



## STAFF REPORT ACTION REQUIRED

### Results of the Interest Arbitration Process with the Toronto Professional Fire Fighters Association, Local 3888

<b>Date:</b>	July 9, 2012
<b>To:</b>	City Council
<b>From:</b>	City Manager Executive Director of Human Resources
<b>Wards:</b>	All
<b>Reason for Confidential Information:</b>	
<b>Reference Number:</b>	

#### **SUMMARY**

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The purpose of this report is to provide Council with the results of the Interest Arbitration process with The Toronto Professional Fire Fighters Association, Local 3888 and a summary of the award issued by Arbitration Board chaired by Kevin Burkett on June 26, 2013.

#### **RECOMMENDATIONS**

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**The City Manager recommends that:**

1. City Council authorize the Deputy City Manager & Chief Financial Officer to make appropriate one-time adjustments to the 2013 Operating Budget of Fire Services to reflect the provisions of the Arbitration Award as detailed in this report.

## Financial Impact

The financial impacts of this report are set below. Sufficient funds have been accrued and budgeted for the period of 2010 to 2013, to account for the wages and benefits provided in the final award.

### Wages

Wages			Incremental Cost	
Annual Compounded Increase:				
2010	3.19%	Base Pay	2010	\$9,643,779
2011	3.20%	Base Pay	2011	\$10,001,316
2012	3.00%	Base Pay	2012	\$9,677,216
2013	2.87%	Base Pay	2013	\$9,525,169
2014	<u>2.00%</u>	Base Pay	2014	\$6,830,797
	14.26%			
<b>Total Base Cost</b>			<b>Base</b>	<b>\$45,678,278</b>

### Active Benefit Plan

Benefit Enhancements	Costs/(Savings) – for Term of the Agreement
Naturopath – added to paramedicals	\$200,000
Vision Care – add \$80 for eye exam	\$300,000
<b>Benefits – Cost Containment Measures</b>	
Dispensing Fee Cap - \$9.00	(\$260,000)
Line of Duty Death Benefit - reduced to 3 times salary	(\$300,000)
<b>Total Cost/(Savings)</b>	<b>(\$60,000)</b>

### Post Retirement Benefits

Benefit Enhancements	Liability Costs/Savings*
Post-65 Health Care Spending Account of \$3,000.00 for 10 years	\$40.2M*
Elimination of Grandparented Post 65 Retiree Benefit Plan from the former North York and former City of Toronto	(\$42.0M)*
<b>Total Benefit Liability Cost/(Savings)</b>	<b>(\$1.8M)*</b>
<b>Sick Pay Gratuity</b>	
Sick Pay Gratuity Formula changed to ½ the available sick credits effective immediately	(\$9.4M)*
<b>Total Benefit Liability &amp; Sick Pay Gratuity Savings</b>	<b>(\$11.2M)</b>

\*Post 65 Retiree Liability costings/(savings) and Sick Pay Gratuity costings/(savings) are approximate pending implementation of the Award and a full actuarial valuation

The Deputy City Manager and Chief Financial Officer has reviewed this report and agrees with the financial impact information.

## **DECISION HISTORY**

The Employee & Labour Relations (E&LR) Committee approved the City's mandate for collective bargaining on September 29, 2009. Subsequent updates were provided to the E&LR Committee on May 19, 2010, August 11, 2010 and February 1, 2011 and there was no change approved to the bargaining mandate.

## **ISSUE BACKGROUND**

### **Issue**

The Collective Agreement between the City of Toronto and the Toronto Professional Firefighters' Association, Local 3888 ["the Association"] expired on December 31, 2009.

The parties were unable reach agreement on a new collective agreement and, while some matters were agreed to by the parties, unresolved monetary matters were referred to interest arbitration.

The statutory mediation/arbitration process commenced on June 28, 2011 and continued until the Board released its award on June 26, 2013.

