

**COMMONWEALTH OF MASSACHUSETTS
JOINT LABOR MANAGEMENT COMMITTEE FOR MUNICIPAL POLICE & FIRE
INTEREST ARBITRATION PANEL**

IN THE MATTER OF THE INTEREST ARBITRATION

Between

**NEW BEDFORD FIREFIGHTERS LOCAL 842,
INTERNATIONAL ASSOCIATION OF FIREFIGHTERS**

And

CITY OF NEW BEDFORD

JLMC-20-7968

OPINION

AND

AWARD

The Arbitration Panel members are:

Ira B. Lobel, Esq., Public Panel Member and Chairperson
Dean Mazzarella, Management Committee Member
Matthew Reddy, Labor Committee Member

Appearances:

For the New Bedford Firefighters Local 842, International Association of Firefighters
Leah M. Barrault, Esq. Labor Collaborative, LLC

For the City of New Bedford
Elizabeth B. Valerio, Esq. and Elizabeth K. Paris, Esq.
Valerio, Domminello & Hillman, LLC

Jane Mederios Friedman, First Assistant City Solicitor, City of New Bedford

Elizabeth Treadup Pio, Assistant Solicitor, City of New Bedford

INTRODUCTION

The New Bedford Firefighters, Local 841 IAFF (“Union”) and the City of New Bedford (“City”) (“Union”) are parties to a collective bargaining agreement (“CBA”) that expired June 30, 2019. The parties were unable to reach an agreement for a new contract beginning July 1,

2019. Following mediation and a 3(a) hearing before the Joint Labor Management Commission (“JLMC”) of the Commonwealth of Massachusetts, the JLMC ordered the parties to submit their outstanding issues to this arbitration panel. By letter dated November 24, 2020, this panel was appointed. Hearings were conducted on January 15¹ and March 23, 2021, via Zoom. Both parties were represented by counsel and were given a full and fair opportunity to introduce evidence, present testimony, examine and cross-examine witnesses, and otherwise support their respective positions on the outstanding issues before the Panel. Briefs were received on or about April 30, 2021. On May 6, 2021, the City made a Motion to Strike Exhibit and Media Articles submitted after close of hearing. The Union did not respond to this motion and the Arbitration Panel choose not to consider the motion.

The Panel met in executive session on May 18, 2021, via Zoom and deliberated on each of the outstanding issues. There were numerous follow-up phone calls from the neutral panel member to each of the labor and management panel members and between these two panel members, all in an effort to obtain a unanimous Award.

The Panel has carefully and fully considered all the data, exhibits, briefs, and testimony of the sworn witnesses. The results of those deliberations are contained in this OPINION AND AWARD (“Award”). It should be emphasized that this Award has attempted to get either or both parties in agreement on all outstanding issues.

IDENTIFICATION OF OPEN ISSUES

The parties agreed that the proper duration of this agreement is three years, running from July 1, 2019, to June 30, 2022. The parties also agreed that the following issues are to be

¹ No evidence was presented on the first hearing day when the parties attempted to reach an agreement to avoid an arbitration decision. A subsequent hearing had to be conducted in which all the evidence was presented.

decided by this Panel:

1. Annual wage increases;
2. A Union proposal for a new Step 6 at 4% over the current Step 5;
3. A Union proposal to increase payments for longevity;
4. A Union proposal to modify eligibility for longevity (bands);
5. A Union proposal to increase sick leave payout at retirement from 180 to 250 days;
6. A Union proposal to provide cancer screening (new article);
7. A City proposal to change the education payment structure for new hires;
8. A City proposal to change the light duty work requirements (new article); and
9. A City proposal to civilianize the signal room.

APPLICABLE LEGAL STANDARDS

Chapter 589 of the Acts of 1987, together with the standards promulgated by the JLMC on August 24, 2000, establishes the factors to be considered in any interest arbitration determination. These shall include, but not be limited to the following:

- (1) Such an award shall be consistent with: (i) (I) Such an award 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
- (2) The financial ability of the municipality to meet costs.
- (3) The interests and welfare of the public.
- (4) The hazards of employment, physical, educational and mental qualifications, job training and skills involved.
- (5) A comparison of wages, hours and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours and

² M.G.I/ c. 239 was repealed in 1990.

