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December 30, 2011

**VIA E-MAIL & U.S. MAIL**

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J. F. McMAHON

Rebekah L. Gewirtz, President  
Board of Aldermen  
Somerville City Hall  
1 City Plaza  
Somerville, MA 02145

**Re: Arbitration - City of Somerville and Local 76 IAFF: JLMC (10-12F)**

Dear Madame President:

First, let me introduce myself as labor counsel for the Somerville Firefighters Union, IAFF Local 76.

I am writing to you in connection with the recently issued arbitration award in the above captioned matter. As you perhaps know, because public safety unions are prohibited from engaging in work stoppages or so-called "strikes", the legislature created a mechanism for resolving contract disputes through the Joint Labor Management Committee (Chapter 589 of the Acts of 1987).

In this case the parties presented their respective cases to a tri-partite panel which was comprised of a Labor Representative, a Management Representative, and a Neutral Arbitrator. There were four days of hearings, each party submitted a post-hearing brief and the Panel issued a unanimous award.

The Award in this case was sent to the parties on December 13, 2011 and the parties were encouraged to "meet in order to exchange views on an appropriate joint statement". However, the Mayor has not given President Colbert the courtesy of returning numerous voicemail messages. When you read the award, you will see that most of the Union's proposals were not adopted by the panel, however, I informed Mr. Collins in an email dated December 14<sup>th</sup> we will support the award as we are legally required to do.

In any event, once the award is issued, in addition to implicit, customary conduct standards in these matters, the statute governing this arbitration requires, in relevant part:

"The employer and the exclusive employee representative shall support any such decision or determination in the same way and to the same extent that the employer or the exclusive employee representative, respectively is required to support any other decision or determination agreed to by an employer and an exclusive employee representative pursuant to the provisions of said Chapter 150E of the General Laws."

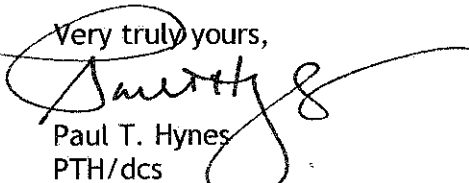
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CITY CLERK'S OFFICE  
SOMERVILLE, MA

Page 2  
December 30, 2011  
Rebekah L. Gewirtz, President

Simply put, the Mayor is required to do two things; 1. Submit the award to the Board of Aldermen; and, 2. Support its approval. I understand that the Mayor, Mr. Bean and Mr. Collins attended a meeting of the Board of Aldermen on December 20<sup>th</sup> and were allowed to appear before the Board in Executive Session. I suspect that the Mayor and his bargaining team have already engaged in actions which constitute non-compliance with the legal mandate requiring that they support the award as if it were a product of voluntary negotiations. Moreover I also believe that he has commenced a campaign of distorting the facts and making pejorative comments in order to create a prejudicial and inflammatory climate designed to defeat approval of the award. I have written to the Mayor to request that he cease and desist such conduct and that he comply with his legal obligation to support the award. If he fails to do so, we will take appropriate action against him for his blatant violation of his legal duty.

The purpose of this correspondence is to provide you with a copy of the award and to set forth the legal obligations of each party. Hopefully, the Mayor will comply and the award will be submitted to the Board for consideration and approval.

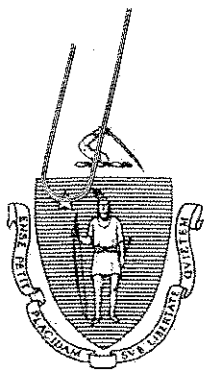
Very truly yours,



Paul T. Hynes  
PTH/dcs

cc: (cover letter only)

Mayor Joseph A. Curtatone  
Alderman John M. Connolly  
Alderman Bruce M. Desmond  
Alderman Maryann M. Heuston  
Alderman Sean T. O'Donovan  
Alderman Walter F. Pero  
Alderman William M. Roche  
Alderman Dennis M. Sullivan  
Alderman Thomas F. Taylor  
Alderman Robert C. Trane  
Alderman William A. White, Jr.  
Jay Colbert, Local 76  
Martha Coakley, Attorney General  
Joanne Goldstein, Secretary of Labor  
Erica Crystal, Director DLR  
Richard Reilly, JLMC  
Harold A. Schaitberger, Pres. IAFF  
Edward Kelly, Pres. PFFM  
Robert Collins, Esq.



