BOARD OF INTEREST ARBITRATION
NYS PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of an Interest Arbitration between:	**PERB Case Nos. IA201-027; M201-146**
THE CITY OF NEW YORK }	
and }	**Re: Interest Arbitration**
PATROLMAN'S BENEVOLENT ASSOCIATION }	
OF THE CITY OF NEW YORK }	
}	
}	

PUBLIC ARBITRATION PANEL

Gary J. Dellaverson, Esq., Employer Panel Member
Ronald G. Dunn, Esq., Employee Organization Panel Member
Dana Edward Eischen, Esq., Impartial Panel Member and Chair

APPEARANCES

The City of New York:

Proskauer Rose, LLP
by Carole O'Blenes Esq. Marnie W. Zebrak, Esq.
M.. David Zurndorfer, Esq. Jay A. Hewlin, Esq.

Office of Labor Relations
by James J. Hanley, Commissioner of Labor Relations
Alan M. Schlesinger, Esq., General Counsel
Pamela Silverblatt, 1st Deputy Commissioner

PBA of the City of New York:

Kaye Scholer LLP
by Jay W. Waks, Esq. Rachel Yarkon, Esq.
Barry Willner, Esq. Gregory Fidlon, Esq.

PBA Office of General Counsel
Michael Murray, Esq.

PROCEEDINGS

The Panel held hearings in New York City on March 18-19-20, April 22-23 and May 6-7, 2002, at which both parties were ably represented and afforded full opportunity to present oral and documentary evidence in support of their respective positions. The record was opened with the exchange of pre-hearing briefs and supporting documents in early March 2002 and closed with the submission and exchange of post-hearing briefs and reply briefs, with supporting documentation, in late June 2002. The well-developed and informative record consists of more than 2,300 pages of transcribed sworn testimony and oral argument, some 600 additional multi-page documentary exhibits and the comprehensive pre-hearing and post-hearing briefs. That record has been fully and carefully considered by the Public Arbitration Panel, in strict accordance with the statutory criteria of Civil Service Law, § 209.4, *infra*.

After convening in Executive Session for several days in July, August and September, 2002, the Panel arrived at a majority decision and executed the attached two-page Award on September 4, 2002. Because the Panel was absolutely convinced that its decision should be officially announced to the public and the parties prior to September 11, 2002, we issued the Award together with an abbreviated Opinion of the Chair. Although I benefitted greatly throughout these proceedings from the wisdom and experience of my Panel colleagues, the language of the Opinion which follows is the sole responsibility of the Chair.

THE GOVERNING STATUTORY PROVISIONS

New York State Civil Service Law Section 209.4(c)

* * * * * *

(v) the public arbitration panel shall make a just and reasonable determination of the matters in dispute. In arriving at such determination, the panel shall specify the basis for its findings, taking into consideration, in addition to any other relevant factors, the following:

a. comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with 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.

(vi) The determination of the public arbitration panel shall be final and binding upon the parties for the period prescribed by the panel, but in no event shall such period exceed two years from the termination date of any previous collective bargaining agreement, or of there is no previous collective bargaining agreement then for a period not to exceed two years from the date of the determination of the panel.

OPINION OF THE CHAIR

Preliminary Statement

Under the Taylor Law, an interest arbitration panel has the authority to balance and weigh the various statutory criteria and to determine the weight to be accorded to each such variable in order to make a fair and reasonable award in the factual context and circumstances of the individual case. *See, e.g.*, Police Benevolent Association of White Plains, Inc. and City of White Plains, PERB IA97-032 (Nov. 10, 1998) (Stein, Burzichelli, Zuckerman); State of New York and Police Benevolent Association of New York State Troopers, PERB IA95 -034 (June 24, 1997) (Scheinman, Kurach, McCormack); Massena Police Protective Association v. Village of Massena, PERB IA 96033; M 96-217 (Mar. 23, 1998) (Rinaldo, Peets, Deperno).

Inevitably, the events and fallout of September 11, 2001 permeated these proceedings and obviously and significantly influenced the deliberations and final decision of this Panel. It should be noted and emphasized, however, that the fundamental bases for the attached 24-month Award are the statutory mandates for fair and reasonable application of the enumerated statutory criteria set forth in Civil Service Law § 209.4(c)(v), adherence to fundamental principles of pattern bargaining and parity which these Parties have endorsed for decades and the express statutory time limitations on our authority set forth in Civil Service Law § 209.4(c)(vi).

In my considered opinion, for reasons stated herein, the attached 24-month Award is fair, reasonable and fully consistent with both the statutory requirements and the recognized principles of parity-conformity and pattern-consistency which have characterized the collective bargaining relationship of the City of New York and its unions, including the PBA, for many decades.

The Principles of Pattern and Parity

In the parlance of labor-management relations and collective bargaining, the terms "pattern" and "parity" are descriptive of relative equality among and between negotiated agreements; "pattern" is general equivalence of net cost between bargaining units and "parity" is the relationship of basic maximum salary between titles. For many decades, the City of New York and the scores of labor organizations representing over 350,000 City employees in some 147 bargaining units have engaged in pattern bargaining. Over the years, the City and the individual unions or union coalitions representing City employees, as well as every impartial arbitration tribunal called upon for dispute intervention in the public interest, have accepted pattern-conformity as a primary benchmark, unless a particular case presented "unique, extraordinary, compelling and critical" circumstances that could not be addressed without stretching the parameters of the pattern.

The unions representing New York City employees - - prominently including the PBA - - traditionally have participated in pattern bargaining; not necessarily because it always favors their positions but because they seem to recognize that not only is it necessary but it usually best serves the interests of the unions and the employees they represent, as well as the public and the City. The pattern principle allows labor leaders to agree to fair and reasonable settlements, with a level of comfort that they will not later be embarrassed or outdone by a richer settlement achieved by one of the dozens of other municipal unions. Many distinguished impartial arbitrators have recognized that collective bargaining between the City of New York and its various unions, both uniformed and civilian, has been governed by mutual acceptance of the concept of pattern bargaining.

