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STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of Compulsory Interest Arbitration Between:

ALBANY PERMANENT PROFESSIONAL FIREFIGHTERS  
ASSOCIATIONS, LOCAL 2007, LOCAL 2007-A, I.A.F.F.,  
AFL-CIO

CONCILIATION

PERB Case No.  
IA2013-014  
M2012-289

-And-

THE CITY OF ALBANY, NEW YORK

**OPINION & AWARD**

For the Period of  
January 1, 2012 through December 31, 2013

**BEFORE:**

Dennis J. Campagna, Esq.  
Public Panel Member & Chairman

James W. Roemer, Jr., Esq.  
Public Employer Panel Member

John M. Crotty, Esq.  
Employee Organization Panel Member

**APPEARANCES**

A. For the Employer City of Albany:

Roemer Wallens Gold & Mineaux, LLP  
Elayne G. Gold, Esq.

B. For IAFF Locals 2007 & 2007-A

Law offices of Thomas J. Jordan, Esq.  
Thomas J. Jordan, Esq.

## **BACKGROUND**

Pursuant to the provisions outlined in Section 209.4 of the Civil Service Law, the undersigned Panel was designated by the Chairperson of the New York State Public Employment Relations Board ("PERB") to make a just and reasonable determination of a dispute between the City of Albany, New York, ("City") and the Albany Permanent Professional Firefighters' Association, Locals 2007, representing Firefighters, Lieutenants and Captains, and Local 2007-A, representing Battalion Chiefs, of the International Association of Firefighters. (Collectively "Association").

The City is New York State's Capital City and was chartered in 1686 making it the second oldest City in the United States. It is the largest municipality in the Capital District, covers approximately 40 square miles, and enjoys a diverse population of approximately 98,000. The daytime population of Albany is estimated at approximately 160,000 during regular workdays.

Albany sits on the Hudson River, which runs from the north to the south, to New York City. The Port of Albany which sits on the Hudson River is a major trade port. Several major interstate roads run through the City, the I-90 and I-87 and the City is contiguous to the Albany International Airport located in the Town of Colonie.

The City's Fire Department operates on a 24/7 basis and consists of approximately 241 sworn members as follows: Chief (1), Executive Deputy Chief (Currently Unfilled), Deputy Chief (3), Battalion Chiefs (3), Captains (18), Lieutenants (49) and Firefighters (164). Job descriptions for each position is in evidence as Union Exhibit 4.

Firefighters work 24-hour shifts, meaning that they work 24 consecutive hours and are then off duty for 72 consecutive hours before reporting for their next 24-hour shift. The Department consists of four (4) platoons: A, B, C and D. The record reflects that approximately 70-80% of the Department's calls are for emergency medical services, followed by traditional type fire suppression calls followed by a small percentage of calls dealing with water rescue, HAZMAT and confined space calls. (See TR 1-58)

The last collective bargaining agreement between the City and the Association covered the period January 1, 2010 through December 31, 2011. Subsequently, the parties commenced negotiations toward a successor agreement in June 2012 without success. As a result, impasse was declared and a Mediator appointed by PERB that was likewise unable to achieve closure. Accordingly, on or about May 20, 2013, the Association filed a Petition for Compulsory Interest Arbitration to which the City responded on or about June 3, 2013. Pursuant to the procedures set forth in Section 209, the Undersigned was appointed as the Chairperson of the Panel convened to resolve the instant impasse. John M. Crotty, Esq. was designated as the Association's Representative on the Panel, and the City designated James W. Roemer, Jr., Esq. as its Panel representative. Subsequently, the instant Arbitration hearing occurred over the consecutive two day period of May 28<sup>th</sup> and 29<sup>th</sup>, 2014. A stenographic record was taken at the hearings pursuant to N.Y. Civ. Serv. Law § 209.5, which record shall serve as the official record. Each witness was sworn, and the parties submitted numerous exhibits and documentation. At the conclusion of the hearings, both parties hereto elected to summarize their positions with a written brief, filed electronically with the Panel on or about August 15, 2014. Thereinafter, the Panel fully reviewed all data, evidence, arguments and issues submitted by the Parties. Following meaningful discussion and deliberations at multiple executive sessions, the Panel reached consensus on the terms of a two-year Award covering the two year period of January 1, 2012 through December 31, 2013.

The positions initially taken by the Parties are extensively set forth in their respective petition and response, testimony, exhibits and post-hearing briefs, all of which are incorporated by reference in this Award. These positions will be summarized for the purpose of this Opinion and Award. Accordingly, set out herein is the majority Panel's Award as to what constitutes a just and reasonable determination of the issues submitted by the Parties for the two-year period of January 1, 2012 through December 31, 2013.

In arriving at such determination, the Panel has specifically reviewed and considered all of the following statutory criteria as set forth in N.Y. Civ. Serv. Law, § 209.4:

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

**THE OUTSTANDING ISSUES FOR RESOLUTION BY THIS PANEL**

The current and unresolved issues for resolution by this Panel are summarized as follows:

<b>ISSUE</b>	<b>CITY PROPOSAL</b>	<b>ASSOCIATION PROPOSAL</b>
<b>Duration</b>	2 Years [1/1/12 – 12/31/13]	2 Years [1/1/12 – 12/31/13]
<b>Salary Increases</b>	Freeze each of 2 years	4% per year each of 2 years
<b>Comparables</b>	Cities of Rochester, Syracuse, Utica, Schenectady & Troy	Cities of Rochester, Syracuse, Utica, Schenectady & Troy
<b>Health Insurance Plans</b>	Change in employee contribution [10% (I) & 25% (F) New Hires only] and update language to mirror Police Agreement with the City with respect to Plans. Change Rx to a three-tier plan similar to other bargaining units. [City Proposals 6 & 6A]	Status Quo
<b>Retiree Health Insurance</b>	Status Quo (Leave as a City Policy not in the CBA)	Association Proposal 23 – Memorialize the current City Policy in the CBA.
<b>EMT/Para Stipends</b>	Status Quo	Association Proposal 28 – Increase EMT & Para Stipends by \$500.

