

**American Arbitration Association  
Voluntary Labor Tribunal  
Case No. 01-22-0003-5825**

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**IN THE MATTER OF ARBITRATION BETWEEN**

**CITY OF FRAMINGHAM**

**AND**

**FRAMINGHAM FIRE FIGHTERS Local 1652**

**Grievant:** [REDACTED]

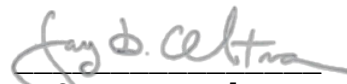
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**AWARD OF THE ARBITRATOR**

The Undersigned Arbitrator, having been designated in accordance with the arbitration agreement entered by the above named parties and having been duly sworn and having duly heard the proofs and allegations of the parties AWARDS as follows:

For the reasons set forth in the attached Decision, it must be concluded that the grievance is arbitrable, and, on the merits, the grievance is sustained. As stated above, any monetary remedy must be based on the date the grievance was filed. Accordingly, as of July 26, 2022 Firefighter [REDACTED] should have been placed on the salary schedule reflecting a start date of August 25, 1996. Firefighter [REDACTED] should receive retroactive payment for that time period until the date he retired. As to whether this retroactive payment will affect his pension, that is a matter that must be addressed by the Framingham Retirement Board.

March 24, 2023  
Boston, Massachusetts

  
Gary D. Altman

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**ARBITRATION DECISION AND AWARD**

**Introduction**

The City of Framingham ("City" or "Employer") and Framingham Firefighters Local 1652 are parties to a Collective Bargaining Agreement ("Agreement"). Under the Agreement, grievances not resolved during the grievance procedure may be submitted to arbitration. The parties presented their case in an arbitration hearing before Gary D. Altman, Esq., on December 21, 2022. The Union was represented by Ally Presskreischer, Esq. & Lea Barrault, Esq., and the City was represented by Kathryn M. Fallon, Esq. The parties had the opportunity to examine and cross-examine witnesses and to submit documentary evidence. The parties submitted written arguments after the close of the hearing.

**Issue**

The parties did not agree to an issue at the outset of the hearing. The Union maintains that the issue should be phrased as follows:

Did the City's actions regarding Firefighter [REDACTED] pay violate Article 6 of the parties' CBA? If so, what shall be the remedy?

The City maintains that the issues raised by the Union's grievance are as follows:

1 Whether the City violated the provisions of the CBA.

2 Whether the grievance should be dismissed as untimely and non-arbitrable.

3 Whether the CBA required the City to readjust FF [REDACTED] 12/07/97 date of hire for salary compensation purposes based on the City's MGL c. 31, §46 request to reinstate FF [REDACTED] on 12/07/97; and relatedly, if the answer to Issue 3 is yes, and the CBA required the City to readjust FF [REDACTED] 12/07/97 date of hire, based on the City's MGL c. 31 §46 reinstatement request on 12/07/97, what is the readjustment formula prescribed in the CBA to calculate the readjustment.

4 Whether the grievance should be dismissed as without merit.

### **Facts**

The facts in the present case are relatively straight forward. The grievant, [REDACTED] began working for the Framingham Fire Department ("Department") on January 14, 1996. Mr. [REDACTED] successfully completed the fire fighter training academy and then worked as a firefighter for the City, without interruption, for fifteen (15) months. The parties' Collective Bargaining Agreement conditions continued employment for newly hired firefighters to become EMT certified within fifteen months from one's date of hire. There is no dispute that Mr. [REDACTED] was unable to complete his EMT certification within the allotted time, and as a result he was terminated from the Department on April 28, 1997.

Mr. [REDACTED] was able to complete his EMT training and became a certified EMT on October 16, 1997. Chief [REDACTED]

████████ explained that there was a vacancy in the Department, at that time, and the Department requested the State's Department of Personnel Administration to reinstate Mr. ██████████. Because it was less than five years from his date of termination, the City was able to rehire Mr. ██████████ pursuant to MGL c. 31, §46, without having to obtain an active eligible list of candidates from the Department of Personnel Administration. Mr. ██████████ was rehired on December 7, 1997. There is no dispute that Mr. ██████████ was not paid any salary or any pay for the time period after he was terminated until he was rehired by the Department (04/29/97-12/06/97). Mr. ██████████ then worked for the Department for twenty-five (25) years, and retired on September 24, 2022.

