

COMMONWEALTH OF MASSACHUSETTS  
JOINT LABOR MANAGEMENT COMMITTEE FOR MUNICIPAL POLICE  
AND FIRE  
JLMC-11-12F

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IN THE MATTER OF ARBITRATION BETWEEN:

CITY OF MALDEN

&

MALDEN FIREFIGHTERS LOCAL 902, IAFF

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AWARD AND DECISION BY THE ARBITRATION PANEL

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**Background**

The City of Malden ("City" or "Employer") and Malden Firefighters Local 902, IAFF ("Union") are parties to a Collective Bargaining Agreement ("Agreement") that expired June 30, 2009. The parties engaged in direct negotiations but were unable to reach a successor Agreement. A petition was filed for the Massachusetts Joint Labor Management Committee ("JLMC") to exercise jurisdiction, and the JLMC exercised formal jurisdiction of the ongoing dispute between the City and the Union. On May 4, 2012 the City and Union agreed to the following with respect to their contract negotiations:

The City of Malden ("City") and the Malden Firefighters Union, Local 902, IAFF ("Union"), through their duly authorized representatives, hereby agree:

- (1) That they have been unable to resolve their bargaining dispute over the terms and conditions of a collective bargaining agreement;
- (2) That the issues in said negotiations have remained unresolved for an unreasonably long period of time;

(3) That they have apparently exhausted the process of collective bargaining under the law, and that their dispute may constitute a potential threat to public welfare;

(4) That they wish to proceed directly and voluntarily to arbitration of the dispute currently before the Joint Labor Management Committee under the following terms:

- (a) The form of arbitration shall be conventional, issue by issue subject to the provisions contained in approved "Attachment A".
- (b) The issues in dispute shall be resolved by a three-member arbitration panel, one selected by the City (currently Diane Crimmins), one selected by the Union (currently Jay Colbert), and a third impartial Arbitrator, Gary Altman, who shall act as chairman of the panel.
- (c) The arbitration panel shall have the authority to resolve such issues on the basis of the City's proposals, the Union's proposals, or some combination or variation thereof that they deem warranted. Each party shall submit their proposals and positions, in writing, to the arbitration panel at the hearing.
- (d) All issues resolved by the arbitration panel within the scope of authority conferred upon them shall be final and binding upon the parties hereto, subject to provisions of Chapter 589 of the Acts of 1987 as amended; and, it is in any event agreed that this agreement to arbitrate shall not expand the obligations of the parties under the statute.

The parties further agreed:

## PART I

The most recent collective bargaining agreement between the parties titled "COLLECTIVE BARGAINING AGREEMENT BETWEEN THE CITY OF MALDEN AND THE MALDEN FIREFIGHTERS UNION, LOCAL 902, IAFF JULY 1, 2008 - JUNE 30, 2009" shall remain unchanged except as modified by PART II - issues to be resolved by arbitration as authorized by Chapter 589 of the Acts 1987 as Amended.

## PART II

The parties agree that the arbitration award shall provide for a four (4) year duration under Article 32, effective July 1, 2009 through June 30, 2013.

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Arbitration hearings commenced on October 5, 2012 and continued on December 3, 2012 in Malden, Massachusetts before the Tri-partite panel consisting of Gary D. Altman, Esq., Diane Crimmins, Management Panel Member, and Jay Colbert, Union Panel Member. Laurence J. Donoghue, Esq., represented the City, and Terence Coles, Esq., represented the Union.

### Analysis and Issues

Under the Collective Bargaining Laws of Massachusetts, the Interest Arbitration process is utilized when "there is an exhaustion of the process of collective bargaining which constitutes a potential threat to public welfare". In reaching the conclusions in the present award, the Arbitration Panel has considered the criteria set forth in the statute including the municipality's ability to pay, wages and benefits of comparable towns, and the cost of living. It must also be noted that large gains or major concessions are not achieved in the format of arbitration. An arbitrator is reluctant to modify contract provisions where the parties, in past years, have already reached

agreement, the contract article has been in the contract for a considerable period of time and there has been no ascertainable problem with the contract language.

### **Background**

The City of Malden is located approximately five miles north of Boston, and has a population of approximately 60,000 residents. The City is governed by a Mayor and has an elected eleven person City Council. The bargaining unit is composed of five Deputy Chiefs, eleven Captains, sixteen Lieutenants, and one hundred and eleven uniformed Firefighters. There are three fire stations in the City and bargaining unit employees respond to fire suppression and various emergency responses that occur in the City. The Fire Department does not provide ambulance service to City residents.

