

COMMONWEALTH OF MASSACHUSETTS
JOINT LABOR MANAGEMENT COMMITTEE FOR MUNICIPAL POLICE
AND FIRE
JLMC-16-5261

IN THE MATTER OF ARBITRATION BETWEEN:

CITY OF LAWRENCE

&

IAFF Local - 146 LAWRENCE FIREFIGHTERS UNION

AWARD AND DECISION BY THE ARBITRATION PANEL

Background

The City of Lawrence ("City" or "Employer") and IAFF Local 146 ("Union") are parties to a Collective Bargaining Agreement ("Agreement") that expired June 30, 2015. The parties engaged in direct negotiations but were unable to reach a successor Agreement. A petition was filed for the Massachusetts Joint Labor Management Committee ("JLMC") to exercise jurisdiction, and the JLMC exercised formal jurisdiction of the ongoing dispute between the City and the Union. Mediation was conducted under the auspices of the JLMC, but the parties were unable to reach agreement.

The JLMC then determined that the dispute should proceed to arbitration pursuant to Section 3(a) of Chapter 589 of the Acts of 1987. The JLMC appointed a tri-partite panel consisting of Gary D. Altman, Esq., Dean Mazzarella, Management Panel Member, and David Keene, Union Panel Member. The JLMC also directed that the parties conduct a mediation session prior to the arbitration hearing. A mediation session was conducted on July 12, 2018, no agreement was reached at the session, and the interest

arbitration hearing occurred on July 17, 2018. Elizabeth B. Valerio, Esq. and Erica Crystal, Esq. represented the City. Paul T. Hynes, Esq. represented the Union. After the conclusion of the hearings the parties submitted post-hearing briefs.

Analysis and Issues

Under the Collective Bargaining Laws of Massachusetts, the Interest Arbitration process is utilized when "there is an exhaustion of the process of collective bargaining which constitutes a potential threat to public welfare". In reaching the conclusions in the present award, the Arbitration Panel has considered the criteria set forth in the statute including the municipality's ability to pay, wages and benefits of comparable communities, the hazards of the job, and the cost of living. It must also be noted that large gains or major concessions are not achieved in the format of arbitration. An arbitrator is reluctant to modify contract provisions where the parties, in past years, have already reached agreement, the contract article has been in the contract for a considerable period of time and there has been no ascertainable problem with the contract language.

Background

The City of Lawrence is located in the Merrimack Valley in Northeast Massachusetts. The City has a population of approximately 80,000 residents. The City is governed by a Mayor, and has a nine member City Council. Because of severe financial issues, for many years the City has been under the oversight of the State Department of Revenue. Specifically, in the 1990s there was a financial Review Board that oversaw the City's finances, and in 2010 the Legislature passed the Lawrence Financial Stability

Law; under this legislation the Commonwealth's Secretary of Administration and Finance appointed a fiscal overseer to approve the City's budgets and spending plans, and monitor the City's expenditures. Since the passage of the Financial Stability Law in 2010 there have been two State Overseers. Robert Nunes, a Deputy Commissioner of the Department of Revenue, served from 2010 until 2014. In 2015 Sean Cronin, Deputy Director Commissioner for Local Services, was appointed as the successor to Mr. Nunes. Mr. Cronin continues to serve in this role.

The bargaining unit is composed of approximately 121 uniformed personnel. The Department operates four engines, 20 ladders and one rescue, and responds to more than 6,000 calls a year.

Issues

The unresolved issues are as follows:

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WAGE INCREASES

UNION POSITION

The Union proposes the following base wage increases for the 2015-2018 Agreement:

3% increase effective July 1, 2015
3% increase effective July 1, 2016
3% increase effective July 1, 2017

The Union maintains that the Lawrence firefighters have been without pay increases since June 30, 2015. The Union states that the workload of Lawrence firefighters continues to increase, that the total runs by the Department are among the highest in the Commonwealth, and the Department is among the top three for responses to home fires. The Union states that the City is densely populated and has a number of old mill buildings that pose unique hazards for City's firefighters, as many of these buildings contain unknown chemicals. In addition, the Union states that with the existing opioid and heroin crisis it is common for Lawrence Fire Fighters to respond to drug overdoses on a daily basis, and that in 2016 Lawrence had the most opioid death per person in New England. The Union maintains that firefighters are often called to administer Narcan, and these situations can be volatile; as a result these responses can be dangerous for the Department's firefighters. The Union states that the City of Everett recently agreed to a 4.5% increase for its firefighters in recognition of the hazards of administering nasal Narcan.

