

**STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD
INTEREST ARBITRATION PANEL**

IN THE MATTER OF THE INTEREST ARBITRATION

Between

THE CITY OF ALBANY, NEW YORK

And

**THE ALBANY POLICE OFFICERS UNION LOCAL 2841,
LAW ENFORCEMENT OFFICERS UNION COUNCIL 82,
AFSCME, AFL-CIO (PATROL UNIT)**

**IA2006-015
M2005-302**

OPINION

AND

AWARD

The Arbitration Panel members are:

Ira B. Lobel, Esq.
Public Panel Member and Chairperson

James W. Roemer, Jr., Esq., Roemer Wallens & Mineaux, LLP
Employer Panel Member

Ennio J. Corsi, General Counsel, New York State Law Enforcement Officers Union,
District Council 82, AFSCME, AFL-CIO
Employee Organization Panel Member

Appearances:

For the City of Albany:
Elayne G. Gold, Esq., Roemer Wallens & Mineaux, LLP

For the Albany Police Officers Union Local 2841:
Matthew P. Ryan, Associate General Counsel, New York State Law Enforcement
Officers Union, District Council 82, AFSCME, AFL-CIO

Pursuant to the provisions contained in Section 209.4 of the Civil Service Law, the New York State Public Employment Relations Board designated the Chairperson, the Public Employer and Employee Organization Panel Members by letter dated November 7, 2006 to make a just and reasonable determination of the outstanding issues in the dispute between the City of Albany (hereinafter referred to as the "City") and the Albany Police Officers Union Local 2841, New York State Law Enforcement Officers Union, District Council 82, AFSCME, AFL-CIO (hereinafter referred to as the "Union").

The collective bargaining agreement between the parties expired on December 31, 2005. On July 10 and 14, 2006, the parties participated in mediation sessions, and, on July 19, 2006, the parties executed a Memorandum of Agreement (MOA) for settlement of the contract. This MOA was rejected by the Union membership. On August 21, 2006, the Union filed a petition for compulsory interest arbitration; the City filed its answer on September 5, 2006.

On September 15, 2006, the Union filed an improper practice charge alleging the "that the City of Albany violated §209-a.1(d) of the Public Employees' Fair Employment Act by submitting non-mandatory subjects of bargaining to compulsory interest arbitration."

The Panel Chairperson determined that the interest arbitration hearings should not be scheduled until after a decision on the improper practice charges would be rendered. Accordingly, hearings were scheduled for November 14 and 15, 2007. While waiting for both the improper practice charge determination and the interest arbitration hearings, representatives of the parties executed a second MOA on May 11, 2007. This MOA was also rejected by the Union membership. Neither MOA was included in the interest arbitration record.

The interest arbitration hearings were held on November 14 and 15, 2007, and January 4, 2008, in Albany, NY. Both parties were represented by counsel and introduced evidence,

presented testimony, summoned witnesses, examined and cross-examined witnesses, and otherwise supported their respective positions on the outstanding issues before the Panel. The parties timely filed post hearing briefs on or about February 8, 2008.

The Panel met in executive session on February 14 and 26 and April 7, 2008, and deliberated on each of the outstanding issues. The Panel has carefully and fully considered all the data, exhibits, briefs and testimony of the sworn witnesses. The results of those deliberations are contained in this OPINION AND AWARD (Award).

The Panel considered the impact of each item upon the whole, and made its Award concerning the combination of items that would provide for resolution of the impasse. In arriving at the determination and Award contained herein, the Panel has considered the following statutory guidelines contained in Section 209.4 of the Statute:

- (v) The public arbitration panel shall make a just and reasonable determination of the matters in dispute. In arriving at such determination, the panel shall specify the basis for its findings, taking into consideration, in addition to any other relevant factors, the following:
 - a. comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours, and conditions of employment of other employees performing similar services or requiring similar skills under similar working conditions and with other employees generally in public and private employment in comparable communities.
 - b. the interests and welfare of the public and the financial ability of the public employer to pay;
 - c. comparison of peculiarities in regard to other trades or professions, including specifically, (1) hazards of employment; (2) physical qualifications; (3) educational qualifications; (4) mental qualifications; (5) job training and skills;
 - d. the terms of collective agreements negotiated between the parties in the past providing for compensation and fringe benefits, including, but not limited to, the provisions for salary, insurance and retirement benefits, medical and hospitalization benefits, paid time off and job security.

PARTIES' POSITIONS AND DISCUSSION REGARDING STATUTORY CRITERIA

COMPARABILITY

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

Summary Position of the Union. The Union argued that the appropriate comparisons are:

(1) the Towns of Bethlehem, Colonie, and Guilderland and the Cities of Cohoes, Schenectady, and Troy; and (2) the Cities of Syracuse, Rochester, and Buffalo.

With regard to Bethlehem, Colonie, Guilderland, Cohoes, Schenectady, and Troy, the Union pointed out that these municipalities are in close proximity to Albany, are in the same labor market, and the police officers attend the same police training academy (the Zone 5 Training Academy in Schenectady). Albany police officers entering the academy must meet the same medical and physical requirements as the officers in the aforementioned jurisdictions, and upon graduation can work in any of those jurisdictions. Further, the essential job functions for Albany police officers and officers in these other jurisdictions (i.e., arrest and detention of suspects, collection and preservation of evidence, search and seizure, use of force, etc.) are the same. With regard to Syracuse, Rochester, and Buffalo, the Union presented evidence that these are all large upstate cities with similar index crime rates and that their police departments have similar work loads and provide a similar level of services to their citizens. The Union noted that the most recent interest arbitration award concerning the Syracuse Police Department found that the appropriate comparable jurisdictions for Syracuse were Albany, Rochester, and Buffalo.

Summary Position of the City. The City maintained that possibly the most important “comparable” is what the City’s other public safety units negotiated, specifically the Albany Police Supervisors’ Union and the Firefighter Union. Both recently signed contracts for the period in dispute.¹

The City argued that the comparable jurisdictions should be the upstate cities of Troy, Schenectady, Utica, Syracuse, Rochester and Buffalo. It maintained that each of these cities is an urban center with city concerns, similar per capita income and similar size of police force-to-population ratios.

The City maintained that a City can never be comparable to a Town. Towns, by law, do not have constitutionally imposed taxing limits and generally have a different income and tax base than a city. Towns are suburban in nature making for differences in both the amount and nature of crimes.

