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In the Matter of Arbitration

Opinion

between

and

City of Lockport

Award

and

(PERB Case No. A2006-041)

Lockport Professional Firefighters Assn.

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This arbitration was heard on March 7, March 21, and May 14, 2007 at the Municipal Building in Lockport, New York. The undersigned was appointed to arbitrate the controversy through the procedures of the Public Employment Relations Board. Upon submission of post-hearing arguments by both sides on July 27, 2007, the record was closed.

APPEARANCES

For the Employer:

David Blackley, Deputy Corporation Counsel
Thomas Passuite, Fire Chief

For the Union:

Bernard E. Stack, Attorney
Samuel G. Oakes, President
Patrick K. Brady, Vice President
Luca Quagliano, Secretary Treasurer
Kevin W. Pratt, Local Officer
Michael Washington, EMS Representative, NYSPFFA
Dennis Sweeney, Health and Safety Coordinator, NYSPFFA

THE ISSUE

The parties agreed to allow the Arbitrator to frame the question to be resolved in this arbitration, which I do as follows: Did the City violate the Collective Bargaining Agreement (hereafter CBA) when Fire Chief Thomas Passuite issued a Directive on December 29, 2005, regarding new duty assignments and operational changes? If so, what shall the remedy be?

BACKGROUND

The parties had a collective bargaining agreement covering the years 1999-2002 (Joint Ex. 1). In April 2002, following a number of retirements, the City, by action of the Board of Fire Commissioners, reduced its minimum staffing level to 9 firefighters per shift in order to reduce overtime costs. On December 10, 2002, the parties executed a "supplemental agreement" covering the years 2003 and 2004 (Joint. Ex. 3), in which they agreed, among other things, that a minimum staffing level of 10 firefighters per shift would be maintained. On March 30, 2004, they executed a tentative successor agreement covering the years 2003-2007 (Joint Ex. 2). This agreement contained no new language on staffing levels. On November 4, 2004, the parties agreed to extend the supplemental agreement, including the 10-firefighter minimum, through the end of 2005 (Joint Ex. 4).

On December 29, 2005, the Fire Chief, Thomas Passuite, issued a Directive (Joint Ex. 7) noting that, with the impending "sunset" of the supplemental agreement, the minimum staffing would be reduced to 9 firefighters per shift, in conformance with the April 2002 resolution of the Board of Fire Commissioners which the supplemental agreement had overridden. The Directive stated that the reduction in minimum staffing

would require operational changes. One of these changes provided that, when a shift was at minimum staffing and had to respond to a full-complement, first-alarm assignment, the Officer-in-Charge (OIC) would have the discretion to deploy either the fire truck or the rescue unit (ambulance). The Directive also noted that "when an alarm of fire is received that requires a full first alarm assignment response, the LFD Dispatcher shall immediately contact County Fire Control and request a mutual aid ambulance and crew to respond directly to the alarm of fire."

On January 2, 2006, the Union filed the instant grievance (Joint Ex. 5), asserting that the "Directive received from Fire Chief Passuite dated 12/29/05, page 3, changes #7, contradicts addendum B of the Standard Operating Procedures revised edition May 3, 1996 and changes the terms and conditions of the CBA Article 3 Paragraph 19." The requested remedy is, "Comply with NFPA 1710 and the CBA Article 3 Paragraph 19." NFPA 1710 refers to a document issued by the National Fire Protection Association titled, "Standard for the Organization and Deployment of Fire Suppression Operations, Emergency Medical Operations, and Special Operations to the Public by Career Fire Departments." Article 3, Paragraph 19 of the CBA reads as follows:

> The City agrees that it will man all equipment with adequate manpower to assure that any evolutions the men are called upon to perform can be conducted with enough men to assure the safety of the men performing the evolution. The City will maintain sufficient apparatus in service to assure that adequate apparatus is available to provide a basic safety factor toward the potential fire situation in a city of this size.

Addendum "B" (Joint. Ex. 6) is a part of the Standard Operating Procedure of the Lockport Fire Department, last revised on May 3, 1996. It addresses "Firefighter Safety and Health" under the circumstance of "Initial Attack – First Alarm Assignment." The

statement of purpose cites the goal of "prevention and reduction of accidents, injuries and occupational illnesses," although it notes:

> ***While most incidents will be covered by this SOP for a first alarm assignment, exceptions can occur due to the various fire environments and response conditions we may encounter. Therefore, modifications to the standard as directed by the Officer in Charge will be complied with.*** (Emphasis in original.)

