

IN THE MATTER OF
ARBITRATION BETWEEN

FALL RIVER FIRE FIGHTERS, LOCAL 1314 IAFF

and

CITY OF FALL RIVER

Interest Arbitration
Case No. JLMC-22-9197

Arbitration Panel: Beth Anne Wolfson, Neutral Arbitrator
Matthew Reddy, JLMC Committee Member, Union
Gerard Hayes, JLMC Committee Member, Management

Appearances:
For the Union: Leah Barrault, Esq.
For the City: John Clifford, Esq.

Decision and Award
By the Arbitration Panel

Background

The City of Fall River (City) and the Fall River Fire Fighters, Local 1314, IAFF (Union) are parties to a collective bargaining agreement (CBA) with a term from July 1, 2016 to June 30, 2019, which was extended by a Memorandum of Agreement (MOA) from July 1, 2019 to June 30, 2021, signed by the parties on March 26, 2021. The bargaining unit covered by the CBA includes all uniformed members of the Fall River Fire Department (FRFD) except the Chief. There are approximately 195 firefighters who staff 6 stations across the City. In addition to fires, the FRFD

responds to calls concerning carbon monoxide, natural gas emergencies, motor vehicle accidents, water rescues, hazardous material emergencies, lift assists, and medical emergencies.¹ The City's population is approximately 94,000 and is the fourth largest city in the Commonwealth. It is bisected by two major highways, I-195 and MA-24. The FRFD covers approximately 33 square miles on land and about 7 miles of water. Jason Burnt, a City firefighter and current Union President, testified that the City is densely populated, with many three-decker houses that are close together, as well as old mill buildings. Apparently some of those buildings have been converted into medical offices. He also stated that the City has within its borders an LNG facility.

There are 6 engine companies and 3 ladder companies, a heavy rescue company, and 2 command vehicles. The water is covered by the Department of Marines 1 and 2, which is staffed through cross-manning of firefighters also assigned to heavy rescue. Apparently the FRFD's goal is to man its apparatus with 4 members, but at present most apparatus is staffed with 2 firefighters and 1 fire officer. The 2 engine companies furthest north and south in the City are maintain a crew of 3 firefighters and 1 fire officer. Both command vehicles are staffed with a District Chief alone, without an aid or assistant.

The Union previously filed a petition with the Massachusetts Joint Labor Management Committee (JLMC). After a subcommittee meeting of the JLMC held a hearing with the parties on the issues in dispute on September 29, 2022, and by letter dated November 4, 2022, it directed the parties to proceed to arbitration before a tripartite panel. By letter dated November 28, 2022, the undersigned was appointed by the JLMC to serve as Neutral Chair of the Arbitration Panel. The Management member of the Panel is JLMC Committee Member Gerard Hayes, and the Union member of the Panel is JLMC Committee Member Matthew Reddy.

¹ Although the City has a separate EMS Department, firefighters are first responders, and the record evidence shows that about 27% of FRFD calls are medical.

An arbitration hearing was held on July 17, 2023² before the tripartite Panel. At the hearing the parties were given full opportunity to present evidence and make arguments on their outstanding issues.³ Both parties submitted their briefs electronically on August 29, 2023, on which date this Arbitrator electronically exchanged the briefs for the parties and provided them to the other Panel members.

Issues in Contention

Duration was not listed as one of the authorized issues, and both parties have submitted evidence regarding wage rates for FY 2022, 2023, and 2024, from which the Panel has concluded that they are in agreement that the Award should provide for a three-year CBA effective from July 1, 2021 to June 30, 2024. The issues to be arbitrated, which were certified by the JLMC at its 3(a) hearing, are:

<u>Joint Issues:</u>	<u>Pages</u>
1. Wages (Article 3)	4 - 21
<u>Union's Issues:</u>	<u>Pages</u>
1. New Article, Hazardous Duty Pay	21 - 25
2. New Article, Medical Care Stipend	25 - 26
3. New Article, Apparatus Driver/Inspector Stipend	26 - 28
4. Firefighter EMT Stipend (Article 43)	28 - 30
<u>City's Issues</u>	<u>Pages</u>
1. Sickness/ Injury During Vacation Time (Article 21)	30 - 32

² An attempt to mediate a settlement of the parties' dispute prior to the commencement of the hearing was unsuccessful.

³ At the hearing and in its brief the City objected to the JLMC's exclusion from these proceedings of some City bargaining proposals. This Panel declined to consider those proposals because its authority is limited to the issues certified by the JLMC to be arbitrated, as listed in the November 28, 2022 appointment letter.

	<u>Pages</u>
2. Bid System (Article 22)	32 -33
3. Sickness/Illness (Article 29)	33 - 35
<u>Summary of Award</u>	35 – 37

Wages and Salary – Article 3

The parties' CBA, effective July 1, 2016 to June 30, 2019, was extended by a Memorandum of Agreement, effective July 1, 2019 to June 30, 2021. Wages are addressed in Article 3 – Wages and Salary – of their expired Agreement.

With respect to wages of comparable employees, the Panel must look at the fire fighters in comparable communities. Because the parties were unable to agree on the universe of comparable communities, the Panel must determine for purposes of its analysis the appropriate universe of comparable communities. The Town asserts it is: Attleboro; New Bedford; Taunton; Brockton; and Plymouth. The Union contends it is: Attleboro; New Bedford; Taunton; Brockton; Chelsea; Everett; Leominster; Lowell; Malden; Quincy; Revere; and Springfield. The parties agree on Attleboro; New Bedford; Taunton; and Brockton.

The City provided as evidence an excerpt from the 2018 police patrol officers' award where the parties agreed that Attleboro, New Bedford, Taunton, Brockton, and Plymouth were appropriate comparable communities. In that case, the Union also proposed to include in the universe of comparable communities, Everett, Lowell, and Springfield; however, that Panel determined the communities agreed on, i.e., Attleboro, New Bedford, Taunton, Brockton, and Plymouth were appropriate comparable communities. That panel declined to include Everett, Lowell and Springfield because the City of Everett, as a greater Boston community, typically

reflected a higher compensation factor than the South Coast region, the City of Springfield is located in the western part of the Commonwealth and is the third largest city in the Commonwealth, and the City of Lowell is in the Merrimack Valley, which is geographically distinct from Fall River, and has a traditionally distinguishable wage and benefit track from Fall River.

The Union provided as evidence the statutory definition of what is a gateway city and a list of Massachusetts gateway cities, demographic information for all 26 gateway cities, including Fall River, and the testimony of the Union's expert, Kevin J. Dasey. According to Dasey's testimony, he selected 11 of the 25 other gateway cities to compare to Fall River. The Panel notes both that Dasey did not explain why he selected those 11 out of 25, and also that he actually included a 12th gateway city in his analysis.⁴ In addition, it appears the Union did not include Plymouth because it was focusing on Massachusetts gateway cities for its universe of comparable communities and Plymouth, a town, is not a gateway city.

This Panel accepts as external comparable communities the four cities the parties agreed on, i.e., Attleboro, New Bedford, and Taunton – all in Bristol County as is Fall River - and Brockton, in Plymouth County, which is contiguous to Bristol County.

This Panel declines to include in the universe of external comparable communities the town of Plymouth. The Union provided copies of the four agreed to cities' most recent CBAs, but neither party provided a copy of the town of Plymouth's most recent CBA. The Panel is not comfortable relying on only the extrapolated information the Employer provided from which to draw comparisons. The Panel also declines to include in the universe of external comparable communities the cities of Chelsea, Everett, Leominster, Lowell, Malden, Quincy, Revere, and

⁴ Union Ex. 9, p. 95, lists 11 external comparable communities, not including Attleboro, but Union Ex. 9, pp. 96, 97, and 99-100, include Attleboro in the analysis of external comparable communities.

Springfield suggested by the Union. None of those cities are in Bristol County. All of those cities are geographically remote from Fall River, especially Lowell, Leominster, and Springfield. All of those cities are in counties not contiguous to Bristol, except Quincy; however, Quincy, along with Chelsea, Revere, and Everett, are all located in the Metro Boston Region. Malden, which abuts Revere and Everett, while not part of the recognized Metro Boston Region, is considered a suburb of Boston. Finally, although it appears the Union was concentrating on gateway cities, as stated above, its expert did not testify why he chose those 8 cities out of the 21 gateway cities not agreed to by the parties.

City's Position

The City originally proposed a wage increase of 1.5%, 0%, and 1%, for the 2022, 2023, and 2024 fiscal years. In the Summary contained in its post-hearing brief, however, the City submitted that this Panel should award wages increases of 1.5%, effective 7/1/21, 3%, effective 7/1/22, and 1/5%, effective 7/1/23. In its brief, the City addressed what it perceived as the Union's primary focus, *i.e.*, the City's patrol officers' wage increases, but also addressed the City's EMS and Superior Officers' wage increases and those of the comparable communities it suggested. Finally, the City discussed its financial ability to fund wage increases.

With respect to the patrol officers, the City contends their raises were: 7/1/21 – 1.5%; 7/1/22 – 1%; and 7/1/23 – new wage schedule for Step 1, date of hire through year 4, \$2,346.20, Step 2, year 5 through year 9, \$2,538.46, and Step 3, 10 years of credible service, \$2,923.08. This demonstrates the City had limited resources to fund retroactive wage increases for FY 22 and 23. The fiscal year beginning 7/1/23, however, includes significant increases for Patrol Union members, including an increase of approximately 18.5% over the prior year for patrol officers with 10 years of service. The City asserts the increase in the third year of the patrol officers CBA was

justified by several factors that are not applicable to the firefighters. First, police wages were a contributing factor to severe hiring and retention issues. At the time the patrol officers' CBA was settled the Police Department (PD) had 25 funded positions that were vacant and its staff of 145 officers was significantly lower than the previous year. The City was losing officers to other police departments as well as its own Fire Department. Conversely, the FRFD is fully staffed and does not have any staffing or retention issues.

The City argues the workload of its police officers is substantially greater than the workload of its firefighters. The City measures workload by number of calls. It asserts the 3-year average of calls was 6,930 per year, or 19 per day, for the FRFD, while the PD averaged 44,900 per year or 123 per day, or six times as many calls as the FRFD. The City also argues this average does not take into account the fact that as of December 2022, the PD had only 145 officers while the FRFD had 195 firefighters. Furthermore, given that police officers respond to 10 times the number of calls on a daily basis than firefighters, their job is clearly more hazardous.⁵ It also argues the Union has steadfastly resisted the City's proposals to narrow the gap.

The City asserts the Patrol Union made several valuable and meaningful concessions in exchange for their wage increases. Specifically, both the Patrol and Superior Officers Unions agreed to significant language changes limiting both the opportunity to accrue comp time and how much comp time could be accrued, addressing a practice that had created an unfunded liability in the millions of dollars by allowing an employee to not work for up to 2 years prior to actually retiring. Both police unions also agreed to full implementation of body cameras, which would create a record of police interactions with the public and provide a clear method of determining whether claims of police misconduct are true. None of the City's non-wage proposals are remotely

⁵ The Panel notes this argument concerns an Article proposed by the City that was not authorized by the JLMC at its 3(a) Hearing to be submitted to arbitration, therefore, the Panel cannot consider such an argument.

close in importance or value to these concessions by the police unions. Finally, the City contends if the firefighters want parity with the police it should engage with the City in good faith bargaining over the issue of workload.

The City asserts the Panel should consider the fact that its police have historically been paid more than its firefighters. Union Exhibit 8 shows a patrol officer with 15 years of service earned a total of \$84,746 per year, while a firefighter with the same years of service earned \$69,306, or 22.3% less. Furthermore, the Union exhibit includes EMT pay, which is not paid to all firefighters. When that is subtracted from firefighter wages, the difference increases to 25.7%. In addition, the Union exhibit is predicated on the theory that firefighters “work” 12.5% more hours than police officers, therefore, their wages should reflect that; however, firefighters are permitted to sleep during their shifts while police officers are not, therefore, the difference in scheduled hours is meaningless. Furthermore, any rational analysis of “work” should include workload measured in number of calls, so that disparity is negated by the amount of work actually performed by police officers. The City also asserts that not only is there no evidence that would justify imposing a wage package that narrowed or eliminated a gap that has always existed, but also for its reasons cited above there is ample justification for that wage gap to be increased.

With respect to the Superior Officers’ CBA, the City contends it is inapplicable to this arbitration. That Union negotiated an increase in rank differential, from 15% to 18%, which was phased in during the term of their CBA because the existing rank structure resulted in some patrol officers earning more than sergeants. That was the only wage increase negotiated by the Superior Officers’ Union. That conflict in wage structure does not exist in the firefighters’ CBA. Furthermore, as previously asserted, the Superior Officers also agreed to implementation of body cameras and to modifications in their comp time language.

With respect to the EMS Department, the City contends there are several distinguishing factors. Between 2018 and 2022 that department's revenues increased from \$7.4 million to \$9.6 million. The wage increases negotiated in its most recent CBA has dramatically improved the ability to hire and retain staff. The EMS Department operates as an enterprise fund, i.e., its revenues fund wages and other expenses. FRFD wages, on the other hand, are funded through general fund revenues, and firefighters cannot generate additional revenue to support their wages. Even if the Panel compares EMS wages to firefighters, EMS basic EMTs earn 20.89% less than firefighter basic EMTs. The City argues the Union will likely try to compare EMS paramedics to firefighter wages; however, they are trained and equipped to perform medical procedures that firefighters, including those certified as paramedics, cannot perform. In addition, EMS employees responded to 25,715 calls in 2022, whereas firefighters responded to 7,170 calls. The call volume for the EMS Department, which is 3 ½ times that of the FRFD, is managed by staffing 17 employees per shift compared to 35 firefighters on a given shift. For these reasons the Panel should not consider the wages paid to EMS Department employees in its deliberations.

