

STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION

_____)	
In the Matter of)	Interest Arbitration Award
Waterbury Board of Education)	Under Section 10-153f
-and-)	Connecticut General Statutes
Waterbury Teachers' Association)	January 17, 2019
_____)	

ARBITRATION AWARD

Arbitration Panel:

Leslie A. Williamson, Jr., Esq., Chair
Representing the Interests of the Public

John M. Romanow, Esq.,
Representing the Interests of the Waterbury Board of Education

Gail McKinley-Anderson
Representing the Interests of the Waterbury Teachers' Association

Appearances:

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CONTENTS

- I. The Proceedings
- II. Statutory Factors
- III. Facts Applicable to All Issues
- IV. Issues in Dispute--Summary
- V. Disputed Issues, Discussion and Award
- VI. Written Dissent
- VII. Agreed Upon Language
- VIII. Arbitrators' Signatures and Oaths

I. The Proceedings

The Waterbury Board of Education (hereinafter Board) and the Waterbury Teachers' Association (hereinafter Association) are parties to a Collective Bargaining Agreement covering the period July 1, 2016 to June 30, 2019. Pursuant to the applicable provisions of Section 10-153a *et seq.* of the Connecticut General Statutes, as amended, the parties commenced negotiations on a successor agreement. Unable to resolve certain disputed issues in either negotiations or mediation, the parties submitted the matter to arbitration.

In accordance with the timelines of the aforementioned statute and pursuant to Notice sent by the Connecticut Department of Education, the Arbitration Panel commenced the arbitration proceeding on December 3, 2018. This initial session was administrative in nature. Subsequent duly noticed hearings were scheduled for and held on December 17, 2017 and December 20, 2018. In accordance with statutory requirements, all hearings were held in the school district; specifically, at the offices of the Board. The arbitration proceedings were declared closed effective December 28, 2018.

At the hearings, the parties were provided with a full opportunity to introduce evidence, examine and cross-examine witnesses and to make argument. The following witnesses testified under oath: Doreen Biolo, Chief Financial Officer, Board of Education; Sarah Geary, Policy and Budget Management Specialist, City of Waterbury; Michael LeBlanc, Director of Finance, City of Waterbury; and, Neil O'Leary, Mayor, City of Waterbury; Darren Schwartz, Chief Academic Officer, Board of Education; Kevin Egan, teacher and President of the Waterbury Teachers' Association; and, George Flaherty, Jr., teacher Waterbury Public Schools. A stenographic record of the proceedings was taken and transcribed.

Both parties filed timely, well-crafted post-hearing briefs. On January 7, 2019, the Arbitration Panel met in executive session to deliberate the disputed issues. A further executive session phone conference was held on January 11, 2019. This Award follows the thoughtful deliberation of the Panel after careful study of the record in its entirety, including all evidence, testimony and argument submitted by the parties, whether or not specifically referenced herein.

II. Statutory Factors

Section 10-153(c)(4) of the Connecticut General Statutes sets forth the factors to be considered by the arbitration panel when selecting between the parties' last best offers on each disputed issue. In pertinent part, the Section reads as follows:

In arriving at a decision, the arbitrators or the single arbitrator shall give priority to the public interest and the financial capability of the town or towns in the school district, including consideration of other demands on the financial capability of the town or towns in the school district. In assessing the financial capability of the town or towns, there shall be an irrebuttable presumption that a budget reserve of five percent or less is not available for payment of the cost of any item subject to arbitration under this chapter. The arbitrators or single arbitrator shall further consider, in light of such financial capability, the following factors: (A) The negotiations between the parties prior to arbitration, including the offers and the range of discussion of the issues; (B) the interests and welfare of the employee group; (C) changes in the cost of living averaged over the preceding three years; (D) the existing conditions of employment of the employee group and those of similar groups; and (E) the salaries, fringe benefits, and other conditions of employment prevailing in the state labor market, including the terms of recent contract settlements or awards in collective bargaining for other municipal employee organizations and developments in private sector wages and benefits.

III. Facts Applicable to All Issues

This section contains general facts that were considered by the Panel, if applicable, on each of the issues in dispute. For ease of review, they are organized consistent with the statutory factors listed in Section II.

(A) Public Interest

The statute does not define the term public interest. Rather, it provides the parties and the Arbitration Panel with the flexibility to determine the public interest based upon the uniqueness of and circumstances within each particular municipality.

The City of Waterbury is located in New Haven County. It has a population of approximately 109,211, which is projected to increase to 112,571 by 2020. (Board 61) It operates a PK-12 school district with approximately 19,007 students. (Board 61)

As noted in the June 2017 Comprehensive Annual Financial Report (CAFR):

The City's public school facilities serving approximately 19,000 students include four high schools, three middle schools, a magnet school for grades 6-12, twenty elementary schools, and two alternative schools.... The City and its school system are strongly committed to Pre-Kindergarten through Twelfth Grade Education. (Association 5-2 at v)

Further, the CAFR notes:

The Mayor believes that with the presence of a skilled and educated workforce, affordable real estate, and the convenience and culture of city life balanced by the nearby rural beauty of the countryside, the City will continue to draw interest from investors and developers who see Waterbury as a center for business, education and quality of life. (Association 5-2 at vi)

The Board of Education's Mission Statement echoes the importance of education:

The mission of the Waterbury School System is to establish itself as the leader in Connecticut for urban education reform in partnership with the State Department of Education and the entire Waterbury community. The school system will provide opportunities for all students to maximize their skills and talents in an atmosphere where teaching and learning flourish under the never wavering belief that all students can be exemplary, while becoming respectful, responsible, productive citizens vital to our community. (Association 5-12 at 5)

In order to facilitate the Board's Mission and the Mayor's desire for an educated workforce, there are 1,598 members of the teachers' bargaining unit, represented by the Association. (Board 7) These members provide a full range of educational and instructional services.

There is an inextricable link between an educated population and the economic welfare of the City. In Waterbury, 36% of the population are high school graduates, 8% have associate degrees and 15% have bachelor's degrees or higher. (Board 61)

Clearly, it is in the public interest to support a strong educational, operational and fiscally sound school system. Therefore, it is in the public interest to attract and retain a cadre of well-qualified teachers. The provisions of a collective bargaining agreement play an extremely important part in the recruitment and retention of highly qualified teachers; delineating salary and benefits as well as conditions of employment.

In assessing the public interest, a balance must be struck between a strong educational system, with the concomitant educational benefits derived from the efficient and effective cadre of teachers, and the financial interests of the City. As the Board notes, "it is axiomatic that keeping a municipality solvent is in the public interest." (Board Brief at 15) And, it is because of this balance that the two primary statutory factors which this Panel must consider are public interest and financial capability.

(B) Financial Capability

The Board and the Association have provided the Panel with extensive financial information (See generally: Board 61-132 and Association 5-1 – 5-21j) and analysis (Board Brief at 3-14 and Association Brief at 2-22) In addition, the Panel received testimony from: Doreen Biolo, Chief Financial Officer, Board of Education; Sarah Geary, Policy and Budget Management Specialist, City of Waterbury; Michael LeBlanc, Director of Finance, City of Waterbury; and, Neil O'Leary, Mayor, City of Waterbury.

We begin our general summary of the financial capability with an observation offered by the Board.

Any discussion about Waterbury's current fiscal condition must begin with a historical reference to a City on the brink of bankruptcy approximately fifteen (15) years ago. As a result of an enormous budget deficit and wholly unfunded liabilities, the State Legislature imposed a Financial Oversight Board, which exercised control over Waterbury City management for several years. See S.A. 01-1 (2001). (Board Brief at 3-4, footnote omitted)

Waterbury is no longer on the brink of bankruptcy and is no longer under the management of the Financial Oversight Board. But, it remains one of the least wealthy municipalities in the state. The Association contends, "The City of Waterbury's financial capability is stronger and more stable now than it has been in the past seven years." (Association Brief at 2) This is undoubtedly due, according to the Board, because, "Over the past decade, since the departure of the Oversight Board, Waterbury has implemented myriad, conservative fiscal measures in an effort to ensure the City's financial stability and long-term viability. (Board Brief at 4)

The Connecticut Department of Education has categorized public school systems into distinct groupings called District Reference Group or DRG. Towns and cities in the state are grouped

into nine separate DRGs based on several data indicators: median family income, parental education, percentage of families living with a single parent, percentage of public-school children eligible to receive free or reduced-price meals, percentage of children whose families speak a language other than English at home and the number of students attending schools in the district. Thus, a DRG indicates similar groups of cities/towns based on population and socio-economic indicators such as education, income, occupation and need.

Waterbury is in DRG I, the bottom category of groupings.¹ When evaluating financial capability, traditionally municipalities within the same DRG serve as an appropriate comparison. Additionally, the parties have used a Tier 2 Comparison Group². As appropriate, this factor will be considered.

Waterbury's 2017 population of 108,629 places it 4th, in the middle, of the municipalities in DRG I and at the top in the Tier 2 Comparison groups. (Board 81 and 82)

Its 2016 median household income, of \$39,681 ranks it 4th in DRG I, with Bridgeport at the highest at \$43,137 and Hartford at the lowest with \$32,095. (Board 83) Of the twenty municipalities in the Two-Tier Comparison Group, Waterbury is last. Cheshire ranks first at a median household income of \$108,559. (Board 84)

Other rankings show a similar pattern. In TANF (Temporary Assistance for Needy Families), Waterbury ranks 3rd in DRG I, with monthly average recipients at 3,095. In the Two-Tier Comparison Group, it ranks 1st, with Middlebury the lowest at 4. (Board 85 and 86) As a percentage of population, 2.86% of the population are TANF recipients. In DRG I, Bridgeport has the lowest at 1.49% and Hartford the highest at 3.96%.

In 2016 unemployment rate, Waterbury ranks 2nd in DRG I at 8.1% and 1st in the Tier 2 Comparison Group. (Board 91 and 92) Although in January 2018, it dropped a full per cent to 7.1%.³ (Board 72 at 3)

Waterbury's poverty rate is 25.1%, 4th highest in DRG I and highest in the Tier 2 Comparison Group. (Board Book 2, Exhibits 56 and 57) The 2016 poverty rate in Waterbury was 25.4%, ranking it 5th in DRG I, with Hartford ranked 1st at 31.9% and Bridgeport 7th at 22.1%. (Board 93)

The AENGLC⁴ ranking provides an overall understanding of relative fiscal condition. Waterbury's 2018-19 AENGLC is 167 out of 169. (Board 97) The other cities in DRG I are also

¹ The other towns in DRG I are: Bridgeport, Hartford, New Britain, New Haven, New London and Waterbury. (Board 80)

² The Tier 2 Comparison group consists of: Beacon Falls, Bristol, Cheshire, Hamden, Litchfield, Meriden, Middlebury, Naugatuck, Oxford, Plymouth, Prospect, Southbury, Southington, Thomaston, Torrington, Wallingford, Watertown, Wolcott and Woodbury. (Board 80)

³ An Association exhibit indicates the rate was 6.9% in December 2018. (Association 5-18)

⁴ AENGLC is defined in §10-261(a)(5) of the Connecticut General Statutes as the "equalized net grand list divided by the total population of a town multiplied by the ratio of the per capita income of the town

at the bottom of the statewide data—New Haven, 162; New London, 164; Bridgeport, 165; New Britain, 166; Windham, 168; and, Hartford, 169. (Board 97)

Waterbury's 2016 Mill Rate is 58.22, the second highest in DRG I. (Board 99) It is the highest in the Tier 2 Comparison Group, with Oxford being the lowest at 24.96. (Board 100) Its equalized Mill Rate is 42.58, the highest in Connecticut. (Board 101 and 102) Its current mill rate is just over 60.

