

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the Compulsory Interest
Arbitration between

OPINION & AWARD

BUFFALO POLICE BENEVOLENT
ASSOCIATION, INC.,

-and-

CITY OF BUFFALO, NEW YORK

PERB Case No. IA2020-012; M2019-080

BEFORE:

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

Sean P. Beiter, Esq.
Public Employer Panel Member

John J. Gilmour, Esq.
Employee Organization Panel Member

APPEARANCES:

For the Buffalo Police Benevolent Association, Inc.

Gilmour & Killelea, LLP
Daniel M. Killelea, Esq.

For the City of Buffalo, NY

Goldberg Segalla, LLP
Kristin Klein Wheaton, Esq.

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 City of Buffalo, NY (“City”) and the Buffalo Police Benevolent Association, Inc. (“PBA”).

The City had a population of approximately 278,349 at the 2020 census. The average household income in the City for 2020, according to the US Censes Bureau, was \$39,677, with 28.3% of the City’s residents living in poverty. There is reason to believe that the City is the seventh poorest City in the State of New York.

The Parties last Agreement consisted of a MOA executed on May 29, 2015. Relevant to the instant proceeding, is the Parties’ agreement on salary increases, to be effective July 1 of each year: 0% (2009); 0% (2010); 0% (2011), 1% (2012), 1.5% (2013), 2% (2014), 3% (2015), 3% (2016), 3% (2017), and 3% (2018). All salary increases were “fully retroactive.”

The PBA filed the petition for compulsory interest arbitration on or about February 26, 2021. The petition noted that, after the expiration of the MOA on June 30, 2019, a Declaration of Impasse was filed on August 9, 2019, and the Parties then participated in mediation before PERB. Mediation sessions were held on various dates in 2019 and 2020. The only proposal submitted by the PBA with its petition was an increase in wages to be effective July 1, 2019 (3.5%) and July 1, 2020 (3.5%). The City has proposed that there be no wage increases for either year of the Award.

The Chairperson of the Panel was designated by PERB. The Parties selected their members of the Panel. Hearings were held via Zoom on December 2, and 3, 2021, when the PBA presented its witnesses and positions to the Panel, and on February 10, 2022, when the City presented its witnesses and positions to the Panel. The PBA then presented rebuttal testimony on March 14, 2022.

At the hearing, both parties were represented by counsel and other representatives. The Parties submitted numerous and extensive exhibits and documentation, including briefs, and both Parties presented extensive arguments on their respective positions.

Thereafter, the Panel fully reviewed all data, evidence, arguments on the issue submitted to the Panel. The Panel also meet in executive session on June 1, 2022 and engaged in a number of discussions concerning the issue to be decided by the Panel. The majority of the Panel has reached an agreement on the issue of wages for the period July 1, 2019 through June 30, 2021.

The positions originally taken by the Parties are quite adequately specified in the petition and the response, the numerous hearing exhibits, and in the post-hearing briefs, which are all incorporated by reference into this Award. Such positions will merely be summarized for the purpose 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 issue submitted by the Parties for the period July 1, 2019 through June 30, 2021.

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

a) comparison of the wages, hours and conditions of employment of the employee involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services or requiring similar skills under similar working conditions and with other employees generally in public and private employment in comparable communities;

b) the interest and welfare of the public and the financial ability of the public employer to pay;

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

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

The Panel also has taken into account additional factors found in Section 209.6 of the Civil

Service Law:

(6)(a) For disputes concerning an impasse pursuant to subdivision four of this section that involve a county, city, town, or village subject to section three-c of the general municipal law, a public arbitration panel shall make a determination as to whether such county, city, town, or village, is a public employer that is a fiscally eligible municipality as part of its analysis of the financial ability of the public employer to pay.

(b) In evaluating whether a public employer covered by this subdivision is a fiscally eligible municipality, such public arbitration panel shall consider the average fall value property tax rate of such public employer and the average fund balance percentage of such public employer.

(I) For purposes of this subdivision, "full value property tax rate" shall mean the amount to be raised by tax on real estate by a local government in a given fiscal year divided by the fall valuation of taxable real estate for that same fiscal year as reported to the office of the state comptroller.

(ii) For purposes of this subdivision, "average full value property tax rate" shall mean the sum of the full value property tax rates for the five most recent fiscal years divided by five.

(iii) For purposes of this subdivision, "fund balance percentage" shall mean the total fund balance in the general fund of a local government in a given fiscal year divided by the total expenditures from the general fund for that same fiscal year as reported to the office of the state comptroller.

(iv) For purposes of this subdivision, "average fund balance percentage" shall mean the sum of the fund balance percentages for the five most recently completed fiscal years divided by five.

(c) If the average full value property tax rate of such public employer is greater than the average full value property tax rate of seventy-five percent of counties, cities, towns, and villages, with local fiscal years ending in the same calendar year as of the most recently available information, the public arbitration panel must find that such

public employer is a fiscally eligible municipality. The office of the state comptroller shall make publicly available the list of counties, cities, towns, and villages that have an average fall value property tax rate that meets such criteria in each local fiscal year. If a public employer has not reported to the office of the state comptroller the information necessary to calculate its average full value property tax rate, such public employer may not be deemed a fiscally eligible municipality and the provisions of this subdivision shall not apply.

(d) If the average fund balance percentage of such public employer is less than five percent and the state comptroller has certified that any additional fund balances in funds other than the general fund available for payment of arbitration awards in each year, if added to the fund balance of the general fund, would not cause the average fund balance percentage of such public employer to exceed five percent, the public arbitration panel must find that such public employer is a fiscally eligible municipality. The office of the state comptroller shall make publicly available the list of counties, cities, towns, and villages that have an average fund balance percentage that is less than five percent in each local fiscal year. If a public employer has not reported to the office of the state comptroller the information necessary to calculate its average fund balance percentage, such public employer may not be deemed a fiscally eligible municipality and the provisions of this subdivision shall not apply.

