

**IN THE MATTER OF
INTEREST ARBITRATION
BETWEEN**

**LOCAL 937, INTERNATIONAL ASSOCIATION OF FIREFIGHTERS
-AND-
CITY OF CHELSEA**

JLMC-11-35F

AWARD

A. Contract Durations

1. July 1, 2010 through June 30, 2011
2. July 1, 2011 through June 30, 2014

B. Compensation Increases

1. Fiscal Year 2011 – Effective July 1, 2010, a 3% across-the-board wage increase
2. Fiscal Year 2012 – Effective January 1, 2012, a 2% across-the-board wage increase
3. Fiscal Year 2013 – Effective July 1, 2012, a 2.5% across-the-board wage increase
4. Fiscal Year 2014 – Effective July 1, 2013, a 2.5% across-the-board wage increase

C. Personal Leave

Union's proposal to introduce a personal leave benefit to the collective bargaining agreement is not awarded.

D. EMT Stipend

Status quo.

E. Hazardous Duty Stipend

Status quo.

F. Hazardous Materials Response and Confined Response Pay

Status quo.

G. Holidays

Status quo.

H. Education

Status quo.

I. Vacation Leave

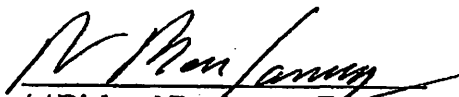
Status quo.

J. Drug Testing

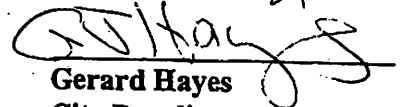
Status quo.


Jay Colbert
Union Panelist

Dated: 2/1/13


/s/ Richard Boulanger, Esq.
Chairman and Neutral Panelist

Dated: 1/31/13

I dissent from
the award.

Gerard Hayes
City Panelist

Dated: 2/1/13

I. INTRODUCTION

The Joint Labor-Management Committee (JLMC) Interest Arbitration Panel is composed of Union Representative, Jay Colbert; Neutral Panelist and Chairman, Richard Boulanger, Esq.; and City Representative, Gerard Hayes. The Arbitration Panel was appointed by the JLMC to resolve a contract dispute between Local 937, International Association of Fire Fighters ("Union") and the City of Chelsea ("City"). The parties submitted the following issues for hearing: Contract Duration, Compensation Increases, Paid Leave, and Drug Testing.

The arbitration hearing was held on October 24, 2012 at JLMC offices, Boston, Massachusetts.

The Union was represented by Ms. Leah Barrault, Esq. Deputy Chief John Quatieri and Consultant Kevin Dasey testified for the Union.

Mr. John Clifford, Esq. represented the City. City Manager Jay Ash testified for the City.

The parties were given full opportunity to present evidence and make arguments.

In formulating its award, the panel considered the following provisions of c.589 of the Acts of 1987:

- 1) the interests and welfare of the public;
- 2) the hazards of employment;
- 3) physical, educational and mental qualifications;
- 4) job training and skills involved;
- 5) comparative wage and employment conditions with employees performing similar services and with other employees generally in public and private employment in comparable communities;
- 6) the cost-of-living as determined by the Department of Labor;
- 7) the overall compensation presently received by the employees, including direct wages and fringe benefits;
- 8) tax levy limit - Prop 2½ ;

- 9) comparable property tax rates;
- 10) municipal growth rates- residential/commercial;
- 11) Free Cash/reserves;
- 12) mean residential income;
- 13) debt/projected expenses;
- 14) other settlements in the municipality and in other comparable communities for employees similarly situated; and
- 15) changes in any of the foregoing circumstances during the pendency of the dispute.

In formulating its award, the panel applied all of the statutory elements to the evidence. The panel reviewed and applied relevant internal and external comparability data to the parties' issues. It also considered the City's ability to pay for the award's financial aspects.

Based on the evidence submitted, the panel concludes that the awarded proposals are justified, and that the City has the requisite ability to pay for the financial components of the award, as discussed in more detail below. The terms of the parties' July 1, 2007 to June 30, 2010 collective bargaining agreement shall continue in full force and effect in the July 1, 2010 through the June 30, 2011, and the July 1, 2011 through June 30, 2014 contracts, except as awarded herein by the Arbitration Panel, or as modified by the parties.

II. FINDINGS AND OPINION

A. CONTRACT DURATION

1.) UNION PROPOSAL:

A three (3) year contract beginning July 1, 2010 through June 30, 2013.

2.) TOWN COUNTER-PROPOSAL:

A one year contract - July 1, 2010 through June 30, 2011, followed by a three (3) year collective bargaining agreement from July 1, 2011 through June 30, 2014.

3.) DISCUSSION:

The panel is persuaded that fixing wage increases through Fiscal Year 2014 is beneficial to both parties. The City is better able to plan future budgets and Firefighters may rely on future wage increases.

4.) AWARD

A one year contract - July 1, 2010 through June 30, 2011, followed by a three (3) year collective bargaining agreement from July 1, 2011 through June 30, 2014.

B. WAGE INCREASES

1.) UNION PROPOSAL:

July 1, 2010 - 4% wage increase across-the-board

July 1, 2011 - 4% wage increase across-the-board

July 1, 2012 - 4% wage increase across-the-board

2.) CITY COUNTER-PROPOSAL:

July 1, 2010 - No increase

July 1, 2011 - 1% wage increase across-the-board

July 1, 2012 - 1% wage increase across-the-board

July 1, 2013 - 1% wage increase across-the-board

3.) **DISCUSSION:**

a. **JUSTIFICATION – COMPENSATION INCREASE**

i. **EXTERNAL COMPARISONS - UNIVERSE FIREFIGHTER COMPENSATION**

The Union argues that its wage increase proposal is appropriate as the City's Firefighters receive the lowest Base Salary in its universe. Furthermore, the Firefighter's Base Salary is far less than that of City Police Officers, according to the Union. The City contends that the Union's wage increase proposal is excessive as Firefighter benefits and stipends are far more generous than those enjoyed by universe Firefighters and City Police Officers.

