

Date of Award: November 21, 2018

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Sharon Henderson Ellis  
Neutral Arbitrator

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Frank Frederickson  
Management Arbitrator (JLMC)

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William DeMille  
Union Arbitrator (JLMC)

Finally, the Union proposes a stipend for the position of Police Detective. The Detective position in Avon seems somewhat unique. Two patrolmen work as part-time detectives. They share the duties of the position based on scheduling.

Comparability data show that eight of twelve communities asserted as comparable to Avon pay stipends to their detective(s). Most pay a flat dollar amount. Holbrook and Randolph pay a percentage of base pay.

While the fact that two officers fill one position is unique, the Panel does not believe this necessarily justifies treating them differently from the majority of communities that give extra compensation for the detective position.

Even the Town in its brief proposes a formula should this Panel choose to award extra compensation for the detective position. It states, "Should the Panel be inclined to award any payment, the Town suggests taking the average of those communities paying a "fixed" stipend amount and disregarding that 4 communities pay nothing at all, resulting in a stipend of \$1092 for the detective position (to be split between the two individuals performing the role)."<sup>9</sup>

The Arbitration panel awards a stipend of \$1092 for the position of Detective, to be split between the two officers performing that role.

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<sup>9</sup> Town Brief at page 17.

No officer absent from a regular assigned shift shall work an open shift for a fifty-six hour period after such absence. Such fifty-six (56) hour period shall run from the time of expiration of the regular shift from which the officer was absent. The foregoing provisions shall not apply to a member of the Bargaining Unit who is absent because of utilization of a personal day in accordance with . . . Effective July 1, 2013, each unit member shall be entitled to utilize two (2) sick days per calendar year, which shall be exempt from the restrictions of this sub-paragraph.

Understanding the concerns of both the Town and the Union, the Arbitration Panel accepts the Union's proposal in part by modifying Section E and changing the restriction from 56 hours to 24 hours.

### **Specialist Positions** (Article 25)

Currently, the Town has three specialist positions in the police department – Detective, Firearms instructor and Metro or SEMLAC Officer. None receives any separate compensation for these positions. The Union proposes adding a stipend of 5 % for these existing positions. The Union asserts that the majority of comparable communities compensate specialists for the special nature of their positions.

Holbrook, Norwood and Randolph pay detectives specialist differentials on a percentage basis ranging from 1.5 to 15%. Five other communities cited by the Union pay stipends for specialist positions in flat dollar amounts.

According to the Town, none of the selected comparable communities provide a stipend for a firearms instructor position. And, the Union did not present evidence as to the duties, time commitment or other aspects of the position that are "additional" work.

The Arbitration Panel concludes that there is insufficient evidence to justify a specialist stipend for the *Firearms Instructor* position. Article 25 shall remain unchanged in that regard.

A second specialist position is the SEMLAC Officer. This is apparently a motorcycle detail for an individual who attends "special events" such as the Patriots or Red Sox victory parade, the Boston Marathon, and such. These duties are performed outside of the officer's employment in the town and if compensated, are paid by the City of Boston or an event organizer.

The Arbitration Panel concludes that there is insufficient evidence to justify specialist pay for the *SEMLAC Officer*.

On this issue, the Union asserts that the Town has failed to sufficiently justify changing the *status quo*, especially where there is one union group that is still on a weekly system.

The panel finds for and awards the proposal of a bi-weekly payroll for the police department. A police department is indeed unique in the amount of weekend work and in the daily intricacies and changes in pay amounts. It is better for everyone that there be sufficient time to ensure an accurate payroll.

### **Longevity**

Currently, the contract at Article 21 provides that officers receive longevity pay according to the following schedule:

- |  |                |
|--|----------------|
| 1. After five (5) years of service         | \$300 annually |
| 2. After ten (10) years of service         | \$500 annually |
| 3. After fifteen (15) years of service     | \$700 annually |
| 4. After twenty (20) years of service      | \$800 annually |
| 5. After twenty-five (25) years of service | \$900 annually |

The Union proposes to convert this current flat dollar system to percentages, specifically: 1.0% after 5 years; 1.5% after 10 years; 2.0% after 15 years, 2.5% after 20 years; 3.0% after 25 years and 3.5% after 30 years.

The Union acknowledges that the practice in comparable communities does not justify its longevity proposal but takes the position that what it considers to be an enormous disparity in wages between Avon and other towns justifies changing and increasing the longevity benefit.

The Arbitration Panel rejects the proposal. It hopes that the wage system as awarded will go a long way in decreasing disparities in Avon's wages for its police and police compensation in comparable communities.

