

**IN THE MATTER OF THE *FIRE AND POLICE SERVICES COLLECTIVE*
BARGAINING ACT R.S.B.C. 1996 CHAPTER 142**

BETWEEN: CITY OF BURNABY

(the “City” or “Employer”)

AND: BURNABY FIREFIGHTERS’ UNION, INTERNATIONAL
ASSOCIATION OF FIRE FIGHTERS, LOCAL 323

(the “Association” or “Union”)

INTEREST ARBITRATION DISPUTE

ARBITRATOR: David C. McPhillips

COUNSEL FOR THE EMPLOYER: Chuck Harrison and Monique Orioux

COUNSEL FOR THE UNION: Sean McManus

DATE OF HEARING: June 15 and July 7, 2016
Burnaby, BC

DATE OF AWARD: August 10, 2016

The parties are agreed this Board has the jurisdiction to determine this matter which involves an interest arbitration between the City of Burnaby and the Burnaby Fire Fighters' Union, IAFF, Local 323 to establish the terms of a Collective Agreement commencing on January 1, 2012. This matter was referred to interest arbitration by letter from the Minister on March 11, 2015 pursuant to the *Fire and Police Services Collective Bargaining Act* (the "Act").

FACTS:

The City of Burnaby, the third largest City in the Province, is the Employer and the Union, IAFF Local 323 is the exclusive bargaining agent representing 281 Fire Fighters in seven fire stations providing services such as fire fighting, motor vehicle extrication, aquatics rescue, high angle rescue, heavy urban search and rescue, emergency medical pre-hospital care, hazardous materials response, inspections and investigations and community safety programs.

The parties previously entered into a two year Collective Agreement which was in effect from January 1, 2010 to December 31, 2011. Following the expiry of that Agreement, the parties began in February 2014 to negotiate a successor Agreement but were unsuccessful in that endeavour. The parties then proceeded through mediation but were unable to settle on any terms and the matter was ultimately referred by the Minister to this interest arbitration process.

At that time, there were more than fifty outstanding issues but following a meeting with this Board, most of the demands were withdrawn by the parties and it was agreed that the following matters would be addressed in this process:

1. Term of the Agreement
2. Wages
3. Article 8.8 Amendments
4. Other Matters
 - a) Inclusion of a 15th year Rate
 - b) Increase to the Captain Index
 - c) Adjustment to the Assistant Chief Rate
 - d) Changes to the Medium Term Disability Benefits

The criteria to be applied in the process of setting the terms of a collective agreement for Fire Fighters is governed by Article 4(6) of the *Act*:

4(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.

These criteria, along with other general principles, have been applied in numerous arbitration awards over the last number of years, many of which were referenced at this hearing and include the following: *City of Grande Prairie and Grand Prairie Fire Fighters Association, IAFF Local 2770*, January 24, 2004 (Sims); *Yorkton Professional Fire Fighters Association, Local 1527, of the International Association of Fire Fighters and The City of Yorkton*, May 17, 2004 (Priel); *International Association of Fire Fighters, Local 1075 v. City of St. John's*, August 12, 2005 (Oakley); *City of Winnipeg and the United Fire Fighters of Winnipeg, Local 867 of the International Association of Fire Fighters*, April 13, 2005 (Peltz); *Richmond (City) v. Richmond Firefighters' Assn., IAFF L. 1286*, [2009] B.C.C.A.A.A. No. 106 (McPhillips); *CUPE and the Saskatchewan Health-Care Association*, May 17, 1982 (Halvorson); *Re Board of School Trustees, School District No. 1 (Fernie) and Fernie District Teachers' Association*, December 21, 1982, 8 L.A.C. (3d) 157; *Re Beacon Hill Lodges of Canada and Hospital Employees Union*, March 31, 1985, 19 L.A.C. (3d) (Hope); *Vancouver (City) v. Vancouver Fire Fighters' Union, Local 18*, [2012] B.C.C.A.A.A. No. 57 (Hall); *Regina Professional Firefighters Association, Local No. 181 IAFF and the City of Regina*, (July 11, 1991 (Laing); *Nelson (City) v. Nelson Professional Fire Fighters' Assn. (Wages Grievance)*

