

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the Compulsory Interest Arbitration

-between-

BUFFALO POLICE BENEVOLENT ASSOCIATION, INC.

-and-

CITY OF BUFFALO, NEW YORK

PERB Case No.: IA 2008-027; M2008-190

COPY

OPINION

AND

AWARD

BEFORE: Jay M. Siegel, Esq.  
Public Panel Member and Chairman

Kevin M. Kennedy  
Employee Organization Panel Member

Sean P. Beiter, Esq.  
Public Employer Panel Member

APPEARANCES:

For the Buffalo Police Benevolent Association  
Law Office of W. James Schwan  
By: W. James Schwan, Esq., Of Counsel

For the City of Buffalo  
Goldberg Segalla, LLP  
By: Matthew C. Van Vessel, Esq., Of Counsel

## BACKGROUND

Pursuant to the provisions contained in Section 209.4 of the Civil Service Law, the undersigned Panel was designated by the Chairperson of the New York State Public Employment Relations Board ("PERB") to make a just and reasonable determination of a dispute between the Buffalo Police Benevolent Association, Inc. (PBA) and the City of Buffalo, New York (City).

The City covers nearly 42 square miles in the western part of the State of New York (State). It is located on the eastern shore of Lake Erie. It has approximately 261,000 residents, making it the second largest city in the State. The City provides a full range of services to its residents ranging from police and fire protection to sanitation, highway and recreation.

The PBA represents all sworn police officers, detectives, detective sergeants, police lieutenants, police captains and police inspectors. It currently has approximately 750 unit members.

The City's officers are generally divided into two divisions, namely, the patrol division and the detective division. The Department also has administrative and specialized units.

The City's officers are frequently called upon to handle violent crimes. The City has more violent crime than the cities of Rochester and Syracuse and municipalities in the Buffalo suburbs. While Buffalo's 2010 statistics show it had 1,357 violent crimes per 100,000 residents, Rochester had 1,094 per 100,000 residents and Syracuse had 947 per 100,000 residents. The suburban Buffalo police department with the closest statistics to Buffalo had a high of 232 violent crimes per 100,000 residents.

The City has struggled economically since the 1980s. As recently as the 1980s, the City and its environs was a hub of manufacturing. Indeed, 27% of the area workforce was employed in manufacturing in the 1980s. This number has shrunk to 5.6% at the present time. This has been somewhat offset by job growth in federal, state and local government, as well as higher education, retail, banks and healthcare.

The fiscal affairs of the City arguably hit a low point in 2003. In July 2003, the State determined that the City was in such severe financial crisis that it could not be resolved without State intervention. The Buffalo Fiscal Stability Authority (BFSA) was established to monitor the City's financial plans and ensure that the City was adhering to fiscal requirements set forth in the BFSA Act.

The BFSA began in a control period. This meant it had the maximum authority to take actions to protect the City's financial integrity. In 2003, the BSFA enacted serious austerity measures, including eliminating positions, imposing a hiring freeze and closing fire stations.

By 2004, the BFSA determined that it needed to take more severe measures. It imposed a wage freeze on all employee organizations for fiscal year 2004-2005. The wage freeze continued in 2005-2006 and 2006-2007. All salary increases, including step increments, were frozen during the period of 2004 to 2007.

The PBA's last CBA with the City governed the period from July 1, 2002 through June 30, 2007. In the CBA, PBA members were provided with a \$5,000 annual increase effective July 1, 2002, followed by raises of 3.4% effective July 1, 2003, July 1, 2004, July 1, 2005 and July 1, 2006. Although PBA members received the agreed-upon salary increases in 2002 and 2003, the BFSA had the authority to take actions that superseded

any CBAs. Hence, the wage freezes imposed by the BFSA meant that PBA members did not receive the 3.4% wage increase on July 1, 2004, July 1, 2005 and July 1, 2006.

In 2007, the City presented a four-year financial plan to the BFSA. It demonstrated that the City's severe financial crisis had sufficiently abated to permit a lifting of the wage freeze. The City's plan to the BFSA included requesting a lifting of the wage freezes that were imposed on bargaining units from 2004 through June 30, 2007.

Pursuant to this plan, the BFSA lifted the wage freeze. Effective July 1, 2007, PBA members received the 3.4% salary increase they were supposed to receive on July 1, 2004. Effective July 1, 2007, step increases and other increases due under the CBA that were suspended the preceding three years were allowed to recommence prospectively. Moreover, pursuant to this plan, the 3.4% salary increase PBA members were due to receive on July 1, 2005 was paid to PBA members effective July 1, 2008 and the 3.4% salary increase unit members were due to receive on July 1, 2006 was paid to PBA members effective July 1, 2009. This manner of lifting the wage freeze was litigated and ultimately deemed proper by the New York State Court of Appeals in 2011.

On or about May 1, 2007, the parties began negotiations for a successor contract to the one that expired on June 30, 2007. However, since the BFSA was in what is considered a "control period" where it has maximum authority to make major economic decisions due to the economic distress of the City, the parties engaged in limited negotiations. At a certain point in time, the parties began to actively negotiate but the negotiations were unsuccessful. Thereafter, acting pursuant to the rules of procedure of PERB, a PERB-appointed mediator met with the parties. Mediation was unsuccessful. On

or about January 30, 2009, the PBA filed a Petition for Interest Arbitration. On February 17, 2009, the City responded to the petition and filed a cross petition for arbitration.

On May 4, 2012, the Public Arbitration Panel was designated by PERB, pursuant to Section 209.4 of the New York State Civil Service Law, for the purpose of making a just and reasonable determination of this dispute. On July 1, 2012, the BFSA determined that the City's financial outlook had improved to the point where it voted to move from control period status to advisory status. Simply stated, this provided the City with greater discretion and authority to act on issues involving its fiscal affairs. However, under the statute creating the BFSA, the BFSA has the authority to reimpose the control period if it determines that the City is back in the throes of a fiscal crisis at any time through 2037.

Hearings were conducted before the Panel in Buffalo, New York, on September 18 and 19, 2012, October 25 and 26, 2012 and November 9, 2012. At all hearings, both parties were represented by counsel. A transcribed record was taken at all hearings. Both parties submitted numerous and extensive exhibits and documentation, including written closing arguments. Both parties presented extensive arguments on their respective positions.

On March 12, 2013, PERB officially appointed Kevin M. Kennedy to serve as the PBA Panel Member instead of James W. Panus, the PBA's original Panel Member in this proceeding.<sup>1</sup>

Thereafter, the Panel fully reviewed all data, evidence, arguments and issues submitted by the parties. Despite significant discussion and deliberations at multiple

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<sup>1</sup> Mr. Kennedy attended all arbitration hearings as a member of the PBA's executive committee. He advised that he had a complete record and was prepared to proceed with a scheduled executive session without further delay. Neither Mr. Kennedy nor the PBA requested an adjournment or continuance in order to allow Mr. Kennedy more time to prepare.

