

AMERICAN ARBITRATION ASSOCIATION

In the Matter of Arbitration Between the

IAFF LOCAL 60,

"Union,"

-and-

CITY OF SCRANTON,

"Employer."

INTEREST
ARBITRATION
AWARD

AAA Case No. 01-22-0003-9023
(Act 111)

BEFORE:

Robert C. Gifford, Esquire
Impartial Chair

Stephen J. Holroyd, Esquire
Holroyd Gelman, P.C.
Arbitrator appointed by IAFF Local 60

Robert Ufberg, Esquire
Ufberg & Associates
Arbitrator appointed by the City of Scranton

The International Association of Fire Fighters Local 60 ["IAFF" or "Union"] and the City of Scranton ["City" or "Employer"] are parties to a collective bargaining agreement governing the wages, hours and employment terms and conditions of fire fighters employed by the City.

The prior contract between the Union and the City expired by its terms on December 31, 2021. Before its expiration, the parties engaged in collective bargaining pursuant to the Policemen and Firemen Collective Bargaining Act, Act 111 of 1968, 43 P.S. 217 *et seq.* ("Act 111"). When the parties were unable to reach agreement on a new contract, this Panel of Arbitrators ("Panel") was selected and convened under the authority of Act 111.

Arbitration proceedings were held on January 24, February 6 and 13, 2023, during which time both parties were afforded a full and fair opportunity to present documentary and other evidence, examine and cross-examine witnesses, and offer argument and explanatory presentations in support of their respective positions. The Panel thereafter met in executive session on February 27, March 14, 27, and 30, and April 3, 2023, and held various telephone conferences.

Following a full and complete review of the evidence and arguments presented by the Union and the City, the following Award is issued by a majority of the Panel. As previously indicated, the Panel was not in unanimous accord on each and every issue.

The arbitrators for the Union and the Employer have attached their respective dissents on certain specific issues, as they each determined to do.

AWARD

1. Article III: Union Rights.

Section 1. – Modify to read as follows:

1. The Fire Chief, also referred to as the Superintendent of Fire, or the Chief's designated representative, shall permit a regular full-time staff member of the International Union, or a representative of the Local Union (such as a duly-designated steward), to visit a fire house at a mutually agreed upon time to investigate firefighter complaints or grievances relating to the terms and conditions of this Agreement.

Section 2. – Modify to read as follows:

3. The Union, including its officials (defined as President, 1st Vice President, 2nd Vice President, Secretary and Treasurer) or other duly authorized representative (such as a Steward), shall collectively be provided up to two hundred forty (240) hours of leave per calendar year total with no reduction in pay to conduct official Union business or investigations such as those set forth in paragraph 1 above, and to attend to other official Union matters and functions, whether work-related or non-work-related; provided that where a Union official takes time from his/her scheduled work (i.e., with pay) to perform work-related Union duties under this contract, he or she will promptly then or thereafter provide the City with written certification that such paid release time is/was required so that he/she could perform such duties and that he/she could not reasonably have performed them on non-compensated time

Section 4. – Delete this section; it is now incorporated into new Section 2.

2. Article VIII: Wages

For 2022: A \$2,000 one-time lump sum payment, less applicable deductions and withholdings, for all current City firefighters hired and employed by the Fire Department on or before December 31, 2021.

A current City firefighter hired in 2022 will receive a lump sum amount based on his/her date of hire into the bargaining unit, and his/her work as a City firefighter thereafter during Calendar 2022, as follows:

- \$2,000 if he/she worked as a City firefighter during the four calendar quarters;

- \$1,500 if he/she worked as a City firefighter during three calendar quarters;
- \$1,000 if he/she worked as a City firefighter during two calendar quarters;
- \$500 if he/she worked as a City firefighter during one calendar quarter.

The same formula will apply to a City firefighter who retired during 2022.

All lump sum amounts shall be payable within sixty (60) days from the date of this Award.

For 2023: The base wage of Bargaining Unit Members (with appropriate adjustment for rank) shall be increased by 2.0% effective retroactive to January 1, 2023, provided that firefighters who have not completed four (4) full years of service as a City of Scranton firefighter will follow their incremental wage schedule.

For 2024: The base wage of Bargaining Unit Members (with appropriate adjustment for rank) shall be increased by 2.5% effective January 1, 2024. Same proviso for firefighters who have not completed four (4) full years of service.

