

IN THE MATTER OF AN INTEREST ARBITRATION
PURSUANT TO THE *FIRE PROTECTION AND PREVENTION ACT, 1997*

BETWEEN

THE CORPORATION OF THE MUNICIPALITY OF CLARINGTON

(the “Municipality”)

and

**CLARINGTON PROFESSIONAL FIRE FIGHTERS’ ASSOCIATION,
LOCAL 3139 INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS**

(the “Association”)

SOLE ARBITRATOR: JOHN STOUT

APPEARANCES:

FOR THE MUNICIPALITY:

Mark Mason – Hicks Morley
Lisa Wheller – Human Resources Manager
Dave Speed - Director of Emergency Services and Fire Chief
Randy Cowan - Deputy Fire Chief
Brad Lamport - Deputy Fire Chief

FOR THE ASSOCIATION:

Jeffrey Sack K.C. – Jeffrey Sack Law
Bob McCutcheon - Advocate
Richard Kelly - Advocate
Andrew Anthony – Advocate Apprentice
Michale Kalita -President
Mike Patrick Vice President
Rob Gardner -Committee Chair
Scott Snowden
Ian Roy
Marc Ladouceur
Chris Grani

**PROCEEDINGS HELD IN WHIBY ONTARIO, WITH MEDIATION ON APRIL 10, 2024,
AND ARBITRATION ON AUGUST 19, 2024**

BACKGROUND

[1] I was appointed pursuant to the *Fire Protection and Prevention Act, 1997*, as amended (“*FPPA*”), to resolve the outstanding issues remaining in dispute between the Corporation of the Municipality of Clarington (the “Municipality” or “Clarington”) and the Clarington Professional Fire Fighters Association (the “Association”) with respect to a renewal collective agreement. There is no dispute with respect to my appointment or jurisdiction to resolve the issues remaining in dispute between the parties.

[2] The parties filed extensive written briefs presenting their positions on the issues remaining in dispute. Mediation occurred on April 10, 2024. The arbitration hearing was held on August 19, 2024, at which time the parties made oral submissions to supplement their written briefs.

[3] On August 29, 2024, I issued an interim award whereby I remitted back to the parties the promotion articles/proposals and remained seized.

[4] The most recent collective agreement was awarded by Arbitrator Jasbir Parmar in 2019, and it expired on December 31, 2022, see *Clarington (Municipality) and CPFFA* 2019 CanLII 91554 (ON LA).

[5] Clarington has a population of approximately 107,000 and it is growing. The Municipality is in the Region of Durham, and it is spread out over 612 square kilometers, including four major urban centres: Bowmanville, Courtice, Newcastle and Orono. Geographically, the Municipality is located on the south shore of Lake Ontario, with the City of Oshawa to the west.

[6] Clarington has a collective bargaining agreement that applies to employees represented by the Canadian Union of Public Employees (CUPE) Local 74 representing both “inside” and “outside” employee groups. Clarington also employs approximately 95 non-unionized full-time employees and 400 non-unionized part-time employees.

[7] The Durham Regional Police provides police services to the Municipality.

[8] Clarington operates a full-time Fire Service (the “Fire Department”) from three stations. The Fire Department provides fire protection and emergency services throughout the Municipality and elsewhere in Durham Region pursuant to mutual aid agreements with the other municipal entities.

[9] The Fire Department operates from five stations: Stations 1, 2 and 4 are composite stations and Stations 3 and 5 are exclusively volunteer. The administration, fire prevention, mechanical and training staff are all headquartered at Station 1. Each station is equipped with at least one pumper and a tanker truck and other apparatus (additional pumpers, aerial trucks, rescue trucks and other specialized equipment) are located at the various stations.

[10] The Association currently represents 73 members employed by the Municipality’s Fire Department working in the positions:

- 4 Platoon Chiefs
- 12 Captains
- 48 Suppression Fire Fighters
- 1 Chief Fire Prevention Officer
- 1 Fire Prevention Officer
- 3 Fire Prevention Investigators
- 1 Chief Training Officer
- 2 Training Officers
- 1 Maintenance Technician

[11] In collective bargaining and at mediation the parties were able to agree upon several amendments to the collective agreement. These agreed upon items shall form part of the renewal collective agreement.

CONSIDERATIONS AND ANALYSIS

[12] Like most interest arbitrators, I shall not comment on every proposal in this award. I am of the view that, considering the ongoing nature of collective

bargaining, it is best (for the most part) to let the parties keep their powder dry to argue another day. Therefore, unless specifically addressed in this award, all outstanding proposals are dismissed without prejudice to future bargaining.

