

**IN THE MATTER OF
INTEREST ARBITRATION
BETWEEN**

LOCAL 1768, IAFF

-AND-

TOWN OF PLYMOUTH

JLMC-12-2380

AWARD

A. Contract Duration

1. July 1, 2012 through June 30, 2015

B. Compensation Increases

1. Cost-of-living Increases

- (a) Effective July 1, 2012, a 1% across-the-board wage increase applied to the salary schedule in effect on June 30, 2012.
- (b) Effective January 1, 2013, a 1% across-the-board wage increase applied to the salary schedule in effect on December 31, 2012.
- (c) Effective July 1, 2013, a 1% across-the-board wage increase applied to the salary schedule in effect on June 30, 2013.
- (d) Effective January 1, 2014, a 1% across-the-board wage increase applied to the salary schedule in effect on December 31, 2013.
- (e) Effective July 1, 2014, a 2.5% across-the-board wage increase applied to the to the salary schedule in effect on June 30, 2014.

2. Base Salary Equity Adjustments

- (a) Effective July 1, 2013, a 1% across-the-board wage increase applied to the salary schedule in effect on June 30, 2013.
- (b) Effective June 30, 2015, a 1% across-the-board wage increase applied to the salary schedule in effect on June 29, 2015.

C. Vacation Leave

Status quo with twenty-four (24) hours' notice of vacation leave by a Firefighter to the

Fire Chief or his designee.

D. Jury Duty

Town's proposal.

E. Shift Swaps

Status quo.

F. Twenty-Four (24) Hour Shift - Circuit Breaker

- The circuit breaker shall be maintained. However, it shall not be applied in calendar year 2014 regarding 2013 sick leave. The twenty-four (24) hour shift shall continue throughout calendar year 2014.
- In calendar year 2014, a per Firefighter annual average, eight (8) sick leave day circuit breaker shall be applied to the twenty-four (24) hour shift continuation in calendar year 2015.
- All sick leave used during an illness or injury-caused absence of thirty (30) or more consecutive calendar days shall be excluded from the per Firefighter annual, average, eight (8) sick leave day utilization calculation. A ten (10) or fourteen (14) hour shift segment shall count as one (1) sick leave day. A twenty-four (24) shift shall be credited as two (2) sick leave days.

G. Drug and Alcohol Testing

Status quo.

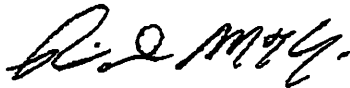
H. Compensatory Time

Status quo.

I. Rank Differential (Steps)

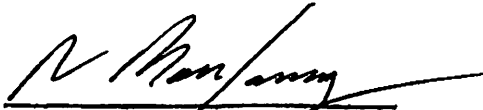
- Effective July 1, 2012, following the application of cost-of-living and base salary equity adjustments, a Firefighter step 6 promoted to Lieutenant shall be promoted to Lieutenant step 2.
- Effective July 1, 2012, a Lieutenant step 4 promoted to Captain shall be promoted to Captain step 2.

- Firefighters and Lieutenants so promoted shall thereafter on the twelve (12) month anniversary of their promotions receive annual step increases, beginning at step 3.



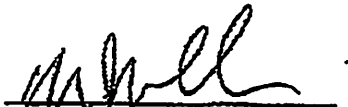
Richard MacKinnon
Union Panelist

Dated: 2-5-14



Richard Boulanger, Esq.
Chairman and Neutral Panelist

Dated: 2/5/14



Michael Whalen
Town Panelist

Dated: 2/5/2014

I. INTRODUCTION

The Joint Labor-Management Committee (JLMC) interest Arbitration Panel is composed of Union Representative, Richard MacKinnon; Neutral Panelist and Chairman, Richard Boulanger, Esq.; and Town Representative, Michael Whalen. The Arbitration Panel was appointed by the JLMC to resolve a contract dispute between Local 1768, IAFF ("Union") and the Town of Plymouth ("Town"). The parties submitted the following issues for hearing: Contract Duration; Wage Increases; Vacation Leave; Jury Duty; Shift Swaps; Twenty-Four (24) Hour Shift -Circuit Breaker; Drug and Alcohol Testing; Compensatory Time; and Rank Differentials (Steps).

The interest arbitration proceeding was held on November 15, 2013 at the John Carver House, Plymouth, Massachusetts.

The Union was represented by Ms. Leah Barrault, Esq. Mr. Chip Hawthorne, Union Bargaining Chairman, and Mr. Kevin Dasey, Financial Analyst/Consultant to the Union, testified for the Union.

Mr. David Jenkins, Esq. and Mr. Timothy Zessin, Esq. represented the Town. Fire Chief G. Edward Bradley and Ms. Lynne Barrett, Town Finance Director, testified for the Town.

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

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

- 1) the interests and welfare of the public;
- 2) the hazards of employment;
- 3) physical, educational and mental qualifications;
- 4) job training and skills involved;

- 5) comparative wage and employment conditions with employees performing similar services and with other employees generally in public and Private employment in comparable communities;
- 6) the cost-of-living as determined by the Department of Labor;
- 7) the overall compensation presently received by the employees, including direct wages and fringe benefits;
- 8) tax levy limit - Prop 2½ ;
- 9) comparable property tax rates;
- 10) municipal growth rates- residential/commercial;
- 11) Free Cash/reserves;
- 12) mean residential income;
- 13) debt/projected expenses;
- 14) other settlements in the municipality and in other comparable communities for employees similarly situated; and
- 15) changes in any of the foregoing circumstances during the pendency of the dispute.

