**IN THE MATTER OF THE FIRE AND POLICE SERVICES COLLECTIVE BARGAINING ACT, R.S.B.C. 1996, c.142 AND IN THE MATTER OF A COLLECTIVE BARGAINING DISPUTE**

BETWEEN:

**CITY OF VANCOUVER**

(the "Employer")

AND:

**VANCOUVER FIREFIGHTERS' UNION, LOCAL 18**

(the "Union")

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|---|---|
| ARBITRATOR: | Judi Korbin |
| COUNSEL: | Tom Roper, Q.C.<br>for the Employer |
| | Allan Black, Q.C.<br>for the Union |
| DATES OF HEARING: | October 17, 2008<br>November 1, 8, 10, 17, 18 and 19, 2008 |
| PLACE OF HEARING: | Vancouver, BC |
| DATE OF AWARD: | December 11, 2008 |

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**INTRODUCTION**

By letter dated May 15, 2008, the Minister of Labour referred the resolution of a collective agreement between the parties to arbitration. In that letter, the Minister also stated the following:

> Given the significant list of outstanding items that exists between the parties, I recommend the parties use further mediation, as outlined under Section 4(5) of the **Act,** to encourage settlement during the arbitral proceedings.

Subsequent to that referral, I was appointed on May **27, 2008,** by the parties pursuant to the *Fire and Police Services Collective Bargaining Act* (the "*Act*") as a Mediator and Interest Arbitrator to settle the terms and conditions of a collective agreement between the Vancouver Firefighters' Union, Local **18** (the "Union") and the City of Vancouver (the "Employer"). I met with the parties on **17** occasions to assist them in mediation in resolving a number of the outstanding issues between them. The issues that were settled in the mediation process are attached as Schedule A and shall form part of this Award.

Four **issues** remain outstanding and were addressed by the parties in the arbitration proceedings held on October **17,** November **1, 8, 10, 17, 18** and **19, 2008.**

Under the ***Act,*** in the Arbitration Award I am obliged to have regard to the criteria set out in Section 4 which provides as follows:

> Settlement **by** Arbitration
>
> **4** (1) If the minister directs that a dispute be resolved by arbitration, the parties may, by agreement, make arrangements for the appointment *of* a single arbitrator or the establishment of a 3 person arbitration board.
>
> (3) **The** arbitrator *or* arbitration board appointed or established under the section must commence the hearing within 28 days of being appointed or established and must issue **a** decision within 21 days of the conclusion of the hearing.

(4) Sections 92 to 98, 101 and 102 of the Code apply to an arbitration under this Act.

(5) The arbitrator or arbitration board may encourage settlement of the dispute and, with the agreement of the parties, may use mediation or other procedures to encourage settlement at any time during the arbitral proceedings.

(6) In rendering a decision under this Act, the arbitrator or arbitration board must have regard to the following:

(a) terms and conditions of employment for employees doing similar work;
(b) the need to maintain internal consistency and equity amongst employees;
(c) terms and conditions *of* employment for other groups of employees who are employed by the employer;
(d) the need to establish terms and conditions of employment that are fair and reasonable in relation to the qualifications required, the work performed, the responsibility assumed and the nature of the services rendered;
(e) the interest and welfare of the community served by the employer and the employees as well as any factors affecting the community:
(f) any terms of reference specified by the minister under section 3;
(g) any other factor that the arbitrator or arbitration board considers relevant.

In this case, there are no further terms *of* reference specified by the Minister as per sub-section (f).

The four issues that remained outstanding following the mediation process are set out in the Memorandum of Agreement dated October 17, 2008, as follows:

- Term **and Wages**
- Union proposal to establish a 15 year rate at 106% **of** the **10th** year rate
- Union proposal to "block the current Gratuity Plan
- Employer proposal to eliminate Gratuity Plan

both parties introduced a vast amount of evidence (both *viva voce* and documentary) in addition to their comprehensive written and verbal submissions during the course of the seven days of arbitration hearing.

**POSITIONS OF THE PARTIES**

(a) Term

The Union takes the position that the term of the renewal Collective Agreement should be three years. The Union argues that the term of all firefighter contracts in the province of British Columbia in the most current round of negotiations is three years, from January 1, 2007 to December 31, 2009. Counsel further submits that all the contracts of the past thirty years between the Union and the City of Vancouver have been one or more calendar years, commencing on January 1 and ending on December 31.

The Employer takes the position that the term of the agreement should be either five years to reflect the term negotiated with the other municipal employees in the City of Vancouver or 39 months, as arbitrated in an interest arbitration under the ***Act*** by Arbitrator Lanyon on December 14, 2007 in ***Re:*** *Vancouver Police –and- Vancouver Police Union (December 14, 2007), unreported (Lanyon).* The Employer rejects the Union's proposal for a 36-month agreement which would put the parties into negotiations before the 2010 Olympics in and around Vancouver. Other employers having something to do with the Olympics (e.g. the Province, BC Ferries, the Municipality of Whistler and Whistler Fire, Richmond, West Vancouver and the City of Vancouver) have collective agreements in place that carry them through the Olympics, argues counsel for the Employer. Mr. Roper submits that a longer term would also allow the parties more time before recommencing the bargaining process, given that the parties are already two years into the term of a new contract.

(b) Wages

The Union argues that BC firefighters, including Vancouver firefighters, have lost ground in terms of wages compared to firefighters in other parts of the country. It is the submission of the Union that, historically speaking, Vancouver firefighters were paid at higher rates than those in other major Canadian cities, but, over the past number of years that gap has been eliminated. By 2006, argues Mr. Black, the wage differential between Vancouver and Toronto firefighters has grown to 6.9% and the gap will be widened if the City prevails in this matter, given recent settlements in those other cities.

Specifically, the Union relies on the settlement between the City of Vernon and the Vernon Firefighters' Union, which provides for 13.5% increases over three years, as follows:

| Date | % Increase |
|---|---|
| January 1, 2007<br>July 1, 2007 | 2.0<br>1.5 |
| January 1, 2008<br>July 1, 2008 | 2.0<br>2.5 |
| January 1, 2009<br>July 1, 2009 | 2.5<br>3.0 |
| **Total** | **13.5%** |

| Date | % Increase |
|---|---|
| January 1, 2007<br>June 30, 2007 | 2.0<br>1.5 |
| January 26, 2008<br>October 4, 2008 | 2.5<br>2.5 |
| January 24, 2009<br>October 3, 2009 | 2.5<br>2.5 |
| **Total** | **13.5%** |

The Surrey Firefighters also maintained the 0.5% lift that it achieved in the 2003-2006 agreement and remain the highest paid firefighters in the province. The Union argues that the result of these settlements has been to lower the gap between the firefighters in these BC communities and the firefighters in Toronto. The differential between Surrey and Toronto in 2009 will be only 2.5%, compared to 6.4% in 2006. The Union submits that this is similar to the reduction in the wage differential between Alberta (Edmonton) firefighters and Toronto firefighters, which is now at only 2.0%.

The Union further submits that the work and services performed by firefighters in Surrey, Vernon and other communities are substantially identical and, at present, approximately 97.8% of firefighters in BC receive a common rate, with the balance being within 1% of the rate. The Union further contends that, since 1973, the Vancouver firefighters have been paid at substantially the same rate as Surrey firefighters.

In order *to* place Vancouver Firefighters in an equal position to Surrey and narrow the gap between Vancouver and Toronto firefighters, the following wage rate increases need to be put in place, in the submission of Mr. Black:

| **Date** | **% Increase** |
|---|---|
| January 1, 2007<br>June 30, 2007 | 2.0<br>1.5 |
| January 1, 2008<br>October 1, 2008 | 2.6<br>2.6 |
| January 1, 2009<br>October 1, 2009 | 2.6<br>2.7 |
| Total | **14.0%** |

The Union argues that the Vancouver Police wage award of December 14, 2007 was not accepted as the basis of these voluntary settlements reached in Vernon and Surrey, each of which adopted higher increases and a shorter term and this should be a major

guiding factor in this award. Similarly, Burnaby firefighters did not accept the Vancouver Police award, which resulted in the Award by Arbitrator Gordon in ***Re:*** *City of Burnaby – and- Burnaby Firefighters Union, Local* ***323,*** on September 26, 2008.

The Union argues that the duties of firefighters encompass an increasing range of duties that combine an extraordinary combination of training, skills, strength, responsibility, interpersonal and human communication abilities, and bravery. The Union submits that firefighters may be called at any time to literally put their lives on the line to protect citizens and respond to medical emergencies, natural and man-made disasters, criminal activity and conflagaration.

