

IN THE MATTER OF ARBITRATION BETWEEN

**AMERICAN FEDERATION OF STATE,
COUNTY, AND MUNICIPAL EMPLOYEES,
COUNCIL 5**

and

Union,

CITY OF BROOKLYN PARK,

**INTEREST ARBITRATION
DECISION**

Employer.

BMS Case No. 15-PN-0251

Arbitrator: Stephen F. Befort

Hearing Date: April 29, 2015

Post-hearing Briefs submitted: May 18, 2015

Date of Decision: June 12, 2015

Appearances:

For the Union: Chad McKenna

For the Employer: Susan E. Torgerson

INTRODUCTION

This is an interest arbitration proceeding arising under Minnesota’s Public Employment Labor Relations Act (PELRA), Minn. Stat. §§ 179A.01 - 179A.60. American Federation of State, County, and Municipal Employees, Council 5 (Union) is the exclusive representative of a unit of essential public safety employees employed by the City of Brooklyn Park (City). The unit consists of all part-time firefighters employed by the City who meet PELRA’s definition of a “public employee.”

The Bureau of Mediation Services (BMS) certified this unit on February 19, 2014, and the parties thereafter clarified the unit by stipulation on October 17, 2014. Later in 2014, the City hired eighteen full-time firefighters from within the pool of part-time unit firefighters. This move to a predominantly full-time firefighting force has lessened the amount of work available for the part-time firefighters.

The Union and the City have engaged in negotiations and mediation in an attempt to reach a first collective bargaining agreement. The parties, however, have been unable to reach a complete agreement, and the BMS has certified twenty unresolved issues for interest arbitration.

DISCUSSION AND AWARD

INTEREST ARBITRATION STANDARDS

1. **Replicate Voluntary Agreement.** The central goal of interest arbitration is to ascertain the agreement that the parties themselves would have reached if they had continued bargaining and concluded a voluntarily negotiated settlement. *See* AFSCME Council 65 and County of Carver, BMS Case No. 10-PN-423 (Fogelberg, 2011).

2. **Criteria for Determination.** In general, arbitrators consider the following factors in determining interest arbitration awards: the employer's ability to pay and other economic considerations, relevant internal comparisons, and relevant external comparisons. Since the adoption of the Minnesota Pay Equity Act, Minn. Stat. Sec. 471.991 - 471.999, the principal, but not exclusive, factor relied upon by most Minnesota interest arbitrators in deciding issues of wages, benefits, and other terms and conditions of employment has been internal consistency with the settlements negotiated with respect to the other bargaining units in the same jurisdiction. *See* e.g., Law Enforcement Labor Services, Inc. and McLeod

County, BMS Case No. 03-PN-613 (Kircher, 2003); Law Enforcement Labor Services, Inc. and Chisago County, BMS Case No. 95-PN-54 (Berquist, 1995).

These criteria are of limited application in this proceeding for several reasons. First, since no other unit of part-time essential employees is known to exist in the state of Minnesota, no external comparator exists for this unit. Second, while some relevant internal comparisons may be drawn to the agreements covering the City's two other public safety units, namely the full-time firefighter unit represented by the International Association of Firefighters (IAFF) and the police officer unit represented by the Brooklyn Park Police Federation (BPPF), these latter units consist of full-time positions as opposed to the part-time positions represented by the Union. Finally, while the City does not argue an inability to pay, it did submit evidence showing that the City has a tax base per capita that is 54 percent smaller than its peer communities. This more limited tax capacity must be kept in mind when considering the financial implications of the various proposals at issue.

3. **Burden on Proponent for Change.** As a general proposition, an interest arbitrator should not alter longstanding contractual arrangements or the status quo in the absence of a compelling reason to do so. Accordingly, most interest arbitrators will place the burden on the party proposing a change in the parties' relationship to demonstrate the need for such change by clear and compelling evidence. *See Human Services Supervisors Association and County of Dakota, BMS Case No. 97-PN-837 (Wallin, 1997).*

ISSUES FOR RESOLUTION

1. Definitions

A. Final Positions

i. Union

The Union proposes that the following definition of “seniority” be included in the definitional article of the contract:

Seniority is defined as date of hire with the City of Brooklyn Park. Only unpaid leaves of more than fourteen (14) days, excluding discipline, shall be deducted from seniority.

ii. City

The City proposes no language in the definitional article defining seniority.

B. Discussion

The City opposes the inclusion of a definition of seniority in this article on the grounds that the concept of seniority varies by context. At the hearing, the Union indicated it is not opposed to omitting a definition in this article so long as an appropriate definition is included in the seniority article of the contract.

C. Award

The City’s position is awarded.

