



May 18, 2010

To: Michael Ross, President
Boston City Council

From: Thomas A. Kochan

RE: Analysis of and Commentary on the Firefighter Arbitration Award

You asked me to provide an independent review of the firefighter arbitration award and an analysis of how the award relates to the negotiated settlements of the police and other city bargaining units. I do so below and then add some options for moving forward from here.

Analysis of the Award

Wages

Chart 1 summarizes the wage increases awarded in arbitration for the contract running from July 1, 2006 to June 30, 2010 and compares them to the wage increases negotiated in the police contract for this same time period.

The award increases basic wages by 2% for July 2006-June 2007, 2.5% for July 2007-June 2008, 3% for July 2008-June 2009, and 3.5% effective in mid-contract year January 2010-June 2010. The award then increases wages by an additional 2.5% on June 30, 2010, the last day of the contract, in return for imposing a new comprehensive random drug and alcohol testing program. Thus, the award follows the pattern of base wage increases in the police contract, with two exceptions: (1) it defers the 3.5% increase in wages provided in the fourth year of the agreement by six months and therefore effectively reduces the cost of this increase for that year by half, and (2) it provides an additional 2.5% increase on the last day of the contract that effectively increases firefighter wages for 2010-2011 beyond those granted in other settlements.

In addition to the increases in base wages, the award provides a 1.5% hazard differential increase in 2008 and in 2009. These closely approximate the 1.5% increase police received in 2008 for hazardous duty pay, and 2009 increases of 0.5% in the weekend differential, and 0.15% increase in their “911 Response Specialist” differential.

Both the police settlement and the firefighter arbitration award included several benefit reductions. Both provided for increases in the percentage of health insurance premiums paid by employees and the elimination of a Master Medical Insurance plan option.

The issue of comparability is complicated because of various differences in the compensation structures of police and firefighters. One main complication is how to account for longevity payments due police and firefighters. Slightly over half (54%) of police officers receive annual payments through a state law called the Quinn Bill that compensates police officers for obtaining credits toward advanced degrees. Those with at least ten years of service who do not receive Quinn Bill benefits receive cash longevity awards. Firefighters with five or more years of service receive 0.5% annual longevity increases. These longevity and Quinn Bill increases precede both the firefighter arbitration award and the 2006-2010 police settlement, were not changed in these negotiations, and, therefore, were not included in the arbitrator’s award. However, they are included in the arbitrator’s estimates of the cost of the total increases and in the Mayor’s estimates of the cost increases discussed below.

Both the arbitrator and the Mayor estimate that, in percentage terms, the award translates into an increase in wage cost outlays over this four year period of approximately 14% (13.7% is the city’s exact estimate). This approximates the city’s estimate of a 14.2% wage cost outlay for police patrolmen over these same four years.

Thus, my bottom line assessment is that the wage increases awarded ***for the contract years 2006-2010*** are consistent with the pattern of police wage settlements for this same time period.

As noted above, the arbitration award also provides a 2.5% increase on the last day of the contract. In effect this 2.5% provides a 2.5% increase in wages for FY 2011. It is this increase that would continue in 2011 and thereafter that moves the firefighters ahead of police and other city employee units and increases the total long term cost of the award.

The dollar cost of the wage increases for the **four year** agreement is calculated by the arbitrator, net of savings in health insurance benefit reductions, to be \$39.4 million. The Mayor's estimate of these wage increases using the same data available to the arbitrator for these four years is slightly higher, \$41.7 million. This difference is mostly due to different assumptions about how much of the reduction in insurance benefits can be achieved by the city retroactively. For the purposes of the Council's decision, it is safe to conclude that the Mayor's estimates of the cost of the wage increases for the four years and the arbitrator's estimates are essentially equivalent.

The Mayor also provides an additional calculation of the cost of the wage increase **inclusive of overtime** (the arbitrator did not have these data available for his calculations). Including overtime payments due firefighters for the 2006-2010 contract years increases the Mayor's estimate of the four year contract to \$48 million. (This does not alter the size of the percentage increase since the appropriate percentage increase calculation would start from actual base wages plus overtime paid in the last year of the prior contract).

Adding the cost of the **fifth year** increase leads the Mayor's office to estimate that that total cost of the awarded wage increases (plus expected overtime costs) **projected out over the five years is 19%. Adding together the increases in wages and overtime (projected at past average rates) produces a total estimated cost over the five years of \$74 million.** This is the basis for the statement in the Mayor's April 24th and May 7th letters to the City Council indicating the total "value" of the award is \$74 million.

