STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the Compulsory Interest Arbitration

-between-

WATERTOWN PROFESSIONAL FIREFIGHTERS ASSOCIATION, IAFF LOCAL 191
Employee Organization,

-and-

CITY OF WATERTOWN
Public Employer,

PERB Case No.: IA 2016-002; M2015-210

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

        Charles E. Blitman, Esq.
        Employee Organization Panel Member

        Terry O’Neil, Esq.
        Public Employer Panel Member

APPEARANCES:

For the Watertown Professional Firefighters Association, IAFF Local 191
Blitman & King, LLP
By: Nathaniel G. Lambright, Esq., Of Counsel

For the City of Watertown
Slye Law Offices, P.C.
By: Robert J. Slye, 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 Watertown Professional Firefighters Association (Union) and the City of Watertown (City).

The City is the County seat of Jefferson County. It lies approximately 70 miles north of Syracuse, New York, and approximately 30 miles south of the province of Ontario, Canada.

In 2017, the City had approximately 26,000 residents and 13,000 housing units. The median price of a home in the City is $131,500.00.

The City’s Fire Department operates on a 24/7 basis. It has 72 professional firefighters in the bargaining unit covering the titles of firefighter, captain and battalion chief. There are 55 firefighters, 13 captains and 4 battalion chiefs in the unit.

The City’s Fire Department operates three fire stations, each of which is assigned an engine company. The City has one rescue and ladder company, which works out of the Massey Street Station.

The last collective bargaining agreement (CBA) between the parties covered the period July 1, 2011 through June 30, 2014. The parties began negotiations for a successor contract in a timely manner but the negotiations were unsuccessful. Thereafter, a PERB-appointed mediator met with the parties. Mediation was unsuccessful and on or about May 24, 2016, the Union filed a Petition for Interest Arbitration pursuant to Section 209.4 of the Civil Service Law.
On or about June 10, 2016, the City filed a timely response to the Petition dated May 24, 2016. On June 22, 2016, the undersigned Public Arbitration Panel was designated by PERB pursuant to Section 209.4 of the New York State Civil Service Law for the purpose of making a just and reasonable determination of this dispute.

Although both parties have numerous proposals regarding wages and working conditions, the timing of this proceeding has been impacted by the City’s desire to remove the minimum Manning provision from the CBA. At the time the Panel was initially appointed by PERB, the parties were engaged in litigation over the minimum Manning provision in the CBA. The parties mutually agreed to defer convening the interest arbitration proceeding. Although all litigation regarding the minimum Manning provision has not concluded as of the date of the signing of this Award, in 2018 the parties agreed to proceed with interest arbitration.

The minimum Manning provision in the current CBA is 15. Over the course of multiple collective bargaining agreements and an interest arbitration award between the late 1970s and early 1990s, the parties agreed to reduce minimum staffing from 22 firefighting personnel on each shift to 15.

Hearings were conducted before the Panel at the offices of the City on October 18, 2018 and November 28, 2018. At both hearings, the parties were represented by counsel. Both hearings were transcribed. Both parties were afforded the opportunity to present oral and documentary evidence in support of their respective positions. Both parties submitted numerous and extensive exhibits and documentation, including written closing arguments.
Thereafter, the Panel fully reviewed all data, evidence, arguments and issues submitted by the parties. Despite significant discussion and deliberations during two Executive Sessions, a telephone conference call, and numerous e-mails between the Panel, the Panel was unable to reach consensus on an Award. As a result, this Award represents the determination of the Panel Chair, who was joined by one or both Panel members on an item by item basis.

The positions taken by both parties are quite adequately specified in the Petition and the Response, numerous hearing exhibits, and post-hearing written submissions, including e-mails from the parties to the Panel, all of which are incorporated by reference into this Award. Such positions will merely be summarized for the purposes of this Opinion and Award. Accordingly, set out herein is the Panel’s Award as to what constitutes a just and reasonable determination of the parties’ Award setting forth the terms and conditions for the period July 1, 2014 through June 30, 2016.

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

a) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services or requiring similar skills under similar working conditions and with other employees generally in public and private employment in comparable communities;

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

c) Comparison of peculiarities in regard to other trades or professions, including specifically, 1) hazards of employment; 2) physical qualifications; 3) educational qualifications; 4) mental qualifications; 5) job training and skills; and
d) The terms of the collective agreements negotiated between the parties in the past providing for compensation and fringe benefits, including, but not limited to, the provisions for salary, insurance and retirement benefits, medical and hospitalization benefits, paid time off and job security.

**COMPARABILITY**

Section 209.4 of the Civil Service Law requires that in order to properly determine wages and other terms and conditions of employment, the Panel must engage in a comparative analysis of terms and conditions with “other employees performing similar services or requiring similar skills under similar working conditions with other employees generally in public and private employment in comparable communities.”

**Union Position**

The Union notes that Section 209(4)(c)(v) of the Civil Service Law directs the Panel to compare wages, hours and conditions of employment of Union members with employees who perform similar work in comparable communities.

The Union contends that its members should only be compared to firefighting units in comparably sized cities as well as the Watertown Police. More specifically, it insists that its members should be compared primarily with the wages, hours and conditions of employment of firefighters employed by the cities of Rome, Ithaca and Auburn as well as the Watertown Police. The Union stresses that these cities are the best set of comparables because they are all around the same size, i.e., populations more than 25,000 and less than 33,000. They are all within close proximity to Watertown and have similar demographics. Police officers in Watertown are an appropriate comparable because Watertown firefighters and police officers both do risky, life-saving work that
protects the public in the exact same community. Both units are interest arbitration-eligible and members of both units live in the same housing market.

The Union maintains that population is the best way to determine comparability because population most impacts a city’s method of organizing and operation. The larger the city, the more complex its operation becomes. As the size of a city increases, the number of businesses, entertainment facilities, churches and schools increases. To the Union, public service professionals such as police and firefighters require greater degrees of training and skills to help handle all of the problems that occur with larger populations and more intricate service systems. Since a city’s method and organization is directly linked to the size of its constituency, the Union contends that population is the most significant factor to find commonalities within the firefighting profession. In the Union’s view, municipalities with populations under 10,000 simply do not have as much in common as municipalities with 25,000 to 33,000 people. The three cited firefighting comparables have similar populations as Watertown as Auburn is only 1,017 larger than Watertown, Ithaca is only 5,319 larger than Watertown and Rome is only 6,786 larger.

These comparables also have similar economic, geographic and demographic characteristics. The Union maintains that Watertown is in the middle of the pack in terms of many relevant statistics, including percentage of the population under age 18 and over 65, percentage of the population with a Bachelor’s degree or higher, population density, number of housing units, median household income, median housing value, etc. With the exception of Rome, the other comparables are all about the same number of square miles. Finally, each of the comparables is within close proximity to Watertown. Auburn is 97 miles away, Ithaca is 125 miles away and Rome is 76 miles away from Watertown.
The Union points out that the City has also proposed Ithaca, Auburn and Rome within the universe of comparables. The Union objects to the City’s other proposed comparables because they are either much smaller than Watertown or they are located in a far different part of the State where different labor markets exist. For example, the Union objects to Ogdensburg, Batavia, Fulton and Oswego because these municipalities have far fewer people than Watertown, i.e., Ogdensburg 15,000 fewer, Batavia 10,222 fewer, Oswego 8,222 fewer and Fulton 12,843 fewer. Other comparables suggested by the City, such as Plattsburgh and Saratoga Springs, should be rejected by the Panel because they are more than 150 miles away and in different labor markets.

The Union maintains that the City’s initial failure to propose the Watertown Police as a comparable is an error. The Union stresses that firefighters and police in the City work side by side, are in the same labor and housing market and share similar risks. They are also the only groups of interest arbitration-eligible employees working for the City.

The Union objects to the City’s contention that interest arbitration awards between the City and the Police dating back to the 1980s and early 1990s are relevant insofar as comparability is concerned. Not only was the Union not a party to those proceedings but the proceedings occurred so many years ago that the information relied on by those panels is wholly different from the information relevant to this Panel.

In the end analysis, the Union insists that the Watertown Police are the most relevant and obvious comparable. The Watertown police should be considered along with fire departments of Ithaca, Auburn and Rome as both parties agree that these jurisdictions
are comparable with Watertown. The Union urges the Panel to find this grouping as the relevant group of comparables.

**City Position**

In addition to the jurisdictions of Auburn, Rome and Ithaca, which were also proposed by the Union, the City proposes the jurisdictions of Ogdensburg, Fulton, Oswego, Cortland, Plattsburgh and Saratoga Springs. The City notes that in arriving at the most appropriate comparable jurisdictions, the Panel should consider factors such as size and population of the municipalities, size of the bargaining units, population density, geographical proximity, as well as regional or local demographics and economics.

The City maintains that the most rational way to find true comparability is to find as large a grouping of reasonable comparables as possible. This is the best way to determine where Watertown’s firefighters stand vis-à-vis the market. The City objects to the Union’s smaller universe of proposed comparables, emphasizing that Watertown’s firefighters earn less than each of those groups. When the City’s broader group of comparables is considered, it presents an entirely different picture showing the competitiveness of Watertown firefighters’ salary and benefits. The City asserts that by examining a larger group of data, it becomes abundantly clear that Watertown is within a standard deviation of the mean.

The City maintains that its comparables are virtually identical to comparables decided in prior interest arbitration proceedings with the City. Indeed, the 1998 Award of Panel Chair Selchick and the 2001 Award of Panel Chair Prosper wholly support the list proposed by the City.
The City contends that the Panel should not select the small group of comparables proposed by the Union. It avers that such data is skewed in favor of the Union and that this is the primary reason why the Union has selected its grouping of comparables. The City objects to this grouping as it allows the Union to make a narrow argument that it requires greater salary increases than proposed by the City simply to be competitive with its much smaller proposed list of comparables.

The City argues that its group of comparables came about through genuine objective commonalities. This is the best and only way to reach a rational determination of comparables. For this reason, the City urges the Panel to find firefighters in Ogdensburg, Fulton, Oswego, Cortland, Plattsburgh, Saratoga Springs, Auburn, Rome and Ithaca to be the most appropriate grouping of comparables.

**Panel Determination on Comparability**

Both parties proposed Ithaca, Rome and Auburn to be in the group of comparables. This is entirely logical as all of these jurisdictions share similarities with Watertown. They all have a range of 10,000 to 15,000 housing units with Ithaca having the least at approximately 10,400 and Rome having the most at approximately 15,000. Auburn and Watertown are right in the middle with Auburn having approximately 12,500 and Watertown having approximately 13,000. The populations of these jurisdictions is quite similar with Watertown having the fewest residents at approximately 25,500 and Rome having the most at approximately 32,500.

As far as size of the firefighting departments, the similarities of the jurisdictions continues. Rome has the most firefighters at 77 and Ithaca has the least with 65. Watertown and Auburn are right in the middle with 70 and 69, respectively. In terms of
firefighters per 1,000 residents, Ithaca has 2.10, Rome has 2.37, Auburn has 2.58 and Watertown has 2.73.

While none of the comparable jurisdictions are in the exact same labor market as Watertown, the fact remains that none of them are geographically far away. Rome is 76 miles from Watertown, Auburn is 97 miles away and Ithaca is 125 miles away.

Since these jurisdictions have clear similarities in population, size of department, demographic data and are in close proximity to one another, the Panel determines they are comparable jurisdictions. In making this determination, the Panel recognizes that these jurisdictions are not ideal comparables. The reality is that there are not any perfectly comparable firefighting jurisdictions near enough to Watertown to have a true apples-to-apples comparison. However, the selected jurisdictions share enough meaningful similarities to Watertown to give the Panel a logical and reasonable guide to compare Watertown.

The Panel determines that Watertown Police must be part of the list of comparables. Firefighters and police in Watertown work side by side doing life-saving work in the same jurisdiction. They have the same employer, work in the same labor market, live in similar housing markets in or near Watertown and share similar risks. They are the only two interest arbitration-eligible bargaining units in Watertown. While these two units are not perfectly comparable because they do different work, they share significant similarities that make them an important comparable.

Finally, the Panel finds that Oswego and Fulton should be considered as a comparable primarily because of their close proximity to Watertown. Since they are
arguably in similar labor markets as Watertown, the Panel determines they should be given some consideration.

All of the other jurisdictions proposed by the City are rejected as comparables. All of these jurisdictions either lack enough similarity with Watertown due to the population of the jurisdiction, proximity to Watertown or both. For example, both Saratoga Springs and Plattsburgh are 150 miles away from Watertown. Saratoga Springs is significantly different from Watertown insofar as its economy is concerned and Plattsburgh is simply a little too far away (approximately 160 miles) and smaller than Watertown (approximate population of 19,500) to make it a meaningful comparable.

For all of the reasons above, the Panel determines that the Watertown Police and the firefighters in Auburn, Ithaca, Rome are most comparable and that firefighters in Oswego and Fulton should be given some consideration as comparables.

**INTERESTS AND WELFARE OF THE PUBLIC AND ABILITY TO PAY**

**Union Position**

The Union stresses that the City’s financial ability to pay must be balanced with interests and welfare of the public. The Union cites an interest arbitration award from Arbitrator Jeffrey M. Selchick involving the City of Buffalo and the Buffalo Professional Firefighters Association covering the period 1990-92 which appropriately balances these two considerations. The Union emphasizes that Arbitrator Selchick found that the ability to pay must be balanced with public safety and welfare and the obligation to provide firefighters with a fair and equitable increase for the important and dangerous work they perform. Arbitrator Selchick further held that firefighters in Buffalo must be given
priority, as a matter of the public interest and safety, over other less essential services
provided by the City.

The Union maintains that this Panel also must view Watertown’s ability to pay
against the importance of maintaining the high level of public safety necessary to
protecting the public and allowing the Fire Department to be capable of responding
competently to the numerous types of life threatening and property threatening
eMERgencies it handles. The Union asserts that its members must be fairly compensated
and given priority, as a matter of public safety, interest and welfare, over other less
essential services provided by the City.

The Union claims that the data in the record shows that the City has a high
demand for firefighting and emergency medical services. It avers that a fair wage and
benefit package positively impacts firefighter morale, which allows its firefighters to
provide the high level of service City residents have come to expect. It also permits the
City to attract the cream of the crop in firefighting and will allow it to retain its well-
trained firefighters.

With respect to ability to pay, the Union insists that all of the evidence
overwhelmingly demonstrates that the City has the ability to pay for the Union’s
proposed increases in wages and benefits. It relies on the analysis and determination of
Kevin Decker, a municipal finance expert who has over 30 years of experience in labor
economics and collective bargaining. The Union points out that after reviewing relevant
data provided by the City, as well as information maintained by the State about the City,
he concluded that the City has the ability to pay for the Union’s proposals.
According to the Union, Mr. Decker's testimony and analysis shows that the City's has the ability to pay using a combination of existing unreserved fund balance, State aid, revenue from a hydropower contract, sales tax receipts and property taxes. Mr. Decker began with the City's largest revenue source, which is sales tax revenue. He testified that since the City is the commercial and retail center of the region and draws people from all over the region, including Canada, the region has a vibrant commercial economy.

This is particularly important because the City's largest revenue source comes from sales tax. Mr. Decker testified that the City receives a significant amount of annual revenue from sales tax, which has gone up in each of the past several years. In his report, Mr. Decker presented data establishing the healthy amount of sales tax revenue growth the City has received over the past several years. Of significant note to Mr. Decker is the fact that the City's actual revenues frequently exceed the sales tax revenues it projects in its annual budget.