Executive Sessions, the Panel was unable to reach consensus on an Award. As a result, this Award represents the determination of the Panel Chair, who was joined by the City Panel Member on an item-by-item basis.

The positions taken by both parties are quite adequately specified in the Petition and the Response, numerous hearing exhibits, and post-hearing written submissions, all of which are incorporated by reference into this Award. Such positions will merely be summarized for the purposes of this Opinion and Award. Accordingly, set out herein is the Panel's Award as to what constitutes a just and reasonable determination of the parties' Award setting forth the terms and conditions for the period July 1, 2007 through June 30, 2009.

In arriving at such determination, the Panel has specifically reviewed and considered all of the following criteria, as detailed in Section 209.4 of the Civil Service Law:

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

## **COMPARABILITY**

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

### **PBA Position**

The PBA stresses that the comparability is the criterion establishing the market to be used to assess how existing terms and conditions of employment compare to similar employees within the relevant market. In other words, it is a search for the market within which a comparison of prevailing wages and benefits is to be made.

The PBA contends that its members should be compared with all of the police agencies in the municipalities surrounding Buffalo. It maintains that the City's proposal to compare it only to other City bargaining units a few select upstate cities is a limiting market that does not comport with the comparability criteria. To the PBA, geographical proximity is much more relevant than limiting the group of comparables to a few select jurisdictions as asserted by the City. In the PBA's view, its proposed group of comparables is most appropriate because it provides a complete picture of the full extent of the market.

The PBA maintains that the City's proposed group of comparables is far too limiting and does not give the Panel a complete assessment of the prevailing wages and

benefits in the market. The PBA asserts that its list of comparables is appropriate because it is comprehensive and neither too big nor too small.

The PBA argues that there is nothing unique about city governments that requires or warrants a comparability analysis limited only to other cities, particularly when those cities are located in different markets with different economic conditions than Buffalo. In the PBA's view, comparability requires a search for the relevant market, not a search for governments of the same type. The PBA maintains that in dozens of cases over the years, arbitration panels have not restricted their comparability analysis in such a way. The PBA urges this Panel to follow the same path and adopt all police agencies in the Buffalo area and the City of Rochester as the group of comparables.

#### City Position

The City insists that even though it is in a much healthier fiscal position than it was on July 3, 2003, that its financial challenges are unique among the other large cities in the State. While the City concedes that Rochester, Syracuse and Albany share some similarities with Buffalo, the City stresses that its unique financial struggles make it such that there is truly no comparable municipality in the State. The City notes that unlike the other large cities in the State, it is the only municipality in more than 25 years to have a wage freeze imposed on its employees.

The City observes that it has been in a declared fiscal emergency for nine years. This resulted in the creation with the BFSA which has the statutory authority to directly oversee the City's finances. The City maintains that the wealthier suburban municipalities near Buffalo cannot be considered comparable as none of them has contended with such a truly unique fiscal circumstance. None of those communities were as dependent upon



state aid to fund their operations. In the City's view, this is precisely why the closest comparables are the other bargaining units of the City as they all had to contend with the same unique and challenging fiscal circumstances.

To the extent that other municipalities will be considered by the Panel, the City urges the Panel to consider Rochester, Buffalo and Albany as the comparables. The City stresses that these communities are most similar in terms of size, geographical proximity, economics and demographics. Indeed, while these municipalities' economic challenges are not as severe as Buffalo, they have all had their fair share of economic struggles.

The City notes that Rochester, Syracuse and Albany all are within the range of Buffalo in terms of size and population. While Buffalo has a geographic area of approximately 40.5 square miles and a population of approximately 260,000, Rochester has a geographic area of 35.8 square miles and a population of 219,773. Syracuse is 25.1 square miles with a population of 147,306 and Albany is 21.4 square miles with a population of 97,856.

#### **Panel Determination on Comparability**

The Panel Chair finds that the cities of Rochester and Syracuse are the most appropriate group of comparables. A number of facts lead the Panel Chair to this conclusion. First and foremost, they are similar in terms of size, population and geographical proximity. Rochester and Syracuse are also most comparable to Buffalo because all three cities have been struggling economically for the past twenty plus years as manufacturing and other traditional industries in upstate New York have either contracted or disappeared. All three cities have suffered fierce population declines and have large numbers of poor residents in need of fiscal assistance. All three cities have

crime rates that are well above where anyone wants them to be. Although Rochester and Syracuse are not as reliant on State funding as Buffalo, the fact remains that all three cities continue to need to look to Albany for assistance.

The Panel Chair does not find Albany to be an appropriate comparable to Buffalo. He so ruled in 2012 in an interest arbitration involving the City of Albany Firefighters and he sees no logical basis to deviate from that determination. As the Panel Chair has previously noted, Buffalo has nearly three times the population as Albany and is nearly twice the size in terms of geography. They are hundreds of miles apart and in a completely different region of the State. Their economies are completely different and their housing markets are completely different. They do not share enough in common to be considered comparable with one another.

To a much more limited extent, the Panel Chair finds that police agencies in the Buffalo area and other City bargaining units should be in the universe of comparables. Other police agencies in the Buffalo area should be considered to a limited extent because they are located in the exact same labor market. Employees in all of these agencies purchase homes in the same market, can compete for jobs in the same market and have similar economic circumstances. Other City bargaining units should be considered because the City is in a truly unique economic circumstance. Thus, the manner in which it handles its negotiations with other bargaining units has some relevance to this dispute.

Accordingly, pursuant to the statutory criteria, the main universe of comparables is Rochester and Syracuse. Other police agencies near Buffalo and other City bargaining units are also in the universe of comparables to a much more limited extent.

## ABILITY TO PAY

### PBA Position

The PBA maintains that Buffalo is in a vastly different and vastly better economic position than it has been in the past. It is in sound financial condition and has the ability to pay for the proposals made by the PBA..

The PBA's evidence of the City's ability to pay was based on the testimony and exhibits presented by Edward Fennel, a government finance consultant who has been examining the records of the City since 1979. The PBA asserts that the evidence offered through Mr. Fennel conclusively establishes that the City has the ability to pay for a substantial increase in salary and benefits. According to the PBA, Mr. Fennel's presentation should be accorded great weight because he is an expert in municipal finance, he made his recommendations based on the City's records and his testimony was largely un rebutted.