THE COMMONWEALTH OF MASSACHUSETTS  
JOINT LABOR-MANAGEMENT COMMITTEE  
FOR MUNICIPAL POLICE AND FIRE  
19 STANFORD STREET, 1<sup>ST</sup> FLOOR  
BOSTON, MASSACHUSETTS 02114  
[www.mass.gov/jlmc](http://www.mass.gov/jlmc)

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TIMOTHY P. MURRAY  
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RICHARD M. REILLY  
CHAIR

(617) 626-5466

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December 13, 2011

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100 River Ridge Drive  
Suite 203  
Norwood, MA 02062

Robert Collins, Esq.  
City of Somerville  
93 Highland Avenue  
Somerville, MA 02143

Re: Local 76, International Association of Fire Fighters  
And the City of Somerville JLMC-10-12F

To the Parties:

The Joint Labor-Management Committee has received and forwards copies of the Arbitration Award in the above-referenced matter. Upon receipt of the Award, the parties are encouraged to meet in order to exchange views on an appropriate joint statement or to share with one another any independent statements prior to public disclosure of the Award.

If you have any questions, please do not hesitate to contact the Committee.

Very truly yours,

A handwritten signature in black ink, appearing to read "Julia E. Fahey".

Julia E. Fahey  
Senior Staff Representative for Labor

A handwritten signature in black ink, appearing to read "Sandra Charton".

Sandra Charton  
Senior Staff Representative for Management

Enc.

cc.: Rick Reilly William MacDonald  
Tony Sasso David Bain  
Jay Colbert Sally Polzin

In the Matter of the Arbitration Between

CITY OF SOMERVILLE

-and-

INTERNATIONAL ASSOCIATION OF FIRE  
FIGHTERS, LOCAL 76

JLMC Case No:  
10-12-F

JLMS DEC13 PM2:23

Arbitration Panel:

James M. Litton, Esq.	- Chair
David J. Bain, Esq.	- City Representative
William MacDonald	- Union Representative

Appearances:

Robert V. Collins, Jr., Esq. - for the City of Somerville

Paul T. Hynes, Esq. - for the International Association  
of Firefighters, Local 76

OPINION AND AWARD

History of the Case:

The City of Somerville (City or Employer) and the International Association of Fire Fighters, Local 76 (Union) were parties to a collective bargaining agreement which expired on June 30, 2007 (Agreement). The Agreement set forth the wages, hours, terms and conditions of employment of certain fire fighting employees of the City.

Negotiations for a successor collective bargaining agreement were unsuccessful. In April 2010 the Union unilaterally filed a petition with the Joint Labor-Management

Committee for Municipal Police and Fire (JLMC). Unsuccessful mediation under the auspices of the JLMC followed. On June 10, 2010 the JLMC exercised formal jurisdiction over the dispute between the parties. Subsequently, the JLMC appointed this tripartite Arbitration Panel (Panel).

The City and the Union, independently, submitted to the Panel a statement of proposals which they sought to incorporate into their successor collective bargaining agreement. They included the following:

A. Union proposals

1. Duration: a. three (3) years FY 2008 - FY 2010  
b. two (2) years FY 2011 - FY 2012

2. Wages: (with full retroactivity)

7/1/07	4%
7/1/08	4%
7/1/09	4%
7/1/10	4%
7/1/11	4%

3. Stipends

All stipends shall be rolled into the base pay and considered as regular compensation for all purposes effective June 30, 2009.

#### 4. Limited Duty

The City shall recognize and apply the presumptions applicaable for firefighters as contained in M.G.L. chapter 32, sections 94, 94A and 94B as interpreted and applied by PERAC, CRAB and the courts in determining whether an employee's incapacity for duty shall be classified as line of duty pursuant to M.G.L. chapter 41, section 111F.

#### 5. Permanent Vacancy:

The Fire Chief shall submit a requisition for the permanent promotional appointment of an officer forthwith but in no event latr than (3) working days immediately following the occurrence of a vacancy in an officer rank or upon a members completion of the application for retirement process at the Somerville Retirement Board and the City shall fill said vacancy with a permanent promotion within sixty (60) days.

#### 6. Article XIII (change current language)

Effective January 1, 2002, for every one (1) calendar month in which an employee does not use sick leave days and, such employee shall be credited with one quarter of a shift (day or night) of personal leave. The scheduling of such personal leave shall be subject to the guidelines set forth in Article XXIII.

