ARBITRATION OPINION AND AWARD
American Arbitration Association
Case Number 14 360 L 00532 09

In the matter of an Act 111 Interest Arbitration Between the

CITY OF PHILADELPHIA

AND

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 22

The Arbitration Panel

Michael E. Zobrak
Chairman and Impartial Arbitrator

Stuart W. Davidson
Arbitrator for IAFF Local 22

Kenneth M. Jarin
Arbitrator for City of Philadelphia

Appearances

Shannon Farmer
Patrick J. Harvey
Katharine A. Crawford

For the City of Philadelphia

Nancy B.G. Lassen
Richard G. Poulson
James S. Beall
Deborah R. Willig

For IAFF Local 22

Issued: October 12, 2010

I. INTRODUCTION

The City of Philadelphia (hereinafter the "City") and the International Association of Fire Fighters Local 22 (hereinafter the "IAFF") are parties to a collective bargaining agreement which governs the wages, hours and working conditions of the City's fire fighters and paramedics. The prior contract between the parties had a termination date of June 30, 2009.

In 2008, the parties exchanged proposals regarding requested changes in the existing collective bargaining agreement and commenced bargaining. When the parties were unable to resolve their bargaining disputes directly, the above-designated Panel of Arbitrators (hereinafter the "Panel") met pursuant to the authority contained in the Policemen and Firemen Collective Bargaining Act, 43 P.S. § 217, et seq. (hereinafter "Act 111"), as modified by the Pennsylvania Intergovernmental Cooperation Authority Act for Cities of the First Class, 53 P.S. § 12720.101, et seq. (hereinafter the "PICA Act").

Hearings were held on September 17, October 22-23, 26-28, November 4, 23-24, December 9-10, 2009, January 4-7, February 1-2, 8, April 5-6, 12-13, 19-21, 26-27, 2010 in Philadelphia, Pennsylvania, at which times the Panel heard testimony and received documentary evidence. The Panel considered numerous issues submitted by both the IAFF and the City. The Panel also considered thousands of pages of exhibits introduced into evidence by the parties in support of their positions. Following the hearings, the Panel met in executive session on numerous occasions regarding the evidence and arguments that had been submitted and raised by the parties.

II. BACKGROUND

This Act 111 interest arbitration was conducted within the context of the Pennsylvania Intergovernmental Authorities Act ("PICA Act"), which created the Pennsylvania Intergovernmental Cooperation Authority (hereinafter "PICA"). The PICA Act requires that the City develop, at least annually, Five-Year Financial Plans that provide for balanced budgets and must be reviewed and approved by PICA. The City is further required to undertake "a review of compensation and benefits" and to ensure that expenditures, including those for employee wages and benefits, are balanced with revenues. 53 P.S. § 12720.102(b)(1)(iii)(H); 12720.209(b) and (c). Under the PICA Act, a failure on the part of the City to comply with such requirements would result in the mandatory withholding of state funding and tax revenues designated for the City.

Most relevant for this Panel, Section 209(k) of the PICA Act, entitled "Effect of Five Year Plan on certain arbitration awards," requires that, prior to rendering an Act 111 award which grants a pay or fringe benefit increase, the Panel must consider and accord substantial weight to:

> i. the approved financial plan; and
>
> ii. the financial ability of the [City] to pay the cost of such increase in wages or fringe benefits without adversely affecting levels of service.

53 P.S. § 12720.290(k)(l). The Panel also must make a written record of the factors it considered when making its determination according substantial weight to the Five Year Plan and the City's ability to pay. 53 P.S. § 12720.290(k)(2).

During the course of this Act 111 proceeding, both parties raised arguments regarding the City's financial condition and ability to pay for this Award within the confines of the Five Year Plan. In making this Award, the Panel has carefully reviewed and considered the testimony of the witnesses and the exhibits submitted by the parties, as well as the post-hearing submissions of both parties in support of their respective positions. This Panel has duly considered the parties' arguments, and has accorded the City's financial concerns the substantial weight required by law.

III. FINDINGS

In light of the PICA Act's requirement that the Panel make findings, supported by substantial evidence in the record, that the City has the ability to pay the cost of the Award without adversely affecting service levels, the Panel has carefully considered the evidence and the contentions of the parties. After doing so and fully complying therewith, the Panel has made the following findings in support of its Award:

A. <u>City's Financial Condition</u>

1. The City is statutorily required to maintain a balanced budget.

2. The City is also required to submit a revised five year plan that is balanced in each of its years to PICA for approval whenever it appears that the City's budget is no longer balanced as a result of unplanned revenue decreases or expense increases. The City is required to provide quarterly updates to PICA showing how actual results and current projections compare to the Plan.

3. PICA can require the City to make mid-year adjustments if there is a variance from the approved five year plan. Because the City is prohibited by law from enacting mid-year tax increases, such adjustments generally must come from service reductions.

4. The FY09-FY13 Plan was approved by PICA on June 17, 2008.

5. Under the FY09-FY13 Plan approved by PICA, the projected FY08 fund balance was $182 million.

6. The FY09-FY13 Plan contained smaller tax reductions than the Mayor had originally proposed in his February 2008 budget to make up for the lower revenue the City was experiencing.

7. An arbitration panel issued an award setting the terms and conditions of the bargaining unit represented by the Fraternal Order of Police ("FOP"), the City's other Act 111 bargaining unit, for the period from July 1, 2008 through June 30, 2009 on July 10, 2008 ("2008 FOP Award"). The 2008 FOP Award contained wage and longevity increases as well as other benefits for FOP members.

8. A portion of the cost of the 2008 FOP Award was offset by a reduction in the City's contribution to the FOP Health Benefits Joint Trust ("FOP Joint Trust") that provides health care benefits to members of the FOP and their dependents with money provided by the City.

9. On July 24 and August 14, 2008, the City reached agreements with District Council 33 and District Council 47 respectively, the unions that represent the City's non-uniformed unionized employees. Each of these agreements had a term from July 1, 2008 to June 30, 2009. These agreements contained a freeze on the City's health insurance contributions to the respective union's health benefit joint trusts and lump sum contributions rather than across-the-board wage increases.

