IN THE MATTER OF AN ARBITRATION

BETWEEN:

CORPORATION OF THE CITY OF TORONTO
("the Employer")

AND:

TORONTO PROFESSIONAL FIRE FIGHTERS ASSOCIATION, LOCAL 3888
("the Association")

IN THE MATTER OF:

RENEWAL COLLECTIVE AGREEMENT

BOARD OF ARBITRATION:

Kevin M. Burkett	- Chair
John Saunders	- Employer Nominee
Jeffrey Sack	- Association Nominee

APPEARANCES FOR EMPLOYER:

Darragh Meagher	- Director, Employment Law Group
Ian Solomon	- Counsel
Zoya Trofimenko	- Counsel

APPEARANCES FOR ASSOCIATION:

Jeff Nester	- Advocate, IAFF/OPFFA
Ed Kennedy	- TPFFA President
Frank Ramagnano	- TPFFA Secretary/Treasurer
Damien Walsh	- TPFFA Vice President
Ernie Thorne	- District 1 Vice President OPFFA

We have been appointed under the Fire Protection and Prevention Act, 1997 to adjudicate upon the issues in dispute between the parties in respect of the negotiation of a renewal collective agreement to the collective agreement between them that expired December 31, 2009. There is no dispute between the parties with respect to our authority in this regard.

Toronto is the largest city in Canada with a population of over 2.7 million living in a geographic area of about 630 square kilometres. Toronto Fire Services is responsible for fire protection and prevention within the municipal boundary. The Toronto Professional Fire Fighters Association represents 3,084 members: 2,766 in operations; 129 in fire prevention and education; 73 in communications; 40 in mechanical maintenance; 16 in staff services; 13 in information and communications systems; 5 in emergency planning and research; and 4 in health and safety. Needless to say, given the scope of the industrial and commercial economy and the diversity of residential accommodation within the city of Toronto, fire prevention and protection is a critical public service.

These parties bargained on 16 occasions between October 29, 2009 and April 19, 2010 before proceeding to conciliation on July 12, 2010. Mediation sessions with this Board were held on June 28, 2011 and September 28, 2011. The parties then met on October 3, 2011 for the purpose of identifying agreed items and signed off on those items on October 12, 2011. A signed document setting out all agreed items was then tendered. The arbitration hearing commenced on November 12, 2011 and continued

on December 21, 2011, March 5, 2012 and May 28, 2012. The complexity of the costing and valuation issues and the Board's necessary reliance upon actuarial reports that have been challenged and either clarified or revised as we have proceeded through the deliberative process have necessitated numerous executive sessions extending over many months.

The issues in dispute are as follows:

Association Issues

1. Article 8 – Provide Increases to Wages
2. Article 11.01 – Increase Vacation Entitlement
3. Article 13.01 and 13.04 – Replace Float Day with Family Day
4. Article 13.03 – Time and One-Half for Working on a Designated Holiday
5. Article 15.01 – Increase Reimbursement for Required/Requested Certificates
6. Article 16.02(b) – Insert Minutes of Settlement re Synvisc into Agreement
7. Article 16.02(d) – Add Naturopath and Increase Professional Services Benefit
8. Article 16.02(e) – Increase Benefit for Psychologist, and Add Psychiatrist
9. Article 16.02(g) – Increase Vision Care Benefit
10. Article 17.01 and 17.02 – Increase and/or Harmonize "Post-65 Benefits" for all Retirees
11. Article 25 – Seeking 2.33 OMERS Supplemental Plan
12. Article 52.01 – Seeking 5-Year Term
13. Article 56.01 – Seeking Deletion of Clause

14. New Article – $75 for Retirees Attending Court

Employer Issues

1. Article 8 – Payroll Harmonization
2. Clause 8.01(b) – Red-Circling
3. Article 9.01 – Hours of Work - Communications Swing Shift
4. Article 12 – Vacation Entitlement
5. Article 14 – Illness and Injury Plan
6. Article 16.02 – Dispensing Fee Cap
7. Article 16.04(c) – Line of Duty Death
8. Article 52 – Term of Agreement

It is to be noted that the Association asserts that Employer issues #4 and #5 are "late" issues not raised or dealt with during the direct two-party bargaining phase of these negotiations. The Association asks the Board to disregard these issues. It is to be further noted that in its March 5, 2012 submissions, the Employer withdrew its issue #1, Payroll Harmonization.

The parties are ad idem that the term of the renewal collective agreement should be five years, i.e. January 1, 2010 to December 31, 2014.

SUBMISSIONS

The Association seeks to replicate the settlement voluntarily negotiated between the Toronto Board of Police Commissioners and the Toronto Police Association for the period January 1, 2010 to December 31, 2014.

Employer

The Employer put forward an analysis of the statutory criteria as they apply here in support of an award that provides for a lesser financial impact than the voluntarily negotiated Toronto Police settlement. The Employer argues, firstly, that it lacks the ability to bear the cost of the Association proposals. In this regard, a detailed presentation was made identifying sources of revenue and expenditures. A fiscal 2012 Toronto budget deficit of $774 million in an overall budget in excess of $10 billion was forecast. However, the fiscal 2012 projected deficit has now been revised to an actual 2012 surplus of $284 million. The budget includes an assumed wage increase for 2012. The Employer asks us to take note of the fact that the per capita cost of providing fire service in Toronto ($153) exceeds the average of the other municipalities ($139).

