

Global Settlement Agreement and Release

2019-11-02
This Global Settlement Agreement and Release ("Global Settlement") is made and entered into by and between plaintiffs, the International Association of Fire Fighters, Local 198 ("Union") on behalf of its members, William DiLorenzo ("DiLorenzo"), Silvester Fonville ("Fonville"), and John Varallo Jr. ("Varallo"), and defendants the State of New Jersey, Division of Local Government Services ("State" or "DLGS") and the City of Atlantic City ("City"), on its own behalf and on its executors, administrators, representatives, agents, attorneys, successors, assigns, council, or heirs.

WHEREAS, the City operates pursuant to the Municipal Stabilization and Recovery Act ("MSRA");

WHEREAS, MSRA provides the State with a number of tools designed to improve and stabilize its financial circumstances;

WHEREAS, the Union is recognized by the State and City as the majority representative for the purposes of collective bargaining;

WHEREAS, the Union, State and City are operating under the terms of an expired collective negotiation agreement ("CNA"), as modified by MSRA;

WHEREAS, the parties are engaged in negotiations seeking a successor CNA and settlement of all outstanding issues (the "Global Settlement");

WHEREAS, the parties are desirous to resolve certain matters in advance of the Global Settlement;

NOW THEREFORE, in consideration of the promises and covenants contained in this Global Settlement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the Parties agree as follows:

1. Stipulation of Dismissal. The parties agree that a stipulation of dismissal, with prejudice, will be filed for the matter docketed before the Superior Court of New Jersey, Atlantic County Docket No. ATL-L-222-17. The stipulation of dismissal is annexed hereto as Exhibit A.

The parties also agree to a stipulation of dismissal for the matter docketed before the Superior Court of New Jersey, Atlantic County Dkt. No. ATL-L-435-19 as the claims relate to out-of-title work, step raises, the 2016 \$1000.00 bonus and promotions which occur to fill the table of organization consistent with the schedule change in this Global Settlement. A copy of this stipulation of dismissal is annexed hereto as Exhibit B. Within five (5) business days of ratification of the Global Settlement by the parties, counsel for the Union shall deliver to Genova Burns LLC, counsel for the State and City, executed copies of the stipulations of dismissal. Genova Burns LLC shall promptly thereafter file the stipulations of dismissal.

2. Withdrawal of Grievances. The parties agree that all grievances filed prior to the effective date of this Global Settlement are withdrawn, with prejudice. This Paragraph shall not serve as a waiver of any future grievances. Plaintiffs specifically acknowledge that they will not

institute any legal action and/or support any legal action on behalf of any individual relating to a withdrawn grievance pursuant to this Paragraph.

3. **Recognition of Exclusive Representative.** The City and the State agree to formally recognize the Union as the exclusive majority representative for all sworn employees at the rank of Deputy Chief and below. The City and State shall notify PERC of the voluntary recognition of the Union as the exclusive majority representative for all sworn employees at the rank of Deputy Chief and below. The parties shall jointly notify PERC that this voluntary recognition is in lieu of enforcement or further action of PERC Docket No. CU-2015-04 and request the matter be dismissed.

4. **Emergency Medical Services Reopener.** Should the City or State decide that employees in the Union's bargaining unit shall be trained and/or required to provide emergency medical services, the parties agree to negotiate appropriate compensation levels.

5. **Rehire of Former Employees.** The Fire Department intends to rehire a number of former employees. Former employees will be subject to and must pass all background checks and the interview process. Those employees who have not had a break in fire service (*i.e.*, continued to work in the fire service in another municipality and to participate in the New Jersey Police and Firemen's Retirement System) since their separation from the Fire Department shall be placed on the salary guide with the other members of their hiring class. Such employees shall be entitled to prospective sick leave as if they had not had a break in service. However, for seniority purposes, such reinstated employees shall be the lowest ranked employee in their hiring class.

Those employees who had a break in fire service (*i.e.*, did not work in the fire service in another municipality and did not participate in the New Jersey Police and Firemen's Retirement System) since their separation from the Fire Department shall be placed at Step 1 of the salary guide, and shall be subject to the sick leave accrual in Paragraph 10.