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

Based on the evidence submitted, the panel concludes that the awarded proposals are justified, and that the Town has the requisite ability to pay for the financial components of the award, as discussed in more detail below. The terms of the parties' July 1, 2009 to June 30, 2012 collective bargaining agreement shall remain in effect in the July 1, 2012 through the June 30, 2015 contract, except as modified herein by the Arbitration Panel, or by the parties.

II. FINDINGS AND OPINION¹

A. CONTRACT DURATION

1.) UNION PROPOSAL:

A three (3) year contract beginning July 1, 2012 through June 30, 2015.

2.) TOWN COUNTER-PROPOSAL:

A three (3) year collective bargaining agreement beginning July 1, 2012 through June 30, 2015.

3.) DISCUSSION:

Pursuant to the parties' agreement, the collective bargaining agreement shall have a term of July 1, 2012 through June 30, 2015.

4.) AWARD

Contract Duration – July 1, 2012 through June 30, 2015.

B. COMPENSATION INCREASES

1.) UNION PROPOSAL:

July 1, 2012 – 4% wage increase;
July 1, 2013 – 4% wage increase;
July 1, 2014 – 4% wage increase;

2.) TOWN COUNTER-PROPOSAL:

July 1, 2012 – 1% or 1.5% wage increase;
July 1, 2013 – 1% or 1.5% wage increase;
July 1, 2014 – 2% or 1% wage increase;

3.) DISCUSSION:

The Union argues that internal and external comparability data justify its wage proposal, and

¹The term Firefighter shall include Lieutenants, Captains & Battalion Chiefs unless otherwise indicated.

that the Town has an ability to pay for same. The Town contends that the same evidence supports its proposal.

A review of the internal and external comparability data and ability to pay evidence, as discussed in more detail below, supports the following compensation increases:

Cost-of-living Increases

- (a) Effective July 1, 2012, a 1% across-the-board wage increase applied to the salary schedule in effect on June 30, 2012.
- (b) Effective January 1, 2013, a 1% across-the-board wage increase applied to the salary schedule in effect on December 31, 2012.
- (c) Effective July 1, 2013, a 1% across-the-board wage increase applied to the salary schedule in effect on June 30, 2013.
- (d) Effective January 1, 2014, a 1% across-the-board wage increase applied to the salary schedule in effect on December 31, 2013.
- (e) Effective July 1, 2014, a 2.5% across-the-board wage increase applied to the to the salary schedule in effect on June 30, 2014.

Base Salary Equity Adjustment

- (a) Effective July 1, 2013, in addition to the 1% cost-of-living increase, a 1% across-the-board Base Salary Equity Adjustment applied to the salary schedule in effect on June 30, 2013.
- (b) Effective June 30, 2015, a 1% across-the-board Base Salary Equity Adjustment applied to the salary schedule in effect on June 29, 2015.

a.) Justification

The panel's compensation increase award is justified by Town Firefighters' workload, and by internal and external comparability data. Town Firefighters have a significant land mass to protect as the Town is the largest, land volume community in the Commonwealth. Within that ninety-six (96) square mile area is the Entergy nuclear power plant, the House of Correction, Jordan Hospital, nursing homes, large and remote State forests, the ocean front, a boat-filled harbor, industrial parks, retail centers, large housing developments, and highways crowded with tourists, residents and

commuters, presenting diverse and serious firefighting hazards. (T – 34-37)² (See also Union Exhibit #1.)

The panel acknowledges the Town's settlements with four (4) other bargaining units, including the Teachers' union which accepted a Town wage increase similar to that proposed in the instant case. The panel is not aware of whether the compensation of other Town employees is competitive vis à vis their universes. The panel must address internal (Police Officers) and external (universe Firefighters) compensation disparities with Town Firefighters. While internal and external wage increase comparisons are enlightening, they must be reviewed in conjunction with base salary and overall compensation comparisons internally and externally. The rationale being that a comparable wage increase may result in overall compensation or base salaries that are not competitive, as here.

The Union contends that a Firefighter (Private) without Emergency Medical Technician (EMT) certification earns 7% less than a Town Patrol Officer, irrespective of degree level. It argues that a Firefighter (Private) with an EMT certification receives 5.2% less than a Town Patrol Officer. While the Town disagrees with those Union calculations, it admits that a fifteen (15) year Town Police Officer with a Bachelor's Degree receives \$5,500 more in compensation than does a similarly situated Town Firefighter. (T – 82-83) It attributes the disparity to the Quinn Bill payment, and notes that the Union has not sought an increase in its educational incentive. In any event, it is clear that the internal comparability evidence reveals a compensation gap between Town Firefighters and Town Police Officers in favor of Town Police Officers.

As to external comparability data, the Union asserts that the Town's universe should be

²T signifies the transcript of the November 15, 2013 hearing followed by the page number(s).

rejected as most of the communities have a much smaller population than the Town, with much less housing and commercial development, and a corresponding smaller firefighting force. The Union contends that the panel should use the universe chosen by Stone Consulting, Inc., the Town's salary survey consultant for Town Patrol Officer compensation. Stone Consulting, Inc. recommendations to the Town were issued in December, 2012. (See Union Exhibit #7.) Based on that universe, a fifteen (15) year First Responder Firefighter earns 15.0% less compensation than a similarly situated universe Firefighter. The Union also contends that a fifteen (15) year Firefighter who is EMT certified earns 15.3% less than the average universe Firefighter with EMT certification. (T – 73) (See also Union Exhibit #7.)

