

STATE OF MASSACHUSETTS
JOINT LABOR MANAGEMENT COMMITTEE
JLMC- 13 - 2598
IN THE MATTER OF INTEREST ARBITRATION
BETWEEN
THE TOWN OF LEXINGTON
AND
THE LEXINGTON POLICE ASSOCIATION
OCTOBER 10, 2015

APPEERANCES:

FOR THE UNION: Alan McDonald & Jason Powalisz

FOR THE TOWN: Phillip Collins

PANEL MEMBERS: Diane Crimmins, Mgt. Rep, Donald Cummings, Labor Rep., Arbitrator Theresa M. Dowdy, Neutral

1. INTRODUCTION

This matter came before the panel upon certification of the Joint Labor Management Committee (JLMC) on October 7, 2014, to resolve a contract dispute between the Town of Lexington (Town) and the Lexington Police Association (Union). In addition to Wages, the parties submitted their other issues for hearing.

The Union issues are: Wages, Salary Rates for Sergeant¹, Night Shift Differential, the Day after Thanksgiving as an additional holiday, Hazard Duty Pay, Non-Quinn Bill Educational Incentive, and Reopener of the Promotional Process.

¹ It is the Panel understanding that the Sergeants' have been certified to have their own union. Accordingly, this package is only applicable to the Lexington Patrolmen's' Union.

The Town issues are: Wages, Removing the Department from Civil Service, A Drug Testing Program, yearly limit on the single vacation days, and Use of Protective Vests.

The interest arbitration was heard by the Arbitration Panel on June 2, 2015 at the Town Hall in Lexington. All parties were present. The following individuals testified on behalf of the Town: Carl Valente, Town Manager (Manager) and Mark Corr, Police Chief (Chief). The Union Counsel testified on behalf of the Union, explaining the documents in the Union Submission. Both parties presented documentation and had the opportunity to question the documentation and to examine and cross examine witnesses. The parties forwarded their Briefs to the panel on August 14, 2015 at which point the record was closed.²

2. BACKGROUND

Lexington is a lovely and historic Town. It sits adjacent to the Rt. 128 corridor which circles the Boston Metropolitan area, and is known as the "technology highway". The Town is run by a Board of Selectmen, who appoint a Town Manager. The funding body is a representative Town Meeting.

Carl Valente, the Town Manager, who has a municipal management and financial background, testified that when he came to the Town in 2005, all of the Town's reserve funds had been depleted, the personnel needed to properly run the Town were not present due to layoffs³, the Town was on a credit watch and the Town had been caught up in the recession like many Massachusetts Cities and Towns.

The Manager was charged with building up the Town's reserves and bring the level of personnel back to properly provide services to the residents. This took about 4-5 years, but the Manager got it done.

² The parties were aware that this Arbitrator was away on vacation when they asked for an extension to file the Briefs. Upon my return on August 30, 2015 I read the Brief and the parties knew the Panel would issue its report 30 days from that time.

³ The Town had tried to reduce the staff through early retirement incentive, which the Town is still paying for. Nonetheless, the Town still had to lay off personnel in the past.

Currently, the Town has built up its reserves to substantial levels and has free cash available. In addition, the Town will have full funding of its pension obligation in 10 years and currently has a AAA credit rating. The Manager stated that he never wants to be in the same position he found the Town in when he came. Because of the cycles in the economy, the Manager explained that the Town needs the reserves and free cash to weather such a downturn without layoffs. Further, he testified that the Town does not rely on State Aid for that same reason.

During the past 10 years and up to the present, the Town has encountered a rise in the student population. The Manager testified that the rise is coming from the renters in Town rather than homeowners. In the recent past, the Town had to upgrade and provide for numerous classrooms. This had to be done by borrowing. The Manager has now put before Town Meeting a new fund called the Capital Improvement Fund for near future projects. Those projects are building a new elementary school, building a new fire station and building a new police station. The Manager is to be commended for the job he did in putting Lexington's fiscal house in order.