Waterbury maintains a Kroll Bond Rating of AA-/Stable (Association 5-5) It was upgraded from A+ to AA- in November 2017. "KBRA's rating action reflects the continued strong fiscal controls of the city, recognition of the city's demographic recovery from the recession, improving tax base, improved reserve position and containment of OPEB liabilities." (Association 5-5 at 1) The rating also noted, under Key Rating Concerns, "Relatively high unemployment rates and poverty rates, and low income per capita. Limit on General Fund reserves through 2022 constrains City's financial flexibility." (Association 5-5 at 2) The Fitch Rating is AA-. (Association 5-6)

In January 2018, Moody's downgraded Waterbury from an A1 to an A2 rating, which, nonetheless, maintained a stable outlook. (Board 72) In its Summary, Moody's noted:

The City of Waterbury...is constrained by high tax rates and fixed cost. In spite of these constraints, the city's narrow financial position has been very stable for over a decade. That stability may be challenged going forward given its very high debt, pension, and OPEB burden and looming uncertainty surrounding state revenue.... (Board 72)

In FY '19, a majority of Waterbury's revenue, 60%, is derived from property taxes, with 34% coming from state aid. (Testimony of Geary, Tr. Vol. 1 at 73-74)

Waterbury has experienced growth in its grand list, which the Board characterizes as modest. (Board Brief at 5) It states, "Over the past four (4) years, the City's net grand list has increased by an average of a little more than 1% per year, which has yielded less than \$11,000,000 in additional property tax revenues over the same timeframe." (Board Brief at 5, footnote omitted) The annual property tax collection rate for FY '17 was 97.45%, which exceeded the budgeted amount of 96%. (Association 5-2 at xv) Property tax collections came in \$4.2 million more than budgeted...." (Association 5-2 at xv)

Waterbury maintains its fiscal health by prudent financial management. We review the last best offers of the parties acknowledging this factor together with the overall financial capability of Waterbury.

to the per capita income of the town at the one hundredth percentile among all towns in the state ranked from lowest to highest in per capita income."

(C) The negotiations between the parties prior to arbitration, including the offers and the range of discussion of the issues

The parties engaged in good faith negotiations and mediation prior to arbitration. During the course of the negotiations they exchanged a number of proposals: resolving some and bringing some to arbitration. Three issues in dispute, numbers 3, 5 and 13, were withdrawn during the arbitration process. (See generally: Board 1 to 3 and Association 4-1a to 4-1n)

(D) Interest and Welfare of the Employee Group

There are 1,598 members of the teachers' bargaining unit. (Board 7) There is a twelve-step salary schedule, with lanes for BA, with 113 teachers; BA+15, with 60 teachers; MA, with 544 teachers; MA+15, with 270 teachers; 6th Year, with 268 teachers; 6th Year +15, with 320 teachers; and, PhD, with 20 teachers. (Association 1-1 and Board 12)⁵ Of the total number of teachers, 420 are on Step 12 of the various lanes. (Board 7)⁶

(E) Cost of living

The national CPI-U for the period January 2016 to October 2018 is 1.3%; 2.1% and 2.4%. Thus, the three-year average, acknowledging November and December data are absent, is 1.93%. (Association 9-1) Using the 12-month periods November 2015-October 2016; November 2016-October 2017; and, November 2017-October 2018, the CPI-U is 1.05%, 2.08% and 2.5% respectively. Thus, the three-year average is 1.88%. (Association 9-2)

(F) The existing conditions of employment of the employee group and those of similar groups

The specifics of this factor are best addressed, as applicable, to appropriate issues in dispute.

(G) The salaries, fringe benefits, and other conditions of employment prevailing in the state labor market, including the terms of recent contract settlements or awards in collective bargaining for other municipal employee organizations and developments in private sector wages and benefits

The specifics of this factor are best addressed, as applicable, to appropriate issues in dispute.

⁵ Three teachers are listed as ROTC and do not appear in the lanes. (Board 12)

⁶ Board 7 was as of 12/5/18. Board 12, which is undated, indicates 421 teachers on Step 12. The difference is not significant.

IV. Issues in Dispute--Summary

The Board and the Association presented with Panel with a four page, comprehensive Issues in Dispute document. This agreed upon document, with its four notations found on page 4, serves as a framework for the issues upon which the parties made their last best offers. We incorporate the document as part of this award. (Joint Exhibit 4)⁷

⁷ The document will be paginated 10-A through 10-D.

V. Disputed Issues, Discussion and Award

This Section sets forth the last best offer of each party on each issue in dispute. The Arbitration Panel is mandated by statute to select either the Board's last best offer or the Association's last best offer on each such issue. As held in *Branford Board of Education vs. Branford Education Association* (No. CV 80179099S, October 10, 1980, Satter, J.):

When the statute requires that the parties submit to the arbitrator their respective positions on each individual issue in dispute between them '*in the form of a last best offer*', it means a form that when accepted, will terminate the contract controversy. This can only be accomplished by the form of the offer being in contract language, so that the arbitrator's choice of one or the other of the offers completes the contract. A last best offer accepted by the arbitrator, which leaves its implementation into the contract subject to further controversy, defeats the fundamental purpose of the Act. (emphasis in original) (Board Brief, Appendix)

Thus, when reviewing the last best offers of the parties, the Panel must first determine whether a last best offer, standing on its own, completes the contract. Only after such a determination can the Panel assess each last best offer based on evidence and statutory criteria. With the enactment of Public Act 79-405, binding interest arbitration became the statutory mechanism to resolve labor disputes between boards of education and certified professional employees. Approaching the 40th anniversary of the passage of Public Act 79-405, Judge Satter's decision remains the foundation for the evaluation of last best offers. In other words, last best offers must be capable of implementation without engendering further controversy.

In making our awards on the merits, the Arbitration Panel based its decision on our analysis and discussion of the statutory factors, in light of all documentary and testimonial evidence presented and arguments made by the parties at the hearing and in their post hearing briefs. Any dissent is also based on an assessment of the same evidence in light of the same statutory factors.

The parties submitted agreed upon language, which is incorporated in this award as a separate section. The agreed upon language document also contains a listing of where each of the issues is located and where each of the last best offers is to be inserted. Therefore, the current contract language will not always be contained in our discussion of the issues.

Several issues originally presented as issues in dispute were withdrawn during the arbitration; specifically: Issue 3, Issue 5 and Issue 13. While slightly repetitive, for continuity purposes the withdrawn issues are noted in the general Issues in Dispute--Summary section, which precedes this section, and as individual issue placeholders herein.

ISSUE IN DISPUTE 1
Article 5, Section 1(b)
¶¶ 73-74
(Class Overage Remedies)

BOE Last Best Offer

¶73 **Section 1(b)**. When the maximum per classroom listed in Section 1(a) is exceeded by four (4) students or less, the Board shall address the overage, with the Board maintaining exclusive discretion to select one of the following actions : 1) transfer students to alternate buildings; 2) add a classroom aide to the classroom during the period or periods of each day when the number of students in the classroom exceeds the maximum listed above; 3) relieve the teacher of some or all non-teaching duties provided that no other teacher shall be required to perform duties in excess of those permitted in Article 8 except this action shall not be used to address overages for elementary teachers; 4) open a classroom. The Board shall have fifteen (15) school days to implement one or more of the remedies listed above and may switch among them as certified and non-certified staff become available.

After December 1st of any given school year, if a K-5 classroom teacher's class exceeds the maximum by four students or less, for five (5) consecutive school days, the Board may elect any of the above actions, or the Board may elect to pay the affected teacher a stipend of fifteen dollars (\$15) per student per day thereafter, for all remaining scheduled student contact days that the overage exists. If, at any time after December 2nd, a student transfers out of District and/or does not attend school for at least seven (7) consecutive school days, said student shall no longer count towards the classroom overage threshold triggering the aforementioned overage option and any corresponding payment obligation.

¶74 If the Board fails to take any of the above-described actions within fifteen (15) school days after the reporting of the overage, the affected teacher or the Association may file a grievance regarding the overage. Said grievance shall proceed in accordance with the rules of the American Arbitration Association for expedited arbitration. The Arbitrator shall fashion an appropriate remedy.

Last Best Offer Waterbury Teachers Association

Section 1(b). When the maximum per classroom listed in Section 1(a) is exceeded by four (4) students or less, the Board shall address the overage, with the Board maintaining exclusive discretion to select one of the following actions : 1) transfer students to alternate buildings; 2) add a classroom aide to the classroom during the period or periods of each day when the number of students in the classroom exceeds the maximum listed above; 3) relieve the teacher of some or all non-teaching duties provided that no other teacher shall be required to perform duties in excess of those permitted in Article 8 except this action shall not be used to address overages for elementary teachers; 4) open a classroom. The Board shall have fifteen (15) school days to implement one or more of the remedies listed above and may switch among them as certified and non-certified staff become available.

After December 1st of any given school year, if a K-5 classroom teacher's class exceeds the maximum by four students or less, for five (5) consecutive school days, the Board may elect any of the above actions, or the Board may elect to pay the affected teacher a stipend of fifteen dollars (\$15) per student per day thereafter, for all remaining scheduled student contact days that the overage exists. If, at any time after December 2nd, a student transfers out of District and/or does not attend school for at least seven (7) consecutive school days, said student shall no longer count towards the classroom overage threshold triggering the aforementioned overage option and any corresponding payment obligation.

If the Board fails to take any of the above-described actions within fifteen (15) school days after the reporting of the overage, the affected teacher or the Association may file a grievance regarding the overage. Said grievance shall proceed in accordance with the rules of the American Arbitration Association for expedited arbitration. The Arbitrator shall fashion an appropriate remedy.

Discussion:

The Board and the Association submitted identical last best offers. Therefore, no discussion is necessary. For administrative purposes only, the Panel selects the last best offer of the Board.

Award:

Based on a review of all the evidence in light of the statutory criteria, the panel unanimously awards the **Last Best Offer of the Waterbury Board of Education on Issue #1**.

ISSUE IN DISPUTE 2
Article 7, Section 1
¶109
(Weekly Preparation Periods)

BOE Last Best Offer

¶109 Section 1. K-5 and/or K-8 teachers will be scheduled for at least four (4) preparation periods per week. In order to meet this requirement, the Board of Education shall have the ability to reduce the number of preparation periods for teachers in an effort to afford all K-5 and/or K-8 teachers, at least four (4) preparation periods per week. A preparation period shall be considered a free period for said teacher but he/she must use the entire period engaged in some school connected activity, including but not limited to, class preparation. Scheduled weekly preparation time shall consist of at least two hours. In no event shall any teacher have a preparation period of less than 30 minutes in duration.

Final Last Best Offer Waterbury Teachers Association

Section 1. K-5 and/or K-8 teachers will be scheduled for five (5) preparation periods per week. In order to meet this requirement, the Board of Education shall have the ability to reduce the number of preparation periods for teachers in an effort to afford all K-5 and/or K-8 teachers, five (5) preparation periods per week. A preparation period shall be considered a free period for said teacher but he/she must use the entire period engaged in some school connected activity, including but not limited to, class preparation. Scheduled weekly preparation time shall consist of at least three hours. In no event shall any teacher have a preparation period of less than 30 minutes in duration.

Discussion:

The Board seeks to amend the language concerning preparation periods; reducing the number of those periods from five to four and reducing the weekly preparation time from “at least three hours” to “at least two hours.” The Association is seeking to retain the current contract language.

As background, the 2006-2010 contract and the 2010-2013 contract provided for three preparation periods per week. This number continued in the first year of the 2013-2016 contract but was increased to four preparation periods per week commencing on July 1, 2014, and increased again, commencing on July 1, 2015, to five preparation periods per week. (See: Association Flash Drive, WTA contracts) It has remained at five during the current contract, i.e., 2016-2019. (Board 4)

The Board is concerned with the fact that if “specials,” (e.g. art, music, gym) teachers are absent, and the Board is unable to fill the absent position with substitutes, the regular classroom teacher will often miss their preparation period. This has led to the filing of several grievances resulting in two grievance arbitration awards (Association 13-1 and 13-2) and two appeals, one with a Superior Court decision (Board 17) and one where a decision is pending.

Chief Academic Officer Darren Schwartz testified that in December there was an approximate fill rate of 45% for the absences. (Tr. at 22) In other words, there were more vacancies than substitutes resulting in some teachers being required to cover classes during their preparation period. Additionally, according to Mr. Schwartz, teacher absences in the Waterbury schools has increased. (Tr. Vol. 2 at 24) This increase has apparently exacerbated the problem of coverage.

The number of classroom teacher absences during the 2016-17 school year averaged 13.1 days. (Board 28) To put these absences in a comparative context, the number is slightly below the average number of days absent in DRG I, i.e. Bridgeport at 16.6, Windham at 15, Hartford at 14.2, New London at 12.5, New Haven at 12, and New Britain at 9.5. (Board 28) These six districts combined averaged 13.3 days per year. Thus, while it may be a problem in Waterbury, the number is not an aberration when compared to other DRG I districts. Although it is higher than Tier 2 districts, where the average is 9.97. (See Board 28)

The Panel has no negotiation history as to why the number of preparation periods increased from 3 to 5. But, we can make the reasonable inference that the increase benefitted the educational interests of the district.

