

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of the Interest Arbitration

-between-

**Compulsory Interest
Arbitration**

**PATROLMEN'S BENEVOLENT ASSOCIATION
OF NEWBURGH, NEW YORK, INC.**

**PERB Case No. IA2014-001;
M2013-203**

"Petitioner or PBA"

-and-

CITY OF NEWBURGH

"Respondent or City"

X-----X

BEFORE:

**ARTHUR A. RIEGEL, ESQ., CHAIRMAN OF THE PANEL
ADRIAN HUFF, PETITIONER MEMBER
RICHARD K. ZUCKERMAN, ESQ., RESPONDENT MEMBER**

NYS PUBLIC EMPLOYMENT RELATIONS BOARD

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APPEARANCES:

FOR THE PETITIONER:

LEWIS, CLIFTON & NIKOLAIDIS by LOUIS NIKOLAIDIS, ESQ.

FOR THE RESPONDENT:

LAMB & BARNOSKY, LLP by GREGORY A. GILLEN, ESQ.

CONCILIATION

BACKGROUND

The parties are signatories to the collective bargaining agreement between the City of Newburgh (Respondent) and the Patrolmen's Benevolent Association of Newburgh, New York, Inc. (Petitioner or PBA) that expired on December 31, 2012. Negotiations for a successor agreement were held on October 11, December 12, 2012 and April 8 and September 27, 2013.

The bargaining proved to be unsuccessful.

An Impasse Petition was jointly filed on November 4, 2013. Accordingly, Martin Ellenberg assigned by New York State Public Employment Relations Board (PERB) to mediate the impasse. Mediation sessions were conducted by Mediator Ellenberg on February 19 and March 12, 2014. Despite best efforts by Mediator Ellenberg, these sessions proved to be unproductive.

Accordingly, on April 16, 2014, the PBA filed a Petition for Compulsory Interest Arbitration with PERB (JX1). The City filed a Response on May 5, 2014 (JX2). Included in the Response was an Improper Practice Charge that alleged that seven of the PBA proposals involved non-mandatory subjects of bargaining. (JX6). The PBA responded to the Improper Practice Charge on May 30, 2014 (JX7).

The parties entered into a *Stipulation of Partial Settlement* on July 24, 2014 (JX8). This settlement resolved the issues related to three of the PBA proposals. The parties agreed to submit briefs concerning the remaining four PBA proposals. In a letter dated January 5, 2015, the City advised PERB that the parties had reduced their number of proposals and in so doing withdrew the remaining four proposals that were identified in the Improper Practice Charge (JX9).

On June 4, 2014, I was designated as the Chair and Neutral Member of the Interest Arbitration Panel. Adrian Huff was designated as the Employee Panelist and Richard K. Zuckerman was designated as the Employer Panelist. Thus, the arbitration panel was established to hear and finally decide all relevant issues

Pre-hearing conferences were held on September 29, 2014 and October 8, 2014. During the course of the pre-hearing conferences, the parties discussed a reduction in the number of their

proposals to ten proposals each. Ultimately, the parties agreed to reduce the number of their proposals to ten. The revised lists of proposals were submitted and exchanged. It must be added that the PBA proposals were not renumbered and were not designated as a sequentially number set of items. The City's proposals were renumbered in a sequential manner

Hearings on this matter were held on January 13, 21 and February 24, 2015. Executive sessions were held on October 8, 2015 and January 11, 2016

The parties were directed to submit post-hearing briefs. I received them in a timely manner.

Subsequent to the record having been closed, on October 1, 2015, the City moved to re-open the record for the purpose of adding a September 16, 2015 Stipulation of Agreement between the City of Newburgh and Local 589, IAFF, AFL-CIO to the record. The term of the Stipulation of Settlement is January 1, 2015-December 31, 2017.

The Union objected to this application. The basis for the objection was the Union's assertion that the record was closed and that it could not be re-opened for the above stated reason.

As a consequence, I convened an executive session on October 8, 2015. As an outgrowth of the executive session, I ordered the submission of briefs related to the basis for the application as well as the Union's arguments in opposition to it.

As the maker of the application, the City was directed to submit its brief on or before October 30, 2015. The Union was given until November 25, 2015 to respond to the City's brief.

The City submitted its brief in a timely manner. On November 3, 2015, the Union, in an effort to expedite the interest arbitration process agreed to stipulate to the placement of the above

referenced Stipulation of Settlement into the record provided that the City agreed to the placement of the Memorandum of Agreement of the City of Poughkeepsie and the City of Poughkeepsie Police Benevolent Association in the record. The term of the MOA is January 1, 2012-December 31, 2016,

The City entered into the suggested stipulation on November 4, 2015, with the understanding that the MOA between the City and Civil Service Employees Association (CSEA) also be admitted into evidence. This MOA was attached to the City's brief but had not been previously made part of the record.

The Union, in an email dated November 5, 2015, did not object to the inclusion of the MOA between the City and CSEA in the record. Therefore, the three MOAs were placed in evidence as CX95 (Firefighters Stipulation of Agreement) and CX96 (CSEA MOA) and as PBAX 21 (Poughkeepsie MOA). As a consequence of the above stated agreement of the parties, the need for the Union to respond to the City's brief was obviated.

Throughout the process, the parties were ably represented by counsel and had a full and fair opportunity to present testimonial and documentary evidence in support of their respective positions. The following is a discussion of the record created by the parties.

THE UNRESOLVED PROPOSALS

The following is a listing of each party's unresolved proposals:

PBA (Numbers in brackets are the numbers of the proposals before the reduction to 10 proposals)

1. [1] Pay increase retroactive to 1/1/13; six percent increase in 2013 and 2014.

2. [2]Employee shall have the ability to convert Comp Time to cash, with a maximum of 200 hours to cash in, once per year.
3. [3]Personal days increase to five per year.
4. [7] Increase Sick Days to 15 per year.
5. [8] Increase Sick Leave Reduction Incentive \$500 per step (i.e. \$1500 for no sick time use, and \$1000 for using between one and three days).
6. [9] Increase Shift Differential 7% per hour for 4pm to 12 midnight shift, and 10% per hour for the midnight to 8 am shift.
7. [11] Increase Longevity Bonus as follows:
 - 7-9 years- 2% of base salary
 - 10-14 years- 3% of base salary
 - 15-19 years- 4% of base salary
 - 20+ years- 5% of base salary
8. [12] Increase Uniform Allowance to \$1500 for all employees.
9. [18] When a detective completes 40 hours of *Stand By* time, s/he shall be credited with 8 hours of Comp Time and 2 hours of straight time pay.
10. [24] Four holidays to be floaters; if not used by the end of the year, they are to be paid out at holiday pay rate.

CITY

1. Article III (A) (2) (ii) - Add ten steps for new hires. Make steps equidistant.
2. Article IV (F) (Vacations) - All vacation selections for the following year will be made between November 1 and November 30.

3. Article V(C) (Holidays) - For all employees hired after 1/1/13, combine and replace #3 (Lincoln's Birthday) and #4 (Washington's Birthday) with *Presidents Day*; Delete #9 (General Election Day).
4. Article VIII (Overtime-Compensatory Time) - Eliminate all compensatory time.
5. Article IX (A) (Hospitalization) - Add: *Upon retirement, an employee who meets eligibility requirements for retiree health coverage and who enrolls in retiree health coverage will contribute 25% of the premiums for retiree health insurance coverage during their retirement. However, in the event that an employee who meets the eligibility requirements and who is enrolled in individual coverage at the time of separation from City service adds dependent coverage after separation from City service, the City will only contribute toward the premium cost for individual and dependent coverage at the statutory minimum rates. When a retiree is eligible for health insurance coverage through another City employee's or retiree's plan, the retiree and the other City employee or retiree must choose either two singles or one family plan.*
6. Article IX (A) (2) (Hospitalization) - For employees hired on or after 1.1.13, increase to 20 years of continuous service by the City. Also, for employees hired on or after 1/1/13, delete the second and third sentences.
7. Article IX (B) (Hospitalization) - all employees will contribute 25% of premiums throughout employment.
8. Article IX (D) (Hospitalization) - Convert buyout from percentage to \$4,000. 1st paragraph change notice by *December 1st to October 15th*.

9. Article IX(D)(Hospitalization)- Add: *When an employee is eligible for health insurance through another City employee's plan, the employee and the other City employee must choose either two single plans or one family plan.*

10. Article XXII (B) (Drug & Alcohol testing) - Entire procedure to become permanent. In addition, (B) (1st paragraph) (2nd sentence), insert *or if an employee discharges a weapon after City-owned vehicle.*

11. Article IX(D) **POSITIONS OF THE PARTIES**
POSITIONS OF THE PARTIES

CONTENTIONS OF PETITIONER

The PBA argued as follows:

It is by now a given that the market crash of 2008 negatively impacted nearly everyone. Municipalities were hit hard, businesses were hit hard, taxpayers were hit hard, and employees were hit harder. Contracts negotiated after 2008 had to account for deep economic downturns, and the City of Newburgh was no exception. Fully understanding the reality of the economic times, in 2009, the City of Newburgh PBA agreed to a contract that did not include wage increases, that gave back personal days and vacation days, and that extended the period during which employees would make health insurance contributions. The Parties did so in full expectation that benefits and wages would be restored in the next contract.

Unfortunately, due to scandalous mismanagement by past City officials, the City has not had as robust a financial recovery as other municipalities. However, it is in significantly better financial shape that it has been in many years, in part due to the nearly six years of frozen wages that the PBA members have had to endure.

Now, when the time has come for the City to make good on its commitment to restore wages and benefits to the bargaining unit, and when its employees have gone many, many years without wage increases, the City balks. This is despite the fact that the City of Newburgh PBA deserves better.

For the reasons set forth below, the Interest Arbitration Panel should grant Local 445's proposals as written.

I. PRIOR AGREEMENTS BETWEEN THE PARTIES

The most recent collective bargaining agreement between the parties expired on December 31, 2012. Joint Exhibit 3. The City of Newburgh officers have not received a wage increase since 2009. Likewise, longevity bonuses have remained flat since 2008. *See* Jt. Ex. 3B p. 31, Joint Exhibit 10, p. 6 and Memorandum of Agreement.

In addition, all employees gave back two holidays, two sick days, two personal days, and their right to an additional personal day if no sick leave was used for 2012. *See* Jt. Ex. 3B, pp. 6, 25, 26, 27. During the year 2012, the PBA members sacrificed their shift differential of \$2.00 for the midnight shift and \$1.00 for the afternoon-evening shift. *See* Jt. Ex. 3B, p. 4. These givebacks were made, based upon the City's express promise that the City would be better off after the expiration of the collective bargaining agreement and therefore able to make up for the givebacks and stagnant wages.

Wages

Current PBA wages are set forth in Appendix A of the Salary Schedule of Joint Exhibit 3B, p. 50-51. Wages range from \$40,000 starting pay to \$71,253 for a second year detective. Until January 1, 2012, the wage scale had seven steps for officers (trainee, starting,

and first through fifth year) and two steps for detectives. Since January 1, 2012, the wage scale has eight steps for officers (trainee, starting and first through sixth year) and two steps for detectives. *See id.* The contract also provides for longevity pay of \$950 for employees with 7-9 years' experience, \$1,450 for employees with 10-14 years' experience, \$1,950 for employees with 15-19 years' experience, and \$2,250 for employees with 20 or more years' experience. Jt. Ex. 3B, p. 31.

Health Insurance

City of Newburgh police officers currently receive health insurance coverage under the New York State Empire Plan. Employees hired after January 1, 2003 are required to pay ten percent (10%) of the cost of their health insurance coverage for the first five years of employment with the city. In addition, employees covered by another insurance plan can opt out of their health insurance and receive a buy-out of 25% of the premium costs for each month the employee declines coverage. *See Jt. Ex. 3B, pp. 15-16.*

Retirement Benefits

PBA employees are covered under the New York State Police and Fire Retirement system. Jt. Ex. 3B, p. 7. In addition, the contract provides for health insurance coverage for retirees. Jt. Ex. 3B, p. 15. Employees hired on or after January 1, 2003 must have 15 years of continuous employment by the City to be eligible for such coverage. *See id.*

Paid Time Off

PBA employees currently receive the following paid time off benefits:

- thirteen days of sick leave (12 days in 2012), Jt. Ex. 3B, p. 25;
- two days of personal leave (zero days in 2012), Jt. Ex. 3B, p. 26;

- ten days of vacation for employees with 1 to 3 years of service; 15 days of vacation for employees with 4-6 years of service; 20 days' vacation for employees with 7-9 years of service, 25 days' vacation for employees with 10-14 years of service, and 30 days' vacation for employees with 15 or more years of service, Jt. Ex. 3B, p. 5.
- Fourteen paid holidays (12 in 2012), Jt. Ex. 3B, p. 6.

The contract provides job security in as much as disciplinary action is to follow the provisions of Section 75 of the New York State Civil Service Law. Jt. Ex. 3, p. 31.

Other Contractual Provisions

Other contractual benefits for which the parties have proposed changes are compensatory time, sick leave reduction incentives, shift differentials, uniform allowances, detective "stand-by" time, and the drug and alcohol procedure.

Compensatory Leave

The contract allows employees to accrue compensatory time in lieu of overtime. Jt. Ex. 3B, p. 14. The compensatory time must be taken by the last day of the calendar month following the month in which it is earned. If it is not taken, the employee is to be paid in cash ten days after that date. Article VIII, Section B, Jt. Ex. 3B, p. 14. The contract further provides that employees may accrue compensatory time beyond the thirty day limit by signing a waiver and agreeing to take the time at a subsequent date in lieu of cash payment. Article VIII, Section C, Jt. Ex. 3B, p. 14. Employees can earn comp time for missed meals and stand-by time as well as overtime worked. See Article VIII, Sections A.3 and D, Jt. Ex. 3B, p. 14.

Sick Leave Reduction Incentive

The contract provides that an employee who uses no sick days during the year receives a \$1,000 bonus, and an employee who uses between one and three sick days receives a \$500 bonus. Article XIV, Section B.2, Jt. Ex. 3B, p. 25.

Shift Differentials

The contract provides two different shift differentials: For employees working the 4:00 p.m. to 12 midnight shift (“afternoon shift”) the differential is \$1.00 per hour, and for employees working the 12 midnight to 8:00 a.m. shift (“midnight shift”), the differential is \$2.00 per hour. Article III, Section G, Jt. Ex. 3B, p. 4.

Uniform Allowances

The contract provides for a clothing allowance of \$1,400. Article XII, Section A, Jt. Ex. 3B, p. 18. Although the contract provides that the City can implement a quartermaster system, there is no quartermaster system currently in place.

Stand-By Time

The contract provides that the detective scheduled to work the midnight shift shall receive eight hours compensatory time for every 88 hours stand-by time for the week he is assigned stand-by and works the midnight work tour. In addition, officers assigned to stand-by duty are paid an additional two hours straight time after each 56 hours of stand-by time. Article VIII, Section F, Jt. Ex. 3B, p.15.

Drug and Alcohol Procedure

The current contract provided that for the year 2012, a random drug testing policy would be implemented. Article XXII, Section B, Jt. Ex. 3B, p. 40, sets forth the details of the policy. Prior to 2012, the contract only called for “reasonable suspicion” testing. *See id.*

II. THE INTEREST AND WELFARE OF THE PUBLIC
A. The Dangerous Nature of the City of Newburgh

The City of Newburgh is one of the most dangerous cities in the country. As set forth in PBA Exhibit 16, the City of Newburgh has been ranked as the ninth most dangerous place to live in the United States.

In the first half of 2014 alone, twenty-five people had been shot, after 51 shootings in 2013. See "Editorial: Newburgh crime fight shows hopeful signs," *Times Herald Record*, June 15, 2014, Union Ex. 16. Even though the police routinely confiscate dozens of guns from residents, the number of shootings has been on the rise since 2007. See Leonard Sparks "Shootings put Newburgh on edge," *Times Herald Record*, December 17, 2014, Union Ex. 16. Crime rates have been exacerbated by high unemployment and high poverty, with an 8.1% unemployment rate in 2014 and 35 percent of households living in poverty on less than \$25,000 per year.

Obviously it is in the best interest of the public to have a strong police force, with enough staffing to act not only reactively but proactively as well. Yet the City does not have sufficient officers to address these crimes, and the City has been losing officers and not replacing them in the last few years.

Despite these impediments, the City has a committed force that wants to serve the community, despite the ever-increasing challenges and rarely-increasing remuneration for so doing. The Department has forged ahead with youth initiatives to improve the relations between Newburgh youth and the department.

B. Police Job Duties & Comparison to Other Jobs

Qualifications for the position of police officer in the City of Newburgh are similar to those in other municipalities. See Union Ex. 12 (job description for City of Newburgh Police Officer). As Arbitrator Riegel stated in *In re PBA of the City of Beacon*, PERB Case No. IA2010-015; M2010-042.

It is clear that police personnel are faced with serious and unique hazards. Police personnel, in general, and, in this case, police officers, risk death and serious injuries regularly. . . . Thus the [determination of comparability] is satisfied when the PBA is compared with other police departments. It should not be surprising that the comparability with respect to salary and benefit considerations is matched by a comparison with other units . . . Law enforcement is unique and those employed in this field can only be compared with others in that field.

In re PBA of the City of Beacon, p. 46.

However, the work load for Newburgh officers is significantly higher than in other municipalities due to the high crime rates and low staffing levels. Newburgh police are also exposed to more danger than officers in other municipalities.

Moreover, due to the City's past financial issues, the officers in the department are saddled with broken and out-of-date equipment, such as Tasers that don't work and cars that are nearly 20 years old, have incredibly high mileage, and are held together with zip ties.

Likewise, the Newburgh Police Department building has been neglected and is currently in a state of disrepair, with consistent standing water in the officers' locker room which frequently ruins the officers' personal belongings and uniforms, in addition to presenting health hazards.

In addition to making the work of fighting crime in the City of Newburgh more difficult, the run-down state of the Department's equipment contributes to a feeling of generally low morale in the City of Newburgh Police Department. While not all of these problems lend

themselves to an easy solution, the PBA asks that the panel be mindful of the admonition in *In re City of Beacon*, wherein Arbitrator Riegel stated

It is unquestioned that the needs of the public are met by a well-paid and well maintained corps of police officers that operates safely and efficiently. It is also clear that a police force with good morale is essential. Positive morale results in higher productivity and a flow of high quality candidates for the positions available.

In re City of Beacon, p. 44. As to comparing the wages of police officers with those of other professions in the City of Newburgh, Arbitrator Riegel has ruled, and the PBA agrees, such comparisons are not appropriate. See *In re City of Beacon*, p. 46.

III. COMPARISON WITH SIMILARLY SITUATED EMPLOYEES

The PBA believes that the following municipalities are situated similarly to the City of Newburgh: the Cities of Middletown, Kingston, Port Jervis, Poughkeepsie, and Beacon, and the Towns of New Windsor and Newburgh. The City has agreed that the Cities of Middletown, Kingston, Port Jervis, Poughkeepsie, and Beacon are comparable; and further urges that the panel find that the City of Hudson is a comparable municipality.

The basis for asserting that Middletown, Kingston, Port Jervis, Poughkeepsie, and Beacon are similarly situated is the decision in *In Re City of Beacon*, wherein Arbitrator Riegel concluded that the comparable jurisdictions to the City of Beacon are “cities in Dutchess County as well as in counties contiguous to Dutchess, i.e. Orange, Ulster, and Columbia.” *In re City of Beacon* at 44.

As to the Town of Newburgh and the Town of New Windsor, the basis for including them as comparators is their geographic proximity, their economic integration, and the fact that City officers have left City employ for jobs in those municipalities. In recent interest arbitration

concerning the Town of Newburgh PBA, Arbitrator Jeff Selchick found both the Town of New Windsor and the City of Newburgh to be comparable to the Town of Newburgh. *See In re Town of Newburgh and Town of Newburgh PBA*, PERB Case No. IA-2010-029/M2010-117. The PBA disagrees that the City of Hudson is a comparable municipality, because, among other things, it is significantly smaller (with less than one-third the population of the City of Newburgh). In addition, Newburgh has more than four times the number of people living below the poverty line than does the City of Hudson, rendering it a more destitute population, more in need of quality policing and, unfortunately, rendering the community more desperate and dangerous. Hudson is also significantly distant from the City of Newburgh.

In any event, it must be noted that certain of the municipalities, specifically the City of Poughkeepsie and City of Kingston, have contracts which expired in 2011, so the wage rates and benefits therein – while still superior to the wage rates and benefits in the City of Newburgh – are out-of-date and will likely be increased once those agreements are re-negotiated.

There is one way in which none of these purportedly comparable municipalities is similar to the City of Newburgh, and that is the crime rate. While Newburgh officers are paid at rates often significantly less than the comparable municipalities, they are exposed to far more dangerous crimes on a regular basis. *See Union Ex. 15*. Of ten murders committed in all of the comparable municipalities, a full half of them were committed in Newburgh. *See id.* Newburgh had more than twice the number of robberies than any other comparable municipality, as well. *See id.*

It is reasonable to seek a pay rate that includes recognition that City of Newburgh PBA officers work in a dangerous environment. The alternative is that City officers will continue to

leave the City in droves, taking with them institutional knowledge and community relationships that will take years to replicate, if they are not lost altogether.