For 2025: The base wage of Bargaining Unit Members (with appropriate adjustment for rank) shall be increased by a total of 3.0% - 1.5% payable effective January 1, 2025; and 1.5% effective July 1, 2025. Same proviso for firefighters who have not completed four (4) full years of service.

For 2026: The base wage of Bargaining Unit Members (with appropriate adjustment for rank) shall be increased by a total of 3.0% - 1.5% payable effective January 1, 2026; and 1.5% effective July 1, 2026. Same proviso for firefighters who have not completed four (4) full years of service.

Section 5(D). – Modify this section to read as follows:

Overtime worked to fill a vacant position shall be compensated at one and one half (1½) times the firefighter's then-current hourly rate or, if the vacant position being filled is an officer position, then one and one half (1½) times the hourly rate of that officer position.

Overtime will be filled by the rotation/wheel in place as of the date of this Award, except that where the position to be filled is a vacant officer position, the City will assign an officer who is in the immediate "band" of firefighters who are available to fill the open overtime vacancies. If multiple officers are in that immediate band, the vacancies shall be filled in order of their rank as officers (e.g., Captain before Lieutenant), and, as amongst officers of the same rank in that band, by bargaining unit seniority. If an employee in the band declines an

overtime opportunity, then the next firefighter in line, whether a regular firefighter or a ranked officer, will be added to it. Once the band is final, all overtime slots will be filled from it. If there are no officers in a band to fill a vacant officer position on overtime, it will be filled by the firefighter with the greatest bargaining unit seniority.

When an employee is called in and works adjacent of his/her regular shift, overtime will be paid only for the additional time worked, not for the time the employee worked as part of his/her regular shift (for example, an employee called in at 6 am, ahead of his 8 am shift, will receive 2 hours of overtime, not 3).

Section 6. - Make the following changes

Any newly hired Bargaining Unit Member shall be paid, in addition to longevity outlined in the 2012 Settlement Agreement, the following percentage of a firefighter's maximum base without longevity:

While in Fire Academy	<u>60%</u>
Upon Graduation from Academy	<u>65%</u>
After Completion of Year 1	<u>70%</u>
After Completion of Year 2	<u>80%</u>
After Completion of Year 3	<u>90%</u>
After Completion of Year 4	<u>100%</u>

Section 7. Delete current section 7 and replace with the following:

7. All City of Scranton firefighters are required, as a condition of their employment, to operate fire department vehicles. The rank differential above fifth year firefighter shall be as follows:

<u>Chauffeur - 4%</u>
<u>Lieutenant - 8%</u>
<u>Captain - 12%</u>
<u>Fire Inspector, Fire Prevention Officer & Master Mechanic - 16%</u>
<u>Assistant Chief - 20%</u>
<u>Deputy Chief - 24%</u>

Effective immediately, if a firefighter who has not yet completed four (4) full years of service, and therefore is not at the regular (5th year) firefighter base rate that is applicable upon completion of four (4) years' service, is promoted to the Chauffeur position, he/she will receive the 4% rank differential on top of his/her then applicable rate of pay. For example, a Firefighter promoted to Chauffeur after completing one year of service after graduating from the Academy will receive 74% of a fifth year firefighter; and so on.

Note: The \$560.00 annual stipend currently paid to Assistant Chiefs and the Deputy Chief is discontinued and deleted from this Agreement, except that it

will continue to be paid for the term of this Agreement to those five individuals who were being paid it as of December 31, 2021, namely Al Lucas, Dan Hallowich, Jeffrey White, John W. Davis and Brian Scott, for so long as they remain employed in their current positions. The stipend shall permanently sunset December 31, 2016.26

Section 8. – Modify this section to read as follows:

8. Except for terms or conditions which were added in the negotiations immediately preceding and leading to this Agreement, no monetary or fringe benefit which was provided to bargaining unit employees under the parties' immediately preceding Agreement is rescinded or diminished by this Agreement. The Union shall have up to one hundred twenty (120) calendar days from the effective date of this Complete Tentative Agreement to present to both the Chief and Human Resources Director, in writing, any items it asserts are mutually agreed past practices that should be included in the new CBA. If the City does not agree that such an item was a mutually agreed past practice, the issue shall be heard by the Panel pursuant to its retained jurisdiction as described in # 15, below.

3. Article X – Clothing Allowance and Personal Protective Equipment (PPE)

Add the following:

Effective beginning in 2024 the current method by which the City provides a clothing allowance and personal protective equipment (PPE) will be replaced by a quartermaster system. Under it, effective May 1, 2024, all members of the Department will be provided with work uniforms. In the second year of the quartermaster program members (starting May 1, 2025) will be issued a set of Class A Uniforms. A second set will be issued to active employees after their completion of sixty (60) months of service. New members will be issued one set of PPE.

