

February 24, 2014

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RE: JLMC 12-17F
Local 3126, I.A.F.F
And
Town of Westford

Gentlemen:

As you are aware, there were three clerical errors in the above cited award. They were errors of typing incorrect numbers and mistranscribing two dates. They were:


1. On page 7, under duration of the contract, it should read:
"The duration of the agreement will be July 1, 2011 to June 30, 2014"
2. On page 12, the first sentence of the last paragraph should read:
"For this reason, the panel agrees that the wage pattern established by the Town for FY 12 and FY 13 should be maintained."
3. On page 24, under EMT Stipend Increase, it should read:
"Effective July 1, 2012 the EMT Stipend increased by 1%."
This makes it consistent with the panel's award on page 14 which states:
"Given the importance of the services, and the increased workload they place on the Firefighters, and taking into consideration the Town's limited resources, the panel awards a 1% increase in the EMT stipend effective July 1, 2012."

I apologize for any inconvenience this may have caused.

I have attached a corrected copy of the award.

Thank you for your understanding.

Sincerely



John W. Hanson
Arbitrator

Massachusetts Joint Labor-Management Committee
For Municipal Police and Fire

In the Matter of Interest Arbitration *
Between *

TOWN OF WESTFORD *

And *

JLMC No: 12-17F

WESTFORD FIRE FIGHTERS *

IAFF, LOCAL 3126 *

*

ARBITRATION PANEL:

John W. Hanson,	Chair
Michael Whalen,	Management Representative
Richard MacKinnon	Fire Fighter Representative

REPRESENTING:

The Town:	Nicholas Anastasopoulos, Esq.
The Union:	Alfred Gordon O'Connell, Esq.

HEARING DATE:

May 13, 2013
June 27, 2013

BRIEFS FILED

October 29, 2013

PANEL MEETING

November 7, 2013

RELEVANT STATUTORY LANGUAGE

Chapter 1078 of the Acts of 1973, as amended.

Section 4A (in part)

...The factors to be given weight in any decision or determination...shall include, but not limited to:

1. such an award which shall be consistent with: (i) section twenty-one C of chapter fifty-nine of the General Laws, and (ii) any appropriation for that fiscal year from the fund established in section two D of chapter twenty-nine of the General Laws;
2. the financial ability of the municipality to meet costs. ...;
3. the interest and welfare of the public;
4. the hazards of employment, physical, educational and mental qualifications, job training and skills involved;
5. a comparison of wages, hours, and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours, and conditions of employment of other employees performing similar services and with other employees generally in public and private employment in comparable communities;
6. the decisions and recommendations of the fact finder, if any;
7. the average consumer prices for goods and services, commonly known as the cost of living;
8. the overall compensation presently received by the employees, including direct wages and fringe benefits;
9. changes in any of the foregoing circumstances during the pendency of the dispute;
10. such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between parties, in the public service or in the public service or in private employment;
11. the stipulations of the parties.

ISSUES BEFORE THE ARBITRATION PANEL

The following issues were certified by the Joint Labor Management Committee:

Joint Issue:

Wages/Duration

Union Issues:

Increase EMT Stipend

Roll EMT and Paramedic Stipend into the Base Salary

Increase Vacation Leave Accrual

Increase Stipends for ALS Coordinator and Clinical Coordinator

Town Issues

Reduce Educational Incentive

Reduce the Accrual of Non-occupational Sick Leave

Recoupment of Advances in Benefits and Compensation

Changes in Personal Reduction Language

Background

The Town of Westford and Local 3126 of the International Association of Firefighters are parties to a Collective Bargaining Agreement which expired on June 30, 2011 but which has continued in effect during the negotiations for a successor agreement.

After negotiations between the parties for a successor agreement failed to produce a settlement, the Union petitioned the Joint-Labor Management Committee (JLMC) for mediation. Following two unsuccessful mediation sessions, the parties agreed to proceed, voluntarily, to arbitration. The undersigned was chosen as Neutral Panel Chair, serving with Management Representative Michael Whelan and Union Representative Richard MacKinnon.

Position of the Parties

Comparable Communities

By agreement of the parties, the following “market basket” of communities was chosen, based on geographic proximity, similar population, per capita income and EQV per capita, as comparable communities. These same communities have been used by the parties in past negotiations. Acton, Andover, Bedford, Belmont, Burlington, Billerica (including Billerica

Ambulance), Chelmsford, Concord, Dracut, Lexington, North Andover, Reading, Stoneham, Sudbury, Tewksbury, Westborough, Westwood, Wellesley, Wilmington and Wakefield.

Ability to Pay

The parties at the hearing and in their briefs indicate that the main difference between the two sides is their assessment of the Town's ability to pay. The Town maintains that its fiscal situation is such that it cannot afford the cost of the Union's wage and benefits proposals. The Union argues that the Town has more than sufficient funds available to cover the cost of their proposal.

The Union

The Union argues that the Town's contention that they do not have sufficient funds available to pay for the Union's proposal is based on old budget projections, rather than actual figures and conservative budgeting that has understated revenues and overstated expenses.

The Union presented Appendix A which uses actual revenue figures certified by the Department of Revenue (DOR) through the end of FY13 and projects forward from there. Appendix A shows the Town's estimate of Free Cash from FY 12 to FY 16. For the period FY 12 through FY 14 it shows:

Free Cash ending FY 12 going into FY 13 as \$2,094,476 and
Free Cash going from FY 13 into FY 14 of \$4,150,874. (Tn. Ex. 62)

The actual figures certified by DOR for that same period shows:

Free Cash for FY 12 to FY 13 - \$6,626,990
Free Cash for FY 13 to FY 14 - \$7,697,533

While Town Exhibit 62 projects an overall deficit in Free Cash at the end of FY 16 of (\$5,950,501) the Union estimates, based on DOR certified figures for FY 12 and FY 13, a positive Free Cash balance at the end of FY 16 of \$1,796,158.

