

JOINT LABOR-MANAGEMENT COMMITTEE
Michael C. Ryan, Esquire, Neutral Chair
Joseph E. Hubley, Labor Representative
Timothy Francis, Management Representative

In the Matter of the Interest
Arbitration between

TOWN OF FRANKLIN

-and-

FRANKLIN PERMANENT
FIREFIGHTERS, LOCAL 2637,
IAFF

JLMC No. 13-2547
Interest Arbitration
CBAs commencing July 1, 2011
and July 1, 2012

For the Union

Leah Barrault, Esquire

For the Town

Philip Collins, Esquire
Melissa R. Murray, Esq.

I. INTRODUCTION

This proceeding is an interest arbitration pursuant to St. 1973, c. 589, as amended through St. 1987, c. 589, §1 (the "Statute"). It concerns the successor or successors to the parties' most recent collective bargaining agreement ("CBA"), which expired on June 30, 2011.

Each party initially submitted seven issues that remained in dispute. On April 24, 2014, after hearing, the

Joint Labor Management Committee ("JLMC") voted to limit the issues to Wages and Duration, plus the following:

Union

1. Additional Compensation
2. Rank Differential
3. Education Incentive
4. Sick Leave
5. Longevity Pay

Town

1. Wages of New Hires
2. Paramedic Stipends/New Hires
3. New Hires, Sick Leave Accrual
4. New Hires, Unused Shifts
5. Sick Leave Exchange

The parties were also ordered to impact bargain one of the Town's disputed issues, the elimination of Civil Service, with mediation and arbitration to follow if necessary.

Two days of hearing were held by the panel on September 12 and 23, 2014. The parties presented witnesses and copious, detailed documentary evidence, supplemented with additional material post-hearing. Both parties submitted comprehensive briefs. The panel met twice in executive session

The Statute requires the panel to give weight to the following factors:

* * *

- 2) The financial ability of the municipality to meet costs.

... Such factors which shall be taken into consideration shall include but not be limited to: (i) the city, town, or district's state reimbursements and assessments; (ii) the city, town or district's long and short term bonded indebtedness; (iii) the city, town or district's estimated share in the metropolitan district commission's deficit; (iv) the city, town or district's estimated share in the Massachusetts Bay Transportation Authority's deficit; and (v) consideration of the average per capita property tax burden, average annual income of members of the community, the effect any accord might have on the respective property tax rates on the city or town.

- 3) The interests 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 factfinder, 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, factfinding, arbitration or otherwise between parties, in the public services or in private employment.
- 11) The stipulation of the parties.

II. BACKGROUND

A. The Town of Franklin Fire Department

The Town of Franklin ("Town") is a suburban community with an industrial base, 22 miles southwest of Boston. It has an area of 27 square miles and a population of approximately 33,000. It is governed by a Town Council and a Town Administrator, who for the last fourteen years has been Jeffrey Nutting.

The Town employs 49 firefighters in its Fire Department ("Department"). There are two fire stations: Headquarters and King Street; two engines; one ladder truck, assigned to Headquarters; and two ALS ambulances. The Department responds to some 3,400 incidents per year, 60% of which are EMS calls. It also provides mutual aid to the adjacent towns of Bellingham, Norfolk, and Wrentham.

Firefighters work 42 hours per week on 10- and 14-hour shifts, in four rotating groups. In general, a minimum of

nine firefighters work each shift. All firefighters are required to maintain EMT certification, or EMT-P (paramedic) certification if hired with that credential. The great majority of firefighters are paramedics, and in recent years, the Town has only hired firefighters with that certification.

The Town is party to eight other non-school CBAs with the following unions:

- Franklin Police Association ("Patrolmen")
- Franklin Police Sergeants Association ("Sergeants")
(jointly referred to as the "Police Unions")
- Franklin Library Employees Association, MLSA, Local
4928, AFT ("Library Staff")
- Dispatchers, AFSCME
- DPW, AFSCME
- Clerical, AFSCME
- Public Facilities, AFSCME
- Custodians, AFSCME

The Town and all of these unions entered into one-year CBAs effective 7/1/11, and three-year CBAs effective 7/1/12.

This Union is the last to settle.

B. Parties' Positions on Ability to Pay

UNION'S POSITION: To calculate the costs of its proposals, the Union assumed a four-year duration and full retroactivity of all proposals to 7/1/11. Based on those assumptions, the costs over four years are:

**COSTS OF UNION'S PROPOSALS
(UNION'S CALCULATION)**

UNION PROPOSAL	FY12	FY13	FY14	FY15	TOTALS
Wage Increases	\$138,362	\$282,258	\$432,035	\$587,693	\$1,440,348
Specialist Stipends	\$ 9,900	\$ 9,900	\$ 9,900	\$ 9,900	\$ 9,900
Rank Differential	\$ 21,829	\$ 22,702	\$ 23,611	\$ 24,555	\$ 92,696
Education Incentive	\$ 31,769	\$ 33,040	\$ 34,362	\$ 35,737	\$ 134,908
Family Sick Leave	--	--	--	\$ 20,000	\$ 20,000
Longevity	\$ 15,500	\$ 15,500	\$ 15,500	\$ 15,500	\$ 62,000
TOTALS	\$ 217,359	\$363,400	\$515,408	\$693,385	\$1,789,552

By contrast, the Town is offering only a single economic item, with a cost of \$415,084:¹

**TOWN'S WAGE PROPOSAL
(UNION'S CALCULATION)**

	FY12	FY13	FY14	FY15	TOTAL
FY15 Budgeted Base Sal.	\$3,459,050	\$3,459,050	\$3,459,050	\$3,459,050	--
Town's Proposed Percentage Increase	0% + \$29,400*	1.5%	2%	2.5%	--
Compounded Percentage	0%	1.5%	3.53%	6.12%	
Compounded Increase	\$ 0	\$ 51,886	\$122,014	\$211,694	
TOTALS	\$ 29,400	\$ 51,886	\$122,104	\$211,694	\$415,084

*\$600 one-time lump sum x 49 members

The amount in contention is therefore \$1,375,000, the difference between the Union's proposals and the Town's offer. Annualized, this is less than 1% of the Town's \$99.8 million FY15 budget, a paltry amount. Through the Department's ambulance services, which generate about \$800,000 annually, the firefighters themselves generate more than enough revenue to cover that amount. According to an advice memorandum from the DOR, a town may

¹ The Town calculates its offer as \$412,000.

appropriate from ambulance service receipts for the exercise of any of its corporate powers.

The Town is more than able to pay for the Union's economic proposals, with full retroactivity. It has a substantial industrial base, in part because of its purposely low commercial and industrial tax rate. Its six industrial parks house large numbers of manufacturing, R&D, and technology businesses. Residential and commercial real estate are increasing, with the value of building permits exceeding \$40 million in 2012 and 2013. That new growth added over \$1 million to the FY14 tax levy. The total of 6,377 undeveloped and underdeveloped parcels creates the potential for even more growth in both population and tax revenue. And at 5.6%, the 2012 unemployment rate for Norfolk County was well below the national level.

The Town's good fiscal health is a matter of public record. In January, 2014, S&P upgraded the Town's bond rating from AA to AA+, with a stable outlook, the highest rating the Town has ever received. S&P noted available reserves of \$10.7 million in FY12, with an expected operating surplus of \$3.3 million in FY13. And on November 3, 2014, the Department of Revenue (DOR) certified the Town's free cash at \$3,073,946 for FY14, 53.6% over the previous fiscal year.

The Town currently has at its disposal an estimated \$14.7 million in available funds, more than eight times the cost of the Union's wage and benefit proposals:

**UNION'S ESTIMATE OF AVAILABLE FUNDS
(Based on FY14 Data)**

FY15 Free Cash	\$ 3,073,946
FY14 Stabilization Fund Balances	8,114,192
FY15 Budgeted Firefighter Compensation Reserve	250,000
Health Insurance Trust Fund Surplus	763,442
Open Space Fund	500,000
Reserve – Continuing Resolutions	1,450,000
Other Accounts Available to Undesignated General Fund Balance	561,701
TOTAL	\$14,713,281

The Union's expert, Kevin Dacey, derived these estimates from the Town's own documents. Dacey included the General Fund, as well as funds available or potentially available to the General Fund for appropriation.² The Town no longer self-funds its health insurance plan, and there is a balance remaining in its Health Insurance Trust Fund, which according to Town Manager Nutting consists entirely of Town contributions. That entire balance can therefore be used to pay the Town's share of health insurance premiums. That would free up an equivalent amount in the General Fund for the Union's proposed pay raises.

