

**COMMONWEALTH OF MASSACHUSETTS
JOINT LABOR MANAGEMENT COMMITTEE**

In the Matter of the Arbitration Between

TOWN OF PLYMOUTH

JLMC No: 12-2229

And

**Date Issued:
August 6, 2014**

PLYMOUTH POLICE BROTHERHOOD

AWARD

A. Contract Duration

July 1, 2012 through June 30, 2015

B. Compensation Increases

Cost-of-Living Increases

- (a) Effective July 1, 2012, a 1 percent across-the-board wage increase applied to the salary schedule in effect on June 30, 2012.
- (b) Effective January 1, 2013, a 1 percent across-the-board wage increase applied to the salary schedule in effect on December 31, 2012.
- (c) Effective July 1, 2013, a 1 percent across-the-board wage increase applied to the salary schedule in effect on June 30, 2013.
- (d) Effective January 1, 2014, a 1 percent across-the-board wage increase applied to the salary schedule in effect on December 31, 2013.
- (e) Effective July 1, 2014, a 2.5 percent across-the-board wage increase applied to the salary schedule in effect on June 30, 2014.

Base Salary Equity Adjustments

- (a) Effective July 1, 2014, a 1 percent across-the-board wage increase applied to the salary schedule in effect on June 30, 2013.
- (b) Effective June 30, 2015, a 1 percent across-the-board wage increase applied to the salary schedule in effect on June 29, 2015.

C. Shift Swaps

Amend Article IV to include the following sentence: "All shift swaps shall be repaid within sixty (60) days."

D. Vacation Leave

There must be three (3) days' notice for use of any vacation time.

E. Drug and Alcohol Testing

The parties shall form a committee to negotiate a Drug and Alcohol Policy. The committee will bring the negotiated policy back to the next round of contract negotiations.

F. Direct Deposit

Officers will continue to be paid on a weekly basis but by direct deposit.

G. License to Carry

No change.

H. Holidays

No change.

I. Night Shift Differential (Art. XXV)

The current 3 percent differential shall be increased to 4 percent as of January 1, 2015. There shall be no holiday/weekend differential.

J. Clothing Allowance (Art. IV)

The clothing allowance for all officers shall remain unchanged.

K. Personal Days (Art. IVE)

No change.

L. Deferred Compensation (new article)

The Town shall make a matching contribution of 15 percent to an ICMA deferred compensation plan. The match will be based on the maximum amount an employee can contribute evenly over a 52-week period without exceeding the IRS maximum annual regular contribution. The plan shall be consistent with that presently provided to the Police Superior officers.

Bill DeMille
Union Panelist

Sharon Henderson Ellis
Chair & Neutral Panelist

Michael Whalen
Town Panelist

BACKGROUND

The Joint Labor-Management Committee (JLMC) interest arbitration panel comprises Union Representative Bill DeMille, Town Representative Michael Whalen, and Chair and Neutral Panelist Sharon Henderson Ellis. The Panel was appointed by the JLMC to resolve a contract dispute between the Town of Plymouth and the Plymouth Police Brotherhood. Representing the Town were attorneys David Jenkins and Timothy Zissen. Representing the Union was attorney William Straus.

The parties submitted the following issues for arbitration: Contract Duration; Wage Increases; Shift Swaps; Vacation; Drug and Alcohol Testing; Direct Deposit; License to Carry; Shift Differential; Holidays; Clothing Allowance; Personal Days, and Deferred Compensation.

Arbitration hearings were held on March 11 and May 19, 2014. The parties' written briefs were received by the Arbitrator on or about July 1, 2014. At the arbitration, both sides were provided a full opportunity to present evidence and make arguments.

