

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

**In the Matter of the Compulsory Interest
Arbitration between**

SYRACUSE POLICE BENEVOLENT ASSOCIATION

and

CITY OF SYRACUSE

PERB Case No. IA-2004-027; M2004-042

OPINION

AND

AWARD

Before Interest Arbitration Panel:

Thomas N. Rinaldo, Esq., Chairperson

Jeffrey Lacey, Esq., Public Employer Member

Jeffrey Piedmonte, Employee Organization Member

The New York State Public Employment Relations Board, pursuant to the New York Civil Service Law, Section 209.4, designated the Chairperson and other above Panel Members by notice dated March 17, 2005.

A pre-hearing was held on March 30, 2005 at which time the Parties identified the open issues for the Panel's consideration. Hearings were then held on June 17, 23, and July 6, 2005. The Panel then met in executive session on August 15, September 14, October 5, November 1, and 2, 2005, in Syracuse, New York. Appearing on behalf of the Syracuse Police Benevolent Association ("PBA") was the law firm of DePerno & Khanzadian, by Rocco A. DePerno, Esq., and on behalf of the City of Syracuse ("City") was the law firm of Bond, Schoeneck & King,

PLLC, by Peter A. Jones, Esq., of counsel.

At the hearing, the Parties were given a full opportunity to produce witnesses and present documentary, video, and other evidence in support of their respective positions, as well as the opportunity to question witnesses appearing on behalf of both Parties. This Opinion and Award constitutes the results of the Panel's consideration of the evidence presented within the context of the criteria set forth in Section 209.4 of the Civil Service Law, including, but not limited to a comparison of wages, hours and conditions of employment of other employees performing similar services or requiring similar skills under similar working conditions; the interest and welfare of the public and the financial ability of the public employer to pay; the peculiarities in regard to other professions such as hazards, educational qualifications, training and skills; and the terms of collective agreements negotiated between the Parties in the past providing for compensation and fringe benefits.

It is noted that, at the request of the Parties, a Summary of Award was issued on November 7, 2005, with the understanding that the Opinion and Award herein would follow. The positions originally taken by both Parties are adequately set forth in the petition and the response, the numerous hearing exhibits, and in the Parties' post-hearing briefs, all of which are incorporated by reference into this Award. Such positions will simply be summarized for purposes of this Opinion and Award.

PROPOSALS OF THE PARTIES

SYRACUSE PBA CONTRACT PROPOSALS - 2004/2005

The Syracuse PBA reserves the right to add to, delete from, and/or otherwise modify these proposals (and all others subsequently proffered) to the extent permitted by law.

The Syracuse PBA further reserves the right, to the extent permitted by law, to revert to any of its proposals at any time during negotiations, should the give and take of negotiations (either from these proposals, or, from any short list) not produce a negotiated successor agreement.

- (1) Article 4.1 - Association Business: Full release time for a second full time PBA representative.
- (2) Article 4.5 - Release of Scheduled Duty for PBA Meetings: Modify Preamble to read "PBA Executive Board and PBA Board of Directors".
 - (1) To read "for regular PBA and Special PBA meetings"
 - (2) Delete "only for night meetings"
 - (4) Delete "no expansion of either Executive Board or Board of Directors"
- (3) Article 5.1 - Salary and Wage Adjustments: Effective on and retroactive to January 1, 2004, increase all base salaries by ten (10%) percent, plus ten (10%) percent cash bonus, payable on January 1, 2004; effective January 1, 2005, increase all 2004 base salaries by an additional ten (10%) percent, plus ten (10%) percent cash bonus, payable on January 1, 2005. In each year of the contract there shall be a minimum differential between all ranks, to be discussed as negotiations progress.
- (4) Article 5.3 - Longevity Pay: Effective on and retroactive to January 1, 2004, at five (5) years of service, \$500.00; plus \$100.00 for each additional year thereafter, i.e. [10 years, \$1,000.00], [18 years, \$1,800.00], etc.
- (5) Article 6.2 - Uniform Allowance: Effective on and retroactive to January 1, 2004, increase uniform allowance to \$1,000.00. Effective January 1, 2005, increase uniform allowance to \$1,500.00; Effective January 1, 2004, provide \$500.00 clothing maintenance for plain clothes officers; Effective January 1, 2004, one time payment of \$300.00 for uniform change. All members must have a Blauer jacket after the increase is implemented, as discussed during negotiations.

- (6) Article 7.3.3: Three (3) officers within each of the three platoons within the patrol division to have right to take their PL day, regardless of number of officers also on furlough that day. That means a total of twelve (12) officers can be off on PL, on any one day, above and beyond the number of officers otherwise on furlough.
- (7) Article 8.3 - Compensatory Time (Earned Prior to January 1, 1989) : Delete 8.3.1, 8.3.2, and 8.3.3 - Add new language: All Comp Time will be paid at the rate in effect at time of retirement, separation, death, resignation, etc.
- (8) Article 8.3.4 - overtime: Amend to read "Police Officers may at their option use accrued Comp Time for terminal leave or cash pay out.
- (9) Article 8.4 - Compensatory Time (Earned After January 1, 1989) : To the extent the City takes the position that officers may not cash in more than 480 hours of "new bonus" at the time of separation from the department, the PBA proposes that officers shall have the right at any time during their career, including at separation, to cash in all (or as much of) their unused accumulated comp time, they choose.

[NOTE: See also PBA proposals (7 & 8 above, as well as PBA proposal (47) below)].

- (10) Article 8.5 - Call-In Time: Eliminate requirement that callback not be "contiguous" to tour of duty.
- (11) Article 9 - Group Medical Insurance: Coverage to be fully non-contributory; ADD super blue prescription, and eye-glass coverage.

Retiree coverage: members to be provided with their medical coverage in effect at time of separation including dental coverage at the rate of coverage in effect at time of separation.

- (12) Article 9.3 - Group Dental Plan: Eliminate \$1,500.00 dental cap.
- (13) Article 10 - Grievance and Arbitration: PBA to have thirty (30) calendar days from knowledge of either the act, or occurrence of event giving rise to the grievance in those situations where a PBA is unaware that a member has been grieved.
- (14) Article 11 - Discharge and Discipline: Unless specifically determined otherwise by the disciplinary arbitrator, personnel files to be purged of disciplines automatically every six (6) months; Accident Review Board decisions not to be considered as part of personnel file for either promotions, or progressive discipline.
- (15) Article 11 - Discharge and Discipline: Purge all written and verbal reprimands from files

after one year.