The Town did not dispute the existence of any of these amounts. It only questioned the propriety of including the

² Dacey relied on the Town's most recent audited financial statements (FY13), draft FY14 balance sheet, and FY15 General Fund Budget.

"Continuing Resolutions" reserve and the "Other Account Balances Available." Even without those amounts, the Town has immediately available more than seven times the cost of the Union's proposals.

Although admitting that it has this money, the Town is simply unwilling consider increases beyond the amount it budgeted. The JLMC has rejected this approach. In Boston Fire Fighters, Local 718, JLMC No. 08-02F (Eischen, 2010), where the city's collective bargaining reserve, plus available funds, were sufficient to pay fair raises, the panel observed that "ability to pay" means "ability," not "willingness."

TOWN'S POSITION: In recent years, Franklin has confronted a struggling economy, sharply decreased local aid, and increased costs of benefits and services. It has used over \$6.5 million in reserves, reduced staff by about 20%, withheld pay raises, and changed health insurance plans. Voters were sufficiently alarmed by these trends that, in 2007, they approved a \$2.7 million Prop. 2½ override, the only override of the eight proposed over the years that was ever approved.

The Town lost over \$3.8 million in state aid from FY09 to FY14, almost \$1 million more than comparable

communities. State aid is still nowhere near what it was even during the parties' 2007-10 negotiations.

From FY05 to FY13, health insurance costs soared as high as \$3.3 million, an increase of 41%. At the same time, retirement assessments rose sharply. Until FY11, the Town had no account to cover its unfunded liability for "Other Post-Employment Benefits" ("OPEB") liability (primarily health insurance for retirees), which is currently \$89,000,000. The Town appropriated \$200,000 for this purpose in FY14, and will appropriate increasing amounts each year, with a projected appropriation of \$1.1 million in FY19.

Although the Town's fiscal situation has recently improved, its problems are far from solved. It has finally started rebuilding its free cash and stabilization funds, but its latest free cash certification is still less than it was two years ago, and only slightly above the three-year average. The Town did generate some free cash from the FY14 budget, but basic principles of municipal finance preclude spending free cash on pay raises, because a pay raise is a recurring expense, and free cash is uncertain from year to year. It is the Town's policy to use free cash primarily to fund long-neglected capital improvements and address unforeseen expenses. The Town's prudent

accumulation of reasonable reserves protects Town employees and the public.

The Union displayed a complete misunderstanding of these and other fiscal realities. Its prediction that a hypothetical build-out of the Town's undeveloped parcels will yield substantial population growth is pure speculation. In any event, potential population growth many years from now is irrelevant to wages and benefits for the last four fiscal years.

The Union's all-encompassing definition of "available funds" disregards all of the Town's needs and obligations other than the firefighters' wages and benefits. As far as the Union is concerned, if the Town has the legal authority to redirect funds into the General Fund, those funds are "available," even if they are earmarked for other purposes. The Union went even further: some of the funds it identified as "available" are legally encumbered, such as the reserve fund for unemployment claims, which the Town is required to maintain under G.L.c. 151, §24.

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C. Parties' Positions on Two-Tier Wages and Benefits³

TOWN'S POSITION: The Town's two-tier proposals are necessary if compensation is to remain sustainable. All other Town unions accepted at least some of the Town's two-tier proposals:

**TWO-TIER COMPENSATION ACCEPTED BY TOWN UNIONS
FY13-FY15**

<i>UNION</i>	<i>Wages</i>	<i>Education Incentive</i>	<i>Sick Leave Accrual</i>	<i>Sick Leave Incentive</i>	<i>Sick Leave Buyback</i>
Police Unions	<input checked="" type="checkbox"/>				
DPW	<input checked="" type="checkbox"/>				
Library Staff	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	[Earned time]	[Earned time]	[Earned time]
Dispatchers		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Clerical	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
Custodians	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
Public Facilities			<input checked="" type="checkbox"/>		

Additionally, in the school units, newly hired teachers have reduced sick leave accrual, a modified sick bank, and no longevity pay or sick leave buyback. School paraprofessionals accepted reduced sick leave accrual and no longevity for new hires.

Contrary to the Union's contention, two-tier compensation is hardly unusual among Massachusetts fire departments. The Massachusetts retirement system has five different contribution rates based on date of hire; for example, firefighters hired after 7/1/96 contribute 12%,

³These are the parties' positions on two-tier benefits in general. Their positions on the Town's individual two-tier proposals are set forth proposal-by-proposal, below.

while those hired before 1984 pay only 7%. While two-tier base pay structures are not common, they are not unheard of among firefighters:

**FIRE DEPARTMENTS WITH TWO-TIER
COMPENSATION/BENEFITS**

NOTE: Departments in red are on Town's list of comparable communities. Departments marked with an *asterisk have a two-tier benefit as the result of a JLMN award.

Department	Benefits Affected	Department	Benefits Affected
Andover	Multiple	Middleboro	Health ins. Contribution
Ashland	Health ins. contribution	*Nantucket (2011)	Longevity
Arlington	Health Ins. contribution Sick leave buyback	Norfolk	Wages
Attleboro	Education incentive	No. Andover	Longevity, education incentive, holidays, terminal leave
Ayer	Wages	No. Attleboro	EMT stipend
Bourne	Sick leave buyback	Norton	Wages
Burlington	Percentage benefits changed to flat dollars	Orleans	Longevity, educational incentive, sick leave, sick leave buyback, residency
Cambridge	Longevity	Rockland	Sick leave buyback
*Chatham (2014)	Health ins. Contribution, longevity	Salem	Sick leave, sick leave buyback
Cohasset	Sick leave buyback	Sharon	Health ins. Contribution
Danvers	Vacation	Sudbury	Longevity, vacation
Easton	Sick leave buyback	Taunton	Sick leave buyback
*Haverhill (2006)	Health ins. contribution	Uxbridge	Health ins. Contribution
Hopkinton	Longevity	Waltham	Education incentive
Longmeadow	Education incentive	Wellfleet	Vacation
Lowell	Longevity	Westwood	Sick leave buyback
		Woburn	Percentage benefits changed to flat dollars

There is no basis for the Union's contention that two-tier compensation impairs teamwork and trust among firefighters. In the communities listed above, two-tier compensation has caused no deterioration in fire suppression or emergency medical services.

UNION'S POSITION: It is difficult to imagine anything more destructive to firefighters' morale than a two-tier wage and benefit structure. It deprives new firefighters of longstanding contractual benefits and compensates them unequally for undertaking the same risks as their fellows. At the same time that the Town is proposing this inequitable system, it also proposes to cut the paramedic stipend for new hires, so that over a 30-year career, they will earn another \$70,000 less than their more senior coworkers. Unequal compensation for identical work is corrosive to the teamwork that is essential to firefighting, and detrimental to public safety.

The Town's sole justification for its two-tier proposals is its desire for consistency with other Town unions. The JLMC has stated that the pattern of settlement is only one factor among many, and might be more or less persuasive, depending on all of the circumstances. Newton Police Association, JLMC 09-23P (2009).

While some of the Town unions agreed to some two-tier benefits, they received an enhanced economic package in exchange. For the Police Unions, the Town agreed to an educational incentive nearly equal to the Quinn Bill, even in the absence of state reimbursement. This will leave new

firefighters much worse off than new police officers over time.

III. THE PARTIES' PROPOSALS AND POSITIONS

ISSUE 1: WAGES

UNION PROPOSAL:

7/1/11 - 4%
 7/1/12 - 4%
 7/1/13 - 4%
 Should the panel award a fourth year:
 7/1/14 - 4%

TOWN PROPOSAL:

For current firefighters:
 7/1/11 - 0% + one-time \$600 lump-sum payment
 7/1/12 - 1.5%
 7/1/13 - 2.0%
 7/1/14 - 2.5%

For firefighters hired after 6/30/14, a new wage scale:⁴

Steps (3% apart)	Base	Paramedic	Total
1	\$42,000	\$5,000	\$47,000
2	\$43,470		\$48,470
3	\$44,991		\$49,991
4	\$46,566		\$51,566
5	\$48,196		\$53,196
6	\$49,883		\$54,883
7	\$51,629		\$56,629

UNION'S POSITION: In part because the Town has insisted on so-called "pattern" wage packages, there is a

⁴ The current wage scale is:
 Probation \$44,645
 Step 1 \$46,583
 Step 2 \$48,775
 Step 3 \$51,482
 Step 4 \$53,026

longstanding disparity in the wages of Franklin firefighters and police. To redress this imbalance, the panel must base its decision on all of the statutory factors, not merely the pattern.

