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 the City of Philadelphia

Appearances

Shannon D. Farmer
Meredith Swartz

For the City of Philadelphia

Nancy B.G. Lassen
Deborah R. Willig
Richard G. Poulson

For IAFF Local 22

Final Award Issued: July 2, 2012

I. INTRODUCTION

The City of Philadelphia (the "City") and the International Association of Fire Fighters Local 22 ("IAFF" or "Local 22") are parties to a collective bargaining agreement that 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. The instant award sets the wages, hours and working conditions of bargaining unit members for the four (4) year period from July 1, 2009 through June 30, 2013.

II. PROCEDURAL HISTORY

In 2008, the City and Local 22 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 (the "Panel") met pursuant to the authority contained in the Policemen and Firemen Collective Bargaining Act, 43 P.S. § 217, et seq. ("Act 111"), as modified by the Pennsylvania Intergovernmental Cooperation Authority Act for Cities of the First Class, 53 P.S. § 12720.101, et seq. (the "PICA Act").

The Act 111 Panel initially convened hearings 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 Local 22 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 issues, evidence and arguments submitted by the parties.

On October 15, 2010, the Panel issued a four-year Award covering the period from July 1, 2009 through June 30, 2013 ("2010 Award"). The 2010 Award contained a thorough and complete review of the financial factors considered by the Panel in the course of its deliberations. The 2010 Award also contained seventeen (17) substantive provisions that provided a mix of economic and non-economic improvements and concessions. The economic provisions were influenced in significant part by the most recent Act 111 interest arbitration award governing the City's police officers, as well as the longstanding history of parity between police and fire employees on wages, and near parity on benefits. The 2010 Award was less costly to the City than the 2009 Police Award, both in real dollars and also as adjusted on a pro-rata basis.

The City did not appeal a 2009 Police Award. However, on November 12, 2010, the City filed a petition to vacate the 2010 Award, alleging that certain provisions of the Award failed to satisfy the requirements of the Pennsylvania Intergovernmental Authorities Act ("PICA Act"), 53 P.S. § 12720 et seq.

By mutual agreement of the parties, after a lengthy period of appeal without finality, the Court of Common Pleas for Philadelphia County vacated the 2010 Award on November 16, 2010 and remanded the matter back to this Panel, with direction "to issue a final award":

> AND NOW, this 16th day of November 2011, it is hereby ORDERED and DECREED that with the exception of Paragraphs 5 and 6, which neither party contests, the remainder of the Act 111 Arbitration Award rendered by the Arbitration Panel on October 15, 2010 in The

> City of Philadelphia and International Association of Fire Fighters, Local 22, Case No. 14 360 L 00532 09, is hereby VACATED and REMANDED to the Panel to issue a final award in accordance with the requirements of the Pennsylvania Intergovernmental Cooperation Authority Act for Cities of the First Class, 53 P.S. § 12720.101 et seq. This Order is entered without prejudice to the City's claim that provisions of the Award should be vacated because they are in violation of Act 111.

Thereafter, the Panel convened remand hearings on March 23, March 26, April 11 and May 3, 2012. During the remand hearings the Panel received additional testimony and documentary evidence concerning the City of Philadelphia's financial status, the local, state and national economies, the City's most recent 5-Year Financial Plans (including the FY13-17 Plan proposed by the City, that is now pending PICA approval), the financial resources available to the City, and the impact of the parties' proposed contractual adjustments on the City's fiscal condition. In addition to considering the extensive evidence presented to the Panel during the 2009-10 proceeding, the Panel on remand engaged in a comprehensive review of the City's ability to pay for a fair award for its firefighters and paramedics. Following the remand hearings, the Panel met in executive session on May 7, 8, 11 and 23, 2012 regarding the evidence and arguments submitted by the parties.

III. ACT 111 AND THE PICA STATUTE

This Act 111 interest arbitration proceeding was conducted pursuant to a court order resulting from the City's Petition to Vacate the 2010 Award issued by this Panel. Given that we have undertaken this remand proceeding in the context of past and threatened future appeals, a review of the legal standards governing Act 111 and PICA is warranted.

The Panel is aware that Act 111 provides no statutory right of appeal of an interest arbitration award. The statute by its terms specifically prohibits appeals of interest arbitration awards. *See* 43 P.S. ¶ 217.7(a). In Town of McCandless v. McCandless Police Officers Association, 587 Pa. 525, 901 A.2d 991 (Pa. 2006) ("McCandless"), the Pennsylvania Supreme Court described the limited judicial review of Act 111 grievance and interest arbitration awards as a "linchpin of [Act 111], which furthered the legislative intent of preventing Act 111 arbitration awards from bogging down in litigation." McCandless, 901 A.2d at 998 (quoting Pennsylvania State Police v. Pennsylvania State Troopers Association, 540 Pa. 66, 656 A.2d 83, 89 (Pa. 1995) ("Betancourt")).[1]

This Act 111 interest arbitration proceeding is unique in that it was conducted within the context of not only Act 111, but also the Pennsylvania Intergovernmental Authorities Act ("PICA Act"). The PICA Act requires the City to develop an annual Five-Year Financial Plan that provides for a balanced budget, which plan must be approved by Pennsylvania Intergovernmental Cooperation Authority (hereinafter "PICA"). The PICA Act also requires the City to undertake "a review of compensation and benefits" and to ensure that expenditures, including those for employee wages and benefits, are balanced with revenues. *See* 53 P.S. § 12720.102(b)(1)(iii)(H); 12720.209(b) and (c).

According to City Finance Director and former PICA Executive Director,

[1] This Final Award is issued 35 months into the 2010 Award's 48 month term. Clearly, the elongated process caused by the City's appeal in this proceeding has devolved into precisely the "bogged down" situation that the Pennsylvania Supreme Court cautioned against in *McCandless*.

Rob Dubow, PICA's role in reviewing the City's proposed 5-year Plans is limited to ensuring that the proposed plans are credible and contain accurate projections of revenues and expenditures. According to Mr. Dubow, PICA does not play a role in policy decisions and does not control or direct how the City allocates its financial resources among competing policy interests, including essential public safety services. Mr. Dubow confirmed that in the event of unanticipated expenses or changes in revenue, PICA may require the City to revise its 5-Year Plan to account for those changes.

The PICA Act does not vary the standard of review of interest arbitration awards applicable under Act 111. It does, however, impose additional requirements that must be met by Act 111 interest arbitration panels. It also provides a limited opportunity for a party to appeal an Act 111 interest arbitration award in order to test whether the arbitration panel has met those additional requirements.

The additional requirements imposed by the PICA Act are as follows: Section 209(k) of the Act requires that, before rendering an Act 111 award that grants a pay or fringe benefit increase, an Act 111 arbitration 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 arbitration panel must also make a written record of the factors it considered when making its determination, and accord substantial weight to the Five Year Plan and the City's ability to pay. 53 P.S. § 12720.290(k)(2).

To gauge whether an Act 111 interest arbitration panel has met the

Section 209(k)(1) and (2) requirements, the PICA Act permits a very limited appeal:

> (3)(i) Any party to a proceeding before a board of arbitration may appeal to the court of common pleas to review:
>
> (A) the consideration of the assisted city's financial plan;
>
> (B) the determination as to the assisted city's financial ability to pay; or
>
> (C) the failure of the board of arbitration to issue a determination including a detailed writing of all factors which the board of arbitration took into account in considering and giving substantial weight to the assisted city's financial ability to pay and the assisted city's financial plan.
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> 53 P.S. § 12720.290(k)(3)(i).

In the event of such appeal, the PICA Act does not vary the standard of review applicable under Act 111. But the Commonwealth Court has recognized that a petition to vacate an award alleging a violation of the PICA Act "requires a reviewing court to engage in a limited factual review of an Act 111 arbitration award occurring after the Authority approved the Plan. . . . Under [the PICA Act], a party may appeal to the trial court to review the Panel's consideration of the City's Plan, its determination of the City's ability to pay, and any failure to properly outline the factors, in writing, giving substantial weight to the City's interests." City of Philadelphia v. FOP Lodge 5, 916 A.2d 1210, 1216 (Pa. Cmwlth. 2007). In an appeal, "the trial court [must] address whether the Panel accorded substantial weight to the Plan and whether the Panel's determination as to the City's ability to pay for the . . . Award is supported by substantial evidence in the record brought before the Panel." Id.

The Panel notes that the level of deference required by the PICA Act does not require an Act 111 arbitration panel to blindly accept the City's Five Year Plan in devising an Award. City of Philadelphia v. International Association of Fire Fighters, Local 22, No. 1906 C.D. 2006 (Pa. Cmwlth. Ct. August 24, 2007) ("The deference required [under the PICA Act] does not equate to acceptance of the Plan."). Rather, the Panel's conclusions regarding the City's ability to pay must be upheld so long as they are "supported by substantial evidence as produced by the parties to the proceedings before the board of arbitration." 53 P.S. §12720.209(k)(3)(ii)(B).

It is also the Panel's understanding that an award is not void or voidable should it fail to comply with the PICA Act. Instead, the PICA Act states that, in the same manner that the City prepares the Five Year Plan that is submitted to and approved by PICA, "the assisted city shall submit to the authority a proposed revision to the plan which demonstrates that revenues sufficient to pay the costs of the award will be available in the affected fiscal years of the plan." 53 P.S. § 12720.290(k)(3)(iii).

Based on the above review of the PICA Act, it is the Panel's responsibility to issue a Final Award. The 2010 Award has been vacated pursuant to the Section 209(k)(ii) process outlined above, and remanded to the Panel for this specific purpose. In this regard, the Panel maintains that the 2010 Award met (and still meets) the standards set forth at Section 209(k)(i) of the PICA Act. This is firmly established by the record evidence developed in both our initial and remand hearings.

During the course of this remand proceeding both the City and the IAFF raised arguments regarding the City's financial condition and ability to pay for an award in light of the Five Year Financial Plan. In issuing this Final Award, the Panel has carefully reviewed and considered the entirety of the record, including but not limited to witness testimony, expert testimony, documentary exhibits, and 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. The Panel has also specified in this Final Award the factors that we have taken into account in considering and giving substantial weight to both the City's financial ability to pay for this Final Award as well as to the Five Year Financial Plan.

It is the position of this Panel that the record evidence developed by both parties, and the comprehensive list of factors taken into account by the Panel contained in this Remand Award, satisfies Section 209(k)(i)'s requirements. Further, based upon all of the above, the Panel specifically finds that the City of Philadelphia has the means to fully satisfy the cost of wage and fringe benefit increases in the Final Award without adversely affecting levels of service. This finding is, in our view, fully supported by the evidence in the record before us.