### **Issues**

The unresolved issues are as follows:

1. Article XIX - Wage Increases	p. 4
2. Article XXII - Longevity & Education pay	p. 10
3. Article XXI - Sick Leave	p. 19
4. Article XXII - Holidays	p. 23
5. Article XXIV - Defibrillator Stipend	p. 25
6. Article XIX - Salary (Senior Longevity)	p. 27
7. Health Insurance	p. 28

### **1. ARTICLE XIX - WAGE INCREASES**

#### **Union Position**

July 1, 2009: 2%  
July 1, 2010: 2%  
July 1, 2011: 4%  
July 1, 2012: 4%

The Union maintains that the City has the ability to pay the Union's wage proposal as well as its other

compensation proposals. The Union first stated that an October 3, 2012 letter from the Department of Revenue certified that there was over \$8 million in free cash available to the City, and that this amount is a vast improvement over the pre-recession free cash amounts. The Union further states that the City has \$957,557 in its stabilization funds, and at the time of the hearing there was a balance of \$5 million in the City's Health Insurance Trust Fund, and of that amount, at least \$3 million would be available to fund the firefighters' contract. Specifically, the Union states that the City could use the surplus funds in this Trust fund to purchase health insurance for other City employees, which in turn, would make funds available for the City to use to fund this Agreement. The Union also points to a reserve account established for the FY13 budget of over \$750,000.

The Union further contends that the financial picture of the City has been improving over the past three years, and points to the improving free cash balance, in which there was an increase of \$5.77 million to \$10.860 million from FY11 to FY12. The Union contends that at the present time there is at least \$14.35 million in available funds to fund the Union's contract proposals. In addition, the Union states that the City has seen increased State Aid in the last two fiscal years, and that by FY13, the City has recovered all but \$2.529 million in annual local aid. The Union further states that all of the other City agreements have been settled, thus, there is no need to set aside additional monies for other contract settlements. The Union also maintains that the City has been able to maintain an A1 Moody's bond rating and an S&P rating of A+.

### City Position

January 1, 2012: 2%

January 1, 2013: 2%

June 30 2013: 1%

The City states that its annual budget is over \$150 million, but like many other Massachusetts communities a significant portion of the City's budget is based on State Aid as reflected in the so-called Cherry Sheets. The City states that State Aid at the time the last contract expired at the end of FY 2009, was over \$49 million, and for the next four years the City never received the same level of State Aid; that in 2010 State Aid was \$42.9 million and for FY 2013, it has increased to \$46.5 million, but it is still \$2.5 million less than it was in FY 2009.

The City further states that although the free cash amount for FY 2013 has been certified at \$8.6 million, it must be remembered that between 2009 and 2013 the City had two years of negative free cash; that between FY 2007 and FY 2009, the City went from \$2.5 million free cash to a negative free cash amount of over \$2 million. The City further states that its free cash amount represents only 5.7% of its annual budget, which is below the statewide average of 6%. The City maintains that it's fiscal condition is better than before the 2008 recession, but not at a level where the City can afford the exorbitant pay and benefit increases proposed by the Union. Moreover, the City asserts that simply because it has funds in its free cash accounts does not mean that the money must be spent on wage and benefit increases to its employees.

## Discussion

At the outset, both the Union and City agreed that this Interest Arbitration proceeding would cover a four-year duration, from July 1, 2009 through June 30, 2013. The Union proposes full retroactivity for wage increases to July 1, 2009. The following is a review of base wage increases provided to firefighters in comparable communities as well as other Malden City employees.

<u>Community</u>	<u>FY10</u>	<u>FY11</u>	<u>FY12</u>	<u>FY13</u>
Malden Police	0%	2%	2%	2% 1/1 1% 6/30
Malden Teachers	0%	0%	1% 1/1 1% 6/30	2% 1/1 1% 6/30
Malden DPW	0%	0%	2% 1/1	2% 1/1 1% 6/30
Chelsea Fire	2%	N/A	N/A	N/A
Everett Fire	N/A	1% 7/1 1.5% 1/1	1.5% 7/1 2% 1/1	N/A N/A
Medford Fire	0%	2% 12/31	3% 12/31 4% 6/30	2.5% 1/1
Melrose	2%	0%	N/A	N/A
Lynn Fire	1%	1%	3%	2%
Revere Fire	2% 7/1 2% 1/1 1.5% 6/30	N/A	N/A	N/A
Saugus Fire	2.5%	2%	2%	3%
Somerville Fire	2.5%	2.5%	3%	2.5%
Stoneham Fire	N/A	1.5%	1.5%	1.5%

There can be no question that over this four-year period of time, there have been very modest pay adjustments provided to other firefighters in the region. Moreover, the facts demonstrate that over this time period there have

also been wage freezes for some of the years in many communities.

An important measure to use when considering a wage increase for Malden Firefighters and the City's ability to pay, is the wage adjustments provided to other City employees, especially the other public safety employees working for the City of Malden. Indeed, as of this time all other Malden Unions have agreements for the time period that is at issue in the present case. The facts show that the wage adjustments for both the Malden Police Patrol Officers and the Malden Police Superiors were the same over this four-year period.

