

**COMMONWEALTH OF MASSACHUSETTS**  
**JOINT LABOR MANAGEMENT COMMITTEE FOR MUNICIPAL POLICE**  
**AND FIRE**  
**JLMC-11-27F**

---

**IN THE MATTER OF ARBITRATION BETWEEN:**

TOWN OF FALMOUTH

&

FALMOUTH FIREFIGHTERS LOCAL 1397, IAFF

---

**AWARD AND DECISION BY THE ARBITRATION PANEL**

**Background**

The Town of Falmouth ("Town" or "Employer") and the Falmouth Firefighters Local 1397, IAFF ("Union") are parties to a Collective Bargaining Agreement ("Agreement") that expired June 30, 2010. The parties engaged in direct negotiations but were unable to reach a successor Agreement. A petition was filed for the Massachusetts Joint Labor Management Committee ("JLMC") to exercise jurisdiction, and the JLMC exercised formal jurisdiction of the ongoing dispute between the City and the Union. Arbitration hearings commenced on March 25, June 4, and July 8, 2013 in Falmouth, Massachusetts before the Tri-partite panel consisting of Gary D. Altman, Esq., Shelia Vanderhoef, Management Panel Member, and Jay Colbert, Union Panel Member. Leo Peloquin, Esq., represented the Town of Falmouth, and Harold Lichten, Esq., represented the Union. The parties submitted post-hearing briefs.

**Analysis and Issues**

Under the Collective Bargaining Laws of Massachusetts, the Interest Arbitration process is utilized when "there is

an exhaustion of the process of collective bargaining which constitutes a potential threat to public welfare". In reaching the conclusions in the present award, the Arbitration Panel has considered the criteria set forth in the statute including the municipality's ability to pay, wages and benefits of comparable towns, and the cost of living. It must also be noted that large gains or major concessions are not achieved in the format of arbitration. An 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.

#### **Background**

The Town of Falmouth is located on Cape Cod, and spans 44 square miles, including 68 miles of coastline. It has a year round population of approximately 30,000 residents, and the population increases in the summer months to almost 100,000. The Town has Board of Selectmen. The bargaining unit is composed of two Deputies, four Captains, four Lieutenants, and forty-eight firefighters. In addition, full-time and part-time dispatchers working more than sixteen hours a week are also in the bargaining unit. The Town operates five fire stations; two of the stations are staffed by one firefighter, two of the stations are staffed by two firefighters, and headquarters has a minimum of four firefighters on staff. Approximately 50% of the firefighters are certified as paramedics, and the remainder hold EMT certifications. The Town operates ambulance services to the residents. In addition to firefighting apparatus, the Department operates four ambulances.

## **Issues**

The unresolved issues are as follows:

1. Wage Increases	p. 3
2. EMT/MEDIC Payments	p. 13
3. Vacation	p. 17
4. Personal Leave	p. 18
5. Sick Leave Buy Back	p. 21
6. Bi-Weekly Pay	p. 22
7. Sick Leave Usage	p. 23
8. Seniority	p. 24
9. Call/Back	p. 27
10. Longevity	p. 29

## **1. ARTICLE XIX - WAGE INCREASES**

### **Union Position**

The Union position at the outset of the Arbitration proceeding was as follows:

July 1, 2010:	1%
July 1, 2011:	2%
July 1, 2012:	2%
January 1, 2013	2%

The Union, in its brief, is proposing a contract period that would cover a four-year period of time. The Union now proposes two options:

#### **Option I**

July 1, 2010:	2%
July 1, 2011:	2%
July 1, 2012:	2.5%
July 1, 2013	2.5%

Commencing Fiscal Year 2013, paramedic and EMT stipends would be rolled into base.

#### **Option II**

July 1, 2010:	2%
July 1, 2011:	2%
July 1, 2012:	2%
July 1, 2013	2%

Commencing Fiscal Year 2013, a \$500.00 increase to EMT and Paramedic stipends and Fiscal Year 2014 a \$500.00 increase to the Paramedics and EMT stipends would be rolled into base effective Fiscal year 2013.

The Union maintains that the Town has the financial means and the ability to pay the Union's proposed wage and benefit package. The Union states that it must be remembered that the Ambulance service generates over \$1.4 million dollars a year for the Town. The Union also asserts that the firefighters have a very heavy workload, with over 6,500 runs a year, and that the number has been increasing over the past five years.

The Union states that the cost for the Town for fire protection is approximately \$184 dollars per capita, which is the second lowest on the Cape, and the Town spends under \$.50 per \$1000 of property value. The Union also asserts that the Town has new growth and points to FY 12 in which there were 67 new building permits, 3 new commercial permits and 2,409 alteration permits. The Union also states that there have been a significant number of senior housing units approved by the Town. The Union thus asserts, that Falmouth continues to attract new economic growth.

The Union states that at the beginning of FY 13 the Town had more than 12 million dollars in surplus funds available for appropriation. The Union points to free cash of over 3 million dollars, a stabilization fund of 1.8 million, an additional stabilization fund of \$621,000, and an overlay surplus of \$210,000, thus providing over 6 million dollars in money that could be appropriated to pay long overdue pay raises. The Union also states that there is an additional \$6 million set aside in reserves, which could be used for additional appropriations. The Union

maintains that the Town of Falmouth is in solid economic health, and has the means and ability to fund pay increases for its firefighters for all four years of this successor agreement. The Union states that the Town recently had its bond rating increased to AA+ by Standard and Poor.

The Union states that the salary and benefit levels of Falmouth Firefighters is substantially lower than the salary and benefits paid to their colleagues working in other Cape Cod communities. Specifically, the Union states that the base pay of Falmouth Firefighters is the lowest of any other Cape Cod community. Specifically, the Union states that a Falmouth Firefighter with 15 years of service with an EMT earns \$60,793, which is \$4,000 below the average paid to comparable firefighter EMTs in other Cape Cod fire departments. The Union states that a paramedic with fifteen years of service earns \$61,793, which is \$8,000 lower than paramedics in the other Cape Cod communities. The Union also asserts that EMTs and Paramedics in other Cape Cod communities have received an average annual increase of 2.4% for the four-year period of time at issue, which is in line with what the Union has proposed for the duration of this four-year period of time.

The Union states that the Police Officers recently agreed to a new agreement in which the work week was reduced from forty hours to thirty-five hours, which increased their hourly rate, and will ultimately increase their overtime earnings, holiday pay, and result in police officers working a shorter work week. The Union also states that the Town and Police agreed to add new Educational Incentive benefits for new officers, even though it no longer receives any state reimbursements for this benefit. The Union states that the hourly rate for Falmouth Police

will now far exceed the hourly rate paid to Falmouth Fire fighters.

The Union further argues that the wage increases proposed by the Town are substantially lower than provided in any arbitration award issued by the JLMC in the last several years. The Union states that arbitrators have provided larger increases even in fiscally distressed communities, and in worse financial condition than Falmouth.

**Town Position**

July 1, 2010:	0%
July 1, 2011:	0%
July 1, 2012:	1.5%
July 1, 2013:	1.5%

The Town states that its proposal is reasonable and fair based on the financial condition of the community, and also based on the wage increases provided to other bargaining units in the Town of Falmouth. The Town states that the Police Patrol Officers recently agreed to a contract that provided no pay increases for three years, the Police Superiors received no wage increases for a two year period, and that the last time any police officer received any increase was in Fiscal Year 2010. The Town states that the economic offer provided to Firefighters exceeds the cost of any new or improved economic benefits provided to Falmouth Police for the same period of time.

The Town maintains that the Union's proposal is exorbitant based on the recent wage settlement that was agreed to with Falmouth Police officers. The Town states that the State of Massachusetts decided not to fund the Quinn Educational Incentive for Police Officers, which would have resulted in substantial pay cuts of up to 10%

for Falmouth Police Officers; this amounted to a total reduction of \$119,000 in pay for Falmouth Police officers. The Town states that to avoid wage reductions for its Police Officers, the Police Union and the Town agreed to restore the education incentive to current members of the bargaining unit, but agreed to no base salary increase for three years, and that the Police also gave up two vacation days, and longevity pay for two years, which saved the Town \$24,000. The Town further states that for newly hired police officers the parties agreed to provide a flat dollar educational payment for officers hired after July 1, 2009, which is a lesser educational incentive than is provided to current Police Officers. The Town states that because it ensured that current officers would not receive significant reductions in pay should not be considered as a new economic benefit, but rather as a preservation of the status quo, as it was neither the Town's nor Police Union's fault that the State refused to continue to fund its share of the Quinn Educational Incentive.

The Town acknowledges that the agreement with the Police also called for a reduction in the work week for Police Officers from forty hours per week to thirty-five hours per week, which meant that the overtime rate and holiday pay will potentially increase. The Town asserts, however, that the increased costs to pay for the changes in the work schedule for the Police will be less than the cost to provide Firefighters with its proposed pay increases for two fiscal years. Specifically, the Town states that the Police Agreement, with the reduction of the work week, cost the Town approximately \$135,527 whereas a two year increase of 1.5% and 2.25% for Falmouth Firefighters will cost the Town \$193,000. Moreover, the Town states that changes in

the work week for the Police was a management proposal to increase the efficiency of the Police Department due to the fact that Police Officers worked a 5-3 work schedule with shifts that lasted nine hours and ten minutes. The Town states that the change in the workweek allowed the Police Department to create a work schedule that allowed for staggered shifts to minimize overtime costs, and reduced FLSA overtime by \$18,000.

The Town further asserts that with a total increase of 3.75% over the contract period, the salary rates of Falmouth Fire EMTs and Paramedics is well within the rates paid in other Cape Cod communities. The Town states that in FY 09 it received \$6.188 million in state aid, for 2014 it was projected to receive \$4.123 million in state aid, a reduction of 33%. Moreover, the Town further states that other bargaining units have reached agreement for the same four-year wage pattern, which has been offered to Falmouth Firefighters. Moreover, the Town states that other Town employees were required to take unpaid furlough days in Fiscal Year 2011 due to the Town's financial crisis.

The Town further states that any funds in the free cash account should not be used to pay recurring costs such as wage and benefit increases for employees. The Town states that at the time of the hearing it only had \$200,000 in the free cash account. In addition, the Town maintains that funds in the Stabilization fund should not be used to pay for recurring salary costs. The Town states that prudent management calls for a municipality to have in its reserves, at a minimum, 5% of the prior years' operating budget. The Town states that at the present time, the amount was \$2.3, which amounted to only 2.5% of the prior year's operating budget. Similarly, the Town states that

the amount in its unreserved balance is low, based on fiscal standards, and monies in this account should not be used to fund recurring costs. The Town states that the budget has only gone up 2.5% from FY 13 to FY 14.

The Town states that it must be remembered that Moody's downgraded the Town's bond rating from Aa2 to As3 in 2010, and recommended strong fiscal restraints to improve its bond rating. The Town states that it has improved its fiscal condition and in 2012 the bond rating was raised again to Aa2. The Town asserts that the Firefighters' salary and benefit proposal would result in increases considerably higher than provided to any other Town of Falmouth employee for the same period of time, and should not be granted.

### **Discussion**

Determining the "appropriate" salary increase is not an exact science. In general, arbitrators consider the cost of living, wages, and benefits of comparable employees, the ability of the employer (or citizens) to pay for an increase in wages, the bargaining history of the parties and recent contract settlements. Arbitrators often pay great attention to wage settlements that have occurred within the municipality, as internal wage settlements demonstrate the so-called "going rate" and the municipal employer's ability and willingness to pay, in the current economic times.

For Falmouth employees, the facts demonstrate that there is a fairly consistent pattern of wage settlements. Specifically, for the three year period of time prior to this round of contract negotiations, that is for the FY 08 through FY 10 period, municipal employees received a total of an 8% increases over the three years (Police, Fire, DPW,

AFSCME). Thus, historically, at least in terms of base wage increases, there appears to be parity in the across the board wage increases provided to Falmouth municipal employees.

The wage settlements for Falmouth municipal employees for the most recent round of contract negotiations are as follows:

	FY 11	FY 12	FY 13	FY 14
Police	7/1/10 - 0%	7/1/11 - 0%	7/1/12 - 0%	NA
DPW	7/1/10 - 0%	7/1/11 - 0%	7/1/12 - 1.5%	7/1/13 - 2.25%
Library	7/1/10 - 0%	7/1/11 - 0%	7/1/11 - 1.5%	7/1/13 - 2.25%
Police Sups	7/1/09 - 0%	7/1/11 - 0%	NA	
AFSCME	No Settlement	No Settlement	No Settlement	

For Fiscal Year 2011 and 2012 no Falmouth municipal employee received any pay increases. For Fiscal Year 13, DPW and Library employees received 1.5% and Police again received no increase. For FY 2014 those groups that settled they received a 2.25% increase.

The settlements for other public safety groups in the same community often serve as a barometer for a JLMC interest arbitration proceeding. The fact that the Police did not receive any increase over the time period under consideration should not be determinative for this Fire Agreement. There is also no dispute that the State reneged on its obligation to pay 50% of the Quinn Bill education incentive and as a result, Police Officers faced a significant decrease in their compensation. There is also no dispute that despite the lack of State funding, the Town and Police Union agreed that the Town would pay the full Quinn Bill education incentive for current employees, and consequently Police Officers did not receive a reduction in

their pay. Even though Police received no increase this Panel believes that Firefighters must receive pay increases over the period of this Agreement.

Falmouth Firefighters are one the last bargaining unit in the Town to settle for this most recent round of contract negotiations, and the Panel is considering contracts covering four year period of time from July 1, 2010 through June 30 2014. The evidence demonstrates that the finances of the Town have certainly changed over this time four-year time period. Specifically, in May of 2010 Moody Financial downgrade the Town's bond rating. The Moody's May 2010 report stated:

Moody's Investors Service has downgraded to Aa3 from Aa2 the Town of Falmouth's (MA) General Obligation rating; the outlook remains negative. The Aa3 rating affects \$113 million in outstanding debt. Approximately \$52.6 million of the town's outstanding debt is secured by an unlimited property tax pledge as debt service has been voted exempt from the levy limitations of Proposition 2 ½. The town's remaining debt of \$60.9 million is secured by a limited property tax pledge and is Subject to the levy limitations of Proposition 2 ½. The downgrade reflects the town's weakened financial margins, evident in a fiscal 2009 available fund balance (combined Unreserved General Fund balance and Stabilization Fund) of 1.7% of revenues, down substantially from a healthier 11.7% in fiscal 2004 (ended June 30).

\* \* \*

Falmouth's financial position is expected to remain pressured in the medium term due to already narrow reserves and historical structural imbalances, caused by aggressive capital spending, appropriations of free cash and deficits in the water and sewer fund. The town has posted General Fund deficits for the past six years, reducing its fund balance from \$10.3 million in fiscal 2004 (13% of revenues) to \$2.7 million in fiscal 2009 (2.7% of revenues). At the same time,

Falmouth's available reserves (including Unreserved General Fund and Stabilization Fund) have been depleted from \$9.2 million in fiscal 2004 (11.7% of revenues) to \$1.7 million at the end of fiscal 2009 (1.7% of revenues). Fiscal 2009 ended with a large \$3.2 million operational deficit that was driven by underperforming water revenues, reducing the General Fund balance to \$2.7 million, from \$5.9 million in fiscal 2008.

By May of 2012, however, the Town's Bond rating had been upgraded back to Aa2, and Moody's removed the negative rating. The May 2012 Moody's report stated in part:

In recent years, the town's previous trend of negative operations, with draws on reserves to balance operations, reversed, producing significant improvements in available reserves. In fiscal 2011, available reserves, which now includes the town's stabilization fund, increased from \$3.6 million (3.3% of General Fund revenues) in fiscal 2010 to \$7.4 million (6.6% of General Fund revenues), with the operating surplus due largely to continued growth in property tax revenues and conservative budgeting estimates for expenditures. Growth in property tax revenues (70.6% of GF revenues) was attributable to levy growth under the limitations of Proposition 2 1/2, new growth, and the favorable settlement of personal property tax abatement cases in excess of accrued refunds. Management anticipates fund balance will increase to \$8.3 million at fiscal 2012 year-end (June 30), and town officials do not expect any draws on available reserves in fiscal 2013.

The Moody's report certainly explains why, for FY 11 and FY 12, there were no across the Board increases for Falmouth Municipal employees.

The Panel believes that the most compelling criteria in determining the wage increases for the period of this Arbitration Proceeding is the wage settlements that were provided to other Falmouth Municipal Employees. It is true as the Union contends, there was a reduction in hours for

Police, and that this resulted in an increase in their hourly rate of pay. The Police, however, received no general wage increase and agreed to lower their longevity payments for a two-year period of time. The Panel concludes that the wage increases provided in this Award are well within the Town's ability to pay, as these increases, for the most part, follow the wage pattern of wage increases reached by other municipal employees.

#### **AWARD - WAGES**

##### **ONE-YEAR AGREEMENT**

Year 1 (7/1/2010) No Across the Board Wage Increase

##### **SECOND THREE-YEAR AGREEMENT**

Year 1 (7/1/2011) No Across the Board Wage Increase

Year 2 (7/1/2012) 1.5% Across the Board Wage Increase

Year 3 (7/1/2013) 2.25% Across the Board Wage Increase

##### **EMT & PARAMEDIC STIPENDS**

Article 28 of the current Agreement provides for an annual stipend of \$3,500 for those holding an EMT certification, and \$4,500 for those members of the bargaining unit who hold a Paramedic certificate. The amount is paid in one payment the first payday in December of each year.

##### **Union Position**

As stated above, the Union proposes to take the EMT and Paramedic Stipends and roll these annual amounts into the base pay of bargaining unit employees. In addition the Union proposes, depending upon the salary increases, to also add two \$500.00 increases to the EMT stipend, and two \$500 increases to the paramedic stipend, and then to

rolling the EMT and Paramedic stipends into the base pay of Falmouth Firefighters. The Union maintains that over the past few years it has become a common practice, in other communities, to take these stipends and make them part of a Firefighter's base pay. Specifically, the Union cites the practice for Dennis Firefighters, Yarmouth Firefighters, and points to recent Arbitration Awards in Scituate, Somerville, and Malden in which the Arbitration Panel rolled EMT and Paramedic payments into the Firefighters' base wage rate. The Union further states that emergency medical services are now an essential part of a Firefighter's work responsibilities and the stipend amounts should be considered part of the base pay for Firefighters.

#### **Town Position**

The Town opposes the Union's proposal to increase the stipends and to roll the stipends into the base pay of Falmouth Firefighters. Moreover, The Town asserts that a \$1,000 increase in the EMT stipend and a 22% increase for Paramedics. The Town argues that the fact that other Cape Cod communities now include these stipends into base pay is not a sufficient reason to do so for Falmouth Firefighters. Specifically, the Town states that to do so would be too costly, and that none of the other Falmouth settlements provided for any increase in benefits as has been proposed by the Firefighters Union. Moreover, the Town asserts that the educational incentive payments paid to Police are not now included in base pay for Police officers. The Town opposes the Union's proposal.

#### **Discussion**

The issue is whether the current annual stipends should be rolled into the base, and whether the rates should be increased. The facts show that the rates of pay

for Falmouth EMTs and Paramedics are lower than paid in other communities. The following chart shows that the majority of Departments now include EMT and Paramedic stipends as part of base pay. EMT and Paramedic salaries in other Cape Cod communities are as follows:

		<b>Base Salary/EMT</b>	<b>EMT</b>	<b>TOTAL</b>
Barnstable	FY 11	\$57,797		\$57,797
Bourne	FY 14	\$54,717	\$3,000	\$57,717
COMM	FY 11	\$66,628		\$66,628
Cotuit	FY 14	\$58,151		\$58,151
Dennis	FY 13	\$62,290		\$62,290
Hyannis	FY 14	\$71,770		\$71,770
Mashpee	FY 10	\$53,697		\$53,697
Sandwich	FY 13	\$54,338	\$2,717	\$57,055
W. Barns.	FY 13	\$55,473		\$55,473
Yarmouth	FY 13	\$54,395	\$5,440	\$59,835
<b>AVERAGE</b>				<b>\$60,041</b>
<b>Falmouth</b>	<b>FY 14</b>	<b>\$55,306</b>	<b>\$3,500</b>	<b>\$58,806</b>

		<b>Base Salary/Paramedic</b>	<b>Paramedic</b>	<b>TOTAL</b>
Barnstable	FY 11	\$57,797	\$7,780	\$65,597
Bourne	FY 14	\$54,717	\$6,000	\$60,717
COMM	FY 11	\$69,735		\$69,735
Cotuit	FY 14	\$63,966		\$63,966
Dennis	FY 13	\$65,919		\$65,919
Hyannis	FY 14	\$74,670		\$74,670
Mashpee	FY 10	\$58,643		\$58,643
Sandwich	FY 13	\$54,338	\$7,064	\$61,402
W. Barns.	FY 13	\$59,911		\$59,911
Yarmouth	FY 13	\$54,395	\$11,226	\$65,621
<b>AVERAGE</b>				<b>\$64,618</b>
<b>Falmouth</b>	<b>FY 14</b>	<b>\$55,306</b>	<b>\$4,500</b>	<b>\$59,806</b>

The evidence demonstrates that more must be done to increase the rates for EMT and Paramedics. There can be no question that the majority of calls to the Fire Department are for ambulance services, and the evidence demonstrates that Falmouth Firefighters are underpaid when compared to the colleagues in other Cape Cod communities. Under the current Agreement, EMT and Paramedic stipends are paid on an annual basis. There is no dispute that to roll the

stipends into base pay would also increase the overtime rate for EMTs and Paramedics. The data shows that the majority of responses by the Falmouth Fire Department are to provide emergency medical services for citizens of the Town. In other words, Paramedic and EMT duties are now an essential part of the Falmouth Firefighters' essential responsibilities. Therefore when Paramedics or EMTs respond to a call on overtime, they are performing Paramedic and EMT services, and their overtime rates should include this fact.

It is also common for other fire departments in the region to recognize that EMT and Paramedic duties are included in the base pay of those firefighters who perform these important duties. Specifically, the Departments of Dennis, Yarmouth, Mashpee, and Bourne (recent agreement) include EMT and Paramedic payments in base pay. Moreover, it must also be noted that the police, although they received no base pay increases for the duration of their agreement they reduced their work week from 40 hours to 35 hours, which certainly increases their hourly overtime rate for Police officers. There is no longer any justification to continue to pay EMT and Paramedic stipends as flat dollar amounts; these payments should, in fact, be part and parcel of their base pay, and these amounts must be increased to reflect the disparity that now exists for Falmouth EMTs and Paramedics when compared to their colleagues in other Cape Cod Fire Departments.

#### **AWARD - EMT and PARAMEDIC PAYMENTS**

Based on the totality of facts, the EMT and Paramedic stipends shall both be increased by \$500.00 effective the first year of the Agreement (FY 2011). In addition the EMT and Paramedic stipends shall both be increased by an

additional \$500.00 effective the second year of the Agreement (FY 2012).

In addition on January 1, 2014 the Paramedic stipend shall be increased by an additional \$500.00, and both the EMT and Paramedic stipends should be rolled into the base pay of all members of the bargaining unit. It must be stated that this additional increase of \$500.00 for the paramedic stipend on January 1, 2014 is not an additional payment of \$500.00 for the paramedics but rather, as of this date, the top step Firefighter Paramedic shall be \$61,306, the hourly rates and overtime rates shall as of January 1, 2014 reflect these higher base pay amounts as a result of the stipends being rolled into the base pay at this time. Similarly, the annual rate for the top step Firefighter EMT on January 1, 2014 will be \$59,806. In other words, on January 1, 2014 their shall no longer be annual stipends for EMTs and Paramedics, as the payments will be rolled into the base pay and hourly rates for Falmouth Firefighter EMTs and Paramedics.

#### **VACATION**

Article 17 Section 2 of the parties' Agreement sets forth the Vacation benefits for members of the bargaining unit. At the current time Falmouth Fire Fighters receive annual vacation based on their years of service: From 1-5 years, 2 weeks of vacation; from 5-10 years, 3 weeks of vacation; from 10-15 years, 4 weeks of vacation; they then receive 5 weeks of vacation after they have twenty-five years of service.

#### **UNION POSITION**

The Union proposes to increase vacation days so that after fifteen years of service, firefighters would earn

five weeks of vacation, and each year thereafter fire fighters would earn an additional day to a maximum of six weeks vacation.

#### TOWN POSITION

The Town is opposed to the Union's proposal. The Town states that no other Town employees received an increase in their vacation benefits in this round of contract negotiations. The Town asserts that at the present time only Firefighters are able to sell-back unused vacation leave. The Town asserts that to grant the Union's proposal would cost more than \$200,000, without even factoring the additional overtime that would be required to fill in for vacationing firefighters.

#### Discussion

Providing additional time off is an economic benefit; an employee is paid and is not required to work. Moreover, for public safety employees, granting additional time off has the potential of increasing the Department's costs as the Department, at times, will have other members work in place of the absent firefighters, and when this occurs, the Town incurs additional overtime costs. No other Town bargaining unit received an increase in vacation benefits during this round of contract negotiations. There is insufficient justification to grant the Union's proposal for additional vacation time.

#### AWARD - VACATION

The Union's proposal to increase vacation days for members of the bargaining unit is not awarded.

#### PERSONAL LEAVE

Article 17 Section 7 (4) and 4(a) provides that bargaining unit members may use up to three personal days;

two of the days are deducted from sick leave or vacation leave. For line personnel, personal leave may be taken in two (2) hour increments. The provision also limits when personal leave can be taken based on minimum staffing.

#### UNION POSITION

The Union proposes that employees' personal days should not be charged to sick leave or vacation leave. The Union states that in the most recent Police agreement, parties agreed to decouple personal leave from sick leave usage. The Union maintains that this should also be the case for Falmouth Firefighters.

The Union opposes the Town's proposal to require that personal leave be taken in either ten or fourteen hour increments. The Union states that at the present time, members are allowed to take personal leave in two hour increments, and that this practice allows for members who work twenty-hour shifts the flexibility to attend to family matters that occur during their shift. The Union states that to change the current practice could potentially result in additional sick leave usage, and operational concerns about obtaining proper coverage. The Union asserts that there is insufficient justification to change the current practice.

#### TOWN POSITION

The Town opposes the Union's proposal. The Town states that at the present time Firefighters have more paid vacation hours than Police, and are now allowed to sell back vacation time and sick time on an annual basis. The Town maintains that the Union's proposal would inevitably result in further costs to the Town as Firefighters would use the three personal days, and then have additional

vacation and sick days to sell back to the Town at the end of the year.

The Town proposes to change the language on personal leave usage so that personal leave must be taken in full shifts or either ten or fourteen hours. The Town maintains that personal leave, at the present time, can be taken in increments as low as two hours. The Town asserts that the current practice creates logistical problems in those instances in which the Department has to wait for call back coverage. Specifically, the Town states that the Chief explained that there are instances in which a firefighter will take two hours of personal leave, and then another firefighter will have to travel twenty minutes to cover for the absent firefighter, and then another twenty minutes once the firefighter returns. The Town states that if firefighters were required to take personal leave for an entire shift, then a firefighter would be required to cover the absent shift, and not spend unnecessary time travelling to and from the stations for coverage. The Town further states that it is unusual for Fire Departments to allow personal leave in such small increments. The Town states that its proposal would not reduce the level of personal leave available to members of the bargaining unit.

#### **Discussion**

The Union and Town both have proposals to alter the status quo. There is insufficient evidence to change the personal leave provisions of the Agreement at this time.

#### **AWARD - PERSONAL LEAVE**

The Panel makes no changes in the personal leave provision of the current agreement.

### **SICK LEAVE BUY BACK**

Article 17 (3) Sick Leave, Section 4A, provides that members of the bargaining unit who have accrued 85 days of sick leave can receive payment for up to 3 (12 hour) sick days in excess of 85 days.

### **UNION POSITION**

The Union proposes to change the current annual sick leave buy back so that employees would be able to sell back unused sick day sick once they have accrued 70 days, and to also allow employees to sell back up to six days once they accrue 100 accumulated sick days. The Union maintains that the Police, in their recent agreement, provided for buy back of sick leave of up to 2 sick days for those police officers who have accrued sixty-five days of sick leave.

### **TOWN POSITION**

The Town opposes the Union's proposal. The Town maintains that at the present time Falmouth Firefighters have a very generous benefit. The Town also states that Firefighters in addition to selling back sick leave on an annual basis, can also sell vacation days back to the Town. The Town maintains that there is no justification to increase the buyback for members of the Fire Department.

### **Discussion**

There is insufficient justification to change the status quo. At the present time Firefighters, are now allowed to buy-back annual leave every year. There is no reason to increase the annual sick leave buy-back at this time.

### **Award - Personal Leave**

The Panel makes no changes in the current sick leave buy out leave provisions of the current agreement.

### **BI-WEEKLY PAY & DIRECT DEPOSIT**

There is nothing in the parties' Agreement that provides for employees to be paid on a bi-weekly basis, and direct deposit.

#### **TOWN POSITION**

The Town proposes to add a new provision that would permit the Town to move to a bi-weekly pay period, and direct deposit. The Town proposes that the change be implemented when all the other Town bargaining units agree to the change. The Town states that at the present time the DPW and Town Library employees agreed to the change.

The Town states that converting to a bi-weekly pay and direct deposit would save the Town \$40,000 in annual payroll costs and has no impact on wages of bargaining unit employees.

#### **UNION POSITION**

The Union does not oppose the Town's proposal to move to a bi-weekly pay and direct deposit system. The Union states that it should be remembered that the Town's proposal would save the Town money, and any such savings should be considered when reviewing the overall compensation awarded to members of the bargaining unit.

### **Discussion**

The Arbitration Panel is faced with a change that is proposed by the Town that will permit modest savings to the Town. It is true that it is a change in the status quo and could conceivably result in some inconvenience to employees at the outset. It must be pointed out, however, that the change to a bi-weekly payroll cycle and direct deposit can not be considered as an economic concession; bargaining unit employees will not be paid less nor will their pay be reduced by converting to a bi-weekly payroll process; at

most, there would be some minor inconvenience at the outset. In addition, at the present time, other municipal employees have agreed to change to a bi-weekly payroll cycle.

#### **AWARD - BI-WEEKLY PAYROLL**

The Town's proposal to convert to a bi-weekly payroll cycle, and direct deposit, when all other Municipal bargaining units agree to this change, is awarded.

#### **SICK LEAVE USAGE**

Article 17 (3) sets forth the contract provisions for sick leave. The current provision provides that employees will not be eligible for overtime if they are out sick.

#### **TOWN POSITION**

The Town proposes that members who take sick leave for any portion of their shift shall not be eligible for overtime until the member works the next regularly schedule shift.

The Town maintains that there have been instances in which firefighters are out of work sick, and that they then respond to work overtime immediately after the shift, in which they have been absent, is over. The Town asserts that it is common sense that if a firefighter is too ill to work the regular shift, that the firefighter would be too ill to work the succeeding shift. The Town states that its proposal would serve as a disincentive for firefighters to use sick leave unless they were legitimately sick.

#### **UNION POSITION**

The Union opposes the Town's proposal. The Union states that the Town has not demonstrated that there is a problem or issue with sick leave usage for members of the Department. The Union indicated that it would be willing to

accept a modest limitation on working overtime after being out sick.

### **Discussion**

It is not unusual for labor agreements to place restrictions on overtime if an employee calls in sick. A reasonable compromise would be to add language providing that if an employee calls out sick for his or her regular tour of duty, the firefighter will not be eligible for overtime opportunities for 48 hours from the start of the shift from which the firefighter called out sick.

### **AWARD - SICK LEAVE**

The parties should add language to the Agreement that provides that if a member of the bargaining unit calls out sick for his or her regular tour of duty, the firefighter will not be eligible for overtime opportunities for 48 hours from the start of the shift from which the firefighter called out sick; this will not apply to situations in which employees have been held over on a shift.

### **SENIORITY - SPECIALTY POSITIONS**

Within the Falmouth Fire Department there are three distinct positions, Fire Prevention Officer, Fire Inspector, and Emergency Medical Supervisor. The job descriptions of the positions, and the qualifications for the positions, are set forth in an Appendix to the Agreement. For the Fire Prevention Officer and Fire Inspector Appendix D reads:

The positions shall be filled by an employee in the bargaining unit on a seniority basis within the ranks, beginning with the highest rank, providing the employees within the bargaining unit are qualified to

hold the position. The following qualifications have been agreed to:

1. It is desirable that he/she has a minimum of five (5) years experience in the Falmouth Fire Rescue Department.
2. It is desirable that he/she has a knowledge of Fire Inspector 3, N.F.P.A. Standard 1301, Fire Professional qualifications
3. It is desirable that he/she has had previous experience as an officer in the Falmouth Fire Rescue Department.

For the position of Emergency Medical Supervisor, Appendix E, the qualifications are:

Qualifications:

Must be a permanent member of the Falmouth Fire Rescue Department, with a minimum of two (2) years experience as an EMT -Paramedic and retains Paramedic certification.

Other Significant Facts:

Incumbent must be familiar with all phases of Emergency Medical Services, includes the use of biomedical and Emergency Medical Services communications and maintenance of updated procedures. There shall be a six (6) month probationary period.

TOWN POSITION

The Town proposes that these two positions should no longer be filled by rank seniority, but instead that the Town should have the ability to fill the positions based on other criteria including performance, education, skill, training and ability, and that the Chief would have authority to make the final decision on filling vacancies in these specialized positions.

The Town argues that it is reasonable and logical that the Chief should have the final authority to fill the

positions based on the merit of the candidates. The Town asserts that for specialty assignments it is not unusual that in other Fire Departments, the Chief would have the discretion to fill the position without applying strict seniority. The Town further points to the provisions of the Interest Arbitration Law that provides that issues of assignment and promotion are not within the scope of arbitration. The Town thus maintains that its proposal should be adopted.

#### UNION POSITION

The Union opposes the Town's position. The Union maintains that the parties have agreed to the qualifications for the position, and that job descriptions are added to the parties' Agreement. The Union states that the positions have been filled by seniority but that candidates must meet the qualifications for the position. The Union argues that there is no need to modify the current practice, as there has been no evidence of any problems with the current practice.

#### Discussion

The parties have agreed to the qualifications for the positions at issue, thus, it is not as if employees who are unqualified can obtain any of these positions simply because they have more seniority. The Employer's proposal would drastically change the status quo, and there is no evidence that unqualified employees have been placed into these positions. In sum there is insufficient evidence to change the current contract provisions at this time.

#### AWARD - SENIORITY - SPECIALTY POSITIONS

The Employer's proposal is not awarded. There shall be no change in the status quo.