Real property tax revenue, the second highest annual revenue source for the City, continues to be stable. Equally important, from 2014 to 2019, Watertown residents have had their property tax bills increase a very low 0.5% per year on average. When this is considered, along with the fact that the City's use of the Constitutional tax limit hovers in the 15% to 20% range, it becomes abundantly clear that the City has plenty of tax authority remaining.

The City's contract with National Grid to sell excess hydropower generated by the City has also been a stable and increasing City revenue, according to Mr. Decker. The data Mr. Decker presented shows substantial revenue growth for the City in the last two
years. While the City attempted to present this as a potentially fading revenue source, the Union emphasizes that the contract runs through 2030, more than 15 years after the first year the Panel is addressing in this Award.

Mr. Decker testified that the City’s $13,023,656 in unrestricted fund balances evinces the City’s strong financial health. Mr. Decker states that since this constitutes nearly 28% of expenditures, it is well above the recommendations for fund balance maintained by the New York State Comptroller’s Office, Moody’s Investors Service and the Government Finance Officers Association. The Union emphasizes that Mr. Decker testified that the City’s unrestricted fund balance has consistently been well above all recommended fund balance figures and that its fund balance has remained healthy and stable even in the rare years when the City’s annual budget ran a structural deficit. In other words, any recent modest annual budget deficits in the City have had no impact on the City’s financial health.

Mr. Decker testified that unlike many upstate New York cities, Watertown has not come close to being designated by the State as being in fiscal stress at any time since 2013. Mr. Decker testified that the City gets barely any points in the Comptroller’s fiscal stress monitoring system and that the City’s data indicates that it should not be in fiscal stress status for the foreseeable future. This is why it should not come as a surprise that Moody’s rates the City very strongly on its debt. Moody’s recently assigned the City an Aa3 rating, which is the fourth highest rating out of 21 and is considered high grade and quality.

Although Mr. Decker opined that the City is more than healthy enough to pay for the firefighters’ proposed raises out of existing unrestricted fund balance, Mr. Decker
testified that it is unlikely the City will need to do this because it has set aside money for raises in a contingency account for projected salary increases with collective bargaining units in an amount in excess of $1.3 million.

Moreover, Mr. Decker testified that his analysis establishes that the City has the ability to pay for the proposed salary increases even with maintenance of the 15 firefighter minimum staffing clause going forward.

The Union stresses that the City did not assert an inability to pay. Rather, it simply had the City’s Comptroller testify that the City’s unrestricted fund balance is projected to drop in the next few years. Since cross-examination revealed that this was based on conservative budgeting of revenues and the City has consistently done better than these projections, the Union contends that the City’s contentions should be met with great skepticism.

The Union contends that the City’s spending practices show that it has little concern about its spending and clearly has the ability to pay. Among other things, the Union cites the recent settlement with the PBA where the City agreed to increase wages by 2.75% for each of the years between 2017 and 2020, as well as the City’s spending well in excess of $700,000 over the past few years for legal representation in matters against the firefighters.

In the end analysis, since the credible and reliable factual data shows that the City is financially stable and has the ability to pay for the Union’s proposals, the Union urges the Panel to find that the City has the ability to pay for its proposals.
City Position

The City does not dispute that it has the ability to pay for a reasonable award. It insists that the Panel cannot ignore the fact that the City is part of an overall economy that is not as strong as it formerly was. It stresses that its economics can be adversely affected by forces outside its control.

The City expresses grave concern about Mr. Decker’s opinion that the City has the ability to pay for the raises proposed by the Union, i.e., 4%, effective July 1, 2014, and 3.75%, effective July 1, 2015. The City stresses that if anything close to those percentages is adopted by the Panel, it can have a devastating effect on the City’s budget because those raises compound to the present time. Equally important, any raise adopted by the Panel must also take into consideration the fact that the firefighters are likely to get salary increases in the fiscal years after this award. Since Mr. Decker conceded that he did not forecast the impact of retroactivity on the City’s current budgeting, the Panel should be very careful in its ability to pay determination. Rather than find that the City has the ability to pay for the Union’s proposal, the Panel should determine that the City has the ability to pay for a reasonable award that is far less that the increases proposed by the Union because fiscal prudence is wholly supported based on the City’s economic data.

Fiscal prudence is also warranted because Watertown’s largest revenue source is so unusual. Mr. Decker admitted that the City was very atypical in having sales tax be its largest revenue source. Indeed, Mr. Decker testified that the City was one of only three cities in the State that receives at least two times more of its revenue from sales taxes than property taxes. This places the City’s ability to pay in a more precarious position.
because sales tax is so sensitive to upward or downward swings based on the state of the economy. With the exception of real property taxes, which is a guaranteed revenue source, the City’s other large revenue sources are sales tax, electrical power and State aid, all of which can fluctuate from year to year. In the City’s view, the idea presented by Mr. Decker, i.e., that the City can raise taxes, is not a solution when a municipality has a limited ability to pay.

The City observes that almost 96% of the Fire Department’s budget is spent on salary and benefits. In the City’s view, this is an exorbitant rate and must be controlled in order for the City be maintain its financial health going forward.

The City’s emphasizes that the statutory ability to pay criteria contains another critical component, namely, the interest and welfare of the public, and that this criteria must be given serious consideration by the Panel. In the City’s view, the focus must be on the practical ability of the City to pay for the increased costs proposed by the Union. This must be considered in light of the City’s obligation to be mindful of the fiscal needs of its taxpayers and the reality of the 2% tax cap. This cap of 2% or the rate of inflation, whichever is lower, is a hard cap imposed by the State absent special legislation by the municipal body to exceed the cap. The City stresses that if the Panel imposes the raises proposed by the Union, the City will have no choice to exceed the tax cap and adversely affect its taxpaying public.

The City’s need for the Panel to act with fiscal prudence was also supported by the testimony of City Comptroller James Mills, a certified public accountant who has held the position of City Comptroller since 2002. The City stresses that this makes Mr. Mills an absolute expert on the state of the City’s finances and requires the Panel to give
serious consideration to Mr. Mills’ concerns about the City’s financial situation. The City points out that Mr. Decker even conceded that Mr. Mills has done a solid job managing the City’s budget over the last several years.

Mr. Mills presentation highlighted the grave concerns he has about the City’s structural budget deficits. For the year 2018-2019, he testified that the City had a projected deficit of $2.183 million. To close the gap, the City appropriated $2.0 million in unreserved fund balance. From a sound budgeting perspective, Mr. Mills advised the City to raise property taxes above the tax cap, but the City declined.

The City maintains that the Panel must exercise fiscal prudence because its annual expenses continue to far exceed revenues and the gap is growing. The City explains that Mr. Mills’ long term fiscal plan requires the City to significantly increase revenues from taxes because he believes the expiration of the National Grid Power Purchase Agreement in 2030 will result in a loss equating to nearly 12% of anticipated expenditures at that time.

While the City concedes it has the ability to pay for a reasonable award, it asserts that the fiscal concerns of the City demonstrate that the interests and welfare of the public are equally important to consider. The City’s residents should not be burdened with having to pay for the excessive raises proposed by the City. Fiscal prudence must be the focus because that most addresses the interests and welfare of the public.

**Panel Determination on the City’s Ability to Pay**

The Panel Chair has carefully considered the statutory criteria regarding ability to pay as provided through the positions of the parties from the testimony, exhibits and post-hearing briefs filed, forming the record in this matter.
The Panel Chair finds that the economic data submitted by both parties and the testimony of both parties' experts demonstrates that the City has the ability to pay for a reasonable award, including reasonable salary increases. Mr. Decker’s testimony and presentation was thorough and persuasive in showing the City’s strong financial condition. Sales tax revenue is the City’s largest revenue source and this revenue has grown in seven of the past nine fiscal years. Since 2009, the City’s sales tax revenue has increased from $14.4 million to $18.4 million. In 2017 and 2018, the City received sales tax revenue increases of 4.4% and 3.4%, respectively, showing that recent trends are very favorable. While sales tax revenue has been increasing at a very solid clip, the City has not been forced to overburden its taxpaying public. Indeed, the data submitted shows that between 2014 and 2019, the additional tax levy imposed on residents has averaged 0.5% per year. The City’s Constitutional Tax Limit has been below 20% in all of the recent years, showing that it has ample options to increase revenue in the event the City had a need to increase tax revenue.

In addition, while Mr. Mills expressed concern about the contract the City has with National Grid, this concern is not relevant to this Panel’s ability to pay determination. The facts show that the City’s revenue from National Grid has been steady and, if anything, increasing over the past few years. Most importantly, this Panel is addressing salary increases for the period of 2014 to 2016, a period 14 to 16 years prior to the expiration of the National Grid contract. This is simply too far away in time for this Panel to consider this a relevant economic concern, particularly in light of the fact that it is unknown how this revenue will change in 2030, which is still some 11 years from now.
The City’s unrestricted fund balance continues to be a very healthy economic statistic. The City has a little more than $13 million in unrestricted fund balance. This is 27.9% of revenues, which is well above the fund balance level recommended by the New York State Comptroller’s Office, Moody’s Investors Service and the Government Finance Officers Association.

Speaking of Moody’s and the New York State Comptroller’s Office, their ratings of Watertown indicate that the City is in a strong financial situation. Moody’s bond rating for the City is Aa3, the fourth best rating out of 21. The Comptroller’s fiscal stress monitoring system, which assesses a number of financial criteria, assessed virtually no fiscal stress points on the City, an indication that the City is not susceptible to any objective fiscal stress.

Finally, Mr. Decker testified that the City has more than $1.3 million in a contingency account. The City’s budget indicates that the contingency account is for projected salary and benefit increases for outstanding collective bargaining units.

Mr. Mills testified about some of his genuine concerns about the City’s current budget and the Panel recognizes those concerns as legitimate. However, such concerns do not establish that the City lacks the ability to pay for a reasonable award. The only real concern about the City’s current financial state is that its expenses have exceeded revenues in each of the past five years. However, while the City’s budgeting has shown some structural deficits, the City is clearly maintaining a strong financial condition because its unrestricted fund balance has remained steady during the same period. Whereas in 2013 the City’s unrestricted fund balance was $12.032 million, its unrestricted fund balance in 2018 was $13.023 million. The totality of the evidence
strongly supports the determination that the City has the ability to pay for a reasonable award on salary and other economic issues.

This determination also addresses the Panel’s consideration of weighing the ability to pay in light of the interests and welfare of the public. Ability to pay must be measured against the interests and welfare of the public. As the Panel Chair has previously opined in other interest arbitration awards, he finds that it is beneficial for the City and the public for its firefighters to be competitively compensated in the context of the City’s ability to pay. The evidence shows that the City has clear needs for firefighting services, thus rendering it in the interest of the public to provide reasonable wages and benefits to its firefighters who are capable of responding in a professional and competent way to life threatening and property threatening fires, hazardous conditions and other emergencies.

Based on the evidence in the record, the Panel Chair is confident that the City’s prior fiscal management, along with its favorable economic conditions, will allow it to maintain a strong position. The Panel Chair finds that the City has the ability to pay for this Award and that the wage and other increases awarded herein constitute a fair and reasonable Award.

**COMPARISON OF PECULIARITIES OF THE FIREFIGHTING PROFESSION**

The Panel has also carefully considered the statutory criteria regarding the comparison of the firefighting profession with other trades or professions, including, specifically: (1) hazards of employment; (2) physical qualifications; (3) educational qualifications; (4) mental qualifications; and (5) job training and skills.
The parties do not dispute the fact that appropriate weight must be given to the especially hazardous nature of firefighting work and the unique training, skills, pressures and dangers that firefighters face each day. The Panel Chair notes that there is ample evidence in the record showing the hazards of firefighting. These include being burned by fires, cancer and heart disease. City firefighters are exposed to non-chemical hazards, such as heat and noise, and chemical hazards, such as toxic fumes and carbon monoxide.

Dr. Denise Smith, a professor at Skidmore College, testified about the physical demands of firefighting and how wearing and using heavy personal protection equipment in hot, stressful and dangerous environments adversely affects firefighters. Michael Valente, the Northeast Director of the New York Chapter of the Firefighter Cancer Foundation, testified about the increased cancer risk firefighters face compared to other professions. The Panel Chair recognizes that while there is no absolute connection proven, the fact remains that there are some firefighters in Watertown who have been battling cancer.

When the Panel Chair also considers the training, skills, educational requirements and other requirements firefighters in Watertown must possess in order to competently do the job, he finds that the peculiarities of the profession mandate a direct comparison with firefighters.

**TERMS OF THE PARTIES’ COLLECTIVE BARGAINING AGREEMENTS**

Pursuant to Section 209(4)(C)(v) of the Civil Service Law, the Panel is directed to consider the terms of collective bargaining agreements negotiated in the past.
The Union focuses on the history of the minimum manning provision in the CBA and its impact on past negotiations. It asserts that in 1977-78, the parties agreed to a minimum manning provision of 22 men on duty at all times. The Union maintains that it negotiated this provision in order to protect the health and safety of its members as well as the public. Over the next few contracts, the parties agreed to reduce the minimum manning provision, initially from 22 to 18 and then from 18 to 17.

During the negotiations for the 1987-90 CBA, the City sought to reduce the minimum manning provision. The Union contends that it ultimately agreed to reduce the minimum manning provision to 15 and that this was the bare minimum needed to protect and preserve the property of the City and to maintain the health and safety of the public and its property.

The Union states that the City has continuously attempted to remove the minimum manning provision from the CBA since that time. It states that it has often accepted lower salary increases in exchange for preserving the safety of its members in maintaining the minimum manning provision at 15.

As for minimum manning, the City contends that a change is warranted based on the statutory criteria including comparability, the interest and welfare of the public and terms of prior collective bargaining agreements. In the City’s view, the facts mandate that the Panel intercede by eliminating or reducing the minimum manning provision.

The Panel has carefully considered the terms of collective bargaining agreements negotiated. This past history influences the Panel in crafting a just and reasonable award.
WAGES

Union Position

The Union is seeking a 4% across the board salary increase in 2014-2015 followed by a 3.75% increase in 2015-2016. The Union asserts that this proposal should be accepted because Watertown’s entry level salary increase is much less than entry level salaries provided to its proposed comparables, except for Auburn. At the top step of the Watertown salary schedule, the situation is even more dire. The Union maintains that its members would need a 24.30% increase to earn the average salary of the other comparables. Captains in Watertown earn $10,000 less than the next lowest comparable after five years of service and would need a 22.97% increase to earn the average salary of the other comparables. Finally, Battalion Chiefs would need a 14.82% wage increase to earn the average salary of the other comparables. In the Union’s estimation, its proposed increases are a necessity just so it can diminish the discrepancies between its salaries and the salaries of the firefighter comparables and begin making strides toward regaining some semblance of parity with the City’s police officers.

The Union contends that its wage proposal should be granted due to the constant risks firefighters face every day in order to protect the public and its property. Firefighters are constantly exposed to risk, whether it be from burns, inhaling toxins or exposure to serious chemical and non-chemical hazards.

The uncontroverted evidence regarding the City’s ability to pay strengthens the validity of the Union’s salary proposal. The City’s current financial condition is very solid. Indeed, the Union contends that the City’s financial condition is so sound that its sole defense was that it will lack the ability to pay in 2030 when its contract with
National Grid expires. The current data speaks for itself and far more compelling than the City’s hypothetical concerns occurring some 11 years from now.

