

IN THE MATTER OF
ARBITRATION BETWEEN

CHELMSFORD POLICE SUPERIOR OFFICERS, LOCAL 20

and

TOWN OF CHELMSFORD

Interest Arbitration

Case No. JLMC-16-5509

Arbitration Panel: Beth Anne Wolfson, Neutral Arbitrator
Alan Andrews, Police Representative
Andrew Flanagan, Management Representative

Appearances:

For the Town: Marc L. Terry, Esq.
Mirick O'Connell

For the Union: Sean McArdle, State Director
NEPBA

Decision and Award
By the Arbitration Panel

Background

The Town of Chelmsford (Town) and the Chelmsford Police Superior Officers, Local 20 (Union) are parties to a collective bargaining agreement (CBA) that expired June 30, 2016. The Union represents a bargaining unit composed of approximately seven (7) sergeants. The Chief, lieutenants, captains, patrol officers, and civilian employees of the Police Department are not part of the bargaining unit. The Town's population is approximately 35,100.

The Union previously filed a petition with the Massachusetts Joint Labor Management Committee (JLMC). After a subcommittee of the JLMC held a hearing with the parties on the issues in dispute, it directed the parties to proceed to arbitration before a tripartite panel. By

letter dated February 8, 2018, the undersigned neutral was appointed by the JLMC to serve as Chairman of the Arbitration Panel. The Management member of the panel was JLMC Committee member Andrew Flanagan, and the Union member was JLMC Committee member Alan Andrews.

An arbitration hearing was held on October 19, 2018,¹ before the tripartite Panel. At the hearing, the parties were given full opportunity to present evidence and make arguments on their outstanding issues. Both parties submitted their briefs electronically to the Panel by the deadline of December 12, 2018, on which date this Arbitrator electronically exchanged the briefs for the parties.

Issues in Contention

Although duration was one of the issues listed by both parties, the parties are in agreement that the award should provide for a three-year CBA effective from July 1, 2016 to June 30, 2019, therefore, the Panel will acquiesce to their joint position on duration.

In addition, the parties agreed that an award would be rendered on each of the following issues:

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¹ An attempt to mediate a settlement of the parties' dispute on September 12, 2018 was unsuccessful.

Wages – Article 13

The current CBA, effective July 1, 2014, expired on June 30, 2016. Wages are addressed in Article 13 – Compensation of the expired agreement.

Town's Position

The Town proposes a wage increase of 2%, 1.6%, and 1.6%, for the 2017, 2018, and 2019 fiscal years. The Town asserts it has a well-established pattern of total economic increases for 2% per year for the 2017 through 2019 fiscal years. The only deviation from this pattern came as a result of a hearing under the auspices of the JLMC for the firefighters. That award does not support additional compensation for the sergeants unless they can show a pay disparity. The Town contends the data does not support such an adjustment. In addition, the JLMC panel that considered the patrol officers' CBA after the firefighter award stated "the aim of the Panel was to have a total overall package of the settlement similar to the firefighters." That panel did not, however, consider the portion of the firefighters' award related to minimum manning because it was a non-economic safety issue. Consistent with this analysis, the patrol officers' panel awarded the Union 0.5% base wage increases in each year of the contract. It also increased the work week from 37 ½ hours to 40 hours with no change in work schedule, effective January 1, 2019, to address the wage disparity in the external market. The estimated value of the base wage increases, change in hours of pay and shift differential, which the panel also awarded, is 5.63%. The Town takes the position that no such wage disparity exists for the sergeants. In summary, the Town has a well-established pattern of 2% base wage increases. This pattern only deviated by the addition of a 1% increase to the firefighters' EMT stipend to offset a prior panel error. The patrol officers' award is valued at slightly less than the pattern over the duration of the CBA while still resolving the long-term external wage disparity.

The Town argues its proposal of a step schedule was in response to the Union's proposal for a step schedule. This schedule will result in a non-recurring savings to the Town once per sergeant over the course of a career, unlike a recurring cost base wage increase. It amounts to 0.44% or \$2,145 for each sergeant. The Town would far prefer an award with no steps to one that exceeds the pattern of 2% base wage increases. It only engaged in the dialogue with the Union about a step schedule because the Union sought one. The internal pattern strongly supports the Town's position of base wage increases not to exceed 2% per year.

The Town also contends the external comparison supports its proposal. The Town's compensation is consistent with its place among comparable communities. The Town is located in Middlesex County, at the intersection of Route 495 and Route 3. Billerica, Dracut, Reading, Tewksbury, and Wilmington are the most comparable communities. Among its comparables, the Town is second (behind Billerica) in averaged assessed value, EQV per capita, income per capita, and median family income. The Town lags behind Billerica in one critical area – commercial tax revenue. This is the single biggest driver in the difference between the Town's financial resources and Billerica's. The Town chose Billerica and Dracut, which are at the higher and lower ends of the external market spectrum, to provide a balanced analysis of the marketplace. The Town's comparable universe is, therefore a more legitimate representation of the external market.

