

RESOLUTIONS

(1)

RESOLVED: That upon the recommendation of the Historic District Commission, Chapter 38-24 of the Code of Ordinances of the Town of Westport is amended by adding the property and building(s) located at 42 Compo Road North as a historic property. (Second reading, full text as follows.)

**ARTICLE II  
SPECIFIC HISTORIC DISTRICTS AND LANDMARKS**

**38-24 Historic landmark properties**

The property and building(s) at 42 Compo Road North, to be known as the Alvilde and John Hunt House, situated in the Town of Westport, County of Fairfield and State of Connecticut being shown on a certain map entitled "Map of property to be transferred from Alvilde L. Hunt to Theodora J. Scarborough, Westport, Conn. Jan. 1941, 558/1000 acres, Scale 1" = 60' W.J. Wood, Jr. Civil Eng. & Surveyor" which map is on file in the Westport Town Clerk's office as Map No. 1561.

(2)

RESOLVED: That the arbitration decision in the matter of the Town of Westport and the Public Works Bargaining Unit, case # 2010 NBA 104, dated March 20, 2012, is rejected and a further review of the decision by a second panel of arbitrators is requested.

**WESTPORT RTM ORDINANCE COMMITTEE REPORT**  
**Proposed Ordinance Re Designation of an Historic Landmark Property**  
**"First Reading" – March 6, 2012 Representative Town Meeting**

**THE PROPOSED ORDINANCE**

The proposed ordinance provides for the designation of the property and building(s) at 42 Compo Road North, Westport CT as "historic landmark" properties in accordance with CT General Statutes, Chapter 97a, Section 7-147q.

**THE RECOMMENDATION**

At its meeting held on February 29, 2012, those present at the RTM Ordinance Committee voted unanimously that the above proposed ordinance is ready for RTM consideration. Attending and voting were Eileen Flug, Chair, Lee Arthurs, Don Bergmann, Allen Bomes and George Underhill. David Floyd was absent. Also present were Carol Leahy and Gail Kelly.

**DISCUSSION**

The RTM Ordinance Committee reviewed the proposed ordinance using the Ordinance Committee checklist. The Ordinance Committee concurs with the responses to the checklist. The Committee notes that the request for designation of 42 Compo Road North as "historic landmark" properties was sought by the owner of the properties and the designation was approved by action of the Westport Historic District Commission at its meeting held on February 14, 2012.

Respectively submitted,

**THE RTM ORDINANCE COMMITTEE**

Eileen Flug, Chair  
Lee Arthurs  
Don Bergmann, Reporter  
Allen Bomes  
George Underhill

Dated: March 1, 2012

March 21, 2012

**TRANSMITTAL MEMORANDUM**

TOWN OF WESTPORT  
- and -  
AFSCME Co. 4, Local 1303-385

Case No. 2010-MBA-104

**AWARD OF THE ARBITRATION PANEL**

M. Jackson Webber, Esquire—Chair Panel Member  
Mr. David Ryan—Management Panel Member  
Mr. Kevin Murphy—Union Panel Member

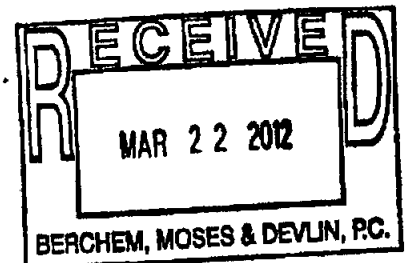
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**Representatives of the parties:**

Floyd Dugas, Esquire – Town - certified return receipt requested  
James Castelot Staff Rep. - Union – certified return receipt requested

cc: File  
Charles Plungis, Labor Relations Analyst-CCM  
John W. Olsen, President  
Town Clerk – certified return receipt requested

/sk  
Enclosure



STATE OF CONNECTICUT  
LABOR DEPARTMENT  
BOARD OF MEDIATION AND ARBITRATION

ARBITRATION AWARD  
UNDER §7-473c  
OF THE  
CONNECTICUT GENERAL STATUTES

In the Matter of the Arbitration Between:  
TOWN OF WESTPORT, DPW  
-and-  
LOCAL 1303-385 of COUNCIL 4,  
AFSCME, AFL-CIO

CASE No. 2010-MBA-104

March 20, 2012

The undersigned Arbitration Panel, having been duly appointed in accordance with the Rules of Procedure of the Connecticut State Board of Mediation and Arbitration, and pursuant to the provisions of 7-473c of the General Statutes of the State of Connecticut, does respectfully make this Arbitration Award as required by said Statute.

REPRESENTATIVES OF THE PARTIES

Appearing for Board: Floyd Dugas, Esq. and Jeffrey P. Morgan Esq.

Appearing for the Union: James Castelot, Staff Representative

PANEL

M. Jackson Webber, Esq., Chair  
David Ryan, Management Member  
Kevin M. Murphy, Labor Member

## INTRODUCTION

This dispute concerns bargaining between the Town of Westport and Westport Public Works Local 1303-385, Council 4, AFSCME AFL-CIO over the negotiation of a successor labor agreement.

The undersigned arbitrators were designated to hear and decide the dispute in accordance with Section 7-473c of the Connecticut General Statutes. Over six (6) days, the parties appeared before the arbitration panel in Westport, Connecticut. Both parties were represented and were accorded a full opportunity to submit evidence, examine and cross-examine witnesses, and present arguments. The parties' last best offers on the issues in dispute were submitted to the panel on November 29, 2011. The panel members met in two (2) executive sessions to deliberate and decide each outstanding issue.

The agreed-upon language submitted to the panel is incorporated and made a part of this award.

### STATUTORY FACTORS

"(2) In arriving at a decision, the arbitration panel shall give priority to the public interest and the financial capability of the municipal employer, including consideration of the demands on the financial capability of the municipal employer. The panel shall further consider the following factors in light of such financial capability: (A) The negotiations between the parties prior to arbitration; . . . (B) the interest and welfare of the employee group; . . . (C) changes in the cost of living; . . . (D) the existing conditions of employment of the employee group and those of similar groups; and . . . (E) the wages, salaries, fringe benefits, and other conditions of employment prevailing in the labor market, including developments in private sector wages and benefits."

THE TOWN OF WESTPORT  
AND  
COUNCIL #4, AFSCME, AFL-CIO  
LOCAL 1303-385  
PUBLIC WORKS

List of Issues

<u>Issue No.</u>	<u>Art./Sec.</u>	<u>Proponent</u>	<u>Description</u>	<u>Paragraph</u>
1	CBA Art. IV, Sec. 4	Joint	Emergency Call In	24
2A	CBA Art. V, Sec. 1	Union	2009-10 Wages	27
2B	CBA Art. V, Sec. 1	Union	2010-11 Wages	27
2C	CBA Art. V, Sec. 1	Union	2011-12 Wages	27
2D	CBA Art. V, Sec. 1	Union	2012-13 Wages	27
3A	CBA Art. V, Sec. 4	Town	PPO Plan Design	35-40
3B	CBA Art. V, Sec. 5	Town	Alternative Health Plan	49
3C	CBA Art. V, Sec. 5	Town	Change in Carriers	49
3D	CBA Art. V, Sec. 7	Town	Employee Contributions	54
4	CBA Art. V, Sec. 9 (new)	<del>Joint</del> Union	Physicals	55
5	CBA Art. IX, Sec. 3	Town	Injury Leave – Workers Comp Supp.	89
6	CBA Art. IX, Sec. 9	Union	Personal Days	95
7	CBA Art. X, Sec. 2	Town	Arbitral Forum	102
8	CBA Art. XVII	Town	Management Rights	121
<i>w/d</i> 9	CBA Art. XVIII	Town	Subcontracting	122
10A	CBA Art. XXI (Pension Art. 1)	Town	Defined Contribution Plan	125
10B	CBA Art. XXI (Pension 5.1(a))	Town	Maximum Benefit	125
11	CBA Art. XXII	Joint	Duration	126

## Issue 1 – Article IV, Sec. 4

### Emergency Call In

The Union is proposing to increase the emergency call-in from the current three (3) hours at time and one-half to four (4) hours at time and one-half. The Union stated: "The major problem is that an alarm may sound and the employee or employees have to come into work. If the problem is resolved prior to the end of the current three (3) hours, the employee returns home. Sometimes a second emergency call comes in only a few hours after the employee returns home and the employer only pays the original three (3) hours that is left. The employee does not receive an additional three (3) hours. The employer only pays three (3) hours no matter how many times the employee gets called in on an emergency. The additional hour helps the employees who have this problem." (Union brief, p. 2.)

