

COMMONWEALTH OF MASSACHUSETTS
JOINT LABOR MANAGEMENT COMMITTEE

In the Matter of the Arbitration between
FRAMINGHAM POLICE SUPERIOR OFFICERS ASSOCIATION

AND

CITY OF FRAMINGHAM
WESTFORD

CASE NUMBER JLMC 16-5119

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:

The duration of the contract will be three years covering FY-16, FY-17 and FY-18.


Wages will be increased two percent (2%) beginning in FY-16

Wages will be adjusted two percent (2%) beginning in FY-17

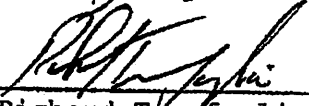
Wages will be adjusted one percent (1%) beginning in FY-18.

The City proposal on compensatory time will be included in the new agreement.


Current language will be retained on all other issues.


Garry J. Wooters, Impartial Chair

2-22-18


Richard Tranfaglia, Employer member

(concurring) (dissenting)


John Nelson, Union Member

(concurring) (dissenting)

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JOINT LABOR MANAGEMENT COMMITTEE

In the matter of the arbitration between

FRAMINGHAM POLICE SUPERIOR'
OFFICERS ASSOCIATION

JLMC 16-5119

AND

TOWN OF FRAMINGHAM

-*****

Board of Arbitration:

Garry J. Wooters

John Nelson, Union Member

Richard Tranfaglia, Management Member

Appearances:

Gerald McAuliff, Esq., for Framingham Superior Officers Ass'n

Christopher Brown, Esq., for City of Framingham

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 Framingham Police Superior Officers Association ("Association") and the Town of Framingham ("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:

Wages

Duration

Sick Leave

Quinn Bill

Work Schedule

Town Issues:

Sick Leave

Wages

Duration

Quinn Bill

FMLA

Comp Time

Scheduling of Training Days

Anonymous Complaint Handling

A hearing was held in Framingham, Massachusetts on October 5, 2017 at which time all parties and their representatives were present. Post-hearing briefs and reply briefs were filed by both parties and have been considered.

Positions of the Parties

1. Duration

The Union proposes a three year contract covering FY 16, FY-17 and FY-18.

The City proposes a four year agreement covering FY-16, FY-17, FY-18 and FY-19.

2. Wages

The Union proposes 3% across the board (COLA) increased in each of the three years of the contract.

The City proposes 1% COLA in each of the first three years of its proposed four year agreement and an increase of 2% in year four (FY-19).

3. Quinn Bill

Currently, Quinn Bill benefits are not rolled into base pay for purposes of computing overtime rates. The City proposes language which would make clear that this is intended. The language reads:

Base pay under the CBA, for purposes of overtime calculation,

shall be and always has been regular pay less Quinn Bill incentives or differentials not already rolled into base pay calculations.

The Union opposes the language contending that the City is obligated by law to include Quinn Bill incentive in base pay for purposes of overtime.

4. FMLA

Currently, the contract language and personnel policies allow unit members to use available sick leave for the FMLA qualifying illnesses or injuries or other family members. The Town proposes that such sick leave be available only for the personal illness or injury of the unit member. Acceptance of this change would include a one percent (1%), one-time salary increase.

The Union opposes the change.

5. Compensatory Time

Currently, unit members may accumulate and carry over comp time up to a maximum of 240 hours. The contract provides for a mandatory buy-out of time above that limit. The City proposes reducing the maximum accumulation to 150 hours with a maximum carry-over, year-to-year, of 120. Excess hours would be bought out.

The Union does not oppose the change.

6. Work Schedule

The City proposes adding five days to the work year for unit members such days to be used for training purposes. In return for the increased work year, the City would add two percent (2%) to the base.

The Union opposes the change contending that the increased compensations does not cover the increased work time.

7. Complaint Procedures

Under the current policies and procedures, the Department would consider only written complaints of misconduct by an officer. The City proposes changing the language to permit the City to investigate anonymous complaints.

The Union opposes this change.

