

NY PUBLIC EMPLOYMENT RELATIONS BOARD  
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STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of the Interest Arbitration

between

**Niagara Falls Police Captains' and  
Lieutenants' Association**

and

**City of Niagara Falls**

PERB Case No: IA2009-012; M2008-227

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\* **CONCILIATION**

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OPINION

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AND

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AWARD

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Before:

Ronald E. Kowalski, Ph.D.  
Arbitrator

Richard J. Rotella, Esq.  
Public Employer Panel Member

Lt. William M. Thomson  
Public Employee Organization Panel Member

**APPEARANCES**

**For the Public Employer**  
Christopher M. Mazur, Esq.

**For the Public Employee Organization**  
Anthony J. DeMarie, Esq.

## **INTRODUCTION**

On August 14, 2009 the New York State Public Employment Relations Board (hereinafter "PERB") having determined that a dispute continued to exist in negotiations between the City of Niagara Falls (hereinafter "City") and the Niagara Falls Captains' and Lieutenants' Association (hereinafter "Union"), and acting under the authority vested in it under Section 209.4 of the Civil Service Law, designated the above-listed Public Arbitration Panel for the purpose of making a just and reasonable determination of the dispute.

On December 14, 2009 a hearing was held in the City of Niagara Falls in Niagara County, New York. Representatives appeared before the Panel, which received exhibits, contracts, demonstrative evidence and testimony. After submission of all supporting evidence, the parties agreed the hearing was closed and briefs were submitted to the Panel in January, 2010. The Panel met in Executive Session on March 15, 2010 and held subsequent discussions on the outstanding issues resulting in this Award.

## **THE STATUTORY STRUCTURE**

Subdivision 4 of Section 209 of the Civil Service Law was enacted to provide a means for resolving negotiation impasses between public employers in New York State and police and firefighters, as defined in the statute. Subdivision 4 provides that, when PERB determines that an impasse exists, it shall appoint a mediator to assist the parties to effect a voluntary resolution of the dispute. If the mediator is unsuccessful within a stated period, either party may petition PERB to refer the dispute to a Public Arbitration Panel.

Section 205.4 of PERB's Rules and Regulations promulgated to implement Subdivision 4 of Section 209 requires that a petition requesting referral to a Panel contain:

- (3) A statement of each of the terms and conditions of employment raised during negotiations, as follows:
  - (i) terms and conditions of employment that have been agreed upon;
  - (ii) petitioner's position regarding terms and conditions of employment not agreed upon.

The response to the petition must also contain respondent's position specifying the terms and conditions of employment that were

resolved by agreement and, as to those that were not agreed upon, respondent shall set forth its position.

The Public Arbitration Panel shall then hold hearing on all matters related to the dispute and all matters presented to the Panel shall be decided by a majority vote of the members of the Panel.

The Panel is directed to make a just and reasonable determination of the matters in dispute. The statute spells out the following criteria, which must be taken into consideration, when relevant:

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 qualification;
- (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.

The Panel's determination is final and binding upon the parties for the period prescribed by the Panel.

### **BACKGROUND FACTS**

A Collective Bargaining Agreement existed between the parties from January 1, 1994 through December 31, 1996; terms and conditions of this agreement were extended and modified through December 31, 1999 by an Interest Arbitration Panel award dated July 15, 1998. Later, the parties agreed to a written "Memorandum of Agreement" which covered the period of January 1, 2000 to December 31, 2003. The terms and conditions of the agreement were once again extended and modified through December 31, 2007 by an Interest Arbitration Panel Award dated October 2, 2007. The parties

are and have been without an agreement since the expiration of that Award.

Representatives of the parties met in an attempt to reach a negotiated agreement with respect to the terms and conditions of employment. The parties met on August 25, 2008, September 3, 2008, September 8, 2008, January 12, 2009, January 26, 2009 and February 27, 2009.

The parties did not reach an agreement and the Union filed a Declaration of Impasse. The New York State Public Employment Relations Board appointed a mediator and mediation meetings were conducted April 20, 2009 and May 29, 2009. The parties were, however, unable to reach an agreement and, subsequently, the Union filed for compulsory interest arbitration on or about June 29, 2009.

