

JOINT LABOR-MANAGEMENT COMMITTEE

Bruce Fraser, Neutral Chair

Paul Birks, Labor Representative

William Mahoney, Management Representative

In the Matter of the Interest Arbitration

Between

TOWN OF AMHEREST, MA

JLMC No. 14-3903
Interest Arbitration

-And-

AMHERST POLICE SUPERVISORS UNION

For the Union: Kevin Coyle, Esq.

For the Town: David Jenkins, Esq.

November 20, 2015

AWARD - JLMC No. 14-3903

Article 6.11 Double Time for Forced Overtime

The Union proposal for extension of Forced Overtime is denied.

Article 10.01 Vacation Leave

The Union proposal of additional Vacation Leave is denied.

Article 16.01 Accreditation Activities

The Union proposal of a 2% wage increase for Accreditation Activities is granted, effective January 1, 2016.

Article 18.05 Promotional Procedures

The Town's proposal on promotional procedures is denied.

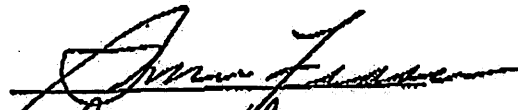

Wages & Duration

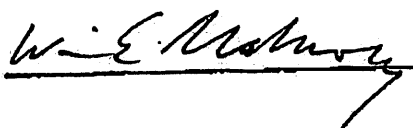
The wage increase for a 3 year agreement shall be 2%, effective the beginning of FY2014, FY2015, and FY 2016.

Bruce Fraser
Neutral Arbitrator

Paul Birks
Labor Representative

William Mahoney
Management Representative



(P. Hastings -
See attached
opinion)

INTRODUCTION

This proceeding is an Interest Arbitration pursuant to St. 1973, c. 589, as amended. The Chapter requires that the factors to be given weight in any decision or determination resulting from the mechanism or procedures determined by the committee to be followed by the parties in order to reach final agreement pursuant to this section shall include, but not be limited to:

- ...
2. The financial ability of the municipality to meet costs.
3. The interests and welfare of the public.
4. The hazards of employment, physical, educational and mental qualifications, job training and skills involved.
5. A comparison of wages, hours, and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally in public and private employment in comparable communities.
6. The decisions and recommendations of the factfinder, if any.
7. The average consumer prices for goods and services, commonly known as the cost-of-living.
8. The overall compensation presently received by the employees, including direct wages and fringe benefits.
9. Changes in any of the foregoing circumstances during the pendency of the dispute.
10. Such other factors, not confined to the foregoing which are normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment through voluntary collective bargaining, mediation, factfinding, arbitration or otherwise between parties, in the public services or in private employment.
11. The stipulations of the parties.

This proceeding deals with the successor to the parties' most recent collective bargaining agreement, which expired on June 30, 2013. The members of the Police Supervisors Union consist of eight sergeants, three lieutenants, and two captains who supervise thirty-three patrol officers.

The Joint Labor Management Committee voted to limit the items in dispute to Wages and Duration plus the 5 following issues per each side. The following are the issues which were submitted to the Panel.

UNION ISSUES

1. Article 6.11 Double Time for Forced Overtime
2. Article 10.01 Vacation Leave
3. Article 16.01 Compensation Matrix
4. Accreditation Payment

TOWN ISSUES

1. Article 18.05 Promotional Procedures

JOINT ISSUES

Wages & Duration

One day of hearing was held by the Panel on August 13, 2015, in Amherst, MA. Both parties presented witnesses and submitted briefs. The panel discussed the issues by phone, but the decision was not unanimous.

ISSUES IN DISPUTE

ISSUE No. 1: Article 6.1 – Double Time for Forced Overtime

CURRENT CONTRACT LANGUAGE

An employee who is permanently assigned to the midnight to 8:00 a.m. shift and who is ordered to be held beyond their normal work shift for the purpose of last minute replacements to the day shift, will be compensated at two (2) times their regular work rate.