[2010] B.C.C.A.A.A. No. 174 (McPhillips); *The City of Regina v. Regina Professional Fire Fighters Association, Local 181 IAFF*, September 21, 2005 (Paus-Jenssen); *The City of Moose Jaw and Moose Jaw Fire Fighters Association, Local 553*, August 30, 2007 (Paus-Jenssen); *Regina Professional Fire Fighters Association, Local 181 and the City of Regina*, December 23, 1997, (Priel); *Surrey (City) v. Surrey Fire Fighters' Assn.* [2011] B.C.C.A.A.A. No. 50 (McPhillips); *Temiskaming Lodge and CUPE Local 2368*, September 11, 2007 (Shime); *Penticton (City) v. Penticton Fire Fighters' Assn., International Assn. of Fire Fighters, Local 1399*, [2015] B.C.C.A.A.A. No. 75; *Vancouver (City) v. Vancouver Firefighters' Union, Local 18*, [2008] B.C.C.A.A.A. No. 182 (Korbin); *Burnaby (City) v. Burnaby Firefighters Union, Local 323* [2008] B.C.C.A.A.A. No. 220 (Gordon); *Chilliwack v. Chilliwack Professional Fire Fighters Association, Local 2826*, [1999] B.C.C.A.A.A. No. 594 (Munroe, Q.C.); *The City of Lethbridge and Lethbridge Professional Fire Fighters Association, Local 237*, April 24, 2008 (Tettensor); *St. Catharines Professional Fire Fighters Association and the Corporation of the City of St. Catharines*, September 27, 1985 (Teplitsky); *Vancouver Police Board v. Vancouver Police Union*, [2000] B.C.C.A.A.A. No. 308 (Munroe, Q.C.); *Penticton (City) v. Penticton Fire Fighters' Assn., International Assn. of Fire Fighters, Local 1399*, [2016] B.C.J. No. 880; *Ajax Professional Fire Fighters Association v. Ajax (Town of)*, 2013 ONSC 7361; *The City of Whitehorse and Whitehorse Fire Fighters Association, IAFF Local 2217*, April 6, 2010, (Tettensor); *The City of Regina and the Regina Professional Fire Fighters Association, Local 181*, December 31, 2008, (Paus-Jenssen); *Vancouver (City) v. Vancouver Firefighters' Union, Local 18*, [2001] B.C.C.A.A.A. No. 419 (Korbin); *McMaster University and McMaster University Faculty Association* (1990), 13 L.A.C. (4th) 199 (Shime); *City of Prince George and Prince George Firefighters' Union, IAFF Local 1372*, January 15, 2015 (Ready); *City of Vancouver and Vancouver Fire Fighters' Union, IAFF Local 18*, December 1, 2014 (Wilkins); *Kootenay Boundary (Regional District) and IAFF Local 943*, 2009 Carswell BC 3993 (Gordon); *Vancouver Police Board and VPU*, 2014 Carswell BC 2723 (Lanyon).

Many of these authorities have attempted to distil the basic principles which apply to interest arbitration generally and Police and Fire specifically. The most recent review

was undertaken by the British Columbia Supreme Court in a judicial review of the 2015 Penticton Fire Fighters Award. In *City of Penticton v. Penticton Fire Fighters, supra*, the B.C. Supreme Court stated, at para. 8:

Because the *Act* has remained the same since it was enacted in 1996, there is a great deal of commentary by arbitrators on its interpretation and application. In this case, the arbitration award identified a number of general principles that have been consistently applied to collective bargaining disputes submitted to arbitration under the terms of the *Act*. Neither party took issue with the applicability of these general principles to the dispute. The general principles are as follows:

1. There is no weighting assigned to the factors in s. 4(6) of the *Act* and thus each must be applied according to the circumstances of the case.
2. The arbitrator must apply the replication principle; that is, what the parties would have agreed to and likely achieved had a collective agreement been negotiated through collective bargaining. In applying this principle, arbitrators look to the historical pattern of settlements by the parties as evidence of what would likely “replicate” a bargained collective agreement.
3. The process of interest arbitration is conservative and the arbitrator should respect the bargaining relationship that exists and not introduce fundamental changes to the collective agreement. In other words, the interest arbitrator should not be an innovator and should strive to maintain the *status quo*.
4. The award should be fair and reasonable and fall within a reasonable range of comparators. This principle appears to be a marriage of the replication principle with the premise that the arbitrator not make fundamental changes to the collective agreement.