10. On October 17, 2008, an arbitration panel issued an award covering employees represented by Local 22 ("2008 Award"). This award had similar economic terms to the 2008 FOP Award, including a reduction in the City's health insurance contributions to the IAFF Health Benefits Joint Trust ("Joint Trust"), but also contained benefits that the 2008 FOP Award did not, including a 25% increase in premium pay and more than a million dollars in equipment requested by Local 22.

11. After the FY09-FY13 Plan was approved by PICA, the City faced additional financial difficulties as a result of the challenging local and national economy.

12. As a result of reductions in collections of the Business Privilege Tax and the Real Estate Transfer Tax coupled with disappointing returns in the City's Pension Fund, the City would have faced a $2.4 billion deficit in its five year plan if it had not taken corrective actions. The City also suffered a loss in Wage Tax revenue of about $15 million.

13. As a result of the economic downturn, the City's actual tax revenues in FY09 were $186.5 million less than the City had projected in the original FY09-FY13 Plan.

14. The City took significant actions in its 2008 rebalancing plan and during the formation of its FY10 budget in 2009 to close this Five Year Plan gap including:

    1 Delaying business and wage tax reductions until 2015,

    2 Eliminating over 1,200 full and part time positions;

    3 Increasing efforts to collect delinquent taxes;

    4 Increasing fines and fees;

    5 Reducing overtime across the government,

    6 Eliminating 200 police vacancies in FY09;

    7 Decommissioning 5 fire engine companies and 2 fire ladder companies in January 2009;

    8 Reducing the number of City-funded pools in FY09;

    9 Requiring furlough days for certain exempt employees;

    10 Imposing salary cuts for Cabinet-level officials, Deputy Mayors, the Managing Director, the Mayor's Office and the Mayor.

    11 Reducing the police department budget by $4 million in FY10;

    12 Reducing the fire department budget by $8 million in FY10;

    13 Additional city-wide staff reductions in FY10;

    14 Temporary 1% sales tax increase for FY10-FY14;

    15 Eliminating the unused portion of the $400 million set aside for employee wage and benefit improvements from the FY09-FY13 Plan;

    16 Assumed savings from pension, benefit and work rule changes of at least $25 million annually across the workforce;

    17 Savings from a change in the pension amortization and a partial deferral of payments to the pension fund that would be repaid with interest before the end of the FY10-FY14 Five Year Plan.

15. PICA originally approved the City's Five Year Plan for FY10-FY14 on July 21, 2009, contingent on the Pennsylvania legislature enacting legislation to allow the City to carry out the sales tax increase and pension funding changes.

16. When the legislation had not passed by August 15th, PICA disapproved the City's Five Year Plan for FY10-FY14 on August 16th, placing the City in danger of having PICA require the Commonwealth to withhold millions of dollars in tax revenue.

17. The City submitted a revised plan to PICA making more than $20 million in additional cuts to compensate for delays in the imposition of the 1% sales tax increase.

18. PICA approved the revised FY10-FY14 Five Year Plan ("FY10-FY14 Plan" or "Plan") on September 11, 2009 pending state approval of sales tax and pension changes, which occurred on September 18, 2009.

19. The FY10-FY14 Plan assumes no wage or benefit increases for Local 22 for the length of the Plan. To the contrary, the FY10-FY14 Plan assumes $2.7 million annually in cost savings from pension, benefit and work rule changes from this bargaining unit.

20. The $2.7 million in annual cost savings are Local 22's portion of the overall $25 million in annual savings the FY10-FY14 Plan assumes from the City's workforce.

21. On December 18, 2009, the FOP interest arbitration panel issued an award covering the period from July 1, 2009 through June 30, 2014 ("2009 FOP Award"). The 2009 FOP Award contained no wage increase for FY10 and reduced the City's contribution to the FOP Joint Trust in order to achieve savings for the City in FY10 that meet or exceed the Plan's assumptions. The 2009 FOP Award also changed the pension terms for employees hired on or after January 1, 2010, increased co-pays for medical and prescription benefits as of July 1, 2010 and ordered the FOP Joint Trust to move to self-funding of medical benefits, all of which are projected to save the City money. The 2009 FOP Award also contained wage increases in FY11 and FY12, as well an increase in stress pay in FY11 from 4% to 5% of salary.

22. The City did not appeal the 2009 FOP Award.

23. The Dow Jones industrial average hit bottom in March 2009, just prior to the FOP arbitration hearings. The City's initial 2010-14 Five year Plan was constructed at this time, when the economy's indicators were at their lowest levels.

24. Through cost saving efforts in FY10, the City achieved the portion of the $25 million in savings allocable to the non-union workforce.

25. The Mayor introduced his proposed budget and FY11-FY15 Five Year Plan ("FY11-FY15 Plan") on March 4, 2010. Like the FY10-FY14 Plan, the FY11-FY15 Plan assumes no wage or benefit increases for Local 22 for the length of the Plan and continues to assume $2.7 million annually in cost savings from this bargaining unit as part of an overall $25 million in assumed annual savings.

26. Following passage of the budget by City Council, the Mayor submitted a revised FY11-FY15 Plan to PICA in July 2010 to close a more than $50 million budget gap from the original Plan caused by a decrease in realized tax revenue below budgeted levels and changes made to the budget by City Council.

27. The budget passed by City Council for FY11 and the revised FY11-FY15 Plan submitted to PICA in July 2010 similarly assume no wage or benefit increases for Local 22 for the length of the Plan and continue to assume $2.7 million annually in costs savings from this bargaining unit. The budget for FY11 did not require the layoff of fire department employees.

28. The Mayor has made it a goal of his Administration to reduce taxes to encourage job creation and income growth.

29. The Panel recognizes that the City cannot rely solely on wage tax revenue growth beyond the levels projected in the Plan as a source to avoid budget deficits.

30. The majority of the City's budget is spent on expenses over which the City has little control, including pension and debt service.

31. Reducing pension and benefit costs while maintaining the pension fund's health is an announced priority for Mayor Nutter.

32. Maintaining public emergency services such as police and fire protection is an important component in attracting business and residents to the City and to retaining the City's economic and population base.

B. <u>The Economic Outlook</u>

1. The extent of the economic recession of 2008 was unforeseen by forecasters and economists.

2. Although the economy is now in a period of slow growth, the effects of the recession continue to be felt in Philadelphia through inflated unemployment rates and lagging wage and sales tax collections.