The Union acknowledges that the City has financial constraints, but that due to the nature and quantity of work performed by the City's firefighters the City must provide fair wage increases for bargaining unit employees.

The Union contends that while some of the other Unions in the City agreed to nominal wage increases and concessions, it must be remembered that none of the other public safety employees in the City have reached agreement, and most importantly, none of the City Unions that reached agreement face the everyday working hazards confronted by Lawrence firefighters. The Union points to the terms of Chapter 589 of the Acts of 1987, that require the panel to consider the unique and dangerous hazards of the job, and thus contends that the appropriate benchmark for this Panel is to consider the wages and benefits provided to Lawrence police and firefighters in other comparable cities.

The Union contends that the wages of Lawrence firefighters lag behind the wages paid to Lawrence police officers. Moreover, the Union states that Lawrence firefighter wages fall behind the wages paid to firefighters in comparable communities. The Union maintains that an appropriate list of comparable communities based on demographics, population, size of department and hazards should include Brockton, Haverhill, Lowell, Lynn, Methuen and Quincy. The Union states that a review of these communities shows that firefighters in these communities have received higher wage increases over the time period under consideration in this proceeding than what has been proposed by the City, and that wages and benefits for firefighters in these comparable communities are generally higher than what firefighters receive in the City of Lawrence.

The Union points to the City's recent agreement with the Fire Chief, in which the City provided wage increases that averaged about 2.7% over a three year period, and that

the Chief also receives the same benefits now enjoyed by Lawrence firefighters, which the City now seeks to reduce.

The Union maintains that the City's financial condition has improved since the most recent Agreement expired three years ago. The Union states that the City reported a \$14.2 million surplus for Fiscal Year 2017, which it reported was the result of rolling over surpluses from prior years, and that \$4.3 million of that amount was as a result of property taxes and other collections coming in higher than expected. The Union also states that the City's free cash has continued to increase, that the credit agencies have considered the City to "have a stable outlook" (Moody's) and that it has "strong budgetary performance". (S&P) The Union maintains that the City has the financial ability to pay modest pay increases without the concessions being demanded by the City.

CITY POSITION

The City proposes the following wage increases for the duration of the 2015-2018 Agreement:

- One time payment of \$1,500 not added to the base effective upon ratification
- 1.25% increase effective July 1, 2016
- 1% increase effective July 1, 2017
- .5% increase effective January 1, 2018.

The City maintains that Lawrence is one of the poorest communities in the Commonwealth, suffers from high unemployment, and that its citizens have very low-income levels. The City states that it ranks third highest in the State of Massachusetts of citizens living below the federal median poverty level. The City further maintains that the per-capita income of \$13,080 is significantly below the State average of \$37,658, ranking Lawrence 348 out of the

Commonwealth's 351 communities, and that as of May 2018 the City had the highest unemployment rate in the State. Moreover, the City states that the State Department of Education has designated the Lawrence School District as a Level 5 District, the lowest level, and that the Schools are under State Receivership at the present time.

The City points to a report recently issued by the Massachusetts Division of Local Services, which notes that although the City has had some recent financial growth the City's financial health is still precarious, and that for the City to achieve financial stability the City must adopt balanced budgets that have reasonable spending controls, have sufficient financial reserves, and must fund its OPEB and unfunded pension liabilities, which currently place severe fiscal constraints on the City.

The City states that because of the City's precarious financial condition, in 2010 the Massachusetts Legislature passed the Lawrence Financial Stability Law, St. 2010 c.58, which appointed a State Overseer to review and approve the City expenditures, including approval of all Collective Bargaining Agreements. As part of this legislation the City borrowed money from the State to pay its bills, and as a result the City will be making loan payments back to the State until 2031. For the time period involved for this three year Agreement, the City must make annual payments of approximately \$12 million a year; these payments are in addition to its other fixed obligations.

The City states that the Overseer will not approve a contract that jeopardizes the long term financial health of the community, and using free cash to fund collective bargaining agreements is not an acceptable practice. The City contends that the most appropriate benchmark for the

acceptability of a new Firefighters Agreement is the collective bargaining agreements that have been reached with eight out of the twelve Unions representing other City of Lawrence employees. The City states that in all of these agreements employees received modest pay increases but also agreed to financial concessions that were necessary to sustain the current level of services at an affordable rate.

Discussion

Determining the "appropriate" salary increase is not an exact science. In general, arbitrators consider the cost of living, wages and benefits of firefighters in comparable communities, the ability of the employer (or citizens) to pay for an increase in wages, the bargaining history of the parties and recent contract settlements. Arbitrators often consider wage settlements that have occurred within the municipality, as internal wage settlements demonstrate the so-called "going rate" and the municipal employer's ability and willingness to pay, in the current economic times.

