



CITY OF BOSTON • MASSACHUSETTS

OFFICE OF THE MAYOR
THOMAS M. MENINO

May 7, 2010

TO THE CITY COUNCIL

Dear Councilors:

Today, the Joint Labor Management Committee Arbitration Panel issued an Arbitration Award (copy attached) in the interest arbitration between the City of Boston and the International Association of Fire Fighters – Local 718. The award was supported by Arbitrator Dana Eischen and by the panel's labor representative, Robert McCarthy, who is the President of the Professional Fire Fighters of Massachusetts. The panel's management representative, Mayor Dean Mazzeella of Leominster, dissented.

The award covers a contract period that begins on July 1, 2006 and ends on June 30, 2010. Over the four (4) year period this award provides a cumulative increase of 19.2% and has an estimated value of \$74 million.

I am required by law (Subsection 11 of Chapter 89 of the Acts of 1987) to submit to you "*an appropriation necessary to fund such decision or determination*" within thirty days of the issuance of the Award. My Administration is currently working on a proposed plan to finance this award and I will submit this to you in advance of this required deadline. The law also requires me to "*support any decision or determination in the same way and to the same extent that ... [I am] ... required to support any other decision or determination agreed to by an employer and an exclusive employee representative pursuant to the provisions of... Chapter 150 E of the Massachusetts General Laws.*" The law places with you, the Legislative Body of the City, the discretion to approve or reject the recommendation for an appropriation sufficient for the Award. The law further states, that "*if the municipal legislative body votes not to approve the request for appropriation, the decision or determination shall cease to be binding on the parties (the Mayor and the Union) and the matter shall be returned to the parties for further bargaining.*"

Again, the arbitration award is enclosed and a proposed specific appropriation to fund this award will be submitted to you within the statutory time period.

Respectfully,

Thomas M. Menino
Mayor of Boston

AWARD OF THE ARBITRATION PANEL
JLMC Case No. 08-02F

The following Award is in full and final resolution of the JLMC-certified and properly submitted issues presented to the Tripartite Interest Arbitration Panel in JLMC Case No. 08-02F. Unless otherwise specified, the effective date of the amendments to the Agreement under the Panel's Award shall be the date the Panel's Award in JLMC Case No. 08-02F becomes binding upon the parties, pursuant to Chapter 589 of the Acts of 1987^{3/}

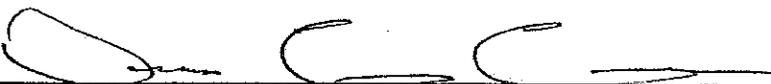
The following relates the changes to be made to the Local 718-City of Boston July 1, 2003-June 30, 2006 (FY 2004-FY 2006) Collective Bargaining Agreement ("Agreement"), pursuant to the Award of the Tripartite Interest Arbitration Panel in JLMC No. 08-02F [All sections and subsections of the predecessor Agreement not affected by the Award are to continue unchanged.]:

Duration (Article XXI):

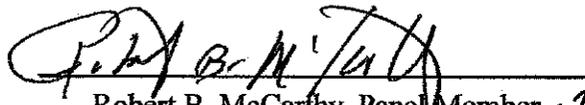
Two (2) successive Collective Bargaining Agreements covering the period July 1, 2006 - June 30, 2010, with the following duration respectively:

1. July 1, 2006 - June 30, 2007 (FY 2007); and
2. July 1, 2009 - June 30, 2010 (FY 2008-2009-2010).

Dates in this Article are to be amended accordingly.



Dana Edward Eischen, Panel Chair 4/20/2010

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Robert B. McCarthy, Panel Member 4/20/2010

 _____
Dean J. Mazarella, Panel Member 4-20-10 12:58 PM

^{3/} The phrases "Effective on the date the award is to be implemented" and "the date the award is to be implemented" mean the calendar point that the compensation changes as provided for in Article XX are implemented, including full compliance with all retroactive requirements.

Compensation (Article XX):

Amend Section 1 (base wages) to reflect the following percentage increases on the following dates:

FY 2007 – FY 2008 Contract:

Effective FPP^{1/} FY 2007... plus 2%
Effective FPP FY 2008... plus 2.5%

FY 2009 – FY 2010 Contract:

Effective FPP FY 2009... plus 3%
Effective January 1, 2010... plus 3.5%
Effective June 30, 2010... plus 2.5%

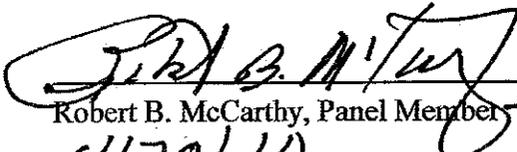
Amend Section 2 Night Differential, Section 3 Hazardous Duty/Specialist Compensation and Section 4 Transitional Career Awards Program to reflect the recalculation of each such benefit based upon the periodic increase to the Section 1 base wages, *supra*, with each recalculation effective on the same dates as the respective increases to the base wage.

Amend Section 3 Hazardous Duty/Specialist Compensation to reflect the following percentage increases on the following dates:

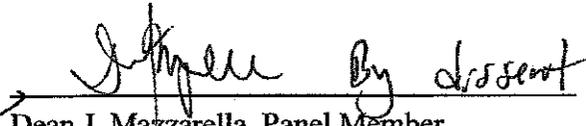
Effective FPP FY 2008... plus 1.5%
Effective FPP FY 2009... plus 1.5%



Dana Edward Eischen, Panel Chair



Robert B. McCarthy, Panel Member
4/20/10



Dean J. Mazarella, Panel Member
will mail my objections:
4-20-10 1:00 pm

^{1/} "FPP" signifies beginning of first payroll period.

Special Operations Division: Hazardous Materials and Technical Rescue Division

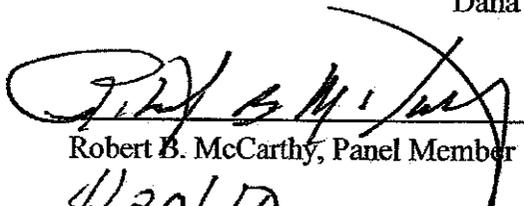
Amend Article XX-*Compensation* by adding as new Section 9 the following:

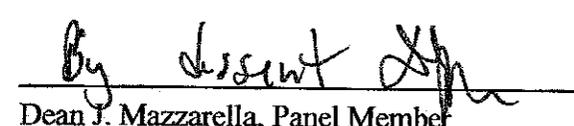
Section 9. Special Operations Division: Hazardous Materials/Technical Rescue

Effective June 30, 2010, all employees assigned to those fire companies which by virtue of comparatively more sophisticated training and more frequent responses concentrate upon hazardous materials and technical rescue public safety activity [five (5) companies concentrating on hazardous materials response and seven (7) companies concentrating on technical rescue response], the field District Chief and Incident Command Technicians [whose duties include supervision of such companies], and Headquarters assigned officers and firefighters whose duties include oversight, training, and support services for such field companies, shall receive a base compensation stipend annually of \$500.00 (for the Technician level) and \$1,000 (for the Advanced Technician level).

This stipend shall be considered as part of the regular weekly base compensation of covered employees for purposes of computing night differential, hazardous duty pay, overtime pay, holiday pay, sick, injured, vacation and other authorized leave compensation, and for pension contribution compensation.


Dana Edward Eischen, Panel Chair 4/19/2010


Robert B. McCarthy, Panel Member 4/20/10


Dean J. Mazarella, Panel Member
4-20-10
1:07 pm

Sick Leave (Article XVII)

Amend by deleting existing Section 3 and inserting the following new Section 3:

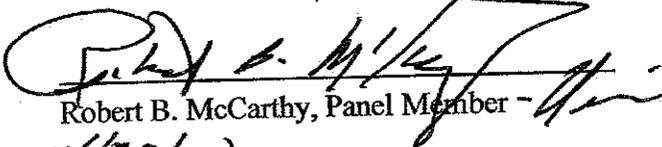
All employees must notify his/her company officer or immediate supervisor of the employee's absence due to illness no later than one (1) hour before the start of his/her tour (work shift) in the case of a day tour, and no later than three (3) hours before the start of his/her tour (work shift) in the case of a night tour, unless such notice is impracticable, in which case the employee must provide notice as soon as is practicable. After consultation with the District Fire Chief, or the rank equivalent, the supervisor shall attempt to contact the employee by telephone to ascertain if the employee can return to full, regular duty on the employee's next regularly scheduled tour of duty (work shift). After sick leave absence of more than two (2) consecutive actual tours of duty (work shifts), the Fire Commissioner can require the involved employee to communicate with the Department Medical Examiner and/or obtain a medical letter from his/her medical provider. After consultation with the employee's medical care provider, the Department Medical Examiner shall determine an employee's return to duty status. Notwithstanding the foregoing two sentences, the Fire Commissioner can require any employee to communicate with the Department Medical Examiner and/or obtain a medical letter from his/her medical provider if said employee has accumulated ten (10) tours or more of undocumented absences within a rolling twelve (12) month period.

No member of the bargaining unit shall be entitled to holiday pay if he or she has an undocumented sick leave on the night before a holiday, on the holiday, or the day after a holiday.



Dana Edward Eischen, Panel Chair

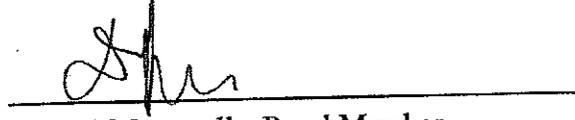
4/20/10



Robert B. McCarthy, Panel Member

4/20/10

April 20, 2010
am - c



Dean J. Mazarella, Panel Member

4-20-10

1:00 pm

Group Health Insurance (Article XIX, Sections 11 and 27)

Amend by deleting existing Section 11 and inserting new Section 11, as follows:

Section 11 Effective 60 days after the JLMC award becomes binding upon the parties pursuant to Chapter 589 of the Acts of 1987, the City shall cease to offer Master Medical to bargaining unit members. Effective that same date, the City shall offer the indemnity PPO known as Blue Care Elect Preferred. The City's rate of contribution for the indemnity PPO shall be 75%. The employee's rate of contribution shall be 25%.

- A. **Effective January 1, 2008** the City's rate of contribution for all approved and authorized health maintenance organizations shall be 87.5%. The employees rate of contribution for all approved and authorized health maintenance organizations shall be 12.5%.
- B. **Effective January 1, 2009** the City's rate of contribution for all approved and authorized health maintenance organizations shall be 85%. The employees rate of contribution for all approved and authorized health maintenance organizations shall be 15%.
- C. **Effective January 1, 2008** the City's rate of contribution for all approved and authorized point of service products shall be 82.5%. the employees rate of contribution for all approved and authorized point of service products shall be 17.5%.
- D. **Effective January 1, 2009** the City's rate of contribution for all approved and authorized point of service products shall be 80%. The employees rate of contribution for all approved and authorized point of service products shall be 20%.

(Note: When the City calculates the retroactive compensation for employees it will reduce the retroactive compensation by an amount equal to the additional retroactive health insurance premiums owned by such employees).

Amend by inserting new Section 27, as follows:

Section 27. Effective on the date an award becomes binding upon the parties pursuant to Chapter 589 of the Acts of 1987, bargaining unit members declining the City's health insurance benefit shall be eligible for the City's opt-out insurance benefit pursuant to the City's health insurance policy. Those bargaining unit members shall receive fifteen hundred dollars (\$1,500) for opting-out of an individual plan or twenty-five hundred dollars (\$2,500) for opting-out of a family plan under the above-mentioned policy.

Eligibility.

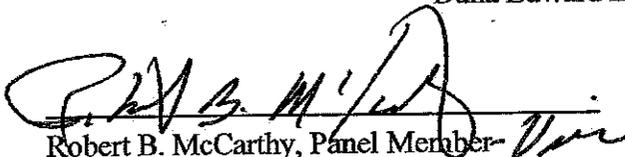
To participate employees must have been enrolled or be currently enrolled in medical coverage through the City of Boston for a year and have dropped the coverage;

Employees are eligible for the payment if they have coverage under another plan.