(e) When such public employer has been found to be a fiscally eligible municipality, the public arbitration panel shall, first and foremost, consider ability to pay by assigning a weight of seventy percent to that portion of the criterion contained within clause b of subparagraph (v) of paragraph (c) of subdivision four of this section that pertains only to the public employer's ability to pay. All other criteria contained in subparagraph (v) of paragraph (c) of subdivision four of this section, including that portion of clause b of subparagraph (v) of paragraph (c) of subdivision four of this section that pertains to the interest and welfare of the public, shall constitute an aggregate weight of thirty percent. Additionally, with respect to the total monetary value of any determination, the panel must recognize and take into account in its determination the constraints, obligations and requirements imposed by the real property tax cap pursuant to section three-c of the general municipal law upon the public employer involved in the dispute before the panel.

POSITION OF THE PBA

According to the PBA, an analysis of the Taylor Law criteria fully establishes the merit of its proposal that there should be raises of 3.5% for each of the fiscal years of 2020 and 2021. On “ability to pay,” the PBA asserts that the record leaves no doubt that the City has the ability to pay the 3.5% increases sought. The PBA claims that the City’s “own evidence” establishes its ability to pay.

The PBA focuses on the testimony of Donna Estrich, the City’s Commissioner of Administration, Finance Policy and Urban Affairs, and claims that, as the City’s own witness whose testimony was offered regarding the City’s ability to pay, “not once in the entirety of that testimony ... did Commissioner Estrich state that the City did not have the ability to pay the PBA’s petitioned-for raises.” (Emphasis in original). Further, the PBA puts forth, Commissioner Estrich “conceded” facts that establish the City’s ability to pay. These “facts,” the PBA puts forth, include: the approximately \$40 million that the Seneca Nation of Indians will pay to the City in a “lump sum”; the City could pay the increases with American Rescue Plan funds; the City could pay “any recurring costs resulting from raises awarded to members of the PBA by increasing the City’s tax levy”; the City has the ability to issue bonds and borrow money; the City is currently owed approximately \$12 million by the Solid Waste Fund; the City has received an average of \$161 million in State Aid in each of the last four years; the City has been receiving well in excess of what it budgeted for in sales tax revenue; the City projects a positive cash flow of \$26.5 million for Fiscal year 2022; the City is spending less on salary for members of the PBA than what it budgeted; the City expects to pay salary increases to its employees as a “cost of doing business”; and the City has already set aside monies to pay 2% and 2% raises for Fiscal Years 2020 and 2021.

Even accepting the City's cost estimates for the raises sought by the PBA, the PBA argues, the finding can be made that the City has the ability to pay for the raises. The PBA also identifies a communication from the City's Mayor on April 29, 2022 that, the PBA maintains, sets forth his intent to raise property taxes in the City to generate an additional \$6.6 million in annual revenue. According to the PBA, the Mayor stated that his rationale for raising taxes was at least in part based on his conclusion that the public wanted "safer streets, safer schools." The Mayor also recently stated, the PBA asserts, that he sought a \$5.4 million hike in the police budget in order to fight crime.

In addition, the PBA relies on the testimony of its financial expert, Anthony Hynes, that "keeping taxes absolutely flat is probably not sound fiscal policy" and that the City "is going to have to raise taxes because they haven't done it." In fact, the PBA claims, in his testimony, Mr. Hynes identified "at least \$63 million in existing funds which the City could use right now to pay the cost of the raises sought." (Emphasis added). The PBA notes that Mr. Hynes also identified, in addition to existing funds, a \$16.4 million debt the City has failed to claim from the Solid Waste Disposal Fund. The PBA asserts that Mr. Hynes was also able to identify a number of recurring revenue sources which could be used to fund the PBA's petitioned-for raises. Thus, the PBA relies on the testimony of Mr. Hynes that: the City could raise the property tax levy without exceeding the State Property Tax Cap; could borrow up to \$1 billion without exceeding the State Constitutional Debt Limit; could engage in a collection of increasing Mortgage Tax income, also in a collection of increasing Sales Tax income; and could resume "in-rem property sales."

As to any weight placed by the City on its status "as a fiscally eligible municipality," and the requirement of the Panel to assign a weight of 70% to the City's ability to pay, the PBA responds

that the 70% factor clearly does not establish that the City has an inability to pay any raises. In fact, the PBA contends, “it would appear that no amount of weight assigned to the City’s ability to pay would be of any benefit to its opposition to the PBA’s Petition.”

The PBA rejects any argument by the City that, because the \$331 million in American Rescue Plan (“ARP”) funds constitute a “one shot revenue,” they cannot be used as a source of funding for the “recurring costs” of the sought-after pay raises. Although the City has made this claim, the PBA notes, it has nevertheless “announced plans to use that very same ‘one shot revenue’ of ARP funds for purposes which also have recurring costs.” (Emphasis in original). The PBA also stresses the testimony of Mr. Hynes that, even without the ARP funds, the City can “well afford” to pay for the raises sought by the PBA.

Turning to the comparability criteria under the Taylor Law, the PBA asserts that the Panel, in addition to wages paid to other public employees and Police Officers in comparable communities, must consider the “current, historic level of inflation and its effect upon the income of members of the PBA.” The record fully establishes, according to the PBA, that “a failure to pay any raises is the equivalent of a pay decrease; [and] such an effective decrease would only serve to aggravate the growing disparity between the pay of PBA members, and that of other public employees and police officers in comparable communities.” (Emphasis in original).

The PBA also claims that its evidence sets forth “a comparison of the base compensation and total compensation of other public employees and police officers in geographically and demographically comparable communities to those served by the Buffalo Police Department - and they indicate that the pay of members of the Buffalo PBA is falling behind that of other public employees and police officers in comparable communities at an increasing rate.” The PBA adds that

the record evidence establishes that “members of the PBA are paid, on average, at least 8.7% less than police officers in comparable departments, and less than members of Buffalo Professional Firefighters Local 282.” Moreover, the PBA notes, “in light of the current 8.5% rate of inflation, even if members of the Buffalo PBA were awarded pay raises that brought them into income parity with other public employees and police officers in comparable communities, the members of the PBA would be receiving almost no raises at all in terms of the effect on their incomes.”