The parties' Collective Bargaining Agreement provides that Firefighters receive a step increase on the salary scale based on "years of "City/Fire experience". There is no dispute that the Department practice has been that firefighters would receive their eligible step increase on their anniversary date from their date of hire. The evidence shows that Firefighter ██████████' anniversary date for receiving his step increases has been December 7, his date of reinstatement, and he then received his contractual step increases based on this anniversary date. This practice, of basing his step increases on the anniversary date of December 7, continued whenever he received a contractual step increase until his retirement.<sup>1</sup>

In Mr. ██████████ personnel file there is a hand written note that on September 9, 2009, Mr. ██████████ seniority date

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<sup>1</sup> In the 2017-2020 Agreement, the parties agreed to restructure the salary schedule and decrease the years needed to advance to the next step. The evidence shows that with this restructuring Firefighter ██████████ still had the anniversary date of December 7.

was adjusted. Apparently, this was done by Assistant Fire Chief [REDACTED]. From the handwriting on this note it states that his "longevity date" and his "vacation date" would be adjusted to August 25, 1996. It appears that the calculation reflected his original hiring date of January 14, 1996, and then subtracted the number of days that he was off the payroll until he was rehired by the Department in December of 1997.

In other words, he was given service credit from the date of his original hire minus the time he was off the payroll due to his termination for not having received his EMT certification, until he was rehired. There was no mention on this note that his anniversary date for step increases was to be changed to this new adjusted date. There was no actual written explanation or testimony from either Assistant Chief [REDACTED] or Firefighter [REDACTED] as to what led to the genesis of this change.

In 2016 a question arose from one of the administrative staff with regard to Fire Fighter [REDACTED] anniversary date; whether it was in 1996 or 1997 for purposes of his vacation eligibility. On January 25, 2016 then Chief [REDACTED] wrote an email that Firefighter [REDACTED] seniority date "for the purpose of vacation and longevity FF [REDACTED] would "be his civil service date of 8/25/1996, which was consistent with what had occurred in 2009 with Assistant Chief [REDACTED]. Again, there was no mention of changing Fire Fighter [REDACTED]' anniversary date for purposes of his receiving step increases.

The parties reached a successor Collective Bargaining Agreement for 2017-2020. In this Agreement the parties restructured the salary schedule and decreased the years

needed to advance to the next salary schedule. The evidence shows that with this restructuring of the salary schedule, the resulting changes in salary, and retroactive payments paid to Mr. ██████ were based on the anniversary date of December 7. Until the present grievance, there was never any grievance filed challenging December 7, 1997 as being his anniversary date for purposes of his salary step placement.

Union President ██████ testified that Firefighter ██████ approached him in July 2022, about his upcoming retirement and mentioned his step placement. Mr. ██████ stated Firefighter ██████ did not know that his anniversary for step placement was not adjusted at the same time his longevity and vacation dates were adjusted. Mr. ██████ testified that when there were lateral hires into the Fire Department, they had received credit for their prior work experience, and he believed that Firefighter ██████ should also have been given credit for his fifteen months of service before he was terminated. Chief ██████, on the other hand, explained that under Massachusetts Civil Service Law firefighters hired into the Department as lateral transfers from other departments had to receive credit for the prior service. Chief ██████ stated that as far as he knew Firefighter ██████ was the only one who had been terminated before he was rehired, and was not a lateral transfer.

