IN THE MATTER OF
ARBITRATION BETWEEN

SEEKONK FIREFIGHTERS LOCAL 1931, IAFF, AFL-CIO
and

TOWN OF SEEKONK

Interest Arbitration
Case No. JLMC-16-5505

Arbitration Panel: Beth Anne Wolfson, Neutral Arbitrator
Matt Reddy, Fire Representative
Ted Alexiades, Management Representative

Appearances:

For the Town: Joseph S. Fair, Esq.
KP/Law

For the Union: Leah Marie Barrault, Esq. & Mark Macchi, Esq.
Pyle Rome Ehrenberg, PC

Decision and Award
By the Arbitration Panel

Background

The Town of Seekonk (Town) and the Seekonk Firefighters Local 1931, IAFF, AFL-CIO (Union) are parties to a Memorandum of Agreement (MOA), dated July 10, 2013, carrying forward through June 30, 2016, except as modified by the MOA, the terms of the parties' collective bargaining agreement (CBA) that expired June 30, 2013. The Union represents a bargaining unit composed of approximately twenty-eight (28) full-time firefighters, four (4) lieutenants, and two (2) captains.[1] The Chief is not part of the bargaining unit. As of 2002, all firefighters in the Town were required to be paramedics. Of the thirty-two currently employed

[1] According to Chief Michael Healy, at the time of the hearing the Town was in the process of filling two of these firefighter positions, which were vacant.

firefighters, twenty-four (24) firefighters, two (2) lieutenants, and one (1) captain were Paramedics.[2] The remaining two (2) firefighters, two (2) lieutenants, and one (1) captain, who were grandfathered in, are EMT Basic. The firefighters are divided into four groups, A-D. Two groups have seven firefighters and one lieutenant each, and two groups have six firefighters and one lieutenant each.[3] The normal workweek for the four groups is an eight (8) day cycle of 42-hours worked, comprised of a 10 hour day, a 10 hour day, a 14 hour day, a 14 hour day, and four (4) days off. The two administrative captains - one for operations and one for fire prevention - work Monday through Friday, 7:00 AM to 2:30 PM. The Town operates two fire stations and an Advanced Life Support EMS ambulance service, all staffed by the firefighters. A third facility is used for storage only. At the Headquarters or Main Station, there is an engine, a ladder truck, a brush truck that is operated during the brush season, and a rescue vehicle. Four firefighters are usually assigned per shift to this station: two on the engine and two on the rescue truck, or the ladder truck if the call necessitates that vehicle. At the Banna or Pine Street Station there is an engine and a rescue vehicle, but no ladder truck. Two firefighters are usually assigned to this station and will take out the engine or the rescue vehicle depending on what is needed. From January through September 17, 2017, the Department responded to a total of 2,245 calls, 1,464 of which were medical calls. The Town is located in Bristol County, has a population of approximately 14,371, and is about 18 square miles in size. The municipalities bordering Seekonk are: Attleboro; Rehoboth; Pawtucket, Rhode Island; and East Providence, Rhode Island.

On September 19, 2016, the Union filed a petition with the Massachusetts Joint Labor Management Committee (JLMC). After a subcommittee of the JLMC held a hearing with the

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[2] According to Chief Healy, two of the twenty-four firefighters, who are required to become Paramedics, were in the process of being certified; one was still in school and one needs to take his test.

[3] It appears the two firefighter positions in the process of being filled at the time of the hearing would bring the complement of firefighters in each of the four groups up to seven.

parties on the issues in dispute, it directed the parties to proceed to arbitration before a tripartite panel. By letter dated May 15, 2017, the undersigned neutral was appointed by the JLMC to serve as Chairman of the Arbitration Panel. The Management member of the panel was JLMC Committee member Ted Alexiades, and the Union member was JLMC Committee member Matt Reddy.

An arbitration hearing was held on September 19, 2017 and October 13, 2017, before the tripartite panel. At the hearing, the parties were given full opportunity to present evidence and make arguments on their outstanding issues. Both parties submitted their briefs electronically to the panel by the deadline of December 13, 2017, on which date this Arbitrator electronically exchanged the briefs for the parties.

Issues in Contention

Although duration was one of the issues listed by both parties, the parties are in agreement that the award should provide for a three-year CBA effective from July 1, 2016 to June 30, 2019, therefore, the panel will acquiesce to their joint position on duration.

In addition, the parties agreed that an award would be rendered on each of the following issues:

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Wages – Article 8, Section 2

The parties' MOA, dated July 10, 2013, carried forward through June 30, 2016, except as modified by the MOA, the terms of the parties' collective bargaining agreement (CBA) that expired June 30, 2013. Wages are addressed in Article 8, Section 2 of the expired agreement, as modified by point 2 of the MOA.

Town's Position

The Town proposes wage increases of 1.5% in FY17, FY18, and FY19. According to the Town, its wage proposal reflects the uncertainty of the economic outcome of this case given the significant increase the Union is seeking in the current Paramedic stipend and its pursuit of the addition of a significant longevity benefit. Absent those, the Town asserts it would have proposed a higher base wage increase similar to what was granted go the Town's police union. All the Town's bargaining units received a 2% wage increase for FY17. With respect to FY18 and FY19, only the police, supervisory, and clerical units have settled their contracts beyond FY17. For FY18 and FY19, the police settled for 1.75% and 1.75%, respectively. While they did also receive an increase in the education benefit for non-Quinn Bill eligible officers, they agreed to the elimination of their sick leave incentive benefit and accepted lower base wage increases than the Union seeks. Furthermore, the education benefit only affected about half of that bargaining unit, while the sick leave benefit elimination and lower wages affected all the members of the unit. The Clerical Union settled for 2.25% in each of FY18, FY19, and FY20. The Supervisory Unit settled for 2% in FY18, 2.25% in FY19, and 2.25% in FY20. Neither of

these unions received other financial benefits like the firefighters are seeking. At the time of this matter, the DPW and Library Units had not settled their contracts with respect to FY18 and FY19. When considering the impact of the Union's proposed wage increase of 4% for FY18 and FY19 in connection with the Town's argument on ability to pay (see below) the Panel should keep in mind that each of the Town's unsettled unions will presumably be seeking base increases that are at least equal to what is ultimately awarded to the firefighters.

With respect to the comparison between the Towns' firefighters and police officers, the Town asserts the Union's analysis is flawed because it compares the FY19 police officer pay rates to the FY16 firefighters pay rates. As a result, the Union fails to take into account that by FY19 firefighter rates will have increased, at a minimum, the base wages by 1.5%/1.51%/1.5% as the Town has proposed. In addition, the Union's comparison of police and firefighter hours worked in a given year is not a reliable measure because it fails to account for the firefighters' down time during their shifts. From the Town's perspective, both police and firefighters have important but different sets of public safety duties, as well as substantially different work schedules, and the Union did not offer any evidence to support the contention that the additional hours firefighters work throughout the year are comparable to the other hours they work and to those being worked by police officers.

The Town contends, on the other hand, that its own comparative analysis, which looked at the total compensation packages for its patrol officers and firefighters irrespective of the number of total hours worked in a year, and used the same point of measure, i.e., FY16, demonstrates that firefighters without an educational degree receive approximately $3,000.00 per year more in overall compensation than police officers who do not possess a degree. At the associate's level, firefighters earn slightly more than non-Quinn Bill eligible police officers, but

slightly less than Quinn Bill eligible officers. It is not until one reaches the bachelor's degree level that both Non-Quinn Bill and Quinn Bill eligible officers out earn their firefighter counterparts. Similar results are found at the sergeant and lieutenant levels, with fire lieutenants without a degree earning a higher total compensation package that police sergeants, while the latter edges out the former at the associate's and bachelor's degree levels. Any disparity between total compensation received by firefighters and police officers at any rank is directly attributable to the differences in the education benefit that they respectively receive. It is important to note that the Union did not propose an education benefit increase during negotiations or part of these arbitration proceedings. If the Panel grants an across the board increase in base wages as a means of adjusting the total compensation gap at the higher educational levels, it would be simultaneously increasing the amount by which non-degreed firefighters already out earn police officers without a degree.

