

In the Matter of an Interest Arbitration
Pursuant to the *Fire Protection and Preventions Act, 1997 and as amended*

Between:

THE CORPORATION OF THE CITY OF OSHAWA
(the “Employer” or the “City”)

- and –

OSHAWA PROFESSIONAL FIREFIGHTERS ASSOCIATION
INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS LOCAL 465
(the “Association”)

AWARD

Paula Knopf – Arbitrator

Appearances:

For the Employer: John Saunders, Counsel
Jamie Burns, Counsel
Stephen Barkwell, Fire Chief
Todd Wood, Deputy Fire Chief
Mike Barlow, Deputy Fire Chief
Krystal Williams, Director, Total Rewards & Labour Relations
Megan Hamilton, Senior H.R. Business Partner
Jessie Doucette, Coordinator, Compensation & Benefits

For the Association: Mike Palachik, Advocate
Jeffrey Sack, K.C., Counsel
Wassim Garzouzi, Counsel
Nicole Whitmarsh, Counsel

The hearing of this matter was held via video conferencing, at the Parties request, on
April 24, 2025

This Award resolves the outstanding collective bargaining issues between the Oshawa Fire Services (“Oshawa” or the “Employer”) and the Oshawa Professional Fire Fighters’ Association, International Association of Fire Fighters, Local 465 (the “Association”). Their previous Collective Agreement expired on December 31, 2023.

The purpose of this Award is to resolve the terms and conditions of employment that the Parties have not yet been able to resolve on their own. Since fire prevention and the duties related to this service are essential to a community, there is no right to strike or lockout. Accordingly, interest arbitration is the dispute resolution process that is designed to bring closure to the dispute by attempting to replicate what the parties would be expected to have achieved through free collective bargaining.

The Parties attempted to reach a consensual Collective Agreement during bargaining that took place from January to March of 2024. They resolved many issues, but impasse arose over the issues that have become the subject matter of this Award. The Parties were unable to agree on who would arbitrate this dispute, resulting in my appointment by the Minister of Labour. My jurisdiction and authority to conduct this hearing and resolve the terms and conditions of employment have not been challenged.

The City of Oshawa has a population of approximately 200,000. In addition to the Firefighter’s bargaining unit, the City also has collective agreements with the Canadian Union of Public Employees for the Inside and Outside employee groups. Police services in Oshawa are provided by the Durham Regional Police Service Board (“Durham Police”).

The Oshawa Fire Service covers a diverse area of residential, commercial, urban and rural locations. It provides fire protection, prevention, public education and other emergency services for the City. The Service has six fire stations and employs 197 full-time firefighters, divided into five divisions: Fire Suppression, Fire Training, Fire Prevention, Communications and Maintenance.

The principles that apply to interest arbitration are well established and well known to these Parties. Therefore, there is no need to set out a long review of the caselaw that was cited in the Parties' briefs. Suffice it to say that the statutory criteria must be respected, along with the important factors of comparability, demonstrated need and total compensation.

Nevertheless, it is helpful to acknowledge the governing principles. First and foremost, the "duty" of an interest arbitrator is to apply the criteria set out in Ontario's *Fire Protection and Preventions Act*;

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 municipality, 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.

In order to fulfill my responsibility in the case at hand, I have applied these criteria to the Parties' extensive briefs, their supporting materials, and their fulsome submissions.

These have provided sufficient evidence to enable me to compare the Parties' proposals in relation to what similar bargaining units in similar circumstances have achieved through free collective bargaining. This included looking at Fire Services and, to some extent, Police Services of similar size and in the same geographic areas. For

example, there has been a pattern of virtually identical rates for Oshawa Firefighters and the Durham Police. Further, the logical Firefighter comparators have historically included Oakville, Richmond Hill and Markham.

It has been noted that the Employer forcefully advocated for the elimination of Life Time Retiree Benefits and for amendments to the vacation and statutory holiday accumulations in the event of long-term absences while a Firefighter is receiving WSIB or LTD benefits. The Association adamantly rejected these proposals, submitting that the status quo represents negotiated terms that should not be altered without the Employer offering anything of significant value in return. For its part, the Association advocated for significant improvements relating to compensation and benefits.

I have tried to ensure that the resulting Collective Agreement respects the needs of the Parties by awarding working conditions and compensation that serve them and their community responsibly. Finally, I have applied the statutory criteria and the respected factors of comparability, demonstrated need and total compensation. To that end, I have given considerable weight to the evidence concerning voluntary agreements with comparable parties.