With respect to external comparability, The City contends the analysis of comparable wages must include relative ability to pay and a comparison of workload. Pursuant to its analysis of workload, its firefighters respond to fewer calls than other departments, including Attleboro, which has half the population of the City. New Bedford, which is very close both geographically and in population, respond to three times as many calls. The City contends the primary reason for the disparity is that New Bedford firefighters respond to almost 19,000 medical calls a year, while its firefighters respond to 2,600. Furthermore, the City spends on average \$3,303 per call, as compared to an average of \$1,036 per call for the other communities. In addition, a City firefighter with 10 years of service, based on FY21 wages, earned \$61,535, approximately \$4,324 below the

average of comparable communities when compared to their FY23 wages. For illustrative purposes only the City projects that if its firefighters received 1.5% in FY22 and 3% in FY23, they would then be paid 1% more than the average. This analysis does not take into consideration that its 10 year firefighters receive unlimited sick leave compared to their peers in other communities, most of whom receive 15 sick days a year. The analysis also does not reflect the vacation benefits of the City's firefighters. After 10 years of service they receive 240 hours of vacation, on average one week more than their peers in other departments, which the City projects at a value of 2% of total earnings.

The City also argues that, to the extent its firefighters receive lower wages than their peers, based on the City's fiscal data, as well as workload, they are precisely where they should be. The City's need to negotiate higher wages for patrol officers should not be construed as indicative of the City being flush with cash. Its Chief Financial Officer testified that the City faces significant challenges, including short-term and long-term pension funding, construction of the Diman Vocational High School, the minimum net spending requirement of the Commonwealth, loss of grant revenue from the American Rescue Plan (ARPA), and a reduction in cannabis revenues. She also testified that the FY24 budget was balanced using one-time revenues, including \$4.3 million in ARPA funding and \$430,000 in free cash. Although such use of non-recurring revenue is generally frowned upon, the City had no choice but to do so.

According to the City, its exhibits demonstrate both its available revenues and how it compares to other communities. Its cash reserves at the end of FY22 was \$1.9 million. Its free cash is the lowest of the comparable communities, as a percentage of its operating budget. Its general purpose stabilization fund is the second lowest, 38% less than average. Its revenue by source shows the City heavily relies on state aid to balance its budget. Its undesignated fund

balance in 2022 was the lowest of the comparable communities as a percent of budget (2.8%). Its cannabis revenues were drastically reduced due to legislative changes, which occurred after the City's FY23 budget had been approved. Finally, the City's credit rating from Moody's of A3 specifically lists low cash reserves and high debt as concerns, and notes its low per capita income, which the City states is the lowest of the comparable communities, and the elevated poverty levels (the City states it has the highest unemployment of the comparable communities), as contributing to the lower bond rating.

With respect to other Chapter 589 economic indicators the Panel could consider, the City argues the CPI, which is just one of the factors, does not enhance the City's overall ability to pay. The City's low reserves reflect that. All the data supplied by the City, including information from the Massachusetts Division of Local Services, the U.S. Department of Labor Consumer Price Index, bond rating agencies, such as Moody's and Standard and Poor's, and its financial reports demonstrate conclusively that the City continues to have constraints on its ability to fund wage increases. The City states the Union's projected cost for its proposed COLA's alone (4%/4%/4%) would be \$3.8 million. The City included \$880,000 in the FRFD budget for anticipated raises, based on a projected total increase of 6% for FY24 over the FY23 budget. It does not include any retroactive pay for FY22 or FY23. There is no credible evidence that the City can afford such an increase.

Union's Position

The Union seeks wage increases of 4% for each year of a three-year CBA effective from July 1, 2021 to June 30, 2024. The Union contends the City has the ability to pay fair firefighters raises and benefits, and in light of the low compensation in comparison to the City's patrol officers the Union's wage and benefits proposals must be granted. The City has provided significant

increases to its other public safety bargaining units, which alone demonstrates both a willingness and an ability to pay. The Union asserts the City has not denied an ability to pay, but rather shows an unwillingness to provide its public safety pattern of wage and benefits increases to its underpaid firefighters based on its perception that the FRFD does fewer runs than it should. The City has made no showing that the firefighters have not done their assigned work. In addition, the City's comparable call data is flawed because it is impossible to ascertain what is contained in the external comparable call data, particularly the number of inspections, drills, and training done by in-service fire companies. That information is also missing from the FRFD call data presented by the City, which only contained a group of FRFD annual Incident Analysis reports also missing those incidents. In addition, the City apparently did not credit any of the 4,000 EMS responses by "Squad 11," which is a joint FRFD and EMS manned unit.

In light of the possibility that the Panel might not award the wage increase the Union seeks plus the other monetary benefits requested, it proposed a financial package that included the 4%/4%/4% wage increase, plus hazardous duty pay of 1.5% annually, added to base retroactively. The Union asserts that subtracting out the \$880,000 the City has already appropriated for this CBA, the cost for this Union proposal would be \$4.117 million, or an average annual cost to the City of \$1.372 million for each of the three years at issue. According to the Union, the City shows \$41.12 million in its Actual Reserve Balances (excluding the Water and Sewer Stabilization Funds). The Union, on the other hand, has identified \$76.422 million. The City included in its calculation an EMS Stabilization Fund of \$1.25 million, but the Union did not. The City shows unexpended Free Cash of \$2.2 million while the Union assumes, based on the \$5.4 million FY 22 surplus in Other Local Receipts that there will be a sufficient FY23 surplus to restore Free Cash to the FY 23 certified amount of \$4.961 million. Both the City's and the Union's reserve calculations are well

above the net cost of the Union's proposals of \$4.117 million, factoring in what the City has already appropriated for this CBA.

The Union's contends its wage proposal should be granted because it helps bring the City's firefighters and police officers into parity. There is historical precedent of police and fire parity in JLMC decisions. The uniquely hazardous responsibilities held by police officers and firefighters leads to the common public safety pattern of parity between a municipality's police and fire departments, and is why police and fire bargaining units are the only units subject to the JLMC process to resolve collective bargaining disputes. The Union asserts it is generally accepted that there is enough community of interest to provide some validity to the comparison. It argues this Panel should follow the long line of precedent and issue a decision that calibrates the parity between the City's police and fire units. Furthermore, the Union's proposal should be granted because the compensation of the City's firefighters lags behind that of its police by at least 31.3% annually across degree levels. The City failed to present any credible evidence comparing the fire and police units. The Union's charts, on the other hand, demonstrate that the fairest comparison is between a 15 year firefighter and a 15 year patrol officer spanning all levels of education, *i.e.*, none, associate degree, bachelor's degree, and master's degree. Furthermore, the City's firefighters, separated into four groups, work a 48-hour cycle, averaging 42 hours weekly to provide the City with 24 hour coverage without gaps or overtime. Its police officers, on the other hand, work a 4 on and 2 off schedule, which averages only 37.5 hours weekly, so they work 242 hours less than firefighters annually, or 12.5% less scheduled hours. The City avoids paying its firefighters overtime for the 4.5 hours that about 170 firefighters work each week of straight time that police officers do not, equaling almost \$20,000 in pay hours each year. Factoring the

difference in hours into the equation, the overall average lag between a City firefighter and a City patrol officer with all degrees is about 47.6%.

The Union's also argues its proposal, or some variation of it, should be granted because it mirrors what the City gave its police and EMS units. According to the Union, in the last round of CBA negotiations, the City's patrol officers received average annual increases of 5.125% or 20.5% over four years, from FY22 through FY25, and its Superior Officers received average annual wage increases of 7.4% or 29.6% over the same period. In addition, the City's EMS employees received average annual wage increases of 8.125% or 32.5% over the same period. With respect to patrol officers, this results in an average annual lag for firefighters of 31.3%, or an average hourly lag of 47.6%.⁶ Furthermore, patrol officers received other benefits, including but not limited to a \$3,000 COVID bonus and the Juneteenth holiday. The City does not dispute these increases, but took the position that although the COVID bonuses were related to work performed during the pandemic, payment was contingent on its public safety units settling their contracts, which is why firefighters have not yet been given the bonus.

The Union also argues, in light of the low compensation in comparison of FRFD firefighters to similarly situated firefighters in other cities and towns, its proposed wage increase should be granted. Using the City's proposed external universe, it is clear the FRFD provides fire protection at the lowest cost per capita, and property protection per \$1,000 of property protected at the fourth lowest cost. Furthermore, the City's firefighters lag behind significantly at each degree level, resulting in an average lag of 26.6%. In addition, the Union argues this Panel should disregard the City's external comparison data because it is flawed. It does not contain a review of overall compensation as required by the JLMC statute. For example, the City omitted or ignored

⁶ Because the Union's externals analysis included cities the Panel has not included in the universe of external comparable communities it deems appropriate, the Panel has not relied on that data.

holiday pay and shift differentials in Brockton, educational incentives in Taunton, New Bedford, and Brockton, and other stipends such as Brockton's non-supervisory differential.

Finally, the Union contends its proposed increases to firefighter wages and benefits are justified by the increase in workload and the hazards of the job. In this case, the Union has shown that while the FRFD manpower has decreased over the past several years, call volumes have been rising and continue to rise. In addition, the Union offered un rebutted evidence that the City's firefighters' job is replete with hazards and that they put their lives on the line each time they respond to a call.

Discussion

In lieu of the parties reaching agreement, this Panel must determine the appropriate wage increase for the three-year CBA sought by the parties. There are a number of factors arbitrators customarily consider in determining what wage increases should be granted, including the wages of comparable employees, wage increases granted to other City employees, and the City's ability to pay. The parties, through the hearing testimony, document submissions, and post-hearing briefs, have provided the Panel with information on these factors and have relied on this information in support of their respective positions. For the reasons outlined below, this Panel concludes that for the three-year CBA sought by the parties for FY22, FY23, and FY24 (July 1, 2021 – June 30, 2024) a wage increase of 4.0% effective July 1, 2021, 4.0% effective July 1, 2022, and 4.0% effective July 1, 2023, is appropriate.

With respect to Town-side bargaining units, the Town asserts that the patrol officers received only 1.5% and 1% for the first two years of their CBA, which demonstrates that the City has limited resources to grant retroactive raises for FY22 and FY23. The City admits that fiscal year beginning 7/1/23 included significant increases for patrol officers, including an increase of

approximately 18.5% over the prior year for patrol officers with 10 years of service. The City asserts the increase in the third year of the patrol officers CBA was justified by several factors that are not applicable to the firefighters. First, police wages were a contributing factor to severe hiring and retention issues. Second, the workload of its police officers is substantially greater than the workload of its firefighters, as measured by the average number of calls responded to by patrol officers and firefighters per day and per year. Third, the Patrol Union made several valuable and meaningful concessions in exchange for their wage increases, i.e., agreeing to a language change limiting the opportunity to accrue comp time and how much comp time could be accrued and to full implementation of body cameras. It asserts that none of the City's non-wage proposals for the firefighters' CBA are remotely close in importance or value to these concessions by the police unions. Fourth, the City contends if the firefighters want parity with the police it should engage with the City in good faith bargaining over the issue of workload. Finally, the City asserts the Panel should consider the fact that its police have historically been paid more than its firefighters.

The City contends a comparison to the Superior Officers' CBA is inapplicable to this arbitration because the only wage increase it received was an increase in rank differential, from 15% to 18%, which was phased in during the term of their CBA because the existing rank structure resulted in some patrol officers earning more than sergeants, a situation absent in the firefighters' CBA. The City also noted that, like the patrol officers, the Superior Officers agreed to implementation of body cameras and to modifications in their comp time language. Finally, the City asserts the Panel should not consider the wages paid to EMS Department employees in its deliberations because that department's budget is exclusively funded by through department receipts, while firefighters cannot generate revenue to support their wages. Even if the Panel compares EMS wages to firefighters, EMS basic EMTs earn 20.89% less than firefighter basic

EMTs, the EMS paramedics are trained and equipped to perform medical procedure that firefighters, including those certified as paramedics, cannot perform, and the call volume for the EMS Department is 3 ½ times that of the FRFD, covered by 17 employees per shift compared to 35 firefighters on a given shift.

It is clear from the record evidence that both the City's offer to its firefighters at the time of the JLMC hearing, and the raises suggested in its brief, would result in the firefighters salary schedule trailing far behind that of the City's other public safety unions, especially its patrol officers.⁷ Although the City asserts that its firefighters have historically been paid less than its patrol officers, the Panel notes that the gap has been considerably widened by the substantial bump given the patrol officers in their current CBA, effective 7/1/23. In addition, the City has widened the gap even further by agreeing to another wage increase for patrol officers of 2%, effective July 1, 2024. Finally, a historical imbalance does not support the contention that increasing that imbalance is justified.

The Panel is also not persuaded by the workload argument. The respective number of calls for patrol officers and firefighters is generated by circumstances beyond either group's control. It would be a disservice to the citizens of Fall River to discount the need to have firefighters ready to respond and serve in whatever emergencies arise. In addition, the Panel notes that although the City attempted to show its Firefighters respond to fewer calls than in the comparable communities, its data did not support that contention. It is clear from the City's data that the vast majority of calls for all the comparable communities were "medical responses" as opposed to "fire/other responses." When looking at just the number of "fire and other responses calls" the City's firefighters responded to more calls than every comparable except Brockton. Even though the

⁷ For purposes of the analysis the Panel has concentrated on the comparison with the City's patrol officers.

majority of the City's "medical responses" were clearly handled by its EMS department, 1,944 medical calls made up 27% its firefighters' total calls. In addition, its firefighters responded to 3,025 of the medical calls jointly with the EMS Department, which represented 15.6% of the EMS Department calls. Finally, comparing the non-monetary provisions before this Panel to those agreed to by the police unions is akin to comparing apples to oranges.⁸

With respect to external comparability, as stated above, the Panel accepts as the appropriate universe of comparable communities the cities of Attleboro, New Bedford, Taunton and Brockton. Trying to compare the parties' information was again akin to comparing apples and oranges. The City compared the base pay of a 5 year and a 10 year firefighter in its employ as of FY21 with those of the same duration in the comparable communities as of FY 23, 24 or 25, depending on the CBA duration. It also calculated the average lag for its firefighters as compared to the comparable group for varying years including Plymouth, which comparable the Panel has declined to use. While such a comparison is not ideal, it is interesting to note that the City drew the conclusion that without a raise its firefighters annual base pay would lag behind on average \$2,079 or 97% for a 5 year firefighter and \$4,324 or 98% for a 10 year firefighter. If they received a projected raise of 1.5% in FY22 their annual base pay would still lag behind \$1,164 or 98% and \$3,401 or 95%, respectively. If they received a projected raise of 3% in FY23, according to the City's calculations, their annual base pay would be above the average: \$794 or 101% for a 5 year firefighter and \$553 or 101% for a 10 year firefighter.