IV. THE PARTIES' PROPOSALS

A. The Union's Proposals

The Union's proposals, and the rationale for them, are as follows.

Union Proposal 1: Pay increase retroactive to 1/1/13, six percent increase in 2013 and 2014

As discussed above, the bargaining unit has not had a pay raise since 2009. Wages at the City of Newburgh are significantly below the wages in the other municipalities reviewed. The 2013 starting salary of Newburgh officers was almost one-fourth lower than average, and second-year pay was over twenty percent lower than average. And despite the incredibly dangerous nature of work in Newburgh, its wage rate averages between 16 and 29% lower than the municipality paying the highest wages. *See* Union Ex. 1. Likewise, detective salaries at the City of Newburgh are 16% below average for the municipalities surveyed. Indeed, even with the 12% increase sought by the PBA, Newburgh detective salaries would be below the norm. *See id.*

The PBA estimates the total cost of the sought-after wage increase at \$443,748. Union Ex. 1. The City has estimated the cost as \$487,454. It is unclear whether the City's estimate includes retro pay to individuals no longer employed by the City.

As to this and other Union proposals, the City has "projected" future costs for Union proposals as well (for 2015 to 2017); however, in as much as there will be another contract for that period, estimating those costs at this time is impossible (and given that negotiations for this period have not yet began, as to most proposals the current status quo will remain in effect at least until sometime in mid-2015 when the interest arbitration for the 2013-2014 CBA is

concluded). The City's future projections, moreover, fail to take into account the changing workforce, including a large increase in new employees at the bottom of the salary scale in late 2014 and early 2015. Therefore, the Union is not herein addressing the Employer's 2015 to 2017 projections, except to the extent necessary to point out calculations that are not only speculative but are also based on faulty assumptions.

Union Proposal 2: Employees shall have the ability to convert Comp Time to cash, with a maximum 200 hours to cash in, once per year.

Under the current contract, employees who work overtime, miss lunch, or are required to stand-by can receive compensatory time ("comp time"). All comp time earned in any given month is to be repaid no later than the last day of the next calendar month. According to the contract, if time off cannot be given during that period, the employee is to be paid in cash ten days after that deadline. There is no contractual limit on comp time payouts. The contract also provides that any employee "desiring to accrue compensatory time beyond the thirty day limit may sign a waiver whereby the employee agrees to take comp time at a subsequent date in lieu of cash payment." *See* Article VIII, Section C, Jt. Exhibit 3B, p. 14.

The current proposal would allow that waiver to apply to a maximum of 200 hours. As the contract currently reads, there is no reason why employees cannot cash in 200 hours of comp time. The only difference is whether it is paid monthly or allowed to accrue over the course of the year. If it accrues, the employer will be able to earn interest on the unpaid wages until the end of the year. In addition, the employer will not have to incur additional overtime covering comp time hours.

The Union estimates that this proposal will not add any significant costs apart from minor bookkeeping, as the hours would either be worked by someone else at straight time (or, more

likely, overtime rates) or would be paid out after thirty days. Assuming that the average worker cashed out 50 hours per year, the cost would be approximately \$20,000 per year. However, this cost would be offset by the overtime costs saved to cover the comp time being taken as time instead of pay. The City concedes in its Exhibit 65 that this proposal adds no cost for years 2013 and 2014.¹

The City's CBA is significantly different from other municipalities in its provision of comp time so that comparison to other municipalities is not appropriate for this proposal.

Union Proposal 3: Personal days increase to five per year.

Employees currently receive two personal days per year. However for the year 2012, employees "gave back" these two personal days in the interest of avoiding layoffs. Newburgh is well below average in granting personal days – the average for comparable municipalities is 4.14 personal days, so Newburgh is over 100% below average. *See* Union Ex. 3. The Town of New Windsor and Cities of Beacon, Middletown and Hudson in fact give employees five personal days. *See id.* Newburgh's provision for very few personal days is all the more troubling given the exceedingly dangerous and stressful nature of work in the City. Nowhere are officers more in need of paid time off.

Since 2013 and 2014 have already passed and these personal days were not granted, the effective impact on the City's finances for 2013 and 2014 is nil, as the City concedes in its Tab 68.

Union Proposal 4: Increase Sick Days to 15 per year.

¹ The City estimates the cost of this comp time increase for the years 2015-2017. The City's estimate is absurd, however, as it is based on the assumption that "all officers will accrue and be paid out for 200 hours annually." The City gives no explanation as to why it assumes this would happen. *See* City Ex. 65.

Currently, employees receive 13 days of sick leave. However, for the year 2012, employees gave back one sick day per year in the interest of avoiding layoffs. Both the Town of New Windsor and the Town of Newburgh provide employees with 15 sick days per year; and the City of Kingston does not appear to limit employee sick days. *See* Union Ex. 4. As with personal days, since 2013 and 2014 have already gone by and these additional sick days were not given to employees, the impact on the City's finances for 2013 and 2014 is nil, as the City concedes in City Exhibit 71. And, because the City offers a sick leave incentive pay program, this proposal could cost the City nothing.²

Union Proposal 5: Increase Sick Leave Reduction Incentive \$500 per step (i.e., \$1500 for no sick time use, and \$1000 for using between one and three sick days).

Currently, employees can receive a sick leave incentive of \$1,000 if they use no sick time and \$500 if they use between one and three sick days. In 2013, 10 employees received the \$1,000 bonus and seven received the \$500 bonus. In 2014, 13 employees received the \$1,000 bonus and 12 received the \$500 bonus.

The sick leave incentive provides a substantial cost savings to the employer, because an employee who calls in sick from his shift is frequently replaced by use of overtime, costing the employer not only the sick pay for the absent employee, but the time-and-a-half for the overtime. Thus each sick day costs the employer 2 ½ times as if the employee did not call out sick. If the sick leave incentive is increased, more employees will be encouraged to use it, yielding a higher cost savings. As set forth in City Ex. 5, the average savings for each employee who uses the

² The City's estimate of future costs for added sick leave days, in addition to being premature, fails to take into account two salient facts: One, the City offers a sick leave incentive policy, which numerous officers have utilized, so that officers are not taking all of their sick time; and two, that officers use, on average, only ten days of sick leave. Thus an increase in sick leave will not cost the employer two full days of leave per person. *Cf.* City Ex. 71.

\$1,500 incentive will be \$3,103.62, and the average savings for each employee who uses the \$1,000 incentive will be \$2,541.25.

It is not possible to compare this benefit to other departments' because comparator bargaining units do not use a sick leave incentive program.

The Employer argued that the proposed increase to the sick leave incentive would be \$96,000 for the year 2015 to 2017. This is clearly wrong for several reasons. First, according to the employer's City Exhibit 74, it was calculated by assuming an increase of \$500 for each individual who previously received the sick leave incentive (i.e., 25 people per year, according to City Exhibit 74, first footnote). Twenty-five recipients each receiving \$500 is \$12,500, not the \$32,000 listed in Exhibit 74. In addition, the Employer has not calculated any estimated savings by virtue of the use of the sick leave incentive. As there will be a new CBA in effect for the period 2015 onward, any future cost estimate at this time is inappropriate.

Union Proposal 6: Increase Shift Differential to 7% per hour for 4 p.m. to 12 midnight shift and 10% per hour for the midnight to 8 a.m. shift.

The current shift differential is \$1.00 per hour for the 4 pm to 12 midnight shift and \$2.00 per hour for the 12 midnight to 8 a.m. shift. For the year 2012, employees agreed to forego the shift differential in the interest of avoiding layoffs. Changing the shift differential to a percentage rather than a flat rate will allow senior employees to receive a shift differential more proportional to their salary rate.

As to future costs, the City's estimates are wildly inflated. It is unclear from City Exhibit 77 how it came to these figures. And the City could reduce shift differential costs using lower-paid employees on the shifts that require payment of a shift differential.

Comparison to other units is complicated by the fact that some comparable units pay shift differentials as a percent of salary and others pay shift differentials as an hourly rate. In Union Exhibit 6, the PBA converted the hourly rate to a salary percentage. The City's late night differential is 2.3% lower than average.

Union Proposal 7: Increase Longevity Bonus as follows:

- 7-9 years 2% of base salary
- 10-14 years 3% of base salary
- 15-19 years 4% of base salary
- 20+ years 5% of base salary

The current longevity bonus is paid at a flat rate based on seniority. At seven to nine years the rate is \$950; at ten to 14 years the rate is \$1,450, from 15 to 19 years the rate is \$1,950, and from the 20th anniversary until separation is \$2,250. The rationale for the proposal is that, first of all, longevity has not increased in many years and the flat rates are now very out of date. A percentage longevity bonus, rather than a flat rate, allows longevity to keep pace with inflation. It also encourages employees to stay longer.

The City estimates that the proposed longevity increase would cost the City an additional \$89,000 for 2015 to 2017. However, the City's estimate is based on the assumption that all officers would remain employed by the city and thus be eligible for such longevity pay, which is not supported by historical data. Indeed, as newer employees are brought on to the workforce, longevity costs will decrease.

In comparison to the other bargaining units, the City of Newburgh's longevity bonus is low. For one thing, the City has no longevity bonus for employees in their fifth or sixth year, as Town of Newburgh or the City of Port Jervis provide. For seven to nine year employees, the average longevity bonus is \$1,138, twenty per cent higher than Newburgh's \$950. And for 18 to

19 year employees, the average longevity bonus is \$2,630, fully 35% *higher* than Newburgh's \$1,950. On the whole, Newburgh's longevity bonuses for employees with seven or more years of service are 18% below average. *See* Union Exhibit 7.

Union Proposal 8: Increase Uniform Allowance to \$1500 for all employees.

Currently, the uniform allowance is \$1,400 and has not been changed for many years.

Unlike other municipalities such as the City of Middletown and the Town of New Windsor, the City of Newburgh does not provide employees a cleaning allowance, so the proposed increase would help to offset some of those costs. In addition, employees have had their uniforms damaged by water and mildew in the locker room and have had to replace these items at their own cost.

The Uniform Allowance for 2013 and 2014 has already been paid, so there would be no cost to this proposal associated with funds budgeted for 2013-2014. Future costs would be approximately \$5,800 per year (calculated as an additional \$100 per officer).

The City, bizarrely, asserts that this would cost in the neighborhood of \$46,000. According to the text of City Exhibit 83, the City is including the costs of a quartermaster system in its estimate. Inasmuch as the City does not currently have a quartermaster system (though the contract allows for one), and more importantly given that the PBA's proposal says nothing about the quartermaster system, the City's estimate based upon increased cost to the quartermaster system is off base.

Union Proposal 9: When a Detective completes 40 hours of "stand-by" time they shall be credited with 8 hours of comp time and 2 hours of straight time pay.

The CBA provides that a Detective receives 8 hours of compensatory time for every 88 hours of stand-by time for the week he is assigned to be on stand-by. The PBA seeks an increase to the compensation for stand-by time to encourage employees to accept stand-by assignments. This proposal cannot be easily compared to other departments as each department assigns and compensates stand-by time differently. *See Union Ex. 9.*

The Employer concedes that this proposal would have no additional costs for the years 2013 and 2014. *See City Exhibit 86.*

Union Proposal 10: Four holidays to be floaters; if not used by the end of the year, they will be paid out at holiday pay.

Under the current CBA, employees either have the holiday off and receive pay, or work the holiday and also receive holiday pay. This proposal would allow employees to “float” the holidays and use them as additional personal, sick or vacation days. The rationale for this proposal is to allow additional flexibility in scheduling holidays. This proposal would actually not incur any additional costs as the employees are already entitled to holiday pay; rather, it would ease staffing on holidays. The Cities of Beacon, Poughkeepsie, Kingston and Middletown already effectively allow these floating holidays.

The City has projected future costs on this proposal “by assuming that all officers will bank and be paid for four floater holidays, i.e., they will work four days that they would ordinarily be off with pay and then receive an additional four days’ pay for the four floater holidays they have banked.” This makes no sense. First, the department must maintain its current staffing level on holidays, and so it is not likely that employees will be able to work additional holidays on the schedule. Second, if employees work a holiday and take another day off with pay, it does not make any difference in costs to the Employer.

B. The Employer's Proposals

Employer Proposal 1: Add ten steps for new hires. Make steps equidistant.

As an initial matter, this proposal is so vague as to be meaningless. Given that the current salary structure provides wage rates for employees in their rookie through sixth year, with two additional steps for detectives, the necessity for providing ten additional steps is unclear. The employer's chart at Tab 31 purports to provide detail, but rather than providing salary steps for new hires it spreads out the current salary steps over 17 years.

The Employer's proposal would render a salary schedule significantly different from every other municipality, as other municipalities have between five and six salary steps. *See* Union Ex. 1. This would make hiring and maintaining high-quality officers practically impossible.

In addition, the City was not able to articulate any present or future savings from this proposal. *See* City Ex. 32. Clearly there would be no retroactive savings as the proposal would apply only to new hires. In addition to failing to explain the basis of any future savings realized by such proposal, the City has also failed to consider that a salary schedule so completely out of step with other municipalities would inevitably lead to higher turnover – and with it higher training costs.

Employer Proposal 2: Add vacation selection deadline of between November 1 and November 30.

The Employer has provided no explanation as to why it needs to have vacation selections made by November for the following year. As shown in City Exhibit 34, this vacation selection requirement is more stringent than any other municipality's requirement. Nor does the proposal give any indication as to what would happen if an employee requested vacation after November

30. The PBA further notes that school calendars are rarely set for the following school year as far in advance as November of the prior school year. As many families plan their vacations around school dates, this would actually render the early selection date extremely inefficient as requested vacation dates would have to be changed after having already been approved.

This proposal will not save the Employer any money.

Employer Proposal 3: Reduce holidays for new hires.

The Employer's Proposal 3 seeks to eliminate Election Day and combine Lincoln's Birthday and Washington's Birthday into one holiday of Presidents' Day for new hires. To do so would mean that new hires would receive only 12 holidays, which is below average for the comparable municipalities. *See City Ex. 36.*

This proposal would not save the Employer any money for the 2013-2014 period, as the employees have already taken their holidays for those years. The Employer has not speculated as to the extent of savings that would be realized by eliminating these proposals in the future.

Employer Proposal 4: Eliminate compensatory time.

The Employer proposes to eliminate comp time entirely. It is difficult to compare comp time across jurisdictions, but the employer concedes that most other comparable jurisdictions provide employees with comp time. Comp time is provided to employees when they work hours for which they would otherwise be entitled to overtime, as well as for when employees must work through their meal time. Newburgh employees also receive comp time for working stand-by hours. This allows the employer to avoid payment of overtime, while simultaneously allowing employees to enjoy a more flexible schedule as they can use their comp time in lieu of other PTO. Where comp time is tied to stand-by time, it gives officers an incentive to be on

stand-by and able to work on immediate notice if needed, a must in a city as violent and unpredictable as Newburgh.

Although the City asserts in Exhibit 39 that it would realize a cost savings for 2013 and 2014 by eliminating comp time, this is incorrect as under the current CBA all comp time must be used or paid out within 30 days of when it is earned. Moreover, the City's method of calculating the cost of comp time is deeply flawed. The City's calculation is based on the assumption that "every officer takes their accrued compensatory time as time off and the City is forced to backfill all of these absences." However, if comp time were not offered, all of the accrued comp time would have to be paid out in the form of overtime payments. Since comp time is granted to avoid payment of overtime, the City cannot avoid paying for this time, whether it is by paying overtime or granting comp time. In terms of cost, it makes no difference. In fact, the Employer may come out ahead on the deal as it can retain what would otherwise be overtime pay and collect interest on those sums.

The City's presentation does not provide an estimate of cost savings in 2015 or beyond from the elimination of comp time.

Employer Proposal 5: Eliminate dual coverage in retirement, increase employee contributions toward retiree health insurance premiums.

The Employer proposes that retirees pay 25% of their health insurance premiums, as well as providing that if retirees seek to add dependent coverage, the City "will only contribute toward the premium cost for individual and dependent coverage at the statutory minimum rates." As an initial matter, it is unclear what statutory minimum rates the City is referring to. In any event, the City is attempting to cut back on a benefit which retirees were promised and for which such employees sacrificed wage increases in order to secure. Moreover, in reviewing the City's

comparison with other municipalities, *see* City Exhibit 43, it is clear that the City seeks employee contributions far higher than any other comparable municipality.

Despite this, the City did not articulate any savings it would obtain from this proposal for any period of time. *See* City Ex. 44.

Employer Proposal 6: Increase service requirement to be eligible for retiree health coverage; new employees do not receive credit for outside service.

The City proposes to make it more difficult for employees to receive retiree health coverage, proposing to simultaneously increase the number of years of service needed to obtain the benefit as well as to ignore prior service at other employers in determining whether employees can obtain retiree coverage. The ultimate outcome of this would be that only individuals working a full 20 years at the City of Newburgh would be entitled to retiree health benefits. This proposal is out of step with other municipalities. *See* City Exhibit 46. It is undisputed that the City of Newburgh is a dangerous place to work, and to deny employees a bargained-for benefit, or to make such benefit more difficult to obtain would only serve to make it difficult to recruit qualified officers from other jurisdictions.

Since retiree coverage for 2013 and 2014 has already been paid, there is no savings to be realized by this proposal. The City has not provided any projections as to how this would affect members in the future, either in terms of how many employees would lose their retiree coverage or what the financial impact would be on the City if this proposal were granted.

Employer Proposal 7: Increase active employees' health care contributions to 25%.

Currently, employees pay 10% of their health premiums for the first five years of employment. The City proposes to raise this to 25% for all employees. As shown in City

Exhibit 49, this is an incredibly regressive proposal that is far more draconian than in any other municipality. It does not take into account the vast majority of the department's workforce which has already paid ten percent of health premiums for several years on the assumption that those contributions were capped at five years. The City offers no phase-in period, no limitation on the 25% for extant employees, no reduction based upon years of service and no limitations on duration. The City makes no distinction, as other municipalities do, between individual and family plans.

Since health coverage has already been provided for 2013 and 2014, this proposal would not save the City anything for those years. The City has not projected the extent of future savings this would provide.

Employer Proposal 8: Convert health insurance buyout to flat dollar amount; change deadline for buyout.

Currently, employees who elect not to receive City health coverage are entitled to 25% of the premium costs for each month that an employee declines coverage, and such election must be made by December 1st. The City's proposal would move the date back to October 15, and provide a flat dollar amount of \$4,000 for any employee who declines coverage.

The Employer has provided no information as to how this compares to other municipalities, and no compelling rationale for this proposal. Inasmuch as employee buyouts of health insurance for 2013 and 2014 have already happened, this proposal would not save the City any money for that period. *See* City Ex. 53. The City has not projected the extent of any future savings from this proposal.

Employer Proposal 9: Eliminate dual enrollment.

The Employer's proposal would require that where any city employee is eligible for coverage through another city employee's plan, such employees would have to choose either two single plans or one family plan. This proposal would have no impact. *See* City Ex. 56. There are currently no employees eligible for coverage through another city employee's plan.

Employer Proposal 10:

Add additional basis for reasonable suspicion testing; make drug and alcohol testing procedure permanent.

The first part of the City's Proposal 10 would require that any time an employee discharges a weapon, the City would have the right to conduct an immediate drug and alcohol test. As shown in City Exhibit 58, this is an extremely uncommon contract provision. As written, moreover, it would allow the City to test employees for drugs or alcohol anytime they went to the firing range or took a firearms qualification test, or if the weapon was discharged while the employee was not on duty. This is clearly overbroad. The City did not provide any basis for this proposal or any indication of any time in which any employee discharged a weapon and was either suspected of drug or alcohol abuse or found to have engaged in such abuse.

The second part of this proposal would extend random drug testing procedures, which were in effect in the year 2012. In any event, it would be far more appropriate for the parties to engage in bargaining over these proposals for the next contract, as to amend the 2013-2014 contract in this way would have no practical effect whatsoever.

IV. THE CITY OF NEWBURGH HAS THE FINANCIAL ABILITY TO PROVIDE WAGES AND BENEFITS SOUGHT BY THE PBA

A. Fiscally Eligible Municipalities

The City has made much of – indeed staked its case on – recent amendments to the Taylor Law. These recent amendments, set forth in Section 209(6) of the Taylor Law, provide that where an employer that is deemed a “fiscally eligible municipality” in an interest arbitration, the panel must give 70% of its decisional weight to the city’s ability to pay. See Section 209(6) (e) of the Taylor Law. The definition of “fiscally eligible municipality” is set forth in New York Finance Law Section 160.05.

Despite the strong language of the statute, it is full of sound and fury but signifies little. Interest arbitration panels have always been primarily concerned with the ability of the employer to pay. This preoccupation with the ability of the employer to pay has only increased in dominance since the state passed tax cap legislation.³ Were it not so, the PBA is certain that employees would routinely receive wages and benefits that keep up with the current cost of living and recompense officers for what is without a doubt one of the most dangerous jobs. To suggest otherwise is to take the position that the Employer could afford wage increases but that an interest arbitration panel was convened to decide whether the officers deserved such increases, which borders on absurdity. Few, if any, employers have ever argued that, although they could afford to increase compensation, the officers don’t deserve such increases.

