

COMMONWEALTH OF MASSACHUSETTS  
JOINT LABOR -- MANAGEMENT  
COMMITTEE FOR POLICE AND FIRE,  
Case No. JLMC 11-42P

Police Officers of Westport Alliance

and

Town of Westport

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DECISION OF THE INTEREST

ARBITRATION PANEL

The undersigned neutral arbitrator was designated to chair a tripartite panel of arbitrators by the Joint Labor Management Committee, as per a letter dated December 11, 2012 from Sandra Charton, Senior Staff Representative. That correspondence also named Marjaria Doherty as Management Representative and Donald Cummings as Labor Representative on the panel.

This matter was scheduled for hearing before the above panel on March 7, 2013, became the victim of a weather delay, and was reset for and heard on April 4, 2013 at 10:00 a.m. at the offices of the Massachusetts Department of Labor Relations, 19 Staniford St., Boston, MA 02114. At the conclusion of this hearing, the parties agreed to file post-hearing briefs, extended to June 21, 2013, and received by the neutral arbitrator on June 24 and 25, 2013, respectively. At hearing, both sides made presentations, with the Alliance offering its positions first. Subsequently, the members of the arbitration panel reviewed the proceedings in executive session on August 6, 2013 at the offices of the JLMC in Boston, MA, after which this document was finalized.

At the hearing, both sides were represented as follows:

For Westport Police Officers Alliance:

Jason R. Powalisz, Esquire

Counsel for the Alliance

Christopher A. Dunn

President, Westport Police Alliance

Frank Nopert

Vice Pres., Westport Police Alliance

Johnny Couto

Observer, Westport Police Alliance

Antonio Centola

Observer

For the Town of Westport:

Brian Maser, Esquire

Counsel for Town of Westport

John F. Healey

Town Administrator and witness

Terry Provencal

Town Accountant

Keith Pelletier

Chief of Police

As part of the initial phase of these proceedings, each side identified particular issues for this hearing, in addition to the topics of "Wages" and "Duration," including three more topics at the initiative of the Town and five more topics at the initiative of the Alliance. (See Charton e-mail of December 26, 2012.) For reference purposes:

<u>Issue No.</u>	<u>Topic</u>	<u>Article</u>	<u>Page</u>
1.	Wages	VIII	5
2.	Duration	XI	12
3.	(Town) Sick Leave Language	VII	13
4.	(Town) Definition of "grievance"	IX	14
5.	(Town) Grievance Procedures, change to Art. IX, § 2	IX	15
6.	(Police) Extra Work Assignments (new paragraph) (new rate)	V	17
7.	(Police) Extra Work Assignments (amend Art. V, § 4-f) (Traffic ctrl)	V	19
8.	(Police) Paid Holidays (Thanksgiving Friday)	VI	21
9.	(Police) Shift Differential increase	VIII	22
10.	(Police) Longevity stipend, calculation process	VIII	23

### EXHIBITS

The parties submitted the following exhibits in support of their respective positions on the issues presented during the hearing:

1.	Current collective bargaining agreement (CBA) for FY 06-09 and FY 10 MOA ("Union" and "Alliance" used interchangeably herein)	Union Ex. No. 1
2.	Bargaining history, JLMC Petition/Correspondence	Union Ex. No. 2
3.	Union Proposals (Wages/Duration plus 5), Town proposals (Wages/Duration plus 3)	Union Ex. No. 3
4.	Union Comparable Communities	Union Ex. No. 4

5.	Wage and Health Insurance Data	Union Ex. No. 5
6.	Internal CBA's /MOA's, including current, in-force CBA's for Westport Fire, Highway and Library bargaining units, ending 06/2014.	Union Ex. No. 6
7.	Consumer Price Index/Inflation Data	Union Ex. No. 7
8.	Town of Westport Financial Data (Bond Submission, Audits, Grants DOR Reports	Union Ex. No. 8
9.	Union proposal relating to "Details"	Union Ex. No. 9
10.	Union proposal relating to "Shift Differential"	Union Ex. No. 10
11.	Union Proposal relating to "Thanksgiving Friday"	Union Ex. No. 11
12.	Commonwealth "Estimated Receipts" for 2009	Town Ex. No. 1
13.	Commonwealth "Estimates Receipts" for 2010	Town Ex. No. 2
14.	FY 2010 Local Receipts	Town Ex. No. 3
15.	List of Appropriations letter to Town Treasurer for May, 2008 Town Meetings	Town Ex. No. 4
16.	List of Appropriations letter to Town Treasurer for May 2009 Town Meeting	Town Ex. No. 5
17.	Letter, Town Clerk Samson to Treasurer Foster re: Appropriations from December 7, 2010 Special Town Meeting	Town Ex. No. 6
18.	Special Town Meeting warrant for October 27, 2009	Town Ex. No. 7
19.	Special Town Meeting Warrant for December 1, 2009	Town Ex. No. 8
20.	Moody's "AA3" rating report dtd July 13, 2010	Town Ex. No. 9
21.	Westport Finance Committee Minutes for October 20, 2009	Town Ex. No. 10
22.	Selectmen's Minutes, Regular Meeting, February 8, 2010	Town Ex. No. 11
23.	Selectmen's Minutes, Regular Meeting, February 22, 2010	Town Ex. No. 12
24.	Selectmen's Minutes, Regular Meeting, March 8, 2010	Town Ex. No. 13
25.	Selectmen's Minutes, Regular Meeting, March 22, 2010	Town Ex. No. 14
26.	Selectmen's Minutes, Regular Meeting, April 14, 2010	Town Ex. No. 15
27.	"South Coast" article, "Westport Rejects Override," 4/21/10	Town Ex. No. 16

28.	Selectmen's Minutes, Regular Meeting, April 20, 2010	Town Ex. No. 17
29.	Selectmen's Minutes, Regular Meeting, April 26, 2010	Town Ex. No. 18
30.	Westport Finance Committee, Minutes, April 27, 2010	Town Ex. No. 19
31.	Selectmen's Minutes, Special Meeting, April 29, 2010	Town Ex. No. 20
32.	Selectmen's Minutes, Regular Meeting, May 3, 2010	Town Ex. No. 21
33.	Selectmen's Minutes, Special Meeting, May 10, 2010	Town Ex. No. 22
34.	Selectmen's Minutes, Regular Meeting, May 17, 2010	Town Ex. No. 23
35.	"Reductions letter," Town Accountant Provencal to Dept. Heads, dtd May 10, 2010	Town Ex. No. 24
36.	Selectmen's Minutes, Regular Meeting, June 1, 2010	Town Ex. No. 25
37.	Town budget worksheets w/ and w/o "override" for FY 2011	Town Ex. No. 26
38.	Special Town Meeting Warrant for December 10, 2010	Town Ex. No. 27
39.	Town's "Sources Spread Sheet" for FY 2012, dtd May 24, 2011	Town Ex. No. 28
40.	Town's "FY 2014 Estimated Revenues" sheet, dtd 1/24/13	Town Ex. No. 29
41.	Town's "FY 2014 Estimated Revenues" sheet w/ \$46K surplus	Town Ex. No. 30
42.	Town's "Union Contracts Comparison" FY 09-10 thru FY 13-14	Town Ex. No. 31
43.	Town's "Major Financials," FY 2010 thru FY 2014	Town Ex. No. 32
44.	Town's "Position Comparables – Education" as of last CBA expired	Town Ex. No. 33
45.	Town's Comparable Communities (4) w/ "At a Glance" sheets	Town Ex. No. 34
46.	Acushnet/Teamsters Police CBA, 7/1/09 to 6/30/12	Town Ex. No. 35
47.	Swansca/Mass Coalition of Police CBA, 7/1/08 to 6/30/11	Town Ex. No. 36
48.	Somerset/New England PBA CBA, 7/1/09 to 6/30/12 (Art. 33)	Town Ex. No. 37
49.	Lakeville/Mass Coalition of Police, L., 304, CBA 7/1/08 to 6/30/11	Town Ex. No. 38
50.	MOA, Westport Mass COP, Local 272, dtd 9/8/08 re: police details	Town Ex. No. 39
51.	CBA, Town and Westport Permanent Firefighters, 7/1/06 – 6/30/09	Town Ex. No. 40

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There follows an explanation of the positions of the parties on each of the foregoing issues along with the panel's determination on how those issues shall be resolved:

Issue No. 1.

