



The Research Bureau

The Fire Department Arbitration Decision: Implications and Options

Report 04-08
August 9, 2004

Introduction

Under Massachusetts law,¹ when contract negotiations between public safety labor unions and city management reach an impasse, the matter is referred to the State Joint Labor Management Committee, and then to an arbitrator if the impasse persists. In a recent arbitration decision, the International Association of Firefighters (IAFF) Local 1009, Worcester's firefighters' union, was awarded a retroactive 6% pay raise intended to equalize compensation of firefighters with that of police officers.² The awards total an estimated \$4.8 million, increase Fire Department salary costs by 6% over last year, and also trigger the "hazardous materials stipend" calculation (explained below) adding another 1.1% to firefighter salaries. These costs must be factored into base salary expenditures in all subsequent years. In addition, this precedent will alter the negotiating landscape for other municipal unions. The awards represent a budget crisis for FY05, since no funds were allocated for this decision or other collective bargaining pay raises.³ In this report, we examine the decision and summarize the implications of this decision over both the short and long term.

The arbitration decision and its predecessors

In 1998, IAFF Local 1009 won an arbitration decision that began a cycle of large public safety pay increases that is continuing today.⁴ That decision awarded firefighters an additional 1.1% raise to their base salary each time the base salary was increased (called the "hazardous materials stipend").⁵ Each time both police and fire receive a 4% raise, for example, the firefighters receive a 5.1% raise, thus increasing firefighter base salaries faster than police officer base salaries. In 2002, the International Brotherhood of Police Officers (Locals 378 and 504), the Worcester police officers' union, won three items in an arbitration intended to resolve this pay discrepancy: 1) holiday pay calculations were made identical to the calculations for the Fire Department, 2) the "range fee"⁶ paid to officers was increased and rolled into the base salary (base salary raise), 3) police officers received a 3% pay raise at the end of the contract in 2003 "to compensate for the current disparity in Public Safety compensation" (emphasis added).⁷ The firefighters' union then sought to win equivalent pay increases. The firefighters' contract did not include a 3% raise at the end of 2003 or the equivalent of the police "range fee" increase, and they argued that this discrepancy between police and fire pay raises reopened their contract. Firefighters had signed their contract earlier than other unions but their contract included a clause stating that their contract could be reopened if the police officers received greater

¹ Section 3 (a) of Chapter 589 of the Acts of 1987

² "Carving out \$5M for firefighter pact a test for O'Brien;" *Telegram and Gazette*, 25 July 2004; "Labor Intensive," *Worcester Magazine*, July 15, 2004, City Desk.

³ With the exception of the teachers' union, other municipal employee union contracts are expired. When those contracts are settled, negotiated pay raises may have to be paid out in FY05.

⁴ "Council OKs Plan to Pay Firefighters," *Worcester Telegram & Gazette*, 23 September 1998.

⁵ For additional discussion of the Hazardous Materials Stipend, see Worcester Regional Research Bureau Report 04-06, *Worcester's FY05 Budget: More Tough Questions* at www.wrrb.org.

⁶ The "range fee" was a \$250 stipend paid to police officers to offset their costs for maintaining their skills on their own time (possibly at a firing range). Under the arbitration decision, this was increased to \$1500 and rolled into the base salary.

⁷ JLMC Case #01-47P-2001, #02-48PS-2001 and the Arbitrator's February 26, 2002 memo of clarification of the decision.

Police and Fire Salaries: Is there parity?

TABLE 2	Average Salary	Total salaries for Department	No. of employees
Fire after the Arbitration:	\$ 66,982	\$ 29,873,751	446
Fire	\$ 62,946	\$ 28,073,751	446
Police	\$ 62,257	\$ 32,560,374	523
Parks	\$ 52,418	\$ 2,830,586	54
Code	\$ 47,792	\$ 2,676,379	56
Health	\$ 45,785	\$ 2,197,656	48
DPW	\$ 43,913	\$ 8,782,560	200
Library	\$ 39,852	\$ 3,347,595	84
Communications	\$ 36,484	\$ 1,897,163	52

* This adds \$2,000,000 over the FY05 budgeted amount and does not include the retroactive portion of the decision that is for retroactive pay increases (\$2.8M).