3. The NBER, which is the official arbiter of the start and end of recessions, has declared that the 2008-09 recession ended in June 2009.

4. The nation's top forecasters are projecting positive growth for the remainder of 2010, with average growth rates for real GDP in the 2.5-3% range. Growth of around 3% in real GDP is projected in FY11 as well.

5. Although there are signs of improvement in the economy, employment remains weak. Because wage taxes are the City's largest source of tax revenue, recovery in other areas, such as the real estate market, are unlikely to completely offset the negative budget impact from weaknesses in employment.

6. In light of a number of economic factors in the City and nationally, the City projects slowly increasing tax revenues over the FY11-FY15 Plan, as it did in the FY10-FY14 Plan.

7. The Panel was presented with an array of expert testimony from both parties about the economic condition of the City and its likely economic future. Their testimony was considered and weighed in reaching this Award.

8. The Philadelphia economy has become more resilient due to its transition from an industrial economy to a more diverse economic base.

9. Central Philadelphia development has promoted and fueled gentrification that has extended into neighborhood throughout and adjoining Center City, fueling a boom in population, real estate values and commercial development.

10. The City is in the process of recovering more than $900 million in unpaid taxes and penalties, as well as $1 billion in bail defaults.

11. A tax amnesty program ending on June 25, 2010 generated approximately $60 million in additional revenues.

C. <u>Benefits</u>

1. Compensation and benefits for City employees made up 61% of the City's FY09 General Fund spending.

2. By 2013, the City expects to spend more than 25% of its total budget on health care and pension benefits for City employees.

3. From FY01 to FY09, the City's health benefit costs increased by 114%.

4. Health benefits are provided to active and certain retired firefighters through the Fund, on which both the City and Union are entitled to seat representatives. The Fund is actively managed. Administrative costs have remained level despite increasing regulatory and administrative demands imposed by new federal laws and regulations.

5. The Fund offers a PPO product and an HMO for its participants. The renewal rates are aggressively negotiated annually by the Fund's actuarial consultants, counsel and administrator.

6. The City's contribution to the Joint Trust that provided health benefits to Local 22 was 131% higher in FY09 than it was in FY00, even with the 12% reduction in that contribution under the 2008 Award.

7. As of August 31, 2009, the end of its plan year, the Joint Trust had reserves of approximately $28 million. As of April 30, 2010, the Fund held reserves of approximately $24 million, against an average monthly expenditure of $4.2 million, and average annual expenditures of over $50 million. The Fund's reserves are currently declining.

8. The Panel credits the City's representation that fundamental change in the manner in which health benefits are purchased, as the City proposes, will provide meaningful cost savings in both the long and short-term.

9. Modest changes in the existing benefit plans are also appropriate to bring Local 22's health benefit plans more into line with those offered by other employers and with the benefits enjoyed by other City employees.

10. Over Local 22's objection, the Panel is ordering the Joint Trust to adopt the self-insurance funding program sought by the City. The City estimates that this self-insurance program will reduce the health plan's costs by $1 million or more each year, in addition to the immediate savings of $5 million being awarded by this Panel.

11. In making its Award on the issue of health benefits, the Panel is cognizant that costs for health benefits for Local 22 have been significantly higher than costs for health benefits for the FOP for at least the past decade. The Panel is also cognizant that occupational exposures and the nature of their jobs have led to increased disease burdens for Local 22 members. The Panel's Award urges the participants to take a more active role in managing their health and controlling health plan costs in light of all of these factors. The Panel also urges the City to take a more active role in enhancing occupational safety and health.

12. As it has for the past several decades, the City continues to struggle with its pension obligations. Although the City's annual contributions have grown by more than 100% since FY01, the City's latest actuarial report shows that the pension fund was only 45% funded as of June 30, 2009.

13. To provide short-term relief for its pension costs, the City lengthened the amortization for its unfunded accrued liability and received state approval to make reduced payments towards its minimum municipal obligation ("MMO") for a period of two years. These changes were unanimously approved by the Pension Board.

14. The pension funding changes made by the City in FY10 provide short-term budgetary relief, but the deferral of a portion of the MMO in FY10 and FY11 increased the City's FY10-FY14 pension funding costs because the deferral will be repaid with interest.

15. The City designed a new pension plan for new hires, which contains both a defined benefit component and a voluntary defined contribution component, to improve the long-term health of the pension system by providing benefits for new hires at a lower cost to the City.

16. Under the 2009 FOP Award, employees hired on or after January 1, 2010 have a choice of entering the new pension plan or entering the existing plan and paying an additional 1% of their pensionable earnings.

D. <u>Other Findings</u>

1. Local 22 presented evidence that the wages of Philadelphia fire fighters are lower than in other comparable cities. The Panel recognizes that the comparison of compensation between cities is very complex.

2. The Panel recognizes that both the City and Local 22 presented extensive proposals on the issue of a wellness-fitness program for this bargaining unit. The Panel commends both parties for working together to reach agreement on a number of significant components of this program. The Panel recognizes, however, that the parties were unable to reach agreement on some significant issues and hopes that the existing Wellness-Fitness Committee will continue to work to reach agreement on these issues.

3. The Panel recognizes that during the life of the prior collective bargaining agreement the Fire Department suffered a significant loss of 150 positions due to the decommissioning of seven (7) fire companies. While no employees were laid off as the result of the decommissioning, the number of employees in the Fire Department has steadily declined.

4. The Panel takes note of the Fire Department's recent implementation of "brownouts" in which fire companies are temporarily removed from service on a rotating basis to provide personnel to fill-in at other companies experiencing staffing shortages. The Panel takes note of the City's assertion that such reductions provide substantial savings to the City. The Panel takes no position, however, as to whether brownouts are advisable or permissible under the CBA.

5. During the hearings, Local 22 argued passionately against the imposition of furloughs for this bargaining unit, despite the fact that they were part of the 2009 FOP Award. The Panel acknowledges Local 22's concerns for the safety of its members. Furloughs differ significantly from layoffs. The City retains the right to layoff employees through the use of seniority. Furloughs, on the other hand, allow for short-term reductions in the number of fire department employees working on a shift or tour, without the application of seniority.

6. Furloughs are a proper subject of negotiations. Unlike layoffs, the terms of furloughs require mutual agreement or the establishment of those terms through this Award.