The Union stresses that the City’s ability to pay is most evident by its recent actions. Its 2017-2021 settlement with the PBA called for salary increases of 2.75% each year, demonstrating a clear recognition by the City of its sound financial condition.

For all of the reasons above, the Union urges the Panel to adopt its salary proposal each year of the two year award.

City Position

The City maintains that the Panel should deny the Union’s salary proposal. While acknowledging the tremendous firefighting and public safety work that firefighters perform, the City asserts that the Union’s proposal should be wholly rejected because its firefighters are already competitively compensated in the group of comparables.

In the City’s estimation, the Union’s proposed salary increase is excessive in this economic climate. The City asserts there is absolutely no evidence of any City bargaining units or firefighting units in the group of comparables recently receiving wage increases of roughly 4% annually. This is because the economic climate has substantially changed and municipalities like Watertown simply cannot afford to fund annual salary increases at such an excessive level annually. When considered along with the fact that inflation has hovered below 2% for virtually all of the past several years, it becomes abundantly clear that the City’s proposed wage increase of 1.5% for each of two years is reasonable and should be adopted by the Panel.

The City contends that, if its proposal is adopted by the Panel, its starting firefighting salary will be the highest of its proposed comparables. While the City
concedes that the starting salary for Captain is on the low end of the comparables, it is
within range of the mean salary of the comparables. Of significant note, Battalion Chief
salaries are highly competitive at the starting level and in comparison to median base
salaries. While the City concedes that firefighter maximum salaries are below the mean
of its comparables, maximum Captain and Battalion Chief salaries remain very
competitive. In the City’s view, the totality of the data shows that its proposed 1.5%
anual increases will allow the firefighters to maintain their relative strength among the
comparables.

While the Union wishes to focus on the City’s recent settlement with the police,
the City emphasizes that that settlement had significant givebacks from the police on
health insurance, including a 10% co-pay on specialty drugs. Equally important, during
the years covering this Award, other City bargaining units all received 1.5% in 2014-
2015 and a range of 1.5% to 2.5% in 2015-2016. This data alone demonstrates that the
Union’s proposal of 4% in 2014-2015 and 3.75% in 2015-2016 is wholly excessive and
should be rejected.

For all of the reasons above, the City urges the Panel to provide wage increases of
1.5% for each year.

**Panel Determination on Base Wages**

The Panel Chair has carefully considered the statutory criteria, balancing the
reasonable economic needs of the City’s firefighters with the obligations of the City in
the context of what is fair and reasonable.
Wages are one of the most important elements in any labor agreement. Employees have the utmost concern about the wages they will be paid and wages represent the greatest expenditure for the City.

The record contains data showing that the City has the ability to pay for a wage increase above the amount it proposed. The City has a healthy unreserved fund balance that is well above the amount suggested by any objective entities, including Moody’s Investors Service and the New York State Comptroller’s Office. Both Moody’s and the Comptroller’s assessment of the City’s overall financial condition demonstrates that the City’s finances are strong and that it continues to be a solid place for investment. The data presented by both the Union and the City shows that the City’s sales tax revenue has regularly increased over the past several years and that it increased in a robust manner in the past two years.

Thus, while the data arguably suggests that the City has the ability to pay for an Award above the amount being awarded by this Panel, i.e., 1.5% effective July 1, 2014 and 2.5%, effective July 1, 2015, there are several sound reasons why this is the appropriate salary increase to be awarded. First and foremost, the City has a history of providing very similar percentage salary increases to police officers and firefighters. City Exhibit 29 is noteworthy and compelling. It shows the percentage salary increases provided to police officers and firefighters in each year since 1990-91. Police and firefighters had the same salary increases in four of the ten years between 1990-91 and 1999-2000 and police received higher wage increases than firefighters in five of the six other years. However, things have markedly changed since then. In eight of the fourteen years since 1999-2000, firefighters and police have received the same salary increases. In
four of the other years, firefighters have received higher wage increases than police officers. In two of the other years, police officers received higher increases than firefighters. In the three years between 2011-12 and 2013-14, firefighters and police officers received the same salary increases. And in 2014-15 and 2015-2016, the City provided wage increases of 1.5% in 2014-2015 and 2.5% in 2015-2016 to its police unit and its unit represented by the Civil Service Employees Association.

This demonstrates to the Panel Chair that the history of collective bargaining shows a substantial similarity between the raises received by police and firefighters in Watertown. While it is not an unwavering pattern of each group receiving the exact same salary increase each year, there is a clear history of similar treatment. This significantly influences the Panel Chair to award salary increases to firefighters at the same amount provided to police officers for the two years in question.

There are other reasons for the Panel Chair to exercise fiscal prudence for the two years covering this award. The City will have to negotiate with the firefighters for several years retroactive to the last day covering this Award, i.e., June 30, 2016. Since history shows the City addresses firefighter raises similarly to the way it treats police raises, the strong likelihood is that the City will need resources to address salary increases in subsequent years.

The salary award herein is also fully consistent with the most relevant comparables. Auburn’s firefighters received wage increases of $1,525 in 2014-15 followed by 1% in 2015-2016. Ithaca’s firefighters received salary increases of 2.75% in 2014-15 followed by 2.9% in 2015-2016 and Rome’s firefighters received salary increases of 2% in each of the relevant years. This demonstrates to the Panel Chair that
the award of 1.5% in 2014-2015 followed by 2.5% in 2015-2016 is in line with the raises received by the comparables.

In reaching the conclusion that salary schedules shall be increased by 1.5% effective July 1, 2014 and 2.5% effective July 1, 2015, the Panel Chair finds that the City has the ability to pay for a fair increase in wages overall.

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

AWARD ON BASE WAGES

ARTICLE 4- COMPENSATION

Section 1(a) shall be modified to reflect a 1.5% pay increase in all steps and grades effective July 1, 2014 and an additional 2.5% pay increase in all steps and grades effective July 1, 2015.

Concur Dissent
Charles E. Blitman, Esq.

Concur Dissent
Terry O’Neil, Esq.

HEALTH INSURANCE PREMIUM CONTRIBUTION

City Position

The City proposes to increase the firefighters’ contributions toward health insurance premiums from 12% to 13%. It also proposes to increase co-pays, deductibles and prescription drug payments so they are consistent with the amounts paid by police.

The City asserts that premium contribution increases are a necessity because of the City’s self-insured health insurance plan funding costs have skyrocketed over the past
20 years. The City presented data showing that over the past 20 years, the annual family
premium cost has tripled and the annual individual premium cost has quadrupled. In the
City’s view, this is untenable for the City and unfair to the taxpayers as the significant
majority of those increases have been borne by the latter.

The City contends that the agreements reached with some of its other labor unions
to further share in the cost of health insurance is a strong reason for the Panel to make
significant changes on health insurance in favor of the City. The City notes that police
officers in Watertown have been paying 13% of the cost of premiums dating back to July
1, 2012. As part of their 2017-2021 CBA with the City, police officers agreed to increase
their premium contribution to 14% effective January 1, 2019, 14.5% effective July 1,
2019 and 15% effective July 1, 2020. In addition, while firefighters have enjoyed very
low co-pays, deductibles and prescription drug payments over the past several years, both
the police and CSEA bargaining units in the City have agreed to increase their payments
well beyond the amount paid by firefighters. Whereas the individual and family
deductibles for firefighters are currently $120 and $360, respectively, police officers and
CSEA members pay virtually double that amount at $200 for individual and $600 for
family. Whereas firefighters pay co-pays of $7 for in-network doctor visits and $15 for
out-of-network doctor visits, police officers and CSEA members pay double that amount
at $15 for in-network doctor visits and $30. Finally, while firefighters have prescription
drug costs of $5/$20/$35, police officers and CSEA members pay $10/$30/$50. Given
the substantial financial burden the City has had to endure to fund health insurance, the
City contends that requiring firefighters to pay the same toward health insurance as the
other bargaining units in the City is the least that should be done.
Union Position

The Union insists that any increases toward the cost of health insurance are unjustified and unwarranted. It stresses that the City’s strong financial condition and the firefighters weak salary standing vis-à-vis the comparables justifies no change. While the Union acknowledges that its members are paying less than the comparables, it argues that this is a necessity because its wages are unfairly low. The Union maintains that it belies logic for the City to demand parity on health insurance payments for firefighters without providing parity on salary for firefighters. Since firefighters are paid substantially less than Watertown police officers, there is no basis for firefighters to increase their health insurance costs.

The Union stresses that it has been much easier for police to increase their contributions toward health insurance costs because they receive much higher base salaries than firefighters. This allows police to have a much bigger financial cushion to absorb the increased costs. More importantly, many of the police officer health insurance contribution increases have occurred during years when they received healthy salary increases of 2.75% per year. The Union maintains that parity is a two way street, i.e., if there is no wage parity, there should be no health insurance contribution parity.

For all of these reasons, the Union urges the Panel to reject the City’s proposals on health insurance.

Panel Determination on Health Insurance

The Panel Chair finds clear support in the record for an increase to premium contributions. Firefighters in Watertown are contributing less than firefighters in any of the three most comparable jurisdictions. Evidence in the record shows that firefighters in
Auburn contribute no less than 15%, firefighters in Ithaca contribute no less than 20% and firefighters in Rome who were hired after January 1, 1985 contribute 25% toward the cost of health insurance premiums. In addition, police officers in Watertown have been contributing 13% since 2012 and will eventually contribute 15%.

Moreover, while the City’s health insurance premiums did not increase in 2014-2015, the City’s health insurance premiums increased by 4.72% in 2015-2016, 3.92% in 2016-2017, 18.38% in 2017-18 and 12.07% in 2018-2019. These significant cost increases, coupled with the data from the comparables showing that Watertown’s firefighters contribute the least toward health insurance, convinces the Panel Chair that the City’s proposal on increasing premium contribution is warranted.

The Panel Chair finds that the most equitable result on health insurance is to increase the firefighters’ premium contribution to 14% effective June 30, 2016. This will put the firefighters more in line with all of the most relevant comparables. Moreover, although the Panel Chair is imposing 1% more on premium contributions than the police were paying during this time frame, he is doing so because there will be no increases in payments for co-pays, deductibles and prescription drugs as these cannot be awarded retroactively in a practical manner.¹ In other words, since firefighters will not be forced to make any changes on co-pays, deductibles and prescription drug costs during the term covered under this Award (and likely for the foreseeable future thereafter), the fair and logical outcome is to require firefighters to offset the City’s lack of an increase in the area

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¹ The Panel Chair recognizes that it will take the City an inordinate amount of time to account for any retroactive increases in co-pays, deductibles and prescription drug payments. For this reason, these increases are not awarded. Instead, the City shall receive premium contribution increases from 12% to 14% retroactive to June 30, 2016.
of co-pays, deductibles and prescription drugs with a gain in the area of premium
collection.

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

**AWARD ON HEALTH INSURANCE**

**ARTICLE 10** - Section 1(a) shall be modified to reflect health insurance premium
payments of 14% effective June 30, 2016.

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<th>Concur</th>
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<td>Charles E. Blitman, Esq.</td>
<td>Terry O’Neil, Esq.</td>
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**HEALTH INSURANCE BUYOUT**

**Union Position**

For firefighters who have health insurance coverage through another source, the
CBA provides buyout payments of $1,250.00 per year for opting out of individual
coverage and $2,500.00 per year for family coverage. The Union proposes to increase the
buyout payments to $2,500.00 for individual coverage and $5,000.00 for family
coverage.

The Union notes that an individual health plan premium currently costs more than
$8,600.00 per year and a family plan currently costs more than $19,000.00 per year. The
Union maintains that increasing the buyout payments would be highly beneficial to both
the firefighters and the City. Firefighters taking the buyout will see an increase in their
pay for taking the buyout while the City is likely to encourage additional firefighters to
opt for the buyout due to the increased cost of health insurance. Under the Union’s plan, the City would save more than $14,000.00 for each firefighter taking the buyout who has family coverage.

**City Position**

The City does not object to the buyout as long as any increase in the payments is based on an increase in the number of firefighters opting out of health insurance. It asserts that it should not increase the buyout unless there is a guarantee that additional firefighters over the current level will opt out. Otherwise, if the City increases the amount it pays for the buyout and no additional firefighters opt out, the City will be paying increased costs for the buyout without receiving anything in exchange. The City asserts that any increase to the buyout payment should occur only when 14 or more firefighters opt for the buyout.

**Panel Determination on Health Insurance Buyout**

There are currently seven firefighters who opt out of health insurance and take the buyout. There is no doubt that increasing the health insurance buyout will be a win/win for both sides. However, this win/win situation can only occur if the buyout increase is contingent upon additional firefighters opting out of health insurance. For example, if three additional firefighters opted out of family health insurance and the Union’s proposed health insurance buyout payment provision was triggered, the City would incur $32,500.00 in increased buyout payments but the City would save more than $58,000.00 on health insurance premium payments for the three additional firefighters who opted out of health insurance. The Panel Chair finds that the savings the City can receive from this
change makes this a highly beneficial proposal to both sides and one that should be adopted.

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

**AWARD ON HEALTH INSURANCE BUYOUT**

**ARTICLE 10 (Section 7)** – Add as a new second sentence the following:

Effective June 30, 2016, if 10 or more firefighters utilize the buyout option the buyout payments shall increase to $2,500.00 for employees opting out of an individual health plan and to $5,000.00 for employees opting out of family coverage.

Concur Dissent Concur Dissent
Charles E. Blitman, Esq. Terry O’Neil, Esq.

**SICK LEAVE INCENTIVE**

**Union Position**

The current CBA does not have a sick leave incentive. The Union proposes a new provision dividing each year into quarterly blocks. Under the Union’s proposal, a firefighter would receive a payment of $500.00 for each quarter he utilizes no sick days.

The Union asserts that proposal would provide a true incentive and reward to firefighters who maintain good health. The City would also benefit because increased attendance decreases the amount the City must expend on replacements who are paid at the overtime rate.
The Union points out that the City expressed concern that certain firefighters were abusing their sick time. To the Union, this provision would provide a carrot rather a stick in attempting to address the City’s alleged concern over sick leave abuse.

Since the Union’s proposal can benefit both sides and is reasonable, the Union urges the Panel to adopt its proposal.

**City Position**

The City is amenable to a sick leave incentive payment, although it objects to the Union’s proposal to provide a payment based on quarterly attendance. The City maintains that the sick leave incentive must be based on excellent attendance throughout an entire year so that firefighters have an incentive to maintain good attendance all year. This proposal, in concert with the City’s sick leave reduction proposal, is a reasonable way to improve employee attendance, which is unsatisfactory overall in the City’s view.

**Panel Discussion Regarding Sick Leave Incentive**

The Panel Chair agrees that a sick leave incentive can be beneficial to both sides. Unit members with excellent attendance will be rewarded for their consistent presence on the job and good health. The City will benefit from decreased overtime costs.

The Panel Chair agrees with the City that the sick leave incentive should be based on a full year as this requires firefighters to have strong attendance all year long, which should be a condition for the payments to be provided.