Discussion and Panel Determination. The Panel has carefully considered the parties’ positions regarding comparability. The conclusions drawn by this Panel regarding comparability have an impact on the final determination of this Panel. However, the determination of the appropriate comparable jurisdictions, as required by law, is not an exact science. The law does not require this panel to specifically state that the police officers in this particular case must be compared to a specific jurisdiction or group of jurisdictions. The law requires that this panel compare wages and hours of conditions of employment of the employees in the City of Albany and other employees similarly situated. Any conclusions developed involve a multi-faceted analysis in which a variety of factors are considered.

In making comparisons, it is inappropriate to focus only on salaries. Total compensation

¹ Both contracts covered 2006, 2007, 2008 and 2009. This interest award will cover only 2006 and 2007.

must be considered and must include both the percentage wage and benefit increases **and** the overall compensation package in these jurisdictions during the contract period.² To the fullest extent practical, the overall compensation package should include wages, benefits and other forms of compensation (shift differential, longevity pay, clothing allowance, etc.) Each contract also can emphasize different aspects of the compensation package.³ Additionally, some of the benefits affect employees differently.⁴ It is necessary to examine average total compensation to analyze whether wages, hours and conditions of employment are comparable.

To make the appropriate comparative analysis, this Panel first looked at other settlements within the jurisdiction. The Albany Police Supervisors Unit and the Firefighters carry significant weight on the ultimate conclusions of this Panel. This analysis includes the percentage wage increases negotiated as well as the value of other economic improvements, such as shift differential or longevity pay. The Panel will take into account the overall net increase for these other City employees.

A secondary comparison must be made to other cities in upstate New York, namely Troy, Schenectady, Utica, Syracuse, Rochester and Buffalo. An analysis of these communities demonstrates similarities regarding police force-to-population ratios and crime statistics. Albany is the median of the seven cities in terms of size. Two of other cities are in the same labor market.

A tertiary comparison must be made with other police departments in the immediate

² For example, even if it were shown that the total compensation was not in line with comparable police departments, it may be inappropriate to award a percentage wage increase that equalizes this differential in one contract. In such a situation, any interest arbitration panel would also have to consider the percentage wage increase and may find it appropriate to make wages comparable over a period of several years and/or contracts.

³ For example, one jurisdiction could emphasize starting salaries; another could stress the salaries for senior employees. Other jurisdictions could pay employees through a shift differential, longevity or clothing allowance. True comparisons must factor in all these variables.

⁴ For example, the value of the health insurance benefit can widely vary based on the need for single or family plan; longevity pay will benefit senior employees differently than junior employees.

geographic area. For a variety of reasons, not all of which are logical or fair, towns often pay higher salaries and benefits than similar classes of employees in cities (e.g. teachers, police, public works), despite the fact that the demands of the individual job may be more challenging in the city. However, the overall compensation package (wages, hours and conditions of employment) in cities and towns in the immediate area should be compared to ensure that Albany City salaries are sufficiently competitive to recruit and retain qualified employees in the specific labor market.

To summarize, in determining comparability, this Panel first examined the other settlements within the City of Albany concerning the police supervisors and firefighters units. The next level of comparison was among other police departments in cities in upstate New York, specifically Troy, Schenectady, Utica, Syracuse, Rochester and Buffalo. The final level of comparison is to other departments in the New York State Capital District. The Panel has utilized all the information submitted to reach the conclusions contained herein to assess whether the total amount of wages and benefits provided to the Police Officers and Detectives in the City of Albany, NY is comparable with other employees in Albany performing similar services and other employees in comparable communities.

ABILITY TO PAY

Another criterion to be considered is the “interests and welfare of the public and the financial ability of the public employer to pay.”

Summary Position of the Union. The Union pointed out that the City affirmatively stated that it was not arguing that it had an inability to pay. The Union analyzed the City’s fiscal picture by examining three categories of economic health: (1) diversified sources of revenue; (2) a balanced budget; and (3) unreserved fund balance as a percentage of total revenue.

The Union noted that the City's revenue is not solely dependent on property taxes. It demonstrated that the City has a well diversified source of revenue including property taxes, sales tax, land use fees, and State payments in lieu of taxes. The Union also pointed out that the City's budgets have been balanced, its total revenues have generally outpaced expenditures, and its annual unreserved fund balance is within the guidelines or ranges recommended by the Government Finance Officers Association. The Union's conclusion is that the City is fiscally strong, flexible, and well-managed, and clearly has the ability to pay the wage increases sought by the Union.

Summary Position of the City. The City stressed that the focus of any financial discussion should be upon the General fund, the only fund out of which Police Department expenses are paid. It noted that the General Fund's major revenue sources are real property tax and sales tax.

The City acknowledged its unreserved fund balance increased as a percentage of total revenues from 2003 to 2006. It explained that one of the reasons for the increase in FY2006 was unanticipated revenues from New York State in the amount of \$12 million. In FY2007, the City appropriated \$3.3M from this fund to balance the budget, negatively and unexpectedly impacted by a loss of income and rise of expenses. The FY2008 budget required \$7.7 million from the Fund Balance to achieve a balance budget. The City was concerned that, even though FY2006 had a Fund Balance that was 14.6% of total revenues, this percentage dropped to 3.7% by the end of FY2008. The City argued that the outlook in future years is even bleaker.

The City argued about the future of its revenue from both sales tax and the landfill. It noted that the sales tax revenue would be adversely affected by any decrease in the population in the 2010 census. Additionally, there maintained that sales tax revenues received so far this year are low and may forecast an unstable economy. The City also testified that the landfill has been

a stable and predictable source of revenue to the City of about \$12 million per year. Landfill revenues have been adversely impacted due to a DEC permit restriction regarding the amount of tonnage and types of materials it can receive. The City also claimed that the landfill has a finite life and will be at its capacity by the end of 2009.

The City also argued that increased expenditures should be considered when the Panel's evaluates any economic increases. It noted that 71% of the City budget goes to payment of employee salaries and benefits. It also noted that \$41.6, or 27% of the entire General Fund, is spent on Public Safety services/personnel costs, including wages, benefits and retirement system costs of all employees within the Department. Specifically, the City referenced the increasing cost of health insurance, including the impact of the change in the previous contract that required the City to pay 100% of the cost of health insurance for all police officers and their families after 8 years of service. The City estimated that this cost the City approximately \$1.5 M each year. The City also referenced large increases in the costs of the retirement system and fuel.

Discussion and Panel Determination. In a manner analogous to comparability, determining a community's ability to pay proposed increases is not an exact science. There must be a multi-faceted analysis that considers the revenues and expenses of the City, the cost of the proposals of both the City and the Union, and the long term, compounded cost of these proposals.