The PBA stresses that the City's year-end fund balance data is emblematic of the City's strong recovery. The PBA notes that while the City only had \$17.86 million in fund balance at the end of 2002, the City's fund balance improved to \$95.661 million in 2006 and reached a recent high of \$142.94 million in 2010. To the PBA, the City's robust fund balance increase demonstrates how ludicrous the City's position is. In other words, the City's claim that there is only \$5.6 million available to fund wage increases for all City employees, including PBA members, cannot be given any credence.

The PBA maintains that there are other noteworthy aspects of the City's financial data that demonstrate the City's good financial health. It cites the following:

- Assets of the City exceeded its liabilities at the close of the fiscal year ending June 30, 2011 by more than \$165 million.
- The committed, assigned and unassigned fund balance for the general fund was more than \$92 million as of June 30, 2011, which is 20.1% of total general fund expenditures.
- The BFSAs special revenue fund holds more than \$17 million of state aid that will be turned over to the City in the future.
- The City's bond indebtedness has decreased in each of the last ten fiscal years from more than \$465,885,000 to \$313,957,579.
- The City has set aside more than \$70 million to pay for anticipated settlements with collective bargaining units from past years that will not affect the City's current revenues or fund balance.

The PBA notes that set forth in the Official Bond Statement regarding the issuance of general improvement serial bonds are matter of fact statements highlighting the City's outstanding recovery. Among other things, it is noted that "as a consequence of the substantial improvement in the City's financial operations, the city has experienced a sizable increase in its cash and liquidity position." (PBA Exhibit 2). The PBA stresses that the City's financial improvement is even more noteworthy because it has occurred while the City is in the midst of a tax reduction plan that has reduced taxes by nearly 25% since 2006.

The PBA stresses that Mayor Brown accentuated the City's improving financial condition after releasing the City's 2012-2013 budget. Among other things he stated:

This year Buffalo earned its fifth successive bond rating increase, bolstering Wall Street's confidence in our City as a result of the significant and continued fiscal

improvements. All three top credit rating agencies graded Buffalo in the "A" category – the highest credit rating in Buffalo history... With \$750,000,000 in construction now underway in downtown Buffalo, where the rapidly growing medical campus continues to expand and a newly revitalized waterfront has become a popular destination, investors from across the country and internationally are taking a serious look at Buffalo... Adding to the interest is the support of Governor Andrew Cuomo and his promise of \$1 billion in state aid to attract new businesses and industry to our City.

In the PBA's estimation, Mayor Brown's positive outlook is corroborated by the fact that in April 2012, the City earned an upgraded credit rating from Moody's going from A2 to A1. In reaching this conclusion, the PBA notes that Moody's was pleased with the City's strong improvement in its General Fund balance increases and its adherence to its financial plan. To the PBA, this objective determination from Moody's, coupled with the fact that the City Comptroller has conceded that the City has more than \$56 million in unspent funds, wholly demonstrates that the City has the ability to pay for the PBA's economic proposals.

#### **City Position**

The City insists that the Panel cannot ignore the fact that BSFA Act was adopted because the City was in a dire situation. The BSFA pronounced two essential goals, namely, the preservation of services and the affordability of taxes. It concluded that the failure to act consistent with these goals jeopardizes the City's long-term fiscal health.

The City reminds that Panel that its recovery was only made possible due to the State's extraordinary intervention, which included the imposition of a control board that made difficult austerity decisions, including three years of wage freezes and a hiring freeze. This, coupled with massive increases in State aid, helped the City begin its recovery.

The City maintains that its recovery is extremely fragile because it still has a large structural budgetary imbalance. The City insists that its recurring revenues are less than its recurring expenses. Since approximately 80% of the City's recurring expenses are personnel costs, the City maintains that it has an extremely limited ability to pay for any wage increases.

The City stresses that it relies on State aid and fund balance to balance its budget every year. In the City's estimation, any economic increase awarded by the Panel must be offset by equivalent concessions. Otherwise, the structural imbalance between the City expenses and revenue will only be exacerbated.

The City stresses that its ability to pay is also limited by the fact that there is some potential for a real spike in personnel costs. After all, the City's fire department union employees have not had a contract since 2004. The City maintains that the cost to resolve those outstanding years, coupled with the six outstanding years for police, as well as the costs to address seven other bargaining units could be exorbitant. In the City's view, any increases in salary must be extremely moderate. Otherwise, the City risks being right back where it was with virtually no fund balance and a deep structural budget deficit.

The City asserts that it finished the 2007-2008 fiscal year with an unreserved, undesignated fund balance of \$76.02 million. The City insists that its fund balance only reached these levels due to the wage freeze, increased State aid and BFSA borrowing. The City maintains that its limited ability to pay is accentuated by the fact that the City finished fiscal year 2008-2009 with an unreserved, undesignated fund balance of \$58.93 million.

The City opines that its fund balance has declined because it has been forced to use substantial amounts of its fund balance in each of the more recent fiscal years to balance its budget. It used \$12.8 million in 2010 and \$12.3 million in 2011. In the current budget, the City utilizes another \$11.5 million in fund balance. The City insists that this is demonstrative of a City with fiscal pressures in a challenging economic environment. In the City's view, its continued reliance on one-time revenue sources such as fund balance and State aid wholly demonstrates that it has a very limited ability to pay for increases in costs.

The City contends that given its financial circumstances, its ability to pay for any additional wage increases beyond those already provided in 2007 and 2008 is limited to 1.5%. The City avers that it simply does not have the ability to pay for anything beyond that amount. It claims that its current budget cannot absorb any increases beyond 1.5%.

The City reminds the Panel that its largest source of income is State aid. The City points out that in 2010, it received more than \$195 million in State aid. This demonstrates a far greater reliance on State aid than the cities of Rochester, Syracuse and Albany. Indeed, while Buffalo received approximately 39% of its total revenue from State aid in 2010, Syracuse received 27.9% of its revenue from State aid while Rochester received 22% of its revenue from State aid. The City contends that since State aid is unpredictable and non-recurring that it only has the ability to pay for a limited salary increase.

The City contends that the PBA's claim that the City's finances are not dire defies common sense and the data in the record. The City maintains that it simply cannot afford the millions of dollars of retroactivity and future increases demanded by the PBA.

The City argues that its ability to grow its revenues are severely restricted. It suffered a cut in State aid in 2010 while the State was suffering the devastating affects of the last recession. Although the City may have implemented a plan that reduced taxes by nearly 25%, the City still utilizes over seventy percent (71.15%) of its available constitutional tax limit and due to the State's two percent (2%) cap on property tax increases, the City's ability to generate additional revenue through taxes is limited. Moreover, mortgage tax receipts have dropped by 33% from 2007 to 2010. With revenue growth remaining flat or declining in some areas, the City continues to have no choice but to depend on State aid to make ends meet.

