

**ARBITRATION OPINION AND AWARD
American Arbitration Association
Case Number 14 360 L 00202 09**

In the matter of an Act 111 Interest Arbitration Between the

CITY OF PHILADELPHIA

AND

**FRATERNAL ORDER OF POLICE,
LODGE NO. 5**

The Arbitration Panel

Thomas W. Jennings
Arbitrator for FOP

Kenneth M. Jarin
Arbitrator for City of Philadelphia

Ralph H. Colflesh
Chairman and Impartial Arbitrator

Appearances

Shannon D. Farmer
Jeffrey M. Kolansky
Jeffrey M. Scott
Patrick J. Harvey

James J. Binns
Stephen J. Holroyd

For the City of Philadelphia

For the FOP

Issued: December 18, 2009

I. INTRODUCTION

The City of Philadelphia (hereinafter the "City") and the Fraternal Order of Police, Lodge No. 5 (hereinafter the "FOP") are parties to a collective bargaining agreement which governs the wages, hours and working conditions of the City's police officers. In 2008, the parties exchanged proposals regarding requested changes in the existing collective bargaining agreement and commenced bargaining. When the parties were unable to resolve their bargaining disputes directly, the above-designated Panel of Arbitrators (hereinafter the "Panel") met pursuant to the authority contained in the Policemen and Firemen Collective Bargaining Act, 43 P.S. § 217, et seq. (hereinafter "Act 111"), as modified by the Pennsylvania Intergovernmental Cooperation Authority Act for Cities of the First Class, 53 P.S. § 12720.101, et seq. (hereinafter the "PICA Act").

Hearings were held on May 19, 27 and 28, June 2, 3, 9, 15, 16 and 19, July 7, 8, 9, 13, 14 and 24, and September 3, 10, 15 and 22 in Philadelphia, Pennsylvania, at which times the Panel heard testimony and received documentary evidence.

The Panel considered numerous issues submitted by both the FOP and the City. The Panel also considered hundreds of pages of exhibits introduced into evidence by the parties in support of their positions. The Panel was charged with the responsibility of rendering an Award which would govern the terms and conditions of employment of the City's police officers. The prior contract between the parties had a termination date of June 30, 2009.

Following the hearings, the Panel met in executive session regarding the evidence and arguments that had been submitted and raised by the parties.

II. BACKGROUND

This Act 111 interest arbitration was conducted under the dictates of the Pennsylvania Intergovernmental Authorities Act ("PICA Act"), which created the Pennsylvania Intergovernmental Cooperation Authority (hereinafter "PICA"). The PICA Act requires that the City develop, at least annually, Five-Year Financial Plans that provide for balanced budgets and must be reviewed and approved by PICA. The City is further required to undertake "a review of compensation and benefits" and to ensure that expenditures, including those for employee wages and benefits, are balanced with revenues. 53 P.S. § 12720.102(b)(1)(iii)(H); 12720.209(b) and (c). Under the PICA Act, a failure on the part of the City to comply with such requirements would result in the mandatory withholding of state funding and tax revenues designated for the City.

Most relevant for this Panel, Section 209(k) of the PICA statute, entitled "Effect of Five Year Plan on certain arbitration awards," requires that, prior to rendering an Act 111 award which grants a pay or fringe benefit increase, the Panel must consider and accord substantial weight to:

- i. the approved financial plan; and
- ii. the financial ability of the [City] to pay the cost of such increase in wages or fringe benefits without adversely affecting levels of service.

53 P.S. § 12720.290(k)(l). The Panel also must make a written record of the factors it considered when making its determination according substantial weight to the Five Year Plan and the City's ability to pay. 53 P.S. § 12720.290(k)(2).

During the course of this Act 111 proceeding, both parties raised arguments regarding the City's financial condition and ability to pay for this Award within the confines of the Five Year Plan. In making this Award, the Panel has carefully reviewed and considered the testimony of the witnesses and the exhibits submitted by the parties, as well as the post-hearing submissions of both parties in support of their respective positions. This Panel has duly considered the parties' arguments, and has accorded the City's financial concerns the substantial weight required by law.

III. FINDINGS

In light of the PICA Act's requirement that the Panel make findings, supported by substantial evidence in the record, that the City has the ability to pay the cost of the Award without adversely affecting service levels, the Panel has carefully considered the evidence and the contentions of the parties. After doing so and fully complying therewith, the Panel has made the following findings in support of its Award:

A. City's Financial Condition

1. The City is statutorily required to maintain a balanced budget and to submit a revised five year plan that is balanced in each of its years to PICA for approval whenever it appears that its budget is no longer balanced as a result of unplanned revenue decreases or expense increases.
2. PICA can require the City to make mid-year adjustments if there is a variance from the approved five year plan. Because the City is prohibited

by law from enacting mid-year tax increases, such adjustments generally must come from service reductions.

