

COMMONWEALTH OF MASSACHUSETTS
THE JOINT LABOR-MANAGEMENT COMMITTEE
FOR MUNICIPAL POLICE AND FIRE

Richard G. Higgins, Arbitrator

**IN THE MATTER OF THE INTEREST
ARBITRATION BETWEEN**

**CAMBRIDGE POLICE PATROL
OFFICERS ASSOCIATION AND
CITY OF CAMBRIDGE**

AND

**CAMBRIDGE POLICE SUPERIOR
OFFICERS ASSOCIATION AND
CITY OF CAMBRIDGE**

JLMC-96-3P

JLMC 05-42P

ARBITRATOR'S AWARD

<i>Issue</i>	<i>Award</i>
Wage	7% — 7/1/94 0% — 7/1/95 3.0% effective and retroactive to 7/1/96
Hazardous Duty Stipend	Effective and retroactive to 7/1/94 — \$ 110/month for each member of CPPOA and of CPSOA. Increase to \$195/month effective and retroactive to 7/1/95. Increase to \$250/month effective and retroactive to 7/1/96. These annual recurring payments shall be included in the base pay only to the extent that the same benefit, awarded by Arbitrator Boulanger in the Firefighters Interest Award, was so included.
Grievance/Arbitration City Proposal #3 to CPPOA and CPSOA	I award the city's proposed language as amended by me in this document.
All other proposals of both the CPPOA and CPSOA and the City of Cambridge	All other proposals are denied in favor of current contract language.

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JLMC-95-42P

On April 26, 1996, the Joint Labor-Management Committee for Municipal Police and Fire appointed Richard G. Higgins as Arbitrator in the above-referenced Interest Arbitrations. There were ten (10) hearing days in this case. The hearings commenced on July 22, 1996 and ended on February 3, 1997. The parties agreed to an extension of the time established for submission of briefs. I received the entire brief from the Associations and the City's brief on economic issues in mid-May, 1997. The City submitted a series of briefs on language issues, with the final item being received on July 7, 1997.

These proceedings were conducted under the provisions of Chapter 569 of the Acts of 1987 as amended. This arbitration was initiated by means of a March 20, 1996 pair of memoranda in which the respective parties agreed to submit the issues remaining open in their negotiations to "final and binding" interest arbitration. The memorandum covering JLMC-95-42P involving the City and the Cambridge Police Superior Officers Association (hereinafter CPSOA) was submitted as Joint Exhibit 2. The memorandum involving JLMC-96-3P between the City and the Cambridge Police Patrol Officers Association (hereinafter CPPOA) was submitted as Joint Exhibit 4. In those memoranda, the parties agreed to limit the issues placed before the Arbitrator to the issue of Economics/Wages, and five other issues. The specific issues will be listed below.

At the initial Arbitration hearing, the parties agreed to merge their presentations on the two separate cases and to have evidence or argument presented in one case available to the Arbitrator for consideration in both cases. In their written closing briefs, the parties have continued this format of merging the two cases for presentation purposes. Given this history, I have determined that it is appropriate to issue my opinion and award in these cases as a single document.

ISSUES—CITY AND CPSOA NEGOTIATIONS

CPSOA Issues

1. Economics

- A. Add hazardous duty differential in the amount of \$100/month effective and retroactive to July 1, 1994. Such differential shall be paid in the first pay period of each month.**
- B. Increase night differential by \$7.20/week effective and retroactive to July 1, 1994.**
- C. Increase current weekend differential by \$20/week effective and retroactive to July 1, 1995. Provide weekend differential of \$20/week effective and retroactive to July 1, 1995 for officers who do not regularly work weekends, in consideration of their availability to work weekends when assigned to a position requiring the same.**
- D. Increase contractual salary rates by 3% across the board effective July 1, 1996.**
- E. Increase hazardous duty differential to \$150/month effective July 1, 1996.**
- F. All of the foregoing amounts shall be included in the base pay for all purposes.***

* By letter of April 15, 1997, the Association modified their Economic package by changing item F to read:

- F. All of the foregoing amounts shall be included in the base pay only to the extent that the same or similar salary and benefits awarded by Arbitrator Boulanger in the firefighters interest award were so included.**

2. Article VIII, Representation (CPSOA Proposal #2)

- 3. Article XX, Vacation and Sick Time (CPSOA Proposal #6)
- 4. Article XXII, Court Time (CPSOA Proposal #7)
- 5. New Article, Just Cause (CPSOA Proposal #15)
- 6. New Article, Medical and Psychiatric Examination (CPSOA Proposal #16)

City Issues (CPSOA)

1. Economics

A. Wages. The City proposes that annual base salaries in Article XXVI, Section 1 be increased as follows:

Effective July 1, 1995 \$200 across the board

Effective July 1, 1996 3.0% across the board

B. Attendance Incentive. Effective July 1, 1995 there shall be an attendance incentive system whereby an employee who uses no sick leave or time off for work related injury or leave of absence in the preceding six months (retro to 1-1-95), shall receive a \$100 payment. The system will continue in effect with payments based on the prior six months of service.

