

IN THE MATTER OF THE *FIRE PROTECTION AND PREVENTION ACT, 1997*
-and-
IN THE MATTER OF AN ARBITRATION

BETWEEN:

THE CORPORATION OF THE CITY OF VAUGHAN

- The Employer

- and -

THE VAUGHAN PROFESSIONAL FIREFIGHTERS ASSOCIATION

- The Union

AND IN THE MATTER OF an arbitration regarding a new collective agreement

Arbitration Board: Howard Snow, Chair
Bruce Light, Employer Nominee
Bill Cole, Union Nominee

Appearances:

On behalf of the Employer

John Saunders	- Counsel
Stephen Maio	- Student-at-Law
Cathrine Berge	- Director, Human Resources
John Sutton	- Fire Chief
Greg Senay	- Deputy Fire Chief
Glenn Duncan	- Deputy Fire Chief

On behalf of the Union

Cynthia D. Watson	- Counsel
Bevin C. M. Worton	- Counsel
John Krasnokutsky	- President
Mario Meffe	- Secretary
Mario Marmora	- Executive Member
Rick Greenfield	- Executive Member

Hearing held May 12 and June 22, 2005, in Toronto, Ontario.

AWARD

I. INTRODUCTION

This is an award in an interest arbitration involving the Corporation of the City of Vaughan as the Employer and the Vaughan Professional Firefighters Association as the Union representing the full-time employees of the City of Vaughan Fire and Rescue Service (VFRS).

II. THE ISSUES AND THEIR RESOLUTION

The parties' last collective agreement expired December 31, 2003. As the parties were unable to negotiate a new collective agreement, the resolution of the new agreement was referred to arbitration.

One day of mediation took place May 12, 2005, at which time several items were resolved. More than 40 items remained in dispute.

A day of arbitration was held June 22 when the parties presented their positions on the matters in dispute. The members of the Board then met in executive session July 5 and, due to scheduling difficulties, not again until August 29 and September 6, 2005. As the award was being prepared, the Union requested an opportunity to make submissions on the impact of a recent Brampton firefighter settlement. The Board granted that request and the parties' submissions were completed November 4, 2005.

This award reflects what I believe the parties would have agreed upon had they achieved their own settlement. In so doing I have relied heavily upon the recent settlements of other fire services and firefighter unions. In addition, I have considered the criteria specified in

Section 50.5 (2) of the *Fire Protection and Prevention Act, 1997*, criteria such as the economic situation in the province and locally, the Employer's ability to attract and retain firefighters, and a comparison with other employees.

I have directed changes in only some of the matters in dispute in these negotiations. Where no change is set out in this award, the terms of the 2001-2003 collective agreement are to continue.

1. Accident and sickness

Article 8:02 of the previous agreement contained a provision for accommodating firefighters who were sick. The provision makes no reference to the *Ontario Human Right Code* and is outdated in terms of the current legal obligations to accommodate ill or injured employees.

I direct the parties to replace the old Article 8:02 with the following provision in their new collective agreement:

8:02 An employee who through illness or injury cannot return to normal duties and responsibilities will be accommodated pursuant to the Ontario Human Rights Code. When a disabled employee who has been accommodated in another position is able to perform the normal duties and responsibilities of his/her former position, then he/she shall be returned to the former position as soon as possible. It is understood that nothing in this section is intended to limit the Corporation's, the Association's or the employee's obligations to accommodate disabled employees under the Ontario Human Rights Code. In fact, all recognize and agree that they are bound by the OHRC and that all rights and obligations thereunder apply to them.

2. Positions outside the bargaining unit

During their negotiations the parties discussed, but did not resolve, issues concerning employees temporarily appointed to positions outside the bargaining unit. Both parties made proposals to deal with the issue of the accumulation of seniority and the scope of employees' duties while temporarily working at a job outside the bargaining unit. I accept that it is desirable to address this situation in the agreement and think that a fair balance of the parties' interests can be achieved.