6. **Salary Guides and Step Advancement.**

A. Effective July 1, 2019, employees hired prior to July 1, 2019 and those employees rehired pursuant to Paragraph 5, above, shall be placed on the following salary guide:

Deputy Chief, Chief Fire Prevention	\$157,310
Battalion Chief, Assistant Chief Fire Inspector	\$137,749
Captain, Fire Inspector, Maintenance Repairs, Custodian, Air Mask Technician	\$120,905
STEP 24	\$106,267
STEP 23	\$105,267
STEP 22	\$104,267
STEP 21	\$103,267
STEP 20	\$102,267
STEP 19	\$101,267

STEP 18	\$100,267
STEP 17	\$99,267
STEP 16	\$98,267
STEP 15	\$96,267
STEP 14	\$89,354
STEP 13	\$83,354
STEP 12	\$80,354
STEP 11	\$77,140
STEP 10	\$73,926
STEP 9	\$70,712
STEP 8	\$67,298
STEP 7	\$64,283
STEP 6	\$61,070
STEP 5	\$57,856
STEP 4	\$54,642
STEP 3	\$51,428
STEP 2	\$48,214
STEP 1	\$45,000
ACADEMY	\$35,000

B. Effective July 1, 2019 the step assignments for firefighters hired prior to July 1, 2019 shall be as follows:

- a. Firefighters in the hiring classes of 1987 and 1994 shall be placed at Step 24 of the salary guide.
- b. Firefighters in the 1998 hiring class shall be placed at Step 21 of the salary guide.
- c. Firefighters in the hiring class of 2001 shall be placed at Step 18 of the salary guide.
- d. Firefighters in the hiring classes of 2004, 2005, 2007, 2008 and 2011 shall be placed at Step 15 of the salary guide.
- e. Firefighters in the hiring class of 2013 shall be placed at Step 6 of the salary guide.

C. Employees hired on or after July 1, 2019 will be placed on the following salary guide:

Deputy Chief, Chief Fire Prevention	\$135,000
Battalion Chief, Assistant Chief Fire Inspector	\$120,000
Captain, Fire Inspector, Maintenance Repairs, Custodian, Air Mask Technician	\$95,000
Step 15	\$90,000

Step 14	\$83,000
Step 13	\$78,000
Step 12	\$75,000
Step 11	\$72,000
Step 10	\$69,000
Step 9	\$66,000
Step 8	\$63,000
Step 7	\$60,000
Step 6	\$57,000
Step 5	\$54,000
Step 4	\$51,000
Step 3	\$48,000
Step 2	\$45,000
Step 1	\$38,076
Academy	\$35,000

Newly hired firefighters, if any, shall be placed on Step 1 of the salary guide upon completion of the Academy.

D. Effective July 1, 2022, the salary guide for employees hired before July 1, 2019 shall increase by 2% for each step of the guide as follows:

Deputy Chief, Chief Fire Prevention	\$160,456
Battalion Chief, Assistant Fire Chief Inspector	\$140,504
Captain, Fire Inspector, Maintenance Repairs, Custodian, Air Mask Technician	\$123,323

STEP 24	\$108,392
STEP 23	\$107,372
STEP 22	\$106,352
STEP 21	\$105,332
STEP 20	\$104,312
STEP 19	\$103,292
STEP 18	\$102,272
STEP 17	\$101,252
STEP 16	\$100,232
STEP 15	\$98,192
STEP 14	\$91,141
STEP 13	\$85,021
STEP 12	\$81,961
STEP 11	\$78,683
STEP 10	\$75,405
STEP 9	\$72,126
STEP 8	\$68,644

STEP 7	\$65,569
STEP 6	\$62,291
STEP 5	\$59,013
STEP 4	\$55,735
STEP 3	\$52,457
STEP 2	\$49,178
STEP 1	\$45,900
ACADEMY	\$35,700

- C. Effective July 1, 2022, the salary guide for employees hired on or after July 1, 2019 shall increase by 2% for each step of the guide as follows:

Deputy Chief, Chief Fire Prevention \$137,700

Battalion Chief, Assistant Chief Fire
Inspector \$122,400

Captain, Fire Inspector, Maintenance Repairs,
Custodian, Air Mask Technician \$96,900

Step 15	\$91,800
Step 14	\$84,660
Step 13	\$79,560
Step 12	\$76,500
Step 11	\$73,440
Step 10	\$70,380
Step 9	\$67,320
Step 8	\$64,260
Step 7	\$62,200
Step 6	\$58,140
Step 5	\$55,080
Step 4	\$52,020
Step 3	\$48,960
Step 2	\$45,900
Step 1	\$38,837
Academy	\$35,700

- D. For the purposes of step advancement, each step of the firefighter guide is representative of one (1) year of service.
- E. Firefighters whose July 1, 2019 step assignment exceeds his/her years of service shall remain on step until s/he acquires the years of service for advancement on the step guide.
- F. Effective July 1, 2020, and for each year thereafter, step advancement will depend on

the firefighter's acquisition of the years of service commensurate with the step for which advancement is sought.