Nonetheless, the Board reiterates that it "... has simply been unable to fill all of those absences despite efforts to increase the pool of eligible substitute teachers." (Board Brief at 24) But, the Board has not demonstrated that there has been an abuse of teacher absences, only that they occur at a rate consistent with the average of the other DRG I districts. The inability to hire qualified substitutes to fill vacancies is certainly an issue for the Board. However, absent a definitive showing of abuse, it is not an issue for the classroom teacher.

The Association has demonstrated that five weekly preparation periods is the norm within New Haven County, another reasonable comparison grouping, (Association Brief at 37-38, Association 11-7) and for DRG I. (Association Brief at 39, Association 11-6)

Further, the testimony of Association President Kevin Egan succinctly expressed the educational impact that the loss of one preparation period per week has on teachers. (Association Brief at 42) It is not in the public interest for such reduction to occur.

The primary factors of public interest and, to some extent, financial capability together with the subordinate factors of the interests and welfare of the employee group, the existing conditions of employment of the employee group and those of similar groups all strongly support the awarding the last best offer of the Association.

Award:

Based on a review of all the evidence in light of the statutory criteria, the panel majority, Mr. Williamson and Ms. McKinley-Anderson, awards the **Last Best Offer of the Waterbury Teacher' Association on Issue #2**. Mr. Romanow dissents.

ISSUE IN DISPUTE 3
Article 7, Section 12
¶120A

WITHDRAWN BY THE ASSOCIATION ON 12-20-18

ISSUE IN DISPUTE 4
Article 8, Section 1
¶121

BOE Last Best Offer

¶121 **Section 1. Duty Free Lunch** - All teachers shall have a duty free lunch period daily which is at least equal in length to the lunch period of the pupils.

Final last best offer Waterbury Teachers Association

Section 1. Duty Free Lunch - All teachers shall have a duty free lunch period daily which is at least a continuous twenty five (25) minutes in duration.

Discussion:

The Board is seeking to retain the current contract language, which is identical to the language contained in numerous past contracts, i.e., 2006-2010, 2010-2013, 2013-2016. The Association last best offer is to establish a definitive length for the teacher lunch period of 25 minutes.

Mr. Egan testified that “for the longest time it [lunch period] was 25 minutes so that there’s already schedules that were done... only in the last couple of years shortened to 20 minutes.” (Tr. at 83) But, as noted above, the last four contracts did not contain such a definitive period. And, there was neither a claim of, nor evidence to support, an established past practice. There was only a generalized assertion, which lacked specificity.

Mr. Egan continued in his testimony with the assertion that the 20 minutes lunch period was implemented across the entire school system. However, Mr. Flaherty testified that the current high school lunch time was between 21-22 minutes. (Tr. Vol. 2 at 96) While relatively minor in terms of minutes, the testimony is illustrative of the actual variance of duty free lunch period based on the educational needs of a particular school.

Additionally, Mr. Egan testified that the extra 5 minutes at the elementary schools could be achieved by reducing the wrap around time. (See: Union 1-1, Article 3, Section 2, subsection d) Mr. Flaherty testified that the 2 or 3 minutes could be achieved by reducing the morning announcements from 5 minutes to 2 minutes. (Tr. Vol. 2 at 97) Thus, the Association asserts that the 5 minutes could be incorporated in the existing school day.

However, the Board notes that in its presentation, “...the Union has failed to provide any information to this Panel to determine what the current lunch schedules are at all the district’s thirty (30) schools.” (Board Brief at 29) The Board is correct.

Further, as the Board observed, Mr. Egan testified that the implementation of the Association’s offer could affect instructional time. (Board Brief at 30) Although the Association opined as to how its last best offer could be implemented, it acknowledged that no administrators were

consulted. Thus, the Panel has no comprehensive evidence on how the actual change in contract language would impact the educational interests of the district.

The Panel takes arbitral notice that Section 10-156a of the Connecticut General Statutes mandates the “Each professional employee...employed to work directly with children shall have a guaranteed duty free period for lunch which shall be scheduled as a single period of consecutive minutes.” Within the meaning of this statute, the current language of the contract, which the Board seeks to maintain, meets the statutory requirement. The Association, which has the burden, has not demonstrated persuasively why the existing contract language needs alteration.

The primary factor of the public interest supports the last best offer of the Board, while the subordinate factor of the existing conditions of employment of the employee group and those of similar groups support the last best offer of the Association. While the change is proffered by the Association, the evidence is not strong enough to support either of the two last best offers based on the statutory factor of the interests and welfare of the employee group.

Award:

Based on a review of all the evidence in light of the statutory criteria, the panel majority, Mr. Williamson and Mr. Romanow, awards the **Last Best Offer of the Waterbury Board of Education on Issue #4**. Ms. McKinley-Anderson dissents.

ISSUE IN DISPUTE 5
Article 16, Section 4
¶236

WITHDRAWN BY THE BOE ON 12-20-18

ISSUE IN DISPUTE 6
Article 18, Section 2
¶259
(Personal Leave Usage)

BOE Last Best Offer

¶ 259 **Section 2.** No personal days shall be used for the purpose of extending vacation periods (e.g., Christmas recess or Spring recess or the extension or prolongation of the period between the end of a given school year and the commencement of a new school year) or for the purpose of extending “long week-ends” (Thanksgiving or Memorial Day Weekends). No personal days may be used after May 15th of any given school year unless expressly approved by the Superintendent or his/her designee from Central Office.

Final Last Best Offer Waterbury Teachers Association

Section 2. No personal days shall be used for the purpose of extending vacation periods (e.g., Christmas recess or Spring recess or the extension or prolongation of the period between the end of a given school year and the commencement of a new school year) or for the purpose of extending “long week-ends” (Thanksgiving or Memorial Day Weekends).

Discussion:

The Board is seeking to amend existing language to preclude the use of personal days after May 15th unless expressly approved by the Superintendent or Superintendent’s designee. The Association is seeking to retain the current contract language.

Mr. Schwartz testified that he has been “hearing from administrators about difficulties staffing the building after the May 15 date due to the amount of personal days being taken by the unit.” (Tr., Vol. 2, at 101) Indeed, according to his testimony, approximately 40% of all personal days in 2017-2018 were taken after May 15th. (Tr. Vol 2 at 102) The actual figure was slightly higher at 41.6%; of the 4709 personal leave days taken in 2017-2018, 1957 were taken after May 15th. (Board 29 and Schwartz testimony) This is clearly a significant amount.

However, Section 2 cannot be read in isolation. Section 1(b) of Article 18 reads, in pertinent part:

Written application for such leave shall be made to the Building Principal on a form prescribed by the Superintendent...as far in advance as practicable and at least seventy-two (72) hours in advance, except in cases of emergency. Approval of personal day applications, not including an emergency situation, shall be at the discretion of the Superintendent or his/her designee from Central Office, but such approval shall not be unreasonably withheld.... (Board 4 at 36, emphasis added)

Since the underlined language above did not appear in the 2006-2010, 2010-2013 and 2013-2016 contracts (Association Flash Drive, WTA Contracts), it is a reasonable inference to conclude that it was added in the current 2016-2019 contract. Thus, for the last three years, approval of any personal day is at the discretion of the Superintendent or designee provided such approval is not unreasonably withheld.

There is no evidence to indicate that all 1,957 personal leave days taken after May 15th in 2017-2018, excluding emergency days for which there was no breakout information, were not taken without the express approval of the Superintendent or the Superintendent's designee. The Board has not met its burden to demonstrate the need to limit the use of personal days when it, apparently, approved them.

Further, the language proposed by the Board excludes the phrase "approval shall not be unreasonably withheld." Absent evidence to the contrary, this limitation is appropriate. Its exclusion, together to a seemingly unfettered approval (or disapproval) by the Superintendent is inconsistent with the language of the contract.

While the contracts for districts in DRG I vary with regard to personal leave, there is no contract in DRG I that contains the same or similar language restricting the use of personal leave days after a certain date. (See generally: Association Flash Drive DRG I Contracts)

The primary factor of public interest and the secondary factors of the interests and welfare of the employee group and the existing conditions of employment of the employee group and those of similar groups support the last best offer of the Association.

Award:

Based on a review of all the evidence in light of the statutory criteria, the panel majority, Mr. Williamson and Ms. McKinley-Anderson, awards the **Last Best Offer of the Waterbury Teachers' Association on Issue #6**. Mr. Romanow dissents.

ISSUE IN DISPUTE 7(a)
APPENDIX A
¶464A
Salary Schedule 2019-2020

BOE Last Best Offer

SCHEDULE A
2019-2020

	BA	BA+15	MA	MA+15	6THYR	6TH+15	PHD
Step							
1	43,110	44,593	46,107	47,769	49,392	50,901	52,491
2	43,613	47,005	48,496	50,240	52,048	53,637	55,339
3	47,897	49,411	50,838	52,804	54,744	56,413	58,141
4	50,240	51,772	53,261	55,339	57,412	59,134	60,997
5	52,656	54,151	55,632	57,844	60,081	61,831	63,233
6	55,040	56,497	58,005	60,376	62,773	64,581	66,275
7	57,412	58,918	60,376	62,880	65,441	67,275	69,750
8	59,783	61,236	62,747	65,441	68,078	70,021	72,207
9	62,745	64,207	65,683	68,542	71,343	73,416	75,008
10	66,252	68,074	69,888	72,651	75,348	77,578	79,477
11	69,759	71,941	74,092	76,761	79,352	81,739	83,945
12	77,369	80,054	82,682	85,400	88,024	90,711	93,365

For the 2019-2020 school year, there shall be no general wage increase over the salary schedule for the 2018-2019 school year.

Final Last Best Offer Waterbury Teachers Association

Effective July 1, 2019 – There shall be no step movement.

Effective July 1, 2019 – All salaries on the 2018-2019 salary schedule shall be increased by two and one-quarter percent (2.25%) and shall become the 2019-2020 salary schedule.

Appendix A, Schedule A¹
2019-2020

	BA	BA+15	MA	MA+15	6THYR	6TH+15	PHD
Step							
1	44,080	45,596	47,144	48,844	50,503	52,046	53,672
2	44,594	48,063	49,587	51,370	53,219	54,844	56,584
3	48,975	50,523	51,982	53,992	55,976	57,682	59,449
4	51,370	52,937	54,459	56,584	58,704	60,465	62,369
5	53,841	55,369	56,884	59,145	61,433	63,222	64,656
6	56,278	57,768	59,310	61,734	64,185	66,034	67,766
7	58,704	60,244	61,734	64,295	66,913	68,789	71,319
8	61,128	62,614	64,159	66,913	69,610	71,596	73,832
9	64,157	65,652	67,161	70,084	72,948	75,068	76,696
10	67,743	69,606	71,460	74,286	77,043	79,324	81,265
11	71,329	73,560	75,759	78,488	81,137	83,578	85,834
12	79,110	81,855	84,542	87,322	90,005	92,752	95,466

Discussion:

We begin our discussion with a review of the Agreed Upon Language, specifically page 67. (Joint Exhibit B) As noted in the jointly filed Issues in Dispute document (Joint Exhibit A), the parties have identified paragraph 464A as the location of Issue 7(a), and have inserted a highlighted ISSUE IN DISPUTE #7(a) opposite paragraph 464A. However, numbered paragraph 464, in the parties jointly filed Agreed Upon Language document (Joint Exhibit B), contains a salary schedule for 2019-20.

Neither party brought the inclusion of paragraph 464 to the Panel's attention, so we address our concern, which was raised in our executive session, *sua sponte*. Paragraph 464 contains the 2018-2019 salary schedule that was included in the prior contract. (Board 4, Association 1-1) The schedule is also identical to the Board's last best offer, which is a zero percent increase in the 2018-2019 salary schedule for 2019-2020. The Association's last best offer is for a 2.25%

increase in the salary schedule. There is no doubt that the Association never intended to carry over the 2018-2019 salary schedule into 2019-2020.

