

AMERICAN ARBITRATION ASSOCIATION

In the Matter of Arbitration Between:

READING LODGE No. 9, FRATERNAL
ORDER OF POLICE

AAA Case No. 01-16-0003-9905
(Act 111 Interest Arbitration)

and

Hearing Dates: 5/15/17; 8/15/17

CITY OF READING

Board of Arbitration

Patrick Harvey, Esquire
Arbitrator for City of Reading

Sean T. Welby, Esquire
Arbitrator for Reading Lodge No. 9, FOP

Walt De Treux, Esquire
Impartial Arbitrator and Panel Chair

FOREWORD

The undersigned arbitrators were duly appointed as the Board of Arbitration pursuant to the provisions of Section 4(b) of the Act of June 24, 1968, P.L. 237, as amended, 43 P.S. §217.4(b) (Act 111) and the procedures of the Philadelphia Regional Office of the American Arbitration Association. The hearings in this matter were conducted on May 15, 2017, and August 15, 2017, at Reading City Hall, Reading, Pennsylvania, where both parties were given a full opportunity to present evidence and cross-examine witnesses. The record was left open at the conclusion of the hearings for

any party to submit supplemental evidence to the Board. The Board acknowledges that the parties agreed to waive the time limits under Act 111.

The City of Reading was designated as a distressed municipality pursuant to Act 47 in 2009. As part of that process, the Commonwealth Department of Community and Economic Development appointed Public Financial Management (PFM) as the Act 47 Recovery Plan Coordinator for the City. PFM subsequently contracted with Vijay Kapoor, Esquire of The Kapoor Company to join the Recovery Plan Coordinator team. Mr. Kapoor is an expert in municipal finance as that term is contemplated by Act 47, holding both an advanced degree and more than eight (8) years of experience in issues relating to municipal finance.

As Plan Coordinator, Mr. Kapoor participated in the Act 111 hearings as both witness and advocate for the Department of Community and Economic Development. The Amended Act 47 Plan (hereinafter "amended plan") was received into evidence along with his testimony explaining its provisions. The Panel found Mr. Kapoor's testimony to be credible and accepts it as such.

The FOP offered the testimony of H. David Robison, Ph.D. Dr. Robison is an expert in municipal finance as that term is contemplated by Act 47, holding both an advanced degree and more than eight (8) years of experience in issues relating to municipal finance. The Panel found Dr. Robison's testimony to be credible and accepts it as such.

Both experts in municipal finance agreed that the current expenditure cap established by the amended plan would permit the provisions set forth in this Award.

Following Executive Sessions of the Board of Arbitration, the following Award was adopted.

AWARD

1. **TERM:** Three (3) years, effective January 1, 2017.

2. **WAGES AND STEP INCREASES:**
 - (a) Effective January 1, 2017, there shall be an across the board increase in all categories and classifications as follows:
 - January 1, 2017 – 1.0%
 - January 1, 2018 – 1.0%
 - January 1, 2019 – 2.0%

 - (b) All bargaining unit members who are not at the top pay step in their rank shall receive step increases on his or her anniversary date during the term of this Award

3. **LONGEVITY**

Effective January 1, 2017 and continuing through the term of the collective bargaining agreement, all bargaining unit members who are currently eligible for and receiving longevity shall have their longevity payment frozen at the dollar amount in effect on December 31, 2016.

4. **HEALTH INSURANCE BENEFITS**
 - (a) The City shall offer the same medical plans currently available to bargaining unit members. Effective July 1, 2018, the City's shall contribute the following amounts toward premiums for all current bargaining unit members enrolled in the City's healthcare plans. These amounts shall be the City's total monthly liability, including taxes, surcharges, penalties, assessments and other charges and costs under state or federal legislation, including any amendments thereto such as a "Cadillac Tax," and shall include medical, prescription drug, vision and dental coverage:

	<u>Effective 7/1/18</u>	<u>2019</u>
Single	\$635	\$667
Dual	\$1,287	\$1,351
Family	\$1,887	\$1,982

Effective July 1, 2018, the employee contribution shall be the difference between the identified monthly maximum contribution and the COBRA rate (not including the 2% administrative fee charge) for the plan selected.