- 1) The firefighter must acquire the years of service during the fiscal year to be eligible for step advancement.
 - 2) For illustrative purposes only, an employee on Step 15 of the salary guide is only eligible for advancement to Step 16 if he/she will reach his 16th year of employment during that fiscal year.
- G. For illustrative purposes only, a copy of the salary placement for 2019-2021 is annexed hereto as Exhibit C. The promotions included in that document are similarly for illustrative purposes only and are not binding.
- H. Employees at the positions of Fire Fighter, Captain, Fire Inspector, Maintenance Repairs, Custodian, Air Mask Technician, Battalion Chief, and Assistant Chief Fire Inspector shall be entitled to overtime pursuant to the Section 207(k) of the Fair Labor Standards Act.

7. Work Schedule.

- A. Effective at the start of the next pay period after this Global Settlement is ratified by the parties or September 1, whichever is later, the regularly scheduled workweek for all staff personnel shall be 40 hours per week.
1. Staff personnel shall be assigned to duty five days per week for eight hours a day.
 2. The working hours for staff personnel shall comply with the practice described in Article 13, Section B of the expired CNA.
 3. The City maintains the right to temporarily assign staff personnel to fire suppression.
- B. Effective at the start of the next pay period after this Global Settlement is ratified by the parties or September 1, whichever is later, fire suppression employees shall be assigned to a four (4) platoon system, 24-hour shift work schedule.
- C. The City will exercise its managerial prerogative and select the most qualified individuals to effectuate promotions to fill the table of organization to meet the needs of the four (4) platoon, 24-hour shift work schedule. This includes making promotions to the ranks of Captains, Battalion Chiefs, and Deputy Chiefs.

The parties will negotiate how seniority will be determined for the newly promoted employees.

The parties agree to continue negotiations for a procedure for future promotions. The parties shall employ the services of Mediator James Mastriani to assist them in these

negotiations. The parties reserve their rights regarding a promotional process and future promotions not encompassed by this provision.

- D. The base schedule for fire suppression employees will be one 24-hour shift of work, followed by one 24-hour day off, followed a second 24-hour shift of work.
- E. After the second 24-hour work shift, there will be five consecutive regularly scheduled days as days off, subject to the assignment of one (1) 24-hour impact day. Fire suppression employees will be assigned to one 24-hour impact day for an average of one impact day every 28 calendar days.
- F. Employees who are on Union release time on their impact day shall not be required to work an additional impact day.
- G. Fire suppression employees scheduled to work shall report for duty no later than 0800.
- H. For informational purposes, a copy of the 4-platoon schedule and impact days is annexed to this Global Settlement as Exhibit D.

8. **Restricted Vacation Usage Days.** The parties agree that there shall be reduced vacation available on the following days:

New Years Eve Day
New Years Day
Saturday before Memorial Day
Sunday before Memorial Day
Memorial Day
Air Show Days (August 20-21, 2019)
Air Show Days (known at the time of vacation picks)
Summer Concert Dates (known at the time of vacation picks)
Saturday before Labor Day
Sunday before Labor Day
Labor Day
Thanksgiving Day
Friday after Thanksgiving
Christmas Eve Day
Christmas Day

The parties agree to further negotiate vacation availability on these dates.

9. **Discipline.**

- a. **Minor Discipline.** Employees may request a Departmental hearing before a representative of the Fire Chief for minor discipline (suspension of 5 working days or less). Employees may appeal the Department hearing decision through the grievance and arbitration process, including arbitration before an arbitrator selected from a panel of arbitrators provided by PERC. The State/City agrees that the

arbitrator's decision shall be final and binding on the parties and the State/City shall not rely on MSRA to amend or reject the arbitrator's decision.