The Union further argues that firefighters face increasing hazards, including illegal activity and environmental conditions. It is argued that current building construction methods have increased risks to firefighters, as a result of the use of plastics and other man-made materials that release toxins when they are burned. Firefighters increasingly face the risk of cancer, heart disease and chronic obstructive pulmonary disease.

In particular, the cancer risk to firefighters is of particular concern and this has been recognized by governments at all levels, submits the Union. For example, in 2003, the Vancouver City Council unanimously adopted a resolution expressing support for "the presumption that a number of cancers in fire fighters have been caused by their regular exposure to the hazards of fire scenes for specific length of time" and requested appropriate legislation. In 2005 and 2008, the BC provincial government enacted cancer presumption legislation and regulations recognizing nine forms of cancer as occupational diseases associated with firefighting.

It is the position of the Union that all of these factors justify wage increases in line with the Surrey and Vernon Firefighters.

For its part, the Employer is seeking a wage settlement that is consistent with the wage increases negotiated by the City's municipal bargaining units or, alternately, the

increases awarded by Arbitrator Lanyon for the Vancouver Police on December 14, 2007.

The Employer takes the position that firefighters across the province have historically argued vehemently, and successfully, for parity or near parity with Vancouver Firefighters. They have never argued for parity with "anomalous" cases, nor have arbitrators awarded parity with such settlements. The Employer takes the position that the Vernon and Surrey settlements are anomalous cases.

The Employer argues that, generally speaking, arbitrators applying the ***Act*** have held that their function is not to be an innovator but rather to act conservatively, to maintain the status quo, and to have significant regard to historical bargaining relationships and relationships between employee groups, particularly where those relationships have been established or have been continued through freely negotiated agreements.

The Employer points out that the CUPE settlement that was reached last year was consistent across the employers bargained by Metro Vancouver. It was reached as a result of free collective bargaining involving strikes in the region including, an 11 week strike by CUPE Local 15 with the City of Vancouver. The Employer submits that the CUPE settlement has also been accepted by other civic employees represented by the IBEW, IATSE Local 118, the Teamsters, the West Vancouver Municipal Employees Association in West Vancouver and the GVRD Employees Union.

The Employer submits that there is an historical relationship that exists between firefighters and other employees in the municipality where agreements have been freely negotiated, and in particular, where they were concluded after a strike/lockout. Firefighters are municipal employees paid from the same funds as other municipal employees represented by other unions, argues counsel. It is submitted that, in applying the replication theory, arbitrators often take into account what other unions have settled for when they have pressed their demands to a negotiated conclusion; particularly after implementing a strike to force their demands. There is no better evidence of what the employer would have been prepared to offer in monetary terms, in applying the

replication theory, than what it actually was prepared to agree to, following a lengthy strike, in the submission of the Employer.

Counsel relies on the decision of Arbitrator Foley in *Re City of Vancouver and Vancouver Firefighters' Union, Local 18*, (unreported), May 7, 1993, where he states at page 4:

> The more suitable indicator of what wage increases are appropriate for Vancouver Firefighters is the level of increases prevailing in the municipal sector in British Columbia and in the City of Vancouver in particular.

As well, the Employer relies on similar findings in *Re Cranbrook (City) and Cranbrook Fire Fighters, Local 1253 of the International Assn. of Fire Fighters* [1996], B.C.C.A.A.A. No. 446, September 19, 1996 (McPhillips).

The Employer also submits that there is a relationship of "parity" or "near-parity" between firefighters across the province and the Vancouver Firefighters. The Employer argues that, for years, BC firefighters have argued strenuously for the continuation of a parity or near-parity relationship with Vancouver Firefighters, taking the position that any settlement other than the Vancouver settlement was anomalous. Counsel submits that arbitrators have accepted this argument and have consistently maintained parity or near-parity with Vancouver for firefighters in communities around the province. Specifically, the Employer points to *Re City of Vernon and I.A.F.F., Local 1517 (Vernon Fire Fighters Assn.)*, 13 C.L.A.S. 46, January 30, 1989, and to *Re Okanagan Mainline Municipal Labour Relations Association* v. *IAFF, Locals 953, 1399 and 1746*, (unreported), April 11, 1989 (Hope), at paras. 5 and 43:

> The submission of the three union locals was that I should award wage parity with the collective agreement in force between the City of Vancouver and IAFF, Local 18. Parity would require a "catch up" lift of 1% on January 1, 1986 and four subsequent lifts totaling 9.5% over the three years, for a total of 10.5%.
>
> ...

> In the majority of cases, parity with Vancouver has been the accepted guide post. The approach urged by the employer invites me to depart from well established bargaining criteria. It is trite for me to observe that interest arbitration holds little potential for innovation. Interest arbitrators are enjoined to replicate the collective bargaining process. Thus it is predictable, and perhaps inevitable, that they will follow bargaining trends, not set them.
>
> My conclusion is that the union is entitled to maintain its parity relationship with Vancouver but not to close the gap.

*The Employer also relies on Re Okanagan Mainline Municipal Labour Relations Association* v. *IAFF, Locals 953, 1399 and 1746,* unreported, (Munroe); *Re Prince George (City) and I.A.F.F., Local 1372,* **(1990) 22 C.L.A.S. 214** (Kelleher); **Re** *Dawson Creek (City) and I.A.F.F., Local 2136,* **(1991)** 23 **C.L.A.S.** 352 (Munroe); *Re Greater Victoria Labour Relations Assn. v. International Assn. of Fire Fighters, Local 730* **[1993], B.C.C.A.A.A. No. 321,** October 28, **1993** (Ready); *Re Victoria (City) and International Assn. of Fire Fighters, Local 730,* (unreported) August 23, **1995** (Ready); and *Re Cranbrook (City) and Cranbrook Fire Fighters, supra.*

The Employer emphasized the most recent arbitral award in *Re City of Burnaby (Gordon), supra,* where it was held that dominant weight could not be given to the settlements in Surrey and Vernon, that the historical relationship of firefighter bargaining in **BC** was with Vancouver, and that other Firefighter settlements were considered only where specific trade-offs in these agreements could also be compared.

The Employer asserts that an historical relationship also exists between Vancouver Firefighters and the Vancouver Police settlements, with a differential being maintained between the actual wage rates. While there were early situations where firefighters argued for wage parity with the police within Vancouver, it is the position of the Employer that the pattern has actually been to maintain a relatively constant wage differential. Similarly, the Employer argues that the Union has not been successful in arguing parity with Toronto firefighters. In *Re City of Vancouver (Foley), supra,* the arbitrator held, at page **4:**

> The argued wage relationship with the Toronto Firefighters is not based on a conscious "historical tracking" of those rates by the City of Vancouver and the Vancouver Firefighters. I therefore do not believe any significant weight can be given to that argument---it is a wage relationship of hapchance not of design. Furthermore, I am not convinced that, with respect to this group of employees, it is necessary to look beyond B.C.'s boundaries to determine appropriate wage increases.

Again, in *Re City of Vancouver (Korbin), supra,* Toronto firefighters' wages were considered as a comparator; however, the Employer notes that reasoning was not adopted by the arbitrator, who specifically noted that Ontario was the only jurisdiction where firefighters were paid the same as police.

Ultimately, in the submission of the Employer, arbitrators have held that an historical relationship does exist with Vancouver Police settlements. In fact, it is argued that the Vancouver Firefighters have voluntarily negotiated a continuing differential with Vancouver Police wage rates, by negotiating the same wage increases,' save for two rounds of bargaining where they negotiated less. Indeed, in the submission of counsel for the employer, the Union has sought to preserve this differential in arbitration. This was acknowledged in *Re City of Vancouver, supra,* (Korbin), at paras. **46-47:**

> Under the Act I must also have regard to the wage increases achieved by other employees who work for the City of Vancouver. Of significance is the settlement awarded to the Vancouver City Police Force for 1999, 2000 and 2001 (albeit the employer is the Vancouver Police Board). It is indisputable that a historical relative wage pattern has existed between Vancouver Police and the Firefighters...
>
> Nonetheless, the statistics acknowledge a salary differential relationship between the Firefighters and Police that has existed for almost 25 years and, with few anomalies, has varied only slightly.

Put another way, the Employer's position is that, in the past twenty-five years the Vancouver Firefighters have never negotiated nor received through arbitration a settlement higher than the settlement negotiated or arbitrated by the Vancouver Police.

