

In The Matter Of
The Arbitration Between:

**Worcester Firefighters Union, Local 1009, IAFF
And
City of Worcester**

JLMC Case No. 15-4632
Contract Impasse Arbitration Issue by Issue
Date of Award: November 29, 2016

After having considered the evidence and arguments of the parties including the pertinent statutory factors set forth in Ch. 589 of the Acts of 1987, the tri-partite Arbitration Panel awards as follows:

Contract Duration: There shall be a one year contract running from July 1, 2013 through June 30, 2014 and a three year contract running from July 1, 2014 through June 30, 2017.

Wages:

FY 2014: 2% across-the-board effective January 1, 2014

FY 2015: 2% across-the-board effective January 1, 2015

FY 2016: 2% across-the-board effective February 1, 2016

FY 2017: An additional step shall be added to the wage schedule as a new maximum step calculated at 2% above the current maximum step effective July 1, 2016. The one year in step requirement before eligibility for the next step, where such requirement exists, remains with the provisos that those who reached the previous maximum step (step 6) in the year preceding July 1, 2016 shall become eligible for and shall receive the new maximum step one year after their elevation to step 6 and that those who were at the previous maximum step (step 6) on or before July 1, 2015 shall receive the new maximum step effective July 1, 2016.

Equity Wage Adjustment

With respect to the degreed firefighters at the bachelors and masters level hired before July 1, 2009, there shall be, as indicated in the accompanying opinion, an equity wage adjustment effective no

earlier than October 1, 2015 for these individuals; the equity adjustment shall comprise a stipend in an amount not to exceed a maximum of \$2,000 with the specific amount and its application to be initially bargained by the parties. The parties, therefore, are directed to bargain over the details of this equity adjustment, and either party may petition the panel to impose implementation details at the end of a 45 calendar day period from the date of this award if impasse exists.

9% Night Shift Differential: There shall be no 9% night shift differential.

Health Insurance:

(1) Health insurance deductibles for all plans shall be increased from \$250/\$750 to \$500/\$1000 effective the date of this award, and out-of-pocket maximums shall be adjusted in light of the Affordable Care Act effective the date of this award;

(2) The amounts of co-pays for all plans shall be increased effective the date of this award as follows:

(a) the 3rd tier of prescription co-pays from \$45 to \$50;

(b) the co-pays for PCP and Specialists office visits for all tiers by \$5.00;

(3) there shall be mandatory mail order refills on all maintenance prescriptions.

Additional Holiday & Holiday Rate Increase:

There shall be no change in the number of holidays nor shall there be a holiday rate increase.

Hours of Work:

There shall be a conversion to a 24 hour work schedule with a 1-2-1-4 format pursuant to the following: the parties are directed to bargain over the details of the implementation of a 24 hour work schedule, and either party may petition the panel to impose implementation details at the end of a 45 calendar day period from the date of this award if impasse exists.

Use of Accrued Sick Leave:

There shall be some reasonable control imposed on the use of accrued sick leave with regard to approved FMLA-qualifying family reasons. The parties are directed to bargain over the details of reasonable control on the use of accrued sick leave, and either party may petition the panel to impose implementation details at the end of a 45 calendar day period from the date of this award if impasse exists.

Assessment Center:

There shall be an assessment center with regard to promotion to the rank of District Chief. The assessment center score in the process for promotion to District Chief shall carry a weight of 20%; training and education shall carry a weight of 20%; and the exam score shall carry a weight of 60%. The parties are directed to bargain over the remaining details of the implementation of an assessment center, and either party may petition the panel to impose implementation details at the end of a 45 calendar day period from the date of this award if impasse exists.

Vacation:

There shall be no change in vacation.

Selection for Promotion:

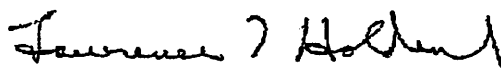
There shall be no change in selection for promotion.

Retention of Jurisdiction

The Panel shall retain jurisdiction over the implementation of this award for the next 45 calendar days (which may be extended if timely requested by either party within the 45 calendar day period) for the purpose of resolving any issues which remain unresolved by the parties with regard to the Equity Wage Adjustment, Hours of Work, Accrued Leave, and the Assessment Center.