Regarding the factor of “comparison and peculiarities to other trades and professions,” the PBA claims that the City has not challenged the fact that PBA members face any number of “peculiarities” in the course of their employment, which include, “unlike other trades or professions,” the need to “carry firearms, to be trained in the use of deadly physical force, to be trained in the defense against deadly physical force, to be trained in the use of defensive tactics and less-deadly physical force, [and] to make arrests and restore order.” Other “peculiarities” identified by the PBA include engaging “the public and criminals in high-crime areas,” operating “patrol vehicles for many hours,” being “exposed to disease,” and “to the extremes of human behavior on a daily basis,” including engaging in “life-or-death situations,” and being “exposed to the risk of regular injury and sometimes even death in the course of performing their duties.”

As to the Taylor Law factor of “interest and welfare of the public,” the PBA maintains that the City has not challenged the conclusion that an Award granting the PBA the raises it seeks would be a benefit to the interest and welfare of the public. It also identifies the testimony of its President, John Evans, to the effect that “increasing wages would allow the Buffalo Police Department to have an easier time attracting better-qualified candidates ... and having better qualified candidates and cadets in the Academy,” who would eventually become “better police officers.” The salary increases

sought, according to the PBA, would also motivate veteran officers “to remain on active duty and continue to serve with the Buffalo Police Department.”

Finally, in terms of the criterion of “past collective bargaining agreements,” the PBA notes that, before the “expiration of the most recent successor agreement to the Collective Bargaining Agreement,” the City had agreed to pay PBA members “wage increases of 3% in each of the four (4) preceding years.” That Agreement, the PBA notes, was signed on May 29, 2015, and provided for raises of 3% in Fiscal Years 2016, 2017, 2018, and 2019. The “petitioned-for raises of 3.5%,” the PBA argues, must be considered “more than reasonable, and well in line with the pay increases for members of the PBA to which the City has previously agreed.”

POSITION OF THE CITY

In setting forth its position, the City relies on the testimony of its Commissioner of Administration, Finance, Policy and Urban Affairs, Donna Estrich, as to the calculation of both the retroactive and recurring costs of the wage increases the PBA has proposed. The City asserts that an Award of base wage increases to the PBA translates “into recurring expenses that the City must account for in the current fiscal year and all future fiscal years.” In the City’s estimation, it is axiomatic that the current budgeted expenses have to be “offset by recurring revenues that can be budgeted as an offset.”

The City notes that the amount of State Aid it has received the past several years, which it depends upon to balance its budget, has remained “flat.” Accordingly, the City puts forth, it “cannot budget recurring increases in state aid to offset the recurring costs from an award of a wage increase.” In terms of sales tax revenues as a potential source to fund recurring revenue increases,

the City maintains that it “has no control over either the sales tax rate or the amount of revenue that may be generated for the City in any given year.”

In terms of raising property taxes, the City claims that it “has already levied property taxes for the current fiscal year,” and “any awarded base wage increase would put the current budget year out of balance.” Additionally, the City claims that an Award of a wage increase for both years covered by the Award would require the City “to budget a property tax increase large enough to offset the recurring costs of two wage increases.” On this point, the City observes that taxing decisions rest with the City’s Mayor and Legislative body and, if the “Panel concludes that the City should increase the property taxes paid by its residents in order to pay for base wage increases for members of the PBA interest arbitration, it would be intruding upon the formation of public policy by elected officials in the City of Buffalo.” The City also underscores its status as a “fiscally eligible municipality,” which it claims heightens the need to find recurring revenues to offset the cost of a wage increase in existing revenues. The City also labels “retroactivity” as a major concern, particularly in view of the “fiscal pressures and uncertainty caused by the COVID-19 pandemic and resulting economy.” In the final analysis, the City argues, the Panel “must come to a conclusion that the PBA’s wage increase proposal must be denied as not reasonable.”

Focusing on fiscal year 2019, the City identifies the fact that its largest single expenditure is its workforce costs, which account for 65.1% of its budget. It also relies on the testimony of Commissioner Estrich that the two biggest sources of revenue for the City are State Aid and property tax revenue, with State Aid constituting approximately 30% of the budget and property taxes constituting approximately 27% of the budget. The City observes that, in a 2013 Interest Arbitration Award, Panel Chair Siegel noted the “troubling” fact that State Aid is a much greater revenue source

for the City than property tax, and the City observes that “the situation has not reversed itself in the nine ... years since that Award was issued.” Sales tax, the City notes, constituted approximately 16% of the budget for Fiscal year 2019. The City stresses it does not control the amount of State Aid received, which has been generally “flat,” and sales tax revenues by their very “nature [are] volatile and subject to various economic factors.” The City thus maintains that it is not able to predict or budget for recurring increases in revenue from such sources to offset the current increase of cost of police officer salaries, which would therefore leave “the burden on the City’s property taxpayers.”

For Fiscal Years 2020, the City notes that workforce costs again were the single largest expenditure category. State Aid for this fiscal year, the City notes remained the same as it had for the past 11 years. The City places significant weight on the onset of the COVID-19 pandemic in March 2020 when both the New York State and Erie County declared a State of Emergency with attendant shutdowns and other Executive Orders that “affected the City’s budget revenue stream.” It identifies the testimony of Commissioner Estrich that the City, because of the impact of the pandemic, sold real property and used American Rescue Plan funds to balance the budget for 2020-2021. The City notes that these sources were “one shot revenues” and, as the Commissioner testified, when the City ended fiscal year 2020-2021, it had “an unassigned fund balance of \$25 million, still short of what the Council recommends as a thirty-day fund balance.” The City describes its financial position as “delicate,” and also observes that the revenues that were generated from red light cameras in fiscal years 2020 and 2021 “have been discontinued so that source of funding will no longer be coming into the City.”

In turning to the Taylor Law criteria for interest arbitration, the City identifies its status as a “fiscally eligible municipality” and the requirement that the Panel analyze the ability to pay factor

by assigning a weight of 70% to the ability to pay criterion. Moreover, the City observes that the Panel is required to take into account “the constraints, obligations and requirements imposed by the real property tax cap pursuant to General Municipal Law.” An Award of the pay raises sought by the PBA, the City contends, would take the City in the wrong direction and erase the progress that has been made in stabilizing City finances “by throwing the City budget out of balance with an Award.” Underscoring this observation, the City argues, is the fact that the comparability factors already establish that PBA members are not underpaid.