The Manager continued to state that the Town sees an increase of residential more than commercial taxpayers although the commercial taxpayers are the highest taxpayers in the Town. The Bio-tech industry is quickly moving into the Rt. 128 corridor and there is one such manufacturer seeking to come into Lexington, which will add to the Commercial tax base. As the Manager explained, The Town has changed its zoning regulations to accommodate more commercial zoning, but the Town is landlocked and there is just so much property available. In addition, despite the Capital Improvement Fund and other Stabilization Funds, the Manager testified that the ultimate cost to the taxpayers in the Town will be about \$1,000 after all the funds are depleted. Accordingly, the Town has a very high per capital tax burden.

The Police Chief also testified for the Town for certain proposals that the Town has put forward. In his testimony, he did not degrade any member of his department. Indeed it was obvious that he was very proud of the officers that worked for him. He testified on the topics that he felt would improve the health and welfare of officers in the department.

This panel also recognizes the scrutiny that all Police Departments are under. Not just because of cell phones recording their every move, but the terrorists looking to specifically kill police officers. The Town has approximately 32 patrolmen who serve the residents. They are the first to arrive on the scene of an incident whether it be an accident, a heart attack or a domestic violence call. The Police are in service or on patrol 24/7 during which period they Serve and Protect. Bargaining Unit members regularly respond to burglar alarms, larcenies, assaults, domestic violence calls and every single medical call that firefighters respond to as well. Unlike other emergency services that respond to calls, the police serve two rolls. They do respond to calls regarding what may be a dangerous situation, but they are out protecting the community day and night. When patrol officers are out driving around town, they are preventing crimes from occurring by their visibility. Therefore, the police officers can never work a 24 hour shift because they would need to be out and visible for 24 hours. Police officers are the only employees that carry guns and have the power of arrest. This power must be administered judicially because the consequences could be incalculable. As such, police work is by nature, inherently dangerous.

The Union believes that the Town can afford the Union's wage proposal because it has the means to pay for it without effecting taxpayers. The Union argues that the Town can use the free case or the Stabilization Fund. The Union is paid lower for Patrolman Max than most of the Town's comparables,

while the Town is in a better position when the fiscal health of the Town is compared to the same towns.

3. FINDINGS AND OPINIONS

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

- 1) The interests and welfare of the public;
- 2) The hazards of employment;
- 3) The 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 2 ½
- 9) Comparable 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 pendency of the dispute.

In formulating its award, the panel applied all of the statutory criteria to the parties' evidence and testimony. The panel carefully reviewed and applied relevant internal and external comparability data to all the parties' issues.⁴

A. DURATION

⁴ The Panel used the Town's comparable data because it was used in prior JLMC cases for both the Police and Firefighters Unions. In addition, the Town's comparable are most contiguous and/or similar in population. Those Comparable are Arlington, Bedford, Belmont, Burlington, Concord, Natick, Needham, Waltham, Watertown, Wellesley, Winchester, Woburn and Lexington.

The parties agree that the duration of the contract shall be as follows:

A three year collective bargaining agreement from: July 1, 2012 through June 30, 2015.

B. WAGES

The Towns Proposal: 2% July 1, 2012; 2% July 1, 2013; 2% July 1, 2014

The Union Proposal: July 1, 2012 increase current gap for patrol officers between each step by 1%; July 1, 2013 increase the gap between each step by another $\frac{3}{4}$ %; July 1, 2014 increase the gap again by $\frac{3}{4}$ %. (This increases the steps from 0% at the first step to 12% at the final step for patrolmen max.)

Findings and Opinion:

There are some parts of the statutory consideration that we did not find helpful. For one, the Consumer Price Index (CPI) from March 2012 to March 2015 is 3.98%. However, all comparable communities, including Lexington gave wage increases above the CPI index.⁵ In the other comparable communities as cited in Footnote 2, Lexington stands the second highest in Median Income/Per Capita income, while the Police Officer Maximum Salary ranks below average or at the bottom of the list given the current patrolman maximum as of \$53,347. Even with the Towns proposed increases, it would put the police still below the average or 5th lowest out of the 12 comparable communities.