The JLMC panels in both the firefighters' and patrol officers' cases generally accepted the Town's proposed comparable communities. For this reason alone, this Panel should follow suit to ensure consistency in the process and a common approach for all involved now and in the future. This Panel should also disregard the Union's proposed comparable universe of Arlington, Billerica, Danvers, Dracut, Marlborough, Natick, North Andover, Saugus,

Tewksbury, and Watertown because the Union's methodology does not demonstrate an overall comparability with the Town in that it ignores the generally accepted approach of focusing on economically comparable communities, based on similar equalized value per capita, that are within normal commuting distance, which is relevant to the competition for employees. Arlington, Danvers, Marlborough, Natick, North Andover, Saugus, and Watertown do not meet this standard, and therefore, should not be considered in this Panel's analysis.

Finally, the Town contends a comparison between the Town's sergeants and fire captains is inappropriate. First, among the four comparable communities that have sergeants and fire captains, the fire captains are all paid more than the sergeants. Second, the disparity ranges from approximately \$1,000 in Dracut to \$9,000 in Billerica, with Reading, Tewksbury and the Town falling in the \$3,000 to \$34,000 range, therefore, there is no evidence supporting the Union's argument. The Town asserts that differences in the types of compensation, *e.g.*, Quinn Bill and shift differentials, likely offset some of the difference. Third, within the Town there is a notable difference between sergeants and fire captains in that fire captains are always shift commanders, whereas non-bargaining unit lieutenants, not sergeants, are shift commanders in the Police Department. The Town acknowledges that sergeants act as officer-in-charge when a lieutenant is not working, but this has occurred on just 141 of 1095 shifts in 2017 and, as of October 13, 2018, sergeants had done so only 73 times in calendar year 2018.

With respect to ability to pay, the Town does not dispute that it has sufficient resources to pay financial increases consistent with the 2% total economic package it agreed to with its other bargaining units, but denies it can afford the financial package sought by the Union. The Union seeks a 26.3% pay increase over three years, including the introduction of a new 6-step pay

schedule, which provides for initial wage adjustments, 5% base wage increase in each CBA year, and an increase in the Physical Fitness Bonus.

Although the Union points to the Town's stabilization funds as a source for funding, those funds are generally set aside to meet extraordinary financial challenges to the community, such as an economic downturn or unforeseeable events such as expenses resulting from a natural weather event. Although the Stabilization Fund approaches \$10 million, because the Town has had to establish a Sewer Stabilization Fund to meet specific projections through the end of a debt cycle for a Town-wide sewer project, the amount truly available in the Stabilization Fund is less than the target of 7.5%. Furthermore, the Town's financial standing took a hit in 2018 in the form of a decrease of \$1 million or 10% of its stabilization balance due to negative investment returns. Finally, the Stabilization Fund is meant to stabilize the Town's finances, which allows it to borrow at reduced interest rates, and not to fund increases in operational costs.

With respect to the Town's certified free cash, that represents the amount of its funds that are unrestricted and available for appropriation. According to the Massachusetts Department of Revenue, under sound policies, a municipality should strive to generate free cash in an amount equal to 3% to 5% of its annual budget. Also, as a non-recurring resource, it should be restricted to paying one-time expenditures, funding capital projects, or replenishing other reserves. Free cash should not be used to fund recurring operational costs such as employee compensation or adding new positions. In addition, the Town's certified free cash for the current fiscal year is less than 1% of its operating budget as compared to the DOR's guidance of 3% to 5%.

With respect to other aspects of its financial circumstances, the Town contends it taxes to its levy limit as allowed by Proposition 2 ½ and has done so for most of the past decade. In addition, the citizens have rejected multiple Proposition 2 ½ overrides since 1992, with the

exception of a 1993 override for solid waste collection. Even without an override, residential tax bills have increased by more than 10% in the past three fiscal years based on increased assessments, which makes the Town the 69th highest tax burden in Massachusetts out of 351 cities and towns. In fact, at \$17.96 per \$1,000, the Town has the highest residential tax rate among its comparable communities, with the next closest being Tewksbury at \$16.13. The other three comparables have residential tax rates of less than \$15.00 per \$1,000. The Town's ability to raise tax revenues is further limited by its comparably small commercial tax base.

Finally, revenues in the form of state aid have been shrinking as a percentage of budgets for years. To compound the financial strain on the Town, health insurance costs continue to increase at 7% annually, pension assessments by more than 2.5%, and the Town has an unfunded OPEB liability of \$72 million. The Union attempts to show the Town's ability to pay its exorbitant demand with resources such as free cash and the stabilization fund that, for reasons explained previously, are not available. Furthermore, the Union's evidence does not reflect the most recent data for the Town; therefore, it paints an inaccurate picture. In addition, the Town's resources are even more stretched as it will likely have to draw from its stabilization fund this spring to implement the minimum manning award in the firefighters' case.