<b>ISSUE</b>	<b>CITY PROPOSAL</b>	<b>ASSOCIATION PROPOSAL</b>
<b>Paramedic Rig Incentive</b>	Status Quo	Association Proposal 9 - \$1.00 per hour increase
<b>Paramedic Longevity</b>	Status Quo	Association Proposal 11 – New section granting longevity stipend for all Paras per para years of service.
<b>Rescue Squad Stipend</b>	Status Quo	Association Proposal 22 – [New] Amend Articles 40 & 42 to reflect \$1500 stipend for membership on squad.
<b>Rescue Squad Selection by Strict Seniority</b>	Status Quo	Association Proposal 24 – Amend Articles 40 & 42 to reflect.
<b>Promotion in Rank for Rescue Squad</b>	Status Quo	Association Proposal 35 – Amend Article 30.7 – new language prohibiting adverse employment action re: bidding for those on Rescue Squad
<b>Eliminate Top Grade Requirement for Rescue Squad Members</b>	Status Quo	Association Proposal 37 – Amend Articles 40 & 42 to eliminate top grade requirement and change to 5 years of service.
<b>Inverse Incentive</b>	Status Quo	Association Proposal 32 – Daily stipend of \$1/hour if inversed out of bid position
<b>Tactical Medical Clause</b>	Status Quo	Association Proposal 12 – New language regarding safety equipment, training and compensation.
<b>Overtime Eligibility</b>	Status Quo	Association Proposal 10 – Amend Article 3.5: member not eligible for OT on last day worked before a vacation
<b>Missed OT Opportunity</b>	City Proposal 3 – Amend 3.5.10 re: missed OT – delete “old grievance remedy.”	Status Quo
<b>Missed OT Opportunity</b>	City Proposal 13 – Amend Article 3.5.7 re: missed OT – member to receive next available 12 hr. OT bock and receive a “no count”.	Status Quo
<b>Use of Comp Time on Christmas Eve &amp; Day</b>	Status Quo	Association Proposal 25 – Amend Article 3.2.1 (FF) & 3.2.2 (Battalion Chiefs) 10 members off on Comp Time for both Christmas Eve & Day
<b>Vacation day of Battalion Chiefs not counted toward number of members off per shift</b>		Association Proposal 15 – Amend Article 12.1
<b>Number of Personnel off on Vacation</b>	City Proposal 5 – Amend Article 12.1 to reduce employees off on vac 12 to 8	Status Quo

ISSUE	CITY PROPOSAL	ASSOCIATION PROPOSAL
<b>Sick Leave Bank Deletion</b>	City Proposal 9 – Amend Article 31 delete sick leave bank & replace with yearly sick leave accrual and use procedure	Status Quo
<b>Notification of Change in work Schedule (Battalion Chiefs)</b>	City Proposal 14 – Amend 8.10.1 Battalion CBA notice of change 14 days prior & changes in work shifts require permission of Chief or designee	Status Quo
<b>Delete Rotating Panel of Arbitrators</b>	City Proposal 15 – replace with Rules/Regs of PERB	Status Quo

**CRITERIA 1 – COMPARABILITY**

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

**Positon of the Parties & Determination on Comparability:**

The Association and the City have agreed on the listing of comparables. In a manner consistent with the 1989 Interest Arbitration Award chaired by John E. Sands between these same parties, and again in the January 2012 Interest Arbitration Award chaired by Jay Siegel, both Panel Chairs Sands and Siegel determined that the following Cities were appropriate as the Comparables for Albany: Rochester, Syracuse, Utica, Schenectady and Troy. As discussed in greater detail below, these are the comparables Association witness and Economist Kevin Decker used for his presentation on the City’s ability to pay.

Accordingly, the Cities of Rochester, Syracuse, Utica, Schenectady and Troy will be used as the listing of comparable communities for the purpose of this Award.

## CRITERIA 2 – ABILITY TO PAY

### A. The Association's Position

In a nut-shell, it is the Association's position that the City has the ability to pay for its monetary proposals. In this regard, the Association produced Kevin Decker of Decker Economics as its expert witness on the issue of City Economics. Mr. Decker offered the following relevant points:

- The City's fiscal year extends from January 1<sup>st</sup> to December 31<sup>st</sup>.
- Of the three governmental funds operated by the City, the General Fund is the largest. In 2013, the City spent approximately \$193 million and the General Fund expenditures constituted \$168.4 million or 87% of the 2013 expenditures. Firefighters (as well as other employees within the City) are compensated out of the General Fund.
- Personal services and employee benefits are the two largest expenditures out of the General Fund, accounting for about 74% of General Fund spending. Of this, about 55% is for Public Safety expenditures or which the Albany Police Department spends \$54 million and the City's Fire Department spends \$32.7 million.
- The City's revenue sources for 2013 were comprised primarily of Real Property Tax (32%), Sales and Use Tax (18%) and Payment in Lieu of Taxes (15.6%).
- On average between 2009 and 2014 the City purposes tax [levies] have gone up by just over one percent. That's the number in italics at the bottom of Column 2. In comparison, the rate of inflation for this period was around two percent. So the City has kept its tax levy increase... nearly a full percentage point under the rate of inflation.
- The City receives 100% of its tax levy. There's no issue of uncollected taxes. The collections are guaranteed by the County, and then... in terms of thinking about the split between homestead [residential] and non-homestead [business], approximately 65 percent of the property is homestead property.
- With respect to the tax burden of an average single family homeowner for 2014, the tax bill for an average home assessed at about \$154,100 is, including school, city, county and library tax, \$4,957.05. Approximately one-third of that amount is attributable to City

taxes; only 19.4% of the City taxes goes to the fire department, so only 6.2% of the homeowners' tax bill is attributable to the Fire Department (i.e. 84¢ per day)

- Over the last three year period, commencing December 31, 2011, the average Albany Taxpayer's City bill has increased by \$ 16.64 for an annual average increase of 1.08% representing about 0.02% of the average family income.
- Regarding the City's use of the State's constitutional debt limit from 2009-2014, "the City is not close to it. They've been under 40% for this entire period . . . currently at around 37.5% . . . an available margin of over 59 million dollars."
- With regard to Sales Tax, the City receives 32.17% of the 40% total sales tax receipts received by Albany County. Stats show that the City's Sales Tax revenues have increased to a point where for 2013 the City received approximately \$ 31 million and for 2014, the City is expected to receive about \$ 31.9 million in Sales Tax revenues.
- For 2014, the City maintains an unrestricted fund balance of approximately \$ 15.3 million. These funds can be spent in most any manner the City sees fit. For the period 2008-2013, the City's total fund balance has been about 12% – 15% of expenditures, with the unrestricted fund balances running between 9% – 12% of expenditures. The Association notes that this is significant given that Moody's recommends a minimum of unrestricted fund balance of 5% and the Government Finance Officers Association is recommending 15%. Accordingly, the Association notes that the City's fund balance is not indicative of any immediate fiscal problems, particularly since the City has had operating surpluses for three of the last five years. This means that while the City appropriated \$ 9.8 million for 2014, it is more likely than not that the City will not spend all of those monies.
- With respect to the Comptroller's Fiscal Stress Monitoring System, Mr. Decker's most updated information noted that the City's score was 35.4%; Scores between 0 and 45 percent, receive a "no designation" to the municipality's fiscal stress which is the lowest fiscal stress designation. (T-Vol.2-77-78). Mr. Decker explained that scores of 45%-55% receive a "susceptible to fiscal stress" designation, scores of 55%-65% get a "moderate fiscal stress" designation, and over 65% is designated "significant fiscal stress". (T-Vol.2-78). With regard to viewing the City as a fiscally eligible community, Mr. Decker noted: "There are two criteria that are looked at for municipalities in the state. There is a

fund balance criteria. If your average fund balance over the last five years is less than 5%... (Albany obviously did not qualify under that criteria) [Secondly] if your average full value tax rate is in the top 25 percent that also puts you on the list (Albany is on the list because of this)." (T-Vol.2-80)