I. Lawrence Wage Increases

The wage settlements for Lawrence municipal employees¹ for the recent round of contract negotiations are as follows:

| | FY 12 | FY 13 | FY 14 | FY 15 |
|--------------|-------|-------|-------|-------|
| Firefighters | 0% | 0% | 2.5% | 2.5% |
| Supervisors | 0% | 0% | 0% | 0% |
| Library | 0% | 0% | 2.5% | 2.5% |
| Laborers | 0% | 0% | 0% | 0% |
| Water | 0% | 0% | 0% | 0% |
| LACE | 0% | 0% | 0% | 0% |

¹ Neither the City nor the Union provided the recent wage settlement for Lawrence Teachers, which is the largest bargaining unit in the City. Public news accounts indicate that the State Receiver for the Lawrence Schools and the Teachers Union reached agreement for 2014-2017 school years, which provided for base wage increases. For the 2017-2020 school years it appears that teachers received \$1,000 increases to the their base pay.

| | | | | |
|----------------|----|----|------|------|
| Carpenters | 0% | 0% | 0% | 0% |
| Foreman | 0% | 0% | 0% | 0% |
| Police Patrol | 0% | 0% | 2.5% | 2.5% |
| Police Supers. | 0% | 0% | 2.5% | 2.5% |
| Inspectors | 0% | 0% | 2.5% | 2.5% |

| | FY 16 | FY 17 | FY 18 | FY 19 |
|----------------|---------|-------|---------------|--------------|
| Firefighters | N/S | N/S | N/S | N/S |
| Supervisors | \$1,500 | 1.25% | 1.25% .75% | N/S |
| Library | 1% | 1.25% | 1.25% .75% | 1.25% |
| Laborers | \$1,000 | 1.25% | 1% .75% | 1.25% .75 |
| Water | \$1,000 | 1.25% | 1% .75% | 1.25% .75 |
| LACE | \$1,000 | 1.25% | 1% .75% | 1.25% .75 |
| Carpenters | \$1,000 | 1.25% | 1% .75% | 1.25% |
| Foreman | \$1,200 | 1.25% | 1% .75% | 1.25% |
| Police Patrol | N/S | N/S | N/S | N/S |
| Police Supers. | N/S | N/S | N/S | N/S |
| Inspectors | N/S | N/S | N/S | N/S |

The dollar amounts listed in FY 16 were one-time payments that were not added to the employees' base salary.

This arbitrator has often given weight to wage settlements that have been agreed to for employees working in the same municipality, especially when all other bargaining units in the City have reached agreement. In the present case, however, no agreements have been reached with the other public safety units in the City, and these consist of the largest bargaining units in the City, excluding teachers.

Further, a review of the prior history of settlements shows that the City has not had a strict parity relationship in terms of wage increases for all City bargaining units; public safety groups have received higher amounts in past negotiations. Indeed, this practice occurred even when the City was under State oversight.

Specifically, as discussed later, the prior Overseer agreed to contracts and wage increases for public safety employees whereas no agreements were reached with other City bargaining units. In sum, although relevant and instructive, the wage settlements for other City bargaining units for the period of this three year contract should not be considered as binding for the three year contract period considered in this case.

II. Comparability

The parties disagree as to which communities should be the basis for comparisons with Lawrence. The City asserts that the communities of Brockton, Chelsea, Fall River, Haverhill, Holyoke, Lowell, Lynn, New Bedford, and Springfield should be used as comparable communities. The Union's universe of comparable communities is much smaller and includes the communities of Brockton, Haverhill, Lowell, Lynn, Methuen, and Quincy.

There is no right or wrong answer in deciding which communities are in fact comparable. Comparability does not mean that the communities must in fact be equivalent in each and every respect. There in fact may be reasons to compare various conditions of employment that exist for Lawrence with the firefighters in a large number of municipalities. For example, the facts may show that there is a consistent statewide trend, for example, for working hours, or shift schedules for firefighters. Thus, a comparison with a large number of communities would be most relevant in this regard. Nonetheless, looking at wage settlements for other cities in financially distressed communities is certainly relevant in considering wage increases for Lawrence firefighters.