While the City recognizes that its financial condition has improved, it implores the Panel to look at the reality of its budget. It was in a uniquely troubled condition that has taken years to pull out of. It is heavily reliant on State aid. It has a declining population that is very poor with a median household income of \$28,490. The City urges the Panel to find that it has a limited ability to pay for any increase and reject the PBA's contention that it has the ability to pay for the PBA's economic proposals.

#### **Panel Determination on the City's Ability to Pay**

The Panel Chair has carefully considered the statutory criteria regarding ability to pay as provided through the positions of the parties from the testimony, exhibits and post-hearing briefs filed, forming the record in this matter.

The Panel Chair is cognizant that during the term of this Award and beyond, the financial conditions in Buffalo showed significant improvement compared to the past. Due in large part to the receipt of over \$175 million in State aid each year, the City



greatly improved its fund balance, reduced its indebtedness and has become a much better place for investment.

However, much of this positive news is tempered by some stark realities.

Personnel costs are a major piece of the City's budget. The City arguably got back on its feet economically because of the austere measures taken by the BFSa control board.

Three years of wage freezes and a long-term hiring freeze, coupled with increases State aid, allowed the City to improve its financial condition. In other words, the City became more solvent in many ways because it had three consecutive years where its personnel costs were flat. Subsidized with over \$175 million in State aid, the City's revenues grew while its personnel costs did not (due to the wage and hiring freezes).

When one looks at the City's budget over the past several years, it becomes abundantly clear that it remains challenging. The City's revenues are heavily reliant on State aid. In each of the past few years it has frequently received over \$175 million in State aid. This cannot be assumed to be a given each and every year. Very troubling is the fact that State aid is a much greater revenue source for the City than property tax revenues. The City cannot expect to significantly grow its revenue through property taxes as property tax growth will be limited for the foreseeable future for several reasons. The City has great incentive to keep taxes down so as to provide incentives for investment and give members of its dwindling population both tax relief and an incentive to stay in Buffalo. These unmistakable facts, coupled with the 2% tax cap law, make it abundantly clear that the City has genuine limitations on its ability to increase the revenue side of its budget each year. If there is a limit on the ability of the City to annually grow its revenue, there must be limits on the City's ability to pay.

The positive news is that the Panel Chair finds that the record establishes that the City has reserved funds from prior budgets to pay for anticipated collective bargaining increases. The City clearly can draw on money that is set aside to pay for the amount awarded in this Award. Thus, while the Panel Chair rejects the PBA's contention that the City has the ability to pay for the proposals made by the PBA, the Panel Chair finds that the City has the ability to pay for this Award and that the City's careful planning and ongoing fiscal management, along with its improving economic conditions, will allow it to maintain a positive position despite the challenging economy and the unique economic challenges facing the City. Therefore, the Panel Chair finds that the City has the ability to pay for this Award and that the wage and other increases awarded herein constitute a fair and reasonable Award.

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

#### **PBA Position**

In the PBA's view, this consideration encompasses the fact that the City's taxpayers benefit from having a professional, well-trained police department. In the PBA's estimation, this can only happen when its members' wages and benefits are competitive so that the City can attract and retain quality police officers. The PBA opines that the Panel must issue an Award that allows its members to regain some ground on the comparators who did not suffer three years of wage freezes, frozen increments and lost retroactivity. The PBA maintains that it is in the public interest for its members to start making back some ground on salary compared to other police officers in Rochester and

the Buffalo suburbs so as to assure that its police officers will not leave the City for a comparable position elsewhere.

#### **City Position**

The City stresses that the Panel is obligated to consider the fact that this Award will directly affect the citizens and taxpayers of the City and the economic future of the City for years to come. It must also consider the fact that citizens in the City are struggling to find sustainable well-paying jobs and have grave concerns about the ability of its City government to remain on sound financial footing. These considerations, along with the fact that the economic forecast is not bright, mandate that the Panel exercise its power with great care and caution while fashioning its Award.

#### **Panel Determination on Interests and Welfare of the Public and Financial Ability of the City to Pay**

The Panel has carefully considered the statutory criteria regarding the interests and the welfare of the public and financial ability of the City to pay, as provided through the positions of the parties from the testimony, exhibits and post-hearing briefs forming the record in this matter. In looking at this specific issue, the Panel Chair finds that the PBA's argument that the public benefits by having a competitively compensated staff of police officers must be given credence. It influences the Panel Chair's determination on the issues of the overall wage adjustment and longevity. The Panel Chair's Award in the area of salary and longevity is premised on the recognition that it is prudent for the City and beneficial to the public for its police officers to be competitively compensated. While the Panel Chair is aware that this Award will not allow PBA members to be equally compensated with all of the comparables, the salary and longevity increases awarded

herein provide PBA members with the ability to remain competitive in the context of very challenging economic circumstances.

At the same time, all of the other economic proposals advanced by the PBA have been rejected by the Panel Chair because he is concerned about the detrimental effect that any new long-term financial commitments may have on the City's bottom line. It is not in the interest of the public to significantly augment the economic package provided to police officers as this could have a detrimental impact on the City's budget.

### **COMPARISON OF PECULIARITIES OF THE POLICE PROFESSION**

The Panel has also carefully considered the statutory criteria regarding the comparison of the police profession with other trades or professions, including specifically: (1) hazards of employment; (2) physical qualifications; (3) educational qualifications; (4) mental qualifications; and (5) job training and skills. The PBA asserts that the police profession is so unique that no other useful comparison can be made with other trades or professions.

The parties do not dispute the fact that appropriate weight must be given to the especially hazardous nature of police work and the unique training, skills, pressures and dangers that police officers face each day. The PBA correctly stresses that the City has more violent crimes and more property crimes per 100,000 residents than any of the cities and municipalities in the universe of comparables<sup>2</sup>. At the same time, the PBA observes that Buffalo employs fewer police officers per 100,000 residents than the cities of Albany, Syracuse and Rochester. There is no doubt that PBA members have a

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<sup>2</sup> However, as the City points out, there has been an overall decrease in crime in the City over the past five (5) years.

challenging, difficult and dangerous job. The Panel Chair finds that the peculiarities of the profession mandate a direct comparison with police officers.

### **BASE WAGES**

#### **PBA Position**

The PBA proposes a fifteen percent (15%) across-the-board salary increase effective July 1, 2007. The PBA also proposed a \$5,000 across the board salary increase effective July 1, 2007. In doing so, the PBA notes that its proposal was made prior to the time the BFSa lifted the wage freeze and before the wage increases that were supposed to be paid on July 1, 2004, July 1, 2005 and July 1, 2006 were paid effective July 1, 2007, July 1, 2008 and July 1, 2009. In other words, the PBA recognizes that its initial proposal may need to be modified downward.

