

TOWN OF RANDOLPH MASSACHUSETTS

ARBITRATION OPINION & AWARD
Susan R. Brown, Arbitrator

and

LRC #585-17; Gr: A. Royer

**INTERNATIONAL ASSOCIATION OF
FIREFIGHTERS, LOCAL 1268**

DATE OF AWARD: 6 April 2018

The undersigned Arbitrator, selected by the parties in accordance with their 2016-2017 collective bargaining agreement, held a hearing on 9 January 2018 in Randolph, Massachusetts to consider the grievance of Alan Royer. The Town was represented by Matthew J. Buckley, Esq. of Deutsch Williams Brooks DeRensis & Holland; Alfred Gordon O'Connell, Esq. of Pyle Rome Ehrenberg appeared for the Union. Both parties filed post-hearing briefs.

STIPULATED ISSUES

Did the Town violate the collective bargaining agreement when it failed to pay Alan Royer longevity and education incentive payments beyond the date of his retirement?

If so, what shall be the remedy?

PERTINENT CONTRACT PROVISIONS

ARTICLE 9 LONGEVITY INCREMENTS

(A) On or after July 1, 2016, an employee of the town who has been in continuous full-time employment for ten years shall be paid, in addition to the compensation for the position as set forth in this agreement, annual increments in the amount of five hundred dollars (\$500.00) and an additional amount of one hundred dollars (\$100.00) for each 6year of such employment served over ten (10) years of service. Longevity shall be payable in two (2) equal installments in December and June of each fiscal year.

ARTICLE 14 RIGHTS AND PRIVILEGES

All job benefits and privileges heretofore permitted by law or regulation and enjoyed by employees, which are not specifically provided for or abridged in this Agreement, are hereby protected by this Agreement.

ARTICLE 15 EDUCATIONAL BENEFITS

A full-time employee of the Fire Department, excluding the Chief and Chief of Operations, shall receive in addition to the compensation for the position set forth in Article VII, Section 1 of this Agreement, amounts indicated herein (1)for each credit hour for each course successfully completed and which is a recognized requirement for a degree in Fire Science at a fire science degree institution; and (2)for completion of classes at the Massachusetts Fire Academy that include testing and Pro-Board Certification, as follows:

(A) In FY17, one hundred ten dollars (\$110) per credit hour plus two hundred fifty dollars (\$250) per Pro-Board Certification class up to a maximum of five thousand, four hundred dollars (\$5,400).

(B) In FY18, one hundred ten dollars (\$110) per credit hour plus two hundred fifty dollars (\$250) per Pro-Board Certification class up to a maximum of five thousand, six hundred fifty dollars (\$5,650).

Payment to eligible personnel under this Article shall be made in June of each fiscal year for the fiscal year ending on June 30th, upon request of the employee.

(JX 1)

BACKGROUND

There are few if any disputed facts in this case. Alan Royer was continuously employed by the Randolph Fire Department for 32 years until his retirement on 3 August 2017. When he retired, he received his longevity and education credits pro-rated for the 2018 fiscal year that had begun on 1 July. His full annual longevity payment calculated under Article 9 comes to \$2,700 for FY18; when he retired, he received \$258.65 for longevity, prorated for the 35 days he was an employee in the fiscal year. Mr. Royer's full payment for education credits calculated under Article 15 comes to \$4,620 for FY18; at retirement, he was paid \$443.10 for educational attainment, prorated for the 35 days he was an employee in the fiscal year.

The language cited above for longevity and education has been in the contract without substantive change, except for amounts credited, at least since the 2004-07 collective bargaining agreement. It is undisputed that since 2004, all retiring firefighters have received their full annual amounts in these categories regardless of when in the fiscal year they retired.¹

Prior to August 2017, the Fire Department handled all the retirement paperwork and calculated the final payouts owed to retiring firefighters. At some unspecified point, David Murphy, Town Manager since 2010,² transferred the retirement payouts to the jurisdiction of City Hall where they were handled

¹ There were some clerical errors but the obvious intent was to pay the full year of these benefits.

² Despite it being called the Town of Randolph, the municipal entity has had the legal status of a city since 1 January, 2010 with Mr. Murphy as its first Manager.

by Anne Barkhouse, Administrative Assistant to the Manager. In his spot audit of Personnel Action Forms, Mr. Murphy reviewed Mr. Royer's retirement calculations and concluded that the Fire Department had been misinterpreting the contract. In his view, if a firefighter is not employed on the payout dates specified in the contract, s/he is not entitled to the benefit; therefore, retiring firefighters had been receiving payouts inconsistent with his interpretation of the collective bargaining agreement. He testified that after he talked to the Fire Chief, he ordered the *pro rata* pay to Mr. Royer as an attempted compromise with the firefighters although he conceded that that too is inconsistent with his view of the contract. He did the same with the one other firefighter who has retired since Mr. Royer.