7. The Panel takes note that the City has already achieved substantial deployment-related savings via the permanent and/or temporary decommissioning of fire companies over the last two years.

8. The Panel also notes that the City has not furloughed any Police Officers, notwithstanding securing the right to do so in the last contract award.

9. Local 22 argued aggressively for an award of stress pay to mirror the stress pay that FOP members receive, and also for the removal of the residency requirement. Local 22 argued that its position on those issues was consistent with the City's arguments in favor of parity. The Panel has carefully considered these arguments and has determined to reject them in light the City's current fiscal challenges.

10. The Panel also recognizes that there was extensive testimony on the issue of chief's aides. The record contains compelling testimony as to the impact of having chief's aides on the safety of those engaged in firefighting. The Panel's decision is that the chiefs' aides position be continued due to the compelling safety issues and the evidence presented.

11. Local 22 raised several issues related to the promotion of supervisory officers. The Panel recognizes that in addressing promotional issues its role is limited. Management retains the right to select qualified candidates for promotion. The Panel has determined to limit its Award to matters related to the promotional examination, with the understanding that the City has the ability to select candidates for promotion from an eligible list per Civil Service regulations.

IV. AWARD

1. **Term.** This Award shall be effective for four (4) years, from July 1, 2009 through June 30, 2013.

2. **Wages**

A. Effective July 1, 2009, there shall be no across-the-board wage increase in the salary schedule.

B. Effective July 1, 2010, there shall be a three percent (3.0%) across-the-board wage increase in the salary schedule.

C. Effective July 1, 2011, there shall be a three percent (3.0%) across-the-board wage increase in the salary schedule.

D. Effective July 1, 2012 there shall be a three (3.0) percent across-the-board wage increase in the salary schedule.

3. **Health and Welfare**

The existing contract terms governing health and welfare benefits shall be amended by the addition of the following, which shall supplement, not replace, the existing terms except where inconsistent:

A. Monthly Contributory Requirement

1. For the period July 1, 2009 until the Fund implements the self-insured arrangement described in Section C (SELF-INSURANCE) below, which shall not be later than December 31, 2010, the City's monthly contributory requirement to the Fund shall be $1,270 per member per month.

2. Effective the first month that the Fund has implemented the self-insured arrangement described in Section C (SELF-INSURANCE) below, the Fund will pay the first five million dollars ($5,000,000) in claims incurred and invoiced by IBC. For any amounts above this initial five million dollars ($5,000,000) the City shall be responsible for payment as described in Section 3.C.6.

B. Health Benefits

1. Except as provided herein and except as may be determined by Board of Trustees of the Fund the Plan of Benefits provided by IAFF Local 22 Health Plan ("Fund") on and in effect on June 30, 2009 for active and eligible retired firefighters and their eligible dependents shall remain unchanged for the duration of this Award. Nothing in this Award shall preclude the Trustees of the Fund from providing health benefits coverage to the IAFF Local 22 staff or the staff of the Fund, consistent with the

terms of the Fund's Restated Agreement and Declaration of Trust, provided that Local 22 shall be responsible for the cost of providing such benefits to Local 22 staff and neither the City nor the Fund shall bear any financial responsibility for the cost of such benefits for Local 22 staff.

2. Notwithstanding the foregoing, if the Fund should determine to substantively improve benefits during the term of the Award, the costs of such improvements shall not be reimbursed by the City and shall be specifically excluded from any obligation of the City to fund replacement of any reserves through creation of the escrow account provided for in this Award. The modification of benefits to achieve specific cost savings, such as a flu shot program, health fairs, etc, shall not be considered a substantive modification to those benefits. The cost of benefit changes mandated by federal or state law or regulations shall be reimbursed by the City.

C. Self-Insurance

1. Effective on or before January 1, 2011, and until modified by a subsequent award or written agreement of the parties, the Fund shall provide medical and prescription benefits through a self-insured program in accordance with the provisions of this Award.

2. The Fund shall be exclusively responsible for the administration of the self-insured program and shall prudently administer the program. This responsibility shall include, but is not limited to the selection of all providers (such as TPA/ASO, stop loss carriers, consultants, disease management and other services deemed necessary) by the Trustees of the Fund currently and in the future to implement and maintain the modification to self-insurance required by this Award. All contractual relationships regarding and arising from self-insurance shall be exclusively between the Fund and the chosen providers.

3. The Fund will use its best efforts to secure the best possible financial arrangements with any third-party administrator or vendor for the provision of any services provided or administered by the Fund. If appropriate, this may include taking steps to retain any discounts under existing benefit contracts. The Fund is expected to use competitive bidding and/or other comparable means, including aggressive negotiation with vendors, to ensure that it has achieved the best possible financial arrangements for all services.

4. The Fund will purchase stop loss insurance at levels appropriate for the fund's claims experience and at an attachment point acceptable to the City. The cost of such insurance shall be included in the health fund's administrative expenses. If more economical to do so, the Fund may purchase stop loss under the umbrella of the City's stop loss contract or through coalition pricing with the City.

5. The Fund shall, at least each calendar quarter, as soon as reasonably possible after the end of the quarter, provide the City with periodic reports of de-identified information regarding usage and experience in such detail as is reasonably necessary for the City to audit the claims being made and to demonstrate compliance with this Award. This information shall be considered highly confidential and shall be provided to a designated City representative. It shall be used solely to monitor the aggregate utilization of Fund participants and their eligible dependents under the self-insured program required by this Award.

6. Commencing with the first billing for medical, drug, dental and vision benefits received after January 1, 2011 from the selected providers as well as Related Expenses as defined below, the Fund shall transmit the bill thus received by the most expeditious means possible to a designated City official. Within three business days after presentation of the bill for prescription drug claims and within fifteen calendar days after presentation of the bills for other expenses provided for in this paragraph, the City shall transmit directly to the Fund by wire transfer or other agreed-upon method the entire amount necessary to pay the bill as presented in a timely and businesslike manner. The Fund shall be responsible for forwarding the money to the provider with proof of payment being made to the City. In that regard it is recognized that different vendors and providers might require different payment dates and cycles. The Fund shall be empowered to obtain such payment dates and cycles as it deems most desirable and advantageous in performing the requirements of this Award. Any objection the City might raise to such billing shall be resolved independent of the obligation to make such payment and shall not under any circumstance be used to set off or otherwise delay payment.

