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Highlights

- This award would carry over costs into the 5th year and set a higher base for the next round of union contracts that the City cannot support in this uncertain fiscal climate.
- The base salary of a tenth-year firefighter that was \$72,937 in fiscal 2006 will rise to \$87,336 on June 30, 2010, an increase of \$14,398 or 19.7%. Of that total, \$4,138 will be a new payment in fiscal 2011.
- The Worcester City Council rejected a firefighters' arbitration award in 2004 and the parties returned to the table to successfully negotiate a new contract.

Fire Arbitration Award Should Not Be Approved

Financial implications for fiscal 2011 and beyond raise serious concerns

The Boston City Council should not approve the arbitration award for the firefighters' four-year contract. Voting for the \$17.6 million appropriation submitted by the Mayor for fiscal 2010 would constitute approval of the four-year arbitration award. This award would carry over costs into the fifth year and set a higher base for the next round of police officer, firefighter and teacher contracts that the City cannot support in this uncertain fiscal climate.

After a complete evaluation of the cost of this award, the Research Bureau affirms that the award grants the members of International Association of Firefighters, Local 718 an average salary increase over four years of 19% and that the total cost of the award to the City over five years will be approximately \$74 million.

The City Council has the fiduciary responsibility to evaluate the new additional costs of the award in FY11 and their financial impact on employee spending in this economy before acting on the contract. Issues considered in the Research Bureau's recommendation include:

- *Fiscal environment uncertain.* Boston is heading into two years of financial uncertainty as state aid will be cut for the third consecutive year in fiscal 2011 and is expected to be cut even more deeply in fiscal 2012. Pension and health insurance costs will continue to absorb a larger share of available resources causing a shift of funds away from other basic services.
- *Benefits vs. cost of the award.* The overall operational benefits of the new provisions in this award are not significant enough to warrant the cost of \$74 million over five years. Some of the same provisions were negotiated with other unions at less cost.
- *Police vs. Fire.* The 2.5% awarded the firefighters on the last day of the contract that will be paid in fiscal 2011 moved their base wages further ahead of police officers and other employees and increases the cost of the award in fiscal 2011.
- *A hit to the fiscal 2011 budget.* Most union contracts expire by August 2010. The Menino Administration included less than 1% for salary increases for other union contracts in its recommended fiscal 2011 budget. The salary increase awarded on the last day of fiscal 2010 raises the bar for other unions, putting the Mayor's fiscal 2011 budget out of balance.

The ability of the City to pay the cost of the four-year contract is less of a problem due to the availability of collective bargaining reserves established for each of the four years and the reserve recommended for fiscal 2011. The Administration will rely on other revenue sources to bridge the funding gap of \$1.5 million in fiscal 2010 and \$4.3 million in fiscal 2011.

Collective Bargaining Context

Most city employees are organized into bargaining units represented by approximately 39 labor unions for the purpose of negotiating over wages and other terms and conditions of employment. The Administration negotiated the current city union contracts for four years starting on July 1, 2006 and most expiring on June 30, 2010. School union contracts started on September 1, 2006 and will expire on August 31, 2010. The general wage package for the Boston Teachers Union (BTU) and the four police unions was 14% over four years as a consequence of meaningful language changes that provided operational improvements in those departments. Other unions settled for 11% over the same four years. The Administration reached agreement with the BTU in March 2007 and with the Boston Police Patrolmen's Association (BPPA) in June 2007, almost three years before the firefighter arbitration award was formally released. Two other police unions agreed to contracts in October 2007.

As part of the wage package, each union agreed to a 5% increase in the employee's share of the health insurance premium phased-in over two years. With the four police unions and a few other large unions, the Administration agreed to a modified residency requirement that allowed union members to live outside the city after 10 consecutive years of full-time service.

The Boston Police Superior Officers union chose to file with the Joint Labor-Management Committee after lengthy negotiations with the Administration. However, the Administration and union came back to the table and agreed to a negotiated new contract that was approved in February 2009. Because the downturn in the economy was more evident at that time, the Superior Officers contract provides for the 3.5% salary increase in the fourth year to be paid on the last day of the contract, June 30, 2010.

Why Arbitration?