Union's Position

The Union seeks wage increases of 5% for each year of a three-year CBA effective from July 1, 2016 to June 30, 2019. It rejects the Town's proposal for adding steps and reducing the rank differential between the top step patrolman and the bottom step sergeant. In FY 16 a newly promoted sergeant would make 14,041.90 or 25% higher than a top step patrol officer. If the Town's proposal was implemented, by the end of the 2016-19 CBA a newly promoted sergeant would make \$10,561.73 or 17.69% higher than a top step patrol officer. If the Panel were to

award steps, the Union contends it should maintain the 25.49% differential between the top step patrol officer and bottom step sergeant, and add additional steps to shrink the differential between a top step sergeant and lieutenant.

The Union asserts that its evidence shows the Town's seven police sergeants are underpaid in comparison to the towns in the Union's proposed universe of comparable communities. Those communities are: Arlington; Billerica; Danvers; Dracut; Marlborough; Natick; North Andover; Saugus; Tewksbury; and Watertown. Billerica and Tewksbury are two of the five communities immediately contiguous to the Town, and the other eight comparables are within a thirty mile radius of the Town, and within 30% (plus or minus) of the Town's population and median family income. The Union contends that geography, population and income are the most common criteria used to determine comparable communities, and based on these criteria, these ten communities constitute a legitimate universe of comparables.

The Town also argues that the Town has the ability to pay the wage increases sought by the Union. The Town's per capita real estate taxes are 8.5% above the average of the comparable communities, and 5.6% above the average of per household real estate taxes. This places the Town fifth among the eleven communities for both categories, which establishes that the Town's taxpayers bear an average property tax burden as borne by the average tax payer in the comparable communities.

The Union asserts that a comparison of the financial resources of the Town and its comparable communities is unnecessary and fundamentally meaningless because the Union's evidence shows the Town has resources to pay its seven sergeants wage increases significantly greater than those proposed by the Town. Although the Town has offered to create three steps and 5.35% on the top end of the new step over the three-year period, it agreed to a CBA with its

patrol officers that provides a total base wage increase of 8.25% plus an additional 1.02% on shift differential. It agreed to a CBA with its Fire Department on an arbitration award² that provided a total base wage increase of 6% plus an additional 1% on EMT pay, a job requirement for its firefighters. Furthermore, the Town awarded the Fire Department an additional \$245,000 or 6% per member in overtime opportunities for the increase in minimum manning for one of its five fire stations.³ The Union contends the Town Manager was aware of the impact the firefighter award would have on the sergeants' upcoming arbitration.

In addition, the Union argues the Town agreed to a total base wage increase of 6% for its police lieutenants for the same three-year period. Furthermore, it agreed to a one-time contract with its Town Manager for a base wage increase of \$23,992 or 14%. The most compelling evidence of the Town's ability to pay the cost of the Union's proposals is the certified free cash history in the Town and its comparable communities. According to the evidence, the Town's average certified free cash for FY 14 to FY 18 is \$1,842,968.

The Union also contends the Town has an S&P credit rating of AA+ and a reserve of \$13,083,491 in its Stabilization and Free Cash funds, which makes its reserves seventh in its comparable universe. The Union argues the Town has the legal right to use reserve funds to pay for the Union's proposals. In fact, the Town has transferred money from these reserves in the past to fund interest arbitration awards. On January 16, 2016, at a Special Town Meeting, the Town Manager requested \$301,965 be transferred from the General Stabilization Fund to pay for the 2016 police interest arbitration award. On April 30, 2018, he asked that \$245,000 be transferred from the same fund to pay for the 2018 firefighter interest arbitration award. Both

² The Union quotes from that JLMC Panel's decision regarding ability to pay, "Based on the above, the Panel determined that the Town has the ability to pay *reasonable wages and benefits* as well as a *reasonable increase of Firefighters* for the Per Piece Manning proposal as discussed above."

³ The Panel notes the both the patrol officers and firefighters CBAs were awarded pursuant to arbitration decisions.

transfers were passed by a more than 2/3 vote of the taxpayers and did not affect the Town's S&P credit rating of AA+.

Finally, the Union contends the Town has the ability to pay for the Union's proposals, but it is unwilling to do so. During negotiations and mediation, the Town did not present any credible evidence to refute its ability to pay. Prior to the instant interest arbitration, the Town did not present as an issue its inability to pay. In fact, On June 22, 2016, the Union and the Town Manager came to an agreement for the 2016-19 CBA, which the Board of Selectmen did not ratify on two attempts.

The Union also argues that the sergeants merit its proposed wage increases. Its evidence shows the number of crimes per sworn police officer in the Town is 23.2% above the average of the comparable communities. The evidence also shows the crime per officer is the fourth highest among the comparable communities. Despite the significantly higher than average work load evinced by this evidence, police officers in the Town receive salaries that are significantly below the average salaries paid to police officers in the comparable communities. According to the Union' evidence, the Town only pays 5.32% of its revenues for police expenditures, which is 8.7% below its comparable universe. The Town's police expenditures is the sixth highest or exactly in the middle of the comparable communities.

