

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD
INTEREST ARBITRATION PANEL

In the Matter of the Interest Arbitration between

THE CITY OF JOHNSTOWN,
Public Employer,

-and-

CITY OF JOHNSTOWN POLICE
BENEVOLENT ASSOCIATION, INC.,
Employee Organization.

OPINION

AND

AWARD

PERB Case No. IA2007-027; M2006-312

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

Mark T. Walsh, Esq.
Employee Organization Panel Member

Elayne G. Gold, Esq.
Employer Panel Member

APPEARANCES:

For City of Johnstown:
Roemer, Wallens & Mineaux, LLP
Dionne A. Wheatley, Esq. of Counsel

For City of Johnstown Police Benevolent Association, Inc.
Gleason, Dunn, Walsh & O'Shea
Ronald G. Dunn, 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 City of Johnstown ("City") and the Johnstown Police Benevolent Association ("PBA").

The City of Johnstown is a municipal corporation located in Fulton County with a population of 8,511 at the 2000 census. The City's Police Department, operates on a 24/7 basis. PBA members presently work 12 consecutive hours during a five day work week on one of two shifts. The PBA is the recognized bargaining agent for all sworn members of the City Police Department exclusive of the Chief of Police and Lieutenant. At present, the PBA membership includes 5 full-time Police Officer Sergeants, 16 full-time Police Officers, 1 Detective, and 1 Juvenile Officer.

Two other bargaining units have contractual relationships with the City. These units are CSEA Public Works Unit and the Firefighters Association. Both units have agreements in place through December 31, 2010 with the City. The CSEA unit has wage increases of 3% for each contract year of 2007 through 2010 while the Firefighters have wage increases of 3% in 2007 and 3.5% for the years 2008 through 2010.

The PBA and the City are parties to a Collective Bargaining Agreement for the period January 1, 2004 through December 31, 2006. In 2006, the parties engaged in negotiations towards reaching a successor Agreement. Such negotiations did not result in agreement and subsequently, impasse was declared. PERB appointed a Mediator on March 9, 2007. Mediation was not successful, and on or about March 24, 2008, the PBA filed its Petition for Compulsory Interest Arbitration. The City filed its Response on or about April 7, 2008. Thereafter, the undersigned Public Arbitration Panel was designated by PERB, pursuant to Section 209.4 of the NYS Civil Service Law, for the purpose of making a just and reasonable determination of this dispute.

An interest arbitration hearing was held on September 15, 2008 at which both parties were represented by Counsel and other representatives. Both parties submitted numerous and extensive exhibits and documentation, and both parties presented extensive arguments on their respective positions. Post-hearing briefs have also been received by the Panel.

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

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

The Panel has been specifically authorized by the parties to exceed the two year maximum period duration as provided by the Taylor Law in Section 209.4(c)(vi). This Award therefore provides an Agreement for the period commencing January 1, 2007 and ending December 31, 2009. Accordingly, set out herein is the Panel's Award as to what constitutes a just and reasonable determination of the terms and conditions of employment at issue for the period January 1, 2007 through December 31, 2009.

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

Law:

- a) comparison of the wages, hours and conditions of employment 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 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."

In this proceeding, the PBA has proposed a comparable universe that consists of the Cities of Amsterdam, Gloversville, Watervliet, Glens Falls and the Village of Hudson Falls. The City proposed comparables consists of the Cities of Amsterdam and Gloversville and the Villages of Herkimer and Little Falls. Moreover, the City has maintained that its Agreement with the City's Firefighters is sometimes relevant as a comparable.

The PBA justifies its universe of proffered comparables by stating that they all are within the same geographical region and that the employees in this universe of comparables therefore essentially share the same cost of living, employment opportunities, and consumer prices. Further, the PBA asserts, employees in its proposed universe of comparables face similar tax burdens, housing costs, and utility costs. The PBA maintains that its proffered universe, in essence, constitutes a "contiguous community."

The City claims that its evidence in support of its proffered universe of comparables demonstrates substantial similarities in the areas of population, poverty levels, income, bargaining unit size, as well as terms and conditions of employment. It does note that, save for the Cities of Amsterdam and Gloversville, it does not agree with the PBA's comparables. In this regard, it claims that Watervliet, which is located in Albany County, and Glens Falls and Hudson Falls, both located in Warren County, ought not be considered as comparable communities by the Panel.