Binding arbitration is the last step in a lengthy process to secure a new contract between a municipality and public safety union. Nevertheless, for the second consecutive contract, the Menino Administration and IAFF Local 718 have had to rely on binding arbitration to break the impasse reached after normal negotiations broke down. Contract negotiations between the two parties began in earnest in May 2006 but 18 bargaining sessions over 15 months were unproductive. During this time the contract expired on June 30, 2006, but its provisions remain in force

until superseded by a new contract. Drug and alcohol testing was not a factor in this delay since the issue was not introduced until October 2007 after the Administration had petitioned the state Joint Labor-Management Committee (JLMC) to take jurisdiction of the dispute. As noted above, the Administration did successfully negotiate a four-year contract with the BPPA in June 2007 establishing a framework for other public safety unions. However, Local 718's unrealistic financial demands and its interest in extending negotiations closer to the mayoral election in 2009 as well as the Administration's interest in securing language changes to affect

operational improvements resulted in impasse.

Finally, on August 1, 2007, the Administration petitioned the JLMC to take jurisdiction of the dispute. Rather than follow normal procedures to bring resolution to this case in a reasonable timeframe, this phase was also marked by delay. The JLMC did not agree to take jurisdiction of this case until February 2008. Mediation sessions over nine months with JLMC staff and later a private mediator were not successful. Starting in May 2009 and ending in February 2010, the arbitration panel conducted 21 days of hearings followed by post hearing and reply briefs from both parties submitted by early April. The arbitration panel's award decision was signed on May 3, 2010 and officially received by the parties on May 7, 2010.

Role of City Council

The Boston City Council does not have a passive role with regards to any collective bargaining contract. While not responsible for the negotiation of a contract, the City Council, as Boston's appropriating authority, does have the fiduciary responsibility to evaluate the cost and provisions of a contract to determine whether the contract is affordable and if the value of the operational changes in the new agreement is appropriate given the added cost to the taxpayers. The same responsibility holds true for arbitration decisions. In fact, state law on binding arbitration (Ch. 589, Acts of 1987) specifically states, "*If the municipal legislative body votes not to approve the request for appropriation, the decision or determination shall cease to be binding on the parties and the matter shall be returned to the parties for further bargaining.*"

City council or town meeting approval of contract or arbitration awards is not automatic and there are several examples in which the appropriating body did not approve the funding for a firefighter arbitration award. For example, in 2004 the Worcester City Council rejected a firefighter arbitration award because the members felt the service cuts proposed to fund the award were too onerous. Both parties did return to the bargaining table to negotiate a subsequent agreement that was approved.

Financial Environment

The City's financial position has changed dramatically over the past two years and now into fiscal 2011 compared to the first two years of the contract. As a consequence of the deep recession and its impact on the Massachusetts economy and state budget, the City's total general fund budget actually decreased by \$22.8 million or 0.9% this fiscal year. Budget cuts were made in the Departments of School and Fire while the Police Department budget remained flat. Over the three years from fiscal 2008 to the Mayor's recommended fiscal 2011 budget, total general fund revenues have increased by 5.1% for an average annual increase of 1.7%.

This slow revenue growth has required departments to absorb normal cost of living and contractual increases. State aid has decreased by \$94 million or 19.1% during the three years. In this tight period, the increased spending for employee health insurance and pensions by \$143.4 million or 36.2%, has contributed to spending for all city departments, outside the top four, decreasing by \$4.1 million or 1.8%.

As difficult as these three years have been and

will be, fiscal 2012 is expected to bring deeper local aid cuts. One-time revenues of approximately \$2.0 billion that were available in the fiscal 2011 state budget will be significantly less in 2012. Notably, federal ARRA stimulus funds for operations will be depleted. Retirement asset losses of 24% in 2008 will contribute to a spike in Boston's pension costs in fiscal 2012 if no other mediating steps are taken. These uncertain financial times will continue as concerns are raised that the European fiscal crisis will slow the economic recovery in the United States. With over 70% of the operating budget tied to employee spending, it is not surprising to note that city-funded full-time equivalent positions decreased by 606 or 3.5% over the three years from January 2008 to January 2010. The Mayor's recommended fiscal 2011 budget plans for the layoff of approximately 250 employees.