Other plans include:

- i. Your spouse's/partner's plan (as long as he or she is covered by someone other than the City of Boston, Boston Water and Sewer Commission or the Boston Public Health Commission);
- ii. A private plan;
- iii. A plan offered through a second employer (if you have another job that provides health care benefits); or
- iv. A retiree health plan from an employer other than one of the City of Boston groups.


Dana Edward Eischen, Panel Chair 4/16/2010

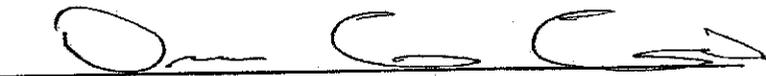

Robert B. McCarthy, Panel Member - *Chair*
4/20/10

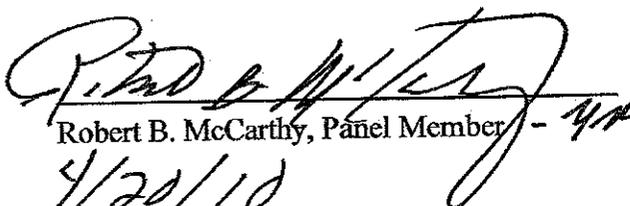

Dean J. Mazarella, Panel Member 4-20-10- 1256P

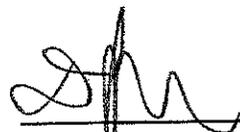
Residency (Article XX)

Amend by deleting existing Section 25 and inserting the following new Section 25:

All members of the bargaining units must be residents of the City of Boston in accordance with the City of Boston's Residence Ordinance (Ord. 1976, c. 9 as amended). After ten (10) years of consecutive full-time service (or, in the case of bargaining unit members who have had a break in service due to work-related disability ten (10) years of full-time service in total) from date of appointment to the bargaining unit, members of the bargaining units will be exempted from the Residency Ordinance (Effective upon issuance of award). (Effective on the date the award is to be implemented).


Dana Edward Eischen, Panel Chair 4/16/2010


Robert B. McCarthy, Panel Member - *Chair*
4/20/10


Dean J. Mazarella, Panel Member
4-20-10- 12:56 P.

Drug and Alcohol Testing (Article XXII and Appendix F)

Add the following new Article XXII to the Agreement:

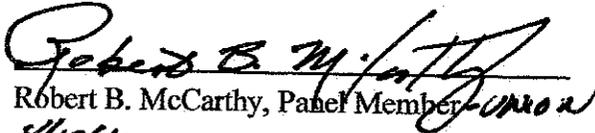
Article XXII Drug and Alcohol Random Testing

Effective on the date the Panel's Award in JLMC Case No. 08-02F becomes binding upon the parties, pursuant to Chapter 589 of the Acts of 1987, but no sooner than July 1, 2010, the "Boston Fire Department /IAFF Local 718 Drug and Alcohol Free Workplace Policy", incorporated by reference herein and appended hereto as "Appendix F" shall become part of the Agreement between the Parties and shall be implemented for members of the bargaining unit(s) covered by this Agreement.



Dana Edward Eischen, Panel Chair

4/19/10



Robert B. McCarthy, Panel Member

4/19/10



Dean J. Mazzearella, Panel Member

12:55 pm

4-19-10

APPENDIX F

This Policy shall supersede any conflicting policies or practices within the Fire Department but shall be construed and applied in a manner consistent with the Collective Bargaining Agreement, specifically including Article XIX, § 21 and Article XVI.

BOSTON FIRE DEPARTMENT/IAFF Local 718

**DRUG AND ALCOHOL
FREE WORKPLACE POLICY**

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I. INTRODUCTION

1.1 The Boston Fire Department and the Boston Firefighters Local 718 recognize that illegal drug use and abuse/misuse of alcohol by Members of this Department pose a threat to the public welfare and to the employees of the department. Thus, the Department will take the necessary steps, including drug and alcohol testing, to maintain a drug/alcohol free workplace. The goal of this policy is to detect and prevent illegal drug use, controlled substance and alcohol misuse and abuse and to assist in the rehabilitation of Members whenever possible. The following procedures provide the department with reasonable measures to ensure drug and alcohol use does not jeopardize the public or the Department's ability to serve its citizens.

II. EDUCATION

2.1 The Department will continue an educational program that addresses all current related substance issues. This educational program will be scheduled at sufficient intervals to ensure that not only are the goals of this Policy met, but that all Members are familiar with the issues, problems and current trends concerning contemporary substance abuse.

III. EMPLOYEE ASSISTANCE PROGRAM

The Boston Fire Department and the Boston Fire Union Local 718 maintain an Employee Assistance Program (EAP) which is available twenty-four (24) hours a day, seven (7) days a week. This program is for the benefit of all Members. Voluntary participation, which is participation because a Member believes he or she may benefit by attending meetings at the EAP, is confidential and is optional for the Member.

IV. CONFIDENTIALITY

4.1 The Department shall advise all participants in the collection, testing, and reporting process of their responsibility to protect Member privacy and to maintain the confidentiality of all drug and alcohol test results. The Department shall maintain all correspondence, notes, reports, testing records and other documents pertaining to substance abuse testing in a locked, secure location, and limit access to those records to those with a need to know.

4.2 Except as required by law, all information concerning a Member's drug and alcohol tests shall remain confidential for all purposes other than determining and defending disciplinary action.

4.3 With the exception of determining and defending disciplinary action or as required by law, all Department personnel shall maintain Member privacy and confidentiality concerning all alcohol and drug test results.

4.4 Any Department personnel with access to information about the identity of Members selected for testing and the designated test date and time shall maintain the confidentiality of that information, to avoid any advance notice to the selected Members.

4.5 Notwithstanding the foregoing, upon request by the Member or the Member's union representative with written authorization from the Member, the

Department shall provide copies of all laboratory reports, test results, forensic opinions, laboratory work sheets, procedure sheets, and/or laboratory procedures.

V. DEFINITIONS

- 5.1 Controlled Substance - any drug included in Schedules I through V, as defined by Section 802(6) of Title 21 of the United States Code (21 USC 802(6)), the possession of which is unlawful under Chapter 13 of that title, or any drug included within the definition of "Controlled substance" in Chapter 94C of the Massachusetts General Laws (for example, but not limited to: cocaine, marijuana, valium, morphine, anabolic steroids). The term does not include the use of prescribed drugs, which have been legally obtained and are being used by the individual for whom they were prescribed in accordance with the prescription and for the purpose for which they were prescribed.
- 5.2 Illegally-Used or Improperly Used Drugs - any prescribed drug which is legally obtainable but has not been legally obtained or is not being used as originally prescribed, all designer drugs not listed in the Controlled Substances Act (for example, but not limited to: MDA, fentanyl), and any other over-the-counter or non-drug substances (for example, but not limited to: airplane glue) being used for other than their intended purpose.
- 5.3 Alcohol - colorless, volatile and flammable liquid that is the intoxicating agent in fermented and distilled liquors. It includes, but is not limited to, beer, wine and liquor. It does not include alcohol used in chemical processing, cleaning or testing.
- 5.4 Department Property - includes buildings, offices, facilities, equipment, vehicles, land, and parking lots owned, loaned, utilized or leased by the Department. It also includes any other site at which business of the Department is transacted whether on or away from Department owned, loaned, or leased property.
- 5.5 Motor Vehicle Collision - an unplanned, unexpected and unintended vehicle collision involving fire apparatus or any Department owned vehicle which a) occurs on Department property, on Department business, or during working hours, and b) initially appears to have been caused wholly or partially by a member, and c) causes a fatality, personal injury requiring medical treatment away from the scene or damage to property in excess of \$2,500. [Necessary and authorized "squeeze-through operations" are excepted from the property damage definition].
- 5.6 Drug Paraphernalia - any item that is clearly intended for use for the administering, transferring, manufacturing, testing or storing of a controlled substance.
- 5.7 Reasonable Suspicion of Drug and/or Alcohol Use - the reasonable suspicion standard for drug testing of Members is based upon a specific objective fact(s) and reasonable inferences drawn from that fact(s) in light of experience that the individual may be involved in the use of any illegally-used drug, controlled substance, or alcohol. Examples may include one or more of the following:
- (a) Observable phenomena, such as direct observation of on-duty alcohol use or possession and/or direct observation of on-duty or off-duty use or possession of a controlled substance or illegally-used drug, and/or the on-duty display of behaviors which appear to be indicative of the

use of any illegally-used drug, controlled substance, or alcohol and are not attributable to other factors;

- (b) a pattern of abnormal conduct, erratic behavior or deteriorating work performance, including but not limited to, extended or patterned sick leave use, excessive tardiness, or frequent accidents, not attributable to other factors and which appears to be related to drug and/or alcohol abuse;
- (c) arrest, indictment, or conviction for a drug or alcohol related offense;
- (d) newly discovered evidence that the Member has tampered with a prior drug/alcohol test;
- (e) repeated or flagrant violations of the Department's Rules and Regulations which are determined by a supervisor to pose a substantial risk of injury or property damage and which are not attributable to other factors and appear to be related to drug and/or alcohol abuse;

The above examples are not all inclusive and are intended to be illustrative.

- 5.8 The indicators of being affected by a drug or by alcohol are not confined to those consistent with misbehavior, or to obvious impairment of physical or mental ability, such as slurred speech or difficulty in maintaining balance. Although reasonable suspicion does not require certainty, mere "hunches" are not sufficient to meet this standard.
- 5.9 Under the Influence of an Unauthorized Controlled Substance, Illegally-used Drug and/or Alcohol - The presence of a .04 alcohol content or greater, or a verified positive drug test, at levels specified by the Substance Abuse and Mental Health Services Administration (SAMHSA), for an unauthorized controlled substance or an illegally-used drug.
- 5.10 Medical Review Officer (MRO) - The Department's Medical Examiner, or his properly certified designee, shall serve as the Medical Review Officer under this policy.
- 5.11 Member - Any and all individuals represented by the Boston Fire Fighters Local 718 International Association of Fire Fighters.
- 5.12 The Contractor(s) - A third party contractor(s) that is responsible for administering the Fire Department Alcohol and Drug Testing Program, or any portion thereof. Duties of a contractor may include randomly selecting the Testing groups, collecting specimen at testing sites or other collection locations designated by the Department, storing specimens, and/or performing testing of specimens.
- 5.13 SAMHSA - The Substance Abuse and Mental Health Services Administration

VI. AUTHORIZED USE OF PRESCRIPTION MEDICINE

- 6.1 Members undergoing prescribed medical treatment with any drug must inquire of their medical provider whether such drug can potentially affect the member's ability to perform the job safely. If advised that such drug can potentially affect the member's ability to perform the job safely, or if the medical provider is uncertain about the drug's potential impact on the member's ability to perform

the job safely, the member must immediately report the drug prescribed to the Fire Department's Medical Office and a determination will be made as to the Member's ability to perform his duty.

VII. PROHIBITED CONDUCT

The following conduct by Members is prohibited:

- 7.1 Unauthorized use, possession, manufacture, distribution, dispensation or sale of a controlled substance, illegally-used drug, drug paraphernalia, or alcohol on Department property, on Department business, in Department supplied vehicles, or vehicles being used for Department purposes, or during working hours;
- 7.2 Use of alcohol at any time while in the Department Uniform; except for special events for which the Chief of the Department has designated an exemption to this rule;
- 7.3 Unauthorized storage in a desk, locker, or other repository on Department property of any illegally-used drug, controlled substance, drug paraphernalia, or alcohol;
- 7.4 Possession of any illegally-used drug, controlled substance, drug paraphernalia, or an open container of alcohol in a vehicle used by a Member when such vehicle is located on Department property;
- 7.5 Being under the influence of an unauthorized controlled substance, illegally-used drug or alcohol on Department property, on Department business, in Department supplied vehicles or vehicles being used for Department business or during working hours;
- 7.6 Possession, use, manufacture, distribution, dispensation or sale of illegally-used drugs or controlled substances while off duty;
- 7.7 Intentionally diluting a urine or breath sample;
- 7.8 Refusing consent to testing or refusing to submit a breath or urine sample for testing;
- 7.9 Failing to adhere to the terms of any Rehabilitation Agreement (sample attached) which the Member has signed;
- 7.10 Arrest or conviction under any drug or alcohol statute;
- 7.11 Failure to immediately notify the Department of any arrest or conviction under any drug or alcohol statute;
- 7.12 Failure to comply with Section 6.1.
- 7.13 Refusing to sign a) a receipt for the Department's Substance Abuse Policy, b) the Consent and Release Form, c) the Chain of Custody Form, or d) a Rehabilitation Agreement.