7. As used herein, the term "Related Expenses" shall mean expenses directly attributable to provision of benefits, including TPA/ASO, stop loss, disease management and bundled services and any deposits or advances required by selected vendors. It shall not include day-to-day administrative expenses.

8. Prior to January 1, 2011 and prior to each July 1 thereafter, the Fund shall provide the City with a statement setting forth the actual costs of medical, drug, dental and vision benefits and projected incurred claims as well as Related Expenses and administrative costs for the plan year ended the prior June 30th and the trend to be applied for the plan year beginning the previous July 1st ("Budgeted Cost"). The trend shall be the average of the projected trend for this specific plan as determined by the Segal Company and a recognized benefits consulting firm designated by the City.

9. Within thirty (30) days before January 1, 2011 and each July 1 thereafter, the Fund shall present to the City a budget of projected administrative costs for the upcoming plan year. Commencing on January 1, 2011 and on the first day of each month thereafter, the City shall pay the Fund the pro-rated monthly portion of the budgeted administrative cost. Within thirty (30) days of the end of the plan year, the Fund shall provide the City with a statement prepared by its auditor of actual

administrative costs for the previous plan year. If the actual administrative costs are less than the budgeted administrative costs for that plan year, the City shall take a credit against the administrative costs payable in the current plan year. If the actual administrative costs are greater than the budgeted administrative for that plan year, the City shall make payment for those additional administrative costs within thirty (30) days. Any disputes about the reasonableness of the projected or actual administrative costs shall be resolved as set forth in this Award.

10. Should the Fund return to an insured medical plan by agreement between the City and the Union or by order of or modification of this Act 111 arbitration award or a future award, the City shall be responsible for claims incurred under the self-insured arrangement ordered by this Award, including all claims incurred but not reported ("IBNR") following the termination of the self-insured arrangement, unless a subsequent Act 111 arbitration award provides an alternate mechanism for the payment of the IBNR claims or by agreement of the parties.

D. Risk Sharing

The Panel recognizes that increasing health care costs is a matter of significant concern to both the City and the Union. The Panel acknowledges, through this Award, that the City is gaining the opportunity to recognize savings through successful efforts by the Fund to reduce its costs, but also bearing the risk that the costs will increase. This places a significant responsibility on the Fund to manage Fund costs and the Panel makes this Award with the intent of providing incentives to the Fund and its members to do so. It is the Panel's fervent wish that the City and the Fund will both reap the rewards of successful efforts at effective health fund management through reduced costs.

1. Within ninety (90) calendar days after March 1, 2011 and each June 1 (starting June 2012) thereafter, the parties shall compare the actual cost of plan expenses, including benefits, administrative costs and Related Expenses as determined by the Fund's auditor, to the Budgeted Cost for the last completed plan year.

2. If the actual cost is less than the Budgeted Cost for the last completed plan year, the City shall pay the Fund one-half of the difference thus determined. If the actual cost is more than the Budgeted Cost for the last completed fiscal year, there shall be no additional payments to the Fund for the last completed fiscal year.

E. Drug and Doctors' Visits Benefits

Effective January 1, 2011, the benefits provided by the Fund shall include prescription drug copayments and doctors' visits copayments in the following amounts.

Prescription Drug

Retail

Generic - $5.00
Formulary Brand - $10.00
Non – Formulary Brand - $15.00

90 Day Mail Order

Generic - $10.00
Formulary Brand - $20.00
Non-Formulary Brand - $30.00

Doctors' Visits

Doctor's Visits - $15
Specialist Visits - $25

F. Resolution of Issues

The neutral chairman of the Panel shall retain jurisdiction as a single arbitrator over this matter for the duration of this Award solely to resolve any disputes that might arise in the implementation of this Award. In that regard, the Chairman shall be empowered to hold emergency hearings within twenty-four (24) hours of notice by the parties of a dispute and to issue emergency injunctive relief enforceable in a court of appropriate jurisdiction to either party if he should deem it appropriate to do so. Such resolution shall be considered an arbitration award issued pursuant the grievance and arbitration procedure otherwise set forth in the collective bargaining agreement.

4. **Retiree Trust Fund**

A. Within 30 days of execution of this Award, he City shall make a lump sum payment of two and a half million dollars ($2.5 million) to the Retiree Joint Trust Fund.

B. On or before July 1, 2011, the City shall make a lump sum payment of two and a half million dollars ($2.5 million) to the Retiree Joint Trust Fund.

C. On or before July 1, 2012, the City shall make a lump sum payment of two and a half million dollars ($2.5 million) to the Retiree Joint Trust Fund.

D. On or before June 30, 2013, the City shall make a lump sum payment of two and a half million dollars ($2.5 million) to the Retiree Joint Trust Fund.

5. **Pensions**

A. Current Employees. There will be no change to the pension benefits for current employees.

B. New Employees. At the time of hire, all employees hired on or after the execution of this Award shall make a one-time, irrevocable election between participating in Plan A (also known as Plan 87) as defined in the Philadelphia Retirement Code as of July 1, 2009, except as modified below, or participating in a new plan of benefits called Plan 10, which shall be made part of the Retirement Code. The Union will be given a reasonable opportunity to address any newly-hired employees before employees are asked to submit their election.

1. Revised Plan A. Employees who elect to participate in Plan A shall be subject to all the terms of Plan A as set by the Retirement Code in effect as of July 1, 2009, except that they shall be required to make an employee contribution in the amount of 6% of their pensionable earnings on equal terms as those set forth in Ordinance 100286 for uniformed employees of the Police Department.

2. New Plan 10. The terms of Plan 10 shall be implemented to correspond with those set forth in Ordinance 100286 for uniformed employees of the Police Department, which includes the following changes to Plan A:

a. Employee Contribution. A 5.5% employee contribution for the first 20 years of service, and no employee contribution thereafter.

b. Normal Retirement Benefit. A defined benefit equal to 1.75% multiplied by the average final compensation for the employee, multiplied by up to a maximum of 20 years of service.

c. Average Final Compensation. The average of the employee's five (5) highest annual compensations calculated for either five (5) calendar years or five (5) anniversary years.

d. After twenty (20) years of credited service, employees will no longer earn credited service, will no longer make contributions to the pension fund and their average final compensation shall not increase.

e. Voluntary Defined Contribution Plan. Employees may make voluntary contributions to their accounts under the City's 457 Plan. For each fiscal year, the City will make a contribution to a defined contribution plan individual account of 50 cents on the dollar for each dollar contributed by the employee to his 457(b) plan account, up to a maximum City matching contribution of 1.5% of compensation.

