

Background

The parties have narrowed the dispute to two issues: wages for an agreed upon three year contract covering fiscal years, 2011, 2012 and 2013 and the Town's proposed modification of the language of Article III, Section B of the parties' most recent Agreement which prohibits provisional or temporary promotions. With respect to the wage issue, the Union seeks wage increases of 4% effective July 1, 2010; 3% effective July 1, 2011; 4% effective July 1, 2012. The Town has offered a wage package of 0% effective July 1, 2010; 2.5% effective July 1, 2011; 1% effective July 1, 2012.

The majority of the parties' evidence and arguments was directed to persuade the panel on the appropriate wages. There is a vast difference between the parties' respective positions and to that end, it is fitting and necessary to summarize their evidence and arguments, although, as in any summary, there will be information which is simply too cumbersome to repeat without burdening the reader of this Award with excessive detail.

Union's Position on Wages

The Union argues it is unnecessary for this Arbitration Panel to re-invent the wheel; it has already been done. In particular, the Union points out that the parties' prior terms and conditions of employment, covering the immediately preceding three fiscal years, 2007 to 2009, was decided by tri-partite panel appointed by the Joint Labor Management Committee, which was chaired by Gary D. Altman, a well-known and experienced neutral arbitrator.³ The Altman Award noted that in the parties' negotiated agreement covering fiscal years 2004 to 2006 (hereinafter "2004-2006 Firefighters Agreement") "the firefighters wage adjustment and the teacher's wage adjustment was identical (2% -2004, 3% - 2005, 4% - 2006). This history of parity for the across the board wage increases is certainly relevant to the panel's determination in this proceeding." [Altman Award, p. 14; Union Exhibit 2]. The Union argues that thereafter the Altman Award found no inability of the Town to pay what the teachers received for the three years under its consideration (FY 2007 to FY 2009) and awarded the firefighters

will be described in detail to the extent such documents are relied upon for the purposes of this Award.

³ The other members of the panel, Judith H. Robbins, Management Member, and John F. Sciara, Union Member, concurred in the Award (hereinafter referred to as the "Altman Award").

6%, the identical increase in base salary agreed to by the School Committee and the teachers association. ("The most relevant criteria is the across the board increases agreed to for teachers in the same three year time period." *Altman Award*, pp. 15-16).

The Union argues "[t]here is no reasonable justification for this Arbitration Panel to simply abandon the principles and rationale that the Arbitration Panel utilized less than three years ago...." The Union goes on "[r]ather than attempting to reinvent the wheel ... the Union's position [is].... that it should be awarded for the first two years ... [what] has already been reached with the Weymouth Teachers Association during the same two year period – namely four percent (4%) as of September 1, 2010 and three percent (3%) as of September 1, 2010." [Citing to Memorandum of Agreement between the School Committee and the Weymouth Teachers Association.⁴ [Union Exhibit 14].

The Union further argues that the Town's financial condition at the present time has vastly improved since the evidence presented to the Altman Award panel. In addition the Town presented the argument that the teachers' settlement in 2008 preceded the global economic recession financial during the hearings leading to the Altman Award, and it was rejected then. The Union argues that it should be rejected now. In particular the Union presented the following table to demonstrate the improvement of the Town's financial health:

Fiscal Year	Free Cash	Stabilization	Reserve	Total
2008	\$1,160,605	\$837,652	\$1,256	\$1,999,513
2009	\$3,164,741	\$103,940	\$139	\$3,268,820
2010	\$2,441,340	\$927,590	\$3,644	\$3,372,574
2011	\$3,699,892	\$939,444	\$358,527	\$4,997,863
2012	\$3,2278,977	\$1,157,185	\$409,262	\$4,794,424

The Union points out that this dramatic improvement and thus its ability to pay has been no accident. The firefighters, through the unified voice of Local 1616, has

⁴ The Union argues that it is settled law under Mass. G.L. c. 150E, that there is no separation of powers under c. 150E, Section 1, between the School Committee and the Town. The School Committee is the Town's representative for those negotiations and agreement. *Town of Saugus*, 28 MLC 13, 17 (2001).