There is no question that the City is facing economic challenges. The decrease in the fund balance over the last several years is a legitimate cause for concern about incurring significant, ongoing increases to the budget. Issues concerning the revenues generated by the landfill are real and must be considered. Similarly, the evidence indicates that there may be a further reduction in the City's population that will adversely impact sales tax revenue. Finally, significant increases in property taxes may be impractical, both from a standpoint of legal

property tax limits and the political realities.

All of these concerns relate to the advisability and wisdom of future increases. The contract in question applies to years 2006 and 2007. In these years, the City has previously negotiated wage and benefit increases for all other City employees. Many of the potential concerns mentioned above were present when the contracts in these other units were negotiated. If these increases were granted to other units, similar increases can be justified in the instant situation. Whether the City has the ability to pay increases significantly above these comparable settlements is problematic. However, even if the City could afford such increases, there is significant question whether such increases could be justified in light of the comparable wages and benefit data of comparable communities.

The City argued that there were significant increases in its expenses over the last several years. It is uncontested that the State Retirement System has increased the employer's contribution significantly. It is also uncontested that health insurance costs have increased significantly. However, the Panel notes that most of the increase referenced by the employer is the result of the change in the employees' contribution negotiated in the previous contract. This was part of the negotiated agreement in 2005 and it must be considered as part of the remuneration negotiated in that agreement. To argue that the "ability to pay" is affected by this negotiated change would be to charge the employees twice for this change. As part of the negotiated agreement in 2005, it cannot be considered as part of the increased cost in this contract, except to the extent that the overall health insurance premium has gone up significantly.

"Ability to pay" is not an exact science and must be considered in conjunction with comparability. The most important criteria in developing an award such as this is comparable settlements - first in the City, then within similar cities in upstate New York, then within

municipalities in the same labor market. Once this analysis is completed and a proposed award is developed, this panel must analyze whether the City had the ability to pay comparable settlements.

PECULARITIES OF THE PROFESSION AND HISTORY OF NEGOTIATIONS

There is no doubt that police officers are engaged in a dangerous profession. Particularly in a city such as Albany with its crime index and diverse population, police officers are asked to perform consistently and professionally. The particulars of police work in a city such as Albany requires additional skill and training. Both sides agreed that the expectations on both the Department and the individual officer are demanding and increasing.

There is a long history of negotiations between the City of Albany and the New York State Law Enforcement Officers Union, District Council 82, AFSCME, AFL-CIO. With this history, the Union and the City have negotiated and worked under work rules over the years that have served the interests of both sides. By its nature, interest arbitration panels do not normally introduce new and unusual concepts into an established relationship. However, in this situation, as noted in the discussion below, there are several items awarded by the Panel that will promote needed management flexibility while maintaining adequate protections for employees.

DISCUSSION OF SPECIFIC PROPOSALS

Both sides have brought a significant number of proposals to be considered by the Panel, an indication of the unsuccessful bargaining done by the parties before the declaration of impasse. The Panel has carefully discussed and considered each and every item submitted to arbitration. Unless specifically mentioned below, any proposal not mentioned should remain as contained in the current contract. If the subject matter is not in the contract, the status quo should remain.

It is useful to describe the Panel's methodology and approach. The Panel unanimously agreed that any economic improvement should, to the fullest extent possible, be made to all employees in a substantially equivalent manner. Accordingly, we have purposely avoided awarding increasing any economic benefit that would affect a limited number of employees, items such a clothing allowance or longevity pay. Similarly, the Panel, or a majority thereof, did not find justification for the introduction of any new economic items such as shift differential, educational incentive and tuition reimbursement. The Panel's economic focus was on wage/salary increase.

Several proposed items involved increased time off or pay back for unused time. The Panel, or a majority thereof, has concluded that additional time off is not warranted. Unit members currently enjoy liberal and competitive leave benefits. There is no justification for increasing the amount of time off.

Similarly, there is no justification for increasing the sick leave bonus days or modifying the vacation/compensatory time buy back provisions. Both of these items are long standing provisions that have worked well over the years. There is little evidence to show that increasing or modifying these benefits will have any impact on the goal of the benefit – to improve the overall attendance of the work force.

Both parties proposed a number of language modifications that either changed operations or had economic implications. Accordingly, except as specified below, after carefully considering all language items, the Panel has concluded that all existing contract language should remain the same. The Panel recognizes that, during the deliberations, the parties agreed on a number of minor items. These agreements involve language relating to City proposals on

Sections 2.4.1, 8.1.1, 10.14, and 13.2.4 and should be incorporated into the final document.⁵

The following items, therefore, comprise the proposals that the Panel is ordering changed or modified.

1. HEALTH INSURANCE BUYOUT (Union Proposal #19, section 19.1.4)

The current contract provides that “any employee who can show adequate health insurance coverage under a spouse’s or other’s health insurance plan may opt out of a City health insurance plan receive annually \$1,000.00 for opting out of an individual plan and \$2,000 for opting out of a family plan.”

Position of the Union. The Union sought to increase the buyout to \$1,500 for an individual plan and \$3,000 for a family plan, the same level afforded to other employees in the City.

Position of the City. The City did not oppose the increase in this economic benefit if considered as part of the overall package.

Discussion. In recent years, health insurance buyouts have become a common benefit in many collective bargaining agreements. Its purpose is to provide sufficient financial incentives for an employee to obtain health insurance from another source. The employer will also save the cost of the premium. The increase in the amount of the buyout will give greater incentive to employees to examine alternative sources for health insurance.

This changed benefit was included in the memorandum of agreement for both the Firefighters and the Police Supervisors. In terms of internal comparability, the proposal should be granted with no change in the contract language other than the dollar amount. It is impractical for this item to be retroactive since the city’s benefit of not providing health insurance cannot be

⁵ See email dated 2/4/2008 from Matthew Ryan to Elayne G. Gold (Employer Brief Exhibit E) for specific language.

retroactive. However, since there is an opt-out provision in mid-year, the increase should be effective July 1, 2008.

Award. The first sentence of section 19.1.4 shall be modified as follows. The rest of the clause shall remain the same.

Effective July 1, 2008, any employee who can show adequate health insurance coverage under a spouse's or other's health insurance may opt out of a City health insurance plan and receive annually \$1,500.00 for opting out of an individual plan and \$3,000 for opting out of a family plan.

2. PRESCRIPTION DRUG (City Proposal, Section 19.1.2(d))

The current contract provides for a \$2.00 prescription drug co-pay.

Position of the City. The City proposed that this co-pay be increased to \$7.00, arguing that it is both a reasonable increase and consistent with other agreements throughout the City.

