

**JOINT LABOR MANAGEMENT COMMITTEE
INTEREST ARBITRATION AWARD**

BETWEEN

CITY OF WOBURN

And

**WOBURN FIRE FIGHTER'S ASSOCIATION
IAFF/LOCAL 971**

JLMC -11-24F

CONTENTS AND AWARD SUMMARY

Article	Award	Page
3 § 1 - Limited Duty	No change	5
4 § 3(b) - Compensatory time off	Proposed change Awarded	7
6 § 1 - Vacation Policy	5 th week of vacation at 20 years of service Awarded	8
8 § 1 - Sick Leave	No change	11
10 § 1 (a) - Ambulance Duty	No change	13
11 § 1 - Medical Coverage	5% increase in employee contribution per City pattern Awarded	14
12 § 2 - Per Piece Manning	Manning per piece increased effective 6/30/14	17
14 § 13 - EMT Stipend	Increase to \$2,500 Awarded	23
WAGES	1% FY '12 2% FY '13 2% FY '14	25

UNION PROPOSAL

CITY PROPOSAL

PROPOSALS FROM BOTH UNION AND CITY

Commonwealth of Massachusetts
Joint Labor Management Committee for Municipal Police and Fire

In the Matter of the Interest Arbitration

JLMC-11-24F

Between

CITY OF WOBURN

And

WOBURN FIRE FIGHTER'S ASSOCIATION,
IAFF, Local 971

BEFORE: Sarah Kerr Garraty
Neutral Arbitrator

Diane Crimmins
Management Representative

Jay Colbert
Labor Representative

HEARINGS: November 19, 2012

BACKGROUND

The City of Woburn (City) and the Woburn Fire Fighters Association, IAFF, Local 971 (Union) are parties to a collective bargaining agreement effective between July 1, 2008 and June 30, 2011. They have been without a contract since then. After collective bargaining failed to bring about an agreement over the terms of a successor agreement the parties agreed to proceed "directly and voluntarily" to conventional, issues by issue arbitration subject to a list of issues approved by the JLMC. The undersigned Neutral Arbitrator was appointed as were the undersigned Management and Labor arbitration panel members.

The parties were directed to submit to arbitration the issue of wages and five other issues. The parties agreed to attempt mediation with the undersigned neutral panel chair as mediator and the management and labor panel arbitrators participating as team members with their respective sides. A single mediation session held on October 1, 2012 did not bring about an agreement. A hearing was held on November 19, 2012 and post-hearing briefs submitted on January 13, 2013.

In formulating its award, the panel considered the following provisions of Chapter 589 of the Acts of 1987: the interests and welfare of the public; the hazards of employment; physical, educational and mental qualifications; job training and skills involved; comparative wage and employment conditions with employees performing similar services and with other employees generally in public and private employment in comparable communities; the cost of living as determined by the Department of Labor; the overall compensation presently received by employees, including direct wages and fringe benefits; the tax levy limit – Proposition 2 1/2; municipal growth rates – residential and commercial; free-cash reserves; mean residential income; debt/projected expenses; other settlements in Woburn and in other comparable communities for employees similarly situated; and changes in the foregoing circumstances during the pendency of the dispute.

The parties were only able to agree upon one comparable community – Burlington. The City identified all of the communities contiguous to Woburn – (Winchester, Lexington, Reading, Wilmington, and Stoneham). To these it added the following non-contiguous communities that the City believed to be comparable – Needham, Belmont, Natick, Arlington, Melrose, and Waltham. In addition to

Burlington, the Union identified Andover, Marlborough, Billerica, Watertown, Methuen and Everett as being comparable communities.

The parties have identified the following ten issues, listed in the order in which they appear in the current Agreement: 1) Article 3, § 3 – Limited Duty (City issue); 2) Article 4 § 3(b) – Overtime (City issue); 3) Article 6 § 1 – Vacations (Union issue); 4) and 5) Article 8, § 1 – Sick Leave (2 City issues); 6) Article 10 § 1(a) – Ambulance Duty (Union issue); 7) Article 11 § 1 – Medical Coverage (City issue); 8) Article 13 § 2 - Per-Piece Manning (Union issue); and 9) Article 14 § 4 – EMT Stipend (Union issue).¹ In addition, both parties submitted wage proposals for a three-year agreement. The Union is seeking a 12% increase over the term of the Agreement, allocated at 4% for each of FY '12, FY '13 and FY '14. The City has proposed an overall 3% increase with a 0% increase in Fiscal year 2012 and a 1.5% increase in each of FY '13 and FY '14.

The ten issues before the panel are discussed below and in the order in which they appear in the current Agreement.

ISSUE # 1 – Article 3 § 1 and 3 – LIMITED DUTY (City)

The City has proposed to following changes to Article 3 § 3 (changes in italics)

1. ...This policy shall apply after the employee has been absent from work for a period of ~~16 consecutive shifts~~ *8 consecutive shifts*, excluding hospital time.