Source: Worcester FY05 Budget Prepared by: Worcester Regional Research Bureau

The three arbitration decisions have been based on the assumption that police officers and firefighters should receive comparable compensation. In Table 2 (above) we show the current average salaries in the Fire Department, Police Department and other large City departments. Police officers and firefighters are indeed paid at comparable levels. (Before the arbitration decision, average salaries in the Fire Department were \$700 more than average police salaries.) When the FY05 arbitration decision is added to the Fire Department salaries, the average salary increases by 6%, and exceeds police salaries by over \$4,000 per employee (6%). The arbitration decision introduces pay inequity between police officers and firefighters. The Police Department salaries include longevity bonuses, police career incentive pay (the Quinn bill) and holiday pay. They do not include extra duty pay which is available to police officers or extra income many firefighters earn through additional employment outside the department.⁸

Financial implications of the arbitration award

Below is a breakdown of the arbitration costs, how they might be paid, and their implications for taxpayers and for municipal operations:

1) Increasing property-taxes:

Raising an additional \$4.8 million in tax revenue is an option legally available to the City Council, since the City has \$11 million in unused tax-levy capacity. This was accumulated from previous years when the City Council did not tax the maximum amount allowed under proposition 2 ½. No override is needed to raise these taxes. What would be the impact on taxpayers? Residential property values have continued to soar this year, resulting in expected valuation increases ranging from 17% for single-family

⁸As a result of extra-duty pay, 73 of the 92 City employees who earned \$100,000 or more in 2002 were police officers.

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homes to 33% for three-family properties. The following analysis assumes that the City Council will maintain the same ratio of tax burden between commercial/industrial property and residential property in FY05 (66.3% of the revenue comes from residential and 33.7% comes from commercial/industrial). Table 3 (below) is an estimate of the tax increases Worcester taxpayers can expect in FY05 without the arbitration decision:

TABLE 3 Estimated Taxes without Arbitration Decision				
Residential	FY04 Average tax bill	FY05 Average Tax bill	% increase	\$ Amount of increase
Single Family	\$2,658	\$2,763	3.94%	\$105
Condo	\$1,765	\$1,790	1.42%	\$25
Two Family	\$2,640	\$2,913	10.34%	\$273
Three Family	\$2,637	\$3,120	18.32%	\$483
Apartment	\$6,985	\$7,460	6.80%	\$475
Commercial	\$12,888	\$13,791	7.01%	\$903
Industrial	\$17,681	\$18,108	2.42%	\$427
Source: Valuation change estimates provided by Worcester Assessor's Office				
Prepared By: Worcester Regional Research Bureau				

According to this estimate, single-family homeowners would be facing close to a 4% increase in their tax bills (\$105) due to valuation increases and an increase in the total tax levy from \$156 million in FY04 to \$163 million in FY05. Table 4 (below) shows the impact of the arbitration decision if the City funds it through an increase in property taxes.

If the City Council chose to raise the \$4.8 million by increasing property taxes, the tax levy would rise to \$168 million, increasing single family tax bills by nearly 7% over last year (\$185). Two- and three-family owners would see more dramatic increases of 13% (\$358) and 21% (\$391) respectively. Commercial and industrial taxpayers would see jumps of 10% (\$1,307) and 5% (\$957) in their tax bills despite slow growth in their property valuations.⁹

2) Funding through Fire Department cuts and restructuring

A *Worcester Telegram and Gazette* editorial (7/28/04) suggested that the Fire Department itself is “the most likely area to cut via firefighter layoffs, elimination of engine companies and even fire station closings,” to fund the award. With the average salary and benefits cost per firefighter estimated at more than \$60,000, it would take a reduction of more than 75 (17% of the department) to fully fund the \$4.8 million

⁹ This calculation uses estimates based on current trends for changes in property valuation between FY04 and FY05. For instance, single-family home valuations are expected to increase nearly 17%, three-family are estimated at 33%, commercial property at nearly 6%, and industrial property 1.2%. This explains the different tax implications for categories of property that are taxed at the same rates.

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arbitration decision. But since structure fires have declined by 55% since 1995, what is the justification for maintaining the same level of staffing under changed circumstances?