Mr. ██████ stated that sometime in early July of 2022, he had a conversation with Fire Chief ██████. Mr. ██████ explained that they discussed Mr. ██████ pay step and his adjusted start date was discussed. There was no agreement to change the December 7, anniversary date for

Mr. [REDACTED] to an earlier date. On July 26, 2022 the Union filed a grievance for Firefighter [REDACTED], which alleged:

Nature of Grievance: Local 1652 and Firefighter [REDACTED] believe Articles VI and XII of the CBA have been violated. Article VI Exhibit A states " Step 7 to reflect the start of the 26 years of City/Fire Service Experience". FF [REDACTED] was hired Jan 14th 1996 and resigned from the department April 20th 1997. He was rehired Dec 7th 1997. Civil service gave FF. [REDACTED] credit for his time of service from Jan 96 to April of 97 and moved his seniority date to August of 1996. We believe that FF. [REDACTED] should receive all pay benefits in line with his August 1996 date and not his December 1997 date.

The grievance was filed with Chief [REDACTED] Chief [REDACTED] denied the grievance, and the Union then submitted the grievance at Step 2 with the City's Human Resources Director. Mr. [REDACTED] testified that in the past the Union had filed step 2 grievances with the Human Resources Department, as it believed that the Human Resources Department is the designee of the Mayor. Chief [REDACTED] stated that he did not know who had been designated as the Mayor's designee. The Union did not receive a response, and on August 22, 2022 the Union filed a demand for arbitration. On September 24, 2022, Firefighter [REDACTED] retired from service from the Framingham Fire Department. At the time of his retirement he was on Step 6 of the salary schedule.

**Relevant Provisions of the Collective Bargaining Agreement**

Article VI - Salaries

All employees covered by this Agreement shall be paid in accordance with the attached salary schedules. See Exhibit A.

For the purpose of Exhibit A:

Step 5 to reflect the start of 12 years of City/Fire Service Experience

Step 6 to reflect the start of 20 years of City/Fire Service Experience

Step 7 to reflect the start of 26 years of City/Fire Service Experience

Step 8 to reflect the start of 27 years of City/Fire Service Experience

Step 9 to reflect the start of 28 years of City/Fire Service Experience”

Article IV Section 2 - Allowance for Vacation Leave

Any full-time permanent employee on the payroll as of December 31, hired in that calendar year, and who continues on the payroll through June 1 of the year following the date of hire, but has less than twelve (12) months service with the City as of June 1, shall be granted one (1) week's vacation leave plus an additional day of vacation for each full calendar month worked in the preceding year but not to exceed a total of two (2) weeks of vacation leave.

Vacation leave of two (2) weeks with pay shall be granted to such employee who has been employed by the City for at least one (1) year but less than five (5) years. Eligibility for vacation shall be effective June 1 for those employees with less than two (2) years of service

A. Vacation leave of three (3) weeks with pay shall be granted to such employee who has been employed by the City for a minimum of five (5) years but less than ten (10) years. Eligibility for the third week of vacation shall be effective after anniversary date of such employee.<sup>2</sup>

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<sup>2</sup> The remaining paragraphs on vacation grant additional vacation based on “anniversary date”



Article XXIV-Longevity

Longevity pay shall be paid to any permanent employee in the City service covered by this Agreement as following

Years of Service	Longevity Pay (JLMC-10/2021)
10	\$400.00
15	\$450.00
20	\$500.00
25	\$550.00
30	\$600.00
35	\$650.00

Longevity pay shall be due and payable within thirty (30) days after the anniversary date of completion of said years of service.

**Position of the Parties**

Summary of the Union's Arguments

The Union first maintains that the grievance is procedurally arbitrable. The Union states that the City's contention that the Union did not follow the grievance procedure and that the grievance was not filed in a timely manner, are without merit. The Union states that after the Chief's denial of the grievance at Step 1, it submitted the Step 2 grievance to the City Human Resources Department, which it had done in the past, and believed it was the Mayor's designee for responding to Step 2 grievances. The Union states that the City certainly knew of the Union's grievance and chose not to answer. The Union argues that any contention that the grievance process was not followed is without merit.

The Union argues that the grievance is timely. The Union contends that arbitrators have long recognized that a

grievance disputing whether an employee has been paid the wrong rate of pay is a continuing violation, which arises each time the employer pays the employee the wrong rate of pay. The Union further states that there is no evidence that Firefighter [REDACTED] knew he was receiving the wrong rate of pay or was at the wrong step of the salary schedule until he was nearing his retirement, when he realized that he was not at the correct salary step and a grievance was then filed. The Union, thus, claims that the grievance is procedurally arbitrable.

