

**JOINT LABOR MANAGEMENT COMMITTEE FOR MUNICIPAL POLICE
AND FIRE**

In the Matter of Interest Arbitration Between:

**BEVERLY POLICE SUPERIORS
ASSOCIATION**

And

OPINION AND AWARD

CITY OF BEVERLY

JLMC-13-2733

ARBITRATION PANEL

Marc D. Greenbaum, Chair
Alan Andrews, Association Panel Member
Diane Crimmins, Management Panel Member

APPEARANCES

For the Association:

Paul T. Hynes, Esq.
Michael Keefe, Esq. (on brief)

For the City:

Michael J. Maccaro, Esq.
Lena-Kate Ahern, Esq. (on brief)

INTRODUCTION

This case arises out of a bargaining impasse between Beverly Superior Officers Association (“the Association”) and the City of Beverly (“the City”) occurring in connection with their negotiations for a successor collective bargaining agreement (“the Agreement”) to the one that expired on June 30, 2011. After affirming the existence of an impasse, the Joint Labor Management Committee for Municipal Police and Fire (“JLMC”) certified the issues for arbitration on October 9, 2014. Thereafter, the above referenced members of the Arbitration Panel (“the Panel”) were designated.

Hearings on this matter were held on March 27, 2015 and April 15, 2015. At those hearings, both parties were present and represented by counsel. Following presentation of the evidence, both parties sought leave to submit post-hearing briefs and reply briefs. Upon the Panel's receipt of the reply briefs the matter was ripe for resolution. The Panel held an executive session on July 23, 2015.

FACTUAL BACKGROUND

I. The Context.

When this matter entered interest arbitration, there were numerous issues in dispute. Besides the length of the Agreement and the proposed wage structure, the JLMC had certified five issues submitted by each party for resolution. Prior to the final submission of this matter, the parties resolved a number of those issues. Other issues appear to have been narrowed in the briefing process. As the Panel views the record, the only issue is the wage adjustment with other issues subsumed within the wage issue. With this background we can consider the relevant facts.

The City has a population of more than 40,000 residents with per capita income in excess of \$36,000 per year. It has an excellent bond rating, with Standard and Poor's rating of AA and a Moody's rating of Aa2. According to the Department of Revenue, it entered Fiscal Year 2015 with free cash of slightly more than \$7,000,000 and a stabilization fund of \$750,000. It derives the overwhelming percentage of its revenue from property tax levies, with the remaining revenue sources consisting of state aid, local aid, local receipts and other miscellaneous sources.

The Association represents the seventeen superior officers employed by the City's Police Department ("the Department"). The Department's forty or so Patrol Officers are represented by the Beverly Police Benevolent Association ("BPBA").

To put the disputed issues in context, we need to look at the other collective bargaining outcomes within the City and the most recent history of negotiations between the City, the Association and the BPBA. They are instructive.

By the time this hearing commenced, the City had reached agreement with all but one of the various labor organizations representing its employees, exclusive of employees in its school department. Those Agreements cover the period July 1, 2011 through June 30 2014. The Association is the only labor organization of City employees without an agreement covering that time period.

With one big caveat, to be discussed below, the other city wide collective agreements for the relevant time period provide wage increases according to the following schedule:

July 1, 2011	0%
July 1, 2012	1.5%
July 1, 2013	1.5%
January 1, 2014	1%

Those agreements also contain reopeners that can be triggered if this proceeding results in the Association's receiving a wage package in excess of this pattern.

The differences between the parties appear relatively narrow, but, in reality, are less so. The Association suggested, at various points, that the panel award a three year agreement covering FY 2012 through 2015 and a one year agreement covering FY 2016.

It has not pressed that position in its final submission. Rather, it is seeking a three year wage adjustment consisting of the following:

July 1, 2011	0%
July 1, 2012	1.5%
July 1, 2013	3.5%
January 1, 2014	2.0%

The Association's request thus parallels the City pattern for FY 2012 and 2013, diverging only in the FY 2015. It justifies that request largely based upon the claimed assumption of additional duties by its members and the outcome of the most recent negotiations between the City and the BPPA.