VIII. REHABILITATION

- 8.1 Rehabilitation Program - A Member may be directed to participate in a mandatory rehabilitation program by the Commissioner, the Department's Medical Examiner, or the Department's EAP Coordinator. Members may also self-refer to the Rehabilitation program. This section applies to both circumstances. Members who enter an inpatient drug or alcohol rehabilitation program must sign the Rehabilitation Agreement in Appendix A. The Member will be required to attend meetings of the EAP sponsored by the Boston Fire Department and Local 718 and will be required to follow the directives established by the Coordinator of this program for a period of one (1) year following the date of his entrance into the Rehabilitation Program. Members who are participating in the Rehabilitation Program may be tested for the presence of drugs or alcohol at any time while enrolled in the program. Additionally, the Department Medical Examiner may require that a Member complete a medical evaluation during this rehabilitation period.
- 8.2 If a Member cannot make a meeting for emergency reasons only, he or she must call in by telephone (773-5529 or 343-3784). If a Member attends any rehabilitation meetings other than those at the EAP quarters, the Member must get prior written approval from the EAP program coordinator. The Member must catalog all substance abuse meetings that he attended, including the name of the group conducting the meeting and the meeting place. The Member shall provide such information to the EAP Program Coordinator.
- 8.3 Leave of Absence - As part of a rehabilitation program, the Department may grant a Member a leave of absence for the purpose of participating in a rehabilitation program that has been approved by the Boston Fire Department's EAP Coordinator. The Member shall authorize his treatment provider to communicate with the EAP Coordinator for the purpose of confirming that the Member is participating in the program and has adhered to all of the program's requirements. The Member will be responsible for any costs associated with his rehabilitation program that are not covered by his health insurance provider. The Member will be allowed to use his available leave balances in order to receive pay during this leave of absence. In the event that the Member does not have sufficient leave then he will be placed on an unpaid leave of absence. Prior to the Member's return to the Department, the Member must submit to Department administered drug and alcohol testing, and test negative for drugs and alcohol in accordance with the standards in this Policy. Additionally, the Member must be cleared to return to duty by the Department's Medical Examiner.

IX. TYPES OF TESTING

- 9.1 Drug tests will consist of determinations of the presence of controlled substances, illegally used drugs and alcohol as defined in Section II. Members of the Boston Fire Department will be tested for drugs and/or alcohol under the following circumstances:
- (a) Random Testing - In a joint desire to achieve and maintain a work force that is 100% drug and alcohol free and in further recognition that the Department has not yet achieved such goal, the Parties agree that the

Department will implement and maintain a random drug and alcohol testing program. This program will include urinalysis and breath alcohol testing.

- (b) Reasonable Suspicion of Drug and/or Alcohol Use - A Member will be tested for drugs and/or alcohol when a supervisor makes a determination based on reasonable suspicion. Referrals for reasonable suspicion testing will be made using the procedures set forth in XI, 11.1.
- (c) Medical Clinical Observation - A Member will be tested for drugs and/or alcohol when the Department's Medical Examiner makes a determination, based on his direct observation, that the Member may be under the influence of alcohol or drugs in violation of this policy.
- (d) Follow-up Testing - Any Member who has tested positive for alcohol or drugs in violation of this policy will be subject to unannounced follow-up testing for thirty-six months following the date of return to duty.
- (e) Probation Period Testing - All Probationary personnel are subject to drug and alcohol testing during their probation period without prior warning and at random intervals. Members who test positive for drugs or alcohol during their probationary period will be subject to termination.
- (f) Condition of Permanent Promotion/Appointment - Members who are offered and accept a promotion/appointment to the permanent positions of Lieutenant, Captain, District Chief and Deputy Chief in the uniform division of the Department, or to the positions of Senior Fire Alarm Operator, Principal Fire Alarm Operator, Assistant Superintendent of Fire Alarm and Superintendent of Fire Alarm in the Fire Alarm division of the Department will be required to submit to alcohol and drug testing. A negative test result shall be a condition of such promotion. An employee can decline to be tested and, upon an employee's exercising such option, the employee shall forego the promotion in issue; however, such employee shall not be regarded as having refused to be tested for any other purpose or provision of this Policy, nor shall such declining constitute a basis for reasonable suspicion drug or alcohol testing.
- (g) Return from Suspension - Members, who have been suspended for a violation of this Policy, will be required to submit to Department administered drug and alcohol testing, and must test negative for drugs and alcohol in accordance with the standards in this Policy, prior to his return to the Department. Additionally, prior to returning to work the Member must be cleared to return to duty by the Department's Medical Examiner.
- (h) Motor Vehicle Collision - Members who are driving fire apparatus or any Department owned vehicle which is involved in a motor vehicle collision, as defined in V. §5.5, supra, will be required to submit to alcohol and drug testing.

X. POLICY ENFORCEMENT

10.1 The following section applies only to those Members of the Department who have not tested positive for drugs or alcohol in violation of this Policy at any point in his or her career and who are participating in the Department's Rehabilitation Program ("the Program") either on a mandatory basis or as a matter of self-referral:

- (a) A Member who has been directed by the Department to participate in the Program or has self-referred to the Program but has not violated any provision of this Policy shall not be subject to disciplinary action.
- (b) If a Member, who is participating in the Program, fails to follow the guidelines of his rehabilitation program he or she shall be suspended for a period of five (5) days. Additionally, the Member will be required to participate in the Program for one (1) year from the date of his return from the five (5) day suspension.
- (c) If a Member, who is participating in the Program, fails to follow the directives of his rehabilitation program for a second time he or she shall be suspended for a period not less than thirty (30) days. Additionally, the Member will be required to participate in the Program for one-year from the date of his return from the thirty (30) days suspension.
- (d) If a Member, who is participating in the Program, fails to follow the directives of his Rehabilitation Program for a third time, the Member shall be terminated.

10.2 The following section applies to those Members of the department who have tested positive for drugs or alcohol in violation of this Policy at any point in his or her career:

- (a) If a Member tests positive for drugs or alcohol for the first time, but has not violated any other provision of this Policy, the Member shall be suspended for a period of thirty (30) days.
- (b) If a Member tests positive for drugs or alcohol for the first time, he or she shall be required to participate in the Department's Rehabilitation Program.
- (c) If a Member has violated other provisions of this policy, in addition to testing positive for drugs or alcohol, he or she may be subject to disciplinary action in excess of thirty (30) days and which may, depending upon the severity of the violation, include termination.
- (d) If a Member tests positive for drugs or alcohol a second time the Member shall be terminated.
- (e) If a Member, who has tested positive for drugs or alcohol, fails to follow the terms and conditions of his or her rehabilitation agreement the member may be terminated.

- (f) If a Member, who tested positive for drugs or alcohol in violation of this Policy, tests positive for either drugs or alcohol a second time, regardless of whether the second positive test corresponds to the substance that gave rise to the first positive test, the Member shall be terminated.
- 10.3 If a Member switches or adulterates a urine or breath sample during the testing process, the Member shall be treated as if s/he tested positive.
- 10.4 If a Member is on the tour report for a work location that has been selected for testing, and the Member leaves the worksite, without authorization, and without complying with the requirement to be tested, the Member shall be treated as if he tested positive.
- 10.5 Nothing in this Policy will limit the Commissioner's authority to impose discipline for violation of the Rules and Regulations of the Department not included in this Policy.

XI. PROCEDURES FOR DRUG TESTING

11.1 Referral Procedure for Supervisors for Reasonable Suspicion

The Department's supervisors are responsible for being alert to declining job performance, erratic behavior or other indicators of possible illegal drug use, controlled substance abuse or alcohol use or abuse. Whenever a supervisor makes a determination of reasonable suspicion of drug and/or alcohol use (as defined in Section II of these procedures) the following steps will be taken:

- (a) The supervisor will immediately document in writing all circumstances, information and facts leading to and supporting his/her suspicion. At a minimum, the report will include appropriate dates and times of suspect behavior, reliable/credible sources of information, rationale leading to referral for testing and the action(s) taken.
- (b) Prior to referring a Member for testing, the supervisor will discuss the problem with the Member in a private location with one (1) witness, preferably another supervisor, present. Caution will be taken not to accuse the Member of substance abuse, but the Member will be presented with instance(s) of questionable behavior or other indicator(s). If the Member does not have an acceptable explanation for his questioned behavior or the presented indicator(s), the supervisor will continue with the procedures set forth in this section. The Member may request the presence of a union representative during this meeting; however, the inability to secure a union representative shall not unduly delay the meeting.
- (c) The supervisor shall consult with a second supervisor of a higher rank and they shall jointly decide whether to refer a Member for testing. The on-duty Deputy Chief will make the final determination.
- (d) Once a determination has been made to refer a Member for testing, the Deputy Chief will advise the Member of such decision and notify the on

call EAP Coordinator, who will respond to that location and escort the Member to a collection site. The EAP Coordinator should remain with the Member at the collection site until testing is concluded. In the event that leaving the scene and/or remaining with the member is not feasible, the EAP coordinator will 1) arrange transportation to the collection site (the Member will be instructed not to drive a vehicle), 2) notify the collection site that the Member is being sent for testing, 3) request that the collection site notify the supervisor when collection procedures are completed, 4) arrange transportation for the Member following the collection process, and 5) notify the Member that he or she is not to return to work pending receipt of the test results by the Medical Review Officer.

- (e) Upon conclusion of the testing the EAP Coordinator will ensure that the Member is escorted to his destination. The EAP Coordinator will direct the Member not to drive himself to his destination. The Member will be relieved from duty and placed on administrative leave with pay pending receipt by the Office of Medical Examiner of the test results and the Member will be notified of this change in status.
- (f) In those cases where the supervisor has reasonable suspicion to believe the Member is impaired, the Member will be immediately removed from the work site and shall be placed on administrative leave with pay pending the outcome of the test. If the Member test negative for drugs and alcohol, the Member will be restored to full duty.
- (g) In those cases where a supervisor discovers a Member who possesses what appears to be a controlled substance, illegally-used drug or alcohol, or drug paraphernalia, he or she will proceed as described above for instances where reasonable suspicion exists, and, if the substance in question appears to be a controlled substance or illegally-used drug, will report the matter to the Boston Police Department immediately and to the Deputy Chief for disciplinary action.

11.2 Procedures for Random Testing

- (a) Random on-duty testing will be conducted throughout the year, although the days of the week and the times of the day when testing is conducted and the number of Members tested in any given week will vary.
- (b) The Department shall create a list of work locations and work groups that will be subject to random testing. Each member will be assigned to one testing group based of his her work location or work group. Each identified group will be known as a "Testing Group." For example, the Department may create a Testing Group by identifying particular fire houses, pieces of equipment, or combinations thereof, together with a particular work group assigned to that house or equipment. The Department may combine locations or pieces of equipment to create a Testing Group. The Department shall determine the site of testing in circumstances where a Testing Group combines Members from more than one location. The Department shall attempt to create Testing Groups of relatively the same number of members, but the actual composition of each Testing Group shall be at the Department's discretion. The Department may create Testing Groups at Fire

Department Headquarters at its discretion. Members on modified duty shall be included in Testing Groups.

