

JOINT LABOR MANAGEMENT COMMITTEE FOR POLICE AND FIRE

**IN THE MATTER OF
INTEREST ARBITRATION
BETWEEN**

**LOCALS 75 AND 80, NEW ENGLAND
POLICE BENEVOLENT ASSOCIATION**

-AND-

TOWN OF SOMERSET

JLMC-12-2400

JLMC-12-2401

AWARD

A. WAGES:

- Effective July 1, 2012: 2% across-the-board base wage increase applied to the salary schedule in effect on June 30, 2012;
- Effective July 1, 2013: 2% across-the-board base wage increase applied to the salary schedule in effect on June 30, 2013;
- Effective July 1, 2014: 2% across-the-board base wage increase applied to the salary schedule in effect on June 30, 2014

B. COURT TIME:

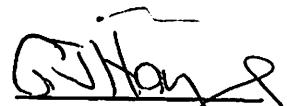
Status quo.

C. GRIEVANCE PROCEDURE:

Status quo.


Kenneth Scanzio
Union Panelist


Richard Boulanger, Esq.
Chairman and Neutral Panelist


Gerard Hayes
Town Panelist

Dated: 2/24/15

Dated: 2/24/15

Dated: 2/26/15

I. INTRODUCTION

The Joint Labor-Management Committee (JLMC) interest arbitration panel is comprised of Union Representative, Kenneth Scanzio; Management Representative, Gerard Hayes; and Neutral Panelist and Chairman, Richard Boulanger, Esq. The arbitration panel was appointed by the JLMC to resolve a contract dispute between the New England Police Benevolent Association, Locals 75 and 80 (Union) and the Town of Somerset (Town). Local 75 is a bargaining unit of Town Police Sergeants and Lieutenants. (See Joint Exhibit #1a.) Local 80 is a bargaining unit of Patrol Officers. (See Joint Exhibit #1b.) All bargaining unit employees shall be referred to as Police Officers unless a distinction is necessary. The Union's issue is a wage increase. The Town's issues are wages, court time, and the grievance procedure.¹

The interest arbitration case was heard by the arbitration panel on December 11, 2014 at the Town Hall, Somerset, Massachusetts.

The Union was represented by Mr. Sean McArdle, the Union's State Director.

Mr. Clement Brown, Esq. represented the Town. The following individuals were called as witnesses for the Town: Ms. Pamela Lee, Principal Assessor; Mr. Joseph Bolton, Finance Director; Mr. Dennis Lutrell, Town Manager; Police Chief George McNeil; and Captain Stephen Moniz.

The parties were given full opportunity to present evidence and make arguments.

In formulating its award, the panel considered and applied the following provisions of c.589 of the Acts of 1987:

¹The Town withdrew its overtime proposal.

- 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 2½ ;
- 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.

In formulating its award, the panel applied all of the statutory elements to the parties' evidence. The panel carefully reviewed and applied relevant internal and external comparability data to the parties' issues.

Based on the evidence submitted, the panel concludes that the awarded proposals are justified, and that the Town has the requisite ability to pay for the financial components of the award, as discussed in more detail below. The terms of the parties' July 1, 2009 to June 30, 2012 collective bargaining agreement remain in effect from July 1, 2012 through June 30, 2015, except as awarded herein by the arbitration panel, or as otherwise modified by the parties. Tentative agreements reached by the parties, if any, shall be included in the parties' July 1, 2012 through June 30, 2015 contract.

II. FINDINGS AND OPINION

A. WAGES:

1.) UNION PROPOSAL:

The Union seeks a 3% wage increase in each fiscal year from 2013 through 2015.

2.) TOWN COUNTER-PROPOSAL:

The Town is proposing a 1% wage increase effective June 30, 2013 with no increases in fiscal years 2014 and 2015.

3.) DISCUSSION:

The Union argues that the internal and external comparability evidence, and the Town's ability to pay support its wage demand.