State of Massachusetts, near the Rhode Island border. New Bedford has a population of about 95,000 people, making it the sixth largest city in the State. Its area is 24.1 square miles. It ranks as the #1 fishing port in the United States, holding this position for the last eighteen years. New Bedford was once considered a mill city; many of the now vacant mills have been converted into residential housing and storage facilities.

In their briefs, the parties focused on different justifications for their respective positions on the salary, step and incentive pay increases. The City focused on its financial instability. The Union focused on the workings of the Fire Department and comparisons of its wages, hours and working conditions to those of other employees in the City and other firefighter elsewhere in the State.

Both groups of comparisons must be evaluated by the Arbitration Panel, giving appropriate weight to each comparison. None are determinative; none can be neglected.

Summary Position of the City

The City stressed how it has struggled to achieve financial stability since the last recession in 2008, resulting in the shuttering of many businesses. Their fragile financial situation was made even more precarious when the COVID-19 pandemic hit.

The City noted its schools and firehouses are some of the oldest in the State and will soon need replacement. Its tax burden is high, while its per capita income is low, making the single-family tax bill as a percentage of per capita income one of the highest in the state. Its commercial tax burden is also high.

The City explained other factors that should be considered in any financial settlement. One of five New Bedford residents was born outside the United States. The unemployment rate reached nearly 25% at the peak of the COVID-19 pandemic. The per capita income was

approximately \$18,410 compared to a statewide average of approximately \$46,000. The property tax rate has increased significantly in comparison to wages; from 2015 to 2021, the property tax has increased by 34% while the per capita income has increased by 21.7%.

The City also referenced some of the financial challenges contained in the school system, including the number of high needs students, number of free lunches, and similar problems. This has added to the financial concerns of the City.

The City stressed, to ensure its future financial security, it must carefully control costs, allocate resources, and make strategic planning decisions. The City noted 75% of its budget represents fixed obligations, leaving only 25% of the operating budget to support City personnel costs and operating expenses. This means the City must be extremely cautious in granting any wage increases to employees.

The City argued that this panel should defer to the financial expertise of City witnesses. It maintained reliance on the Union's sole witness, Kevin Dasey, would be flawed. It would not be prudent, as Dasey suggested, for the City to rely on free cash or monies from the Federal government intended for COVID-19 relief. This would not be a sustainable solution and has been explicitly denounced by the Massachusetts Department of Revenue. It argued that these types of funds should not be used to fund a collective bargaining agreement. Similarly, it maintained it is legally prohibited from using enterprise funds to support the fire agreement. Further, it is prohibited by law from exceeding a 2 ½% property tax increase on City residents.

The City emphasized the insufficient reserves available to fund the Union's proposals. It maintained the funds from the American Rescue Plan ("ARPA") should not be considered a funding source for any wage increase. The City must balance the large increases proposed by the Union with the negative impact such increase would have on the City's Financial Position.

Summary Position of the Union

In contrast to the above examination of the City's finances, the Union focused on the Fire Department and comparisons to other employees within the City and other fire departments located in similar communities. It noted that the Fire Department employs 205 firefighters, most of whom work a twenty-four (24) shift schedule. Fire department personnel are assigned to one of the following five divisions: Fire Suppression, Fire Prevention, Fire Training, Marine, and Fire Alarm. Multiple job functions are performed within these broad categories.

Over the last ten years, the call volume for the Fire Department has steadily increased from 13,593 runs in 2013 to 25,279 runs in 2019. Significantly, structure fires have increased from 394 in 2013 to 1670 in 2019.³ The Fire Department operates out of six stations with a total of nine (9) apparatus. Each station has unique hazards. Firefighters are often the first to arrive on the scene for medical calls and assess; they then treat and stabilize patients prior to the arrival of the Emergency Medical Services division which is a separate municipal entity. As the largest fishing port in the United States, New Bedford has a marine unit with its own unique set of challenges. In addition, New Bedford has three state highways within its borders and services the New Bedford Regional Airport.

In terms of the ability to pay, the Union argued that it had an AA/Staple rating with S&P and showed increases in various fund balances. It noted various General Funds Balances totaled approximately \$90.7 million. It noted some of this money could be applied to salaries.

Equally important to available cash, the Union stressed that firefighters should be compared to policemen, referencing numerous JLMC decisions. It maintained a comparison

³ The Union omitted numbers for 2020, claiming the call volume decreased because of a unilateral change made by Mayor Jon Mitchell to transfer work outside of the bargaining unit. The Mayor's right to take such action is now being litigated before the Massachusetts Department of Labor.

our efforts failed. Accordingly, the neutral chair wrote this award; he viewed the Award as a package knowing each side may agree – and disagree – with some of the items discussed. The panel members could write his rationale for the issue(s) in which he disagreed. Such comments will be added as an addendum to this award.

