

NEW YORK STATE
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the Compulsory Arbitration

- Between -

CITY OF BATAVIA, NEW YORK

-and-

BATAVIA POLICE BENEVOLENT ASSOCIATION

OPINION AND AWARD

PERB Case #
IA2007-003
M2006-104

Before: Interest Arbitration Panel

Stuart M. Pohl, Esq.	- Chairman
Frank Klimjack	- Association Panel Member
Mary Louise Conrow	- Public Employer Panel Member

NEW YORK STATE PUBLIC EMPLOYMENT RELATIONS BOARD
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CONCILIATION

In Attendance:

For Association

W. James Schwan	- Attorney
Anthony Hynes	- Consultant
Todd Crossett	- Detective
Kevin R. Decker	- Economist
Wayne Fenton	- Vice President

For Employer

Paul J. Sweeney	- Attorney
Jason Molino	- City Manager
Dawn Fairbanks	- Human Resource Specialist

The parties conducted several bargaining sessions seeking to agree upon a new collective bargaining agreement to replace the bargaining agreement due to expire on March 31, 2005. After those negotiations failed to result in a new agreement, the late Charles E. Leonard was appointed by

Richard A. Curreri, the Director of Conciliation for the New York State Public Employment Relations Board ("PERB"), to mediate the impasse. Mediation sessions were conducted by Mr. Leonard on September 15, 2006, November 1, 2006, December 4, 2006 and April 24, 2007. No new agreement was reached.

On August 23, 2007, Mr. Curreri wrote to me and the other Panel members, Mary Louise Conrow, Esq., and Frank Klimjack, President of the Batavia Police Benevolent Association (hereinafter, the "**Association**"), advising that we had been designated to serve as the Panel Members of the Public Interest Arbitration Panel (hereinafter, the "**Panel**") in the above-entitled matter, and that I was to serve as the Chair of said Panel.

A hearing in this matter was held on July 23, 2008, November 14, 2008 and February 17, 2009, in Batavia City Centre, Batavia, New York. At those times, the **Association** was represented by W. James Schwan, Esq., and the **City of Batavia** (hereinafter, referred to as "**Batavia**" or "**City**") was represented by Paul J. Sweeney, Esq., of counsel, Coughlin & Gerhart, LLP.

At the hearing, both parties were given a full opportunity to present written and oral opening statements, to call witnesses and to present documentary evidence in support of their respective proposals and positions, as well as to cross examine any witnesses called by the other. Each party availed itself of these opportunities. At the conclusion of the hearing, the parties agreed to submit post-hearing briefs. The Panel received both briefs by April 21, 2009. The hearing was declared closed.

I. Introduction

This document is the Opinion and Award of the Panel identified above and as designated by PERB, pursuant to Civil Service Law Section 209.4 on August 23, 2007. The term of the prior collective bargaining agreement between the parties (hereinafter referred to as the “**cba**”) ended on March 31, 2005.

As noted above, the parties attempted, unsuccessfully, to negotiate a successor to the collective bargaining agreement. They exchanged proposals and then held bargaining sessions which were to no avail. No new agreement was reached. As a consequence, on June 25, 2007, the Association filed a **Petition For Compulsory Interest Arbitration** with PERB (Panel Ex. 2). The City filed its **Answer to Petition for Compulsory Interest Arbitration** with PERB on July 12, 2007 (Panel Ex.3). Thereafter, PERB designated the Public Arbitration Panel of which Stuart M. Pohl is the Chair (Panel Ex. 1).

Subsequent to the above-noted hearing, the Panel met in executive session on June 29, 2009, in Batavia, New York. Thereafter, this Award was reviewed and discussed by the Panel. At least two of the three members of the Panel concurred in the disposition of each issue within the parameters framed by this Opinion and Award.

II. POSITIONS OF THE PARTIES AND PANEL'S OPINION

Civil Service Law Section 209, subsection 4(c)(v) provides that, in making a “just and reasonable” determination of the matters in dispute, the Panel should take into account various factors:

“ . . . *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 bargaining 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. ”

Before we reached the various conclusions set forth on the pages that follow, the Panel carefully reviewed, and where appropriate, discussed at length in executive session, the detailed financial and demographic data, reports, expert testimony and written arguments which were carefully assembled and presented by the parties at the above-referenced hearing.

Given the nature of the outstanding issues presented to us, we paid particular attention to the comparable data and arguments relating to a comparison of Batavia police patrolmen, sergeants and lieutenants, to sworn members of police departments in comparable municipalities; the public interest and welfare; the working conditions which are unique to police officers; and the financial ability of Batavia to pay for the economic provisions contained herein.

As noted, the parties submitted post-hearing briefs that set forth their contentions. Some of their proposals were discussed in detail, while others were discussed in summary fashion, or not at all. The following paragraphs will briefly summarize the parties' positions on each outstanding issue, taking into consideration each of the above-mentioned factors.

In the pages that follow, the Panel will discuss any relevant evidence of record, and our conclusions as to what we believe constitutes a fair and reasonable determination of the outstanding issues presented in this proceeding.

After due consideration, at least a majority of this Panel has arrived at the following conclusions concerning the impasse and its resolution:

III. COMPARABLE COMMUNITIES

The parties in this matter have not agreed upon the communities the Panel should look at for drawing the comparisons required by the Taylor Law. The Panel recognizes that it is its obligation to compare the wages, hours and other working conditions of employees performing similar services in comparable communities. The Panel also understands that the purpose for such comparison is to assure, as much as is possible under the circumstances, external equity for the employees of the public employer. This, of course, does not require the Panel to grant wage increases and benefits which result in *parity* among comparable communities.

Although the precise job duties performed by individual officers of each police department might well vary from community to community, the Panel has assumed that, for the most part, the police employees of each of the suggested comparable communities perform essentially the same duties, and are subject to the same physical and educational requirements. Certainly the extent of and types of crimes and offenses, and related and necessary crime prevention activities they perform may well vary from community to community and from rank to rank. However, the Panel has also assumed that the employees of each department cited by the parties engage in a *hazardous profession* which has no comparable counterpart in the private sector.

The parties' proposed comparable communities are as follows:

1. The City:

The City maintains that the cities of Oswego, Cortland, Geneva, Olean, Gloversville and Corning are the most comparable to Batavia if one considers their population, bargaining unit size, per-capita income, median household income, median family income, individuals below poverty level, mean retirement income, percent of the population over the age of 55, percent of population over age 65, and those aged 65 and over, below the poverty level. The data for these alleged comparables is contained in City Ex. 1, Tab 1.

According to City Manager, Jason Molino, the above cities have been facing challenges similar to those faced by Batavia. If these cities are, indeed, "comparable," then Batavia appears to fall somewhere near the middle.

The City contends that the Panel should not consider or find the municipalities of Canandaigua, Dunkirk, Fredonia and LeRoy to be "comparables," since the Association never presented evidence to establish that these communities were similar to Batavia in population, bargaining unit size, average income, median income, retirement income, age of residents, or poverty levels. Furthermore, none of the experts called by the Association provided any support or justification for the use of these communities as comparables.

2. The Association:

The Association contends that the Panel should find that the communities of Dunkirk, Fredonia, LeRoy and Canandaigua are appropriate to use as comparables in the instant proceeding. The Association contends that said conclusion can be drawn from the findings of the James R. Markowitz Panel in its compulsory interest arbitration award concerning the Batavia Firefighters Association.

In that proceeding, the Association suggested that the appropriate comparable communities were Buffalo, Rochester, Dunkirk, Canandaigua and Ithaca. The Markowitz Panel rejected a portion of the Association's argument regarding what it contended were the appropriate comparable communities. It also rejected some of the City's proposed comparables. It found that the proper comparable communities included Canandaigua, Dunkirk, Olean and Geneva. It also found that "to a lesser extent" the communities of Cortland, Oswego and Ithaca were useful because they shared similar characteristics with Batavia, although they were further away from Batavia than the other communities the Panel found to be comparable.

3. The Panel's Decision on Comparables.

In the instant proceeding, the Panel carefully considered the testimony and data provided by City Manager Molino, as well as the Markowitz Panel Award. The Panel in the present matter finds some support for both the Association's position and the City's position regarding the comparable communities. Each of the communities below is either a small city or is a community located in a rural setting and relatively close in proximity to Batavia. Cortland, Oswego and Ithaca are somewhat further away. Gloversville, while sharing many of the same attributes as the other alleged comparables, is too distant from Batavia to provide a useful comparison in this proceeding. While there are individual variances in the terms and conditions of employment of employees in the comparable communities found in the current record, it is apparent to the Panel that the nature of police work and the hazardous nature of that work makes comparison to employees in other police departments the only meaningful external comparison.¹

¹As noted subsequently, herein, comparison to the wages of City fire fighters represented by the IAFF is also relevant to the Panel's inquiry in this proceeding, given the hazardous nature of their work.