- (16) Article 14 - Group Life Insurance: increase life from \$25,000 to \$50,000; increase AD and D from \$10,000 to \$50,000.
- (17) Article 16.3(b) - Investigation: Delete (if any time is left, the member of the force shall be given comp time).
- (18) Article 17 - Duty and Shift Assignment: prohibition against unilateral switching of rest days and/or work days to avoid payment of overtime.
- (19) Article 19.2 - Non-job related sick leave for members employed after December 31, 1974: 1080 hours per calendar year regardless of years of service; all employees to be covered by Article 19.1; full sell back of sick time annually, or at retirement. Remove sick cap.
- (20) Article 19.3 - General Conditions: delete acknowledgement that sick leave benefits are subject to the Department's Rules and Regulations. Delete last sentence of said paragraph.
- (21) Article 19.4: six (6) two month blocks instead of three (3) four month blocks. Also increase 1 day pay per block.

Revise to redefine "days off" as sickness;

5 days off - 1 day pay
4 days off - 2 days pay
3 days off - 3 days pay
2 days off - 4 days pay
1 day off - 5 days pay

- (22) Article 23 - Funeral Pay: officer on either rest, furlough, or vacation to be able to convert from same to funeral leave. Delete requirement of "actual loss of time from scheduled work". Effective January 1, 2004, increase four/three to six/five; funeral leave pay to include Step-Father/StepMother; also include day after funeral.
- (23) Article 27 - Term of Agreement: Two Year Agreement commencing January 1, 2004, ending December 31, 2005.
- (24) New Article - Family Care Benefits: Any member of the department giving birth to a child will be given 4 weeks prior to birth, and 8 weeks following birth of paid leave for a normal vaginal delivery. Any member of the department giving birth to a child by cesarean section will be given 4 weeks prior and 10 weeks following birth of paid leave. This time will be considered separate from sick leave and will not be subject to any

pro-ration as poised in Section 7.1.2. This leave will also not effect the sick leave incentive program as outlined in Section 19.4, as it will be considered separate and different than sick leave. Furthermore any member of the department will be allowed to take up to a 2 year leave of absence without pay for the care of his/hr child. During this time the member will be allowed to retain his/her insurance through the City at the members cost under group rates. Any member of the department will be given 5 family care days that may be used for the birth of a child, illness of a spouse, or illness of a child. This leave will be considered separate and different than sick leave and will not be subject to any pro-ration or apply to the sick leave incentive program.

- (25) New Article - Hazardous Duty: When staffing levels fall below agreed upon numbers, patrol officers to be assigned to two-person cars, or be compensated in accordance with the increased risks associated therewith - double time.
- (26) New Article - Wheel vs. Non-Wheel Disparity: All employees to work the same number of days per year, regardless of the work schedule he/she is assigned to.
- (27) New Article - Job Descriptions: City to set forth, in writing, the job descriptions of all positions within CID, SID, APU, Juvenile Aide, SIRP, DARE, and, every other position within the Investigations Bureau not otherwise identified in this paragraph.

In keeping with the detective tenure statute, City to identify whom (in the opinion of the City) are detectives and/or investigators as those terms are contemplated by the statute.

City to identify each and every employee, by name, whom the City asserts is performing the duties of either a detective and/or an investigator as those terms are contemplated in the statute.

City statutorily appoint as detectives/investigators all persons who are tenure-eligible under Section 58.4(c)(ii) of the Civil Service Law.

- (28) New Article - Education Incentive: Master's Degree, \$1,500.00 per annum, BA, \$1,000.00, per annum; Associate's Degree, \$500.00 pr annum.
- (29) New Article - On-Call Compensation: Time and one-half the FLSA hourly rate.

Hostage Negotiation Team, ERT and Crime Lab Personnel actually on-call, to be entitled to same also.
- (30) New Article - Take Home Cars: Take home cars to be provided to all detectives.
- (31) New Article - PBA Welfare Trust Fund: City to contribute the sum of \$200.00, per

annum, per PBA member to the PBA Welfare Trust Fund, it being understood that said contribution shall be used for benevolent purposes only, and not for negotiations, grievances and the like.

- (32) New Article - Family Holidays: Employees who work on Thanksgiving Day, Christmas Day, New Year's Eve after 1700 hours, or, on New Year's Day, to be paid at the rate of time and one-half over and above all other compensation provided same.
- (33) New Article - Tier II Final Average Salary Plan: to be discussed during negotiations.
- (34) New Article - Section 384 (e)Plan: as discussed in negotiations.
- (35) New Article - Continuing City paid health Coverage for Spouses and Family of Officers killed in the Line of Duty.
- (36) New Article - At Officers option, suspensions to be payable through concomitant reduction of comp time.
- (37) New Article - City to implement a five-step schedule for Sergeants, Lieutenants, Captains and Inspectors of \$500/year for each year for the first five years.
- (38) New Article - Transfers: Develop language to determine a member's transfer rights when they are transferred against their desire.
- (39) New Article - Calculation of Overtime: As discussed during negotiations.
- (40) New Article - Contract Re-opener: Should the City enter into a collective bargaining agreement with another bargaining unit (either through negotiations, mediation or compulsory interest arbitration) that provides better or greater terms and conditions of employment than the City provides to the police, the PBA shall have the right to re-open negotiations to capture same, to the extent permitted by law.
- (41) Retroactivity: Unless agreed otherwise, all of the proposals set forth by the PBA (and all others advanced by the PBA during negotiations), to be effective on and retroactive to January 1, 2004.
- (42) New Article: Compensation to be paid at the rate of double time for minimum staffing of patrol on Friday, Saturday and Sunday until department staffing is returned to our maximum strength of 503.
- (43) New Article: A minimum of 15% of the total number of police officers assigned to a shift will be allowed to use furlough, compensatory time or personal time on any given

day.

(Example - If a patrol division has sixty police officers assigned to the shift a total of nine officers may take the day off regardless of other officers being assigned to training, military or special assignments).