In regard to the economic situation in Ontario, the Employer pointed to projected minimal growth and the provincial deficit. As for the Municipality, reference is made to static GDP, high unemployment and a costly social assistance caseload brought on in large part by provincial downloading. Reference is made to its

many restraint initiatives, the low average household income relative to other GTA municipalities and, also relative to other GTA municipalities, the residential tax and fee burden as a function of median household income.

The Employer maintains that services would have to be reduced if an award was to mirror the increases agreed to by the Toronto Police Services Board if current funding and taxation levels are not increased. As proof of this assertion, the Employer points to the post-settlement Toronto Police Services Board budget that was based on not filling vacancies caused by retirement, resignation or other separations and by continuing a freeze on hiring for 2012.

The Employer also maintains that it has no difficulty attracting and retaining fire fighters which, it is argued, also militates in favour of a lesser award.

Finally, the Employer reminds the Board that recent settlements and awards between the Toronto Police Services Board and the Toronto Police Association have included provisions that reduced its future liabilities. Reference is made to the 2008 award that introduced a post-65 health care spending account that terminated employee entitlement to a post-65 benefit plan, thereby, the Employer asserts, reducing its future liabilities by some $56 million. Reference is also made to the capping of the sick leave bank payout for new employees to a maximum of six months (from nine months) and the limiting of entitlement to a sick bank payout to those with 25 years of service instead of the previous 10 years of service. It is the position of the Employer that any consideration of the police settlement as a pattern

must provide concessions of the same value. Finally, reference is made to the settlements with its municipal workers that the Employer points out are far less than what it is offering to its fire fighters. The Employer's offer is as follows:

Year	Effective Date	Percentage Increase	Resultant First Class Fire Fighter Annual Salary
2010	January 1, 2010	3.16%	$81,249
2011	January 1, 2011	3.19%	$83,851
2012	January 1, 2012	2.15%	$85,654
2013	January 1, 2013	2.00%	$87,367
2014	January 1, 2014	2.00%	$89,114

Association

The Association made extensive submissions in response to the economic argument advanced by the Employer. The overriding theme of the Association presentation is that the so-called "crisis" is politically, as distinct from economically, driven. The Association points to the $346 million surplus generated in 2010 and then, as had been consistently done in the past, rolled into the 2011 budget that allowed council to implement a tax freeze and eliminate the personal vehicle tax. The Association argues that both the 2011 tax freeze ($56 million) and the elimination of the personal vehicle tax ($64 million) were political decisions as was the decision, for the first time, not to roll the 2011 surplus ($155 million) into the 2012 budget. The Association explains that, if there had been no 2011 tax freeze but rather a normative 2.5% tax increase, if the personal vehicle tax had not been repealed and if the 2011 $155 million surplus had been rolled into the 2012 budget, the effect would have been

an additional $275 million in budget room. It is argued that these measures would have more than doubled the fiscal 2012 surplus. Having regard to the foregoing, the Association asserts that, whereas arbitrators are required to consider ability to pay, they are not required to consider the political willingness (or lack thereof) of the employer to pay.

In addition, the Association argues that the Employer's actions do not lead to its conclusions. It is submitted that the Employer reached a voluntary agreement with the Toronto Police for precisely the same increases in pay that are being sought by its fire fighters and that agreement was reached in the same economy and in the face of an essentially identical budget story. It is submitted that in negotiations with CUPE 416, the Employer turned down an offer of a wage freeze to focus on flexibility concerns that are not at issue here. Finally, it is submitted that the Employer acknowledges that, although resulting in a lower end rate, its offer to the fire fighters would be more costly over the life of the agreement than the police parity position of the fire fighters.

ANALYSIS

The statutory criteria that we must consider in deciding the issues before us are set out at Section 50.5 of the Fire Protection and Prevention Act, 1997. Section 50.5(2) stipulates as follows:

> In making a decision the board shall take into consideration all factors the board considers relevant, including the following criteria:

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. A 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 then retain qualified firefighters.

Before considering the application of these criteria to the issues before us, it is important to observe that their application, as with the criteria found in other interest arbitration statutes, is not intended to cause a predetermined result. While requiring a board to put its mind to various factors that might be relevant to its ultimate determination, they do not abridge the broad discretion of an interest board of arbitration to consider and weigh all the relevant factors in any given case in coming to a freely determined result that is fair and reasonable in all the circumstances. The discretion given to an interest board of arbitration in this regard is fundamental to the functioning of an interest arbitration process that serves as an alternative to free collective bargaining under which the parties are able to resort to economic sanctions in the form of strike or lockout in support of their respective positions. Where the legislature, in its wisdom, decides that in the interest of the greater public good the

right to free collective bargaining must be restricted to the extent that economic sanctions are not permitted, i.e. police, fire and health services, the alternative must be fair, impartial and transparent. This is why statutory criteria, as found in the various interest arbitration statutes, including the Fire Protection and Prevention Act, do not remove the ultimate discretion of a board of interest arbitration to make a fair and impartial award that takes into account all relevant considerations.