In formulating the Award, the panel considered the following required considerations from Chapter 589 of the Acts of 1987:

- 1) The interests and welfare of the public;
- 2) The hazards of employment;
- 3) Physical, educational and mental qualifications;
- 4) Job training and skills involved;
- 5) Comparative wage and employment conditions with employees performing similar services and with other employees generally in public and private employment in comparable communities;
- 6) The cost of living as determined by the Department of Labor.
- 7) The overall compensation presently received by the employees, including direct wages and fringe benefits;

- 8) Tax levy limit – Prop 21/2;
- 9) Comparable property tax rates;
- 10) Municipal growth rates—residential/commercial;
- 11) Free Cash/reserves;
- 12) Mean residential income;
- 13) Debt/projected expenses;
- 14) Other settlements in the municipality and in other comparable communities for employees similarly situated; and
- 15) Changes in any of the foregoing circumstances during the pendency of the dispute.

This Award represents consideration of all of the statutory elements. The Arbitration Panel reviewed relevant internal and external comparability data on the issues. It also considered the Town's ability to pay for the Award's financial aspects.

Based on the evidence provided, the panel concludes that the components of the Award are justified. The Town has the ability to pay for the financial components. The comparability data and the Town's financial condition are discussed in detail below.

The terms of the parties' collective bargaining agreement for July 1, 2009, through June 30, 2012, shall remain in effect in the contract for July 1, 2012, through June 30, 2015, except as modified herein by this Award or, by the parties.

THE PARTIES' ECONOMIC PROPOSALS

A. CONTRACT DURATION

The parties agree upon a three-year agreement from July 1, 2012, through June 30, 2015.

B. COMPENSATION INCREASES

Union Proposal

July 1, 2012 – 5 percent increase

July 1, 2013 – 5 percent increase

July 1, 2014 – 5 percent increase

Town Counterproposal

July 1, 2012 – 1.5 percent

July 1, 2013 – 1.5 percent

July 1, 2015 – 1 percent

Discussion

The Union asserts that internal and external comparability data justify its wage proposal and that the Town has the financial ability to pay these increases. The Town contends that the wage proposals are not sustainable financially over the long term and that comparable data from both internal and external sources support its contention.

A review of the internal and external comparability data and the evidence on the Town's ability to pay support the following compensation increases:

Cost-of-Living Increases

- (a) Effective July 1, 2012, a 1 percent across-the-board wage increase applied to the salary schedule in effect on June 30, 2012.
- (b) Effective January 1, 2013, a 1 percent across-the-board wage increase applied to the salary schedule in effect on December 31, 2012.
- (c) Effective July 1, 2013, a 1 percent across-the-board wage increase applied to the salary schedule in effect on June 30, 2013.
- (d) Effective January 1, 2014, a 1 percent across-the-board wage increase applied to the salary schedule in effect on December 31, 2013.
- (e) Effective July 1, 2014, a 2.5 percent across-the-board wage increase applied to the salary schedule in effect on June 30, 2014.

Base Salary Equity Adjustments

- (a) Effective July 1, 2014, a 1 percent across-the-board wage increase applied to the salary schedule in effect on June 30, 2013.
- (b) Effective June 30, 2015, a 1 percent across-the-board wage increase applied to the salary schedule in effect on June 29, 2015.

B(1) Panel's justification for the Award for wage increases and equity adjustments

The Panel's compensation increases are justified by comparisons with all the external comparability data from other communities. Additionally, it is consistent with the recent arbitration award for the other public-safety bargaining unit in the Town—its firefighters.

The Panel acknowledges that four of the unions in the Town settled their collective bargaining agreements for a 4 percent wage increase. However, the typical internal comparison is between public-safety personnel— police and fire employees.

There was a large gap between the wage increase proposals of the Town and the Union—4 percent versus 15 percent over three years.

The Town and the Union relied upon very different comparability data. The Union used the data from the Stone Consulting, Inc. study, a fiscal comparability study with recommendations that was financed by the Town. The communities in that externals universe were Braintree, Framingham, Medford, Peabody, Quincy, Somerville, Waltham, Watertown, Weymouth, Woburn, and Barnstable. The Stone Study found that Plymouth Patrol Officers were 8 percent below the market on pay for patrol officers with the lowest pay on the salary schedule. For officers at the maximum end of the pay scale, the study concluded that their wages were 5 percent below the market rate.