The Town contends that the Union's universe is inappropriate, and that the panel must use its universe as it has been utilized in prior Town interest arbitration proceedings. Notably, according to the Town, it was implemented by the prior Town Firefighter panel. Merely because the Town's consulting firm used a certain universe for its Patrol Officer salary review purposes does not mean that it should be utilized in the instant proceeding, particularly where the Town was not aware of the Union's reliance on the Stone Consulting, Inc. review for its survey. According to the Town, the Stone Consulting, Inc. report includes communities that are more densely populated, and urban in character, while the Town is suburban/rural in character. Moreover, it selected communities clustered in the greater Boston area which tend to drive up the compensation factor. Consequently, it is more probative of compensation and other working conditions to include Southeastern Massachusetts towns which are proximate to the Town.

The universe advanced by the Town and utilized in the past, includes communities that are

smaller in population and firefighting work force but are geographically closer to the Town than the cities chosen by Stone Consulting, Inc..

There is more of a compensation gap if Stone Consulting, Inc.'s universe is utilized. However, in this proceeding, the panel utilizes the traditional universe advanced by the Town. While the compensation gap is less when Town Firefighter compensation is contrasted to the Town universe average compensation, nevertheless, that difference must be rectified. The Union contends that when the wage increase errors in the Town's universe compensation calculations are corrected, it reveals that a ten (10) year Town Firefighter with an Associate's Degree earns nearly \$4,000 or 6.5% less than the average universe Firefighter. (See Exhibit H.) It asserts that when holidays and clothing/uniform allowance stipends are included in compensation, a Town Firefighter earns nearly \$6,000 or 9.4% less than the Town's average universe Firefighter. (See Exhibit H.) Focusing on the base salary comparisons using the Town's universe, in Fiscal Year 2013, there was a 3% gap between a Town Firefighter and the universe average. Using the Town's universe calculations for a ten (10) year EMT certified Firefighter on the night shift with an Associate's Degree, indicates a 3% gap in total compensation in Fiscal Year 2013 . (See Town Exhibit #1.) It also appears that some of the base wage figures included in the Town's calculation are dated. The Middleboro and Rockland rates appear to be Fiscal Year 2012 salaries, while Pembroke's salary rate appears to be a 2009 figure. (See Town Exhibit #1.) Moreover, the Duxbury base wage rate appears to be a pre-Fiscal Year 2013 salary as well. (See Town Exhibit #1.) Similarly, the holiday and clothing allowance compensation is not included in the Town's survey. (See Town Exhibit #1 and Union Exhibit H.) If all universe Fiscal Year 2013 salaries and the holiday and clothing amounts had been included, the non-Town average would have been higher, resulting in more of a compensation gap.

It is not surprising that Town Firefighter base salaries are lagging behind the universe average because, although in the prior arbitration proceeding Town Firefighters (Privates) were awarded a sixth step and Lieutenants and Captains a fourth step, only a 2% across-the-board wage increase was awarded in the period July 1, 2009 through June 30, 2012. The compensation gap must be cured and once Town Firefighters are competitively compensated that compensation level must be maintained over the course of the contract's duration. The panel chooses to correct the compensation disparity by means of cost-of-living adjustments (COLA) and base salary equity increases. While a base salary equity adjustment has the same cost/benefit effect as a cost-of-living increase, it is conceptually distinguishable in that it addresses the need for a base salary adjustment to catch up and match the universe average target figure. The panel chooses to implement the compensation adjustments by spreading wage increases and base salary equity adjustments throughout the three (3) year contract period beginning July 1, 2012, with the last base salary equity adjustment on June 30, 2015.

The compensation increases awarded by the panel are justified.

b.) Ability to Pay

In a Town Firefighter interest arbitration award covering the July 1, 2009 through June 30, 2012 contract period, a JLMC panel followed a Town pattern of no wage increases in Fiscal Years 2010 and 2011 with a 2% across-the-board wage increase effective July 1, 2011 (JLMC-10-04F). Effective January 1, 2012, it awarded a senior step to Firefighters as provided to Police Patrolmen and to Police Superior Officers.³ During that proceeding, the Town noted its increased indebtedness with capital projects such as the then new Plymouth North High School and the Senior Center. The Town also pointed to a zero balance in the Pilgrim Nuclear Power Plant generated BECO Stabilization

³While the party panelists that served on the prior case differ from those participating in the instant case, the neutral

fund. The re-licensing of the Pilgrim Nuclear Power Plant, the Town's largest tax payer, was also in doubt. The prospect of losing tax revenue from the Pilgrim Nuclear Power Plant would have been a major financial blow to the Town. The Town's 2011 Free Cash balance was \$2.9 million down from its \$4.3 million ten (10) year average. The Town had then recently received \$1.45 million less in State aid than it received in fiscal year 2009, and its Bond rating was downgraded by Moody's Investors Service (Moody's) from Aa2 to Aa1.