- With regard to the impact of the Association's wage proposal on the average taxpayer, the Union notes that the salary driven pay for the Association is approximately \$16.5 million for 2012 and \$16.9 million for 2013. Assuming a 2.5% pay increase, and assuming further that such pay increase is funded totally through an increase in real property taxes, the average homeowner's taxes would increase by \$ 15.70 per year.
- Next, the Union notes that the City's general obligation bonds are rated at "double A minus" by Standard and Poor's – meaning that the City's bonds are of high-grade, high-quality and this rating is the fourth highest on Standard and Poor's scale of 22 ratings.
- Next, the Association notes that the Albany Police Officers Union settled on terms covering January 1, 2010 through December 31, 2013. The PBA bargaining unit received salary increases of two percent for January 1<sup>st</sup>, 2010, two percent for January 1<sup>st</sup>, 2011, three percent effective January 1<sup>st</sup>, 2012, and two and a half percent effective January 1<sup>st</sup>, 2013. The agreement with this bargaining unit was reached in November 2012. Those first three raises of two percent, two percent and three percent were full retro. The two years applicable in the instant matter reflect a three percent and the two and a half percent that the police were awarded in 2012 and 2013. (T-Vol.2-85)
- Next, in comparing relevant demographic and socioeconomic indicators for the comparables, Mr. Decker summarized and emphasized the importance of the information contained in this exhibit: "...when you look at Albany's demographics, none of these places stack up to Albany." (T-Vol.2-91) Albany is first or second in every indicator examined by Mr. Decker in this exhibit: (1) population increase, (2) median family income, (3) lowest percentage of families in poverty, (4) lowest unemployment rate, (5) percentage of adult population with Associate's Degree or higher, (6) median value of owner-occupied housing, (7) per capita taxable value (Albany has the highest value despite all the tax exempt property in the City, (8) use of state constitutional tax limit and (9) S+P rating. (T-Vol.2-93-94)

- Finally, the Union, with the assistance of Mr. Decker, concluded: "I think that the City does have an ability to pay a reasonable increase, and by reasonable increase I think something along the lines of what was negotiated with the police union would be considered reasonable in this case." (T-Vol.2-95-96)

#### B. The City's Position

As its initial point, the City notes that the Albany Police Officers' Union (consisting of rank and file police officers), negotiated a 2% in fiscal year 2010 and a 2% in fiscal year 2011, together with health insurance changes, including an agreement that all newly hired police officers will make substantial health insurance contributions for the life of their career. Prior to that time all Police employees contributed toward health insurance until eight years of service; thereafter, the City fully funded the health insurance benefit. In fiscal year 2012, the police negotiated a 3% wage adjustment followed by a 2.5% increase in 2013 in exchange for major concessions on Health Insurance. It is the City's position that the current fiscal climate cannot support the extension of such wage adjustments to the Firefighters. This conclusion is supported by the extensive testimony of Budget Director Alam, together with the Exhibits she presented to the Panel. The main points supporting this City argument are as follows:

- Albany is New York State's capital City and as so, has the burden of lost tax revenue due to the high percentage of tax exempt property, mostly State owned, within its borders. Beginning at the end of 2009 and into 2010, the City of Albany experienced "serious financial challenges due to lower than anticipated State Aid (or AIM) payments, lower sales tax revenue and higher employee pension contributions."
- Starting in 2009 and moving forward to the present time, there continues to be a loss in the State revenue/AIM funds to the City of Albany. In addition, State pension costs and health insurance costs continue to rise. The City receives far less in per capita State Aid than other comparable cities [as compensation] for all of its tax exempt State owned property.

- Currently, 57% of all property." in the City is tax-exempt; 80% of all commercial property is tax-exempt. Since 2009, the City's commercial tax base has declined by 13.3% and our overall tax base is down 7%.
- The City's reaction to these serious and pressing fiscal issues included a change to retiree health Medical Advantage requirements; a reduction in the workforce; cutting operational expenses and provided no wage increases over an extended period to its non-union workforce. The City also was able to successfully negotiate, with two non-public safety unions, wage freezes for 2010 and 2011; it successfully negotiated health insurance changes with not only two blue collar units, but with its largest union - the Albany Police Officers' Union, a Union that also enjoys the benefits of interest arbitration under New York's Taylor Law.
- In a 2010 "Analysis of the Fiscal Impact of State Government Policies and Tax-Exempt Properties," the Public Financial Management Group conducted a management audit of the City of Albany. This Analysis, entitled "Capital Punishment" noted that while the City was an efficiently run municipality and had made significant strides toward prudent financial management in the last 16 years, the City faces substantial financial hurdles that are mostly outside of its immediate control. At the heart of Albany's anemic revenue profile is its role as the seat of State and County government, as well as the host for the State University of New York (SUNY) Central Administration and a major research campus of SUNY. As a result, nearly two thirds of the value of Albany's real property is exempt from taxation.
- While the State has recognized the plight of its upstate urban centers and created the AIM program to assist them, Albany receives only a fraction of AIM per capita funding of other major upstate cities.
- In February 2014, Mayor Kathy Sheehan noted that the City of Albany meets the statutorily established criteria of a "fiscally eligible municipality" - with expenditures outpacing City budgeted and available revenues. As a result, the City is seeking for the Financial Restructuring Board to make recommendations (as it is charged to do) for "reforming and restructuring City operations."
- Of all its neighbors and comparable jurisdictions, Albany remains one of the highest taxing entities to the point of relying on its fund balance to bridge its budget deficits.

These factors continue to impact the City even today. In this regard, Ismat Alam, the City's Budget Director testified to the City's past, present and forecasted economic situation. Ms. Alam testified that even without any consideration for wage adjustments (not only for Fire personnel, but City wide), the City faces a "deficit [of] over \$21 Million".

- Retirement System costs for the Fire unit have increased 4150.5% from 2000-2014 while City Health Insurance payments rose 64.91% over approximately the same time period. City wide from 2004-2013 Retirement System costs jumped 28%, while City wide Health Insurance over the same time period jumped 27%. From 2010-2014 the City experienced a level provision of and a greater use and tapping into the rainy day/Contingency Fund. In fact, only \$445,585.00 was budgeted for contingency in fiscal 2014. By the time of the instant Interest Arbitration, the City had "already used \$349,390.00 ... because of the [contract] settlement in 2012 [paid in 2014] for the Non-Sworn [Police Civilian Unit]. ... we have less than \$100,000.00 left right now ... we haven't even started June yet".
- From 2010-2014 the City experienced a 13.3% decline in commercial property development. In the years from 2010-2014 the City raised Homestead (residential) property taxes by 11 %, and Non-homestead (commercial) property taxes by 13.0%. Among the established "comparable communities" the City of Albany stands slightly behind the City of Schenectady with the highest level of taxation.
- As noted in Mayor Sheehan's Memorandum to the Common Council, "The City is running out of Fund Balance to cover its deficit ... the gap between spending and revenue continues to grow" and the Mayor predicts that "Albany's Fund Balance is projected to fall below 5% of operating expenses at the end of 2014." To address the situation and as Albany is a "fiscally eligible municipality" the City has submitted its condition for State Financial Restructuring/Board review. The economic conditions of New York State's Capital City are not sustainable.

Accordingly, and based on the foregoing, the City maintains that it simply cannot afford an Award designed around the Association's demands.

## **DISCUSSION – ABILITY TO PAY**

While Albany's financial picture is not all doom and gloom, the fact remains that Albany faces many financial challenges: rising costs of employee benefits, all but a stagnant State Aid, high costs for fuel and utilities to name a few. These challenges are compounded by the fact that the cost of serving as the State's Capital, the County seat, and the region's largest city has resulted in a high percentage of tax exempt property, mostly State owned. In this regard, currently, 57% of all City property is tax-exempt, and 80% of the City's commercial property is tax-exempt leaving Albany's homeowners and a short list of private sector businesses to shoulder the burden of providing services to both residents and the more than 70,000 commuters who enter the City each work day.

