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DEAN J. MAZZARELLA

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Dissenting Opinion of Mayor Dean J. Mazzarella, Management Member of the Panel

I dissent from the economic aspects of the panel's award. I believe the award is a slap in the face of the citizens of Boston and I urge the Boston City Council to conduct an independent review of Arbitrator Eischen's financial conclusions because I do not believe they are accurate.

I have been a member of the Joint Labor Management Committee for several years, and have participated in dozens of fire and police dispute-resolution proceedings. I have to honestly state that the manner in which this JLMC proceeding was conducted was a disgrace to the agency. I believe the public needs to know that the deliberations of the panel were arbitrary, punitive and, in my opinion, improper.

Here is what happened. On the weekend of the deliberations, Arbitrator Eischen presented to me and Robert McCarthy, the firefighter represented on the panel, a draft award for a total 14% pay increase for the firefighters – the same increase that had been negotiated for the police and teachers. A copy of that draft award is attached to this dissent. I specifically asked Mr. Eischen what the ground rules for deliberations were, and he clearly stated that he had made up his mind, and that the only remaining issues were "tweaks" of certain language in the drug-testing proposal, unless Mr. McCarthy and I agreed to a different award (we did not). During our discussions of Mr. Eischen's proposed award on Sunday, April 18, 2010, Mr. McCarthy loudly and repeatedly complained that if Mr. Eischen issued his award, he and the union would look bad since the firefighters wouldn't get extra money for the drug and alcohol testing policy. I thought Mr. McCarthy's behavior was improper and I told him and Mr. Eischen that it was.

The next morning, to my complete surprise, Mr. McCarthy presented a proposal to Mr. Eischen that had never before been discussed or proposed by the union, which would suspend the fourth year pay raise until January 2010 and award the firefighters 3.5% on the last day of the contract, June 30, 2010. I was shocked at this proposal, since it would increase the cost of the contract by millions of dollars. I pointed out to Mr. Eischen that he had clearly stated on Sunday that he decided the financial aspects of the award, and this was beyond his ground rules. I also asked Mr. Eischen if he knew how much this proposal would cost, and he admitted he did not. He said he thought that the proposal would be virtually the same cost as his original 14% award. When I demonstrated to him that the cost of this last-minute proposal would be millions of dollars more expensive than his original award, he took recess himself and came back in a few minutes with a draft award that gave the firefighters 2.5% rather than 3% on the day of the contract, and

he threw in money for the "Special Operations" proposal that he had specifically rejected the day before.

I was extremely upset and I questioned Mr. Eischen's professionalism. I asked how he could possibly start our deliberations with a specific draft award and specific ground rules, and then suddenly, without any justification or understanding of the cost implications of what he was doing, change the ground rules and increase the award. I urged him to suspend our deliberations so we could ask an independent third-party to cost out the proposal, in fairness to the taxpayers of the City of Boston, who would have to pay for an award. Mr. Eischen refused my suggestions and insisted that he wanted to leave, as did Mr. McCarthy. Mr. Eischen then presented his final award, from which I dissented, and he and Mr. McCarthy left.

It was clear to me based on the behavior of Mr. Eischen that his about-face, in which he transformed a 14% award, was totally arbitrary and it seemed to be punitive to the City of Boston.

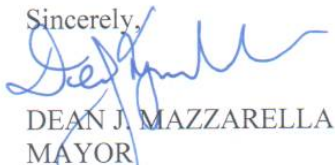
Mr. Eischen's opinion seems to be based on the idea that the firefighters should be rewarded for a drug and alcohol testing program that he believes is "unprecedented." As most of us know, this type of program is routine for millions of employees around the country, including public safety employees. Those employees do not get a pay raise for submitting to drug and alcohol testing; it goes with the job. My question is why, if on April 18, 2010 he was willing to issue an award *without* a special payment to the firefighters for drug and alcohol testing, did he change his mind the next day?

His turn-around was not, in my opinion, based on anything to do with the evidence in the case, since he admitted he had no idea of the cost implications of his revised award.

Ordinarily, I would not discuss the deliberations of a JLMC panel. I have thought long and hard about this case, however, and the facts need to be disclosed. I have written about our deliberations because I want the public and the Boston City Council in particular to understand that the award in this case was not a carefully thought-out decision. It was a last minute decision reached without any understanding of the enormous cost impact it would have. I do not believe JLMC deliberations should be conducted in such an unprofessional way.

I urge the Boston City Council to do what I suggested to Mr. Eischen: obtain an independent review of the actual cost of this proposal, and ask if it is proper to give the firefighters extra money for drug and alcohol testing when Mr. Eischen himself presented a draft award that gave them no extra money.

Sincerely,



DEAN J. MAZZARELLA
MAYOR

DJM/eai
Enc.

Compensation (Article XX):

Amend Section 1 (base wages) to reflect the following percentage increases on the following dates:

FY 2007 – FY 2008 Contract:

Effective FPP^{4/} FY 2007... .plus 2%
Effective FPP FY 2008... .plus 2.5%

2
2
4.5

FY 2009 – FY 2010 Contract:

Effective FPP FY 2009... .plus 3%
Effective FPP FY 2010... .plus 3.5%

3
3
7.5
3.5
11.0

Amend Section 2 Night Differential, Section 3 Hazardous Duty/Specialist Compensation and Section 4 Transitional Career Awards Program to reflect the recalculation of each such benefit based upon the periodic increase to the Section 1 base wages, *supra*, with each recalculation effective on the same dates as the respective increases to the base wage.

Amend Section 3 Hazardous Duty/Specialist Compensation to reflect the following percentage increases on the following dates:

Effective FPP FY 2008... .plus 1.5%
Effective FPP FY 2009... .plus 1.5%

Dana Edward Eischen, Panel Chair

Robert B. McCarthy, Panel Member

Dean J. Mazzarella, Panel Member

^{4/} "FPP" signifies beginning of first payroll period.