Panel Determination on Comparability

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

Perhaps a saving grace in a Panel's conscientious efforts to follow the statutory mandate to take comparables into account is the trend that the Panel Chairman has observed by which Panels ascribe greater weight, lesser weight, or no weight at all to the comparables offered by both parties in connection with a

particular proposal under consideration. This approach favors inclusivity over exclusivity and allows for a consideration of the proposals before the Panel that is not as result-oriented of an approach as would occur if exclusivity were to prevail by rejecting comparables.

The Panel finds that the primary comparables, which are included in the arguments of both parties, are the cities of Gloversville, located in the same County as the City, and Amsterdam, located in the contiguous County of Montgomery. The Panel finds that other municipalities within and outside of Fulton County can also be considered as relevant, given their geographical proximity to the City. Those other municipalities which are outside of Fulton County and geographically distant from the City, however, bear less relevance to the Panel's inquiry due to significant regional economic differences. The Panel would also observe that since they share commonality as City employees, it must also take into account the City's other employees and the current collective bargaining agreements with both CSEA and the Firefighters.

Detailing it down even further, the Panel found the City of Gloversville to be the closest match to the City, not only based on geographic location, but also considered population, nature of the city, size of the police department and other comparable qualities. The City of Amsterdam is also a very good comparable. It is the intent of the Panel herein to bring salaries of City Officers closer to the salaries currently earned by Officers employed by the cities of Amsterdam and Gloversville.

ABILITY TO PAY

The PBA's "ability to pay" evidence was based primarily on the testimony of Economist Kevin Decker and attendant exhibits. The City's financial witness was the City Treasurer, Michael Gifford. In addition, the City also introduced exhibits relevant to Mr. Gifford's testimony.

The PBA contends that the evidence offered from and through Mr. Decker conclusively demonstrates that the City possesses the final financial ability "to pay any conceivable award." According to the PBA, Mr. Gifford acknowledged that Mr. Decker's analysis was substantially accurate and he presented the same conclusion as did Mr. Decker that the City's "present financial condition is solid." The PBA claims that Mr. Decker's presentation included the fact that the General Fund from which the Police Department is budgeted has three major revenue sources: real property tax; sales and use tax; and state and federal aid. The PBA observes that in fiscal year 2007, the General Fund revenues totaled \$8,868,758.00, and that the real property tax and sales and use tax funded the greatest portion of the General Fund, accounting for 36.4% and 34.5% respectively. The PBA also identifies that portion of Mr. Decker's testimony that, over the past five years, the City's real property tax base increased by five percent, and, at the same time, its annual average growth rate and the tax levy "grew at a very controlled rate, 0.69%, which is significantly lower than any of the PBA's proposed, comparable jurisdictions."

The PBA also identifies the testimony of Mr. Gifford that the City has been able to collect tax revenues in an effective manner and it points to Mr. Decker's testimony that the City has also effectively managed the State Constitutional Tax limit, such that, in fiscal year 2008, the City used only 48.1% of the tax Limit, "placing it squarely in the middle of the PBA's comparable range." Moreover, the PBA observes, it is clear from the presentation of Mr. Decker and Mr. Gifford that the City's projected tax revenues and tax bases have grown at a rate greater than the tax increases during the past five years. It is clear, the PBA maintains, that the City can be described as "a fiscally sound municipality with both the means and available avenues necessary to increase General Fund revenues."

The City, focusing on the presentation offered by Mr. Gifford, observes that the General Fund is the primary fund from which the Police Department is funded and that the fund's major revenue sources are the real property tax and sales tax. It notes however, that State aid is also a source of the fund and it identifies Mr. Gifford's testimony that, although the City has seen its State aid increase over the last several years, there is a genuine concern that the "State's fiscal crisis will potentially impact further State aid." It notes also that Mr. Gifford testified that expenditures in the Police Department have increased and, in 2007, over two million dollars was spent by the City to fund the operation of the Police Department.

The City acknowledges Mr. Gifford's testimony that the City's "financial condition is solvent", based in no small part on the fact that it has "made sound fiscal decisions over the last few years to achieve financial stability." It notes that the City's bond rating is Baa2, which is considered a low investment grade, and, further, because it is a small city, the City "is subject to limitations including constitutional tax limits, its limited boundaries, and unforeseen events [that] could potentially have a significant impact." For example, the City identifies a major fire in its downtown area in 2008 with damage that exceeded its insurance coverage. The City also points to the fact that it faces a number of equipment needs as well as foreseeable increases in the costs of health insurance, retirement contributions, and that these factors need to be taken into account by the Panel.

