

ARBITRATION OPINION AND AWARD  
American Arbitration Association  
Case Number 14 L 360 0245 02 W

In the matter of an Act 111 Interest Arbitration Between the

**CITY OF PHILADELPHIA**

**AND**

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

**The Arbitration Panel**

Thomas W. Jennings  
*Arbitrator for FOP*

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

Alan A. Symonette  
*Chairman and Impartial Arbitrator*

**Appearances**

Kenneth M. Jarin  
Brian D. Pedrow  
Anne Barden  
Charles J. Grant  
Fredrick Pasour  
Gregory Vrato  
Shannon D. Farmer

*For the City of Philadelphia*

Gary M. Lightman  
Stephen Holroyd

*For the FOP*

Issued: July 25, 2002

## **I. INTRODUCTION**

The City of Philadelphia (hereinafter the “City”) and the Fraternal Order of Police, Lodge No. 5 (hereinafter the “FOP”) are parties to a collective bargaining agreement which governs the wages, hours and working conditions of the City’s police officers. In December 2001, the parties commenced bargaining with the exchange of proposals. When collective bargaining did not result in a resolution of the disputed issues, the above-designated Panel of Arbitrators (hereinafter the “Panel”) met pursuant to the authority contained in the Policemen and Firemen Collective Bargaining Act, 43 P.S. § 217, et seq. (hereinafter “Act 111”), as modified by the Pennsylvania Intergovernmental Cooperation Authority Act for Cities of the First Class, 53 P.S. § 12720.101, et seq. (hereinafter the “PICA statute”).

Hearings were held on April 3, May 1, 11, 22, 23, 24, June 8, 9, 12, 21, 22, 24 and 25 in Philadelphia, Pennsylvania, at which times the Panel heard testimony and received documentary evidence. In addition, the parties submitted to the Panel their respective post-hearing briefs and rebuttal evidence.

The Panel considered numerous issues submitted by both the FOP and the City. The Panel was charged with the responsibility of rendering an Award which would govern the terms and conditions of employment of the City’s police officers. The prior contract between the parties had a termination date of June 30, 2002.

During the hearings, the Panel heard testimony from more than 40 witnesses. The Panel also considered more than 550 exhibits introduced into evidence by the parties in support of their positions.

The Panel met in executive sessions on July 18, July 22, and July 25, 2002, regarding the evidence and arguments that had been submitted and raised.

## **II. BACKGROUND**

This Act 111 interest arbitration is the fifth conducted between these parties since the passage of the PICA statute, which created the Pennsylvania Intergovernmental Cooperation Authority (“PICA”). PICA was intended and has functioned to aid the City in restoring and maintaining fiscal discipline.

The PICA statute was enacted in June 1991 in response to the concern of the Pennsylvania General Assembly over Philadelphia’s dire financial condition. The statute gives Philadelphia the legal tools to eliminate its budget deficit and to foster sound financial practices on an ongoing basis.

The PICA statute requires that, at least annually, the City develop a Five-Year Financial Plan which provides for balanced budgets and must be reviewed and approved by the PICA Board. The City is further required to undertake “a review of compensation and benefits” and to ensure that expenditures, including those for employee wages and benefits, are balanced

with revenues. 53 P.S. § 12720.102(b)(1)(iii)(H); § 12720.209(b) and (c). Under the PICA statute, a failure on the part of the City to comply with such requirements would result in the mandatory withholding of state funding and tax revenues designated for the City.

Most relevant for this Panel, the PICA statute also sets forth a number of specific requirements for Act 111 collective bargaining and interest arbitrations involving the City of Philadelphia. Specifically, the City must execute collective bargaining agreements in compliance with the then operative Five-Year Plan. Further, Section 209(k) of the PICA statute, entitled “Effect of Five Year Plan on certain arbitration awards,” requires that prior to rendering an Act 111 award which grants a pay or fringe benefit increase, the Panel must consider and accord substantial weight to (1) the approved financial plan; and (2) the financial ability of the City to pay the cost of such increase in wages or fringe benefits without adversely affecting levels of service. 53 P.S. § 12720.290(k)(l).

During the course of this Act 111 proceeding, both parties argued forcefully and convincingly regarding these financial considerations as outlined in the PICA statute. In making this Award, the Panel has carefully reviewed and considered the sworn testimony of the witnesses and the exhibits submitted by the parties, as well as the post-hearing submissions of both parties in support of their respective positions. This Panel has duly considered the parties’ arguments, and has accorded the City’s financial concerns the substantial weight required by law.