With those general principles in mind, we turn to the issues in dispute in the present case.

I. Term

On this issue, the Union submits a five (5) year Agreement (2012 – 2016) would be more appropriate while the Employer seeks a four (4) year Agreement (2012 – 2015).

The Union argues that a five year Agreement (ending December, 2016) would be appropriate as it would post-date the issuance of this Award and provide the parties an opportunity to return to the bargaining table before the expiry of the Agreement. Further, the Union argues that if a four year Agreement is awarded, it will have already expired with the result that it would be difficult for either party to provide prior notice to bargain.

The Employer submits a four year Agreement expiring in December, 2015, would be better as it would be consistent with the current pattern of Fire Fighter Agreements.

The City provided the following chart setting out comparisons with respect to dates among some of the larger Fire Fighter bargaining units in the province:

| Municipality | Term |
|--------------------|--------------|
| Burnaby | 2012 - _____ |
| Penticton | 2010 - 2015 |
| Prince George | 2010 - 2015 |
| Coquitlam | 2012 - 2015 |
| Langley, City | 2012 - 2015 |
| Victoria | 2012 - 2015 |
| Vancouver | 2012 - 2015 |
| W. Vancouver* | 2012 - 2015 |
| Vernon | 2013 - 2015 |
| City of N. Van* | 2013 - 2015 |
| Delta | 2012 - 2019 |
| District of N. Van | 2012 - 2019 |
| Langley, Township | 2012 - 2019 |
| New West. | 2012 - 2019 |
| Pitt Meadows | 2012 - 2019 |
| Port Moody | 2012 - 2019 |
| Surrey | 2012 - 2019 |
| Maple Ridge | 2013 - 2019 |
| Kelowna | 2013 - 2019 |
| Mission | 2014 - 2019 |
| Richmond | 2014 - 2019 |
| City of N. Van* | 2016 - 2019 |
| W. Vancouver* | 2016 - 2019 |

*West Van and City of North Van negotiated contracts for 2012 – 2015 and just recently signed agreements to cover 2016 – 2019.

The City also submits that a term ending in 2015 would provide the parties with incentive to commence meaningful negotiations sooner. As well, if the Agreement did not expire until the end of 2016, at least seven other districts and cities with Fire Fighter contracts ending in 2015 would likely have concluded their negotiations and that would “put Burnaby at the bottom of the list of the Union’s bargaining efforts”. As well, the

City is presently in negotiations with its CUPE locals and there are certain bargaining matters which impact both the CUPE and Fire Fighter bargaining units.

In this instance, I am persuaded by the submission of the City that a four (4) year agreement (January 1, 2012 to December 31, 2015) is the more appropriate. In my view, this most reflects what the parties would have negotiated (the replication principle) in light of both the City's other collective agreements and the pattern of Fire Fighter agreements throughout the province.

That term also has the added advantage of requiring these parties to return to the bargaining table immediately and address the myriad of issues which were not addressed during this last round of bargaining.

In order to avoid any procedural difficulties, it is also deemed that notice to bargain has been given effective the date of this Award.

II. Wages

The parties provided this Board with their submissions with respect to wages on June 15, 2015 and those have been duly considered.

The pattern in Fire Fighter Agreements in British Columbia has been well established for the years in question and virtually all the Fire Fighters in the province were paid the "provincial wage standard". It has often been observed in the arbitral jurisprudence that this is a very significant, if not overwhelming, factor: *2008 Vancouver Fire Fighters, supra*; *2008 Burnaby Fire Fighters, supra*; *2009 Trail Fire Fighters, supra*; *2010 Nelson Fire Fighters, supra*; *2011 Surrey Fire Fighters, supra*; *2012 Vancouver Fire Fighters, supra*; *2015 Penticton Fire Fighters*.