The Town is proposing to amend the current contract language to allow the superintendent or foreman to dispatch available personnel without the three (3) hour minimum during weather emergencies in the case of unscheduled early starts. The Town stated "pursuant to the current language, whenever there is emergency work and the department needs to call in a bargaining unit employee early, i.e. prior to commencement of the normal work day at 7:00 a.m., the call in procedure requires payment of a three (3) hour minimum at one and one-half (1 ½) times the employee's regular rate of pay. DPW Director Stephen Edwards testified that there are occasions during weather emergencies when employees arrive at the office between 6:00 a.m. and 7:00 a.m. on their own accord and are available to commence work. However, the Town is prohibited from sending those men out to work and instead must call the "call in



crew," who will receive a three (3) hour minimum at time and one-half (1½). Further complicating matters, if the individuals that are called in do not live close to Town or if the weather emergency slows travel, the called in employees may not even arrive for work until almost 7:00 a.m., at which point there was no need to have called them in early to begin with. During this time, the employees that already arrived at the office (and who were not coincidentally also on the call in crew that day) would have sat in the office with nothing to do and unable to commence work until 7:00 a.m., thereby actually losing overtime that they could have worked. Director Edwards testified that the purpose of the desired change is a "win-win" situation for the bargaining unit." (Town brief, pp. 40-41.)

It appears that the Town's proposal is both practical and reasonable and only applies in emergency situations. Therefore, after reviewing all of the information received by the arbitration panel, in light of the statutory criteria, the last best offer of the Town for Issue 1 is accepted. The Town appointed Arbitrator agrees with the Neutral Arbitrator, based upon the same statutory criteria, and the Union appointed Panel Member dissents on the selection of the last best offer of the Town for Issue 1 based on the same statutory criteria.

**Issues 2A, 2B, 2C, and 2D – Article V, Sec. 1**

**2009-2012 Wages  
2010-2011 Wages  
2011-2012 Wages  
2012-2013 Wages**

The Town is proposing that:

- commencing July 1, 2009, no wage increase will be granted,
- commencing July 1, 2010, a wage increase of two percent (2%) not retroactive,
- commencing July 1, 2011, a two percent (2%) wage increase, and
- commencing July 1, 2012, a two and one-half percent (2 ½%) wage increase.

The Union, on the other hand, is proposing:

- commencing July 1, 2009, a two and one-half percent (2½%) raise plus step,
- commencing July 1, 2010, a two and three-quarters percent (2¾%) raise plus step,
- commencing July 1, 2011, a two and one-half percent (2½%) raise plus step, and
- commencing July 1, 2012, no last best offer was submitted.

The Union stated: "Based on the Town of Westport's 'Ability to Pay' as submitted on November 9, 2011 by Mark Murphy, AFSCME Research & Collective Bargaining Services, Moody's Investor Service shows that in 2009 the Town's financial position remains healthy given its current sound reserve levels and proactive fiscal management. The Town's Undesignated General Fund balance remains healthy, ending that fiscal year with a 7% and 7.5% of revenues. The report in the 2010 budget also shows that revenue with 16 positions eliminated, budget reductions in all of the Town's non-property tax revenue lines, has an additional \$2.2 million in the general Fund balance. Unaudited results are favorable indicating a \$3.6 million addition to the General Fund balance. The report in 2011 shows that their adapted (sic) fiscal 2011 budget is balanced with a 3.1% mill rate increase and includes a \$2.6 million fund balance appropriation. The Town's local economy is expected to continue to balance from its strong demographic profile and favorable location." (Union brief, p. 3.)

The Town argues that "LBO's reflect the economic realities of the time and are supported by a number of factors. First, as discussed above, it is axiomatic that there are only three ways in which a municipality can fund a wage increase: (1) where there is growth in the grand list; (2) by raising taxes; and (3) with an increase in money from the state. As discussed in detail above, the evidence in the present case indisputably shows that the Town's grand list has been flat over the past few years and is not expected to increase significantly in the near future, (Town Ex. 3, B-26, 119-122.) In fact, the 2010 grand list declined by 12.4% from the 2009 grand list. *Id.* Of course, it is the 2010 grand list that impacts the upcoming FY12 budget. Additionally, non-tax revenues continue to drop at an alarming rate. Building permits, real estate conveyance

revenue, and other fees collected by the Town are down. (Town Ex. 3, B-28.) Similarly, state aid is declining and the days of counting in the injection of federal stimulus money are over. (Town Ex. 3, B-146, 147.) Thus, the Town's only option to meet increased expenses and what presumably the Union expects the Town to do in order to fund their salary and benefit increases, is to further burden Town taxpayers. This is problematic because the percentage of the budget comprised of property tax revenue has increased every year since FY07 and property tax for FY11 represented more than 90% of the total budget. (Town Ex. 3, B-27.) In FY09, when the Town's property revenue as a percentage of its total revenues was only 86.9%, the Town ranked 8<sup>th</sup> out of the 23 towns in Fairfield County as the most reliant upon property tax revenue. (Town, Ex, 3, B-90, 91.) In turn, the Town has been forced to use much needed reserve funds to balance the budget, and these funds are also now disappearing. *Id.* The fact that the town used reserve funds to balance its budget demonstrates that expenses outpaced revenues and establishes the Town's inability to afford the unrealistic increases to wages and benefits sought by the Union. Not only does the record reflect the harshest economic climate since the Great Depression, it shows that wage freezes are the present norm with only modest wage increases over the next several years. (Town, Ex. 3, G, 3-11.) Further, the record established the Town DPW employees, as a whole, are very well paid. (Town Ex., CD of Comparison Contracts). For example, compared to the minimum and maximum for the same job in towns within Westport's DRG Group A, its AENGLC grouping, and that are contiguous, the Town's employees make 10.9% more than average minimum and 1.7% more than average maximum. (Town brief, pp. 43-44.)

It appears that the current employees are receiving wages that are comparable to those in the comparison group. Further, other unions have received freezes in the past and these employees have received step increases for the years of 2009, 2010, and 2011. Therefore, after reviewing all of the information received by the arbitration panel, in light of the statutory criteria, the last best offer of the Town for Issues 2A, 2B, and 2D are accepted. The Town appointed Arbitrator agrees with the Neutral Arbitrator, based upon the same statutory criteria, and the Union appointed Panel Member dissents on the selection of the last best offers of the Town for Issues 2A, 2B, and 2D based on the same statutory criteria. After reviewing all of the information received by the arbitration panel, in light of the statutory criteria, the last best offer of the Union for Issue 2C is accepted. The Union appointed Arbitrator agrees with the Neutral Arbitrator, based upon the same statutory criteria, and the Town appointed Panel Member dissents on the selection of the last best offer of the Union for Issue 2C based on the same statutory criteria.