collaborated with others, including the Teachers and the Police Unions, to provide the 70% vote required for the Town to join the State Group Health Insurance Commission's insurance program. Through this group purchasing program, begun during FY 2010, the Town stabilized and eventually reduced the costs of its health insurance for all municipal employees and retirees.⁵ The Union argues that instead of sharing this savings with the Firefighters, the Town laid off five firefighters shortly after the Altman Award issued and thereafter reduced the Fire Department's budget by approximately \$900,000 per year and took back into the Town's General Fund a significant portion of the Fire Department's

5

Cost and Estimated Savings In Town's Health Insurance Premiums Based Upon Town's Participation in Group Health Insurance Commission Program per G.L. c.32B, §19 [In Millions \$]							
FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
Cost Per Fiscal Year							
\$11.80M	\$15.10M	\$18.80M	\$16.50M*	\$15.88M	\$17.53M	\$18.28M	\$19.00M
Estimated Savings Per Fiscal Year, Assuming Non-GIC Cost for 2008 Remained Fixed							
N/A	N/A	N/A	\$2.3M#	\$2.92M	\$1.27M	\$0.52M	(\$0.20M)
Total Estimated Savings for Fiscal Years 2007 to 2014 = \$6.81M Total Estimated Savings for Fiscal Years 2011 to 2013 = \$4.71M • GIC coverage replaced existing Town health insurance programs during FY 2010 # Estimated savings used FY 2009 as cost of health insurance (conservative estimate since private health insurance continued premium increases year on year) and subtracted ensuing years premium costs to calculate savings.							

budget each year as unused funds.^{6,7} On the basis of these savings, the Union argues the Town cannot cry that it does not have the *ability* to pay; it is simply the Town's *willingness* to pay.

The Union's wage proposal, the Union argues, must be measured against how the Town compensated its other public safety workers, namely the police patrolmen and the police superior officers (collectively referred to as "Police Unions"). Following the Commonwealth's refusal to fund its share of the Quinn Bill, namely 50% of the benefit, the Town nevertheless agreed to step into the shoes of the Commonwealth and fully fund the Quinn Bill to the tune of an additional \$500,000 per year for same three years the parties are fighting over in the current contest. The Union argues that based on the Supreme Judicial Court's ruling in *Adams v. City of Boston*, 461 Mass. 602 (2012), the Town was not legally or contractually bound to pick up this expense. When this \$1.5M of additional Quinn Bill money is added to the Police Unions 2% wage increase during this same three year period, the total increase for the Police Unions amounts to a whopping 19.12% increase in funding for the police officers or an average increase in cost to the Town of 6.37% per year. In comparison to the Police Union's receipt of 6.37% of new money, the Firefighters proposal salary increase of 3% - 4% - 3% over the same three year period or 3.66% per year, looks positively paltry. The Town's argument that the Joint Labor Management Committee has ruled that a Town's commitment to

6

Fire Department Total Budget by Fiscal Year and Percentage of Budget Unspent During Fiscal Year					
	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Total Budget	\$8,217,350	\$7,755,213	\$7,783,849	\$7,433,527	\$7,330,445
Percent Unspent	2.699%	0.949%	1.153%	1.241%	1.216%

⁷ The Union also forfeited \$550 in its contractually agreed upon Uniform Allowance in FY 2011 as a means of reducing the number of firefighters on lay-off by one. Giving up these funds amounted to a 1% reduction in the firefighters' total compensation.

Quinn Bill benefits has no bearing on wages is totally false. The JLMC plays absolutely no role in wage determinations, other than providing the framework for independent arbitral discretion on this issue.

The Union next focuses its attention on the Town's argument that other Town employee unions have accepted increases close to the Town's proposed wage increase for the firefighters. The Union argues that nothing could be further from the truth and the Union's argument in this regard will be set forth in response to the Town's presentation with respect to wages. However, the Union argues that the increase for Firefighters should also take into consideration the increase in workload as the number of firefighters has declined substantially. This workload has also increased and is likely to increase significantly in the coming fiscal year because of the Southfield Development, described next.

