

JOINT LABOR-MANAGEMENT COMMITTEE

Bruce Fraser, Neutral Chair

Richard MacKinnon, Labor Representative

Daniel Morgado, Management Representative

In the Matter of the Interest Arbitration

Between

TOWN OF FRAMINGHAM, MA

**JLMC No. 14-3843
Interest Arbitration**

-and-

**FRAMINGHAM FIRE FIGHTER UNION
LOCA 1652, IAFF, AFL-CIO**

For the Union: Leah Barrault, Esq.

For the Town: Christopher Brown, Esq.

October 5, 2015

(See next page for Award)

AWARD – JLMC No. 14-3843

Article III, Section 6 – Compensatory Time Off: The Town's proposal is granted.

Article IV, Section 1 – Holiday Pay: This provision shall remain unchanged.

Article IV, Section 4 – Tour by Tour: The Town's proposal of two extra holidays shall be granted
No other change shall be made.

Article V, Section 3 – Sick Leave: This provision shall remain unchanged.

Article VII, Section 1 – Hazardous Duty: This provision shall remain unchanged.

Article XIX(B) – EMT Compensation: The Union's proposal is granted, effective FY 2016

Article XXVII, Section 1 – Personal Days: This provision shall remain unchanged.

Article XXVIII(A) – Defibrillator Training: This provision shall remain unchanged.

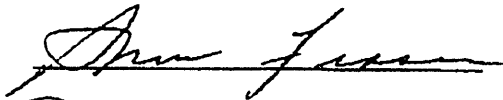
Article: Duration & Wages: The increase to wages shall be as follows:
Effective Date:

July 1, 2014 - FY2015: 2.0%

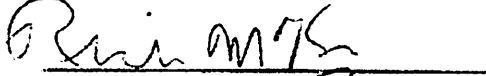
July 1, 2015 - FY2016: 1.5%

July 1, 2016 - FY2017: 2.0%

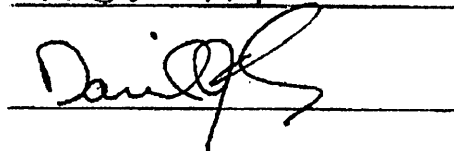
Bruce Fraser
Neutral Arbitrator



Richard MacKinnon
Labor Representative



Daniel Morgado
Management Representative



INTRODUCTION

This proceeding is an Interest Arbitration pursuant to St. 1973, c. 589, as amended. It concerns the successor to the parties' most recent collective bargaining agreement, which expired on June 30, 2014.

The Joint Labor Management Committee voted to limit the items in dispute to Wages and Duration plus the following issues, which were presented at the 3(a) hearing:

UNION'S ISSUES

1. Article VII: Hazardous Duty Pay
2. Article XIX (B): EMT Compensation
3. Article XXVIII(A): Defibrillator Pay
4. Article IV: Holiday – Day after Thanksgiving
5. Article XXVII: Sections 1 & 2: Personal Days

TOWN'S ISSUES

1. Article V, Section 3: Longevity/Sick Leave Buyback
2. Article III, Section 6: Compensatory Time Cap/Cash Out
3. Article IV, Section 4: Time off Controls (2)
4. Article XXVII, Section 1: Personal Days

One day of hearing was held by the Panel on June 18, 2015, in Framingham, MA. Both parties presented witnesses, submitted briefs, and reply briefs. The panel met by phone on September 15, and 17, 2015. The decision which follows was unanimous.

Chapter 589 of the Acts of 1987

Chapter 589 requires that the factors to be given weight in any decision or determination resulting from the mechanism or procedures determined by the committee to be followed by the parties in order to reach final agreement pursuant to this section shall include, but not be limited to:

2. The financial ability of the municipality to meet costs.
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 traditional 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 stipulations of the parties.

ISSUES IN DISPUTE

There were 10 separate issues submitted for arbitration, including duration and wages. They are considered in turn.

ISSUE No. 1: Article III Section 6 – Compensatory Time Off

CURRENT CONTRACT LANGUAGE

Effective July 1, 2013, [the] limit [of] the total amount of time accrued [shall be] no more than 240 hours. The reduction of hours in excess of 240 hours shall be achieved through attrition.

POSITION OF THE TOWN

The Town proposes amending Article III (Section 6) as follows:

1. Limit the accrued compensatory time for new hires after July 1, 2014 to no more than 144 hours, effective July 1, 2014;
2. Require cash-out of accrued compensatory time upon promotion.
3. For all other unit members, compensatory time would remain limited to 240 hours, but cashing out of accrued compensatory time upon promotion would be required effective July 30, 2017.
4. The reduction of excess is to be achieved through attrition rather than buy-back by the Town.