Richard MacKinnon
Union-designee
Concur/dissent

Dean Mazzarella
Management-designee
concur/dissent



Lawrence T. Holden, Jr.
Impartial Chairman

Vacation:

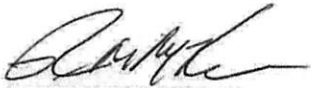
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Richard MacKinnon

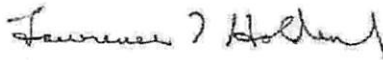
Union-designee

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concur/dissent



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Contract Impasse Arbitration Issue by Issue
Date of Opinion: November 29, 2016

Preliminary Statement

Arbitration hearings involving the above-captioned matter were held on June 29, July 6, and July 22, 2016 in Worcester, Massachusetts before a tri-partite Arbitration Panel comprising Dean Mazzarella, Management-designee, Richard MacKinnon, Union-designee, and the undersigned, impartial chairman. Representing the Union at such hearings was Leah M. Barrault, Esq., and representing the City were Philip Collins, Esq. and Melissa R. Murray, Esq.. Stenographic notes of the hearing were taken; both parties filed post-hearing briefs which were received by the Panel on October 25, 2016. This arbitration arises under the provisions of Ch. 589 of the Acts of 1987, and this arbitration is taking place under the auspices of the Massachusetts Joint Labor-Management Committee (JLMC) on a conventional issue by issue basis.

Issues

The issues which have been certified by the Joint Labor Management Committee (JLMC) in this case are as follows: wages; duration; night shift differential; hours of work; holiday pay; additional holiday; selection for promotion; assessment centers; vacation; sick leave; and health insurance Section B plan design changes.

Background

This interest arbitration is intended to settle open contractual issues between the parties for a four year period covering July 1, 2013 through June 30, 2017. There exists no dispute over duration. The parties do want a one year contract and a three year contract covering the period in question.

The bargaining unit in question, Worcester Firefighters Local 1009, comprises firefighters, Lieutenants, Captains, and District Chiefs.

In addition to Local 1009, the City of Worcester bargains with other unions representing police patrol officers (Local 911, NEPBA), police superiors (Local 504, IBPO), clerks (Local 490, NAGE/SEIU), multi-unit group (Local 495, NAGE/SEIU), and DPW clerks (Local 170, Teamsters).¹

The City developed a uniform COLA model for negotiation with respect to all of the above Unions. That COLA model comprised the following: a 2% across-the-board wage increase effective January 1, 2014; a 2% across-the-board wage increase effective January 1, 2015; a 2% across-the-board wage increase in fiscal 2016 effective six months after implementation of all health insurance plan design changes set forth in the City's Health Insurance proposal; and a new maximum step, calculated at 2% above the current maximum step, to be added to the wage schedule effective July 1, 2016. The new step is to be applied to those who have spent or have reached one year's service in the current maximum step.

All of the above Unions except Local 1009 have settled their contracts with the City generally in accordance with the 2% COLA model described above with one exception, and that exception was Local 504. Local 504 received an additional 1% wage increase on October 1, 2013 which the City said was a make-up increase - an increase to make up

¹ The Worcester School Committee bargains with its teachers union over wages and conditions of employment. Pursuant to statutory law the City Manager has a vote along with School Committee members on whether or not to approve a teachers' contract. The School Committee enjoys some autonomy in bargaining with its teachers as the School Committee's entire budget (not simply the teachers' contract) is submitted to the City Council for adoption or rejection.

for the fact that Local 504 had received 1% less than everyone else during a previous round of bargaining. Also, there were some other equity adjustments made in contracts with other Local Unions representing police (Local 911) and clerical employees (Locals 170 & 490) during the current round of bargaining; those equity adjustments will be discussed later herein.

Additionally, the Worcester School Committee settled a contract with its teachers union granting unqualified 2% increases across the board over three years (September 1, 2013 thru August 31, 2016) with the second year having a staggered 2% increase. While the settlement with the Worcester teachers is of interest, that settlement was reached by the Worcester School Committee and not the City. The Worcester School Committee enjoys a certain degree of autonomy in its negotiations with the teachers, and that autonomy was made more pronounced in this particular instance since City management did not participate in the negotiations and was not notified by the School Department, as required by law, of the date and time for a vote on the teachers' contract and, therefore, had no voice in the vote on the contract. Accordingly, the teachers' contract carries little weight in this proceeding.

The scope of this arbitration between the City and the firefighters concerns only the issues that have been certified by the JLMC for arbitration as identified in the Issues Section of this decision.

It is the obligation of this Panel to craft a just award based on the statutory factors as set forth in Ch. 589 of the Acts of 1987. Those factors are as follows:

"(1) Such an award which shall be consistent with: (i) section twenty-one C of chapter fifty-nine of the General Laws, and (ii) any appropriation for that fiscal year from the fund established in section two D of chapter twenty-nine of the General Laws;

"(2) the financial ability of the municipality to meet costs. The commissioner of revenue shall assist the committee in determining such financial ability. 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 fact finder, if any;

"(7) the average consumer prices for goods and services, commonly known as the cost of living;

"(8) the overall compensation presently received by the employees, including direct wages and fringe benefits;

"(9) changes in any of the foregoing circumstances during the pendency of the dispute;

"(10) such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between parties, in the public service or in private employment;

"(11) the stipulation of the parties."