Nonetheless, the PBA insists that additional and significant salary increases are warranted for a number of compelling reasons. First and foremost, while the BFSa eventually lifted the wage freeze and paid PBA members what they were entitled to receive, none of the raises due were paid retroactively. The PBA observes that the City's failure to retroactively pay its members what they deserved collectively cost its members tens of millions of dollars. In real dollar terms for individual PBA members, the PBA presents charts showing the losses for specific job titles. According to the PBA, a PBA member on Step 3 in the 2003-2004 fiscal year lost more than \$29,000. According to the PBA, members in positions of detective, lieutenant and captain lost wages ranging from \$12,500.00 to \$15,695.00. According to the PBA, when FICA and pension savings are added to the equation, it shows that the City saved between \$25,000.00 and \$35,000.00

for a majority of PBA members. The PBA contends that the impact to its members as a result of the wage freeze can only begin to be rectified with a wage increase during the term of this Award that is well in excess of 5%.

The PBA stresses that the wages it has lost over the past several years has resulted in its members losing significant ground when compared to the universe of comparable police officers. Whereas in 2003, PBA members were paid more than most officers in the universe of comparables, as of July 1, 2007, PBA members lost significant ground. At that time, they received less pay over a 26-year career than officers in Orchard Park and Cheektowaga. When total compensation is considered, the PBA argues that it presents an even more dismal picture for PBA members showing that they earn less than all of the officers in the suburban Buffalo police departments. To the PBA, this injustice cannot be allowed to continue, given the dangerous crime and challenges that PBA members are presented with each and every day.

The PBA stresses that it still fares poorly when it is compared to Rochester, the closest and most similar city to Buffalo. The PBA asserts that as of July 1, 2007, its members earned between \$6,000.00 and \$7,000.00 per year less than police officers in Rochester with five years, ten years, fifteen years and twenty years of service. In other words, a raise of approximately 9.1% is required and justified to allow PBA members to be competitive with Rochester, the most relevant comparator.

The PBA presents a comparison showing how its wages will fare against the comparables if a 5% wage increase was granted. It contends that it will not do enough to rectify to disparity in its wages with its comparators.

The PBA stresses that the competitiveness of its members' wages becomes even more dire when one analyzes the wage comparisons in 2008 and 2009. To the PBA, its objective wage comparison charts show that a wage increase well in excess of 5% for the term of this Award is mandated because its members will still struggle to remain competitive even if its proposal was granted by the Panel.

#### **City Position**

The City notes that it initially proposed a wage increase of 5% effective July 1, 2007 followed by a 0% increase effective July 1, 2008. The City contends that its proposal is no longer applicable because it was made prior to the time that the wage freeze was lifted and the 10.2% in wages was paid to PBA members. In addition, the City maintains that its proposal was premised on receiving comparable concessions, including health insurance premium contributions, plan changes and certain productivity measures. Hence, the City now proposes a wage increase cumulatively totaling 1.5% over the two years of the Award.

The City reminds that Panel that wage increases are recurring expenses that must be funded each year. The City stresses that until July 1, 2012, it remained in a State-declared fiscal crisis. In the City's view, one of the main reasons for the crisis was the City's structural budget deficit. While the structural budget gap is in a much better place than it was several years ago, it still remains. Hence, any increase to wages must be extremely conservative so as to not exacerbate this ongoing and challenging issue for the City. To do otherwise, may very well result in the BFSA going back to "hard" oversight status from its current "advisory" status.

The City contends that any consideration of monies lost by PBA members is outside the scope of this Panel's authority to address. The City points out that the subject of the wage freeze, back pay and how frozen increases would be implemented after the lifting of the wage freeze are addressed in the BFSa Act and have been sanctioned by the New York State Court of Appeals after litigation.

The City contends that it has a genuine revenue problem. All of the evidence shows that it does not generate enough revenue to meet its financial obligations. The City concedes that it can only pay its bills due to the State's generous assistance.

The City asserts that the most recent BFSa report highlights the challenges facing the City. It notes that the City's expenses in the most recent year rose approximately 4.4% due to increases in pension and health insurance costs. It also warns the City about its use of fund balance to bridge its budget gap because the City is using a non-recurring revenue such as fund balance to fund recurring expenses. The use of fund balance, coupled with a one-time spin up in State aid, is the only reason the past year's budget did not cause the City undue strain. However, the BFSa noted that the enhanced State aid is not recurring and presents a further funding challenge for the City in future years.

The City insists that Ed Fennell, the PBA's financial expert, conceded that the City faces a challenging structural budget problem moving forward. In the City's estimation, this is precisely why any wage increases must be paid for with commensurate savings in health insurance and other productivity measures.

The City notes that its budget director testified that the City built a 1.5% salary increase into this year's budget. Thus, any increase above 1.5% without commensurate



concessions will require the City to utilize reserves or implement service cuts in order to fund the Award.

The City observes that the PBA's financial expert disavowed the PBA's initial proposal for a 15% wage increase. He conceded that anything close to this amount was not tenable for the City. Given the City's budgetary challenges and the limited ability it has to raise revenues in the foreseeable future, the City urges the Panel to Award an increase no greater than 1.5% over the two years of the Award. Anything more will expand the City's structural budget gap and could represent a real setback to the City's recovery.

For all of these reasons, the City urges the Panel to reject the PBA's demand.

#### **Panel Determination on Base Wages**

The Panel Chair has carefully considered the statutory criteria balancing the reasonable economic needs of the City's police officers, with the obligations of the City in the context of what is fair and reasonable in the context of the City's challenging economic conditions.

Wages are one of the most important elements in any labor agreement. Employees have the utmost concern about the wages they will be paid, and wages represent the greatest expenditure for the City. When base wages increase, the City's costs for employee pensions, overtime, court time, holiday pay, etc., all increase.

The record contains data that supports both parties' positions. The City faces genuine economic concerns. It has had to contend with flat revenue streams and an economy that is fragile. These are genuine issues that cannot be ignored.

The City's limited ability to grow revenue in the near term raises the greatest concern to the Panel Chair and is the most compelling reason for the PBA's salary increase to be far less than it has proposed. Several factors lead to this conclusion. Buffalo's population has been declining. This means fewer taxpayers and less revenue. The City's mortgage tax income has been declining for the past several years. This means less revenue. The City is in the midst of a tax reduction plan that is intended to provide tax relief to the City's residents and attract more businesses to the City. While this is arguably improving the City's economic climate, the City will not capture revenue growth from this in the immediate future and it certainly does not add revenue at the present time. The 2% tax cap law also restricts the City's ability to grow revenue.

