

JOINT LABOR-MANAGEMENT COMMITTEE
Bruce Fraser, Neutral Chair
Alan Andrews, Labor Representative
Dean Mazzearella, Management Representative

In the Matter of the Interest Arbitration

between

CITY OF HAVERHILL, MASSACHUSETTS

-and-

THE HAVERHILL POLICE PATROLMEN'S ASSOCIATION

For the Union: Joseph Padolsky, Esq.

For the City: Philip Collins, Esq.; Melissa Murry, Esq.

June 30, 2017

(See next page for the Award)

AWARD – JLMC 15-4626

Article – Duration

The Parties agree to an Agreement from July 1, 2014 to June 30, 2017.

Article 1 – 21 Wages

The wage increases shall be the following:

FY15 – 1.5%

FY16 – 1.5%

FY 17 – 2.5%

Article 9 – Private Detail Rate

The Union's proposal is granted

Article 17A (Proposed) – Arbitration of Disciplinary Action

If the Union's statement of the language is agreed to by the City, the proposal is approved. If there is no agreement, the proposal shall be sent back to the parties.

Article 30 Weekend Differential

The Union's proposal is rejected.

Article Drug and Alcohol Testing

The parties agreed to the proposed provision.

Article Assignment to Road Details

The proposal is granted, subject to the following: The City promises to provide basic training prior to assigning the personnel. For such details, the following selection process shall apply:

1. Sworn police officers (and superior officers) shall have first preference in accordance with Article 9, Section c of the Contract and current practice. If none are available, then:
2. Retired Haverhill police officers or reserves, in accordance with Article 9 of the Contract and current practice, shall be offered the detail. If none are available, then:
3. Persons who are not sworn police officers, subject to the training requirements above, shall be offered the detail.

Article Sick Leave Buy Back

The City's proposal is rejected.

INTRODUCTION

This proceeding is an Interest Arbitration pursuant to St. 1973, c. 589, as amended. It concerns the successor to the parties' most recent collective bargaining agreement, which expired on June 30, 2014.

Two days of hearing were held by the Panel on January 30 and February 3, 2017, in Haverhill, Massachusetts. Both parties presented witnesses and submitted briefs. The Panel met on May 24, 2017. The panel decision, based its consideration of the data presented and the factors below, signed off on June 30, 2017.

Chapter 589 of the Acts of 1987

Chapter 589 requires that 11 factors be given weight in any decision or determination resulting from the mechanism or procedure 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:

1. Such an award shall be consistent with (i) section twenty-one C of chapter fifty-nine of the General Laws and (ii) any appropriation for that fiscal year from the fund established in section two D of chapter twenty-nine of the General Laws.
2. The financial ability of the municipality to meet costs.
3. The interest 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 proceeding 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 decision 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 condition of employment through voluntary collective bargaining, mediation, factfinding, arbitration, or otherwise between the parties, in the public services or in private employment.
11. The stipulations of the parties.

THE ISSUES AND DISCUSSION

Issue No. 1 - Duration

The Union and the City agree on a three year agreement, from July 1, 2014 to June 30, 2017.

Issue No. 2 - Article 21 Salaries

Period	City Proposal	Union Proposal
July 1, 2014 to June 30, 2015	1.5%	4%
July 1, 2015 to June 30, 2016	1.5%	5%
July 1, 2016 to June 30, 2017	1.75%	3%
Total Cost	4.75%	12%

Position of the Union

The Union proposes wage increases of 4%, 5% and 3% for the years FY15, FY16, and FY 17, respectively. It argues that its proposal is reasonable and would bring the Haverhill Police Patrol Officers from their current wage lag of 12.9% to the average of the comparable municipalities. It presents the following arguments.

The City has the ability to pay. In fact, according to Mayor Fiorentini, it is in the strongest financial position in years and the City taxes are below the levy limit for the third year in a row. Its bond rating has improved since the Fire Award to a S&P of AA. Moreover, the Union's proposal requires no unusual taxation or tax overrides and the Police Department has been turning back money to the general fund over the past several years. These are just two of the examples, the Union points out, of the excellent financial position of the City. The Union states that the City is in an excellent position to fund its request: the City's financial flexibility has greatly increased since FY11.

