

EX28.21

***IN THE MATTER OF AN INTEREST ARBITRATION PURSUANT TO
THE FIRE PROTECTION AND PREVENTION ACT, 1997***

CITY OF TORONTO

(“City”)

and

**TORONTO PROFESSIONAL FIRE FIGHTERS ASSOCIATION LOCAL 3888,
INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS**

(“Association”)

BEFORE

James Hayes, Chair
John Saunders, City Nominee
Jeffrey Sack, Q.C., Association Nominee

APPEARANCES

For the Association

Jeff Nester, IAFF/OPFFA Advocate
Mike Palachik, IAFF/OPFFA Assistant Advocate
Frank Ramagnano, TPFPA President
James Coones, TPFPA Secretary/Treasurer
Damien Walsh, TPFPA Vice President
Kevin McCarthy, TPFPA Executive Officer
Dave Holwell, TPFPA Executive Officer
John MacLachlan, TPFPA Executive Officer
Geoff Boisseau, TPFPA Executive Officer
Brent Heppell, OPFFA District 1 Vice President

For the City

Darragh Meagher, Counsel
Zoya Trofimenko, Counsel
Dymphna Walko-Channan, Manager, Employee and Labour Relations
Matthew Pegg, Fire Chief, Toronto Fire Service
Robert O’Hallarn, Division Commander, Toronto Fire Service
Michael Wiseman, Director, Pension, Payroll and Employee Benefits

Mediation was held on January 22 and April 2, 2016. Arbitration hearings were held on May 20 and May 26, 2016. Many supplementary submissions were received, the last on July 17, 2017. There were numerous teleconferences and Executive Sessions.

AWARD

A. Introduction

1. This interest arbitration relates to the renewal of the Collective Agreement that expired on December 31, 2014. The bargaining unit consists of more than 3,000 firefighters. Toronto has a population exceeding 2,700,000. The City has collective agreements with other trade unions, as the Toronto Police Services Board has with the Toronto Police Association (“TPA”).

2. The parties first exchanged proposals on November 27, 2014 and met directly for purposes of collective bargaining, mediation, and related dispute resolution on numerous dates extending into the summer of 2016.

3. The renewal Collective Agreement will consist of all matters agreed to by the parties and the following terms and conditions. Any proposals not referred to below are dismissed.

4. In determining the outstanding matters, we have been guided by the criteria identified in ss. 50.5(2) of the *Fire Protection and Prevention Act, 1997* (“FPPA”). FPPA criteria include the following in addition to “all factors the board considers relevant”:

1. The employer’s ability to pay in light of its fiscal situation.
2. The extent to which services may have to be reduced, in light of the decision if current funding and taxation levels are not increased.
3. The economic situation in Ontario and in the municipality.
4. The comparison, as between the firefighters and other comparable employees in the public and private sectors, of the terms and conditions of employment and the nature of the work performed.
5. The employer’s ability to attract and retain qualified firefighters.

B. Salary Submissions

City

5. The City emphasizes that application of the replication principle is an objective process, not one that is subjective permitting reliance upon a freestanding sense of ‘fairness’ by an arbitrator. While not advancing a formal inability to pay submission, the City asserts that it is unable to bear the cost of the Association’s proposals. It says that the Board should “give primary consideration to the City’s financial circumstances...and should, in making any award, moderate any awarded wage increase or benefit enhancements sought”.

6. The City asserts that the police/fire parity relationship in wages dates back for decades. It says that the Association has previously, openly, and invariably tracked Toronto police and that the Association has never referred to wages paid to firefighters elsewhere. The City argues that fire salaries would have shown at least some variation from local police wages, either upward or downward, if these parties had acted previously on any understanding that there were relevant comparators for Toronto other than the singular police comparator.

7. The City notes that there have been only two previous fire interest arbitration awards relating to Toronto: *Burkett (2013)*¹ and *Teplitsky (2001)*². It stresses Arbitrator Burkett’s holding that application of the comparator police settlement would be reflective of the historical bargain between these parties, and that this longstanding comparator settlement outweighed the other statutory criteria. The City also points to Arbitrator Teplitsky’s observation that there had been no significant differential between police and firefighter wage rates in Toronto since at least 1975 and his opinion that: “Where, as in Toronto, collective bargaining has spoken, arbitrators should listen.”

¹ *Corporation of the City of Toronto*, 2013 CanLII 62276 (ON LA) (Burkett)

² *Corporation of the City of Toronto*, unreported, March 9, 2001 (Teplitsky)

8. Accordingly, the City submits that: “the annual salaries for firefighters should be adjusted on the basis of the salary increases applicable to Toronto Police, in light of the long-standing parity that has existed between the salaries applicable to these two groups of employees”.

9. In a following submission, the City stressed again that wages for these groups have moved together for decades without connection to the salaries of firefighters employed elsewhere.³ It relies upon a Table covering the period 2001 to 2014 to illustrate that the salaries of first class firefighters and police constables in Toronto have moved in virtual lockstep. The City points to a further Table⁴ for the period 2005 to 2014 which discloses that Toronto police/fire salaries were consistently within \$100 of each other during the period.

10. The City proposes the following wage rates: January 1, 2015: \$92,435 (2%); December 1, 2015: \$93,128 (0.75%); January 1, 2016: \$94,525 (1.5%); July 1, 2016: \$94,951 (0.45%); January 1, 2017: \$96,375 (1.5%); July 1, 2017: \$96,760 (0.40%); January 1, 2018: \$98,454 (1.75%).

Association

11. The Association maintains that the history of wage parity with local police was predicated upon an embedded assumption that Toronto fire salaries would continue to lead fire wages elsewhere in the province. Perpetuation of police parity in this round would shatter this established relationship with other fire groups. The Association submits that: “if the Toronto fire fighters were to receive the same wage rates negotiated by the Toronto police for the years 2015 through 2018, the wage

³ The parties made submissions concerning the relevance, if any, of a decision released after formal hearings were completed in this matter: *City of Guelph*, 2017 CanLII 7602 (ON LA).

⁴ The Table included 15 geographically proximate municipalities: Ajax, Brampton, Caledon, Cambridge, Guelph, Kitchener, Markham, Mississauga, Newmarket, Oshawa, Pickering, Richmond Hill, Vaughan, Waterloo, and Whitby.

linkage between Toronto fire fighters and fire comparators will be turned upside down”.

12. The Association relies upon what was said in *Burkett (2013)*: “The linkage has been at the first class fire fighter/first class constable ranks. It should be noted that there has also been linkage with comparable fire fighter groups elsewhere in Ontario.”⁵

13. The Association resists any suggestion that the Board should adopt a quasi-inability to pay submission however calibrated. It points to a recent report of the City Manager, issued on May 16, 2016 that included the following commentaries:

Adjusting for both inflation and population allows for a more direct view on the cost of municipal services over time. Through this lens, overall City expenses and revenues have actually declined. Municipal services cost about \$165 or 3.8 percent less per resident compared to six years ago. (p. 11)

The City has controlled expense growth over the past six years, as measured in current or adjusted terms. There has not been an overall expense problem. (p. 17)

Toronto residential property taxes remain well below the level of other large Ontario municipalities, measured on an average household basis. Council’s priority towards limiting residential property tax increases to the rate of inflation has translated into overall property tax growth that is actually less than the rate of inflation. (p. 19)

14. In its later submission, the Association responded that:

When the employer asserts that there has been no “direct connection” to other fire fighters in the province it again misses the point. The “direct connection” has been that the Toronto fire fighters have always been the highest paid fire group in the province. Indeed, this is the “reliable benchmark” that has historically been the result of freely bargained agreements and arbitrated awards in Toronto.