6. **Vacations – New Hires**. Employees hired on or after the date of this Award will be guaranteed only one (1) week of vacation during the period of the Summer Vacation Schedule from May 1 to September 30 annually during their first five (5) years of sworn employment in the Fire Department.

7. **Legal Services**. Effective July 1, 2009, the City's contribution to the IAFF Local 22 Legal Services Fund shall be increased by $2 per member per month.

8. **Disability - Payment of Accrued Vacation Benefits**. Any bargaining unit member retiring as a result of a work-related disability shall be entitled to payment for any accrued, unused vacation.

9. **Chief's Aides**. The Fire Department will continue to utilize Chief's Aides for all Battalion and Deputy Chiefs.

10. **Supervision and Promotion**. Promotional examination for the ranks of Battalion Chief and Deputy Chief will be graded in accordance with the following weights: (1) written examination results – 45%; (2) oral examination results – 45%; (3) Fire Department seniority – 10%.

11. **Wellness/Fitness**. The current wellness/fitness provision will be continued by this award, with the addition of language requiring the parties to meet at least quarterly to develop a plan to implement a wellness/fitness program.

12. **Parity – Furloughs, Residency and Stress Pay**

The issue of parity between Fire and Police employees was argued vigorously by the parties. The Firefighters argued that parity requires the Panel to award them the five percent (5%) stress pay differential that is provided to Police Officers, which was increased in the most recent Police Act 111 Interest Arbitration Award, and to eliminate residency restrictions in the same manner as was done for Police Officers. The City argued that parity required the Panel to impose upon the IAFF Local 22 bargaining unit the same furlough provisions that were contained in the Police Act 111 Award.

The Panel has carefully considered these issues, especially the fiscal impact of a 5% stress pay award in the current economic climate, the fiscal impact of bargaining unit members leaving the City, and the likelihood that furloughs will negatively impact the safety and health of bargaining unit members. The Panel declines to award the five percent (5%) stress pay differential, to lift the residency restrictions, or to permit the City to furlough Local 22's bargaining unit members.

On the issue of furloughs and the City's asserted desire to utilize same in order to provide financial flexibility and savings, the Panel notes that this Award addresses the City's major concerns of salary, medical benefits and pensions by providing a 1-year salary freeze, by ordering a shift to the City's proposed self-insurance system, and by requiring a reduced pension benefit for new members of the bargaining unit. Given these major adjustments, an additional award of furloughs is unnecessary given other options presently available to the City.

13. **Compensatory Time.** Effective July 1, 2011, members at the rank of Battalion Chief and above will be permitted to accumulate compensatory time on an hour for hour basis up to a cap of 1200 hours. These employees will be permitted to cash out up to 600 hours of compensatory time at retirement from the Department subject to the existing rules and regulations.

14. **Grievance Procedure.** Article 21(A)(2) of the Agreement will be amended as follows:

> *The grievance and arbitration procedure set forth herein shall include within its subject matter only alleged violations of the Act 111 Awards and this Contract.*

15. **Severability.** In the event that any provision of this Award is deemed illegal, invalid or unenforceable by a court of competent jurisdiction, such determination shall not affect the validity or enforceability of any other provision(s) of this Award.

16. **Retention of Jurisdiction.** The Panel shall retain jurisdiction over this Award in order to resolve any disputes regarding implementation of its terms.

17. **The Existing Agreement.** Except as modified by this Award, all other terms and conditions contained in the collective bargaining agreement between the City and IAFF Local 22 in effect from July 1, 2008 to June 30, 2009 shall remain in effect. All other proposals and requests for change submitted by the City and IAFF Local 22 to the Panel, which have not been specifically addressed in this Award, were considered and have not been awarded.

Michael E. Zobrak *Chairman and Impartial Arbitrator*	10-14-10 Date

Stuart W. Davidson *Arbitrator for IAFF Local 22*	✓ Concur	Dissent
Kenneth M. Jarin *Arbitrator for City of Philadelphia*	Concur	✓ except for paragraphs 2A, 5 and 6. Dissent

ARBITRATION OPINION AND AWARD – CONCURRING OPINION
American Arbitration Association -- Case Number 14 360 L 00532 09

In the matter of an Act 111 Interest Arbitration Between the

CITY OF PHILADELPHIA

AND

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 22

CONCURRING OPINION OF ARBITRATOR STUART W. DAVIDSON, ESQUIRE

On behalf of International Association of Fire Fighters, Local 22, I join with the Neutral Arbitrator in the majority Opinion and Award, but I do so with great reluctance.

In my opinion, and based on the considerable record developed by the parties in the this matter, the economic concessions to the City that are contained in the Award are not warranted, unreasonably compromise fire fighter safety, and far exceed the extent to which changes may be justified by the City's presentation.

I fully concur in the Panel's decision to reject the City's proposal to secure the right to furlough bargaining unit members, especially in view of the significant and recent reductions within the Fire Department in the form of the 2009 decommissioning of fire companies and the 2010 utilization of brownouts to further reduce coverage and costs. I am convinced that the Nutter Administration has undertaken a misguided and dangerous course to reduce fire and other emergency service to Philadelphia's citizens, and to compromise bargaining unit member safety in the process. In light of the considerable savings already achieved via these questionable managerial actions, however, it is very clear that furloughs are both unnecessary and fraught with potential for abuse if awarded. I concur in the decision to prohibit furloughs.

I object to the one-year wage freeze for the first year of this Award, primarily in light of the Panel's failure to establish true economic parity between the police and fire bargaining units by awarding Local 22 members the 5% stress pay differential enjoyed by the police bargaining unit. It is fundamentally unfair to expect the members of Local 22's bargaining unit to bear the same economic concessions imposed upon the police bargaining unit in the areas of salary, health benefits and pensions, but not be afforded true, 100% economic parity in the area of salary.