Franklin firefighters have a heavy and increasing workload. The Town has thirteen public schools, a college with 1,500 full-time students, two MBTA commuter rail stations, an 82-bed nursing home, two assisted-living facilities with over 200 units, three large hotels, nine apartment buildings, and two industrial parks. EMS and fire suppression runs continue to rise, while manpower has remained the same. The hazards of the job are also increasing. Two unique hazards require special training: a large commercial solar installation with 20,000 panels, and a 100-kilowatt electrical generator.

Internal Comparables. The JLMC traditionally favors parity among public-safety bargaining units. Any legitimate comparison between the Franklin police and firefighters must take into account rank, training, and years of experience. The fairest comparison is between the total compensation package for a 15-year paramedic firefighter/private and 15-year patrol officer, at all levels of education.

**UNION'S COMPARISON OF COMPENSATION
FRANKLIN FIREFIGHTERS AND POLICE
JUNE 30, 2011⁵**

	<i>Firefighter 15 Years – Paramedic Associate's Degree</i>			<i>Patrol Officer 15 Years Associate's Degree</i>		
Base	\$49,968			\$55,036		
Education Incentive						
Associates	2,000			5,504		
Bachelor's	\$3,000			\$11,007		
Master's	\$3,000			\$13,759		
Paramedic	6,996			--		
Shift Differential	--			3,016		
Longevity	675			--		
Holiday Pay ⁶	4,153			3,326		
Clothing/Cleaning	1,400			1,450		
TOTALS	\$65,192			\$66,192		
Firefighter percent difference	-4.8%*			-11.5%		
Scheduled Hours of Work/Yr.	1942			2184		

Carried forward to July 1, 2014, with the accompanying increases to patrol officers' base, education incentives, and holiday pay, the disparity is even more pronounced. And since firefighters work far more hours per year, as of

⁵ Because police officers hired after 7/1/94 were required to obtain an associate's degree within five years, most patrol officers at this level of seniority would have one as of 6/30/11. (For officers hired after 6/30/12, the degree is a condition of hire.) The panel has therefore begun the comparison at that level of education. A majority of firefighters have paramedic certification, but no degree.

⁶ There was considerable wrangling over the mechanics and valuation of the firefighters' holiday pay. Eventually, the parties entered into certain stipulations (discussed *infra*), but the Town still takes issue with the Union's calculations of the value of the benefit.

July 1, 2014, the firefighters' hourly rate lagged 20.9% to 28.4% behind the hourly rate of the police.⁷

The JLMC panel must also take into account the generous education incentive that the Police Unions received to replace Quinn Bill benefits.⁸ The JLMC has found that where a Town negotiates education incentives equal to full Quinn Bill stipends, they must be viewed as a percentage increase. Haverhill Fire Fighters, Local 1011, JLMC No. 09-11F; Scituate Fire Fighters, Local 1464, JLMC No. 10-15F; New Bedford Firefighters, Local 841, JLMC No. 13-2548. Even under the Town's "pattern," the Union is entitled to at least this percentage built into the base.

External Comparables. For purposes of comparison, the appropriate geographic area is bounded roughly by Rtes. 495, 95, 128 and 16. Within that area, communities with less than half of Franklin's population must be excluded, as well as Dedham and Wellesley, which do not run ALS ambulances. The remaining towns are the appropriate

⁷ This seems to be a comparison between the firefighters' wages at status quo, and the patrolmen's wages under their current agreement. Additionally, according to the Town, the comparison includes only patrolmen working the night shift, with its 5% differential.

⁸The Police Unions formerly received education stipends under G.L.c.41, §108L (the "Quinn Bill"), 50% of which were reimbursed by the Commonwealth. In 2009, the legislature eliminated Quinn Bill benefits for police hired after 2009, and in 2010, the Commonwealth ceased its reimbursement.

comparators: Bellingham, Canton, Foxborough, Mansfield, Natick, Needham, Norwood, Sharon and Walpole.

The Town's set of comparables includes all of the Union's except Needham. Needham is an appropriate comparable. It has a similar population size to Franklin's (29,366). Both departments have two fire stations and run multiple ALS ambulances. The Massachusetts Department of Education includes Needham in a group of 11 school districts similar to Franklin.

The Town's additional communities - Ashland Attleboro, Easton, Hopkinton, Norfolk, North Attleboro, Norton, Uxbridge, Westwood, and Wrentham - are not truly comparable. Their populations and departments are smaller. For example, Norfolk has only 13,560 residents and twelve permanent firefighters.

First and foremost, it should be noted that *none* of the comparable communities has a two-tier wage system for firefighters.⁹ It is also noteworthy that the compensation of the Franklin Firefighters is close to the bottom of the list:

⁹ The Town cites Ayer, Norfolk, and Norton as having two-tier wage systems. Even if this is true, the discrepancy between the two wage scales is far less drastic than the Town proposes here, and none was accompanied by a reduction in the paramedic stipend.

**UNION'S COMPARABLE COMMUNITIES
15-YEAR FIREFIGHTERS
As of Last Settled CBA**

	<i>Thru</i>	<i>Base</i>	<i>EMT</i>	<i>Medic</i>	<i>Shift Diff</i>	<i>Education</i>			<i>Hol.</i>	<i>Clothing</i>	<i>Longevity</i>	<i>Training/ Hazmat</i>	<i>TOTALS</i>
						<i>Assoc</i>	<i>B</i>	<i>M</i>					<i>No degree Medic</i>
Bellingham	FY15	51,914	2,200	4,900	--	1350	2100	2100	2,995	950	450	713	61922
Canton	FY15	56059	In base	1450	1092	2400	4800	4800	3388	550	625	616	63780
Foxborough	FY14	52365	4500	7000	--	2847	5693	7117	4661	1050	800	--	70443
Mansfield	FY14	57015	5690	8181	3849	3250	5250	7250	3816	1300	475	734	75370
Natick	FY12	55490	2220	7491	--	2774	4439	5549	4827	625	1665	832	70624
Needham	FY16	59180	4734	5622	2367	4439	8877	8877	4785	--	888	2114	75522
Norwood	FY14	54720	4104	6566	1423	1250	1850	1850	2519	600	650	--	66478
Sharon	FY14	59144	In base	In base	--	1450	2625	2925	2589	450	475	--	64866
Walpole	FY14	58864	4121	6475	--	2943	4415	7358	3105	500	600	--	69544
Franklin	FY11	50103	3507	7014	--	2000	3000	3000	4153	1400	675	--	63.345
Averages		56836	3938	5961	2183	2523	4450	5314	3439	753	736	1323	68728

Under the most recent CBA, the typical 15-year Franklin firefighter, who is a paramedic with no degree, made an average of 8.5% less than firefighters in comparable departments. If all degrees are taken into account, the overall average lag between a Franklin firefighter paramedic and the comparables is 9.9%. Even taking FY11 as a comparison point, the overall average lag between a 15-year Franklin Firefighter and the comparables, taking all certifications and degrees into account, is 2.9%. Obviously, the Town's wage proposal would do little or nothing to remedy this disparity.

Finally, according to the Town's own cited JLMC awards for the relevant years, almost no firefighter unions received a 0% increase for FY12, and in FY13, most increases were higher than 1.5%:

JLMC FIREFIGHTER AWARDS

FY08-FY14
(Shaded Area = Duration of Award)

City/Town	FY08	FY09	FY10	FY11	FY12	Fy13	Fy14	FY15
Nantucket JLMC 10-01F (2011)		1%/1%	2%	2%/1%/1%				
Plymouth JLMC 10-04F (2011)			0%	0%	2%eff.6/30+ new steps			
Somerville JLMC 10-12F (2011)	2%	2%	2.5%	2.5%	3.0%			
Haverhill JLMC 09-11F (2011)	FY07: 1% FY08: 1%	2%	2%	2%	2.5%			
Lynn JLMC 12-11F (2012)		1%	1%	1%	3%	2%		
Saugus JLMC 10-11F (2012)				2%	2%	3%		
Chelsea JLMC 11-35F (2013)				3%	2%	2.5%	2.5%	
Weymouth JLMC 12-09F (2013)				0%	2.5%	2.5%		
Malden JLMC 11-12F (2013)			0%	1%	2%	2%/2%		
Woburn JLMC 11-29F (2013)					1%	2%	2%	
Northampton JLMC 11-28F (2013)				2%	2%	2%/1%		
Somerset JLMC 11-16F (2013)			0%	0%	3%	3%		
Falmouth JLMC 11-27F (2013)				0%	0%	1.5%	2.25%	
Chatham JLMC 13- 2682 (2014)						0%	0.5%	2.5%
Westford JLMC 13-17F (2014)					0%	0%	2%/1%	

Two-tier wages. While the Town secured some form of two-tier wage system from the Police, Clericals, Custodians, DPW, and Library Staff units, it did not do so from any other unit, or from unrepresented employees. The Town's proposal for newly hired firefighters is far more detrimental than the second tier for newly hired police officers. Over a 30-year career, a newly hired firefighter will suffer a 3.6% loss of pay, compared to a patrol officer (3.5%) and a sergeant (1.6%) hired on the same day.