The City states that Mr. Decker's conclusion on behalf of the PBA that the City is sound fiscally and has the ability to pay any award that is fair and reasonable must be understood by the Panel as requiring an inquiry as to what is "fair and reasonable." The City offers the conclusion that an eight percent wage increase over three years cannot be considered fair and reasonable, and it identifies Mr. Gifford's testimony that an 8% wage increase would clearly not be in the best interests of the City. It notes Mr. Gifford's testimony that a projected 3% increase for 2007 and 3.5% for 2008 "are still feasible."

Panel Determination on Ability to Pay

Shortly after the interest arbitration hearing in the instant matter was concluded, the nation's economy went into a what can fairly be described as a tailspin. It is equally fair to state that the nearly catastrophic events that overtook the economy exceeded the worst expectations of most of the mainstream fiscal prognosticators. Along with all other municipalities in New York, and the State itself, the City is faced with fiscal limitations and uncertainties that were not evident when this proceeding was in the hearing or fact finding phase.

On the other hand, the Panel would observe the clear evidence in the record that neither party disputes that the City has done an excellent job of keeping its fiscal house in order. Thus, the Panel is in a position to express confidence that the City will be able to weather the present economic storm. Moreover, the parties do not disagree that the City does have the ability to pay the economic components of this Award in the form of wage increases. Accordingly, it is the finding of this Panel that the wage increases awarded herein constitute a fair and reasonable Award.

SALARY

The PBA's Proposal "1" seeks an increase of 8% in wages for the two years in issue in this interest arbitration proceeding. In support of this proposal, the PBA contends that the record shows that its members' wages have lagged behind wages earned in the comparable jurisdictions that the PBA has offered to the Panel. Thus, viewing the years 2006 and 2007, the PBA notes that the \$41,254.72 base annual salary that was earned by a top step Patrolman in the City was much less than the base annual salaries that were earned by Officers "similarly situated" in the comparables. It is significant, according to the PBA, that the disparity in wages is even greater when the focus is on the two(2) jurisdictions which the parties mutually cite as appropriate comparables: the cities of Amsterdam and Gloversville.

Thus the PBA notes that in 2006, a top step Officer in Amsterdam was able to earn a base annual salary of \$48,514.00, and in 2006 a top step Officer in Gloversville earned a base annual salary of \$44,657.00. The top step Officers in these two jurisdictions, the PBA notes, had an average salary that was 12.92% greater than the top step Officer in the City. The disparity increases, the PBA maintains, when one takes into account Amsterdam's "going out" rate for the calendar year 2006. In 2007, according to the PBA, the disparity between the comparables upon which the parties agreed is "even greater." It notes that the 2007 base annual salary for top step Officers in Amsterdam and Gloversville is \$47,671.40 whereas top step Patrolmen in the City, under the expired Agreement, were paid the

same amount in 2007 as 2006, namely, \$41,254.72, or 15.5% less than their fellow Officers in the two other jurisdictions.

The salary disparities have had a negative impact, the PBA asserts, seen in what it considers to be "growing retention problems" as set forth in the testimony of PBA President Carter, and as corroborated by Gloversville Police Officer Scott. In response to the City's claim that neither the City's Fire Department nor the Gloversville Police Department received increases of greater than 3% in 2006 or 2007, the PBA states that these facts cannot justify limiting the Award herein to the same percentage because of the disparity between Amsterdam and Gloversville. The PBA also emphasizes the fact that it agreed to the City's zero percent base annual salary increase in 2004. The PBA claims that it did so "in reliance upon the City's broken promise that it would be made up to the PBA in the future."

An 8% increase, the PBA argues, would not eliminate the salary disparities identified, and its members would earn \$3,063.07 less in base annual salary than the 2007 average for the entire comparable universe and 7% less than the 2007 average that top step Officers receive in Amsterdam and Gloversville. The PBA also notes that the cost of living rose 3.8% in 2006 and 2.5% in 2007, and has already risen 4.2% in January and June of 2008. Annual salary increases of at least 3.35%, the PBA observes, would be required simply to stay in pace with inflation. The PBA claims therefore that an 8% across the board annual salary increase represents simply a just and reasonable Award and should be awarded herein by the Panel.

Needless to say, the City resists the 8% increase sought by the PBA. It maintains that this demand "is not justified" for a number of reasons. Regarding the claim that the City recently had an Officer leave to join the Police Department in Gloversville because of higher compensation, the City contends that claim must be rejected since Officer Scott's transfer more "likely [was] because the old management issues had been resolved to his liking and not because he wanted more money." Furthermore, the "short term lateral transfers between two police departments" as exemplified by Officer Scott's situation, the City contends, had nothing to do with any recruitment or retention problem but involved matters that were personal to the Officer. The City claims that its compensation package can be seen to be competitive to other Police Departments and effectively accomplishes all goals of retention.

