IN THE MATTER OF AN ARBITRATION

BETWEEN:

THE CORPORATION OF THE CITY OF HAMILTON

(the "City")

AND:

HAMILTON PROFESSIONAL FIRE FIGHTERS' ASSOCIATION, LOCAL 288

(the "Association")

IN THE MATTER OF:

RENEWAL COLLECTIVE AGREEMENT

SOLE ARBITRATOR:

Kevin M. Burkett

APPEARANCES FOR CITY:

Daryn Jeffries	- Counsel
Daina Search	- Counsel
Yakov Sluchenkov	- Director Employee Health and Labour Relations
Meredith St. Denis	- Labour Relations Officer
Vanessa Di Pietro	- Labour Relations Analyst
Dave Cunliffe	- Fire Chief
Mike Rember	- Deputy Chief
Dan Milovanovic	- Deputy Chief

APPEARANCES FOR ASSOCIATION:

Howard Goldblatt	- Counsel
Carmen Santoro	- IAFF Advocate
Rob D'Amico	- President, IAFF Local 288

I have been appointed by the parties to act as the interest arbitrator in regard to the renewal collective agreement to the collective agreement between them that expired December 31, 2022. There is no dispute with respect to my jurisdiction in this regard.

The City of Hamilton, located at the west end of Lake Ontario, has a population of approximately 781,000. The Hamilton Fire Department provides fire protection and fire prevention services from 30 locations across the city, with 26 emergency response stations. The Hamilton Professional Fire Fighters Association, Local 288, is the bargaining agent for approximately 550 full-time fire fighters employed by the City.

The parties exchanged proposals for the renewal collective agreement on May 9, 2023 and met to negotiate on May 9, 12, 16, 23 and 24, June 9, 16 and 29 and July 5 and 6, 2023. The Association referred the outstanding issues to arbitration in accordance with Section 49 of the Fire Protection and Prevention Act 2017 S.O. 1997 (FPPA) on July 10, 2023. The City made a further proposal on November 3, 2023 which the Association rejected on November 8, 2023. Mediation proved to be unsuccessful. An arbitration hearing was convened on February 28, 2024 with rebuttal briefs, reply briefs and other submissions following.

The issues in dispute that have been submitted to arbitration are as follows:

Association Proposals

1) Wage Increase – Schedule "A"

2) Salary Differential Increase – Schedule "A"

3) Frontline Emergency Pay – Schedule "A"

4) Instructor Training Premium – Schedule "A"

5) Safety Shoes – Schedule "B"

6) Benefits – Schedule "F"

7) Mechanical Division On Call Pay – Article 5.5

8) Truth and Reconciliation Day – Article 9.1

9) Statutory Holiday Pay – Article 9.1

10) Post 65 Health Care Spending Account – Article 11.8(4)(iii)

11) Association Leave – Article 13.2

12) Bereavement Leave – Article 13.3

13) Personal Emergency Leave – New Article

14) Hours of Employment Training Division – New Article

15) WSIB/LODD (LOA) – New Article

16) Holiday and Lieu Day Selection – New Article 7(vii)

17) Transfer of Personnel – Operations Division – New Article 14.4(a)

18) Officer Overtime – New Article

19) Eligibility for Transferring to the Training Division – New Article

20) Training Schedule and Returning to Regular Shift – New Article

21) 24-Hour Suggested Work Schedule – Article 4.1(d)

City Proposals

1) Wages – Schedule "A"

2) Term

3) Hours of Employment – Article 4.1(a), (c), (e) and Article 4.1(d)(xii)

4) Shift Exchanges/Trades – Article 4.1(d)(v)

5) Overtime Compensation – Article 5.1

6) Group Medical – Articles 11.6, 11.8 and 11.13

7) Promotions, Seniority and Transfers – Articles 14.3 and 14.7

8) Sunset Clause – Article 16.1

9) External Hires to Temporary Positions – New Article

10) Remove Minutes of Settlement Re Duties of the Assistant Deputy Chief

11) Amend Memorandum of Agreement Re Exclusion

12) Policy of Promotion – Schedule "C"

13) Benefits – Schedule "F"

The parties have agreed on a four-year term extending from January 1, 2023 to December 31, 2026.

The arbitrator is bound by Section 50 of the FPPA which stipulates as follows:

> **50.5** (1) The arbitrator shall examine into and decide on matters that are in dispute and any other matters that appear to the arbitrator necessary to be decided in order to conclude a collective agreement between the parties.
>
> [...]

Criteria

(2) In making a decision, the arbitrator shall take into consideration all factors the arbitrator considers relevant, including the following criteria:

1. A comparison, as between the employees and other employees in the public and private sectors, of the terms and conditions of employment.