3. The FY09-FY13 Plan was approved by PICA on June 17, 2008.
4. Under the FY09-FY13 Plan approved by PICA, the projected FY08 fund balance was \$182 million, a decrease of nearly \$116 million in one year.
5. The FY09-FY13 Plan contained smaller tax reductions than the Mayor had originally proposed in his February 2008 budget to make up for the lower revenue the City was already experiencing.
6. An arbitration panel issued an award for the period from July 1, 2008 through June 30, 2009 on July 10, 2009 ("2009 Award"). The 2009 Award contained wage and longevity increases as well as other benefits for FOP members.
7. A portion of the cost of the 2009 Award was offset by a reduction in the City's contribution to the FOP Health Benefits Joint Trust ("Joint Trust") that provides health care benefits to members of the FOP and their dependents with money provided by the City.
8. On July 24 and August 14, 2008, the City reached agreements with District Council 33 and District Council 47 respectively, the Unions that represent the City's non-uniformed unionized employees. Each of these agreements had a term from July 1, 2008 to June 30, 2009. These agreements contained a freeze on health insurance contributions and lump sum contributions rather than across-the-board wage increases.
9. On October 17, 2008, an arbitration panel issued an award covering employees represented by the International Association of Fire Fighters Local 22. This award had similar terms to the FOP Award, including a reduction in the City's health insurance contributions to offset the cost of the wage increases.
10. After the FY09-FY13 Plan was approved by PICA and the 2009 Award issued, the City suffered an unprecedented financial crisis as a result of the challenging local and national economy.
11. As a result of reductions in collections of the Business Privilege Tax and the Real Estate Transfer Tax coupled with disappointing returns in the City's Pension Fund, the City would have faced a \$2.4 billion deficit in its five year plan if it had not taken corrective actions. The City also suffered a loss in Wage Tax revenue of about \$15 million.

ARBITRATION OPINION AND AWARD

Case Number: 14 360 L 00202 09

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12. As a result of the economic downturn, the City's actual tax revenues in FY09 were \$186.5 million less than the City had projected in the original FY09-FY13 Plan.
13. The City took significant actions in 2008 and 2009 to close this Five Year Plan gap including:
 - Delaying business and wage tax reductions until 2015,
 - Eliminating nearly 3,000 full and part time positions in FY09;
 - Increasing efforts to collect delinquent taxes;
 - Increasing fines and fees;
 - Reducing overtime across the government,
 - Eliminating 200 police vacancies in FY09;
 - Decommissioning 5 fire engine companies and 2 fire ladder companies;
 - Reducing the number of City pools in FY09;
 - Requiring furlough days for certain exempt employees;
 - Imposing salary cuts for Cabinet-level officials, Deputy Mayors, the Managing Director, the Mayor's Office and the Mayor.
 - Reducing the police department budget by \$4 million in FY10;
 - Reducing the fire department budget by \$8 million in FY10;
 - Additional city-wide staff reductions in FY10;
 - Temporary 1% sales tax increase for FY10-FY14;
 - Eliminating the unused portion of the \$400 million set aside for employee wage and benefit improvements from the FY09-FY13 Plan;
 - Savings from pension, benefit and work rule changes of at least \$25 million annually across the workforce;
 - Savings from a change in the pension amortization and a partial deferral of payments to the pension fund.

14. PICA originally approved the City's Five Year Plan for FY10-FY14 on July 21, 2009, contingent on the Pennsylvania legislature enacting legislation to allow the City to carry out the sales tax increase and pension funding changes.
15. When the legislation had not passed by August 15th, PICA disapproved the City's Five Year Plan for FY10-FY14 on August 16th, placing the City in danger of having PICA withhold millions of dollars in tax revenue.
16. The City submitted a revised plan to PICA making more than \$20 million in additional cuts.
17. PICA approved the revised FY10-FY14 Five Year Plan ("FY10-FY14 Plan" or "Plan") on September 11, 2009 pending state approval of sales tax and pension changes, which occurred on September 18, 2009.
18. The FY10-FY14 Plan assumes no wage or benefit increases for the FOP for the length of the Plan. To the contrary, the FY10-FY14 Plan assumes \$8.7 million annually in cost savings from pension, benefit and work rule changes from this bargaining unit.
19. The City's official unemployment rate, which does not count the long-term unemployed and those who are not looking for work, has been above 10% since May and is projected to approach 12% by 2010 and remain at double-digit levels for the next few years.
20. Wage taxes make up nearly one third of the City's revenue. As a result, the City's high unemployment rate poses a threat to the City's revenue projections.
21. Weaknesses in the economy pose additional threats to other City revenue sources, including the business privilege tax, real estate transfer tax and sales tax.
22. Even before the most recent economic crisis, the City faced numerous challenges to maintaining balanced financial operations, including: a poor population that creates a large demand for social services; its responsibility for both city and county government services; significant employee benefit costs; the migration of middle-class residents to areas outside the City; and already high tax rates.
23. The Mayor has made it a goal of his Administration to reduce taxes to encourage job creation and income growth and turn around the losses in jobs and residents that the City has experienced over the past 50 years.
24. The Panel recognizes that Philadelphia's increasingly poor population, population decreases and already high tax rates means that that City

cannot rely on wage tax revenue growth as a source to avoid budget deficits.

25. As a result of the City's weak economic condition, bond rating agencies have ranked Philadelphia second lowest only to Detroit among the 20 largest cities.
26. The majority of the City's budget is spent on expenses over which the City has little control, including pension and debt service.
27. Reducing pension and benefit costs while maintaining the pension fund's health is an announced priority for Mayor Nutter as the high personnel costs for City workers costs impact the budget available for programs and services, and contribute to the City's inability to fully invest in its core infrastructure, such as roads and health centers, as well as police and fire stations.