I direct the parties to add the following related provisions in the new agreement:

3:01(f) The Corporation may appoint an employee to act in a position outside the bargaining unit for a period of up to one year.

11:05 If an employee accepts a transfer to a temporary position outside of the bargaining unit, the employee shall have the right to return to his/her position in the bargaining unit for a period of twelve (12) calendar months. If the employee returns to the bargaining unit during this time, he/she shall retain seniority accumulated up to the date of leaving the bargaining unit, as well as time spent outside the bargaining unit. During such time outside the bargaining unit the employee shall not be involved in the administration of discipline to other bargaining unit members.

3. Grievance procedure

There were a number of changes suggested in the parties' existing grievance procedure.

The current time limits for processing grievances are very short and it appears that the time limits are sometimes missed. During bargaining both the Union and the Employer made proposals to extend the time for the various steps in the grievance procedure and, at the hearing, both parties accepted that the time limits might reasonably be adjusted. Although the existence of time limits does encourage the parties to act promptly, I think it reasonable to increase the time limits.

I direct the parties to make the following changes to the time limits in the applicable section of their grievance procedure in the new agreement:

15:03 change “third (3rd)” to “seventh (7th)” in both places

15:04 change “third (3rd)” to “seventh (7th)” in both places

15:05 change “third (3rd)” to “fourteenth (14th)” in both places

15:06 change “fifth (5th)” to “seventh (7th)”

15:07 change “fifth (5th)” to “tenth (10th)”

In addition, the Union requested changes clarifying the Union’s role in discipline and other matters related to the discipline process. In my view, such provisions are common, enhance fairness, and clarify the role of both parties in this important area.

I direct the parties to add the following provisions to the new agreement:

15.11(a) No employee shall be discharged or disciplined without just cause.

15.11(b) The Corporation agrees that whenever a disciplinary meeting is held with an employee an Association Representative shall be invited to be present. Such a meeting, once requested, shall take place as soon as possible at a time mutually agreed to by the parties. It is understood that the holding of the

meeting does not prevent the employee from being relieved of duty by the Corporation prior to the meeting.

15.12 When an employee is disciplined or discharged the Association shall be given a copy of the discipline or discharge.

15.13 The Corporation agrees that upon written request by the employee he/she may view all documents pertaining to unsatisfactory conduct or work performance contained in the employee's personnel file.

4. Firefighter fitness

The physical fitness of firefighters has been an issue in a number of negotiations in the fire sector. The previous collective agreement between these parties contained a Letter of Understanding which directed that a Joint Committee be struck to consider a particular fitness program known as "C-PAT" and report back to the negotiating committees. This did not happen.

In these negotiations the Employer sought a provision requiring firefighters to pass a different type of fitness test while, on the other hand, the Union asked that the old Letter simply be renewed.

Firefighting is a physically demanding job and it is important that firefighters maintain fitness. I am not, however, in a position to evaluate the merits of competing fitness testing systems. In any event, it is not necessarily testing which is needed - the goal should be to promote a sense among all that firefighters' fitness is essential for both the firefighters and the Employer. It is reasonable to include a revised Letter of Understanding in the new agreement.

I direct the parties to replace the old C-PAT letter with the following letter of understanding:

The fitness of a firefighter is of benefit to the individual firefighter, to his or her fellow firefighters, to the VFRS, and to the Corporation. The parties therefore agree to promptly establish a joint committee, consisting of three persons appointed by the VFRS and three persons appointed by the Union, to consider ways of promoting fitness among firefighters.

The committee will meet regularly and examine:

- 1. The methods of encouraging each firefighter to maintain or enhance his/her fitness level;*
- 2. The value of periodic fitness testing as a means of encouraging fitness;*
- 3. An assessment of differing fitness tests;*
- 4. The way that fitness is currently being rewarded by the Corporation and how the Corporation might reward those firefighters who maintain fitness; and,*
- 5. Any other matters which, in the opinion of the committee, may assist in promoting a culture of fitness.*

The committee is to report to the parties by October 1, 2006.