The Town's proposals also take into consideration the needs of the Town and its Fire Department with respect to the level and quality of services the Department is able to provide. The Department currently operates out of two fire stations – Main Station and Pine Street or Banna Station, with a third facility used only for storage. There are four staffing groups: two with seven firefighters and one lieutenant; and two with six firefighters and one lieutenant.[4] The Department operates on an eight day work cycle with firefighters working two ten-hour shifts, then a day off, two fourteen-hour shifts, and then three days off. Given the current staffing, each shift is staffed with less than eight employees 50% of the time. If a firefighter takes a day off for sick, vacation, personal, or other reasons, the Department operates with six firefighters in a group or maintains at seven with overtime. In addition, when there are eight firefighters working, four

[4] The Chief testified that he expects to hire two firefighters within the month to bring the latter two groups up to seven firefighters.

are assigned to the engine and ladder at Main Station and four on the engine and rescue at Banna Station. If firefighters are out sick or on injury leave, only two firefighters are assigned to Banna Station, bouncing between the engine and rescue depending on the nature of the call. Moreover, 20% of the staffing at Banna Station is done on an overtime basis. At current staffing levels, the Department's overtime costs in FY16 were over $270,000.00, but dropped to approximately $250,000.00 in FY17. The Town notes the drop in overtime costs was attributable to an increase in staffing to eight per group, which subsequently decreased again due to Department resignations.

In an effort to serve the Town more efficiently and effectively, the Chief and the Town are undertaking a plan to increase staffing and build a new fire station. As part of this plan, four firefighters will be hired in January of 2018, in addition to the two the Chief planned to hire within a month of the arbitration. According to the Chief, it takes one year to hire and train a new firefighter, so these new firefighters will not be fully functioning until at least January of 2019. At that time, all groups will have increased to nine under the present staffing structure. To support three stations, the Chief would change the staffing structure to four groups of eleven, which would necessitate hiring additional firefighters. Main Station would operate an engine, rescue, and ladder with three firefighters on the engine, two on the rescue, and one from the engine on the ladder. Banna would operate an engine and rescue with two firefighters on each, and the new South Station would operate an engine or rescue with two firefighters. Under this scenario, the Chief would employ a minimum manning of nine, which with eleven in a group allows for two absences on any given shift without the need to backfill on an overtime basis.

The new fire station would be located in the south end of Town. The Town contends the need for this station is supported by the Department's review, which shows 50% of the overall

call volume comes from the areas south of Route 44. In addition, the response time for a vehicle fire in the North and central districts of the Town is 1.7 minutes, while the response time in the South district is 7 minutes. The response time for public assistance in the North and Central districts is 5.81 minutes, while the response time for the South district is 15 minutes. Furthermore, the Town's volume of calls has steadily increased over the past few years, resulting in the Town having to seek mutual aid from surrounding communities, including transports. The Chief estimates the transports could have resulted in approximately $213,400.00 in revenue for the Town over three years if the Department had additional staffing.

While there are substantial costs associated with the Town's hiring and South Station plans, such plans would provide substantial benefits to the Town, reducing response times to areas south of Route 44 and reducing the number of calls for any one particular apparatus, thereby increasing the safety and protection of its residents, and the firefighters. It will also reduce the Town's overtime costs. In light of these benefits, the Town requests the Panel take into account these plans when considering the Town's financial position and ability to pay.

Finally, the Town argues virtually all of the categories contained within the Fire Department's budget are affected by a base wage increase. Other than the EMT/paramedic stipends and the uniform allowance, all categories are tied to the base wages in some way and would have to be increased in connection with any base wage increase that is given. Under the Town's proposed 1.5% base wage increase in each of FY17 through FY19, there would be an additional cost of $27,808.40, $56,033.93, and $84,682.84, respectively, or a three-year total of $168,525.17. In addition, the Town would have to cover $84,682.84 in recurring wage costs attributable to these increases in future fiscal years. These figures are exclusive of increased overtime costs that would be incurred due to these wage increases.

The Town contends the current total of the annual salaries of the bargaining unit is $1,853,893.39. The Union's base wage proposal of 4% would result in the total base salaries alone jumping to $1,928,049.13 in FY17, $2,005,171.10 in FY18, and $2,085,3767.94 in FY19, or a cost of $456,918.39 over three years. Moreover, by FY19 he total base salaries would have risen by $231,484.55, which amount the Town would be required to fund in the following fiscal years. When considering the Union's proposal in conjunction with its proposed stipend increase, stipend roll-in and longevity proposals, the costs are even more astronomical, i.e., $165,628.70 for FY17, $257,706.47 for FY18, and $349,902.68 for FY19. These figures are more than four times the costs of the Town's proposals.

The Town asserts its fund balances are not a viable funding source for the award sought by the Union. With respect to Free Cash, it is a financial position as of a certain date and is not a recurring revenue source. According to the Town, the DOR recommends against using Free Cash to fund recurring expenses, such as base wage increases. In addition, the Town's stylization account is a "rainy day fund" that is designated to protect a town against unexpected one-time expenses. The DOR recommends against using stabilization funds for recurring expenses. It also recommends a town maintain a stabilization fund balance of 5% to 10% of its annual operating budget. In this case, the Town has an annual budget of approximately $52 million and a stabilization balance of $3.8 million, which at 7.38% of the Town's annual budget is at the midpoint of the DOR's recommended amount. The Free Cash and stabilization balances are also used by bond rating services to help measure a community's financial stability and fiscal responsibility. That bond rating determines the interest rate at which a town can borrow money for capital purchases and projects. In the most recent Standard and Poors rating, the Town

received an AA+/Stable rating. Using these funds to pay for the Union's requested increases could negatively affect the Town's bond rating.

According to the Town, Fairhaven, North Attleboro, Norton, and Somerset are the towns the Panel should compare the Town to, not the Union's list of comparables. These towns are all in Bristol County, as is the Town. In addition, their populations, geographic proximity, unemployment rate, per capita income, and other relevant factors demonstrate that they are appropriate comparables. The Union's list, on the other hand, seem to be all those within a certain geographic radius, excluding call departments and those that do not provide EMS ambulance services, "cherry picked" to support the Union's assertion that the Town's firefighters are compensated at a lower rate than their peers. According to the Town's comparables, the Town is at the median of its comparables in terms of compensation for firefighters and lieutenants, as well as for firefighters and lieutenants with an associate's degree.

Union's Position

The Union seeks wage increases of 4% in FY 2017, 2018, and 2019. The Union contends the Town settled for 2% with those bargaining units that are only settled through FY17, and agreed to several additional financial benefits in exchange for very few concessions. For the same period at issue here, the police settled for 2% in FY17, 1.75% in FY18, and 1.75% in FY19, along with significant increases to the non-Quinn education incentive. That benefit immediately impacted 16 police unit members – 43% of the bargaining unit. For FY18, police officers with a non-Quinn qualifying degree received approximately an additional 2% for an associate's degree, 4% for a bachelor's degree, and 5% for a master's degree. In FY19 those figures rose to approximately 3%, 6%, and 8%, respectively. Because this benefit immediately impacted 43% of the police bargaining unit and none have a master's degree, the value of this

non-Quinn increase across the board is approximately an additional 1.3% for FY18 and 1.9% for FY19. Most recently, the Town settled two contracts through FY20: the Supervisory unit settled for 2% in FY 18, 2.25% in FY19, and 2.25% in FY20; and the Clerical unit settled for 2.25% in FY18, FY 19, and FY20.

The uniquely hazardous natures of and responsibilities held by the Town's police and fire departments lead to common public safety pattern of parity between a municipalities' fire and police departments. In countless decisions, the JLMC has sought to provide such parity. To make a comparison between a police officer and a firefighter it is important to equalize the individual in terms or rank and training, as well as years of experience. The Union asserts that the fairest comparison is between a 15-year firefighter with EMT-P certification and a 15-year patrol officer spanning all levels of education, i.e., no higher education, and associate's, bachelor's and master's degrees. To adequately demonstrate the lags a firefighter must overcome to achieve parity, the Union compared an FY16 firefighter with an FY19 police officer, the last year of the police contract and the final year of each party's proposal in this case. In its recent contract, the police union received wages totaling 5.5% over three years, significant increases to non-Quinn education compensation, and increases to Field Training Officer compensation. Applying these increases, a 15-year firefighter with no degree and a paramedic certification lags behind a 15-yer police officer with no degree by 1.2%, with an associate's degree by 8.8%, with a bachelor's degree by 16.2%, and with a master's degree by 20.7%. The overall average lag is 11.8%.

With respect to hours of work, the Union argues that firefighters, separated into four groups, work an 8-day cycle, averaging 42 hours weekly, to provide 24-hour coverage to the Town without gaps or overtime. Police officers, on the other hand, work a 6-day cycle of 4 on

and 2 off, averaging 37.5 hours per week. So, police officers work 242 hours less than firefighters annually, or firefighters work 12.5% more hours annually than police officers. With this difference factored in, the overall average lag between a firefighter and police officer, when all degrees are considered, is 25.7%. Furthermore, in calendar year 2016, the average Town police officer made $80,597.82, while the average firefighter made only $57,909.76, which is a 39.2% discrepancy. Even discounting overtime and detail from the police ($21,885.96) and fire ($8,530.67) units, there remains a 19.8% discrepancy.

