

**INTERNATIONAL ASSOCIATION OF
FIRE FIGHTERS, LOCAL #1009**

**ARBITRATION OPINION
AND DECISION**

AND

INTEREST ARBITRATION

CITY OF WORCESTER

**JOINT LABOR MANAGEMENT
COMMITTEE CASE NO. 03-13F**

**DATE OF AWARD:
MAY 1, 2006**

I. INTRODUCTION

The parties appeared before the Arbitration Panel consisting of John F. Sciara, Labor Panel Member, Daniel J. Morgado, Management Panel Member and Craig E. Overton, Neutral Arbitrator at hearings held on December 4, 2005, April 3, 2006 and April 7, 2006. Appearing for the Union was E. David Wanger, Esquire. The City was represented by Philip Collins, Esquire. The parties concluded their respective presentations in the first three days of hearing, with appropriate rebuttals during the hearing. The attorneys agreed to expedite the filing of their briefs so that the Panel could begin its deliberations on April 21, the date originally set aside for possible rebuttal. The panel met in executive session on April 21, 2006 and April 26, 2006. The panel is mindful from prior correspondence that the City is fast approaching the date for presenting its FY 2007 budget to the Worcester City Council. Accordingly, we have expedited our consideration of this matter.

The parties submitted numerous documentary exhibits which the Panel has reviewed and considered in light of the statutory criteria. The Panel has also weighed the arguments of the parties in the briefs received on April 20, 2006.

This proceeding involves one of the longest unsettled contracts under the jurisdiction of the Joint Labor Management Committee. The procedural history of this case is both unique and tortured. After the so-called "Boyle Award" was rendered for the two I.B.P.O. police units, Local 1009 sought to invoke the re-opener clause of their 2000-2003 Agreement. The representatives of the City, under the prior administration, refused to meet with the Union. This in turn caused the Union, understandably, to file a prohibited practice charge at the Labor Relations Commission (LRC). When a complaint was issued by the LRC, scheduling a Formal Hearing, the Union filed a Motion to Defer the case to the J.L.M.C., and the City assented.

At about the same time the parties, still having a dispute about the final terms of the 2000-2003 Agreement, engaged in minimal bargaining about the successor contract. The two disputes were joined for hearing before this Panel, but then, at the suggestion of the Union and with the City's assent, the issues were bifurcated. Thus, this Panel's award in July, 2004 dealt only with the re-opener issue, and reserved jurisdiction over the successor contract issues.

The proceeding was further complicated by the action of the Worcester City Council's unanimous rejection of the majority award of this Panel rendered in July, 2004, and by the parties' inability to reach a resolution upon resumption of bargaining. In addition, the City has raised jurisdictional issues about the Union's ability to present wage proposals from the re-opener phase of this proceeding. Equally, the Union at the hearing has questioned whether an award beyond June 30, 2006 would run afoul of the three-year limitation on the duration of collective bargaining agreements under the bargaining statute. However, that objection appears to have been removed by the

Union in the position articulated in its brief. Accordingly, the Panel majority deems it important to craft an award which will limit jurisdictional objections.

II. WAGES AND HEALTH INSURANCE: THE LOCAL 378, I.B.P.O. SETTLEMENT

The Panel has been influenced by the first City settlement, reached in May, 2005, by Local 378, I.B.P.O. representing a large unit of approximately 365 police officers. Other City and school settlements have followed the lead of Local 378 in the 9.25% wage pattern (over 4 years) and the health insurance reform measures under which plan design co-pays are updated (within the norms established by City Exs. Health-3 and Health-5) and contribution rates by the City are reduced to levels more consistent with the norm in the Massachusetts public sector. The City demonstrated that the skyrocketing increases in health insurance are eating up a disproportionate share of the City's budget and fiscal resources. See City Exs. Health-1, 2, 6, 7-12 and City Exs. ATP-6, 7-10. As difficult as these changes are for employees to accept, we conclude that they are necessary to allow the City to afford the level of increases in wages and other benefits.

III. THE HAZMAT METHODOLOGY ISSUE

In 1994, the parties negotiated an unusual and complicated provision under which compensation for the exposure to and performance of service related to hazardous materials, set at 1.1%, became a recurring add-on to each subsequent wage increase. Indeed, it took the parties four years, until 1998, to resolve a dispute about the interpretation of that provision. The nine-year history of these increases (1994-2003) resulted in firefighter base wages increasing significantly more than those of other bargaining units, including police. The Panel is convinced that the time has come to

eliminate the HAZMAT methodology (sometimes called the "double counting methodology"). It has the foreseeable potential to de-stabilize labor-management relations.