- (c) The Department will give the Union thirty (30) days notice of the creation the testing initial testing groups, with an opportunity for the Union to comment on the groups. The Department may change or modify Testing Groups at its discretion, provided it gives the Union thirty (30) days notice of such change.
- (d) The Department shall use an established independent third-party contractor(s) which has clients subject to USDOT-regulated testing ("Contractor") to select the Testing Groups subject to testing and administer the testing process. The Department shall give the Contractor a list of the Testing Groups and a schedule indicating when the work groups for each Testing Group are on duty. The contractor shall independently determine the dates and times of testing. The Contractor shall design the testing program such that number of drug and alcohol tests each year is, in the case of each type of test, at least equal to 50% of the total number of Members, as of July 1. Weekly, the Contractor shall generate a list ("list") of Testing Groups, using a scientifically valid, tamper-resistant, computer-generated random number selection method. This list will be in effect for a seven (7) day period from Monday through Sunday. During the week for which it is generated, the Contractor shall not provide the Department with a copy of the list.
- (e) The following process shall be repeated on each day in which the Department conducts random testing:

The Contractor shall advise the Department's EAP Coordinator of the Testing Group(s) selected for random testing and the dates and times of such testing. Subject to the operating needs of the Department, all of the Members of the selected Testing Group shall be tested. If a Testing Group is not on duty on a particular day, the Testing Group will remain on the list for the duration of the seven (7) day period that the list is effective, and may be tested the next time that Testing Group is on duty.
- (f) Once the EAP Coordinator has been informed by the Contractor that testing will be conducted on a given day the EAP Coordinator will inform the Deputy Chief of Personnel. The Deputy Chief of Personnel will then inform the Division Commander. In the event that the EAP Coordinator is unable to contact the Deputy Chief of Personnel, he shall directly contact the Division Commander.
- (g) The EAP Coordinator will obtain copies of the tour reports for the Testing Groups to be tested, in the following manner:
 - (i) During office hours Monday through Friday, he will contact the Chief of Personnel or his designee for the tour report(s) for the location(s) to be tested.
 - (ii) During evening hours, weekends and holidays, he will contact the District Chief for the location to be tested and obtain copies of all the tour reports for that district.

- (h) The EAP Coordinator will meet the Contractor at the first selected Testing Group site with the tour reports for the Testing Group to be tested. The EAP Coordinator will contact the District Chief for the selected Testing Group and request that the District Chief meet him at the testing site. The EAP Coordinator will be present at all testing sites to serve as the Department liaison to the Contractor.
- (i) As soon as practicable after the Contractor arrives at the site, but not before the Members on the tour report for duty, the District Chief shall inform the company officer(s) that the Member(s) on duty will be tested on that tour. The officer(s) shall then inform the Member(s) that the Member(s) will be tested on that tour. Where a Testing Group consists of Members from more than one location, the District Chief shall inform the company officer(s) of the location that is not the testing site that the Member(s) on duty will be tested on that tour and must immediately travel to the test site. The officer(s) shall then inform the member(s) that the Member(s) will be tested on that tour, and the officer(s) shall accompany the Member(s) to the test site. All Members of a Testing Group on duty, regardless whether a Member in another Testing Group has swapped into that group for the shift and regardless of whether a Member from another Testing Group has been detailed into that Testing Group or is otherwise working in that Testing Group that day, shall be tested when a Testing Group is selected for testing. The fact that a Member from one Testing Group was subject to testing while swapping into, being detailed into or otherwise working in another Testing Group on the day such other Testing Group was tested will not excuse the Member from random testing in that Member's own or any other Testing Group when his/her own group, or any group into which s/he swapped or was detailed or otherwise assigned, is tested.
- (j) If a Testing Group consists of Members assigned to fire suppression equipment, the particular fire house(s) subject to testing will be placed out of service for the duration of the testing process.
- (k) A Member who is on the tour report working that tour whose Testing Group is selected for testing on the date designated by the Contractor will not be excused from testing, will not be allowed to reschedule testing, nor will the Member be allowed to take sick time or leave work to avoid testing. If such a Member leaves the worksite, without authorization, without complying with the requirement to be tested, the Member shall be treated as if he tested positive for a controlled substance in accordance with Article X of this policy.
- (l) If a selected location is at an active incident, the Department will delay testing until the incident is cleared and the unit(s) has returned to its assigned work location. All random testing shall be scheduled with due consideration for the operational needs of the Department.
- (m) The Contractor will collect specimens at the test site, or, where it deems appropriate, at any other test site designated by the Department.

11.3 Collection, Testing and Storage of Specimen

- (a) When conducting testing for prohibited drugs the Department will use urine screening. When conducting testing for alcohol use the Department will use breath alcohol testing. The designated collector

shall collect one urine sample from the Member at the time he collects the breath sample for alcohol testing. The designated collector shall take reasonable measures to provide the Member with privacy while maintaining the integrity of the testing.

- (b) The designated collector shall divide the urine sample into two (2) containers, one for testing and the other for potential re-testing. The Member will place a signed and dated seal over the cap of the specimen containers, place the sealed containers in an envelope, seal the envelope and then sign across the seal. In the event the Member cannot produce sufficient urine for a split sample (a total of 45 milliliters, 30 for the tested sample, 15 for the untested sample) the specimen collector shall document the inability or produce a sufficient sample. An attempt should be made to have the Member produce a sufficient specimen in accordance with procedures defined by the Contractor. A Member who has not produced a sufficient specimen after three hours shall be referred to the Department's Medical Review Officer for evaluation in accordance with Section 11.5.
- (c) The designated collector shall retain the samples to ensure chain of custody from the collection site to the location where the Contractor will conduct the actual test.
- (d) In the case of random testing, the Contractor shall test the sample for the presence of these five drugs, classes of drugs, or their metabolites: marijuana, cocaine, opiates, phencyclidine (PCP), and amphetamines. In the course of testing for Reasonable Suspicion of Drug and/or Alcohol Use, other drugs or their metabolites may be tested for if their particular use is suspected. The Contractor shall conduct an initial test on the urine sample, as well as a confirmatory test on each urine sample that yields a positive result.
- (e) The Department will direct the Contractor to store all confirmatory positive urine samples in an appropriate, properly secured location.
- (f) Breath Alcohol tests will be conducted by a properly qualified test operator using an Evidential Breath Testing device (EBT). A positive test will be followed by a second confirmatory EBT test. The Department will direct the Contractor to store breath alcohol results at a level of .04 or greater, in an appropriate, properly secured location.
- (g) The Contractor shall utilize a laboratory certified by SAMHSA and using SAMHSA standards to conduct the test on the urine sample.

11.4 Testing of Divided Sample

- (a) A Member who tested positive for a controlled substance(s)/illegal drug(s) may, within seventy-two (72) hours of being informed of the test result, make a written request to have the untested sample submitted for testing. The Member may have the untested sample tested by the same laboratory as the initial sample, or the Member may select an alternative laboratory. The alternative laboratory must be certified by SAMHSA and must apply the same testing levels. The untested specimen must be transported directly from the Contractor to the alternative laboratory and the Member must pay any associated costs for this additional test. The Member must authorize the alternative

laboratory to provide the test results directly to the Department's Medical Review Officer.

11.5 Diluted Sample or Inability to provide a Sample

- (a) In the event that a Member does not provide a sufficient breath sample for alcohol testing, or a sufficient urine sample for drug testing, the designated collector will refer the Member to the Medical Review Officer. If the Medical Review Officer determines the Member has a valid reason for his inability to provide a sufficient sample, then the Medical Review Officer shall have the discretion to order additional testing to secure a valid sample. If, after consulting with the Member's medical care provider, the Medical Review Officer finds no valid reason for the Member's inability to provide a sufficient sample, then the Member shall be treated as if he tested positive.
- (b) If the Contractor informs the Medical Review Officer that a Member provided a diluted sample, then the Medical Examiner Officer shall have the discretion to order additional testing to secure a valid sample.

11.6 Procedure Upon a Positive Test Result

Upon a final positive test result, after either reasonable suspicion or random testing, the MRO shall meet with the involved member. Such meeting shall provide the member with the opportunity to discuss alternative causes for the positive test. The final decision about the test result shall be made by the MRO.

XII. UNION REPRESENTATION

- 12.1 Any Member ordered to undergo alcohol and drug tests under this Policy may request the presence of a union representative during the test. However, the inability to secure a union representative shall not unduly delay administration of the test, and the union representative shall not interfere with the privacy and integrity of the testing process as prescribed by the Contractor.
- 12.2 At any time, the Union, upon request, will have the right to inspect and observe any aspect of the drug and alcohol testing program with the exception of individual test results, so long as such inspection and observation do not interfere with the drug and alcohol testing program. The Union may inspect individual test results if the release of this information is authorized by the Member involved.

APPENDIX A

Boston Fire Department Rehabilitation Agreement

I, _____, enter into this Rehabilitation Agreement with the Boston Fire Department and agree to comply with the terms and conditions listed herein:

I agree to remain substance free for the duration of this agreement. This includes refraining from the use of controlled substances, illegally-used or improperly used prescription drugs, or alcohol.

I agree that I will comply with all of the terms of the Boston Fire Department's Drug and Alcohol Free Workplace Policy (The Policy).

I agree that I may be tested for the presence of drugs or alcohol at any time for the duration of this agreement. I understand that this testing is in addition to the regular random drug testing program for all Members.

I agree that if I have ever tested positive, or if I ever do test positive, for the presence of drugs or alcohol in violation of the Policy, I will be subject to unannounced drug and alcohol testing for thirty-six months from the date of my return to duty.

I understand that I must attend regular meetings, administered by the Boston Fire Department Employee Assistance Program (EAP), in accordance with the schedule outlined below:

1. Months One, Two and Three

- a) attend a minimum of three (3) substance abuse meetings per week for the first three (3) months; and
- b) visit the EAP office twice per week
- c) If a member attends the substance abuse meeting that is held at EAP quarters, it will constitute one (1) meeting per month.

2. Months Four, Five and Six

- a) attend a minimum of three (3) substance abuse meetings per week; and
- b) visit the EAP office once per week

3. Months Seven, Eight and Nine

- a) attend a minimum of three (3) substance abuse meetings per week; and
- b) visit the EAP office once every other week

4. Months Ten, Eleven, and Twelve

- a) attend a minimum of three (3) substance abuse meetings per week; and
- b) visit the EAP office once per month

I agree that in the event I cannot attend a meeting for emergency reasons only, I will contact the EAP by telephone at (617) 773-5529 or (617) 343-3784. If I attend any rehabilitation meetings other than those at the EAP quarters, I will get prior approval from the EAP program coordinator. I will maintain a catalog of all substance abuse meetings that I attend, including the name of the group conducting the meeting and the meeting place. I will provide this information to the EAP Program Coordinator.

I understand that if I have been granted a leave of absence for the purpose of participating in a rehabilitation program, then prior to my return, I must submit to a Department administered drug and alcohol test, and test negative for drugs or alcohol in accordance with the standards in this policy. Additionally, I must be cleared by the Department's Medical Examiner to return to duty.

I understand that if I am suspended for any reason during the length of this agreement (separate from any initial thirty day suspension if I have tested positive for drugs or alcohol for the first time), a new twelve (12) month rehabilitation agreement will start upon my return from the suspension.

I understand that failure to follow the terms and conditions of this Rehabilitation Agreement will result in disciplinary action in accordance with Article X of the Department's Drug and Alcohol Free Workplace Policy.

By affixing my signature below, I hereby agree to the terms of this Agreement and state that I have freely, knowingly, intelligently, and voluntarily entered into this Agreement. I also acknowledge that I was given and exercised a full opportunity to consult with my Union representatives, to review the terms and conditions of this Agreement, and was fairly represented by the Union at all times during the negotiation of this Agreement and its terms.

_____ DATED: _____

**INTEREST ARBITRATION PROCEEDINGS
JOINT LABOR-MANAGEMENT COMMITTEE
JLMC CASE NO. 08-02F**

In the Matter of an Interest Arbitration between:

THE CITY OF BOSTON, MA

and

LOCAL 718, INTERNATIONAL ASSOC. OF FIRE FIGHTERS

ARBITRATION PANEL

Dean J. Mazzarella, JLMC Management Member
Robert B. McCarthy, JLMC Labor Member
Dana Edward Eischen, Impartial Chair

APPEARANCES

For The City of Boston: GREENBERG TAURIG, LLP
by Joseph Ambash, Esq.