II. The Context for the Association's Proposal.

The real driving factor behind the Association's wage proposal is the agreement the City reached with the BPBA. That agreement followed the pattern set forth above. In addition, the City agreed to pay all members of the patrol officers' bargaining unit a 2% stipend, in exchange for the BPBA's agreement to City's creating a Community Impact Officer Unit ("CIO") and permitting patrol officers to assume Field Training Officer ("FTO") duties. Those new provisions permit the Chief to reassign patrol officers from a shift on which that officer bid to the Community Impact Unit. They also permit officers to be assigned to perform training duties in support of that unit. The Chief's exercise of that power may result in the reassigned officer's losing the contractual shift differential. Taken together these two provisions enable the City to more fully implement a community policing strategy.

All members of the patrol unit receive the stipend. The record indicates, however, that at any given time perhaps four or five patrol officers are impacted by these changes. The lack of symmetry between those receiving the stipend and those affected by the contractual changes has its roots in the agreement between the Association and the City commencing in FY 2009. That agreement provided a 1.7 % increase for the superior officers as compensation for their assumption of additional duties. Specifically, paragraph 8 of the parties' Memorandum of Agreement provided:

ARTICLE XXXI – MISCELLANEOUS

- J. (new) The Association acknowledges that the Chief of Police has provided certain Association members with cell phones in order that such personnel be available to the Chief as needed on a 24/7 basis. The Association acknowledges this existing availability policy and in return for wage increases contained in this agreement accepts such policy, waving all present rights, if any, to challenge such policy as a change in working conditions.
- K. (new) The Association acknowledged that the City has entered into a DRUG TESTING POLICY with the Beverly Police Benevolent Association which requires members of the BPSOA to assume additional duties. The Association acknowledges the possible imposition of additional duties upon Association members because of this DRUG TESTING POLICY and in return for the wage increases contained in this Agreement waives all rights, if any, to challenge such policy as a change in working conditions.
- L. (new) The Association acknowledges that the City has entered into a change in the CBA between the City and the BPBA and that such modification may require members of the BPSOA to assume additional responsibilities relating to the duty assignments of patrolmen. (SEE BPBA-CBA ARTICLE 3§8). The Association acknowledges the imposition of additional duties upon Association members because of this duty assignment policy and in return for the wage increases contained in this agreement waives all rights, if any, to challenge such policy as a change in working conditions.

The 1.7% increase increased the historical 18% differential between patrol officers on the highest step and a sergeant. With the adjustment, that differential increased to approximately 20% for the period covered by the predecessor agreements.

The CTO/FTO stipend effectively restored the historical relationship. The City's agreement to the stipend was, in part, driven by the BPBA's desire to maintain the historical relationship between the wages of the top step patrol officer and sergeants.

The evidence establishes the existence of such parity in recent history. Between FY 2007 and FY 2011, the increases received by the Association and the increases received by the BPBA mirrored one another with the exception of FY 2009. That was the year the Association secured the 1.7% increase to compensate the superior officers for performing new duties.

The City's wage proposal would virtually maintain the historic relationship between the top step patrol officer and sergeants, subject to a .3% differential, representing the difference between the 1.7% increase the Association secured in FY 2009 (without considering the compounding) and the 2% stipend recently secured by the BPBA. The Association's proposal would effectively maintain the relationship established by its prior agreement with the City. The Association's primary basis for maintaining the more recent differential arises out of its view that its members have been required to perform additional duties.

The Association has cited four such duties during the hearing, but the final briefing indicates that only two of those remain relevant. At the hearing, the Association cited the Department's adoption of Tasers, as one of the additional less than lethal force tools available to police officers. The City, however, did not acquire the four Tasers it

now possesses until February 2015. The Association's reply brief indicates its belief that the issue raised are "not ripe for resolution given the time period in which [it] arose."