Accordingly, and after careful consideration of the statutory criteria, testimony, exhibits, documentation, and post-hearing briefs filed, forming the record in this matter, the Panel makes the following:
AWARD ON SICK LEAVE INCENTIVE

Article 6 (Section 3) – Add as a new Section (m) the following provision:

Employees who utilize no sick days in a calendar year will receive a sick leave attendance incentive of $1,000.00. Employees who utilize one sick day in a calendar year will receive a sick leave attendance incentive of $500.00. Employees who utilize two sick days in a calendar year will receive a sick leave attendance incentive of $250.00. Attendance incentive payments shall be provided by January 31 each year. This provision is effective on June 30, 2016.

Concur Dissent
Charles E. Blitman, Esq.  

Concur Dissent
Terry O’Neil, Esq.

SICK LEAVE SELL BACK FOR RETIREE HEALTH INSURANCE PAYMENT

Union Position

The Union notes that under the current CBA, firefighters are entitled to be paid for unused sick leave at the rate of 25% of their sick leave balance, up to a maximum of 45 days. The Union proposes that the CBA be amended to allow any days sold back at retirement to be used to fund health insurance after retirement.

The Union points out that the CBA currently lacks a provision allowing firefighters to use their payment for unused sick time to fund retiree health insurance. Instead, firefighters receive their unused sick days as an after tax payment. The Union contends that allowing firefighters to use their unused days to pay for retiree health insurance would save the firefighters on income taxes and be no additional cost to the City. Since the Union’s proposal is beneficial to firefighters and does not cost the City anything, the Union urges the Panel to adopt its proposal.
City Position

The City's only objection to this proposal is that it will require its staff to track these payments and deduct them from firefighters' premium contribution payments. The City acknowledges that there is nothing else adverse to the City about this proposal.

Panel Chair's Determination on Sick Leave Sellback for Retiree Health Insurance

The Panel Chair finds the Union's proposal to be reasonable and appropriate. It will save firefighters on the income tax cost and the City will not incur any additional costs as a result of this provision being adopted. The Panel Chair is aware of numerous municipalities across New York that permit employees to use unused leave time to pay for retiree health insurance. In the Panel Chair's experience, it is a minor administrative inconvenience but not so burdensome as to dissuade the Panel Chair from adopting a proposal that is cost neutral to the City and beneficial to firefighters.

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

AWARD ON SICK LEAVE SELLBACK FOR RETIREE HEALTH INSURANCE PAYMENTS

Article 4 (Section 4) shall be revised by adding the following:

In lieu of receiving a direct cash payment from the City, a member may elect to use the value of his unused sick leave to fund retiree health insurance payments, the value of which shall be calculated on a pre-tax basis for this benefit only. This provision is effective on June 30, 2016.

Concur Dissent
Charles E. Blitman, Esq.

Concur Dissent
Terry O'Neil, Esq.
STIPULATED VACATION SWAP LANGUAGE

City Position

Article 6, Section 1 (c) has language addressing how members of equal rank, or members who normally serve in acting ranks, shall be allowed to exchange portions of their vacation. During a recent arbitration over this provision, the parties reached a stipulation in lieu of having the arbitrator decide the dispute. The City now seeks to incorporate the stipulated language into the CBA. It asserts that Chief Herman testified that the new stipulated provision has worked without incident. Since the Union has agreed to this provision, the City asserts that this award should adopt the language of the stipulation.

Union Position

While acknowledging that the parties resolved the vacation swap issue in lieu of completing arbitration, the Union has concerns about adding the stipulation to the CBA. It opposes any restriction of vacation swaps because unforeseen contingencies may arise that require one to be utilized. In those circumstances, when there is a good faith reason for the exchange, the Union feels vacation swaps should be permitted to occur. By placing the stipulated language into the CBA, the Union expresses concern that it may lose flexibility for its members who wish to swap vacations.

Panel Discussion on Stipulated Vacation Swap Language

The Panel Chair determines that the City’s proposal should be adopted. The parties agreed to the stipulated language and Chief Herman testified that he has not observed any problems with implementation of the stipulated language. Since the language was mutually agreed to, it should be adhered to and placed in the CBA.
Accordingly, and after careful consideration of the statutory criteria, testimony, exhibits, documentation, and post-hearing briefs filed, forming the record in this matter, the Panel makes the following:

**AWARD ON STIPULATED VACATION SWAP LANGUAGE**

Replace Article 6 (Section 1)(c) with the following:

Members of equal rank and/or members who normally serve in acting ranks shall be allowed to make good faith exchanges of portions of their vacations as they so desire provided that the members who desire to make this change shall notify the Chief of the Department at least 30 days prior to the date of exchange, but no later than the 15th of the month prior to the exchange. A good faith exchange or portions of a pick for legitimate reasons, and not for the purpose of gaining additional working days vacations, will be granted, as long as it meets the conditions of Article 6 in this Agreement. An exchange of entire picks is considered to be a good faith exchange. An exchange of less than an entire pick for the primary purpose of gaining additional working day vacations and reducing the number of non-work day vacation days does not meet the purpose of this Section. The portion to be exchanged shall not exceed sixteen (16) days. This provision is effective on June 30, 2016.

Concur
Charles E. Blitman, Esq.

Dissent

Concur
Terry O’Neil, Esq.

Dissent

**HOUSEKEEPING PROPOSALS**

**City Position**

The City has ten proposals that it considers to be non-substantive in nature that it has proposed as editorial changes or updates to language to comply with changes in laws or changes in dates. The City contends that there is absolutely no reason for the Union to object to any of its housekeeping proposals because none of them are substantive. The City’s proposed changes will make the CBA clearer and more accurate.

**Union Position**

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The Union agrees to five of the City's proposed housekeeping changes and to parts of two other City housekeeping proposals. The Union objects to the remaining proposals because it considers them to either to be meaningful changes to the CBA or believes the items should remain in the CBA for historical or referencing purposes. The Union urges the Panel to be deferential to the parties on the meaning of historical provisions in the CBA and not to adopt any of the housekeeping proposals that the Union objects to.

Panel Discussion on Housekeeping Proposals

The Panel Chair feels it is appropriate to change only those housekeeping proposals that the parties mutually agree on. The parties are much more conversant on the history of their CBA than the Panel Chair and the implications that changes to the CBA can have on their history. Disagreement about the historical need to retain a specific provision in a CBA is something for the parties to discuss and resolve at the negotiating table in the future.

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

**AWARD ON HOUSEKEEPING PROPOSALS**

Revise the CBA as follows:

1. Article 3, Section 2 – Change “New York State Fair Public Employment Act” to N.Y. Public Employees Fair Employment Act (“the Taylor Law”)
2. Article 6, Section 3f – Change to clarify, to read: “Accumulated sick leave credits shall not form a basis for granting extra pay or extra vacation because of failure to use accumulated sick leave, but may be consumed only through absence caused by illness or injury.”
3. Article 6, Section 9b – Move to Article 7 and replace Article 7, Section 1 with: “A seniority list shall be posted in a conspicuous place in each department office. It
shall be revised when necessary. The seniority list shall operate in accordance with the procedure recommended by the State Department of Civil Service and the rules and regulations under which the Watertown Civil Service Commission functions. A copy will be provided to the Union on a quarterly basis.”

4. Article 9 – Modify by deleting the reference to WWI Veterans.

5. Article 10, Section 1a – Modify by deleting the reference to pre-June 30, 1983 hirées.

6. Article 13, Section 6 – Change to read: “Employees of the Fire Department shall observe the holiday schedule on Sundays and on all holidays as designated in the Leave Rules. Such schedule shall exclude employees from performing duties other than normal housework and responding to emergency situations.”

7. Article 15, Section 1 – Modify by changing to the font of the text to all capital letters.

Concur ———— Dissent ————
Charles E. Blitman, Esq.

Concur ———— Dissent ————
Terry O’Neil; Esq.

CIVILIZATION OF CODE ENFORCEMENT

City Position

Since 1993, two members of the firefighters bargaining unit have been assigned to the City’s civilian Code Enforcement Bureau. According to the City, the parties have been arguing about this issue for more than 20 years without a resolution satisfactory to the City. The resolutions of their disputes have permitted the status quo to remain, namely, the continuation of two firefighters assigned to the Code Enforcement Bureau to conduct annual inspections of places of public assembly and triennial inspections of commercial properties. Since the job specifications for the job of Building Safety Inspector permit employees in that title to conduct public assembly inspections and commercial code inspections, the City proposes to return the two firefighter positions to the line and have them do actual firefighting work.
The City insists that the current structure is irrational and not cost effective. The City pays firefighters considerably higher salaries than it pays Building Safety Inspectors. Moreover, Building Safety Inspectors are wholly qualified to do all aspects of code enforcement work whereas firefighters are not. The two firefighter personnel assigned to the Codes Department cannot lawfully perform all duties because they are not master plumbers, which is a requirement of code enforcement work. Thus, whereas civilian codes enforcement personnel are legally permitted to perform the duties performed by fire personnel, fire personnel are not permitted to perform all of the duties of a Code Enforcement Officer.

This is not only impractical but it is not cost ineffective. The City points out that Matt Roy, the City’s Human Resources Director, testified that a shift from two firefighters to two additional civilian employees would save the City at least $25,000.00 per position per year. In the City’s view, its taxpayers should not be saddled with such excessive costs, particularly where the City has the ability to attract Code Enforcement Officers who can do all aspects of the position. Another significant advantage for the City is that it would be able to utilize these two firefighters for the firefighting work they were originally employed to perform.

The City insists that this is a perfect time for the Panel to adopt its proposal. The City notes that Captain DeMar, one of the two firefighters who has been working in the Code Enforcement Bureau, testified that he had just submitted his retirement papers to the State Retirement System. Since Captain DeMar leaves a vacancy in the Codes Bureau, this is a perfect time to make the City’s proposed change.
Union Position

The Union vehemently objects to the City’s proposal. It insists that the firefighters assigned to the Code Enforcement Bureau have unique skills and expertise that provide the best protection for the City and its residents. Among other things, firefighters review plans for new construction. This includes sprinklers, alarms, emergency lighting, etc. They oversee fire protection systems, repairs and recertifications. They respond to citizen complaints and interpret the fire codes. They conduct furnace inspections, issue propane permits, and inspect propane installations.

The Union stresses that firefighters performed code enforcement work for much of the 20th century. Then, in 1993, after the City attempted to civilianize the entire Code Enforcement Bureau, the parties settled the dispute by agreeing that as long as the City operated a Code Enforcement Bureau, it would have at least as many firefighters as civilian personnel performing this work.

The Union expresses grave concern about the Panel taking away work that has been part of the bargaining unit for decades. This is not only unfair but it is unsafe. According to the Union, firefighters have the unique skills and expertise to predict how a building will handle fire conditions. There was ample testimony from Captain DeMar about the unique expertise he has when assessing buildings, which is due to his firefighting training. In the Union’s view, a civilian simply cannot possess the knowledge a firefighter has acquired from training and being on the line. The Union argues that public safety should not take second place to the City’s desire to save money.
Panel Discussion on Civilianization of Code Enforcement Bureau

The Panel Chair finds that this is the right time to make changes to the Code Enforcement Bureau. The most compelling reason to make this change is because civilian Code Enforcement employees can perform all required aspects of code enforcement and firefighters cannot. In other words, it is perfectly legal for the City to have all code enforcement work done by civilians and, in addition, such work can be done at a lower cost. For these reasons, it is appropriate to give the City the right to start civilianizing all code enforcement work if it so chooses.

The Panel Chair observes that this is an ideal time to make some changes to code enforcement work due to the retirement of Captain LaMar. The Panel Chair determines that the remaining firefighter working in the Code Enforcement Bureau should continue to have the right to perform code enforcement work until such time as he is no longer employed by the City. However, the City shall be permitted to employ civilians for all other code enforcement work.

The Panel Chair points out that this award does not require the City to implement civilianization of code enforcement work. Rather, it simply gives the City the right to do this if it so chooses. If the City decides that it would be best served by continuing to have firefighters work in code enforcement, it can continue to do so.

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

**Award on Civilianization of Code Enforcement**

Add the following to the CBA:
"The two firefighting bargaining unit members performing code enforcement work at the time of the interest arbitration hearings will continue to have the right to perform such work until such time as they no longer work for the City. The City shall have the right to assign Code Enforcement Officers to perform all other code enforcement work, including some of the overage work the firefighters performing code enforcement work cannot complete. When the firefighter bargaining unit members performing code enforcement work no longer work for the City, the City shall have the right to assign all code enforcement work to Code Enforcement Officers if it so chooses. This provision is effective on June 30, 2016."

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**REDUCTION OF SICK LEAVE**

**City Position**

The City currently provides 96 hours per year of sick leave to police officers and 144 hours per year of sick leave to firefighters. The City proposes to reduce firefighters’ sick leave to the same amount as that received by members of the City’s Police Department.

The City argues that a reduction is mandated because the firefighters use of sick leave far exceeds the amount used by police officers. For example, in 2016 police officers used an average of 60.41 hours per year while firefighters used an average of 93.47 hours per year. In 2017, sick time usage got worse with firefighters using an average of 100.8 hours per year and police officers using an average of 52.40 hours per year. In other words, in 2017, firefighters used nearly 100% more sick leave than police officers.

The City asserts that if this proposal is adopted, firefighters will use less sick time and the Fire Department will be able to reduce its overtime costs.
Union Position

The Union strongly objects to the City’s proposal. It points out that there is no proof of firefighters abusing sick leave. If any firefighters are abusing sick leave, the City has the option of pursuing discipline against them. Of significant note to the Union is the fact that the City has not attempted to discipline a firefighter for sick leave abuse for as far back as anyone can remember.

The Union points out that its 2017 sick leave statistics are arguably higher than usual because two members were battling cancer and one was on long-term injury leave. Since there is no proof of a single firefighter abusing sick leave, the City’s rationale for reducing sick leave is wholly speculative and devoid of merit.

Panel Discussion on Sick Leave

The Panel Chair rejects the City’s proposal because it is wholly speculative. The City asserts there is sick leave overuse yet there is no evidence that it has spent a single moment attempting to discipline such overuse. In the law of the workplace, when an employer alleges sick leave overuse, the objective way to establish that this is occurring is to prosecute disciplinary cases against the employees allegedly overusing sick time. The Panel Chair routinely deals with these types of cases in his disciplinary arbitration practice and is confident that municipalities across the State prosecute sick leave overuse cases against employees on a regular and consistent basis.

For the City to allege overuse of sick leave and not prosecute a single sick leave overuse case is not persuasive. The City’s arguments become even more spurious considering that the City’s Fire Department report indicates that in 2017 it had two firefighters in 2017 who were on leave due to cancer and five other unit members who
were out on extended absences having surgeries. This is an excerpt from the City Fire Department’s Annual Report:

Department sick leave use is above the 7 year average once again this year. Two department members have been fighting the diagnosis of cancer. The illness proved career ending for one and the other has returned to full duty. Their absence during treatment is recorded in the data. Other extended sick leave absences 5 personnel having surgeries (City Exhibit 9).

In terms of comparability, while the Watertown police clearly receive less sick leave than Watertown’s firefighters, the 12 sick days Watertown’s firefighters receive each year is consistent with what the other firefighting comparables receive. Indeed, Ithaca and Oswego provide their firefighters with the same 12 sick days per year that Watertown’s firefighters receive. Firefighters in Rome, Auburn and Fulton arguably receive a more generous benefit. The bottom line is that, based on a review of the sick leave benefits received by the comparables, there is no basis for a reduction.

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

**AWARD ON SICK LEAVE**

The City’s proposal to reduce sick leave is rejected.