Mr. Roper argues that these historical patterns, established by both voluntarily concluded agreements and arbitrated agreements, suggest one of *two* answers to the question of wage increases and term in this case. The first is the settlement that CUPE and other municipal unions achieved, which was a five-year agreement with the following increases:

- Jan 1, 2007 3%
- Jan 1, 2008 3%
- Jan 1, 2009 3.5%
- Jan 1, 2010 4%
- Jan 1, 2011 4%

The second alternative argued by the Employer is the settlement awarded to the Vancouver Police Union by Arbitrator Lanyon, which provides a 39-month term with the following increases:

- January 1, 2007 3.5%
- January 1, 2008 3%
- August 1, 2008 1%
- January 1, 2009 3%
- July 1, 2009 1%
- December 31, 2009 0.875%

Given the historical relationship with the Vancouver Police settlement over the past 25 years, there is no principled basis for the Union to now argue that the appropriate comparators are the City of Vernon and/or City of Surrey Firefighter settlements.

It is simply opportunistic for the Vancouver Firefighters to suggest that these two current settlements are now the appropriate comparables, because they happen to be higher than the CUPE or Vancouver Police settlements, in the submission of counsel for the Employer.

In the alternative, the Employer argues that, even if the Vernon and Surrey settlements are to be considered, an understanding of the basis of those settlements demonstrates why it would be inappropriate to treat them as establishing any sort of precedent for the

Metro Vancouver employers. Put another way, the Employer contends that these settlements must be understood in context.

It is the position of the Employer that the Vernon settlement reflects a significant benefit achieved by the employer in removing a clause that restricted the operation of its vehicles.

Mr. Roper submits that the same is true for Surrey. In a letter from Surrey to the Metro Vancouver Labour Relations Bureau it is pointed out that Surrey has certain offsets that are not part of the City of Vancouver Firefighters' collective agreement.

The Employer submits that, in ***Re** City of Burnaby, **supra,*** Arbitrator Gordon had before her the Surrey and Vernon settlements and she declined to follow them. Rather she chose ***to*** follow the Vancouver Firefighters' settlement for the second and third years and recognized the historical relationship between the Vancouver Police settlement and the Vancouver Firefighters settlement, (at pages 26 and 27). Speaking initially about the last round of negotiations prior to the interest arbitration in front ***of*** Arbitrator Gordon in 2008, she stated:

> There, the industry pattern was set when Burnaby Firefighters settled for the VPU wage increase awarded by Arbitrator Lanyon. It is the case that two specific increases associated with recruitment and retention issues being experienced in the policing industry were included in the VPU award; and it is the case that Burnaby and Vancouver Firefighters settled for the same percentage increases even though no recruitment and retention issues existed in their industry. Nonetheless, by tying the firefighting industry pattern to the VPU award, the Burnaby Firefighters were maintaining the historical relative wage differential between firefighters and police. Whereas during this round, Vernon and Surrey Firefighters did not settle for the term and wage increases awarded to the VPU. In my view, following decades of history wherein Vancouver Firefighter wage rates have established the industry pattern, it is appropriate to consider the specific facts associated with the changing pattern during this round *of* collective bargaining. It is also apparent from a review of the earlier interest arbitration awards presented in the parties' briefs, that where other firefighter settlements, as opposed to VPU settlements or awards have historically been viewed as a significant comparator in a particular firefighter dispute, interest arbitrators have indeed

> considered specific trade-offs and achievements in the provisions of collective agreements.

With regard to the Union's arguments about the nature of the work, the Employer acknowledges the inherent risks and hazards of firefighting, but notes that the duties of Vancouver Firefighters have not significantly changed and the nature of the duties is already reflected in the wage differential between firefighters and other municipal employees. Put another way, Mr. Roper argues that this arbitration is about the general wage increases that should be awarded to Vancouver Firefighters; and it is not about valuating or re-evaluating firefighter duties and responsibilities. The Employer's position is that firefighters are paid their existing wage rates for performing fire and rescue duties and that these are the same duties they have performed for many years.

Finally, the Employer referenced the recent economic crisis and noted that past projections for economic growth are likely now unrealistic. While acknowledging the economic picture for Vancouver in the near and mid term is uncertain, the Employer submits that it recognizes the historical wage relationship and collective bargaining pattern between firefighters and the Vancouver Police and is prepared to respect that relationship in the resolution of this dispute. Counsel, however, argues that because of this situation, the arbitration award should take a conservative approach **to** wage increases, not launch into a new direction and leapfrog on to two agreements that break historical patterns.

(c) 15th Year Rate

The Union submits that the current rates of pay for Vancouver firefighters increase with the seniority of the individual and should have a further increment, after the IO-year date, which attracts 102% rate. The Union argues that after ten years firefighters should attract additional increases given that such employees develop and enhance their skills, specialist qualifications and leadership abilities. It is submitted that senior firefighters are practically required to perform significant mentoring and provide on-the-

job assistance to younger firefighters and this should be reflected in the establishment of a 15th year rate.

The Union argues that cities in other Canadian provinces -- including Toronto, Edmonton, Regina, Saskatoon, Prince Albert and Winnipeg -- recognize the increased experience and responsibility of firefighters with years of service and the Union provided the details of these rates. In addition, there are eight municipalities, representing one-third of all firefighters in British Columbia, that have established a 15th year (or similar) rate for firefighters, as follows:

- Surrey – 106%
- Salt Spring Island – 106%
- Victoria – 105%
- Saanich – 105%
- Powell River – 105%
- Ft. St. John – 105%
- Prince George – 104%
- Kamloops – 104%

In response to the Union's proposal for the 15th year rate, the Employer again submits that arbitrators are not innovators, but rather should seek to maintain the status quo. Mr. Roper submits that if parties wish to achieve new terms in their collective agreement (particularly terms that are not common to all agreements) they must bargain them. Arbitration is not the process by which to achieve new beachheads in the collective bargaining relationship, contends the Employer.

Specifically, the Employer submits that there is no basis for the imposition of a 15th year rate, noting that the Union has made this proposal in the last six rounds of collective bargaining and it has been successfully resisted by the City in every round. On that basis, argues counsel, it is not possible to say that the parties would likely have agreed to this proposal had they pressed their dispute to impasse.

The Employer further argues that the majority of collective agreements covering the majority of firefighters in British Columbia do not contain the 15th year rate. Counsel argues that, with the exception of Surrey, no other Lower Mainland municipality has it and certainly no members of Metro Vancouver Labour Relations have this rate.

(d) Gratuity Plan

Currently the parties have a gratuity plan at Article 12.3 of the Collective Agreement, which reads:

> C. <u>Gratuity Plan</u>
>
> (1) <u>How Accumulated</u>
>
> A credit of the number of hours equivalent *to* three (3) duty shifts (in accordance with Clause 5) per annum shall be given for each year of service, or for part of a year a credit of hours equivalent to one (1) duty shift for each four **(4)** months of service which may be accumulated *to* a maximum number of hours equivalent to 120 duty shifts.
>
> (2) <u>Deductions</u>
>
> A deduction is made from the current year's gratuity credits for all hours absent on sick leave with pay, except that such deductions shall not exceed the number of hours equivalent **to** three (3) duty shifts in any one (1) calendar year, or for any one **(1)** illness. The total gratuity credited *to* each employee at December 31st of each calendar year will remain to such employee's credit regardless of time lost in any subsequent year through illness or any other reason.

**The** Union submits that Vancouver Firefighters have had a gratuity plan for more than a half a century. Mr. Black argues that the plan previously provided for up to four gratuity day credits per year, with deductions from earned gratuity day credits only up to one day's credit deducted in any four month period. This is the formula being sought by the Union in this round of bargaining.

The Union argues that the present formula was adopted in 1994, when the Employer refused to renew the plan as it then existed and the parties adopted a plan that only provided for three gratuity days per year and immediate loss of gratuity days for each day of illness, regardless of the period in which the gratuities were earned. In mediation to renew the 2000-2002 contract, the parties reinstated the plan the Union is currently proposing for 2001 and 2002 with its continuance being conditional upon sick leave usage by the bargaining unit being reduced to 6.6 days per year on average. The target was not met by the end of 2002 and the Employer refused to renew the plan in the 2003-2006 collective agreement. The Union submits that the Union has made continuing efforts to curb misuse of sick leave and it has been reduced by 2.0 days per year since 2001. In 2005 and 2006 the averages were 6.0 and 6.6 shifts respectively, and the average in 2007 was 7.3 shifts.