The City also identifies the State Constitutional Taxing limit. It notes that PBA witness Hynes testified that the City regularly taxes below the taxing limit and thus there is room for the City to increase taxes within the limit. Nevertheless, the City observes, the City’s Mayor cannot unilaterally set the tax rate for the City, which must be done by the legislative body. According to the City, “[t]o the extent Mr. Hynes is suggesting a property tax increase to fund the raises for the PBA, this notion should be wholly rejected by the Panel.”

On the criterion of “interest and welfare of the public and ability to pay,” the City insists that the Panel assessment “must take into account the fact that the City is still on the road of recovery, and still under the advisory guidance of the Erie County Fiscal Stability Authority ... with respect to its budgets.” While noting a financial improvement in the City, the City also contends that its budget must still be considered “fragile and recovering from the COVID-19 Pandemic,” and thus “[a]ny economic increase that may be awarded by this Panel must be modest, implemented prospectively,” and take into account “that No concessions are being made by the Union that may offset the cost of any wage increase that may be awarded by the Panel.” (Emphasis in original).

The City also urges the Panel to consider that its financial ability in the current year to pay for any Award must be considered. Regarding “one shot revenues,” the City urges caution because the use of one shot revenues to balance a budget could “exacerbate a structurally unsound budget.” The City identifies its ARP plan and maintains that if it were to use “ARP monies to fund police raises, not only would it be using one-shot revenue to pay for a recurring expense, it would require the City to take funds away from the remedial purposes that its elected leaders have designated them for,” as seen in the ARP plan. Concerning casino revenue, the City notes that it has not actually received the revenue, nor does it know when it might come in. The casino revenue, the City argues, simply cannot be counted on “to be a steady stream of revenue in the City’s budget going forward.”

On the question of the City’s debt, the City identifies the acknowledgment of the PBA financial expert Hynes that there is large amount of debt with respect to OPEB (Other Post Employment Benefits), seen in the “ever growing retiree health benefits.” The City notes it does not have funds budgeted for the liability but pays “as it goes,” and “[a]s this liability is expected to grow, this is another factor to consider in the City’s ability to pay the Union’s requested wage increases.” As to “bond rating,” the City identifies the testimony of Commissioner Estrich about the S&P Global Report issued on April 1, 2021 that, despite giving the City an A+ bond rating, offered a “negative” outlook consistent with issues raised in the arbitration, as noted in the Report’s language that “the City continues to face revenue generation pressure in future years to match growing expenses.” The City also identifies language in the S&P Report that stated the City had a “weak budgetary performance and that the City’s OPEB liabilities continue to be a source of pressure on the City’s budget.” S&P also noted, according to the City, that “using one-shot funding to fund recurring

revenues ... could lead to potentially unstable financial budgets.” In the City’s estimation, a financial inability to pay for the increases sought by the Union will result in negative consequences for the City’s bond rating and, in effect, would “negatively impact the City’s ability to fund all its operations and all the services it offers to the public.”

The City notes that property taxes, after State Aid, is its primary stream of revenue but hastens to add that “it does not represent a source that may be tapped in any significant manner to raise the funds demanded by the Union.” Further, the City claims that raising property taxes to the constitutional tax limit is a political process, and further observes that Commissioner Estrich offered testimony that the Mayor has sought to “keep property taxes relatively flat to encourage commercial development and growth in the City.” Additionally, the City argues that “higher taxes do not provide an incentive for residents of the City to remain in Buffalo, thereby causing a downward spiral effect should recurring personnel costs, including wage increases, continue unabated to outpace recurring revenues and growth in the City.” In the area of “revenues and expenditures,” the City claims its position “is precarious since it does not control the revenues it receives and other expenses are rising due to inflation.” Thus, the City identifies the testimony of Commissioner Estrich that the cost of gas and utilities are up for the City and that the “cost of overtime in the police budget was higher than budgeted.”

On the question of retroactivity, the City asserts that an Award of an increase effective July 1, 2020 “not only must be paid in both Fiscal Year 2020-2021 and Fiscal Year 2021-2022, it would be compounded upon the wage increase effective July 1, 2019.” It observes that the Siegel Panel, confronted with rendering an Award that had a significant retroactive costs, “deferred a one percent (1.0%) increase for the 2007-2008 Fiscal Year to June 30, 2008 and deferred a two percent (2.0%)

increase for the 2008-2009 Fiscal Year to June 30, 2009.” The City asks the Panel Chair to consider the example of the Siegel Panel when making any determination on retroactivity.

The City rejects any reliance by the PBA on the fact that the City has budgeted and accrued a liability for 2% wage increases in each year to be covered by the Award. According to the City, the testimony of Commissioner Estrich was to the effect that “even if the Panel awards 2% for each of the two years, the City is still short \$4 million dollars in monies to fund those raises.” Additionally, the City relies on the testimony of Commissioner Estrich “that if this Panel awards 3.5% per year, the amount the City will need to pay for them will be \$16.7 million dollars in retroactive pay in current fiscal year 21-22,” with “[t]he recurring costs going forward would be \$7.2 million dollars.” Moreover, the record shows, the City claims, that it budgeted those amounts with the contemplation that the City would receive “some concession” from the PBA. Because the City received no “offsetting concessions,” it argues, the funds set aside “should be the outside parameters of any Award, not the starting point.” The City reasons that it should not be “penalized for prudent budgeting and liability accrual.” The City stresses its position that an Award of 2% or greater would require it to utilize reserves or seek other adjustments within the City’s appropriations because the funds to pay a greater increase are not in any of the budgets since 2019.

The City asserts that the record evidence concerning expected costs of raises that were requested by the PBA as set forth in its documentary evidence and the testimony of Commissioner Estrich were acknowledged by PBA expert Hynes. The testimony of Mr. Hynes, the City puts forth, essentially consisted of his “opinions on policy decisions the City has made in the past with respect to raising taxes and collecting on an alleged debt owned to it by the Buffalo Municipal Housing Authority” as well as the claim that the City should have taken additional funds in “revenue loss”

in its plan to spend American Rescue Plan funds. The City also observes that Hynes offered testimony on sales tax revenue in his claims that they were coming in higher than projected, but, the City replies, “considering that inflation could be driving these numbers, sales tax revenue is not a reliable revenue upon which to rely on the reoccurring cost of the PBA’s proposed raises going forward.”