TOWN'S POSITION: Internal comparables. Given the longstanding internal pattern of equal percentage increases for all Town unions, internal comparables are far more relevant than external comparables. In the absence of some strong, overriding justification, it is inequitable to grant one union higher raises than every other group has received. Accordingly, the JLMC gives great weight to the pattern of settlement in a Town. See, e.g., Scituate Firefighters, Local 1464, JLMC 10-15F (2012); IBPO, Local 478, JLMC 94-30P (1995); City of Gardner, JLMC 91-17P (1993).

Every Town bargaining unit has accepted the same base wage proposal that the Town is offering the firefighters. Indeed, the Town unions have received the same percentage

increases for at least the last ten years. In 2003, the JLMC granted this Union exactly the same percentage increases that every other Town union accepted. IAFF, Local 2637, JLMC 03-09F (2003). Yet the Union continues to advocate increases that not only break the pattern, but are higher than any Town union has received in over ten years.

The Town has never aspired to have parity between its police and fire departments. Factoring out the education incentives, Franklin firefighters often receive more compensation than their police counterparts. Consider the following annual cash comparison in FY11:

**COMPARISON OF FY11 SALARIES
PATROLMEN AND FIREFIGHTERS**

	<i>FY11 Salary</i>	<i>+/- Police Salary</i>
Patrolman	\$55,039	
Firefighter/EMT	\$53,466	(\$1,573)
Firefighter/Paramedic	\$56,963	+\$1,924

Maintaining Quinn Bill benefits for the Police Unions does not break this pattern. The Quinn Bill created a gap in compensation between police and firefighters, because the legislature made the policy judgment that higher education is more necessary for police. The Police Unions have had an educational incentive since 2002. The Union now argues that a patrolman with a 20% Quinn payment got an additional 10% when the Town stepped up to pay the state's share of the benefit. The JLMC rejected this argument in

Watertown Firefighters, JLMC 12-22F (2014); City of Malden, JLMC 11-12F (2013); and Town of Scituate, JLMC 10-15F (2012), among others. The Town knows of no JLMC awards that view firefighters' base salary as lagging because of the discrepancy between Quinn Bill benefits and firefighters' education incentive.

The Union's comparison of the supposed hourly rates of the police and the firefighters makes no sense. The panel should reject the notion that a firefighter who works 91 shifts per year, and makes roughly the same base pay as a police officer working 244 shifts, is somehow "lagging" by 12.5%. For decades, Massachusetts firefighters have worked an average 42-hour workweek, on "10s and 14s" for four out of eight days, or on 24-hour shifts for two out of eight days. Police usually have an average 37.5 hour workweek on a "4 and 2" schedule. The Union also ignores the fact that firefighters are encouraged to sleep while on duty at night.

External Comparables. The Union selected an unduly narrow range of comparables, included inapplicable stipends and differentials, relied on misleading averages, and generally compared apples and oranges. It compared Franklin's FY11 compensation against later fiscal years in other communities, and used a bizarre "FY14.25" device.

At least six communities meet the Union's stated criteria, but are absent from its comparisons: Ashland, Attleboro, Easton, Hopkinton, North Attleboro, and Norton. The Union also excludes two of the Town's three mutual-aid communities. The Union also cherry-picked communities that are wealthier than Franklin. Seven of the Union's nine communities have a per capita EQV¹⁰ from 14% to 34% greater than Franklin's, and six have higher per capita income.

The Town's comparables are ALS communities within a 10-mile radius of Franklin, with populations between 12,000 and 45,000 (except for two of Franklin's mutual-aid towns, which have slightly smaller populations). They have similar operating budgets, income levels, and per capita EQV. They present a more comprehensive view of the compensation in area communities.

¹⁰Per capita EQV ("equalized value") is a measure of a municipality's property wealth. See G.L.c. 58, §§9 and 10C

**TOWN'S COMPARABLE COMMUNITIES
10-YEAR FIREFIGHTER, ASSOCIATE'S DEGREE,
PARAMEDIC¹¹
FY12***

	<i>Maximum Base</i>	<i>Paramedic</i>	<i>Education Incentive (Associate's)**</i>			<i>Longevity</i>	<i>Haz.Stip.</i>	<i>Night Diff.</i>	
Ashland	\$54,492.33	\$ 4,100	\$ 1,400			\$ 1,000	\$0	\$0	
Attleboro	\$50,835.60	\$ 5,500	\$ 2,500			\$ 300	\$0	\$0	
Bellingham	\$48,921.60	\$ 4,600	\$ 1,350			\$ 300	\$0	\$0	
Canton	\$50,157.14	\$ 5,250	\$ 2,000			\$ 475	\$0	\$ 637	
Easton	\$58,343.00	\$ 5,150	\$ 2,100			\$ 250	\$0	\$0	
Foxborough	\$54,926.14	\$ 3,750	\$ 2,746			\$ 600	\$0	\$0	
Hopkinton	\$57,739.76	\$ 6,547	\$ 1,300			\$ 350	\$0	\$0	
Mansfield	\$55,070.54	\$ 4,900	\$ 3,250			\$ 425	\$0	\$ 3,717	
Natick	\$54,539.16	\$ 7,363	\$ 2,727			\$ 1,091	\$ 818.00	\$0	
Norfolk	\$58,116.00	In base	\$ -			\$ 835	\$0	\$0	
North Attleboro	\$54,662.54	\$ 6,013	\$ 1,500			\$ -	\$0	\$0	
Norton	\$58,092.84	\$ 6,013	\$ 1,750			\$ 300	\$0	\$0	
Norwood	\$52,594.87	\$ 5,550	\$ 1,250			\$ 500	\$0	\$ 1,367	
Sharon	\$58,810.00	\$ 6,311	\$ 1,200			\$ 425	\$0	\$0	
Uxbridge	\$61,738.04	In base	\$ -			\$ 655	\$0	\$0	
Walpole	\$56,073.88	In base	\$ 2,804			\$ 350	\$0	\$0	
Westwood	\$59,044.75	\$ 6,186	\$ 2,952			\$ 250	\$0	\$0	
Wrentham	\$52,262.96	\$ 5,226	\$ 2,613			\$ 1,000	\$0	\$0	
Averages	\$55,407.58	\$ 5,564	\$ 1,885			\$ 477	\$0	\$ 337	
Franklin	\$49,968.36	\$ 6,996	\$2,000	\$ 650	\$0	\$0	\$1,400	\$4,153	\$65,167
Franklin/Averages	-\$5,439.22	\$ 1,432	\$ 115	\$ 173	\$0	\$337	\$ 625	\$1,061	-\$ 987

*The data shown for Franklin is from FY11, but is usable because the Town is offering 0% for FY12.

**The \$3,000 incentive for a bachelor's is ahead of nine other communities, including Sharon, Norwood, North Attleboro, and Bellingham. Six towns have no incentive for a master's: Attleboro, Bellingham, Canton, Hopkinton, Norwood, and Sharon.

¹¹The Town provided data for firefighters with EMT certifications, but since the great majority are paramedics, the chart reflects only that group.

Admittedly, Franklin's base salary is comparatively low. However, most other economic items are at or above average, so in total compensation Franklin is only slightly below average. That is exactly what one would expect, given that it is in the middle of the pack with regard to demographics.

Even with two 0% raises, Franklin remains within the average range when total compensation is expanded to include holiday pay. The parties stipulated:

1. Holiday pay is earned and paid in two different stages.
2. One stage is holiday pay accrual. The Department maintains a record of holiday pay accruals covering two periods per [fiscal] year. The first period ... covers ... July 4, Labor Day, Columbus Day, Veterans Day and Thanksgiving. The second period covers the remaining six holidays, Christmas Day through Memorial Day.
3. The accrual system works as follows:
 - a. A firefighter not working on a holiday is credited with 10 hours.
 - b. A firefighter working his scheduled 24-hour shift on a holiday is credited with 24 hours.
 - c. The accrued hours may be taken as additional time off during the six-month period. Any hours not used ... are paid out in cash at the end of the six-month period.
4. The other stage of holiday pay is a payment for firefighters who work on a holiday, the half-time holiday differential. The payment is for 24 hours pay at half the regular rate. This payment is made, only in cash, in the payroll period which includes the holiday.

