

# American Arbitration Association

## VOLUNTARY LABOR ARBITRATION TRIBUNAL

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In the Matter of the Arbitration between

SEEKONK FIREFIGHTERS UNION,  
IAFF, LOCAL 1931

and

TOWN OF SEEKONK

AAA Case No. 01-16-0004-8239

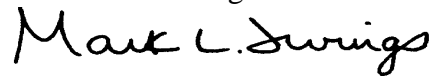
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### AWARD OF ARBITRATOR

The health insurance stipend amounts that the Town paid to Firefighters Dalessio, Doar, Godin, or Ransom on or about June 24, 2016 violated the contract. They shall be paid the difference between a net amount of \$2500 and the amounts they were paid.

The Town's failure to pay Firefighter English a health insurance stipend on or about June 24, 2016 violated the contract. He shall be paid a net amount of \$2500.

Mark L. Irvings



June 29, 2017

**In the Matter of the Arbitration between**

**SEEKONK FIREFIGHTERS UNION,  
IAFF, LOCAL 1931**

**and**

**TOWN OF SEEKONK**

**OPINION  
AND  
AWARD**

**AAA Case No. 01-16-0004-8239**

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The parties submitted this case to arbitration pursuant to their collective bargaining agreement effective July 10, 2013 to June 30, 2016. A hearing was held on April 26, 2017 at which James Hykel, Esq., appeared on behalf of the Union; and Joseph Fair, Esq., appeared on behalf of the Town. Post-hearing briefs were received from the parties on June 21, 2017.

**ISSUE**

Did the health insurance stipend amounts that the Town paid to Firefighters Dalessio, Doar, Godin, or Ransom on or about June 24, 2016 violate the contract? If so, what shall be the remedy?

Did the Town's failure to pay Firefighter English a health insurance stipend on or about June 24, 2016 violate the contract? If so, what shall be the remedy?

**BACKGROUND**

**New Contract Provision.** For years, pursuant to Article 27, Section 1, of the collective bargaining agreement with the Union, the Town has made available to its firefighters health insurance. Currently the employees have the option of a Blue Cross HMO plan or PPO plan, either for the individual or a family. For each plan the Town

pays 75% of the premium<sup>1</sup>.

On July 10, 2013, a number of members of the Board of Selectmen on behalf of the Town, and Union President Shaun Whalen, on behalf of Local 1931, executed a Memorandum of Agreement for a successor collective bargaining agreement, effective July 10, 2013 through June 30, 2016. Included in the document was the following:

12. Article 27, section 2: 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 amount will be paid in one lump sum, June 30, annually.

No bargaining history surrounding the adoption of this provision was presented during the arbitration.

**Implementation of the Benefit.** Like all municipalities in Massachusetts, Seekonk is on a July 1 to June 30 fiscal year. As of June 27, 2014, the last payroll period in fiscal 2014, Adam Dalessio was the only firefighter who had opted out of health insurance for the entire year. Treasurer Christine DeFontes and Assistant Treasurer Jamieson reviewed the collective bargaining agreement and decided to include \$2500 as a gross amount in Dalessio's payroll check, from which federal and state payroll taxes<sup>2</sup> were deducted. According to Jamieson, they thought that perhaps the reference in Article 27, Section 2 to *net amount* was a typographical error. The treasurers did not consult with the Town Administrator, anyone who participated in the negotiations on behalf of the Town, or Union representatives before reaching this conclusion.

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<sup>1</sup> Based on the figures provided by Assistant Treasurer Collector Tracy Jamieson for the employee's biweekly premium, it appears the Town's current annual payment for HMO coverage is \$7020 for an individual and \$18,303 for a family; and for PPO coverage is \$11,379 for an individual and \$28,409 for a family.

<sup>2</sup> It is not clear from the record if 11% pension contributions were deducted from the stipend amount.

At some point after receiving the June 27, 2014 paycheck, Dalessio and his wife contacted the Treasurer's office and spoke with DeFontes. DeFontes subsequently spoke with Town Administrator Shawn Cadime, who had not been employed in Seekonk in July, 2013, and inquired if her implementation of the provision was correct. They discussed that it could be difficult figuring out the appropriate gross amount to yield a \$2500 net figure. Cadime told the treasurer that he believed she had acted correctly, although Cadime did not speak to anyone who had participated in the negotiations.

Sometime in the fall of 2014 Dalessio approached Whalen and explained that he had received a gross payment of \$2500 for the health insurance stipend, rather than a net amount of \$2500. Whalen explained that because written grievances have to be submitted within ten days of the employee learning of the action giving rise to the grievance, it was far too late to file a grievance challenging the payment. He advised Dalessio to be vigilant to see if the same manner of payment occurred again, in which case the Union would file a grievance. Dalessio was again the only firefighter to forego health insurance for the duration of fiscal 2015. On June 26, 2015 he was issued a paycheck that included the gross amount of \$2500, from which deductions were taken. The Union promptly filed a grievance, which the parties settled without precedent or prejudice.

