

BEFORE THE JOINT LABOR MANAGEMENT COMMITTEE
FOR POLICE AND FIREFIGHTERS (JLMC)

City of Worcester (the City)	*	INTEREST ARBITRATION:
	*	
	*	Opinion, Decision and Award
and	*	
	*	
Local 504, I.B.P.O. (The Union)	*	DATE OF AWARD:
JLMC-05-57PS	*	July 23, 2007
	*	

OPINION

I. Background

This matter came before a three-member interest arbitration panel appointed by the JLMC and composed of Paul J. Birks, Labor Panel Member, Paul W. Blazar, Management Panel Member, and Allan W. Drachman, Neutral Arbitrator. The Union, Local 504, I.B.P.O., representing ranking police officials in the City's Police Department, was represented by Kevin B. Coyle, Esq. The City was represented by Philip Collins, Esq.

Pursuant to instructions from the JLMC, both parties listed a limited number of issues to be determined by the Panel. Initially the Panel's consideration was limited to the four year period approved by the parties as the duration to be covered by the award, i. e., July 1, 2003 through June 30, 2007.

At the hearing on April 24, 2007, the parties submitted testimony and numerous documentary exhibits which the Panel reviewed and considered in the light of the statutory criteria. The Panel also considered the arguments of the parties in briefs received on May 29, 2007.

During the Panel's deliberations in June, 2007, the parties expressed a mutual interest in having the JLMC Arbitration Panel mediate a contract extension.

This mediation was undertaken with the understanding that, without an agreement by the parties on the framework of any such extension, the Panel would be left to issue an award limited to the period July, 2003 through June, 2007.

The Panel's mediation efforts brought the parties close to an agreement. Thereafter, the parties met and have conveyed to the Panel the framework of a four year award and a two year extension, for its review and approval. The Panel commends the parties for their persistence in reaching this point. The parties have entered into a written Stipulation (Attachment B to the Award) that the Panel render one award for the four year period and one for the two year extension.

Much of the evidence at the hearing concerning the City's ability to meet costs focuses on the City's efforts to reduce a sizeable gap between desired spending levels and available resources in the FY 2008 budget process. The City also introduced evidence of other fiscal limitations, e.g. GASB requirements, which are likely to further diminish the City's ability to pay in FY 2009 and beyond.

Based on all the evidence and considering all of the statutory factors, the Panel believes the award covering the four year period, July, 2003 through June, 2007 (Part I of the Award, hereinafter called the Four Year Award) and the two year extension through June, 2009 (Part II of the Award, hereinafter called the Two Year Award), represent a fair settlement for both parties and that the two year contract extension provides a measure of stability in the parties' relationship.

III ISSUES

A. FOUR YEAR AWARD

1. Wage Increases and Health Insurance Changes

On health insurance changes, the Panel has been influenced by the May, 2005 Local 378 settlement in 2005, the other City and school settlements which followed the lead of the 378 settlement, and the Overton II Award which followed the pattern of such prior settlements.⁷

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⁷Although the fact that the Off The Record Tentative Agreement (OTRTA) was rejected by the membership of Local 504 is in evidence, the Panel has not considered the terms of the OTRTA in arriving at its conclusions or as criteria for its Four Year Award.

The City has clearly demonstrated and documented that dramatically escalating increases in the cost of health benefits are consuming an increasingly disproportionate share of the City's budget and fiscal resources. The shifting of part of the cost of such increases to members of the bargaining unit represented by Local 504, is necessary in order for the City to afford to pay increases in wages and other benefits.

Therefore, the changes in health insurance proposed by the City will be included in the Award, except that the Panel has adjusted the effective dates of certain changes to avoid difficulties in retroactive application of such changes.

On wage increases, the 2005 Local 378 settlement established a basic 9.25% pattern which is included in this Four Year Award. The 2.0% increase which becomes effective on June 30, 2007 as part of this 9.25% pattern is in consideration of all the health insurance changes proposed by the City and included in this Four Year Award.

2. 3% on June 30, 2007

The Union's proposal to add a 3% wage increase on June 30, 2007 to all the other increases has been the most difficult issue for the Panel. If the parties had not consented to extend the jurisdiction of the Panel to cover an additional two-year period (through June 30, 2009), the award, in all likelihood, would not have included wage increases beyond the 9.25% wage increase, which is the contract settlement pattern for the 2003-2007 period.