### **Background**

Negotiations commenced in September, 2009. However, after a total of 29 days of negotiations by April, 2010, those negotiations reached an impasse. Although the parties were able to resolve all of the non-monetary issues at the bargaining table, the parties were unable to reach an agreement on the monetary issues, including wages and benefits, and the length of the Agreement.

Negotiations in the Fire Services sector are governed by the *Fire Protection and Prevention Act, 1997* (the "*Act*"). The *Act* states that there shall be no strike or lockout. As a result, outstanding issues between the parties were referred to interest arbitration before a Board of Arbitration.

Arbitrator Kevin Burkett was appointed by the parties to chair the arbitration board. The City's nominee on the board was John Saunders. Kevin Sack was the Association's nominee.

Mediation commenced on June 28, 2011 and continued on September 28, 2011. The parties were unable to resolve any of the outstanding monetary issues through mediation and all outstanding matters proceeded to interest arbitration.

The arbitration commenced on November 12, 2011 and continued with additional hearing dates on December 21, 2011, March 5, 2012 and May 28, 2012. In addition, written submissions to the Board were submitted by the City on June 4, 2012, June 12, 2012, December 20, 2012 and February 12, 2013.

### **Arbitration Issues and Results**

Appendix A provides a summary of all the Association issues that were submitted to the Arbitration Board for consideration and the outcome of the Board's decision.

Appendix B provides a summary of all the City issues that were submitted to the Arbitration Board for consideration and the outcome of the Board's decision.

An Arbitration Award was issued by Arbitrator Burkett on June 26, 2013. The Arbitration Award is final and binding to the parties.

### **Key Issues**

1. Ability to Pay – Traditionally, arbitrator's have given very little weight to the municipality's ability to pay during the interest arbitration. This has resulted in higher than normal increases in the collective agreements governing those emergency services where interest arbitration is the only option when bargaining has reached an impasse.

Recognizing this history, the City took a very strong position that the arbitration board (the "Board") needed to take into account the City's ability to pay when considering the issues before it and deciding on its award. It was the City's position that the *Act* required the Board to do so and, in addition, the principles of replicating the collective bargaining process required it to consider the current economic conditions, comparability with other settlements and the total compensation package currently provided to Fire fighters.

To demonstrate the importance of this issue and the significance to the City, the Deputy City Manager & CFO attended a full day of hearing and provided a detailed presentation of the City's Finances and Budget situation for 2012 and in the future. The presentation clearly demonstrated the City's need to control costs, including over-inflationary increases in wages and benefits, in order to ensure a sustainable financial position. In addition, the DCM/CFO focused on the need for the City to not rely on annual surpluses, which are unknown and unreliable, for continuing to fund annual operating budgets

**Award Outcome** – Consistent with recent Fire Services awards in other Municipalities, the Board rejected the City's argument and concluded the City did not demonstrate an ability to pay issue. The Board observed the importance that attaches to comparator employers in fashioning arbitration awards. Arbitrator Burkett indicated that he was mindful of the historic linkage between Police and Fire salaries. In relation to the issue of ability to pay, the Board concluded:

.....In the face of an estimated 2012 budget surplus of this magnitude, it is difficult to establish an inability to pay.

2. Wages – Traditionally in Ontario, Arbitrator's have relied on Fire/Police parity when considering the wage increases to be awarded. This parity relationship has been in place for many years, including in Toronto. In 2001, Arbitrator Teplitsky included the following in his award for salaries in the first harmonized collective agreement between the City of Toronto and the TPFPA:

For some time prior to amalgamation, the first class firefighter rates across Toronto were generally comparable to each other, although total compensation varied. Since at least 1975, there has been no significant differential between the police and firefighters rates in Toronto. Collective bargaining history has shown that rate parity between these groups has been the approach in Toronto. Where, as in Toronto, collective bargaining has spoken, arbitrators should listen.