3.(h) Limited duty, *with the exception of Dispatch*, shall be performed on a work schedule of Monday through Friday from 0830 hours to 1630 hours. If a Fire Fighter, including Captains and Lieutenants, is assigned to limited duty

¹ The fifth Union issue – Article 14 § 4 – CDL was withdrawn by the Union in its post hearing brief.

by the City as a dispatcher, he shall be assigned to ~~his regular work group and work the regular work week as defined in Article 4, Section 1 of the contract. If more than one Fire Fighter on a group is assigned to limited duty, management has the right to reassign such Fire fighter to a different work group. Fire Figthers assigned to days shall be reassigned to other day shift related duties. four consecutive tours of duty, 0800 hours to 1800 hours, not to exceed forty hours per week. Fire Fighters assigned to days shall be reassigned to other day shift related duties.~~

City Position

The City brings forward this proposal as part of its effort to minimize overtime expenditures. Fire Fighters are now essentially prohibited from returning to duty after an injury for 16 consecutive shifts even if cleared for limited duty by a physician. This would free up other Firefighters to respond to calls, which would help reduce overtime. Under this proposal, when assigned to dispatch as light duty firefighters would be assigned to four ten-hour shifts in order to avoid the need to assign 2 hours of overtime to complete the shift.

Union Position

The Union argues that the City's proposal would not even accomplish its stated purpose of minimizing overtime, since firefighters on light duty cannot be used to supplement shift suppression or fill overtime vacancies. The Police have no similar light duty requirement. Moreover, there is not history of utilizing firefighters on light duty to perform dispatch function.

DISCUSSION

While the City has prioritized its goal of decreasing overtime costs through various proposals in this case the panel is not persuaded that bringing employees back on light duty earlier and changing light duty shift scheduling is the most

effective mechanism for doing so, given the fact that employees on light duty are not generally able to contribute to shift manning requirements. In addition, the panel notes that the internal comparable – the police bargaining units, do not have a light duty provision in their agreements at all.

AWARD

No change to the current limited duty provision is awarded.

ISSUE # 2 – Article 4, Section 3(b) – COMPENSATORY TIME OFF (City)

The City has proposed the complete elimination of the current Article 4, Section 3 (b), which provides:

~~If a Fire Fighter elects compensatory time instead of overtime pay, the time off shall be given at the Fire Fighter's discretion consistent with the requirements of the Department to maintain an effective work force at all times.~~

The City's proposed replacement language reads:

If a firefighter elects compensatory time instead of overtime pay, the time off shall be given at the firefighter's discretion as long as the compensatory time off selected is approved by the Fire Chief. If the Fire Chief determines that the selected time off will negatively impact the cost effective management of the Department, and is unable to provide an alternative time within ninety (90) days, the firefighter will be paid for his overtime instead of receiving compensatory time."

City Position

The City proposes this language as another aspect of its overall goal of reducing overtime expenditures. Firefighters will still be able to use compensatory time at their discretion within ninety days as long as this use will not force the City to fill the original shift on an overtime basis. The proposed language allows the City to pay overtime in lieu of compensatory time off if an alternative comp day cannot be arranged within ninety days.

Union Position

The Union has produced a chart based on City exhibits measuring compensatory time use and overtime. It suggests that there is no relationship between of comp day usage and overall overtime costs. In general, during the years in which comp time was the highest overtime costs were lower than in years in which comp time usage was lowest.

DISCUSSION

The panel is persuaded that the proposed language preserves the compensatory time benefit while affording the Fire Chief some additional control over when comp time is actually taken. Even if overall comp time and overall overtime have not moved up or down in lockstep, there is little doubt that if the Chief has a say in when a firefighter takes comp time and can use that increased discretion to avoid overtime where possible, this will make a positive contribution in reducing the City's overtime expenditures. Under the proposed language, the firefighter remains free to work with the Chief to arrive at an acceptable time to use comp time within ninety days, and if that effort is not successful the employee is simply paid at overtime rates in lieu of compensatory time.

AWARD

The City's proposed change to Article 4 § 3(b) is awarded

ISSUE # 3 – Article 6 § 1 – VACATION POLICY (Union)

The current language provides simply that “vacation time shall be determined by Massachusetts General Laws and City Ordinances. The applicable provision is M.G.L. c. 41 § 111D, providing for 3 weeks of vacation for firefighters with 5-10 years of

service and 4 weeks of vacation for firefighters with more than 10 years of service. The Union's proposal would amend Article 6 § 1 to add a 5-week vacation benefit for firefighters at all ranks after 15 years of service.

Union Position

The Union points out that the firefighters are the only City employees who are not awarded five weeks of vacation after 15 years of service. Although the Police contract also tracks § 111D benefits, the Massachusetts Supreme Judicial Court's *Holyoke* decision, 358 Mass. 350 (1970) interpreted the statute as requiring 28 working days of vacation. Although the City's firefighters work a 24-hour schedule rather than the 4 and 2 schedule addressed in *Holyoke*, the move to a five week vacation benefit for the most senior firefighters is supported by the internal and external comparables. The firefighter schedule is compressed into 48-hour blocks, but the result is that firefighters work the equivalent of over 30 more 8-hour shifts per year than do the patrol officers. Even many of the City's external comparable communities, which also largely work 24-hour shifts, provide a five-week vacation benefit to their most senior firefighters.