**Issues 3A, 3B, 3C, and 3D – Article V, Sec. 4**

**PPO Plan Design  
Alternative Health Plan  
Changes in Carriers  
Employee Contributions**

The Town has proposed to amend the current plan design as follows:

"The Town's LBO as to Issue 3A, PPO plan design, is as follows:

- (1) \$15 office visit co-payment; \$20 effective 7/1/12
- (2) \$0 office visit co-payment for preventative care
- (3) \$150 co-payment for inpatient hospitalization
- (4) \$100 co-payment for outpatient procedures and surgery
- (5) \$75 co-payment for Emergency Room care
- (6) \$50 co-payment for Urgent Care.

The Town's Last Best Offer as to Issue No. 3B, alternative health care plan, is as follows: 'As an alternative to the above plan, the Town shall offer a Health reimbursement Account (HRA) with a \$1500 individual and a \$3000 for two person or family deductible which deductibles shall be funded 75% by the Town. The employees' cost-share for the HRA Plan shall be less than that for the PPO Plan.'

The Town's LBO as to Issue No. 3C, changes in carrier, is as follows: 'The Town reserves the right to change health plans or carriers, provided the replacement plan is substantially equal on an overall basis in terms of benefits.'

The Town's LBO as to Issue NO. 3D, employee contribution, is as follows:

7/1/09 – 7% - (not retroactive)

7/1/10 – 9% (not retroactive)

7/1/11 – 11% (retroactive)

7/1/12 – 13%

The Town also represented significant evidence regarding the increasing costs of health insurance. In brief, the Town's medical and dental costs for FY12 is \$6,803,424. This is an increase of 5% from FY11, after annual increase of 22.2% from FY10 to FY11, 7.52% from FY09 to FY10, and a 4.92% increase from FY08 to FY09. (Town Ex. 3, G, 4-1). Thus, since FY09, the Town's health insurance expenses have increased nearly 40% from \$4.9 million to \$6.8 million. *Id.* The Town's proposed changes to the PPO plan design alone (Issue 10A) are expected to generate a valuable savings of approximately 3%. (Town Ex. 3, G, 4-13)." (Town brief, pp. 45 -47.)

The Union stated that its "LBO retains current contract language from July 1, 2009 through June 30, 2011. Upon issuance of an award, the employees shall pay 10% of the premium cost of all medical benefits and the Town's proposed co-pays. According to the testimony from the Finance Director, all non-union employees and unionized employees continue to pay 5% of the premium cost of medical insurance and all co-pays from July 1, 2009 through June 30, 2011. There is no reason that this bargaining unit should be paying higher premium costs as the employer proposes, beginning July 1, 2009 of 7%, July 1, 2010 of 9%, and 11% July 1, 2011 with additional costs for all co-pays." (Union brief, p. 5.)

There is no question that health care costs are on the rise. Parties have tried to reduce costs by making design changes, which the Town has proposed along with increasing the employees' contribution to premium health care costs. A majority of the panel agrees with the Town's proposals. Therefore, after reviewing all of the information received by the arbitration panel, in light of the statutory criteria, the last best offer of the Town for Issues 3A, 3B, 3C, and 3D are accepted. The Town appointed Arbitrator agrees with the Neutral Arbitrator, based upon the same statutory criteria, and the Union appointed Panel Member dissents on the selection of the last best offers of the Town for Issues 3A, 3B, 3C, and 3D based on the same statutory criteria.



## **Issue 4 – Article V, Sec. 9 (NEW)**

### **Physicals**

The Union is proposing language that would require the Town to pay for all costs of annual physicals that are required by law to maintain an employee's CDL license up to date. The Union stated: "It is a requirement of the Federal ICC regulations that employees who hold a CDL license must take a physical either every two years or every three years in order to maintain their licenses. The employees in the bargaining unit are allowed, under their current insurance plan, one physical paid for by the carrier very two years. When an employee is required to take his physical, the employee cannot take another physical unless he pays for it out of their own pockets. That could be every two years that the employee must pay for the physical. The Department of Public Works requires a physical each year. It should be the responsibility of the Town to pay for the physicals for the employees in order for them to provide the services to the public. The employees should not have to use their own insurance for the requirements by the Department of Public Works. Also, if an employee needs a physical, he has to pay for it because he has used the one that is paid for in order to maintain their CDL and their jobs. (Union brief, p. 9.)

The Town stated that the Union did not submit any evidence in support of its proposal.

The panel did not have sufficient data as to the cost of this proposal. Therefore, after reviewing all of the information received by the arbitration panel, in light of the statutory criteria, the last best offer of the Town for Issue 4 is accepted. The Town

appointed Arbitrator agrees with the Neutral Arbitrator, based upon the same statutory criteria, and the Union appointed Panel Member dissents on the selection of the last best offer of the Town for Issue 4 based on the same statutory criteria.

**Issue 5 – Article IX, Sec. 3**

**Injury Leave – Workers' Compensation Supp.**

The Town is proposing to add "after 20 days absence from work" to the current contract language. The Town stated: "Specifically, the current contract provision grants DPW employees on injury with full pay, less any payments received from workers' compensation, from the date of injury until he./she is able to return to duty or reaches the point of maximum recovery. As evidenced in Town Ex. 3, G, Tab 6, the amount of workers' compensation is exceedingly high, much higher in fact than similar municipalities. In fact, the four year average workers' compensation losses in the Town is upwards of three and one-half (3½) that of similar municipalities." (Town Ex. 3, G, 6-4.)" (Town brief, p. 48.)

The Union stated it "believes that when an employee is injured in the performance of his job, he should be entitled to the full injury leave that is currently provided in the current CBA. The Town's proposal that it would be responsible to pay the injured employee 'after 20 days from work' is not fair. Most job related injuries are not the fault of the employee. This proposal would force employees to use their own sick time or vacation time, if accumulated, in order to maintain their incomes." (Union brief, p. 10.)

In order to help off-set the high cost of workers' compensation, the Town's proposal for a waiting period of 20 days appears reasonable. Therefore, after reviewing all of the information received by the arbitration panel, in light of the statutory criteria, the last best offer of the Town for Issue 5 is accepted. The Town appointed Arbitrator agrees with the Neutral Arbitrator, based upon the same statutory criteria, and the

Union appointed Panel Member dissents on the selection of the last best offer of the Town for Issue 5 based on the same statutory criteria.

**Issue 6 – Article IX, Sec. 9**

**Personal Days**

The Town is proposing "three (3)" personal days, which maintains the current contract language. The Union, on the other hand, is proposing to increase the number of personal days from three (3) four (4) and, further, that new hired probationary employees may, under the Union proposal, take personal leave where as in the current contract they are prohibited.

The Union stated: "This bargaining unit, during the winter months and also during snow storms and the hurricane in 2011, worked as much as 30 to 35 hours straight for the public. The only rest that the employees receive was some rest in their vehicles. The employees would like an extra personal day in order to get the proper rest. This is a unique problem in the Department of Public Works for the employees." (Union brief, p. 11.)