The Panel will consider Gateway communities that have similar demographics as Lawrence, and for which the parties submitted the most recent wage settlements. Wage adjustments in these communities over the relevant time frame are as follows:

| Community | FY 15 | FY 16 | FY 17 | FY 18 |
|-------------|-------|-------|-------|-----------|
| Brockton | 1.75% | 2.00% | 2.00% | 2.00% |
| Chelsea | 3.00% | 3.00% | * | |
| Haverhill | 1.50% | 1.50% | 1.75% | NS |
| Lowell | 2.50% | 0.00% | 3.00% | 3.00% |
| Lynn | 2.00% | 2.00% | 2.50% | 2% & 1% |
| New Bedford | 1.00% | 1.50% | 1.50% | 1% & 1% |
| Springfield | | | 2% | 2% & 1.5% |
| Lawrence | 2.50% | | | |

* Chelsea for FY 2017 .5% 7/1/16; 1.75% 1/1/17; .75% 6/30/17

As the City points out, in none of these other communities is there a State Overseer monitoring the City's expenditures. This certainly demonstrates that other communities are not in the same financial condition as the City of Lawrence. These other communities, however, share similar attributes in that that they have high unemployment, high poverty levels, and challenges to their ability to raise revenue (City of Lynn also has an A3 Bond rating the same as Lawrence). A review of the wage increases in these other communities demonstrates that the 9% wage increase over the three-year period of time proposed by the Union is considerably higher than what has been agreed to in these communities. Similarly, the 2.75% increase to base salaries for the three year contract period is considerably lower than what has been agreed to for the relevant time period in these other financially challenged communities.

There can be no question that the City has serious fiscal challenges; after all, it is the only Massachusetts municipality that is being overseen by a State Overseer. This being said, the facts demonstrate that the City's fiscal health is slowly improving. A history of the City's free cash shows:

| <u>Fiscal Year</u> | <u>Free Cash</u> |
|--------------------|------------------|
| 7/1/2015 | -\$2,490,350 |
| 7/1/2006 | -\$15,112,680 |
| 7/1/2007 | -\$12,098,339 |
| 7/1/2008 | Not certified |
| 7/1/2009 | Not certified |
| 7/1/2010 | \$5,443,486* |
| 7/1/2011 | \$4,688,685 |
| 7/1/2012 | \$6,600,818 |
| 7/1/2013 | \$5,839,202 |
| 7/1/2014 | \$9,506,582 |
| 7/1/2015 | \$7,482,819 |
| 7/1/2016 | \$12,166,541 |
| 7/1/2017 | \$14,159,321 |

* State oversight began in 2010.

The City's 2017 free cash level is the highest in more than ten years. A news report dated from December 2017, explaining the City's surplus for FY 2017 reads as follows:

The surplus is equal to 5 percent of the combined \$265 million budget for the city and schools and is the eighth in a row since 2010, when the state allowed the city to borrow \$24 million to bail itself out of several years of deficit spending in return for accepting a fiscal overseer with veto power over its spending and contracts.

Added to other signs of economic recovery, including the five-year capital plans and fiscal forecasts that the city recently began developing with the aid of a Boston financial consultant, the surplus suggests that the day is approaching when the city will take back

control of its spending from the state, Mayor Daniel Rivera said Friday.

"I know if we keep getting year after year double-digit reserves like this one, he'd find it hard to say we're doing the wrong thing," Rivera said about Sean Cronin, who oversees city spending for the state. "In the end, he'll see we're in good financial health and that this administration has been a good steward and set the city up for future self-oversight. I don't want to rush it. I don't think they want to. When the time is right, it will happen."

* * *

Of the \$14.2 million surplus for fiscal year 2017, which ended June 30, just over half came from rolling over some of the surpluses that accumulated in 2016 and earlier years. Another \$4.3 million piled up when property taxes and other collections came in better than expected, although deadbeat taxpayers still owed the city \$2.5 million at the end of the year.

Another \$2.4 million of the surplus occurred when departments underspent their budgets, according to Budget Director Mark Ianello.

Among the departments that returned part of their budgets, Public Works returned \$145,000, Fire returned \$46,000 and Police returned \$30,000, Ianello said.²

It is also significant to consider the most recent Firefighter agreements that were reached while the City was under the review of the State Overseer. There were a number of years in which the parties agreed to no wage increases (FY 2011, 2012 and FY 2013). When the fiscal condition of the City improved, the Overseer agreed to modest wage increases. Specifically, for the most recent three-year period covering July 1, 2012 through June 30, 2015 the parties agreed to wage increases as follows:

² December 3, 2017 article from the Eagle Tribune.

| | |
|--------------|------|
| July 1, 2012 | 0% |
| July 1, 2013 | 2.5% |
| July 1, 2014 | 2.5% |