(b) In the event that an Excise Tax based upon federal/state legislation appears to be reasonably likely to be imposed on the City's police health care plan, whether directly by the federal government or through such tax being passed on by the insurance provider, the City shall have the option of reopening the contract to address potential plan design changes to the health care plan to reduce or eliminate such potential tax.

Any such reopener shall be commenced by the City giving notice to the Union within thirty (30) days following the City's receiving reasonable notice that the Excise Tax will be imposed on the City's police healthcare plan for a particular year. Once the contract is reopened by the City, it is agreed that the City and the Union shall meet promptly in an attempt to reach an amicable resolution.

In the event no resolution is reached, an interest arbitration hearing shall occur no later than sixty (60) days following the City's reopener request, which shall be presided upon by the current Act 111 Interest Arbitration Panel which shall retain jurisdiction for that particular purpose.

A decision shall be rendered by the Panel within ninety (90) days following the City's initial request to reopen the contract. The Panel's decision shall take effect only after it is confirmed that the Excise tax will be applied to the health plan.

(c) The Act 47 Plan recommends that police retirees eligible for employee medical benefits from the County of Berks as a subsequent employer be disqualified from receipt of post-retirement medical benefits under the collective bargaining agreement. The City has advanced such a proposal in this proceeding for consideration by the Panel.

It is the determination of a majority of the Panel that no change to the collective bargaining agreement in this regard is necessary or appropriate. This is because the collective bargaining agreement already disqualifies retirees from receipt of City sponsored post-retirement medical benefits during any period where they are eligible for alternate coverage, and has done so since 1987.

In *City of Reading and Reading Lodge No. 9, Fraternal Order of Police*, AAA Case No. 14 390 01530 12 (Arb. Colflesh, 2013), Arbitrator Colflesh interpreted the existing language of the collective bargaining agreement as disqualifying a retired Reading City Police Officer from continued receipt of City-sponsored post-retirement medical benefits during any period in which the Retired officer is eligible for coverage from a subsequent employer which is "roughly similar to or better than the relevant City plan" taking into consideration an employee/spouse's individual circumstances. In that case, Arbitrator Colflesh directed the parties to appoint a permanent arbitrator to resolve disputes between the parties in individual cases.

For reasons that are not clear from the record, no permanent arbitrator was ever appointed to make such determinations, and the City never sought to make any determinations to be reviewed.

To remedy this situation and achieve compliance not only with the provisions of the Act 47 plan, but also with the collective bargaining agreement as it has existed in this regard since 1987, the parties have appointed the Neutral Arbitrator in this matter to serve as the permanent arbitrator directed in the *Colflesh* Award. The Neutral Arbitrator accepts this appointment.

The medical plan benefits and employee premiums currently available to Berks County employees were introduced into evidence in this matter. So too admitted were the current post-retirement medical plans and employee premiums available to Reading Police retirees. Based on his review of the City and Berks County plans, the Neutral Arbitrator is comfortable stating that the plans and premiums meet the standard of the *Colflesh* award such that he finds that the City shall not be required to provide otherwise eligible future police retirees who work for Berks County with retiree health care during their employment with the County. For officers who have already retired and are working for Berks County, the Neutral Arbitrator will consider each case on an individual basis using the following process:

The City shall, within 30 days of the date of this Award, notify each current police retiree working for Berks County that it believes is disqualified from receipt of benefits based upon the provisions of the collective bargaining agreement of its intent to see that disqualification. The Notice shall include express instructions on how to appeal that determination through written notice to both the City and FOP within 30 days of the date the Notice was mailed.

The City shall provide the list of individuals so notified by name and address, to both the FOP and this Neutral Arbitrator. Thereafter the FOP shall have an additional 30 days to submit any and all information to the Neutral Arbitrator as to the basis for dispute (i.e., non-comparable plan design, individual circumstances, etc.)

