
IN THE MATTER OF INTEREST ARBITRATION BETWEEN
TOWN OF SOMERSET, MASSACHUSETTS
AND
INTERNATIONAL ASSOCIATION OF FIREFIGHTERS, LOCAL 2649
JOINT LABOR- MANAGEMENT COMMITTEE
FOR MUNICIPAL POLICE AND FIRE
JLMC# 11-16F

INTEREST ARBITRATION AWARD AND DECISION

ARBITRATION PANEL

Bonnie J. McSpiritt, Neutral Arbitrator, Chair
Marjarita Doherty, Town-Designated Arbitrator
Richard MacKinnon, Union-Designated Arbitrator

FOR THE TOWN OF SOMERSET, MA

Clement Brown, Esq of Horvitz & Brilhante, L.L.P.

FOR THE SOMERSET, MA FIREFIGHTERS

Alfred Gordon O'Connell, Esq. of Pyle Rome Ehrenberg, PC

HEARING DATES

June 3, 2013
July 23, 2013

PANEL MEETINGS

November 6, 2013

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INTRODUCTION

The Town of Somerset, Massachusetts (Town) and the International Association of Firefighters, Local 2649 (Union) are parties to a collective bargaining agreement which expired on June 30, 2009. The parties began bargaining for a successor agreement in December 2009 and negotiated for five or six sessions into calendar year 2010 but were unable to reach an agreement. The Union filed with the Joint Labor – Management Committee for Police and Fire (JLMC) and Mediator Sally Polzin met with the parties on four occasions during the spring and fall of 2012. The JLMC held a 3a hearing on November 26, 2012 to determine how the dispute could be resolved and after a full hearing found that there was “. . . an apparent exhaustion of the process of collective bargaining which constitutes a potential threat to the public welfare . . .”¹. Consequently, the JLMC appointed a tri-partite to resolve the dispute in interest arbitration.

Hearings were held on two days and the parties were afforded a full and fair opportunity to be heard and present evidence. The Union presented Financial Analyst/Consultant Kevin Dasey, as its one and only witness. In turn, the Town presented three witnesses; Assistant Assessor Pamela Lee, Fire Chief Scott Jepson and Town Administrator Dennis Luttrell. All witness were examined and cross-examined. Post hearing briefs were submitted and the Arbitration Panel met on November 6, 2013.

¹ Massachusetts General Law, Chapter 589 (1987) amended Chapter 1078 (1973)

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BACKGROUND

TOWN

The Town of Somerset is located in Bristol County in Southwestern Massachusetts. The Town is 20 miles southeast of Providence, RI, approximately 50 miles from Boston and two miles from Fall River. Somerset bordering towns are Fall River and Freetown to its east, Swansea to the south and west and Dighton, Berkley and Freetown to the North. The eastern border is on the Taunton River and the southern border is on Mouth Hope Bay. The Town in 2010 had a population of 18,165 residing in approximately 7 square miles, the median age was 45.4, median family income was \$67,077 and the median per capita income was \$29,597. Somerset's two major categories of employment were trade, transportation and utilities and education and health services. In November 2012, the Town's labor force was 9,551 with an unemployment rate of 8.4% as compared to Massachusetts unemployment rate of 6.1% and 7.7% in the country. The cost of living in 2009, 2010, 2011 and 2012 was -0.7, 1.6, 2.7 and 1.6 respectively and the average for the first half of 2013 was 1.5.

In Fiscal Year 2013 (FY13) the total tax levy to be raised was \$42,486, 117 and the total revenue source including the tax levy, state aid, local receipts and other available revenue was \$62,664,557. In FY12, the overlay reserve was over \$3.7 million or 10.1% of the net tax levy. The total fund balances at the end of FY13 was \$24,341,873. (App 17, p. 21), free cash was \$5,342,655 (p.27) and FY12 stabilization fund was \$9,085,936. (p.27). Town Exhibit 6 documented that free cash has been reduced to \$1,731,965 at the end of FY13 due to special articles and a transfer of monies to the stabilization fund of \$2.6 million. The stabilization fund was also reduced

by \$2.0 million when it was applied to the budget at Town Meeting to reduce the tax rate and is currently at \$7,085,936. Accordingly, Somerset has a total of approximately \$8.8 in free cash (uncertified) and stabilization funding. The Town's total current indebtedness for FY13 is \$19,839,320. In FY12 the Debt Per Capita as a Percent of Per Capita was 4.87% (App17, p.31) and in FY11 Town debt as a percent of budget was 3.97% which was the second lowest percentage in the nine comparables. (UX1, p.9) Finally, the Town's largest taxpayer, Dominion Energy, an electric powered generation plant, who made up 28% of the FY12 tax levy was decommissioned and the owner filed a real estate and personal property tax abatement appeal which may impact FY12 and FY13 tax levy.

BARGAINING UNIT CHARACTERISTICS

The Town's employees are divided into 12 unionized and one non-unionized groups which are Public Works, Sewer, Water, Dispatchers, Police Patrolmen, Police Sergeants and Lieutenants, Firefighters, School Administrators, i.e. Teachers; School Cafeteria, School Clerical, School Custodians and School Paraprofessionals and Monitors. The non-unionized group is referred as the Personnel By-Laws unit. The Firefighters bargaining unit includes all uniform firefighters, excluding the Chief and Deputy Chief. There are 7 Lieutenants and 22 firefighters; all of whom have Emergency Medical Technician Certifications (EMT) in Basic/Enhanced, Intermediate or Paramedic. The firefighters man two Rescue Units on a 24 hour basis and made 1,870 responses out of a total 4,690 according to the Town's website.²

² UX1, p.5

JLMC CERTIFIED ISSUES

At the 3a hearing the Town submitted the following issues in addition to wages and duration:

1. Amend Article 19 – Holidays by adding new language
2. Amend Article 23 – Sick Leave by adding new language
3. Delete language in Article 25 - Blue Cross/Blue Shield
4. Amend Article 28 – Physical Condition by adding new language
5. Amend Appendix C by deleting the existing language and adding new language

The Union's issues, also in addition to wages and duration were:

1. Amend Article 31 - EMT Stipends – to increase all stipends, convert to percentages and add to base rate of pay
2. Amend Article 26 – Residency - by deleting the second sentence
3. Create a new Article – Night Differentials
4. Amend all Benefit Calculations from 1/5 to 1/4 of a week's pay
5. Amend Article 38 – Senior Officer/Fire Fighter Pay – increasing payments

During the 3a hearing, the Town objected to the EMT Stipends being percentages because the Union's proposal was based on fix dollar increases, not percentages, during negotiations and mediation. The Union disagreed with the Town's recollection of the 3a hearing believing that the JLMC determined that the Union's proposal regarding the EMT Stipends was two issues since the Union was looking for an increase in the stipend as well as converting the payments from fixed dollars to percentages. In any event, the JLMC ordered the Union that the issue could only deal with a dollar value and certified that the issues to be arbitrated were limited to wages, duration and the following:

Town

1. Change in holiday article
2. Change in sick leave article re: medical appointments and prior approval
3. Delete Blue Cross/Blue Shield insurance sentence
4. Amend "physical condition" article by requiring employees to past annual test
5. Amend Appendix C

Union

1. Residency
2. Night Differential
3. Benefits calculations
4. Longevity – Senior Officer/Firefighter Pay
5. EMT Stipend – Fixed Dollar Increase

It was learned during the a pre-arbitration conference call and the two day hearing that the parties agreed there would be two agreements covering the four fiscal year period, the duration of the first agreement, July 1, 2009 to June 30, 2012 and the duration of the second agreement duration, July 1, 2012 to June 30, 2013. The Union withdrew Issue # 2 – Night Differential and the Town withdrew Issue # 1 – Holidays and Article 28 – Physical Conditions. In addition, the parties also stipulated to delete the current language in Article 25 – Blue Cross/Blue Shield and add the following language: “The Town shall pay seventy-five percent (75%) of the cost of the health plans offered.” Accordingly, this award deals with a total of seven issues:

1. Wages
2. Change in sick leave article re: medical appointments and prior approval
3. Residency
4. EMT Stipend – Fixed Dollar Increase
5. Senior Officer/Firefighter Pay - Longevity
6. Amend Appendix C
7. Benefits calculations

COMPARABLES

External

The Union proposed that the panel consider the following 21 communities within Bristol, Barnstable, Norfolk and Plymouth Counties because their population range (15,000 to 25,000) is comparable to Somerset’s population of 18,165, the towns border Somerset or they were substituted for a border town that was not appropriate :

Bellingham	Bourne	Canton	Dighton	Duxbury	Easton
Fairhaven	Foxborough	Freetown	Hingham	Mansfield	Norton
Pembroke	Rockland	Sandwich	Scituate	Sharon	Seekonk
Walpole	Westport	Yarmouth			

The Town proposed the following eight Towns because the size of the fire department was similar, the community had a population in the range of 15,000 to 20,000 and the Towns geographically surrounded Somerset:

Bourne	Easton	Fairhaven	Mansfield	Norton	Raynham
Seekonk	Westport				

The Panel reviewed the parties' evidence and determined that nine comparables were appropriate. These comparables are:

Bourne	Easton	Fairhaven	Mansfield	Norton	Raynham
Sandwich	Seekonk	Westport			

The Panel concluded that the nine were appropriate based on the fact that 7 of the towns were submitted by both parties. In addition, the Panel concurred with the Town that Raynham and added Sandwich because we agreed with the Union it was an appropriate comparable since it bordered Bourne and had a similar population (20, 675) to Somerset (18,165). The Panel did not conclude the remaining towns offered by the Union were comparable based on geographical distance from Somerset (Bellingham, Canton, Duxbury, Foxborough, Pembroke, Rockland, Scituate, Sharon); geographical distance and their populations were significantly lower or higher than Somerset (Hingham, Walpole, Yarmouth) or their population was significantly lower and they were not drive through towns (Dighton, Freetown)

Internal

The Panel placed significant weight on the wages settlements of the town and the teachers referenced above because the award must be reasonable with wages and

benefits received by other bargaining units in Somerset. In particular, the Panel looked to the wages and benefits received by the police units since it is generally accepted that there is enough community of interest to provide validity to the comparison.

STATUTORY CRITERIA GUIDING INTEREST ARBITRATION

Chapter 589 of the Acts of 1987 sets criteria to guide interest arbitration awards for police and fire. These criteria are the financial ability of the town to meet costs; the interests and welfare of the public; the hazards of employment, physical, educational and mental qualifications, job training and skills involved; comparative wage and employment conditions with employees performing similar services and with other employees generally in public and private employment in comparable communities; the cost of living as determined by the Department of Labor; the overall compensation currently received by employees, including direct wages and fringe benefits; and any changes of the foregoing circumstances during the pendency of the dispute.

In addition to the criteria above the Arbitration Panel believes that novel and untried solutions and/or proposals that seek a significant change from a mature Agreement are rarely awarded in interest arbitration. Quoting fellow Arbitrator Gary Altman, "[A]n arbitrator is reluctant to modify contract provisions where the parties, in past years, have already reached agreement, the contract article has been in the contract for a considerable period of time and there has been no ascertainable problem with the contract language". Therefore, the Panel has rendered its award after considering the parties' proposal in conjunction with all the criteria listed above.

ISSUE # 1

ARTICLE 8 – WAGES

Current Contract Language

Appendix A - Effective June 30, 2009:

Captain	1,089.68
Lieutenant	1,022.05

FIREFIGHTERS

2 years/1day	902.52
1 year/1 day	812.28
1 day/1 year	722.02

* * *

Town Proposal

The Town proposes to increase wages as follows:

Fiscal Year 2010	effective July 1, 2009	0%
Fiscal Year 2011	effective July 1, 2010	0%
Fiscal Year 2012	effective July 1, 2001	1%
Fiscal Year 2013	effective July 1, 2012	1%
	effective June 30, 2012	1%

Union Proposal

The Union proposes to increase wages as follows:

Effective retroactive to July 1, 2009 – 3% increase across the board
Effective retroactive to July 1, 2010 – 3% increase across the board
Effective retroactive to July 1, 2011 – 3% increase across the board
Effective retroactive to July 1, 2012 – 3% increase across the board

Union Position

The Union's proposal seeks to address the significant workload and lag in pay that the Town's firefighters are experiencing when compared to the Town's police officers and firefighters in surrounding comparable communities. The Town's wage proposal is unrealistic given that even their comparable data demonstrates that

Somerset firefighters lag behind and the Town did not compare the firefighters to police officers since the evidence would support the Union increases. The Union's proposal will cost the Town approximately \$908,000 and they believe the Town has the ability to pay the amount needed to eliminate the lag in wages, bring firefighters on parity with police officers and recognize the increase in work load when the Fire Department purchased a second Rescue Vehicle.

Ability to Pay

The Town's argument that they do not have the ability to pay is based on the reduction in the tax levy resulting from the closing of one power plant and the sale of another power plant is not supported by the evidence. First, although the Somerset Power Plant stopped generating power in December 2011, the impact on the tax levy was less than 3% since FY07. Second, the Dominion Plant despite its closure still accounts for more than 28% of the tax levy in FY13. Third, the Town informed the Arbitration Panel that the owner of the Dominion Plant appealed their FY12 assessment of the Plant to the Appellate Tax Board and also plans to appeal their FY13 assessment. As a result, the Town anticipates substantial deficits in the FY12 and FY13 overlay as demonstrated in TX2. The Union argued that the Town cannot state that their assessment of the Plant is correct but then argue the Town's overlay will result in a deficit if Dominion wins their appeal.

Eliminating this as an issue, the remaining evidence shows that Somerset has the funds and a very strong debt position to pay the Union's economic proposals which can come from free cash (approximately \$1.7 million) stabilization fund balances (\$7.1 million), tailings (\$36,000), available monies outside the General Fund (\$100,000) and the Health Trust Fund excess (1.1 million). It is clear that the economic health of Somerset continues to remain strong with a debt-to-asset ratio of 3.97% which is the fourth lowest of the Union's comparables and the amount of year-end available funds as a percentage of budget was 22.9% which is the highest of all comparables.

The Arbitration Panel should not consider the Town's argument regarding their inability to pay because they are totally responsible for the funding of the \$84 million cost of the new school and have outstanding liabilities in Other Postemployment Benefit

Plan (OPEB). The evidence shows that the State will absorb \$64% of that cost and the Towns of Somerset and Berkeley will split the remaining cost (Somerset 75%, Berkeley 25%). Therefore, Somerset cost will be approximately \$22.7 million as opposed to \$84 million. Regarding OPEB, the Town failed to submitted evidence that demonstrated it was required to put funds aside to cover that potential liability.

Comparability Data

Externals

The Union maintains that whether the Arbitration Panel considers the Union's comparable communities or the Town's is irrelevant because both demonstrate that Somerset firefighters lag significantly behind either set of comparables. The updated data in TX5 shows that firefighters make 10.58% less in their base wage than the comparable communities. Furthermore, the Union's data shows that firefighters' wage rates lag on average approximately 12.74% using wage settlements with the average time period of FY12.6. The Town's wage proposal is insignificant and does not come anywhere near to closing the wage disparity gap between Somerset firefighters and comparable communities.

Internals

Police

The Union contends that the Arbitration Panel should award the Union's wage proposal to bring the firefighters into parity with the Town's police units because continuing or restoring parity between a municipal's police and fire departments is supported by other JLMC awards. The Town failed to present any comparison evidence between the police and fire units; therefore the Panel should rely totally on the Union's evidence which were based on three factors that make firefighters different from police officers:

- (1) Police officers work 5.8% fewer scheduled hours than firefighters since police officers work on a repeating 34-hour cycle and firefighters work on a repeating 48-hour cycle;

- (2) Police officers are provided significant additional earnings opportunities in terms of overtime and paid details; and
- (3) The Town accepted the obligation to pay for the full Quinn education benefit for all otherwise eligible employees and has agreed to extend Quinn benefits even to those employees who would not be eligible under state law.³

Taking these three factors into consideration and utilizing the Union's comparison data of police officers' and firefighters wages, the evidence clearly established that the average annual lag between firefighter with 15 years of service with comparable educational attainments is 14.1%. In addition, when a comparison is made between the actual annual earnings of firefighters and police officers; firefighter's earnings lag even further by 23.5%.

Quinn Bill Educational Benefits

The Union acknowledges that the police units did not receive an across-the-board wage increase in FY10 and FY11 but they did obtain 100% funding of the Quinn Bill for current employees as well as employees hired after July 1, 2009 who under State Law were not eligible for Quinn benefits. The Union argued this "super-Quinn benefit is a game changer"⁴ when the Town agreed to fund the benefit at 100% whether the State reimburses them 50% from that day forward. Somerset was not forced to make this change but chose to make it not only for current employees who may have received a substantial pay cut but also police officers who were exempt from the law. This agreement results in police officers receiving huge increases from 5% to 25% in exchanged for the police officers agreeing to a low wage package.

Other JLMC Arbitration Panels have concluded that when a municipality agrees to pay 100% of the Quinn benefit for police officers that it impacts firefighters' contracts given that in every case, the Panels have awarded additional compensation to balance the benefits received under the Quinn Bill. The Union argued that this Panel must do the same and at least award the Union's wage proposal of 3% in each year of the Agreement.

³ Union Brief, p. 24.

⁴ Union Brief, p. 26.

Other Internal Comparables

The Arbitration Panel should also take into account what other internal comparables received that is beyond what the Town is offering the firefighters. First, non-bargaining employees received in addition to the across-the-board wage increases received an additional 4% increase in steps every year. Second, the Public Works and Sewer units received wage reopeners in FY12 and FY13 and FY11 through FY13 respectively which gives them the right to obtain wage increases over and above what they received if the firefighters obtain a greater wage increase.

Wage Increases for Recent JLMC Awards

The Union contends that recent JLMC Awards demonstrate that the average wage increase of 2% per year is the norm and that no Award in the last several years has granted a 0% increase for more than one year without granting some other extraordinary benefit. The Union submitted twelve awards to support their position.

Wage and Benefits Proposal is Justified by Increased Workload

The Union maintained that the Arbitration Panel should consider an increase workload as a factor in determining if their wage proposal is justified. With the purchase of the second Rescue Unit in FY12 it is undisputed that the workload of the firefighters has increased two-fold with no increase in staffing. Therefore, the Panel should take this into consideration when awarding the economic package for this award.

In summary, the Town's argument that they do not have the ability to pay the wage proposal by the Union is unsubstantiated. The Town has the money and the firefighters deserve to be brought up to parity with Somerset police officers and firefighters in comparable communities and due to their increase in workload.

Town Position

The Town argued that much of the Union's data and calculations are based on incorrect assumptions or faulty reasoning and they should not be considered by the

Arbitration Panel. First, the Union's comparable communities do not have the same community of interest as Somerset. Second, the chart which reflects that the Town's 2011 debt as a percentage of the budget is misleading given that Somerset is building a new high school and will be acquiring the largest amount of debt in the Town's history. Third, the data used for FY 12 free cash and the stabilization fund of \$14.3 million is incorrect. The Union failed to report that \$3.6 million free cash was used for special articles or transferred to the Stabilization Fund leaving a balance on June 20, 2013 of approximately \$1.73 million. In addition, the remaining free cash was not used, was reverted and since it is not anticipated that the FY14 free cash will be certified until after January 2014 then the free cash is not accessible. The stabilization fund on June 30, 2013 was at \$9.1 million but during Annual Town Meeting \$2.0 million of the fund was applied to the budget to reduce the tax rate. Therefore, free cash and the stabilization fund are at \$7.1 million not \$14.3 million.

Fourth, the "average increase in base wages" chart is inaccurate because no data was available for almost half of the comparables which results in the inflation of the Union's purported average base wage. Fifth, the charts allegedly reporting on various averages for compensation/benefits in the comparable communities are also incorrect because the averages include only those communities who offer the compensation/benefit and a 0 is not added in for those communities who do not. Sixth, the Union's comparability data does not include the employer cost of health insurance which is a major economic factor in municipal collective bargaining agreements. Finally, the Union improperly used a Department of Revenue 2.65% cost of living adjustment and then disregarded the Department of Labor's cost of living adjustments for calendar years 2010, 2011 and 2012 which were 1.6, 2.7 and 1.6 respectively. Based on the above, the Panel should not consider the Union's comparability data in its entirety and specifically should dismiss the "wage lag summary" data which was used to compare firefighters' salary and benefits with police officers.

The Union's position that firefighters should receive significant increases to achieve parity with the police units because police officers can work details and earn Quinn Bill educational benefits is also misplaced. Although police officers can earn extra money working details the officers have to work the additional hours, a piece of

information which was not factored into the Union's argument that firefighters work more hours than police officers. Moreover, since the creation of 24 hour shifts most, if not all firefighters, have full-time jobs with significant earning capacity beyond their full-time employment with Somerset.

With regard to the Quinn Bill, the Town Administrator testified that Somerset has been paying the whole benefit ever since the State began reducing its portion of the funding. To do otherwise police officers' wages would have been cut anywhere from 10% to 20% and the Town would have lost the ability to retain current employees and recruit new employees. Although the Union implores the Arbitration Panel to consider how this benefit affects achieving parity between firefighters and police officers yet they fail to recognize that firefighters currently receive a stipend for education. Accordingly, the Quinn Bill would be an additional education incentive which police officers and firefighters in the comparable communities do not have. The Union's contention that Paramedic training takes two to four years to complete hence it should be equivalent to earning an Associates or subsequent degree was rebutted by the Chief and is unfounded. Additionally, the Union's argument that the Town's cost of funding the Quinn Bill at \$122,000 or 4.97% is misleading because police officers' base salary did not change given that the benefit is not new. Considering that the Union factored in both details and the Quinn Bill inappropriately, the Arbitration Panels should ignore the Union's "total earnings comparison" data between firefighters and police officers.

Recognizing that the Union's data discussed above was flawed it is understandable why the Union believes that the Town has the ability to pay for a compensation package of \$909,000. The Town argued this cannot be done for the following reasons. One, the Town does not have \$14 million in free cash and the stabilization fund to finance the package. Even if the Town had surplus monies from these sources they should not be used for paying reoccurring expenses because it negatively affects the Town's structural operating deficit which Somerset is already operating under. The Town has kept a large stabilization fund balance to off-set losses in revenue from the power plants. Obviously, this is what is happening now and the Town expects that money will be taken from the Stabilization Fund in FY13 and FY14 to cover the losses from the Dominion plant being decommissioned. Two, the Union

maintains that there is a Health Insurance Trust Fund excess of \$1.1 million but provided no evidence where the figure came from. Nevertheless, even if the surplus was available, it should either be returned to the employees and the Town or used to offset subsequent year(s) health insurance premiums.

Three, the Union demonstrated no understanding of the impact on Somerset economically as a result of the Dominion Power Plant being decommissioned and the reduction in value and sale of the Somerset Power Plant. These two companies are the Town's largest taxpayers and have contributed over 40% of the tax levy and are now contributing only 28%. The only comment made by the Union regarded the Town's action of putting money in their overlay account to deal with Dominion's tax abatement FY12 appeal. Although it is true that the Town did transfer funds into the overlay account if Dominion appeal is approved; the amount barely covers 50% of the abatement liability and does not deal with Dominion's FY13 abatement appeal. Furthermore, the number of abatements filed by other commercial taxpayers is unprecedented and those abatements refunds would also come from the same overlay account. Four, the Town's state aid has decreased substantially since FY 09 from a high of \$7.5 million in FY09 to a low of \$5.7 in FY12. Although, the Town's state aid for FY13 reflects an increase it is still \$1.3 million less than what was received in FY09. Consequently, there has been a significant increase in residential tax rates from \$13.18 FY00 to \$15.04 in FY13. The commercial tax rate has also increased from \$26.66 in FY00 to \$30.11 in FY13.

Five, the Town's ability to pay for the Union's wage proposal is also affected by the building of an \$84 million regional high school. Although approximately 64% of the construction costs will be covered by the State, the Town will have to bond the remaining costs. In addition, the Town has over \$11 million in unfunded future retiree benefit that they should have been putting money away to cover and have not done because of their fiscal situation. Six, the Town acknowledges that the base wages are below the mean of the comparables; however, the firefighter benefits are equal to or greater than the comparable communities. Accordingly, there is no need to go above the "pattern of general wages increases" that has been accepted by all Somerset's bargaining units, including the police units. Finally, The Town has significantly reduced

the general operating budgets for FY13 and FY14 and has avoided layoffs through attrition. The Town expects to continue trimming the operating budgets over the next few years.

Discussion

It goes without saying that the Arbitration Panel spent the majority of our time reviewing and discussing the parties' wage proposals and the Town's ability to pay. Given the evidence, the Panel concludes that although the Town's ability to pay has been weakened by a number of factors; Somerset still has the ability to pay "reasonable" wage increase for firefighters. We emphasize the word "reasonable" because the Panel does not find that the Union's wage proposal is "reasonable" given that no one; not the police, other municipal bargaining units or the comparables received three percent wage increases each year during FY10 to FY13. Furthermore, the Panel is not compelled to award increases in FY10 and FY11 because all municipal bargaining units did not receive an across-the-board wage increase. However, we believed based on our rationale set forth below that firefighters should receive "reasonable" across-the board wages increase of 3% in FY12 and FY13. Accordingly, the Panel's awards the firefighters 0% in FY10, 0% in FY11, 3% in FY12 and 3% in FY13.

Ability to Pay

First, the Panel cannot ignore the negative affect the recession and the long recovery from it had on Somerset and their taxpayers financially. There can be no argument that the Town which was already fiscally conservative had to tighten their belts even more and develop budgets without overburdening Somerset taxpayers. The Town was able to protect the taxpayers in fiscal years 2010 to 2012 with percent changes to the tax rate being 2%, 0 and 3% respectively but could not in FY13 given that there is a 17% change in the tax rate which is one of the highest rates over a 13 year period. We did take into account the decreases in State Aid since FY2009 but noted that there was an estimate \$1.3 million increase in FY13 which could be used to fund the firefighters wage increase. In addition, although the Town's ability to pay has

been weakened it still is stable considering that it has 22.9% of its FY13 budget on hand a percent which was the highest of the Panel's comparables.

Second, we could not disregard the fact that the tax levy from two of the Town's largest taxpayers, the Somerset and Dominion Power Plants has decreased steadily from a high of over 40% in FY04 to a low of 28% in FY13. Despite this decline, the Panel concludes that the impact is in FY13 and beyond but not FY10 through FY12. In addition, we found the Town's argument that it could not pay a reasonable wage increases because Dominion may win their tax abatement appeal irrelevant given that according to the Somerset's FY12 Continuing Disclosure Report:

[The Town] is confident it will prevail in this proceeding [tax abatement appeal], but should the taxpayer prevail, the Town is prepared to cover approximately half of the maximum potential abatement with funds held in overlay, with the remainder appropriated from reserves, raised on the re-cap sheet, or borrowed, as appropriate, should the need arise⁵.

Based on the above, the Panel believes that the Town's plans to cover the abatement should not come at the expense of the firefighters receiving a reasonable wage increase in FY12 and 13.

Third, the Panel also found that the Town's argument regarding the building of the Somerset Berkeley Regional High School is immaterial for the period of time in question. While it cannot be disputed that the Town will incur a large amount of debt in the near future which may impact the next round of firefighter negotiations; it does not impact reasonable wage increases for FY10 to FY13. Furthermore, the current debt-to-asset ratio at 3.97% is one of the lowest of the comparables. Four, we believe the Town can fund the wage increase but if the Town cannot allocate monies from the budget then they can draw from stabilization funds which is \$7.1 million. We understand why the Town may not want to use nonrecurring funds to pay for recurring expenses; however, it is within the Town's discretion to use the funds in this manner.

Five, the Arbitration Panel did not credit the Union's ability to pay argument regarding the health care trust funds because the \$1.1 million surplus is based on estimates and/or assumptions; not actual data. We acknowledge this was beyond the

⁵Appendix 17, p. 42.

Union's and the Town's control despite the reporting procedures set forth in Regional Agreement (Appendix 19) that was created pursuant to Massachusetts General Law, Chapter 32B, sections 3A and 12. Six, we rejected the Town's inability to pay argument as a result of OPEB liabilities because the Town has chosen not to put funds aside to cover this liability and the firefighters should not bear the Town's burden of not doing so. Finally, the Panels' conclusion that the firefighters should receive an additional 1% in FY12 and FY13 also stems from firefighters bringing in revenue by manning the ambulances and the fact that their workload substantially increase without an increase in staffing.

External and Internal Comparable Data

The Arbitration Panel reviewed the comparability data and finds that both external and internal data supports wage increases of 3% in FY12 and FY13 for Somerset firefighters. With regard to the external comparables actually support an even higher increase; however, the Panel did not award wage increases in excess of 3% due to our conclusion that Union's wage proposal was not "reasonable" when compared with both external and internal comparables. Looking at the external comparables currently the base wage for Somerset firefighters is \$46,931 which is \$4,406 below the average of the nine comparables used by the Panel. By the firefighters receiving 3% increase in both fiscal years the base wage will increase to \$49,789 which does not bring them above the average but keeps the firefighters competitive with the comparables

The internal wage/compensation settlements were given considerable weight because they demonstrate the Town's ability or willingness to pay. The wage settlements for Town employees and teachers are as follows:

Unit	FY 10	FY11	FY12	FY 13	FY14	FY15
Police-All	0%	0%	1% (1)(2)	open	open	open
Dispatchers	0%	0%	0% (3)	0% (4)	0%	0%(5)
Public Works	0%	0% (6)	1%	2% (7)(8)	open	open

Sewer	0%	0% (6)	1%	2% (8)	open	open
Water	0%	0%	1%	2%	open	open
Personnel By-Law	0% (9)	0%	1% (10)	1% (10)	(11)	
Teachers	unknown	unknown	1%	2%	1.5%	open

Notes:

(1) On January 1, 2012 the Town agreed to fully fund the Quinn Bill Educational Benefit for officers hired prior to July 1, 2009 to compensate for the State's underfunding of its reimbursement of the benefit. In addition, the parties agreed that the educational benefits would be offered to all employees hired after July 1, 2009. These employees were previously ineligible to receive Quinn Benefits.

(2) Effective June 30, 2012, Police Officers received a 1% increase in Article 30 - Accreditation/ Training Stipend for a total of 3%.

(3) There are two Agreements for the Dispatchers that cover the six fiscal years - July 1, 2010 to June 30, 2012 and July 1, 2012 to June 30, 2015. Effective July 1, 2011, Dispatchers did not receive a wage increase but received a 1% increase in salary pursuant to Article 21- Stipends under Accreditation/Training Stipend. Effective June 30, 2012, Dispatchers received an additional 1% increase in salary for the same stipend.

(4) On July 1, 2012, Dispatchers received eighty-seven cents (\$.87) per hour stipend paid out weekly for the Emergency Medical Dispatch Program mandated under M.G.L. Chapter 6A, Section 18B, and 560 C.M.R. 5.00.

(5) The parties agreed that the Dispatchers would have a wage reopener in FY 2014 and FY2015 if another bargaining unit in the Town received a greater wage increase in any of the fiscal years than what the Dispatchers received.

(6) In FY11 a \$250 stipend increase was given.⁶

(7) The parties agreed in FY12 and FY13 that Public Work received automatic reopeners for wages and stipends only.

(8) The parties agreed to a wage reopener in any of the fiscal years if another bargaining unit in the Town received a greater wage increase in any of the fiscal years than what the Public Work and Sewer employees received.

(9) The average step increase is 4% therefore; these employees received a 4% step increase when other bargaining units received no increase in FY10 and FY11.

⁶ The Panel was unable to locate the \$250 stipend in the Public Work and Sewer Agreements but accepted the stipend as fact since the Union did not dispute its existence.

(10) These employees received a 1% across-the-board wage increase in addition to an average 4% step increase in FY12 and FY13.

(11) Effective July 1, 2013, the Personnel By-Law salary schedule was increased from 7 steps to 9 steps which allowed employees at the top step to continue receiving 4% step increases.

First, the Panel finds that the Town's argument that firefighters should receive the same "wage pattern" increases given to all bargaining units is unfounded. Based on the wage chart above and the notes provided, the Panel found that the other Town bargaining units received total wages/compensation above and beyond the "wage pattern" in FY12. Therefore, the Town's willingness to support higher compensation packages of other unionized and non-unionized employees supports the firefighters receiving a total of 3% in FY12 and FY13. In addition, three out of the six Town bargaining unit, i.e. Dispatchers, Public Works and Sewer, received either automatic wage and stipend reopeners or a wage reopener based on other bargaining units receiving a higher wage increase in any of the fiscal years. These wage and/or stipend reopeners may result in these units receiving additional wage increases now that the Panel awarded firefighters a greater increase in FY12 and 13. Finally, Personnel By-Law employees continued to receive their steps in FY10 and FY11 which no other bargaining unit received. In addition, they received steps and across-the-board wage increases of 1% in FY12 and FY13 which was more than any other bargaining unit received during that time.

Second, with regard to the Quinn Bill Educational Benefits, the Town's decision to fully fund the education benefits for current police and then extend the benefit to officers who never had it justifies an additional 1% higher wage increase for firefighters. The Town's actions clearly demonstrate when they want to provide additional compensation they have the ability and are willing to pay for them and the Panel finds that firefighters should not be treated differently. Finally, the Panel did not consider the Union's "parity" argument because the evidence did not establish that the Town and the Union historically negotiated firefighters' wage increases so they would be on parity with police officers. The Panel recognizes that other JLMC interest arbitration panels have used the "parity" criteria when awarding wages; however it is not mandated under the

statute and based on the lack of evidence we were not compelled to use parity as a criteria here.

Based on the Town's ability to pay and the comparable data discussed above, the Panel awards the firefighters a general wage increase of 3% in FY12 and FY13.

Award

Three-Year Agreement

Year 1	7/1/09	0% Across-the-Board Wage Increase (FY10)
Year 2	7/1/10	0% Across-the-Board Wage Increase (FY11)
Year 3	7/1/11	3% Across-the-Board Wage Increase (FY12)

One-Year Agreement

Year 1	7/1/12	3% Across-the-Board wage Increase (FY13)
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ISSUE # 2

ARTICLE 23 – SICK LEAVE

Current Contract Language

Sick leave with pay will be granted in accordance with the provisions of this Article to each said permanent employee:

* * *

b) Who receives medical, dental or optical examination or treatment, provided that said employee gives the Fire Chief sufficient proof of having attended an examination or undergone such treatment.

* * *

Town Proposal

The Town seeks to add a provision that medical appointments must be approved by the Chief, except in cases of emergency.

Union Proposal

None - The Union seeks to retain the status quo.

Town Position

Currently, firefighters are not required to give notice for medical, dental and optical appointments and because the Chief is notified at the last minute of an appointment it is difficult to keep shifts adequately staffed. This has been a problem on several occasions and the proposed language gives the Chief the discretion to require firefighters to remain on duty if the shift cannot be covered. The Chief testified that generally seven employees are scheduled for each tour but he wants to maintain a minimum of five firefighters even if employees have appointments. Therefore, the language would go into effect when two employees are already out and a 3rd firefighter notifies the Chief that s/he has an appointment. In this situation, the Chief would have the discretion to tell the employee they could not attend the appointment. In addition, the Chief wants notice to be at least four hours in advance. The proposed language makes an exception for emergency situations. The Chief testified that if a firefighter suddenly became ill or the need for an appointment was not known until that day that

would constitute an emergency and the firefighter would be able to attend the appointment.

Union Position

The Union argued that the Town's proposal is ". . . exceedingly restrictive, as it would give the Fire Chief complete and utter discretion, without guiding principles, to deny a member's request to use sick leave to attend even an appointment with a specialist that may have taken months and months to arrange".⁷ In addition, the Chief alluded to needing the language to correct a problem but no evidence was presented that a problem existed. According to the Chief typically when firefighters notify him that they have an appointment they do not take the whole tour off but attend the appointment and return to work. Therefore, the Chief is not covering a 24 hour tour but only a small portion of it. The Chief agreed that it would be more cost effective to cover a portion of a shift as opposed to an employee calling in sick for the whole shift which would require overtime.

The Town did not share with the Union until the arbitration hearing their goal to man a shift with a minimum of five firefighters leaving the Union to interpret the Town's proposal that the Chief would have the discretion to tell an employee that s/he could not go to their scheduled appointment for any reason. In addition, it was at the arbitration hearing that the Chief shared that a reasonable notification period would be a minimum of four hours and the Union still does not know when or how the Chief could revoke his permission. Finally, it was only clarified during the hearing that if a firefighter had received approval for a medical appointment in advance and on the day of the appointment the staffing level went below five that the Chief would still allow the employee to attend the appointment because he had previously approved it.

Based on the fact that Town's proposal lack specifics and no evidence of a problem was received the Panel should deny the proposal. If the Panel determines the proposal is reasonable, the Panel must insure that the new language contains criteria that the Chief must use to determine if the fire fighter can attend the appointment and

⁷ Union Brief, p. 41.

how much notification the Chief needs to make the determination as well as notification to the firefighter if s/he is unable to attend the appointment.

Discussion

The Panel understands the purpose of the Town's proposal and agrees that the need to receive prior notice for appointments so tours are staffed properly is a reasonable request. However, we are not awarding the change for two reasons. First, the Arbitration Panel is reluctant to modify contract language that has been in the Agreement for a considerable period of time and believe a change should occur for thorough the "give and take" of negotiations. Second, the proposal, as written, is extremely restrictive and goes beyond what Chief Jepson actually desires. The evidence demonstrated that the parties need to discuss the change further to develop the appropriate language which will accomplish what the Chief wants but does not force firefighters to call in sick for an entire tour. This result is more costly than covering only a portion of a tour when firefighters are attending medical, dentist and optical appointment. Based on the above, the Panel does not support a change to the current language.

Award

Article 23 – Sick Leave, Section b shall remain at status quo.

ISSUE # 3

ARTICLE 26 - RESIDENCE OUTSIDE OF TOWN LIMITS

Current Contract Language

Residency within ten (10) miles, border to border of the Town of Somerset is a condition of employment and/or promotion. All employees hired after January 1, 1999, must within six months of their employment by the Town, and as a condition of their continued employment, reside within ten (10) road miles of the fire station.

Union Proposal

Delete second sentence.

Town Proposal

None – The Town seeks to retain status quo.

Union Position

By deleting the second sentence all firefighters will return to a residency requirement of border to border rather than 10 miles from the fire station. The Union seeks this change to gain parity with the two police units in Somerset. The Town did not demonstrate why the change would be problematic or that the change affects firefighters returning to the fire station in a timely manner when called back. The Town insists on retaining the language because the Town received it 14 years ago as one item in exchange for the Union receiving the 24 hour shift schedule. Additionally, even though Somerset is not regulated by civil service, the civil service law and Chapter 150 E were amended to allow parties to negotiate residency issues.

Town Position

The Town received the residency requirement as part of a quid pro quo for the 24 hour shifts. The Chief testified keeping the language the same continues to be important so firefighters can be call back to work and return quickly for emergencies.

Discussion

Eliminating the residency requirement that firefighters hired after January 1, 1999 must reside within ten road miles from the fire station is supported by the comparables in that six of the nine comparables have border to border residency requirements. However, the Panel is not awarding the modification of the contract provision because the parties already reached agreement on the issue and the Town gained the restriction as a result of a quid pro quo for firefighters receiving 24 hour shift schedules. If the Union wants to change this provision it must be accomplished through negotiations.

Award

Residency Requirements shall remain at status quo.

ISSUE # 4

**ARTICLE 31 - CERTIFIED E.M.T./PARAMEDIC/FIRST RESPONDER
COMPENSATION AND COMPLEMENT**

Current Contract Language

* * *

EMT stipends shall be paid in a lump sum at the same time as educational credits are paid, according to the provisions in Article 13 [sic].⁸

Effective July 1, 2006, the following rates will apply:

A. EMT's Incentive Pay

- | | |
|---|------------|
| 1. First year of the contract (2006-2007): | \$3,800.00 |
| 2. Second year of the contract (2007-2008): | \$4,000.00 |
| 3. Third year of the contract (2008-2009): | \$4,200.00 |

B. EMT's Enhanced Incentive Pay

- | | |
|---|------------|
| 1. First year of the contract (2006-2007): | \$4,350.00 |
| 2. Second year of the contract (2007-2008): | \$4,550.00 |
| 3. Third year of the contract (2008-2009): | \$4,750.00 |

C. EMT I Incentive Pay

- | | |
|--|------------|
| 1. First year of the contract (2006-2007) | \$4,550.00 |
| 2. Second year of the contract (2007-2008) | \$4,750.00 |
| 3. Third year of the contract (2008-2009) | \$4,950.00 |

D. EMT/Paramedic Incentive Pay:

- | | |
|--|------------|
| 1. First year of the contract (2006-2007): | \$5,450.00 |
| 2. Second year of the contract (2007-2008) | \$5,650.00 |
| 3. Third year of the contract (2008-2009) | \$5,850.00 |

Union Proposal

	<u>7/1/2009</u>	<u>7/1/2010</u>	<u>7/1/2011</u>	<u>7/1/2012</u>
EMT-B*	\$7270	\$7488	\$7713	\$7944
EMT-I	\$7755	\$7987	\$8227	\$8474
EMT-P	\$8239	\$8486	\$8741	\$9003

* This proposal collapses the EMT-Basic and EMT-Basic Enhanced into one level or the EMT/Basic stipend.

⁸ This is Article 35.

Town Proposal

Increase stipends by an average of \$230 in Fiscal Year 2011.

Union Position

The Union's proposal to substantially enhance the EMT Stipend was made to recognize and compensate for the significant increase in workload by adding a second Rescue Unit and without an increase in staffing. In addition, the proposal places emphasis on the time and effort firefighters must commit to obtain EMT and Paramedic certifications and then continue their education and fulfill testing requirements for recertification. Based on this, the Union argued that the EMT Stipend is on "par with the educational benefits [Quinn Bill] offered to police officers".⁹

The Union contends by the Panel awarding the increases the Town will achieve parity for all public safety employees and maintains this should be done given that the Town agreed to fund for all employees, including new hires, the entire cost of the Quinn Bill after the State withdrew its funding support. The Union understands the Town takes exception to the increases proposed because they are substantially higher than what was discussed at negotiations; however, the Union defends the proposal for two reasons. First, the JLMC directed the Union to revert its' proposal from percentages to fixed dollars and this was done. Second, the overall compensation package was lowered when they withdrew the night differential proposal and purposely shifted its economic priorities to the EMT stipends. Based on this, the Union argued that it is totally appropriate for the Panel to consider the proposal.

Town Position

First, the Town objects to the Panel considering the Union's proposal because it is regressive given that the Union's initial proposal of EMT B - \$400, EMT I - \$500 and EMT P - \$600 per year over three years never changed during negotiations and mediation until it was submitted to the Arbitration Panel and the Town via email on May 28, 2013. The current fixed dollar stipends figures far exceed the dollar figures that the parties bargaining over.

⁹ Union Brief, p. 15.

The Town is open to a moderate increase for EMT Stipends in the second year but contends the Union's proposal is unjustified. To validate the Town's EMT Stipend proposal, the Chief compared firefighter stipends with Towns that had a similar complements of full-time and call firefighters, the population of the community was between 15,000 and 20,000 and the geographical area was mainly in Bristol County or just beyond its borders. The Town could agree to combine EMT Basic with EMT Enhanced because currently only firefighters that are EMT-Enhanced and Paramedic Certified are hired.¹⁰

Discussion

The Arbitration Panel awards the Town's proposal with regard to increasing the EMT stipends because we find that the significant increases proposed by the Union are improper for the following reasons. First, historically Somerset firefighters have received compensation increase in base wages as opposed to yearly increase in the EMT stipends. Therefore, the Panel finds no compelling reason to change the manner in which increases are distributed. Second, the comparables do not support the increases. The average EMT stipends for the nine comparables are EMT Basic/Enhanced – \$3469; EMT Intermediate – \$4650 and EMT Paramedic – \$5857. Somerset's EMT-Basic/Enhanced stipend is significantly higher (\$1281) than the comparables; \$300 higher than the EMT – Intermediate comparables and \$7 less than the comparables for EMT-Paramedic. Accordingly, the Town's proposal to increase the stipends by \$230 in the second year of the Agreement keeps Somerset above all the comparables.

Third, the Panel in Issue #1 – Wages above took into account the Town's decision to fund the Quinn Bill for current and new employees and awarded wage increases of 3% and 3% in FY 2012 and 2013. However; we do not believe that the Town's agreement with the police is justification for doubling EMT stipends. The Quinn Bill educational benefit for the Somerset police units is not new and Town's agreement to fund the benefit to retain seasoned police officers whose salaries would have been

¹⁰ Currently, the Department has six EMT-Basic/Enhanced, one EMT-Intermediate and 22 EMT-Paramedics.

substantially lowered and provide the benefit to employees who did have access to it is not a valid reason to increase wages and also double EMT stipends.

Finally, the Arbitration Panel does not find that the Union's withdrawal of the night differential proposal is a quid pro quo for stipend increases that are significantly above the comparables. As mentioned in the introduction section, proposals that seek a significant change, i.e. a new benefit, in a mature agreement is rarely awarded in interest arbitration. Furthermore, since only one comparable – Westport - has a night shift differential benefit the Panel would have found no compelling reason to award the benefit if it was before us. The creation of a new benefit should occur at the bargaining table and not as a result of an arbitration award. Based on the above, the Panel finds that the Union's withdrawal of the proposed benefit has no financial quid pro quo value to increase the EMT stipends.

Award

The EMT - Basic/Enhanced, EMT – Intermediate and EMT – Paramedic Stipends shall be increased by \$230 retroactively to July 1, 2010.

ISSUE # 5

ARTICLE 38 – SENIOR OFFICER/FIREFIGHTER PAY

Current Contract Language

1. Effective June 30, 2006, members of the bargaining unit shall be entitled to the following “senior officer/firefighter pay”:
 - A. After fifteen (15) years of service as a full-time firefighter: \$15.00 per week;
 - B. After eighteen (18) years of service as a full-time firefighter: \$30.00 per week;
 - C. After twenty-five (25) years of service as a full-time firefighter: \$50.00 per week.

* * *

Union Proposal

Effective July 1, 2009, members of the bargaining unit shall be entitled to the following “senior officer/firefighter pay”:

- A. After ten (10) years of service as a full time fire fighter \$25.00 per week.
- B. After fifteen (15) years of service as a full time fire fighter \$40.00 per week.
- C. After eighteen (18) years of service as a full time fire fighter \$55.00 per week.
- D. After twenty-five (25) years of service as a full time fire fighter \$75.00 per week.

Town Proposal

None - The Town seeks to retain status quo.

Union Position

The Union’s proposal seeks to increase firefighters’ compensation overall so parity can exist between the firefighters and police officers. The Union understands that this cannot be done all through base salaries and proposed to add a senior officer/firefighter stipend after ten years at a rate of \$15.00 per week and increase the amount of the current stipend after 15, 18 and 25 years of service.

Town Position

The Senior Officer/Firefighter Pay is a second longevity stipend that firefighters receive in addition to a regular longevity stipend. The Town argued keeping the stipend at status quo is appropriate for two reasons. One, Somerset is the only Town in the comparables to have a second longevity stipend and two, when adding the two

longevity stipends together, Somerset firefighters are paid the highest longevity stipend when measured against the comparables.

Discussion

Although the Arbitration Panel did not receive significant evidence to support the Union's proposal; we do agree that this stipend should be increased. However, the Union's proposal exceeds what police officers currently receive and we find there is no compelling reason that firefighters should have a higher Senior Officer/Firefighter Pay stipend than police officers. Therefore, the Panel awards senior officers and firefighters to receive the same second longevity as the police officers.

Award

Article 38 shall be amended as follows:

Effective July 1, 2009, members of the bargaining unit shall be entitled to the following "senior officer/firefighter pay":

- A. After fifteen (15) years of service as a full time firefighter \$20.00 per week.**
- B. After eighteen (18) years of service as a full time firefighter \$35.00 per week.**
- C. After twenty-five (25) years of service as a full time firefighter \$55.00 per week.**

ISSUE # 6

APPENDIX C – WORK SCHEDULE FOR STAFF PERSONNEL

Current Contract Language

Work week for staff personnel will consist of four (4) ten (10) hour days. During a holiday week, if the holiday falls between Monday and Friday then that will be considered the day off for the week.

Town Proposal

Amend Appendix C by deleting the existing language and replacing it with the following:

“The work week for staff personnel will consist of four (4) ten-hour days, said work week to be scheduled at the discretion of the Chief.”

Union Proposal

None – The Union seeks to retain status quo.

Town Position

This language change impacts one firefighter who is the Department's Training Officer and who does not work on a 24 hour shift schedule. Currently, the employee determines his own work schedule and the Chief does not have the ability and/or flexibility to create a training schedule that he believes meets the training needs of the Department. The Chief has no intentions to change the Training Officer's schedule from a monthly schedule to one that could be changed weekly. He is not seeking to have the Officer work on week-ends or change the current practice of the Training Officer working during a holiday week.

Union Position

The Union contends the Town failed to establish that there was a problem except that the Chief is frustrated that he has no control over scheduling when the Training Officer's works. And although the Chief testified that he would continue to set the Officer's schedule on a monthly basis two weeks in advance and would not require him/her to work on the week-end, the language as written gives the Chief the unfettered discretion to set any schedule he chooses. In addition, the new provision deletes the

reference to the Officer's work schedule during holiday weeks and while the Chief testified his intent is to continue this practice; that is not clear in the proposal.