It also appears that in this 2012-2015 Agreement there were fringe benefit increases in such items as vacation, (providing 6 weeks of vacation after 20 years whereas prior practice provided 6 weeks after 25 years of service), and also increases in amounts paid for academic compensation. In this prior Agreement there were no concessions to existing benefit levels to the extent that are now being sought by the City in this round of negotiations. Moreover, the facts demonstrate that the financial health of the City has improved since the prior Agreement was reached with the prior State Overseer. Accordingly based on the totality of facts the Panel makes the following Award:

AWARD - DURATION & WAGE INCREASES

The Panel Awards wage increases for the three-year period:

July 1, 2015 - \$1,500 flat dollar amount not added to the base
 July 1, 2016 - 2% increase
 July 1, 2017 - 2.5% increase

II. UNION ISSUES

1. Detailed Out Bids

At the present time Lawrence Firefighters are not paid an additional amount if they are detailed out to work at a different fire station in the City from their bid assignment.

UNION POSITION

The Union proposes that Lawrence firefighters be paid \$25 per shift in those instances in which are assigned to

work at a different station from their bid position. The Union estimates that the cost of this new language would be in the range of \$13,000, and that the City can afford this increase. The Union contends that firefighters should be paid this additional sum for the inconvenience of having to work at a different location.

CITY POSITION

The City opposes the Union's position. The City maintains that it is not uncommon for Lawrence firefighters to be assigned to work at different fire stations from their bid assignment, and estimates that it occurs 100 times a month. The City estimates that to grant the Union's proposal would cost approximately \$60,000 a year. The City contends that there is no justification to pay additional sum of money simply because a firefighter performs his or her duties at another Lawrence fire station.

Discussion

There is insufficient justification to grant the Union's proposal. First, it cannot be stated that the proposal sought by the Union is a prevailing practice in other fire departments. Moreover, there is no suggestion that being detailed to different stations increases the work or adds responsibilities beyond those regularly encountered by Lawrence Firefighters. Finally, available funds should be used towards wages for all bargaining unit members.

AWARD - Detailed out Bids

The Union's proposal is not awarded.

2. Vacation Language

Article VIII of the Agreement sets forth the provisions on vacation, describing not only the amount of

vacation time for Lawrence Firefighters but also the process for scheduling vacations.

UNION POSITION

The Union proposes to add language that would allow employees the option to take all or any part of their annual vacation entitlement upon providing the Fire Department with 24 hours notice. The Union maintains that there would be no added cost to provide this contract change.

CITY POSTION

The City opposes the Union's position. The City maintains that because of operational and potential overtime costs it cannot agree to the Union's proposal.

Discussion

There is no evidence to suggest that what the Union is looking for is a prevailing practice for other fire departments. It would certainly appear that allowing firefighters the opportunity to take their vacation whenever they seek to take the time-off, could result in increased overtime costs. There is insufficient justification to alter the status quo.

AWARD - VACATION

The Union's proposal is not awarded.

3. Base Pay Increase (BPI)

Union Position

In the 2010 Agreement the parties agreed that the clothing allowance of \$1,000 was to be rolled into a firefighter's base pay. As part of this Agreement, the parties agreed that this amount would not be included for purposes of calculating premium payments (such as night

differential, overtime, longevity pay). The Union proposes that the restriction that this amount not be used in computing firefighters' premium pay be eliminated. The Union estimates that this change would add an annual cost of \$60,000.

City Position

The City's opposes the Union's position. The City estimates that the cost of the Union's proposal would be approximately \$40,610 per year, or \$121,830 for the three-year agreement. The City argues that when the parties agreed to roll-the amount into base pay they specifically agreed that this amount would not be considered for overtime and other payments. The City states that there is no justification to now include the amount into a firefighter's base pay.

Discussion

The parties when, they agreed to this provision, specifically agreed not to include this payment when calculating various premium pay rate. There is no justification to change the parties' prior agreement and now consider this payment into calculation of premium payments. The status quo should be continued.

AWARD - BPI Payments

The Union's proposal is not awarded.

4. Academic Compensation

Article XXV sets forth the provision for academic compensation for bargaining unit members. Under the terms of the present Agreement there is a cap of \$500 a semester and \$4,000 cap over one's career for certain educational reimbursements. Under the agreement the City reimburses for

registration fees and book expenditures. The City reimburses for book expenditures with no cap.

UNION POSITION

The Union proposes that the City reimburse members for registration fees, books and tuition and all associated costs for Fire Science courses at accredited institutions. The Union maintains that it is in the City's interest to have an educated work force, and that its proposal would encourage further education at minimal costs to the City. The Union estimates that the annual cost would be approximately \$50,000.

CITY POSITION

The City opposes the Union's proposal. The City maintains that Lawrence Firefighters, at the present time, have a very generous level of compensation for academic attainment, and there is no need to increase reimbursement beyond what currently exists in the Agreement.