2. A comparison of collective bargaining settlements reached in the same municipality and in comparable municipalities, including those reached by employees in bargaining units to which the *Labour Relations Act, 1995* applies, having regard to the relative economic health of the municipalities.

3. The economic health of Ontario and the municipalities, including, but not limited to, changes to labour market characteristics, property tax characteristics and socio-economic characteristics.

4. The employer's ability to attract and retain qualified firefighters.

5. The interest and welfare of the community served by the fire department.

6. Any local factors affecting the community.

COMPARATORS

Interest arbitrators in this and other sectors prohibited from strike/lockout look to the collective bargaining results of comparable bargaining units covering the term of agreement under consideration. This is the primary means of giving effect to the

principle of replication. In this case, given the population and location of Hamilton, the primary fire service comparators are and have been for many years Brampton, Mississauga, Oakville and Toronto. The local police are always a comparator in fire sector interest arbitration, especially in regard to salary. The City argues that comparator fire sector units should include all those in Ontario with populations that exceed 100,000. These parties have never relied upon such a geographically open-ended universe. However, as will become apparent, in the circumstances here it has been necessary to consider a universe of secondary comparators with significant populations that are geographically proximate. These are Burlington, Kitchener, Waterloo and Guelph. Burlington has a population of over 200,000 and is contiguous to both Hamilton and Oakville. Kitchener, Waterloo and Guelph are within a 50-kilometre radius of Hamilton. Kitchener also has a population of over 200,000.

The term of agreement as agreed between the parties (2023-26) coupled with the COVID inflation inhibit reliance upon the primary comparators here. The Brampton, Mississauga and Toronto agreements extend only into 2023, the first year of the agreed upon 2023-26 term of operation of this renewal collective agreement. (Oakville expired in 2022 and is presently before an interest arbitrator.) However, these collective agreements were negotiated in late 2018 and early 2019, before the onset of the pandemic-related inflation, i.e. 6.8% in 2022 and 3.9% in 2023, that most certainly will be taken into account in the current renegotiation of these salaries for 2023 and 2024.

It follows that the 2023 rates that were negotiated in 2018 and 2019 are of little assistance in determining the 2023 rates at this time.

While the primary comparators do not assist in determining the quantum of a fair and equitable post-2022 salary award for the period 2023-26, guidance can be taken from the secondary fire comparators where salaries were determined post 2022 and where there exists a historical relativity to Hamiton and the other primary comparators.

SALARIES

As discussed, the primary comparators do not assist with respect to salary determination because, except for 2023 (Toronto, Mississauga and Brampton), none of the primary comparators have settled for 2024, 2025 or 2026. As for 2023, the primary comparator salaries were determined in 2018-19, before the pandemic inflationary spiral that resulted in the 6.8% rise in the CPI for 2022 and the 3.9% rise in the CPI for 2023. Those salaries do not reflect the 2022-23 inflation that will no doubt influence the Oakville salary determination for 2023 and the Brampton, Mississauga and Toronto salary determinations for 2024. That said, as noted, there are relevant fire sector settlements negotiated in the knowledge of the pandemic-related inflation. Kitchener, Waterloo, Guelph (2023-26) and Burlington (2023-24) were negotiated in 2023. Burlington with, as noted, a population of over 200,000, contiguous to both Oakville

and Hamilton, and with a historical relativity to the primary comparators is the most relevant for our purposes. As noted, Burlington settled on May 25, 2023 for a 2023 annual increase of 3.5% (end rate $110,393) and a 2024 annual increase of 2.95% (end rate $113,658). It did so in the knowledge of the 6.8% rise in the CPI for 2022 and in the knowledge of the average 5% per month year-over-year inflation for each of the first four months of 2023. It is to be observed that between 2018 and 2022 inclusive the salary of a Burlington first class fire fighter was within $50/year of an Oakville first class fire fighter and that the Burlington first class fire fighter salary was also aligned with the Brampton and Mississauga first class fire fighter salaries for the same period. Accordingly, the Burlington salaries for 2023 and 2024, based on the historical relationships, provide a strong indication as to what will be the 2023 and 2024 primary comparator salary levels for these years.

The Burlington and Hamilton first class fire fighter salaries were at virtual parity from 2014 through 2017 with a differential in favour of Hamilton of $172/year to $179/year for 2018 through 2021, accelerating to $604 in 2022. While the 2022 differential of $604 in favour of Hamilton marks a dramatic and, based on the historic pattern, unsustainable year-over-year increase in the differential, it is nevertheless consistent with the trend line and, therefore, is to be taken into account in applying the replication principle. Accepting that the pre-existing Hamilton/Burlington differential is a relevant consideration, the midpoint between the $172-179/year 2018-21 differential and the $604 2022 differential (a $390/year differential in favour of

Hamilton for 2023 and 2024) produces a realistic free collective bargaining outcome for these years. This would result in a Hamilton first class fire fighter salary of $110,783 for 2023 and $114,040 for 2024.