Analysis

Contract Duration

Both parties are in concurrence with respect to a four year duration spanning the period, July 1, 2013 through June 30, 2017. Accordingly, there shall be a one year contract running from July 1, 2013 through June 30, 2014 and a three year contract running from July 1, 2014 through June 30, 2017.

Wages & Night Shift Differential

The Union in its letter to the JLMC setting forth the issues in dispute indicated that it was seeking a 4% wage increase for each year of a four year agreement with the first increase effective July 1, 2013 and then annually thereafter. At the commencement of the arbitration hearing the Union stated that it would like to change its request for a 4% annual wage increase to a 3% annual wage increase for each of the four years in question; however, because the Union's announcement came relatively late in the process and because the City had prepared its case based on the Union's request for a 4% annual wage increase, the Union elected to stay with its 4% annual wage increase each year for four years but, nonetheless, did provide data regarding the impact of a 3% wage increase each year for four years.

The Union has also requested a 9% "shift differential" effective July 1, 2013.² This so-called "shift differential" is really a request for a 9% wage increase for the entire bargaining unit since the shift differential is not a benefit limited to a discrete number of firefighters but, rather, is defined by the Union in such a way as to apply to most all the members of the bargaining unit. Thus, the shift differential is essentially a disguised general wage increase.

² I need not get into a discussion about whether this proposal is a regression from a prior proposal the Union made in bargaining; the reason such discussion is not necessary will become apparent as the reader gets deeper into the analysis regarding the 9% shift differential.

The City has offered the Union the COLA model described in the Background Section of this decision which essentially amounts to a 2% increase each year for fiscal years 2014 & 2015, a 2% increase in fiscal year 2016 dependent upon acceptance of health insurance plan design changes, and in fiscal year 2017 just the value of a step increase to many members of the bargaining unit (which ranges in value from 2% to 16% depending upon the step to which the member advances) and for the members of the bargaining unit who are at top step (step 6), a new maximum step (step 7) which is 2% above the old maximum step (step 6). Somewhere between 70% to 73% of the bargaining unit is at maximum step as of fiscal year 2017.

What may be said about the merits of these two competing requests regarding a general wage increase? I shall start with reference to internal (within the City) comparators rather than external (outside the city) comparators. Internal comparators have an edge in my view because internal comparators have the City's ability to pay baked into them whereas external comparators do not; by this statement I mean that where there has been an internal settlement between the City and unions with bargaining clout, such as the public safety unions,³ the presumption is that the City's ability to pay was taken into account by both parties in making calculations as to what would constitute a fair settlement of contract terms.

I now turn to consideration of the internal comparators.⁴ There has been for the most part a long-standing tradition within Worcester of parity in terms of pay increases between the police and firefighter bargaining units. There have been occasions, limited in number, where one public safety union leapfrogged the other, but the resolution of temporary advantage has historically been a reversion to parity with the disadvantaged union being subsequently made whole. For example, the record showed that in the negotiations for the 2009-13 agreement Local 504 (police superiors) received 1% less than the other public

³ The public safety unions have bargaining clout because they have access to the interest arbitration process under the auspices of the JLMC.

⁴ In terms of making comparisons I am not inclined to include pay from outside employment (details in the case of police and secondary employment in the case of firefighters). These outside employment choices are voluntary.

safety unions but that such loss in parity was made up by an extra 1% increase (a so-called legacy increase) on October 1, 2013 in the next contract. The same type of situation occurred earlier with respect to Local 911 (the patrol officers).

The record showed that in the current round of negotiations both police units (Locals 911 and 504) settled with the City on the basis of the model COLA. It is now the firefighters who are pressing for advantage and want not only to double the increase the police received but also want a 9% kicker as well. While the police accepted the model COLA (an increase of 2% per year for three years and a top step increase of 2% in the fourth year amounting to an 8% increase to the top step base non-compounded), the fire unit wants a 4% increase per year over a four year agreement plus another 9% in the first year amounting to a 25% increase in the existing base non-compounded. If an increase of this magnitude were granted to the firefighters, it would drive a sequoia-size hole in the long-standing principle of parity.