2. Union Security

A. Final Positions

i. Union

In recognition of the UNION as the exclusive representative the EMPLOYER shall comply with PELRA, as amended, by:

4.1. *The EMPLOYER shall deduct from the wages of EMPLOYEES, who authorize such deduction in writing, a monthly amount sufficient to provide the payment of dues, or a fair share amount as permitted by PELRA, as established by the UNION. Such monies shall be remitted as directed by the UNION.*

4.2. *The UNION may designate UNION MEMBERS to act as stewards and an alternate, and shall strive to inform the EMPLOYER in writing of such choice.*

- 4.3. *The EMPLOYER shall provide a bulletin board and make sufficient space available for the posting of UNION notices and announcements at each Fire Hall.*
- 4.4 *The UNION shall indemnify and save the EMPLOYER harmless against any and all claims, demands, suits, or other forms of liability which may arise out of any action taken or not taken by the EMPLOYER for the purpose of complying with the provisions of this article.*
- 4.5. *Consistent with public interests and with the permission of the Department Head, or their designate, the EMPLOYER agrees that a UNION representative shall, without loss of pay, be allowed to:*
- A. Investigate and pursue grievances;
 - B. Attend negotiation meetings;
 - C. Consult with EMPLOYER representatives;
 - D. Meet with local UNION officials or other UNION representatives concerning the enforcement or application of any provision of this AGREEMENT.

Such time spent conducting the above activities shall not disrupt the work of the Fire Department.

ii. City

In recognition of the UNION as the exclusive representative, the EMPLOYER shall comply with PELRA, as amended, by:

- A. *Deducting each payroll period an amount sufficient to provide payment of dues, or fair share amount as permitted by PELRA, as established by the UNION from the wages of all employees authorizing in writing such deduction on the form provided by the UNION; and*
- B. *Remitting such deductions to the appropriate designated officer of the UNION once each month, unless other arrangements are agreed to by the EMPLOYER and the UNION*
- C *The UNION may designate certain employees from the bargaining unit to act as stewards and shall inform the EMPLOYER in writing of such choice.*
- D. *The UNION shall indemnify and save the EMPLOYER harmless against any and all claims, demands, suits, or other forms of liability which may arise out of any action taken or not taken by the EMPLOYER /or the purpose of complying with the provisions of this article.*

Consistent with the public interests and with permission of the Fire Chief or his designate, the City agrees that a UNION representative shall investigate and pursue grievances, attend negotiation meetings, consult with City representatives, and meet with local UNION officials or other UNION representatives concerning the enforcement of

any provisions of this Agreement.

B. Discussion

The City's proposal is to adopt a provision that implements the minimum requirements of PELRA with respect to union security. The City is concerned that the Union's proposed language in section 4.5 would obligate the City to provide pay to a steward who is off duty prior to performing Union representation tasks.

The Union's proposal in section 4.1 would give the Union the authority to designate the appropriate recipient of Union dues. The Union contends that the intent of section 4.5 is to allow a steward on shift to perform negotiation or grievance adjustment tasks without loss of pay.

The Union's proposal with respect to designating the recipient of dues is fees is reasonable and consistent with standard practice. Section 4.5 should be modified to make clear that stewards are entitled to pay only for performing representational tasks during an assigned shift.

C. Award

The Union's position is awarded except that section 4.5 is amended to read as follows:

Consistent with public interests and with the permission of the Department Head, or their designate, the EMPLOYER agrees that a UNION representative shall, without loss of pay, be allowed during an assigned shift to:

- A. Investigate and pursue grievances;
- B. Attend negotiation meetings;
- C. Consult with EMPLOYER representatives;
- D. Meet with local UNION officials or other UNION representatives concerning the enforcement or application of any provision of this AGREEMENT.

3. Employer Security

A. Final Positions

i. Union

The UNION agrees that during the life of this AGREEMENT, it will not cause, encourage, participate in or support any strike, slow-down or other interruption of or interference with the normal functions of the EMPLOYER. The Employer agrees that during the life of this agreement it shall not lockout or otherwise reuses employees to perform available work.

ii. City

The City proposes that the contract contain no language on this subject.

B. Discussion

The City contends that the Union's proposed language is superfluous since it merely restates existing state law principles. This language, however, is commonplace and would enable the parties to utilize the contract grievance machinery to enforce the provision's respective prohibitions.

C. Award

The Union's position is awarded.

4. Seniority

A. Final Positions

i. Union

8.1 *Seniority shall be determined by the EMPLOYEE'S length of continuous employment with the Brooklyn Park Fire Department and posted in an appropriate location. Seniority rosters may be maintained the Department Head on the basis of time in grade and time within specific classifications. The EMPLOYER shall establish a seniority list and a copy of that list forwarded to the UNION.*

8.2 *Seniority shall be according to time and date of hire.*

- 8.3 *In case two EMPLOYEES are hired at the same time, one shall be senior. In case two or more are hired at the same time; seniority shall be determined by lottery (such as the flip of a coin or the drawing of a card).*
- 8.4 *In the event of promotion (from Part-Time Fire Fighter to Full-Time Firefighter or Lieutenant to Captain, etc.) of more than one individual, seniority shall be carried over from their previous position to their new position. (i.e.. if two employees receive promotion at the same time, their seniority as it was structured in their previous positions would carry over to determine who is more senior in their new positions)*
- 8.5 *New EMPLOYEES shall be on a 12 month probationary period. The EMPLOYEE shall be certified after that time unless, in the opinion of the Department Head, additional training is necessary before certification. In that case, the EMPLOYER shall notify the EMPLOYEE and the UNION of the specific training that is necessary. After such notification, the EMPLOYER may extend the EMPLOYEE'S probationary period by 3 months. In no event shall an EMPLOYEE'S probationary period exceed 15 months.*
- 8.7 *A reduction in work force will be accomplished on the basis of job classification and/or seniority with the EMPLOYEE with the least seniority to be laid off first.*
- 8.8 *EMPLOYEES shall be recalled from layoff on the basis of seniority. The EMPLOYEE laid off with the highest seniority shall be recalled first. An EMPLOYEE on layoff shall have an opportunity to return to work before any new EMPLOYEE is hired.*
- 8.9 *For promotions within the Fire Department, the most senior, capable, qualified applicant shall be promoted In order to be eligible for a promotion, EMPLOYEE must have completed their initial 12 month probationary period and meet the requirements for such a promotion.*
- 8.10 *Vacation requests shall be selected on the basis of seniority.*

ii. City

Seniority shall be determined by the employee 's original start date with the department and posted in an appropriate location. Seniority rosters may be maintained by the Chief on the basis of time in grade and time within specific classifications.

Seniority shall not apply to placement on the salary schedule. In the case two EMPLOYEES are hired at the same time, one shall be senior. In the case two or more are hired at the same time; seniority shall be determined by the EMPLOYEE'S ranking on the eligibility list in the hiring process.

Seniority will be the determining criterion for transfers, promotions and lay-offs only when all job-relevant qualification factors are equal.

In the case of a personnel reduction, the employee with the least seniority shall be laid off first. No new employee shall be hired until the laid off employee has been provided the opportunity to return to work. Recall rights under this Article shall continue for thirty six (36) months after lay off. Recalled employees shall have ten (10) working days after notification of recall by registered mail at the employee 's last known address to report to work or forfeit all recall rights. This provision applies only to the job classification from which the employee was laid off.

Seniority will be a factor only when all other conditions and qualifications are equal. The City Manager or City Manager's authorized representative has the final authorization to determine the need and interest of the City in making assignments without regard to seniority.

B. Discussion

The parties generally agree on the principle of departmental seniority and that layoffs should be determined on the basis of inverse seniority. The Union proposal, however, differs in three respects: (1) by proposing that a tie in seniority should be broken by lottery, (2) authorizing an extension of an employee's probationary period to 15 months, and (3) providing that the most senior qualified employee should be entitled to an available promotion.

The City counters that (1) ties in seniority should be broken by eligibility list ranking, (2) the Union's proposed extension of the probationary period intrudes upon management rights, (3) seniority should not automatically trump all other factors in determining promotions, and (4) the Union's proposed section 8.10 is unnecessary since the part-time firefighters do not accrue vacation time.

I find the City's proposed language to be preferable with respect to breaking ties in seniority and as to the length of the probationary period. I also conclude that a middle ground is appropriate for determining promotions and lay-offs, with seniority determinative only where qualifications are relatively equal.

C. Award

The City's position is ordered with three modifications. First, Article 8 shall include a provision that:

New employees shall be on a 12 month probationary period.

Second, the third paragraph of the City's proposal is deleted. Third, the last paragraph of the City's proposal is modified to state as follows:

Seniority will be determinative in making promotions and lay-offs only when all other conditions and qualifications are relatively equal. [Remaining language of paragraph deleted.]