5. Salary rate of the Communications Supervisor

The parties disagreed upon the salary rate for the new position of Communications Supervisor. The Employer proposed setting the rate at 115% of the Communications Operator rate, that is 92% of the first class firefighter salary. The Union sought a rate of 115% of the first class firefighter rate.

There are similar positions in several other fire services and, as the Employer conceded, communications supervisors with some of the comparable employers are paid at a higher rate

than it proposed. The Employer expressed the view that its proposed salary was fair but, if it turned out to be low, it could be raised over time in negotiations.

Many other fire services have a pay rate for the communications supervisor position, or other comparable position, of 115% of the rate paid to communications operators and I conclude that this is a fair rate for this new position.

I direct the parties to establish a pay rate for the Communications Supervisor at 115% of the rate paid to the Communications Operators.

6. Benefits

The previous collective agreement contains in Article 13 a series of benefits - drug, dental, health care, vision care, laser eye surgery, etc. Both parties made proposals for changes. In general terms the benefits, as a package, appear to be on par with other similar employers and I do not think major improvements are needed.

However, there are some items which might reasonably be adjusted. For example, regarding dental benefits, the previous agreement specified payment according to the Ontario Dental Association fee schedule which has been adjusted on a periodic basis. Since January 2003 the parties have used the 2001 fee schedule. The Union sought to update this reference by adopting the current fee schedule. The Employer sought a change in the dental plan to nine month recall rather than the current six months.

An updated fee schedule is appropriate and there appears to be no compelling dental reason for dental exams every six months.

Regarding drug benefits, the Employer sought a change to less expensive generic drugs. On the other hand, the Union sought improvements to the vision care benefit which now has a \$230.00 maximum every 24 months.

I direct the parties to make the following four changes to the benefits in Article 13:

- 1. Change the reference to the Ontario Dental Association fee schedule to specify that the dental benefits are paid on the basis of the previous year's Ontario Dental Association fee schedule;*
- 2. Change the dental coverage to provide for recall exams every nine months;*
- 3. Change the maximum vision care to \$275.00 every 24 months; and,*
- 4. Change the prescription drug coverage to provide for generic drugs only, unless the physician prescribes otherwise.*

7. Duration

The parties had differing proposals for the length of the new agreement. The Employer sought a period of stability and asked for a four year agreement, although its monetary proposals covered only three years. The Union asked for a two year agreement, although it also made a wage proposal to cover three years. During bargaining both parties had proposed a three year agreement.

A two year agreement would mean this new agreement would expire December 31, 2005, and therefore bargaining would need to begin again almost immediately, before this award could be fully implemented. I see no value in the parties being in a state of nearly continuous negotiations. As for a four year agreement, there were a number of items which the parties had failed to fully address in negotiations and which this board has not addressed. In these circumstances, a three year agreement seems reasonable.

I direct the parties to amend Article 19 - Duration to provide that the agreement will be in effect from the 1st day of January 2004 until the 31st day of December 2006.

8. Wages

Both parties made proposals for general wage increases. The Employer proposed annual increases of 3.38%, 3.5%, and 3.5%. The Union proposed annual increases of 4%, 4%, and 4%. Both parties made submissions as to why their proposals were to be preferred and did so primarily by reference to salaries in neighbouring fire services and in the police sector.

In this agreement, as in many other firefighter collective agreements, all salaries are tied to the salary paid to the first class firefighter, such that when that salary is changed all other salaries are changed. It is thus necessary to consider only the first class firefighter salary.