Those communities which are sufficiently comparable to the City of Batavia include:

1. Canandaigua
2. Dunkirk²
3. Olean
4. Geneva

For the same reasons expressed by the Markowitz Panel, we find that, to a lesser extent than the above communities, the following communities are somewhat comparable to Batavia and may provide some guidance in the instant matter:

5. Cortland
6. Oswego
7. Ithaca

IV. ABILITY TO PAY

The parties are certainly aware that the statutory criterion of *ability to pay* is relevant when an interest arbitration panel determines that, based upon other statutory criteria, the wage and/or other economic increases or improvements sought for employees are justified.

For the reasons detailed in a subsequent section of this Opinion, the Panel believes that the bargaining unit employees represented by the Association warrant a modest wage increase and certain other economic improvements, though not as much as proposed by the Association.

²Although *Fredonia* is adjacent to Dunkirk, there is no evidence in the record from which the Panel can reach a determination as to whether it is comparable to Batavia for purposes of this proceeding. Although *LeRoy* is geographically close to Batavia, there is no evidence in the record from which to conclude that it is comparable to Batavia.

However, the remaining question to answer is whether the City has the ability to pay for that package. If it does not, then that economic package should be reduced to an amount that is both reasonable and affordable.

1. The Association.

As evidenced by City Ex. 2, Tab 10, any argument by the City that it lacks the ability to fund the wage increases and benefit improvements sought by the Association should be rejected. The City gave employees in its other bargaining units (i.e., CSEA and AFSCME) 2.95% wage increases in fiscal year 2005-2006, and gave its non-union employees a 2.85% increase in fiscal year 2005-2006 (City Ex. 2-A).³

In addition, City Ex. 1, Tab 1 reflects that the median household income for City residents is higher than that found in any of the City-proposed comparable communities. Further, the percentage of City residents living below the poverty level is less than in any of the comparable communities cited by the City. Finally, while the percentage of the City's population over 55 years old and over 65 years old is comparable to the percentages in the communities cited by the City, the percentage of older residents living below the poverty line is significantly less than all City-proposed comparables except Corning.

In Batavia, its taxable assessed value has increased from 2005 to 2007 (City Ex. 2, Tab 1), whereas Oswego's equalized and full taxable assessed values per capita have been declining.

Other exhibits demonstrate that the City:

³The Panel notes, however, that for fiscal year 2005-2006, the City and the IAFF (fire fighters unit) agreed to a **0.00%** pay increase and for fiscal year 2006-2007, a **1.50%** increase (City Ex. 2-A). The CSEA and AFSCME units and the non-union employees received a **0.00%** increase for fiscal year 2006-2007 (City Ex. 2-A, which replaced City Ex. 2, Tab 10).

- a. has lowered its tax rate on four occasions (Union Ex. 2, p. 4).
- b. has an overall full tax rate (including county/city/village and school taxes) that falls in the middle of the Association's proposed comparable communities.
- c. is well below its constitutional taxing limit. Since 1999, it has been 40% below its tax limit. For 2005 and 2006 it was below its 2004 tax limit (Association Ex. 2, p. 6).
- d. had a tax margin at the end of March 2009 of 34.2% or \$6,347,733 (Association Ex. 2, p. 7) as contrasted with Dunkirk at 96.1% and LeRoy at 40.2% of their margin (Association Ex. 2, p.7).
- e. realized a significant increase in sales tax revenue since 1990 including significant increases in said revenue in 2005 and 2006 as compared to 2004 levels (Association Ex. 2, p. 8).
- f. in the first-half of 2008-2009, has had sales tax payments which were 5.3% above the 2007-2008 fiscal year. Sales tax revenue was approximately \$200,000 over budget for the fiscal year ending 2008 (Association Ex. 2, p. 8).
- g. uses the sales and use tax for 36% of its General Fund revenues (Association 2, p. 2). It places more reliance on sales and use tax than on real property tax revenue to balance its General Fund budget.
- h. has had fund balance deficits in the past, but currently has a fund balance surplus (Association 2, p. 11). Moreover the primary cause of the deficits has been flaws in the City's budget-decision making process, despite repeated warnings. The situation has now been corrected (City Ex. 2, Tab 4, p. 4 and Tab 3).
- i. has had past budget deficits that were not caused by the operation of the Police

Department or by department personnel costs.

j. For the fiscal year ending 2008, the City appropriated no fund balance to balance the General Fund budget. In addition, actual expenditures were \$1.06 million under budget. Actual revenues exceeded the budget by \$590,025, for a resulting operating surplus of \$1.65 million (Association Ex. 2, p. 14).

k. came in under budget for Police Department Personnel services for fiscal years ending March 31, 2006, 2007 and 2008 (Association Ex. 2, p. 15).

l. budgeted for an anticipated wage increase for the fiscal year 2008-2009. It also received a VLT Aid payment of \$629,698 in June that it did not include in the budget. The city also included a contingent fund appropriation of \$200,000 (Association Ex. 2, p. 16).

Since a 1% increase in personnel costs equals \$21,300, the City has more than sufficient money in the current budget to fund retroactive salary increases sought by the Association.

2. The City.

The City takes the position that it lacks the ability to pay for the various economic proposals put forward by the Association in this proceeding. According to the City, it has been engaged in an ongoing battle to deal with the economic impact of declining populations and decreasing property values. Its population is aging. The City suggests that the aging population will negatively impact future economic growth. Its financial condition has deteriorated in recent years, although it has had some success in narrowing a very large deficit in its reserve fund balance. Its financial condition is further exacerbated by the current economic recession.

a. If the comparable communities urged by the City are used by the Panel, the Panel must conclude that the average taxable assessed value in those communities has increased

by 2.11% from 2005 to 2006, while the City's increased by only .13% (City Ex. 2, Tab 1, p. 4), which "mirrored" the City's tax base growth; i.e., its "ability to tax," which was marginal (2/17/09 T. 49-50⁴). Mr. Molino testified that the same negative trend continued during the period 2006 to 2007.

b. The City's growth in taxable assessed value increased only 1.69% , as compared to the average growth in taxable assessed value in the comparable communities of 4.58% (p. 50). In dollar terms, the average growth for the comparables was \$18,807,000 over a three-year period, as compared to the City's average increase in growth in its taxable assessed value of only \$9,015,000 (2/17/09 T. 50).

c. The City's increase in the full taxable assessed value per capita for the period 2005 to 2007 was \$.55 per capita, as compared to an average of \$1.28 per capita for its suggested comparable communities. As noted by Mr. Molino, the City started the fiscal year ending March 31, 2005, with a positive undesignated fund balance, but ended that fiscal year with an undesignated fund balance deficit of approximately \$1.2 million. Since a community's undesignated fund balance should fall within 7% to 12% of its operating budget, the City should have maintained a fund balance of approximately \$1.3 million for the fiscal year ending 2005, rather than its deficit of \$1.2 million (City Ex. 2, Tab 3 and 2/17/09 T. 53).

d. The City's undesignated fund balance increased to \$2.2 million for fiscal year ending March 31, 2006, receding \$1.8 million for fiscal year ending March 31, 2007 (City Ex. 2, Tab 4, 2/17/09 T. 54)

⁴ All references to pages of the Transcript of each day of the hearing in the instant proceeding are cited, herein, as "[date] T. [page number]."

e. The City implemented significant cutbacks and layoffs (e.g., divesting itself of its ambulance service; eliminating a deputy fire chief position, a community development officer; an assistant city engineer, and others) which caused the undesignated fund balance deficit to shrink to \$365,000 for the fiscal year ending March 31, 2008. But, in the prior three fiscal years, the City had to borrow money through the issuance of revenue anticipation notes, to offset or maintain its operations through the deficit cash position (City Ex. 2, Tab 6 and 2/17/09 T. 54). All units *except the Association* have experienced layoffs.

f. The City also must be concerned with increasing retiree health-care costs for GASB-45 Compliance for its non-union employees (\$630,000), AFSCME unit (\$1,067,000), CSEA unit (\$1,060,000), fire fighters (IAFF) unit (\$3.9 million and Association unit (Police - \$1.89 million). (2/17/09 T. 55-56).

g. The Association's retiree health-care proposal would increase the City's costs from \$1.89 million in current liability to \$3 million (City Ex. 2, Tab 8 and 2/17/09 T. 57-58).

h. The City would not have been able to start its fiscal recovery without the wage concessions it received from its other union and non-union employees.

i. Retroactive pay increases would be \$691,265 if the Association's proposal is adopted by the Panel (City Ex. 2, Tab 14 and 2/17/09 T. 72-73). That would force the City to return to a \$1 million plus undesignated fund balance and to increase its tax levy by 6 or 7% without taking into account any future retiree costs (City Ex. 2, Tab 14 and 2/17/09 T. 72-73).

j. The City would find it "difficult to swallow" the costs that would result from its wage proposal (\$126,351), but it would be more manageable than the cost of the Association's proposal.

k. Foreclosures in the City are on the rise suggesting that City residents are finding it more difficult to pay their taxes. Various articles in evidence suggest that municipalities with an aging population which typically demand more City services, along with a shrinking tax base, will impact the City's ability to pay the economic improvements sought by the Association in this proceeding (City Ex. 2, Tabs 16 and 17 and 2/17/09 T. 74-76).

l. Using "averages" the City's aged population makes it the most disadvantaged among the comparable communities.

m. The testimony of the Association's expert, Mr. Decker, did not support the Association's claim that the City has the ability to pay. If anything, he actually supported the City's position that it lacks the ability to pay.