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<thead>
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<th>Dissent</th>
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<td>Charles E. Blitman, Esq.</td>
<td>Terry O’Neil, Esq.</td>
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**MINIMUM MANNING**

**City Position**

The City proposes to eliminate the minimum Manning provision in the CBA. That provision currently provides that whenever manpower drops below 14, excluding the
Battalion Chief, a member or member shall be called in to bring the strength to at least 14.

The City contends that, like any municipality, it should have the right to determine the level of service it requires. To the City, determining the level of service and staffing it wishes to provide to its residents is a fundamental management right.

The City insists that changes to the minimum manning clause are an absolute necessity because its required staffing is far above that of any of the comparables. The data in the record shows that the City has the highest number of firefighters per 1,000 residents of all of the proposed comparables. While Watertown has 2.73 firefighters per 1,000 residents, Ithaca has 2.10 per 1,000, Rome has 2.37 per 1,000 and Auburn has 2.58 per 1,000.

In terms of minimum staffing, the evidence shows that Watertown’s staffing is an outlier with the other comparables. While Ithaca does not have a minimum manning clause, Rome has minimum staffing of 17 and Auburn has minimum staffing of 12. At the very least, this data strongly supports a reduction of minimum staffing. This is the case because Auburn and Watertown are almost identical in terms of population, square miles and number of housing units. Whereas Watertown has 13,045 housing units, Auburn has 12,490. Whereas Watertown is 9.02 square miles, Auburn is 8.34 square miles. Whereas Watertown has a population of 25,689, Auburn’s population is 26,704. Since Auburn and Watertown have virtually identical statistics it challenges logic as to why Watertown should be required to have minimum of staffing of 15 while Auburn has minimum staffing of 12.
The statistics in Rome also support the City. Although Rome has minimum staffing of 17 firefighters, it is significantly larger than Watertown. Rome is one of the largest cities in the State in terms of square miles, with 74.8 square miles compared to Watertown’s 9.02. Rome also has 2,000 more housing units than Watertown and almost 7,000 more residents than Watertown. If the Panel is not going to fully eliminate the minimum Manning provision, it certainly has strong and persuasive data mandating a reduction.

The City objects to the Union’s presentation about the National Fire Protection Association (NFPA) standards. While acknowledging that those standards recommend that staffing of 15 firefighters is lowest standard to maintain safety, the City stresses that it has not adopted these standards and that it is not legally required to do so. Similarly, although Chief Herman ideally would like the City to at least have 15 firefighters per shift, he conceded that it is up to elected officials to determine staffing and that he would provide the best level of fire service he could if the City had the right to set staffing parameters.

In the end analysis, the City insists that the minimum Manning clause should be eliminated so it can manage its workforce and provide the level of service it deems appropriate. In the alternative, since the City’s minimum Manning is so far above the other comparables, a significant reduction to the minimum Manning clause is warranted.

**Union Position**

The Union strongly objects to the City’s minimum Manning proposal. It begins by noting that professionals in the fire service business, including Chief Herman, strongly support the City’s minimum Manning provision. The Union notes that Chief Herman
testified that the Department should have minimum staffing of 17 and that Chief Herman’s 2017 annual report expresses grave concern about the City’s attempts not to backfill for members reporting out sick and the implementation of minimum staffing of 13. Chief Herman’s 2017 report sends a very clear message that he is gravely concerned that lowering the City’s minimum staffing has the potential to result in a tragedy for the City, something he cannot support.

The Union stresses that the minimum manning provision should not be touched because firefighter and public safety should not be based on the whims of politicians. Instead, it should be based on sound firefighting safety practices and the opinions of those who understand the business and safety of firefighting. Since the Union presented a plethora of evidence on this front and the City presented none, it is abundantly clear that the 15-man minimum must remain in the CBA.

The Union notes that NFPA is a national fire safety organization that sets standards for fire departments. It is an organization made up of management and union representatives. According to the Union, NFPA Rule 1710 is the standard for the minimum number of firefighters a municipality should utilize for the safety of firefighters and their communities. Since the NFPA standard is 15 and the Union presented other expert witnesses who testified why it would be reckless and dangerous to go lower than 15, the City’s proposals must be rejected.

The Union stresses that maintaining minimum staffing at 15 is also vital because the City’s Fire Department cannot rely on mutual aid. Fort Drum is the closest fire department and is approximately 20 minutes away. Thus, while Fort Drum’s department
could assist with cleanup, they cannot be there fast enough to do the critical life-saving and property-saving work that needs to occur in the minutes after a fire call is received.

The Union avers that Chief Herman did not mince words when he testified about the importance of maintaining the minimum staffing levels. He explained that just as a licensed engineer would not jeopardize his license by saying a structure is safe when it is falling down on its own weight, he cannot ignore his professional training and background and recommend minimum staffing at less than 15.

The Union emphasizes that it provided unrebutted evidence on negotiations history dating back to the 1970s that the purpose of the minimum manning provision was to protect and preserve the health, safety and well-being of the firefighters, as well as the citizens of Watertown and its property. This is as relevant today as it was then, as evidenced by the expert testimony in the record about compelling safety reasons for maintaining the status quo. In the Union’s view, a major change on an issue like minimum staffing should not be imposed by the Panel. Rather, this type of change, if it is ever to be done, should only occur through the give and take of collective bargaining.

**Panel Discussion on Minimum Staffing**

The Panel Chair rejects the City’s proposal to eliminate or make any changes to the minimum manning provision because the evidence in the record strongly supports maintenance of the status quo. There is a plethora of unrebutted evidence in the record supporting no change in the minimum manning provision. It shows that the minimum manning clause was added to the CBA due to concerns about protecting and preserving the health and safety of firefighters, the citizens of Watertown and the City’s properties.
This continues to be a legitimate reason for not changing the minimum manning provision. (Union Exhibit 18).

Chief Herman testified without equivocation about his support for no change to the minimum manning provision. His 2017 Report about the City’s attempt to reduce staffing expressed grave concerns about this practice and its potential impact on safety. Chief Herman did not mince words. Among other things, his Report states that the Fire Department “has been a proponent of best practices, which this lower staffing directive is not.” He also warned that it is very risky to lower the “operational best practices with the expectation that nothing will go wrong.” His report also stated that there is an impact to service and safety when operations of untested and unapproved levels, such as the new 13-man staffing occur and that he felt duty bound to inform City government and the public at large. These concerns are very compelling to the Panel Chair.

NFPA Standard 1710 is another compelling reason not to change the minimum staffing provision. This standard indicates that 15 men is the minimum number of firefighters that should be utilized when responding to a house fire.

Similarly, the testimony of John Sandella, a 32-year veteran of the Newark New Jersey Fire Department, who has served as his union’s president for five years and has extensive service time on national fire safety health and safety committees, was also compelling and supported the rejection of the City’s proposals on minimum manning. He testified that the NFPA 15-man minimum staffing standard was a collaboration between firefighters and management and that all sides came together because they all understood it was needed for the safety of their firefighters and their communities. The totality of his testimony, as well as the testimony of Sam Fresina, President of the New York
Firefighters Association, provided strong safety rationales for maintaining the City’s minimum manning provision at the current levels.

The Panel Chair acknowledges that the City may have the most favorable manning clause in the group of comparables. However, that doesn’t mean that the data is compelling enough to warrant a change. Watertown has 2.73 firefighters per 1,000 residents. Comparables such as Auburn and Rome are quite close to this number with Auburn at 2.58 firefighters per 1,000 and Rome at 2.37 per 1,000. Ithaca has the lowest staffing among the comparables with 2.10 per 1,000 residents.

Just because Watertown’s minimum staffing is arguably more favorable than the other comparables does not demonstrate that a change is warranted. The Panel Chair determines it is more prudent to fall on the side of safety. Moreover, in every situation where comparables are analyzed, there is usually one bargaining unit with the most favorable provision. Just because Watertown’s may be the most favorable does not mean that it should be reduced for that reason, particularly when expert firefighters have testified that doing so is not in the best interest of public or firefighter safety. These experts provided examples of what they described as the organized chaos that occurs during a dangerous fire incident. Their examples demonstrated why each firefighter is needed during an emergency and how staffing levels lower than 15 can lead to considerably greater risk.

The record is replete with evidence supporting no change to the City’s minimum manning levels for safety reasons. When the City’s Fire Chief, the expert testimony veteran firefighters who are not from Watertown and NFPA standards all recommend maintaining staffing at 15 for safety reasons, the evidence is highly persuasive. The Panel
Chair finds expert opinion valuable and compelling, particularly when decreased public safety is one of the potential adverse consequences of a decision favoring the City on this issue. The Union presented substantial evidence and testimony showing sound reasons to maintain the status quo.

When the Panel Chair considers the interests and welfare of the public, history of past negotiations and all of the other relevant evidence and statutory criteria, he determines that the City's minimum manning proposal must be rejected.

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

AWARD ON MINIMUM MANNING

The City's proposal to eliminate or reduce the minimum manning provision in the CBA is rejected.

Concur___ Dissent___
Charles E. Blitman, Esq.

Concur___ Dissent___
Terry O'Neil, Esq.

REMAINING ISSUES

The Panel has reviewed in great detail all of the demands of both parties, as well as the extensive and voluminous record in support of those demands. The fact that those demands have not been specifically addressed in this Opinion and Award does not mean that they were not closely studied and considered in the context of terms and benefits by the Panel members. In interest arbitration, as in collective bargaining, not all proposals are resolved and not all contentions are agreed with. The Panel, in reaching what it has
determined to be fair result, has not made an Award on all of the demands submitted by each of the parties.

**AWARD ON REMAINING ISSUES**

Except as set forth in this Award, the City’s demands are hereby rejected.

Except as set forth in this Award, the Union’s demands are hereby rejected.

Concur                      Dissent
Charles E. Blitman, Esq.

Concur                      Dissent
Terry O’Neil, Esq.
DURATION OF AWARD

Pursuant to the agreement of the parties and the provisions of Civil Service Law Section 209.4(c)(vi) (a.k.a., the Taylor Law), this Award is for the period commencing July 1, 2014 through June 30, 2016. The terms of this Award shall be effective on such dates as set forth herein and payable to any unit member working during such award term. Payment of any retroactive wage adjustment shall be made no later than 60 days after the execution of this Award.

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

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

TERRY O’NEIL, ESQ.  
Employer Panel Member  

CHARLES E. BLITMAN, ESQ.  
Employee Organization Panel Member  

I dissent on retroactive payments to be made no later than 60 days after execution of the Award.
STATE OF NEW YORK  
COUNTY OF PUTNAM  

On this 30th day of June 2019 before me personally came and appeared Jay M. Siegel, Esq., to be known and known to me to be the individual described in the foregoing Instrument, and he acknowledged the same to me that he executed the same.

Notary Public
KATHLEEN E. PIFFETT
Notary Public, State of New York
No. 02646128192
Qualified in Putnam County
Commission Expires 06/06/2021

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STATE OF NEW YORK  
COUNTY OF ONONDAGA  

On this 25th day of June 2019 before me personally came and appeared Charles E. Blitman, Esq. to be known and known to me to be the individual described in the foregoing Instrument, and he acknowledged the same to me that he executed the same.

Notary Public
ROSANNE C. CANESTRARE
Notary Public, State of New York
Qualified in Onondaga County No. 4778058
My Commission Expires: Dec 10, 2022

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STATE OF NEW YORK  
COUNTY OF NASSAU  

On this 20th day of June 2019 before me personally came and appeared Terry O’Neil, Esq. to be known and known to me to be the individual described in the foregoing Instrument, and he acknowledged the same to me that he executed the same.

Notary Public
MARGARET M. KRATOCHVIL
Notary Public, State of New York
No. 01KRT667007
Qualified in Nassau County
Certificate Filed in New York County
Commission Expires Dec 31, 2021
Interest Arbitration between the City of Watertown and the Watertown Professional Firefighters Association – IAFF Local 191 – PERB Case Number IA 2016-001; M2015-210

DISSENTING OPINION

Terry O’Neil, Esq. – Bond, Shoeneck & King, PLLC

June 20th, 2019

INTRODUCTION

The opinion of the Panel’s Majority ("Majority"), which constitutes the Interest Arbitration Award (hereinafter "Award") herein, is a microcosm of much of what is wrong with the Interest Arbitration process. This is the kind of Award that has caused public employers to believe the process is "hopeless" when trying to effect meaningful and justifiable relief from onerous contract provisions. Such a thought-process provides an inherent bargaining advantage to police and fire unions and creates an imbalance of power that was neither contemplated by the authors of the original Taylor Law nor the authors of the Interest Arbitration amendments.

For all of the problems associated with Interest Arbitration, it is not the actual language of the Taylor Law that is at fault. As will be demonstrated in this Dissent, had the language of the statute been properly applied, a “just and reasonable determination of the matter in dispute” would have been forthcoming. Instead, the Arbitrator, someone charged by statute as the “public” member and Chairperson of the Panel (hereinafter “Chair”), and an understandably biased Professional Fire Fighters Association Representative (serving as the Union Panel member) (collectively hereinafter “the
Majority") combined to produce an Award that is irrational, arbitrary and capricious on the two major issues in dispute, and on at least one other item, acted beyond the scope of their jurisdiction.

Somehow, and it was not for a lack of advocacy on my part or evidence in the Record, the Majority either did not grasp the evidence, or chose to ignore it.¹

If left intact, this Award will harm not only the City of Watertown ("City") and its taxpayers, but also any other community that attempts to turn to this process when an impasse is reached on crucial items to the Employer. Given the evidence in the Record, despite a number of issues I have concurred on, the totality of this Award can only be labeled as "unjust and unreasonable" given the lack of relief on the two major issues in this impasse.

This Award on the two issues are – in the Majority's words – based upon the statutory criteria. I submit, based on the Record, it is not.

The Majority Failed to Appropriately Consider
All of the Statutory Criteria Necessary For the Award

Section 209.4(c)(v) provides, in relevant part (with emphasis added), that the "Panel shall make a just and reasonable determination of the matters in dispute." The statute continues:

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 wages,² hours and conditions of employment of the unit members with those of other employees "performing similar services or

¹ The arguments presented herein were made in very similar fashion verbally and in memos and during the Panel's Executive Sessions.
² References to wages have not been subsequently included since I concur with the Chair on that issue.
requiring similar skills under similar conditions . . . in comparable communities"; 

b. "the interests and welfare of the public" and the financial ability of the City to pay; 

c. comparison of peculiarities between firefighters and other trades/professions; 

d. the terms of agreements negotiated between the City and PFAA in the past. 

Initially, I will concede the Majority did, to some extent, review and compare the Firefighters hours and conditions of employment "... with the hours and conditions of employment of other employees performing similar services or requiring similar skills under similar working conditions ..." However, it did not limit its analyses to Firefighters in "comparable communities." Its review is insufficient to pass statutory muster. 

With the exception of Subsection (c) above, the City put all other Subsections – (a), (b) and (d) – in issue. 

The courts have required that the decisions of Interest Arbitration Panels be rational and not arbitrary or capricious. This Award is both irrational, and arbitrary and capricious. 