If there is any doubt in this regard, reference need only be had to the judgements of the Supreme Court of Canada in *re: B.C. Health Services,* [2007] SCR 391, SCC 27 and *CUPE v. Ontario (Minister of Labour),* [2003] 1 SCR 539, 203 SCR 25. In the former, the British Columbia government passed legislation overriding certain collective agreement provisions applicable to employees in the health care sector. In reversing a number of its prior decisions, the Supreme Court found that Section 2(d) of the Charter guarantees a right to collective bargaining as part of freedom of association. Although the Court emphasized that the right is to a process and does not guarantee access to a particular statutory framework or to a particular result, the Court did find that "substantial interference" with collective bargaining will violate the Charter. It would be difficult to conclude that statutory interest arbitration parameters that robbed an impartial interest arbitrator of his/her essential discretion by, in effect, prescribing a particular result or even by narrowing the range within which a fair and reasonable result might otherwise fall would not run afoul of *B.C. Health*. After all, just as there can be no "substantial interference" with the right to

free collective bargaining, there can be no "substantial interference" with free, fair and impartial interest arbitration where it is legislatively substituted for free collective bargaining.

Consistent with the foregoing, the Supreme Court had already found in 2003 in *CUPE v. Ontario (Minister of Labour), supra* that the Ontario Minister of Labour could not ignore the established list of mutually acceptable interest arbitrators and appoint retired judges to interest arbitration cases. The government of the day was unhappy with the results of interest arbitration in the health care sector. While acknowledging that retired judges would not necessarily lack impartiality, the Court concluded that interest arbitrators must also be independent and that independence in the interest arbitration sphere is guaranteed by training, expertise, and mutual acceptability. The Court went on to find that "the appointment of an inexpert and inexperienced chairperson to an interest arbitration board who is not seen as generally acceptable in the labour relations community is a deficit in approach that is both immediate and obvious." It is difficult to see how restricting the discretion of an expert, experienced and mutually acceptable interest arbitrator by means of formulaic criteria or other such limitations that affect the outcome would be any less a deficit in approach that is both immediate and obvious.

Given the foregoing, it is not surprising that the statutory criteria that govern interest arbitration generally, and this case in particular, are neither exhaustive nor formulaic. Under the law, for reasons related to fundamental fairness, interest

arbitrators are provided with a broad discretion to consider not only the statutory criteria but all other factors that are relevant and to provide an appropriate weighting. Such discretion is the necessary underpinning to an interest arbitration process that, as the substitute for free collective bargaining, is fair, impartial and transparent.

The application of the criteria must be on the basis of the facts that are presented in any given case. However, there are certain principles that apply generally.

There has been criticism of a number of recent awards by those who would have interest arbitrators ignore the prescribed criteria/factors (except for the state of the Ontario economy) and whatever else might be relevant in the particular case and simply give effect to the government's restraint pronouncements. To do that would be to refuse to exercise independent discretion in assessing and weighing all the relevant criteria/factors as required by the statute and, thereby, to undermine the process of fair and impartial interest arbitration that serves as the legislated alternative to free collective bargaining.

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.

This is not to say that ability to pay is ignored where relevant comparator settlements exists, as demonstrated in a number of recent awards where the wage increases have been staged and/or back-end loaded (see *re:* *Fort Frances Professional Fire Fighters Association and Corporation of the Town of Fort Frances,* dated February 4, 2011 *(unreported),* *Hawkesbury Professional Fire Fighters and Corporation of the Town of Hawkesbury,* dated December 23, 2011 *(unreported)* and *Corporation of the Municipality of Clarington and Clarington Fire Fighters Association*, dated June 4, 2010 *(unreported)*) in order to lessen the financial impact upon the employer.

The statutory requirement to consider "the employer's ability to pay in light of its fiscal situation" has been, as noted, the subject of recent comment, some of it characterizing ability to pay as always overriding. This cannot be the case. First, as already made clear, each of the statutory criteria and whatever other criteria an independent arbitrator considers relevant must be considered. Second, the ability to pay criterion is inextricably intertwined with the remaining criteria because it cannot be addressed until at least an estimation is made as to what an award should be

without consideration of ability to pay. In other words, an answer must be provided to the question – ability to pay what? – before it can be determined whether or not there exists an inability to pay. Third, and more specifically, there is a direct linkage between the ability to pay criterion and the extent to which services might have to be reduced (criterion #2 under the Fire Prevention and Protection Act) that is expressly recognized in Section 50.5(2) of the Act. This is so because a reduction in services might offset the cost or part of the cost of an award and thereby, depending on the type and extent of a service reduction, might alleviate an inability to pay if one exists or, where services cannot be reduced, accentuate an inability to pay. Finally, as in this case, the ability to pay criterion may trigger arguments that an asserted inability to pay is really an unwillingness to pay. In this case, the Association refers to a 2011 municipal tax freeze, the repeal of the personal vehicle tax and the decision to discontinue the allocation of the previous year's budgetary surplus to the current year as self-imposed budget measures that reflect an unwillingness, as distinct from an inability, to pay. 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.