It is common in fire negotiations to compare the salaries of first class firefighters with those of the first class constables in the police service in that same jurisdiction - here the York Regional Police. Over the past ten years the salaries paid to these firefighters have often been lower than the police, although in 2002 the firefighters were paid more. The Employer submitted that because the firefighters were paid on average 1% below the police over that 10 year period I should maintain that differential. While I accept that difference as being factually correct, I am not persuaded that it should be maintained. In 2002, as I noted above, the firefighters were paid more than the police, but I am also not persuaded that the firefighters should continue to be paid more. Instead, I conclude that there has been an ongoing relationship with each group attempting to maintain parity with the other. This is consistent with what has been accepted throughout the province with comparisons between the salaries of the first class positions in fire and police.

The comparison here suggests that in the first two years of an agreement the Union's 4% request is reasonable - leaving the firefighters' salary \$250 behind the police salary in 2004 but \$55 ahead in 2005. As the York police do not yet have a 2006 salary, a comparison for that year is not possible.

However, firefighter salaries are also compared at the first class level with those of firefighters in surrounding communities. Both parties provided comparisons of this type. There were gaps in this data as several other local communities have not yet established 2004 or 2005 salaries.

Salary rates have been established in Markham through 2005. A 4% increase here in 2004 and 2005 would leave these firefighters \$235 below the Markham firefighters in 2004 and \$90 above them in 2005. Markham does not yet have a 2006 salary.

A 4% increase in 2004 and 2005 would leave salaries here behind those in Toronto in 2004, and that fire service does not yet have 2005 salary rates. A 4% increase in 2004 and 2005 would place these salaries behind Burlington, Mississauga and Oakville in 2004 but ahead of each of them in 2005. Finally, that 4% increase would leave the salaries below Hamilton and Windsor in both years.

Brampton negotiated a new agreement after I had begun to prepare this award. This Board received written submissions about that agreement. A 4% increase here for 2004 would leave salaries in Vaughan behind those in Brampton for 2004 and a further 4% increase for 2005 would leave Vaughan salaries behind Brampton salaries for 2005.

There is very little data available regarding comparable salaries for 2006. A 4% increase in both 2004 and 2005 would bring the wages in line with others by 2005 and it is then

necessary to predict wage increases for 2006. The Union proposed 4% and the Employer proposal was 3.5%. It appears from the data provided that salary increases have tempered somewhat and that 4% is greater than the salary increases which are likely to be negotiated by the fire services in neighbouring communities for 2006. For example, the salary increase for Brampton in 2006 will be 3.12%. A 3.5% salary increase for Vaughan in 2006 would move the Vaughan salaries slightly ahead of the Brampton salaries. It appears then that an increase of 3.5% will be a fair increase for 2006.

I direct the parties to revise the agreement to provide for a general wage increase of 4% on January 1, 2004, a further increase of 4% on January 1, 2005 and a final increase of 3.5% on January 1, 2006.

9. Promotions

These firefighters have a rank structure with an expectation that firefighters may be promoted from fourth class firefighter, to third, to second, then to first class firefighter and later to Assistant Captain, then to Captain, then Platoon Chief. Each promotion carries with it increased pay. The agreement provides mechanisms for making decisions on these promotions. However, serious concerns were raised about the operation of the existing promotion system.

While this Board spent time considering how the system might be improved, this is a complicated issue and one which I ultimately concluded was not one which could be properly addressed in this award. Because of importance of promotions, however, I have decided that this issue should be further considered by the parties promptly and if the parties are unable to agree on a promotion system, the Board will reconvene the hearing to deal with it further.

I direct the parties to resume negotiations on the issues of promotions dealt with in Article 11 and in Schedule B. This Board retains jurisdiction over this issue and, if the parties are unable to resolve this issue by February 1, 2006, the Board will reconvene at the request of either party to address the issue.

10. Recognition pay

This was the most contentious item in the negotiations.

The Union sought to introduce a new monetary benefit which it termed “recognition pay.” Similar pay rewarding those with long service has been called by many other names in the police sector where it has quickly been established as a normal part of the pay structure. It is paid to the police officers employed by the York Regional Police.