The Union asserts its evidence shows the Town's sergeants are woefully underpaid in relation to police sergeants in comparable communities. If the Town's wage proposal is awarded, this disparity will only increase. On the other hand, if the Union's wage proposal is awarded its position of seventh among the comparable communities would be maintained. With respect to the external universe, in FY 16, the Town's sergeants' salary discrepancy was \$3,869.21 or 5.3% below average. If the Town's proposed wage increase is implemented, by FY

19 the discrepancy would increase to \$5,236.85 or 6.7%. In addition, the FY 16 maximum sergeants' salary was ninth lowest of the eleven communities and by FY 19 with the Town's proposed wage increase the maximum salary would drop to the tenth lowest - \$13,090.27 below town number one and \$1,656.87 below town number nine.

With respect to the internal universe, the Union's evidence compares the wage increases of sergeants to police lieutenants and fire captains from FY 97 to FY 19. The non-compounded 24 year total increase is 53% a year or 2.21% a year for lieutenants and 48% or 2% a year for fire captains, while the Town's proposal would result in a non-compounded 24 year total increase for sergeants of 44.2% or 1.84% a year. Although the salary discrepancy for the Town's sergeants in the comparable universe is great, it pales in comparison to the disparity that exists between the sergeants and the lieutenants. When the Town created the lieutenant position in 1995 the salary differential was 26%. That differential remained on average at 31.58% for over 16 years. In FY 16 the rank differential was 38.36%. The Union's asserts, in the comparable universe, the average differential between the top step sergeant and bottom step lieutenant is 12.75%, which puts the Town's sergeants 25.72% below the average. If the Union's wage proposal is awarded, this disparity would decrease the rank differential from 23.45% or 10.72% below the average.

Contrary to the Town's proposal, if the wages stated in the June 22, 2016 Memorandum of Agreement had been approved and implemented, the seven sergeants would have received at top step the same 48% raised over the same 24 year period as the fire captains. In FY 97 the Town's sergeants were 2.6% below the fire captains. That differential remained between 0.6% to a high of 3.6% over an 18-year period (until FY 13). If the Town's wage proposal is awarded, this disparity will increase because the fire captains only have one step, while the Town proposes to increase the sergeants' steps. In addition, the Union's evidence shows sergeants are in fact in

charge of running shifts on numerous occasions and fill those openings first. In summary, the Town's sergeants are dramatically underpaid in the comparable universe and within the Town's internal universe.

Discussion

In lieu of the parties' reaching an agreement, this Panel must determine the appropriate wage increase for the three-year CBA sought by the parties. There are a number of factors arbitrators customarily consider in determining what wage increases should be granted, including the wages of comparable employees, wage increases granted to other Town employees, and the Town's ability to pay. The parties, through the hearing testimony, document submissions, and post-hearing briefs, have provided the Panel with information on these factors and have relied on this information in support of their respective positions. For the reasons outlined below, this Panel concludes that for the three-year CBA sought by the parties for FY17, FY18, and FY19 (July 1, 2016 – June 30, 2019) a wage increase of 2.0% effective July 1, 2016, 2.0% effective July 1, 2017, 2.0% effective July 1, 2018, and 3.0% effective January 1, 2019 is appropriate.⁴

As to the wage increases the Panel has awarded, based on the evidence presented by both parties, the Panel concludes that the Town has the ability to pay. Indeed, the retroactive raises proposed by the Town are being awarded.⁵ The Town, in its brief, attested to its ability to pay those percentages, therefore, there should be no issue of ability to pay those increases. With respect to the raise effective January 1, 2019, again the Panel finds based on the evidence presented that the Town has the ability to pay. The Panel notes the June 22, 2016 Memorandum

⁴ With respect to the supposed proposed steps, although the parties may have had discussions about this during negotiations, both the Union and the Town made it clear in their briefs that they do not want steps. Given the parties' positions, the Panel declines to issue an award that includes salary steps.

⁵ The Panel recognizes that the Town proposed 1.6% increases effective July 1, 2017 and July 1, 2018, but the amount awarded is only 1/20 % more, which the Panel does not believe impacts the Town's acknowledgement of its ability to pay the retroactive raises, particularly when it was aware of its pattern of 2% raises negotiated or anticipated across the board.

of Agreement negotiated by the parties⁶ included new steps that afforded the existing sergeants⁷ raises of approximately 2% effective July 1, 2016, 1.65% effective July 1, 2017, and 5.7% effective July 1, 2018. This Panel presumes the Town Manager was aware of whether or not the Town could fund such an Agreement. By deferring some of the third year raise to January 1 and June 30, 2019, the Town is receiving a substantial cost saving. Extrapolating from the Town's evidence of total budgeted base wages for FY16 (\$483,854.28) the total dollar amount of the Panel's awarded base wage increases would be: 7/1/16 – \$9,677 (2%); 7/1/17 – \$9,871 (2%); 7/1/18 – \$5,034 (2% to 1/1/19); 1/1/19 – \$3,813 (1.5% to 6/30/19); and 6/30/19 - \$3,842 (1.5%).