C. T-pass subsidy. Effective two months after the Award, a T pass subsidy of 60% of the cost of a monthly pass, up to a maximum of \$30 per month, shall be instituted, for use by employee only, for passes purchased through payroll deduction.

D. Weapons Training Pay. The City proposes that, effective, July 1, 1996, the semi-annual installments of Article XXXII be increased by \$50 to \$400.

E. Bonus. The City proposes to pay a bonus in the amount of \$750, to all employees on the active payroll, as of the date of the Award.

- 2. Article XX, Vacation Leave
- 3. Article XVIII, Grievance, Article XIX, Arbitration
- 4. Article II, Management Rights

5. **New Language—Job Descriptions**
6. **Article XIII, Section 1(b)—Work Shift in the Traffic Division***

* This item was resolved by the parties at the February 3, 1997 arbitration hearing.

ISSUES—CITY AND CPPOA NEGOTIATIONS

CPPOA Issues

1. Economics

- A. Add hazardous duty differential for all officers in the amount of \$110/month effective and retroactive to July 1, 1994. Such differential shall be paid in the first pay period of each month.
- B. Increase weapons differential to \$25/week effective and retroactive to July 1, 1995.
- C. Increase hazardous duty differential to \$155/month effective and retroactive to July 1, 1995.
- D. Increase contractual salary rates by 3% across the board effective July 1, 1996.
- E. Increase weapons differential to \$35/week effective July 1, 1996.
- F. Increase hazardous duty differential to \$165/month effective July 1, 1996.
- G. All of the foregoing amounts shall be included in the base pay for all purposes.*

* In an April 15, 1997 letter, the CPPOA amended Item G to read:

- G. All of the foregoing amounts shall be included in the base pay only to the extent that the same or similar salary and benefits awarded by Arbitrator Boulanger in the firefighters interest award were so included.

2. **Article XIII A, Section 4, Voted Picks (CPPOA Proposal #3(b))**
3. **Article XIX, Section 2, Sick Leave (CPPOA Proposals #7d, #7e, #7f, #7g and #18)**

- 4. Appendix A, Investigation Interview Procedures (CPPOA Proposal #14)
- 5. Article XXIV, Minimum Manning (CPPOA Proposal #17)
- 6. New Article, Medical and Psychiatric Examination (CPPOA Proposal #22)

Arbitrator's Note: In the March 20, 1996 "Memorandum of Agreement" in which the CPPOA and City agreed to binding interest arbitration, the City reserved certain rights of appeal. At paragraph 4f of that memorandum, it states: "The City of Cambridge reserves all rights to challenge the arbitrability of proposals #2 (Voided Picks) and #5 (Minimum Manning) before any arbitrator selected under the auspices of the JLMC; before the Labor Relations Commission; and under the provisions of St. 1973, c. 107B, as amended."

City Issues (CPPOA)

1. Economics

A. Wages. The City proposes that annual base salaries in Article XXVI, Section 1 be increased as follows:

Effective July 1, 1995 \$200 across the board

Effective July 1, 1996 3.0% across the board

B. Attendance Incentive. Effective July 1, 1995 there shall be an attendance incentive system whereby an employee who uses no sick leave or time off for work related injury or leave of absence in the preceding six months (retro to 1-1-95), shall receive a \$100 payment. The system will continue in effect with payments based on the prior six months of service.

C. T-pass subsidy. Effective two months after the Award, a T pass subsidy of 60% of the cost of a monthly pass, up to a maximum of \$90 per month, shall be instituted, for use by employee only, for passes purchased through payroll deduction.

D. Bonus. The City proposes to pay a bonus in the amount of \$750, to all employees on the active payroll, as of the date of the Award.

2. Article XIX, Section 1(a), Vacation Leave

3. Article XVII, Section 2, Grievance—Arbitration

4. Article XXVI, Section 9—Master Police Officer Differential*
5. Article VIII, Section 1, Hours Off for Bargaining and Grievance Meetings
6. Article XXVI, Compensation—Weapons Pay
- * The City withdrew its Issue #4 regarding Master Police Officer at the February 3, 1997 arbitration hearing.

