

ARBITRATION OPINION AND AWARD
AMERICAN ARBITRATION ASSOCIATION
CASE NUMBER 14 L 360 0357 04

IN THE MATTER OF THE ACT 111 INTEREST ARBITRATION BETWEEN

CITY OF PHILADELPHIA

AND

FRATERNAL ORDER OF POLICE, LODGE # 5

The Arbitration Panel:

Thomas W. Jennings, Esq.
Arbitrator for the FOP

H. Thomas Felix, II, Esq.
Arbitrator for City of Philadelphia

Thomas G. McConnell, Jr.
Chair and Impartial Arbitrator

Appearances:

For the City:

Brian D. Pedrow, Esq.
Charles J. Grant, Esq.
Shelley R. Smith, Esq.
Anne Barden, Esq.
Daniel L. Garry, Esq.
Gregory J. Vrato, Esq.
Shannon D. Farmer, Esq.
Amy Weiss Kramer, Esq.

For Lodge # 5:

Gary M. Lightman, Esq.

I. INTRODUCTION

The City of Philadelphia (City) and the Fraternal Order of Police, Lodge No. 5 (FOP) are parties to a collective bargaining agreement governing the wages, hours, and working conditions of the City's police officers. In 2003, the parties commenced bargaining with an exchange of proposals. When collective bargaining did not result in a resolution of the disputed issues, the undersigned Panel of Arbitrators (Panel) was formed pursuant to the provisions of the Policemen and Firemen Collective Bargaining Act, 43 P.S. Section 217, et. seq. (Act 111), as modified by the Pennsylvania Intergovernmental Cooperation Authority Act for Cities of the First Class, 53 P.S. Section 12720.101, et. seq. ("PICA statute").

Hearings were held on May 3 and 25, June 3, 4, 14, 15, 21, and 22, and on July 7, 2004, at which time the Panel heard testimony and received documentary evidence. Both parties filed post-hearing briefs. The Panel engaged in several executive sessions, including July 7, July 16, July 19, and July 23, 2004.

The Panel considered numerous issues submitted by the FOP and the City. The Panel was charged with the responsibility of rendering an Award which would govern the terms and conditions of the City's police officers. The prior contract between the parties had a termination date of June 30, 2004. During the hearings, the Panel heard testimony from numerous witnesses, and the Panel has received hundreds of supporting exhibits submitted by the parties.

BACKGROUND

This Act 111 interest arbitration is the sixth conducted between the parties since the passage of the PICA statute, which created the Pennsylvania Intergovernmental Cooperation Authority (PICA) in order to return to fiscal discipline to the City. The PICA statute requires that the City develop, at least annually, Five-Year Financial Plans which must provide for balanced budgets and which must be reviewed and approved by the PICA Board. 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. Section 12720.102 (b)(1)(iii)(H); 12720.209 (b) and (c). Under the PICA statute, 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 to this Panel, the PICA statute also sets forth a number of specific requirements for Act 111 collective bargaining and interest arbitrations involving the City of Philadelphia. Specifically, the City must execute collective bargaining agreements in compliance with the then operative Five-Year Plan. Further, 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 (1) the approved financial plan; and (2) 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. Section 12720.290(k)(l).

During the course of this Act 111 proceeding, both parties argued forcefully and convincingly regarding these financial considerations as outlined in the PICA statute. 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. This Panel has duly considered the parties' arguments, and has accorded the City's financial concerns the substantial weight required by law.

II. AWARD

1. Term:

This Award shall be effective for four years, from July 1, 2004 to June 30, 2008. The health care provisions shall be subject to a re-opener in the second and fourth years of this Award (See Item 4 below). Item 14 below shall also be subject to the re-opener.

2. Wages:

a) Effective July 1, 2004, there shall be a 3% across-the-board increase in the Police pay schedule.

b) Effective July 1, 2005, there shall be a 3% across-the-board increase in the Police pay schedule.

c) Effective July 1, 2006, there shall be a 3% across-the-board increase in the Police pay schedule.

d) Effective July 1, 2007, there shall be a 4% across-the-board

increase in the Police pay schedule.

3. Holiday:

Effective with calendar year 2007, and for each year thereafter, each employee shall be entitled to his or her birthday as a holiday.