Southfield Development

The United States Navy, owner and occupier of the Weymouth Naval Air Station located on approximately four square miles (1500 acres) of land located in South Weymouth, Rockland and Abington, turned this property over to the Commonwealth of Massachusetts following the base closing in 1997. The Commonwealth chartered the property by an Act of the Legislature, c. 301 of the Acts of 1998, to an entity known as South Shore Tri-Town Development Corporation ("Tri-Town").⁸ Tri-Town has moved ahead with this development, now known as Southfield, so that it now houses approximately 450 residents with the expectation that when the property is fully developed there will be 7,000 permanent residents residing in 2855 housing units, an assisted living facility, a long term care facility along with restaurants, shops, commercial and industrial operations, a movie studio, a sports complex, golf course and research facilities.

Former Boston Fire Chief Kevin MacCurtain, hired by Tri-Town as a consultant on fire protection for Southfield, recited the history of fire protection on the site and made

⁸ Chapter 301 of the Acts of 1998 includes among its stated purposes that Tri-Town be "empowered to fully redevelop the property for the benefit of the towns of Abington, Rockland and Weymouth, the region and the commonwealth. Because the base is located in three different jurisdictions, its orderly redevelopment will depend on the formulation of a comprehensive, consensus Reuse Plan and implementation of uniform redevelopment policies for the property."

comprehensive recommendations on March 22, 2012 which included specific recommendations for goals for FY 2012, 2013 and 2014. Chief MacCurtain noted that the current fire response time for Weymouth Fire Department to Southfield is seven to eight minutes, far longer than the five minutes set as a national standard for first responders. Chief MacCurtain also noted that Rockland Fire could respond to Southfield within four to five minutes via the Union Street Gate, but the gate is "inoperable" and the access road is "overgrown and impassable." Chief MacCurtain recommended one fully staffed Engine Company (1 Officer and 3 Firefighters) be established during FY 2013 and by FY 2015 Southfield have built a fully manned (i.e. one officer and three firefighters) an on site three-bay fire station with one engine company, one ladder company and one ambulance. Chief MacCurtain's recommendations to Southfield echoed many of the recommendations made to Weymouth Mayor Susan M. Kay by Weymouth Fire Chief Robert J. Leary (now-retired). These documents stirred up a hornets nest of activity by Local 1616 seeking input into the impact of the Southfield Development on the work load and safety issues confronting Weymouth Firefighters.

The Union demanded impact bargaining, but the Town advised that it was in negotiations with Tri-Town over what Tri-Town wanted to do about fire protection. On July 12, 2012 Tri-Town and the Town executed an Agreement for Fire Services which included a fee for service agreement calling for payment by Tri-Town to Weymouth of \$1,642.53 (only for FY 2013, to be adjusted for FY 2014) for the first hour of each response plus an additional \$1,176.40 for each additional hour or fraction thereof. In addition Tri-Town agreed to fully fund one additional Weymouth Firefighter so that one Weymouth Fire Inspector would be available full-time to perform inspections and reviews of Southfield development projects. The Agreement expires on June 30, 2014. The Union has reiterated its demand to bargain over the impact of this Agreement; the Town has declined to engage in further negotiations with the Union pending a permanent agreement between the Town and Tri-Town as to who will be providing fire protection services to Southfield.

During the current arbitration the Town took the position that Tri-Town could contract with the towns of Weymouth, Rockland or Abington to provide permanent fire protection services or it could establish its own fire department in accordance with its

charter from the Commonwealth. Until Tri-Town makes that decision, the Town is not in any position to make any adjustment in wages, hours or terms and conditions of employment with Local 1616.⁹

In arbitration the Town produced documents showing that the Town billed Southfield in excess of \$30,000 for fire services in the first quarter of FY 2013. If this pattern continues for the full year, the Town will have collected in excess of \$120,000 for fire services, sufficient funds to increase the base salary of all firefighters by almost 2%. Given this source of funding, entirely due to the work of the Town's firefighters, the Union argues that it is fully fitting that some additional compensation should be provided and it fully supports the Union's proposed wage increase of 11% over the three years of the Agreement.

Town's Position On Wages.

The Town argues that the entire Southfield argument presented by the Union is simply irrelevant since it is a "pay as you go" system which provides no permanent source of income to support one nickel of a wage increase for the Union. Until Tri-Town comes to grips with how it is going to supply and pay for fire protection services, the Town is simply providing a band-aid to a potential surgical sized knife wound.