While requiring careful scrutiny and complex in its application to any given case, it should not be taken from the foregoing that a genuine inability to pay is inconsequential. The opposite is true. A case in point would be the December 16,

2009 interest award covering *The Corporation of the City of Windsor and the Windsor Professional Fire Fighters Association*. In that case, the Board identified a number of issues that, if awarded, would have had a significant economic impact, including an Association demand to reduce the workweek from an atypical 48 hours per week to the standard 42 hours per week. Recognizing that "Windsor has been particularly hard hit by the economic recession," the Board did not issue a final award but rather issued an interim award for the period 2006 through 2009. Given the state of the Windsor economy, the Board, while awarding interim wage increases and some benefit improvements, did not address the reduction in hours issue and remained seized to deal at a future date with this and other outstanding economic issues that were before it. In his concurring opinion, the employer nominee emphasized that:

> The evidence clearly showed that the City of Windsor has borne a disproportionate share of the current economic downturn as compared to other municipalities. The high unemployment rate, the decreases in the auto industry, the low municipal fiscal health, the high cost of fire fighting, and the negative current value assessment all demonstrate that the City is struggling financially and has an inability to pay.

The employer nominee then concluded that:

> While I might have been inclined to create a different outcome to this decision, I agree that it is not an inappropriate settlement given the fiscal realities of the City of Windsor; its inability pay; the comparative data of other municipalities; the Windsor Police settlement; the City settlements; the factors outlined in the Fire Protection and Prevention Act and the compelling interests of the parties.

In the case before us, a deficit of $774 million for fiscal 2012 had been projected in the budget presentation made by the Employer. However, the 2012

budget, that assumes a 2012 wage increase, has been revised to show an actual 2012 surplus of $284 million. In the face of an estimated 2012 budget surplus of this magnitude, it is difficult to establish an inability to pay.

It is against the backdrop of the foregoing that we turn to the application of the statutory criteria in this case. The necessary starting point is the identification of the voluntarily negotiated Toronto Police 2010-2014 settlement as a longstanding comparator settlement. The salaries of Toronto fire fighters and Toronto police officers, both paid from the municipal purse, have been linked for decades in both negotiated settlements and arbitration awards, as have police/fire salaries elsewhere. This linkage, established through numerous freely negotiated settlements and interest arbitration awards, reflects the fact that both police officers and fire fighters provide an essential public service in that both protect the public safety at considerable personal risk. 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. While the police/fire linkage has been challenged by municipal employers from time to time, these challenges have never been successful. In the result, given the freely negotiated Toronto Police settlement for the same term with which we are concerned, an inability to pay argument must establish that the Employer has an inability to pay its fire

fighters what was negotiated for this municipality's police officers, taking into account the concessions made by the police.

The Toronto Board of Police Commissioners and the Toronto Police Association entered into a freely negotiated five-year collective agreement for the period 2010-2014 inclusive. It is to be noted that the Toronto Police agreement followed and in large measure reflected two prior voluntarily negotiated agreements covering major police forces in the Province of Ontario for the same economic cycle. The first was that negotiated between the Province and the O.P.P. That agreement paid lip service to the Province's own wage restraint initiative by providing for an above normative wage increase in year one, followed by two years of net zero compensation increases and then followed by an undertaking to make the O.P.P. the highest paid police service in the province in year four. The Peel Region Board of Police Commissioners and the Peel Region Police Association then entered into a voluntarily negotiated agreement shortly thereafter. The Toronto Police settlement followed.

The Toronto Police settlement provides for percentage wage increases of:

- 2% effective January 1, 2010
- .91% effective July 1, 2010
- .25 effective December 1, 2010
- 2.75% effective January 1, 2011
- .44% effective October 1, 2011

- 1.5% effective January 1, 2012
- 1.48% effective July 1, 2012
- 1.80% effective January 1, 2013
- 1.05% effective December 1, 2013
- 2% effective January 1, 2014 – expires December 31, 2014

The Toronto Police settlement also provided for benefit, vacation, shift premium and rank differential improvements over the five-year term. The concessions that were negotiated included a reduction in the sick leave gratuity payment from nine months to six months for new hires (the fire fighter sick leave gratuity payment is currently six months) and also for new hires an increase from 10 years of service to 25 years of service in order to qualify for the six-month sick leave gratuity and the restriction of the payout to separation from employment by reason of death or retirement. It was also agreed that uniform constables in training would no longer receive a 6.75% "plainclothes allowance" when spending six months in a detective setting during training. It is to be remembered, as well, that those covered by the Police agreement had post-65 retiree benefits replaced by a health care spending account of $2,500 in 2009 (presently $3,000 per annum with life insurance continuing). 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.

If there was no longstanding comparator, greater weight would be given to the settlements between this employer and its municipal workers. These settlements, along with other relevant fire fighter and police settlements/awards (if any exist), together with the macro economic data, would be taken into account to establish the parameters within which such an award should fall. However, as already noted, while there is a historic relationship in this municipality between police and fire salaries/increases, there is no historic relationship between police and fire salaries/increases and the salaries/increases paid to other municipal workers. Because there is no inability to pay, because there is no historic relationship in this municipality between the salaries paid to fire fighters and the salaries paid to municipal workers, because there exists a voluntarily negotiated Toronto Police settlement for the same term with which we are concerned and because there is a historic relationship in this municipality between fire and police salaries, the salaries/increases negotiated for this Employer's municipal workers are of limited assistance in applying the replication principle.

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.

- 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.

