

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF LABOR RELATIONS

In the Matter of the Arbitration Between:

TOWN OF SEEKONK

- and -

AFSCME, COUNCIL 93,  
LOCAL 1701, AFL-CIO

ARB-21-8690

Arbitrator:

Carey D. Shockey, Esq.

Appearances:

Joseph S. Fair, Esq. - Representing Town of Seekonk

Jared J. Kelly, Esq. - Representing AFSCME, Council 93, AFL-CIO

The parties received a full opportunity to present testimony, exhibits, and arguments, as well as to examine and cross-examine witnesses at a hearing. I have considered the issues, and, having studied and weighed the evidence presented, conclude as follows:

**AWARD**

The grievance is procedurally arbitrable, but the Town did not violate the collective bargaining agreement by the manner in which it calculated the step raises of Jim Halpin, Kevin Hearst, Paul Proulx, and Wayne Young. The grievance is denied.



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Carey D. Shockey, Esq.  
Arbitrator  
November 22, 2022

**INTRODUCTION**

On June 16, 2021, the American Federation of State, County, and Municipal Employees, Local 1701 (Union) filed a unilateral petition for Arbitration. Under the provisions of M.G.L. Chapter 23, Section 9P, the Department of Labor Relations (Department) appointed Carey D. Shockey, Esq. to act as a single neutral arbitrator with the full power of the Department. The undersigned Arbitrator conducted a virtual hearing via WebEx on September 21, 2021. The parties filed briefs on December 13, 2021.

**THE ISSUES<sup>1</sup>**

Is the grievance procedurally arbitrable?

If so, did the Town violate the collective bargaining agreement by the manner in which it calculated the step raises of Jim Halpin, Kevin Hearst, Paul Proulx, and Wayne Young? If so, what shall be the remedy?

**RELEVANT CONTRACT LANGUAGE**

The parties' Collective Bargaining Agreement (Agreement) contains the following pertinent provisions:

**ARTICLE II, SECTION 4 – SALARIES (In Part)**

Years of Service	Fiscal Year 18 – 2% Increase				
	Step 1 0-2 years	Step 2 3-4 years	Step 3 5-6 years	Step 4 7-9 years	Step 5 10+ years
Foreman	\$ 24.03	\$ 24.51	\$ 25.00	\$ 25.50	\$ 26.01
Mechanic Foreman	\$ 25.43	\$ 25.94	\$ 26.64	\$ 26.99	\$ 27.53
Mechanic	\$ 23.73	\$ 24.19	\$ 24.67	\$ 25.17	\$ 25.67
Laborer/Maintenance	\$ 22.28	\$ 22.73	\$ 23.18	\$ 23.64	\$ 24.11
Equipment Operator	\$ 22.04	\$ 22.49	\$ 22.94	\$ 23.40	\$ 23.87
Driver/Laborer	\$ 20.57	\$ 20.98	\$ 21.40	\$ 21.83	\$ 22.27
P/T Sec	\$ 15.31	\$ 15.62	\$ 15.93	\$ 16.25	\$ 16.58
Secretary	\$ 20.11	\$ 20.51	\$ 20.92	\$ 21.34	\$ 21.77

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<sup>1</sup> The parties were unable to agree on a stipulated issue and authorized the arbitrator to craft an appropriate issue.

Years of Service	Fiscal Year 19 – 2% Increase				
	Step 1	Step 2	Step 3	Step 4	Step 5
	0-2 years	3-4 years	5-6 years	7-9 years	10+ years
Foreman	\$ 24.51	\$ 25.00	\$ 25.50	\$ 26.01	\$ 26.53
Mechanic Foreman	\$ 25.94	\$ 26.46	\$ 26.99	\$ 27.53	\$ 28.08
Mechanic	\$ 24.20	\$ 24.68	\$ 25.16	\$ 25.67	\$ 26.18
Laborer/Maintenance	\$ 22.73	\$ 23.18	\$ 23.64	\$ 24.11	\$ 24.59
Equipment Operator	\$ 22.48	\$ 22.94	\$ 23.40	\$ 23.87	\$ 24.35
Driver/Laborer	\$ 20.98	\$ 21.40	\$ 21.83	\$ 22.27	\$ 22.72
P/T Sec	\$ 15.62	\$ 15.93	\$ 16.25	\$ 16.58	\$ 16.91
Secretary	\$ 20.51	\$ 20.92	\$ 21.34	\$ 21.77	\$ 22.21