In any event, even if giving primary weight to an employer’s ability to pay were not *precisely* what interest arbitration panels have always done, the notion that the precise extent of consideration to be given to that concern is 70% is bizarre, and frankly, impossible to comprehend. The statute does not provide any rubric or guidelines for determining precisely the percentage weight the panel has given to the employer’s ability to pay. And how could it?

³ Without a doubt, if the City were not relying upon being a “fiscally eligible municipality” as a way to avoid increasing compensation to PBA officers, the City would be emphasizing the tax cap instead.

Finally, while the PBA agrees that the City meets the criteria of the statute and is therefore “fiscally eligible,” as PBA financial expert Kevin Decker explained, this designation is meaningless. A “fiscally eligible municipality” is defined as, *inter alia*, a municipality where “the average full value property tax rate . . . is greater than the average full value property tax rate of seventy-five percent of counties, cities, towns and villages, with local fiscal years ending in the same calendar year . . .” N.Y. Finance Law Sec. 160.05. As Decker explained, based on this definition, all municipalities in the top 25% of tax rates are by definition “fiscally eligible.” This tells us nothing about those municipalities; and even if every municipality in New York State were in excellent financial condition, 25% of the municipalities in the state would qualify under this definition (including, presumably, some of the wealthiest municipalities that utilize high tax rates to provide improved services to their citizens).

The second criterion defining what constitutes a fiscally eligible municipality asks whether a municipality’s fund balance is below 5%. This criterion is a more reasonable one, as it actually reflects the City’s financial condition. Newburgh does not qualify as fiscally eligible under this test. *See* Decker Report, Union Ex. 20, Exhibit N. In fact, under the State’s analysis, the City of Newburgh is not considered a “fiscally stressed” entity at all. *Id.* at Exhibit M.

B. The City’s Ability to Pay

Kevin Decker presented testimony on January 21, 2015, concerning the City’s ability to pay. Documentation from his report was entered into evidence as Union Exhibit 20. Among other things, Decker emphasized that the City’s financial condition, while extremely troubled in 2010, has been improving steadily since then. *See* Decker Report, Union Exhibit 20, Exhibit L. In 2013, the City had a fund balance of \$9,240,341, of which \$4,506,201 is unrestricted – more

than enough to provide the contract improvements sought by the PBA without having the Fund balance dip below 5%. *See id.* at Exhibit J.

In addition, in March 2014 Moody's Investor Service raised the City's credit rating from Ba1 to Baa3, which represents that the City has "average creditworthiness" as compared to other municipalities. *See id.* at Exhibit P.

The City, unsurprisingly, asserts that it cannot afford to pay wage or compensation increases. However, the City's presentation was largely devoid of substantive explanation as to why it is claiming it cannot afford such increases. The City Comptroller's presentation (which included substantial errors, such as miscalculation of the City's total Revenues and Expenses for the years 2008 to 2013) actually demonstrated that city revenues have increased steadily since 2008. *See Report of City Comptroller, City Exhibit 91 at pp. 4-5.*⁴ Likewise, the City has increased tax rates for both homestead and non-homestead properties, giving a financial cushion for wage and benefit increases.⁵

The City points to certain equipment and infrastructure upgrades in Exhibit 91; however Exhibit 91 is completely devoid as to any detail concerning the necessity of these upgrades, the cost, the length of time over which such items will be upgraded, and whether the State or any other agency or municipality will share responsibility for such costs. In the absence of such detail, items like the \$40 million "Replacement of Public Safety Building" cannot seriously be considered in determining appropriate wage and compensation increases to the City police.

⁴ Although the City projected 2015 revenues to be slightly lower than 2014, as Kevin Decker pointed out, the City's projected 2015 revenues do not include sales tax revenues. *See Decker Report, Union Ex. 20, Exhibit H.*

⁵ To the extent that homestead taxes have dipped, it is due to a change in the City's method of assessing homestead values, as Kevin Decker explained. *See Decker Report, Union Ex. 20, Exhibits D and E.*

Finally, the City claims that it “does not have funding in the budget” for any wage or compensation improvements. However, this reasoning is circular at best and foolhardy at worst. The City was well aware since 2009 that it would be required, at some point, to give wage increases and other compensation enhancements to its workforce. The failure to include these increases in any City budget for the last 6 years can be described only as a failure to plan for costs that were known and knowable (indeed, the City has meticulously costed out the proposed wage and benefits increases, and the PBA’s proposals have been in the City’s hands since 2012). Likewise, the City’s position that because it complies with the 2% tax cap it therefore need not pay wage increases is nonsensical. Had the City set aside appropriate funds for wage increases on an annual basis in anticipation of the eventual negotiation of the collective bargaining agreement, there would be no difficulty in granting the sought-after increases. Moreover, as set forth in Exhibit G of the Decker Report, Union Exhibit 20, the City could have increased 2015 tax revenues by over 1 million dollars without reaching the tax cap.

For the reasons set forth above, the PBA’s proposals should be granted in full and the Employer’s proposals should be denied in full.

CONTENTIONS OF THE CITY

The City argued as follows:

Despite protracted contract negotiations, it has unfortunately become necessary to resolve the parties’ stalled negotiations through compulsory interest arbitration. The parties continue to have vastly different opinions about what the City can afford to give the PBA, if anything, in response to its unrealistically high demands. While the financial doom and gloom of the recession may have come as a shock in most municipalities, hard times are nothing new for the

City, which has been the subject of State finance-related legislation three times in the past three decades and which, until recently, literally went pay period to pay period without knowing for certain whether its checks would “bounce.”

What is new for the City, however, is that the State has finally directed interest arbitration panels to give concrete, priority binding weight to the statutory ability to pay criterion in interest arbitration proceedings where, as here, the municipality is substantially fiscally strained. Specifically, in 2013, the Taylor Law was amended to help fiscally distressed municipalities avoid bankruptcy or the appointment of financial control boards. Included in this legislation were amendments to the law that radically changed the compulsory interest arbitration process for “fiscally eligible municipalities.” Specifically, the amendments require that, when a Panel renders an award involving a “fiscally eligible municipality,” the Panel must give a weight of 70% to the ability to pay portion of the statutory arbitration criteria and 30% to the remaining criteria. The amendments further provide that, with respect to the total monetary value of the award, the Panel must consider the constraints, obligations and requirements of the property tax cap law. N.Y. CIV. SERV. LAW § 209.6(e) (McKinney 2015) (City Ex. 5).

It is undisputed that the City meets the definition of a “fiscally eligible municipality.” As a result, this interest arbitration is, to our knowledge, one of the first implementing the new legislation. When the Panel applies the statutory criteria and, in particular, gives the ability to pay criterion its appropriate weight, it will be apparent that the PBA’s demands are both unrealistic and beyond what the City can afford and should be made to pay in these precarious financial times.

The PBA has attempted to justify its admittedly high demands by alleging that its unit members have not received a raise in over six years, despite having made concessions during the last round of negotiations. While there is some facial truth to this assertion, the PBA's view of history is also incomplete and out of context.

In December 2010, the City projected that it would end the 2010 fiscal year with an accumulated, undesignated fund balance deficit of \$14.1 million. As a result, legislation was enacted pursuant to which the City issued \$12 million of Bond Anticipation Notes to finance its negative cash flows and was required to submit budgets to review by the State Comptroller. Moreover, in order to adopt a balanced General Fund in 2011, the City implemented a 70% increase in the property tax levy, along with a host of layoffs, incentives and early retirements, that reduced the City's workforce from approximately 260 employees to 205 full-time equivalents and reduced essential City police, fire and public works services. All of this occurred at a time when all four of the City's union contracts were expired and contractually called for step increases, longevity payments and other payments were locked in and mandated pension and health costs were continuing to rise.

Accordingly, with a financial "end of days" bearing down upon it, the City turned to each of its unions for assistance. The PBA agreed to a new contract covering the period 2009-2012 that froze salary and step movement for its duration, added a new extended salary schedule for new hires and included a host of other temporary givebacks, most of which sunset when the contract expired on December 31, 2012. In return, the City agreed to a no layoff provision that saved the jobs of many PBA unit members as well as a sick leave reduction incentive and

decreased required annual training. Accordingly, the assertion by the PBA that it has not had raises in six years is, to say the least, misleading.

While the PBA asserts that it was “promised” that the City would “make up” for these concessions in the next round of bargaining when the City would hopefully be in a better financial position, the unfortunate truth is that the City is still not yet in that position, and even if that representation was made, no details were provided by the PBA as to who made the “promise,” when, where, how or whether that person(s) had the authority to do so. The City cannot yet afford do what the PBA so desperately wants it to do: erase all of the givebacks of the last contract and make unit members more than whole. While the PBA (and the City’s other unions) may have offered a helping hand to the City when it was hanging from the edge of a financial cliff, the City is currently only standing at the edge of the same cliff. Awarding the PBA’s demands would push the City back over the financial edge. This Panel’s award must avoid this catastrophic result.

The City’s financial condition has recently somewhat improved, thanks to the leadership of the new City Manager Michael G. Ciaravino, his staff, Mayor Judy Kennedy and the members of the City Council. It is still, however, nowhere near being able to pay the increases that the PBA is demanding. The City’s primary revenue sources continue to fall annually, at the same time as the list of needed expenditures stack-up daily. Having increased property taxes by 30% in 2010, 63% in 2011, 11% in 2012, 14% in 2013 and 4% in 2014, the City Council is unwilling to override the tax cap and saddle already economically strained residents and business owners to pay for the PBA’s disproportionately high demands with further tax increases. Nor is the

Council willing to jeopardize their taxpayers' chances of obtaining much needed tax relief through the State's "Tax Freeze Credit" program.

No one denies the very real dangers that PBA unit members face day in and day out while serving the City's residents and visitors. In fact, we affirmatively recognize and express our appreciation and admiration to our police officers who serve on the front lines of the City's efforts to retake its streets. These dangers, however real, are nothing new for the PBA's unit members. In fact, several testified that these dangers are one of the reasons why they choose to stay and thrive as Newburgh police officers. Nevertheless, the financial reality is that the PBA's demanded increases are wholly out of step with those being agreed to and awarded in any of the comparable external jurisdictions and they will, if awarded, push the City into almost certain financial ruin.

This is why the Award must include concrete financial savings to offset *any* increases in wages or benefits that the Panel may deem appropriate. Anything less than that will contravene the legislative intent behind the Taylor Law amendments and the fiscal reality confronting the City. Unfortunately, however, the Award when issued will already be more than half a year expired. This is problematic for the City because, unless the Panel is prepared to make unit members pay retroactive concessions, the City already stands to lose out on a significant portion of any potential savings, which may be awarded. Accordingly, we implore the Panel to be mindful of this fact when issuing its Award; *i.e.*, any concessions awarded to offset increases must account for the fact the award will already be expired when issued.

**THIS PANEL'S APPLICATION OF THE RELEVANT STATUTORY
CRITERIA WILL MANDATE AWARDED THE CITY'S PROPOSALS
AND REJECTING THE PBA'S DEMANDS**

There are unique differences between public and private employer. The Public Employees' Fair Employment Act (a/k/a "the Taylor Law") recognizes the fundamental differences between public sector and private sector employers. The law defines a public employer as:

the state of New York, (i) a county, city, town, village or any other political subdivision or civil division of the state, (ii) a school district or any governmental entity operating a public school, college or university, (iii) a public improvement or special district or (iv) any other public corporation, agency or instrumentality or unit of government which exercises governmental powers under the laws of the state.

N.Y. CIV. SERV. LAW § 201.6(a). The employees of all other employers, including private sector employers, are excluded from the scope of this law.

As this Panel is well aware, public employers have limited resources with which to provide services, and the bulk of those resources come from taxpayers. It is self-evident that the residents of the City, much like residents throughout the country, require police officer services and that these services come with a price.

By statute (Civil Service Law § 209.4(c)(ii)), the Public Member of this Arbitration Panel represents those residents; *i.e.*, the taxpayers who both bear the burden of potential increased costs needed to maintain their police force and who likewise receive the benefits of the provided services. The Public Member is the Panel member ultimately charged with making choices, traditionally reserved to the public's elected officials, regarding among the largest expenses and expenditures of the City: salaries, health insurance, other fringe benefits, and the many more unrelated terms and conditions of PBA unit members' employment. Due to the sheer amount of money involved, these decisions will directly impact the City's elected officials' ability to set

financial and policy priorities for the years covered by the Award and those following its expiration.

It is within this context that the Civil Service Law requires that this Panel's decision be based upon the following criteria, "in addition to any other relevant factors:"

- a. comparison of wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services or requiring similar skills under similar working conditions and with other employees generally in public and private employment in comparable communities;
- b. the interests and welfare of the public and the financial ability of the public employer to pay;
- c. comparison of peculiarities in regard to other trades or professions, including specifically (1) hazards of employment; (2) physical qualifications; (3) educational qualifications; (4) mental qualifications; (5) job training and skills; and
- d. the terms of 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.

N.Y. CIV. SERV. LAW § 209.4(c) (v).

Critically, as noted above, the recent amendments to Section 209 also requires the Panel to determine whether the City "is a fiscally eligible municipality as part of its analysis of the financial ability of the public employer to pay." § 209.6(a). If the Panel determines that the City is a "fiscally eligible municipality," then the Panel is required to "first and foremost, consider ability to pay by assigning a weight of seventy percent." § 209.6(e) (City Ex. 5). All other criteria taken together must then comprise the remaining 30% of the Panel's analysis. *Id.* The amendments also require that the Panel take into account the constraints, obligations and

requirements of the property tax cap law with regard to the total monetary value of the award it issues. *Id.*

Here, it is undisputed that the City is a “fiscally eligible municipality” as the PBA’s financial expert conceded to this fact in his presentation (PBA Ex. 20 at Ex. N). Nevertheless, to the extent that the Panel agrees with the City that the Panel must make its own independent determination of this fact, the Panel must find the City to be a “fiscally eligible municipality” if: (1) the City has an “average full value property tax rate” that is greater than the “average full value property tax rate” of 75% of the other municipalities in the state; or, (2) if the “average fund balance percentage of [the City] is less than five percent and the state comptroller has certified that any additional fund balances in funds other than the general fund available for payment of arbitration awards in each year, if added to the general fund, would not cause the average fund balance of [the public employer] to exceed five percent. . . .” (City Ex. 3); § 209.6(c)-(d).

The “full value property tax rate” is “the amount to be raised by tax on real estate by [the public employer] in a given fiscal year divided by the full valuation of taxable real estate for that same fiscal year as reported to the office of the state Comptroller.” § 209.6(b) (i). The “average full value property tax rate” is the average of the City’s “full value property tax rates” for the last five years. § 209.6(b) (ii).

The “fund balance percentage” is the “total fund balance in the general fund of [the City] in a given fiscal year divided by the total expenditures from the general fund for that same fiscal year as reported to the office of the state comptroller.” § 206.6(b) (iii). The “average fund

balance percentage” is the five year average of the City’s “fund balance percentages.” § 206.6(b) (iv).

In order to assist the Panel in determining whether the City qualifies as a “fiscally eligible municipality,” Section 209.6(c-d) requires the Office of the State Comptroller to publish the list of counties, cities, towns, and villages “that have an average full value property tax rate that meets [the applicable] criteria in each local fiscal year . . . and . . . that have an average fund balance percentage that is less than five percent in each local fiscal year.” *Id.*

In the most recently published list from the State Comptroller, the City qualifies as a “fiscally eligible municipality” because it has an “average full value property tax rate” greater than 75% of the other municipalities in the State. According to the State Comptroller, to meet this criterion, a municipality needs a rate above 6.823%, which the City exceeded with a rate of 11.93% (City Ex. 4).

Accordingly, the Panel must give a weight of 70% to the City’s ability (or more accurately, inability) to pay for the Award, with the remaining criteria, including comparability, only constituting 30% of the weight supporting the Panel’s determination and award. The Panel must also consider and affirmatively analyze the constraints, obligations and requirements imposed by the real property tax cap law on the total monetary value of the Panel’s award. § 209.6(e); (City Ex. 5).

Here the record before the Panel conclusively establishes that the increases sought by the PBA are unwarranted and out of touch with the City’s limited ability to pay for increases, as well as in comparison to what other police officers have received in other comparable external jurisdictions.

For these reasons, and for those more fully discussed in this submission, the City respectfully requests that the Panel award its proposals and deny the PBA's demands.

**THE CITY DOES NOT HAVE THE
ABILITY TO PAY FOR THE PBA'S DEMANDS**

A. The Ever Increasing Cost to Provide Police Officer Services Is Unsustainable.

Even with a base wage freeze during the term of the last contract, the cost to provide police officer services continues to grow due to factors outside of the City's control. PBA unit members' wages and benefits are funded through the City's General Fund and represent more than one-third; *i.e.*, 34.1%, of that Fund's expenditures (PBA Ex. 20 at Ex. B). With an annual average cost of \$105,791 per unit member (City Ex. 18) and employees only making an annual average of 183 appearances (City Ex. 19), the City expends approximately \$578 per employee per day. As if this expense wasn't enough, the City is additionally forced to contend with annual increases in health insurance premiums and pension contributions, which are beyond the City's power to control.

Between the start of the "great recession" in 2008 and 2015, the NYSHIP premiums for individual coverage increased by 37% (City Ex. 41). For family coverage alone, the rates increased by 43% through 2015 (City Ex. 42). Similarly, between 2008 and 2014, the average annual employer contribution rates to the New York State Police and Fire Retirement System increased by a whopping 74%. These facts unequivocally demonstrate that it is costing the City more to maintain less than what had previously been the *status quo*. While the cost of providing services continues to rise, the monies available to fund the services are diminishing.

In addition to these uncontrollable cost increases, the City's figurative hands are further tied by the requirements and obligations imposed by the State's real property tax cap law, which went into place for the 2012 fiscal year. Pursuant to this law, the City is constrained from adopting a budget that would call for a tax levy increase (the amount of money that can be raised through real property taxes) that exceeds the City's prior year tax levy by more than two percent or the rate of inflation, whichever is less, unless the City Council adopts a local law overriding this limit. Here, the City Council has not only "forbidden" the City Administration from proposing an override of the tax cap levy limit, but it has also directed the City to pursue further cost-cutting measures in order to make it possible for the City's homeowners to take advantage of the State "Tax Freeze Credit" program.

This program will provide two years of tax relief reimbursements to qualifying homeowners for increases in local property taxes on their primary residences. In order for the City to make this program available to its taxpayers, the City is required to become "freeze-compliant." To do this, the City cannot exceed the property tax levy limit or enact any legislation to exceed this limit for the 2015 fiscal year and to certify its compliance with these conditions to the State Comptroller and the Commissioner of Taxation and Finance. It did so on December 30, 2014 (*id.*).

Next, the City was required to submit to the State Division of Budget, by June 1, 2015, an efficiency plan that reduces costs through the consolidation of services, and to further comply with the tax cap levy law for the 2016 fiscal year (*id.*). The City's efficiency plan must establish a savings to the City equal to at least 1% of the City's 2014 tax levy (or \$198,626) (*id., see also* PBA Ex. 20 at Ex. G). As a result, it is imperative that the City continue to tighten its belt so that

it can guarantee that it will be able to stay within the cap and be able to provide this critical tax relief to its taxpayers. An Award that results in a net cost increase in PBA unit members' compensation may well torpedo these goals.

In addition to the constraints that the tax cap law places on the City's ability to fund this Award, there are the staggering, additional unfunded costs facing the City in connection with the repair or replacement of its dilapidated equipment and crumbling infrastructure. As City Comptroller John Aber testified, the City is facing \$2.5 million in needed departmental fleet replacements: 27 vehicles in the Police Department; 11 vehicles in the Water Department; 12 vehicles in the Fire Department; and eight vehicles in the Department of Public Works (City Ex. 91). The City further faces an additional \$97 million in needed infrastructure repairs: \$5.1 million for water dams and bridge repairs; \$2.1 million to replace the landing pier; \$40 million to replace the Public Safety Building; and \$50 million for a DEP mandated long term control plan for sanitary sewers (*id.*). As recently as May 11, 2015, Mayor Kennedy described the situation as a "kind of dice game to figure out which thing is at the highest risk to fail first and what kind of catastrophe that thing would happen so that we can deal with it now. . . ." These astronomical costs more than eclipse the \$3.7 million unassigned fund balance that the City had at the end of the 2013 fiscal year (PBA Ex. 20 at Ex. J).

The City will likely be unable to meet its short and longer term goals of achieving relatively precarious financial stability, let alone improvement, without the Panel's assistance. Consistent with this, the Panel must affirmatively and emphatically adopt the City's mantra of fiscal prudence and award the City substantive proposals while denying the PBA's demands.

B. The City's Revenue Sources Continue Their Downward Spiral.

PBA unit members' salaries and benefits are funded by the City's General Fund (PBA Ex. 20 at Ex. A). The three largest sources of revenue in that Fund are real property taxes (44.6%), sales and use tax (23.1%) and state aid (12.9%), which combine to comprise 80.6% of the General Fund's revenues (*id.* at Ex. C). While these declining revenue sources are currently adequate to keep the City literally afloat, they will no doubt buckle under the crushing weight of the additional costs that will need to be borne by the City if the Panel awards the PBA's demands.