Pursuant to the provisions of Civil Service Law Section 209.4 the New York State Public Employment Relations Board ("PERB") designated the undersigned on August 14, 2009 as the Public Arbitration Panel for purposes of making a just and reasonable determination on the matters in dispute between the City of Niagara Falls and Niagara Falls Police Captains' and Lieutenants' Association.

## ISSUES

In accordance with the provisions of Section 209.4 of the New York Civil Service Law and by mutual agreement, the parties hereto submitted the following issues to the undersigned arbitration panel

- Wages/Longevity
- Shift Differential
- Health Insurance
- Holidays
- Court Pay
- Uniform Allowance
- Education Incentive
- Sick Leave
- Bereavement Leave
- Assignments
- Shift Supervision
- Personal Leave
- New Employees
- Grievance Procedure
- Desk Pay
- Captains Assignment
- Relief Captain
- Hourly Rate
- Work Week

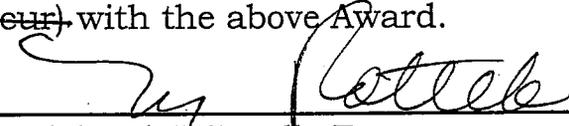
The Panel has carefully weighed the evidence and testimony submitted to it during the hearing and in post-hearing submissions in its determinations. The Panel has attempted to take a balanced approach to the demands, one that recognizes the fiscal considerations of the City and the legitimate concerns of the

members of the Union. The Panel has applied the criteria set forth in the law in assessing the merits of the parties' demands.

**TERM of AWARD**

**The maximum term of the award cannot exceed the statutory two (2) year award restriction. The Panel Award shall be for the two-year period from January 1, 2008 through December 31, 2009.**

I (concur) (~~do not concur~~) with the above Award.

Date: 05/03/2010   
Richard J. Rotella Esq.  
Public Employer Panel Member

I (concur) (~~do not concur~~) with the above Award.

Date: 5/3/2010   
Lt. William M. Thomson  
Public Employee Organization Panel Member

**DISCUSSION AND DETERMINATION OF THE ISSUES**

**Wages/Longevity Pay/Shift Differential**

The Union has proposed wage increases of 5% for each year of the award. The Union argues that salary increases of this size are modest given comparisons with similar employees in comparable

municipalities in the region and New York State. A comparison with such comparable cities including Lockport, North Tonawanda, City of Buffalo, Ithaca and Town of Amherst among others clearly demonstrates that on average officers in this bargaining unit are paid \$9,000 a year less than the average of these cities for comparable ranks. The City's proposed increases of \$500 for each year would thus only create a greater disparity in the future as increases have averaged better than 3% in many of the comparable cities above as noted in the Union's exhibits.

The testimony of Edward J. Fennel, an expert in municipal finances as well as his analysis of the City of Niagara Falls financial statements demonstrate the City has the ability to pay the increases sought by the Union. Supporting the opinion of Mr. Fennel is the fact that the documents show that there is a present budget surplus of more than \$25 million in the City treasury.

The Union also seeks an increase in the current longevity payments and shift differentials. There has been no increase in longevity pay since 1995 and the Union's proposal to increase longevity to \$250 after 15 years, \$350 after 20 years, \$450 after 25 years, and \$550 after 30 years is reasonable given the fact members

of the bargaining unit are among the lowest paid officers in the region. An increase in the shift differential from 50 cents to 65 cents per hour for officers who worked the second and third shift in 2008 and an additional 10 cents per hour for those shifts during 2009 is also proposed as again there has been no change in the 50 cents per hour differential since 1994. An increase is long overdue to bring this compensation in line with other similar units.

The City argues that it has limited financial resources in the current economic conditions and the Union's proposals for pay increases including a 5% base wage increase as well as increases in longevity payments and the shift differential would place an unreasonable burden on its taxpayers.

The City contends that the cities of Troy, Binghamton, Rome and Utica as well as Schenectady should be used as comparables rather than those selected by the Union as they are more comparable in size and face similar economic and inter-city problems as Niagara Falls. While North Tonawanda and Lockport are also comparable in some way and were utilized by the Union they have smaller populations and police departments half the size of Niagara Falls.