This Panel agrees with the Panel in Overton II that if the HAZMAT double-counting provision had not been discontinued, it would have continued to destabilize police salaries. However, the Union is correct that the portion of the Overton II Award which granted an additional 3.0% salary increase effective June 30, 2007 to some extent eroded the purpose of the Boyle Award.

The Panel also agrees that wage comparability cannot be measured by naked base salaries alone, without taking into account other important elements of compensation. Police, compared to firefighters, have the considerable advantage of being able to enhance their base salaries through education incentive pay under the Quinn bill. This Panel agrees with the City that the Overton II Award for the June 30, 2007 increases took into account the aggregate cost of the fringe benefits

negotiated by Local 378, I.B.P. O. with the City. Unlike naked base salary, the value will vary from police officer to police officer based on rank, education levels, and both the opportunity and willingness to work overtime.

The Panel has decided to include in this Award a 3% increase effective on June 30, 2007, the same effective date as the 3% increase awarded by the Overton II Panel. It is this Panel's belief that such action rectifies any base pay disparity occasioned by the double-counting methodology and the Overton II Award.⁷

3. Including Education Incentive Pay in Base Pay for the calculation of holiday pay and overtime pay

The Panel is following the Local 378 settlement by including this item in the Award (Firefighters Local 1009 also receives this benefit although its education incentive pay is lower). However, the effective date of the enhanced overtime will be delayed to June 30, 2007 for two reasons. First, a considerable percentage of overtime funds in the Worcester Police Department come from either federal or state grants. Pay under these grants cannot be increased retroactively after a grant expires. Therefore, to retroactively increase overtime under the grant would shift to the taxpayers of the City of Worcester an unexpected cost, and one which the City chose not to incur through its own overtime budget. Second, the delayed effective date is partly justified in light of the 3.0% increase also effective on June 30, 2007, at the end of this Four Year Award.

4. \$650 increase

The Panel is awarding the Union's proposal for a \$650 increase, effective July 1, 2006, in addition to the 9.25% pattern. This increase is in consideration of the increase the threshold for eligibility for sick leave buyback and the Continuing Discussions portion of the Two Year Award. This increase also avoids the compression of the salary differential between the salaries for the supervisory ranks of police officials and for patrolmen by reason of the "first-to-settle" 0.75% increase effective July 1, 2003 in the Local 378 cba. Because of the effective date, however, members of the Local 378 bargaining unit have still received a considerable advantage in having been the first union in the City to address health insurance reform at the bargaining table.

⁷See also further discussion on the impact of the 3% increase on the issue of salary increases in the Two Year Award.

5. Delibrillator Stipend, Civil Process Server Stipend,
Court Time, Off-Duty Assignments

The Panel awards these items because they mirror changes made in the 2003-2007 cba between the City and Local 378, or, in the case of Off-Duty Assignments, to reflect certain increases in detail premiums which were implemented under the terms of the 2000-2003 agreement after the Local 378 cba was funded.

6. Side letter on 28-day work period under the
federal Fair Labor Standards Act (FLSA)

The Panel awards the side letter sought by the City under the federal Fair Labor Standards Act (FLSA). Without deciding whether some police officials are exempt from that law, it is apparent that the 28 day work period grants the City an option available to it under the FLSA without altering the practice, under the cba, of calculating overtime in number of ways which are more generous to sworn police personnel than if the FLSA standard were used.

7. The "Re-Opener"

The Panel agrees with the Panel in the Overton II Award, and the City's argument, that no useful purpose would be served by continuing the 1998 reopener language. The Panels Awards fairly compensate police officials for the time period involved. Therefore, the Panel awards the elimination of the 1998 re-opener.

B. TWO YEAR AWARD

1. Mid-year 2.0% salary increases

The June 30, 2007 effective date of the 3.0% salary increase makes this a budget matter for Fiscal Year (FY) 2008. The City's exhibits have made it clear to the Panel that the City's ability to fund salary increases has deteriorated since the May, 2005 agreement with Local 378, the May, 2006 Overton II award, and the dates other wage settlements were made by the City and the School Committee for FY 2008 or FY 2009. Therefore, taking the 3.0% wage increase and the City's diminished ability to pay into account, in the Panel's judgment it is reasonable that the wages for each year of the 2007-2009 period be 2.0%, and that they be

effective mid-year in each fiscal year, i.e., a 2.0% increase on January 1, 2008 and a 2.0% increase on January 1, 2009.