It is the submission of the Union that other firefighter contracts have gratuity systems that provide for greater annual gratuity days and/or deductions on a proportionate basis, as is being proposed by the Union. In addition, the Union says that other City of Vancouver employees also have plans in line with the Union proposal, including the Vancouver Police, CUPE Local 15 and the excluded City of Vancouver staff. Mr. Black argues that none of the plans referenced are conditional on achieving or maintaining sick leave levels.

Finally, the Union argues that the present system results in a sick employee losing a sick leave day, also losing a gratuity day and the Union being obliged *to* pay for the first four days of a firefighter's sick leave absence (as revised from six days in the present mediation). This is viewed by the Union and its members as "triple-dipping" and the Union urges that the plan should be changed to increase gratuity days and limit their reduction upon absence due to illness to one per period.

Far its part, the Employer argues that the gratuity plan should be deleted altogether. With regard to the Union's proposal, the Employer contends that it adds cost to the collective agreement with no evidence of a commensurate decrease in the utilization of

sick leave. Counsel argues that, even if there was some basis to believe there would be a reduction in the use of sick leave, that savings is reduced by going to the "block" system of accruing and deducting a gratuity day only within the four month period, as proposed by the Union. Simply stated, it is the position of the Employer that there would be no benefit to the City in accepting the Union's proposal; only additional cost.

Counsel argues that if the Union is to achieve its proposal it should do so in collective bargaining where the Employer can achieve an offset for the additional cost and administrative burden that the proposal would impose.

Further, the Employer argues that the plan should be eliminated on the following basis: that it adds costs by increasing the City's liability with no measurable benefit in terms of reduced sick leave usage; it is based on questionable premises: and, it discriminates against Firefighters who have legitimate illnesses or disabilities. Those Vancouver Firefighters who are fortunate enough to remain in good health throughout the year get extra paid time off, while others who are unavoidably absent due to illness or disability do not. For these reasons, the Employer argues that the gratuity plan should be deleted from the Collective Agreement.

In the alternative, the Employer submits that, should a block system be put in place, the CUPE Local 15 language should be adopted. Counsel submits that this language provides for one gratuity day per four months, but does not include in the section dealing with the deduction of gratuity days the language "or for any one (1) illness". The result, in the submission of the Employer, is that in a prolonged illness spanning more than one block, the illogical result of a firefighter only losing one gratuity day for that illness and still accruing addition gratuity days in subsequent blocks is eliminated. The Employer argues that this system of block gratuity days is preferable to the Union's proposal as it recognizes the intent of gratuity days is to reward employees for attendance at work.

**EVIDENCE**

The parties called six witnesses, four on behalf of the Union and two on behalf of the Employer, to give evidence in this matter. For the purposes of this Award, I have attempted to briefly summarize the evidence that was presented, as a whole.

Evidence was presented about the "cancer presumption" that now exists in provincial legislation for firefighters. This presumption takes the onus off the worker to prove that the cancer was work related. This presumption applies to nine forms of cancer in British Columbia and does not exist for police in the province. Presumption legislation also exists in all areas of Canada. The evidence supports that cancers have been an issue for some time with firefighters, but the "presumption" was only adopted in BC in the fall of 2005, and then expanded to include two more forms of cancer in May of 2008. The Union's witness, Mr. Allan Leier, recently retired President (2004-2008) of the BC Provincial Firefighters, testified that the issue of the risk of cancer forms part of the wage demands of firefighters. However, the Employer's witnesses claim that the Employer pays for cancer claims and the cancer presumption through increased Workers Compensation premiums.

There was also extensive evidence presented about the changing duties and nature of fire fighting and the increased risks associated with the job. Battalion Chief Jeff Dighton testified for the Union that firefighters now receive more calls dealing with more issues, such as medical and first responder calls. He also testified that many of these changes in the work done by firefighters require additional training, as well as new equipment.

According to Mr. Dighton, the concept of firefighting changed in the late 1990's based on scientific research and the introduction of Positive Pressure Ventilation (PPV). PPV had the effect of reversing the process that used to be utilized for fighting fires, i.e. now fans blow air into a fire, rather than direct the smoke from inside to outside. Additionally, traditionally water was used to fight fires. Now, more frequently, compressed air foam is used, which has required extensive training at every level.

Among other first responder equipment, Blood Pressure Cuffs and CO2 Monitors, have also been introduced and require training of firefighters.

As well, Mr. Dighton testified about administrative changes, changes in communications and technology and the increase in responsibilities for the operation and inspection of vehicles. He testified about increased risks to firefighters as a result of high-rise buildings, tower crane inspections, underground fires in parkades, Sky Train tunnels, and the new RAV-line tunnels, fires in "wild lands" such as UBC Endowment Lands, drug labs and "grow ops". An example provided by Mr. Dighton was new technology brought about in the last three to four years, called Thermal Imaging Cameras, which assists firefighters to locate victims or particular sections in a burning room by providing an image and may result in firefighters going deeper into the fire.

Mr. Dighton's evidence was supported by the Union's president, Captain Rod MacDonald, and International Vice-president of the IAFF, Lorne West. Under cross-examination, however, the witnesses agreed that many of these changes have developed over many years, although some of the issues have intensified in recent years.

Evidence was provided on recruitment and retention issues in the Vancouver Fire and Rescue Service. The Union witnesses pointed out that the department has the lowest number of applicants ever and that more and more Vancouver Firefighters are leaving the Employer. There was also evidence presented that hiring standards have increased during recent years. The Employer's witnesses testified that there is 3.5% turnover and less than 1% is a result of firefighters resigning.

Mr. Allan Borden, a Human Resources consultant with Vancouver Fire and Rescue, testified about the process of recruitment, noting that when the Employer ends up with fewer new recruits than expected, it **is** not because there are not enough applicants, but simply a result of how many applicants advance through the interview and testing

process and the fact that some successful interviewees choose to leave due to myriad reasons, including family, medical, career changes or that they have also been accepted by another fire department. The Employer presented the existing data:

| | Summer 2006 | Spring 2007 | Summer 2007 | Spring 2008 | Fall 2008 |
|---|---|---|---|---|---|
| Number of Applicants | 339 | None | 198 | 172 | 136 |
| Applicants passing written exam (eligible for interview) | 161 | 101 carried over from 2006 | 89 | 104 | 66 |
| Applicants interviewed | 60 | 76 | 64 | 71 | 49 |
| Applicants passing interview | 16 | 17 | 13 | 24 | 18 |
| Date of class | Nov-06 | May-07 | Oct-07 | May-08 | Oct-08 |
| Numbers hired | 14 | 17 | 14 | 18 | 20 |
| Numbers leaving | 1 | 1 | 3 | 1 | 4 |
| Actual intake hire | 13 | 16 | 11 | 17 | 16 |

The witnesses also presented evidence regarding the 15th year rate. Mr. Dighton gave evidence that the Union's proposal is based on the structure *of* the fire department that requires more senior members to "mentor" junior members. His evidence is that this is "the back-bone of the organization." Under cross-examination, he agreed that the Union put forward a demand for the 15th year rate in previous rounds of bargaining in 1990, 1991, 1995, 1997, 2000 and 2003 and these demands were rejected by the Employer. Mr. West, who is also a Senior Acting Battalion Chief in Surrey and Chair of the IAFF Executive Board Human Relations Committee, testified as well about the 15th year rate, stating that veteran firefighters are expected to provide mentoring and insight to junior members.

The Employer's witness, Mr. Paul Strangway, is a negotiator for Metro Vancouver Labour Relations. His evidence is that only 25.4% of the firefighters in British Columbia

have a 15th year rate. He also testified that 332 different firefighters received additional pay for instructing and that their seniority ranges from four years to 28 years on-the-job.

**The** witnesses also gave evidence about the gratuity plan. Mr. Dighton's evidence was that, in one instance, he lost all of his gratuity days as a result of a four day illness at the end of the year due to the current plan. Mr. Strangway testified that the Union's proposal will add .62% to the total cost of payroll and the Employer's alternative gratuity plan, the CUPE 15 provision, would add .33% to payroll costs.