- (44) New Article The right to be paid for any furlough days that than 480 hours of either comp time or bonus at the time of separation from the department, the PBA proposes that officers shall have the right at any time during their career, including at separation, to cash in all (or as much of) their unused accumulated comp time or bonus, they choose.

[NOTE: See also PBA proposals (7, 8 & 9 above)].

**City of Syracuse - - Contract Proposals for PBA Negotiations (2004 -2005)
May 5, 2004**

1. Civilian Review Board

To be discussed in negotiations.

2. Uniform Allowance (Section 6.1.2)

In order to maintain the integrity of the Syracuse Police Department's uniform, the Chief of Police reserves the right to make annual uniform changes. The cost of such changes shall not exceed 50% of the annual uniform allowance and shall be paid for with said check. Whenever possible, changes will be announced in December prior to the January uniform allowance check.

3. Reporting Time

Establish reporting time for all officers of 15 minutes prior to the current start of their shift, thereby extending the workday an additional 15 minutes. Such time will be included in the time compensated by an employee's annual salary which shall not be considered overtime hours worked and shall be considered straight time hours under Section 7(k) of the Fair Labor Standards Act.

4. Grievance and Arbitration (Article 10)

Negotiate a procedure for the triage of grievances. An arbitrator or a member of the established panel of arbitrators would meet monthly with the PBA and the Chief or his designee to assess all pending grievances. The arbitrator should be vested with the

authority to determine which cases go forward and which cases shall be dropped. The arbitrator's decision shall be binding.

5. Overtime (Article 8)

Establish a calculation rate for determining overtime based upon a 2080 hour work year, plus the additional hours associated with reporting time for each officer. Such time is to be treated as straight time compensation under Section 7(k) of the Fair Labor Standards Act.

6. Hospitalization, Medical, and Dental Plan (Article 9)

To be discussed in negotiations.

7. Retiree Medical Coverage

To be discussed in negotiations.

8. Written CBA

Reduce the collective bargaining agreement to a final, written document. The City of Syracuse reserves the right to add to, delete from, or otherwise modify these proposals and all others subsequently proffered (to the extent permitted by law). The City of Syracuse further reserves the right, to the extent permitted by law, to revert to any of its proposals at time during negotiations, should the give and take of negotiations (either from the proposals, or, from any short list) not produce a negotiated successor agreement.

Article 9 Hospitalization, Medical Plan and Dental Plan

9.1 Group Insurance Amend

- Effective January 1, 2005, increase current deductible from \$125.00 (individual) to \$200.00 (individual) and from \$375.00 (family) to \$600.00 (family).
- Effective January 1, 2005, increase the maximum annual out-of-pocket (including deductible) from \$525 (individual) and \$1,575 (family) to \$750 and \$2,250, respectively.
- Effective January 1, 2005 change current prescription drug co-pay plan from \$5 for generic and \$15 for brand name to a three (3) tier plan - \$5 for generic, \$15 for preferred brand and \$30 for a non-preferred brand.

- Effective January 1, 2005, increase the annual maximum out-of-pocket limit of \$1,000 per person for prescription drugs to \$1,100.

9.3 Group Dental Plan Amend

- Effective January 1, 2005, increase the monthly employee contribution rate from \$7.00 (individual) and \$15.00 (family) to \$9.00 and \$20.00, respectively.

BACKGROUND FACTS

The City is a municipal corporation located in Onondaga County in the State of New York. The City is also the fifth largest City in New York. Its land area is approximately 25 miles and, in 2003, its population was 144,001. It would appear, since at least 1960, the City has experienced a decline in population of over 72 thousand residents while, at the same time, the population of Onondaga County has increased by over 36 thousand people.

The City provides a number of municipal services to its residents, including police and fire protection, street maintenance, water service, sewage and refuse collection, and other services. Further, the City operates Hancock International Airport, which is north of the City limits. The schools in the City are overseen by the Syracuse Board of Education. That body does not have power to tax or incur debt and, by necessity, depends upon the City for its financial support.

In 2005, the City's employees numbered 1,971, and School District employees numbered 4, 700. Nine different collective bargaining units as well as an unrepresented executive group represent City employees. From 1990 to the present, the City has reduced its civilian workforce by approximately 19%, and, during this period of time, Fire Department personnel have been

reduced by over 13%. Police Department personnel, since 1990, have increased by 8.65%.

The City's Police Department includes 490 sworn Officers. The PBA is the certified bargaining agent for all sworn Officers of the Police Department, save for the Chief of Police, Deputy Chiefs, and other Department employees. The record shows that, for fiscal year 2003-04, 31% of the City's General Fund expenditures were allocated for the Police Department. In fiscal year 2004-05, Department expenditures made up 34% of the General Fund budget. The payroll base for the Department for fiscal year 2004-05 was in the neighborhood of 43 million dollars.

The Parties in this proceeding have a collective bargaining relationship dating back to the first Collective Bargaining Agreement covering the period 1969-70. Over this period of time, it would appear that the Parties have only achieved agreement through collective bargaining four times, and that 11 contract terms have thus been resolved through interest arbitration. The Chairperson of this Panel was the Chairperson of the Panel issuing an Award for the period 1998-1999 (PERB Case No. IA98-012). Arbitrator Jeffrey Selchick was the Chairperson of Panels issuing Awards for the period 2000-01 (PERB Case No. IA09-026) and the period 2002-03 (PERB Case No. IA2002-007).

The following constitutes the Panel's Award as to what constitutes a just and reasonable determination of the Parties' Agreement for the period January 1, 2004 through December 31, 2005.

POSITION OF THE PBA

On the question of the appropriate universe of comparables, the PBA offers the opinion that the City “is unique, in that it is directly surrounded by adjacent police units, to wit: the town(s) of Camillus, Clay, DeWitt, and Manlius.” These four jurisdictions, according to the PBA, allow the Panel to make useful comparisons given the fact that they have negotiated or arbitrated recent salary increases across the board in the neighborhood of three to five percent. The PBA also contends that the City is “unique in that it is one of the four largest upstate New York cities, along with Buffalo, Rochester and Albany, and ranks third in size and population.” It notes the Panel’s Award for 2001-2003 drawing a comparison to “larger upstate police departments.”