The Union, on the other hand, compared base pay for a 15 year firefighter with no degree, an associate degree, a bachelor's degree, and a master's degree. It compared the City's firefighters base pay for FY21 with that of the comparable communities of Attleboro (using FY23 base salary),

⁸ The Panel declines to comment on the bargaining assertion as that is both irrelevant to this arbitration and improper to raise in this forum.

New Bedford (using FY24 base salary), and Taunton (using FY24 base salary). For some reason it left out Brockton. Again, the comparison is not ideal, however, the Panel notes apparently for a 15 year City firefighter with no degree the lag is \$5,015 or 8.1%, with an associate degree it is \$2,311 or 3.6%, with a bachelor's degree there is no lag, but rather \$367 or 0.5% above the average with those three cities, and with a master's degree \$1,719 or 2.5% above the average.

Because the Panel could not draw any conclusions due to the vastly different criteria each party used, it turned to the CBAs for the comparable communities to see what percentage wage increases were granted by those municipalities for the fiscal years at issue. Here, again, the data is not consistent because the CBAs run through varying fiscal years. A review of the firefighters most recent CBAs for the comparable communities shows that Attleboro firefighters received 3% raises effective 7/1/21 and 7/1/22. New Bedford firefighters received 2% raises effective 7/1/21, 7/1/22, 7/1/23, and 7/1/24. Taunton firefighters received raises of 1% effective 7/1/21, 2% effective 7/1/22, and 2% effective 7/1/23. Brockton firefighters received a raise of 2% effective 7/1/21. The Panel notes that, according to the record evidence, as of 7/1/20, which was the last time the City's firefighters received a raise, its newly hired firefighters with no degree earned less than newly hire firefighters in every comparable community other than Brockton. Trying determine what its firefighters with an associate, bachelor's or master's degree earned as of 7/1/20 with specific years of service as compared to firefighters with the same status in the comparable communities was again akin to a comparison of apples to oranges because the comparable communities employ either a different range of steps, or a different combination of steps and years of service, and their monetary credit for various degrees, which varied from community to community would have to be added in because it was included in a CBA article separate from the wage article. Based on the City's treatment of its internal units' raises, particularly the patrol

officers, as well as the record evidence from both parties concerning external comparable communities, the Panel concludes its award of wages is justified. The award will bring the City's firefighters' base wages in line with its patrol officers and with the firefighters in the comparable communities.

Having so concluded, the Panel must now consider whether the City is able to pay these increases. The City contends, among other things, that it set aside \$880,000 in the FRFD budget for anticipated raises based on a projected total increase of 6% for FY24 over the FY23 budget. Apparently this does not include any retroactive pay for FY22 or FY23. It also claims its cash reserves at the end of FY22 was \$1.9 million, its free cash was the lowest of the comparable communities as a percentage of its operating budget, its general purpose stabilization fund is 38% less than average, its undesignated fund balance in 2022 was 2.8% of its budget, its cannabis revenues were drastically reduced due to legislative changes, and it relies heavily on state aid to balance its budget. Finally, the City's Chief Financial Officer testified that the City faces significant challenges, including short-term and long-term pension funding and the cost of construction of the Diman Vocational High School. In addition to the loss of cannabis revenue, she cited the loss of ARPA grant revenue. She also testified that the FY24 budget was balanced using one-time revenues, including \$4.3 million in ARPA funding and \$430,000 in free cash because it had no choice but to do so. The City asserts it does not have the resources to pay the Union's proposed COLA of 4%/4%/4%, which it calculates would cost \$3.8 million.

With respect to City funds that are traditionally relied upon in determining ability to pay, the City's evidence shows that as of May 31, 2023 its unexpended Free Cash reserve balance was

\$2,200,000,⁹ its General Stabilization Fund reserve balance was \$8,370,000, and its ARPA reserve balance was \$30,000,000. The Panel does not take the position that non-recurring funds should normally be relied on for payroll. It does find, however, that there are monies adequate and appropriate for funding retroactive wage increases in an agreement the City knew it was negotiating and should have known would eventually be funded. Furthermore, the City was aware that, awarding both the patrol and superior officers significant base wage adjustments would signal a request for a larger percentage base wage increase to firefighters and could have anticipated that such an amount would be awarded to the firefighters. Indeed, in its brief the City has moved away from its original proposal of 1.5%/0%/1% to 1.5%/3%/1.5%. Although the Panel is awarding more than the City indicated it would have offered the Union, the Panel notes that it is not awarding the medical care stipend, apparatus drive/inspector stipend, or firefighter EMT stipend sought by the Union, or hazardous duty pay in the amount the Union requested (see below). Finally, it is not appropriate to budget for other employees and for capital expenditures at the expense of one group of employees. Given the totality of the evidence, the Panel concludes that the City has sufficient resources to fund the firefighter wages the Panel is awarding.

Award - Wages

There will be a three-year contract covering July 1, 2021 to June 30, 2024, with wage increases of 4% effective July 1, 2021, 4% effective July 1, 2022, and 4% effective July 1, 2023.

New Article – Hazardous Duty Pay

Union's Position

The Union proposes firefighters receive annual hazardous pay equivalent to 3% of their annual base pay. The Union asserts firefighters are required to respond to numerous and varied

⁹ This was apparently not certified Free Cash. The record evidence shows the last Certified Free Cash amount was \$4,960,698 as of 6/30/22, as noted in the Massachusetts Department of Revenue Free Cash Calculation, which indicated this as certified on 1/24/23.

types of hazardous calls. In addition, calls that do not initially present as hazardous can change in an instant to become extremely hazardous. The City has the ability to pay the cost of the Union's proposal yet it objects on the grounds that a FRFD firefighter's job is not dangerous because its call volume is lower than that of its comparable communities. A fire is dangerous irrespective of how many times per year firefighters respond to them. An assertion to the contrary is nonsense, and lacks compassion and a fundamental understanding of the risks being made by its firefighters for its citizens. In addition, if the job of a FRFD firefighter was not dangerous or hazardous, and did not require specialized training and personal protective equipment, anyone who the City employs would have no problem responding to any calls received by the FRFD, which is not the case. For these reasons, the Union's proposal should be granted.

City's Position

The City asserts the projected cost of the Union's proposal is \$1,287,000. The City contends it has assigned a one-time stipend for employees in recognition of the challenges encountered in the performance of their duties during COVID-19 pandemic, which in the case of public safety units is \$3,000. If the Panel approves a similar payment for this unit, the cost would be approximately \$600,000. The City has no objection to the Panel awarding the same COVID premium pay to the firefighters' unit.

The City does not agree that the Union's 3% increase for hazardous duty pay is justified. The City recognized its police and EMS employees with a one-time bonus for the additional risks incurred during the pandemic. The Union opposes a permanent increase of 3% in their wages based on hazards that were not proven through the evidence. Rather the evidence actually shows the City's firefighters are exposed to less hazardous duty than its police officers or EMS workers based solely on the number of times they are called to respond. That is equally true if the Panel

considers the hazards faced by the City's firefighters as compared to their peers in other communities. In some of those communities the firefighters receive hazardous duty pay in addition to their base wages, however, they respond to more calls than the City's firefighters. It is self-evident that firefighters face more hazards if they respond to more calls. An across-the-board increase, as the Union proposes, is not supported by an analysis of the comparable communities in wages or as compared by workload. The City opposes any award other than a one-time bonus of \$3,000 for service during the COVID-19 pandemic. It proposes for that benefit the following language:

ARPA Hazard Premium Pay – Firefighters employed by the Fall River Fire Department at any time from March 1, 2020, through March 1, 2021, shall receive a one-time stipend of \$3,000.00 in recognition of the employees' continuing to perform their duties as front-line workers, who have and will bear the greatest health risks because of their service in critical sectors. In order to be eligible for said payment, employees must either be on active status as of the funding of this agreement or have retired from the Fall River Fire Department in good standing prior to said date, and be receiving pension payments pursuant to General Laws, c. 32.¹⁰

Discussion

The Union asserts an annual hazardous duty pay provision is merited because firefighters are required to respond to numerous and varied types of hazardous calls. The City opposes the provision because it believes, based on the number of calls its firefighters respond to, as opposed to those for its police officers and EMS workers, and those of firefighters in the comparable communities, the City's firefighters are exposed to less hazardous duty. The City opposes any hazardous duty provision other than the one-time hazard premium pay in the amount of \$3,000 it

¹⁰ The City notes this language was taken from the Fall River Patrol MOU, and was also included in the Superiors MOA.

has already given to its patrol officers and superior officers.¹¹ The Panel does not agree that the hazards faced by the City's firefighters can be calculated solely based upon the number of calls to which they respond. Rather, the scenarios with which they are presented, including potential adverse firefighting conditions, exposure to unknown hazardous materials, various scenarios in addition to building fires, such as motor vehicle accidents, carbon monoxide and natural gas emergencies, and medical responses, create the hazards of the job. This is acknowledged by the universe of comparable communities, all of which have hazardous duty provisions in their CBAs.

Attleboro has had a hazardous duty pay stipend since 7/1/15, which amount at that time was graduated dependent on rank. Effective 7/1/18, the stipend was increased to \$1,650 for all bargaining unit members. Effective 7/1/21 half of that amount was rolled into its firefighters' base pay while the other half was paid out as a stipend, and effective 7/1/22 the entire stipend was rolled into firefighters' base pay. Brockton has a hazardous duty stipend. As of 7/1/21 it was 14.25%.¹² New Bedford has a hazardous duty supplemental wage for all members of the bargaining unit, which is 3% of the base pay of a top step firefighter.¹³ Finally, the hazardous material pay section in Taunton's CBA states, "Because of the risks of exposure to hazardous materials that are inherent in the firefighting profession" every member of the bargaining unit would receive a hazmat premium of 3% applied to the base salary of each member's rank or position. That article was amended to include a retroactive payment of 1% effective on 7/1/20, 7/1/21, and 7/1/22, resulting in hazmat pay amounts of 4%, 5%, and 6% for each of those years, respectively.

¹¹ The Panel notes that according to the record evidence, in addition to its patrol officers and superior officers, the City has also made COVID-19 bonus payments to its Environmental Police (\$3,000), and its DPW employees represented by the Teamsters (\$2,500).

¹² According to the City the amount is 9.25%, but that is contradicted by the Brockton CBA in evidence, which states the stipend was increased by 2% to 12.25 effective 7/1/20, and by another 2% effective 7/1/21 to 14.25%.

¹³ According to the City's that equals \$1,880.

The Panel is mindful of the cost to the City that would result in the implementation of a hazardous duty pay provision; however, it is also respectful of the fact that FRFD firefighters are exposed to dangers in the performance of their duties as protectors of the City's citizens and property. Indeed, every comparable community has recognized the dangers inherent in their firefighters' jobs by including some form of a hazardous duty pay provision in their respective CBAs. In light of this, the Panel finds it appropriate to award hazardous duty pay in the amount of 3.0% of a bargaining unit member's annual base pay, to be added to each member's base pay as of 1/1/24.¹⁴

Award - New Article – Hazardous Duty Pay

The Panel awards hazardous duty pay in the amount of 3.0% of a bargaining unit member's annual base pay, to be applied to the base salary of each member's rank or position, included in each member's regular paycheck, and included in base pay for all purposes including overtime and retirement. The 3.0% hazardous duty pay is to be added into each member's base pay as of 1/1/24.

New Article – Medical Care Stipend

Union's Position

The Union proposes a new \$1,500.00 annual medical care stipend. It contends that will compensate firefighters for duties they already perform, including epi-pen, stop bleed, active shooter, and the needle machine. This increase is warranted given the nature of the firefighters work, the lag in compensation between firefighters and police, as well as the lag between them and their external comparable firefighters. The City presented no defense except that it does not

¹⁴ The Panel notes the City's willingness to pay its firefighters the same COVID-19 one-time bonus that it paid to its other protective services employees, and the DPW unionized employees, which it apparently has already budgeted with ARPA funds. While a COVID pandemic bonus provision was not an issue certified for arbitration by the JLMC, the Panel sincerely hopes the City does so compensate its firefighters for service during the pandemic.

want to pay firefighters any more than they are being paid now. For these reasons the Panel should award the Union's proposal.

City's Position

The City asserts the projected cost of the Union's proposal is \$855,000. The City does not minimize the value or importance of any of these activities, but based on call volume, firefighters do not perform these activities with any regularity. This is particularly true of Narcan and the epi-pen. Firefighters respond to a small number of medical calls per year, a small fraction of the medical calls handled by the EMS Department. There is also no justification for this wage increase in the external comparable communities' data as there is no reference to a similar payment in those communities. For these reasons the City opposes the Union's proposal.

Discussion

The City's firefighters already receive a stipend based of their certification as EMT basic, EMT intermediate/advanced, and EMT paramedic. In addition the Panel has awarded the firefighters a hazardous duty pay provision. Based on the record evidence, the Panel concludes there is insufficient evidence to support granting this new article.

Award – New Article - Medical Care Stipend

The Union's proposal is not awarded.