⁵ At page 15

15. The Association submits that arbitral continuation of its usual salary relative position should produce a normative award placing its members *above* the highest fire wage rates in the province. Those points of reference in the relevant period would be: Oakville (2015); Sarnia (2016); Woodstock (2017); Whitchurch-Stouffville (2018).

16. In its initial submission the Association had suggested acceptance of annual police salaries provided that the first class constable annual salary is calculated in terms of an hourly rate. If that police hourly rate is applied to the additional hours worked annually by firefighters, Toronto fire will receive more annual income than Toronto police. The Association claimed that, after such an adjustment is made: “the upheaval in the historical wage linkage with other comparator fire groups will not occur to the detriment of the Toronto fire fighters”.

C. Discussion of Salary Issue

General

17. Collective bargaining is not a precise mathematical exercise. There is significant room for legitimate disagreement among experienced labour relations practitioners about the arbitrated result that would best replicate an agreement if it had been freely negotiated in a right to strike or lockout environment. All that an interest arbitrator can hope to do is to produce an award that falls within a reasonable range. Analysis of various data does not dictate a single ‘right’ answer immune from rigorous debate and credible differing opinion.

18. It is also trite to say that every collective bargaining situation requires individual assessment. There is no hierarchy of relevant factors. A factor that may be decisive in one situation may be irrelevant in another. Interest arbitrators must respect the local collective bargaining environment.

19. This case presents a distinctive aspect: Toronto firefighters have normally ranked first, or near first, in provincial salaries.

Both cases have ostensible appeal

20. Toronto firefighters make a case that is intuitively attractive. It seems plausible that salaries for firefighters in the largest city in Canada should be at the top or close to the top of fire wages in Ontario subject to quirks of collective bargaining timing and unexpected vicissitudes. It would appear implausible that Toronto fire wages should lag smaller semi-rural municipalities not far from the city.

21. On the other hand, the City advances a position anchored in local bargaining history, one supported by the contemporaneous agreement reached with the TPA. The City has succeeded in securing what may be seen as restrained wage increases in this round from Toronto police.⁶ If the task of an interest arbitration board is to seek to replicate the outcome of free collective bargaining, the City asks the Board to conclude that the City would not have agreed to pay its firefighters more than police.

Burkett (2013)

22. The Board has the benefit of the reasons provided in a recent award relating to Toronto fire. Given the prominence of the Arbitrator, his opinion commands attention.

23. A reading of the award in its entirety makes clear that the Board viewed the historical fire/police parity relationship in Toronto to be the deciding factor in reaching its conclusions. In so doing, Arbitrator Burkett was called upon to consider

⁶ And, from two major CUPE local unions. The City also points to the recent settlement reached in London.

the City's submissions concerning ability to pay and the relevance of settlements with other municipal employees.⁷

24. In the case before us, no formal case for an inability to pay has been advanced and the report of the City Manager would have presented a serious obstacle if it had. However, that Toronto police voluntarily accepted these wage increases is a highly relevant fact speaking directly both to replication and the economic criteria identified in ss. 50.5(2) of the *FPPA*.

25. The Association submits on the other hand that there has been a significant factual change since the last round of bargaining and *Burkett (2013)*. The Association asserts that there are other fire groups that deserve scrutiny in this arbitration and explains why.

26. We turn to this submission.

The 'leading rank' position

27. The Association recognizes the longstanding history of police parity in Toronto. However, the Association does not accept that its core argument in this arbitration disregards the history of Toronto fire collective bargaining.

28. The Association submits that it had no prior need to make explicit reference to other fire comparators because parity with police had normally placed its members at or near the top of any provincial fire wage table. The Association's number one status served as a sufficient proxy for a more formal designation of any "direct connection" with other fire groups.

⁷ See however, *City of Kingston*, November 23, 2011, where Arbitrator Burkett decided to follow firefighter comparators where there was a divergence between firefighter and local police rates.

29. The Association also submits, essentially, that its leading rank should be an informing arbitral principle regardless of how previous Toronto fire bargaining history might be construed.

30. It is important to be careful with this proposition. There are certainly situations where parties have negotiated provisions intended to guarantee certain salary outcomes.⁸ Arbitrators have also occasionally imposed simple ‘me-too’ clauses as an exercise of discretion.⁹ It is quite another thing however to elevate a bargaining objective or a collective bargaining mechanism or a typically achieved bargaining result into a new stand-alone *principle* sufficient to direct the outcome of an interest arbitration in and of itself without regard to any other factor.

31. But this is not the end of the matter.

32. Despite the lack of any express employer agreement that Toronto fire should lead provincial wages, and regardless of whether an arbitrator should adopt ranking as a decisive arbitral principle, there can be no doubt that the relative position of Toronto fire is an important factor. The Association does not merely *aspire* perennially to first ranking. There is little to no doubt that the historical *result* of fire bargaining has been to place Toronto firefighters in a leading rank.¹⁰ Given the size and complexity of the City, this result is hardly surprising. Indeed, the reason for it appears self-evident. Toronto is a vital urban driver of the national economy.

⁸ For example: clauses that guarantee a mid-term salary adjustment should a named comparator later obtain a higher wage. See also: the recent London fire collective agreement where it was agreed that the December 1, 2018 wage increase would replicate the London police agreement, an increase to be determined by reference to an average of the other 11 members of the ‘Big Twelve’ police departments in Ontario.

⁹ See for example, *Corporation of the City of Oshawa*, 2015 CanLII 39880 (ON LA), where the 2015 wages for firefighters were directed to follow the same increases and increment dates as for Durham Regional Police.

¹⁰ See, for example, the City Table 4 referred to in paragraph 9 above and Association material. There was no factual challenge to this proposition in oral argument.

Conclusion

33. We accept the position emphasized by the City that interest arbitration should not permit subjective reliance upon an arbitrator's freestanding sense of 'fairness' or, we would say, an arbitrator's personal instinct that 'the employer or the union would never have agreed to X', thereby disqualifying X from consideration. Application of the universally accepted arbitral replication principle is an objective process and comparator information, particularly that derived from free collective bargaining, is central to the exercise.

34. Fire bargaining in this round has departed somewhat from more typical historical patterns and the situation before Arbitrator Burkett. While the reasons for this may be debatable, a number of fire settlements in the province have run appreciably ahead of police wage rates. It is not as if one municipality, or even two, has concluded a settlement(s) that may be easily dismissed as unique or intemperate. There have been previous examples of fire leading police in the past but the present extent of this occurrence, notably, in free collective bargaining, appears to be without precedent.¹¹

35. This development opens a novel lens through which the Association position must be viewed. It is a simple fact that multiple firefighter groups freely negotiated salaries above both local police and Toronto police -- after the Toronto police agreement was settled in March 2015. When replication theory is borne in mind, the usual assumption that local fire/police salary patterns should be presumed to continue appears far from certain at this time.

36. It is in this collective bargaining setting that the Association's leading rank submission is presented. In our opinion, this requires examination in firefighter

¹¹ Fire leading police as follows from 2015 onward: [2015] Oakville, Cornwall (arbitrated); [2016] Barrie, Kitchener, Vaughan, Pearson Airport, Halton Hills, Georgina, Whitchurch-Stouffville; [2017] Barrie, Kitchener, Caledon, Vaughan, Pearson Airport, Whitchurch-Stouffville.

terms. Respecting a historical fire/police relationship is not the same thing as treating the local relationship as indefinitely symbiotic. Nor may the Association's perennial superior ranking at the time of settlement be dismissed as one that has always been derivative. Nor should its continuation be considered as necessarily contingent upon the TPA preserving its own equivalent rank vis-à-vis other police groups.