STIPULATED ISSUE

At the hearing, the parties stipulated that the issue before this Arbitrator is:

"What shall be the terms of the collective bargaining agreements to succeed the agreements dated July 1, 1991 through June 30, 1994, pursuant to the memoranda of agreement in Case #JLMC 96-3P and JLMC 95-42P?"

BACKGROUND

In late December, 1994, and early January, 1995, the CPSOA and City exchanged proposals for a successor to their 7/1/91 through 6/30/94 Contract. The CPSOA had 17 proposals, while the City advanced 14 proposals. At or about the same time, the CPPOA put forward 14 proposals for a successor to the 1991-94 Contract, and expanded that number in June 1995 to a total of 22 proposals. The City advanced 14 proposals to the CPPOA.

Although the parties disagree on many items in this case, there seems to be fundamental agreement that the 1994-1995 negotiations were not particularly productive. Both parties seem to acknowledge that the City/CPSOA negotiations were more fruitful than those between the City and CPPOA. However, neither side asserted that even the CPSOA/City negotiations had more than modest success. The negotiations between the City and CPPOA in 1995 amounted to four meetings, and a total of six hours. In their briefs, each party has either directly asserted, or intimated, that responsibility for their modest progress in these negotiations should be laid at the door of the other party. Be that as it may, as noted above, both sides agree that progress was indeed modest, if not miniscule.

The 1994-1995 negotiations between these two Associations and the City did not occur in a vacuum. While they were drafting their proposals and

engaging in face-to-face negotiation, other Unions were also reaching agreement with the City for the 1994-1997 Contract period. Out of those other interactions, and subsequent agreements, there is, according to the City, a "pattern" of wage settlements which developed for the period July 1, 1994 through June 30, 1997. That "pattern," according to the City, was made up of wage settlements of 0% in FY95, 0% in FY96, and 3.0% in FY97. City Exhibits 104 and 105 document the settlements with other Unions which the City asserts reflect a 0%, 0%, and 3.0% "pattern." City Exhibit 104 contains information on 14 Union contracts reached between the City and a variety of unions. City Exhibit 105 represents data on settlements between the Cambridge School Department and six (6) Unions/Associations made up of employees in the School Department.

One of the "Wage Settlements" listed on City Exhibit 104 is the 7/1/94 through 6/30/97 Contract between the City and the International Association of Fire Fighters, Local 30. City Exhibit 104 lists the "Wage Settlements" between Local 30 and the City for FY95 through FY97 as "0%, 0%, 3%." The reality of the 1994-1997 contract between IAFF Local 30 and the City is not quite as simple and uncomplicated as a "0%, 0%, 3%" would seem to indicate at first blush. Indeed, the Contract between the City and Local 30 was not reached through negotiations, but rather by means of a "Last Best Offer" Interest Arbitration conducted between October and December 1994 under the auspices of the Joint Labor-Management Committee. The "arbitrator's award" in that case was issued by Arbitrator Richard G. Boulanger, Esq. on December 20, 1994. Arbitrator Boulanger's award in that LBO Interest Arbitration states:

I award the last best office of Cambridge Fire Fighters Local #30, I.A.F.F. as follows:

Duration—Three years July 1, 1994 through June 30, 1997.

Year 1: (July 1, 1994 to June 30, 1995). Effective July 1, 1994 the City is to provide a Hazardous Material Stipend of \$100 per month. In addition, the City is to provide an increase of \$7.20 per week in the night differential, effective July 1, 1994.

Year 2: (July 1, 1995 to June 30, 1996). Effective July 1, 1995 the City is to provide a \$20.00 per week increase in the stipend paid for a weekend differential.

Year 3: (July 1, 1996 to June 30, 1997). Effective July 1, 1996 the City is to provide an annual stipend for all members of the department certified with the credential for defibrillation training in the amount of \$635.00 per year. The stipend to be paid the second pay period in August for valid certification current

as of July 1 of each contract year. (The first payment would be made in August of 1996 for certification as of July 1, 1996.) In addition a wage increase in the amount of 3%, effective July 1, 1996 is to be granted by the City.

Miscellaneous agreements of the parties. (See Agreements of the Parties included in Last Best Offer Award)

Richard G. Boulanger, Esq. Dated: 12/20/94

As has been noted above, there were ten (10) hearings in these Police Arbitration cases. There were approximately 200 numbered exhibits submitted, along with approximately 60 lettered sub-exhibits. The parties submitted a total of over 280 pages of post-hearing briefs. In addition, approximately 20 prior JLMC awards, in various communities, were submitted as City Exhibit 151.