New Article - Apparatus Driver/Inspector Stipend

Union's Position

The Union proposes a stipend of 5% of their annual base pay, effective 7/1/21, for all apparatus drivers and inspectors. It asserts apparatus drivers are responsible for more during a work shift than a firefighter who is not driving. It is additional stress when responding to calls to get apparatus to the call and positioned properly, and to ensure the firefighters on the scene have the equipment to respond to the call safely and properly. Because of the immense stress and

responsibility it is not surprising that the City has a difficult time getting these positions voluntarily filled. That is also true for Inspector positions. The Union argues the City did not present any opposition to the proposal at the hearing and it has the ability to pay. For these reasons the Panel should award the Union's proposal.

City's Position

The City contends the projected cost of this proposal is \$337,000. It argues apparatus drivers and inspectors have completely different schedules and job requirements. Firefighters work two 24-hour shifts every 8 days. Inspectors work 8 AM to 4 PM with one day off a week. They take classes on their own time in order to be qualified. Conversely, there is no training or certification necessary to receive the pay for apparatus driver. Those positions are awarded by seniority through a bidding process. There are fire academy certifications for apparatus drivers, but the FRFD does not require them.

The proposed stipend for apparatus drivers is an attempt to increase wages, without acquiring any actual expertise or specialized training, based solely on seniority. The City opposes any such stipend in the absence of any requirements for training or certification. The City would not oppose a modest, non-retroactive stipend between 1% to 3% for inspectors only because those employees have an unfavorable schedule and are required to attend critical training on their own time.¹⁵

Discussion

The Union provided insufficient evidence to support either part of its proposal. Although the Panel appreciates the City's indication that it would not oppose a modest, non-retroactive

¹⁵ The City noted that New Bedford pays a stipend to firefighters assigned to the Fire Prevention Bureau of 1% to 3%, based on service in that position.

stipend for inspectors only, the Panel concludes that is best left to the parties to discuss any stipend for the inspectors in future negotiations.

Award - New Article - Apparatus Driver/Inspector Stipend

The Union's proposal with respect to stipends for apparatus drivers and inspectors is not awarded.

Firefighter EMT Stipend – Article 43

Union's Position

The Union proposed the firefighter EMT Stipends be increased, effective 7/1/21 as follows:

EMT Basic- increase stipend to an amount equal to 5% of the annual base salary paid to a five-year firefighter with no degree.

EMT Intermediate/Advanced- increase stipend to an amount equal to 7% of the annual base salary paid to a five-year firefighter with no degree.

EMT paramedic- increase stipend to an amount equal to 10% of the annual base salary paid to a five-year firefighter with no degree.

The above stipends shall be included in an employee's base for all contractual purposes including but not limited to overtime.

The Union argues that when a shift is staffed with 35 firefighters, and all of them are working, which is still below national safety standards, the FRFD pulls one to work on the EMS truck with an EMT or paramedics rather than keeping the firefighter on duty to bolster suppression response. Firefighters are considered first responders under the law, which is different from EMS employees; however, if they are being required to work on EMS trucks when the FRFD is still understaffed per national standards, they should be properly compensated for doing a job that is not even in their department or under their CBA. For these reasons the Panel should award the Union's proposal.

City's Position

The City contends the projected cost of this increase is \$715,000. The City argues that all of the comparable communities provide critical medical services to their communities, but the City's firefighters do not. Given the vast disparity in the amount of medical services provided by the City's firefighters as compared to the firefighters in the comparable communities, the stipends of the comparable communities' EMTS and paramedics is irrelevant. There is also no basis to compare the wages of the EMS Department's paramedics with the City's firefighters. Furthermore, the City asserts the firefighters would not increase the amount of EMS work they do. For these reasons, the City opposes the Union's proposal.

Discussion

Article 43 already provides for a stipend to the City's firefighters based of their certification as EMT basic - \$1,500, EMT intermediate/advanced - \$2,250, and EMT paramedic \$3,000. The data for the comparable communities shows that Attleboro's EMT stipends in its 2020-23 CBA are \$2,600 (basis), \$3,100 (intermediate), and \$7,000 (advanced). New Bedford provides only for an EMT basis stipend at \$2,000. Brockton increased its percentage stipend effective 7/1/21. According to the City's chart that resulted in stipends of \$2,633 (basic) and \$5,792 (paramedic). Although the CBA provides for an EMT intermediate stipend the City apparently omitted it from its chart. Finally according to the City's chart, Taunton EMTs also receive a percentage of base. Its stipends are \$2,567 (basic) and \$5,133 (paramedic). Again, a stipend for intermediate, if there is one provided in the CBA, was omitted. All of these communities' firefighters respond to medical emergency services, but the record is clear that the City has an EMS Department that provides the majority of its emergency medical services. The Panel concludes, therefore, that there is insufficient evidence to support granting the requested stipend increases.

Award – Firefighter EMT Stipend – Article 43

The Union's proposal is not awarded.

Article 21 – Sickness/Injury During Vacation Time

City's Position

The City proposes to delete Section 1 of Article 21, which states:

Any employee who is disabled due to sickness or injury, provided that the injury or illness is not due to the result of outside employment, during his/her assigned vacation period shall not be charged for such vacation time. Provided, however, that the employee shall not automatically extend his/her vacation, but rather, said unused vacation shall be assigned either in the current or subsequent calendar year at a time convenient to the Department. Employees shall provide a doctor's certificate with respect to said disability.

The City contends the Union enjoys unlimited sick leave. This provision allows an employee to get a doctor's note stating he was sick during vacation, and have that vacation re-credited to him/her. The City's firefighters enjoy a very generous vacation benefit. Firefighters with ten years of service gets 240 hours of vacation. Firefighters with twenty-nine years of service get 335 hours of vacation time. Based on a 42-hour week that equates to 8 weeks of vacation. The City requests this section be deleted because it can easily be manipulated, expanding the already generous vacation benefits enjoyed by this bargaining unit. The City is not accusing the Union or any employees of abusing this section, but is merely seeking to eliminate an onerous provision from the CBA. In summary, the provision is ridiculous on its face. The potential for abuse is beyond obvious. The Union will likely argue there is no evidence that there has been abuse in the past, so the City's proposal should be rejected on that basis. The City's proposal is a very modest change to a sick leave benefit that is far beyond any other comparable fire unit. The City's proposal would

inhibit the expansion or manipulation of an already generous vacation benefit. For these reasons, the City's proposal should be granted.

Union's Position

The Union argues that there is no evidence to support the City's proposal. There is no data showing that sick leave is an issue in the FRFD. For this reason, the City's proposal should be rejected.

Discussion

The City requests that this section be deleted from the parties' CBA because its firefighters enjoy a generous vacation benefit and because this provision can be easily manipulated, even though it is apparently not accusing its firefighters of ever having done so. The Union opposes the deletion of this provision because there is no evidence that sick leave has been an issue in the FRFD. The Panel notes that, upon review of the comparable communities' CBAs, Taunton has a similar provision. Article VII, Section 1 (g) states in pertinent part: "Any Firefighter who has reported in on the sick list and whose vacation is due to start shall not commence such vacation until the Firefighter reports subject for duty." Taunton also has a sick leave abuse provision (Article VII, Section 4) that allows the Chief to request a doctor's certification and counsel or use progressive discipline if he finds a firefighter has abused sick leave, pursuant to the provisions of that section. Even though New Bedford does not have a similar provision concerning sickness during vacation, the Panel notes New Bedford does have a provision in its sick leave article (Article 23) that permit its Chief to require a doctor's verification of illness regardless of the duration in cases of frequent use of sick leave or when a pattern of sick leave indicates a potential abuse of sick leave privileges. The City's Fire Chief also has the ability to address suspected abuses of sick leave. Article 29, Sickness/Illness, Section 2 states:

Any member reporting out sick periodically and compiling a series of short duration absences may be required by the Chief, after notice, to submit a physician's certificate for each subsequent absence. The employer may require the employee to submit to a physical examination by a physician designated by the department. If so, the report shall be recognized unless substantial evidence as to fitness for duty can be presented to the contrary through the department physician to the Chief Executive Officer.

Based on the evidence in the record, in particular the fact that the City does not assert there has been any specific instances of abuse of Article 21, Section 1, the Panel declines to grant the City's proposal.

Award – Article 21 – Sickness/Injury During Vacation Time

The City's proposal to delete Section 1 of Article 21 is not awarded.

Article 22 – Bid System

City's Position

The City proposes to amend Section 2 to return to the practice of only doing one bidding process per year, rather than multiple bidding processes per year. Repeating this bidding process is inconvenient, but the proposal does not have significant value to the City so it should not be awarded in exchange for some costly wage increase.

Union's Position

The Union did not present a position in its brief with respect to this proposal.

Discussion

The Panel notes that, pursuant to the City's position, a one round bidding process had been agreed to by the parties in the past, and the current process is inconvenient. The Union presented

no opposition to this specific proposal. In light of this, the Panel grants the City's proposal. The second sentence in the fourth paragraph of Article 22, Section 2, will be deleted.

Award – Article 22 – Bid System

Article 22, Section 2, paragraph 4 (unnumbered) is amended to read:

Section 2. Bid System Procedure:

Bid system – After the initial bid is awarded there shall be one (1) subsequent bid offered for the position vacated by the person being awarded the original bid.

Article 29 – Sickness/Illness

City's Position

The City proposes to add the following section to Article 29:

When a member of the FRFD is out sick long term (more than two weeks) said member shall not be allowed to leave the state of Massachusetts. If said member does leave the state said member will forfeit vacation time equal to their time away from Massachusetts. Members out long-term sick and those who demonstrate repeated or pattern sick leave will at the discretion of the Fire Chief at a date and time convenient to the department be ordered to report to a doctor's office for fit for duty assessment. Any member who does not show up for an appointment or leaves before being seen by the doctor will be reported as AWOL and will be taken off the pay roll until said member returns to duty or upon arrival at next available Doctor appointment.

The City asserts, as with its proposal for Article 21, that this is a modest restriction on the unlimited sick leave benefit. If an employee is out sick more than 2 weeks that employee will not be allowed to use unlimited sick leave in lieu of vacation to travel to other states or countries. The proposal would also require employees on long-term sick leave or otherwise showing a pattern of sick leave use to go to a City appointed physician. The City has provided data that indicates firefighters used an average of 92 hours of sick leave in 2022. That is more than 2 weeks of sick leave on average. The City's exhibit also shows a significant increase in sick leave over the past 3 years. This

proposal would impose a modest restriction on opportunities for abuse. For these reasons, the Panel should award the City's proposal.

Union's Position

The Union objects to the City's proposal. The Union contends the City's proposal has no basis in data showing that sick leave in the FRFD is an issue at present. Union members have never been required to be in a specific location when they are on sick leave and the City cites no instances where a member's location while out on sick leave was an issue. Moreover, there is already a provision in the parties' CBA permitting the City to send a Union member to a doctor of its choosing when an issue arises. The Union argues the City admitted it does not utilize the provision because it is too costly. For these reasons, the Panel should reject the City's proposal.

Discussion

The Panel has reviewed the evidence in the record of the CBA provisions of the City's patrol officers and superiors, as well as of the comparable communities, and has determined that none of those communities have a travel restriction such as the City is seeking to include in the parties' CBA. Although the City has presented data to show sick leave usage of its firefighters it does not allege that it suspects a pattern of abuse. The Union opposes this provision because there is no evidence that sick leave has been an issue in the FRFD. Although, as stated above, pursuant to Article 29 Section 2, the Chief has some ability to address potential abuses of sick leave by requiring a physician's certificate if a firefighter is out periodically and compiling a series of short term absences, the Panel notes this proposed provision concerns when an FRFD member is out long term. The Panel concludes that based upon the record evidence the City's proposal, not including the travel restriction, is warranted.

Award – Article 29 – Sickness/Illness

The City's proposal to add a section to Article 29, without the travel restriction, is awarded.

The language awarded by the Panel is as follows:

Members of the FRFD out sick leave for two or more weeks, or who demonstrate repeated or pattern sick leave will at the discretion of the Fire Chief at a date and time convenient to the department be ordered to report to a doctor's office for fit for duty assessment. Any member who does not show up for an appointment or leaves before being seen by the doctor will be reported as AWOL and will be taken off the pay roll until said member returns to duty or upon arrival at next available Doctor appointment.

Summary of Award

Award - Wages

There will be a three-year contract covering July 1, 2011 to June 30, 2024, with wage increases of 4% effective July 1, 2021, 4% effective July 1, 2022, and 4% effective July 1, 2023.

Award - New Article – Hazardous Duty Pay

The Panel awards hazardous duty pay in the amount of 3.0% of a bargaining unit member's annual base pay, to be applied to the base salary of each member's rank or position, included in each member's regular paycheck, and included in base pay for all purposes including overtime and retirement. The 3.0% hazardous duty pay is to be added into each member's base pay as of 1/1/24.

Award – New Article - Medical Care Stipend

The Union's proposal is not awarded.

Award - New Article - Apparatus Driver/Inspector Stipend

The Union's proposal of stipends for apparatus drivers and inspectors is not awarded.

Award – Firefighter EMT Stipend – Article 43

The Union's proposal is not awarded.

Award – Article 21 – Sickness/Injury During Vacation Time

The City's proposal to delete Section 1 of Article 21 is not awarded.

Award – Article 22 – Bid System

Article 22, Section 2, paragraph 4 (unnumbered) is amended to read:

Section 2. Bid System Procedure:

Bid system – After the initial bid is awarded there shall be one (1) subsequent bid offered for the position vacated by the person being awarded the original bid.

Award – Article 29 – Sickness/Illness

The City's proposal to add a section to Article 29, without the travel restriction, is awarded.

The language awarded by the Panel is as follows:

Members of the FRFD out sick leave for two or more weeks, or who demonstrate repeated or pattern sick leave will at the discretion of the Fire Chief at a date and time convenient to the department be ordered to report to a doctor's office for fit for duty assessment. Any member who does not show up for an appointment or leaves before being seen by the doctor will be reported as AWOL and will be taken off the pay roll until said member returns to duty or upon arrival at next available Doctor appointment.

Respectfully submitted this 21 day of October, 2023,

Gerard Hayes - I dissent.