The City's total taxable assessed value and full values of real property have declined by 25% since the end of the 2011 fiscal year (*id.* at Ex. D), and 44% since the end of the 2009 fiscal year:

Fiscal Year	Homestead	Non-Homestead	Total Assessment
2009	\$1,034,081,269	\$567,994,915	\$1,602,076,184
2010	\$860,490,904	\$476,211,711	\$1,336,702,615
2011	\$746,753,570	\$440,556,711	\$1,187,310,281
2012	\$680,634,720	\$408,441,911	\$1,089,076,631
2013	\$608,052,683	\$393,974,612	\$1,002,027,295
2014	\$564,565,476	\$383,307,543	\$947,873,019
2015	\$527,693,979	\$366,709,467	\$894,403,446

(City Ex. 91). This means that home values have decreased, homes are not selling or a combination of the two. This plummet in assessments has been so substantial that the City has been powerless to offset the attendant financial losses it has experienced through concomitant

increases in the tax rates. For example, the average assessed value of a single-family residence in the City decreased by 21% between 2012 and 2015 (PBA Ex. 20 at Ex. E). Despite a 23% increase to the assessed value tax rate for this same type of residence over the same period of time, the “City Purpose Tax Bill” still *decreased* by 3% (*id.*). The net result of this has been a significant decline in the City’s real property tax revenue. To make matters worse, the City’s expert testified that property tax revenues are being further eroded as the number of exempt properties; *i.e.*, properties exempt from taxes, is increasing in the City; *e.g.*, Mt. St. Mary’s College, SUNY Orange, St. Luke’s Cornwall Hospital and other religious organizations.

Sales tax has also proven to be an unreliable source of revenue for the City. While the City saw a modest 2.3% increase in sales tax revenue from the 2012 to 2013, the City is projected to experience a \$300,000 shortfall in this revenue for 2014 and is currently not budgeting for any increases in sales tax revenue for 2015 (*id.* at Ex. H).

The outlook with respect to the City’s third largest revenue source is equally grim. State aid declined by \$384,230 from 2009 to 2011, an 8% decrease, and has flat-lined ever since then (*id.* at Ex. I). Accordingly, for the 2015 fiscal year, the City did what the PBA’s financial expert described as “prudent” and did not budget for any increase in aid (*id.*).

In sum, between 2012 and 2013, the City experienced a more than \$6,000,000 (12%) decline in total revenues, coupled with a \$2,830,551 (7%) increase in total expenditures (*id.* at Ex. J and K). From 2014 to 2015, the City budgeted for another \$1,217,538 (3%) decline in total revenues (*id.*). While the City may no longer be engaging in deficit spending; *i.e.*, the City’s spending is not exceeding its revenues, the frightening pattern of declining revenues is simply unsustainable. With almost no end in sight to the City’s evaporating cash flow, it is apparent that

the City's ability to fund the Award is significantly constrained, especially when the total cost of the PBA's demands would use up approximately 71% of the City's unassigned fund balance at the end of the 2013 fiscal year, the first year that this Award will cover (*id.*). The City needs relief, and it is the Panel's duty and responsibility to provide it.

C. The PBA's Presentation Did Not Accurately Convey the City's Financial Challenges.

While the City has made minimal gains since the financial meltdown in the years prior to the expiration of the last contract (*id.* at Ex. L), no amount of spin from the PBA's financial expert can detract from the fact that, as noted above, the City's financial position is as precariously weak as ever. As City Comptroller John Aber testified in his presentation, not only does the City have insufficient reserves available to finance any increases but there is not enough money in the budget to do so.

At the outset, the most glaring deficiency in the PBA's presentation of the City's financial condition is the fact that it was based entirely on outdated financial information; *i.e.*, the City's financial condition at the end of the 2013 fiscal year as opposed to the end of the most recent fiscal year 2014. This is problematic because the information presented by the PBA does not evidence the City's current financial condition, let alone its ability to pay for the PBA's demanded increases. Conversely, the City's expert testified as to the current financial issues facing the City; *i.e.* that the City is forecasting a further \$1.2 million decrease in revenues for 2015, that in 2014 the City spent its entire sewer reserve, that the number of exempt properties are increasing, that the City reclaimed 64 properties due to foreclosures in 2014 *etc.* Not only is the record devoid of any credible evidence demonstrating that the City can afford the PBA's demanded wage and benefit package, but the PBA's own financial expert tellingly did not even

testify that, in his expert opinion, the City has the financial ability to pay for the Award demanded by the PBA. The only opinion in the record as to this most critical issue is that of Mr. Aber, who testified that the City does not have the financial ability to pay for the Award.

Even worse than the PBA's failure to present credible evidence as to the City's ability to pay for increases is the fact that it had the temerity to claim that a 3% wage increase would "only" cost each taxpayer an additional \$15.41 in taxes per year (PBA Ex. at Ex. O). This astounding assertion ignores the real issue, which is that the City's taxpayers cannot afford any tax increase, let alone one dedicated solely to funding PBA wage demands. Moreover, this figure does not take into account the PBA's actual wage demand (6%) or its other demands, which together represent an approximate 71% wage increase over the next three years (City Ex. 90). As a result, if all of the PBA's demands were awarded, the average taxpayer would actually pay an additional \$360 per year for 55 PBA unit members (City Ex. 15). Even that figure does not account for the cost of increases in health insurance, pension and payroll expenses. All, by the way, in the context of employees who are scheduled to come to work only 243 times a year and who, on average, actually appear an average of only 183 times per year (*see* City Ex. 19).

When these factors are considered, the PBA's overly optimistic view of the City's financial status does not match reality. The Panel's award must provide the taxpayers with relief, and any benefit enhancements must be matched with concessions to fund them

**THE PARTIES AGREE THAT THE CITIES OF BEACON,
KINGSTON, MIDDLETOWN, PORT JERVIS AND
POUGHKEEPSIE ARE THE COMPARABLE EXTERNAL JURISDICTIONS**

One thing upon which the parties agree is that the cities of Beacon, Kingston, Middletown, Port Jervis and Poughkeepsie are the comparable external jurisdictions to the City

of Newburgh. This mutual recognition is based in large part on this Panel Chair's decision in *Police Benevolent Association of the City of Beacon and The City of Beacon*, 2012 in which, he determined that the "comparable jurisdictions to the City of Beacon are . . . [the cities] of Kingston, Middleton, Port Jervis, Poughkeepsie and Newburgh." (City Ex. 8). This finding remains reasonable and appropriate given that these cities share similar economic and non-economic demographics; *i.e.*, population sizes, densities, median household incomes, percentages of persons below the poverty level and geographic land areas (City Ex. 9). The Panel should, therefore, recognize all of these cities to be the comparable external jurisdictions to the City of Newburgh.

**THE CITY OF HUDSON IS ALSO A
COMPARABLE EXTERNAL JURISDICTION BUT
THE TOWNS OF NEWBURGH AND NEW WINDSOR ARE NOT**

The Parties disagree whether the City of Hudson and the Towns of Newburgh and New Windsor are comparable external jurisdictions. The relevant economic and non-economic demographics, however, establish that the City of Hudson is a comparable external jurisdiction but that the Towns of Newburgh and New Windsor are not.

A. The City of Hudson Is Also a Comparable External Jurisdiction.

The City of Hudson should also be found to be a comparable external jurisdiction to the City of Newburgh since its relevant economic and non-economic demographics are similar to those of the City of Newburgh.

For instance, Hudson's median household income of \$39,792 is in line with that of the other comparables, which range from a high of \$57,792 (Beacon), to a low of \$36,077 (Newburgh) (City Ex. 9). The percentage of persons below the poverty level in Hudson

(24.4%) is also in line with the percentage in the other comparables, which range from a high of 27.9% (Newburgh) to a low of 15.0% (Beacon) (*id.*). Although Hudson has the smallest population size of the other comparable cities, at 6,648 persons, it is still comparable to Port Jervis, which has the next smallest population size of 8,668 persons (*id.*). Similarly, although Hudson has the smallest land size of the other cities at 2.16 square miles, it is still relatively comparable to Port Jervis at 2.53 square miles and Newburgh at 3.80 square miles (*id.*). This is also true of Hudson's population density of 3,110.8 persons per square mile, which is in line with Beacon (3,279.4), Kingston (3,191.7) and Port Jervis (3,490.7) (*id.*).

Given the overlap and similarity of Hudson's demographics with those of the other comparable cities, Hudson was appropriately found to be a comparable external jurisdiction to the City of Beacon in *Police Benevolent Association of the City of Beacon*, and should, for the same reasons, be found to be an appropriate comparable external jurisdiction in this matter (City Ex. 8). Although it is true that less weight was given to Hudson than the other comparables in *Police Benevolent Association of the City of Beacon*, the same should not hold true in this matter given that there is a greater degree of similarity in the economic demographics between Newburgh and Hudson; *e.g.*, Hudson has a median household income of \$39,363, Newburgh's is \$36,077, and Hudson's percentage of persons below the poverty level is 24.4%, Newburgh's is 27.9% (City Ex. 9).

Hudson should, therefore, be found to be a comparable external jurisdiction.

B. The Towns of Newburgh and New Windsor Are Not Comparable External Jurisdictions.

Despite the PBA's arguments to the contrary, the Towns of Newburgh and New Windsor are not comparable external jurisdictions to the City of Newburgh or any other of the above cited comparable cities.

The PBA's contention that the Towns of Newburgh and New Windsor are comparable to the City of Newburgh is based upon the decision of *Town of Newburgh and The Town of Newburgh Policemen's Benevolent Association*, 2012 (Selchick, Arb.), in which Arbitrator Jeffrey M. Selchick included the City of Newburgh in the universe of comparable external jurisdictions for the Town of Newburgh. Although Arbitrator Selchick found the City to be comparable to the Town, he tellingly acknowledged that the City was "somewhat of an 'outlier'" (City Ex. 10). Arbitrator Selchick nevertheless side-stepped this acknowledgement by relying on the fact that the City and the Town were geographically contiguous, coupled with what he described as (but did not provide evidentiary proof of) a trend among interest arbitration panels to favor inclusivity of proposed comparables (City Ex. 10, 11). By taking this approach, Arbitrator Selchick was able to ignore the fact that the relevant economic and non-economic demographics demonstrate that the City and Towns are not in fact comparable jurisdictions.

While the City of Newburgh and the Towns of Newburgh and New Windsor share similar population sizes and are geographically contiguous, the similarities end there. In fact, when the remaining relevant economic and non-economic demographics are compared, it becomes apparent just how dissimilar they are (City Ex. 12). For instance, the Towns' populations are far wealthier than the City's population; *e.g.*, the City's median income is \$36,153, while the Town of Newburgh's is \$77,027 and the Town of New Windsor's is \$72,336; the City has 4,346 of 9,140 or 48% of households below the local poverty level, while the Towns

have only 547 of 10,774 or 5% (Town of Newburgh) and 419 of 9,358 or (4%) (Town of New Windsor); the City has 27.9% persons below the poverty level, the Towns only have 7% (Town of Newburgh) and 5.2% (Town of New Windsor); the City has a population density of 7,587 persons per square mile, the Towns densities are 698.3 (Town of Newburgh) and 2,371.6 (Town of New Windsor) (*id.*). These objective dissimilarities in the wealth of the City's and the Towns' populations are especially relevant in this matter, given that the Panel must give substantial weight to the City's inability to pay, a factor that is directly dependent upon and impacted by the relative wealth of the City's population.

Commensurate with this conclusion, the Public Panel member in this proceeding ruled in *Police Benevolent Association of the City of Beacon*, at p.44, that "towns and cities are not comparable" (City Ex. 13). That determination correctly took into account the fact that towns and cities each have vastly different methods of financing, not to mention, forms of government, governing laws and Civil Service divisions. This is to say nothing of the fact that unit member Kevin Lahar testified that the difference between the City and the Towns are night and day; *i.e.*, in the Towns people say "hello" and "Merry Christmas" to officers, in the City they throw rocks and bottles.

The Towns of Newburgh and New Windsor should not, therefore, be found to be comparable external jurisdictions to the City of Newburgh.

**THE PANEL SHOULD DENY THE PBA'S BASE SALARY DEMAND
BECAUSE ITS UNIT MEMBERS ARE ADEQUATELY COMPENSATED**

While the City recognizes the valuable services that its police officers provide, it at the same time believes that the two 6% retroactive increases the PBA is seeking are far beyond what

the City can afford to pay and are wholly out of step with the types of increases that are being awarded in the other comparable external jurisdictions.

While it is true that the PBA voluntarily negotiated four years without increases in the last round of bargaining, it did so in exchange for other equally valuable (to them) considerations; *e.g.*, a reduction in training from 40 hours to 21 hours per year, an additional two hours straight-time pay after completion of 56 hours of stand-by time and a sick leave reduction incentive (Jt. Ex. 5). Thus, the PBA's claims of unfairness are of their own doing, borne of choices they made, and must be placed in the context of self-serving buyer's remorse.

A more objective analysis of the PBA's own evidence demonstrates that PBA unit members' salaries nevertheless remain comparable to their counterparts in the other comparable cities. For example, Newburgh's police officers' starting salary of \$46,727 exceeds the Beacon starting salary of \$43,697 (PBA Ex. 1, pg. 4). Similarly, Newburgh's third year salary of \$61,281, fourth year salary of \$63,171 and fifth year salary of \$65,369, are all higher than Kingston's respective third year (\$56,846), fourth year (\$57,970) and fifth year (\$61,227) salaries (*id.*). While the City's base salary rankings are admittedly below those of the other municipalities, someone has to be last, or next to last, and the City's ongoing crises, coupled with the PBA's agreement to freeze base salaries last contract, more than justifies the ranking (which does not even take into account all of the unit members' other terms and conditions of employment). Moreover, even with the wage freezes, PBA unit members still earned \$80,398 more over the course of the past 14 years, than they would have if their base wages had only kept pace with increases in the rate of inflation (City Exs. 28, 29).

The further argument by the PBA that low salaries have caused a significant number of unit members to leave the City to work for other, better paying, municipalities is also unavailing. Several of the PBA unit members testified that officers leave for a number of reasons beyond just salaries; *i.e.*, they leave because of the inherent stress associated with working in a City like Newburgh, because of disabilities, retirement, etc. Additionally, the argument that the Panel must address salaries in order to address the City's retention issues is undercut by the fact that this same argument has time and again been rejected in the City of New York, which, despite ongoing retention issues, continues to have the lowest paying salaries for police officers of almost all comparable external jurisdictions.

The simple truth is that the kinds of increases the PBA is demanding are simply out of touch with the types of increases that are being negotiated and awarded in the other comparable cities (Beacon, Hudson, Middletown and Port Jervis). For example, the average increases for those comparable cities that negotiated police contracts or received interest arbitration awards that include the two years that the present award will cover (Beacon, Hudson, Middletown and Port Jervis) were 1.63% for 2013 and 2.17% for 2014 (City Ex. 61). The average does not include the two years of no salary increases that were awarded to the PBA in the City of White Plains, for the period July 1, 2010 – June 20, 2012, a municipality with a far greater ability to pay than Newburgh (City Ex. 93).

As importantly, police officers in Beacon and Middletown paid for their increases, far lower than what the PBA demands here, through substantial concessions. Beacon's award

included the implementation of a new health insurance plan. Middletown's wage increases were offset by 15% health insurance premium contributions for all new officers for the life of their employment (City Ex. 61).

Perhaps the most telling information in terms of comparability and the City's limited ability to pay for wage increases comes from the settlement the City reached with the CSEA following the last day of hearing in the present matter (a copy of the MOA is attached as Proposed City Ex. 95). Pursuant to this settlement, the City and CSEA agreed to no wage increases for the period 2011-2014, a 1.75% wage increase for 2015 and a 2% wage increase for 2016. As with the recent settlements and awards in the external jurisdictions cited above, the City's CSEA settlement was also funded with concessions; *i.e.*, a reduction of one holiday for all members (the celebration of Presidents' Day in lieu of Washington's and Lincoln's birthdays), and more significantly, 15% new employee contributions towards health insurance premiums for the life of their employment with the City (a 5% increase in the existing 10% contribution rate paid by CSEA members hired on or after January 1, 2003) (City Ex. 94).

This evidence proves that there is no basis upon which to award any type of wage increase to the PBA, let alone its demand of two 6% per year increases. That demand would cost \$487,454 (the equivalent of a 12.36% wage increase) over the two years of the Award (City Ex. 62). When these increases are factored out over an additional three years beyond the two years of the Award; *i.e.*, 2015, 2016 and 2017, the cost increases to \$1,239,932 (the equivalent of a 31.44% wage increase) (*id.*), which is 33% of the 2013 fiscal year-end unassigned fund balance, in the broader context of all of the City's other unanticipated expenses, including the other outstanding CBA's; *i.e.*, Local 589, IAFF and PSOA (Jt. Ex. 11). Accordingly, there is no basis

on which the Panel can award the PBA's wage demand. Instead, it must either not award any increases or only award increases that are either significantly lower than what is being demanded, along with concomitant concessions to pay for those increases so that the City is not required to pay non-existent money to fund these new costs or breach the tax cap levy to do so.

THE PBA'S REMAINING DEMANDS ARE UNJUSTIFIED AND EXCESSIVE

The PBA insists that its unit members deserve vast wage and benefit improvements despite its failure to introduce sufficient evidence demonstrating a need for them. At a cost of \$487,454, the equivalent of a 12.36% wage increase for the two years that the award will cover 2013-2014, (a cost which skyrockets to \$2,799,447, the equivalent of a 70.98% wage increase (City Ex. 90, Slide 98) when the prospective demands are included and the prospective cost is projected out for an additional three years 2015-2017), these demands are completely indefensible. The City respectfully submits that, for the reasons that follow, the Panel should reject the PBA's demands in their entirety.

A. The Panel Should Deny the PBA's Demand to Increase the Number of Personal Days Because the PBA Failed to Justify the Increase.

The PBA demands to more than double the number of personal days from two to five days (City Ex. 66). It failed, however, to provide the Panel with a compelling justification to support this demand.

PBA Unit President Michael Pitt sought to justify this demand on the basis that it would help reduce the use of sick leave by giving officers another way to escape the stress of the job through so-called "mental health days." This argument does little more than establish that the PBA is merely seeking to substitute one type of leave for another. While the argument was couched as intending to reduce sick leave usages, the demand in reality will increase both the

potential number of days officers may be out on leave and the attendant overtime costs associated with covering those absences.

Furthermore, the projected prospective three year increased cost of this demand, without awarding two 6% retroactive wage increases, is approximately \$118,028 (the equivalent of 2.99% wage increase (City Ex. 68)). When the two demanded 6% increases are factored into the costing, the increased cost of this demand rises to approximately \$132,610 (the equivalent of a 3.36% wage increase) (*id.*).

The PBA presented projected retroactive increased costs for this demand, covering the years of the award 2013 and 2014 (PBA Ex. 3). Given its belated clarification that this demand (and every other demand except for the wage demand) is to only apply prospectively, the PBA's retroactive costing is wholly irrelevant and should be disregarded. Moreover, since the PBA has failed to present any evidence as to what the projected prospective increased costs of this demand are, the Panel should rely solely upon the City's evidence as to the projected increased costs of the demand. Accordingly, the Panel should reject this demand.

B. The PBA's Demand to Increase the Number of Sick Days Should be Rejected by the Panel Because the PBA Failed to Explain Why an Increase was Necessary.

The PBA demands to increase the number of sick days from 13 to 15 days (City Ex. 69). Here too, the PBA has failed to provide the Panel with a compelling reason why this increase is necessary.

The PBA's rationale that the "[n]umber of sick days is not sufficient, and employees had to give up a sick day in 2012" is unavailing for two reasons. First, the PBA has provided no explanation as to why the current number of sick days is insufficient. Second, the PBA is not proposing a temporary increase to make the unit whole for a prior negotiated temporary give-

back. Instead, it is seeking permanent increases that will do far more than make the unit whole for a one-time temporary give-back.

In addition, the number of sick days currently provided by the City is better than or equal to four of the six comparable cities. The number of days provided by the City exceeds the number of days provided by Middletown, Port Jervis and Poughkeepsie and is equal to that of Beacon (City Ex. 70).

If awarded, the projected prospective three year increased cost of this demand, without awarding two 6% retroactive wage increases, is approximately \$78,685 (the equivalent of 2% wage increase). When the two demanded 6% increases are factored into the costing, the increased cost of this demand rises to approximately \$88,407 (the equivalent of a 2.24% wage increase) (City Ex. 71). Accordingly, the Panel should reject this demand.

C. The PBA Has Not Justified Its Demand to Increase the Sick Leave Reduction Incentive.

The PBA demands \$500 increases in the two sick leave reduction incentive payouts. This would result in a 100% increase in incentive payments; *i.e.*, \$1,000 to \$1,500 or a 50% increase for employees who do not use any sick leave in a given year, and from \$500 to \$1,000 another 50% increase for employees who use between one and three sick days in a year (City Ex. 71).

There were 25 PBA unit members who qualified for incentive payouts in 2014 (PBA Ex. 5, pg. 5) and 17 in 2013 (*id.* at 6). The approximate 50% increase in the number of employees who qualified for a payout from one year to the next demonstrates that the current incentive is working and motivating employees to reduce their sick leave usage.