Comparisons to these cities unlike those cited earlier by the City are done in a geographical sense only.

When the proper comparisons are made to comparable municipalities the total compensation package of the members of the bargaining unit is seen to be competitive. Wages are not out of line and members of the Union enjoy one of the best health insurance plans in the area. The current cost of the plan is \$18,721 per year and employees have no contribution. The City even in the current economic environment and having limited resources has made no attempt to reduce this benefit. When the value of this benefit is combined with current wages and the generous provisions for such things as holidays, personal days and vacation, the total compensation and benefits package is clearly competitive with comparable municipalities. The City's proposed increases of \$500 in each year are therefore fair and reasonable given these facts and the fiscal problems confronting the City.

The City's continuing dramatic loss of population and its manufacturing base have resulted in a downtrend in revenues from taxes and fees. The City currently receives a large portion of its budget from the State of New York through the Aid and Incentives for

Municipalities program. Those monies are scheduled to decrease next year and given the State's current problems could continue to do so in the future. The City thus can only afford to pay what it has offered to avoid having to place an undue burden on its taxpayers. The same is equally true with respect to the proposed increases in Longevity and the Shift Differential. The shift differential of 50 cents is comparable to other comparable cities. The longevity increase proposed by the Union would cost approximately an additional \$20,000. This money is beyond what is already to be spent on a wage increase and again cannot be justified given current economic conditions.

### **DISCUSSION**

The Panel has carefully reviewed the extensive data submitted on both salary and longevity, as well as the shift differential, and believes there is support in the evidence for a reasonable increase in wages including an improvement in longevities. The current shift differential appears to remain competitive and, hence, money would be better spent on base salary. The Panel is fully aware of the fiscal difficulties facing the City and recognizes that any wage increase

must not place an unfair burden on the City's already burdened taxpayers. However, it is in the best interest of both the City and its taxpayers that members of its police force be fairly compensated for the difficult and often dangerous work they perform on behalf of the public. After looking at comparables in the region and considering other comparables in the State, the Panel believes an increase of 3% per year in each of the two years would at least maintain the current wage levels and ensure they do not fall further behind those of other similar departments in the region. The Panel also believes that longevities which encourage and reward long, dedicated service should be increased. While the Panel does not believe a comparison with other municipalities supports increases of the size sought by the Union some increases at the 15th year and beyond are justified by the data. The Panel would not award any change in the shift differential as it remains competitive. The Panel makes the following award on these issues.

### **AWARD**

#### **Salary (Article 6.01)**

- **3% increase effective January 1, 2008**
- **3% increase effective January 1, 2009**

**Longevities (Article 6.03)**

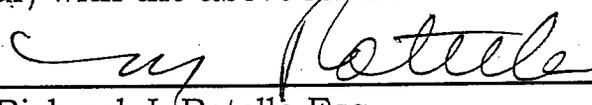
**Increase steps by**

- \$250 at 15 year Step
- \$300 at 20 year Step
- \$350 at 25 year Step
- \$450 at 30 year Step

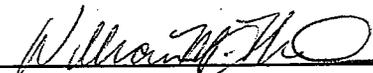
**Shift Differential**

- **No change in existing Shift Differential payment.**

I (concur) (~~do not concur~~) with the above Award.

Date: 05/03/2010   
Richard J. Rotella Esq.  
Public Employer Panel Member

I (concur) (~~do not concur~~) with the above Award.

Date: 5/3/2010   
Lt. William M. Thomson  
Public Employee Organization Panel Member

**Uniform Allowance**

The Union has proposed increases of \$300 for 2008 and \$500 for 2009 in the existing uniform allowance. The Union argues there has been no increase in the uniform allowance since the Miller Award in 1998. Even with the proposed increase which would bring the allowance to \$1,000 in 2008 and \$1,200 in 2009, the monies would be insufficient to supply officers with the required item of uniforms

and equipment. Surrounding similar police departments in the Town of Amherst and City of Buffalo already provide more generous allowances and a number provide the actual uniforms and a maintenance allowance such as West Seneca and North Tonawanda. The increase sought is thus reasonable and long overdue.