Gerard Hayes, Management Panel Representative

Matthew Reddy

Matthew Reddy, Union Panel Representative

Beth Anne Wolfson

Beth Anne Wolfson, Neutral Arbitrator and Panel Chairperson

IN THE MATTER OF
ARBITRATION BETWEEN

FALL RIVER FIRE FIGHTERS, LOCAL 1314 IAFF

and

CITY OF FALL RIVER

Interest Arbitration
Case No. JLMC-22-9197

Arbitration Panel: Beth Anne Wolfson, Neutral Arbitrator
Matthew Reddy, JLMC Committee Member, Union
Gerard Hayes, JLMC Committee Member, Management

Appearances:
For the Union: Leah Barrault, Esq.
For the City: John Clifford, Esq.

Decision and Award
By the Arbitration Panel

Background

The City of Fall River (City) and the Fall River Fire Fighters, Local 1314, IAFF (Union) are parties to a collective bargaining agreement (CBA) with a term from July 1, 2016 to June 30, 2019, which was extended by a Memorandum of Agreement (MOA) from July 1, 2019 to June 30, 2021, signed by the parties on March 26, 2021. The bargaining unit covered by the CBA includes all uniformed members of the Fall River Fire Department (FRFD) except the Chief. There are approximately 195 firefighters who staff 6 stations across the City. In addition to fires, the FRFD

responds to calls concerning carbon monoxide, natural gas emergencies, motor vehicle accidents, water rescues, hazardous material emergencies, lift assists, and medical emergencies.¹ The City's population is approximately 94,000 and is the fourth largest city in the Commonwealth. It is bisected by two major highways, I-195 and MA-24. The FRFD covers approximately 33 square miles on land and about 7 miles of water. Jason Burnt, a City firefighter and current Union President, testified that the City is densely populated, with many three-decker houses that are close together, as well as old mill buildings. Apparently some of those buildings have been converted into medical offices. He also stated that the City has within its borders an LNG facility.

There are 6 engine companies and 3 ladder companies, a heavy rescue company, and 2 command vehicles. The water is covered by the Department of Marines 1 and 2, which is staffed through cross-manning of firefighters also assigned to heavy rescue. Apparently the FRFD's goal is to man its apparatus with 4 members, but at present most apparatus is staffed with 2 firefighters and 1 fire officer. The 2 engine companies furthest north and south in the City are maintain a crew of 3 firefighters and 1 fire officer. Both command vehicles are staffed with a District Chief alone, without an aid or assistant.

The Union previously filed a petition with the Massachusetts Joint Labor Management Committee (JLMC). After a subcommittee meeting of the JLMC held a hearing with the parties on the issues in dispute on September 29, 2022, and by letter dated November 4, 2022, it directed the parties to proceed to arbitration before a tripartite panel. By letter dated November 28, 2022, the undersigned was appointed by the JLMC to serve as Neutral Chair of the Arbitration Panel. The Management member of the Panel is JLMC Committee Member Gerard Hayes, and the Union member of the Panel is JLMC Committee Member Matthew Reddy.

¹ Although the City has a separate EMS Department, firefighters are first responders, and the record evidence shows that about 27% of FRFD calls are medical.

An arbitration hearing was held on July 17, 2023² before the tripartite Panel. At the hearing the parties were given full opportunity to present evidence and make arguments on their outstanding issues.³ Both parties submitted their briefs electronically on August 29, 2023, on which date this Arbitrator electronically exchanged the briefs for the parties and provided them to the other Panel members.

Issues in Contention

Duration was not listed as one of the authorized issues, and both parties have submitted evidence regarding wage rates for FY 2022, 2023, and 2024, from which the Panel has concluded that they are in agreement that the Award should provide for a three-year CBA effective from July 1, 2021 to June 30, 2024. The issues to be arbitrated, which were certified by the JLMC at its 3(a) hearing, are:

<u>Joint Issues:</u>	<u>Pages</u>
1. Wages (Article 3)	4 - 21
<u>Union's Issues:</u>	<u>Pages</u>
1. New Article, Hazardous Duty Pay	21 - 25
2. New Article, Medical Care Stipend	25 - 26
3. New Article, Apparatus Driver/Inspector Stipend	26 - 28
4. Firefighter EMT Stipend (Article 43)	28 - 30
<u>City's Issues</u>	<u>Pages</u>
1. Sickness/ Injury During Vacation Time (Article 21)	30 - 32

² An attempt to mediate a settlement of the parties' dispute prior to the commencement of the hearing was unsuccessful.

³ At the hearing and in its brief the City objected to the JLMC's exclusion from these proceedings of some City bargaining proposals. This Panel declined to consider those proposals because its authority is limited to the issues certified by the JLMC to be arbitrated, as listed in the November 28, 2022 appointment letter.

	<u>Pages</u>
2. Bid System (Article 22)	32 -33
3. Sickness/Illness (Article 29)	33 - 35
<u>Summary of Award</u>	35 – 37

Wages and Salary – Article 3

The parties' CBA, effective July 1, 2016 to June 30, 2019, was extended by a Memorandum of Agreement, effective July 1, 2019 to June 30, 2021. Wages are addressed in Article 3 – Wages and Salary – of their expired Agreement.

With respect to wages of comparable employees, the Panel must look at the fire fighters in comparable communities. Because the parties were unable to agree on the universe of comparable communities, the Panel must determine for purposes of its analysis the appropriate universe of comparable communities. The Town asserts it is: Attleboro; New Bedford; Taunton; Brockton; and Plymouth. The Union contends it is: Attleboro; New Bedford; Taunton; Brockton; Chelsea; Everett; Leominster; Lowell; Malden; Quincy; Revere; and Springfield. The parties agree on Attleboro; New Bedford; Taunton; and Brockton.

The City provided as evidence an excerpt from the 2018 police patrol officers' award where the parties agreed that Attleboro, New Bedford, Taunton, Brockton, and Plymouth were appropriate comparable communities. In that case, the Union also proposed to include in the universe of comparable communities, Everett, Lowell, and Springfield; however, that Panel determined the communities agreed on, i.e., Attleboro, New Bedford, Taunton, Brockton, and Plymouth were appropriate comparable communities. That panel declined to include Everett, Lowell and Springfield because the City of Everett, as a greater Boston community, typically

reflected a higher compensation factor than the South Coast region, the City of Springfield is located in the western part of the Commonwealth and is the third largest city in the Commonwealth, and the City of Lowell is in the Merrimack Valley, which is geographically distinct from Fall River, and has a traditionally distinguishable wage and benefit track from Fall River.

The Union provided as evidence the statutory definition of what is a gateway city and a list of Massachusetts gateway cities, demographic information for all 26 gateway cities, including Fall River, and the testimony of the Union's expert. Kevin J. Dasey. According to Dasey's testimony, he selected 11 of the 25 other gateway cities to compare to Fall River. The Panel notes both that Dasey did not explain why he selected those 11 out of 25, and also that he actually included a 12th gateway city in his analysis.⁴ In addition, it appears the Union did not include Plymouth because it was focusing on Massachusetts gateway cities for its universe of comparable communities and Plymouth, a town, is not a gateway city.

This Panel accepts as external comparable communities the four cities the parties agreed on, i.e., Attleboro, New Bedford, and Taunton – all in Bristol County as is Fall River - and Brockton, in Plymouth County, which is contiguous to Bristol County.

This Panel declines to include in the universe of external comparable communities the town of Plymouth. The Union provided copies of the four agreed to cities' most recent CBAs, but neither party provided a copy of the town of Plymouth's most recent CBA. The Panel is not comfortable relying on only the extrapolated information the Employer provided from which to draw comparisons. The Panel also declines to include in the universe of external comparable communities the cities of Chelsea, Everett, Leominster, Lowell, Malden, Quincy, Revere, and

⁴ Union Ex. 9, p. 95, lists 11 external comparable communities, not including Attleboro, but Union Ex. 9, pp. 96, 97, and 99-100, include Attleboro in the analysis of external comparable communities.

Springfield suggested by the Union. None of those cities are in Bristol County. All of those cities are geographically remote from Fall River, especially Lowell, Leominster, and Springfield. All of those cities are in counties not contiguous to Bristol, except Quincy; however, Quincy, along with Chelsea, Revere, and Everett, are all located in the Metro Boston Region. Malden, which abuts Revere and Everett, while not part of the recognized Metro Boston Region, is considered a suburb of Boston. Finally, although it appears the Union was concentrating on gateway cities, as stated above, its expert did not testify why he chose those 8 cities out of the 21 gateway cities not agreed to by the parties.

City's Position

The City originally proposed a wage increase of 1.5%, 0%, and 1%, for the 2022, 2023, and 2024 fiscal years. In the Summary contained in its post-hearing brief, however, the City submitted that this Panel should award wages increases of 1.5%, effective 7/1/21, 3%, effective 7/1/22, and 1/5%, effective 7/1/23. In its brief, the City addressed what it perceived as the Union's primary focus, *i.e.*, the City's patrol officers' wage increases, but also addressed the City's EMS and Superior Officers' wage increases and those of the comparable communities it suggested. Finally, the City discussed its financial ability to fund wage increases.

With respect to the patrol officers, the City contends their raises were: 7/1/21 – 1.5%; 7/1/22 – 1%; and 7/1/23 – new wage schedule for Step 1, date of hire through year 4, \$2,346.20, Step 2, year 5 through year 9, \$2,538.46, and Step 3, 10 years of credible service, \$2,923.08. This demonstrates the City had limited resources to fund retroactive wage increases for FY 22 and 23. The fiscal year beginning 7/1/23, however, includes significant increases for Patrol Union members, including an increase of approximately 18.5% over the prior year for patrol officers with 10 years of service. The City asserts the increase in the third year of the patrol officers CBA was

justified by several factors that are not applicable to the firefighters. First, police wages were a contributing factor to severe hiring and retention issues. At the time the patrol officers' CBA was settled the Police Department (PD) had 25 funded positions that were vacant and its staff of 145 officers was significantly lower than the previous year. The City was losing officers to other police departments as well as its own Fire Department. Conversely, the FRFD is fully staffed and does not have any staffing or retention issues.

The City argues the workload of its police officers is substantially greater than the workload of its firefighters. The City measures workload by number of calls. It asserts the 3-year average of calls was 6,930 per year, or 19 per day, for the FRFD, while the PD averaged 44,900 per year or 123 per day, or six times as many calls as the FRFD. The City also argues this average does not take into account the fact that as of December 2022, the PD had only 145 officers while the FRFD had 195 firefighters. Furthermore, given that police officers respond to 10 times the number of calls on a daily basis than firefighters, their job is clearly more hazardous.⁵ It also argues the Union has steadfastly resisted the City's proposals to narrow the gap.

The City asserts the Patrol Union made several valuable and meaningful concessions in exchange for their wage increases. Specifically, both the Patrol and Superior Officers Unions agreed to significant language changes limiting both the opportunity to accrue comp time and how much comp time could be accrued, addressing a practice that had created an unfunded liability in the millions of dollars by allowing an employee to not work for up to 2 years prior to actually retiring. Both police unions also agreed to full implementation of body cameras, which would create a record of police interactions with the public and provide a clear method of determining whether claims of police misconduct are true. None of the City's non-wage proposals are remotely

⁵ The Panel notes this argument concerns an Article proposed by the City that was not authorized by the JLMC at its 3(a) Hearing to be submitted to arbitration, therefore, the Panel cannot consider such an argument.

close in importance or value to these concessions by the police unions. Finally, the City contends if the firefighters want parity with the police it should engage with the City in good faith bargaining over the issue of workload.

The City asserts the Panel should consider the fact that its police have historically been paid more than its firefighters. Union Exhibit 8 shows a patrol officer with 15 years of service earned a total of \$84,746 per year, while a firefighter with the same years of service earned \$69,306, or 22.3% less. Furthermore, the Union exhibit includes EMT pay, which is not paid to all firefighters. When that is subtracted from firefighter wages, the difference increases to 25.7%. In addition, the Union exhibit is predicated on the theory that firefighters “work” 12.5% more hours than police officers, therefore, their wages should reflect that; however, firefighters are permitted to sleep during their shifts while police officers are not, therefore, the difference in scheduled hours is meaningless. Furthermore, any rational analysis of “work” should include workload measured in number of calls, so that disparity is negated by the amount of work actually performed by police officers. The City also asserts that not only is there no evidence that would justify imposing a wage package that narrowed or eliminated a gap that has always existed, but also for its reasons cited above there is ample justification for that wage gap to be increased.

With respect to the Superior Officers’ CBA, the City contends it is inapplicable to this arbitration. That Union negotiated an increase in rank differential, from 15% to 18%, which was phased in during the term of their CBA because the existing rank structure resulted in some patrol officers earning more than sergeants. That was the only wage increase negotiated by the Superior Officers’ Union. That conflict in wage structure does not exist in the firefighters’ CBA. Furthermore, as previously asserted, the Superior Officers also agreed to implementation of body cameras and to modifications in their comp time language.

With respect to the EMS Department, the City contends there are several distinguishing factors. Between 2018 and 2022 that department's revenues increased from \$7.4 million to \$9.6 million. The wage increases negotiated in its most recent CBA has dramatically improved the ability to hire and retain staff. The EMS Department operates as an enterprise fund, i.e., its revenues fund wages and other expenses. FRFD wages, on the other hand, are funded through general fund revenues, and firefighters cannot generate additional revenue to support their wages. Even if the Panel compares EMS wages to firefighters, EMS basic EMTs earn 20.89% less than firefighter basic EMTs. The City argues the Union will likely try to compare EMS paramedics to firefighter wages; however, they are trained and equipped to perform medical procedures that firefighters, including those certified as paramedics, cannot perform. In addition, EMS employees responded to 25,715 calls in 2022, whereas firefighters responded to 7,170 calls. The call volume for the EMS Department, which is 3 ½ times that of the FRFD, is managed by staffing 17 employees per shift compared to 35 firefighters on a given shift. For these reasons the Panel should not consider the wages paid to EMS Department employees in its deliberations.