Examining both briefs very closely, we understand the parties have presented proposals that are far apart on the issues presented. In many cases, neither side appeared to present proposals that are attractive to this panel, particularly regarding the main economic proposals. Both sides avoided presenting economic proposals that would, on their face, be acceptable, or even close to acceptable to the other side or the arbitration panel.

At the start of its discussions, the panel believed a unanimous award was an obtainable goal; this panel has attempted to consider the open issues as a whole and have tried to develop a package including all outstanding issues acceptable to the panel members. Unfortunately, these discussions were not successful and the independent panel member was forced to write his decision.

A discussion of the open issues are as follows:

1. WAGES, STEP and LONGEVITY

The three pure economic issues involve a direct wage increase and modification of the step and longevity benefits. Each should be treated in combination with the others. A larger wage increase may cause a smaller step and longevity increase, or vice versa.

The City proposed the following:

FY 2020: 0%

FY 2021: 0%

FY 2022: 1%

No change to the current contract regarding steps and/longevity

between privates in the New Bedford Fire Department and patrol officers in the New Bedford Police Department (15 years of seniority spanning all levels of education) shows that firefighters lag by 11.7%. This does not include the greater number of hours worked by the firefighters. Overall, it maintained the average policeman made 15.3% more money than the average firefighter. The Union made similar comparisons with firefighters in other communities in the State and reached the same conclusions.

Appropriate External Comparisons

Both sides referenced MGL, c. 23A §3A to determine which communities should be used for external comparisons. The City suggested the original Gateway communities should be used for comparisons; these include the following:

| | | |
|------------|----------|-------------|
| Brockton | Holyoke | Pittsfield |
| Fall River | Lawrence | Springfield |
| Fitchburg | Lowell | Worcester |
| Haverhill | | |

It argued these cities are the most appropriate comparison.

In contrast, the Union argued that the definition of gateway communities is a municipality with a population between 30,000 and less than 250,000. This included 24 various communities throughout the State.

In any comparison, it is appropriate for this arbitration panel to evaluate as much information as possible and then determine which information should be given greater or lesser weight. The panel understands comparisons can be used to help determine an outcome; they should never dictate an outcome. We also understand comparability can be used to achieve the desired result. Further, items other than wages and benefits must be considered including internal comparisons, ability to pay, general economic outlook, etc.

As a panel, we were interested in trying to reach a unanimous decision. Unfortunately,

The Union proposed the following:

FY 2020: 4%

FY 2021: 4%

FY 2022: 4%

Step: add a new step six for members with twenty (20) years of service that will be 4% above the current Step 5.

Longevity: modify the current contract to the following: 9-19 years of service - \$1,000; 19-24 years of service - \$1,500; 24 to 30 year of service - \$3,000; 30 to 35 years of service - \$3,500; and 35 years or more - \$4,000.

Summary Position of the City

The City argued their wage proposal is in line with increases received by other City units.⁴ Considering the pandemic, the wage proposed by the City is fair and an increase that is affordable. Its proposal would require an increase of \$159,709 over the contract period, within the limits of what the City could offer. It would not require the use of non-recurring, one-time money to fund the increases and would not further burden the City's residents by requiring significant increases in property or commercial taxes.

The City argued the wage increase demanded by the Union is simply unaffordable and well beyond monies received by any of the other units within the City. It also would require the City to dip into funds that are intended to be used for emergencies and not for recurring expenses such as wages.

The City maintained an additional 4% step is similarly unaffordable. Given the large percentage of firefighters who would benefit from the additional step, it would result in a 9.2% increase wage cost in the first year of the contract for many firefighters, combining wage and step cost. This is not only unaffordable, but unreasonable and unrealistic. It is not comparable

⁴ Most city units, including schools, settled before the onset of the COVID-19 pandemic.

conditions of employment of other employees performing similar services and with other employees generally in public and private employment in comparable communities.

- (6) The decisions and recommendations of the factfinder, if any.
- (7) The average consumer prices for goods and services, commonly known as the cost of living.
- (8) The overall compensation presently received by the employees, including direct wages and fringe benefits.
- (9) Changes in any of the foregoing circumstances during the pendency of the dispute.
- (10) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.
- (11) The stipulation of the parties.