With respect to hazards and work load, the Union asserts that since 2013 call volumes have continued to rise. The Department's manpower has, however, remained relatively the same. In addition, the Town has a year round population of over 14,000 residents and covers approximately 18.3 square miles. The Town is located along Interstate 195, which is a highly traveled highway, as well as Route 44, which is a destination for surrounding communities due to a number of large retail chains along the route. These highly traveled roads lead to increased call volumes and create additional hazards for firefighters, particularly in the realm of medical calls, which make up nearly 2/3 of all calls. Even the Chief described the difficult nature of the ALS ambulance service run by the Town, explaining that it is the equivalent to taking a portion of an emergency room into the field.

The Town's firefighters are also paid less than their external peers. The Union contends that its list of comparables, which considered geographic proximity, population, size, property value, and department operations, are the appropriate external comparators. The Union excluded surrounding communities that did not run an EMS service at a paramedic level because nearly all of the Town's firefighters are paramedics. The comparable communities the Union used, which are located in Bristol, Norfolk, and Plymouth Counties, are: Attleboro; Berkley; Bridgewater;

Easton; East Bridgewater; Freetown; Lakeville; Mansfield; North Attleboro; Norton; Plainville; Raynham; Somerset; West Bridgewater; and Wrentham. The Union notes that the Town agrees with North Attleboro, Norton, and Somerset, and added Fairhaven. According to the Union, the Town's firefighters' salaries are close to the bottom of its list of comparables. Specifically, a 15-year Town firefighter/EMT-P with no degree lags behind by 11.4%, with an associate's degree lags by 14.9%, with a bachelor's degree lags by 16.9%, and with a master's degree lags by 18.3%. When all education attainments are taken into consideration, a Town firefighter/EMT-P lags behind the same firefighter in the external communities by 15.4%. If the Panel were to add in Fairhaven and consider a 15-year Fairhaven firefighter/EMT-P at FY19 (the last year of the Fairhaven contract) the average external lag across all education levels would be 14.9%. The Union notes its comparators are appropriately analyzed at the average time period of FY17.5 due to the widely varied contract dates of the comparable communities.[5]

The Union also asserts the Town's analysis is flawed because it compared firefighters with 10-years of service as opposed to 15-years of service, which is the average mid-career of a firefighter. Second, the Town failed to include several items for which firefighters are compensated, most notably holiday pay. Third, the Town did not include a comparison for the years at issue in this case. For all of these reasons, the Union contends the Panel should use the information presented by the Union and conclude that its proposed wage and benefit increases are appropriate to bring the Town's firefighters in line with external comparable firefighters.

With respect to cost of its proposal, the Union argues that by eliminating eight employees no longer employed by the fire Department and adding two employees recently hired, the Union's proposal would cost approximately $1,038,000 over three years. Although the Town

[5] The Union asserts it has used this method in over 25 JLMC cases, at least 18 of which have resulted in reported decisions.

stated at the hearing that it has not set aside funds to pay for the Panel's order, it would be fair to assume that the Town has not completely neglected its financial responsibilities to the taxpayers and has instead anticipated and planned to pay, at the very least, its wage proposal totaling approximately $195,500. This leaves a difference of $842,500, with $305,230 being retroactive (FY17 and half of FY18) and $537,270 prospective (half of FY18 and FY19). These amounts can be measured against the $8,394,335 in available funds the Union has identified. They are also amounts before consideration of any revenue growth the Town, with an S&P rating of AA+, may have during the remainder of FY18 and FY19. Moreover, the contracts agreed to between the Town and the Town Manger and the Fire Chief suggest the Town is in an excellent financial position. The Chief received an 11% increase in his prior year's base salary, effective 9/6/17, and a 2% increase effective in September of each of the next two years. He also received stipend increases and the creation of a new stipend of $2,500.00 for maintaining his EMT-B certification despite the fact that he is not required to perform EMT services. The Town Manager received a 3% salary increase for each year of his new three-year agreement.

The Union also contends the Town has the ability to pay the raises the Union is requesting. The Town has an estimated $8,394,335 in available funds. Although the Town asserts it has $3.8 million in its stabilization fund, the Union believes, based on the Town's own Basic Financial Statement, that there is actually $4,877,819.00 in that fund. That should be measured against the Town's operating budget of approximately $50 million. Taking into consideration the Town's contention that the DOR suggests a Town maintain between 5% and 10% of its operating budget in stabilization funds, the Town's stabilization fund is either 7.6% or 9.8% of its operating budget, depending on whether the Panel accepts the Town's data or the Union's data. In either case, the Town is well within the 5-10% range suggested by the DOR,

and would remain in that range even if it paid the Union's entire proposal out of its stabilization funds. In addition, the Town has $3,516,516 in Certified Free Cash that could be used to cover the Union's proposal. The Town's claim that it does not like to use Free Cash or Stabilization Funds for recurring expenditures is again an expression of reluctance rather than inability to pay. Nothing in state or local law prevents the Town from using either fund to cover the Union's proposal. In fact, M.G.L. Ch. 40, section 5(b) clearly provides that stabilization funds may be appropriated for any lawful purpose, such as a decision in this case. Finally, the Union has also identified over $5.6 million in an Unassigned General Fund that could also be used. Despite the Town's reluctance, it clearly has available funds to pay the Union's entire proposal, therefore, the Union's wage proposal should be granted.

Discussion

In lieu of the parties' reaching an agreement, this Panel must determine the appropriate wage increase for the three-year CBA sought by the parties. There are a number of factors arbitrators customarily consider in determining what wage increases should be granted, including the wages of comparable employees, wage increases granted to other town employees, and the Town's ability to pay. The parties, through the hearing testimony, document submissions, and post-hearing briefs, have provided the Panel with information on these factors and have relied on this information in support of their respective positions. For the reasons outlined below, this Panel concludes that for the three-year CBA sought by the parties for FY17, FY18, and FY19 (July 1, 2016 – June 30, 2019) a wage increase of 2.0% effective July 1, 2016, 2.25% effective July 1, 2017, and 2.25% effective July 1, 2018, is appropriate.

With respect to Town-side bargaining units, the Town asserts that absent the Union's demands with respect to a stipend increase and a longevity benefit, it would have proposed a

higher base wage similar to what it granted the police union, i.e., 2% for FY17, 1.75% for FY18, and 1.75% FY19. The Panel notes that in addition to these raises, the police union received substantial increases for non-Quinn eligible officers that increased every year of the new CBA. The Town argued that the Union did not request an education benefit increase; however, the Panel is not swayed by that argument. Each union is entitled to seek its compensation in the form it desires. The police union may have been satisfied to accept lower percentage wage increases in light of an increased education benefit for many of its members, but that does not preclude the firefighters from seeking higher base wages rather than a combination of lower percentage wage increases and higher education benefits.

According to the record evidence, all the other Town-side bargaining units received 2% for FY17. The only other units to settle contracts past FY17 besides the police were the Clerical and the Supervisory units. At the time of the hearing, the DPW and Library units had not settled their contracts. The Clerical Union settled for 2.25% in each of FY18, FY19, and FY20. The Supervisory Unit settled for 2% in FY18, 2.25% in FY19, and 2.25% in FY20. Although the Town's proposal is lower than these raises, the Union's proposal is much higher.

With respect to external comparability, the parties cannot agree on the universe of comparable communities. The Town used Fairhaven, North Attleboro, Norton, and Somerset. Although the Union used North Attleboro, Norton and Somerset, it also used Attleboro, Berkley, Bridgewater, Easton, East Bridgewater, Freetown, Lakeville, Mansfield, Plainville, Raynham, West Bridgewater, and Wrentham. Both the Town and the Union used 2013 population and 2014 EQV per capita in determining their comparables. In addition, the Town looked at distance from the Town, labor force, unemployment rate in 2015, per capita income in 2012, assessed values for single family in FY17, net State aid in FY17, and total revenue in FY17. The Union,

on the other hand, looked at 2016 average single family tax bills, 2011 per capita income, land area, population density, 2013 total road miles, and total assessed value. The Panel notes that many of the comparables proposed by the Union are not in Bristol County where the Town is located. In addition, the population of Attleboro, at approximately three times the population of the Town, is significantly larger than any of the other comparables suggested by either party. As a further complication, the Town used a 10-year firefighter/Paramedic, a 10-year Lieutenant/Paramedic, a 10-year firefighter/Paramedic with an associate's degree, and a 10-year Lieutenant/Paramedic with an associate's degree for its comparisons in its universe of four purported comparable communities, and compared its FY16 base salary for these classifications to the FY16 salaries in its comparables, except for Fairhaven and North Attleboro, where FY17 and FY15, respectively, were used. The Union, on the other hand, used a 15-year firefighter/Paramedic with no degree, an associate's degree, a bachelor's degree, and a master's degree for its comparisons in its universe of fifteen purported comparable communities, and compared the Town's FY16 bases salaries for these classifications with bases salaries in its comparables ranging from FY16 to FY19.[6] Finally, the Town ranked its employees among the comparables based on a total compensation computation (base salary, Paramedic stipend, clothing and longevity), whereas the Union did not provide a ranking in its charts (and also included shift differentials, holidays and education in its total compensation computations).