What follows is the Panel's award:

### **III. AWARD**

#### **1. Term**

This Award shall be effective for two (2) years, from July 1, 2002 through June 30, 2004.

#### **2. Wages**

A. Effective July 1, 2002, there shall be a three percent (3%) across-the-board increase in the Police pay schedule.

B. Effective July 1, 2003, there shall be a three and one-half percent (3.5%) across-the-board increase in the Police pay schedule.

#### **3. Stress Pay**

Effective July 1, 2003, the four percent (4%) stress pay currently received by bargaining unit members shall be included in pension calculations, sick leave, vacation pay, holiday and other AL leave.

#### **4. Health and Welfare**

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

A. Effective July 1, 2002, the City's monthly dollar contribution to the Joint Board shall be increased to \$770.00 per month per eligible employee and eligible retiree.

B. Effective July 1, 2003, the City's monthly dollar contribution to the Joint Board shall be increased by an additional ten percent (10%) to \$847.00 per month per eligible employee and eligible retiree.

C. The City shall make two one-time payments, each in the amount of five million dollars (\$5,000,000) to the Joint Trust. The first payment shall be made within thirty (30) days of the issuance of this Award. The second payment shall be made shall be made on or about July 1, 2003.

D. The Board of Trustees for the Joint Program shall be increased by one (1) member which shall be appointed by the City.

E. The Panel recognizes that the Joint Board, LEHB and the DOP have used their best efforts to contain costs. Yet, the escalating costs of health care are of significant concern to both parties, and it is incumbent that the parties address this concern. The Panel believes that the Board of Trustees is in the best position to address these issues during the term of this Award and, therefore, directs that the Board of Trustees shall undertake serious analysis and consideration of cost containment strategies for the medical plans and dental,

optical and prescription plans with the objective, among others, of identifying plan design and benefit structure modifications that will reduce the cost to the City of providing health care benefits. To achieve this objective, the Panel directs that no less than two (2) meetings per year of the Board of Trustees shall include an in-depth discussion of alternative cost containment strategies.

#### **5. Pensions and Retirees**

The City will continue the program to provide the annual health care and/or pension benefits for retirees of the FOP by making the annual payments to the Retiree Joint Trust created in paragraph 6, "Pensions and Retirees," of the 1992-1996 Act 111 Interest Arbitration Award in accordance with this paragraph. The first such payment, in the amount of two million and five hundred thousand dollars (\$2,500,000), shall be made within thirty (30) days of the issuance of this Award. The second such payment, in the amount of three million dollars (\$3,000,000), shall be made on or about July 1, 2003. Except as modified by this Award, these payments shall be subject to the same terms and conditions provided in paragraph 6 referenced above.

#### **6. Grievance and Arbitration Procedure**

The "Information to FOP" provisions of the existing contract shall be amended to add the following new subparagraph: "When back pay is awarded in a grievance arbitration, the City will provide the FOP with a copy of the

distribution sheet and will keep the FOP informed of issues concerning compliance with the Award.”

## **7. Examinations**

The “Examinations” provisions of the existing contract shall be amended to provide that: “In the case of a second certification of an eligible from a promotional list, the employee, if not selected, shall be provided with a statement of the reason for non-appointment and shall be granted, upon request, an interview with a responsible official regarding his/her non-appointment.”

## **8. Grievance Definition**

Article XX.A.2 (Grievance and Arbitration Procedure) shall be amended to read as follows:

The grievance and arbitration procedure set forth herein shall include within its subject matter only alleged violations of Act 111 Awards and this Contract, except for Article V.I. (Appearances to Answer Charges Against Oneself (If the issue does not involve discipline)) and Article XII (Jury Duty and Court Duty).

## **9. The Existing Agreement**

Except as modified by this Award, all other terms and conditions contained in the collective bargaining agreement between the City and the FOP

in effect from July 1, 2000 and June 30, 2002 shall remain in effect. All other proposals and requests for change submitted by the City and the FOP to the Panel, which have not been specifically addressed in this Award, were considered and have not been awarded.

\_\_\_\_\_/s/ Alan A. Symonette\_\_\_\_\_  
Alan A. Symonette, Impartial Arbitrator

Date: July 25, 2002

\_\_\_\_\_/s/ Thomas W. Jennings\_\_\_\_\_  
Thomas W. Jennings, FOP Arbitrator

Date: July 25 2002

Agree  
 Dissent

\_\_\_\_\_/s/\_H. Thomas Felix, II\_\_\_\_\_  
H. Thomas Felix, III, City Arbitrator

Date: July 25, 2002

Agree  
 Dissent as to paragraph 4, Health and Welfare. Dissenting opinion to be filed.