Upon receipt of information the Neutral Arbitrator shall consider all the evidence, and issue supplemental awards resolving any disputes where appropriate. The Neutral Arbitrator reserves the right to hold a hearing(s) on any individual case where he deems it necessary. This process shall implement the *Colflesh* Award and is consistent with the provisions of the Act 47 plan. A similar process shall be used for any other current or future police retiree not employed by Berks County who the City believes is disqualified from post-retirement medical benefits under the *Colflesh* award.

5. **PENSION (ARTICLE XVI, SECTION 10)**

The Panel recognizes that the ability of police officers to purchase service credit is a benefit in excess of those authorized in the Third Class City Code. Relying on *City of Wilkes-Barre v. Wilkes-Barre Police Benevolent Association*, 814 A.2d 285 (Pa. Cmwlth. 2002), the Association contends that the Panel has the authority, not the obligation, to eliminate this previously agreed upon benefit. The City argues to the contrary that the Panel has an obligation to eliminate the benefit. It should be noted that the Act 47 Plan does not mandate such an elimination. (N.T. at 176; Coordinator's Presentation Slide 68). The Panel, therefore, is left to examine and weigh the equities of the parties' respective positions.

There are important considerations on both sides of this issue. There is an impact on the funding requirements of the plan that bears upon the City's financial health. However, that was limited when the last Act 111 Interest Arbitration Panel precluded all hires after 2012 from entering the benefit program. Yet there is also a potentially devastating impact upon the individual circumstances of those officers who have signed up for this benefit and have paid or are paying contributions.

At hearing, the City submitted some financial and actuarial information as to the impact on the City from the elimination of the benefit. There was insufficient information on the financial impact on individual officers who have signed up for the benefit and have paid or are paying contributions, and no information on the number of officers currently enrolled and the number of officers eligible to enroll. This issue requires close attention to carefully balance the City's financial needs against the consequences of elimination of the benefit to the affected officers.

For these reasons, the Panel directs the City to provide additional information on the financial impact of elimination of the benefit to the Panel and the Association within 90 days of the date of this Award. The Association will have 90 days to submit a response, including any additional information, for the Panel's consideration. The Panel will retain jurisdiction of this case to consider this issue once it receives and evaluates the information presented.

CONCLUSION

All other terms and condition of employment not modified by this Award shall remain "as is". All proposals of the parties not included in this Award shall be deemed denied. The Board of Arbitration shall retain jurisdiction of this case for the purpose stated in ¶5 of this Award and for resolving any dispute regarding implementation of the Award.

It is understood that the signatures of the arbitrators attest to the fact that the contractual changes represent the majority opinion award on each issue by the members of the arbitration panel.

Walt De Treux 6/6/18
Walt De Treux, Esq.
Impartial Arbitrator and Panel Chair

Sean T. Welby
Sean T. Welby, Esquire
FOP-appointed Arbitrator

Patrick Harvey
Patrick Harvey, Esquire
City-appointed Arbitrator
Dissent solely as to paragraph #5 of the Award.

AMERICAN ARBITRATION ASSOCIATION

In the Matter of Arbitration Between:

READING LODGE No. 9, FRATERNAL
ORDER OF POLICE

AAA Case No. 01-16-0003-9905
(Act 111 Interest Arbitration)

and

Hearing Dates: 5/15/17; 8/15/17

CITY OF READING

Board of Arbitration

Patrick Harvey, Esquire
Arbitrator for City of Reading

Sean T. Welby, Esquire
Arbitrator for Reading Lodge No. 9, FOP

Walt De Treux, Esquire
Impartial Arbitrator and Panel Chair

Dissent

On behalf of the City of Reading (the "City"), I dissent to paragraph five (5) of the Panel's Arbitration Award. As established at the hearing, the City of Reading is fiscally distressed and facing serious fiscal challenges in the coming years. One of those severe challenges is the funding of its pension plans, especially the Police Pension Plan. The distressed fiscal condition of the Police Pension Plan was established at the hearing and was not challenged. The City's pension plans are all underfunded and are an on-going severe fiscal strain and concern for the City.