The Statutory Factors

Under the statute, the panel is required to consider a number of factors. The bulk of the evidence in this case concerned comparison of the proposals to other settlements within the City (internal comparability), comparison with similar units in other communities (external comparability), and ability to pay.

The evidence on ability to pay suggests that Framingham has little current ability to increase revenues. It is uncomfortably close to the tax levy limit. A long-term goal of shifting tax burden from commercial property has been in place since the recession of 2008. In the most recent rankings, Framingham still has the 4th highest commercial tax rate in the state.

On the capital side, there are plans for several significant projects which will impact costs going forward. There are plans are for a new fire station and a new middle school.

The evidence on ability to pay suggests to the panel the wisdom of prudence in increasing obligations through collective bargaining settlements.

On the other hand, the Union points to available sources from which to fund its proposal through current appropriations. There is certified free cash of more than 14,500,000. In recent years, the Police Department has turned back significant amounts of its appropriation at the close of the fiscal years.¹

¹ The Chief testified that this was largely due to the inability to fill and retain all authorized positions due to civil service restrictions and turnover through retirement and resignation.

Internal Comparability. Most other City contracts for FY-2016 settled for one percent (1%). The Deputy Fire Chiefs got 2%, and the Firefighters received a 1.5% increase.

For FY-2017, the firefighters, deputy chiefs, crossing guards received 2% increases. The non-union employees also received a 2% increase. Library, DPW (2 units) and Parks units (two units) got no across-the board increases. Professional employees got one percent (1%).

Of those contracts settled for FY-2018 (seven units), all received one percent COLAs.

The Patrol Officers union is not settled for either FY-2017 of FY-2018.

External Comparability/Total Compensation

Both parties have compiled a list of communities to which they believe Framingham can be usefully compared. Although there is some overlap in the lists, they vary widely . Only Somerville and Waltham are on both lists.

Both parties also point out that it is not entirely simple to compare one contract to another to see which is the more favorable. The overall economic benefit to unit members depends not only on the base salary, but on such factors as differentials and incentives and whether such stipends, incentives and differentials are rolled into the base or not for purposes of calculating overtime rates. The communities selected by the parties also may differ from Framingham in terms of work hours. Framingham Superior Officers work a five-and-three (5 and 3) schedule which is somewhat unusual. Employee share of health insurance premiums is also a significant economic benefit which varies from community to community.

From its listing of comparables, the Union argues that Framingham has recently lost ground compared to other communities and needs a catch-up increase. In several key metrics, Framingham superior officers rank last when the outside settlements are compared "apples to apples." This is true even using communities selected for comparison by the City. The City evidence is asserted to show that over a ten year span, Framingham has not been significantly losing ground when compared to others as demonstrated by its calculations of average top step base salary..

The City cites the difficulty of making accurate comparisons, but argues that, properly analyzed, the data is not as unfavorable to Framingham as the Union contends. The City notes that unit members receive generous health care benefits, holiday compensation, vacations, longevity and other economic benefits. The Union notes that most of these benefits are also enjoyed by superior officers in the comparison communities at a similar or higher level.

Consumer Price Movement.

The evidence on CPI indicates that the cost of living has increased by 4.7% so far during the term of the proposed contract.

The City argues that its 1%, 1% and 1% increases, compounded, more than make up for the increase in CPI.

Welfare of the Public

The panel finds that the welfare of the public is best served by the wise and careful allocation of available resources. Any settlement recommended must be capable of implementation without creating a financial crisis.

The panel also believes that the welfare of the public is best served when superior officers in the middle managers of police services, believe they are being fairly treated with respect to wages and working conditions.

We have made our recommendations with these factors in mind.

The Findings

Duration.

A majority of the panel finds that a three-year contract is appropriate. This was the length of contract agreed to in the ground rules and was the standard during most of the negotiations and impasse process. The parties made some other proposals late in the process to try and break the impasse, but these were not successful.

The contract will have a terms covering FY-16 through FY-18.