Albany's most immediate and pressing challenges are a structural budget deficit estimated at between \$11 and \$18 million that has been overcome each year by band-aide measures such as spin-ups of 19A payments from the State, selling off space in the City's landfill, and spending down the City's fund balance.

As noted above, Albany's financial future is not all doom and gloom since the City can capitalize on some inherent assets and opportunities. For example, because of Albany's location and stature, the academic and health sectors located within the City, and a relatively stable employment picture all provide a basis to encourage more investment in the City. In addition, the record reflects that since the end of 2011, there has been a slight increase in the Taxpayer's City bill over the last three year period, amounting to approximately \$16.64 or 1.08% annual increase.

In addition to those positive factors noted above, the record reflects that the City's sales tax revenue has increased steadily since the 2009-10 recession years, resulting in just under \$31 million in 2013, exceeding pre-recession levels. The projection for 2014 is approximately \$31.9 million in sales tax revenues. Adding to Albany's positive and stable financial picture is an approximate \$15.3 million unrestricted fund balance and a general obligation Standard and Poor's bond rating of double A minus. This rating reflects a stable outlook and confidence in the

City's future. Indeed, the City is to be commended on its outstanding job of managing its resources through difficult times to a point where it has emerged in decent financial health.

Given the foregoing, while it is clear that the City does not have the ability to pay for the sum total of the Association's economic proposals, a majority of the Panel finds and concludes that on balance, the City has the ability to pay for the wage increases provided in this Award, particularly given the Panel's determination on health insurance changes, contributions, and the retroactive effect of the wage increases awarded as discussed in detail below.

### **CRITERIA 3 – THE INTERESTS AND WELFARE OF THE PUBLIC**

#### **A. The Association's Position**

It is the Union's position that the City and its residents benefit from having a professional, well-trained Fire Department. Moreover, there is no dispute that the work of the City's Fire and Police Departments encompasses tasks that are inherently dangerous and thus require the best of equipment and training. Therefore, the Union notes, in order to maintain the Albany Fire Department at its highest level, it is important to provide a salary and benefit packages that retains and attracts current employees and qualified candidates for future positions. It is therefore the Panel's task to issue a determination that accomplishes this important task.

#### **B. The City's Position**

While the City agrees with the Union's contentions, the City advises that the product of this Award will have a definite impact on the citizens and taxpayers of the City as well as its economic future. Thus, the City notes that while it is not "destitute" from an economic standpoint, the City struggles with day-to-day responsibilities of increasing costs, mostly associated with Health Care and Pension costs for its employees, costs over which, to date, it has had little control. Thus, when considering the City's economic forecast, which as of this date, is not a bright one, the City urges the panel to exercise its power and authority with great care and caution when fashioning its Award.

## **DISCUSSION – THE INTERESTS AND WELFARE OF THE PUBLIC**

Given the Panel's review of the Statutory Criteria regarding this topic, we are inclined to agree with the position of both parties in that it is our task to fashion an Award that maintains the terms and conditions of both bargaining units at a competitive level, in line with the Albany Police Department's agreement with the Albany Police Officer's Union ("APOU"), but yet achieves the delicate balance of providing an Award which the City can afford. As a result, in achieving this balance, the Panel will reject a number of proposals from both sides as it deals with the task of fashioning an Award that provides decent, yet affordable salary increases, and addresses the City's interests in reining in, to the most reasonable extent possible, soaring Health Care costs.

## **CRITERIA 4 – COMPARISON OF PECULIARITIES OF THE F.F. PROFESSION**

The Panel has carefully considered the Statutory Criteria regarding the comparison of the Firefighting profession with other trades and professions, including specifically, (1) the hazards of employment, (2) physical qualifications; (3) educational qualifications; (4) mental qualifications, and (5) job training and skills. It is the Union's position that the Firefighting profession is a unique one such that aside from a comparison with the day-to-day inherent risks of the Police Department, with whom the Albany Firefighters work on a regular basis, there are no other comparisons.

The Panel does recognize that appropriate weight must be given to the particularly hazardous nature of the work performed by the Albany Firefighters and is mindful of the unique training, skills and pressures that Firefighters face each and every day – this Panel understands and appreciates the inherently dangerous nature of this profession as well as the impact of this profession on a Firefighter's quality of life and life span.

## THE PROPOSALS BEFORE THIS PANEL

### I. WAGE INCREASES

#### A. The Association's Position on Wage Increases

In its proposal, the Association seeks a 4% increase in salary to take effect on January 1, 2013, and another 4% to take effect on January 1, 2014<sup>1</sup>. The Association justifies its proposal by noting the following:

- First, the Association notes that its workload has significantly increased over the last five year period;
- Second, workload comparisons with other Fire Districts comparable to Albany demonstrate that Albany Firefighters represent the median, and therefore respond to more calls than does Schenectady, Troy and Utica, but less than Rochester and Syracuse.
- Third, the Association notes that Albany's emergency medical service ("EMS") calls have been consistently increasing to a point where, aside from Syracuse, Association bargaining unit members currently respond to more EMS calls than do any of its comparable Fire Districts;
- Albany's Labor Market Firefighters who compete for the same goods and services as Albany does received increases of between 2% and 4% for the two years at issue in this Interest Arbitration, and finally,
- The Association maintains that the City has the ability to pay for its requested increases in salary particularly given the fact that the City negotiated and agreed upon salary increases of 3% for 2012 and 2.5% for 2013 for its other Public Safety bargaining unit, the Albany Police Officer's Union.

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<sup>1</sup> Not 6% as noted by the City.

## B. The City's Position on Wage Increases

It is the City's position that the salary increase sought by the Association are not realistic given today's economic climate. The City relies on the following to justify its position:

First, the City maintains that one must look at the "real" cost for the top grade (5 years of service) Firefighter, since this is where the majority of the bargaining unit fall. Here, the City notes that while the base wage is \$59,155, the average annual wage when adding in overtime, holiday pay, contractual stipends, health insurance and so forth results in a annual payment for the Top Grade Firefighter of approximately \$119,536, twice the base wage rate for this grade.

Next, the City notes that its Firefighters do well being the second highest paid among all comparables. Moreover, the City adds, in 2012 and 2013, a time when most of the comparable communities saw either a wage freeze or stalled negotiations, only the City of Schenectady was able to negotiate a 4% wage adjustment. Given the City's declining revenues and increasing expenses, the City is doing what it must to ensure its future which means holding the line with the participation of all its employees. Thus, to pay any kind of "reasonable increase" would result in the City's projected budget deficit for 2015 of \$21 million.

## II. HEALTH INSURANCE

### A. The City's Position on Health Insurance [City Proposals 6 & 6A]

City Proposal 6 and 6A seek to amend both the Firefighter and Battalion Chiefs CBAs to revise the health insurance plan options, modify the concept of employee contribution and overall update the contractual language. The City offers the following in support of its proposal.