IV. SPECIFICATION OF FACTORS CONSIDERED BY THE PANEL – 2010 AWARD

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 carefully considered the evidence and the contentions of the parties in the 2010 interest arbitration proceeding. The entire record in the 2010 proceeding was introduced in this remand proceeding and has been given due consideration by the Panel. Additionally, the Panel restates certain findings contained in the 2010 Award, which are also considerations in rendering this Final Award:

A. City's Financial Condition

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.

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. 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.

7. 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.

8. 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.

9. 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.

10. 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.

11. 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 2010 FY09-FY13 Plan.

12. 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 $534 million police department budget by $4 million in FY10;

    12 Reducing the $189 million 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.

13. 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.

14. The FY10-FY14 Plan assumes no wage or benefit increases for Local 22

for the length of the Plan.[2] To the contrary, the FY10-FY14 Plan assumes $2.7 million annually in cost savings from work rule changes (furloughs) from this bargaining unit.

15. 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.

16. On December 18, 2009, the FOP interest arbitration panel issued an award covering the period from July 1, 2009 through June 30, 2014 ("2009 Police Award").

17. The 2009 Police 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.[3]

18. The 2009 Police 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.[4]

19. The 2009 Police Award also contained wage increases in FY11 and FY12, as well as an additional increase in stress pay in FY11 from 4% to 5% of salary.[5]

20. The City did not appeal the 2009 Police Award.[6]

21. 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.

22. Following passage of the budget by City Council, the Mayor submitted a revised FY11-FY15 Plan to PICA in July 2010.

23. The budget passed by City Council for FY11 and the revised FY11-FY15

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[2] Significantly, no wage increases for Police were assumed either.
[3] Our 2010 Award replicated these terms.
[4] Our 2010 Award replicated these terms.
[5] Our 2010 Award did not award this additional stress pay compensation to firefighters.
[6] In our deliberations on the 2010 Award, the Panel gave significant weight to the City's decision not to appeal the 2009 Police Award, on which the 2010 Award was modeled. The City did not challenge the 2009 Police Award's compliance with the PICA Act, notwithstanding the Police Award's deviation from the City's Five Year Plan.

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.

24. 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. The National Bureau of Economic Research, which is the official arbiter of the start and end of recessions, confirmed that the 2008-09 recession ended in June 2009.

3. 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.

4. 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.

5. 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.

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

7. 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.

8. 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.

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

C. Benefits

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. 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.

4. 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.

5. 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.

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

7. The City estimates that a 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.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. Under the 2009 Police 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.[7]

D. **Other Findings**

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.

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[7] This concession was also included in our 2010 Award.

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 Police 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 lay off 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. 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. While the Panel believes that the promotion criteria reflected in the test scores is not properly balanced, the City's right to select qualified candidates negates any impact by the proposed test scoring weighing.

11. The Panel has decided not to include the provision on promotional exams in the Final Award. Local 22 raised several issues relating to the promotion of officers. Those issues led to the inclusion of promotional factors to be given consideration when determining promotions. The City has taken the position that the inclusion of that provision exceeds the panels authority under Act 111. While the Panel does not agree with the City's position, the Panel is also concerned that the issue not become a reason for further appeal and delay the implementation of this Award and

is not included herein. The Panel urges the City to review its promotional criteria to make them more appropriate. This determination does not preclude this issue being during future negotiations.

V. SPECIFICATION OF FACTORS CONSIDERED BY THE PANEL – ON REMAND

Based on a consideration of the record as a whole before the Panel in the remand proceeding, we further set forth the following specific factors which we have considered and taken into account, while giving substantial weight to the City's Five Year Plans (approved and proposed), in concluding that the City of Philadelphia has the means to satisfy the cost of wage and fringe benefit increases in the Final Award without adversely affecting levels of service.

A. OVERVIEW OF NATIONAL, REGIONAL AND LOCAL ECONOMY

1. There has been substantial positive growth in the national, state, and local economies since the 2010 Award was issued in October of 2010.

    a. The Dow Jones Industrial Average is 25% higher than when the City presented its economic case in the Police Arbitration in July 2009, and 17% greater than when the City presented its economic case in the 2010 Fire Arbitration.

    b. The U.S. Gross Domestic Product is substantially greater now than when the City presented its economic case in the Police Arbitration, and when this Panel issued the 2010 Award.

    c. Consumer confidence has substantially improved since the City's economic presentation in the Police Arbitration, and the issuance of the 2010 Award.

2. The current U.S. Gross Domestic Product level is the highest in the history of the United States. GDP has risen by 17% since the issuance of the 2010 Award.

3. Forecasting entities project consistent economic growth and unemployment decline through 2015.

    a. The Philadelphia Federal Reserve Bank projects continued economic growth in real GDP of 2.7%, 3%, and 3.1% in 2013, 2014 and 2015 respectively.

b. The Philadelphia Federal Reserve Bank also projects a substantial decrease in national unemployment, from 8.3% in 2012 to 6.7% in 2015.

c. The Congressional Budget Office projects even greater economic growth.

d. Average annual real GDP growth over the last decade was 1.7%. From 1990 through 2011, average real GDP growth was 2.4%. From 1980 through 2011, average real GDP growth was 2.6%.

e. In the wake of the economic downturn, national economic growth rates have returned to levels at or above the average growth rates from 1990 to the present.

4. The United States has experienced positive real GDP growth every quarter since the third quarter of 2009.

5. National unemployment rates are steadily decreasing, and they have decreased since the date of the 2010 Award.

a. Overall employment in March 2011 exceeded that in March 2010 by 1.2%.

b. Overall employment in March 2012 exceeded that in March 2011 by 1.5%.

c. The Federal Reserve Bank forecasts that the U.S. unemployment rate should decrease to as low at 6.7% by 2014.

6. Both Pennsylvania and Philadelphia unemployment rates are steadily decreasing, at a trend that is very similar to the United States.

a. During the remand hearings, Pennsylvania's seasonally-adjusted unemployment rate decreased from January to March 2012.

b. Pennsylvania's current unemployment rate of 7.5% is lower than that experienced in several previous recessions since 1975.

c. Pennsylvania's seasonally and non-seasonally adjusted unemployment rates in March 2012 were the lowest PA unemployment rates in over three years, since early 2009.

d. Pennsylvania long-term unemployment has decreased by more than 18% since January 2010.

7. Philadelphia's local unemployment rate is substantially similar to that of other large metropolitan cities within 150 miles of Philadelphia.

8. While Philadelphia and other large metropolitan cities generally have higher unemployment rates than the U.S. and Pennsylvania, Philadelphia's local rate is highly correlated to the trend of national and state unemployment rates.

9. An examination of local unemployment rates from 1990 through February 2012 establishes that Philadelphia's unemployment rate recovery following recessions closely follows that of Pennsylvania. Philadelphia's current unemployment rate has been as high or higher, with subsequent recovery following state trend, in other recessions since 1980.

10. As U.S. and Pennsylvania unemployment rates are projected to continue to improve, Philadelphia's unemployment rate recovery will likewise improve.

11. During the remand hearings, Philadelphia's seasonally adjusted unemployment rate declined from 11.2% to 10.7%, and its non-seasonally adjusted unemployment rate dropped from 11.2% to 10.3%.

12. Philadelphia unemployment rates are in decline, following the pattern of decline in the United States and Pennsylvania. This gradual decline in Philadelphia unemployment will continue during the term of the Award.

13. The macro economy is rebounding, both in terms of GDP growth and job growth, which strengthens the City's tax base and results in increased revenue to the City.

14. The City of Philadelphia continues to be a vibrant and dynamic economic environment, which continues to grow in terms of both economic development and population:

    a. Philadelphia is a top-rated cultural and social environment;

    b. A major new museum (the Barnes Museum) is opening in May 2012;

    c. New hotel and commercial developments are planned;

    d. Major educational institutions (such as Penn, Temple and Drexel Universities) continue to expand;

    e. Strong universities, vibrant health care sector, public transportation, cultural activities and professional sports teams contribute to a dynamic local economy.

15. Philadelphia reversed decades of population loss by increasing its population between 2000 and 2010, as the City becomes increasingly attractive to a younger and better-educated sector of the population.

B. THE CITY OF PHILADELPHIA'S FINANCIAL OUTLOOK

16. The City of Philadelphia utilizes a structural model to generate its tax revenue forecasts.

17. Structural models are principally used for policy modeling, and they do not forecast revenue accurately or reliably. Structural models such as the City's are limited by policy assumptions and predictions, as well as the unavailability of data.

18. As part of this remand proceeding, IAFF Local 22 undertook a retrospective, quantitative evaluation of the historic performance of the City's forecasting model using three economic methods of analysis: (1) a long-term time series model; (2) a 12-month moving average model; and (3) a month-over-same-month-year-ago model.

19. Each of these forecasting models utilized by the IAFF is well-suited to forecasting City revenue, and is independent of policy assumptions and predictions.

20. Using audited City tax revenue data dating back to 1969, IAFF Local 22 economic experts[8] constructed a long-term time series model of City tax revenue. The IAFF's long-term time series model relies on observed, objective tax revenue data, rather than the policy assumptions and predictions that underlie the City's structural model.

21. The City has conceded the accuracy and appropriateness of the IAFF's time series model to predict revenue.

22. Application of the long-term time series model to the City by IAFF's economic experts reveals the systematic under-prediction of City tax revenues in various PICA- approved 5-Year Plans. With the exception of the recessionary period of 2009-10, the City's revenue forecasts and

[8] Dr. Michael Bognanno is a labor economist, Temple University Associate Professor, and Chairman of the Temple University Department of Economics. Dr. Andrew Buck is an econometrician, Temple University Professor, and former Chairman of the Temple University Department of Economics.

resultant 5 Year Plans have underestimated revenue in each year since 1992.

23. Using monthly tax revenue data reported by the City, IAFF economic experts also constructed two monthly forecasting models: (1) a 12-month moving average model; and (2) a month-over-same-month-year ago model. The two monthly models are useful in gauging the current strength of Philadelphia's economy, and in forecasting performance over the next two years.

24. Each of forecasting models used by IAFF's economic experts show that the City consistently under-predicts both the level of tax revenue and the annual growth rate, resulting in the underestimation of annual revenue in its Five Year Plans.

25. The City's overall tax revenue growth since 1969 has been steady. The long-term expected growth rate of City tax revenue receipts for the period from 1969 to 2011 is 2.88%. The same growth rate from 1993 to 2012 is 3.21%. And the same growth rate from 2009 and 2011 has been a robust 4.48%.