The second of the claimed new duties resulted from the provision of the BPBA's 2012 -2014 providing for the City's issuance of body armor. The General Order implementing this provision was not issued until the February 20, 2015. Similar to the issues arising from the Department's acquisition of four Tasers, the Association's reply brief acknowledges that the issue raised by the adoption of mandatory body armor is not "ripe for resolution given the time period in which [it] arose."

The other claimed additional duties cited by the Association rest upon different evidentiary foundations. The Association has cited the City's Drug Testing Policy as imposing new duties on the superiors for its administration. That is true. However, Article XXXI, Section K of the Memorandum of Agreement governing the parties between Fiscal Years 2009 and 2011 provided additional compensation for the superiors as a result of the additional duties imposed by the policy.

The Association has suggested that the Memorandum only anticipated increased duties while its proposal is founded upon the actual increase in those duties. The Memorandum, however, incorporates the drug testing policy giving rise to this new duties and it reflects what the parties anticipated occurring. The evidence does not demonstrate a material variance between what was anticipated and what occurred. Thus, it appears that the compensation for any additional duties resulting from the drug testing policy is already embedded in the parties' economic relationship.

The Association has also cited the new responsibilities arising from the Department's furnishing the superiors with cell phones, thus enabling them to be

contacted on a 24/7 basis. Article XXXI, Section J of the 2009-2012 Memorandum of Agreement addressed that issue to the extent it recognized that additional duties resulted from the Chief's ability to contact the superiors on a 24/7 basis using those cell phones.

The evidence at the hearing indicated, however, that patrol officers and other superiors used the cell phones to facilitate their ability to contact the superiors while they were on or off duty. That could have been achieved prior to the cell phone's issuance through land lines and the like. The evidence suggests, however, that the City furnished cell phones have made it easier for the superior officers to be contacted by both voice communication and the always ubiquitous text messages. The quantitative increase in those communications is not evident from the record. Experience suggests that the cell phones increased the numbers of such communications received by superiors from officers other than the Chief while the superiors are on or off duty.

It should also be noted that on March 24, 2011, the City agreed to provide members of both the Association and the BPBA that portion of the so-called Quinn Bill benefits that was previously reimbursed by the Commonwealth. Since both units benefitted equally from this agreement, other than being window dressing of one form or another, it really does not impact the result in this proceeding.

III. The City's Financial Health.

The Panel is required to consider numerous factors in reaching its award. Under St. 1973, c. 1078 §4A (3)(a) as amended by St. 1987, c. 589, §1, one of those factors is the "financial ability of the municipality to meet costs." The Association's most recent wage proposal differs somewhat from the one it asserted at the outset of the hearing. This creates some uncertainty in determining the actual cost differential between the

parties' proposals. Because both the difference between the City's proposal and the Association's arises, in the final year of the Agreement, the differential, through the life of the Agreement seems to be between \$55,000 and \$60,000. Of course, that difference will carry over into subsequent agreements, may well trigger the reopener provisions in the City's other agreements and impact future negotiations city-wide.

As reflected by its bond ratings, the City is, for the moment, in good financial health. It has seen a healthy growth in revenues between FY 2012 and FY 2015 (projected). In FY 2012, its revenues grew by 2.54% and the City projects that its revenues for FY 2015 will grow by 3.67%. It has not had a Proposition 2 ½ override.

At the close of FY 2014 it had a free cash balance of seven million dollars and a stabilization fund of approximately \$750,000. By the end of FY 2015, it projects a free cash balance of slightly less than four million dollars and a stabilization fund of slightly less than six million dollars. This change will result from the City's transferring free cash into the stabilization fund. At the end of FY 2014 Standard and Poor's opined that the City "had strong access to external liquidity." It will need that access as it is currently in the process of planning and building a new Middle School.

The City has a surplus in its health insurance trust fund. Part of that surplus, however, is comprised of incurred but not reported claims. Other portions of that surplus will be required to fund anticipated premium increases. Recognizing that surplus, the City appears to have budgeted and anticipates budgeting premium holidays of 1/12 of the amounts for Fiscal Years 2015 and 2016.

This does not mean that the City's fiscal picture is without problems. The City projects increasing reliance on property tax levies, as revenue from other external

sources, notably State aid, are projected to decrease. In the current fiscal climate for the Commonwealth, that assumption appears reasonable. At the time of the hearing, there was uncertainty about that amount of reimbursement it may receive from outside sources for the snow removal expenses incurred following the recent winter which all who were witnesses to it would like to forget. There are also contingencies related to litigation and property tax rebate requests that could adversely impact the City's financial situation.

Like other municipalities, the City has unfunded pension liabilities. The evidence indicates that the City's unfunded liability is 85.9 million dollars. It is on track to fully fund those obligations earlier than the year 2040, the date it is required to do so by law. At the current rate of funding it will do so by 2030.

That does not, however, take the City out of the fiscal woods. It has unfunded liabilities for what other post-employment benefits, known as OPEB. The latter is estimated as being some two hundred million dollars. It is currently funding those benefits with current revenue and is on track to "modestly fund" those benefits in future years, with a best case assumption of an annual advance funding of 2.5 million per year.

The Association's expert calculated that the cost difference between the City's proposal and the Association's pre hearing proposal was some \$69,000, now reduced as the result of the adjustment in the Association's economic proposal. Its expert observed that its free cash, stabilization fund and health insurance trust fund surpluses enabled the City to meet that obligation. Whether those sources should be considered in assessing the City's ability to pay an ongoing operating expense is open to question.

The problem presented by the City is what happens in the future. We can never know. While it has been generating surplus revenues since FY 2010, the City projects the

picture as changing in FY 2016. It has assumed an annual 3% growth in school costs, the debt service expense resulting from the new middle school and salary increases that are “planned carefully and mindfully.” It has also assumed an inability to make a meaningful reduction in its OPEB liability and the need to reduce road and sidewalk work.

With these assumptions, the City projects having to tap its free cash and stabilization funds to fund a budget deficit for FY 2016 and projects that trend continuing until FY 2020. By that fiscal year, all other things being equal, it projects a cumulative deficit of \$5,000,000 dollars.

In sum, it appears that the City can afford both its proposal and the Association’s for the year in question. The uncertainty arises because of the future impact of granting the Association’s proposal. There are reopener provisions in the other City agreements that could lead to increases in the City’s personnel costs. The larger increase sought by the Association will likely have a ripple effect on the City’s bargaining with its other bargaining units for FY 2015 and beyond.

POSITONS OF THE PARTIES

Association Position:

The Association first contends that its proposal, when measured against the statutory factors, required to be considered by the Panel, support granting its award. The City, it says, has the present ability to pay for the proposal and any contrary claims, it avers, are based upon speculation, not fact. The public interest in having the City’s superior officers well compensated, it continues, is evident as are the hazards that superior officers confront in the performance of their duties. The award sought by the Union, it continues, is fully consistent with the results in surrounding communities and

will not disrupt existing bargaining patterns within the City. Applicable JLMC precedent, the Association argues, also supports granting its proposal.

Wholly apart from the statutory factors, the Association continues, the evidence fully supports the legitimacy of its proposal. Its proposal, the Association contends, is consistent with the wage increase afforded the BPBA and is supported by the Union's agreement to City proposals on body armor, accreditation and use of an assessment center in the promotion process.

The Panel, the Association continues, should ignore the City's inflammatory rhetoric and focus on the facts. The additional 2% sought by the Association, it avers, is required for its members to keep pace with the increases awarded the patrol officers. The prior 1.7% increase, cited by the City as a disruption in the normal bargaining pattern, the Association continues, was given in exchange for its members' assumption of additional duties, most notably in connection with the drug testing policy. It was not, as suggested by the City, the Association says, an aberration. Moreover, it claims, the prior increase is effectively irrelevant since it is less than the stipend received by the patrol officers. Notably, it avers, all patrol officers receive the increase despite the fact that only a limited number of patrol officers perform those duties at any one time. In contrast, the Association argues, the increased duties for which it is seeking compensation apply across the entire spectrum of its bargaining unit. Thus, it says, the CIO/FTO stipend received by the BPBA is really a base wage increase.