City Position

The City argues that the firefighters already work fewer days per year than other City employees and therefore enjoy significantly more time off than their counterparts in other bargaining units. Whereas all other City employees work over 200 days per year the firefighters work only 81 to 85 days annually. Although they work 24-hour shifts, when not responding to a call they are permitted to sleep on beds provided to them at the stations. Moreover, their shift configuration allows

them to schedule vacations in a manner that maximizes their time away from work; firefighters using two weeks of vacation in a row can be off duty for 21 days consecutive days. A fifth week of vacation would permit this to be expanded to the functional equivalent of 45 days. When the Agreement's other generous leave benefits are added in, bargaining unit members enjoy an inordinately large amount of time off, a situation that is already causing unaffordable levels of overtime expenditure.

Discussion

Although M.G.L. c. 41 § 111D governs vacation leave for both police and firefighters, since the *Holyoke* decision interpreted the statute in a manner than afforded police officers eligibility for a 5th week of vacation, Woburn's firefighter bargaining unit has been the only in which the most senior employees are not permitted to accrue a 5th week of vacation. The City's arguments about the number of days per year firefighters work (as compared to other City workers with more traditional shift assignments) notwithstanding, Firefighters are not on duty working for the City any fewer hours than are other City employees. In fact, their 24 hour shift assignments result in more hours "on the clock" than fellow City employees in other bargaining units.

Significantly, all but one of the Union's comparable communities and many of the City's comparable communities provide a fifth week of vacation time for senior firefighters, and many of these cities and towns also utilize 24 hour scheduling for their firefighters. For these reasons the panel is persuaded that adding a fifth week of vacation benefit for the most senior firefighters is appropriate. In an effort to

balance a step toward parity with a recognition of the City's legitimate fiscal constraints, we award the a fifth week of vacation to firefighters of all ranks after twenty (20) years of service rather than the fifteen (15) years sought by the Union.

AWARD

The Union's proposal to award a fifth week of vacation benefit to the most senior firefighters at all ranks is awarded but modified to provide a fifth vacation week after twenty (20) years of service.

ISSUES 4 and 5 - Article 8 § 1 - SICK LEAVE (City)

The first of two City proposals regarding sick leave amends the third paragraph of Article 8 § 1, ¶ 3 as follows:

Every member covered by this Agreement shall be credited with sick leave with pay for a period not to exceed ~~fifteen (15)~~ twelve (12) working days per full year of service; for persons starting work on the first working day of the calendar month credit will begin at once, at the rate of ~~one and one-quarter (1 1/4) days~~ one (1) day per month; otherwise on the first day of the month following employment, and will accumulate each calendar month thereafter.

City Position

The City points out that the fifteen-day sick leave accrual benefit predates the 1994 shift to 24-hour scheduling with its resulting frequency of work. For example, firefighters work 27% fewer shifts than do DPW employees and 25% fewer shifts than police officers. Through this proposal the City is attempting to curb suspected sick leave abuse. The total number of sick hours used since 2009 has ranged from a low of 2,488 hours in FY 2010 to a whopping 4,643 hours in FY 2012. Human Resources Director Cox testified that there was a great deal of single-day usage and even cases in which employees were sick for the day shift but able to work the night shift the same day.

Union Position

The City awards 15 annual sick days to all of its full-time employees in all bargaining units and the City has offered no evidence that firefighter sick leave use is meaningfully different from use among its other employees or its designated comparable communities. It points out that in Belmont, one of the City's comparables, firefighters are awarded a paid shift off if they use less than 60 hours per year of sick leave, yet the four-year average hourly use among bargaining unit members in Woburn is only 50.1 hours.

The second of the City's proposals to Amend Article 8 § 1 would amend ¶ 5 as follows:

Sick leave shall only be used for legitimate sickness. The Chief will review sick leave on an annual basis. Discipline may result from abuse of sick leave, e.g., repeated use of sick leave without medical evidence, e.g. four or more separate incidents of sick leave, etc. or any use of sick leave for absences not related to illness or injury, etc.

City Position

The City's argument in favor of this proposal is essentially the same as that articulated above; the City suspects that firefighters are abusing sick leave benefits and seeks language that would augment its ability to prevent this. Whereas the current language already permits discipline for sick leave absences not related to illness or injury, the proposed change specifies some situations in which discipline would be justified.

Union Position

The current language is already sufficient to allow the City to discipline employees if sick leave abuse can be established. The City offered no evidence that

any firefighter has been disciplined or counseled for sick leave abuse under the current language. The City's documentation related to sick leave abuse was incomplete and inaccurate.

Discussion

The proposed move from fifteen (15) to twelve (12) sick days per year is not supported by internal or external comparability. All other City employees accrue fifteen sick days per year. While the firefighters work a different shift schedule than do employees in any other bargaining unit, the 24-hour shift schedule is common among firefighter units based on the nature of their work. The City has provided no internal or external precedent for offering fewer sick leave days to firefighters in other communities based on the 24-hour shifts they work.

With regard to the proposed sick leave language change, the current contract has permitted the Chief to review sick leave and to discipline employees found to have abused sick leave through quantity or pattern of absences or any use of sick leave for absences not related to illness or injury.

AWARD

No changes to the current sick leave provisions are awarded.

ISSUE # 6 – Article 10 § 1 (a) – AMBULANCE DUTY (Union)

The current language provides that.

Fire Fighters assigned to ambulance duty shall receive a weekly pay differential of forty dollars (\$40.00). This differential shall not be included as part of the base salary for purposes of calculating overtime.