However, replicating the Toronto Police settlement is more difficult than it might seem. While the objective is to fashion an award with a comparable net compensation impact, it is not a simple matter of applying the terms of the Toronto Police agreement. First, because of the differences in the two collective agreements,

certain of the concessions made by the Toronto Police are not available to the Toronto fire fighters, i.e. the reduction of the sick leave gratuity from nine months to six months and the elimination of the "plainclothes allowance." Second, because of the difference in bargaining unit complement and utilization rates, the cost impact of the various concessions (both police and fire) requires careful analysis to arrive at an equivalent savings target. Third, for purposes of considering a health care spending account, the prior post-65 retiree benefits are not equivalent as between the 2005 Toronto Police benefit and the limited grandfathered Toronto Fire benefit. And fourth, although available to it, the Employer has withdrawn its demand for payroll harmonization, thereby giving rise to a question as to whether a concession refused is nevertheless a concession that is to be given some weight for purposes of determining a savings target.

Without detailing the specific costings, actuarial reports and expert commentary tabled by the parties, we have fashioned an award that, having considered and analyzed all the evidence, approximates the Toronto Police voluntary agreement. Keeping in mind that under the prior collective agreements the Toronto Police and Toronto Fire salaries were identical at the first class constable and first class fire fighter levels, we have maintained the parity relationship throughout the term. It is to be noted that our salary award, although producing a higher end rate than that proposed by the Corporation, is less costly to the Corporation than the adoption of its salary offer would have been. In order to produce a comparable net compensation

result, we have provided for only modest benefit improvements, awarded a 12-hour swing shift for the communication division, introduced the same dispensing fee cap of $9 as is applicable to the Toronto Police, reduced the line of duty death benefit from four times annual salary to three times annual salary, amended the sick pay gratuity formula to provide for a gratuity based on one half the firefighter's accumulated sick leave credits to a maximum of one half year's salary and moved away from the grandfathered North York and Toronto post-65 retiree benefit arrangement to an across-the-board health care spending account that produces net cost savings for the Employer.

We reject the assertion that the Employer's sick leave demand is a late demand of the type that we should not entertain. Rather, the Employer's sick leave proposal is a moderated proposal and, therefore, properly before us.

We have amended the sick leave gratuity formula to bring it into line with not only the Toronto Police but also the manner in which public sector sick leave gratuities are calculated generally. The usual way of calculating a public sector sick leave gratuity is on the basis of one half of one's accumulated sick leave bank to a maximum of one half year's salary. In other words, one day of accumulated sick leave credits supports one half day's worth of sick leave gratuity, up to the maximum. We are awarding that the sick leave gratuity calculation here be clarified to provide for a sick leave gratuity equal to one half of an employee's accumulated sick leave credits

up to a maximum of one half year's salary. Because implementation issues may arise, we will remain seized for purposes of determining these issues should it be necessary.

The Employer presented evidence to show that there is a significant increase in call volumes occurring between 10:00 and 22:00 hours. In response, the Employer has proposed a 12-hour swing shift between 10:00 and 22:00 hours for the Communication Division that would be worked by two call-takers/dispatchers. We agree that, in the specific circumstances that pertain to the Communication Division, such a swing shift worked by two call-takers/dispatchers is warranted. However, because this issue was not fully addressed in direct two-party negotiations and because there are potential implementation issues, we will remain seized in the event that such issues arise.

The Association urged that the grandfathered post-65 benefits be extended to all fire fighters but, if that request was denied, made an alternative proposal in respect of post-65 benefits. Keeping in mind that the fire fighters who were employed with the former North York and City of Toronto (pre-amalgamation) were grandfathered with frozen post-65 retiree benefits regardless of age or years of service in a 2008 arbitration award, the Association proposed that these post-65 retiree benefits be extended to all current Toronto fire fighters or alternatively that the Board award a "health care spending account" for all Toronto fire fighters, subject to a one-time status quo option for the grandfathered former North York and City of Toronto members. Effective January 1, 2011, members of the Toronto Police Service retiring

on an unreduced pension are provided a "health care spending account" of $3,000/year. The Employer estimated that, by replacing post-65 benefits with the health care spending account, the Toronto Police Services Board reduced its total actuarial liability by $56 million. The Fire Service equivalent of a $56 million actuarial reduction for the Police Service is just under $19 million. However, the Association asserts that, when reference is had to the 26% premium reduction for the pre-existing post-65 police benefits that was not factored into this calculation and to the presumption of a 90% take-up rate that was factored in and then amended to a 70% take-up rate (that the Association asserts is still too high), the reduction in the accrued liability by reason of moving to a health care spending account for the Toronto Police Service is $21.6 million, not $56 million. The Fire Service equivalent of a police $21.6 million accrued liability reduction is $7.7 million, not $19 million. It goes without saying that account must be taken of the increased cost (and hence reduced net savings to the Employer) of providing the health care spending account to non-grandfathered fire fighters who have retired since January 1, 2010. Further, there is a dispute between the parties as to the cost impact of providing an option to grandfathered fire fighters and as to whether the continuation of the post-65 life insurance arrangements should be taken into account. We have resolved these issues to the best of our capability in awarding as we have.