Finally, the Panel has considered the Town's financial health. According to the Town Manager's hearing testimony, for the past 3-4 years the Town has had a bond rating of AA+. The Town's evidence shows its certified free cash balance for FY 19 is \$996,403. In addition, as of June 30, 2018, its Stabilization Fund was \$9,747,766. The Town voted to fund the Firefighters' JLMC award at its spring 2018 Town Meeting, and at that meeting the Town Manager advised that there would be subsequent awards for the Police Patrol Officers and for the Superior Officers (Sergeants). The Town contends that free cash and Stabilization Fund monies should not be used to fund operational costs. As state above, however, the Panel notes the FY 17, 18 and 19 raises effective July 1st of each of those fiscal years were essentially anticipated by the Town and should, therefore, have been budgeted. With respect to the monetary elements in this award, the fact that the Town has to fund other JLMC awards for bargaining units with which it could also not come to agreement does not absolve it of responsibility to also fund the award in the present case.

⁶ This Agreement, negotiated by the Town Manager, was not ratified by the Town's Board of Selectmen.

⁷ This looks only at the top step each of the three years as those steps apply to the sergeants who were hired before July 1, 2016.

With respect to wage increases granted other Town employees, the Town acknowledges that it gave 2% wage increases across the board to all Town employees, both union units with which it bargained and non-union employees. Three bargaining units – the sergeants, the firefighters and the patrol officers – went to interest arbitration over their CBAs. The firefighters also received a 2% increase for each of the three years of their CBA as a result of an interest arbitration award. The Panel in that case noted that the Town planned to propose a 2% increase for all three years of the firefighters' CBA, but never made that proposal because the parties went to interest arbitration. The Panel in that case also awarded the firefighters a 1% increase in the EMT stipend, retroactive to July 1, 2016, the beginning of their CBA. Because all firefighters in the Town are required to have the EMT certification, they all received that increase. Although the stipend is not added into base wages, it still resulted in firefighters receiving an additional 1% of their top step annual base wage every CBA year (the method by which the stipend is calculated), which dollar amount increases as the top step amount increases.

The patrol officers also received their wage increase as a result of interest arbitration rather than through the parties' bargaining. In that case, the Panel awarded wage increases of 0.5% for each of the three years; however, the patrol officers paid hours of work also changed from 37.5 hours a week to 40 hours a week with no change in schedule, effective January 1, 2019, acknowledged by that Panel as “a significant increase in pay” to patrol officers. In addition, the patrol officers' shift differential increased from \$1.73 per hour to \$2.00 per hour. This award was apparently the result of intense settlement discussions by the Panel with the parties during the hearing, so the Town clearly had the opportunity to assess whether it could fund such a CBA. The Town estimates the cost increase of this award at 5.63%. The Union asserts this CBA resulted in a total base wage increase of 8.25%, plus an additional 1.02% on

shift differential. The police Panel acknowledged that it could not make absolute identical comparisons to the firefighter unit; however, its “aim ... was to have a total overall package of the settlement similar to the firefighters.” Even though there was no consistent trend in comparable towns for shift differentials, that Panel concluded “after discussions with the parties” that “an increase was warranted as part of the overall compensation awarded to the police.” Based on the record evidence, this Panel concludes that the patrol officers’ compensation package for the CBA effective 7/1/16 to 6/30/19 is more than 9%. Furthermore, based on the across the board increases for all Town employees, and particularly acknowledging the wage packages for the other two public safety units in the Town, this Panel finds that a wage increase of 2%, 2%, 2% at the beginning of each year of the parties’ three-year CBA, a 1.5% increase effective January 1, 2019, and a 1.5% increase effective June 30, 2019 is appropriate.

With respect to wages of comparable employees, the Panel must look to sergeants in comparable communities. Because the parties were unable to agree on the universe of comparable communities, the Panel must determine for purposes of its analysis, the appropriate universe of comparable communities. The Town asserts it is: Billerica; Dracut; Reading; Tewksbury; and Wilmington. The Union contends it is: Arlington; Billerica; Danvers; Dracut; Marlborough; Natick; North Andover; Saugus; Tewksbury; and Watertown. The parties agree on Billerica, Dracut and Tewksbury. The Panel notes that in the 2016 firefighters’ award the parties agreed that the Towns of Billerica, Reading, Tewksbury, and Wilmington were appropriate comparable communities.⁸ In the 2018 patrol officers’ award, that Panel determined the Towns of Billerica, Reading, Tewksbury, and Wilmington were appropriate comparable

⁸ That panel noted that the Town also thought Dracut was comparable, but determined not to include it in the universe of comparables.

communities.⁹ With respect to the Union's other suggested comparables, the towns of Danvers, North Andover, and Saugus are in Essex County, not Middlesex County, therefore the Panel declines to use them as comparables. Marlborough and Watertown are cities, not towns. Those cities, as well as the towns of Natick and Arlington, are all approximately 20 or more miles from the Town, therefore, the Panel declines to use them as comparables. Based on all of the above, the Panel accepts Billerica, Dracut, Reading, Tewksbury, and Wilmington as the appropriate universe of comparables.