With respect to external comparability, The City contends the analysis of comparable wages must include relative ability to pay and a comparison of workload. Pursuant to its analysis of workload, its firefighters respond to fewer calls than other departments, including Attleboro, which has half the population of the City. New Bedford, which is very close both geographically and in population, respond to three times as many calls. The City contends the primary reason for the disparity is that New Bedford firefighters respond to almost 19,000 medical calls a year, while its firefighters respond to 2,600. Furthermore, the City spends on average \$3,303 per call, as compared to an average of \$1,036 per call for the other communities. In addition, a City firefighter with 10 years of service, based on FY21 wages, earned \$61,535, approximately \$4,324 below the

average of comparable communities when compared to their FY23 wages. For illustrative purposes only the City projects that if its firefighters received 1.5% in FY22 and 3% in FY23, they would then be paid 1% more than the average. This analysis does not take into consideration that its 10 year firefighters receive unlimited sick leave compared to their peers in other communities, most of whom receive 15 sick days a year. The analysis also does not reflect the vacation benefits of the City's firefighters. After 10 years of service they receive 240 hours of vacation, on average one week more than their peers in other departments, which the City projects at a value of 2% of total earnings.

The City also argues that, to the extent its firefighters receive lower wages than their peers, based on the City's fiscal data, as well as workload, they are precisely where they should be. The City's need to negotiate higher wages for patrol officers should not be construed as indicative of the City being flush with cash. Its Chief Financial Officer testified that the City faces significant challenges, including short-term and long-term pension funding, construction of the Diman Vocational High School, the minimum net spending requirement of the Commonwealth, loss of grant revenue from the American Rescue Plan (ARPA), and a reduction in cannabis revenues. She also testified that the FY24 budget was balanced using one-time revenues, including \$4.3 million in ARPA funding and \$430,000 in free cash. Although such use of non-recurring revenue is generally frowned upon, the City had no choice but to do so.

According to the City, its exhibits demonstrate both its available revenues and how it compares to other communities. Its cash reserves at the end of FY22 was \$1.9 million. Its free cash is the lowest of the comparable communities, as a percentage of its operating budget. Its general purpose stabilization fund is the second lowest, 38% less than average. Its revenue by source shows the City heavily relies on state aid to balance its budget. Its undesignated fund

balance in 2022 was the lowest of the comparable communities as a percent of budget (2.8%). Its cannabis revenues were drastically reduced due to legislative changes, which occurred after the City's FY23 budget had been approved. Finally, the City's credit rating from Moody's of A3 specifically lists low cash reserves and high debt as concerns, and notes its low per capita income, which the City states is the lowest of the comparable communities, and the elevated poverty levels (the City states it has the highest unemployment of the comparable communities), as contributing to the lower bond rating.

With respect to other Chapter 589 economic indicators the Panel could consider, the City argues the CPI, which is just one of the factors, does not enhance the City's overall ability to pay. The City's low reserves reflect that. All the data supplied by the City, including information from the Massachusetts Division of Local Services, the U.S. Department of Labor Consumer Price Index, bond rating agencies, such as Moody's and Standard and Poor's, and its financial reports demonstrate conclusively that the City continues to have constraints on its ability to fund wage increases. The City states the Union's projected cost for its proposed COLA's alone (4%/4%/4%) would be \$3.8 million. The City included \$880,000 in the FRFD budget for anticipated raises, based on a projected total increase of 6% for FY24 over the FY23 budget. It does not include any retroactive pay for FY22 or FY23. There is no credible evidence that the City can afford such an increase.

Union's Position

The Union seeks wage increases of 4% for each year of a three-year CBA effective from July 1, 2021 to June 30, 2024. The Union contends the City has the ability to pay fair firefighters raises and benefits, and in light of the low compensation in comparison to the City's patrol officers the Union's wage and benefits proposals must be granted. The City has provided significant

increases to its other public safety bargaining units, which alone demonstrates both a willingness and an ability to pay. The Union asserts the City has not denied an ability to pay, but rather shows an unwillingness to provide its public safety pattern of wage and benefits increases to its underpaid firefighters based on its perception that the FRFD does fewer runs than it should. The City has made no showing that the firefighters have not done their assigned work. In addition, the City's comparable call data is flawed because it is impossible to ascertain what is contained in the external comparable call data, particularly the number of inspections, drills, and training done by in-service fire companies. That information is also missing from the FRFD call data presented by the City, which only contained a group of FRFD annual Incident Analysis reports also missing those incidents. In addition, the City apparently did not credit any of the 4,000 EMS responses by "Squad 11," which is a joint FRFD and EMS manned unit.

In light of the possibility that the Panel might not award the wage increase the Union seeks plus the other monetary benefits requested, it proposed a financial package that included the 4%/4%/4% wage increase, plus hazardous duty pay of 1.5% annually, added to base retroactively. The Union asserts that subtracting out the \$880,000 the City has already appropriated for this CBA, the cost for this Union proposal would be \$4.117 million, or an average annual cost to the City of \$1.372 million for each of the three years at issue. According to the Union, the City shows \$41.12 million in its Actual Reserve Balances (excluding the Water and Sewer Stabilization Funds). The Union, on the other hand, has identified \$76.422 million. The City included in its calculation an EMS Stabilization Fund of \$1.25 million, but the Union did not. The City shows unexpended Free Cash of \$2.2 million while the Union assumes, based on the \$5.4 million FY 22 surplus in Other Local Receipts that there will be a sufficient FY23 surplus to restore Free Cash to the FY 23 certified amount of \$4.961 million. Both the City's and the Union's reserve calculations are well

above the net cost of the Union's proposals of \$4.117 million, factoring in what the City has already appropriated for this CBA.

The Union's contends its wage proposal should be granted because it helps bring the City's firefighters and police officers into parity. There is historical precedent of police and fire parity in JLMC decisions. The uniquely hazardous responsibilities held by police officers and firefighters leads to the common public safety pattern of parity between a municipality's police and fire departments, and is why police and fire bargaining units are the only units subject to the JLMC process to resolve collective bargaining disputes. The Union asserts it is generally accepted that there is enough community of interest to provide some validity to the comparison. It argues this Panel should follow the long line of precedent and issue a decision that calibrates the parity between the City's police and fire units. Furthermore, the Union's proposal should be granted because the compensation of the City's firefighters lags behind that of its police by at least 31.3% annually across degree levels. The City failed to present any credible evidence comparing the fire and police units. The Union's charts, on the other hand, demonstrate that the fairest comparison is between a 15 year firefighter and a 15 year patrol officer spanning all levels of education, *i.e.*, none, associate degree, bachelor's degree, and master's degree. Furthermore, the City's firefighters, separated into four groups, work a 48-hour cycle, averaging 42 hours weekly to provide the City with 24 hour coverage without gaps or overtime. Its police officers, on the other hand, work a 4 on and 2 off schedule, which averages only 37.5 hours weekly, so they work 242 hours less than firefighters annually, or 12.5% less scheduled hours. The City avoids paying its firefighters overtime for the 4.5 hours that about 170 firefighters work each week of straight time that police officers do not, equaling almost \$20,000 in pay hours each year. Factoring the

difference in hours into the equation, the overall average lag between a City firefighter and a City patrol officer with all degrees is about 47.6%.

The Union's also argues its proposal, or some variation of it, should be granted because it mirrors what the City gave its police and EMS units. According to the Union, in the last round of CBA negotiations, the City's patrol officers received average annual increases of 5.125% or 20.5% over four years, from FY22 through FY25, and its Superior Officers received average annual wage increases of 7.4% or 29.6% over the same period. In addition, the City's EMS employees received average annual wage increases of 8.125% or 32.5% over the same period. With respect to patrol officers, this results in an average annual lag for firefighters of 31.3%, or an average hourly lag of 47.6%.⁶ Furthermore, patrol officers received other benefits, including but not limited to a \$3,000 COVID bonus and the Juneteenth holiday. The City does not dispute these increases, but took the position that although the COVID bonuses were related to work performed during the pandemic, payment was contingent on its public safety units settling their contracts, which is why firefighters have not yet been given the bonus.

The Union also argues, in light of the low compensation in comparison of FRFD firefighters to similarly situated firefighters in other cities and towns, its proposed wage increase should be granted. Using the City's proposed external universe, it is clear the FRFD provides fire protection at the lowest cost per capita, and property protection per \$1,000 of property protected at the fourth lowest cost. Furthermore, the City's firefighters lag behind significantly at each degree level, resulting in an average lag of 26.6%. In addition, the Union argues this Panel should disregard the City's external comparison data because it is flawed. It does not contain a review of overall compensation as required by the JLMC statute. For example, the City omitted or ignored

⁶ Because the Union's externals analysis included cities the Panel has not included in the universe of external comparable communities it deems appropriate, the Panel has not relied on that data.

holiday pay and shift differentials in Brockton, educational incentives in Taunton, New Bedford, and Brockton, and other stipends such as Brockton's non-supervisory differential.

Finally, the Union contends its proposed increases to firefighter wages and benefits are justified by the increase in workload and the hazards of the job. In this case, the Union has shown that while the FRFD manpower has decreased over the past several years, call volumes have been rising and continue to rise. In addition, the Union offered un rebutted evidence that the City's firefighters' job is replete with hazards and that they put their lives on the line each time they respond to a call.

Discussion

In lieu of the parties reaching agreement, this Panel must determine the appropriate wage increase for the three-year CBA sought by the parties. There are a number of factors arbitrators customarily consider in determining what wage increases should be granted, including the wages of comparable employees, wage increases granted to other City employees, and the City's ability to pay. The parties, through the hearing testimony, document submissions, and post-hearing briefs, have provided the Panel with information on these factors and have relied on this information in support of their respective positions. For the reasons outlined below, this Panel concludes that for the three-year CBA sought by the parties for FY22, FY23, and FY24 (July 1, 2021 – June 30, 2024) a wage increase of 4.0% effective July 1, 2021, 4.0% effective July 1, 2022, and 4.0% effective July 1, 2023, is appropriate.

With respect to Town-side bargaining units, the Town asserts that the patrol officers received only 1.5% and 1% for the first two years of their CBA, which demonstrates that the City has limited resources to grant retroactive raises for FY22 and FY23. The City admits that fiscal year beginning 7/1/23 included significant increases for patrol officers, including an increase of

approximately 18.5% over the prior year for patrol officers with 10 years of service. The City asserts the increase in the third year of the patrol officers CBA was justified by several factors that are not applicable to the firefighters. First, police wages were a contributing factor to severe hiring and retention issues. Second, the workload of its police officers is substantially greater than the workload of its firefighters, as measured by the average number of calls responded to by patrol officers and firefighters per day and per year. Third, the Patrol Union made several valuable and meaningful concessions in exchange for their wage increases, i.e., agreeing to a language change limiting the opportunity to accrue comp time and how much comp time could be accrued and to full implementation of body cameras. It asserts that none of the City's non-wage proposals for the firefighters' CBA are remotely close in importance or value to these concessions by the police unions. Fourth, the City contends if the firefighters want parity with the police it should engage with the City in good faith bargaining over the issue of workload. Finally, the City asserts the Panel should consider the fact that its police have historically been paid more than its firefighters.

The City contends a comparison to the Superior Officers' CBA is inapplicable to this arbitration because the only wage increase it received was an increase in rank differential, from 15% to 18%, which was phased in during the term of their CBA because the existing rank structure resulted in some patrol officers earning more than sergeants, a situation absent in the firefighters' CBA. The City also noted that, like the patrol officers, the Superior Officers agreed to implementation of body cameras and to modifications in their comp time language. Finally, the City asserts the Panel should not consider the wages paid to EMS Department employees in its deliberations because that department's budget is exclusively funded by through department receipts, while firefighters cannot generate revenue to support their wages. Even if the Panel compares EMS wages to firefighters, EMS basic EMTs earn 20.89% less than firefighter basic

EMTs, the EMS paramedics are trained and equipped to perform medical procedure that firefighters, including those certified as paramedics, cannot perform, and the call volume for the EMS Department is 3 ½ times that of the FRFD, covered by 17 employees per shift compared to 35 firefighters on a given shift.

It is clear from the record evidence that both the City's offer to its firefighters at the time of the JLMC hearing, and the raises suggested in its brief, would result in the firefighters salary schedule trailing far behind that of the City's other public safety unions, especially its patrol officers.⁷ Although the City asserts that its firefighters have historically been paid less than its patrol officers, the Panel notes that the gap has been considerably widened by the substantial bump given the patrol officers in their current CBA, effective 7/1/23. In addition, the City has widened the gap even further by agreeing to another wage increase for patrol officers of 2%, effective July 1, 2024. Finally, a historical imbalance does not support the contention that increasing that imbalance is justified.

The Panel is also not persuaded by the workload argument. The respective number of calls for patrol officers and firefighters is generated by circumstances beyond either group's control. It would be a disservice to the citizens of Fall River to discount the need to have firefighters ready to respond and serve in whatever emergencies arise. In addition, the Panel notes that although the City attempted to show its Firefighters respond to fewer calls than in the comparable communities, its data did not support that contention. It is clear from the City's data that the vast majority of calls for all the comparable communities were "medical responses" as opposed to "fire/other responses." When looking at just the number of "fire and other responses calls" the City's firefighters responded to more calls than every comparable except Brockton. Even though the

⁷ For purposes of the analysis the Panel has concentrated on the comparison with the City's patrol officers.

majority of the City's "medical responses" were clearly handled by its EMS department, 1,944 medical calls made up 27% its firefighters' total calls. In addition, its firefighters responded to 3,025 of the medical calls jointly with the EMS Department, which represented 15.6% of the EMS Department calls. Finally, comparing the non-monetary provisions before this Panel to those agreed to by the police unions is akin to comparing apples to oranges.⁸

With respect to external comparability, as stated above, the Panel accepts as the appropriate universe of comparable communities the cities of Attleboro, New Bedford, Taunton and Brockton. Trying to compare the parties' information was again akin to comparing apples and oranges. The City compared the base pay of a 5 year and a 10 year firefighter in its employ as of FY21 with those of the same duration in the comparable communities as of FY 23, 24 or 25, depending on the CBA duration. It also calculated the average lag for its firefighters as compared to the comparable group for varying years including Plymouth, which comparable the Panel has declined to use. While such a comparison is not ideal, it is interesting to note that the City drew the conclusion that without a raise its firefighters annual base pay would lag behind on average \$2,079 or 97% for a 5 year firefighter and \$4,324 or 98% for a 10 year firefighter. If they received a projected raise of 1.5% in FY22 their annual base pay would still lag behind \$1,164 or 98% and \$3,401 or 95%, respectively. If they received a projected raise of 3% in FY23, according to the City's calculations, their annual base pay would be above the average: \$794 or 101% for a 5 year firefighter and \$553 or 101% for a 10 year firefighter.