First, the City notes that has not singled out the Firefighters in its proposal to modify and modernize the Health Insurance provisions. In this regard, the City notes that it has made a City-wide effort to move away from the Empire Blue Cross Wrap Around and the Empire Blue Cross Extended plans to plans that are more up-to-date in terms of provisions of benefits and options,

while at the same time attempting to rein-in spiraling health insurance costs<sup>2</sup>. There plans were designed specifically for the City of Albany years ago and currently do not exist outside of the City. Currently, the City is self-insured and works with a Third Party Administrator to assist with plan operations.

Second, the City notes that it was successful in negotiating a modification to its provision of health insurance with the Albany Police Officers Union (“APOU”), a unit consisting of 279 Police Officers and Detectives. In this regard, the City notes that the APOU agreed to the elimination of the Blue Cross Extended and wrap-around plan options and enrollment in the Blue Cross PPO Plan or the CDPHP plan. In addition, the APOU agreed that new hires would contribute toward their health insurance premiums for the duration of their career at a rate of 10% for Individual and 25% for Family coverage. Other negotiated changes include a tiered prescription drug component (a move away from a flat \$7 fee for all drugs) and updates to provisions of benefits. In addition to successful negotiations with the APOU, the City notes that other Unions also agreed to these changes including the AFSCME Blue Collar Unit, the Operating Engineers, and the City’s non-Union personnel. All toll, the City notes that these modifications resulted in savings amounting to approximately \$200K each year.

B. The Association’s Position on Health Insurance [Association Proposal 23]

In its proposal, the Association seeks to codify current practices by the City which provide health insurance to its retirees at no cost to the retiree with the inclusion of the following language in the CBA:

Members who retire after 12/31/11 will receive health insurance during retirement at no cost and with coverage and benefits equal to or better than those employed on their last day of employment.

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<sup>2</sup> As of 2014, the City notes that the Family Premium cost \$1,775.99 per month, and the Individual Coverage cost \$763.45 per month. In addition, Bargaining Unit employees contribute toward their health insurance premium for their first seven years of employment at a rate of 10% for Individual coverage and 25% for Family coverage, after which the City pays for 100% of the premium amount. Consistent with the Current City Policy that retirees pay, at the time of their retirement, what they paid as an employee, employees who, at the time of their retirement, paid nothing toward their health insurance enjoy health insurance in retirement with the City paying 100% of the cost.

Currently, there is no language in either CBA that addresses health insurance at Retirement. In this regard, the Association notes that it is nearly alone since all comparable Fire Department provide some type of contractual guarantee regarding health insurance upon retirement. However, the Association stresses the need for such language given the fact that the City has recently proposed imposing a health contribution on its retirees consisting of 10% for Individual Coverage, and 25% for Family Coverage. Such a contribution would have a substantial financial impact on those on a fixed income the Association notes. In addition, while the City currently provides retiree coverage under the Blue Cross/Shield PPO Plan, the Association notes that there is simply no guarantee that the City will continue to do so in the future. Moreover, the Association adds, unit members assumed the job as City Firefighters with the understanding that they would enjoy the benefits of a solid health insurance program throughout their career and into retirement.<sup>3</sup> Indeed, the Association notes, given the day-to-day health and safety dangers to which an Albany Firefighter is subjected, the need for health insurance into retirement is a substantial one.

#### C. The City's Response to Association Proposal 23

The City rejects the notion of including language in the CBA that memorializes what to date has been a City Policy in providing health insurance to its retirees. In this regard, the City notes that none of the CBAs between the City and any of its bargaining units includes such language. Currently, the City notes that with the absence of negotiated contractual language, City employees, once retired, are subject to legislatively imposed changes in the provision of retiree health insurance. While the City understands the desire for any of its employees to know that their health insurance will continue into retirement, the City notes that the issue of Retiree Health Insurance is not a matter that should be addressed by an Interest Arbitration Panel.

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<sup>3</sup> The record shows that currently, there are 132 bargaining unit members who are eligible to retire with 20 or more years of service.

D. The Association's Response to City Proposals 6 & 6A

The Association notes that while it is willing to accept an overall health insurance package that eliminates the Blue Cross Wrap Around and Blue Cross Extended Plans, the proper forum for dealing with this as well as other health insurance issues is a City-wide committee of Council members, City Administrators, and representatives from all City Unions to air concerns and ideas from all sides and fashion a comprehensive health insurance plan to address these important issues. In addressing the City's proposal for a 10%/25% insurance contribution for new hires, the Association labels such proposal as "draconian", particularly since there will be no immediate cost savings, and more importantly, that it will create a "two tiered" bargaining unit, each tier having a different contribution rate, but all employees within each tier performing identical tasks and responsibilities.

**PANEL DISCUSSION ON WAGES AND HEALTH INSURANCE**

In breaking with the traditional separate discussion regarding wages and health insurance, the Panel will deal with them as a "package", since in reality, wages and health insurance issues are inexorably intertwined for changes in one clearly impact the other.

First, with respect to Wages, it is the Panel Majority's conclusion that Association members should enjoy a wage increase no less than that achieved by the APOU. However, mindful of the fact that the APOU enjoyed an immediate implementation of these wage increases, it is the Panel's decision that the implementation of these two wage increases for members of the bargaining units members at issue will begin as of December 31, 2014 for the following reasons:

- The APOU's agreement on health insurance changes became effective at the same time as did their wage increases. Members of the Associations at issue in this proceeding however continued to enjoy the Empire Blue Cross Wrap Around and Empire Blue Cross Extended Plans during the period encompassed by this Award.

- Full retroactivity of these wage increases will be extremely costly to the City (estimated at approximately \$1.7 Million)<sup>4</sup> for which the current budget does not provide.

Next, with respect to Health Insurance, the Panel Majority Conclude as follows:

- First, we agree that the creation of a two-tiered health insurance contribution plan for active employees is not a good idea. Indeed, in a recent interview regarding current negotiations with the United Auto Workers Union, Fiat/Chrysler Corporation President and CEO Sergio Marchionne agreed that the two wage tier system at Chrysler Corporation was not, in retrospect, a good idea and should be eliminated in exchange for a single wage system. Moreover, and as noted by the Association, implementation of the City's proposal for new hires will produce negligible savings for the current future.
- Next, we agree with the Association that exploration of other health insurance models by a joint Labor-Management Committee is a wise idea. Moreover, this joint Labor-Management Committee should be tasked with the discussion of health insurance models for both active members as well as retirees. In this regard, and by way of example, in response to continually escalating health benefit premium costs, Erie One BOCES, located in Western New York, established the NY44 Health Benefits Plan Trust in 2003. The Plan later expanded to employees and eligible retirees not only from Erie 1 BOCES, but also to schools throughout New York State. As it begins its eleventh year of operation, and having achieved self-funded status as of January 2008, the Trust has grown to approximately 14,000 enrollees in 50 participating school districts, BOCES and Community Colleges representing over 177 bargaining units. Throughout this time, the Trust has managed to keep yearly increases in the single digits, well below the "Community" standard. What makes the Trust unique is that the plan, overseen by the New York Insurance Department, is controlled by 10 trustees who are employees of Erie 1 BOCES and represent all participating schools: five appointed by the labor organizations and five appointed by Erie 1 BOCES' administration. Because the Trust is jointly run, both union and management have an equal say in how it operates including

<sup>4</sup> As of December 31, 2011, a 1% increase amounted to approximately \$219,000. Thus, a 3% increase in 2012, compounded by a 2.5% increase in 2013 amounts to approximately \$1.7 Million.