In a section titled "Apparatus Assignments," Addendum B further states:

> Minimum response for all reports of structural fires or other emergencies requiring a full complement response, as determined by the Officer in Charge, shall be two (2) engine companies, whenever possible. However, if conditions permit, a coordinated two (2) engine company and one (1) truck company response shall be the preferred response.
>
> One (1) ambulance shall respond on all alarms of reported structural fires, Municipal Alarms, or other emergencies as determined by the Officer in Charge.

Various other portions of Addendum B are cited below in the context of the parties' arguments and my analysis.

POSITION OF THE UNION

The Union notes that for 30 years prior to 2002, the City operated with a shift minimum of 10 firefighters. Over the past several years the Department has been reduced from 59 to 51 firefighters. The Department's Standard Operating Procedure (SOP) calls for an ambulance to respond to all fire alarms. Under the Chief's Directive, an ambulance may or may not be dispatched, depending on the judgment of the Officer-in-Charge. However, as a practical matter, when staffing is at minimum the ambulance is generally not sent out, which is a violation of both the SOP and the safety provisions of the CBA. Moreover, given the overall staffing of the Department, it is not unusual for a shift to fall below the minimum and thus require call-ins.

The Union contends that both a ladder truck and an ambulance should respond to a full-complement, first-alarm assignment, as both the equipment carried on the truck and the medical care provided by the ambulance are equally required. A Union witness testified to an incident in which two firefighters were injured because the Company did not have the optimal equipment to ventilate the burning building. On any given day, whether a house fire gets a proper response depends on the happenstance of whether the shift is staffed by 9 or 10 firefighters. And if the ambulance is not called out and turns out to be needed, it would take a half-hour to call in extra firefighters to bring it. The City's suggestion that such situations can be addressed by mutual aid is unrealistic. Union witnesses testified without contradiction that called-in Lockport firefighters would respond faster than a mutual-aid call.

The Union further argues that Article 3, Paragraph 19, of the CBA requires the City to maintain both adequate manpower and sufficient apparatus to assure safety. The same requirement is found in the SOP, which was approved by both the City Council and the Fire Board. The Chief's Directive was never approved by either the Fire Board or the Council, nor does it comply with broadly recognized standards promulgated by the National Fire Protection Association. NFPA Standard 1710, at Section 4.1.2.1, sets forth a response time of four minutes or less for a unit with first-responder capability for emergency medical services, and eight minutes or less for the arrival of an advanced life-support unit. Under NFPA Standard 1710, the benchmark for medical-services response is separate from response times for fire-suppression services. Moreover, while mutual-aid agreements may be used under this standard, they are still

expected to comply with the time-response requirements. In the present case, mutual aid does not comply.

The Union points out that when the Chief was required to operate with a minimum of nine firefighters he sought to have the ambulance removed from service, but the Fire Board refused. He also signed a letter to the Fire Board requesting a return to a 10-person minimum staffing level. Although the Chief maintained that under the Directive the Department is still following the SOP and is in compliance with the CBA, he acknowledged that he would like to have more manpower available. But the Department is not in compliance with the SOP, the CBA, or NFPA standards. Reliance on mutual aid does not satisfy the item in the SOP requiring an ambulance to be dispatched, as the Mutual Aid Plan itself is not designed for routine day-to-day operations, but rather true emergency conditions. Indeed, the Chief himself testified that he knew of no instance when mutual aid was used for the initial call, as contemplated in the Directive.

For the foregoing reasons, the Union asserts that the Department's SOP requiring that an ambulance respond to all full-complement, first-alarm assignments is in compliance with NFPA Standard 1710; that the Chief's Directive creates a situation that is unsafe for firefighters, thereby in violation of Article 3, Paragraph 19, of the CBA; that the Department has the necessary apparatus to comply with the contractual requirement but not sufficient manpower; and that the NFPA standards should be recognized as the appropriate benchmark under this grievance. Accordingly, the Union urges that the City be directed to require the response of an ambulance to every full-complement, first-alarm assignment; to revise the Chief's Directive as appropriate; and

to provide sufficient manpower to allow an ambulance to be dispatched to all full-complement, first-alarm assignments.