The PBA attempted to justify its demand on the basis that higher payouts will result in more employees not using sick leave. The evidence establishes that the current payouts are still sufficiently incentivizing the membership and there is simply no guarantee that increases in the payments will result in further decreases in the amount of sick leave being used by employees. Moreover, the current rates are already far more generous than those offered by the two comparable cities that offer similar cash payment incentives; *i.e.*, Beacon (\$200 if less than five days used in a year) and Poughkeepsie (\$875 if no days are used, \$625 if one day is used and \$425 if two to three days are used) (City Ex. 73).

The projected prospective three year increased cost of this demand is approximately \$96,000 (the equivalent of 2.43% wage increase) (City Ex. 74). Accordingly, the Panel should reject this demand.

D. The PBA's Demand to Change the Shift Differentials to a Percentage of Base Salary is Excessive and should be rejected.

The PBA demands changing the shift differential paid to employees assigned to the 4:00 p.m. to 12:00 a.m. shift from \$1 per hour to 7% of the employees' hourly wage per hour and, for employees assigned to the 12:00 a.m. to 8:00 a.m. shift, from \$2 per hour to 10% of the employees' hourly wage per hour (City Ex. 75).

The PBA attempted to justify this demand by pointing to the fact that, in 2012, employees did not receive shift differentials. This was yet another attempt by the PBA to overly compensate for a negotiated temporary give-back by demanding a substantial permanent change to the contract that would establish an ever-increasing permanent cost to the City. By converting

from a flat dollar amount to a percentage of base salary, the cost of paying this benefit is guaranteed to continue to rise as the employees' earnings rise.

In addition, the unreasonableness of the demand is demonstrated by the fact that four of the six comparable cities do not even pay shift differentials (City Ex. 76). While Poughkeepsie pays a weekly shift differential, it is also on a flat dollar basis. Middletown pays a 5% differential, far below the 7% and 10% the PBA is demanding (*id.*).

The projected prospective three year increased cost of this demand, without awarding two 6% retroactive wage increases, is approximately \$200,664 (the equivalent of 5.09% wage increase). When the two demanded 6% increases are factored into the costing, the increased cost rises to approximately \$250,278 (the equivalent of a 6.35% wage increase) (City Ex. 77).

Accordingly, the Panel should reject this demand.

E. There Is No Need for the Panel to Increase Longevity Payments.

The PBA seeks to restructure the longevity benefit so that unit members will receive longevity payments as a percentage of base salary (ranging from 2% up to 5% of base salary depending upon years of service) (City Ex. 78). This demand must be rejected because it is yet again another example of an unjustifiable attempt to tie benefits to wages which, if awarded, would guarantee automatic increased costs to the City any time wages are increased. There is no justification in this record, let alone a demonstrated need, for a change of this kind.

The demand should also be rejected because a conversion from flat dollar longevity payments to payments tied to employees' salaries is out of step with how longevity payments are made in five of the six comparable jurisdictions (Beacon, Hudson, Port Jervis and Poughkeepsie), which are all paid as flat dollars. Moreover, Middletown converted from a

percentage of base salary to flat dollar amounts for all employees hired on or after January 1, 2012 (City Ex. 79).

Even at their current amounts, the City's longevity payments exceed all of the longevity payments offered in Beacon and are only \$50 less than the first two longevity step payments provided by Hudson (Newburgh's first two steps are \$950 and \$1,450; Hudson's are \$1,000, \$1,500), but more than exceed Hudson's last two payments by \$950 and \$1,250 respectively (Newburgh's last two steps are \$1,950 and \$2,250; Hudson's are \$1,000 and \$1,000) (*id.*).

If this demand were awarded without awarding two 6% retroactive wage increases, the projected prospective three year increased cost would be approximately \$89,641 (the equivalent of a 2.27% wage increase). If the two 6% increases are awarded, then the prospective three year increased cost of this demand would rise to approximately \$127,475 (the equivalent of a 3.23% wage increase) (City Ex. 80).

For these reasons, this excessive demand must be rejected.

F. The PBA Has Not Justified Its Demands to Eliminate the Quarter-Master System and Provide All Members With Increased Uniform Allowances.

~~The PBA demands a return to the City paying all unit members an annual uniform allowance and asserted for the first time at the last hearing date, the elimination of the current quartermaster system used for providing uniforms to unit members. The PBA also demands that the annual uniform allowance be increased by \$100. This would result in the allowance increasing from \$1,400 to \$1,500 (City Ex. 81).~~

The current quartermaster system provides uniformed unit members with the required uniform in a manner that is both efficient and cost effective for the City (detectives and unit

members who belong to the Department's "plain clothes" narcotics squad are the only members who currently receive an annual uniform allowance and are not issued uniforms pursuant to the quartermaster system). Not only does the PBA's demand not reference the elimination of the quartermaster system, but the record is devoid of any evidence establishing why the PBA believes the quartermaster system should be scrapped and replaced with annual uniform allowances for all members. The unreasonableness of the demand is further evidenced by the fact that the City's present uniform allowance of \$1,400 exceeds the uniform allowances provided by all six of the comparable cities (City Ex. 82).

The three year prospective increased cost of these demands amounts to approximately \$136,420 (the equivalent of a 3.46% wage increase) (City Ex. 83). Here, the PBA's costing information altogether fails to account for both the financial impact attendant to the elimination of the quartermaster system as well as the increased cost associated with returning all unit members, other than detectives and members of the narcotics squad, to an annual uniform allowance (PBA Ex. 8). Therefore, this information should be disregarded in its entirety.

Based upon the excessiveness of this demand and the lack of evidentiary support in the record, the Panel should reject these demands.

G. The Panel Should Reject the PBA's Demand for an Enhanced Stand-by Time Benefit for Detectives Because the PBA has failed to Justify This Increase.

The PBA demands that detectives receive an enhanced stand-by benefit for completing fewer hours of stand-by time (City Ex. 84). Presently, detectives receive eight hours of compensatory time for every 88 hours of stand-by time completed (*id.*). The PBA seeks to more than half the number hours of stand-by time needed before compensatory time is paid; *i.e.*, to

change the status quo that after completing only 40 hours of stand-by time, detectives would receive eight hours of compensatory time and an additional two hours of straight time pay (*id.*).

The PBA provided no evidence justifying this demand. Instead, the PBA merely provided a conclusory statement that the changes are “necessary” because of “low salaries” and the need to “encourage senior employees to take the position as a stand-by detective” (PBA Ex. 9). The PBA failed to offer any concrete evidence corroborating these statements. Moreover, while the PBA concedes that each comparable jurisdiction “calculates standby time in a different way,” the unavoidable fact is that half of the six comparable cities (Hudson, Middletown and Port Jervis) do not even have contract provisions addressing stand-by time (City Ex. 85).

If this demand is awarded, without awarding the PBA’s demanded wage increases, the projected prospective three year increased cost to the City would be approximately \$110,565 (the equivalent of 2.80% wage increase). If the wage increases are factored into the award, then the cost of this demand would increase to approximately \$124,230 (the equivalent of a 3.15% wage increase) (City Ex. 86).

The Panel should, accordingly, reject this demand.

H. The PBA Has Not Justified Its Demand for Four Floater Holidays.

The PBA demands that four of the 14 designated paid holidays be changed to floater days that unit members could later use on days of their choosing or bank to be paid out at the end of the year (City Ex. 88). The PBA seeks to justify this demand on the ground that it would provide flexibility in the scheduling of holidays (PBA Ex. 10). In reality, this is just another means of increasing membership compensation; *i.e.*, instead of taking off four pre-existing holidays with pay, unit members will be able to work these four days, receive pay, and then

receive an additional four days' pay when they cash out their banked floater days at the end of the year. This is, then, simply a backdoor way of providing employees with the ability to earn an additional four days' pay. Tellingly, half of the six comparable cities do not provide any flexibility with respect to the holidays that unit members can take (City Ex. 89).

If this demand were to be awarded by the Panel, the projected prospective three year increased cost, without awarding the PBA's wage increases, would be approximately \$192,995 (the equivalent of a 4.89% wage increase). When the wage increases are factored into the costing, the cost of this demand would increase to approximately \$217,179 (the equivalent of a 5.51% wage increase) (City Ex. 90).

Accordingly, the Panel should reject this demand.

WHERE THE PARTIES HAVE COMPETING PROPOSALS ON THE SAME ISSUE, THE PANEL SHOULD AWARD THE CITY'S PROPOSALS AND REJECT THE PBA'S DEMANDS

A. The Panel Should Award the City's Proposal to Eliminate All Compensatory Time and Reject the PBA's Demand to Both Increase the Amount of Compensatory Time That May Be Accrued and Provide for an Annual Payout.

While the City seeks the elimination of all opportunities for unit members to earn compensatory time (City Ex. 37), the PBA is demanding a change to the current requirement that compensatory time be used in the month following its accrual or paid out in cash within 10 days of this deadline (City Ex. 63). Specifically, the PBA is demanding that unit members be allowed to annually accrue and be paid out for up to 200 hours of compensatory time (*id.*). Because compensatory time only serves to compound the need for overtime, the Panel should reject the PBA's demand and grant the City's proposal.

Compensatory time often results in the payment of additional overtime or the accrual of more compensatory time for the second employee who is utilized to back-fill the absence of the first. Thus, the accrual of compensatory time results in a compounding cycle of increased overtime payments and/or compensatory time accruals for the City. By awarding the City's proposal to eliminate compensatory time, the Panel will enable the City to reduce this potential exposure without adversely affecting unit members; *i.e.*, unit members will still receive cash overtime for any qualifying additional service.

Newburgh would not be the first of the comparable cities to prohibit the earning of compensatory time. Indeed, the PBA conceded that neither Kingston's contract nor Poughkeepsie's contract provide for compensatory time (City Ex. 38; *see also* PBA Ex. 2).

Conversely, if the Panel awards the PBA's demand, the City's potential overtime and compensatory time exposure would be increased because officers would now be able to carry more accrued compensatory time for a longer period of time; *i.e.*, by changing from a payout within 30 days of accrual to an annual payout. Moreover, the demand for an annual 200 hour cap on the accrual of compensatory time is far beyond the annual caps in place in any of the comparable cities that provide for compensatory time; *i.e.*, Beacon and Middletown each have a 48 hour max accrual and Hudson has a 40 hour cap (City Ex. 64).

If the Panel grants the City's proposal to eliminate compensatory time, the City would save \$558,418, the equivalent of a 14.16% wage increase for the entire bargaining unit (City Ex. 39). Conversely, if the PBA's demand for an annual payout of up to 200 hours of compensatory time is awarded, the prospective three year projected increased cost to the City, without awarding two 6% retroactive wage increases, would be approximately \$344,383 (the equivalent of an

8.73% wage increase). When the demanded increases are factored into the costing, the cost increases to approximately \$386,918 (the equivalent of a 9.81% wage increase) (City Ex. 65).

For these reasons, the PBA's demand should be rejected and the City's proposals awarded.

**THE CITY'S REMAINING PROPOSALS SHOULD BE AWARDED
BECAUSE THEY ARE REASONABLE, APPROPRIATE
AND WILL IMPROVE PRODUCTIVITY AND EFFICIENCY**

The City's financial status has only somewhat improved since the last round of bargaining. It still faces significant declines in revenue, ever escalating costs and depleted reserves. Additional concessions must be awarded in this interest arbitration proceeding so that the City can operate its Police Department in a more cost-efficient manner.

The City presented the Panel with a wage and compensation package that will accomplish that goal. If the Panel grants that package in its entirety, taxpayers could realize savings of approximately \$1,700,398, the equivalent of a 43.12% wage concession (City Ex. 59). This savings would go a long way toward helping the City in its slow march toward solid financial ground.

A. The City's Proposal for a New Salary Schedule for New Hires is Reasonable.

The contract currently provides for a seven step salary schedule (Police Officer Start to Police Officer 6th Year). The City seeks to obtain cost savings and budgetary certainty through the creation of a new ten step schedule with equidistant salary steps (City Ex. 30). This proposal makes sense.

By retaining the bottom and top steps of the current salary schedule and adding 10 new steps in between at equal distances, the City will not only gain the long-term savings associated

with unit members taking longer to reach top step, but will also gain the budgetary certainty of knowing the exact percentage increases that can be expected from year to year because of equidistant salary steps (*id.*). If awarded, the City would save \$95,389, the equivalent of a 2.42% wage concession (City Ex. 31). The Panel should grant this proposal.

B. The City's Proposal for an Annual Vacation Selection Deadline Makes Sense.

The City seeks to require that all vacation selections for the following year be made between November 1st and November 30th (City Ex. 32). This proposal would ease vacation scheduling for the Department's administration and possibly reduce coverage issues due to unexpected vacations by unit members. Moreover, vacation selection deadlines are not uncommon. One-half of the six comparable cities have some form of vacation selection deadline (City Ex. 33). Since the City's proposal does not require any financial concession on the part of the PBA and would merely provide administrative flexibility for the City, the Panel should grant this common sense proposal.

C. The Panel Should Grant the City's Proposal to Reduce the Number of Holidays for New Hires Because the Current Number of Holidays is Excessive.

The City seeks to decrease from 14 to 12 the number of holidays allotted to employees hired on or after January 1, 2013 (City Ex. 34). This reduction would be accomplished by replacing Lincoln's and Washington's Birthdays with Presidents' Day and by eliminating General Election Day (*id.*).

This reduction in holidays was the same reduction that was temporarily put in place in the last round of negotiations, but which subsequently sunset. While the City is now seeking to permanently implement this reduction, it is only seeking to do so for new employees. None of the present bargaining unit members would be affected by this proposal.

As important, there is considerable precedent for decreasing to 12 the number of holidays. Beacon, Port Jervis and Poughkeepsie all only provide 12 days to their police officers, and Middletown provides 13 (City Ex. 35).

If this proposal is awarded, the City will save \$5,058, the equivalent of a 0.13% wage concession (City Ex. 36). For these reasons, the Panel should award this proposal.

D. The Panel Should Award the City's Health Insurance Proposals.

1. The City Has Justified Its Proposal to Require Retiree Health Insurance Premium Contributions and Prohibit Dual Coverage in Retirement.

PBA unit members currently receive 100% fully paid retiree health insurance premiums, another benefit that is going the way of the dodo bird. For all employees who retire on or after January 1, 2013, the City seeks to decrease its contribution to 75% or, if the employees add dependent coverage at retirement, for the City to contribute at the statutory minimum rates of 50% and 35% (City Ex. 40). The City additionally seeks to eliminate the potential possibility that City employees who are eligible for coverage as a dependent through one another's plans may both enroll in family level coverage; *e.g.*, if two married employees both enroll in family coverage.

Since 2001, the NYSHIP premium for individual coverage has increased 152% and the premium for family coverage has increased 171% (City Exs. 41-42). Among the six comparable cities, Newburgh is the only one without some of kind of retiree health contribution required of unit members (City Ex. 43). While the amount of the contributions often depend upon hire dates and other service-related conditions, contributions range from as high as 30% for individual coverage (Hudson) to 50% for dependent coverage (Kingston and Poughkeepsie) (*id.*). Not

requiring some degree of premium contributions on the part of retirees would be both disconnected from reality as well as financially unsustainable.

The contract does not currently prohibit City employees, who are eligible for health insurance coverage as a dependent of one other's plans, from both enrolling in family level coverage; *e.g.*, nothing prohibits two married employees from both enrolling in family level coverage. This can result in an unnecessary duplication of benefits and expenses. Accordingly, the City seeks to prevent this sort of economic waste (City Ex. 40). Awarding this proposal would not impact any current PBA unit member. If the Panel grants this proposal in its entirety, and assuming all active retirees would retroactively contribute at 25% of the cost of premium contributions, the City would save \$556,297, the equivalent of a 14.11% wage increase for the entire bargaining unit (City Ex. 44). Now is the time for the Panel to award this proposal.

2. The Panel Should Grant the City's Proposal to Increase the Service Requirement for New Employees to be Eligible for Retiree Health Insurance Coverage and To Eliminate Credit for Outside Service because this Benefit Should Only be Provided to Unit Members Who Have Demonstrated Long Dedicated Service to the City.

Currently, PBA unit members hired on or after January 1, 2003, are eligible for 100% City-paid retiree health insurance after 15 years of continuous service with the City (City Ex. 45). Unit members are also currently eligible to receive up to a maximum of five years of service credit toward their eligibility to receive retiree health insurance coverage from the City for prior service rendered to an outside police agency, at the rate of one year of service credit for every two years of continuous service with an outside agency (*id.*).

Given the ever increasing costs of providing retiree health insurance coverage (City Exs. 41-42), the City seeks to increase the number of years of service credit necessary for employees

to be eligible for their currently no premium cost retiree health insurance coverage from 15 to 20 years of continuous service and to eliminate all outside service credit for any officers hired after January 1, 2013 (City Ex. 45).

As it stands now, officers can potentially be eligible for fully premium paid retiree health insurance coverage after only 10 years of service with the City; *i.e.*, assuming they are eligible for five years of service credit because of prior service to another outside police agency. This kind of benefit is far too generous and expensive to be bestowed upon unit members for just 10 years of service with the City. The entire concept of retiree health insurance is to reward employees who have devoted their entire or a substantial part of their careers to the service and protection of the City and its residents.

A 20 year service requirement is already in place in Hudson, which requires 20 years of service along with the return of 200 sick days before police officers are eligible for retiree health insurance coverage (City Ex. 46). Additionally, none of the six comparable cities have contract provisions that provide employees with service credit towards eligibility for retiree health coverage based upon service rendered to outside departments or agencies (*id.*).

Although it is difficult for the City to put a price tag on the potential savings associated with this kind of proposal, common sense dictates that a benefit as extraordinarily generous as fully premium paid retiree health insurance coverage should not be easily earned. For these reasons, the Panel should award this proposal.

3. The City's Proposal to Increase Active Employees' Health Insurance Premium Contributions and to Require All Active Employees to Contribute to Health Insurance Premium Contributions is Consistent with Current Trends.

Presently, unit members hired before January 1, 2003 do not contribute anything toward the cost of their health insurance premiums (City Ex. 48). Unit members hired on or after January 1, 2003 contribute only 10% towards health insurance premiums for the first five years of their employment and thereafter do not contribute anything (*id.*). Again, because of the ever rising cost of health insurance premiums (*see* City Exs. 41-42), the City is seeking an across-the-board 25% contribution from all unit members for the entirety of their careers (City Ex. 48).

As with retiree health insurance, it is no longer fiscally realistic for the City to continue to provide employees with no premium cost health insurance coverage for the duration of their careers. In addition, while most of the comparable cities at one time provided coverage to police officers without any premium contribution, all of the comparable cities now require some kind of contribution for one class of employees or another (City Ex. 49). For instance, Beacon has a 20% contribution for all employees hired after January 1, 1993. Hudson has a 15% contribution for individual coverage and a 30% contribution for family coverage for all employees hired after January 1, 2012. Middletown has a 15% contribution for employees hired on or after January 1, 2012. Port Jervis has a 20% contribution (not to exceed \$5,200) for employees hired on or after January 1, 2011. Poughkeepsie has as 20% contribution (zero if the officer maintains 85 sick days) for employees hired on or after December 31, 1989 (City Ex. 49).

It is an inescapable fact that Newburgh is the only city among the comparables where police officers, regardless of hire date, will eventually receive health insurance coverage with no premium cost to the officers for the majority of their careers with the City. By reference, members of the City's CSEA unit who were hired on or after January 1, 2003 and members of the City's Local 589, IAFF unit (fire) who were hired on or after January 1, 2011 are required to

contribute 10% toward the cost of their health insurance premiums for the entirety of their careers (City Ex. 94). Moreover, pursuant to the terms of the CSEA's most recent contract settlement, *supra*, CSEA members are now required to contribute 15% for the entirety of their employment.

The trend remains that more and more police officers contribute toward the cost of health insurance premiums. Imposing a contribution on all employees would have a positive impact on the City's fiscal bottom line and enable it to realize approximately \$480,830 in savings, the equivalent of a 12.19% wage increase, over the term of the Award (City Ex. 50).

The time has come for the PBA to make substantial health insurance concessions in exchange for whatever wage and benefit increases the Panel awards. For these reasons, the Panel should award the City's proposal.

4. The City's Proposal to Convert the Health Insurance Buy-out from a Percentage to a Flat Dollar Amount and to Change the Deadline for Electing a Buy-out is Reasonable.

PBA unit members who decline City-provided health insurance currently receive 25% of the City's savings. The City seeks to convert this benefit to a flat dollar amount of \$4,000 and to change the deadline for unit members to notify the City that they are declining coverage from December 1st to October 15th (City Ex. 51).

As health insurance premiums continue to skyrocket (*see* City Exs. 41-42), a benefit based on the percentage of savings no longer makes sense. A flat dollar amount allows the City to better control its health insurance costs by ensuring that the cost of paying the buyouts does not continue to rise with the mushrooming cost of health insurance premiums. Additionally, the change in the notification deadline would not have any financial impact upon unit members and

would provide the City with the administrative flexibility to timely prepare for coverage changes in advance of new plan years.