Unfortunately, the presentation of these various numbers has led to some confusion between the four and five year costs of the award so it is worth repeating these numbers:

The dollar outlay for the four years of the contract amounts to approximately a 14% increase costing approximately \$40 million in wages or \$48 million in wages and overtime pay.

The dollar outlay that will occur over the five years, assuming no other changes in wages are made for the fiscal year beginning July 1, 2010 would be 19%, costing approximately \$64 million in wages and \$10 million in overtime for a total value of \$74 million for wages and overtime pay over these five years.¹

Drug and Alcohol Testing

The arbitration award also introduces for the first time a comprehensive random drug and alcohol testing program. The unanimous decision of the arbitrators to award random drug and alcohol testing is a bold and unusual feature of this arbitration award. There is a longstanding norm in the arbitration profession that makes most arbitrators reluctant to impose new policies that the parties could not negotiate on their own. The theory behind this norm is that the parties know their specific needs and circumstances better than the arbitrators and therefore new policies such as these should be negotiated jointly rather than imposed by a neutral third party. In the case of the Boston firefighters, however, despite clear evidence of the need for such a policy, the parties could not reach a negotiated agreement on drug and alcohol testing. Therefore, the significance of the arbitration decision on this matter should not be underestimated. The fact that it is a unanimous decision of the three arbitrators is also significant and suggests there is a shared commitment to this new policy on the part of the firefighters and the city. I will return to this point below when I discuss options for using this commitment to turn a new page in labor management relations between the firefighters and the city management.

A central question in this case is whether or not firefighters should be compensated for the “value of this concession” as the arbitrator describes his rationale for the 2.5% wage increase.

¹ The Mayor’s \$74 million estimate assumes overtime in 2011 will continue at the same rates as in prior years.

The arbitrator justifies the wage increase as being consistent with a traditional labor relations practice of providing compensation for a concession by employees that has considerable value to the employer. To do otherwise in his view would allow the city to “gain firefighter random drug and alcohol testing without paying the fair and reasonable cost of that significant concession.” (p. 22 of the arbitrator’s opinion).

There is a longstanding conventional practice in collective bargaining and in arbitration to “buy out” practices that continue to have value to one party but have either outlived their value to the other or impose significant operational costs. The classic example of this is a work rule that was established for good reasons at one time but, given technological changes or other changes in organizational practices, no longer makes sense or that now impedes operational efficiency.

The question is whether this conventional logic should be applied to random drug and alcohol testing for public safety personnel (or other employees). As noted above, from a traditional labor relations and past practice perspective the answer might well be yes. Most labor relations experts will recognize that providing a cash payment as a tradeoff for implementing this new program is consistent with the general norm.

Moreover, although the evidence on this point is contested by the city, it appears that the city acknowledged this practice when non-random drug testing was introduced into police contracts in 1998, the same year the city agreed to support passage of the Quinn Bill. However, the police patrolmen also agreed to a zero wage increase for 1998 and 1999 in those negotiations. Similarly, a 2% increase in hazardous duty pay was introduced into the Emergency Medical Technicians’ (EMTs) contract in 1995, when language was included that called for the parties to commit to jointly design a drug testing program. The anticipated joint effort did not materialize and non-random drug testing was not implemented until a provision requiring it was included in the 2004 contract. In that contract the city also agreed to enhance EMT pensions by shifting them from the Group 2 to Group

4 plan that covers police and firefighters. The EMTs also agreed to a below pattern (1.5%) wage increase for 2004.

This history illustrates that most negotiations involve multiple tradeoffs that make it difficult to assign any specific quid pro quo or value to acceptance of drug testing. It is clear, however, that such tradeoffs are part of bargaining history in the city.

There are, however, also different factors at play at this point in time that argue against applying the conventional labor relations norm to drug and alcohol testing:

(1) The drug and alcohol testing program is designed to monitor and eliminate illegal behavior that has been documented to be a problem within the fire service. One might therefore ask whether employees should be rewarded for simply meeting their legal and contractual obligations.

(2) Ensuring all firefighters are free of drugs and alcohol at work clearly benefits both the public and firefighters. Every firefighter and his or her family benefits from knowing that fellow firefighters are drug and alcohol free when performing their essential duties side by side in dangerous situations.

Options for Moving Forward

The above analysis covers the questions you asked me to address. What follows are some reflections that I've gained in the process of examining the data and talking with the parties about these issues. I present them here as a professional in this field who values deeply collective bargaining and effective dispute resolution procedures, including arbitration. They are meant to provide options for both bringing this protracted dispute to a fair resolution and better positioning labor and management leaders to work together in the public interest and in the interests of the firefighters and other city employees.