3. Panel's Decision on the City's Ability To Pay.

The Panel has carefully analyzed the financial data, and the testimony of the parties' witnesses concerning the City's fiscal condition from 2005 to the present budget year. Having completed that review, the Panel concludes that the City's financial condition, while showing signs of recovery, is still not strong. The City correctly notes that for 2006 and 2007, its equalized taxable assessed value has increased at a lesser rate than the "average" of its proposed comparable communities. However, considered individually, Oswego increased at a lesser rate than Batavia for 2006 and then significantly declined in 2007 (City Ex. 2, Tab 1).

By almost any measure, the City's data reflects a City that has operated with a very unhealthy undesignated fund balance for several fiscal years, including 2005-2006 and 2006-2007 (City Ex. 2, Tabs 3 and 4). Nor did the Association rebut City Manager Molino's testimony that the City has been making gradual progress in controlling spending and borrowing and in reducing the

undesignated fund balance deficit. Clearly any significant, unanticipated expenses or losses in revenue would quickly return the City to a greater undesignated fund balance, undoing several years of fiscal improvement.

The City's claim of no ability to pay the wage increases and other benefit improvements sought by the Association, was buttressed by economist, Mr. Decker who made numerous concessions and admissions that cannot be overlooked by the Panel. Although he was called by the Association in support of its claim that the City has the ability to fund the Association-proposed economic items, he testified that:

a. He did not have experience preparing a municipal budget or a multi-year plan (11/14/08 T. 40).

b. He has testified in over 30 interest arbitration proceedings, all for unions. Of these, he recalled that in 28 of the 30 he testified in, it was his opinion the municipality had the ability to pay employees the wage increases they sought (11/14/08 T. 41-42).

c. He did not do a cost analysis of the Association's various proposals regarding increased costs that would be associated with overtime, nor increased cost associated with employee benefits that would result from the Panel adopting the Association's wage and benefits proposals (11/14/08 T. 46-47). Nor did he analyze what impact the Association's proposal would have on the City's required contributions to the New York State Retirement System, nor its impact on the school tax, or county tax (11/14/08 T. 47-48).⁵

d. He did not know the breakdown of real property tax revenues from residential versus commercial taxpayer sources (11/14/08 T. 48).

⁵Mr. Hynes did provide such information.

e. He conceded that the constitutional tax limit for the City (which was in the 30% to 40% range during the period 1999 to 2009) measures only the municipality's ability to further tax its residents (11/14/08 T. 48). It is not an indicator of the taxpayers' wealth. It is a measure of the underlying wealth of the taxable property in the community, but not of wealth in terms of income to residents (11/14/08 T. 49).

f. He admitted that a healthy undesignated fund balance should be in the 5% to 10% range. He agreed that the City does not currently have a positive undesignated fund balance and that that is an unhealthy sign for the City. "It's not--its definitely not where the City should be or wants to be, correct." (11/14/08 T. 50-51).

g. He also made certain concessions with respect to the City's revenues from various sources. Although he did not address mortgage tax revenues in his presentation, he speculated that the City probably wasn't experiencing an increase in mortgage tax revenue. In any event he conceded it was not increasing. He did not analyze the City's gross utilities tax. He conceded that no one knows whether or not sales tax revenues will increase or decrease; that the gas tax was apparently declining due to falling prices; that the video lottery tax (VLT) may be less than in previous years, and that no one knows whether it will be phased out in its entirety, or when (11/14/08 T. 53-64).

h. With respect to Union Ex. 2, Exhibit N, which contains a comparison of the budget versus actual spending for Police Department Personal Services from 2005 to 2009, he was certain the items such as overtime, holiday pay, longevity, night bonuses or differential bonuses, or anything the officer or member of the Police Department received in pay is included in the actual number as a personal service item (11/14/08 T. 66-67). However, he was unaware

of why the City experienced the surplus on the personal service spending item in any of the years reported on the exhibit. He agreed the surplus could be attributable to an unfilled position, or to physical fitness incentives never claimed but budgeted for, or sick leave payouts that were never paid (11/14/08 T. 68-69).

i. Significantly, he conceded that a municipality operating in a deficit mode is not usually a healthy course of action, and that a legitimate use of any budget surplus, including a surplus in personal services, should be to reduce debt (11/14/08 T. 69).

j. The Panel found the following exchange on cross examination compelling:

Q. You would agree with me, cooperating in the deficit mode is normally not a healthy posture for any municipality?

A. I agree with you, yes.

Q. So reducing the deficit would seem to be a legitimate priority for a municipality?

A. I agree.

Q. And using surpluses to pay down that deficit would be a prudent thing to do for a municipality?

A. It certainly would be one of the priority uses of that. Is it the only one, I can't say that. But is it a prudent one, sure. Absolutely.

Q. As a professional economist, how would you recommend eliminating an undesignated funds balance deficit?

A. I think the way the City is doing it is the way they need to do. They need to be prudent in their budgeting, which they've been for the last couple of years, that they were not prior to that.

Q. OK. So prudent budgeting?

A. Yes. Don't designate--don't use funds balance to balance the budget which you don't have, but the City did, which it does not appear to be doing any more.

Q. Controlling expenses?

A. To the best that you can, yes.

Q. Limit borrowing?

A. Sure. (11/14/08 T. 69-70)

City Manager, Mr. Molino offered compelling testimony about the City's struggle to right its financial ship. It is apparent that the City's revenues, while fairly strong for the first two quarters of the 2008-2009 fiscal year may hold steady or decline depending upon the overall state of the national and local economies, the willingness of consumers (including those with fixed incomes) to spend money rather than to save it.

It is self-evident that the City's constitutional taxing limit is a double-edged sword since City taxpayers, a good percentage of whom are living on fixed income, are already being asked to absorb a substantial portion of the tax burden. However, there is insufficient evidence to conclude that the City would have to resort to real property tax increases to fund the wage increase to be paid for 2006-2007. Even if tax increases became necessary, there is insufficient evidence for the Panel to conclude either that the City's taxing limit would be breached, or that the City's taxpayers would revolt. Excellent police services and the safe living environment such services provide have a price. Both the City's police department and its fire department provide invaluable aid and assistance to the community in times of danger or catastrophe. The employees of both departments routinely engage in hazardous and life-threatening activities. Although insufficient revenue and increases in expenses caused by this Award and the recession may result in undesirable results such as layoffs, a hiring freeze, etc., those unit employees who remain employed by the City should not be the only ones to bear the brunt of the recession.

The Panel finds that the City does not have the ability to pay *all* the wage increases and other economic benefits sought by the Association. However, we believe a modest wage increase and certain limited economic improvements for unit employees for 2005-2006 and 2006-2007 are affordable and within the City's means to pay, assuming the Panel finds such wage increases and improvements in economic benefits are warranted.

Thus, a careful review of the evidence and testimony relevant to the City's ability to pay has lead at least a majority of the Panel to conclude that the increase awarded herein, as more fully discussed below, represents a just and reasonable settlement of the wage issue, considering the City's weak fiscal condition, and to further conclude that the City has the ability to pay for that increase retroactively.