Any decision or determination resulting from the mechanism or procedures determined by the committee if supported by material and substantive evidence on the whole record shall be subject to the approval by the legislative body of a funding request as set forth in this section, binding upon the public employer and employee organization...; and provided, further, that the scope of arbitration in firefighter matters shall not include the right-to appoint and promote employees. Assignments shall not be within the scope of arbitration; provided, however, that the subject matters of initial station assignment upon appointment or promotion shall be within the scope of arbitration. The subject matter of transfer shall not be within the scope of arbitration, provided however, that the subject matters of relationship of seniority to transfers and disciplinary and punitive transfers shall be within the scope of arbitration. Notwithstanding any other provisions of this act to the contrary, no municipal employer shall be required to negotiate over subjects of minimum manning of shift coverage, with an employee organization representing municipal police officer' and firefighters. Nothing in this section shall be construed to include within the scope of arbitration any matters not otherwise subject to collective bargaining under the provisions Of Chapter one hundred and fifty E of the General Laws....

BACKGROUND OF COMMUNITY AND FIRE DEPARTMENT

The City of New Bedford is located in Bristol County in the south-eastern part of the

to the police contract since the police require 28 years of service and have only a 3% benefit for Step 5A. The City also noted that the police exchanged light duty language for this benefit.

The City asserted the Union's proposal on longevity would increase the current benefit by anywhere from 82% to 300%. It is also significantly higher than the police longevity payments which max out at \$2,500 after twenty-five years of service.

Summary Position of the Union

The Union argued its wage proposal is reasonable because its compensation is less than other firefighters in comparable communities. It maintained that New Bedford firefighters makes 12.8% less than a similarly situated 15-year firefighter/EMT in comparable communities. It also maintained its wage proposal is justified based on comparisons with police and school employees in New Bedford.

Similarly, its step proposal would put New Bedford firefighters more in line with New Bedford police officers. It noted that the 2019 Memorandum of Agreement between the City of New Bedford and the New Bedford Police Union created a new step 5A for members with twenty-eight years of service that is 3% above Step 5. In that agreement, an officer's rank differential is based on Step 5, giving employees of all ranks the benefits. The higher benefit for firefighters is an attempt to lessen the current differential between police and fire and catch up with external comparisons in comparable communities.

The Union also asserted that its longevity proposal will help narrow the gap between the New Bedford police and the City's external comparisons.

Discussion of Wages, Steps and Longevity

It should be understood total compensation involves a combination of wages, steps, and longevity. In some cases, it may include health insurance and retirement. A superb benefit in

one area may be justification for a lower benefit in another area.⁵ Negotiators and decision-makers must look at the combination of all economic benefits and not focus on just one.

In the current case, wages, steps, and longevity are inextricably interconnected. An increase to one will have an impact on an increase (or lack thereof) to another of the issues. The size of these increases must be considered. In addition, another significant variable in this case is the civilianization of dispatch: the Union seeks additional salary to allow the City this opportunity. To obtain an acceptable award, the neutral panel member must find a balance between all outstanding issues, with particular emphasis on the key items of wages and civilianization of dispatch.

In addition, the Union has maintained its wages lag far behind the police and other firefighters in comparable communities. Even if it is assumed this argument is correct, the reality was not corrected overnight. It happened over a period of years. It cannot be equalized immediately and maybe not ever. Bridging this reality, if it does exist, may take years to correct and may never be fully equalized. As noted above, it is sometimes difficult to make accurate comparisons, given the emphasis each side may put on various issues. For example, if the police put heavy emphasis on steps, it may mean percentage wage increase could be reduced. This does not mean the firefighters have to do the same thing. The entire economic package must be examined.

In addition, there can be no question the City faces highly unusual financial challenges and uncertainties. COVID-19 makes these challenges and uncertainties even more problematic. Money for any of the wage increases should not come from money reserved for one-time

⁵ The easiest example of this is health insurance: over the years, each member of the panel has observed a union and employer collectively trading a higher health insurance percentage co-pay (on the part of the employee) for a higher wage increase, or a lower insurance co-pay (on the part of the employee) for a lower wage.

expanses or is contained in similar types of reserved fund.