The overall fiscal condition of the City and its pension plans not only mandates the need for fiscal restraint by this Panel generally, it also mandates that the Panel, at the very least, take all actions to correct any unlawful or excessive pension benefits that have caused or exacerbated the excessive pension costs and underfunding of the pension plans.

One of the chief unlawful and excessive pension benefits that is substantially contributing to the underfunding of the police pension plan and the fiscal distress of the City is the "Ghost Time" provision found in Article 10 of the

collective bargaining agreement (CBA). The Ghost Time provision allows a police officer to buy up to five (5) years of "service time" toward his or her defined benefit pension benefit even though the officer did not actually work as a police officer for the City during those five years. The Ghost Time provision essentially allows a police officer to skip five years of service and to begin to receive a pension five years early.

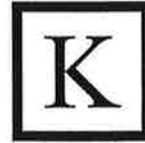
There can be no dispute that the Ghost Time provision is an unauthorized pension benefit. As the City highlighted during the hearing, and as the Coordinator has noted in its commentary on the Award, case law mandates the elimination of the Ghost Time benefit. While the arbitrator for the police argues that the Panel is not required to eliminate that provision, the City has presented sufficient evidence to justify the elimination of the excessive and illegal Ghost Time provision. The City submits that the Panel has no authority to mandate the continuation of an unlawful pension benefit. Further, the excessive cost of the Ghost Time provision to the City's taxpayers and the pressing need to eliminate that provision was established through sufficient financial evidence at the Act 111 hearings.

The City's amended Fiscal Recovery Plan does not expressly mandate the elimination of the Ghost Time provision, but the Coordinator's commentary explains its rationale for not expressly mandating the elimination of the Ghost Time provision due to the state of case law at the time the Plan was written. The Plan was written before the law changed to mandate the elimination of this illegal benefit. Further, it is the City's position that the elimination of the Ghost Time provision is not only justified by the spirit and general provisions of the Recovery Plan but required by law.

Unfortunately, the arbitration panel has chosen to not mandate the elimination of the Ghost Time provision at this time resulting in further continued excessive cost and strain to the City's underfunded Police Pension Plan. Instead, a majority of the Panel has chosen to seek more evidence relating to the Ghost Time provision. By doing so, the Police Pension Plan's fiscal distress will continue to exacerbate due to the confirmation of the excessive and illegal Ghost Time provision. While the City dissents from the Panel's decision to not bring the Police Pension Plan into compliance with the law, it will comply with the majority of the Panel's request for additional information. It is the City's continued position that the Panel must eliminate the Ghost Time provision once it issues its final award/ruling on this provision after review of the Panel's requested additional evidence.

Since it is my view that the Panel did not appropriately consider and weigh the compelling and sufficient financial evidence and circumstances, I cannot support paragraph five (5) of the Panel's Award which results in unnecessary delay in eliminating the illegal Ghost Time provision.

*I, Andrew J. Harvey dissent solely
as to paragraph # 5 of Award.*



MEMORANDUM

TO: Reading FOP Act 111 Interest Arbitration Panel and Counsel
FROM: Vijay Kapoor on Behalf of Recovery Plan Coordinator
DATE: June 6, 2018
RE: Review of Award for Plan Compliance

As Recovery Plan Coordinator, we have reviewed the attached Act 111 interest arbitration award issued by this Panel and find that it complies with the Amended Recovery Plan. We appreciate the parties' efforts in bringing this matter to a conclusion.

We are disappointed that the Panel did not immediately eliminate the ability for police officers to purchase non-military pension service credit or "ghost time." The Third Class City code does not permit purchasing this time, the courts have found that it can be removed for existing employees, and it has had a significant negative impact on the police pension fund and consequently on the City of Reading's financial condition. We did not mandate its removal in the Amended Recovery Plan as the legality of its removal for existing employees had not yet been addressed by the courts when we drafted the Amended Recovery Plan. Given the Commonwealth Court decision in the *City of Allentown* case, it is clear that it may be removed for existing employees.

cc: Gordon Mann, Public Financial Management