While the Town has sufficient Free Cash and Stabilization Fund, its ability to pay is not unlimited. The Town has one of the highest per capita tax burden, an above average senior population, and one of the highest per pupil spending. The Panel took all of that into consideration and find that The Town has the ability to pay slightly more than their offer.

⁵ This is also true for most of the JLMC awards through 2015.

However, the most telling is the internal comparisons. All other units have settled for the 2/2/2 except the police and superior police officers. When the Panel looked into the benefits and/or total new income of the other public safety union, the Panel noticed the following:

- 1) All firefighters work the night shift which increases all their income an additional 1.55% shift differential added to their base salary.
- 2) All firefighters now receive 1.5% Hazardous duty pay, and in addition,
- 3) All firefighters are required to have an EMT-Paramedic certification which compensates them \$8,874 each year.
- 4) All firefighters have a Longevity provision which compensates \$250 for 5-10 years of service up to \$2,950 per year for 30 plus years of service to be added to the base wage for calculating overtime and holiday pay.
- 5) The new contract also provides an educational incentive from 15 credits or \$1,200 to Bachelor's degree for \$3,200.

Firefighters also have a limited minimum manning provision, which guarantees overtime to most members of the force.⁶ All other benefits are similar, including health care employer contribution.

While some of these benefits are balanced out by benefits received by the police such as Quinn Bill, other benefits received by all firefighters in this latest agreement do not. This is especially true for the night shift differential which all firefighters receive.

In the Report of the Town Manager for 2016 Fiscal Year, under the title of Collective Bargaining, it states "For the FY2013-2015 period, the Town is still negotiating with the Lexington Police Association and Police Superior Officers.....The budget for fiscal year 2016 includes amounts that may be required for those collective bargaining agreement to be settled. The Panel finds that a blend of the Town and the

⁶ The Panel by no means intends to denigrate the job of Firefighter. They are truly deserving of our respect and support. Our purpose is, to follow the statute in which we must compare internal CBA to the Police CBA.

Union Proposals in Wage Award is not that much greater than the funds put aside by the Town and is consistent with the total percentage received by the Towns other public safety Union. Therefore, the Panel **AWARDS** the Patrolmen the following wages for the life of the contract:

July 1, 2012- wage increase 2%

July 1, 2013 – wage increase 2%

July 1, 2014 – wage increase 2% and an additional .5% on June 30, 2015.

The last step of the wage scale shall be increased as follows:

Patrolman Maximum

July 1, 2012– 1%

July 1, 2013 - .5%

June 30, 2015 - .5 %

OTHER UNION ISSUES ADDED HOLIDAY

UNION PROPOSAL: ADD THE DAY AFTER THANKSGIVING AS ANOTHER HOLIDAY

TOWN RESPONSE: TOWN IS AGAINST THIS PROPOSAL

Findings: The police have 11 holidays as do other departments including the Towns own Fire Department. The other Departments in the Town have floating holidays.

These departments generally do not have to spend overtime filling in for a person who is off. However, this would definitely increase the Police Departments overtime budget. In addition, the Police have a very generous vacation leave benefit. Therefore the Panel finds this Union proposal as **STATUS QUO**

HAZARDOUS DUTY PAY

**UNION PROPOSAL: EFFECTIVE JULY 1, 2013 THIS INCREMENT SHALL BE INCREASED BY AN
ADDITIONAL ONE PERCENT (1%). EFFECTIVE JULY 1, 2014 THIS INCREMENT SHALL BE ADDED TO THE
WAGE SCALE AT EACH STEP AT WHICH TIME THIS SECTION SHALL BE ELIMINATED FROM THE
AGREEMENT.**

**TOWN PROPOSAL: THE TOWN OPPOSES ANY ADDITION INCREMENT TO ITS SALARY PROPOSAL
AND THAT THE HAZARDOUS DUTY PAY IS SUFFICIENT.**

Findings: As we have said before, Police officers are in a very precarious and dangerous position.