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FY - 10	July 1, 2009 - 0%
FY - 11	January 1, 2011 - 2%
FY - 12	January 1, 2012 - 2%
FY - 13	January 1, 2013 - 2%
	June 30, 2013 - 1%
TOTAL	7%

The City proposes a total of a 5% increase over the term of this Agreement. As indicated above, the Police Patrol Officers and the Police Superiors agreed to a total of a 7% wage increase over the duration of this Agreement. There was no wage increase For FY 2010. Accordingly, there is no good reason that Malden Firefighters should receive an across the Board increase for Fiscal Year 2010.

The evidence also demonstrates that both Police bargaining units, as well as all other City bargaining units, agreed to change their health insurance coverage in two important respects; first, all Unions agreed to pay more for their health insurance coverage increasing the employees share from 17.5% to 20%. Second, both Police



Unions agreed to change the plan coverage to the "Best Buy" plan on April 1, 2011.

There can be no question that Malden Firefighters, by not reaching agreement, continued the status quo with respect to their health insurance coverage and the co-share percentages, which allowed them to continue with a more expensive health insurance coverage, which cost the City more money. In addition, Malden Firefighters continued to pay 17.5% while all other City employees agreed to pay 20% for their health insurance. The fact that there was no change in the health insurance coverage was an economic benefit for Malden Firefighters, and a cost disadvantage for the City. Specifically, the City will not receive any economic savings by changing the health insurance co-share rates and by changing to the new less expensive Rate Saver Plan until a future date. (It would be impossible to make a retroactive change in the health insurance plan, and any such change must commence on a future date).

The fact of the matter is, that health insurance costs real dollars, and must be considered as a significant economic and cost benefit. The delay in making a change to the health plan and the co-share levels, which is now the status quo for all other Malden City employees, compels this Panel to not grant the same wage increases on the same dates as provided to the two other public safety bargaining unit.

On the other hand, there is sufficient justification to award the same total percentage increase (7%) that was agreed to with the other public safety unions, albeit on different implementation dates. Specifically, it must be remembered that having employees pay more, and the change to a less costly health insurance plan will provide future

savings to the City than would be the case if there was no change in the health insurance coverage.

The total 7% wage increase over the four-year period is the same total increase agreed to with the two Police Unions. The wage adjustments provided to Malden's other public safety unions certainly provides an appropriate barometer of the City's ability to pay over this time period. In addition, the total 7% wage increase for this four-year period is in line with the increases in wages agreed to with other Fire Departments in the region. Moreover, the panel has deferred part of the wage increase until June 30, 2013 to reflect the fact that the changes in health insurance will not be effective until this fiscal year.

**AWARD - WAGE INCREASES**

FY 10 July 1, 2009 - 0%  
FY 11 January 1, 2011 - 1%  
FY 12 January 1, 2012 - 2%  
FY 13 January 1, 2013 - 2%  
June 30, 2013 - 2%

**2. ARTICLE XXII - LONGEVITY & EDUCATION PAY**

Article XXII of the current Agreement sets forth the current provisions for longevity and education pay. The provisions provide the following:

<u>Year of Service/Degree</u>	<u>Amount</u>
5-9 years	no benefit
10-14 years or Associate's	3%
15-19 years or Bachelor's	4%
20 years or Master's	5%

The parties have an alternative longevity education program that is available to those employees who use no

more than four tours of duty for non-work related sickness.  
The alternative schedule is as follows:

<u>Year of Service/Degree</u>	<u>Amount</u>
5-9 years	no benefit
10-14 years or Associate's	6%
15-19 years or Bachelor's	8%
20 years or Master's	10%

The facts show that the majority of firefighters now receive benefits under the enhanced longevity/education payment schedule (84 of 111 firefighters).

#### **Union Position**

The Union proposes to revise Sections 1, 3, and 4 of the current contract provisions. The Union proposes to eliminate the lower longevity education schedule, so that there would be just one schedule, which would no longer be based on sick leave usage. The Union further proposes that the amounts of the longevity/education schedules be increased. In addition the Union proposes that payment of the longevity/education payment would be on the anniversary date of the year that the employee reaches the appropriate level, instead of the current practice, which is to pay the amount on January 1, to those who have met the criteria as of the prior July. Finally, pursuant to Section 4, the EMT stipend is not part of the employees' base wage rate. The Union proposes that the current EMT stipend should be added to an employee's base wage rate and included in the weekly straight time rate.

The Union's proposal reads as follows:

(a) All employees covered by this Agreement shall receive, in addition to their salary, 3.00% of the employee's base rate of pay as a longevity differential for 5-9 years of service; or 10.00% as a longevity differential for 10-14 years of service or

for holding an Associates Degree; or 20% as a longevity differential for 15-19 years of service or holding a Bachelor's Degree; or 25% as a longevity differential for 20 or more years of service or holding a Master's Degree. This benefit is retroactive to 7/1/2009. Such amount shall be paid weekly and shall be included in computing an employee's regular straight-time rate of pay. Individuals who retire or otherwise terminate employment with the city shall be entitled to the longevity benefit as provided in Section 2 below. The longevity differentials set forth above shall commence at the beginning of the employee's year of service. For example, an employee hired on February 1, 2005 would begin receiving a 3% longevity differential as of February 1, 2010.