I am also deeply concerned about the Award's requirement that the parties move into a self-insured health insurance system, as has been requested by the City, given that the current and longstanding delivery system that was ordered at the City's request many years ago has proven effective. I am also concerned that the Award's contribution reductions, which will cause the health plan to dramatically diminish its economic reserves, serve no other purpose but to punish Local 22 for operating a cost-effective and efficient health plan. There is no reason for this change.

In its presentation, the City's advocates seem oddly outraged that after nearly two decades of substandard health care, the Firefighters and Paramedics finally and recently were able to secure health benefits similar to those enjoyed by other public safety personnel. In every other major city in America, except Philadelphia, police and fire employees receive virtually identical healthcare benefits. Philadelphia should be no exception.

Finally, and notwithstanding my considerable concerns over the salary freeze and refusal to provide stress pay, the questionable changes to the health plan, and the establishment of a third pension tier, I am signing the Award in order to secure a final agreement, and to afford Local 22's bargaining unit members the stability of a collective bargaining agreement that protects the wages and benefits that they have most certainly earned through their dangerous and very valuable work. The men and women of the Philadelphia Fire Department deserve far better than the shabby treatment they have endured from this and prior administrations.

Stuart W. Davidson

STUART W. DAVIDSON, ESQ.
Arbitrator, IAFF Local 22

10/15/10
Dated

ARBITRATION OPINION AND AWARD
American Arbitration Association
Case Number 14 L 360 0532 09

In the matter of an Act 111 Interest Arbitration Between the

CITY OF PHILADELPHIA

AND

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 22

DISSENTING OPINION OF CITY-APPOINTED ARBITRATOR

October 15, 2010

On October 15, 2010, two members of an interest arbitration panel (the "Panel") issued an Award in the Act 111 Interest Arbitration between the City of Philadelphia (the "City") and the International Association of Fire Fighters, Local 22 (the "Union") that purports to govern the terms and conditions of employment for the City's fire fighters from July 1, 2009 through June 30, 2013.[1] Because the Award disregards the City's ability to pay for its terms and fails to give any meaningful consideration to the impact of the Award on the City's financial condition, in direct contravention of the statutory requirements of the Pennsylvania Intergovernmental Cooperation Authority Act for Cities of the First Class, 53 P.S. §§ 12720.101 et seq. ("PICA Act"), I dissent from the Award with the exception of paragraphs 2A, 5 and 6. In addition, I dissent from paragraphs 9 and 10 because these provisions (1) interfere with the City's managerial rights and (2) are outside the Panel's jurisdiction. I also dissent from paragraphs 3(F) and 16 of the Award on the basis that they impermissibly attempt to retain jurisdiction over this matter following issuance of the Award.

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1 On September 21, 2010, the Pennsylvania Labor Relations Board issued a Final Order removing the fire service paramedics from this bargaining unit because they are not fire fighters within the meaning of Act 111. Accordingly, the paramedics are not covered by this Award and any references to them in the Award are inappropriate to them as a matter of law. Costs shown for the impact of this Award exclude paramedics. Were the paramedics to be included, the costs shown would be approximately 12% higher.

PICA Requirements and the Excessive Cost of the Award

I dissent from the Award because it imposes more than $66.7 million in compensation costs plus tens of millions more in projected increases in health benefit costs on the City, which are all far beyond what it can afford based on its approved Five Year Plan and, unlike the award issued by the interest arbitration panel setting the terms and conditions of employment for the City's police officers represented by the Fraternal Order of Police, Lodge No. 5 ("FOP"), this Award does not provide the City with a corresponding means to pay for its excess costs.

The PICA Act requires that the Panel consider the City's Five Year Financial Plan ("Five Year Plan") and accord substantial weight to the City's ability to pay the cost of any increase in wages or fringe benefits without adversely affecting the level of services the City provides to its 1.5 million residents. 53 P.S. § 12720.209(k)(1). The PICA Act also requires that the Panel, in its Award, demonstrate how it determined that the City is able to pay for its Award without negatively affecting those services. The PICA Act further requires that the panel's determination "shall state with specificity in writing all factors which the board of arbitration took into account in considering and giving substantial weight to

> (i) the approved financial plan of the assisted city; and
>
> (ii) the assisted city's financial ability to pay the cost of such increase."

53 P.S. § 12720.209(k)(2).

Under the approved FY10-FY14 Five Year Plan and the approved FY11-FY15 Plan, the City must achieve net savings from this bargaining unit of at least $2.38 million annually. Blatantly ignoring the Five Year Plan's assumptions, the Panel's Award imposes more than $100 million in added costs. Yet the Panel fails to demonstrate in its findings that the City can pay an award that exceeds the amounts contained in the Five Year Plan without adversely affecting services. To the contrary, the record before the Panel demonstrates that the City has already had to make extensive cuts in services over the last two-and-a-half years to balance the budget in the face of the longest and deepest recession since the Great Depression. These steps that the City has already taken to balance the FY09, FY10 and FY11 budgets include:

- raising property taxes by almost 10%;
- decommissioning five fire engine companies and two ladder companies,
- temporary deactivation of fire suppression companies on a daily basis to reduce overtime costs;
- imposing a temporary 1% sales tax increase;
- deferring pension payments;
- delaying City-funded wage and business tax reductions;
- eliminating over 1,200 full and part-time positions;
- eliminating 200 police vacancies;
- reducing funding for pools and ice rinks,
- reducing library hours,
- cutting administrative agencies across the board;

- requiring furlough days in FY09 and FY10 for certain exempt employees;
- cutting overtime throughout the government;
- changing the pension amortization;
- reducing salaries for cabinet level officials, deputy mayors, the Managing Director's office, the Mayor's office, and the Mayor.

The Panel's award ignores these serious and painful cuts, which are real and on-going, and adds costs instead.

In total disregard of the PICA Act, the Panel's findings do not identify how the City has the ability to pay for the increased costs of the Award without further cutting services. Instead, the Award resorts to generalized statements about the economy and savings that the City has already achieved (that are already assumed by the Five Year Plan cost and savings assumptions that the Award blatantly ignores) that fail to specifically identify a legitimate source of the dollars to pay for the real and immediate costs from this Award from without further impacting the services that have already suffered under the on-going economic crisis, as detailed by the testimony of Donald Schwarz, Deputy Mayor for Health and Opportunity and Health Commissioner, and other witnesses.