**BACKGROUND**

Initially, I regret having to write a Dissent. I preferred additional Executive Sessions to address the important issues raised in this case. My concerns arose only after hearing the Chairman's initial rulings on the important issues by phone. Those 

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3 Rightfully so, this criteria was given little consideration by the Panel. See, infra. 
4 I have included this Section to provide perspective for the readers of this Dissent.
discussions were ended on the Chair's part by saying: "I guess we'll have to agree to disagree." Frankly, I needed time to review some of his rationale and data allegedly in support of his rulings in order to reply. I was unable to complete that task prior to his "First Draft." Without any additional face to face Executive Sessions – written submissions were all I could resort to. Ultimately, they were futile on the two crucial City proposals on sick leave and minimum manning.

As the Panel knew, the Court of Appeals denied the City's request for leave to appeal the Appellate Division, 4th Department's reversal of Supreme Court Justice McKluskey's decision staying an arbitration involving the contracts minimum manning provisions. The City does not agree that the existing provisions . . . which make no mention of safety . . . is a safety provision. The City argued it is a job security provision (NOT a no lay off provision) which does not meet the Court of Appeals standards for enforceability. No lay off clauses and minimum manning provisions are both job security clauses. The Court of Appeals requires that strict scrutiny be applied to both. The Court of Appeals did so most recently in Johnson City to protect the public from elected officials unwittingly negotiating away the most basic management right, i.e., to determine the size of its work force.

Nonetheless, that fight is over for now in the 4th Department. While the City regrets it "ran out of Courts" to challenge the current minimum manning provisions, it confronted this crucial issue in this Interest Arbitration. This history made the Interest Arbitration critically important to the City's elected representatives and its citizens.

It is undisputed that minimum manning is a non-mandatory subject of bargaining, i.e., a topic an Employer is not obligated to negotiate with its Union.
Nonetheless, years ago the City chose to negotiate the topic and a minimum manning provision was included in the Collective Bargaining Agreement (CBA). PERB in its *Cohoes* decision converted non-mandatory provisions contained in CBA’s to mandatory provisions to allow employers to make proposals in Interest Arbitration to delete or alter such provisions. The City now relies solely on Interest Arbitration to change a provision which could not, in its view, be justified based on the applicable interest arbitration statutory criteria.

A version of this Dissent was shared with the Panel to hopefully persuade the Chair that the existing manning and inextricably intertwined over generous sick leave provision should be changed. I was not persuasive.

Despite overwhelming evidence supporting a reduction in the contracts minimum manning number based on comparability, the interest and welfare of the public, and prior CBA’s, a Majority of the Panel (“Majority”) refused to reduce the number. See, infra.

The Chair based his rationale to continue the clause unchanged almost entirely on safety. However, even if this were a safety provision, there is no evidence in the Record to demonstrate that Watertown, compared to any other municipality, or its own Police Department (“PD”), was more dangerous than others, therefore, in the Majority’s view, requiring higher minimum manning numbers.

Moreover, there was no evidence that any number of firefighters\(^5\) not fighting fires makes the job safer. The Union’s entire “safety” argument is based on hypotheticals or standards that have no application to Watertown or any other

\(^5\) Although the unit includes Firefighters, Captains and Battalion Chiefs, for ease of reading I use the term Firefighter to describe the unit collectively throughout.
comparable Fire Department in New York State. Based on the Record, Watertown is neither safer nor more dangerous than any other Fire Department in New York State, or its “comparable” PD for that matter, which has no minimum manning clause in its CBA.

When the safety factor is neutralized, I submit that comparability . . . which overwhelmingly favors the City’s position . . . should have controlled. See, infra. This should have applied regardless of what communities were deemed comparable.

I was persuaded, as the Employee Panel Member confirmed in our deliberations, that the Chair believed “making a ‘sea change’” in Interest Arbitration is inappropriate. That, however, is not a supportable criterion applicable in an Interest Arbitration. I will address the proper criteria in more detail, infra.

The Record supporting the City’s proposal to reduce firefighter sick leave entitlement was even more compelling than its arguments on manning. See, infra.

As mentioned on page 2 of the Award, the Panel was designated to make a “just and reasonable determination” of this dispute. I believe the Award is neither just nor reasonable to the City and its citizens.

The items I highlight to support the above are the Majority’s conclusions regarding the following:

1. Comparability.
2. Interest and Welfare of the Public
3. Peculiarities of the Firefighting Profession and Hazards of the Job
4. Terms of Prior CBAs
5. Sick Leave; and
6. Minimum Manning

While this appears to be a long list, they are not all proposals – they are topics discussed in the Majority’s Opinion. My Dissent covers in detail only 2 proposals – in
order of importance - minimum manning and sick leave. The remaining topics support changes on these 2 issues.

While I believe there are grounds to vacate this Award as described infra, I believe that the City is unlikely to pursue that course. Nonetheless, the City's elected officials and the public are entitled to understand the topics at issue, the flaws in the Majority's Award, and the impact it has on them.

1. **Comparability**

Under Section 209.4 of the Civil Service Law the Panel must consider;

a) Comparison of the . . . conditions of employment of the employees involved in the arbitration . . . with . . . employees performing similar services . . . under similar circumstances . . . in comparable communities (emphasis added).

I have been involved as a Panel member in numerous Interest Arbitrations since the statute was passed in the 70's. My personal experience, plus a review of numerous other awards, is that true comparability has been the most heavily relied upon criteria in Interest Arbitration. To overcome it, one side had to clearly demonstrate a countervailing reason why it should not control.

During the hearings in this case, given the lack of agreement by the parties on comparables, the Panel assumed responsibility to determine the comparables. I even stated this on the Record. Once this decision was made, the Panel was then obligated to follow the statutory criteria to determine the comparables. The Majority did not follow the statute.

The City consistently took the position that the City's Police Department was comparable. Numerous City Exhibits involving comparability utilized PBA provisions.
On page 7 the Majority states: “In the end analysis, the Union insists that the Watertown Police are the most relevant and obvious comparable.”

In fact the Majority called them “an important comparable.”

During the Executive Sessions comparative data was reviewed and discussed to establish comparables in addition to the PD. There was never a consensus among the three Panel members. The Chair therefore made a finding that had not been agreed upon by myself or the Union Panel member. I submit that finding was seriously flawed.

The bullets below are uncontroverted and were unequivocally established in this proceeding.

- The PD is “an important comparable” – the Union, the City and the Chair all agreed.
- The most comparable FD is Auburn – the Chair even agreed on page 49. Auburn is almost a “mirror image” of Watertown and is less than 100 miles from Watertown. Notwithstanding what the Majority said on page 10 of the Award, it is an “apples to apples comparison” with Watertown. The Chair even reached that conclusion on page 49: “Auburn and Watertown are almost identical in terms of population, square miles and housing units.” In terms of size of Departments, Watertown and Auburn are almost identical (70 and 69). Even in terms of firefighters per 1,000 residents (a statistic I have never seen before in an Interest Arbitration) they are the closest – when rounded – Auburn 2.6 . . . Watertown 2.7.
- Ithaca is approximately 40% the size of Watertown based on square miles and 20% more populous. Its median housing values are approximately
60% higher than Watertown and it is 125 miles away – a different labor market. There are 13,000 housing units in Watertown compared to 10,400 in Ithaca.

- I submit Ithaca is not comparable to Watertown and I never agreed otherwise during our Executive Sessions.

- Rome is not comparable. In square miles it is 7 times larger than Watertown; its population is 25% greater; it is 92 miles away – and in a different labor market. On page 50 of the Award, the Majority properly found that the statistics in Rome supported my position on comparability –

  "It [Rome] is significantly larger than Watertown . . . it is one of the largest cities in the State in terms of square miles (74.8 compared to 9.02) . . . 2,000 more housing units . . . 7,000 more residents."

- While the Chair agreed on the above when discussing minimum manning, he nonetheless used Rome selectively for the sick leave comparison, and even in his minimum manning conclusion to reject the City’s proposal. This was unfair, unreasonable and arbitrary and capricious. The Majority cannot “cherry pick” non comparables to support a faulty conclusion. That process is contrary to the criteria in the statute.

- While Oswego and Fulton are geographically closer to Watertown than the other proposed comparables – neither are comparable in population (Oswego - 18,000 to 27,000) (Fulton - 12,000 to 27,000 in population – less than one half its size) or minimum manning (both have minimum manning levels of 7, less than 50% of Watertown). Indeed, the Union itself specifically objected to Fulton and Oswego as comparables. See
page 7 of the Award. For the same reason Rome is not comparable, neither are Oswego and Fulton. It is unreasonable to selectively use non comparables to justify any finding. I believe they were utilized only to support a rejection of one of the City’s most crucial proposals related to sick leave (infra). In fact, neither myself nor the Employee Panel Member (EPM) agreed Oswego and Fulton were comparable during the Panel’s deliberations.

“Close Proximity” alone is no basis to call a municipality “comparable” for Interest Arbitration purposes. It is like calling Cicero comparable to Syracuse.

Other than Auburn, all the other municipalities should have been given no consideration. I submit it was unreasonable, and arbitrary and capricious for the Majority to include Rome, Ithaca, Oswego and Fulton as comparables for any of the items at issue based on the Record. Based on any criteria, they are not “comparable communities.” The statute only authorizes comparability with “comparable communities.”

My position was – and still is - Auburn and the PD were the only statutory “comparables.” The Majority agreed the PD and Auburn PD were comparables. I never agreed the others were “comparable” – because they are not.

2. **Interest and Welfare of the Public**

While morale is important, the Union’s claim that its “benefit package positively impacts firefighter morale” does not in my view translate into the “interests and welfare of the public”. The Union’s argument paraphrased on page 12 of the Award that “good
morale" permits the City to attract "the cream of the crop in firefighting and . . . allow it to retain its well-trained firefighters" is a conclusion without a foundation. There is no Record evidence of good or bad morale, inability to attract candidates or to retain firefighters.

An inflated manning provision, compounded by excessive sick leave use, has over the years generated millions of dollars of overtime, see, infra. According to the 2017 Annual Report (page 4), overtime for 14-15, 15-16, and 16-17 totaled $1,560,000 for approximately 70 unit members. This was almost exclusively a product of the minimum manning/excessive sick leave use combination.

The information above when applied to the criteria above supported relief from the manning and sick leave provisions which would reduce overtime and be in the "interest and welfare of the public".

The Panel's Determination of the "interest and welfare of the public" was not adequately addressed in the Award. The Majority limited its analysis primarily to only half of the statutory criteria – the City's ability to pay – see, pages 18-21. The City has no disagreement on how that criteria was applied. The City agreed it had the ability to fund a fair and equitable package. While I do not dissent from the wage portion of the Award, I submit the package is not "fair and equitable."

The Majority's analysis of the "interests and welfare of the public" is limited to half a paragraph on page 21 of a 58 page Award:

[I] find that it is beneficial for the City and the public for its Firefighters to be competitively compensated in the context of the City's ability to pay. The evidence shows that the City has clear needs for firefighting services, thus rendering it in the interest of the public to provide reasonable wages and benefits to its firefighters who are capable of responding in a
professional and competent way to life threatening and property threatening fires, hazardous conditions and other emergencies.

While the Majority uses the term “competitively,” it ignored “comparability” when rejecting the City’s proposals on minimum manning and sick leave.

3. **Peculiarities of the Firefighting Profession and Hazards of Job**

The City recognizes the importance of a paid firefighting force. However, candidates clearly understand, and the City concedes, the job is inherently dangerous. Consequently, firefighters are provided not only with a 20 year pension, but unique benefits that provide protection if they suffer the physical consequences from a job they voluntarily sought.

There was testimony from the Union’s witnesses that a firefighter’s job: places stress on their hearts; makes them susceptible to cancer; and possibly being burned. I concede those points – along with the fact that they are brave and are in a noble profession. However, there is nothing in the Record to indicate that the Watertown firefighters are any more susceptible to the “hazards of the job” than any other firefighters (comparable or not) or for that matter the City’s police officers. These risks are assumed voluntarily upon appointment. Any negative consequences are statutorily addressed in a fair manner.

I acknowledge Dr. Smith’s study on the hazards of the job which recognizes heightened risks of heart attacks. We have no statistics in the Record comparing Watertown Firefighter heart attacks, if any, with our Police or the other comparable (or even non comparable) fire departments.
While recognizing the possibility of heart attacks, this hazard is addressed by NY State in Section 363-a(1), commonly referred to as the "heart bill." This statute covers firefighters who suffer a heart attack while in active status. If that occurs, the heart attack is presumed to have occurred in the performance of duties. It results in an accidental disability retirement that provides three quarters pay tax free, supplemented by another quarter pay in 207a-2 supplements for a 100% tax free pension. After they receive their disability retirement their pension increases when raises occur in Watertown for active Firefighters. They also are entitled to a $50,000 death benefit.

I also acknowledge the Firefighter Union President's testimony regarding cancer concerns. Section 363B provides the same benefits for a Firefighter who while active gets cancer as one who suffers a heart attack.

No other public employees are provided these combined benefits – not even the City's police.

Moreover, only they and Police have Interest Arbitration.

For those injured on the job, General Municipal Law 207(a) provides for 100% pay tax free for an unlimited duration. In Watertown Firefighters also receive all their benefits while out injured. If forced to retire because of such injury, they receive 207(a)2 benefits, i.e., 100% of salary, plus raises, plus longevity generally until age 70.

These factors have traditionally been considered by employers and are the reason firefighters are generally already paid more than white and blue collar unionized employees.
The Award states:

the parties do not dispute the fact that appropriate weight must be given to the especially hazardous nature of firefighting work and the unique training, skills, pressures and dangers that firefighters face each day.

The City agrees. However, this essentially becomes a neutral factor in Interest Arbitration since these hazards are already factored into a Firefighters’ pay and unique benefits preceding each Interest Arbitration. Additionally, when comparability is applied it is done with other Firefighters or Police in the same category.

Most importantly, there is no evidence in the Record that a firefighter’s job in Watertown is any more skilled and/or hazardous than an Auburn firefighter – or any other firefighter – and/or a Watertown police officer. This is true even if you use the rest of the “alleged” comparables.

Firefighting is essentially a hazardous job. There is no proof the Watertown Firefighters’ jobs are any more hazardous than any other Firefighters in other municipalities.

At the conclusion of this section, the Majority states: “The peculiarities of the job mandate a direct comparison with firefighters.” However, the Statute itself limits such “comparison . . . with other employees performing similar services or requiring similar skills under similar working conditions . . . in comparable communities.”

As demonstrated above, the Watertown Firefighters should be compared ONLY to our police and the Auburn Firefighters.
4. **Terms of the Parties Past Collective Bargaining Agreements**

The parties have both collectively bargained and in Interest Arbitration reduced the minimum manning figure from 22 to 18 to 17 to 15. See, infra.

The City's main argument in these negotiations was that the clause is a job security clause and unenforceable. The City lost that in the Courts. Its argument for a change to the clause in this proceeding is based primarily on the criteria contained in the Interest Arbitration statute — comparability, the interest and welfare of the public, and terms of prior collective bargaining agreements.

Past CBA’s and an Interest Arbitration addressed this issue on a number of occasions and “past CBA’s” have reduced the number.

5. **Sick Leave**

I purposefully chose to start the issues section of my Dissent with sick leave.

In 2017 firefighters used an average of 100.8 hours of sick leave per year, the equivalent of almost 12.6 eight hour days per unit member. Police officers used an average of 52.4 hours of sick leave per year – the equivalent of 6.5 eight hour days per unit member. Firefighters used nearly 100% more sick leave than the police.