It has repeatedly been observed in the last few years that 98 – 99% of Fire Fighters in British Columbia receive the "provincial wage standard" and one of the reasons for that is the dangerous nature of this occupation with the risk of disease. As well, with the City of Burnaby and IAFF Local 323, the history of their negotiations indicate these parties have followed the provincial standard and, in some cases, have actually established it.

In my view, there is no compelling reason to deviate from the wage increases which were given to other Fire Fighters in the province for the period in question. As a result, the following wage increases are awarded:

2012 – 2.5%

2013 – 2.5%

2014 – 2.5%

2015 – 2.5%

III. Article 8.8 Amendment

Since the previous Collective Agreement expired at the end of 2012, issues arose with respect to changes which had been made to the BC Municipal Pension Plan. A grievance filed by the Union proceeded to arbitration and the dispute was ultimately resolved by a Letter of Understanding entered into by these parties on April 29, 2016. In that LOU the parties agreed to amend Article 8.8 to the following effect:

8.8 Municipal Pension Plan and SPPA

- (a) All existing eligible employees and all future eligible employees will be covered by and be subject to the current and any future rules established by the Municipal Pension Board and the Pension Corporation governing Group 5 participation.
- (b) Effective January 1, 2016, eligible employees will receive a Supplemental Pension Pay Allowance (SPPA) from the Employer of 0.56% of pensionable earnings (basic regular earnings) on a go forward basis. There will be no retroactive payment for the period December 20, 2014 to December 31, 2015.
- (c) The SPPA will be paid to eligible employees on a bi-weekly basis, where the Employer will transfer the appropriate amount of monies into each member's account. Such allowance will be treated as a standalone allowance and not be pyramided with any other benefit. The SPPA is calculated and payable on all earnings currently defined as pensionable (e.g. regular, sick, WorkSafe, retroactive, vacation and statutory holidays).
- (d) The Union will contract directly with a financial institution of the Union's choice to provide a non-registered savings vehicle to its eligible members. The Union will take all responsibility communicating and enrolling its existing members and will provide the required information to all new eligible employees.
- (e) The Employer accepts no administrative costs associated with this non-registered savings program, other than the costs associated with the calculations, bi-weekly payroll deductions and remittance to the individual accounts as provided by the Union. Employees with questions about the SPPA will be directed to the Union or financial institution for responses.

- (f) The Employer assumes no liability for the administration, governance, viability, competitiveness, etc. of the non-registered savings program and the due diligence obligation remains with the Union. As a result, the Union agrees to hold the Employer harmless from any disputes/legal action instituted by eligible employees.
- (g) The Union and the Employer agree that the funds are to be utilized for post-retirement benefits and will be available to the employee upon retirement or separation from the Employer. The Union and the Employer agree to share equally any future pension increases set by MPP.

It is so Awarded.

IV. Other Matters

Background

There are four matters to be addressed in this section. In this case, the Employer is seeking reductions to the Medium Term Disability benefits and a lowering of the Assistant Chief pay rate. The Union is seeking an increase to the Captain Index and the inclusion of a 15 year rate into the Agreement.

Before addressing each of these issues, it is useful to review some general principles that are relevant with respect to these types of requests.

It has often been observed that the interest arbitration process is a “conservative” exercise and arbitrators are generally hesitant to introduce changes to a collective agreement in the absence of significant and compelling evidence. This approach acknowledges the reality that in collective bargaining, trade-offs are critical and to make isolated changes to individual items would not “replicate” what the parties would have done during bargaining. It is only in the face of demonstrated need and obvious comparability in the face of a clear pattern that such changes should be made to an agreement: *2009 Richmond Fire Fighters, supra*; *2015 Penticton Fire Fighters, supra*; *Ajax Fire Fighters, supra*.

These comments must also be emphasized here in light of the fact that these parties will be immediately returning to the bargaining table and will be able to engage in the “give and take” of negotiations.

a) Inclusion of a 15 Year Rate

The Union proposes the insertion of a 15th year rate for Fire Fighters at 106% of the 4th year (1st Class) rate for members completing 15 years of service. The Union submits that about one-half the IAFF locals in the Province have a 15th year rate and the District of North Vancouver and IAFF Local 1183 have just recently negotiated a 15th year rate in their collective agreement. As a result, it is asserted by the Union that the “comparability” criterion should lead to inclusion of such a rate in the Burnaby Local 323 Agreement.