Position of the Union. The Union countered that this percentage increase was excessive and should be consistent with the percentage increase in the cost of the health insurance premium.

Discussion. There is no issue in collective bargaining more explosive than the cost of health insurance. Employers are legitimately concerned about a health insurance premium that can cost in excess of \$18,000 per year for a family plan. Any increase in the premium can have a significant impact. Employees understandably do not want to pay more for a benefit negotiated in the past.

In many collective bargaining situations, the focus for changes in health insurance has been to increase the premium contribution of the employee. In other instances, the parties have focused on changing the plan design (increasing the cost of doctors' visits, emergency room visits, prescription co-payments, etc.) to moderate premium increases. In some, there has been a combination of both approaches. It is an unusual contract today that does not have some

modification of the health insurance premium.

In some situations, prescription drug cost can approach 25% of the total cost of the insurance program. Drug co-pays of \$10, \$20 and \$25 are no longer unusual. In fact, a prescription drug payment of \$7 for all drugs, whether generic or brand name, would still be considered low amongst most plans. While it is understood that this is a significant increase in percentage terms, it is still modest in comparison to other programs and it is consistent with agreements elsewhere in the City. Accordingly, the prescription drug shall be increased to \$7.00, but for ease of administration for both the City and the employee, this benefit shall take effect July 1, 2008.

Award. Effective 7/1/08, the prescription drug co-pay shall be \$7.00.

3. LINE-UP PAY (Union Proposal #2, Section 10.1.1)

The current contract provides that: “Employees shall be required to attend a fifteen (15) minute roll call before the beginning of their regular shift for which they will be compensated at the rate of \$650, payable in January of each year.”

Position of the Union. The Union sought to have line up pay increased to the overtime rate of time and a half instead of the flat rate paid on a yearly basis. The Union argued that this would bring the payment for roll call into compliance with the Fair Labor Standards Act.

Position of the City. The City acknowledged that the Albany Police Supervisors negotiated a change from the \$650 per year to time and one half the hourly rate for “actual hours worked.” It suggested that, if the panel gives consideration to this proposal, it should be awarded on the same basis as the supervisors.

Discussion. The Panel acknowledges that this benefit was extended to the Albany Police

Supervisors; it is logical for it to be extended to the Officers and Detectives in the same manner. This benefit is both a substantial benefit to the employees and a substantial cost to the City. For an officer at top salary earning approximately \$24.73 per hour, payment of overtime for fifteen minutes per day for actual hours worked could amount to approximately 60 hours of straight time pay. Deducting the \$650 currently received, this benefit could amount to an additional wage increase equivalent to almost 2% for many officers.

The Panel, or a majority thereof, finds that an effective date of January 1, 2008 is a logical, fair and equitable method of introducing this contract change. The contract language should mirror the language adopted in the Supervisors contract.

Award. The last sentence of section 10.1.1 shall be modified in the following manner:

Effective December 31, 2007, employees shall be required to attend a fifteen (15) minute roll call before the beginning of their regular work shift, for which they will receive time and one half the actual hours worked. For the year 2008, the line up lump sum payment made in fiscal 2008 will be taken into account. Further, line up pay will be part of "the regular rate of pay" for the calculation of the overtime pay.

4. OVERTIME DISTRIBUTION (Union Proposal #15, Article 11.5)

The Panel has carefully considered all aspects of this proposal. Except for the section relating to separate seniority lists for officers and supervisors, the panel rejects any other modification of the contract. There was not convincing evidence submitted to justify any changes from the current contract.

Regarding the separation of the overtime rosters, given the reality that the sergeants and lieutenants are no longer within this bargaining unit, it is logical that appropriate language should be developed. However, the Panel believes that the parties are best able to develop language to achieve this goal.

Accordingly, the parties are ordered to develop language to ensure overtime lists that apply only to the employees in this unit. Such language should become effective July 1, 2008, in order that the parties have time to write appropriate language and sufficient time to allow the separated overtime roster to be incorporated into the work schedule. However, the Panel will retain jurisdiction in the event that the parties cannot develop mutually acceptable language. If language cannot be written and agreed to by June 1, 2008, this issue will be remanded to the Panel to write the actual language.

5. BEREAVEMENT LEAVE (Union Proposal #26, Section 14.1.2)

The current contract does not include domestic partner. In 2003, the language added grandparent-in-law.

Position of the Union. The Union made two proposals in this section, the first includes domestic partner and the second updates the language for the grandparent-in-law. It noted that the City of Albany has seen fit to advance certain rights to its citizens existing in domestic partnerships (see Domestic Partnership Ordinance of the City of Albany §37.91.00). The Union argued that adding domestic partners would keep the contract consistent with the City ordinance.

Position of the City. The City pointed out that the current contract allows the Chief to expand the definition of immediate family and could cover the situation the Union seeks to address.

Discussion. The Panel agrees that the language should be modified to include domestic partner. However, it also believes that domestic partner should be defined in a manner consistent with the City ordinance. Adding this caveat should eliminate a grievance similar to those that have occurred in other jurisdictions over the definition of domestic partner.

Updating the language regarding grandparent-in-law is simple cleanup.

Award. Section 14.1.2 should be modified with the following language:

For the purposes of bereavement leave, immediate family shall mean any relative living in the same household as the employee, an employee's spouse, domestic partner (as defined by the City Ordinance), parent, sibling, child, step-child, father-in-law, mother-in-law, brother-in-law, sister-in-law, grandparent, and grandparent-in-law. For special reasons, the Chief may expand this definition of immediate family.

6. TEMPORARY ASSIGNMENTS (City Proposal regarding Section 9.3.1)

Section 9.3.1 of the current contract provides:

The Chief may make a temporary assignment of less than thirty (30) days for a valid police purpose; however, the same employee can only be assigned once within a three (3) month period unless agreed to by the Union.

Position of the City. The City sought to delete the current language and replace it with the following: "The Chief may make a temporary assignment for a valid police purpose." The City's justification to rescind the current language and practice was to give the Chief more flexibility for valid police purposes. The Chief testified, "In today's world, we need flexibility to move and utilize our employees as needed. We need to use the expertise of our employees." The City maintained that the change is needed to ensure more efficient operations in the deployment and utilization of the work force for "valid police purposes."

Position of the Union. The Union maintained that the City proposal is overly broad and may render the Agreement's control on job assignments meaningless. The Union argued that the current language ensures that the use of such assignments is not abused by limiting temporary vacancies to thirty (30) days in any ninety (90) period. It pointed out that the contract provides for the filling of vacancies by seniority if candidates are similarly qualified, ensuring that job assignments are filled on a fair and equitable basis. It suggested that under the City's proposal, it would be possible to give an officer a "temporary assignment" for an indefinite period, and make it, in effect, a "permanent job assignment." The Union argued that the current language

allowed the City sufficient flexibility in assignment and should be maintained.