As to the Taylor Law criterion of “hazards of employment,” the City acknowledges that police officers in the City have hazardous employment but takes issue, however, with “hazards” identified by PBA President Evans on the ground that they were not substantiated. The City also states that it “does not concede that the job had become more hazardous since the last contract and no proof was submitted to substantiate such a claim.” The City also contends that New York State has recognized the higher risk associated with the work of police officers as seen in the legislation regarding disability benefits and 20 year retirements.

In the area of “comparables,” the City asserts that the comparable in communities “include other Cities, with similar tax structures, including the City of Rochester, City of Syracuse, and City of Albany.” The PBA, according to the City, did not offer much testimony on comparables, whereas the “City offered much more detail on the comparable municipalities offered by the Union to illustrate how different the benefit packages are with the other municipalities, especially the towns.” As to the comparables offered by the PBA of the Towns of Amherst, Cheektowaga, West Seneca, and Tonawanda, the City argues that the PBA offered “[v]ery little testimony” as to why these municipalities would be considered comparable to the City. In fact, the City asserts, towns cannot be considered comparable “due to the differences in taxing structure, state aid and fiscal responsibilities.” The City notes, for example, that most towns do not have paid fire departments

and, when average household income and percentage of residents in poverty is added to the mix, “the contrast between the entities offered by the Union, other than Rochester, becomes even more apparent.”

The City asserts that its proposal of no wage increases cannot be considered unreasonable “when the total package of wages, benefits, work schedule, and other terms and conditions of employment enjoyed by PBA members are compared to the total package of wages, benefits, work schedule, and other terms and conditions of employment of police officers in comparable jurisdictions.” Again, the City stresses that it has not asked “for any concessions in return” for any wage increase. In the final analysis, the City urges the Panel to “recognize that the City is reliant upon two sources of revenue, state aid and sales tax, over which it has no control, and that an excessive wage increase awarded by this Panel is likely to drive up property taxes even higher than what the City requires.”

PANEL DETERMINATION

The Panel has reviewed and considered all factors it is required to take into account under Section 209 of the Civil Service Law. That the Panel may not have explicitly discussed or analyzed any particular factor, therefore, should not be taken to mean that the factor was not taken into account. It is abundantly clear to the Panel, however, that the primary point of contention between the Parties, as can be seen in the statements of their positions, is focused on the “ability to pay” factor. This makes sense, given the City’s status as a “fiscally eligible municipality” and the Panel’s obligation to assign that factor a weight of 70% when applying all of the factors that must be taken

into account. Accordingly, the Panel devotes much of its analysis to the “ability to pay” factor but mention is made of several other factors that support the Award on wages.

The Panel finds it useful to highlight what it considers to be significant parts of the presentations offered by the “ability to pay” witnesses produced by the Parties - Mr. Hynes on behalf of the PBA and Ms. Estrich on behalf of the City. First, Mr. Hynes. Mr. Hynes has a history of performing financial consultations and has prepared at least 25 analyses of a municipality’s ability to pay in interest arbitration proceedings in New York. Mr. Hynes, in his testimony, noted that, under the State Constitution’s taxing limit, the City’s tax levy was below 50% of the constitutional limit. As to the State property tax cap, Mr. Hynes noted that the City is approximately \$8 million below the tax cap. Given his estimation that the PBA’s wage proposal would present ongoing costs of \$6.1 million, Mr. Hynes opined that the City could fund the ongoing costs by raising property taxes without exceeding the Property Tax Cap Act. Under the constitutional debt limit, Mr. Hynes also observed, the City has the ability to issue more debt. Thus, Mr. Hynes described the current debt as “relatively low,” and asserted that the City could borrow more money to pay the proposed wage increases without violating the constitutional debt limit. Mr. Hynes also identified the American Rescue Plan (“ARP”) and observed that, under the Plan, the City would eventually receive a total of \$331 million, which must be used by December 31, 2024. Mr. Hynes noted that a permissible category of expenditure for ARP funds is “revenue replacement.” This is a concept that permits the ARP funds, Mr. Hynes observed, to find their way into the City’s general fund based on a calculation of “revenue loss.” Mr. Hynes testified that the City pays police salaries out of its general fund.

Mr. Hynes summarized in his testimony “where the [City’s] money is.” Exhibit AHX 1 takes into account the observations set forth in his testimony that have already been identified. It also references, among other items, State Aid, including mortgage recording tax and general purpose State Aid. The Panel finds it useful to identify in pertinent part the “Conclusion on the Ability to Pay” part of this Exhibit. It reads:

The City General Fund had an operating surplus in the General Fund of \$14.8 Million in FY 2021.

It has likely underestimated FY 2022 Sales Tax Revenues by a minimum of \$10 Million.

It has an explicit appropriation for salary increases in the General City Charges section of the FY 2022 Budget of \$4.9 Million.

It has Unassigned Fund Balance on June 30, 2021, of \$8.2 Million.

It has a rainy-day fund of \$40.7 Million which constitutes the entire “Committed” Fund balance on the FY 2021 General Fund Balance Sheet. Officially called the “Emergency Stabilization Fund”, the purpose of this fund is found in the City Charter §20-17.1(a) (AHX31, pc:289). It states, in part:

“ ... These funds shall be used for extraordinary operating or capital needs that could not be anticipated and cannot be funded with current budget resources. ...”

It would be completely proper to use the fund to pay part of the salary increases to the PBA beyond what was appropriated in the budget. However, the table below illustrates why it is unlikely to be needed for that purpose.

The Property tax levy for the current year cannot be changed once the budget was adopted. Therefore, any increases granted to the PBA in the current Fiscal Year must be paid from current funds. The table below summarizes the sources of those funds in Millions.

Underestimation of Sales Tax Revenue	\$10
Appropriation for Salary Increases	\$4.9
Rainy Day Fund	\$40.7

Unassigned Fund Balance	\$8.2
Total	\$63.8 Million
Two yr. Cost of PBA Proposal*	\$8.96
Ongoing Cost in FY 2022	\$6.1
3 Yr. Total Cost of Raises through 6/30/22**	\$15.06

*Raise of 3.5% and 3.5% including cost of Fringes.