POSITION OF THE CITY

The City contends that it has not violated any of the terms and conditions of the CBA, and further that it is not subject to any of the provisions of the NFPA. As the Chief's testimony established, the Department has been graded by the Insurance Services Office (ISO) and was most recently given a higher standing with regard to its ability to provide fire protection. The Chief noted that the NFPA Standards have no legal authority over the City, as they have never been adopted by the Fire Board of Commissioners. Moreover, neither the NFPA nor the ISO requires an ambulance to respond on initial first-alarm assignments. It is the Officer-in-Charge who determines these assignments.

Accordingly, the City urges that the grievance be dismissed in its entirety.

FINDINGS AND OPINION

Our first task in assessing this grievance is to be clear on the scope of my authority. The grievance claims that the Chief's Directive violated both Addendum B of the Fire Department's Standard Operating Procedure and the Collective Bargaining Agreement between the parties. The adjustment sought includes compliance with NFPA Standard 1710. It is therefore necessary to determine how I should consider these three documents (and possibly others) in evaluating the merits of the grievance.

My authority as arbitrator obviously derives directly from the CBA, which provides a grievance procedure including arbitration (Article 6). Under this provision, arbitrators are empowered to make a final and binding determination on "all grievances which are

not amicably settled" in the grievance procedure. A grievance is defined in the CBA (Article 6, Paragraph 1) as follows:

> Grievance shall include all claimed violations of any contract existing between the City of Lockport and the employees covered by this Agreement and in addition shall include all claimed violations, misinterpretations, inequitable application of the existing written rules of the City of Lockport, New York, or department or agency thereof, all of which relate to or involve employee health or safety, physical facilities, materials or equipment furnished to employees or supervision of employees, including matters involving employee rate of compensation, retirement benefits and disciplinary proceedings where the consideration of such would not be contrary to any law, rule or regulation having the force and effect of law.

In Article 3, Paragraph 19, of the CBA, the City pledges to provide adequate manpower and adequate apparatus to assure the safety of the firefighters. I am clearly charged with determining whether the Chief's Directive is in compliance with this pledge. Furthermore, in the first sentence of Addendum B of the SOP, the City states that "it is the policy of the Lockport Fire Department to provide for and operate with the highest level of safety and health for all members." Accordingly, it appears that the SOP falls within "the existing written rules of the City of Lockport, or department or agency thereof [presumably including the Fire Department], all of which relate to or involve employee health or safety . . . ." I am therefore empowered by the CBA to determine whether the Chief's Directive is in compliance with not only Article 3, Paragraph 19, but with Addendum B as well.

As for the NFPA Standards, these are not mentioned in the CBA, directly or indirectly, and unless they have been formally incorporated into the rules or operating procedures of the Fire Department, they do not constitute promises by the City to the Union that I am charged with upholding. I am therefore not empowered to declare that

something the City has done is "in violation of" an NFPA standard. This does not mean, however, that NFPA standards, or indeed any external standards, are necessarily irrelevant to this proceeding. As noted, the CBA requires the City to provide "adequate manpower" and "adequate apparatus" to assure firefighter safety. These are obviously very broad and ambiguous terms that are nowhere defined or elaborated on in the CBA. Thus the standards for determining the adequacy of manpower and apparatus, as those terms are used in the CBA, must be sought outside the CBA itself, either within the collective bargaining relationship (through such indicators as bargaining history, about which there is no evidence in the record) or according to some "industry standard." In other words, since the parties must be assumed to have had something in mind when they put these words into their contract, and, in the absence of evidence to the contrary, what they had in mind presumably included consistency with firefighting safety norms, anything that helps us understand what those norms are is instructive.

Three other points should be made by way of background. First, as with any grievance involving the construction and application of contract language, it is the burden of the moving party, in this case the Union, to prove that the CBA has been violated. Here the Union must show by a preponderance of the evidence that the Directive contravened some provision of the CBA. If the Union is able to make a *prima facie* case that there has been a violation, it falls to the City to rebut that case. If, after the City's rebuttal, the Union's case is still supported by a preponderance of the evidence, the Union must prevail.