In my view, the evidence with respect to a 15th year rate does not lead to the conclusion that there is a clear pattern in the province of a 15 year rate being included in Fire Fighters’ Agreements. It appears that only approximately 50% of the IAFF Locals covering about 50% of the Fire Fighters have such a rate in their agreements which can be seen from the following table provided by the City:

| Municipality | Max Seniority Rate |
|----------------|--|
| Burnaby | 103% 10 th year rate |
| Surrey | 103% 10 th year rate 106% 15 th year rate |
| Vancouver | 103% 10 th year rate |
| Richmond | 103% 10 th year rate |
| Delta | 102% 10 th year rate 106% 15 th year rate |
| Dist N Van | 103% 10 th year rate 106% 15 th year rate |
| City of N. Van | 103% 11 th year rate 106% 15 th year rate |
| W. Van | 103% 10 th year rate |
| New West | 103% 11 th year rate 106% 15 th year rate |
| Coquitlam | 103% 10 th year rate 106% 15 th year rate |

| | |
|-------------------|--|
| Prince George | 103% 10 th year rate 104% 15 th year rate |
| Langley, City | 103% 10 th year rate |
| Langley, Township | 103% 10 th year rate 106% 15 th year rate |
| Pitt Meadows | 102% 10 th year rate |
| Port Moody | 103% 10 th year rate |
| Maple Ridge | 103% 10 th year rate 106% 15 th year rate |

It is of particular interest to note that of the four major Lower Mainland agreements (Vancouver, Surrey, Richmond and Burnaby), which tend to establish the provincial pattern, only Surrey has a 15th year rate and that was freely negotiated by the parties rather than being imposed through interest arbitration.

Therefore, it has not been established on the evidence that a 15th year rate is the “norm” or “standard” in Fire Fighters Agreements. As a result, it would not be appropriate to insert a 15th year rate into this Agreement and that request by the Union is denied.

b) Increase to the Captain Index

The current Captain classification is compensated at 122% of the 10th year rate and the Union proposes the index be raised from 122% to 125% on the basis of the following additional duties being undertaken by Burnaby Captains in recent years:

- In addition to the regular supervision and maintaining appropriate levels of training in the Fire Stations, Captains now have more responsibility with new recruits as there is greater accountability for safety and appropriate training needs to be completed (8 blocks/sets).
- Preceptorship Program, training of new Fire Officers to get practical hands on experience to assist with preparation as a new Fire Officer (4 blocks/sets).
- New role/responsibility since 2014 as Chief’s Aide on Command 1 – at an incident – the Chief’s Aide main role is to manage the accountability of all personnel on scene and to keep a record of the operational tactics and positioning of all fire crews and all outside agencies.

- Mentorship type program to learn the role and responsibility of the Assistant Fire Chief – specific duties would include: operational (strategy, tactics, incident command); administrative; staffing requirements (day to day); specific discipline liaison

The City argues that these duties are not unique to Burnaby and exist in other districts and all these types of duties have historically formed part of the Captain position. As well, it is asserted that many of these duties are undertaken by individuals as further training and are not performed by all the captains but rather only by a sub-set of them who seek advancement by promotion or into acting roles (Deputy Chief/Chief).

Once again, a comparative chart provided by the City is instructive:

| Municipality | Captain's Rate |
|-------------------|------------------------------------|
| Burnaby | 122% of 10 th year rate |
| Surrey | 122% of 10 th year rate |
| Vancouver | 122% of 10 th year rate |
| Richmond | 122% of 10 th year rate |
| Delta | 122% of 10 th year rate |
| Dist N Van | 122% of 10 th year rate |
| City of N. Van | 122% of 11 th year rate |
| W. Van | 122% of 10 th year rate |
| New West | 122% of 11 th year rate |
| Coquitlam | 122% of 10 th year rate |
| Prince George | 122% of 10 th year rate |
| Langley, City | 122% of 10 th year rate |
| Langley, Township | 122% of 10 th year rate |
| Pitt Meadows | 122% of 10 th year rate |
| Port Moody | 122% of 10 th year rate |
| Maple Ridge | 122% of 10 th year rate |

In my view the evidence is insufficient to establish that the duties in the position of Captain in Burnaby differ in any significant way from those in other districts and so there is nothing unique here. Further, on a comparison basis, every other Fire Fighter collective agreement in British Columbia has the Captain's index at 122% of the 10th year rate.