The Town contends that the comparability data, and its inability to pay support its wage increase proposal.

In light of the internal and external comparability data, and the Town's ability to pay, as discussed in more detail below, the panel awards the following wage increases:

- Effective July 1, 2012: 2% across-the-board base wage increase applied to the salary schedule in effect on June 30, 2012;
- Effective July 1, 2013: 2% across-the-board base wage increase applied to the salary schedule in effect on June 30, 2013;
- Effective July 1, 2014: 2% across-the-board base wage increase applied to the salary schedule in effect on June 30, 2014.

a. JUSTIFICATION

As to Town wage increases, Firefighters, the other group of Town public safety employees, received 3% wage increases in Fiscal Years '12 and '13 pursuant to an arbitration award. (See Joint Exhibit #3.) The Firefighters' Interest Arbitration Panel calculated a 1% Quinn Bill value in the Firefighters' wage increase for Fiscal Years '12 and '13. Even allowing for a

1% Quinn Bill value in the 3% wage increase award to Town Firefighters in Fiscal Years '12 and '13, nets out a 2% wage increase value for Police Officers, necessary in order that Police Officers maintain their compensation position with Town Firefighters. (See Joint Exhibit #3.)

Concerning external comparables, the Town agrees with the Union's universe of Berkley, Bourne, Dighton, East Bridgewater, Fairhaven, Freetown, Mansfield, Middleboro, Norton, Swansea, and Westport, but it disagrees that Middleboro should be included. The panel does not decide the issue here, but notes that inclusion or exclusion of the Middleboro data does not have a significant impact on the overall statistics. Given this, the panel will not recalculate exhibits containing Middleboro data. In the 2013-2015 fiscal year period, Town maximum Patrol Officers' wages lagged behind the universe salary average by 12.4%, 13.6%, and 15.3% respectively. (See Union Exhibit #13.) The Town salary figures include its June 30, 2013 1% offer. (See Union Exhibit #13.) According to Union calculations, in Fiscal Year '13, the Town was last in the universe ranking as regards maximum Patrol Officers' salaries. (See Union Exhibit #13.) Based on Union data, in Fiscal Year '14, the Town was also last in maximum Patrol Officers' salaries. (See Union Exhibit #13.) Per the Union's figures, in Fiscal Year '15, the Town is 12th of 13 in universe rankings for the maximum Patrol Officer salaries while Mansfield, the last town listed, has not reached agreement on a Fiscal Year '15 wage increase. (See Union Exhibit #13.) The Town does not disagree that its salaries are comparatively low.

The Union's calculations indicate that in Fiscal Year '13, Police Officers lagged behind by 11.3% in combined universe average compensation. In Fiscal Year '14, it was behind by 11.8%, and in Fiscal Year '15, Town Police Officers are 13.5% lower in combined compensation than the average of their universe counterparts. In Fiscal Year '12, Town Police Officers lagged behind their universe counterparts by 8.5% in combined compensation indicating that the lag

increased in each contract year from 2012-2015. Even when total Town Police Officer compensation includes the 3% training stipend and the Senior Officer pay, there is considerable lag. (See Joint Exhibits #1a and #1b.)

The Union's figures also indicate that in Fiscal Year '13, the average universe wage increase was 2.04%; in Fiscal Year '14, it was 2.63%; and in Fiscal Year '15, the average universe wage increase was 1.94% with three (3) communities not settled. (See Union Exhibit #13.) The Town agrees that in Fiscal Years '13, '14, and '15, the average universe wage increase was 2%. Significantly, in Fiscal Years '13, '14, and '15, an approximate 2% annual wage increase was negotiated in four (4) of the Town's contiguous communities:

	<u>FY'13</u>	<u>FY'14</u>	<u>FY'15</u>
<u>Berkley:</u>	1%	2%	2% (See Union Exhibits #1a/b; #13)
<u>Dighton:</u>	2%	2%	2% (See Union Exhibit #3b and #13)
<u>Freetown:</u>	1% (7/1/12) 1% (1/1/13)	1.5%	1.5% (7/1/14) (See Union Exhibit #7.) 0.5% (1/1/15) (See Union Exhibit #7.)
<u>Swansea</u>	2%	2%	2% (See Union Exhibit #11.) ²

An annual 2% Town Police Officer wage increase in Fiscal Years '13, '14, and '15 is justified based on universe compensation and salary increase data, particularly those annual wage increases negotiated in the contiguous communities.