The Town also disputes the Union's interpretation of the Altman Award and argues that the award specifically made the history of teacher negotiations as "relevant" but not controlling. Unlike the Union which focuses only on the wages for the three fiscal years in question, the Town suggests that the arbitration panel take a longer view of the wages paid to the various town employees, including the police unions who perform public safety work. The following chart forms the basis for the Town's argument:

⁹ The Union argues that given the size and capability of the fire departments in Rockland and Avon, it would be almost impossible for those Towns to take on the responsibility for providing comprehensive fire protection for Southfield. Furthermore, the Union argues that Tri-Town's

Town of Weymouth labor Negotiations Update With Proposed [Fire] Settlement By Unit and Fiscal Year									
Bargaining Unit	2008	2009	2010	2011	2012	2013	2014	Total	Average
Firefighters	0.0%	0.0%	6.0%	0.0%	2.5%	1.0%		9.5%	1.6%
Police	0.0%	0.0%	6.0%	0.0%	0.0%	2.0% (1/1/13)		8.0%	1.3%
Superior Officers	0.0%	0.0%	6.0%	0.0%	0.0%	2.0% (1/1/13)		8.0%	1.3%
Dispatchers	0.0%	0.0%	0.0%	6.0%	2.5%	1.0%		9.5%	1.6%
Traffic Supervisors	0.0%	0.0%	2.5%	N/A	N/A	N/A	N/A	2.5%	0.8%
DPW	0.0%	0.0%	2.5%	3.5%	2.5%	1.0%		9.5%	1.6%
SEIU	3.0%	0.0%	0.0%	3.0%	2.5%	1.0%		9.5%	1.6%
Library	0.0%	2.0%	3.0%	1.0%	2.5%	1.0%		9.5%	1.6%
Non-Union	0.0%	0.0%	0.0%	0.0%	4.0%	0.0%		4.0%	0.7%
Weymouth Public Schools Labor Negotiations									
WTA -Unit A -Teachers	1.0%	2.0%	3.0%	4.0%	3.0%			13.0%	2.6%
WTA-Unit B Dir/Supr	1.0%	2.0%	0.0%	2.0%				5.0%	1.3%
WTA- Unit D Paras	1.0%	2.0%	0.0%	2.0%	1.7%	1.8%		8.5%	1.4%
WTA-Unit E Tutors	1.0%	2.0%	0.0%	2.0%	N/A	N/A	N/A	5.0%	1.3%
Van Drivers	1.0%	2.0%	0.0%	2.0%	2.0%	1.0%	2.0%	10.0%	1.4%
Maintenance Workers	1.0%	2.0%	0.0%	2.0%	2.0%	1.0%	2.0%	10.0%	1.4%
Custodians	1.0%	2.0%	0.0%	2.0%	2.0%	1.0%	2.0%	10.0%	1.4%
Cafeteria Workers	2.0%	1.0%	0.0%	2.0%	2.0%	1.0%	2.0%	10.0%	1.4%
Non-Union	1.0%	2.0%	0.0%	2.0%	0.0%			5.0%	1.0%

ability to build and operate its own Fire Department at a cost (as estimated by former Weymouth Chief Leary) of \$4.6 million is simply out of the question.

The Town's basic argument is that all of the wages provided to the Town's employees must be viewed globally, which means that the Arbitration Panel should consider the wages from fiscal year 2008 through fiscal year 2013, rather than isolate and consider only the years which are at stake in the current proceeding. The Town's proposed wages for the Firefighters provides them with an average wage increase higher than all other Town employees, save the Teachers, whose agreement was reached long before the onset of the fiscal crisis which enveloped the Town within a matter of months following that agreement. All of the other Town unions have settled for the "going rate" of 2.5% and 1.0% for fiscal years 2011 to 2013. But for the timing of the Teachers Agreement, the pattern of bargaining is clear and the Teachers Agreement represents the aberration, not the standard.