Finally, the witnesses gave extensive evidence of the historical bargaining relationships and processes of bargaining and interest arbitration of collective agreements for firefighters in the province. Mr. West testified about the Union seeking national parity with firefighters in Ontario. He provided the following percentage salary differentials for firefighters in other Canadian cities, as compared to Vancouver in 2006:

| | |
|---|---|
| Brampton | 6.8 |
| Edmonton | -0.5 |
| Halifax | -6.5 |
| Hamilton | 3.4 |
| Mississauga | 4.6 |
| Montreal | -7.6 |
| Ottawa | 6.9 |
| Surrey | 0.5 |
| Toronto | 6.9 |
| Winnipeg | -1.0 |

Mr. West was the lead spokesperson in the Vernon Firefighters negotiations and a key advisor to the Surrey Firefighter negotiations. His evidence was that Vernon and Surrey were able to make some ground on that front. Mr. West disputed that Surrey and Vernon achieved the measure of trade-offs from the firefighters that they perceived they did.

ne also testified about the Surrey Firefighters achieving 0.5% extra in the 2003-2006 settlement where he was the lead spokesperson and stated the Employer did not identify any particular trade-off for that 0.5% at the bargaining table. Mr. West did agree after the agreement was signed he knew about the particular work that was brought "in house" from a contractor in 2005 and 2006, although he didn't know "how long they did this."

Mr. Strangway also gave extensive evidence on these issues. He gave evidence about the way in which Metro Vancouver developed its mandate of 9.25% over 39 months for the last round of bargaining and how the settlements and labour disputes unfolded. His evidence was that the City of Richmond, a non-Metro Vancouver employer, set the pattern for term and wages, although after the Vancouver and North Vancouver strikes had commenced, adopting the first 36 months of the Metro Vancouver mandate and added two additional years at 4% and 4%. His evidence on the municipal settlements in 2007 is summarized in the following table:

| | |
|---|---|
| July 20 | Vancouver/CUPE 1004 strike commences<br>District of North Vancouver/CUPE 389 strike commences |
| July 23 | Vancouver/CUPE 15 strike commences |
| July 24 | Vancouver/CUPE 391 strike commences |
| July 30 | Delta/CUPE 452 settles on same term and wages as Richmond<br><br>Burnaby/CUPE 23 settles on same term and wages as Richmond |
| July 31 | Surrey/CUPE 402 settles on same term and wages as Richmond |
| August 2 | District of North Vancouver/CUPE 389 strike settles on same term and wages as Richmond |
| August 14 | White Rock/CUPE 402 settles on same term and wages as Richmond |
| August 16 | City of North Vancouver/CUPE settles on same term and wages as Richmond |

| | |
|---|---|
| October 9 | Vancouver/CUPE 15 strike settles on same term and wages as Richmond |
| October 12 | Vancouver/CUPE 1004 strike settles on same term and wages as Richmond |
| October 18 | Vancouver/CUPE 391 strike settles on same term and wages as Richmond |

Mr. Strangway also provided evidence that the BC Government and other employers associated with the 2010 Olympics have achieved terms that take their contracts beyond the Olympics. In addition to the BC Government, and all of its bargaining units, the following employers have achieved expiry dates as follows:

| Employer | Expiry |
|---|---|
| BC Ferries | October 2010 |
| Vancouver & CUPE | December 31, 2011 |
| Vancouver & VPU | March 31, 2010 |
| Richmond & CUPE | December 31, 2011 |
| West Vancouver & VMEA | December 31, 2012 |
| Whistler & CUPE | December 31, 201 / |
| Whistler Firefighters | December 31, 2010 |

The parties presented other evidence that I have not summarized here because it has little impact or bearing on my decision in this matter.

## ANALYSIS & DECISION

I have carefully and thoroughly reviewed the evidence and submissions of both parties in coming to my Award. I am also required by the *Act* to consider all of the factors set out in Section 4(6):

(a) terms and conditions of employment for employees doing similar work;

(b) the need to maintain internal consistency and equity amongst employees;

(c) terms and conditions of employment for other groups of employees who are employed by the employer;

(d) the need to establish terms and conditions of employment that are fair and reasonable in relation to the qualifications required, the work performed, the responsibility assumed and the nature of the services rendered;

(e) the interest and welfare of the community served by the employer and the employees as well as any factors affecting the community;

(f) any terms of reference specified by the minister under section 3;

(g) any other factor that the arbitrator or arbitration board considers relevant.

The *Act* does not give any particular weight to any one factor or another, but rather requires that an arbitrator give regard to the criteria in each particular case, with greater weight being attached to certain factors based on collective bargaining and economic circumstances of the particular dispute (see *Re City of Burnaby, supra (Gordon)).*

In interest arbitration, including arbitration under the ***Act,*** an arbitrator is faced with the task of determining the terms and conditions of a collective agreement which she feels best replicate what the parties themselves would have reached had they been left to freely negotiate and settle their collective agreement (see *Re Vancouver Police, supra (Lanyon)*).

In my decision in *Re City of Vancouver and Vancouver Firefighters' Union, Local 18* [2001] B.C.C.A.A.A. No. 419, Award No. A-276/01 (Korbin), I made the following comments about the role of an interest arbitrator in these circumstances, at paragraph 25:

> As an interest arbitrator appointed under the Act, I must not only be guided by the criteria enunciated in the Act but also by principles of interest arbitration that have developed historically and do not conflict with the Act. The "replication" approach to interest arbitration is one such principle. In one of the earliest decisions under the Act, Arbitrator Stan Lanyon, in Vancouver Police Board -and- Vancouver Police Union, [1997] B.C.C.A.A.A.

No. 621, (October 30, 1997) comments on the replication principle at page 16 and 17:

> Second, the Employer states that the guiding arbitral principle in interest arbitration is the replication theory – an award should replicate what the parties would have concluded themselves, had they successfully settled their collective bargaining dispute. This is a principle which arbitrators have long accepted. Indeed, an interest arbitrator will often attempt to have the parties narrow their differences so that the final award is an obvious "splitting of the difference", a solution tacitly understood by the parties. Thus, interest arbitration is essentially a conservative exercise in which arbitrators do not stray far from the status quo.
>
> However, along with the replication principle there is a second principle recognized by arbitrators in interest arbitration awards; that is, the requirement to award what is fair and reasonable. Yarrow Lodge Ltd. and Hospital Employees' Union, (1993) 21 C.L.R.B.R. 2nd, 1. Arbitrators are thus loathe to award terms and conditions of employment that do not fall within the reasonable range of comparators, simply because one party would have been able to impose a settlement at one end of the spectrum. And indeed the fair and reasonable principle is recognized expressly in Section 4(6)(d) of this Act – "The need to establish terms and conditions of employment that are fair and reasonable..."

In this early decision, Arbitrator Lanyon comments generally on each of the enumerated factors in Section 4(6). In summary, he states at page 17:

> ... it is clear that what emerges from factors (a) through (d) is the principle of "comparison", a rational matching of similar work along with measuring both internal and external consistency and equity, other employees of the employer, and what is fair and reasonable.

Furthermore, it is well recognized by arbitrators that the Act does not assign the weight to be given to any of the guiding criteria. For example, Arbitrator Munroe, in Vancouver Police Board –and- Vancouver Police Union, [2000] B.C.C.A.A.A. No. 308, (August 9, 2000) says at page 12:

> As many arbitrators have observed, the Act does not assign the weight to be given to any of the guiding criteria – i.e., in relation to each other. And indeed, the relative weighting can change from one dispute to the next, as the circumstances may vary. In the present circumstances, my

> conclusion is that the external comparisons should be accorded the greatest weight, but with the local wage environment having some moderating influence.
>
> In considering the respective positions of the parties, I adopt with approval the principles enunciated by Arbitrators Lanyon and Munroe, although the present circumstances present a different conclusion to that of Arbitrator Munroe.

Once again, I adopt the reasoning of Arbitrators Lanyon and Munroe.

Turning to the issue of similar work under the criteria in Section 4(6)(a) of the ***Act,*** the primary issues in this dispute are the term and wages. The circumstances have changed providing me with new evidence to assign different weights to the guiding criteria. Unlike the case in 2001, there now are firefighter settlements which serve as true comparators within the province. The issue in the present case comes down to the appropriate comparators for the Vancouver Firefighters given the settlements with other Vancouver municipal employees, firefighters in the City of Surrey, Vernon and the City of Burnaby, as well as relative wage rates with respect to the Vancouver Police and firefighters in other jurisdictions.

The Employer is essentially advancing that I adopt either the CUPE municipal settlement over a five-year term or the Vancouver Police arbitration Award imposed over a 39-month term. While this recognizes the historical relationship between these two groups and the Vancouver Firefighters and is supported by factor (c), it effectively ignores factor (a) (under Section 4(6)) of the ***Act,*** namely the terms and conditions of employment for employees doing similar work, specifically in the neighbouring community of Surrey.