The Union, on the other hand, compared base pay for a 15 year firefighter with no degree, an associate degree, a bachelor's degree, and a master's degree. It compared the City's firefighters base pay for FY21 with that of the comparable communities of Attleboro (using FY23 base salary),

⁸ The Panel declines to comment on the bargaining assertion as that is both irrelevant to this arbitration and improper to raise in this forum.

New Bedford (using FY24 base salary), and Taunton (using FY24 base salary). For some reason it left out Brockton. Again, the comparison is not ideal, however, the Panel notes apparently for a 15 year City firefighter with no degree the lag is \$5,015 or 8.1%, with an associate degree it is \$2,311 or 3.6%, with a bachelor's degree there is no lag, but rather \$367 or 0.5% above the average with those three cities, and with a master's degree \$1,719 or 2.5% above the average.

Because the Panel could not draw any conclusions due to the vastly different criteria each party used, it turned to the CBAs for the comparable communities to see what percentage wage increases were granted by those municipalities for the fiscal years at issue. Here, again, the data is not consistent because the CBAs run through varying fiscal years. A review of the firefighters most recent CBAs for the comparable communities shows that Attleboro firefighters received 3% raises effective 7/1/21 and 7/1/22. New Bedford firefighters received 2% raises effective 7/1/21, 7/1/22, 7/1/23, and 7/1/24. Taunton firefighters received raises of 1% effective 7/1/21, 2% effective 7/1/22, and 2% effective 7/1/23. Brockton firefighters received a raise of 2% effective 7/1/21. The Panel notes that, according to the record evidence, as of 7/1/20, which was the last time the City's firefighters received a raise, its newly hired firefighters with no degree earned less than newly hire firefighters in every comparable community other than Brockton. Trying determine what its firefighters with an associate, bachelor's or master's degree earned as of 7/1/20 with specific years of service as compared to firefighters with the same status in the comparable communities was again akin to a comparison of apples to oranges because the comparable communities employ either a different range of steps, or a different combination of steps and years of service, and their monetary credit for various degrees, which varied from community to community would have to be added in because it was included in a CBA article separate from the wage article. Based on the City's treatment of its internal units' raises, particularly the patrol

officers, as well as the record evidence from both parties concerning external comparable communities, the Panel concludes its award of wages is justified. The award will bring the City's firefighters' base wages in line with its patrol officers and with the firefighters in the comparable communities.

Having so concluded, the Panel must now consider whether the City is able to pay these increases. The City contends, among other things, that it set aside \$880,000 in the FRFD budget for anticipated raises based on a projected total increase of 6% for FY24 over the FY23 budget. Apparently this does not include any retroactive pay for FY22 or FY23. It also claims its cash reserves at the end of FY22 was \$1.9 million, its free cash was the lowest of the comparable communities as a percentage of its operating budget, its general purpose stabilization fund is 38% less than average, its undesignated fund balance in 2022 was 2.8% of its budget, its cannabis revenues were drastically reduced due to legislative changes, and it relies heavily on state aid to balance its budget. Finally, the City's Chief Financial Officer testified that the City faces significant challenges, including short-term and long-term pension funding and the cost of construction of the Diman Vocational High School. In addition to the loss of cannabis revenue, she cited the loss of ARPA grant revenue. She also testified that the FY24 budget was balanced using one-time revenues, including \$4.3 million in ARPA funding and \$430,000 in free cash because it had no choice but to do so. The City asserts it does not have the resources to pay the Union's proposed COLA of 4%/4%/4%, which it calculates would cost \$3.8 million.

With respect to City funds that are traditionally relied upon in determining ability to pay, the City's evidence shows that as of May 31, 2023 its unexpended Free Cash reserve balance was

\$2,200,000,⁹ its General Stabilization Fund reserve balance was \$8,370,000, and its ARPA reserve balance was \$30,000,000. The Panel does not take the position that non-recurring funds should normally be relied on for payroll. It does find, however, that there are monies adequate and appropriate for funding retroactive wage increases in an agreement the City knew it was negotiating and should have known would eventually be funded. Furthermore, the City was aware that, awarding both the patrol and superior officers significant base wage adjustments would signal a request for a larger percentage base wage increase to firefighters and could have anticipated that such an amount would be awarded to the firefighters. Indeed, in its brief the City has moved away from its original proposal of 1.5%/0%/1% to 1.5%/3%/1.5%. Although the Panel is awarding more than the City indicated it would have offered the Union, the Panel notes that it is not awarding the medical care stipend, apparatus drive/inspector stipend, or firefighter EMT stipend sought by the Union, or hazardous duty pay in the amount the Union requested (see below). Finally, it is not appropriate to budget for other employees and for capital expenditures at the expense of one group of employees. Given the totality of the evidence, the Panel concludes that the City has sufficient resources to fund the firefighter wages the Panel is awarding.

Award - Wages

There will be a three-year contract covering July 1, 2021 to June 30, 2024, with wage increases of 4% effective July 1, 2021, 4% effective July 1, 2022, and 4% effective July 1, 2023.

New Article – Hazardous Duty Pay

Union's Position

The Union proposes firefighters receive annual hazardous pay equivalent to 3% of their annual base pay. The Union asserts firefighters are required to respond to numerous and varied

⁹ This was apparently not certified Free Cash. The record evidence shows the last Certified Free Cash amount was \$4,960,698 as of 6/30/22, as noted in the Massachusetts Department of Revenue Free Cash Calculation, which indicated this as certified on 1/24/23.

types of hazardous calls. In addition, calls that do not initially present as hazardous can change in an instant to become extremely hazardous. The City has the ability to pay the cost of the Union's proposal yet it objects on the grounds that a FRFD firefighter's job is not dangerous because its call volume is lower than that of its comparable communities. A fire is dangerous irrespective of how many times per year firefighters respond to them. An assertion to the contrary is nonsense, and lacks compassion and a fundamental understanding of the risks being made by its firefighters for its citizens. In addition, if the job of a FRFD firefighter was not dangerous or hazardous, and did not require specialized training and personal protective equipment, anyone who the City employs would have no problem responding to any calls received by the FRFD, which is not the case. For these reasons, the Union's proposal should be granted.

City's Position

The City asserts the projected cost of the Union's proposal is \$1,287,000. The City contends it has assigned a one-time stipend for employees in recognition of the challenges encountered in the performance of their duties during COVID-19 pandemic, which in the case of public safety units is \$3,000. If the Panel approves a similar payment for this unit, the cost would be approximately \$600,000. The City has no objection to the Panel awarding the same COVID premium pay to the firefighters' unit.

The City does not agree that the Union's 3% increase for hazardous duty pay is justified. The City recognized its police and EMS employees with a one-time bonus for the additional risks incurred during the pandemic. The Union opposes a permanent increase of 3% in their wages based on hazards that were not proven through the evidence. Rather the evidence actually shows the City's firefighters are exposed to less hazardous duty than its police officers or EMS workers based solely on the number of times they are called to respond. That is equally true if the Panel

considers the hazards faced by the City's firefighters as compared to their peers in other communities. In some of those communities the firefighters receive hazardous duty pay in addition to their base wages, however, they respond to more calls than the City's firefighters. It is self-evident that firefighters face more hazards if they respond to more calls. An across-the-board increase, as the Union proposes, is not supported by an analysis of the comparable communities in wages or as compared by workload. The City opposes any award other than a one-time bonus of \$3,000 for service during the COVID-19 pandemic. It proposes for that benefit the following language:

ARPA Hazard Premium Pay – Firefighters employed by the Fall River Fire Department at any time from March 1, 2020, through March 1, 2021, shall receive a one-time stipend of \$3,000.00 in recognition of the employees' continuing to perform their duties as front-line workers, who have and will bear the greatest health risks because of their service in critical sectors. In order to be eligible for said payment, employees must either be on active status as of the funding of this agreement or have retired from the Fall River Fire Department in good standing prior to said date, and be receiving pension payments pursuant to General Laws, c. 32.¹⁰

Discussion

The Union asserts an annual hazardous duty pay provision is merited because firefighters are required to respond to numerous and varied types of hazardous calls. The City opposes the provision because it believes, based on the number of calls its firefighters respond to, as opposed to those for its police officers and EMS workers, and those of firefighters in the comparable communities, the City's firefighters are exposed to less hazardous duty. The City opposes any hazardous duty provision other than the one-time hazard premium pay in the amount of \$3,000 it

¹⁰ The City notes this language was taken from the Fall River Patrol MOU, and was also included in the Superiors MOA.

has already given to its patrol officers and superior officers.¹¹ The Panel does not agree that the hazards faced by the City's firefighters can be calculated solely based upon the number of calls to which they respond. Rather, the scenarios with which they are presented, including potential adverse firefighting conditions, exposure to unknown hazardous materials, various scenarios in addition to building fires, such as motor vehicle accidents, carbon monoxide and natural gas emergencies, and medical responses, create the hazards of the job. This is acknowledged by the universe of comparable communities, all of which have hazardous duty provisions in their CBAs.

Attleboro has had a hazardous duty pay stipend since 7/1/15, which amount at that time was graduated dependent on rank. Effective 7/1/18, the stipend was increased to \$1,650 for all bargaining unit members. Effective 7/1/21 half of that amount was rolled into its firefighters' base pay while the other half was paid out as a stipend, and effective 7/1/22 the entire stipend was rolled into firefighters' base pay. Brockton has a hazardous duty stipend. As of 7/1/21 it was 14.25%.¹² New Bedford has a hazardous duty supplemental wage for all members of the bargaining unit, which is 3% of the base pay of a top step firefighter.¹³ Finally, the hazardous material pay section in Taunton's CBA states, "Because of the risks of exposure to hazardous materials that are inherent in the firefighting profession" every member of the bargaining unit would receive a hazmat premium of 3% applied to the base salary of each member's rank or position. That article was amended to include a retroactive payment of 1% effective on 7/1/20, 7/1/21, and 7/1/22, resulting in hazmat pay amounts of 4%, 5%, and 6% for each of those years, respectively.

¹¹ The Panel notes that according to the record evidence, in addition to its patrol officers and superior officers, the City has also made COVID-19 bonus payments to its Environmental Police (\$3,000), and its DPW employees represented by the Teamsters (\$2,500).

¹² According to the City the amount is 9.25%, but that is contradicted by the Brockton CBA in evidence, which states the stipend was increased by 2% to 12.25 effective 7/1/20, and by another 2% effective 7/1/21 to 14.25%.

¹³ According to the City's that equals \$1,880.

The Panel is mindful of the cost to the City that would result in the implementation of a hazardous duty pay provision; however, it is also respectful of the fact that FRFD firefighters are exposed to dangers in the performance of their duties as protectors of the City's citizens and property. Indeed, every comparable community has recognized the dangers inherent in their firefighters' jobs by including some form of a hazardous duty pay provision in their respective CBAs. In light of this, the Panel finds it appropriate to award hazardous duty pay in the amount of 3.0% of a bargaining unit member's annual base pay, to be added to each member's base pay as of 1/1/24.¹⁴

Award - New Article – Hazardous Duty Pay

The Panel awards hazardous duty pay in the amount of 3.0% of a bargaining unit member's annual base pay, to be applied to the base salary of each member's rank or position, included in each member's regular paycheck, and included in base pay for all purposes including overtime and retirement. The 3.0% hazardous duty pay is to be added into each member's base pay as of 1/1/24.

New Article – Medical Care Stipend

Union's Position

The Union proposes a new \$1,500.00 annual medical care stipend. It contends that will compensate firefighters for duties they already perform, including epi-pen, stop bleed, active shooter, and the needle machine. This increase is warranted given the nature of the firefighters work, the lag in compensation between firefighters and police, as well as the lag between them and their external comparable firefighters. The City presented no defense except that it does not

¹⁴ The Panel notes the City's willingness to pay its firefighters the same COVID-19 one-time bonus that it paid to its other protective services employees, and the DPW unionized employees, which it apparently has already budgeted with ARPA funds. While a COVID pandemic bonus provision was not an issue certified for arbitration by the JLMC, the Panel sincerely hopes the City does so compensate its firefighters for service during the pandemic.

want to pay firefighters any more than they are being paid now. For these reasons the Panel should award the Union's proposal.

City's Position

The City asserts the projected cost of the Union's proposal is \$855,000. The City does not minimize the value or importance of any of these activities, but based on call volume, firefighters do not perform these activities with any regularity. This is particularly true of Narcan and the epi-pen. Firefighters respond to a small number of medical calls per year, a small fraction of the medical calls handled by the EMS Department. There is also no justification for this wage increase in the external comparable communities' data as there is no reference to a similar payment in those communities. For these reasons the City opposes the Union's proposal.

Discussion

The City's firefighters already receive a stipend based of their certification as EMT basic, EMT intermediate/advanced, and EMT paramedic. In addition the Panel has awarded the firefighters a hazardous duty pay provision. Based on the record evidence, the Panel concludes there is insufficient evidence to support granting this new article.

Award – New Article - Medical Care Stipend

The Union's proposal is not awarded.