Contract Article VIII

### Wages

The parties have different expectations for the wage package for this contract. The Town essentially is looking to comparability with other elements or departments of Town employees while the Alliance is using police department compensation in comparable communities it has studied.

Pertaining to wages and other issues being sought (or not wanted, as the case may be) in these proceedings, the Union provided background data. The Westport Police Department (WPD) consists of 26 members: 18 patrol officers, 6 sergeants, 2 lieutenants and 2 patrol officers still in training, as of the April 4<sup>th</sup> hearing date. The 2010 CBA for the department (a one-year extension to the 2006-2009 agreement), Union Ex. No. 1, has been in "holdover" status since it was agreed-to. The parties have not been able to conclude negotiations on a successor CBA since then, as has been shown by the failed attempts to get a new contract by the 2010-11 efforts to do so, efforts that were doomed to failure because of the financial situation in those years and voter reluctance to move forward, as shown by a review of Town Ex. Nos. 11-27. The tentative agreement reached in 2012 was not approved by selectmen.

Currently, the Union (a/k/a/ "Alliance") is seeking a two-year package for 2011 and 2012, with an objective being to "catch up" for what they never received since 2009. In contrast to that, the Town, as per the Union's opening statement, is seeking a four-year package, through 2015. If adopted, the Town proposal would pay 0%, 1%, 1% and 2% for each of the years in a 2011-2015 agreement<sup>1</sup>. On the other hand, the Union argues that if it could achieve 3% for FY 2011 and for 2012, then it would still only reach a median income level in Bristol County.<sup>2</sup> The text of the Union's proposal may be found at page 6 of the Union's brief and on page 5 of the Town's brief.

### Position of the Alliance

The Police Alliance asserted that it should have wages increases greater than those proposed by the Town, that comparison with surrounding police departments demands it and equitable treatment justifies it. It seeks a percentage increase each year, using ten comparables and various indicators, e.g. the pay for a 10-year police officer in competing towns. The Union explained that the current police salary is \$47,306, spread across the department and shown in Union Ex. No. 5. It sees the cost of the Town's proposal to be \$49,279 and the cost of its proposal as \$53,192, as per the figures they used at hearing.

In its post-hearing brief, the Union reported that the parties "unsuccessfully engaged in negotiations for a successor contract," given delays caused by the Selectmen's rejection on July 18, 2011 and a lengthy process to prepare the petition for interest arbitration and present it to the JLMC. Likewise, this bargaining was hampered by the "Town's insistence that the Union accept

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<sup>1</sup> See Town brief, p. 6 relating to this and the Town's other 4 issues.

<sup>2</sup> The parties are not in agreement about comparable communities, one side wanting to use comparables in Bristol County only while the other wants to determine comparables by department size, work loads, and other functional variables versus geographical variables. See also Town brief, pp. 17-18.

a wage package which the Town alleged was 'the same' as the one accepted by other Town unions."<sup>3</sup> Lastly, referring to what the Union called the Town's "flintiness," as coined by the Town Administrator, is but a diversion for citizens "not wanting to pay the freight for the services they get," saying this was "an obstruction to the collective bargaining process generally,...[without] support under the relevant statute or principles."

Westport has a population of approximately 15,532 and doubles this in the summer months.<sup>4</sup> It was characterized as a residential and resort community which "functions with the obvious financial advantages of a strong property tax base and significant financial reserves."<sup>5</sup> It co-exists with other communities, all with basically the same proximity to each other, same taxation and finance laws, revenue receipts through "cherry sheet" distributions, and tax and other liabilities to the state, thus making it appropriate to look to "patterns of settlements" in "communities providing similar services."<sup>6</sup> In this spirit, the Union surveyed wage settlements in 17 of 19 of the Bristol County communities, with Westport being the twentieth community. Communities such as New Bedford, Fall River and Fairhaven are larger, compared to the smaller Berkley, Dighton and Freetown. For example, in Bristol County in FY 2011, "the average base wage increase was 2.1%. In FY 2012...it was 1.5%" (as per Union Ex. No. 5, and brief, p. 12). This was 3.6% for two fiscal years, conspicuously more than the "1% total offered by Westport." With this, the Union claims that "comparable community evidence offers overwhelming support for an award of the Union's wage proposal."<sup>7</sup>

Using ten comparable communities based on proximity and similarity in population,<sup>8</sup> three of which were among those picked by the Town as comparables, the Union found Westport police placed last. If the Town's 0% and 1% for FY's 2011 and 2012 were adopted, they would remain there, "dead last."<sup>9</sup> Conversely, the Union argues that its wage proposal would bring Westport near to the middle of the spectrum, with 6 communities ahead (higher) and 4 behind (lower) it, if the full wage proposal were implemented, i.e., the wages for two years and a new 4<sup>th</sup> step at 3% higher than the current top step. "To avoid having Westport suffer the growing problem in Massachusetts of having officers laterally transferring from lower paying communities to higher paying communities, and to keep Westport competitive with its immediate neighbors, and award of the Union's base wage proposal is an imperative."<sup>10</sup>

The Union asserts that the Town has the "unquestioned ability to pay for the Union's economic package." Notwithstanding that the Town will claim it cannot afford the Union's proposal or that it may have other intended uses for its free cash, stabilization funds or budget allocations, "the Town has the unquestioned ability to pay for the Union's fair and reasonable wage proposal."<sup>11</sup> Even if this ability to pay were somewhat impaired and "depressed municipal

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<sup>3</sup> Union br., p. 2. The firefighters were attributed with receiving a "tremendous economic enhancement beginning in FY 11," purportedly something that would let them settle in a manner consistent with other Town unions without being hurt financially. See EMT benefit worth \$5000 annually. Union br., p. 19

<sup>4</sup> Union br., p. 4 and Union Ex. No. 4.

<sup>5</sup> Union br., p. 4, noting that currently its free cash increased to \$828,575 and its stabilization fund to \$872,290 for FY 13. Its bond rate is strong at Aa3 and its unemployment rate "has stabilized."

<sup>6</sup> Union br., p. 11.

<sup>7</sup> Union br., p. 12.

<sup>8</sup> Union br., p. 13, there were more finite similarities such as per capita income, bond ratings, and state aid receipts.

<sup>9</sup> Union br., p. 14. See, in particular, fn. 11 for explanation in detail, especially as to "detectives."

<sup>10</sup> Union br., p. 15. See fn 13, noting that Westport is the only community without a 4<sup>th</sup> step on the wage scale.

<sup>11</sup> Union br., p. 23.

finances are posited as a barrier to economic relief, it is well recognized that employers 'who have pleaded inability to pay have been held to the burden of producing sufficient evidence to support the plea. The alleged inability [to pay] must be more than speculative and failure to produce sufficient evidence will result in a rejection of the plea."<sup>12</sup>

The Union urges that municipal budgets are "in large part, a product of the Board of Selectmen's assessment and ordering of priorities."<sup>13</sup> From that the Union extrapolates that from "nearly \$32 million in FY 13 revenues (and the same anticipated in FY 14), [to say] that the Town does not have the ability to pay for a particular item<sup>14</sup> is simply another way to of saying that the Town has chosen to use its revenue [differently]...[H]ere the cost of a fair salary increase each year for two years is a *de minimis* incremental cost to the Town, [not an issue of] inability to pay."<sup>15</sup> In this respect, the Town presented "its finances in a foreboding light...based on rather outdated data" that ignored its Moody's Aa3 bond rating, its \$1.7 million FY 13 "free cash and stabilization funds, its unfunded [unfilled ?] Deputy Chief position" at \$70K annually, and the Town's "stable tax base."<sup>16</sup>