As a result, to accede to the Union’s request would in fact initiate a new benchmark into this Agreement which does not exist in other Fire Fighters agreements. The jurisprudence is very clear that that is not the role of an interest arbitrator. Arbitrator Hope aptly expressed this view in *Okanagan Mainline Municipal Labour Relations Association and IAFF, Locals 953, 1399, 1746*, 6 L.A.C. (4th) 323, wherein he stated at p. 535, that “(i)t 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”.

Thus, this request from the Union is denied.

c) Assistant Chief’s Rate

Under the prior Collective Agreement between these parties, the Assistant Fire Chief received, depending on length of service, a rate of pay at either 147%, 152% or 157% of the 10th year rate. The City asserts that this should now be a single rate at 147% for any new appointees (anyone who is already an Assistant Chief would continue to proceed through the 147%-152%-157% range). It should be noted that it was agreed that this issue would proceed to arbitration on a without prejudice basis with the understanding that the Union is entitled to argue in the future whether an issue introduced at mediation can be argued at interest arbitration.

The following chart indicates the rates of pay under other collective agreements for Assistant Fire Chiefs (“AC”) or Battalion Chief (“BC”) who perform the same duties in other districts:

| Municipality | MaxAC or BC Rate |
|----------------|---------------------|
| Burnaby | 147, 152, 157% (AC) |
| Surrey | 140% (BC) |
| Vancouver | 140.2% (BC) |
| Richmond | 137, 140, 142% (BC) |
| Delta | 140% (BC) |
| Dist N Van | Excluded |
| City of N. Van | Excluded |

| | |
|-------------------|-------------------------|
| W. Van | Excluded |
| New West | 140% (AC) |
| Coquitlam | Excluded |
| Prince George | 132+, 136+, 140+ (AC) |
| Langley, City | Excluded |
| Langley, Township | Excluded |
| Pitt Meadows | Excluded |
| Port Moody | Platoon Captain is 130% |
| Maple Ridge | Excluded |

The City asserts that Assistant Chiefs or Battalion Chiefs are excluded from the bargaining unit in about 50% of Lower Mainland municipalities and that for the remaining 50% of the Lower Mainland municipalities where Assistant Chiefs or Battalion Chiefs are included in the bargaining unit, the highest rate of pay is 142.8% in Surrey where the parties freely bargained the current 2012 – 2019 collective agreement and which is a close comparator to Burnaby. It is asserted, therefore, that Burnaby’s rates of 147%, 152%, and 157% are significantly greater than the rates in other Lower Mainland municipalities.

It is argued that given the strong trend towards parity and prevailing standard of parity or near parity, the 152% and 157% are well out of line with comparable districts and even the 147% would still be higher than the rate contained in other Fire Fighter agreements.

The Association submits that this three tiered rate for the Assistant Chief in Burnaby has a history going back into the 1970’s and was imposed after an independent study had made recommendations. Further, the continuation of those rates has been freely negotiated by these parties since at least 1989. In fact, these three tiered rates were subsequently introduced in the Agreement for both the Chief Fire Prevention Officer and the Chief Training Officer. The Union asserts this long history of this standard being freely bargained by these parties should be respected. As well, the Union asserts it would not be appropriate to remove one item in isolation from changes to other elements in the Collective Agreement.

In my view, while it appears that this Assistant Captain's rate is higher than in other areas, it is difficult to simply "cherry pick" one item in isolation from the other elements of remuneration, particularly given that in other many districts the Assistant Captain position is excluded from the bargaining unit.