Before addressing the changes to the Collective Agreement, the Parties deserve to have an explanation for my decision with regard to the Life Time Retiree Benefits. I was advised that Vaughan and Oshawa are the only municipalities that still offer Life Time Retiree Benefits to firefighters. The Employer is seeking to bring an end to this benefit and has offered to replace it with a Health Care Spending Account that would provide \$4,000 per year from the date of their retirement until the age of 75. This would apply to employees retiring on or after January 1, 2025. The Employer's justification for the change is its reliance on the fact that lifetime benefits are not the norm in this sector and they create a significant cost that is said to be unwarranted for retention or recruitment purposes. The Association resists this change, pointing out that lifetime benefits are entrenched in the Collective Agreement and were only removed voluntarily in other

bargaining units in exchange for other significant benefits or by arbitrators who were persuaded by strong contextual reasons for the change.

The other arbitral decisions to remove the retiree benefits for life in this sector are helpful to understand my decision to reject this Employer's request at this time.

In 2013 Arbitrator Burkett was faced with similar arguments in *Toronto (City) v Toronto Professional Fire Fighters Association, Local 3888*, 2013 CanLII 62276 (ON LA). The context of that case is significant. It arose after the amalgamation of various bargaining units into one with the City of Toronto. The former North York Firefighters who were "grandfathered" by a 2008 arbitration award into the Toronto Firefighters' Association's bargaining unit had their post-65 benefits frozen, regardless of age or years of service. Arbitrator Burkett explained his reasons for bringing that benefit to an end:

The Association urged that the grandfathered post-65 benefits be extended to all fire fighters but, if that request was denied, made an alternative proposal in respect of post-65 benefits. Keeping in mind that the fire fighters who were employed with the former North York and City of Toronto (pre-amalgamation) were grandfathered with frozen post-65 retiree benefits regardless of age or years of service in a 2008 arbitration award, the Association proposed that these post-65 retiree benefits be extended to all current Toronto fire fighters or alternatively that the Board award a "health care spending account" for all Toronto fire fighters, subject to a one-time status quo option for the grandfathered former North York and City of Toronto members. . . .

We have decided to standardize post-65 benefits (exclusive of life insurance) on the basis of a \$3,000/year health care spending account. Our award will be that a \$3,000/year health care spending account be implemented for all bargaining unit fire fighters on the same basis as the Toronto Police health care spending account. The effect will be to create a "win/win." A standardized post-65 health care spending account applying to all Toronto Fire Service fire fighters (subject to the time-limited option extended to the grandfathered North York and Toronto fire fighters discussed below) constitutes, on balance, a much better post-65 benefit arrangement for bargaining unit fire fighters than presently exists

Because we are attempting to replicate the Toronto Police pattern, the quantum of the Employer savings generated by the harmonization of post-65 benefits is an important consideration. . . .

It is significant to note that Arbitrator Burkett's rationale for the elimination of the lifetime retiree benefit included the goal of replicating the Toronto Police agreement and the need to harmonize post-65 benefits within the firefighters' bargaining unit. One must also note that the Toronto Firefighters Association proposed the Health Care Spending account as a viable option. None of those factors apply to the case at hand.

In *The Corporation of The City of Windsor v Windsor Professional Fire Fighters' Association*, 2024 CanLII 379 (ON LA) Arbitrator Burkett outlined the history behind his elimination of the life-time retiree benefits in 2013. That happened in the context of him replicating the City's Firefighters with its Police, where that latter's lifetime benefit had been eliminated earlier in an award by Arbitrator Kaplan. Arbitrator Burkett explained:

The retiree benefits issue is a complicated one. Historically the City of Windsor provided, atypically, active member benefits for life to all of their retirees including fire fighters and police officers. Given that this put these fire fighter retirees in an advantaged position relative to their fire sector comparators, the City tabled a demand in the renegotiation of the collective agreement between the parties that expired December 31, 2005 that existing employees be grandfathered for purposes of retiree benefits so that a less generous more normative retiree benefit arrangement could be put in place for future employees. In the interest award dated October 25, 2013 renewing the collective agreement that expired December 31, 2005, this arbitrator, mindful that the fire sector standard is a health care spending account to age 75, expressly opted to follow arbitrator Kaplan's *Windsor Police* award that grandfathered existing employees for the purpose of maintaining their lifetime retiree benefit entitlement while capping retiree benefits for future employees at age 75. The award was that "existing members (including retirees and members hired up to the date hereof) shall be grandfathered as per the current collective agreement; it is agreed and understood that the eligibility for post-retirement benefits under the current collective agreement, but not the nature or quantum of these benefits...will not be the subject of future negotiations. Members hired on or after the date hereof shall have the then active member retirement benefits until the age of 75." (emphasis added) The City, therefore, obtained a significant concession in the form of the age 75 cutoff of post-65 retiree benefits for employees hired after October 25, 2013, with the pre-October 25, 2013 employees keeping what they had in regard to retiree benefits under the existing collective agreement, with the right to negotiate future improvements. [sic]