### **Overtime (Article 7, Section E)**

Currently, the parties' agreement prohibits officers from working overtime for a period of time after using sick leave. The Town stands by the provision as desirable to ensure that sufficient time elapses following sick leave before an officer puts himself in an overtime work situation. The Union opposes this limit or prohibition and seeks to have it deleted from the agreement. The provision reads,

And, since no rationale whatsoever was explained for the current system that delays the educational incentives for one year, we advise and award a slight change to Article 26. Starting the percentage increases the year the degree is earned is a change we recommend and award. This modification and the change in the wage system may in some measure, at least, improve the Town's ability to attract new officers through lateral transfers.

### **Sick Leave Accrual**

When employees retire, all union contracts provide for payment of a portion of accrued and unused sick leave. Here, the Town proposes that sick leave accrual be capped at 180 shifts. Testimony established that management and all union and non-union employees are subject to this same cap.

The Union opposes the cap and adds that the Town failed to establish that other communities have a cap on sick leave accrual.

As a matter of practice, both arbitrators and parties understand that whenever reasonable, employees of a single municipality should find that benefits are fair and comparable. Here, the evidence establishes that the 180-shift cap on sick leave accrual is universal within the Town. The Town's proposal for a 180-shift cap is awarded.

### **Bi-Weekly Pay**

The Town proposes that the payroll for police officers be changed from a weekly pay system to a bi-weekly one. The majority of employees in the town and other unions have accepted this change. Specifically, the firefighters, agreed to make this change.

Substantial testimony described the difficulty in processing the payroll and meeting the Town's warrant requirement within a one-week time period. This is especially true in the police department where there are shift differentials, overtime, shift swaps and other unique features that change every week. Additionally, the shift swaps, weekend work and differentials that occur on a weekend have to be computed, reviewed and transferred on Mondays. It is impractical, if not impossible for the Town to meet its responsibilities in reviewing and ensuring accuracy of the payroll in this short amount of time.

master's degree. No incentive amount is paid the first year a degree is attained; the 2% percentage increases commence the year after a degree is received.

The Town points out that, because of its *phased-in* educational incentive, it is difficult to use lateral transfers to attract police officers with degrees from other towns. To fix this disadvantage, it proposes a system utilized in perhaps six comparable communities that provides a fixed stipend in lieu of gradual percentage increases. These fixed educational stipends would be paid to each new officer hired after the last year of this agreement (June 30, 2017). Under this proposal, employees hired prior to July 1, 2017, would be grandfathered and would continue to receive the phased in benefits offered in the current contract at Article 26. The proposed stipend amounts are \$3400 for an Associates degree, \$5250 for a bachelors degree, and \$8000 for a masters degree..

The Union opposes the Town's proposed flat-rate incentive for new hires. It asserts that while the stipend may appear economically attractive, it does not increase with wage increases over time. And, over time, officers who work side by side may be earning appreciably different amounts. In the town of Holbrook, the parties eventually jettisoned this type of bifurcated system where newer hires earned a flat-rate amount and longer-term employees earned a percentage increase on base pay.

Additionally, the Union asserts that the stipend amounts the Town proposes are significantly lower than the stipend amounts paid in other communities that have adopted a bifurcated system.

The arbitration panel is convinced by the Union's assertions that over time, bifurcated pay systems of any kind fail to be effective and equitable solutions. In particular, the pay disparities end up impacting officer morale. Accordingly, the proposed flat rate stipends for educational incentives are not awarded.

At the same time, the Panel finds unsettling the concern both parties acknowledge about attracting new police officers, at least those with degrees. The Panel is reluctant to see the matter go wholly unaddressed.

At no time was a rationale provided for the two strikingly unusual features of Avon's current educational incentive provision (Article 26). It is unusual in two respects. First, an officer earning a degree receives no extra compensation the first year. As of the second year, a 2% increase is phased in each year.

### *Award of the Arbitration Panel on Wages*

Certain aspects of the Town's Package Proposal have strong appeal to the tripartite board of arbitrators. First, the fact that the proposal gets rid of the unusual stipends or proficiency payments made in the past to make up for lower base wages. Second, the proposal set out in the Town's brief brings the base pay amounts closer in line with communities with which Avon is being compared and may make lateral transfers of new police officers more likely.

However, the Arbitration panel rejects or declines to include, the aspect of the Town's package proposal that increases the salary schedule from 4 steps to 6 steps.

The Panel adopts the aspects of the proposal that add an amount equal to the current stipends (\$2500) to base pay. Also, it adopts the annual increases of 2% as set out in the Town's brief and in its Exhibit 5 (for FY 14, FY 15 and FY 16).<sup>8</sup> However, as officers have doubtless already been compensated for past stipends, the stipend addition to base pay shall be effective on June 30, 2017 instead of in FY 16.

Additionally the Board raises the stipend amount of \$2500 to \$3000. The additional \$500 can be considered as what otherwise would have been Taser proficiency pay.

### **Educational Incentive**

Most, if not all, municipalities in the state offer police officers incentive pay for completing college degrees—associates, bachelors, and masters. Currently, Avon officers receive a phased in 15% increase for an associate's degree, 20.5% for a bachelor's degree, and 25% for a master's degree.

Avon's educational incentive program is different from that of other communities, however, in that officers in other communities receive the percentage increase in full when the degree is earned. In Avon, however, the percentage increases are phased in—at 2% each year until officers have enough years of service to reach the full percentage amount. In other words, it takes eight years to attain the full 15% benefit for an Associates degree, ten years to attain the full 20.5% benefit for a Bachelors degree, and thirteen years to attain the full 25% for a

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<sup>8</sup> See page 3 of that exhibit.

### The Town's Package Proposal

However, despite its proposal of a 5% increase to base pay over three years, the Town presented an alternative – what it calls a Package Proposal. Apparently, the Town describes this proposal as a “package” because it includes more than base pay and wages. Rather, it combines proposals regarding Educational Incentive Pay, Base Wages, and Stipends.

Related to base wages, the Town's package proposal would replace the current 4-step salary schedule with a 6-step schedule.<sup>6</sup>

Importantly, the Town proposes adding or rolling the current stipend amount of \$2500 into base pay in FY 2016. That is, in FY 16, after computing a 2% increase to the prior year's base wage, it adds \$2500 to that amount in lieu of what has for several years been a stipend total in that amount for Firearms and Defibrillator proficiency. While the Town always talks about a 1% increase for FY 17, the figures set out in its package proposal, show an increase to base pay in FY 17 in the amount of 2%, not 1%. This, it asserts, will bring the total percentage increase in base pay over three years to 6.7%. In addition to increasing base pay, this proposal increases the value of differentials, holiday pay, overtime rates and retirement benefits.<sup>7</sup>

The Town's proposed 6-step salary schedule is as follows:

	<u>FY 15</u>	<u>FY 16</u>	<u>FY 17</u>
Step 1	\$41,513.00	\$44,844.28	\$45,741.17
Step 2	\$43,174.56	\$46,538.05	\$47,468.81
Step 3	\$44,901.54	\$48,299.57	\$49,265.56
Step 4	\$46,697.60	\$50,131.56	\$51,134.19
Step 5	\$48,565.51	\$52,036.82	\$53,077.56
Step 6	\$50,508.13	\$54,018.29	\$55,098.66
Disting'd Service	\$59,033.54	\$59,219.20	\$60,403.58
Sergeant's Rate	\$59,599.59	\$66,241.58	\$67,566.41

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<sup>6</sup> While not fully explained, the change from a 4-step schedule to a 6-step one apparently accommodates the Town's proposal to pay flat stipends to new hires who possess or obtain an associates, bachelors, or masters degree.

<sup>7</sup> Page 8 of Town's written brief or argument.



stipends and/or proficiency payments as well as pay differentials for things like weekend work. Both parties explained that these stipends were negotiated in the past as an acknowledgement that the Town's base pay was lower than that of several other communities. This lag in base pay is also evidenced by the Town's concern over its difficulty in attracting officers to laterally transfer from other communities to Avon.

The stipends referenced above have included pay for firearms proficiency—\$1300 annually—and for defibrillator (AED) proficiency (\$1200 annually). Presently, these are paid separately and are not part of base salary. In these negotiations, the Union is seeking Taser proficiency pay and an increase in the firearms proficiency pay. It is also seeking stipends for three specialist positions: Detective, Firearms Instructor, and SEMLAC Officer.

### **Duration**

The parties agree that the period for this Agreement is July 1, 2014, through June 30, 2017, or Fiscal Years 2015, 2016 and 2017.

### **Wages**

The wage and salary section of the contract that expired in 2014 includes a 4-step salary schedule, each step constituting an increase over the previous step.<sup>4</sup>

Entering the current negotiations and this arbitration, the Union has proposed and is seeking the following: a 3% increase for FY 15; a 3% increase for FY 16; and, a 3% increase for FY 17. For its part, the Town is offering what it negotiated with its other public-safety union, that is, 2% for FY 15, 2% for FY 16, and 1% for FY 17.<sup>5</sup>

Clearly there is quite a chasm between the Town's proposal of 5% over three years and the Union's proposal of 9% over three years.