Primarily because pattern bargaining has brought relative stability to labor relations in New York City, it has been endorsed by nearly every impasse panel that has ever considered the matter;

with any exceptions limited to unique, extraordinary, compelling and critical circumstances that cannot be addressed within the parameters of the pattern. I concur with and adhere to the holdings in those prior awards that pattern bargaining generally has served these parties well for decades and that its logic and necessity have usually been recognized by the City, the municipal labor unions and labor neutrals alike. However, as the first such interest arbitration panel established under the terms of the Taylor Law, our deference to the parties' traditional pattern-bargaining standards must also pass the overall litmus test , set forth in Civil Service Law, § 209.4(c)(v), *supra*, of "a just and reasonable determination of the matters in dispute".

Regarding the related concept of parity, it is undisputed that police officers and firefighters have had the same basic maximum salary for more than 100 years, *i.e.*, since 1898; and since 1964 the same "basic max" parity relationship has applied to correction officers. In addition, each group of superior officers (*e.g.*, sergeants, lieutenants, captains) within the NYPD, the Fire Department and the Department of Correction has long adhered to strict vertical parity with all the titles within their respective uniformed force and horizontal parity with their counterparts in the other uniformed forces.

In my considered judgement, unless the Taylor Law's overriding standards of fairness and reasonableness and/or the statutory criterion of the public's interests and welfare compel a different result, this public interest arbitration panel should not weigh and balance the other criteria set forth in Civil Service Law § 209.4(c)(v) in a manner at odds with the values which the parties themselves have validated over the years by their own actions at the bargaining table. For arbitrators to reject such mutually accepted historical standards and impose their own value judgements divorced from

the realities of the bargaining relationship would be a clear invitation to the parties to seek more in arbitration than they could obtain in negotiation with knowledgeable negotiators.

Such an award, if it were made, would make successful negotiations between the City and its labor organizations extremely difficult, by undermining a process of collective bargaining which is time-proven to be effective in accommodating the needs of the parties with due regard for the interests and welfare of the public. Even if times and circumstances were otherwise normal, it would be unwise and imprudent for this Panel to impose such major sea changes on an established bargaining relationship by arbitral fiat. To do so in the context of reverberating after-shocks from the unspeakable events of 9/11 would escalate an act of imprudence to one of irresponsibility.

In that connection, the Panel fully credits the testimony of the Mayor of New York City that: " This is a historic time in the history of New York. I don't think in modern memory, there has ever been a time where the City was so challenged to do more for people with fewer resources." Transcript. 1810, 1796-97 (Bloomberg). Especially because the Panel is acutely aware that the City's post-9/11 fiscal environment is fraught with so many other perils, this would be an absolutely inappropriate time for this Panel to blaze trails into new and unexplored areas of collective bargaining for the parties.

For all of the foregoing reasons, we reject the PBA's bargaining initiative for a 21.9% "market adjustment" salary increase to Police Officers. Instead, we take as our basic template for the attached 24-month Award the uniformed services pattern for the 2000/03 round of bargaining, established in the Uniformed Forces Coalition Economic Agreement ("UFCEA") entered into on July 26, 2001 between the City and the Uniformed Forces Coalition ("UFC"). [For this round, the UFC consisted of all the unions representing uniformed employees of the City, with the exception

of the PBA. In the current round, ten of the thirteen uniformed unions have ratified UFCEA-based agreements with the City; and the Uniformed Firefighters Association and the Detectives' Endowment Association have tentatively accepted the uniformed coalition deal as well].

Out of similar deference to pattern bargaining, we must also decline to adopt the PBA's bargaining initiative for unit-specific benefits for Police Officers in excess of those established in the Health Benefits Agreement, dated January 11, 2001, (the "HBA") between the City and the Municipal Labor Committee ("MLC"). Without expressly or implicitly resolving the controversy between the parties as to whether the PBA is bound by law or contract to the terms of the Municipal Labor Coalition Health Benefits Agreement, the arbitral principles and the statutory criteria, *supra*, all favor a conclusion that the terms of the HBA should be fully dispositive of the health and welfare aspect of the dispute before this Panel. Nothing in this record supports any contrary conclusion.

The UFCEA Pattern Fairly and Reasonably Applied to the PBA

In addition to the $200 Welfare Fund increase effective on the last day of that agreement, pursuant to the Municipal Labor Committee Health Benefits Agreement, the Uniformed Forces Coalition Economic Agreement of July 26, 2001, provides for: (i) a 5% increase on the first day of the agreement; (ii) another 5% increase (compounded) at the start of the 13th month of the agreement; (iii) an "Additional Compensation Fund" of 1.5% on the first day of the 28th month of the agreement, to address "unit-specific issues" for each of the constituent unions. The UFCEA is formulated as a two-year contract, with a pair of three-month extensions; thus covering a total period of 30 months. The City calculates net cost savings of 2.46% due to extension of the contract expiration date by the additional six months but, for reasons explained below, the longer term

option is unavailable in this particular case. The ultimate dilemma we faced was the impossibility of achieving both absolute parity and rigid pattern adherence in the same 24-month Award.

This Panel simply will not render an award which undermines the principles of horizontal and vertical parity cementing the bargaining relationships between the City and its various uniformed employees. The City presented persuasive evidence that the last significant disruption of these parity relationships in the 1960's triggered what is commonly called the "parity wars"; resulting in court actions, arbitrations, strikes and "an endless cycle of catch-up", which cost the City hundreds of millions of dollars. Maintenance of the fundamental parity of basic maximum rates between NYPD Police Officers and NYPD Firemen requires a rate of increase of 5% during each year of our two-year Award, since the UFCEA provides for 5% rate increases on the first day of the 1st and 13th months of its 30-month term. The Panel's decision honors and maintains those fundamental parity relationships by providing for identical rate increases of 5% increase on the first day of the Award and another 5% increase (compounded) at the start of the 13th month of its 24-month term.

There is irrefutable logic to the City's position that withholding 1% of that second 5% rate increase until the last day under our Award would eventually have provided for "out-year" parity of the basic maximum rates; while allowing the City to partially replicate the 1% of cost-savings which it attributes to the first three-month extension under the UFCEA. We carefully considered but ultimately rejected that approach because a majority of the Panel is persuaded that it would produce a result wholly at odds with our overriding obligation under Civil Service Law § 209.4(c)(v) to make a fair and reasonable determination of the matters in dispute. Specifically, we rejected paying a 4% rather than a 5% rate increase to Police Officers between August 1, 2001 and July 31, 2002 because that would produce the unacceptable result of unfair and unreasonable disparity between the

compensation paid to NYPD Police Officers and NYFD Firefighters for time spent working shoulder-to-shoulder performing the same search, rescue and recovery duties in the aftermath of the 9/11World Trade Center disaster.