While there exist differences between the City and Local 1009 as to the precise numbers involved in the dollar comparisons between firefighter and police compensation, I find the reliable evidence to be that with regard to individuals hired before July 1, 2009 the firefighters have a substantial comparative advantage over the police in the no degree category and, further, have a significant advantage over police in the degree category until the comparison reaches the higher degreed individuals (Bachelor's & Masters) where the police begin to enjoy an advantage over the firefighters. I further find that with regard to individuals hired after July 1, 2009 the firefighters maintain a significant advantage over police both in the no degree as well as the degree categories.

The firefighters point to some equitable increases granted in the 2013-17 contracts to a discrete sub-group of police - the ones hired after July 1, 2009 who previously got mostly a flat educational stipend and were falling significantly behind those Quinn Bill police officers hired before July 1, 2009. That equitable adjustment, which was limited in scope and which simply increased the flat educational stipend and granted or improved longevity stipends somewhat for the

post-July 2009 group of police officers, does not serve as a bellwether for the entire police bargaining unit or for the firefighter unit for that matter; if it did, attempts by the City to close inequities in a discrete subset of a bargaining unit would be punished with the message that the City acts at its own peril in addressing issues of fairness. Such a message would not be in the long term interest of any of the City's unions nor of the City itself. The City should be commended for correcting somewhat a growing inequity in a discrete subset of the police bargaining unit.

The firefighters also point to a change in the pay scale for Local 495 and Local 170 members wherein these clerical employees went from their old pay scales in the last year of their fiscal 2013-17 contracts to a City-wide pay scale. In making this change, the entry level positions were paid less but the mid-level positions were paid more; so, there were elements of a trade here. The total value of the change was the equivalent of about a .6% increase in compensation costs so that instead of a 2% increase in the final year, the clerical units received an increase valued at 2.6% which was .6% above the increase that the police at maximum step received. Also, the employees in these two units are clerks who receive far lower compensation than police and fire, and, here, again, the City together with Locals 495 & 170 was seeking to make a one-time equitable adjustment for a much lower-paid group of employees and place them on a uniform City-wide pay scale. The same considerations apply here as apply in the immediately preceding paragraph. This change falls into the category of a small equitable adjustment rather than a noteworthy break in the overall COLA pattern.

I now turn to the factor of the City's ability to pay for the firefighters' compensation proposal. First, there is the matter of the cost of the competing proposals. In terms of additional money needed over four years beyond existing compensation costs, the Union's proposal just for COLA increases and the night shift differential would add \$26,519,000 or approximately \$6,630,000 per year on average over four years to an existing Fire Department budget of approximately \$39,000,000 per year; the City's proposal for COLA increases (no night

shift differential) would add \$5,020,684 or approximately \$1,255,171 per year on average over four years to the Fire Department's existing budget. Needless to say, the Union's proposed addition of \$26,519,000 over four years (\$6,630,000 per year on average) to the Fire Department's existing budget is a burden too far.

The impact of Local 1009's proposal upon City finances would not stop just at the numbers referenced above. Since Local 1009's proposal would break the long-standing tradition of parity with the police and would depart from the model COLA generally accepted by the other City unions, there would, no doubt, be cries of "me too" from these other Unions likely resulting in the cascading of outsized consequences with unsustainable effects upon the City's limited resources.

And what are the City's resources? Worcester is categorized as a Gateway City which in Massachusetts parlance refers to a city with a population between 35,000 and 250,000, a city with an income level below the Massachusetts median, and a city whose residents with a bachelor's degree or higher is below the Massachusetts average. Worcester was hit hard by the Great Recession in 2008; it had to reduce City employees significantly due to falling revenue, and it still has not returned in terms of staffing to pre-Great Recession levels. It is also receiving 15 million dollars less in local aid presently than it did prior to the Great Recession. The real property values in the City which form the core of its tax base and are the principal source of its revenue-raising have decreased from 2011 through 2015. Worcester tax payers bear the highest residential property tax rate among some 11 communities which may be said to be somewhat comparable to Worcester; these communities include Springfield, New Bedford, Brockton and Lynn. The median income of Worcester residents in 2015 averaged \$46,449 which is below the state average of \$66,866. Approximately one-third of Worcester's tax base is tax-exempt due to the large number of educational and non-profit institutions inside City limits. The City's tax levy limit hit the City's tax levy ceiling in 2016.

City Manager Edward Augustus described some of the demands upon the City's limited resources from the many competing constituencies.

To name just a few from both his testimony and the testimony of others: the City is seeking to correct an adverse health condition stemming from school building windows but is only able to replace a limited number of windows per year due to resource constraints; the City is committed to providing new turnout gear for every fire suppression member of the Fire Department and needs also to find funds to improve the quality of its fire apparatus; the City is committed to improving the quality of its bond rating so that it doesn't needlessly spend extra dollars on the costs of higher debt service and bond insurance; the City is trying to meet, but has fallen far short of, the Massachusetts Department of Revenue's recommendation that 3% to 5% of the City budget comprise free cash; and the City is in the very incipient stage of trying to set aside funds for a large OPEB (other post-employment benefits) liability.