Police have been without any wage increase for over five (5) years. The modest increase awarded herein takes into consideration that fact and the intention to provide police officers with the same increase granted to the City's fire fighters in 2006-2007. Although the City's payment of wage increases of 2.95% to its CSEA and AFSCME units for 2005-2006 was apparently affordable, such increases were negotiated several years in advance of 2005-2006. When the IAFF negotiated for its fire fighters, the City sought and obtained a 0% increase for 2005-2006, and a modest 1.5% increase for 2006-2007. It is unlikely it would have agreed to that increase if it truly believed it lacked the ability to pay for it. However, it is also true that the 0% wage increase was for the first year of a five year agreement, which also provides for a wage increase of 2% in the third year, and 2.5% increases in years four and five, notwithstanding the City claim in this proceeding that it lacks the ability to fund the Association's proposed wage increases.

The Panel has noted the modest degree of success the City has had in improving the City's

financial condition. The Panel finds that said improvement is in no small part due to the City's attempts to control expenses, including seeking and obtaining wage relief from the IAFF starting in 2005-2006 and in 2006-2007 from CSEA and AFSCME unit employees and its non-union staff. Although the Panel believes what the economy holds for the City in the future is quite speculative at present, it also believes the City has the ability to provide a modest wage increase to the police covering the two year time frame covered by its Award. Although it is not the Panel's intention to provide the police with parity with fire fighters regarding all terms and conditions of their employment, it is the Panel's intention to provide some degree of internal pay equity by awarding the Association-represented unit with a wage increase of 1.0% effective April 1, 2005 and another increase of 2% effective April 1, 2006. Because, as noted by the City, any retroactive pay increases will become a part base salary in each year that follows the end date of this Award, the Panel believes it would be imprudent to direct a more significant increase at this time.

V. INTERESTS AND WELFARE OF THE PUBLIC

AND

PECULIARITIES OF THE POLICE PROFESSION

1. The Association.

It should be self-evident that members of the public served by the City's professional police force will clearly benefit if the City is able to recruit and retain well-qualified and experienced officers. Moreover, wages, benefits and other terms and conditions of employment should give recognition to the fact that most members of the police department engage in work that is inherently more dangerous than other jobs. In order to meet these legitimate concerns and interests, wages and

benefits should, when financially feasible, be set at competitive levels that will maintain the employees' relative status and position among police employees in comparable communities.

The Panel believes that the only meaningful comparisons the Panel should consider are with police officers in the City and those in comparable communities, as well as with its with unionized City fire fighters. Given the hazardous nature of their work, police employees should not be compared to non-union employees, nor with City employees represented by CSEA or AFSCME. There is, however, some justification for comparing police employees to employees in the City's fire department, given the inherently dangerous nature and life-saving nature of the jobs performed in each department.

VI. OUTSTANDING ISSUES

The current impasse concerns seven (7) outstanding Association proposals and seven (7) outstanding City proposals.

The specifics of each proposal will be analyzed and discussed subsequently, herein. However, the Panel has noticed that the City's Closing Brief focused almost entirely on the issues of comparability, ability to pay, wages and health insurance. The only arguments it made as to the proposals which remain outstanding are found either interspersed with its discussion of the ability to pay issue, or at pages 24-25 of its Closing brief. The Association, on the other hand, provided the Panel with detailed arguments as to each of the remaining proposals, in its Post-Hearing Memorandum.

It is the Panel's decision, made during its executive session, that an Award addressing the key, but not all, open proposals raised by the parties during this proceeding, will result in a just and

reasonable resolution of the parties' impasse, especially given the fact the parties will soon need to return to the bargaining table to negotiate a new agreement covering the period subsequent to March 31, 2007.

A. Association's Proposals.

1. Wages. (Association Proposal #1 and City Proposal #2)

a. The Association's Position.

Essentially, the Association contends that a review of the hourly rate comparisons and total compensation data contained in the Association's presentation established that if its proposed wage increases are not granted by the Panel, City police officers will continue to fall further behind the police in comparable communities in terms of their total compensation and rate of pay per hour worked.

Thus, it has proposed that base pay should be increased by 4.5%, effective April 1, 2005 and increased an additional 5.5%, effective April 1, 2006, or a total of 10% over two years. This proposal is separate and apart from other economic proposals which, if awarded by the Panel, would increase the police officers' total compensation package and the cost to the City. Those other items are discussed below.

The Association contends that its wage proposal is both reasonable and affordable. The City's offer of 0% in the first year and 1.0% in the second year is insufficient. As compared to the the Association's proposed comparable communities, wage increases for 2005 averaged 3.375%. If one considers the City's proposed comparable communities, the average wage increase was 4.08%. If the Panel uses all of the communities proposed by the Association and the City, the average wage increase for 2005 was 3.8%. Thus, the wage increases for 2005, depending upon which communities

are considered to be comparable to the City, ranged from 3.375% to 4.08%. Assuming the Panel uses only Canandaigua, Dunkirk, Geneva and Olean as the comparable communities, the average wage increase was 3.81%. The City's police significantly lag the *average total compensation* in many of the comparable and somewhat comparable communities (Association Ex. 1, pp. 24-34).

For 2006, the average increase for the Association's comparable communities was 3.31%, while the City's was 3.7%. Again, if only Canandaigua, Dunkirk, Geneva and Olean are used, the average increase was 3.75%. If all proposed comparables are used, the average increase was 3.53%. The Association's wage proposal should be adopted by the Panel.

b. The City's Position.

The City has proposed wage increases over a four year period; 0% in year one, 1% in year two, 1.5% in year 3, and 1.75% in year four.

In comparing the *average pay* for patrol officers in its proposed comparable communities to those paid in Batavia (City Ex. 1, Tab 2), Batavia paid higher wages in 2001 (\$44,008 compared to \$40,369), 2002 (\$45,849 compared to \$41,690), 2003 (\$47,110 compared to \$42,723), 2004 (\$48,406 compared to \$44,110), 2005 (\$48,406 compared to \$45,568), 2006 (\$48,406 compared to \$47,031), and 2007 (\$48,406 compared to \$48,381).

The Association's presentation by Anthony Hynes was flawed given the fact his analysis did not take into consideration salary differences among patrol officers and those in higher ranks (7/23/2008 T. 106-115).

No pay increase is warranted since Association members are being paid more than the *average* of the comparables proposed by the City. In addition, their total compensation is sufficient given the "generous benefits" unit members already receive, including health insurance.

c. The Panel's Opinion.

The Panel has carefully considered this issue and the testimony and documentary evidence supplied by the parties. The Panel is satisfied that the City has the financial ability to pay for an award which is just and reasonable within the intent of the Taylor Law.

The Panel finds that the City's police officers have qualifications that remain quite satisfactory; have jobs that entail significant risks to their own health and safety; and have to continue to perform their duties with quality and professionalism, so as to benefit the public they are sworn to protect.

A review of the numerous communities the Panel has selected as comparable reveals that police officers of the City do enjoy one of the higher *base wages* among the comparable communities. While the City's economic picture for the years in question (April 1, 2005- March 31, 2007), was quite troubled, it *presently* has sufficient means by which to fund the raises awarded herein. The City's data and contentions relied upon *average salaries* among communities it proposed as comparable to itself. But, using *average wages* does not fairly depict Batavia's standing among the comparables used by the Panel. The base *starting* salaries in those communities, as reflected in their collective bargaining agreements covering the relevant time period (i.e., 2005-2007), reveals the following wages as they compare to Batavia:

	<u>2005</u>	<u>2006</u>	<u>2007</u>
Dunkirk⁶			
Patrol	\$53,160	\$55,356	\$57,666
Desk Sgt./Det	\$53,161	\$55,981	\$57,666

⁶Figures include longevity (\$600 in 2005, \$650 in 2006 and \$700 in 2007) and tech pay (\$625/year).

Sgt.	\$55,601	\$57,869	\$60,255
Lt.	\$58,042	\$60,383	\$62,844
Capt.	\$61,092	\$63,525	\$66,081
Canandaigua	\$39,295	\$40,671	\$42,094
Olean			
Hired after 6/1/00	\$33,254	\$34,418	
Hired before 6/1/00	\$40,007	\$41,407	
Geneva			
P.O. ⁷	\$36,575	\$37,307	\$38,053
Geneva Command⁸			
Sgt.	Not provided		\$52,894
Lt.	Not provided		\$57,380
Capt.	Not provided		\$61,808
Cortland			
Patrol			\$34,050 ⁹
			\$35,242 ¹⁰
Sgt.			\$54,250
			\$56,149
Capt.			\$60,864
			\$63,299
Oswego			
P.O.	\$32,306	\$33,276	
Det.	\$49,886	\$51,383	
Sgt.	\$50,224	\$51,731	
Lt.	\$52,831	\$54,416	

⁷Police Officers' contract 1/1/2004 to 12/31/2008.

