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Employer Name: **Philadelphia, City of**

Union: **International Association of Fire Fighters (IAFF), AFL-CIO**

Local: **22**

SIC: **9224**

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#810621

ARBITRATION
AAA CASE NUMBER 14 L360 00317 02 W

In the Matter of the Arbitration between

CITY OF PHILADELPHIA

and

Act 111 Interest Arbitration

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS LOCAL 22

5/12/03

OPINION AND AWARD

Before Arbitrators:

H. Thomas Felix, II, Esquire	Appointed by the City of Philadelphia
Stuart W. Davidson, Esquire	Appointed by the International Association of Fire Fighters, Local 22
John Paul Simpkins, Esquire	Impartial Arbitrator selected by the Parties

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MARCH 20, 2003

7/1/02 -- 6/30/05

13 pages

INTRODUCTION

The City of Philadelphia (hereinafter the "City") and the International Association of Fire Fighters, Local 22 (hereinafter "Local 22" or "Union"), are parties to a collective bargaining agreement which governs the wages, hours and working conditions of the City's fire fighters and paramedics. In December 2001, the parties commenced bargaining concerning the terms and conditions for a successor agreement pursuant to the authority of the Policemen and Firemen Collective Bargaining Act, 43 P.S. § 217, et seq. (hereinafter "Act 111"), as modified by the Pennsylvania Intergovernmental Cooperation Authority Act for Cities of the First Class, 53 P.S. § 12720.1 01, et seq. (hereinafter the 'PICA statute"). An exchange of proposals and meetings were unsuccessful and the undersigned panel of arbitrators (hereinafter the "Panel") was constituted and met convening the parties in hearings, to resolve the disputed issues as designated by the parties.

The PICA statute requires that, at least annually, the City develop a five-year financial plan (the "Five Year Plan") that provides for balanced budgets and must be reviewed and approved by the PICA Board. During the course of this Act 111 proceeding, both sides presented arguments regarding the City's financial condition, ability and inability to pay for this Award within the confines of the Five Year Plan. Section 209(k) of the PICA statute, requires that prior to rendering an Act 111 award which grants a pay or fringe benefit increase, the Panel must consider and accord substantial weight to (1) the approved financial plan; and (2) 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)(1). The City is further required to undertake "a review of compensation and benefits" and to ensure that expenditures, including those for employee wages and benefits, are balanced with revenues. 53 P.S. §

12720.102(b)(1)(iii)(H); § 12720.209(b) and (c). In making this Award, the Panel has carefully reviewed and considered the sworn testimony of over 40 witnesses, thousands of pages of transcript testimony and over 125 City and Union exhibits, as well as the post-hearing submissions of both parties in support of their respective positions. This Panel has duly considered the parties' arguments, and has accorded the City's financial concerns the substantial weight required by law.

The operation of task forces was the principal staffing issue presented by the City. In 1992, an Act 111 panel first established the current staffing standards and urged the Fire Department to increase staffing minimums on its ladder and engine companies to meet the recommendations of the National Fire Protection Association. Unfortunately, those staffing numbers have not increased since 1992. Further, while the City seeks to eliminate these standards, evidence that the current staffing minimums on Fire Department engine or ladder companies are excessive, is lacking.

The primary staffing dispute before this Panel concerned the Fire Department's use of Task Forces, a unique deployment configuration that is found nowhere else in the country. The current Fire Commissioner has recognized that task-force configurations are not an optimal way to fight fires, and his two predecessors testified in the 2000 Act 111 proceeding that task forces are inherently unsafe.

Task forces have been a principal topic of dispute in each Act 111 proceeding since 1992. In each of the awards since 1992, Act 111 panels have raised serious concerns about their continued use. In 1996 and 2000, Act 111 panels ordered the Department to take a number of actions to verify the safety of this controversial configuration. The City was directed to establish training programs, to develop standard operating procedures, and to work jointly with the Union

to assess the relative safety of task forces. In January 2001, the parties went so far as to agree to suspend task forces and to jointly study the issue, as follows:

> The Department shall eliminate all permanent and/or prescheduled task forces effective immediately. A joint committee consisting of equal representation from the Department and the Union will study the task force issue and make recommendations regarding the continued utilization of task forces.