The City argues the current \$700 paid to members of the bargaining unit is more than adequate. The demand to increase it to \$1,000 in 2008 and \$1,200 in 2009 would be costly, representing \$20,000 additional dollars over the period covered by this proceeding. This additional cost would place one more burden on a City budget that is already strained by the current economic conditions, diminishing revenues and potential losses in State aid. The City believes the demand is not reasonable given the circumstances and should be denied by the Panel.

### **DISCUSSION**

The Panel has reviewed the comparative data on the issue of the proper level for uniform allowance. There has been no increase in the uniform allowance since 1998 while costs have risen substantially for the purchase of such uniforms and equipment. A study of

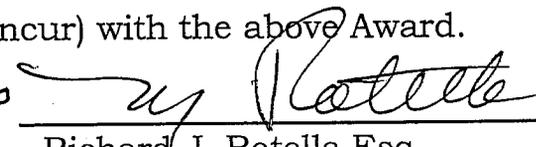
comparable municipalities indicates that an increase to \$1,000 for 2008 and to \$1,200 for 2009 would be appropriate given the cost of such uniforms and equipment as well as the allowances paid in other municipalities. The Panel would award the following increases based on the above review.

### **AWARD**

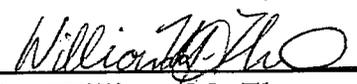
#### **Uniform Allowance (Article 6.12)**

- **Increase to \$1,000 (2008)**
- **Increase to \$1,200 (2009)**

I (~~concur~~) (do not concur) with the above Award.

Date: 05/03/2010   
Richard J. Rotella Esq.  
Public Employer Panel Member

I (concur) (~~do not concur~~) with the above Award.

Date: 5/3/2010   
Lt. William M. Thomson  
Public Employee Organization Panel Member

#### **Holidays**

The Union has proposed that Election Day be added to the authorized annual holidays and that the language in Subsection 9.01.4 of Article 9 be deleted and replaced with provisions that would provide that officers would be allowed to use or redeem unused

holidays anytime during the year. The Union argues Election Day is a traditional holiday and should be added to the list. The Union also argues its members should have greater flexibility in utilizing holidays given their work schedules.

The City is opposed to the addition of any new holidays as they represent added costs to an already strained City budget. The current holidays are comparable to other municipalities in the region. The City also while not opposed to some flexibility in the use of holidays is opposed to language that would allow the officers to redeem or use them without any consideration as to the City's need for that officer's services on the day selected.

### **DISCUSSION**

The Panel has studied the proposals put forth on holidays and believes, while there is some merit to the proposals, the City's concern over costs and the need to be able to supervise the use of holidays, also have merit. The Panel believes there is a balanced approach to both these issues that would address the concerns raised by the parties.

Election Day is a common holiday found in the contracts of a number of municipalities. However, the cost of adding a new, additional holiday at the point given the fiscal condition of the City is not supported by the data. The Panel would therefore award the adding of Election Day and the elimination of the Birthday holiday as Election Day is a more appropriate holiday. The Panel also believes some additional flexibility in the use of holidays is appropriate but with oversight and consideration given to the need of officers' availability for duty. The Panel would therefore eliminate the current language in Article 9.01.4 but replace with language that would allow for the use of a holiday anytime of the year as long as it received prior approval by the Superintendent of Police.

#### **AWARD**

##### **Holiday (Article 9.01)**

- **Add Election Day holiday and eliminate Birthday Holiday**

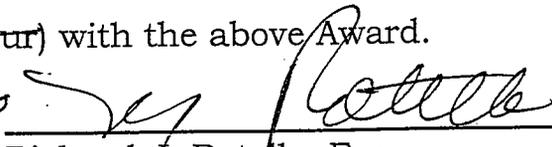
**(Article 9.01.4)**

- **Delete language in this section and replace with the following:**

**“Any bargaining unit member may use a holiday any time of the year with prior approval by the Superintendent of Police or his/her designee.”**

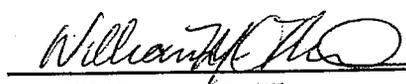
I (concur) (~~do not concur~~) with the above Award.