Moreover, the previous Agreement was freely bargained by these parties and the three tiered rate was included and significant weight must be accorded to historical patterns of negotiated settlements: *2009 Richmond Fire Fighters, supra*; *2012 Vancouver Fire Fighters, supra*; *2014 Vancouver Police, supra*.

Undoubtedly, the City wishes to address this issue but it is appropriate that the parties be given a further opportunity to deal with this in collective bargaining before it would be appropriate for an arbitration board to unilaterally impose it.

Therefore, at this time, this request from the City is denied.

d) Medium Term Disability Benefit

Under the Collective Agreement in Burnaby, Fire Fighters have Short Term Sickness and Accident Leave ("STSA"), Medium Term Disability ("MTD") and Long Term Disability ("LTD") benefits.

The STSA (Article 7.5) provides Fire Fighters who have three (3) months service with two weeks (or 84 hours) of sick leave which is paid at 100% of salary and is funded by employee contributions. Once the STDA is exhausted, any Fire Fighter (with at least three (3) months service) qualifies for the MTD benefit, under which the employee receives 100% of regular gross earnings for a maximum period of 50 weeks. After that period, the employee would apply for LTD coverage and that plan is not at issue here.

In this case, the City has asked that the MTD benefit be reduced from 100% to 90% for the 50 weeks that the employee is eligible. The evidence is that in the 2012 – 2015 Burnaby - CUPE Collective Agreement, that reduction from 100% to 90% was agreed to by CUE and it has also subsequently been applied to exempt staff. As a result, the City submits that on the basis of "internal comparisons", consistency should lead to a reduction in this benefit for its Fire Fighters. The City asserts that internal equity is a

relevant consideration in these circumstances: *2008 Vancouver Fire Fighters, supra*; *City of Penticton v. Penticton Fire Fighters, (BCSC), supra*.

The City has also provided the following chart setting out Disability Plan usage for 2015 among its group of employees:

| Burnaby Municipal Benefit Society 2015 Short, Medium and Long Term Disability Days Lost Per Member | | | | | |
|--|-----------------|------|------|------|------------------|
| Division | Average Members | STSL | MTD | LTD | Total Disability |
| Inside | 631 | 4.27 | 5.99 | 5.28 | 15.54 |
| Outside | 308 | 6.21 | 5.07 | 3.25 | 14.53 |
| Foremen | 60 | 1.79 | 4.66 | 0.00 | 6.45 |
| Library | 59 | 4.85 | 3.09 | 4.34 | 12.28 |
| Average CUPE | 1058 | 4.78 | 5.47 | 4.29 | 14.54 |
| Fire | 279 | 4.81 | 8.42 | 1.65 | 14.88 |
| Exempt | 157 | 3.17 | 3.29 | 0.00 | 6.46 |
| Average All Divisions | 1494 | 4.62 | 5.84 | 3.32 | 13.78 |
| Regular Part-time | 96 | 3.53 | 3.79 | 0.00 | 7.32 |

The Association submits that there has been no justification presented by the City for the inclusion of this “cost-cutting” measure. It asserts the City had a surplus of \$8.6 million last year and there is no economic rationale for amending this benefit. The Association argues that the dangerous nature of the Fire Fighter position (including cancers which are now legislatively presumed to be job related) and the proximity to citizens who may be ill mean that the internal comparison with CUPE workers is not germane. It is submitted that there is a significant difference in the work of Fire Fighters and other municipal employees and an internal comparison is not appropriate on this matter.

In my view, the first step in these cases is to compare a benefit to the corresponding benefits in other Fire Fighter agreements. However, as both parties pointed out, these sickness and illness provisions in Burnaby differ significantly from those contained in the Fire Fighter agreements in other districts and cities.

In the case of short term disability, which is all employee funded, Burnaby Fire Fighters are covered under the Short Term plan for 7 days compared to Surrey - 5 days,

Vancouver – 4 days and Richmond – no days. As a result, in that instance the Fire Fighters in Burnaby bear a higher cost than the Fire Fighters in other areas.

Next, the Medium Term Disability Plan in Burnaby provides that Fire Fighters are eligible for full coverage (for 50 weeks) once they have three (3) months of service. However, in other districts, there is an accrual system in place which relates days of eligibility for these benefits to length of service. However, these systems also provide for pay-out for unused days (to a cap) at the time of retirement.