Discussion

The Panel concludes it is reasonable for the Chief to have control over the Training Officer's schedule. However, based on the Chief's testimony the Town's proposal gives him more discretion than what he is seeking. Therefore, the Panel awards that the Chief shall have discretion over setting the Officer's schedule under the following conditions:

1. The current language shall remain in place and the parties shall meet and develop additional language which shall include the following criteria:
 - a. The Chief has discretion to set the Training Officer's schedule on a monthly basis.
 - b. The Training Officer shall receive a two week notice of what his/her schedule will be the following month.
 - c. The Training Officer will not be required to work week-ends.

Award

Appendix C shall be amended as follows:

1. **The current language shall remain in place and the parties shall meet and develop additional language which shall include the following criteria:**
 - a. **The Chief has discretion to set the Training Officer's schedule on a monthly basis.**
 - b. **The Training Officer shall receive a two week notice of what his/her schedule will be the following month.**
 - c. **The Training Officer will not be required to work week-ends.**

ISSUE # 7

BENEFITS CALCULATIONS

Current Contract Language

There is no current language.

Union Proposal

All benefits calculations in the parties' collective bargaining agreement shall be converted from 1/5 of a week's pay to 1/4 of a week's pay.

Town Proposal

None – The Town seeks to retain status quo.

Union Position

The Union is seeking to receive what it did not obtain in negotiations and a grievance arbitration award which was all leave benefits being calculated at 1/4 per week basis as opposed to 1/5. Although the Union acknowledged when they received 24 hour tours 14 year ago they did agree there would no additional cost added; the current proposed change is made in the interest of fairness and will only cost approximately \$6000 per year. Firefighters work four shifts per week on average while other town employees work five shifts per week, consequently firefighters are required to use more leave days when they are out sick or on vacation leave. In addition, firefighters are more apt to get sick because as EMTs they come in contact with people who are ill and they are also get injured more often because of the dangerous work they perform. Therefore, the Union seeks this change because if it is not awarded firefighters will continue to use more leave days to every one day they get off. The Union contends that penalizing firefighters based on their shift structure is inappropriate.

Town Position

The Chief testified that when the 24 hour shifts were negotiated that the parties also discussed changing the way benefits, i.e. holidays, vacation leave and sick leave, were calculated. Previously benefits were earned on a 1/5 basis and the Union sought

when they received 24 hours shifts to have all benefits calculated on a 1/4 basis. At the time the parties did agree that holidays would be calculated on 1/4 basis but there was no agreement for sick and vacation leave to be calculated in this manner. The Union is now seeking the change and the Town opposes making the change for several reasons.

First, back in 1999 the Union said the 24 hour shift schedule would not cost the Town more to implement and changing the calculation from 1/5 to 1/4 increases the cost of the benefit. Second, the calculation of benefits for vacation retirement buy-backs¹¹ was arbitrated in 2012 and the Arbitrator found that the Town appropriately calculated the vacation buy-back based on a 1/5 basis since the 24 hour shift scheduled was implemented. Third, for firefighters hired after July 1, 1992 sick leave buy-back is paid at \$25 per day for up to 200 days with no deductions. Therefore, for two-thirds of the Department it doesn't matter if firefighters are paid at 1/5 or 1/4. Finally, the Union offered no pertinent evidence to support a change in the way sick and vacation leave are calculated.

Discussion

The parties have both collective bargaining and arbitral history over the calculation of benefits for a lengthy period of time. The Panel acknowledges the Union's frustration with how sick and vacation leave benefits are calculated; however, we believe that the change should not come from an Arbitration Panel but through negotiations. In addition, the Panel has awarded other economic benefits, i.e. wages, EMT stipends and Senior Officer/Firefighter Pay, therefore we find no compelling reason to award another cost item and change the way sick and vacation leave benefits are calculated.

Award

The calculations of benefits shall remain at status quo.

¹¹ In the grievance, the Union was also grieving how sick leave buy backs were calculated but they withdrew that portion of the grievance at the arbitration hearing. Arbitrator Beth Anne Wolfson, Somerset Firefighters Union, Local 2649 and Town of Somerset, AAA# 11 390 02564 09 (April 2012)

SUMMARY OF AWARD

ISSUE # 1: ARTICLE 8 – WAGES

Three-Year Agreement

Year 1	7/1/09	0% Across-the-Board Wage Increase (FY10)
Year 2	7/1/10	0% Across-the-Board Wage Increase (FY11)
Year 3	7/1/11	3% Across-the-Board Wage Increase (FY12)

One-Year Agreement

Year 1	7/1/12	3% Across-the-Board wage Increase (FY13)
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ISSUE # 2: ARTICLE 23 - SICK LEAVE

Article 23 – Sick Leave, Section b shall remain at status quo.

ISSUE # 3: ARTICLE 26 – RESIDENCE OUTSIDE OF TOWN LIMITS

Article 16 - Residency Requirements shall remain at status quo.

ISSUE # 4: ARTICLE 31 - CERTIFIED E.M.T./PARAMEDIC/FIRST RESPONDER COMPENSATION AND COMPLEMENT

The EMT - Basic/Enhanced, EMT – Intermediate and EMT – Paramedic Stipends shall be increased by \$230 retroactively to July 1, 2010.

ISSUE # 5: ARTICLE 38 – SENIOR OFFICER/FIREFIGHTER PAY

Article 38 shall be amended as follows:

Effective July 1, 2009, members of the bargaining unit shall be entitled to the following “senior officer/firefighter pay”:

- A. After fifteen (15) years of service as a full time firefighter \$20.00 per week.
- B. After eighteen (18) years of service as a full time firefighter \$35.00 per week.
- C. After twenty-five (25) years of service as a full time firefighter \$55.00 per week.

ISSUE # 6: APPENDIX C – WORK SCHEDULE FOR STAFF PERSONNEL

Appendix C shall be amended as follows:

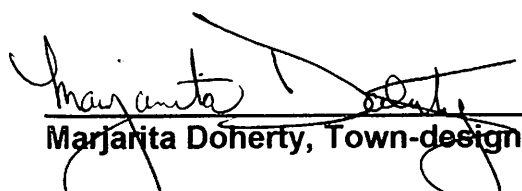
2. The current language shall remain in place and the parties shall meet and develop additional language which shall include the following criteria:
 - d. The Chief has discretion to set the Training Officer's schedule on a monthly basis.
 - e. The Training Officer shall receive a two week notice of what his/her schedule will be the following month.
 - f. The Training Officer will not be required to work week-ends.

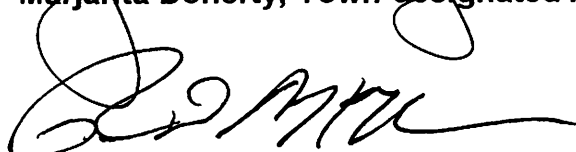
ISSUE # 7: BENEFITS CALCULATIONS

The calculations of benefits shall remain at status quo.

Date: 11/6/13


Bonnie J. McSpiritt, Neutral Arbitrator, Chair


Marjanta Doherty, Town-designated Arbitrator


Richard MacKinnon, Union-designated Arbitrator