Discussion . To a majority of the Panel, the City made a convincing argument regarding the need for greater flexibility in making temporary assignments. However, while the City would have to show a “valid police purpose,” any change should have limitations. Otherwise, concerns expressed by the Union could become a reality.

After evaluating the testimony and several lengthy conversations, the Panel, or a majority thereof, is convinced that a change is needed to give the City greater flexibility. Accordingly, the language should be modified to allow a temporary assignment of less than one hundred twenty (120) days during any twelve (12) month period. This should give the City additional flexibility in making temporary assignments while protecting the employees against an inordinately lengthy temporary assignment.

Award. The language of 9.3.1 should be modified as follows:

The Chief may make a temporary assignment of less than one hundred twenty (120) days during any twelve month period for a valid police purpose, unless otherwise agreed to by the Union.

7. OVERTIME PREMIUM PAY (City Proposal on Section 11.1.1)

The third sentence of Section 11.1.1 of the current contract specifies:

The option to be compensated in time off rather than overtime payment shall be available only for regular overtime or preplanned overtime, and not special off duty overtime details, as specified in Section 11.5.

Position of the City. The City sought to amend this section by addressing the issue of “reimbursable” overtime. Under the contract, the City does not allow the taking of compensatory time off for overtime work which is reimbursable. The Chief explained that the City may receive a state grant for specific police undertakings such as the School Dismissal Grant (versus a “special detail” such as work at the Times Union Center for which the City is not

reimbursed for time the officers work at that site). The City argued that granting comp-time for this work was akin to double dipping. It suggested that the proposed language change would remedy any potential conflict.

Position of the Union. The Union argued that the City is seeking to limit the scope of overtime work that can be elected by the employee for compensatory time off. It suggested that adding the phrase “reimbursable overtime” to this section of the contract may seriously restrict an employee’s ability to elect compensatory time off for “preplanned overtime” or “regular overtime.”

Discussion. Scheduling time off is a constant problem in any police department, in large part to the amount of overtime that police accrue as compensatory time off. Adding to this burden through reimbursable overtime further exacerbates this problem by adding compensatory time for overtime accrued for activities paid by other sources. Since the City is getting reimbursed for these activities, the Panel, or a majority thereof, is of the opinion that it is only fitting that the City pay for these activities in cash rather than time off, even if such activities are part of the officers’ “normal duties.” Contractually, “special detail” overtime is reimbursed in pay rather than in compensatory time off. It would be consistent that all overtime from sources outside the City should be paid in a similar manner.

One of the difficulties with using the language proposed by the City is that the employee may not know which is overtime is subject to pay only and which overtime is subject to either pay or compensatory time off. Accordingly, the change made in section 11.1.1 should have the effect to require the City to notify employees, at the time of posting, whether such overtime is eligible for payment only and not compensatory overtime. This will give the officer the opportunity to make a decision regarding whether to bid for such assignment.

Award. The third sentence of Section 11.1.1 shall be changed as follows, with the change in italics:

The option to be compensated in time off rather than overtime payment shall be available for regular overtime or preplanned overtime, and not special off duty overtime details *or reimbursable overtime*, as specified in Section 11.5. The City shall notify employees, at the time of posting, whether such overtime is eligible for payment only and not compensatory overtime.

8. SPECIAL OFF DUTY DETAILS AND PREPLANNED OVERTIME (Section 11.5.1-11.5.6)

Both sides put forth various proposals seeking to amend the system concerning overtime assignment. The Union maintained that its proposal sought to bring the agreement's overtime assignment provisions into compliance with the current practice as it exists in the Department. The City claimed that its intent was to "clarify and define the current practice." Both sides have also proposed various substantive modifications to the current practices. The Panel has thoroughly discussed these proposed substantive modifications from the current practice and has rejected inclusion in any final award.

It is always appropriate to attempt to clarify current language to bring it in line with current proposals. However, the parties have greater expertise than this Panel regarding the exact working of the Albany Police Department to develop language with the fine tuning necessary for a section such as this. With day to day knowledge of the operation of the Department, the parties are better able to develop language that avoided unintended consequences and made the application of the existing language more confusing. Accordingly, we instruct the parties to negotiate language to clarify and define current Department practice. In the event such language cannot be developed by June 1, 2008, the parties should operate under the current contract.

9. UNPLANNED OVERTIME (Employer proposal 11.8)

Position of the City. The City sought to add the following language to the contract:

In the event overtime is needed for any valid police purpose and is not preplanned, management reserves the right to call in any department member without regard to the seniority provisions of the collective bargaining agreement.

The City argued that it needed the ability to call in certain personnel even if that person or persons are not on the overtime list for call-in at the particular time in question. The Chief explained that “in the case of a major event or incident, the Department may need to have people come in who possess certain expertise or knowledge.”

Position of the Union. The Union argued that this proposal was overly broad and could have the practical result of requiring officers to be “on-call” at all times during off duty hours. It maintained that the implementation of the proposal could have the practical effect of curtailing or limiting an off-duty officer’s ability to conduct their personal pursuits. The Union maintained that the thrust of this section could be addressed by Sections 11.5.5 and 11.2.2.

Discussion. Both sides have made compelling arguments that the Panel has carefully considered. The Panel recognizes that there are situations in which an individual police officer or officers have certain knowledge, training or experience that gives him/her a unique ability to deal with a certain event or incident. While it cannot be estimated how common such a situation might be, the Panel, or a majority thereof, recognizes that the City must be in a position to order unplanned overtime in a manner that expeditiously promotes the mission of the Department. There must be a valid police purpose and overtime cannot be used in a way to allow certain employees to receive excessive overtime. Furthermore, this change should not have the effect of putting police officers on-call in a manner different from current practices. It is simply a tool that will give the Chief the opportunity to call in available employees with the appropriate

knowledge, training or experience, without regard to the seniority rotation currently in place, for a valid police purpose. These caveats should provide adequate protection for the employees in the unit.

Award. A new section 11.8: should be added to the contract

In the event overtime is needed and it is not preplanned, the employer may, for a valid police purpose, call in any department member with specialized knowledge, training or experience, without regard to the seniority provisions of this Article. Any hours worked under this section shall be included in and counted toward each officer's quarterly overtime total as described in Section 11.5.3.