Discussion

There is insufficient justification to make any changes to this provision at the present time. Specifically, there is no valid argument that the academic reimbursement and the overall academic benefits are deficient when considering the same benefit provided in other communities. The Union's proposal cannot be awarded at the present time.

AWARD - Academic Compensation

The Union's proposal is not awarded.

5. Sick Leave

Under the current Agreement Lawrence firefighters are granted fifteen sick days a calendar year, and there is no limitation on the number of sick days that a firefighter

can accrue. In addition Firefighters have three personal days that they can use during the year, which cannot be carried over into succeeding years.

Union Position

The Union proposes to add a new sick leave incentive that would provide that for each quarter (3 months) that an employee does not use any sick time the would earn one personal day. Under the Union's proposal these personal days could be carried over from year to year.

Employer Position

The Employer is opposed to the Union's proposal. The Employer contends that there is no need to provide for additional time off for firefighters, who now receive three personal days per year. In addition, the City contends that when firefighters take time off, their shifts are covered by overtime, which adds further financial costs to the Department. The City further maintains that no other City bargaining unit has a sick leave incentive program as proposed by the Union.

Discussion

There is insufficient justification to award the Union's proposal. First, it must be stated that under the present system, if employees do not use their annual sick leave, the sick leave is accumulated, and they are paid for the days at the end of their employment. Thus, firefighters are eventually paid for not using their sick leave. Under the Union's proposal employees if they do not use their sick leave, would then get four additional personal days per year. Providing additional time off is an economic benefit as employees are paid for not working. Moreover, for public safety positions, often times absences must be filled by assigning overtime, thus adding further costs. In

addition at the present time firefighters receive three personal days per year; it cannot be said that this is inadequate.

AWARD - SICK LEAVE

The Union's proposal is not awarded.

III. CITY ISSUES

All of the five issues presented by the City that were certified by the JLMC, involve significant concessions or "give backs" in the current benefits previously agreed to by the City and the Union. The City states that other City bargaining units agreed to many of these concessions and contends that the Overseer will not sign off on a new Agreement with the Firefighters unless these concessions are included in this Award. Certainly, the Panel has considered the agreements reached by the other City bargaining units in making its determinations.

There can be no doubt that reducing benefits would ultimately result in cost savings for the City. Nonetheless, this Arbitration Panel is authorized under Chapter 589 of the Acts of 1987, and this statute sets forth various criteria that must be considered by the Panel in making its Award, which include "the hazards of employment" and a "comparison of wages hours and conditions of employment with employees performing similar services", and not only what the other City bargaining units agreed to in this recent round of contract negotiations.³ Interest arbitration is a conservative process and, as stated above

³ The City in its response to the JLMC's jurisdiction of these on-going negotiations raised the question of the JLMC's authority, since the City's finances were under the oversight of the State Overseer. This issue is a matter that is beyond this Panel's authority.

"large gains or major concessions are not achieved in the format of arbitration".

1. Vacations

Article X of the current Agreement provides vacation based on years of service as follows:

| | |
|--------------|---------|
| 1-5 years | 2 weeks |
| 5-10 years | 3 weeks |
| 10-15 years | 4 weeks |
| 15-20 years | 5 weeks |
| more than 20 | 6 weeks |

CITY POSITION

The City proposes to eliminate the sixth week of vacation for those employees who do not have twenty or more years of service as of January 1, 2016. Employees who have reached twenty years of service as of that date would retain their sixth week of vacation. The City states that other City bargaining units in this round of negotiations agreed to reduce the vacation leave for new hires, and firefighters already have more vacation than the City's civilian employees. The City further contends that its proposal to eliminate the sixth week of vacation for those who have not reached that level would save the City money in the future, as with less vacation taken there would be less overtime slots that have to be filled.

UNION POSITION

The Union opposes the City's position. The Union maintains that due to the hazards of the job, six weeks vacation for those firefighters with twenty years of service is reasonable and appropriate. Moreover, the Union contends that for many years Lawrence firefighters have had

six weeks vacation and there is no justification to reduce vacation leave at this time.

Discussion

Lawrence Firefighters, for a number of years, had up to six weeks of vacation. Specifically, the last integrated Agreement for the period of 2003 - 2006 provides for up to six weeks of vacation. In the most recent Agreement covering the period from 2013 - 2015, Robert Nunes, the prior State Overseer, reached agreement with the Union reducing the eligibility for the sixth week of vacation from twenty-five years to twenty years. Since the time when this last Agreement was reached with the State Overseer, the facts show that the fiscal condition of the City has improved. Accordingly, there is insufficient justification to modify the current vacation benefits that were just agreed to with the prior State Overseer.