We have decided to standardize post-65 benefits (exclusive of life insurance) on the basis of a $3,000/year health care spending account. Our award will be that a

$3,000/year health care spending account be implemented for all bargaining unit fire fighters on the same basis as the Toronto Police health care spending account. The effect will be to create a "win/win." A standardized post-65 health care spending account applying to all Toronto Fire Service fire fighters (subject to the time-limited option extended to the grandfathered North York and Toronto fire fighters discussed below) constitutes, on balance, a much better post-65 benefit arrangement for bargaining unit fire fighters than presently exists. It is to be remembered that the only Toronto fire fighters who presently enjoy post-65 retiree benefits are the 1,177 grandfathered former North York and City of Toronto fire fighters (out of an overall complement of 3,084 bargaining unit members) and their coverage is frozen (although from the Employer's perspective subject to premium inflation). On the other hand, because these post-65 benefits to the grandfathered fire fighters are subject to premium inflation and because they are for life, a health care spending account that is a fixed amount (albeit subject to negotiation at each contract renewal), payable annually to age 75 for all fire fighters, including those grandfathered, would result in a saving to the Employer.

Because we are attempting to replicate the Toronto Police pattern, the quantum of the Employer savings generated by the harmonization of post-65 benefits is an important consideration. After a careful analysis, we have determined that if we were to provide an election to all the grandfathered fire fighters, as requested by the Association, and if 50% of these opted for the health care spending account (which we

consider to be an optimistic assumption), the savings would not replicate the economic impact of the Toronto Police settlement. However, on the basis of both fairness and legal consideration, we are prepared to provide the grandfathered former North York and Toronto fire fighters who are eligible to retire on an unreduced pension as of the date hereof or are within one year of such eligibility with the option (within a 90-day window) of choosing as between the health care spending account or retaining grandfathered status. We are satisfied that, if the grandfathered benefits (exclusive of life insurance) are discontinued and replaced with a $3,000/year health care spending account for all Toronto fire fighters, including those who have retired since January 1, 2010, the savings would be sufficient, when considered within the context of our full award, to produce a result that reasonably replicates the Toronto Police settlement.

Having regard to all of the foregoing, we award as follows.

A W A R D

The parties are directed to enter into a renewal collective agreement for the term January 1, 2010 to December 31, 2014 that contains all the terms and conditions of the predecessor collective agreement save and except that it is amended to incorporate the following:

1. All matters agreed between the parties prior to the date hereof including the Synvisc agreement.

2. An amendment to the wage schedule to incorporate the following first class fire fighter wage rates:

Effective	January 1, 2010	$80,316
	July 1, 2010	$81,047
	December 1, 2010	$81,249
	January 1, 2011	$83,483
	October 1, 2011	$83,851
	January 1, 2012	$85,108
	July 1, 2012	$86,368
	January 1, 2013	$87,923
	December 1, 2013	$88,486
	January 1, 2014	$90,623

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

3. Effective January 1, 2014, an amendment to article 13, Designated Holidays, to delete float day (article 13.04) and add Family Day as a designated holiday.

4. An amendment to article 15.01, Medical Certificates, to provide for a maximum of forty dollars ($40) for each medical certificate required.

5. Effective within thirty (30) days of the date hereof, an amendment to article 16.02(d), Benefits, to include the services of a naturopath.

6. Effective within thirty (30) days of the date hereof, an amendment to article 16.02(g) to add eighty dollars ($80) for an eye exam.

7. Maintain article 56, Succession Planning, letter of agreement referred to at article 56.01.

8. Incorporate a new article, Retirees Attending Court, to provide seventy-five dollars ($75) to retirees attending court for Toronto Fire Service business.

9. Effective within thirty (30) days of the date hereof, an amendment to article 16.04, Group Life Insurance, to reduce the line of duty death benefit to three (3) times annual salary.

10. Effective within thirty (30) days of the date hereof, an amendment to article 16.02, Extended Health Care Plan, by prefacing article 16.02(b) with the words, "Subject to a dispensing fee cap of nine dollars ($9) per prescription".

11. An amendment to article 9.07, Communications Division, to provide as soon as is reasonably possible for a 12-hour swing shift scheduled from 10:00 hours until 22:00 hours to be filled by two (2) call-takers/dispatchers. The swing shift is to be made available to call-takers/dispatchers on each platoon, excluding the Designated Acting Captains, on the basis of seniority, failing which the swing shift will be assigned to the junior staff member on each platoon. We remain seized to deal with any unresolved implementation issues.

12. Effective from the date hereof, an amendment to article 14.15, Sick Pay Gratuity, to provide that the sick pay gratuity shall be equal to one half of an employee's accumulated sick leave credits, up to a maximum of six (6) months salary. We remain seized to deal with any unresolved implementation issues.

13. Effective within thirty (30) days of the date hereof, an amendment to article 17.02, Benefits - Post-65 Retirees, to delete the existing post-65 benefits (excluding life insurance) and to provide:

1. a health care spending account of $3,000/year on the same basis as under the Toronto Police Service collective agreement, available to all current members and any member who retired on or after January 1, 2010;
2. a one-time election, to be exercised within ninety (90) days of the date hereof, to the grandfathered former North York and Toronto fire fighters who are presently eligible to retire on an actuarially unreduced pension or are within one year of eligibility to retire on an actuarially unreduced pension, as between continuation of the grandfathered post-65 benefits under article 17.02 or in addition to the continuation of the post-65 life insurance, the $3,000/year health care spending account. A failure to elect will be considered an election in favour of the $3,000/year health spending account.