10. FLEXIBLE SHIFTS (City proposal 10.1.1. and 10.3.3)

Position of the City. The City sought to add language to Section 10.1.1. to permit flexible work hours for certain position. Chief Tuffey explained that "the old traditional hours of work do not fit in this more modern police world." The City suggested that flexible work hours would give the City more members of the unit available as needed.

Position of the Union. The Union countered that the current language gives the City a procedure, through the Labor Management Committee, in which the parties may meet and discuss the establishment of job requirements and specifications. The Union argued that the City's proposal seeks to force a waiver of the Union's ability to challenge the alteration of an employee's regular work hours. The Union questioned why the City focused on the need for this flexibility in the police unit when the police sergeants and lieutenants have no similar provision.

Discussion. After careful consideration, the Panel, or a majority thereof, has concluded that some relief is appropriate in this section, but not to the extent sought by the City. The City has made a convincing argument that flexibility may be needed in certain units. The need for this flexibility should be limited to the Community Response Unit (CRU) or the Strategic Deployment Unit (SDU), both of which have to respond to different situations on relatively short

notice. There is no need for this type of provision in patrol units that have continuous coverage. Similarly, there is no need for flexibility unit such as administrative services or communications.

The Panel has developed the language below in recognition that the ability to adjust hours to fight crime is necessary to help protect citizens of the City. The Panel also acknowledges that the flexible work hours must be justified by a valid police purpose. In terms of the day to day morale of people in this unit, the City should recognize that there is a need for stable working conditions amongst the employees. Employees must perceive that the employer is making adjustments to the schedule in a non-arbitrary manner. Otherwise, employees will quickly bid out of these units. In addition, if necessary, this will be a subject for modification in the next round of negotiations. If warranted, it may not be difficult to make convincing arguments that a return to status quo language is appropriate.

However, for the purposes of this contract, the Panel finds that the language below is appropriate to meet the needs of the City and provide sufficient protection for members of the bargaining unit. The Panel recognizes that the parties should analyze, when negotiating a successor agreement, whether there is a need for further limitations and clarifications.

Award. Section 10.1.1 of the agreement shall be modified by adding the following language after the second sentence (which ends with “quitting time”):

- a. However, the employer may require certain positions in either the Community Response Unit or the Strategic Deployment Unit, to have their start and completion of their shift adjusted by no more than four hours for no more than 30 days per instance. Such modification of the shift time must be for a valid police purpose in order to enhance and/or accomplish the mission of the particular unit (as set forth in Section 13.2.4). There shall be a valid police purpose for changing the start time of a shift under this section and such change cannot be used solely for the purpose of avoiding the payment of overtime.

(Note: the remainder of this clause refers to line-up pay that was addressed in section 3 of this Award.)

In order to implement this change, it is also necessary to amend section 10.3.3 in the following manner:

Except as otherwise provided in Section 10.1.1 above, the basic work week and shift scheduling system provided for in this Agreement shall not be changed unless the changes are mutually agreed upon between the Union and the Employer.

11. WAGES (Union Proposal #1, Article 17.1.1)

Position of the Union. The Union sought a two year contract at 10% per year for a term running from January 1, 2006 through December 31, 2007. The Union justified its demand by comparisons to the starting and top salary ranges in the departments with largest number of police officers in the Capital District and the interest of the public to employ officers that are adequately compensated and thus highly motivated. It noted the physical and mental qualifications necessary to become an Albany police officer. The Union highlighted the high number of index crimes and occupational hazards facing City police in comparison to the other police departments. It maintained that a 10% annual adjustment would still leave City police officers below both other police officers in the Capital District and other police officers in other cities in Upstate New York.

Position of the City. The City noted that it completed negotiations with the Albany Police Supervisors Union and agreed to a 3% wage adjustment for the 2006 contract year and a 3.75% adjustment for the 2007 contract year. The Firefighters Union agreed to a 3.0% annual adjustment for the same period. The City also argued that comparisons to other cities in upstate New York demonstrate that Albany police compare favorably both in terms of percentage increases, the starting wage, the five year salary level, and the ten year salary level. It maintained that a fair, equitable, and "comparable" percentage wage increase would keep the

Albany police officers on pace with other public safety units in the City and other comparable communities.

Discussion. Determining the appropriate wage increase is not an exact science. The Panel understands that wage increases in the police supervisor and firefighter units within the City are between 3 and 3.75% per year for the period under consideration. However, the Panel also recognizes that these settlements include other economic costs that benefited employees. For example, the Police Supervisors Association Memorandum of Agreement increased the rank differential and included a shift differential of \$.25 for the midnight shift and \$.20 for the evening shift. The Firefighters Memorandum of Agreement included increased longevity pay, improved uniform maintenance allowance and a increased stipend for EMT/Paramedic. The Panel has done its best to estimate the cost of these various benefits to ensure that the various settlements are comparable. It should be understood that this Panel has agreed that economic increases are most equitably and appropriately distributed in the form of general salary increases. The Panel has purposely avoided increases in items such as longevity or clothing maintenance. The result will be that the percentage increases will be somewhat higher than the percentages granted to either of the other units.

In addition, the Panel, or a majority thereof, has granted the City some language items that will give it greater flexibility and operating efficiency. While the Panel, or a majority thereof, has determined that these items are appropriate in their own right, it also recognizes that they may affect employees in a manner different from the current status quo. While it is difficult to put an actual price on the value of these items, the Panel has considered them in arriving at a final salary award.

The Panel has also considered both percentage wage increase and the actual wage for the

period in dispute. In comparing City wages to other cities in upstate New York (Schenectady, Troy, Utica, Syracuse, Rochester, and Buffalo), the wage increase that is being awarded is consistent with the percentage wage increases granted in these communities for the 2006 and 2007 contract year. For example, Syracuse had percentage increases of 3% for each of the two years and Utica had increases of 2% every six months for the period in question. Schenectady or Troy are not settled for the period in question.

Regarding the actual salary, if one examines the start, five year and ten year salaries for these communities, Albany is competitive. With two 3.9% increases, the starting salary in Albany will be \$42,796 in 2006 and \$44,465 in 2007.⁶ This will place Albany police \$2,500 above the average of these four other communities, above both Utica and Rochester and below Buffalo and Syracuse. Comparisons to the 10 year or maximum salary (Rochester and Buffalo had only maximum salaries) show that Albany is within \$300 of the average of the cities references above - above Utica, almost identical to Syracuse and about \$2,000 below Rochester and Buffalo.