B. The Economic Outlook

28. Relying on the testimony of Dr. Joel Naroff and others, the City opined that "any upturn is likely to be extremely modest" with "muted growth for the next decade."
29. In response to the economic testimony of the City, the FOP presented the Panel with the extensive testimony of Dr H. David Robison, who is the Chair of the Department of Economics at LaSalle University.
30. The extent of the economic recession of 2008 was unforeseen by most forecasters and economists.
31. Mortgage rates have fallen from 6.22 percent in January 2007 to 4.06 in May 2009. These low mortgage interest rates have stimulated a mini-refinance boom that leaves more expendable dollars in consumers' pockets.
32. This Panel takes judicial notice of the fact that the GDP for the most recent quarter was reported at 3.5% – a marked and unexpected increase that at least officially signals the economic end of the 2008 recession.
33. Consumer spending jumped 2.6 percent in August. This is a marked increase from the depths of the recession. Many economists expect to see a consumer-led retreat from the recession.
34. Home sale indexes rose 17.6 percent from January through June with a 3.6 percent rise in June. While some of these sales are unquestionably the result of foreclosure, the increase nonetheless marks positive growth.

35. Business inventories have fallen dramatically, goods orders improved through the first half of 2009 and CEO confidence has risen significantly from the depths of the recession.
36. Consumer confidence has finally begun to rise. Thus, in March 2009 it was only at 26.9 percent and had risen 54.6 percent in August.
37. Many experts suggest that the second quarter of 2009 was the bottom of the recession. The Conference Board's leading economic index rose 1.1 percent in April 1.2 percent in May and .7 percent in June. In that June report, the Conference Board acknowledged that confidence is slowly rebuilding and that the volatility that had characterized the financial markets in earlier periods of time was now dissipating. The August report for the Conference Board grew at 6.2 percent annual rate over the preceding six months.
38. Of the \$3.7 trillion in residential mortgage-backed securities that created the financial Shockwaves leading to the recession, only \$1.7 trillion remain in existence. Of that \$1.7 trillion, over \$250 billion are already in bankruptcy, foreclosure or distress and will soon be off the books and records of the institutions. Others are being financed. Thus the so-called "toxic debt" that did so much to destroy the economy is being "unwound" and replaced with good investments.
39. The nation's top forecasters are now projecting positive growth in the fourth quarter of 2009 as well as positive economic growth in 2010. Economists project inflation to be close to 0 for 2009. In 2010, on the other hand, forecasters see inflation returning in very, very modest levels.
40. In 2010, the Federal Reserve now projects real growth between 2.1 percent and 3.3 percent.
41. The Fed in San Francisco projects that the real growth will be 2 percent by the first quarter of next year. Typically if the economy is growing faster than 2 percent, unemployment rates typically fall. Thus if the Federal Reserve Board in San Francisco is correct, unemployment could begin to fall as early as the first quarter of next year.
42. The Fed forecasters here in Philadelphia also projected a positive economic growth in the near future. The consensus of the Philadelphia Fed forecast is for real growth between 1 and 3 percent in 2010 with even more positive growth in 2011.
43. The consensus of forecaster throughout the nation is that the economy has essentially bottomed out and will start periods of positive growth in the third quarter of 2009. The rate of recovery will be modest in 2009 and pick up speed in 2010.

44. Most forecasters predict real growth in 2011 between 2 and 4 percent with the "point estimate" of those forecasts being 2.7 percent real economic growth. The bulk of their probability is for real economic growth of 3 percent.
45. Some leading economists, however, have now forecast a "double dip" recession, with the economy improving and then falling into recession again, which would result in revenue shortfalls for the City.
46. While there are undoubtedly still risks in the economy, there are strengths and advantages arising from those risks. While Philadelphia's foreclosure rate has increased, it is significantly better than the really hard hit cities and states. Thus, recovery from the downturn in real estate may be quicker in Philadelphia than elsewhere.
47. Although there are signs of improvement in the economy, employment remains weak. Because wage taxes are the City's largest source of tax revenue, recovery in the real estate market cannot offset the negative budget impact from weaknesses in employment.
48. In light of all these factors, the City projects slowly increasing tax revenues over the FY10-FY14 Plan, but the Plan does project economic growth and without that economic growth, revenues would likely fall short of projections.
49. The Panel was presented with a veritable array of experts from both parties who testified at great length and in great detail regarding the economic future of the City. All of their testimony was considered and weighed in reaching this Award.
50. Even if the City's economy improves more than the growth the City projects, the City will still face significant budget challenges unless fundamental changes occur to rein in the City's pension and health benefit costs.

C. Benefits

51. Compensation and benefits for City employees make up 60% of the City's General Fund spending.
52. By 2013, the City expects to spend more than 25% of its total budget on health care and pension benefits for City employees.
53. From FY01 to FY08, the City's health benefit costs increased by 123%, while revenues only grew 38% during this period.