CONTENTIONS OF THE UNION

The Union maintains that although the contract is silent with respect to payouts for retiring employees, the parties' interpretation of how benefits are to be paid to them has been consistent since at least 2004. In this light, the Town violated Article 14 by unilaterally changing established past practice relating to payouts of longevity and education benefits at retirement. According to the Union, the evidence clearly meets the three conditions required by that language: a benefit (full annual payout at retirement), permissible under the law, enjoyed by employees, and not specifically provided for or abridged by the agreement. The Arbitrator should find that the Town violated the contract and make the Grievant whole in two aspects: paying him his full entitlements for

both benefits and amending its report to the Retirement Board reflecting the change in earnings.

CONTENTIONS OF THE TOWN

According to the Town, the Union has not met its burden of proving that the Town violated any provision of the contract. It maintains that the language of Articles 9 and 15 requires that benefits be accrued before they are paid; the fact that the dates of payment for both benefits are specifically set forth can only mean that they must be earned by continued employment. So even if the benefits are applicable to retirees, in the absence of any language, there is no legal basis for allowing them to receive full annual payments. Pro-rating is the only result which fits this rule.

The fatal flaw in the Union's argument is that an employee could work one day into the fiscal year and garner an entire year's benefits. If alternate interpretations exist, it is well-settled that arbitrators should not apply those with harsh or unreasonable results. Employees should not be able to time their retirements in order to obtain substantial payments that have not been earned. The Arbitrator should deny the grievance for this Grievant and for those in the future.

OPINION

If the language of Articles 9 and 15 specifically addresses payments to employees who are retiring, then it is my task to interpret that language. The

Town claims that the designation of payout times for the benefits indicates that they may only be made to persons who are on the payroll at those designated times. This is not an unreasonable interpretation but other circumstances indicate the possibility of other, also reasonable interpretations, making the language ambiguous.

One of these other circumstances is the language of Article 4 regarding holiday pay. That also specifies two different payout times for holiday pay, the first one directly following Thanksgiving (five holidays) and the second in the first pay period of June (six holidays). The significant difference from the language at issue lies in the next two sentences:

The member must be employed by the Randolph Fire Department at the time of the holiday to be eligible for the paid holiday. When a member leaves the employ of the Town, he or she will be paid for any outstanding holiday days in his or her last paycheck.

This clearly demonstrates that the parties knew how to specify that persons must be on the payroll to be eligible for certain benefits and also how to designate the method of payment when a person left the Town's employ.

Both these elements, however, are missing from Articles 9 and 15, which leads us to the second circumstance that indicates other possible interpretations regarding how retiring employees are to be paid these two benefits: a clear, longstanding, unwavering practice of paying full annual amount for these benefits upon retirement, irrespective of the retirement date. Not only do these circumstances meet the general definition of a binding past practice where the contract is ambiguous or silent, this collective bargaining agreement contains very specific language in Article 14 regarding retention of

any “benefit or privilege”; the parties’ practice meets all the elements required by Article 14 to become binding for the life of the collective bargaining agreement.

There is no doubt that retiring firefighters have timed their retirement dates to maximize their benefits; eight of the nine firefighters who retired between 1 July 2004 and 31 October 2015 under four successive negotiated contracts had retirement dates within 45 days of the start of the fiscal year. This should come as no surprise to Town officials, particularly Mr. Murphy, who personally signed two of the three contracts negotiated during his tenure.³ It is apparent that the four contracts between 2007 and 2016 were negotiated with the mutual understanding that full-year longevity and education benefits were paid to retiring employees.

To reiterate, payments for longevity and education constitute a practice of the nature as spelled out in Article 14 and may not be abrogated under the current contract. If the Town wishes to change this practice, it must do so at the bargaining table.

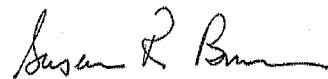
³ He may have signed all three but the copy of the 2010-13 collective bargaining agreement (JX 2c) submitted into evidence at arbitration was unsigned.

AWARD

The Town violated the collective bargaining agreement when it failed to pay Alan Royer longevity and education incentive payments beyond the date of his retirement.

Within 30 days of the date of this award, the Town shall pay Mr. Royer the difference between his full annual longevity and educational payments for FY2018 and what he actually received. In addition, the Town shall notify the Norfolk County Retirement System of the adjustments to Mr. Royer's three year income.

Dated: 6 April 2018



Susan R. Brown, Arbitrator