- b. **Major Discipline.** An employee subject to major discipline (more than 5 working days) shall first have a departmental hearing before a representative of the Fire Chief with the right to appeal that decision to an arbitrator selected from a panel of arbitrators provided by PERC. The arbitrator's initial decision is subject to adoption, rejection, or modification by the DLGS. The decision of DLGS will be considered a final agency decision which may be appealed to the new Jersey Superior Court Appellate Decision.
 - c. **Continued Negotiations.** In the event any other City bargaining unit negotiates a different process for employees to challenge discipline, the Union may request to renegotiate this provision.
10. **Sick Leave.** Employees hired on or after July 1, 2019 will be allotted 24 less sick leave hours than employees hired before July 1, 2019.
11. **Sick Leave Incentive.** Beginning January 1, 2020 sick leave use will be assessed for incentives to be paid the following year. On or before January 31, employees shall be paid the following incentives for curtailing sick leave use in the prior calendar year:

<u>Sick Leave Hours Used Per Calendar Year</u>	<u>Incentive Amount</u>
0 hours	\$1,000
1-12 hours	\$700

12. **Ratification.** The terms of this Global Settlement are subject to ratification by the members of the IAFF Local 198. IAFF Local 198 agrees to present this Global Settlement to its constituents for ratification.
13. **Disputes arising under this Global Settlement.** The parties agree that mediator James Mastriani will retain jurisdiction to resolve any disputes arising under this Global Settlement. The parties further agree that Mr. Mastriani's decision interpreting this Global Settlement shall be considered an arbitration decision and agree that any review shall be subject to the provisions of N.J.S.A. 2A:24-1 *et seq.*
14. **Individual Plaintiffs' Waivers.**
- a. ***William DiLorenzo.*** DiLorenzo, on his own behalf and on behalf of his heirs, future heirs and assigns agrees to execute the General Release annexed to this Global Settlement as Exhibit E.

b. *Silvester Fonville*. Fonville, on his own behalf and on behalf of his heirs, future heirs and assigns agrees to execute the General Release annexed to this Global Settlement as Exhibit F.

c. *John Varallo, Jr.* Varallo, on his own behalf and on behalf of his heirs, future heirs and assigns agrees to execute the General Release annexed to this Global Settlement as Exhibit G.

The General Releases will not be effective unless this Global Settlement is ratified by the membership of IAFW Local 198 and approved by the State.

15. Union Waiver.

A. The Union on its own behalf and on behalf of its present and former members, officers, partners, employees, agents, attorneys, insurers and all their respective present and former parents, subsidiaries, affiliates, successor and assigns, REMISE, WAIVE, RELEASE AND FOREVER DISCHARGE, WITH PREJUDICE the City of Atlantic City, and its present and former councilmembers, designees, officers, partners, employees, agents, attorneys, insurers and all their present and former parents, subsidiaries, affiliates, successor and assigns (the "City Releasees"); the State, and its present and former directors, designees, officers, partners, employees, agents, attorneys, insurers and all their present and former parents, subsidiaries, affiliates, successor and assigns (the "State Releasees") from any and all actions, causes of action, suits, charges, complaints, claims, demands, rights, liabilities, grievances, arbitrations, damages, accounts, judgments, wages, commissions, right of contribution and indemnification, debts, obligations, promises, contracts, representations, agreements, controversies, expenses, attorneys' fees, costs and all other liabilities of any kind or description whatsoever, either in law or equity, whether known or unknown now or hereafter, accruing prior to the date of execution of this Global Settlement that in any way relate to the claims that were asserted in the matter docketed as ATL-L-222-17, and in the matter of ATL-L-435-19 claims that relate to out-of-title work, step raises, the 2016 \$1000.00 bonus and promotions which occur to fill the table of organization consistent with the schedule change in this Global Settlement and claims regarding any negotiations about promotional processes for these ranks prior to September 1, 2019.

B. The Union expressly does not waive or release, on its own behalf or on behalf of any other persons or entities, any claims against the City Releasees or the State Releasees, accruing after the date of execution of this Global Settlement and related to, among other things, acts or omissions related to the negotiation or implementation of promotional procedures occurring after the filling of the table of organization to fill the schedule created by this Global Settlement.

16. Preparation of CNA. The parties agree that the terms of this Global Settlement will be effective upon the parties' ratification except as otherwise stated herein.

The parties further agree to develop a CNA to incorporate the terms of this Global Settlement, and the employees' existing terms and conditions of employment not otherwise

changed by this Global Settlement. The parties agree that the terms of the expired CNA not affected by this Global Settlement or the implementation orders shall continue.

The parties agree that the provisions of the expired CNA relating to non-discrimination and dues deductions shall be updated to be consistent with existing federal and New Jersey law.

The parties agree that the CNA shall include the terms previously implemented relating to workers' compensation, including that employees shall be paid 100% of their salaries when they are absent due to an on-the-job injury. This change from the State's implementation memorandum has already been effectuated and retroactive payments have been made to two employees impacted by the change.