5. All holiday payments are over and above base bi-weekly pay.

In sum, the benefit for holidays not worked is ten hours of cash or ten hours of time off. For holidays scheduled and worked, firefighters receive half-pay, plus an additional day of pay or a day off. In FY11, the value of the benefit for a top-step firefighter was \$4,153, not \$3,272, as the Union would have it.¹² The discrepancy of \$881 between the parties' calculations should not be minimized. It is a significant component of overall compensation and a statutory factor that the panel must consider.

The Union offered no evidence on consumer prices. From 2009 to 2013, the yearly average increase ranged from negligible in 2009, to 2.7% in 2011. For the three other years, the average was between 1.4% and 1.6%. This is quite consistent with the Town's 6% total increase for FY12, FY13, and FY14.

Two-Tier Wages. The proposed second-tier pay scale for newly hired firefighters is much closer to the first tier than the Patrolmen's second tier. Similarly, the gap

¹² The Town's calculation is:

8.25 days off x 10 hours =	82.5 hours
2.75 days worked x 36 hours =	99.0 hours
TOTAL	181.4 hours
TOTAL VALUE	\$4,153

between the first and second tiers in the Clerical, Library, DPW, and Custodian CBAs is far greater than the one proposed here.

As of FY15, the proposed second tier, at its highest step, will be only \$1,396 less than the Town's proposed wage for current firefighters. The proposed second-tier paramedic stipend will be \$2,425 less than the Town's proposed 14% for current paramedics.

In contrast, as of FY15, the top step of the second tier for patrolmen is \$1,798 less per year than current officers receive. Newly hired patrolmen with an bachelor's degree will make \$3,453 less; with an associate's degree, \$6,906 less.

The second-tier pay scale for sergeants has three steps, the first being 8.3% above the patrolmen's maximum. The differential for fire lieutenants is much greater, 15%.

Two-tier base pay is common in private-sector CBAs. As of April, 2013, 29% of expiring contracts had two-tier compensation systems. The recovery of the auto industry is partly attributable to the introduction of a second-tier wage scale up to 50% lower than the first tier.

ISSUE 2: RANK DIFFERENTIAL

ARTICLE XII SALARIES AND WAGES

UNION'S PROPOSAL:

Section 7: Rank Differential

There will be a fifteen (15%) percent pay differential between fire fighters at maximum base salary and a lieutenant's base salary.

There will be a ~~twenty-five~~ thirty (25 30%) percent pay differential between fire fighters at maximum base salary and a captain's base salary.

UNION'S POSITION: The proposal will increase captains' pay from \$62,460 to \$77,307, effective 7/1/14. Captains have significantly more responsibility than a lieutenant. On nights and weekends, when the Chief and Deputy Chief do not work, they are responsible for all Departmental operations. During their shifts, captains have supervisory responsibility for both stations and are responsible for filling shift vacancies for the following week. They are the incident commanders for all multi-apparatus operations. The captain is the front-seat officer of Engine 1, responds with Tower 1 and Rescue 1, and potentially responds with Engine 2 and Rescue 2.

Franklin fire captains are comparable to police lieutenants (the highest rank below the chief), who are unrepresented. As of FY15, a max-level police lieutenant makes 49.4% more, and a mid-level police lieutenant 29.5%

more, than the \$70,392 salary of a top-step police sergeant.¹³

The Town's only objection to this proposal is that it would have the knock-on effect of raising the detail rate, currently \$42.50/hr.¹⁴ The Town's own wage proposal would also have that effect, while still leaving the Firefighters' rate lower than the Police Unions' detail rate of \$46.

TOWN'S POSITION: It is a gross exaggeration to state that captains are in charge of operations on nights and weekends. Both the Chief and Deputy Chief are salaried employees with 24/7 on-call responsibilities. Capt. Klich offered no testimony at all to support the Union's claim that captains' duties have increased. Chief McCarraher testified that they have not.

There was no evidence that Franklins fire captains fare poorly compared to their peers in comparable communities. And the testimony of Police Chief Semerjian laid to rest the Union's attempt to equate fire captains and police lieutenants as "shift commanders." Police

¹³ The Town's pay scale for unrepresented employees has three grades, "min," "mid," and "max."

¹⁴ Under Article VII(3), the rate for non-Town details must be at least 150% of a captain's pay.

lieutenants are non-union, mostly day-shift personnel more akin to deputy chiefs. The shift commanders are sergeants.

Effective 7/1/14, the Union's proposal would increase captains' pay from \$62,460 to \$77,307, resulting in an overtime and detail rate for *all* firefighters of \$53.10. The Town's wage proposal would increase captains' pay to \$66,281 on the same date, resulting in an increased detail rate of \$45.52/hr. The basic detail rates for the Patrolmen are roughly equal:

FY12: \$42

FY13: \$45

FY14: \$46¹⁵

The Union's proposal would destroy that rough equality, which would be disruptive of bargaining relationships.

ISSUE 3: SPECIALTY STIPENDS

ARTICLE XII SALARIES AND WAGES

UNION'S PROPOSAL:

Section 9: Additional Compensation

Increase stipends for specialty positions from \$1,500 to \$2,600.

¹⁵ Police details (but not fire details) worked for the Town are discounted by \$3.

UNION'S POSITION: Under Article XII(9), 10 positions receive a \$1,500 annual stipend.

Public Fire Safety Education Officer
ALS Coordinator (2)
BLS Coordinator (2)
Training Officer
Arson/Fire Investigator
Management Information Officer
Equipment Officer
MIS Programmer (currently none)
SCBA Officer
Infection Control Officer

These assignments are in addition to full-time firefighting duties. The stipend was last increased in FY07, from \$1,250.

Police receive \$50/week (\$2,600/year) for the following full-time assignments:

Detective
Court Prosecutor
Administrative Sergeant
Juvenile Officer
Community Service Officer
K-9 Officer
Computer Specialist
Motorcycle Officer.

Police receive \$25/week (\$1,300/year) for the following assignments, which are in addition to their regular duties:

Accident Reconstructionist
Firearms Instructor
Armorer
Photo/Print Officer
Field Training Officers
MDT Coordinator
Medical Equipment Coordinator

There is no logical reason for the majority of police officers holding specialty positions to receive more pay than the specialist firefighters, particularly where the firefighters perform the specialties on top of their regular duties.

TOWN'S POSITION: The firefighter specialists are comparable only to the part-time police specialists, and already receive \$200 more per year than those specialists. Neither the workload nor the responsibilities of the firefighter specialists have increased in recent years, except for the ALS and BCS coordinator. Fire Chief McCarraher appointed a second firefighter to each of the latter specialties to remedy the problem.

ISSUE 4: EDUCATION INCENTIVE

ARTICLE XIII EDUCATIONAL INCENTIVE

UNION'S PROPOSAL:

Effective 7/1/11, increase as follows:

Associate's:	from \$2,000 to 5% of base pay
Bachelor's:	from \$3,000 to 10% of base pay
Master's:	from \$3,000 to 12.5% of base pay

Paid bi-weekly in regular paychecks, rather than half in June and half in December.

UNION'S POSITION: On average, the current education incentive lags behind the comparable communities by the following amounts:

Associate's:	\$523
Bachelor's:	\$1,450
Master's:	\$2,314

It is also strikingly lower than the police education incentive. Under the Police Unions' 2012-15 CBAs, patrol officers and sergeants hired before July 1, 2012 (including officers promoted to sergeant after that date) receive the following educational incentives:

Associate's:	\$ 5,953
Bachelor's:	\$11,906
Master's:	\$14,883

As noted earlier, these stipends are the dollar equivalent of the prior full percentages under the Quinn Bill: 10%, 20% and 25% of base.

Effective FY15, officers hired after January 1, 2012, receive the following incentives for degrees in "a related field of study":

Associate's:	\$ 2,500
Bachelor's:	\$11,906

The Town will not realize any significant savings from this second-tier incentive for years.

TOWN'S POSITION: The Union proposes "percentagized" education incentives, even though the Police Unions

eliminated them in the most recent round of bargaining, including for those receiving the old Quinn Bill payments. Based on the Town's proposed percentage increases to base, the Union's proposal will increase the costs per firefighter by the following amounts:

Associate's: \$ 651
 Bachelor's: \$2,303
 Master's: \$3,629

Based on the actual profile of degrees currently held, the Union's proposed benefit will cost upwards of \$108,000 per year, \$49,000 more than currently.

The Union offered no justification for these increases, other than its wish to receive Quinn-type benefits. The current incentive for an associate's degree is above the average for the Town's 18 comparables. Six of the comparables provide no incentive at all for a master's degree.

