

**COMMONWEALTH OF MASSACHUSETTS
JOINT LABOR MANAGEMENT COMMITTEE
TRIPARTITE ARBITRATION PANEL
JLMC-15-4460**

NEW ENGLAND POLICE BENEVOLENT
ASSOCIATION, INC., LOCAL 56,
POLICE PATROL OFFICERS

- and -

CITY OF WOBURN

Michael C. Ryan, Esq., Chair
John E. Nelson, Police Panel Member
John D. Petrin, Management Panel Member

Date: October 18, 2017

Background

The Joint Labor Management Committee appointed this tripartite arbitration panel on October 24, 2016. We held hearings in Woburn on April 28 and May 16, 2017. The parties presented evidence, including testimony and exhibits, and both written and oral argument. Both filed post-hearing briefs by July 31, 2017. The issues involve proposed modifications to the expired collective bargaining agreement that would cover the three (or four) fiscal years: FY 15, FY 16, FY 17 (and FY 18).

For the City

Philip Collins, Attorney
Melissa R. Murray, Attorney

For the Union

Sean R. McArdle, Attorney

II. Discussion of Issues.

1. Duration

The parties have agreed during this process to a one-year contract effective July 1, 2014, through June 30, 2015, followed by a three-year contract effective July 1, 2015 through June 30, 2018.

Recommendation: A one-year contract effective July 1, 2014, through June 30, 2015, followed by a three-year contract effective July 1, 2015, through June 30, 2018.

2. Wages, Article 26, Section 1

Union:

Retroactive to July 1, 2014: 3.5% increase across-the-board
Retroactive to July 1, 2015: 3.5% increase across-the-board
Retroactive to July 1, 2016: 3.5% increase across-the-board
Retroactive to July 1, 2017: an increase across-the-board
adjusted to be comparable among comparable communities.

City:

Retroactive to July 1, 2014: 2.0% increase across-the-board
Retroactive to July 1, 2015: 2.0% increase across-the-board
Retroactive to July 1, 2016: 3.0% increase across-the-board
Retroactive to July 1, 2017: 1.75% increase across-the-
board; effective January 1, 2018: 1.75%.

Recommendation:

Retroactive to July 1, 2014: 2.0% increase across-the-
board
Retroactive to July 1, 2015: 2.0% increase across-the-board
Retroactive to July 1, 2016: 3.0% increase across-the-board
Retroactive to July 1, 2017: 1.75% increase across-the-
board;
Effective January 1, 2018: 1.75% increase across-the-board

The Union argues:

The City has an undeniable ability to pay. It is reflected in the fact that it has never claimed to the contrary. In any event, a review of the comparable communities shows that the City's ability to pay is relatively strong. Indeed, it has \$31.6 million in reserves. It also has 2.7% lower long term debt and a 2.7% higher amount of resources per capita than the comparables. Its Moody's bond rating has improved in the last ten years to Aa1, at the level of the best of the group; its

long-term debt is 15% lower than average while its revenue is 3% higher than average. Its per capita long-term debt is middle of the pack. Meanwhile, each patrol officer faces a crime rate that is 25% above average among these 11 communities.

More directly, financial resources of the City are reflected by the fact that it has agreed to wage increases to its fire fighters of 58.4% over 14 years compared to 32.1% for its police officers over the same time period. Even if the panel awards the Union's proposal on wages, the wage increases, on a non-compounded basis, compared to firefighters, it would still be slightly below.

In terms of salary, the maximum patrol officers' salary was \$3,600 below that of the average comparable community, including the City's current offer through FY2017. It is \$10,000 below the highest paid. In terms of combined compensation, including education incentive, shift differential, longevity and holiday pay, Woburn patrol officers are \$2000 below the average comparable in FY14 and getting worse in FY 15 and beyond with the City's proposal.

The City argues that its City-wide pattern of 10.5% over four years, settled with five other City bargaining units-plus all school department bargaining units-should be awarded in light of this compelling comparison. This above average wage increase is offset by the unions accepting a 5% higher

contribution to the cost of health insurance premiums (to 25%). Most of the statutory factors are identical City-wide, for example, CPI and ability to pay. A pattern has been followed in the past, varied only by a specific trade-off. This internal comparability, important in many JLMC awards, should prevail since other things are essentially equal. In addition, no other bargaining unit received any significant economic benefit for all or most of its members.

The City's proposed wage increase of 10.5% clearly exceeds the average awards and settlements in the comparable communities, which average about 2% per year. This extra raise here more than offsets the increase in health insurance contribution. It is directly comparable to the other cities in the comparability universe. It notably exceeds the increase in the CPI. The statutory factor of overall compensation also supports the City's proposal.

In rebuttal, the City argues that the police unions, to the extent their "unadorned" base pay might be lower than that of firefighters, it is more than offset by financial benefits from the significant Quinn bill educational salary boost, in addition to a night differential, more vacation sooner in a career, defibrillator stipend, and others.

In sum, base pay with the City's offer is squarely in the middle of the pack. The Union's calculations in more than

one way, in contrast, are somewhat misleading and less useful because, e.g., they do not distinguish a salary level that might actually be based on a longevity reward and include some clerical errors.

At ten, twenty, and thirty years, Quinn-eligible officers with a BS continue to rank 4th in terms of overall compensation, while non-Quinn eligible officers rank 6th.

Also, (1) the Union's data severely undervalues the City's Holiday Pay benefit in overall compensation. Its flawed analysis does not convince: it is actually comparable when all relevant factors are considered. (2) The City provides two generous incentives that set it apart from the comparables and are part of total compensation: an annual (not once in a career) sick leave buyback incentive and a 15% retirement incentive bonus. Thus, the City has no difficulty hiring police officers. Finally, (3) no catchup rationale because of a leaner settlement in the last contract can persuade. The State's pulling the rug out from under its payment of 50% of the Quinn benefits is a compelling context for the actual bargain last time. In return for the City picking up the State's 50% share of the substantial Quinn benefits and adding significant incentives for those who did not have it, the Union agreed to a three-year contract with a lower than average wage increase. The Supreme Court

subsequently ruled that the City would not have had to agree to continue paying Quinn benefits; so, the Union benefitted by making that below-CPI deal in return for far greater Quinn benefit payments from the City. Thus, its current argument does not hold water.

Finally, it would create anomalous wage disparities to have a higher increase for Superiors yet significant longevity payment increase for Patrol. This would break the City model and lead to more contentious bargaining in the future. It is also unprecedented.

The panel: To their credit, the parties have mutually agreed to a group of ten comparable communities based primarily on geography, population, and median family income in order to satisfy the statutory factor of comparable communities. This takes the common source of argument, and the uncertainty it results in, out of the arbitration process.

We essentially recommend the wages of the Model City contract in this case. Although internal comparability such as this is not a specific, identified statutory factor, it does fall within the catchall provision of the statute¹ as a factor

¹ "Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages" Chapter 589.

upon which past JLMC factfinders and interest arbitration panels have often placed great emphasis.

While the City does not dispute that it has the economic ability to pay, including a strong bond rating, wages and compensation justified by the statutory factors. The panel has decided to award the City's proposal because most of the statutory factors strongly support it. Also, the resulting wage falls squarely within the center of wages for police patrolmen in comparable communities. The size of the increase per year over the four years is slightly higher than that of comparable communities during the same time period.² It slightly exceeds the CPI. It squares with the results of other settlements and awards in comparable communities. Finally, along with some other increases in benefits, it is sufficient to offset the increase in employee contribution to health insurance premiums to 25%. This last factor is quite plainly a meaningful justification for the slightly higher wage increase we have accepted than purely objective compensation factors might have called for due to the increase in health insurance premium payments to be shouldered by the bargaining unit.

The Union seeks to compare the City's proposed wage increases to those of the other Woburn public safety union, the

² Although some other compensation benefits in many other communities are also indirectly increased by an increase in the basic wage, that is not so true here.

firefighters, a common statutory factor. The comparison is not persuasive, however, in light of the significant increase in City contribution to Quinn educational benefits during the previous contract in the same time period. We also do not view the prior contract as subpar for the same reason. Nonetheless, we do see some anomalies within some of the other aspects of wages and conditions of employment that will justify slight modifications, below. Thus, while we have accepted the City's Model Contract as a valid and significant factor in our analysis, it does not trump all the other factors.

3. Shift Differential, Article 26, §2

Union: Effective July 1, 2014, increase from 5% to 9%.

City: Opposed.

Recommendation: Effective June 1, 2018,
increase from 5% to 6%.

The Union argues that FY14 shift differentials, at \$814, were 23% below the average of the comparables on the evening shift and at \$1,105, 28% below the average on the night shift.

Moreover, these amounts increase automatically with wage increases with the vast majority of the comparable communities, but not at Woburn. Thus, without an increase,

the disparity will worsen. Finally, it was last increased in 1998; it is the time to adjust it again.

The City argues that an 80% increase in the shift differential should be rejected and, instead, the panel should consider it as part of overall compensation. Also, it is (1) at odds with the pay treatment of firefighters, (2) part of the reason why police are above average in total compensation, (3) way above the average of 6%, and (4) at odds with the City's model contract, which had no significant economic benefit for a large part of any unit. This increase would break the model as a significant economic cost aside from wages: it would apply to more than half of each bargaining unit.

In contrast, in the 1990s, firefighters agreed to have \$700 per year added to their pay in recognition of their night work. It is roughly equivalent to \$1000 per year now, way below this current benefit.

The panel: We recommend an increase to 6%. At 5%, the bargaining unit is third from the bottom and well below the median for the comparable communities. This is an important distinction. An increase to 6% will bring the benefit close to both the average and the median. Although we rely upon the

model for the primary economic issue in this case, wages, other factors dictate this change.

4. Health Insurance

City:

The City proposes and

Union:

the Union agrees to the following change;

Effective January 1, 2018: (a) that the City pays 75% and employees pay 25%; (b) for PPOs that the City pay 60% and the employees 40% and that specific co-pay language be deleted; and (c) re "Opt Out," in accordance with the mayor's policy implemented for other employee groups, the City will pay \$1500 per year for eligible active employees who opt out of an individual health plan and \$3000 per year for eligible active employees who opt out of a family health plan, as long as such employee had been covered on the city's health insurance for the previous 24 consecutive months. Employees who opt out of the City's health insurance cannot re-enroll for at least 12 months, unless a qualifying event occurs.

Recommendation:

We adopt the above based on the argument stated in the Union's closing brief.

5. Master Steps/Senior Patrol Officer Positions/Early steps for new hires

Union: Create three steps with a 4% increase at each step in their base salary at 20 years, 25 years, and 30 years of service, retroactive to July 2014. Oppose early steps for new hires.

City: Oppose adding steps at the top. Revise the single step base salary for officers hired on or after July 1, 2017, to a four-step annual schedule where step 4 equals the maximum step

for current officers, and each lower step equals 96% of the step above it.

Recommendation: Revise the single step base salary for officers hired after January 1, 2018, by creating a "Step 0" at 0.97 of the current step; it would last for two years. Also, create an additional step "2" after 20 years at 0.5%, effective June 30, 2018.

The Union argues that the sole pay step for Woburn Patrol officers, while on the one hand is the highest among the starting pay step among the comparable communities, nonetheless, on the other hand each and every other community has at least 3, up to as many as 10, higher steps. As a result, the maximum amount that the patrol officer can receive in Woburn is \$3,285 below (5.7%) the average maximum of the other communities. This proposal would attempt to close that large and growing gap for senior patrol officers without requiring an across-the-board increase. The Union opposes any different pay for new hires.

The City argues that the Union's proposed additional pay steps, immediately affecting 14 of the 55 officers, would raise the weighted average total wage increase of the whole unit from 10.5% to 12.2%, representing an additional cost to the City of \$208,000 per year. No evidence supports such an increase. It would also destroy the existing parity of longevity payments between Patrol Officers and Superior Officers. It would wreak havoc with pension costs.

The City's new steps for new hires is supported by convincing evidence and common sense. Although it only applies to new hires, it would not be a "two-tier" pay structure: after three years the new hires would be at the same pay level as those hired previously. Even with the lower first step, the base pay would remain competitive: still an above-average starting pay. Common sense stems from the fact that Woburn is the only City among the 11 that only has one step, making new senior patrol officers stay at the same pay as new hires. Five is the average number of steps. Other communities have agreed to this type of early step.

The panel: We agree that the initiation of major new steps starting at 20 years of service would be excessively costly. Such would also shrink the appropriate difference between patrolmen and their sergeants. This can cause many different problems. Nonetheless, we acknowledge a problem with the current pay structure, as do both parties who argue in support of adding steps: the notion that a police patrol officer should stay at the same wage for an entire career is a concept that has, over time, become an outlier and no longer makes sense; it is difficult to justify on any basis. Accordingly, we strongly recommend that the parties expand the patrol officer salary structure, commensurate with the

maintenance of an appropriate separation with Sergeants. This is something, however, that is best accomplished at the bargaining table. Therefore, in order to encourage such a future endeavor, we recommend two small changes: a new step 0 and a new step 2. Having more steps for patrol officers and, therefore, higher pay at senior levels is also justified based on the comparable communities.

6. Educational Incentive. Article XXII, §4

Union:

Non-Quinn Bill Eligible Officers:
Effective July 1, 2014, increase the annual payments in Article 22, §4:

| | |
|--------------------------|--------------------------|
| Associates Degree ... | from \$3,000 to \$5,500 |
| Bachelor's Degree ... | from \$6,000 to \$8,500 |
| Masters or JD Degree ... | from \$7,500 to \$10,500 |

City: Opposed.

Recommendation:

Non-Quinn Bill Eligible Officers:
Effective July 1, 2017, increase the annual payments in Article 22, §4:

| | |
|--------------------------|-------------------------|
| Associates Degree ... | from \$3,000 to \$3,250 |
| Bachelor's Degree ... | from \$6,000 to \$6,500 |
| Masters or JD Degree ... | from \$7,500 to \$8,125 |

Effective June 30, 2018, increase the annual payments in Article 22, §4:

| | |
|--------------------------|-------------------------|
| Associates Degree ... | from \$3,250 to \$3,500 |
| Bachelor's Degree ... | from \$6,500 to \$7,000 |
| Masters or JD Degree ... | from \$8,125 to \$8,750 |

The Union argues that its educational incentive is \$1441 below average for AD, \$3196 below for BS and \$4344 below for master's degree (32%, 35% and 37% low). Six of the 10 comparable communities pay 100% of the Quinn benefits to post-2009 employees.

The City argues that the proposal is flawed because it does not follow the percentage proportionality of the Quinn bill benefits by adding the same amount at each level, skewing the percentage relationship. More importantly, the pay increases are huge on the one hand, and lacking any evidence that they are necessary on the other hand. The facts show that it would be absurd to raise these because it is necessary. Finally, even with lower educational benefits, the officer's average total compensation is above average.

The panel: There is no disputing, particularly in this day and age, that police officers should be strongly encouraged with incentives, to achieve the higher education that can help officers deal appropriately with the increasingly complex matters facing them, for example, the appropriate use of force when facing a threat to the community and/or themselves, or the importance of culturally appropriate behavior. Higher education can improve community understanding and improve the quality of policing in any city. Accordingly, although the

non-Quinn eligible benefits are still significantly below what they used to be pre-2009, we think two small increases are justified. We do so maintaining the percentage relationships.

(Patrol) 7. EMT/First Responders. Article 26, §3

Union: Effective July 1, 2014, delete Emergency Medical Technician and instead make it a First Responder stipend of \$2500.

City: Opposed.

Recommendation:

No change.

The Union proposes to reallocate the funds for the \$1500 EMT stipend, for which only ¼ of the unit are eligible, towards a unit-wide benefit for being a first responder, with a modest increase.

The City argues that every officer is required to be a first responder as part of his job. The idea of an EMT stipend is to incentivize an officer to increase his skills. Thus, this proposal makes no sense. There is no comparable benefit anywhere.

The panel agrees with the City here. We conclude that there is no objective basis for such a change. It would also be a loss to the public interest in that there is a clear advantage to having a police officer achieve and maintain EMT skills. Taking this incentive away would discourage the maintenance and achievement of EMT certification.

8. Flex Shift

City: The Chief shall have the right to assign police officers (and a sergeant) to a flexible, impact shift working primarily 6:00 pm to 2:00 a.m., but subject to assignment to work at other times based on special needs (night differential payable at all hours.

Union: No change.

Recommendation: The panel can see the need to address whether the proposal will assist in enhancing public safety needs and concerns. We strongly recommend that the parties convene a labor/management committee to address this matter.

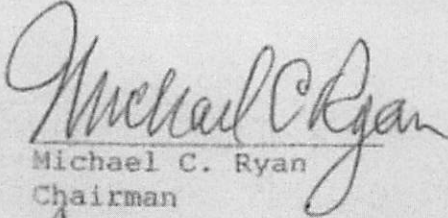
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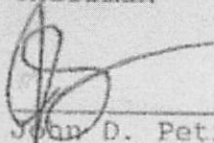
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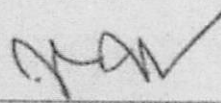
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