5. Discipline

A. Final Positions

i. Union

- 9.1 *The EMPLOYER will discipline EMPLOYEES for just cause only. Discipline will generally be administered in a progressive manner. Discipline shall only include:*
- A. *Oral reprimand;*
 - B. *Written reprimand;*
 - C. *Suspension;*
 - D. *Demotion; or*
 - E. *Discharge*
- 9.2 *Discipline that is placed in the EMPLOYEE'S personnel file shall be read and acknowledged by signature of the EMPLOYEE. The UNION and the EMPLOYEE involved will receive a copy of such discipline.*
- 9.3 *Discharges will be preceded by a five (5) day suspension without pay.*
- 9.4 *EMPLOYEES will not be questioned concerning an investigation of disciplinary action unless the EMPLOYEE has been given an opportunity to have a UNION representative present at such questioning.*
- 9.5 *Grievances relating to this Section shall be initiated by the UNION at the Step 2 level of the Grievance Procedure in Article 7.*

ii. City

The EMPLOYER may discipline employees only for just cause; such discipline shall generally be progressive and may include verbal reprimand, written reprimand, suspension, demotion, or dismissal in accordance with regulations of the City of Brooklyn Park. The EMPLOYER may determine the appropriate level of discipline without proceeding through all levels.

Discharges shall be preceded by a five (5) day suspension without pay.

An EMPLOYEE shall be given the opportunity to have UNION representation present when being questioned concerning an investigation likely to lead to disciplinary action of that employee, provided that it does not unduly delay the investigation.

During the probationary period, an employee may be disciplined or discharged at the sole discretion of the EMPLOYER.

Employee access to personnel files is governed by Minnesota Statute 181.961. Upon written request by an employee, Human Resources shall provide the employee with an opportunity to review their personnel record no later than seven (7) working days after receipt of the request. The personnel record will be available for review by the employee during normal business hours and in the presence of a HR representative. A copy of the personnel record shall be provided to the employee upon request and at no cost to the employee.

Access to personnel records shall be limited to once every six months, upon separation from employment, and once per year after separation for as long as the personnel record is maintained.

B. Discussion

The parties are not far apart in terms of their proposals for a discipline article. The principle point of disagreement is that the Union would like to list permissible progressive discipline steps explicitly, while the City desires to retain discretion to determine appropriate levels of discipline more broadly. The Union's proposed language is consistent with that adopted in the BPPF contract. At the hearing, the Union acknowledged that an employee's choice of steward representation should not unduly delay a disciplinary investigation.

I believe that the Union's listing of disciplinary steps is appropriate, but the provision should recognize the City's right to bypass progressive discipline steps in response to serious misconduct.

C. Award

The Union's proposed section 9.1 will be awarded, subject to the addition of language stating, "but the City retains the right to bypass progressive discipline steps in response to serious misconduct." Beyond section 9.1, the City's proposal is adopted as proposed.

6. Work Schedules

A. Original Final Positions

i. Union

- 10.1 *The FLSA cycle shall be 14 days. The City shall meet and negotiate with the Union over any changes to this cycle.*
- 10.2 *The normal work shift shall be a minimum of four (4) hours, with a maximum of twenty-four (24) consecutive hours. Each employee shall have the opportunity to be scheduled for at least one shift weekly through the seniority-based shift bidding system that bid for available shifts on an annual basis.*
- 10.3 *Shifts shall be scheduled from 0600-1000, 1000-1400, 1400-1800, 1800-2200, 2200-0600 seven (7) days a week.*
- 10.4 *In the event the EMPLOYER elects to entertain a different work schedule, the UNION hereby agrees to participate in a meet and negotiate session regarding same. If the EMPLOYER requires EMPLOYEES to be on standby, at or away from a fire station, EMPLOYEES required to be on standby will be compensated. The EMPLOYER agrees to meet and negotiate the pay and conditions of standby with the UNION should they wish to require standby.*
- 10.5 *Bidding for shifts will take place starting the first day of the month prior. There will be two rounds with the first round based on seniority. The second round will be first-come first-served. The start and end of each round will*

be posted on the Fire Manager calendar. Shifts will be assigned by the operations division.

- 10.6 *Firefighters may bid up to 76 hours of preferred shifts and up to a total of 190 hours in the available time. Firefighters may only bid up to 36 consecutive hours at a time, with at least 8 hours of prior to the next shift. Firefighters will not be required to bid on a minimum number of available or preferred shifts.*
- 10.7 *Firefighters may not be scheduled for more than 190 hours per month, without prior approval by the Deputy Chief*
- 10.8 *Shifts may be given away up to 7 days (168 hours) before scheduled start time; otherwise it is the firefighter's responsibility to find coverage for their assigned shifts. Firefighters may put their shifts up for any time up to the start time of that shift. The scheduled firefighter will be held responsible for that shift if no one accepts it.*
- 10.9 *If, after a current schedule is posted, shifts become available, they shall be offered in order of seniority.*
- 10.10 *All mandatory training dates and training topics will be posted one year in advance of the scheduled training. Make up dates, with two possible dates, will be posted along with the mandatory training calendar. Trainings shall be scheduled both in the morning and evening on the dates identified on the calendar to allow all EMPLOYEES to attend. Make up trainings may be administered through the use of video or online materials as long as it can be verified that the EMPLOYEE completed studying the required material. EMPLOYEES will be required to log 12 hours of training each quarter.*

ii. City

The City proposes that the contract contain no language on this subject.