The Union proposal, and the allowance as it exists generally in the police sector, consists of a 3% per year payment after 8 years of service, a 6% per year payment after 17 years of service and a 9% per year payment after 23 years of service. Given the years of service of the firefighters in this bargaining unit, the impact of this new provision would be about equal to a general 4% salary increase, soon rising to 5%.

Apart from being common in the police sector, the Union submitted that its 3%, 6% and 9% proposal had found favour in the fire sector, having been negotiated in Toronto, Sudbury, Hamilton and Windsor and awarded in Markham. In addition, the Union noted at the hearing that in the last round of bargaining Mississauga, Brampton and London had provided increased pay for senior firefighters, although those increases differed from this proposal.

The subsequent written submissions indicated that Brampton had since negotiated the 3%,

6%, and 9% provision, and it is probable that both the London and Mississauga associations will seek it. Finally, in the submissions regarding the Brampton settlement, the Union's main argument was that this benefit had been voluntarily negotiated by those parties, had become the new standard form of compensation for firefighters, and should be awarded.

I make no award in this area for several reasons:

- a) The comparison between the fire and police first class salaries has been made for many years and comparability in the salaries of the first class firefighter and first class constable is widely accepted. I relied above upon that salary comparison, in part, in establishing a general wage increase.

Although I find the comparison between first class salaries of police and those of firefighters very persuasive, the fact that the 3%, 6%, 9% long service benefit is now common under a variety of names in police agreements in Ontario is not nearly as persuasive for its inclusion in this collective agreement.

There have long been differences among other aspects of the police and fire collective agreements. The difference which is perhaps of greatest significance in terms of this benefit is the existence of a senior police constable pay rate - often an extra 2% for police constables after 10 years - something which served a similar purpose as this new 3%, 6%, 9% long service pay scheme for police. Many police agreements had such a senior constable provision for years before introducing this version of long service pay. While the 3%, 6%, 9% benefit is now the norm in policing, the fact that it is now the police norm does not mean that it is, or will become, the norm in the fire sector. It needs to be supported on some further basis.

- b) In general, the payment of an increased senior firefighter rate similar to the old senior police constable rate has not been common in fire services in Ontario.
- c) In particular, these parties have no history of paying more to senior firefighters in a manner similar to the old senior constable rate.
- d) There was no need demonstrated for an additional salary increase of this magnitude.
- e) If there were a demonstrated need for a further increase in pay of this magnitude for these firefighters, there was no persuasive argument offered as to why it should be paid disproportionately to senior firefighters, as opposed, for example, to all firefighters equally. It was supported primarily on the basis that most police and some firefighters have it.
- f) Most importantly, I set out at the beginning of this award the criteria I would use. Applying those criteria:
 - 1. Firstly, I doubt the parties would have agreed upon this had they reached their own agreement.
 - 2. Secondly, this benefit is not now the norm in fire services as the firefighters at only a few fire services have such a benefit and a comparison with other fire agreements does not support adding it here.
 - 3. Thirdly, the criteria in the *Act* do not lead to including this benefit.

While the introduction of this benefit might be justified if it were the norm in fire services, or if the Association were to accept other changes of significant value to the Employer in exchange for this benefit, as some of the Firefighter Associations have done, I find no justification for introducing it here in this round of bargaining.

11. Implementation date

The general wage increases, in section 8 above, are effective on the dates specified. The remaining changes are effective as of the date of this award.

Summary:

I direct the parties to prepare a collective agreement for the 2004, 2005 and 2006 calendar years using the 2001-2003 collective agreement, incorporating the above provisions and all other changes which they agreed upon in bargaining.

In addition to the issue of promotions in section 9 above, the Board will remain seised to deal with any issues which may arise in the implementation of this award or in the preparation of the new collective agreement.

Dated in London, Ontario, this 14th day of November, 2005.

Howard Snow, Chair

I concur/I dissent

Bruce Light, Employer Nominee

I concur/I dissent

Bill Cole, Union Nominee