During this arbitration, the City argued that the Board should consider other factors in addition to comparability with Toronto Police, including, the City's ability to pay, current economic conditions and recent negotiated settlements with other bargaining units (CUPE Locals 416 and 79) within the City of Toronto (to replicate collective bargaining).

**Award Outcome** – the Board rejected the City's argument and maintained the parity relationship by awarding exactly the same increases as the Toronto Police settlement. This will result in an overall salary increase of 14.26% over the 5 years of the term of the collective agreement (i.e., January 1, 2010 to December 31, 2014).

Consistent with the historical trend in Ontario, this interest arbitration process has resulted in wage increases that rejects the City's "ability to pay" submission, are above the rate of inflation, higher than the current trend for other public sector settlements and, most importantly, much higher than all other settlements within the City of Toronto, with the exception of Toronto Police.

**Financial Impact** – This aspect of the award will result in an incremental cost of \$45.7M over the 5 year term. Sufficient funds have been budgeted to account for the wage increases provided in this final award.

3. Post -65 Retiree Benefits – The issue of post-65 retiree benefits is a very significant and potentially costly one for the City. During the Teplitsky arbitration to determine the first harmonized collective agreement, the City worked to limit any post 65 retiree benefits. As a result of the City's efforts, Mr. Teplitsky limited any entitlement for post 65 retiree benefits to those employees from the former North York and former City of Toronto who were grandparented with their former post 65 retiree plans. However, he did not eliminate the benefit for those employees. All other Fire fighters were limited

to retiree benefits up to age 65. This result was consistent with all other employee groups within the City of Toronto, where the post-65 retiree benefits are limited to those employees who were grandparented through their former municipality's post-65 benefit plan. No employees who did not meet the grandparenting eligibility criteria, as of the grandparented date, are eligible for post 65 retiree benefits.

In 2008, Arbitrator Kaplan awarded Toronto Police Officers who retire after January 1, 2009, a \$2,500.00 Health Care Spending Account (HCSA) for a period of 10 years. The amount of the HCSA increased to \$3,000.00 effective January 1, 2010. In exchange for the HCSA, Arbitrator Kaplan eliminated any entitlement to the previous post-65 defined benefit plan, which was available for life, for all future retirees. This change resulted in a significant liability savings of approximately \$53.0 Million for the Toronto Police Services.

Since 2008, a post 65 retiree HCSA has been negotiated in many other Police Services and a few Fire Services throughout the province.

The City's position was that a post 65 retiree HCSA should not be awarded. The post-65 retiree benefit issue had previously been determined by Arbitrator Teplitsky and the post 65 retiree benefit provided to Fire fighters was comparable with all other employee groups within the City.

In the alternative, if the HCSA was going to be awarded, the City argued that it should be awarded in the same manner as Arbitrator Kaplan awarded the HCSA in the Toronto Police matter and afford the City similar savings. As such, the City argued the Board should eliminate the grandparented post-65 retiree plans from the former City of North York and former City of Toronto.

**Award Outcome** – the Board has awarded a \$3,000.00 HCSA for all Fire fighters who retired on or after January 1, 2010 and for all future retirees.

The City was successful in convincing the Board to eliminate the grandparented post-65 retiree plans, however, the Board did so in a manner that provided a transition option for grandparented fire fighters who are eligible to retire, within one year, with an actuarially unreduced pension that will reduce the liability savings that will be achieved by the City.

Financial Impact – net liability savings of approximately \$1.8 M (subject to actuarial valuation).

4. Benefits (Cost Containment Measures) – Consistent with the City's recent bargaining objectives, the City proposed some cost containment measures that were consistent with the measures that had been negotiated with the other City bargaining units and were more comparable with other Fire services. The proposals included:

- Dispensing Fee cap of \$9.00;

- Line of Duty Death (LODD) Benefit - reduced from 4 times salary to 3 times salary

**Award Outcome** – the Board awarded the dispensing fee cap at \$9.00 and the change in the LODD benefit to 3 times salary.