Before generating options for moving forward it is useful to identify the interests of each party in the issues at hand.

Firefighters:

1. The firefighters believe they are entitled to receive some value for accepting the new drug and alcohol policy, consistent with conventional labor relations practice and what they interpret as past bargaining practice with police and EMT bargaining units.
2. The firefighters would benefit from having the wage increase for 2011 paid at the time these wages are earned rather than waiting years for retroactive payment of negotiated or arbitrated wages as has been the case for the last four years.

City (Mayor's Office):

1. The Mayor believes the city and public should not have to pay for public employees to accept drug and alcohol testing.
2. The Mayor's office is concerned that the 2.5% wage increase for 2011 is too costly given the city's fiscal situation and that it will set the floor for wage increases with all other city bargaining units for 2011 negotiations.

Some observations:

My conversations with city and firefighter officials have made it clear that a straight up/down vote by the Council to fund/not fund the arbitration award will neither end this dispute nor put the parties on a course to transforming what is now a dysfunctional labor-management relationship into one that gets the parties working together to, among other things, ensure the new drug and alcohol policy realizes its full potential benefits to the city, the public, and the firefighters.

Instead, what is likely to occur is a protracted period of litigation that further delays implementation of a drug and alcohol program and payment of retroactive or prospective wage increases to the firefighters.

Given that the wage increases for the four years of the contract are consistent with increases negotiated by the police and that the drug and alcohol testing policy is clearly in the public interest, the issue comes down to what to do with the 2.5% increase going forward on July 1, 2010.

Recall that this 2.5% increase was awarded by the arbitrator in return for adoption of random drug and alcohol testing. Regardless of one's judgment of whether this was appropriate or not, it would not be reasonable for all other city units to see this 2.5% as their wage benchmark for next year. Those bargaining units (essentially the police and EMTs) that already have a drug policy presumably negotiated what they considered fair terms for that policy when they agreed to it. Those without such a policy would need to consider whether this particular comprehensive drug and alcohol policy is appropriate for their bargaining unit.

Some Potential Options for Consideration

To avoid protracted litigation and/or further delays in resolving this dispute, the city and the union could voluntarily consider several options, singly or in combination, for addressing their interests and the interests of the public. These might include such options as:

1. Agreeing that the 2.5% will be the only increase in wages for 2011 and negotiating other contractual changes that reduce labor costs in a clear and measurable way, and/or;
2. Deferring the 2.5% increase until six months into the fiscal year 2011 thereby cutting the cost of the increase in half.

Both of these options would have the effect of creating a five year contract. This could also provide the parties the time and opportunity to begin working together in implementing the drug and alcohol policy in ways that achieve the further

savings in enforcement, rehabilitation, and/or associated health and disability costs that the firefighters believe are possible.

Alternatively, the Council could take unilateral actions that have the effect of lowering future labor costs, assuming options for doing so can be identified that are within the Council's discretion.

Taking one or some combination of these actions would:

1. Preserve the wage pattern for 2006-2010, and if combined with one or more options for lowering the cost of the 2.5% increase for 2011 make it clear that 2.5% is not a benchmark or standard for 2011 wage increases for all other city units. Other units would be challenged to provide equivalent labor cost savings to achieve a 2.5% wage increase.
2. Shift the debate over whether or not the 2.5% is an appropriate or inappropriate compensation for drug and alcohol testing to the question of how reduce the real costs of that increase in base salaries in the future.
3. Avoid the costs of negotiation and potential arbitration in 2011 and provide firefighters with wage increases in the time period they are actually earned, thereby eliminate the uncertainty associated with the protracted negotiations of the past.
4. Hold management and labor leaders accountable for working together to turn around what is now a dysfunctional relationship to better serve the public and meet the needs of firefighters, their families, and city officials.

**Comparison of Police and Firefighter Wage Increases:
July 2006-June 2010**

Base Wages

Year	Police	Firefighters
July 2006-June 2007	2%	2%
July 2007-June 2008	2.5%	2.5%
July 2008-June 2009	3%	3%
July 2009-June 2010	3.5%	3.5% due January 1, 2010 2.5% due June 30, 2010

Other Increases

Police:

- 2008: 1.5% Hazardous Duty Differential
- 2009: 0.5% Weekend Differential
- 0.15% 911 Response Specialist Differential

Firefighters:

- 2008: 1.5% Hazardous Duty Differential
- 2009: 1.5% Hazardous Duty Differential