2. Sick Leave Buyback

The Panel believes that increasing the threshold of eligibility from 100 days to 125 days creates an incentive to conserve sick leave, thus increasing productivity. The increase in buyback days from 35 to 60 above the threshold are targeted to employees who have conserved sick leave. The increased threshold provides additional justification for the \$650 increase effective July 1, 2006. Accordingly, the Panel adopts these items as part of its Award.

3. Longevity Pay and Eligibility

The revisions in longevity pay and eligibility were omitted from the Union's agenda before the Panel for the Four Year Award because of the JLMC's limit on the number of issues. However, these changes parallel changes agreed to in the Local 378 cba, and therefore are included in the Two Year award.

4. Drug and Alcohol Policy

The Panel will include in the Award, as an attachment, the new language of Article 29, **Drug and Alcohol Policy**, which has been agreed to by the parties.

5. Union Proposal concerning 111F benefits and presumption

Based on all the evidence and argument, the Panel does not award the Union's proposal on this issue. However, this proposal may be subject to further negotiation by the parties under the "Continuing Discussions" provisions of the Two Year Award.

IV. Other Proposals

Any proposal of either party which is not specifically addressed herein is understood to be not included in the Four Year Award or in the Two Year Award.

V. Conclusion

Based on all the evidence considered, evaluated, weighed and prioritized in the light of the statutory criteria, mindful of the arguments advanced by the parties orally and in writing, and including any agreements or stipulations of the parties, the Panel hereby issues the attached Panel Award.

_____)	
CITY OF WORCESTER)	
)	
and)	
)	JLMC No. 05-57PS
LOCAL 504, I.B.P.O.)	
_____)	

PANEL AWARD

Part I

Four Year Award

General

A. When January 1, July 1, December 1 or June 30 is listed as the effective date for a change in salary, health insurance contribution or plan design, or other compensation matter, such change may be made for the payroll week during which such specified date falls.

B. When the effective date of a wage increase is retroactive, bargaining unit members then employed shall be eligible to receive it even though they may not be employed on the date of issuance of this Award.

1. Duration: July 1, 2003 – June 30, 2007

A. Except as modified by the provision in Section 2, below, providing for an 0.25% wage increase effective July 1, 2003, the terms of the cba expiring June 30, 2004 shall remain in force.

B. A successor cba incorporating the terms of the cba expiring June 30, 2004 and the terms of this Award shall be effective July 1, 2004 and shall expire on June 30, 2007.

2. Wages: Increase annual wages, across-the-board, as follows:

Effective July 1, 2003	0.25%
Effective July 1, 2004	2.0%
Effective July 1, 2005	2.0%
Effective July 1, 2006	\$650.00
Effective July 1, 2006	2.0%
Effective June 30, 2007	1.0%
Effective June 30, 2007	2.0%
Effective June 30, 2007	3.0%

As noted in the Opinion, the \$650 increase is in consideration of certain other changes and factors. The 2.0% increase on June 30, 2007 is in consideration of all the health insurance changes proposed by the City and adopted by the Panel.

3. Education Incentive/Overtime: The second sub-section of the Education Incentive portion of Article 27 shall be revised to read as follows:

a. Effective January 1, 2006. These payments shall become part of base compensation to be received weekly, and shall be used for the calculation of holiday pay, but not overtime.

b. Effective June 30, 2007. These payments shall become part of base compensation to be received weekly, and shall be used for the calculation of overtime pay and holiday pay.

4. Health Insurance:

A. Effective June 30, 2007 and subject to implementation as soon as practicable after the Award, the following Plan Design changes shall be made:

\$10 office visit co-pay for all plans;
\$10/\$20/\$35 Rx co-pays (30 day supply) for all plans; and
\$50 ER visit co-pay for all plans.

B. The City's percent contribution rates shall be as follows:

For active employees hired on or after January 1, 2006, for all plans other than Master Medical, 75%, effective June 30, 2007; for employees hired before January 1, 2006, the City's contribution rate towards all health plans, other than Master Medical, shall be set at 80%, effective June 30, 2007; and for Master Medical, 60%.

C. The following language shall be included as an exception to the current provisions of Article 28, Savings Clause:

if any portion of the health insurance changes set forth in this Award, which are essential components of the City's offer, are held invalid by a tribunal of competent jurisdiction, or if compliance or enforcement of any such provision is in any way restrained, then the City shall have no obligation to pay or to continue in effect the 2.0% salary increase effective June 30, 2007 until such time as a final judgment is rendered and not appealed which declares such provisions valid or removes any restraint on their enforcement.