37. All of which is to say that fire need not always follow police although there may be circumstances where this is an appropriate outcome. If it were otherwise, collective bargaining in the fire sector would be effectively eliminated despite the statutory guarantee provided by the *FPPA*. Furthermore, the traditional leading salary rank of the Association, achieved in free collective bargaining, is a fundamental feature of both the provincial and Toronto fire labour relations historical picture. It requires more than perfunctory attention. We conclude that we are obliged to consider the freely negotiated collective bargaining results of other fire groups, as well as local police.

38. We turn to review the salary information before us and observe that there is no question that an Award duplicating local police wages would cause Toronto firefighters to fall well below firefighters in a number of other municipalities both large and small, including semi-rural locations.¹²

39. In 2015, Toronto police wages led fire groups everywhere in the province except in Oakville where fire salaries were well ahead of Toronto police. We see Oakville fire leading Toronto fire in 2015 to be the type of example that suggests a 'near first' qualification to the Association position.

¹² We have not ignored the recent settlement in London, for the 2015-2018 period, where wage rates were set at levels reflective of negotiated police rates and below certain fire groups elsewhere. However, the settlement included a number of other counter-balances and included resolution of an extraordinarily lengthy proceeding in which the employer took issue with police/fire parity as a legitimate factor in firefighter wage determination. That circumstance was unique.

40. For 2016, the following fire groups freely negotiated wages ahead of Toronto police in descending order of magnitude: Sarnia, Halton Hills, Barrie, Woodstock, Kitchener, Vaughan, Georgina, Whitchurch-Stouffville. Sarnia fire led Toronto police by \$960. In all of these cases, excepting Sarnia and Woodstock where they were equivalent, fire salaries were higher than local police.

41. For 2017, the following fire groups freely negotiated wages higher than Toronto police in descending order: Woodstock, Kitchener, Barrie, Pearson Airport, Vaughan, Whitchurch-Stouffville, Caledon. In every case, except Woodstock where they were equal, local fire salaries were superior to local police. Woodstock fire wages were ahead of Toronto police by \$1,308.

42. For 2018, there are only two freely negotiated fire agreements higher than the Toronto police as this award issues: Whitchurch-Stouffville and Caledon. We have considered Whitchurch-Stouffville and Caledon but note that the total complement of full-time firefighters there amounts to a tiny fraction of the Association's more than 3,000 members.

43. Having regard to all of the foregoing, it is our opinion that a reasonable but cautious arbitrated outcome in this case should seek to balance the two crucial factors presented here, one in tension with the other.

44. It is essential that the historical salary connection of Toronto firefighter wages with local police be accounted for, meaningfully and observably. The relationship has been stable and has served Toronto fire labour relations well despite the City's attempt at rupture in the last round.¹³ We find that the Association has no better claim to abandon the long-term police/fire relationship than the City did in *Burkett (2013)*. The asserted entitlement to leading provincial

¹³ The City in *Burkett (2013)* opposed continuation of fire/police parity in favour of emphasis upon alleged comparator settlements reached with other municipal unions.

fire wages does not support a unilateral right to entirely sever, with the right to restore, this linkage at will. The TPA settlement warrants serious continuing credit.

45. On the other hand, we accept that the historical achievement of Toronto fire in securing leading rank in provincial fire salaries must also be weighed. The Association's members do not inhabit a collective bargaining island, alone with Toronto police, in perpetual isolation from collective agreements freely negotiated elsewhere. We do not accept that an interest arbitrator should position Toronto firefighters at appreciable distances behind colleagues who have freely negotiated higher salaries, where the resulting shortfalls would be significant. To do so would require an arbitrator to accept local police practice to be the sole effective wage determinant for Toronto fire with no accounting for the provincial firefighter labour relations environment.

46. Accordingly, we conclude that the requisite arbitral balance suggests recognition of both fire settlements and the Toronto police agreement, all of which were freely negotiated during the life of the Collective Agreement issuing here.

D. Salary Award

47. We direct an amendment to the wage schedule to incorporate the following first class firefighter wage rates:

January 1, 2015	\$92,435	December 1, 2015	\$93,128
January 1, 2016	\$94,280	July 1, 2016	\$95,410
January 1, 2017	\$96,840	July 1, 2017	\$97,910
January 1, 2018	\$98,454		

48. All other classifications are to be increased by the same percentages on the same effective dates.

49. Retroactive wages to be paid within 90 days to current employees and to those who have left the bargaining unit.

E. Term

50. January 1, 2015 to December 31, 2018

F. Remaining Issues

51. Captain, Marine Captain, Senior Marine Engineer rank differential: 118% (July 1, 2018).

52. Article 4.02 probation clause to add: "provided that the decision is not made in an arbitrary or discriminatory manner or is made in bad faith".

53. Paramedical per service maximum increased to \$600. Total maximum increased to \$2500. Add athletic therapy.

54. Psychologist maximum increased to \$3500. Add psychotherapist.

55. Dental major restorative maximum increased to \$2500.

56. Article 13: one additional float day as of January 1, 2018.

57. Add prescription requirement for massage therapy costs to be eligible for reimbursement.

58. Article 16.14 amended as follows: "The City shall provide the Association with a copy of the signed benefit plan(s), including any updates or changes thereto, once the City is in receipt of the same. Any update or change shall not reduce the scope, level, or nature of any benefit without the agreement of the parties."

59. We confirm arbitral jurisdiction concerning Association pension proposal but cannot grant in light of total compensation resulting from this Award.

60. The following issues are referred to committees without remaining seized:

- possible consolidation of a Toronto Fire Services and Toronto Paramedic communications centre
- IAFF/IAFC wellness and fitness initiative
- possible replacement of “qualified medical practitioner” with “qualified health professional”
- Article 11 vacation selection

G. Estoppel Notices

61. The City served the Association with a number of ‘estoppel notices’. When the Association countered with proposals, the City objected to alleged late demands and raised other concerns. There were issues as to whether or not all the notices and proposals related to true matters of estoppel.

62. The parties engaged in post-hearing discussions concerning the substantive differences but failed to reach resolve. In this unusual situation, the Board provided the parties with an opportunity to make submissions after formal hearings were completed.

63. The directions that follow generally involve maintaining our understanding of the *status quo* pending further discussions in committees and/or pending further attention in the next round of bargaining. To be clear, these directions are not intended to imply any determination by the Board as to whether or not a particular

issue is a practice without foundation in the Collective Agreement, or, a practice grounded in a particular clause(s) of the Collective Agreement.

Referrals to committees

64. Without the Board remaining seized, past practice will continue while the appropriate committee addresses the topic and unless and until an issue is otherwise resolved.

- Article 8.02 – Overpayments
- Article 18 – Probation upon promotion
- Article 26 – Transfer at 65
- Article 16 – Safety shoes
- Article 29 – Union representative on non-disciplinary committee
- Article 29 – Scheduling meeting
- Attendance Management Policy – Pattern absences

Red circling of mechanics

65. Article 8.01 (b) language will govern.

Past practice continuation

66. Current practice to continue for:

- Article 10 – Working as a call taker
- Article 21 – Bereavement leave
- Article 59 – Modified work location
- Article 59 – Promotions while absent
- Earnings threshold for LTD cut-off

- LTD overpayment recovery
- Return to work form
- LTD information

H. Letters of Understanding

67. To be renewed.

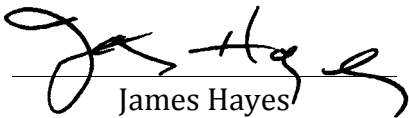
I. Implementation

68. All changes to be effective within 60 days, or a reasonable period thereafter, except as specified above.

J. Board to Remain Seized

69. The Board will remain seized until the parties enter into a formal Collective Agreement.

Dated at Toronto, this 17th day of August, 2017.