Turning to the universe of comparables, according to the data presented by the parties, the Town compared the six towns by hourly base wage rate as of 7/1/15. According to the Town, its sergeants' hourly base wage rate was second out of the six. Although not clear, it appears the Town used the top step hourly rate for Reading, Wilmington, and Tewksbury. It apparently used the initial step for Dracut, and noted there were increases at 10, 15, 20, and 25 years. For Billerica it noted after the hourly rate "after 5 years." The variables makes it difficult for the Panel to draw a conclusion with respect to the Town's sergeants, except that they are not the highest paid of the comparables, and if those hourly rates are averaged, the Town's sergeants appear to be paid slightly above average. The Union's data, which uses yearly salaries, paints a different picture. Unfortunately it does not contain information for Reading or Wilmington; however, of the four remaining towns (including the Town), the Town's sergeants are third out of four, lagging behind Billerica by almost \$11,000, and Dracut by about \$350. When looking at the data the Union presented for the 2017, 2018, and 2019 fiscal years¹⁰ and if the Panel extrapolates the Town's sergeants' salaries based on the percentage base wage increases it is

⁹ One of the towns the panel declined to consider was Dracut, which had been proposed only by the Town in that case.

¹⁰ The Union noted that Billerica's CBA was not settled for FY 17, 18 and 19.

granting, of the four towns¹¹ the Town was below Dracut and above Tewksbury for FY 17 and 18, and over \$7,500 below Dracut as of the end of FY19.¹² The Panel finds this data insufficient to affect its determination of appropriate wage increases.

Award - Wages

There will be a three-year contract covering July 1, 2016 to June 30, 2019, with wage increases of 2% effective July 1, 2016; 2% effective July 1, 2017; 2% effective July 1, 2018; 1.5% effective January 1, 2019; and 1.5% effective June 30, 2019.

Seniority – Article 9, Section 2

Union's Position

The Union proposes to change Article 9, Section 2, by moving from an annual shift bidding process to a bi-annual shift bidding process. The new language would be:

Bi-annually, no later than January 15th and July 15th, the Chief of Police or his/her representative shall post a written schedule of shifts to be filled on July 1st and January 1st, by seniority shift bidding process. Said schedule shall include a list of officers by seniority for the shift bid year starting July 1st and January 1st. Said shift bidding shall not start until the schedule of openings has been posted for five (5) days. The Chief of Police shall post a scheduled time for each officer to bid so that all bidding is completed no later than March 1st and September 1st.

The Union contends the Towns proposal on this change was the same as the Union's proposal. Joint Exhibit 1, a Memorandum of Agreement signed by the Union and the Town, but not ratified by the Town's Board of Selectmen, shows that the parties were in agreement on this change, therefore, the Panel should grant the amendment to Article 9, Section 2.

Town's Position

The Town asserts that it rejects the Union's proposal. Although the Union proposes to implement a bi-annual, rather than annual, shift bidding it has offered no evidence to demonstrate the necessity of making such a change. In addition, converting to a bi-annual shift

¹¹ Again, the Union did not present data for Reading or Wilmington.

¹² The Union noted Tewksbury's CBA was not settled for FY 19.

bidding procedure would be inconsistent with the patrol officers bargaining unit. Furthermore, only one of the Panel's accepted comparable communities – Billerica - has bi-annual shift bidding. Tewksbury and Dracut, two other comparable communities, bid shifts on an annual basis like the Town does presently. For these reasons, the evidence does not support the Union's proposal to implement bi-annual shift bidding, therefore, the Panel should not grant this proposal.

Discussion

The Union seeks to change Article 9, Section 2 from annual bidding to bi-annual bidding. It appears to rely on the fact that the parties agreed to this language change in a Memorandum of Agreement signed June 22, 2016; however it acknowledges that the Town's Board of Selectmen declined to ratify that Agreement. A review of the CBA's from the accepted comparables discloses that of those towns, only Billerica has bi-annual bidding. Dracut and Tewksbury have annual bidding. The Town's patrol officers also have annual bidding. Based on the above, the Panel concludes the Union's proposed change is not supported by the record evidence.

Award – Seniority – Article 9, Section 2

The Union's proposal is not awarded.