In addition, there is evidence that the historical pattern of bargaining for BC firefighters is changing. This was acknowledged by Arbitrator Gordon at p. 19 of her award in ***Re City of Burnaby,*** *supra:*

> In British Columbia, the industry pattern or "parity agreement" in the firefighting industry has typically been established by the Vancouver Firefighters and the City of Vancouver as represented by Metro Vancouver (formerly GVRD).' The remaining

> municipalities and firefighter locals in the Lower Mainland have then typically settled for the Vancouver Firefighter wage adjustments, and increasingly other municipalities and their firefighter locals around the Province have settled for "parity" or "near parity" with Vancouver Firefighters (parity or near parity applies to wages, not benefits). And, as explained in Arbitrator Korbin's Vancouver *Firefighter* award discussed below, an historical wage pattern has persisted for many years between Vancouver police and firefighters whereby police wages have been higher than firefighter wages.
>
> A variation of this historical pattern occurred in 2003. During collective bargaining for the 2003-2006 collective agreement, Burnaby Firefighters settled their wage rates ahead of Vancouver Firefighters. Burnaby Firefighters negotiated the same percentage wage rate provided for in Arbitrator Lanyon's VPU award, and thereafter, Vancouver Firefighters and many other locals around the Province signed agreements adopting the Burnaby Firefighters' wage settlement. Surrey Firefighters settled after the region had settled, and as noted earlier, that local negotiated an additional 0.5% lift at the end of their collective agreement.
>
> During the current round of collective bargaining, a variation of the historical pattern is also evident. The first firefighter locals and municipalities to settle their wage adjustments in the spring of 2008 were Vernon and Surrey. Unlike the situation in 2003, the parties in Vernon and Surrey agreed to wage adjustments exceeding those awarded to the VPU by Arbitrator Lanyon for the 2007-2010 collective agreement (i.e., 13.5% over 3 years for firefighters compared to 12.375% over 39 months for police). The evidence in this proceeding is that the municipalities of Vernon and Surrey believe they achieved specific benefits, trade offs, and other advantages of real value in exchange for the agreed-to wage adjustments. Given the extra 0.5% lift at the end of the Surrey collective agreement, the Surrey settlement currently provides the highest firefighter wages in B.C.
>
> Thus, the previous and current rounds of collective bargaining in the firefighting industry in B.C. reflect an emerging change in historical circumstances..

In the present case, the Union points to rates in other jurisdictions, and the term and wage rates that have been negotiated in Surrey (and Vernon) within the province. Surrey as a comparator for Vancouver Firefighters has been rejected in the past. In *Re City of Burnaby, supra,* Arbitrator Gordon notes at pp. 21-22:

> In 1983, Arbitrator McColl settled the outstanding terms and conditions of employment between the City of Vancouver and Vancouver Firefighters under the Essential Services Dispute Act. When that case was heard, Surrey was the only municipality in the Province that had settled a collective agreement with its firefighters. Vancouver Firefighters proposed the Surrey agreement as the primary comparator for the settlement of their wage rates, and Arbitrator McColl rejected that position for these reasons:
>
> > The evidence establishes that the Surrey Firefighters' unit is a unit much smaller than the one involved in this case, and that historically, Surrey has piggy-backed on the contracts relating to other firefighters achieved through the GVRD, the bargaining agent for a large majority of the Lower Mainland municipalities, including Vancouver Firefighters. It is not appropriate given that fact alone for the Union to use Surrey as a primary comparator in determining the wage package for Vancouver Firefighters.
>
> Arbitrator McColl considered settlements achieved by other firefighters across Canada. Wage increases were constrained at that time by the provisions of the Compensation Stabilization Program. The maximum wage increase permitted under that legislative scheme was 3% for each contract year. He awarded Vancouver Firefighters a wage increase of 3% in each year in order to maintain "the traditional historical relationship [Vancouver Firefighters] bear with other firefighters across Canada" (page 32).

What is significantly different today is that Surrey is now one of the largest municipalities in the province, with a population of over 400,000, and indeed is considered one of the largest and fastest growing communities in the country. From the evidence, the Surrey complement of firefighters **is** the second largest in the province, and the number of fire halls and the duties and responsibilities they undertake are now very similar to what exists in Vancouver. And it is obvious that Surrey Firefighters are no longer prepared to simply "piggy-back" on the wages of their Vancouver counterparts. **It** is in my view reasonable to consider the Surrey Firefighters in terms of "other employees doing similar work. This was also recognized by Arbitrator Gordon when she states, "...(arbitrator McColl's) reasoning does not hold true for the current round *of* bargaining."

The Employer quite strenuously argues that if I accede to the Union's position in this case it would mean that any Firefighter's Union that settles higher in the province would automatically establish a new benchmark for all firefighters – and the historical relationships that have been recognized consistently by arbitrators over some 25 years would be irrelevant. With respect, I do not agree with that proposition.

As already noted, the historical pattern for firefighters bargaining in British Columbia is changing. In consideration of that fact, and the specific history of the present round of negotiations between municipalities and firefighters, and given the fact that two municipalities, including Surrey, settled higher wage increases without resorting to arbitration, it can be concluded that wage rate increases above the Vancouver Police and other municipal workers are a significant issue for BC firefighters that can realistically be (and indeed have been) achieved in collective bargaining. This is also supported by the fact that the Union in Burnaby did not accept the CUPE or Vancouver Police rate increases, but rather opted to take the matter of wage increases to arbitration.

What also emerges from the evidence is that both the municipalities of Vernon and Surrey believe that they obtained trade offs that they feel justified the wage increases they agreed to. Ultimately, this is the case in all negotiations and is, in fact, what an arbitrator is forced to attempt to replicate in an interest award.

The Employer acknowledges this and urges me to adopt the reasoning of Arbitrator Gordon in ***Re City of Burnaby, supra,*** in not following the Surrey and Vernon settlements. At pp. 25-26, Arbitrator Gordon stated:

> I am persuaded that the Surrey Firefighter settlement constitutes a regional firefighter comparator and the Vernon Firefighter settlement constitutes a provincial firefighter comparator; and, some weight is attributable to these comparators under the ***Act*** At the same time, dominant weight cannot be attached to these comparators. A change in the historical bargaining pattern appears to be emerging whereby a local other than Vancouver Firefighters settles its collective agreement ahead of Vancouver Firefighters and Metro Vancouver. However, at this early stage of this emerging change, I find Surrey Firefighters cannot yet be viewed as having unseated Vancouver Firefighters as the local

> setting the industry pattern. At this juncture, the historical relationship between Burnaby Firefighter and Vancouver Firefighter wage rates remains a weightier comparator. Save for two years since 1993, the Burnaby Firefighter wage rates have been tied to Vancouver Firefighter wage rates. In contrast, during that same period, Burnaby Firefighter and Surrey Firefighter wage rates have only been equivalent in 11 years, and for those 11 years, all three firefighter locals --Vancouver, Burnaby and Surrey --were equivalent.

And at p. 29, Arbitrator Gordon concluded:

> The evidence is that the wage increase in the first year of the VPU, Surrey Firefighter and Vernon Firefighter collective agreements is the same -- i.e., 3.5%. The increases in the second and third years of the Vernon Firefighter and Surrey Firefighter collective agreements are greater than those in the corresponding years of the VPU collective agreement such that the acceptance of the Surrey or Vernon Firefighter settlement as a dominant comparator would significantly alter the historical wage gap with VPU wages in years two and three. Focusing for the moment on the previous and current rounds of collective bargaining in the firefighting industry, I am not persuaded that, if collective bargaining had proceeded to conclusion, Burnaby Firefighters would have achieved the same result as Surrey or Vernon Firefighters for the second and third years of the collective agreement. As noted in the *City of Campbell River* award, Burnaby Firefighters achieved a significant collective bargaining outcome during the last round of collective bargaining... I find that, despite the existence of the Surrey and Vernon Firefighter settlements as relevant comparators, weight must still be accorded to the VPU increases and the historical wage differential relationship between Vancouver Firefighters and Burnaby Firefighters, and VPU wage increases.

In the end, what Arbitrator Gordon ordered for Burnaby was a 3.5% increase in the first year because in her words "the evidence is that the wage increase in the first year of the VPU, Surrey Firefighter and Vernon Firefighter collective agreements is the same – i.e. 3.5%". In the second and third years, she tied the Burnaby increases to the Vancouver Firefighter settlement, respecting the long history of parity with Vancouver, as is noted above. And, finally, she held that she would not close the historical gap between Firefighters and the Vancouver Police. However, she does note, that "interest

arbitrators have indeed considered specific trade-offs and achievements in the provisions of collective agreements" (p. 27).