27.3 of the APPFA CBA and APPFA (Battalion Chiefs) CBA shall be modified to read as follows:

27.3 Effective on the date that the City implements the health insurance plans authorized by the Interest Arbitration Award dated \_\_\_\_\_, 2015, the health insurance offerings to bargaining unit members shall be CDPHP (Group #10000479-0004) or the City Empire Blue Cross/Blue Shield PPO Option (Group #997182-020) with the following components:

- a) A utilization review management process shall be instituted with:
  - 1. Pre-Certification component with utilization review;
  - 2. Mandatory second surgical opinion, and
  - 3. Mental health/Substance inpatient utilization review.
- b) There shall be mandatory mail order for custodial/maintenance drugs.
- c) There shall be mandatory generic substitution for prescription drug coverage.
- d) Prescription drug co-pay shall be as follows:
  - BCBS PPO: \$2/\$7/\$20 [Generic/Formulary/Non-formulary]
  - CDCHP: \$5/\$20/\$35 [Generic/Formulary/Non-formulary]
- e) The City will comply with NYS Timothy's Law/Mental Health Parity Act – The Act requires insurers to provide the same level of benefits for mental illness or substance abuse as for other physical disorders and diseases. These benefits include visit limitations, deductibles, copayments and lifetime and annual limits.

  X    
CONCUR

DISSENT

James W. Roemer, Jr.  
JAMES W. ROEMER, Jr., ESQ.  
EMPLOYER PANEL MEMBER

3/30/15  
DATE

CONCUR

  X    
DISSENT

John M. Crotty  
JOHN M. CROTTY, ESQ.  
EMPLOYEE PANEL MEMBER

4/7/15  
DATE

**AWARD ON EMPLOYEE CONTRIBUTION FOR HEALTH INSURANCE**

Upon the Association's receipt of the 60-day written notice by the City to the Association of its intent to replace the Health Insurance programs set forth in Article 27.3 of the 2010-2011 CBAs, Article 27.2 shall be amended to read as follows:

27.2 All bargaining unit members who accept Health Insurance benefits under the health insurance agreements shall pay 10% of the premium cost for such coverage for the duration of their employment with the City.

<u>X</u> CONCUR	<u>DISSENT</u>	<u>James W. Roemer, Jr.</u> JAMES W. ROEMER, Jr., ESQ. EMPLOYER PANEL MEMBER	<u>3/30/15</u> DATE
<u>CONCUR</u>	<u>X</u> DISSENT	<u>John M. Crotty</u> JOHN M. CROTTY, ESQ. EMPLOYEE PANEL MEMBER	<u>4/7/15</u> DATE

**HEALTH INSURANCE FOR RETIREES**

The Association's proposal to include language in the CBA which codifies the City's practice of providing Health Insurance to any Firefighter who retires after December 31, 2011 is rejected. However, with regard to those bargaining unit members who, as of December 31, 2013 were not contributing to their Health Insurance Coverage shall be deemed, under the City Policy/Practice in effect as of the execution of this Award, to be contributing 0% of their health insurance premium<sup>6</sup>.

<u>X</u> CONCUR	<u>DISSENT</u>	<u>James W. Roemer, Jr.</u> JAMES W. ROEMER, Jr., ESQ. EMPLOYER PANEL MEMBER	<u>3/30/15</u> DATE
<u>CONCUR</u>	<u>X</u> DISSENT	<u>John M. Crotty</u> JOHN M. CROTTY, ESQ. EMPLOYEE PANEL MEMBER	<u>4/7/15</u> DATE

<sup>6</sup> It is understood that pursuant to the City's prevailing policy/practice, a retiree shall pay that percentage of the premium amount in retirement as he/she paid while employed in active City status.

### **III – ASSOCIATION PROPOSAL NO. 9 – PARAMETIC RIG INCENTIVE**

#### **A. The Association's Position**

The current CBA does not provide any incentive for working on a Paramedic rig. The Association offered the following as justification for its proposal:

Members of the paramedic companies are required to work harder because their companies are very busy. Members must go through additional training. Members are inversed into the paramedic companies because it is difficult to keep people on the rigs.

(Testimony of Battalion Chief Michael Burns, TR Vol 1 at 97)

The cost of the Association's proposal amounts to \$2080 per person per year with a minimum of 32 unit members, and a maximum of 40.

#### **B. The City's Position**

It is the City's position that this proposal should be rejected by the Panel. In this regard, the City notes that it already provides monies, at various levels, which should serve as the incentive, particularly the yearly stipend set forth in the CBA to any Unit Member who is a Paramedic, an amount of \$2,200 per year. Moreover, the City maintains that this incentive, if granted, is subject to overtime calculations, and all toll, will amount to a very costly proposition. The Department has, on average, 3 to 4 Paramedics inversed to Paramedic Rigs, which would cost approximately \$70,000 per year.

### **DISCUSSION & AWARD ON ASSOCIATION PROPOSAL 9**

Following our careful review of the record, the Panel Majority finds support for the Association's proposal to create some type of incentive for Paramedics. The problem, as we see it, lies in the fact that Paramedics are obligated to serve in this capacity for a period of five (5) years, after which time a number of them elect to leave the position. As a result, the Department



The Association notes that in past agreements, both parties have been willing to modify the CBA by including a listing of mutually acceptable Arbitrators the purpose of which was to expedite the process as well as to save costs. In response to the City's proposal 15, the Association counters with its suggestion to agree on a list of 5 "Local Arbitrators" which would include the two presently on the list.

**DISCUSSION & AWARD - CITY PROPOSAL 15**

Following our careful review of the subject language currently in the CBA, the Panel Majority hereby GRANTS the City's proposal as follows:

- Delete Section 20.4
- Amend Article 21, Section 21.4.3 by replacing the current language with the following:

"If the employee elects to proceed to arbitration, the Arbitrator shall be selected in accordance with N.Y.S. PERB's Rules for selection and appointment. The Parties are at liberty to agree upon a mutually agreeable Arbitrator."

- Delete Appendix "C" in its entirety;
- Amend Appendix "E" at Section 19 to delete "using the rotating list of arbitrators set forth in this agreement for the contract grievances and disciplinary arbitrations.
- Amend the CBA where applicable so as to reflect the use of the NYS PERB and PERB's Rules of Procedure for the selection of Arbitrators which will replace Appendix "C".

The foregoing changes shall become effective upon the signing of this Interest Arbitration Award.

  X    
CONCUR

DISSENT

James W. Roemer, Jr.  
JAMES W. ROEMER, Jr., ESQ.  
EMPLOYER PANEL MEMBER

3/30/15  
DATE

  X    
CONCUR

DISSENT

John M. Crotty  
JOHN M. CROTTY, ESQ.  
EMPLOYEE PANEL MEMBER

4/7/2015  
DATE



## **CITY PROPOSALS 3 & 13– AMEND “OLD GRIEVANCE REMEDY”**

Article 3, Work Schedules, at Section 3.5.10 (& Battalion Chief CBA Section 3.5.7) provides, in relevant part:

Where a member of the bargaining unit is inadvertently passed over by the Department, then, that member of the bargaining unit shall be given first preference for the next available pre-planned overtime which occurs.