Firefighter Amy Doar cancelled her health insurance on August 21, 2014. Charles Ransom cancelled his coverage on February 1, 2015. Scott Godin was hired on June 18, 2015 and he elected not to enroll in any Town-sponsored health insurance plan. According to Jamieson, these firefighters were not paid any health insurance opt-out stipend because they had not gone the full fiscal year without health insurance. The three

firefighters, along with Dalessio, opted out of health insurance coverage for the entirety of fiscal 2016.

**Actions in Fiscal 2016.** In the last payroll check in June, 2016 or the first one in July, 2016, Dalessio, Doar, Godin, and Ransom each received gross payments of \$2500, from which tax deductions were made. Firefighter English was hired on February 12, 2016, and he was not paid any stipend because of the treasurer's interpretation that stipends only went to employees who were on the payroll for the entire fiscal year and opted out of health insurance for the entire year. The Union filed a grievance on behalf of all five firefighters. It was denied at all levels of the grievance procedure and appealed to arbitration.

**Other Contractual Benefits.** Article 16, Section 2 of the collective bargaining agreement provides that each firefighter shall be granted an annual clothing allowance, which currently is \$750. If a firefighter submits receipts for items purchased, that amount is reimbursed in a separate check within a week. Any amount left in a firefighter's account is included in the regular payroll check the first week in June. Section 3 of that article provides for a \$150 annual cleaning allowance and that amount is included in the regular payroll check the first week in October.

Michael Healy has been the fire chief since July, 2014, having progressed up through the ranks after being hired as a regular firefighter in 1987. He testified that he believed that under a prior chief, if a firefighter was hired in the middle of a fiscal year, the two allowances were pro-rated. During his tenure, however, six to eight firefighters have been hired and have begun working at various times during the fiscal year. He has

never prorated any clothing or cleaning allowance, meaning the firefighter would get the full clothing allowance in June and full cleaning allowance in October. Similarly, Article 20 provides for specified stipends for firefighters who attain thirty credits, an Associate's Degree, or a Baccalaureate Degree, to be paid the first week in July. All firefighters with the requisite credits on July 1 receive the full stipend, regardless of when in the fiscal year they were hired.

Numerous other stipends are provided for in the collective bargaining agreement, including for EMT certifications and various specialty assignments. Each provision states an annual amount but specifies that the total is to be disbursed on a weekly basis, or in one instance semi-annually.

**Notation of Net Pay and Computation of Gross-Up.** The paychecks prepared by the Town show the "Total Pay" of the employee, comprised of all forms of compensation; less "Deductions," which yields the "Net Pay." Among the deductions – besides Medicare, Social Security, federal and state withholding – are Bristol County Retirement; Union dues; health, vision, and dental insurance, and 457 retirement contributions, all of which are deducted pre-tax; and for some employees child support.

The Town uses a computer software program called Munis to calculate and track payroll and withholding. To determine how much to deduct for federal and state withholding from each employee's compensation, the Town relies on the number of exemptions claimed by the employee on his or her W4, as well as marital status. The Internal Revenue Service dictates a minimum withholding of 25% of taxable earnings and produces withholding tables for use by employers. Among the features available in

Munis is one called “net pay simulator.” Numerous computer programs that enable an employer to “gross up a net amount” are available through a Google search.

## **UNION POSITION**

The language of Article 27, §2 is clear and unambiguous; it requires the Town to pay a net amount of \$2500. The Town cannot avoid this obligation by claiming without any factual basis that the language negotiated by the parties was a “typo.” Even assuming there were any ambiguity, the evidence supports the Union’s reading of the contract. The term “net amount” has a commonly understood meaning that is fundamentally different than “gross.” In contrast to other provisions that specify a total annual payment, like the clothing or cleaning allowance, the use of “net amount” evidences the parties’ intention that the opt-out payment is to be treated differently. Contrary to the Town’s assertion, it is not difficult to calculate and pay the net amount, since Munis provides a “gross up” feature, as do many other readily available computer applications. All that is necessary are the employee’s marital status and claimed dependents and the statutorily required deductions of payroll taxes. The Town in fact regularly calculates net pay, as is shown on every paycheck.