The general state of the economy in Buffalo and the State of New York overall and the unique challenges facing the City on the revenue side of the budget leads the Panel Chair to conclude that the wage proposal made by the PBA must be significantly moderated. The Panel Chair determines that the appropriate salary increase to award is 1% effective June 30, 2008, i.e., on the last day of the first year of this Award. The Panel Chair also determines that on the last day of the second year of this Award PBA members shall receive an additional salary increase of 2%. By deferring these salary increases to the last day of both years, the City will save more approximately \$2 million dollars in retroactive money.

Although all of the police units in the universe of comparables have gained ground on Buffalo's police officers, the salary increase awarded by this Panel will allow PBA members to remain competitively compensated. The data clearly supports this conclusion. PBA members also enjoy a competitive package of benefits and time off.

Moreover, PBA members still have several additional retroactive years to negotiate. The amounts awarded for these two years move PBA members in the right direction.

This is an economic step forward for PBA members. While it is far less than the PBA demanded, the more modest approach is a necessity so that the City can continue to keep its economic house in order and continue to work toward a brighter future with a more booming economy. Of significant note to the Panel Chair is the fact that while the police officers in comparable jurisdictions received greater increases in 2007 and 2008 than the amount awarded herein, all of the police officers in the universe of comparables work in jurisdictions that are significantly less reliant on State aid than the City of Buffalo.

In the Panel Chair's view, the City is in the midst of making changes geared toward significantly improving its economic prospects in the future. However, it is not out of the woods. The City has structural budgetary issues that have required it to use more than \$10 million in fund balance in each of the past three years. Since the City has real challenges on the revenue side of its budget, the personnel side of its budget can only grow in a modest and conservative way so that the City can manage its resources carefully and limit the impact of this Award on its taxpayers by maintaining services and limiting tax increases.

The Panel Chair is cognizant of the fact that the City has set aside approximately \$70 million in funds to pay for retroactive settlements of collective bargaining disputes. While the PBA insists that this justifies a wage increase beyond what is being awarded, the Panel Chair disagrees. He notes that the retroactive costs of this Award are nearly \$10 million. The PBA has four additional years of retroactive years to negotiate over. This

will put a further dent in the \$70 million of funds. In addition, the City has not had an agreement with its firefighters since 2004. The retroactive costs to resolve outstanding contracts with the firefighters will undoubtedly take a large bite out of the \$70 million because it will cover a large number of years. Hence, the Panel Chair determines that this Award is the most appropriate way to handle salary increases for the PBA unit at this time.

At the same time, the money that is set aside for settlements convinces the Panel Chair that it is appropriate to render an Award that is beyond the amount proposed by the City. This is important because the wage increases awarded by the Panel will allow City officers to retain their relative standing vis-à-vis the universe of comparables. The Panel Chair finds it to be important for City officers to maintain their standing relative to other officers in the universe of comparables to the best extent possible. If the Panel awarded the salary increase proposed by the City of 1.5% overall, which is well below the average amount received by officers in the universe of comparables, the Panel could jeopardize the relative standing of the City's police officers.

In reaching the conclusion that salary schedules shall be increased by 1% effective June 30, 2008 and 2% effective June 30, 2009, the Panel Chair finds that the City has the ability to pay for a fair increase in wages overall.

Accordingly, and after careful consideration of the statutory criteria, testimony, exhibits, documentation, and post-hearing briefs filed, forming the record in this matter, the Panel makes the following:

#### **AWARD ON BASE WAGES**

#### **ARTICLE 4- BASE WAGE**

Effective June 30, 2008, the current wage scales shall be increased by 1%.

Effective June 30, 2009, the June 30, 2008 wage scales shall be increased by an additional 2%.

\_\_\_\_\_  
Concur

Kevin M. Kennedy

KH 7-12-13  
Dissent

X 7/8/13  
Concur

Sean P. Beiter, Esq.

\_\_\_\_\_  
Dissent

### LONGEVITY

#### PBA Position

The PBA proposes to adjust the years of service steps when longevity would be granted and to increase the current amount of longevity being provided to officers.

Currently, each PBA member receives a longevity payment of \$125.00 for each completed year of service up to a maximum of 25 years. Thus, a PBA member with ten years of service currently would receive \$1,250.00 for that year and a PBA member with 20 years of service would receive \$2,500.00 for that year. The PBA proposes that the longevity schedule be changed as follows:

<u>Years</u>	<u>Amount</u>
0-5	\$1,000.00
6-10	\$2,000.00
11-15	\$3,000.00
16-20	\$4,000.00
Over 20	\$5,000.00

The PBA asserts that its currently longevity schedule lags the market substantially at all of the service levels. It maintains that its officers received fair compensation vis-à-vis the comparables in 2003 but that its rank has greatly worsened over time to the point

where its overall compensation for employees with 20 years of service ranks last among the local, relevant police jurisdictions. To the PBA, the disparity in overall earnings must be addressed with significant increases to longevity as part of an overall package. The PBA notes that officers in Amherst enjoy a payment of \$3,850.00 for longevity at the 25<sup>th</sup> year while PBA members receive \$3,125.00 per year at the 25<sup>th</sup> year. In the PBA's view, when the danger of the job its members perform is compared to officers in Amherst it becomes abundantly clear that significant increases toward longevity are warranted.

To the PBA, the evidence demonstrates that longevity payments and overall compensation to senior officers is well below market rates.

#### **City Position**

The City insists that the PBA has failed to present any support for this demand. It asserts that its police officers receive competitive longevity payments and that there is no compelling reason to further increase these payments. It points out that in virtually all of the municipalities cited by the PBA, Buffalo officers receive greater longevity payments than officers in wealthier suburban Buffalo police departments.

In the City's view, increases to longevity are unwarranted in these difficult economic times. The City stresses that while its finances are in a better place than they were in 2003, the fact remains that any wage increases beyond 1.5% will have to be paid out of this year's City budget. In other words, if the Panel Awards a base wage adjustment of 1.5% in total over the course of two years, any longevity payments would be beyond the ability of the City to finance without potential service cuts or other economic concessions. Since longevity payments add up over time, the City stresses that the Panel should not increase the City's liability on this already expensive payment.

### Panel Determination on Longevity

The Panel Chair finds clear support in the record for an increase to longevity. Police officers in Buffalo are paid the same or less than many of their counterparts in suburban areas when base wages and longevity payments are factored in. Over the past several years, PBA members clearly have lost ground in terms of their overall compensation. Within the context of what is affordable, a modest increase is warranted so PBA members can maintain their relative standing.