14. Provision for wage retroactivity based on all paid hours from the expiry of the predecessor collective agreement. Retroactivity is to be paid within ninety (90) days of the date hereof for all present employees. Any employee who has left the employ is to be notified in writing at the address on file within thirty (30) days of the date hereof and payment is to be made within sixty (60) days of receipt of acknowledgement of notice.

Except as otherwise specified, amendments are effective from the date hereof.

Any issue not referred to is denied.

We remain seized with respect to all issues until such time as the parties enter into a formal collective agreement.

Dated this 26th day of June 2013 in the City of Toronto.

Kevin Burkett

Kevin M. Burkett – Chair

Partial Dissent Attached — "Jeffrey Sack"

Jeffrey Sack – Association Nominee

Partial Dissent Attached — "John Saunders"

John Saunders – Employer Nominee

Partial Dissent of Association Nominee

1. While I consider that the Chair's Award, taken as a whole, falls within the zone of what is reasonable in the circumstances, there are aspects of the reasons and rulings in the Award with which I do not agree.

2. Before setting out those matters with which I disagree, however, it is necessary to comment on two matters in dispute between the parties, i.e. police-fire comparability and ability to pay.

3. With respect to the first matter, the City has argued for a change in the method by which the wages of firefighters are determined by giving less weight to police-fire comparability than has historically been the case. However, the City has offered no persuasive reason why this relationship should be upset. Police-firefighter comparability has been the practice for decades across Ontario, including all of its major cities, and is reflected in voluntary settlements between the parties and in the awards of virtually all arbitrators. The comparison with police, as opposed to other municipal employees, is widely accepted because, in addition to organizational and other similarities, police officers and firefighters are the two branches of the municipal service who put their lives in danger in order to protect the safety and security of the public.

4. The jobs of firefighters have indeed become more dangerous in recent years. In this regard, exposure at fire scenes to toxins from plastics and chemicals has resulted in a higher incidence of cancer and cancer-related deaths than is experienced by the general population. As a result, most provinces have enacted legislation presuming many kinds of cancers to be related to the job of firefighting. The point is that, with the jobs of firefighters growing more complex and dangerous, there is less justification than ever for disturbing the police-fire comparison.

5. With respect to the second matter, the City has asserted an inability to pay Toronto firefighters the same wage rate as Toronto police but, whatever may be said about the relevance of such a criterion, this is transparently not the case. When the hearings began, the City projected an estimated deficit for 2012 of $774 million by the time the hearings ended the deficit had turned into a surplus of $284 million. The fact is that the City has given no explanation as to why it is not

in a position to pay the same wages to Toronto firefighters as the Police Services Board (funded by the City) has voluntarily agreed to pay Toronto police.

6. What this shows is that ability to pay is not the motivation driving the City. The City's obvious agenda is to disrupt the police-fire comparison. Indeed, in the service of this objective, the City has made it clear that it is prepared to pay more, over the term of the agreement, than the Association has asked if the pattern of parity of wage rates as between the police and firefighters is broken.

7. Moreover, achievement by the City of its objective would be self-defeating. All it would do is create enormous pressure for catch-up increases in the future which, together with normative increases, would prove to be all the more onerous for the taxpaying public.

8. However, as indicated above, while I concur in the weight given to the police-fire comparison, there are a number of changes to the collective agreement, requested by the City and allowed by the Chair's Award, with which I do not agree. On the other hand, the Award also grants a number of changes sought by the Association, including remuneration for medical certificates, coverage of the services of a naturopath, an additional amount for eye exams, the designation of Family Day as a holiday, indemnification to retirees attending court, and most importantly, the introduction of a post-65 Health Care Spending Account, which the Toronto police receive but City firefighters do not.

9. Here, too, I find myself in disagreement with certain aspects of the Chair's Award. The option of those firefighters whose post-65 pre-amalgamation benefits were grandfathered to choose to keep those benefits rather than access a Heath Care Spending Account has not been fully actualized. Although many such "grandfathered" firefighters will have an option under the Chair's Award to choose between their existing post-65 benefits and the Health Care Spending Account, the option is limited to those "grandfathered" firefighters who are currently eligible to retire or who are within one year of becoming eligible. The City has argued that this limitation is necessary if it is to achieve "savings" similar to those secured when the police were awarded a Health Care Spending Account. However, any "savings" or, more accurately, reductions in liability resulting from the introduction of the Health Care Spending Account are a matter of contention between

the parties that actuarial evidence has not been able to resolve. I would have extended the option to all firefighters with grandparented benefits.

10. Having said that, I acknowledge, as I did at the outset of this Partial Dissent, that the Chair's Award, taken as a whole, falls within the zone of what is reasonable in the circumstances.

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Jeffrey Sack, Association Nominee

Partial Dissent by City of Toronto Nominee

While I am in agreement with much of what the Chair of this Interest Arbitration Board has said, with respect, I must offer a different view with regard to the analysis and conclusions which have been made. To be clear, in doing so I am not saying that the decision of the Chair of this Interest Arbitration Board in the circumstances is unreasonable.