POSITION OF THE UNION

The Union proposes that double time for forced overtime be extended to all shifts, not just the midnight to 8 a.m. shift. It argues that it is a rare event, but when it occurs, be it at 8 am or at a later time, it is an onerous event for the recipient, and worth double time whenever.

POSITION OF THE TOWN

The Town rejects this proposal.

DISCUSSION

The Panel does not disagree with the Union that a forced overtime may be onerous, but given the overall settlement package, we do not support the potential added cost to the Town.

AWARD

The Union's proposal is denied.

ISSUE No. 2: Article 10.01 – Vacation Accrual**CURRENT CONTRACT LANGUAGE**

More than ten (10) years completed service, two (2) work days per full calendar month employed for a total of 24 days per year.

POSITION OF THE UNION

The Union proposal to add an additional level as follows:

More than twenty (20) years completed service, two and one-half (2½) work days per full calendar month employed, for a total of 30 days per year.

POSITION OF THE TOWN

The Town rejects this proposal.

DISCUSSION

Again, the Panel viewed this as an added benefit to the Supervisors and an added cost to the Town, a benefit which was received by none of the other units. Given this, the Panel does not support this proposal.

AWARD

The Panel denies the Union's proposal.

ISSUE No. 3: Accreditation Duties

CURRENT CONTRACT LANGUAGE

The Agreement does not have any language regarding this activity.

POSITION OF THE UNION

The Amherst Police Department is one of the forty-eight accredited municipal police departments in Massachusetts. High standards must be met to be accredited and it requires an ongoing process to meet and maintain the standards. Given its location in a college town, accreditation is a valuable attribute for those who would question the professionalism of the Department.

Accredited departments are re-examined biannually to assure compliance. At present, there are 257 mandatory and 125 optional accreditation standards. The Department has identified 138 tasks to assure ongoing compliance, has assigned monitoring groups of them to each of the supervisors, and determined dates by which this must be completed. These tasks are in addition to the normal supervisory duties.

The Union is asking for a 2% increase in salary for these added duties. At present, there is no provision for giving a supervisor member added compensation for increased duties working on the Department's accreditation program. The Union points out that all police supervisors in towns with accredited police departments are paid more than the members of the Union at each grade.

POSITION OF THE TOWN

The Town rejects the proposal, arguing that: 1) the Union already received additional compensation for accreditation; and 2) the Union failed to establish that an across the board increase for accreditation is warranted.

The Town asserts that the Union has already received additional compensation for this work. It points out that the Union raised the issue in 2001 and the Town agreed to additional compensation in the bargaining at that time. It provided TX-12 to support its claim. Exhibit TX-12 contains a series of letters dated 2001, the relevant parts of which are excerpted below:

1. Letter dated May 4, 2001 from Atty. Coyle:

New Item – Union proposal of Accreditation Differential of 4%

2. Letter of bargaining session dated June 22, 2001, from James Connor to Amherst Town Mgr. Barry Del Castilho:

As a Post Script, Mr. Connors wrote: "Mr. Coyle, at the close of the session, made a strong plea for recognition (\$\$) of the Amherst Police Department being only one of two Massachusetts departments certified in the new accreditation process.

3. Letter of bargaining session dated September 7, 2001, from James Connors to Amherst Town Mgr. Barry Del Castilho:

Atty. Coyle mentioned recognizing the Department's recently acquired accreditation

The Town's "Basis for Settlement" did not contain any mention of payment for accreditation and did contain "8. Drop all remaining proposals"

4. Letter of bargaining session dated November 13, 2001, from James Connors to Amherst Town Mgr. Barry Del Castilho:

Atty. Coyle mentioned a number of issues remaining unresolved: the Accreditation Differential was not among them.

The Town proposal of a contract, dated November 13, 2001, did not mention Accreditation Differential. The yearly increase in the final proposal was 3% in each of three years. There was no mention of why the yearly wage increase was raised from 2.5% to 3.0% in the final draft.

Human Resources Director Kay Zlogar testified that an Accreditation Differential was raised during the negotiations in 2001, and it was her recollection that the increase in wage percentage was in recognition of the accreditation work. But she was unable to bring forth any written confirmation that the 0.5% increase each year in the final document was attributed to the Union's request for accreditation recognition.

The Town's second reason for rejecting this Union proposal is the contention that the Union failed to make a case that the form of an across-the-board wage increase is even warranted or appropriate.

DISCUSSION

The evidence shows that the parties discussed accreditation in 2001, but omitted any explicit mention of it playing a role in the final contract agreement. Moreover, there was no mention of its role in any written paperwork thereafter, and although the topic was mentioned at the 3A meeting, still no evidence of its role was forthcoming. Given the lack of hard evidence, the Panel must conclude that accreditation was considered in the 2001 negotiations, was ignored in the final analysis. It follows that the Union has not already been compensated for this work.

The second reason put forth by the Town was there was no reason put forth to justify this additional increase. On the contrary, it appears from the documentation provided that the supervisors have assumed considerable additional work to obtain accreditation status and are committed to retain it. A 2% increase in wages is reasonable.

AWARD

A 2% wage increase shall be given to each supervisor beginning on January 1, 2016. There shall be no retroactive payment of the increase.

ISSUE No. 4: Article 18.05 Promotion Procedures**CURRENT CONTRACT LANGUAGE**

The current provision contains the following:

B: The written examination will be administered by the Town Manager or his/her designated representative.

C. The written examination will be a standardized test, approximating the position, classification, developed by a reputable testing organization.

POSITION OF THE TOWN

The Town proposes to do away with the examination and leave the decision solely in the hands of the Town Manager.

POSITION OF THE UNION

The Union argues that even though the current system may be imperfect, it does provide a structured process based on basic merit principles. Lack of this will permit favoritism.

DISCUSSION

The Panel felt that although the manner in which the parties currently promote a member may be flawed, any changes should be made through negotiation, and should not be imposed by an outside entity.

AWARD

The Town's proposal is denied.

ISSUE: WAGES & DURATION

The parties proposed the following:

	FY-14	FY-15	FY-16	FY-17
Union	2%	2%	2%	---
Town	2%	2%	2%	2%

POSITION OF THE UNION

The Union proposes a 2% wage adjustment in each of three years. It points out that a four year agreement will put it out of cycle with all other municipal bargaining units and, barring a round of one year agreements, it will be a year behind the other units and this will prejudice the unit in bargaining its next agreement.

POSITION OF THE TOWN

The majority of union employees in the Town have accepted a 2% over FY2014-FY2016: firefighters, patrol officers, and other town-side unions. The Town notes that there is a tradition of parity among bargaining units and no evidence why there should be any deviation.

DISCUSSION

Both parties proposed a COLA of 2% for FY2014-FY-2016. Extending the Supervisors an additional year would put them out of sync with the other unions and the Town has offered no reason for this extra year.

AWARD

The increase in wages shall be 2% for each of three years:

Effective Date:

July 1, 2013 - FY2014 2.0%

July 1, 2014 - FY2015 2.0%

July 1, 2015 - FY2016 2.0%

In the Matter of the Interest Arbitration

Between

TOWN OF AMHERST, MA

**JLMC No. 14-3903
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AMHERST POLICE SUPERVISORS UNION

Dissent of William E. Mahoney, Esq. Management Member

The majority decision follows the established wage pattern for all Town of Amherst bargaining employees, until the last year of the contract. Midway through the last year the majority awards an additional two percent (2%) wage increase. The basis for this additional award is that the Amherst Police Department is an accredited department and therefore the majority has awarded the Union the amount of wage increase that they requested.