4. Health and Welfare:

The existing contract language shall remain in effect except as provided below:

a) Effective July 1, 2004, the City's monthly contribution to the Joint Board shall be increased to \$898.00 per month per eligible employee and eligible retiree.

b) The present Panel recognizes that the Joint Board, LEHB, and the DOP have used their best efforts to contain costs. The present Panel shares the concern of the 2002-2004 Panel, however, that escalating health care costs must be addressed by the Joint Board. The present Panel therefore directs the Joint Board to undertake a serious analysis and consideration of cost containment strategies for the medical plans and dental, optical, and prescription plans with the objective of identifying, among other things, plan design and benefit structure modifications which will lead to a reduction in City costs for providing such health benefits.

c) There shall be a re-opener to address health care for the period of July 1, 2005 through June 30, 2007. During this re-opener, the Panel shall have jurisdiction to consider additional City monthly contributions to the Joint Board, and in doing so will take into account the City's ability to pay. The Panel shall

also entertain testimony as to the outcome of the Joint Board's deliberations discussed in paragraph "b" above. The Panel may also independently review strategies for containing health care costs and shall have jurisdiction during the re-opener to render an appropriate award on such issues. In considering such an award, the Panel will also review the impact of such changes on the bargaining unit, in relation to the quality and cost of health care benefits.

d) There shall be a re-opener to address health care for the period of July 1, 2007 through June 30, 2008. During this re-opener, the Panel shall have the same jurisdiction set forth in paragraph "c" above.

5. Pensions and Retirees:

Retiree Joint Trust Payments shall be increased to three million and two hundred and fifty thousand dollars (\$3,250,000) for 2004-05, three million and five hundred thousand dollars (\$3,500,000) for 2005-06, three million and seven hundred and fifty thousand dollars (\$3,750,000) for 2006-2007, and four millions dollars (\$4,000,000) for 2007-2008. The 2004-05 payment shall be made no later than thirty days after the date of this award. Subsequent payments shall be made no later than July 31st of the respective fiscal year.

6. Scope of the Agreement:

Article II of the contract, captioned "Scope of Agreement," shall amended as follows:

a) The first paragraph of the existing "Scope of Agreement" provision shall be deleted.

b) The second paragraph of the existing "Scope of Agreement" shall remain in tact.

c) A new provision entitled "Recognition" shall be added, as follows:

The City recognizes Lodge No. 5 of the Fraternal Order of Police as the exclusive collective bargaining representative of the bargaining unit covered by this Contract, pursuant to Act 111, including the following classes of full-time Civil Service employees with permanent appointments:
Police Officer; Police Officer I; Police Corporal; Police Detective; Police Sergeant; Police Lieutenant; Police Captain; Police Staff Inspector; Police Inspector; Chief Police Inspector; Graphic Artist; Prosecution Detective I; Prosecution Detective II; Prosecution Detective Sergeant; Prosecution Detective Lieutenant; Prosecution Detective Captain; Deputy Chief Prosecution Detective; Criminal Prosecution Special Investigator in the Office of the District Attorney.

7. **Grievance Procedure**: Article XX, Section A (2) shall be amended so that it shall read as follows:

The grievance and arbitration procedure set forth herein shall include within its subject matter only alleged violations of Act 111 Awards and this Contract.

8. **Longevity**: The existing longevity schedule shall be converted to percentages, as set forth below. The new longevity schedule shall be implemented on July 1, 2005. Each bargaining unit member shall thereafter be entitled to longevity based upon this new schedule, computed on the base salary plus stress differential for the respective rank:

Years:	Percentage
1-2	0
3-4	2.3%

5-9	2.8%
10-14	3.5%
15-19	4.2%
20-24	4.7%
25-29	5.3%
30-35	5.8%

9. Death in Active Status:

If an employee dies while in active City service and, at the time of death has ten (10) years of continuous service as a member of the bargaining unit, the City will continue to make contributions for health coverage for eligible dependents of the employee provided such dependents are receiving a survivor's pension, for a period of five (5) years from the date of the employee's death. The payments for the eligible surviving spouse and eligible dependents shall cease if the dependent becomes ineligible for a survivor's pension. Any such payments shall be made in accordance with the provisions governing health and welfare payments at the time the payment is due.

10. Special Units Clothing:

An employee who is transferred to a special unit (this does not include an employee who is detailed into a special unit for a limited period of time during which special clothing or equipment is not required) for which the City requires individual uniform clothing or equipment that is unique to that unit, in addition to the maintenance allowance otherwise described herein, shall be

provided with the first issue of each item of clothing or equipment so required provided that the employee has not received such individual uniform clothing or equipment in a previous unit. Such items shall be provided as soon as feasible, after the employee is transferred to the unit provided that the employee continues to actively work in the unit when the item becomes available. Regular street clothing such as casual or business attire is not included in this provision.