As for 2025 and 2026, the City offer of 2.85% for 2025 and 2.85% for 2026 is slightly better on a percentage basis than the other significant post-2022 secondary comparator settlements of 2.85% for 2025 and 2.75% for 2026, i.e. Kitchener, Waterloo and Guelph. The application of a 2.85% increase for 2025 would produce a Hamilton first class fire fighter salary of $117,290 for 2025 and a 2.85% increase for 2026 would produce a Hamilton first class fire fighter salary of $120,632 for 2026.

Although Hamilton fire fighters were paid more than their Hamilton police counterparts from 2015 through 2020, by an average of $1,460/year (a historical anomaly), the Hamilton police were paid more than their Hamilton fire counterparts in 2021 ($252) and 2022 ($194). The 2023 salary for a Hamilton first class police constable has been set at $109,386. At a 2023 annual salary of $110,783, a Hamilton first class fire fighter would be paid $1,397 more than a Hamilton first class constable for 2023, thereby reversing the 2022 differential by $1,591. Even taking into account the most recent police sector settlements, it is highly unlikely that the Hamilton police salaries for 2024 and beyond would support higher Hamilton first class fire fighter salaries for 2024-26 than those specified above.

BENEFITS

As a necessary first step, the benefit entitlements under this collective agreement must be measured against the benefit entitlements under the primary comparator collective agreements. However, as noted with respect to salaries, the primary comparator collective agreements do not extend beyond 2023 while these parties have agreed to a four-year term extending to December 31, 2026. The secondary comparator collective agreements extend into the 2023-26 term and were negotiated after the 2022 COVID-related spike in the rate of inflation. It follows that it is also necessary to consider the pace of benefit improvements under those collective agreements in awarding benefit improvements here for the 2023-26 term. The secondary comparator collective agreement renewals do not contain breakthrough benefit improvements. Accordingly, an assumption has been made that over the period 2024-26 the primary comparator benefit levels will trend upwards but without breakthrough improvements. This award as it pertains to benefits will reflect this assumption such that the level of benefits will trend upwards over the term, at a pace of benefit improvement that could reasonably be anticipated under free collective bargaining.

The Association demand for the inclusion of the Day of Truth and Reconciliation as a statutory holiday is supported by its inclusion within all four expiring primary comparator collective agreements.

The City's benefit rollback demands are dealt with under the City Demands heading.

LATE DEMANDS

The City argues that the Association has submitted to arbitration a number of "late" demands that are not within my jurisdiction to adjudicate. Specifically, the City identifies the following Association demands as "late" demands:

2) Salary Differential Increase – Schedule "A"

4) Instructor Training Premium – Schedule "A"

6) Benefits – Schedule "F"

15) WSIB/LODD (LOA) – New Article

16) Holiday and Lieu Day Selection – New Article 7(vii)

17) Transfer of Personnel – Operations Division – New Article 14.4(a)

18) Officer Overtime – New Article

19) Eligibility for Transferring to the Training Division – New Article

20) Training Schedule and Returning to Regular Shift – New Article

The City submits that the Association never raised its proposals regarding WSIB/LODD, officer overtime, holiday and lieu day selection, eligibility for transferring to the training division or training schedule and return to regular shift in

bargaining nor identified the proposed salary differential increase and instructor training premiums it is now seeking. Moreover, it submits that the Association has put forward proposals for massage, mental health and osteopath, chiropodist/podiatrist that exceed its bargaining proposals.

In response to the Association position that its proposals in regard to holiday and lieu day selection and transfer of personnel – Operations Division were in response to a "changed" bargaining environment, the City points out that it advised the Association on January 17, 2024 that it would be implementing a new policy effective January 1, 2025 that would address the assignment of operations personnel to an apparatus, the selection of vacation, holidays and lieu days by apparatus group and the process for transfers and reciprocal trades. The City further points out that it had taken the position in bargaining from the outset that it could act unilaterally on these issues such that the bargaining environment did not change when it withdrew its proposals and confirmed its intention to act unilaterally. The City asserts that it sought the Association's agreement on these issues in bargaining in order to avoid a future rights dispute. The City argues that, having told the Association at the outset that it could act unilaterally, it was open to the Association to table a counterproposal at that time and that, having failed to do so, it is not open to the Association to do so at arbitration. The City position is that it is outside the arbitrator's jurisdiction to now consider these "late" proposals.

Finally, in regard to the officer overtime, transferring to Training Division and training schedule and returning to regular shift issues, the City submits that it provided

the Association with estoppel letters on May 3 and 4, 2023, prior to the commencement of bargaining. It is the City's position that if the Association wished to deal with these issues in bargaining (as distinct from at rights arbitration), it was required to table demands at the outset of bargaining. The City submits that the demands tabled at interest arbitration are "late" demands that are not within my jurisdiction to adjudicate.