Arbitration Award

By its nature, an arbitration award usually addresses a limited scope of issues and this award is no exception. The limit on issues for this department is a troubling matter since no language changes have been made in the contract with Local 718 for over eight years. Both sides presented proposals for wages, length of contract and sick leave. The arbitration panel considered proposals by the union on residency, hazardous materials differentials and Special Operations compensation, and proposals by the Administration on drug and alcohol testing and group health insurance. Each party pulled from consideration one issue not listed during the course of arbitration.

The wage component of the arbitration

decision involves five salary increases over a four year contract from July 1, 2006 to June 30, 2010.

4-Year Contract Increases

FY07	2.0% increase in FPP July 2006 2.5% increase in FPP in July 2007
FY08	1.5% increase in Hazardous Duty/Specialist compensation in July 2007 3.0% increase in FPP in July 2008
FY09	1.5% increase in Hazardous Duty/Specialist compensation in July 2008
FY10	3.5% increase on January 1, 2010 2.5% increase on June 30, 2010 \$500 and \$1,000 stipends for eligible members (est. 300) of Special Operation Companies based on achieving Technician or Advanced Technician certification.

* FPP = first pay period

Night differential, hazardous duty/specialist compensation and Transitional Career Awards Program (TCAP) payment are recalculated based on each increase in the base wage.

Other provisions of the arbitration award included:

- Random drug and alcohol testing program
- Same health insurance plan as negotiated with other unions
- Residency modification consistent with police union contracts
- Modified sick leave plan

Drug and Alcohol Testing

Contract negotiations between the Menino Administration and Local 718 on the issue of drug testing did not first begin after the devastating Tai Ho restaurant fire in West Roxbury in August 2007 that resulted in the

death of two Boston firefighters. Indeed, drug testing was on the table with Local 718 in negotiations in 1999. The four police unions had agreed to drug testing in 1998. The O'Toole Commission had issued its report on the Fire Department in 2000 and had recommended random drug testing for firefighters. Despite the fact that the contract ratified in 2001 provided \$47 million for salaries which grew on average by 21.5% over four years, drug testing was not negotiated due to union resistance and the Administration's desire to achieve other management changes in the contract, especially a few recommended by the O'Toole Commission.

Drug testing for firefighters was also included in the Administration's package in the 2004 negotiations. Taking advantage of the City of Boston hosting the Democratic National Convention in July 2004, the leaders of the fire and police unions delayed serious negotiations until July which eventually led to expedited arbitration and a decision for the police unions that provided salary increases but no language changes. The firefighters agreed to the same structure without language changes for three years at 10.5% on the night of the DNC delegation parties.

Drug testing was not included in the Administration's initial contract proposal in 2006 to succeed the contract with Local 718 expiring on June 30, 2006. The financial demands of the union and the desire to achieve other management improvements were the reasons cited. However, after the August 2007 tragic fire, the Administration in October did present a drug and alcohol testing initiative for negotiations. Union leaders expressed a willingness to negotiate an alcohol

and drug program but reportedly sought salary increases of 21% in return. When the Administration's alcohol and drug program was introduced as an item for arbitration, Local 718 strongly opposed the program being decided in arbitration and suggested it might challenge such a move in court, preferring to negotiate the program directly with the Mayor.

State and Boston firefighter union leaders contend that the Administration was able to negotiate drug testing in the 1998 police contracts because the Mayor agreed to adopt the Commonwealth's police educational incentive Quinn Bill in the same contract. These fire leaders ignore that what was directly associated with the Quinn Bill was the police unions agreeing to delay implementation of the Quinn Bill until July 2000 and to accept no salary increases in fiscal 2001 and fiscal 2002 to offset initial costs. During those same years, firefighters received salary increases of 4.0% and 4.5% respectively. No salary increase for two years has had a cumulative financial benefit for the City over subsequent years.

Cost of Arbitration Award

The Research Bureau does agree, after careful analysis, that the cost to the City of Boston for the arbitration award over five years is in the range of \$74 million. We affirm that the salary percentage for Boston firefighters over four years, on average, will increase by 19%. The salary increases range from 17.0% to 19.8% depending on the position and years of service.

Mr. Dana Edward Eischen, the Impartial Chair of the Arbitration Panel indicated that the

Boston firefighter contract has a “complex compensation structure” which is very true and that makes determining the cost of the contract equally complex and difficult. A base wage increase of 2.5% that the public easily understands masks a series of recalculations based on each increase in the base wage that ripples throughout the contract. As a result, a straight base wage increase of 2.0% can become a total annual average earnings increase of 2.5%.