Yet, the Agreed Upon Language does such a thing in paragraph 464. The Panel unanimously rules that the inclusion of paragraph 464, with the salary schedule for 2019-2020 was a mutual mistake by the parties. To hold otherwise would require us to ignore the Issues in Dispute document (Joint Exhibit A) and the totality of evidence presented by both parties on Issue 7(a). Said another way, if the parties had intended paragraph 464 to be the agreed upon salary schedule for 2019-2020, there would have been no necessity to submit last best offers for the first year of the new agreement, which both the Board and the Association have done.

The Panel raises a second issue *sua sponte*. The concern was not raised by the Board but in our executive session. In its last best offer, the Board does not affirmatively state that there shall be no step movement, a statement that has been included in prior contracts and which is contained in other issues before this Panel, i.e., Issue 7(b) and Issue 7(e).

The Panel majority, Mr. Williamson and Mr. Romanow, rules that the lack of an affirmative statement that there is no step is not necessary. Failure to include such language does not make the Board's last best offer defective. Further, the lack of such statement does not, conversely, imply, directly or indirectly, that there is a step movement. The Board's last best offer is clear, definitive and capable of implementation. The Board's last best offer, if awarded, does not subject the issue to further controversy. The Panel Majority also notes that the Association acknowledged that "neither Party has requested step advancement in contract year one (2019-2020)" (Association Brief at 48) Ms. McKinley-Anderson dissents from the ruling of the Panel.

Having addressed the procedural matters, we next turn to the merits of the last best offers. Simply put, the Board is seeking a hard freeze, i.e., no step movement and no increase in GWI. The Board is proposing that the salary schedule for 2019-2020 remain unchanged from 2018-2019. The Association is seeking no step movement but an increase of 2.25% from the 2018-2019 salary schedule for the 2019-2020 salary schedule.

Returning to the *Branford* decision, Judge Satter accurately stated the purpose of the last best offers. He wrote:

The purpose of the requirement that the arbitrator accept either of the last best offers of the parties is twofold: (1) to prevent the arbitrator from splitting the difference between the two offers, and (2) to impel each party to make the fairest possible last offer, because if one party does not, the arbitrator is likely to choose the offer of the other.

As an implicit corollary to Judge Satter's observation, last best offers are normally closer than further apart. Of course, the "fairest possible last offer" depends, to some measure, on perspective. Both parties in Waterbury engaged in good faith bargaining and mediation. Both parties strongly believe in their last best offers. Both parties argued well their positions in their respective briefs. But, the fact is that the last best offers are far apart. A 0% increase is

significantly different than a 2.25% increase, especially in a bargaining unit comprised of 1,598 educators. (Association 7-2) In terms of money, the Board's last best offer will keep the current cost of the salary account at \$109,682,467. (Association 7-2) A 2.25% increase will mean the salary account would increase by approximately \$2,466,000.⁸

As we stated in the general section on public interest and will reiterate here, in assessing the public interest, a balance must be struck between a strong educational system, with the concomitant educational benefits derived from the efficient and effective cadre of teachers, and the financial interests of the City.

We begin our analysis of the public interest by looking at the teaching population of 1,598 educators. There is nothing in the evidence before us to remotely suggest that these professionals are anything but dedicated, competent and caring educators. However, even with such dedication, there is evidence to indicate a significant turnover in the teacher population; averaging approximately 144 per year, the average being computed over the period July 1, 2013 to November 20, 2018. (Association 5-15)

Of this number approximately 106 per year are resignations. (Association 5-15) Indeed, the Waterbury Public Schools Annual Report for 2017-2018 indicated there were 88 resignations between June 21, 2017 and April 12, 2018. (Association 5-12 at 47-49) There is no evidence as to why the teachers were resigning in such numbers. For example, there were no exit interviews introduced nor even an indication that they had been conducted. But, from the salary schedule, which will be discussed later, it can reasonably be inferred that some portion of them are leaving because of wages. The percentage is completely unknown.

Realistically, we know that salary and benefits play an important part in the hiring and retention of qualified employees. And, it is in the public interest to maintain a strong professional educator workforce. When compared to those leaving, we know currently there are approximately 26.3% of the teachers on the top step of the salary schedule, indicating some degree of longevity and educational continuance. (Association Brief at 48) Education is a labor-intensive profession. An appropriate investment in teachers serves the students of Waterbury and thus the public interest.

As we assess the last best offers our focus shifts to the financial capability of the district, the other primary factor for our consideration. Both parties have provided exhaustive financial data.

The City of Waterbury receives approximately 60% of its revenue from property taxes. (Testimony of Geary, Tr. Vol. 1 at 72-73) The current mill rate for real estate and personal property is 60.21, which Mayor O'Leary testified will not be raised. (Tr. Vol. 1 at 198) The mill rate has always been high. For example, in FY 16 it was 58.22. (Board 67) Its 2016 Equalized Mill Rate as 42.58, the highest in DRG I (Board 101) and the Tier 2 Comparison Group. (Board 102).

⁸ The Panel is aware that the actual cost of salary is dependent on a variety of factors including changes in teaching population based on resignations, retirements and other reasons, such as death. We will discuss the impact of a shifting population in our discussion of financial capability.

Between FY 15 and FY 19, the Grand List has grown; from \$4,011,521,890 to \$4,266,559,990. According to the Board, the increase averaged “a little more than 1% per year.” Board Brief at 5) The Grand List as of October 1, 2017 is \$4.3 billion, up \$123.4 million from the prior year. (Association 5-14a) The Motor Vehicle Mill rate has increased significantly from 37.00 mills in both FY ‘17 and FY ‘18 to 45.00 mills in FY ‘19. ((Board 67)

According to the Republican-American, “As state aid to the city drops by millions, local officials are crediting efforts to encourage business growth with helping to keep the real estate tax rate flat.” (Association 5-14a) As the Association explains, the business environment in Waterbury has grown. (Association Brief at 2-5) However, while business investment in Waterbury is growing, the City has had to offer tax stabilization programs which limit short term tax revenue. (Testimony of LeBlanc, Tr. Vol. 1 at 104-105)

Turning to the Board’s budget, it has been funded for FY ’19 at \$158,375,000. (Board 64) In fact, since 2009-2010 the Board’s budget has, for the most part, been flat funded. From the 2009-10 date to 2015-16, the Board received \$155,625,000. It was only in 2016-2017, that it was increased by \$2,750,000 to its present amount. (Board 64) Testimony indicates that for the 2019-2020 fiscal year it will remain constant.

Current teacher salaries cost \$109,600,000 (Board 7) or 69.2% of the budgeted amount. However, the Board also receives education cost share formula grant monies from the state. (Testimony of Biolo, Tr. Vol. 1 at 10)

... currently we’re at 136.6 million; 113 million of that goes to the City, the municipal side which that [sic] has been flat funded to the City since 2009. the City has flat funded us (Board) from 2010 because they have not received an increase on the ECS on the municipality side since 2009. (Testimony of Biolo, Tr. Vol. 1 at 11)

From an assessment of the City finances it is clear that even with the 2.98% growth in the grand list yielding \$3.6 million in real estate and personal property tax and an additional \$3.7 million in the motor vehicle tax, due to the increase in mill rate, which was essentially an offset of monies previously received from the State, the additional revenue has been used for current operating expenses or to fund increases in the pension fund or health fund.

The City ended FY ’18 with a surplus of \$335,000 or .08% of its operating budget. The City readily admits that it budgets for a surplus. (Board Brief at 7) For example, the City budgets for a tax collective rate of 96% but collects at a rate that exceeds 97%. Budgeting for the surplus permits the City to make reasonable adjustments to its operating budget to address changing circumstances.

On the Board’s side, its prior year surpluses are held in a contingency account. This year there was a shortfall of \$4.9 million dollars in the Board’s budget. The shortfall was addressed by exhausting the contingency account and “Eliminating positions, reorganizing the central office, reducing purchasing contract costs, making changes to student transportation, reducing the

student year (which in turn reduced the work year for non-certified staff) and reducing the per pupil allotment of each school.” (Board Brief at 11)

The Board notes,

While the current state biennial budget sets forth a redistribution of ECS monies to underfunded municipalities like Waterbury using a 10-year phase-in formula, there are serious concerns about whether any redistribution will actually occur given the state’s fiscal outlook and a new administration in the Governor’s Office. (Board Brief at 12)

The Board is referencing Public Act 17-2 (June Special Session) The Association notes that the projected ECS funding for 2019 is \$136,614,823. (Association Brief at 11) The operative word is “projected.”

Whether the actual increases in the ECS formula will come to fruition is a concern of the City and Board. Antidotally, newly-elected Governor Lamont indicated in a meeting at CCM, as reported by Mayor O’Leary, that municipalities should not rely on additional funding. (Board Brief at 12) The Board contends it “...will not see an increased general fund allocation from the City and its education specific state aid allocations are, at best, unknown and vulnerable at this point.” (Board Brief at 12) The former is certain; the latter is less certain.

The Association argued, “...the Board produced absolutely no verifiable testimonial nor documentary evidence that the statutory formula and the new ECS formula would not be implemented.” (Association Brief at 12) The Association goes further, “The reality is actual statutory funding formula and confirmed revenue must be the basis for determining financial capability and can never be replaced by speculative practices that are not grounded in official reports or data.” (Association Brief at 12)

The Board responds, “Across the City, there is less revenue coming in and increasing financial obligations that Waterbury must fund. The City needs to continue to act responsibly and conservatively. This is especially true in light of the real possibility of further reductions in state aid allocations to Waterbury in the years to come and that the ECS redistribution promised under Governor Malloy’s administration will not materialize.” (Board Brief at 12)

The Board is correct that its prudent and self-described “conservative” approach to fiscal issues has moved the City away from the days necessitating the Finance Control Authority. It is also clear that the state is facing financial issues of its own. (Board Brief 13-15; See generally, Board 125-131, Association 6-2 to 6-7)

With 34% of its revenue stream coming from the state, the importance of the ECS money cannot be understated. A portion of the increased ECS money, together with a portion of the savings associated with the budgeted salary account versus actual expenditures when resignations and retirements are factored in, appear, at first blush, to support the argument that Waterbury has the financial capability to support a 2.25% increase. Further inquiry is necessary.

The concerns raised by Board over the uncertainty of the ECS funding must be juxtaposed to the current statutory formula enacted by the legislature.

Mayor O'Leary testified, "All I really want is to take a look at the state budget in February so that I know how to responsibly make a budget responsibly her in the City of Waterbury." (Tr. Vol. 1 at 194) The Mayor's comment is appropriate, responsible and fiscally prudent. But, the statutory scheme enacted by the General Assembly almost 40 years ago mandates that an award be issued prior to the budget submission date of the Board in order that it can present to the municipality its budget. In this instance, it must be issued based on the best available current information.

The Association asserts, "...the Board produced absolutely no verifiable testimonial nor documentary evidence that the statutory formula and new ECS formula would not be implemented." (Association Brief at 12) The Association is correct. But, while not determinative, the testimony and concerns expressed by Chief Financial Officer Biolo, Policy Budget Specialist Geary, Director of Finance LeBlanc and Mayor O'Leary cannot be summarily ignored, especially in light of the state's recent budgetary actions.

Assuming the new ECS formula is received by the City/Board in full, it would mean receipt of approximately an additional \$6 million dollars. The cost of the Association's proposal is \$2,466,000. Assuming the cost of the increase would come directly from the \$6 million, it would represent 41.1% of the total new monies. But there is no evidence that the cost of the increase could be supported by the new ECS monies. Said another way, none of the City's and Board's financial experts was asked whether, if the money was received, could it support the increase sought by the Association.

What the evidence does show is that the Board had a \$4,931,190 budget gap. (Board 63) The gap was closed using General Fund Surpluses and contingency surplus and Hurricane Relief Fund/Contingency Surplus, the reorganization of various positions and various cuts. If it is in the educational interests of the Board to restore some programs or to pay for programs paid by the contingency surpluses, which are now exhausted, then there does not appear to be sufficient funds available for pay for the increase sought by the Association. By any objective criteria, taxpayers in Waterbury are maxed-out in terms of mill rate. In short, the financial capability evidence does not support the 2.25% increase sought by the Association.