Residential	FY04 Average tax	FY05 average tax	% increase	\$ Amount
Single Family	\$2,658.00	\$2,843.00	7.0%	\$185
Condo	\$1,765.00	\$1,843.00	4.4%	\$78
Two Family	\$2,640.00	\$2,998.00	13.6%	\$358
Three Family	\$2,637.00	\$3,211.00	21.8%	\$574
Apartment	\$6,985.00	\$7,677.00	9.9%	\$692
Commercial	\$12,888.00	\$14,195.00	10.1%	\$1,307
Industrial	\$17,681.00	\$18,638.00	5.4%	\$957

* As the city tax rates for FY05 have not yet been set, this is an estimate that assumes the City maintains the current tax classification ratio which has placed a greater burden on commercial and industrial property owners since FY84 when the City adopted a dual tax rate.

Source: Valuation change estimates provided by the Worcester Assessor's Office

Prepared by: Worcester Region Research Bureau

3) Reducing or eliminating other municipal services

Rather than obtaining the funds from just the Fire Department, the City could attempt to trim expenses in a number of departments. However, most of the City's other departments are also operating with reduced staff and are offering reduced services compared to a few years ago. The ten largest departments are listed below. Many of these departments (with the exception of Union Station which received capital improvement funds in FY05) are budgeted at amounts that are lower than their budgets in FY03. For example, the Worcester Public Library has had to reduce hours at its main branch by 23% and is closed on Sundays and Mondays. Because of staff reductions, it now takes three weeks to obtain a building permit from the Department of Code Enforcement. Table 5 (below) conveys the magnitude of the impact that the arbitration decision could have on other departments. Those departments which are substantially smaller than Police and Fire, could be decimated if the arbitration decision were funded by further cuts in their budgets.

TABLE 5 Department Operational Budgets FY03 and FY05

	FY05 budget	FY03 Budget	% Change
	in millions		
Police	\$31.20	\$31.60	-1.27%
Fire	\$29.60	\$29.30	1.02%
Public Works	\$13.20	\$13.60	-2.94%
Public Library	\$3.50	\$4.00	-12.50%
Parks and Recreation	\$3.00	\$3.50	-14.29%
Communications	\$2.10	\$2.20	-4.55%
Technical Services	\$1.80	\$2.10	-14.29%
Code Enforcement	\$1.60	\$1.80	-11.11%
Health	\$1.60	\$1.70	-5.88%
Union Station	\$1.20	\$0.40	200.00%

Source: City of Worcester FY03 Budget and FY05 Budget

Prepared by: Worcester Regional Research Bureau

Conclusion: What Can Worcester Do?

This arbitration decision creates a short-term fiscal crisis for the City and serious long-term fiscal challenges. Taxes must be raised or employees laid off to fund the decision. Here we present some options for the short-and long-term.

Rejection: “Just say no” to funding the arbitration decision

The City Administration is bound to recommend funding for this decision, but the City Council is not bound to fund it. Under Massachusetts law, the City Council, as the City’s legislative body acts with independent authority equal to that of the state legislature with respect to appropriations for the contract. If the City Council does not fund it, the issue is returned to collective bargaining. If an impasse is reached in collective bargaining, the issue still falls under the jurisdiction of the Joint Labor Management Committee. But it cannot be returned to arbitration; the issue of the unfunded decision would become a part of negotiations for a successor contract. This option may lead to several outcomes: 1) Negotiations may result in a different outcome because of the City Council’s unwillingness to fund the decision; 2) If negotiations again reach an impasse, it will come before the State Joint Labor Management Committee which now has a new chairman. However, it is unlikely that the Committee would issue a finding contrary to the existing

arbitrator's decision; 3) It preserves the approved FY05 budget as written; no service cuts or tax increases are immediately needed; 4) The City administration will have more time to complete its restructuring plan for municipal operations which may determine how the decision could be funded.

The City could also appeal the decision to the Superior Court, which may overrule interest arbitration decisions on the merits of the case, not only if a procedural error was made as is the case with grievance arbitrations.¹⁰ While the details of the arbitration have not been publicly released, it is possible that the court could find that since the police arbitration decision from 2002 was intended to equalize police pay with that of firefighters, it is not reasonable to then award firefighters the same raises so that they may keep up with the police. The City should seek a legal opinion on the merits of a challenge in state court, and proceed with a challenge if it is warranted.