54. From FY01 to FY08, the City's contribution to the Joint Trust that provided health benefits to the FOP has increased by more than 11% per year on average.
55. Health benefits are provided to active and retired officers through a Joint Trust and Law Enforcement Health Benefits, Inc (LEHB). There was no disagreement that LEHB is superbly managed and, through its relentless efforts at cost containment, has produced an efficient and effective health administration program that is unequaled in this City.
56. The Joint Trust has only experienced medical cost increases of 4%, 5%, 1% and 9% over the last four years. These increases are markedly less than national, state or local trends.
57. At the time the 2009 Award issued, the City's contributions to the Joint Trust exceeded the cost of the benefits, allowing the Joint Trust to accumulate substantial reserves.
58. Despite a reduction of more than 10% in the FOP Award, the City's contribution to the Joint Trust in FY09 continued to exceed the cost of benefits, allowing the Joint Trust to add approximately \$5 million to its already substantial reserves.
59. As of June 30, 2009, the Joint Trust had reserves of approximately \$48 million.
60. The Panel finds that such a reserve is unnecessary based on the size of the health plan and the type of benefits being provided.
61. The Panel finds that only fundamental change in the manner in which health benefits are purchased, as the City proposes, will provide meaningful cost savings in both the long and short-term.
62. Modest changes in the existing benefit plans are also appropriate to bring the FOP's health benefit plans more into line with those offered by other employers.
63. As a tribute to the skill with which it is managed, we have ordered LEHB, over its strong objections, to adopt the self-insurance funding program sought by the City. This order is direct reflection of the confidence that we have in its ability to continue to provide one of the most effective and efficient health care programs in the Commonwealth under what will undoubtedly be trying and difficult circumstances.
64. By its own estimate, this self-insurance program will save the City approximately Four Million Dollars or more each year in health care costs.

65. As it has for the past several decades, the City continues to struggle with its pension obligations. Although the City's annual contributions have grown by more than 100% since FY01, the City's next actuarial report is likely to show that the pension fund was less than 50% funded as of June 30, 2009.
66. Most of the largest locally-administered public pension funds are more than 80% funded.
67. Although the latest valuation for the year ended June 30, 2009 has not yet been completed, as with most pension funds, the funding percentage is all but guaranteed to drop from the already reduced FY08 valuation based on the poor investment returns for the Pension Fund and the continued market strains.
68. To provide short-term relief for its skyrocketing pension costs, the City lengthened the amortization for its unfunded accrued liability and received state approval to make reduced payments towards its minimum municipal obligation ("MMO") for a period of two years. The remainder of the MMO payments will have to be paid back in FY13 and FY14 with interest. These changes were unanimously approved by the Pension Board.
69. The pension funding changes made by the City this year provide short-term budgetary relief, but increases the City's long-term pension funding costs.
70. The City designed Plan '09, which contains both a defined benefit component and a voluntary defined contribution component, to improve the long-term health of the pension system by providing benefits for new hires at a lower cost to the City.

D. Disability

71. Police officers who are temporarily injured on duty receive disability benefits at 100% of salary under the Heart and Lung Act. These benefits are tax-free.
72. Heart and Lung Act claims are handled according to a Memorandum of Understanding negotiated between the City and the FOP in 2004.
73. Under the current Heart and Lung Act system, the FOP has the right to have doctors added to the City panel to provide treatment to FOP members when injured on duty.

E. Other Findings

74. One of the highest priorities of the City is improving public safety. As a result, the City announced several ambitious goals including reducing homicide by 25% in 2008 and 30-50% over the next three to five years, decreasing the number of shooting victims by 20% in 2008 and increasing the number of guns taken off the streets.
75. In the 2008 Award, the Panel granted the Department, on a pilot basis, additional flexibility in changing the scheduled starting time of employees in the Highway Patrol Unit and the Strike Force without payment of additional overtime to respond to crime patterns. The Award provided that the impact of this change would be reviewed by the panel in connection with the next Award.
76. The FOP presented evidence that the wages of Philadelphia Police Officers are lower than in other cities it claims to be comparable. The Panel recognized that the comparison of compensation between cities is very complex and must take into account a number of factors including the economic condition and structural challenges of the respective cities.
77. The increase in stress differential contained in this award is designed to restore the wage relationship between members of the FOP and members of Local 22 of the International Association of Fire Fighters in light of the 25% increase in premium pay that members of Local 22 received in their 2008 interest arbitration award.

IV. AWARD

1. Term

This Award shall be effective for five (5) years, from July 1, 2009 through June 30, 2014.

2. Wages

- a. Effective July 1, 2009, there shall be no across-the-board wage increase in the Police pay schedule.
- b. Effective July 1, 2010, there shall be a three percent (3%) across-the-board wage increase in the Police pay schedule.
- c. Effective July 1, 2011, there shall be a three percent (3%) across-the-board wage increase in the Police pay schedule.

- d. There shall be a reopener in 2012 before this Panel for the sole purpose of determining the amount of wages to be paid to members of the bargaining for the years beginning July 1, 2012 and July 1, 2013. During any hearing on the reopener, each party shall be limited to no more than two days of presentation and there shall be no more than one day of rebuttal for both parties combined. The Panel's award shall have an effective date of July 1, 2012.

3. Stress Differential

Effective July 1, 2010, the stress differential shall be increased to five percent (5%). The five percent (5%) stress differential shall be included in pension calculations, sick leave, vacation pay, holiday and other AL leave.

4. Health and Welfare

Article VI of the Collective Bargaining Agreement, Paragraph 1 of the 1992-1996 Act 111 Award and Appendix "F" of the 1992-1996 Act 111 Award shall be amended by the addition of the following, which shall supplement, not replace, the existing terms except where inconsistent:

HEALTH AND WELFARE AS OF JULY 1, 2009

A. Monthly Contributory Requirement

1. Effective July 1, 2009 the City's monthly contributory requirement to the Joint Trust shall be \$1,165 per member per month.
2. Effective January 1, 2010 through and including June 30, 2010, the City's monthly contributory requirement to the Joint Trust shall be \$965 per member per month.