The panel awards the following wage increases:

- Effective July 1, 2012: 2% across-the-board base wage increase applied to the salary

² It is worthy of note that in FY'12, the following wage increases were negotiated in the four (4) contiguous towns: Berkley - 2% (See Union Exhibit #1a and #13); Dighton - 2.5% (See Union Exhibits #3a and #13); Freetown - 3% (See Union Exhibit #13); and Swansea - 4% (See Union Exhibit #13). The FY'12 wage increase average was 2.9%.

- schedule in effect on June 30, 2012;
- Effective July 1, 2013: 2% across-the-board base wage increase applied to the salary schedule in effect on June 30, 2013;
- Effective July 1, 2014: 2% across-the-board base wage increase applied to the salary schedule in effect on June 30, 2014.

b. **ABILITY-TO-PAY**

The Union contends that the Town has the ability to pay for its financial proposals based on its Free Cash, Stabilization Funds, Regional Greenhouse Gas Initiative (RGGI) payment and State Aid. The Union asserts that the Town has enjoyed an enviable AA2 Moody's Bond Rating from 2010 through 2014. (See Union Exhibit #13.)

The Town argues that it must hold the line on its budgets for Fiscal Years '13 through '15 because it has a recurring structural operating deficit, requiring it to use one-time revenues to pay for recurrent expenses, unwise but necessary financial planning. The Town can no longer rely on power plant revenues due to the closure of the Somerset MonTemp/NRG (Somerset) in 2011 and the potential closure of the Dominion/Brayton Point Energy Plant (Dominion) in 2017. (See Town Exhibit #1.) Ms. Pamela Lee, the Town's Principal Assessor, testified that ten (10) years ago, the taxes from the two (2) power plants comprised 43% of the Town's tax base, but now Dominion comprises less than 20% of the Town's tax base. (See Town Exhibit #1.) Somerset has made the following tax payments to the Town: Fiscal Year '12 - \$205,361.55; Fiscal Year '13 - \$238,771.42; Fiscal Year '14 - \$205,063.50; and in Fiscal Year '15 - \$130,400.39. (See Town Exhibit #1.)³

The Town negotiated Payment In Lieu Of Tax (Pilot) agreements with Dominion from 2001 to 2011. The Town and Dominion then negotiated a successor Pilot agreement from 2012

³ Asset Recovery Group purchased Somerset in Fiscal Year '11 and made the tax payments to the Town in Fiscal Years '13-'15.

to 2016. (See Town Exhibit #2.) The Town received \$14,442,386.40 in Fiscal Year '12 and \$9,906,168.01 in Fiscal Year '13 from Dominion. (See Town Exhibit #1.) Pursuant to the Pilot, the Town received \$7 million in Fiscal Year '14 from Dominion, and \$5.5 million in Fiscal Year '15, and \$4.2 million in Fiscal Year 2016 from Brayton Point Energy. (See Town Exhibit #1.)

Ms. Lee testified that the decreasing power plant revenue resulted in tax increase shifts to homeowners and small business owners. As to the larger commercial tax base, Ms. Lee identified Home Depot, Stop & Shop, a plaza, a hotel and various restaurants in addition to Dominion. As to more financial pressure on the Town's budget, Mr. Joseph Bolton, the Town's Finance Director, pointed to the Town's share of the cost of constructing a new regional high school at \$34.5 million, and a \$1.6 million/year annual payout beginning in Fiscal Year '15. Mr. Bolton testified that the Town has a large, older population with limited resources to pay tax increases, and other cost items. Mr. Bolton also testified that the Town's average income was less than the median state income, and that the Town's unemployment rate was higher than the state-wide average.