The Association argues that if a mediation proves to be unsuccessful, as here, either party "can revert to positions previously advanced or even alter or enhance those positions in light of events that have transpired in the course of what is always a protracted negotiations process." The Association submits that, in any event, the differences between the parties as submitted to interest arbitration, including the demands labelled by the City as "late" demands, are "disputes" within the meaning of the FPPA that are within the jurisdiction of an interest arbitrator to adjudicate.

In response to each of the three categories of "late" demands identified by the City, the Association argues: firstly, that if issues are not resolved in bargaining/mediation it is free to revert to its previous position or to even enhance its position at arbitration; secondly, it is entitled to respond to the estoppel letters at arbitration in an effort to avoid future litigation; and thirdly, in regard to holiday and lieu day selection and transfer of personnel – Operations Division, which it acknowledges are "late" demands, it argues that these demands were necessitated by the "unprecedented actions" of the City in tabling these proposals, taking these proposals to impasse in bargaining, in removing these proposals from collective

bargaining and in announcing that it would impose these proposals unilaterally. The Association points out that its "late" demands in response "enshrine longstanding and successful practices between the parties." The Association submits that the fact that it filed grievances to protect itself in the event that its demands were not entertained at arbitration is immaterial to the issue of whether its demands should be dealt with on the merits.

The seminal passage from *GAU, Local 12-L v. Graphic Centre (Ont) Inc. [1976] OLRB Rep 221*, a decision of this arbitrator in his then capacity as a vice chair of the OLRB, describes the corrosive impact of "late" demands on the bargaining process as follows:

> The decision making capability of the parties depends upon not only a full and open discussion of the items which are in dispute but also upon an awareness that the scope of the dispute is limited to those items which have been put into dispute in the early stages of the bargaining process. Decision making does not take place in a vacuum. The parties set the parameters with their early exchange of proposals thereby establishing the framework within which they negotiate. A party which holds back on an item or number of items and then attempts to introduce these matters into the negotiations as the process nears completion, effectually destroys the decision making framework. A party cannot rationally or properly consider its bargaining position in the absence of absolute certainty that the full extent of the dispute has been revealed. The tabling of additional demands after a dispute has been defined must, in the absence of compelling evidence which would justify such a course, be construed as a violation of the duty to bargain in good faith.

I adopted this reasoning in *re: Ontario Cancer Institute and ONA 1989 CarswellOnt 5429* in dealing with the question of prejudice, as follows:

> When the union argues that there would be no prejudice to the hospital it misses the point. The framework for collective bargaining is established with the initial exchange of the bargaining agendas and the subsequent exchange of proposals and counterproposals. The concessions made by one side are in response to and conditioned upon the position taken by the other side. There is obvious prejudice to the party that has relied upon the framework established by the orderly exchange of proposals if the other party is allowed to table a fresh set of demands at the last minute. Whereas these demands would surely evoke a series of different responses the party relying on the established framework has already exposed bargaining limits that go beyond.

Reference should also be had to the award of arbitrator Stout under the FPPA in *re: City of Welland v. Welland Professional Fire Fighters' Association 2020 CanLII (ON LA)* wherein he stated that:

> In free collective bargaining it has been held that, absent compelling reasons, altering one's proposals or tabling new demands late in bargaining can constitute a failure to bargain in good faith. This same principle applies to the interest arbitration process.
>
> Finally, in the recent *City of Windsor and Windsor Professional Fire Fighters Association* award under the FPPA, January 2024, this arbitrator found, in response to an Association claim that the City had tabled "late" demands that should not be entertained, as follows:
>
> An orderly framework for collective bargaining, an important public policy objective, requires that "late" demands that undermine this framework not be permitted. The orderly framework for collective bargaining is established through the initial tabling of demands by both sides and the respective bargaining responses to those demands. These initial exchanges establish the framework within which each party can move forward with certainty as to the scope of the dispute and with knowledge of the other party's initial position in regard to the issues in dispute. Late demands that undermine the orderly framework for

> collective bargaining would be in breach of the statutory duty to bargain in good faith.
>
> [...]
>
> As for the City's recognition pay proposal, the prohibition against the tabling of late demands is not intended to prevent a good faith proposal that is in direct response to an issue put into dispute by the other side (see *Welland v. Welland Professional Fire Fighters' Association 2020 CanLII 36022 (Stout)* and *Ottawa v. Ottawa Professional Fire Fighters Association 2022 CanLII 68077 (Burkett)*). The City's recognition pay proposal was in direct response to the Association's recognition pay proposal and, therefore, is not a late demand.