The Union argues that Firefighter [REDACTED], when he returned to work for the Framingham Fire Department in December 1997, was not given credit for his prior fifteen months of service with the Department, which he had earned before he was terminated in April 1997. The Union argues that there is nothing in the parties' Agreement that requires one's experience in the Fire Department to be continuous. The Union maintains that the Department should have considered Firefighter [REDACTED] fifteen months of prior service with the Department. The Union states that this error in establishing his anniversary date was corrected in September of 2009, when then Assistant Chief [REDACTED], after reviewing Firefighter [REDACTED] personnel records, awarded him credit for his prior fifteen months of service, and adjusted Firefighter [REDACTED] anniversary date to be August 25, 1996.

The Union argues that this adjustment meant that Firefighter [REDACTED] should have received step increases based on the August 25, 1996 date and not December 7, 1997. The Union claims that the Department's failure to change Firefighter [REDACTED] anniversary date for the purpose of salary step increases meant that Firefighter [REDACTED] did not

receive step increases when he should have received such increases and was placed at the wrong step of the salary schedule for many years. The Union claims that this mistake by the Department resulted in Firefighter [REDACTED] being deprived of a significant amount of money over the years. The Union further states that if Firefighter [REDACTED] was placed on the correct salary step, the computation of his retirement would have been higher, since his last three years of service would have been at a higher rate of pay.

The Union concludes that the grievance should be sustained, and that Firefighter [REDACTED] anniversary date for purposes of step increases be changed to reflect the adjusted date of August 25, 1996. The Union further claims that the City must make Mr. [REDACTED] whole by retroactively compensating him for the years he was not paid at his proper wage step, and reflecting that he had in fact reached wage step seven (7) prior to his retirement.

#### Summary of the City's Arguments

The City maintains that the grievance is not procedurally arbitrable for two distinct reasons. First, the City claims that the Union did not follow the contractual grievance procedure in submitting the present grievance. Specifically, the City states that Article IX of the parties' Collective Bargaining Agreement provides that Step 2 of the grievance procedure must be filed with the Mayor or his designee, and at no time has the City ever indicated that the Human Resource Office is the Mayor's designee for purposes of filing Step 2 grievances. The City thus maintains that since the Union did not properly file the grievance with the Mayor the grievance must be dismissed as being procedurally inarbitrable.

The City also states that the grievance is untimely, as the second reason the grievance is procedurally inarbitrable. The City maintains that when Firefighters are eligible to advance a step on the salary schedule, the advancement has always been effective on the Firefighter's anniversary date. The City states that since Firefighter [REDACTED] returned to employment with the Fire Department his anniversary date for step movement has been December 7, and this has remained the case for his entire service with the Department until he retired.

The City states that in 2007, when there was an agreement with an Assistant Chief and Fire Fighter [REDACTED] to change his anniversary date, it was only for purposes of computing vacation and longevity. His anniversary date, for purposes of step advancement on the salary schedule, remained December 7, and he continued to receive step increases at that time. The City states that at no time did Firefighter [REDACTED] ever file a grievance contending that he was placed on the wrong salary step, or that he was not receiving the correct rate of pay. The City states that Mr. [REDACTED] certainly knew his rate of pay and his salary step over the years, and that waiting more than twenty years to allege there was a mistake is well past the contractual twenty-one day time period for filing a grievance, and the grievance should be dismissed as untimely.

The City argues that there is no merit to the Union's grievance. The City contends that there is no provision in the Agreement that requires the City to adjust Firefighter [REDACTED] date of hire from December 7, the date that he was rehired, to an earlier date. The City states that Mr. [REDACTED] was discharged in April of 1997 and there is no provision in the collective bargaining agreement that

states that his anniversary date should be anything other than his rehire date.