Date: 05/03/2010

  
Richard J. Rotella, Esq.  
Public Employer Panel Member

I (concur) (~~do not concur~~) with the above Award.

Date: 5/3/2010

  
Lt. William M. Thomson  
Public Employee Organization Panel Member

### **Health Insurance**

The Union and the City have both sought some changes to the current provisions governing health insurance. The Union has proposed extending health insurance to the surviving spouse and dependent children of officers who die while still employed by the City without cost to the spouse or children. The Union believes it is unfair to place the burden of health insurance costs on the widows and children of officers who have served the City and die while still employed at the City.

The City is opposed to such an extension as it would once again add to the escalating health insurance costs that are already placing strains on the City budget. The City instead is seeking to at least have new employees contribute by way of premiums and higher co-

pays to relieve this growing burden. It would maintain the benefits of existing employees but cannot afford to enhance them given the costs set out in the data.

### **DISCUSSION**

The Panel has spent considerable time reviewing the proposals on health insurance and is of the opinion that added benefits as proposed by the Union, even though well intentioned, cannot be justified in the current economic environment. Health insurance premiums continue to escalate and the monies are needed to just maintain current benefits. As concerns the City's proposal with respect to new employees, the Panel would leave substantial changes to the parties' future negotiations as these matters are tied to total compensation and are best resolved in negotiations.

However, the Panel does believe that any new member of the bargaining unit coming from another City bargaining unit where he or she was previously required to pay a co-pay for his/her health insurance premium should be required to continue to pay the co-pay regardless of the provisions for other employees in the unit. This

provision would not deprive the new employee of any benefits but would limit the additional costs to the City.

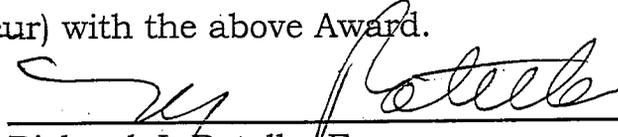
### AWARD

#### Health Insurance (Article 12.1)

**Any new member of the bargaining unit previously required in another City unit to pay co-pay for his/her health insurance premium will be required to continue to pay said co-pay for the same. Any prior section that is in conflict with this provision is null and void with respect to said co-pay.**

I (concur) (~~do not concur~~) with the above Award.

Date: 05/03/2010

  
Richard J. Rotella, Esq.  
Public Employer Panel Member

I (~~concur~~) (do not concur) with the above Award.

Date: 5/3/2010

  
Lt. William M. Thomson  
Public Employee Organization Panel Member

#### Bereavement Leave

The Union and the City have had detailed discussions over the current provisions in Article 9.12 governing bereavement leave. The Panel believes there is a general agreement that the language should be altered to clarify the current practice with respect to the number

and types of days granted for such leave. The language should read that an officer will be excused from duty for such bereavement leave to a maximum of four (4) work days which would provide greater clarity.

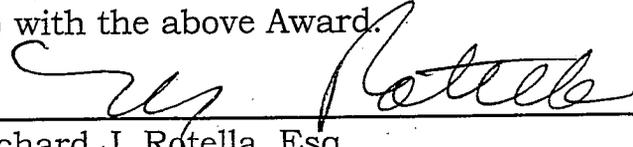
### **AWARD**

#### **Bereavement Leave (Article 9.12)**

**- Amend the existing language in the provision to state that an officer will be excused from duty "to a maximum of four (4) work days."**

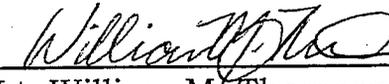
I (concur) (~~do not concur~~) with the above Award.

Date: 05/03/2010

  
Richard J. Rotella, Esq.  
Public Employer Panel Member

I (concur) (~~do not concur~~) with the above Award.

Date: 5/3/2010

  
Lt. William M. Thomson  
Public Employee Organization Panel Member

#### **New Employees**

The City has proposed the inclusion of a new provision which would address the benefit levels of employees hired after the date of this Award. The City has proposed that such employee be entitled to the following benefits:

- Vacation. After ten (10) years of service or 520 weeks of service vacation shall be capped at four weeks.