B. Health Benefits to Active and Retired Police Officers

1. Except as provided herein and except as may be determined by Law Enforcement Health Benefits, Inc ("LEHB"), the Plan of Benefits provided by LEHB on and in effect on June 30, 2009 for Active and Retired Police Officers and their families and eligible dependents shall remain unchanged for the duration of this Award.
2. Notwithstanding the foregoing, if LEHB should determine to substantively improve benefits during the term of the Award, the costs of such improvements shall not be reimbursed by the City and shall be specifically excluded from any obligation of the City to fund replacement of any reserves through creation of the escrow account provided for in this Award. The modification of benefits to achieve specific cost savings, such as a flu shot program, health fairs, etc, shall not be considered a

substantive modification to those benefits. The cost of benefit changes mandated by federal or state law or regulations shall be reimbursed by the City.

C. Self-Insurance

1. Effective July 1, 2010 and until modified by a subsequent award or written agreement of the parties, LEHB shall provide to eligible active and retired police officers, their families and eligible dependents the level of benefits that was in effect as of June 30, 2009, except as modified pursuant to this Award, through a completely self-insured benefit program in strict accordance with the provisions of this Award.
2. LEHB shall be exclusively responsible for the administration of the self-insurance program for so long as authorized by the Joint Trust and shall prudently administer the program. This responsibility shall include, but is not limited to the selection of all providers (such as TPA/ASO, stop loss carriers, consultants, disease management and other services deemed necessary by LEHB currently and in the future to implement and maintain the modification to self insurance required by this Award. All contractual relationships regarding and arising from the self-insurance shall be exclusively between LEHB and the chosen providers. The City shall not have privity with those providers as a result of this Award.
3. LEHB shall, at least each calendar quarter, as soon as reasonably possible after the end of the quarter, provide the City with periodic reports of de-identified information regarding usage and experience in such detail as is reasonably necessary for the City to audit the claims being made and to demonstrate compliance with this Award. This information shall be considered highly confidential and shall be provided to a designated City representative. It shall be used solely to monitor LEHB's usage and experience under the self-insured program required by this Award.
4. Commencing with the first billing for medical, drug, dental and vision benefits received after July 1, 2010 from the selected providers as well as Related Expenses as defined below, LEHB shall transmit the bill thus received by the most expeditious means possible to the designated City official. Within three business days after presentation of the bill for prescription drug claims and within fifteen calendar days after presentation of the bills for other expenses provided for in this paragraph, the City shall transmit directly to LEHB by wire transfer or other agreed-upon method the entire amount necessary to pay the bill as presented in a timely and businesslike manner. LEHB shall be responsible to forward the money to the provider with proof of payment being made to the City. In that regard it is recognized that different vendors and providers might require different payment dates and cycles. LEHB shall be empowered to obtain such

payment dates and cycles as it deems most desirable and advantageous in performing the requirements of this Award. Any objection that the City might raise to such billing shall be resolved independent of the obligation to make such payment and shall not under any circumstance be used to set off or otherwise delay payment.

5. As used herein, the term "Related Expenses" shall mean expenses directly attributable to provision of benefits, such as TPA/ASO, stop loss, disease management and bundled services. It shall not include day-to-day administrative expenses.
6. Prior to September 1, 2010 and prior to each September 1 thereafter, LEHB shall provide the City with a statement setting forth the actual costs of medical, drug, dental and vision benefits and projected incurred claims as well as Related Expenses for the plan year ended the prior June 30th and the trend to be applied for the plan year beginning the previous June 30th ("Budgeted Cost"). The trend shall be the average of the projected trend for this specific plan as determined by the Segal Company and a recognized benefits consulting firm designated by the City.
7. Within thirty (30) days before July 1, 2010 and each July 1st thereafter, LEHB shall present to the City a budget of projected administrative costs for the upcoming plan year. Commencing on July 1, 2010, and on the first day of each month thereafter, the City shall pay LEHB one-twelfth of the budgeted administrative costs. Within thirty (30) days of the end of the plan year, LEHB shall provide the City with a statement prepared by its auditor of actual administrative costs for the previous plan year. If the actual administrative costs are less than the budgeted administrative costs for that plan year, the City shall take a credit against the administrative costs payable in the current plan year. If the actual administrative costs are greater than the budgeted administrative for that plan year, the City shall make payment for those additional administrative costs within thirty (30) days. Any disputes about the reasonableness of the projected or actual administrative costs shall be resolved as set forth in this Award.
8. Within ninety (90) calendar days after October 1, 2011 and each October 1 thereafter, the parties shall compare the actual cost of benefits and Related Expenses as provided by LEHB and as determined by the LEHB's auditor, to the Budgeted Cost for the last completed plan year. If the actual cost is less than the Budgeted Cost for the last completed plan year, the City shall immediately pay LEHB one-half of the difference thus determined. If the actual cost is more than the Budgeted Cost for the last completed fiscal year, there shall be no additional payments for the last completed fiscal year.