The most appropriate comparisons, the Town argues, are those with the Police Unions. While the Town stepped to the plate and met the challenge of fully funding the Quinn Bill despite the State's unabashed reneging on its long term commitment to police officers. But that, the Town suggests, simply left the police officers standing in place --- they got the exact same benefit as previously, it was simply a different source of the money. The Police Unions essentially gave up wage increases for the three years in question because the two percent increase effective January 1, 2013 puts one percent in their pocket. The Town points out that the Police Unions gave up more than just money because their educational incentive was realigned and provided them a benefit which is more in line with what the Firefighters' educational incentive, but without the tuition and book reimbursement provided to firefighters. In the current negotiations the Town is not seeking to have the Firefighters accept the Police Unions' deal of 0% in FY 2011, 0% in FY 2012 and 2% effective January 1, 2013 for FY 2013, but rather simply what all of the other unions who negotiated with the Town during these fiscal years, namely 0% in FY 2011, 2.5% in FY 2012 and 1% in FY 2013.

The Town has strenuously objected to the concept that "free cash" is a measure of "ability to pay." As Town's Chief Financial Officer William McKinney testified at arbitration, "free cash" is simply what the Town saved in the prior fiscal year, it is not a continuous source of income and to expend such funds on *permanent* wage increases would be foolhardy and dangerous because that money will not be there on a year in and

year out basis which is what an increase in base wages requires. In addition, Mr. McKinney detailed the Town faces impending large increases in health insurance, notwithstanding that the Town's health insurance premium is set by the Group Health Insurance Commission. The Town faces increases in net-school spending as the Commonwealth backs off on school funding and it has yet to see the impact of the Other Post-Employment Benefits which must be paid to retirees. As Mr. McKinney so vividly described in his testimony, the Town is limited by Proposition 2½ to increasing 61% of its budget by 2.5% or a total budget increase of 1.5%. With the limited revenue from the State and facing its school, pension and health insurance obligations, the Town argues that it has been stretched to even make the current offer on the table. The Firefighters are not immune to what all Town employees face and therefore the Town's wage proposal should be adopted.

Union's Response to Town's Wage Argument

The Union argues that if one examines the chart presented by the Town, one can see that Dispatchers, DPW, SEIU and Library employees all received well in excess of 3.5% in FYs 2011, 2012 and 2013. This fully supports the Union's claims for its wage package.

Discussion of Wages

The extensive and combative arguments presented to the panel in this case illustrate the extreme ill-toned and hard-nosed relationship between the Union and the Town. The firefighters feel put upon and the Town feels ripped off. The fact is that neither opinion is conducive to developing a fair and workable arrangement between the parties. When a fairly small group of employees foots the bill to go to interest arbitration every three years rather than settle with the Town, it bodes nothing but ill will. When the Town forces the Union to engage in this activity, it appears to be done for spite. Nothing this panel can say or do is going to repair the damage to this relationship, except by calling attention to it and suggesting that both sides ease up. When the Altman Award issued in June 2010 the Town immediately laid off six firefighters which was later reduced to five when the Union agreed to give up its uniform allowance. We certainly hope that this type of retribution does not occur following issuance of this Award.

The wage issue presented is fairly typical of public sector employees, except in this case the parties eschew comparison with other comparable communities and instead focus, as agreed, solely on how other employees of the Town have been provided for in terms of wages. We do not find that the Altman Award mandated that there be an exact "parity" between the firefighters and the teachers. As the Altman Panel noted there is almost no comparison between the duties and job functions of the two groups. Teachers teach children; firefighters fight fires. Teachers work ten months a year; firefighters work a twenty-four hour schedule. Firefighters routinely earn overtime; teachers are not paid overtime. The single most common thread is that teachers and firefighters are paid by the Town through taxes paid for by residents. As employees they should be treated fairly, but not necessarily equally.

The bargaining history for Union's claim of parity is based on the Altman Award, which in turn relied upon the fact that the parties' immediately preceding collective bargaining agreement had the same wage increases. If the Town agreed to treat the firefighters and teachers in the round of negotiations prior to the Altman Award as entitled to the same wage increase, surely such an agreement did not mean that the Town agreed to exact parity between teachers and firefighters. In fact, because the Police Unions had not settled for those years, the Altman Panel looked around and took note of what the teachers, a strongly organized group, got and matched it in a total award. Parity was not the reason for the Altman Award, the Teacher's Agreement was available as a basis for and therefore relevant to deciding that Award. At arbitration it is the strength of their rationale and the facts supporting their positions which move them ahead. Arbitration rewards rationale and fairness.