It is against the backdrop of the foregoing that a determination must be made as to whether the Association's demands identified by the City as "late" demands are properly before me for adjudication. As is clear from the case law, except in exceptional circumstances, demands that undermine the framework for orderly collective bargaining breach the statutory duty to bargain in good faith and, therefore, are not matters that should be considered on their merits. Indeed, to consider "late" demands on their merits would, absent the exceptional circumstances referenced in the case law, give effect to a breach of the duty to bargain in good faith.

The move from two-party bargaining to interest arbitration does not constitute a fresh point of departure but rather a continuation of the bargaining process. The prohibition upon the tabling of "late" demands remains in place. The Association is mistaken when it argues that a party is free to augment its demands when the dispute enters the interest arbitration phase. It is important to understand, however, that absent

two-party agreement following without prejudice bargaining, a party may revert to its original position.

With this in mind, I turn to the specific Association demands identified by the City as "late" demands. In regard to the salary differentials, the Association identified this as a demand at the outset (May 9, 2023) without specifying the specific amounts. The City, in continuing to bargain, did not request or otherwise require specification. Accordingly, this is not a demand that undermined the framework for bargaining and will be considered on its merits. The Association increased certain of its benefit demands as tabled on May 9, 2023 in its referral to arbitration (hearing aids, mental health, massage and osteopath/chiropodist). It did so without pointing to any specific external collective bargaining development that might have supported these increases. Accordingly, these demands have been considered on the basis of the original request. The WSIB/LODD position first tabled in its December 6, 2023 counterproposal is that the 2022 Memorandum of Agreement on this matter be incorporated into the collective agreement. This demand will not be considered on its merits. However, the Memorandum of Agreement remains in effect subject to its terms.

Having been provided with estoppel notices dated May 3 and 4, 2023 regarding 18) officer overtime, 19) eligibility for transferring to the Training Division and 20) training schedule and returning to regular shift, the Association was on notice that the City was establishing its right to apply these articles according to the strict language. The Association, therefore, was on notice that it could table proposals at bargaining to

amend the strict language or to otherwise confirm the existing practice or that it could wait and grieve. The Association did not table bargaining demands in this regard until the January 31, 2024 referral to interest arbitration. Absent any compelling reason to justify the failure to table until January 31, 2024, after some 10 days of bargaining, these are "late" demands that run counter to the duty to bargain in good faith and, therefore, have not been considered on the merits.

The holiday and lieu day selection (16) and transfer of personnel – Operations Division (17) present a different set of circumstances. I start by confirming that both are central to the work life of a fire fighter and are proper subject matters for collective bargaining. Indeed, an Association demand at the outset of bargaining dealing with these subject matters would have been properly in dispute subject to ultimate determination at interest arbitration. Notwithstanding, there was no express collective agreement language in the predecessor collective agreement that would have prevented the City from acting under its management rights for legitimate business reasons. However, it should be noted that if it had been in the contemplation of the City at the time of bargaining to alter these longstanding practices (as it was) and it had remained silent only to unilaterally implement following bargaining, it might well have been met with not only a rights challenge but also with a bargaining in bad faith complaint before the OLRB. That said, bargaining ensued to impasse with the Association taking the position that any contract language should reflect the existing practices. In response, the City withdrew its proposals and confirmed that it would act unilaterally. It was at

this juncture that the Association tabled its own demands (which the City asserts are "late") to codify the existing practices within the collective agreement. Without prejudice to its argument that these demands are "late", the City maintains that neither demand reflects the current practice. In regard to the Association's proposed holiday and lieu day selection language, the City argues that it deviates from the current practice in that it expressly constrains the Chief in regard to scheduling, places limitations on the number of staff that are permitted to be off at any given time that do not presently exist and allows for the drawing of days off by platoon seniority as opposed to seniority by rank, then department seniority in each platoon.

That aside, the bargaining sequence that culminated with the City's withdrawal of its bargaining proposals and confirmation of its intent to act unilaterally constituted an exceptional circumstance within the meaning of the applicable case law that permits the tabling of a bargaining response by the Association. At the outset of bargaining, the Association would have reasonably expected that absent a contrary indication from the City these long-standing practices would continue such that there would have been no need to table a demand. Having then been met with the City demand to alter the practices, the reasonable expectation of the Association, notwithstanding the City position that it could act unilaterally, was that any change to the practice would be subject to negotiation. However, in the face of the bargaining impasse, the City withdrew its proposals and confirmed its intention to act unilaterally. This changed the bargaining dynamic. It was at this juncture that the Association would have understood

for the first time that if it wished to preserve the practices, bargaining proposals would be required. The Association's bargaining proposals, therefore, while "late", were in direct response to the unusual withdrawal of the City's proposals and the confirmation of its intention to act unilaterally. In this collective bargaining context, these are exceptional circumstances within the meaning of the applicable case law that justify the Association's "late" proposals. Accordingly, these proposals are to be adjudicated on their merits.