⁸Starting 1/1/2007

⁹Effective 12/31/2006

¹⁰Effective 1/1/2007

Capt.	\$57,240	\$58,957	
Ithaca	Not provided		
Batavia	Impasse	Impasse	Impasse
Eff. 4/1/2004			
Those hired before 4/2/2000			
P.O.	\$38,118		
Pol. Det./Det. Youth	\$43,902		
Sgt.	\$45,878		
Det. Sgt.	\$50,388		
Lt.	\$52,619		
Those hired after 4/1/2000			
P.O.	\$32,942 (start)		

The top step salaries in those communities, as reflected in their collective bargaining agreements covering the relevant time period (i.e., 2005-2007), reveals the following wages as they compare to Batavia. The top step could not be determined for some of the comparables:

	<u>2005</u>	<u>2006</u>	<u>2007</u>
Canandaigua	\$49,368.00	\$51,096.00	\$52,883.00
Dunkirk	None specified		
Olean			
Hired after 6/1/00	\$46,524	\$48,152 (after 4 years)	
Hired before 6/1/00	\$46,524	\$48,152 (after 4 years)	
Geneva			
P.O.	\$46,839	\$49,181	\$51,640
Geneva Command			

Sgt.	Not provided	\$62,104
Lt.	Not provided	\$66,956
Capt.	Not provided	\$71,776

Cortland \$50,671¹¹
\$52,444¹²

Oswego

P.O.	\$50,328	\$51,838
Det.	\$55,774	\$57,447
Sgt.	\$56,117	\$57,800
Lt.	\$58,721	\$60,483
Capt.	\$63,135	\$65,029

Ithaca Not provided

Batavia Impasse Impasse Impasse

Eff. 4/1/2004
Those hired before 4/2/2000

P.O.	\$48,406 (after 4 years)
Pol. Det./Det. Youth	\$53,164 (after 4 years)
Sgt.	\$55,552 (after 3 years)
Det. Sgt.	\$61,017 (after 3 years)
Lt.	\$63,775 (after 3 years)

Those hired after 4/1/2000

P.O.	\$48,406 (after 6 years)
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The City's police significantly lag the *average total compensation* in many of the comparable and somewhat comparable communities. Additionally, we also looked at the IAFF contract with the City (Panel Ex. 10). It reflects the following salary schedule for Fire Fighter, Fire Lt., Fire Capt., and

¹¹Effective 12/31/2006

¹²Effective 1/1/2007

three levels of EMT *hired before April 1, 2001:*

<u>2005-2006 Base salary</u>		<u>2005-2006 Top Step (4 years)</u>
Fire Fighter	\$38,289	\$47,097
Fire Lt.	\$46,232	\$54,160
Fire Capt.	\$53,073	62,285

EMTs (deemed not relevant to instant proceeding by Panel)

<u>2006-2007 Base salary</u>		<u>2006-2007 Top Step (4 years)</u>
Fire Fighter	\$38,863	\$47,803
Fire Lt.	\$46,925	\$54,972
Fire Capt.	\$53,869	\$63,219

EMTs (deemed not relevant to instant proceeding by Panel)

Clearly, both the police and fire engage in duties which are, while not the same, both inherently dangerous and of vital interest to the public that each entity serves. It is also apparent that the City police officers hired after April 1, 2000 are paid significantly less than are new fire fighters, whereas, police near or at the top step are paid slightly more than are employees in the City's fire department.

The Panel believes that the salary increases awarded herein are sufficient to address the competing interests of the police officers, on the one hand, and the taxpayers whom they serve. These increases are modest and will allow police officers to maintain their standard of living in these difficult economic times. Without these increases, unit employees would fall further behind officers who work in police departments in what the Panel has found to be comparable, or some-what

comparable communities (e.g., Canandaigua, Oswego, Cortland, Geneva [both units]). See U. 1, Association's "Salary Comparisons," including comparisons of "total compensation."

However, the City's weakened financial condition, coupled with the fact that the City's other organized units have agreed to concessions to help the City to return to a sound fiscal footing, make it unwise and imprudent to award raises in the amounts sought by the Association, notwithstanding that such raises might otherwise be justified.

Any financial burden placed on the City by this award is well within its ability to pay. In this regard it is interesting to note that the police employees in one of the City's proposed "comparables" (Corning, NY), were awarded a 4% pay increase for 2005 and another 4% pay increase for 2006 at all steps of its salary schedule (See Campagna Panel Award - June 24, 2007).

The Panel will award a salary increase of 1% at all steps of the schedule, effective April 1, 2005, and 2.0% at all steps of the schedule, effective April 1, 2006. Any further attempts to narrow the salary gap for total compensation and rate of pay per hour worked will have to occur during the next round of bargaining.

2. Pay for working on holidays. (Art. VIII, Section 4 - Association Proposal 3)

a. The Association's Position.

The Association proposed adding a new section 4 to Article VIII of the collective bargaining agreement. Under its proposal, sworn officers who are scheduled to work and who then do work their scheduled shift on New Year's Day, Memorial Day, July 4, Thanksgiving, and one half day for Christmas Eve, and/or Christmas, will be compensated at the time and one half overtime rate for such work (U. 1, p. 8 [green column] and 7/23/2008 T. 73-74). The costs of that proposal, assuming a 4.5% increase in base pay, is reflected under the "Holiday" column on U. 1, p.8. The only

justification offered by the Union for awarding on this proposal is its assertion that there has been a practice to pay time and one half when unit employees work on certain enumerated holidays.

b. The City's Position.

In its Closing Brief, the City indicated that the Panel should make no change to the pay for working on a holiday. It provided no rationale for its position.

c. The Panel's Opinion.

The Panel has reviewed the record and can find no evidence to justify converting the alleged past practice into a benefit provided by this Award. The fire fighters unit represented by the IAFF does not have such language in its collective bargaining agreement with the City. It is the Panel's conclusion that whatever past practice has existed, if any, should continue. There is no proven need, at this juncture, to include any language on this subject in our Award. This proposal will be denied.

3. Shift Differential. (Art. V, Section 1C - Association Proposal #4)

a. The Association's Position.

In this proposal, the Association seeks to amend Article V, Compensation, Section 1C. (Shift Differential). The modification would provide shift differential pay, at the rate of 2.5% of base pay, to employees assigned to the afternoon or 3 p.m. to 11 p.m. shift and 3% to employees assigned to the midnight or 11 p.m. to 7 a.m. shift. At present employees are paid \$.50 per hour for said shifts. The Association contends that paying a shift differential in like circumstances is commonplace. In Canandaigua, officers are paid an 8% shift differential. Dunkirk pays police officers 75 cents per hour for working the afternoon shift and one dollar per hour for working the midnight shift. Cortland pays \$1.80 per hour and \$1.85 per hour. A Geneva police officer is paid 4% of base pay for working the afternoon shift, 5% base pay for working 8 p.m. to 4 a.m. shift, and

6% for working the 11 p.m. to 7 a.m. shift. Olean provides no shift differential. Other communities cited by the Association were not deemed to be comparable by this Panel.

b. The City's Position.

In its Closing Brief, the City indicated that the Panel should make no change to the shift differential language. It provided no rationale for its position. Presumably it objects to any proposal that would increase its labor costs.

c. The Panel's Opinion.

Based upon the statutory criteria discussed previously herein, the Panel finds that a modest increase in the shift differential, from \$.50 to \$.75 per hour, is just and reasonable. Of the comparable and somewhat comparable communities relied upon by the Panel, shift differential pay in amounts or percentages greater than in Batavia can be found in Canandaigua (8% of normal compensation), Dunkirk (additional 75 cents and additional \$1.00 depending upon shift), Geneva (4% to 6% of base salary depending upon shift), Cortland (\$1.80 to \$1.85 per hour depending upon shift), and Oswego (and additional \$.50 or \$.75 per hour depending on shift).¹³

The cost of awarding on this proposal is relatively minor, as reflected in U. 1, p. 22 and is within the City's ability to pay.

4. Training Stipend - Special assignments (Art. V - Association Proposal #5).

a. The Association's Position.

The Association has proposed that ERT team members, Field Training Officers and the Self Defense Instructors, Firearms Instructors, and Police Instructors receive a "minor payment or stipend" for the work they perform in those roles. Presently, only Field Training Officers and

¹³Olean does not provide a shift differential. No data was provided for Ithaca.

instructors in development school receive an additional \$.50 per hour while actually teaching or training. The payment or stipend is warranted since Dunkirk pays a \$625 stipend and a "technician allowance" to 13 officers who perform as range officers, identification officers, DARE officers, etc. Geneva provides a \$15 per day stipend for officers assigned as field training officers. None of the other comparable communities pay a stipend.

b. The City's Position.