The firefighters have strong arguments independent of the parity issue, but these come from the overall comparison with all other groups within the Town, not from any particular group. However, it is necessary to consider the Union's claims concerning Southfield. Surely the Southfield Development will become a major issue for the firefighters. When it does, we are certain that the Town will end up with many more firefighters and with an additional station and equipment within Southfield. It is perhaps the only solution that makes sense for Tri-Town, but Tri-Town must come to that conclusion. In order for the current Agreement to consider a more serious wage increase

due to additional work load or requiring the addition of firefighters to the roster, there must be a steady stream of income from Southfield. For now there is only a trickle of income and until there is a steady permanent stream, the concept of granting the firefighters a salary increase based on nothing more than the current pay-as-you go system would be foolhardy for the Town. By the same token, the Town should take a much tougher stance on negotiations with Tri-Town. It should not take a major conflagration with serious property damage and possible injury or death to wake Tri-Town up to figure out how it is going to establish a small city without permanent fire protection. The Town's continued work in Southfield is relevant only to the extent that it does increase the Firefighters' workload and the additional possibility of injury.

The Union's argument for increasing the firefighters' wages based on what the Town provided police officers has some validity, but not nearly to the tune of 19%, as the Union claims. The Union is correct that under the recent Supreme Judicial Court ruling in *Adams v. City of Boston*, 461 Mass. 602 (2012) the Town had a right to refuse to pay police officers' the Commonwealth's non-reimbursed share of the Mass. G.L.c. 41, § 108L career incentive pay. However, the Court added that "municipalities are free to pay more than one-half voluntarily, and may agree to do so via collective bargaining." Article XIV of the Town's Agreement with its Police Unions, simply stated that the Town "shall pay to all employees so entitled police career incentive base salary increases as provided" in the Law. There was no mention in the Police Union agreements about limiting the Town to its statutorily obligated 50% plus the extent of the State's reimbursement as was the City of Boston in the *Adams* case. Thus the Police Unions had a valid *contractual* claim against the Town to pay the full Quinn Bill amount regardless of the level of the State's reimbursement.

The Police Unions approach was that rather than compel the Town to arbitrate and litigate the issue, the police took a substantial discount in any pay increase in order to preserve, enhance and protect their educational pay.¹⁰ The Town recognized that it did not want to see the police officers' salary cut due to the Commonwealth's renegeing on its

¹⁰ In fact the Town and the Police Union agreed to augment the educational incentive to provide a benefit for police officers who would not be eligible for Mass. G.L. c. 41, § 108L, and brought the Police Unions into a program similar to that for the Firefighters Educational Incentive.

Quinn Bill obligations. How fair is it to a police officer who attends school for a number of years on the promise of a pay increase only to find the rug pulled out from under him by the Governor and the Legislature. While the Union characterized this as "new" money going into the pot, the fact of the matter is that by agreeing to fully fund the Commonwealth's portion of the Quinn Bill, the police officers stayed in place. The Police Unions recognized the Town's willingness to fund these agreements and thus took a 2% increase in base salary over three years, with an out-of-pocket cost to the Town of 1%. This of course cost the Town in excess of 18% over the three years, but the police officers only saw 1% in their pocket and a base salary increase of 2%. The nub of the Town's treatment of the Police Unions is that the Firefighters are entitled to some further adjustment in their salary, but it is certainly does not justify a 19% increase over three years.

There is compelling evidence that due to the decrease in the number of firefighters and the additional workload there should be some further increase in the wages paid to the Firefighters, beyond what the Town has offered. The Town's financial position is much stronger today than it was in June 2010 despite the extreme doom and gloom forecast by the Town's Chief Financial Officer. The fact of the matter is that the Town has managed to live well within its budget for many years. Moreover, some of the increase awarded herein could be passed on to Southfield because the bargain basement rates provided by the Town to Southfield on a per run basis can be adjusted upon the expiration of the Town's current agreement with Tri-Town Development.