One of the difficulties in making comparisons such as the above is that the Panel cannot accurately evaluate the entire wage and benefit package. There are too many other variables that can make the total compensation in one community better or worse than another. For example, Albany gets to its top salary relatively quickly and has rather small longevity steps. It also has an excellent health insurance benefit. Rochester has a very low starting salary but a higher maximum salary. Syracuse pays more in salary at the start, less at 5 years, but more at ten years. Overall, it is impossible to determine which city provides better pay and benefits; clearly, each unit has a slightly different approach to police pay. However, based on the above, the overall

⁶ For these comparisons, the Panel has used the 2005 "PO" rate of \$41,190, instead of the "Academy Cadet" rate used by the Union.

compensation for members of the bargaining unit is comparable to police officers in other cities in upstate New York.

Additionally, even if one compares City police to jurisdictions in the area, the Panel, or a majority thereof, is of the opinion that Albany police salaries are not nearly as uncompetitive as suggested by the Union. Examining salaries for the 2007 fiscal year and factoring in the wage increases granted in this award, Albany will be about \$1500 behind the starting salary in Bethlehem, but almost \$4,000 ahead of the starting salary in Guilderland. Since the time of the arbitration hearing in this case, the Town of Colonie concluded an interest arbitration award in which they were granted 3.25% wage increases in 2006 and 2007. The entry rate in 2005 was only \$1,000 above the Albany City rates for the same year; after this award, this gap will be reduced. Comparing the top salaries, there is no question that the Towns pay better than any of the Cities in upstate New York. Much of this can be attributed to the differences in taxing mechanisms between cities and towns and the differences in the tax base. However, with the greater percentage increases granted by this award, the gap between top salaries should be reduced.

As mentioned above with the cities, the above comparisons focus on salary only and do not take into account differences in benefits regarding health insurance and other and other economic benefits. However, based on wages alone, it is the sense of the Panel, or a majority thereof, that Albany police salaries are competitive with police salaries in both cities in upstate New York and other towns in the Albany area.

There can be no question that Albany Police perform a dangerous, challenging and difficult job under difficult circumstances. The crime index is just one of many factors that make the job in the City particularly challenging. As with other cities in upstate New York, Albany

has a diverse population requiring unique skills and training. Albany Police deserve to be compensated in line with other cities in upstate New York.

The award set forth below is comparable to the total value of other settlements in the City and wages and working conditions found in comparable communities elsewhere in the State. Since the cost of this award is consistent with other settlements in the City for the same period, there is no question about the ability to pay. It takes into account both the different manner in which we have allocated the total package and some payment for the language flexibility we have granted the City in this award.

Award. Salaries shall be increased by the following amounts:

1. Effective January 1, 2006 – 3.9%
2. Effective January 1, 2007 – 3.9%

SUMMARY OF AWARD

1. Health Insurance Buyout, Section 19.1.4

Effective July 1, 2008, any employee who can show adequate health insurance coverage under a spouse's or other's health insurance may opt out of a City health insurance plan and receive annually \$1,500.00 for opting out of an individual plan and \$3,000 for opting out of a family plan.

2. Prescription Drug, Section 19.1.2(d)

Effective 7/1/08, the prescription drug co-pay shall be \$7.00.

3. Line -up pay – section 10.1.1

Effective December 31, 2007, employees shall be required to attend a fifteen (15) minute roll call before the beginning of their regular work shift, for which they will receive time and one half the actual hours worked. For the year 2008, the line up lump sum payment made in fiscal 2008 will be taken into account. Further, line up pay will be part of "the regular rate of pay" for the calculation of the overtime pay.

4. Overtime Distribution, Section 11.5

The parties are ordered to develop language to ensure separate overtime lists for this unit. Such language should become effective July 1, 2008, in order that the parties have sufficient time to write appropriate language and sufficient time to allow the separated overtime roster to be incorporated into the work schedule. However, the Arbitration Panel will retain jurisdiction in the event that the parties cannot develop mutually acceptable language. If language cannot be written and agreed to by June 1, 2008, this issue will be remanded to the Panel to write the actual language.

5. Bereavement Leave, Section 14.1.2

For the purposes of bereavement leave, immediate family shall mean any relative living in the same household as the employee, an employee's spouse, domestic partner as defined by the City Ordinance, parent, sibling, child, step-child, father-in-law, mother-in-law, brother-in-law, sister-in-law, grandparent, and grandparent-in-law. For special reasons, the Chief may expand this definition of immediate family.

6. Temporary Assignments, Section 9.3.1: modify language to read:

The Chief may make a temporary assignment of less than one hundred twenty days (120) days during any twelve month period for a valid police purpose.

7. Overtime Premium Pay, Section 11.1.1: modify the 3rd sentence to read as follows (change is in italics):

The option to be compensated in time off rather than overtime payment shall be available for regular overtime or preplanned overtime, and not special off duty overtime, *or reimbursable overtime*, as specified in 11.5. The City shall notify employees, at the time of posting, whether such overtime is eligible for payment only and not compensatory overtime.

8. Special Off Duty Details and Preplanned Overtime, Sections 11.5.1-11.5.6 .

The Panel we instruct the parties to develop language to accurately reflect current practice for this goal. In the event such language cannot be developed by June 1, 2008, the current contract should remain.

9. Unplanned Overtime, add a new Section 11.8

In the event overtime is needed and it is not preplanned, the employer may, for a valid police purpose, call in any department member with appropriate knowledge, training or experience, without regard to the seniority provisions of this Article. Any hours worked under this section shall be included in and counted toward each officer's quarterly overtime total as described in Section 11.5.3.

10. Flexible Shifts, Sections 10.1.1 and 10.3.3

Amend section 10.1.1 by adding after second sentence (end with quitting time): "However, the employer may require certain positions in either the Community Response Unit or the Strategic Deployment Unit, to have their start and completion of their shift adjusted by no more than four hours for no more than 30 days per instance. Such modification of the shift time must be for a valid police purpose in order to enhance and/or accomplish the mission of the particular unit (as set forth in Section 13.2.4). There shall be a valid police purpose for changing the start time of a shift under this section and such change cannot be used solely for the purpose of avoiding the payment of overtime.

Amend section 10.3.3. "Except as otherwise provided in Section 10.1.1 above, the basic work week and shift scheduling system provided for in this Agreement shall not be changed unless the changes are mutually agreed upon between the Union and the Employer."

11. Wages:
 - a. Effective 1/1/06 – 3.9%
 - b. Effective 1/1/07 – 3.9%

The Panel recognizes that this Opinion and Award is the result of an analysis of all outstanding issues. It comprises the Panel's best judgments as a balance between all outstanding

items. While there are certain individual items that both the Employee and Employee Organization Member may have changed individually, reservations on certain items have been eliminated in the context of an overall and total package. Accordingly, the Panel unanimously agrees with all of the provisions articulated in this Opinion and Award, except as stated below.