The Chair believes strongly that the evidence on the financial capability of Waterbury would support, and the teachers deserve, a modest salary increase for 2019-2020. In the Chair's opinion the zero last best offer of the Board is too low but the 2.25% last best offer from the Association is too high. Judge Satter's observation on the risks associated with last best offers is evident here. The statute commands that the Panel select one of the two last best offers. And, on balance, given our appropriate statutory constraints, the financial capability of Waterbury favors the last best offer of the Board.

In our analysis of the subordinate factors, we combine "the existing conditions of employment of the employee group and those of similar groups" and "the salaries fringe benefits...including the

terms of recent contract settlements or awards in collective bargaining for other municipal employee organizations and developments in private sector wages and benefits.”

Within the City of Waterbury, the Board notes, “the interest arbitration award for the Waterbury School Administrators issued in January 2018...awarded...a total wage package that amounted to a 4.7% increase over three (3) years (approximately 1.5% per year) *BOE Exhibit 58*.⁹ The first year of that contract awarded a 1% GWI to the Union.” (Board Brief at 38, emphasis in original) The initial year was for 2018-2019.

Both the police and fire contracts resulted in a 0% increase for their respective first years of 2017-18. The police contract then increased salaries by 2.25% for 2018-2019; 2.50% for 2019-2020; 2.5% for 2020-2021, and 2% for 2021-2022. The firefighters’ contract was for a shorter duration, in the second year, 2018-2019, the salaries were increased by 2.25%; in 2019-2020 by 2.75% and in 2020-2021 by 2.75%. (Board 132)

To put these contracts in perspective, the last teachers’ contract, 2016-2019, resulted in a 9.6% total increase. The prior contract, 2013-2014, resulted in an 8.5% total increase, with a zero in the first year, i.e., 2013-2014. Since we have no longitudinal data to compare the police and fire contracts prior to 2017-2018, it is appropriate to reserve any comparative analysis to a commencement year of 2017-2018. In doing so, we find that within the City of Waterbury comparison groups, there is support for the last best offer of the Board.

The same does not hold true when we review the teacher contract settlements outside the City. For the 2019-2020 year, the statewide average is 2.74%. (Association Brief at 31) Within DRG I, the average settlement, of the two municipalities reporting settlements this year is 2.72%. (Association Brief at 32) Even the Board’s document shows settlements for 2019-2020 averaging 2.725%. (Board 60) But, considering the internal and external comparisons, “the existing conditions of employment of the employee group and those of similar groups” and “the salaries fringe benefits...including the terms of recent contract settlements or awards in collective bargaining for other municipal employee organizations and developments in private sector wages and benefits” favors, only slightly, the Association.

The subordinate factors of cost of living and the interests and welfare of the employee group favors the Association.

Award:

Based on a review of all the evidence in light of the statutory criteria, the panel majority, Mr. Williamson and Mr. Romanow awards the **Last Best Offer of the Waterbury Board of Education on Issue #7(a)**. Ms. McKinley-Anderson dissents, with a written dissent appearing in Section VI.

⁹ The Board referenced an interest arbitration award, but Board 58 is a copy of the contract derived from the award not the award itself.

ISSUE IN DISPUTE 7(b)
APPENDIX A
¶465A
(Step Advancement in the 2020-2021 School Year)

BOE Last Best Offer

Employees who have not reached maximum step shall advance one step beginning with the 12th pay period of the 2020-2021 School Year.

Final Last Best Offer Waterbury Teachers Association

Effective July 1, 2020 – Teachers not on the maximum step on the 2019-2020 salary schedule shall advance one (1) step. (Increment Cost = 3.50%).

Discussion: Based on the directive of the Board and Association in Joint Exhibit A, the Panel is not required to render an award on Issue 7(b) because of the award on Issue 12.

ISSUE IN DISPUTE 7(c)
APPENDIX A
¶465B
(GWI for Steps 1-11 for the 2020-2021 School Year)

BOE Last Best Offer

For the 2020-2021 School Year, there shall be no general wage increase for Steps 1-11 over the Salary Schedule for the 2019-2020 School Year.

Final Last Best Offer Waterbury Teachers Association

Steps 1-11 on the 2019-2020 schedule shall be increased by two and one-half percent (2.50%) (Total Increase to Salary Account: 1.65%) and shall become the 2020-2021 salary schedule.

Discussion: Based on the directive of the Board and Association in Joint Exhibit A, the Panel is not required to render an award on Issue 7(c) because of the award on Issue 12.

ISSUE IN DISPUTE 7(d)
APPENDIX A
¶465C
(GWI for Step 12 in the 2020-2021 School Year)

BOE Last Best Offer

For the 2020-2021 School Year, there shall be a 1.0% increase to Step 12 only over the 2019-2020 Salary Schedule.

Final Last Best Offer Waterbury Teachers Association

Effective July 1, 2020 – Step 12 on the 2019-2020 schedule shall be increased by one and one-half percent (1.5%) (Total Increase to Salary Account: 0.51%) and shall become the 2020-2021 salary schedule.

Discussion: Based on the directive of the Board and Association in Joint Exhibit A, the Panel is not required to render an award on Issue 7(d) because of the award on Issue 12.

ISSUE IN DISPUTE 7(e)
APPENDIX A
¶466A
(Step Advancement in 2021-2022 School Year)

BOE Last Best Offer

For the 2021-2022 School Year, there shall be no further Step Advancement over the Step Advancement in the 2020-2021 School Year.

Final Last Best Offer Waterbury Teachers Association

Effective July 1, 2021 – There shall be no step advancement.

Discussion: Based on the directive of the Board and Association in Joint Exhibit A, the Panel is not required to render an award on Issue 7(b) because of the award on Issue 12.

ISSUE IN DISPUTE 7(f)
APPENDIX A
¶466B
(GWI for Steps 1-11 in the 2021-2022 School Year)

BOE Last Best Offer

For the 2021-2022 School Year, there shall be a 1.5% general wage increase to Steps 1-11 over the 2020-2021 Salary Schedule.

Final Last Best Offer Waterbury Teachers Association

Effective July 1, 2021 – Steps 1-11 on the 2020-2021 salary schedule shall be increased by two percent (2.00%) (Total Increase to Salary Account: 1.32%) and shall become the 2021-2022 salary schedule.

Discussion: Based on the directive of the Board and Association in Joint Exhibit A, the Panel is not required to render an award on Issue 7(f) because of the award on Issue 12.

ISSUE IN DISPUTE 7(g)
APPENDIX A
¶466C
(GWI for Step 12 in the 2021-2022 School Year)

BOE Last Best Offer

For the 2021-2022 School Year, there shall be a 1.5% increase to step 12 over the 2020-2021 Salary Schedule.

Final Last Best Offer Waterbury Teachers Association

Effective July 1, 2021 – Step 12 on the 2020-2021 salary schedule shall be increased by two percent (2.00%) (Total Increase to Salary Account: 0.68%) and shall become the 2021-2022 salary schedule.

Discussion: Based on the directive of the Board and Association in Joint Exhibit A, the Panel is not required to render an award on Issue 7(g) because of the award on Issue 12.

ISSUE IN DISPUTE 8(a)
Article 26, Sections 1(d).1. and 1(d).2
¶360B and ¶361B
(Premium Cost Share in Year 2)

BOE Last Best Offer

¶ 360B. Effective September 1, 2020
HDHP: 20% of the premium or premium equivalent.

¶ 361B. Effective September 1, 2020
HDHP: 20% of the premium or premium equivalent.

Final Last Best Offer Waterbury Teachers Association

1. **Medical.** Each employee shall pay the following portion of the premium or premium equivalent for the above medical plans for the coverage of the employee and their eligible dependents. For the purposes of the benefit plans set forth in this Article, “eligible dependent” shall be a spouse or child who meets the criteria set forth in the insurance carrier’s plan description. Any employee who receives benefits for dependents who do not meet the requirements of Section 152 of the Internal Revenue Code shall be solely responsible for any resulting taxes and related charges, and shall hold the City harmless from any costs in connection with the provision of such benefits.

Effective September 1, 2020: HDHP: 19.5% of the premium or premium equivalent.

2. **Prescription.** Each employee who is enrolled in the prescription plan shall pay the following:

Effective September 1, 2020: HDHP: 19.5% of the premium or premium equivalent.

Discussion: Based on the directive of the Board and Association in Joint Exhibit A, the Panel is not required to render an award on Issue 8(a) because of the award on Issue 12.

ISSUE IN DISPUTE 8(b)
Article 26, Section 1(a).1.a
¶347A
(City Contribution Towards HSA in Year 2)

BOE Last Best Offer

- ¶347A. Effective September 1, 2020, the City will fund forty-five percent (45%) of the annual deductible into the employee's Health Savings Account on a quarterly basis with payments made on September 1, December 1, March 1 and June 1.

Final Last Best Offer Waterbury Teachers Association

1. Effective September 1, 2020, a High Deductible Health Plan (HDHP-HSA) with a \$2,000/\$4,000 Deductible, funded jointly through a Health Savings Account.

Health Saving Account Funding and Timing: The City shall fund the following portion of the employee's annual deductible into the employee's HSA according to the following schedule:

- a. The City will fund fifty percent (50%) of the annual deductible into the employee's Health Savings Account on a quarterly basis with payments made on September 1, December 1, March 1 and June 1.

Discussion: Based on the directive of the Board and Association in Joint Exhibit A, the Panel is not required to render an award on Issue 8(b) because of the award on Issue 12.

ISSUE IN DISPUTE 8(c)
Article 26, Sections 1(d).1. and 1(d).2
¶360C and ¶361C
(Premium Cost Share in Year 3)

BOE Last Best Offer

- ¶ 360C. **Effective September 1, 2021:**
HDHP: Employees shall pay 1 percent (1%) more of the premium equivalent than the percentage of the premium equivalent paid by employees in the previous plan year.
- ¶ 361C. **Effective September 1, 2021:**
HDHP: Employees shall pay 1 percent (1%) more of the premium equivalent than the percentage of the premium equivalent paid by employees in the previous plan year.

Final Last Best Offer Waterbury Teachers Association

1. **Medical.** Each employee shall pay the following portion of the premium or premium equivalent for the above medical plans for the coverage of the employee and their eligible dependents. For the purposes of the benefit plans set forth in this Article, “eligible dependent” shall be a spouse or child who meets the criteria set forth in the insurance carrier’s plan description. Any employee who receives benefits for dependents who do not meet the requirements of Section 152 of the Internal Revenue Code shall be solely responsible for any resulting taxes and related charges, and shall hold the City harmless from any costs in connection with the provision of such benefits.

Effective September 1, 2019: **HDHP:** The premium cost share shall increase one-half percent over the prior year premium cost share.

2. **Prescription.** Each employee who is enrolled in the prescription plan shall pay the following:

Effective September 1, 2021: **HDHP:** The premium cost share shall increase one-half percent over the prior year premium cost share.

Discussion: Based on the directive of the Board and Association in Joint Exhibit A, the Panel is not required to render an award on Issue 8(c) because of the award on Issue 12.

ISSUE IN DISPUTE 8(d)
Article 26, Section 1(a).1.a
¶347B
(City Contribution Towards HSA in Year 3)

BOE Last Best Offer

¶347B. Effective September 1, 2021, the City will fund five percent (5%) less of the deductible into the HSA than was funded in the previous plan year. Said funding shall be paid quarterly basis with payments made on September 1, December 1, March 1 and June 1.

Final Last Best Offer Waterbury Teachers Association

1. Effective September 1, 2020, a High Deductible Health Plan (HDHP-HSA) with a \$2,000/\$4,000 Deductible, funded jointly through a Health Savings Account.

Health Saving Account Funding and Timing: The City shall fund the following portion of the employee's annual deductible into the employee's HSA according to the following schedule:

- a. The City will fund fifty percent (50%) of the annual deductible into the employee's Health Savings Account on a quarterly basis with payments made on September 1, December 1, March 1 and June 1.

Discussion: Based on the directive of the Board and Association in Joint Exhibit A, the Panel is not required to render an award on Issue 8(d) because of the award on Issue 12.

ISSUE IN DISPUTE 9
Article 27, Section 10
¶402A
(Just Cause Provision)

BOE Last Best Offer

No Such Language.

Final Last Best Offer Waterbury Teachers Association

Section 10. Teachers shall not be disciplined without just cause. This provision shall not apply to any adverse employment action undertaken in accordance with Conn. Gen. Statutes § 10-151 *et seq.*

Discussion:

The Association is seeking to add a new provision to the Agreement providing a “just cause” standard for any discipline accorded a teacher. The Board’s last best offer is to keep the current contract language wherein no “just cause” provision is included.