The adjustment to the wages awarded herein is not out of line with what the Town has paid other bargaining units, but takes into account the facts as set for the above. It is on this basis that this arbitration panel will find that the appropriate wage increase shall be as follows:

For Fiscal Year 2011: 0%

For Fiscal Year 2012: 2.5%

For Fiscal Year 2011: 2.5%

Town's Proposed Change to Article III, Civil Service, Promotions and Union's Opposition Thereto

The Town proposes to modify Article III, § B. of the 2007-2010 Agreement¹¹ by removing the prohibition against a provisional promotion to the position of Chief. The Town's argument in favor of this modification is that if and when the Town needs someone to lead the Fire Department it seeks the opportunity to do so in accordance with Civil Service Law, G.L. c. 31 which permits provisional promotions. This will allow the Town to make a provisional promotion from among the current highest ranking members of the Fire Department (or outside the Department) while the Civil Service process is being followed. Civil Service Law, G.L.c. 31, §15¹² specifically allows for provisional promotions; there is no reason for the Town to be contractually prohibited from making such appointments.

The Union has opposed the Town's proposed modification, but its opposition was when the Town sought to exclude *all firefighter promotions* from the prohibition of all provisional promotions. The Union's opposition was based upon the Town's unarticulated need for eliminating the prohibition against provisional promotions.

Discussion of Modification of Article III, § B.

The Town's extremely narrow elimination of the prohibition against temporary or provisional appointments certainly makes sense when it is applied to the Chief. A permanent appointment may take many months to accomplish based upon such factors as whether the Division of Civil Service has an active list for the position and if not how quickly there will be an examination. Even after an examination, it may be weeks or even months before a permanent appointment may be made due to delays in the Civil Service process itself. In fact the Union's reasoning for opposing the narrow lifting of

¹¹ Article III, § B. provides in relevant part as follows:

All promotions within the uniformed branch of the Department through the rank of Chief shall be made as a result of competitive examination given and granted by the Division of Civil Service... Only permanent promotions shall be made (i.e. no temporary or provisional promotions.)....

¹² G.L. c. 31, § 15. provides in part: "An appointing authority may ... make a provisional promotion of a civil service employee in one title to the next higher title in the same departmental unit...."

the prohibition melts away in the face of the need for the Department to have a Chief, even on a temporary or provisional basis. The Town's proposal should be granted.

Award

For the reasons set forth above, the following is hereby awarded:

1. Wages for Firefighters shall be adjusted and paid retroactively as follows:

Fiscal Year 2011: Increase in base wage by 0.0%

Fiscal Year 2012: Increase in base wage by 2.5%

Fiscal Year 2013: Increase in base wage by 2.5%

2. The third sentence of Article III, § B shall now read as follows:

"Only permanent promotions shall be made except for the position of Chief (i.e. no temporary or provisional appointments.)"

/s/ James S. Cooper
James S. Cooper
Chairman

Date: March 27, 2013

I concur.

/s/ Michael Whalen
Michael Whalen
Management-Designated Panel Member

Date: March 26, 2013

I dissent.

/s/ Richard MacKinnon
Richard MacKinnon, Union Designated Panel Member

Date: March 26, 2013

[See attached for copy of electronic signatures which are hereby attested to be taken as original signatures.]

the prohibition melts away in the face of the need for the Department to have a Chief, even on a temporary or provisional basis. The Town's proposal should be granted.

Award

For the reasons set forth above, the following is hereby awarded:

1. Wages for Firefighters shall be adjusted and paid retroactively as follows:

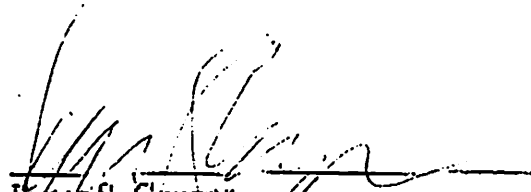
Fiscal Year 2011: Increase in base wage by 0.0%

Fiscal Year 2012: Increase in base wage by 2.5%

Fiscal Year 2013: Increase in base wage by 2.5%

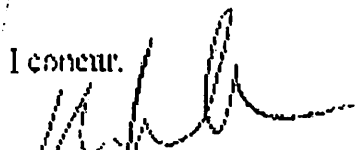
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James S. Couger
Chairman

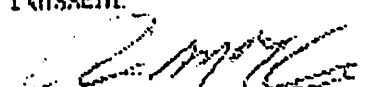
Date: 3/27/13

I concur.


Michael Whalen
Management-Designated Panel Member

Date: 3/26/13

I dissent.


Richard MacKinnon, Union Designated Panel Member

Date: 3/26/13