Complementing the quartermaster program, the City will, in 2024, provide an eligible firefighter with a \$250 annual voucher for personal work-related items not covered by quartermaster distribution, e.g., station shoes or boots, fire service flashlights, hand tools and other related items, as may be requested and approved in advance by the Chief. Receipts for authorized expenditures will be required. That amount will increase to \$300 effective 5/1/26.

The City will develop and implement an inspection, care and maintenance program for PPE issued by the City or purchased by individual bargaining unit members in accordance with the current NFPA 1851 Standard or its successor standard.

All equipment provided by the City is issued equipment, and as such shall be returned to the City upon the employee's retirement or other separation of employment with the City. The cost of any unreturned equipment or equipment that is severely damaged/destroyed due to the fault or negligence of the employee will be deducted from the employee's final pay or severance check.

When usable issued PPE equipment is returned to the Administrative Captain, he will redistribute it based on his assessment of needs within the department, with emphasis on attempting to provide firefighters with at least one year of service who don't yet have a second set; provided that if two or more firefighters meet the needs assessment essentially equally, the equipment shall be offered on the basis of seniority.

4. Article XII – Leave of Absence Without Pay

Add the following to this Article:

2. (a) If an employee does not meet the eligibility requirements for a family or medical leave under FMLA, but needs time off because of a medical condition, including pregnancy-related or birth-related conditions, or for a parental leave after birth of a child, the City may grant up to twelve (12) weeks of unpaid leave with a right to job restoration upon return to work.

(b) When taking such a Leave under (a) above, the employee shall use her/his accumulated sick leave, if any, during any period of the Leave that would otherwise be unpaid.

(c) All leaves without pay will be designated as leave under the FMLA, if such leaves meet the requirements of the Act.

5. Article XV – Health Insurance

At implementation of this Award the City's current health insurance plan remains in effect. Effective July 1, 2023, the City will continue to provide health insurance through that plan, with certain components, i.e., deductibles, co-pays, dental coverage and prescription formulary, modified as presented at the arbitration hearing. Therefore, replace or modify, as appropriate, the current Article as follows:

A. Regular full-time bargaining unit employees will be eligible to participate in an Employer-sponsored health insurance plan ("Plan") beginning the next full calendar month following the completion of their probationary period or earlier if required by law. Upon ratification, the Employer will offer eligible employees the attached Health Plan.

B. Effective July 1, 2023, the applicable Health Insurance Plan for actively employed bargaining unit employees covered by this

Agreement, including Medical, Prescription Drug, Dental and Vision components, shall be in accordance with the attached plan. The Presentation shows the Plan coverages, deductibles and co-pays for Firefighters and covered family members/dependents covered by the Plan.

C. Employee contributions for Health Insurance:

1. Effective beginning July 1, 2023, active bargaining unit members who are eligible for and participate, for themselves and any eligible family member/s, in the City's Health Insurance Plan shall contribute, on a pretax basis, toward the cost of health care benefits 4.0% of the base pay of a 5th year Firefighter, deducted in equal shares from their paycheck.

2. Effective July 1, 2025, active bargaining unit members who are eligible for and participate, for themselves and any eligible family member/s, in the City's Health Insurance Plan shall contribute, on a pretax basis, toward the cost of health care benefits 4.5% of the base pay of a 5th year Fire Fighter, deducted in equal shares from their paycheck.

D. Recognizing the ever-changing nature of health insurance and the significant fiscal challenges posed to the Employer in continuing to provide it, the Union acknowledges the Employer's right to designate and unilaterally change from time to time, as it determines necessary, the particular carrier(s) and plan(s); to modify specific plan components, except as provided below; and to provide any or all benefits on an insured basis with a carrier(s) of its choice, or on a self-insured basis.

If the Employer intends to make a material change in plans or specific plan components ('material' being defined to mean a plan or specific plan component change that is not substantially comparable with that in effect as of the date of this Award) which it determines is necessary, it will inform the Union, provide it with the reason it wants to make the intended change, and offer to negotiate with the Union before it; provided that upon such notice, if the Union wishes to meet and negotiate about the intended change, such negotiations shall be conducted on an expedited basis, without delay, and completed in sufficient time for the Employer's plan to be finalized and implemented, including conducting an Open Enrollment, before the new Plan Year. In the event the parties do not reach agreement over a proposed material change in plans or specific plan components, the Employer may seek expedited arbitration from the independent arbitrator or, if both parties prefer, under the AAA Rules for Arbitration.