It is clear that the employers viewed there were such trade-offs in both the Vernon and Surrey settlements. Arbitrator Gordon notes, at p. 9:

> The evidence presented at the arbitration hearing was that, from the City of Vernon's perspective, this wage increase would have been less absent the firefighters' agreement *to* certain significant trade-offs and adjustments *to* the provisions of the collective agreement of real benefit to the City.
>
> ...
>
> The evidence presented at the hearing was that from the City of Surrey's perspective, numerous advantages were achieved for the City in exchange for the agreed-to wage rates in the current collective agreement.

Arbitrator Gordon specifically recognized that, where such trade-offs exist, other municipalities may adopt wage increases that, like Vernon and Surrey, close the wage gap between firefighters and the Vancouver Police, at p. 29:

> In these circumstances, municipal employers around the Province may resist, during this round *of* collective bargaining, any wage increases for firefighters that would close the historical wage gap between firefighters and police unless, as appears *to* be the case in Surrey and Vernon, they achieve some sort of trade-offs/achievements under their collective agreements.

I note that Arbitrator Gordon (in *Burnaby, supra)* did not award the first year rates of the Vancouver Police Settlement nor the term of 39 months imposed in Arbitrator Lanyon's Award, *supra.* Rather, she awarded the Surrey Firefighters sequential rate increases in the first year and a term of 36 months which is the same term as both Surrey and Vernon.

Turning to the national comparators, the evidence reveals that as a percentage of Vancouver's 4th year firefighter rates, in 2000 the Toronto rate was 105.8%, while in

2006 it was 106.9%. Clearly, the differential has grown over the last two collective agreements, notwithstanding that Vancouver firefighters do similar work as Toronto firefighters, as evidenced by the Lim HR Consulting Reports of August 25, 2003 and December 9, 2003.

As I noted in my earlier Award, ***supra,*** between these patties, "While these external comparisons should be accorded some weight, they relate only to wages and I must have regard to the relative wage differential for firefighters that has existed between Vancouver and these cities over the past decades," and "it is not my task to dramatically narrow the wage differential from that historically established by the parties themselves."

According to the evidence in this case, both the Employer's and the Union's proposals on wage rates will have the effect *of* narrowing the percentage in the wage gap in 2009, between Toronto and Vancouver, and I have taken that into account in this Award.

The evidence before me is that there has been an historical wage relationship, spanning over 25 years, between the Vancouver Firefighters and the VPU, with the former having a lower salary but achieving similar wage settlements. The evidence also reveals that the wage gap has widened in recent years. Under factor 4(6)(c) *of* the *Act*, I am not limited to considering the percentage wage increases of "other groups *of* employees who are employed by the employer" but I must also look at the effect on their relative salaries and the resulting wage differential between the two groups.

In the present case, the Union seeks to reduce the wage differential between Vancouver Firefighters and the VPU. While it is true the Vancouver Firefighters have not achieved wage increases greater than those of the VPU in the past, that is not the sole or determinative consideration under factor (c) and I am persuaded in these circumstances that this, in addition to the evidence in respect of the other factors, leads to **a** different conclusion than has been reached in past awards and settlements regarding the Vancouver Firefighters and the VPU wage differential.

Additionally, there has been relative parity between Surrey Firefighters and Vancouver Firefighters since at least 1979, with Surrey ahead in some years and Vancouver ahead in others. I have given significant weight to that under factor 4(6)(a) in this Award.

In addressing Sections 4(6)(a) and (d) of the ***Act,*** I have considered the ample evidence with respect to the duties and risks associated with fire fighting. I addressed similar evidence in the 2001 award between these parties, at para. 30:

> Firefighters in the City of Vancouver provide many and complex services in addition to fire suppression and rescue. As examples, Firefighters are First Responders for rescue and accident Emergency Medical Services and are responsible for certain pre-hospital care such as applying CPR and oxygen therapy until the medics arrive. As well, Firefighters are responsible for Technical Rescues such **as** Auto Extrication pursuant to accidents (they use the "jaws of life"), Urban Search and Rescue, Confined Space Rescue, Elevator Rescue, High Angle Rescue, Water Rescue and Industrial Rescue. They **also** respond to Hazardous Material (HazMat) spills, and are called upon to dismantle Grow Operations (marijuana). They perform building inspections for emergency preparedness with respect to fire suppression and earthquake resistance and many other related activities.
>
> In short, the evidence persuades me there are no other employees of the City of Vancouver that **do work** similar to that of Firefighters.

I continue to be persuaded that no other employees of the City of Vancouver do work similar to that of a firefighter. There is no doubt that Vancouver Firefighters continue to perform a valuable, skilled and dangerous service and are exposed to dangerous conditions and health risks due to the nature of their work, and that is reflected in the wage rates, benefits and working conditions they have achieved. There can also be no doubt on the evidence that technical, scientific and equipment advances have changed the way firefighters perform their duties over the years and require training to that end. Many ***of*** these changes have been in place since the 1990s and while training continues *to* be implemented, most of the changes are not new. There were amendments to the *Criminal Code of Canada* in April of 2003 *to* protect firefighters and other persons who may be exposed to dangerous situations like marijuana grow-ops and clandestine drug

labs. While this is a recognition of the workplace hazards firefighters and other employees (including the Police) encounter, grow-ops and drug labs are not a new phenomena.

With respect to the cancer presumption legislation, which has arisen since the parties' last collective agreement, the evidence of Mr. West is that this issue was on the table in both the Vernon and Surrey negotiations. Neither of those employers included consideration of this new development vis-à-vis firefighters and the cancer risk as a factor in the final resolution of their increased wage uplift. (Presumption legislation presumes that for the purposes of worker compensation that certain types of cancer in firefighters is the result of career firefighting for a number of years and compensation will thus be granted.)

The Union focused evidence on firefighters occupational health risks, including heart and lung disease and cancer. It asserts that presumption legislation in Manitoba, New Brunswick and Ontario regarding heart attacks arising from duty, and cancer presumption legislation in all areas of the country, including BC, which covers presumptively job-related cancers for firefighters, reflects increased medical, government and employer recognition of the inherent danger of firefighters acquiring these diseases.

The Union relied on two Manitoba awards dealing with cancer risks. In Re *City of Winnipeg –and- The United Fire Fighters of Winnipeg, Local 867*, (unreported) April 13, 2005 (Peltz), the arbitrator held that "reasonable collective bargaining would involve a fair consideration of the cancer risk as one factor which contributes to a setting of firefighter wages" (at p. 19).

And, at pages 25-26, the arbitrator goes on to conclude:

> Two conclusions can be stated. First, the scientific proof of occupational risks previously believed to affect fire fighters has been made more complete. Second, there is evidence establishing that the incidence of work related cancer illness is greater than previously known. Both of these findings should receive weight in the board's determination of wage increases for the 2004-2005 agreement.

In-the present case I find there exists a situation similar to that before Arbitrator Gordon in *City of Burnaby*, ***supra,*** as stated at page **28:**

> Here, I find that no sufficient evidentiary foundation for taking a similar approach was presented to this board to warrant a significant wage increase to compensate for new evidence establishing that the incidence of work-related cancers for Burnaby Firefighters has increased. It **may well** be that if the Union can establish a sufficient evidentiary basis in the future, an interest arbitrator will consider this factor under the ***Act.***

In assessing the evidence presented in this case, like Arbitrator Gordon, I am unable to find that the "incidence of work-related cancer illness is greater than previously known", and her comments regarding the future apply to the Vancouver Firefighters as well.

All of these factors dealing with duties and risks are neutral in the determination of my finding on the term and wage increases in this Award.

Factor (d) does require me to consider what "terms and conditions of employment are fair and reasonable in relation to the qualifications required, the work performed, the responsibility assumed and the nature **of** the services rendered." In my evaluation of **all** of the other factors in this Award, I have had due regard to the nature of the work of firefighters and what would be fair and reasonable in all of the circumstances.

I am not of the view that any weight is to be given to Section 4(6)(e) under the ***Act*** with respect to recruitment and retention. While there is clearly evidence of fewer applications for firefighters recently, I am satisfied that there have actually been no problems filling the vacancies. Indeed, on the evidence some recruits fail to pass the written and interview process. Nonetheless, there are still many new firefighters in training and others available for future classes. **I am** not persuaded that there **is** evidence of a recruitment or retention problem for the Employer at this time.

I have however given consideration, with reference to factors 4(6)(e) and (g) in the ***Act,*** to the upcoming 2010 Olympics and the need for the Vancouver public **to** have assurances of service during that major event.

