

COMMONWEALTH OF MASSACHUSETTS
JOINT LABOR MANAGEMENT COMMITTEE

In the Matter of the Arbitration between
WESTFORD SUPERIOR OFFICERS ASSOCIATION

AND

TOWN OF WESTFORD

CASE NUMBER JLMC 14 3559

AWARD OF THE ARBITRATOR(S)


WE, THE UNDERSIGNED ARBITRATOR(S), having been designated in accordance with the procedures of the Joint Labor Management Committee and having fully heard the proofs and allegations of the parties, AWARD as follows:

1. Duration. The contract will have a three year term running from the expiration of the prior agreement.
2. Wages. There will be a 2% increase in base wages effective the first day of each fiscal year.
3. Salary Schedule. The salary schedule will be adjusted in accordance with the arbitration proposal of the Town to establish a five percent differential between ranks, and a five percent differential between steps.
4. Holidays. Add language giving all unit effective July 1, 2013, employees eight hours of straight time pay for six (6) holidays per year. This change does not alter the current scheduling practices in the unit or remove the language providing that superior officers are not scheduled to work holidays. Said holidays to be paid as agreed by the parties or as per the contract of the Chief. Holidays, however paid, are not to raise the base hourly rate for purposes of overtime or other benefits.
5. Accreditation. No change in current language
6. sick leave payout. The Town proposal is added to the contract.
7. Early Retirement Incentive. The Town proposal is added to the contract.
8. Hours of Work. Add new language, contained in the Opinion, giving the Chief the right to determine the assignment of superior officer out for two or more calendar weeks.


Garry J. Wooters, Impartial Chair

3/12/16


Daniel Morgado, Employer member ~~(concurring)~~ (dissenting)


Donald Cummings, Union Member (concurring) ~~(dissenting)~~

COMMONWEALTH OF MASSACHUSETTS
JOINT LABOR MANAGEMENT COMMITTEE

In the matter of the arbitration between
Westford Superior Officers Association
and
Town of Westford
Case Number: JLMC 14-3559

DISSENT

I have dissented on the above reference award because of the awarding of six (6) holidays to the Group.

This is a new contract provision that creates a pure economic benefit with no corresponding change in work being provided to the Community or in offsetting reductions in some other aspect of the pay and benefits structure of the Group. Further, this benefit is granted retroactively resulting in a substantial increase in the overall cost of this award.

Accordingly, I file this dissent with the panel.



Daniel J. Morgado – Management Member

March 7, 2016

COMMONWEALTH OF MASSACHUSETTS
JOINT LABOR MANAGEMENT COMMITTEE

In the matter of the arbitration between

WESTFORD SUPERIOR OFFICERS ASSOCIATION JLM-14-3559

AND

TOWN OF WESTFORD

-*****

Board of Arbitration:

Garry J. Wooters

Donald Cummings, Union Member

Daniel Morgado, Management Member

Appearances:

Susan Horwitz, Esq., for Westford Superior Officers Ass'n

Nicholas Anastasopoulos, Esq., for Town of Westford

OPINION AND AWARD

Statement of the Case

The undersigned was appointed pursuant to the procedures of the Joint Labor Management Committee as the impartial chair of a board of arbitration convened to hear a dispute existing between the Westford Superior Officers Association ("Association") and the Town of Westford ("Town"). Pursuant to its authority under MGL c. 150E, sec. 4A, the Joint Labor Management Committee certified wages,

duration and the following issues:

Union Issues:

Realignment of steps

Holidays

Town Issues:

Sick Leave

Hours of Work

Retirement Incentive, Early Notice

Accreditation

A hearing was held in Westford, Massachusetts on November 9, 2016 at which time all parties and their representatives were present. Post-hearing briefs were filed by both parties and have been considered.

The Board of Arbitration met via conference call on January 15, 2016.