D. In the drafting of a comprehensive cba, the parties shall 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 Award.

5. Defibrillator Stipend: In full settlement of any claims under Section 6 of the Memorandum of Agreement dated April 14, 1998, that article will be amended in pertinent part to require the payment of an annual AED stipend of \$250 effective in Fiscal Year 2006, with the first payment to be made as soon as practicable after the funding of this agreement by the City Council. Thereafter, the annual payment of the AED Stipend will be made in the first pay period in September of each year, with the understanding that police officers promoted into this bargaining unit are entitled to one \$250 payment per fiscal year.

6. Court Time: Effective December 1, 2006, the minimum compensation for court time under Article 11 shall be increased to four (4) hours.

7. Off-Duty Assignments: The following provisions which were implemented prior to the date of this Award shall continue to be implemented:

Off-duty road /construction jobs performed for utility companies such as Verizon, NStar, and Mass. Electric shall continue to be compensated according to the following minimum hours at the applicable detail rate:

For details worked in excess of four (4) hours, but less than six (6) hours, a minimum of six (6) hours' pay.

For details worked in excess of six (6) hours, but less than eight (8) hours, a minimum of eight (8) hours' pay.

8. Civil Process Server Stipend: In consideration of the officials' unusual role as civil process servers, effective in Fiscal Year 2007, unit employees shall receive an annual stipend of \$250, to be made in one payment in the first pay period of each September. Police officers promoted into this bargaining unit are entitled to one \$250 payment per fiscal year.

9. Reopener: The Panel awards the City's proposal:

Economic items offered or awarded are contingent on the condition that such items are final and therefore not subject to any obligation or request for re-opener. Accordingly, paragraph 15 of the April 14, 1998 M.O.A. is deleted in the 2003-2007 agreement.

10. Side Letter on 28 day work period under the FLSA: The Panel awards the following Side Letter:

This letter reflects the parties' understanding that the Police Department operates under a twenty-eight day work period for purposes of overtime under the Federal Fair Labor Standards Act. The parties acknowledge that under the current collective bargaining agreement (2000-2003) and current practice, overtime is paid in many instances before federal law requires such payment. Nothing in this Side Letter shall alter the way in which overtime is calculated under the 2000-2003 collective bargaining agreement and under past practice.

Part II

Two Year Award

1. Duration. July 1, 2007 through June 30, 2009

A successor cba incorporating the terms of the cba expiring June 30, 2007 and incorporating the terms of this Award shall be effective on July 1, 2007 and shall expire on June 30, 2009.

2. Wages. The Panel awards the following across-the-board wage increases:

Effective January 1, 2008-	2.0%
Effective January 1, 2009-	2.0%

3. Sick Leave. Effective July 1, 2007, the sick leave buyback benefit shall be amended as follows:

a. The threshold of eligibility shall be raised from one hundred (100) days to one hundred twenty five (125) days;

b. The number of days which can be bought back, above the 125 day threshold, shall be increased from 35 days to 60 days.

4. Education/Longevity. Article 24 shall be revised as follows:

a. In the second paragraph, revise "after July 1, 1982" to read "after January 1, 1988".

b. Annual longevity benefits for employees hired before January 1, 1988 who are not eligible for education benefits shall be increased by \$250 effective July 1, 2007.

5. Drug and Alcohol Testing. Article 29 shall be revised as per Attachment A.

6. Continuing Discussions. Notwithstanding the issuance of this Award, the parties will have continuing negotiations about

(1) future changes in health insurance contributions and plan design, to be effective not earlier than FY 2009; and

(2) issues under Mass. G.L. Section 111F, including but not limited to

(a) the application of the statutory presumption of job-relatedness under the "heart bill" to paid injured leave; and

(b) limited duty for employees injured on or off the job.

The parties will negotiate in good faith with a view toward reaching agreement.

Failing such agreement, no changes shall be made, the current contract will remain in effect, and disputes shall not be subject to interest arbitration.

ATTACHMENT A

ARTICLE 29

Drug and Alcohol Policy

.01 The purpose of this program is to establish the fact that the City and its employees have the right to expect a drug free environment in the workplace. The main emphasis of the program is not to be punishment but the counseling and rehabilitation of employees with a problem with alcohol or drugs. However, nothing contained herein shall be construed to prevent disciplinary action for any infractions of Department rules, policies or procedure or any misconduct.