At the same time, firefighters should receive wages and benefit increases that are consistent with other wages and benefit increases both in New Bedford and in comparable communities. As first line providers during the COVID pandemic, they should be compensated appropriately. It must be understood, however, such comparisons can yield highly different results, depending on which departments in the City are considered comparable and which other cities in the state are considered equivalent.

It should be noted the Union's proposal on step and longevity are far in excess of what they currently enjoy or even what the police currently have in their collective bargaining agreement. These two provisions should be comparable for both the police and firefighters.

However, with consideration as to the cost of both step and longevity and the City's financial condition, these items will be phased in over the life of the contract. This will give the City time to prepare for their inclusion in the contract. The Firefighters will permanently receive the benefit.

After carefully reviewing the information received, the arbitration panel unanimously rules that the total wage component should be increased in the following manner.

Award

- a. **Wages.** The firefighters shall receive the following increases:
 - Effective July 1, 2019: 2%
 - Effective July 1, 2021: 2%
 - Effective July 1, 2022: 2%
- b. **Step.** Effective June 30, 2021, add a new Step 5A for firefighters who have twenty-eight years of service in the New Bedford Fire Department. Step 5A shall be 3% above Step 5. The rank differential for Lieutenants, Captains and District Chiefs will be based on Step 5, not Step 5A, unless the Lieutenant, Captain and District Chief has 28 years or more service in the New Bedford Fire Department.

- c. **Longevity.** Effective June 30, 2022, replace Article 38 with the following:
Effective June 30, 2022, firefighters with 10 through 19 years of service as of December 31 of the calendar year will receive \$1,000.00. Firefighters with 20 through 24 years of service as of December 31 of the calendar year will receive \$1,500.00. Firefighters with 25 years of service as of December 31 of the calendar year will receive \$2,500.00.
Employees will be paid their annual longevity increments on the second pay day in December each year. Upon termination or death, employees or their heirs shall receive their full longevity increment for the year of such termination or death.⁶

2. SICK LEAVE BUYOUT

The current payout for unused sick leave is contained in Article 23 of the CBA. Currently, employees at retirement who have at least 75 unused days shall be paid \$50 per day up to a maximum of 180 days. Employees who do not have 75 days shall be paid for all unused sick leave in excess of 30 days. Lieutenants, captains and district chiefs shall be paid a proportionate amount.

The Union proposed to add the following categories: from 181 to 220 accumulated days, payment at a rate of \$70.00 per day; from 221 to 250 accumulated days payment at a rate of \$75.00. The Union argued their proposal was comparable to the police and should be adopted.

The City maintained the Union's proposal amount to a 39% total benefit increase and was simply unaffordable, especially when combined with the Union's wage proposal. It also suggested it is more generous than the police agreement.

Discussion

It could be legitimately argued the contract provisions regarding sick leave buyout for police and fire should be the same. If one carefully evaluates the current provisions in both contracts, there are two fundamental differences: the fire contract pays for up to 45 days for

⁶ The language for both step and longevity mirrors the language contained in the Police collective bargaining agreement. The only difference is the effective date.

those employees who had less than 75 accrued days at retirement; the police contract does not contain a benefit for employees with less than 75 days accrued sick leave; it has better benefits for those policemen who have accumulated more than 180 days.

This panel has no way of determining which approach is better for both the firefighters and the City. We could guess the cost to the City for the two different approaches is probably about the same, but it would be an uneducated guess.

Our decision will make the parties evaluate the cost of both the current contract and the cost if police contract language was adopted. This should be analyzed over the last three years. Once this is done and if the cost is approximately the same, the Union shall have the choice of which contract they would prefer: the current firefighter contract or the current police union contract. If the compared costs are 20% more or less expensive for the City, the current language shall continue unchanged. If the cost is less than 20% different either way, the Union will have the right to chose between the two different approaches.

The firefighter proposal, as currently formulated, is rejected.

Award

Within 30 days of this award, the City and the Union shall compare the costs of following the police versus fire contractual provisions over the last three years. If the cost of using the police language is within 20% of using the current language, the Union will have the right to decide whether the language contained in the new agreement shall be the same as currently in the firefighter contract or shall be changed to the language in the current police contract. If the cost differential is more than 20% different (plus or minus), the language shall remain the same.

3. CANCER SCREENING

The Union proposed adding new language for cancer screening. It asserted such language is currently being used by the Boston Fire Department. Further, it claimed it is not currently covered by the health insurance plans offered to New Bedford Municipal employees.