... In this situation, [the “old grievance remedy” of the aggrieved member working as an “extra man”] the aggrieved member shall have the right to work on the date of their choosing, on a Company assigned by the Battalion Chief with the consent of the Fire Chief and/or his designee, within thirty (30) days of the date of settlement.

The City proposes replacing the foregoing second paragraph with the following:

In these instances, the member will receive the next available twelve (12) hour overtime block and will receive a “no count.”

The City supports its proposal by noting that the “old grievance remedy” provides that when an employee is inadvertently skipped over for overtime, that employee must be given work even if that employee is not needed to provide the necessary staffing coverage. The City notes that this remedy is not economic feasible nor prudent since it results in overstaffing and the utilization of overtime since even though a Platoon may have this “extra man”, that “extra man” does not count toward any internal staffing minimums.

The Association objects to the change proposed by the City, noting that these demands address situations that are “rare (almost none with Battalion Chiefs and maybe 6 in the last year with the Firefighters). In response, the City notes that from January 2011 through October 2012, there were approximately 23 occurrences for an estimated 130 hour of unnecessary time.

## **DISCUSSION & AWARD – CITY PROPOSALS 3 (F.F.) & 13 (BATTALION CHIEFS)**

The Panel Majority grants the City’s proposed change. The Panel Majority reached this conclusion since it is the intent of this provision to make any individual who was inadvertently passed over for an overtime opportunity whole – it is not nor should it be a “make work”

provision, particularly when no work exists. Moreover, the Panel notes that the adopted City Proposal 3 & 13 grant the skipped individual with 12 hours of work as opposed to 4 hours under the old grievance remedy, thus making this a "win-win" opportunity for both parties hereto.

AWARD

The City's Proposals 3 & 13 are GRANTED effective upon the signing of this Interest Arbitration Award.

X  
CONCUR

DISSENT

James W. Roemer, Jr.  
JAMES W. ROEMER, Jr., ESQ.  
EMPLOYER PANEL MEMBER

3/30/15  
DATE

CONCUR

X  
DISSENT

John M. Crotty  
JOHN M. CROTTY, ESQ.  
EMPLOYEE PANEL MEMBER

4/7/15  
DATE

REMAINING ISSUES

The Panel has reviewed the demands and proposals of both parties, as well as the extensive and voluminous record in support of said proposals. The fact that these proposals have not been specifically addressed in this Opinion and Award does not mean that they were not studied and seriously considered in the context of contract terms and benefits by the Panel Members. In Interest Arbitration, as in collective bargaining, not all proposals are accepted, and not all contentions lead to agreement. Moreover, this Panel Chair is of the opinion that Interest Arbitration is not and was never designed to be a substitute for good faith negotiations but was designed as a mechanism to resolve disputes between Labor and Management that may exist notwithstanding their good faith negotiations. Accordingly, the Panel, in reaching what it has determined to be fair results, has not addressed or made an Award on many of the proposals submitted. The Panel is of the view that this approach is consistent with the practice of collective bargaining. Accordingly, we make the following Award:

**AWARD ON REMAINING ISSUES - CITY OF ALBANY**

Any proposals and/or terms other than those specifically modified by this Award are hereby rejected.

X \_\_\_\_\_ DISSENT \_\_\_\_\_ J. W. Roemer, Jr. 3/30/15  
CONCUR \_\_\_\_\_ DISSENT \_\_\_\_\_ JAMES W. ROEMER, Jr., ESQ. DATE  
EMPLOYER PANEL MEMBER

X \_\_\_\_\_ DISSENT \_\_\_\_\_ John M. Crotty 4/7/15  
CONCUR \_\_\_\_\_ DISSENT \_\_\_\_\_ JOHN M. CROTTY, ESQ. DATE  
EMPLOYEE PANEL MEMBER

**AWARD ON REMAINING ISSUES - ASSOCIATION [LOCALS 2007 & 2007A]**

Any proposals and/or terms other than those specifically modified by this Award are hereby rejected.

X \_\_\_\_\_ DISSENT \_\_\_\_\_ J. W. Roemer, Jr. 3/30/15  
CONCUR \_\_\_\_\_ DISSENT \_\_\_\_\_ JAMES W. ROEMER, Jr., ESQ. DATE  
EMPLOYER PANEL MEMBER

\_\_\_\_\_ DISSENT \_\_\_\_\_ John M. Crotty 4/7/15  
CONCUR \_\_\_\_\_ DISSENT \_\_\_\_\_ JOHN M. CROTTY, ESQ. DATE  
EMPLOYEE PANEL MEMBER

**RETENTION OF JURISDICTION**

The Panel hereby retains jurisdiction of any and all dispute arising out of the interpretation of this award for a period of 120 days from its execution date.

  X    
CONCUR

            
DISSENT

James W. Roemer, Jr.  
JAMES W. ROEMER, Jr., ESQ.  
EMPLOYER PANEL MEMBER

3/30/15  
DATE

  X    
CONCUR

            
DISSENT

John M. Crotty  
JOHN M. CROTTY, ESQ.  
EMPLOYEE PANEL MEMBER

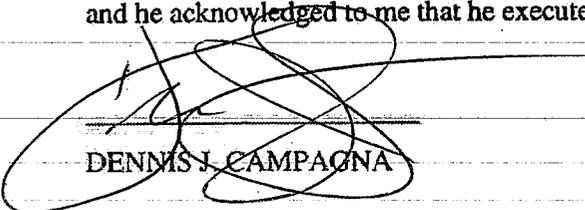
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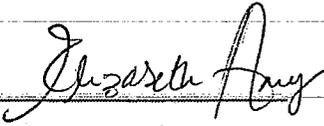
**ACCORDINGLY**, the Panel, following consideration of the record evidence and after due consideration of the statutory criteria, executes this instrument which is the Panel Award.

STATE OF NEW YORK  
COUNTY OF WESTCHESTER) ss.:

*New York*

On this 17 day of April, 2015 before me personally came and appeared Dennis J. Campagna, Esq., to me known and known to me to be the individual described in the foregoing instrument, and he acknowledged to me that he executed the same.

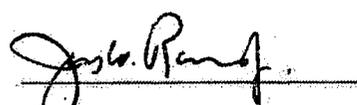
  
DENNIS J. CAMPAGNA

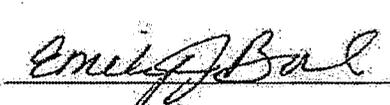
  
Notary Public

**ELIZABETH ANAYA**  
Notary Public - State of New York  
NO. 01AN6185756  
Qualified in New York County  
My Commission Expires 9/26/2016

STATE OF NEW YORK  
COUNTY OF ALBANY) ss.:

On this 30<sup>th</sup> day of March, 2015 before me personally came and appeared James W. Roemer, Jr., Esq. to me known and known to me to be the individual described in the foregoing instrument, and he acknowledged to me that he executed the same.

  
JAMES W. ROEMER, Jr.