The increase it is seeking, the Association continues, fully parallels the increase granted to the Patrol Officers. Thus, it avers, granting its proposal will maintain internal equity between the units in the Department. Moreover, it continues, the City's position,

unlike the Association's ignores the fact that the agreement for the CIO/FTO stipend will increase the supervisory responsibilities of the superior officers, as did the increased responsibilities for the drug testing that were a component of the 1.7% increase granted in 2009. The increased supervisory responsibilities resulting from the stipend, the Association argues, must also factor into the Panel's consideration of the wage proposal. So viewed, it says, the reasonableness of the Association's proposals cannot be doubted.

The City's reliance upon its agreements concerning the Quinn Bill are not relevant, the Association continues. The patrol officers signed a similar agreement, thus making the agreement demonstrative of the parity the Association is seeking to maintain.

The City's attempts to marginalize the increased duties resulting from the drug testing policy and the furnishing of the superior officers with cell phones, the Association continues, should also be rejected. The evidence demonstrates, it avers, that superior officers are regularly contacted on their cell phones by patrol officers without regard to whether the superior officers are on or off duty. There is also evidence, the Association avers, the drug policy has imposed additional duties on the superior officers.

The Association has not, it continues, accepted the City's financial analysis. Most notably, it says, its evidence demonstrates that the City's analysis fails to account for the portion of the Health Insurance Trust Fund surplus available to the City. Moreover, it argues, the Association questioned whether the City's financial analysis adequately accounted for the availability of its seven million dollar operating surplus. The analysis, the Association avers, ignores the fact that the anticipated funding of the City's unfunded pension liability by 2030 will increase the amount the City has available for funding other post-employment benefits.

The City, the Association continues, has also presented a financial picture that differs from that portrayed in the official statement issued in connection with a bond offering at virtually the same time as this proceeding. The variations are signification, the Association contends. More critically, it says, the official statement is nowhere near as firm on the City's efforts to fund its OPEB liability as was the testimony of its witness. Instead, it continues, the evidence demonstrates that the city will continue to run a healthy surplus enabling it to pay the increase sought by the Association.

The Association thus asks the Panel to issue an Award incorporating its proposal.

City Position:

The City argues that the Panel should require the Association to abide by the City wide pattern. Such a result, it contends, would maintain the historic relationship between the top rated patrol officers and sergeants.

The CIO/FTI stipend granted to the BPBA, the City avers, simply restored the historic relationship between the compensation for the two bargaining units that was changed by the 1.7% increase given to the Association in the last negotiations. The 2% increase, the City avers, was not simply additional money. Instead, it contends, it afforded the patrol officers the opportunity previously given to the Association to make concessions in exchange for additional compensation.

The Union's claim that it is entitled to more because of additional duties, the City argues, must be rejected. The Union, it says, already secured compensation for any claimed additional duties resulting from the drug testing policy and whatever changes resulted were insufficient to warrant granting additional compensation. More critically, it says, like the drug testing policy, the Association has already been compensated for any

claimed additional duties resulting from the cell phone policy, thus precluding those new claimed duties being a basis for additional compensation. The other claimed duties, the City argues, effectively arose after the end of the contract period in dispute.

The result sought by the City, it continues, respects its financial position and is necessary to maintain fairness to other City wide bargaining units. The Union's economic position, the City avers, effectively asks the City to gamble on a number of economic contingencies being resolved in the City's favor. Such budgeting by chance, it avers, is not responsible. Moreover, relying upon the stipends provided to the patrol officers, the City claims would create a bargaining climate encouraging never ending requests for catching up that could ultimately be unsustainable and encourage other public safety unions to go to impasse to obtain JLMC mandated arbitration.