Despite the City's vigorous arguments, the majority of the Panel concludes that there must be some quid pro pro for the elimination of "double counting". However, it is apparent that political and economic factors suggest the propriety of prospective application of a quid pro pro. Accordingly, the Panel concludes that on the last day of the contract, effective June 30, 2007, there shall be an across-the-board increase in annual wages of \$1,500 plus 3.0%. In determining this amount, the Panel has taken into account the improvements in fringe benefits in the Local 378 I.B.P.O. settlement, especially the substantial benefit of having the so-called Quinn Bill salary increases built into base pay both for purposes of calculating overtime rates and holiday pay. We note as well that the Local 378 settlement also includes other improvements in compensation.

IV. THE RE-OPENER

The re-opener clauses in the parties' 2000-2003 Agreement appear to be triggered only by agreements reached during those three fiscal years. The City has made its wage offers in this proceeding expressly contingent on an understanding that they will not be subject to any request or obligation to re-open the agreement. The Panel agrees that the 2000-2003 re-opener should be confined to the term of that agreement. In the Panel's experience, re-opener clauses are usually the product of mutual agreement based on specific circumstances and the desire of the employer to get one unit to be the first to settle. Here, the City has opposed re-openers because it

wants the certainty, and therefore the stability, which comes with knowing that a done deal is really done. The Local 378, I.B.P.O. settlement permanently deleted the re-opener clause from its agreement. Based upon all the evidence and the circumstances prevailing at the time of this Award, there is no reason to continue the re-opener clause in the 2003-2004 or 2004-2007 agreements. Even with the Award covering a four-year period, the parties will be back to the bargaining table in less than a year. Local 1009 is, of course, free to propose to the City, at that time, the inclusion of some form of re-opener.

V. STEP 1A

The Panel adopts the City's proposal to add a new step to the schedule for the second year of employment, halfway between the current minimum and Step 2. This proposal, modeled on an identical provision in the Local 378 Agreement, will reduce wage costs in the first few years of a firefighters employment. The savings to the City will not be significant during the life of the agreement, since the new step will apply only to those hired after January 1, 2006. The future savings, however, are warranted by the record evidence, as well as by the maximum pay rates achieved by the Union under this Agreement.

VI. FRINGE BENEFITS

In its brief, the Union has reduced its wage demands, withdrawn its night differential proposal, and (with prior notice to the City) added less costly proposals for longevity and a stipend for those trained in confined space technique. The Panel is not convinced that the Union's other pending proposals for officer rank differential or clothing allowance should be awarded. We do, however, endorse the alternate

approach of awarding improved longevity and a stipend for those trained in confined space technique. This alternative approach closely parallels improvements in the Local 378 police agreement in longevity and a Civil Process Server stipend. Accordingly, our award does not include the more costly proposals initially sought by the Union, but does include the two changes suggested in the alternate approach.

VII. SUMMER VACATION SCHEDULE

The Union has proposed a variety of changes in summer vacation scheduling, some of which change the increments in which vacation is taken. The other significant change is the expansion of the summer vacation period in a way estimated to generate considerable savings in overtime. The City has proposed to allow certain non-suppression personnel to take all vacation as single tours. The panel concludes that these scheduling changes have merit, provided that there are reasonable restrictions on the way the vacation will be taken; and concludes that the City should reap the expected recurring savings in overtime. Accordingly, the panel awards the proposed changes with certain notice provisions. In consideration of these savings, the panel also awards, as set forth in the attached award, a \$500 across-the-board wage increase to be effective July 1, 2006. In our estimation, the overtime savings will come close to paying for this increase.

VIII. OUT-OF-GRADE SERVICE REQUIREMENT

The panel adopts the City's proposal to place an experience requirement on serving in an out-of-grade capacity, and the related *quid pro quo* it offered (in response to an earlier Union proposal) that a firefighter detailed to meet the time-in-service requirement receive the applicable out-of-grade pay.

IX. THE 24-HOUR SHIFT

The panel is convinced that, because of the minimal bargaining referred to in the Introduction above, the matter of adopting the 24-hour shift should be the subject of an advisory joint study committee, as more fully set forth in the Award.