ANALYSIS CRITERIA

Chapter 589 of the Acts of 1987 added to M.G.L. Ch. 150E, Section 4A, Subsection 3(a) a set of criteria to be utilized in arbitration proceedings conducted under the rules and auspices of the JLMC. Chapter 589 of the Acts of 1987 states in pertinent part:

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 which shall be consistent with: (i) section twenty-one C of chapter fifty-nine of the General Laws, and (ii) 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 or 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: (i) the city, town or district's state reimbursements and assessments; (ii) the city, town or district's long and short term bonded indebtedness; (iii) the city, town or district's estimated share in the metropolitan district commission's deficit; (iv) the city, town or district's estimated share in the Massachusetts Bay Transportation Authority's deficit; and (v) 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 of 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 service or in private employment.

(11) The stipulation of the parties.

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ARBITRATOR'S ANALYSIS/DISCUSSION/AWARD

There is an old saying which, in essence, asserts that it takes more effort to be concise than it takes to simply throw out a large number of words on a particular subject. Although it is not a quote, my recollection of the saying is: *I did not have enough time to write you a short letter, so I wrote you a long letter instead.* Given the extraordinary length of these arbitration proceedings (ten days of hearings) and the truly impressive extent of documentary evidence and argument presented during this proceeding, my discussion of a large portion of this case will be dramatically short by contrast. That contrast is entirely intentional.

Earlier in this document, I quoted the criteria which Chapter 589 of the Acts of 1987 added to Chapter 150E, which are to be utilized in any Arbitration conducted under the jurisdiction of the Joint Labor-Management Committee. In most Interest Arbitration cases which I have conducted, and in the vast majority of those JLMC Arbitration Awards submitted to me as exhibits, those criteria are utilized in an analysis of each of the items placed before the Arbitrator by the parties. Certain criteria will play a more important role, depending upon the unique circumstances of the community and Union involved, or the unique economic factors at work during the relevant contract period. This traditional approach often involves a detailed analysis of the governmental entity's "ability to pay," coupled with an equally detailed analysis of how the wages and benefits of the Union involved compared to those of similar employees in comparable communities. Added to this latter analysis is a traditional examination of how the subject Union stacks up against settlements with other Unions in the same municipality, including any assertion that some "pattern" exists among that municipality and other Unions.

The two cases before me involving the City and the CPPOA and CPSOA are unique. During the ten days of hearing, as the record of the hearing grew both in length and the extent of the documentary evidence submitted, this case seemed "unique" based solely upon that very length. Indeed, the time that I devoted to studying the exhibits and testimony between hearings reinforced my belief that the answer to this case would require that I be totally immersed in the minute detail of the evidence and testimony presented in order for me to be able to make coherent decisions weaving in all of the ocean of detail. Now that I have immersed myself in that body of detailed evidence, testimony, and argument, my opinion has changed dramatically. I have devoted enough time to the study of all of the evidence before me to enable me to, in essence, "write a short letter" in this case.

With all due respect to all of the evidence, argument, and testimony presented in this case, there is one—and only one—reason these parties ended up in these proceedings. These parties are not in interest arbitration because CPOA Proposal #3(b) regarding "Voided Picks" had risen to a level where these parties would go without a Contract for three years rather than compromise on that subject. I am convinced that no other single one of the "language" issues rose to that level of significance. There was, however, one item which was reason enough for these parties to go without a Contract for three years and to agree to "interest arbitration" to resolve their Contract. That reason is the December 20, 1994 Last Best Offer Arbitration Award of Arbitrator Richard G. Boulanger which established the terms of the 1994-1997 Contract between the City and Local 30 of the International Association of Fire Fighters.

Up until December 20, 1996, this Arbitrator had little reason to view this case in any way other than a traditional Interest Arbitration. Up until that point, the parties had been addressing each of the issues in sequence and presenting evidence, testimony and some argument on each issue as it arose. The proceedings were reminiscent of other fact-findings and interest arbitrations in which I have been involved. It was not until the study period devoted to this case over the holiday period, including the exhibits submitted on December 20, 1996, that a different view began to emerge. On December 20, 1996, the Associations submitted a copy of the LBO Firefighter Award as their Exhibit #29. The Associations also submitted as their Exhibit #32 the "Brief" submitted by the City during those LBO Firefighter proceedings. In that brief, the City asserted that if Arbitrator Boulanger should happen to adopt the Firefighters' last best offer, such a ruling would constitute "...A Substantial Threat to the Rough Parity of Cash Benefits Between the Cambridge Police Units and the Cambridge Fire Unit." (Association Exhibit #32, p. 21) Indeed, at p. 22 of the City's brief in the Firefighters LBO Arbitration, the City made a prediction which I am convinced turned out to be 100% accurate. At p. 22 of its Firefighters LBO brief, the City asserted: "But there is simply no way to award \$2,950 in recurring fringe benefits—6.3%—and expect the police units to buy the notion that fire fighters' 'unique' involvement with hazardous materials, warrants \$1,200 per year."