In order to determine whether compensation increases are warranted, it is necessary to identify the appropriate external universe, among other factors. Based on population, geographic proximity, residential and commercial building density and various socio-economic factors, the panel adopts the cities of Everett, Malden, Medford, Revere, and Somerville as an appropriate universe to which the City Firefighter compensation can be compared. The panel has excluded the City of Boston from the comparable universe as it does not share necessary elements with the City and universe communities. City Police Officer compensation must also be evaluated as it is the City's other public safety unit.

As of June 30, 2010, universe compensation components and universe average Total Compensation of a fifteen (15) year Firefighter with a Bachelor's Degree and receiving an EMT stipend are as follows:

Fiscal Year 2010 – 15 Year Firefighter with Bachelor's Degree

Community	Base Salary	Shift Diff's	Holidays	Education	Clothing	EMT	Hazmat & Training	Longevity 15 yrs	AED and EPI	Total Compensation
Everett	54,805		5,032	2,600	900	1,166	1,458	1,500	1,100	68,561
Malden	53,501	2,451	3,168	1,961	500	787	1,600	2,048	500	66,516
Medford	56,098	3,359	3,643	1,300		500	1,000	500	482	66,882
Revere	47,113		3,781	2,827	1,100	2,827	3,300	1,100	1,413	63,461
Somerville	67,240		4,982							72,222
Average	55,751	2,905	4,121	2,172	833	1,320	1,840	1,287	874	67,528
Chelsea	38,631	2,704	4,280	7,726	1,100	1,200	5,678	1,500	900	63,719

A Base salary increase of 2% was applied to Malden and Revere Base Salaries as the parties have not reached settlements. The value of 2% was selected as it represents an average wage increase bargained by other universe parties such as Chelsea in Fiscal Year 2010. The 2% application allows for calculation of Total Compensation figures including universe Average Total Compensation that can be compared to that of City Firefighters in Fiscal Year 2010. As of June 30, 2010, a fifteen (15) year City Firefighter with a Bachelor's Degree received \$3,809 less in Total Compensation than did his/her similarly situated universe peer, largely due to the failure of the Bachelor's Degree benefit and other, more than competitive stipends, to offset the Base Salary gap. While City Firefighters receive competitive benefits and stipends, their base salaries are considerably lower than those of their universe colleagues, accounting for the compensation discrepancy. However, when the City's Master's benefit (30% Base Salary) is calculated as part of Total Compensation, the Firefighter universe Total Compensation gap is offset. The Master's benefit significantly contributes to Total Compensation. Even though somewhat less (37/90) than fifty percent (50%) of the bargaining unit receives the Master's benefit, it is available to all Firefighters who meet the contractual requirements including hire before July 1, 2009. Therefore, in calculating Total Compensation, it cannot be ignored, less the incentive to earn the benefit disappears. It is the value of the Master's benefit that results in a competitive Average Total Compensation for City Firefighters. Consequently, so long as future City wage increases are competitive with those granted in other universe

communities, then City Firefighters will receive Average universe Total Compensation, at least at the Master's level. However, as to Total Compensation, City Firefighters do not compare favorably with City Police Officers.

ii. INTERNAL COMPARISONS – CHELSEA PATROLMEN COMPENSATION

The compensation comparison of a fifteen (15) year City Patrolman with a Bachelor's Degree and a fifteen (15) year Firefighter with a Bachelor's Degree and an EMT certification is as follows:

Patrolman - 15 years - Bachelor's Degree

Base	\$45,613
Educational Incentive	9,123
Hazardous Duty	5,474
Night shift Differential	
Hazmat and confined space	
EMT	
Defibrillator	
Longevity	1,500
Holiday Pay	4,053
Holiday Premium	2,307
Clothing	1,000
Annual Total	\$69,070

FireFighter - 15 years - Bachelor's Degree

Base	\$38,631
Educational Incentive	7,726
Hazardous Duty	2,781
Night shift Differential	2,704
Hazmat and confined space	2,897
EMT	1,200
Defibrillator	900
Longevity	1,500
Holiday Pay	4,280
Holiday Premium	
Clothing	1,100
Annual Total	\$63,719

A comparison of Fiscal Year 2010 City public safety employee compensation reveals that a fifteen (15) year Patrolman with a Bachelor's Degree working a 4/2 shift receives \$5,351 more than a fifteen (15) year Firefighter with a Bachelor's Degree and an EMT certification. A twenty (20) year Firefighter with an EMT certification and Master's benefits receives \$6,487 less in Total Compensation than a twenty (20) year Patrolman with a Master's Degree:

Patrolman - 20 years - Master's Degree

Base	\$45,613
Educational Incentive	13,684
Hazardous Duty	5,930
Night shift Differential	
Hazmat and confined space	
EMT	
Defibrillator	
Longevity	2,000
Holiday Pay	4,390
Holiday Premium	2,499
Clothing	1,000
Annual Total	\$75,116

FireFighter - 20 years - Master's Degree

Base	\$38,631
Educational Incentive	11,589
Hazardous Duty	3,013
Night shift Differential	2,704
Hazmat and confined space	2,897
EMT	1,200
Defibrillator	900
Longevity	2,000
Holiday Pay	4,595
Holiday Premium	
Clothing	1,100
Annual Total	\$68,629

The Fiscal Year 2010 seven thousand dollar (\$7,000) Base Salary discrepancy between a Patrolman and a Firefighter largely accounts for the Total Compensation differences. The added compounding value of the higher Base Salary when percentage-based benefits (i.e., education and hazardous duty) are applied also contributes to the increased Total Compensation of a Patrolman. Even with the addition of exclusive Firefighter benefits (i.e., Night Shift Differential, Hazmat and Confined Space stipend) to the Firefighter Base Salary, the Total Compensation discrepancy is over five thousand dollars (\$5,000) at the Bachelor's Degree level and over six thousand dollars (\$6,000) at the Master's level. Therefore, it is necessary to increase the Firefighter Base Salary to make it more competitive with that of a City Patrolman.