It referenced numerous firefighters who have or are currently battling cancer.

The City observed a lack of information provided by the Union regarding this proposal. At the hearing, there was a lack of specificity regarding this proposal. It noted the City currently pays 75% of the health insurance premium which covers screenings for every cancer listed by the City. It believes the City satisfactorily covers screenings through the health insurance.

Discussion. From everything this panel has read, including significant input from the firefighter representative, firefighters may be more susceptible to cancer than employees in other professions. At the same time, the health insurance program should safely protect employees from cancer if diagnosed at the proper time. This simply means the City and the Union working together with the health care providers should develop a training program to help firefighters identify various symptoms that may be a prelude to cancer. Firefighters can then ask for the appropriate screening/treatment from their health care providers. This will often be covered by health insurance. The initial action should be taken by the firefighter, either at his/her yearly physical or when he/she observes an unusual symptom(s).

Award.

The parties shall jointly develop training to help firefighters identify health symptoms that may be an early indication of cancer.

4. EDUCATION INCENTIVE FOR NEW HIRES

The current contract requires a payment of 5 cents per credit hour for each college credit earned. This money is added to the hourly rate paid to each firefighter.

The City proposed changing this format for new hires to a dollar amount equivalent to the same amount of money. The money would be paid twice a year.

The Union opposes this proposal, claiming the City provided no justification.

Discussion

Information provided by the City shows that all other units in the City have the same type of lump sum payment. There is no justification for the firefighters to be treated any differently. Additionally, while this may have an impact on overtime (the lump sum will not be included in the hourly rate), it will also be a forced saving method for employees. Getting a lump sum of over \$3,000 or \$6,000 twice a year may be beneficial to many employees, especially around the holidays.

Eliminating the cents per hour rate should be beneficial to the budget office. The panel could assess how difficult it would be to change wages on a per credit hour basis. It would also encourage firefighters to obtain a degree, a goal beneficial to both firefighters and the City.

For all the above reasons, the City's proposal shall be adopted.

Award

For any new hire after the date of this award, a firefighter with an associate's degree in fire science shall receive \$6,552 per year; those with a bachelor's degree in fire science shall receive \$13,104 per year. Half of these payments shall be paid on or about June 15; the other shall be paid on or about December 15.

5. LIGHT DUTY

Currently, a firefighter does not return to work after an on-duty injury until the City's physician determines he/she is fit to perform all the duties consistent with his/her position.

The City seeks to return firefighters injured on duty to work as soon as medically possible and consistent with any limitations the firefighter has. It argued a firefighter may be able to perform some work, but unable to perform all the duties of the job. The City sought to provide these firefighters with an opportunity to return to work in a light duty capacity. This

proposal would provide suitable work for firefighters who are physically able to report to work in some capacity. This would require a firefighter who is physically capable of doing some work (office work, inspections, etc.) to perform job functions, consistent with his/her medical limitations. It would also avoid compensating these same firefighters for doing absolutely no work for the entire duration of their leave, which could be a long period of time.

The Union argued against the adoption of such language. It maintained the City presented no data to justify the adoption of such language. It pointed to numerous contracts from comparable departments that do not contain similar language. It also argued it would be inappropriate for a City physician to determine a fire fighters' fitness for light duty without a course for appeal. This is done in several external comparisons.

Discussion

Numerous on-the-job injuries should allow the employee to resume many job duties but would prevent an employee from resuming all normal job functions. Requiring an injured employee to return to work helps not only the employer staff various functions but also the employee who is able to become engaged in some job functions that would not be impacted by his/her on-the-job injury. Obviously, this would depend on a case-by-case examination of the job and the injury. Most employers, regardless of the industry, have some mechanism to require employees injured on the job to return to work in a limited capacity, consistent with appropriate medical examination. Requiring an employee to do light duty is common practice in most locations.⁷

The police in New Bedford agreed to such a proposal in the last collective bargaining agreement. There is no justification for the firefighters not to agree to similar language. The one

⁷ This would not have been an issue in New York State, where light duty is uniformly required by law.

criticism of the police language that this panel finds compelling is an absence of an opportunity for the firefighter to appeal the decision of the City physician. A simple solution would be to have a mutually selected doctor make the final decision in the event the City physician and the employee's physician disagree.