Wages

A majority of the panel finds that base wages should be adjusted as follows;

A two percent increase for FY-16.

A two percent (2%) increase for FY-17

A one percent (1%% increase for FY-18.

This set of increases is consistent with the pattern established with other Town bargaining units. In particular, it would make the general increase to the superior officers mirror that given to the deputy fire chiefs for the same years. These two groups represent the middle management of the two uniformed branches in the Town.²

This pattern would give the superior officers a settlement as high as any group in the City for the three years in question. Yet, it does not exceed the maximum settlement for any one year.

A majority of the panel does not believe that the external comparables justify going outside the pattern established by contracts for other city employees. It is very difficult to compare total compensation for those contracts with total compensation for Framingham superior officers. Moreover, a

² The panel is not adopting or requiring parity between these two groups. We indicate only that on the evidence in this case, comparison to the deputy fire chief settlements is useful in determining what the City can afford and still remain within the established pattern of internal settlements.

majority of the panel does not believe that the settlement we adopt would cause Framingham to fall further behind in these rankings. Whatever Framingham's absolute rank in a listing of comparable communities, it does not appear that there is a dramatic loss of ground in recent years. Framingham has essentially retained its position, whatever that is.

The ability to pay evidence persuades us that there is little justification for a large catch-up increase for these employees beyond what would otherwise be in line with other contracts. While not in financial crisis, Framingham has considerable pressure on its tax base and significant demands which must be prioritized and met both in routine and recurring expenditures and in capital projects. Because this unit is relatively small, in terms of numbers of employees, it is possible to examine the total budget and find "free" funds. But, even those funds not directly encumbered must serve multiple demands, not merely funding this settlement.

Yet, notwithstanding the value of prudent spending, we find that the City can fund a settlement for the superior officers as generous as that negotiated for the deputy fire chiefs.

Quinn Bill

How the Quinn Bill educational incentives are funded and incorporated into the pay of superior officers are important issues. These disputes are both practical and legal. Even if the panel were inclined to offer its conclusions in these areas, no award would remove all of the uncertainty in this area. Changes to the current practices should be made either by the parties or other adjudicatory forums. A majority of the panel finds for no change to current language.

Work Schedule

Interest arbitrators are usually reluctant to make changes to existing language absent a strong showing of need. In this case, there is the additional factor that the agreement is totally retroactive. The parties will be back in bargaining almost immediately and can address any pressing language issues.

Consequently, a majority of the panel finds that most of the non-wage issues should be resolved by making no change to the current agreement.

In this case, the changes proposed to the work schedule are significant. Thus far, the Union has not accepted the offer to make this change in return for a wage increase apparently judging that the buy-out offered is less valuable than the burden imposed by the change. The issues raised by this proposal are best resolved by the parties. A majority of the panel finds for no change to current language.

FMLA Sick Leave

For much the same reasons as discussed relative to the Town proposal on work schedule, a majority of the panel finds that current language be retained relative to the sick leave issue. There is no showing of current need. The proposed buy-out has not been accepted by the Union. This is an issue best returned to the parties.

Comp Time

The City proposed decreasing the amount of comp time which can be carried over from year to year to a limit of 120 hours, with a float of 150 hours during the year. This would continue a process begun in the prior contract of reducing such accumulation.

It does not appear that the Union opposes this change. Hours which cannot be carried over are bought out, so there is no forfeiture to the members.

A majority of the pane recommends the City proposal on this item.

Complaint Procedures

This is a very sensitive area for law enforcement. There are sound reasons for police management to want flexibility in the area of complaint investigation. There are also real concerns from officers about due process and fairness when dealing with anonymous complaints. An effective process might need to consider the history in the community and the level of trust within the department.

The panel believes that the subtleties and concerns in this area are best handled by the parties, not by the panel imposing a solution.

A majority of the panel finds for no change to current

language.

Conclusions

The panel has carefully examined the evidence and considered the arguments of the parties. Our findings represent our best effort to render a fair and equitable award.

Garry J Wooters, Impartial Chairman

February 21, 2018