In *Port Colborne (Corporation of the City) v Port Colborne Professional Firefighters' Association*, 2023 CanLII 29342 (ON LA), Arbitrator Stout was also asked by the Employer to "grandparent" benefits for life, based on the lack of comparable lifetime

benefits in other municipalities. However, the context in that situation was the introduction of the Firefighters' 24-hour shift. Arbitrator Stout explained and concluded:

[8] The City's main proposal in this round of bargaining involves a move towards a "normative benefits structure" through the grandparenting of benefits for life. There is no dispute that the situation in Port Colborne is unique, and the current benefit package has no relevant comparator. None of the acknowledged comparators set out in the Collective Agreement have benefits for life and they all have much richer benefit plans for current firefighters.

[9] My award reflects what I consider to be fair and reasonable, having regard to relevant comparators, as well as appropriate trade-offs that the parties would be inclined to make in free collective bargaining. I am ending the benefits for life and replacing them with a more normative benefits structure.

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A **Health Care Spending Account (HCSA)** will be introduced at \$3,250 for retired members between ages 65-75, including their spouse but with no survivorship benefit. This HCSA is not extended to those already in receipt of benefits for life, as that benefit remains unchanged for those persons and frozen at the current entitlement. For clarity, the HCSA is to be granted to any firefighter who retired after January 1, 2020. Those firefighters will not be entitled to benefits for life.

- **Pre 65 Benefits:** Firefighters who retire prior to age 65 will be entitled to all the benefits enjoyed by active members until age 65. After age 65 the only entitlement will be the HCSA.

One has to conclude that the "trade-offs" that took place in the context of that hearing were a decisive factor.

It is also important to note that during the last round of negotiations between the Parties to this case, they turned to arbitration to resolve their impasse over the issue of benefits for life, see *Corporation of The City of Oshawa v Oshawa Professional Fire Fighters' Association*, 2022 CanLII 77749 (ON LA). This Employer asked Arbitrator McIntyre to remove the retirees' lifetime benefit. Her analysis and advice are significant:

[42] Under the provisions of the current collective agreement, retired employees with at least 25 years' service are entitled to a limited range of benefits available to active members and are subject to an overall cap of \$10,000 every

three years. What is unique in this Collective Agreement amongst the comparators is the fact that these same benefits are available for the life of those retirees who qualify. The Association proposed that eligibility for retiree benefits be reduced from 25 years to 10 years, that the cap be removed and that the active benefit package be made available to retirees to age 65. It has also proposed improvements to the benefits available for retirees over 65.

[43] The City resisted the proposed changes to the benefits plans including the removal of caps which are a key component of the benefits plans with all its employees. It also pointed to a number of aspects of the benefits provided under this Collective Agreement that are superior to the comparators including unlimited access to psychological services and retiree benefits for life....

[45] A careful consideration of the detailed submissions of the parties and examination of the extensive data provided by both parties regarding the current benefit plans and those of the comparators supports the awarded improvements to the existing plans. The parties are encouraged to consider replacing the current plan with a Health Care Spending Account for retirees between the ages of 65 and 75 and further improving the benefits available to retirees to age 65. **These changes are better addressed by the parties through negotiations rather than through arbitration.** [sic]

Arbitrator McIntyre's pointed suggestion to negotiate a Health Care Spending Account into this Collective Agreement did not meet with success during this round of negotiations. Their missed opportunity signals that the Parties are not able to craft or agree upon the trade-offs that are expected in exchange for valued rights.

It must also be noted that the City's proposal to end the retiree benefits for life would have an immediate impact on some existing members of the bargaining unit who may have recently joined this Service with the legitimate expectation of a significant lifetime benefit.