11. Catastrophically Disabled Police Officers:

An employee who is eligible for a periodic adjustment under Section 401(5) of the Public Employees Retirement Code and who actually receives the first of such adjustments shall in addition receive a one-time lump sum payment equivalent to the amount of that adjustment for the period from the commencement of eligible pension benefits until the effective date of the first periodic adjustment. In no event shall this one time lump sum exceed the amount of the adjustment times seven years of eligibility.

This provision applies to all employees who have received a pension benefit which qualifies for the periodic adjustment and who have not received such adjustment prior to July 1, 2000. No provision of this article nor any benefit awarded shall be subject to review under the grievance and arbitration procedure contained in the collective bargaining agreement.

12. Sick Leave Conversion:

At retirement, occurring on or after July 1, 2004, an employee who has retired may elect to use all or part of his or her accumulated sick leave to purchase an extension of the five (5) year period of retiree health, medical,

dental, optical and prescription coverage in lieu of receiving a cash payment as provided in Appendix D of the 1990 Act 111 Interest Arbitration Award. For purposes of purchasing extended coverage, one hundred twenty (120) hours of accumulated sick leave will buy six (6) months of extended coverage. All such purchases must be in full blocks of one hundred twenty (120) hours.

The number of compensable sick leave hours for employees who have retired above the rank of police officer shall be determined by applying the cash payment formula as provided in Appendix D of the 1990 Act 111 Interest Arbitration Award. Those compensable hours may be used to purchase extended coverage, according to the following schedule:

Employees in Pay Ranges	Hours of Post Formula Sick Leave Required to Purchase 6 Months of Additional Health Insurance
202,203,299	120
204	110
205	105
206	95
208	80
209	75
210	70
211	65

All such purchases must be in full blocks of the amount required to purchase six (6) months of extended coverage. Hours of compensable sick leave not exchanged for extended health care coverage, shall be compensated at the employee's rate of pay at the time of separation.

13. Disability:

Effective July 1, 2004, the dollar setoff applied to outside income, affecting those individuals with permanent service-connected disabilities, shall not be applied to the first \$25,000 in outside income. Effective July 1, 2007, the dollar setoff will be completely eliminated if it is not applied to firefighters at that time.

14. Insurance and Benefits—Injured in the Line of Duty:

Item 14 of the FOP's issues in dispute shall be subject to further review by the panel during the 2005-06 re-opener.

15. Existing Agreement:

Except as modified by this Award, all other terms and conditions contained in the existing CBA between the FOP and the City shall remain in effect. All other proposals and requests for change submitted by the parties to the Panel, which have not been specifically addressed in this Award, were considered and have not been awarded.

Thomas G. McConnell Jr., Chair

Dated: August ____, 2004

Thomas W. Jennings, FOP Arbitrator

Dated: August ____, 2004

Agree: _____

Dissent: _____

H. Thomas Felix, II, City Arbitrator

Dated: August ____, 2004

Agree: _____

Dissent: _____

ARBITRATION OPINION AND AWARD
American Arbitration Association
Case Number 14 L 360 0357 04

In the matter of an Act 111 Interest Arbitration Between the

CITY OF PHILADELPHIA

AND

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

**DISSENTING OPINION
OF CITY-APPOINTED ARBITRATOR**

August 13, 2004

On August 13, 2004, the Panel issued its Award in the Act 111 Interest Arbitration between the City of Philadelphia (the “City”) and the Fraternal Order of Police, Lodge No. 5 (the “FOP”). Because the Award ignores the City’s ability to pay for its terms, as required by the Pennsylvania Intergovernmental Cooperation Authority Act for Cities of the First Class, 53 P.S. §§ 12720.101 *et seq.* (“PICA Statute”), I respectfully dissent. I also dissent from paragraph 14 of the Award on the basis that it impermissibly delegates the Panel’s authority to another body.

The PICA Statute mandates that this Panel, in making its Award, consider the City’s Five Year Plan and accord ***substantial weight to the City’s ability to pay the cost of any increase in wages or fringe benefits without adversely affecting the level of services the City provides to its 1.5 million residents.*** The Panel’s Award has not done so.