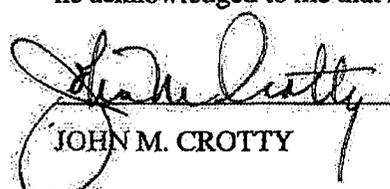
  
Notary Public

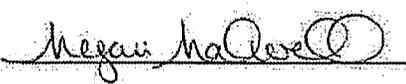
**EMILY J. BOND**  
Notary Public, State of New York  
No. 01BO6313190  
Qualified in Albany County  
Commission Expires 10-14-2018

STATE OF NEW YORK  
COUNTY OF ALBANY) ss.:

ORANGE

On this 1<sup>st</sup> day of April, 2015 before me personally came and appeared John M. Crotty, Esq. to me known and known to me to be the individual described in the foregoing instrument, and he acknowledged to me that he executed the same.

  
JOHN M. CROTTY

  
Notary Public

**MEGAN MAXWELL**  
NOTARY PUBLIC, STATE OF NEW YORK  
Qualified in Orange County  
Reg. No. 01MA6278664 34  
Commission Expires March 25, 2017

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of Compulsory Interest Arbitration :  
Between :

ALBANY PERMANENT PROFESSIONAL :  
FIREFIGHTERS ASSOCIATIONS, :  
LOCAL 2007, LOCAL 2007-A, I.A.F.F., :  
AFL-CIO, :

**CONCURRING OPINION OF  
PUBLIC EMPLOYER PANEL  
MEMBER JAMES W.  
ROEMER, JR., ESQ.**

**PERB Case No. :  
IA2013-014; M2012-289**

-and-

THE CITY OF ALBANY, NEW YORK.

I am constrained to write a Concurring Opinion to this Award. The Interest Arbitration process is not an exact science and, to a large extent, it is an extension of the negotiating process. The parameters of this Award reflect that negotiating process. For example, even though the City of Albany and the Police Officer's Union long ago entered into a Collective Bargaining Agreement covering the same period of time that this Award covers, and that Agreement authorized a 3% wage adjustment for 2012 and 2.5% wage adjustment for 2013, in my view, the deteriorating financial situation for the City of Albany, as acknowledged by the Chairperson of the Panel, would not warrant a repeat of those wage adjustments for this bargaining unit. However, even though those wage adjustments are being authorized by this Award, the fact that they are being authorized on the last day of the two year period for which this Award covers, effectively means there is no retroactivity on those awards for 2012 and 2013. In addition, the Panel has authorized the same health insurance plan concessions that were negotiated in the police officer's contract and changing health insurance plans from the existing "Cadillac plan" to those authorized by this Award will result in considerable savings for the City and its taxpayers. Furthermore, a majority of the Panel is authorizing a 10%

health insurance premium contribution for all members of the bargaining unit when these new health plans go into effect. Currently, more than 75% of the bargaining unit members are not contributing at all toward their health insurance premium, so this change will provide the City with additional revenue to support this important benefit.

Currently, no Collective Bargaining Agreement between the various unions and the City of Albany authorizes a continuation of health insurance in retirement. That benefit is controlled by the City through policy, which, in my view, under the current law, is subject only to change by the City. This Award provides that members of the bargaining unit who were on the payroll as of December 31, 2013 shall be "deemed" to be paying nothing towards their health insurance premium on their last day of work, the affect being that under current City policy (subject to being changed in the future), they will not be required to contribute towards their health insurance premium after they retire. The Union sought to get contractual protection on this issue and a majority of the Panel has rejected that proposal, leaving health insurance in retirement entitlement and the premium contribution issue at status quo.

Finally, one of the City's proposals which came to the Interest Arbitration Panel dealt with curtailing the number of bargaining unit members who could be off on vacation and other types of leave at any particular point in time. After the Interest Arbitration hearing was held, the Panel was informed by the Employee Organization Panel Member, Mr. Crotty, that the Union and the City had entered into a binding agreement, which resulted in a reduction in the number of individuals allowed to be off and that that agreement effectively modified the Collective Bargaining Agreement on that subject making consideration of that subject by the Panel unnecessary. Because the parties reached that agreement, the Panel did not deliberate or make an Award on that issue.



STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of Compulsory Interest Arbitration Between

ALBANY PERMANENT PROFESSIONAL FIREFIGHTERS  
ASSOCIATION, LOCAL 2007 and LOCAL 2007-A, I.A.F.F.,  
AFL-CIO,

PERB Case Nos.  
IA2013-014  
M2012-289

-and-

THE CITY OF ALBANY, NEW YORK.

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**Opinion Of Employee Organization Member**

**John M. Crotty**

I file this opinion to explain my votes upon certain terms of this award.

The record does not establish that the City's financial condition is "deteriorating" as claimed by the City's panel member, or is otherwise in a state that warrants a wage award without retroactivity. The City's "positive and stable financial picture" (award p.13) should have resulted in an award making the wage increases payable earlier than December 31, 2013.

As to the employee health insurance concessions awarded to the City, the Panel should have deferred to the collective bargaining process and not awarded those concessions. The Panel knew about the Association's past and on-going efforts to work with the City to achieve cost savings, including its active participation with the City and other unions on a labor-management

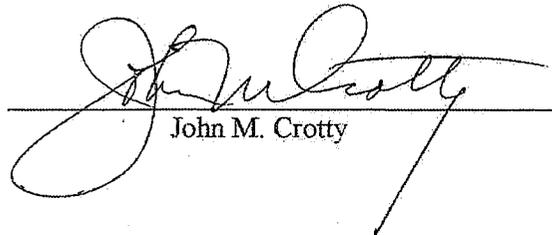
committee that is currently exploring alternative health insurance models that could save the City very substantial monies while protecting the Association's members and their families. The Association wants to be a partner with the City in seeking ways through the collective bargaining process to stabilize or decrease the costs of health insurance. The solution to the health insurance issues facing this country is not to be found in interest arbitration awards that decrease benefits and shift costs to employees. That is unfair to employees and it is an approach doomed to failure in the long term.

As to retiree health care benefits, this award does not state or suggest that the City has a right to unilaterally change retirees' benefits at will. That is only an opinion expressed by the City's representative to this Panel. Health insurance benefits have been provided to retirees for so long and so consistently that I and the Association believe their continuation has been and is ensured under an implied contract theory or an enforceable practice. Moreover, the terms of this award address retiree health care benefits in a way that further ensures the continuation of those benefits unless and until those benefits are changed by agreement with the Association or a future interest arbitration award. The City's representative believes otherwise, but that, again, is only his opinion.

I dissented from the paramedic award because it does not offer any meaningful solution to the problem the Panel recognized nor does it address the Association's rationale for its proposal. The problem lies in paramedics surrendering their paramedic certificates after six years to avoid forced assignment to paramedic rigs. The record fully supports the Association's claim that work on the rigs is onerous and that the City often has to "inverse" junior paramedics to these paramedic rigs because many senior paramedics do not bid onto them with any frequency or with continuity.

The award extends the additional compensation only to those paramedics who have served on a paramedic rig for five consecutive years and then remain on a paramedic rig thereafter. This part of the award will likely apply to very few, if any, paramedics. It does not compensate paramedics soon enough for the nature of the work performed on the rigs, it will not result in paramedics retaining their certificates, and it will not prevent or lessen inversing. The award in this respect is too little, too late and for that reason I dissent.

Dated: April 15, 2015  
Albany, New York



John M. Crotty