However, the Board also awarded some benefit enhancements that were requested by the Association (i.e., \$80 benefit for required eye exams and inclusion of Naturopath as a paramedical), which results in a cost neutral impact of these various changes.

Financial Impact – cost neutral

5. Sick Pay (Sick Pay Credit Grant Liability) – In accordance with the City's recent bargaining objectives to reduce its long term financial liabilities the City proposed to eliminate the current sick pay accumulation plan and replace it with an Illness or Injury Plan (IIP), similar to the IIP negotiated with TCEU, Local 416 and CUPE, Local 79 in 2009. The City argued there was a demonstrated need for the City to achieve a curtailment of its sick bank liability and that an award of the IIP would replicate the agreement between the City and TCEU, Local 416 and CUPE, Local 79.

In the alternative, the City proposed to change the Sick Pay Gratuity formula from 100% of the available sick credits up to a maximum of 6 months' salary, to ½ of the available sick credits up to a maximum of 6 months' salary. During the 2011 negotiations between the Toronto Police Services Board and the Toronto Police Association, the parties negotiated a change in their sick pay gratuity language to reduce the maximum payout from 9 months to 6 months for all new employees hired after January 1, 2012. The Toronto Police sick pay gratuity formula is based on ½ of the available sick credits up to a maximum of 6 months' salary.

The City alternative proposal would replicate the agreement between the Toronto Police Services Board and the Toronto Police Association. The City argued that it was appropriate to consider the proposal in this context.

**Award Outcome** – The Board did not award the City's primary proposal which was to eliminate the sick bank payout, however, he did award the change to the Sick Pay Gratuity formula. The Board's decision makes the change applicable to both new and existing employees. This change in the sick pay gratuity formula is now consistent with Toronto Police.

Financial Impact – net savings of approximately \$9.4 M (subject to actuarial valuation).

6. Hours of Work, Communications Shift Schedule – The Communications Division of Toronto Fire currently has a shift schedule that has balanced staffing levels that are maintained throughout the length of each shift. This shift schedule does not adequately

respond to different workload levels throughout the day and night and does not provide for the appropriate staffing levels during the periods of peak call volumes.

To improve efficiency and ensure there is a high level of customer service, the City proposed a new shift schedule that would provide higher staffing levels during the peak call volume periods of 10:00 and 22:00 hours.

**Award Outcome** – the Board awarded the City's new shift schedule for the Communications Division.

Financial/Efficiency Impact – cost neutral. This change will provide more efficient scheduling of resources and improved customer service.

## **SUMMARY**

The results of this interest arbitration have maintained the longstanding wage parity relationship between Toronto Fire Fighters and Toronto Police. Traditionally, the parity relationship between fire and police has been limited to the wages only and has not included benefits. Over the years, the benefit plans for fire fighters have been significantly different than the Police benefit plans.

Of particular note in this award are the benefit enhancements contained therein and, more significantly, the awarding of the post 65 retiree health care spending account. It appears these benefits were awarded based on comparability with Toronto Police, and the Board gave little consideration to the City's overall benefit plan design, the City's financial situation and comparison with the other employee groups within the City. At the same time, certain aspects of those changes, such as the change to the Sick Pay Gratuity and the elimination of grandparented post-65 benefits, will give rise to longer term liability reductions to the City.

## **CONTACTS**

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## **SIGNATURE**

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Bruce L. Anderson  
Executive Director of Human Resources

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Joseph P. Pennachetti  
City Manager



## **ATTACHMENTS**

- Attachment 1: Appendix A provides a summary of all the Association issues that were submitted to the Arbitration Board for consideration and the outcome of the Board's decision.
- Attachment 2: Appendix B provides a summary of all the City issues that were submitted to the Arbitration Board for consideration and the outcome of the Board's decision.
- Attachment 3: Arbitration Award, Renewal Collective Agreement, City of Toronto and the TPFPA, Local 3888