The Union's proposal leaves the language intact but raises the ambulance stipend from \$40 per week to \$100.00 per week.

Union Position

Bargaining unit members have not seen an increase in the ambulance stipend since 1989, yet 70% of the calls received and responded to by the Woburn Fire Department are medical calls and the volume of medical calls has been steadily increasing.

City Position

Of the City's comparable communities only Burlington has an ambulance differential separate and apart from the more traditional EMT differential. Only one of the Union's comparables (Andover) provides this additional stipend. The EMT differential is adequate to compensate for the work generated by medical-related calls.

Discussion

The Ambulance stipend is a fairly unusual benefit among the comparable communities. Neither Ambulance nor EMT stipends have increased for over twenty years and improvements in the EMT stipend are ordered herein in lieu of improvement in the Ambulance stipend.

AWARD

No changes to the current Ambulance Stipend are awarded.

ISSUE # 7 – ARTICLE 11 § 1- MEDICAL COVERAGE (City)

Effective July 1, 2011, the City shall pay 67.5% of the medical insurance premium of an indemnity plan and 82.5% of the medical insurance premium of an HMO plan. The employee shall pay the remaining 32.5% of the medical insurance premium of an indemnity plan and the remaining 17.5% of the medical insurance premium of an HMO plan.

- Effective July 1, 2012, the City shall pay 65% of the medical insurance premium of an indemnity plan and 80% of the medical insurance premium of an HMO plan. The employee shall pay the remaining 35% of the medical insurance premium of an indemnity plan and the remaining 20% of the medical insurance premium of an HMO plan.”

Additionally, the City proposes that the next [unbulleted] paragraph of Section 1 be revised to read, as follows:

Employee medical insurance premiums will be deducted from each employee’s pay on a pre-tax basis, saving the employees the amount of the taxes for these premiums, as long as allowable by law.

City Position

The City points to escalating health insurance premium costs in recent years. In FY 2011 the percentage increase was over 15% and in FY 2013 it rose another 7.5%. Just those two years brought over \$2 million in increased premiums at a time when local municipal funding has been constrained. The City is therefore proposing a phased in 5% increase in employee contributions to help defray those costs. The City argues that this level of increase is justified by the City’s comparables, which average an 81/19% split. Even the Union’s proposed communities support the City’s proposal. Marlborough and Burlington both have 70/30% splits, while Methuen has a 62/38% split and Andover has a 65/35% split. The internal comparisons are even more compelling. In this round of collective bargaining every other bargaining unit in the City, including the Police unions, accepted the split proposed herein. The move to deduct this from pre-tax income will lessen the financial impact of the proposed increase.

Union Position

The Union argues that the City’s proposal to increase the percentage paid by employees toward health insurance premiums must be analyzed in the context of its

wage proposal. When combined, the 0%, 1.5%, 1.5% wage proposal and the 5% increase in employee contributions to health insurance premiums would result in a net base wage decrease of 1.97%. There is no justification for the disparity between the Police settlement, which committed over \$300,000 in annual expenditures for Quinn Bill benefits, the settlements with all other bargaining units in the City, which utilized a 1%, 2%, 2% wage pattern, and the offer wage/health insurance contribution package that has been offered to this bargaining unit. If the proposed increase in health insurance contributions is awarded it must be coupled with a fair wage proposal.

Discussion

The City's proposal is reasonable and supported by both internal and external comparable communities. The skyrocketing cost of health insurance is a national problem for employers and employees alike. Increases in employee contributions have proved a difficult but necessary element of comprehensive efforts to deal with this problem. The 80/20 split proposed by the City, phased in over the term of the Agreement and softened by the City's offer to deduct premium contributions from pre-tax income is reasonable, especially when viewed in light of other wage and benefit improvements recommended herein.

AWARD

The City's proposed changes to Article 11 § 1 are awarded.

ISSUE # 8 – ARTICLE 13 § 2 - PER PIECE MANNING (Union)

The current language related to minimum manning per piece of fire apparatus reads as follows:

(a) The Fire Department shall be divided into seven (7) companies. The employer shall maintain for the safety of the public the minimum at various stations of the Department so that there is always a minimum of three (3) permanent Fire Fighters working on the pumping engine currently known as Engine # 3 and two (2) permanent Fire Fighters to every other piece of apparatus on duty, and assigned to each pumping engine, ladder truck, tower truck, and Rescue Company of the Fire Department.

The Union proposes that the manning per piece of Fire Department apparatus, specifically Ladders 1 and 2 and Engines 4 and 5, be increased from two to three.

Union Position

Per piece manning while responding to a fire or medical call is a mandatory subject of bargaining to the extent that it impacts the health and safety of bargaining unit members. The Union presented unrefuted evidence that the current practice of deploying only two firefighters on Ladders 1 and 2 and Engines 4 and 5 poses a significant safety risk and is in violation of almost every relevant and local safety standard. The City's own expert, Donald Bliss, reaffirmed that conclusion and suggested that the improvement proposed by the Union could be accomplished at little cost to the City. The Union emphasizes that its proposal does not suggest any staffing pattern nor does it in any other way thwart the City's managerial prerogatives. If this proposal is awarded, the City will be free to effectuate it in any manner that is within its managerial rights.