On September 11, 2001, PBA-represented Police Officers and UFA-represented Firefighters faithfully performed their sworn duties by running into the danger which everyone else could flee. Many of them paid the ultimate price for their incredible devotion to the public safety and welfare. The *Police Commissioner's National Police Week Memorial Message*, sent to all NYPD commands on May 13, 2002, succinctly addressed this issue, as follows:

> Many people used the time after 9/11 for reassessment or reflection. New York City Police Officers did not have that luxury. In addition to working around the clock in recovery efforts at Ground Zero and Fresh Kills, you went about the day-to-day business of keeping New York safe.... From heroic rescues to the long hours on parade duty, exposed to the elements, you are keeping New York and New Yorkers safe. Despite diminishing numbers, due to attrition, you are getting the job done, day in and day out. Ultimately, I hope you are compensated adequately for the outstanding work you do.

In the days, weeks and months which followed 9/11, PBA-represented Police Officers and UFA-represented Firefighters alike performed the dangerous, dirty and grisly work which far too often defines their chosen professions. We cannot forget that they worked side-by-side in that reeking, smoking, death-filled disaster area which was once the World Trade Center. None of us one should be allowed to forget the hellish setting and circumstances in which these men and women toiled for months with such devotion to duty; including recovering the shattered bodies of civilians and fallen comrades in uniform, under working conditions surpassing even the nightmare visions of Hieronymous Bosch.

Is it adequate, let alone fair, reasonable and in the best interest of the public's welfare and safety, for this Panel to rule that Police Officers should be compensated at an unequal pro-rated level of pay for performing such work in the aftermath of 9/11, solely because the 24-month statutory limitation on our authority and the intransigence of the Parties prevented us from replicating the first three-month extension on the UFCEA in a longer term Award? Or is the public interest better served by this Panel's conclusion that fairness and reasonableness require a parity-consistent Award which provides equal pay for equal work in the performance of those post-9/11 homeland security duties? I hold that the correct answer is self evident. In my judgement, this Panel has responded correctly, fairly and reasonably in a parity-conforming 24-month Award which of necessity flexes but does not break the uniformed services pattern.

A fair and reasonable Award need not be inflexibly rigid just because it declines to impose a fundamental approach which violates an essential principle, like the vertical and horizontal parity in uniformed forces titles which these Parties themselves have repeatedly validated in free collective bargaining. Although the Panel also reaffirms its deference to the principle of pattern bargaining, it need not adhere slavishly to a "one-size fits all" pattern, because that also would be contrary to the custom, practice and tradition of collective bargaining between the City and its labor organizations. It is not unheard of for boards of arbitration or negotiating parties with a firm commitment to pattern bargaining to make rare exceptions, when absolutely necessary to address a clearly demonstrated inequity or some other clearly and convincingly demonstrated rationale for making a reasonable exception to an established pattern. See, *e.g.*, Report to the President by Emergency Board No. 187 at 5 (Oct. 10, 1975) (Rehmus, Eischen, Weston).

We need look no further than the bargained settlement in the City/United Federation of Teachers Agreement of June 10, 2002, for ample evidence that collective bargaining by sophisticated negotiators is a wonderfully flexible process for achieving innovative but pattern-consistent solutions to urgent unit-specific problems. In that connection, the City/UFT Fact Finding Board concluded that educator recruitment problems presented a "unique, extraordinary, compelling and critical circumstance" which justified a reasonable measure of deviation from the "civilian pattern", to address unit-specific recruitment issues. *See* Findings of Fact and Recommendations of the Fact Finding Board I the Matter of an Impasse Between United Federation of Teachers and The Board of Education/City of New York, (Collins, Scheinman, Townley) PERB Case Nos. M201-003, 201-015, April 8, 2002. Moreover, the ultimate settlement achieved by the City School District and UFT Local 2 shows that the parties manifestly agreed with that conclusion and recommendation. [The City/UFT Agreement also provided for additional compensation for teachers, in return for real productivity gains for the Employer. This Panel's strenuous efforts to render an Award reflecting both the parity/pattern elements of the UFCEA Agreement and some additional compensation for Police Officers in return for NYPD-specific productivity gains ultimately foundered on the Panels inability to obtain mutual agreement by the Parties to a 30-month term].

In the Panel's 24-month Award, the 1.5% "Additional Calculation Fund" for addressing unit-specific issues in a mutually agreeable manner other than enhancement of the two 5% general wage increases is payable on the last day of the 24th month, whereas the 1.5% additional compensation fund is payable on the first day of the 28th month under the 30-month UFCEA. [The City calculates that the funding for this additional compensation fund was generated in the UFCEA by the second 3-month extension and that the timing of the 1.5% in our 24-month Award constitutes an unjustified

pattern deviation]. Notwithstanding our inability to replicate that UFCEA settlement in a 30-month iteration of our 24-month Award, this Panel is persuaded that granting the 1.5% additional compensation fund to PBA-represented employees three months earlier is justified by record evidence clearly and convincingly demonstrating a recruitment and retention crisis in the NYPD which, if left unaddressed, will negatively impact public safety.

According to data compiled by Professors David Lipsky and Harry Katz, nationally prominent labor economists associated with the New York State School of Industrial and Labor Relations, "the net outflow from the force will be approximately 1900 officers a year. In other words, over a four-year period, December 31, 2002 to December 31, 2006, the size of the force will shrink by another 7,600 officers. In summary, over the six-year period, 2000 [to] 2006, the New York City police force will shrink by 29 percent unless corrective action is taken." Transcript 2187/23-2188/20 (Lipsky). The conclusion that this is an unacceptable result for public safety was echoed and buttressed by former NYPD Police Commissioner Timoney, who testified that: [The NYPD came up with a] "mathematical model that would measure ... arm[ed] patrol strength and come up with a number that people could live with that you could say if X number of police officers are working on a daily basis, then the city is pretty safe. And that number was 6,666 [and increased to 9,800 following the Safe Streets, Safe City legislation]. It was determined if you fall below that number on a regular basis, you are, quite literally, endangering public safety." Transcript 413/21-414/24,422/19-23 (Timoney).