Physical Fitness Test (Article 37)

Union's Position

The Union asserts that physical fitness tests for police officers are becoming increasingly common. They are a method used to keep employees healthy. In order to maintain the physical fitness standard, police sergeants are required to complete several hours of training per week. In July of 2010, the Town made physical fitness tests mandatory for all newly hired officers, and the Town and Union negotiated a stipend, not included in base pay, of \$500.00. The Union

proposes to increase that stipend to \$1,000.00, effective July 1, 2016, which is a minimal increase for the Town's seven (7) sergeants. The Police Department is the only Town department with a mandatory physical fitness test.

Town's Position

The Town opposes the Union's proposal. It contends the Union did not produce any exhibits or rationale to support its proposal. It also asserts the proposal will cost the Town \$3,500.00 or 0.72% per year. For these reasons, the Panel should reject the Union's proposal.

Discussion

The Union seeks an increase in the Physical Fitness Test stipend from \$500.00 to \$1,000.00, effective July 1, 2016. None of the external comparables for which CBAs were provided (Billerica, Dracut and Tewksbury) have such a stipend. The CBAs for Reading and Wilmington were not provided. The Town's police officers receive a \$500.00 stipend. Based on the totality of the evidence the Panel concludes that the increase in Physical Fitness Test Stipend from \$500 to \$1,000 is not appropriate.¹³

Award – Physical Fitness Test Stipend Increase

The Union's proposal to increase the Physical Fitness Test Stipend from \$500.00 to \$1,000.00 is not awarded.

Light Duty - Article 30A

Town's Position

The Town proposes to add a new Article 30A with the following language:

An employee of the Chelmsford Police Department who is incapacitated from regular duty because of injuries, illness or disability, may be required by the Chief

¹³ Although there was some discussion concerning the parties prior negotiations for a Union proposal to replace existing optional physical fitness standards used to qualify for the bonus, the Union did not pursue this proposal with evidence at the hearing or assert either that proposal or argument in support in its brief. The Town included the Union's proposal in its exhibit binder (I-43) and included argument against the proposal in its brief. Because the Union apparently did not pursue this proposal, the Panel declines to consider the issue.

of Police to perform light duty on either a full-time or part-time basis, notwithstanding any provision of law to the contrary, provided the assignment is supported by a Town-appointed physician and there are light duty tasks available that the employee is capable of performing. Light duty shall mean duties currently performed by bargaining unit employees.

Any bargaining unit employee otherwise entitled to injury leave under G.L. c.41 §111F and any applicable provision of the Collective Bargaining Agreement who is assigned to light duty under the provisions of this agreement shall continue to be indemnified for all medical bills, etc., as provided by law. In the event that the employee only works partial weeks under this provision, the remainder of the employee's wages shall be paid in accordance with injury leave.

Light duty assignments shall not interfere with an employee's ability to attend routine medical appointments, including therapy, related to the illness/injury resulting in the light duty assignments.

The Town contends this would allow the Police Department to assign certain administrative duties to sergeants who are on injured-on-duty and who have the capacity, based on their treating physician's determination, to make productive use of their time and abilities. M.G.L. ch. 41, §111F entitles a police officer to receive full, tax-free compensation while on injured-on-duty leave. This results in an officer receiving more compensation while out injured than he/she would when working, which creates a strong disincentive for employees to return to work. This, in turn, has a negative financial and operational impact on the Department. When a sergeant has some capacity to work, the inability to assign that officer to light duty becomes a waste of a valuable human resource. Three of the accepted comparables - Billerica, Reading and Tewksbury - have light duty provisions. In addition, the JLMC Panels in both the firefighters' and patrol officers' cases included a light duty provision (although in the patrol officers' award the arbitrator referred the subject to a labor-management committee and if no settlement was achieved by 1/1/2019, the parties would return to the arbitrator for future mediation/arbitration). Based on the strong policy, operational and budgetary reasons, the absence of any identifiable

harm to a sergeant working light duty, and the absence of any evidence from the Union opposing this proposal, the Panel should award the Town's light duty proposal.

Union's Position

The Union opposes the Town's proposal. It argues that if the Panel is going to award a light duty provision, it should use the language on light duty from the parties Memorandum of Agreement (which was not ratified by the Town's Board of Selectmen). That language states,

A bargaining unit employee who is incapacitated from full, unrestricted duty because of an injury, illness, or temporary disability, whether sustained on or off-duty, may be required by the Chief of Police to perform light duty on either a full-time or part-time basis, notwithstanding any provision of the law to the contrary, provided there are light duty tasks available that the employee is capable of performing. Light duty shall mean duties currently performed by bargaining unit employees.

A bargaining unit employee otherwise entitled to injury leave under G.L. c. 41, sec. 111F and any applicable provision of this collective bargaining agreement who is assigned to light duty under the provisions of this Article shall continue to be indemnified for medical expenses associated with the injury, as provided by law. A bargaining unit employee otherwise entitled to injury leave under G.L. c. 41, sec. 111F who works part-time on light duty, shall have the remainder of their regular wages paid in accordance with G.L. c. 41, sec. 111F.