26. Notwithstanding this experience, the City administration utilizes a substantially lesser (1.7%) growth rate in tax revenue forecasts in its 5-Year Plans. This figure is substantially lower than the average growth rate assumed by previous City administrations (2.67%), actual historical average growth rates (4.5% from 2009 to 2011; 3.21% from 1993 to 2012; 2.88% from 1969 to 2011), and projected annual growth rates derived from the IAFF economic expert's two monthly forecasting methods (6.64% for FY2013, using the 12-month moving average model; 6.3% for FY2013, using the month-over-same-month-year-ago model).

27. The City's Proposed 2013-2017 5-Year Plan ("Proposed Plan") has not yet been approved by PICA. Nevertheless, the discrepancy between the City's assumed growth rate and actual and projected growth rates suggests that the City will receive substantially more tax revenue than its Proposed Plan projects.

28. The City's confidence in its overall economic position is evidenced by its plans to implement voluntary and significant tax reductions, which will negatively affect tax revenues.

   a. A 1% sales tax that took effect in FY2010 is scheduled to expire in FY2015. The City has stated that it does not intend to seek an extension of the 1% sales tax beyond FY2015.

b. The City's Finance Director testified that not extending the 1% sales tax will cost the City $130 million per year in tax revenue for the period FY15-17.

c. The City intends to voluntarily reduce both the Business Receipts Tax ("BRT").

d. The City also intends to voluntarily reduce its wage tax rate, effective during FY14.

e. The City's Finance Director testified that reduction of the BRT and wage tax rates will cost the City an additional $160 million in tax revenue over the course of the Proposed Plan.

29. Over the course of the Proposed 5-Year Plan, the IAFF economic experts forecast that the City will experience significant additional tax revenue beyond that projected by the City, in the following amounts: (1) $1.198 billion in additional revenue if the City extends the 1% sales tax; (2) $723 million in additional revenue if the City lets the1% sales tax expire; or (3) $563 million in additional revenues if the City lets the 1% sales tax expire and implements its planned BRT and wage tax cuts.

30. The significant additional tax revenues forecast by the IAFF experts stem from the City's historic under-estimation of level of revenues and use of an unusually low revenue growth rate.

31. Even considering its voluntary reduction in tax receipts over the course of the Proposed Plan, the City itself projects significant fund balances in the aggregate amount of $197 million over the course of the 5 Year Plan.

32. The revenues and fund balances identified by the City are sufficient to fund the Final Award. Further, the significant additional revenues forecast by the IAFF economic experts are sufficient to fund a more generous award that would provide full economic parity between uniformed Police and Fire employees.

33. In addition to underestimating revenues, the City has and continues to divert substantial financial resources to discretionary spending initiatives. New discretionary spending consumes resources otherwise available for essential City services such as Fire Department services.

34. The City's confidence in its overall economic position is evidenced by new discretionary spending initiatives, including almost $300 million for street improvements, city-wide technology improvements, recreation facility improvements, various riverfront, park, and municipal facility improvements, and the redesign of Love Park. This spending includes:

a. Payment of the Philadelphia Museum of Art's utility bills and provisions of property and services without compensation, at a cost of $5.4 million per year, notwithstanding the Museum's $360 million endowment;

b. Payment of the utility bills of a private restaurant located at the Fairmount Water Works;

c. A $5 million fee to study the relocation of the Police Department's administrative office;

d. $20 million to redesign Love Park;

e. Direct subsidy of Philadelphia Eagles for-profit operations in the annual amount of $7.8 million.

35. Annual debt service obligations arising from the City's discretionary spending have grown substantially over the past decade, and now consume a significant portion of the City's General Fund budget.

36. The City's confidence in its overall economic position is evidenced by a variety of impending tax cuts, and its assessment contained FY2013-17 Five Year Plan that the City's finances "have begun to stabilize, tax receipts are beginning to grow moderately again, unemployment is slowly coming down, and businesses – small and large – are investing and creating jobs in Philadelphia."

37. In addition to its current healthier economic position, the City has recently realized a new opportunity to secure additional revenues from nonprofit entities, as a result of a recent change in Pennsylvania law.

a. The City lost significant annual the revenue formerly generated by its voluntary Payment in Lieu of Taxes (PILOT) program, after state law relaxed the definition of tax-exempt entities in 1997.

b. In April 2012, legal developments restored the former and more conservative definition under which the City previously secured significant PILOT payments from its non-profits.

c. The City may now resume collection of millions of dollars per year in renewed or new PILOT agreements, or otherwise pursue the taxation of a sizeable number of nonprofit entities, pursuant to the change in law.

d. If PILOT payments were made equal to merely 50% of the real estate taxes currently exempted, the City could secure more than $50 million per year in continuing revenue.

C. PHILADELPHIA FIRE DEPARTMENT REDUCTIONS, RISKS AND SAVINGS

38. The demand for core public safety services within Philadelphia continues to grow, due to both the City's population, density and other unique spatial characteristics of Philadelphia (old buildings, contiguous buildings, narrow streets, and similar issues).

39. While the demand for Fire Department services continues to grow, the Department's ability to meet the demand has been diminished. For example, the Department was able to respond to only 68% of EMS runs within the industry standard of nine minutes in FY11, and since FY08 there has been an average 25 second increase in average response time to structural fires.

40. The total number of fire deaths increased by 24% from FY08 to FY11. During this same period the City closed seven (7) fire companies in 2009 and instituted station "brownouts" in 2010, which results in neighborhood fire companies being periodically placed out of service.

41. The City's decision to permanently close seven fire companies has provided at least $10.5 million in Fire Department savings each year, or over $50 million in cost savings over the course of the Five year Plan.

42. The City's decision to implement rolling brownouts has provided at least $3.8 million in Fire Department savings each year, or almost $20 million in additional cost savings over the course of the Five Year Plan.

43. There is no dispute that since 2008 the Fire Department has sustained cutbacks to service levels that impose more work and greater risks for bargaining unit members, while providing significant financial savings by the City.

44. Recommendations based on safety considerations have been made to the City that it cease the practice of brown-outs, and maintain the Chief's Aide position in the Local 22 bargaining unit.

    a. Both a PICA consultant and a Fire Department Staffing and Operations Task Force have recommended that the City cease the practice of brown-outs immediately. Brown-outs have not been discontinued to date.

b. While a PICA consultant recommended elimination of Chief's Aide positions, the Fire Department's Staffing and Operations Task Force recommended that the Fire Department maintain Chief's Aides as a critical safety position, necessary for safe and effective fire ground planning and communications.

c. The Panel takes note that two firefighters were killed in service during the term of this remand proceeding, evidencing yet again the extreme dangers of the fire ground environment. Other large City fire departments have maintained or restored (Washington, DC) Chief's Aides, frequently following line of duty deaths, in order to maintain fire ground safety.

d. The Fire Department's Staffing and Operations Task Force recommended that the Fire Department maintain Chief's Aides as a critical safety position, necessary for safe and effective fire ground planning and communications. The Panel urges that the Task Force's recommendation on Chief's Aides be followed. While the record contains compelling testimony as to the impact of having Chief's Aides on the safety of those engaged in firefighting, the Panel can only reserve each parties' position on the question of the retention of chief's aides in further litigation.

D. <u>FIREFIGHTER SALARY AND PARITY WITH POLICE</u>

45. Bargaining unit members have not received a salary increase since January 2009. Since that time, the national CPI-W has increased by 9.08% and the same measure in Philadelphia has increased by 8.4%.

46. The cost to bargaining unit members of the delay in receiving the 2010 Award's wage increases is not less than $279 per employee, through July 1, 2012.

47. On an hourly basis, bargaining unit members are paid 5% less per year than comparably situated members of the Philadelphia Police Department. This disparity is caused by the fact that Police Department members receive "stress pay" valued at 5% of gross salary, while Local 22 members, who work two hours more per week, do not.

48. In the most recent FOP Lodge 5 Award, "stress pay" to members of the Philadelphia Police Department was increased by 25%, from 4% to 5%, which increased the salary disparity between Police and Fire by an additional 1%.

49. In addition to the lower annual salaries of bargaining unit members, the Fire Department is significantly less expensive to the City than the Police Department due to its smaller size.

50. The City's Police Department is more than three times larger than the City's Fire Department. While the Police Department consumes approximately 40% of the City's budget, the Fire Department represents a mere 13% of the budget.

51. Consequently, any pay increase provided or awarded to Police Officers is multiplicatively more expensive than an equivalent pay increase to Firefighters.

52. By virtue of the significantly larger size of the Police Department, the most recent 2009 Police Award – which the City did not appeal -- cost the City more than three times the amount of the 2010 Award issued by this Panel.

53. The 2009 Police Award contained an additional 1% increase to stress pay beyond the scheduled annual salary increases. The approximate cost of the 1% increase in police stress pay was $24.9 million over five years.

54. The 2010 Award and this Final Award do not provide a matching 1% improvement for the Firefighters. The approximate total savings to the City of not awarding a matching 1% increase to the Firefighters is $8.6 million over five years.

55. The approximate total savings to the City of not awarding 5% stress pay to the Firefighters is $42.8 million over five years.

56. The 2009 Police Award contained a relaxation of the residency requirement for Police Officers that will permit police officers to relocate outside the City limits, resulting in the loss of tax receipts by the City of Philadelphia.

57. The 2009 Police Award was more than three times more costly than the 2010 Award of the firefighters, and it was issued at a time when the City reported a negative fund balance of $137 million.

58. The Panel is cognizant of the fact that the City did not appeal the Police Award, and accorded great weight to that fact during its deliberations leading to both the 2010 Award and this Final Award. The City's acceptance of a much more costly Police Award evidences the conclusion that a less costly Fire Award comfortably falls within the City's financial means.

59. While the Panel acknowledges that the City is free to elect whether to challenge or comply with an Act 111 award, and the Panel does not advocate the legal challenge to any Act 111 award, the Panel has considered and given significant weight to the City's failure to challenge the significantly more expensive Police Award in reaching our determination that this Final Award is affordable.

60. The approximate cost of the annual salary increases to the Firefighters in the 2010 Award is $60.6 million. The City's Finance Director indicated that the total "raises and other benefit changes" contained in the 2010 Award would cost the City $66 million.

61. Any new costs contained in this Final Award must be considered in light of the City's annual overall budget of approximately $4 billion per year, or $20 billion over the period of the Proposed 5-Year Plan. Such costs are a fraction of the City's overall budget.

62. The City's cost analysis of the 2010 Award includes savings attributable to gaining the right to furlough firefighters. Similarly, while the City contends that it will realize significant savings from the right to furlough in the 2009 Police Award, no Police Officers have been furloughed since the issuance of the FOP Award. The City admits that it has not utilized the Police furlough provision, despite what it characterized as difficult economic times.