James Hayes

“See attached”

Jeffrey Sack, Q.C.

“See attached”

John W. Saunders

Partial Dissent of Association Nominee

PART I. WAGES

Comparability

In this case, the task of the board is to determine the wages and benefits of Toronto firefighters. The City's nominee urges that the board follow the wage settlement negotiated by the Toronto police for the 2015-2018 period. Not only is this the exact opposite of what the City argued in the last round of arbitration, the City would not assure the board that it would take the same position in the next round.

Moreover, the City's approach conflicts with the views of the majority of fire sector interest arbitrators (including the present Chair), who make it clear that one must take account of the wages and benefits of both (1) local police and (2) firefighters in comparable municipalities. And, while I may disagree on the precise application of these two principles, with respect to the wage rates awarded in any given year, I concur in the bedrock principle that we must be guided by both considerations.

Indeed, to take account of both police and comparable fire wage rates is to follow the historical consensus of fire sector arbitrators, including Arbitrator Burkett who – in a passage in his Award which the City's nominee does not mention – emphasizes the linkage between firefighter settlements in Toronto with settlements of other fire groups across the province, as follows: “The linkage has been at the first class fire fighter/first class constable ranks. It should be noted that there has also been linkage with comparable fire fighter groups elsewhere in Ontario. However, there has never been any linkage to municipal workers either in terms of absolute rate or percentage increase.”

The City's nominee begins by citing the Award of Arbitrator Burkett who chaired the interest arbitration board which set firefighter wages and working conditions for the 2010-2014 period. Noting that Arbitrator Burkett followed the Toronto police settlement, he urges that we do the same for the 2015-2018 period. However, the City took a position in the Burkett arbitration that is the precise opposite of the position it has taken in the instant arbitration, namely that police wages should not be taken into account, and that firefighter increases should be limited to those negotiated with civic employees other than police or firefighters. Needless to say, this approach was categorically rejected by Arbitrator Burkett. In awarding parity with police, however, Arbitrator Burkett actually preserved the leading position of Toronto firefighters in the Ontario fire sector.

In the current 2015-2018 period the context is quite different. The fact is that during this period settlements with firefighters in an appreciable number of comparable municipalities in Ontario have diverged from those of local police.¹⁴ Indeed, if the board were to apply the Toronto police settlement to Toronto firefighters, without taking this into account, Toronto firefighters would lose their historical position at or near the top of the provincial firefighter wage table.

Toronto's Leading Position

As indicated above, interest arbitrators in the fire sector in Ontario agree that, in determining compensation for firefighters, consideration should be given to the wages and benefits of (1) local police and (2) firefighters in comparable

¹⁴ E.g., [2015] Oakville, Cornwall (arbitrated); [2016] Barrie, Kitchener, Vaughan, Pearson Airport, Halton Hills, Georgina, Whitchurch-Stouffville; [2017] Barrie, Kitchener, Caledon, Vaughan, Pearson Airport, Whitchurch-Stouffville.

municipalities. The weight to be given to each of these factors will vary, of course, depending on the circumstances in the particular case,¹⁵ but the relative wage relationship of a firefighter group with other firefighter groups in the same geo-economic region and across the province will play an important role. In this case, for example, it is clear that Toronto firefighters, members of the largest fire service in Canada serving the largest city in Canada, have historically held a position at or near the top of every provincial fire wage table.

This finding is challenged by the City's nominee who asserts that it is a "concept" that has been articulated for the first time in this proceeding and is belied by experience. Such is not the case. The Toronto firefighters have historically been at or near the top of the provincial fire wage table, at the time of settlement, and this fact the City has not disproved. The same has been true, until very recently, for the Toronto police, vis-à-vis other police forces in Ontario. As Arbitrator Burkett confirmed in an interest Award involving the Toronto police: "The Metropolitan Toronto police have consistently been the best paid of the major forces in Ontario and among the best paid in Canada."¹⁶

¹⁵ As the present Chair stated in the *City of Guelph* case: "We conclude that the appropriate course is to seek a balance between fairly designated comparators. In identifying the 'right' balance, we are very much aware that there is no fixed formula to be generally applied. Previous patterns of collective bargaining practice will vary between municipalities. Economic circumstances may differ. In some situations there may be established 'direct comparators' accepted by both parties. In other cases those comparators may be seen as more 'indirect' or may be in dispute. It will be necessary to consider whether or not one comparator should be ascribed more importance than another. Interest arbitration is not a science. There is significant room for honest disagreement among experienced labour relations practitioners as to the arbitrated result that would best replicate an agreement if it had been freely negotiated in a right to strike or lockout environment."

¹⁶ *Re: Metropolitan Board of Commissioners of Police and Metropolitan Toronto Police Association*, unreported, June 4, 1980. This view was reiterated by Arbitrator Burkett in *Re: Metropolitan Toronto Police Association and Metropolitan Board of Commissioners of Police*, unreported, January 29, 1988, and by Arbitrator Keller in *Re: Metropolitan Toronto Police Association and Police Services Board*, unreported, September 10, 1997.

The fact that the Toronto police, for the years 2015-2018, have chosen to depart from their historical ranking does not require that Toronto firefighters march in lockstep behind them – not when an appreciable number of firefighter groups in Ontario have maintained their historical ranking, relative to other firefighters in the province. What the Chair in the present arbitration has done is to craft an Award which takes account of police wage rates, while maintaining the Toronto firefighters' leading position among firefighters in Ontario.

In this regard, it is important to take account of the sequence in which settlements are reached. Thus, the City nominee's suggestion that Toronto police and firefighters have historically settled below a number of other police and fire forces in Ontario ignores the "the time of settlement." It is not unusual for some police or fire groups to negotiate higher wages than police and firefighters in Toronto after the latter have settled, but this is not a concern; relative wage relationships are typically restored in the very next round of negotiations. In this manner police and firefighters are not penalized for settling early, and do not inhibit other forces from making advances in their subsequent negotiations. This is true in the instant case. In 2015 the Award directing wage parity with police ensures the maintenance of Toronto firefighters' "leading position" in Ontario. In 2016 and 2017, when police and fire wages across the province diverged, with the latter in many municipalities gaining ground, the leading position of Toronto firefighters vis-à-vis other Ontario firefighters is preserved. And in 2018, when only two smaller municipalities in Ontario have settled with their fire forces – so that Toronto police, followed by the other Big Twelve police forces, are therefore the major comparator – Toronto

firefighters, under the Award, continue to maintain their leading position at or near the top of the provincial firefighter wage table, and do not thereby inhibit other firefighters in Ontario from making further advances. Moreover, should this occur, they can expect to see their own “leading position” restored in the next round of negotiations.

Ultimately in his dissent the City’s nominee acknowledges that “in determining the wages of any firefighter bargaining unit there is a need to have regard to the wages of comparable fire departments.” This is indeed a fundamental element of firefighter wage determination across Canada, accepted by arbitrators for the last hundred years. Moreover, while the City’s nominee argues that there is no reason to pay Toronto firefighters more than firefighters elsewhere, he is well aware that, with exceptions, larger municipalities pay wages that are, generally, higher than wages paid in smaller municipalities. Indeed, he himself characterizes larger municipalities in Ontario as those which are “arguably relevant.”

But why look just at Kitchener and Vaughan, he asks, and not at London? In the first place, there are not merely one or two places where firefighters have settled ahead of police for the 2015-2018 period, as the City’s nominee suggests, but seven or eight – just as many as those which have not.¹⁷ And while size is a relevant factor, it is notable that even smaller municipalities have settled with their firefighters at levels higher than local (or Toronto) police.¹⁸

¹⁷ See Note 1.