The wages and benefits of comparable municipalities are significantly higher than those of the Haverhill Police Patrolmen. According to their consultant, Mr. Dasey, the Haverhill officers lag behind the comparable communities that the Union has identified by more than 12%. The proposed level of funding would bring them only to the average of the comparables as of FY17, not above average.

Moreover, the cost of living is higher in Haverhill than in comparable communities

Position of the City

The City maintains that there is nothing that justifies a deviation from the wage pattern of the Model Contract, already laid down for the Superior Police Officers and the Fire Fighters. The City maintains that the Model Contract notion is fair, it preserves historical relationships between the City three public safety unions, and it maintains the base pay and overall compensa-

tion of Haverhill's Patrolmen at a competitive level compared to their external peers. As Arbitrator Zarr-Cochran (2006) wrote, "Conformity of wage increases across units, particularly when there is a history of this approach to bargaining... provides predictability and stability to both sides of the labor/management equation."

The City states that in the absence of some overriding justification, it would be inequitable to grant greater pay raises than other employees of the City and especially their public safety counterparts and superior officers. The City argues that the Union proposal, 2½ times the amount received by other city workers, is unreasonable. It argues that the proper barometer is other public safety Unions within the City.

It argues that an internal pattern of similarity of wage increases "trumps" external data because it is an internal pattern, which can be viewed as already having reconciled the issue of a Town's ability to pay. In short, there is a long history of negotiating equal wage increases which reflect a consensus that is both fair and equitable.

In Haverhill, there is a 15 year history of consistent COLA increases across the three public safety units, the 3 other City unions (Teamsters, AFSCME, Laborers), and Administrative/No-union employees. (This relates to base pay increases and does not include Union-specific pay.) For a decade, Police Officers, and Fire Fighters base salaries have been very close except for one exception, favoring the Police. To accept the present Union proposals would turn early 2014 wage parity into a gross disparity of 11.5%. Moreover, it would shrink the Sergeant-Police Officer ratio by over 7%. The City continues that the statutory factor of external comparability provides no basis for departure from the Model Contract. And the view that Police duties are unique, thus different and deserve a greater base increase than Firefighters is, in the City's view, a non-argument. To award an increase of significant magnitude to the Police, for example, would rupture the concept of parity which has existed for many years.

Relating to city comparisons on the salary issue, the City used much different criteria for selecting the cities than did the Union. The results are predictable. The City's choice supported its claims and showed that the City's offer of 4.75% over three years will result in a base annual compensation for a Haverhill Police Officer with 7 years of experience of \$56,408 (Exhibit 6C), still ahead of some of the settled communities. In short, Haverhill fits comfortably within the midrange of its comparables, and thus is consistent with the Model Contract approach used by the City. The other elements of compensations are close to the average of the comparable cities.

Note: It is not useful to compare the City and the Union comparisons, since their choice of municipalities are different, choice of the data from each are, in many cases, incomparable and, in some case, the manner of computation is unorthodox.

One final point. The City maintains that although the City's budget has stabilized under good fiscal management, the City is in no position to deviate from its internal Model Contract pattern, given its past and current financial position. Considerable testimony was provided on several areas of expenditure, both by Mayor Fiorentini and City Auditor Charles Benevento, to the effect that things were definitely better, but there was still much to do. Many examples

were provided to show how the City has progressed. The Union's response to this presentation raised some important points, but in the final analysis, the Panel could not conclude that there was a significant reservoir of money which could be applied to this negotiation without adverse effect on the City.

Discussion

The Model Contract embraced by the City would have the City offer what they put on the table: 1.5%, 1.5%, and 1.75%, the funding given the firefighters. However, there are two considerations that bear on this Model Contract proposal.

First, a comparison of the City of Haverhill's choice of municipalities with Haverhill for the three years at issue shows the following (CX 177).

Comparison of Percentage Change of Base Compensation

	FY-2015	FY-2016	FY2017
Cities	2.19%	2.5%	2.17%
Haverhill	1.5%	1.5%	1.75

This chart indicates that the City's offer is 2.11% below the City's comparative group average. It is reasonable that the City offer more, given that the disparity between the comparison group average is greater than 2%. An increase of .75% seems fair and reasonable.

Second, as indicated above, the City is in good fiscal shape and there is no reason to expect it will not stay this way. It can afford to fund the salary account more so than in previous years.