The PBA claims that the City’s proffered comparables can be viewed as a “random pick of cities in New York State, regardless of location, size or population.” The PBA accuses the City of offering no explanation as to why cities such as Rome, Schenectady, Niagara Falls, Troy and Utica, belong within the universe of comparables. Again, the PBA refers to language in the Panel’s Award for 2001-2003 that the “largest upstate cities ... have more in common with each other than with any of the smaller upstate cities.”

By way of background, the PBA observes that, only on one occasion since 1990, have the Parties achieved a negotiated Agreement. The PBA complains of being “forced to limit its expectations to those issues, and only those issues, that are of absolute and fundamental importance to its members.” By virtue of this process, the PBA opines, its members do not

receive a number of benefits other officers receive under negotiated Agreements. Disparity, according to the PBA, can be found not only in overall career earnings but also in the lack of fringe benefits.

As to salary and wage increases, within the context of its universe of comparables, the PBA, focusing on the top step of the salary scale, maintains that its members are behind in wages and wage increases. Thus, the PBA maintains that increases of six percent for the two years of the Agreement “would simply bring Syracuse in line with the other units compared, not ahead.”

Regarding longevity pay, the PBA claims its sought after increase in longevity is justified by the fact that the City “is woefully behind its comparable communities in longevity pay.” As to uniform allowance, the PBA notes that the allowance has been increased by only \$55 in the past 15 years. The amount allowed under the present Agreement, according to the PBA, does not even address the cost of cleaning and therefore addresses not at all the cost of replacement or repair.

On its proposal concerning rank differential, the PBA claims that, when viewed within the universe of comparables, “Syracuse is woefully behind in rank differential at every level.”

The PBA contends that its proposal on family holidays recognizes that the nature of the police work requires officers to be away from their families on holidays. Hence, the PBA asserts that its proposal seeking “compensation at the rate of time and one-half after 1700 hours, above all other compensation provided, for working on Thanksgiving Day, Christmas Day, and New Year’s Day” is justified. The PBA notes that not all officers in the PBA work the same number of days per year and in view of the fact that the Police Department is divided into two categories

of work schedules: those officers who work the 4-2 work wheel and those officers who work a 5-2 work schedule. The PBA notes that the Award for 1999-2000 compensated officers on a 5-2 work schedule for additional time worked by providing two additional bonus days per year in addition to 96 hours of compensatory time per year. Nevertheless, according to the PBA, the officers who work the 5-2 schedule continue to work five more days per year than officers on the 4-2 work wheel. The PBA asserts that, while bonus time and compensatory time is a benefit, the fact remains that a number of officers have accumulated more bonus time than they will be able to utilize and are actually not compensated for the additional days worked in the off-wheel schedule. Hence, the PBA claims that a proposal seeking monetary compensation in an effort to adjust the disparity in work days for those officers not on the work wheel schedule is justified. The alternative proposal, according to the PBA, is similarly justified, in seeking the work schedules of all officers adjusted so that officers work the same number of days per year.

Focusing on ability to pay, the PBA asserts that the City for at least the past 15 years has always complained during interest arbitration of its lack of funding to provide for any wage increases. It is the PBA's position, however, that, despite its predictions of doom and gloom, the City has "always operated in the black, generating end of the year surpluses in the process." The PBA notes the testimony of its Financial Expert, Edward J. Fennel, to the effect that the City has obtained budgetary surpluses in six of the last seven years and has been able to avoid problems that have confounded other cities in Upstate New York such as school closings in Rochester and the creation of a Control Board in Buffalo. The credible record evidence, according to the Union, mandates the conclusion that the City "is fiscally healthy and able to pay

the increases sought.” To this end, the PBA notes the stable bond rating for the City in 2005, the fact that no tax increases were anticipated in the budget submitted in May, 2005, and the near unanimous passage of the budget. The PBA directs the Panel’s attention to judicial recognition that the claims of municipalities that there is no money for wage increases is often a political issue rather than a true statement of financial conditions. Moreover, the PBA contends that the City’s ability to pay must be considered in the context of the “interest and welfare of the public.” The City’s ability to pay, the PBA argues, “must be viewed against the importance of maintaining the high level of public safety necessary to protect its citizens, and the Officers must be compensated, and must be given priority, as a matter of public safety, interest and welfare, over other less essential programs and services provided by the City.”

The PBA notes that the size of the Department has increased by 12% since 1991, which the PBA attributes to the City’s recognition of its need for the services rendered by PBA members. Further, the PBA claims that the City acknowledges the fact that it employs “a superior police force whose level of professionalism displayed is unparalleled.” The City also recognizes the dangers facing PBA members and maintains that the City, if required, must be obliged to reassess its fiscal priorities if it is not willing to raise taxes to fund an Award.

The PBA also takes note of what it considers to be the unequivocal record evidence that its members “are still working more days and have less time off than other comparable units.” The stress and dangers inherent in the duties performed by PBA members must be taken into account by the Panel, the PBA argues. According to the PBA, “[r]ecognition in salaries and other compensation must be given in relation to the hazardous and intrusive nature of the work

these officers perform and the sacrifices they make to provide the public with safety and protection from crime.”

The PBA also claims that it is not legitimate to base parity on solely what the Firefighters have obtained. Thus, the PBA asserts that there a number of differences between the PBA Contract and the Firefighter Contract, other than wages, including the fact that PBA members face substantial restrictions on outside work through State law as well as differences in Departmental rules and Department scheduling practices. According to the PBA, “the nature and intensity of police work is far more consuming, and takes its toll on the officers both physically and emotionally.” Additionally, the PBA notes, Firefighters receive regular days on and off during each work cycle unlike Police Officers. Firefighters do not have to report to work ten minutes early as do members of the PBA, the PBA notes, and Firefighters have the opportunity, during the night shift, to maintain a semblance of normal sleep patterns. In any event, the PBA maintains, if there is to be true parity with the Firefighters, “the City must provide the police with all of the other benefits of employment given to the Firefighters, or alternatively, the City must compensate the police significantly more in wages in order to offset the other glaring disparities that exist between the contracts.”