(b) Effective July 1, 2011, all bargaining unit members who attain twenty-eight (28) years of service to the City of Malden or another federal, state, county, regional, municipal service which is deemed credible under the guidelines of the Malden Retirement System, shall receive a longevity differential of seven (7%) percent of the bargaining unit member's base rate of pay, in addition to any longevity payment the bargaining unit member receives pursuant to Article XXII for each year of service beginning in year twenty-nine (29) and Section 1(a). Said payment shall not compound annually but instead shall be applied to that bargaining unit member's base pay each year. Such amount shall be paid weekly and shall be included in computing an employee's regular straight-time rate of pay.

Section 3. Delete

Section 4. Now Section 3. Amend language as follows:

Employees who hold an EMT certification and are assigned by the Chief as an EMT shall receive a stipend equal to 3.0% of the top base salary of a firefighter retroactive to July 1, 2008 to be paid in Fiscal Year 2009 and thereafter. Said stipend will be paid weekly and shall be included in computing an employee's regular straight-time rate of pay.

The Union argues that its proposal for increases in longevity and education is reasonable when considering the new "Enhanced Base Salary", that was agreed to with Malden Police Patrol Officers and Police Supervisors. Specifically, the Union states that this new Enhanced Base Salary is a new benefit that amounts to a 5% to 25% increase in wages for Malden Police, which amounts to approximately a 7% total salary increase for Malden Police.

The Union maintains that it must be remembered that in the prior Police Agreements the City was only obligated to pay half of the Quinn Bill education levels. The Union asserts that this new Enhanced Base Salary is a "game changer", because the City has now guaranteed that it will pay 100% of the education levels for Police, thus assuring that the Malden Police will contractually receive the full educational levels set forth under the Quinn Bill. The Union further states that the City has also agreed that police educational incentives will be included in the base rate of Police Officers, and thus will be part of the Police Officers' overtime rates.

The Union states that the City and Police Unions, by contractually guaranteeing Quinn payments, essentially added a new contract benefit, and a benefit of commensurate value must be provided to Malden Firefighters. The Union further asserts that there is no longer any justification to have two longevity/educational schedules based on sick leave usage by Firefighters. The Union states that the City, when it agreed to the Enhanced Base Salary for Police, did not condition this new benefit upon sick leave usage, and there is no justification to continue to provide different benefit levels to Malden Firefighters based on sick leave usage. The Union further contends that the

evidence demonstrates that the City has ample funds to fund the Union's proposal to increase education and longevity payments, and roll the EMT pay into base pay.

### **City's Position**

The City is opposed to the Union's proposal and would retain the current contract language. The City asserts that the Union's proposal is a significant increase over the current educational/longevity payments, and in some instances, doubles the amounts that are now provided. The City maintains that it pays approximately \$395,000 per year for longevity/education benefits for Malden Firefighters; under the Union's proposal this amount would cost an additional \$500,000 per year.

The City further states that the parties agreed to two longevity/education schedules based on sick leave usage. The Employer states that at the present time the vast majority of Malden Firefighters receive benefits under the higher longevity/education schedule because they use less than four sick leave tours per year. The City states that the evidence thus demonstrates that the current two tiered schedule works by reducing sick leave usage, and to now change the practice would most likely increase sick leave usage. The City argues that the Union's proposal should be rejected.

### **Discussion**

There can be no dispute that the Union's proposal to greatly increase the longevity/education schedules for Malden Firefighters is based on the fact that the City agreed with both Malden Police locals, the patrol officers and superior officers, to continue full Quinn Educational Benefits, for current employees and to also provide Quinn

Education Benefits for new police officers hired into the police bargaining units.

There is also no dispute that the State reneged on its obligation to pay 50% of the Quinn Bill education incentive and, as a result, police officers faced a significant decrease in their total compensation. There is also no dispute that despite the lack of State funding, the City and Police Union agreed that the Town would pay essentially the full Quinn Bill Education Benefits for current employees, and also agreed to provide Quinn Educational Benefits for newly hired police officers. The benefit is now referred to in the Police Agreement as "Enhanced Base Salary", and new police officers must wait three years before they receive the new enhanced salary benefits.

It was certainly not the fault of the Malden police officers or the City that the State decided to eliminate the 50% reimbursement for Quinn educational incentive payments. In a recent Arbitration Award involving the Scituate Firefighters, as the neutral Chairman, I reasoned that the loss of State reimbursement for the Quinn incentive, and the fact that a municipality decides to come up with additional funds to ensure that its police officers do not suffer a significant decrease in compensation, should not be considered as a windfall for other employees in the municipality.

On the other hand, it must be noted that the City agreed to pay newly hired officers Quinn payments when it was no longer required to do so by law. Moreover, the City, in the most recent round of contract negotiations, agreed to increase longevity payments for those police officers who did not even receive Quinn benefits. The City also included educational benefits as part of the base pay of

Malden Police, thus this benefit included in the overtime rate for Malden Police.

Under the present Agreement there are two longevity/education schedules for Malden Firefighters: lower payments for those who use more than four tours of sick leave, and higher payments for those firefighters who use less than four sick tours. This dual structure, based on sick leave usage, was agreed to by the parties in their prior negotiations, and was obviously devised to discourage sick leave usage. Apparently, this dual longevity/education structure has been successful, as the vast majority of Malden Firefighters use less than four tours of sick leave, and thus qualify for the higher longevity/education payments. The Panel is concerned that to now do away with this dual structure could potentially increase sick leave usage in the future. Accordingly, there is insufficient justification to eliminate the dual longevity/education schedules that are now in place and based on sick leave usage, and was a plan that was agreed to by the parties in prior negotiations.

The Firefighters have proposed to increase the longevity/education payments by significant amounts.

<u>Year of Service/Degree</u>	<u>Amount</u>	<u>Proposed</u>
5-9 year	no benefit	3% (+3%)
10-14 years or Associate's	6%	10% (+4%)
15-19 years of Bachelor's	8%	20% (+12%)
20 years or Master's	10%	25% (+15%)

The increases proposed by the Union are too high, and in some instances would more than double the amounts now received by current members of the bargaining unit. Indeed, the contract settlements reached in other communities, which were introduced in this proceeding, do not show such



significant increases for Firefighter benefits simply because police in these other communities retained Quinn educational incentives. The fact that the City provided the funding to ensure that Malden Police Officers did not have their compensation reduced, is not a legitimate reason to take the value of the Quinn Bill benefit and apply these amounts to substantially increase Firefighter benefits.

On the other hand, the City did agree with both Police Unions to add a new longevity payment of 3% for those police officers with five to nine years of service who do not now receive any educational incentive. This is a new benefit, and accordingly, there is ample justification to add this new longevity step for both longevity schedules for Malden Fire Firefighters. Moreover, the increase in longevity payments for Malden Police and the addition of the enhanced base salary for Malden Police certainly justifies an increase to the longevity/educational incentives for Malden Firefighters.

The Union also proposes that payment of longevity be made at the beginning of the employee's year of service. Currently this benefit is paid in January to employees who have met the criteria as of the prior July. The Union's proposal is reasonable and should be adopted.

The Union also proposes that education/longevity payments should be rolled into base pay, so that the amounts would then be calculated into a Firefighter's overtime rates. Similarly, the Union proposes that the EMT stipend be paid weekly and included in the base pay of Firefighters.

A review of the Police Officers' recent settlement shows that the new enhanced salary rates, which essentially include the Quinn-like educational incentives, are included

in the base salary of police officers, and thus included in their overtime payments. In view of the recent agreement with Police, the education/longevity payments for Firefighters should be paid weekly and included in calculating the regular straight-time rate of pay for Malden Firefighters.

There can be no question that when Malden Firefighters respond to a call, those that are EMT certificated may be called upon to perform EMT services. In addition, it is not unusual for other fire departments in the region to recognize that the EMT stipend is included in the base pay of those firefighters that perform these special duties. There is no longer any justification to continue to pay this stipend as a separate payment; these amounts should in fact be part and parcel of an employees base rate of pay.

When the City reached agreement with the Police to restore the educational incentive amounts for Malden Police, the amounts did not include retroactive overtime. Accordingly, the inclusion of longevity and EMT into straight time rates of pay for Malden Firefighters shall not be retroactive, and shall commence on June 30, 2013

**AWARD - LONGEVITY/EDUCATION PAY & EMT STIPEND**

Effective July 1, 2012 the Longevity/Education payments shall be increase to:

Use of more than four sick tours

<u>Years of Service/Degree</u>	<u>Amount</u>
5-9 years	3%
10-14 years or Associate's	4%
15-19 years or Bachelor's	5%
20 years or Master's	6%

Use of more no more than four sick tours

<u>Years of Service/Degree</u>	<u>Amount</u>
5-9 years	3%
10-14 years or Associate's	7%
15-19 years of Bachelor's	9%
20 years or Master's	11%

Effective June 30, 2013 the Longevity/Education payments shall be increased to:

Use of more than four sick tours

<u>Years of Service/Degree</u>	<u>Amount</u>
5-9 years	3%
10-14 years or Associate's	5%
15-19 years or Bachelor's	6%
20 years or Master's	7%

Use of more no more than four sick tours

<u>Years of Service/Degree</u>	<u>Amount</u>
5-9 years	3%
10-14 years or Associate's	8%
15-19 years or Bachelor's	10%
20 years or Master's	12%

Effective June 30, 2013, the Longevity/Education Payments and EMT payments shall be paid weekly and shall be included in computing an employees' regular straight time rate of pay.

**3. ARTICLE XXI - SICK LEAVE**

The current Agreement provides for sick leave buy back when employees retire. In addition, Section 2 of Article XXI of the current Agreement also provides that employees can buy back sick leave based on a set formula:

<u>Sick Leave Usage</u>	<u>Buy Back</u>
0-2 Sick Days	Up to six days at 100% value
3 Sick Day	Up to six days at 80% value
4 Sick Days	Up to six days at 60% value

Under Section 3 of this Article employees can now accrue up to 15 sick days per year.

### Union Position

The Union proposes to change the current sick leave buy-back provisions as follows:

Delete current language in section 2 and replace with the following:

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Section 2. ~~There shall be a Sick Leave Buyback Program~~ which shall allow for the buyback of accumulated sick leave as follows:

Effective 7/1/2011, employees can buy back up to 2 weeks (8 days) of accumulated sick leave at the rate of one shift's pay for each day sold back to the City.

Section 3. Sick leave shall accrue at the rate of 24 days per year.

Add new Section 9:

Section 9. Any employee out more than 4 undocumented sick incidents must provide a physicians note.

The Union maintains that its proposal to change the sick leave benefit must be considered with the changes recently agreed to with the Malden Patrol Officers and Superior Officers. The Union states that in the recent Police Agreement, the annual sick leave buy-back was increased to two weeks. The Union states that it must also be remembered that the value of a day's pay for police officers has greatly increased in value, as the parties

agreed that the enhanced education benefit would now be considered part of a police officer's base pay.

The Union states that its proposal to increase annual sick leave to twenty-four days is still less than that of the police, who can accrue up to thirty days per year. The Union states that police can buy back up to two weeks of sick leave, but since they accrue more days on an annual basis, police still would be able to accrue an additional sixteen days per year even if they give back two weeks of sick leave, whereas firefighters if they give back two weeks of sick leave, would only accrue seven days, and would then have less sick days to buyback at their retirement. The Union states that its proposal addresses this disparity. The Union states that its proposal to require firefighters to submit a doctor's note after four undocumented absences would ensure that there was not sick leave abuse.

#### **City Position**

The City states that it is willing to increase the annual buy-back for those employees using between 0-2 days from the current level of six days to eight days, as follows:

Section 2: Effective 7/1/2011 for employees who use 0-2 undocumented sick days within a calendar year, allow for buy-back of 2 weeks of accumulated sick leave at 100% of a full day's pay for each day sold back to the City.

The City is opposed to any of the other changes proposed by the Union to the sick leave provisions of the Agreement.

## Discussion

The Union's proposal would amend the current sick leave provision in four ways: (1) it would increase the number of sick days to be bought back on an annual basis from 6 days to 8 days (2 weeks); (2) it would delete the requirement that annual sick leave buy-back would be based on the amount of sick days used during the year; (3) it would increase the annual sick leave accrual from 15 days per year to 24 days per year; and finally (4) it would require that employees with more than four undocumented sick days would be required to submit a doctor's note.

Malden Police, similar to Malden Firefighters are permitted to buy-back a certain amount of their sick leave based upon how much sick leave they used during the course of the year. A review of the recent Police agreement shows that the only change for the Police was to allow Police to buy back up to two weeks of sick days if they use two or fewer sick days per year or have five (5) or fewer documented sick events between December 1, and November 30. The annual accrual for sick leave was not increased. The Police, in their recent agreement, did not agree to increase their annual sick leave accrual, nor did they agree to de-couple the annual buy back from sick leave used during the year. Accordingly, there is insufficient justification to increase the annual sick leave accrual or to change the annual buy-back program so that it is no longer based on sick leave usage during the year. The only change that is awarded is to add the police language with respect to increasing the annual buy back, and such language should be put in place for Malden Firefighters.

#### AWARD - SICK LEAVE

The parties shall add language to the agreement that provides:

Any member of the bargaining unit with two (2) or fewer undocumented sick days or with five (5) or fewer documented sick events between December 1 and November 30 of the preceding year may sell back eight (8) sick days (two weeks) for eight days of his/her weekly pay, to be paid in the second pay period in December yearly.

This change should be effective June 30, 2013. No other changes to the sick leave article are awarded at this time.

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#### 4. ARTICLE XXII - HOLIDAYS

##### Union Position

Amend Sections 2 and 3 as follows:

Section 2. A day's pay for a holiday shall be computed as one fourth of the weekly pay **and shall be included in computing an employee's regular straight-time rate of pay.**

Section 3. All employees covered by this Agreement shall be entitled to **two (2)** personal days off at the member's discretion, provided at least two days' notice has been given to the Chief. Personal days may be used at any time during the year upon appropriate notice and approval of the Chief. Personal days must be used, however, within the fiscal year and may not be accrued.

The Union states that Patrol Officers, in their recent agreement, received an additional personal day based on meeting certain conditions, and that it is appropriate that Malden Firefighters also receive an additional personal day; accordingly the Union has proposed increasing the amount of personal days from one day to two days per year.

The Union further seeks to have holiday pay be included in computing an employee's regular straight time rate of pay. The Union asserts that this change is necessary to compensate for the significant monetary benefit received by Malden Police when the City agreed to add the Enhanced Base Salary for Police as a contractual benefit, and make this payment part of a police officer's regular rate of pay.

#### **City's Position**

The City is opposed the Union's proposal and would retain the current contract language. The City maintains that in the Police Agreements police officers only receive an additional personal day if they meet standards of sick leave usage, and participate in the City's wellness program.

#### **Discussion**

Leave time or paid time off from work is not simply a language change; it is a benefit change that has a real cost impact, and it is an economic benefit. Employees have additional time off from work, while being paid, and with public safety employees, the Employer may have to replace the absent employee by paying overtime. A review of the recent Police Agreements shows that the police did not receive an additional unqualified personal day; a police officer must use four or less sick days, and also participate in the City's Wellness Program. Upon satisfying these two criteria a police officer will receive an additional personal day. The language that was agreed to with the Police is appropriate, and should be added to the Fire Agreement.

There is insufficient justification to take one's holiday pay and roll this amount in to an employee's base pay.



#### AWARD - PERSONAL DAY

The parties shall add the following provision to the Agreement as follows:

The parties agree that any member of the bargaining unit who uses four (4) or less sick days between December 1 and November 30 of any year and who participates in the Wellness Program shall be credited with an additional Personal Day in accordance with this Article and Section for the upcoming calendar year. This provision should be effective June 30, 2013 for the Fiscal Year starting July 1, 2013.

#### 5. ARTICLE XXIV - DEFIBRILLATOR STIPEND

The current Agreement provided that Malden Firefighters receive an annual stipend of \$500.00 if they are defibrillator certified. At the present time all Malden Firefighters are required to be certified, and thus receive this payment.

#### Union's Position

Amend Article XXIV as follows:

Each employee who completes a qualified training program and maintains the required certification for defibrillation operator shall be paid an annual stipend of \$1,000.00, paid in weekly installments, and shall be included in computing an employee's regular straight-time rate of pay.

The Union states that the Police, in their recent contract, received a new monetary benefit. The Union states that added to the Police Agreement was a provision that provides that police officers can now receive \$500 per year for being trained and performing a certain number of fingerprints during a calendar year. The Union maintains that all police officers are eligible to receive this benefit. The Union states that it is appropriate and

reasonable that Malden firefighters receive an equivalent monetary benefit; it has proposed to increase the annual defibrillator stipend by an additional \$500.00, and to also make this payment part of base pay.

#### **City's Position**

The City is opposed the Union's proposal and would retain the current contract language. The City states that not all Malden Police Officers receive the fingerprinting stipend. In addition, being qualified to use a defibrillator is already a requirement of the job for Malden Firefighters, whereas not all police officers qualify for this stipend; they must receive special training, and must then perform a certain number of fingerprints to receive the stipend.

#### **Discussion**

The City and Malden Police Officers in the recent agreement added the following language.

Any officer who is trained and maintains a log on account and performs ten or more fingerprinting tests within any calendar year will be eligible for an annual stipend of five hundred (\$500.00) dollars to be paid within thirty (30) days of the end of the calendar year. The City acknowledges that it still owes each officer eligible under the prior formula five hundred (\$500.00) dollars each and agrees to pay to each eligible officer the outstanding amount within thirty (30) days of the date of execution of this Agreement.

There can be no dispute that Police Officers will receive an additional monetary benefit if they meet the appropriate qualifications. It is important to point out that not all Malden Police receive this benefit. Superior Officers are not eligible to receive this amount. In addition, the evidence shows that only about a third of

police officers are currently qualified for this fingerprint stipend. Thus, for these reasons, there is insufficient justification to now double the defibrillator stipend for all Malden Firefighters. The Panel believed that the current amount should be increased by \$200.00 and that this increase would be effective June 30, 2013.

As indicated above, the Panel has determined that EMT, and the longevity/education incentive should be added to the base pay of Malden Firefighters. This should also be the case for the defibrillator stipend. There can be no question that this is an important and valuable skill attained by Malden Firefighters, and this amount should be part of a Malden Firefighter's base pay.

#### **AWARD - DEFIBRILLATOR STIPEND**

Effective June 30, 2013 the defibrillator stipend shall be increased to \$700.00, and that shall be paid weekly and shall be included in computing an employees' regular straight time rate of pay.

#### **6. ARTICLE XIX - SALARY (SENIOR LONGEVITY)**

Section 10 of the parties' Agreement also has a provision entitled Senior Longevity. This provision provides that employees who have twenty-eight years of service will receive an additional 7% of base rate of pay as a senior longevity payment commencing with the twenty-ninth year of service. There are certain eligibility standards that Firefighters must meet before being eligible for this senior longevity payment.

#### **Union's Position**

Delete Section 10 (Senior Longevity now under Article XXII, Section 1(b)).

### **City's Position**

The City is opposed to the Union's proposal and would retain the current contract language.

### **Discussion**

In view of the discussion on longevity/education incentive earlier in this Decision, there is insufficient justification to delete the current provision.

### **AWARD - SALARY (SENIOR LONGEVITY)**

The Union's proposal is not awarded. There shall be no change to the current contract provision.

## **7. HEALTH INSURANCE**

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Under the current Agreement Firefighters pay 17.5% of the former Legacy Insurance coverage. All other City employees have now moved to the Best Buy Plan, and pay 20% for the premium costs.

### **City's Position**

The City proposes that Firefighters should change to the Best Buy Plan, and should increase their co-share contribution level to 20%. The City states that at this time all other City employees have moved to the Best Buy coverage, have agreed to pay 20% of the cost of this coverage, and there is no good reason that Malden Firefighters should be the only City employees that have different health insurance coverage, and pay different amounts.

The City further maintains that changes under the Best Buy Plan would result in only modest increases in co-pays and emergency room visits for members of the bargaining unit. The City states that under the Best Buy Plan, participants have the advantage of an HRA account, to which the City contributes. The City further contends that under

the Best Buy Plan, there is no co-payment for annual physicals, and the plan guarantees coverage for all children under the age of 26.

### **Union's Position**

The Union states that it would be willing to change to the new insurance plan and pay the 20% co-share amounts only if its wage and benefit proposals are awarded in their entirety. The Union stated that there would be insufficient justification to grant the City's proposed changes if the Panel was not willing to provide pay and benefit increases equivalent to what was agreed to with the Malden Police.

The Union maintains that in FY 2010 the City laid off ten Malden Firefighters because the Union would not accept the City's health insurance changes. The Union states that the money the City saved by laying off ten firefighters more than offset the costs of retaining the health insurance coverage. The Union asserts that any deficit was the result of the Comptroller's mismanagement, and unnecessary borrowing. Moreover, the Union states that there was an overlay surplus that was then applied to the deficit. The Union argues that the Union was unfairly penalized by the City's layoff of ten firefighters and that it would only be appropriate to award changes in health coverage, provided that Firefighters are fairly and equitably compensated.

### **Discussion**

As of the time of this Arbitration proceeding, all of the City of Malden employees have now enrolled in the Best Buy Insurance Plan, and are paying 20% toward their insurance premiums. The evidence demonstrates that there has been City parity with respect to health insurance coverage and there is no good reason that Malden

Firefighters should have different coverage, or pay less of a percentage basis for Health Insurance coverage, than other City employees.

Accordingly, this panel shall award the change in insurance plans and employee contribution rates proposed by the City, which is the same as is now in place for all other Malden employees. As stated earlier in this Decision, the Panel has considered the cost impacts of any such changes with respect to the date that wage increases should be awarded. Accordingly the changes should go into effect as of June 30, 2013.

#### **AWARD HEALTH INSURANCE**

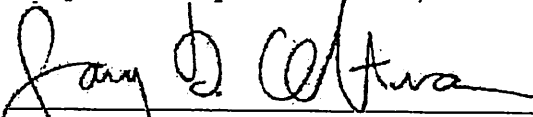
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The City's proposal to change coverage to the Best Buy Plan (the same plan and coverage now in place for other Malden employees) and for employees to pay 20% of the insurance premiums is awarded. These changes shall be effective June 30, 2013.

#### **Conclusion**

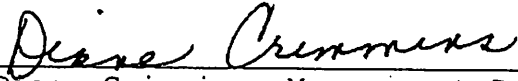
The Panel has considered the statutory criteria in an effort to balance the interests of the bargaining unit employees, the City, and the citizens of the City of Malden. Although all concur in this result, it must be noted that the reasoning set forth above is that of the neutral arbitrator.

Respectfully submitted,



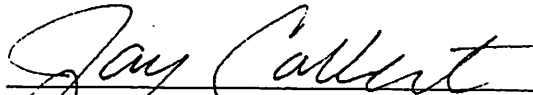
Gary D. Altman, Esq., Neutral Arbitrator

Dated: March 28, 2013



Diane Crimmins, Management Panel Member, Concurs in this

Award Dated: March 28, 2013



Jay Colbert, Union Panel Member, Concurs in the Award

Dated: March 28, 2013