It also proposes that no retroactive wages shall be due and owing to any person not employed at the time of any agreement or award, unless said person left the employ of the City of Haverhill to become an active M.G.L. c. 32 retiree.

Award

The increase to the base rate shall be the following:

FY15 – 1.50%

FY16 – 1.50%

FY17 – 2.50% [1.75% + .75% (Adj. towards Comparison Cities)]

Issue No. 3 – Article 9 Private Detail Rate

Current Contract Language

Effective July 1, 2013, the rate shall be forty-four dollars (\$44) per hour with a four (4) hour minimum.

Position of the Union

The Union proposes that the rate be increased to \$46 per hour, **going forward**. It argues that this position is reasonable and would adjust the Haverhill rate in line with the comparable municipalities, although it would still be at the low end. Moreover, there would be no increased cost to the City.

While the City has stated that the average private rate is \$44/hr., it has overlooked several nearby towns/cities. The Union points to the Private Detail Rates of the cities and towns which border on Haverhill, for example, Methuen at \$58/hr., North Andover at \$49/hr., Lawrence at \$45/hr., and Andover at \$50/hr.

Position of the City

The City rejects this proposal, arguing that the private detail rate is already competitive among the City's comparable communities.

Discussion

The Union's proposal is reasonable, given the rates at neighboring cities and town. It would still place the Union near but not at the top of the City's list of communities, and the raise does not increase the cost to the city of Haverhill.

Award

The private detail rate shall be raised to \$46/hour, effective immediately, one week after the City Council votes to fund the award.

Issue No. 4 – Article 17A (New) Just Cause Provision

Current Contract Language

The present language does not mention "just cause" as a standard

Position of the Union

The City has agreed to arbitrate discipline under the "just cause" standard. The language, which follows, is offered by the Union and is intended to make explicit that which has been the practice. [Taken from Appendix A – Union's Proposed Award]

Section 1

No employee shall be discharged, suspended or demoted for disciplinary reason without just cause.

Section 2

The grievance shall follow the Grievance Procedures outline in Article 17.

Section 3

As a condition precedent to submitting a grievance alleging a violation of Section (d), pursuant to Article 1 – Grievance Procedure, the Association and the employee involved shall sign and give to the employer, on a form prepared by the Employer, a waiver of any and all rights to appeal the disciplinary action to any other forum including the Civil Service Commission. The waiver shall include a declaration that no other disciplinary review has been commenced.

Section 4

Should the Association submit a grievance alleging a violation of Section 1 to arbitration, the arbitration shall be conducted on an expedited basis.

Position of the City

The City raised several points in its brief about the language presented above.

Discussion

There was no discussion of this language during the two-day hearing, and it was the Panel's understanding that what was presented above by the Union incorporated the parties understanding of the language and process that is currently being used.

If this is not the case, since the Panel does not have the facts to reach a position, this issue shall be withdrawn from this proceeding and returned to the parties for separate negotiation.

Award

If the Union's presentation is not acceptable to the City, the entire issue shall be removed from this proceeding and can be raised separately.

ISSUE No. 5 – Article 30 Weekend Differential**Current Contract Language**

Any member of the Bargaining Unit who works any hours between the hours of 4:30 p.m. and 8:30 a.m. will receive a night differential of ten percent (10%) computed on their annual salary. Said differential is to be paid weekly. An employee does not have to be regularly assigned to said shift to receive the differential.

Every member of the Bargaining Unit will receive a differential of one percent (1%) computed on their base wage (to be paid weekly).

Position of the Union

The Union proposes to revise Article 30 by adding another section, as follows:

Section 1 [See above]

Any member of the Bargaining Unit who works any hours between the hours of 4:30 p.m. and 8:30 a.m. will receive a night differential of ten percent (10%) computed on their annual salary. Said differential is to be paid weekly. An employee does not have to be regularly assigned to said shift to receive the differential.

Every member of the Bargaining Unit will receive a differential of one percent (1%) computed on their base wage (to be paid weekly).

(Proposed) Section 2

Any member of the Bargaining Unit who works any hours between the hours of 11:30 p.m. on Friday and 2:30 a.m. Monday will receive a weekend differential of five percent (5%) computed on their salary for each said shift. Said differential is to be paid weekly (or bi-weekly if biweekly payroll is mutually agreed to by the parties). An employee does not have to be regularly assigned to said shift to receive the differential. Said differential shall be for "weekend" shifts only and does not apply to Friday early night shifts or Monday late shifts.