63. The City presented no evidence during the remand proceedings regarding the need or feasibility of furloughs for up to thirty days in the Fire Department.

64. The City repeatedly admitted during the 2010 and Remand proceedings that it had no specific plan for implementing Fire Department furloughs safely and effectively, should that authority be awarded. This was especially troubling to the Panel, in view of the fact that furloughs create operational disorder within the Fire Department and substantial harm to employees.

65. The Panel also was troubled that the City proposed to implement Fire Department furloughs at a time when it was engaging in expanded and unrestrained fire company brownouts, that the City admits provide savings of approximately $4 million per year.

66. Given the Fire Department's current staffing levels and service demands, the use of furloughs in the Fire Department will not provide savings. Instead, furloughs in the Fire Department would cause an increase in personnel costs, in the form of overtime costs at time and a half to fill the assignments of furloughed employees. The additional hiring contemplated

by the City will not eliminate the need for overtime, or result in savings through furloughs.

67. Further, full implementation of the City's furlough proposal (up to thirty days annually) would reduce bargaining member compensation by 8.3% of their annual salary, which would further widen the unfortunate parity gap in hourly compensation between Police and Fire.

68. The City's costing of the 2010 Award is questionable. In its direct presentation, the City represented the cost of the 2010 Award at $220.5 over 8 years (FY10-FY17), although the 2010 Award only covers a four year period from July 1, 2009 through June 30, 2013. Additionally, its cost analysis valued savings from furloughs at $2.7 million per year, which the City cannot achieve in the Fire Department.

69. In its rebuttal presentation the City stated that the cumulative cost of the 2010 Award was only $53.5 million.

70. Due to constant and high overtime demand in the Fire Department, furlough savings cannot be achieved in the Local 22 bargaining unit without hiring far more employees than the City plans to hire. Furlough savings were never achieved pursuant to the 2009 Police Award, and they will not be achieved in the Fire Department.

E. HEALTH CARE BENEFITS

71. Health benefits are provided to active and certain retired firefighters through the Local 22 Health and Welfare Fund, on which both the City and Union are entitled to seat representatives. Unlike most major cities, Philadelphia does not provide full retiree health care coverage to retired firefighters and police for the duration of their lives.

72. The Health & Welfare Fund is actively managed. Administrative costs have remained level despite increasing regulatory and administrative demands imposed by new federal laws and regulations.

73. The Health & Welfare Fund offers both a PPO product and an HMO for its participants. Annual renewal rates are aggressively negotiated by the Fund's actuarial consultants, counsel and administrator.

74. The Panel believes that modest changes in the existing benefit plans are appropriate to bring Local 22's health benefit plans more into line with those offered by the City to its Police Officers in the 2009 Police Award.

75. The Panel notes 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 environmental and occupational exposures related to the nature of their work have led to

increased illness and disease burdens for Local 22 members, which fact has been recognized by prior Act 111 panels and not challenged by the City.

76. The Panel recognizes the successful management of the Health & Welfare Fund, which factual finding was included in the unanimous award of the parties in 2008. The Panel recommends that the City and the Firefighters continue to actively manage their health plan and control health plan costs. The Panel also urges the City to take a more active role in enhancing occupational safety and health.

77. As of August 31, 2009, the end of its plan year, the Joint Trust had reserves of approximately $28 million. Based on the 2008-2009 Award, which reduced the City's contribution to $1,270 per member per month, these reserves were reduced to approximately $24 million, against an average monthly expenditure of $4.2 million and average annual expenditures of over $50 million.

78. Due to the City's appeal of the 2010 Award, the City's monthly contribution has remained frozen at $1,270 per member since July 2008, notwithstanding annual increases in the cost of health care.

79. During the period of the City's appeal to the present, the Fund has depleted its reserves by approximately 50%, or $13.7 million.

80. In the 2010 Award, the Panel provided significant relief to the City by granting the City's proposals to mandate the implementation of a self-insurance program, and to increase user co-payments made by bargaining unit members. Such benefit concessions were also contained in the 2009 Police Award.

81. The 2010 Award provided the City with additional financial relief by requiring the Fund to cover the first $5 million in self-insurance claims as part of a transition to a self-insurance program that the City, not the Union, demanded. A similar but substantially smaller requirement was contained in the 2009 Police Award.

82. The 2010 Award's $5 million "spend down" requirement was 50% larger than a pro-rata amount ($3.3 million) measured against the similar requirement in the 2009 Police Award.

83. By virtue of its appeal, the City has delayed implementation of the benefit changes and self-insurance requirement contained in the 2010 Award, thereby failing to realize millions of dollars in savings related to the self-insurance mandate and the diminished benefit levels required in the 2010 Award.

84. The 2010 Award reflected the Panel's determination that it would be

appropriate for the Fund to adopt a self-insured approach for the provision of medical benefits. This cost saving change was not implemented due to the City's appeal of the 2010 Award. As noted above, the Fund's financial status has changed significantly as a result of the City's appeal.

85. The per member per month contribution has not changed since July, 2008, while the cost of providing such benefits has increased. In order to achieve the intended financial arrangement set forth in the original Award, the Fund must now receive contributions reflecting the actual cost of providing coverage during the period of the City's appeal as well as during any implementation period that will be required to implement this current Award.

86. Both the City and the Union had their respective consultants quantify the cost of providing benefits during the appeal period, as well as during the implementation period. The IAFF projections were consistently lower than the City projections. These rates are adopted in the Final Award.

F. PICA FINDINGS

87. The Panel has fully considered the health benefit, salary and other economic provisions of this Final Award in the context of the City's approved and proposed 5 Year Plans.

88. The Panel has accorded weight to the City's approved and proposed 5 Year Plans, as well as the City's financial ability to pay the cost of the increase in wages and fringe benefits as set forth herein without adversely affecting levels of service.

89. The Panel has fully considered the record as a whole, as compiled in both 2010 and on remand, in rendering the specific considerations enumerated above.

90. Based on the record as a whole before us, and the specific considerations set forth above, the Panel concludes that the City has the financial resources to provide the reasonable wages and benefits set forth in this Final Award without adversely affecting the level of City services.

91. The following Final Award is rendered in full compliance with the PICA Act, and within our authority pursuant to Act 111.

VI. 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**[9]

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

A. Monthly Contributory Requirement

1. For the period July 1, 2009 through June 30, 2010, the City's monthly contributory requirement to the Fund shall be $1,443.37 per member per month.

2. For the period July 1, 2010 through June 30, 2011, the City's monthly contributory requirement to the Fund shall be $1,475.23 per member per month.

3. For the period July 1, 2011 through June 30, 2012, the City's monthly contributory requirement to the Fund shall be $1,521.55 per member per month.

4. For the period July 1, 2012 through September 30, 2012, the City's monthly contributory requirement to the Fund shall be $1,679.00 per member per month.

5. For the period October 1, 2012 through June 30, 2013, the City's monthly contributory requirement to the Fund shall be reduced by 3.5%, to

[9] The Panel notes, in response to the City's objection, that we have declined to reissue the 2010 Award provision providing continued jurisdiction over Health & Welfare disputes by this Panel.

$1,619.64 per member per month.

B. **Prescription and Medical Benefits**

Effective October 1, 2012, the benefits provided by the Fund shall include prescription drug copayments and doctors' visits copayments in the following amounts. Prescription drug retail co-payments will be as follows: Generic - $5.00; Formulary Brand - $10.00; Non-Formulary Brand - $15.00. Prescription drug mail order co-payments will be as follows: Generic - $10.00; Formulary Brand - $20.00; Non-Formulary Brand - $30.00. Doctor visit co-payments will be $15.00. Specialist visit co-payments will be $25.00.

C. **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.

D. **Self-Insurance**

1. Upon written notice to be provided not later than July 30, 2012, the City may exercise a one-time election to require the Fund to provide medical and prescription benefits through a self-insured program in accordance with the provisions of this Award. The program shall continue until modified by a subsequent award or written agreement of the parties.

2. Before implementation of the self-insured program described in this section, the City must pay the Fund all retroactive contributions set forth at Section 3.A.1-5 above. The Fund may not implement a self-insurance program absent the City's payment of all retroactive contributions.

3. Effective the first month that the Fund has implemented the self-insured arrangement described in this section, 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.D.7 below.

4. 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.

5. 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.

6. 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.

7. 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.

8. Commencing with the first billing for medical, drug, dental and vision benefits received after January 1, 2013 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.

9. 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.

10. Prior to January 1, 2013 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.

11. Within thirty (30) days before January 1, 2013 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, 2013 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.

12. 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.

E. **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 January 1, 2013 and each June 1 (starting June 2013) 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.

4. **Retiree Trust Fund**

A. Within 30 days of execution of this Award, the City shall make a lump sum payment of five million dollars ($5.0 million) to the Retiree Joint Trust Fund.

B. On or before July 30, 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.

C. 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.** The Panel notes that the Paragraph 5 (Pensions) of the 2010 Award was not vacated and remains in effect.

6. **Vacations – New Hires.** The Panel notes that Paragraph 6 (Vacations – New Hires) of the 2010 Award was not vacated and remains in effect.

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 Panel recognizes that there was extensive testimony on the issue of chief's aides. The Panel's decision not to make an award on this issue is without prejudice to either party's position in any litigation related to the City's right to abolish or limit the use of chief's aides.

10. **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.

11. **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 negative impact of furloughs on the safety and health of bargaining unit members. While the Panel believes that Local 22's parity positions are substantial and must be redressed, the City's present post-recession financial position constrains us from doing so in this Final Award. 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 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 both the 2010 Award and this Final Award address the City's financial concerns in other ways. The Final Award provides a 1-year salary freeze, anticipated savings generated by granting the City's proposal to require the Health Plan to provide benefits through a self-insured plan, and a reduced pension benefit for new bargaining unit members. Given these major adjustments, an additional award of furloughs is unwarranted, as well as not necessary given other options presently available to the City.

12. **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.

13. **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.

14. **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.

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

16. **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 full force and effect. All other proposals and requests 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.

7-2-12

Michael E. Zobrak
Chairman and Impartial Arbitrator

Date

✓

6/26/12

Stuart W. Davidson
Arbitrator for IAFF Local 22

Concur

Dissent

Date

✓ in part (to 2(a), 5 and 6)

✓ in part (to all remaining paragraphs)

6/29/12

Kenneth M. Jarin
Arbitrator for City of Philadelphia

Concur

Dissent

Date

See attached dissenting opinion.