On the positive side of the financial ledger, in Fiscal Year '14, the Town received a \$3.54 million RGGI payment to offset decreasing power plant revenue. Mr. Dennis Lutrell, Town Manager, testified that the Town expects to receive \$220,000 in RGGI payments in Fiscal Year '15. The Town's Free Cash numbers are as follows: Fiscal Year 2011 - \$7.8 million; Fiscal Year '12- \$5.3 million; Fiscal Year '13 - \$4.1 million; and Fiscal Year '14 - \$2.2 million. However, due to the December 10, 2014 Town meeting vote to transfer funds from Free Cash, it was reduced to \$35,155. (See Town Exhibit #5.) The Town's Stabilization Fund totaled \$8.4 million in Fiscal Year '13 and \$10.2 million in Fiscal Year '14. Due to a December 10, 2014, \$1.5 million withdrawal from the Stabilization Fund, and transferred to the Operating Budget to offset

a potential tax increase, the Stabilization Fund is \$8,728,359 in Fiscal Year '15. (See Town Exhibit #5.) Mr. Bolton testified that the Town plans on withdrawing \$2 million from the Stabilization Fund in order to counter any potential tax increases. Furthermore, while dropping from \$7,281,638 in Fiscal Year 2009 to \$6,223,761 in Fiscal Year '13, cherry sheet numbers have remained stable since then. In Fiscal Year '14, the Town received \$6.3 million; and in Fiscal Year '15, it received \$6.4 million. (See Town Exhibit #5.) Mr. Bolton also admitted that the \$2.2 million in Overlay Surplus could be used in the same manner as Free Cash. The Town also received retiree prescription reimbursements in the amounts of \$213,845 in Fiscal Year '12; \$248,363 in Fiscal Year '13; and \$179,403 in Fiscal Year '14. While the Town does not have an unlimited ability to pay, primarily due to decreasing power plant revenues, it has and will have sufficient finances to fund the award.

4.) **AWARD**

- Effective July 1, 2012: 2% across-the-board base wage increase applied to the salary schedule in effect on June 30, 2012;
- Effective July 1, 2013: 2% across-the-board base wage increase applied to the salary schedule in effect on June 30, 2013;
- Effective July 1, 2014: 2% across-the-board base wage increase applied to the salary schedule in effect on June 30, 2014

B. **COURT TIME:**

1.) **TOWN PROPOSAL:**

Decrease court appearance compensation from a minimum of four (4) hours pay to no less two (2) hours pay.

2.) **UNION COUNTER-PROPOSAL:**

Reject as unjustified.

3.) **DISCUSSION:**

In relevant part, Article 7 (**Court Time**) provides as follows:

An officer who attends as a witness for the Commonwealth or the United States in a criminal case or in a civil case which results from official action, or who testifies before a non-town board or commission, which appearance arises from his/her employment shall, if such attendance is not during the officer's scheduled tour of duty, be compensated at the rate of one and one-half times his/her regular rate of pay for each hour spent in attendance thereof, but in no case shall he/she receive less than four (4) hours minimum compensation, except for motor vehicle hearings in which case he/she shall receive no less than two (2) hours minimum compensation.

In addition to the first paragraph of the Local 75 collective bargaining agreement (above), the Local 80 contract has the following contingency as part of its last sentence:

"...and except in the event that such attendance overlaps the officer's regularly scheduled tour of duty, in which case he/she shall be paid at the time and one-half rate for the actual time spent in attendance excluding the hours of said regularly scheduled tour of duty."