The Union states that there should be proper coverage of each of the four shifts. Since the Department does not presently have the staffing to fully staff the 6 p.m. to 2 a.m. shift which has forced officers to work the overtime and/or work double shifts. In many cases, the Union notes, the officers have complained they have had to miss family events. The Union proposal on weekend differential will incentivize officers who are available to and willing to work weekend shifts in order to fill an operational need of the Department.

Position of the City

The City seeks no change in the language, arguing that there was no convincing case presented that would justify a 5% increase, and adds that this proposal is an additional wage increase disguised as a benefit. The City points out that this weekend differential is payable to virtually all officers for doing what they have always done, namely, work some weekends.

It notes that the Superior Officers do not receive a weekend differential nor do the Fire Fighters. Externally, none of the City's comparable communities pay a weekend differential. Moreover, the cost would be 1.4% on top of the proposed 12% wage increase.

Discussion

The cost of this work differential (1.4%) as well as the fact that no comparable unit in the City receives it dictates that it is be rejected, at least for the present time.

Award

The proposal is rejected.

ISSUE No 6 – Article 31 Sick Leave Buyback**Current Contract Language**

Article 31(c) reads, in part, as follows:

The City and the Union agree that all newly hired employees shall be considered ineligible for Sick Time “buy back.” However, this language will not take effect until all public safety unions have agreed to this language.

Position of the City

The City proposes that the second sentence of Article 31(c) [“However, this...”] should be removed, pointing out that sick leave is a benefit designed to permit time off to deal with health issues. It is not intended as a retirement bonus.

Position of the Union

The Union argues that there be no change in language of Article 31(c). The Union states that it entered into the language, above, by voluntary agreement during the 2012 bargaining, the first bargaining unit to agree. There is no reason why the Union should agree to removing this language the Union voluntarily agreed to in the previous bargaining.

Discussion

The City made an offer to amend Article 31(c). The Union refused. The article shall remain unchanged.

Award

The City’s proposal is rejected.

ISSUE No. 7 (new) Drug and Alcohol Testing**Position of the City**

The City seeks to add a new article with a Drug and Alcohol Policy which is the same as that of the Haverhill Police Superior Officers’ bargaining unit.

Position of the Union

The Union agrees to the proposal

Award

Haverhill's police officers shall be subject to the same drug and alcohol testing policy as Haverhill Police Superior Officers' bargaining unit.

Issue No. 8. Assignment of Road Details

Current Contract Language

Article 9 Private Details and Overtime

The present article provides for payment of \$44 per hour, with a four hour minimum.

Position of the City

The City argues that it should have the right to use persons who are not sworn police officers to direct traffic, subject only to a requirement of training, to engage road detail personnel, or flaggers, in situations where a sworn police officer is not necessary.

Position of the Union

The Union opposes this language, pointing out that the City has not provided any evidence in support of the proposal. Moreover, it maintains that proper enforcement and the general welfare of the public requires that uniformed officers be assigned to road details.

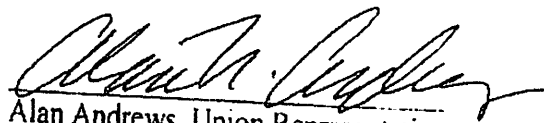
Discussion


It is not unreasonable to use individuals who are not sworn police officers to direct traffic, provided the task to be performed is within their individual abilities. The City promises to provide basic training prior to assigning employees to this duty. For such details, the following selection process shall apply:

1. Sworn police officers (and superior officers) shall have first preference in accordance with Article 9, Section c of the Contract and current practice. If none are available then:
2. Retired Haverhill police officers or reserves, in accordance with Article 9 of the Contract and current practice, shall be offered the detail. If none are available, then:
3. Persons who are not sworn police officers, subject to the training requirements above, shall be offered the detail.

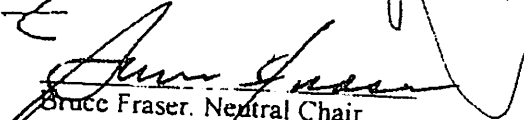
Award

The City's proposal is granted with the clarifications indicated.


Alan Andrews, Union Representative


Dean Mazzarella, City Representative

Dissent


Bruce Fraser, Neutral Chair