Given the current economic situation in Canada and around the world, I have considered the evidence presented with respect to cost of living and economic growth rates for the City and Province under factor (e) of the *Act.* While the interests and welfare of the community are certainly a significant factor, the evidence with respect to the economy is that the short-term future for Vancouver is uncertain. Neither party relied heavily on this factor in arguing its respective position. Therefore, it has played a lesser role in my determination than wage comparisons *to* other employee groups, both within and external to the City of Vancouver.

Finally, I think it is important to note that the staging of the wage increases in a particular settlement or award has an impact on the overall cost-benefit to the Employer and Union members. For example, while both the Vernon and Surrey settlements provide for 13.5% increases over the term, the **costs** associated with these increases are different due to the dates on which they are triggered. Likewise, the Vancouver Police Award commences with a 3.5% increase on January 1, 2007, resulting in increased costs to the Employer compared to the Vernon and Surrey firefighter agreements, which provide the increase in stages throughout the term of the contracts. Put another way, the manner in which the wage increases were staged in the Vernon and Surrey Firefighters' agreements result in lower costs (as acknowledged by Surrey) as compared to the Vancouver Police agreement, over the term of those agreements, even though the wage increase is 1.125% greater than that awarded to Vancouver Police in the same 39 months.

In the result, in consideration of all of the factors outlined in the *Act*, I find that the wage rate increases for Vancouver Firefighters should closely follow the Surrey settlement so that the Vancouver Firefighters achieve the same increase in their wage rate by the conclusion of their collective agreement as the Surrey Firefighters; however, the term of the agreement shall be 39 months rather than 36 months, for the reasons noted immediately above and in consideration for the additional wage increases over and above those attained by the Vancouver Police and CUPE employees, in the first 36 months, in Vancouver.

To be clear, I have considered the competing interests of the Union to secure wage increases in-line with their colleagues in neighbouring communities that would close the wage gap with the VPU on one hand and the need for the Employer to constrain costs and secure stability through the 2010 Olympics on the other hand. This Award, while providing much of the total wage increase sought by the Union, reduces the cost to the Employer by extending the term and staging the wage increases throughout the 39-month term of the contract.

In *City of Burnaby, supra,* Arbitrator Gordon stated that it was premature "at this emerging stage to view Surrey Firefighters as having unseated Vancouver Firefighters as the local setting the industry pattern," because she found at that juncture Burnaby Firefighter and Vancouver Firefighter wage rates remained a weightier comparator than Burnaby Firefighter and Surrey Firefighter wage rates.

There is a different situation before me in this case. This case involves the Vancouver Firefighters directly, the leaders who set the industry pattern with respect to firefighter rates in British Columbia. In determining their wage rates I must take into account what I find best replicates what the parties in this dispute would have achieved on their own had they successfully concluded their bargaining dispute, together with what is fair and reasonable in the particular and challenging circumstances at hand.

Here, I rely on the comments of Arbitrator Munroe in *City of Vernon,* **supra,** at page 3:

> First of all, Section 4(6) of the Act does not preclude the arbitral resolution of a wage dispute by reference to Vancouver parity. Certainly, an external comparison, even with employees doing the same or similar work, is not the dominant criterion generally, but neither can the statute be construed as giving dominance to purely focal conditions.
>
> Secondly, the greater the parties' historical attachment to **a** parity relationship, the greater its significance as a deciding factor. In that sense, I agree with Mr. Hope's observation at p. 39 of his above-cited award dated December 28, 1995, that:
>
>> ... the concept of parity has been confined largely to wage levels and has been applied on an individual and historical basis. That **is,** where interest arbitrators have encountered a pattern of parity in a particular dispute, parity has been

> accepted as a reasonable basis for resolving the issue of wages.
>
> Thirdly, where (as here) there is a long history of a parity relationship, the party seeking the dissolution of the relationship would normally be expected to identify the reasons why that step should now be taken, and to make a concrete proposal which is relatively more persuasive in the context of the present dispute. I am not speaking here of a legal burden of proof, but rather of the practical realities associated with collective bargaining, including interest arbitration as an extension thereof.

There is no doubt that there is a long history of a parity relationship between Vancouver Firefighters and Vancouver Police, which the Union is seeking to dissolve. The Union here has identified the reasons why that step should be taken and satisfied me with a proposal vis-a-vis the Surrey Firefighters that is relatively more persuasive with respect to the wages to be awarded herein, than the proposals of the Employer.

It should be noted that, in coming to the conclusion that Surrey is the most valid comparator for Vancouver on wages in this matter, I have come to a different conclusion than I did in the 2001 award, where I held: "With respect to regional comparators, the difficulty in this case is that there are no firefighter settlements which serve as a true comparison within the province" (para. 32). As already established, that is not the evidence that is before me in the present case.

However, I have not acceded to the Union's request that it be awarded the additional 0.5% increase that was achieved by the Surrey Firefighters at the conclusion of the 2003-2006 collective agreement. As noted by Arbitrator Gordon, at page 26:

> Another feature of the Surrey and Vernon settlements should be considered. The evidence is that, at least from the City of Surrey's perspective, valuable advantages and/or trade-offs at the end of the 2003-2006 collective agreement were exchanged for the extra 0.5% lift, and a number of advantages were achieved under the current collective agreement in exchange for continuing the extra 0.5% lift on top of the wage settlement achieved by the Vernon Firefighters.

The evidence in this case is that while the City of Surrey believed it received a valuable trade-off for the .45% (uncompounded) lift at the end of 2003-2006, the Union was not so advised at the bargaining table although it did know about the situation later.

Moreover, and more importantly, the 2003-2006 agreements were freely negotiated between Burnaby Firefighters and the City **of** Burnaby, Vancouver Firefighters and the City of Vancouver and Surrey Firefighters and the City of Surrey. In respect of those freely negotiated agreements I decline to award the Vancouver Firefighters the additional increase achieved by the Surrey Firefighters, which the City viewed as a special trade-off in their 2003-2006 contract.

On the evidence, with respect to all of the issues dealt with in bargaining and in mediation between these parties, the resolutions were the product of the same, normal to-and-fro of negotiation that took place in Vernon and Surrey, in addition to the particular advantages by the respective employers as the trade-offs for the additional wage uplifts. Put another way, in all three collective agreements some gains were made by the firefighters in their negotiations separate from the wage rate results.

Turning to the issues of the 15th year rate, I have also considered the evidence and submissions in the context of the factors set out in the ***Act.*** I find that there ***is*** no prevailing pattern within BC Firefighters to support the inclusion of the 15th year rate. As noted, including Vancouver, only 25% of BC Firefighters have such a rate. As such, I am not persuaded to order the changes to the Collective Agreement being proposed. Furthermore, in the case of the 15th year rate, the Union has been seeking to make this change over a number of prior rounds of bargaining and has not been able to secure such a gain. I am not satisfied now is the time to make such a change.

Turning to the gratuity plan, the evidence is that there is a wide range of plans within firefighter collective agreements, including some that do not have any such plan at all. For example, Burnaby, Langley and Maple Ridge have no gratuity plan; North Vancouver City, North Vancouver District and Vancouver have "non-blocked" plans; and Coquitlam, Delta, New Westminster, Port Moody and White Rock have blocked plans. Further, some plans provide three gratuity days while others provide four. Within the

City of Vancouver, six unionized groups have non-blocked plans while five have blocked plans. Again, as with the 15th year rate, I find there is no prevailing standard for gratuity plans, either within the City (factor (c)) or with other firefighter groups (factor (a)). In addition, this is a complex issue and I do not have sufficient or compelling evidence to lead me **to** award, within the confines of the ***Act,*** either of the changes proposed by the parties in this case.

**SUMMARY**

In summary, I find that the term of the agreement should be 39 months, from January 1, 2007 to March 31, 2010 with the following wage increase increments:

| Date | % Increase |
|---|---|
| **January 1, 2007** | **2.0** |
| **June 30, 2007** | **1.5** |
| **January 26, 2008** | **2.5** |
| **October 4, 2008** | **2.5** |
| **January 24, 2009** | **2.5** |
| **December 31, 2009** | **2.5** |
| **Total** | **13.5%** |

No other changes to the Collective Agreement are awarded save and except the items agreed to in mediation and appended to this Award.

I retain the necessary jurisdiction *to* deal with any issues arising out of the implementation of this Award or the Memorandum attached as Schedule **A** *to* this Award.

It is **so** awarded.

Dated at the City *of* Vancouver in the Province of British Columbia this **11th** day of December, 2008.

"J. Korbin"
**JUDI KORBIN, Arbitrator**