Trying to compare the parties' information, therefore, is akin to comparing apples and oranges. Suffice it to say that for the Town's universe all the classifications fell in the third slot out of five, ranking for total compensation based on the categories it chose to use. The Panel notes that for the Union's classifications, based on total compensation for the categories it chose

[6] As noted in the summary of the Union's position, its comparators are analyzed at the average time period of FY17.5 due to the widely varied contract dates of the comparable communities.

to use, firefighters with no degree ranked 12 out of 16, while firefighters with an associate's, bachelor's or master's degree ranked 14 out of 16. Because the Panel could not draw any conclusions due to the vastly different criteria each party used, it turned to the CBAs for the comparables to see what percentage wage increases were granted by those municipalities for the fiscal years at issue. Here, again, the data is not consistent in form. Although most show percentage raises, some use salary amounts. In addition, the fiscal years vary. It appears from the Panel's review of these CBAs that neither party's proposal is supported by the increases granted. Based on the Town's treatment of its internal units' raises, as well as the information presented by both parties concerning external comparables, the Panel concludes its award of wages is justified.

Having so concluded, the Panel must now consider whether the Town is able to pay these increases. The Town contends, among other things, that it did not set aside money to fund any firefighter raises. It also claims that it is in the process of building its stabilization fund to appropriate percentage levels, and that its free cash should not be used to fund recurring expenses such as salaries. Furthermore, it appears to be arguing that its plan to build a third fire station and increase staffing in order to man that station and avoid overtime should be considered. With respect to town funds that are traditionally relied upon in determining ability to pay, the evidence shows that the Town has free cash of $3.5 million,[7] and a Stabilization Fund balance of $3.8 million. The Panel does not take the position that non-recurring funds should normally be relied on for payroll. It does find, however, that these monies are adequate and appropriate for funding retroactive wage increases in an agreement the Town knew it was negotiating and should have known would eventually be funded. Furthermore, the Town was

[7] This amount as of July 1, 2016, was supplied through the Town's Free Cash Calculation Forms dated September 19, 2016, and was not refuted by the Town.

aware that it had awarded all other Town-side bargaining units a 2% wage increase for FY17, and could have anticipated that this amount would be awarded to the firefighters as well. Although the FY18 and FY19 percentages the Panel is awarding is 0.5% more than the Town indicated it would have offered if the Union had not been seeking an increased stipend and a longevity benefit, the Panel notes that it is not awarding a longevity benefit (see below). In addition, its award is in line with the raises the Town gave the clerical and supervisory units. Furthermore, it is not out of line with the raises given the police unit due to the fact that the police were also granted an educational benefit. In addition, even though the Town may be contemplating a third fire station and increased staffing, it is on good financial standing with a Standard and Poors bond rating of AA+/Stable, and a Stabilization Fund at 7.38% of its annual operating budget (the Panel notes, as per the Town's position, that the DOR recommends such funds be at 5-10% of the annual operating budget). Finally, it is not appropriate to budget for other employees and for capital expenditures at the expense of one group of employees. Given the totality of the evidence, the Panel concludes that the Town has sufficient resources to fund the firefighter wages the Panel is awarding.

Award - Wages

There will be a three-year contract covering July 1, 2016 to June 30, 2019, with wage increases of 2% effective July 1, 2016, 2.25% effective July 1, 2017, and 2.25% effective July 1, 2018.

Work Schedule/24-Hour Shifts – Article 9, Section 1

Town's Position

The Town proposes 24-hour shifts, with a rotation of 24 on, 24 off, 24 on, 24 off, 24 on, and 4 days off, creating a nine day cycle. This proposal would immediately alter staffing levels to three groups of eleven firefighters, with the hiring of one additional firefighter and promoting two firefighters to lieutenant, instead of four groups of eight firefighters. For purposes of FLSA compliance, the Town would utilize a 212 hour, 28 day work period, and all other CBA provisions affected by this work schedule change would be modified a necessary to accommodate the change. This would reduce overtime to virtually nothing, saving the Town approximately $200,000.00 a year. Although this shift structure has not been widely adopted in this region, the City of Gloucester and the Town of Tiverton, RI both currently employ it. With respect to the cost of a 56-hour workweek, the Chief determined it would require 33% more hours than firefighters are currently working, resulting in increased wage costs of approximately $611,785.00. With the hiring of an additional firefighter and the promotion of two to lieutenant, the total cost to the Town would be $681,021.00 to $694,582.00. The net effect of granting the Town's proposal would be that the Town could continue to proceed with its South Statin plan, but at a cost approximately $66,323.00 to $138,494.00 less than what is estimated under the current staffing schedule.

The Union argues that working 56 hours over nine days would be unreasonably demanding on firefighters. The Chief testified, however, that at least 50% of the firefighters in the Department presently maintain outside employment in a part-time or full-time capacity for employers such as private ambulance companies, local colleges, and the firefighters' own businesses. The Town's payroll records also reflect that firefighters already work a significant

amount of additional hours of overtime over the course of a year. It is more likely than not, therefore, that firefighters are already averaging 56 hours of work in some form or another over a nine day span. The Union's argument that 14 additional average hours per week would be too taxing on firefighters is not supported by its members' own current practices.

The Union's purported evidence regarding the Providence Fire Department's experience with the 24 hour shift/56 hour workweek is also without merit. Paul Doughty, a former member of the Providence Fire Union's leadership, testified that Providence ultimately did away with the schedule after it saw a spike in sick leave usage, on duty injuries, and retirement after the schedule went into effect. No evidence was provided, however, to demonstrate that any spike was causally related to the change in shifts as opposed to other potential causes. In addition, no historical data on sick leave usage or on job related injuries prior to the change was provided. Furthermore, Doughty's testimony that the retirements were because of the change was totem pole hearsay and should not be considered. Finally, when Providence unilaterally imposed the shift change, the Providence Fire Union initiated lawsuits and file grievances. So, one cannot rule out the possibility that the absences were the product of an informal job action.

The Town submits, as a preliminary matter, that the Panel should not grant the Union's 24 hour shift proposal in light of the Union's failure to bargain in good faith over the Town's 24 hour shift proposal during the underlying negotiations. The CERB has already found probable cause to believe the Union engaged in unlawful surface bargaining regarding the Town's proposal in violation of M.G.L. Chapter 150E, and a full hearing is scheduled for January 10, 2018. The Town asserts that, despite its statutory obligations, the Union failed to bargain in good faith at the first and ultimately only negotiation session that took place between the parties at which the Town's 24 hour shift proposal was raised. At that session, the Union categorically

and unequivocally stated there was "no condition on the planet" under which it would agree to accept the Town's 24 hour shift counterproposal and filed for mediation before the Town's bargaining team had the opportunity to meet further with the Board of Selectmen regarding the Union's response.[8] In light of this, the Panel should not grant the Union's 24 hour shift proposal in absence of a final determination on the merits of the Town's charge by the Department of Labor Relations. To do so would permanently deprive the Town of receiving the good faith bargaining process to which it is entitled under M.G.L. Chapter 150E and reward the Union for its unlawful behavior.

If the Panel is not inclined to deny the Union's proposal on such grounds, additional justification for the denial is found in the fact that the Union's proposal offers absolutely no real benefit to the Town. The Town contends that the Union's proposed 24-hour shift schedule of 24 hours on, 24 off, 24 on, and five days off, which would result in an average of 42 hours per week over an eight week cycle, would potentially increase the risk of sick leave. So, rather than having to find coverage for 10 to 14 hour shifts, the Fire Department would now have to find coverage for a full 24-hour shift. Although it appears this would be an issue under the Town's proposal as well, the Town's proposal yields three additional firefighters per group, giving the Department more flexibility because more firefighters could be out of work for their regular shift on any given day before the need to backfill would be triggered. In addition, under the Union's proposal, the Department's current overtime costs would not change. Furthermore, some of the Union's purported benefits for its proposal, such as circadian sleep rhythms, reducing the number of long commutes, and 24 hour schedule studies, either were not supported by evidence or were inapplicable.