This chart sets out the MTD requirements in some comparable districts:

| | |
|------------------|--|
| Burnaby | 50 weeks; qualifies after 3 months service; entitlement renews if return to work for 60 days |
| Surrey | Accrued up to 200 shifts (takes 11.16 years of service to accrue) |
| Vancouver | Accrued up to 261 shifts (takes 13.05 years of service to accrue) |
| Richmond | Accrued up to 261 working days (takes 13.05 years service to accrue); no cap 25+ years service |
| Delta | Accrued up to 60 weeks (takes 10 years of service to accrue) |
| City N. Van | Accrued up to 261 shifts (takes 13.05 years to accrue) |
| Dist. N. Van | Accrued up to 261 shifts (takes 13.05 years to accrue) |
| West Van | Accrued up to 261 shifts (takes 13.05 years to accrue) |
| New West | Accrued up to 60 weeks (takes 10 years of service to accrue) |
| Coquitlam | Accrued up to 150 shifts (takes 8.3 years of service to accrue) |
| Prince George | Accrued up to 156 shifts (takes 10.5 years of service to accrue) |
| Langley City | Accrued up to 34 weeks (takes 6.6 years to accrue) |
| Langley Township | Accrued up to 182 shifts (takes 10.1 years to accrue) |
| Maple Ridge | Accrued up to 182 shifts (takes 10.1 years to accrue) |
| Pitt Meadows | Accrued up to 173.33 shifts (takes 15.4 years to accrue) |

As a result, it is extremely difficult to compare this unique approach in Burnaby with the benefit systems in place in other Fire Fighter agreements. As a result, one must be extremely sensitive to imposing changes without any true ability to determine the overall impact on comparative remuneration, for example, the ability of Fire Fighters in other districts to claim a pay-out of unused days.

The other factor is the internal comparison with other Burnaby employees. While I agree with the City that this bears careful consideration, the reality is that the Fire Fighter position is a unique one and involves duties which differ significantly from other municipal employees.

While I also agree with the City that the “dangerous” nature of the job has already been built into wages and other Worker Compensation benefits, Fire Fighters may very

well have more need to use sickness and illness coverage due to significant exposure on a regular basis to people who are ill. That position has been asserted by the Association and there is simply not enough evidence before me to draw any definitive conclusions.

As well, this is another situation of one party asking an arbitration board to make an isolated reduction (without any *quid pro quo*) to a benefit which has previously been negotiated by the parties. In my view, there are not “persuasive and significant” reasons for doing so at this time: *2009 Kootenay Boundary Fire Fighters, supra*; *2008 Vancouver Fire Fighters, supra*.

As stated above, these parties have a history of negotiating their agreements and prior to an arbitration board imposing unilateral terms, the parties should be given the opportunity to address the issue in bargaining and engage in appropriate trade-offs. If overtime and after repeated failed attempts to address what is perceived to be a problem, an arbitration board might consider it appropriate to make such a change. At this point of time, however, this request by the Employer is denied.

AWARD:

As set out above, this Board has concluded the following:

1. The term of this Collective Agreement will be for four (4) years covering the period from January 1, 2012 to December 31, 2015. Notice to bargain with respect to a successor agreement is deemed to have been given as of the date of this Award.
2. Wage increases for each of the four years of the Agreement are as follows:
 - 2012 – 2.5%
 - 2013 – 2.5%
 - 2014 – 2.5%
 - 2015 – 2.5%
3. Amendments to Article 8.8 as set out above are to be made to the existing language.

4. Each of the other requests by the two parties with respect to the 15th year rate, an increase to the Captain's Index, an adjustment to the Assistant Chief rate and the change to Medium Term Disability Benefits are denied.

Any monies owing pursuant to this Award should be paid by the City within sixty (60) days of the issuance of this decision.

I will remain seized to deal with any matters arising from the interpretation or implementation of this Award.

Dated this 10th day of August, 2016

“David McPhillips”

David C. McPhillips
Interest Arbitrator