**Includes fringe benefit costs.

Thus, Mr. Hynes testified that he identified, as he put it, \$63 million that could be used to fund a \$15million cost. Further, he observed that calculation “does not include what is potentially up to seventeen million dollars in accrued liabilities for salary and benefits which adds another seventeen million to that sixty-three.” As Mr. Hynes put it, the City “can pay the raise.”

The City’s financial expert was its Commissioner of Administration, Finance Policy and Urban Affairs, Donna Estrich. In her position, Ms. Estrich noted, she is responsible for overseeing the creation and administration of the City’s budgets. Her cost projections for the wage increases sought by the PBA, the Panel notes, was higher than the projections offered by Mr. Hynes. Thus, Ms. Estrich projected a \$5.3 million costs that would be carried out for the each of the remaining fiscal years and projected recurring costs of \$7.21 million going forward.

Ms. Estrich identified the City’s primary source of revenue as State Aid, which she noted constituted approximately 30% of the budget, followed by property tax revenue, which is approximately 27% of the budget, and finally, sales tax, which she noted was approximately 16% of the budget. Ms. Estrich stressed that the City had no control over either State Aid or sales tax

revenues and added that, along with State Aid and sales tax revenues, the property taxes in the City have remained static.

Ms. Estrich also identified the City's receipt of ARP funds, which funds, she testified, could be described a "one shot" source of revenue. She observed that the City is using \$100 million of ARP funds as part of its "revenue" and the remaining \$331 million was "going out into the community for different public service activities which would all be one-shot and would not come back to the City." According to Ms. Estrich, there was no specific category in ARP funds that could be used to fund the PBA wage proposals in a specific sense but the "revenue recovery would be used a part of our payroll." She added, however, that the City has "already allocated that out, so if we use money from the ARP money that we budgeted, we'd have to cut somewhere else to offset that costs." Therefore, she testified, if the City were to use ARP funds to fund the PBA's wage proposal, it would result in taking "money away from other projects that the City had designated those funds for."

Ms. Estrich was then asked what impact would the City face on its budget for Fiscal year 2021-2022 if the wage proposal was fully awarded. In her answer, she testified that the City has put aside some money for wage increases and that it had a "salary adjustment line in the current year for four different unions." Ms. Estrich went on to testify, however, that she did not think that the budget amount would be sufficient and the City would thus "have to cut into some other expenditures and reduce those expenditures."

In assessing the evidence offered by the Parties through Mr. Hynes and Ms. Estrich, the Panel also has taken note of the obvious fact that the City's fiscal health was adversely affected by the COVID-19 pandemic. The Panel is also aware of financial stressors caused by post-employment

expenses the City faces due its obligation to retirees. The Panel further notes the axiom that the City's "ability to pay" cannot be equated to its "ability to tax." It is also fair, however, for the Panel to observe that the City's status as a "fiscally eligible municipality" does not itself constitute evidence that the City lacks the "ability to pay" the wage increases sought by the PBA.

The Panel is also aware of the City's legal and strategic needs to be scrupulous in setting and managing its budgets. Ms. Estrich's testimony underscores how careful and, in the Panel's estimation, successful the City has been in this regard. The Panel, of course, is also aware of political constraints every municipality faces when considering a greater use of its taxing power to fund its operations. Finally, by way of general observation, the Panel takes the City's point that the City will not achieve any savings in other areas of its financial obligations to the PBA under the Collective Bargaining Agreement because only the PBA's proposed wage increases are before the Panel.

Nevertheless, the Panel is convinced that the City has the "ability to pay" the wage increases sought by the PBA. In making this finding, the Panel appreciates the "one shot" nature of the ARP monies, but also notes that the concept of "revenue replacement" permits the City to place some ARP monies into its general fund. In the final analysis, the Panel does not believe that the City has rebutted the presentation made through the PBA's financial expert, Mr. Hynes, to the extent that presentation establishes the City's "ability to pay" the increases sought in the PBA's wage proposal. The conclusion that the City has the "ability to pay" the PBA wage proposal, the Panel finds, does not automatically mean that the proposal should be granted in full. There is a certain fragility to the City's fiscal health that the Panel should take into account, which in turns causes the Panel to issue

an Award that while fully retroactive, awards an increase of 3.0% in the first year of the Award and 3.25% in the Award's second year.

The Award on wages, the Panel finds, is also consistent with the remaining statutory criteria. To that end, the Panel will identify what it considered to be significant factors that support the Award made herein.

On comparability, the PBA offers as comparables, the Police Departments for the Towns of Amherst, Cheektowaga, Tonawanda, and West Seneca, and the City of Rochester. The City offers as comparables the Police Departments of the cities of Rochester, Syracuse, and Albany. The Panel Chairman would offer his observation, based on a number of years of experience in presiding over interest arbitration proceedings, that the strongest arguments offered concerning the question of comparables are often raised by a party in opposition to the comparables proffered by the opposing party. Stated differently, it might well be that it is easier to criticize a proffered list of comparables than make a coherent argument as to why another proffered universe of comparables should be accepted.

A saving grace, perhaps, in a Panel's conscientious efforts to take comparables into account is a trend that the Panel Chairman has observed throughout the State by which Panels ascribe greater weight, less weight, or no weight at all to the comparables proffered by both parties in connection with particular proposals. This approach favors inclusivity over exclusivity and allows for a consideration of the proposals before the Panel that is not as result-oriented of an approach as would occur if exclusivity were to prevail by rejecting comparables. In the instant proceeding, the Panel notes that the City's selection of comparables, namely, other large cities spread across the State, cannot be considered unreasonable. Nor, the Panel finds, can the comparables offered by the PBA

be considered unreasonable, given the focus on wages paid to police in local communities. The Award on wages in this proceeding keeps the PBA members compensated at a competitive rate and is consistent with the comparability factor.

The next factor to be considered - the "interest and welfare of the public" - prompts the Panel's observation the need of the City's residents for a competent police force is one that seems to have intensified over time. The ability to attract and retain competent police officers depends not in small part on fair and competitive wages. This observation is also consistent with another statutory factor considered - "hazards of employment." The Panel Chairman takes note of the recent attack of innocent shoppers in Buffalo by a perpetrator armed with an assault weapon and the immediate and effective response of the Buffalo Police in a life-and-death situation that saw one of their former comrades counted among the murdered. Even when engaged in what could be considered far more mundane duties, PBA members regularly face unknown and possibly deadly perils. The Panel finds that the Award on wages herein reflects justified compensation to PBA members because of the inherently hazardous nature of their employment.