The Union failed to submit the cost of its proposal and a list of the personal days that Union members take. Therefore, after reviewing all of the information received by the arbitration panel, in light of the statutory criteria, the last best offer of the Town for Issue 6 is accepted. The Town appointed Arbitrator agrees with the Neutral Arbitrator, based upon the same statutory criteria, and the Union appointed Panel Member dissents on the selection of the last best offer of the Town for Issue 6 based on the same statutory criteria.

## **Issue 7 – Article X, Sec. 2**

### **Arbitral Forum**

The Town is preparing to have the American Arbitration Association and not the Connecticut State Board of Mediation and Arbitration be the agency that would administer grievances.

The Union did not submit a last best offer on this issue. The Union stated that it "wants the current contract language to remain. The history shows that requests for arbitration for grievances by the Union are at a minimum. Over the life of the current agreement, there has been only two or three cases before arbitration. The current language shows that the parties can use tri-partite, or one arbitrator. The cost is \$25.00 per case to the State Board of Medication & Arbitration. The cost for the American Arbitration Association consists of the arbitrators' costs, including but not limited to, travel, meals, lodging, etc. These costs could break the treasury of the Union and handicap its fiduciary responsibility to its members and employees. Also, using the State Board of Mediation & Arbitration there are three Panel members where there is only one for the American Arbitration Association." (Union brief p. 12.)

The Panel had no choice but to accept the last best offer of the Town because the Union did not submit a last best offer. Therefore, after reviewing all of the information received by the arbitration panel, in light of the statutory criteria, the last best offer of the Town for Issue 7 is accepted. The Town appointed Arbitrator agrees with the Neutral Arbitrator, based upon the same statutory criteria, and the Union appointed Panel Member dissents on the selection of the last best offer of the Town for Issue 7 based on the same statutory criteria.

## **Issue 8 – Article XVII**

### **Management Rights**

The Town is proposing to amend the current Management Rights article by adding "including, but not limited to, the rights: to determine the standards of services to be offered by Town employees, to determine the standards of selection for Town employment; to direct its employees and to take disciplinary action against them; to relieve its employees from duty because of lack of work or for other legitimate reasons; to issue rules, policies and regulations, including those affecting working conditions; from time to time, to change those rules, policies and regulations and enforce them; to maintain the efficiency of governmental operations; to determine work schedules; to determine the methods, means and personnel by which the Town's operations are to be conducted; to determine the content of job classifications; to exercise complete control and discretion over its organization and technology of performing its work and to fulfill all of its legal responsibilities." (Board brief, p. 50.)

The Union argued that: "The current language has been in effect since this Local was organized. There has never been any problem or situation because of the current language. The proposed change from the Town adds to Management Rights above and beyond the Municipal Employee Relations Act." (Union brief, p. 13.)

It appears that the Town proposal will eliminate any confusion as to the rights of the Town and the Union as to how the current contract is administered. Therefore, after reviewing all of the information received by the arbitration panel, in light of the statutory criteria, the last best offer of the Town for Issue 8 is accepted. The Town appointed

Arbitrator agrees with the Neutral Arbitrator, based upon the same statutory criteria, and the Union appointed Panel Member dissents on the selection of the last best offer of the Town for Issue 8 based on the same statutory criteria.



**Issue 9 – Article XVIII**

**Subcontracting**

The Town has withdrawn its proposal for Issue 9.

**Issues 10 A and 10B– Article XXI  
Maximum Benefit**

**Pension – Article 1  
Pension – Article 5.1(a)**

The Town has proposed a defined contribution plan for all employees hired on or after the issuance of this award. Further, the Town is proposing that the maximum benefit that employees could receive would be capped at 65% of the employee's Final Average Compensation and any employee as of June 30, 2011, who is entitled to a pension greater than 65%, would be grandfathered at the rate (years of service times 2.5%) as of June 30, 2011.

The Town, under the defined contribution plan, has proposed a 5% employer contribution for new hires. The Town stated: "The Town's budgeted pension contributions have increased 50-fold since FY 03, from \$188,522 in FY03 to \$9,240,000 in FY11. (Town Ex. 3, B-39.) In the past 5 years alone, the Town's pension costs have increased more than 1,000%. (Town Ex. 3, B-131.) As Finance Director John Kondub testified, pension fund values have dropped by a total of \$22,000,000 since FY07. (Town Ex. 3, B-37.) For FY10, pension funding for DPW was \$124,000 less than ARC and, as of June 30, 2010, the DPW pension plan was underfunded by more than \$800,000. (Town Ex. 3, B-38, 143.) In total, the Town's pension plans are underfunded by almost \$25,000,000. (Town E. 3, B-143.) As to implementation of a defined contribution plan for new hires, the evidence proves that there is a clear and overwhelming trend to defined contribution plans in the public sector."

"Regarding Issue 10B, the proposed 65% cap on maximum pension benefits, it is important to emphasize that, shockingly, the current pension calculation permits employees to retire and collect up to 81.25% of their Final Average Compensation. Analysis of municipalities in the Town's DRG Group A, AENGLC grouping, and that are contiguous, reveals that an 81.25% maximum benefit percentage is exceedingly high. (Town Ex. 3, G, 11-345.) Only Darien and Fairfield provide greater maximums, with every other town allowing much less and, in the case of Greenwich and Lyme, not offering a defined contribution plan at all. *Id.* The Towns LBO to permit employees to retire with a maximum 65% of final average compensation is reasonable, would compare favorably to other municipalities, and still provides employees with a significant retirement benefit. Significantly, actuarial determination of cost estimates based on the 6% maximum reveals that the DPW plan would go from being underfunded by \$834,065 to being stable and *overfunded* by \$180,327. (Town Ex. 13.) In turn, the Town's ARC for 2010-2011 would have been reduced from \$378,249 to \$238,937 and, ultimately, Town's accrued liability would be reduced by more than \$1,000,000, or roughly 10%. *Id.*" (Town brief, pp. 52, 53.)

The Union stated: "As of June 30, 2009, most of the Town's employee pension plans were close to 100% funded. The Town appropriated \$700,000 for fiscal year 2010. The Town will also make an additional appropriation in fiscal 2011. These are all figures under the defined benefit Plan. From 2009 thru 2011, no employee in this bargaining unit has retired. The Town's wealth indicated and housing values far exceeds state and national levels. The Town's local economy is expected to continue to benefit from its strong demographic profile and favorable location. The Town of

Westport is not in any position like many other Cities and Towns, where their pension funds are in dire straits. There is no need to change the current pension plan and create a defined Contribution Plan for new hires." (Union brief, pp. 14, 15.)

The Town's proposal reflects a growing trend of requiring new employees to have their pension covered under a defined contribution plan along with capping the benefits that an employee can receive under the defined benefit plan. Therefore, after reviewing all of the information received by the arbitration panel, in light of the statutory criteria, the last best offers of the Town for Issues 10A and 10B are accepted. The Town appointed Arbitrator agrees with the Neutral Arbitrator, based upon the same statutory criteria, and the Union appointed Panel Member dissents on the selection of the last best offers of the Town for Issues 10A and 10B based on the same statutory criteria.

## **Issue 11 – Article XXII**


### **Duration**

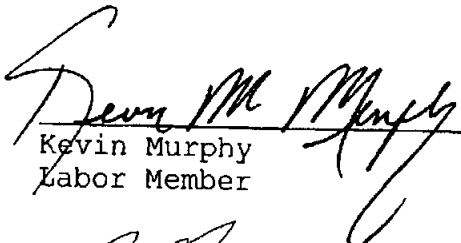
The Town is proposing that the duration of the contract be until June 30, 2013 and the Union is proposing that the contract terminate June 30, 2012.