Turning to the comparable studies offered by the PBA, the City maintains that they refute the PBA's claim that its Officers are not adequately compensated. The City notes that among the City's comparables, City Officers start off as the fourth highest among the five jurisdictions, but by the time an Officer is at ten years of service his or her salary is among the highest, and, in fact, is greater than salaries received by Officers in Amsterdam and Gloversville. Moreover, the City indicates that the new hire salary for the City in 2006 was greater than that offered in Amsterdam, Glens Falls, and Hudson Falls. The City also finds it significant that when viewing the PBA's comparables, one finds that nearly all of the jurisdictions

therein have had 3% wage increases over the last several years. It reviews the record as containing an acknowledgment by PBA President Carter that no change in patrol requirements has occurred in the City during the past several years, and fact, the City claims, its crime index decreased between 2006 and 2007.

It cannot be said, the City claims, that there is any justification for an 8% wage increase. Moreover, the City argues that the Panel should not be persuaded by any assertion of the PBA that the wage increase they receive must be greater than that received by City Firefighters. It notes that "obvious differences" exist between the duties of Police Officers and Firefighters but, the City claims, it must be emphasized that "both provide important services to the public." The City urges the Panel to take into account the Firefighters' compensation as well as their other terms and conditions of employment. It can also be noted, the City puts forth, that the Firefighters perform duties beyond the basic public safety function to fight fires, and they have "ancillary duties for the maintenance of the Fire Department's physical plant and equipment and perform Code Enforcement functions", unlike Police Officers.

The City also relies on the testimony of Mr. Gifford that the City's Police Officers always have been among the highest paid employees of the City. It points to that portion of Mr. Gifford's testimony that a Firefighter requires eight years of service to reach top grade but a Police Officer requires only three years of service to reach top grade.

The City contends that the \$850 added to the salary schedule for Firefighters, in addition to a 3% increase in 2005 was after the 2004 wage freeze experienced by all units. Viewing the years 2001 to 2003, the City also claims that PBA members received a 3.5% increase, greater, therefore, than the Firefighters' 3% increases. The \$850 given to the Firefighters, the City asserts, "was intended to give the firefighters a more competitive salary with the police, and the Association's comparison chart indicates that the firefighters still earn less than the police."

Panel Determination on Salary

Initially, the Panel would note that the parties have expressly agreed to extend the two year statutory authority of this Panel and have agreed upon a three year Award that is effective for the period January 1, 2007 through December 31, 2009. Turning to the question of a salary increase, the Panel first identifies its finding that the City has the financial ability, as agreed by the parties, to address a fair increase in wages. Clearly, the PBA's ranking in the universe of comparables, as identified by the Panel, supports the conclusion that a fair increase in wages is justified in order to keep the PBA members at their present position. It is the intent of the Panel to award the salary increases and adjustment to base herein so that the difference between the salaries of City Officers and those in Amsterdam and Gloversville is lessened.

Further, a consideration of the statutory criterion of comparability also allows the Panel to take into account the City's Agreement with the Firefighters, given the fact that there is an obvious basis to compare the "conditions of employment" that attend the duties of the Police and Firefighters. It is noted that the City's Agreement with the Firefighters shows, for the years to be covered by the instant Award, that the Firefighters received, for the period 2007 through 2010, wage increases of 3%, 3.5%, and 3.5%. The Panel also notes that the Firefighters, for their 2005 base annual salary increase, received 3% plus \$850.

In view of all statutory criteria, and based on the Panel's unanimous findings and the parties' agreement for a three year Award, the Panel will award an increase in salary as stated plus, for 2008, an \$800 salary adjustment to base.

AWARD

1. Effective January 1, 2007, and retroactive to that date, the base salary schedule shall be increased by three percent (3%).
2. Effective January 1, 2008, and retroactive to that date, there shall be an \$800 salary adjustment to base salary, and then the base salary schedule shall be increased by three and one-half percent (3.5%), also retroactive to that date.
3. Effective January 1, 2009, and retroactive to that date, the base salary schedule shall be increased by three and one-half percent (3.5%).
4. All retroactive monies due herein shall be paid by the City within thirty (30) days of the issuance of this Award.