The City contends that no change is necessary. There is no evidence to suggest that it is having any difficulty filling these positions. Virtually none of the comparable communities provide such a stipend. Detective Crossett conceded that these positions are viewed as "prestigious;" that officers already receive additional compensation for their duties; and he knew of no officer who was refusing to perform his duties because he believed he was not being fairly compensated (11/14/2008 T. 93-96).

c. The Panel's Opinion.

The Panel finds no basis or justification for awarding the modification proposed by the Association.

5. Change in Dental Insurance for retirees on or after April 1, 2005. (Art. XIII - Association #6)

a. The Association's Position.

The Association has proposed that the dental language coverage in Article XIII be changed in significant respects, and that, effective April 1, 2005, Association unit members who retire from service would continue to receive health insurance coverage until Medicare eligible. The Association concedes that this proposal was not discussed at the interest arbitration hearing. However, it contends that it is something that could be discussed during the Panel's Executive

Session. The Association has asked the Panel to note that the City's fire fighter retirees receive fully paid health insurance until they are Medicare eligible (U. 1, p. 17 and Panel Ex. 8).

b. The City's Position.

In its Closing Brief, the City indicated that the Panel should make no change to the dental insurance language, presumably because of its contention that it lacks the ability to pay for it. However, its Closing Brief provided no rationale for its position.

c. The Panel's Opinion.

The Association provided the Panel with no evidence to establish why the proposed dental and retiree language should be added to the parties' relationship, except for its belated reference to the IAFF contract. The Panel believes the City's financial condition is insufficient to require it to provide this costly benefit, which by its nature would remain in effect beyond the two years of this Award. Therefore, the Panel will award that the Association's proposal be denied.

6. Coverage under Section 384(e) supplement coverage. (Art. XII - Association #7)

a. The Association's Position.

The Association contends that the Panel should award that members presently enrolled in the New York State Police and Fire Retirement System's Section 384(d) plan who are not currently covered under the Section 384(e) supplement, be provided such coverage (Association Ex. 1, p. 21, Panel Ex. 7, Art. XII, p. 18). Of the communities that the Panel has found to be comparable, only Dunkirk has done so.

b. The City's Position.

The City urges the Panel to deny this proposal, asserting that the proposal is a prohibited subject, presumably because it seeks an award for retirees who are no longer members of the

bargaining unit represented by the Association as of March 31, 2005.

c. The Panel's Opinion.

The Panel has not been persuaded that it has the authority to award on this subject. Although the 2005-2007 Dunkirk collective bargaining agreement for its police department does provide "Effective January 1, 1994, the CITY shall make available to members of the ASSOCIATION the retirement plan described in Section 384-e of the Retirement and Social Security Law," there is no evidence in the record explaining how, when, or why that provision was added to the collective bargaining relationship in that municipality. The Panel will award that the Association's proposal be denied.

7. Pay or Compensatory Time for Weekend On-call. (Art. V, Section 1D - Association #8)

a. The Association's Position.

Finally, the Association has proposed that a Detective Sergeant, Detective and/or Juvenile Detective receive eight hours pay or eight hours of compensatory time for each weekend they are on call. Such provision would be in addition to the 24 hours of compensatory time each person serving in said title presently receives for being on weekend on-call. Six employees would be affected by this proposal.

The Association contends that this modification is needed to adequately compensate said individuals for the inconvenience of having to either be at home, or in close proximity to home, to immediately respond to the scene on an on call weekend. It notes that Canandaigua does not have an on-call provision in its contract. The Association then suggests that this could mean that no employee actually serves on an on-call basis. It makes a similar claim with respect to Dunkirk. Others of the Panel's comparable or somewhat comparable communities such as Geneva and

Oswego do not have on-call provisions in their collective bargaining agreements either. Cortland detectives do serve on-call and are paid \$41.50 per on-call day. Since being on call seriously limits one's off-duty activities, the on call pay for Detective Sergeant, Detective and/or Juvenile Detective should be increased by providing them the additional eight hours of pay or compensatory time for each weekend they are on-call.

b. The City's Position.

The City contends simply that there should be no change in the on-call pay language. However, its Closing Brief provided no rationale for its position. The Panel does not know whether the City seriously opposes this proposal, or whether it believes it is encompassed in its overall claim that it lacks the ability to provide for most of the wage increases and other economic benefits sought by the Association in this proceeding.

c. The Panel's Opinion.

The Panel has reviewed the contracts made available to it for most of the comparable or somewhat comparable communities. Canandaigua's collective bargaining agreement contains no provision for on call work or pay. Dunkirk's collective bargaining agreement has "recall" language, but not on call requirements or pay. Olean's collective bargaining agreement has a "call-back" pay provision, but no language regarding on call duty or pay. Geneva's collective bargaining agreement for its Police Officers Unit also has a call back pay provision but no provision for on call status or pay. Its collective bargaining agreement for its Command Officers unit contains no language on either call-backs or on call duty or pay. In Cortland, the contract contains a provision for "on-call duty" pay. Effective January 1, 2005, when an officer is subject to recall when there is no Detective Bureau/Youth Division officer on duty and one becomes necessary, the on-call officer is entitled to

\$41.50 per on-call day and those days can be accumulated and exchanged. Oswego has two contracts - one for its Police Officers unit and one for its Captains unit. The Police Officer contract contains no on call language. Nor does its Captains unit contract. The Panel had no data or contract for Ithaca.

The Panel has concluded that the current record contains some evidence that a few of the comparable communities provide an on call pay benefit, such evidence is vague, incomplete, subject to various speculative conclusions and, in the end, not persuasive. Police Officers in Batavia presently receive an on call benefit. The Panel is not persuaded that an improvement in such benefit is justified and will award that such proposal be denied.

B. City's Proposals.

1. Vacation and Sick Leave. Time off requests for single day vacations, compensatory time and holidays (Art. IX 13. - City Proposal #1).

a. The City's Position.

The City seeks to amend Article IX, Section 13. by requiring that requests for these types of time off days be submitted at least thirty (30) days prior to the date requested. It has provided no rationale or evidence to justify this proposal.

b. The Association's Position.

The Association responded that, unless there is proof of some compelling reason for the change, the request should be denied by the Panel.

c. The Panel's Opinion.

The City's Closing Brief provides no rationale for this proposal. Nor does the record. In the absence of proof that employees have been abusing these benefits, or that scheduling around these absences has become problematic, the Panel sees no basis for making this proposal a part of its

Award.

2. Accumulation of compensatory time (Art. V 3.a. - City Proposal #3).

a. The City's Position.

The City has proposed reducing the maximum number of compensatory hours an employee can accumulate from 150 down to 40 hours. It contends that other comparable communities proposed by the City limit the accumulation of compensatory time (e.g., Olean - 80 hours; Oswego - 60 hours; Geneva - doesn't address carryover; Corning and Gloversville).

b. The Association's Position.

The City's proposal is incomplete, at best, since it completely ignores the reference in Article V, Section 1 C., and inferred from Section 1 D, to the right of employees to accumulate up to a maximum of 150 hours of compensatory time. Granting the City's proposal would simply make it more difficult for an officer or command officer to receive compensatory time beyond that stated in Article V, Section 1 C. and 1 D., thereby compounding the existing problem of getting time off.

c. The Panel's Opinion.

The City's Closing Brief provides no rationale for this proposal. Nor does the record. Its Closing Brief closes with the statement, "No change is warranted." The Panel is unable to reconcile that statement at this time. In the absence of proof that employees have been abusing these benefits, or of the existence of some compelling reason to limit the accumulation of compensatory time, the Panel sees no basis for making this proposal a part of its Award.

3. Limitation on use of personal leave days and deposits into compensatory leave bank (Art. IX, Section 12A. - City Proposal #4).

a. The City's Position.

The City has provided no rationale or evidence to support this proposed change. The

proposal would allow unit employees to use only one, rather than all, of the four provided personal leave days, regardless of staffing, with a two-hour minimum notice. It would also add language to Article IX, 12A. allowing members to deposit personal leave balances into the member deferred compensation account, or the member's retiree health savings account, so long as certain notice and other procedures are followed.

b. The Association's Position.

The Association opposes this item because Batavia police generally work more hours per year, particularly officers with more years of service, than some of the communities it believes are comparable (i.e., Canandaigua, Dunkirk, Fredonia and LeRoy). Since the City has allowed positions in the Police Department to remain vacant, police officers should not be penalized from taking personal leave days they have earned. Officers in the above communities enjoy working fewer hours or get more personal leave time than do officers in Batavia.

c. The Panel's Opinion.