The Town wants to reduce deferred liability for overtime costs and keep the costs in the fiscal year in which they were incurred. It is attempting to achieve this both by capping the compensatory time an employee can accrue and, second, that such accrued time should be cashed out upon promotion.

Presently, the limit is 240 hours and it is paid at the firefighter's current rate of pay. The Town seeks to remedy this by limiting the cap for new hires only, and requiring everyone to cash out upon promotion. [Members as of 2014 only have to cash out for promotion after 2017.]

POSITION OF THE UNION

During the last negotiations, the Union agreed to reduce members' accrual maximum from 340 to 240 hours. The Town is now proposing, without any credible justification, an additional reduction for members hired after July 1, 2014 who may accrue more than 144 hours. This, in spite of reduced compensatory time used in 2014. The Union sees no basis for this proposal.

DISCUSSION

The Town proposal will help cut expenses and not appreciably affect the Firefighters income or working conditions.

AWARD

The Town's proposal shall be granted.

ISSUE NO 2: ARTICLE IV (Section 1) HOLIDAY PAY

CURRENT CONTRACT LANGUAGE

The following holidays shall be paid holidays for all members of the Fire Department. [There are 11 holidays listed.]

POSITION OF THE UNION

The Union proposes that the day after Thanksgiving be added to the list. It notes that several other Town units have this day as a paid holiday and the majority of comparable Fire Fighting units have from 12 to 14 paid holidays.

POSITION OF THE TOWN

The Town opposes the additional day off.

DISCUSSION

While the Panel recognizes that the level of paid holidays is not equal to some of the comparable communities, it does not feel that an increase is justified at this time.

AWARD

There shall be no changes in Article IV, Section 1.

ISSUE NO. 3: ARTICLE IV (Section 4) – TOUR-BY-TOUR

CURRENT CONTRACT LANGUAGE

(Second Paragraph) Not more than four (4) fire fighters can be on an individual vacation tour at one time. It is further agreed that no tour may be granted for Christmas Eve Night or Christmas Day/Night and New Year's Eve Night or New Year's Day/Night or Thanksgiving Day/Night

POSITION OF THE TOWN

The Town proposes that

1. That four fire fighters be reduced to three fire fighters on vacation tour at a time;
2. The Fourth of July Day/Night and Labor Day/Night be added to the end of the language cited above.

The Town argues that all members can still use their available vacation time each year even with the reduction of four to three fire fighters on vacation at a time, therefore the reduction will not affect the workforce. Importantly, it will give the Town more control to reduce potential liability. The Town claims that its "time off controls" are consistent with patterns in other bargaining units.

In addition the Town wants to eliminate use of tours on certain holidays where the time-off slots are filled constantly and lead to operational concerns. It points out that there is a carryover period for vacation leave until May 15th of the following year, vacation is subject to a buyback provision, and some vacation can also be converted to compensatory time. It argues that there is no real loss to the unit members.

POSITION OF THE UNION

The Union rejects both proposals, contending that the Town's claim that this proposal is consistent with the wage settlement patterns of other bargaining units is simply not supported by the evidence. Moreover, no data was produced at the hearing that the use of single vacation tours is a problem in need of correction and the overtime actually decreased from \$1,235 in 2013 million to \$1,167 in 2014. Finally, the Union contends, that to the extent that overtime costs are high, that is attributable to mismanagement by the Town.

DISCUSSION

The Panel finds that the adding of two holidays will help curtail expenses. This change is granted. It does not find that the reduction of four to three Firefighters on vacation tour at a time is justified.

AWARD

Article IV, Section 4 shall be changed to add the two extra holidays requested by the Town. No other change shall be made.

ISSUE NO 4: ARTICLE V (Section 3) – SICK LEAVE

CURRENT CONTRACT LANGUAGE

Employees covered by this Agreement shall be allowed sick leave with pay for non-duty related injuries or sickness accrued at the rate of 1¼ days per month, fifteen (15) days per year.

BACKGROUND

During previous bargaining, the parties agreed to add three longevity steps at years 26, 27, and 28 of service and that an employee's eligibility for sick leave buyback upon ordinary retirement or death would be reduced gradually, once any employee enters the first step of these three new steps. Eventually, an employee would be no longer entitled to sick leave buyback at the end of their career but the increased regular compensation, of 2% per year, is pensionable.

POSITION OF THE TOWN

The Town contends that since the implementation of the longevity steps arrangements, the bargaining unit members in the Police Officers Union have taken substantial amounts of sick leave while they are, at the same time, enjoying the longevity benefits. The Town negotiated a provision with the Police Officers Union whereby at a certain point sick leave would be basically traded in for the longevity wage increases.