Local 1009 points to various funds, such as free cash, stabilization, judgment reserve, and school building improvement funds, as sources for funding the compensation increases it seeks. The free cash fund is intended to cover unanticipated shortfalls in revenue or unexpected, exigent expenses;⁵ the stabilization fund is intended to cover the costs of debt service for a new high school building; the judgment reserve fund is intended to cover the costs of court judgments against the City; and the school building improvement fund is designed for the purpose its name suggests. The overriding point to be made about these various dedicated funds is that it is not good practice to use non-recurring revenues, such as the dollars in these special funds, to pay for recurring expenditures, such as wage increases; at least, this is what the bond rating agencies think as violation of the above principle leads to bond rating downgrades with increased debt service costs. And it is the case that City management would rather spend the limited resources it has on treating its employees fairly with appropriate compensation and on infrastructure

⁵ City management is under a directive to set aside 50% of free cash for building reserves and 30% for OPEB liabilities.

improvements and new capital projects than on increased costs of debt service and bond insurance premiums.

Given all of the above considerations, Worcester clearly falls into the category of a city with limited ability to pay. The very strong impression I obtained from hearing this case is that Worcester has done a very careful job of trying to allocate scarce resources, has emphasized fairness by attempting to treat all unionized employee groups similarly in terms of a model COLA while, at the same time, making very modest equitable adjustments to specific employee sub-groups where warranted, and has done an exceptional job of finding new money to fund the COLA increases it has proposed. To think that the City has the resources to fund the omnibus package Local 1009 seeks with all of its follow-on consequences requires a different reality than the one presented here.

Following the review of internal comparators and ability to pay comes the matter of external comparators, namely, comparison of total compensation of Worcester firefighters to firefighters in comparable cities. This external comparison in the case of Worcester, however, is not easily done as it is difficult to find demographics in other Massachusetts communities that match well with Worcester's. The Union has suggested Boston and Cambridge as appropriate comparables. Boston, in particular, does not match well as it is a behemoth in terms of its comparative demographics: Boston's population is more than 3.5 times Worcester's; its assessed valuation is 9 times Worcester's; and its budget is 4 times that of Worcester. Cambridge is not much better in terms of a comparator as Worcester's population is almost twice that of Cambridge; Cambridge's income per capita is almost three times that of Worcester; and Cambridge's equalized valuation per capita is about 4.3 times that of Worcester.

The City suggests 11 external comparators, namely, Brockton, Cambridge, Fall River, Lawrence, Lowell, Lynn, New Bedford, Newton, Quincy, Somerville, and Springfield. While Cambridge and Newton would seem out of place in this comparison given their significant wealth and other demographics, the City's comparators do have the factor of diversity in their corner and provide a more representative sample

than the Union's. Thus, for the purposes of this case, as between the Union's external comparators and the City's, I shall use the City's comparators.

Since the lion's share of Local 1009's bargaining unit comprises firefighters without a degree (64% of the bargaining unit), it makes sense to look at how the non-degreed Worcester firefighter fares in terms of total compensation against his/her non-degreed peers in comparable communities.⁶ The evidence shows that in every longevity category from 5 years through 30 years the Worcester firefighter exceeds his/her peers save for the 30 year category where the Worcester firefighter is third behind Brockton and Quincy. If one were to make the same comparison using degreed firefighters and longevity - a category where Worcester has fewer firefighters - then the record shows that Worcester is situated in the top quarter of the pack. All of the external comparators suggest that there is no overriding or compelling reason to revisit the outcome suggested by considerations of internal comparators and ability to pay.

Finally, cost-of-living considerations need to be consulted. The record showed that from 2012 through 2015 the cost-of-living per the All-Urban Consumer Index increased a total of 5.2% resulting in an average annual increase of 1.73%. The All-Urban Consumer Index indicated that the cost-of-living increases decelerated rather than accelerated near the end of the above-referenced period. There is nothing in the cost-of-living information that prompts a re-visitation of the City's model COLA increases.

In light of all of the foregoing, the City's model COLA is the outcome that warrants application here.