The reduction to writing of contract language to regulate matters as complicated as these by an interest arbitrator is an exercise fraught with possible unforeseen consequences. This is especially so where, because of the unusual bargaining sequence, the parties themselves have not fully engaged, including with respect to the specific elements of the holiday and lieu day selection issue identified for the first time at pages 43 and 44 of the City's February 28, 2024 brief. Accordingly, the award will provide the parties with the opportunity to fully engage on these two issues and, failing resolution, to provide the arbitrator with additional information in the form of written briefs dealing with the issues that remain outstanding.

The status quo will remain in place pending a final award.

CITY DEMANDS

The City has tabled a comprehensive slate of demands that requires analysis.

- The wage issue is analyzed elsewhere.

- The parties have agreed upon a four-year term extending from January 1, 2023 to December 31, 2026.

- The City is proposing to apply a seven-day-a-week, Monday through Sunday, work schedule to employees in Training, Mechanical/Repair and Fire Prevention with the daily and weekly hours of work essentially unchanged except for Fire Prevention whose daily hours of work under the City proposal would change from 07:00 to 17:00 hours to 07:00 to 23:59 hours. These employees are scheduled to work a five-day Monday to Friday workweek under the collective agreement. However, the Training Division has been under a four-day workweek trial for 12 years that the Association is seeking to formalize.

  In support of its proposal with respect to Mechanical/Repair, the City refers to the extensive legislated and regulatory requirements including stringent vehicle emissions standards and inspection requirements. Reference is also made to

advance electronic technology that requires specific maintenance. I am reminded that equipment frequently breaks down outside of normal business hours and on weekends (recent weekend examples requiring same day repair are cited). The City submits that manpower should be available on weekends at no extra cost (i.e. no overtime). The City concedes that the repair of paramedical vehicles has exasperated space availability.

The primary comparators, all major fire services, would be subject to the same legislative and regulatory constraints with regard to maintenance and repair and would also require weekend repair work. None of the primary comparators require Mechanical Division employees to work a regularly scheduled seven-day-a-week work schedule. Absent distinguishing factors here that would establish a pressing demonstrated need, I am not prepared to impose a Mechanical/Repair work schedule that is so at variance with the primary comparator norm.

With regard to training, the competency requirements here are no different than for the other primary comparator fire services. The primary comparator analysis does not support the awarding of a seven-day-a-week Monday to Sunday work schedule. However, the deadline for compliance with the FPAA Regulation re Mandatory Minimum Certification Standard is set for either July 1, 2026 or July

1, 2028 depending upon the fire protection services being provided by the municipality. Given the training requirements, this mitigates in favour of maintaining the four-day workweek trial for the Training Division in preference to formalizing it within the collective agreement at this time.

The Fire Prevention Division engages in community risk reduction, in public education and in fire safety inspection. These are the same functions as would be performed by the Fire Prevention Division of any other major fire service. Again the comparator analysis does not support the extension of regularly scheduled hours and days of work as proposed by the City.

- There is no compelling reason to delete the "suggested" 24-hour work schedule as proposed by the City.

- The Association accepts the City proposal regarding time off duty before working either a 12- or 24-hour shift (article 4.1(d)(v)).

- The Association accepts the City proposal regarding time lapse for payment of overtime (article 5.1).

- Retiree Benefits – The arbitrator is not prepared to limit the retiree benefit coverage provided to a spouse, widow, widower or eligible dependent to the time as of which the member attains the age of 65 as sought by the City. A spouse, a widow, widower or eligible dependant presently has such coverage until he/she attains the age of 65. The comparator analysis does not support the City position.

  As for the City's housekeeping proposals, housekeeping should not in any way affect substantive or arguably substantive rights or entitlements. While there is no live Ontario health tax issue, the reference to the Ontario health insurance plan in Article 11.8 could be a relevant consideration should there again be a health tax issue. While the City is free to and has changed carriers, the agreement of these parties is to provide the equivalent of the Canada Life Article 11.6 dental plan and the Article 11.8 sub B extended health plan. Any housekeeping should make this clear. Because the Association is reluctant to make any amendments to Article 11, this award, within the above constraints, will incorporate the City's housekeeping proposals.

- The purpose of any sunset clause is to provide the employee with the opportunity to rehabilitate through a period of good behaviour at work. Extended periods off work do not provide such an opportunity and, therefore, should not count towards rehabilitation. Accordingly, the City proposal will be awarded.

- With the exception of the Kingston communication division, there is no fire service comparator support for the introduction of a temporary employee classification to backfill in the support divisions. The City demand will be denied.