Lieutenant Stukeley explained that the various apparatus that respond to a fire do not show up at the same time; there can be a lag of 4-8 minutes before other apparatus arrive and approximately fifteen minutes before any mutual aid from an adjoining community arrives. The City's suggestion that the first responders wait for backup to avoid entering a burning building alone is inherently unrealistic; no firefighter will wait when there are lives at risk. The Union's expert, Boston Fire Department Deputy Chief Jay Fleming, opined that Woburn is more densely populated than the average Massachusetts community, yet it has fewer firefighters and apparatus per capita than many other communities. He described Woburn as a commercial hub that includes major highways, multi-unit apartments, malls and cinemas.

ICMA standards recommend at least three firefighters per piece of apparatus responding to an emergency scene. Indeed, The Metro Mutual Aid, of which Woburn is a member, requires that any apparatus responding as backup do so with a minimum three firefighters. Likewise, the National Institute for Science and Technology (NIST) has concluded that staffing levels of two firefighters per piece of apparatus responding to a low hazard residential emergency scene increases the risk to firefighters and the public when compared to three person manning. This study also concludes that a medium growth fire addressed by an early arriving apparatus with a 2-person crew would not be expected to complete the essential tasks in time to rescue occupants from exposure to life threatening toxic gases.

Fleming summed up these studies with the following conclusion:

When you have more firefighters in the truck, then the number of firefighters who get injured goes down. It's very simple. You don't have to work as hard;

you don't have to work as quickly. There is less injury with more firefighters. So staffing level of two firefighters, which is typical for Woburn, increases the risk to firefighters and the public relative to staffing levels of three or four firefighters.

The Union points out that the Municipal Resources Institute study commissioned by the City supported the Union's proposal. It specifically recommended a particular configuration of staff among the Woburn fire stations that would permit three responders per piece of apparatus. The Union stressed the fact that while this represents a cost effective suggestion that would accomplish the Union's suggested minimum manning per piece proposal, it recognizes that whether to take the recommended approach or some other one is not a mandatory subject of bargaining.

City Position

The City has moved to dismiss the Union's manning proposal, asserting that it effectively amounts to a question of assignment that is not permitted under the JLMC statute and not a mandatory subject of bargaining. The City suggests that the Union's proposal has been a moving target that attempts to couch as a mandatory subject of bargaining (per piece manning) what is in its essence a proposal for minimum shift assignments.

The City next argues that its current manning requirements are in full compliance with guidance promulgated by OSHA and NFPA. OSHA guidelines for interior structural firefighting require four firefighters, two inside the structure and two outside of it. Moreover, NFPA is a private trade organization; the Commonwealth has not adopted its guidelines as mandatory regulations. Indeed, as Company witness Bliss pointed out, the Annex to NFPA Standard 1710 provides

that that it is within the discretion of the municipality to determine the acceptable level of risk and what is appropriate staffing for the community. In this case, the City of Woburn should have the authority and discretion to determine what scope and level of service should be provided by its Fire Department.

The City asserts that the Union's manning proposal has been a moving target that does not seriously address the cost issues. When pressed, Union representatives continually say, "three per piece," essentially deflecting the difficult questions about how to accomplish that. At a minimum, this would require the City to hire four additional firefighters, resulting of an increase of 5.25% in the Fire Department budget.

Addressing the testimony of its own expert witness, who suggested that a cost-effective way to address the per-piece manning proposal would be to close a fire station and consolidate staff to the remaining stations, the City argues that the JLMC is not the appropriate forum for addressing such a core managerial prerogative. Given the comprehensive nature of the MRI report, it would be wholly inappropriate for the Panel to focus on one component of the Report.

Discussion

One of the essential features of the Massachusetts Public Sector Collective Bargaining Law, M.G.L. c. 150E and the case law that has developed since it was enacted is an effort at the delicate balancing of managerial prerogatives to operate the governmental enterprise and employee rights to engage in collective bargaining over wages, hours, and terms and conditions of employment. The positions of the parties in this case regarding minimum manning represent this balancing of

interests. The balance that has been carved out with regard to this issue is that whereas “per shift manning” is viewed as a level of services decision that is an inherent management right and therefore not a mandatory subject of collective bargaining, “per piece manning,” that is, the number of firefighters assigned to each piece of equipment responding to a call, is viewed as a mandatory subject of bargaining because it is integrally related to health and safety concerns of firefighters.

The Union’s proposal is therefore squarely in permissible territory; it does not seek to compel any particular manner of effectuating its proposal to increase manning per piece of firefighting apparatus from two to three on ladder trucks 1 and 2 and pumping engines 4 and 5. The City is correct that how to accomplish that remains an inherent managerial prerogative – and a complex one to boot

Yet the testimony in this case regarding the health and safety concerns of two-person manning was overwhelming and essentially unopposed. The Union’s expert witnesses on this topic, Jay Fleming and Bill Stukey, testified that with the current two man per-piece crews, the first piece of fire equipment arriving at a fire scene and manned with two firefighters does not assure immediate safe entry into a structure. The reason for this is that one firefighter needs to man the ladder or engine, leaving only one to enter the burning structure until more manning and apparatus arrive at the scene. Yet every safety regulation prohibits this. In this situation, the firefighter faces a choice of obeying the regulations and waiting for a second piece of fire apparatus to arrive or ignoring the regulation in an effort to

potentially save lives. Fleming explained that this is not a real choice – no firefighter will stand outside a burning building with lives at risk and wait for backup.

