



## CITY OF NEW BEDFORD

JONATHAN F. MITCHELL, MAYOR

March 20, 2017

Joseph Lopes, President  
New Bedford City Council  
133 William Street  
New Bedford, MA 02740

Dear Council President Lopes and Members of the City Council:

I am writing to advise you that the New Bedford Police Union and the New Bedford Fire Union have both petitioned the Massachusetts Joint Labor Management Commission ("JLMC") to take jurisdiction over their respective contract negotiations.

The Joint Labor Management Committee was established through Chapter 589 of the Acts of 1987 and provides for binding arbitration for police and fire contract disputes. In accordance with the law, decisions resulting from the JLMC process "shall be, subject to the approval by the legislative body of a funding request as set forth in this section, binding upon the public employer."

The statute further states:

... The employer and the exclusive employee representative shall support any such decision or determination in the same way and to the same extent that the employer or the exclusive employee representative, respectively is required to support any other decision or determination agreed to by an employer and an exclusive employee representative pursuant to the provisions of said chapter one hundred and fifty E of the General Laws. If the municipal legislative body votes not to approve the request for appropriation, the decision or determination shall cease to be binding on the parties and the matter shall be returned to the parties for further bargaining...[Emphasis added]

The Commonwealth Employee Relations Board ("CERB") has taken the position that not only must an employer (e.g., a mayor, city manager) request funding from its legislative body for a JLMC award, but that an employer has an affirmative obligation to express unconditional support for such an award in the face of opposition. In Chelsea, for example, the city manager

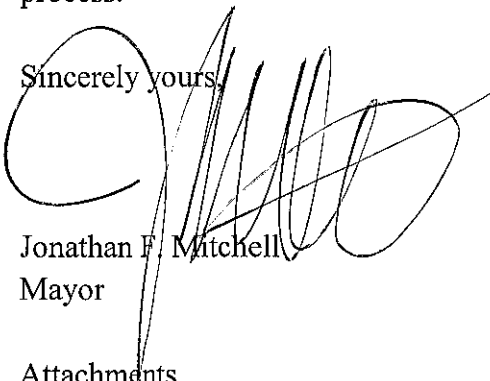
was found to have violated the law when he failed to speak in support of a JLMC award during the public comment portion of a City Council meeting in which the City Council debated a resolution asking the parties to return to the bargaining table. The city manager's silence was found to violate G.L. c. 150E, section 10(a)(5). See City of Chelsea v. Chelsea Firefighters, Local 937, IAFF, Case No. MUP-13-2683 (May 29, 2014)

Although I believe that the CERB's interpretation of the law could well violate the First Amendment, until a court says otherwise, I have no choice but to support a JLMC award. The City Council, however, is not bound by any JLMC decision and has the right to ask questions, as it would in the case of any funding request, and to make its own decision regarding whether or not the funding request should be approved.

The City's most recent involvement in the JLMC process involved the fire contract. In October 2014, the City received a decision that has had a lasting impact on relations between the City and its labor unions. I have enclosed a copy of a letter that was sent to the JLMC after the City received the 2014 Fire decision, along with the response we received from the Chairman of the JLMC.

After receiving the response from the JLMC Chairman, I submitted the funding order to the City Council, as required by law. Unfortunately, I was prohibited by law from sharing my concerns with the City Council. Given the police and fire union's recent petitions to the JLMC, I thought it prudent to take the opportunity to remind the Council of our respective roles in the JLMC process.

Sincerely yours,



Jonathan F. Mitchell  
Mayor

Attachments



*City of New Bedford*  
OFFICE OF THE CITY SOLICITOR

MIKAELA A. McDERMOTT  
*City Solicitor*

JANE MEDEIROS FRIEDMAN  
*First Assistant City Solicitor*

SHANNON C. SHREVE  
*Counsel II*

ERIC JAIKES  
JOHN A. MARKEY, JR.  
KREG R. ESPINOLA  
*Assistant City Solicitors*

BLAIR S. BAILEY  
ERIC C. COHEN  
JOHN E. FLOR  
THOMAS J. MATHIEU  
ELIZABETH TREADUP PIO  
*Special Legal Counsel*

November 14, 2014

John W. Hanson, Neutral Chair  
Jill R. Goldsmith, Management Chair  
Jay Colbert, Fire Chair  
Commonwealth of Massachusetts  
Department of Labor Relations  
Joint Labor-Management Committee  
10 Staniford Street, 1<sup>st</sup> Floor  
Boston, MA 02114

Re: JLMC-13-2548 New Bedford Fire Fighters, Local 841 and City of New Bedford

Dear Sir/Madam:

We write to ask you to review the Interest Arbitration Award (Award) issued on October 21, 2014 by an arbitration panel appointed by the Joint Labor Management Committee (JLMC) in connection with the collective bargaining agreement between the City of New Bedford (City) and the New Bedford International Association of Firefighters, Local 841 (Fire Union).

As you are aware, Chapter 589 of the Acts of 1987 governs this dispute, and it provides that any award is binding upon the public employer, subject to approval by the legislative body, "if supported by material and substantive evidence on the whole record." We believe that the Award is not supported by material and substantive evidence on the whole record because: (1) although the Award purports to establish wage parity between New Bedford's police officers and firefighters, it in fact creates substantial disparity because it provides firefighters with a 2% retroactive raise in base wages that the Police did not receive in its most recent contract, as well as with expanded educational incentives; (2) the panel did not meet its legal obligation to consider certain material factors regarding the City's ability to pay; and (3) the panel miscalculated the cost of the Award to the City.

Since the JLMC retains exclusive jurisdiction over this matter, and the City is required to exhaust its administrative remedies, the City is petitioning the JLMC to review this Award to

determine whether it is supported by material and substantive evidence on the whole record and, as such, must be submitted to the New Bedford City Council for approval.