The Town's financial standing has improved dramatically since the prior JLMC award issued on October 7, 2011. The Department of Revenue's (DOR) Town Tax Rate Recapitalization Sheet for Fiscal Year 2013, the first year of the collective bargaining agreement, indicates that nearly \$5 million dollars in Free Cash was a "revenue source appropriated for particular purposes." In Fiscal Year 2013, General Municipal State Aid was up from Fiscal Year 2012. (T – 183-184) (See also Town Exhibit #19.) Moreover, license and permit revenue has been stable, increasing since Fiscal Year 2009. (T – 184) (See also Town Exhibit #20.) While new growth bottomed out in Fiscal Year 2010, it has been stable since 2011. Ms. Lynne Barrett, Town Finance Director, projected \$1.2 million dollars in new growth in 2014 noting that the Town has available buildable land because it is not yet "built out." (T – 168, 181) (See also Town Exhibit #21.) In Fiscal Year 2013, total local receipts were up nearly \$4 million (\$3.8 million) over the budgeted amount of nearly \$12.5 million for a 30.7% increase. (See Union Exhibit #7.) Most notably, motor vehicle excise taxes were up \$500,000. Licenses and permits through March, 2013 were up nearly \$388,000 above the \$1.5 million budgeted amount. Ms. Barrett attributed the license and permit increases to new construction, primarily the Pine Hills project, a large, upscale residential community. (T – 166, 185) These calculations were made at the end of March, 2013 with three (3)

chairman remained the same.

months left in Fiscal Year 2013. ((See Union Exhibit #7.) They are a sign of the Town's growing economy. The Town points to increasing health insurance costs. The Fiscal Year 2013 savings in health insurance costs was \$1.5 million dollars. (T – 190) (See also Town Exhibit #23.) The Town's share of health insurance cost rose by a modest 4.01% in Fiscal Year 2014 with a 14.7% estimated increase in Fiscal Year 2015. (See Town Exhibit #23.) It is worthy of note that there is a balance in the health insurance trust account. The Town also notes its increasing pension costs and other post employment benefit expenses (OPEB). (See Town Exhibits #22 and #24.) However, the Town has voluntarily assumed more OPEB liability than is legally required. (T – 186-187) Ms. Barrett testified that the Town's excess levy capacity had recently increased to \$7.0 million in Fiscal Year 2013. (T – 180) However, Standard & Poor's noted that the Fiscal Year 2013 unused levy capacity was \$9.15 million. (See below.) Excess levy capacity is an indicator of a community's fiscal health. It demonstrates that the Town is not required to tax to its full legal capacity in order to manage its fiscal affairs, an enviable position as contrasted with other cities and towns.

In April, 2013, Standard and Poor's Ratings Services assigned an AA rating to the Town. Its analysis of Town finances include the following factors:

The town's total assessed valuation (AV) has declined annually since 2009, attributed in part to the national recession. As of fiscal 2013, total AV stands at \$8.6 billion, a 10% decline from 2009. Despite this, Plymouth's real estate valuation per capita stands at roughly \$150,000, a figure we consider extremely strong. Additionally, state equalized value per capita is \$165,000 as of 2012. After declining sharply from 2008 to 2009, building permits have been rising steadily. In fiscal 2012, permits reached 1,710, exceeding the pre-recessionary level of 1,606. The 10 leading taxpayers are, in our opinion, very diverse at just under 12% of the total gross levy. However, one taxpayer — Entergy Nuclear — comprises over 8% of the gross levy.

As of the most recent audit (June 2012) and including transfers, operating revenues exceeded operating expenses by almost \$92,000. Property taxes and state aid remain the two largest revenue sources, accounting for 67% and 24% of operating revenues, respectively, for fiscal 2012. Tax collections have averaged 98% for the past five years. As of June 30, 2012, Plymouth's total fund balance stood at \$26.5 million, or

14.7% of fiscal 2012 expenses. The total available fund balance (assigned and unassigned) comprised \$22.26 million as of that date, equating to a strong 12.4% of expenses. in our view. The \$22.26 million includes \$8 million in stabilization fund reserves. For fiscal 2013, management believes reserves are likely to remain very close to their fiscal 2012 year-end total. The town also has added flexibility in that they have not been taxing at the full amount permitted under commonwealth-imposed tax levy limits. As such, they have flexibility should revenue or expense pressures dictate. The fiscal 2013 unused levy capacity is \$9.15 million.

While noting the negative factors of “financial stresses associated with pension and other post employment benefit costs, multiple year declines, and total assessed valuation, Standard and Poor’s concluded that “the outlook on all long-term ratings is stable.” Standard and Poor’s identified the following impressive Town fiscal characteristics:

The stable outlook reflects Standard & Poor's view of a town that has certain stabilizing credit fundamentals. These findings include strong income, extremely strong wealth levels, and ample employment opportunities. Although the debt profile is favorable and the town has an unused levy, the town’s unfunded actuarial accrued liability could limit Plymouth's ability to address unforeseen future events. Barring any sudden, sharp changes in financial performance, we do not anticipate a ratings change during the two-year outlook period.

It is worthy of note that in Fiscal Year 2013, Moody’s restored the Town’s Aa2 rating from its previous Aa rating, a sign of stable fiscal health.