The Panel has no difficulty rejecting the Union's comparability data. The communities in its externals universe are significantly denser in population and more urban than Plymouth. Also, the communities are located in or near the greater Boston area, a factor that favors higher compensation.

The Town used communities that are geographically close although smaller in population. Importantly, the Town's externals universe has been used in previous arbitrations for the firefighters and perhaps the police. In fact, the recent Firefighter Award relied upon the same externals universe that the Town uses in this arbitration.

The Town's comparability statistics, on average, show that Plymouth Police are paid from two to three thousand dollars less than police in comparable communities. While the Union criticizes the dates and methodology employed by the Town, this panel deems both the dates and methodology to be legitimate.

Accordingly, the Panel concludes that the externals data regarding what police are paid in comparable communities justifies the 2 percent equity adjustment in addition to the cost-of-living increases awarded.

Additionally, the cost-of-living increase of 6.5 percent over three years is identical to what was recently awarded to the firefighters for the same time period. It makes eminent sense that the police and the firefighters, both public-safety employees, should receive pay that is reasonably comparable.

B(2) Ability to Pay

A critical factor when considering an appropriate wage level and benefits is, of course, a municipality's financial status and ability to pay the awarded amounts. In this instance, there is little doubt that the Town can afford the 8.5 percent wage increase and equity adjustment awarded by the Panel. This amount is double what the Town proposed but not much more than half of what the Union is seeking.

Commenting on the Union's proposed 15 percent increase, the Town stated, "While the Town might have the ability to pay one or two years' worth of 5 percent increases . . . this pattern is certainly not sustainable over the long term."¹ Considering that this award represents something close to half of what the Union proposed, the Panel believes the Town would concede that it has the ability to pay the award and that the awarded amounts are sustainable over the long term.

The Union points out that it did its part when negotiating the predecessor contract during the 2009 recession by accepting only a 2 percent increase over three years.

¹ Town Brief at page 9.

Compared with its financial status in 2009, the Town is currently in an “enviable financial position.”² Additionally, in the recent Firefighter Award, the Arbitration Panel described the Town as having a “growing economy.”³ The Town is in this fortunate position because it has taken prudent measures in recent years to improve its financial standing. Indeed, as the Town rightly points out, it should not be penalized for taking proactive measures. The Panel in no way wants to take advantage of the Town’s current financial status. It believes this Award does not do so.

The Town’s much improved financial standing since 2009 is demonstrated in part by its highly favorable bond ratings. On April 28, 2014, Standard and Poor’s upgraded the Town’s rating to an AA+ from AA. And in FY 2013, Moody’s restored the Town’s Aa2 rating from its previous Aa rating.

The Town’s projected “Free Cash” amount for FY 2014 is in excess of \$5 million, notably above its ten-year average of \$4.3 million. The Town argues that funding from free cash would be an irresponsible deviation from its conservative financial management strategy; however, the Panel in the Fire Award concluded that free cash occurs annually and that it could be used to fund wage increases. The Union projected that the Town’s free cash comes in yearly at \$4–5 million.

Importantly as well, the balance in the Stabilization Fund for FY 2014 is at \$8.7 million. Municipalities are permitted to establish special reserve funds into which monies may be deposited and reserved for later appropriations. An excerpt from Analyst Kevin Dasey at page 48 of his report states that the Fund can be used for general and/or capital purposes upon two-thirds Town Meeting approval. Town Finance Director Lynn Barrett did not disagree with this statement but said it was the Town’s practice to use the reserve for capital projects and one-time expenditures.

Adding to the good financial news is the consensus that the tax levy can be increased by 2-1/2 percent. This means that the Town is not required to tax to its

² Union Brief at page 14.

³ Firefighter Award (JLMC-12-2380) at page 10.

full legal capacity in order to manage its fiscal affairs. Whatever the increase allowed, this unused levy capacity is an indicator of a community's fiscal health.