Although the former "Health Care Committee" is terminated, the City will meet with the Union upon request to discuss health insurance issues and is open to creation of a new and different health care committee, about which discussion is invited.

E. A bargaining unit member may elect to waive his/her health insurance coverage as provided hereinbefore under the following conditions:

i). The election that shall be in writing shall be effective as of the first day of the month next following the City's receipt of the notice; and

ii). The election may be revoked at any time in writing with such revocation becoming effective as of the first day of the month next following the City's receipt of that notice; and

iii). For each full month that the revocation is in effect the Employee shall monthly receive the following amount, payable to him/her in the paycheck next following the completion of the month for which the revocation was in effect.

- o Employee - \$100/mo
- o Employee and Spouse - \$200/mo
- o Employee and Child - \$200/mo
- o EE and Children - \$250/mo
- o Family - \$400/mo

iv. The money shall be paid to the bargaining unit member in the paycheck next following the completion of the month for which the revocation was in effect and shall not be considered compensation for pension deduction purposes.

v. An employee cannot maintain health insurance with the City if Employee's spouse/significant other or other family member is also employed by, or a retiree of, the City and has health insurance with the City that does or could cover the employee. Nor is any buyout available to an employee who is not eligible to maintain health insurance with the City.

Employee Participation in Health Insurance costs during the term of the Contract:

1. Employee Premium portion (as a percentage of base pay):

- Effective July 1, 2023: 4.0%
- Effective July 1, 2025: 4.5%

2. Deductibles

- Effective July 1, 2023: \$1,000 / \$2,000
- Effective January 1, 2026: \$1,250 / \$2,500

3. Pharmacy Co-Pays

- Effective July 1, 2023: \$5, \$25, \$80
- Effective January 1, 2025: \$10, \$35, \$90

- Pharmacy formulary shall be updated periodically by the carrier or RX provider in standard industry fashion, with notice to Union of any significant changes.

4. Physician, Therapy, Rehab Co-Pays

- Effective July 1, 2023: \$20, \$30
- Effective January 1, 2025: \$30, \$40.

5. Emergency Room Co-Pay

- Effective July 1, 2023: \$150

6. Article XVII: Seniority

Add the following new sections to this article:

4. The following shall be required to test for the relevant promotion within the Department, pursuant to a testing schedule determined, and modified from time to time, by the Fire Chief.

Chauffeur – a minimum of one (1) year's experience as a firefighter.

Fire Lieutenant – a minimum of five (5) years experience as a firefighter.

Fire Captain/Administrative Captain – a minimum of eight (8) years' experience in the Department, including a minimum of 2 years' experience as a Fire Lieutenant or six (6) years' experience as a Chauffeur.

Fire Inspector/Fire Prevention Officer/Master Mechanic – a minimum of ten (10) years' experience in the Department regardless of rank.

Assistant Training Chief – a minimum of ten (10) years' experience in the Department including a minimum of two (2) years as Fire Captain, or four (4) years as a Lieutenant.

Assistant Chief – a minimum of 12 years' experience with the Department, including a minimum of 2 years as Assistant Training Chief, or two years as Captain or five (5) years' experience as a Lieutenant.

Deputy Chief – a minimum of 14 years' experience with the Department, including a minimum of 2 years as Assistant Chief or Assistant Training Chief. Captains with a minimum of 14 years' experience with the Department, including at least five (5) years as a Captain will be permitted to test.

The City has and reserves the right to instruct the City of Scranton Civil Service Commission (Commission) to schedule additional exams based on needs if a list expires. The Fire Chief shall provide the Commission with the Department's current Standard Operating Procedures and Standard Operating Guides to be used as study material for the candidates for their written exams – which the Commission shall then provide to the testing company. The Fire Chief may assist the Commission with mechanical tasks or perfunctory tasks such as scheduling of tests and providing contact information for the oral examination panel, but he shall not opine to the Commission or the panel about a candidate nor shall he actively participate in the testing process or in the Commission's deliberations about candidates. The City shall facilitate making available materials necessary to study and/or prepare for the exam.