As of July 1, 2013, the commencement of the second contract year, DOR certified Free Cash at \$5.5 million, notably above the \$4.3 million ten (10) year average. Furthermore, as of July 1, 2013, the Stabilization Fund was \$9 million, which amount can be used for any lawful purpose, but is normally reserved to fund capital projects. (T – 117) As of July 1, 2013, \$1 million was in the Overlay Reserve account. Significantly, unlike the nuclear power plant licensing uncertainty during the prior contract period, the Nuclear Regulatory Commission (NRC) in May, 2012 granted a twenty (20) year license to Entergy. In the Summer of 2013, the Town meeting approved a three (3) year pilot agreement with

Entergy resulting in revenues of \$10 million in Fiscal Year 2014, \$9.5 million in Fiscal Year 2015, and \$9.25 million in Fiscal Year 2016. (T – 162) (See also Union Exhibit #10 and Town Exhibits #17 and #19.) Entergy revenue represents approximately 8% of Town tax revenues. (T – 161) General Municipal State Aid increased from the Fiscal Year 2013 level. (See Town Exhibit #19.) The Town contends that Free Cash should not be used for recurring operational expenses such as increased payroll costs. However, the Town's Free Cash is not a one-time budgetary surplus, but rather occurs on an annual basis with the recent ten (10) year average of \$4.3 million. Consequently, it can be used to fund wage increases.

The Town costs out its wage proposal at approximately \$500,000, while it calculates the Union's compensation increases at \$1.9 million. (See Town Exhibit #25.) (T – 177-178) The Town settled four (4) contracts at 4% over three (3) years with increases on July 1st of each contract year. Clearly, it has an ability to pay such increases, and resulting stipendiary increases to the Firefighters. The key inquiry then is whether the Town has an ability to pay for the difference between its increases and those awarded by the panel. The panel notes that the cost of the Fiscal Year 2013 wage increase award is 1.5% over Fiscal Year 2012 compensation, the same increase as that provided to Town-side employees in two (2) bargaining units, albeit by virtue of the 1%/1% "split," there is a 0.5% additional increase on the Firefighter base salaries to shrink the overall compensation gap between Town Firefighters and other public safety employees similarly situated. That 0.5% additional increase will be absorbed in the Fiscal Year 2014 budget. By awarding "wage splits" with July 1 and January 1 effective dates, over the three (3) year contract period, the cost impact is lessened in each fiscal year, and over the three (3) year life of the contract as compared to the Union's and the Town's proposals seeking single wage increases on July 1st of each contract year. Similarly, by awarding "wage splits" in Fiscal Years 2013 and 2014, the panel has decreased the

retroactive funding requirements of the award. Furthermore, by “back-loading” the largest COLA (2.5%) in the final year (Fiscal Year 2015) of the contract, and the second and final base salary equity adjustment of 1% on the last day (June 30, 2015) of the three (3) year contract, the panel has also reduced the cost impact to the Town.

The Town has the ability to pay for the awarded compensation increases.

4.) AWARD

a.) COST-OF-LIVING INCREASES

- (a) Effective July 1, 2012, a 1% across-the-board wage increase to the salary schedule in effect on June 30, 2012.
- (b) Effective January 1, 2013, a 1% across-the-board wage increase to the salary schedule in effect on December 31, 2012.
- (c) Effective July 1, 2013, a 1% across-the-board wage increase to the salary schedule in effect on June 30, 2013.
- (d) Effective January 1, 2014, a 1% across-the-board wage increase applied to the salary schedule in effect on December 31, 2013.
- (e) Effective July 1, 2014, a 2.5% across-the-board wage increase applied to the to the salary schedule in effect on June 30, 2014.

2. Base Salary Equity Adjustment

- (a) Effective July 1, 2013, a 1% across-the-board Base Salary Equity Adjustment applied to the salary schedule in effect on June 30, 2013.
- (b) Effective June 30, 2015, a 1% across-the-board Base Salary Equity Adjustment applied to the salary schedule in effect on June 29, 2015.

C. VACATION LEAVE

1.) UNION PROPOSAL:

The Union seeks five (5) weeks of paid vacation leave (240 hours) after fifteen (15) years of service. The Union also proposes one (1) additional week of paid vacation leave upon completion of twenty (20) years of service.

2.) TOWN COUNTER-PROPOSAL:

The Town rejects the Union's proposal for increased paid vacation leave. The Town proposes that Firefighters not be allowed to take paid vacation leave on certain Holiday shifts. It also seeks a one (1) week notice from a Firefighter prior to commencing paid vacation leave.

3.) DISCUSSION:

While the parties seek modifications to the current vacation leave provision, they reject one another's proposals to alter it.

Current Article IV (Vacations) benefit levels are as follows:

- A. An employee in continuous service shall be granted two (2) weeks' vacation with pay provided he has completed thirty (30) weeks of service prior to July 1.
- B. An employee with less than thirty (30) weeks' employment of continuous nature as of July 1st shall be granted eight (8) hours of vacation with pay for each full month of continuous service completed prior to July 1, but not to exceed forty-eight (48) hours of vacation.
- C. An employee who has completed five (5) years of service shall, in the year in which this length of service has been completed, be granted three (3) weeks of vacation with pay.
- D. An employee who has completed ten (10) years of service shall, in the year in which this service has been completed, be granted four (4) weeks of vacation with pay.
- E. Upon the death of an employee who is eligible for vacation under these rules, payment shall be made to the estate of the deceased in an equal amount to the vacation allowance as accrued in the vacation year prior to the employee's death but which has not been granted. In addition, payment shall be made for that portion of the vacation allowance earned in the vacation year during which the employee died up to the time of his separation from the payroll.
- F. Employees who are eligible for vacation under these rules and those whose services are terminated by dismissal through no fault or delinquency of their own, or by retirement, or by entrance into the Armed Forces/shall be paid an amount equal to the vacation allowance as earned, and not granted, in the vacation year prior to such dismissal, retirement, or entrance into the Armed Forces. In addition, payment shall be made for that portion of the vacation allowance earned in the vacation year during which such dismissal, retirement or entrance into the Armed Forces occurs up to the time of the employee's separation from the payroll.
- G. Absences on account of sickness in excess of that authorized under the rules

therefore or for personal reasons as provided for under other leave may, at the discretion of the Chief, be charged to vacation leave.