The Town proposes to reduce sick leave accrual from fifteen (15) days per year to ten (10) days per year, beginning at 16 years of service. While the Town acknowledges that although this proposal does not result in the parity it was seeking with the original proposal, it believes that it will more evenly balance the factors.

POSITION OF THE UNION

The Union argues that the Town has received the benefit envisioned at the time of the FY 10-12 MOA, i.e., an elimination of the sick leave buyback benefit at retirement, and claims that the benefit now sought is quite different: reducing sick leave accrual and consequent overtime costs during the course of a fire fighter's career. During the next round of negotiations resulting in the FY12 to FY 14 MOA, the Town expressed no concern with how this arrangement was going. There is no evidence that this arrangement is not working as contemplated.

DISCUSSION

The parties negotiated this provision intending it to have specific effects. Apparently, it did not. The Panel finds that the parties should work out a additional change rather than have it imposed on them. No change is granted.

AWARD

Article V, Section 3 shall remain unchanged.

ISSUE NO. 5: ARTICLE VII (Section 1) – HAZARDOUS DUTY

CURRENT CONTACT LANGUAGE

Members covered by this Agreement shall receive Hazardous Duty Pay in the amount of six (6%) percent of the base salary per contract year...

POSITION OF THE UNION

The Union proposes increasing 0.5% to this amount, effective July 1, 2014. It notes that it is the first increase since 2008 and this benefit is not included in the computation of overtime. It argues that it is justified, in part, because of an increasing number of hazardous conditions on a daily basis.

POSITION OF THE TOWN

The Town rejects the increase of the stipend from 6% to 6.5%.

DISCUSSION

Because of reasons discussed below, the Panel finds that no change is warranted at this time.

AWARD

Article VII, Section 1 shall remain unchanged.

ISSUE NO. 6: ARTICLE XIX (B) – EMT COMPENSATION**CURRENT CONTACT LANGUAGE**

Section B: Employees possessing a valid E.M.T. certificate shall receive a stipend equivalent to 2.75% of an employee's base pay, capped at \$1,500.00.

POSITION OF THE UNION

The Union proposes eliminating the cap, effective July 1, 2014, thereby permitting the higher paid firefighters to receive an increase in the benefit. It points out that there has been no increase since 2008, that medical calls are on the increase, that other units such as Arlington and Marlborough receive considerably more, and that the costs to the Town would be only \$8,070.

POSITION OF THE TOWN

The Town rejects eliminating the \$1,500 cap on the EMT stipend, pointing out that only the most senior fire fighters would benefit from this increase.

DISCUSSION

The current language discriminates against firefighters at the top of the salary scale. The Panel agrees with the Union that this should be changed. It notes that the cost of this equalizing move is very small.

AWARD

The cap on the EMT stipend, Article XIX(B), shall be removed, effective FY 2016.

ISSUES NO. 7 & 8: ARTICLE XXVII (Section 1) – PERSONAL DAYS

Article XXVII:

Section 1. Each full time employee covered by this Agreement will be granted one (1) personal day in each calendar year.

Section 2. Each full-time member covered by this agreement will be granted one (1) Personal Leave Day (PLD) in each calendar year. The members must be on shift and in the station in order to request it. To exercise this PLD a manpower shortage cannot be created. Loss of PLD is not a grievable offence.

POSITION OF THE UNION

The Union proposes to amend Article XXVII by deleting Section 2 and increasing the number of guaranteed personal days, or shifts in Section 1 from one to two days. It points out that it is not practicable to limit guaranteed personal time to only the 10 hours or the 14 hours night shift, members often need a full 24 hours and with current language, can't get it. In addition, it points out that the majority of firefighting units within the external comparable universe receive from 2 to 9 personal days. As mentioned above, the Town provided no evidence that personal leave created an overtime dilemma and the Union suggest the overtime problem is of the Town's own doing.

POSITION OF THE TOWN

The Town proposes deleting the enabling language above because personal days are often used as a last resort to take time off, which results in shift manning issues and overtime costs. It calculated that 94% of the personal days created a situation where another firefighter had to be hired for the shift. It estimates that eliminating the personal day in Section 1 would save the Town approximately \$57,000 per year in coverage costs.

DISCUSSION

The Panel notes that only one of the Personal Leave days was in play in this proposal. It believes that the parties could negotiate a solution to the apparent personal leave difficulty more effectively than having the Panel adjust only one of the two days.

AWARD

Article XXVII(A) shall remain unchanged.