The City's brief for the Firefighters LBO Arbitration went on to make a further prediction. At p. 23 of that brief, the City argued to Arbitrator Boulanger that "granting their (IAFF Local 30) demands would upset the clear 0-0-3 pattern and would turn imminent police negotiations into a rhetorical free-for-all."

I would be the last person to classify the truly outstanding presentations made by Attorneys McDonald and Collins as being nothing more than "...a

rhetorical free-for-all." However, the situation facing these two advocates, in light of the Award of Arbitrator Boulanger, posed a difficult problem for each. With all due respect to the documentation, eloquence and evidence supplied by the two Associations, I am convinced that from the Associations' points of view, this case represents essentially a demand to get the same treatment as the firefighters. While that demand might at first blush seem to be an easy one to support, it faced the daunting challenge of justifying a "me too" approach in the face of wages and benefits received by members of the two Associations which are at the top of their field when placed beside those in comparable communities. The Associations' challenge was made doubly difficult in light of the emerging "0-0-3" pattern, which was either evolving or had evolved among many of the other Unions in Cambridge for the 1994-1997 period.

On its side, the Boulanger Award posed different but equally daunting challenges to the City. In its brief, in the Firefighters LBO Arbitration, the City had on several occasions, in an attempt to convince Arbitrator Boulanger that the Firefighters did not deserve certain increases, argued that police officers would have been equally entitled (or equally unentitled from the city's point of view) to an item such as "hazardous duty" pay. In that same brief at page 22, the City had argued that certain police training time dwarfed the eight-hour HAZMAT operations training and eight-hour defibrillation training in the Fire Department.

Any remaining doubts that I had that these cases, despite the extensive record of hearings and argument, are essentially a battle over whether the Associations would receive the same thing that the Firefighters received, was resolved when I received the parties' briefs. Included with the Association's brief as "Attachment A" was an April 15, 1997 letter, referred to above, modifying the Associations' Economic Demands. Up until that point, the Associations had been demanding that all economic increases "be included in the base pay for all purposes." As of April 15, that demand had been modified to read, "All of the foregoing amounts shall be included in the base pay only to the extent that the same or similar salary and benefits awarded by Arbitrator Boulanger in the firefighters interest award were so included."

In their brief, at page 9, the Associations acknowledged that despite ten days of hearing and numerous exhibits, testimony and argument, this case boils down to essentially one item. At pages 9 and 10 of their brief, the Associations stated: "Not surprisingly, in light of the foregoing, the debate between the City and the Associations over the resolution of their respective economic proposals has devolved, in simplest terms, to whether the City's police patrol officers and police superior officers should receive the equivalent of the economic package received by the City's firefighters and firefighter

supervisors (hereinafter "the public safety pattern"), as contended by the Associations, or whether they should receive the less substantial settlements received by the City's non-public safety employees (hereinafter the non-public safety pattern"), as contended by the City. In this regard, each of the Associations has modeled its economic package on the public safety pattern by proposing non-salary, but recurring, economic increases in the first two years of the proposed agreement, and an across the board salary rate adjustment of 3% in the third year, with a further adjustment in weapons or hazardous duty pay to correspond to the additional remuneration awarded the fire fighters in the form of a defibrillation training differential."

The City, in its brief at page 52, has made certain statements which echo my conclusion that this case boils down to a question of the police Union's receiving or not receiving non-wage fringe benefit increases equivalent to the amounts received by the Firefighters. At page 52 of its brief in this case, the City states: "The unions' entire case essentially rests on one narrow premise: Whatever percent increases the fire fighters get, the police should get. As we observed in our opening statement, the police don't want to make what other police in similar communities make, nor do they actually want to make what Cambridge fire fighters make. They want to establish, ever-so-conveniently, given all the other settlements, 'a public safety percent pattern.'" (Emphasis in original.)