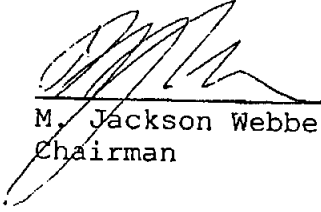
The Union proposal would place the parties into negotiations for a subsequent contract upon issuance of this award.

It is logical that the current contract extend through June 30, 2013. Therefore, after reviewing all of the information received by the arbitration panel, in light of the statutory criteria, the last best offer of the Town for Issue 11 is accepted. The Town appointed Arbitrator agrees with the Neutral Arbitrator, based upon the same statutory criteria, and the Union appointed Panel Member dissents on the selection of the last best offer of the Town for Issue 11 based on the same statutory criteria.

In the Matter of Arbitration Between: )  
TOWN OF WESTPORT )  
AND )  
AFSCME, CO. 4, Local 1303-385 )  
Case No. 2010-MBA-104, Public Works )

  
\_\_\_\_\_  
David Ryan  
Management Member

  
\_\_\_\_\_  
Kevin Murphy  
Labor Member

  
\_\_\_\_\_  
M. Jackson Webber  
Chairman

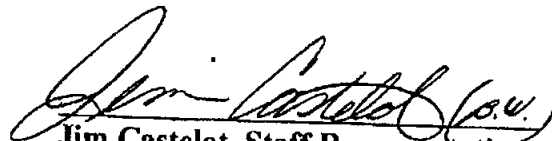
RECEIVED  
MAR 20 2012  
DEPARTMENT OF LABOR  
BD. OF MEDIATION & ARBITRATION

In the matter of:  
Town of Westport  
Department of Public Works  
  
-and-  
  
Local 1303-385 of Council 4  
AFSCME, AFL-CIO

Case No: 2010-A-104

**\*\*\*LAST BEST OFFERS OF THE UNION\*\*\***

Submitted by:

  
Jim Castelot, Staff Representative  
CT Council 4, AFSCME, AFL-CIO

**Issue No: 1**

**ARTICLE IV - EMERGENCY CALL IN**

**Paragraph 38**

Section 4: An off-duty employee called for emergency work shall be given a minimum of four (4) hours at one and one-half (1 ½) times his/her regular rate of pay. This does not include scheduled early starts or extension of the workday.



Case No.: 2010-MBA-104

Issue No: 2A

**ARTICLE V - WAGES, 2009-2010**

**Paragraphs 43 & 44**

Section 1: July 1, 2009 2.5% plus one step movement

Case No.: 2010-MBA-104

**Issue No: 2B**

**ARTICLE V - WAGES, 2010**

**Paragraphs 43 & 44**

Section 1: July 1, 2010 2.75% plus one step movement

Case No.: 2010-MBA-104

**Issue No: 2C**

**ARTICLE V - WAGES, 2011**

**Paragraphs 43 & 44**

Section 1: July 1, 2011 2.5% plus one step movement

**Issue No: 3C**

**ARTICLE V - WAGES & BENEFITS**

**Paragraph 64**

Section 7: Employee Contributions: Each employee covered for Medical Insurance shall contribute the sum as follows: Date of Award: 10%

**Issue No: 4**

**ARTICLE V - WAGES**

**Paragraph 69**

Section 9: (NEW). The Town shall pay for all costs for annual physicals which are required by law in order to keep the employees CDL licenses up to date. Employees may not take personal leave during the probationary period.

**Issue No: 6**

**ARTICLE IX - LEAVE PROVISIONS**

**Paragraphs 139 &140**

Section 9: Personal Leave: A permanent employee with the prior approval of the Director of Public Works shall be entitled to four (4) Personal Leave Days in each fiscal year for personal business. In the case of a last minute emergency where prior approval is not possible, the employee must notify his/her supervisor at the start of the workday.  
New hire probationary employee.

**Issue No: 10A**

**ARTICLE XXI - PENSION PLAN**

**Paragraph 185**

Pension 6.3a For Participants hired prior to January 1, 1999:  
Such pension shall be up to 75% of the pension which could be payable pursuant to  
Section 6.3 (a)

**Issue No: 10A**

**ARTICLE XXI - PENSION PLAN**

**Paragraph 185**

Pension 6.3b For Participants hired on or after January 1, 1999:  
Such pension shall be up to 50% of such Participant's Final Average Compensation:



**Issue No: 11**

**ARTICLE XXII - EFFECTIVE DATE**

**Paragraph 186**

Except as otherwise specifically provided herein, the effective date of this Agreement, when executed by the authorized representatives of the UNION and the TOWN, shall be July 1, 2009 and thereafter this Agreement shall remain in full force and effect without reopening of any kind for the period July 1, 2009 through June 30, 2012. It shall continue in effect from year to year thereafter, unless either party gives notice to the other of its intention to change this Agreement, which notice to the other party must be given in writing prior to November 1<sup>st</sup> preceding its termination.

STATE OF CONNECTICUT  
DEPARTMENT OF LABOR  
BOARD OF MEDIATION AND ARBITRATION

TOWN OF WESTPORT

and

AFSCME COUNCIL 4, LOCAL 1303-385  
(Public Works)

CASE NO. 2010-MBA-104

NOVEMBER 29, 2011

TOWN'S LAST BEST OFFERS

Presented By:  
Floyd J. Dugas, Esq.  
Berchem, Moses & Devlin, P.C.  
75 Broad Street  
Milford, CT 06460  
(203) 783-1200  
fdugas@bmdlaw.com

**ISSUE NO. 1**  
**ARTICLE IV, SECTION 4**

**Emergency Call-In**

The Town's Last Best Offer as to Issue No. 1 is as follows:

“An off-duty employee called for emergency work shall be given a minimum of three (3) hours at one and one-half (1 1/2) times his/her regular rate of pay. This does not include scheduled early starts or extension of the workday. In the case of unscheduled early starts related to weather emergencies, the Superintendent or Foreman may dispatch available personnel as they become available without the three hour minimum.”

**ISSUE NO. 2A  
ARTICLE V, SECTION 1**

**Wages 2009-10**

The Town's Last Best Offer as to Issue No. 2A is as follows:

"The wage schedule in effect for 2008-09 shall remain in place for 2009-10, (i.e. no general wage increase)."

**ISSUE NO. 2B  
ARTICLE V, SECTION 1**

**Wages 2010-11**

The Town's Last Best Offer as to Issue No. 2B shall be as follows:

"Effective (but not retroactive to) July 1, 2010, the salaries in effect on June 30, 2010 shall increase by two (2%) percent."

**ISSUE NO. 2C  
ARTICLE V, SECTION 1**

**Wages 2011-12**

The Town's Last Best Offer as to Issue No. 2C is as follows:

“Effective and retroactive to July 1, 2011, the salaries in effect on June 30, 2011 shall increase by two (2%) percent.”

**ISSUE NO. 2D  
ARTICLE V, SECTION 1**

**Wages 2012-13**

The Town's Last Best Offer as to Issue No. 2D is as follows:

“Effective July 1, 2012, the salaries in effect on June 30, 2012 shall be increased by two and one-half (2.5%) percent.”

**ISSUE NO. 3A  
ARTICLE V, SECTION 4**

**PPO Plan Design**

The Town's Last Best Offer as to Issue No. 3A is as follows:

- "(1) \$15 office visit co-payment; \$20 effective 7/1/12
- (2) \$0 office visit co-payment for preventative care
- (3) \$150 co-payment for inpatient hospitalization
- (4) \$100 co-payment for outpatient procedures and surgery
- (5) \$75 co-payment for Emergency Room care;
- (6) \$50 co-payment for Urgent Care."