A final observation by the Panel is that the wage increases awarded in this proceeding are justified by the significant rate of inflation that did not occur until after the wage proposals were made. In a very real sense, the significant rate of inflation, though it does not decrease the costs of the City, reduces the value of the raises in a very real way to the PBA members. The "interest and welfare of the public," which includes the need to have fairly compensated police officers, mandates, in the Panel's estimation, the need for an outcome that substantially awards the raises sought.

AWARD

- (1) Effective July 1, 2019 and retroactive to that date, the base salary schedule on all steps and titles will be increased by three percent (3.0%).
- (2) Effective July 1, 2020 and retroactive to that date, the base salary schedule on all steps and titles shall be increased by three point two five percent (3.25%).

DATED: July 5, 2022

Thomas N Rinaldo

THOMAS N. RINALDO, CHAIRPERSON

S.P. Beiter

SEAN P. BEITER, ESQ.
PUBLIC EMPLOYER MEMBER

CONCUR/DISSENT

July 18, 2022

J.J. Gilmour

JOHN J. GILMOUR, ESQ.
EMPLOYEE ORGANIZATION MEMBER

CONCUR/DISSENT

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the

BUFFALO POLICE BENEVOLENT
ASSOCIATION, INC.,

Petitioner,

-and the-

CITY OF BUFFALO,

Respondent.

**DISSENTING OPINION OF
PUBLIC EMPLOYER
MEMBER**

PERB Case No.
IA2020-012
M 2019-080

After having no meaningful input into the majority's decision, I waited with great anticipation for a Majority Opinion that would somehow justify the wage increases arrived at by the majority, and upon a thorough review of said Majority Opinion, I am left with no choice but to vehemently dissent!

Under the Public Employee's Fair Employment Act, (Article 14 of the New York Civil Service Law, also known as the "Taylor Law") an Interest Arbitration Panel is charged with the responsibility to "make a just and reasonable determination of the matters in dispute." CSL § 209(4)(c)(v); *Matter of Buffalo Professional Firefighters Assn., Inc., Local 282, IAFF, AFL-CIO-CLC (Masiello)*, 13 N.Y.3d 803, 804 (2009). The Majority's Opinion and Award (hereinafter "Award") is neither "just or reasonable" for reasons including, but not limited to, that the record proof of the City of Buffalo's ("City") financial condition and the majority's refusal to weigh the statutory criteria in good faith. The majority Panel has exceeded its authority by adopting an Award without the required consideration of the statutory factors, especially the requirement to weigh the "ability to pay" factor at 70%. There is simply no plausible basis for the Award. Section 209

(4)(c)(v) of the Civil Service law's requirement to reach a "just and reasonable determination" compels me to dissent from this Award.

At the outset, the "Panel Determination" for the Award, which encompasses a mere seven and half pages of the Award, and is not grounded in the record. Award at pp. 18-25.

Pursuant to Civil Service Law § 209 (4)(c)(v), in rendering an award, the Panel shall specify the basis for its findings, taking into consideration, in addition to any other relevant factors, the following:

a) comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours, and conditions of employment of other employees performing similar services or requiring similar skills under similar working conditions and with other employees generally in public and private employment in comparable communities;

b) the interests and welfare of the public and the financial ability of the public employer to pay;

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

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

However, and as further detailed below, if the municipality is "a fiscally eligible municipality," the panel is compelled to base its determination by weighing the municipality's ability to pay at 70% and weighing all other factors set forth in the statute at 30%; *see also Matter of Walker (Read)*, 168 A.D.3d 1253, 1256 (3d Dep't 2019) (there is a "general policy recognizing the importance of considering, during the arbitration process, the fiscal status of fiscally-distressed municipalities").

Here, the Majority of the Panel has failed to fulfill its statutorily mandated duty to analyze and apply the criteria properly given the City's fiscally eligible municipality status. *See* CSL § 209.6 (a). Under Civil Service Law § 209.6 (c), if the average full value property tax rate of a public employer is greater than the average full value property tax rate of seventy-five percent of counties, cities, towns, and villages, with local fiscal years ending in the same calendar year, the public arbitration panel *must* find that such public employer is a fiscally eligible municipality. Under section 209.6 (e) of the Civil Service Law, when an employer is a fiscally eligible municipality, the public arbitration panel must, first and foremost, consider ability to pay by assessing a weight of seventy percent (70%) to a public employer's ability to pay. As previously noted, the remainder of the criteria set forth shall constitute an aggregate weight of thirty percent (30%).

In addition, regarding the total cost of the two year arbitration award, the Panel must recognize and take into account in its determination, the constraints, obligations and requirements imposed by the real property tax cap pursuant to section three-c of the General Municipal Law upon the public employer involved in the dispute before the panel. CSL § 209.6 (e).

Despite the fact that there was no dispute that the City is a fiscally eligible municipality by virtue of its full value property tax rate, the majority of the Panel failed to credibly analyze this statutorily required factor in fashioning the Award. Award at pp. 18-19. Given this fact, the Panel was obligated to find that the City is a fiscally eligible municipality within the meaning of § 209.6 (c). The Panel majority failed to properly analyze the City's "ability to pay" pursuant to the statutorily required 70%. The Award merely gives lip service to the statutory criteria without requisite analysis.

Had the majority of the Panel heeded the statutory mandate the only conclusion it would have been able to make is that the City does not have the ability to pay increases awarded. As the record here indicates, the City is recovering from the impact of the COVID-19 pandemic and is in a limited cash position. There is no dispute that the City's recurring expenses exceeded its recurring revenue, and it is only through a large infusion of aid from New York State that the City is able to balance its budget. The raises awarded by the Panel Majority exacerbate that gap. Similarly, although Commissioner Estrich never directly stated that the "City could not afford raises," such statement was not necessary in that her testimony established that the City cannot afford the raises that the majority of the Panel awards here. Commissioner Estrich testified that the City had budgeted only 2% for the years at issue and that a retroactive award above that amount would set the prior year budgets and current year budget out of balance. Nevertheless, the Panel majority determined, without any basis, that the City of Buffalo had the ability to pay an Award of 3.0% and 3.25% in base wage increases retroactively. These raises are not grounded in the record, and they are excessive, especially in light of the fact that the Panel is only making an Award on unit member wages and is not awarding any concession or offset to the City.