#### Procedural History and Relevant Provisions of the Award

On January 7, 2013, the Fire Union petitioned the JLMC to intervene in negotiations over a successor collective bargaining agreement between the Fire Union and the City. The JLMC voted on June 20, 2013 to exercise formal jurisdiction in this matter pursuant to Chapter 589 of the Acts of 1987. On February 14, 2014, the JLMC found there was an exhaustion of collective bargaining that constituted a potential threat to public welfare. The Fire Union and City were notified that the JLMC was invoking the procedures and mechanism for the resolution of the collective bargaining negotiations under the Act. On February 28, 2014, the JLMC appointed a tripartite arbitration panel in the matter.

On October 21, 2014, the arbitration panel issued an Interest Arbitration Award that included both retroactive and prospective wage increases. Specifically, the Award provides for an increase in wages of 2% on July 1, 2012, 1.5% on January 1, 2014, 1% on July 1, 2014, 1.5% on January 1, 2015, and 1.5% on June 28, 2015. The panel further ordered that members of the Fire Union be given a lump sum payment of \$2,500.00 not to be included in the base wage, increased the clothing allowance from \$675.00 to \$1,000.00 per year retroactive to July 1, 2012, and increased educational benefits from \$.02 per credit to \$.05 per credit effective June 28, 2015 for all firefighters, including new hires.

1. The Panel Included a 2% Retroactive Raise under the Mistaken Belief That It Would Establish Wage Parity

The Award is not supported by material and substantive evidence on the whole record in that it fails to support the central premise of the panel's Award, namely, "wage parity" between New Bedford's firefighters and police officers. Although the Award purports to establish parity between police officers and firefighters, the evidence in the record unequivocally demonstrates that it creates substantial disparity between the two bargaining units. The panel included a 2% retroactive wage increase that pushed the firefighters' wages well above those of police officers under their most recent contract. The panel's decision to increase educational incentives to firefighters further exacerbated this disparity.

#### Disparity in Base Wages

The panel made unambiguously clear that its decision rested heavily on its intent to maintain "base wage parity" between police officers and firefighters. For example, the panel stated on page 7 of the Award:

The Panel placed significant weight on the recent settlement of the City's Police Bargaining Unit because the parties have a history of negotiating base wage parity between firefighters and police.

In an effort to strike what it believed to be wage parity, the panel sought to mirror the pay increases in the recently negotiated contract with the Police Union. In that contract, which was executed in February 2014, police officers received base wage increases that totaled 5.5% over the term of the contract (i.e., 1.5% as of January 1, 2014, 1% as of July 1, 2014, 1.5% as of January 1, 2015, and 1.5% as of June 28, 2015), plus a one-time lump sum payment of \$2,500. In an effort to mirror the police settlement, the panel likewise gave firefighters incremental raises totaling 5.5%, as well as a \$2,500 stipend, but it also went a step further. The panel included in its Award an additional 2% pay increase effective July 1, 2012, bringing the firefighters' total base wage increases to 7.5% over the term of the contract. The panel justified this additional 2% increase on the grounds that:

... the Panel finds that the City has the ability to pay "reasonable" wage increases which are similar to the wage increases recently received by the City's Police Officers, with one exception that the Firefighters shall receive a two percent (2%) increase in FY13 on July 1, 2012.

History shows that the parties' [sic] have maintained "base wage parity" between Police and Fire, since 2000, with one exception occurring in January 2006 when Police Officers received an additional 2%, and the Panel concludes that this fact alone justifies that base wage parity should continue (emphasis added).

Award, p. 22.

The panel's decision to grant the firefighters an additional 2% raise as of July 1, 2012 appears to have been based on a false premise that the additional 2% wage increase was necessary to make the firefighters' wages achieve parity with those of the police officers. This was not the case, and nothing in the record suggests otherwise. In fact, the 2% wage increase that the Police Union received in 2006 placed the Police and Fire Unions at exact base wage parity. See Attachment A-1 and A-2.

Following the police officers' 2% raise in 2006, the bargaining units remained in base wage parity, as demonstrated by exhibits entered into evidence by the Union. For example, the Fire Union contract in effect from July 1, 2007 to June 30, 2010 (included at tab 2 in Union Exhibit 1) shows that the base wage for a step 5 firefighter was \$49,434.73 (or \$950.67 per week) as of July 1, 2007 and \$51,164.95 (or \$983.94 per week) as of July 1, 2008. The Police Union contract in effect from July 1, 2006 to June 30, 2009, included at tab 6 in Union Exhibit 1, shows that the weekly wage for a Step 5 police officer was exactly the same for the relevant time periods (i.e., \$950.67 as of July 1, 2007 and \$983.94 as of July 1, 2008). The base wages for police officers and firefighters continued to increase in lockstep, and as of June 30, 2012, the base wage salary for both police officers and firefighters at Step 5 was \$1,003.62. See Attachment B and Union Exhibit 1, Tab 5 and Tab 4.

Notwithstanding the panel's stated intent to maintain base wage parity between police officers and firefighters, the panel issued an Award that resulted in a substantial disparity between the two bargaining units. The additional 2% raise awarded to firefighters creates a wide gap in the base wages of police officers and firefighters. Under the Award, the weekly base pay

for a firefighter at step 5 with no educational incentive will exceed that of a step 5 police officer with no educational incentive by \$41.20 per week, which amounts to an annual base wage disparity of \$2,142.40 by the end of the contract. The City estimates that the 2% raise will cost the City an additional \$1,198,846 over the life of the contract. See page 2 of Attachment C to this letter. Because the record demonstrates that the panel's central premise for its Award is erroneous, the Award is not "supported by material and substantive evidence on the whole record."

### Disparity in Educational Incentives

The panel further diverted from the goal of "parity" when it awarded all firefighters \$.05 per credit for the educational incentive. In the police settlement (Union Exhibit 1, Tab 3), the parties agreed to increase incrementally the educational benefits of existing police officers to make up for the actual loss in benefits that police officers have suffered as a result of the Commonwealth's decision not to fund the Quinn bill. As of June 28, 2015, existing police officers will receive 100% of the benefits they were entitled to receive under the Quinn bill. However, police officers hired after February 2014, who have never been entitled to receive Quinn benefits, will receive a far less generous fixed amount. See Union Exhibit 1, Tab 3.