Ira B. Lobel
Public Panel Member and Chairman



James W. Roemer, Jr.
Public Employer Panel Member



Ennio Corsi
Employee Organization Panel Member

CONCURRING OPINION – PUBLIC EMPLOYER PANEL MEMBER

While I concur with the other members of the panel that Sections 10.1.1 and 10.3.3 should be amended to provide the Department with more flexibility regarding the scheduling of officers assigned to the Community Response Unit or the Strategic Development Unit, I vigorously protest the language which permits this needed flexibility. Stated succinctly, the utilization of flexibility will occur only in the following circumstance. The Department will determine that there are circumstances within the City which warrant that more members of either or both of these units should be on duty at times when there is an insufficient number of members (or none at all) of these two units scheduled to work. In making that determination, the Department has obviously met the threshold of needing additional staff “for a valid police purpose” or else the decision would not have been made initially. There are only two methods by which the additional staff can be deployed. The first and more traditional method would be to call off duty members of the unit in on an overtime basis. This provision will allow the Department a second option which will be to reschedule members of these two particular units, within the limitations expressed in the award, to work outside of their normal work hours without receiving overtime compensation. Therefore, I agree with the phrase “there shall be a valid police purpose for changing the start time of the shift under this section”, but I vehemently object to the inclusion of the rest of that sentence which reads “and such change cannot be solely for the purpose of avoiding the payment of overtime.” It is axiomatic that in every case where the Department has determined that there is a need for additional personnel that the Department has met the “valid police purpose” or else the determination would never have been made. This provision expressly allows the Department to fill that need by changing the shifts of members of these particular units instead of paying overtime. There can never be an instance when a shift is changed without a valid police purpose, because to do so would have been to create a bogus overtime opportunity which the union would then have to argue is the case in order to demonstrate that the City changed the shift solely for the purpose of avoiding the payment of overtime. The lack of logic in the crafting of this language is both disturbing and unjustifiable. Having spent almost four decades trying to interpret the meaning of less than precise contract language crafted by others, I am loathe to be a party to the same sort of chicanery that others

have either intentionally or unintentionally left in their wake. I cannot envision a case which the City could lose in arbitration if and when it implements this provision and therefore, I would eliminate the last phrase in the authorized language change which reads “and such change cannot be used solely for the purpose of avoiding the payment of overtime.”


James W. Roemer, Jr.
Public Employer Panel Member

CONCURRING OPINION – EMPLOYEE ORGANIZATION PANEL MEMBER

While I concur with the other members of the Panel concerning a large part of the Award, I strongly object to their decision-making process with regard to several aspects of the Award.

First, while I acknowledge that the wage increases of 3.9% in 2006 and 3.9% in 2007, which equate to a total wage increase (compounded) of 8%, significantly exceed the 6.1% rate of inflation (compounded) as measured by the Consumer Price Index in those years, the other members of the Panel, in my opinion, utterly failed to address the salary gap problem facing this department. At the hearing and in its briefs, the Union raised the issue of the salary gap between the Albany Police Department and the other police departments in the Capital Region and between APD and the police departments of the upstate cities of Syracuse, Rochester, and Buffalo. Prior to the issuance of this Award, APD's starting salary was the fifth lowest among Albany, Bethlehem, Cohoes, Colonie, Guilderland, Schenectady, and Troy (overall 7.5% below the average) and APD's maximum salary was the sixth lowest among the group listed above (overall 10.9% below the average). With regard to the three other major upstate cities referenced above, APD ranks third among them in starting salary (overall 11% below the average) and last in maximum salary (overall 14.6%). The Award in this case only slightly ameliorates these disparities.

I do not object to the amount of the wage increases on fairness grounds. I object to them on the grounds that the Award-adjusted starting and ending salaries, combined with the workload, and the nature thereof, carried by the members of this department, will further exacerbate the recruitment and retention problems faced by the department. Fifteen years ago, nearly a thousand individuals took the Civil Service Exam to become Albany Police Officers. Now, the City of Albany is lucky to get a couple hundred applicants. This Award will simply make it harder to attract and keep the best police officers, which in turn leads to other problems including those associated with employee morale. Regrettably, the other members of this Panel, in my opinion, have shortsightedly buried their heads in the sand on this issue.

Second, I believe that it was inappropriate for this Panel to use the Albany Firefighters contract and the most recent negotiated settlement concerning the Albany Firefighters in its deliberations. With all due respect to Albany Firefighters and the job that they perform, that job is a different job. It cannot be denied that the wages, hours, conditions of employment,

workload, nature of the workload, outside employment opportunities, and overall quality of worklife of Albany Police Officers are completely different from those of Albany Firefighters. It is my opinion that the purpose and the effect of the inclusion of their contract and latest settlement in the equation was to artificially and purposefully lower the bar on this Award.

Third, while the Panel partially granted the Chief only two of the so-called “management rights” clauses he sought and further set in place safeguards in that regard, the Award nevertheless installs language which is still ripe for mischief and will undoubtedly lead to protracted litigation between the parties. I am putting all parties on notice that this Union will aggressively pursue any and all abuses or transgressions which occur under cover of this language.

Fourth, the City and the Union mutually understand that the line-up pay provision in the contract needs to be corrected to make it compliant with the Fair Labor Standards Act. There are no reasons, other than to artificially limit the retroactive financial impact of this Award and to put off until a later date the City’s obligations under the law, for the change in line-up pay to be effective December 31, 2007 and not January 1, 2006. In his concurring opinion, Mr. Roemer used the words “chicanery” and “lack of logic”. Those words are more appropriately used in this context.



Ennio J. Corsi
Employee Organization Panel Member

AFFIRMATION

STATE OF NEW YORK)
COUNTY OF ALBANY)

I, Ira B. Lobel, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my award.

Date: April 29, 2008

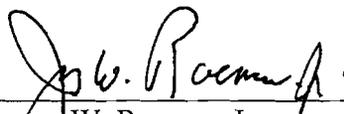


Ira B. Lobel
Public Panel Member and Chairperson

STATE OF NEW YORK)
COUNTY OF ALBANY)

I, James W. Roemer, Jr., do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my award.

Date: April 29, 2008



James W. Roemer, Jr.
Public Employer Panel Member

STATE OF NEW YORK)
COUNTY OF ALBANY)

I, Ennio Corsi, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my award.

Date: April , 2008



Ennio Corsi
Employee Organization Panel Member