D. Run Out Escrow Account

1. On or before December 31, 2010, the City shall establish, fund and thereafter maintain an escrow account in an amount equal to benefits incurred in three full months of benefit payments (hereinafter referred to as "run out"). The escrow account shall be subject to an escrow agreement between the City and LEHB prohibiting the City from withdrawing funds from the escrow account unilaterally, except as provided in this Award.
2. The purpose of the Run Out escrow shall be to fund and satisfy all incurred but unpaid claims for which LEHB is responsible under this Award if and when the self-insured structure is replaced by an insured structure as a result of future Act 111 proceedings between the parties.
3. To the extent, upon termination of the self-insured structure created herein for any reason, that the Run Out Escrow account should prove inadequate to cover such incurred but unclaimed program benefits, the City shall immediately pay all such difference. If there are funds remaining in the Run Out Escrow account six months after termination of the self-insured structure, the City shall be entitled to an immediate return of those funds.
4. To the extent that interest earned on the account causes the account to exceed the three month limit described above, the City may withdraw such interest and utilize it for its own purposes.

E. Drug and Doctors' Visits Benefits

Effective July 1, 2010, the benefits provided by LEHB shall include prescription drug copayments and doctors' visits copayments in the following amounts.

a. Prescription Drug

1. Retail

- a. Generic - \$5.00
- b. Formulary Brand - \$10.00
- c. Non – Formulary Brand - \$15.00

2. 90 Day Mail Order

- a. Generic - \$10.00
- b. Formulary Brand - \$20.00
- c. Non-Formulary Brand - \$30

b. Doctors' Visits

- a. Doctor's Visits - \$15
- b. Specialist Visits - \$25

If LEHB should determine, in its discretion, to subsidize some or all of the increased costs to employees of these co-pays, the City shall bear no responsibility for the cost of the subsidy and any costs incurred by LEHB in providing the subsidy shall be credited against the three month reserve in paragraph F so that the City shall not be required to fund these costs in any way.

F. LEHB Reserves

1. On or before July 1, 2013, the City shall establish an escrow account in an amount equal to then prevailing cost of providing three full months of all health care benefits plus administration less the assets remaining in the reserves of LEHB and Joint Board not including realty. The escrow account shall be subject to an escrow agreement between the City and LEHB prohibiting the City from withdrawing funds from the escrow account unilaterally, except as provided in this Award.
2. The escrow fund shall be payable to LEHB in the event that the self-insurance funding is replaced during the term of this Award with any other funding mechanism to provide the benefits provided in this Award. If the self-insurance model remains in effect under the next award and the next award is of three years or greater duration, the City shall be entitled to reclaim the escrowed funds.
3. To the extent that interest earned on the account causes the account to exceed the amount described above, the City may withdraw such interest and utilize it for its own purposes.

G. Resolution of Issues

The neutral chairman of the Panel shall retain jurisdiction as a single arbitrator over this matter for the duration of this Award solely to resolve any disputes that might arise in the implementation of this Award. In that regard, the Chairman shall be empowered to hold emergency hearings within twenty-four (24) hours of notice by the parties of a dispute and to issue emergency injunctive relief enforceable in a court of appropriate jurisdiction to either party if he should deem it appropriate to do so. Such resolution shall be considered an arbitration award issued pursuant the grievance and arbitration procedure otherwise set forth in the collective bargaining agreement .

5. Pensions

At the time of hire, all employees hired on or after January 1, 2010 shall make a one-time, irrevocable election between participating in Plan B (also known as Plan 87) as defined in the Philadelphia Retirement Code, as modified below, or participating in Plan 09, which shall be made part of the Retirement Code. The FOP will be given a reasonable opportunity to address any newly-hired employees before employees are asked to submit their election.

Employees who elect to participate in Plan B shall be subject to all the terms of Plan B as set by the Retirement Code, except that they shall be required to make an employee contribution in the amount of 6% of their pensionable earnings.

Plan 09 shall provide for both a defined benefit plan with an employee contribution, and a defined contribution plan, where an employee shall have the option of contributing into said plan up to a specified percentage of pensionable earnings. The terms of this Plan 09 shall be designed to reduce the cost to the City by at least the same level of cost reduction to the City resulting from the increase in employee contribution from 5% to 6% for Plan B.

The parties shall meet over the next 30 days to attempt to reach an agreement on the specific terms of Plan 09. If the parties do not reach such an agreement, this Act 111 Panel shall issue a supplemental award no later than March 1, 2010, effective immediately upon issuance, setting forth the terms of Plan 09.

Between the date of this Award and March 1, 2010, any new hires shall enroll in Plan B and contribute 6% of their pensionable earnings. When Plan 09 becomes effective, any such new hires shall be afforded a one-time option of switching to Plan 09.

6. Residency

- a. Effective July 1, 2010, employees who are eligible for or currently enrolled in the DROP will not be required to live in the City of Philadelphia.
- b. Effective January 1, 2012, employees who have five (5) or more years of service as a police officer in the City of Philadelphia will not be required to live in the City of Philadelphia.
- c. All employees will be required to reside in the Commonwealth of Pennsylvania.