(2001 Settlement, C. Ex. 1, Tab 1, at 5.) The Fire Department has yet to conduct a joint study of this issue with Local 22.

In light of this, and because the City has failed to demonstrate that the Task Forces staffing configuration is safe, the Panel has determined that it is inappropriate to lift the restrictions established by prior Act 111 panels and agreed to by the parties in January 2001.

Finally, a word about parity. Throughout these proceedings, the City and the Union repeatedly made reference to the July 25, 2002 interest arbitration award of an Act 111 panel, which established a new collective bargaining agreement for Philadelphia's police officers ("Police Award"). (U. Ex. 53; C Ex. 4.) At the outset of these hearings, the City's representatives characterized the Police Award as generous and also stated that it fell within the financial constraints of the City and was otherwise fair and acceptable. (Transcript, 09/09/02, at 104:16 - 105:4.) Similarly, representatives of Local 22 also relied upon and pointed to the terms of the Police Award to support their positions on various issues. The Panel has considered both parties' positions on the issue of parity in reaching its Award.

Except as changed herein, the terms and conditions of the prior collective bargaining agreement as established both in prior awards and the settlement of 2000 are hereby continued. The parties are urged to work jointly to develop an integrated agreement that will incorporate the provisions of the various awards and agreements. With these understandings, the Panel issues the following Award:

AWARD

1. Term

This Award shall be effective for three (3) years beginning July 1, 2002 and ending June 30, 2005.

2. Wages

A. Effective July 1, 2002, there shall be a three percent (3%) across the board increase in the pay schedule for members of the bargaining unit;

B. Effective July 1, 2003, there shall be a three and one-half percent (3 ½ %) across the board increase in the pay schedule for members of the bargaining unit; and

C. Effective July 1, 2004, the across the board increase in the pay schedule shall be three percent (3%) for members of the bargaining unit.

D. Effective July 1, 2002, bargaining unit members will progress from Step 1 to Step 2 of the starting salary progression upon completion of ten (10) months of employment, including time spent at the Fire Academy. This progression is limited to employees in the classification of Fire Fighters and Fire Service Paramedics.

3. Pension Benefits

Premium Pay:

Effective July 1, 2003, the 2 and 2/5ths hours of premium pay currently received by bargaining unit members shall be included in pension calculations, not to exceed a maximum of four percent (4%) of base salary.

4. Health and Welfare

Nationally, the cost of health insurance benefits has become one of the most contentious issues in contract negotiations. Faced with increases in insurance premiums in excess of 10% annually, and prescription costs at double that level, employers and unions are struggling to maintain an adequate level of benefits. Not surprisingly, the issue of health insurance benefits for active and retired Fire Fighters has been a difficult one for this panel. Uniformed Fire Fighters receive a monthly contribution from the City. That contribution is then used by a joint trust to purchase health insurance benefits including dental, vision and prescription benefits. The joint trust includes City representation, but with a majority of members appointed by the Fire Fighters. The City contribution continues for five years following retirement, and that time period may be extended by exchanging sick pay at retirement for additional periods of coverage, and may be deferred or started at a later time.

The issue of health care for fire fighters has been and continues to be controversial and contentious between the parties. Most troubling is the fact that Philadelphia's fire fighters do not receive the same level of health benefits as Philadelphia's police officers. This is troubling not only because of the nature of the work that both groups of employees perform, but also because no other city identified by the parties during these proceedings treats its police officers and fire fighters so differently on the issue of basic health care.

The disparity between police and fire health benefits can be traced to 1992, when an Act 111 interest arbitration panel changed the City's responsibility for health care from an obligation to provide a defined benefit to an obligation to provide merely a defined contribution to employee groups, with which they could purchase health insurance. The Union has argued forcefully and persuasively that this change from a defined benefit to a defined contribution has

inappropriately disadvantaged fire fighters, who, because of their work, their demographics and the well-documented impact of their continual exposure to toxic substances and infectious disease, simply cost more to insure. The consequence of these factors has made it impossible for the City's fire fighters to secure health insurance equivalent to those enjoyed by the City's police officers with the contributions made by the City, even though the City pays more per capita to the fire fighters' health plan than to other City plans.