Unlike the police settlement, the panel's Award increases the education benefit for all firefighters, not just the existing members of the department. Furthermore, the awarded benefits of \$.05 per credit will exceed those of an existing police officer, further increasing the disparity between firefighters and police officers. A step 5 police officer with a bachelor's degree will receive an educational incentive of \$11,354 per year, while a step 5 firefighter with a bachelor's degree will receive \$13,104 per year, a difference of \$1,750 per year.<sup>1</sup>

## 2. Failure to Consider Mandatory Factors Regarding City's Ability to Pay

A second and independent reason why the Award is not "supported by material and substantive evidence on the whole record" is that the arbitration panel failed to consider certain material factors that were reflective of the City's (and its residents') ability to pay increased wages to New Bedford firefighters. As you are aware, Chapter 589 of the Acts of 1987 mandates that the arbitration panel consider specific factors in evaluating a municipality's ability to meet costs. The Act provides in relevant part:

### (2) The financial ability of the municipality to meet costs.

The commissioner of revenue shall assist the committee in determining such financial ability. Such factors which shall be taken into consideration shall include but not be limited to: (i) the city, town, or district's state reimbursements and assessments; (ii) the

---

<sup>1</sup> A bachelor's degree is based on 120 credits and the calculation is 120 credits x \$.05 x 42 hours x 52 weeks = \$13,104.00 for a firefighter. A police officer under the Quinn educational program provides for payment of 20% of an officer's base pay for a bachelor's degree. A police officer's annual salary at step 5 is \$56,771.52 and 20% is \$11,354.72. A newly hired police officer with a bachelor's degree will earn \$2,850.00 per year, significantly less than a firefighter under the Award. See Union exhibit 1, Tab 3.

city, town or district's long and short term bonded indebtedness; (iii) the city, town or district's estimated share in the metropolitan district commission's deficit; (iv) the city, town or district's estimated share in the Massachusetts Bay Transportation Authority's deficit; and (v) consideration of the average per capita property tax burden, average annual income of members of the community, the effect any accord might have on the respective property tax rates on the city or town. (Emphasis added).

The City submitted into the record a Department of Revenue (DOR) report requested by the JLMC (City Exhibit 7) that included evidence of all of the requisite factors. In its post-hearing brief, the City cited at length the DOR report, which compared New Bedford to cities of similar size and demographics, namely Brockton, Fall River, Lowell and Lynn. Compared to those cities, New Bedford had: the lowest per capita income in 2010 and received the second to lowest amount of state aid that year; the second lowest single family home values in 2013; and the highest amount in tax liens, tax foreclosures/possessions and utility liens as of June 30, 2012.

In its discussion of the City's ability to pay (Award, p. 23-25), the panel completely disregarded the statutory factors it is required by the Act to consider. Rather than citing each of the factors and the evidence – or lack thereof – relating to them, the panel broadly asserted that because the City has untapped levy capacity and has managed its finances effectively, it could raise taxes to fund the Award. The panel also reasoned that because City CFO Ari Sky purportedly presented the same financial evidence at a police interest arbitration hearing in January 2014, but then supported the subsequent police settlement, the City has the financial ability to pay for the Award.<sup>2</sup>

The panel further assigned “little weight” to the anticipated loss of \$6.2 million dollars in SAFER grant funds in FY 2016 and its impact upon the operation of the fire department. See Award p. 23. In fact, the panel, without any supporting documentation, asserted the department hired additional firefighters under the grant for fire suppression and prevention. Award, p. 23. The panel failed to consider the supporting elements described in the grant that its purpose was to retain 63 firefighters. See Union exhibit 5, p. 23-27. The panel also made an undocumented assertion the City “has a plan to fund the Grant after it expires with monies from the nationally renowned Marine Commerce Terminal and other new revenue sources.”<sup>3</sup>

The panel's conclusion that the City has the ability to pay the Award is unsupported by “material and substantive evidence on the record as a whole.” The panel had a statutory obligation to consider with specificity the factors listed in the Act and the evidence on the record, including the DOR report and the SAFER application, relating to those factors in the context of this specific Award. The panel completely ignored the statutory factors, opting instead to discuss

---

<sup>2</sup> However, in making this statement the panel neglected to consider the Award issued by the panel provided for a retroactive pay increase of 2% to July 1, 2012 at an additional cost of \$1.99 million and erroneously alleged the police settlement resulted in an increase of police “base salaries” of 11.3% when base salaries only increased by 5.5%. Award, p. 23.

<sup>3</sup> The actual statement in the SAFER grant application is the “economic activity operated by these wind energy projects is expected to create additional revenue streams and significantly augment City finances in years to come...as part of a strategic review of all municipal public safety operations...a number of organizational configurations and efficiency measures will be considered as part of the public safety strategic review.” Union exhibit 5, p. 26. (Emphasis supplied).

the City's ability to pay for the Award in the most general of terms. Because the panel failed to consider the statutory factors and related evidence, the Award does not pass muster under the Act. Cf., Massachusetts Bay Transportation Authority v. Local 589, Amalgamated Transit Union, AFL-CIO, CLC, Civil Action No. 2013-02409, 2014 WL 7863572, at \*6 (Mass. Super. Dec. 19, 2013)(decision supported by "material and substantial evidence" where, inter alia, MBTA did not argue that arbitrator totally ignored certain data).