The City and the Union shall meet within thirty (30) days from the date of mutual ratification of this Agreement to discuss whether to change the current testing company. Change will only be made by mutual agreement. In the event the City is notified during the term of this Agreement that the testing company (the one it currently utilizes or any successor, if any) will no longer perform the promotional exams, the City and Union will meet within thirty (30) calendar days from the date of such notification to discuss selection of a new testing company. If the City and Union do not agree on a new testing company within that thirty (30) calendar days period the Civil Service Commission will select the testing company.

5. Temporarily filling an acting officer (Chauffeur or above) vacancy shall be done as amongst employees on that shift who are on a then-current active eligibility promotional list for that position or above, if applicable. If there is no then-current eligibility list at the time, the principle of unit seniority shall be applied to fill the acting position.

7. Article XXV – Heart and Lung Benefits

Delete Sections 3 and 4, and any references to setting up panels with specific arbitrators and replace them with a new section setting forth more recently agreed procedures between the parties which they now follow for Heart and Lung hearings.

Add the following new sections:

Section 5. An employee will not accrue any paid leave while out on Workers' Compensation, provided he or she is not also receiving benefits pursuant to the Heart and Lung Act. This includes sick time, vacation time, and holiday time.

Section 6. An employee who is transferred from Heart and Lung to Workers' Compensation shall not accrue paid leave to increase their

severance buyout. Any member on Workers' Compensation shall not be permitted to use their time on Workers' Compensation to increase their pension benefit or use such time to calculate their eligibility for retiree healthcare benefits.

An employee who has a work-related accident or incurs a work-related injury will, as required by the City's Policy, report it immediately and submit to an immediate mandatory drug and alcohol test which will be scheduled by the Fire Chief, Human Resources or their designee.

Section 7: In any Heart and Lung Act arbitration brought pursuant to the parties' grievance procedure, the rules of evidence shall be applied to the same extent and in the same manner as they are at a non-Heart and Lung Act labor arbitration. By way of example: medical evidence may be presented by way of written documentation, regardless of whether said documentation may be technically considered hearsay under the federal Rules of Evidence.

8. Article XVI: Pension and Retirement

Add the following section:

Section 6. Any request for pension must begin with official notice from the employee to the Fire Chief, who will in turn verify eligibility and submit an approved request to the Pension Board. Any employee who is determined by a Heart and Lung Panel Arbitrator to be permanently disabled shall immediately apply for the pension; if not, the City shall submit the application on the employee's behalf. Any and all disputes as to whether a disability is work-related or non-work related shall be determined by an arbitrator from the Heart and Lung Panel. The decision of the Heart and Lung Panel arbitrator adjudicating whether an injury is permanent shall be binding on the employee and the parties hereto.

Note: It is noted that in the course of the hearing and our subsequent deliberations, the City indicated that it may choose at some point to deal with this issue by ordinance. There is no issue with that, provided that such an ordinance is, of course, lawful.

9. Article XXI: Grievance Procedure

Replace Section 1, Step 3 with the following:

Step 3: If the grievance is not satisfactorily settled, it may be submitted upon mutual agreement between the parties for non-binding mediation to the Pennsylvania State Mediation Service. The representative of the Pennsylvania State Mediation Service shall not have the right or power to

decide or adjudicate anything concerning the matter. Rather, his/her authority shall be solely to attempt to confidentially mediate a settlement of the grievance to the satisfaction and agreement of the parties involved.

10. Article : Fire Academy

New article, as follows:

The following fire academies are mutually agreed by the parties, selection amongst which at any time to be as designated by the City: HACC, Allentown and COS if the City opens a fire academy or participates in one as a joint operator. Either party may seek to designate another fire academy that meets applicable then-current NFPA standards as are met by HACC at the time. Neither party will unreasonably withhold its agreement to adding another academy that meets such standards, provided that the City shall at all times designate which fire academy as amongst them it shall use.

11. Article : Performance Evaluations

New article, as follows:

During the term of this Agreement, the City will implement a Fire Department Performance Evaluation Program, to be performed annually by the Department's officers for those members under their charge. The Performance Evaluations will include evaluation of employees on the various aspects of their work and, where applicable, a work improvement plan.

12. Article : Time Trades

New article, as follows:

All time trades will be tracked by the Fire Chief's Office. Time trades must be approved in advance by the Assistant Chief or his designee on the shift on which the applicable time is to be worked. Any time trade must be repaid within eighteen (18) calendar months of when the trade occurred or the end of the succeeding year, whichever is greater. [Note: Any current time trades must be zeroed out by December 31, 2024.] Any deviation from that must be approved in writing by the Fire Chief or his designee. Everyone involved in this process shall timely and fully report all relevant information to the Assistant Chief or designee involved, and that Assistant Chief or designee to the Fire Chief. Failure to repay owed time within one year, will result in the repayment of time at the next working shift of the member owed.

13. Article : Duration of Agreement

New article, as follows (unless a Duration article existed in a prior CBA which is being consolidated):

The term of this Agreement shall be a period of five (5) years, commencing January 1, 2022 and terminating on December 31, 2026.

14. Other Subjects

Add the following:

Assistant Training Chief: The City will add a full-time Assistant Training Chief position to the unit. The Training Chief will be responsible for performing and/or overseeing all training within the Department (e.g., scheduling, tracking and related functions, ISO ratings, CPSE Accreditation, grant writing assistance). A copy of the job description and applicable rate of pay will be prepared and supplied to the Union within 60 days from the date of this Award. This position will work the M-F, 40 hrs/wk, non-suppression work schedule.

QRS: The City intends to implement a Fire Department-based Quick Response System (QRS) which it has been developing, to assist with responding to EMS calls. Upon approval for a QRS System, the City will notify the Union and offer to meet with it to discuss – not bargain over – the details of the program.

15. Consolidated Contract / Integration:


It is well-recognized that the retention in any collective bargaining agreement (CBA) of outdated language from prior labor agreements, arbitration awards, mutual memoranda, etc., makes the interpretation and application of that CBA needlessly difficult, complex and confusing. A clean-up of the CBA between these parties has not been done in more than 25 years. It is long overdue, to clarify the parties' exact obligations to each other and to prevent mishandling and mistrust in applying their contract and in their relationship. Accordingly, the parties are directed to produce a clean and correct complete new CBA within one hundred twenty (120) calendar days from the date of this Award, same to incorporate the terms and conditions of this Award into the prior terms and conditions.

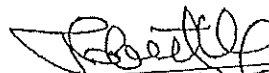
To accomplish that, a true and correct version of the parties' last prior CBA, which expired December 31, 2021, must first be readied, eliminating all non-necessary, obsolete, superseded and aged-out provisions and language, inaccurate article and section references, and incomplete or erroneous

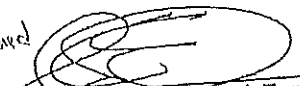
material grammar. The parties will then accept and integrate the terms and provisions of this Award into their new CBA and mutually prepare and produce the new CBA within the one hundred twenty (120) calendar day period stated above. If the parties need more time, they shall request an extension from the undersigned Board of Arbitration, provide the reason for their request and a new proposed completion date.

Considering the overarching importance of this contract consolidation and integration process, this Arbitration Panel shall, until the parties produce the complete new CBA, retain jurisdiction of any disagreement or dispute between the parties over what constitute the true and correct terms of the parties' last prior CBA. The processing of any dispute or disagreement over identifying those terms shall be under the grievance procedure in the parties' CBA, but shall culminate in arbitration heard by this Arbitration Panel.

The decision of the Arbitration Panel represents concurrence by a majority of the Panel members on every issue but does not necessarily represent concurrence by all Panel members on every issue. Any language or terms of the Agreement not amended, revised, modified, or deleted by this Award shall remain in effect for the term of the Agreement. The Panel shall retain jurisdiction for the same one-hundred (120) days in the event there are any issues with the implementation of this Award.


Stephen J. Holroyd, Esq.
Arbitrator for IAFF Local 60
Dissenting as to ARTICLE XVIII
(WORTH INSURANCE) - see attached


Robert Utberg, Esq.
Arbitrator for the City of Saratoga


Robert G. Olford, Esq.
Impartial Arbitrator

Dissent as to (see)
Article VIII - Wages;
Article XVII - Seniority
and certain
subjects proposed
by the Employer but
not included in the
Award.
See attached Dissent.

Dated: 4/4/23

DISSENTING OPINION OF UNION-APPOINTED ARBITRATOR

When the Pennsylvania General Assembly passed the Policemen and Firemen Collective Bargaining Act in 1968, it granted fire fighters the right to bargain over their wages and benefits, but also imposed an important limitation on that right. Unlike employees in the private sector, fire fighters in Pennsylvania would never have the right to employ the most effective weapon in their arsenal—the right to *strike*. So important were the services that fire fighters provided to society that they would not be permitted to withhold those services in an attempt to improve their lot.

Instead, the heavy responsibility of determining just what a fire fighter is worth would fall on the shoulders of an interest arbitration panel.