Consideration of Comparables

I agree that interest arbitration boards have a very broad degree of discretion to consider many factors when they are determining the terms and conditions of employment for the firefighters. The sources of the criteria which must be considered are not only statutory, but they also include other areas which the Board, in its discretion, must consider relevant. The statutory criteria, however, can not be ignored or diminished in their weight. In particular, “a comparison between the firefighters and other comparable employees in the public and private sector…” and “ability to pay…”; need to be closely analyzed.

It is in the search for appropriate comparables where I differ with the majority of this Board. There is little doubt that there has been decades of comparability between the wages paid to the first class Toronto Police officers and the wages paid to the first class Toronto firefighters. It is a factor which must be considered by this Board, a factor which must be given considerable weight, but it is not the only factor to be considered when determining the appropriate wage rate.

In my respectful opinion, the Board has failed to appropriately consider the wage increases which have been given to the other employees of the City of Toronto. I am not of the view that firefighters should be paid the same absolute amounts as members of CUPE who work in the public works area, parks and recreation department or the library, or that they should be paid the same as the non-union City staff. What should be considered, however, is whether they should receive the same percentage increase as all of these types of employees.

In my view, the awarding of the Toronto Police wages is balanced by the extraordinary concessions which have been awarded in favour of the City in this decision. As such, I think that it is prudent to briefly review the concessions which have been obtained by the City.

The awarding of the Health Care Spending Account for the Toronto firefighters represents the first time that this benefit has been awarded by arbitration in this sector. Previously the former City of Toronto and City of North York firefighters had enjoyed a variety of dental, drug, extended health, out of country coverage, vision care, hearing aid coverage, and paramedical benefits. These benefits continued for the life time of the firefighter. Both parties spent considerable time and effort producing extensive actuarial costings and expert reports which demonstrated both the present day value of the existing benefit packages and the proposed benefits. The awarding of the Health

Spending Account actually results in a net savings of millions of dollars to the City because of the previous retiree benefits for life. However, it is also worth noting that the only City employees that receive a similar benefit are a grand-parented group to whom it was extended prior to amalgamation.

In addition, the dispensing fee cap of $9, the reduction in the line of duty death benefit and the reduced sick leave gratuity formula payout provided additional saving for the City. Again, similar changes have already been implemented by the City, in relation to such benefits, for all other employee groups to the extent that these benefits are offered to them. Finally, the awarding of the new day shift in the Communications Division alters the constant staffing over a 24 hour period and replaces it with staffing which reflects the actual need for service.

Firefighting is a difficult business. There is, however, no evidence that the firefighters of 2013 are doing anything different than the firefighters of 2009 which merits them receiving a higher percentage wage increase to compensate them for increased duties and responsibilities or increased risk. The duties and responsibilities of most classifications in the City of Toronto are evolving. Like all employers, the City is asking all their employees to work harder and to take on a larger variety of tasks. There is, however, no evidence that the firefighters' terms and conditions of employment have increased or changed in a way that is disproportionate to those of other City employees. As such, while the absolute numbers may be quite different, the percentage increases should not be different. Therefore, the across the board wage increases of the rest of the City employees must also be given greater weight in determining the wage adjustments to be given to the Toronto firefighters.

Ability to Pay

The representatives for both the City of Toronto and the Toronto Professional Firefighters' Association presented extensive briefs with regard to the City's finances and it's "ability to pay". Little would be gained by regurgitating the minute deals of these submissions, except to say that the two sides did not agree.

One of the most objective pieces of evidence of an employer's ability to pay should be found in the settlements that it was willing and able to give to its other employees. The City has not argued that the firefighters should receive less than its other employee groups, it has just said that there is no reason that they should be paid more than the other employee groups.

The City did not assert that police – fire comparability should not be considered, it just did not want that to be the only consideration when determining the appropriate wage rate. The City was not requesting that the Toronto firefighters accept substandard wage increases. In fact, their proposal would have generated more cash into the firefighter's pockets during the life time of the collective agreement. The major difference was the end rate at the conclusion of the collective agreement.

The City’s wage proposal was above the national, provincial and local cost of living increases during the appropriate times. It was equal to or greater than the amounts which have been freely negotiated with the other City bargaining units and the City’s non-union employees. It was equal to or greater than the vast majority of the wage increases that have been freely negotiated in the private sector in Toronto. It was equal to or greater than the wage increases that have been freely negotiated or awarded through interest arbitration to hundreds of thousands of public sector employees in hospitals, community colleges, universities, municipal transit authorities and the provincial government.

In fact, the only comparable data which was placed before this Board that exceeded the City’s wage proposal was the Peel Regional Police settlement and the Toronto Police settlement. In my respectful opinion, the awarding of wage increases which mirrored the Toronto Police settlement fails to give appropriate weight to all of the above factors.

In my opinion, the City of Toronto had and has an inability to pay wage increases of the size that were negotiated by the Toronto Police. It is interesting to observe that in response to the current budgetary constraints, the Toronto Police Services Board has, as noted by the majority of this Board, implemented a significant hiring freeze and implemented other cost saving measures to try and meet the severe financial pressures.

On balance, it is my opinion that while the concessions obtained by the City were substantive, they do not offset the excessive wage increase that the Toronto firefighters have received. I would have awarded less total compensation to the Toronto firefighters.

Respectfully submitted,

“*John Saunders*”

John Saunders
Nominee for the City of Toronto