Background

The Town of Westford is a suburban community of 27,000 located on route 495 northwest of Boston. In attempting to resolve this impasse, the JLMC considered a "market basket" of communities to

use for comparability purposes. Portions of contracts from those communities are referenced below.¹

The Association is the exclusive representative of a bargaining unit of employees comprised of lieutenants, captains and the deputy chief of the Police Department. The Association and the Town have been parties to a series of collective bargaining agreements, the most recent of which expired on June 30, 2013. The parties bargained over a successor agreement, but were unable to agree on all issues. Mediation did not resolve the impasse and the dispute was submitted to the Joint Labor Management Committee. Pursuant to the agreement of the parties, the JLMC appointed this Board of Arbitration and directed it to resolve the specified issues through issue by issue, conventional arbitration.

The Town bargains collectively with five other bargaining units: police patrol officers and sergeants (referred to herein as WPA or "lower unit"), firefighters excluding the Chief (IAFF), DPW employees, Town Hall employees, and mid-management employees. All of those bargaining units have agreed to contracts for at least some of the period at issues here.

¹ At hearing, the Town provided digital copies of contracts from those communities for use by the Board.

The Town argues that Westford employees have enjoyed generous wage and benefit increases over the years. The Town is, however, affected by the broad economy. Beginning in FY2009, the downturn in the overall economy put pressure on the Town. New growth declined, while costs for health insurance continued to rise. The Town has a significant unfunded pension liability. Contracts with unionized employees were already settled through FY 2011, but, for FY 12 and FY13, all Town and School Department unions accepted 0% base increases. The Association was the first Union to accept the 0% base increase. Growth in state aid in recent years has been small, increasing less than 2% over seven fiscal years.²

The Town does not have as much free cash as the Union has argued. The amount certified by the Department of Revenue was 3,949,730 as of September 2015. Moreover, it is not sound fiscal practice to use free cash for recurring expenses.

New growth surged for FY 14 and 15, allowing the Town to fund generous settlements for its employees and cover health care increases. The Town must be careful, however, to continue sound budgeting practices which led to an upgrade in the Town's bond rating from AA+ to AAA.

² State Aid for FY 16 is expected to be \$18,943,976. State aid in FY 2009 was \$18,698,712.

The Union argues that the Town can fund the Association proposals. It has voluntarily entered into contracts containing the same or similar benefits.

The Association also argues that strong bond rating and the analysis by the Department of revenue all point to a Town with a robust and healthy outlook.

The majority of the Board believes that Westford can fund a settlement for this employees group in line with the internal and external comparables. While there are real structural concerns such as unfunded pension liability, nothing in the data suggests that this group cannot expect a settlement in the range of others agreed to by Westford and comparable communities.

The relatively sound fiscal condition of Westford does not, however, justify a wage and benefit package imposed without concern for its cost. The Board believes that it must consider not only each proposal on its individual merits, but the total cost of the package.

The Economic Issues

The Board has grouped together for analysis those proposals by both parties which have a significant economic cost or impact. It is the view of the majority of the Board that such proposals must be judged not only on their individual merits, but on how they contribute to the total economic cost of any award here.

1. Holidays

The Association proposes adding to its contract the holiday benefit contained in the lower unit and firefighters contracts. Under the current language, if a holiday falls within the regular work week of a superior officer, and that officer has the day off, the officer receives his regular week's pay. If the holiday falls outside the officer's scheduled work week, the officer receives another day off with pay. Should the officer be required to work, he receives additional compensation. It is clear, however, that by custom and contract language, superior officers do not work holidays.³

Under the holiday language in the lower unit and firefighter contracts, employees are paid for the holiday in addition to their regular base pay whether the holiday is worked or not. If the

³ Article X, sec. 2 provides: "All employees covered by this Agreement shall not be scheduled to work on any holiday ... "Testimony indicated that no superior officer has been scheduled to work on a holiday for a number of years.

holiday is worked, the employee receives additional time and one half.

The evidence indicates that the benefit first appeared in the lower unit contract in 1998. Getting a similar benefit for the superior officers has been a major issue in negotiations since, including 2004 and 2011. To date, the Town has not agreed to add this benefit.

A number of the superior officer contracts in the market basked communities have a benefit similar to that which the Association seeks here.

Thus, the Association contends that the internal and external comparables support its position and it should be part of the total compensation for Westford superior officers.