AWARD - VACATION

The City's proposal is not awarded.

2. Sick Leave

Under Article XIV employees receive fifteen sick days a year, and pursuant to Section 1B they "are allowed to accumulate unlimited unused sick leave." Pursuant to Article XIV Section 3, Lawrence firefighters are paid for one half of their accumulated sick days upon their separation of employment with the Department.

City Position

The City proposes that employees hired after July 1, 2015 would no longer be paid for their accumulated sick leave upon separation from employment. The Employer contends that the current pay for sick leave upon separation is an unfunded and unsustainable cost, that the

liability at the present time is \$1,921,182, and that this amount will increase by \$100,000 each and every year unless there is some limitation placed on this very generous buy-back. The City further contends that all the other bargaining units that reached agreement with the City during this round of negotiations, agreed to stop the payment of unused sick leave upon separation of employment with the City, and also agreed to a cap on sick leave accrual.

Union Position

The Union opposes the City's position. The Union is opposed to creating different benefit levels for members of the bargaining unit that are based upon when they start employment with the City. The Union also states that any financial savings would not be realized for years.

Discussion

A review of contracts for other communities submitted in this proceeding shows the following for sick leave buyback:

Brockton

Retire or death firefighters with 35 days or more paid 50% of sick days payment limited to \$9,900.
Retire or death firefighters with 75 days or more paid 50% of sick days payment limited to \$13,800.

Chelsea - Sick Leave buy back 20% cap of \$13,500

Haverhill - 40% of unused sick leave.

Holyoke - limited to 1,000 hours.

Lynn

Employees hired before June 30 1987 - 50% of unused days
New Employees hired after June 30, 1987 no sick leave buy-back.

Lowell

2012-2105 Agreement new firefighters no buyback of accumulated sick leave.
Current employees 40% buyback - cap of 275 tours.

Springfield - 15% of daily rate.

The facts show that under the current contract provision Firefighters are able buy back their sick leave at 50% of their daily per diem rate; there is no cap on sick leave accumulation, or any cap on amount for sick leave buyback. When reviewing buy-back provisions for other comparable fire departments it must be concluded that Lawrence Firefighters have very generous buy back levels. The facts show that in other communities it is not unusual for employers and unions to have agreed to different benefit levels for new hires. (See Lynn and Lowell cutting off buy-backs for new employees).

The City estimates the current liability to fund the sick leave buy back is at \$1.9 million dollars, with an increased annual liability of \$100,000 a year. Next to pension costs and OPEBS, this presents a significant continuing financial liability for the City. It must also be stated that this is a benefit that does not impact the actual pay that Lawrence firefighters receive while they are in active employment, but is a payout made after one leaves the employ of the Department. Available monies should be used to provide cost of living increases to working firefighters. Accordingly, there is ample justification to modify the sick leave buyout for new hires.

AWARD - SICK LEAVE

The City's proposal should be granted. It should become effective for those new employees hired thirty days after execution of this Award.

3. Night Shift Differential

Under the current Agreement all Firefighters receive a night differential of a percentage of their base pay.

City's Position

The City proposes that for new employees hired after June 30, 2016, the night shift differential shall be 6%. The City states, for example, that the current annual cost is approximately \$709,000 and that if the differential were lowered to 6% the annual cost would eventually be in the range of \$425,000. The City states that reducing the cost of the night shift differential for new employees would eventually save the City money over the long run.

Union Position

The Union opposes the City's proposal. The Union maintains that under the City's proposal Lawrence firefighters, depending upon when they are hired, would be paid differently; new employees would receive less than current employees. The Union contends that Lawrence firefighters no matter when they start their employment are all expected to perform the same duties, and have the same responsibilities. The Union opposes paying bargaining unit members different rates of pay.

Discussion

There can be no question that the City's proposal would result in immediate savings for the City. The City's proposal would pay Lawrence firefighters based on their employment date less money than their colleagues that were hired earlier. It is hard to justify paying firefighters hired after 2016 a significantly lower rate of pay when they also work the same night shifts and perform the same fire duties as firefighters hired before them.

AWARD – NIGHT DIFFERENTIAL

The City's proposal is not awarded.

4. Longevity

Article XXIV is entitled Longevity and was added to the Agreement in 2000. Under this provision, Lawrence firefighters, starting at five years of service and ending at 30 years of service, receive a percentage of salary based on their years of service. For example at 5 years of service it is 2.7%, and it increases each year (except for years 25-29 which is at the rate of 8.5%) to an employee's thirtieth year when the amount is 9%. In the 2007-2010 Agreement, the parties added a new Section to Article XX, a separate longevity schedule, which provides payment of .5% to firefighters after ten years of service, 1% after fifteen years of service, 1.5% after 20 years of service, and a 2% increase after twenty-five years of service.