Stripped then to its essence, that is the question in this case. Should the Police Associations receive non-wage fringe increases in amounts essentially equal to similar increases received by the Firefighters in the Last Best Offer Arbitration Award? This is where my "short letter" analogy comes into play. I could answer that question by getting into an extended analysis of the myriad arguments presented by the parties on this question. However, I am convinced that no purpose would be served by long dissertations on exhibits and testimony which I did not find compelling in reaching my decision. As noted above, this case comes down to a choice between two options. The parties are entitled to a clear explanation as to why I chose one option over another. It would be a disservice to the process to obscure this fundamental choice by burying it in a mass of facts, figures, and generalized labor-relations rhetoric in order to attempt to reflect all of the evidence and argument presented.

Economics #1—Economics/Wages

I am satisfied that the Police Associations should receive increases in non-wage cash stipends roughly equivalent to those received by the Firefighters in the Last Best Offer Arbitration Award in December 1994. There are three major items or considerations which represent the bases for my decision.

These are: 1) Current Benefit/Wage Levels; 2) the "0-0-3%" pattern; and 3) the Firefighters LBO Award and the Issue of Parity. I will address these in order.

Current Benefit Levels—The City has spent an impressive amount of effort to document the fact that Cambridge Police Officers and Superior Officers are well compensated when compared to their peers in other communities. After studying the evidence and testimony in that regard, I accept the City's assertion. I cannot, however, accept the argument that these wage/benefit levels, in and of themselves, represent a reason for having two "0" years in a three-year contract. When all is said and done on the question of the excellent wages and benefits paid to members of these Associations, it must be kept in mind that those wages and benefits are the result of negotiations between this City and these Associations. For whatever reasons, over the years, these parties have been instrumental in creating the relative position of Association members vis a vis their peers in other communities. These wage and benefit levels are an expression of how this City and these Associations believe their employees/members should be paid. The existing levels do not represent a compelling argument for substantial increases which would expand even further Cambridge's lead over other communities. However, that lead, viewed as an expression of the intent of these parties, argues for reasonable "update" of wage and benefit levels to reflect increases in the cost of living. If for a moment we set aside the "0-0-3%" pattern argument, which I will address below, I am satisfied that there is no compelling reason leading me to conclude that the wage and benefit levels which these parties have created should not be "updated" to reflect increases in the cost of living. There are, of course, many ways one could "package" such increases and those ways will be discussed below. Finally, one of the arguments sometimes encountered against such "update" is one where the employer's "ability to pay" is in question. In this case, the City is on record stating that it is not raising an "ability to pay" issue.

The "0-0-3%" Pattern—Although the City has not raised an "ability to pay" argument, it has done a thorough job of documenting how Cambridge employees have received increases in the recent past while other communities were experiencing "0" years. The City, while asserting that it is not claiming an inability to pay, has in essence argued that these Associations should join other Unions in giving the City a two-year hiatus to strengthen its financial position. With all due respect to that argument, the fact is that the City has not raised an "ability to pay" issue. Thus, the most compelling dimension of the argument is the result of the City's efforts to gain this two-year hiatus with its Unions. That result is the "0-0-3%" pattern to which the City points in this case. I acknowledge that comparability within a particular community is a powerful element in any interest arbitration. I acknowledge the content of City Exhibits 104 and 105. What those exhibits, coupled with City Exhibit 106,

show however, is that there are two major exceptions to the "0-0-3%" pattern. These are the Teachers' 2.5% increase in FY95, and the Local 30 LBO Award. Those are two very major exceptions. I acknowledge that the City probably views the Local 30 package with less than fondness. However, I cannot ignore the fact that it exists. The fact that it came into existence through a Last Best Offer Interest Arbitration does not negate its impact as a major exception to the claimed "pattern." A pattern's impact is diminished by exceptions. The two existing exceptions to the "0-0-3%" are with very significant labor organizations in the City of Cambridge. For reasons that I'll discuss below, I am convinced that the issue of "internal comparability" argues more strongly for a finding in this case akin to the Firefighters LBO than it does for a finding consistent with those remaining organizations making up the less than unanimous "0-0-3%" pattern.