POSITION OF THE CITY

The City observes that a “critical determination” in this proceeding is the identification of the appropriate universe of comparable cities. It notes that the language of the statute does not mandate that the Panel look at municipalities “that are exactly the same” as the City of Syracuse, but also notes that “reference to wildly different communities is surely not helpful.” According to the City, the Panel faces a “clear choice” in this area. Thus, it notes that the PBA’s proffered universe of comparability includes three upstate New York Cities (Buffalo, Albany, and Rochester) and four towns adjacent to the City (Camillus, Clay, DeWitt, and Manlius). The City notes that its proffered universe identifies ten upstate New York cities (Albany, Binghamton, Buffalo, Niagara Falls, Rochester, Rome, Schenectady, Syracuse, Troy and Utica), and that its proffered comparables make more sense than the universe offered by the PBA.

In rejecting the universe advanced by the PBA, the City quarrels with the PBA’s choice of four townships, contending that, if the PBA wanted a comparison with suburban communities, then all suburban police departments should have been selected rather than the four towns, in fact, selected by the PBA. The City argues that the PBA’s choice of the four towns was one made in an effort to portray PBA members as “underpaid and underappreciated.” The City contends that the four towns cannot be considered comparables, noting the fact that the City has a financially dependent school district, the fact that the towns selected have a far smaller population than the City, and the towns selected are significantly wealthier than the City. Additionally, the City claims that the type of police work performed by PBA members bears

little resemblance to the work performed by police in the four townships. The City also observes that there is no true resemblance in size between the City's Police force and the police force of the four towns.

The City also claims that the PBA's attempt to make a comparison with suburban communities based on the argument that the police work in a suburban communities is not as demanding as the work performed by PBA members and yet suburban Police receive roughly the same amount of salary as do members of the PBA must be rejected. Such an approach, according to the City, overlooks "the vast disparity in wealth between the City and the suburbs." Further, the City focuses on language from this Arbitrator's 1998-1999 Award and language found in Arbitrator Selchick's 2000-01 Award that there are substantial differences between the suburban communities and the City.

In the City's estimation, the most appropriate universe of comparability is in the ten large upstate New York cities the City has identified. On this point, the City observes that the PBA seeks only to include Albany, Buffalo, and Rochester in the universe of comparables. This approach by the PBA, the City argues, must be considered inconsistent because the PBA wants to compare the City with, on the one hand, smaller suburban communities, and at the same time compare it to only Buffalo, Rochester, and Albany and in turn ignore the remaining upstate cities. The City contends that the upstate cities it has selected are all comparable.

The City also maintains that, in analyzing the appropriate comparables, it can be determined that PBA members are fairly compensated. Looking at top step officers among the comparables, the City observes that top step officers in Syracuse are paid more than top step

officers in Binghamton, Niagara Falls, Rome, Troy, Utica, and Albany. Top step officers in Buffalo and Rochester, though compensated at a greater rate, perform law enforcement, the City maintains, in cities that are larger “and more crime-ridden than Syracuse.” The City also maintains that PBA members, regarding staffing ratio of officers to residents, enjoy a rating higher than all upstate cities save for Albany. PBA salaries, according to the City, are consistent with the lower cost of living in the City when a comparison is made with the other upstate cities. The City emphatically rejects the analysis offered by the PBA concerning wages since the PBA, the City argues, makes its comparison by viewing the wages of Syracuse Officers that are frozen at the 2003 levels with wages of the officers in other municipalities in later years where either negotiated or awarded increases exist. In the City’s estimation, the PBA’s comparison is also significantly flawed when it makes a specific comparison with the City of Buffalo. The City notes that, due to the financial crisis in Buffalo, the Buffalo Fiscal Stability Authority that has frozen wages of all Buffalo City employees and thus the Buffalo Police Officers are paid today at 2003 wage levels.

The City notes its rejection of the PBA’s attempt to include the four towns in Onondaga County as comparables but also argues that, even if these four towns were appropriately comparable, the fact remains that the “wages paid to PBA members are certainly not out of line with those received by suburban officers.” Additionally, the City contends that, when comparability is assessed, “the entire picture-wages, benefits and other earning opportunities” must be taken into account. In this regard, the City argues that PBA members have superior health benefits and “unparalleled overtime earning opportunities.” As to overtime opportunities,

the City observes that the overtime cost for 2004 in the City were over three times the overtime cost for the City of Buffalo and higher than overtime costs for Albany and Rochester. Looking at overtime amounts earned per officer demonstrates, the City contends, that PBA members “have the potential to and do, in fact, earn far more than their counterparts in Albany, Buffalo and Rochester.”

When comparisons are made to other public and private sector employees, the City observes, PBA members have received greater wage increases than other Syracuse City employees for a number of years. This favorable comparison for PBA members, the City observes, extends to the City’s Firefighters and other public sector employees who work for the City. The wage increases received by the PBA, according to the City, also are greater than those received in the private sector. Further, the wage increase received by PBA members have outpaced inflation, the City observes, which has allowed PBA members to exercise greater buying power in each year.

Turning to the public interest and the City’s ability to pay, the City observes that the PBA seeks a 10 percent wage increase in each of the two years of a contract with an additional 10 percent bonus in each year. The City maintains that even if it “was flush with cash, this proposal would be brazen and unjustified, since the wages of PBA members far exceed those of other City employees and are in line with, or exceed, the wages of police officers in comparable communities.” In view of the City’s poor financial condition, the PBA’s request, the City puts forth, is “either (1) totally disconnected in all respects with reality or (2) merely a bogus attempt to manipulate the interest arbitration/bargaining process.” There is ample record evidence,

according to the City, that it is experiencing serious financial problems. In this regard, the City also observes that it is not a wealthy municipality and, in the appropriate universe of comparables, “has the second lowest per capital income.” It notes further that City residents face rising property taxes. The fact that the City may not have exhausted its constitutional taxing limit, the City observes, does not present a rationale that the City necessarily is possessed with the ability to pay increased wages. In short, the City claims that any wage increases received by the PBA “must be made in the context of a City population that is largely poor and already burdened by increasing property taxes.”