The Union's portrayal of the City's ability to pay the increases sought, the City continues, must be rejected. The Union's economic analysis, the City avers, ignores the likely long term effects on its negotiations with other labor organizations. If granted, the City argues, those increases will substantially increase the City's potential financial exposure during future bargaining cycles. Thus, it contends, the Union's effort to look at only the immediate costs of its proposal, without regard to its future ramifications should be rejected by the Panel.

What the Association characterizes as savings that could result from decreasing contributions to its Health Insurance Trust Fund, the City says, are illusory. Among other things, the City notes, the Union's position ignores likely increases in health care costs and the needs to retain a reserve for incurred but not reported health care expenditures.

The Union's reliance upon the City's official statement for its most recent bond offering, it avers, must also be rejected. That statement, it avers, is not formally part of the record. Moreover, it contends, the Union's argument fails to observe that the cited increase in its stabilization fund resulted from a transfer of free cash, a common and prudent practice followed by many municipalities.

Still other factors cited by the Union, the City continues, fail to support its position. The parties' pre-hearing agreement on the accreditation issue, it observes, does not provide any basis for granting the Union's proposal and its reliance upon the City of Quincy award is fundamentally irrelevant to the resolution of this controversy.

For these reasons, the City concludes, the Panel should award the package proposed by the City.

OPINION

Certain issues in this case are easily disposed of. By the close of the briefing, the parties appear to have agreed that the Panel should award a three year agreement covering the period from July 1, 2011 through June 30, 2014.

The parties also appear to have agreed upon the wage adjustment for the first two fiscal years of that agreement. Thus, the Panel will not award any wage increase for FY 2012 that commenced on July 1, 2011 and a 1.5% increase effective July 1, 2012 for FY 2013. The FY 2013 increase will be retroactive to July 1, 2012.

Left in dispute is what happens to the wage structure for FY 2014. The Association is seeking a 3.5% increase effective July 1, 2013 and a 2% increase effective January 1, 2014. The City believes that the Panel's award should be consistent with the City wide pattern. That would result in a 1.5% increase effective July 1, 2013 and an

additional 1% effective January 1, 2014. The parties also appear to agree that the award should be retroactive to the effective date of each increase. Thus, if the Panel's computations are correct, there is a 3% differential between the parties for FY 2014.

The disposition of this matter was heavily influenced by both the calendar and the evolution of the Union's position. At the outset, the Association justified its proposal by reference to the CIO/FTO stipend provided in the City's recent agreement with the BPBA. The Association recognized that the City received managerial flexibility in exchange for the stipend. It thus sought to justify its proposal by citing new and additional duties that devolved upon the superior officers since the prior agreement. While there were other arguments advanced by the Union, the claimed change in the duties and responsibilities of the superior officers constituted the core of its presentation.

The record demonstrated, however, that a number of the cited duties were imposed subsequent to the time period covered by the dispute before the Panel. Thus, the claimed additional duties relating to the City's implementation of a body armor policy and its adoption of less than lethal force weapons occurred subsequent to June 30, 2014. In its post-hearing briefs, the Association prudently withdrew these issues from the Panel's consideration, preferring instead to have those issues discussed during the negotiations for the successor agreement. That appears to be the proper forum.

The Union's evidentiary presentation also sought to justify the requested increase by citing the new duties imposed by the City's drug testing program. As the Factual Background demonstrates, the 1.7% increase received by the bargaining unit in 2009 was designed, in part, to compensate the superior officers for those additional duties. The evidence does not demonstrate that the actual new responsibilities imposed on the

superior officers exceeded those envisioned by the earlier agreement. Thus, those duties cannot factor into the Panel's disposition since doing so effectively compensates the superior officers twice for the same additional duties.

During the briefing stage, the Association suggested that implementation of the CIO/FTO program imposed new responsibilities on superior officers. There was no significant evidence of what those new duties might be and any new duties would post-date June 30, 2014. Thus, like the body armor and less than lethal force issues, collective bargaining is the appropriate forum for those issues to be discussed.