The Union further argues that Town's conservative projections on expenditures over-budgeted when compared to real spending. It points to Employee Benefits and particularly Health Benefits costs, as one major example. It cites the Town's Audited Financial Statements for FY 10, FY 11 and FY 12 which shows the Town significantly over-budgeted for Health Benefits.

FY 10 - \$73,977 less than that budgeted
FY 11 - \$88,448 less than that budgeted
FY 12 - \$1,600,000 less than that budgeted

Based on these figures, the Union's projection for future Health Benefits costs is 8% rather than the Town's projection of 12%

The Union further argues that the Town's projected capital plan appropriation of \$1.5 million per year is too high considering actual appropriations for FY 12 – FY 14 were \$925,000. It maintains that a projection of \$1 million per year is appropriate.

The Union maintains that the Town has underestimated Chapter 70 funds which according to FY 14 Cherry Sheet figures came in at \$125,175 above what was estimated and which has, for the period FY 12 – FY 14 increased at an average of \$138,000 per year. Other state aid for FY 14 was \$92,563 more than was estimated by the Town.

The Union argues that in FY 13, the Town had a Free Cash and Stabilization fund balance of \$11.1million. After adjustment for maintaining a minimum recommended balance for reserves of \$4.37 million, the Town balance was still \$6.6 million. This, it contends, is more than enough to pay for the Union's proposals.

The Town

The Town argues that the Union's estimate of available funds is flawed in that it is based on a "balance sheet" approach. That is, it reflects funds that are available on a specific day but does not recognize ongoing costs. It does not indentify a revenue source to cover a \$300,000 base-pay increase.

Town Budget Director Daniel O'Connell testified that the Union's analysis started with identified funds of \$6.8 million certified by DOR (combination of Free Cash and Ambulance Retained Earnings). What the Union analysis did not recognize was that the Town had not balanced its budget for FY13 and that the Town had to appropriate \$1.851 from Free Cash in order to balance that budget. Further, he testified that the \$6.6 million Free Cash figure was inflated by \$625,000, which was used to pay two settlements of \$375,000 and \$250,000 regarding the Town's perchlorate litigation (Tn. Ex. 72, p. 18).

He argued that the Union's use of the Ambulance revenues as available funds was inappropriate in that they were used to cover ambulance expenses. He also questioned the Union's use of the Stabilization Funds, Overlay Surplus Funds, and revolving funds in concluding that the Town could afford to pay for the Union's proposal twenty times over.

He testified that the use of Free Cash or Stabilization funds to fund reoccurring expenses such as employee wages and benefits could have a negative impact on the Town's bond rating. He testified that the rating agencies (Moody's and Standard and Poor) were concerned that the Town's use of Free Cash to balance the budget indicated to them that the Town was spending at a rate that outpaced their revenue, indicating deficit spending.

He testified that funds appropriated for wetlands and conservation, insurance claims and equipment replacement could only be used for those specific purposes and not used for ongoing expenses such as salaries. He concluded that the actual remaining available funds totaled \$7.78

million of which \$4.8 million had to be kept aside as a minimum recommended balance; that left only \$2.933 million available. At a cost of \$826,861 for the Union's proposals, that would mean that 28% of available funds would be given to only 38 employees of the town.

The Town also points out that the Union, in its analysis failed to recognize the other post-employment benefits (OPEB) liability. It argues that the Town is required to recognize the liability caused by benefits like health insurance and life insurance as it is accrued rather than when it is paid. It argued that the Town's OPEB liability in FY 09 was \$55 million. This figure has jumped to \$67 million in FY 11 and \$72 million at the time of the hearing.

Finally, the Town argues that in FY 15 it will be contractually obligated to pay the teachers a double step which was promised them. They accepted a step freeze for FY 12, saving the Town \$1.7 million. This double step will cost the Town over \$1 million in FY 15.

The Town argues that the Union's analysis did not take into account the Town's complete financial situation, and the Town does not have the ability to pay the cost of the Union's proposal.

Wages / Duration

The Union proposed a three year agreement and the following salary increases:

FY 12 - 7/1/11 – 3% increase
FY 13 - 7/1/12 – 3% increase
FY 14 - 7/1/13 – 3% increase

The Town proposed a two year agreement as follows:

FY 12 – 0%
FY 13 – 0%
Step freeze retroactive to 7/1/13
One time payment, not on the base, of \$300 for firefighters at top step
One time payment, not on the base, of \$500 for step eligible firefighters

Duration

The Union

The Union argues that if the panel accepts the Town's proposal on duration, specifically FY 12 and 13, the contract will have expired before the award is issued. It maintains that the JLMC has typically avoided issuing awards that would have expired upon their issuance. As it is, the Union argues that a third year will be half over by the time an award is issued. It argues that in the interest of stable labor relations, a third year is justified.

The Town

The Town argues that a two-year award is appropriate. It maintains that the Town has traditionally tried to keep all of its contracts coterminous in order to allow them to budget prospectively for all units. It argues that a three-year agreement would complicate future town – wide negotiations.