The City argues that a return to a defined-benefit plan would cause a substantial hardship to the City, and suggests that an improvement could be achieved for the fire fighters if the City were permitted equal representation on the Board of Trustees that governs the fire fighter Health Plan.

Both arguments have merit. While this Panel is open to some modification in recognition of the City's obligation to fund the benefit, it must also be recognized that the City has no responsibility to provide and administer the benefit. Accordingly, this Panel is unwilling to mandate equal representation on the Local 22 Health Plan's Board of Trustees until the City is prepared to guarantee that the fire fighters will receive and maintain a level of health care benefits commensurate with the work they perform. Similarly, and in consideration of the City's strenuous opposition, this Panel is unwilling to impose a defined-benefit program and has instead decided to retain the current, defined-contribution structure. But we do so with substantial reservations.

The Panel has, therefore, decided to apply to the fire-fighter health plan contributions the same percentage increases as were granted in the July 2002 Police Award, using the contribution rate established by the 2000 Act 111 panel as the basis. Like the Act 111 panel that issued the Police Award, this Panel has also decided to award lump-sum payments to the plan in each of the

three years of this Award. And, while the Panel recognizes that the City was seeking a substantially lower contribution rate and the Union was seeking a defined level of benefits, our compromise should allow the fire fighters to modestly improve their health benefits within the current, defined-contribution structure.

The existing contract language shall remain in effect except as modified below:

A. Effective September 1, 2002, the City's monthly dollar contribution to the Joint Trust Health and Welfare Fund ("Fund") shall be increased to eight hundred twenty-three dollars and thirty-seven cents ($823.37) per eligible participant each month.

B. Effective July 1, 2003, the City's monthly dollar contribution to the Fund shall be increased by ten percent (10%), to nine hundred five dollars and ninety cents ($905.90) per eligible participant each month.

C. Effective July 1, 2004, the City's monthly dollar contribution to the Fund shall be increased an additional ten percent (10%), to nine hundred ninety-six dollars and twenty-seven cents ($996.27) per eligible participant each month.

D. Within fifteen (15) days of the issuance of this Award, the City will make a lump-sum payment to the Local 22 Health Plan in the amount of $1.7 million dollars. The City will make a second payment to the Fund, in the amount of $1.7 million dollars, on or before July 1, 2003, and a third payment of $1.7 million dollars on or before July 1, 2004.

E. In the event of death of an active member, who is otherwise pension eligible, the City will provide medical benefits for the participant's

surviving spouse and/or dependent children for a period of 5 years after the member's death. The current policy shall continue to apply to active members who are not pension eligible.

F. Contributions

Contributions will be remitted the month someone is hired into the bargaining unit and continue monthly thereafter so long as the individual remains in the bargaining unit.

G. Effective July 1, 2003, the Joint Trust created in the 1992-1996 Act 111 Award shall be modified to provide one-third representation by City Trustees and two-thirds representation by Local 22 Trustees. The Joint Trust shall have the sole and exclusive authority over medical, dental, optical and prescription benefits offered to qualifying participants; namely, employees, retirees and qualifying dependents. Within sixty (60) days of this Award, the newly constituted Joint Trust shall adopt or ratify a Trust Agreement governing the operation and administration of the Joint Trust that complies with this Award.

H. The escalating costs of health care are of significant concern to the parties. It is therefore incumbent them to address this concern. The Panel believes that the Board of Trustees of the Joint Trust is in the best position to address these issues during the term of this Award and, therefore, directs that no less than two (2) meetings per year of the Board of Trustees will include an in-depth discussion of alternative cost containment strategies with a view toward their implementation.

5. Pensions and Retirees

The City will continue the program to provide the annual health care and/or pension benefits for retirees of Local 22 by making the annual payments to the Retiree Joint Trust created in the 1992-1996 Act 111 Interest Arbitration Award . The first such payment, in the amount of one million and seven thousand dollars ($1,007,000), shall be made within thirty (30) days of the issuance of this Award. The second such payment, in the amount of one million and seven thousand dollars ($1,007,000), shall be made on or about July 1, 2003. On or before July 1, 2004, the City will make another payment to the Joint Retiree Trust in the amount of one million five hundred thousand dollars ($1,500,000). Only retirees who are not receiving or deferring City contributions for health and welfare benefits shall be eligible for payments from the Retiree Joint Trust. Except as modified by this Award, these payments shall be subject to the same terms and conditions provided in paragraph 17 of the 1992-1996 Act 111 Interest Arbitration Award.