Light duty assignments shall not interfere with an employee's ability to attend routine medical appointments, including therapy, related to the illness, injury, or temporary disability resulting in the light duty assignment.

The Town and the Union shall observe the following procedure when returning a bargaining unit member to either part-time or full-time light duty:

1. The Town shall schedule a fitness for duty exam for a bargaining unit employee who is incapacitated from full, unrestricted duty because of an injury, illness, or temporary disability, to be completed by a Town physician. Prior to the exam, the Town shall provide the physician with the employee's job description and a list of what light duty tasks the employee will be asked to perform. A courtesy copy of the notice of the exam will be provided to the Union;
2. In the event the Town's physician reports that the employee is capable of returning to work on light duty as described in the Town's letter, the employee (1) may accept the Town physician's finding and schedule a return to work date with the Chief, or (2)

may, within ten (10) business days (Monday-Friday) from the date of the Town physician's note, provide a note from their private physician that disagrees with the Town physician's report;

3. If the employee's physician disagrees with the Town's physician's determination that the employee is capable of light duty, the Town and the Union shall select a third physician to examine the employee to determine whether the employee is capable of performing light duty as described by the Town. The cost of the exam shall be paid for by the Town. The examination shall occur no later than fifteen (15) business days after the date of the employee's physician's report.
4. If the third physician concludes that the employee is capable of performing light duty, the employee shall return to work at the direction of the Chief.
5. If the third physician concludes that the employee is not capable of performing light duty, the Town may order the employee to submit to a fitness exam pursuant to Step 1 of this procedure pursuant to the third physician's report and conclusions as to when the employee may be capable of performing light duty.

Discussion

The Panel notes that although the parties discussed this new article, because the Town's Board of Selectmen did not ratify the Memorandum of Agreement, there was no consensus reached regarding light duty language. Given the differences in language of the provision now proposed by the Town and the provision acceptable to the Union, the Panel believes this matter is best left to the collective bargaining process.

Award – Light Duty - Article 30A

The Town's proposal to add a new Article 30A is not awarded.

Overtime – Article 35

Town's Position

The Town proposes to amend Section 1 by changing the first sentence in Procedure #10 to read:

Officers assigned to in service training, **firearms training**, or other training schools that are assigned by the Department shall be assigned as part of their regular shift and shall not be paid overtime but shall be granted compensatory time at a rate of time and one-half for hours worked on a regularly scheduled day off. [added language bold and underlined]

The Town asserts that adding firearms training for sergeants to training that is compensated by compensatory time, rather than overtime pay, would save the Town less than \$1,500.00 a year. The JLMC Patrol Officers Award included the same proposal, with a more substantial savings. This provision is consistent with the prevailing practice among comparable communities, with Billerica and Dracut having similar provisions. Reading provides no additional compensation for firearms training, so the Town's offer of compensatory time is a more favorable benefit, therefore, the Panel should award the Town's proposal.

Union's Position

The Union opposes the Town's proposal on the basis that, as the Town Manager testified, the cost saving to the Town is almost 1%.

Discussion

The Town's proposal seeks to compensate firearms training with compensatory time, as it already does for other training. There is no consistency among the comparable communities. Pursuant to the 2018 JLMC patrol officers' award, however, the Town's patrol officers now receive compensatory time for firearms training. Based on the record evidence, the Panel awards the change.

Award – Overtime – Article 35

The Town's proposal to amend the first sentence of Article 35, Section 1, Procedure #10 to add the words "firearms training" between "service training" and "or other training schools" is awarded.

Summary of Award

Award – Wages

There will be a three-year contract covering July 1, 2016 to June 30, 2019, with wage increases of 2% effective July 1, 2016; 2% effective July 1, 2017; 2% effective July 1, 2018; 1.5% effective January 1, 2019; and 1.5% effective June 30, 2019.

Award – Seniority – Article 9, Section 2

The Union's proposal is not awarded.

Award – Physical Fitness Test Stipend Increase

The Union's proposal to increase the Physical Fitness Test Stipend from \$500.00 to \$1,000.00 is not awarded.

Award – Light Duty - Article 30A

The Town's proposal to add a new Article 30A is not awarded.

Award – Overtime – Article 35

The Town's proposal to amend the first sentence of Article 35, Section 1, Procedure #10 to add the words "firearms training" between "service training" and "or other training schools" is awarded.

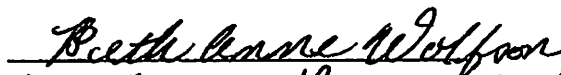
Respectfully submitted this 4th day of February, 2019,



Alan Andrews, Union Panel Representative

 DISSENT

Andrew Flanagan, Management Panel Representative


Beth Anne Wolfson, Neutral Arbitrator & Panel Chairperson