The Town contends that the minimum court time payment should be two (2) hours as an average court time appearance is less than four (4) hours in duration. However, travel time to/from a court appearance is not included in the minimum four (4) hour court time figure. Moreover, when a Police Officer is scheduled for a court appearance, s/he is not eligible for an overtime or a detail opportunity. The Town did not provide any data regarding abuse of the current system, or data regarding significant savings that would result from a change to the court time payment term. The four (4) hour court time minimum payment is the common provision in universe communities. Therefore, the current court appearance provision shall not be modified. The Town has the ability to pay the minimum four (4) hour court time payment at the time-and-one-half rate for non-motor vehicle case appearances.

4.) **AWARD**

Status quo.

D. **GRIEVANCE PROCEDURE:**

1.) **TOWN PROPOSAL:**

As to grievance filing and processing, the Town proposes changing "working days" to calendar days. It also seeks a five (5) calendar day grievance initiation period.

2.) **UNION COUNTER-PROPOSAL:**

The Union urges the panel to reject the Town's proposal because it is unnecessary.

3.) **DISCUSSION:**

In pertinent part, Article 17 (**Grievance Procedure**) includes the following provisions:

Section 4. Grievances, except as is otherwise provided for herein shall be processed in accordance with the following procedure:

A. **Level One.** The aggrieved employee must present his/her grievance in writing to his/her immediate supervisor within seven (7) working days from being aggrieved. It shall give a summary of the facts involved, the provision or provisions, of this Agreement allegedly violated and the relief desired. The immediate supervisor shall advise the aggrieved employee in writing of his/her decision with respect to the grievance within seven (7) working days after the grievance is presented.

B. **Level Two.** If at the end of seven (7) working days next following the presentation at Level One the grievance shall not have been disposed of to the employee's satisfaction, the aggrieved employee or the UNION may within five (5) working days thereafter, submit his/her grievance in writing to the Chief of Police. The written grievance shall give a summary of the facts involved, the provision or provisions of this Agreement allegedly violated and the relief desired. Within ten (10) working days after receipt of the written grievance, the said Chief of Police or his/her representative shall meet with the aggrieved employee and a representative or representatives of the UNION in an effort to settle the grievance. Within ten (10) working days after the conclusion of said meeting, the Chief of Police shall advise the aggrieved employee and the UNION in writing of his/her decision concerning the grievance.

C. **Level Three.** If at the end of the twenty. (20) working days next following the presentation of the grievance at Level Two, the grievance shall not have been

disposed of to the employee's satisfaction, the aggrieved employee or the UNION may within (5) working days thereafter submit his/her grievance in writing to the Board of Selectmen by submission of same to the Town Administrator as the designated representative of the Board of Selectmen at this level of the grievance procedure. Within the (10) working days after receipt of the written grievance, the Selectmen or their designated representative shall meet with the aggrieved employee and a representative or representatives of the UNION in an effort to settle the grievance. The Selectmen or their designated representative shall within ten (10) working days after the conclusion of said meeting advise the aggrieved employee and the UNION in writing of his/her or their decision, as the case may be, with respect to the grievance.

D. Level Four. If the UNION is not satisfied with the disposition of the grievance at Level Three or if no decision has been rendered within ten (10) working days after said meeting between the Selectmen or their designated representative, the UNION and the aggrieved employee, the UNION may, by giving written notice to the Selectmen within ten (10) working days after the date of the decision of the Selectmen or their designated representative in Level Three or within twenty (20) working days after said meeting with the Selectmen or their designated representative if no decision has been rendered, present the grievance for arbitration. In such case the following procedure ...

The Town seeks the conversion of working days to calendar days to expedite the grievance process, and while the facts of the dispute are fresh in the minds of the parties. However, no evidence was presented to support a finding that there are any particular drawbacks to the parties' longstanding grievance procedure and compliance with it. Therefore, the panel makes no changes to it.

4.) AWARD

Status quo.