X. ASSIGNMENT TO THE RESCUE UNIT

With prior notice to the Union, the City, in its brief, revised its position on transfers to focus on assignments to the Rescue Unit. After due consideration of the parties' arguments, the Panel awards the City's proposal to remove such assignments from the current bid system, with seniority to be considered when qualifications are relatively equal.

XI. OTHER PROPOSALS

To the extent that this Opinion does not specifically address a proposal of either party, it is because we have concluded that the items in the Award sufficiently address the principal concerns of the parties. These other proposals can be addressed, as the parties choose, in the next round of bargaining.

XII. CONCLUSION

Accordingly, based on all the evidence weighed in light of the statutory criteria, the Panel hereby issues the attached Award.

AWARD

In full resolution of the issues presented in JLMC Case No 03-13F, the following changes shall be made in the parties' 2000-2003 collective bargaining agreement.

1. **Duration.** Except as provided in paragraph 2 below, the current collective bargaining agreement shall be extended without change for a period of one year. The new collective bargaining agreement shall cover the period from July 1, 2004 through June 30, 2007.
2. **Wages/Hazmat Methodology/Re-opener.** The first paragraph of page 50 of the 2000-2003 agreement, the so-called "double counting" method, and associated illustrations reflecting that methodology, shall be deleted from the agreement effective July 1, 2003. A new illustration shall be inserted reflecting calculation of base, and application of the Hazardous Materials Stipend, Longevity, and Education Incentive. [A sample illustration is set forth in Attachment A.] The Hazardous Materials Stipend already built into the base from 1994-2003 shall remain as part of base compensation and, on and after July 1, 2003, the Hazardous Materials Stipend percentage benefit shall be applied to base in the same manner as the Longevity and Educational Incentive percentage benefits for the purpose of calculating regular base compensation and for calculating overtime, holiday pay and retirement contributions and benefits. The re-opener language of the 2000-2003 agreement (New Article: RE-OPENER, page 46-47) is hereby deleted from the agreement effective July 1, 2003.

The following wage increases will be implemented:

- a. Increase wages under Article 20 by 0.25% effective July 1, 2003. Inasmuch as FY 2004 has passed, it is understood and agreed that members of the bargaining unit who worked in FY 2004 shall receive the retroactive pay increase, as soon as practical following ratification and funding of an Agreement or Award.
- b. Retroactive to July 1, 2004, the wage schedule shall be increased by 2.0% across the board.
- c. Retroactive to July 1, 2005, the wage schedule shall be further increased by 2.0% across the board.
- d. Effective July 1, 2006, the wage schedule shall be further increased by 2.0% across the board.
- e. A 2.0% across-the-board increase shall be granted on the same date as the health insurance contribution rate change set forth in the last paragraph (fourth bullet) of subsection 3a below is implemented, and shall be calculated after the 2.0% increase. Effective June 30, 2007, the wage schedule shall be further increased by 1.0% across-the-board.
- f. In addition, effective July 1, 2006, but after said 2.0% across-the-board wage increase, annual salaries shall be increased by \$500 across the board, in consideration of the changes in the vacation schedule (proposed by the City to effect manpower overtime savings) set forth in paragraph 7 below. This increase will not be subject to paragraph 3b below.
- g. Add Step 1A to schedule, as follows: For firefighters hired after Council funding of this Agreement, there shall be a new step added to the salary schedule, to be effective during the one-year probationary period, which shall be set halfway between the Academy rate (Step 1) and the current Step 2, i.e. approximately \$39,907.21 on the 6/30/03 Schedule 4A, with no degree/no longevity. Such Step 1A shall thereafter increase as provided in sub-sections 2a-2f above, and 2h below.
- h. In full resolution of any and all claims of the parties regarding the so-called re-opener portion of the JLMC Case No. 03-13F, in the context of changes above, the annual salary schedule shall be increased effective June 30, 2007 as follows: First, the increase provided in the last sentence of section 2e above shall be applied; second, an increase of \$1,500 shall be applied across the board; and third, a 3.0% increase shall be applied across the board.