7. Firearms

- a. The current Firearms provision shall be amended to remove the following: "If a police officer has purchased a GLOCK 9MM sidearm and produces either a receipt or proof of purchase including the cost of such weapon, the City shall reimburse the police officer for that cost."
- b. Beginning July 1, 2010, employees who are qualified by the Department to do so shall, at the employee's request, be provided with an approved GLOCK 40 or 45 mm handgun and accompanying approved holster. Provided, however, that the number to be equipped in any year shall depend on the Department's training capacity, so long as any officer who so requests shall have the opportunity to receive the training by June 30, 2013. The FOP will be consulted by the Department regarding the order of training and distribution. Employees who purchased and were qualified by the Department on an approved GLOCK 40 mm or 45 mm handgun and who produce a receipt or other proof of purchase showing the cost paid for such weapon will be reimbursed by the Department for the cost of the weapon and approved holster by July 1, 2012.

8. Overtime

Supplemental services hiring or scheduled absentee replacement that the Department makes available within each district/unit shall be offered on a rotating basis by seniority, within rank, within each district/unit among those who have volunteered in writing for such assignments. Employees on the Sick Abuse List shall not be eligible to participate in this rotation. An employee who declines an offered voluntary overtime assignment shall not be offered another voluntary overtime assignment until his/her name is reached again on the rotation.

9. Work Schedules

- a. The Department shall be entitled to adjust an employee's normal scheduled starting time by four (4) hours up to six (6) days per year without the payment of overtime. Employees will be given at least twenty-four (24) hours advance notice whenever practical.
- b. The Department shall have the right to change the scheduled starting time of employees in the rank of detective by up to three (3) hours three (3) times per calendar year for an entire workweek without payment of additional overtime. Employees will be given at least seventy-two hours notice of the change.

- c. The Department shall continue to have the right to change the scheduled starting time of employees in the Highway Patrol Unit and the Strike Force by up to three (3) hours without payment of additional overtime to respond to crime patterns. All changes shall be made in accordance with the requirements of the 2000 Award for similar changes to the work schedules of the tactical Five/Seven Squads.
- d. The City will provide the FOP with at least ninety (90) days written notice of its intent to change the work schedule for the entire bargaining unit.

10. Vacations – New Hires

Employees hired on or after the date of this Award will be guaranteed only one (1) week of vacation during the period of the Summer Vacation Schedule from May 1 to September 30 annually during their first five (5) years of sworn employment in the Police Department.

11. Disability – Payment of Accrued Vacation Benefits

Any officer retiring as a result of a work-related disability shall be entitled to payment for any accrued, unused vacation.

12. Disability – Heart and Lung Benefits

- a. Effective upon the issuance of this Award, a panel of non-party appointed specialists shall make independent medical examinations (IME) evaluations of officers who have made a claim to benefits under the Heart and Lung Act or whose continuation of benefits under the Act is contested by the City. The Panel shall be selected by the two neutral arbitrators assigned to hear the Heart and Lung cases as well as the partisan arbitrators designated by the parties in this proceeding. The decisions of those non-party appointed specialists shall thereafter be accorded substantial deference by the Heart and Lung Arbitrators.
- b. Provided that the physician is contractually bound by the treatment costs and protocols imposed by the City's Risk Management Department on physicians in the panel of doctors who treat police officers pursuant to the Heart and Lung Act, an officer receiving medical treatment under the Heart and Lung Act may treat with a physician of his or her own choosing.
- c. The Heart and Lung Arbitration Panels shall continue to have authority to issue whatever orders are necessary to achieve justice

in the administration of the parties' agreement to resolve Heart and Lung Act disputes.

13. Commanders

- a. Effective July 1, 2010, Commanders shall receive straight time pay for all hours worked at the Puerto Rican Day parade.
- b. Effective July 1, 2011, Commanders shall receive straight time pay for working one weekend per year in Weekend Command. There shall be no pay for any stand-by time.
- c. Effective July 1, 2011, officers at the rank of Captain and above will be permitted to accumulate compensatory time on an hour for hour basis up to a cap of 1200 hours. These employees will be permitted to cash out up to 600 hours of compensatory time at retirement from the Department subject to the existing rules and regulations.

14. Court Appearances

Effective January 1, 2010, officers who do not receive notice at least 48 hours in advance of the time they are directed to appear for a required court appearance, other than a preliminary hearing, scheduled for a date the officer is not scheduled to work, shall be paid a minimum of 4 hours of overtime at a rate of 2.5 times the employee's regular rate.

15. Legal Services

Effective July 1, 2009, the City's contribution to the FOP Legal Services Fund shall be increased by \$2 per member per month.

16. Aviation Unit

Once an employee is selected for an assignment in the aviation unit, the City will pay for the reasonable and necessary cost of any required certifications obtained after the employee was hired by the Department to allow the employee to maintain his or her pilot's license. The City's maximum obligation to pay for required certifications already obtained by current members of the aviation unit in accordance with this paragraph shall be \$60,000.

17. Furloughs

Upon seven (7) days advance notice to the FOP and the affected employee(s) the City shall have the unrestricted right to temporarily furlough any employee or employees for a definite length of time, which

shall not exceed thirty (30) days in any fiscal year. Time spent on furlough shall be unpaid and shall be treated as time spent on temporary lay off for purposes of accruing pension and service credits, but shall not be treated as a layoff for any other purpose and the City shall not be required to follow any contractual lay off procedure with regards to such furloughs. The City will continue to make health benefit contributions on behalf of the employee during the furlough period. Furloughs shall not be considered a separation from service for purposes of the DROP program. In the event of a temporary closing of a facility or work unit, all represented employees within the designated work unit shall be scheduled off on furlough for one or more days. Otherwise, the Department will issue a schedule of furlough days. In the event that not all employees in a job title are required to serve the same number of furlough days in accordance with the schedule generated by the Department, the most senior employees shall serve the smallest number of furlough days required by the schedule.