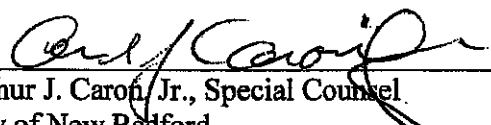
3. Miscalculation of Cost of Award

The Award also is suspect because of an arithmetic mistake; namely that the panel miscalculated the total cost of the Award to the City. The panel calculated the cost of the entire award to be an approximate cumulative cost of \$3.1 million over the three-year agreement, at an estimated average annual cost of \$1.0 million. Award, p. 24. As demonstrated in Attachment C to this letter, which lists the costs of each component of the Award by fiscal year, the actual cost of the Award is more than \$4.1 million. The cost of the Award therefore exceeds the panel's estimate by 32%. Thus, even if the panel had properly considered the relevant statutory factors in evaluating the City's ability to pay, its analysis would be based on a flawed calculation. The panel's analysis of the City's ability to pay is dubious at best in light of this mistake. For this reason alone, the Award should be revisited.

Conclusion

Since the panel stated in its Award that its intent was to maintain parity between the Fire and Police unions, the portions of the Award dealing with base wages and educational incentives are clearly not supported in the evidence contained in the record. Further, the panel failed to consider relevant factors in considering the City's ability to pay and miscalculated the cost of the award. For the reasons stated herein, the City respectfully requests that the Committee review this matter.

CITY OF NEW BEDFORD  
by its attorneys,

  
Arthur J. Caron, Jr., Special Counsel  
City of New Bedford  
133 William Street – Room 203  
New Bedford, MA 02740-6163  
Tel. (508) 979-1460



RECEIVED

MAY 23 2006

PERSONNEL DEPARTMENT

FIRE

SALARIES & WAGES 2% ANNUAL INCREASE 1/1/06										
RANK	eff 1/1/06	Night Diff. eff. 5/14/06	WEEKLY	DAILY	HOLIDAY	1/2 HOL	1 1/2 HOL	HOURLY	YEARLY	
CHIEF	\$ 44.62	\$ 59.50	\$ 1,791.84	\$ 255.98	\$ 447.96	\$ 223.98	\$ 671.94	\$ 42.6629	\$ 93,175.68	
DEPUTY	\$ 39.28	\$ 52.37	\$ 1,577.27	\$ 225.32	\$ 394.32	\$ 197.16	\$ 591.48	\$ 37.5540	\$ 82,018.04	
DISTRICT CHIEFS	\$ 33.92	\$ 45.24	\$ 1,362.59	\$ 194.66	\$ 340.65	\$ 170.32	\$ 510.97	\$ 32.4426	\$ 70,854.68	
CAPTAINS	\$ 33.92	\$ 39.33	\$ 1,184.87	\$ 169.27	\$ 296.22	\$ 148.11	\$ 444.33	\$ 28.2112	\$ 61,613.24	
LIEUTENANTS	\$ 33.92	\$ 34.20	\$ 1,030.32	\$ 147.19	\$ 257.58	\$ 128.79	\$ 386.37	\$ 24.5314	\$ 53,576.64	
FIREFIGHTER 5TH	\$ 22.31	\$ 29.75	\$ 895.92	\$ 127.99	\$ 223.98	\$ 111.99	\$ 335.97	\$ 21.3314	\$ 46,587.84	
FIREFIGHTER 4TH	\$ 22.31	\$ 27.38	\$ 824.85	\$ 117.84	\$ 206.21	\$ 103.11	\$ 309.32	\$ 19.6393	\$ 42,892.20	
FIREFIGHTER 3RD	\$ 22.31	\$ 25.61	\$ 771.50	\$ 110.21	\$ 192.88	\$ 96.44	\$ 289.31	\$ 18.3690	\$ 40,118.00	
FIREFIGHTER 2ND	\$ 22.31	\$ 23.93	\$ 720.71	\$ 102.96	\$ 180.18	\$ 90.09	\$ 270.27	\$ 17.1598	\$ 37,476.92	
FIREFIGHTER 1ST	\$ 22.31	\$ 22.31	\$ 660.75	\$ 94.39	\$ 165.19	\$ 82.59	\$ 247.78	\$ 15.7321	\$ 34,359.00	
			HAZ MAT DUTY							
				048 = \$26.88	095 = \$6.72					
				049 = \$6.64	1/2 Hol = \$3.36					
					Hol 1/2 = \$10.08					

4-5000

ATTACHMENT A-2

preference shall be given in accordance with rank and then seniority within the rank. The Chief may, in his/her discretion, permit more than one (1) ranking or superior officer to take vacation, if, in his/her opinion, the Department will be adequately staffed and maintained and he/she will make every effort to comply with the individual preferences for vacation of the ranking and superior officers. The Chief may make temporary or other transfers of police officers to insure that the Department is adequately staffed and maintained. Ranking and superior officers on the night relief's shall bid for summer vacation schedule no later than March 15 and said vacation schedule within the station will be established on alternative weeks so that no two vacation periods will commence on the same date.

ARTICLE XXIII

WAGES

**Police salary schedule**

Days	1% July 1, 2003	1% July 1, 2004	2% July 1, 2005	2% January 1, 2006	2% July 2, 2006
Step 1	628.80	635.09	647.79	660.75	673.97
firearm pay	25.57	25.83	26.35	26.88	27.42
	654.37	660.92	674.14	687.63	701.39
Step 2	685.87	692.73	706.58	720.71	735.12
firearm pay	25.57	25.83	26.35	26.88	27.42
	711.44	718.56	732.93	747.59	762.54
Step 3	734.21	741.55	756.38	771.50	786.93
firearm pay	25.57	25.83	26.35	26.88	27.42
	759.78	767.38	782.73	798.38	814.35
Step 4	784.97	792.82	808.68	824.85	841.35
firearm pay	25.57	25.83	26.35	26.88	27.42
	810.54	818.65	835.03	851.73	868.77
Step 5	852.60	861.13	878.35	895.92	913.84
firearm pay	25.57	25.83	26.35	26.88	27.42
	878.17	886.96	904.70	922.80	941.26
Sergeant	980.49	990.29	1,010.10	1,030.30	1,050.91
firearm pay	25.57	25.83	26.35	26.88	27.42
	1,006.06	1,016.12	1,036.45	1,057.18	1,078.33
Lieutenant	1,127.56	1,138.84	1,161.62	1,184.85	1,208.55
firearm pay	25.57	25.83	26.35	26.88	27.42
	1,153.13	1,164.67	1,187.97	1,211.73	1,235.97
Captain	1,296.70	1,309.67	1,335.86	1,362.58	1,389.83
firearm pay	25.57	25.83	26.35	26.88	27.42
	1,322.27	1,335.50	1,362.21	1,389.46	1,417.25