Award

The language of the police contract should be adopted with the addition of a voluntary examination by the firefighter's physician. In the event the firefighter's doctor does not agree with the City doctor, the two doctors shall appoint a third doctor to make the final decision. The parties shall develop the final language for such provision. In the event they cannot work out appropriate language, they shall ask the arbitrator in this matter to write appropriate language.

6. CIVILIANIZE THE SIGNAL ROOM

The City proposed to civilianize and centralize the Department's dispatch center. Currently, when fire emergency calls are received by the City, the signal room dispatches the fire apparatuses to emergency scenes. Currently, there are nine (9) firefighters and one (1) lieutenant assigned to the Dispatch Center. The firefighters are not specifically trained to work in the dispatch center; the City intends to redeploy them to firefighter work in one of the other Department's units. In place of these firefighters, trained civilians will work as dispatchers in the signal room.

The City noted the firefighters do not receive dispatch training in the academy. It maintained that New Bedford is one of only two gateway cities that does not have a civilian dispatch center.

The Union was concerned about the lack of a transition plan to move toward a civilian dispatch center. It further stated that no details were given about the structure and/or success of such civilian dispatch centers in the external communities. It maintained that, without proper

training and familiarity with the job, a fire civilian dispatcher could be highly dangerous. It stated that until the City can produce a concrete plan for a transition of fire dispatch to civilians, the Panel should reject this proposal.

Discussion

This issue has been extremely difficult for the Chair and the Panel. The Chair of this committee resides in New York State, where civilians handle dispatch for both police and fire in almost all situations. He could not envision this transition as a problem. The City saw this as a more efficient and cost saving approach, particularly when dispatch could be done in concert with the police. The Firefighters saw this as both dangerous if done improperly by civilians as well as a potential loss of jobs.

The concerns of both sides are real and problematic. For this reason, the neutral chair tried to obtain unanimous award that tries to balance both economic increases (wages, step, and longevity) with the Union's concession on this issue.

In any transition, requisite training for civilians is essential. Such training and transition are a management right and responsibility and should be considered as such. Management should have the good sense to consult with the Union and dispatchers in other groups in the City (police) to be the transition is done properly and safely. As noted in the hearing and in the briefs, such transition has been done in the police department. There is no reason to believe the transition could not be accomplished in the fire department. With the City's lead, the parties should be able to work cordially to make sure it is accomplished safely.

Award

The City language should be adopted.

SUMMARY OF AWARD

The Panel recognizes that this Opinion and Award is the result of an analysis of all outstanding issues. This Award contains the Panel's best judgments as a balance between all outstanding items. While there are certain individual items that both the Employer and Employee Organization Member may have changed individually; reservations on certain items have been eliminated in the context of an overall and total package. Accordingly, the Panel unanimously agrees with all the provisions as articulated in this Opinion and Award.

These elements are articulated below:

1. COMPENSATION

A. WAGES

- i. Effective July 1, 2019 - 2%**
- ii. Effective July 1, 2020 - 2%**
- iii. Effective July 1, 2021 - 2%**

- B. STEP.** Effective June 30, 2021, add a new Step 5A for firefighters who have twenty-eight years of service in the New Bedford Fire Department. Step 5A shall be 3% above Step 5. The rank differential for Lieutenants, Captains and District Chiefs will be based on Step 5, not Step 5A, unless the Lieutenant, Captain and District Chief has 28 years or more service in the New Bedford Fire Department.

- C. LONGEVITY.** Effective June 30, 2022, replace Article 38 with the following:
Firefighters with 10 through 19 years of service as of December 31 of the calendar year will receive \$1,000.00. Firefighters with 20 through 24 years of service as of December 31 of the calendar year will receive \$1,500.00. Firefighters with 25 years of service as of December 31 of the calendar year will receive \$2,500.00.
Employees will be paid their annual longevity increments on the second pay day in December each year. Upon termination or death, employees or their heirs shall receive their full longevity increment for the year of such termination or death.

2. SICK LEAVE BUYOUT

Within 30 days of this award, the City and the Union shall compare the costs of the two contractual provisions. If the language is within 20% of each other, the Union

will decide whether the language contained in the new agreement shall be the same as currently in the firefighter contract or shall be changed to be the same as the current police contract. If the cost differential is more than 20%, the language shall remain the same.

3. CANCER SCREENING

The parties shall jointly develop training to help firefighters identify health symptoms that may be an early indication of possible cancer.