18. Educational Incentive

Effective July 1, 2010, the Department shall provide up to \$250,000 per year in tuition reimbursement to employees who satisfy the requirements set by the Department. This amount shall be prorated for the remainder of the current fiscal year, which ends on June 30, 2010.

19. Retiree Trust Fund

- a. Within sixty (60) days of the issuance of the Award, the City shall make a lump sum payment of four million dollars (\$4 million) to the Retiree Joint Trust Fund.
- b. On or before July 1, 2010, the City shall make a lump sum payment of four million dollars (\$4 million) to the Retiree Joint Trust Fund.
- c. On or before July 1, 2011, the City shall make a lump sum payment of four million dollars (\$4 million) to the Retiree Joint Trust Fund.
- d. On or before July 1, 2012, the City shall make a lump sum payment of four million dollars (\$4 million) to the Retiree Joint Trust Fund.
- e. On or before July 1, 2013, the City shall make a lump sum payment of four million dollars (\$4 million) to the Retiree Joint Trust Fund.

20. Catastrophically Disabled Officers

The parties shall meet and discuss compensation for Mrs. Mindy Marynowitz for the primary care she renders to her husband John Marynowitz in light of the specific evidence placed on the record regarding their circumstances.

21. Catastrophic Leave Bank

The City and the Union will establish a program to permit employees covered by this agreement to donate accrued vacation leave to a leave bank. The program shall be administered by a joint labor management committee consisting of three (3) members appointed by the Union and three (3) members appointed by the City. The program shall be subject to the following rules:

- a. Each year during the period of January 1 to March 31, employees may contribute accrued vacation leave to the leave bank.
- b. Employees may only donate earned accrued vacation leave and must indicate such voluntary, irrevocable transfer in writing. Employees may contribute from one to five days in whole day increments only.
- c. Eligibility for transfer of vacation leave shall be limited to employees who have donated a vacation day to the leave bank in the last contribution period. Only employees who can demonstrate a catastrophic medical condition and who are approaching exhaustion of all paid leave are eligible for a grant of leave time from the transfer of leave bank.
- d. The committee shall have the sole authority to determine eligibility for a grant of leave. The committee shall review applications from employees for a grant of leave from the leave bank and determine the amount of leave to be granted. Grants of leave shall be limited to a maximum of thirty (30) leave days. Employees may apply for a maximum of two grants during a calendar year.
- e. Employees receiving such transferred leave shall only be credited in accordance with the Civil Service Regulations governing maximum leave accrual.

If an employee who has received transferred leave separates from City service for any reason, there shall be no payment for unused transferred leave. Unused transferred leave shall be returned to the leave bank. No aspect of this benefit shall be subject to the grievance procedures.

22. Retention of Jurisdiction

The Panel shall retain jurisdiction over this Award in order to resolve any disputes regarding implementation of its terms.

23. The Existing Agreement

Except as modified by this Award, all other terms and conditions contained in the collective bargaining agreement between the City and the FOP in effect from July 1, 2008 to June 30, 2009 shall remain in effect. All other proposals and requests for change submitted by the City and the FOP to the Panel, which have not been specifically addressed in this Award, were considered and have not been awarded.




Ralph H. Colflesh, Impartial Arbitrator



Thomas W. Jennings, FOP Arbitrator

Agree
 Dissent *as to wages - First Year only, 95 Pensions, 917 Fuelish*



Kenneth M. Jarin, City Arbitrator

Agree *Except as set forth in the attached Dissent*
 Dissent

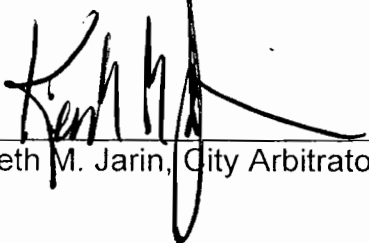
Dated December 18, 2009

**American Arbitration Association
Case Number 14 360 L 00202 09**

DISSENTING OPINION OF CITY-APPOINTED ARBITRATOR

The Panel appropriately recognizes the significant burden that pension and health care costs for City employees, including the employees in this bargaining unit, impose on the City to the detriment of the City's ability to invest in programs and services to meet the needs of all its citizens, to invest in the City's future and to attract citizens and businesses to make this City grow and thrive. The Panel, with this award, properly takes significant and meaningful steps towards reigning in those costs by making long-term reductions in the amount the City will spend on pension benefits for newly-hired employees including raising the employee contribution and introducing a new, less-costly hybrid defined benefit/defined contribution plan. This award also makes fundamental changes in the funding of health benefits, reduces the City's costs and asks employees to pay more of the cost of those benefits through increased co-pays. In addition, this award grants significant additional flexibility for the Police Department in its crime fighting efforts.

Despite these significant and meaningful steps, this award does not go far enough to protect the City's fiscal health. Because the wages in the second and third years of the award are in excess of what the City can afford, I dissent from paragraphs 2(b), 2(c) and 3 of the award. I likewise dissent from the provisions of the award changing the residency requirement for incumbent officers, as having City employees live in the City helps keep City neighborhoods strong and vital.



Kenneth M. Jarin, City Arbitrator

Dated December 18, 2009