Reorganization: Restructure the Fire Department

The City Manager was working on a reorganization plan for municipal government before this decision was awarded. Perhaps the Fire Department could be restructured to accommodate a large portion of this decision. As noted earlier, the number of fires has decreased by 41% and structure fires have declined by 55% since 1995 owing to the use of more fire resistant construction materials, use of smoke detectors, and other fire prevention measures. The Research Bureau has suggested in earlier reports that the structure of the Fire Department should change to meet those changing conditions. According to the City commissioned Fire Department Operations Study from 1999, fewer—fully staffed (4 firefighters)—fire engine companies would be able to meet the current functions of the department.¹¹

Organization: Advocate reform of the collective bargaining laws at the state level

Collective bargaining will be more difficult in the wake of the arbitration award, and unions may be tempted to push for an impasse in order to get another lucrative arbitration award. Former City Manager Thomas Hoover drew attention to this problem in a question to Commonwealth Secretary of Administration and Finance, Eric Kriss, at a Research Bureau forum on February 27, 2004: "Cities are not on an equal plane with unions [in arbitration]. Cities now go into this arbitration process hoping to minimize the loss that they know they will sustain."¹² Hoover asked the Romney administration to

¹⁰ Interest arbitrations, such as the current firefighter decision, are governed by MGL 30A which allows for judicial review on the merits of the decision, unlike grievance arbitrations which are governed by MGL 150C and only allow for limited review of the arbitration procedures.

¹¹ Worcester Regional Research Bureau, *Tough Choices for Tough Times: Worcester's FY04 Budget*. March 27, 2003. Tridata Corporation, "Fire Department Operations Study: Worcester, Massachusetts" December 1999. Undoubtedly any major restructuring of the department would have elements that are subject to collective bargaining; however, the changes in the department might alter the landscape of the labor dispute.

¹² Worcester Regional Research Bureau forum, "State of the City's Finances: How Will Worcester Balance its FY05 Budget?" February 27, 2004. The disproportionate power of public employee unions vis-à-vis management has long been observed. Almost 30 years ago, Yale law professors Ralph Winter and Harry Wellington pointed out there is a fundamental difference between the effects of collective bargaining in the private and public sectors. In the private sector, the level of union demands is constrained by the operation of the free market: a settlement that imposes excessive costs (as determined by the market itself) on a given

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work to reform the system. Kriss indicated that political action was needed, beginning with calls to the state legislature. Worcester public officials as well as those from other municipalities in the area should present their concerns about the arbitration process to the state legislative delegation.

Privatization: Look for opportunities to partner with the private sector to provide City services.

Part of the City Manager's reorganization should include more aggressive steps to privatize elements of municipal operations. While not all City services are easily privatized (police and fire, for example), many City functions deserve serious consideration. One of the City Manager's new cabinet officers or his Assistant City Manager should be given responsibility for exploring public-private partnerships to perform some municipal functions. A credible threat of privatization introduces the element of competition and can help labor negotiations. The experience of Hope Cemetery is evidence of this; the union agreed to the use of temporary labor after the initiation of a serious discussion of privatization. Hope Cemetery may or may not be privatized, but the serious consideration of the possibility was good for cemetery operations.

firm or industry will hurt workers themselves, by inducing consumers to reduce their demand for the firm's products in favor of alternative (more effectively or less costly) goods. But since there is only one government for a given political entity, voters who find a public authority's collective bargaining settlement to be excessively generous with their tax monies have less opportunity to fight back. Moving to a different city or state is not unusually an option. And as for voting out the city administration in the subsequent election, that isn't likely to happen, since individual citizens lack the strong direct interest in the election outcome, or organization to advance their particular interests, that unions can muster. Only a City administration that focuses on the City's long-term interests can resist the temptation to cave to excessive union demands. Harry H. Wellington and Ralph K. Winter, "The Limits of Collective Bargaining in Public Employment," *Public Employee Unions: A Study in the Crisis of Public Sector Labor Relations*, (San Francisco: Institute for Contemporary Studies, 1976).