## ATTACHMENT B

### **Wage Comparison – Police/Fire Step 5 with no education payments**

#### Firefighter

June 30, 2012

Base Wage:  
 $52,188.25 \div 52 =$  \$1003.62  
HazMat: 30.12  
Night Differential: 41.66 \*  
\$1075.40

#### Police

June 30, 2012

Base Wage:  
 $52,188.25 \div 52 =$  \$1003.62  
Fire arms: 30.12  
Night Differential: 50.18  
\$1083.92

\* By agreement with the Fire Union, pursuant to Article 39 of the collective bargaining agreement, firefighters receive 83% of the police night differential.

#### **October 21, 2014 Award**

2%

July 1, 2012

Base Wage:  
 $53,232.02 \div 52 =$  \$1023.69  
HazMat: 30.71  
Night Differential: 41.65  
\$1096.05

0%

July 1, 2012

Base Wage:  
 $52,188.25 \div 52 =$  \$1003.62  
Fire arms: 30.12  
Night Differential: 50.18  
\$1083.92

1.5%

January 1, 2014

Base Wage:

$54,030.50 \div 52 =$  \$1039.05  
HazMat: 31.17  
Night Differential: 42.27  
\$1112.49

1.5%

January 1, 2014

Base Wage:

$52,970.84 \div 52 =$  \$1018.67  
Fire arms: 30.56  
Night Differential: 50.93  
\$1100.16

1%

July 1, 2014

Base Wage:

$55,580.81 \div 52 =$  \$1068.86

1%

July 1, 2014

Base Wage:

$53,500.72 \div 52 =$  \$1028.86

HazMat:	32.07
Night Differential:	<u>42.70</u>
	\$1143.63

1.5%  
January 1, 2015

Base Wage:	
56,414.52 ÷ 52 =	\$1084.90
HazMat:	32.55
Night Differential:	<u>43.34</u>
	\$1160.79

1.5%  
June 28, 2015

Base Wage:	
57,260.74 ÷ 52 =	\$1101.17
HazMat:	33.04
Night Differential:	<u>43.99</u>
	\$1178.20

Fire arms:	30.87
Night Differential:	<u>51.44</u>
	\$1111.17

1.5%  
January 1, 2015

Base Wage:	
54,303.60 ÷ 52 =	\$1044.30
Fire arms:	31.33
Night Differential:	<u>52.22</u>
	\$1127.85

1.5%  
June 28, 2015

Base Wage:	
55,118.44 ÷ 52 =	\$1059.97
Fire arms:	31.80
Night Differential:	<u>53.00</u>
	\$1144.77

Base Wage difference (Fire) 1101.17 – (Police) 1059.97 = \$41.20 per week

Annual = \$2,142.40

## **ATTACHMENT C-1**

### **Financial Impact of the Award**

#### **Retroactive Provisions**

Clothing Allowance (FY 13-14):	\$109,566
<u>Wage Increases:</u>	<u>655,595</u>
Subtotal:	\$765,161

#### **FY 2015 Increases**

Clothing Allowance (FY 15):	\$54,783
Wage Increases:	736,019
<u>\$2,500 Signing Bonus:</u>	<u>570,656</u>
Subtotal:	\$1,361,458

<b>FY 2015 Total Due:</b>	<b>\$2,126,619</b>
---------------------------	--------------------

#### **FY 2016 Increases**

Education Credit (eff. 6/28/15):	\$608,700
Clothing Allowance (FY 16):	54,783
<u>Wage Increases:</u>	<u>1,324,897</u>

<b>FY 2016 Total:</b>	<b>\$1,988,380</b>
-----------------------	--------------------

<b>Total Cost of Award (FY 13-16):</b>	<b>\$4,114,998</b>
--	--------------------

This breakout includes FICA costs for all years and the pension impact. The Award raises the City's net pension obligation by an estimated \$262,000 beginning in FY 16. That number is incorporated into the wage increase estimate for that year.

## **ATTACHMENT C-2**

### **Financial Impact of the Award without the July 1, 2012 2% Increase in Base Wages**

#### **Retroactive Provisions**

Clothing Allowance (FY 13-14): \$109,566

Wage Increases: 103,189

Subtotal: \$212,755

#### **FY 2015 Increases**

Clothing Allowance (FY 15): \$54,783

Wage Increases: 451,812

\$2,500 Signing Bonus: 570,656

Subtotal: \$1,077,251

<b>FY 2015 Total Due:</b>	<b>\$1,290,006</b>
---------------------------	--------------------

#### **FY 2016 Increases**

Education Credit (eff. 6/28/15): \$608,700

Clothing Allowance (FY 16): 54,783

Wage Increases: 962,663

<b>FY 2016 Total:</b>	<b>\$1,626,146</b>
-----------------------	--------------------

<b>Total Cost of Award (FY 13-16):</b>	<b>\$2,916,152</b>
--	--------------------



THE COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF LABOR RELATIONS  
19 STANFORD STREET, 1<sup>ST</sup> FLOOR  
BOSTON, MASSACHUSETTS 02114  
Telephone: (617) 626-7158  
FAX: (617) 626-5467  
[www.mass.gov/jlmc](http://www.mass.gov/jlmc)

DEVAL L. PATRICK  
GOVERNOR

ERICA F. CRYSTAL  
DIRECTOR

JOINT LABOR-MANAGEMENT  
COMMITTEE FOR  
MUNICIPAL POLICE AND FIRE  
JOHN W. HANSON  
CHAIR

November 17, 2014

Arthur J. Caron, Jr., Special Counsel  
City of New Bedford  
Office of the City Solicitor  
133 William Street - Room 203  
New Bedford, MA 02740

Mr. Caron:

I am in receipt of your letter of November 14, 2014 and your request that the Committee review the Interest Arbitration Award issued on October 21, 2014 regarding the City of New Bedford and the International Association of Firefighters, Local 841.