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[8] The Panel notes this statement and quote attributed to the Union (not to a specific person) are contained in the Town's "Motion to Continue Arbitration Hearing or to Strike 24 Hour Shifts as an Issue", as well as in the Town's post-hearing brief, not in the record evidence.

Union's Position

The Union also proposes 24-hours shifts, but with a rotation of 24 on, 24 off, 24 on, and 5 days off, with a repeated eight-day cycle. Under the Union's proposal, the firefighters would continue to work a 42-hour workweek with no change to benefits or costs. According to the Union, the 24-hour work schedule has been widely adopted by fire departments throughout the Commonwealth. While most of the 143 fire departments that utilize a 24-hour work schedule have done so through negotiated contracts, JLMC panels have addressed and overwhelmingly endorsed the 24-hour schedule in prior cases. The Union also argues there is no evidence that any communities that began the 24-hour shift as a result of a JLMC panel have abandoned the schedule.

The Union offered testimony from Boston Fire Department Deputy Chief Jay Fleming, who testified that the Union's proposed shift schedule would be beneficial for morale and training and would provide a safer alternative to the current schedule of two consecutive 10-hour shifts, followed by one day of, followed by two consecutive 14-hour shifts, and then followed by three days off. He testified that the current schedule does not give firefighters adequate recovery time, while the Union's proposed schedule gives better recovery time because it involves less interruptions to the firefighters sleep patterns over a workweek. He also testified that Boston, which had changed to the 24-hour schedule from the same schedule as the Town current uses, experienced improvements in training because time previously spent on an afternoon shift change is now spent on exercising, group bonding, and drilling.

The Union asserts the Town seeks to be the first municipality in the Commonwealth to have a 56-hour workweek imposed on its Fire Department by an arbitration panel and only the second municipality in the entire state to have a 56-hour workweek. The Town did not research

the impact of such a schedule other than to contact the Tiverton Fire Chief, who was concerned about firefighters working 1/3 more hours. The Town did not include "Kelly Days" in its proposal, which is a practice used by many departments that work a 56-hour week and involves providing firefighters a certain number of days off each year in addition to any other time off benefits. The Town also did not research the impact on firefighters' pensions associated with moving to a 56-hour workweek. In summary, the Town did nothing to support the need or desire for a 56-hour workweek. Even the Chief testified that he did not want to move the Department to a 56-hour workweek.

The Chief did testify that he believed the 56-hour work week would allow the Department to increase per shift staffing without generating additional overtime or personnel costs. He did not provide any information to substantiate this claim. The Union, on the other hand, presented testimony from Paul Doughty, Providence Firefighters Union President, who stated that injury on duty leave tripled while they had the 56-hour workweek. He also testified that there was a mass exodus of Providence firefighters, who either retired or left for other fire departments as a result of the schedule change. In January of 2017, when the Providence Fire Department went back to a 42-hour workweek and instituted a 24-hour shift schedule, injured on duty cases dropped from 615 the month before to 300. For all of these reasons, the Panel should reject the Town's 56-hour proposal.

Discussion

The Town and the Union have both advocated for a change in work schedule to a 24-hour shift. The difference lies between the number of days in the work cycle and the number of hours firefighters would then work in a week. The Town has proposed a nine day cycle, with firefighters working 24-hours on/24-hours off/24-hours on/24-hours off/24-hours on/4 days off,

for a total of 56 hours a week. The Union has proposed keeping an eight day cycle with firefighters working 24-hours on/24-hours off/24-hours on/5 days off, so they would still work a total of 42 hours a week. For the following reasons, the Panel declines to order the adoption of the Town's proposal.

The Panel finds it particularly interesting that, when specifically asked by the Panel at the hearing if he wanted his Department to work a 56-hour week, Fire Chief Healy took time to reflect and then replied that he did not. In addition, according to the direct testimony of Town Manager Shawn Cadime, the Town Board of Selectmen, not the Chief, determines what goes into a Town proposal. He also testified that, if it had a choice, the Board of Selectmen would keep the current shift/work schedule; however, because the Union's proposal was on the table it suggested the 56-hour work week with a move to 24-hour shifts. The only research done prior to the Town countering the Union's proposal with its proposal was the Chief's conversation with the Fire Chief in Tiverton, where a 56-hour work week with 24-hour shifts is in use. According to the record documentary evidence, Tiverton utilized the same 42-hour workweek/eight-day cycle as the Town until its July 1, 2015 – June 30, 2018 CBA, for which the parties negotiated a change to a 56-hour workweek; however, according to that change, the Tiverton Firefighters work 48-hours on followed by 96-hours off. There is no evidence in the record regarding how the Town's Board of Selectmen determined the workweek schedule it proposed, which is vastly different from the Tiverton schedule. The record is devoid of any information on whether the Board of Selectmen considered or even asked for the Chief's opinion. What is in the record is evidence that the Town is working on a plan to build a third fire station. The building and equipment must be funded, and once completed it must be manned. It appears from the record that part of the basis for proposing a nine-day cycle and 56-hour workweek is tied to the

restructuring of firefighter work groups in order to man the third station. In addition, the Town hopes to save money with the group restructuring by reducing the need for overtime. While it is laudable that the Town wants to improve its fire service by adding a third station in a different part of town, the Panel does not find that sufficient reason for the Town's work schedule proposal. In addition, The Panel finds concerning the manner in which the Board hurriedly devised its proposal, the fact that it at best overlooked asking the Chief for his input, and the fact that it apparently failed to consider the effect of its proposal on areas such as firefighter safety or pensions. For these reasons the Panel will not award the Town's proposal.[9]

Although there is a dearth of experience concerning the Town's schedule proposal, there is ample experience, as well as evidence in this record, concerning the adoption and use of a 42-hour workweek with 24-hour shifts in Massachusetts. Since the 1990s and continuing to the present, most Massachusetts fire departments have adopted some form of this work schedule, whether through negotiation or by JLMC decision. The Union has also provided convincing evidence and argument that there are beneficial effects of a 24-hour schedule on firefighter safety, morale, and fatigue recovery. Although the Union proposes a schedule of 24-hours on/24-hours off/24-hours on/5 days off, the Panel notes that the most recent JLMC decisions have awarded 24-hours on/48-hours off/24-hours on/96-hours off. The Panel believes such a schedule would be better suited to achieving the beneficial effects of a 24-hour schedule. The Panel, therefore, awards a 24-hour shift schedule with an eight-day cycle, in the pattern of 24-hours on/48-hours off/24-hours on/96-hours off, and directs the parties to make certain that this shift change does not cause any other change in benefits.

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[9] Prior to commencement of the hearing, the Panel declined to continue this arbitration until the Town's charge against the Union for alleged failure to bargain in good faith was heard and decided by the DLR. In light of the Panel's findings with respect to the means by which the Town conceived of and presented its shift schedule counterproposal to the Union, the Panel now declines to strike the issue of 24-hour shifts from the parties' respective list of issues.

Award – 24-Hour Shifts/Work Schedule (Article 9, Section 1)

The Town's proposal to amend Article 9, Section 1 to institute 24-hour shifts, with a rotation of 24 on, 24 off, 24 on, 24 off, 24 on, and 4 days off, creating a nine day cycle, is not awarded.

The Union's proposal to amend Article 9, Section 1 to institute 24-hours shifts, with a rotation of 24 on, 24 off, 24 on, and 5 days off, with a repeated eight-day cycle, is not awarded.

The Panel has determined that the Town shall adopt a 24-hour shift schedule of 24 hours on, 48 hours off, 24 hours on, and 96 hours off, with a repeated eight-day cycle. The Panel also directs the parties to make certain that this shift change does not cause any other change in benefits.

Paramedic Stipend Increase & Rolled Into Base

Union's Position

The Union proposes to increase the EMT-Paramedic stipend from $4,150.00 to $6,000.00, effective July 1, 2016 and have this amount included in computing an employee's regular straight pay. Nearly all members of the Town's Fire Department are EMT-P certified, with the exception of six members, all hired prior to 2002. The Fire Department currently runs an ALS ambulance service, which the Chief described as equivalent to taking a portion of an emergency room out on the road and delivering to victims such services on the scene of the medical incident. Medical calls have made up about 2/3 of all calls responded to by the Fire Department since 2013. Those calls have increased since 2013, with the Department responding to 1,796 medical calls in 2013 and 2,050 medical calls in 2016, the last full year for which data was available. Despite the significant increase in medical calls, the EMT-P stipend has not been increased since June 30, 2013. Similarly situated firefighters in the Union's comparables universe receive higher EMT-P stipends. When combining all medical related stipends, the Town's firefighters are among the bottom three communities with regards to compensation for

such certification. Of the communities chosen by both the Town and the Union – Norton, North Attleboro, and Somerset – the Town's firefighters are compensated the least for their EMT-P certification even without considering the additional stipends received by firefighters from each town for medical related certifications. Firefighters in those three external communities on average receive $7,875.00 for their EMT-P certification for FY18. The financial lag alone justifies the increase in the stipend; however, the Union seeks to have the proposed $6,000.00 stipend included when computing an employee's regular straight time. The Panel should grant this proposal because a substantial majority of a Town firefighter's job involves performance of EMT-P services. Considering the integral nature of EMT-P responsibilities to a Town firefighter's job, it logically follows that the compensation for the performance of these duties be part of a firefighter's regular compensation rate.