Base Wage % vs. Annual Earnings Increase %		
	Base Wage Increase	Annual \$ Increase
FY07	2.0%	2.5%
FY08	2.5%	4.1%
FY09	3.0%	4.5%
FY10 (a)	3.5%	1.9%
FY11(b)	2.5%	4.8%

(a) 3.5% on January 1, 2010 for six months

(b) 2.5% on June 30, 2010 to be paid in FY11

Methodology Assessment – To independently determine the approximate cost of the four-year arbitration award, the Research Bureau carefully analyzed the Menino Administration’s methodology in estimating a total cost over five years of \$73.7 million. We tested each step of the process and confirmed key data points with appropriate City officials. Starting with a weekly base salary, the percentage of the annual salary increase is applied to create a new weekly base. A night differential and a hazardous duty differential received by all firefighters are calculated as different percentages of the weekly base. For firefighters with five years or more service, a Transitional Career Awards Program (TCAP) formula is also applied and these calculations

together become the new weekly base. The weekly base is multiplied by 52.2 to establish the new annual base wage. To that is added holiday pay of 25% of the weekly base multiplied by the 13 holidays in the contract. A details-out figure of \$150 and a clothing allowance of \$550 are included for a new total annual base wage.

Following this process, the change in the base wage for each firefighter position for each year of the contract is established. Each of these annual salaries multiplied by the number of positions as of a set date produces the total cost of each position in each year. Aggregating the salary costs for all positions by each year of the contract enables the total salary increase by year to be calculated as well as the percent increase over the prior year. Taking that percent for each year and multiplying it by the total fiscal year earnings of the same year including overtime establishes the total new cost by year. That means that the annual percentage increase is applied to the total base earnings which includes base salary, overtime and vacation and sick leave buy-backs which are all affected by a salary increase. This process produces a more accurate estimate of the true cost of the contract salary increase. Totaling each year’s annual increase produces the total cost the City is required to pay as a result of the contract.

Transitional Career Awards Program - The TCAP is a form of longevity award unique to the firefighters' contract which translates into an average salary increase of 0.5% each time the base wage increases. This is a fact noted in Mr. Eischen's arbitration award report and Professor Kochan's report to the City Council.

Thus for the arbitration award which provides five salary increases in four years, the TCAP provides a total salary increase of 2.5%. The TCAP for firefighters is established as 1.0% of the combined total of a third year firefighter's maximum weekly salary, weekly night differential and weekly hazardous duty differential added to the previous year's TCAP base.

The value of the TCAP to a firefighter's wage growth is demonstrated by a comparison of the increase of the base wage and TCAP for each of the four years from fiscal 2002 to fiscal 2006 for a fifth year firefighter. The total base wage increased by \$11,427 or 18.7% but the base salary component increased by \$8,593 or 15.4% while the TCAP component increased by \$2,834 or 53.5%. For the four years of the award from fiscal 2006 through fiscal 2010 for a tenth year firefighter, the base wage increased by 12.4% while the TCAP increased by 26.6%. In this example, the TCAP's share of total base wages in fiscal 2006 of 11.6% increased to 13.4% in fiscal 2011. The TCAP is an integral part of the firefighter's wage increase and should be included in any analysis of the total cost of the arbitration award. Typically in collective bargaining contracts, a longevity award represents a straight dollar increase in the range of \$500 or \$1,000 depending on the employee's length of service, not an increase tied to each new base wage increase.

Given our concern about the fifth year costs, the distinction of the award expenses over four years and in the fifth year is important to note. From our assessment of the methodology we affirmed that the expenses tied to the award from fiscal 2007 through fiscal 2010 are

approximately \$48.4 million and that the related fiscal 2011 costs are \$25.3 million, bringing the total cost of the award over five years to approximately \$74 million. The \$25.3 million figure is split between the new cost of \$7.3 million due to the 2.5% salary increase effective the last day of the contract and the annualization of the 3.5% of the prior year with TCAP added and the carry forward cost of \$17.9 million based on contract provisions included in the four years that add to the salary base that continues in subsequent years.