The City's expert witness, Donald Bliss, was commissioned to do separate comprehensive reviews of the management structure, operational capabilities, facilities, equipment, technology morale and attitudes within the Woburn fire and police departments. Bliss testified that among the study's myriad recommendations for the Fire Department was the suggestion that the City's five fire stations exceeded by at least one the number necessary to protect its total area. He went on to recommend that the City close its oldest Station (Station 3) and redeploy those personnel to the other four stations. He agreed that this would permit the City to increase manning per piece of firefighting apparatus more efficiently and perhaps utilizing only existing personnel.

The overall agreement among the Union and City expert witnesses is compelling. It appears that there is at least one cost effective way in which to enhance the health and safety of Woburn's firefighters (not to mention the safety of its citizens) by increasing per piece minimum manning. Yet just as the City has argued, a JLMC interest arbitration panel has no business dictating how the City should organize its Fire Department operations or whether it should close one or more of its fire stations; these are core managerial decisions. The panel is persuaded, however, that the current per-piece manning configuration is below standard and poses a risk to the health and safety of bargaining unit members. Accordingly, the Union's proposal to amend the language of Article 13 § 2 so as to

require that three permanent firefighters be assigned to ladder trucks 1 and 2 and pumping engines 4 and 5 is awarded.

The panel is also cognizant of the fact that the changes needed to bring this change about are complex and that the City will imminently experience a change of leadership brought about by the retirement of the current Chief. For this reason the change described above is awarded so as to take effect on the last day of the Agreement – June 30, 2014. This will permit the City in excess of a year in which to work with the Department's new management in an effort to determine how to bring about the increased manning-per piece requirements awarded herein.

AWARD

Effective June 30, 2014, Article 13 § 2 shall be amended to require a minimum of three firefighters working on the pumping engines currently known as Engines # 1, # 2 and #3 and a minimum of three firefighters working on the ladder trucks currently know as Ladders # 1 and # 2.

ISSUE # 9 – Article 14 §13 EMT STIPEND – (Union)

The current language requires that,

All permanent members of the Fire Department who have fulfilled the prescribed requirements and satisfactorily passed the written and practical examination and are duly registered as Emergency Medical Technicians shall receive annual remuneration as follows:

... As of July 1, 1989 – One Thousand, seven hundred fifty dollars (\$1,750.00).]

The Union proposes raising the stipend to \$4,000.00

Union Position

The Union argues that the City requires EMT certification yet has not increased the stipend since 1989. During the time frame the volume of calls has increased and 70% of those are medical calls. The average EMT Basic Stipend for the external comparables is \$2,967.00.

City Position

The City asserts that the proposed increase in the EMT stipend is a staggering 128%. As an annual increase in base salary this amounts to an additional 3%. Since the EMT stipend is added to base salary, this will also drive up already excessive overtime costs. Only five of the City's comparable communities have an EMT stipend at all. Although six or the seven communities the Union is using as comparables have EMT stipends larger than those in Woburn, the Union's proposal exceeds even the highest of its comparables.

Discussion

The Union has established that the City's EMT stipend has not only remained unchanged for over twenty years but also lags behind its identified comparable communities. EMT pay exists in all but one of those communities and in substantially higher amounts than are currently paid in Woburn. Indeed, the average stipend among these comparable communities is \$3,967.00 - substantially higher than the current \$1,750.00 Woburn EMT Stipend. As noted above, however, most of these communities do not also pay an Ambulance Stipend. In light of all of these considerations the panel awards an increase in the EMT Stipend to \$2,500.

AWARD

Article 14 § 13 shall be amended to provide as follows:

... As of July 1, 2011 – Two Thousand, five hundred dollars (\$2,500.00).]

ISSUE # 9 – WAGES

Union Proposal: FY 2012 – 4% increase

 FY 2013 – 4% increase

 FY 2014 – 4% increase

City Proposal: FY 2012 – 0% increase

 FY 2013 – 1.5% increase

 FY 2014 - 1.5% increase

Union Position

The Union initially points out that the particular characteristics of Woburn inform the appropriate comparable communities more than does a strict analysis of contiguous communities. One of its chief distinguishing features is that while it ranks 40th in the Commonwealth in residential population, it ranks 11th in the number of employment establishments, 9th in number of employees working there, and a resulting daytime population increase of 13,336. These characteristics bring about a greater volume of fire and medical calls. The Union hired an expert to determine the appropriate comparable communities in search of others with common measures of population, per capita income, area of coverage, bond rating fire department workload and the like.

The Union argues that the City's choice of comparables amounts to cherry picking to arrive at a contrived result. Even its use of contiguous communities under the theory that these represent Woburn's "employment marketplace," breaks down when one looks at the details. For example, the daytime populations of Reading, Stoneham and Winchester decrease during the day, and the per capita incomes in Reading, Lexington and Winchester tower over those of Woburn. The non-contiguous communities are also nonsensical; Waltham has double Woburn's population and has almost three times the number of firefighters. Per capita income in Needham, Belmont, Natick and Arlington is far higher than that in Woburn. When combined, the variances between the median City-endorsed comparables and Woburn are 48% (population); 75% (daytime population); -24% (Per Capita Income and -13% (EQV per Capita).