LONGEVITY

The PBA's Proposal "2" seeks to increase the current longevity service payment by \$200 in each year of the contractual period. According to the PBA, its evidence in support of the salary increase proposal shows that the base annual salary for top step Patrolmen in 2006, 2007 and 2008 "languished well behind that of top step police officers in comparable jurisdiction." According to the PBA, a method of addressing the disparity would be to increase the longevity service payment as sought in the proposal. It notes that among its comparables, the longevity payments "vary greatly", and the City's Firefighters were provided a longevity service payment in 2007 of \$1,250 at the conclusion of ten years of service. The PBA asserts, given its salary position in the context of the comparable jurisdictions and the fact that the Firefighters in 2005, received a \$850 base salary increase, its longevity proposal is justified.

The City claims that when analyzed in terms of the PBA's comparables, the longevity payments for PBA members is much greater than provided in Watervliet and Hudson Falls. The PBA President acknowledged in his testimony, the City observes, that PBA members receive the highest longevity payments when compared to other City employees. In sum, the City claims, no adequate basis or justification for an increase in longevity payments has been presented.

Panel Determination on Longevity

The Panel is unanimous in its finding that the same reasons and evidence that justify a fair wage increase for members of the bargaining unit also support, for the third year of the Award, a modest increase in each longevity step of \$100. Such an increase is in accord with the statutory criteria, including the City's ability to pay, the need to keep the PBA members in their position among the comparables, and is otherwise fair and reasonable under all of the circumstances presented herein.

AWARD ON LONGEVITY

Effective January 1, 2009, and retroactive to that date, there shall be a one hundred (\$100) dollar increase to each longevity step.

SICK LEAVE

Article 13(g) of the parties' Agreement, addresses "additional sick leave", as follows:

In the event of prolonged illness or disability, every employee or officer who has a minimum accumulated sick leave of thirty (30) day or more who exhausted aforesaid leave, shall be entitled to an additional thirty (30) days sick leave. An employee or officer who has less than three years service shall be entitled to a minimum thirty (30) days sick leave.

The City's Proposal "2" seeks to eliminate Article 13(g) of the Agreement. The City notes however that during negotiations, it modified this proposal to change the word "shall" to "may" so that "the discretion to grant the additional sick leave would be made by the Chief of Police and appealable to the City Council." It points to the testimony of Chief Horning that in years past, the language of the provision utilized "may" instead of "shall." It also identifies the Chief's belief that the change was not negotiated. In any event, the City contends that the justification is to give discretion back to the City to allow, as the Chief testified, an ability on the part of the Chief to view an Officer's use of sick leave in order to determine if there is a need for additional sick leave rather than automatically granting additional days. The City observes that the Chief requires this discretion to evaluate the situation because, for example, the employee seeking additional sick time may be a new hire who does not have the accumulated sick time.

The City claims that its comparables show that only two other jurisdictions, Gloversville and Little Falls, have sick leave extension provisions and both grant the municipalities appointing authority discretion regarding whether or not additional leave time will be granted. Viewing the PBA's comparables, the City observes that only Hudson Falls and Glens Falls have additional sick leave provisions and that, in Glens Falls, additional sick leave is discretionary. It is the City's position that its "sick leave extension provision is extremely generous and, therefore, the modification requested is warranted and should be granted by the Panel."

The PBA responds that the City's modified proposal should not be granted. The PBA insists that the language now in place in Article 13(g) "is an entitlement and is not subject to the discretion of the Chief." No justification has been advanced by the City that is persuasive, according to the PBA, to require any modification of the existing language. Indeed the PBA argues that a change would in essence eliminate the benefit and "providing additional coverage in rare circumstances to previously ineligible members at the expense of the entitlement to the benefits for all members who would have qualified for the benefit under the existing structure, does not rise to the level of a persuasive justification sufficient to carry the City's statutory burden under the Taylor Law."

According to the PBA, additional sick leave benefits are provided in comparable jurisdictions, as for example, in Hudson Falls, as well as to the City's Firefighters. The current Agreement reflects "a mutually bargained for Agreement",

the PBA argues, and there is no basis for the Panel to award the City its modified proposal.

Panel Determination on Additional Sick Leave

The Panel unanimously finds that the City has advanced persuasive reasons why the Chief should be granted discretion when a request for additional sick leave is made. Nevertheless, the Panel appreciates the concerns that could be raised by the PBA if the discretion would be viewed as “unbridled” and not subject to the review of any neutral and impartial authority. With safeguards in place that the exercise of discretion must be based on reason and that the exercise of that discretion can also be reviewed by a mutually selected arbitrator, the Panel finds that the City’s modified proposal, with these safeguards, should be awarded.