American Arbitration Association
Case Number 14 L 360 0532 09

DISSENTING OPINION OF CITY-APPOINTED ARBITRATOR

This week, I received in the mail from the neutral arbitrator his proposed 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") for which I have served as the City's arbitrator. It was like déjà vu all over again. I am profoundly dismayed that after three years of proceedings involving more than 20 days of hearing, dozens of witnesses and thousands of pages of documentary evidence, the neutral arbitrator, now joined by the Union-appointed arbitrator, has utterly and completely abdicated his statutory responsibility to issue a fair award that complies with the dictates of the Pennsylvania Intergovernmental Cooperation Authority Act for Cities of the First Class, 53 P.S. §§ 12720.101 et seq. ("PICA Act"), which even the neutral arbitrator admits govern these proceedings. Instead, these two arbitrators have issued an award that completely disregards the record, imposes more than $200 million in unbudgeted costs which would cause the City of Philadelphia to suffer an immediate budget deficit this year and in every one of the next four fiscal years.

In a time when the City's revenues have fallen below their budget projections for four straight years and still have not returned to pre-recession levels, absent the supplemental revenues temporarily produced by multiple years of tax increases, this Award cavalierly finds that the City can pay for the unconscionably high cost of the Award, despite the voluminous record to the contrary. Among its more troubling provisions:

- This Award provides for more than $16 million in retroactive wage payments for covered employees and increases annual salary costs by an additional $17 million in FY13 as well. These increases are not offset by necessary management flexibility to furlough employees as the current FOP award authorizes.

- This Award requires the City to make a retroactive payment of more than $20 million to the union-run health fund for health care costs from 2009 to date, although the fund was capable of and did in fact pay for these benefits with the historic levels of contributions provided by the City, and even though the fund still has a reserve today of nearly $13 million, even after paying for those benefits. These retroactive payments are not necessary for the health fund, unreasonably transfer City tax dollars to the health fund which are not being used to provide benefits during the term of this Award and reward the health fund for not having managed its costs. Had the Union chosen to make reasonable changes in benefits during this time period as the previous award directed– the same changes the FOP made to its plan – and not, instead, actually improved benefits by adding coverage for Lasik surgery, its costs would have been lower. In fact, the Union's own expert estimates savings of nearly $2 million a year from the plan changes that the Union could have and should have made.

- This Award increases the City's payments to the health fund from the pre-Award level of $1270 per employee per month ("PEPM"), which is already hundreds more than the City pays for any other employee group, unionized or non-union, to more than $1,600 PEPM beginning July 1, 2012.[1] This contribution, which is more than $19,000 per employee per year, is nearly two-thirds of the median household income for a family of four in Philadelphia, according to the United States Census Bureau, and it is almost 40% higher than the FOP monthly health care cost.

1 The Award requires the City to pay $1,679 PEPM beginning July 1, 2012, then changes to $1,619.64 PEPM on October 1, 2012, depending on whether the health fund moves to self-insurance with the City paying the cost of benefits and administration.

- The improvements detailed above, without the kinds of savings opportunities found in the FOP award, the deputy sheriff and Register of Wills award, and the correctional officers award, result in unanticipated costs for the budget year beginning on July 1, 2012 of more than $74 million, wiping out completely the razor thin fund balance projected by the City and putting the City in an immediate, untenable, and illegal budget deficit.

Accordingly, with the exception of paragraphs 2(a), 5 and 6, I dissent from the award that the majority of the Panel has stated it will officially issue on July 2, 2012 ("Award"). This dissenting opinion should be appended to and made part of the Award when it is issued.

On October 15, 2010, the same neutral arbitrator and the same Union-appointed arbitrator issued an award that purported to govern the terms and conditions of employment for the City's sworn fire department personnel from July 1, 2009 through June 30, 2013. Because that award disregarded the City's ability to pay for its terms and failed to give any meaningful consideration to its impact on the City's financial condition, in direct contravention of the statutory requirements of the PICA Act, the City appealed.[2] On November 16, 2011, the Court of Common Pleas of Philadelphia County issued an order vacating the challenged portions of the award and remanding it to the Panel to "issue a final award in accordance with the requirements of the [PICA Act]." Thereafter, the Panel held additional hearings, heard the testimony of additional

2 The City's appeal specifically exempted paragraphs 2(a), 5 and 6, as does this dissent. In addition, the City's appeal challenged certain provision as violating the City's managerial rights and exceeding the Panel's jurisdiction.

witnesses on the City's financial condition and the costs associated with the vacated 2010 award ("Vacated Award"), received thousands of pages of additional documentary evidence, received additional post-hearing briefs and conducted additional executive sessions.

Astoundingly, despite the clear requirements of the PICA Act and the extensive evidence of the City's on-going financial challenges and scant available resources, the Panel has chosen to reissue the same terms as the Vacated Award with the addition of (1) more than $20 million in retroactive additional payments to the Union's health fund to compensate for benefits that the health fund has already paid for out of the City's pre-Award contribution level, even though the health fund currently has nearly $13 million in reserve without these additional payments, and (2) an increase of more than 32% to the City's contribution to the health fund effective July 1, 2012 to $1,679 PEPM. The Panel purports to justify this Award with pages of misleading and outright false "findings" that disregard or mischaracterize the evidence before the Panel. The Vacated Award did not comply with the PICA Act and the current Award amplifies those flaws by adding more costs that the City simply cannot afford without making immediate cuts in services and/or personnel.

The PICA Act Requires the Panel to Give Substantial Deference to the City's PICA-Approved Five Year Plan and Ensure that the City is Able to Pay the Cost of the Award Without Adversely Impacting Service Levels.

The Award contains a five page section on the law of the PICA Act and Act 111 that it appears the neutral arbitrator copied directly from the Union's post-hearing brief. Most of that section is a gross distortion of the law, suggesting, as does the rest of the Award, that the PICA Act requires little more than that the Award identify some piece of evidence that the City can afford the award without adversely affecting services, regardless of whether that evidence is credible or has a logical or factual basis.

The law governing the PICA Act has been extensively briefed and I will not repeat that extensive discussion here. I simply remind the Panel that, in fact, the PICA Act requires the Panel to defer to the City's approved Five Year Plan and not to award increases in wages or fringe benefits unless the Panel finds, based on substantial evidence in the record, that the City can afford those increased costs without adversely affecting the level of services the City provides to its 1.5 million residents. The PICA Act also requires that the Panel, in its Award, demonstrate how, based on substantial evidence in the record, it determined that the City is able to pay for its Award without negatively affecting those services. None of this has occurred in this Award.

Instead, the Panel has utterly failed to carry out its responsibilities by disregarding the evidence presented by the City in its entirety and mischaracterizing and distorting the record. The result is an Award that will cause an immediate budget deficit in FY13, despite the Award's blithe assertion that "the Panel specifically finds that the City of Philadelphia has the means to fully satisfy the cost of wage and fringe benefit increases in the Final Award without adversely affecting levels of service." (Award at 8). The Panel's unsupported assertion in the face of the reality described below demonstrates its lack of touch with reality.

The Award Repeats the Economic Errors of the Vacated Award with Added Health Care Costs.

In every budget and Five Year Plan since FY10, the City's Five Year Plans have assumed that the City will achieve net savings from each of its open labor contracts in each year. That is, that any additional wage and benefit costs that are included in the contract will be offset with changes that reduce the City's short-term and long-term costs. The changes that the City has sought and which have been included in other City contracts reached to date include: the right to furlough employees (the 2009 police award); a new pension plan for new hires (the police award, the Vacated Award, the deputy sheriffs and Register of Wills award, the corrections officers award); increased pension contributions by current employees (the corrections officers award); overtime changes (the police award; the corrections officers award); freezes in step and longevity increments (the deputy sheriffs and Register of Wills award; the corrections officers award); reductions in health care costs (the police award; the deputy sheriffs and Register of Wills award).

Unlike the police award, the Vacated Award did not provide savings opportunities to offset its substantial costs.[3] This Award not only continues that

3 The only cost savings provided by the Vacated Award were the pension terms for new hires, which the pension fund's actuary estimated at a total (continued...)

flaw, but incredibly also adds even more costs through additional, retroactive health care contributions and skyrocketing health care contribution rates.

For example, the Vacated Award ordered wage increases of 3% on July 1, 2010, July 1, 2011 and July 1, 2012. This Award continues those terms.

The Vacated Award maintained the City's contribution to the Union-run health fund that provides health benefits to covered employees and their families at $1270 per employee per month ("PEPM")[4] until January 1, 2011, when it directed the health fund to increase the co-pays for doctors' visits and prescription drugs and move from a fully-insured model where the health fund pays a fixed premium to a self-insured model where the heath fund pays the costs of benefits and administration. The Vacated Award made the City responsible for the full cost of the self-insured benefits after the health fund was responsible for the first $5 million of self-insured costs following the transition, regardless of their cost. Over the City's strenuous objection, the Vacated Award refused to make employees or the health fund responsible for any portion of the

(...continued)
cost saving of $382,000 to $1.9 million over five years and $849,000 to $4.3 million over 10 years.

4 This contribution of $1,270 PEPM was far higher than the City's contribution to any other unionized employee group. Before the FOP health fund moved to a self-insurance model on July 1, 2010, the City was contributing $1,165 PEPM, which dropped to $965 PEPM for six months in 2010 to reduce the health fund's reserves. Since the FOP health plan moved to self-insurance in 2010, the City's costs have been approximately $1,150 per month. The City has been contributing $975.76 PEPM to the District Council 33 and District Council 47 health funds since 2007.

cost, no matter how much they increased above what the parties' projected. The Vacated Award also refused to direct the employees to pay a portion of the monthly cost of their benefits, despite the unrebutted evidence that the vast majority of employees nationwide are required to contribute to the cost of their health benefits, including fire fighters in the vast majority of the comparison departments referenced by the parties.

The Award continues the health care provisions of the Vacated Award, with the following even costlier changes:

- It retroactively increases the City's PEPM contribution to the health fund as follows:
  - $1,443.37 effective July 1, 2009
  - $1,475.23 effective July 1, 2010
  - $1,521.55 effective July 1, 2011
  - $1,679.00 effective July 1, 2012
  - $1,619.64 effective October 1, 2012
- It allows the City to decide to have the health fund move to self-insurance effective October 1, 2012. To do so, the City has to pay all of the contributions listed above and bear all the costs of the benefits and administration of the health fund, regardless of the cost, with no employee contribution, after the health fund pays the first $5 million.[5]

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[5] The Award suggests that the requirement that the City "pay up" before the health fund can move to self-insurance includes requiring the City to contribute $1,619.64 PEPM for October 1, 2012 through June 30, 2013. This, of course, would be the most outrageous form of double-dipping, as the health fund would have all of its costs paid by the City through self-insurance and it would receive an additional $38.5 million from the City on
(continued...)