The Town’s unilateral creation and implementation of a rule that an employee had to opt out of health insurance for a full fiscal year before being eligible for the \$2500 payment was unjustified. Such a rule was not negotiated and is inconsistent with the way the Town pays other allowances and differentials. The chief confirmed that he does not prorate the clothing and cleaning allowances, or the educational stipends. If employed on the relevant payment dates, the full benefit is given. That the Town may not have gained the full cost-savings in the case of a firefighter who did not work the entire year is not

determinative. The Town pays much more for health insurance for some firefighters than for others, so the impact of different benefits may vary by individual.

Lastly, the Union did not waive its right to grieve this contract violation. The Union learned of the Town's initial incorrect implementation of the provision in 2014 too late to file a grievance. The next violation was promptly grieved and it resulted in a non-precedential settlement. The Union then filed timely grievances over the incorrect application of Article 27, §2 in 2016. All the affected firefighters should therefore be compensated for the difference between \$2500 and what they were paid, or in English's case, the full \$2500.

## **TOWN POSITION**

The Town properly denied the health insurance stipend to English because he had not opted out of coverage for the full fiscal year preceding June 30, 2016. The Union sought to avoid the absurd result of a firefighter getting \$2500 despite the Town not having gained the benefit of the opt-out for the full year by contending English should be paid a prorated stipend. The weakness with the Union position is that nothing in the contract provides for the payment of a prorated benefit. In contrast to the EMT and specialty position stipends, for which the total annual amounts are to be paid as part of the regular payrolls, other lump sum payments like the clothing allowance are not pro-rated, regardless of when in a fiscal year the firefighter is hired. In the absence of explicit proration language, a lump sum benefit is all or nothing, and the Town would never have agreed to pay the health insurance stipend where it had not gained the benefit of a full year of insurance savings.



The Union also failed to establish that the payment of \$2500 to those firefighters who opted out for a full fiscal year violated the contract. The Union proposed the language of Article 27, §2, and any ambiguity must be resolved against the drafter. The Union failed to produce any evidence of bargaining history that would elucidate the mutual understanding of the parties when they negotiated the provision.

Nowhere in the contract is the term “net amount” defined. It is instructive that in 2014, when the provision was first applied to Dalessio, the Town paid the \$2500 as a total amount less deductions, and no grievance was filed. Even assuming the Union declined to file a grievance because of timeliness issues, the Union never put the Town on notice that it disagreed with the Town’s interpretation of the new provision. A contract term must be interpreted to avoid an absurd or unworkable result. The Town could not determine the proper after-tax amount for each firefighter because that number would depend on numerous factors, such as the firefighter’s outside income, and deductions for things like mortgage insurance and charitable contributions, as well as the variable earnings as a firefighter. An individual’s effective tax rate would not be known until the end of the calendar year, while the Town has to pay the health insurance stipend on June 30. Relying on the employee’s W-4 declaration is not sufficient because the employee can elect to over or under-withhold and can change the declaration at any time during the tax year. Further, paying a different benefit level to different employees would be inequitable, and paying in after-tax dollars could effectively double the cost of the benefit to the Town, with employees in the 33% tax bracket getting double what employees in the 15% bracket would receive. The individual variations would also make it impossible for the Town to accurately budget the cost of the benefit.

The only reasonable conclusion is that the parties inartfully used “net amount” to mean “total amount.” Such a reading of the contract would result in all firefighters getting the same benefit, as is the case with all other contractual allowances and stipends. The Town would receive the same *quid pro quo* from every firefighter who opted out of insurance coverage and the administrative problems of calculating individual payments would be eliminated.

## **OPINION**

**Net Cannot Be Read as Gross.** Unlike the provisions for the clothing and cleaning allowance or the educational stipends, which call for a total dollar payment in a lump sum, Article 27, §2 uniquely describes the health insurance payment as a “net amount.” While one tenet of contract interpretation states that ambiguities will be resolved against the drafter, that is a rule of last resort. A more fundamental rule is that contract language should be interpreted to give effect to all terms. Particularly where the language is different from other provisions, it must be assumed the parties intended the unique language to be applied differently.

Typically arbitrators rely on bargaining history and evidence of practice to discern the parties’ mutual intent regarding contract language. Although the Union sought to introduce the testimony of Whalen, who participated in the negotiations, that testimony was precluded based on a best evidence objection. Whalen acknowledged that the parties exchanged written proposals regarding Article 27, §2, but since the Union elected not to introduce whatever written proposals it had in its possession, Whalen was not permitted to testify about his recollections of the discussions. The Town offered no documents

regarding negotiations and no Town representative who was present at the arbitration had participated in the negotiations.