.02 Except in the case of applicants for employment in the bargaining unit, no drug testing shall be permitted on a random or universal basis, except as hereinafter provided. Testing of employees shall only be permitted when there is

reason to suspect drug or alcohol use. Immediate alcohol testing shall be permitted upon the reasonable suspicion standard herein provided.

.03 The City shall provide a suspected employee and the union with a written report evidencing reasonable suspicion no later than twenty-four hours after the suspected employee is directed to submit to drug testing.

.04 The employee shall be provided with a test sample at the time drug testing is conducted. Drug testing to be performed is to be of the more expensive and accurate nature, so as not to subject the employee to the stress and embarrassment of a possible false positive result from the less expensive test.

.05 The parties shall ensure the confidentiality of the testing process and results. Access to information about the tests shall be limited to the employee and only members of management and union officials with a compelling need for this information.

.06 The following information shall be provided an employee directed to undergo a drug test:

1. a copy of the testing program procedures;
2. a. description of the sample gathering protocol;
3. a list of tests to be used;
4. the name and location of the laboratories to be used;
5. the test results in writing with an explanation of what the results

mean.

.07 The directive to submit a drug test sample shall be based upon facts sufficient to constitute reasonable suspicion of controlled substance use. Objective facts that shall be used in evaluating an employee's condition include but are not limited to:

1. Balance – sure/unsure/questionable
2. Walking – steady/unsteady/questionable
3. Speech – clear/slurred/questionable
4. Attitude – cooperative/uncooperative/questionable

.08 Rehabilitation programs shall be mandatory for employees with confirmed positive results or for any employee admitting drug usage. Employees who successfully complete a rehabilitation program approved by the City shall be guaranteed no disciplinary action and a one time only right to return to their job. Available sick leave may be utilized to accommodate participation in an approved rehabilitation program.

.09 It is the intention of this article that an employee who is found to test positive on the drug screening shall be treated within the employer/employee relationship. It is incumbent upon the employee to *submit* a proposal to the City to be reviewed by the physician designated by the City for approval. It is the intention that such proposal include a drug rehabilitation clinic, whether on an out-patient or in-patient basis. The employee may utilize sick days for such in-patient programs. Leaves of absence without pay for such reasonable periods will be allowed if the employee has no other accrued leave available. The employee shall be expected to comply with all the requirements and regulations of the substance abuse rehabilitation clinic and the failure to abide by all such conditions and requirements shall be a basis for termination of employment.

.10 The employee agrees to submit a random urinalysis testing at the discretion of the City for a period of one (1) year after returning to work after commencing said program. If any test during such time yields a positive result, the employee shall be immediately subject to disciplinary action which may be termination of employment.

.11 The City shall bear all costs of testing and rehabilitation after any available insurance coverage has been pursued and exhausted .

.12 It is agreed that the parties will make every effort to protect privacy and confidentiality.

ATTACHMENT B

JOINT LABOR MANAGEMENT COMMITTEE

FOR MUNICIPAL POLICE AND FIRE

CITY OF WORCESTER)	
)	
and)	
)	JLMC No. 05-57PS
LOCAL 504, I.B.P.O.)	
)	

STIPULATION

Now come the parties and stipulate that, given the arbitration panel's efforts to mediate a contract extension beyond June 30, 2007, both parties agree that the

Arbitration Panel should render an Award covering the period through June 30, 2009, in the form of a four year award (July, 2003 through June, 2007) and a two year award (July, 2007 through June, 2009).

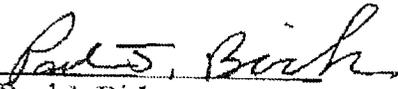
LOCAL 504, I.B.P.O.,
By its Attorney

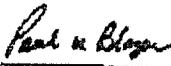
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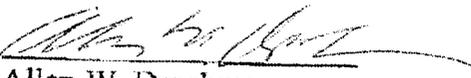
Kevin B. Coyle

Philip Collins

Dated: July 23, 2007


Paul J. Birks
Labor Panel Member


Paul W. Blazar
Management Panel Member


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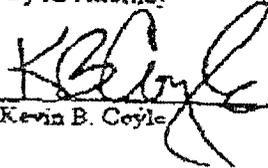
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