#### 7. Wellness Program

The City shall provide \$20,000 to the Union to provide for a Wellness Program administered by the Union, including but not limited to cancer screening, nutrition, weight loss, and fitnes

**B. City proposals**

1. **Term of Agreement:** July 1, 2007 through June 30, 2010

2. **Compensation:**

a. Wages (Article V):

1. July 1, 2007 - 0%
2. July 1, 2008 - 1.0%
3. July 1, 2009 - 1.0%

b. Health Insurance (Article XV): The City of Somerville shall pay seventy-eight (78%) of the premiums for any of the health insurance plan(s) and employees who elect coverage shall pay the balance of any such premium;

c. The failure of the City to implement any increases(s) to an employee's share of their healthcare premium shall not preclude the City from subsequently increasing those rates subject to the limitations set forth above;

3. **Furlough Program:**

A deduction equal to one (1) week's base pay from any retroactive payment(s) in lieu of the weekly deductions of 1/52.2 of base pay agreed to by other collective bargaining units.

a. Furlough as per the "patrol officers' furlough model":

1. Employees to be paid back during payroll period following July 15, 2013 unless separated from service prior to January 1, 2013;

2. All employees from whom this deduction is made will receive a lump sum payment on the pay period following July 15, 2013 equal to one week's base wages at the base rate in effect on July 1, 2013 unless separated from service prior to January 1, 2013 and electing, in writing, the alternate payment in paragraph III(i)(5) below;
3. Payback rate at either July 2013 base rate or base rate at last day of employment if separated before 2013; and
4. If an employee is separated from service before January 1, 2013 they shall receive their payout (pro rata, where appropriate) within 90 days of their separation from service at the base rate of pay on their last day of employment or on the July 2013 payout date at the 2013 rate, whichever one the employee chooses provided that if the employee wishes to receive a payment prior to July 2013 he/she must notify the Personnel Department, in writing, prior to their last day of employment.
5. The Side Letter covering "Retired Members Furlough Payment" dated March 13, 2009 between the City and the Somerville Police Employees Association shall apply in full to bargaining unit members covered by this Furlough Program.

**4. Article XXX "Substance Abuse Testing":**

ADD to existing policy and procedures the following:



- a. All employees will be subject to random drug and alcohol testing, which shall be done during an employee's shift/tour of duty.
- b. The random selection process shall be by computer-generated numbers for each member of the bargaining unit. Such computer-generated program shall be performed by an outside contractor hired by the City which specializes in such function.
- c. An employee who tests positive after a random drug or alcohol test shall be subject to the same conditions as those who test positive following a "reasonable suspicion" or "post-incident" test.

During the pendency of this case the City reached agreement with the Public Employees Committee (PEC). Consequently, it withdrew its Health Care proposal from its list of issues to be considered in this matter. The City also subsequently withdrew its proposals concerning the furlough program.

The Panel conducted hearings in this matter on April 25, May 17, June 10, and October 27, 2011. Thereafter both the Union and the City filed extensive briefs on November 23, 2011.

Opinion:

The Panel has considered the positions of the parties as they expressed them both at the hearings in this matter and in their post-hearings briefs. We have considered the City's arguments concerning the financial straits within which it currently finds itself. We have considered the Union's argument concerning the difference between the City's claimed inability to pay certain wage increases and its desire not to do so. We have considered recent contract settlements between the City and

its other unions as well as recent contract settlements in comparable communities. We have considered the duties and risks which Somerville firefighters face on the job every day. We have considered the factors which statute requires us to consider. These considerations lead us to make the following Award which we deem to be fair under the circumstances and which we believe the City is able to fund:

1. Contract Duration

Two collective bargaining agreements of the following durations:

- a. July 1, 2007 - June 30, 2009
- b. July 1, 2009 - June 30, 2012

2. Stipends

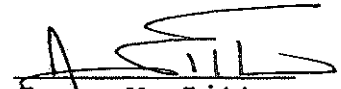
All stipends shall be rolled into the base pay and considered as regular compensation for all purposes as of the start of FY 2010 on July 1, 2009 (7/1/09).

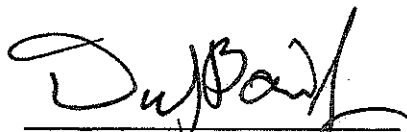
3. Wages

Increases shall be granted on the following dates with full retroactivity:

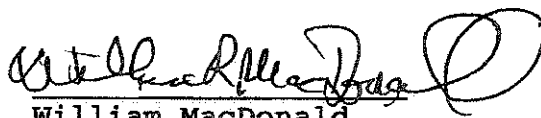
July 1, 2007	2.0%
July 1, 2008	2.0%
July 1, 2009	2.5%
July 1, 2010	2.5%
July 1, 2011	3.0%

The Panel makes no other award on any remaining City or Union issue.

  
James M. Litton  
Chair 12.8.11

  
David J. Bain, Esq.  
City Representative

Concur: ✓ Dissent:           

  
William MacDonald  
Union Representative

Concur: ✓ Dissent: