

**COMMONWEALTH OF MASSACHUSETTS
JOINT LABOR MANAGEMENT COMMITTEE FOR MUNICIPAL POLICE & FIRE
INTEREST ARBITRATION PANEL**

IN THE MATTER OF THE INTEREST ARBITRATION

Between

THE CITY OF NORTHAMPTON

And

NORTHAMPTON FIREFIGHTERS, I.A.F.F. LOCAL 108

JLMC-11-28F

OPINION

AND

AWARD

The Arbitration Panel members are:

Ira B. Lobel, Esq.
Public Panel Member and Chairperson

Edward Gibson, Former Mayor, City of West Springfield
Employer Panel Member

Robert Taylor, Longfellow Fire Fighters, Local 1903
Employee Organization Panel Member

Appearances:

For the City of Northampton
Layla G. Taylor, Esq., Sullivan, Hayes & Quinn, LLC

For the Northampton Firefighters, I.A.F.F. LOCAL 108
Terence E. Coles, Esq., Pyle Rome Ehrenberg, PC

INTRODUCTION

The City of Northampton ("City") and the Northampton Firefighters Association, I.A.F.F. Local 108 ("Union") are parties to a collective bargaining agreement ("CBA") that expired June 30, 2010. On May 5, 2009, the parties signed a "Side Letter of Agreement" that

provided three major changes to the last year (FY 2010) of the CBA: a wage and step freeze for FY 2010 in lieu of a previously agreed 3% wage increase and step movement; a move to a full service (24/7) ambulance service beginning in FY 2010, with the restoration of 8 bargaining unit positions (5 vacant and 3 new); and further discussion between the City and the Union if during FY 2010 any other bargaining unit in the City is granted new wage concessions.

The parties were unable to reach an agreement for a new contract beginning July 1, 2010. Following mediation and a 3(a) hearing before the Joint Labor Management Commission ("JLMC") of the Commonwealth of Massachusetts, the JLMC ordered the parties to submit their outstanding issues to this arbitration panel. By letter dated July 6, 2012, this panel was appointed. Hearings were conducted on January 3, March 7, and March 15, 2012. Both parties were represented by counsel and introduced evidence, presented testimony, examined and cross-examined witnesses, and otherwise supported their respective positions on the outstanding issues before the Panel. Briefs were received on or about May 24, 2013, and post hearing briefs were received on May 29, 2013. The Panel met on June 24, 2013, in executive session and deliberated on each of the outstanding issues. The Panel has carefully and fully considered all the data, exhibits, briefs, and testimony of the sworn witnesses. The results of those deliberations are contained in this OPINION AND AWARD ("Award").

The parties agreed that the proper duration of this agreement is three years, running from July 1, 2010, to June 30, 2013. The parties also agreed that the following issues are to be decided by this Panel:

1. Wage and step increases;
2. A Union proposal to provide a stipend for fire academy certifications
3. A City proposal to eliminate the \$0.25 night shift differential

4. A Union proposal to provide an ambulance assistant stipend of \$1,500 to all firefighters who do not have EMS certifications.
5. A Union proposal to require three bargaining unit members on all engine and ladder trucks leaving the station.
6. A City proposal to start the time for call backs when the alarm sounds and not at the top of the hour, as has been the practice.
7. A City proposal to change maternity leave provisions.
8. Bereavement leave changes, agreed to in post-arbitration discussions

APPLICABLE LEGAL STANDARDS

Chapter 589 of the Acts of 1987, together with the standards promulgated by the JLMC on August 24, 2000, establishes the factors to be considered in any the interest arbitration determination. These shall include, but not be limited to the following:

- (1) Such an award shall be consistent with: (i) (I) Such an award shall be consistent with: (i) section twenty-one C of chapter fifty-nine of the General Laws, and (ii) any appropriation for that fiscal year from the fund established in section two D of chapter twenty-nine of the General Laws.¹
- (2) The financial ability of the municipality to meet costs.
- (3) The interests and welfare of the public.
- (4) The hazards of employment, physical, educational and mental qualifications, job training and skills involved.
- (5) A comparison of wages, hours and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally in public and private employment in comparable communities.
- (6) The decisions and recommendations of the factfinder, if any.

¹ M.G.I/ c. 239 was repealed in 1990.

- (7) The average consumer prices for goods and services, commonly known as the cost of living.
- (8) The overall compensation presently received by the employees, including direct wages and fringe benefits.
- (9) Changes in any of the foregoing circumstances during the pendency of the dispute.
- (10) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.
- (11) The stipulation of the parties.

Any decision or determination resulting from the mechanism or procedures determined by the committee if supported by material and substantive evidence on the whole record shall be subject to the approval by the legislative body of a funding request as set forth in this section, binding upon the public employer and employee organization,...; and provided, further, that the scope of arbitration in firefighter matters shall not include the right-to appoint and promote employees. Assignments shall not be within the scope of arbitration; provided, however, that the subject matters of initial station assignment upon appointment or promotion shall be within the scope of arbitration. The subject matter of transfer shall not be within the scope of arbitration, provided however, that the subject matters of relationship of seniority to transfers and disciplinary and punitive transfers shall be within the scope of arbitration. Notwithstanding any other provisions of this act to the contrary, no municipal employer shall be required to negotiate over subjects of minimum manning of shift coverage, with an employee organization representing municipal police officer' and firefighters. Nothing in this section shall be construed to include within the scope of arbitration any matters not otherwise subject to collective-bargain• ins under the provisions Of Chapter one hundred and fifty E of the General Laws....

BACKGROUND OF COMMUNITY AND FIRE DEPARTMENT

The City of Northampton is the capital of Hampshire County and is situated about 15 miles north of Springfield, Massachusetts. It has about 30,000 full time residents and an additional 2,600 students attending Smith College. The Fire Department has two fire stations

and approximately 60 full-time firefighters in the bargaining unit. Since 2009, the Department provides round the clock emergency ambulance service for the City of Northampton and Town of Westhampton. This obviously has had an impact on both staffing and workload. The Fire Department is divided into four rotating shifts for each of the two fire stations. Each of these eight shifts (4 shifts in each of 2 stations) is supervised by a captain. Typically, 15 firefighters are assigned to each shift; the minimum staffing during the day is 13 and at night 12. The employees work 24 hour shifts amounting to a 42 hour workweek on a rotating schedule.

The other municipal employees in the City are organized into unions representing the Department of Public Works, City Clerical Workers, City mid-level management, and two units in the Police Department (police officers and police sergeants). There are also seven units in the school department. All of these units have negotiated contracts expiring June 30, 2013, with the exception of the two police units whose contracts expired June 30, 2012.

DISCUSSION OF SPECIFIC PROPOSALS

1. WAGES

City Proposal:

1. Effective FY2011 (July 1, 2010) unit members who did not get steps in FY2011 receive a 1% increase. (eligible employees already received step)
2. Effective FY 2012 (July 1, 2011) – 0% wage increase (eligible employees already received step)
3. Effective FY 2013 (July 1, 2012) – 1% (eligible employees already received step)

Union Proposal:

1. Effective retroactive to July 1, 2010 – 2%, in addition to step movement
2. Effective retroactive to July 1, 2011 – 3%, in addition to step movement
3. Effective retroactive to July 1, 2012 – 3%, in addition to step movement

Restoration of step freezes from FY 2010

Summary Justification for Employer's Position

The City maintains it does not have the economic resources to support the increases proposed by the Union. It also claims that the impact of the demand proposed by the Union will cost much more than it claims. Further, the majority of funds the Union claims could be used is restricted and cannot be used to satisfy any arbitration award.

The City notes that its overall budget is about \$96 million; however, \$16 million is for enterprise funds, self-supporting funds such as sewer, water, and solid waste. About \$30 million is allocated to the school, \$16 million for employee benefits, and \$6.5 million for debt, leaving \$26 for the City's operating budget, including, fire, police, public works and other City services. It claims it has only \$1.4 million in stabilization and free cash reserves. It has also seen significant reductions in state aid over the last four years. During this same time period, the City has been faced with limitations on its ability to generate new revenue. The closure of the City's landfill and the reduction in returns on investment income has also had a negative impact on the budget.

On the expense side, the City maintains it has made significant efforts to control spending during the past several years. It negotiated step and wage freezes for employees in both the City and schools. It also attempted to control health insurance costs by bidding out the plans and successfully negotiating changes in health insurance programs for all groups except the firefighters.

The City maintains that the Fire Department's budget does not include additional monies to fund an award. The overall City budget has two main sources of income available to fund this award: free cash and stabilization. Both are underfunded and it would be inappropriate

to use these funds to perpetually increase the Fire Department budget. This could potentially jeopardize the City's ability to pay other obligations.

The City claims the generally accepted rule of fund is that free cash and stabilization should be approximately 5% of the budget. The free cash account is significantly below this percentage and significantly below the levels of free cash in neighboring towns. The City argues that the funds the Union suggested to be used are restricted and not available to finance an award. Additionally, if the money comes from the Fire Department's existing budget, it could result in significant layoffs.

The City argues that its proposal is fair and consistent with what other units in the City received for the period in question. It notes that many of the other units have taken a 0% increase and/or a step freeze for both FY2011 and FY2012. It concedes that Local 108 (Firefighters) and Local 390 (Police) are the two exceptions to this pattern. It acknowledges that Local 390 received step movement through a negotiated agreement; Local 108 received step movement through a negotiated litigation settlement with the City.

The City maintains that the arguments about parity with the police are not persuasive. It claims the Union fails to accurately account for what happened to both locals in FY 2010 and it inaccurately characterizes monies received for the Quinn bill, maintaining it has never been part of the equation for parity. The City notes its concerns with the loss of State support of the Quinn bill and its impact on the police officers. It also notes the impact of moving to round the clock ambulance service in the Fire Department. The City maintains that the firefighters actually did as well as patrol officers in terms of increases.

The City disputes the claims that firefighters in Easthampton and Amherst are significantly better paid than firefighters in Northampton. While it concedes that base wages are

more in these two towns, it maintains that this single comparison is not an adequate basis for the determination of a wage award. The City maintains that other communities would be better comparables in terms of population and overall budget. There was no showing that Northampton's pay was at the low end of these other towns when comparing pay and benefits. Furthermore, even if Amherst and Easthampton could be considered comparable, the comparisons failed to take into account the differences in health insurance contribution, additional staffing in Northampton, and the financial resources of these communities.

Finally, the City maintains that if the Department had to lay-off firefighters to fund a wage increase, it could be required to return money on Safer Grant awards received by the City. This would further complicate an already bleak financial picture.

Summary Justification for the Union's Position

The Union argues that this arbitration panel should restore the historical parity between a municipality's police and fire departments. It cites two JLMC arbitration awards supporting this position. On the basis of this arbitral precedent, the Union asserts that the City's reliance on settlements with the other non-public safety bargaining units is misplaced.

The Union maintains that it is undisputed wage parity existed between the City's Police and Fire units prior to FY 2010. It asserts that this parity was destroyed in FY 2010 when the Firefighters agreed to forego a negotiated 3% wage increase plus step movement. In contrast, the Police refused to accept the City's demand and received both a 3% pay increase and steps in FY 2010. It maintains that for the Firefighters to again receive parity, the 3% pay increase and an additional step should be restored.

The Union also maintains that restoration of the State's share of the Quinn bill amounts

to a significant pay increase since 2011. It notes that when the Commonwealth of Massachusetts decided not to pay 50% of the Quinn bill, the City agreed to pay this figure and included this in the July 1, 2010-June 30, 2012 patrolmen's CBA. The Union maintains that this is now a contractual obligation to the police and represents a net pay increase for the patrolmen. It emphasizes that the City was not obligated, contractually or legally, to pay the Commonwealth's share of the Quinn bill. By taking on this new obligation, a new and substantial benefit was given to the patrolman. This should be considered by the arbitration panel. The Union calculates that this amounts to an average increase of 6.6% in police officers base pay.

The Union cites other arbitration panels that have awarded firefighters additional wage increases to compensate for a municipality's decision to fully fund the Quinn bill. It maintains that the City's funding of the Quinn bill justifies a 3% wage increase. It notes that the average gross pay for a patrolman is \$64,773, while the average Firefighter earned \$56,975.

The Union maintains that Northampton firefighters' pay lags behind their peers in comparable communities. It uses firefighters in Amherst and Easthampton to demonstrate that Northampton lagged behind its peers by 5.6% to 8%, depending on length of service, EMS certification and other education levels. It claims that the Fire Chief acknowledged this lag in his testimony, based on his own comparison with other communities.

The Union claims that other JLMC arbitration awards during this period justify its proposed increases. The Union maintains that its decision to take a wage freeze in FY 2010 was not in line with settlements in surrounding comparable communities. It maintains that the Fire Chief's own survey of comparable communities (Amherst, Westfield, Agawam, and West Springfield) demonstrates the average wage increase for FY 2010 was 2.5%. It maintains that wage increases in these other towns for FY 2011 and FY 2012 are consistent with the wage

increases proposed by the Union.

The Union argues that even if this arbitration panel awards all of the pay and benefit increases proposed by the Union, the City's firefighters will still lag in pay compared to the police unit and firefighters in comparable communities. It also maintains that the increase workload in the Fire Department justifies a substantial increase in pay.

The Union posits that the City's wage proposal is unreasonable because it fails to recognize the substantial compensation it agreed to provide the police unit and the significant lag in pay. It claims that its proposal would cost approximately \$644,000, or about \$572,000 more than the City's proposal. It maintains that reserves from free cash and other accounts within the City could easily pay for this increase. Particularly in light of the wage increases granted to the police, there should be no question about the City's ability to pay.

Discussion

Determining the appropriate wage increase in any situation is not an exact science. The guidelines set forth in the statute provide the basic ingredients for making such a determination; however, many of the variables are subject to interpretation that can result in significant differences in an assessment of an appropriate wage increase.

One key determination in this evaluation is a comparison to other employees providing similar services and with other employees in generally in public and private employment. However, the manner in which such comparisons are made can result in significant differences over the "appropriate" wage increase.

For example, the appropriate number can vary significantly depending on which towns and cities are considered comparable. One can look at different comparable towns based on size,

geography and wealth. These different towns can have significantly different wage and benefit systems. Even if the parties can agree on the comparable towns, how you interpret this information can change the “correct” or “appropriate” number. For example, one community may pay a higher starting salary while another may pay a higher salary for senior employees. One may emphasize base salary. Another may make benefits more attractive. Still, another may emphasize stipends for additional training or some other non-direct wage component. As noted above, all are instructive; none are determinative.

An analysis of the so-called parity between police and fire can also be filled with variables that are instructive but not determinative. It is necessary to compare apples with apples. For example, if police can earn more money due to the Quinn Bill, should this be counted for “parity” purposes? Similarly, if firefighters can earn more based on EMS certifications, should this be counted for “parity” purposes? Is it appropriate to look at total income, or just base wages? All of these other variables must be considered when discussing the “appropriate” settlement number. Finally, a close look at the salary schedules for FY 2009 demonstrates that the two scales are not the same; if there was true parity, the scales would have been even closer. By looking at the previous police and fire contracts, however, it is clear an important variable is a goal of parity or a close approximation of parity. This encourages arbitrators to look at a comparison of percentage wage increases as opposed to the actual benefit package. However, even this comparison can be subjected to differing interpretations.

Additional comparisons within the municipality can be complex. The Union argued that the only comparison is the patrolmen. The Panel respectfully disagrees. From a human resource standpoint, it is difficult to justify to school teachers, public works employees, or others why police and/or fire should be treated differently than other municipal employees. By the same

token, it is difficult for police and firefighters groups to accept a freeze when the police and/or fire unit in the same city and surrounding communities are receiving pay increases. As noted above, all our instructive; none are determinative.

Evaluating all of the above information is difficult in normal situations. However, before the start of FY 2010, the City was faced with three very difficult and unusual circumstances, all of which had solutions that could be problematic for various groups in the City: (1) a rapidly deteriorating fiscal position in the City; (2) the Commonwealth's decision to cease funding its share of the Quinn bill; and (3) the move to 24/7 ambulance service in the Fire Department. Each of the three posed difficult problems for all parties; the three combined created an impossible situation for the City and all of the bargaining units, particularly police and fire.

Just before the start of FY 2010, the City was facing a severe economic crisis. They believed they were broke and went to each and every bargaining unit in the City. Those whose contracts were expiring agreed to no pay increase; some even agreed to 2 furlough days, a net impact of close to a 1% wage cut. Local 108 had previously negotiated a 3% wage and step movement. The City asked them to forego both of these. The firefighters agreed to do this, with their understanding that full ambulance service would be brought to the City and the police would agree to a similar wage and step freeze. (The police had also previously negotiated a 3% wage increase for FY 2010.)

A key element for both the firefighters and the City was the shift to a full time ambulance service. This not only avoided the possibility of layoffs but provided an opportunity for additional staff and additional income for firefighters who maintain various EMS certifications for performing the ambulance service. The agreement to forego a 3% raise and step increases in exchange for 24/7 ambulance service may have been a sound bargaining

decision for the firefighters, even if the patrolmen were not part of the equation and /or assumptions. However, in hindsight, because of the timing of all of these elements, it is understandable how the firefighters felt betrayed when the police did not accept the pattern.

At the same time the negotiations regarding the firefighters were taking place, the Commonwealth decided to eliminate their share of payment of the Quinn bill, effective during FY 2010. For police who were taking advantage of this legislation, this amounted to a 5, 10, or 12 ½% pay cut, depending on how much education the employee had. (On average, this amounts to an average pay cut of approximately 6.6%.) This reality must have been a consideration when the patrolmen rejected the City's request to forego the negotiated 3% pay increase and step movement. It is one thing to forego a negotiated increase raise that you will receive in the future. It is another matter to forego this same raise at the same time one is facing the impact of a 50% cut in Quinn bill subsidies. It could be argued that, in terms of net income, (the 3% wage increase offset by one half the value of Quinn), the patrolman took a 2-9.5% wage cut. (This depended on whether one lost 5, 10 or 12 ½% of Quinn.) It could also be argued that the City had no obligation to pay the Commonwealth's half of Quinn and unnecessarily incurred a total cost of 3% plus the value of step.

In FY 2011, the City was faced a difficult decision with its police unit: either fund the 50% of Quinn that the Commonwealth stopped funding or have the police accept a significant cut in income due to the absence of this stipend. This difficult decision had to be made at a time when the City was emphasizing that no money was available for raises for any other bargaining unit employee in the City. It was also made just after the City had convinced the firefighters to forego a negotiated 3% pay increase. Regardless of what they did to the police *visa vi* Quinn, the City must have understood it would upset many groups in the City.

In *Town of Scituate and Scituate Firefighters Local 1464, IAFF*, Arbitrator Gary Altman acknowledged this dilemma when he awarded the firefighters an amount different from the freeze the police received (after having the Commonwealth's share of Quinn incorporated into police pay) or the 2% granted for supervisory employees. In the award, Altman emphasized the symmetry among wage increases for all municipal employees. He also said about Quinn:

The fact that the State stopped reimbursing local communities for the Quinn Bill incentive, and the Town had to make up the money to ensure that Police did not receive significant decreases in their pay, is not a legitimate reason to grant additional benefits to other municipal employees.

Altman awarded an increase consistent with other municipal employees. It was clearly more than the wage freeze police received and significantly less than the Commonwealth's half of Quinn. It was also a variation of the settlement reached with other municipal employees. (The award did not specify what other municipal employees received.)

Based on this analysis and ascertaining that paying the Commonwealth share of Quinn simply maintained income for patrolmen over the period of FY10, FY11, and FY12, patrolmen received 3% plus steps over their FY09 income plus steps in each year, compared to no wage increase and steps in two of the three years for the firefighters. This discrepancy should be equalized in some manner with increases in FY2011 and FY2012 together with a reasonable wage increase for FY13. The Panel does not believe the 3% plus step can be equalized precisely, since there was a net pay cut for police in FY 2010 followed by a net 3% increase in FY 2011. The goal is to make it comparable. Precision is not possible, since both sides can look at these increases differently. The Panel does not believe it is appropriate to retroactively reinstate a step, especially after the parties agreed to forego this step in FY 2010.

In sum, the Panel acknowledges that the police are now receiving 3% plus one additional

step (over Quinn) for these three fiscal years, as compared to what the firefighters received during the same period. Accordingly, this panel will balance the absence of these increases with two across the board 2% increases. This should be comparable, but not exactly the same, as the policemen's net pay cut in FY2010 (3% minus half Quinn) and the net 3% increase in FY2011.

The City notes in their reply brief that during this period the firefighters have received dramatic increases in their stipend/profit sharing for ambulance service. While this must be acknowledged, the amounts set forth in the stipend have been in existence for a number of years, even before the Department went to full ambulance service. It can be assumed that the parties believed it would take a number of years to reach these levels; the firefighters should not get a diminished pay increase because these levels were finally reached.

Based on all of the above rationale, the panel believes the increases set forth below should be instituted. Based on the above rationale, it is impossible to compare precisely the exact worth of both the firefighter and patrolman settlements. (Much of this evaluation will depend on how one interprets the timing and amount of the various numbers). This Panel has attempted to make the increases close enough to make it similar, yet different enough so that it is not precisely comparable. We have also, as will be discussed later in this award, eliminated the shift differential. In partial exchange for the elimination of the shift differential, we have ordered a mid-year increase of 1% (or a net increase of ½% taking the shift differential into account). This will further make absolute comparisons of equity between police and fire problematic; the intent should be to make increases comparable, but not precisely the same.

The Panel recognizes that this Award deviates from the pattern set with other non-police bargaining units. However, while the Panel agrees that restoration of Quinn was a difficult decision, the City's decision to pay a 3% raise and step over Quinn must be addressed.

Firefighter increases should be kept more in sync with the police unit than other units in the City. This Award is comparable, but not the same, as patrolman increases over the last four years.

The Panel has examined the voluminous record regarding the finances of the City and its ability to pay these increases. While we agree that these are challenging times, we also believe this Award is affordable and fair both internally and when compared to other jurisdictions. The percentage raises are in line with other firefighters in the surrounding area, with the negotiated increases for the Northampton police for FY 2010, FY 2011 and FY 2012, increases for other City employees in FY 2013, and should be affordable to the City.

Award

1. **Effective July 1, 2010 – 2% across the board wage increases (in addition to steps already paid.)**
2. **Effective July 1, 2011 – 2% across the board wage increases (in addition to steps already paid.)**
3. **Effective July 1, 2012 – 2% across the board wage increases (in addition to steps already paid.)**
4. **Effective January 1, 2013 – 1% across the board wage increases**

2. STIPEND FOR FIRE ACADEMY CERTIFICATIONS (new)

There is currently no language in the contract relating to this subject.

Union Proposal: Each bargaining unit member should be paid a stipend equal to 1% of base pay, with a maximum stipend totaling 5%, for each Massachusetts Fire Training Council Certification examination they pass.

City Proposal: The City urges rejection of this proposal.

Discussion: The Union argues for the inclusion of this benefit on the basis that continuing education has enormous value for the Department, the individual firefighters, and the public.

It maintains that the Fire Chief and Captains all testified to the value of these programs. The proposal is fair and should be granted. It is especially equitable in light of the fact that the 100% Quinn Benefit granted to the police unit is included in police officer base pay.

The City maintains it is not a sound expenditure of taxpayer money to provide extra compensation to incentivize additional training for firefighters that may improve competencies within the fire service but are not required to perform the job of a firefighter. It argues that the City does not discourage firefighters from improving their skills by taking voluntary training or obtaining voluntary certifications during paid time. It also maintains that the proposal is potentially very expensive.

The Panel has carefully considered this proposal. While it believes that most training is worthwhile, it notes that the Department encourages the training and certifications at the present time. It usually pays for the test and grants time off with pay. This Panel believes that the Department has developed a culture where firefighters are encouraged to take courses and obtain certifications in the course of their normal duties. Firefighters have responded positively to this encouragement. Management and most members of the bargaining unit see the mutual benefit of these trainings and certifications. There is no reason to change the status quo.

***Award.* The Union proposal shall not be adopted. The status quo should continue.**

3. ELIMINATION OF THE \$0.25 NIGHT SHIFT DIFFERENTIAL

The current contract provides the following:

Beginning FY03, all bargaining unit members will be paid an additional \$0.25 per hour for each hour worked between the hours of 6:00pm and 8:00am

City Position: The City proposes the elimination of this section.

Union Position: The Union argues that this section should be maintained.

Discussion. The City notes that this provision was added to the contract when firefighters worked a 10 hour day shift and a 14 hour night shift. It was added as an incentive and inconvenience pay for those working from 6:00 pm to 8:00 am. When the Department moved to a 24-hour shift operation, the need for a shift differential evaporated.

The Union counters that this money is wages and amount to about 0.5% of salary. It would be unfair to take this away from the firefighters. The Union also maintains that this benefit has been retained through a number of contracts after the 24-hour shift was instituted.

Shift differentials started many years ago in the private sector to provide an incentive for employees to work an evening or night shift. It has spread to all parts of the economy and provides an incentive and pay for the inconvenience of working a non-desirable shift. When employees rotate shifts so that all employees have the same level of inconvenience for working a non-preferred shift, many contracts have eliminated a shift differential and simply include the value of the shift differential in the base wage. If all employees work the same shifts, there is no need to incentivize employees to work these less desirable shifts.

In a 24 hour shift such as this, there is no reason to have as shift differential. All employees work the same hours. However, employees derive about ½% in salary from the shift differential. Since all employees receive the same amount of money from shift differential, this money should be folded into base pay. To do otherwise would, in effect, give the employees a pay cut. The goal is to eliminate unnecessary or illogical benefits while maintaining the income of the firefighters.

Award. The shift differential shall be eliminated as soon as practicable. However, in granting the wage increase of 1% effective January 1, 2013, we have factored in the value of the shift differential to each employee.

4. **AMBULANCE ASSISTANT STIPEND**

Article 5, Section 2 of the current contract provides the following:

b. Amounts: Stipends will be determined annually based on certified revenue from June-July (City's fiscal year), stipend payments cannot exceed 22% of the gross certified (received) revenue, as follows:

i. Basic:	\$3,000
ii. Intermediate	\$4,500
iii. Paramedic	\$6,500

Union Position: The Union is seeking to add an ambulance assistant stipend of \$1,500 for firefighters without EMT certifications.

City Position: The City argues against the inclusion of this proposal.

Discussion: The Union argues that this proposal is a no cost item to the City since the Ambulance Assistant stipend comes out of the 22% allotment outlined in Article 5 of the collective bargaining agreement. It is simply a different way of distributing a fixed amount. The Union maintains that full ambulance service has increased the responsibilities and duties of all firefighters, even those with any EMS certification. As such, all firefighters should benefit from the revenue received.

The City maintains there is no evidence to show that non-EMS firefighters are performing work outside their first responder certification. While admitting that non-EMS firefighters may be performing more first responder duties and are probably becoming more proficient in such task, there is no reliable evidence to show that they are performing more of these duties than in the past or at a higher level of responsibility.

This proposal distributes specified dollars differently from the current contract. The ambulance assistant stipend does not represent an added cost to the City. Legitimate arguments can be made for both the Union and City position. Full ambulance service has had an impact on

all members of the Department including those who do not do direct EMS functions. The very presence of the ambulance has forced the non-EMS firefighters to become more adept at first responder needs. It has also forced them to accept the burden of other duties when EMS firefighters are performing such EMS duties. It is logical that all firefighters share, in varying degrees, the fruits of the 24/7 ambulance income

Award. The Union proposal is adopted. The additional stipend of \$1,500 for ambulance assistant shall be added to this section of the contract without changing the 22% cap, effective June 30, 2013.

5. THREE BARGAINING UNIT MEMBERS ON ALL ENGINE AND LADDER TRUCKS LEAVING THE STATION

There is currently no language in the contract relating to this subject.

Union Position: The Union proposed that the following language be added to the contract as a new article:

Staffing: The City will maintain, for the purposes of public safety, minimum staffing of three (3) bargaining unit members on any engine or ladder truck leaving a station. The minimum will be maintained until the apparatus returns to the station.

City Position: The City opposes the adoption of this proposal.

Discussion: The Union maintains that this proposal addresses a real and significant health and safety issue. It notes that about twice a month, staffing on engine and ladder trucks falls to two members (usually as a result of reassignment of personnel to perform other duties on other apparatus). The Union maintains that there can be a substantial lag in response time with a 2 person crew compared to a three person crew. This can have a significant impact when fighting a fire. The sooner a fire can be brought under control the sooner risks to both firefighters and

the public can be lessened. Additionally, a two member crew is limited in what it can do when it arrives at the fire. For example, it cannot make entry in the building until backup apparatus or crew members respond.

The City acknowledges that it would be nice to be able to have engine companies with additional staff and ambulances with more EMTs. However, the present practice is to staff apparatus when an alarm goes out exactly like the firefighters are requesting. The only difference is that management currently has the flexibility to staff apparatus with non-unit firefighters (Deputy Chiefs, Assistant Chiefs or even the Chief, if necessary). The Department also has the flexibility to separately deploy people to the scene if the shift commander feels it is in the interest of safety. It also notes that surrounding communities often have less staffing than Northampton. The City also maintains that there could be a significant cost to the City in terms of additional staffing.

Staff requirement needs for firefighting and ambulance service do not necessarily follow predictable patterns. Even if there was no ambulance service, too many fires at one time could force some of the equipment to run with less than optimal service. The introduction of 24/7 ambulance services makes manning requirements even more difficult and more unpredictable. After listening to the testimony on this issue, the Panel is convinced that the current staffing levels are usually sufficient, with adequate backup from supervisory personnel. We see no basis to justify a change. However, we encourage both sides to make sure that when an apparatus leaves the station with a non-unit supervisor, such employees performs the appropriate assignment, to the fullest extent possible. This should insure that the parties will continually strive to maintain the intent of minimum staffing. The parties must continually communicate to achieve the goals of minimum staffing.

We also note that 24/7 ambulance service is still relatively new. It is obvious that any employer, including the Fire Department, should constantly reevaluate its staffing to make sure it can adequately provide services. This is particularly true when new services, such as the 24/7 ambulance, are added. The panel is not convinced, however, that there is justification for changing the apparatus staffing requirement at this time.

Award. The Union's proposal is rejected.

6. START THE TIME FOR CALL BACKS TO START WHEN THE ALARM SOUNDS AND NOT AT THE TOP OF THE HOUR

Section 10.03 of the current contract provides the following:

In the event of multiple alarms, general alarms, other callbacks, all Employees shall readily avail themselves and respond to such fire immediately upon notification. Those called back shall be paid time and one-half (1.5) the prevailing rate with minimum credit for four hours. Those Employees scheduled to report to duty on the successive shift shall be the first to be relieved.

Current practice is to pay call-back from the start of the hour in which the alarm sounds.

City Position: The City proposes to change the current practice and specify the call back starts when the alarm sounds.

Union Position: The Union seeks to maintain the current practice.

Discussion: The City views this proposal as a way of controlling overtime costs on an item that makes no logical sense. It acknowledges that, in non-critical situations, management may hold the tone until the top of the hour in order to avoid overtime expenses and control cost. It maintains that changing the practice will result in a better operation and the potential loss of income does not outweigh introduction of a better and more accurate practice.

The Union argues that the current practice and compensation scheme is justified in light

of the tremendous inconvenience and cost associated with a member being recalled to respond to a fire. The member may be interrupted from another job or have to incur child-care or other expenses as a result of the recall. It claims that the City offers no justification for the change.

It is undisputed that the practice of call-backs starting at the top of the hour has been in existence for as long as any member of the Fire Department can remember. It is also clear that this practice is not specified in the collective bargaining agreement. The Panel cannot articulate any clear rationale for timing the start of call-backs of the current practice, except that it has been done this way for many years. (It may have started as a mechanism to avoid arguing over the precise time of a call; in today's world of computers and time stamps, there will be no disagreements about when a call-back occurred.)

The Panel agrees that call-backs can be a significant inconvenience to any employee. Depending on the industry and the situation, call-back provisions range from 2 to 4 hours, and start at either the time called or the time arriving at the worksite. It would be highly unlikely that either party would be able to cite another situation in which the call-back starts earlier than the time of the call (or when the alarm sounds).

The current practice essentially gives employees additional time for the call back; depending on the situation, it could be an additional 5-55 minutes. The Panel sees no justification for this practice and finds that the contract should be more consistent with practices in other fire departments and contracts in other industries, both public and private.

***Award.* Language shall be added to clarify that call-back time starts when the bell is sounded. The following sentence added to Section 10.03 would accomplish this result:**

The call-back shall start when the alarm is sounded.

7. MATERNITY LEAVE

Article 18 of the current contract provides the following:

18.01. In case of maternity leave an employee shall be allowed to continue working until her attending physician determines that she should take maternity leave.

Except as provided below, maternity leave shall be without pay.

When possible the employee shall give the employer two (2) week's notice prior to her last day of work.

18.02. Upon being placed on maternity leave under this article, the employee may use any sick leave and/or vacation leave credits accrued to her at her discretion. Maternity leave shall be allowed up to six (6) months and with the approval of the department head, may be extended for medical reasons.

18.03. Such maternity leave shall not affect the employee's right to receive vacation time, sick leave bonuses, advancement, seniority, length of service credit, benefits, plans or programs for which she was eligible at the date of her leave and any other advantages or rights of her employment incidental to her employment position; provided, however, that such maternity leave shall not be included, when applicable, in the computation of such benefits, rights and advantages; and, provided, further, that the employer need not provide for the cost of any benefits, plans or programs during the period of maternity leave unless such employer so provides for all employees on an FMLA approved leave of absence.

Article 49 provides the following:

The parties to this agreement hereby agree to adopt through reference and implement the City of Northampton's Family and Medical Leave Policy and any subsequent revisions mandated by federal law.

City Proposal: The City proposed the language be modified to the following:

18.01. In case of a paternity or maternity leave an employee shall be allowed to continue working until his or her physician determines that he or she should take such leave. Except as provided below, paternity or maternity leave shall be without pay. When possible the employee shall give the employer two (2) week's notice prior to his or her last day of work.

18.02. All leaves for maternity or paternity leave shall be governed by the provisions of the City of Northampton's Family and Medical leaves of absence policy. Such policy shall be regularly updated to comply with the provisions of applicable state and federal law and is hereby incorporated by reference into this

agreement.