¹⁸ London is, in any event, demonstrably an outlier, reaching a settlement after eight years of costly litigation, resulting in the wholesale abandonment by the City of its attempt to repudiate police-fire parity as one of the two guiding principles in fire sector wage determination.

Nor does it undermine the Association's position to point out, as the City's nominee does, that in Kitchener and Vaughan firefighters settled before the police did. Indeed, this only serves to confirm that the firefighters did not automatically follow police but took into consideration factors other than police rates, such as comparable fire settlements in Barrie and elsewhere, when they arrived at an agreement.

PART II. ABILITY TO PAY

The City's nominee and I do not agree on the application of the "ability to pay" principle and the relevance of "comparable net compensation" with the police. Recalling that the Association argued in the last round of arbitration that the City had the ability to pay firefighters a wage equal to that of the police, the City's nominee suggests that this is tantamount to saying that the City lacks the ability to pay more than it pays the police. But the first proposition does not imply the second; it is a classic *non-sequitur*. Nor is it inconsistent with the Burkett award to pay firefighters a net compensation increase that is different from that paid to police, if such compensation is warranted, as it is, by the increases paid to firefighters in comparable municipalities.

The question of the City's ability to pay is readily determined by the City Manager's Report dated May 16, 2016, which was, tellingly, tendered in evidence not by the City but by the Association. It establishes that the City does not have a problem with costs, which are less than they were six years ago, but with revenues, and that a shortfall arises from the fact that the City's council has made a political decision to hold tax rates below the rate of inflation, and at a level lower than comparator

municipalities.¹⁹ This approach has been rejected as untenable by Arbitrator Burkett himself, in the following language: “This argument must be given careful scrutiny because even the most strident critics of interest arbitration would not argue that a public sector employer can establish an ongoing inability to pay by means of ongoing tax freezes or other such measures.”

The issue therefore is not the City’s ability to pay, but rather whether increases to the City’s firefighters are limited to those the City has negotiated with its police. In this regard, the answer is clear; The Board must determine the appropriate level of Toronto firefighter wages having regard to Toronto police wages, and to the wage settlements of firefighters in comparable municipalities. The Award duly takes account of both factors, applying an approach that is consistent with the views of all leading interest arbitrators in the fire sector in Ontario.

PART III. OTHER ISSUES

With respect to pensions, I agree with the Chair that a board of interest arbitration has jurisdiction to grant the Association’s proposal to ensure that firefighters can exercise their right to early retirement after 30 years’ service without a financial penalty by increasing the pension accrual rate from 2 to 2.33 percent per year. However, I disagree with his conclusion that, for reasons of cost, it cannot be granted at this time, given the total compensation resulting from this Award. Both

¹⁹ The City Manager’s Report states: “Adjusting for both inflation and population allows for a more direct view on the cost of municipal services over time. Through this lens, overall City expenses and revenues have actually declined. Municipal services cost about \$165 or 3.8 percent less per resident compared to six years ago. (p. 11) The City has controlled expense growth over the past six years, as measured in current or adjusted terms. There has not been an overall expense problem. (p. 17) Toronto residential property taxes remain well below the level of other large Ontario municipalities, measured on an average household basis. Council’s priority towards limiting residential property tax increases to the rate of inflation has translated into overall property tax growth that is actually less than the rate of inflation. (p. 19)”

the federal and provincial governments have enacted legislation to make the requested pension improvement possible, and it is time to fulfil this promise. It should be negotiated by the parties and, if agreement cannot be reached, in the next round of bargaining, it should be awarded by a board of arbitration.

With respect to the payout on retirement of unused sick leave credits, the City's nominee again argues that the board should follow police settlements in Toronto and elsewhere which have discontinued this benefit for future employees. However, a large number of municipalities in Ontario (not a small number as the City's nominee suggests), employing the vast majority of firefighters in the province, have agreed to settlements with firefighters that have not altered or eliminated the payment of unused sick leave credits.


Although the issue has been addressed at fire sector interest arbitrations on at least nineteen occasions, in every case the arbitration board has declined to alter this benefit for firefighters – for many reasons, including provincial patterns, the inadequacy of alternatives, and total compensation comparisons as between police and firefighters. Moreover, the claim by the City's nominee of substantial savings fails to mention that, since those who would be affected by the proposed change are future employees, no savings whatsoever would accrue to the City for at least 30 years!

As with pension and sick leave, police and firefighters may well have different priorities, given the differences in their work and experience. Thus, because of the strenuous (indeed dangerous) nature of their work, firefighters suffer physical injuries at an inordinate rate; to cut back their physiotherapy coverage, as the City

proposed, would only prolong periods of firefighter disability instead of returning firefighters back to work as soon as possible – a goal shared by both firefighters and municipalities.

PART IV. CONCLUSION

On the whole, while I would have awarded additional and in some respects different monetary and non-monetary changes, it must be acknowledged that the Chair has sought to balance and accommodate the interests of both the firefighters and the City, in light of the criteria in the *Fire Protection and Prevention Act*.



Jeffrey Sack, Q.C., Association Nominee

Dissent of the Nominee of the City of Toronto

It is with respect that I must dissent from the award of the Board in this matter.

The Previous Toronto Fire Interest Arbitration (the *Burkett award, 2013*)²⁰

In that decision, the Arbitrator Burkett held that:

Where comparator settlements exist, especially longstanding comparators such as the Toronto Police in this case, greater weight is placed on the link to the comparators (criterion #2 under the *Fire Protection and Prevention Act*) and greater scrutiny is given to the employer's ability to pay (criterion #1 under the *Fire Protection and Prevention Act*), especially where the comparator settlement(s) has been negotiated in the same economy by the same employer or by another employer(s) in a similar economic context. After all, as a substitute for free collective bargaining, the objective of interest arbitration must be to provide those whose access to free collective bargaining is abridged with roughly the same result as would otherwise be achieved in free collective bargaining. This is the basis of the universally accepted replication principle... (page 11)

The Police pattern, therefore, is comprised of compensation improvements (wages, benefits and entitlements) together with concessions (including the replacement of post-65 benefits with a health care spending account). The replication of the Toronto Police agreement would require the awarding to the Toronto fire fighters of the same wage increases over the same term together with benefit and entitlement improvements and concessions that **produce a comparable net compensation impact...** (page 17/18)

Having fully considered the submissions of the parties and having regard to all of the foregoing, we have concluded:

- The voluntarily negotiated collective agreement between the Toronto Police Association and the Toronto Police Services Board for the same term constitutes a longstanding comparator settlement.
- An application of this comparator settlement would be reflective of the historical bargain between these parties.
- An application of this comparator settlement would not give rise to an inability to pay.

²⁰ *City of Toronto and Toronto Professional Firefighters Association, Local 3888*. June 26, 2013 (Burkett)

- Absent an inability to pay, this longstanding comparator settlement, which is encompassed within statutory criterion #4, outweighs the other criteria as they apply in the circumstances of this case.

It follows that, to the extent possible, we should replicate this comparator settlement – that is, both the compensation gains and the concessions voluntarily negotiated under the renewal Toronto Police collective agreement to produce a comparable economic impact. (page 18/19) [emphasis added]

In that case, Arbitrator Burkett, with the same nominees as in this case, crafted a decision for the Toronto Fire Service that attempted to replicate the cost increases and the concessions²¹ of each of the issues in the former Toronto Police deal. We pro-rated the numbers based on the different sizes of the two bargaining units and then calculated the costs and concessions of each of the issues and produced a final settlement which had essentially the same economic result as the Toronto Police deal. We produced a “comparable net compensation impact”.

The Toronto Police Settlement for 2015-2018

The most recent Toronto Police agreement goes from January 1, 2015 until December 31, 2018.