- The City seeks to have the Minutes of Settlement regarding duties of the Assistant Deput Chief deleted. These minutes establish the boundary between the Assistant Deputy Chief (excluded) and the Platoon Chief (included) and, therefore, serve a useful labour relations purpose.

- The City seeks to amend the scope clause to remove the numerical limitation upon each of the excluded positions and to expressly assign to the Chief the authority to determine the number of incumbents in each of the excluded positions. Scope related issues are hard fought within the fire sector. The Association, in its rebuttal brief, confirmed that it is willing "to clarify the clause...during the term." The best arbitral response at this time is to leave this issue to the parties to discuss during the term.

- The City seeks: to rewrite the promotions, seniority and transfer language of articles 14.3 and 14.7 to clarify that employees transferring to divisions outside

their area of expertise will be placed in the rank of fifth class and then progress through the ranks to the rank of first class; to confirm that an employee who applies for a job posting or for a transfer must have the required NFPA certification for the job sought; to clarify that an employee must have attained the rank of first class in the Operations Division to be eligible to transfer to the Training Division; and that effective January 1, 2025 operations employees must have the required NFPA certification to transfer to the Training Division. Provided that it is understood that the proposed "fifth class" replaces the existing probationary class so that an additional step is not being created and that an employee who is unsuccessful will be returned to his/her previous position, these amendments, in that they clarify the process and specify the required certifications, will minimize future disputes. The City proposal will be awarded.

- The City seeks to rewrite the promotion policy (Schedule "C"). Although its proposals are explained in its rebuttal brief, there is no comparator discussion as would have allowed the arbitrator to better understand the implications of the City's proposed amendments in a major fire service setting. The promotional process is central to the work life of a fire fighter and, therefore, it requires careful thought and understanding if changes are to be imposed, especially in circumstances where a number of changes were made by the parties themselves in the last round. The Association has confirmed its willingness to discuss

possible additional amendments to Schedule "C" during the term. Accordingly, given the foregoing, the best arbitral response at this time is to leave this issue to the parties to discuss during the term.

- The City seeks to effect cost savings by bringing a number of benefit entitlements into line with the benefit entitlements under its other internal collective agreements:

  Smoking cessation – 3 months unlimited to $300

  Private nursing – 0 to $25,000 annually

  Physiotherapy – 0 to $3,500 annually

  Out of province – 0 to 60 days

  Orthotics - $500/year to $500/3 years

  Injectable vitamins – delete

  Teeth whitening – delete

While cost containment is a legitimate City objective, and while the statutory criteria includes collective agreements bargained in the same municipality, the proposed rollback of fire service benefits must be assessed in the context of their fire service application. This is so because certain benefits (including a number of these) may be of particular importance to fire fighters such that significant weight must be given to the level of benefit under the primary fire sector comparator collective agreements. For example, because fire fighters face an element of potential physical danger that exceeds

that of other employees, the level of private nursing and physiotherapy coverage should be in line with that under the comparator collective agreements. The same would apply to smoking cessation for those who fight fires and may be exposed to toxic fumes. Because fire fighters often retire at a younger age than others, the duration of out of country medical coverage should also be in line. The current orthotic coverage ($500/year) is commonplace within the fire sector. Except for teeth whitening which the City asserts, without challenge, is not provided under the Brampton, Mississauga or Toronto collective agreements and was deleted from the Hamilton Police collective agreement in 2020, the City relies primarily upon an internal comparator analysis. However, not having been provided with a primary fire sector comparator analysis, it must be assumed that, except for teeth whitening, such an analysis would not support the awarding of the City's rollback benefit proposals. Accordingly, and keeping in mind that the benefit package as a whole is the result of past economic bargains, I have not been persuaded, except for the deletion of teeth whitening, to award the City's other benefit proposals.

A W A R D

Having regard to all the foregoing, I hereby award as follows.

The parties are directed to enter into a renewal collective agreement to the collective agreement between them that expired December 31, 2022 that contains all of

the terms and conditions of the predecessor agreement except as amended to incorporate the following.

1. All matters agreed between the parties prior to the date hereof, including a term of operation from January 1, 2023 to December 31, 2026.

2. Provide for the following first class fire fighter annual salaries:

Effective January 1, 2023	$110,783
Effective January 1, 2024	$114,040
Effective January 1, 2025	$117,290
Effective January 1, 2026	$120,632

All other ranks are to be increased by the same percentage amounts on the same effective dates.

Salary retroactivity is to be provided to those employed since the expiry of the predecessor collective agreement on the basis of all paid hours and is to be paid within 90 days of the date hereof.

3. Increase the salary differential for the District Chief from 130% to 135%.

4. a) Vision – Effective as soon as reasonably practicable, increase maximum to $650 per 24 consecutive months.

b) Dental Major Restorative – Effective as soon as reasonably practicable, increase to $2,500 per person per 12 consecutive months, and effective January 1, 2026, to $3,000.