**ISSUE NO. 3B**  
**ARTICLE V, SECTION 5**

**Alternative Health Plan**

The Town's Last Best Offer as to Issue No. 3B is as follows:

“As an alternative to the above plan, the Town shall offer a Health Reimbursement Account (HRA) with a \$1500 individual and a \$3000 for two person or family deductible which deductibles shall be funded 75% by the Town. The employee's cost-share for the HRA Plan shall be 5% less than that for the PPO Plan.”

**ISSUE NO. 3C  
ARTICLE V, SECTION 5**

**Change in Carrier**

The Town's Last Best Offer as to Issue No. 3C is as follows:

“The Town reserves the right to change health plans or carriers, provided the replacement plan is substantially equal on an overall basis in terms of benefits.”

**ISSUE NO. 3D  
ARTICLE V, SECTION 7**

**Employee Contributions**

The Town's Last Best Offer as to Issue No. 3D is as follows:

- "7/1/09 – 7% (not retroactive)
- 7/1/10 – 9% (not retroactive)
- 7/1/11 – 11% (retroactive)
- 7/1/12 – 13%

**ISSUE NO. 4  
ARTICLE V, SECTION 9 (NEW)**

**Physicals**

The Town's Last Best Offer as to Issue No. 4 is as follows:

"NO SUCH LANGUAGE"

**ISSUE NO. 5  
ARTICLE IX, SECTION 3**

**Workers' Compensation Supplement**

The Town's Last Best Offer as to Issue No. 5 is as follows:

“, after 20 days absence from work,”

**ISSUE NO. 6  
ARTICLE IX, SECTION 9**

**Personal Days**

The Town's Last Best Offer as to Issue No. 6 is as follows:

“three (3)”

**ISSUE NO. 7  
ARTICLE X, SECTION 2**

**Arbitral Forum**

The Town's Last Best Offer as to Issue No. 7 is as follows:

"American Arbitration Association"

ISSUE NO. 8  
ARTICLE XVII

Management Rights

The Town's Last Best Offer as to Issue No. 8 is as follows:

"including, but not limited to, the rights to: to determine the standards of services to be offered by Town employees; to determine the standards of selection for Town employment; to direct its employees and to take disciplinary action against them; to relieve its employees from duty because of lack of work or for other legitimate reasons; to issue rules, policies and regulations, including those affecting working conditions; from time to time, to change those rules, policies and regulations and enforce them; to maintain the efficiency of governmental operations; to determine work schedules; to determine the methods, means and personnel by which the Town's operations are to be conducted; to determine the content of job classifications; to exercise complete control and discretion over its organization and technology of performing its work; and to fulfill all of its legal responsibilities."



**ISSUE NO. 9  
ARTICLE XVIII**

**Subcontracting**

The Town's Last Best Offer as to Issue No. 9 is as follows:

WITHDRAWN BY THE TOWN

**ISSUE NO. 10A  
CBA - ARTICLE XXI  
(Pension Section 5.1(a))**

**Defined Contribution Plan**

The Town's Last Best Offer as to Issue No. 10A is as follows:

"Employees hired on or after the issuance of the award in Case No. 2010-MBA-104, shall no longer be eligible to participate in the Public Works Department Retirement Plan (the "Defined Benefit Plan"); instead, they shall be eligible to participate in a Town Defined Contribution Plan, a copy of which Defined Contribution Plan is substantially in the form attached hereto."

DRAFT TOWN OF WESTPORT DEFINED CONTRIBUTION PLAN

SPECIFICATION SUMMARY

**Effective Date**

The Plan Year is the calendar year and the plan is effective on \_\_\_\_\_

**Eligibility**

All employees are eligible to participate effective the first day of the month coinciding with or next following the completion of six months of service and attainment of age 21.

The following classification(s) are excluded:

- Non-resident aliens

**Compensation**

Compensation is defined for purposes of this Plan as the base salary earned by the Participant including any contributions through a salary reduction arrangement to a cash or deferred plan under Section 401(k) of the Code and to any flexible benefits program maintained by the Employer and described under Section 125 of the Code, and 132 (f)(4) etc.

**Employee Contributions**

Mandatory Contributions

Participants are required to contribute an amount equal to 5% of eligible Compensation recognized under the Plan on a tax deferred basis.

Before-Tax Elective Contributions

Through payroll deductions participants may elect to contribute an additional percentage of eligible Compensation recognized under the Plan on a tax-deferred basis. Such contributions may be an amount from 1% to 95% of compensation provided that a participant's Before-Tax Elective Contributions plus Mandatory Contributions do not exceed the Internal Revenue Service maximum, which is \$16,500 for 2009.

Participants over age 50 that are contributing the maximum Before-Tax contribution may make additional an additional "catch up contribution". The maximum catch up contribution is \$5,500 for 2009.

A participant may increase, decrease, suspend or resume his or her rate of Before-Tax or Contributions twice per year (January 1<sup>st</sup> or July 1<sup>st</sup>).

Rollover Contributions

An employee (even before meeting the eligibility requirements to participate in the Plan) may make a Rollover Contribution from a qualified plan of a prior employer, or from a "Rollover IRA" (one which previously came from a qualified plan of a prior employer and was subsequently deposited into a "Rollover IRA" account). A Rollover Contribution will be accepted by the Plan provided the rollover is in accordance with the guidelines established by the Plan's Employee Benefits Committee.

## Employer Contributions

### Standard Contribution

The Employer will contribute an amount equal to 5% of each participant's Compensation for the Plan Year provided the participant is employed on the last day of the Plan Year. Participants who retired, died or became disabled during the Plan Year will be eligible for the discretionary contribution.

### Vesting

Before-Tax, Roth and Rollover contributions are 100% vested at all times. All Employer Contributions will vest according to the following schedule for each Year of Service you complete with at least 1000 hours.

Years of Service	Percentage
Less than 2	0%
2	25%
3	50%
4	75%
5	100%

### Forfeitures

Upon distribution of the vested value of a terminated participant's accounts, any non-vested portion of any accounts will be forfeited. Such forfeitures from employer contributions will be applied to reduce the amount of contributions to the plan.

### Investment Accounts

Participants have the right to direct amounts contributed by them, or by the Employer on their behalf to any of the Plans investment options in multiples of 1%. In addition, participants have the right to change the investment direction of future contributions on an unlimited basis.

### Transfers Between Options

Participants have the right to transfer multiples of 1% of the net value of their accounts in the investment funds to any one or more of the other investment funds on an unlimited basis.

## Withdrawals During Employment

### Non-Hardship Withdrawal

While in active service, participants may withdraw once per Plan Year, all or a portion of the net vested value of their accounts, in the following order of priority:

1. Before-Tax Contribution Account, upon the Participant's attainment of age 59 1/2;
2. Rollover Contribution Account, upon the Participant's attainment of age 59 1/2;
3. Employer Standard Contribution Account (vested value), upon the participant's attainment of age 59 1/2 (if applicable);

### Hardship Withdrawal

Due to a "hardship" event (i.e., "immediate and heavy financial need" as defined by IRS regulations), subject to approval by the Plan's Employee Benefits Committee and other requirements of IRS regulations, and after withdrawing the maximum amount available under A., above, participants may withdraw, once per Plan Year, all or a portion of the net value of the vested interest in their accounts, in the following order of priority:

1. Before-Tax Contribution Account (exclusive of investment earnings);
2. Rollover Contribution Account;

Contributions will be suspended for 6 months upon acceptance of a Hardship Withdrawal unless the employee signs an affirmation that the "immediate and heavy financial need" cannot be relieved from other sources reasonably available to the employee (including liquidation of assets, ceasing elective plan contributions, by taking other available plan distributions and loans from any Employer plan, or by taking out a commercial loan in an amount sufficient to satisfy the need).

**Note:** A mandated 10% additional federal tax applies to all taxable Plan distributions before age 59 1/2, unless such distribution is in the event of:

- death
- total and permanent disability
- retirement or termination, at or after age 55
- deductible medical expenses
- a Qualified Domestic Relations Order

### Loans

Loans are permitted, subject to applicable law and IRS regulations. Participants are permitted no more than one (1) outstanding loan at any time. Loan repayments are made through payroll deductions. The participant will pay loan origination fees and annual maintenance fees. Participants may borrow from the net value of their accounts in the following order of priority:

1. Before-Tax Contribution Account;
2. Rollover Contribution Account;

*(The interest rate on a loan is the prime rate as set forth in the first publication of The Wall Street Journal issued during the month in which the loan is requested, rounded to the nearest 1/4%.)*

The minimum loan amount is \$1,000.

The maximum loan amount is the lesser of:

1. 50% of a participant's vested accounts at the time of the loan request, or
2. \$50,000, reduced by the highest outstanding loan balance during the preceding 12 months.

The maximum term of a loan is five years, unless the loan is used for the purchase of a primary residence, in which case the term can be for a period of up to fifteen years.

### **Distribution of Accounts Due to Termination of Employment**

If a participant's accounts are \$1,000 or less upon termination of employment, payment will be in the form of a lump sum as of a valuation date as soon thereafter as administratively possible.

If upon termination of employment, a participant's accounts exceed \$1,000, payment will be deferred to Normal Retirement Date, unless the participant elects one of the following optional forms of payment:

- Lump sum payment as of a valuation date following the date of termination of employment. (Note: lump sums are subject to a mandatory 20% income tax withholding and a statutory 10% additional federal tax if paid before age 55.) A participant "Rollover" is permitted within 60 days of

distribution to an Individual Retirement Account (IRA), or another employer's plan (if permitted by that plan).

- Direct "Rollover" from the Plan to another employer's plan (if permitted by that plan).

#### **Distribution of Accounts due to Death, Disability or Retirement**

A participant's Normal Retirement Date shall be the attainment of age 55.

Total and Permanent Disability shall mean the inability to perform the occupation of the employee at the onset of the disability.

If a participant's accounts are \$1,000 or less upon termination of employment, payment will be in the form of a lump sum as of a valuation date as soon thereafter as administratively possible.

If termination of employment is due to Normal, Early or Postponed retirement, death, or Total and Permanent Disability, and a participant's account exceeds \$1,000, distribution of the participant's accounts will be made upon the participant's attainment of Normal Retirement Date, unless the participant or beneficiary elects (within 30 days of receipt of an election notice) to further defer distribution beyond Normal Retirement Date to a Postponed Retirement Date (subject to an IRS minimum distribution of benefits requirement following attainment of age 70 1/2), or unless the participant or beneficiary elects one of the following optional forms of payment:

- Lump sum payment as of any valuation date following the date of termination of employment. (Note: lump sums are subject to a mandatory 20% income tax withholding and a statutory 10% additional federal tax if paid before age 55.) A participant may "Rollover" this amount within 60 days of distribution to an Individual Retirement Account (IRA), or another employer's plan (if permitted by that plan).
- Direct "Rollover" from the Plan to another employer's plan (if permitted by that plan).
- Monthly, quarterly, semi-annual or annual installment payments commencing on a date selected by the participant over a period not to exceed 10 years or the life expectancy of the participant (subject to a statutory 10% additional federal tax if paid before age 55.)

#### **Account Statements**



Each participant will receive a statement showing the value of his or her Plan accounts on a quarterly basis.

**ISSUE NO. 10B  
CBA - ARTICLE XXI  
(Pension Section 5.1(a))**

**Maximum Pension – Defined Benefit Plan**

The Town's Last Best Offer as to Issue No. 10B is as follows:

“Effective upon issuance of the award in Case No. 2010-MBA-104, the maximum pension an employee shall be eligible for shall be capped at sixty-five (65%) percent of the employees Final Average Compensation; employees who as of June 30, 2011 have years of service which would entitle them to a pension greater than sixty-five (65%) percent shall be grandfathered at the rate (years of service times 2.5%) they had as of June 30, 2011.”

**ISSUE NO. 11  
ARTICLE XXII**

**Duration**

The Town's Last Best Offer as to Issue No. 11 is as follows:

"2013"

THE TOWN OF WESTPORT  
 AND  
 COUNCIL #4, AFSCME, AFL-CIO  
 LOCAL 1303-385  
**PUBLIC WORKS**

List of Issues

<u>Issue No.</u>	<u>Art./Sec.</u>	<u>Proponent</u>	<u>Description</u>	<u>Award</u>
1	CBA Art. IV, Sec. 4	Joint	Emergency Call In	Town – Early Starts
2A	CBA Art. V, Sec. 1	Union	2009-10 Wages	Town – 0%
2B	CBA Art. V, Sec. 1	Union	2010-11 Wages	Town – 2%
2C	CBA Art. V, Sec. 1	Union	2011-12 Wages	Union – 2.5%
2D	CBA Art. V, Sec. 1	Union	2012-13 Wages	Town – 2.5%
3A	CBA Art. V, Sec. 4	Town	PPO Plan Design	Town – Same as Fire & WMEU
3B	CBA Art. V, Sec. 5	Town	Alternative Health Plan	Town – HRA
3C	CBA Art. V, Sec. 5	Town	Change in Carriers	Town
3D	CBA Art. V, Sec. 7	Town	Employee Contributions	7/1/09 – 7% not retro 7/1/10 – 9% not retro 7/1/11 – 11% (retro) 7/1/12 – 13%
4	CBA Art. V, Sec. 9 (new)	Union	Physicals	Town
5	CBA Art. IX, Sec. 3	Town	Injury Leave – Workers Comp Supp.	Town – 20 day waiting period

6	CBA Art. IX, Sec. 9	Union	Personal Days	Town – 3
7	CBA Art. X, Sec. 2	Town	Arbitral Forum	Town – AAA
8	CBA Art. XVII	Town	Management Rights	Town
9	CBA Art. XVIII	Town	Subcontracting	Withdrawn
10A	CBA Art. XXI (Pension Art. 1)	Town	Defined Contribution Plan	Town
10B	CBA Art. XXI (Pension 5.1(a))	Town	Maximum Benefit	Town – 65%
11	CBA Art. XXII	Joint	Duration	Town – 4 years

# MEMORANDUM

BACK UP MATERIAL  
RTM ITEM # 2

To: Gordon Joseloff, First Selectman  
cc: Hadley Rose  
From: Floyd J. Dugas, Esq.  
Re: Public Works Interest Arbitration Award  
Date: March 26, 2012

---

The following is a summary of the arbitration award settling the labor contract between the Town and the Public Works bargaining unit for the period 2009-2013:

## Issue No. 1 -- Emergency Call Ins

By way of its proposal, the Union sought to increase the current minimum call in pay from 3 hours to 4. The Town sought to amend the language to allow the Public Works Supervisors to dispatch personnel as soon as they arrive in the case of an early call in due to weather related emergencies, without having to pay the 3 hour minimum. The arbitrators selected the Town's last best offer over the Union's stating that it is not only "practical" but "reasonable."

## Issues No. -- 2A, 2B, 2C and 2D -- Wages

The arbitrators selected the Town's last best offer on three out of the four issues regarding wages, including the Town's last best offer in the first year for a general wage freeze:

2009-10	0%	(Town prevailed)
2010-11	2.0%	(Town prevailed)
2011-12	2.5%	(Union prevailed)
2012-13	2.5%	(Town prevailed)

These numbers are actually lower than what the Town offered to the Union in negotiations and the Union rejected. It should also be noted that those employees not at the top step were already advanced a step on each of July 1, 2009, 2010 and 2011, so that has already been factored into and absorbed in the budget. The two percent increase for 2010-11 is not retroactive. The 2.5% increase for 2011-12 is retroactive. The base payroll for the bargaining unit is roughly \$1,800,000, thus each 1% increase will cost the Town approximately \$18,000.

Issues No. 3A, 3B, 3C and 3D – Insurance

In Issue 3A, the arbitrators awarded the Town the same increases in the medical plan co-payments and deductibles as previously agreed to by the Fire and WMEU Unions, e.g. \$15 Office Visit Co-Pay, \$20 effective 7/1/12; \$150 In-patient hospitalization, \$100 for Out-Patient procedures; \$75 Emergency Room Co-Pay and \$50 for Urgent Care.

Issue 3B incorporates the same HRA alternative plan as Fire and WMEU have.

Issue 3C adds language allowing the Town to change carriers provided the replacement plan is “substantially equal on an overall basis.”

Issue 3D provides for the following premium cost share contributions; presently employees pay just 5%:

7/1/09	7%	(Not retroactive)
7/1/10	9%	(Not retroactive)
7/1/11	11%	(Retroactive)
7/1/12	13%	

Issue No. 4 – Physicals

In Issue No. 4, the Union sought to require that the Town pay all cost (over and above what the health plan covers) associated with the annual physicals required to maintain commercial driver’s licenses. The language was rejected by the arbitration panel.

Issue No. 5 – Workers’ Compensation Differential

As is common in municipal contracts in Connecticut, the contract between the parties requires the Town to pay the difference between an employee’s regular salary and what he is entitled to under the Workers’ Compensation Act. The Town is obligated to pay the differential for up to two years.

In an effort to control Workers’ Compensation costs, the Town proposed that the differential would only be paid after 20 days absence from work. In the majority of Workers’ Compensation claims, lost time is less than 20 days. The arbitrators found this proposal reasonable, thus selected the Town’s last best offer.

Issue No. 6 – Personal Days

Bargaining unit members are currently entitled to three personal days per year. The Union sought to increase that number to 4. Most public sector employees enjoy either two or three days. The Panel rejected the Union’s effort to increase this benefit.

### Issue No. 7 – Arbitral Forum

In Connecticut, public employees have two primary choices for grievance arbitrations: (1) the State Board of Mediation and Arbitration (“SBMA”) and (2) the American Arbitration Association (“AAA”).

In addition to being more flexible in certain procedures, AAA is more costly. Experience shows the added cost reduces the number of frivolous and minor grievances filed by a union. The arbitrators accepted the Town’s proposal to replace SBMA with AAA. It is the expectation that this will reduce the number of grievances filed for arbitration, therefore the direct and indirect (lost work time) cost associated with the filing of grievances for arbitration.

### Issue No. 8 – Management Rights

The Town sought and was awarded a more expanded management rights clause strengthening the right of the Public Works management to more effectively run the department.

### Issue No. 9 – Subcontracting

This issue was withdrawn by the Town during the arbitration process.

### Issues No. 10A and 10B – Pension

Issue 10A – by way of Issue 10A, the Town for the first time has won the right to provide the Town Defined Contribution Plan, rather than the existing Defined Benefit Plan, for new hires. Unlike the pension plans for WMEU and Fire, which “locked out” any changes to those plans until 2014 and 2016 respectively, the Public Works pension does not include a similar provision. You will recall with WMEU and Fire, the arbitrators ruled the Town could not propose such a change.

Issue 10B – by way of Issue 10B, the Town sought to cap the maximum pension Public Works employees could earn at 65% of final average compensation. Presently, employees can earn up to 81.25%. In order not to “hurt” any existing employees who had already accrued more than 65%, the Town’s last best offer “grandfathered” any employees with more than 65% as of 7/1/11 at the percentage in effect on that date, i.e. if they had earned 75% as of 7/1/11, they can still receive a benefit up to that amount, but not more. My understanding is as few as one and no more than a few employees were eligible for more than 65% as of 7/1/11.

Had the Town not opted for strategic purposes to grandfather this group, the anticipated actuarial saving was estimated to be roughly \$1,000,000. While we do not know what the savings will be with the “grandfathering,” it is believed to still be nearly \$1,000,000.



### Issue No. 11 – Duration

While the Town sought a four year agreement, the Union sought a three year agreement. Once again, the arbitrators sided with the Town. Had it not, the parties would have been required to commence negotiations immediately for a new contract. The award moves that date forward to next Spring.

### Conclusion

Overall, this is a very good award for the Town. Nonetheless, the RTM (as Legislative body) has the right under the law to reject the award in which case a second panel of arbitrators will be appointed to review the decision of the first panel. It is estimated that in 85% of all cases, second panels affirm the decision of the first panel. A two-thirds vote is required to reject. The RTM does not have to vote to accept the award. It becomes effective automatically if not rejected within 25 days of receipt (March 22, 2012).

**From:** Garten, Helen A.  
**Sent:** Friday, March 23, 2012 11:20 AM  
**To:** Lowenstein, Richard A.  
**Subject:** Fw: DPW arbitration award  
Here's the summary Floyd prepared.

BACK UP MATERIAL  
RTM ITEM # 2

----- Original Message -----

**From:** Helen A. Garten  
**To:** [Reabof@aol.com](mailto:Reabof@aol.com) ; [Brian Stern](mailto:Brian Stern) ; [oaktop@optonline.net](mailto:oaktop@optonline.net) ; [avikaner@mortonwilliams.com](mailto:avikaner@mortonwilliams.com) ; [Lasersohn, Tom](mailto:Lasersohn, Tom) ; [jmcollins@optonline.net](mailto:jmcollins@optonline.net) ; [JOHN PINCAVAGE](mailto:JOHN PINCAVAGE)  
**Cc:** [edward.iannone@gmail.com](mailto:edward.iannone@gmail.com) ; [kwirf@aol.com](mailto:kwirf@aol.com) ; [Allyson Stollenwerck](mailto:Allyson Stollenwerck)  
**Sent:** Thursday, March 22, 2012 6:22 PM  
**Subject:** DPW arbitration award

Folks,

The arbitration decision in the Public Works labor negotiation was just released. It is very favorable to the town, including wins on the following issues:

- new employees will go into a defined contribution plan
- benefits for existing employees in the defined benefit plan are capped at 65%

Those are the big news, but there were also some other changes that will save the town money, including:

- increased medical insurance premiums that will kick in immediately for this fiscal year
- some good changes regarding workers compensation

I am including former Board members in this email because the process that led to this award has been going on for more years than we can count! I believe that when negotiations began, Allyson, who was the BoF's first representative, was pregnant and Ed was head of our Labor Subcommittee. Brian took over from Allyson when she went back to full time work, and he took it through the negotiation phase: I took over for the arbitration and I think Steve Edwards, John Kondub and I testified about one year ago! So thank you, Allyson and Ed--I thought you'd want to know.

Helen