Cuts in state aid that were dramatic in 2008 have come back to their pre-2008 level. Local aid is well above what it has been in recent years.

Finance Director Barrett acknowledged that the Town's operations were on track as budgeted for FY 2014 and that the future prospect was one of continued growth as Plymouth has significant land-development potential.

The Town does raise concerns about future challenges such as its Retirement Assessment and its growing unfunded OPEB (Other Post-Employment Benefits) liability. It is true that the Town has the same long-term concerns with pension liability, as do all municipalities. Regarding its Other Post-Employment Benefits (OPED) liability, however, the Fire Award Panel concluded that the Town had voluntarily assumed more OPEB liability than is legally required.

One concern the Town has historically raised is the future revenue of the Pilgrim nuclear power plant. Today, however, there is no licensing uncertainty as there was in prior years. In May 2012 Entergy was granted a twenty-year license, and in 2013 the Town approved a three-year agreement with Entergy resulting in revenues of \$10 million for FY 2014, \$9.5 million in FY 2015 and \$9.25 million in FY 2016. These constitute about 8 percent of the Town's tax revenue. While these revenues cannot necessarily be counted on year to year, presently the status is positive.

Finally, by awarding "wage splits" with July 1 and January 1 effective dates over the three-year contract period, this Award's cost impact is minimized each fiscal year.

In sum, there are clearly adequate financial reserves for the Town to pay for the awarded increases.

OTHER ISSUES

C SHFT SWAPS

The current Agreement permits a patrol officer to arrange with another officer to cover his or her assigned shift in exchange for the first officer's promise to cover the shift of the second officer at some future time. Both officers are paid their regular weekly wages as if they had worked their regular schedules. Currently, the Agreement includes no limit as to the number of swaps an officer may make in a specified period nor a deadline for repayment.

In 2011, however, the Public Employee Retirement Administration Commission (PERAC) addressed the effect of the swaps on retirement allowances. In some cases, some retiring employees received retirement credit for days they actually never worked. PERAC now issues forms requiring police chiefs to "certify" that the retiring officer has repaid any shift substitutions he received. Accordingly, Chief Botieri is required to track all shift swaps. Imposing a reasonable deadline for repaying the shifts would significantly simplify this administrative burden.⁴

Generally speaking, the Union points to the positive working relationship between the Union and the current Chief. It asserts, therefore, that operational issues such as the proposed limit on shift-swap repayment are better left to the parties.

AWARD

Shift Swaps

Amend Article IV to provide the following: "All shift swaps shall be repaid within sixty (60) days."

The Panel concludes that requiring repayment of shift swaps within 60 days is a reasonable requirement. Chief Botieri testified he was seeking a reasonable period for repayment. While the Union pointed out the serious impracticability of the

⁴ Initially, the Town proposed that the swaps be repaid within the same pay period. When questioned by the Union, Chief Botieri agreed that the proposal as stated would not always be practical. The Union vociferously objected to the Town's proposal as initially framed.

Town's original proposal, it did not specify a particular objection to a reasonable change beyond its emphatic position that such operational details are better worked out between the parties rather than determined by a JLMC panel.

D. VACATION LEAVE

The Town proposes that the current vacation clause include additional tools to assist the Chief in ensuring sufficient staffing levels and to avoid last-minute staffing shortages. Specifically, the Town's proposal is the following: Members must request vacations no less than one (1) week in advance.

The Union objects again on the grounds that detailed operational provisions should be negotiated and drafted by the parties, especially where the Town has not spelled out the details.

AWARD

Vacation Leave (Article XIX)

The Panel awards the following:

Members must request vacation no less than three days in advance. There must be three (3) days' notice for request of any vacation time.

The requirement of some advance notice for request of vacation time is eminently reasonable as a way of preventing staff shortages. The Panel deems three days rather than one week to be reasonable.