For Local IAFF 718: ANGOFF, GOLDMAN, MANNING,
WANGER, HYNES & DUNLAP, P.C.
by E. David Wanger, Esq.
Matthew J. McCaffrey, Law Clerk

ALSO PRESENT

For the City

Jordan Ablon, Labor Counsel
Robert Boyle, Office of Lab. Rel.
Paul Curran, Office of Lab. Rel.
John Dunlap, Director of Lab. Rel.
Samantha Doepken, Office of Lab. Rel.
Roderick J. Fraser, Jr., Fire Commissioner
Chris Giuliani, Office of Budget Management
Karen Glasgow, Deputy Comm. Labor/Legal
Ellen Hatch, Office of Budget Management
Ronald Keating, Chief, BFD
Kathleen Kirleis, Deputy Comm. Admin/Finance
Maria Marotta, Office of Labor Relations
Lisa Calise Signori, Director Admin/Finance

For the Union

Larry Curran, Bargaining Team, Local 718
Joseph Finn, Bargaining Team, Local 718
Peter Gailunas, Bargaining Team, Local 718
Edward Kelly, President, Local 718
Sean Kelly, Bargaining Team, Local 718
Rich Paris, Vice President, Local 718
Thomas R. Roth, Pres., The Labor Bureau, Inc.

PERTINENT STATUTORY PROVISIONS

Chapter 589

THE COMMONWEALTH OF MASSACHUSETTS

In the Year One Thousand Nine Hundred and Eighty-seven

AN ACT RELATIVE TO DISPUTE RESOLUTION

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Chapter 1078 of the acts of 1973 is hereby amended by striking out section 4A, as most recently amended by section 238 of chapter 351 of the acts of 1981, and inserting in place thereof the following section:

Section 4A. 1 (a) (i) There shall be in the executive office of labor, but not subject to the jurisdiction thereof, a committee to be known as the joint labor-management committee, in this section referred to as the committee. The committee shall be composed of fourteen members, including a chairman and a vice-chairman and such alternate members as the committee shall approve. Twelve committee members shall be appointed by the governor as follows: three firefighters from nominations submitted by the Professional Firefighters of Massachusetts, International Association of Firefighters, AFL-CIO, three police officers from nominations submitted by the International Brotherhood of Police Officers, NAGE, SEIU, AFL-CIO, and the Massachusetts Police Association, and six from nominations submitted by the Advisory Commission on Local Government established under section sixty-two of chapter three of the General Laws.

The chairman and vice-chairman shall be nominated by the committee, and appointed by the governor for a term of three years. The chairman shall be the chief administrative officer of the committee. The vice-chairman shall assist the chairman and may be authorized by the chairman when so authorized and he shall vote only in the absence of the chairman.

* * * * *

(2) (a) The committee shall have oversight responsibility for all collective bargaining negotiations involving municipal police officers and firefighters. The committee shall, at its discretion, have jurisdiction in any dispute over the negotiations of the terms of a collective bargaining agreement involving municipal firefighters or police officers; provided, however, that the committee may determine whether the proceedings for the prevention of any prohibited practices filed with the labor relations commission shall or shall not prevent arbitration pursuant to this section.

* * * * *

3) (a) The committee shall have exclusive jurisdiction in matters over which it assumes jurisdiction and shall determine whether issues in negotiations have remained unresolved for an unreasonable period of time resulting in the apparent exhaustion of the processes of collective bargaining. If the committee makes such a determination it is authorized to hold a hearing to identify:

- (1) the issues that remain in dispute;
- (2) the current positions of the parties;
- (3) the views of the parties as to how the continuing dispute should be resolved; and

(4) the preference of the parties as to the mechanism to be followed in order to reach a final agreement between the parties.

If the committee, after a full hearing, finds there is an apparent exhaustion of the processes of collective bargaining which constitutes a potential threat to public welfare, it shall so notify the parties of its findings.

Within ten days of such notification, the committee shall also notify the parties of its intent to invoke such procedures and mechanisms as it deems appropriate for the resolution of the collective bargaining negotiations. Such procedures and mechanisms may include, but need not be limited to:

- (1) any form of arbitration, including, but not limited to, conventional arbitration, issue-by-issue or last best offer;
- (2) arbitration for all or any issue in dispute; provided, however, that the committee may direct the parties to conduct further negotiations concerning issues not specified for arbitration;
- (3) single arbitration, including the chairman, vice-chairman or an outside neutral arbitrator;
- (4) an arbitration board, which may include labor and public management representatives as voting or non-voting members;
- (5) separate stages or procedures for the executive and legislative bodies of a municipality.

The factors to be given weight in any decision or determination resulting from the mechanism or procedures determined by the committee to be followed by the parties in order to reach final agreement pursuant to this section shall include, but not be limited to:

- (1) Such an award shall be consistent with: (i) section twenty-one C of chapter fifty-nine of the General Laws, and (h) any appropriation for that fiscal year from the fund established in section two D of chapter twenty-nine of the General Laws.
- (2) The financial ability of the municipality to meet costs.

The commissioner of revenue shall assist the committee in determining such financial ability. Such factors which shall be taken into consideration shall include but not be limited to: (ii) the city, town, or district's state reimbursements and assessments; (iii) the city, town or district's long and short term bonded indebtedness; (iv) the city, town or district's estimated share in the metropolitan district commission's deficit; (v) the city, town or district's estimated share in the Massachusetts Bay Transportation Authority's deficit; and (vi) consideration of the average per capita property tax burden, average annual income of members of the community, the effect any accord might have on the respective property tax rates on the city or town.

- (3) The interests and welfare of the public.
- (4) The hazards of employment, physical, educational and mental qualifications, job training and skills involved.
- (5) A comparison wages, hours and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally in public and private employment in comparable communities.

- (6) The decisions and recommendations of the factfinder, if any.
- (7) The average consumer prices for goods and services, commonly known as the cost of living.
- (8) The overall compensation presently received by the employees, including direct wages and fringe benefits.
- (9) Changes in any of the foregoing circumstances during the pendency of the dispute.
- (10) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, factfinding, arbitration or otherwise between parties, in the public services or in private employment.
- (11) The stipulation of the parties.

Any decision or determination resulting from the mechanism or procedures determined by the committee if supported by material and substantive evidence on the whole record shall be, subject to the approval by the legislative body of a funding request as set forth in this section, binding upon the public employer and employee organization, as set forth in chapter one hundred and fifty E of the General Laws, and may be enforced at the instance of either party or the committee in the superior court in equity; provided, however, that the scope of arbitration in police matters shall be limited to wages, hours, and conditions of employment and shall not include the following matters of inherent managerial policy: the right to appoint, promote, assign, and transfer employees; and provided, further, that the scope of arbitration in firefighter matters shall not include the right to appoint and promote employees. Assignments shall not be within the scope of arbitration; provided, however, that the subject matters of initial station assignment upon appointment or promotion shall be within the scope of arbitration. The subject matter of transfer shall not be within the scope of arbitration, provided however, that the subject matters of relationship of seniority to transfers and disciplinary and punitive transfers shall be within the scope of arbitration. Notwithstanding any other provisions of this act to the contrary, no municipal employer shall be required to negotiate over subjects of minimum manning of shift coverage, with an employee organization representing municipal police officers and firefighters. Nothing in this section shall be construed to include within the scope of arbitration any matters not otherwise subject to collective bargaining under the provisions of chapter one hundred and fifty E of the General Laws. The employer shall submit to the appropriate legislative body within thirty days after the date on which the decision or determination is issued a request for the appropriation necessary to fund such decision or determination, with his recommendation for approval of said request. Notwithstanding the foregoing, where the legislative body is a town meeting, such request shall be made to the earlier of (i) the next occurring annual town meeting, or (ii) the next occurring special town meeting. The employer and the exclusive employee representative shall support any such decision or determination in the same way and to the same extent that the employer or the exclusive employee representative, respectively is required to support any other decision or determination agreed to by an employer and an exclusive employee representative pursuant to the provisions of said chapter one hundred and fifty E of the General Laws. If the municipal legislative body votes not to approve the request for appropriation, the decision or determination shall cease to be binding on the parties and the matter shall be returned to the parties for further bargaining. The committee may take such further action as it deems appropriate, including without limitation, inquiring as to the municipal legislative body's vote.

The commencement of a new municipal finance year prior to the final awards by the arbitration panel shall not be deemed to render a dispute moot, or to otherwise impair the jurisdiction or authority of the arbitration panel or its award. Any award of the arbitration panel may be retroactive to the expiration date of the last contract.

If a municipal employer, or an employee organization willfully disobeys a lawful order of enforcement pursuant to this section, or willfully encourages or offers resistance to such order, whether by strike or otherwise, the punishment for each day that such contempt continues may be a fine for each day to be determined at the discretion of said court. Such fine shall be in addition to such other remedies as the court may determine.

No member of a unit of municipal police officers or firefighters who is employed on a less than full-time basis shall be subject to the provisions of this clause.

When the parties to a municipal police or fire collective bargaining negotiation jointly design their own dispute resolution procedures, they may divest the committee of jurisdiction by presenting a written agreement of their procedures to the committee; provided, however, that the committee finds that said procedures provide for a final resolution of the dispute, without resort to strike, job action, or lockout; and provided, further that if the committee subsequently finds that either of the parties fails to abide by said procedures, the committee shall assume jurisdiction of the dispute.

In any dispute resolution conducted by other than the committee or its members or staff, the parties shall share and pay equally the costs involved in such resolution; provided, however, that pursuant to a vote of the committee and subject to the availability of funds for the purposes thereof, said costs may be paid by the committee.

* * * * *

**ADOPTED RULES JOINT LABOR-MANAGEMENT COMMITTEE
FOR MUNICIPAL POLICE AND FIRE**

Adopted: August 24, 2000

The purpose of the Joint Labor-Management Committee is to encourage the parties to collective disputes involving municipal police officers and fire fighters to agree on the terms of collective bargaining agreements or the procedures to resolve particular disputes. The Committee shall make every effort to encourage the parties to engage in good faith negotiations to reach settlement and a constructive long-term relationship.

* * *

III. Procedures in Disputes that have remained unresolved for an unreasonable period of time resulting in the apparent exhaustion of the processes of collective bargaining. (Section 3 (a) of Chapter 589 of the Acts of 1987)

1. In a dispute, over which the Committee has taken jurisdiction, and which the Committee determines issues in dispute have remained unresolved for an unreasonable period of time resulting in the apparent exhaustion of the processes of collective bargaining, the Committee may direct an investigation hearing to be held by a tripartite panel of the Committee, or by the Chairman or Vice Chairman of the Committee, or by the senior staff for labor and the senior staff for management together (who may also substitute for a labor or management member of a tripartite panel) to identify:
 - a) the issues remaining in dispute;
 - b) the current position of the parties;
 - c) the views of the parties as to how the continuing dispute should be resolved;

- d) the preferences of the parties as to the mechanism to be followed in order to reach a final agreement between the parties;
- e) other relevant questions.

Such hearing officers shall report to the Committee the information gathered at the hearing.

2. If the Committee thereafter finds there is an apparent exhaustion of the processes of collective bargaining which constitutes a potential threat to public welfare, it shall so notify the parties of its findings. Within ten (10) days of such notification, the Committee shall also notify the parties of its intent to invoke such procedures and mechanisms as it deems appropriate, and it has been authorized by legislation to use, for the resolution of the collective bargaining negotiations.

3. In any dispute involving the financial ability of the municipality to meet costs, the assistance of a report of the Commissioner of Revenue is to be requested, if a current report had not been secured earlier in dispute resolution efforts of the Committee. (See 11-10 above.)

4. Any decision or determination resulting from the above procedures determined by the Committee, if supported by material and substantive evidence on the whole record shall be, subject to the approval by the legislative body for a funding request as set forth in chapter one hundred and fifty E of the General Laws, and may be enforced at the instance of either party or the Committee in superior court in equity.