Over the years, it has become well-established that an Act 111 interest arbitration panel is to be guided by *facts*, and not hyperbole. Generally, three factors drive a panel's decisions in crafting an award: 1) demonstrated need for a proposal; 2) an examination of how comparable communities and departments have addressed the issue; and 3) whether there is an "ability to pay" for the proposal.

In this matter, the Panel was faced with some difficult decisions, given both the City's tortured 30-year history while in distressed status under the Municipalities Financial Recovery Act ("Act 47") and the nearly decade-long litigation that stemmed from the City's attempts to impose a Recovery Plan in 2002, as well as the fact that the parties have not actually opened their contract for negotiations since 2015. In the eight years that have passed since, there have been a number of trends and evolutions in the world of collective bargaining for fire fighters, and it can fairly be said that Scranton was behind the curve in a number of areas.

I do believe that, for the most part, a majority of the Panel did a fair job of crafting an award that would equitably address both the current state of affairs, and the fact that the extant collective bargaining agreement was, for want of a better term, "stale" in a number of areas. To be sure, this is largely a concessionary award as far as Local 60 is concerned, but a majority of the Panel must be commended for only applying a scalpel to those provisions that needed updating, as opposed to the chainsaw the City wished to employ. So, too, should a majority of the Panel be commended for not blindly accepting the City's claims of still being on the brink of bankruptcy and awarding fire fighters wage increases well in excess of what the City was willing to pay, and which will allow Scranton fire fighters to retain their place among comparable cities in that regard.

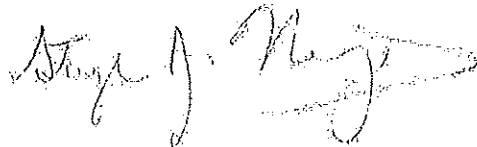
Nevertheless, I am compelled to dissent to the decision of a majority of the Panel to impose additional burdens on employees in connection with their health care. To be fair, the evidence in this case did show that, as a result of not having updated their collective bargaining agreement since 2015, Local 60 members had been immune from the considerable changes that occurred across the state and found members contributing more towards their health care. It was inevitable that there would be some "pain" in this department.

However, a majority of the Panel went too far with its decisions to increase the so-called "cost sharing" (which, in reality, is little more than cost-*shifting*). Over the life of this agreement, employees will be contributing an additional one percent of their pay towards the cost of health care.

This will result in an approximately \$1,100 increase in premium contributions between now and 2026, while a 5th year fire fighter will receive approximately \$8,000 in wage increases over that same span.

More onerous, however, are the deductibles imposed by a majority of the Panel. Admittedly, Local 60 previously had *no* deductibles. However, going from zero to \$1,000/\$2,000, with an additional \$250/\$500 in the final year of the agreement, is simply too much, too soon. Among comparable departments, only one currently has higher deductibles, while most are in the \$300/\$500 range for individual deductibles. Even with the expectation that the other departments will "catch up" and contribute more as their agreements come up for renegotiation, my fear is that the majority here have still ramped Scranton up to the top of the table throughout the life of this agreement. It is almost as if they are being punished for having successfully bargained long-term contract extensions which shielded them from shifting costs of health care over the past 10-plus years. It certainly ignored what comparable departments are paying *now*, which is what is supposed to be driving the Panel's determinations—indeed, comparables *did* appear to drive the Panel's changes to co-pays, which are more in line with what are seen in other departments, although still closer to the top of the table.

Because of these too-drastic changes to the employees' contributions to health care, I am compelled to dissent.



STEPHEN J. HOLROYD

RE: Firefighters Local 60 - and - City of Scranton (Act 111)
AAA Case No. 01-22-0003-9023

DISSENT OF EMPLOYER-APPOINTED ARBITRATOR
TO APRIL 4, 2023 AWARD

The arbitration panel was extremely diligent in conducting a careful and thorough review of the record in this case, consisting of testimony by knowledgeable fact witnesses, particularly noting Chief John Judge, a highly trained and educated veteran firefighting professional and Scranton City Solicitor, Jessica Eskra, who educated on the City's 30 years in Act 47 oversight, and expert witnesses for both sides in the fields of municipal finance, fire safety and municipal firefighting standards. The record includes several dozen documents and many hundreds of pages of "required reading", which all three arbitrators obviously reviewed and so collectively understood the huge importance of this contract, coming at this post-COVID, post-Act 47 moment in time. That importance was made and stressed over and over by the City in its two pre-arbitration meetings with the leadership of IAFF Local Union No. 60, one in November 2021 and the other in February 2022. There would have been more, and the meetings could have been substantive and real, had the Union's leadership at that time been willing.