Irrespective of whether the PBA's calculation that the actual number of uniformed officers was below the budgeted number by about 2000 is correct or the City's figure of about 1,600 is more accurate, since the NYPD already was below budget at the time of the reduction the declining size

of the force is indisputable. The graduating class of new officers from the July 2001 Academy class numbered 1,359, well below City projections and the City's calculation of 35,000 applicants is significantly skewed by the inclusion of thousands of internet inquiries which never materialize into actual live candidates. In addition to the decline in the number of viable applicants, there also has been a decline in the quality of recruits as evidenced by the fact that the Police Academy dropout rate has more than doubled in recent years. *See, e.g.*, December 2001 Police Officer Recruitment and Hiring Report, at 41).

In manifest recognition of these demonstrated problems of police department recruitment and retention, both the above-referenced Mayoral Commission and the Mayor's Management Report for Fiscal 2001 described unprecedented steps being taken by the City to increase the number of candidates for Police Officer examinations. *See* Review of the New York City Police Department's Recruitment and Hiring of New police Officers, December 2001, at 14-19 and excerpt from Re-Engineering Municipal Services 1994-2001, Mayor's Management Report Fiscal 2001 Supplement. These new steps (including calling potential recruits at home, waiving the $35 application fee, offering tests at numerous locations on numerous dates, and extending filing deadlines) further demonstrate the persistent difficulty the City is experiencing in attracting quality candidates. *See also* Al Baker, *Kelly Plans to Hire Outside Consultant to Speed Police Recruiting,* NEW YORK TIMES (February 8, 2002).

Even if such efforts were successful, there is no question that a large number of applicants still inevitably leads to a relatively small pool of acceptable candidates. In unrefuted testimony, the former head of the New York State Police and the Federal Drug Enforcement Agency explained, based on his years of experiences with police recruiting that "the absolute [bare] minimum would

be 20 applications per successful candidate". Transcript 2030/18-21 (Constantine). Thus, even with the inflated count of 35,000 applicants, the NYPD will likely fall well short of filling its current goal to hire 2,700 recruits from among the 10,000 "test takers" it now expects in this round. On that basis, the City probably will not generate sufficient candidates to fill the class of 1,800-2,000 recruits it was seeking as of the Panel's last hearing day on May 7, 2002.

In sum, the evidence persuades a majority of this Panel that, for a variety of reasons including the large surge in retirement-eligible officers flowing from previous hiring initiatives and the attraction of experienced officers to less stressful police work in other venues, the NYPD uniformed force is shrinking in size. This very real crisis results from the indisputable fact that outflows of police officers have been and continue to be significantly greater than inflows of new recruits. Nor is it any longer open to reasonable debate that crime levels in New York City, a key measure of the City's quality of life, dramatically declined in recent years as a result of increases in the uniformed numbers of the NYPD. Particularly in the wake of 9/11, there can be no dispute that maintaining a numerically strong, high quality, high morale police force is a unique, critical, urgent and compelling need.

These evident recruitment problems must be addressed if uniformed police officer numbers are not to reach a level at which the NYPD will not be able to effectively perform its basic public safety functions. For that reason alone, the Panel holds that despite our previously described but frustrated preference to more precisely duplicate the UFCEA pattern in a 30-month Award, we are nonetheless justified in replicating the 1.5% additional compensation fund to the best of our ability in the attached 24-month Award, subject to the same limitations and conditions on allocation of those additional funds. We cannot mandate that the Parties mutually agree to spend those additional

monies on ways and means specifically targeted to alleviate the expanding recruitment crisis, but that is the plain intent and the strongest possible recommendation of the Chair of this Panel.

SUMMATION

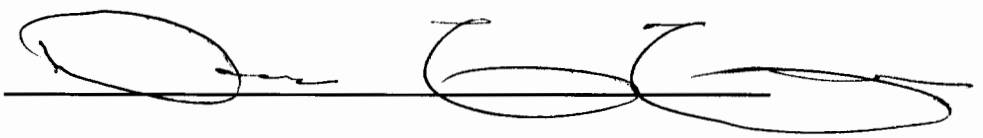
The Panel's ultimate responsibility under the enumerated statutory criteria of Civil Service Law § 209.4(c)(v) is to address fairly and reasonably the legitimate economic needs of the Police Officers in a manner which does not disrupt the tenuous stability already obtained through creatively bargained iterations of parity-conforming and pattern-consistent negotiated agreements; while simultaneously taking into account the City's ability to pay and recognizing the safety, security and financial interests and welfare of the public who will be called upon to pay the cost. The delicate task of traversing without tearing asunder this intricate web of legitimate but irreducibly countervailing interests, to produce a fair and reasonable determination of the matters in dispute, was made much more difficult by the limited number of bargaining proposals remaining within the jurisdiction and authority of the Panel and by the statutory time limits set forth in Civil Service Law § 209.4(vi).

The Panel has no discretion to impose an Award longer than two years in duration, although I would very much preferred to have done so in this particular case. Our extensive efforts to obtain mutual agreement of the Parties to a resolution of this dispute over a longer term eventually proved fruitless. During our intensive and exhaustive executive sessions every conceivable iteration of such a longer term award, consistent with both the above-cited statutory requirements and the cardinal principles by which these Parties have conducted their collective bargaining relationship for decades, was attempted by the Panel. Each such attempt eventually foundered on the refusal by one or the other of the Parties to consent to any such a formulation which was also acceptable to the other side.

Had the Parties mutually granted this Panel latitude to do so, I could have more precisely duplicated rather than replicated the 30-month uniformed pattern settlement and also generated additional pattern-consistent compensation for Police Officers in return for real productivity gains for the NYPD. Unfortunately for all concerned, the Panel's preference was frustrated by the statute and the veto power of the Parties.