Article 24 of the existing contract defines grievance to include, “An employee complaint or a complaint by the WTA concerning the evaluation of disciplinary action inflicted upon an employee....” (Association 1-1 at 40) Thus, the existing contract provides for grievances to be filed because of disciplinary action. The Association provides no evidence indicating that there have been due process violations in disciplinary actions that would be cured with the insertion of a just cause provision in the contract.

The existing contract does contain a just cause provision in Article 29, Personnel Files. Specifically, Section 1, subsection (a) reads, in part:

No allegations by a school official or fellow employee alleging material of a scandalous nature regarding a teacher’s conduct, service, character or personality shall be placed in the teacher’s file without just cause and notice to the teacher. (Joint Exhibit B at 60)

There is no persuasive evidence that a “just cause” provision needs to migrate to other parts of the contract. Without using the term, similar protections are provided in Article 4, Section 3, subsection d. The subsection reads: “A decision regarding involuntary transfer may be appealed pursuant to the grievance procedure. However, any review of this decision shall be limited to the issue of whether the transfer was made in good faith (i.e. not arbitrary or capricious or without rational basis in fact).” (Joint Exhibit B at 9) Thus, the contract is replete with due process protections.

The Association contends, “The standard of ‘Just Cause’ and its underlying reliance on transparent due process, has become the standard of disciplinary review in labor relations. Notably, the seven tests of just cause devised by Arbitrator Carroll Daugherty (Association Exhibit 11-3) is widely accepted as the foundational tests to determine whether the ‘punishment fits the crime’ and provides a consistent, standardized inquiry.” (Association Brief at 61)

The Association is correct. The concept of “just cause” is generally pervasive in public sector collective bargaining agreements. For example, the “just cause” standard, in its various iterations, is prevalent in teacher contracts throughout the state. In DRG I, Bridgeport, New Haven, Hartford, New London and Windham all have “just cause” provisions. (Association 11-5) In the Tier 2 comparison towns, Bristol, Cheshire, Hamden, Litchfield, Meriden, Plymouth, Thomaston, Torrington, Wallingford, Watertown, Wolcott, Region 14 (Woodbury and Bethlehem), Region 15 (Middlebury and Southbury) and Region 16 (Beacon Falls and Prospect) all have “just cause” provisions. (Association 11-5)

Further, other City contracts contain a “just cause” provision. For example, Waterbury City Employees Local 353, AFSCME (Blue Collar Unit); Local 1339, IAFF, AFL-CIO (Fire); Waterbury Police Union, Brass City Local, Connecticut Alliance of City Police (Police); School Administrators of Waterbury; Local 2090, Council 4, AFSCME (WMAA) and Waterbury City Employees Association (White Collar). (Board 44)

There is no evidence before this Panel to demonstrate that the “just cause” provisions contained in the aforementioned agreements served either as a management impediment or financial burden to the City.

The Association summarizes its argument as follows: “... the inclusion of new just cause language ... would promote fairness and consistency with respect to disciplinary investigations and provide teachers with a consistent due process standard that has become the universal in labor contracts.” (Association Brief at 63-64) The Association’s premise is good. But, there has been no persuasive showing that disciplinary investigations by the Board have not been fair. There was testimony of one inquiry that the Association asserted was not thorough. But, standing alone, that is not persuasive enough to include new language.

The public interest is not served by including unnecessary contract provisions without evidentiary support. This primary factor supports the last best offer of the Board. While the subordinate factors of the interests and welfare of the employee group and the existing conditions of employment of the employee group and those of similar groups support the last best offer of the Association. On balance, without a stronger showing of need, the primary factor trumps the two secondary factors.

Award:

Based on a review of all the evidence in light of the statutory criteria, the panel majority awards the **Last Best Offer of the Waterbury Board of Education on Issue #9**. Ms. McKinley-Anderson dissents.

ISSUE IN DISPUTE 10
Article 30, Section 13
¶433
(Definition of Substitute Services)

BOE Last Best Offer

¶433 **Section 13.** In schools where the Board assigns at least one floating substitute teacher for every 400 students, teachers may be required to perform substitute services or accept students from absent teacher(s) without remuneration or any other remedy, and without regard to otherwise applicable class size maximum. Substitute services include any service that a substitute teacher would otherwise perform, including the occasional assignment of additional student contact time during an otherwise scheduled preparation period or unassigned period. In schools where the Board does not assign at least one floating substitute teacher for every 400 students, in the event an absent classroom teacher (including Itinerant Art, Music and P.E.) is not provided with a substitute then the absent teacher shall be charged one (1) leave day including sick, personal, professional and legal. The teacher(s) (including Itinerant Art, Music and P.E.) who take these students shall divide equally one (1) leave day per occurrence and no class size or load maximum shall be exceeded.

Final Last Best Offer Waterbury Teachers Association

Section 13. In schools where the Board assigns at least one floating substitute teacher for every 400 students, teachers may be required to perform substitute services or accept students from absent teacher(s) without remuneration or any other remedy, and without regard to otherwise applicable class size maximum.

In schools where the Board does not assign at least one floating substitute teacher for every 400 students, in the event an absent classroom teacher (including Itinerant Art, Music and P.E.) is not provided with a substitute then the absent teacher shall be charged one (1) leave day including sick, personal, professional and legal. The teacher(s) (including Itinerant Art, Music and P.E.) who take these students shall divide equally one (1) leave day per occurrence and no class size or load maximum shall be exceeded.

Discussion:

The issue before us is found in Article 30, section 13, which contains two paragraphs, labeled 433 and 434 in the Agreed Upon Language document. (Joint Exhibit 10) Issue 10 is found in paragraph 433. In their respective last best offers, both the Board and the Association included not only paragraph 433 but also paragraph 434, which is not in dispute and which neither party sought to change. We recognize that the inclusion of paragraph 434 does not prejudice either party.

The Board seeks to include a definition of substitute services into the contract. Specifically, its last best offer amends paragraph 433 by adding the following: “Substitute services include any service that a substitute teacher would otherwise perform, including the occasional assignment of

additional student contact time during an otherwise scheduled preparation period or unassigned period.”

The Association argues that the Board’s offer “would modify the current language to require teachers to provide instruction or supervise students during daily preparation periods, which directly conflicts with the current preparation period language would have the additional negative impact of further diluting teacher preparation time.” (Association Brief at 65)

The Board asserts that its proposal “is an effort to memorialize, in contract language, its understanding and interpretation of the current contract language....” (Board Brief at 60) Mr. Schwartz testified that, based on his knowledge and that of the retired Director of Personnel, substitute service has always included teachers covering during their preparation period. And, Ms. Biolo, Chief Financial Officer of the Board, testified that, “to her knowledge, the Board has never compensated a teacher for periodic, missed preparation time.” (Board Brief at 61)

The issue of whether having teachers cover a class during their preparation period arose when two grievances were filed. In both, separate arbitrators held that the Board violated the contract when such assignments were made. (Board 17 and 18) Arbitrator Webber wrote: “The Board can’t make a connection between substitution and preparation periods when there is nothing in the CBA that even remotely suggests that may be done.” (Board 18 at 16) Further, Arbitrator Webber stated, “Preparation periods were periods set aside by the negotiated CBA for teachers to be used for school related purposes including classroom preparation. They were not to be used for “...teaching or engaging with students in any way.” (Board 18 at 18) Monetary damages were awarded as well as a cease and desist order. (Board 18 at 18) The Board has appealed. The appeal is pending.

In the second arbitration case, Arbitrator Psarakis found, “During the course of the 2016-2017 school year, 22 teachers at Tinker [school] were routinely deprived of one or more of the required five weekly preparation periods.” (Board 17 at 6) Arbitrator Psarakis found a violation of the contract, awarded monetary damages and a cease and desist order. The Board appealed seeking to vacate the award.

By decision dated July 31, 2018, the superior court granted the Board’s motion to vacate; notably because the award was imperfectly executed. (Board 15 at 13)

Arbitrator Psarakis wrote:

The parties of course, are free, following the expiration of this contract, to negotiate future provisions concerning preparation periods or other provisions that impact upon terms and conditions of employment. In so doing, it is expected they obviously will weigh and assess the importance of cost considerations and ability to pay considerations, among other relevant factors, when deciding whether such benefits should be provided, and in what amounts, especially during times of financial exigency. (Board 16 at 14)

Indeed, the parties engaged in such negotiations. In fact, the Association had made a proposal to add new language to the contract. It proposed, in part, “In accordance with the language of article

7, teachers not receiving their contractual, minimum weekly preparation period shall be compensated for all lost preparation period time at the teacher's respective daily rate of pay reduced to an hourly or fractional basis." (Board 2 at 9) The Association withdrew its proposal during arbitration. (See Joint Exhibit A, Issue 3)

The New Haven contract reads, in part, "Teachers shall not be assigned to any other duties during their preparation periods." (Association flash drive, DRG I Contracts) In Bridgeport, the contract reads, in part, "The Board of Education and the Association agree that preparation periods for elementary teachers should serve to improve the effectiveness of classroom instruction." (Association flash drive, DRG I Contracts) In Hartford the contract reads, in part, "Preparation time/periods shall be time used for educational purposes.... Teachers will be assigned to class coverage on a rotating basis. If there is an emergency need for coverage and a teacher is required to provide class coverage during his/her preparation period more than once in a semester, he/she shall be paid at the emergency coverage compensation rate...for each class period after the first such occurrence in each semester." (Association flash drive, DRG I Contracts)

The above examples illustrate that there is not one way in which preparation periods are handled but also that preparation periods are for something other than direct student teaching. However, there is concern on the part of the Board that to not amend the contract could lead to unknown potential financial exposure. That concern must be balanced against what could be characterized as the traditional definition of preparation periods.

The Association's argument that the status quo should be maintained ignores the two arbitration decisions and the inferential suggestion by Arbitrator Psarakis that the parties negotiate over the contract provisions.

In light of the arbitration awards and the unknown financial cost of not amending the contract, the Board's last best offer is reasonable. Returning to that offer, it incorporates, in pertinent part, the following language, "including the occasional assignment of additional student contact time during an otherwise scheduled preparation period or unassigned period." (emphasis added) By limiting additional contact time to an occasional event, it appears that the routine occurrences described in Arbitrator Psarakis' decision, will be limited. Thus, the Board's last best offer insures that student needs will be met without significantly impacting preparation periods.

The public interest and financial capability of the municipality support the last best offer of the Board. The subordinate factor of the interests and welfare of the employee group and existing conditions of employment of the employee group and those of similar groups favor the last best offer of the Association.

Award:

Based on a review of all the evidence in light of the statutory criteria, the panel majority, Mr. Williamson and Mr. Romanow, awards the **Last Best Offer of the Waterbury Board of Education on Issue #10**. Ms. McKinley-Anderson dissents.

ISSUE IN DISPUTE 11(a)
Article 32, Section 1
¶443A
(Contractual Hourly Rate in Year 1)

BOE Last Best Offer

No Such Language.

Final Last Best Offer Waterbury Teachers Association

Section 1. In the event an employee works in a program or activity for which certification is required during the summer months, or any portion thereof (that is those months between the end of a given academic year assignment and the commencement of the subsequent regular academic year assignment), or work in such a program or activity outside the regularly scheduled student day, that teacher shall be compensated for said professional activity at the rate of \$33.00 per hour effective July 1, 2019.

Discussion:

We begin by following the guidance of Judge Satter that the form of the last best offers must terminate the controversy. The panel majority finds that of the two last best offers, the Association's is in the form that will terminate the contract controversy, i.e., it is in a form that completes the contract.

In the alternative, and on the merits, we begin with the current contract language for Article 32, Section 1, which reads:

In the event an employee works in a program or activity for which certification is required during the summer months, or any portion thereof (that is those months between the end of a given academic year assignment and the commencement of the subsequent regular academic year assignment), or work in such a program or activity outside the regularly scheduled student day, that teacher shall be compensated for said professional activity at the rate of \$32.00 per hour effective July 1, 2016. (Joint B)

The monies are paid out under the following categories: Adult Education, After School, Extended School, Homebound, Mentor Pay, Summer School, 21st Century and Workshop. (Board 38)

The Association seeks to increase the \$32.00 amount by one dollar, i.e., to \$33.00 per hour. This would amount to an approximate percentage increase of 3.1%.