The Firefighters LBO Award—Parity

I acknowledge the City's arguments with respect to the City's view of the history of "parity," or the absence thereof, between these two public safety groups. However, the extensive knowledge of that history displayed by the City cannot obscure the fact that these Associations, and indeed the City itself, knew full well in December 1994 that if the Firefighters received their Last Best Offer it would be viewed as a disruption of the "rough parity" existing between the two public safety groups. It would take a computer to fully analyze all of the variables involved in even deciding when or if exact parity exists. I acknowledge the City's evidence and argument regarding the Master Patrol Officer compensation received by the Police and not by Firefighters. I also acknowledge the exhibits demonstrating the total increases received by various unions during the last several contracts. However, the evidence before me warrants a conclusion that even the City, prior to the award of Arbitrator Boulanger, viewed the two public safety groups as being in rough parity. At page 23 of its Firefighters LBO brief, the City asserted that "the fire fighters certainly haven't shown they need \$2950 to catch up to police..." When they received that amount, a strong case had been created that rough parity had been overturned. One might well ask at this point why I chose to find the Firefighters' Arbitration Award compelling as opposed to finding adherence to the "0-0-3 pattern" decisive. The answer to that question is simple. At some point in its wisdom, the lawmakers of Massachusetts saw fit to create special statutory labor relations provisions addressing Police and Fire. Those provisions did not include Teachers, Highway Department Employees, or a variety of other public employees. There is a unique relationship between police and fire that goes far beyond grouping them under a special statutory provision devoted to the resolution of their contracting disputes. While that relationship does not immunize the two public safety groups against being

compared with other public employees, there can be no doubt, as evidenced by the very existence of the statute itself, that this special relationship demands that the first element of comparability to be looked at is how the other public safety union did in any round of negotiations. If the circumstances of one City's public safety union were so different from that of the other, then that significant difference could well represent the basis for different treatment. With all due respect to the herculean efforts by the City in this case to establish such a difference, I am convinced that the traditional relationship between wages and benefits of the two Associations has been significantly disturbed by the LEO Award. I am further convinced that a failure to redress that disruption in these proceedings would lay the seeds of extended disputes as to "parity" between Cambridge's two public safety unions to a degree which is far more disruptive than this award will be to the "0-0-3 pattern" advanced by the City.

Arbitrator's Award—Economics/Wages—The City has argued that the Associations' economic demands, if implemented, would create a patch-work quilt of non-wage cash fringe benefits which would invite future disagreements over comparability and internal consistency. I agree. I do, however, find it appropriate to mirror the Firefighters LEO Award by making part of my award in the form of recurring cash/non-wage increases. I have devoted extensive time to considering all the various options. I am satisfied that the most appropriate, direct, and least disruptive solution is to place the entire increase for each of those years into a single category entitled "Hazardous Duty Stipend." This solution allows for awarding of increases comparable to the Firefighters' increases, while at the same time avoiding sowing the seeds for future comparability disagreements. This award also avoids the compounding effect of making any increase in the form of an across-the-board wage increase. Therefore, I award a Hazardous Duty Stipend of \$110 per month effective July 1, 1994 and retroactive thereto. I further award an increase in Hazardous Duty Stipend to \$195 per month effective and retroactive to July 1, 1995. I further award an increase in the Hazardous Duty Stipend to \$250 per month effective July 1, 1996 and retroactive thereto. In addition, I award an across-the-board 3.0% wage increase effective July 1, 1996 and retroactive thereto.

Other Association Issues #3 through #6

At this point in the discussion, it is time for me to "drop the other shoe" with respect to my decision to apply the terms of the Firefighters LEO Arbitration Award to the instant cases. The other side of that coin is that Arbitrator Boulanger did not award any other improvements to the Firefighters' Union Contract beyond those that the City and Local 80 had already previously

agreed to. Therefore, consistency demands that awards in this case, which are based solely upon the principle of the re-establishment of "rough parity" between police and fire, in order to be fair, must take all of the firefighters award, both good and bad, from the Unions' point of view. Therefore, I am satisfied that all other demands of the Associations, beside their economic demands, must be denied by me in order to truly make this award, based on rough parity, consistent from the perspective of what these Associations gained compared to what Local 30 gained.

City Proposals to CPPOA and CPSOA

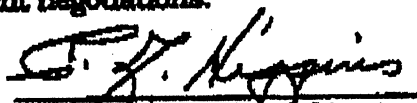
This then brings us to a consideration of the City's non-economic proposals. In considering those proposals, there is one prominent factor present in this case in July 1997 which would not have been present were this decision being written in 1994, 1995, or even mid-1996. This new factor is that as of the writing of this decision and award, the contract period at issue ended on June 30, 1997. Thus, these parties will never have to live, during the years covered by the disputed contract, under any language changes awarded by me. That fact, coupled with the fact that the parties may instantly address in negotiations for a successor contract their dispute over certain language items argues for, at best, modest language changes. As anyone involved in collective bargaining knows, changes to a mature contract happen incrementally. The fact that the parties may put five substantive proposals on the table for interest arbitration does not mean that the existence of those five demands warrants some affirmative recommendation on each. On the contrary, an arbitrator should avoid creating the illusion that interest arbitration is a desirable alternative to reaching agreement during negotiations. Extensive revisions to language items reached during an Interest Arbitration invite the parties in the future to hold on to their original positions during negotiations in anticipation of the possibility that they will arrive at binding arbitration. Arbitrator restraint is doubly called for on language changes when the Interest Arbitration Award will issue, as is the case here, after the last day of the period covered by the disputed contract.