With the certainty of state aid cuts in fiscal 2011 and the expectation of even deeper local aid cuts in fiscal 2012, the total estimated expense of \$74 million over five years should remain primary consideration in evaluating this award. Not considered in this estimate is the impact the higher salaries from the award will have on future pension costs.

Revenues to Fund Arbitration Award

Funding the four years of the arbitration award is not the primary issue before the City Council. Over the four years, the City established collective bargaining reserves in each operating budget for anticipated expenses including those for the firefighters' contract. From fiscal 2007 through fiscal 2010, reserves totaling \$47.8 million were appropriated for Local 718 contract expenses. The Administration projected expenditures of \$48.4 million which was reduced by \$1.9 million in estimated savings from the firefighters paying 5% more for their health insurance premiums for a net expense of \$46.5 million. For the first three years of the award, the reserves are adequate to fully cover the

projected expenditures.

In fiscal 2010, a reserve shortfall of \$1.5 million exists. The City Auditor has determined that a collective bargaining reserve balance for one fiscal year cannot be applied to contract expenses for a different fiscal year. As a result, the Administration plans to support the fiscal 2010 shortfall by a supplemental appropriation funded by meals excise receipts collected but not committed this year. As of April 2010, \$5.4 million in meals excise has been received by the City since collections started in October 2009. For fiscal 2011, the Mayor's recommended fiscal 2011 budget contains a collective bargaining reserve of \$29.5 million of which \$20.9 million is planned for the increased expenses due to the firefighters' award. Total contract expenditures are projected to increase by \$25.3 million leaving a gap of \$4.3 million. The Administration has options to fill this gap but has not yet explained how it will do so.

Operational Value of Arbitration Issues

The cost of a contract or arbitration award is not the only measure that should be considered in evaluating whether it deserves to be approved. The operational value of changes in the contract to more efficiently manage services or control costs is also an important factor. From a careful assessment of the new provisions of this award, the Research Bureau believes that overall the operational benefits of the new provisions in the contract are not significant enough to warrant the cost of \$74 million over five years. The new provisions include::

Health Insurance Change: The health

insurance requirement is the same as negotiated with all other city and school unions. The members of 35 unions agreed to an increase of 5% in their health premiums and accepted salary increases of 11% over four years, substantially less than the 19% awarded the firefighters. A high priority of the four police unions and Local 718 for this round of negotiations was a broader relaxation of the City's residency requirement. For the police contracts, the Administration agreed to a modified 10-year residency requirement to secure union agreement for acceptance of the health insurance premium increase and other reform language changes. The arbitration award continues that same pattern by granting the identical residency flexibility while adopting the same health insurance modification.

Modified Sick Leave: A positive feature of the modified sick leave plan is that a member of Local 718 will not be entitled to holiday pay if he/she has an undocumented sick leave on the night before a holiday, on the holiday or the day after a holiday. The sick leave policy authorizes the Fire Commissioner to require a firefighter to communicate with the Department's Medical Examiner and/or obtain a medical letter from his/her medical provider but not until the employee has accumulated ten tours or more of undocumented absences within a rolling twelve month period. Fire experts do not expect these changes to have a material effect on reducing the use of sick time in the Department.

Random Drug Testing: The random drug and alcohol policy is an important addition to the Boston Fire Department's personnel

policies. This plan was modeled after the San Francisco Fire Department's plan that was negotiated between the City and its firefighters' union. The beneficiaries of the new policy are both the City and the firefighters whose safety in dangerous and high stress situations depends on alert and decisive action by fellow firefighters. The real benefit of this policy for the firefighters discounts its adoption as a "concession" worthy of significant salary adjustment. This plan is established eleven years after the drug testing was negotiated with the four Boston police unions which was further enhanced in the current contracts negotiated in 2007 and 2009. The Research Bureau continues to believe that random drug and alcohol testing should not be subject to collective bargaining but should be a state requirement to ensure a uniform system of testing of all uniformed public safety officers throughout the Commonwealth.