City Position

The City proposes to amend the provisions of Article XXIV. Under the City's proposal employees hired after 6/30/16 would not be eligible for Article XXIV longevity. For current employees, the City also proposes to eliminate all but steps 5, 10, 20, 25, and 30, and under its proposal the percentages for these levels would not change. The City proposes to red circle current employees who are at the steps to be eliminated. These employees would remain at the eliminated step until they advance to the next remaining step.

The City contends that Article XXIV, even though it is listed as longevity, is really an enhanced step system in which firefighters receive an additional step up to their thirtieth year of employment. The City states that this

longevity program costs over \$440,000 a year and eliminating this benefit for new hires would eventually save the City considerable money. The City also maintains that changing Article XXIV benefits so that employees earn these payments on five-year anniversaries instead of every year would provide immediate cost savings for the City.

Union Position

The Union opposes the City's position. The Union maintains that this is another of the City's concessions that would have firefighters paid different rates of pay even though they perform the same duties. The Union maintains that Article XXIV was agreed to many years ago and should not be altered in this round of contract negotiations.

Discussion

This is another City concession that would have bargaining unit employees performing the same duties but being paid different rates. There is no question that the current longevity program, as stated by the City, has the same impact as steps, in which firefighters receive a small increase for every year of service. It is true that these longevity steps add to the overall wage costs of bargaining unit employees. Although the Panel will not grant the City's proposal, the cost has been considered when determining the overall wage package awarded in this Decision.

AWARD - Longevity

The City's proposal is not awarded.

5. Academic Compensation

Article XXV sets forth the provisions on Academic Compensation. Section 2 of the present Agreement provides that firefighters receive:

| | |
|------------------------------------|-----------------------|
| One to Nine credits | \$10.00 per credit |
| Ten to Twenty four credits | 1.5% of annual salary |
| Twenty-five to Thirty-nine credits | 3% of annual salary |
| Forty to Fifty-nine credits | 5% of annual salary |
| Sixty or more credits | 10% of annual salary |
| One hundred and twenty credits | 15% of annual salary |

CITY POSITION

The City proposes to keep the current credit system, but instead of paying based on a percentage of an employee's salary, the City would pay up to a maximum of \$7,500 per calendar year for 120 credits or more, and prorate this amount for fewer credits. The City estimates that its proposal would save in the range of \$161,000 per year.

UNION POSITION

The Union opposes the City's proposal. The Union contends that firefighters have been paid for academic credits on a percentage basis for many years, and there is insufficient basis to now convert to a flat dollar amount, which is another proposal to lower the compensation for Lawrence Firefighters.

Discussion

The most recent integrated Agreement of the parties was for the period of 2003 - 2006, and at that time employees were paid a percentage of their salary based on the number of credits they have earned. In the most recent Agreement that was reached with the prior State Overseer for the 2013-2015 period, the prior State Overseer did not

lower academic benefits, but actually agreed to increase the percentage amounts, for those with 60 or more credits, to 10%, from the prior rate of 7.5%, and for those with 120 or more credits to increase from 10% to 15%.

As stated above, the City's finances have improved from the time the last Agreement was reached. Accordingly, there is insufficient justification to now change from the current percentage basis for academic attainment to the flat dollar amount proposed by the City.

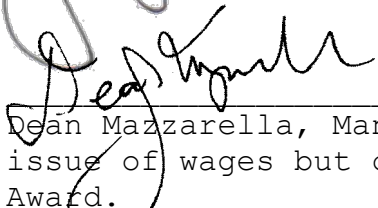
AWARD - ACADMIC COMPENSATION

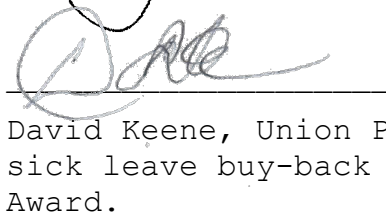
The City's proposal is not awarded.

Conclusion

The Panel has considered the statutory criteria in an effort to balance the interests of the bargaining unit employees, the City, and the citizens of the City of Lawrence.


Gary D. Altman, Esq., Neutral Arbitrator


Dean Mazzarella, Management Panel Member, dissents on the issue of wages but concurs in all other issues in this Award.


David Keene, Union Panel Member, dissents on the issue of sick leave buy-back but concurs in all other issues in this Award.

Dated: December 5, 2018