In an effort to identify effective comparables for the Union, its expert first considered that Woburn is 40th in statewide population so began with the band between 26th and 50th in statewide population. He then eliminated communities outside of Route 495 or south of the Mass Pike, those with noticeable variance from Woburn's annual budget of \$129 million, and those with available resources less than 4% of annual budget. This left six communities (in addition to Burlington – the one community contiguous to Woburn that also meets the Union's comparability standard).

Relying on its identified comparable communities and comparing overall compensation among them for a 15 year firefighter with an EMT certification and an Associates degree, the Union has identified an overall 10% lag among external

peers. At the Bachelor's degree level that lag is still 9.5%. The Union's analysis of the internal comparables to a 15-year Woburn patrolman the union identifies no pay and benefit lag without the education incentives but an average lag of 8.1% across all Associates to Master's degree education levels. The firefighters proposed 12% pay increase would come close to closing the gap with its peer pay parity group.

When the most common degrees (Associate's degree among firefighters and Bachelor's degree among patrol officer) are compared within Woburn there is a lag of 13.2%. The Union argues that the expenditures that the City committed to restore Quinn Bill education benefits for which State funds have been removed totaled a net of \$387,126. When this is annualized as a one time increase in pay during the relevant open period, it becomes clear that the police union actually received base wage increases of 6.9% for FY 2012, 1.5% for FY 2013 and 0% for FY 2014 – an annualized 2.63%.

The Union takes exception with the City's argument that firefighters work less than do police officers. Firefighters work a 48-hour schedule that repeats itself seven times during each 6-week cycle whereas police work a 4 days on/2 days off schedule. The comparison is that firefighters work an annual 30+ additional 8-hour days than police officers and 25+ more 8 hour shifts than do other City employees.

Turning to the question of ability to pay, the Union argues that City of Woburn is in sound fiscal condition and has the ability to pay for the wage and benefit increases sought by the Union. In his FY 2013 budget message Mayor Galvin stressed that the General Fund increased by 2.5% in FY 2012. He also boasted of the

City's favorable bond refinancing and a Moody's bond rating of As2. It is expected that the 2013 budget will be \$7.4 million under the Proposition 2 ½ levy limit without appropriating free cash to fund operations. Indeed, the City has estimated \$25.7 million in available funds. In this light the \$2.1 million cost of funding the firefighter wage and benefit increases sought by the Union is affordable to the City.

Turning finally to the changes in the cost of living during the open period, the Union cites to the DOR's determination that the statewide COLA rate for FY 13 was 2.65%.

City Position

While the City has weathered the financial crisis through conservative management, it continues to face challenges that include even-increasing costs of providing excellent health insurance coverage for its employees, reductions in local aid and the need to invest in capital improvements including the replacement of school buildings and upgrades or replacement of public safety buildings. The citizens of Woburn, a largely blue-collar community, face challenges in supporting the tax burden brought about by these circumstances.

In advocating for its selected comparable communities, the City argues that all of the contiguous communities are included based on the fact that its firefighters are drawn from the same labor pool. The Union's selected communities are not in the Metro Boston market area with the exception of Burlington, Watertown and Everett. Then, to make these random communities appear comparable, the Union has inappropriately "averaged" them. The City chose the non-contiguous

communities of Arlington, Belmont, Waltham, Natick, Needham and Melrose based on their similarity in population, per capita income and EQV value.

The City suggests that its 3% wage offer over the term of this agreement maintains parity with contiguous and comparable communities and is consistent with the City's pattern for its public safety bargaining units, particularly when police officers who were not Quinn Bill eligible before October 2009 are factored in. Indeed, it is non-Quinn Bill eligible police officers who will be lagging behind firefighters. The City stresses that the Union's attempt to frame restored Quinn Bill benefits as wage increases is belied by the fact that the Firefighters already explicitly received the benefit increases aimed at achieving Quinn Bill related parity back in 1998 and through a JLMC award.

Turning to the statutory factor of ability to pay, the City asserts that the Union mistakenly claims that the City has 25.7 millions available within the FY 2013 budget to fund the Union's demands. Yet much of this funding is statutorily restricted to particular uses such as school construction and affordable housing. Indeed, the Department of Revenue has certified just over \$8 million as being "free cash." The City suggests that even this is not wisely used to fund recurring costs such as wage and benefit increases; best financial practices would dictate using "free cash" for one-time expenditures such as capital outlays. Contrary to the Union's assertions, the City has offered a fair wage increase that will maintain firefighters relative position when compared to the City's police force and those in fire departments in nearby comparable communities.

The City estimates that the cost of the Union's proposals totals \$2,164,961 when the cost associated with its minimum manning proposal is included, as it must be. As outlined above, many of the funds that the Union points to as available to fund these demands are restricted to other uses and therefore not available. The City's proposal will maintain parity with the internal public safety unions and the comparable and contiguous cities and towns.

Discussion

1. Internal Comparability

There are advantages and disadvantages to becoming the last bargaining unit in Woburn to reach agreement with the City. One advantage, which the Union has stressed, is that the City's ability to fund the firefighter agreement is easier to discern because its current budget has already factored in the cost of funding the other agreements. One disadvantage is that the other collective bargaining units have set a consistent pattern that included the 5% increase in employee contributions to health insurance benefits also awarded above and a pattern of wage increases totaling 5% over three years except in the case of the other public safety bargaining units – the police. These do not seem to support the 12% pay increase proposed by the Union.