6. Safety Equipment

A. Ear Plugs - Effective July 1, 2003, adequate ear plugs will be made available to all fire fighters and replaced as necessary.

B. Bunker Gear - Effective January 1, 2004, the Fire Department shall implement a bunker gear acquisition, cleaning and maintenance program. It will include provision of a second set of bunker gear no less than the quality currently in use for all active fire fighters assigned to fire suppression companies at a cost of no more than $1 million dollars.

C. As soon as practicable but no later than January 1, 2004, the Fire Department shall provide a two-way radio to each active fire fighter while on the fire ground

and replace them as necessary.

7. Drug and Alcohol Testing

The Fire Department shall be permitted to employ a computerized method to randomly test up to fifty percent (50%) of the bargaining unit each year for the presence of drugs or alcohol. Testing shall be in accordance with the protocols, definitions and levels established under Directive 54. Positive results shall be treated in accordance with the disciplinary policies and procedures established by the Fire Department. Provided further, that prior to implementation of any such program, the City shall provide a copy to the Union for a thirty-day review period within which any issues can be discussed. Failing agreement on any aspect of the program within the review period, the matter shall be immediately submitted to binding arbitration which shall take place and be decided within thirty days in the absence of agreement otherwise.

8. Probationary Employees

When a probationary employee has completed six (6) months of his or her twelve (12) month probationary period, the employee shall be permitted to work overtime and obtain outside employment on the same terms as non-probationary employees.

9. Paramedic Transfers

Any Fire Service Paramedic with five (5) or more years of service who takes and passes the open, competitive examination for the class of Fire Fighter pursuant to Civil Service Regulations, shall receive an additional ten (10) points added to his or her examination score which will be in addition to any veteran or other points applicable under the Civil Service Rules and Regulations. Any Fire Service Paramedic who is appointed to the class of Fire Fighter under this provision shall be appointed as an entry-level Fire Fighter, provided that their pensions will

continue to accrue without a break in service.

10. Sick Leave

Sick Leave Policy. Commencing with the date of this Award, the City's practice of requiring employees to submit a medical note for the first day of absence shall be discontinued. The Fire Department will abide by the Managing Director's Sick Leave Policy of 1984 as amended in 1992. Provisions of the Fire Department's directive that are inconsistent with the Managing Director's Sick Leave Policy will be revised to conform with that policy.

Members of the bargaining unit who suffer from the effects of Hepatitis C will be required to run their accumulated sick time down to 500 hours before they are allowed to request hours from the Catastrophic Illness Bank. But these members will not be required to exhaust their accumulated vacation, administrative leave or holiday hours.

11. Compensatory Time

Members of the bargaining unit at or above the rank of Battalion Chief shall be granted compensatory time in lieu of overtime. Those members may accumulate an unlimited amount of compensatory time, but may only carry over three hundred and fifty (350) hours from year to year. Upon separation from employment, members will be compensated for all unused compensatory hours up to three hundred and fifty (350) hours at the employee's current rate of pay.

12. Educational Benefits

The tuition reimbursement benefit will be made available to Firefighters and Paramedics who successfully complete an education course in a field related to public health, public safety or administration at any accredited college or university.

13. The Existing Agreement

Except as modified by this Award, all other terms and conditions contained in the collective bargaining agreement between the City and Local 22 in effect from July 1, 2000 through June 30, 2002 shall remain in effect. All other proposals and requests for change submitted by the City and Local 22 to the Panel, which have not been specifically addressed in this Award, were considered and have not been awarded.

March 20, 2003

H. Thomas Felix, II, Esquire
Arbitrator for City of Philadelphia
☒ Concur ☐ Dissent

Stuart W. Davidson, Esquire
☒ Concur ☐ Dissent

John Paul Simpkins, Esquire
Impartial Arbitrator
☒ Concur ☐ Dissent