The Union contrasted these mediocre and "grim" projections with the "conservative" estimates of local receipts and revenues for FY 14 that demonstrate the ability "to meet its obligations far and wide throughout the Town, including the possibility of sending more money to schools, funding Town Meeting articles, PCB monitoring, budget supplements and placing even more money into the Stabilization Fund."<sup>17</sup> In making these observations, the Union said that the Town "should not continue to skirt [a] fair settlement using the reputation of some of its citizens (cranky, fiscally negligent, unwilling to pay the freight for the services they get) as a reason to keep its officers at the bottom of the wage barrel."<sup>18</sup>

With this in mind, the Union spoke to the impact of its "base wage proposal" costs. This proposal contemplates 3% for FY 11 (as of July 1, 2010), 3% for FY 12, and a new 4<sup>th</sup> step at 3% higher than the current top step, to be effective July 1, 2010. Based on the top step base wage is \$47,306, and annual costs of \$74,880 for FY11 and \$39,156 for FY 12, the total cost is \$114,036. The Town's proposal for these two years (and ignoring the fact the Town proposed more than a two-year CBA) is \$0 for FY 11 and \$12,298 for FY 12. It also contains 1% for FY 13 and 2% for FY 14. The Union observed that its package at \$114K is less than the savings generated just by leaving the Deputy Chief's position unfilled.<sup>19</sup>

The Union referred to the cost of living index (COLA) and its importance was a tool upon which parties rely because of its "apparent and official certitude."<sup>20</sup> Using that authority, the COLA from July 2008 to July 2013, the five years from the Union's last wage increase until the present, ranged from 3.6 to 5.4 percent, "in line with the Union's proposed 6% [on the ] base and well above the Town's 1-2% proposed [increase] for either FY 11-12 or FY 11-13."<sup>21</sup> Thus, the logic for wage increases not only is intended to help bring officers current with comparability data, with keeping them employed in Westport, but also represents an effort to keep their buying

<sup>12</sup> Union br., p. 25 and Elkouri and Elkouri, *How Arbitration Works*, 6<sup>th</sup> Ed., p. 1431.

<sup>13</sup> Union br., p. 25 This is, of course, true but not always exclusively. e.g. when residents get to vote.

<sup>14</sup> E.g., \$114,036 using Union Ex. No., 5, p. 4 as the cost for the base wage proposed increases.

<sup>15</sup> Union br., p. 26.

<sup>16</sup> *Id.* See also fn. 25 relating to other reports, bond presentations and data presented at hearing.

<sup>17</sup> With reference to Town Ex. Nos. 29 and 30, and the current \$873K balance in the Stabilization Fund.

<sup>18</sup> Union br., p. 28 Likewise, testimony from Town Administrator Healey.

<sup>19</sup> Union br., pp. 30 and 36, and fns. 29 and 30 therein. Also, fn. 37, below.

<sup>20</sup> Union br., p. 31 and Elkouri and Elkouri, above, p. 1425.

<sup>21</sup> *Id.*, pp. 31-32.

power undiminished by inflation, citing the costs of electricity, gas and oil as examples. Added to this is the fact that state law “allows the Panel to recognize the dangers inherent in the job of a police officer in today’s America even if the Town refuses to do so.”<sup>22</sup>

The Union’s wage proposal is further justified by the fact that “fewer police officers are doing the same [amount] of work...[and] the increased stress and workload further warrant [adoption] ... of the Union’s ... wage package.”<sup>23</sup> The Town’s professed “interest in attracting and retaining good employees ... is inconsistent with the degraded wage proposal it [has] steadfastly advanced throughout negotiations...[and are inconsistent with] basic notions of fairness.”<sup>24</sup>

#### Position of the Town:

The Town characterizes its actions as “work[ing] towards a goal of compensating its police officers at a high level while also maintaining an important and necessary level of fiscal responsibility. [Its]...proposal would allow its police officers to remain the highest paid unionized employees in the Town and would keep the police officers well ahead of any of the Town’s unionized employees [and]... would further allow its police officers to be compensated at a level with surrounding communities...[T]he reality is that the Town ... continues to face several fiscal challenges ... [that] mandate that [it] negotiate a fiscally responsible collective bargaining agreement with the Alliance...[I]ts proposal balances the need for fiscal discipline with its goal of paying its police officers at a high level.”<sup>25</sup> Following on this fiscal philosophy, the Town added, “The Panel should place great emphasis on the financial challenges which faced the Town in FY ’11, and beyond, and the Town’s ability to pay in light of those challenges [and] should compare the Town’s police officers’ compensation as compared to other Westport employees....[and] should give little weight to the comparable community figures submitted by both the Town and the Alliance.”<sup>26</sup>

Speaking to the its ability to pay, the Town notes that it “has successfully negotiated agreement[s] with all other bargaining unit employees for the term of July 1, 2010 through June 30, 2014...[with] identical wage increases for this period (0%, 1%, 1%, 2%) along with other modest bumps in benefits.”<sup>27</sup> The Town reports that these newly negotiated benefits for these units over the 2010-2014, four-year period, will cost it “approximately \$126,834” while the Alliance’s proposals, if “fully accepted by the Panel,” would cost \$197,936” for only two years, namely for July 1, 2010 through June 30, 2012.

Historically, Town revenues fell significantly from FY 2009 to FY 2012. By way of example, for FY 2009-2010, estimated receipts fell \$700,000.<sup>28</sup> In FY 2010, “local receipts” were “short by \$82,109. “Free cash” (\$435,000) had to be used to balance the budget in FY 2009 and again in FY 2010 (\$649,559), resulting the certification of a negative free cash balance in October

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<sup>22</sup> *Id.*, p. 34.

<sup>23</sup> Union br., p. 36.

<sup>24</sup> *Id.*

<sup>25</sup> Town brief, pp. 2-3.

<sup>26</sup> *Id.*, p. 7. See also Town br., pp. 17-18 (“least amount of weight on comparables), p. 18 (too many unknowns to rely on comparables for them to be factored into the Panel’s analysis).

<sup>27</sup> *Id.*, p. 8, with further reference to Town Ex. No. 31.

<sup>28</sup> Town Ex. Nos. 1 and 2.



of 2009 of \$39,045.<sup>29</sup> By July of 2010, free cash rose to \$329,538, but all of that, other than \$32,897, was used to balance the FY 2011 budget.<sup>30</sup> All of these efforts were not necessarily effective as marked by the need to call two special town meetings to reduce expenses for FY 2010, by \$250,807 for the Town and another \$89,567 for schools.<sup>31</sup>

For FY 2011, the year for which the Alliance has proposed a 3% salary increase and all other unionized groups accepted 0%, brought more bad fiscal news. "As early as October of 2009, the Town Accountant [predicted] a \$1 million deficit for FY 2011." The concern was so prevalent that finances caused the Selectmen to "routinely and regularly" discuss budgetary issues for FY 2011 and decided, in February of 2010, that a budget "override" or more than \$1 million would be necessary for the FY 2011 budget.<sup>32</sup>

That was not to become a solution. The "override" did not pass and the State Legislature announced a 4% reduction in aid to the Town.<sup>33</sup> By April of 2010, the budget committee determined that the Town faced a FY 2011 deficit of \$1,569,239. This caused the Town Accountant to send a memo to all departments to cut the (bottom line of) budget by \$1,364,582, 8.9% of the total operating budget. From this amount, the Police Department had to cut \$57,502. This \$1.3 million reduction was not enough. In December of 2010, the Town transferred another \$92K from overlay surplus and \$180K from free cash in order for the budget to balance.<sup>34</sup>

From all these financial constrictions, the Town observes that the Alliance "did not dispute any of the Town's evidence....really all the Alliance did was show the Panel members numbers without any explanation as to whether the Town actually had the ability to fund a contract with the numbers on a specific page."<sup>35</sup> With reference to the free cash levels that are more recent and contemporaneous with these proceedings, the Town said, "Admittedly, things have improved with the Town with respect to its free cash reserves but now is not the time to use that free cash to pay for excessive increases to wages for Fiscal Years gone by that are not commensurate with wages paid to other union employees. The economy is still depressed...receipts continue remain stagnant or decrease, there is little to no new growth...."<sup>36</sup> Continuing, the Town said that it "did have monies in its stabilization fund, but those funds are not earmarked to fund pay increases to employees, especially when they are already paid at a competitive wage that is higher than all other employees in the Town. ... The economic outlook for FY 2014 is not any better and will not have funds available to fund large wage increases."<sup>37</sup>

Looking back over the past three to five fiscal years, the Town suggests that in the fiscal environments of FY 2010 and 2011, "a 3% raise and new steps on a wage scale is not justified or practical....Any raise, let alone a raise of 3%, at a time when the voters and taxpayers ... voted down an override, which only sought to maintain the then existing level of services, would have

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<sup>29</sup> *Id.*, Nos. 3, 4, 5 and 6.