The City's Fiscal Year 2011-2014 Teachers' wage increase settlements as applied to its Firefighters' Base Salaries assists in shrinking the Total Compensation gap between City Patrolmen and Firefighters. Teachers were granted the following across-the-board wage increases:

- 3.0% effective - September 1, 2010
- 2% effective - mid-point school year 2011-2012
- 2.5% effective - July 1, 2012
- 2.5% effective - July 1, 2013

The wage increases negotiated by the Teachers' Union are consistent with the following Firefighter universe

settlements:

	FY11	FY12	FY13	FY14
Everett	July 1, 2010 - 1%	July 1, 2011 - 1%		
	January 1, 2011 - 2%	January 1, 2012 - 2%		
	June 30, 2011 - 1.5%			
Medford	December 31, 2010 - 2%	December 31, 2011 - 3%	January 1, 2013 - 2.5%	
		June 30, 2012 - 4%		
Somerville	July 1, 2010 - 2.5%	July 1, 2011 - 3%	July 1, 2012 - 2.5%	July 1, 2013 - 2%
Malden ¹				
Revere ²				

The percentage increases should be viewed to a significant degree as Firefighter Base Salary uplifts as distinct from cost of living adjustments. Application of these across-the-board wage increases to Firefighters' Base Salaries will increase Firefighter Total Compensation as will the application of percentage-based benefits and stipends to their augmented Base Salaries. As a result, City Firefighter Total Compensation will be more competitive with City Patrolmen Total Compensation. Moreover, the application of the Teachers' wage increase package to City Firefighter Base Salaries will allow City Firefighter Total Compensation to remain competitive with universe Firefighter Total Compensation at least at the Master's level.

b. ABILITY TO PAY – COMPENSATION INCREASE

Following application of relevant statutory factors to the costs of the award, the panel concludes that the City has an ability to pay for the financial components of it. The Union calculated a \$4.5 million dollar price tag for its proposals while the City projects a \$3.05 million cost of the Union's package. Furthermore, the City calculates a \$7.8 million dollar price tag on the Union's compensation proposal when the Union's demands are applied to other bargaining unit and non-

bargaining unit City employees. While acknowledging that the award may have some general impact on City compensation increases, the panel rejects the notion that the award sets the pattern as such. The panel has no jurisdiction over any other non-Firefighter bargaining unit or non-Union employees. Based on a review of the evidence, the panel concludes that the Firefighters have been in a unique compensation position vis á vis its universe Firefighters and City Police Officers. The panel is not aware of the compensation position of other bargaining unit employees or non-bargaining unit employees vis á vis their universes. The panel's Firefighter compensation award was tailored to the needs of the Firefighter bargaining unit. Specifically, increases in Firefighter Base Salary were necessary as a catch-up measure to the City's Police Officers. In light of the panel's rationale for its award to Firefighters, the City has control over what it offers by way of compensation increases to bargaining unit employees and non-bargaining unit employees alike. Therefore, the panel restricts itself to Firefighter compensation in calculating the cost of its award.

The award's price tag is less than that calculated by both parties. The panel has rejected Union benefit increases, and it has also reconfigured justified compensation augmentation, particularly Base Salary upgrading. By reducing and/or delaying Base Salary adjustments, the panel has lessened the cost of such increases, mindful of the City's less than competitive per capita income, relatively low property values, and high unemployment rate while acknowledging the City's impressive tax base growth, combined with a fiscally competent leadership team resulting in impressive Free Cash and Reserve account balances.

The City contends that it has a limited ability to fund compensation increases. It argues that it does not have sufficient funding to subsidize much more than a 1% increase per Fiscal Year from

¹ No settlement to date.

2012 through 2014. It points to a decrease in general government state aid over the past few years, and notes that local aid is the largest percentage of its annual budget as compared to other universe cities. The evidence reveals that general government state aid is now on the upswing, although admittedly not at prior levels. However, the City admits that while its local aid has decreased, the loss of state funds was offset by excise taxes generated by Enterprise Rental, a motor vehicle rental entity. While the City is guaranteed \$1.3 million annually pursuant to its contract with Enterprise Rental, \$4.3 million was generated in Fiscal Year 2009 offsetting the state aid decrease. In Fiscal Year 2011, the first year of this award, more than \$5 million in excise taxes were generated by Enterprise Rental. While the tax revenue from Enterprise Rental may fluctuate, recent trends indicate that it is providing a substantial source of funds to the City, well beyond the \$1.3 million contractual minimum. The impressive Enterprise Rental revenue stream continues to substantially contribute to the City's fiscal health.

In support of its limited ability to pay for compensation increases, the City also points to its unfunded long-term debt including future employment benefit obligations. It argues that as a percentage of equalized valuation, its long-term debt is the highest in the universe. However, in his Fiscal Year 2011 Comprehensive Annual Financial Report (CAFR), City Manager Jay Ash noted that the City's debt burden was relatively low compared to that of other like-sized communities. Mr. Ash indicated that the Fiscal Year 2011 General Fund Balance, a \$4.3 million increase over the Fiscal Year 2010 General Fund Balance, was available for appropriations at the City's discretion. The City argues that in Fiscal Years 2012 and 2013, the City was required to absorb \$585,204 and \$358,839 respectively in lost grant monies, which grants expired in Fiscal Year 2011. Grant monies

² No settlement to date.

were utilized to employ Firefighters who must now be subsidized with City funds to continue their employment. The City contends that its investment in personnel results in less funds available to fund compensation increases. However, a Section 19 health insurance agreement between the City and its employees resulted in a \$1 million insurance premium cost savings to the City by way of employee, including Firefighters', absorption of higher co-pays and deductibles. In the Fiscal Year 2011 CAFR for the year ended June 30, 2011, Mr. Ash noted as follows:

At June 30, 2011, general fund cash and cash equivalents totaled \$28,263,614, while the balance of unrestricted cash and cash equivalents for all governmental funds totaled \$46,700,433.

The approximate cost of the Fiscal Year 2011 three percent (3%) wage increase is \$200,000, well within the City's ability to pay.

The City submits that it's A+ bond rating, placing it mid-pack in its universe, means that the City must be cautious in its spending habits, a lesson learned during the five (5) year (1990-1995) receivership period. However, Standard & Poor's Rating Service (Standard & Poor's) was more optimistic regarding the City's 2012 bond rating, citing the following rationale for it:

The ratings reflect our opinion of the city's following strengths:

- Strong financial position and good management policies;
- Experienced financial management; and
- Low debt burden, net of state school construction aid.

Standard & Poor's personnel were impressed with the City's sound management and fiscal practices, as they should have been, while acknowledging the City's long-term unfunded liabilities and relatively low income and wealth factors. The City is in a sound financial position due to the enlightened leadership of City officials led by Mr. Ash.

The City has experienced impressive, recent new growth which will produce significant

revenue to it in the future. One new Marriott hotel has been constructed and is providing real estate and hotel room taxes to the City. The Federal Bureau of Investigation (FBI) has selected the City as the site of its new regional headquarters. It has planned a 200,000 square foot, \$100 million building in the City which will generate not only substantial property taxes, but it will also spur new economic development and increased revenue for local merchants. Mr. Ash indicates that such tax revenue will be utilized to subsidize future municipal budgets and necessary City services. Moreover, the Marriott hotel chain is considering constructing another hotel in the City. The City is also in contention for one (1) of the three (3) casinos targeted for Eastern Massachusetts. While the casino location is more speculative than the new FBI headquarters, and the new hotel construction, nevertheless, its location and feasibility is more evidence that the City has become an attractive location for commercial development.

In his Fiscal Year 2013 State of the City Report, Mr. Ash noted the positive revenue impact of the new Marriott Hotel, and the opening of One Webster, described as a development of one hundred twenty (120) luxurious apartments. Mr. Ash observed that new growth revenue obviated the need for a Proposition 2 ½ override. He went on to note that based on "property tax rates combined with water and sewer bills, the City was the most affordable in the region." Mr. Ash also observed that "in contrast to most communities, new housing, stores, hotels and plants continue to spring up around the City and that the City enjoys growth and stability despite local, national, and international fiscal stress." It is worthy of note that such expansion results in the availability of new jobs in addition to an increased City revenue stream.

While the parties quarrel over the amount available in various City reserve accounts to fund wage increases, the City does not dispute that Free Cash and its General Stabilization Fund are

available for such purposes. However, the City cautions on using Free Cash or its General Stabilization Fund for recurring expenses such as salary increases and other compensation. In Fiscal Year 2012, the General Stabilization Fund was \$4.3 million. Similarly, recent Free Cash amounts are a strong indicator of the City's fiscal health. The City points out that available Free Cash fluctuates, noting a recent \$2.4 million Free Cash certification. The City has recently been certified for impressive Free Cash figures. In the first year of the award (Fiscal Year 2011), the City closed out the Fiscal Year with \$8,885,459 in Free Cash up from \$7,478,000 available at the close of Fiscal Year 2010. The Fiscal Year 2011 amount was the highest in the universe. In Fiscal Year 2012 (the second year of the award), Free Cash increased to \$10,759,219. As to the City's future financial health, Standard & Poor's commented as follows:

Despite the economic downturn, the city's combined unreserved general fund and stabilization fund balances have increased each year since fiscal 2006, and management projects another surplus for fiscal 2012. In fiscal 2011, the city implemented Governmental Accounting Standards Board (GASB) Statement No. 54, which is intended to make fund balance reporting more consistent and transparent. Overall, liquidity has improved to very strong levels over the years. In fiscal 2011, the town reported roughly \$28 million of cash and equivalents, or about 74 days' operating cash on hand. The city is reporting an overall total fund balance of \$26.7 million, or roughly 19% of expenditures, which we consider very strong. The total fund balance is made up of \$2.3 million of assigned fund balance (1.7% of expenditures) and \$26.7 million in unassigned fund balance (19%). We note the unassigned fund balance includes the town's stabilization reserves. Stabilization funds can be made available for any municipal purposes but require a supermajority vote by the city's elected officials.

For fiscal 2012, the city is projecting another sizable operating surplus, aided by a light winter and stable revenues. The 2012 operating budget totals \$115 million, which, after accounting for a drop in debt service due to the redemptions of school bonds, is virtually flat over the previous year.

State aid accounts for the majority of general fund revenues (56% of fiscal 2011), while property taxes account for 29%. We note that state aid has historically been more volatile than property taxes. However, the town's financial profile has been

enhanced by an excise tax agreement with Enterprise Car Rental Co., which has leased land from the city. In addition the city's reserves and operating flexibility are at the highest point. Chelsea produces an extensive five-year financial forecast that projects reserves to be maintained at these strong levels through fiscal 2017. The city's policy is to maintain the undesignated general fund balance equal to at least 5% of expenditures and the stabilization fund balance equal to at least 3%.

Certainly then, the City is well poised to propel its current strong financial position into the future, at least through Fiscal Year 2014, the final year of this award. The panel does not accept the City's rationale that Fiscal Year 2012 certified Free Cash amount of over \$10 million has been completely absorbed into the Fiscal Year 2013 budget to fund projects and other undertakings, and is no longer available for compensation increases. The City's lack of wage increase inclusion in the budget or underfunding it contributed to the Free Cash amounts in Fiscal Years 2011-2012. Therefore, it is reasonable for the panel to look to the City's Free Cash amounts to fund Fiscal Year 2011 and Fiscal Year 2012 wage increases. There is no evidence that Free Cash amounts will plummet in Fiscal Year 2013 or in Fiscal Year 2014. Based upon the high volume of excise taxes generated by Enterprise Rental and the City's new growth, as well as its sound financial management practices, there is no reason to believe that Free Cash and the General Stabilization Fund accounts will not remain ample through Fiscal Year 2014, despite spending on City-wide wage increases which have not yet been paid, beginning in Fiscal Year 2011. Based on all of the ability to pay evidence, the panel concludes that the City has a sufficient ability to pay the compensation increases awarded by the panel.

The City argues that the panel should not consider the Teachers' Fiscal Year 2011-2014 wage increases as the City receives far more Chapter 70 Education Aid than General Governmental Aid. However, as indicated in more detail above, General Government Aid is not the only source of the

City's ability to pay. Rather, wage increases can be funded from the City's certified Free Cash amounts for the Fiscal Years 2010-2012, ranging from nearly \$7.5 million dollars to nearly \$10.8 million dollars with a \$4.3 million dollar General Stabilization Fund. Furthermore, the City contends that if the panel examines the Teachers' wage settlement, it should also consider the Teachers' concessions. The City submits that the panel should not award the Teachers' wage package, but if it does so award, then it should also award City proposals. However, the City's Holiday, Vacation, and Education Incentive Pay would have a compensation-reduction impact at a time when Firefighters' Total Compensation is not competitive with its universe peers, except at the Master's level, and not competitive with Police compensation at any level. Therefore, the City's paid leave reduction and/or dilution proposals would have the effect of exacerbating the adverse Firefighter compensation gap vis à vis universe Firefighters and City Police Officers. Consequently, they were rejected as were Union proposals to introduce a three (3) day Personal leave benefit and increase various stipends. While the Union's benefit increase proposals would have the effect of boosting Total Compensation, the current stipends are more than competitive with universe Firefighters and City Police Officers. Rather, it is the Firefighter Base Salary that is not competitive with that of universe Firefighters and City Police Officers.

We are then left with the City's proposal to modify its Drug Testing provision. The panel agrees with the City's argument that it is necessary to remove impaired employees from the workplace while they are under the influence of drugs or alcohol. However, as the panel is not aware of problems, grievances, or shortcomings concerning the current contractual protocol, we are hard-pressed to alter it. The current collective bargaining agreement expires on June 30, 2014. Presumably, the parties will begin bargaining within one (1) year from the date of this award. The

panel is of the opinion that the parties should discuss the City's proposal during those negotiations, at least as a threshold matter.

The panel's focus was building Firefighter Base Salaries so that their Total Compensation could be more in line with that of non-Master's level universe Firefighters and City Police Officers. The panel chose a Fiscal Year 2011-2014 wage increase schedule between the Union's Fiscal Year 2011-2014, uncompounded 16% wage increase and the City's uncompounded Fiscal Year 2011-2014, 3% wage increase. The Teachers' package was the only City wage pattern submitted into evidence. No other bargaining unit had settled at the time of the hearing. The Teacher wage pattern was not selected because Teachers and Firefighters perform the same services. Indeed, both Teachers and Firefighters perform very valuable but different, professional tasks with quite distinguishable working conditions. The Teachers' wage increase package was chosen because it was familiar, and it helps accomplish the goal of closing the City Firefighter Total Compensation discrepancy with City Police Officers and non-Masters level universe Firefighters.

4.) **AWARD**

- a) July 1, 2010 – 3% across-the-board wage increase to the Base Salaries in effect on June 30, 2010
- b) January 1, 2012 – 2% across-the-board wage increase to the Base Salaries in effect on December 31, 2011
- c) July 1, 2012 – 2.5% across-the-board wage increase to the Base Salaries in effect on June 30, 2012
- d) July 1, 2013 – 2.5% across-the-board wage increase to the Base Salaries in effect on June 30, 2013

C. **EMERGENCY MEDICAL TECHNICIAN STIPEND**

1.) **UNION PROPOSAL:**

Increase from \$1,200 to \$2,000 effective July 1, 2010.

2.) **CITY COUNTER-PROPOSAL:**

Reject as the current benefit is competitive.

3.) **DISCUSSION:**

The panel finds that at twelve hundred dollars (\$1,200), the City's stipend compares favorably to the universe average of one thousand three hundred twenty dollars (\$1,320).

4.) **AWARD:**

Status quo.

D. **PERSONAL DAYS**

1.) **UNION PROPOSAL:**

Three (3) annual personal days.

2.) **CITY COUNTER-PROPOSAL:**

Reject as unnecessary due to Firefighter time off resulting from twenty-four (24) hour shift.

3.) **DISCUSSION:**

The panel is of the opinion that the introduction of a paid leave benefit is better accomplished through the parties' direct negotiations.

4.) **AWARD:**

Union's proposal is not awarded.

E. **HAZARDOUS DUTY STIPEND**

1.) **UNION PROPOSAL:**

Increase from 6% to 8%.

2.) **CITY COUNTER-PROPOSAL:**

Reject as current benefit is more than competitive.

3.) **DISCUSSION:**

There is no basis to increase the Hazardous Duty stipend as it is competitive with the universe average.

4.) **AWARD:**

Status quo.

F. **HAZARDOUS MATERIALS RESPONSE AND CONFINED RESPONSE PAY**

1.) **UNION PROPOSAL:**

Increase from 7.5% to 9.5%.

2.) **CITY COUNTER-PROPOSAL:**

Reject as current benefit is competitive.

3.) **DISCUSSION:**

The Union's proposal is rejected as the Hazardous Materials Response and Confined Response Pay stipend compares favorably to the universe average.

4.) **AWARD:**

Status quo.

G. **VACATION LEAVE**

1.) **CITY PROPOSAL:**

The City proposes a modification to Article XVI by adding a new Section 4A to include the following terms:

Amend Article XVI by inserting a new Section 4A:

"All employees hired after July 1, 2011 shall accrue vacation as follows:

<u>Years of Service</u>	<u>Vacation Tours</u>
0 to 1 years	4 tours
2 to 5 years	8 tours
6 to 10 years	12 tours
11 to 20 years	16 tours
21+ years	20 tours"

2.) **UNION COUNTER-PROPOSAL:**

The Union rejects the City's proposal.

3.) **DISCUSSION:**

The vacation provision in the 2008-2010 collective bargaining agreement (Article XVI) includes the following terms:

SECTION 1: Employees in the Fire Prevention Division, the Training and Safety Officer, the Hazardous Materials Office and the Administrative Deputy Chief shall select vacation periods, at their own convenience with the approval of the Chief of the Fire Department. All other employees, including Deputy Chiefs, shall pick vacation periods in accordance with present practice on a seniority basis, within each group. The City shall not be required to allow more than two firefighters per group to be on vacation at the same time, except in the summer period when three members will be allowed per group per period, effective with the 1996 vacation schedule. For purposes of this Agreement, seniority in terms of vacation picks shall be based upon the length of service of an employee computed from the date of his original permanent appointment to the Fire Department. (see G.L., Chap. 31, Sec. 15D)

SECTION 2: Vacation picks outside of the period June 15 to September 15, may be granted to employees by the Chief.

SECTION 3: Employees shall receive their vacation pay in one lump sum prior to their commencing their vacation, unless they request otherwise in writing.

SECTION 4: The following vacation schedule shall be employed:

- 0 - 4 years of service - 12 tours
- 5 - 9 years of service - 13 tours
- 10 - 14 years of service - 17 tours
- 15-19 years of service - 18 tours
- Over 20 years of service - 22 tours

A "week" of vacation shall be defined as guaranteed four (4) tours of vacation.

SECTION 5: All employees shall be entitled to "sell" one (1) week of their vacation back to the city at their regular weekly compensation.

SECTION 6: All employees shall be entitled to take all of their vacation

weeks in single tours. Additionally, members shall be entitled to take any of their fourth tours owed for their vacation just prior to the start of their vacation if they so choose, as well as at the end of their vacation.

SECTION 7: Employees shall be allowed to select one week vacation during the summer months and additionally, vacations shall be selected 52 weeks per year.

SECTION 8: (A) The process for selecting vacations is as follows:

After the weekly line-up has been issued; five firefighters from each group may take vacation with any combination of week and individual tour, provided they are available.

(B) The Union has agreed to help the Fire Chief contain overtime costs and resources so that the department does not exceed its funding for overtime. The Union understands that the overtime funding is provided to maintain sufficient manpower due to vacations, sickness, FMLA, injury and death leave etc. Should it become apparent that the overtime resources are insufficient to cover costs by the City or the Fire Chief then the parties agree to meet to discuss modifying the vacation selection plan agreed upon in sub-paragraph (A).

(C) If the Union fails to meet with the City and/or the Fire Chief within two weeks of a request based on funding, then the City may implement a modification to the vacation selection that is based upon the collective bargaining agreement.

The vacation leave benefit is similar to that of universe communities. While the parties are free to grandfather vacation leave, the panel is not inclined to do so in the instant case.

4.) **AWARD:**

Status quo.

H. **HOLIDAY**

1.) **CITY PROPOSAL:**

Article 7, Section 1: Eliminate Bunker Hill Day and St. Patrick's Day as holidays.

2.) **UNION PROPOSAL:**

Reject as unnecessary.

3.) **DISCUSSION:**

The 2008-2010 collective bargaining agreement includes the following **Holiday** (Article VII)

term:

SECTION 1: All employees shall be entitled to the following holidays for the purposes enumerated below:

NEW YEARS DAY	MARTIN LUTHER KING DAY
WASHINGTON'S BIRTHDAY	PATRIOT'S DAY
MEMORIAL DAY	INDEPENDENCE DAY
LABOR DAY	COLUMBUS DAY
VETERAN'S DAY	THANKSGIVING DAY
CHRISTMAS DAY	ST. PATRICK'S DAY
BUNKER HILL DAY	
FIREFIGHTER'S MEMORIAL SUNDAY (FIRST SUNDAY IN JUNE) (or the day of celebration thereof)	

For the purpose of this Article, the "holiday" is the twenty-four (24) hour period commencing at 8 o'clock A.M. of each day listed in this Section.

SECTION 2: When any of the aforementioned holidays fall on an employee's scheduled workday or on an employee's scheduled day or days off or during his vacation or during any period of an employee's paid injured leave, he shall receive, for each such holiday, in addition to his regular weekly compensation, an additional day's pay, computed by dividing his regular weekly compensation by 3.5 and shall be computed as part of his weekly salary.

While the parties are free to modify the Holiday leave, the panel chooses not to do so.

4.) **AWARD**

Status quo.

I. **EDUCATION**

1.) **CITY PROPOSAL:**

The City proposes the following additional term be added to Article 15, Section 15

(Education):

"This benefit shall be available to employees employed by the Department and actively pursuing an eligible educational degree as of July 1, 2011."

2.) **UNION COUNTER-PROPOSAL:**

The Union rejects the City's proposal as unnecessary.

3.) **DISCUSSION:**

Article XV (**Miscellaneous**) Section 15 (**Educational Increments**) provides as follows:

(A) Pursuant to the following schedule, the City will pay to eligible employee annual educational increments as a component of base wages and paid weekly. Such increments will be based on accumulated credits. Any firefighter hired after March 1, 1992 in order to be eligible for the 15% Education Incentive must attain an Associated Degree in Fire Science. Incentives of 20% and 30% can be earned in the same manner as members hired before March 1, 1992 providing credits earned between 60-150 are 75% in Fire Science. Notwithstanding the provision of this section, any Firefighter hired after July 1, 2009 shall be granted a Base Salary increase of ten percent (10%) upon attaining an associate's degree in fire science, and a twenty percent (20%) increase upon attaining a baccalaureate degree in fire science, and a twenty-five percent (25%) increase upon attaining a master's degree in fire science. Degree shall be earned at an accredited educational institution recognized by the U.S. Department of Education.

(B) The increment to base wages related in Subsection A of this section will be based on the accumulation of points earned in an accredited educational institution offering course in fire science, fire administration and /or management or other subjects applicable to the fire department in the following manner: One (1) point for each semester hour credit earned toward a baccalaureate or an associate degree; sixty (60) points for an associate degree; one hundred and twenty (120) points for a baccalaureate degree and one hundred and fifty (150) points for a degree of master in fire science.

(C) The base wage increments related in sub-section A of this Section will be computed in the following manner; a three percent (3%) increase for ten (10) points so accumulated; a six percent (6%) increase for twenty-five (25) points; a ten percent (10%) increase for forty (40) points; a fifteen percent (15%) increase for sixty (60) points; a twenty percent (20%) increase for one hundred and twenty (120) points; and, a thirty percent (30%) increase for one hundred and fifty (150) points so accumulated.

(D) Text Books utilized by any employee in connection with fire science, fire administration and management programs pursuant to this section and for which textbook the City reimburses employees, shall be given by the employees to the Fire Department upon completion of the course for which such text books are utilized. Such text books shall be maintained in the various station houses, for use by all employees.

It appears that the parties negotiated a requirement that Firefighters hired after July 1, 2009 must earn a degree to qualify for the educational benefit. Moreover, the stipend itself was reduced to

10% for an Associate's Degree in Fire Science, maintained at 20% for a Bachelor's Degree in Fire Science, and reduced from 30% to 25% of salary for a Master's Degree in Fire Science. The panel is of the opinion that further modifications of the current education benefit is best left to the parties' bargaining.

4.) **AWARD**

Status quo.

J. **DRUG TESTING:**

1.) **CITY PROPOSAL:**

Rename **ARTICLE XXI** "Alcohol and Drug Use Policy" and add the following provision:

(NEW insert at beginning) It is impermissible to report for or to be found on duty while impaired or under the influence of alcohol, illegal narcotics, prescription drugs, or any combination thereof.

Employees are required to report the use of prescription drugs if use of such drug may result in any impairment or negative impact on the employee's ability to perform as a firefighter. Employees found to be impaired or under the influence of alcohol, illegal narcotics, prescription drugs, or any combination thereof will be subject to disciplinary action, up to and including termination.

Section I. Finding of Impairment Based on Observation

An employee may be found to be impaired by the Chief and/or other supervisors, based on the observations of two (2) trained supervisors, or in the case of the Chief the Chief and one other trained supervisor.

An employee may be found to be impaired based on the observations of trained supervisors. If the supervisors determine that an employee's behavior or appearance may indicate drug or alcohol impairment, the employer shall document impairment based on observations. Observations by the employer must be made just before, during, or just after work hours. Appearance, speech, behavior, and body odor are factors in determining reasonable suspicion, as well as indications of the chronic and withdrawal effects of illegal narcotics. The supervisors must directly observe the behavior in question, and may not rely solely on third party reports of alcohol or drug misuse. Observations for impairment will be made by two or more trained supervisors. A written, signed report must be completed by the supervisors who determine that the employee is impaired.

A finding of impairment shall set in motion the operation of M.G.L. c. 31, section 41-46. Said sections 41-46 protect and provide the legal rights to tenured civil service employees. This Agreement also provides an employee the right to elect to arbitration any disciplinary action taken against him.

Section 2 - Testing

Subject to the provisions of this Article, an employee may also be subject to urinalysis drug testing, if reasonable suspicion of drug use exists, as determined by the Chief of the Fire Department or other supervisor. Determination of "reasonable suspicion" by the Chief or other supervisor shall comport with constitutional and legal guidelines. The employee shall be advised by the Chief or other supervisor of the facts and circumstances constituting his determination of "reasonable suspicion" in each instance. The employee shall be tested for any narcotic, including illegal narcotics and prescriptions drugs.