I must inform you that Chapter 589 of the Acts of 1987 does not authorize the Committee to review arbitration awards issued under its process nor does it provides a mechanism to do so.

Once issued, an arbitration award belongs to the parties in the dispute to ratify and fund in accordance with the provisions of Chapter 589. Any questions or disagreements with the award, beyond funding, must be resolved by the parties in whatever appropriate forum is available to them.

I hope this clarifies the Committee's position on this issue.

Yours truly,

/s/ John W. Hanson  
Chair, Joint Labor-Management Committee

cc. William Straus  
Judith Robbins  
Jay Cobert  
Jill Goldsmith  
Bonnie McSpirtt  
Erica Feldman-Boshes

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF LABOR RELATIONS  
BEFORE THE COMMONWEALTH EMPLOYMENT RELATIONS BOARD

\*\*\*\*\*

In the Matter of

\*

Case No.: MUP-13-2683

\*

CITY OF CHELSEA

\*

Date Issued: May 29, 2014

\*

and

\*

CHELSEA FIREFIGHTERS, LOCAL 937, IAFF \*

\*

\*\*\*\*\*

Board Members Participating:

Marjorie F. Wittner, Chair  
Elizabeth Neumeier, Board Member  
Harris Freeman, Board Member

Appearances:

Jaime Kenny, Esq. - Representing the City of Chelsea

Alfred Gordon O'Connell, Esq., - Representing Chelsea Firefighters, Local 937,  
IAFF

DECISION ON APPEAL OF HEARING OFFICER'S RULING ON CROSS-MOTIONS  
FOR SUMMARY JUDGMENT

Summary

1       The City of Chelsea appeals from a ruling that it violated its obligation under  
2       Section 10(a)(5) of M.G.L. c. 150E (the Law) to support funding for the cost items in a  
3       Joint Labor-Management Committee (JLMC) arbitration award, when its City Manager  
4       failed to speak out in support of the award at a City Council meeting that voted on a  
5       resolution asking the parties to meet to negotiate a new agreement, but that did not  
6       include a funding order. For the reasons set forth below, the Commonwealth



1 JLMC award; and 2) Ash's conduct at the March 18, 2013 City Council meeting, when  
2 City Council debated and heard public comment on a resolution asking the parties to  
3 negotiate a new contract but did not fund the JLMC award <sup>4</sup> The Hearing Officer next  
4 addressed and rejected the City's argument that the dispute was moot because the  
5 JLMC award was funded on May 6, 2013.

6 As to the merits of the complaint, the Hearing Officer allowed both parties'  
7 summary judgment motions in part. She granted the City's cross-motion as to Ash's  
8 February 25, 2013 funding request. The Hearing Officer concluded that the statements  
9 made therein adequately supported the JLMC award. The Union does not appeal from  
10 this ruling. The Hearing Officer also granted the Union's cross-motion as to the March  
11 18<sup>th</sup> meeting. She held that Ash's failure to speak up at that meeting to encourage the  
12 City Council to support the award rather than the resolution violated the City's  
13 obligation to take all steps necessary to obtain funding. The City filed a timely appeal of  
14 this ruling. The Union filed a response to the appeal.

#### 15 Facts

16 On review, the City challenges one of the "Undisputed Facts" that formed the  
17 basis of the Hearing Officer's Ruling. These facts, which the Hearing Officer derived  
18 from the City's answer to the Complaint, the parties' motions, memoranda and  
19 supporting documents; and a DVD of the March 18<sup>th</sup> meeting, are reprinted verbatim

---

<sup>4</sup> The Hearing Officer declined to rule on the lawfulness of an alleged February 6, 2013 conversation because the parties disputed its substance. At the conclusion of the decision, the Hearing Officer instructed the parties to notify her within ten days of receipt of the decision whether they sought further litigation on this issue. She also notified the parties that the remaining portions of the complaint would be dismissed with prejudice if no party responded within ten days. Neither party sought further litigation on this issue.

1 that the Union submitted in its motion for summary judgment.<sup>6</sup> Although the City filed  
2 motions to strike certain facts in the Union's summary judgment motion, it did not file a  
3 motion to strike any of facts contained in Paragraph 14.<sup>7</sup> The Hearing Officer  
4 appropriately treated those facts as undisputed. The City's failure to contest these facts  
5 *before* the Hearing Officer issued her ruling precludes it from doing so now.

6 Even if we were to consider the City's arguments, they lack merit. First, although  
7 the second sentence of Paragraph 16 does not expressly reference the March 18<sup>th</sup>  
8 meeting, it is clear from reading the Undisputed Facts as a whole, particularly  
9 Paragraph 8, which describes Ash's February 25 funding request, and Paragraphs 13-  
10 15, which describe the March 18<sup>th</sup> meeting, that Paragraph 16's statement that Ash "did  
11 not submit a communication to the City Council in support of Award" refers only to Ash's  
12

---

<sup>6</sup> This paragraph states, verbatim:

14. On March 18, 2013, the City Council heard public comments regarding the resolution asking the parties to meet to negotiate a new agreement and voted to adopt it. [See Complaint at ¶12.]. Capistran spoke on behalf of the Union in opposition to the resolution. [See Capistran Affidavit, Attachment B, at ¶ 11]. Ash was present but did not speak. Id. Nor did Ash submit a communication to the City Council expressing his support for the award, [see Joint Exhibit 9, attached hereto as Exhibit I], as he often does to support various issues before the City Council. [See, e.g., Attachment H and Joint Exhibit 11, attached hereto as Attachment J.] (Brackets in original).

<sup>7</sup> The City sought to exclude evidence pertaining to a February 6, 2013 conversation between the Union President and the City Manager and evidence of an October 30 2012 email from the City Manager to the City Council regarding the JLMC award, which had not yet issued. As noted above, Hearing Officer granted the City's motions.

1 erred when she did not conclude that this matter was moot. In its motion for summary  
2 judgment, the City argued that the matter was moot because the controversy at issue  
3 ceased on May 6, 2013, when the City Council voted to fund the JLMC award. The  
4 Hearing Officer disagreed. Relying on well-established case law, the Hearing Officer  
5 held that, although the funding dispute ceased with the City's Council's vote, the issue  
6 was not moot for three reasons: 1) the City Council's vote was separate from the City  
7 Manager's conduct at issue in the complaint; 2) the City Manager took no steps to  
8 remedy his unlawful conduct; and 3) the matter was capable of repetition because the  
9 City Manager never acknowledged any wrongdoing. Compare Commonwealth of  
10 Massachusetts, 12 MLC 1590, SUP-2619, SUP-2638 (January 31, 1986) (dismissing  
11 complaint as moot where parties, by successfully completing bargaining, resolved the  
12 allegations that the Commonwealth had engaged in regressive bargaining and achieved  
13 stable and continuing labor relations) with Boston School Committee, 15 MLC 1541,  
14 1546, MUP-6400 (1989) (Board declined to dismiss complaint as moot where  
15 employer's delay in submitting a wage offer was capable of repetition and employer did  
16 not admit that its conduct constituted a violation of the duty to bargain in good faith).

17 The City contests this conclusion on a number of grounds. It first argues that all  
18 of Ash's actions, including the February 25 request for funding, satisfied his statutory  
19 obligation to support the JLMC award and, therefore, the Hearing Officer's conclusion  
20 that the matter was not moot was based on a flawed premise. We reject this argument  
21 for the reasons set forth in the final section of this opinion.

22 The City next reiterates the argument that the City Council's vote resolved the

---

<sup>10</sup> The Board's jurisdiction is uncontested.

1 extent that the employer and the exclusive representative are required to support any  
2 other decision or determination that they agree to pursuant to Chapter 150E. Under this  
3 rule, a public employer that fails to take all steps necessary to secure funding for the  
4 cost items of a collective bargaining agreement refuses to bargain in good faith in  
5 violation of Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law. Id. (citing  
6 Mendes v. City of Taunton, 366 Mass 109 (1975); Town of Belmont, 22 MLC 1636,  
7 1639, MUP-9875, (April 1, 1996); City of Chelsea, 13 MLC 1144, 1149, MUP-6211  
8 (September 22, 1986) (additional citations omitted).

9 Here, the Hearing Officer found that Ash's February 25<sup>th</sup> funding request satisfied  
10 the City's obligation to express support for the award. The Union does not appeal from  
11 this aspect of the decision and we find no basis to disturb it. A little over two weeks  
12 later, however, some of the City Councilors proposed a resolution to require the Union  
13 and the City Manager to meet to negotiate a collective bargaining agreement that was  
14 more "favorable" than the award and which, critically, did not include an order to fund it.  
15 The resolution came before the full City Council on March 18th. Several Councilors  
16 spoke for and against the resolution at the meeting, including Councilor Hatleberg, who  
17 said that it was "fair to see the vote on this resolution as something of a proxy for where  
18 things would come out on a vote." The facts state that the City Council heard public  
19 comment on the resolution and that the Union President spoke in opposition on behalf  
20 of the Union, but that Ash said nothing. The resolution passed.

21 Although the Hearing Officer found, based on Hatleberg's statements, that there  
22 was no doubt that a vote for the resolution was a vote against the JLMC award, she  
23 ultimately treated the resolution as an "intervening event" that "reduced the likelihood"

1 Committee, supra. See also Town of Rockland, 16 MLC 1001, 1006, n. 11, MUP-6620  
2 (June 1, 1989) (duty to seek funding for a contract encompasses an obligation to  
3 express support for the funding request, particularly in the face of any expressed  
4 opposition).

5 For the same reasons, we reject the City's argument that the Hearing Officer  
6 erred when, citing Town of Rockland, supra, she held that Ash's silence in the face of  
7 the debate over the resolution violated the Law because it could have been construed  
8 as support for the resolution. The City argues that this cannot be correct because the  
9 City Council already knew that Ash supported the JLMC award. The City also argues  
10 that the Hearing Officer ignored critical distinctions between the facts of this case and  
11 those in Town of Rockland. The Hearing Officer addressed both of these arguments at  
12 length in her decision, and we agree with her conclusion that Ash's prior, known  
13 statements in support of funding were not enough to satisfy the City's bargaining  
14 obligation in the face of the changed circumstances described above.

15 The fact that Rockland has a town meeting form of government, where the  
16 citizens are the funding body, but that the City of Chelsea has a City Manager form of  
17 government, where the City Council is the funding body, does not change this result.  
18 As the Union points out, Section 1 of the Law makes no such distinction, defining  
19 "legislative body" as the "City council . . . or any body which has the power of  
20 appropriation with respect to an employer . . . ." Under this definition, an employer's  
21 obligation to seek and actively support funding for an award applies equally to City  
22 Council and town meeting forms of government. Further, the fact that the citizens  
23 attending the town meeting in Rockland may not have been as knowledgeable about

1 Association of Government Employees, Local R1-162 v. Labor Relations Commission,  
2 17 Mass. App. Ct. 542, 546 [1984] (pursuant to Section 7(d) of Law, all municipal  
3 ordinances, by-laws rules and regulations are explicitly superseded by bargaining  
4 agreements as to the important mandatory bargaining issues covered by Section 6).

5 Second, there is no dispute that the Council members heard public comment  
6 regarding the resolution at the meeting and that the Union president spoke on behalf of  
7 the Union in opposition to the resolution. Although the City claims that Roberts Rules of  
8 Order prevented Ash from debating the resolution because only Councilors can  
9 participate in debate under the cited rule, it neither provided a copy of the relevant rule,  
10 see, e.g., Savill v. Port Norfolk Yacht Club, Inc., 83 Mass. App. Ct. 1130 (2013), nor  
11 explained the procedural context in which the City Council heard public comment.

12 Finally, the City Council rule cited by the City does not expressly prohibit the City  
13 Manager from speaking at City Council meetings. Rather, it simply requires all  
14 communications from the City Manager to the City Council to first be deposited with the  
15 City Clerk and time stamped no later than 4:00 pm of the Thursday preceding a regular  
16 meeting.<sup>11</sup> Here, the evidence shows that Ash knew about the resolution as early as  
17 March 14, 2013,<sup>12</sup> but failed to submit any communication to the City Council in support

---

<sup>11</sup> According to the City, Rule 38 of the City Council's Rules states:

All communications from the City Receiver or City Manager...must first be deposited with the City Clerk and time stamped. No such communication or petition time stamped later than 4:00 p.m. the Thursday preceding a regular meeting shall be presented to the City Council at that meeting unless unanimous consent of the Council shall have first been obtained for the same.

<sup>12</sup> The Board takes administrative notice of the fact that March 14, 2013 was a Thursday.


- b) Notify the DLR in writing of the steps taken to comply with this decision within ten (10) days of receipt of this decision.

SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF LABOR RELATIONS  
COMMONWEALTH EMPLOYMENT  
RELATIONS BOARD

  
MARJORIE F. WITTNER, CHAIR

  
ELIZABETH NEUMEIER, BOARD MEMBER

  
HARRIS FREEMAN, BOARD MEMBER

**APPEAL RIGHTS**

Pursuant to the Supreme Judicial Court's decision in Quincy City Hospital v. Labor Relations Commission, 400 Mass. 745 (1987), this determination is a final order within the meaning of M.G.L. c. 150E, § 11. Any party aggrieved by a final order of the Board may institute proceedings for judicial review in the Appeals Court pursuant to M.G.L. c.150E, §11. **To claim such an appeal, the appealing party must file a Notice of Appeal with the Commonwealth Employment Relations Board within thirty (30) days of receipt of this decision.** No Notice of Appeal need be filed with the Appeals Court.

## **APPENDIX A**

### **Undisputed Facts**

1. The City is a public employer within the meaning of Section 1 of the Law.
2. The Union is an employee organization within the meaning of Section 1 of the Law.
3. The Union is the exclusive bargaining representative for firefighters employed by the City.
4. On February 4, 2013, an arbitration panel appointed by the Joint Labor-Management Committee (JLMC) to resolve a contract dispute between the parties issued its award in case number JLMC-11-35F.
5. On or about February 6, 2013, Union President Brian Capistran (Capistran) met with City Manager Jay Ash (Ash).<sup>13</sup> Ash expressed his desire to settle a fifth year of the collective bargaining agreement.
6. After the Award issued, on February 7, 2013, Ash notified the City Council by email that the Police Superior Officers' Association signed a contract and that the City had received the firefighters' arbitration Award. Ash's email states in its entirety:

Police Superiors now have a signed contract, 2 past years at .5% and 1%, and these 3 years (this one and two more) at 2, 2, 2.75, and another .75 on the last day of the contract. Also, new personnel get lower vacation and educational \$\$.

Fire arbitration is in. 2 past years at 3 and 2, and this year and next at 2.5 and 2.5%.

I am costing out each of these and will be presenting to Council for votes to fund them. We owe retro for the two past years, which could be under \$50K for police and over \$1M for fire.

As you know, Council can approve, disapprove or ask for changes.

7. On or about February 21, 2013, Capistran notified Ash that the Union would not discuss a "fifth year."

---

<sup>13</sup> The Hearing Officer did not read the City's Motion in Limine to propose exclusion of the undisputed fact that Ash and Capistran met and had a conversation about extending the collective bargaining agreement for a fifth year.



11. On or about March 14, 2013, Ash notified Capistran by email that the City Council's agenda for its next meeting included the consideration of a Resolution asking the parties to meet to negotiate a new agreement and did not include a financial order to fund the contract.
12. On March 14, 2013, Capistran asked Ash if he had contacted the City Council regarding the items on the agenda referred to in paragraph 11. Ash replied that: "I have not given them a reply. I have not been asked to do so." Ash told Capistran later that day: "I was not asked for my opinion regarding the resolution and have not contributed to its filing. My actions have been and will continue to be consistent with the laws governing such an award."
13. On March 18, 2013, the Resolution came before the full City Council regarding the Award. The City Council heard public comments regarding the resolution and voted to adopt it. Ash did not make any statements at the March 18, 2013 meeting. Capistran spoke on behalf of the Union in opposition to the Resolution.
14. At the March 18, 2013 City Council meeting, Hatleberg publically stated, among other things, that "he was there to help us find a shorter, more fairer process...that serves the taxpayers of the City...", that he did not feel that he could support the funding of the Award, and that it was "fair to see the vote on this Resolution as something of a proxy for where things would come out on a vote, and rather than being placed in a position of voting down something that I don't find myself even wholly against....for me it does balance out to say that I do believe that we need a better deal for the City..." In his remarks, Hatleberg noted Ash's support of the Award by saying: "So we have the decision that has been made and that has been spoken about, that the City manager has been in support of, and I believe many of you are here in support of."
15. Following Ash's remarks at the March 18, 2013 City Council meeting, Murphy spoke against the Resolution, Robinson spoke in favor of the Resolution, and Frank stated that he would vote no on the Resolution, but that did not mean that he supported the arbitration fully.
16. Ash was present at the meeting but did not make any statements. Nor did Ash submit a communication to the City Council expressing his support for the Award, as he often does to support various issues before the City Council.

---

the substance of Ash's statements at the March 11 meeting because the Union disputed the alleged statements.