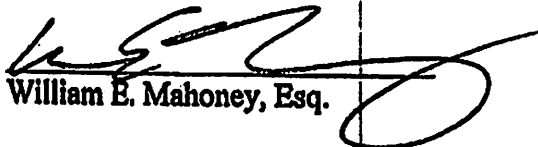
The dissent in this matter is based on several facts. First, the Town presented evidence that it has already increased the wages for bargaining unit members when the accreditation issue was first raised 14 years ago. The evidence shows that the Union proposed an additional wage increase in 2001 due to the extra duties associated with being an accredited department. (Town Exhibit 12). The Town provided copies of its internal bargaining notes showing their initial wage position (Town Exhibit 12). The Town then showed that it changed its wage position and increased it by 1.5% (Town Exhibit 12). To bolster this documentary evidence the Town produced a witness who testified that she participated in the 2001 negotiations and that the 1.5% increase in compensation over the Town's initial wage offer in the 2001 negotiations was in recognition of the accreditation duties. This employer witness was subject to cross examination. The Union did not offer any rebuttal evidence, despite having an available witness who was present in both the current and the 2001 negotiations. Regardless of the Union's failure to present any rebuttal evidence the majority decision discounts the Town's evidence and awards an additional 2% for accreditation.

Second, if the evidence offered by the Town was not sufficient for the majority, the fact that the Union waited 14 years to raise it again should have been more than enough for the panel to reject this argument. The Union chose in 2001 to settle their contract. Should they have felt that their concerns regarding accreditation were not adequately addressed they could have gone to arbitration. Should they have felt that accreditation was still an issue after 2001 they could have raised the issue at any time in successor negotiations three years later. For an unknown reason, the Union brings this issue to arbitration in 2015, 14 years after accreditation. The majority's decision sends the message that even when the parties have completed their negotiations the Union can still raise issues, even from 14 years ago, and be awarded salary increases. This sets a bad precedent for labor relations and injects a great deal of uncertainty into negotiations between parties.

Third, the majority decision will send a message to other bargaining units that all bargaining units are not being treated equally and that there is little incentive to settle a contract with the Town until the JLMC process is completed for all public safety bargaining units. In Ch. 589 of the Acts of 1989 the criteria for consideration by an arbitration panel specifically includes "A comparison of wages, hours, and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally in public and private employment in comparable communities." At Town exhibit 6 the Town demonstrated that it settled a three year contract with the five other Town government employee bargaining units at 2%, 2% and 2%. The school bargaining units, including the teachers bargaining unit, settled for less than this pattern. At Town exhibits 4 and 5 the Town has clearly demonstrated that Amherst Supervisors are paid well above the average of their comparable universe and the award of 8% over three years will create a new high water mark for all bargaining units.ⁱⁱ

The Town demonstrated that there has been very low turnover in the bargaining unit over the past 15 years (despite not having an accreditation bonus, if the Union's position is believed). This should be a signal that employees are generally satisfied with their wages and working conditions. (See Town exhibit 10). It is noteworthy that of the 288 Town employees 6 of the 13 members of the bargaining unit are amongst the top 11 gross wage earners in Amherst (See Town exhibit 11).ⁱⁱⁱ

The majority decision does not adequately apply the criteria in the Statute as demonstrated above and for these reasons I dissent.


William E. Mahoney, Esq.

11-23-15
Date

ⁱ Unfortunately for the Town, the majority does not credit the Town with this increase in wages as the Town could not produce a document specifically indicating the additional 1.5% offered by the Town over their initial offer was due to the accreditation issue raised by the Union.

ⁱⁱ The 8% being awarded to the Amherst Supervisors is twice the increase negotiated with Amherst teachers, see Town exhibit 6.

ⁱⁱⁱ See criteria 8 in the majority opinion. Overall compensation of Amherst police supervisors, when including the Town's proposed wage increases, keeps them well above average for the comparable universe of police departments and near the top for Town of Amherst employee compensation.