The Town contends that the benefit is costly (4%) and not justified by the Association arguments. The Town points to the custom in Westford whereby superior officers do not work holidays. They may plan for such occasions based on a certainty they will not be required to work.

The Town also argues that total compensation for Westford Superiors is not out of line with comparable communities and, thus, this expensive benefit is not justified. It provides no additional services for the money.

There are strong arguments here for internal comparability with other Town contracts, and external comparisons with other market basket towns.. But, it is not a parity case. There is no historical linkage between this benefit and the Superior Officer unit. For the entire period it has been in Town contracts, about fifteen years, it has not been in the SOA contract. An interest arbitrator or panel should be reluctant to create such a linkage when it has not been accepted by the parties over an extended period.

2. Changes to the Salary Schedule

The new contract between the Town and the Lower Unit increases the differential between top step patrol officer and first step sergeant to ten percent. The first eight steps of the patrol officer schedule were increased from 2.83% to 3%. The steps for sergeants were decreased from five percent to four percent.

The Association proposes making the differential between ranks ten percent for sergeant/lieutenant, Lieutenant/captain, and captain/deputy. The percentage spread between steps for each rank would be reduced from five percent to three. The Town contends that these changes would add \$150,609 to the total cost of the settlement, or 6.89%.

The Union argues that mirroring the changes to the lower unit salary grid will prevent the kind of distortions which will otherwise result. Even now, a top step sergeant promoted to lieutenant may lose money by virtue of the promotion.

The Town argues that the changes are not justified solely by the lower unit contract. It points to the structural differences. In particular, there are only three steps in the SOA contract for each rank, while there are eight for patrol officers and five for sergeants in the lower unit. Comparisons at top step for each rank show Westford ranks favorably with market basket communities.

The Town proposes restoring the 5% differential between ranks and leaving the step differential as they have been. This would result in a more fiscally responsible package continuing the historic patterns.

3. Wages

Both sides have made wage proposals. The Association, which had been proposing two percent (2%) increases in each year (FY14, FY15 and FY16) altered in proposal at arbitration. It linked a 0% increase for FY14 to adoption of its proposal on realignment of the salary schedule, with 2% increases in FY15 and FY16. Absent adoption of the wage schedule changes, the Union proposal has been 2% increases in each year.

The Town has proposed two percent (2%) increases in the base for each year.

The evidence shows that all contracts settled by the Town have included three-year base adjustments of 5.5% to 6.5%. Net cost of these agreements is between 7.00% (OPEIU) and 9.13% (WPA).

Findings on Economic Items

A majority of the Board finds as follows:

Given the overall economic condition of the Town and other

settlements voluntarily entered into, the overall position of the Town is not unreasonable. Its economic offer, amounting to 8.26% over the three years of this agreement puts it squarely within the range of settlements in the Town and in market basket communities.

By contrast, the overall package sought by the Association appears to be out of line with other settlements. The Association has pointed to no other contract valued in the range of 14% for three years.

The Town wage proposal is in line with the strong pattern established in the Town and school department. Breaking out of that pattern is difficult to justify. We will, therefore, award basic wage increases of 2% for each year of this three-year contract.

We also adopt the changes to the salary schedule proposed by the Town. Maintaining the historic spread of five percent between top step sergeant and first step lieutenant, with five percent spreads between other ranks in the unit appears sensible. Maintaining the five percent differential between steps also seems to ensure that the compensation of Westford superior officers will continue to rank favorably compared to market basket communities.

The Association proposal in this area is expensive, and justified largely by the structure of the new lower unit agreement. The board does not find that such parallelism between the two schedules is justified or necessary.

We will, therefore, adopt the arbitration position of the Town, but with two significant modifications.

First, the Board does not adopt the Town position on accreditation. The evidence indicates that the services performed by bargaining unit employees on developing and implementing policies aimed at maintaining accreditation has not diminished in value. Reducing the stipend is merely a modest give back, not justified on this record.