### CALL/BACK

Article 24 sets forth the minimum manning provisions for the Fire Department. Article 24 Section 1 provides that the Department shall have a minimum of ten firefighters on duty. The Falmouth Fire Department has established protocols for calling firefighters back to work to ensure the minimum staffing is 10 personnel

### TOWN POSITION

The Town proposes the following changes to the current call back procedures:

For Automatic Telephone Alarms, send an officer to investigate and determine whether there is a need to dispatch an on-duty crew;

For One Box responses, don't tone out a full response until the dispatched crew assesses the situation and determines whether it is necessary;

For Box Alarms, don't call coverage until it is established that the dispatched crew is "committed," i.e., has to be at the scene for at least 15 minutes;

For Rescue Calls, don't call for coverage until the dispatched crew determines that it has to transport a patient.

The Town states that the current practices provide that firefighters are called back to cover a station whenever a piece of apparatus responds to a fire. The Town states that this call back occurs even in those situations when the crew does not have to spend any time at the call. The Town further states that at times firefighters who are called back for coverage never even arrive at the station; they are relieved because the dispatched crew was not needed at the call and is returning to the station. The Town states that in these situations the called

firefighters are still paid. The Town states that Chief Sullivan testified that in FY 13 there were 153 automatic residential fire alarms and only two of these alarms resulted in the dispatched crew having to perform services at the call. The Department states that for these alarms, the Town had to pay out 271 hours of overtime.

The Department further states that for the so-called 1-1 Box there is an automatic call-back to cover the dispatched crew, and there is also a tone call, in which any off duty firefighter can respond. The Town asserts that these 1-1 responses generate significant overtime costs even in those situations in which these responding firefighters never even report to the station. The Town states that 95% of the box alarms are false alarms. The Town further states that even the majority of rescue calls do not require the ambulance crew to transport a patient, and the majority of rescue calls result in the ambulance reporting back to the station.

#### UNION POSITION

The Union opposes the Town's proposal. The Union asserts that some years ago, in a prior agreement the parties agreed to eliminate the "allez-allez" call back procedure so that less firefighters are called back when fire and ambulances are dispatched to a scene. The Union maintains that because the Town is geographically large, and there is limited coverage the current call-back procedure works well; as there is limited coverage in the station, the Town's proposal could have serious ramifications on health and safety of firefighters and members of the public. The Union maintains that there is insufficient justification to modify the current practices.

## **Discussion**

The evidence demonstrates that over the years the parties have established protocols for staff coverage. The evidence introduced at the hearing does not demonstrate that this Arbitration Panel should modify the practice at this time. Accordingly, the Town's proposal to change the status quo is not awarded.

## **AWARD - CALL/BACK**

The Panel awards no change in the current call/back procedures, and the status quo should remain in place for the duration of this Agreement.

## **LONGEVITY**

Article 17 (6) provides longevity payments to members of the bargaining unit. The schedule provides for the following longevity payments: 5-10 years \$300, 10-15 years \$350, 15-20 years \$400, 20-25 years \$500, 25-30 years \$600, and over 30 years \$700.00.

## **UNION POSITION**

The Union proposes to increase the longevity schedule by adding \$100 for each step. The Union states that the current longevity schedule has been in place for many years, and that modest increases are warranted to reward those fire fighters who have provided long and valued service to the Town for many years.

## **TOWN POSITION**

The Town opposes the Union's proposal. The Town states that there is no justification to increase longevity payments. The Town states that this benefit alone would cost an additional \$30,000. The Town further states that no other Town employees received an increase in longevity payments during this round of negotiations. The Town also

notes that the Police actually agreed to forgo longevity payments for two years, saving the Town money during this two year time period.

### **Discussion**

Both Police and Firefighters have longevity payments in their agreements. There were no changes in the Police agreement during this round of contract negotiations. There is insufficient justification to increase the longevity schedule at this time.

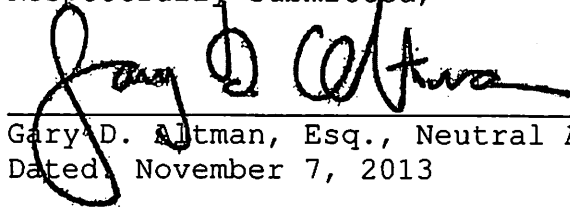
### **AWARD - LONGEVITY**

The Union's proposal to increase longevity payments for members of the bargaining unit is not awarded.


### **Conclusion**

The Panel has considered the statutory criteria in an effort to balance the interests of the bargaining unit employees, the City, and the citizens of the Town of Falmouth. Although all concur in this result, it must be noted that the reasoning set forth above is that of the neutral arbitrator. The Union Panel member disagrees with the zero wage increases in the first two years of this Award.

Respectfully submitted,



Gary D. Altman, Esq., Neutral Arbitrator  
Dated: November 7, 2013



Sheila Vanderhoef, Management Panel Member, Concurs in this Award  
Dated: November 7, 2013



Jay Colbert, Union Panel Member, Concurs in this Award  
Dated: November 7, 2013