[13] In making my award, I am guided by the legislative criteria set out in the *FPPA*, which includes the following:

- A comparison, as between the employees and other employees in the public and private sectors, of the terms and conditions of employment.
- 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.
- The economic health of Ontario and the municipality, including, but not limited to, changes to labour market characteristics, property tax characteristics and socio-economic characteristics.
- The employer's ability to attract and retain qualified firefighters.
- The interest and welfare of the community served by the fire department.
- Any local factors affecting the community.

[14] In addition to the *FPPA* criteria, I have also considered the well-accepted interest arbitration principles found in the jurisprudence, which includes the principles of total compensation, demonstrated need, gradualism and most notably replication as informed by comparability.

[15] Most relevant to the application of the replication principle is objective evidence of comparators, hopefully freely negotiated or imposed by interest arbitration. As stated by Arbitrator Goodfellow in *Bridgepoint Health and CUPE 79* 2011 CanLII 76737 (ON LA), "comparability puts the flesh on the bones of replication, providing the surest guide to what the parties would likely have done, in all the circumstances, had the collective agreement been fully and freely bargained."

[16] Historical patterns both in the fire sector and more specifically between the parties are extremely relevant to the replication exercise. Arbitrators must consider how the parties have acted in the past when trying to discern what they would do in the current economic circumstances. Where there is a historical pattern of following certain comparators, then greater weight is placed on those comparators, see *Toronto (City) and Toronto Professional Fire Fighters Association, Local 3888*, 2013 CanLII 62276 (ON LA).

[17] In the fire service sector, relevant comparators are generally based on geography and municipal population. In addition, there is a historical acceptance of local police services being a relevant comparator, particularly when it comes to salaries.

[18] The parties agree that the historically relevant comparators are the Durham Regional Police and the other fire services in the Durham Region (Ajax, Oshawa, Whitby and Pickering). The Association asserts that most of the regional comparators, including the Durham Regional Police, settled or were awarded before inflation increased dramatically in 2022 and became entrenched in the economy. Therefore, the Association argues that I must look beyond the Durham Region and consider other more recent awards and settlements in the fire sector that reflect the positive effect on wages due to the increase in inflation. The Association places reliance on the recent award of Arbitrator Kevin Burkett in *Hamilton (City) and Hamilton Professional Fire Fighters' Association*, 2024 CanLII 66452 (ON LA) and my recent award, *Toronto (City) and Toronto Professional Fire Fighters' Association*, 2024 CanLII (ON LA).

[19] In my recent award between *Ajax (City) and Ajax Professional Fire Fighters' Association*, 2024 CanLII 46731 (ON LA), I found that the most relevant salary comparators for Ajax fire fighters are fire services in close geographic proximity within Durham Region, and the Durham Regional Police. I also noted that the provincial landscape must be given some consideration with respect to what may be seen as normative in the fire sector, while keeping in mind total

compensation. I found that for 2022 and 2023 the historical comparators provided compelling objective evidence. However, for 2024 I awarded a higher wage increase as a split, taking into consideration the more recent awards and settlements that reflected inflation. Clarington is now the only regional comparator that has not settled for 2024.

[20] In my view the most recent settlements and awards provided by the Association do not substantially change the fire sector landscape. Like many of the comparators provided in Ajax, these additional provincial comparators are found in agreements that extend beyond 2024. In my view, these awards and settlements will be highly relevant to the next round of bargaining for these parties.

[21] I have therefore awarded the same wage increases to Clarington fire fighters as I provided to those fire fighters working in Ajax for 2023 and 2024. In terms of the total compensation awarded to these fire fighters, I have also taken inflation into consideration.

[22] In terms of differentials paid to Captains and Platoon Chiefs. The regional comparators are all higher, which warrants an increase. The increase reflects what is fair and equitable having regard to the comparative data and the inflationary times that have recently been experienced.

[23] The Association seeks amendments to the recognition pay provisions. The Municipality is not opposed to including language to reflect the current practice. I am awarding clarification language to reflect the current practice.

[24] The Association seeks language relating to prior authorization of benefits. I have dealt with this issue on two previous occasions. In both cases, I awarded language with respect to prescription drugs, see *Welland (City) and Welland Professional Fire Fighters' Association* 2022 CanLII 14850 (ON LA) and *Bradford (Town) and Bradford Professional Fire Fighters Association*, 2024 CanLII (ON LA). I am awarding similar language in this case for the same reasons. I acknowledge

that the parties are currently engaged in litigation over this issue, the amendment to the collective agreement should resolve that dispute and save the parties the cost of litigation.

[25] The Association seeks minimum staffing language. I am of the view that this issue requires more information. Given that the parties are going back to the table almost immediately, it is my view that this matter should be deferred to the next round of bargaining.

[26] In terms of benefits, the Association seeks several benefit increases. I have awarded a number of these proposals that I am the view are supported by the objective comparative data.

[27] I am remitting all the articles/proposals related to the promotional process back to the parties for six (6) months and remain seized to decide the issue if the parties cannot agree.

[28] I am also remitting back to the parties for six (6) months the proposals relating to WSIB, ESA and personal leave absences. This may also be included in a Letter of Understanding ("LOU") to not inhibit finalizing a collective agreement and commencing negotiations for the next collective agreement.

[29] I am also remitting back to the parties the Association leave proposals and retirement age and vested service, which require additional information and ought to be discussed in further collective bargaining.

[30] I am also remitting back the proposals for amending the current LOUs. If the parties cannot agree within 90 days, then they may refer the matter back to me to decide.

[31] I am dismissing the Association's request to amend the AD&D LODD language that was recently awarded by Arbitrator Parmar in her 2019 award. The

Association's request is like the request made in a recent Supplemental Award issued by Arbitrator Burkett in *Vaughn (City) and Vaughn Professional Fire Fighters' Association*, unreported, December 5, 2024. I agree with Arbitrator Burkett that "the language as awarded is a clear response to the issue raised in bargaining and is intended to cover bargaining unit employees into their retirement."

[32] The Association proposal relating to the contracting out of dispatch, which they say is housekeeping, is dismissed. The issue of contracting out dispatch operations was addressed by Arbitrator Burkett in a June 4, 2010, award. The current language reflects the award of Arbitrator Burkett, which permitted the contracting out dispatch operations to another municipality under certain conditions. The work was contracted out to the City of Oshawa in accordance with the current language. There is no evidence that the current arrangement with Oshawa is going to be altered in any way. Therefore, no demonstrated need has been established to alter the *status quo*.

AWARD

[33] Accordingly, having regard to the analysis above, I hereby order the parties to enter into a renewal collective agreement that contains all the terms and conditions of the predecessor collective agreement, and appendices, save and except as amended by the parties' agreement and this award as follows:

- **Term: two years from January 1, 2023 until December 31, 2024.**
- **Agreed items:** Amend to include all agreed upon items.
- **Wages:**
 - **January 1, 2023 - \$108,999**
 - **January 1, 2024 - \$110,906**
 - **July 1, 2024 - \$112,814**
- **Wage Differentials:**
 - **Platoon Chiefs** effective April 29, 2024, increase to 132%
 - **Captains:** effective April 29, 2024, increase to 119%

- **Article 13- Family Emergency Leave:** Effective date of award increase to 4 x 12-hour days.
- **Article 13 – Pregnancy and Parental Leave:** Effective date of award Increase to 15 weeks for each of pregnancy and parental leave.
- **Article 17 – Prior Authorization:** Amend to provide:

There shall be no requirement for prior authorization, drug review or approval of any medically prescribed drugs with the notation on the prescription “No substitution”.

- **Article 17 DZ Licence:** Effective date of award increase to \$125.
- **Article 17- Benefits –** Increase effective as soon as reasonably practicable from the date of this award.
 - **Psychological:** Increase the amount to \$3,500 and add psychotherapist, social worker, and counsellor.
 - **Prescription eye:** Increase to \$650
 - **Paramed:** Increase to \$750
 - **Massage:** Increase to 1,000
 - **Dental:** Move to current ODA and major restorative \$2,000/year.
 - **LTD:** Increase to 75% with a cap of \$8,500
 - **Hearing Aids:** \$500/3 years
- **Article 21-Recognition Pay:** Amend to add normative language providing that these payments shall qualify as pensionable earnings and be included in computing overtime, vacation, sick leave pay, maternity/parental leave entitlements, statutory holiday pay and WSIB.

[34] All wage increases to be paid to all members and former members who were employed during any period covered by the term of the renewal collective agreement.

[35] I remain seized to address any errors or omissions and until the parties have signed a renewal collective agreement.

Dated at St. Petersburg, Florida this 6th day of February 2025.

A handwritten signature in dark ink, consisting of several loops and a long horizontal stroke extending to the right.

John Stout – Arbitrator