E. DRUG AND ALCOHOL TESTING

The Town proposes the implementation of a formalized drug and alcohol procedure that would establish post-accident, reasonable-suspicion, and random drug and alcohol testing for all members of the bargaining unit. This would combat any mistrust on the part of the Town's residents, who rely upon its police force for safety and protection. The Town should not have to wait, it asserts, for future irresponsible behavior to cause damage to the Town and its reputation.

The Union counters that drug testing is not present elsewhere and that the Chief has acknowledged that he has been able to deal with any substance issues involving

alcohol through discipline. No need for such a drastic change was demonstrated. The Union points out that the Panel has no specific proposal before it.

AWARD

Drug and Alcohol Testing

The parties shall form a committee to negotiate a Drug and Alcohol Policy. The committee will bring the negotiated policy back to the next round of contract negotiations.

Many municipalities have implemented programs for drug and alcohol testing, and the Town's aspiration to have such a policy is not unreasonable. However, the details and ramifications of any such policy deserve considerable time and study.

F. DIRECT DEPOSIT

Currently, officers are paid on a weekly basis and have the option of receiving a paycheck or having the pay deposited directly into a savings or checking account.

Recently, the Town asserts, the unions representing the Town's clerical employees the union representing its professional and office employees, and non-union employees agreed to receive their pay on a bi-weekly basis through direct deposit. It is the Town's position that this change will further streamline the Town's administrative operations and will cause no detriment to the officers.

The Union asserts that a change to bi-weekly pay would unnecessarily disrupt the planning and payment schedules that employees currently use. A weekly paycheck permits employees to better plan and schedule their personal financial obligations. The Union adds that because this provision is not in the Fire Award it could not be implemented in any event.

AWARD

Direct Deposit

Officers will continue to be paid on a weekly basis but by direct deposit.

The Panel considers the Union's objection to a shift to bi-weekly pay eminently understandable. It is not convinced, however, that direct deposit would negatively affect the officers if the plan can be implemented.

G. LICENSE TO CARRY

The Town proposes that a police officer be required to obtain a license to carry a firearm as a prerequisite for the job. Currently, the Chief of Police grants licenses to officers upon hire and there is no requirement that they qualify for a license under the applicable statute—G.L. c. 140 Sec. 131. The Town's rationale is that its police officers should be held to the same standards for a license to carry a firearm as are the Town's residents. The Town asserts that most members of the public would be appalled to learn that police officers are held to a lower standard with respect to qualifying for a gun license. It seeks to have this rectified by requiring Plymouth police officers to obtain a license to carry pursuant to Chapter 140 of the Mass. General Laws.

The Union asserts that no difficulties, confusion, or problems were offered by the Town to justify changing the current system. By the proposal, it asserts, the Chief would no longer be able to exercise the authority permitted by law to allow the officer to carry a firearm while on the job. The Union proffers as an example an officer who had his license suspended following an *ex parte* proceeding under the domestic violence statute. Would such an employee be subject to immediate discharge?

Moreover, the Union asserts that the JLMC arbitration process contains no authorization for the Panel to rewrite, amend, or repeal a state law provision regarding the licensing of firearms. Accordingly, the JLMC has no legal authority, it asserts, to adopt such a provision.

AWARD

License to Carry

No change.

The Panel did not reach consensus on this issue, so the practice shall remain unchanged.

H. HOLIDAYS

The Union is currently compensated for eleven holidays. The Union seeks to add a twelfth holiday. Its rationale for the proposal is that four unions in the Town receive at least twelve holidays. It cites the Stone Report's statement that Plymouth was below the median in this category.

The Town opposes an increase in the number of holidays granted to police officers. In Plymouth all public-safety employees receive eleven paid holidays per year. Because of the schedules worked by public-safety employees, the Town points out that an extra holiday would cost an additional \$20,000 per year. For non-safety employees, an additional holiday does not cost the Town extra money.

AWARD

Holidays

No change.