The Panel gives lip service to the serious challenges to the City's fiscal health, yet it awarded economic terms that far exceed the amounts provided in the Five Year Plan, without providing the City a way to pay for those increases without cutting services. Although the wage increases in this Award are similar to those in the FOP Award, which the City did not appeal, the FOP Award provided the City with the means to balance the costs of the award while this Award does not. The FOP Award, like this one, contained wage increases of 3% in FY11 and 3% in FY12. In addition, the FOP Award provided a 1% increase in the stress differential to bring employees into line with the 1% increase in premium pay this Union received in its 2008 contract, while the FOP did not. To offset those costs, the FOP Award implemented a new pension structure for new hires, reduced the City's health care contribution to the union-controlled health fund by nearly $10 million in FY10, implemented a new health care funding arrangement and increased employee medical and prescription drug co-pays in an attempt to control the City's costs for health care benefits for covered employees in FY11 and future years, expanded the City's right to adjust employee schedules and avoid overtime costs and, significantly, allowed the City to impose up to 30 unpaid furlough days per year.

The FOP Award recognized that the Five Year Plan assumed annual savings by employees in that union, as it does for employees in this Union. Unlike the instant Award, however, the FOP Award took steps to achieve those savings. For example, the FOP Award reduced the City's health care contribution by nearly $10 million for FY10 and instituted a new pension structure for employees hired after January 1, 2010, at the same time that it imposed a wage freeze for FY10. These measures allowed the City to exceed the level of savings it projected from the FOP in FY10. This Award, by contrast, provides the City with no savings in FY10.

Similarly, although the FOP Award provided for wage increases that were in excess of what the City projected, and from which the City dissented, it did this at the same time that Award made changes in employee medical and prescription drug co-pays which will lower the City's costs and changed the funding structure for the medical benefits to reduce the City's costs. This Award, on the other hand, adds an additional $19 million in wage costs from the 3% wage increase in FY13 that was not part of the FOP Award, delays the cost saving changes in health benefits by six months and, more importantly, fails to account for the proportionally larger costs of this plan as a result of differences in plan management and benefit usage that will leave the City subject to ten of millions in excess health care costs.

The profound differences in health care costs and administration between the Union and the FOP were totally overlooked by the Panel when it refused to grant the City's proposals to implement meaningful risk sharing, additional plan changes and employee contributions, shifting all the risk of cost increases to the City and providing the Union and the employees with no meaningful incentive to reduce costs. As this Panel was aware through testimony by the Union's own expert - who is also the expert for the FOP's health fund - and documentary evidence, the FOP presented evidence of its aggressive cost management and wellness efforts that have saved tens of millions of dollars and reduced its premiums by nearly 13% in just a few years. The Union's health fund, by contrast, has not taken those steps and, in fact, the Union's own health care expert (the same one the FOP uses), issued three pages of recommendations to the Union's health plan in October 2009 on steps it should be taking to control its plan costs through collaboration and outreach to plan participants. The Union's health plan had implemented none of them when that expert testified before the Panel months later. As a result, the per person cost for benefits and administration of the Union's health plan were 12.5% greater than the costs of the FOP health plan in FY10 according to their experts.

By failing to implement the risk sharing measures that the City proposed that would have provided the Union and the employees the incentive to control the costs in their health plan, the Award leaves the City vulnerable to skyrocketing health benefit costs that are projected by the City's expert to increase to nearly $56 million a year by FY13, adding more than $29 million above what the Five Year Plan projects between now and the end of FY13. Significantly, the Union's expert testified that the City's cost estimates were too optimistic, projecting health fund costs increasing to more than $60 million a year by FY13, adding more than $37 million above what the Five Year Plan projects during that period. These FY13 costs are 20% higher than the projected costs for the FOP plan on a per capita basis, even though both plans will have the same benefits. The Award imposes these unchecked costs solely on the City, while leaving the Union's health fund with tens of millions of City money in reserves accumulated through the excess contributions imposed on the City by previous arbitration awards intended to protect the fund against large increases in costs that could occur during the term of a multi-year award, while the City's contribution remained fixed. The current reserve is more than $10,000 per active employee for a fund that now has no cost responsibilities as a result of this Award and no need to hold a reserve at all.

Finally, the FOP Award provided the City with the means to fund the wage increases through furloughs. During that proceeding, the City estimated that imposing 30 furlough days would save it $42.9 million a year or $214 million over the next five years. This savings was greater than the added cost of the FOP Award. This Award, by contrast, denies the City the right to do furloughs, providing the City with no means to pay for its excess costs.

The Award will cause a Five Year Plan deficit that the City will have to take additional corrective action (i.e., further service cuts) to offset. As the Panel is not permitted to issue an Award that undermines the City's service levels, it cannot stand.

During the arbitration proceedings, the City presented extensive, unrebutted evidence on its perilous financial condition. The Panel's Award completely disregards the City's ability to pay and its approved Five Year Financial Plan. As a result, the Panel's Award contravenes the PICA Statute and places more than $100 million of unanticipated costs on the backs of the City taxpayers. I dissent from the Panel's violation of its obligations under Act 111 and the PICA Act.

Paragraph 10 – Chief's Aides

The Panel has included a requirement that the City continue to deploy Chief's Aides for all Battalion Chiefs and Deputy Chiefs. I dissent from the Panel's Award as it interferes with manning and standards of service, both of which are matters of inherent managerial policy, as the Supreme Court recently reaffirmed in striking down a provision from the 2005 Award that would have required the City to implement an ALS Pilot Program. It is the Commissioner of the Fire Department, not an arbitration panel, who has the right to implement changes regarding standards of service as he sees fit.

Paragraph 11 – Supervision and Promotion

I dissent from the Panel's unprecedented decision to wade into setting the elements of and weights to be accorded to promotional examinations. Selection of personnel is a management right over which the City will not and need not bargain.

Paragraphs 3(F) and 16 – Retention of Jurisdiction

I dissent from paragraphs 3(F) and 16 of the Panel's Award to the extent that they improperly attempt to extend the authority of this Panel beyond the date of issuance of the Award or defer the issue to another panel. This Panel simply does not have the right to extend the jurisdiction of this or any other Panel over these issues after this Award is signed. This improper delegation of authority renders this provision of the Award illegal.

Dated: October 15, 2010

Kenneth M. Jarin
Arbitrator for the City of Philadelphia