Converting that benefit to a flat-dollar payment would save the City \$4,406, the equivalent of a 0.11% wage increase for the entire unit, over the duration of the Award (City Ex. 53). The Panel should, therefore, award this proposal.

5. Prohibiting Dual Health Insurance Enrollment for Active Employees is Commonplace in 2015.

As is the case for retiree coverage, nothing prohibits City employees, who are eligible for health insurance coverage as dependents of one another's plan, from both enrolling in family level coverage. As noted above, this can result in an unnecessary duplication of benefits and expenses (City Ex. 54). Accordingly, because the awarding of this proposal would not impact any current PBA unit member, since there are presently no married city employees both receiving family level coverage, now is the time to clarify the contract so as to avoid any unnecessary future economic expense.

E. There Is No Reason Why the Panel Should Not Grant the City's Proposal to Make the Drug and Alcohol Testing Procedures Permanent and Add an Additional Reasonable Suspicion Basis for Testing.

~~A detailed drug and alcohol testing procedure was temporarily added to the contract in~~ the last round of negotiations. This provision, however, sunset with the expiration of the last contract on December 31, 2013. The City now seeks to permanently add this provision to the contract and to include an additional reasonable suspicion basis for testing unit members after they discharge a weapon (City Ex. 57).

The drug and alcohol testing procedures protect the City, its residents, visitors and employees (including PBA unit members) from those unit members who may have unfortunately

fallen victim to drug and alcohol abuse. As keepers of the peace and enforcers of the law, it is of paramount importance that unit members always discharge their duties with the utmost sobriety and clarity of mind. For these reasons, it is critical that the City have in place a fair and impartial testing procedure to guard against those hopefully rare instances when employees are no longer acting in accordance with these expectations.

Procedures of this kind are well established in the law enforcement community. Indeed, four of the six comparable cities have some type of drug and/or alcohol testing procedure in place (City Ex. 59). Moreover, the City of Poughkeepsie's procedures contain a reasonable suspicion basis for testing employees when they discharge a weapon (*id.*).

This proposal would not come with any type of financial concession if awarded in its entirety for all of the above-cited reasons.

For all of the reasons set forth in this Post-Hearing Memorandum, and at the hearing, the City respectfully and earnestly requests that the Panel award the City's proposals and reject the PBA's demands.

OPINION

§209 of the New York State Civil Service Law (*Taylor Law*) sets forth the parameters which an Interest Arbitrator must utilize in deciding terms and conditions of employment. These criteria are as follows:

- a. Comparison of wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services or requiring similar skills under similar working conditions and with other employees generally in public and private employment in comparable communities;
- b. the interests and welfare of the public and the financial ability of the public employer to pay;

c. comparison of peculiarities in regard to other trades or professions, including specifically, (1) hazards of employment; (2) physical qualifications; (3) educational qualifications; (4) mental qualifications; (5) job training and skills.

d. terms of collective agreements negotiated between the parties in the past providing for compensation and fringe benefits, including but not limited to, the provision for salary, insurance and retirement benefits, medical and hospitalization benefits, paid time off and job security.

With these criteria in mind, I turn to the specific issues before me. The first such matter is the initial criterion.

I must first observe that the broad category of comparable jurisdictions is limited to other police departments. However, in view of the stipulation to admit the settlement documents of the Newburgh firefighters and administrative employees, they must also be considered. I must add that the weight given to the CSEA MOA will be given less weight. I will elaborate on this further in my discussion of the third criterion under the Taylor Law.

Moreover, the impact of the City's designation as a *fiscally eligible community* must be considered. It is un rebutted that the 2013 amendments to the Taylor Law require the Panel to give 70% weight to *ability to pay* and a total of 30% to the combination of the other three criteria. While this will be addressed in connection with Criterion (b), it impacts on this criterion as well. The most relevant *comparables* are the ones that would ordinarily be comparable in a traditional sense but are also *fiscally eligible communities*.

Within this context, the parties agree that the following cities are comparable to Newburgh: Kingston, Middletown, Beacon, Port Jervis and Poughkeepsie. There is nothing in the record to indicate that any of these jurisdictions is a *fiscally eligible community*. However, the MOAs of the other City bargaining units must be given substantial consideration since they

were arrived at under the same financial circumstances that apply to the instant interest arbitration.

Both parties cited my 2012 Award in *City of Beacon*. I am persuaded that considerations of population size, density, household income, percentages of people living below the poverty line and geographic land area suggest that the above referenced cities are comparable external jurisdictions to the City of Newburgh. The crux of my Award in *City of Beacon* was that the external comparables to Beacon were the cities in Dutchess County and counties that are contiguous to it.

However, the parties differed with respect to the comparability of other jurisdictions. The PBA argued that the Towns of Newburgh and New Windsor are comparable to the City of Newburgh, while the City asserted that the City of Hudson should be included within the list of comparators.

With respect to the matter of the towns, the financing of cities and towns are very different. I opined in *City of Beacon* that towns and cities are not comparable.

In this case, not only is there a difference in the matter of the financing of cities and towns but a review of the specifics relative to the comparison of the demographics of the Towns of Newburgh and New Windsor with those of the City of Newburgh persuade me that the well stated PBA argument must be outweighed by the very significant dissimilarities between the above referenced towns and the City of Newburgh.

I recognize that Arbitrator Selchick held in his 2012 Award in *Town of Newburgh and*

Town of Newburgh PBA that the City of Newburgh was comparable for interest arbitration purposes to Town of Newburgh. However, at that time, Arbitrator Selchick considered the City of Newburgh to be an *outlier* in his analysis.

Of equal or greater importance is the 2013 revision to the Taylor Law which mandated a different analysis of the *ability to pay for fiscally eligible municipalities*. The City of Newburgh is one such municipality.

I have reviewed the criteria established relative to the identification of *fiscally eligible municipalities*. One of the criteria is that such a municipality must have an *average full value property tax rate* that is greater than 75% of the other municipalities in the State. Satisfying this criterion makes a municipality automatically eligible for status as a *fiscally eligible municipality*.

The Office of the State Comptroller established a property tax rate of 6.823 as the threshold required for automatic status as a *fiscally eligible municipality*. The City's property tax rate is 11.93, a rate that is far greater than the threshold rate.

Thus, it is undisputed that the City must be considered a *fiscally eligible municipality*. Such a designation required the panel to give *ability to pay* a weight of 70%, with the other criteria being given a total weight of 30%.

The Union argued that interest arbitration panels have always given great weight to the *ability to pay* and that the 70% weight is difficult to comprehend. Even if there is merit to this argument, the Panel was required to make serious efforts to satisfy the language and intent of the amendment to the Taylor Law.

This amendment to the Taylor Law places greater focus on the economic disparities between the City of Newburgh and the Towns of Newburgh and New Windsor. Thus, I must

conclude that the Selchick panel's analysis was done before the change in the Taylor Law and a reasonable application of the amended law must lead to a finding that the cited towns are not comparable to the City of Newburgh for purposes of this Award.

As to the City of Hudson, I find that Hudson has some areas of comparability (some economic and demographic indicators) and other differences (location). Thus, the panel gave less weight to Hudson than to the other agreed upon cities.

As a consequence, I conclude that the comparable jurisdictions to the City of Newburgh are the cities are Kingston, Middletown, Port Jervis, Poughkeepsie and Beacon. The City of Hudson, though comparable, was given less weight than the other comparables.

Criterion (b) concerns the interests and welfare of the public and the financial ability of the public employer to pay for the costs associated with increases in wages and improvements in benefits. I will first address the interests and welfare of the public.

It is unquestioned that the needs of the public are met by a well-paid and well maintained police force that operates safely and efficiently. It is also clear that good morale within these units is essential. Positive morale results in higher productivity and a flow of high quality candidates for the positions available.

The issue of the City's ability to pay requires a different kind of analysis. I must first acknowledge the quality of the presentations made by the representatives of the PBA and the City.

The PBA argued that the City's bond rating, as of March 2014 was raised from Ba1 to Baa3. It added that, in 2013, the City had a fund balance of \$9,240,341, of which \$4,506,201 was unrestricted.

It pointed out that the City, without explanation, indicated that it is incapable of paying wage or compensation increases. However, it observed that the City's total revenues and expenses have increased steadily since 2008.

It noted that the City claimed the need for equipment and infrastructure upgrades. It stresses that this claim is devoid of details.

It concluded that the City failed to properly plan for the need to grant wage increases to PBA members. It insisted that, despite the lack of effective planning, the City has the ability to pay for the cost of the PBA proposals.

The City argued that the increasing cost of police services is unsustainable. It pointed to increasing pension and health insurance costs.

It stressed that its hands are further tied by the real property tax cap. Moreover, the City Council has banned proposals to override the tax cap.

It asserted that the City was required to provide the State Division of Budget with plans to reduce costs through the consolidation of services as well as to comply with the tax cap in the 2016 fiscal year.

It posited that there is a continuing downward spiral of revenue sources. It observed that the City's finances would buckle in the presence of an award granting the PBA's proposals.

The City argued that it has experienced a decline in revenue and an increase in expenses between 2012 and 2013. It observed that the Union's optimistic views of the City's finances are not matched by the realities.

After considering the arguments and relevant data, I am persuaded that *the ability to pay* is not measured in absolute terms. In short, it is not necessarily true that the inability to pay for the PBA proposals connotes that the City is unable to fund more modest improvements in wages. The MOAs involving the Firefighters and CSEA support this conclusion.

Thus, despite the severity of the City's economic condition, I am persuaded that the City does have the ability to pay for smaller increases in salaries than those proposed by the PBA. I recognize the seriousness and the scope of the economic downturn in recent years. That being said, I conclude that the City has the ability to pay for reasonable improvements in the wages of PBA members.

Criterion (c) is based upon a comparison of the peculiarities of the job of members of the unit involved in the interest arbitration with other trades or professions, including specifically hazards of employment, physical qualifications, educational qualifications, mental qualifications and job training and skills. It is clear that police personnel are faced with serious and unique hazards. Law enforcement personnel, in general, and, in this case, police officers, risk death and serious injuries regularly. There is a strong similarity between police officers and other law enforcement units relative to the specific considerations in this criterion. Law enforcement is unique and those employed in this field can only be compared with others in that field.

As noted above, I need to comment about the weight given to the Firefighters and CSEA MOAs. The Firefighters are typically considered one of the uniformed services provided by a municipality. It is true that the services rendered by fire departments are not the same as those of police departments. However, both jobs are inherently dangerous. They are generally considered sufficiently alike as to enjoy similar retirement and pension benefits. They share benefits under

the General Municipal Law for injuries and/or illnesses sustained in the performance of their duties. There are broadly similar in the physical and educational qualifications that apply to both jobs. Additionally, police officers and firefighters are subject to ongoing training such that the maintenance of skills is a high priority. Finally, a review of their CBAs reveals many similarities in terms of their contract provisions.

Are they identical? They are not. However, because they are similar in enough ways, it is useful under the facts of this case to consider the results of the bargaining between the City and the Firefighters union when considering the financial aspects of this Award. This observation is pertinent given that there is no evidence of other police jurisdictions that are funded by *fiscally eligible municipalities*. Thus, the Panel considered the financial aspects of the Firefighters MOA as being that of a comparable bargaining unit.

As noted above, the CSEA MOA is given less weight than that of the Firefighters. CSEA does not represent a uniformed service. However, the weight given the CSEA MOA is based on a need to demonstrate that the City's financial status is distressed and that its inclusion in the category of *fiscally eligible municipalities* is justified and must be addressed.

The final statutory criterion, statutory criterion (d), requires a consideration of past collective bargaining agreements between the parties with respect to compensation and fringe benefits. This criterion mandates that the instant proceeding not be viewed in a vacuum, but rather in the context of prior negotiations and awards between the PBA and the City. The record is replete with relevant data. Particular attention was given to the post-2008 period. This history was given appropriate consideration.

Having discussed the relevant statutory criteria, I now turn to the parties' specific proposals. It should be recalled that the parties reduced the number of their proposals to ten. The Union did not renumber their proposals. Thus, the Panel renumbered the ten proposals but indicated the actual numbering of the Union's in brackets.

The City did renumber its proposals. They will be referred to sequentially from one to ten.

TERM OF THE AWARD

In the absence of an agreement between the parties, interest arbitration awards are limited to terms of two years. There is no such agreement in this case. Thus, this award is a two year award that covers the period January 1, 2013- December 31, 2014.

UNION PROPOSAL 1 [1] and CITY PROPOSAL 1:

The Union proposed six percent increases for each of 2013 and 2014. It asserted that the increases be retroactive to January 1, 2013. It observed that the bargaining unit has not had a wage increase since 2009 and that its wages are below the comparables.

It estimated the cost of these increases to be \$443,748. It notes that the City's estimate is \$487,454, but that the estimate includes retroactive pay to people no longer employed by the City.

The Union noted that the City has projected future costs in 2015-17. It indicated that there will be another CBA covering 2015-17 and that estimating costs for that contract is not possible.

The City rejected this proposal as being unaffordable and as being inconsistent with increases awarded in comparable external jurisdictions. It agreed that the PBA voluntarily negotiated four years of no wage increases but that it did so in exchange for other considerations.

The City averred that the PBA salaries are comparable to those of its counterparts in other cities. It agreed that the base salaries rank below other jurisdictions. The City's fiscal crises and the agreed to wage freeze in the last contract must be considered.

In the context of the wage freeze previously negotiated, it is important to make two comments. First, both the fire fighters and CSEA took *zeros* during the same time frame as did the PBA. The entire country was facing the most serious economic contraction since the great depression of the 1930s and all of the City unions agreed to wage freezes. Second, and equally important, there was an agreement between the parties such that there were no layoffs in the PBA in return for the wage freeze.

Thus, there was a *quid pro quo*. The City benefitted from a wage freeze involving police officers and the PBA membership benefitted from the preclusion of layoffs. This is not to say that the wage freeze need not be considered. It is to say that the wage freeze must be considered in its full context.

The City maintained that there is no basis upon which to award any wage increase. It maintains that this demand would cost \$487,454 or the equivalent of a 12.36% increase over the two years of the Award. It maintains that these increases when factored out in 2015, 2016 and 2017, the cost increases to about \$1.2 million. It concluded that the Panel could award either no increase or one that is much lower than 6% per year along with concomitant concessions.

I first considered the increases awarded 2013 and 2014 to bargaining units in comparable cities (CX61). The Beacon police got 2% increase in each year along with changes in the health insurance plan. Hudson police received 0% in 2013 and 1.5% in 2014. Middletown awarded the PBA 3% for each year but imposed a 15% health insurance premium on employees hired on or after January 1, 2012. The last PBA contract in Port Jervis provided for a 1.5% increase in 2013. There is no successor CBA in place.

As noted above, the Poughkeepsie MOA was admitted into the record after it had been re-opened (PBAX21). This MOA provided for 1% increases in 2013 and 2014. It also provided for a *split* 3% in 2015 and 2% in 2016. The 2015 and 2016 increases will be disregarded here since the City and the Union have not yet negotiated the successor to the 2013-2014 CBA.

Finally, the record suggests that the Kingston CBA expired on December 31, 2011 and a successor agreement has not been promulgated. Thus, there is no data available for 2013 and 2014.

As indicated above, the City-IAFF MOA was put into evidence as part of an agreement with the PBA (CX95). The predecessor CBA expired on December 31, 2014. The MOA calls for a 1% increase upon the ratification and approval of the MOA (which became effective October 1, 2015 with no increase before that in 2015) and a 1.75% increase in 2016 and a 2% increase in 2017.

I previously pointed out that the City-CSEA MOA would be considered in terms of the City's ability to pay. This MOA provided for a \$2500 payment to members upon ratification of the MOA and a 1.75% increase in 2015 and a 2% increase in 2016.

After a thorough review of the internal and external comparables, I am persuaded that the PBA is to be awarded 1% increases as of July 1, 2013 and July 1, 2014. These increases are to be retroactive to July 1, 2013. With respect to unit members who may have separated from service between July 1, 2014 and the date of this Award, only retirees will receive the retroactive 1% payment(s).

The Firefighters and the CSEA MOAs indicate that, even as a *fiscally eligible municipality*, the City has the ability to pay for 1% increases. Moreover, the increases awarded in external comparables indicate that these increases are in keeping with the range of increases gotten in those jurisdictions.

It is apparent that all of the above cited CBAs/MOAs are not co-terminus. Some of the other bargaining units have CBAs that will continue beyond the expiration of the CBA that will arise from this proceeding. Since the Union will commence negotiations for the next CBA, there will be a further narrowing of the gap between the City's PBA and that of external comparables.

In calculating the cost of this wage increase, I relied on the *1% number*. This factor represents 1% of the base salaries of bargaining unit members. In this instance, the 1% number is \$39,438. The aggregate increases over the two years of this Award are 1.5%. Thus, the uncompounded cost of the wage increase is \$59,157.

As to City Proposal 1, the City observed that adding ten equidistant salary steps for new hires would result in long-term savings and would produce budgetary certainty by producing a salary schedule with pre-determined percentage increases. The Union claimed that the proposal was vague and significantly different from the salary schedules of comparable municipalities.

While there are advantages to salary schedules with equidistant salary steps, the creation of such a schedule should not be done in the absence of a broader restructuring. With that in mind, this proposal must be denied here but may be considered in the future.

UNION PROPOSAL 2 [2] and CITY PROPOSAL 4:

The Union proposed that bargaining unit members have the ability, once a year, to convert up to 200 hours of compensatory time to cash. The current contract language requires that compensatory time earned in a given month be repaid (in time) before the end of the next calendar month. If the time is not repaid within that time frame, the unit member is to be paid in cash ten days after the deadline. The CBA also provides for unit members who want to accrue compensatory time beyond the 30 day limit to do so by signing a waiver whereby the unit member agrees to take compensatory time at a later date in lieu of a cash payment (CX63).

The Union asserted that this proposal would allow the waiver to apply to a maximum of 200 hours. It stressed that there is no reason why members cannot cash in 200 hours of compensatory time, with the difference being whether it is paid monthly or accrued over the course of a year.

In its view, the City would continue to earn interest on the money until the end of the year while incurring no additional overtime covering compensatory time hours. It adds that the proposal would be virtually without cost to the City since the compensatory time hours would be worked by other employees at straight time or overtime or would be paid out after 30 days.

According to the Union, if the average employee cashed out 50 hours per year, the cost would be about \$20,000. It stresses that this cost would be offset by the saving in overtime costs when compensatory time is taken in time rather than money.

The City urged the denial of this proposal on the grounds that this proposal would potentially increase overtime and compensatory time exposure because of the possible accrual of accrued compensatory for a longer time frame. It also stressed that none of the comparables have anywhere near a 200 hour cap on the accrual of compensatory time (CX 38 & 64, PBAX2).

A significant part of this proposal is the establishment of a 200 hour cap on accrued compensatory time. The current contract language sets forth a 30 day period in which compensatory hours can be accrued and an additional month in which the time can be repaid (in time). If the compensatory hours are not repaid in time by the end of the month after the hours are accrued, the member is compensated in money within ten days.

It appears that the external comparables provide for compensatory time, although Kingston refers to it as *time owed* (CX38) and Port Jervis makes no provision for compensatory time (PBAX2) However, as to the accruals, most of the comparables that have compensatory time language in the contract permit the accrual of 40-50 hours of compensatory time and none of them have contract provisions concerning the cashing in of compensatory time (CX64).

Given that a 200 hour cap is well beyond any such cap in comparable jurisdictions and the cashing in of accrued compensatory time is not available in any of the comparables, this proposal must be denied.

For its part, the City proposed the elimination of all compensatory time (CX37). Its rationale was to reduce costs through the elimination of compensatory time. It observed that the granting of the City's proposal would not negatively affect unit members since they would continue to receive cash overtime for any additional qualifying service.

The Union urged the rejection of this proposal on the grounds that most other jurisdictions provide officers with compensatory time. It added that unit members get compensatory time for working *stand by* hours. It added that this approach allows the City to avoid paying for overtime while offering the members with a more flexible schedule.

It observed that tying *stand by* to compensatory time incentivizes the members to accept such assignments. It opines that the City, due to the prevalent violence, benefits from such availability.

As to the proposal *per se*, the Union stressed that, if compensatory time were not offered, all accrued compensatory time would be paid for as overtime.

To be sure, the parties have articulated arguments that need to be considered. However, given that 2013, 2014 and 2015 have elapsed, it would be appropriate to defer this proposal to the round of bargaining over a successor agreement that will begin shortly after the issuance of this Award. That being said, this proposal must be denied at this time.

UNION PROPOSAL 3 [3]:

The Union proposed an increase in personal days from two to five. It stated that the unit members surrendered two personal days in 2012 in order to avoid layoffs. It indicated that the City is below average in granting personal days. It pointed out that 2013 and 2014 have passed and these days were not granted. Thus, the impact on the City's finances is nil.

The City argued that there was no evidence produced to demonstrate a need for this increase. It recalled that PBA President Pitt stated that granting this proposal would reduce sick leave since this would provide an additional way for members to relieve stress through *mental health days*.

There are two elements of this proposal that must be considered. First, evidently there was bargaining between the PBA and the City over the issue of layoffs. The record suggests that the negotiations leading to the avoidance of the layoff of unit members included an agreement by the Union to, among other things, surrender two personal days.