Applying this caselaw and the arbitral criteria to the facts of this case leads to the conclusion that it is not appropriate to make a change to the Parties' Collective Agreement with respect to the retiree lifetime benefits. I acknowledge that lifetime benefits are not the norm in the Fire Sector. I have also mentioned above that I subscribe to the importance of replication in performing the function of an interest

arbitrator. However, replication involves more than simply mirroring other contracts. It also involves paying heed to the realities of collective bargaining by recognizing that changes are incremental and normally occur when changes of this nature take place in exchange for something else or because of other special circumstances.

The retiree benefits for life in this Collective Agreement exist as a result of the Parties past bargaining history. In all the cases cited above where arbitrators have acceded to a City's request to remove the lifetime benefit, there were specific reasons for doing so, such as harmonization with an internal or an historical comparator, or it was done in the context of a significant "trade-off" that benefited that bargaining unit. None of those factors are present in this case now. Accordingly, I have declined the Employer's request to remove the life-time retiree benefits. On the other hand, I have not awarded any of the Association's requested improvements to their existing Life Time Retiree Benefits. Nor have I awarded their request to provide "active retired" benefits amounting to active member benefits to all retired members until the age of 65.

The Award that follows details the items that will become changes to the Parties Collective Agreement. Any proposals that were made that are not contained in this Award should not be thought to have been ignored. They have been dismissed, without comment, to enable the Parties to address them afresh and without prejudice in subsequent negotiations, should they choose to do so.

Accordingly, I order that the following changes shall be put into effect:

Article 7.04(b) and (c), and 8.03 – Vacations and Paid Holidays

Amend to provide, effective the date of this Award:

Where an employee is absent from work on WSIB as a result of occupational illness or injury, the employee's annual vacation entitlement and paid holidays shall continue to accrue provided that their receipt does not exceed the employee's net pay while on compensation, nor will the employee be able to carry the unused vacation or paid holidays forward into the next year. In other words, such employees shall be paid full salary, not to exceed their net bi-weekly pay.

I leave it to the Parties to determine the appropriate language to bring this concept into effect.

Article 9.01(a) – Accident and Sickness

Amend to provide WSIB entitlements for absences “*caused by an accident or occupational illness occurring while in the course of his/her employment*”.

Article 9.13 – Sick Leave Credits

Amend to apply to an employee who is injured “in the course of his/her employment”.

Article 10 – Salaries

To be given effect beginning January 1, 2024:

Article 10.01 – General Wage Increase

January 1, 2024: \$111,288

January 1, 2025: \$114,592

July 1, 2025: \$118,602

January 1, 2026: \$120,974

July 1, 2026: \$123,394

Article 10.01 – Differential Increases

Captain	120%
Platoon Chief	135%
Chief Fire Prevention Officer	135%
Dispatch Supervisor	110%
Senior Mechanic EVT	112%
Mechanic EVT	100%
Dispatcher	100%

Article 10.07 – Acting Pay

Effective the date of this Award:

Amend to provide that on shifts at each station when a Fire Pumper, Aerial Device and Rescue truck is assigned to the station and where a Captain is not detailed to be in charge of the said vehicle, the Senior qualified Fire Fighter - First Class Acting Captain on such shift at such station who is in charge of such vehicle, or who is responsible for that vehicle, should be paid at the rate of a Captain and be in charge of such vehicle on each such shift.

However, Firefighters who have failed the Captain’s exams under Article 11 should not be permitted to act as a Captain under this provision.

Article 10.11 - Standby Pay

Effective the date of this Award, amend the "Stand By" to \$30.00 for day of stand-by, in addition to any monies that the Employee may be entitled to on call back.

Article 12 – Leave of Absence

Family Leave

Effective the date of this Award, provide four (4) days per calendar year without loss of basic compensation where the medical condition of a family member (as defined by the *Employment Standards Act*, "Personal Emergency Leave" section) requires the employee to be absent from work to care for such a family member.

Article 14 – Employee Benefits

The following changes shall take effect the date of this Award:

Vision Care: Increase to \$700 and allow for the amount to be available towards contact lenses.

Paramedical Practitioners: Increase coverage to \$1250 for each of the listed paramedical services and remove the maximum limit per visit and the requirement for a MD note/recommendation. Further, add Occupational Therapists to the list of services.

Dental Plan

Amend to provide that Dental coverage will accord with the current Ontario Dental Association's fee guide.

Also increase Major Restorative and Orthodontic each to \$3500.00

Long Term Disability – Amend to provide a monthly maximum benefit of \$8,500. The cap on extended health care benefits over a three-year period shall also be increased to \$30,000.