3. **Health Insurance.** The City will maintain existing percent contributions and plan design through June 30, 2006.

a. Effective July 1, 2006 the following changes shall be made:

- Plan Design changes: \$10 office visit co-pay for all plans; \$10/\$20/\$35 Rx co-pays for all plans; and \$50 ER visit co-pay for Fallon (Blue Choice already \$50).
- The City's contribution rate for Master Medical shall be set at 60%; the subscriber shall pay the remainder.
- The City's contribution rate for active employees hired on or after January 1, 2006, for all plans other than Master Medical, shall be set at 75%; the subscriber shall pay the remainder.
- For employees hired before January 1, 2006, the City's contribution rate towards all health plans other than Master Medical, effective July 1, 2006, shall be set at 80%; the subscriber shall pay the remainder.

b. It is understood and agreed, as an exception to the current provisions of Article 4, sub-section 1, Savings Clause, that if any portion of the health insurance changes set forth in this paragraph, which are essential components of this agreement, are held invalid by a tribunal of competent jurisdiction, or if compliance or enforcement of any such provision is in any way restrained, then, without the necessity of bargaining about a mutually satisfactory replacement, the City shall have no obligation to pay or to continue in effect the salary increases set forth in paragraph 2e above until such time as a final judgment is rendered and not appealed which declares such provisions valid or removes any restraint on their enforcement. Should such paragraph 2e payment be delayed or interrupted, then upon subsequent enforcement of the health insurance changes as set forth above, the compensation then in effect shall be recalculated, prospectively from the point of enforcement of such health insurance changes, to conform to the entirety of paragraph 2a-2h.

c. The parties further agree, in the drafting of a comprehensive collective bargaining agreement, to update the language of the health insurance article to remove obsolete language and, as necessary, to conform its language to the specific terms of this agreement.

4. **Longevity:** Effective July 1, 2005, \$125 will be added to the annual longevity stipend, so that the percentage benefit in Part F of the 2000-2003 agreement shall be amended by adding .22% across the board as follows:

<u>A minimum of:</u>	<u>But less than:</u>	<u>FY06</u>
5 years	10 years	1.75%
10 years	15 years	2.51%
15 years	20 years	2.60%
20 years	25 years	2.67%
25 years	30 years	3.22%
30 years (or more)		3.47%

Furthermore, effective July 1, 2006, \$125 will be added to the annual longevity stipend, so that the percentage benefit in Part F of the 2000-2003 agreement shall be amended by adding .21% across the board, resulting in percentage benefits as follows;

<u>A minimum of:</u>	<u>But less than:</u>	<u>FY07</u>
5 years	10 years	1.96%
10 years	15 years	2.72%
15 years	20 years	2.81%
20 years	25 years	2.88%
25 years	30 years	3.43%
30 years (or more)		3.68%

5. **Confined Space Stipend:** Effective beginning in Fiscal Year 2007, there shall be an annual stipend of \$250.00 payable to each member of the bargaining unit in consideration of training in Confined Space technique. Such payments shall be made to employees on the payroll in the first week of June of each fiscal year.

6. **Out of Grade. Service Requirement.** Effective upon funding by the City Council, Article 22 will be amended to require that a firefighter must have at least two (2) years on the department to be eligible to serve in any out-of-grade capacity. In cases where this eligibility requirement results in detaching another firefighter to serve as the acting officer, such firefighter shall receive the applicable out-of-grade pay.

7. **Summer Vacation Schedule:** The basic vacation period, also known as the summer vacation period, will be expanded by two weeks for the summer period beginning for calendar year 2006, and will also be amended as follows:

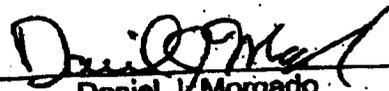
- a. The scheduling of basic vacation entitlement (the summer vacation) shall be one week at a time such that each employee shall be eligible for two one week vacations during the basic entitlement period, such that the basic vacation entitlement period shall consist of 14 one week vacation periods.
- b. All personnel assigned to Fire Prevention, Training, SCBA truck and the Capital Projects Manager shall be eligible to use all vacation weeks as single tours. Use

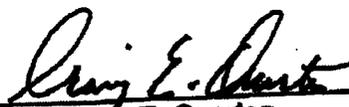
of single tours for these personnel during the summer vacation period and the month of December shall be subject to the operating needs of the department and the discretion of the Fire Chief.