AWARD ON ADDITIONAL SICK LEAVE

Effective upon the date of the Award, Article 13(g) of the parties’ Agreement shall read as follows:

In the event of prolonged illness or disability, every employee or officer who has a minimum accumulated sick leave of thirty (30) day or more and who has exhausted the aforesaid leave, may be entitled to an additional thirty (30) days sick leave. An employee or officer who has less than three years service may be entitled to a minimum thirty (30) days sick leave. Any request for additional sick leave under this provision shall not be unreasonably denied, and any denial of request for additional sick leave is subject to the parties’ grievance procedure.

REMAINING ISSUES

The Panel has reviewed and considered all of the demands and proposals of both parties, as well as the extensive and voluminous record in support of said proposals. The fact that these proposals have not been specifically addressed in this Opinion and Award does not mean that they were not closely studied and considered in the overall context of contract terms and benefits by the Panel members. In interest arbitration, as in collective bargaining, not all proposals are accepted, and not all contentions are agreed with. The Panel, in reaching what it has determined to be a fair result, has not addressed or made an Award on some of the proposals submitted by each of the parties. This is consistent with collective bargaining generally. The Panel has also included in this Award those proposals previously agreed upon by the parties:

Award On Remaining Issues

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

- A. Article 27, "Health Benefits" is amended by deleting all references to CDPHP.
- B. Article 27, Section 4(b) "Health Insurance Buy-out" will increase, effective 1/1/09, so that employees waiving coverage will receive:

- \$4,500 per year for family coverage waiver
- \$3,400 per year for two-person coverage waiver
- \$1,700 per year for single coverage waiver.

- C. Article 27, Section 4(d), shall be amended at subparagraph 3 to read as follows:

An employee who, at the time of retirement, contributes towards health insurance coverage, will continue to contribute at the same percentage contribution upon retirement as the employee contributed while an active employee.

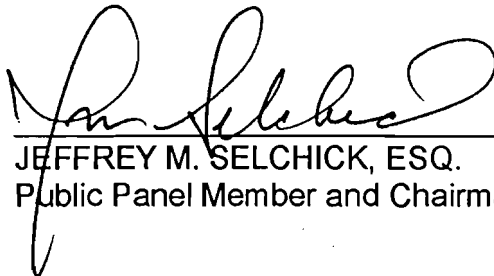
- D. The "City of Johnstown Police Department General Municipal Law Section 207-c Forms" shall be amended to replace the existing Medical Release form with the form attached hereto as Attachment A.
- E. The "City of Johnstown Police Department General Municipal Law Section 207-c Forms" shall be amended to replace the existing New York State Retirement System Notice Form with the form attached hereto as Attachment B.

RETENTION OF JURISDICTION

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

DURATION OF CONTRACT

The Panel has been specifically authorized by the parties to exceed the two year maximum Interest Arbitration Award duration as provided by the Civil Service Law in Section 209.4(c)(vi). This Award therefore shall cover the three year period commencing January 1, 2007 and ending December 31, 2009.



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

4/21/09
Date of
Award

[Concur]



MARK T. WALSH, ESQ.
Employee Organization Panel Member

4/17/09
Date

[Concur]



ELAYNE G. GOLD, ESQ.
Employer Panel Member

4/19/09
Date

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

On this 21st day of April, 2009 before me personally came and appeared Jeffrey M. Selchick, Esq, to me known and known to me to be the individual described in the foregoing Instrument, and he acknowledged to me that he executed the same.

Lauren A Selchick

Notary Public

Lauren A Selchick
Notary Public #02SE6162336
Qualified in Albany County
My commission expires 03/12/2011

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

On this 17th day of April, 2009 before me personally came and appeared Mark T. Walsh, Esq., to me known and known to me to be the individual described in the foregoing Instrument, and he acknowledged to me that he executed the same.

Kathleen D Secor

Notary Public

KATHLEEN D. SECOR
Notary Public, State of New York
Qualified in Rensselaer County
No. 4707531
Commission Expires March 30, 2011

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

On this 14th day of April, 2009 before me personally came and appeared Elayne G. Gold, Esq., to me known and known to me to be the individual described in the foregoing Instrument, and she acknowledged to me that she executed the same.

Andrea Naseman

Notary Public

ANDREA NASEMAN
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN ALBANY COUNTY
NO. 01NA4773541
COMMISSION EXPIRES OCTOBER 31, 2010