The City's Closing Brief contains no justification or references to evidence that would support the Panel adopting this proposed change. A comparison of the personal leave provisions in the contracts of comparable or somewhat comparable communities reveals that Canandaigua officers can take three (3) personal leave days without restriction (Art. X); in Dunkirk, officers receive four (4) personal leave days per year which they can use with very little limitation or restriction (Art. 10); in Olean, there is no leave designated as "personal" although employees are entitled to one day leave without loss of pay and with the Chief's permission (Article 11.1.6); in Geneva, police officers receive four (4) personal days with pay with only minor limitations or restrictions on use (Art. 10.4); also in Geneva, its command officers receive five (5) personal days per year with pay with little or

no restriction (Art. X); in Cortland officers are entitled to up to two (2) personal leave days with pay, subject only to getting the Chief's approval at least seven (7) days in advance (Art. VI); and in Oswego, both the Captains unit and the police officer unit receive up to three (3) personal leave days with pay on 48 hours advance notice and for taking care of "family affairs" (Art. 21). The Panel has not been persuaded that a reduction in the City police unit's personal leave benefit is warranted. The proposal will be denied.

4. *In lieu of medical insurance payment* (Art. XIII 3. - City Proposal #5).

a. The City's Position.

The City has proposed that the *in lieu of* payment provision of Article XIII 3. be modified to provide a fluctuating *in lieu of* medical insurance payment. The amount of each year's payment would be according to a proposed schedule that ranges from a \$2,000 per year payment to a \$5,500 per year payment. The amount of the payment would vary depending upon how many unit employees opt out of the City-provided health insurance plan. The change would save the City money while providing more money to employees who can obtain insurance through their spouses. Only Olean and Oswego provide a more generous benefit.

b. The Association's Position.

The Association does not oppose increasing the amount of the *in lieu of* payments. It is opposed to City Proposal #6 which seeks to change the health insurance provisions of the collective bargaining agreement.

c. The Panel's Opinion.

The *in lieu of* proposal by the City presents a win-win situation for the City and unit members. The panel will incorporate the proposal into its Award. As discussed below, no change

in the other health insurance language will be granted in the Panel's Award.

5. Replacement of health and dental insurance with City's Healthcare Plan (Art. XIII - City Proposal #6)

a. The City's Position.

The City's proposal would replace the health and dental insurance provisions found in Article XIII with a comprehensive plan detailed in Panel Ex. 3, City Proposal #6. Under the new plan, retirees' coverage would remain unchanged, but current employees would receive health insurance coverage *similar* to that currently offered to the City's other bargaining units. City Manager Molino testified in some detail about the fact that employees in the other City bargaining units, as well as non-union employees, have been paying a much higher deductible and have been subject to a greater maximum out-of-pocket cost, as compared to the Association's bargaining unit (City Ex. 2, Tab 11 and 2/7/2009 T. 66-67). The CSEA and AFSCME units have eliminated the cap amount of money. Now the premium equivalent is based on 5% of the premium equivalent or one and one-half times base pay. Eliminating that cap increased the costs of healthcare. The IAFF has a wellness plan and doesn't make a contribution and that is why their deductible is significantly higher than any other unit (\$1000 individual and \$2000 family). The non-union employees now have a 10% contribution of premium equivalent requirement as of the 2008-2009 fiscal year. Yet the Association-represented employees continued to pay zero dollars contribution, except for employees hired after 2000 (2/7/2009 T. 68-69).

For fiscal years 2002 to 2003, 2000 32 2004, the firefighters unit, through an arbitration award, was essentially giving retirees healthcare coverage to the age of 65. That benefit was negotiated out of the current agreement with the IAFF (2/7/2009 T. 69). Fighter fighters now have returned to having the ability to cash in their sick leave accruals at retirement, or to use those credits

to purchase a healthcare benefit (City Ex. 2, Tab 12 and 2/7/2009 T. 69). The City has checked with its healthcare consultant and has been advised that no one could match the City's self-insured plan's premium (2/7/2009 T. 99-100).

b. The Association's Position.

The Association opposes this proposal on several grounds. First, the Panel only has the authority to issue an Award that covers the period April 1, 2005 to March 31, 2007. It has no authority to direct a retroactive implementation of healthcare coverage, since healthcare coverage has already been provided to the bargaining unit's members. Moreover the premiums for said contributions have already been paid. Further, the Panel lacks the authority to direct the implementation of the City's health insurance proposal prospectively, since the aforementioned time period for which the Panel can issue an award has long ago passed.

Imposing a new health insurance plan for the period April 1, 2005 to March 31, 2007 would be unfair and impractical, since the services have already been provided and the City has paid for those past procedures. The City would have no right to proceed against individual employees to collect monies that might be due if the proposed plan is considered to have been in effect. Nor has the City proposed reimbursing officers for any contributions toward healthcare coverage they may have made during the aforementioned time period.

An additional reason for rejecting the City's proposal is that granting it would be unfair to Association unit members. A comparison of the various major medical deductibles and prescription drug co-pay provisions in the proposed plan, with the plan the City provides for the IAFF, CSEA and AFSCME units, shows a marked difference between what Association unit members would pay and what other City employees pay. The Association notes other major problems and missing details

about the proposed plan at pages 40-41 of its post-hearing Memorandum.

c. The Panel's Opinion.

It is fair to conclude that it is highly unlikely the cost of continuing to provide health insurance coverage will decrease under the country's current healthcare and health insurance systems. The Panel understands the reluctance of the Association to *open the door* to shared responsibility for health insurance in the future. Although there appear to be many beneficial provisions in the proposed plan, many aspects of the plan and many of its details apparently had not been provided to the Association, or have not been discussed to any degree during negotiations between the parties.

The Panel is not convinced that it has the authority to include the City-proposed health and dental insurance plan in its Award. Since this Award deals with years that have already passed, it would be unfair and unjust to impose a retroactive cost on said employees. Moreover, without a detailed analysis of the current health insurance benefits enjoyed by the Association's unit members as compared to that provided by the City's proposed plan, the Panel might be imposing a considerable financial burden on the Association's unit employees, no matter how beneficial it might be to the City's fiscal condition, for coverage that is may not be equivalent to what they enjoy now.

A review of the health insurance programs in place in the various comparable, and somewhat comparable communities does not support the City's proposal.

A meaningful discussion of the details of the plan, including the providing of source documents for all aspects of the plan, is much more appropriate. That process can take place, should the parties choose, during the next round of bargaining. Therefore, the Panel will deny this proposal.

6. Reduction in per annum sick leave credits that can be earned (Art. IX - City Proposal #7).

a. The City's Position.

The City's proposal would amend certain subsections of Article IX, Vacation and Sick Leave. It would first limit unit members' ability to earn sick leave with pay. The current formula of 1 1/4 days earned per month of service (15 days per year) would change to 12 days of sick leave credited to the employee each April 1st. The sick leave could not be carried over to the next year and already accumulated sick days would be frozen at their April 1, 2007 level. The employee would be entitled to either deposit the value of accumulated sick leave into a *retiree health savings account*, or into an *eligible deferred compensation account*. The employees would have the ability to annually convert available sick leave to cash for increasing amounts for days 1-12, 13-50, 51-100 and 101-250. Finally, the proposal adds to subsection (d), the option of a deposit of the cash value of redeemed sick days into a retiree health saving account.

The City's rationale for this proposal is apparently tied to its attempts to further improve its financial health, although its Closing Brief contains no argument or asserted justification for such proposal.

b. The Association's Position.

The Association opposes this proposal for several reasons. First, it points out that the City has given no reason for why the number of sick days earned each year should be reduced from 15 to 12. It has not claimed abuse by unit employees. Second, the suggestion to allow unit employees to deposit the value of unused sick leave into a retiree health savings account, or into an eligible deferred compensation account, will not make up for the loss of 3 sick days while the employee is an active employee; will shift the cost of retiree health insurance to the retiree, and is unlike the sick

leave provisions among the comparable communities.

c. The Panel's Opinion.