5. The statute requires that the municipal employer "shall submit to the appropriate legislative body within thirty days after the date on which the [arbitration] decision or determination is issued a request for the appropriation necessary to fund such decision or determination, with his recommendation for approval of such request. Notwithstanding the foregoing, where the legislative body is a town meeting, such request shall be made to the earlier of (i) the next occurring annual town meeting, or (ii) the next occurring special town meeting."

In the event that the municipal legislative body votes not to approve the request for appropriation, the Committee retains full jurisdiction of the dispute. The Committee may take such further action as it deems appropriate to resolve the dispute including further mediation, fact-finding or other dispute resolution procedures.

6. In the event a JLMC panel at a 3(a) hearing considers that the number of issues reported as open are too numerous for an effective dispute resolution or arbitration proceeding, and it has been unable to secure a voluntary agreement to limit the number or scope of issues, it may recommend to the full Committee the issues each party may present in the arbitration or other dispute resolution proceeding. In such case the Committee may limit and specify the issues for arbitration or may limit by specifying to each party the number and scope of issues to be presented to arbitration, defining issues narrowly and precisely.

The parties shall be informed that all other outstanding issues are deferred and shall not be a part of the agreement in dispute. The appointed or selected arbitrator or arbitration panel shall issue an award on the limited number of issues, and the award shall determine the changes to be incorporated in the collective bargaining agreement of the full term under negotiations. Nothing in this paragraph is intended to preclude the parties from incorporating in a collective bargaining agreement mutually agreed upon provisions.

7. A JLMC panel at a 3(a) hearing is further authorized to recommend to the Committee procedures to expedite the arbitration or fact-finding process by specifying or not prehearing briefs and the date and the number of days of hearing. The question of post-hearing briefs is ordinarily to be left to the discretion of the arbitrator or arbitration panel. The arbitration

award or fact-finding report is due in the JLMC office thirty days from the conclusion of the hearing or due date of post-hearing briefs. The JLMC may specify these elements of the arbitration or fact-finding process in its order to the parties.

8. In view of the structure and composition of the JLMC established by legislation (Chapter 589 of the Acts of 1987), in any continuing proceeding of the Committee such as a subcommittee, a Section 3(a) hearing, an authorized tripartite, fact-finding or tripartite arbitration panel to resolve a particular dispute, each of the constituent parts of the Committee - professional firefighters, police or municipal management - shall be free to substitute one member or alternate from this group for another member or alternate in the course of the proceeding with the expressed approval of the chairman of that group. In the event of an emergency involving the attendance of a labor or management member of such committee or panel, the senior staff for labor or management may serve at the designation of the chairman of the group. This freedom of substitution to accommodate work schedules shall not apply to neutral chairpersons of such panels.

PROCEEDINGS

The JLMC appointed this Arbitration Panel to hear and resolve the present dispute, in accordance with a January 16, 2009 letter to the Parties, reading, in pertinent part:

The Committee has previously determined that issues in negotiations have remained unresolved for an unreasonable period of time resulting in the apparent exhaustion of the processes of collective bargaining. A duly appointed subcommittee of the Committee, comprised of Chair Samuel E. Zoll, Robert B. McCarthy Fire Representative, Dean J. Mazzarella Management Representative, and Field Investigator Brian Harrington held a hearing in Boston, on Wednesday, October 8, 2008 on the issues in dispute, the positions of the parties, the views of the parties as to how the continuing dispute should be resolved and the preferences of the parties as to the mechanism to be followed in order to reach a final agreement between the parties.

The Committee now finds that there is an apparent exhaustion of the processes of collective bargaining, which constitutes a potential threat to public welfare.

The Committee notifies the parties that it invokes the following procedures and mechanisms for the resolution of the collective bargaining negotiations.

1. The dispute shall be submitted to Arbitration to be conducted by a tri-partite Panel comprised of an outside neutral Arbitrator as Chair, and a Management Representative and a Labor Representative to be designated by the Committee.
2. The form of arbitration shall be conventional issue by issue.
3. The issues to be arbitrated are:

UNION:

Wages/Duration [A two year and a three year award, from FY 2007- FY2011]
Hazardous materials operational level certification and differentials
Residency
Transitional Career Awards Plan^{1/}
Special Operations assignment compensation
Sick Leave

^{1/} Midway through these proceedings, Local 718 withdrew this JLMC-certified, Union-submitted issue from arbitration by the Panel.

CITY:

Wages/Duration [A three year award from FY 2007 - FY 2009]
Drug and Alcohol testing
Group Health Insurance
Sick Leave
Acting Out of Grade^{2/}

At its meeting on Thursday, January 8, 2009 the Joint Labor-Management Committee VOTED, in accordance with the expressed wishes of the parties, to authorize the appointment of an Arbitrator in the above-referenced case. Accordingly, the Committee has appointed Dana Edward Eischen as the neutral Chair of the Arbitration Panel. . . .

The Panel and the representatives of the Parties met in late February 2009 and jointly established "*Procedural Ground Rules for the City of Boston-IAFF Local 718 Interest Arbitration*". In accordance with those Ground Rules, the Arbitration Panel conducted 21 days of hearings, at which both parties were ably represented by Counsel and afforded full opportunity to present oral and documentary evidence in support of their respective positions. A certified court reporter recorded and transcribed those proceedings, following which posthearing briefs with proposed awards were filed on March 24, 2010, followed by reply briefs dated April 5, 2010.

In the context of and in strict accordance with each of the eleven (11) enumerated statutory factors for decision-making in Chapter 589 of the Acts of 1987, *supra*, the Panel carefully studied and fully considered thousands of pages of sworn testimony and oral argument, several hundred documentary exhibits comprising thousands of additional pages of data and supporting materials and the exceptionally helpful prehearing submissions, posthearing briefs and reply briefs filed by Counsel. After convening in Executive Session April 17-19, 2010^{3/} for several days of additional analysis and consultation, the Panel executed the attached Award by unanimous decision; except for the changes in Article XX-*Compensation* which were decided by a majority of the Panel, with the Management Panel Member dissenting.

2/ Midway through these proceedings, the City of Boston withdrew this JLMC-certified, City-submitted issue from arbitration by the Panel.

3/ The dedication and devotion of my two JLMC Arbitrator colleagues throughout these protracted and difficult proceedings is exemplified by the fact they spent the entire Patriot's Day weekend in Albany, NY, working with a Yankee fan to finalize our Panel's decision, instead of in the Garden or at the Park with the Bruin/Celtic/Patriot/Red Sox Nation.

OPINION OF THE IMPARTIAL ARBITRATOR^{4/}

Some Demographics

The Census Bureau reports that the City of Boston is the 21st largest City in the country, as measured by a resident population of some 620,000. More significantly for this analysis, however, the 47 square miles comprising the City of Boston anchors a substantially larger metropolitan area called Greater Boston; a commuting region embracing six Massachusetts counties (Essex, Middlesex, Norfolk, Suffolk, Plymouth, and Worcester), parts of New Hampshire and all of Rhode Island. The fifth-largest Combined Statistical Area in the United States, Greater Boston is home to some 7.5 million people. A significant number of these individuals commute daily to the City of Boston, swelling the daytime population to more than a million people requiring police and fire public safety services

Boston's government is in the form of a Mayor and City Council. Per the City Charter, the Mayor, as chief executive officer, is responsible for drafting the budget but the final authority to approve the budget rests with the 13-member City Council. According to the City, it's FY09 budget is \$2.42 billion, of which the School Department's budget is \$833 million, or 34% of the total budget and 43.1% of Departmental appropriations for the City. [The Boston School Committee is responsible for operating Boston's public school system, which currently consists of 143 schools serving a population of approximately 55,000 students. The seven members of the School Committee are appointed by the Mayor, and the School Department's budget is set by the Boston City Council.]

The Boston Fire Department employs 1505 uniformed personnel, 67 civilian fire alarm personnel and 81 civilian personnel, for a total of 1653 employees. The management structure consists of a civilian Commissioner, Roderick Fraser, a newly-named Chief of Department, Ronald Keating, a Chief of Field Services and a Chief of Support Services, and two Deputy Commissioners, Karen Glasgow and Kathleen Kirleis. All of those individuals are excluded from the bargaining

^{4/} Although I benefitted greatly throughout these proceedings from the wisdom and experience of my Panel colleagues, the language of the Opinion which follows is the sole responsibility of the Chairman.

units represented by IAFF Local 718: firefighters, lieutenants, captains and fire alarm employees (Unit A) and District and Deputy Chiefs (Unit B). Some years ago, both of these units began to bargain as one and the collective bargaining unit covers both units. [non-fire alarm civilian employees of the Department are represented by AFSCME and SENA (Salaried Employees of North America)].

The Department currently is organized into two divisions and 11 districts. Each division is under the command of a Deputy Fire Chief and each district is under the command of a District Fire Chief. Companies, each of which is under the command of a Fire Captain, consist of the following classifications: engine company; ladder company; rescue company; tower company and marine unit. All companies are divided into four working groups, three of which are under the supervision of a Fire Lieutenant and the fourth under the supervision of a Captain. All companies are staffed with a minimum of one officer and three firefighters per shift. The City's minimum on-duty fire suppression force per tour consists of 267 uniformed personnel. Firefighters work a two-shift 42-hour per week schedule: a day tour of 8 a.m. to 6 p.m. and a night tour of 6 p.m. to 8 a.m. Firefighters are permitted to swap shifts with virtually unlimited discretion and most firefighters arrange to work 24 hour shifts.

Joint Labor-Management Committee Process and Procedures

In Massachusetts, General Laws, Chapter 150E governs public sector collective bargaining and Chapter 589 of the Acts of 1987 governs dispute resolution of bargaining impasses; including interest arbitration when bargaining, mediation or fact-finding prove unsuccessful. Within the meaning of those statutes, the Mayor is the "employer" with the responsibility for bargaining and arbitrating with the City of Boston's unions. But, pursuant to the statute, any awarded contract is subject to the retained funding discretion of the Boston City Council.

The public safety employee dispute resolution process of the Joint Labor-Management Committee ("JLMC"), under which the Panel conducted this arbitration, was most aptly described by its illustrious long-time Chairman, John T. Dunlop in 1999. Professor Dunlop, together with his esteemed Harvard colleague James J. Healey, literally wrote the books on bilateral collective

bargaining which have guided two generations of labor-management negotiators in the private and public sectors. He had this to say about the work of JLMC:

For more than [31] years the JLMC has followed a consistent and distinctive approach to dispute resolution over the terms of firefighter and police collective bargaining agreements in municipalities in Massachusetts. The agency and the process is tripartite, involving Committee members representing state-wide organizations of municipal officials, professional firefighters and police who have an active role in dispute resolution. These members have a capacity to understand and to communicate with parties directly in a dispute.

The Committee has developed a series of successive steps to encourage settlement, from staff investigation and mediation, senior staff involvement, committee member roles in settlement and involvement of the neutral chairman and vice chairman or the appointment of outside neutral fact-finders or arbitrators, including voluntary arbitration, with specific prescription of the form of arbitration and the issues to be resolved. The JLMC is enabled to shape processes and procedures to the characteristics of particular disputes. These diverse procedures were affirmed by Chapter 589 of the Acts of 1987.

These integrated procedures are not replicated in the processes of other states with specialized fire and police procedures. They are markedly different from the all-public Board of Conciliation and Arbitration that the JLMC replaced, in 1977 for fire and police disputes over the terms of collective bargaining agreements.

These processes have resulted in between 85 and 90 percent of all disputes before the JLMC being resolved by voluntary means rather than by imposed arbitration decisions. The Committee seeks always to enhance further the voluntary component of settlements in cases that come before it. This perspective of the Committee is well understood by parties in Massachusetts. (See, JLMC Twenty Year Report, 1978-1997; Report on Clause 3(a) to the Legislature, January 6, 1999, p. 6.)