New Article - Apparatus Driver/Inspector Stipend

Union's Position

The Union proposes a stipend of 5% of their annual base pay, effective 7/1/21, for all apparatus drivers and inspectors. It asserts apparatus drivers are responsible for more during a work shift than a firefighter who is not driving. It is additional stress when responding to calls to get apparatus to the call and positioned properly, and to ensure the firefighters on the scene have the equipment to respond to the call safely and properly. Because of the immense stress and

responsibility it is not surprising that the City has a difficult time getting these positions voluntarily filled. That is also true for Inspector positions. The Union argues the City did not present any opposition to the proposal at the hearing and it has the ability to pay. For these reasons the Panel should award the Union's proposal.

City's Position

The City contends the projected cost of this proposal is \$337,000. It argues apparatus drivers and inspectors have completely different schedules and job requirements. Firefighters work two 24-hour shifts every 8 days. Inspectors work 8 AM to 4 PM with one day off a week. They take classes on their own time in order to be qualified. Conversely, there is no training or certification necessary to receive the pay for apparatus driver. Those positions are awarded by seniority through a bidding process. There are fire academy certifications for apparatus drivers, but the FRFD does not require them.

The proposed stipend for apparatus drivers is an attempt to increase wages, without acquiring any actual expertise or specialized training, based solely on seniority. The City opposes any such stipend in the absence of any requirements for training or certification. The City would not oppose a modest, non-retroactive stipend between 1% to 3% for inspectors only because those employees have an unfavorable schedule and are required to attend critical training on their own time.¹⁵

Discussion

The Union provided insufficient evidence to support either part of its proposal. Although the Panel appreciates the City's indication that it would not oppose a modest, non-retroactive

¹⁵ The City noted that New Bedford pays a stipend to firefighters assigned to the Fire Prevention Bureau of 1% to 3%, based on service in that position.

stipend for inspectors only, the Panel concludes that is best left to the parties to discuss any stipend for the inspectors in future negotiations.

Award - New Article - Apparatus Driver/Inspector Stipend

The Union's proposal with respect to stipends for apparatus drivers and inspectors is not awarded.

Firefighter EMT Stipend – Article 43

Union's Position

The Union proposed the firefighter EMT Stipends be increased, effective 7/1/21 as follows:

EMT Basic- increase stipend to an amount equal to 5% of the annual base salary paid to a five-year firefighter with no degree.

EMT Intermediate/Advanced- increase stipend to an amount equal to 7% of the annual base salary paid to a five-year firefighter with no degree.

EMT paramedic- increase stipend to an amount equal to 10% of the annual base salary paid to a five-year firefighter with no degree.

The above stipends shall be included in an employee's base for all contractual purposes including but not limited to overtime.

The Union argues that when a shift is staffed with 35 firefighters, and all of them are working, which is still below national safety standards, the FRFD pulls one to work on the EMS truck with an EMT or paramedics rather than keeping the firefighter on duty to bolster suppression response. Firefighters are considered first responders under the law, which is different from EMS employees; however, if they are being required to work on EMS trucks when the FRFD is still understaffed per national standards, they should be properly compensated for doing a job that is not even in their department or under their CBA. For these reasons the Panel should award the Union's proposal.

City's Position

The City contends the projected cost of this increase is \$715,000. The City argues that all of the comparable communities provide critical medical services to their communities, but the City's firefighters do not. Given the vast disparity in the amount of medical services provided by the City's firefighters as compared to the firefighters in the comparable communities, the stipends of the comparable communities' EMTs and paramedics is irrelevant. There is also no basis to compare the wages of the EMS Department's paramedics with the City's firefighters. Furthermore, the City asserts the firefighters would not increase the amount of EMS work they do. For these reasons, the City opposes the Union's proposal.

Discussion

Article 43 already provides for a stipend to the City's firefighters based of their certification as EMT basic - \$1,500, EMT intermediate/advanced - \$2,250, and EMT paramedic \$3,000. The data for the comparable communities shows that Attleboro's EMT stipends in its 2020-23 CBA are \$2,600 (basis), \$3,100 (intermediate), and \$7,000 (advanced). New Bedford provides only for an EMT basis stipend at \$2,000. Brockton increased its percentage stipend effective 7/1/21. According to the City's chart that resulted in stipends of \$2,633 (basic) and \$5,792 (paramedic). Although the CBA provides for an EMT intermediate stipend the City apparently omitted it from its chart. Finally according to the City's chart, Taunton EMTs also receive a percentage of base. Its stipends are \$2,567 (basic) and \$5,133 (paramedic). Again, a stipend for intermediate, if there is one provided in the CBA, was omitted. All of these communities' firefighters respond to medical emergency services, but the record is clear that the City has an EMS Department that provides the majority of its emergency medical services. The Panel concludes, therefore, that there is insufficient evidence to support granting the requested stipend increases.

Award – Firefighter EMT Stipend – Article 43

The Union's proposal is not awarded.

Article 21 – Sickness/Injury During Vacation Time

City's Position

The City proposes to delete Section 1 of Article 21, which states:

Any employee who is disabled due to sickness or injury, provided that the injury or illness is not due to the result of outside employment, during his/her assigned vacation period shall not be charged for such vacation time. Provided, however, that the employee shall not automatically extend his/her vacation, but rather, said unused vacation shall be assigned either in the current or subsequent calendar year at a time convenient to the Department. Employees shall provide a doctor's certificate with respect to said disability.

The City contends the Union enjoys unlimited sick leave. This provision allows an employee to get a doctor's note stating he was sick during vacation, and have that vacation re-credited to him/her. The City's firefighters enjoy a very generous vacation benefit. Firefighters with ten years of service gets 240 hours of vacation. Firefighters with twenty-nine years of service get 335 hours of vacation time. Based on a 42-hour week that equates to 8 weeks of vacation. The City requests this section be deleted because it can easily be manipulated, expanding the already generous vacation benefits enjoyed by this bargaining unit. The City is not accusing the Union or any employees of abusing this section, but is merely seeking to eliminate an onerous provision from the CBA. In summary, the provision is ridiculous on its face. The potential for abuse is beyond obvious. The Union will likely argue there is no evidence that there has been abuse in the past, so the City's proposal should be rejected on that basis. The City's proposal is a very modest change to a sick leave benefit that is far beyond any other comparable fire unit. The City's proposal would

inhibit the expansion or manipulation of an already generous vacation benefit. For these reasons, the City's proposal should be granted.

Union's Position

The Union argues that there is no evidence to support the City's proposal. There is no data showing that sick leave is an issue in the FRFD. For this reason, the City's proposal should be rejected.

Discussion

The City requests that this section be deleted from the parties' CBA because its firefighters enjoy a generous vacation benefit and because this provision can be easily manipulated, even though it is apparently not accusing its firefighters of ever having done so. The Union opposes the deletion of this provision because there is no evidence that sick leave has been an issue in the FRFD. The Panel notes that, upon review of the comparable communities' CBAs, Taunton has a similar provision. Article VII, Section 1 (g) states in pertinent part: "Any Firefighter who has reported in on the sick list and whose vacation is due to start shall not commence such vacation until the Firefighter reports subject for duty." Taunton also has a sick leave abuse provision (Article VII, Section 4) that allows the Chief to request a doctor's certification and counsel or use progressive discipline if he finds a firefighter has abused sick leave, pursuant to the provisions of that section. Even though New Bedford does not have a similar provision concerning sickness during vacation, the Panel notes New Bedford does have a provision in its sick leave article (Article 23) that permit its Chief to require a doctor's verification of illness regardless of the duration in cases of frequent use of sick leave or when a pattern of sick leave indicates a potential abuse of sick leave privileges. The City's Fire Chief also has the ability to address suspected abuses of sick leave. Article 29, Sickness/Illness, Section 2 states:

Any member reporting out sick periodically and compiling a series of short duration absences may be required by the Chief, after notice, to submit a physician's certificate for each subsequent absence. The employer may require the employee to submit to a physical examination by a physician designated by the department. If so, the report shall be recognized unless substantial evidence as to fitness for duty can be presented to the contrary through the department physician to the Chief Executive Officer.

Based on the evidence in the record, in particular the fact that the City does not assert there has been any specific instances of abuse of Article 21, Section 1, the Panel declines to grant the City's proposal.

Award – Article 21 – Sickness/Injury During Vacation Time

The City's proposal to delete Section 1 of Article 21 is not awarded.

Article 22 – Bid System

City's Position

The City proposes to amend Section 2 to return to the practice of only doing one bidding process per year, rather than multiple bidding processes per year. Repeating this bidding process is inconvenient, but the proposal does not have significant value to the City so it should not be awarded in exchange for some costly wage increase.

Union's Position

The Union did not present a position in its brief with respect to this proposal.

Discussion

The Panel notes that, pursuant to the City's position, a one round bidding process had been agreed to by the parties in the past, and the current process is inconvenient. The Union presented

no opposition to this specific proposal. In light of this, the Panel grants the City's proposal. The second sentence in the fourth paragraph of Article 22, Section 2, will be deleted.

Award – Article 22 – Bid System

Article 22, Section 2, paragraph 4 (unnumbered) is amended to read:

Section 2. Bid System Procedure:

Bid system – After the initial bid is awarded there shall be one (1) subsequent bid offered for the position vacated by the person being awarded the original bid.

Article 29 – Sickness/Illness

City's Position

The City proposes to add the following section to Article 29:

When a member of the FRFD is out sick long term (more than two weeks) said member shall not be allowed to leave the state of Massachusetts. If said member does leave the state said member will forfeit vacation time equal to their time away from Massachusetts. Members out long-term sick and those who demonstrate repeated or pattern sick leave will at the discretion of the Fire Chief at a date and time convenient to the department be ordered to report to a doctor's office for fit for duty assessment. Any member who does not show up for an appointment or leaves before being seen by the doctor will be reported as AWOL and will be taken off the pay roll until said member returns to duty or upon arrival at next available Doctor appointment.

The City asserts, as with its proposal for Article 21, that this is a modest restriction on the unlimited sick leave benefit. If an employee is out sick more than 2 weeks that employee will not be allowed to use unlimited sick leave in lieu of vacation to travel to other states or countries. The proposal would also require employees on long-term sick leave or otherwise showing a pattern of sick leave use to go to a City appointed physician. The City has provided data that indicates firefighters used an average of 92 hours of sick leave in 2022. That is more than 2 weeks of sick leave on average. The City's exhibit also shows a significant increase in sick leave over the past 3 years. This

proposal would impose a modest restriction on opportunities for abuse. For these reasons, the Panel should award the City's proposal.

Union's Position

The Union objects to the City's proposal. The Union contends the City's proposal has no basis in data showing that sick leave in the FRFD is an issue at present. Union members have never been required to be in a specific location when they are on sick leave and the City cites no instances where a member's location while out on sick leave was an issue. Moreover, there is already a provision in the parties' CBA permitting the City to send a Union member to a doctor of its choosing when an issue arises. The Union argues the City admitted it does not utilize the provision because it is too costly. For these reasons, the Panel should reject the City's proposal.

Discussion

The Panel has reviewed the evidence in the record of the CBA provisions of the City's patrol officers and superiors, as well as of the comparable communities, and has determined that none of those communities have a travel restriction such as the City is seeking to include in the parties' CBA. Although the City has presented data to show sick leave usage of its firefighters it does not allege that it suspects a pattern of abuse. The Union opposes this provision because there is no evidence that sick leave has been an issue in the FRFD. Although, as stated above, pursuant to Article 29 Section 2, the Chief has some ability to address potential abuses of sick leave by requiring a physician's certificate if a firefighter is out periodically and compiling a series of short term absences, the Panel notes this proposed provision concerns when an FRFD member is out long term. The Panel concludes that based upon the record evidence the City's proposal, not including the travel restriction, is warranted.

Award – Article 29 – Sickness/Illness

The City's proposal to add a section to Article 29, without the travel restriction, is awarded.

The language awarded by the Panel is as follows:

Members of the FRFD out sick leave for two or more weeks, or who demonstrate repeated or pattern sick leave will at the discretion of the Fire Chief at a date and time convenient to the department be ordered to report to a doctor's office for fit for duty assessment. Any member who does not show up for an appointment or leaves before being seen by the doctor will be reported as AWOL and will be taken off the pay roll until said member returns to duty or upon arrival at next available Doctor appointment.

Summary of Award

Award - Wages

There will be a three-year contract covering July 1, 2021 to June 30, 2024, with wage increases of 4% effective July 1, 2021, 4% effective July 1, 2022, and 4% effective July 1, 2023.

Award - New Article – Hazardous Duty Pay

The Panel awards hazardous duty pay in the amount of 3.0% of a bargaining unit member's annual base pay, to be applied to the base salary of each member's rank or position, included in each member's regular paycheck, and included in base pay for all purposes including overtime and retirement. The 3.0% hazardous duty pay is to be added into each member's base pay as of 1/1/24.

Award – New Article - Medical Care Stipend

The Union's proposal is not awarded.

Award - New Article - Apparatus Driver/Inspector Stipend

The Union's proposal of stipends for apparatus drivers and inspectors is not awarded.

Award – Firefighter EMT Stipend – Article 43

The Union's proposal is not awarded.

Award – Article 21 – Sickness/Injury During Vacation Time

The City's proposal to delete Section 1 of Article 21 is not awarded.

Award – Article 22 – Bid System

Article 22, Section 2, paragraph 4 (unnumbered) is amended to read:

Section 2. Bid System Procedure:

Bid system – After the initial bid is awarded there shall be one (1) subsequent bid offered for the position vacated by the person being awarded the original bid.

Award – Article 29 – Sickness/Illness

The City's proposal to add a section to Article 29, without the travel restriction, is awarded.

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Members of the FRFD out sick leave for two or more weeks, or who demonstrate repeated or pattern sick leave will at the discretion of the Fire Chief at a date and time convenient to the department be ordered to report to a doctor's office for fit for duty assessment. Any member who does not show up for an appointment or leaves before being seen by the doctor will be reported as AWOL and will be taken off the pay roll until said member returns to duty or upon arrival at next available Doctor appointment.