Discussion and Opinion

While the panel recognizes the value in keeping all collective bargaining agreements coterminous with each other for the purposes of budget projection, it realizes that many communities, for various reasons, (extended negotiations, waiting for fact finder's opinions or arbitration award) have agreements that are out of sync. While these outlier agreements may cause difficulty in some communities, the panel feels that to issue and award which has expired would cause greater difficulty by forcing the parties to return to the bargaining table immediately following the issuance rather than giving the party's time to "cool off" before commencing the next round of bargaining.

Award

The duration of the agreement will be July 1, 2011 to June 30, 2014

Wages

The Union

Based on the Town's ability to pay, an analysis of comparable communities, a review of internal comparables and the increased workload, the Union argues that its wage and benefit proposals are justified.

External Comparables

As stated earlier, the parties agreed on a "market basket" of communities which they have used in previous negotiations. In Union Exhibit 1, pages 8, 9, and 10, the Union compares Westford Firefighters with those in comparable communities at three different levels. Firefighter at 15 years with EMT, Firefighter at 15 years with an Associate's Degree and Firefighter at 15 years with Paramedic status and an Associate's Degree.

To adjust for the fact that some communities have contracts that have expired prior to, or during the years relevant to this contract (FY 12, 13, and 14), have not negotiated successor agreements and one community (Sudbury) who's contract goes beyond, the Union has taken the most recent data available for comparable communities and calculated an "average" fiscal year that they are settled in. That average fiscal year was determined to be FY 12.85.

In conducting its analysis, the Union compared these communities on the basis of:

Base salary,
Longevity,
Shift Differential,
Holiday Pay,
EMT/Defib stipends
Clothing allowance, and
Training and Other.

Based on this analysis they showed:

Firefighter at 15 years with EMT lagged behind the average of other communities by 4.2% or \$2,582.00

Firefighters at 15 years with EMT and an Associate's Degree lagged behind the average of other communities by 3.7% or \$2,379.00

Firefighter at 15 years with Paramedic status and an Associate's Degree lagged behind the average of other communities by 8.4% or \$5,645.00.

Internal Comparables

The Union further argues that its wage and benefits proposals should be accepted to establish parity with the Westford Police Officers. It argues that recent Joint Labor-Management Committee awards have stressed the importance of parity in police and fire units. It cites *City of Melrose and IAFF Local 1617, JLMC 06-18F, City of Melrose and Melrose Police, JLMC 07-11P, City of Haverhill and Haverhill Firefighters, JLMC 09-11F, City of Lawrence and IAFF Local 146, JLMC 95-7F and Town of Kingston and IBPO Local 436, JLMC 01-49P*. They maintain that the community of interest between local police and fire units justify the comparison and parity in wages and benefits.

Specifically, the Union Exhibit 1, pages 11 – 13, argues that Police Officers:

Work 12.5% fewer hours than Firefighters based on their 32 hour cycle verses a firefighter's 48-hour cycle;

Are provided with additional earning opportunities, especially paid details;

Receive full Quinn Bill benefits including for those officers who are eligible under the 2009 Quinn Bill reforms and those officers who are not required to be eligible under that same reform. In addition, it argues that the Police Superior Officers unit was given Quinn benefits on a flat-rate basis to officers who were not eligible under the reforms.

The Union points out that the Town voluntarily accepted the obligation to provide Quinn Bill benefits for officers and superiors, not required by law, to be covered.

Based on this analysis, the Union determined:

Firefighters with 15 years with EMT Status lagged behind a 15 year Police Officer with night differential by 5.2% or \$3, 373.00,

Firefighter with 15 years with Paramedic status lagged behind a 15 year Police Officer with night differential and Associate's Degree by 7.3% or \$5,120.00,

Firefighter with 15 years with an Associate's Degree and Paramedic status lagged behind a 15 year Police Officer with night differential and a Bachelor Degree by 10.5% or \$7,932.00

Finally, the Union compared Police Officers and Firefighters based on actual earning in 2012 and found:

Firefighters lagged behind Police Officers on an average of all ranks by 28.85 % and Firefighters lagged Patrolmen by 19.95%

Reopeners

The Union refutes the Town argument that the reopener language in other contracts would have a significant impact on town finances if a wage increase were to be granted to Firefighters. It argues that only the OPEIU contract, covering mid-level management has specific language that would automatically trigger a reopener if the Firefighters were to receive a salary increase through arbitration. It further points out that a reopener would not require the Town to agree to any further increases.

Recent Awards

The Union, in reviewing recent JLMC Awards, argues that they have been determined primarily on:

1. the relative financial stability of the community,
2. the economic climate at the time, and
3. other JLMC awards during the same period of time.

It maintains that in its analysis it has not found any JLMC fire awards that awarded a zero percent wage increase in any of the years covered by this dispute.

Workload

The Union argues that any increase in a Firefighter's workload should be considered in determining an increase in wages and benefits. It maintains that the establishment of ALS-level ambulance service during the term of the last Collective Bargaining Agreement (a one-year agreement) constituted an increase in workload. It maintains that now that the town runs two

such ambulances providing heightened service the workload is increased and should be considered.

For the reasons cited above, the Union argues that its wage proposal should be awarded.

The Town

The Town argues that its proposal for 0% wage increases for FY 12 and FY 13 plus a wage freeze in one year, coupled with a one time, not on the base, payment of \$300 will maintain parity with Firefighters in comparable communities, while helping the Town during a period of poor economic conditions and maintain the wage pattern established with other bargaining units.

It maintains that the Town continues to address economic challenges due to a number of factors.