The cost impact of this change is an immediate retroactive payment due of more than $20 million and an immediate increase of more than 32% in the City's contribution. Moving forward, it provides the City with a Hobbesian choice for October 1st:

- have the health fund move to self-insurance, which results in savings of about $1 million in FY13, but uncontrolled costs in the remaining years, which the City projects will add $80 million in costs,[6] even if the health fund's costs only increase at the level of trend, or
- increase its contribution to the health fund by more than 27%, at an added cost of $8 million in FY13 alone, and a total added cost of $76.4 million through FY17.

The costs of these and the other economic provisions of the Award far exceed what the City can afford, and what any of the other interest arbitration awards have required.

The Award Will Cost the City In Excess of $200 Million More Than it Budgeted in the Five Year Plan and Cause an Immediate Budget Deficit.

At the hearing, the City presented evidence that the Vacated Award would have cost the City more than $200 million in wages and benefits above what the City budgeted for compensation costs for covered employees in the approved FY12-FY16 Five Year Plan and the proposed FY13-FY17 Five Year Plan. Of this, $102.6 million was the cost of the wage increases through FY17,

(...continued)

top of its costs, taking its reserves to more than $60 million of City taxpayer dollars by June 30, 2013.

6 Which does not include the additional $38.5 million in payments that the Award may or may not require the City to pay (see footnote 5).

$82.4 million was the projected additional health care cost under self-insurance[7] through FY17 and $10 million was the cost of payments to the retiree health fund.[8]

The Award continues all of those costs and adds additional health care costs:[9]

Wages	Retiree Trust Fund	Legal Services	Health Care PEPM 7/1/09-9/30/12	Self-Insurance Beginning 10/1/12[10]	Assumed Savings Not Part of Award	**TOTAL**
$102,598,129	$10,000,000	$397,440	$23,747,393	$79,936518	$21,600,000	**$238,279,480**

7 When the parties did their cost projections for the hearing, they assumed that self-insurance would be implemented September 1st, not October 1st as the Award now dictates. As a result, the projected costs under self-insurance have changed to reflect the change in date.

8 In the Award, the majority of the Panel suggests that the Panel need only concern itself with the costs of the Award through FY13. However, the PICA Act does not permit the City to ignore the real economic impact of its decisions, as the majority of the Panel apparently feels it can do by pretending that the cost of a wage increase or increase in heath care costs does not continue into future years. Rather, the PICA Act requires the City to recognize the cost of all wages and benefits for the next five years and provided a Five Year Plan that provides sufficient revenues to pay for those anticipated costs. Accordingly, the PICA Act requires that the Panel find the City can afford the cost of the Award over the entire Five Year Plan, not just the term covered by the Award.

9 All costs shown are the amounts above what was budgeted by the City through FY17 including "roll-up" costs for wage increases. A more detailed analysis of the cost of the Award and its Five Year Plan impact is attached.

10 Does not include the additional $38.5 million in health care contributions for October 1, 2012 through June 30, 2013 that the Award may require.

Significantly, the bulk of these costs come in FY13 through the award of a wage increase, increased health care contribution, and retroactive payments of wages, health care, retiree health fund and legal services payments:[11]

	FY13 including retroactive	FY14	FY15	FY16	FY17
Wages	$33,975,665	$17,155,616	$17,155,616	$17,155,616	$17,155,616
Retiree Trust Fund[12]	$10,000,000	$0	$0	$0	$0
Legal Services	$198,720	$49,680	$49,680	$49,680	$49,680
Health Care PEPM 7/1/09-9/30/12	$23,747,393	$0	$0	$0	$0
Self-Insurance Beginning 10/1/12[13]	-$1,724,452	$11,806,546	$17,185,569	$23,091,732	$29,577,123
Assumed Savings Not Part of Award	$10,800,000	$2,700,000	$2,700,000	$2,700,000	$2,700,000
TOTAL	**$76,997,326**	**$31,711,842**	**$37,090,865**	**$42,997,028**	**$49,482,419**

Given that the City was already projecting fund balances in both the approved FY12-FY16 Plan and the proposed FY13-FY17 Plan that are only a fraction of what experts, including PICA, recommend, the costs of this Award that

11 If the City does not choose the self-insurance option, the added cost of the Award in FY13 is more than $87 million and the total added cost of the Award is more than $211 million.

12 While the Vacated Award was on appeal, the City made a payment of $2.5 million to the Retiree Trust Fund which should be credited against the amounts due, but which the Award doesn't acknowledge.

13 Does not include the additional $38.5 million in health care contributions that may be required for 10/1/12 through 6/30/13.

will be paid from the General Fund will cause immediate and painful deficits under the projections of the FY12-FY16 Plan:[14]

	FY2013	FY2014	FY2015	FY2016	FY2017
Fund Balance per FY2012-2016 FYP	$71,426,000	$65,124,000	$28,598,000	$28,924,000	N/A
Added General Fund Costs From Award Beginning in FY13	$74,379,417	$30,633,639	$35,829,775	$41,535,129	$47,800,017
FYP Fund Balances After Award	**-$2,953,417**	**-$39,889,056**	**-$112,244,832**	**-$153,453,961**	N/A

If the City chooses not to have the health fund self-insure, leading to higher costs in FY13, the FY13 deficit grows to -$12,656,389.

The FY13-FY17 Five Year Plan projects even narrower fund balances in recognition of revenues that have continued to come in below projections, making the impact of the Award on the General Fund even more severe:

14 Costs shown in the next two charts are General Fund only, which is 96.6% of total costs shown on the charts above.

	FY2013	FY2014	FY2015	FY2016	FY2017
Fund Balance per FY2013-2017 FYP	$53,028,000	$33,618,000	$22,371,000	$36,647,000	$51,302,000
Added General Fund Costs From Award Beginning in FY13	$74,379,417	$30,633,639	$35,829,776	$41,535,129	$47,800,017
FYP Fund Balances After Award	**-$21,351,417**	**-$71,395,056**	**-$118,471,832**	**-$145,730,961**	**-$178,875,978**

If the City chooses not to have the health fund self-insure, leading to higher costs in FY13, the FY13 deficit grows to -$31,054,389.

Simply put, the Panel's breezy assertion that "the revenues and fund balances identified by the City are sufficient to fund the Final Award" (Award at 21), is nothing but pure fantasy.

The Effects of the Award on the City Will Be Dire, in Direct Violation of the PICA Act.

The impact on the City of the more than $200 million in new, unbudgeted costs that the Award adds will be dire. Just the added FY13 cost of $77 million or more is more than 40% of the Fire Departments FY13 budget. It is equivalent to the cost of 24 engine and ladder companies. Closing that gap in the Fire Department's budget would be equivalent to the layoff of more than $1,000 sworn Fire Department personnel.[15]

Compounding the Panel's total disregard for both the facts and the law, the record is clear that the City has few options to fund the cost of this Award and no way to make cuts of this magnitude without adversely affecting services. In fact, the record that the Panel so cavalierly disregards clearly demonstrates that the City has already made extensive budget cuts and increased taxes again and again to close gaps caused by revenues that have repeatedly come in below budget over the past several years.[16] These measures include:

- 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;
- raising property taxes;
- deferring pension payments;
- delaying City-funded wage and business tax reductions;
- eliminating over 1,650 full and part-time positions;

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15 The City is contractually prohibited from laying off employees represented by District Council 33 and District Council 47 to fund an Act 111 award.

16 Now that the City's FY13 budget has been passed, the City is legally prohibited from increasing taxes for the remainder of the fiscal year so its only option to pay for this Award would be budget cuts, which necessarily means service reductions.

- not hiring police officers and fire fighters;
- 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;
- making more than $130 million in cuts since FY08, including substantial cuts to City departments and services.

The Award ignores these serious and painful cuts and tax increases, which are real and on-going to residents and businesses that are already among the country's most heavily taxed, and adds costs instead. The City's FY13 budget, passed by City Council yesterday, continues this trend by further increasing taxes, prompting David L. Cohen, former Chief of Staff to Mayor Ed Rendell and now executive vice president at Comcast Corporation, to tell the Philadelphia Inquirer on June 24, 2012,

> I think this was a very tough budget. I really don't want to criticize anyone, but I think it was an antibusiness budget. Philadelphia already has the highest or second-highest tax on businesses in the country. The city runs perilously close to saying they're just not interested in the job growth that businesses can provide.

Cuts to departments are the City's only option to fund the $77 million or more that this Award will cost the City in FY13 alone.

The Panel's Findings That Purport to Identify the Resources to Fund this Award Are Fatally Flawed

The majority of the Panel totally abdicates its responsibility to examine the evidence and make findings based on that evidence. Instead, they issued an Award full of misstatement, mischaracterization and sheer fantasy that does nothing but adopt the Union's assertions hook, line and sinker.

The Panel's disregard of the City's financial condition is all the more troubling when other interest arbitrators, hearing similar evidence of the City's fiscal challenges, have found that evidence compelling and issued awards that reflect the City's financial condition as both the law and common sense require. Most recently, respected arbitrator Richard Kasher chaired an interest arbitration panel under Act 195 that issued an award involving more than 2,000 correctional officers, finding that the City's financial condition "dire."

There is no question that the City's financial condition is not what it was at the heart of the financial crisis in FY09. The City has never claimed as much. There should also be no question, however, based on the extensive evidence in the record, that the City's finances have not recovered. Even with multiple years of tax increases, the City's tax revenues have come in below the budget's projections in every year since FY09 and are projected to come in below budget again in FY12. Although you would not recognize it from reading the distorted account in the Award, the City's FY12-FY16 Plan and proposed FY13-FY17 Plan project steady economic growth. If that growth does not materialize, the City's revenues will be below budget once again.

Among the most blatant problems with the Award's purported "findings" are the following:

- The Award continues to cite to and rely on projected growth in real GDP for 2010 and 2011 in the 3% range as evidence that the national economy is rebounding. (Award at IV.B.3). Although the Panel may not have noticed, GDP in 2010 and 2011 is no longer projected, it is past. Real GDP in 2011 grew by only 1.7%, not the 3% the Award hopes for. Even into 2012, the economy is not growing at the level economists were predicting it would in 2010. Real GDP grew by only 1.9% in the first quarter of 2012 and experts are projecting growth of around 2% for the remainder of the year and into 2013.

- The Award asserts that the City projects growth in its Five Year Plans of 1.7%, even though the City's revenues have historically grown at a faster rate. (Award at V.B.26). Yet, the FY13-FY17 Plan assumes that the wage tax base will grow at rates ranging from 2.2% to 3.4% per year. The City's sales tax projections assume growth rates of 2.29% to 5.5% per year, while the realty transfer tax is projected to grow at rates of up to 9% per year. The growth rates assumed in the FY12-FY16 Plan, while more modest in some cases, were similarly far in excess of 1.7%.