Whether it is a lone terrorist, looking to kill police officers, or going into a domestic violence situation or catching an armed robbery in action during the night tour, the Panel believes the Town's Police Officers deserve an increase in Hazardous Duty Pay. Therefore, the Panel **AWARDS** increases the Hazardous Duty Pay as follows:

July 1, 2013 add ½ a percent to hazardous duty pay.

July 1, 2014 - add another ½ a percent to hazardous duty pay

NOTE: All requested additional language is denied and Section 10 shall remain STATUS QUO, except as set forth above.

UNION PROPOSAL: INCREASE EDUCATIONAL INCENTIVE FOR NON QUINN BILL RECIPIENTS TO \$5,500 FOR AN ASSOCIATES DEGREE IN CRIMINAL JUSTICE AND FOR A BACHELOR DEGREE OR MASTERS DEGREE IN CRIMINAL JUSTICE INCREASE TO \$10,500 AND \$13,000 RESPECTULLY.

TOWNS POSITION: THE TOWN BELIEVES THAT THE QUINN BILL BENEFITS ARE VERY COSTLY AND IT TRIED TO HAVE AN EDUCATIONAL INCENTIVE FOR THOSE WHO ARE NOT IN THE QUINN PROGRAM. THE TOWN FEELS ITS PRESENT POSITION IS SATISFACTORY.

Findings: The Quinn Bill itself has an additional increment for a Master's Degree. While the Town has been generous for those officers not on the Quinn program, the Panel believes that the Master's/ Law Degree should be added to the non-Quinn officers. Therefore, the Panel **AWARDS** the following:

July 1, 2012 Add to Section 12 #2: For a Bachelor's degree in criminal justice an annual stipend of \$10,000 and for a Master's Degree in criminal justice or a Law Degree an annual stipend of \$12,000.

Night Shift Differential

Union Proposal: Add to Section 10, Night Shift Differential that all officers assigned to another shift and whose hours extend into the 3:45 PM and 8:00 AM time period shall receive the night shift differential for all such extended hours. Effective July 1, 2013 the 6% differential shall be increase to 7% and on July 1. 2014 such differential shall increase to 8%.

Towns Proposal: The Town opposes any increase in the night shift differential including extending coverage to more individuals.

Findings: The Panel agrees with the Town that employees whose shift goes beyond its normal time and works into the 3:45 PM and 8:00AM would generally get overtime pay. Also, the Panel finds that in this

contract, all funds should be in benefits that effect all employee in the Union. Therefore, the Panel finds that this proposal is **STADIS QUO**.

TOWNS ADDITIONAL PROPOSALS

The Town wishes to take the Police Department out of Civil Service and wishes to bargain with the Police Union on the impacts of that decision.

The Union's Position: The Union is opposed to removing anyone in the Police Department from Civil Service protection.

Findings: The removal of the Police Department from Civil Service is a Legislative decision and not appropriate for this Panel to rule on this issue except to rule that the Union shall bargain in good faith with the Town if the Town requests to bargain over the impacts of removing the Police Department from Civil Service before bringing the issue before the Legislature/Town Meeting. Therefore the Panel orders this proposal as **STATUS QUO.**

TOWNS PROPOSAL: TO HAVE A MADATORY WEARING PROTECTIVE VEST PROGRAM.

UNONS POSITION: OFFICERS DO MOSTLY WERE PROTECTIVE VESTS AND THEY SHOULD CONTINUE TO HAVE THAT CHOICE. IN ADDITIONAL PROTECTIVE VESTS ARE UNCOMFORTABLE.

Findings: The Town and the Chief made an excellent case for mandatory wearing of protective vests. Indeed, in this era of terrorists looking to kill police offices, the Panel would be doing the officers a disservice if we did not put this proposal into practice. The Chief credibly testified that if any officer is uncomfortable with the current protective vest, he would try to provide a more comfortable vest for

that officer. Therefore, that proposal is **AWARDED** and will be put into the contract on June 30, 2015, as follows⁷:

New Provision: In Article 10 add a new paragraph stating: In order to maximize officer safety the use of body armor shall be required in accordance with the Departmental Rules and Regulations. Such body armor shall be at the expense of the Department and the Chief will make various types of body armor available to maximize officer comfort.