I need to make an observation about the timing of the step increases for all bargaining unit members in the fourth contractual year (fiscal year 2017). The award is written in such a way as to insure that every member of the bargaining unit receives a step

⁶ This comparison is made on the basis of total compensation existing as of fiscal 2013. To do a more current comparison would require certain projections. For the purpose of the point being made here, it is satisfactory to use known statistics rather than assumed projections, but even if one uses assumed projections, the portrait is not much changed from that which existed as of fiscal 2013.

increase within the fourth year of the contractual period under review here which equates to the last year of the 2014 - 2017 contract term. Members who are climbing the steps of the salary schedule will receive their step increase on their scheduled date. Members who have been at the previous maximum step (step 6) on or before July 1, 2015 shall receive the new maximum step effective July 1, 2016, and members who reached the old maximum step (step 6) sometime during the year preceding July 1, 2016 shall become entitled to the new maximum step (step 7) one year later on the appropriate scheduled date meaning sometime before the end of the contract term on June 30, 2017. As mentioned previously, the value of the step increase alone for members is somewhere between 2% and 16% depending upon where the individual falls on the step schedule. Consequently, everyone receives, at least, a 2% increase in the fourth year of the contractual period under review here.

Now I would like to say something further about the Union's request for a wage increase in excess of the 2% general wage increases awarded here. While I do not think that a request for general wage increases in excess of 2% is warranted here for the reasons already set forth in this decision, I do think that an equity adjustment for a discrete subset of the fire unit, i.e., the degreed firefighters hired before July 1, 2009, should be considered just as an equity adjustment for a discrete subset of the Worcester police unit was considered and granted. The record showed that the degreed firefighters in the category mentioned above lost ground when compared to comparable degreed police officers at the Bachelors and Masters level. I should think that it would be in the interest of the City certainly to encourage the acquisition of greater knowledge and skill through degreed programs for the fire unit, and that firefighters who make the effort to obtain these degrees should not be placed at a substantial competitive disadvantage in relation to their peers in the police unit. The equity adjustment for this category of degreed firefighters at the appropriate longevity steps at the Bachelors and Masters level could certainly take the same form - that of a flat stipend amount - as took place in the case of police officers hired after July 1, 2009.

I think the negotiation of the contours of this particular benefit within a maximum allowable stipend of \$2000 should initially be returned to the parties for discussion as is occurring in the case of a number of other issues discussed infra.⁷

In terms of application of the City's model COLA, however, there is another issue that needs to be addressed. Most City unions implemented the health insurance design plan changes increasing deductibles and co-pays effective July 1, 2015 which was the pre-condition for obtaining the January 1, 2016 2% COLA increase. There was one union (Local 504, IBPO) that accepted the insurance plan design changes only three months prior to January 1, 2016 and received the 2% COLA increase effective February 1, 2016.

There have been no insurance plan design changes for the firefighters unit yet. It appears impractical to make these plan design changes for the firefighters retroactive to July 1, 2015 due to the complexities involved. The unions that did accept timely plan design changes received a \$250 signing bonus. Since Local 1009 has not yet accepted the plan design changes, its members shall not receive the \$250 signing bonus, but its members shall receive a 2% COLA increase effective February 1, 2016 (similar to Local 504, IBPO).

Health Insurance Plan Design Changes

The City proposes the following plan design changes:

"(1) The City proposes to increase the health insurance deductibles for all plans from \$250/\$750 to \$500/\$1000 effective July 1, 2015, and to adjust out-of-pocket maximums in light of the Affordable Care Act;

"(2) The City proposes to increase the amounts of co-pays for all plans, effective January 1, 2016 or as soon as practicable thereafter, as follows:

⁷ If the parties can agree upon the distribution of the economic value of this equity wage adjustment in some other manner, the Panel will support such agreement.

"(a) To increase the 3rd tier of prescription co-pays from \$45 to \$50;

"(b) To increase the co-pays for PCP and Specialists office visits for all tiers by \$5.00;

"(3) The City proposes to require mandatory mail order refills on all maintenance prescriptions."

The Union opposes all changes.

The City self funds its health insurance plans through the vehicle of a health insurance trust created pursuant to the provisions of Massachusetts law. Out of six fiscal years spanning 2010 through 2015 the City has experienced net income in its health insurance trust for four of these six fiscal years. The accretion of net income has served to increase the trust's net assets from \$8,991,000 to \$21,163,1000 during the same time frame. The contributions to the health insurance trust are split with the City paying a 75% share and employees paying a 25% share.

The City proposed plan design changes to its health insurance plans for fiscal year 2016 which had the effect of increasing employee deductibles and co-pays. All of the City's unions save the firefighters have accepted these plan design changes. Since we are now in fiscal year 2017 - the last year of the four year agreement under consideration here - I think, as indicated previously, that the firefighters must accept the plan design changes forthwith but not retroactively due to the complexity of the retroactive calculations.