That, however, is water under the bridge, as noted by the City's counsel in his opening statement, because unfortunately the City's pleas to meet and meaningfully discuss each other's wants and needs, to work together on a new contract to deal with changed and changing circumstances, were met with deaf ears. The City's efforts were rejected; there were no meaningful discussions, leaving no choice but to engage as we did, in an extensive, lengthy Act 111 arbitration. As noted in the body of the Award, that consisted of three full hearing dates, preparation of extensive, very detailed exhibits and engagement of knowledgeable but expensive experts on both sides who testified at the hearings, followed by five separate arbitral executive sessions and numerous telephone conferences between and amongst the panel.

I think it is also appropriate to note and recognize the fact that after the third and final hearing date in this matter on February 13, 2023 - and before this panel assembled for its first executive session on February 27, 2023 - the Union's leadership did finally reach out to City Administration and the parties had *several* very meaningful meetings and discussions which (thankfully) helped positively mitigate some of the issues before this panel and thus helped shape both the scope and timing of this Award. Candidly, those were the kinds of productive discussions the City had been anticipating all along. Hopefully, it marks a breakthrough point for the parties' future working and bargaining relationship.

That said, with due respect for the process and the efforts of all three arbitrators that produced this Award, this arbitrator takes particular exception to two of its aspects:

1. Article VIII - Wages, as set forth in the Award: Given that this process was delayed so long due to the unwillingness of one party, the Union, to engage in meaningful dialogue, I feel strongly that a lump sum award of \$2,000 for Calendar 2022 is much more

than was warranted. Notably, the City first, in 2021, proposed a 2022 lump sum of \$500 which, given all the uncertainties it was dealing with in that still-Covid riven time as the City was peeking out at emerging from Act 47, was considered appropriate and fair. As that year progressed and the City's finances, though still challenged, began to look up, it increased its 2022 lump sum proposal to \$1,200, as noted at the February 6, 2023 arbitration hearing. Considering the increases the City is absorbing in the other four years by this Act 111 Award, including its counsel's and experts' costs as well as its required payment of the full cost and expenses of the independent arbitrator (unknown at this point, but presumed to be considerable given all the time involved), I believe providing \$800 above and beyond the City's modified \$1,200 lump sum offer is simply excessive. Considering that some 135 +/- bargaining unit firefighters will be eligible to receive that lump sum amount, that additional cost (over and above the City's generous revised \$1,200 proposal) is more than \$110,000, plus roll-up costs of at least another 25%. That is simply too much for this City to absorb this year (2023) in addition to all of its other arbitration-related expenses – particularly where some or even most of those costs could have been avoided had the Union's leadership at the time been receptive to mutual discussion... and had they not strung the City out for well over a year and a half before finally pushing the arbitration button they had available all along.

Although the wage amounts awarded for the other contract years are higher than what the City proposed and what it would have liked to see considering Scranton's firefighters' current placement at virtually the top of the wage heap for comparably sized and staffed cities in Pennsylvania, are reasonable all things considered, and so there is no objection or dissent as to those.

2. I dissent to two points in Article XVII – Seniority in the majority Award: The City stated its strong belief that, notwithstanding what may have occurred in the past, advancement (promotion) to certified positions should move *one rung at a time*. For that reason, the City vehemently maintained that opportunity for advancement to the position of Fire Captain/Administrative Captain should not have included Chauffeurs, since a Chauffer, unlike a Lieutenant, has no prior supervisory or leadership training. Likewise, the City's position was that Assistant Chief advancement should not have included the opportunity for a Lieutenant, whose managerial and supervisory training and experience are simply not sufficient to advance him or her to that rank and role. The majority decided as they did on this issue largely because they reasoned that the City has the opportunity, under Civil Service's "Rule of Three" applicable to promotions, to select the one it deems most qualified - who most likely will be a Lieutenant for a Captain position, a Captain for an Assistant Chief position role. That reasoning and opining, however, is based on fuzzy math which no one can know or count on, thus opening the door to advancing individuals to leadership positions who are insufficiently trained and experienced for their new roles. For those reasons, the City reiterates its position on this issue and hopes that it will be reexamined in the future, even before the next CBA.


Robert Ufberg, Esq.
Employer-Appointed Arbitrator