H. An employee, unless receiving pay for such a day or date under the provisions of Section 57A of Chapter 48 of the General Laws, shall be granted an additional day of vacation if, while on vacation leave, a designated holiday occurs which falls on or is legally observed on Monday, Tuesday, Wednesday, Thursday or Friday.

I. Vacation allowance provided under the terms of this section will be calculated on a twelve-month period commencing on July 1st and ending June 30th, and these allowances must be taken in the twelve-month period that immediately follows. In unusual circumstances, exceptions may be granted by the Chief. Such vacations shall be granted by the Chief at such time as, in his opinion, will cause the least interference with the performance of the regular duties of the Department.

J. Each week of vacation to which a member of the bargaining unit is entitled shall consist of forty-eight (48) hours in accordance with the following schedule:

One week - 48 hours
Two weeks - 96 hours
Three weeks - 144 hours
Four weeks - 192 hours

Such vacation may be taken as day tours of ten (10) hours or night tours of fourteen (14) hours and may be taken either a tour (or tours) at a time or on a weekly basis or in any combination thereof. In addition, members shall be permitted to take earned vacation time in segments of four (4) hours or more in order to attend classes, courses, workshops, training sessions or seminars that qualify for educational increments under Article XIX with the administrative procedures for implementing this procedure being mutually developed by the Chief and the Union.

Any employee with fewer than ten (10) hours of vacation time remaining to his/her credit at the end of any fiscal year shall be reimbursed for any such unused vacation hours at his then regular hourly rate of pay. Such employees shall receive the reimbursement for their unused vacation hours by June 30 of that fiscal year.

K. The Privates shall select their vacations on the basis of their seniority which shall be determined by the date of the commencement of their employment in the Department. In those stations in which four (4) or more individuals are assigned per shift, two Privates on any given shift may be on vacation simultaneously. The officers — Captains and Lieutenants — shall select their vacations on the basis of their seniority which shall be determined by the date of the commencement of their employment in the Fire Department.

- L. Employees who are entitled to either three (3) or four (4) weeks of vacation with pay may, at their option upon thirty (30) days' notice and with the approval of the Chief, elect to work during either their third or fourth week of vacation. Employees who volunteer to work during one or two weeks of the Vacation to which they are entitled shall be paid their regular week's pay for the week or weeks in question in addition to their vacation pay.

Firefighters have a maximum vacation benefit of four (4) weeks after ten (10) years of service. Town Police Officers receive a fifth week of vacation leave after fifteen (15) years of service.

The Town argues that a Firefighter's vacation week is comprised of 48 hours while a Police Officer receives 42.5 hours of weekly vacation leave. It also points to the more favorable time-off schedule of a Firefighter as a result of the twenty-four (24) hour shift.

Mr. Chip Hawthorne, Chairman of the Union's bargaining committee, testified without contradiction that a Firefighter must provide thirty (30) days' notice to the Department if s/he wishes to take vacation leave on a major holiday. (T – 48) Moreover, six (6) weeks in advance of the holiday, the Department seeks volunteers to cover such shifts. (T – 48) A Firefighter is only permitted to take vacation leave on a major holiday if another Firefighter agrees to work the holiday shift. (T – 48-49) The Union contends that there have been no issues regarding holiday coverage as a result of vacation leave. (T – 49)

The Fire Chief testified that a two (2) hour notice period is insufficient to obtain a replacement Firefighter. (T – 204). However, he also testified that a twenty-four (24) hour notice period in advance of vacation leave is adequate for staffing purposes. (T – 205). The Chief's twenty-four (24) hour notice request is not unreasonable as it allows his Shift Commanders more time to seek a replacement Firefighter, and it does not impose an undue burden on a Firefighter seeking

vacation leave. The panel does not award the Union's proposal preferring to focus increased Town costs on wage increases and base salary equity adjustments. It also rejects the Town's proposal to preclude vacation leave on certain holidays as there are currently sufficient administrative checks and balances to assure adequate staffing. The panel awards a twenty-four (24) hour vacation leave notice period.

4.) **AWARD**

Status quo but with a twenty-four (24) hours' notice of vacation leave by a Firefighter to the Fire Chief or his designee.

D. **JURY DUTY**

1.) **TOWN PROPOSAL:**

The Town proposes a Jury Duty term.

2.) **UNION PROPOSAL:**

The Union does not object to the Town's proposal.

3.) **DISCUSSION:**

There is no Jury Duty provision in the current Agreement. The Town argues that its proposal is intended to secure Jury Duty documentation as to the Jury Duty summons and the duration of the Jury Duty. (T – 199-200) Furthermore, the Town contends that the release time for Jury Duty should be 10:00 pm on the night prior to the commencement of Jury Duty to reflect the twenty-four (24) hour shift schedule. (T – 201-202)

There should be a Jury Duty provision in the collective bargaining agreement to memorialize the rights and obligations of both parties relative to Firefighter jury service. Requiring a Firefighter to provide a jury summons and documentation regarding discharge from jury service is not

unreasonable in connection with Firefighter staffing. Moreover, releasing a Firefighter from his shift at 10:00 pm the night before his/her Jury Duty begins is reasonable.

4.) **AWARD**

Add a Jury Duty provision to the collective bargaining agreement as follows:
Members of the Department who receive notification of attendance at Jury Duty shall provide a copy of the notice immediately upon its receipt to the Shift Commander and the Director of Human Resources.

Members of the Department scheduled to work a twenty-four (24) hour shift the day before scheduled Jury Duty will be released at 10:00 p.m. on the evening of the scheduled Jury Duty.

Members who attend Jury Duty during scheduled hours shall return to work upon completion of Jury Duty.

Members shall provide evidence of attendance at Jury Duty by providing the Shift Commander and the Director of Human Resources with a copy of the form provided by the court. A member's time shall be recorded as vacation leave pending the receipt of the official court form.

E. **SHIFT SWAPS**

1.) **TOWN PROPOSAL:**

The Town proposes the elimination of shift swaps.

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

The Union rejects the Town's proposal as unnecessary.

3.) **DISCUSSION:**

The Town contends that shift swapping has recently been abused by some Firefighters who use them for extended leaves of absence causing them to miss necessary training. (T – 196-197)
Additionally, the informality of the Departmental swap system has denied the Chief necessary PERAC documentation. (T – 198-199)

The Union urges rejection of the Town's proposal as swaps have been contractually ingrained in the Department for a number of years. The Union also points to the Chief's authority to approve swaps. According to the Union, any abuse of the swap system has stopped, and that the Chief has implemented more stringent swap documentation to satisfy PERAC obligations.

Article VIII (**Other Types of Leave**) provides as follows:

Employees covered by this Agreement shall be permitted to substitute or exchange time of duty with members within the Department only upon prior approval of the Chief of the Fire Department.

The Chief testified that there is no cost to the swap system. (T – 220) The Chief stated that he has not denied swap requests. (T – 221-223) Moreover, the Chief also testified that he has developed more detailed record-keeping in connection with PERAC requirements. (T – 223)

There is no need to delete the swap provision as the Chief has the express authority to deny them.

4.) **AWARD**

Status quo.

F. **TWENTY-FOUR (24) HOUR SHIFT – CIRCUIT BREAKER:**

1.) **UNION PROPOSAL:**

Eliminate or modify the circuit breaker provision.

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

The Town rejects the Union's proposal.

3.) **DISCUSSION:**

The Union argues that the circuit breaker provision is no longer necessary, and in any event it has been misconstrued and misapplied by the Town. If the Town properly calculated the average

annual sick leave usage, it would be below the seven (7) day circuit breaker limit. If the panel maintains the circuit breaker, the following exclusions should apply: Firefighter sick leave absences of thirty (30) or more calendar days, family sick leave, Family Medical Leave Act (FMLA) absences, and absences of four (4) days or more due to illness or injury.

The Town submits that elimination of the circuit breaker provision will result in an abuse of sick leave and staffing difficulties as demonstrated in the period since the twenty-four (24) hour shift was awarded. (T – 237-238) Moreover, the Town maintains that it has not misinterpreted the calculation of the circuit breaker provision.

The twenty-four (24) hour shift, and its circuit breaker provision were awarded in October, 2011. The prior award includes the following terms:

The circuit breaker is based on an annual seven (7) sick leave day Firefighter average. For the purposes of calculating annual sick leave usage, serious illnesses or injuries causing an absence of thirty (30), or more consecutive days shall not be included in the average sick leave usage calculation, Sick Leave usage will be measured at the end of every calendar year.

Continuation of the twenty-four (24) hour work schedule in succeeding years shall be subject to the foregoing conditions. If the circuit breaker provision is activated, the Town may provide sixty (60) days notice to the Union that it intends to discontinue the twenty-four (24) hour shift. During the sixty (60) day notice period, the Town agrees to meet and discuss with the Union the circuit breaker in connection with the twenty-four (24) hour shift, including savings to the Department and reduction in absenteeism.

The evidence reveals that a circuit breaker, typically tied to sick leave, has been included in many panel awards for a twenty-four (24) hour shift. (See Union Exhibit #9.) However, the length has varied. (See Union Exhibit #9.) In some cases, such as in Wilmington and Medford, the parties have bargained its continuity through more than one successor contract. (See Union Exhibit #9.) In the instant case, the twenty-four (24) hour shift and the circuit breaker have only been implemented in

2012 and 2013.⁴ It is clear from the evidence that the Chief has closely monitored sick leave usage and has informed Firefighters of their utilization. (T – 214-216) (See also Town Exhibits #13 and #14.) The Town argues that in 2012, average sick leave utilization was 6.93 days. It notes that the circuit breaker is necessary because in 2013, it rose to an average usage of 8.53 days by the end of October. However, the parties dispute the circuit breaker sick leave calculation in 2013. In order to allow the Chief to monitor sick leave usage in light of the twenty-four (24) hour shift, it is not inappropriate to continue the circuit breaker in 2014 for application in 2015. While the panel clarifies the current circuit breaker calculation, and increases it by one (1) day, it does not include the calculation exceptions urged by the Union.

The circuit breaker shall be maintained. Confusion has arisen over its calculation in calendar year 2013 regarding 2013 sick leave. (T – 206-207; 242) Therefore, the circuit breaker shall not be applied in calendar year 2014 regarding 2013 sick leave. The twenty-four (24) hour shift shall continue throughout calendar year 2014. In calendar year 2014, a per Firefighter annual, average, eight (8) sick leave day circuit breaker shall be applied to the twenty-four (24) hour shift continuation in calendar year 2015. Certain absences shall be excluded from the circuit breaker calculation.

4.) **AWARD**

- The circuit breaker shall be maintained. However, it shall not be applied in calendar year 2014 regarding 2013 sick leave. The twenty-four (24) hour shift shall continue throughout calendar year 2014.
- In calendar year 2014, a per Firefighter annual, average, eight (8) sick leave day circuit breaker shall be applied to the twenty-four (24) hour shift continuation in calendar year

⁴ The twenty-four (24) hour shift was awarded effective December 1, 2011.

2015.

- All sick leave used during an illness or injury-caused absence of thirty (30) or more consecutive calendar days shall be excluded from the per Firefighter annual, average, eight (8) sick leave day utilization calculation. A ten (10) or fourteen (14) hour shift segment shall count as one (1) sick leave day. A twenty-four (24) shift shall be credited as two (2) sick leave days.

G. DRUG AND ALCOHOL TESTING

1. TOWN PROPOSAL:

The Town proposes a Drug and Alcohol testing program.

2. UNION COUNTER-PROPOSAL:

Reject as unnecessary and unsupported by the evidence.

3. DISCUSSION:

The Town seeks a pre-employment, probable cause, and random drug and alcohol testing program. It contends that a recent incident involving off-duty alcohol abuse at one of the Fire stations requires implementation of probable cause and random drug and alcohol testing.

The Union argues that the incident relied on by the Town occurred off-duty, and there was no evidence of on-duty drug or alcohol abuse by Firefighters. The Town disciplined the off-duty Firefighters involved in the incident. It does not appear that on-duty or even other off-duty incidents revealing drug/alcohol abuse have occurred. Consequently, there is no basis for bargaining unit-wide random drug testing at this time.

4. AWARD

Status quo.

H. COMPENSATORY TIME

1. UNION PROPOSAL:

The Union proposes compensatory time in lieu of overtime payments.

2. TOWN COUNTER-PROPOSAL

The Town rejects the Union's compensatory time proposal.

3. DISCUSSION

The Union argues that the compensatory time provision would benefit Firefighters with increased leave time, and aid the Town by reducing overtime costs.

The Town contends that the Union's proposal is unwieldy and would create a documentary nightmare for the Chief, as well as increased overtime spending. (T – 223-224) The panel does not award the Union's compensatory time proposal, preferring to direct whatever increased spending results from the proposal to compensation.

4. AWARD

Status quo.

I RANK DIFFERENTIAL

1. UNION PROPOSAL:

The Union proposes an 18.5% equalization of wage differentials among the top steps of the Firefighter ranks.

2. TOWN COUNTER-PROPOSAL

The Town rejects the Union's proposal.

3. DISCUSSION

The Union argues that the differential equalization among the top steps results in the removal of salary schedule inequities, an unintended result of the prior arbitration award of the Firefighter sixth step. The sixth step award results in the promotion to Lieutenant of Firefighters at virtually no salary increase. (See Union Exhibit #6a and #6b.) Similarly, a Lieutenant's promotion to Captain results in a pay cut. (See Union Exhibit #6a and #6b.) Consequently, the establishment of an 18.5% top step differential between and among classifications will result in a salary schedule that provides a reasonable promotional salary adjustment.

The Town contends that the Union's calculations vis à vis the 18.5% wage differentiation among top step classifications does not resolve its problem.

A sixth step Firefighter promoted to Lieutenant step 1 receives an insignificant promotional compensation increase. Similarly, a promotion from Lieutenant step 4 to Captain step 1 results in a salary decrease. The unintended consequence of awarding a Firefighter sixth step in the prior arbitration award must be rectified to provide a financial incentive for lower-ranked Firefighters to seek promotions to higher ranks. While the Union advocates for a revamped salary schedule fix, the panel prefers a more limited correction. The panel wishes to avoid any potential for additional salary rank discrepancies, some of which were identified by the Town. However, it may be necessary for the parties to realign the salary schedule when they bargain a successor contract. While there could be a cost associated with the rank differential award, it cannot be valued as the number of recent promotions is not known. In any event, the panel limits any resulting costs, awarding a very restricted formula to correct the promotional disparities.

4. AWARD

Effective July 1, 2012, following the application of cost-of-living and base salary equity adjustments, a Firefighter step 6 promoted to Lieutenant shall be promoted to Lieutenant step 2.

Effective July 1, 2012, a Lieutenant step 4 promoted to Captain shall be promoted to Captain step 2.

Firefighters and Lieutenants so promoted shall thereafter on the twelve (12) month anniversaries of their promotions, receive annual step increases, beginning at step 3.