On this issue the Chair referenced the Annual Report and the Chief's “justification” for the increased sick leave usage in 2017 was based on “2 firefighters on leave due to cancer and 5 other unit members who were out on extended absences having surgeries.”

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6 The Panel is required to specifically consider the comparison of firefighters with “other trades or professions.” While not controlling, it is instructive that the Chief included in his 2015 Annual Report that average sick leave in the construction trades is 2 days a year.
I shared with the other Panel members in our Executive Session deliberations an Annotated City Exhibit which addressed the Chief's "defense" and more clearly analyzed firefighters' sick leave use based on the Chief's figures. The document removed from the 2017 sick leave figures the 7 highest sick leave users, presumably the ones the Chief made reference to. I performed similar exclusions for the highest users in 2015 and 2016. The result was that there were still 27 members of the unit who when looking at their 2015 through five months of 2018 (3 ½ years) usage used excessive amounts of sick leave. These 27 Firefighters consistently were out sick 48 to 120 hours a year (6 eight hour days to 15 eight hour days each year). I submit these are excessive sick leave users.

It is important to understand that every sick leave day or night utilized by a unit member averages 12 hours, or a day and a half compared to an 8 hour employee.

In contrast, there were 11 unit members I identified who over that same period of time were out sick at a clearly acceptable level, mostly 0's, 12 to 24 hours, or a 36 hour figure here and there over a 3 ½ year period. The remaining approximately 32 unit members fell between the extremes but clearly higher than the police usage.

The City has never argued that the firefighters were "abusing their sick time." That characterization is the Union's contention about the City's concerns. The City has always expressed its concern in the form of "use" not "abuse". The City discussed in negotiations an "Excessive Sick Leave Use" policy which was mentioned at the hearing. The City took this approach because even if there was abuse, the City is unable to address it under the current contract.

The present agreement, on page 12, provides as follows:
3(h) If absence for illness or injury extends beyond a period of one week, the employee's salary is to be paid only after a certificate of disability, signed by a licensed physician or designated health official, has been filed with the department head or the City Manager. Additional certificates may be required in cases of prolonged illness.

Under this provision those with use of sick leave of 1 week or less are not required to get a Doctor's note.

Consequently, those absences of a week or less are excused. After one week a "certificate of disability signed by a licensed physician or designated health official" is the end of the process. If such certificates are produced these absences are then also deemed "excused" by the Chief.

Even if someone is "caught" abusing sick leave, I am not even sure that could be addressed with discipline. The contractual remedy for someone who "fraudulently reports illness" (or "theft of time" as it is more commonly referred to) is that they lose their sick leave for one year. The remedy for abuse of sick leave is in the contract and precludes discipline.

Given these provisions, the City does not believe, and the Chief has opined, that he cannot impose any discipline to those who excessively utilize sick leave within the contractual parameters. Indeed, while testifying on another proposal the Chief indicated he had never brought anyone up on charges since he has been Chief! Yet, the Majority relief on his testimony to reject the City's minimum manning proposal.

Consequently, the Majority's rationale of lack of discipline is inapplicable and undermines its rejection of the City's proposal.
It should also be noted that unit members are scheduled to work less than 150 tours/out of a 365 day year. This figure is reduced by days lost for sick leave, workers' compensation, jury duty, military leave, etc.

The Firefighters' Sick Leave entitlement (144 hours) is inexplicably 50% more than the Police (96 hours). There is no logical reason to provide firefighters 50% more sick leave entitlement than police officers, especially since they utilized 100% more hours of sick leave than the police in 2017. There is no rational explanation for these figures. The Record evidence and common sense justified equal sick leave hours with the PBA – a true undisputed and "closest" comparable.

One can reasonably conclude the firefighters use far more sick leave because they have approximately 50% more available. The Union provided no rationale as to why their members utilize such excessive amounts. The disparity in sick leave entitlement for police and fire is inexplicable, unsupportable and unfair.

The City's hope was that a combination of a reduction to PBA levels going forward and the sick leave incentive awarded by the Majority would generate better attendance. This would necessarily result in overtime savings the City is entitled to recoup.

Over the years Police worked rotating shifts, steady nights and/or 12 hour shifts (which the PBA presently works). During all their shifts they must remain awake at all times. There is no logical reason why the Police would use less sick leave than Firefighters. The police who work nights are required to remain awake for the whole shift. Firefighters, absent a call, can and do sleep between approximately 11:00 p.m. and 7:00 a.m. Firefighters should not be susceptible to more sick leave use. The
"overuse" figures are baffling – except they generate a huge amount of overtime. The Firefighters simply have far greater entitlements, overuse sick leave, which in turn with minimum manning (infra) generates overtime.

The finding on page 47 of the Award that the City’s proposal is “speculative” is factually inaccurate. The City has not speculated -- the numbers are the numbers.

The Chair relies on the City’s failure to “prosecute a single sick leave abuse case to reject its proposal.” Given the above contract provisions, no such “prosecution” could take place. Given the current provision, I do not believe the City would prevail in a contract grievance based on excessive usage that was less than a week and also supported by medical notes for those absences over a week. The first witness for the Union in such a case would likely be the Chief, who in my dealings with him simply accepts the reality of the absences and the resultant overtime.

In further justification for rejecting the City’s proposal, the Majority used “other firefighting comparables.” The 2 comparables used that have 12 sick days (144 hours) are Ithaca and Oswego – 2 departments we previously demonstrated are not comparable. Indeed, it is the only time these 2 departments were used as comparables for any reason in the Award. They are not comparables and should not have been used to continue this disparity in sick leave with the Police.

Clearly, the City’s police department is the most comparable for this issue. They work in the same City and also are out in the same open air. They also now work 12 hour tours. Their sick leave entitlement is 96 hours (12 x 8) not 144 hours (12 x 12).

The Chair also states that firefighters in Rome [earlier found by the Chair as clearly not comparable (see above)], Auburn and Fulton [earlier found by the Chair as
clearly not comparable based on size (see above)] arguably receive a more generous benefit. Only Auburn of the Majority’s group is comparable. Auburn has a form of unlimited sick leave but has strict monitoring provisions – as do most unlimited sick leave programs.

None of the reasons for continuing the disparity is reasonable – they are irrational, arbitrary and capricious.

Overtime will only continue under this Award and the current scenario – you call in sick, I get overtime – I call in sick, you get overtime – because the City has to fill the empty slots with overtime because of the minimum manning provision. See, infra.

This proposed reduction was designed to work along with the sick leave incentive to lower sick leave use. Somehow the Majority awarded the Firefighters the sick leave incentive and a Sick Leave Buyback, but the City got no reciprocal reduction in sick leave. The incentive and buyback will not fix the problem. The City’s proposal on sick leave should have been awarded. This part of the Award is not supported by the true comparables (Auburn and the Police Department). It certainly is not based on the “interests and welfare of the public” who foot the bill for the millions of dollars of overtime it produces.

6. Minimum Manning

The City stipulated to the hazards of firefighting, i.e., it is an inherently dangerous job. However, it asserted this criteria is somewhat neutralized and deserves little if any additional consideration in this case because of:

- a 20 year retirement plan;
- GML Section 207-a protections;
Section 363 heart and cancer remedial statutes; a $50,000 statutory death benefit; and Firefighter salaries already take this into account.

Most importantly, there is no evidence in the Record that firefighting in Watertown is any more hazardous than Police work or any other comparable Fire Department, or for that matter, any other Fire Department anywhere.

The City addressed every criteria in the statute to support its argument that the minimum manning provisions should be eliminated, or minimally reduced.

**Terms of Prior Contracts/"Job Security"**

With regard to this criterion of the statute, the Union’s prior CBA’s support a reduction in the minimum manning provisions. Such reductions were part of not only prior negotiated agreements between the parties, but was even reduced in an earlier Interest Arbitration Award.

The Chart below demonstrates that these same parties reduced an initial 22 man minimum to 15 as follows:

<table>
<thead>
<tr>
<th>Year</th>
<th>Minimum Manning</th>
</tr>
</thead>
<tbody>
<tr>
<td>1977-78</td>
<td>22, including Battalion Chief</td>
</tr>
<tr>
<td>1981-82</td>
<td>18, excluding Battalion Chief (an Arbitration Award)</td>
</tr>
<tr>
<td>1984-85</td>
<td>17, excluding Battalion Chief</td>
</tr>
<tr>
<td>1987-90</td>
<td>14, excluding the Battalion Chief, not to take effect until the City reduced its active fire stations from 4 to 3</td>
</tr>
<tr>
<td>2011-14</td>
<td>14, excluding the Battalion Chief</td>
</tr>
</tbody>
</table>
Only one of these reductions was tied to changed circumstances – i.e., a reduction of stations. The manning has been – and still is – comparatively speaking – excessive.

The Union claimed that they “gave up things” to keep the minimum manning. This claim was not supported by the Record concerning what occurred in prior negotiations and contracts.

The Union’s arguments about this being a safety clause as opposed to a job security clause are supported only by affidavits from as far back as 40 years ago. The City had no opportunity to cross-examine these affiants. These affidavits should have been given little if any weight given they were not accompanied by a single negotiations proposal or note that discussed minimum manning as a “safety issue.” The City did not have at its disposal negotiators from those years to challenge these claims.

Most importantly, the contract makes no reference anywhere to firefighter or public safety, or city or public property safety.

The Union’s claim that they accepted lower salary increases for preserving the safety of its members is undermined by the frequent lowering of the minimum number. Also, in this Award there is a finding by the Majority that Firefighters’ salary increases have been substantially similar to the police over the years.

Most relevant, however, minimum manning has never been included in a PBA contract and Auburn has minimum manning 25% lower than Watertown.

“Job security” is specifically mentioned in the statute as a criteria to be considered. A minimum of 15 on each of 4 platoons equals 60 firefighters that must be employed at all times. Additional personnel are needed to fill in for those on vacation,
K-time off, sick leave, jury duty leave, military leave, etc. Even Chief Herman said almost 63 Firefighters minimally had to be employed to man the schedule. That figure is low given the need to backfill for time off.

Minimum manning provisions are job security provisions. This protection is a factor to be considered when demonstrating “how good” the Firefighter already had it under the prior CBA. This criteria favored the City’s demand to again reduce the minimum.

**Public Safety**

The Union’s additional contention that 15 was also the “bear minimum” needed to protect and preserve the property of the City and to maintain the health and safety of the public and its property should not be considered. As PERB has consistently recognized, a Union may only address the safety of its members. The other “protections” involving the public’s safety and public property are exclusively the responsibility of the elected representatives.

As the Chair is well aware, minimum manning is not a mandatory subject of bargaining. PERB’s rationale (White Plains case) was that manning decisions are best left to elected officials to decide. The Union characterizes this as the “whims of politicians”. While the City chose to include minimum manning in its contract which converted it to a mandatory subject, the City now had an opportunity to at least reduce it to a figure that is fair to the City and its citizens.

The Majority’s discussion on minimum staffing that relates to concerns about protecting and preserving the citizens of Watertown and the City’s properties is
misplaced. The Union does not negotiate for the City or its citizens. It negotiates only for itself and its members.

The Arbitrator should not have recognized these arguments. However, he now assumed that role either by affirming their argument.

**Firefighter Safety**

The Union’s Affidavits submitted as exhibits scan over 30 years of negotiations and are not supported by a single proposal or negotiation note that mentions safety. The City should not have to rebut such claims.

Moreover, there is no proof in the Record or elsewhere that minimum manning provisions make a Firefighter’s job safer. The Appellate Division 2d Department in the Newburgh case addressed this issue thusly:

- minimum manning is a job security clause not a safety clause;
- a safety clause addresses how many firefighters are needed to perform an evolution or to go into a burning building – not to sit and standby for a fire.

On the rare occasion when there is a structure or major fire, Mutual Aid insures that the Firefighters perform their hazardous job as safely as possible.

The Union argued they need 15 Firefighters on duty since they cannot rely on rapid response Mutual Aid. The Annual Reports do not support this claim. The City in fact received more Mutual Aid than it gave. The 2016 Annual Report explains the benefits of Fort Drum’s mutual aid. See, also, the explanation of Mutual Aid in the 2015 Report – a year in which there was a major fire (Vanduzee Street): “it is unrealistic to believe that a community can staff for the greatest hazard.”
Moreover, the Union limited its argument about the lack of Mutual Aid to paid Fire Departments. According to the Annual report, the Town of Watertown’s Volunteer Fire Department can and does provide rapid and frequent Mutual Aid to the City of Watertown.

Comparability

To agree with the Majority’s opinion basically brands every Fire Department in the State with fewer than 15 Firefighters per shift “unsafe.” This is an unsupportable conclusion.

Presumably the deployment of Police – deemed the most comparable by the Majority – would also be unsafe since their contract contains no minimum manning guarantee.

It would seem to most that Police protection is at least as important as fire services. The safety issues arguably are of even greater concern. The Majority completely ignores the fact that the City’s PBA (the most comparable) has no minimum manning provision in its CBA.

The Majority identified Auburn as the “most comparable” Fire Department. While that contract uses the number 12 as a minimum, that is not the actual figure all the time. Auburn often has only 11 Firefighters on duty since the Chief or a Deputy Chief may be counted towards the 12 minimum when on duty on weekdays.
Majority's "Non" Comparables

The Majority ignores the actual minimum manning numbers in even the Majority's "comparable" departments - likely because they also support the City's position on this issue.

Fulton - 7
Oswego - 7
Ithaca - 0

Rome - 17, but the Chair specifically found Rome not to be comparable based on its size ("significantly larger than Watertown . . .") 74.8 square miles compared to Watertown's 9.02 miles; 2,000 more housing units; and almost 7,000 more residents.

The Chair even found that if the Majority was not going to fully eliminate the minimum manning provision, it certainly had "strong and persuasive data mandating a reduction." Yes it did, but he ignored it.

The Union introduced no comparables to support its higher minimum manning figures – higher than ALL comparables – and 25% higher than Auburn – its most comparable Fire Department.

NFPA 1710

Notwithstanding the above, the Majority then utilized NFPA Standard 1710 which calls for 15 Firefighters at a structure fire to justify the status quo.

The City has not adopted this Standard and is not legally required to do so. The Majority fails to mention in its opinion that even the Chief was unaware of any municipality in the State of New York that has adopted the Standard.
Q [to Chief Herman]: And are you aware of any municipality in New York State that has adopted the 1710 standard?

A [by Chief Herman]: Not that I'm aware of . . .

I do not believe there is any evidence in the Record that even 1 municipality in the Nation has adopted this standard.

It should be noted that NFPA Standard 1710 is applicable only to responses to structure fires. According to the City's Annual Reports:

<table>
<thead>
<tr>
<th></th>
<th>2017</th>
<th>2016</th>
<th>2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>Building Fires⁷</td>
<td>28</td>
<td>24</td>
<td>36</td>
</tr>
<tr>
<td>Total Calls</td>
<td>4,393</td>
<td>4,221</td>
<td>4,343</td>
</tr>
<tr>
<td>% of calls for</td>
<td>.0063</td>
<td>.0056</td>
<td>.0082</td>
</tr>
<tr>
<td>Building Fires</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

An argument that there should be 15 men on duty at all times to address building fires which constitute less than 1% of the City's calls cried out for change. It is why every Department in the State with less than a 15 man minimum relies on Mutual Aid when needed.

Indeed a building fire that was not a residential structure would not require the 15 mentioned in 1710. Of the 15 a number of them are for search and rescue – tasks not performed at a scene where there is nobody in the building.