At the end of the day, this Panel was left with no viable alternative but to fashion our decision in the attached 24-month Award, in strict accordance with the statutory time limits. With mutual consent of the Parties, we would have rendered a more satisfactory result for all concerned-- an iteration of our attached Award spread over a 30-month term. Instead we were compelled by the statutory time limit, the extraordinary supervening events of 9/11 and unit-specific circumstances unique to the NYPD to replicate in 24 months the uniformed forces pattern settlement which others received over 30 months.

It is not the intent and should not be the effect of this Award to disrupt or disturb agreements already in place from the last round of bargaining or to endorse abandonment of established principles of parity and pattern in future rounds of bargaining. Finally, in terms of the time-value of money and ability to pay, it should not go unremarked that despite whatever arguable temporary advantage may have inured to the PBA as a consequence of the Taylor Law's constraint on this Panel's authority to package and time the UFCEA pattern rate increases over a 30-month term, the City obtained a similar measure of offsetting fiscal advantage by the delay in paying those increases retroactively in Fall 2002 under this Award, rather than as real time pay-outs of those increases one year earlier under the UFCEA.



Dana Edward Eischen
Signed at Spencer, New York on September 9, 2002

AWARD OF THE PUBLIC ARBITRATION PANEL

The following Award is in full and final resolution of those issues in dispute between the City of New York and the Patrolman's Benevolent Association of the City of New York which remain subject to our jurisdiction and authority as the Public Arbitration Panel in PERB Case Nos. IA201-027; M201-146. All sections and subsections of the 1995-2000 Agreement not affected by the Award are to continue unchanged.

I. Term

The duration of this Award is for a period of twenty-four (24) months: August 1, 2000-July 31, 2002.

II. Health & Welfare

Health and welfare benefits shall be in accordance with the Municipal Labor Committee Health Benefits Agreement.

III. General Increases

Effective August 1, 2000, Employees shall receive a rate increase of 5%.
Effective August 1, 2001, Employees shall receive a rate increase of 5%.

IV. Administration

The general increases in III, *supra*, shall be calculated and administered in the manner set forth in Article VI, Section 3(b) of the 1995-2000 City of New York/PBA Collective Bargaining Agreement.

The terms of Item 6 Performance Compensation in the Uniformed Forces Coalition Interim Agreement dated July 26, 2001 and Article XXII in the 1995-2000 NYC/PBA Grievance and Arbitration Procedure Collective Bargaining Agreement shall be applicable under this Award.

V. Adjustment

Effective July 31, 2002 the PBA bargaining unit shall have available funds of 1.5% in rate to purchase recurring benefits, mutually agreed to by the parties, other than to enhance the general wage increases set forth in III, *supra*. The funds available shall be based on the payroll, including spinoffs and pensions, as of the December 31, 1999 payroll.

Dana Edward Eischen, Impartial Panel Member and Chair

On this 4th day of September, 2002, I, Dana Edward Eischen, do hereby affirm and certify, upon my oath as arbitrator and pursuant to applicable statutes and rules of the State of New York, that I executed and issued the foregoing instrument and I acknowledge that it is my Award in PERB Case Nos. IA201-027; M201-146.
Sworn to before me this 4th day of September, 2002.

Notary Public

EDWARD A. MAZZA
Attorney and Counselor at Law
Reg. No. 4823006
Qualified in Tompkins County
Commission Expires May 31, 2006

Award of the Public Arbitration Panel PERB Case Nos. IA201-027; M201-146

Ronald G. Dunn, PBA Panel Member
Concur/Dissent

Gary J. Dellaverson, NYC Panel Member
Concur/Dissent Dissenting opinion to follow

On this 4th day of September, 2002, I, Ronald G. Dunn, do hereby affirm and certify, upon my oath as arbitrator and pursuant to applicable statutes and rules of the State of New York, that I executed and issued the foregoing instrument and I acknowledge that it is my Award in PERB Case Nos. IA201-027; M201-146.

Sworn to before me this 4th day of September, 2002.

Notary Public

EDWARD A. MAZZA
Attorney and Counselor at Law
Reg. No. 4838006
Qualified in Tompkins County
Commission Expires May 31, 2006

On this 4th day of September, 2002, I, Gary J. Dellaverson, do hereby affirm and certify, upon my oath as arbitrator and pursuant to applicable statutes and rules of the State of New York, that I executed and issued the foregoing instrument and I acknowledge that it is my Award in PERB Case Nos. IA201-027; M201-146.

Sworn to before me this 4th day of September, 2002.

Notary Public

MARGARET M. CONNOR
Notary Public, State of New York
No. 01CO4988895
Qualified in Westchester County
Commission Expires November 18, 2003

CONCURRING OPINION OF
PANEL MEMBER RONALD G. DUNN

On September 4, 2002, the Panel issued an Award. Chairman Eischen issued an Opinion of the Chair, dated September 9, 2002, expressing his rationale for the Award. I submit below my separate concurring opinion to express my rationale for concurring in the Award.

SUMMARY

As explained more fully below, the overriding reason justifying the Award is that the record facts when applied against the multiple factors required by the statutory standard of New York State Civil Service Law §209.4(c)(v) compels an award that begins to narrow the demonstrated, significant salary gap between police officers in New York City and police officers in comparable communities, especially those police jurisdictions operating in and around New York City. It is this combination of factors which justifies the Award's ultimate conclusion that police officers in New York City should receive a compensation package which is different and greater than the compensation package negotiated between the City of New York and other uniformed forces in what has come to be known as the "Uniformed Forces Coalition Agreement" (the "UFC Agreement") in this round of negotiations. I concur in the Award, notwithstanding the fact that it does not go far enough in addressing the below-market salaries of New York City police officers because it provides 2.46% greater salary increases than those in the UFC Agreement and provides contributions to the Police Health and Welfare Fund of a higher dollar value than the UFC Agreement.

The core issue presented to the Panel was the appropriate pay rate for New York City police officers. The voluminous record proof on the statute's first element (*i.e.*, police officer-to-police officer comparisons) -- established to be the most relevant basis for setting New York City police officer wages under the Taylor Law (*see* PBA Exs. A-C) -- established the overwhelming

and undisputed fact that New York City police officers are grossly underpaid when compared to police officers in other communities. This is demonstrably true regardless of which "comparable community" is used to address the statute's comparability test. This required proof on comparability provides ample justification for overcoming any proffer by the City, as disputed by the PBA, of past parity and pattern with police supervisors and non-police employees in the City.