- c. An employee's fifth (5th) vacation week shall be eligible for use as single tour leave, however, a week's vacation shall equal 2 day tours and 2 night tours. Employees eligible for the fifth (5th) week must give notice of intention to take the fifth (5th) week vacation as single tours by the end of September in the year immediately preceding the vacation year in which such tours are to be taken. Notice as to the scheduling of a single vacation tour is to be given at least thirty (30) days in advance. The current practice of overtime replacement of employees assigned to the Rescue Unit on weekly vacations shall also apply to replacement of such personnel taking single tour vacations.
 - d. Single tours may not be used during the summer vacation period and the month of December.
8. **Assignment to Fire Rescue:** Under Article 21, the Fire Rescue shall be removed from the bid system. However, if the Chief in his discretion determines that the qualifications of the applicants for the assignment are relatively equal, then seniority as measured by permanent time in grade (and then, if equal, length of permanent employment in the department, rank in drill school inclusive,) shall govern the selection.
9. **Study Committee:** The parties shall establish a committee to study a 24 hour shift for the Worcester Fire Department; the committee will be made up of 2 persons designated by the City Manager, and 2 persons designated by Local 1009. The Committee report is non binding. The committee has until June 30, 2007 to issue a report. If no report is issued by that time, then the committee will cease to exist.

Except as changed herein, all other material terms of the 2000-2003 Collective Bargaining Agreement shall continue in effect in the 2003-2004 and 2004-2007 Collective Bargaining Agreements


John F. Sclara
Labor Panel Member


Daniel J. Morgado
Management Panel Member


Craig E. Overton
Neutral Arbitrator

Dated: May 1, 2006

**ATTACHMENT A
ILLUSTRATION OF BASE SALARIES**

Because the Award changes the HAZMAT methodology to eliminate the double counting aspect, and because the remaining contract language regarding methods of calculating base pay is still complicated, the panel believes it is useful to illustrate base pay on various dates for a firefighter with an Associates Degree and five to ten years' service. The same methodology will be used to calculate base salaries for firefighters and officers with different levels of education and different lengths of service.

6/30/03	\$54,788.83		
7/1/03	\$54,788.83 Base + 136.97 .25% \$54,925.80 New Base 604.18 H.M. 1,433.56 A.D. 840.36 5-10 \$57,803.90	7/1/06	\$57,144.81 Base + 1,142.90 2% \$58,287.71 + 1,165.75 2% \$59,453.46 + 500.00 \$59,953.46 New Base 659.49 H.M. 1,564.79 A.D. 1,174.19 5-10 \$63,351.93
7/1/04	\$54,925.80 Base + 1,098.52 2% \$56,024.32 New Base 616.27 H.M. 1,462.23 A.D. 857.17 5-10 \$58,959.99	6/30/07	\$59,953.46 Base + 599.53 1% \$60,552.99 + 1,500.00 \$62,052.99 + 1,861.59 3% \$63,914.58 New Base 703.06 H.M. 1,668.17 A.D. 1,252.73 5-10 \$67,538.54
7/1/05	\$56,024.32 Base + 1,120.49 2% \$57,144.81 New Base 628.59 H.M. 1,491.48 A.D. 999.32 5-10 \$60,264.20		

For effective dates listed in the above table which occur before the issuance of this Award, the increases provided shall be retroactive to such dates.

**CONCURRING OPINION
OF
DANIEL J. MORGADO**

My decision to support this Award has been a difficult one, and therefore warrants some explanation.

I dissented from the Panel's July, 2004 Award for a number of reasons. First, I felt it converted a re-opener clause into a "me, too" clause, and therefore improperly presumed what the result of the re-opener negotiations would have been, had the City met with the Union. Second, it provided a three-year increase to Worcester's firefighters well beyond that of other Worcester settlements and municipal settlements generally. Third, given the timing of the Award and its cumulative retroactive effect, I saw no evidence that the City had the wherewithal to absorb its price tag.

This Award, however, is significantly different. For the fiscal years involved, I believe it is consistent with other city and school settlements. It embraces the City's health insurance reforms in a way which facilitates funding its wage increases, and will help stabilize this budget-busting cost in future years. But most significant of all, it eliminates the double counting methodology, which has been an irritant between the public safety services since the mid-1990s, and represents a wage policy which has little to commend it in difficult financial times.

To some, the "last day of the contract" increases awarded by the Panel may seem too much. As Professor Overton's opinion points out, however, other groups which have settled in this round of bargaining have achieved significant economic gains, and in some cases on effective dates earlier than those provided here. Moreover, it is unrealistic to expect that the rejection of funding for this Panel's July, 2004 Award

means that Worcester's firefighters are entitled to no additional consideration. To me, the elimination of the double counting methodology in this contract is a fair quid pro pro for increases which the City will not have to fund until it develops the Fiscal Year 2008 budget.


Daniel J. Morgado