The Union has already negotiated substantial benefits to compensate for the inapplicability of the Quinn Bill to firefighters, including the EMT/Paramedic stipend, with a current value of almost \$7,000/year. Additional benefits are:

**TOWN'S COMPARISON OF FRINGE BENEFITS
 FRANKLIN FIREFIGHTERS AND POLICE**

	<i>Franklin Firefighters</i>	<i>Franklin Police</i>
Scheduled Shifts per Year	91	244
Ave. Holidays Worked	2.75	7.26

Ave. Holiday Pay Hours	181.5	117
Max. Sick-Leave Buyback	\$6,000	\$4,500
Vacation Leave Hours:		
Years 1-15	2160*	1800**
Years 15-20	1200	800
Years 21-30	2400	2,000
30+ Years	5760	4,600
Annual Personal Leave Hours	24	16
Sick Leave Exchange	8 sick days/48 hrs vacation	12 sick days/40 hrs vacation
Specialist Pay (PT positions)	\$1,500	

*5 years at 96 hrs., 5 years at 144 hrs., 5 years at 192 hrs.

**5 years at 80 hrs., 5 years at 120 hrs., 5 years at 160 hrs.

Unlike the Police Unions' CBAs, the Union's CBA has no requirement that firefighters' degrees be in a work-related field, so the incentive seldom adds any value for the Town. Indeed, the Town is currently paying for degrees in restaurant management, landscape architecture, and aviation science, among other irrelevant disciplines.¹⁶ During bargaining, the Union rejected a Town proposal that newly hired firefighters be required to obtain an associate's degree in a job-related field.

About half of the Town's comparables have a strict job-relatedness requirement, while the others extend only into subjects like fire administration and public administration.

ISSUE 5: SICK LEAVE

ARTICLE IX

Current language:

Section 2: Sick Leave

¹⁶ The Town reimburses firefighters' tuition at 50%.

Effective July 1, 1992, sick leave will be earned at the rate of one (1) shift for each month of service. ...

An employee in continuous employment shall be credited with the unused portion of leave granted under this section up to a maximum of one hundred and twenty (120) shifts. After completion of twenty (20) years of service and upon death or retirement, employees covered by this Agreement who have maintained a minimum of 80 shifts accumulated sick leave days for a period of not less than three (3) years immediately prior to separation from service, are entitled to compensation for any unused accumulated sick leave at a rate of fifty (\$50.00) dollars per shift up to a maximum of six thousand (\$6,000.00) dollars.

For the purposes of accrual and consumption of sick leave, each 24-hour shift of duty shall equate to two (2) sick leave shifts. Sick leave taken after a shift starts will be measured in actual hours missed. If an employee goes home prior to the end of his/her shift because of illness, the employee will not be allowed to return to work for the remainder of that 24-hour work period.

* * *

Section 3: Sick Leave Incentive

Effective July 1, 1998, there shall be a sick leave incentive system providing bonus payments to employees based upon the number of shifts under Article VI which are used as Sick Leave under Article IX, Section 2, as follows:

Shifts Used	Bonus Payment
0-2	\$400
3-4	\$200

* * *

UNION'S PROPOSAL - FAMILY SICK LEAVE:

Amend Section 2 to allow the use of six sick leave shifts per year to care for an ill parent, child, or

other relative living in the firefighter's household.^[17]

TOWN'S PROPOSAL:

For employees hired after June 30, 2014:

- Accrual will be 9 days/year
- Accumulation capped at 72 shifts
- Eliminate sick-leave buyback

For all employees, effective 7/1/14:

ARTICLE IX

Section 3: Sick Leave Vacation Exchange

Firefighters having accumulated more than forty (40) twenty-four (24) hour shifts of sick leave may trade shifts for vacation at ~~two (2)~~ three (3) twenty-four hour shifts of sick leave for one (1) twenty-four (24) [hour] shift of vacation. No more than four (4) additional vacation shifts may be taken in any fiscal year.

UNION'S POSITION: Family Sick Leave. Under the current language, sick leave may only be used for personal illness. If a firefighter needs to care for a sick family member, his options are strictly limited. The chief always denies permission to swap shifts if the swap would create overtime. Using vacation or personal leave is impracticable, because the CBA requires at least 24 hours' notice to take that leave time.

Except for firefighters, Town employees use an average of .75 sick days per year for family illness. The Police

¹⁷Union President Robert Donovan testified that the intent of the proposal is to receive three 24-hour shifts, since under the CBA, sick leave is taken in 24-hour increments.

Unions' CBAs allow officers to use up to ten sick days for family illness, provided the illness falls within the definition of the FMLA, and they have used all accrued holiday and personal leave. The Clericals and Dispatchers are entitled to use three days of sick leave for family illness, with no reference to the FMLA definition.

Two-Tier Sick Leave. For new hires, the Town proposes to reduce accrual and accumulation of sick leave, and to eliminate sick leave incentive payments and buyback. It pointed to no problems with the firefighters' use of sick leave; again, its sole justification is consistency with other Town units.

The Town's two-tier proposal would place newly hired firefighters significantly behind the comparable departments:

UNION'S COMPARISON OF TOWN'S 2-TIER SICK LEAVE PROPOSAL WITH COMPARABLE DEPARTMENTS

	<i>Hrs/yr</i>	<i>Max. Accrual (if stated)</i>	<i>Incentive</i>	<i>Buyback/Threshold</i>
Town's Proposed 2nd Tier	108	648	None	None
Bellingham	180	1440	None	90 days
Canton	180	--	None	\$13,000
Foxborough	288	--	None	25% /50 days
Mansfield	180	--	72 hrs	20%
Natick	180	2688	5 days pay	50% /100 days
Hired after 1998	144	1440	Same	50% /50 days
Needham	180	--	3 sick days	25%
with < 10 yrs	same	--	Same	25%, max 120 days
Norwood	180	3360	\$210	25%/100 days
Sharon	180	2160	None	\$2,500
Walpole	180	2160	36 hrs	25%

Sick leave exchange. Similarly, the Town produced no justification for its proposal to increase the sick leave exchange ratio, other than consistency for its own sake. However, the Clericals, Library Staff, and DPW still have the 2:1 ratio. The 3:1 ratio pre-existed the 2012-15 CBAs for the other units.

TOWN'S POSITION. Family Sick Leave. The Union's proposal would have the Town provide a minimum \$1,800 health-care subsidy to the families of every firefighter, at least potentially, to address a non-existent problem. It is untrue that the Department categorically prohibits firefighters with good sick leave records from making swaps to accommodate the sudden illness of a family member. The Town has never considered such circumstances to be "sick leave abuse."

The proposal is difficult to cost out precisely, but the Union's estimate of \$20,000 is derisory. Based on the Union's wage proposal, the cost per 24-hour shift, including overtime, would be \$963.72. The Union estimated a usage of 100 shifts per year, for a total of \$96,372.

Among the Town's units, only the Clericals and Dispatchers have such a benefit, totaling 24 hours per year. The Police Unions allow up to 10 days per year, but the illness must meet the "serious condition" requirement

of the FMLA, and the officer must first use all accrued holiday and personal time. Only four of the Union's external comparables (excluding Needham) provide paid time for family illness.

Two-tier. Every other Town union has accepted two-tier sick leave benefits:

**NEGOTIATED CHANGES IN SICK LEAVE BENEFITS
FOR EMPLOYEES HIRED AFTER 6/30/12
OTHER TOWN UNITS**

<i>Unit</i>	<i>Accrual</i>	<i>Buyback</i>	<i>Incentive</i>
Police and Sergeants	1 day/mo max 90	Eliminated	Eliminated
DPW	8 hrs/mo max 90	Eliminated	
Dispatchers	12/year 90 max	Eliminated	
Clerical	1 day/mo 90 max	Retained \$50/day max \$5000	Eliminated 6/30/13
Custodians	1 day/mo max 90	Retained \$40/day max \$5200	
Public Facilities	1 day/mo max 90	Retained \$25/day max \$2500	

Sick leave exchange. Under the current 2:1 ratio, firefighters can receive 48 hours (4 shifts) of additional vacation by trading in 8 shifts of sick time. The Police Unions, with their 3:1 ratio, receive 40 hours for 15 shifts of sick time, with a value of almost \$200 per year.

The Town's proposal would increase the firefighters' trade-off to 12 shifts of sick time for the same 48 hours of vacation. Police will still have to relinquish 15

shifts for 40 hours. The ratios will be identical, but the firefighters will receive 8 more hours of vacation. Furthermore, the Police Unions relinquished the entire benefit for officers hired on or after July 1, 2012.¹⁸

ISSUE 6: LONGEVITY

ARTICLE IX

UNION'S PROPOSAL:

Section 7: Longevity Pay

Longevity pay will be paid to the permanent firefighters according to the schedule below:

<u>Length of Service</u>	<u>Amount</u>
5 years	\$600.00 600.00
10 years	\$650.00 800.00
15 years	\$675.00 1,050.00
20 years	\$750.00 1,250.00
25 years	\$800.00 1,500.00
* * *	

UNION'S POSITION: The Union's proposal will bring the Firefighters into parity with the School Secretaries, the other unit receiving longevity.