Since the reduction in the number of personal days was the result of direct negotiations in 2012, the restoration of those days should be the result of further negotiations. Since the contract resulting from this proceeding is already expired and the bargaining for a successor agreement will commence shortly after the issuance of this Award, this matter should be part of the direct bargaining for the successor PBA.

With respect to the *mental health days* argument, that position suggests that the sick leave allocation needs to be increased by two days. Union Proposal 4 involves an increase in sick leave days by two days. This proposal really seeks an increase in sick leave days from 13 to 17. As such, Union Proposal 3 is denied.

UNION PROPOSAL 4 [7]:

The Union proposed an increase in sick leave days to 15. It indicated that the CBA provides for 13 days. It added that the members gave back one day in 2012 in the interest of avoiding layoffs. It noted that other jurisdictions provide more sick leave days than does Newburgh. It stressed that Kingston has unlimited sick leave. It noted that the economic impact of this proposal for 2013 and 2014 is nil and, in the presence of the sick leave incentive pay program, this proposal would be without cost to the City.

The City objected to this proposal on the grounds of the lack of evidence for its need. It also maintained that the Union gave back one sick leave day on a temporary basis and is trying to

gain two additional days on a permanent basis. It posited that most of the external comparables provide fewer sick leave days than does Newburgh.

Initially, it must be stated that the temporary *give back* was part of a *quid pro quo* which resulted in the avoidance of layoffs of bargaining unit members. The *give back* was for 2012, the year in which the layoffs were forestalled. There evidently was effective bargaining and the layoffs were avoided.

Separate and apart from the 2012 negotiations, a review of the external comparables indicates that four of them have 13 or fewer sick leave days. One, Hudson, has 18 and another, Kingston, has unlimited sick leave (CX70, (PBAX4). Hudson appears to be an outlier in this respect and, in the absence of the Kingston CBA, I can make no comment about the unlimited sick leave provision. Unlimited sick leave language rarely is in isolation and, without knowing the collateral elements of the sick leave program in Kingston, I acknowledge that there is unlimited sick leave there but can draw no further conclusions about it.

The current contract provision has not been shown to need being changed. The bargaining unit members get as much as more sick leave than their counterparts in comparable jurisdictions. Thus, Union Proposal 4 is denied.

UNION PROPOSAL 5 [8]:

The Union proposed a \$500 increase in the Sick Leave Incentive Program for unit members using no sick leave and for those taking fewer than four such days. The current program provides for a \$1,000 incentive for members using no sick leave and a \$500 incentive for those using fewer than four such days (CX72), PBAX5 sets out the relevant statistics relative to the numbers of members earning the incentive.

It maintained that the incentive has resulted in substantial savings for the City. It argues that the City's estimate of the cost of this proposal is clearly inaccurate.

It posited that Newburgh cannot be compared to other police departments since they do not use a sick leave incentive program.

The City calculated the proposed increases in the incentives to be 50%. It added that the number of unit members receiving the incentives demonstrates that the current incentives are effective and are motivating members to reduce sick leave usage.

In addition, stated the City, there are two comparable cities that offer sick leave incentives, Beacon and Poughkeepsie. It claimed that the incentives in those cities are lower than those in Newburgh.

A review of the data in PBAX5 indicates that 25 unit members received incentive pay. CX17 shows that there were 62 members of the department as of February 2015 (CX17). At least 40% of the entire department is already getting the incentive. The program is working and there is no evidence to suggest that an increase in the incentive will increase the number of employees who will qualify for it.

As to comparability, there are three cities that provide sick leave incentives, Beacon, Hudson and Poughkeepsie (CX73). In all three cases, the incentives are substantially less generous than those in Newburgh.

For the reasons set forth above, Union Proposal 5 is denied.

UNION PROPOSAL 6 [9]:

The Union proposed an increase in the shift differential for unit members working 4:00pm-12:00 midnight to 7% per hour and to 10% per hour for those working midnight to

8:00am (CX75). It stated that bargaining unit members agreed to forego shift differentials in 2012 in order to avoid layoffs. In addition, it observed that changing the shift differential to a percentage rather than a flat rate will allow senior employees to receive a shift differential more proportional to their salary rate.

It posited that the City estimated the cost of this proposal and it is highly inflated. It claimed that the City could reduce the cost of shift differentials by assigning lower salaried people to the 4:00pm- midnight and the midnight- 8:00am tours.

The Union asserted that it is difficult to draw comparisons to other police departments since some pay differentials on a percentage of salary basis and others pay it on a flat dollar basis. It stresses that, when the current approach is converted to a percentage, the shift differentials are 2.3% lower the average (PBAX6).

The City stressed that the Union is again attempting to be overly compensated for a 2012 give back of shift differentials. It added that the conversion of the differentials to a percentage will result in an increase in cost as the employees' earnings increase.

It maintained that four of the six comparables do not pay shift differentials. It noted that Poughkeepsie pays a weekly flat dollar amount and Middletown pays a *percentage* differential but that is significantly less than the 7% and 10% demanded here (CX76).

I have reviewed the arguments and have concluded that four of the comparables do not provide a shift differential. Middletown gives its police officers working midnight-8:00am a 5% differential and Poughkeepsie pays its officers shift differentials of \$60 or \$65 per week.

I have also studied the Poughkeepsie MOA (PBAX21) and note that the shift differentials were raised by one dollar per week in 2015 and 2016. The \$60 and \$65 differentials remained

for the years covered by this Award. The one dollar increases in 2015 and 2016 were for years that have not yet been the subjects of bargaining in Newburgh. Thus, no comment can be made here about 2015 and 2016.

It is apparent that the differential recipients in Newburgh receive either \$40 or \$80 per week (assuming no overtime shifts that receive differential pay). While it may not be mathematically exactly accurate, there is an average differential pay of \$60 a week for 80 hours worked.

Using the same approach with respect to Poughkeepsie reveals that the average differential pay in 2013 and 2014 is \$62.50. This is the only place in which the police officers earn more differential pay than do their counterparts in Newburgh.

When the differentials in Newburgh are compared to Beacon, Hudson, Kingston and Port Jervis, it is obvious that the employees receiving differential pay in Newburgh are getting an average of \$60 per week more. The difference between Newburgh and Poughkeepsie pales by comparison to Newburgh and the above mentioned jurisdictions.

Finally, Middletown employees get a 5% differential but it is limited to officers working the midnight-8:00am tour. It may be that the 5% differential may be more than the \$2.00 per hour (\$16 for an eight hour tour) but the differential paid in Newburgh for the 4:00pm-12:00 midnight tour more than compensates for the greater differential paid in Middletown for midnight-8:00 am tour.

In studying the Poughkeepsie MOA, I noted that the PBA got a one dollar increase in 2015 and 2016. Those years have not yet been the subjects of bargaining in Newburgh. Thus, no comment can be made here about 2015 and 2016.

The data suggests that the shift differential in Newburgh is higher than four of the six comparables, more widely distributed than in Middletown and approximately the same as in Poughkeepsie. Based on this analysis, this proposal is not justified and must be denied.

UNION PROPOSAL 7 [11]:

The Union proposed to convert the current flat rate for longevity payments based on years of service to a percentage of base salary. The proposed percentages were 2% for 7-9 years, 3% for 10-14 years, 4% for 15-19 years and 5% for 20 or more years (CX78). It posited that a percentage basis allows the payments to keep up with inflation and it encourages employees to work longer.

It stated that the City claimed that the proposed increase would cost an additional \$89,000 for 2015-2017. It averred that the City's estimate is based on a premise that all officers would remain on the force and collect longevity pay. It stressed that, historically, the City's premise has not been borne out.

The Union indicated that the longevity pay in Newburgh is lower than that of the comparables. It maintains that the Newburgh longevity bonuses for employees with at least even years of service are 18% below average.

The City stressed that there is no need to increase longevity payments. It argued that this is another effort to link benefits to wages. If awarded, there would be a guaranteed increase in longevity every time wages increase.

With respect to comparable departments, five of the six of them are paid as flat dollars and Middletown went to a flat dollar approach for all employees hired after January 1, 2012. It

added that, at current amounts, the City's longevity payments are greater than those in Beacon and are greater than two of the four longevity payments in Hudson.

The data suggests that there is comparability between the longevity payments of Newburgh and Beacon and Hudson. However, there are also substantial differences between the longevity payments in Newburgh and that of the other comparables (CX79).

There are two aspects of this proposal. The first is the conversion of the longevity payments to an approach that is based on a percentage of base salaries. Having reviewed the data, such a change is unaffordable particularly in view of the City's designation as a *fiscally eligible municipality*.

The second element of this proposal is the attempt to increase the longevity payments. After considering the longevity payments in Kingston, Middletown, Port Jervis and Poughkeepsie, I conclude that each of the four sections of the longevity payment schedule should be increased by \$300. These increases are awarded effective December 31, 2014.

A review of the PBA scattergram (CX17) indicates that, as of February 2015, 48 of the 62 members of the force are eligible for longevity pay. Thus, the cost of this improvement is \$13,800 (.35%).

UNION PROPOSAL 8 (12):

The Union proposed a \$100 increase in the Uniform Allowance. It averred that this allowance has not been raised in many years. It added that, unlike Middletown, the City does not provide a cleaning allowance and the proposed increase would offset the cost of cleaning uniforms. It stressed that there would be no cost to this increase in 2013 and 2014 and the future cost would be \$5,800.

It acknowledged that the CBA allows for a quartermaster system but that it is not in place. It stressed that the proposal makes no reference to the quartermaster system.

The City stated that the expired CBA provides for a quartermaster system that is efficient and cost effective and that detectives officers who work in *plain clothes receive* a \$1,400 uniform allowance (CX81).

It maintained that this proposal does not reference the elimination of the quartermaster system and does not explain why it should be scrapped. Furthermore, stated the City, the Newburgh uniform allowance exceeds that of all of the comparables.

The first matter requiring comment is the quartermaster system that is provided for in Article XII (F) of the CBA. The language of that provision is permissive and I do not construe this demand as seeking the rescission of this provision. The contract provided the City with the right to implement a quartermaster system relative to the issuance of uniforms. That right remains and the City retains the right to institute a quartermaster system if in its discretion it determines that it would be appropriate to do so.

However, according to Article XII (F), even in the presence of a quartermaster system, the terms of Article XII (A) are operative for non-uniformed personnel. Article XII (A) sets forth a \$1,400 clothing allowance. I construe this demand as not including the rescission of Article XII (F) but as seeking an increase in the clothing allowance set forth in Article XII (A) from \$1,400 to \$1,500. This increase would apply to non-uniformed personnel and to uniformed personnel if and when the City has opted not to have a quartermaster system.

The second part of this analysis involves the increase in the uniform allowance from \$1,400 to \$1,500. This aspect of the analysis involves a traditional examination of the issues.

A review of the charts setting forth the uniform allowances received in the comparable jurisdictions (PBXAX8, CX82) suggests that the uniform allowance in Newburgh is higher than those allowances in the comparable departments. The Union asserted that the police officers in Middletown receive a separate uniform cleaning allowance. I have no reason to doubt the accuracy of that assertion. However, Middletown is unique in this respect and does not suggest that comparable jurisdictions are receiving benefits not being enjoyed by the Newburgh officers.

Given that Newburgh's uniform allowance is the most generous of the comparable jurisdictions, I am not persuaded that an increase in this area is justified. Thus, Union Proposal 8 is denied.

UNION PROPOSAL 9 [18]:

The Union proposed that detectives who complete 40 hours of *standby* time receive eight hours of compensatory time and two hours of straight time pay. The Union observed that the current contract provides for eight hours of compensatory time for every 88 hours of *standby* time for the week in which s/he is assigned to be on *standby*. It explained that the proposed increase in compensation would encourage detectives to accept *stand by* assignments. It added that this proposal, if granted, would impose no additional costs for 2013 and 2014. It maintained that this proposal cannot be compared to other departments since the other departments assign and compensate *stand by* time in different ways (PBAX9).

The City noted that the Union provided no evidence to corroborate its reasons for the proposal. It also stated that half of the comparables do not even have contract provisions concerning standby time (CX85).

A review of the parties' charts concerning this proposal is instructive (PBAX9, CX85). It is apparent that Middletown, Port Jervis and Hudson offer no compensation in money or compensatory time for *stand by* time. Kingston offers a maximum of 480 hours a year (40 hours per month) of compensation for *stand by* time. The annual cost of this item is \$14,579. Poughkeepsie gives two detectives a weekly stipend for a total of \$26,000 per year and Beacon uses a similar approach with a smaller stipend. By comparison, the current Newburgh approach has an annual cost of \$38,685.

The Union correctly noted that there is a lack of uniformity relative to the contract provisions in jurisdictions in which *stand by* time is addressed. Two facts are abundantly clear. Three of the comparables do not compensate detectives for *stand by* time at all and of the three that do address this issue, the departments spend significantly less than does Newburgh.

I conclude that there is no need for this proposal and, given the budgetary implications, there is no rationale for increasing the difference between what Newburgh already spends on this item and what the comparable jurisdictions expend. Therefore, Union Exhibit 9 is denied.

UNION PROPOSAL 10 [24];

The Union proposed converting four holidays to *floating* days with the understanding that if they are not used by the end of the year, they will be paid out at the holiday pay rate (CX87). The Union observed that the *floating* days could be used as additional personal, sick or vacation days. It noted that this proposal would allow additional flexibility in the scheduling of holidays. It stressed that there would be no additional cost since the unit members are already entitled to holiday pay. It added that four of the comparables, Beacon, Poughkeepsie, Kingston and Middletown, provide for *floating* holidays.

The City objected to this proposal on the grounds that it would be another way of increasing unit members' compensation. In the City's view, instead of the officers taking off on the four existing holidays, they would work on those days and get paid and then get four additional days' pay when they get paid for the banked *floating* days at the end of the year. As to the comparable jurisdictions, half of them provide no flexibility with respect to the holidays unit members can take.

The analysis begins with the rate of pay to which unit members are entitled on holidays. Article V (A) (1) indicates that officers get paid straight time for holidays, irrespective of whether they work on the holiday. Article V (B) states that officers who work on a holiday will get an additional ½ day's pay. Thus, unit members get paid straight time if they take off on a holiday and get paid time and one-half if they work on the holiday (JX36).

The issue here is the Union proposed taking four holidays as *floaters* with the understanding that they get paid holiday pay, time and one-half, if they do not take the *floating* day by the end of the year. The way the proposal is written the unit member would get paid time and one-half for each holiday worked and for each *floating* day that was to be taken in lieu of the holiday.

Both of these days cannot be considered holidays. For purposes of this proposal, the officer shall be paid time and one-half for the *floating* day and straight time for the actual holiday since the officer voluntarily chose to substitute a *floating* day for the actual holiday. The *floating* day cannot be on another holiday since that would result in a possible dispute over the rate of pay to be applied to a *floating* day on another holiday. In this manner, the intent of the CBA is respected in that the officer will get paid time and one-half for the floating day taken in lieu of

the holiday and straight time for the holiday that was voluntarily transformed into an ordinary day.

As to the substance of the proposal, it would be prudent to limit this proposal to two days for each officer. If this proposal results in an easily managed program, the parties can discuss increasing the number of these days to four.

This approach should satisfy both parties. The Union will get the flexibility it seeks and the City will not be exposed to additional costs. This proposal will go into effect as of December 31, 2014.

The panel is aware that the PBA's proposal did not address most of the potential implementation issues related to this item. Nor, as a result, did the City address them in its presentation. Thus, there is no record from which the panel can award a procedure comprehensively addressing the *how's*, *what's*, *when's* etc. relating to implementation. At the same time, the panel does not wish to issue an award that may immediately result in grievances as members legitimately seek to use the benefit and management legitimately seeks to regulate usage. As a result, the panel will retain jurisdiction over related to the implementation of this item, while, at the same time, encouraging the parties to address these issues on their own.

Accordingly, the panel determines that a committee of four people (two appointed by the PBA and two appointed by the City Manager) is to meet and, within 90 days from the date of this Award, attempt to agree upon the details for the implementation of Item #5 of this Award.

The determinations of the committee must be in writing and ratified by the PBA's membership and the City Manager. In the event that the committee cannot achieve a ratified agreement within 90 days, or a longer period if agreed upon by the parties, either party may

request that the panel reconvene and resolve the matter in a supplemental binding Opinion and Award.

CITY PROPOSAL 2:

The City proposed that vacation selections for the following year be made in November of the prior year (CX32). It posited that the granting of this proposal would provide administrative flexibility for the City and could reduce coverage issues due to unexpected vacations by other unit members. It added that half of the comparable municipalities have restrictions on when vacations can be requested (CX33).

The Union indicated that this proposal would not save money for the City. It added that vacations are frequently planned during school vacations and the school calendars are not always set by November. It stressed that this proposal could result in the need to change previously approved vacations.

It must be stated that school districts approve calendars for the next year in the spring of the prior school year. Moreover, the school vacations are predictable in terms of when they will fall. There are rare circumstances when school vacations deviate from the usual practice. In those rare cases, the City will need to be flexible in dealing with requests to change vacations in return for the administrative flexibility it seeks.

A review of the comparable jurisdictions reveals that three of them have similar restrictions. Hudson's provision is less stringent, Port Jervis's is a bit more stringent and Poughkeepsie's is almost identical. Thus, this proposal is in the mainstream of provisions of this nature. Thus, City Proposal 2 is granted.

CITY PROPOSAL 3:

The City proposed reducing the number of holidays for new hires from 14 to 12. The City proposed the elimination of Election Day and the substitution of Presidents Day for Lincoln's Birthday and Washington's Birthday (CX34).

The City maintained that this proposal was in place during the term of the predecessor agreement but was subject to sunset on December 31, 2012. It posits that this proposal differs from the one that sunset in that this one applies only to new hires. It adds the four of the six comparables have 12 or 13 vacation days.

The Union observed that 12 holidays is less than the average of the comparable municipalities. It added that no money would be saved for the term of the contract and the City did not estimate what the future savings would be.

There are two elements to this proposal. The replacement of Lincoln's and Washington's Birthdays with Presidents Day has become commonplace and is reasonable in this case.

The second aspect of the proposal is the reduction of the number of holidays from 14 to 12. Of the six comparable municipalities, three provide 12 vacation days and two provide 13. The single jurisdiction providing 14 holidays is the outlier (CX35).

The issue here is, in the light of the establishment of Presidents Day, whether the elimination of Election Day is reasonable. Given that this proposal will only affect new hires, I find that it should be granted.

In short, City Proposal 3 is granted but will affect new hires only.

CITY PROPOSAL 5:

The City proposed a number of changes to Article IX (A) of the CBA, i.e. for those retiring after January 1, 2013, eligible retirees are to be required to contribute 25% of the cost of retiree health insurance, retirees who had individual or family coverage while in service but add dependent coverage after retirement will receive City payment for individual coverage and dependent coverage at the statutory minimum rates, and retirees eligible for coverage through another City employee's or retiree's health plan, that retiree and the other City employee or retiree must choose either two single coverages or one family plan (CX40).

The City argued that the cost of health insurance for individuals and families through NYSHIP has risen at least 150% since 2001. It stressed that the contributions made in other comparable jurisdictions are higher than in Newburgh. It maintained that the absence of a requirement of some level of contribution for retiree health insurance is unrealistic and financially unsustainable.

It pointed out that the CBA does not preclude City employees who are eligible for health insurance as a dependent on another employee's coverage from having both employees covered on two family plans. It noted that the City seeks to prevent this waste of resources.

The Union asserted that the City is unclear as to *statutory minimum rates*. It added that the City is cutting back on a benefit that was promised to retirees and for which the retirees sacrificed wage increases. Moreover, it stated that the City's proposal seeks employee contributions that are far higher than other comparable municipality.

There are several components to this proposal. For purposes of clarity, each component will be addressed separately.

Post 1/1/13 retirees are to be required to contribute 25% of the cost of his/her health insurance at the time of his/her retirement.

A review of the data concerning comparable municipalities reveals that only Kingston has non-contributory retiree health insurance and that provision relates only to individual coverage. The Kingston retirees do contribute for the cost of dependents. The other comparables have varying approaches to the contribution for retiree health insurance (CX43).

The variation in the approaches deal with the date of the inception of the current approach and the percentage contribution of the retirees. The fact is that the retirees in the comparable jurisdictions have made contributions to the cost of health insurance for many years. The other and obvious factor to be considered here is the inexorable increases in the cost of health insurance. Thus, I find that the City is justified in seeking a retiree contribution for health insurance.

The two issues to be considered are the level of contribution and that date of retirement of the retiree after which the contribution is to be made. The City is seeking a 25% contribution for individual or family coverage (if the employee had family coverage at the time of retirement). Middletown, Port Jervis and Poughkeepsie require contributions of 15%, 20% and 25% respectively. Beacon and Hudson peg the cost of retiree health insurance to the percentage of contribution while the employees were in service and Kingston requires a contribution for insurance for dependents only.

After considering the range of approaches in the comparable jurisdictions, I conclude that the Newburgh employees shall contribute 15% of the cost of individual retiree health insurance or family coverage if it was in place at the time of retirement.