I have studied the proposals made by the City and am satisfied that it is appropriate to award changes in the grievance/arbitration procedure which amount to partial adoption of the City's demand. I am satisfied that the City's proposal represents an improvement to the existing language which provides no deadline for the filing of a grievance. The absence of such a deadline works against one goal of a dispute resolution mechanism, which is the timely resolution of disputes. However, there is one element of the City's proposed grievance/ arbitration language which I find to be inappropriate. In the

language proposed for both Association contracts, the City has, on several occasions, created time lines for the Association to advance the grievance to the next step and/or to arbitration. In its proposed time lines, the City has included language making the commencement of that time period a certain number of days after the preceding management response was "received or is due." Inclusion of the words "or is due," or other similar words in the proposed City language, creates an unfair relationship between the burdens of responding for the City versus the burden of responding by the Association. Other time lines are initiated when the Management person receives the grievance from the Association. It is only fair, and in my opinion workable, if the Unions' burden to take action is initiated by "receipt" of the required response by management. I am further satisfied that the words, "the Association shall be deemed to have accepted the Step 3 answer unless the American Arbitration Association receives a written Demand for Arbitration within thirty (30) calendar days of the receipt of the Step 3 answer, or the date such answer was due, whichever is later" should be deleted from the City's proposed language. It shall be replaced by the phrase, "the submission to arbitration shall be in the form of a written Demand for Arbitration submitted to the American Arbitration Association within thirty (30) calendar days of the receipt of the Step 3 answer." I do not award the City's proposed subsection 2(e) language in the CPPOA proposals nor its equivalent in the CPSOA proposals. Extension of time limits, and consequences for failure to meet time lines, lend themselves to mutual resolution through negotiation. Finally, the words "endeavor to" are hereby deleted from the Step Three language as proposed.

Remaining City Proposals to CPPOA and CPSOA

There are three reasons why the remaining city issues should be resolved in favor of current control language. First, my denial of association non-economic demands due to the firefighters' LBO award eliminated the ability to establish some form of balanced trade-off in the area of language issues. Second, as noted above, this award post dates the contract's effective dates and the parties are free to instantly address any items they wish to advance, in negotiations for a successor. Third, the 1994/1995 negotiations were very short and relatively non-productive. Under such circumstances, language items such as Management Rights and Job Descriptions, with far reaching and intricate consequences are best left to subsequent negotiations.


Richard G. Higgins, Arbitrator
July 21, 1997



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14.

EXECUTIVE DEPARTMENT
ROBERT W. HEALY
City Manager

RICHARD C. ROSSI
Deputy City Manager

July 28, 1997

To the Honorable, the City Council

Attached please find the Award of Arbitrator Richard Higgins from the Joint Labor Management Committee of the Commonwealth in connection with labor contracts for the Cambridge Police Patrol Officer's Association and the Cambridge Police Superior Officer's Association for fiscal years 1995, 1996 and 1997.

Consistent with my obligations pursuant to Chapter 589 of the Acts of 1987, I am recommending that you accept and fund this award. The Arbitrator found that it was appropriate that the police officers and police superior officers receive virtually the same recurring economic benefits for these three contract years as the firefighters had received in an earlier arbitration award. The arbitrator declined to award any of the language sought by the unions for non economic items. This is helpful to the City because several of those items would have eroded our ability to assign and other important management rights.

With this award all contracts for the period through FY 97 are settled. We have reached agreement with all but a handful of unions for FY 1998 and FY 1999. We have reached agreement with several for FY 2000.

In order to fully fund the attached Arbitration Award I recommend an appropriation of \$3,106,000. Once the Department of Revenue of the Commonwealth has certified a free cash number as of the end of FY 97 and, prior to the establishment of the FY 98 tax rate in September, I will recommend that the retroactive amount of the award, \$2,281,000 be funded from free cash and the amount to be paid as part of FY 98 earnings be paid from taxes.

Respectfully Submitted,

Robert W. Healy
City Manager

Consent Agenda #14

S-453

Relative to the Arbitrator Award in connection with labor contracts for the Cambridge Police Patrol officer's Association and the Cambridge Police Superior Officer's Association for fiscal years 1995, 1996 and 1997.

In City Council August 4, 1997

PLACED ON FILE