A.5 Supplemental Final Positions

i. Union

Bidding for open shifts will take place starting the first day of the month prior. There will be two rounds with the first round based on seniority. The second round will be first-come first-served. The start and end of each round will be posted on the Fire Manager calendar. Shifts will be assigned by the Operations Division. When an Employee bids on a shift they may be assigned work during that time as shift work or be put on stand-by status. If an Employee bids on shifts for a given month, they shall be

placed on the "Availability List." The Availability List shall include all Employees who bid on shift for that month in order of seniority. The Availability List shall reset quarterly. Such list shall be maintained by the Employer.

If a shift becomes open after the bidding period has closed and more than twenty-four (24) hours prior to the beginning of the shift in question, the shift shall be offered in order of seniority from the Availability List. If an Employee is offered and accepts such a shift, the Employee shall be moved to the bottom of the Availability List for the next open shift that becomes available. The Employer shall continue through the Availability List until the shift is filled. If an Employee refuses to work a shift it shall be considered worked for purposes of the Availability List and they shall be moved to the bottom of the Availability List.

If a shift becomes available less than twenty-four (24) hours prior to the start of the shift, it shall be offered to Employees who are scheduled to be on stand-by status during the available shift in order of seniority.

ii. City

Standby Schedule

To allow the POC Firefighter to schedule their availability with the department and meet active membership the standby schedule is an option for the POC firefighters. The standby scheduled personnel will be the first options to fill open shift and will be called on first alarm structure fires.

Bid Scheduling:

The POC Firefighters may bid their standby schedule on a monthly basis into one of four positions on the standby crew.

Bidding for these shifts will take place on first through the fifth of the month prior. There will be two rounds of bidding. Each round of bidding will take place on the FireManager scheduling software.

- *First Round (The 1st through the 5th of each month)*
 - *POC Firefighters may bid up to 72 hours of preferred standby time and up to a total of 175 hours of available standby time with the month.*
 - *POC Firefighters may only bid up to 36 hours consecutive hours at a time, with at least 6 hours off prior to their next available shift.*
- *Second Round Bidding*
 - *All remaining open standby time will be available to all POC Firefighters on a first come, first-served basis.*

The Standby schedule bids will be assigned by the Deputy Chief or their designee. The first round of bids will be selected based on Officer Rank

for one of the positions and then by seniority. The second round is again first-come, first-served.

Assignments:

If there is an on-shift opening that requires back-fill, the following steps will be used to try and fill the opening:

- *First attempt would be to select one or more of the members on the standby schedule. The member selected will be the one who can fulfill a majority of the hours and/or meets any requirements of that position.*
 - *The crew member selected will need to report to the assigned station, in uniform, within 30 minutes of notification.*
 - *Failure to report will result in disciplinary action.*
- *If there is no one on the Standby schedule; Notification will be made via FireManager by email and text to all POC firefighters to see who is available to fill any portion of the open shift.*

Giving Away Shifts

Shifts may be given away up to 7 days (168 hours) before scheduled start time; otherwise it is the firefighter's responsibility to find coverage or work their assigned shift.

Trading Shifts

Firefighters may put their shifts up for trade any time up to the start time of that shift. The scheduled firefighter will be held responsible for that shift if no one accepts it.

Probationary and Reserve Firefighters

Probationary firefighters and Reserves must meet the requirements set forth by the Training division, and obtain the signoff from their Station Captain, prior to bidding standby crew positions.

Personal or Medical Leave

Personnel on leave from the department will be able to bid standby crew shifts for future months with prior approval from the Deputy Chief.

Pages – The five fire event codes will trip the Station 4 tone and those on the Standby Crew will be expected to respond to their assigned station and then to make contact with City Op's for assignment. Members on the standby crew will have 30 minutes to report to the station or could be subject to disciplinary action.

B. Discussion

The Union's original final position proposed contract language that would continue prior practices with respect to shift scheduling. The City objected that the move to a

predominantly full-time firefighter force has rendered these practices inapt. In the new environment, the City does not assign unit employees to shifts, but rather on an on-call basis. As such, part-time firefighters now are assigned shifts primarily in the event of the absence or unavailability of full-time firefighters.

Both parties have submitted modified proposals at the request of the arbitrator to address the matter of bidding for and filling vacant shifts. The language awarded below attempts to blend these two proposals to create a stand-by process that is both fair and transparent.

C. Award

The City will create a standby list that is used to determine the availability of unit employees for work assignments.

Unit employees may bid their standby schedule on a monthly basis. Bidding for these shifts will take place on the first through the fifth day of the month prior. There will be two rounds of bidding, both of which will take place on the FireManager software.

- In the first round, unit employees may bid up to 72 hours of preferred standby time and up to 175 hours of available standby time within the upcoming month. Employees may bid for no more than 36 consecutive hours, with at least six hours off between shifts. The Deputy Chief or designee, for the first round of bids, shall select assignments based on officer rank for one of the positions and then by seniority.
- All remaining open standby time will be available to employees on a first-come, first-served basis.

If a shift becomes open after the bidding period has closed and more than twenty-four (24) hours prior to the beginning of the shift in question, the Employer shall offer the shift in order of seniority from the standby list. If an employee is offered and accepts such a shift, the employee shall be moved to the bottom of the standby list for the next open shift that becomes available. The Employer shall continue through the standby list until the shift is filled. An employee who declines to work an offered shift shall be moved to the bottom of the standby list.

If a shift becomes available less than twenty-four (24) hours prior to the start of the shift, it shall be offered to employees who are scheduled to be on stand-by status during the available shift in order of seniority.

Shifts may be given away up to seven days before scheduled time. Otherwise, it is the firefighter's responsibility to find coverage or work the assigned shift.

Unit employees may put their shifts up for trade at any time up to the start time of the shift. The scheduled firefighter will be held responsible for that shift if no one accepts the offered trade.

Probationary firefighters and Reserves must meet the requirements set forth by the Training Division and obtain the approval of their Station Captain prior to bidding for standby positions.

Personnel on leave will be able to bid for future standby positions with the prior approval of the Deputy Chief.

7. Call-Back Time

A. Final Positions

i. Union

An employee who is called to duty during the employee's off-duty time shall receive a minimum of three (3) hours pay at one and one half (1 1/2 %) times the employee's regular rate of pay. Any EMPLOYEE called to duty within one(1) hour of the normal starting time or called back when the EMPLOYEE is still on the premises after punching out at the end of the day, will be considered to have reported early or extended the work day and will not qualify for the three (3) hour minimum. There shall be no minimum call back requirement for employees covered by this agreement.

ii. City

An employee who is called to duty during the employee's off-duty time shall receive a minimum of two (2) hours pay at the employee's base rate of pay.

An employee who is called to duty on a holiday during the employee's off-duty time shall receive a minimum of three (3) hours pay at the employee's base rate of pay.

B. Discussion

The Union seeks a minimum of three hours pay at time and one-half in the event of a call-back to duty. The Union points to the BPPF contract which provides for three hours of call-back pay as a comparator. The BPPF contract, however, provides for straight-time rather than premium pay. The City argues that unit employees generally work on a standby

or call-back basis such that a call-in to work is not an unusual situation warranting premium pay. The City's position is reasonable and will be awarded.

C. Award

The City's position is awarded.

8. Working Out of Classification

A. Final Positions

i. Union

EMPLOYEES assigned by the EMPLOYER to assume substantially all of the responsibilities of a higher job classification shall receive the salary schedule of the higher classification for the duration of the assignment.

This article shall apply when the assignment is for more than one hour in duration.

ii. City

An employee assigned by the EMPLOYER to assume substantially all of the responsibilities of a higher job classification shall receive appropriate compensation per city policy, not to exceed ten percent of the EMPLOYEES current Base Pay Rate for the duration of the assignment.

B. Discussion

The Union asserts that its proposed language is consistent with that contained in the IAFF contract. The City counters that its proposed language is consistent with current practice. I conclude that the Union's position is most consistent with a policy of compensating part-time firefighters in the same manner as full-time firefighters.

C. Award

The Union's position is awarded.

9. Wage Schedule

A. Final Positions

i. Union

<i>Step</i>	<i>Wage</i>
<i>Start</i>	<i>\$17.05</i>
<i>1-2 years</i>	<i>\$18.65</i>
<i>2-3 years</i>	<i>\$20.25</i>
<i>3-4 years</i>	<i>\$21.85</i>
<i>4+ years</i>	<i>\$23.45</i>

Wage schedule to be adjusted upwards by 2.5% for 2016.

A part-time Firefighter shall be eligible for the following longevity schedule as determined by service as a Firefighter:

After 5 years of service 2%
After 10 years of service 4%

In addition to their hourly rate, Lieutenants shall receive a \$300 monthly stipend and Captains shall receive a \$500 monthly stipend.

ii City

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Seniority shall not apply to placement on the salary schedule.

In addition to their hourly rate, Lieutenants shall receive a \$300.00 monthly stipend and Captains shall receive a \$500.00 monthly stipend.

Probationary: \$10.64

Firefighter I: \$12.56

Firefighter II: \$14.88

Firefighter III: \$17.05

Firefighter III with 4 year's employment or 2,912 hours worked, whichever is first: \$18.65

Firefighter III with 8 year's employment or 5,824 hours worked, whichever is first: \$20.25

Firefighter III with 12 year's employment or 8,736 hours worked, whichever is first: \$21.85

Firefighter III with 16 year's employment or 11,648 hours worked, whichever is first: \$23.45

B. Discussion

Both parties conceptually agree that unit employees should receive the same pay as the full-time firefighters represented by IAFF. The Union's proposed wage schedule is the

same as that contained in the IAFF agreement. The City’s proposal has lower wage rates for probationary, Firefighter I, and Firefighter II employees, but matches the Union proposal at the Firefighter III level. The parties also differ as to step progression within the Firefighter III classification. The Union proposals mirror the IAFF contract in terms of the years of eligibility for step progression, while the City proposal urges an hours of work in grade requirement as opposed to a number of years requirement. The City’s proposal is premised on the proposition that unit firefighters work fewer hours than full-time firefighters and that a better comparison with the full-time firefighters is hours worked in grade rather than years of service. Both parties agree on the amount of monthly stipend to be paid to lieutenants and captains.

Internal consistency favors the Union’s wage schedule proposal. Part-time firefighters perform the same work tasks as full-time firefighters and deserve to be compensated in a similar fashion although the award on this issue strikes a compromise by extending the years of service requirement for step progression. Longevity, however, is likely less important for the part-time employees and already is compensated in part by the years-of-service progression on the wage schedule.

The Union also seeks a 2.5% wage increase beginning on January 1, 2016. This increase is consistent with the IAFF and BPPF agreements. While the City would prefer a contract applicable only to calendar year 2015, it acknowledges that 2.5% represents the pattern wage increase for 2016.

C. Award

Step	Wage
Start	\$17.05
1-3 years	\$18.65
3-5 years	\$20.25
5-7 years	\$21.85
8+ years	\$23.45

Wage schedule to be adjusted upwards by 2.5% for 2016.

In addition to their hourly rate, Lieutenants shall receive a \$300 monthly stipend and Captains shall receive a \$500 monthly stipend.

10. Issues 10-12, 14-17.

A. Final Positions

i. Union

The Union proposes language relating to the following seven types of benefits that would mirror the provisions of the IAFF contract.

- 10. Health Insurance
- 11. Injury on Duty Pay
- 12. Light Duty
- 14. Sick leave
- 15. Bereavement Leave
- 16. Jury Duty
- 17. Severance Pay

ii. City

The City proposes that the contract contain no language relating to these topics.

B. Discussion

The Union cites to the IAFF contract as providing an internal comparison basis for awarding these seven types of benefits. The City objects, arguing that it has a policy of only providing these benefits to employees who regularly work at least 20 hours per week, and that the unit employees do not currently qualify for benefits under this policy. The Union acknowledges the policy, but contends that the contract nonetheless should address these topics so as to be applicable in the event that certain unit employees meet the 20 hours/week threshold or the City changes its policy to extend benefits to other part-time employees who regularly work less than 20 hours per week.

The easiest way to address the latter issue is with a “me-too” clause. A “me-too” clause is a provision that links a benefit received by members of one bargaining unit to that received by another group of employees. Consequently, when a particular benefit of the other group is changed, the me-too provision operates to effect a corresponding change in that benefit for the covered bargaining unit employees. *See* ELKOURI & ELKOURI, HOW ARBITRATION WORKS 17-146 (7th ed. 2012). The me-too clause should be supplemented with a provision extending benefit coverage to any unit employees who in the future regularly work 20 or more hours per week.

C. Award

The parties acknowledge that, at the time of the execution of this agreement, the City had a policy of providing the following benefits only to those employees who regularly worked more than 20 hours per week and that the unit employees did not qualify for such benefits at that point in time:

Health Insurance	Injury on Duty Pay
Light Duty	Sick leave
Bereavement Leave	Jury Duty
Severance Pay	

The parties agree that in the event that the City extends any of the listed benefits to other employees who regularly work fewer than 20 hours per week, the City also will extend such benefit(s) to unit employees under the same circumstances and to the same extent. In addition, the City shall extend benefit coverage per City policy to any unit employees who, in the future, regularly work 20 or more hours per week.

13. Holidays

A. Final Positions

i. Union

All EMPLOYEES shall be eligible for twelve (12) paid holidays. EMPLOYEES shall receive four (4) hours of holiday pay for each holiday.

EMPLOYEES assigned to fire suppression shall receive holiday pay for shifts they are scheduled to work that fall on a holiday, given the nature of 24 hour operations, the holiday shall be considered the entire 24 hour period of the specific holiday as well as 6 hours into the day leading up to and the day after the holiday.

Holidays are: New Year's Day, Martin Luther King Jr. Day, Presidents Day, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, Friday following Thanksgiving, Christmas Eve, Christmas Day, and one (1) floating holiday to be used at the EMPLOYEE'S discretion.

If a call-back happens on a holiday, the three (3) hour minimum requirement for call-back hours shall be increased to a four (4) hour minimum and shall be paid two (2) times their base pay rate.

Any fire suppression employee who works a shift or a portion of a shift on any of the above referenced holidays shall receive an additional half time (1/2) for each hour worked.

ii. City

Employees assigned to fire suppression shall receive holiday pay for the shifts they are scheduled to work that fall on a holiday. Given the nature of 24 hour operations, the holiday shall be considered the entire 24 hour period of the specific holiday.

B. Discussion

The Union seeks language relating to holiday pay that is similar to that contained in the IAFF contract. The City seeks a more modest provision, arguing in its post-hearing brief that “the nature of the job of a part-time firefighter in the City is to fill in around a full-time department structure.” I find that the unit employees should receive time and one-half pay for hours worked on a holiday, but not the additional pay sought by the Union.

C. Award

Holidays are: New Year's Day, Martin Luther King Jr. Day, Presidents Day, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, Friday following Thanksgiving, Christmas Eve, and Christmas Day.

Employees assigned to fire suppression shall receive holiday pay for the shifts they are scheduled to work that fall on a holiday. Given the nature of 24 hour operations, the holiday shall be considered the entire 24 hour period of the specific holiday.

Any fire suppression employee who works a shift or a portion of a shift on any of the above referenced holidays shall receive additional half-time pay for each hour worked.

18. Residency Requirement

A. Final Positions

i. Union

Employees covered by this AGREEMENT shall not be subject to residency requirements.

ii. City

The City proposes that the contract contain no language on this subject.

B. Discussion

No residency requirement currently exists for the part-time firefighters, and the Union seeks a provision that would prohibit the City from adopting such a requirement for the duration of the contract. The City maintains that the Union's proposed language would undermine the City's authority to determine appropriate response times for unit employees. While I do not believe that the proposed language would necessarily inhibit the adoption of a reasonable response time requirement, the Union has not shown a compelling need for a change in the status quo.

C. Award

The City's position is awarded.

19. Certification

A. Final Positions

i. Union

The EMPLOYER agrees to pay for all costs associated with obtaining or maintaining

certificates or other like items necessary for employment.

ii. City

The City proposes that the contract contain no language on this subject.

B. Discussion

The Union proposes language which would commit the City to pay the cost for unit employees to obtain any required certificates. The Union points to an internal comparison with the BPPF contract under which the City pays the costs of license fees for peace officers. The City contends that such a provision is unnecessary because it internally provides all training to the unit employees free of charge. A principled compromise position is to obligate the City only for those costs incurred by employees in obtaining any outside training required by the City.

C. Award

The EMPLOYER will pay for all costs associated with an employee obtaining or maintaining certificates or other like items necessary for employment to the extent that such training or certification is required by the City and provided only by an external vendor.

20. Duration

A. Final Positions

i. Union

This Agreement shall be effective as of January 1, 2015 and shall remain in full force and effect until December 31, 2016, and thereafter as provided by law.

ii. City

This Agreement shall be effective as of January 1, 2015 and shall remain in full force and effect until December 31, 2015, and thereafter as provided by law.

B. Discussion

The Union proposes that this first contract have a duration of two years, while the City

urges a one-year duration. In terms of internal comparisons, the first contract with the IAFF was a three-year agreement and the current BPPF contract has a duration of two years. I believe that a one-year duration would be unduly short, resulting in the parties almost immediate return to the bargaining table.

As noted above, the wage schedule for the second year of the contract should reflect a 2.5 % increase in wages for the unit employees.

C. Award

This Agreement shall be effective as of January 1, 2015 and shall remain in full force and effect until December 31, 2016, and thereafter as provided by law.

Dated: June 12, 2015

Stephen F. Befort
Arbitrator