Years of Service	Fiscal Year 20 – 2% Increase				
	Step 1	Step 2	Step 3	Step 4	Step 5
	0-2 years	3-4 years	5-6 years	7-9 years	10+ years
Foreman	\$ 25.00	\$ 25.50	\$ 26.01	\$ 26.53	\$ 27.06
Mechanic Foreman	\$ 26.46	\$ 26.99	\$ 27.53	\$ 28.08	\$ 28.64
Mechanic	\$ 24.68	\$ 25.17	\$ 25.66	\$ 26.18	\$ 26.70
Laborer/Maintenance	\$ 23.18	\$ 23.64	\$ 24.11	\$ 24.59	\$ 25.08
Equipment Operator	\$ 22.93	\$ 23.40	\$ 23.87	\$ 24.35	\$ 24.84
Driver/Laborer	\$ 21.40	\$ 21.83	\$ 22.27	\$ 22.72	\$ 23.17
P/T Sec	\$ 15.93	\$ 16.25	\$ 16.58	\$ 16.91	\$ 17.25
Secretary	\$ 20.92	\$ 21.34	\$ 21.77	\$ 22.21	\$ 22.65

There shall be a promotion factor. The promotion factor shall provide that an employee who is being promoted to a new job description will be placed in a step, regardless of years, that provides a minimum increased salary rate of 2%.

ARTICLE III, SECTION 4 – VACATIONS (In Part)

Each employee shall have a vacation during the year following completion of a term of service as follows:

During the year following completion of six months service - one week (5 days);

After completion of the next six months, - one week (5 days); After completion of one (1) year service in each successive year - Two weeks (10 days); After completion of five (5) year service in each successive year – Three weeks (15 days); After completion of ten (10) service in each successive year – Four weeks (20 days);

ARTICLE IV, SECTION 6 – GRIEVANCE AND ARBITRATION PROCEDURE (In Part)

Any grievance or dispute which may arise between the parties, including the application, meaning or interpretation of this Agreement shall be settled in the following manner:

Step 1: The Union Steward and/or representative, with or without the aggrieved employee, shall take up the grievance or dispute in writing with the Superintendent within ten (10) working days of the date of the grievance or his/her knowledge of its occurrence. The Superintendent shall attempt to adjust the matter and shall respond to the Steward in writing within ten (10) working days.

### **FACTS**

The Union is the exclusive collective bargaining representative for a unit of “all regular members” of the Town of Seekonk’s (Town) Public Works Department (Unit). The Town and the Union have been parties to a series of collective bargaining agreements (Agreements). Prior to the 2014-2017 Agreement, the parties did not use salary steps in setting wages. In the 2014-2017 Agreement, the parties implemented salary steps based on an employee’s length of service in their current position. As of the 2017-2020 Agreement, the parties agreed to base salary steps on total length of service in the bargaining unit. Reflecting the most recent change, the parties modified the Article II, Section 4 salary step charts by adding “Years of Service” to the far left of the year row in each table.

On September 20, 2020, the parties concluded a Memorandum of Agreement (MOA) for the term July 1, 2020, through June 30, 2023. Article II, Section 4, paragraph 3 of the MOA stated that:

Article II. Section 4-Wages

Delete section and replace with:

**As of July 1, 2020 ([FY21]) a 1.75% base salary increase**

**As of July 1, 2021 ([FY22]) a 1.75% base salary increase**

**As of July 1, 2022 ([FY23]) a 1.75% base salary increase**

Update and insert new wage table according to the foregoing increases.

The MOA did not otherwise modify Article II, Section 4; Article III, Section 4; or Article IV, Section 6.

The Town hired Jim Halpin (Halpin) on January 14, 2019 as a Driver/Laborer and placed him at Salary Step 1. In January 2020, he was promoted to the position of Equipment Operator at Salary Step 1, per the promotional language in Article II, Section 4. The Town hired Kevin Hurst (Hurst) on February 22, 2018 as an Equipment Operator and placed him at Salary Step 1. The Town hired Paul Proulx (Proulx) on July 25, 2011 as a Driver/Laborer, but did not place him on a Salary Step, because steps did not yet exist. Following implementation of the 2014-2017 Agreement, Proulx was placed at Salary Step 3, as an existing Town employee. On or about July 25, 2018, the Town moved Proulx to Salary Step 4. Wayne Young (Young) was hired by the Town on September 7, 2010 and advanced to Salary Step 5 on September 7, 2020.<sup>2</sup>

On March 15, 2021, Union Staff Representative Sheila Kearns (Kearns) emailed Assistant Town Administrator and Human Resources Director Carol Ann Days (Days) regarding members' concerns over "the distribution of the two-percent (2%) wage increases between steps" and, more specifically, "when the steps are implemented according to the years of service." Days responded that:

The steps are being paid in accordance with the contract, which is based on years of service. Below is a further explanation.

Step 1: 0-2 Years of Services

Step 2: 3-4 Years of Services (employee would be moved to this step on their third year with the Town)

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<sup>2</sup> Young's position is not included in the record, nor are the dates of his prior Salary Step advancements.

Step 3: 5-6 Years of Services (employee would be moved to this step on their fifth year working with the Town)

Step 4: 7-9 Years of Services (employee would be moved to this step on their seventh year working with the Town)

Step 5: 10+ Years of Services (employee would be moved to this step on their tenth year working with the Town)

Please let me know if you have any additional questions.

Kearns attempted to confirm her understanding the following morning, replying:

Thank you for your prompt response.

Just so that I am clear in my understanding, moving to each step would be when they begin that particular year. For example Step 2: 3-4 years of services (employee would be moved to this step beginning on their third and fourth years with the town) [sic]. Correct?

Later that morning, Days replied to Kearns that:

Yes, it is based on years of service so they would have to complete the previous step's years of service before moving onto the next. The example you gave is how the step increases have been implemented.

Over the next week, Kearns asked Days to confirm that Halpin, Hurst, and Proulx, had received their Salary Step increases, according to the Agreement.

On March 25, 2021, Days further responded to Kearns regarding the three Unit employees Kearns previously listed. Days stated that:

I received the following information from the Treasurer's office and added when each would be eligible for their next Step increase.

Jim Halpin was hired 1/14/2019 as a Driver/Laborer at FY19 - Step 1 rate. He was promoted to Equipment Operator in January 2020 FY20 - Step 1. Jim Halpin is eligible for Step 2 on 1/14/2022.

Kevin Hurst was hired 2/22/2018 as an Equipment Operator. His step increase is currently with the Treasurer's office and he is eligible for Step 2 effective 2/22/2021. The Treasurer's office did not receive the step increase request from DPW until this month (each department must submit a personnel change notice, which gets signed and approved by the Department Head and Town Administrator's office),

he will be paid his new rate retroactively to 2/22/2021 in the upcoming payroll.

Paul Proulx was hired 7/25/2011 as a Driver/Laborer. There were no steps then. When steps were introduced, existing employees started at Step 3. Paul remained at Step 3 until he completed 7 years of service on 7/25/2018, and then he moved to FY19 - Step 4. He remains at Step 4 and will be eligible to move to Step 5 on his 10 year anniversary 7/25/2021.

On March 30, Kearns responded to Days by agreeing with regard to Halpin, but otherwise claiming that Hurst and Proulx should have received a Salary Step increase one year prior to the dates stated by Days. That afternoon, Days replied in kind and stated that:

Based on the true definition of the "years of service" this is how we are interpreting the years and the movement between steps.

Step 1: 0-2 Years of Services (0 - 35 months)  
Step 2: 3-4 Years of Services (36 - 59 months) Employee is eligible to move on their 36th month  
Step 3: 5-6 Years of Services (60 - 83 months) Employee is eligible to move on their 60th month  
Step 4: 7-9 Years of Services (84 -119 months) Employee is eligible to move on their 84th month  
Step 5: 10+ Years of Services (120+ months) Employee is eligible to move on their 120th month

To clarify on Jim Halpin, the contract has a "promotion factor" language. We therefore amend our original statement and say that he would progress to Step 2 in 2023, based on years of service in that job category.

Respectfully, I believe we are in disagreement with the interpretation of the contract. If you do not agree with the above I would ask how you would like to proceed. We can certainly have a phone conversation to further discuss or if you would prefer to follow your grievance procedure we can attempt to resolve it through the formal process.

On April 8, 2021, Kearns responded to Days by claiming that the parties had extensively discussed "years of service" in recent MOA negotiations and related

mediation; the parties had never previously discussed “years of service” in terms of months; and Halpin, Hurst, Proulx, and Young all deserved increased and retroactive pay, because the Salary Step increases began at the start of a “year of service,” not the end. Kearns then asked Days to provide three days for the parties to meet and discuss the issue, rather than filing a grievance.

On April 12, 2021, Days notified Kearns that the Town would not agree to any demanded increases, because it believed it was acting consistent with past practice regarding Salary Step increases for Unit employees. However, Days further offered to meet with the Union over the issue, even if the Union chose to pursue a grievance at the same time. Kearns replied to Days the next day by email-filing a grievance and again seeking dates for the parties to meet and confer regarding the Salary Step issue. The Union’s Salary Step grievance was denied at Step 2 on or about May 12, 2021, and at Step 3 on or about May 24, 2021.<sup>3</sup> On June 16, 2021, the Union filed a unilateral petition for arbitration with the DLR.

### **POSITIONS OF THE PARTIES**

#### **THE UNION**

##### *Procedural Arbitrability*

The Town did not raise timeliness during its prior grievance decisions. In the alternative, Kearns was not aware how the Town was interpreting “years of service” in terms of Salary Step increases until March 30, 2021. Prior to that date, including her prior emails with Days, Kearns assumed that any failure to implement Salary Step raises was due to administrative confusion or delay, alone. Instead,

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<sup>3</sup> The date of the Step 1 decision is not in the record.



Kearns only realized that the parties were calculating “years of service” differently when Days confirmed the Town was neither confused about its position—nor willing to change it—in Days’ March 30<sup>th</sup> email. As a result, Kearns did not have knowledge of the grievance’s occurrence until that date, as the term is understood under Article IV, Section 6 of the Agreement.<sup>4</sup> Because the grievance was filed within ten (10) working days of March 30, 2021, the grievance was timely and should be decided on its merits.

#### *Substantive Merits*

The language of Article II, Section 4 of the Agreement is clear and unequivocal. The Agreement does not explicitly define “years of service” within the document itself. However, the term is used consistently throughout the document in a way that tracks with the Union’s understanding. For example, in Article III, Section 4 – Vacation Time, the Agreement awards time based on “completed” years of service. Thus, after one years of “completed” service, Unit employees receive ten (10) days of vacation time.

In contrast, “years of service” is used without a qualifier in all three wage charts in Article II, Section 4. This should be interpreted to mean that a “year of service” did not have to be completed to trigger a Salary Step increase. Instead, “year of service” must be read to require an employee to proceed to the next step once they fulfilled the requirements of the current Salary Step. For example, an employee should move from Salary Step 1 to Salary Step 2 once they have completed two years of service, not after completing all three years.

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<sup>4</sup> All references are to the 2017-2020 Agreement, unless otherwise specified.

**THE EMPLOYER***Procedural Arbitrability*

Under Article IV, Section 6 of the Agreement, a grievance must be filed by the Union and/or the aggrieved employee within ten (10) working days of the date of the grievance or the Union's or employee's knowledge of its occurrence. As shown by Kearns' March 15<sup>th</sup> email, an employee had already alerted the Union that he had not received his Salary Step increase and was alleging that this violated the Agreement. Indeed, it is undisputed that the employee who complained to the Union and prompted Kearns to write her initial email was well aware of the alleged violation, since he had not yet received his Salary Step raise. Therefore, the Union had sufficient notice of the grievance as of that date. However, Kearns did not file a grievance until April 13, 2021. Therefore, the grievance was filed untimely.

In the alternative, even if the March 15<sup>th</sup> email is considered a grievance under the Agreement, the purportedly missed Salary Step raises that are at issue in this case were due—by the Union's own admission—considerably earlier than ten (10) business days prior to March 15<sup>th</sup>. Under the Union's theory of the case, the following are the step raises that were allegedly missed in this matter:

- Halpin should have received a Salary Step raise on January 14, 2021.
- Hurst should have received a Salary Step raise on February 22, 2020.
- Proulx should have received two Salary Step raises, one on July 25, 2019, and another on July 25, 2020.
- Young should have received a Salary Step raise on September 7, 2019.

All the Salary Step raises that the Town allegedly failed to pay would have been due months—if not years—prior to when the Union filed its grievance and sent its first email. The Unit employees were all aware they had not received these raises, because any pay increase would have shown up on their weekly pay stubs. Thus, the grievance in this matter was clearly untimely and should be deemed by the Arbitrator to be procedurally inarbitrable and denied. See How Arbitration Works, Elkouri & Elkouri, (5th Ed., 1997), at 274; (citing Logan Company, 90 LA 949 (High, 1988); Inland Container Corp., 90 LA 532 (Ipavec, 1987)).

#### *Substantive Merits*

The Union has the burden of demonstrating, by a preponderance of evidence, that the Town violated the Agreement. It is a well-settled rule of contract interpretation that to determine whether an agreement is clear and unambiguous, the document must be viewed in its entirety and its language be given its plain, ordinary, and usual meaning. Siebe, Inc. v. Louis M. Gerson Co., Inc., 74 Mass. App. Ct. 544, 549 (2009). If a contract is clear and unambiguous, the parol evidence rule bars admission of extrinsic evidence “that would purport to contradict or modify the express terms of the written contract.” Id. Article II, Section 4 references year ranges tied to Salary Steps. Its use of “years of service” coupled with these ranges, makes it clear that the Agreement is referring to the number of years of service that an employee needs to qualify for each Salary Step increase. Given this clear and unambiguous language, the Arbitrator should not consider any parol evidence offered by the Union. Similarly, the dictionary definition of “years” matches the Town’s plain language reading.

An employee does not have the years of service required for a Salary Step increase unless and until that employee has been working for the Town for the requisite period. For example, an employee needs to have three (3) years of service to move to Salary Step 2 on the pay scale. In other words, that employee must have first completed three (3) 365-day or 12-month periods of time from their date of hire; other steps are similar. If the parties had meant otherwise, they would have included specific language in the Agreement. Further supporting the Town's position is that a new employee starts with the Town at "Step 1: 0-2 years." The parties' inclusion of the number "0" acknowledges that a new employee with only one (1) day of service has "0" years of service. If that is the case, then an employee who reaches their one-year anniversary of hire has one year of service. The Union's witness admitted this interpretation was correct during cross-examination.

It is one of the well-established tenets of contract interpretation that an agreement is to be construed to give reasonable meaning to all of its provisions wherever possible. See Shea v. Bay State Gas Company, 383 Mass. 218, 224-25 (1981); Kerrigan v. Boston, 361 Mass. 24, 33 (1972). Accepting the Union's argument would violate this principle, because it would mean ignoring the parties' use of "0" in "Step 1: 0-2 years." Similarly, the Union's interpretation—as expressed in Kearns' emails—would require the Arbitrator to disregard the distinction the parties drew between "2 years" in Step 1 and "3 years" in Step 2, and so on. Any assertion by the Union to the contrary is unsupported by the plain meaning of the Agreement language that was used by the parties, would require the Arbitrator to

ignore the language in the CBA, contrary to the fundamental tenets of contract interpretation. See Shea, 383 Mass. at 224-25; Kerrigan, 361 Mass. at 33.

Even were the Arbitrator to consider the Union's parol evidence, it does not support the Union's claims. The record is devoid of testimony as to any discussions during the negotiations that resulted in the current Salary Steps. As the Union's lone witness testified, at no time during the 2017-2020 or 2020-2023 Agreement negotiations did the parties discuss how to calculate "years of service" under Article II, Section 4 of the Agreements. While Kearns and Days offered different "years of service" interpretations in their emails, neither participated in the underlying negotiations that resulted in the Agreement language at issue. Indeed, Days was only in her current role for six months when this issue occurred, so any inconsistencies in her statements and/or any agreement with Kearns was due to confusion. Similarly, Days' use of months in an email was only an attempt to clarify the Town's interpretation, not an attempt to articulate a different method of calculation or a unilateral implementation of different terms.

Finally, the employees at issue received pay stubs that would have reflected whether the Town granted them the Salary Step raises to which they believed they were entitled. Despite this, neither the employees nor the Union raised issues about Salary Step calculations with the Town until Kearns' March 15<sup>th</sup> email. Therefore, even if the Arbitrator were to uphold the Union's grievance on the merits in this matter, any back pay award should go back no further than ten (10) days.