Town employees have received significant wage increases over the three year period, FY 09, 10 and 11. It argues that the wages paid by the Town compare favorably both internally and externally with other comparable communities.

It maintains that the Town offers superior health plans for its employees, but that the additional costs have outpaced employee contributions to the extent that health insurance represents 10% of the Town's budget.

It further maintains that the Commonwealth's financial situation has resulted in serious reductions in local aid and projections indicate further reductions of 5% to 10%. It argues that local aid represents 20% of the Town's total revenues and that due to the reductions the Town has had to find ways to offset the loss of over \$1 million from FY 09 to FY 10. Combined with unfunded mandates from the Commonwealth, the Town has found it difficult to deal with the reduction of local aid. (Tn. 11)

Further, the Town has an Other Post Employee Benefit (OPEB) liability of \$72 million and needs to budget \$3 million per year just to cover normal costs and prevent the liability from increasing.

In addition the Town has assumed 100% of the cost of Quinn Bill benefits although state funding ceased in FY 12.

The Town argues that in its negotiations with the other Town Unions, the Police Patrol Officers, The Police Superior Officers, the DPW Employees, the Town Hall Employees and the Mid-Management Employees, it has reached agreement with all, based on 0% and 0% and a one-year delay in step increases.

External Comparables

The Town maintains that the Union manipulated its comparable community analysis in such a way as to cast the Union's proposals in the most favorable light. It argues that the Union's use of FY 12 and FY 13 contract settlement in other communities was inappropriate since the last Westford settlement date was FY 11.

It further argues that the Union figures for "Training and Other" were severely understated. The Union's comparable data on pages 8, 9, and 10 of Union Exhibit 1, used a figure of \$750 for this category of comparison. Town Budget Director O'Donnell testified that when he calculated the figures for this category he found the actual average to be \$1,685, and could be higher. (TR Vol. II, p.137-138) He argues that this altered:

Firefighter at 15 years with EMT from a 4.2% lag to a 2.7% lag, and

Firefighter R 15 years with EMT and Associates Degree from a 3.6% lag to a 2.2% lag

When a Master's Degree is added, the lag disappears, and the Town is above average by .3%. (TR Vol. II, p.137).

Internal Comparables

The Town takes issue with the Union's comparison between Police Officers and Firefighter/EMTs, questioning its methodology. It maintains that the analysis is flawed in that it did not separate police officers and firefighters by rank. Further it argues that the analysis failed to account for new Firefighters who had not worked a full year and as a result lowered the average for all Firefighters. Finally it argues that the Union included police compensation for outside details and overtime, which inflated the police figures inappropriately. It maintained that details represented 14% of police total income, compared to only 2.7% of Firefighter income.

For these reasons, and the Town's assessment of its ability to pay (outlined above), the Town argues that the Union has not taken into account the Town's complete financial outlook, including its significant unfunded liabilities, and that the Union's wage proposal be rejected and the Town's proposal be accepted.

Discussion and Opinion

Section 4A of Chapter 1078 of the Acts of 1973 lists a number of factors which an arbitration panel should consider in making a final award. All of the items are important, but depending on the particular circumstances in each case, some points stand out more than others. In this case, the "...financial ability of the municipality to meet cost..." and "... a comparison of wages, hour and conditions of employment of the employees involved in the arbitration proceedings with wages, hours and conditions of employment of other employees performing

similar services and with other employees generally in public and private employment in comparable communities” are particularly relevant.

Determining a community’s ability to pay is always a difficult process especially during tough economic times. This is no less true in this case. The Town of Westford, like many communities in the Commonwealth, has gone through difficult times over the last several years as the state’s economy and the national economy suffered downturns. Local aid cuts, followed by level funding have forced communities to cut budgets, reduce services and depend more heavily on local resources. In addition, the Town has had to deal with unfunded state mandates and the growing realization that it must begin to address its liability for Other Post Employees Benefits, estimated in the Town’s brief at \$72 million.

The Town, in response to these financial pressures, proceeded cautiously and conservatively in budgeting its funds and projecting revenues into the future. It took this approach in bargaining with its employee unions. As a result, the Town was successful in securing agreements from five of the six town bargaining units for FY12 and FY13 that resulted in 0% wage increases in both years and a one year freeze in step increases in either FY12 or FY 13. In return, the Town agreed to a onetime payment, not on the base, of \$300 for those employees on top step and \$500 for those employees currently progressing through the steps. The only unit that did not agree was the Firefighters.

In FY 12, and FY 13, the economic climate in both the state and the nation slowly began to improve and the conservative approach the Town took in its budgeting produced a stronger budget base than had been anticipated. Free Cash (defined by the Department of Revenue, Division of Local Services as revenue, “...generated when actual revenue collections are more than budget estimates, and when expenditures and encumbrances (unpaid bills and orders) are less than appropriations, or both”) (Tn. Ex. 6)) increased more than was anticipated.

As noted above, the Town projected free cash ending FY 12 and beginning FY 13 to be \$2,094,476. Actually, the amount certified by the Department of Revenue was \$6,626,990. While Town Exhibit 72. P18 clearly points out that some of that money was used to balance the final FY 13 budget, and pay outstanding bills and judgments, it nevertheless showed a significant increase over what was projected. Even after adjusting for all outstanding expenditure and judgments and retaining a Recommended Minimum Reserve of 5% of the total operating budget equal to \$4,848,236, the Town still had a reserve of \$2,933, 487.

The same is true for free cash projections for FY 13 which the Town had projected at \$4,150,874 but, was certified by the Department of Revenue at \$7,697,533.

While the panel understands that the Town is reluctant to use what it considers one time revenues such as free cash for ongoing expenses such as salaries, it also recognizes that at some point, when excess funds increase over a period of time, reasonable amounts of these funds can be used to compensate employees who have otherwise gone without wage increases.

For this reason, the panel agrees that the wage pattern established by the Town for FY 12 and FY 13 should be maintained. It was this pattern that helped establish the increases in free

cash to begin with. However, the panel believes that sufficient funds are available in FY 14 and awards a 2% wage increase effective July 1, 2013, and an additional 1% effective June 30, 2014.

We believe that the costs associated with this award will not place an undue burden on the Town's reserves in FY14 or into the future.

Unions Proposals

EMT Stipend Increase and Rolling EMT Stipend into the Base Pay

The Union

The Union proposes a 2% increase in the EMT stipend. The current EMT stipend is now 5% of the top step firefighter pay. This would increase the stipend from 5% to 7%. The Union further proposes that the EMT stipend then be rolled into the base salary, effective July 1, 2011. The Union estimates the cost of this proposal as \$132,000 over the three year period.

The Union maintains that medical calls are becoming more and more an integral part of a modern firefighter's work. EMT and Paramedic work are essential responsibilities for Westford Firefighters, especially since the Town moved to provide ALS services.

It argues that any benefit as a result of this rollover regarding overtime calculations is consistent with the requirements of the Fair Labor Standards Act which includes such stipends in the definition of wages for overtime purposes.

The Union argues that arbitration panels in Scituate and Malden have awarded this benefit in recent cases. It quotes the Scituate award, "*...Paramedic and EMT duties are an essential part of the firefighter's essential responsibilities. ...There is no longer any justification to continue to pay these stipends as a flat dollar amount; these payments should in fact be part and parcel of an employee's base pay.*"

The Union asks that its proposal be accepted.

The Town

The Town maintains that the current EMT stipend of 5% of the top step firefighter's base pay is competitive with the surrounding communities and places them ninth among the twenty – two comparable communities. It further argues that the Paramedic stipend is currently the 5% EMT stipend plus an additional 7% for Paramedic, resulting in 12% total stipend.

It argues that the cost of the stipend for the thirty-eight members currently receiving it was \$101,348.07 for FY 13. (Tn. Ex. 32) A 2% increase would cost the Town \$40,539.23 per year and an additional \$121,617.69 if retroactive to FY 12. (Tn. Ex. 33)

The Town maintains that since all Firefighters receive EMT stipends, this is nothing more than a wage increase by another name and should be rejected.

The Town also opposes the Union's proposal to roll the EMT stipend and the Paramedic stipend into the base pay. It maintains that it is not the norm in comparable communities to include such stipends in the base salary and is simply an attempt to increase wages through those items that are tied to the base salary, such as overtime, holiday pay, educational incentive and sick leave buy-back.

Even if the Town's wage proposal is accepted and the EMT stipend is kept at 5%, the additional cost to the Town of this proposal would be in the range of over \$27,500 per year for the three years of the contract. If the Union's wage and stipend proposals are accepted, the increase per year for this proposal would increase from \$37,500 to almost \$40,000 per year. This, it argues, would be the equivalent of a 2% base wage increase.

The Town asks that both of these proposals be rejected,

Discussion and Opinion

The panel agrees that Paramedic and EMT service are now essential responsibilities of Westford Firefighters. The importance of these services is even more essential now that the Town has committed itself to providing ALS services to the Town. Clearly the provision of these services has become part of the day-to-day operation of the department and an essential part of a firefighter's job.

Nevertheless, as important as these services are, the panel cannot ignore the fact that the Town has limited resources. A 2% increase in the EMT stipend combined with rolling that stipend into the base salary for overtime and other benefit purposes would place an undue financial burden on the Town.

Given the importance of the services, and the increased workload they place on the Firefighters, and taking into consideration the Town's limited resources, the panel awards a 1% increase in the EMT stipend effective July 1, 2012. The panel rejects the Union proposal to roll the stipend into the base salary.

ALS Coordinator and Clinical Coordinator

The Union

The Union proposes that the stipend paid to the ALS Coordinator be increased from \$750 to \$4,000 and the stipend paid to the Clinical Coordinator be increased from \$250 to \$4,000.

The Union presented the testimony of Firefighter / Paramedic Zachary Driscoll who has been the Westford ALS Coordinator since October 2012. Prior to joining the Westford Fire Department, he had served as Operations Manager for a private service provider, Trinity EMS. As Operations Manager, he was in charge of day –to-day operations and oversaw a staff of 300. As ALS Coordinator he has oversight responsibility for paramedics and EMTs. Part of that oversight includes responsibility for quality assurance and quality improvement, (QA/QI) training and education. (Tr. P. 82-84)

Firefighter Driscoll testified that as a firefighter and paramedic, he was responsible for performing the operational duties of that position, such as ambulance runs and fire suppression calls just as other Firefighters were and that he often performed an additional twenty to thirty hours beyond his regular hours performing his duties as ALS Coordinator. He testified that Clinical Coordinator, Al Gentile also worked similar hours beyond his normal schedule performing his duties. (Tr. P. 94)

The Union Maintains that in Lexington, the ALS Coordinator receives a stipend of \$4,000 and in Reading, the ALS Coordinator receives a stipend of 11% on top of an 8% stipend for being a paramedic.

The Union argues that the current stipend was agreed to prior to the ALS Service becoming operational. Now that it is operational, with two ALS ambulances in service, the Union contends that it is time to bring these two positions up to appropriate levels.

The Union asks that its proposal be accepted.

The Town

The Town argues that the Union's proposal should be rejected. It maintains that the increase requested for the ALS Coordinator represents an increase of 533%, or \$3,250, and the increase for the Clinical Coordinator represents an increase of 1600% or \$3, 750. The two increases together represent a \$7,000 increase per year over three years to two employees is equivalent to a 1% total wage increase for the department.

The Town points out that in cross examination, Firefighter Driscoll, testified that the Chief authorized paying him overtime for performing mandatory work, such as M&M rounds (morbidity/mortality) or meeting with the Medical Director.

The Town argues that Firefighter Tim Bellemore testified that when he was on the Union bargaining committee in 2010, the Union's position of the ALS and Clinical Coordinators position was 4% or roughly \$2,000 for the ALS, and 2% or \$1,000 for the Clinical. In this round of negotiations, the Town points out, the request for these positions doubled for the ALS Coordinator and quadrupled for the Clinical Coordinator.

The Town argues that ALS services are still a new operation for the Town and is not yet profitable. It is still subsidized by the Town. It argues that while a modest increase may be appropriate, the request of the Union is fiscally irresponsible.

Discussion and Opinion

The panel agrees that an increase is appropriate for the positions of ALS Coordinator and Clinical Coordinator.

It is clear from the testimony of Firefighter Driscoll that the two positions are critical to the operation of a well functioning ALS system. It is also clear that the work required to perform the functions of these positions extends well beyond the normal schedules of rank and file firefighters / paramedics. In spite of the fact the Chief has authorized overtime for performing certain mandatory functions of the position, given the work involved in quality assurance and improvement, training and education, there is a need for an increase in the two stipends.

The Town argues that the Union's proposal would represent an increase of \$7, 000 per year or \$21,000 over a three year period. Mindful of the Town's financial situation, the panel awards that each stipend be increased to \$3,000 per year, effective July 1, 2013. This would reduce the cost from the Union's original proposal to \$5,000 per year and limit retroactivity to FY 14.

Accrual of Vacation Leave

The Union

The Union proposes increasing vacation accrual to mirror that of the Police Patrolmen's contract. This proposal would increase vacation leave to 240 hours after 15 years, rather than after 20 years and increase to 280 hours after 20 years,

The Union argues that establishing parity with the Police is fair especially when considering that Firefighters work more hours per week, on average than Police Officers. Thus Firefighters have to use more hours of vacation time to get the same amount of time off as a police officer.

The Union asks that this proposal be accepted.

The Town

The Town maintains that the Union's proposal would increase vacation time by 546 hours. Based on an overtime rate of \$36.50 per hour the Union's proposal would increase overtime costs by \$19,929, almost the equivalent of 1% total base wages.

The Town maintains that its overtime budget is already strained and to add this additional cost would require the Department to reduce its preferred staffing levels from the current level of 8 to 7 or 6 in order to maintain the current budget.

The Town further argues that the Westford vacation time is competitive with other communities. It maintains that five communities have 240 hours after 20 years, and four others have 240 hours after 15 years but have no additional hours for years of service after 15 years.

The Town asks that the proposal be rejected

Discussion and Opinion

Given the Town's financial constraints and the fact that the current levels of vacation time are competitive with comparable communities, there is insufficient justification for a change at this time.

The Proposal is not accepted

Town's Proposals

Educational Incentive

The Town

The Town proposes to eliminate the current language in Article 20, paragraph a, which states:

AS Fire Science or equiv.	5% of base wages
BS Fire Science or equiv.	10% of base wage
Masters in Fire Science	12.1/2% of base wages

And replace it with:

New employees and current employees who are not currently eligible to receive compensation for a degree are eligible for the following fixed Educational Incentive stipend in accordance with the current contract language:

CAPTAIN

Associates	\$3,373
Bachelors	\$6,746
Masters	\$8,433

LIEUTENANT

Associates	\$3,020
Bachelors	\$6,040
Masters	\$7,550

MECHANIC

Associates	\$3,020
Bachelors	\$6,040
Masters	\$7,550

FIRE PREVENTION

Associates	\$3,373
Bachelors	\$6,746
Masters	\$8,433

FIREFIGHTER

Associates	\$2,168
Bachelors	\$4,337
Masters	\$5,421

The Town argues that to replace the percentage based stipend system with a flat amount is part of its ongoing cost containment efforts. It states that this proposal would reduce the Town's liability for educational incentive while limiting the impact to new employees and those not currently receiving education benefits. Current Firefighters who are receiving education benefits will continue to receive them under the old language.

The Town maintains that this proposal allows the Town to contain costs while minimizing the impact on current Firefighters. It states that its flat rate proposal would place Westford in the Middle of comparable communities' offering education incentive. It points out that the Police Superior Officers agreed to the same language in a recent round of negotiations.

The Town requests that the proposal be accepted.

The Union

The Union argues that the Town has not made a case for the change and why the current language is a problem.

It further argues that the Towns proposal would place the Firefighters even further behind Police Officers who had their education benefits (Quinn Bill) expanded by offering Quinn Bill

benefits to police officers not otherwise eligible under current law and a new flat rate benefit to Superior Officers at a much higher rate than that being offered to the firefighters.

The Union asks that the proposal be rejected.

Discussion and Opinion

The Town has not provided sufficient information at this time to justify this proposal being accepted.

The proposal is not accepted.