Moreover, I think that in the round of negotiations coming up shortly for a successor contract, the parties should take a hard look at the growing surplus in the health insurance trust fund and mutually determine whether or not the co-pays or deductibles need some downward adjustment or whether a holiday from premium payments is warranted. It is important that the health insurance trust fund have a significant buffer against unforeseen/unanticipated costs, but, clearly, there comes a point at which the buffer is sufficient to protect against such unforeseen/unanticipated costs, and the question is whether the health insurance trust has more than enough funds now to provide such a buffer.

The City indicated that it used savings from the health insurance plan design changes to help fund a COLA increase in fiscal 2016. The concept of using savings from health insurance plan design changes to fund an employee wage increase raises the specter of borrowing from Paul and Jane to pay Paul and Jane.

Additional Holiday & Holiday Rate Increase

The Union is seeking a twelfth paid holiday as well as an improvement in the calculation of the holiday pay rate. The City seeks to maintain the status quo.

No improvement either in the number of holidays or the holiday rate was granted to the police or other City unions. The Union's request here would add slightly over 1% to the cost of the contract. The firefighters already enjoy a superior holiday rate in comparison to other City bargaining units including the police. Given considerations of internal comparators, the City's limited ability to pay, and the superior benefit the firefighters already enjoy, I see no compelling reason to grant an additional holiday and/or an improved holiday rate

Hours of Work

The Union seeks a change in the hours of work from a 10/14 work schedule to a 24 hour work schedule using the 1-2-1-4 configuration; the City opposes any change from the current 10/14 work schedule.

A strong case exists for converting to a 24 hour work schedule. The record showed that 78% of the fire departments in the United States operate on the basis of a 24 hour work schedule as do 70% of the fire departments in the Commonwealth of Massachusetts. The evidence further was that without exception JLMC panels have granted requests to convert to a 24 hour work schedule, and there was no evidence that any fire department that adopted the 24 hour work schedule later abandoned it. A study of the Toronto Fire Department by Dr. Glazner on this subject indicated that the conversion to a 24 hour

work schedule there resulted in improved employee morale, reduced sleep deficit, and resulted in an overall improved feeling of well-being with more energy and less fatigue. Joseph Fleming, Deputy Fire Chief of the Boston Fire Department and a 38 year employee of that Department, testified that Boston had converted to a 24 hour work schedule in 2014; that the transition to the new schedule had gone well with the parties using the pre-existing 10/14 format to advantage in making the conversion; and that he saw benefits in terms of improved employee morale, increased opportunities for training, and greater contact between supervisors and the rank and file. He also pointed out that under the pre-existing 10/14 schedule where firefighters had to catch up on sleep during the day between two night shifts, it was difficult to change circadian rhythms, he believed, from night to day, week to week, with the result that there was often a sleep deficit among firefighters. He did note that the change to a 24 hour schedule was neutral in terms of absenteeism even though studies on the 24 hour work schedule indicated less absenteeism.

While there exists a strong case for implementation of the 24 hour work schedule, the parties are apart on the details. The Union prefers a 1-2-1-4 (one day on, two days off, one day on, 4 days off) schedule over 8 days; the City prefers a 1-3-1-3 (one day on, three days off, one day on, 3 days off) schedule. Deputy Chief Fleming testified that Boston had adopted the 1-2-1-4 format, as have a majority of fire departments, and that the 1-2-1-4 format has worked very well for Boston. Deputy Chief Fleming's testimony about Boston's experience is clearly entitled to consideration and weight. Based on all the evidence presented in this case I am convinced that the 1-2-1-4 format should be adopted.

There are also other significant details that would need to be addressed in a conversion to a 24 hour work schedule. Deputy Chief John Sullivan of the Worcester Fire Department expressed significant concern about various issues, such as rescue operations being filled on an overtime basis using a full 24 hour shift, how shift swaps and overtime coverage under a 24 hour shift schedule would be handled, and whether there would be a migration through bidding of senior day shift

employees from their day shift work to fire suppression work because fire suppression work offered a 24 hour schedule with 6 days off out of every 8 days.

The parties are best equipped to make the decisions regarding these details, but, if necessary, the Panel will make the decision on implementation details in the event that the parties do not. Accordingly, the Panel is remanding the implementation issues regarding the work schedule change along with several other topics, as noted in this decision, to the parties for discussion and resolution.