The last leg of the Union's claim that increased duties warranted the requested increase arose from the superior officers' acquisition of cell phones, as provided for by the prior agreement. There was certainly evidentiary support for the Union's position on this issue. The prior agreement makes clear that the 1.7% increase recognized the Chief's increased ability to contact superior officers while they were on or off duty. The evidence demonstrates that cell phones have been increasingly utilized by other Department members to contact superior officers on and off duty, thus going beyond the increased duties envisioned by prior agreement.

The City suggested that the cell phones did not increase the duties and responsibilities of the superior officers because other officers could use land lines and the like to contact the superiors on or off duty. Cell phones, however, make an individual more accessible since the ability to contact individuals is not dependent upon their being at a particular location. This is not always a blessing, but it is a fact of life that is more prevalent, as people abandon land lines in favor of their cellular counterparts. Thus, the

Panel majority believes that the award must account for the increasing accessibility of the superior officers resulting from their being furnished with City supplied cell phones.

With the issues thus narrowed, the Panel effectively had two choices. On the one hand, it could grant the Association equal to the 2% increase received by the BPPA in exchange for its agreement to the CIO/FTO stipend. Such an award would help cement an increase in what had been the historical 18% differential between a top step patrol officer and a sergeant. It would also likely perpetuate a pattern, evident in the most recent negotiations with the two units, in which the parties would be engage in a perpetual game of catch up.

Conversely, the Panel could also restore, for the moment at least, the historical relationship between the two units based upon the increased responsibilities imposed on superior officers by their being more susceptible to telephonic contact because of their possession of City supplied cell phones. That would result in the award of 1.8% increase, effective July 1, 2013. Since this is relatively close to the City's offer there are no serious questions about the City's ability to pay, even considering the implications of such an award under the reopener provisions of its other collective agreements.

A Panel majority favors the latter approach. The award makes up for the difference between the 1.7% increase received by the Association in 2009 and the 2% increase recently received by the BPPA. It thus maintains, rather than changes the historical relationship between the two units.¹

The tacit preservation of the status quo is driven by the fact that the most potentially significant changes in the duties and responsibilities of the superior officers

¹ The Panel recognizes that the compounding of the 1.7% increase means that the present value of the differential is somewhat less than 0.3%. For simplicity's sake, the Panel majority has not taken that differential into consideration.

occurred in a time period outside of the Panel's jurisdiction. If there is to be a change in the historical relationship between the compensation for the two units within the Department, the arbitration forum is not the most appropriate place for that change to be determined. There have been the changes in the duties and responsibilities of the superior officers resulting from the body armor policy, the adoption of less than lethal force weapons and the CIO/FTO program. The Panel majority believes that collective bargaining, rather than interest arbitration is the appropriate vehicle for determining whether changed circumstances warrant changing the historical relationship. Granting a significant portion of the Association's proposal increases the likelihood that the Association or the BPPA would resort to arbitration to make a change that should be made by the parties.

The views expressed in this Opinion are solely those of the Panel's Chair. An appropriate Award shall enter.

AWARD

1. Article XXXXIV (Duration of Agreement) shall be amended to reflect that the new Agreement commences on July 1, 2011 and terminates on June 30, 2014. The parties shall also exchange proposals for the Agreement take effect for FY 2016 and thereafter within thirty days of the implementation of this Agreement. This Agreement shall continue in full force and effect until a successor Agreement is executed.

2. Article XXX (Pay Scale) and the associated Appendix A shall be amended to reflect the following wage adjustments:

FY 2012	July 1, 2011	0%
FY 2013	July 1, 2012	1.5%
FY 2014	July 1, 2013	1.8%
	January 1, 2014	1.0%



Marc D. Greenbaum, Arbitrator
Dated: July 29, 2015

Diane Crimmins, Management Member (concurring)
Dated:

Alan Andrews, Association Member (dissenting)
Dated:

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Marc D. Greenbaum, Arbitrator
Dated: July 29, 2015



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Dated:



Alan Andrews, Association Member (dissenting)
Dated: