

IN THE MATTER OF  
ARBITRATION BETWEEN

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INTERNATIONAL ASSOCIATION OF FIREFIGHTERS, LOCAL 1876  
and  
CITY OF EASTHAMPTON

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Interest Arbitration  
Case No. JLMC-11-38F

**Arbitration Panel:** Beth Anne Wolfson, Neutral Arbitrator  
Edward J. Gibson, Management Representative  
Robert T. Taylor, Fire Representative

**Appearances:**

**For the City:** Edward Mitnick Esq.  
Brodeur-McGan, PC

**For the Union:** Terence E. Coles, Esq.  
Pyle Rome Ehrenberg, PC

**Decision and Award**  
**By the Arbitration Panel**

**Background**

The City of Easthampton (City) and the International Association of Firefighters, Local 1876 (Union) are parties to a collective bargaining agreement that expired June 30, 2011. The Union represents a bargaining unit composed of approximately nineteen (19) firefighters and five (5) captains (firefighters). The Chief and Deputy Fire Chief are not part of the bargaining unit. The City is the second largest of the two cities in Hampshire County, with a population of about 16,053.

A petition was previously filed with the Massachusetts Joint Labor Management Committee (JLMC). On September 24, 2012 a subcommittee of the JLMC held a hearing with the parties on the issues in dispute, the positions of the parties, the views of the parties as to how the continuing dispute should be resolved, and the preferences of the parties as to the mechanism to be followed in order to reach a final agreement between the parties. At its October 11, 2012 meeting, the JLMC concluded that "there is an apparent exhaustion of the processes of collective bargaining, which constitutes a potential threat to the public welfare." The JLMC further directed the parties to proceed to arbitration, pursuant to Section 3 of Chapter 589 of the Acts of 1987, before a tripartite panel.

By letter dated October 26, 2012, the undersigned neutral was appointed by the JLMC to serve as Chairman of the Arbitration Panel. The Management member of the panel was JLMC Committee member Edward J. Gibson, and the Union member was JLMC Committee member Robert T. Taylor.

An arbitration hearing was held on April 30, 2013 and September 16, 2013, before the tripartite panel. At the hearing, the parties were given full opportunity to present evidence and make arguments on their outstanding issues. As agreed at the hearing the Union subsequently provided as an exhibit the City's free cash certification (U. Ex. 15). In addition, the parties agreed to the submission of page 43, the last page, of the Ludlow Firefighters 2005-08 collective bargaining agreement, which document had been introduced into evidence at the hearing as City's Exhibit 13, but which was missing this page at that time.

On September 27, 2013, after the last day of hearing, the Union requested that the Panel accept a newspaper article from the Wednesday, September 25, 2013 Gazette as a Union Exhibit.

The City objected to the article's submission. By e-mail dated September 30, 2013, the Panel advised the parties of its determination as follows:

The Panel has reviewed the Union's request to submit a newspaper article as an exhibit, as well as the City's objection. The Panel unanimously agrees that we will not accept the article into the record as an exhibit. The hearing was closed on September 16, 2013, subject only to receiving the parties' briefs and the Free Cash Certification if it becomes available before the decision issues. The Panel does not find there is justification to compel it to reopen the record.

On October 16, 2013, the same day the parties submitted their briefs, the Union via e-mail, proposed the addition as Union Exhibit 16 of a document that included an email from Sharon Person, the Secretary of the Ludlow Fire Department and the person in charge of payroll at the Ludlow Fire Department, and wage schedules for the Ludlow firefighters. The City, via an e-mail dated the same day, stated its objections to the introduction of this exhibit. The Panel acknowledged receipt of the request and objection, but because of the timing decided to address the matter in its Decision and Award. The Panel has determined as follows:

The Panel has reviewed the Union's proposal to add Exhibit 16 and the City's objection. The Panel unanimously agrees that we will not accept Exhibit 16. As previously determined, the hearing was closed on September 16, 2013, subject only to receiving the parties' briefs and the Free Cash Certification. The Panel does not find there is justification to compel it to reopen the record at this late date.

As stated above, both parties submitted their briefs electronically on October 16, 2013, and the briefs were exchanged, via the Panel Chair, on October 16, 2013.

### Issues in Contention

The parties have agreed that the award should provide for a three-year contract effective from July 1, 2011 to June 30, 2014. In addition, as a preliminary matter at the outset of the hearing, they agreed to the following:

1. Modify Article 6 – Firefighter Recruit Training, as follows:

6.01(D) The City shall make every effort to send a firefighter to recruit training within a reasonable amount of time *if that new recruit has not previously attended full-time Massachusetts Fire Service certification for FFI and II*. [modification in bold, italics]

2. Modify Article 19 to provide for a 24-hour shift consisting of: 1 day (24 hours) on; 2 days off; 1 day on; 4 days off (*i.e.*, “1, 2, 1, 4”).
3. Article 21 – Wages: Direct deposit of all compensation into the bank of employee’s choice.<sup>1</sup>
4. Article 33 – Sick Leave: The Union withdrew its sick leave incentive proposal.

In addition, the parties agreed that an award would be rendered on each of the following issues:

#### Joint Issues

1. Wages
2. EMT Wages

#### Pages

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22 - 25

#### City’s Issues

1. Biweekly Payroll
2. Health Insurance

#### Pages

25 - 27  
28 - 30

#### Summary of Award

#### Pages

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<sup>1</sup> According to the City, pursuant to Mayor Michael Tautznik’s testimony at the arbitration hearing, he would agree on behalf of the City to adopt similar language agreed to by the City with its DPW-Unit A with respect to direct deposit, namely “Convert payments to direct deposit provided current employees shall be grandfathered. This exemption would be offered one time and would become void if the employee opted for direct deposit.”

### **Wages – Article 21**

The current collective bargaining agreement, effective from July 1, 2008, expired on June 30, 2011. Wages are addressed in Article 21 of the expired agreement.

### **Union's Position**

The Union seeks 4% annual wage increases effective retroactive to July 1, 2011, July 1, 2012, and July 1, 2013. The Union contends the City's firefighters currently lag in pay below the City's police officers by an average of 10.7% and they lag in pay by an average of 3.9 to 7.3% compared to firefighters in surrounding, comparable communities. Even if all the Union's wage and benefit proposals are granted the City's firefighters would still lag behind the comparable communities and the City's police officers by approximately 1.6%. It is well established that a JLMC arbitration panel should issue awards that continue or restore parity between a municipality's police and fire departments. The uniquely hazardous natures and responsibilities of police and fire departments lead to the common public safety pattern of parity. Other panels considering wage proposals for firefighters have concluded that the municipality's wage increases to the police unit, rather than the increases to all of the other bargaining units, constitute the most relevant comparable. Furthermore, the awards affirmed the need to continue parity between the two public safety units. The Union asserts that this precedent demonstrates why the City's reliance on its settlements with the two DPW units and the teachers' unit is misplaced. Indeed, this same argument has been raised by municipalities before other JLMC panels and rejected where, as here, the settlements in the other units have varied from contract to contract but the police and fire units have a history of parity.

The Union also argues that the City has given no reasonable explanation why the firefighters should not receive, at a minimum, the same 2.75% increase the police unit received

for FY2011. Although the City claimed the police increase was negotiated before the alleged economic difficulties in 2009, the evidence shows that the Mayor signed the police contract, including the FY11 2.75% increase, on July 7, 2009. So, at the very time the Mayor claimed the City's finances were in a shambles, he agreed to three (3) consecutive 2.75% increases for the police unit.

The City also did not present any evidence to contradict the analysis presented by the Union's witness, Mr. Dasey. He compared a patrolman with 15 years of service and a Bachelor's degree to a firefighter with the same length of service, an Associate's degree, and a paramedic certification, and a patrolman with 15 years of service and an Associate's degree to a firefighter with the same length of service and an EMT Basic certification, and showed firefighters are 1.2% behind police in wages. The lag increases, however, when the scheduled hours were included in the analysis. Patrol officers work 2,003 hours per year as part of their regular schedule, resulting in hourly wages between \$31.08 and \$31.37. Firefighters work 2,184 hours per year, resulting in an hourly wage between \$25.58 and \$30.20. In other words, firefighters' hourly wage is anywhere from 3.7% to 17.7% below the patrol officers' hourly wage, or an average hourly lag of 10.7%. Furthermore, when Mr. Dasey compared actual earnings of patrol officers and firefighters, the pay lag was anywhere from 9% to 19%, depending on rank. This difference was due to the overtime and detail opportunities patrol officers have.

Mr. Dasey also testified that the City's firefighters' pay is significantly less than that of their peers in seven comparable communities: Agawam; Amherst; Longmeadow; Northampton; Westfield; West Springfield; and Wilbraham. According to Mr. Dasey, these seven communities represent reasonable comparables based on their size and proximity to Easthampton. In addition,

all seven fire departments are similar in that they are comprised of full-time, career firefighters and provide EMS at the Advanced Life Support level. Mr. Dasey compared a 10-year firefighter with EMT B certification in the eight communities and found the city's firefighters earned \$54,622 as compared to an average pay in the seven communities of \$58,585, or a lag of 7.3%. He also compared a 10-year firefighter with a paramedic certification and an Associate's degree in the eight communities and found the City's firefighters earned \$64,262 compared to an average pay for firefighters in the seven other communities of \$66,754, or a lag in pay of 3.9%. The Union contends it demonstrated the City's firefighters lag behind their peers in pay by 3.9% to 7.3% depending on length of service, EMS certification level and education level.

The City did not dispute the pay lag set forth in Mr. Dasey's comparison. Instead, it claimed the comparable communities put forth by the Union were not reasonable comparables and claimed that only Ludlow was a proper comparable. The Union asserts that the DOR Financial Flexibility Report for FY13, which uses a wide range of economic variables such as available resources as a percent of State budget, income per capita as a percent of State budget, and 2010 EQV per capita of the State average, demonstrates that the seven communities used by the Union are reasonable comparators. Furthermore, even if the Panel accepts Ludlow as a comparable, the pay and benefits for Ludlow firefighters simply reinforces the Union's point that the City's firefighters are woefully behind in wages: the City's firefighters lag \$3,524 behind their Ludlow counterparts, and as of FY13 a City 10-year firefighter with EMT-B earned \$54,622, while a similarly situated Ludlow firefighter earned \$60,393, or a 9.57% lag (which is more than the 7.3% pay lag found by the Union using its seven comparable communities). Given the above, the Union asserts the Panel should issue an award that brings the City's firefighter pay in line with surrounding comparable communities.

The Union also argues that even if the Panel awards all of the pay and benefit increases it proposes through FY14, the City's firefighters will only break even with the external and internal comparables. To achieve comparable pay with the firefighters in external communities, the Panel would have to award pay and benefit increases totaling 7.24%. To achieve comparable pay with the City's police officers' hourly rate of pay, the Panel would have to award pay and benefit increases totaling 14.99%. To achieve comparable pay with the City's police officers' actual hourly rate of pay, the Panel would have to award pay and benefit increases totaling 23.29%. To achieve parity through FY14 using the average of these three comparable categories, the Panel would have to award pay and benefit increases totaling 11.77%. The Union's wage and benefit proposals through FY14 total 13.32%, or 1.55% over what is necessary just to achieve parity. Even if the Panel awards the full 13.32%, the City's firefighters will continue to lag an average of 5.82% behind the City's police officers. In sum, while the Union's wage and benefit proposals go some way towards addressing the significant pay disparity suffered by the City's firefighters, it by no means ends that disparity.

The Union contends that the City's wage proposal is unreasonable and fundamentally unfair because it fails to recognize the substantial compensation it agreed to provide the police unit and the significant lag in pay. The City proposes wage increases of 0% effective July 1, 2011, and 1.5% with step freezes effective on July 1, 2012 and July 1, 2013. Furthermore, it is undisputed that the police unit already received a 2.75% increase effective on the date the City proposes to give the firefighters a 0% increase. As stated above, the police unit's increase was granted at the height of the recession, when the City's economic picture was far less rosy than it is now. In fact, the City's free cash has almost doubled since 7/1/08. In addition, the Mayor admitted that the City did not determine how much the Union's proposal would cost and it had



no reason to contest the Union's calculation that the wage and benefit proposals would cost approximately \$453,000.00. Finally, the Mayor admitted that the City had over \$1 million on free cash for FY13, the Ambulance Receivable account holds \$329,804, and there is \$1,052,307 in the Stabilization Fund. Even under an overly cautious analysis, the City has almost \$2.5 million in available funds to pay the Panel's award.

The Union also contends that the City really has almost \$3.5 million in available funds to pay an award. According to Union's Ex. 13, the total cost of the Union's requests were approximately \$453,000. By withdrawing its sick leave proposal, that cost was reduced by a total of \$45,000. Because its proposal to roll EMT wages will generate additional overtime pay, the Union estimates that will add approximately \$39,000 per year to the cost, or a total of \$117,000. According to the Union, that brings the total of its proposals to \$525,000. The City's wage offer carries a cost of approximately \$80,000, which the Union asserts was likely provided for in the City's FY13 salary removal budget. The difference is \$445,000. The Union contends that the City had approximately \$3,456,610.00 at the 6/30/13 fiscal year end to cover this cost, broken down as follows:

The DOR certified the City's FY14 free cash	= \$1,031,819.
50% of Veterans receivable of \$144,814	= \$ 72,407
50% Ambulance receivables of \$329,804	= \$ 164,902
Stabilization	= \$1,052,307
Health Insurance Fund	= \$ 515,823
Unemployment Fund	= \$ 46,544
FY13 free cash appropriation for unspecified	
FY 14 expenses	= \$ 60,100
FY14 budget reserve	= \$ 100,000
50% of 6/30/13 Accounts apparently available	
To the General Fund (\$519,511)	= \$ 259,756
50% of 6/30/13 Dental Fund (\$291,903)	= <u>\$ 145,952</u>
Total:	= \$3,446,910 <sup>2</sup>

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<sup>2</sup> The correct total for these amounts is \$3,449,610.

The Union argues that neither the Mayor nor the City dispute the fact that, at a minimum, the City's Free Cash and Stabilization Fund balances are available to pay for the cost of the wages and benefits proposed by the Union. Even under the City's overly cautious estimate, therefore, at the end of FY13 the City had over \$2.6 million in available funds, or over five (5) times the amount necessary to fund the entire three years of the award, through and including FY14. The Union asserts that the Panel should award its wage and benefits increases based purely on the undisputed available funds.

Furthermore, the Mayor's attempt to exclude various accounts and amounts included in the Union's estimate by labeling them as nonrecurring is completely without merit. Typically, JLMC arbitration panels look first to a municipality's free cash and stabilization fund to estimate the funds available to pay wage and benefit increases. In addition, although the Mayor claimed the DOJ-Police account had restrictions that prevented it being used to pay firefighter wages, he said nothing about whether it could be used to pay police wages. Assuming the \$296,243.00 in that fund could be used for police wages, a like amount budgeted for FY14 police wages could be freed up and transferred back to the General Fund. The Union contends the amount in the DOJ-Police Fund would cover ½ the cost of the Union's total 3-year wage and benefits proposal. The City also failed to rebut the inclusion of other accounts in available funds. Given this, the Union asserts that the following amounts should be added to the City's available funds:

Self-insured Dental Insurance Fund Surplus	= \$145,952
DOJ-Police Account	= \$296,243
Fire Department related accounts	= \$ 14,841
Receipts reserved for appropriation & other	
Discretionary accounts	= \$ 197,071
Dormant/unused balance accounts (DOR Municipal	
accounting guidance requires unspent	
balances revert to General Fund	= \$ 14,843

The Union notes that it has conservatively estimated only 50% availability of these amounts. Furthermore, the Union argues that the City is obligated to anticipate that it will have to pay similar wages and benefits to its police and fire units and to set aside sufficient funds. Having agreed to pay the police unit 2.75% in FY11 alone (with future years to be determined), the City was obligated to set aside amounts to fund a similar award to firefighters for the FY12-14 period.

Finally, the Union contends the City's wage proposal is far outside the average wage increases that JLMC arbitrations have been awarding. The City proposes a wage increase amounting to an average of 1% per year. JLMC arbitration panels have, however, typically been awarding 2.33% per year increases during the relevant period from FY11 through FY14. Indeed, because the economic picture has improved since the last recession, the wage increases from FY12 through FY14 have typically averaged between 2.5% and 3%. In addition, the City of Malden and City of Somerville panels rolled EMT stipends into the base, as the Union seeks here. Even if the panel finds the Union's request for 4% per year is too much, at a minimum it should award increases of approximately 2.5% per year and the Union's EMT stipend proposal.

#### **City's Position**

The City proposes a wage increase of 0% for FY12, 1.5% for FY13, and 1.5% for FY14. It contends its wage proposal is consistent with the City's ability to pay. With the death of the textile industry, the City has endured severely limited growth in new local revenues. Its local tax revenues can only be increased by 2.5% each year. It has also suffered from both dramatic cuts in state aid and the impact of three recession cycles. As the Union's attorney acknowledged, the City is an older city with an aging infrastructure and a significant elderly population. Furthermore, the City has had limited recurring revenue in each of the last four years: FY10 (\$1,127,075) or -3.9% change from the prior year; FY11 \$323,987 or a 1.2% change from the

prior year; FY12 \$284,104 or a 1.0% change from the prior year; and FY13 \$328,000 or a 1.4% change from the prior year. According to the Mayor's testimony, despite the FY13 Year End Report indicating a total of \$829,286 appearing available for appropriations in FY14, of that amount \$501,078 is designated for the "enterprise fund" for sewer and water revenue, which cannot be designated for other City purposes. In other words, only \$328,000 is available in additional recurring revenues from FY13 to be applied to FY14. According to the Union's expert, Mr. Dasey, the total estimated cost of the Union's proposals is \$453,031, which grossly exceeds the total recurring funds available for the entire City.

The City also argues that the harsh economic reality of the City is reflected in the wage freezes and minimal wage increases accepted by other City and School Department collective bargaining units. Furthermore, in June of 2009 the desperate economic situation forced the City to cut the hours of forty-three (43) non-union personnel from 35 to 32 hours and implement a 4-day work week. By comparison, the firefighters did not suffer any loss of hours. And, at the time of the arbitration hearing the non-union employees were still working only 34 hours a week. Finally, the City was unable to fill vacant positions, including in the Fire and Police Departments, because it did not have the funds to do so.

The City asserts the Union expert's calculations regarding estimated available funds are misleading and erroneous, and reflect his total lack of experience in preparing a municipal budget. As the Mayor testified, the only reliable measure is the amount of predictable available "recurring" funds because non-recurring funds may not be available in a following fiscal year. The Mayor's position is consistent with the sound practices suggested by the Massachusetts Department of Revenue (DOR). The DOR defines "available funds" as:

Balances in the various fund types that represent non-recurring revenue sources. As a matter of sound practice, they are frequently

appropriated to meet unforeseen expenses, for capital expenditures or other onetime costs. Examples of available funds include free cash, stabilization fund, overlay surplus, water surplus, enterprise net assets, unrestricted (formerly retained earnings).

Clearly the DOR suggests as a matter of sound practice that non-recurring funds only be used for unforeseen costs, not for payroll, benefits, and other foreseen costs. Even though Mr. Dasey cited the DOR's sound practice in his report, he erroneously based his analysis on "available funds" rather than on reliable and predictable "recurring funds." For example, Mr. Dasey based his calculations on free cash and stabilization fund, which are available funds and not recurring funds. In addition, his opinion that stabilization funds could be used to fund the cost of firefighters' wage increases ignores the sound fiscal practice of using stabilization funds as a "rainy day" fund to pay for unforeseen events. In fact, the Mayor testified that the City's stabilization fund is presently underfunded when measured by municipal rating agency standards that advocate reserve levels closer to 10%.

The City asserts Mr. Dasey also inappropriately relied on specific funds that clearly cannot be used to pay for firefighters' wages. For example, he relied on the DOJ-Police fund, which constitutes monies seized during drug forfeitures. These funds can only be used for Police Department operations under guidelines promulgated by the U.S. Department of Justice.

Finally, in his comparison of police and firefighters' salaries, Mr. Dasey failed to note that the salaries of police officers include "road details," which are sums paid by contractors to police officers for traffic control for public works and construction projects. As a result, Mr. Dasey deliberately overinflated the total compensation paid by the City to police officers.

In summary, the City has only \$328,000 in available recurring funds to use toward wage increases and payroll, which constitutes a 1.4% increase over the prior fiscal year. The City's

proposed wage increase of 0%, 1.5%, 1.5%, therefore, is generous in consideration of its dire economic circumstances.

The City asserts its wage proposal is consistent with agreements it entered into with other City collective bargaining units, as well as proposals made to its police officers union. In the most recent expired contracts the City has provided nearly identical wage increases: the firefighters received increases of 2.5%, 2.75% and 2.75% for FY09-11; the two DPW contracts covering FY09-11 contained yearly increases of 2.75%; the police contract covering FY10-12 also provided for yearly increases of 2.75%; and the teachers (negotiated by the School Department, not the City) recognized the challenging and difficult fiscal reality of the economic circumstances of the City and received wage increases of 3%, 3%, 0% for FY09-11. Although the firefighters received 2.5% in FY09, the police received only 2.5% in FY08, while the firefighters and the two DPW units received a 2.75% increase, and the firefighters received a \$2.50 last step increase effective January 1, 2008. With respect to the recent round of collective bargaining, the City has proposed 0%, 1.5%, 1.5% for the firefighters and two DPW units (FY12-14) and the police (FY13-15), and 0%, 1.5% for the teachers (FY12-13).

The firefighters' proposal of 4%, 4%, 4% is grossly disproportionate and excessive. Even if the firefighters requested half of what they are looking for, it would still be hugely disproportionate to the wage increases agreed to or proposed to the other collective bargaining units. The Union proposal is particularly excessive when compared to what some units have agreed to. For example, the teachers have agreed to two years in a row of 0% (i.e., FY11 and FY12). In addition, its proposal is out of touch with fiscal reality in light of the fact that non-union City employees have actually received a cut in their total compensation as a result of the decrease in hours, which have not yet been restored. Finally, if the firefighters receive a wage

increase higher than offered or proposed to other City employees, it will be the first time in recent history that one unit has received substantially more in wage increases than any other unit.

The City contends that the wages received by its firefighters are not disproportionate or excessively lower than the wages received by firefighters in comparable communities. First, the Union's comparison of "total compensation" is grossly unfair and fraught with difficulty. The only monetary issues presented by the City and Union are base wages and EMT incentive. The Union is not seeking holiday pay, educational incentive, ambulance pay, or longevity, therefore, it is grossly unfair to consider and compare those additional monetary contractual items when comparing "base wages." Differences exist between communities on whether some items, such as EMT incentive or holiday pay, are added to base pay. Some firefighters are paid additional sums for handling ambulance calls (e.g., Ludlow EMT Intermediates receive \$10 additional per ALS call). Some firefighters obtain additional compensation through sick leave incentive programs. The only fair comparison, therefore, is "apples to apples," namely "base" wages or salary received by firefighters in comparable communities.

With respect to the Union expert's testimony, the City argues it is filled with errors and deliberately slanted to deflate the monies received by the City's firefighters. For example, Mr. Dasey erroneously failed to state that the City's firefighters receive longevity for 10 years of service, and misleadingly and mysteriously deducted \$1,250 from the City firefighters' total compensation. In addition, Mr. Dasey did not note whether the monetary sums he considered in respective communities are added to base pay, which can greatly enhance the total compensation received by firefighters.

The City readily acknowledges that the "base salaries" of its firefighters are lower than the wages provided by most of the proposed comparable communities submitted by the

Union. It is grossly unfair, however, to compare the City to communities that are very affluent or have dissimilar populations, equalized valuations, or bond ratings. For example, the Union used Longmeadow and Wilbraham as comparable communities; however, they are very affluent bedroom communities with higher equalized valuations and excellent bond ratings, dissimilar to the City, which is a depressed former mill town with a significant elderly population. In fact, all of the comparables suggested by the Union have higher equalized valuations. While Ludlow also has a higher equalized valuation than the City, it is more comparable because it is also an old textile town with a depressed economy. In addition, all of the comparables suggested by the Union, except Longmeadow and Wilbraham, have populations significantly higher than the City. Furthermore, with the exception of Westfield, which has the same bond rating as the City, all of the Union's comparables have higher bond ratings.