The Panel is anticipating that the parties will improve on their past performance. For example, a 2006 JLMC award involving these parties called for the creation of a Study Committee to inquire into issues surrounding a change to a 24 hour work schedule, and no Study Committee was ever created. The Panel further notes that the parties have not had an integrated contract since the 1980s. Accordingly, the Panel re-iterates that the parties are best equipped to resolve the implementation issues, but that the Panel will decide these issues if the parties have not done so within the required time. The Panel also notes from a timing point of view that by the time this award issues the parties will be approaching the last 6 months of the 4 year contractual period awarded here, and that it makes eminent good sense for the parties to implement significant work schedule changes months prior to the termination of the current contract leaving them with an opportunity to address any trailing issues in the negotiations that will occur for the successor contract.

Use of Accrued Sick Leave

The City proposes to limit the use of accrued paid sick leave to circumstances involving only an employee's own personal illness, and the Union proposes no change in the current practice.

Currently firefighters can use accrued sick leave not only for their own illness but for FMLA-qualifying family reasons under circumstances where they have approved FMLA leave for family issues. This essentially permits firefighters to go on a paid FMLA-approved

absence unlike all other City employees including the police who, if they go out on approved FMLA leave, take an unpaid FMLA leave for family issues.⁸ This unique firefighter arrangement is the result of a long-standing past practice. The record showed that within the past 5.5 years firefighters have used between 64% and 85% of all FMLA leave city-wide, and that the firefighters represent only 22% of the City workforce.

While the City seeks in this proceeding wholesale elimination of this particular benefit for firefighters, i.e., using accrued paid sick leave for approved FMLA leave for family issues, we think a less drastic solution, such as placing some controls on this benefit so as to bring the firefighters somewhat closer to the norm for City employees as a whole, would be the preferred approach. Again, we think that the parties are best equipped to solve this particular issue within the required time frame. Accordingly, this issue will be treated in the same manner as the other issues which have been remanded to the parties.

Assessment Center

The City proposes to use an assessment center as a component of the establishment of a list for promotion to the bargaining unit rank of District Chief . The City proposes that the assessment center piece have a 40% weight in terms of the overall score while the training and education component carry a 20% weight and that the written exam score comprise the remaining 40%. The Union opposes the establishment of an assessment center for the position of District Chief.

What is an assessment center? "Assessment Centers are a series of exercises designed to test how well a candidate would perform in a job, using simulations and role player to replicate real, on-the-job situations. Candidates are evaluated on qualities such as Leadership, Decision-Making, Interpersonal Skills, and Written and Oral Communication. These aspects of individual candidates cannot be

⁸ Under FMLA an employee may be eligible for up to 12 weeks of FMLA leave within the parameters set by law.

measured using the multiple-choice written exam. As these qualities are important to job performance, especially as the tested rank increases up to Chief, the use of Assessment Centers in public safety promotions is growing and gaining respect within Massachusetts."

(Massachusetts HRD Regional Assessment Center Initiative Q&A - 2014).

I note that, in the last round of bargaining, Local 504 (Police Superiors) agreed to incorporate an assessment center for promotion to the rank of captain. Comparability among the City's public safety unions has been a significant element of each party's presentation in the instant case, and I have confirmed the importance of such element here. There exist here justifiable grounds for the implementation of an assessment center with respect to promotion to the rank of District Chief, and the assessment center should carry a weight of 20% in the computation of the overall score, while training and experience should carry a weight of 20% and the written exam score a weight of 60%.

I think here again, however, that the details for implementation of an assessment center, such as who is to conduct the assessment and what qualities are evaluated, are best left to bargaining between the parties within the specified time frame.

Vacation

The City proposes to amend effective January 1, 2016 the vacation schedule and language to reduce the maximum benefit from five to four weeks' vacation after 10 years' service. The Union opposes any change.

The Panel is not persuaded that any change is warranted.

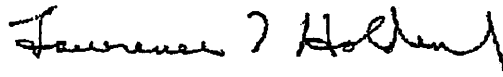
Selection for Promotion

The City states that "notwithstanding any prior practice, it reserves its rights to select a lower rated candidate, within the so-called '2N+1' rule, subject only to the right of a higher rated candidate exercising his/her right under M.G.L. c. 31, §27 to file a so-called 'bypass appeal', and the Civil Service Commission shall have exclusive jurisdiction of any dispute about any such selection. The

City shall have discretion, not subject to the grievance-arbitration process, to select among candidates who are tied on a promotion eligibility list. This provision shall be effective on agreement or issuance of an award."

The Union opposes this proposal in its entirety.

This issue has a long history between the parties and is the subject of a long-standing practice. The Panel is not persuaded that any change should be made.

A handwritten signature in cursive script, reading "Lawrence T. Holden, Jr.", written in black ink.

Lawrence T. Holden, Jr.
Impartial Chairman