The second matter to be resolved is which retirees are to be required to make this contribution. The City proposed that all employees who retired after January 1, 2013 be required to pay the 15% contribution. Given that such a date would require collecting almost three years of retiree contributions, the date suggested in the proposal could pose an undue hardship on retirees and would create administrative difficulties for the City. I conclude that the contribution requirement be imposed on unit members who retired on or after December 31, 2014.

The granting of this proposal will result in savings to the City. The current cost of individual health insurance coverage is \$9,721 per annum (CX41) and the cost of family coverage is \$21,599 (CX42). Thus, the savings to the City would be \$1,458 for each post-December 31, 2014 retiree with an individual coverage and \$3,240 for every post-December 31, 2014 retiree with family coverage.

I hasten to add that these savings are based on current costs of health insurance. While it may be that the escalation in health insurance premiums appear to have lessened, those costs continue to grow but at a slower rate. In short, I am convinced that the per retiree savings will increase over time.

To date, there was only one post-December 31, 2014 retiree and he evidently had family coverage. The short term savings to the City will be about \$3,200. However, in a relatively short time frame, the number of retirees will increase. The scattergram indicates that 42 members of the force were hired before December 31, 2012 (CX16).

While the data does not reflect the number of years of service of these 42 officers and detectives, it is reasonable to conclude that there will be several retirements over the next few

years. With that in mind, I estimate (conservatively) that the savings over the short and mid-term as a result of this change to be half of the 1% percent number (\$39,438) (CX27).

Unit members who had individual coverage while in service but added dependent coverage after retirement

The thrust of this proposal is to limit dependent coverage as being covered by the retiree health insurance language only if the member had selected to have dependent coverage while s/he was in service. This aspect of the proposal concerns the adding of dependent coverage to the individual coverage after retirement. It proposes that the City contribute 35% of the cost of the dependent coverage under those circumstances.

The Union indicated that the statutory minimum rates are not clear. These rates are 50% for individual coverage and 35% for family coverage. It is obvious that the City will contribute 85% of the cost of the individual coverage and will contribute the minimum, 35%, to the cost of dependent coverage. However, it must be clear that dependent coverage that was in place before retirement would not be affected by this change.

It is clear that post-retirement personal decisions of retirees are unrelated to City concerns for the condition of its employees at the time of retirement. The payment of the statutory minimum for dependents added to the health insurance of employees subsequent to retirement reflects a commitment to retirees after they leave City service. This proposal has no impact on unit members who retire with dependents covered by their health insurance.

As noted above, the difference between family and individual health insurance coverage is about \$11,800. Thus, the unit member who retires with individual coverage and wants to add a dependent to his retiree health insurance coverage will pay 65% of the difference between the

two types of coverage. In that case, the City will pay the statutory minimum, 35%, for the dependent coverage, 35% of \$11,800 or \$4,130, and the retiree will be responsible for the balance.

There is no data available to quantify these savings but suffice it to say, the savings to the City will be in excess of \$7,500 in each instance of a dependent being added to the retiree's individual health insurance coverage. Given the absence of data, I cannot estimate what the mid and long term savings will be. As such, despite the absence of a determination of estimated savings, this aspect of the proposal is granted.

Retirees eligible for coverage through another City employee's or retiree's health plan, that retiree and the other City employee or retiree must choose either two single coverages or one family plan

Under current conditions, a retiree who is eligible for health insurance under the coverage of another City employee or retiree is permitted to have family coverage while the other City employee or retiree is also allowed to have family coverage. This condition is duplicative and wasteful.

The proposal to require either two individual coverages or one family coverage makes sense. All of the affected individuals would be provided with health insurance and the City would not be required to pay for two family plans when only one is needed or would not be required to pay for two family plans when two individual plans would suffice.

The City computed the savings if City Proposal 5 is granted as being \$277, 248 in 2013 and almost an identical amount in 2014. This calculation was based on a retirement date of January 1, 2013.

It is currently possible for a retiree to have family coverage and also be covered by another City employee or retiree who also has family coverage. Under those circumstances, the current cost of the two family coverages is \$43,198 (CX42). This number will, of course, increase as the cost of the health insurance grows.

The impact of this proposal will be that the cost of the health insurance will be limited to \$21,599 for one family coverage or \$19,442 for two individual coverages. Thus, the savings to the City will be at least \$21,500. These savings will be accrued without the loss of health insurance to a single person.

This proposal will affect post-December 31, 2014 retirees. There is no one currently who will be affected by the granting of this proposal. However, suffice it to say, the savings will be significant if such a condition arises in the future.

CITY PROPOSAL 6:

The City proposed that, for employees hired after January 1, 2013, s/he must provide 20 years of continuous service in order for them to be eligible for retiree health insurance. The City also proposed that there be an elimination of a maximum of five years credit toward retiree health insurance for outside service (CX45).

It stressed that the cost of health insurance is very high and, at present, an officer can be eligible for retiree health insurance after ten years of service in Newburgh. It maintained that this benefit is too expensive to be bestowed after ten years of service.

The Union asserted that this proposal is inconsistent with comparable municipalities. It added that the granting of this proposal would make the recruitment of qualified officers more

difficult. It posited that there would be no savings for 2013 and 2014 and the City did not project future savings.

A review of the comparables (CX46) suggests that only one municipality, Hudson, has a 20 year service requirement in order for one to receive retiree health insurance. Under the circumstances, this proposal is denied.

CITY PROPOSAL 7:

The City proposed that all employees contribute 25% of the cost of their health insurance throughout the years of their employment (CX48).

I have considered the arguments of the parties and recognize the significance of this issue. However, given that the period covered by this Award is over and considering the importance of the proposal to the entire department, this proposal must be denied at this time in the expectation that, if the issue continues to be one of continued concern, it will be a subject of bargaining for the successor agreement.

CITY PROPOSAL 8:

The City proposed a conversion of the health insurance buy-out from 25% of the City's to a flat dollar amount of \$4,000. It also proposed a change in the date on which unit members need to exercise the buy-out from December 1st to October 15th (CX51).

The City asserted that there are two officers who participate in the buy-out and that the granting of this proposal would result in a savings of \$4,406 for the two year period of this Award (CX53). The Union stressed that there is no evidence of how this matter is handled in comparable municipalities and that there is no compelling rationale for the proposal.

There are a number of salient points that must be made. There is no evidence that suggests that the comparables deal with this matter in a manner consistent with the proposal. The term of this award is over and there would be a need to recoup the savings from the two unit members. Even if the proposal were granted as of December 31, 2014, the City would need to recoup the difference between the existing approach and the proposed one for all of 2015.

On the other hand, there is a rationale for the proposal. It is the reduction of the overall and growing cost of health insurance.

Balancing the arguments leads me to conclude that this item would be better dealt with in the bargaining that will follow the issuance of this Award. Therefore, City Proposal 8 is denied.

CITY PROPOSAL 9:

The City proposal involved the health insurance of a bargaining unit member and another City employee. When the bargaining unit member is eligible for health insurance coverage under the health insurance of the other City employee, the proposal seeks to compel the two employees to either take two individual coverages or a single family coverage (CX54).

The City argued that this proposal would avoid unnecessary duplication of benefits and expenses. It states that this proposal would affect no current unit members since no one is eligible for health insurance under the coverage of another City employee.

The Union noted that this proposal would have no impact. It stated that no bargaining unit members are eligible for health insurance coverage through the coverage of another City employee.

It is true that, since no one is affected by the granting of this proposal, there will be no immediate effect. However, it is preferable to avoid a problem in the future by clarifying the issue at a time when no one is impacted by the change.

As to the substance of the proposal, it avoids a situation in which two City employees who are not represented by the same bargaining unit both select family coverage. There is no justification for the City being required to pay for two family coverages when either two individual coverages or one family coverage will cover everyone eligible for health insurance at a lower cost.

The quantification of the potential savings is similar to the analysis done in connection with City Proposal 5 and need not be repeated here. In short, City Proposal 9 is granted.

CITY PROPOSAL 10:

The City proposed making permanent the Drug and Alcohol Testing protocol that sunset on December 31, 2012. It also proposed that the City have the right to conduct a drug/alcohol test if an employee discharges his weapon (CX61).

The City argued that these testing procedures protect the City, its residents and visitors as well as its employees, including bargaining unit members. It posited that four of the comparable municipalities have some form of said testing. Further, it suggests that the City of Poughkeepsie has reasonable contract language related to the testing of unit members who discharged their weapons.

The Union objected to the language related to the testing of officers who discharged their weapons. It observed that the language was overbroad and provided no basis for the proposal.

As to the issue of making the protocol permanent, the Union stressed that this proposal should be the subject of bargaining for the CBA that follows the term of this Award.

Addressing the making of the testing procedure permanent, it is evident that the existing proposal expired three years ago. There was bargaining as of January 1, 2013. Those negotiations were not fruitful and an impasse was declared. Negotiations will resume some time in 2016 and, while one would hope that the negotiations would lead to a successor agreement, there is every possibility that impasse will be declared again. Under those conditions, there might not be a successor agreement until 2017 or later. Under those conditions, the City would be without an enforceable drug and alcohol testing program for five or six years. In the current climate, it would be unwise for the City and its police officers to have no protocol to follow in this regard.

Four of the six comparable municipalities have testing programs. Beacon, Middletown and Poughkeepsie have programs that cover both drugs and alcohol while Kingston's testing is limited to drug testing.

I am persuaded that it would be imprudent to wait two or more years before the program in place in 2012 was made permanent. The Union's preference for bargaining about the testing program has some merit. If there are parts of the protocol that, in the Union's view, requires revision, it has every right to propose those modifications in the coming negotiations.

As to the proposal to give the City the right to require drug and/or alcohol testing in the event that an officer discharges his weapon, the Union's main argument involved the scope of the proposal. It questioned whether activities such as firing at a firing range constitute the

discharge of a weapon within the meaning of the proposal. The question is a fair one and the answer can be found in the contract language of the Poughkeepsie CBA.

I have reviewed the Poughkeepsie contract and note that Appendix A Section 1 sets the standard, *reasonable suspicion*, for the employer to require an employee to submit to drug/alcohol testing. This provision defines what constitutes *reasonable cause*. It should be added that this section does not focus on particular circumstances under which this provision is applicable.

Section 2.2 deals with *random drug tests*. It sets for the conditions to be followed relative to this aspect of the drug/alcohol testing program

Finally, the contract has a provision immediately preceding Section 1. It is entitled *Employee Screening*. This provision is relevant here and addresses the Union's concerns.

The introductory text states *Except as provided hereinafter, all employees will be required to submit to alcohol and/or drug tests immediately following:* The provision goes on to state four circumstances under which officers would be required to undergo drug/alcohol testing. The first two state: (a) *discharge of a firearm at a human being or a vehicle occupied by a human being* and (b) *otherwise discharging a fireman*.

Part (e) of the provision addresses the Union's concern. It states *an employee will be required to submit to testing whenever there is a reasonable basis to believe that he/she is improperly using or "under the influence" of drugs. As a safeguard for the suspected employee, two (2) supervisory employees (a supervisor and the Chief of Police or designee) must witness the behavior and concur that a reasonable basis exists to believe that the employee is under the*

influence of alcohol or drugs. They must each reduce to writing the factual basis for their "reasonable basis to believe" and the events leading up to their decision to require a test.

I conclude that Part (e) of the Poughkeepsie provision is protective of the rights of the officers. Further, the testing of officers suspected of discharging his/her firearm while under the influence of drugs and/or alcohol is both in the public/City interests as well as those of the officers. Further, the rights of the officers are protected by Section (e).

Thus, this aspect of City Proposal 10 is granted with the understanding that Part (e) of the Poughkeepsie provision or its equivalent will be part of the contract language in the Newburgh CBA. In sum, both elements of City Proposal 10 are granted.

It is necessary to comment on many of the proposals set forth by the parties which have been rejected. This is not to say that none of these proposals has merit. I must indicate that the terms of this award will have expired on December 31, 2014. The parties are free to consider them during the negotiations of the CBA to succeed the instant award.

In sum, I have carefully considered the relevant statutory criteria, as well as the pertinent CBAs, prior interest arbitration awards and memoranda of understanding in arriving at my findings. I believe that this Award properly balances the rights of the members of the PBA to improved conditions with the City's obligation to carefully spend the tax dollars raised and to otherwise protect the public welfare and interests. I must specifically add that the inclusion of the City of Newburgh in statutory category of *Financially Eligible Municipalities* was a factor that was given due consideration herein.

Thus, based on the above, I make the following

AWARD

1. **TERM-** This Award shall cover the period January 1, 2013 through December 31, 2014.
2. **SALARY-** Amend the base salary contained in Article III (A) (2) (i) and Appendices A and A-1 of the CBA such that the base salary in the 2012 salary schedules will be increased by the following percentages:

As of July 1, 2013- 1%, including for those unit members who retired between July 1, 2013 and the date of this Award.

As of July 1, 2014- 1%, including for those unit members who retired between July 1, 2013 and the date of this Award.

3. **LONGEVITY-** Amend Article XV (F) (1), such that each of the four categories of years of service is increased by \$300. This increase shall be effective as of December 31, 2014.

4. **VACATIONS-** Amend Article IV (F) such that requests for vacation days in the following year must be submitted between November 1 and November 30 of the prior year.

5. **HOLIDAYS-** Amend Article V(B) as follows: Effective December 31, 2014, bargaining unit members may take two (2) of the holidays listed in Article V(C) as amended below as *floating days*. The bargaining unit member shall be paid at a straight time rate for the actual holiday and at a rate of time and one-half for the *floating day*. The *floating day* may not be taken on another holiday listed in Article V(C).

As noted on pages 100-101, a committee of four people (two appointed by the PBA and two by the City Manager) is to meet within 90 days of the date of this Award and determine the procedures to be used in the implementation of this item. The determinations of the committee must be in writing and ratified by the membership of the PBA and the City Manager. In the event that the committee cannot achieve a ratified agreement within 90 days of this Award, or a longer period if agreed to by both parties, either party may request that the panel reconvene and resolve the matter in a supplemental binding Opinion and Award.

6. **HOLIDAYS-** Amend Article V(C) such that, effective December 31, 2014, Presidents Day will replace Lincoln's Birthday and Washington's Birthday and that General Election Day will be deleted from the list of paid holidays. The amended Article V(C) will apply to bargaining unit members hired after December 31, 2014.

7. **HOSPITALIZATION-** Amend Article IX (A) as follows:

Effective December 31, 2014, all retirees whose date of retirement is on or after December 31, 2014, shall contribute 15% of the cost of individual or family coverage provided that the retiree had family coverage on December 31, 2014.

For retirees who had individual coverage on December 31, 2014 and opt to add dependents to their coverage, the City shall contribute 85% of the cost of individual coverage and 35% of the cost of the dependent coverage.

When retirees are eligible for health insurance coverage under the health plan of another City employee's or retiree's health plan, both the retiring member and the other City employee or retiree must choose one single family coverage or two individual coverages.

8. **HOSPITALIZATION-** Amend Article IX (D) as follows:

Effective December 31, 2014, where a bargaining unit member is eligible for health insurance coverage through another City employee's plan, the bargaining unit member and the other City employee must choose either one family plan or two individual plans.

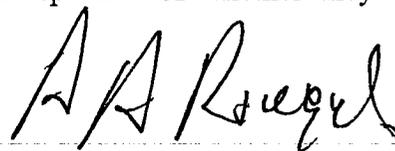
9. **DRUG & ALCOHOL TESTING-** Amend Article XXII (B) as follows:

In sentence 2 of paragraph 1, insert *or if an employee discharges a weapon after City-owned vehicle.*

The last sentence in this section shall be: *Effective December 31, 2014, the following random drug testing procedure shall be implemented:*

10. **ALL OTHER PROPOSALS-** All of other proposals irrespective of whether they were discussed herein are denied.

Dated: January 18, 2016
Hewlett Harbor, NY



ARTHUR A. RIEGEL
IMPARTIAL MEMBER OF PANEL

AFFIRMATION

STATE OF NEW YORK)
COUNTY OF NASSAU)

I, Arthur A. Riegel, Esq., affirm that I am the individual describe in and who executed the foregoing instrument which is my Opinion and Interest Arbitration Award.



ARTHUR A. RIEGEL, ESQ

EMPLOYER PANELIST

I, Richard K. Zuckerman, Esq. Employer member of the Interest Arbitration Panel (concur with) (dissent from) the numbered elements of the above Interest Arbitration Award as follows:

- | | | |
|-------------------------------------|--------|---------|
| 1. Term- | Concur | Dissent |
| 2. Salary- | Concur | Dissent |
| 3. Longevity- | Concur | Dissent |
| 4. Vacation- | Concur | Dissent |
| 5. Holidays- Article V (F) | Concur | Dissent |
| 6. Holidays- Article V (B) | Concur | Dissent |
| 7. Hospitalization-Article IX (A) | Concur | Dissent |
| 8. Hospitalization Article IX (D) - | Concur | Dissent |
| 9. Drug & Alcohol Testing- | Concur | Dissent |
| 10. All other proposals- | Concur | Dissent |

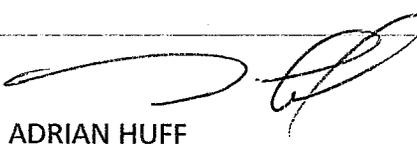


RICHARD K. ZUCKERMAN, ESQ.

EMPLOYEE PANELIST

I, ADRIAN HUFF, Employee member of the Interest Arbitration Panel (concur with) (dissent from) the numbered elements of the above Interest Arbitration Award as follows:

- | | |
|-------------------------------------|-----------------------|
| 1. Term- | <u>Concur</u> Dissent |
| 2. Salary- | Concur <u>Dissent</u> |
| 3. Longevity- | <u>Concur</u> Dissent |
| 4. Vacation- | <u>Concur</u> Dissent |
| 5. Holidays- Article V (F) | <u>Concur</u> Dissent |
| 6. Holidays- Article V (B) | Concur <u>Dissent</u> |
| 7. Hospitalization-Article IX (A) | Concur <u>Dissent</u> |
| 8. Hospitalization Article IX (D) - | <u>Concur</u> Dissent |
| 9. Drug & Alcohol Testing- | <u>Concur</u> Dissent |
| 10. All other proposals- | <u>Concur</u> Dissent |


ADRIAN HUFF

STATE OF NEW YORK)
COUNTY OF NASSAU) ss. :

On this 16th day of January 2016 before me personally came and appeared **Arthur A. Riegel, Esq.** to be known and known to me to be the individual described in the foregoing instrument, and he acknowledged the same to me that he executed same.

DEBORAH RIEGEL
Notary Public, State of New York
No. 0010039984
Qualified in New York County
Commission Expires July 5, ~~1996~~ 2018

Deborah Riegel
Notary Public

STATE OF NEW YORK)
COUNTY OF SUFFOLK) ss. :

On this _____ day of January 2016 before me personally came and appeared **Richard K. Zuckerman, Esq.** to be known and known to me to be the individual described in the foregoing instrument, and he acknowledged the same to me that he executed same.

Notary Public

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY) ss. :

On this _____ day of _____ 2016 before me personally came and appeared **Adrian M. Huff** to be known and known to me to be the individual described in the foregoing instrument, and he acknowledged the same to me that he executed same.

Notary Public

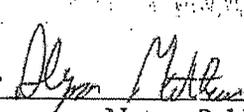
STATE OF NEW YORK)
COUNTY OF NASSAU) ss. :

On this _____ day of January 2016 before me personally came and appeared Arthur A. Riegel, Esq. to be known and known to me to be the individual described in the foregoing instrument, and he acknowledged the same to me that he executed same.

Notary Public

STATE OF NEW YORK)
COUNTY OF SUFFOLK) ss. :

On this 18 day of January 2016 before me personally came and appeared Richard K. Zuckerman, Esq. to be known and known to me to be the individual described in the foregoing instrument, and he acknowledged the same to me that he executed same.

ALYSON MATHEWS
NOTARY PUBLIC - STATE OF NEW YORK
NO. 02MA6123825
QUALIFIED IN SUFFOLK COUNTY
COMMISSION EXPIRES MARCH 14, 2017


Notary Public

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY) ss. :

On this _____ day of _____ 2016 before me personally came and appeared Adrian M. Huff to be known and known to me to be the individual described in the foregoing instrument, and he acknowledged the same to me that he executed same.

Notary Public

STATE OF NEW YORK)
COUNTY OF NASSAU) ss. :

On this _____ day of January 2016 before me personally came and appeared Arthur A. Riegel, Esq. to be known and known to me to be the individual described in the foregoing instrument, and he acknowledged the same to me that he executed same.

Notary Public

STATE OF NEW YORK)
COUNTY OF SUFFOLK) ss. :

On this _____ day of January 2016 before me personally came and appeared Richard K. Zuckerman, Esq. to be known and known to me to be the individual described in the foregoing instrument, and he acknowledged the same to me that he executed same.

Notary Public

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY) ss. :

On this 16th day of JANUARY 2016 before me personally came and appeared Adrian M. Huff to be known and known to me to be the individual described in the foregoing instrument, and he acknowledged the same to me that he executed same.

Margaret Pelletier

MARGARET PELLETIER
Notary Public
State of South Carolina
My Commission Expires Dec 15, 2025