As part of the preparation of a CNA, the parties agree to negotiate procedures to resolve non-disciplinary disputes and impasses over or relating to the contract between the parties.

17. **Non-Admission.** This Global Settlement is not, and shall not in any way be construed as, an admission by the City or State of a violation the CNA, or any express or implied contract of employment, or any breach of the public policy of the State of New Jersey, or violation of any other legal duty. This Global Settlement, and the discussions and negotiations leading to its consummation, shall not be introduced as evidence or referred to in any proceeding involving the Parties other than in a subsequent proceeding before James Mastriani concerning an alleged breach of this Global Settlement. This Global Settlement shall not be introduced in any proceeding before any Court of the State of New Jersey for any purpose.
18. **Governing Law; Jurisdiction.** This Global Settlement shall be governed by and construed in accordance with the substantive laws of the State of New Jersey.
19. **Fiscal Accountability.** The State warrants that entering into this Global Settlement is consistent with the City's recovery plan and fiscally responsible for the purposes of the Municipal Stabilization and Recovery Act.
20. **Entire Agreement.** This Global Settlement contains and constitutes the entire understanding and agreement of the parties with respect to the subject matter of this Global Settlement and all terms and conditions of employment for the members of the bargaining unit except as specifically set forth herein. The parties agree to continue negotiations about non-disciplinary disputes; promotional processes; seniority for those promoted to fill the table of organization; vacation availability on restricted vacation days; or disciplinary procedures upon request of the Union.
21. **Severability.** The provisions of this Global Settlement are severable and if any part is found to be unenforceable, the other portions shall remain fully valid and enforceable. However, if the waivers and releases set forth in Paragraph 14 or 15 of this Global Settlement are held to be invalid, illegal, void and/or unenforceable by a court of competent jurisdiction, DiLorenzo, Fonville, Varallo and the Union agree immediately to duly execute and deliver to the City and State a release and waiver that is legal and enforceable to the fullest extent permitted by law and consistent with the intent of the parties.

22. **Modification or Amendment.** This Global Settlement may not be amended, modified, supplemented, changed, released, discharged or abandoned in any manner, except by an instrument in writing of concurrent or subsequent date signed by the Parties.
23. **Non-Waiver.** The Parties' failure to insist upon strict compliance with any provision of this Global Settlement or the failure to assert any right that the Parties may have under this Global Settlement shall not be deemed a waiver of such provision or right or any other provision or right under this Global Settlement.
24. **Withdrawal.** Any and all proposals not expressly addressed in this Global Settlement are deemed withdrawn by the offering party.
25. **Construction.** Each Party to this Global Settlement has been advised and represented by counsel in connection with the negotiation and preparation hereof, and each Party to this Global Settlement shall be deemed its co-author for purposes of the Global Settlement construction. The paragraph headings contained in this Global Settlement are for reference purposes only and shall not affect the interpretation of the Global Settlement.
26. **Counterparts; Facsimile/Electronic Signature.** This Global Settlement may be executed by the Parties hereto in one or more counterparts, and each fully executed counterpart shall be deemed an original. Any facsimile and/or electronic copy of an executed signature page hereto shall be deemed an original signature page hereto for all purposes.

Martin Basso

Witness

Martin Basso

FOR IAFF LOCAL 198

Dated: 8/26/2019

Dated: 8/26/2019

Witness

By: _____

FOR THE CITY OF ATLANTIC CITY

Dated: _____

Dated: _____

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Witness

FOR IAFF LOCAL 198

Dated: _____

Dated: _____

Witness

By: 

FOR THE CITY OF ATLANTIC CITY

Dated: _____

Dated: 9/16/19

[Signature]
Witness

Dated: 9/17/19

By: [Signature]
FOR THE STATE OF NEW JERSEY,
DIVISION OF LOCAL
GOVERNMENT SERVICES

Dated: 9/17/19

Witness
Dated: _____

By: _____
ROBERT LONG
Dated: _____

[Signature]
Witness

Dated: 8/26/2019

[Signature]
WILLIAM DILORENZO

Dated: 8/26/19

[Signature]
Witness

Dated: 8/26/2019

[Signature]
SILVESTER FONVILLE

Dated: 8-26-19

[Signature]
Witness

Dated: 8/26/2019

[Signature]
JOHN VARALLO, JR.
Dated: 8/26/2019