In this perspective, the JLMC does not accept the view that an imposed arbitration procedure goes back to the original positions of the parties. Rather, imposed arbitration should be built on the negotiations and agreement-making of the parties even though no final agreement may have been achieved. That is the purpose of the various procedures the JLMC brings to bear in each case and its oft specification and limitation of the issues that may be presented in arbitration. The authorized negotiators are the best judges of their common interests, the interrelations among provisions, and the most appropriate terms and conditions to be incorporated in a collective bargaining agreement. In its choice of dispute resolution procedures, the Committee seeks to achieve the results that collective bargaining would have achieved had it not been frustrated.

The 2006 City of Boston Bargaining Round

In the City of Boston there are a total of 23 City collective bargaining units and 12 school units. Traditionally and typically, collective bargaining agreements between the City and its various labor organizations last for three year terms and all expire in the same year (the non-school contracts expiring on June 30 and the school contracts expiring on August 31). The most recent round of

bargaining was for successors to collective bargaining agreements that expired in June and August of 2006. The City and all city employee bargaining units, with the exception of the firefighters, eventually settled the 2006 bargaining round with four-year agreements (a one year 2006-2007 contract and a three-year 2007-2010 contract). Each of those agreements was modeled, in one way or another, on the so-called "teacher/public safety pattern": *i.e.*, a "give" by the City ("take" by the Unions) of revised residency requirements and retroactive increased employee base compensation totaling a 14% , in exchange for a "take" by the City ("give" by the Unions) of offsetting monetary and administrative concessions in the areas of health insurance carrier and coverage changes (including a deduction from retroactive wage payments for the amount of health insurance premium increases scheduled in the new contracts) and other individualized concessions unique to each union.

The 2006 "Public Safety Pattern"

The teachers were the first bargaining unit outside of the "civilian" units to reach a settlement. The four-year agreement, reached in March, 2007, included a 14% wage/benefit package in exchange for significant language give-backs sought by the School Department relating to greater management rights to select and remove teachers at underperforming schools. In public safety uniformed services, IAFF Local 718 represents the firefighters units in the Fire Department and four other unions represent four bargaining units of sworn police officers in the Boston Police Department: (1) the Boston Police Patrolmen's Association (approximately 1750 patrol officers); (2) the Boston Police Superior Officers Federation (approximately 300 uniformed sergeants, lieutenants, and captains); (3) the Boston Police Detectives Benevolent Society, Detectives Unit (approximately 276 detectives holding the rank of patrol officer); and (4) the Boston Police Detectives Benevolent Society, Superior Officers Unit (approximately 130 detectives holding the civil service rank of sergeants, lieutenants, and captains).

The City next settled with the Boston Police Patrolmen's Association ("BPPA") in June, 2007, in a four-year agreement that granted an improved 10-year rolling residency provision and base wage increases as follows: FY07, 2%; FY08, 2.5%; FY09, 3%; FY10 3.5%. In addition, the patrolmen received: 1.5% increase in hazardous duty compensation effective in July 2008; a .5%

increase in the weekend differential as well as a .15% increase in the "911 Response Specialist" differential in July 09, payable to everyone in the bargaining unit; a \$150 increase in the clothing allowance in January, 2008; and, to the 46% of officers not receiving Quinn Bill benefits^{5/}, a revised longevity benefit of \$2000 after ten years and \$4000 after twenty years, effective in July, 2007.

For these "gives" to BPPA, the City obtained "takes" of major cost saving changes in health insurance carrier and coverage; "civilianization" of 30 desk-bound police officer positions with redeployment of officers and withdrawal of associated grievances; cost-saving changes in out-of-state training; and, a change in the Police Department drug testing program to permit career-long random urine re-testing of any officer who tests positive for drugs for the remainder of the officer's career^{6/}. [It is noted that the Police Department drug testing policy does not call for random alcohol testing at all and the so-called "random" hair follicle drug testing protocol provides for the possibility of unannounced testing only during a specified and predictable time period window falling either side of the officer's birthday].

That 2006 public safety pattern-setting City/BPPA settlement was the paradigm for the City's subsequent agreements with the Detectives and Superior Officers Units, *i.e.*, the same residency revisions and the four-year 14% wage/differential/benefits increase pattern, with full retroactivity; in return for the health insurance changes proposed by the City, plus other significant cost-savings and/or administrative concessions by the unions [a superior unit agreed to eliminate the "ballistician" bargaining unit position, by attrition, and several police units engaged in settlement of grievances as part of their "give-backs"]. It also is noted with interest that the BPPA-EMS Division and the Boston Public Health Commission (a separate public employer whose budget is supported in part by the City) negotiated a five-year agreement (3-year followed by 2-year) covering emergency medical technicians (the "EMS Agreement"). That five-year EMS Agreement was modeled optically

^{5/} The state-wide legislated educational benefit for police officers with college-level degrees.

^{6/} Previously, a police officer who tested positive for illegal/prohibited drugs and returned after the initial 45 day mandatory suspension officer could only be subjected to random urine retesting for 36 months.

on the four-year “public safety pattern” established by BPPA, embellished by significant additional “gives and takes” for each side: extension of the police hair follicle drug testing program to cover emergency medical technicians, City collaboration on legislative action to significantly enhance pension benefits for emergency medical technicians, a wage freeze/deferral of the pattern base wage increase in the fourth year and a 1.5% increase in base compensation for the fifth year.

There appears to be no dispute that the BPPA “public safety pattern” agreements are the appropriate standard for evaluating the respective positions of the City and IAFF Local 718 in this firefighter interest arbitration case and the Panel used those settlements as the template for the attached Award. Just as in most communities, there is in the City of Boston a long-standing close relationship between the collectively bargained wages and benefits of Boston’s police officers and firefighters. This is reasonable and appropriate, because public safety employees performing the paramilitary work of fire prevention/suppression and crime prevention/detection have far more in common with one another than with the civilian employees of the City. The most obvious of these similarities is that their work is inherently dangerous and all too frequently leads to injury or death. By training, job description and duty, policemen and firemen respond to public safety dangers by racing toward incidents of violence and destruction from which everyone else is trying to escape. The 9/11 tragedy is only the most significant recent reminder, surely and sadly not the last, that the ultimate sacrifice and the last full measure of devotion for the welfare of the community is part of the job of uniformed public safety employees. By the same token, it is irrefutable that the safety and welfare of policemen, firefighters and the public requires that performance of this dangerous and difficult mission must not be compromised or impaired by illegal drugs or alcohol.

Police Officer/Firefighter Compensation Patterns: A Story of Comparability not Parity

The Boston firefighter and the Boston police officer contracts each have complex compensation structures. And the components of cash compensation vary significantly between the two groups. The patrolmen for example, receive 911 and weekend differentials, educational incentive benefits or longevity payments and separate night and day shift premiums. Firefighters and police officers have a common night work premium and longevity /TCAP benefits, but firefighters

receive none of the other referenced police payments. Over years of bargaining, differences in these collateral payments have prevented parity *i.e.* the same compensation levels between the two groups; and establishing policemen/firefighter parity is not the Panel's objective in this case. Yet there has been a clearly discernable pattern or, perhaps more accurately, a practice of comparative bargaining between these two unions and the City of Boston over many years. Although a settlement reached by one union or the other has not necessarily been followed in a rigid and literal fashion, and occasional deviations or exceptions have occurred for compelling critical reasons, there is no doubt that an agreement reached by the BPPA for a police patrolmen or by IAFF Local 718 for the firefighters has been highly influential in the determination of the other public safety agreement that followed.

The City of Boston and its unions representing police and fire public safety employees traditionally have participated in pattern or comparability bargaining; not because it always favors their positions but because they seem to recognize that over the long term it usually best serves the interests of the unions and the employees they represent, as well as the public and the City. The pattern principle allows labor leaders to agree to fair and reasonable settlements, with a level of comfort that they will not later be embarrassed or outdone by a richer settlement achieved by one of the other municipal unions. The practice of the Parties and the decisions of impartial arbitrators have consistently recognized that collective bargaining between the City of Boston and its uniformed public safety employees is premised generally upon mutual acceptance of the logic and necessity of pattern comparability. The Panel's attached Award reflects the primary principles of that precedent and practice: that pattern bargaining generally has served these parties well for decades and that exceptions or deviations above or below the pattern should be limited to unique, extraordinary, compelling and critical circumstances that cannot be addressed adequately without such appropriate adjustment of the pattern parameters. As discussed in greater detail, below, after each of the Parties withdrew one of their JLMC-certified issues from our arbitral jurisdiction, the Panel was able to reach a unanimous decision on all but one of the remaining unresolved issues by applying those primary principles to the facts and circumstances of this case.

The BPPA Police Pattern Fairly and Reasonably Applied to the Local 718 Firefighters

Article XX-*Compensation* in the Panel's majority Award provides the same 11% in retroactive base wage increases as received by the patrolmen, with an added 3 percentage point increase in hazardous duty pay to match the collection of increases in corresponding collateral payments for the police. Due to countervailing compelling circumstances unique to this case, *i.e.*, implementation of the groundbreaking truly random drug and alcohol testing policy in the context of the currently challenged economy, the Award makes balanced adjustments of the 2006 public safety pattern parameters by imposing a six-month wage deferral in Year 4 and delaying the effective date of a 2.5 percent base increase and Special Operations stipend until the very last day of the contract period. Altogether, the Panel's Award provides the same retroactive 14 percent increase over the four-year period as received by the patrolmen. However, given the Panel's six-month deferral of the last base wage adjustment in deference to contemporary economic conditions, the cost of our Award over its four-year term is approximately \$39 million, compared to \$41 million had the exact terms of the patrolmen's pattern been applied.^{7/}

The City's four-year 2006 public safety pattern offer to the firefighters in direct negotiations and mediation significantly included no change as to the TCAP, which was only belatedly added by the City to its proposed contract changes, along with a brand new belated demand for random drug and alcohol testing. The City now argues that whatever the origin and evolution of the TCAP (proposed by the City, accepted by the Union and modified by interest arbitration) and whatever the continuous treatment of the TCAP in voluntary bargaining and in interest procedures since its inception (never used by the parties or arbitrators to offset the value of pattern base wage increases),

^{7/} It should be noted that these cost estimates reflect the full value of the TCAP which automatically provides an extra increase in weekly pay. In applying the pattern settlement I find that these extra, previously negotiated increases are not incremental as a result of the award. This approach is wholly consistent with the long standing practice of the parties as well as all previous arbitrators. Moreover, the record shows that, like the firefighters' TCAP, the patrolmen receive automatic, built-in, extra increases as more offices attain higher levels of education and receive greater Quinn benefits. In that regard, the City reports that, between 2001 and 2007, Quinn benefits as a percent of pay rose from 7.6% to 10.6%. This extra annual .5% for policemen may rightly be considered the equivalent of the extra annual .5% received by firefighters' as a result of the TCAP formula.

the City is not foreclosed from seeking to negotiate a change. That is a tenable position in the abstract. However, that entitlement was not pursued by the City in the bargaining preceding its October 2008 submission of issues to the JLMC, was not listed among City-submitted issues for JLMC arbitration and was not certified by JLMC for our determination in these proceedings. With the Union's withdrawal of its JLMC-certified proposal for TCAP adjustment, the TCAP discount/offset issue advanced by the City in its proposed award is not even arguably before this Panel for determination; neither directly as originally urged by the City nor, in its final iteration by the City, indirectly by way of base wage pattern manipulation.

In the full context of this arbitration, the Panel does not compel the Union to expend bargaining capital to retain what has been previously established by voluntary negotiations, affirmed by neutral dispute resolution process and reaffirmed by continuous practice of the parties. On the other hand, the JLMC did certify for our consideration and determination the City's belated proposal for random drug and alcohol testing of firefighters, which is awarded by our Panel. In that regard, the Panel awarded what the City insisted was essential for effective Fire Department administration and advancement of the public welfare. The Union acknowledged such testing would be in the best interest of the parties, the employees and the public. The Panel awarded a truly random drug and alcohol policy based in urinalysis and breathalyzer testing, modeled on the U.S. Department of Transportation testing of airline pilots, railroad engineers and long-haul truck drivers but modified for Fire Department application. In the full context of this arbitration, the Union is entitled to additional economic consideration for this very significant concession to the City and the public welfare.