Town's Position

The Town opposes the Union's proposal. The increase would cost $1,850.00 per fighter/paramedic. There are currently 24 paramedics in the Fire Department. If the Panel awards the Union's proposed increase, the total cost to the Town would be $49,950.00 per year, or $149,850.00 over the life of the agreement. Recurring cost for future fiscal years would be $49,950.00. The Town asserts that while Norton and Somerset have higher paramedic stipends, the Town still outranks North Attleboro at both the firefighter and lieutenant levels. Although Fairhaven's stipend is included in its employees' base pay, its firefighters' and lieutenants' total compensation is lower than that of the Town's firefighters and lieutenants. The Town's paramedic stipend, therefore, is at the median among its comparable communities.

The Town also opposes rolling the paramedic stipend into the base pay either at its current level or with the proposed increase. The stipend is already pensionable. Rolling the stipend into base pay would, therefore, primarily serve to substantially increase firefighters'

overtime rates. Using a conservative average base salary of $56,500.00, rolling in a stipend of $4,150.00 to $6,000.00 would result in an overtime rate increase of 7.5% to 10.5%. As the Chief testified, annual overtime is currently $200,000.00 year. So, the Union's proposal would, conservatively, add an additional $15,000.00 to $21,000.00 to overtime each year and cost the Town $45,000.00 to $63,000.00 over the three years of the CBA. Rolling the stipend into base pay would also cause it to increase each year of the contract, and in the years that follow in an amount equivalent to whatever percentage base wage increase is granted that given year. For example, under the Town's proposed base wage increases, the stipend would rise from $4,150.00 to approximately $4,340.00 over three years. Under the Union's proposed wage increases, the stipend increase even more, to $4,668.00. Between increased overtime costs and the impact the amount of the stipend would have on the base wage increases, the annual impact on the Department's budget would range from $20,613.00 to $36,423.00 per year as of FY19 and beyond.

Discussion

The Union seeks an increase in the Paramedic stipend from $4,150.00 to $6,000.00, effective July 1, 2016, and asks that this amount be included in computing a firefighter's regular straight pay. It claims that despite the facts that nearly all members are EMT-P certified, the Department runs an ALS ambulance service that the Chief acknowledges is akin to taking a portion of an emergency room out on the road, and medical calls, which make up 2/3 of all calls responded to by the Department, have increased since 2013, the stipend has not been increased since June 30, 2013. The Town opposes the increase on the bases of cost for 24 Department Paramedics and the ranking of its stipend among the comparables it put forth. In addition, the Town opposes rolling the stipend into the base salary on the ground that this will increase the

firefighters' overtime rate. The Panel has reviewed the information supplied by the parties for their respective comparables (see pages 16-18 for discussion of comparables) and notes again that the data is not always in the same form. With respect to the Town's comparables, the Town again appears to rank third for its comparison of a 10-year firefighter/Paramedic, a 10-year Lieutenant/Paramedic, a 10-year firefighter/Paramedic with an associate's degree, and a 10-year Lieutenant/Paramedic with an associate's degree, except that Fairhaven, which includes its paramedic stipend in the base salary, is thus assumed to be fifth. With respect to the Union's comparables, which used a 15-year firefighter/Paramedic with no degree, an associate's degree, a bachelor's degree, and a master's degree for its comparisons, several communities included the stipend in their base, while at least one did not appear to have a stipend. Of the remaining communities, nine were higher than the Union's stipend by anywhere from $2,530 to $7,850, and two – Freetown and Berkley – were lower by $1,900 and $700, respectively. Based on the totality of the evidence, and the Panel's assessment of the Town's ability to pay (see pages 18-19 above), the Panel concludes that the increase in Paramedic Stipend from $4,150 to $6,000 is appropriate, but it is not appropriate to also roll the stipend into the firefighters' base salary.

Award – Paramedic Stipend Increase

The Union's proposal to increase the Paramedic Stipend from $4,150.00 to $6,000.00 is awarded, retroactive to July 1, 2016.

The Union's proposal to roll the Paramedic Stipend into firefighters' base pay is not awarded.

Uniforms - Article 16, Section 2

Union's Position

The Union proposes to amend Article 16, Section 2 by permitting the Union to submit two uniform design options from which the Chief must choose a design. According to the Union, the current uniforms look nearly identical to the Town's police uniforms. In addition, although the CBA states that the uniforms must comply with National Fire Protection Association (NFPA) 1975, the Chief's and captain's uniforms do not. Under the Union's proposal, the bargaining unit members and the Chief would work together to develop a satisfactory uniform for all. Bargaining unit members would vote on uniform styles that fit within certain guidelines to ensure the Town's firefighters maintain a professional appearance and can be easily identified from the Town's police. The Chief would then select the uniform style from the top two options voted on by the firefighters. Relying on cases involving corrections officers, the Town contends uniform policies are not a mandatory subject of bargaining. The Union asserts that by statute corrections officers' uniforms are not subject to bargaining, whereas firefighters have no such applicable statute. In addition, the Massachusetts Department of Labor Relations has ruled that dress codes constitute a mandatory subject of bargaining.

Town's Position

The Town opposes the Union's proposal. It argues that under the Union's proposal the Chief would have to pick between the Union's top two uniform choices. In addition, bargaining unit members would be able to decide on long or short sleeves on a day-to-day basis, and add short sleeve t-shirts and shorts as uniform options during the months of June, July and August. At present, the Chief determines what uniforms the Department personnel will wear, ensuring

that they are NFPA compliant. According to the Chief, it is important for firefighters to maintain a uniform and professional appearance. The Department wears short sleeves from April 15th through October 15th and long sleeves from October 15th through April 15th. Allowing firefighters to choose on a daily basis whether to wear short sleeves, long sleeves, pants, shorts, or any combination thereof would render the term "uniform" a complete misnomer. The Town also contends that Massachusetts courts, in dicta, have stated that issues regarding uniforms for law enforcement officers are within the employer's sole discretion even where there is no express statutory authority granting such discretion. Given the similar paramilitary structure of a fire department, the same rationale would apply to firefighters' uniforms and the core managerial right of a fire chief to determine same. The Town asserts uniform determination in a fire department is no different than in a police department. Even absent a statute explicitly giving the Town authority to promulgate uniform standards, the determination of the composition of firefighter uniforms is a subject that falls outside the scope of collective bargaining and, as such, outside the authority of the Panel to award. If the Panel concludes it does have authority, the Union is proposing that it be given complete control over the composition of the firefighters' uniform. Taken to the extreme, the Union could propose a purple shirt with yellow polka dots and a yellow shirt with purple polka dots, and the Chief would have to choose between the two no matter how ridiculous or unprofessional each look. Finally, Chief Healy testified that, in his opinion, shorts are not professional attire and they represent a health and safety risk for firefighters because they are frequently exposed to blood, vomit and other bodily fluids during medical calls.

Discussion

The Chief, as head of the Fire Department, is responsible for ensuring that firefighters' uniforms and equipment provide adequate protection. He is also responsible for ensuring that members of the Department are recognizable to the public. The Panel believes that the Union's proposal would hamper the ability of the Chief to make selections that carry out these responsibilities. If, as the Union asserts, the captains' work uniforms do not comply with NFPA 1795, as required by the parties' CBA, that matter is better handled through the grievance arbitration process.[10] The Panel will not award the Union's proposal.

Award – Uniforms Article 16, Section 2)

The Union's proposal to amend Article 16, Section 2 to allow the Union to submit uniform design options from which the Chief must choose a design is not awarded.

Longevity

Union's Position

The Union proposes to amend the parties' CBA to include a new provision addressing longevity pay. The provision would calculate longevity pay as a percentage of a firefighter's base pay and would increase incrementally based on a firefighter's length of service.

The percentages would be: 2% for 5-9 years of service; 2.5% for 10-14 years of service; 3% for 15-19 years of service; 4.5% for 20-24 years of service; 5% for 25-28 years of service; and 7.5% for 29 or more years of service. This is exactly the same as the Town's police longevity benefit, so it seeks to bring the firefighters in line with their counterparts in the Police Department.

[10] The Panel notes that the Chief is not a member of the bargaining unit, therefore, Article 16, Section 2 does not apply to him.

Town's Position

The Town opposes the Union's proposal on the basis that the Union's claim that the firefighters do not have a longevity benefit is incorrect. The firefighters' CBA previously contained such a benefit, but during negotiations for the 1998-2001 CBA, the Union agreed to roll that benefit into the firefighters' base pay. Specifically, the parties agreed that, effective July 1, 1999, the then existing longevity benefit would be eliminated and the amount of $250.00 would be added to each firefighters' base pay and $500.00 would be added to each lieutenant's base pay. For more than 18 years the firefighters have enjoyed the benefits of seeing those amounts increase by the amount of the base wage increases they have received. They have also benefitted from the higher overtime rate resulting from the roll-in during the same period. Now nearly two decades later the Union seeks to reinstitute the longevity benefit. If the Panel awards this proposal, the firefighters will receive a double longevity benefit. This alone should support denying the Union's proposal. The Town also contends that without the proposed longevity benefit its firefighters are already being paid more than its police officer counterparts. Finally, if the Panel does award the longevity proposal, at the very least the base salaries of all firefighters and lieutenants would have to be reduced by $250.00 and $500.00, respectively, plus the additional increases to those figures that were occasioned by the base wage increases those ranks have received since July 1, 1999.

Discussion

The record discloses that the firefighters did have a longevity benefit, which was rolled into their base salaries, effective July 1, 1999, by agreement of the parties. Given the fact that this change in the CBA was negotiated by the parties, the Panel will not award the Union's new

longevity proposal. That matter is best left to the parties to address in future negotiations, should they both be so inclined to revisit the subject.

Award – Longevity

The Union's proposal to amend the parties' CBA to include a new provision addressing longevity pay is not awarded.

Sick Leave Incentive - Article 14, Section 5

Town's Position

The Town proposes to amend Article 14, Section 5 to provide for a monetary payment, rather than compensatory time. Currently, a firefighter who does not use sick time for 6 months is credited with 12 hours of compensatory time, and can accrue a maximum of 24 hours of compensatory time in one year. The Town asserts this creates an unfunded liability because the Department is not aware of when a firefighter is going to utilize the compensatory time or separate from the Department. A firefighter's use of compensatory time also creates additional overtime expenses because the time off must typically be backfilled with overtime. The Town argues this change will not eliminate the sick leave incentive benefit because firefighters will not lose any existing compensatory time balances they may have. They will just not be allowed to accumulate additional compensatory time going forward.

Union's Position

The Union opposes the Town's proposal. It contends the Town's proposal to eliminate compensatory time from the sick leave incentive program removes a substantial portion of the program that was only agreed to during the previous contract settlement. Currently, a firefighter who works 6 months without using sick leave is entitled to an incentive equivalent to 12 hours either paid out as overtime or used as compensatory time. The Chief has discretion to grant the

use of compensatory time in the same manner as Article 9, Section 6. Under the Town's proposal, firefighters will be paid for 12 hours at the holiday rate. Although the Town asserts that use of compensatory time has had an impact on the Department's overtime budget, it did not introduce any evidence directly or indirectly connecting the use of compensatory time to increases in overtime costs. Furthermore, the sick leave incentive is only awarded to firefighters who do not call in sick for 6 months, meaning that for 6 months those firefighters did not create a need to fill a shift as a result of being sick.

Discussion

The sick leave incentive article was negotiated by the parties in just the last collective bargaining negotiations. Unlike the Authorized Training Article (see below), it has definite limitations. First, no firefighter can accumulate compensatory time under this Article unless he/she has not taken a sick day in 6 months. Second, no firefighter may accumulate more than two sick incentive days in one year. Although the Town is correct that it cannot predict when a firefighter might request to use a sick leave incentive day, the Chief has control over whether and when a firefighter may use the sick leave incentive. Given the differences between this Article and the Authorized Training Article, as well as the fact that the parties more recently negotiated this provision, the Panel will not award the Town's proposal. The Panel notes that, given its decision with respect to the Authorized Training Article (see below) the parties should add to Article 14, Section 5 the following sentence: "If the Chief is unable to allow the employee to utilize sick leave incentive time the employee has to option of converting the proposed sick leave incentive hours to pay or to use the proposed hours at a later date."

Award - Sick Leave Incentive (Article 14, Section 5)

The Town's proposal to amend Article 14, Section 5 to reflect that firefighters will be issued pay instead of compensatory time for sick leave incentive is not awarded. The Panel notes that, given its decision with respect to the Authorized Training Article (see below) the parties should add to Article 14, Section 5 the following sentence: "If the Chief is unable to allow the employee to utilize sick leave incentive time the employee has to option of converting the proposed sick leave incentive hours to pay or to use the proposed hours at a later date."

Authorized Training – Article 9, Section 6

Town's Position

The Town proposes to amend Article 9, Section 6 by eliminating compensatory time as a payment option for authorized training. This is not mandatory training, but rather training that firefighters are permitted to attend for professional development. Under the present proposal, bargaining unit members are compensated for the first 15 hours of authorized training at time and a half. Any authorized training beyond 15 hours is compensated as compensatory time. The Town proposes that all hours of authorized training be compensated at time and a half. According to the Town, additional compensatory time increases the Department's overtime costs and unfunded liability. Doing away with this compensatory time would eliminate these costs to the Town without firefighters losing the benefit of additional training or the time and a half they are paid. Furthermore, the Chief testified that, should the Town's proposal be granted, it is his intention to take any overtime savings realized and put it into the training line item in his budget, which would result in firefighters receiving more training than under the present system.

Union's Position

The Union opposes the Town's proposal. It asserts that, as with the sick leave incentive, the Chief already has the ability to deny the use of compensatory time earned through authorized training and can choose instead to pay firefighters in the same manner as the Town's current

proposal. The Chief has an additional safeguard to prevent excessive costs associated with compensatory time because he has the option of not authorizing a firefighter to participate in a particular training. Finally, firefighters use their off duty time to attend these trainings and make themselves better firefighters so they can provide better service to the Department. They should be given the opportunity to regain some of this off duty time through compensatory time.

Discussion

Article 9, Section 6 already provides that firefighters will receive time and a half for off duty, authorized training they attend, up to 15 hours. It is only for any off-duty, authorized training over 15 hours that they are currently compensated by the issuance of compensatory time; however, pursuant to that CBA provision, if the Chief is unable to allow a firefighter to use the compensatory time, the firefighter has the option of converting the proposed compensatory hours to pay or use them at a later date. The Town contends that compensatory time increases the Department's overtime costs and unfunded liability. It also argues that doing away with the compensatory time would eliminate these costs to the Town without firefighters losing the benefit of additional training or the time and a half they are paid. Unlike the Sick Leave Incentive Article (see above), there is no limitation on the number of hours that can be accrued, and it is in the interest of both the firefighters and the Department to have the benefit of this additional training. The Panel finds the elimination of the authorized training compensatory time provision will not prejudice the firefighters because they will still be compensated in one of the ways the parties previously negotiated. In light of the above, the Panel awards the Town's proposal; however, firefighters with existing balances as of the date of this award will be allowed to utilize those balances consistent with existing rules and procedures on the use of such time.

Award – Authorized Training (Article 9, Section 6)

The Town's proposal to amend Article 9, Section 6 to eliminate compensatory time as a payment option for authorized training is awarded. Firefighters with existing balances as of the date of this award will be allowed to utilize those balances consistent with existing rules and procedures on the use of such time.

Health Insurance Stipend - Article 27, Section 2

Town's Position

The Town proposes to amend Article 27, Section 2 by deleting the word "net" from the sentence: "Any unit member who does not receive Health Insurance from the Town of Seekonk shall be compensated a net amount of $2,500.00 per year." The Town contends that when it was first implemented, the Town paid the stipend out as $2,500.00 before taxes. In subsequent years the Union filed a grievance alleging the amount should be a post-tax amount. This resulted in a grievance arbitration award in which the Arbitrator interpreted the language as requiring the Town to individually calculate for each eligible firefighter how much would have to be paid in order for him/her to receive $2,500.00 after taxes had been taken out. This is the only stipend in the parties' CBA paid this way. In addition, the police's CBA currently calls for the $2,500.00 stipend to be paid as a pre-tax amount. Amending the CBA language would affect only a few firefighters per year and would make this stipend amount subject to the same means of administration and calculation as the other stipends in the parties' CBA. Notwithstanding the Arbitrator's decision, the Town continues to disagree that a benefit of this type should be paid as a post-tax amount. There is no way in June, when the stipend is paid, for the Town to know what an individual's tax liability will be at year end. The amount of income taxes an individual must pay at the end of the tax year can vary greatly from person to person. Although the Arbitrator asserted the Town could use the amount of tax withholding an employee declares on

his/her W-4, this calculation is based on whatever the employee declares. It is not uncommon for an employee to elect to have more or fewer taxes taken out of their weekly checks depending on their personal preferences. If an employee wished to artificially increase the size of the health insurance stipend he/she will receive, the employee could simply change his/her W-4 form so that a greater amount of tax must be taken out by the Town.