Town's position. All other Town units agreed to eliminate longevity in FY13, in exchange for a lump sum added to the base. For the Police Unions, the amount was

¹⁸ The Town's data concerning the non-Police units is ambiguous (Town Ex.9). It is not clear whether the DPW, Dispatchers, Custodians, Library and Public Facilities retained the sick leave exchange, or never had it. The Clericals retained the 3:1 exchange, but the eligibility threshold of accumulated sick leave was increased.

\$850. Despite the many benefits that would flow from this offer, the Union rejected it.¹⁹

The Union's proposal is worth more than 1% for most firefighters, and since longevity benefits are pensionable, the \$700 increase at the top step equals a \$560 increase in pension benefits. The firefighters' current longevity benefit is in the middle of the comparables, and above average at 10 years. The Union's proposal would catapult these firefighters to the top:

**RANKING OF UNION'S LONGEVITY PROPOSAL
AMONG TOWN'S COMPARABLES**

	<i>Longevity Amount</i>	<i>Rank Among 19 Towns (18 \$ + Franklin)</i>	<i>\$\$ Above Average</i>
10 years	\$ 800	5 th of 19	+\$323
15 years	\$1,050	4 th (tied) of 19	+\$454
20 years	\$1,250	5 th of 19	+\$345

ISSUE 7: PARAMEDIC STIPEND – NEW HIRES

Current Language:

ARTICLE XII

Section 5: EMT

* * *

EMT stipends will be calculated at the following percentages based upon the employee's base pay:

Section 6: Paramedic

¹⁹ Although this offer is not among the proposals before the panel, the Town in its brief expressed willingness to stand by it.

Firefighters hired as paramedics shall maintain such certification as a condition of their continuation of employment.

<u>Grade</u>	<u>Bonus Payment</u>
Defibrillator certified (non-EMT)	0.5%
EMT A	7.0%
EMT M	7.0%
EMT D	7.0%
EMT P [Paramedic]	14.0%

TOWN'S PROPOSAL:

A new flat-rate paramedic stipend of \$5,000 for firefighters hired after June 30, 2014.

TOWN'S POSITION: Converting the paramedic stipend to a flat rate for new hires will provide cost savings without reducing the benefit for current firefighters. As the Town has already shown, there is ample precedent for two-tiered benefits, in the Town's other CBAs, in other departments, and in JLMC awards.

Most analogous to the Town's proposal is the two-tiered education incentive which the Patrolmen accepted.

Officers employed before July 1, 2012 receive:

	Associate's	Bachelor's	Master's
FY13	\$5,694	\$11,388	\$14,235
FY14	\$5,808	\$11,616	\$14,520
FY15	\$5,953	\$11,906	\$14,883

Officers hired on or after that date receive a flat \$2,500 for an associate's degree and \$5,000 for a bachelor's.

UNION'S POSITION. The Town's proposal is unheard-of among the comparables, including the Town's own comparables. Factoring in the Town's wage proposal, after 30 years, a firefighter paramedic hired after 6/30/14 will lag 31.8% behind a patrol officer hired on the same date. Even second-tier education incentives for newly hired police officers represent a gain, not a loss, because those officers are not entitled to any benefits under the Quinn Bill.

ISSUE 8: DURATION

TOWN'S PROPOSAL:

A one-year CBA and a three-year CBA, with combined effective dates of July 1, 2011, through June 30, 2015.

UNION'S PROPOSAL:

A three-year CBA, effective July 1, 2011, through June 30, 2014.

TOWN'S POSITION: The Town has consistently advocated CBAs with the same expiration date Town-wide. For over a year, the parties' negotiations were premised on a four-year effective period. Not until the §3(a) hearing did the Union propose a different term. To date, the Union has offered no rationale for its proposal for a three-year CBA.

A single period of negotiations for all Town units produces greater efficiency and stability. A CBA that has

already expired when the award issues is not in the interests of the parties or Town residents. The JLMC typically avoids that result. IBPO, Local 364, JLMC-13-2559 (2014); Burlington Police Command Officers Union, JLMC 10-10PS (2011); Burlington Police Patrolman's Association, JLMC 94-15P (1995).

IV. DECISION AND AWARD

A. The Town's Ability to Pay

Before discussing the individual proposals, it is necessary to address one of the parties' fundamental disputes: the Town's "financial ability ... to meet costs," commonly known as "ability to pay." The parties devoted a great deal of attention to this statutory factor, disagreeing on almost every aspect: the Town's fiscal health; the prosperity of its residents; the current and potential value of its residential and commercial real estate; and the amount of money that the Town has immediately available.

The root of the parties' disagreement is their conflicting interpretations of the statutory word "ability." The Union construes that word quite literally. In the Union's view, if the Town has sufficient money in its possession that is not legally encumbered, it is "able"

to pay for the Union's proposals, regardless of the Town's other obligations, or the purposes for which it may have earmarked that money. The Union scoured the Town's books and identified a number of candidates, including the stabilization fund, the remainder of the health insurance trust fund, and free cash.

The Town is appalled by what it sees as the Union's cavalier attitude toward the Town's carefully husbanded resources. It argues that it has manifold obligations that are just as important as the firefighters' compensation, if not more so, and emphasizes that it is only beginning to recover from the recession. It insists that any judgment of its "ability" to pay must be premised on the absolute necessity of rebuilding reasonable reserves, remedying deteriorating infrastructure, and addressing unfunded pension and OPEB liability.

As the Union correctly notes, the legislature chose the word "ability," not "willingness" or "election." A municipality's subjective disinclination to enhance wages and benefits is not a relevant factor. Nor can a municipality render itself "unable" to fund proposals by arbitrarily placing its unions last on its list of priorities.

On the other hand, we doubt that the legislature intended the word "ability" to absolutely exclude consideration of a municipality's many competing duties and commitments. The Town has responsibilities not only to all of its other employee groups, but to its residents and businesses. The Statute does not give public-safety unions priority over those groups when it comes to allocating limited resources.

In January 2014, Town Manager Nutting produced a "Five Year Fiscal Forecast" for the Town's legislative and executive bodies, which included an overview of the Town's financial history during part of the period covered by the CBAs at issue. This document presents a fair and objective picture of the Town's financial condition. Beginning in 2009, the Town, like all other Massachusetts communities, sustained a prolonged period of fiscal instability as a result of the worldwide recession. Over the ensuing years, the Town spent down its reserves, reduced staff, shifted some of its health-insurance costs to employees, and withheld raises.

To the Town's credit, it is now back on its feet and "in generally good financial shape," according to Nutting. To be sure, challenges remain, such as funding pensions and OPEB. But overall, the Town's fiscal health is sound.

Furthermore, it has advantages that many of the neighboring towns lack. It has aggressively exploited its convenience to Interstate 495 and public transportation to extend its industrial base to the "new economy," including electronic components, scientific instrumentation, and biotech. Commercial development lagged during the recession, but has resumed in recent years.

B. The Town's Two-Tier Proposals

Against this background, we first consider the Town's five proposals to implement two-tier structures in wages and other benefits. The most controversial is the proposed two-tier wage structure, which would reduce the base pay of newly hired firefighters.

It has often been stated that interest arbitration is a conservative process. Because the contract provisions at issue will be imposed on the parties, rather than voluntarily agreed to, arbitrators are reluctant to award novel, complex, or controversial proposals. It is far better for the parties themselves to discuss these issues in detail at the bargaining table. An outside third party is not in the best position to identify the sticking points and the appropriate trade-offs.

Despite the Town's argument otherwise, two-tier wage provisions are unquestionably still novel in the public

sector. No JLMC panel has ever awarded one. The Town pointed to two-tier contract provisions in thirty-three Massachusetts fire departments, but only three involved wages *per se*.

The panel disagrees with the Town that a two-tier wage structure would have no ill effects on the morale of the bargaining unit. There is an inherent inequity in having a lower wage scale for newer employees who are doing exactly the same job as their more senior coworkers. This is potentially divisive, and risks destabilizing the union as the exclusive representative. Evidently, the Town's other bargaining units made trade-offs that they considered worthwhile, but this Union's calculation was different.