Second, the Union's proof must be derived largely from the language and logic of the documents in the record, as there is very little evidence here of actual consequences

resulting from the Directive. Although there was some speculation in the testimony, the record simply does not show just how often an ambulance did not respond to a first-alarm fire call after January 1, 2006. Nor is there any direct evidence of the Directive's effect on the safety of firefighters at the scene of a fire. As noted by the Union, Lt. Brady did testify to an incident in which two firefighters were allegedly injured because of the unavailability of equipment to ventilate a burning building, but Lt. Brady was not a witness to the event, and his testimony was entirely by way of hearsay. There was no testimony from people at the scene, nor was any documentation of the incident provided. I am therefore unable to consider this incident as evidence of safety compromises resulting from the Directive.

Third, the City's reference to the rating of the Insurance Services Office (ISO) is not applicable to this grievance. The ISO's Fire Suppression Rating Schedule does not address medical services at all, and the ISO notes in its letter to the City that "the purpose of our visit was to gather information needed to determine a public protection classification, which may be used to develop property insurance calculations." Thus the ISO rating, however commendable, does not speak to the safety questions raised in this grievance and shall not be considered further.

As Addendum B of the SOP directly addresses the manning issues that are at the heart of this grievance, it will be useful to begin the analysis there. In essence, the Chief's Directive says that when the Department is at minimum staffing, at first alarm the Officer-in-Charge calls out two engines and either a ladder truck or an ambulance. If a full first-alarm response is required, the dispatcher is directed to request assistance from mutual aid. If the fire "proves to be a worker," a call-back crew from the Lockport

Fire Department is summoned to respond to the fire with an ambulance. What does the SOP say about this?

As I read it, Addendum B says that an ambulance must be sent out as part of any full-complement, first-alarm response. On page 2 it is stated that "One (1) ambulance shall respond on all alarms of reported structural fires, Municipal Alarms, or other emergencies as determined by the Office-in-Charge." During the hearing, the City suggested that this sentence left the response by an ambulance entirely to the OIC, but I do not read the sentence that way. The sentence requires response by an ambulance to *all* reported structural fires, a formulation that leaves no obvious discretion to the OIC. What is determined by the OIC under this language is whether a call that is not a structural fire or a Municipal Alarm is nevertheless an "other emergency" that warrants an ambulance. This construction is buttressed by a later section that details "the order of apparatus turnout for a full-complement, first-alarm assignment." In that order, the ambulance is sent out first, which can hardly be the case if the procedure contemplates that the ambulance might be left behind. (In this regard, the ladder truck is sent out last, which is consistent with the earlier indication that a three-truck response is only "preferred.")

In addition, Addendum B, on page 5, states that the order of apparatus turnout for a full-complement first-alarm assignment shall be: (1) Rescue 1, (2) Engine 3, (3) Engine 2, (4) Truck 1. There is no suggestion of a choice between the ambulance and the truck. Then it says that "*minimum* staffing levels for apparatus turnout for a full-complement first-alarm assignment shall be as follows," and it details the manning for

each of the four pieces of apparatus. It is very difficult to square this language with the choice between Truck 1 and Rescue 1 that the Directive requires.

During the hearing, particularly through the testimony of Chief Passuite, the City made reference to other language in Addendum B that it suggests allows the OIC discretion in its administration. The Chief pointed to a paragraph on page 1 that states: "While most incidents will be covered by this SOP for a first alarm assignment, exceptions can occur due to the various fire environments and response conditions we may encounter. Therefore modifications to this standard as directed by the Officer in Charge shall be complied with." The Directive, however, does not deal with exceptions but rather the rule, and it does not suggest that a decision to not call out an ambulance will be an exception driven by a particular "fire environment" or "response condition." In fact, the need to choose between a truck and an ambulance is driven not by fire environments or response conditions but by staffing on a given shift, and rather than an exception it is a decision that must be made whenever the Department is a minimum staffing.

Later, in a section titled "Apparatus Assignments," Addendum B states that the minimum response for calls "requiring a full-complement response, as determined by the Officer in Charge, shall be two engine companies, whenever possible. However, if conditions permit, a coordinated two (2) engine company and one (1) truck company response shall be the preferred response." This language clearly states that the OIC may respond to a fire with only two fire trucks, although three are preferred, but the language that follows – "One (1) ambulance shall respond on *all* alarms . . ." – does not suggest the same discretion. As discussed earlier, I read this sentence as requiring the OIC to

send out an ambulance for all structural fires and Municipal Alarms, with discretion only in cases of "other emergencies."