The Board also finds that the Association has made a strong case for inclusion of an enhanced holiday pay benefit. The lower unit as well as the Town's firefighters enjoy a benefit substantially superior to that provided to the superior officers. The more generous benefit sought by the Association is contained in many market basket community contracts, including those for police superior officers.

The difficulty with the Association position has been that the cost of the holiday benefit is substantial. When added to a package already near the top of the range of comparables, it makes the settlement out of line.

The evidence indicates that, in negotiating an employment contract with the Chief, the Town agreed to pay that position for six holidays as provided in the WPA and IAFF contracts, rather than eleven. This undercuts the argument of the Town that not providing this benefit to the Superior officers is justified because they are not required to work holidays. It seems incongruous that the superior officers have a less generous holiday benefit than those both below and above them in the chain of command.

For these reasons the Board will include a reduced holiday benefit of six days, rather than eleven, to be paid in accordance with the WPA and IAFF contract language. We wish to emphasize, however, that we are not removing the language from the contract indicating that superior officers will not be scheduled on holidays. The enhanced benefit is purely economic and not intended to change current scheduling practices or provide an option for officers to choose to work or not work holidays. The holidays included and method of payment shall be as in the contract of the

Chief, or any other method agreeable to the parties.⁴

Other Items

Sick Leave Payout.

Under the current contract employees who give notice and met other requirements may receive fifty percent of unused sick leave up to a maximum of sixty (60) days. The Town proposes that for hires after July 1, 2015, the maximum payout be reduced to forty-five days.

It is the understanding of the Board that, at arbitration, the Union has accepted this proposal.

The Town argues that the proposal will not affect any current members of the WSO unit. The change in language would be consistent with the WPA contract. Overall, the proposal represents a modest reduction in possible future liabilities for the Town.

⁴ Even if holidays are "folded into" regular pay for payroll purposes, nothing in this recommendation is intended to raise the base hourly rate for purposes of calculating overtime or other benefits.

A majority of the Board adopts the Town provisions on sick leave payout.

Hours of Work

Currently, patrol officers and the working lieutenant bid their shifts. This is the case even if the employee is out on long term paid or unpaid leave. This can result I an employee bidding a shift, but not being available to fill it. In the case of the overnight supervisor, the shift would have to be filled continuously on overtime.

The Town has proposed language which would permit the Chief to "make assignments" when an employee is out on a paid or unpaid leave, including injured on duty status."

The Union does not oppose the concept, but is concerned the language is too broad. It has proposed:

If an officer is out on paid or unpaid leave, including injured on duty status for an extended period of time, the Chief reserves the right to select the absent officer's shift schedule during the officer's absence.

The Town considered the Union language too broad fearing it might result in future litigation.

A majority of the Board adopts the following language to be added to the contract:

If an officer is out on paid or unpaid leave, including injured on duty status for two calendar weeks or more , the Chief reserves the right to select the absent officer's shift schedule during the officer's absence.

Retirement Incentive

The current contract contains a benefit for those employees with twenty or more years of seniority who give early notice of retirement and meet other requirements. The Town has proposed reducing the stipend for employees hired after July 1, 2015 as follows: lieutenants from \$110 to \$55 per week; captains from \$120 to \$60; deputy chief from \$130 to \$65.

It is the understanding of the Board that the Association indicated at arbitration that it does not oppose these changes.

The majority of the Board adopts the Town proposal on early retirement incentive.

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Accreditation

Currently, the WSO contract provides for an annual stipend of \$1500 for all unit members to compensate them for work done on developing and implementing policies and procedures related to achieving and maintaining accreditation for the department by the Massachusetts Police Accreditation Committee. The town proposal would reduce this amount to \$1,000.

The Town contends that this change will have a limited impact on current WSO members and is a reasonable cost containment measure for the Town. The proposed language would be consistent with language in the WPA contract.

The Association opposes any reduction in the stipend. The work done by the superior officers of of significant value to the Town in maintaining accreditation.

The majority of the Board does not adopt the Town language on accreditation stipend.

Conclusion

The Board makes the attached Award based on the evidence and

arguments of the parties and in accordance with Chapter 589 of the Acts of 1987.

Garry J. Wooters, Impartial Chairman.