<sup>30</sup> Town brief, p. 9, with reference to Town Ex. Nos. 6 and 28.

<sup>31</sup> Town brief, p. 10, with reference to Town Ex. Nos. 7 and 8.

<sup>32</sup> Town brief, p. 10, with reference to Town Ex. Nos. 10, 11 and 12.

<sup>33</sup> Town brief, p. 10, with reference to Town Ex. No. 4.

<sup>34</sup> *Id.*, p. 11, with reference to Town Ex. Nos. 24 and 27.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*, p. 12.

<sup>37</sup> *Id.*, plus references to Town Ex. Nos. 29 and 30. As for 2014, the "only way the Town will be able to level fund its budget will be through the use of \$828,575 of free cash reserves." If it chooses not to do so, it will be facing a deficit of \$728 K for FY 2014. At hearing, Town Manager Healey indicated that the department has a Deputy Chief position, at \$70K plus benefits per year, which it routinely has left unfilled.

been fiscally negligent....Clearly, this is not, nor would there ever be, the right time for the Alliance to even propose such a financial package.”<sup>38</sup>

Speaking to the issue of “base salaries,” the Town reports that, in addition to having a higher base salary than almost all other employees of the town “except maybe the Town Administrator, Fire Chief, Police Chief, Treasurer, Accountant, Highway Surveyor and Town Planner, members of the Alliance enjoy additional benefits that either far exceed what other employees of the Town receive or [for which] other Town employees are simply not eligible.”<sup>39</sup> In the case of a top-step patrol officer, with a base salary in the \$47,000 range, if that officer is Quinn Bill eligible, with a master’s degree, that would equate to \$12,000 a year in additional take home pay. This is compared to a top-step fire fighter with an annual salary of \$44,743 and who is not Quinn Bill eligible.<sup>40</sup> In the Highway Department, the top hourly rate is \$22.98.

With additional commentary as to Quinn Bill and other financial incentives, the Town reiterated some of the most recent CBA improvements, saying that the improvements in longevity payments represented more than a 200% in that benefit. In addition to this, the “fully guaranteed Quinn Bill for eligible officers” is an additional cost of \$100,000 and “will only continue to increase as the benefit is tied to base salary.”<sup>41</sup> Any other “nominal increases” for other bargaining unit members relating to observed holidays and/or non-Quinn Bill education incentives are much smaller than fringe benefits for Alliance members. Plus, these modifications in benefits to non-Alliance organized employees<sup>42</sup> was a *quid pro quo* for their agreeing to a zero (0%) percent increase in year 1 of the Town’s four-year salary matrix.

On the other hand, if the Alliance were to receive what it is seeking for wage adjustments, for just FY 2011, that cost, as noted earlier, would be \$106,133, for the same year in which the Department was directed to cut an additional \$57,000 from its budget. “This additional \$106 K would be a burden the Town would carry forward in perpetuity. Thus, if the Alliance obtained what they are seeking here, the additional burden on the Town in FY 2012 would be \$197,936 to fund their proposals. ... [T]he financial liability to the Town with the other bargaining units, through Fiscal Year 2014, the Fire Union agreement, Highway Union agreement, Town Hall Union agreement, and non-union pay increases do not come anywhere close to \$200,000” and that is spread out over 4 years, not two.”<sup>43</sup>

In speaking solely and directly to the issue of comparable communities, the Town’s commentary did not focus so much on which communities might be “comparables” to its way of thinking, but rather why comparability data should be focused on the history within the combined organized (multiple union) workforces in Westport, not outside communities. “[T]he Panel should place the least amount of weight on ‘comparables’ when rendering its Decision and Award in this case, in spite of the fact that the Alliance members’ compensation is competitive with the communities offered by the Town as comparables. At one time reviewing neighboring communities may have been a good source of information....[Today]... too many factors exist that lead to these agreements being what they are, and too much speculation is used when deciphering their content. ... Other than numbers, no other ‘comparable’ numbers were offered in

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<sup>38</sup> Town brief, p. 13.

<sup>39</sup> Town brief, pp. 14-15.

<sup>40</sup> *Id.*, and with reference to Town Ex. No. 39.

<sup>41</sup> *Id.*, p. 15, and with reference to Town Ex. No. 31 and Alliance Ex. No. 1.

<sup>42</sup> The largest of these non-Alliance increased level of conferred benefits was the “enhanced longevity payments to members of the Fire Department.” Town brief, pp. 15-16.

<sup>43</sup> Town brief, p. 16.

this case, such as economic solvency of the community....[W]hile a contract in a 'comparable' community may have a higher salary for a patrol officer, the municipality may, due to the excessive salary, have to reduce or cut services within the Police Department or other areas, including issuing layoff notices to patrol officers... There are just too many unknowns.<sup>44</sup>

In its assessment of its own proposal and that presented by the Alliance, the Town reiterated what it called a "modest increase" over four years, one that is "consistent with the wage increases given to members of other bargaining units and non-bargaining unit employees....[Its] proposal is competitive given the overall economic conditions the Town is currently operating under."<sup>45</sup> In advocating this type of assessment, the Town urges that "base salary is only a starting point for determining total compensation....[because] police officers receive numerous other monetary amounts, including longevity, shift differential, stipends, automatic holiday pay, clothing allowances, detail [pay] and a very lucrative education incentive.... Since many of these items are based on base salary, even the slightest increase in salary carries through exponentially to raise compensation in multiple areas....[M]ost of these financial benefits factor into the calculation of each other, which means that an increase to base wages or even to one (1) ancillary benefit has an exponential effect on the members' total compensation."<sup>46</sup>

Panel Decision (intending to represent at least a "Majority" opinion throughout):

The salary component of a document of this nature usually and implicitly is the most struggled-over, controversial, and time-consuming element of the decision. This case was no exception. While listed separately, wages and "duration" were considered simultaneously by the arbitrators, and, as noted under Issue 2, with there being a consensus in Issue 2, that the stability of the parties' CBA would be enhanced by a four-year package, thus the commentary relating to Wages will, likewise, reflect that timeline.

While the Town made a passionate and repetitive request that the comparability factors considered in this case be *internal* to the structure of that municipality,<sup>47</sup> i.e., that the internal comparison factors should trump the more broadly based metric of surrounding communities, it did, nevertheless, supply the panel with a comprehensive snapshot of the "factors to be considered."<sup>48</sup> Those factors were: (1) the municipality's ability to pay; (2) the interests and welfare of the public; (3) the hazards of employment; (4) physical, educational and mental qualifications; (5) job training and skills involved; (6) comparative wage and employment conditions with employees performing similar services and with other employees generally in *public and private employment in comparable communities*; (7) the cost of living; (8) the overall

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<sup>44</sup> Town brief, pp. 17-18

<sup>45</sup> Town brief, p. 19.

<sup>46</sup> Town brief, pp. 19-20.

<sup>47</sup> Town brief, p. 7.

<sup>48</sup> *Id.* For example, "The Town should compare the Town's police officers' compensation as compared to other Westport employees." While this did occur, the panel did not consider that the data internal to the Town should be exclusive of its considerations. Likewise, inasmuch as these proceedings are a product of the mandate to and under the JLMC, the entities focused on by that mandate are police and fire. Thus, comparisons of police and fire, or police to police in various municipalities, we considered more on point than, as an extreme example, the comparison between police compensation and library workers employed by Westport. Likewise, it goes without further explanation that constraining comparisons between various bargaining units in Westport only has the potential for a "false positive" in that the single employer entity, the town, could restrict wages and benefits in one bargaining unit only to use them to restrict wages and benefits within another unit. This would be circular reasoning, to say the least.

compensation presently received by the employees, including direct wages and fringe benefits; and 9) changes in any of the foregoing circumstances during the pendency of the dispute.<sup>49</sup> All these variables were part of the deliberations of the panel of arbitrators.

Given the amount of time the employees in this particular police bargaining unit have gone without a salary adjustment, without drawing any adverse inferences from intervening events such as the Town's financial condition in FY 2010 and FY 2011, a failed "override," or the rejection of the July 1, 2010 to June 30, 2012 proposal (Union Ex. No. 2),<sup>50</sup> we conclude that this bargaining unit would be better served by a new collective agreement (CBA) that extends into their current fiscal year, now FY 2014, as of July 1, 2013. This provides additional time before these particular parties start the bargaining process again, rather than forcing them into this process as soon as this decision is rendered. A momentary "vacation" from the bargaining process is intended to be beneficial, if not healthy and calming as far as labor-management relations are concerned. It also provides a means to approach the cumulative percentage sought by the union over two years, even though it will take four years, a duration sought by the Town, to achieve the wage formula presented here.<sup>51</sup>

<u>As of:</u>	<u>General Wage Adjustment:</u>
FY 2011 (7/1/10)	2.0%
FY 2012 (7/1/11)	2.0%
FY 2013 (7/1/12)	3.0%
FY 2014 (7/1/13)	3.0%
One day before FY 2015 (6/30/14)	3.0% new Step 4 to wage schedule

Issue No. 2

Contract Article XI

### Duration

#### Position of the Alliance:

The essence of the "Duration" issue is tied to the "Wages" issue, as is evident from the manner in which this topic was presented at hearing. For example, the Union is looking to place wage relief into two years, FY 11 and FY 12, with an additional tweaking along the way for a fourth step (new top step) on the wage scale, also effective July 1, 2010. Conversely, the Town conveys the message that it wants to stretch out the duration with lower amounts of financial commitment for four years, 0%, FY 11; 1%, FY 12; 1%, FY 13; and 2%, FY 14. Thus, the Panel's recommendation on the Wage package will impact the recommendation on Duration.

<sup>49</sup> *Italics added.*

<sup>50</sup> The arbitrators are mindful that the Town had a period of fiscal austerity and that it attempted to minimize or postpone new expenditures at a time when it had no funds. This was not a matter of bad faith.

<sup>51</sup> There is no intention to extend retroactivity to persons no longer members of the bargaining unit. Likewise, the addition of a 4<sup>th</sup> step to the wage scale at the end of the CBA is intended as a retention tool, supported by the arbitration panel (or a majority thereof) and is reason for no modifications in the longevity stipend, either as shown in Article 8, Section 4 of the CBA or in Union Ex. No. 5 (Longevity Comparables). See also fn. 10, above. The adjustments to wage compensation provided here are inclusive (in lieu) of offsetting increasing costs of health insurance, at a 39% contribution rate (Union Ex. No. 5), and COLAs as shown in Union Ex. No. 7, e.g., the Boston/Brockton/Nashua figure being 2.3%. The new Step 4 as of 6/30/14 has no meaningful cost impact on this CBA, given its effective date.

The Union did not devote significant, separate commentary to this issue in its post-hearing brief.

Position of the Town:

The Town objects to a contract of only two years' duration. "[T]he ideal of a two year contract which would expire on June 30, 2012 is, in the Town's opinion, nonsensical....[I]f such an aware issued, the parties would be entering into negotiations at some point in the future regarding FY 2013 that has already been closed out by the Town."<sup>52</sup> In the alternative, the Town proposes "a contract that is of similar duration to the other Town bargaining units. Doing this would not only assist the parties in future negotiations, but ... would also preserve the Committee's resources for other pending petitions."<sup>53</sup>

Panel Decision:

As noted in Issue 1, the duration for the next collective bargaining agreement shall be for a period of four years, commencing with July 1, 2010 and expiring on July 1, 2014, as shown above, and covering a period of four years, namely Fiscal Years 2011, 2012, 2013 and 2014. The rationale for this duration may also be found in the Decision for Issue 1. There is an obvious benefit to conclude four years of CBA time, with three years of catch-up, so to speak, and the current FY, FY 2014, so that the next cycle of negotiations starts with a new slate and after a respite from the bargaining process which shows evidence of having been challenging at times over these past four years.

Issue No. 3

Contract Article VII

Sick Leave Language, Town Proposal

Position of the Town

The Town acknowledges that sick leave buybacks are given to employees who "voluntarily separate themselves from employment honorably, generally after a lengthy term of dedicated service to a municipality....[These buybacks] represent a 'thank you for your service' and compensate a retiring employee commensurately with their attendance during the course of their employment....[It should not be provided to] an employee who is separated from employment involuntarily pursuant to the just cause language ... in this contract."<sup>54</sup> Likewise, the Town argues, an employee should not be compensated for a buyback when they "engage in substantial misconduct which adversely affects the public," adding that "substantial misconduct" has been defined as "adversely affect[ing] the public service by impairing the efficiency of the public service."<sup>55</sup>

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<sup>52</sup> Town brief, p. 19.

<sup>53</sup> *Id.*

<sup>54</sup> Town br., p. 20.

<sup>55</sup> Town br., pp. 20-21, citing to *Police Commissioner of Boston v. Civil Services Commn.*, 39 Mass. App. Ct., 594, 599 (1996).

Position of the Alliance:

Article VII, Section 1 (1) of the CBA currently reads:

The Employer agrees to compensate all employees or their beneficiaries twenty-five percent (25%) of the employee's accumulated sick leave upon death, retirement or any other permanent separation from employment except for gross misconduct up through the 19<sup>th</sup> year of service. After 20 years of service[,] reimbursement shall be at the rate of fifty percent (50%). Payment of one hundred percent (100%) sick leave time will be made in the event of a line of duty death.

This proposal would delete the language after "retirement", i. e., "or any other permanent separation from employment except for gross misconduct up through the 19<sup>th</sup> year of service." By brief, the Union interpreted this change to mean that the new version would "then be applicable only in a scenario where an employee was separated from employment not from death or normal retirement, but for a non-voluntary separation for a non-gross misconduct reason."<sup>56</sup> The Union is opposed to this change because, first, the Union raised the issue if such a scenario is even possible under the contractual just cause standard. Second, the Town failed to show at hearing "why this matter was even an issue for it, and/or that changing the parties' contract language accordingly was somehow necessary or proper." It concluded that the Town failed to show why this change would be "just, sensical, reasonable and/or appropriate."<sup>57</sup>

Panel Decision:

The provisions of the FY 2011 through the FY 2014 contract shall maintain the current contract language, "CCL" so to speak, regarding the sick leave provisions under consideration here. There has been no showing that the current contract language is not, nor has not been, effective or that there has been a showing that it is not working and needs to be adjusted. Under those circumstances, there is no reason to make a change in these provisions as part of these proceedings.

Issue No. 4

Contract Article IX

Grievance, definition of; Town Proposal

Position of the Town:

The Town suggests that this proposal is based on the inability of the parties to come to agreement on remedial modifications to the CBA. "[T]he Alliance could not even agree with the Town during negotiations with respect to a definition of what a grievance is evidences...the Alliance's inability to compromise that has resulted in this overly lengthy dispute....shows how unbending the Alliance was at the bargaining table and their all or nothing stance during negotiations."<sup>58</sup>

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<sup>56</sup> Union br., p. 42

<sup>57</sup> *Id.*

<sup>58</sup> Town brief, p. 21

This being the case, the Town “is merely attempting to clearly define, for the benefit of both signatories to the contract, what is and what is not subject to the negotiated grievance procedure,” a necessity, because without a definition, “any dispute tied to one’s employment could be considered a grievance. Such a broad definition may hamper both parties and could lead to abuse and precious time wasted by both sides rather than focusing their respect attention on law enforcement within the borders of the Town.”<sup>59</sup>

#### Position of the Alliance:

This proposal would add language to the definition of a “grievance” as defined in the past and continuing-in-effect CBA. That new language would provide that, “A grievance shall be defined as a perceived violation of a provision of this contract.” The Union complains that the Town did not produce any “evidence or justification” at hearing to warrant making this change. Moreover, if this language is designed to provide a means for determining what an issue means or whether it is arbitrable, then the parties have “decades of arbitral precedent” such that the jointly selected arbitrator may resolve whatever the pending question is without this modification to the existing CBA. “Adding in superfluous language...and without any citation to a solid issue, example, or reason why this is allegedly reasonable or necessary is not a proper use of the JLMC’s processes and... should be rejected outright.”<sup>60</sup>

#### Panel Decision:

Much like Issue No. 3, there was little to no showing that the current contract language is not working as to the definition of what constitutes a “grievance” under the contract. If there is an on-going problem with grievances being filed which do not comport with how a grievance is defined under the CBA or without sufficient specificity so that it can be processed as such, more subtle solutions are available, such as requiring, via the submission of a grievance form or letter, as the case may be, identification not only of what happened, but also of what section(s) of the contract have allegedly been violated. There is also concern that the introduction of the concept of a “perceived violation” might create more confusion than exists with the current contract language. Finally, if this is near and dear to the hearts of the parties to the CBA, they have the ability to adopt it immediately, until the next negotiations, by a side bar letter, or by the negotiations for the next CBA in FY 2015. Most likely, it will not rise to this level of importance, or, if it does, adequate justification will accompany that effort. Keep the CCL.

Issue No. 5

Contract Article IX

#### Grievance Procedure, Processing Methods, Town Proposal

#### Position of the Town:

The Town urges this change because the State Board of Mediation, Conciliation, and Arbitration “now longer exists and is now part of the Commonwealth’s Department of Labor Relations... For whatever reason... the members of the Alliance’s bargaining committee could

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<sup>59</sup> *Id.*

<sup>60</sup> Union br., p. 43.

not bring themselves to agree to remove language designating an non-existent administrative agency...<sup>61</sup> Additionally, “it is standard knowledge that matters before the DLR take longer to process and resolve than matters heard by a private arbitrator. At the AAA, cases are docketed and heard with relative speed where cases at the DLR ... can linger for several months to several years.”<sup>62</sup>

The Town also complains that “equally vexing is the Alliance’s unwillingness to agree to language which prohibits an arbitrator from altering or amending the bargained-for language reached by the parties through negotiations. Such language benefits both parties as it preserves the language negotiated by the parties and gives the arbitrator clear instructions as to what his/her arbitral powers are.”<sup>63</sup>

#### Position of the Alliance:

This proposal would delete provisions of Article IX that permit the submission of grievances to the State Board of Mediation, Conciliation and Arbitration, now managed by the Department of Labor Relations as part of Chapter 150E. Thus, the change would limit arbitration submission only to the American Arbitration Association (AAA). The Union also expressed concerns that this Town proposal would change Article IX so that the parties must share equally the costs of arbitration, and a provision that the arbitrator is without power to alter, amend or delete provisions contained in the CBA.<sup>64</sup>

In response to both of these changes, the Union complains that the Town did not produce any evidence or justification for this change. Likewise, it is “unclear whether parties can even agree to waive their MGL c. 150E, § 8 right to submit to arbitration via the DLR’s processes.”<sup>65</sup> The Town failed to show why this change was necessary. “Unnecessarily closing the door to one outlet for arbitration is unnecessarily restrictive and without purpose. [As for] cost sharing and non-amendment, ... these matters are well settled as inherent in any grievance and arbitration process... [and] should not be awarded by the Panel.”<sup>66</sup>

#### Panel Decision:

The Town’s suggestion of modifying the current language has merit, whether it be to clean-up and update the terminology as it relates to certain state agencies that no longer function as they did when the expiring CBA was negotiated in 2006, presuming that page 34 of Union Ex. No. 1 can be relied upon for that date. We recognize that the State Board of Mediation, Conciliation and Arbitration has vanished. Speeding up the filing and processing of grievances has always been the mantra of effective labor relations systems, public or private. This holds true because it inevitably is in the best interests of both sides to get a matter started, preliminary steps concluded, and arbitration scheduled and concluded as quickly as possible because then the parties can move on, sputtering goes to a simmer and then disappears, and “bad tastes” leave, so that normal day-to-day labor relations can resume. In the meantime, the parties have an answer

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<sup>61</sup> Town brief, p. 22.

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> Union br., p. 43.

<sup>65</sup> This is understood to mean “to submit a grievance to arbitration” unrelated to DLR’s impasse authority.

<sup>66</sup> Union brief, pp. 43-44.



from someone, an arbitrator, as to how a dispute should be resolved and, of course, if the parties really do not like the award, they can always negotiate something they both like better. The Town urged a modification to the arbitration process by asserting, "it is standard knowledge that matters before the DLR take longer to process and resolve than matters heard by a private arbitrator."<sup>67</sup>

The Town, claiming it was "vexed" by the Alliance's unwillingness to agree to language "which prohibits an arbitrator from altering or amending the bargained-for language reached by the parties through negotiations....[assuring that] such language benefits both parties as it preserves the language negotiated....and gives the arbitrator clear instructions as to what his/her arbitral powers are."<sup>68</sup>

All of these assertions are positive reasons why the provisions discussed here either need to be eliminated, updated, or otherwise incorporated into the CBA in order to achieve the purposes that are a part of this discussion. There is merit to having updated CBA language that (1) eliminates the references to the State Board of Mediation Conciliation and Arbitration, (2) inserts a new provider, i.e., the American Arbitration Association as the replacement provider of grievance arbitration services<sup>69</sup> and, by doing so, accelerates/enhances the dispute resolution process, and (3) inserts provisions as to arbitral authority into the CBA, i.e., no unilateral arbitrator altering or amended bargained-for language of the CBA. These modifications shall be implemented in the FY 2011-2014 CBA, in accordance with the time allowed for giving notice, etc. in fn. 69, below.

Issue No. 6

Contract Article V (4) (F)

#### Work Assignments, Detail Compensation, Union Proposal

##### Position of the Alliance:

This change would amend the existing language at Article V (4) (F) by increasing Extra Work Assignment rates as follows:

Road and construction details shall increase by \$1.00 effective upon ratification of a new collective bargaining agreement. These rates will increase by another \$1.00 [per hour] effective July 1, 2011, and another \$1.00 effective July 1, 2012, both at the option of the Alliance. If the Alliance wishes to exercise either or both of these options, it shall so notify the Town in writing no later than May 1 of the

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<sup>67</sup> Town brief, p. 22.

<sup>68</sup> *Id.*

<sup>69</sup> The need for this "expediter clause" in the contract is evident. Not so evident was whether it was supposed to "kick in" if the parties did not agree to a neutral by their own means, or if it meant all cases reaching arbitration automatically go to AAA for processing, docketing, selection and hearing arrangements. We leave this open to the parties with the caveat that if they do not agree on the process, then the second of the two scenarios above, the "automatic referral," shall be considered to be what is needed and accordingly adopted, to become effective within sixty (60) days of the effective date of the FY 2011-2014 CBA, those days being time for modifications to documents and notices to participating offices.

year or years at issue, and upon notification, the Town will implement the increase as of July 1 of the respective year.<sup>70</sup>

The Union characterized this proposal as being “fully warranted” because (a) the comparable “community evidence demonstrates that Westport police officers are currently tied for the lowest paid in any and all categories of detail work and (b) the cost of this is not borne by the Town but by outside vendors ... [Since] there was no countervailing evidence presented by the Town against the proposal, the Union avers it should be fully awarded as written.”<sup>71</sup>

#### Position of the Town:

The Town claimed that the detail rate is competitive and more than adequate. Further, it is “not aware of any economic provisions in any contracts that are activated at the discretion of a bargaining unit, in the same fashion as the Alliance has proposed increases to the detail rate”<sup>72</sup> here. The Town has to prepare an annual budget, a process that “would be frustrated if the Town were to wait upon the Alliance to advise as to whether the detail rate was increasing in a given fiscal year.”<sup>73</sup>

#### Panel Decision:

The role of the panel of arbitrators here is limited by the way the modifications sought by the Alliance were presented, i.e., those changes that they sought between the time of “ratification” and July 1, 2012. All of that is past history. Moreover, it would be more than monumental to attempt to convince users of “detail patrol officers” between the expiration of the last CBA – if we consider the prior but-still-in-force CBA to have expired – and now to make up arrearages so that back-pay accruals would be due to officers for detail pay, essentially at any time before the ratification and implementation of the new agreement which is the subject of these proceedings. Likewise and more contemporary in context, the Union’s brief updated the demand to \$1.00 in FY 12 and another \$1.00 in FY 13.<sup>74</sup> We will not go there, nor will we attempt to create a scheme which incorporates “back pay.”

The arbitrators are mindful that the sources for detail pay are outside users of such services in conjunction with repair, removal, construction, special events, private events that intrude into the public domain, and other purposes for which the Town would have to expend additional wage dollars if those expenses were not paid by the parties using and requiring them. The short version of this is that the Town bears very little, and often no, expense for detail pay. Instead, the Town bills entities using detail officers, takes off an administrative fee for this process and pays a fee to the officer(s) performing the detail.

Working from Union Ex. No. 9, Westport has three police detail rates: \$30 (non-alcohol); \$35 (alcohol); and \$40 (road). These differentials are not even mentioned at Union brief, p. 38. The one thing in common is the brief “total” of \$2.00 over two years; the testimony

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<sup>70</sup> Notwithstanding this language, Union br., p. 6, the Union clarified effective dates to FY 12 and FY 13 at page 38 of its brief.

<sup>71</sup> Union br., p. 38.

<sup>72</sup> Town br., p. 24

<sup>73</sup> *Id.*

<sup>74</sup> Union brief, p. 38.

offered at hearing was the desire for a \$2.00 increase, but without reference as to when and how it would be implemented. Union Ex. No. 9 asserts that, as far as the detail rate is concerned, in bold letters, "Westport is currently tied for lowest paid in any/all categories of detail work." There is a need to increase the rate minimally so that compensation for this type of protective service does not sink any lower in comparison to other communities.

After examining two relevant facts, we have determined that Westport is lower in its detail rate than even less affluent municipalities, than both larger and smaller communities within its universe of comparables, and that its \$30 rate, if still in effect, is less than any other except Acushnet with which it ties. Second, it has been some time, obviously at least two years since Joint Ex. No. 9 could have been conceived, since there have been adjustments to this rate. Thus, effective thirty (30) days after the ratification and implementation of the contract under consideration here, allowing time for notice to all involved and interested parties, the detail rate(s), whatever the case, whether a single or duty-determined rate, shall be increased by \$2.00 per hour. This provision shall appropriately be incorporated into Article V of the new CBA, or whatever article refers to Detail Compensation in that document.

In directing this increase, we are aware that there may be a need for Town meeting to approve this \$2.00 increase, if such a change has to accord with Town activities and record-keeping requirements. This increase is directed as a part of these proceedings and will not be helped by unnecessary controversy surrounding its implementation.

Issue No. 7

Contract Article V (4)

#### Work Assignments, Flagger Protection, Union Proposal

##### Position of the Alliance:

The Union seeks to amend/increase the "Extra Work Assignments" of this article with additional, a/k/a new, language pertaining to traffic control at construction and repair locations, noting that superior traffic control is provided by sworn police officers, to wit:

The Town and the Alliance agree that public safety interests are best served when traffic control on and around the roads, streets, highways and other passageways for construction, repair and maintenance projects; utility construction ... and all other activities requiring traffic control is performed by sworn police officers. Therefore the Town and the Alliance agree that traffic control on all such projects and activities where traffic control is deemed appropriate by the Chief of Police or designee will be performed only by sworn police officers pursuant to the current practice under the Department's Extra Work Assignments System as set forth in this Section, provided that if there are insufficient sworn police officers within the Department to handle available details on a given tour of duty, sworn police officers from other law enforcement agencies may be used to fill them under terms and conditions agreeable to the Association and approved by the Chief of Police. Nothing in this section shall alter the Chief's authority presently existing to determine the appropriate level of traffic control measures on such projects and/or activities.<sup>75</sup>

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<sup>75</sup> Union br., p. 6.

The Union asserts that such language, e.g., that pertaining to functions of “non-flaggers” and “recent state regulations, is “fully warranted by the benefit of having sworn police officers, intimately familiar with the Town’s streets and roads, as the best personnel to guard workers and citizens alike at dangerous road sites” as well as the deterrence of motor vehicle violations/apprehension of offenders/criminals. Likewise, similar language has been agreed to between labor and management “throughout the Commonwealth.” Lastly, it is the Union’s “understanding that the Town at least agrees in principle with the purpose of this language.”<sup>76</sup>

#### Position of the Town:

Making reference to Town Ex. No. 39, the Town said that, in 2008, the parties negotiated language that addressed paid details and the use of “flaggers,” now covered by that MOA. The Town asserted that this MOA “struck a balance between the Town’s managerial prerogatives to determine whether a police presence would be required at construction projects and the Alliance’s interest in preserving their members’ opportunity to work a detail.”<sup>77</sup> The Town complained that the proposal removed “any semblance of balance from the existing process, vitiates the Town’s management rights ... and mandates that only police officers of the Alliance can oversee a construction site on a Town roadway.”

In responding to this proposal, the Town says it understands that the ability to work paid details has been a source of additional compensation for members of the Alliance and that the Alliance does not want to see detail assignments given to individuals outside their membership.<sup>78</sup> However, usually such proposals are accompanied by “some rationale behind the proposal. Here, the Alliance ... presented not such evidence ... as to why this language change was necessary. This proposal is nothing more than an attempt to whittle away at the remaining management rights possessed by the Town.”<sup>79</sup>

#### Panel Decision:

This proposal comes to the arbitration panel without a history of problems or violations of the now current CBA. The current procedures for using flaggers and other protective personnel appear to be working effectively. Likewise, Town Ex. No. 39, shows a negotiated procedure for this process dating to September of 2009.<sup>80</sup> There is nothing to convince us to interfere with a working process or with a document that controls that process when they both work effectively. Maintain the CCL without changes to the present provisions as they apply to matters that are within the discretion of management.

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<sup>76</sup> Union br., pp. 37-38.

<sup>77</sup> Town brief, p. 23.

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> See also Town brief, p. 23.

Paid Holidays, "Thanksgiving Friday," Union Proposal

Position of the Alliance:

This proposal would amend Article VI, Section 3 by making the "day after Thanksgiving a holiday" and by deleting from the current CBA language the following: "and by changing the calculation of holiday pay from 8 hours per holiday to one-fourth of an officer's regular weekly compensation per holiday."

The Union claims that this proposal is "fully supported" by the fact "that the entire Town, union and non-union alike, has this benefit....all three other Town bargaining units have the benefit as do salaried and other non-union Town employees."<sup>81</sup> Likewise, the Town "failed to adduce a single reason why the Union should not have this benefit.."

Position of the Town:

The Town announced that it did not dispute that other Town bargaining unit members received the day after Thanksgiving as a paid holiday and members of the Alliance do not. Members of the Alliance, however, cannot forget that they have contractual benefits that other bargaining unit members do not, two of which include lucrative extra pay details and educational benefits for officers with advanced qualifications.<sup>82</sup> Plus, the Friday after Thanksgiving designation does not mean that police services are not needed for that day.

Panel Decision:

This suggestion is one of those times where police officers and their duty requirements are not the same as other employees of the Town, even the fire department. Requirements for police officers are the proverbial 24-7, and require constant staffing not only for routine and customary events but to address unknown and unexpected emergencies. Their functions make it impossible to equate the totality of their responsibilities with other workers in the fire department, the highway unit or the city hall unit.

An overall assessment of the holiday rotations for members of the police department shows them to be competitive with their comparables in other communities. Likewise, there would be a cost consequence to this new benefit. The arbitration panel feels that the utilization of new funds is more important on the salary line, Item No. 1, than it would be to support this new benefit. In the meantime, we expect that police are rotating their shift assignments so that they work some holidays and get others off; they are not tied to working all the holidays. We do not see a need or justification for this new benefit. Keep the CCL.

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<sup>81</sup> Union br., p. 39.

<sup>82</sup> Town br., pp. 24-25, citing to 2009 and "massive increased to members' longevity pay and full funding of the Quinn Bill, rather than add an additional holiday. The Alliance is now seeking to acquire a benefit that they passed on in prior negotiations for a greater return, without making any concessions with respect to what they received in prior negotiations."

Salaries, Shift Differential, Union ProposalPosition of the Alliance:

The Union proposes a modification to Article VIII, Section 2, dealing with shift differentials. The language of the overall provisions of shift differential would remain unchanged, but this proposal would increase the overnight shift from 5% to 6% and the evening shift from 3% to 4%, both effective as of July 1, 2010.<sup>83</sup>

By way of supporting this proposal, the Union asked this Panel to take notice of the "growing body of medical evidence demonstrating the very real health hazards of shift work," even without which, "balancing work and family/personal life considerably [makes] work than if a worker performs only during regular workday hours." By way of comparison, the Union noted that "the Town's current shift differential is tied for the lowest of not only all ten of its comparable communities, but [all communities] throughout the entire Bristol County."<sup>84</sup> Some communities were touted as having differentials that were three times (300%) those received by Westport police officers, depending on the shift. This is sufficiently compelling that the Union indicated it should be awarded as written.

Position of the Town:

Currently officers who elect to work evening or midnight shifts are eligible for a 3% evening shift differential or a 4% midnight shift differential. In the sense of a cash benefit, a top step patrol officer on evening shifts earns an additional \$1,425.65 annually, or for the midnight shift, an additional \$1900.86 annually. If applied to the Town's proposal, by July 1, 2013, this would raise the evening shift amount to \$1483.56, and to \$1978.08 for the midnight shift.

The Association's proposal, on the other hand, would raise the evening shift differential by \$651.19 as of July 1, 2010 and the midnight shift differential by \$1,214.85. Increases that are this rapid are "overpriced and not practical. The Town's measured approach to increasing the shift differential as part of incremental increases to an officer's base wage is the more desired approach."<sup>85</sup>

Panel Decision:

The arbitration panel has consciously focused its attention to the wage compensation generally, as noted in Issue No. 1. With adjustments to the wage scale there will be automatic increases to compensation for working details, e.g., 3% of \$42, to use a Union figure, is more than 3% of \$40. Our adjustments are more strategically placed on the wage base rather than making more minor (and far more "micro managed") changes to benefits such as the detail rate. In crafting the changes to the wage base in Issue 1, other wage-related cost items were

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<sup>83</sup> Union br., p. 7. Evening shift shows two "increase to" figures, 4% and 6%. It appears 6% is an unredacted holdover and that 4% is the intent, given the brief, p. 39 speaking to a "modest 1% increase."

<sup>84</sup> Union br., p. 39 and with reference to Union Ex. 10. See Raynham, Easton, Mansfield, Dighton and Norton.

<sup>85</sup> Town br., p. 25, as to this and the financial calculations.

considered. We have not been convinced that there is a need for a separate adjustment to the detail rate and find that the current contract language is sufficient as written.

Issue 10

Contract Article VIII (4)

Salaries, Longevity Stipend, Union Proposal

Position of the Alliance:

The current CBA, at Article VIII (4), has a longevity pay provision predicated on years of credible service and based on a series of steps, matched to fixed dollar amounts, e.g., \$300, \$650, etc. Noting that the Town has already “engaged in stipend to salary conversion for a considerably larger benefit,” the Union said the EMT stipend was worth thousands of dollars to each fire fighter who benefited from it. Even without this, however, there “is also good reason to award [it] as a recent change in the state’s retirement law no longer allows such differentials to be included in retirement calculations, and such a conversion would protect Westport police officers’ retirement benefit....The cost is *de minimis* – essentially cash for cash,”<sup>86</sup> the exception being a slight increase in overtime rates. The Union urges this change might also be attractive to an employer because costs do not rise until the wage base increases.

Position of the Town:

The Town claims it was “offended” by the Alliance proposal to increase longevity payments only “a year after [they] negotiated longevity payment increases of more than 200 percent and as percentages rather than flat dollar amounts....Members of the Alliance currently enjoy very lucrative and competitive longevity payments that more than adequately compensate them for their years of service.”<sup>87</sup> These longevity payments were represented to be “far and away the highest in the Town and ... have enjoyed these enhanced payments for a greater period of time than other public safety employees of the Town.

The Town added that the Alliance “engaged in misrepresentation when [it] claimed, at hearing, that a change in the longevity scheme would cost the town nothing.... The longevity payments owed to Alliance members would compound exponentially if they were converted to percentage amounts and ... tied to an officers’ salary.”<sup>88</sup>

Panel Decision:

The arbitration panel reviewed this proposal to convert the current cash (dollar-based) longevity stipend to a base pay amount so that it could be considered part of compensation for retirement purposes. The Alliance/Union further argued that the Town has already made such a commitment by doing just this, converting the EMT stipend to base rate, for the firefighters bargaining unit.

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<sup>86</sup> Union br. p. 40.

<sup>87</sup> Town br., p. 25

<sup>88</sup> *Id.*, p. 26.


On the other hand, this proposal comes with several "variations on a theme." The now-expiring CBA<sup>89</sup> shows a longevity pay schedule of 10 years = \$300; 15 years = \$400; 20 years = \$550; and 25 years = \$650. This is in contrast to Union Ex. No. 5 that shows Westport with a longevity plan of \$1500 to \$3000 for 15 to 30 years of service. This prompts two observations. First, this variation, based on which version is considered to be the starting point as to the cash value of payments, creates a wide disparity between where this police department places with respect to comparable communities that provide the same type of benefit. Second, this wide variation makes it imprudent, if not impossible, for the arbitrators to determine from which figure(s) this benefit, as proposed, should be calculated.

There is a certain practical value in the proposal to the extent that it, in part, is based on putting this payment in a configuration where it would be considered as part of salary, and, consequently, also part of compensation for retirement purposes. The arbitration panel believes that this proposal, given the uncertainty of the financial starting point of any costing estimates and the issue of whether it is handled as a fixed dollar amount or a percentage, is not best addressed as part of this proceeding. With more insight and, one hopes, more mutuality of purpose, the parties will address this in subsequent negotiations, with a result that benefits both sides.<sup>90</sup> Keep the CCL.

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This concludes the hearing, evaluation, assessments, the decisions provided by the arbitration panel. There has been a conscientious and studied attempt to provide the parties with a set of solutions to resolve what is essentially a four-year-old contract dispute. We hope the parties will devote the same attention, concern and diligence to the responsibilities conferred by this document as we, the panel, have in fashioning these remedies for you.

Dated August 30<sup>th</sup>, 2013

  
Parker Denaco, Neutral Arbitrator

[Management member declined to sign]

Marjarity Doherty, Town Arbitrator

  
Donald Cummings, Alliance Arbitrator

After reviewing this decision in its entirety, I (concur ☐) (dissent ☐) with these findings.

I (am ☐) (am not ☐) providing my supplemental comments which are attached hereto.

Dated: \_\_\_\_\_, 2013

After reviewing this decision in its entirety, I (concur ☒) (dissent ☐) with these findings.

I (am ☐) (am not ☒) providing my supplemental comments which are attached hereto.

Dated: 8-19-, 2013

<sup>89</sup> Union Ex. No. 1, p. 26.

<sup>90</sup> To the extent that it is pertinent here, the arbitrators note their familiarity with fn 35 of the Union brief.