- The Award repeatedly asserts that the City has systematically and consistently underestimated revenues in its Five Year Plans, suggesting that additional funds will be forthcoming, but, as the Union's own evidence demonstrated at the hearing, the Five Year Plans drafted by the Nutter Administration have consistently overestimated revenues and the projection is that FY12's revenues will be $17.8 million under budget.

- The Award finds that the City will have revenues in excess of what it projects by relying solely on the Union's analysis of historic growth rates, accepting unquestioningly the assertions of the Union's experts and ignoring the extensive evidence in the record to the contrary.

- Unlike the City, which has to make a set of revenue projections and then balance a budget based on those projections, the Union's experts propounded multiple models of economic projections based on their analysis of historic growth rates in what they apparently viewed as an interesting academic exercise. As evidence of the fact that the Panel failed to evaluate the evidence before it, but simply regurgitated the statements of the Union's experts without examination in its findings, the Panel does not even make a determination that any of models (which yield significantly different results) are either accurate or reliable for projecting the City's tax revenues.[17]

- As the Union's experts did, the Award ignores the impact of tax increases on historic revenue growth rates. For example, the Award asserts that revenues grew at an average rate of 4.5% from FY09 to FY11. In fact, absent tax increases that were implemented in FY10 and FY11, the City's tax revenues dropped from $2,321.7 million in FY09 to $2,307.6 million in FY10 and remained below FY09 levels in FY11 at $2,314.8 million. Between FY08 and FY11, the City's total tax revenues grew by 6.21%. Without the additional revenues that resulted from tax increases during that period, the City's revenues would have fallen by 3.41% during that period. By ignoring the impact of tax increases on the rates of historic revenue growth, the Union's experts consistently overstated the growth that occurred in the tax revenue base. Yet, the Panel based its conclusions that the City can afford the Award on these inflated revenue assertions.

- The Award's reliance on historic revenue growth rates to conclude that future revenues will exceed the City's projections is also flawed because the evidence was clear that the economy has not recovered following this recession as it did following past recessions. Using historic averages to predict future revenues is a dangerous game with so much at stake for the City, particularly in a period like this one that is not following historic norms and where the economy is not behaving as economists expect.

- The Award concludes that the City can afford the Award because it projects total fund balances of $197 million over an unspecified Five Year Plan. (Award at V.B.31). Yet, the cost of the Award is more than $197 million and the costs in FY13 are far in excess of

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17 The Panel also asserts that the City conceded the accuracy and appropriateness of the Union's time series model to predict revenue (Award at V.B.21), which is a blatant falsehood as the City has made no concessions about the appropriateness of any of the Union's multiple revenue models.

the City's FY13 projected fund balance. In addition, you cannot add fund balances across the Five Year Plan together to determine what revenues are available – the fund balances are already cumulative numbers – further demonstrating the fallacy of the Panel's findings.

- The Award finds that the City can recover more than $50 million a year in revenue from PILOTs (Award at V.B.37), but there is no evidence in the record supporting that claim. To the contrary, when asked, Rob Dubow, the City's Finance Director, testified that the City was evaluating whether it will be able to secure additional revenues in light of an April 2012 Pennsylvania Supreme Court decision that may make it easier for municipalities to tax entities that had been considered non-profits under state law in the past.

- The Award suggests that the City's cost projections are not trustworthy by ignoring the testimony of City witnesses and the numbers presented to the Panel. The City put in evidence that the cost of the Vacated Award was $220 million through FY17. The Award says that Mr. Dubow admitted at the time of the Vacated Award that the cost of wages and benefits was only $66 million. (Award at IV.B.60). However, Mr. Dubow testified that the reporting of his statement in the Philadelphia Inquirer was inaccurate because $66 million was the cost of just the wages, not the increased health benefit costs. This statement is consistent with my October 2010 dissenting opinion. Mr. Dubow also explained that his cost analysis in 2010 was looking at a different time period than the cost of the Award today, as the City is required by law to recognize the cost impact of wage and benefit changes over the entire Five Year Plan, not just the year the increase occurs, as the Panel apparently does. As a result, the Award incorrectly finds that the cost of the wage increases is $60.6 million, not the actual cost of $102.6 million.

- The Award's assertion that the City claimed in its rebuttal presentation that the cumulative cost of the Vacated Award was only $53.5 million (Award at V.B.69) is similarly blatantly false. The City's evidence was that the cost of the Vacated Award was $53.5 million in FY13 alone. Of course, the changes the Panel made to the Vacated Award have now driven that FY13 cost above $77 million for that one year alone.

- Despite unrebutted testimony to the contrary, the Award finds that the City projects savings of $2.7 million a year from furloughs, but that it cannot achieve those savings because furloughs would result in increased overtime costs, not savings. In fact, furloughs could save the City more than $15 million a year and the City witnesses testified that if the City did furloughs it would not replace furloughed employees, thus, avoiding overtime costs.

- The Award correctly asserts that the Berkshire Report recommends that the Fire Department cease its program of targeted service reductions, sometimes referred to as brown-outs. The Award fails to mention, however, that the Berkshire Report makes this recommendation in the context of recommending changes in Fire Department deployment that would eliminate up to 16 fire suppression companies and reduce the fire suppression work force by more than 400. The Berkshire Report also recommends the elimination of Chief's Aides.

Simply put, in 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 based on the evidence in the record. Instead, the Panel makes such assertions based on its distortion of the record.

The Panel's Reliance on the City's Decision Not to Appeal the FOP Award in 2009 to Justify This Award is Improper and Based on Flawed Facts.

In the end, it is clear that despite all the misguided window dressing that the Panel attempts to use to hide the facts of this deeply flawed Award, the Panel's determination was, at its core, based solely on the fact that the City did not appeal the FOP award that the Panel mistakenly believes is equivalent but more costly. It is grossly inappropriate for the Panel to conclude, as it obviously does, that the City should be forced to pay for this Award because it chose not to appeal an award issued for a different bargaining unit more than two-and-a-half years ago that had different terms. Moreover, the Panel's belief about the relative costs of this Award and the FOP award, as well as its view of the relative fairness of the two awards is blatantly wrong.

The differences between the FOP award and this Award are numerous but there are key differences that the Panel consistently ignores when faulting the City for not appealing the FOP award but appealing the Vacated Award and challenging this one:

- The FOP award authorized the City to furlough employees up to 30 days per year, which could save the City $43 million a year. This Award denies the City the right to do furloughs, foregoing up to $15 million annually in savings opportunities.

- The FOP award reduced the City's health care contribution to the union-controlled health fund by nearly $10 million in FY10, 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, and then introduced a new health care structure which the City believed would save it millions of dollars because of the FOP's management of its health plan. Those projections have proved true, with the FOP estimating that it has reduced City costs by more than $62 million since FY07 with reductions in the City's PEPM contribution rate followed by the plan changes and move to self-insurance. The City estimates that implementing self-insurance for this Union would add $80 million in costs over the next five years.

- The Union does not manage its health fund in the same way that the FOP does, as evidenced by the testimony of Larry Singer, who serves as a consultant for both funds, and the extensive evidence of the cost savings programs that the FOP health plan has in place that this one does not. Moreover, even when the Union's expert recommended that the Union implement a number of reforms in its health plan to reduce costs, the Union did not do so. Instead of taking steps to control its health care costs, as other funds have done, the Union has allowed its costs to escalate unchecked, as evidenced by costs that are much higher than any other employee group. In addition, the Union has repeatedly improved its benefits, further adding to its costs, including adding a Lasik benefit while the Vacated Award was on appeal.

- The FOP award was the first to implement a new pension structure for new hires, which was a significant factor for the City when deciding whether to appeal the FOP award. Every award that has been issued since then, including the Vacated Award, has contained different pension terms for new hires.
- The FOP award expanded the City's right to adjust employee schedules and avoid overtime costs. This Award makes no such changes.

Thus, although some of the terms of the two awards were similar, the simple fact is that the FOP award provided the City with the means to balance the costs of the award while this Award does not. The Award's findings that the FOP award was significantly more expensive than this one are simply false, as Rebecca Rhynhart, the City's Budget Director, repeatedly testified. Although the total cost of salaries and benefits for the police department are much higher than the fire department because the police department is roughly three times as large, the additional costs imposed by the FOP award were smaller than the additional costs imposed by this Award. Thus, the City's decision not to appeal the FOP award in 2009 is totally irrelevant to whether the City can afford to pay the cost of this Award without adversely affecting service levels, as the PICA Act requires.[18]

The FOP award recognized that the Five Year Plan assumed annual savings by employees in that union, as it does for employees in this

[18] The Award asserts that FOP award was issued at a time when the City's fund balance was -$137 million. Although the City ended FY10, the year the FOP award came out, with a negative fund balance, the City's budget projected a fund balance of $85.3 million that year.

Union. Unlike the instant Award, however, the FOP award took steps to achieve those savings through pension changes, health care changes, overtime and scheduling changes and the right to do furloughs. As a result, the City was able to achieve savings under the FOP award. This Award, by contrast, provides the City with more than $200 million in added costs instead of savings.

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 more than $73 million a year by FY17, adding $80 million above what the Five Year Plan projects between now and the end of FY17. The Award imposes these unchecked costs solely on the City, while giving the Union more than $20 million in additional retroactive payments to add its already multi-million dollar reserve accumulated through excess contributions imposed on the City by previous arbitration awards.

Conclusion

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 as a matter of law.

During the arbitration proceedings, the City presented extensive evidence on its financial condition that the Panel has chosen to ignore. 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 Act and places more than $220 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.

I also dissent from paragraph 15 of the Award because it improperly attempts to extend the authority of this Panel beyond the date of issuance of the Award or defer the issue to another panel.[19] 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.

19 Interestingly, the Vacated Award had two retention of jurisdiction provisions. The Panel removed the one related to health care from this Award based on the City's objection, but retained Paragraph 15.