The basic requirements of this award's drug and alcohol policy are consistent with the requirements of the Omnibus Transportation Testing Act of 1991 as regulated by the Federal Highway Administration. This policy applies to all employees who are required to possess a valid Commercial Driver's License (CDL) as a condition of employment. Governmental units affected by this policy are obligated to establish programs that require random drug and alcohol testing and testing for pre-employment, reasonable suspicion, post-accident, return to duty and follow-up controlled substances and alcohol testing. The Research Bureau reviewed the CDL testing program utilized by the Massachusetts Port Authority which was comprehensive and involved breath test and a two-sample urine

test similar to the firefighter plan. Massport negotiated this plan with the Teamsters union with no additional increase in compensation for its drivers. The City's Public Works Department employs drivers who are required to possess a CDL and are subject to random drug and alcohol testing for which they receive \$20.00 a month or \$240 a year. Firefighters are not subject to the CDL requirement because the federal government delegated the determination of such compliance to each state. Massachusetts has yet to require a uniform random drug and alcohol policy for uniformed public safety officers throughout the Commonwealth.

Comparability of Police and Fire

The comparability of police officer and firefighter base wages is an important factor in evaluating public safety employee contracts. A sense that base wages of one public safety force is surpassing another creates added pressure for increased spending in the next contract round. Determining comparability is more difficult because of the complexity of the annual compensation schedules for both forces.

The base wage increase in percentage terms for the four contract years from fiscal 2006 through fiscal 2010 can be considered roughly comparable only if the annualized 3.5% and the last day 2.5% increases that will be paid in fiscal 2011 are not considered. Including those items raises the firefighters' average base wage increase to 19%. Base wages in the Boston Police Patrolmen's Association contract increased by an average 14.2% during that time. Over the same period, the firefighters' base wages increased by an

average 13.6% based on a half-year wage increase of only 1.9% and not including the 2.5% effective on June 30, 2010. Those two factors contribute to a 4.8% average earnings increase in fiscal 2011. Any base wage increase in fiscal 2011 as part of a new contract will add to that percentage. The BPPA contract includes base wage increases of 2.0%, 2.5%, 3.0% and 3.5% in July of each year. In addition, BPPA members received increases in hazardous duty, weekend and 911 differentials which are similar to the firefighters' hazardous duty increases in 2008 and 2009.

Translating these base wage increases into actual salaries shows that the base salary for a tenth-year firefighter and a patrol officer with a similar starting base salary in fiscal 2006 are somewhat comparable over four years but not if the full 3.5%, up from the half payment in fiscal 2010 and the 2.5% awarded on the last day of the contract are included. The base salary of the tenth-year firefighter that was \$72,937 in fiscal 2006 will rise to \$84,784 on January 1, 2010, an increase of \$11,846 or 16.2%. If the full award is received, the salary rises to \$87,336 on June 30, 2010, an increase of \$14,398 or 19.7%. Of that total, \$4,138 will be a new payment in fiscal 2011 due to the annualized 3.5% and the year-end 2.5%. A Boston police officer with a comparable base salary in fiscal 2006 of \$72,912 will receive an increase in base salary to \$82,914 in fiscal 2010, a growth of \$10,002 or 13.7%. Thus the firefighter's salary increase of 16.2% or the full 19.7% exceeds the patrol officer's increase of 13.7%. The patrol officer's base salaries are not adjusted to reflect the decrease in Quinn Bill payments which would further increase the percentage difference.

Conclusion and Recommendation

The fiscal environment in which the City of Boston must operate today is much different than in 2007 when most of the current contracts were negotiated. The next two to three years will be filled with financial challenges and uncertainty. Deeper local aid cuts are projected in fiscal 2012 and further aid reductions could occur in the following year if the slow economic recovery does not produce significant new job growth in the Commonwealth. The new costs of the award that will be paid in fiscal 2011 will increase expectations by the four police unions and perhaps other unions in negotiations for new contracts starting on July 1, 2010. Furthermore, the operational value of the new provisions in the award comes at too high a price.

For these reasons explained in this report, the Research Bureau recommends that the City Council not approve the \$17.6 million appropriation before it. Saying no will require the two parties to return to the bargaining table which will not be easy but has been done successfully with other city firefighter arbitration cases as recently as 2004.

Options have been suggested to enable the City Council to approve the award while reducing the cost. One proposal would have the 2.5% scheduled to be paid on the last day of the contract delayed until January 1, 2011 thus reducing the cost that year by half. The Research Bureau is concerned about such proposals because the annualized 2.5% would come due in fiscal 2012 which is expected to be a far more fiscally challenging year for Boston than fiscal 2011.