4. EDUCATION INCENTIVE FOR NEW HIRES

Any new hire after the date of this award, a firefighter with an associate's degree in fire science shall receive \$6,552 per year; those with a bachelor's degree in fire science shall receive \$13,104 per year. Half of these payment shall be paid on or about June 15; the other shall be paid on or about December 15.

5. LIGHT DUTY

The language of the police contract should be adopted with the addition of a voluntary examination by the firefighter's physician. In the event the firefighter's doctor does not agree with the City doctor, the two doctors shall appoint a third doctor to make the final decision. The parties will work out the final language for such provision. In the event they cannot work out appropriate language, they shall ask the arbitrator in this matter to write appropriate language.

6. CIVILIANIZE THE SIGNAL ROOM

The City language should be adopted.

The Arbitration panel worked hard to award a unanimous decision. Unfortunately, this did not happen. This is the best award we could achieve with as few dissents as possible.

Ira B. Lobel 6/9/21 Accepts Award in its entirety X
Public Panel Member and Chairman
~~Rejects the following provisions~~
~~-Explanation Attached-~~

Dean Mazzarella 6/9/21 Accepts Award in its entirety
Management Committee Member
~~Rejects the following provisions~~ X
Explanation Attached

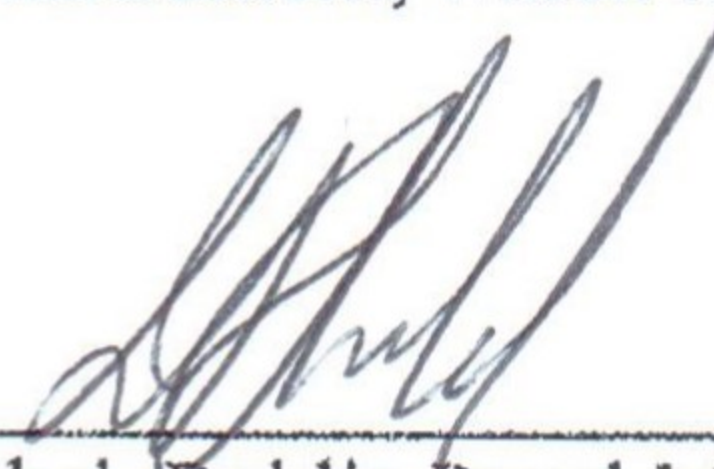
Matt Reddy 6/9/21 Accepts Award in its entirety X
Union Committee Member
~~Rejects the following provisions~~
Explanation Attached

AFFIRMATION

STATE OF NEW YORK)
COUNTY OF ALBANY)

I, Ira B. Lobel, do hereby affirm upon my oath as a member of the Tripartite Panel that I am the individual described in and who executed this instrument, which is my award.

Date: June 9, 2013



Ira B. Lobel, Public Panel Member and Chairperson

STATE OF MASSACHUSETTS)
COUNTY OF)

I, Dean Mazzarella, do hereby affirm upon my oath as a member of the Tripartite Panel that I am the individual described in and who executed this instrument, which is my award.

Date: June 4, 2021

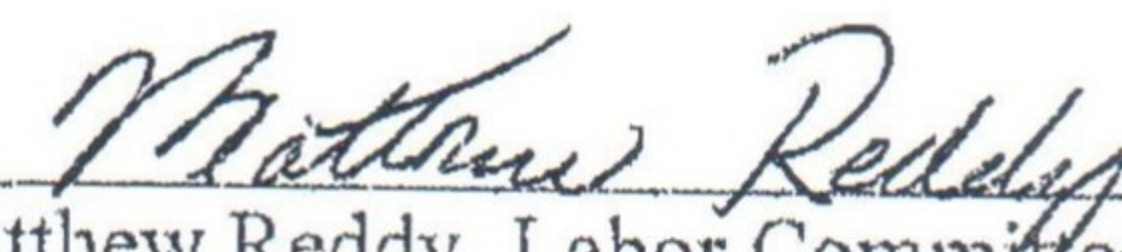


Dean Mazzarella, Management Committee Member

STATE OF MASSACHUSETTS)
COUNTY OF)

I, Matthew Reddy, do hereby affirm upon my oath as a member of the Tripartite Panel that I am the individual described in and who executed this instrument, which is my award.

Date: June 9, 2021



Matthew Reddy, Labor Committee Member

COMMENTS BY MEMBERS OF THE TRIPARTITE PANEL