The modest wage increases which were voluntary secured by the Toronto Police Association are outlined in paragraph 10 of this Board’s decision. In addition to the wages, the Toronto Police Association secured an increase in psychological counselling to \$3,500 per year. They received nothing else.

In return, the City eliminated the payment of sick leave gratuity for new employees upon their retirement²²; reduced the starting wages for newly hired police officers from a average of 85% over the first four years of employment to an average of 82.5% over the same time frame²³; and they capped the previously unlimited physiotherapy insured benefit for employees and their families to \$3,000 per year. There was another small change to the vacation that also benefited the City.

²¹ In that case, there were millions of dollars of concessions which were incorporated into the new agreement.

²² This is a payout of up to six months of unused sick leave that the vast majority of police officers receive when they retire. The change made those hired after ratification (shortly after March 19, 2015) would become ineligible to receive such payment. It was estimated that the savings were \$145 million to the Toronto Police Service.

²³ This was a saving of \$8.5 million.

The Toronto Fire Interest Arbitration

In determining the outstanding matters, this Board has to look at the statutory criteria under the *F.P.P.A.*; the principles of replication, comparability and demonstrated need; and all other factors the Board considers relevant.

The only difference between what was before the Burkett Board and this Board is the Association's new argument that they should be the highest paid firefighters in the province.

The source of this argument, obviously, is the fact that a small number of municipal firefighters have secured salaries that are higher than their local police comparables and/or are higher than the Toronto Police salaries.

Other than this new argument about salaries, there are no other distinguishing criteria or factors between what the Burkett Board had to do and what this Board has to do. While the issues were different, the adjudicative theory should remain the same.

Ability to Pay

The City's argument was that it lacked the ability to pay for the wage increases and employee benefit improvements proposed by the Association. I agree with the Association's witness Mr. Hugh McKenzie when he said that the ability of the City to pay for its firefighters was identical to its ability to pay for its CUPE employees and for the Toronto Police Services Board to pay for the Toronto Police.

The Association nominee and I differ with regard to the application of this factor in this case. In assessing this criteria, one must look at the total cost of the increases and concessions in the proposed changes. The ability to pay then impacts upon the bottom line. The ability to pay should produce a degree of comparability between the total packages for fire, police and other municipal employees. If the wages of the firefighters needed to be adjusted higher or lower based on appropriate comparability then that could occur, but that adjustment would be accommodated elsewhere in the total package.

In my respectful opinion, this Board has imposed costs and obligations upon the City which are inconsistent with the previous decision of Mr. Burkett to produce a comparable net compensation impact with the police. Not only does the Board award too much in the wages category, but there are no major concessionary changes and a number of very expensive cost increases, the majority of which are not justifiable based on any of the criteria.

Comparability to the Police

This Board has decided to match the Toronto Fire wages to the Toronto Police rates for 2015 and 2018. In 2016 and 2017 they are paying them approximately \$2.75 million more than Toronto Police.

In this arbitration, the Fire Association wants to distance themselves from the Toronto Police and they have articulated, for the first time, the concept that the Toronto firefighters should be the highest paid of all of the firefighters in the province.

In considering this assertion, it is instructive to note that the Toronto Police, in this round of negotiations and in previous rounds settlements, have not felt the need to be the highest paid police officers in the province.

The Big Twelve (plus OPP) are a group of the thirteen largest police departments in this province²⁴.

Sarnia Police and Woodstock Police are not members of the Big Twelve. They both settled before Toronto Police. Toronto Police did not feel the need to be number one by matching those numbers. No other police department felt the need to meet or exceed the Sarnia or Woodstock police rates.²⁵

Since Toronto Police settled, some other Police departments have settled for wages above Toronto Police. Barrie Police settled after Toronto Police and their wages were above Toronto Police by \$203 in 2015, \$346 in 2016 and \$538 in 2017. Waterloo Police settled and Guelph Police arbitrated after Toronto Police and have wages that are \$63 higher than Toronto Police in 2018.

The rest of the Big Twelve settled after Toronto Police, Sarnia and Woodstock. Depending on the date of settlement, some settled after Barrie, Waterloo and Guelph. All of the Big Twelve plus OPP who have arbitrated or settled²⁶ deals have wages that are lower than the Toronto Police deal²⁷.

Therefore, in 2015, Barrie and Sarnia are the highest paid police officers in the province. In 2016, Sarnia, Woodstock and Barrie are the highest paid police officers in the province. In 2017, Woodstock and Barrie are the highest paid police officers in the province and in 2018, Waterloo and Guelph are the highest paid police officers in the province.

²⁴ The Big Twelve are composed of Toronto, Peel, York, Durham, Ottawa, Halton, Hamilton, London Windsor, Sudbury, Niagara and Waterloo Police departments. The Ontario Provincial Police is often added on to make thirteen.

²⁵ Toronto Police settled behind Woodstock Police by \$475 in 2016, \$1,308 in 2017. Toronto Police settled behind Sarnia Police by \$14 in 2015 and \$1,007 in 2016.

²⁶ All have settled for this time period (up to 2018) except Hamilton Police.

²⁷ The one exception is Waterloo Regional Police in 2018 which is \$63 higher than Toronto Police.

Sometimes the wage differences were small²⁸, sometimes they were large²⁹, but Toronto Police and the Big Twelve were prepared to settle for wages lower than other police departments for the same time frames. The bottom line is that Toronto Police are not number one for any of 2015 – 2018. In fact, they are third or fourth in the province for each of those years.

This reality has existed for decades. In the 1980 Toronto Police interest arbitration decision by Burkett, he notes that this reality existed as far back as the 1970s. At paragraph 11 he notes Toronto Police falls within the top three of the 13 police departments (fourth in one year).³⁰

Toronto Police has never sought, nor have they in fact been guaranteed, a number one or a leading rank in the province. Notwithstanding this, the Toronto Firefighters have been content for decades to continue to tie their wages to the Toronto Police. If Toronto Police don't need to be number one in the province, why now do Toronto Fire need to be number one?

Comparability to Other Firefighters

I agree that in determining the wages of any fire fighter bargaining unit, there is a need to have regard to the wages of comparable fire departments. In this case, there is no evidence that Toronto firefighters are deserving of more compensation than any other firefighter in the province. There has been no evidence that their duties and responsibilities are different than other firefighters in Ottawa, Mississauga or other large municipalities.

In any case, there is no doubt that Toronto, with a population of approximately 2,700,000 and over 3,000 firefighters is the largest in the province. In decreasing order of population, the next ten fire departments are Ottawa, Mississauga, Brampton, Hamilton, London, Markham, Vaughan, Kitchener, Windsor and Richmond Hill. These are the municipalities which are arguably relevant to look at when assessing relevant comparable firefighter rates for Toronto.

Of the ten municipalities that are arguably comparables to Toronto, to date, only Kitchener, Vaughan and London have settled for the relevant time period.

Of these three, Kitchener Fire settled first. They settled before Waterloo Regional Police settled. Therefore they did not have any local police settlement to follow and no other fire settlements from the top ten fire departments in the province. Kitchener settled for wages that were higher than Toronto Police, but they are not a comparable for Kitchener Fire. When Waterloo Police settled, they settled with end

²⁸ 2018 Waterloo and Guelph are only \$63 higher than Toronto Police

²⁹ In 2017 Woodstock is \$1,308 higher than Toronto Police.

³⁰ *The Metropolitan Board of Commissioners of Police and The Metropolitan Toronto Police Association Interest Arbitration* (June 4, 1980) Burkett

rates lower than Toronto Police for 2015, 2016 and 2017 and settled \$63 higher in 2018.