The Panel has carefully considered this proposal in light of the provisions found in the contracts of the Panel's comparable communities available to it. Thus, the same or similar language appear in the contracts of the comparable or somewhat comparable communities utilized by our Panel. In Canandaigua, employees accumulate 12 paid sick leave days per year and are allowed to accumulate up to 175 sick leave days (Art. IX 5.). Dunkirk officers earn 15 sick leave days per year and can accumulate them. There is also a sick leave incentive provision (Art. 11). In Olean, the patrol unit earns 15 sick leave days per year and can accumulate up to 180 unused credits (Art. 10). In Geneva, the command officers unit contains a detailed sick leave and sick leave incentive plan, as well as a sick leave bank program (Art. X). Geneva's police officer unit, on the other hand, has sick leave language under which an officer earns 4 hours of paid sick leave for every two weeks of work (i.e., 13 days per year) and can accumulate and eventually cash out up to 260 unused sick leave days. The contract also contains a sick leave incentive plan (Art. 10). Cortland's contract provides police officers with 18 paid days of sick leave per year with no cap on how many sick leave days or hours the employee can accumulate (Art. VI, 5.). Oswego's Captains unit and police officers unit contracts provides for 12 paid sick days each year which can be accumulated and either sold back to the city, or cashed out at retirement (Art. 22 and Art. 21, respectively). Nor does the City's own IAFF unit contain the provisions the City seeks to have imposed on the police unit.

Given the way in which comparable communities have provided for, and administered sick leave, coupled with the lack of any persuasive argument or evidence from the City as to why the major change it has proposed should be granted, the Panel must deny the proposal.

7. Clothing (Uniform) Allowance (Art. V 4. - City Proposal #8).

a. The City's Position.

Article V presently provides police officers with an annual uniform purchase and maintenance allowance of \$700, payable in the last paycheck in the month of April. It also provides that each employee covered by the agreement is eligible for \$300 of reimbursable expenses related to the purchase of uniform items so long as receipts are provided. By this proposal, the City would decrease the annual uniform purchase and maintenance allowance to \$500, and increase to \$500 the amount of reimbursable expenses covered employees would be entitled to for the purchase of uniform items only. Its Closing Brief provides no justification for this modification.

b. The Association's Position.

Since the City has provided no justification for this modification, it should not be granted.

c. The Panel's Opinion.

The Panel has reviewed the comparable data and found that many of the communities found to be comparable, or somewhat comparable to Batavia, provide a better uniform or clothing benefit. Thus, though their provisions vary widely from each other regarding how they approach the issue of uniform and equipment purchases and maintenance, the benefits provided to police in contracts in Canandaigua, Dunkirk, Olean, Geneva Command Officers, Geneva Police Officers, and Cortland are superior to those provided for by the City. Thus, an increase in the present level of one portion of the uniform allowance benefit, offset by a reduction in its other component, is simply not justifiable based on the present record. The proposal will be denied by the Panel.

**NEW YORK STATE
PUBLIC EMPLOYMENT RELATIONS BOARD**

In the Matter of the Compulsory Arbitration

- Between -

CITY OF BATAVIA, NEW YORK

-and-

BATAVIA POLICE BENEVOLENT ASSOCIATION

AWARD

The Panel, having duly considered the arguments and proofs submitted by the parties, renders the following Award:

1. Duration of Agreement.

Article XXX, Section 1 of the expired agreement is to be deleted and replaced with the following:

“This contract shall become effective as of April 1, 2005 and shall terminate on March 31, 2007.”

2. Wage Increases. (Association Proposal #1; City Proposal #2)

For the reasons expressed in the accompanying Opinion, the Panel awards that wage provisions of the prior agreement be modified to include the following wage increases and effective dates:

1.00% - Effective April 1, 2005;

2.00% - Effective April 1, 2006

3. Pay for working on holidays. (Association Proposal 3)

The Panel finds no justification for awarding on this proposal. The proposal is denied.

4. Shift Differential. (Association Proposal #4)

Shift differential will be increased from \$.50 to \$.75 per hour, retroactive to April 1, 2005.

5. Training Stipend - Special assignments (Art. V - Association Proposal #5)

The Panel finds no justification for awarding on this proposal. The proposal is denied.

6. Change in Dental Insurance for retirees on or after April 1, 2005. (Association #6)

The Panel awards that the Association's proposal is denied.

7. Pay or Compensatory Time for Weekend On-call. (Association #8)

The Panel is not persuaded that an improvement in such benefit is justified. The proposal is denied.

8. Vacation and Sick Leave. Time off requests for single day vacations, compensatory time and holidays (Art. IX 13. - City Proposal #1).

The Panel is not persuaded that such proposed change is justified. The proposal is denied.

9. Accumulation of compensatory time (Art. V 3.a. - City Proposal #3).

The Panel is not persuaded that such proposed change is justified. The proposal is denied.

10. Limitation on use of personal leave days and deposits into compensatory leave bank (Art. IX, Section 12A. - City Proposal #4).

The Panel is not persuaded that such proposed change is justified. The proposal is

denied.

11. In lieu of medical insurance payment (City Proposal #5).

Article XIII will be amended to provide the following *in lieu of* benefit:

3. The City will pay the following annually to each Bargaining Unit employee whose spouse has medical insurance, and the employee is covered by said plan, with any carrier through his/her job if the City employee voluntarily waives his/her right to City paid medical insurance. This program shall be administered to conform to the City's In-Lieu Payment Plan for Medical Insurance. The annual payment will be made in two equal payments of during the months of June and December. (For example if PBA has 5 members voluntarily waiving his/her right to City paid medical insurance they shall receive an in-lieu of payment of \$3,000.00. If the next year PBA has 4 members voluntarily waiving his/her right to City paid medical insurance they shall receive an in-lieu of payment of \$2,300.00. If the next year PBA has 6 members voluntarily waiving his/her right to City paid medical insurance they shall receive an in-lieu of payment of \$3,500.00.) The in-lieu of payment shall fluctuate in accordance with the number of employees voluntarily waiving his/her right to City paid medical insurance.

# of employees	In-Lieu-of payment
1	\$2,000.00
2	\$2,100.00
3	\$2,200.00
4	\$2,300.00
5	\$3,000.00
6	\$3,500.00
7	\$4,000.00
8	\$4,500.00
9	\$5,000.00
10&up	\$5,500.00

12. Replacement of health and dental insurance with City's Healthcare Plan (Art. XIII - City Proposal #6).

For the reasons discussed in the accompanying Opinion at pp. 43-44, this proposal is denied.

13. Reduction in per annum sick leave credits that can be earned (Art. IX - City Proposal #7).

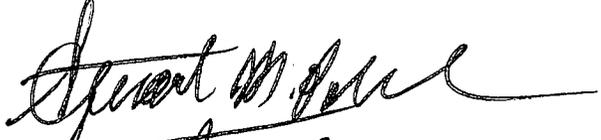
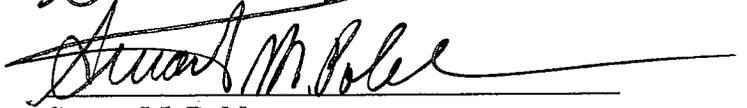
For the reasons discussed in the accompanying Opinion at pp. 43-44, this proposal

is denied.

14. Clothing (Uniform) Allowance (Art. V - City Proposal #8).

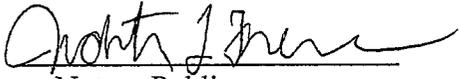
The Panel is not persuaded that such proposed change is justified. The proposal is denied.

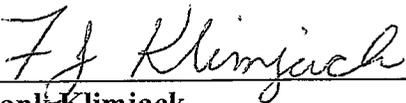
Date: June 29, 2007



Stuart M. Pohl
Panel Chair

STATE OF NEW YORK)
COUNTY OF ERIE) SS:
City OF AMHERST)

On this 29th day of June, 2007, before me, the subscriber, a Notary Public of the State of New York, personally came and appeared **Stuart M. Pohl**, to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged that he executed the same which is the Panel's Opinion and Award.


Notary Public
Judith L. Freese
Notary Public, State of New York
County of Genesee
Commission Expires 8/4/2012
Notary # 01FR6191140


Frank Klimjack
Employee Organization Panel Member

STATE OF NEW YORK)
COUNTY OF GENESEE) SS:
CITY OF BATAVIA)

On this 29th day of June, 2009, before me, the subscriber, a Notary Public of the State of New York, personally came and appeared **Frank Klimjack**, to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged that he executed the same which is the Panel's Opinion and Award.


Notary Public
Judith L. Freese
Notary Public, State of New York
County of Genesee
My Commission Expires 8/4/2012
Notary # 01FR6191140


Mary Louise Conrow
Public Employer Member

STATE OF NEW YORK)
COUNTY OF BROOME) SS:
CITY OF BINGHAMTON)

On this 29th day of June, 2009, before me, the subscriber, a Notary Public of the State of New York, personally came and appeared **Mary Louise Conrow**, to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged that he executed the same which is the Panel's Opinion and Award.


Notary Public

Judith L. Freese
Notary Public, State of New York
County of Genesee
My Commission Expires 8/4/2012
Notary # 01FR6191140