The demonstrated recruitment and retention crisis in the New York City Police Department is further proof justifying the Award's departure from the strict pattern- and parity-consistent award urged by the City but ultimately rejected by the Award.

The statute also requires this Panel to analyze an award in light of the City's "ability to pay." While the record demonstrates that the City faces a challenging period, the record also establishes that during the statutory period that was to be covered by this Award (the 24 months prior to July 31, 2002), New York City had ample room in its budget to fund at least the 21.9% pay increase requested by the police officers. Indeed, the evidence is undisputed that, during the first fiscal year covered by the Award, New York City enjoyed an historically large budget surplus of nearly $3 billion. Even during the second contract year, which included the economically challenging period following September 11, 2001, the City still ended the year with a budget surplus of approximately $663 million.

Finally, perhaps the only silver lining to the unspeakable events of September 11, 2001 is the reaffirmation of public support and appreciation for the unique value that the police officers give to New York. The public will support a Panel award that rectifies the fundamental imbalance in police salaries as compared to other jurisdictions. Put another way, it is in the public interest that this Panel award police officers a wage increase that begins the process of

narrowing the gap between New York City police salaries and those of police officers in comparable communities, communities which have continued to provide additional pay increases to police officers during the course of the two-year period within which this Panel is working.

THE STATUTORY STANDARD

The Panel is required to analyze the facts against the statutory standard of the Taylor Law, Civil Service Law §209.4(c)(v).

The statute has four elements roughly categorized as:

1) comparability with other similarly situated employees and other public and private employees generally;

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

3) a comparison with other peculiarities between the job conditions of police officers and other occupations; and

4) prior agreements between the parties.

The Panel's analysis begins, as it must, with a review of the record facts comparing the salary received by the New York City police officers with the salary received by other police officers in similar comparable communities.

There is virtually no dispute based on the record facts that the police officers in the City of New York, whether they are new recruits or veterans, make markedly less than similarly situated police officers in comparable communities. This is true whether we use as a comparator police officers from other employers who literally work within the City of New York (see, e.g., New York State Troopers and police officers employed by the Port Authority of New York and New Jersey [*see, e.g.*, PBA Ex. 48 at p.29-32]); or police officers who work for the local jurisdictions that abut the five boroughs of New York City (*see, e.g., id.* p.60 detailing the salaries for the City of Yonkers, the counties of Westchester; Nassau and Suffolk; and various

municipalities in Westchester and Rockland County, New York and cities in New Jersey); or even the so-called "national comparators" of the 20 largest cities in the country, as adjusted for cost-of-living differences (*see*, *e.g.*, *id.* at p.47). A comparison of the police officer's salary from the City of New York with any of the police officer salaries in any of these comparators, reveals the obvious, indisputable fact that the police officer salaries in the City of New York fall woefully behind. Indeed, even if the Panel awarded the 21.9% requested by the PBA, which I would vote to award, the police officers' salaries in New York City would still lag behind the police officer salaries in these comparable communities (*see*, *e.g.*, *id.* at p.136). And this under-payment of the City's police officers (relative to other police jurisdictions) has only gotten worse during the two years of the current contract, August 1, 2000 - July 31, 2000, because of the significant pay increases in those other police jurisdictions during that period. (*See*, *e.g.*, *id.* at pp.138-39.)

In another context, a recent fact-finders panel found that it was logical (and, indeed, preferred) to compare teachers' salaries in New York City with the teachers' salaries in adjoining local school districts for determining comparability. (*See* UFT Fact Finders' Findings of Fact and Recommendations, Board Ex. 6, PBA Ex. F, at pp.108-109.) I agree with that conclusion as applied to the pay of New York City's police officers. There is fundamental logic that local police jurisdictions share similar cost-of-living pressures and compete with each other for the scarce resource of qualified police officers. Indeed, the record proof is that the NYPD lost large numbers of qualified police officers to these surrounding jurisdictions that have significantly higher salaries and pay structures. (*See*, *e.g.*, PBA Ex. 14.) (Moreover, as discussed below, in addition to those moving to the much better paying local jurisdictions, there clearly is a crisis in the NYPD in hiring and retention of qualified police officers, as demonstrated by the City's own

data [*see, e.g.*, PBA Exs. 10, 49, 174; PBA Mem. Exs. 4, 10], that there is no hope of curing until their pay is dramatically increased.)

Comparison with these local jurisdictions is particularly apt because each is governed by the same statutory standard found in Civil Service Law §209.4(c)(v) that this Award is based on. The proof in the record and the plain language of the statute fully supports the use of these local comparators as a prime factor in determining the appropriate rate of pay. There is no dispute on this record, that there remains a significant disparity between the salaries paid to police officers in New York and the salaries paid to police officers in these local comparators. The undisputed record facts on this primary factor fully support the PBA's proposed pay increase.

Even if the Panel ignored the compelling proof comparing salaries of police officers in New York City with police officers in the local comparators, the record also revealed a stark comparison between New York City and the 20 largest cities.

The record facts comparing the growth during the 1990s in police officer salaries in New York City with police officer salaries in other national communities reveals a wide disparity. (See, e.g., id. at p.42.) To compare actual salaries, experience and common sense dictate that an adjustment be made for variations in the cost of living from municipality to municipality. No one can seriously argue with the concept that the cost of living and purchasing power varies significantly across the country. (*See, e.g.*, Tr. 261/14-23 [Katz].) What distinguishes the record in this case is the care with which Drs. Lipsky and Katz (assisted by Ms. Jacobs, a former ranking official of the U. S. Department of Labor's Bureau of Labor Statistics) prepared an appropriate and sophisticated basis to quantify conservatively the difference in cost of living from city to city. That study, which is remarkable for its rigor, substantiation, and technically sound approach, allowed the Panel to more accurately and fairly compare the salaries of police

officers across the 20 largest cities (*see, e.g.*, PBA Ex. 49). Applying the logical and scientific approach for adjusting salaries based on the "inter city cost of living adjustment" calculated by Drs. Lipsky and Katz using public data collected by the Bureau of Labor Statistics, made it abundantly clear that on this critical factor New York City police officers are woefully underpaid, by 23% on average, when compared to other police officers in other large national cities. (*See* PBA Ex. 48 at p.48.)