Dental Orthodontics – Effective as soon as reasonably practicable, increase lifetime maximum to $3,500, and effective January 1, 2026 to $4,000.

c) Hearing – Effective as soon as reasonably practicable, increase coverage to $1,800 every 36 consecutive months, and effective January 1, 2026 to $2,000.

d) Mental Health – Effective as soon as reasonably practicable, increase the annual maximum to $3,500 and the per visit maximum to $250, and effective January 1, 2026, increase annual maximum to $5,000.

Amend article 11(a) to read, "Clinical psychologist, psychiatrist, psychotherapist, social worker, services of a practitioner that is not a

standardly covered mental health practitioner but is operating under the supervision of a licensed list of mental health practitioners under the specific group will be covered according to the coverage for the supervising practitioner. Expenses will be paid based on reasonable and customary charges for the supervising practitioner."

e) Massage – Effective as soon as reasonably practicable, increase annual maximum to $750.

f) Speech Therapist – Effective January 1, 2026, increase annual maximum to $900.

g) Osteopath, Chiropodist/Podiatrist – Effective January 1, 2026, increase annual maximum to $650.

h) Chiropractic – Effective as soon as reasonably practicable, increase annual maximum to $700, and effective January 1, 2026 increase to $800.

Amend Schedule "F" (B, C, D, E, F) to clarify that coverage extends to "member, spouse and dependent."

5. Delete from Dental, chemical bleaching (endodontically treated tooth/teeth).

6. Amend article 5.5 – Mechanical Division, On-call Pay to Cover Weekdays, delete second-last sentence and replace with "Members of the Mechanical Division will be paid one (1) hour pay at time and one-half (1½) for each day when on call."

7. Statutory Holidays – Add Day of Truth and Reconciliation (federally and/or provincially declared) to article 9.1(a).

8. HCSA – effective January 1, 2026, increase HCSA to $3,250.

9. Association Leave – Article 13.2, add "Subject to the exigencies of the service, leave of absence with pay shall be given to members of the Association to address Association business provided such leave does not exceed a total of twelve (12) shifts per calendar year. Such leave shall be requested in writing to the Fire Chief or his designate at least ten (10) days in advance of the date of the requested leave."

10. Training Division Hours of Work – The current Letter of Understanding regarding the four-day workweek trial in the Training Division is to be renewed.

11. Holiday and Lieu Day Selection and Transfer of Personnel – The arbitrator remains seized pending the engagement of the parties on this matter and receipt of additional information on any residual issues.

12. Transfer of Personnel – Operations Division – The arbitrator remains seized pending the engagement of the partes on this matter and receipt of additional information on any residual issues.

13. Shift Exchanges/Trades – Article 4.1(d)(v), delete third paragraph and replace with, "An employee must have twelve (12) hours off duty before coming in to work a twelve (12) or twenty-four (24) hour shift."

14. Overtime Compensation – Article 5.1, delete second sentence and following and replace with, "Payment shall be made as soon as practicable following submission and approval."

15. Group Medical

    (a) Amend article 11.6 to read: "The Employer shall pay the full cost of a dental plan equivalent to the Canada Life plan as detailed in the attached Schedule “F”.”

(b) Amend article 11.8 to read: "The Employer will pay 100% of the cost of providing each retired employee and spouse or widow or widower and eligible dependent as defined in Schedule "F" until he/she attains or would have attained the age of 65 with the following coverage:

(a) Ontario Health Insurance Plan

(b) Extended health and dental care equivalent to the Canada Life Dental and Extended Medical Plans

(c) As detailed in the attached Schedule "F"

Note (1): The extended health and dental plan is administered by Manulife.

(c) Amend 11.13 to read, "The Employer will pay 100% for a deceased employee's widow or widower and eligible dependent children with the following coverage:"

16. Promotions, Seniority and Transfers – Articles 14.3 and 14.7 to incorporate the City's proposed article 14.3(b), (c), (d) and (g) and 14.7 (pages 33 and 34 of City brief), with the addition of language under 14.3(g) and 14.7 that if the employee is unsuccessful, the employee will be returned to his/her previous position.

It is understood that the referenced "fifth class" replaces the existing probationary class for purposes of progression.

17. Sunset Clause – Article 16.1, add a new article 16.1(b) as follows: "Employees on an unpaid leave or illness related absence greater than thirty (30) calendar days shall have their discipline timeline as per article 16.1(a) frozen until return from such leave."

Demands not awarded upon are denied.

The arbitrator remains seized until the parties enter into a formal collective agreement.

Dated this 15th day of July 2024 in the City of Toronto.

"Kevin Burkett"

KEVIN BURKETT