Non-Occupational Sick Leave, Article 24(A) Section 1

The Town

The Town proposes that Section 1 of Article 24(A) of the Collective Bargaining Agreement be deleted and the following put in its place:

"Each employee shall accrue up to 96 hours of sick time per year, 96 hours in the case of Fire Prevention. In the case of suspected abuse, the Chief may require a Doctor's certificate from the employee"

The Town argues that it is seeking to limit its potential financial exposure and overtime expense to fill shifts when a Firefighter calls in sick. The proposal would reduce the amount of the annual accrual of sick time hours from 144 hours to 96 hours. The 96 hours figure is the same number of hours that other Town employees receive. The normal workday for other Town employees is 7.5 hours and they receive one sick day per month for a total of 96 hours.

The Town notes that as of June 15, 2013, firefighters have been paid \$114,056.08 in sick leave, or the equivalent of 3.41% of the total Fire and Ambulance Enterprise personal services budget. (Tn. Ex. 56) It notes further that no more than 85 days per year in other paid leave is taken into account.

The Town maintains that this change would make Firefighter sick leave commensurate with other Town employees and asks that the proposal be accepted.

The Union

The Union opposes the Town's proposal. It maintains that the current language is based on the number of tours of sick leave a firefighter gets per year. It states:

“Each employee shall earn and accrue twelve (12) tours at 12 hours per tour and in the case of Fire Prevention; 8 hours per tour of sick leave per year. In the case of suspected abuse, the Chief may require a Doctor’s certificate from the employee.”

The Union maintains that this language was adopted when the Firefighters worked 10s and 14s, so 12 hours was determined to be the average number of hours that would equal one tour. It maintains that this is no different than the Police Contract which states:

“The employee shall be granted twelve (12) sick days each year.”

The difference is that a police officer’s normal work day is eight hours and not twelve. The Town’s proposal, it argues, would reduce a Firefighter’s sick leave to eight days; 96 hours divided by a 12-hour tour.

The Union asks that the proposal be rejected.

Discussion and Opinion

While the Town’s concerns regarding cost control is understandable, there is insufficient information provided here to justify this proposal. The Town states that the Firefighter’s use of sick leave over most of FY 13 is equal to 3.4% of the total Fire and Ambulance Enterprise personal services budget, but does not provide comparisons.

The proposal is not accepted.

Non-Occupational Sick Leave, Article 24 (A) Section 2

The Town

The Town proposes to eliminate Article 24 (A) Section 2 and replace it with the following:

“Unused accrued sick leave may be accumulate from year to year up to a maximum of 960 hours effective 6/30/2013.”

This would reduce the year to year accumulation of sick leave from 1,440 hours to 960 hours.

The Town argues that this is a cost containment measure intended to limit the Town’s potential liability regarding sick leave payout. It maintains that a firefighter can accumulate up to 1440 hours of sick leave, which as of June 30th of each year, can be paid out to Firefighters at the rate of one day for every three days accrued over 1,440. It argues that all other bargaining units in the town are capped at 960 hours. (Tn. Ex. 57a). It maintains that this proposal is consistent with other communities in the area. (Tn. Ex.58)

The Town asks that this proposal be accepted.

The Union

The Union maintains that this proposal is similar to the previous Town proposal in that it disregards the fact that a Firefighters tour is twelve hours and not eight as other town employees. It points to both the Police and Police Superiors contracts which allow for a maximum accumulation of 120 days. Again, it argues, that 1,440 hours is the equivalent of 120 days for a firefighter.

It maintains that the Town's proposal would provide Firefighters with fewer sick days than other town employees.

The Union asks that the proposal be denied

Discussion and Opinion

While understanding the Town's desire to control costs, it has not provided enough information to justify this proposal at this time.

Recoupment of Advances in Benefits and Compensation

The Town

The Town proposes that a new article be added to the Collective Bargaining Agreement. It states:

- a. It is agreed and understood that certain fringe benefits and compensation such as vacation, sick leave, educational incentive, stipends, longevity payments, etc. are earned on the basis of the employees providing services for a complete calendar year, beginning with the employee's anniversary date in the preceding year and ending with the anniversary date in the current year (hereinafter referred to as the "anniversary date"). In crediting certain benefits and paying certain compensation on the July 1st preceding the actual anniversary date, the Town in effect advances compensation of the employee providing services for the full anniversary year.
- b. The Town shall recoup these advances in benefits and compensation from any employee who receives or uses the advanced benefits and compensation who becomes separated from employment with the Town prior to completing the anniversary year.
- c. The recoupment will be made on a pro-rated basis using the ratio between the total number of days between the employee's last date of employment.
- d. To the employee's anniversary date divided by the total number of days between July 1st and the employee's anniversary date.

- e. The Town may deduct the recoupment from the employee's paychecks or other amounts due the employee for the Town.
- f. Temporary separation from the employment due to disciplinary action, non-occupational injury, or other leave of absence, may be subject to recoupment of advances in benefits and compensation at the discretion of the Fire Chief.

Chief Rochon testified that there have been occasions where a Firefighter has spent his entire \$800 clothing allowance just weeks before retiring. This expenditure, he argued, cut into allowance leaving little for a new Firefighter just beginning and in need of clothing and equipment. In other instances, the Chief testified that he was not informed in advance that a Firefighter had attained additional credits or a degree. As a result, the Chief had not budgeted the right amount in his budget. (TR. Vol. II p, 269, 270)

The town argues that there is similar language in the Police contract, therefore it is not imposing a stricter requirement on Firefighters than it has for the police

The Town asks that its proposal be accepted.

The Union

The Union argues that this proposal is not needed. It maintains that the Chief's only real problem was with the clothing allowance and had indicated that it had only happened a couple of times. As for education incentive, it was pointed out at the hearing that they are paid out retrospectively and not in advance.

The Union points out that although the proposal is similar to that of the Police contract, it is harsher than the language in that contract.

The Union argues that the proposal is unnecessary and should be denied.

Discussion and Opinion

The evidence presented by the Town is primarily anecdotal, primarily limited to a couple of incidents regarding the clothing allowance. The Town maintains that it was able to negotiate similar, though less strict, language in the police contract. The Panel feels that negotiations would be the appropriate place for this discussion.

The proposal is not accepted.

Personnel Reductions, Article 11.

The Town

The Town proposes eliminating the current language and replacing it with:

“In the case of personnel reduction, the Chief shall make reductions in a manner that meets the department’s operational need while considering the rank structure. Employee lay-offs shall be made by rank and then seniority.

Employees shall be recalled in a manner that allows for the Chief to meet the departmental need while considering the rank structure.”

The Town argues that the current strict seniority language requires the department to lay-off those with the least seniority without regard to rank or position. It maintains this would greatly impact the paramedics, and ALS services since most recent hires are paramedics. The Town argues that it needs a minimum of eight (8) paramedics to maintain ALS service levels and the Chiefs goal is to have twelve (12) paramedics on staff.

The Chief argues that the department budgets on certain levels of ALS service and a certain expected ALS revenue stream. The Chief maintains that if the Department were unable to perform at ALS levels the revenues would decrease, possibly forcing additional layoffs.

The Town asks that the proposal be accepted.

The Union

The Union argues that the language in Article 11 is an essential tenant of organized labor; the importance of seniority over discretionary decision making by the employer. Since Westford is not a Civil Service town, this contract language is key to the employee’s protection.

It further argues that the proposal gives the Chief unfettered discretion to determine which ranks he wishes to protect and which he wants to reduce. Further, the proposal gives the Chief unlimited discretion in who will be recalled, or if he wants to replace them with new hires.

The Union understands the Town’s need to protect the full level of ALS services, but feels that this proposal goes too far and asks that it be rejected.

Discussion and Opinion

The panel understands the desire and need of the Town to provide ALS level service to its citizens. At the same time it understands the need of the Firefighter’s Union to protect its members from arbitrary decisions made by the employer in the event of a reduction in force.

During the course of his testimony, the Chief testified that the primary reason this proposal was being offered was to protect his flexibility to maintain the ALS services. He testified that a minimum of eight (8) paramedics would be needed to maintain ALS services. He testified that currently he has nine (9) and has a goal of staffing with twelve (12). He testified that if the panel could come up with a way to ensure that the department would not lose its ability to run an ALS program, it would satisfy what he was looking for. (TR. Vol. II, 273, 274)

The panel orders the parties to meet, within thirty (30) days, and draft contract language that will ensure that if layoffs are necessary, they will be conducted by strict seniority, regardless of rank or position. If the layoffs reach a point where less than eight (8) paramedics will be available to ensure the continuance of ALS service to the Town, the Chief may deviate from the normal seniority process to protect ALS services and return to strict seniority once those services have been protected. Employees will be recalled in the order of their seniority and no new employees shall be hired until all laid off employees have been given ample opportunity to return to work.

Should the parties be unable to agree on such language, this panel will retain jurisdiction on this issue for a period of sixty (60) days to resolve any disputes that may arise.

Conclusion

The panel has considered the statutory requirement in an attempt to balance the interests of the Town of Westford and its citizens and the bargaining unit employees. In so doing it issues this award.

Duration:

The duration of the agreement will be July 1, 2011 to June 3, 2014

Wages:

Effective July 1, 2011 – 0%

Effective July 1, 2012 – 0%

Effective July 1, 2013 – 2%

Effective June 30, 2014 – 1%

EMT Stipend Increase:

Effective July 1, 2012 the EMT Stipend increased by 1%

Rolling EMT Stipend into the Base Pay:

The proposal is not accepted.

ALS Coordinator and Clinical Coordinator:

Effective July 1, 2013, the Stipend for ALS Coordinator will be increased to \$3,000 per year.

Effective July 1, 2013, the Stipend for Clinical Coordinator will be increased to \$3,000 per year.

Accrual of Vacation Leave:

The proposal is not accepted.

Educational Incentive:

The proposal is not accepted.

Non-Occupational Sick Leave, Article 24(A) Section 1:

The proposal is not accepted.

Non-Occupational Sick Leave, Article 24 (A) Section 2:

The proposal is not accepted.

Recoupment of Advances in Benefits and Compensation:

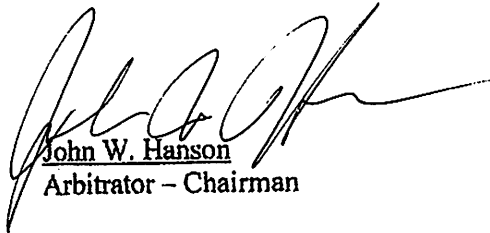
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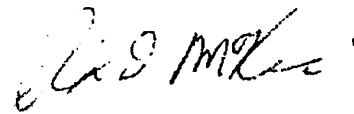
Dated: February 21, 2014



John W. Hanson
Arbitrator - Chairman



Michael Whalen
Management Representative



Richard MacKinnon
Labor Representative