What is clear from the record in this case is that on the central core factor mandated by the statute, the PBA has established beyond peradventure that the salaries and compensation of police officers in New York City fall woefully behind those of similarly situated police officers both in the local comparable communities and any other comparable community examined in this case by either the PBA or the City. (*See, e.g.*, PBA Ex. 48 at pp.31, 48, 53.) Indeed, the undisputed evidence on these central facts demonstrates that it would taken an increase of between 25-55% in order for New York City police officers to catch up to these comparators. (*See* PBA Exs. 48, 136-137.)

The statute also compels that the Panel consider the relative salaries of police officers in New York to other similarly situated employees other than police officers, giving due regard to differences between the qualifications and skills that are required for police officers in New York and those other titles. (*See* CSL §209.4[c][v][a],[c].) The statutory construct is designed so that we look at the results of this comparison giving due regard to the important differences between different occupations. (*See id.* at §209.4[c][v][c].)

Logic and experience reveal that the most appropriate comparator for a New York City police officer is another police officer, whether that be a police officer who works in New York City for another police jurisdiction (such as the police officers of the Port Authority Police

Department), a police officer who works in a jurisdiction that abuts New York City or a police officer who works in one of the 20 largest cities in the country. It is this group that has the most similar job, the most similar job qualifications, and the most similar working conditions. To find otherwise would ignore the statutory construct.

The City argues that the most important, indeed *only* appropriate comparators for New York City police officers are other New York City employees, albeit non-police officers. The argument made by the City in this instance is that the previous patterns and parity in New York City should dictate an award. This argument ignores the plain language of Section 209.4(c)(v)(a) of the Civil Service Law which requires that the Panel look at multiple comparators. How the City has compensated other City employees is just one subset of those multiple comparators.

The comparison to other City employees must, under the statute, take into account the differences in "hazards of employment, ... and qualifications." (*See id.*) The City's own witnesses established that the multitudinous and variegated hazards, conditions and pressures faced by police officers are markedly different and greater than the hazards faced by other non-police City employees. The City's own witnesses also established that the qualifications required of police officers are markedly different than the qualifications needed by other non-police City employees. The events since September 11, 2001 and the constant drumbeat of a need for ever greater vigilance to security concerns, and training to deal with them, makes it a virtual certainty that the jobs of police officers will become more hazardous and require ever more rigorous qualifications in the years to come.

While other City employees have difficult and valuable jobs, police officers are unique in that their job requires them to seek out hazards and routinely asks that they place themselves in

harm's way. That is why the most appropriate comparator for police officers is other police officers, rather than other non-police City employees.

The statute requires that in evaluating the appropriate level of police officer salaries, we must look to multiple comparators, including those outside New York City, not just other City employees. In this way, the statute requires that the Panel measure changes in how to value the relative skills, qualifications and hazards that help define an appropriate salary, and not be inexorably tied to conditions that existed in years gone by. Indeed, it is a natural function of a changing world that over time the relative value of jobs change as qualifications, risks and public needs change. New York City is not immune from that. As an institution New York City prides itself as an engine of change and innovation, and the setting of police pay must reflect that change.

The City urges that the Panel make pattern and parity with other City employees the dominant criteria to the exclusion of all others. The City alleges that there has been parity in New York City since 1898. The PBA vigorously contests this. Regardless of the period of pattern or parity, the City's approach would effectively lock police officers into a relative relationship to other City employees established more than a generation ago. To do that would ignore the statutory requirement that the Panel look at the current salaries for all appropriate comparisons and to make our findings based on that current data. (*See* CSL §209.4[c][v][a].) Here, the record has demonstrated in an overwhelming fashion that the relative rank of police officers' salaries has fallen woefully behind police officer salaries in all other comparable jurisdictions whether local, regional or national. (*See, e.g.*, PBA Ex. 48 at pp.31, 48.) The record facts showed graphically that, particularly over the last 10 years, New York City police officers' salaries have fallen further and further behind those of police officers in all comparable

communities. (*See*, *e.g.*, *id.* at pp. 32, 42, 53.) It appears from the record that the recent adherence essentially to lock-step pattern and parity to other City employees is, in large part, the reason for that situation.

The proof showed that, particularly in the 1990s, as other comparable jurisdictions took steps to increase the pay of police officers at a greater relative rate than other employees, New York kept police officer salaries in relative lock-step with other City employees. (*See*, *e.g.*, *id.*) That insulated City police officers from the change in the relative value of police officers that other comparable cities recognized and acted on. The fact that the City of New York gave quite modest increases in the 1990s, including a period in excess of three years of no increases in salary (*see id.* at pp.122, 127), exacerbated a difficult situation. If we were to slavishly adhere to pattern and parity, New York City police officers would never be able to narrow the gap in police salaries between New York and other comparable communities.

The record facts also reveal that the difference in salaries between New York City police officers and police officers in other comparable jurisdictions is significantly greater than the difference between the salaries of other non-police New York City employees and similar employees in comparable jurisdictions. (*See*, *e.g.*, PBA Ex. 48 at pp. 74-87.) Put a different way, the record shows that New York City police officer salaries lag farther behind salaries in comparable jurisdictions than those of other City employees. It is illogical to allow pattern and parity relationship to dictate the award here in the face of the proof that it would further exacerbate the difference in salaries between New York City and comparable jurisdictions (*see*, *e.g.*, *id.* at p.136).

The Taylor Law standards for comparability require that we re-examine that relationship in light of all other comparable salaries. Based on this record, the facts compel an award that, at a minimum, begins to narrow the gap.

In addition to comparability factors, there are other reasons supported by the record that compel the granting of a compensation package in the Award greater than the UFC Agreement.

I concur with the Chairman's observation that the record supports a conclusion that there is a recruitment and retention crisis. The proof made clear that significant numbers of qualified police officers are leaving the NYPD to accept jobs in other police departments. (*See, e.g.*, PBA Ex. 14.) The record proof made clear that the overriding reason for the departures is the significantly higher salaries available in other departments. (*See, e.g.*, PBA Ex. 49 and the documents referred to in that report.)