The City asserts that while no two communities are identical, the only community that has comparable population, equalized valuation and bond rating to the City is the Town of Ludlow. Both communities also share a history of being a former mill town with a depressed economy. Coincidentally, the base salary of both communities' firefighters is very comparable: Ludlow's as of FY2013 was \$50,497, and the City's as of FY2011 was \$48,296. Both communities do not provide a different "base salary" for firefighters with an associate's degree. If you factor in the City's wage proposal (0%, 1.5%, 1.5%) the difference in FY2013 becomes *de minimis*: Ludlow is \$50,497 and the City would be \$49,413. The City contends the slight difference in base salary could reflect Ludlow's slightly higher population, marginally higher equalized valuation, and better bond rating. The difference becomes insignificant if you consider that the City provides \$4,295 in educational incentive and \$10,142 in EMT incentive, while Ludlow provides only \$500 in educational incentive and \$3,030 in EMT incentive. In summary,



none of the proposed comparable communities is poorer than the City, however, the miniscule differences in firefighter base salary between the City and Ludlow is not disproportionately or excessively lower.

### **Discussion**

In lieu of the parties' coming to agreement, this Panel must determine the appropriate wage increase for the three-year contract sought by the parties. There are a number of factors arbitrators customarily consider in determining what wage increase should be granted, including the wages of comparable employees, wage increases for other town employees, and the City's ability to pay. The parties, through the hearing as well as their post-hearing briefs and document submissions, have provided the Panel with information on these factors and relied on them in support of their respective positions. For the reasons cited below, this Panel concludes that for the three-year contract sought by the parties for FY2012 through FY2014 (July 1, 2011 - June 30, 2014) a wage increase of 1.5% effective July 1, 2011, 1.5% effective July 1, 2012, and 1.5% effective July 1, 2013, is appropriate.

With respect to comparability, the parties cannot agree on the universe of comparable communities. The Union used Agawam, Amherst, Longmeadow, Northampton, Westfield, West Springfield, and Wilbraham. Its expert, Mr. Dasey, testified these communities represent reasonable comparables based on their size and proximity to the City. The City, on the other hand, asserts that Ludlow is the proper comparable because it, like the City, is an old textile town community with a depressed economy. In its brief, the Union added an analysis of all the proposed comparables' average resources and income per capita as a percent of state budget, and their 2010 equalized valuation per capita as a percent of the state average. The City analyzed the proposed comparables' population, their 2012 final equalized valuation, and their bond ratings.

The panel is not swayed completely by either party's argument. For example, Westfield is more than twice the size of the City and its 2012 final equalized valuation is more than twice that of the City. The two do, however, share the exact same bond rating. Amherst's population is also more than twice that of the City, and its 2012 final equalized valuation is significantly higher than the City's, as is its bond rating. Although the City asserts Longmeadow and Wilbraham are affluent bedroom communities and their bond ratings are higher than the City's, their population numbers are close to the City's and Wilbraham's 2012 final equalized valuation is also close to that of the City. Ludlow's population and 2012 final equalized valuation are closer to the City's, but its bond rating is higher. With respect to available resources, Northampton, the City and Ludlow all fall well below the average. As for income per capita, the City, Ludlow, Agawam, Westfield, and West Springfield are all fairly close and below the average, while Amherst is well below the average. For purposes of its analysis, therefore, the Panel will look at all of comparables proposed by both parties.

A review of the evidence concerning the wages of firefighters in comparable communities supports the Panel's determination. The issue before this Panel is a wage increase as a percentage of the firefighters' base salary. Base salary for a 10 year Firefighter EMT B employed by the City or the comparables is:

Agawam	FY13	\$49,896
Amherst	FY13	\$51,122 (EMT P with Assoc. Degree is \$60,234)
City	FY11	\$48,296
Longmeadow	FY15	\$56,698 (EMT P with Assoc. Degree is \$61,467)
Ludlow	FY13	\$50,498 (FY14 is \$51,508 & FY15 will be \$52,538)
Northampton	FY10	\$47,582
Westfield	FY13	\$45,864
West Springfield	FY13	\$55,099
Wilbraham	FY13	\$51,018

With respect to base salary, the City's firefighters rank seventh out of nine for base salary; however, the Panel notes that the salary information for all of the comparables is for FY13, with the exceptions of Northampton (FY10) and Longmeadow (FY15).<sup>3</sup> So, the information shows that while the City's firefighters are not among the highest earners, their FY11 base wages are approximately \$2,300 below the FY13 average for the six comparables whose data was for that fiscal year. The increases granted by the Panel will bring the City's firefighters FY13 base wages very close to that of Agawam, and their FY14 base wages within \$1,000.00 of Ludlow's FY14 base wages.

With respect to the City-side bargaining units, the two DPW units have settled, while the police and fire have not. The Panel notes that the latest police collective bargaining agreement's term ran through June 30, 2012, while the firefighters' last agreement ran through June 30, 2011. The City asserts that there is a pattern established because no settled collective bargaining agreements featured a raise for FY12. Evidence of wage patterns for the City's other municipal employees is relevant but not dispositive in determining appropriate salary increases for the City's firefighters. As stated above, only the two DPW bargaining units' contracts have settled. Each provides for wage increases of 0%/1.5%/1.5% for FY12, FY13, and FY14. Certainly the firefighters perform very different jobs from the City's DPW employees. With respect to the City's police officers and firefighters, both perform inherently dangerous jobs. Both face risks for the benefit of the community. While the police officers' and firefighters' contracts have not settled the City has consistently held to its 0%/1.5%/1.5% position for both of these bargaining units. As stated above, however, the next police contract will run from July 1, 2012 through June 30, 2015 (FY13-FY15), while the firefighters' agreement will run from July 1, 2011

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<sup>3</sup> For purposes of our analysis, the Panel accepts a comparison of wages, not a comparison of wages and benefits combined; because benefits tend to vary from community to community.

through June 30, 2014 (FY12-FY14). Neither party submitted evidence as to why the police and firefighters agreements do not cover the same time period. The evidence does show that in the last year of the police unit's previous contract (which would be the first year of the firefighters' contract now under consideration) the police received a 2.75% wage increase. Furthermore, according to the evidence, the City agreed to the police 2.75% wage increase for FY12 in July of 2009, when its financial condition was at a low point. The Panel believes it would be grossly unfair to award the City's proposal of a 0% to the firefighters for FY12 when the police unit received a 2.75% wage increase for that year and because the City's financial picture has now improved. With respect to FY13 and FY14, the Panel does not believe the evidence supports deviating from the City's consistent 1.5%/1.5% position.

With respect to the argument for the firefighters' wage increases, the City also relies, in part, on the teachers' negotiated wage increases for FY2012 through FY2013. According to the City, the teachers received the following: 0% for FY2012; and 1.5% for FY2013. The City proffered the teachers' information to "reflect that the Teachers Union has recognized the challenging and difficult fiscal reality of economic circumstances of the City and of Easthampton and has received wage increases similar to the City units." The Panel does not rely on the teachers' contract for two reasons. First, the teachers' newest contract runs for only two years – it does not cover FY2014 as the proposed firefighters' contract would – so we cannot know with any certainty what wage increase the teachers might receive in that third year. Second, as the City noted, the School Committee negotiated the teachers' agreement, not the Mayor, and the budgets affecting teachers and firefighters are not the same.

Having concluded that the above-described wages increases are justified, the Panel must now consider whether the City is able to pay these increases. The City stresses its dramatic cuts

in state aid and the impact of three recessions. The Union, through Mr. Dasey's testimony, on the other hand, points to numerous funds in which the City has money that, even if only 50% was available, would be more than enough to fund the Union's sought wage increase. The Panel is not swayed by Mr. Dasey's analysis. He has relied on funds such as the Health Insurance Stabilization Fund, the Unemployment Fund, the Dental Fund, the Veterans' receivables, the Ambulance receivables, and the DOJ-Police account, for which the City has proffered plausible explanations why those monies cannot be used to pay salaries. With respect to the City's funds that are traditionally relied upon in determining ability to pay, the evidence shows that the City has certified free cash of \$1,031,819 and a Stabilization Fund balance of \$1,614,673. The Panel does not take the position that "non-recurring funds" should normally be relied on for payroll. It does find that these monies are adequate and appropriate for funding retroactive wage increases in an agreement the City knew it was negotiating and was aware would have to be funded. Furthermore, although the City may have had financial difficulties in prior years, it has shown some movement toward recovery. Indeed, at the time the City claims to have been suffering a severe economic downturn it agreed to a 2.75% raise for its police officers. It is not appropriate to budget for one unit at the expense of another. Given the totality of the evidence, the Panel concludes that the City has sufficient resources to fund the firefighter wages award.

#### **Award - Wages**

There will be a three-year contract covering July 1, 2011 to June 30, 2014, with a wage increase of 1.5% effective July 1, 2011, 1.5% effective July 1, 2012, and 1.5% effective July 1, 2013.

## **EMT Wages – Article 22**

### **Union's Position**

The Union proposes that firefighters' EMT stipend should be rolled into their base pay. By doing so bargaining unit members will receive their respective EMT stipend for all hours they work. Currently, firefighters and captains only receive the EMT stipend for their regular schedule. All hours worked over that, including mandatory holdovers and call backs for emergencies, do not include the EMT stipend. The Union contends it is undisputed that firefighters utilize their EMT training and certification regardless of whether they are working their regular shifts or outside of those shifts. Because the EMT stipend recognizes the advanced duties and responsibilities firefighters perform as EMTs, they should be paid as such for all their work and not just for their regular hours. The Union also argues that the change it seeks will properly add the EMT wages to the overtime rate. Finally, the Union asserts the reasonableness of its proposal is reinforced by the fact that many of the firefighters in surrounding communities that provide advanced life support services have the benefit the Union is proposing. For example, Amherst firefighters have their EMT stipends included in their hourly rate. That contract recognizes the undisputed reality of firefighters' jobs – they provide advanced life support care to the public whenever they work, not just during their regularly scheduled hours.

With respect to the City's proposal to change the EMT wages from a percentage of the yearly base salary to a fixed amount, the Union argues that approximately 80% of the calls the bargaining unit responds to are EMS-related calls requiring employees to use advanced emergency medical service skills. Placing EMT wages at a fixed amount would mean these advanced skills will be less appreciated every year thereafter. Wages will increase while the EMT stipend will decrease as a relative value to the firefighters' total compensation. The City's

proposal undermines the value of the EMT certification to both the public and the Department. The Union asserts it also runs counter to the trend in fire departments across the Commonwealth. Contracts for the Union's comparable communities – Agawam, Amherst, Northampton, Westfield, West Springfield, and Wilbraham – all have EMT stipends that are either built into the base wage or a percentage of the base wage. None of these communities have flat EMT rates. In addition, Ludlow, the City's comparable, gives an EMT stipend that is a percentage of the firefighters' base salary. Clearly the consensus is that because firefighters perform EMT work during the vast majority of their working hours, the additional compensation they receive for maintaining EMT levels should be based on a percentage of their base wage. Finally, the Union contends that the trend in JLMC arbitration panel decisions has been to expand the value of EMT stipends by rolling the stipends into the base. The City's proposal runs directly counter to this common sense pattern and should be rejected by this Panel.

#### **City's Position**

The City proposes that the percentage increases provided to firefighters be changed to a fixed amount equal to the respective incentive received by EMT-Basic, EMT-Intermediate, and EMT-Paramedic, based on current maximum captain's salary, plus an additional 1%. Under its proposal, firefighters would receive a greater EMT incentive in the first year than they received previously, but that amount would be fixed for future years. The City asserts the present method of calculating EMT incentive based on base salary is a "budget buster" because it increases each and every time a firefighter receives an increase in base salary. By changing to a fixed amount, the City would be protected from highly inflating EMT incentives in future years. Additionally, because the EMT incentive would be increased by an additional 1% based on the current maximum captain's salary, firefighters would still receive a higher EMT incentive.

The City contends the Union's proposal ignores the fiscal realities of the City's economic circumstances. If the EMT incentive is added to base pay, it would result in an increase in overtime pay, educational incentive, and holiday pay. According to Chief Mottor's testimony, adding the EMT incentive to base pay would increase the total compensation received by firefighters by \$211,257, and that is *before* any increase in base salary. Considering the City has only \$328,000 available in additional recurring revenues for FY14 for the *entire* City, the Union's proposal would cost the City approximately 64% of all available funds. Furthermore, based on the evidence provided by the Union with respect to EMT incentive received by firefighters in its proposed comparable communities, it is clear that the City firefighters' EMT incentive is significantly higher than the EMT incentive in those communities. The City ranks third out of six for EMT incentive for a 10 year firefighter EMT B, and is at the top for a 10 year firefighter EMT P with associates' degree.

### **Discussion**

The Union proposes that firefighters' EMT stipend should be rolled into their base pay. The City proposes that the percentage increases provided to firefighters be changed to a fixed amount equal to the respective incentive received by EMT-Basic, EMT-Intermediate, and EMT-Paramedic, based on current maximum captain's salary, plus an additional 1%. The Panel finds is troubled by the conflicting evidence as to the cost of the Union's proposal. According to the evidence submitted by the Union, Mr. Dasey assigned a zero cost to the rolling of EMT wages into weekly rates. In its brief, however, the Union estimated the cost at \$39,000 per year or a total of \$117,000. The City, on the other hand, estimated the cost of this proposal at \$211,257 before any increase in base salary. Unfortunately, neither party submitted supporting documentation for their respective estimates. In addition, it is not clear how many of the



comparable communities have a provision identical to that proposed by the Union, and it appears that none have the provision proposed by the City. Furthermore, after the recent election, the City has a new Mayor. In light of the above, the Panel declines to set the standard for how the City's firefighters are compensated for their EMT training; this should be accomplished by the parties through collective bargaining, particularly because of the change in City administration.

#### **Award – EMT Wages**

The Union's proposal that the firefighters' EMT stipend should be rolled into their base pay is not awarded.

The City's proposal that the percentage increases provided to firefighters be changed to a fixed amount equal to the respective incentive received by EMT-Basic, EMT-Intermediate, and EMT-Paramedic, based on current maximum captain's salary, plus an additional 1% is not awarded.

#### **Bi-Weekly Payroll**

##### **City's Position**

The City asserts the change to a biweekly payroll will make it more efficient and productive. The hours spent processing payroll would be cut in half. A biweekly payroll would require less report filing, cutting down on the paper trail. It would also result in all City and School Department employees being on the same payroll cycle; currently the School Department employees, who outnumber the City-side employees, are on a biweekly payroll, but their checks are prepared by the City's Treasurer's Office.

In an effort to ameliorate the transition to a biweekly payroll, the City has proposed the same language agreed to with the two DPW units. The City would provide 90-day advance notice to employees prior to implementing the change and the City would initially allow employees to make a weekly "draw" over the first three (3) biweekly pay cycles. The City contends this would permit employees accustomed to weekly paychecks to gradually change

over to biweekly pay without suffering any financial disruptions. The City has also taken the position that it would not implement biweekly payroll for the firefighters until all collective bargaining units agree to the change. At present, the two DPW units have agreed, but the firefighters and police have not.

With respect to the Union's argument that it is possible for an error to occur and not be remedied for another two payroll cycles, the City argues that, pursuant to history with the current payroll system, if firefighters report mistakes or errors in their overtime calculations timely, there would be no prolonged delay in rectifying any mistakes. Furthermore, the Union did not submit any evidence that the City's School Department employees, who are already on a biweekly payroll system, have experienced any such problems.

#### **Union's Position**

The Union opposes the City's proposal to change to a biweekly payroll system. The Union contends the City's payroll system is riddled with problems, which result in firefighters regularly not receiving overtime pay, including pay earned for emergency callbacks. The City's proposal to switch to a biweekly system would unfairly add weeks of additional delay to the pay employees have earned. According to the Union President Dunham's testimony, bargaining unit employees frequently work additional hours outside their regular schedule filling temporary vacancies, covering absences, and working callbacks to respond to emergencies. He also testified that the City frequently fails to account for these additional hours in the payroll. They then have to bring the errors to the City's attention to get paid the additional amounts in the next pay cycle. According to Mr. Dunham, bargaining unit members often depend on prompt payment of earned overtime to pay bills such as mortgages and auto loans. The City's failure to pay overtime in a timely fashion can lead to additional problems and embarrassment associated

with failing to timely pay these bills. Currently, firefighters are forced to wait two weeks for their overtime pay if there are errors. If the payroll is biweekly, they will have to wait five weeks. For these reasons, the Panel should not award the City's proposal.

### **Discussion**

The Panel acknowledges that employees who rely on a weekly payroll system and budget accordingly sometimes have difficulty switching to a biweekly system. It is also mindful of the need for employees to timely receive pay. There is no evidence in the record, however, that employees on the biweekly payroll system have experienced great difficulty with their pay. With respect to the firefighters, according to the Union President Dunham's testimony, when they have found errors in their overtime pay and brought it to the attention of the City, the errors were remedied by the next payroll cycle.

The Panel also finds that the change would be more efficient, productive and cost-effective. Furthermore, the City has stated that it would not put into effect such a change until all City-side bargaining units agree to the biweekly payroll, it has proposed to provide 90-day advance notice to employees prior to implementing the change, and it has offered to include language agreed to with the DPW units that would initially allow employees to make a weekly "draw" over the first three (3) biweekly pay cycles to ease the transition. Given these safeguards, the Panel awards the City's proposal.

### **Award – Bi-Weekly Payroll**

The City's proposal of moving to a biweekly payroll system is awarded with the following conditions: (1) The City will not implement such system until all City-side bargaining units agree to the change; (2) The City will provide 90-day advance notice to the firefighters prior to implementing the change; and (3) The City agrees to initially allow the firefighter bargaining unit employees to make a weekly "draw" over the first three (3) biweekly cycles.

## **Health Insurance – Article 29**

### **City's Position**

The City proposes to modify the language of Article 29.01 by deleting the specific reference to “Blue Cross and Blue Shield” in order to make health insurance provisions in the firefighters’ contract consistent with the health insurance language in other City contracts. The firefighters’ agreement is the only City-side agreement with this language. The City contends its proposal will give it flexibility to find the best affordable health insurance for employees. The present language specifically limits the City to one health care provider, *i.e.*, Blue Cross and Blue Shield. The City also asserts that because the firefighters are the only City-side unit with this language<sup>4</sup>, they have an unfair influence over the City’s health insurance options not shared by other City employees.

The City argues that the Union’s objections lack merit. First, the Union’s contention that because the City has enjoyed low and level-funded health insurance premiums in recent years no language modification is necessary ignores the reality that health insurance premiums could rise in the future. The firefighters’ current language could, therefore, seriously curtail or limit the City’s options to find affordable health insurance for its employees and retirees. Second, contrary to the Union’s implication that the City’s proposal is in response to the City Council’s failure to adopt M.G.L. Ch. 32B, §§ 21-23, the City proposed deletion of the Blue Cross/Blue Shield language at the outset of negotiations, which began before M.G.L. Ch. 32B, §§ 21-23 was enacted. Finally, the Mayor testified that he does not foresee the City joining the Group Insurance Commission because the Hampshire Council of Government provides better and more affordable health programs; however, if that entity provided a better and affordable health

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<sup>4</sup> The City acknowledges that the teachers’ contract has the same language as the firefighters, but notes that the School Committee is responsible for negotiating the teachers’ contract.

insurance program option through another carrier, the City would be unable to take advantage of that option given the exclusivity language in the firefighters' agreement.

### **Union's Position**

The Union contends the City's proposal to delete the reference to "Blue Cross and Blue Shield" is unreasonable because it would effectively allow the City to move the bargaining unit, and City employees as a whole, outside of the Blue Cross and Blue Shield network thereby taking away a critical benefit that the bargaining unit has enjoyed since 2002. In addition, other than vague references to needing "flexibility" the City does not offer any reason why this change is necessary or helpful. It is undisputed that the Blue Cross Blue Shield insurance, through the City's membership in the Hampshire County Insurance Trust, has outperformed all other insurance policies in the Commonwealth in providing quality health insurance with no premium increase over the last four (4) years. Furthermore, the City Council has already considered and rejected this proposal, by voting 6 to 2 against adopting M.G.L. Ch.32B §§ 21-23, a law that narrowly restricts the City's obligation to bargain over health benefits. During that process, the Mayor initially advocated for its adoption as a cost savings measure, but later abandoned this argument. The City's Health Insurance 32B Committee also rejected the Mayor's proposal to leave the Trust and switch to another health insurance plan. Given that the City Council and the City's Insurance Advisory Committee have closely studied and rejected the Mayor's proposals to gain flexibility in negotiating insurance benefits for the City's employees and its retirees, there is absolutely no reason for the Panel to do otherwise.

The Union also asserts deleting the Blue Cross and Blue Shield language would allow the City to move firefighters to any carrier of its choosing. Health insurance benefits are one of the most important benefits for firefighters and their families. If this language is deleted firefighters'

current health insurance benefits would no longer be protected and the City would be free to move to a much less attractive plan.

Finally, the City's proposal to delete the Blue Cross and Blue Shield provision in the firefighters' contract has already been considered and rejected by a JLMC Panel. Six years ago the City made the identical proposal, which was rejected. In addition, a second paragraph was added to the Health Insurance article, which language demonstrates that when the parties want to negotiate changes to the health insurance article, they are very selective, spelling out premium contribution changes or plan design changes, with tight restrictions on how these changes can be achieved. The Union contends the Panel should follow the determination of the prior panel.

#### **Discussion**

The current language in the firefighters' agreement limits the City to one insurance carrier – Blue Cross and Blue Shield. The City seeks to remove that language and the Union wants no change. As stated above, the City has a new Mayor. The Panel believes the change in administration merits an opportunity for the new Mayor and the Union to discuss the insurance article. For this reason, the Panel declines to disturb the status quo. The City's proposal to delete the reference to "Blue Cross and Blue Shield is not awarded.

#### **Award – Health Insurance – Article 29**

The City's proposal to delete the reference to "Blue Cross and Blue Shield" in paragraph 1 of Article 29 is not awarded.

## **Summary of Award**

### **Award - Wages**

There will be a three-year contract covering July 1, 2011 to June 30, 2014, with a wage increase of 1.5% effective July 1, 2011, 1.5% effective July 1, 2012, and 1.5% effective July 1, 2013.

### **Award – EMT Wages**

The Union's proposal that the firefighters' EMT stipend should be rolled into their base pay is not awarded.

The City's proposal that the percentage increases provided to firefighters be changed to a fixed amount equal to the respective incentive received by EMT-Basic, EMT-Intermediate, and EMT-Paramedic, based on current maximum captain's salary, plus an additional 1% is not awarded.

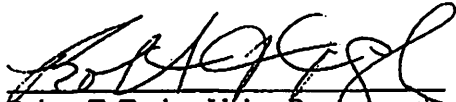
### **Award – Bi-Weekly Payroll**

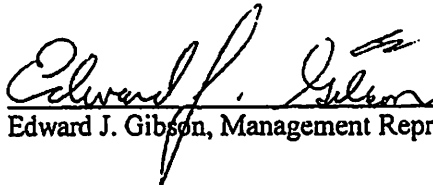
The City's proposal of moving to a biweekly payroll system is awarded with the following conditions: (1) The City will not implement such system until all City-side bargaining units agree to the change; (2) The City will provide 90-day advance notice to the firefighters prior to implementing the change; and (3) The City agrees to initially allow the firefighter bargaining unit employees to make a weekly "draw" over the first three (3) biweekly cycles.

### **Award – Health Insurance – Article 29**

The City's proposal to delete the reference to "Blue Cross and Blue Shield" in paragraph 1 of Article 29 is not awarded.

Respectfully submitted this 5<sup>th</sup> day of Dec., 2013,

  
Robert T. Taylor, Union Representative

  
Edward J. Gibson, Management Representative

  
Beth Anne Wolfson, Neutral Arbitrator