The ultimate challenge for the Panel was to fashion a compensation package for firefighters which reflects the essence of the 2006 public safety pattern in the economic climate of 2010; yet still provides fair value to the Union and employees for the City's achievement of its first truly random drug and alcohol testing program for public safety employees. In the final analysis we accomplished that goal by imposing a partial wage freeze for firefighters in the fourth year of the Award and end-loading on the last day of the Award period a Special Operations stipend (limited to a few hundred

firefighters for honing special skills critical in apocalyptic crisis conditions like 9/11), plus the final 2.5 % end-loaded “give”, on the last day of the contract term, in return for the City’s groundbreaking “take”, on the first day of the Award, of an unprecedented truly random drug and alcohol policy for public safety employees.

Appropriately, the terms of our Award serve to maintain and reinforce the established sensible relationship between firefighter and patrolman earnings. The City suggests that the straight-time earnings of firefighters already exceed that of patrolmen and that comparable increases will only continue the perceived problem. The Union argues that the City’s gross annual earnings data fail to account for the additional work hours performed by firefighters – approximately 231 hours per year. If hours of work are not germane in the comparative analysis, as the City maintains, then it is logical to consider total payroll, including overtime, without regard to the hours necessary to produce those earnings. On this basis the record indicates that “average total earnings” in 2008 for firefighters equaled \$89,270 compared to \$104,843 for patrolmen.

It is clear that, in making comparisons, statutory Factor (5) contemplates recognition of differences in hours worked. This factor calls upon the Panel to consider a comparison of wages, hours and working conditions of the employees involved in the arbitration proceedings with the wages, hours and working conditions of employment of other employees. Citing this factor and other reasons, the Union offered an array of comparisons between firefighters and patrolmen based on “total compensation per hour worked.” For the average or “composite” employee under each contract– hypothetical constructs reflecting the distribution of firefighters across the TCAP grades and patrolman across shifts and various educational attainment/longevity levels– the firefighter earned \$48.64 per hour compared with \$51.50 for the patrolman as of July 2006.

In reaching a competent conclusion with respect to the wage and benefits compensation comparisons between Boston’s firefighters and police officers, I was persuaded that differences in hours worked must be considered and taken into account. After applying our Award – including the 2.5 percent last-day increment for Local 718’s agreement to the award of the first ever truly random drug and alcohol testing program for City employees– the average firefighter will earn about \$59.34

per hour compared with \$60.00 for the average patrolman. Without that 2.5 percent the firefighter would be at \$57.80 per hour. On that basis, even including the last day *quid-pro-quo* increment for "Gold Standard" truly random drug and alcohol testing of firefighters The Panel Award does not distort or dishonor the public safety comparability pattern principle or leapfrog the firefighter over the police officer.^{8/} (Emphasis added).

A State of the Art Truly Random Drug and Alcohol Testing Program is not Cost-Free

The concept of *quid pro quo* ("this for that"), economic recognition ("give" by the employer/"take" by the employees) in exchange for significant managerial/administrative concessions ("give" by the employees/"take" by the employer), is well established in labor-management collective bargaining negotiations. In that connection, historic and contemporaneous public safety bargaining in the City of Boston has granted significant economic recognition in excess of the basic compensation pattern for a union's agreement to drug testing programs which are not truly random, which do not include random alcohol testing and which are far less sophisticated and comprehensive than the U.S. DOT- model random drug and alcohol testing of firemen established by this Panel's Award.

Based on the factual record evidence and impartial analysis, uninfluenced by rhetoric, proactive disclosures, orchestrated disinformation campaigns and manufactured factoids, I am persuaded the cost of the Panel's Award of the 2006 public safety pattern, as modified by a six-month wage deferral in Year 4, the limited last day Special Ops stipend and the last day increment of 2.5% for the truly random drug and alcohol policy, is \$39.4 million over the four-year term. That calculation is premised on the following assumptions:

^{8/} On the question of the patrolmen's pattern it is noted that a reduction in State funding prompted the City to cut Quinn benefits for police officers effective January 16, 2010. The City asserts that this change cheapens the patrolmen's pattern. However, the unilateral legislative watering down of Quinn benefits is not, by any reasonable or realistic calculation, part of the negotiated 2006 public safety pattern. This prospective reduction in pay was not even contemplated by the parties when balancing their interests back in 2007 in reaching the BPPA agreement. More importantly, the BPPA is currently in negotiations over the subject, and the final disposition of the Quinn benefits issue is uncertain at best. If Quinn benefits are not restored or replaced in kind, the Parties likely will take this factor into account in the next round of bargaining and the Panel's denial of Local 718's proposed fifth year accommodates this potentiality.

- Reflects full TCAP effect.
- Net of retroactive health insurance change concession (\$2.5 million).
- Excludes savings due to sick leave which is assumed to become effective prospectively on July 1, 2010.
- Excludes savings due to out-of-grade legislative modification (\$4.5 mil in year 4 according to the City).
- Does not include overtime or variable fringe (pension) costs, as neither the City nor the Union included such data for record analysis.^{9/}

Based on the same set of assumptions, had the Panel simply applied the unmodified BPPA 2006 round compensation pattern to the Local 718 unit, without any compelling and critical adjustments in Year 4, the cost over the same four-year term would have been \$41.1 million.

The foregoing \$39.4 million vs. \$41.1 million figures reflect the “incremental” cost of applying the terms of the BPPA pattern to the Local 718 pay base -- *i.e.* the value of compensation increases over *status quo*. With respect to TCAP effect, how does this costing methodology employed by the Panel compare with parties’ practice and established arbitral precedent? Without exception, this is exactly how pattern agreements were applied in the past by the parties and how Panel Chairman Lawrence Holden applied the police pattern to Local 718 in his July 2004 JLMC award. Similarly, in describing the most recent round of bargaining agreements (2003-2006) which preceded the 2006 round, City chief negotiator John Dunlap told the Panel that the total increases for both prior contracts had the “exact same economic parameters”, in that they both provided 10.6% total increases over the term. In short, neither these Parties nor any JLMC Panel has ever degraded the value of a base compensation increase to the firefighters to account for the TCAP effect on pay, as the City has proposed in this case.

Both the BPPA and Local 718 Agreements are open for renegotiation effective July 1, 2010. Assuming *status quo*, the cost of the Panel’s Award in FY 11 -- *i.e.* “new money”(money over pre-award *status quo*) is \$23.1 million, calculated based on the following assumptions:

^{9/} The costing numbers in the record produced by the respective economic expert witnesses of the parties were similar in many respects but both exclude overtime. This leaves the Panel with no mutually endorsed data for calculating overtime costs of the Award. There is however, City Exhibit 40 which gives us the gross annual earnings for FY 2008 only but does show base pay, overtime and other details. From this we can derive an “overtime factor” of 13.5% of base. If that factor is added to our cost projection the award over the 4-year term of \$39.4 mil, the result is \$44.7 mil. Of necessity, that estimate assumes O.T. is constant over the 4 years but since the “collective bargaining” reserve through FY 10 is \$48.5 -- the key number cited by the Union in UX 31J -- the City concedes that it has the ability to pay but lacks the will to pay.

- Net of concessions on health insurance (\$1.5 million) and sick leave (\$248,000).
- Reflects 2.5% base increase and Special Operations stipend effective June 30, 2010.
- Reflects full effect of TCAP.
- Excludes savings due to out-of-grade legislative modification (\$4.5 mil in year 4 according to the City).

However, \$19.5 million of that \$23.1 expense in FY 2011 is simply the common going forward cost of continuing of the 2006 round 4-year public safety pattern wage increases the City agreed to with the BPPA for police officers and awarded by this Panel to Local 718 for the firefighters. It follows that the net increase of \$3.7 million in FY 2011 “new money” under our Award represents the cost of the end-loaded last day 2.5% *quid* for drug testing and the value of the end-loaded Special Ops stipend. Thus, if the police settlements are deemed by the City to be affordable and appropriate under all of the circumstances, then the Award of the Panel also is both affordable and appropriate.

I have given considerable thought to the ability to pay factor and come to the conclusion that the testimony of both financial experts— Ms. Lisa Signori for the City and Mr. Kevin Dasey for the Union — was inconclusive. It appears that both were trying to establish extreme positions which were unnecessary given (1) the cost of the Award, (2) presence of adequate CB reserves and (3) the City’s fundamental position that it had the ability to meet the cost of even the full Union proposal, let alone the Panel’s significantly less expensive Award.

Given our denial of the Union’s proposed fifth year, it is beyond our purview to comment further about the FY 2011 budget, except to observe that all the City settlements, including the BPPA pattern, also have an impact on FY 2011 and beyond. Further, since there is really nothing in the Panel’s record on that subject except for a few passing statements in the City’s reply brief, we rely on testimony of the City’s primary financial witness that the City has budgeted and reserved monies which are available to fund the Panel’s Award. That undisputed fact is fundamental in our analysis of statutory Factors 1 and 2 in this case.

With regard to the DOR free cash certification issue, in the final analysis the disagreement between Ms. Signori and Mr. Dasey regarding the size of the free cash reserve is irrelevant. Dasey testified that available funds from all sources is \$456 million, while Signori says \$125 million *i.e.*, the DOR certified free cash \$121mil. minus \$45 ml. appropriated, plus \$49 mil. in collective bargaining reserve. (Signori testimony at TR 3094-3096). Even if, *arguendo*, Signori’s version is

available cash and even if, *arguendo*, Signori's version is more accurate the point is that the undisputed amounts are more than adequate to pay for the Panel Award through not only FY 2010 but also through FY 2011.

Ability to pay analysis is not dependent just on how much cash the City has, but also depends on how it chooses to use available funds. The City implicitly acknowledged that the major breakthrough of a random drug and alcohol test for firefighters has a certain added value worth something more than "pattern" when it offered the firefighters 14% fully retroactive without any wage deferral, even before it added the drug and alcohol testing demand to its list of essential City objectives in this round of bargaining. The Panel does not disregard or take lightly the unanticipated financial strains on the City of Boston in this time of national economic turmoil. But the City's bargaining strategy and proposed award reflect a calculated effort to gain firefighter random drug and alcohol testing without paying the fair and reasonable cost of that significant concession. The City has the ability but lacked the will to pay a reasonable *quid pro quo* to the fire fighters for the City's first truly random drug and alcohol testing program for City public safety employees.

In this round of bargaining, the City obtained what it sought and more in cost-savings and administrative concessions from the firefighters through our attached Panel Award, which disposes of all JLMC-certified issues in dispute which were subject to our jurisdiction and authority. Fully aware that my metaphors are shamelessly mixed, I conclude that the City's proposal to skim the frosting, pocket the cake and avoid paying the fair, reasonable and affordable value of the meal is a hound that will not hunt. To hold otherwise would ascribe zero value to a milestone drug and alcohol policy of enormous, lasting and arguably "priceless" benefit in terms of human lives of firefighters and members of the public saved or rescued. To hold otherwise would send the message that in the 2006 round of bargaining the firefighters alone should bear the burden of a faltering economy.

In my considered opinion, for reasons stated herein, the attached four-year Award Of the Panel, unanimous except for the Article XX-*Compensation* adjustments, is fair, reasonable, affordable and fully consistent with the record evidence, the statutory requirements, the public welfare and the recognized principles of pattern-comparability which have characterized the collective bargaining relationships of the City of Boston and its public safety unions for many decades.

A handwritten signature in black ink, appearing to read "Dana Eischen", written over a horizontal line.

Dana Edward Eischen

Signed at Spencer, New York on May 3, 2010

On this 3rd day of May 2010, I, DANA E. EISCHEN, do hereby affirm and certify, as Impartial Chairman of the JLMC Tripartite Arbitration Panel and upon my oath as Arbitrator pursuant to Section 7507 of the Civil Practice Law and Rules of the State of New York, that the duly authorized Panel executed the attached instrument and that it is the true Award of the Panel in JLMC Case No. O8-02F, which I hereby issue on behalf of the Panel to the JLMC on this date.