The Board notes that in 2017-2018, it spent \$1,755,980 for 54,874.4 hours at the \$32 per hour rate. If the rate were to increase by \$1.00 per hour, as proposed by the Association, the increase

cost, according to the Board, assuming a constant number of hours worked, would be \$58,874.40. (Board 37)

The Board argues that the Association “did not present any evidence that the BOE has experienced any difficulty in recruiting teachers to volunteer to teach in these programs. Absent such evidence, the Union has not presented any compelling rationale that the contractual hourly rate should be increased....” (Board Brief at 64) The Board is correct with regard to the former assertion but not the latter.

In the review of prior contracts between the Board and the Association, the \$32 per hour rate was established in the 2010-2013 collective bargaining agreement, with the rate being effective in the third year, i.e., beginning July 1, 2012. (Board 6) In that same agreement the rate was raised from \$30 to \$31 in the second year of the agreement. The \$30 amount was found in the 2006-2010 collective bargaining agreement and carried over to the first year of the 2010-2013 collective bargaining agreement. (Association Flash Drive, item G) Thus, the \$32 an hour rate has been in effect since July 1, 2012.

The cost of living averaged over the last three years is approximately 1.9%. Applying this figure to the \$32 an hour rate would indicate that, at least to this one subordinate factor, a 62¢ increase would be in keeping with the cost of living. Since the amount has not been increased since 2012, a \$1 per hour increase is reasonable.

With regard to comparison data, the Board notes that Waterbury “is within the range of other similarly situated districts” in DRG I. (Board Brief at 64) The figures are informative, Bridgeport pays \$38.00/hr. for summer school and \$24.00/hr. for workshop attendance; Hartford, \$36.00/hr. for summer school and \$33.00/hr. for Extra Pay; New Haven, \$32.00/hr. for summer school and staff professional development; New Britain, \$34.50/hr.; and, New London, \$40.00/hr. for instruction and \$35/hr. for summer professional development or other non-academic extracurricular activities not covered by stipend. (Board Brief at 64 and Association Flash Drive, E)

It is in the public interest and within the financial capability of the municipality to increase the hourly rate by \$1.00. The subordinate factors of interests and welfare of the employee group, changes in the cost of living, the existing conditions of employment group and those of similar groups all support the last best offer of the Association, as does the form of the last best offer.

We note that since the parties have agreed to retain Section 1 in the new Agreement (see Joint B), adopting the Association’s last best offer would, in essence, create a second Section 1, albeit with an effective date of July 1, 2019. We view this as a numbering issue not a substantive issue because the Association’s last best offer has a clear and definitive commencement date.

Award:

Based on a review of all the evidence in light of the statutory criteria, the panel majority, Mr. Williamson and Ms. McKinley-Anderson, awards the **Last Best Offer of the Waterbury Teachers’ Association on Issue #11(a)**. Mr. Romanow dissents.

ISSUE IN DISPUTE 11(b)
Article 32, Section 1
¶443B
(Contractual Hourly Rate in Year 2)

BOE Last Best Offer

No Such Language.

Final Last Best Offer Waterbury Teachers Association

The hourly rate for work performed pursuant to Article 32(1) in effect for the 2019-2020 contract year shall be increased by one dollar per hour and shall become the 2020-2021 Article 32(1) rate.

Discussion: Based on the directive of the Board and Association in Joint Exhibit A, the Panel is not required to render an award on Issue 11(b) because of the award on Issue 12.

**ISSUE IN DISPUTE 11(c)
Article 32, Section 1
¶443C
(Contractual Hourly Rate in Year 3)**

BOE Last Best Offer

No Such Language.

Final Last Best Offer Waterbury Teachers Association

The hourly rate for work performed pursuant to Article 32(1) in effect for the 2020-2021 contract year shall be increased by one dollar per hour and shall become the 2021-2022 Article 32(1) rate.

Discussion: Based on the directive of the Board and Association in Joint Exhibit A, the Panel is not required to render an award on Issue 11(c) because of the award on Issue 12.

ISSUE IN DISPUTE 12
Article 34, Section 2
¶463
(Contract Duration)

BOE Last Best Offer

¶463 Section 2. This Agreement shall be effective and binding as of July 1, 2019 unless a different effective date is prescribed in this Agreement for any Section or Article or provision of this Agreement, and this Agreement shall remain in force and effect through June 30, 2022. Notwithstanding the foregoing, there shall be a single reopener consistent with the statutory timelines. The sole purpose of said reopener is to negotiate salaries and/or step movement, if any, in the second and third year of the contract, as well as the premium cost share and the HSA funding level for insurance for said period of time as provided by the Board.

Final Last Best Offer Waterbury Teachers Association

Section 2. This Agreement shall be effective and binding as of July 1, 2019 unless a different effective date is prescribed in this Agreement for any Section or Article or provision of this Agreement, and this Agreement shall remain in force and effect through June 30, 2022.

Discussion:

Both the Board and the Association have proposed an agreement duration commencing July 1, 2019 through June 30, 2022. However, the Board's last best offer would contain a reopener provision for salaries and/or step movement and premium cost share and HSA funding level for the second and third year of the contract.

We note that the parties intended the word "salaries" to incorporate stipends and hourly rate. In the Issues in Dispute document presented to the Panel, the following notations appear:

Whether Issues in Dispute Nos. 7(b)-7(g) should be adjudicated by the Panel is contingent upon the Panel's decision with respect to Issue in Dispute No. 12. In the event that Issue in Dispute No. 12 is resolved in favor of the BOE, Issues in Dispute Nos. 7(b)-7(g) would become nullities, not requiring disposition.

Whether Issues in Dispute Nos. 8(a)-8(d) should be adjudicated by the Panel is contingent upon the Panel's decision with respect to Issue in Dispute No. 12. In the event that Issue in Dispute No. 12 is resolved in favor of the BOE, Issues in Dispute Nos. 8(a)-8(d) would become nullities, not requiring disposition.

Whether Issues in Dispute Nos. 11(b)-11(c) should be adjudicated by the Panel is contingent upon the Panel's decision with respect to Issue in Dispute No. 12. In the event that Issue in Dispute No. 12 is resolved in favor of the BOE, Issues in Dispute Nos. 11(b)-11(c) and would become nullities, not requiring disposition.

Whether Issues in Dispute Nos. 14(b)-14(c) should be adjudicated by the Panel is contingent upon the Panel's decision with respect to Issue in Dispute No. 12. In the event that Issue in Dispute No. 12 is resolved in favor of the BOE, Issues in Dispute Nos. 14(b)-14(c) would become nullities, not requiring disposition. (Joint Exhibit A)

The Board stated its primary reason for its offer: "because of the genuine uncertainty surrounding the future of state aid, especially the phase-in of additional ECS monies promised in Governor Malloy's current biennial budget." (Board Brief at 66-67)

The Association argues that "...multiyear contracts benefits the City immensely, as it permits the City/Board to project costs and plan for future expenditures.... One year contracts add another level of uncertainty for the employee group and the City/Board and is not compatible with sound financial planning nor in the public's interest in a strong educational system build on the foundation of professional educator talents." (Association Brief at 68-69)

The Association raises valid points. However, under the unique circumstances of this case, including the submitted final last best offers, the Panel Majority concludes that it is in the public interest and the interests and welfare of the employee group to award the Board's last best offer. Additionally, the financial capability of the City also supports our determination.

Award:

Based on a review of all the evidence in light of the statutory criteria, the panel majority, Mr. Williamson and Mr. Romanow, awards the **Last Best Offer of the Waterbury Board of Education on Issue #12**. Ms. McKinley-Anderson dissents.

ISSUE IN DISPUTE 14(a)
APPENDIX B
¶468A
(Extracurricular Stipends in Year 1)

BOE Last Best Offer

No such language.

Final Last Best Offer Waterbury Teachers Association

The Appendix B., Schedule B1 and B2 stipend rates in effect for 2018-2019 shall be increased by two percent (2%) and shall become the 2019-2020 Appendix B., Schedule B1 and B2 stipend rates.

APPENDIX B
STIPENDS

SCHEDULE B¹
COACHES

	<u>RATIO</u>	<u>2016-17</u>	<u>2017-18</u>	<u>2018-19</u>
Football	1	\$6,625	\$6,625	\$6,757
Assistant Football (4)	0.75	\$4,969	\$4,969	\$5,068
Assistant Football (with no Freshman Team)	0.55	\$3,644	\$3,644	\$3,717
Basketball	0.86	\$5,698	\$5,698	\$5,812
Assistant Basketball (with J.V. Team for entire season)	.62	\$4,107	\$4,107	\$4,189
Assistant Basketball (with no J.V. Team)	0.45	\$2,891	\$2,891	\$2,949
Freshman Basketball (If position is adopted by Bd.)	0.3	\$1,988	\$1,988	\$2,028
Baseball & Softball	0.82	\$5,433	\$5,433	\$5,542
Assistant Baseball (with J.V. Team for entire season)	0.5	\$3,313	\$3,313	\$3,379
Assistant Baseball (with no J.V. Team)	0.3	\$1,988	\$1,988	\$2,028
Freshman Baseball (If position is adopted by Bd.)	0.3	\$1,988	\$1,988	\$2,028

Soccer	0.56	\$3,710	\$3,710	\$3,784
Assistant Soccer (with J.V. Team for entire season)	.4	\$2,650	\$2,650	\$2,703
Assistant Soccer (with NO J.V. Team for entire season)	.4	\$2,650	\$2,650	\$2,703
Swimming	0.8	\$5,300	\$5,300	\$5,406
Assistant Swimming	0.45	\$2,981	\$2,981	\$3,041
Track	0.8	\$5,300	\$5,300	\$5,406
Assistant Track	0.45	\$2,981	\$2,981	\$3,041
Indoor Track	.8	\$5,300	\$5,300	\$5,406
Assistant Indoor Track	.45	\$2,981	\$2,981	\$3,041
Cross Country	0.47	\$3,114	\$3,114	\$3,176
Volleyball	0.56	\$3,710	\$3,710	\$3,784
Assistant Volleyball (If position is adopted by Bd.)	0.4	\$2,650	\$2,650	\$2,703
Tennis (per team)	0.47	\$3,114	\$3,114	\$3,176
Rifle	0.47	\$3,114	\$3,114	\$3,176
Golf	0.47	\$3,114	\$3,114	\$3,176
Cheerleader Coach (High School)	0.75	\$4,969	\$4,969	\$5,068
Assistant Cheerleader Coach (High School)	.4	\$2,650	\$2,650	\$2,703
Cheerleader Coach (Middle School)	0.47	\$3,114	\$3,114	\$3,176
Middle School (Per Team Sport)	0.47	\$3,114	\$3,114	\$3,176
Alternative School (Per Team Sport)	0.47	\$3,114	\$3,114	\$3,176
Business Managers (In High School)	1	\$6,625	\$6,625	\$6,758
Director of Sports	1.62	\$10,733	\$10,733	\$10,948

Unified Sports Lead Coach (Middle & High School)	.47	\$3,114	\$3,114	\$3,176
Unified Sports Associate Coach (Middle & High School)	.35	\$2,319	\$2,319	\$2,365
Strength & Conditioning Coach (per season)	.35	\$2,319	\$2,319	\$2,365

**SCHEDULE B²
ADVISORS**

	<u>2016-17</u>	<u>2017-18</u>	<u>2018-19</u>
Controller of Activities Fund			
High School	\$3,864	\$3,864	\$3,941
Middle School	\$3,312	\$3,312	\$3,378
Senior Play Director	\$2,462	\$2,462	\$2,511
Yearbook	\$927	\$927	\$945
Senior Class Advisor	\$927	\$927	\$945
Junior Class Advisor	\$463	\$463	\$472
School Newspaper Advisor	\$586	\$586	\$598
Student Council Advisor	\$463	\$463	\$472
Band Director High School	\$530	\$530	\$541
Band Director Middle School	\$430	\$430	\$439
Chorus Director High School	\$375	\$375	\$383
Chorus Director Middle School	\$299	\$299	\$305
Honor Society Advisor	\$299	\$299	\$305

Play Director Middle School	\$1,226	\$1,226	\$1,251
JROTC Advisor, Wilby And Crosby High Schools (stipend payable two times per year)	\$4,108	\$4,108	\$4,190
Lead High School Robotics Coach	\$3,114	\$3,114	\$3,176
Associate High School Robotics Coach	\$2,319	\$2,319	\$2,365

Discussion:

The Association is seeking a 2% increase in stipends over the amount paid for 2018-2019. The Board's last best offer is "no such language."