The City states that the arrangement made with Assistant Chief [REDACTED] in 2009 to readjust Firefighter [REDACTED] seniority was specifically limited to longevity and vacation benefits. The City states that all that exists is a handwritten note on a piece of paper that there would be a readjustment to August 25, 1996 for purposes of longevity and vacation. The City states that neither Firefighter [REDACTED] nor Assistant Chief [REDACTED] testified in this proceeding. Thus, the City argues that it cannot be concluded that this arrangement was ever intended to change Firefighter [REDACTED] anniversary date for step increases, and, in fact, for the next thirteen years, December 7, remained the date by which step increases were provided to Firefighter [REDACTED].

The City also states that the Union's effort to show that the start date for employees who transferred from other City Departments, reverted to the date that they started service with the City, and not the date they began with the Fire Department, is not relevant. Specifically, the City maintains that in these situations there was not a break in service for these employees, unlike the case with Firefighter [REDACTED] whose employment was terminated before he was rehired. Similarly, the fact that Firefighters, who transferred from other Departments, were placed on steps of the salary schedule that reflected their years of service is also not comparable to Firefighter [REDACTED] situation. These other employees, the City maintains, under Civil Service Law had to receive credit for their prior service, which was not the case with Firefighter [REDACTED]. Moreover, the City argues that one's Civil Service Anniversary date

is set by law, and does not control the date by which employees receive step increases under the parties' Collective Bargaining Agreement.

## **Discussion**

### **I. Procedural Arbitrability**

The City raises two arguments that the grievance is not procedurally arbitrable. The City states that the grievance was not filed with the proper entity at Step 2 of the grievance procedure, and, second, that the grievance was not filed in a timely manner.

The City maintains that Step 2 of the grievance procedure requires the Union to file its grievance with the Mayor or the Mayor's designee, and that the Mayor never designated the City Human Resource Department to serve as the Mayor's designee. There is no dispute that the Union filed the present grievance with the City's Human Resource Department, and there is no claim that the Human Resource Department did not receive the Step 2 grievance. The City certainly knew of the Union grievance, and it would elevate form over substance to conclude that the Union did not properly pursue the grievance. The City certainly had the opportunity to respond to the grievance, but it chose not to do so.

The next issue of procedural arbitrability is whether the Union should be barred from pursuing the present grievance due to the timeliness of the grievance. The first examination must be of the terms of the parties' Agreement. The time requirements of the grievance procedure, Article IX places important obligations on the participants of the grievance process. The time periods are important contract provisions. They reflect the parties' agreement on how to proceed with grievances. Article IX requires a grievance to

be filed "in writing by the Union with the Chief or his Designee within twenty-one (21) days of the occurrence of the event upon which the grievance is based." The time periods, therefore, are as much a part of the Agreement as any other terms. It is therefore inappropriate to ignore procedural requirements simply to respond to the merits of a grievance.

There can be no question that the genesis of the grievance occurred in 1997, when the Union alleges that the Department miscalculated the step placement of Firefighter [REDACTED] by not crediting him with his prior fifteen months of service with the Department. Indeed, if the Union were now pursuing an alleged contract violation which had a definite beginning and ending point in 1997, it would be too late to now raise this issue in a grievance filed in 2022. Arbitration precedent, however, recognizes disputes that are considered as continuing contract violations. "Continuing violations of the agreement (as opposed to a single isolated and completed transaction) give rise to continuing grievances ... arbitrators have permitted the filing of such grievances at any time, this not being deemed a violation of the specific time limits..." Elkouri and Elkouri, How Arbitration Works, 4th ed. p. 197.

An alleged wrongful denial of the appropriate wage rate or improper calculation of an employee's seniority recurs every time an employee is paid the wrong rate of pay or receives a benefit based on the alleged incorrect seniority calculation. In other words, each day the violation occurs is considered a new event which can trigger the filing of a grievance. A continuous violation is distinguishable from disciplinary actions or the failure to promote, events which are completed and defined by a

specific date. The present case, however, is not a case that can be considered to have concluded in 1997. The present grievance raises what must be considered a continuing contract violation. The dispute is therefore distinguishable from incidents which are completed and defined by a specific date.