For the foregoing reasons, I am persuaded that the Chief's Directive was at variance with the very specific instructions of Addendum B, and further that Addendum B falls within the "existing written rules" of the Fire Department, violation of which is by the terms of the CBA subject to grievance. There is a difference, to be sure, between rules and contractual provisions in one important respect. The CBA is executed jointly by the parties, and therefore it can be changed only by joint action of the parties. The "existing written rules," on the other hand, even though incorporated by reference into the contract, are promulgated unilaterally by the City, and therefore may be changed unilaterally by the City following proper procedures. But as the Union has noted and the Chief confirmed, Addendum B was formally adopted by the Fire Board and the City Council, the authorized policy-making bodies in the City, while the Directive, which clearly contravenes some of the rules set forth in Addendum B, was issued by the Chief with no formal action by the same authorities that approved those rules in the first place. If the Chief in the City is permitted to change the rules simply by issuing a "Directive," and thus insulate the action against grievance, there is not much left of the contractual language that allows grievances over violations of "the existing written rules."

Addendum B is also instructive in construing Article 3, Paragraph 19, of the CBA. The City's agreement in that provision to provide adequate manpower and equipment "to assure the safety of the men" must be understood to have had some meaning, as the parties cannot be assumed to have cluttered their contract with empty words. When the City issues another document titled,

FIREFIGHTER SAFETY AND HEALTH
STANDARD OPERATING PROCEDURE
INITIAL ATTACK – FIRST ALARM ASSIGNMENT

which explicitly addresses the assignment of apparatus and manpower to first alarms, and says that an ambulance will be part of the response to *all* full-complement, first-alarm fires, it is difficult to regard these mandates as irrelevant to the specification of "adequate manpower" and "adequate apparatus" to assure firefighter safety. In any event, the City has offered no suggestion as to what the words in Article 3, Paragraph 19, mean, if they do not mean, at the least, that the City will be guided by its own Standard Operating Procedure with regard to firefighter safety and health.

The City introduced a separate document titled "Standard Operating Procedure" (City Ex. 9), which (at p. 7) contains the sentence "Whenever practical, EMS personnel and/or an ambulance should be dispatched to emergencies where their services may be required." This document, however, is unsigned (although there is a signature page) and undated (although apparently earlier than 2000), and there is no indication in the record of how it relates to Addendum B or why its operative language appears to conflict with that of Addendum B. If City Exhibit 9 is supposed to be the document that Addendum B is an addendum to, that is not clear in the record, and in any event an addendum presumably supersedes that to which it is appended. Without more on the document's provenance, I am unable to accord it weight.

The sections of NFPA Standard 1710 cited by the Union, although by no means conclusive on their own, nevertheless lend support to the Union's position. Here again, in Article 3, Paragraph 19, we have a broad, undefined statement in the contract that pledges adequate manpower and apparatus and that must have some meaning. If the

specific meaning is not provided in the contract itself, it is reasonable to look outside for standards that speak to the manning and equipping of firefighting operations. There is no dispute that the NFPA is a broadly recognized and respected organization for this purpose. Standard 1710, titled *Organization and Deployment of Fire Suppression Operations, Emergency Medical Operations, and Special Operations to the Public by Career Fire Departments*, includes in its purpose the specification of minimum criteria for "protecting the citizens of the jurisdiction and the occupational safety and health of fire department employees." These criteria include response times for basic life support and advanced life support (four minutes and eight minutes, respectively, 90 percent of the time) that clearly cannot be met if the ambulance is not dispatched at the first alarm.

It is true, as the City observed, that NFPA 1710 also says that "the fire department shall be permitted to use established automatic mutual aid or mutual aid agreements to comply with the requirements," but as the Union persuasively points out, the mutual aid plan to which the City belongs explicitly contemplates that mutual aid will be used to supplement the City's own capability, and not for routine deployments. In any event, the record contains no documented evidence on the actual use of mutual aid as part of a full-complement, first-alarm response by the Lockport Fire Department. (The Chief testified that since the Directive was issued there has actually been no use of mutual aid for an ambulance on a fire call.)