One of the “experts" cited by the Majority in support of maintaining the current manning is a Newark, New Jersey Union President. You cannot compare Watertown to Newark, New Jersey. Moreover, a Union President is not exactly a “neutral" unbiased expert witness.

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⁷ There is no data on how many of these were “structure fires" or what types of fires were encountered. The Reports use the term “Building Fires."
His testimony that NFPA was a collaborative effort between firefighters and management is belied by its history. The Standard was essentially a product of 2,500 paid firefighters attending a convention in Anaheim, CA in 2001 to pass this “Standard.” While the NFPA may have started as a joint management union effort, the Union “stacked the deck” to get NFPA 1710 passed. The Union pulled one over on the country. However, it hasn’t worked. They have been unsuccessful in their efforts over the last 18 years to have it adopted anywhere in New York. The Majority in this case has now legitimized it.

For the Chair to use it to “trump” comparability and the interests and welfare of the public is irrational and wrong.

The other “expert” was the President of the NYS Firefighters Association - another Union official – who like Chief Herman adopts the philosophy “more is better.” Indeed, Chief Herman even testified that the minimum should be 17 not 15.

To rely on Chief Herman as if he were an “objective” witness given his public statements in the City since the Captains’ positions were abolished is unreasonable. He is clearly a former Union member 1st and the Chief 2d on this issue.

Relying on the testimony of “expert firefighters” to support a minimum and that a reduction “is not in the best interests of the public or firefighter safety” is irrational when the “experts” are Union officials and a Chief who de facto on this issue qualifies as an ex officio member of the Union’s bargaining team.

Moreover, these minimums recently required additional hiring which demonstrated the Chief was not exactly objective on the topic.
Yet, even the Chief on cross-examination fully conceded that it was up to the elected officials to determine staffing.

**No Backfilling Down to 13 If Vacancies Caused by Short Term Sick Leave**

As a result of frustration with the excessive sick leave/minimum manning/backfilling with overtime cycle, effective 11/12/17 — over a year beyond the effective end of this Award — the City stopped backfilling vacancies down to a minimum of 13 if they were caused by short term sick leave.

The only changes when the City went from 15 to 14 because of sick leave was that there would be one additional firefighter on the ladder truck, but the Rescue would be out of service. When it went down to 13, the only change is that there would be 3 personnel on the ladder truck (the least active piece of apparatus) rather than 4.

There was no proof this was "unsafe" to Firefighters — just as it is not unsafe in Auburn — or even Ithaca — Fulton and Oswego — or almost any non metropolitan municipality in the country that staffs with fewer than 15 per shift.

The Union failed to produce any evidence that this reduced staffing had any adverse effects on the firefighters or fire service in the City. The best the Union could come up with was that the Chief was "gravely concerned" over this. There was no evidence of any adverse impact on the unit members who have worked under the Order for 18 months as of the last hearing date.

Moreover, the "reduction" to 13 is higher manning per shift than any other municipality mentioned in the Award, except Rome who everyone concedes is not comparable to Watertown on this issue.
To not even Award the reduced number based on excessive sick leave use and based on the Record is arbitrary, capricious and irrational.

There is no evidence in the Record to address any safety issues created by the reduced Manning from 15 to 13. There were no injuries reported related to that reduction or PESH violations.

Balancing the City’s reduction to a minimum of 13 based on sick leave overuse vs. the Fire Chief’s "concerns", there is no proof in the Record that the City’s needs for Manning are 25% higher than Auburn; 100% more than the City’s police; and 100% higher than even Ithaca.

An examination of that staffing directive to reduce Manning based on sick leave use to a minimum of 13 shows that it was well thought out and firefighter safety was made paramount by putting a piece of equipment out of service for the whole tour so as not to reduce the minimum numbers on a piece of apparatus.

**Number of Firefighters Per 1,000 Population**

While the Chair justifies the status quo with firefighters per thousand population figures, there is no evidence that this is an accepted standard. Moreover, it does not tell the entire story. Every additional firefighter per shift means 4 more firefighters the Employer must employ since there are 4 shifts that must be covered. The figure is even higher because of their generous time off (K time, vacation, sick use, military leave, jury duty leave). The Majority does not analyze the difference and costs between a 15 man minimum and even the closest comparable – a 12 man (really 11), man minimum in Auburn.
The Majority asserts that Watertown has “2.73 Firefighters per 1,000 residents.” It then states on p. 54 that “Comparables such as Auburn [2.58] and Rome [2.37] are quite close to this number.” This analysis is tortured, misleading and irrational. The reality is Rome is NOT comparable on the manning issue with Watertown as the Chair himself found.

Utilizing the number of Firefighters per thousand residents, which I assume is mathematically accurate, does not really highlight the difference in manning among the applicable municipalities.

Auburn’s minimum is 11 or 12 depending on the day and shift. The fact is that Watertown’s minimum is minimally 25% higher than Auburn. The 3 extra men per shift requires Watertown to employ 12 to 14 more Firefighters – at a cost minimally of $1.4 million (14 x $100,000\(^8\) cost per Firefighter).

The Majority also adopts the Union’s argument that the clause addresses not only “preserving the health and safety of Firefighters [but also] the citizens of Watertown and the City’s properties.”

With all due respect to the Majority and the Union, the Firefighter’s health and safety is relevant to this case. The health and safety of Watertown’s citizens and the properties is the unilateral concern of the City’s elected representatives.

Under this Award, the City is forced to continue a minimum manning provision that exceeds the number of its most comparable firefighting unit (Auburn) by more than 25%. The conclusion is based on an NFPA “Standard” that according even to the Chief has not been adopted by any fire department in New York State. The Majority does so

\(^8\) This figure is likely low since “cost” includes salary, overtime, uniforms, pensions, health insurance, etc. and probably far exceeds $100,000.
without any proof on the Record to distinguish why Watertown needs this inflated number in its contract.

This finding also basically concludes that every Department in the State, including those mentioned in the Award, that operates with fewer than 15 Firefighters per shift is essentially unsafe because of 1710. That includes every other department mentioned in the Award except Rome - the 2d largest City in the State – 7 times the size of Watertown.

This conclusion is irrational, arbitrary and capricious and certainly is not based on the statutory criteria governing Interest Arbitration under the Taylor Laws.

Its effects are compounded by the entitlement to, and use of, an inordinate amount of sick leave when compared to its "most comparable" (the Police Department). It has an impact on the elected officials in that millions of dollars that could be used for other City services are dedicated to a manning level – which PERHAPS – is needed on less than 1% of its calls.

Moreover, while the Majority rejected comparability on this crucial issue, the same Majority did use comparability to justify other important parts of the Award, e.g., salary.

**Concurring Opinion**

**Health Insurance**

I also understood the impracticability of altering co-pays, deductibles and prescription drug payments retroactively. However, the savings to the City by the Award of earlier increased percentage contributions are more than offset by the Union
maintaining more favorable treatment in co-pays, deductibles and prescription drug payments for 8 additional years than any other City employees. While I understand the rationale behind the percentage increase, I also think it would have been "just and reasonable" that the co-pays, deductibles and prescription drug payments should have been increased to the levels paid by all other City unionized employees. This is demonstrated by the chart below:

<table>
<thead>
<tr>
<th>Health Insurance</th>
<th>(C. Ex. 15, PBA 1/7/19 Memo &amp; CBA)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>7/1/2012</td>
</tr>
<tr>
<td>PBA</td>
<td>13%</td>
</tr>
<tr>
<td>UFFA</td>
<td>12%</td>
</tr>
<tr>
<td>CSEA</td>
<td>12%</td>
</tr>
<tr>
<td>Deductible</td>
<td>Co-Pay</td>
</tr>
<tr>
<td>UFFA</td>
<td>$120 l / 360 F</td>
</tr>
<tr>
<td>PBA</td>
<td>$200 l / 600 F¹</td>
</tr>
<tr>
<td>CSEA</td>
<td>$200 l / 600 F²</td>
</tr>
<tr>
<td></td>
<td>¹ 6/30/2016</td>
</tr>
<tr>
<td></td>
<td>² 1/1/2017</td>
</tr>
</tbody>
</table>

While I concurred on this item I believe the Majority should have gone further.
This could have been accomplished simply by making all the changes in these items effective 6/30/16, but deferring implementation of the deductible, co-pays and RX until as soon as practical following the issuance of the Award, e.g., July 1, 2019.

Moreover, the Award even pointed out that Watertown firefighters are contributing less even than the Majority's comparables – Auburn 15%; Ithaca 20%; and Rome 25% for post 1/1/85 hirees.

MISCELLANEOUS ITEMS

There are a number of examples of irrational conclusions on even minor issues.

1. Housekeeping – Although properly before the Panel, the Majority refused to Award the deletion of an illegal Agency Fee provision;

2. Sick Leave Incentive – Such a provision generally is included to encourage members to more closely monitor their use of sick leave. The Majority awards this retroactively to June 30, 2016 rather than defer it to the upcoming negotiation when it could be prospective and serve as a true incentive. This is particularly disturbing since the City was offered no relief on the Sick Leave entitlement issue.

3. Sick Leave Sell Back – Since unit members have retired since 2016 the Award appears to apply this retroactively. I believe this is unwise, unfair and will likely generate grievances over claims for retroactive implementation.

4. Retroactive Payments – to require that these retroactive payments be made within 60 days of the issuance of the Award is not only unfair, but clearly goes beyond the Majority's 2 year jurisdiction. Given the administrative tasks to
make these adjustments, it is not only beyond its jurisdiction and authority but also it is illogical to impose this requirement.
CONCLUSION

It was the Union that petitioned for Interest Arbitration. They exposed their minimum manning and sick leave provisions to review under the standards contained in the statute. The Panel was obligated to apply them and issue a "just and reasonable" determination. No item is sacrosanct or exempt from consideration if proposals on them were before the Panel. There is no "Sea Change" exception in the statute. Indeed, Cohoes should be construed as a public policy to encourage Panels to address such non mandatory items raised by Employers.

When the criteria of the statute are applied (Comparability, Interests and Welfare of the Public and the Terms of Prior Agreements) to the items at issue, the City's proposals on Minimum Manning and Sick Leave should have been awarded.

The Award “shocks the conscience” of not only myself, but undoubtedly also will shock the City's residents and business owners.

The Majority’s opinion I believe is irrational, arbitrary and capricious and unfair to the City and its taxpayers. Grounds exist for it to be vacated should the City so choose. To avoid any accusations of self-interest, neither I nor my firm would represent the City in such an action.

Terry O’Neil
June 20, 2019
STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the Compulsory Interest Arbitration

-between-

WATERTOWN PROFESSIONAL FIREFIGHTERS
ASSOCIATION, IAFF LOCAL 191

Employee Organization,

-and-

CITY OF WATERTOWN

Public Employer,

PERB Case No.: IA 2016-001; M2015-210

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

Charles E. Blitman, Esq.
Employee Organization Panel Member

Terry O’Neil, Esq.
Public Employer Panel Member

APPEARANCES:

For the Watertown Professional Firefighters Association, IAFF, Local 191
Blitman & King, LLP
By: Nathaniel G. Lambright, Esq., of Counsel

For the City of Watertown
Slye Law Officers, P.C.
By: Robert J. Slye, Esq., Of Counsel

CONCURRENCE/DISSENT BY
EMPLOYEE ORGANIZATION PANEL MEMBER
My execution of the Opinion and Award authored by the Panel Chair demonstrates my position as the Employee Organization Panel Member, together with this Concurrence/Dissent. The designated parties’ Panel Members are essentially advocates of their clients, superimposed upon their Taylor Law responsibilities in interpreting and applying the statutory criteria applicable to this compulsory interest arbitration proceeding. At each of the hearing days, Executive Sessions and Executive telephone conferences, all panel members had equal and ample opportunity to address, comment upon, and advocate their respective positions based upon the evidence submitted at the hearings and arguments put forth in the post-hearing meetings of the Panel. While I disagree with certain of the conclusions articulated by the City’s Panel Member and the Panel Chair, at no time was my opportunity to persuade the Panel Chair prejudiced by time, attitude, obstinacy, or failures of the Panel Chair and City Member.

I’ll refrain from characterizing the statements made by each Panel Member during deliberations, but note, each (I respectfully submit including myself) possesses years (rolling into decades) of actively participating in labor relations at the State and Federal levels, representing clients in all avenues of labor matters, including Taylor Law collective negotiations and compulsory interest arbitrations. The parties submitted evidence at two hearings, thorough written briefs, and post-hearing information. None of the issues/concepts submitted to this compulsory interest arbitration panel were novel and the skill sets of the Panel Members were and are such that an understanding of the issues and facts upon which argumentation occurred, was easily grasped and understood. The methodology chosen by the Panel Chair and accepted by the other Panel Members, to discuss and determine the issues submitted, was, in my experience, normal and reasonable, and provided equal and ample opportunity to persuade other Panel Members on the content of the Opinion and Award
consistent with the Taylor Law. I am of the view that to simply perseverate is not fulfilling the mission of the Taylor Law. I respectfully submit my counterpart should have the same view. My failure to persuade the Panel Chair on issues on which I dissent, does not manifest a failure to satisfy the Taylor Law’s requirements. Rather, the Panel Chair, based on Taylor Law criteria, on certain issues, differed from my view. In this matter, such is not a short coming of compulsory interest arbitration but rather a difference of opinion based upon the evidence. Taylor Law collective negotiations are an ongoing process that, on occasion, is “interrupted” by a compulsory interest arbitration proceeding. Each party will have future opportunities, which in this case is available immediately, due to this Opinion and Award terminating June 30, 2016, to attempt to persuade the other on key issues. For example, the contested manning provision in the past has been mutually changed by the parties. It is intellectually dishonest to suggest such may not occur through collective negotiations and agreement by the parties in the future. This equally applies to what I believe is inappropriate and wrong based on the facts for the Panel Chair to alter the composition of the bargaining unit regarding Code Enforcement bargaining unit work. After multiple times of raising all of the arguments demonstrating such is violative of the Taylor Law principles, I determined further perseveration was unwarranted. I lost that issue. Similar advocacy applies to the City’s Panel Member on issues he was unsuccessful in convincing the Panel Chair of his views. He lost those issues.

I rely on the Record and characterizations made by the Panel Chair in the Opinion and Award for those issues I am in concurrence as well as his summary of evidence in the Record. New evidence that was not raised by the parties in the Record but only later argued by the Panel Members in Executive Session cannot now be relied upon by the City or the Employee Organization in our dissent. The best evidence of satisfying the Taylor Law criteria is demonstrated by the Opinion and Award
executed and notarized by the three Panel Members. I shall not in this Concurrence/Dissent cite new
evidence due to my reliance on the process and opinion authored by the Panel Chair.

The parties must not resort to entrenching themselves in positions that are inflexible as a result
of this Opinion and Award. This Opinion and Award covers only two years, both of which are over. The
next collective negotiations for this bargaining unit should bring the wages, hours and working
conditions current based on a recognition that mutuality is the cornerstone to good labor relations.
The City’s history of litigation, essentially not prevailing in most of the cases, creates hurdles that are
difficult to overcome. It is my hope such unnecessary City-sponsored litigation is over, and there will
begin a new day allowing the parties to reach agreements thereby eliminating the need for grievances
and court intervention. Time will tell if a new day has arrived.

Charles E. Blitman
June 25, 2019