The determination, however, that the grievance is arbitrable does not mean that the Union should be able to obtain a monetary remedy from the date of the first alleged violation. Although the alleged breach of the Agreement may be continuing, occurring each day the grievant has allegedly not been paid the appropriate rate of pay, any remedy, should a violation be found, would not be retroactive, any such adjustment in salary would begin on the date that the grievance was filed.

## II. Merits of the Grievance

Article VI, sets forth the salary steps for Framingham Firefighter and provides that firefighters will receive the next step based on "years of City/Fire Service Experience". The City states that Firefighter [REDACTED] was rehired on December 7, 1997, and that became his anniversary date for determining future step increases. The Union, on the other hand, states that there is nothing in the Agreement that requires that one's experience must be continuous, and that Firefighter [REDACTED] should have been credited with his firefighter experience before he was terminated.

What is interesting about this case is that in September 2009, the Department readjusted Firefighter [REDACTED] date of hire from December 7, 1997 to August 25, 1996. This action gave Firefighter [REDACTED] credit from his original date of hire, but subtracted the 105 days that he was off the payroll until he was reinstated on December 7,



2007. The handwritten note stated that this was for purposes of longevity and vacation. A question arose as to Firefighter ██████ vacation in 2016, and the Chief at that time confirmed that his hiring date for vacation purposes should be August 25, 1996.

There has been mention of provisions of MGL ch. 31, Massachusetts Civil Service Law, and MGL ch. 32, Massachusetts Retirement law. These statutory provisions, however, have no significance as to the issue as to whether Firefighter ██████ should have been credited with his prior service time for purposes of determining when he received step increases. This is a matter that must be determined by reviewing the terms of the parties' Collective Bargaining Agreement.

Article VI of the parties' Agreement provides that step advancement will be based on "years of City/Fire Service Experience". There is nothing in the parties' Agreement that requires that this be continuous service. I agree, as the City asserts, that there is nothing in the Agreement that requires credit for an employee's time worked prior to one's discharge. Indeed, a different result may have resulted if the Department did not grant Firefighter ██████ service credit for purposes of longevity and vacation, contractual benefits that are also based on a Firefighter's active service with the Department. There is no logical or rational reason why Firefighter ██████ should not have also been credited for his step placement, which under the terms of the parties' Agreement is based on one's experience as a Firefighter with the Town of Framingham.<sup>3</sup>

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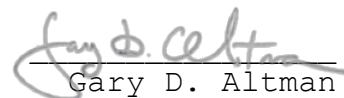
<sup>3</sup> The City introduced exhibit City 2, which addresses bridging of service after an employee leaves City employment and then returns. This policy does not apply to Union

It must be stated that this appears to be a very unique case where a Framingham Firefighter was discharged because he did not receive his EMT certification, but was rehired within a few months once he received his EMT certification. It would have been helpful if there were examples of other Framingham Firefighters who had been let go after they did not receive their EMTs, and were then reinstated, but no examples were cited. Reviewing the records, it appears that it was expected that Firefighter [REDACTED] would be returned to service once he received his EMT certification. Specifically on April 30, 1997 Chief [REDACTED] in a memo to the Department regarding Firefighter [REDACTED] termination for failure to obtain his EMT certification, stated "we look forward to his return to duty as a Framingham Firefighter in the very near future".

**Conclusion**

Based on all the factors, it must be concluded that the grievance is arbitrable, and, on the merits, the grievance is sustained. As stated above, any monetary remedy must be based on the date the grievance was filed. Accordingly, as of July 26, 2022 Firefighter [REDACTED] should have been placed on the salary schedule reflecting a start date of August 25, 1996. Firefighter [REDACTED] should receive retroactive payment for that time period until the date he retired. As to whether this retroactive payment will affect his pension, that is a matter that must be addressed by the Framingham Retirement Board.

March 24, 2023  
Boston, Massachusetts

  
Gary D. Altman

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employees whose conditions of employment are controlled by the terms of the parties' Collective Bargaining Agreement.