The Town's financial circumstances are not now, and were not in FY12, so straitened as to warrant the unprecedented award of a two-tier wage structure. Indeed, the savings effectuated by a two-tier wage structure take place only gradually, over a number of years. The Town's proposal was not a remedy for its plight in the aftermath of the recession, but a long-term plan for its financial future. For all of these reasons, the panel denies the Town's proposal for a two-tier wage structure.

This creates something of a predicament. Implementing a second tier for wages and benefits is obviously of

paramount importance to the Town. It negotiated at least some two-tier provisions with every other bargaining unit, and has staked this entire proceeding on two-tier proposals. Despite the panel's reservations, a blanket refusal to consider any of the Town's proposals would produce an unacceptably lopsided result.

After much reflection, the panel has decided to grant the Town's proposal for a second-tier, flat-rate paramedic stipend, with some modifications. First, the stipend will be increased from the Town's proposed \$5,000 to \$6,000. Second, the provision will be effective on the date of the award, to preserve the expectations of any firefighters that the Town has hired during the pendency of this dispute.

One might well observe that, since paramedic certification is now a condition of hire, this is just a two-tier wage provision in sheep's clothing. However, given the entire context of these negotiations, it is an appropriate concession for the Union. Every other Town union has accepted some form of two-tier benefit. Notably, the Police Unions accepted a two-tier education incentive. Additionally, the parties will commence successor negotiations almost as soon as this award issues, so the Union will have an immediate opportunity to modify this provision, if it so chooses.

This is as far as the panel is willing to go in awarding two-tier benefits. The Town's remaining proposals -- for two-tier sick leave accrual, sick leave exchange, and unused shifts -- are denied

C. Wages

By almost any of the factors "normally or traditionally taken into consideration," there is room for improvement to the Town's wage offer, although not at the level of the Union's proposal. The Town's primary argument is that all of its other bargaining units have long since accepted that offer. The pattern of wage settlements in the Town is one element to consider, but it is not the only factor, nor necessarily the predominant one.²⁰ While it is administratively efficient to have a single wage pattern across all bargaining units, we disagree with the Town that it is inherently "inequitable" for some unions to receive a different wage package than others. Unions have different priorities and may be willing to make different concessions. The Union is not bound to accept a wage offer just because everyone else has.

Traditionally, police and firefighters are each other's most relevant internal comparators. An obvious

²⁰ Actually, the pattern of wage settlements is not among the factors specifically enumerated in the Statute.

sore point in this dispute is the disparity between the firefighters' and patrol officers' compensation - specifically, the patrol officers' far more valuable education incentive. At the level of an associate's degree, the difference is not that striking. The patrol officers' incentive is twice that of the firefighters, but the firefighters' paramedic stipend makes up the difference. However, at the level of bachelor's and master's degrees, the patrol officers' incentive increases sharply to over \$14,000 (as of FY13), while the Union's incentive remains static, at \$3,000. In short, while the patrol officers' total compensation does not differ greatly from the firefighters' at the low end, their education incentive gives them the potential for much higher earnings.

The Town is correct that this disparity is the result of a legislative policy choice. The Quinn Bill, a local option, requires participating municipalities to provide substantial incentives to police officers who obtain advanced degrees in criminal justice. For many years, the state paid half the cost, but beginning in 2009, the legislature reduced, and then eliminated, the state's share. In 2012, the Supreme Judicial Court held that municipalities were required to pay only their 50% share,

not to pick up the deficiency in the state's share. Adams v. City of Boston, 461 Mass. 601 (2012).

Municipalities and police unions have responded in a variety of ways. In some cities and towns, the police have sustained a reduction in pay. Other municipalities, such as Franklin, "stepped up to pay the state's share," in the Town's phrase.

Citing JLMC awards, the Town argues that its decision to cover the state's share does not create an entitlement to "the value of the Quinn Bill benefit" for firefighters. Town of Scituate, JLMC 10-15F(2012), at 12; see also City of Malden, JLMC 11-12F (2013); Watertown Firefighters, JLMC 12-22F (2014). That may be true, but in this case, it does create certain equities in the Union's favor, even if not on a strict, full-value basis.

Also, as a result of this award, the Union will sustain an incursion into the one benefit that balances the Patrolmen's education incentive: the paramedic stipend. An addition to the Town's wage offer is a logical balancing action.

The firefighters' standing among the comparable communities also supports an upgrade to their base wage. The parties differed sharply on the composition of the list of comparables, but even according to the Town's list, the

base pay of the Franklin firefighters is second to last, and their total compensation is below the average.

In consideration of all the foregoing circumstances, the panel awards the following adjustments to base wages:

7/1/11 - 0% + one-time \$600 lump-sum payment
7/1/12 - 1.5%
7/1/13 - 3.0%
7/1/14 - 3.5%

The Town's ability to pay does not weigh heavily against such a modest increase.

E. Sick Leave Exchange

The Town's proposal would raise the "price" of 48 additional hours of vacation from 96 hours of sick leave to 120 hours. The Town recently secured an increase in the exchange ratio from 2:1 to 3:1 from the Police Unions, and the Clericals also have a 3:1 exchange, but because of the firefighters' unique work schedule, it is hard to draw comparisons.

There was no evidence concerning the popularity of this benefit. On balance, a change does not seem warranted at this time.

D. The Union's Remaining Proposals

The panel has responded to two of the Union's major priorities: avoiding two-tier wages and benefits, and upgrading base pay to achieve greater parity with the

Patrolmen. One other proposal warrants consideration, and that is the Union's proposal for family sick leave.

The current contract language limits the use of sick leave to a firefighter's personal illness. The Town deems this a "non-existent problem," because the Department allows firefighters with good sick-leave records to swap shifts if they need to care for a family member. Such an *ad hoc* arrangement, which is essentially left to the Department's discretion, creates needless uncertainty. By contrast, the Police contracts contain a definite entitlement to ten sick days for leave that meets the criteria of the Family and Medical Leave Act (FMLA) provided the officer first uses all accrued holiday and personal leave.

The Union's proposal to pattern the firefighters' family sick leave on the Police language is entirely reasonable. The panel approves the following language:

The Town requires that any employee requesting leave under the terms of the Family and Medical Leave Act of 1993 utilize accrued paid time off (vacation, personal or compensatory time off, and sick leave if a sickness is involved) before any non-paid time off is utilized.

Any employee requesting leave under the terms of the Family and Medical Leave Act of 1993 for conditions regarding family members shall first utilize his/her accrued holiday and personal time. He/she may then utilize six sick leave shifts per year followed by any vacation time before any non-paid time off is utilized.

The Town will continue the employee's health benefits coverage during an approved FMLA period. The employee will continue to accrue holiday, vacation and sick leave credits during the FMLA leave. After the exhaustion of all accrued leave or the expiration of FMLA leave, whichever is later, there will be no further accrual of sick or vacation, or payment for holidays. Seniority, however, will accrue during the term of the leave. An employee taking such leave is entitled to be restored to the position held by the employee when the leave commenced, and will be entitled to any other benefits the employee would have accrued had he/she not taken family leave. The Town may designate extended leave as Family Medical Leave, when appropriate.

No further enhancements to compensation or benefits are in order at this time. The remaining Union proposals are denied.

E. Duration and Retroactivity

The Union had no serious objection to the Town's proposal for a one-year and a three-year CBA. Indeed, much of the Union's data was based on a four-year period. The panel therefore awards two CBAs, one effective July 1, 2011 through June 30, 2012, and the second effective July 1, 2012 through June 30, 2015. Except where noted, all aspects of this award are intended to be fully retroactive.

AWARD

During the term of the parties' collective bargaining agreements effective July 1, 2011 through June 30, 2012, and July 1, 2012 through June 30, 2015:

The firefighters shall receive the following adjustments to base wages:

Effective July 1, 2011 - 0%, plus a one-time \$600 lump-sum payment
Effective July 1, 2012 - 1.5%
Effective July 1, 2013 - 3.0%
Effective July 1, 2014 - 3.5%

Such adjustments shall be fully retroactive to their effective dates.

The Town's proposal for a flat-rate paramedic stipend is allowed, with the following modifications: the amount of the stipend will be \$6,000, and the provision will apply to all firefighters hired after the date of this Award.

The Union's proposal regarding family sick leave is allowed, in accordance with the language set forth above.

The Union's remaining proposals regarding Specialty Stipends, Rank Differential, Education Incentive, Sick Leave, and Longevity Pay are denied.

The Town's remaining proposals regarding Wages/New Hires, Sick Leave Accrual/New Hires, Unused Shifts/New Hires, and Sick Leave Exchange are denied.

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Michael C. Ryan
Neutral Chair

I AGREE.


Joseph E. Hubley
Labor Representative

I AGREE.


Timothy Francis
Management Representative

May 31, 2015
Date