Accordingly, and after careful consideration of the statutory criteria, testimony, exhibits, documentation, and post-hearing briefs filed, forming the record in this matter, the Panel makes the following:

### AWARD ON LONGEVITY

Longevity shall be modified effective June 30, 2009, so that thereafter, each permanent employee who has completed one (1) year of service shall receive annually, in addition to their salary, one hundred fifty-five (\$155) longevity payment for each completed year of service, to a maximum of twenty-five years.

\_\_\_\_\_  
Concur  
Kevin M. Kennedy

7-12-13  
Dissent

7/8/13  
Concur  
Sean P. Beiter, Esq.

\_\_\_\_\_  
Dissent

### HEALTH INSURANCE - ELIMINATION OF COSMETIC RIDER

#### City Position

In addition to proposing that employees share in the cost of their health insurance, the City has also proposed the elimination of the cosmetic surgery rider. It insists that this rider is highly expensive and far too great a luxury for the City to be providing while it tries to avoid severe financial distress. It asserts that this rider is for elective cosmetic

surgery. Hence, this is not a proposal to eliminate cosmetic surgery deemed medically necessary. Rather, it is a benefit that is purely for elective procedures.

The City stresses that this rider alone has cost the City between \$1 million and \$1.5 million in claims in recent years. In actual premium costs, the City contends that eliminating this rider will save the City approximately \$335,000 per year, more than .5% in terms of overall salary.

The City argues that this elective rider does not truly benefit the entire PBA membership, that the costs of this benefit are not justified, and that this expensive benefit has outlived its usefulness. In the City's estimation, numerous interest arbitration panels have recognized the need for employees to make concessions on health insurance. To the City, this concession is warranted and justified.

#### **PBA Position**

The PBA contends that the multiple changes proposed by the City regarding health insurance must be rejected. The PBA stresses that the record shows that the City has had multiple breaches of the CBA regarding health insurance. The PBA maintains that it has prevailed in grievance arbitrations to preserve its health insurance benefits after the City inappropriately breached its contract.

The PBA maintains that this is neither the proper or fair time for the cosmetic rider to be eliminated. The PBA asserts that it has retained health insurance experts so that it could find ways to secure cost savings while preserving benefits. In the PBA's view, the City has been less than forthcoming with information. Thus, while the PBA is open to discussions about cost saving measures in the future, it insists that the cosmetic



rider should not be eliminated because this should occur, if ever, in the context of comprehensive negotiations.

The PBA stresses that concessions on health insurance should not occur on a piecemeal basis. The PBA maintains that eliminating the cosmetic rider at this time will undermine its efforts to effectuate comprehensive change.

**Panel Determination on the Elimination of the Cosmetic Rider**

The parties have a long and active history disputing the issue of health insurance premium contributions, the plans offered by the City, and its overall costs. The City has proposed several cost containment measures in the area of health insurance that are not being granted as part of this Award. Significantly, in consideration of the award on wages, this Panel is rejecting the City's proposal to require contributions toward the cost of health insurance. Further, the Panel denies the City's proposal to increases in deductibles paid by employees and for fundamental changes to the health insurance plans offered by the City to PBA members. The City projects that these changes would save the City hundreds of thousands of dollars on an annual basis for the PBA unit alone.

The PBA objects to the City's proposals in their entirety. It claims that it has won many of its current health insurance benefits through hard fought collective bargaining and through grievance arbitration awards. Moreover, the PBA expresses grave concern about the City's unwillingness to provide it with accurate and detailed data regarding health insurance. It claims that it has retained a health insurance expert who was hired to analyze the current data and offer recommendations for changes to the health insurance plans that would be cost effective while preserving benefits for PBA members.

Throughout this interest arbitration process, the parties have spent significant time discussing the issues raised by both parties regarding health insurance. Comprehensive changes are not being imposed by this Panel and are not recommended by the Panel Chair primarily because this can only occur after the PBA has been provided all of the relevant health insurance data from the City so its experts can provide it with a comprehensive analysis of the status quo and be able to make recommendations for the future. In order for the parties to have productive discussions regarding health insurance cost containment, the first step is for the City to provide the PBA with the necessary data. Once this occurs, the PBA has expressed a willingness to grapple with these issues. If the PBA is well informed, it may be able to make its own recommendations and/or proposals regarding health insurance and provide a win/win for both parties.

The other reason why the Panel Chair is not imposing comprehensive health insurance changes is because this should occur in the context of a long-term overall agreement. In this interest arbitration award, the Panel has authority only for two years covering the dates July 1, 2007 to June 30, 2009. The Panel Chair is of the opinion that in order for comprehensive changes to be considered by the PBA, the City will need to come to the table with some quid pro quo economic improvements in the area of salary in exchange for cost saving and/or containment measures regarding health insurance. It is the Panel Chair's sincere hope that the parties will take this recommendation to heart and that the City will provide the data requested by the PBA. Thereafter, they should engage in negotiations for a long-term settlement of their ongoing dispute regarding salary improvement in exchange for health insurance concessions.

However, the Panel Chair is of the opinion that, in exchange for the salary and longevity increases being granted as part of this Award, the City should be provided with some cost saving measures as a quid pro quo. The cosmetic rider for the traditional plan should be eliminated because it is a luxury that is expensive for the City and no longer makes sense. The Panel Chair is not aware of any comparable group of employees other than City Board of Education employees that enjoy this benefit. Although it is possible that the cosmetic rider benefit is being provided to some public employees somewhere else in the State, there is no evidence of this in the record in this case and the Panel Chair is not aware of any bargaining units in any other jurisdictions that receive such an extraordinary benefit. When the Panel Chair considers the lack of comparable employee units enjoying this benefit and the Panel Chair considers the interests and welfare of the public at large and the fact that he is fairly certain that a majority of taxpayers in the City do not have this benefit, it becomes quite clear that this benefit should be eliminated. Simply stated, the taxpayers of the City and State should not be paying for this "Cadillac" benefit in these challenging economic times. If PBA members want cosmetic procedures that are completely elective and not necessary to maintain their health they can do what everyone else does, namely, pay for such procedures out of their own pocket.

After balancing the statutory criteria, the Panel rejects the City's proposal to have all employees pay for a share of their health insurance and concludes that the elimination of the cosmetic surgery rider is the appropriate quid pro quo for the salary and longevity improvements that are being awarded as part of this Award.

Accordingly, and after careful consideration of the statutory criteria, testimony, exhibits, documentation, and post-hearing briefs filed, forming the record in this matter, the Panel makes the following:

**AWARD ON HEALTH INSURANCE - ELIMINATION OF THE COSMETIC**

**RIDER**

Effective June 30, 2009, after providing thirty (30) days prior written notice to the Union, the City shall have the right to eliminate the cosmetic rider from the traditional health plan offered to active employees and anyone retiring on or after the date the City implements the elimination of the cosmetic rider benefit. It is understood that the City may not retroactively implement the elimination of the cosmetic rider benefit.