There was limited evidence regarding the past administration of the article, but that evidence was inconclusive. It is undisputed that the first time the Town had to pay the benefit – to Dalessio in 2014 – Jamieson, DeFontes, and Cadime decided to pay Dalessio a gross amount of \$2500, from which payroll taxes were deducted. None of them had been at the negotiations and they consulted with no one who had been, either for the Town or the Union. They reached the wholly unsupported and self-serving conclusion that “net amount” was a typographical error. Dalessio challenged the payment amount and eventually spoke to Whalen, which was the first the Union learned of the Town’s action. Whelan did not file a grievance because he concluded the time limit for challenging the payment had long passed. That he did not put the Town on notice that the Union disputed the Town’s interpretation of the provision did not establish a binding past practice evidencing the Union’s concurrence. One single event, learned of too late to grieve, does not meet the test for a past practice. As soon as the Town repeated its action in 2015, Dalessio and the Union promptly filed a grievance, putting the Town on notice. That grievance was settled without precedent or prejudice. While the resolution of that grievance cannot be evidence that goes to the interpretation of the provision, that the grievance was filed and settled refutes any claim that the Union acquiesced to the Town’s view.

Since “net amount” is not defined in the contract, and there is no useful evidence of bargaining history or past practice, the term must be interpreted and applied according to common usage and in a fair and reasonable manner. The Town identified numerous

uncertainties and difficulties in paying the benefit in “after-tax” dollars. To the extent those concerns are valid, one can only say they should have been anticipated by the Town’s negotiators before they agreed to the language of Article 27, §2. The reality, however, is that the calculation of a firefighter’s individual effective tax rate, that is based on factors largely extraneous to his or her employment, is irrelevant. The Town routinely computes an employee’s net pay, based on statutory and work-related deductions, but the Union is not claiming the net amount must account for other than the statutory deductions for federal and state income tax withholding and mandated payroll taxes. The reality is that the Town had no difficulty computing the statutory deductions to take from the firefighters’ \$2500 payment. The Town could employ the same assumptions regarding exemptions and tax bracket to do a “gross-up” calculation.

It is true that the withholding deductions may vary marginally based on an employee’s marital status and number of claimed exemptions, and that an employee can amend his or her W-4 declaration during a tax year. It does seem unlikely, however, that an employee would intentionally over-withhold just to increase the health insurance stipend. The Town’s claim that by manipulating one’s exemptions an employee could produce an insurance stipend double that paid to other employees is incorrect. Paying a net of \$2500 would at most add an amount equal to the tax rate, some fraction of \$2500. Since the tax rate will never be 100%, the effective cost to the Town can never be double. In any case, the risk of W-4 manipulation can be eliminated with a reasonable rule: In computing the net amount due, the Town will use the lowest statutory deductions applicable to an individual employee during the preceding fiscal year.

The Town has argued that paying a net amount will result in differing benefit levels for individual firefighters. Within a relatively small dollar range, that is true but not dispositive. The Town's contribution towards the health insurance of individuals varies between \$7020 and \$28,409. There is obviously no requirement of equal impact in the collective bargaining agreement.

**Full-Year Requirement.** In contrast to benefits like the clothing and cleaning allowance or the educational stipend, the health insurance stipend is predicated on the Town sharing the cost-savings it receives when an employee opts out of health insurance coverage, and incentivizing more employees to do so. To the extent an employee begins employment with the Town mid-year, the Town does not realize the level of savings of a full-year opt-out. While a proration of the health insurance stipend makes sense, since it would insure that the Town would never have to pay out more than a fixed percentage of the amount it saved, neither party argued in favor of proration. Contrary to the Town's statement in its brief of what the Union is seeking, the Union argued for the full \$2500 payment to English.

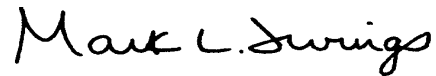
The Town pointed to Chief Healy's administration of the clothing, cleaning, and educational benefits to buttress its assertion that the payments are "all or nothing." It asserted that if the employee is on the payroll on the effective date the benefit is paid, the employee gets the full amount. If anything, this argument supports the Union's position. If English had a Baccalaureate degree when hired in February, 2016, or attained the degree before July 1, 2016, he would have been paid the same \$2000 stipend as a firefighter who had been employed as of July 1, 2015. Applying this same logic to Article 27, §2, the Town must pay to a firefighter who has opted out of health insurance

for whatever portion of the preceding fiscal year the firefighter is employed the full \$2500. Any modification of the negotiated terms of Article 27, §2 must be effected by bargaining, not the unilateral interpretation of administrators who played no part in the drafting of the language.

**AWARD**

The health insurance stipend amounts that the Town paid to Firefighters Dalessio, Doar, Godin, or Ransom on or about June 24, 2016 violated the contract. They shall be paid the difference between a net amount of \$2500 and the amounts they were paid.

The Town's failure to pay Firefighter English a health insurance stipend on or about June 24, 2016 violated the contract. He shall be paid a net amount of \$2500.



Mark L. Irvings  
Arbitrator

June 29, 2017