It is also true, as the Chief testified, that NFPA 1500 (at Paragraph 8.4.23 in the 2002 edition, unchanged in the 2007 edition) states that in emergency operations other than "special operations," "the incident commander shall evaluate the risk to the members operating at the scene and, if necessary, request that at least basic life support

personnel and patient transportation be available." There is no question that this language sends a different message from that of NFPA 1710, and certainly from that of Addendum B. The various NFPA standards are sufficiently extensive and overlapping to preclude definitive conclusions in this area, which is why I opined above that NFPA 1710 alone would not be a sufficient basis for concluding that the Directive violated the CBA, and would not be so even if the City had formally adopted the Standard as policy. NFPA 1500 is a point on the City's side of the argument, but when one searches for the intent of the parties in agreeing to Article 3, Paragraph 19, NFPA 1710 remains a factor to be added to the weight of Addendum B.

A final and weighty piece of evidence is Union Exhibit 2, which is a letter dated February 13, 2007, to the Board of Fire Commissioners from 12 Lockport Fire Officers plus the Chief, whose signature is the first and most prominent. The letter notes that minimum staffing was reduced to nine on January 1, 2006, and then again to eight on September 20, 2006. It says that this action "greatly increases the risk to firefighters' safety." The minimum staffing issue is not part of this grievance and thus not within my authority to address. However, the letter also speaks to the consequences of requiring the OIC to decide between the ladder truck and the ambulance at the point of a first alarm, a procedural change clearly related to the reduction in minimum manning.

> When a Platoon is at 8 men minimum staffing the Assistant Fire Chief must assign two firefighters to Truck #1 which are also assigned to Rescue #1. They placed their turn out gear on Truck #1. The Assistant Fire Chief must decide when an alarm of fire is received, based on the information received, to leave the Ladder Truck behind and take the Rescue #1 or take the Ladder Truck and leave Rescue #1 back at Headquarters. This causes two problems.

> One, if either of the vehicles left behind is needed at the fire incident there is at least a 30 minute delay before the vehicle is en-route to the scene. . . . The truck left behind has an impact on fireground operations that translates into delay of vertical ventilation of the fire and evacuation of trapped civilians from the upper floors. *The Rescue being left behind translates into delay of crucial treatment for injured civilians and firefighters.*
>
> Two, if Rescue is on an emergency medical incident the Ladder Truck is left behind and two firefighters would show up at the fireground without turn out gear. There would be a delay of up to 30 minutes before the stand-by crew could bring out the vehicle that was left behind and the firefighters' turn-out gear. *In the meantime the two firefighters could not perform fireground operations without risk to themselves and other firefighters.*

Despite the fact that the Chief was a prominent signatory of this letter to the Fire Board, he testified that he supported it only because the dispatch function had been transferred to the Police Department (causing the minimum staffing to be reduced to eight), and he wanted to support the officers. However, the excerpt quoted above speaks not just to manning and dispatch but also more generally to the effects of requiring the OIC to choose between the truck and the ambulance, a result of the Directive which was issued on the basis of a *nine*-man minimum, not an eight-man minimum. The Chief stated that he did not read the letter before signing it and did not agree that leaving the ambulance behind is unsafe. Nevertheless, the letter he signed says in no uncertain terms that the particular procedure being grieved in this case creates risks for firefighters. The context here is important. In the CBA the City pledges to provide adequate manpower and adequate apparatus to ensure safety. Its SOP on Firefighter Safety and Health says that an ambulance should be sent out on all first-alarm fires. A letter signed by the Chief and 12 other officers says that leaving the ambulance behind is risky. Such a letter clearly must be seen as support for the proposition that is being advanced by the present grievance.

Accordingly, for all of the reasons set forth above, I conclude that the Union has met its burden of proving, by a preponderance of the evidence, that the Chief's Directive violated the CBA. Accordingly, I find that the grievance has merit and must be sustained.

AWARD

The City violated the Collective Bargaining Agreement when Chief Passuite issued the Directive on December 29, 2005, regarding new duty assignments and operational changes. The City shall rescind any parts of the Directive that are in conflict with Addendum B of the Department's Standard Operating Procedure and bring its operations into compliance with Addendum B by October 1, 2007, or any later date to which the parties may agree. In particular, the City shall comply with Addendum B with respect to dispatching an ambulance to all full-complement, first-alarm fires.

The Arbitrator will retain jurisdiction over the matter for six months for the sole purpose of resolving any dispute over the implementation of this award.

STATE OF NEW YORK} SS:
COUNTY OF ERIE }

I, Howard G. Foster, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my award.

August 23, 2007
(dated)

Howard G. Foster
(signature)