ISSUE NO. 9: ARTICLE XXVIII (A) – DEFIBRILLATOR TRAINING

CURRENT CONTACT LANGUAGE

Article XXVIII, Section A: Fire fighters who receive and successfully pass defibrillator training shall receive a stipend equivalent to 1.5% of an employee's base pay annually.

POSITION OF THE UNION

The Union propose a .5% increase, effective July 1, 2014, raising the rate from 1.5 to 2%. There has not been an increase in this stipend since 2007 and, like other stipends, this is not included as part of the base pay for overtime. It points out that the comparable towns of Arlington and Marlborough receive higher stipend amounts.

POSITION OF THE TOWN

The Town rejects the proposal of increasing this stipend from 1.5% to 2%.

DISCUSSION

As with the Hazardous Duty pay proposal, above, the Panel feels that the money in this award should be on the salary of the Firefighters where it has the greatest effect.

AWARD

The Panel finds that there shall be no change to Article XXVIII(A).

ISSUE NO. 10: DURATION/WAGES

The proposals of the parties for FY 2015 through FY 2017 are shown below.

	FY2015	FY2016	FY217
Union	4%	4%	4%
Town	2%	1%	1%

POSITION OF THE TOWN

The Town has expressed flexibility for additional increases in base wages of up to 1% in FY 2016 and FY 2017 in exchange for agreeing to one or more of the Town cost items, such as the elimination of an unrestricted personal day or adjustment of individual vacation tours, which concessions are to be found in other Town bargaining units and in the Fire Department's Deputy Fire Chief's unit, in particular.

It argues that the wage settlements with the other units show a consistent across-the-board pattern and suggests that an internal comparison of wages is not relevant: some units simply are paid more than others and, in the case of school contracts, they are out of the Town's control. The Town continues that it is not so rich as it seems, it is trying to husband funds, and a considerable amount of the current surplus comes from non-recurring sources. It fears that funding the Fire Department

at the level it proposes (4% for each of three years) may cause the Town to rethink some of the capital projects now projected, or force it to borrow more money than anticipated.

On the issue of comparable communities, it contends that it is important that any historical trends be mirrored by the Town, but not that the Town mirror the wages of the top communities. It notes that the Town has never been in the very top group and points out that during the "Great Recession" the Town did lay off Firefighters, contrary to other towns.

It concludes that its proposed increase of the overall present compensation package, which includes wages and a great number of fringe benefits, is both fair and reasonable.

POSITION OF THE UNION

The Union seeks a reasonable wage and benefit increase for the period of this agreement. It produces evidence that the Framingham Fire Fighters are the lowest paid in the area, earning less than the Framingham Police Department, and that the Town has the ability to pay appropriate raises for a group of employees who work so hard, often in dangerous situations. It points out that the Deputy Fire Chiefs received 2% each year for the same three year period and received some other changes that significantly benefited their income.

The Union finds false that the proposal of the Town, 2%, 1% and 1% for a three year agreement, is consistent with the Town's wage settlement with its other bargaining units. It points to the Police Officers Union, noting that where the average Firefighter works 14% more hours annually than the comparable Police Officer, he/she earns considerably less. And, compared to their peers in relevant Towns, the wages of Framingham Firefighters are near the bottom of the list. On this issue, the Union asserts that the comparison by the Town of what are considered relevant communities was significantly flawed.

Finally, the Union contends that the Town is unwilling, not unable, to fund fair Fire Fighter raises. The Union and the Town disagree over the amount of the wage proposals the other has made. However, the Union adamantly argues that the Town can fund its proposed wage increase, noting that there was no evidence to the contrary shown at the hearing.

DISCUSSION

As in most JLMC cases, there are numerous moving parts of the Town's financial picture, some obvious, some not quite so obvious. The Panel believes that a careful assessment of each factor, and its effect on the other factors, would not be particularly useful in our arriving at a fair decision. Thus, the Panel took the following position: the Town is relatively stable, it offered 2% for FY2015, which is more than the salary increase for any other bargaining unit in the Town. At issue are the other two years.

After considering all the issues and rejecting some, the costs issues in front of us are the following: Hazardous Duty, EMT Compensation, Defibrillator Training, and Salary. We have granted the EMT Compensation increase by lifting the cap, thereby making the percentage equal for all. The Union makes a good case for increasing the percentage 0.5% for Hazardous Duty and Defibrillator

Training. However, rather than place what is effectively a salary increase, albeit not figured into overtime, etc. by granting these increases, we have opted to leave these two benefits at their present level and to award a salary increase of 1.5% for FY2016 and a 2% increase for FY2017.

AWARD

The Panel awards the following wage increases:

FY2015 = 2.0%; FY2016 = 1.5%; FY2017 2.0%