The City also identifies the record evidence concerning its budget structure and revenue sources. It observes that the City’s General Fund, from which police salaries are paid, is dependent on the Onondaga County sales tax, property tax revenues, and State aid. The City cautions that the increase in the Onondaga County sales tax should be understood in light of the fact that the City’s portion of the tax is subject to a yearly cap. The revenue stream from the sales tax, the City claims, has largely been flat. In terms of real property taxes, the City notes that nearly 70 cents of every tax dollar goes to the City school district and that the City’s portion of the tax levy, as with the sales tax, has essentially been flat. Further, the City observes that there has been declining valuation of assessed property and that it has the highest percentage of tax exempt property when compared to Albany, Buffalo, and Rochester. For fiscal year 2004-05, the City notes, the largest source of its revenue was in the form of State aid. For this fiscal year, the City observes, it received an advance payment of 15.6 million dollars in State aid, which will not be repeated in future years. The City opines, consistent with what the State Comptroller has

stated, that it cannot rely on the State for addressing its financial problems.

The City discounts any reliance the PBA may put on the Destiny Project as a source of City revenues. In the short term, the City claims, it will experience a net loss in revenue connected with the Destiny Project. The long term impact, according to the City, must be considered entirely speculative. In terms of the 7.8 million dollar surplus in 2004-05, the City notes the one time State aid spin-up as well as increased revenues from the new Onondaga sales tax and higher property taxes in the City. The City cautions, however, that the 2004-05 surplus came after a 6.5 million dollar budget gap for fiscal year 2002-03. Further, the City observes that its unreserved fund bank balance is currently below the recommended 10 percent threshold. A true understanding of the record evidence, the City puts forth, is that it “remains in serious financial trouble, driven largely by structural issues that will be difficult to alter overnight.”

The City also contends that it basically has done all the trimming it can in other areas of expenditures. In addition, the City identifies what it characterizes as “runaway fringe benefit costs” that the City faces in the form of health insurance and pension payments. It notes the allowance set forth in the 2004-05 budget of 1.2 million dollars to pay retroactive wages to the PBA members and also the existence of a line item slightly in excessive of 4 million dollars in the 2005-06 budget. As to the latter, the City contends that the 4 million dollars must cover the settlements of all of the City’s bargaining unit contracts, most of which expire at the conclusion of 2005. This amount, the City thus claims, must cover the wage adjustments that will be experienced through the end of the 2006 calendar year. According to the City, the record evidence leaves no other conclusion than the City “is a municipality that is fighting to reverse

multiple, negative trends.” In view of what it perceives to be its “bleak revenue picture,” the City contends that “one-time lump sum payments, as opposed to percentage increases, appear to be the only fiscally prudent course for the Panel.”

In terms of a comparison of the peculiarities of employment, the City acknowledges the obvious hazards of employment for members of the PBA. It asserts, however, that these hazards do not rival those encountered by police officers in Buffalo and Rochester. The City acknowledges that the terms of past collective bargaining agreements have seen substantial wage increases. The record evidence, the City argues, compels the conclusion that this pattern “must be broken, given the City’s financial condition and the fact that the PBA members are already very well compensated.”

Turning to its proposals, the City claims the Panel should accept what the City characterizes as a modest health insurance proposal whereby a 3-tier prescription drug plan would be implemented (from 5-15 to 5-15-30) and an increase in dental insurance from \$7 to \$9 per month for single coverage and \$15 to \$20 per month for family coverage. The implementation of these two changes, the City observes, would result in a saving of \$190,000 over the two years of the Contract and yet allow the Officers to enjoy full health insurance coverage at the current cost of \$120 per year for single coverage and \$300 per year for family coverage.

The City also urges the Panel to accept its proposal on uniform allowance, which would allow the Police Department to mandate that up to one-half of the \$700 uniform allowance be used for the purchase of specific uniform items. This proposal would have the benefit of

upgrading uniform parts and improve the appearance of the Police, the City contends.

The City further advances its proposal of requiring Officers to report to work 15 minutes early so that they would work an 8.25 hour day rather than an 8 hour day and that compensation for the additional quarter hour be included in the existing salary compensation. The City notes that this proposal, if accepted, would be in accord with the Fair Labor Standards Act and would increase coverage on the streets. The City also observes that it “has never sought, nor received, anything of significance from the PBA in interest arbitration.” Thus, the City urges the Panel to accept “this one proposal, which would greatly help the City and greatly improve public safety.”

Finally, the City notes that there are 46 PBA proposals that were attached to the petition for interest arbitration and argues that little or no evidence or argument has been offered by the PBA in support thereof. These proposals should be rejected by the Panel, the City asserts, based on a total lack of persuasive evidence or reasons for their inclusion into the Parties’ Agreement.

AWARD

Comparability

Under Section 209.4 of the Civil Service Law, the Panel is obliged to engage in an analysis of the terms and conditions of employment with “other employees performing similar services or requiring similar skills under similar working conditions and with other employees generally in public and private employment in comparable communities.”

It is the PBA's contention that the Panel should compare the Syracuse Police with the cities of Buffalo, Rochester, and Albany. In addition, the PBA argues that the Panel also should consider the wages and benefits that are enjoyed by other local Police Departments in Onondaga County; specifically, the Towns of Camillus, Clay, DeWitt, and Manlius. The City, on the other hand, contends that the Panel's more appropriate basis of comparison would be to review the universe of the ten largest upstate cities including Albany, Binghamton, Buffalo, Niagara Falls, Rochester, Rome, Schenectady, Troy, and Utica.

The Parties' positions on comparability essentially mirror their positions advanced in previous interest arbitration proceedings. Arbitrator Selchick in the 2000-01 Award (PERB Case No. IA099-026) noted that "[t]he issue of appropriate comparables for Syracuse police was addressed by Arbitrator Rinaldo in his Award for 1998-99." (*Id.*, 7). Arbitrator Selchick then quoted from the 1998-99 Award as follows:

This Panel agrees with the City that not all of the towns and villages surrounding the city presently face the same problems, budgetary or otherwise, as that of the City of Syracuse. However, the Cities of Albany, Rochester, and Buffalo are geographically similar to the City of Syracuse and are experiencing similar difficulties as that of the City, and therefore, are proper communities to examine for purpose of comparison. (*Id.*, 7, quoting from Rinaldo Award at p.8).

Arbitrator Selchick noted that the Panel "agrees with the Rinaldo Panel that the most appropriate comparable police departments to Syracuse were those of the larger upstate cities of Albany, Buffalo and Rochester." (*Id.*). The same conclusion was drawn by the Selchick Panel in the 2002-03 Award reached the same conclusion, noting:

The Panel Chairman is again reviewed and considered the appropriate comparables as required by the statutory criteria. While salaries of police in

surrounding jurisdictions may be of interest generally, the Panel Chairman continues with the previously expressed views cited *infra* that towns simply do not have the same problems and issues inherent in policing a large city such as Syracuse.

Further, the Panel finds that while there are clearly differences in size, population, and character of the largest upstate cities, they have more in common with each other than with any of the smaller upstate cities cited by the Employer herein as appropriate comparables. The similarities are most relevant when judging comparable working conditions for police. The level, frequency and complexity of the criminal climate is similar in the large upstate cities, and cannot be realistically compared to the smaller upstate cities. Without question, the larger upstate police departments, and the officers that patrol those city streets, have a more difficult job than their colleagues in the smaller upstate cities. Clearly, they are more similar to each other than to the smaller police departments in the smaller upstate cities.

Accordingly, the Panel finds that pursuant to the statutory criteria, the appropriate comparables to Syracuse are the upstate cities of Albany, Buffalo and Rochester. (PERB Case No. IA2002-007, 8).

The Panel, based on the record herein, finds that the reasoning employed and conclusions reached by the previous Panels remain applicable to the record evidence before it. Thus, the Panel determines that the appropriate comparables to Syracuse are Albany, Buffalo, and Rochester.

Wages and Ability to Pay

The PBA urges the Panel to conclude that the City has the financial ability to pay fair and equitable wage increases. Specifically, the PBA has requested increases of 10% for each of the two years to be covered by the period of this Award plus a 10% cash bonus each year. It is the PBA's position that the City, despite its protestations to the contrary, is in found financial

condition. The City, arguing that the PBA has overestimated its ability to pay, claims that the evidence portrays a “bleak revenue picture” for the City and urges the Panel to make one-time lump sum payments.

The Parties’ positions on the City’s ability to pay and wage increases resemble the positions advanced by the Parties in earlier interest arbitration Awards. In the 2002-03 Award, Arbitrator Selchick, after noting the “appropriate comparables” were “Albany, Buffalo, and Rochester,” further stated that “[t]he Panel does ... agree that it should consider, on a secondary level, police departments in the contiguous geographic area to Syracuse, as well as to those of other upstate cities.” (Id., 14). This Panel agrees with this approach as stated by Arbitrator Selchick.

Turning to the evidence before it, the Panel observes that a comparison of Syracuse to Albany reveals that Albany is ahead in 2003 from starting salary through the sixth year at top salary by 1.25%, with a gap widening so that, by 2005, Albany is 9.4% ahead of PBA members. For Rochester, the salaries starting from the sixth year were greater than Syracuse by 8.38% and, 2004, by 11.58%. For Buffalo, the salaries starting through the sixth year were greater than Syracuse by 21.0% in 2003, and, said salaries were 29.33% ahead of PBA members. Record evidence indicates that, over a 20 year career, Syracuse Officers would earn 27.85% less than Buffalo Officers. The Panel does note the current wage freeze in Buffalo.

The Panel’s assessment of the record evidence is that the Syracuse Police are the lowest paid when compared with Albany, Buffalo, and Rochester. Despite the City’s claim of an inability to pay, the Panel must find that Syracuse Police be awarded greater salary increases

than those proposed by the City. Such increases are necessary to ensure that the Syracuse Police fall no further behind when compared with Albany, Buffalo and Rochester Police.

Therefore, the Panel finds that PBA members should receive the following general wage increases:

2.0% effective 1/1/04, and retroactive to that date.

2.0% effective 7/1/04, and retroactive to that date.

2.0% effective 1/1/05, and retroactive to that date.

2.0% effective 7/1/05, and retroactive to that date.

Retroactive salary payments should be set forth in a separate check and not included in a regular salary check.

The Panel's decision to award these increases, it should be noted, has included the Panel's close consideration of the City's financial situation and its attendant claim that it does not have the ability to pay such increases. The Panel specifically finds, however, that the City possesses the ability to pay the increases herein even if, in fact, the City may be required to re-budget and perhaps re-allocate resources from other programs and projects. The Panel's decision is also based on what some may consider the common sense but nevertheless profound observation that, particularly in a post-9/11 world, the delivery of police services has never been as important as it is today. Further, the Panel emphasizes that it has carefully considered all of the financial data and arguments raised by the City and has applied such data to the criteria mandated by Section 209.4 of the Civil Service Law.

Accordingly, and after consideration of the extensive exhibits, documentation, and

testimony presented herein, and, after due consideration of the criteria specified in Section 209.4 of the Civil Service Law, the Panel makes the following:

Award on Salary Increases

1. Effective January 1, 2004, and retroactive to that date, the base salary scheduled for all unit members shall be increased by 2.0%.
2. Effective July 1, 2004, and retroactive to that date, the base salary scheduled for all unit members shall be increased by 2.0%.
3. Effective January 1, 2005, and retroactive to that date, the base salary scheduled for all unit members shall be increased by 2.0%.
4. Effective July 1, 2005, and retroactive to that date, the base salary scheduled for all unit members shall be increased by 2.0%.
5. The retroactive salary payments Awarded herein shall be paid to unit members in one (1) separate paycheck.

Uniform Allowance

The PBA seeks an increase in uniform allowance of \$1000 retroactive to January 1, 2004,

and \$1500 retroactive to January 1, 2005. Additionally, the PBA seeks, effective January 1, 2004, a \$500 clothing maintenance allowance for plain clothes Officers and, effective on January 1, 2004, a one time payment of \$300 for uniform change. The PBA notes the costs of cleaning, maintaining, and replacing uniforms is expensive and that, in 1990, Officers were spending an average of \$1468 annually for dry cleaning. The PBA also notes that, in 1990, the uniform allowance was only \$645 per year. Further, the PBA observes that, at present, the uniform allowance for Officers is \$700, representing an increase of only \$55 over the past 15 years. Based on a comparison with comparable communities, the PBA argues, the uniform allowance “is not only unreasonably low, it is utterly arcane, and places an unjustifiable burden on the members.”

The City notes its proposal that it be allowed to require that up to one-half of the \$700 uniform allowance, presently allotted, be utilized for the purchase of specified items of clothing. As it now stands, according to the City, Officers may use the uniform allowance for any purpose notwithstanding the contractual language that the “allowance shall be designated and used for the replacement or acquisition of items of required clothing or equipment.”

The Panel observes that PBA members have demonstrated that the uniform allowance, in light of all relevant factors, should be increased. Additionally, the Panel finds the City’s position that some portion of the uniform allowance be specifically devoted to the purchase of specified items of clothing to be well taken. Put differently, the record reflects a need for an increase in allowance and also persuasively illustrates the City’s need to ensure that some portion of the allowance is specifically tied to the purchase of clothing items.

Accordingly, the Panel finds that an increase in the uniform allowance is warranted and that the City's proposal that some portion of the allowance be devoted to the purchase of clothing items is likewise warranted.

Award on Uniform Allowance

Effective 12/31/05, the annual uniform allowance will be supplemented by a \$500 annual increase which will be used for the purchase of uniforms payable through a voucher system based on a procedure mutually agreed upon between the City and the PBA. Said voucher system shall be determined within 60 days of the date of this Award. In the event the Parties do not mutually agree upon a voucher system within 60 days of the date of this Award, then the Panel will retain jurisdiction for the sole purpose of determining said voucher system.

Sick Leave Incentive Program

The current Agreement divides the calendar year into three separate blocks of four months each. An employee not calling in sick during a four month block is entitled to a payment of \$100. The PBA proposes that there be two six month blocks instead of three four month blocks and that the incentive be increased by a day's pay per block.

The Panel finds that the need to reduce the disparity in overall compensation between the City's Police and the comparable cities as identified herein by the Panel can be somewhat addressed by an Award that will increase the sick leave incentive to \$150 for each separate block of the four month blocks. This in turn would increase from \$300 to \$450 the amount of cash

incentive that cannot be exceeded each year.

Award on Sick Leave Incentive Program

Effective 1/1/04 Section 19.4 is amended so that three separate blocks of four monthly segments are increased by \$50 and the total amount of cash incentive for the year is not to exceed \$450.

Sick Leave Sell Back

Under the Parties' Agreement, PBA members are entitled to non-job related sick leave based on years of service. Further, the Contract provides that unused sick leave can be accumulated up to a maximum of 1040 hours. The PBA seeks to remove the cap on accumulated sick leave and to provide its members with the right to a full sell back of accumulated sick leave either annually or at retirement. This proposal is opposed by the City.

Of the comparable cities, it would appear, based on the record evidence, that only Buffalo has a sick leave sell back provision. Nevertheless, the Panel notes the record evidence that, as to Albany, Syracuse Officers, over a 20 year career, earn \$79,000 less than their counterparts in Albany; for Rochester, the Syracuse Officers, when salaries and other enhancements are taken into account, earn \$118,359 less than their nearby counterparts; for Buffalo, over the course of a 20 year career, Syracuse Officers earn approximately \$185,000 less than Buffalo Officers. In view of this disparity, and in acknowledgment that the wage increases and other benefit increases awarded herein do not fully address the disparity, the Panel finds it fair and equitable, within the

context of the statutory criteria, to award Syracuse Officers, effective 12/31/05, the right to sell back to the City 250 hours of accumulated sick leave, at the Officers' prevailing hourly rate at the time of retirement to the City.

Award on Sick Leave Sell Back

A new section 19.5 entitled Sick Leave Sell Back shall be added to the Parties' Agreement providing:

Effective 12/31/05 Police Officers shall be allowed to sell back to the City 250 hours of their accumulated sick leave at the prevailing Police Officers' hourly rate at the time of retirement.

Health Insurance

The PBA seeks to amend Article 9 by changing health insurance so that it is fully non-contributory and adding Super Blue Prescription and eye-glass coverage. Further, the PBA seeks retiree coverage by providing members with medical coverage in effect at the time of separation, including dental coverage at the rate of coverage in effect at the time of separation. The PBA also seeks elimination of the \$1500 dental cap on the group dental plan.

The City, contending that PBA members receive a substantial benefit in the context of the comparable communities, by paying \$120 per year for single coverage health insurance and \$300 per year for family coverage, seeks the implementation of a three-tier prescription drug plan of 5, 15, and 30 as opposed to the current 5 and 15 set up. The City also seeks increases in

contributions toward dental insurance.

Based on the record before it, the Panel is aware of the significant cost to the City for providing health insurance. It is clear that the trend is for employees to pay a greater share of health insurance given the significant cost increases in providing same. One way to lighten the burden on employers such as the City in providing health insurance is to modify drug co-pays. After due consideration to the statutory criteria, the Panel finds it appropriate, effective December 31, 2005, to increase the employee contribution rate from \$10 a month to \$15 per month for individual coverage and from \$25 per month to \$30 per month for family coverage and, upon the issuance of the Award, to change the current prescription co-pay plan from \$15 to \$20 for brand name drugs.

Award on Health Insurance

Effective 12/31/05, increase the employee's contribution rate from \$10/month to \$15/month for individual coverage and from \$25/month to \$30/month for family coverage.

Effective upon issuance of the Award, change current prescription drug co-pay plan from \$15 to \$20 for brand name drugs.

Remaining Issues

The Panel has discussed all of the Parties' proposals. Proposals not addressed herein are not Awarded, it being understood that the contract requirements and provisions those proposals address shall remain unchanged.

Duration of Contract

Pursuant to the provisions of Civil Service Law Section 209.4(c)(vi) (Taylor Law), this Award provides an Agreement commencing January 1, 2004 and ending December 31, 2005.

Thomas N. Rinaldo, Esq.
Public Panel Member and Chairman

Date of Award

(CONCUR)
(DISSENT)

Jeffrey T. Lacey, Esq.
Employer Panel Member

Date

(CONCUR)
(DISSENT)

Jeffrey Piedmonte
Employee Organization Panel Member

Date

STATE OF NEW YORK)
COUNTY OF ERIE) ss:

I, Thomas N. Rinaldo hereby affirm upon my oath as Arbitrator that I am the individual described herein and who executed the within Opinion and Award on January , 2006.

Thomas N. Rinaldo, Esq.
Public Panel Member and Chairman