The City’s Five Year Financial Plan for FY 2005 – FY 2009, recently approved by the PICA Board, projected nine percent (9%) to nine-and-a-half percent (9.5%) annual increases in City contributions for FOP health care benefits. Due to the City’s dire economic condition, the City’s Five Year Financial Plan projected no wage increases. The Award, however, granted the FOP annual wage increases far in excess of the amounts budgeted by the City, as well as several other costly benefits, at a ***cost to the City of more than \$152.7 million above the amounts budgeted in the approved Five Year Financial Plan.***

While the Panel is not required to issue an Award which mirrors the assumptions contained in the Five Year Financial Plan, the Panel is required to give **substantial weight** to the Five Year Financial Plan and the City's ability to pay the cost of its Award. The City presented extensive evidence to this Panel on the City's inability to pay for an Award that is grossly inconsistent with the Five Year Financial Plan. The FOP, in contrast, merely asserted that unspecified funds purportedly "hidden" within the City's budget could fund an Award. The Panel's Award is plainly in conflict with all the credible evidence of record regarding the City's ability to pay.

It is clear that the Panel's Award disregarded the extensive testimony and documentary evidence regarding the very real threats to the City's ability to balance its budgets in FY 2005-2009. It is the opinion of this Arbitrator that the Panel's Award has not accorded the City's ability to pay the substantial weight that the PICA Statute requires.

The PICA Statute further requires that the Panel's Award demonstrate how it determined that the City is able to pay for its Award. Specifically, the PICA Statute provides: "Any determination of the board of arbitration which provides for an increase in wages or fringe benefits of any employee of an assisted city shall state with **specificity in writing all factors which the board of arbitration took into account in considering and giving substantial weight to:**

(i) the approved financial plan of the assisted city; and

(ii) the assisted city's financial ability to pay the cost of such increase.

53 P.S. § 12720.209(k)(2) (emphasis added). The Panel's Award does not contain a single finding as to the City's ability to fund the \$152.7 million burden this Award adds to the City's already dire financial straits. Nor does the Award list a single factor considered by the Panel in considering the City's approved Five Year Financial Plan or the City's ability to pay for the Award.

It is hardly surprising that the Panel's Award fails to comply with the mandate of the PICA Statute that the Panel explain how it determined that the City can pay the cost of the Award without adversely affecting the level of services and benefits provided to the City's residents. The Panel could hardly have made such findings because it is clear from the unrebutted evidence and testimony presented to the Panel that the City cannot afford even a fraction of this Award's \$152.7 million in added costs.

During the arbitration proceedings, the City presented extensive, unrebutted evidence on its perilous financial condition. The FOP presented no evidence to the contrary. Nor did the FOP dispute that the City's fund balance is projected at only \$109,000 at the end of FY 2005. Obviously, this fund balance leaves no room for unexpected costs. Unfortunately, August's recent catastrophic flooding in portions of the City added more than \$13 million in unexpected costs, placing the City's projected fund balance in the red. Any additional unexpected costs, even a winter storm, will push the City's fund balance further into negative numbers.

As the City's presentation to this Panel made clear, the City's options in funding the increased costs of this excessive Award are very limited. To fund the \$152.7 million in added costs from this Award, the City has two options. One option is to cannibalize the police department by reducing the size of the police force by an additional 490 positions over the next five years or by cutting positions and services throughout the department. These reductions will come on top of the 300 police positions already slated for reduction in the approved Five Year Financial Plan, as well as the Five Year Financial Plan's \$4 million cut in police overtime in FY 2005. The City's other option is double digit increases in the City's portion of the real estate taxes. As the City's presentation demonstrated, there are no other viable options available to the City to fund this Award.

The Panel's Award completely disregards the City's ability to pay and its approved Five Year Financial Plan. As a result, the Panel's Award contravenes the PICA Statute and places more than \$150 million of unanticipated costs on the backs of the City taxpayers. I dissent from the Panel's violation of its obligations under Act 111 and the PICA Statute.

I further dissent from the Panel's Award of a "reopener" provision in paragraph 14 on benefits for officers rendered uninsurable as a result of injuries in the line of duty. This Panel's abdication of authority to another Act 111 panel is illegal. Dunmore Police Ass'n v. Borough of Dunmore, 528 A.2d 299 (Pa. Commw. 1987). Therefore, I specifically dissent from the reopener provision under Paragraph 14: Insurance and Benefits-Injured in the Line of Duty.

Accordingly, I dissent from the Award.

Dated: August 13, 2004

H. Thomas Felix, III
Arbitrator for the City of Philadelphia