Medical Examination for the DZ license – Amend to require the Employer to reimburse employees required to maintain a DZ License the cost of medical a exam associated with the renewal of said license.

Prescription Drugs – amend to provide that non-generic drugs shall be covered, without prior authorization, when prescribed by a medical practitioner with the notation "no substitution".

Article 17 – Uniforms and Equipment

Effective the date of this Award:

Increase the footwear allowance for the mechanical division employees to \$300 twice per year and prorate allowance in an employee's first year of service with the City

The Employer's "Change in Practice Notices"

The Employer issued a number of "Change of Practice" notices announcing its intention to administer several aspects of the Collective Agreement differently. In response, the Association either asserted that the "Notices" were vague and ineffective and/or suggested Collective Agreement amendments were said to either "clarify" or improve the situation for members of this bargaining unit.

As an arbitrator who is always hoping that my Awards will resolve issues, improve labour relations and/or help the parties avoid further arbitral disputes, it is very tempting to weigh in on the various proposals and counter-proposals tabled by the Parties. However, as an interest arbitrator, it is not my function to interpret existing labour relations language or to rule on the adequacy or enforceability of estoppel notices. Accordingly, I decline delving into the merits of each of the Employer's estoppel notices and/or the Association's criticisms or counter proposals.

An interest arbitration process is not the best vehicle to address the merits of each of the Employer's estoppel notices and/or the Association's criticisms or counter proposals. However, given s. 86(1) of the *Labour Relations Act*, and my concerns about changes in practices during bargaining, I declare that none of the Employer's or Union's proposals shall take effect without consent. Therefore, the Parties' dispute over these issues shall be remitted to them for further discussion, ideally by way of a joint committee. Failing agreement within six months of the date of this Award, any of these items remaining in dispute concerning the contractual interpretation, violation, application or administration of existing language may be referred to rights arbitration by either Party. To be clear, they do not remain as part of my retained or residual jurisdiction.

Retroactivity: Salary and any compensation increases are to be paid retroactive to all bargaining unit employees who have been employed in the period January 1, 2024, to the date of implementation of the salary increases. Payment is to be made within 60 days of the date of the Award.

Any employees who have left the employ of the City since January 1, 2024 are to be notified in writing at the address on file within 30 days of the date of this Award and are to respond within a further period of 30 days. Payment to these employees is to be made within 45 days of the City receiving notice from such employees of their desire to accept the retroactive payments. Any failure of the employee to respond within the 30 day time period will be deemed to be a waiver of such payments.

Any retroactive payments will take into account any amounts paid as interim increases.

Implementation: Except as otherwise provided, all awarded changes to the Collective Agreement will be effective from the date of this Award. Unless specifically addressed in this Award, all outstanding proposals are dismissed. I remain seized until such time as the parties have signed a Collective Agreement.

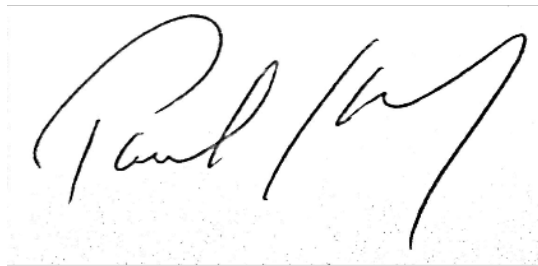
Conclusion:

The Parties are ordered to enter into a Collective Agreement that incorporates all of their agreed upon provisions and all of the changes mandated by this Award.

I thank the Parties and their able advocates for the time and care that they invested in preparing their extensive briefs and responding to the issues raised in this proceeding. However, I strongly encourage the Parties to endeavor to achieve a negotiated settlement when this contract expires. While I strongly believe in the interest arbitration process, it should be seen as a last resort. No arbitrator can better craft a collective agreement than the parties themselves. Further, even when parties come to an impasse, they are better served by bringing forward limited or focused issues to an arbitration hearing, rather than expecting an arbitrator to re-craft language and/or deal

with an excessive list of outstanding issues from each party. These comments are not intended to criticize the Parties to this case. These comments are directed to the parties in this sector and to any other parties who are subject to the interest arbitration process. The sad truth is that a referral to arbitration results in delays, expenses and Awards such as this one, being issued almost two years (or in other cases more), after their previous collective agreement expired.

Dated at Toronto this 15th day of September, 2025.

A handwritten signature in black ink, appearing to read "Paula Knopf", written over a light blue dotted grid background.

Paula Knopf - Arbitrator