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<sup>4</sup> A little confusing is the fact that during the hearing, the Town often spoke of a 3-step salary schedule in the expired agreement while the document itself shows a 4-step salary schedule. It's also unclear how many years of employment are required to move up to a higher salary step. (See pages 16 and 17 of the 2011–2014 Agreement— Jt. Exh. 1.

<sup>5</sup> With its AFSCME unit, however, the Town negotiated 2% for FY 15; 2% for FY 16; and, 2% for FY 17.

## DISCUSSION AND CONCLUSIONS

### **Background**

The Town of Avon and Local 383 of the International Brotherhood of Police officers are parties to and have been working under a collective bargaining agreement that expired on June 30, 2014. According to the parties, despite their best efforts, they have been unable to negotiate a successor collective bargaining agreement.

In circumstances of an inability to reach agreement, Massachusetts Law sets forth this arbitration process. At the Arbitration conducted on August 14, 2018, the Town and the Union through their counsel presented evidence and arguments to a tripartite arbitration panel consisting of a JLMC representative for management, a JLMC representative for the Union, and a neutral arbitrator and chair.

The State Law (Chap. 589 of the Acts of 1987) sets forth factors to which the Arbitration Panel must give weight in rendering its Award on wages and other issues separating the parties. These factors include the following: financial ability of the municipality; public interests and welfare; hazards of the employment, skills and qualifications; overall compensation of other town employees; cost of living; and, comparison in wages and benefits of police officers in comparable communities.<sup>1</sup>

Consideration of the last factor, a comparison with comparable communities, is complicated because of Avon's uniquely small population, its slightly lower *per capita* income and its strong industrial and commercial tax base. Regarding the latter consideration, the Selectmen's Annual Reports include statements, such as these: "The overall economic health of Avon is very positive. Finances are stable and the Town is well equipped to handle its financial obligations"<sup>2</sup>; and "Our financial condition is the envy of area communities. . . ."<sup>3</sup>

Considerable time was spent at the arbitration and in the parties' written arguments discussing comparability figures and variations therein. While the parties agreed on some communities they considered comparable, they disagreed on others. In summary, however, it's fair to say that, overall, the evidence indicates that police in Avon are compensated somewhat below police in other communities. For example, both parties pointed out that their past agreements contained several

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<sup>1</sup> As a matter of practice, if not statute, consideration of the pay and benefits of other

<sup>2</sup> Union Exh. 5, 2016 Report at p. 15.

<sup>3</sup> Union Exh. 3, 2014 Report at p 9.

- C. Educational Incentive  
Leave unchanged but begin to phase in the 2% increases the first year.
- D. Sick Leave Accrual  
Cap at 180 shifts.
- E. Bi-Weekly Pay  
All employees shall be paid bi-weekly, effective 30 days from acceptance of Award.
- F. Longevity  
No change. As set out at present in Article 21.
- G. Specialist Positions  
\$1092 split between the two officers performing the Detective role. (\$546 each Officer to be paid proportionately and weekly).  
  
Otherwise, no new stipends for specialist positions.
- H. Article 7, Section E (Overtime)  
Modify provision from 56 hours to 48 hours.

COMMONWEALTH OF MASSACHUSETTS  
JOINT LABOR MANAGEMENT COMMITTEE /DEPARTMENT OF LABOR RELATIONS

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In the Matter of the Arbitration Between

TOWN OF AVON

And

INTERNATIONAL BROTHERHOOD OF POLICE OFFICERS, LOCAL 383

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JLMC Case No: 116-5322

Date: November 21, 2018

Arbitration Panel:

Sharon Henderson Ellis, Esq.  
Police Chief Frank Frederickson  
William DeMille, Police Det've

Neutral Chair  
Management Arbitrator  
Union Arbitrator

Appearances:

Scott E. Bettencourt, Esq.  
Richard H. Anderson, Esq.

For the Town  
For the Union

AWARD

A. Contract Duration

July 1, 2014 through June 30, 2017

B. Wages

July 1, 2014	2%
July 1, 2015	2%
July 1, 2016	2%

June 30, 2017    Permanently add \$3000 into base pay at all steps and ranks. This will replace the current stipend amounts of \$1200 for AED and \$1300 Firearms Proficiency and adds an additional \$500 for Taser requirements. This will eliminate stipend or proficiency pay language in Articles 31 and 32 of expired agreement.

Keep the same salary step schedule as set out in the 2011-2014 agreement.