### **OPINION**

The two issues before me are:

Is the grievance procedurally arbitrable?

If so, did the Town violate the collective bargaining agreement by the manner in which it calculated the step raises of Jim Halpin, Kevin Hearst, Paul Proulx, and Wayne Young? If so, what shall be the remedy?

I find that the grievance is procedurally arbitrable, but otherwise deny the Union's grievance for the reasons stated below.

*Procedural Arbitrability*

Article IV, Section 6 states that:

Step 1: The Union Steward and/or representative, with or without the aggrieved employee, shall take up the grievance or dispute in writing with the Superintendent within ten (10) working days of the date of the grievance or his/her knowledge of its occurrence. The Superintendent shall attempt to adjust the matter and shall respond to the Steward in writing within ten (10) working days.

This provision references "the aggrieved employee," but only in a subsidiary clause. As a result, as currently drafted, "his/her knowledge of its occurrence" could refer to the "Union Steward and/or representative" or to the "aggrieved employee" themselves. Therefore, I find that the Agreement's contractual time limit is ambiguous.

The parties have offered no bargaining history or other parol evidence regarding timeliness which could resolve the Agreement's ambiguity. However, I note that the Town did not raise timeliness as an affirmative defense during its grievance decisions prior to arbitration. Generally, where there are ambiguities in the wording of contractual time limits, they should be resolved in favor of arbitrability. Similarly, parties are discouraged from waiting to raise timeliness as an affirmative defense until an arbitration hearing, because it prevents procedural

ambush and encourages full discussion of the merits. Therefore, for both reasons stated above, I find that the grievance is procedurally arbitrable.

*Substantive Merits*

The second issue before me is whether the Town violated the Agreement by the manner in which it calculated the step raises of Jim Halpin, Kevin Hearst, Paul Proulx, and Wayne Young. The parties do not dispute that this matter hinges on the interpretation of the phrase “years of service” in the Agreement. Both parties claim that the language of the Agreement is clear and unambiguous.

It is axiomatic that contract interpretations which render meaningless any part of the contract should be avoided, because the parties do not agree to words intended to have no effect. In pertinent part, the three Salary Step charts in the Agreement have identical references to years of service:

<b>Years of Service</b>	<b>Step 1</b>	<b>Step 2</b>	<b>Step 3</b>	<b>Step 4</b>	<b>Step 5</b>
	<b>0-2 years</b>	<b>3-4 years</b>	<b>5-6 years</b>	<b>7-9 years</b>	<b>10+ years</b>

As shown above, Salary Step 1 is for Unit employees with “0-2 years” of service. The use of “0” indicates that the parties classify new Unit employees as having “0” years of service until they complete their first year, not “1.” There is no indication from the chart that the other date ranges in the Salary Step charts are to be treated any differently. As a result, in this context and giving all the language of the charts its plain language meaning, “years of service” means completed years of service and not the beginning of an anticipated year of service.

The absence of some variation of the word “complete” in the Salary Step charts does not change this result. There is no evidence that the parties considered Article III, Section 4 when drafting Article II, Section 4, that the two sections were

ratified at the same time, or that parties otherwise intended to link the two. Similarly, there is no evidence that the parties modified or altered the usage of “years of service” during their negotiations over the MOA. Conversely, Article III, Section 4 never uses “years of service,” instead using, variously, “year following the completion of a term of service,” “year following the completion of six months service,” “one (1) year service,” and other, similar constructions. The evidence also indicates that the Town has a past practice of consistently interpreting “years of service” to mean completed years, not the start of a potential service year. Therefore, for all the reasons stated above, the Town did not violate the collective bargaining agreement by the manner in which it calculated the step raises of Jim Halpin, Kevin Hearst, Paul Proulx, and Wayne Young, and the grievance is denied.

**AWARD**

The grievance is procedurally arbitrable. However, the Town did not violate the collective bargaining agreement by the manner in which it calculated the step raises of Jim Halpin, Kevin Hearst, Paul Proulx, and Wayne Young. The grievance is denied.



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Carey D. Shockey  
Arbitrator  
November 22, 2022