An employee subject to urinalysis drug testing hereunder shall have two (2) options:

(A) He may refuse to be drug-tested, which may set in motion the operation of M.G.L. c. 31, section 41-46. Said sections 41-46 protect and provide the legal rights to tenured civil service employees. This Agreement also provides an employee the right to elect to arbitration any disciplinary action taken against him; or

(B) He may agree to be drug-tested. In such cases, such testing shall be administered by an independent qualified testing laboratory of the City's choice, with the Union input as to such choice. Urine samples will first be taken under the supervision of a qualified physician of the City's choice licensed in Massachusetts.

Urine samples shall be divided into two (2) separate specimens.

If the initial test of one urine sample/specimen is positive, the employee may request a second method of testing.. The second test shall employ a methodology different from the first which shall be equal to the reliability of (GC-MS) Gas Chromatography-Mass Spectrophotometry or greater.

In the event that both urine sample/specimen testing are positive, and independent testing of the same sample, if employed by the employee, is not negative, then the employee will be relieved of duty with vacation, sick pay and/or other compensable leave, to the extent available, or on leave without pay if not, pending completion of a City approved drug rehabilitation program (which may be in-patient or out-patient, including, but not limited to, counseling).

After successful completion of said program, the employee shall return to duty and shall be subject to follow-up "random" drug testing for a period of two (2) years. If the employee is again found to have used any illegal narcotic or shall have used prescription narcotics without a valid prescription, he shall be subject to immediate disciplinary proceedings, including discharge, and shall be availed all his rights under said Chapter 31 and this Agreement.

All testing shall be at the sole expense of the City. Only confirmed positive results of drug usage shall be reported to the employer; in the absence of a confirmed positive report, the lab shall keep all other results including unconfirmed "weakly positive" results. The City will indemnify and hold the Union harmless for any liability resulting from the utilization of this Article.

2.) **UNION COUNTER-PROPOSAL:**

The Union rejects the City's proposal.

3.) **DISCUSSION:**

The 2008-2010 collective bargaining agreement contains the following Drug Testing provision:

Subject to the provisions of this Article, an employee shall be subject to urinalysis drug testing (which shall be drug specific), if reasonable suspicion of non-prescriptive drug use exists, as determined by the Chief of the Fire Department. Determination of "reasonable suspicion" by the Chief shall comport with constitutional and legal guidelines. The employee shall be advised by the Chief of the facts and circumstances constituting his determination of "reasonable suspicion" in each instance.

An employee subject to urinalysis drug testing hereunder shall have two (2) options:

(A) He may refuse to be drug-tested, which may set in motion the operation of M.G.L. c. 31, section 41-46. Said sections 41-46 protect and provide the legal rights to tenured civil service employees. This Agreement also provides an employee the right to elect to arbitration any disciplinary action taken against him; or

(B) He may agree to be drug-tested. In such cases, such testing shall be administered by an independent qualified testing laboratory of the City's choice, with the Union input as to such choice. Urine samples will first be taken under the supervision of a qualified physician of the City's choice licensed in Massachusetts.

If the initial test of each urine sample/specimen is positive, a second method of testing shall be immediately administered. The second test shall employ a methodology different from the first which shall be equal to the reliability of (GC-MS) Gas Chromatography-Mass Spectrophotometry or greater.

In the event that both urine sample/specimen testing are positive, and independent testing of the same sample, if employed by the employee, is not negative, then the employee will be relieved of duty with vacation, sick pay and/or other compensable leave, to the extent available, or on leave without pay if not, pending completion of a City approved drug rehabilitation program (which may be in-patient or out-patient, including, but not limited to, counseling).

During this process, the employee shall be suspended for thirty (30) days,

which suspension shall be stayed pending his successful completion of the drug rehabilitation program and shall be expunged from his record and from the City/Department files upon his successful completion of said program.

After successful completion of said program, the employee shall return to duty and shall be subject to follow-up "random" drug testing for a period of two (2) years. If the employee is again found to have used the specified non-prescription drugs, he shall be subject to immediate disciplinary proceedings, including discharge, and shall be availed all his rights under said Chapter 31 and this Agreement.

The fact of prescriptive use of specified drugs shall preclude any City disciplinary action against the employee or any requirement that he participate in a drug rehabilitation program.

The parties shall meet to develop policies and procedures for taking urine samples/specimens and testing employees as aforesaid, forthwith after execution of this Agreement. This implementation of urinalysis drug testing hereunder shall occur upon agreement as to such policies and procedures. Such policies and procedures shall include, without limitation, the following:

- (I) Procedures for the certification, de-certification and re-certification of laboratories for urinalysis for drugs;
- (II) Nature of original and confirmatory tests, and type of test, together with security of urine samples/specimens;
- (III) Maintenance of chain-of-custody of urine sample/ specimens;
- (IV) Preservation of urine samples/specimens and all records of testing;
- (V) Maintenance of fairness, objectivity, accuracy and confidentiality in the testing program.

All testing shall be at the sole expense of the City. Only confirmed positive results of drug usage shall be reported to the employer; in the absence of a confirmed positive report, the lab shall keep all other results confidential, including unconfirmed "weakly positive" results. The City will indemnify and hold the Union harmless for any liability resulting from the utilization of this Article.

There is no convincing evidence that the City's proposal aids it in ferreting out drug and/or alcohol abuse adversely impacting job performance.

4.) AWARD

Status quo.