I. SHIFT DIFFERENTIAL

The Union proposes an increase in the current shift differential for night work. Currently, officers working either of the night shifts (3:30 PM– 8:00 AM) receive a differential of 3 percent. Additionally, it proposes that officers be paid a weekend differential. The Union bases its request on two main grounds. First, the Stone Report stated that the 3 percent differential was way below the market, which is typically 6 percent. Even the Town's proposed list of comparable communities showed that Plymouth was dead last in terms of differential pay. Second—and important—ranking officers already receive a higher night differential: 4 percent.

The Town points out that, again, the Union's proposal would drastically increase the Town's financial burden. It also asserts that the 3 percent differential is on par with what is paid to public-safety employees both in Plymouth and in comparable communities.

AWARD

Night Shift Differential (Art. XXV)

The current 3 percent differential shall be increased to 4 percent as of January 1, 2015.

There shall be no holiday/weekend differential.

Considering that the superior officers currently receive a 4 percent shift differential, there is no fair reason to not pay regular patrol officers the same amount. The proposal for holiday/weekend differential is not supported by the evidence.

I. CLOTHING ALLOWANCE (Art. IV)

Currently, the officers receive an annual clothing allowance of \$700. It is intended to cover cleaning costs, the replacement of uniforms, and the purchase of police equipment not issued by the Department. The Union proposes an increase to \$1000 and a further increase of \$500 for officers assigned to specialty positions. The Union contends that the current allowance is \$100 below the median amount and that officers in specialty positions have additional demands.

The Town points out that half of the officers are in specialty positions and would be seeking a \$1500 annual increase, costing the Town \$44,000 annually. The Town's superior officers currently receive the same clothing allowance as do the patrol officers—\$700—whereas firefighters receive only \$599.

AWARD

Clothing Allowance

The clothing allowance for all officers shall remain unchanged. Considering that the Panel awards the substantial new benefit of deferred compensation (see below), the additional cost in an increased clothing allowance is not justified.

K. PERSONAL DAYS, (Art. IVE)

Currently patrol officers are granted two personal days annually to attend to personal demands that cannot be met during work time. The Union proposes increasing the grant by an additional day. It points out that SEIU and OPEIU employees currently receive three days and those covered by the Personnel By-laws receive a generous benefit under "earned time."

The Town opposes the proposal on the following grounds. First, the extra day would add \$19,000 to the annual budget. Second, the Union presented no evidence that an additional personal day was an unmet need. Indeed, officers have the

advantage that most employees do not, being able to swap shifts in order to attend to last-minute needs. This provides flexibility without a loss in pay. Also, officers, including police superior officers, in the majority of comparable towns receive two days annually.

AWARD

Personal Days (Art. IV)

No change.

As asserted by the Town, the police have the advantage of being able to swap shifts in order to attend to last-minute events and other personal business on scheduled workdays. Importantly, as well, Plymouth's police superior officers receive just 2 personal days.

L. DEFFERRED COMPENSATION (new article)

The Union proposes for its officers a benefit generally available to other employees in Plymouth: a matching retirement contribution of 15 percent of an employee's contribution to an ICMA deferred compensation plan. The Union describes this benefit as critical and points out that the ranking officers and the Police Chief and Captains have received this benefit for several years.

Again, the Town opposes the proposal on the basis of the cost. It estimates an increase to the budget of at least \$46,000 per year. Further, it asserts that the Union has not shown that comparable communities receive this benefit.

AWARD (new article)

Deferred Compensation

The Town shall make a matching contribution of 15 percent to an ICMA deferred compensation plan. The match will be based on the maximum amount an employee can contribute evenly over a 52-week period without exceeding the IRS maximum annual regular contribution. The plan shall be consistent with that presently provided to the Police Superior officers.

Whereas most Town employees receive this benefit and especially in view of the fact that the police superior officers receive it, there is not rational basis to deny

the benefit to patrol officers.

CONCLUSION

In summary, the JLMC Panel deems the above-described Award as fair, comparable with similar towns and with the Town's other public-safety employees and, within the Town's ability to pay.