Union's Position

The Union opposes the Town's proposal. It argues that by eliminating the word "net" from this section the Town seeks to have the $2,500.00 stipend be taxed before a payment is made to the member, thereby reducing the value of the stipend. Currently the stipend is paid as a post-tax amount, meaning the member is entitled to receive $2,500.00 after taxes. In addition, the Town's proposal essentially circumvents a prior arbitration decision from June of 2017, in which the Arbitrator concluded that the parties agreed that the $2,500.00 stipend would be paid after taxes had already been taken out. The Town failed to introduce any evidence as to why the Panel should, for all intents and purposes, reduce the pay of a firefighter who chooses not to use the Town's health insurance, which already creates a savings for the Town. The Town's reasoning for this proposal is that it would reduce some administrative issues associated with paying the stipend after taxes as opposed to pre-tax. As the Arbitrator noted in the grievance decision, however, the Town's health insurance contribution for employees varies from $7,020 to $28,409, so by paying $2,500 to the individuals who do not use the Town's health insurance, the Town already enjoys a substantial benefit.

Discussion

The language the Town seeks to change was negotiated by the parties and included in their Memorandum of Agreement signed July 10, 2013, carrying forward with certain

modifications, the parties' expired CBA as a three-year contract covering the period from July 10, 2013 to June 30, 2016. In fiscal year 2016 the Union filed a grievance over the Town's alleged violation of the parties' CBA through the health insurance stipend amounts it paid several firefighters. The matter went to arbitration and a decision issued June 29, 2017, in which the Arbitrator found the Town did violate the CBA by failing to pay the stipend as after-tax dollars, i.e., the full $2,500.00 after taxes. In doing so, the Arbitrator noted that, unlike the CBA provisions for clothing and cleaning allowance or educational stipends, which call for a total dollar payment in a lump sum, Article 27, Section 2 "uniquely describes the health insurance payment as a 'net' amount." He concluded, in part, that because the language in this provision is different from the other provisions, "it must be assumed the parties intended the unique language to be applied differently. The Panel notes no evidence was produced at the interest arbitration hearing that would support its overturning a recent, reasoned arbitration decision issued after a hearing in which both sides had the opportunity to introduce evidence concerning the meaning of the term "net." That matter is best left to the parties to address in future negotiations, should they both be so inclined to revisit the Arbitrator's decision. Based on the above, the Panel finds the evidence insufficient to justify awarding the Town's proposal.

Award – Health Insurance Stipend (Article 27, Section 2)

The Town's proposal to amend Article 27, Section 2 to delete the word "net" from that section is not awarded.

Grievance Language - Article 12, Section 1

Town's Position

The Town proposes to amend Article 12, Section 1 by deleting subparagraph 9. The Town contends this is a default clause that theoretically would award the Union the relief it requests in a grievance without a favorable ruling by the Town to that effect. It is particularly problematic because of the Open Meeting Law, which precludes the Board of Selectmen from ruling on a grievance outside of a meeting that was not publically posted at least 48 hours prior to the meeting, excluding Saturdays, Sundays and legal holidays, at which at least three Board members attend. Given vacation schedules and other personal and professional obligations, deciding a grievance within the contractual timeframe is not always possible. Although the Town can ask the Union for an extension, the Town would be at the mercy of the Union in such cases. Furthermore, none of the Fire CBAs submitted by the Town or the Union in this matter contain a similar provision. The Seekonk Police also do not have such a provision in its CBA. This is a draconian provision that would have a significant impact on the Town and its taxpayers solely because of scheduling issues.

Union's Position

The Union opposes the Town's proposal. It asserts that this provision is a substantial benefit to the Union because it establishes the time limits that the Town must abide by when processing a grievance. If it fails to answer a grievance within the established time limits, the grievance will be sustained and the requested satisfaction provided. The Town's proposed change would create a double standard whereby the Union would face penalties for failing to file or elevate grievances within a set time limit, while the Town could simply ignore the entire process and face no repercussions. The current language creates accountability on both sides by

providing penalties for either side that fails to process a grievance or take the appropriate steps within a set time limit.

Discussion

A review of the Town's internal public safety CBAs discloses that the provision the Town seeks to have deleted is unique to the Union's CBA. The Town's Police do not have such a provision. According to this provision, a grievance filed by the Union will be automatically sustained if the Town fails to answer within the time limits imposed by the CBA. The Town contends if it is unable to meet the time limits for legitimate reasons, such as certain constraints on its Board of Selectmen, it loses by default instead of having the grievance ultimately decided on the merits. The Panel notes that it appears the first sentence in subparagraph 9 operates in a similar manner against the Union. If the Union does not process the grievance within the time limits, the grievance is presumed to have been satisfactorily resolved at the first step. The entire subparagraph is contrary to the general presumption that favors arbitration over dismissal of grievances on technical grounds. Deletion of this provision will not remove protection from either party, however, because the CBA contains specific times limits within which grievances must be filed and processed, and step answers must issue. Should either party believe it aggrieved or prejudiced by the other party's failure to follow proper grievance procedure, or the other party's refusal to grant a reasonable extension of time, those issues can be raised at arbitration and the arbitrator can consider the language and requirements of the CBA and any asserted mitigating circumstances. For these reasons, the Panel finds Article 12, Section 1, subparagraph 9 should be deleted in its entirety.

Award – Grievance Language (Article 12, Section 1)

The Town's proposal to amend Article 12, Section 1 by deleting in its entirety the language in Section 1, subparagraph 9, is awarded.

Summary of Award

Award - Wages

There will be a three-year contract covering July 1, 2016 to June 30, 2019, with wage increases of 2% effective July 1, 2016, 2.25% effective July 1, 2017, and 2.25% effective July 1, 2018.

Award – 24-Hour Shifts/Work Schedule (Article 9, Section 1)

The Town's proposal to amend Article 9, Section 1 to institute 24-hour shifts, with a rotation of 24 on, 24 off, 24 on, 24 off, 24 on, and 4 days off, creating a nine day cycle, is not awarded.

The Union's proposal to amend Article 9, Section 1 to institute 24-hours shifts, with a rotation of 24 on, 24 off, 24 on, and 5 days off, with a repeated eight-day cycle, is not awarded.

The Panel has determined that the Town shall adopt a 24-hour shift schedule of 24 hours on, 48 hours off, 24 hours on, and 96 hours off, with a repeated eight-day cycle. The Panel also directs the parties to make certain that this shift change does not cause any other change in benefits.

Award – Paramedic Stipend Increase & Rolled Into Base

The Union's proposal to increase the Paramedic Stipend from $4,150.00 to $6,000.00 is awarded, retroactive to July 1, 2016.

The Union's proposal to roll the Paramedic Stipend into firefighters' base pay is not awarded.

Award – Uniforms Article 16, Section 2)

The Union's proposal to amend Article 16, Section 2 to allow the Union to submit uniform design options from which the Chief must choose a design is not awarded.

Award – Longevity

The Union's proposal to amend the parties' CBA to include a new provision addressing longevity pay is not awarded.

Award - Sick Leave Incentive (Article 14, Section 5)

The Town's proposal to amend Article 14, Section 5 to reflect that firefighters will be issued pay instead of compensatory time for sick leave incentive is not awarded. The Panel notes that, given its decision with respect to the Authorized Training Article (see below) the parties should add to Article 14, Section 5 the following sentence: "If the Chief is unable to allow the employee to utilize sick leave incentive time the employee has to option of converting the proposed sick leave incentive hours to pay or to use the proposed hours at a later date."

Award – Authorized Training (Article 9, Section 6)

The Town's proposal to amend Article 9, Section 6 to eliminate compensatory time as a payment option for authorized training is awarded. Firefighters with existing balances as of the date of this award will be allowed to utilize those balances consistent with existing rules and procedures on the use of such time.

Award – Health Insurance Stipend (Article 27, Section 2)

The Town's proposal to amend Article 27, Section 2 to delete the word "net" from that section is not awarded.

Award – Grievance Language (Article 12, Section 1)

The Town's proposal to amend Article 12, Section 1 by deleting in its entirety the language in Section 1, subparagraph 9, is awarded.

Respectfully submitted this 9th day of January, 2018,

Matt Reddy, Union Representative

Ted Alexiades, Management Representative

Beth Anne Wolfson, Neutral Arbitrator