18.03. Such maternity or paternity leave shall not affect the employee's right to receive vacation time, sick leave, bonuses, advancement, seniority, length of service credit, benefits, plans or programs for which he or she was eligible at the date of such leave and any other advantages or rights his/her employment incidental to his/her employment position; provided, however, that such leave shall not be included, when applicable, in the computation of such benefits, rights and advantages; and, provided, further, that the employer need not provide for the cost of any benefits, plans or programs during the period of leave unless such employer so provides for all employees on an FMLA approved leave of absence. Maternity/Paternity leave shall run concurrently under the provisions of M.G.L. c. 149 §105D and the federal Family Medical Leave Act ("FMLA").

Union Position: The Union seeks to retain the language in the current contract.

Discussion: The City argues that the current benefit provides for female members of the bargaining unit beyond what the law requires. It also notes that it is rarely used. However, the City believes that the current language expands the Massachusetts Maternity Leave Act in a manner that the City is inconsistent with best practices and would not provide uniform leave benefits for all employees in the Department. The City maintains that its proposal simply makes this language consistent with all other units in the City.

The Union claims that the City's proposal is a substantial diminution of the current policy. It claims it reduces the previous 26 weeks with a possible extension to 12 weeks with no possibility of extension. It restricts the use of sick time to eight weeks instead of the current unlimited amount. The new policy requires termination if an employee fails to return to work at the end of the shortened family/medical leave. Finally, the leaves under this policy run concurrently; at present, the policies run consecutively.

Over the years, many contracts included maternity leave provisions that were much more desirable than the current laws regarding family medical leave. The family medical leave provisions resulted in a modification and a narrowing of some of these maternity benefits in

exchange for broadening its coverage to both mothers and fathers. Many contracts have updated their maternity leave provisions to make them consistent with governing law. There is also an effort to make the language consistent throughout the City. The City's proposal achieves this.

Award: The City proposal should be adopted. However, a sentence adding the possibility of extension at the discretion of the Chief shall be added at an appropriate location in the article.

8. BEREAVEMENT LEAVE

During post hearing discussions, the parties agreed to a revision to the second paragraph of Article 15 concerning bereavement leave. The Panel agrees with this change and hereby makes it part of this Award.

Award: The second paragraph of Article 15 shall be changed to the following.

In the event of a death of a member of the immediate family, the employee will be granted paid leave of up to four (4) working shifts, **except for employees working the 24-hour shift, in which case the paid leave will be up to two (2) 24-hour tours.** Immediate family is defined as the employee's mother, father, step-parent, foster parent, step-child, foster child, sister, brother, grandparent, grandchild, father-in-law, mother-in-law, son-in-law, and daughter-in-law.

SUMMARY OF AWARD

The Panel recognizes that this Opinion and Award is the result of an analysis of all outstanding issues. This Award contains the Panel's best judgments as a balance between all outstanding items. While there are certain individual items that both the Employer and Employee Organization Member may have changed individually, reservations on certain items have been eliminated in the context of an overall and total package. Accordingly, the Panel unanimously agrees with all of the provisions articulated in this Opinion and Award, except as

stated below.

1. WAGES

- a. Effective July 1, 2010 – 2% across the board wage increases (in addition to steps already paid.)
- b. Effective July 1, 2011 – 2% across the board wage increases (in addition to steps already paid.)
- c. Effective July 1, 2012 – 2% across the board wage increases (in addition to steps already paid.)
- d. Effective January 1, 2010 – 1% across the board wage increases

2. STIPEND FOR FIRE ACADEMY CERTIFICATIONS (new)

The Union proposal shall not be adopted. The status quo should continue.

3. ELIMINATION OF THE \$0.25 NIGHT SHIFT DIFFERENTIAL

The shift differential shall be eliminated as soon as practicable. However, in granting the wage increase of 1% effective January 1, 2013, we have factored in the value of the shift differential to each employee.

4. AMBULANCE ASSISTANT STIPEND

The Union proposal is adopted. The additional stipend of \$1,500 for ambulance assistant shall be added to this section of the contract without **changing the 22% cap**, effective June 30, 2013.

5. THREE BARGAINING UNIT MEMBERS ON ALL ENGINE AND LADDER TRUCK LEAVING THE STATION

The Union's proposal is rejected.

6. BEGIN THE TIME FOR CALL BACKS TO START WHEN THE ALARM SOUNDS AND NOT AT THE TOP OF THE HOUR

Language shall be added so it is clear that call-back time starts when the bell is sounded. The following sentence added to Section 10.03 would accomplish this result:

The call-back shall start when the alarm is sounded.

7. MATERNITY LEAVE

The City proposal should be adopted. However, a sentence adding the possibility of extension at the discretion of the Chief shall be added at an appropriate location in the article.

8. BEREAVEMENT LEAVE

The second paragraph of Article 15 shall be changed to the following.

[Signature]

Edward J. Gibbon

 Public Employer or Member

AFFIRMATION

Date: June 24, 2013



Date: June 24, 2013

Edward J. Gibson

Edward Gibson
Public Employer Panel Member

COMMONWEALTH OF MASSACHUSETTS)
HAMPDEN COUNTY)

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

Date: June 24, 2013



Robert Taylor
Employee Organization Panel Member