How to weigh the comparability of the Police agreements is among the most hotly contested issue in this case. The City views this as a simple 0%/1%/0% settlement along with an agreement to fund Quinn Bill benefits in order to maintain the status quo despite the Commonwealth's decision to abandon Quinn Bill funding. From this perspective, funding the Quinn Bill does not amount to a wage

improvement. It also points out that only grandfathered officers will receive Quinn Bill benefits at all. Thus, it averages Quinn eligible and Quinn non-eligible officers when comparing their wages to firefighter wages.

In contrast, the Union views the City's concession to fund Quinn Bill educational incentives as amounting to a 6.9% pay raise in the first year of the Agreement which, when combined with the 1% raise in year two brings the total police increase to almost 8%. The Union compares a particular firefighter profile to a particular police officer profile using an officer who is Quinn eligible in reaching its calculation that there is a firefighter pay lag that justifies its 4%/4%/4% proposal.

It is not surprising that the issue of how to factor in the transfer of Quinn Bill funding from the Commonwealth to the cities and towns opting to assume this expense has come up in earlier JLMC cases. In the two cited by the Union, *City of Haverhill and Haverhill Firefighters* JLMC-09-11F, and *Town of Scituate*, JLMC-10-15F, Arbitrators Katz and Altman (respectively) each weighed essentially the same arguments made by the parties to this case and concluded that,

... Even though...I did not feel it was appropriate to treat (Quinn Bill) costs as the equivalent of a 6.25% pay increase...The City's willingness to commit those funds casts significant doubt on its claim that it lacks the financial wherewithal to fund a reasonable settlement for these firefighters (Katz, at 18)

... The fact that the Town came up with funding to ensure that Police Officers did not have their pay reduced, is not a legitimate reason to take the value of the Quinn Bill benefit and apply this amount to increase firefighter benefits (Altman, at 12).

The sound conclusion to reach in this case mirrors that described above; Woburn's agreement with its police union reflected the high cost of retaining

existing Quinn Bill benefits needed to keep already-Quinn eligible officers at status quo. To achieve this the police took lower increases than did the other bargaining units in Woburn. This is appropriately deemed relevant to the City's ability to pay for reasonable increases for its firefighters, but it does not realistically amount to a 6.9% increase for police in year one or an annualized 2.63% as asserted by the Union. The more meaningful comparison is to the other bargaining units in Woburn, which uniformly settled for 1%/2%/2% wage increases for FY '12-14.

2. External Comparability

The Union has demonstrated a wage gap between Woburn firefighters and the firefighters in the Union's comparable communities in the 9-10% range.² While acknowledging that the 5 % increase awarded herein will not bridge that wage gap in a single contract term, the panel has also awarded a long-awaited increase in the EMT stipend with the understanding that this will be calculated as an addition to base wages. Moreover, the panel acknowledges that its award to increase minimum manning per piece will carry some cost, the amount of which will depend on how the City chooses to bring about that change.

² The City's comparables, though they include all contiguous communities that draw from Woburn's labor pool, differ drastically from Woburn in population (variance from over 22,000 higher to over 16,000 lower – average variation 30,792 – rank, 3 of 13); per capita income (variations from almost \$46,000, rank 12 of 13); and EQV (variation from almost \$113,000, rank 9 or 13). They also generally lack a comparable industrial base as reflected in daytime population increase. To put it simply, Woburn abuts largely smaller and wealthier communities and its non-contiguous comparables add to this problem (Belmont's has over 13,000 fewer residents but has an average per capita income that is double that of Woburn; Needham's population varies from Woburn's by just over 10,000 and its per capita income exceeds Belmont's; Waltham has a comparable per capita income but its population exceeds Woburn's by almost 20,000).

3. Ability of Pay

The City is in remarkably good fiscal condition given the economic circumstances of the past five or so years. Even with all of its other collective bargaining agreements already funded it ended 2012 with \$25.7 in estimated available funds, a strong AaB bond rating and free cash of almost \$6M. Significantly, it has an excess levy capacity of about \$4.6M. Though the City has persuasively argued that “available funds” are not all available for all purposes, many cities and towns in Massachusetts would envy Woburn’s overall financial picture. To its credit, Woburn has achieved this through careful management.

Having funded wages for all other bargaining units at 1%, 2% over the three fiscal years at issue in this case, there is no reason to doubt that the City has the ability to extend this same level of increase to its firefighters, particularly in light of the fact that the panel has also awarded the graduated 5% increase in employee contributions to health insurance benefits that the other bargaining units have already accepted.

AWARD

For FY 2012 – 1% increase

For FY 2013 - 2% increase

For FY 2014 – 2% increase

CONCLUSION

The panel has considered the statutory criteria in an effort to balance the interests of the bargaining unit employees, the City and its citizens. The panel's decision was unanimous with respect to all of the issues presented at arbitration.

Respectfully Submitted



Sarah Kerr Garraty, Esq.
Neutral Chair
Dated: February 14, 2013

Executed copy of this page to be provided

Diane Crimmons
Management Panel Member
Dated:

Executed copy of this page to be provided.

Jay Colbert
Union Panel Member
Dated: