

COMMONWEALTH OF MASSACHUSETTS
JOINT LABOR MANAGEMENT COMMITTEE

In the Matter of the Arbitration Between

TOWN OF AYER

and

AYER POLICE PATROL OFFICERS' ASSOCIATION

Case No: JLMC- 12-2132-P

Date Issued: October 15, 2013

INTEREST ARBITRATION AWARD

Arbitration Panel:

Sharon Henderson Ellis, Esq.

Paul Birks

Paul Blazar

Neutral Chair

Labor Arbitrator

Management Arbitrator

PROCEDURAL BACKGROUND

The Ayer Police Patrol Officers' Union (APPOU) represents the permanent full-time patrol officers of the Ayer Police Department. The Town and the Union are parties to a collective bargaining agreement effective July 1, 2011 through June 30, 2012.

Because the Town and the Union have been unable to successfully negotiate a successor contract, the matter is before the Joint Labor-Management Committee (JLMC), in accordance with the provisions of Chapter 589 of the Acts of 1987.

A hearing was held before a subcommittee of the JLMC to identify the issues and present the two parties' views. On February 1, 2013, the JLMC directed that the dispute be submitted to arbitration before this tripartite panel consisting of neutral Chair Sharon Henderson Ellis, Management Representative Paul Blazar and Union Representative Paul Birks.

Two issues were certified for issue-by-issue arbitration. They are – wages and duration and, an issue of credit and usage of holiday pay. Two days of arbitration were held on May 28 and August 12, 2013. The parties' written arguments were received by the arbitration panel on or about September 17, 2013.

ISSUES PRESENTED

The issues presented are pay raises for the span of a three-year contract for Fiscal Years 13, 14 and 15. The Town proposes raises effective July 1, 2012 of 2%, July 1, 2013 of 2% and July 1, 2014 of 2%. The Union proposes a 0% pay raise for the first year of the Contract (Fiscal 2013), a 4% pay raise for Fiscal 2014, paid in two increments (July 1st and January 1st) and a 4% pay raise for Fiscal 15 with the same incremental split.

The second issue involves holiday pay and how it is credited and used by the members of the bargaining unit. The discussion of the holiday issue follows after the discussion of a three-year wage package.

Below is a summary of the facts and arguments presented by each side. The summary of the parties' positions is followed on page 14 by the Panel's Award.

POSITIONS OF THE PARTIES

The Union

It is the Union's position that its "out of the box" approach is justifiable and affordable. It is undisputed that the Union's proposal actually costs the Town less over the three-year contract period by an amount of \$15,670. By imposing upon its members a two-year period with no wage increase and delaying raises until the end of the contract, the Union's proposal provides the Town a significant cost savings.

During the first year of the contract (Fiscal 2013) the Union's proposal requires no cash outlay from the Town and no payment of

retroactive wages. The Town's proposal on the other hand, requires a cost outlay of \$16,000 and retroactive pay.

The Town's proposed 2% raise in year two (Fiscal 2014) is valued at \$16,320. When compared with the Union's proposal of a split 4% raise, the Union cost of \$24,160 is still significantly less than the two-year cost of the Town's proposal -- \$32,320.

It is not until the third year (FY 2015) that the Union's proposal requires a single year outlay of cash larger than what the Town proposed to spend for the same year. The total cost of the wage package for the Union is \$81,616 compared with \$97,286 for the Town.

According to the Union, its proposal presents a fair and perfect balance – although the Union's proposal increases the base by 2%, the Town pays less during the life of the contract and, the Union foregoes any retroactive pay out during the first year of the agreement.

The Town has not claimed an inability to pay. Rather, its *principal* objection is based on the fact it would cause the Town to vary from its pattern of providing some other Town unions with three-year contracts and annual 2% increases.¹ Those employee unions, however, unlike the police, have not proposed to forego raises for two years. In that regard, the APPOA's proposal is more affordable.

According to the Union, the pattern agreed to by other unions is not controlling, especially since the Town did not show where the other bargaining units fell within the universe of comparable communities for the work they perform. The Union asserts that by contrast, its proposal

¹ See the Union's Brief at page 4, first full paragraph.

is tailored to the needs of Ayer police and based on a comparison with the compensation received in comparable communities.

The Union acknowledges that its proposal makes the Union members' slightly more competitive than that of officers in bordering communities.² For example, a Groton officer at the top step would earn 7% less than an Ayer officer at the top step. Importantly, however, that is not the end of the comparison. Groton officers receive Quinn pay and have a larger shift differential. Looked at that way, an Ayer officer receives \$2,252 or \$5,373 less than an officer in Groton, depending on the officer's date of hire.

The Union's proposal seeks to increase its standing viz a viz compensation in the comparable communities; it would not launch the officers outside the universe of comparable communities.

Regarding the Town's ability to pay, the Union's expert pointed out that the Town ended up with an exceptionally large amount of free cash for FY 2013 -- \$1.42M. This by itself could fund the Union's proposal. Importantly, the Union's proposal is consistent with the 8% cost of living increase. Both the comparability data and the evidence regarding the cost of living demonstrate that the APPOA's proposal is more consistent with the statutory criteria than the Town's.³

² See Union Brief at p. 6, paragraph 2.

³ The Union references statutory criteria set out at paragraphs 5 and 6. (p. 5, Union Brief).

Holiday Pay/Comp Time

The Union proposes that an officer being compensated for working a holiday be given the choice of 8 hours of extra pay or banking 8 hours of compensatory time for later use so long as the time off does not create an overtime expense for the Town.

The Union provides the following example:: Officer A elects to take the holiday pay benefit in the form of wages. The Town pays the officer an extra 8 hours in compensation. Officer B elects to take the holiday pay benefit in compensatory time so the Town pays out no additional wages. Officer B uses the accrued time off at a later date but only if no vacancy is created that requires the payment of over time.

In sum, the Union's proposal would provide a cash savings to the Town and would provide the employees with an additional option for time off without burdening the overtime budget.

The Town

While the Town greatly appreciates and values the risks and courage of its police officers, it posits that they are well and justly compensated compared with officers in comparable neighboring communities and with other unionized employees in Town. The Town's proposal, it asserts, will keep the officers compensated at an extremely affordable rate.

According to the Town, the Union's proposal would launch the officers to the upper reaches of compensation compared to comparable communities and create a disparity with other Town employees.

Enumerating the ten statutory criteria to be considered in interest arbitration, it is the Town's position that the greatest weight should be placed on a comparison of the total compensation to officers in comparable communities. This comparison, it asserts, demonstrates how well Ayer's officers are currently paid. The second criterion, it asserts, should compare the officers' compensation to other unionized Town employees, most of whom accepted a 2% wage increase for Fiscal 2013.

Importantly, the Town points out that the Union has put forth *no* argument to support why it deserves a greater increase than other Town employees.

Regarding the comparability of the compensation of Ayers' officers to those of neighboring communities, the Town produced figures for 12 communities. Its figures include the following relevant factors: base pay, educational incentive, longevity pay and night differential.

According to the Town, even if it could afford the 8% increase the Union is seeking, its data shows that the amount is not justified because Ayer police already have a relatively high standing among their peers.⁴ According to its data, the average Ayer patrolman (using his/her FY 12 wages) receives a higher overall compensation (\$63,630) than does a similarly situated patrolmen in 8 of the 12 comparable communities and approximately \$2000 more than the annual average compensation for patrolmen in those communities.⁵

⁴ See Town Brief at page 11, second paragraph.

⁵ Higher than all but Groton, West Boylston and Littleton. Indeed the Union relies heavily on a comparison with the town of Groton.

Looking at the data, Ayer's wages are at or above that of officers in comparable communities. For example, in the twelve communities, the average bottom step is \$43,890 versus \$44,025 in 2012 for Ayer officers. Comparing wages at the top step, Ayer was at \$59,806 in 2012 compared with \$54,690 for officers in neighboring towns.

According to the Town, an average Ayer patrolman (using his FY12 wages) receives a higher overall compensation of \$63,620, more than eight of the twelve communities. The Town argues that the panel should seek equity for the officers, not supremacy.

The Town explains why, in its view, the Union's comparability data is unreliable and that no credible evidence supports the Union's contention that Ayer's wages fall below those in communities of a comparable nature.⁶

A second statutory criterion the Panel is required to consider is the contract and settlement terms of other unionized employees in the municipality. Here, most of the town's employees accepted a 2% wage increase for FY 2013 and have yet to settle for the final two years of their contracts of their contract cycle.⁷ Its Firefighters agreed to a 2% cost-of-living increase for FY 2013. Importantly, the Ayer Police Superior Officers' union agreed to the same terms, as did, the DPW's Union. The Dispatchers are parties to a three-year contract from 2011 through 2014 in which there were no wage increases but wherein they received an annual stipend amounting to about 10% of their base pay.

⁶ The Union asserted that Ayer's wages lagged by 3.7%. This was based, the Town contends on an outdated and unverified survey.

⁷ See Town's Brief at page 13, last paragraph.

The Town Hall clericals have a three-year agreement in effect through June 2014. They agreed to a 1% increase for Fiscal Year 2013.

Principles of fairness strongly dictate maintaining parity, especially with public safety personnel. The Town contends that in recent years, there has been parity among the units and the Union has failed to present evidence why this Panel should deviate from this sound practice, particularly where the wages paid to the patrolmen are above average among comparable communities.

The Town cites to two recent Awards where the arbitration panels relied on parity among safety personnel within a municipality.

Ability to Pay

The Town does not dispute that the Union's present wage proposal imposes a cost over a three-year period that is nominally less than the Town's. It asserts, however, that the more relevant factor is the LONG-TERM costs associated with the two proposals.

The Union's proposal (0, 2/2, 2/2) ends with a total base wage of \$848,966 while the Town's (2,2,2) ends at more -- \$857,455. The Town states, "While the town might have the ability to pay one or two years of 4% increases for 11 employees, this pattern is . . . not sustainable over several years or decades and certainly not if applied to all of the Town's 80 employees.

The Town asserts that once a wage pattern is established, it is difficult to retreat from. Were the Union proposal to prevail, other employees, especially the firefighters, would seek the same increase. The Town concludes, "Based on the more detailed long-term calculations, there is good reason to reject the Union's wage proposal.

According to the Town, not only is an 8% wage increase over the three-year contract period not justified when compared to other towns, it is clearly not sustainable if the Town wishes to stay on solid financial footing in the near future.”

Ability to Pay

Regarding the Town’s ability to pay, Town Administrator Robert Pontbriand explained that like many smaller municipalities outside the 495 loop, recovery following the 2008 recession has occurred more slowly and with less intensity than in larger communities closer to Boston. Ayer’s unemployment rate remains at 7.4%, higher than all but four other towns in the comparison group.

In 2011, Ayer joined the town of Shirley in a Regional School District. This has led to financial uncertainty because Shirley is in more dire financial shape than initially understood. Currently Ayer is contributing more and must maintain sufficient reserves in its stabilization fund in the event of a school finance-related emergency.

Local Receipts, from vehicle excise taxes, meal taxes and other local fees make up 27% of the Town’s revenue. Over an eight-year period, the amount doubled but, in 2012, receipts declined by 13%. The Town states it can no longer rely on regular and steady growth in its local receipts to fund large wage increases.

State Aid has leveled off with no sign of increasing. While part of this is due to school regionalization, not all of the upcoming 27% decrease can be attributed to that alone.

The Union argues that despite the State Department of Revenue’s guidelines to the contrary, the Town can fund the Union’s proposal with

its very large amount of Free Cash for 2013. DOR guidelines provide that a prudent use of free cash is funding *one-time* expenditures or replenishing other reserves. The Town points out the drastic fluctuations year to year in the amount of free cash. It writes, "Based on these wide-ranging fluctuations, and in accordance with DOR guidelines and solid financial practices, the Town has a policy against using free cash to fund recurring expenses like wages."⁸ It asserts this is a bad practice especially if the wages increase exponentially. Moreover, withdrawing funds from free cash requires a 2/3 vote by the Town meeting.

The Town makes annual contributions to the County Retirement System. This retirement assessment has nearly doubled and grows at about 5% per year. In sum, the Town's revenues have stalled while such costs, as these will steadily creep upwards. Related to this expense is the Town's payment of a portion of many of its retirees' health insurance premiums or OPEB. These future costs are largely unfunded to about \$1.9 million over the next 20 years. The Town currently transfers funds into its OPEB Trust account when possible (\$50,000 in 2013).

In summary, and regarding wages, the Town writes, "While recognizing the important work done by patrol officers, these officers are part of a team composed of other Town employees and Town residents. The record in this case demonstrates that those other employees have not received the same wage increases that the Union is now demanding, and Town residents are hurting financially and are not

⁸ Town's Brief at page 21.

able to bear the additional burdens requested by the Union's proposal."⁹ In summary, it is the Town's position that the public interest is not served by granting an exceptional pay increase out of line with what the other Town unions have accepted.

Holiday Pay

The Union's second proposal seeks to amend Article 8 of the contract. The proposal would allow members to elect to take compensatory time in lieu of pay at double time for days they were scheduled and actually worked on any one of the holidays specified in the contract.

The Union officers clarified at the hearing that the proposal contained a provision that would prohibit members from using or taking any such accrued compensator time if doing so would result in overtime for the Department. The Union emphasized its proposal would have no financial impact on the Town or the Department.

In conclusion, the Town submits that the relevant statutory factors warrant an award in favor of the Town's proposals.

⁹ Town Brief at page 24.

GOVERNING STATUTORY CRITERIA
(from Chapter 589 of the Acts of 1987)

Factors to be considered in interest arbitration in Massachusetts.

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 compensation presently received by the employees, including direct wages and fringe benefits;
9. Other settlements in the municipality and in other communities for employees similarly situated; and
10. Changes in any of the foregoing circumstances during the pendency of the dispute.

AWARD

Wages

Being unable to reach agreement on the annual percentage wage increases for a three-year agreement covering the period July 1, 2012 – June 30, 2015, the parties submitted their respective wage proposals to this Arbitration panel.¹⁰

The Town proposes a 2% increase for each of the three contract years. The Union proposes a 0% increase for FY 2013, a split increase of 4% for FY 2014 with 2% payable on July 1 and 2% payable on January 1; and, the same 4% increase for FY 2015, also payable in two increments.

The most compelling aspects of the Union's proposal are the following: a) its proposal costs less for the life of the 3-year contract than does the Town's; b) its proposal requires no retroactive wage payment for the first year of the agreement; as the Union's proposal costs less than the Town's, the Town clearly has the ability to pay; c) nothing compels the Town to follow its so-called pattern of parity (at 2%) with other municipal unions especially when, unlike the APPOA, no other union representing town employees has proposed foregoing raises for two years. Also, the Town presented no evidence as to where the wages of other Town employees fell in comparison with employees who perform the same work in other communities; and finally, d) only the Union's proposal is consistent with testimony as to the cost of living increase over the term of the contract (8%).

¹⁰ All this occurred through the processes of the JLMC, described above at page 2.

The most persuasive aspects of the Town's proposal are the following: a) although the Union's proposal costs nominally less for the first three years, police officers will end up with a higher rate of base pay, increasing the cost of all future raises; similarly, other town employee unions will apply pressure to attain parity with the police; b) the Union has advanced no argument to support why it deserves a larger percentage increase than other town employees; c) an average Ayer patrolman (at FY 2012 wages) receives higher overall compensation (\$63,620) than eight of the twelve comparable communities; the panel should provide equity for the officers with those in comparable communities, not supremacy.

As to wages, the Panel adopts the proposal proffered by the Town. This conclusion has not been reached easily. The fact that the Union's "out of the box" proposal costs the Town less during the life of the contract and obviates retroactive payments has *great* appeal.

For the reasons stated below, however, the Town's reasons for rejecting the proposal are ultimately compelling.

First and foremost, the Union's proposal with its 2% higher increase in the amount of base pay means two things: any future percentage increase the police manage to negotiate will cost the Town more due to the higher rate of base pay. Also, the other unions in town will experience the 8% increase over three years as an amount they are entitled to and they will no doubt press hard to attain it. As stated by the Town, it's one thing to pay 8% to 11 police officers but quite another to pay the same increase to 80 Town employees.

As asserted by the Town, the Union has articulated no justification for ultimately receiving a better wage package than other Town employees. The Union has not disputed that most other unions in town have accepted a 2% increase.¹¹

This is not to say that neither the police nor any other bargaining unit can ever break out of pattern bargaining. They can. Typically, however, this does not occur unless there is a justifiable basis for awarding a superior package. Here, as argued by the Town, the APPOA has advanced *no* argument to support why it merits a larger percentage increase than other town employees.

A superior wage package for the police could be justified, for example, if the data comparing their wages and benefits with those of neighboring communities showed that Ayer police were receiving less. The comprehensive data submitted, however, suggests that the 8% increase, rather than achieving or maintaining comparability with other communities, would put Ayer near or at the top.¹²

In light of the Union's inability to demonstrate a persuasive rationale for getting a better wage package than others in the Town, the Town's concern that the 8% increase in the base will put undue pressure on it three years hence, is not frivolous.

This outcome is consistent with the statutory criteria that must be considered and applied. Two important criteria are comparability with similar communities and relative comparability with other town employees.

¹¹ See Union brief at page 4, second paragraph.

¹² The Union seems to acknowledge this fact at page 6, paragraph 2 of its brief.


For these reasons the Panel adopts the Town's proposal of 2% wage increases for each year of the three-year agreement for Fiscal Years 2013 - 2015.

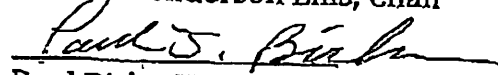
Holiday Pay/Compensatory Time


The second issue for this Panel is consideration of the Union's proposal involving Holiday pay and compensation. Specifically, the Union proposes amending Article 8 so that an officer being compensated for working a holiday be given the choice of eight hours of extra pay or banking 8 hours of compensatory time so long as the time off does not create an overtime expense for the Town.

The Town has advanced no reason why this proposal is not sound and satisfactory. The proposal would provide a cash savings to the Town and give the employees an additional option for time off without burdening the overtime budget.¹³

With the above-stated Award, these proceedings are closed.


Sharon Henderson Ellis, Chair


Paul Birks, Union Arbitrator
~~Concurring or Dissenting~~


Paul Blazar, Mgmt. Arbitrator
Concurring

¹³ See the example of cost savings described by the Union at page ___ of its brief...