- Sick Leave shall be credited at one-half day per full month with a maximum accumulation of ninety (90) days. All unused sick days up to the maximum will be bought back at 20% of their value at retirement or termination of employment.

- All unused sick days up to maximum allowed to be bought back at 20% of their value at retirement or termination of employment.

- There will be no Personal Leave for new employees.

The City believes these changes are necessary to improve the long-term fiscal condition of the City given rising costs.

The Union is opposed to any such changes in benefit levels for new employees. The Union believes such employees are not now represented by the bargaining unit and it cannot negotiate for them. Such changes in benefit levels would also represent a major loss of benefits by future members of the unit and make their already poor compensation package even less competitive with respect to other comparable departments in the region.

## DISCUSSION

The Panel has carefully evaluated the proposed changes in benefits for new employees sought by the City and believes that these matters are best left to future negotiations between the parties. Changes in benefit levels are usually made as part of a larger settlement of a total compensation package in which changes may be made in components of that package such as wages, or the type and features of a health plan in return for such concessions in benefit levels. There is a balancing of interests necessary that are possible in this case in an award and is therefore best left to the parties' future negotiations.

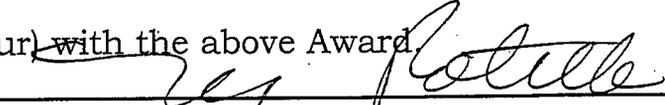
## AWARD

### Employees Benefits

**The Panel would not award the benefit level changes sought for new employees by the City.**

I (~~concur~~) (do not concur) with the above Award.

Date: 05/03/2010

  
Richard J. Rotella, Esq.  
Public Employer Panel Member

I (concur) (~~do not concur~~) with the above Award.

Date: 5/3/2010

\_\_\_\_\_  
Lt. William M. Thomson  
Public Employee Organization Panel Member

**Other Issues**

The City and the Union have also proposed changes or additions to other existing provisions of the Collective Bargaining Agreement. Given the protracted nature of the negotiations and the length of these proceedings lasting as they have beyond the second year of the Award, the Panel believes these issues are best left to the future negotiations of a subsequent contract. The Panel would therefore deny these proposals and awards no changes in these areas in the Collective Bargaining Agreement.

Respectfully submitted,

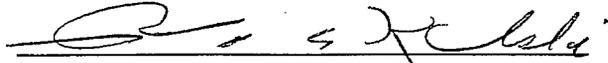
April 29, 2010  
Date

Ronald E. Kowalski  
Ronald E. Kowalski, Ph.D.  
Public Panel Member and Chairman

State of New York            )  
  ) SS:  
County of Onondaga        )

I, Ronald E. Kowalski, Ph.D., do hereby affirm upon my oath as Arbitrator that I am the individual described herein and who executed this Instrument which is an Interest Arbitration Award.

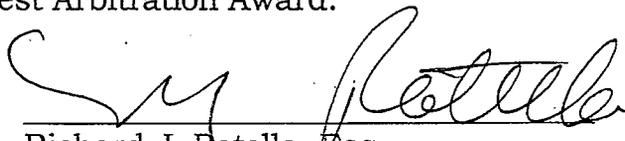
April 29, 2010  
Date

  
Ronald E. Kowalski, Ph.D.  
Public Panel Member and Chairman

State of New York            )  
  ) SS:  
County of Niagara            )

I, Richard J. Rotella, Esq., do hereby affirm upon my oath as Arbitrator that I am the individual described herein and who executed this Instrument which is an Interest Arbitration Award.

05/03/2010  
Date

  
Richard J. Rotella, Esq.  
Public Employer Panel Member

State of New York            )  
  ) SS:  
County of Niagara            )

I, Lt. William M. Thomson, do hereby affirm upon my oath as Arbitrator that I am the individual described herein and who executed this Instrument which is an Interest Arbitration Award.

5/3/2010  
Date

  
Lt. William M. Thomson  
Public Employee Organization Panel Member