Vaughan Fire settled next before their local comparable police department – York Regional Police (YRP). They settled for wage rates that were lower than Kitchener Fire, but still higher than Toronto Police. When YRP settled, they tracked the Toronto Police and were not influenced by the Vaughan Fire settlement which was higher.

London Fire settled third after 39 days of interest arbitration before a decision was issued. Traditionally, London Police had been in the middle of the group of Big Twelve Police wage rates. London Police had negotiated a deal which had them being paid the lowest of the Big Twelve Police departments. London Fire voluntarily agreed to match London Police rates of pay. London Fire had traditionally been compared to Kitchener Fire and Vaughan Fire³¹. London Fire settled substantially lower than Kitchener Fire and Vaughan Fire and substantially lower than Toronto Police. London Fire's rates of pay were about \$6,500 less than the Vaughan Fire and Kitchener Fire rates over the 2015 – 2017 time period.³²

If the end rate wages for Kitchener, Vaughan and London Fire were to be averaged in any year between 2015 - 2108, they would be less than the Toronto Police wages.³³

In determining the wage rates in this case for 2016 and 2017, this Board has essentially selected the Kitchener rates of pay (which are the highest of the three) and linked the end rates of the Toronto Firefighters to their 2016 and 2017 end rates.

If a comparison to other fire departments is to be made, then it should be made to these three comparable fire departments who have already settled for this time period. It should not be a matter of simply picking a single fire department and determining that they are now the comparable because they are higher for a couple of years.

Interestingly, Toronto Fire has never articulated a need to be compared to other fire departments. They have never been linked to Kitchener Fire rates of pay. In fact, in 2009, Kitchener was ranked 12th in the province based on wages; in 2010 it was 23rd; in 2011 it was 20th; in 2012 it was 21st; in 2013 it was 16th; in 2014 it was 16th

³¹ London is the largest of these three municipalities and then Vaughan and then Kitchener.

³² The London deal also had the City excluding the Platoon Chief classification and their duties on October 1, 2018. In return; on the same date, the City increased the Captain rate of pay to 118% and the District Chief rate of pay to 135% and guaranteed that there would be 12 officers above the rank of Captain. In addition, the City decreasing the statutory pay for suppression firefighters by \$1,800 per person; obtained a dispensing fee cap of \$7.50 and obtained many other concessions.

³³ Kitchener and Vaughan fire agreements expire on December 31, 2017 and London expires on December 31, 2019.

and in 2015 it was 9th. In reality, the only reason they are being considered in this case is because they settled first when there were no comparables and they settled high. If Kitchener had been used as a comparable in any previous year, it would have resulted in a wage rate that was less than the Toronto Police. What the Association is arguing for, and the Board is agreeing with, is a rotating comparable based on whoever is temporarily highest in a certain year.

When this Board matched the Toronto Police numbers for 2015 and 2108, they concluded that Toronto Fire does not have to be the highest in the province,³⁴ They have, however, over compensated them for 2016 and 2017.

The award of the Board in 2016 follows Kitchener and makes Toronto Fire the fifth highest group of firefighters. They are ahead of both Vaughan and London³⁵.

In 2017, Toronto Fire, following the Kitchener numbers, becomes the second highest in the province. They are ahead of Vaughan and London. For 2017, the Toronto Fire wage end rate number has been set \$156 behind Woodstock (the highest in the province) and \$1,151 ahead of Toronto Police.

The Board's wage numbers do not balance the police numbers with the other fire numbers. The replication theory of interest arbitration entails consideration of comparables. Interest arbitrators have taken guidance from wage comparables that have developed through local practice. *Burkett (2013)* confirmed the existence of the decades long practice of police parity in Toronto. He also confirmed "no historic relationship between police and salaries/increases".³⁶ He choose to follow that practice relying expressly upon its longevity. It was not arbitrators who first

³⁴ The wage award has Toronto Fire \$13 behind Oakville on January 1, 2015 and \$707 behind Oakville on July 1, 2015. On January 1, 2018 the wage award has Toronto Fire \$380 behind Whitchurch-Stouffville on January 1, 2018 and \$1,467 on July 1, 2018; and \$134 ahead of Caledon on January 1, 2018 and \$1,145 behind Caledon on July 1, 2018.

³⁵ Of the other municipalities above Toronto Police, there is Barrie which is the 16th largest municipality in the province with a population of about 136,000. Sarnia is the 34th largest municipality in Ontario with a population of about 72,000 and Woodstock is the 42 smallest municipality in the province with a population of about 38,000. They all settled before Kitchener and they are not comparable municipalities for Toronto Fire. Of the other fire departments with wages above Toronto Police, Georgina and Whitchurch-Stouffville (W/S) are very small departments with few firefighters. They are in York Region and they matched the Vaughan Fire rates of pay. They did not match the YRP.

Halton Hills and Caledon each have a couple dozen full full-time firefighters. They are composite departments who rely on full-time and volunteer firefighters to provide suppression services to their communities. They are not comparable to Toronto Fire.

Pearson Airport firefighters are not a municipal comparator. It is not clear if they perform similar duties to the municipal firefighters.

³⁶ *Corporation of the City of Toronto and Toronto Professional Firefighters Association, Local 3888* June 23, 2013 (Burkett) at page 18.

identified the relevant comparator for Toronto Fire to be Toronto Police – it was the parties. We should be following in that practice.

Yes, there are a small number of municipalities who have higher fire settlements than Toronto Police. But the vast majority of them are not comparables for Toronto Fire. The Board has essentially selected the City of Kitchener as the appropriate comparable for Toronto Fire. This ignores the decades of fire to police comparability. This elevates the Association argument of being the first, or near first, in the province to essentially an equivalent criteria. Does this mean that in the next round of negotiations or interest arbitration that Kitchener will become the favoured comparable? Or is there now to be an ever changing comparable fire department – whoever is at the top or near the top of the province? Why Kitchener this time, why not Vaughan or London?

The Association nominee wants the best of all worlds. Parity with Toronto Police is fine if it keeps the Toronto firefighters in the top position. The problem with that position is that it then eliminates any role for the comparable firefighters because they would, by definition, be less than the Toronto Police. If the wage rates of those comparable firefighters were to be considered they would decrease the Toronto Fire wage rates to a number that is less than the Toronto Police. On the other hand, if there are essentially any other fire departments with firefighters higher than the Toronto Police, then Toronto Police is ignored and the wages paid to Toronto firefighters are to escalate to the highest fire fighter rate. There is no down side risk.

The wages that have been awarded in 2016 and 2017 create a cash flow difference with Toronto Fire being paid more than Toronto Police. In 2016 this amount is \$108 and in 2017 the amount is \$809. The total difference for 3,000 firefighters is over \$2,750,000³⁷. The Board should have placed more weight on police to fire comparability. Selecting one municipal fire department as the comparable is not appropriate.

Other Toronto Police Issues

Another issue that I have with the decision of the Board is their failure to give any credence to the total compensation adjustment that flowed from the recent Toronto Police settlement. In that document, there were modest wage increases, which this Board is ignoring by paying more. However, they have also ignored the other major concessions which were granted by the Toronto Police.

As Burkett held in the previous Toronto Fire interest arbitration, we should be trying to produce a “comparable net compensation impact”. With respect, the Board has ignored the concessions which were given by the Toronto Police.

³⁷ This costing assumes everyone is paid at the first class rate.

Lower Starting Rates

Toronto Police decreased their starting rates in the last round. If you averaged the first four years of employment for the police they changed from an average of 85% to 82.5%. The current Toronto firefighter is at an average of 84.25% for the first four years. A reasonable solution would have been to match the police number.