\_\_\_\_\_  
Concur  
Kevin M. Kennedy

7-12-13  
Dissent

7/8/13  
Concur  
Sean P. Beiter, Esq.

\_\_\_\_\_  
Dissent

**SEMI-ANNUAL MANPOWER ADJUSTMENTS**

**City Position**

The City currently has the right to review and adjust manpower levels annually. The City formerly had this right twice a year and the City wishes to again have the right to adjust manpower levels more than once a year. The City contends that this proposal will give it greater flexibility in assigning officers and control unnecessary and substantial overtime costs. By having the right to adjust manpower levels more than once per year, the Police Commissioner will be able to even out manpower across City police districts so that an adequate number of officers are assigned to the appropriate shifts in the appropriate districts.

The City stresses that Police Commissioner Derenda testified that bi-annual manpower adjustment would permit him to respond to retirements or injuries that occur after January 15 in any given year. Under the current system, if a single district or shift has an inordinate number of injuries or retirements after January 15, the City is prohibited from adjusting manpower levels until the following January 15. This creates difficult operational issues and creates unnecessary overtime.

#### **PBA Position**

The PBA does not strongly oppose this proposal. It recognizes that the proposal will provide the Commissioner with greater flexibility. The PBA contends that this proposal should only be adopted in conjunction with the PBA's enhanced pay proposals.

#### **Panel Discussion Regarding Semi-Annual Manpower Adjustment**

The Panel Chair is persuaded that the City's proposal should be granted. The City has a valid and compelling operational need to adjust manpower levels twice a year. The current system of allowing manpower adjustments once a year is overly restrictive and prevents the City from being able to adjust its manpower levels when situations arise that are out of the City's control such as police officer retirements or injuries. The City's proposal is reasonable and should result in more prudent police coverage and reduced overtime costs.

Accordingly, and after careful consideration of the statutory criteria, testimony, exhibits, documentation, and post-hearing briefs filed, forming the record in this matter, the Panel makes the following:

#### **AWARD ON SEMI-ANNUAL MANPOWER ADJUSTMENTS**

Modify the manpower adjustment provision by changing it to read as follows:

The parties mutually recognize that there may be a need from time to time to adjust manpower levels in response to retirements and other personnel changes. The City shall have the right to review and adjust manpower levels semi-annually on January 15 and July 15.

\_\_\_\_\_  
Concur  
Kevin M. Kennedy

KA 7-12-13  
Dissent

X 7/8/13  
Concur  
Sean P. Beiter, Esq.

\_\_\_\_\_  
Dissent

### REMAINING ISSUES

The Panel has reviewed in great detail all of the demands of both parties, as well as the extensive and voluminous record in support of those demands. The fact that those demands have not been specifically addressed in this Opinion and Award does not mean that they were not closely studied and considered in the context of terms and benefits by the Panel members. These proposals were considered by the Panel in light of the statutory criteria, testimony, exhibits, documentation and post-hearing briefs filed. However, in the process of arriving at an Award, the Panel was unable to arrive at an agreement on any of these other proposals. In interest arbitration, as in collective bargaining, not all proposals are resolved, and not all contentions are agreed with. The Panel, in reaching what it has determined to be fair result, has not made an Award on all of the demands submitted by each of the parties.

### AWARD ON REMAINING ISSUES

Except as set forth in this Award, the City's demands are hereby rejected.

Except as set forth in this Award, the PBA's demands are hereby rejected.

\_\_\_\_\_  
Concur  
Kevin M. Kennedy

KA 7-12-13  
Dissent

X 7/8/13  
Concur  
Sean P. Beiter, Esq.

\_\_\_\_\_  
Dissent

### RETENTION OF JURISDICTION

The Panel Chairman hereby retains jurisdiction of any and all disputes arising out of the interpretation of this Award.

\_\_\_\_\_  
Concur  
Kevin M. Kennedy

KM 7-12-13  
Dissent

X 7/8/13  
Concur  
Sean P. Beiter, Esq.

\_\_\_\_\_  
Dissent

### DURATION OF AWARD

Pursuant to the agreement of the parties and the provisions of Civil Service Law Section 209.4(c)(vi) (Taylor Law), this Award is for the period commencing July 1, 2007 through June 30, 2009. The terms of this Award shall be effective on such dates as set forth herein and payable to any unit member working during such award term. Payment of any retroactive wage and/or longevity adjustment shall be made no later than 60 days after the execution of this Award.

Accordingly, the Panel, after consideration of the record evidence and after due consideration of the statutory criteria, executes this instrument which is our award.

Jay M. Siegel  
JAY M. SIEGEL, ESQ.  
Public Panel Member and Chairman

7/10/13  
Date

S. P. Beiter  
SEAN P. BEITER, ESQ.  
Employer Panel Member

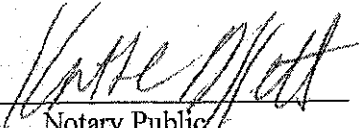
7/8/13  
Date

Kevin M. Kennedy  
KEVIN M. KENNEDY  
Employee Organization Panel Member

7-12-13  
Date

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

On this 16<sup>th</sup> day of July 2013 before me personally came and appeared Jay M. Siegel, 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 the same.

  
Notary Public  
KATHLEEN DUFFETT  
Notary Public, State of New York  
No. 02DU6128192  
Qualified in Putnam County  
Commission Expires 06/06/20 14

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

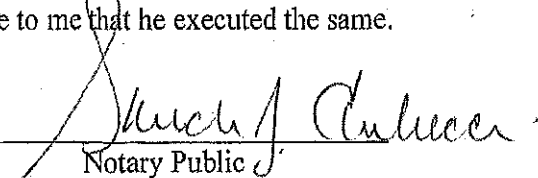
On this 7 day of July 2013 before me personally came and appeared Sean P. Beiter, Esq. to be known and known to me to be the individual described in the foregoing Instrument, and he acknowledged the same to me that he executed the same.

  
Notary Public

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

TAMMY L. SWATSWORTH  
Notary Public, State of New York  
Qualified in Erie County  
My Commission Expires March 26, 2015

On this 2<sup>nd</sup> day of July 2013 before me personally came and appeared Kevin M. Kennedy, 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 the same.

  
Notary Public

SANDRA J CARLUCCI  
Lic. #01CA5020149  
Notary Public-State of New York  
Qualified in ERIE COUNTY  
My Commission Expires 11/08/20 13