The proof also established that the NYPD is having difficulty in attracting a sufficient number of qualified new recruits needed to replenish the ranks of departing officers. (*See, e.g.*, PBA Exs. 10, 27-28, 34.) The proof demonstrated again that the overriding reason is that other municipalities pay higher salaries at all levels. (*See, e.g.*, PBA Ex. 49 and the documents referred to in that report.) This recruitment and retention crisis is further justification for the compensation package which is higher than that in the UFC Agreement.

One of the features of the Award is the creation of a pool of funds equal to 1.5% in rate to purchase recurring benefits. These funds should be used to address the recruitment and retention issue. Specifically, I join the Chairman in recommending that the parties use these funds, to the greatest extent possible, to both attract and keep qualified police officers. As the record made clear, that requires that the funds be spread across the entire salary schedule.

The statute also requires that we address both the financial ability of the City to pay the Award, and the public interest generally. (*See* CSL §209.4[c][v][b].) In doing so, it is important to recognize that the period covered by the Award began August 1, 2000 and runs through July 31, 2002.

There is no real dispute that for the City's fiscal year ending June 30, 2000, the City had an historically large budget surplus. (*See, e.g.*, PBA Ex. 157, Charts 1, 3.) Even in the face of the budget difficulties brought on by the events of September 11, 2001 and the effect of the business and stock market downturn in 2001 and 2002, the City still ended its fiscal year ending June 30, 2002 with a substantial surplus. (*See, e.g.*, PBA Mem. Exs. 40, 41.)

In light of that, if this Award had been issued on August 1, 2000, one day after the expiration of the current agreement, the Panel would have been confronted with a compelling comparability case that overwhelmingly supports the PBA's proposed raise at a time of unprecedented budget surpluses.

The reality is that the Award was not issued until September 2002, more than two years after the contract expired.

Although ability to pay is but one of the criteria applicable here, it is apparent that if the City's financial condition were stronger at the time the Award ultimately was issued, there would have been more support amongst my colleagues on the Panel for an even greater award that further narrowed the gap with police officer salaries in comparable jurisdictions. In light of the practical reality that it takes at least two votes to craft an enforceable award, I am forced to compromise my view and concur in an award that does not grant a salary increase warranted by the proof of comparability (*see, e.g.*, PBA Ex. 48 at p.136).

Nevertheless, because the Award as crafted provides a value of the salary component that is 2.46% higher than the salary increases in the UFC Agreement (at a cost of roughly $49 million more than the UFC Agreement formula) and, similarly, provides contributions to the police officers' Health and Welfare Funds of a higher dollar value than the UFC Agreement, I reluctantly concur. It is that pattern-breaking nature of the Award to which I concur. I only regret that I was unable to persuade the Panel to award the greater salary increases the police officers deserve and the record in this case fully supports.

Finally, the statute requires that we take into account the public interest. (*See* CSL §209.4[c][v][b].) Clearly, the public interest is best served when its police officers are fairly compensated. The record made clear that the City's "renaissance" in the last decade was due in no small part to the commitment, dedication and efforts of the police officers. (*See, e.g.*, PBA Exs. 74 at p.251, 170 at p.2.) It is clear that the public has come to understand and appreciate that fact; the outpouring of support for police officers in the aftermath of September 11, 2001 was an acknowledgment not only of their sacrifices on that awful day, but also of past and future sacrifices. There is no doubt that the public will support and endorse our Award because it begins to address the fundamental unfairness of police officer salaries. There also is little or no doubt that the public would have supported an award that even more substantially addressed this unfairness in the disparity between police officers' pay in New York City and other police jurisdictions.

Both parties dedicated immense resources to present to the Panel a complete, and in some cases, exhaustive record on the statutory criteria. Although I have tried to explain my rationale for my concurrence in the Award, I feel compelled to note that my concurrence is based on the entire record, not just the summary citations contained in this opinion. The brevity of this

concurring opinion notwithstanding, the exhaustive proof in this case supports the conclusion of the Panel that we must address the fundamental need significantly to raise police officer salaries. But for the current overwhelming fiscal difficulties in connection with the unprecedented attack on New York City on 9/11, this Award would have gone further in meeting this need.

For these reasons, I concur.

Dated: Albany, New York
November 8, 2002

Ronald G. Dunn, Panel Member

DISSENT

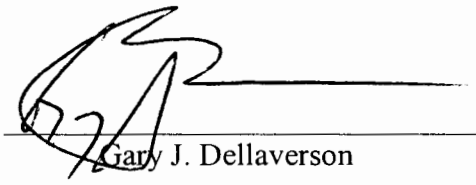
Although I believe a lengthy dissent at this time would disserve both the parties and the process, there are several salient points that are worth underscoring.

First, I concur with the Chair that the record clearly establishes the overriding importance and acceptance of both pattern bargaining and parity relationships in New York City municipal labor relations.

Second, it is regrettable that the Panel has declined to use the flexibility available within the parameters of pattern bargaining to award productivity changes that would generate additional wage increases for the membership of the PBA.

Third, the opinion of the Chair contains a number of obvious errors. By way of example only, the recommendations of the City/UFT Fact-finding Board were pattern-conforming in every respect. Indeed, although finding that the Board of Education was facing a "unique, extraordinary, compelling and critical circumstance" in the form of a recruitment problem of "unprecedented proportion," the Fact-finding Board recommended that the funds needed to remedy that problem be generated -- within the parameters of the pattern -- through mechanisms such as applying salary increases only to incumbents, delaying the second wage increase and/or extending the contract term.

Similarly, it is flatly incorrect that "the City probably will not generate sufficient candidates to fill" its June 2002 class. (Opinion of the Chair at 15) In fact, the City had already filled that class – with over 2,500 fully qualified candidates – prior to the time that the Chair wrote his Opinion. Nor is there any rational basis in the record for a finding that the "quality of recruits" has declined. (Opinion of the Chair at 14) To the contrary, the record contains statements by both the Chief of Personnel and the Commissioner that the quality of the recent recruits joining the NYPD appears to be the best in the history of the Department.



Gary J. Dellaverson

Dated: November 11, 2002