The comparables that we were given demonstrate that London/Hamilton/Mississauga/Oakville/Oshawa/Ottawa/Waterloo all are at 82.5% or less. Brampton and Windsor are below Toronto fire's current number of 84.25%, but above 82.5%. Only Vaughan is above Toronto Fire's current number. The savings was estimated at just over \$1,000,000 per year.

On a comparability test test, we should be granting this.

Eliminate Sick Leave Credit Payout Upon Retirement for New Hires

The Toronto Police did this in their most recent round of negotiations. Of the fire comparables, more than 50 of the 83 departments in this province with full time firefighters have no payout. The City was only proposing to grandfather the payout for new hires so there would have been no saving to the City for over thirty years. Some of the larger departments – Vaughan, Oakville, Burlington, Oshawa, Central York (Newmarket), Whitby, Ajax have no pay out at all.

The City estimated the savings to be \$69 million for the fire department.

Capping of Physiotherapy Benefits From Unlimited to \$3,000

Currently the Toronto firefighters have unlimited coverage for physiotherapy benefits. The Toronto Police enjoyed the same benefit until the last round of negotiations when it was changed to an annual limit of \$3,000. All of the fire comparables have an annual limit that is less than \$3,000 for physiotherapy or they have a per visit cap. No one has an unlimited amount.

The implementation of this change would save the City over \$105,000 per year. Comparability would dictate that this change would be made.

None of the major concessions, or an equivalent concession, that were voluntarily agreed to by the Toronto Police have been granted by this Board.³⁸

³⁸ This Board did grant the requirement of a prescription for the utilization of the massage benefit. The savings to the City is just over \$20,000 per year.

City Issues Not Awarded

The Board has not granted some other issues by the City for which there was comparable justification and granted other Association issues which are not justified based on the comparable data.

Sick Leave Gratuity Calculation

Upon retirement, Toronto Fire paid out at 100% of the unused sick leave credits to a maximum of six months. In the last interest arbitration, Arbitrator Burkett changed this for those hired after June 26, 2013 so they only get paid out 50% of their unused credits to a max of 6 months. The City has now proposed that this formula be extended to the rest of the existing employees.

Essentially every firefighter in the province is paid out the way that the City is suggesting. Toronto Police has done it this way for years. It is the best case of replication that exists. There is no reason that the Board would not have addressed this issue.

Association Issues Awarded

Captain Pay Differential

Currently the Toronto Fire Captains are paid at 116% of the wages of a first class firefighter. The Board proposes to increase this to 118% on July 1, 2018.

There are 4 comparables that have Captains at 120% (Hamilton, Oakville, Ottawa and Vaughan). That leaves seven comparables at essentially 116 or lower (Brampton, Kitchener, London, Markham, Mississauga, Pickering and Windsor³⁹). London will change, but at October 1, 2018⁴⁰. As it stands now, 4/5 of 11 is not a reason to change based on replication. If a group of four comparables is enough to get a change, then the above sick leave gratuity calculation should have been granted.

The Board also increased the differential for the Marine Captains and the Senior Marine Engineer from 116% to 118% with no comparative data and no demonstrated need.

Additional Float Day

³⁹ Windsor pays their Captains at 124% of the first class wages. Windsor Captains, however, do not have the 3/6/9% recognition pay that all other comparable firefighters have. Therefore, one has to subtract the 9% off the 124% to get 115% to compare the actual wages.

⁴⁰ This was part of the trade to exclude Platoon Chiefs and their duties from the bargaining unit which is also effective the same day.

Toronto currently has 12 designated holidays. Eight of eleven comparables have 13 designated holidays. On the basis of the replication or comparability theory, a change could be justified to increase the number from 12 to 13.

The difference, however, is that Toronto pays their firefighters 1.3 times their hourly rate of pay when they work on a statutory holiday. All of the comparables, except Ottawa, pay them at straight time⁴¹. Therefore, the total value of the Toronto statutory holidays at only 12 where they are paid at 1.3 times the regular wage rate is greater than the value of those that have 13 when they are paid at straight time.

Toronto Police are paid at 1.5 times the regular hourly rate for time worked on a designated holiday. They are different, however than firefighters who are compensated at a 12 hour day for each designated holiday while police are only compensated for an eight or ten hour shift on the statutory holiday. As such, the firefighters net more in total compensation than the police.⁴²

Paramedical Benefits Provided by Athletic Therapist

The Board has extended the scope of benefit coverage to provide up to \$600 per year for benefits provided by Athletic Therapists. Only two of the over 80 full-time fire departments in this province provide this type of coverage. There is no reason to expand the scope of this based on the comparables – it is a breakthrough benefit. No evidence was submitted to show any demonstrated need for this type of service.

Paramedical Benefits Provided by a Psychotherapist

The Board wants to increase the scope of benefit providers by adding the heading of Psychotherapist. The Association defined these persons as “an umbrella term for any professional who is trained to treat people for their emotional problems. Depending on their academic degree, a psychotherapist can be a psychiatrist, psychologist, or social worker (among others)...”. The current benefit plan covers the work of psychologists and social workers. The work of psychiatrists is covered by OHIP.

There were no comparables submitted to clearly demonstrate that other municipalities were offering services by this particular discipline. The Association states that the reason for this coverage is to provide services for firefighters suffering from Post Traumatic Stress Disorder, but the City correctly points out that this service would be covered under the *Workplace Safety and Insurance Act* because

⁴¹ Ottawa pays at time and one half. The Association did show some statistics which demonstrated that some other non-comparable municipalities such as Kapuskasing, Deep River, North Bay etc do receive time and a half for work on designated holidays. They showed that in total 13 of the over 80 full-time fire departments pay a premium for work on a designated holiday.

⁴² The calculation is a little more complex because firefighters work a 24 hour shift and use two statutory holidays for each 24 hour time slot. In the end, they still receive more total compensation than do the police for this single item of compensation.

it is arising out of the course of employment. In any case, the existing service providers (social workers, psychologists and psychiatrists) are already covered. There is no demonstrated need for this expansion.

Inability to Change Benefits

Currently, the City can not change benefit carriers if the change in carrier results in a change in benefit levels. The Board has expanded that so that at all times “any update or change shall not reduce the scope, level, or nature of any benefit without the agreement of the parties.”

None of the six comparables that the Association put forward supported that request. All of them were similar, if not identical, to the current restrictions that are present in the collective agreement. There is no comparable language and no evidence was submitted to show any demonstrated need.

Arbitral Jurisdiction over OMERS Supplemental Plan

The Association proposed that the OMERS accrual rate be increased to 2.33%. The City noted that the *OMERS Act, 2006* specifically requires that a municipality must consent to the establishment of such a supplemental pension plan and they noted that no municipal employer (in either the Fire or the Police sector) has ever consented to such a plan.

The Board has concluded that: “We confirm arbitral jurisdiction concerning Association pension proposal”. It is not clear what the Board has actually concluded. I am of the view that an interest arbitration board can not override the statutory requirements of the *OMERS Act, 2006* that employer consent is required to provide this type of pension plan.

Estoppel Notices

The City provided a number of estoppel notices to the Association. The only one that was settled is the Red Circling of Mechanics notification which the parties informed us had been agreed to by them outside of these proceedings. Many of these other proposals had merit and I would have awarded some as part of a total compensation exercise.

Conclusion

In summation, in my respectful opinion, this Board has ignored, or not placed sufficient weight, on the decades of comparability between police and fire wages in the City of Toronto. They have not given any, or sufficient weight, to the concessions which were found in the Toronto Police settlement nor have they sought to produce a comparable net compensation impact based on arbitral jurisprudence and practice between these parties. They have further compounded this situation by awarding

items for which there is little or no comparable data or demonstrated need and they have declined to award other proposals that are supported by comparable data.

All of which is respectfully submitted,



John Saunders

Nominee for the City of Toronto