Dated: June 29, 2012

Kenneth M. Jarin
Arbitrator for the City of Philadelphia

INCREASED CITY COST FROM AWARD THROUGH FY17 (Self-Insurance In FY13)

	FY10 Cost	FY11 Cost	FY12 Cost	FY13 Cost	FY13 Cost With Retro	FY14 Cost	FY15 Cost	FY16 Cost	FY17 Cost	TOTAL
Wages and Other Non-Health Care Costs										
Wage Increases of 3% in FY11, FY12 and FY13*	0	5,552,813	11,267,236	17,155,616	33,975,665	17,155,616	17,155,616	17,155,616	17,155,616	102,598,129
Retiree Trust Fund**	0	0	0	10,000,000	10,000,000	0	0	0	0	10,000,000
Legal Services	49,680	49,680	49,680	49,680	198,720	49,680	49,680	49,680	49,680	397,440
Total	49,680	5,602,493	11,316,916	27,205,296	44,174,385	17,205,296	17,205,296	17,205,296	17,205,296	112,995,569
Projected Health Care Costs										
Added Health Care Costs From Increased PMPM***	5,835,634	6,686,393	7,981,178	3,244,188	23,747,393					23,747,393
Added Health Care Costs From Self-Insurance				3,275,548	3,275,548	11,806,546	17,185,569	23,091,732	29,577,123	84,936,518
Local 22 Health Fund Payment of the Initial Claims				-5,000,000	-5,000,000					-5,000,000
Cost Above Five Year Plan Projection	5,835,634	6,686,393	7,981,178	1,519,736	22,022,941	11,806,546	17,185,569	23,091,732	29,577,123	103,683,911
Lack of Five Year Plan Savings										
Annual Savings Assumed in Five Year Plan Not Part of Award	2,700,000	2,700,000	2,700,000	2,700,000	10,800,000	2,700,000	2,700,000	2,700,000	2,700,000	21,600,000
ADDED CITY COSTS FROM AWARD	8,585,314	14,988,886	21,998,094	31,425,032	76,997,326	31,711,842	37,090,865	42,997,028	49,482,419	238,279,480
				Cumulative Cost of FY13 Terms and Retroactive Terms Ordered Paid in FY13	76,997,326					

Costs shown are all funds

Joint Exhibit 2 at page 10 projects savings from the pension changes for new hires, which took effect in October 2010, at $382,000 to $1.9 million over the first 5 years, and $849,000 to $4.3 million over 10 years. The added costs shown above do not net out those savings.

Calculations based on City Exs. 105, 122 and 123, modified based on the altered health care terms provided for in the Award.

* Includes "roll-up costs" from wage increase of additional pension costs, premium pay, overtime, holiday pay and Medicare costs

** While the Vacated Award was on appeal, the City made a payment of $2.5 million to the Retiree Trust Fund which should be credited against the amounts due, but which the Award doesn't acknowledge

*** Award ordered increases to the PEPM contribution for Juy 1, 2009 through June 30, 2013. The Award gives the City the option of requiring the health plan to move to self-insurance 10/1/12, with the City bearing all of the costs, but argubaly still requires the City to pay the increased PEPM for 10/1/12-6/30/13 in addition to the actual costs of self-insurance if it did so. The cost of the increased PEPM contribution for 10/1/12-6/30/13 is $38.5 million, which is not included in the amounts shown above.

GENERAL FUND IMPACT OF INCREASED CITY COST FROM AWARD THROUGH FY17 (Self-Insurance in FY13)

Cash Impact of Paying Award Beginning in FY13 on FY13-FY17 FYP Fund Balances

	FY2013	FY2014	FY2015	FY2016	FY2017
Fund Balance per FY2013-2017 FYP	$53,028,000	$33,618,000	$22,371,000	$36,647,000	$51,302,000
Added City General Fund Costs From Award Beginning in FY13	$74,379,417	$30,633,639	$35,829,776	$41,535,129	$47,800,017
Revised FYP Fund Balances with Cost of Award	-$21,351,417	-$71,395,056	-$118,471,832	-$145,730,961	-$178,875,978

Cash Impact of Paying Award Beginning in FY13 on FY12-FY16 FYP Fund Balances

	FY2013	FY2014	FY2015	FY2016	FY2017
Fund Balance per FY2012-2016 FYP	$71,426,000	$65,124,000	$28,598,000	$28,924,000	N/A
Added City General Fund Costs From Award Beginning in FY13	$74,379,417	$30,633,639	$35,829,776	$41,535,129	$47,800,017
Revised FYP Fund Balances with Cost of Award	-$2,953,417	-$39,889,056	-$112,244,832	-$153,453,961	N/A

General Fund costs are based on 96.6% of total IAFF employees (1,999 out of 2,070).

INCREASED CITY COST FROM AWARD THROUGH FY17 (No Self-Insurance in FY13)

	FY10 Cost	FY11 Cost	FY12 Cost	FY13 Cost	FY13 Cost With Retro	FY14 Cost	FY15 Cost	FY16 Cost	FY17 Cost	TOTAL
Wages and Other Non-Health Care Costs										
Wage Increases of 3% in FY11, FY12 and FY13*	0	5,552,813	11,267,236	17,155,616	33,975,665	17,155,616	17,155,616	17,155,616	17,155,616	102,598,129
Retiree Trust Fund**	0	0	0	10,000,000	10,000,000	0	0	0	0	10,000,000
Legal Services	49,680	49,680	49,680	49,680	198,720	49,680	49,680	49,680	49,680	397,440
Total	49,680	5,602,493	11,316,916	27,205,296	44,174,385	17,205,296	17,205,296	17,205,296	17,205,296	112,995,569
Projected Health Care Costs										
Added Health Care Costs From Increased PMPM Above Five Year Plan Projection	5,835,634	6,686,393	7,981,178	11,564,221	32,067,426	11,093,378	11,093,378	11,093,378	11,093,378	76,440,938
Lack of Five Year Plan Savings										
Annual Savings Assumed in Five Year Plan Not Part of Award	2,700,000	2,700,000	2,700,000	2,700,000	10,800,000	2,700,000	2,700,000	2,700,000	2,700,000	21,600,000
ADDED CITY COSTS FROM AWARD	8,585,314	14,988,886	21,998,094	41,469,517	87,041,811	30,998,674 0	30,998,674	30,998,674	30,998,674	211,036,507
				Cumulative Cost of FY13 Terms and Retroactive Terms Ordered Paid in FY13	87,041,811					

Costs shown are all funds

Joint Exhibit 2 at page 10 projects savings from the pension changes for new hires, which took effect in October 2010, at $382,000 to $1.9 million over the first 5 years, and $849,000 to $4.3 million over 10 years. The added costs shown above do not net out those savings.

Calculations based on City Exs. 105, 122 and 123, modified based on the altered health care terms provided for in the Award. Assumes PMPM health care costs of $1619.64 beginning October 1, 2012 through FY17.

* Includes "roll-up costs" from wage increase of additional pension costs, premium pay, overtime, holiday pay and Medicare costs

** While the Vacated Award was on appeal, the City made a payment of $2.5 million to the Retiree Trust Fund which should be credited against the amounts due, but which the Award doesn't acknowledge

GENERAL FUND IMPACT OF INCREASED CITY COST FROM AWARD THROUGH FY17 (No Self-Insurance in FY13)

Cash Impact of Paying Award Beginning in FY13 on FY13-FY17 FYP Fund Balances	FY2013	FY2014	FY2015	FY2016	FY2017
Fund Balance per FY2013-2017 FYP	$53,028,000	$33,618,000	$22,371,000	$36,647,000	$51,302,000
Added City General Fund Costs From Award Beginning in FY13	$84,082,389	$29,944,719	$29,944,719	$29,944,719	$29,944,719
Revised FYP Fund Balances with Cost of Award	-$31,054,389	-$80,409,109	-$121,600,828	-$137,269,547	-$152,559,266

Cash Impact of Paying Award Beginning in FY13 on FY12-FY16 FYP Fund Balances					
Fund Balance per FY2012-2016 FYP	$71,426,000	$65,124,000	$28,598,000	$28,924,000	N/A
Added City General Fund Costs From Award Beginning in FY13	$84,082,389	$29,944,719	$29,944,719	$29,944,719	$29,944,719
Revised FYP Fund Balances with Cost of Award	-$12,656,389	-$48,903,109	-$115,373,828	-$144,992,547	N/A

General Fund costs are based on 96.6% of total IAFF employees (1,999 out of 2,070).

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 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 presentations.

I fully concur in the Panel's decision in both the 2010 Award and the Remand Award, to reject the City's proposal on furloughs, especially in view of the significant and recent reductions within the Fire Department in the form of decommissioning of fire companies and implementing brownouts to further reduce coverage and costs. I am convinced that this 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 danger. I concur in the decision to reject the City's proposals.

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. While the Panel recognizes the disparity between the uniformed services, it has nonetheless declined to address the problem. 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.

I object to the Panel's removal of mandatory provisions affecting Chief's Aides and promotional testing. While the Panel reaffirmed its belief that both provisions were justified and remain justified, the Neutral Arbitrator was concerned that the presence of these provisions would constitute a pretext for the City to engage in another costly appeal. Both provisions are justified, however, and are integrally related to the safety on the fire ground. We have learned those truths in tragedy. It is time for the Administration to get beyond its arrogance, its disregard for the safety of the men and women in the Fire Department and address critical safety issues confronting the Department.

Finally, and more than any improvement or concession contained in either the 2010 or Remand Award, I object to the City of Philadelphia's abuse of the judicial process to deprive Local 22's membership of the final and binding arbitration to which they are entitled. It is not lost on this Arbitrator that the Remand Award is being issued at the start of the 4th year of a 4-year award. This is simply unacceptable. It belittles the important contributions made by Local 22's members to the success of our city, it undermines their confidence in a statutory scheme that was enacted for their protection, not their abuse, and it makes a mockery of the swift and final dispute resolution process envisioned by the legislature when they amended the Pennsylvania Constitution in order to enact Act 111.

The Administration's decision to appeal the 2010 Award was particularly irresponsible in light of its acceptance of a far more costly award for the City's police officers. The police award provided more compensation, more healthcare costs, a reduction to City revenue by eliminating the residency requirement, and was issued at a time when the City's finances were in worse shape. Yet the Administration chose to implement that award and to challenge the firefighter award that provided less compensation, less healthcare costs and no change to residency. One cannot help but to question the motivation of both decisions, given they certainly were not economic.

The Administration's decision to appeal also delayed the implementation of the switch to a self-insurance system for healthcare, which according to expert witnesses has cost taxpayers more than $10 million in savings that would otherwise have been achieved absent the appeal. Of course, this does not take into account the additional millions in legal fees undoubtedly generated by the litigation and subsidized by taxpayers. Thus, the decision to appeal was not only inappropriate and insulting to the City's Firefighters and Paramedics, it was also a waste of taxpayer dollars. This culture of litigation and appeal *must end*. Local 22's members, and the citizens they risk their lives to protect, deserve better.

Because of this, 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, the elimination of safety provisions previously awarded, 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 Administration. It is my sincere hope that with this new award the parties can begin to repair their relationship and provide Local 22's members with the stability, respect and dignity that they so richly deserve.

Stuart W. Davidson

STUART W. DAVIDSON, ESQUIRE
Arbitrator, IAFF Local 22

6/29/12
Dated