Further compounding the failure to properly fashion the Award is the Panel majority's failure to analyze the real property tax cap's constraints on the City's ability to pay. Not reaching the tax limit is not a basis for concluding the City has an ability to pay. *See Prue v. City of Syracuse*, 201 A.D.2d 894, 894 (4th Dep't 1994) (rejecting the assertion that a municipality necessarily had the ability to pay the increased wages sought unless it has exhausted its constitutional taxing limit). Additionally, blindly raising taxes without consideration for the negative impact on commercial and residential growth and development in the City is short sighted and faulty reasoning. Serious consideration for the consequences of raising taxes is not reflected in the Award.

The Majority further improperly relies upon information outside of the record and outside of the relevant time period. Specifically, the Award covers the two-year period from July 1, 2019 through June 30, 2021. In support of the Award, the Panel's majority states: "A final observation by the Panel is that the wage increases awarded in this proceeding are justified by the significant rate of inflation." However, the rate of inflation did not occur until after the wage proposals were made. In improperly citing this factor, the majority notes: "In a very real sense, the significant rate of inflation, though it does not decrease the costs of the City, reduces the value of the raises in a very real way to the PBA members." Award at p. 25. The rise in inflation that the Majority relies upon occurred after June 30, 2021. Relying on market conditions outside of the relevant time period of the Award is inconsistent with the statutory criteria and prejudicial to the City. *See generally Goldfinger v. Lisker*, 68 N.Y.2d 225, 231 (1986). If this logic were to be accepted (which it should not), the Panel majority would also be required to analyze the many years prior to the at issue time period of the Award that did not involve significant inflation, which it did not.

Perhaps the most shocking portion of the Award is that the majority of the Panel has determined that it is better fit to determine where the City's limited funds should be deployed even if the City has already budgeted money for certain other important needs of the City. Specifically, the Majority states, "In making this finding, the Panel appreciates the 'one shot' nature of the ARP monies, but also notes that the concept of 'revenue replacement' permits the City to place some ARP monies into its general fund." Award at p. 23. This is perhaps the quintessential example of irrational logic, as it flips the "ability to pay" statutory criteria on its head. If the Panel can simply "rob Peter to pay Paul" out of a municipality's budget the result would be that no municipality would ever be found to have no "ability to pay" since the Panel could merely rearrange and/or

eliminate other budget items as it sees fit in order to fund the union's requested wages. In doing so, the Majority has exceeded its statutory authority.

Here, the Panel's majority rejects what should be a common sense and non-controversial financial planning strategy: applying "one shot" American Rescue Plan ("ARP") monies to reoccurring and perpetual PBA wage increases is bad policy. Instead, the majority Panel unilaterally has determined that the non-reoccurring cash infusion into other much needed areas to improve and benefit the City (e.g. addressing the systemic roots of racial and economic disparities as well as the immediate symptoms of issues which are having an impact on the safety, health, and livability of City neighborhoods), should be superseded and supplanted for PBA wage increases that cannot be sustained after the ARP funding is exhausted. The Award will unfortunately, and unnecessarily, call into question the City's financial stability moving forward.

The testimony and documentary evidence presented at the hearing also demonstrates the City is limited in its ability to pay a large financial award for the years in question. The City has had to rely on state aid to balance its budget and this aid, as testified to by the City's Commissioner of Administration, Finance, Policy and Urban Affairs, is not guaranteed going forward. The uncertainty of these monies was not properly considered by the majority Panel.

The Panel majority also clearly considered the rest of the statutory criteria well above the mandated 30% weight. In relation to the "hazards of employment" factor, the Panel improperly relies upon an event outside of the relevant time period that frankly does not illustrate dangers to PBA members. Specifically, the Panel states "[t]he Panel Chairman takes note of the recent attack of innocent shoppers in Buffalo by a perpetrator armed with an assault weapon and the immediate and effective response of the Buffalo Police in a life-and-death situation that saw one of their former comrades counted among the murdered." The event referenced by the Panel Chairman occurred on

May 14, 2022, more than ten months beyond the Award's time period, and after the record was closed. While the event is one of the most tragic events to have ever occurred in the Buffalo community, that does not mean that it is relevant in fashioning this particular Award for the two-year period from July 1, 2019 through June 30, 2021. That incident, if it is determined relative by the Panel, is a consideration for the next compulsory interest arbitration panel. The Award in this regard is grounded in emotion and not record facts.

To be clear, the City acknowledges the fact that there is no question that the jobs of police officers are hazardous, stressful and traumatic at times. The record shows that the City has addressed many of these hazards through investment in equipment, technology and training. The City takes very seriously the hazards involved in employment and understands that this must be reflected in the PBA's compensation. The City's actions do not overlook this factor. With that said, there must be boundaries and some outer limit to what is relevant to the "hazards of employment" factor. It is clear from the Panel Chairman's reference to the events on May 14, 2022, that such event clouded his analysis and has resulted in inflated wage increases in the Award. This is inconsistent with the statute.

The Panel's majority also does not specify, as it must, which municipalities it actually considered and what weight was provided to each of them. Instead, the Panel's majority merely regurgitates a generic statement of what comparability is and in conclusory fashion determines "[t]he Award on wages in this proceeding keeps the PBA members compensated at a competitive rate and is consistent with the comparability factor." Award at p. 25. Clearly the Award does not properly analyze and consider the factor of comparability.

Amazingly, the majority Panel also decided that the Award be implemented retroactively, completely ignoring the record evidence on why any such award for wage increases should be deferred instead of retroactive.

In summary, it is abundantly clear that the Majority drafted the Award out of whole cloth, and that it is not grounded in the requisite statutory criteria. The decision to grant wages increases of 3.0% and 3.25% is not supported by the record and the majority Panel provides no evidence as to why such increases fit within the 70% weight of ability to pay or any other criteria included in the 30% elements. Ultimately, the impact of the Award is significant as it will immediately cause an unbalanced City budget and funds will have to be transferred from other sources.

For all of the above reasons, I vehemently dissent.



Sean P. Beiter

July 18, 2022