Following the guidance of Judge Satter, the panel majority finds that the of the two last best offers, the Association's is in the form that will terminate the contract controversy, i.e., it is in a form that completes the contract.

In the alternative, and on the merits, the Association advances its position by noting: "The stipend schedule has only increased 2% in the previous six contract years counting the current year." (Association Brief at 69) And, as is demonstrated from the above chart contained in the Association's last best offer, it was in the current year, 2018-2019, when a 2% increase was implemented.

The Association's last best offer, if awarded, would increase the annual cost of stipends by \$17,200. (Board 41)

The public interest and the financial capability as well as the interests and welfare of the employee group, changes in the cost of living averaged over the preceding three years, and the existing conditions of employment of the employee group and those of similar groups all support the Association's last best offer.

Award:

Based on a review of all the evidence in light of the statutory criteria, the panel majority awards the **Last Best Offer of the Waterbury Teachers' Association on Issue #14(a)**. Mr. Romanow dissents.

ISSUE IN DISPUTE 14(b)
APPENDIX B
¶468B
(Extracurricular Stipends in Year 2)

BOE Last Best Offer

No Such Language.

Final Last Best Offer Waterbury Teachers Association

The Appendix B., Schedule B1 and B2 stipend rates in effect for 2019-2020 shall be increased by two percent (2%) and shall become the 2020-2021 Appendix B., Schedule B1 and B2 stipend rates.

Discussion: Based on the directive of the Board and Association in Joint Exhibit A, the Panel is not required to render an award on Issue 14(b) because of the award on Issue 12.

ISSUE IN DISPUTE 14(c)
APPENDIX B
¶468C
(Extracurricular Stipends in Year 3)

BOE Last Best Offer

No Such Language.

Final Last Best Offer Waterbury Teachers Association

The Appendix B., Schedule B1 and B2 stipend rates in effect for 2020-2021 shall be increased by two percent (2%) and shall become the 2021-2022 Appendix B., Schedule B1 and B2 stipend rates.

Discussion: Based on the directive of the Board and Association in Joint Exhibit A, the Panel is not required to render an award on Issue 14(c) because of the award on Issue 12.

VI. Written Dissent

Following is the written dissent by Arbitrator McKinley-Anderson.

VII. Agreed Upon Language

Section 10-153f(c)(4) of the Connecticut General Statutes states, in pertinent part, “At any time prior to the issuance of a decision by the arbitrators or the single arbitrator, the parties may jointly file with the arbitrators or single arbitrator, any stipulations setting forth contract provisions which both parties agree to accept.”

Based upon this statutory directive, the Arbitration Panel accepts the parties jointly filed Agreed Upon Language¹⁰ and incorporates such into its Award.

¹⁰ The Agreed Upon Language is paginated separately from the pagination of the Award. It commences with a cover page and ends with page 78.

VIII. Arbitrators' Signature Page and Oaths

In the Matter of Waterbury Board of Education
-and-
Waterbury Teachers' Association
Section 10-153f of the Connecticut General Statutes
Interest Arbitration Award

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Representing the Interests of the Public in General

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Representing the Interests of the Waterbury Board of Education

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Representing the Interests of the Waterbury Teachers' Association

Dissenting Opinion -- Issue 7(a)

As the party arbitrator for the union, I respectfully dissent to the award of the panel majority in reference to Issue 7a, Salary Schedule- 2019-20. The award rejects the overwhelming evidence and testimony presented during the proceedings while electing to rely upon testimony fraught with hyperbole and speculation.

That stated, first I must address the format of the last best offer of the Board as a procedural matter. The decision cites extensively the Branford case. It is the Branford Board of Education vs. Branford Education Association. (No. CV80179099S, October 10, 1980, Satter J.). An important ruling in that case states that the last best offer of either party shall be in a form that when accepted, will terminate the contract controversy.

The last best offer of the Board does not meet the standard cited in Branford. A review of their last best offer for issue 7a, clearly shows that the offer is silent as to step movement in 2019-20 while the offer of the Union resolves such ambiguity. The offer of the Union affirmatively states there shall be no step movement in 2019-20. When a member of the union looks at the salary schedule for 2019-20 to determine his/her salary, there is no guidance in the offer awarded, as to which step he/she will be placed for that year. Do they remain on the 2018-19 step or advance one step above that placement. Plain and simple, it cannot be determined.

While a review of the evidence presented during the proceedings may suggest the Board intended no step advancement, their actual offer, submitted to the panel, must be considered lacking guidance and therefore not in a form that will “terminate the contract controversy”. (Branford)

This stated, I now return to the substance of my dissent based upon the failure of the panel majority to recognize legitimate and timely evidence presented by the Union.

A review of the comprehensive criteria, defined in 10-153(c) (4), reveals that the evidence and testimony presented by the Union belies that an award of a “hard zero” can be justified.

The bargaining history clearly documents that the Board approached these negotiations seeking its “hard zero” and during the course of negotiations NEVER moved off that position. They never even countered with a one percent (1.0%) as had been awarded by this panel majority just one year ago to the district’s administrators.

The financial capability of the district and the public interest is the priority factor in the statute. Here again, the majority of evidence has been ignored. First and foremost, Waterbury is NOT, in any way, in a desperate financial situation necessitating an extreme award of a “hard zero”. There is not one shred of evidence that Waterbury will face further state aid reductions. A review of the history of state aid in the past seven years, documents that, in spite of state deficit concerns by the legislature, state aid and ECS monies have increased in Waterbury.

(Union Brief, pg. 16-17). This, coupled with annual increases in city revenue, dispute concerns raised by the panel majority. The formula for ECS monies was revised by the legislature in June, 2017 to specifically address the underfunding in Connecticut's urban municipalities. Waterbury will be a recipient of approximately an additional \$6,000,000. That is the law. It can only be adjusted by an act of the entire state legislature.

Ironically, the Board, in its testimony, acknowledged the positive impact of teacher resignations in reference to their budget. Each year, due to the massive exodus of teachers, the Board saves approximately one million in salary costs from what had been budgeted. What is disturbing is all witnesses, who testified on this topic, appeared to be pleased and proud of this annual windfall.

In addition, testimony was offered by the Board that Waterbury received a grant of \$1,500,000 to assist with the influx of students due to the hurricane in Puerto Rico. If the panel majority studied more carefully the city budget for this year (Assoc. Flash drive), you would not find these additional dollars added to the budget. So asked, how can the Board fund an approximate \$2,466,000 increase in the teacher salary account, it has just been explained.

The panel majority has completely ignored the robust business growth, the annual budget surpluses and by the Board's own testimony, the conservative fiscal measures which have resulted in long term stability and viability. They are benefitting from huge school construction projects and massive capital improvements. Obviously, the only financial obligation that cannot reap the benefits of all of these positives; the salary account for the dedicated 1600 teachers in Waterbury.

The interest and welfare of the employee group, at the risk of being redundant, has also been completely ignored by the panel majority. Waterbury Mayor O'Leary testified that teacher salaries in Waterbury have improved immensely during the last two rounds of negotiations (2013, 2016) and now align with the averages within DRG-I and New Haven County. (transcript, pg. 27). The reality is that within DRG-I, Waterbury teachers rank five out of seven at all of the benchmarks and twenty-five or twenty six out of twenty seven within the county. This award of a "hard zero" will absolutely drop these dismal rankings to dead last! No other teacher union agreed to a hard zero this negotiating season or last as shown by Association evidence. (8-3). Recruitment and retention of highly qualified teachers is a high priority in any school district. It is critical to the success in an urban district. Salaries are an important factor in the hiring/retention process. Waterbury has only 25% of its teachers at the maximum step which translates to a statement that those who can leave, do. In fact, documentation and testimony by both sides shows clear concern. Over the past five years, 709 teachers, inclusive of 538 resignations, have moved on to higher paying districts. This translates unbelievably to, 44% of the entire FTE count! Yet, the panel majority believes an award of a "hard zero" will be a small step in mitigating this agreed upon problem, I think not.

A comparison of settlements with similar employee groups overwhelmingly supports the modest offer of the Union (2.25%, no step) versus the “hard zero”. There is absolutely not a shred of evidence to base their decision. Evidence, on the record by the Union, unequivocally supports the offer of 2.25%. During the current bargaining year, there have been approximately fifty-eight settlements. For the three year duration settlements, the average total is 8.5%. For the 2019-20 year, the average is 2.74%. In this instant dispute, the offer of the Union is a half percent below even the average. Documentation proves that that “hard zeros” have not been voluntarily agreed to nor awarded in arbitration in recent years.

The Board referenced comparisons with DRG-I, (the seven major cities in CT), as the most legitimate comparison. That said, the panel majority FAILED to factor the settlements, this year, for New London and Windham.

Windham: $3.3/3.07/1.85 = 7.39$

New London: $1.5/2.95/3.08 = 7.53$

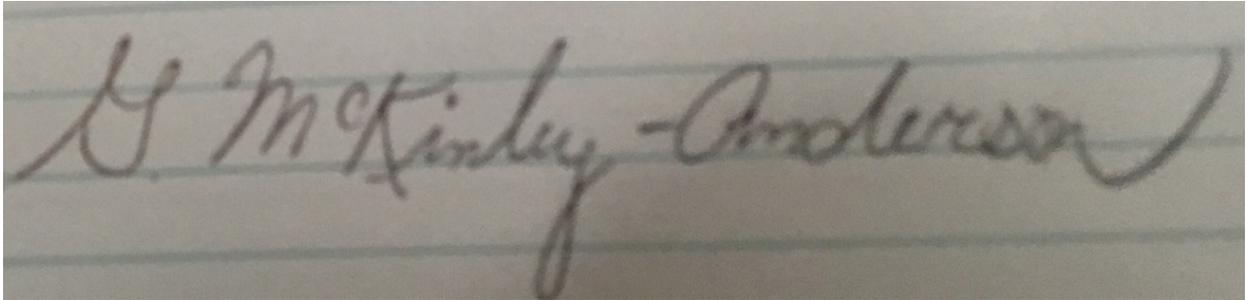
The Board argued and obviously the panel majority accepted the flawed logic that comparison of other settlements, this year, are not persuasive because they do not provide true comparison. This arbitrator notes that panels have always considered other settlement data as important and persuasive. The argument that length of work year, for example, must always be a consideration is flawed at best. I challenge the majority panel to produce a decision where this has been a factor.

The last statutory factor requires the panel to review other municipal settlements. It is a subsection of the sixth criteria. Here, again, the majority panel focus solely on the evidence that the police and fire unions were awarded a “hard zero” (retroactive) in the first year of a four year agreement. What is lacking is a comparison of their salary levels with similar employee groups in the state. In addition, a comparison of insurance benefits versus those of teachers, document a clear disparity. The fire fighter union will pay 16% premium cost share in 2019-20 and the police union maintains the PPO for existing staff. Only new hires are required to enroll in the HDHP.

In conclusion, the award of the panel majority is an egregious affront to the comprehensive criteria defined in 10-153(c) (4). A review of the entire record documents that the panel majority relied entirely on speculative, gloomy testimony of the Board, coupled with false hyperbole and fabricated dire concerns. The sole remaining evidence to support such a punitive award is two municipal employee groups who received a retroactive zero as part of a multi-year agreement.

The decision is outrageous, at best, and completely disregards the obligation of the panel to review ALL of the evidence and testimony presented. The WTA will return to the bargaining table just one year from now. They remain hopeful that the false hyperbole and speculation raised by the board, will be replaced by the truth and the facts that the Union offered in this dispute. They remain steadfast that future Board teams and, if necessary, an arbitration panel,

will give serious weight and credence to ALL comprehensive evidence. They are more than deserving of that opportunity.

A photograph of a handwritten signature in cursive on lined paper. The signature reads "Gail McKinley-Anderson". The ink is dark and the handwriting is fluid and connected.

Gail McKinley-Anderson
Arbitrator for the Waterbury Teachers' Association