TOWNS PROPOSAL: AMEND THE VACATION LEAVE PROVISION BY LIMITING THE VACATION LEAVE THAT CAN BE TAKEN IN INDIVIDUAL DAYS AS FOLLOWS: FOR A VACATION ALLOWENCE OF 5 WEEKS – 2 WEEKS TAKEN AS FULL WEEKS; FOR A VACATION ALLOWENCE OF 4 WEEKS—2 WEEKS TAKEN AS FULL WEEKS; FOR A VACATION ALLOWENCE OF 3 WEEKS – 1 WEEK TAKEN AS A FULL WEEK; FOR A VACATION ALLOWENCE OF 2 WEEKS – 1 WEEK TAKEN AS A FULL WEEK.

UNION PROPOSAL: THE UNION IS AGAINST ANY SUCH PROPOSAL.

Findings: In the past, the Police Officers had at one time taken vacation time in full or partial weeks. Subsequently, the practice had been established that provided officers with single day vacation leave. However, at this point in time, the Police Chief documented that most single vacation days were taken on Fridays and Mondays. In addition, that practice had resulted in increased overtime budget.

The crux of the problem is the single days taken on weekends and the panel finds that this is the issue that must be addressed. In addition the unit members have very generous vacation benefits that are

⁷ The Union added that the vest should only be available when doing a detail. This is a matter that was never discussed and should be discussed or bargained with the Chief over whether this is permissible under the federal standards.

referred to as the Holyoke Vacation benefits. Indeed, the Union had in the past forgone a raise just to get the Holyoke vacation benefits. As such, the Panel Awards the Town proposal amended as follows:

The parties will bargain in good faith, over limiting the use of single vacation days on Friday or Monday. If the parties do not reach a consensus by January 1, 2016 the Town's proposal as set forth above, will be implemented from that date forward.

Duty Drug Testing

The Town PROPOSED a Drug Testing program.

The Union is not inherently against the policy. However, they state that if the programs is ordered by the Panel, the permissible alcohol level should be the same as the firefighter's drug testing policy which is .04 rather than the proposed .02 level for police officers.

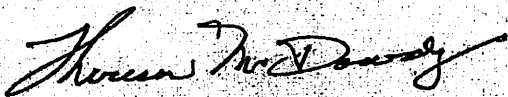
Findings: The amount of alcohol allowed in the police drug policy, is the same as that required for a CDL license holders. This may include other Town employees that work in the DPW department and drive large equipment. However, the CDL licenses undergo random testing. The police policy is a reasonable suspicion standard. Moreover, the patrol division is driving 24/7, unlike the firefighters who mostly man the truck. However, the standard for Federal Police excludes undercover officers for obvious reasons. We do not know if any of the Lexington police ever serve undercover. However, since it is possible that they do or might, such a provision should be added to the policy. In addition, there is an indication that a locker privacy provision already exists. Therefore, that should be added or remove the locker from the policy. As such, the panel AWARDS, the Drug testing provision that is attached to this decision with the changes indicated above.

TENTATIVE AGREEMENT

The parties have reached a tentative agreement regarding section 11. (U) Promotional Process Article Amendment. As such the Panel AWARDS this agreement.

Respectfully submitted,

Arbitrator,

A handwritten signature in black ink, appearing to read "Thomas McDermott", is centered within a rectangular box. The signature is fluid and cursive.

ADDENDUM OF AWARDS

1. WAGES

July 1, 2012– 2%

July 1, 2013 - 2%

July 1, 2014 – 2%

June 30, 2015 - .5%

2. Patrolman Maximum

Increase step as follows:

July 1, 2012– 1%

July 1, 2013 - .5%

June 30, 2015 - .5%

3. Hazardous Duty Pay

Increase as follows:

July 1, 2013 - .5%

July 1, 2014 - .5%

4. On July 1,2012, add to non-Quinn education incentive the following:

Master's Degree in Criminal Justice or Law Degree an annual stipend of \$12,000

5. Mandatory Protective Vest

6. Vacation Leave as modified

7. Drug Testing Policy as modified

8. Tentative Agreements