
IN THE MATTER OF INTEREST ARBITRATION BETWEEN:

CITY OF NEWTON

AND

NEWTON SUPERIOR OFFICERS ASSOCIATION, MASSCOP, LOCAL 401

**JOINT LABOR-MANAGEMENT COMMITTEE
FOR POLICE AND FIRE
JLMC 17-6002**

INTEREST ARBITRATION AWARD

ARBITRATION PANEL

**Bonnie J. McSpiritt, Neutral Arbitrator, Chair
Dean Mazzearella, Management Committee Member
Michael Perreira, Labor Committee Member**

FOR THE CITY OF NEWTON

Attorney Jeffrey Honig, Deputy City Solicitor

FOR THE NEWTON POLICE SUPERIOR OFFICER ASSOCIATION

Attorney Alan Shapiro, Sandulli Grace, PC

HEARING DATES

**June 13, 2019
July 23, 2019**

PANEL MEETINGS/CONFERENCE CALLS

**October 21, 2019
October 23, 2019
October 25, 2019**

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Introduction

The City of Newton (City, Newton or Department) and the Newton Police Superior Officers Association, Massachusetts Coalition of Police, Local 401 (Association or NPSOA) are Parties to a collective bargaining agreement (Agreement) effective July 1, 2011 to June 30, 2014.¹ In May 2014, the Parties began bargaining for a successor Agreement but were unable to reach a settlement. The Parties made several attempts to reach an accord in 2015 but negotiations broke down and the Parties did not meet for about a year.

In August 2016, the City reached two Agreements with the Newton Police Association (NPA) who represented the Patrol Officers. The duration of the first Agreement was July 1, 2014 to June 30, 2015 and the second Agreement was July 1, 2015 to June 30, 2018. As a result of the Patrol Officers settling, the Association and the City started meeting again but were unable to reach an accord. On May 16 2017, the NPSOA petitioned the Joint Labor Management Committee (JLMC) to resolve the outstanding issues. The JLMC voted to exercise formal jurisdiction in the Parties' dispute on October 13, 2017. The Parties participated in negotiations and mediation with the JLMC but a settlement was not reached. A JLMC 3A hearing was conducted in January 2019 and the Parties proceeded to interest arbitration in February 2019.

The Parties met with the tripartite interest arbitration panel twice on June 13, 2019 and July 23, 2019. The Parties were afforded a full and fair opportunity to be heard and present evidence. The witnesses below were sworn in and placed under direct and cross examination:

City

John Daly, Lieutenant, Executive Officer for the Police Department
Maureen Lemieux, Chief Financial Officer
David MacDonald, Chief of Police

Association

John Babcock, Sergeant, President, NPSOA
Dennis Geary, Captain, Special Operations Bureau

¹ In the 1990s, all sworn, uniformed Newton Police Officers, excluding the Chief, were members of one police association. At a later point in the 1990s, the Sergeants, Lieutenants and Captain separated from the Patrol Officers and two Associations were formed: Newton Police Superior Officers Association (NPSOA) and Newton Police Association (NPA).

Post hearing briefs were filed and members of the arbitration panel met and/or conducted business via conference call on October 21, 2019, October 23, 2019 and October 25, 2019.

Background

Characteristics of Newton

In 2015, the City of Newton had a population of over 88,817 residents, which is the tenth highest in the state, residing in approximately 18.91 square miles and 308 road miles (2013). The City's tax levy for FY2019 was primarily supported by residential property taxes, which is \$346 million or 83% of income revenue. The remaining revenue came from State Aid (\$30,548,581), Local Receipts (103,094,723) and Other Available Funds (18,280,309). At the beginning of FY 2019, Newton's Free Cash was \$11,909,715, the Stabilization Fund was 0² and the FY2019 Overlay Reserves was \$5,067,051. The City's Standard and Poor's bond/credit rating in 2017 was AAA and Moody's Bond Rating was Aaa.

Pursuant to the Department of Revenue, Division of Local Services Data Base in 2015 Newton's Income per Capita was \$117,069, Equalized Valuation per Capita in 2016 was \$295,406 and Total Assessed Value in 2019 of residential, commercial, industrial and personal property was \$30.435 billion. In FY 2019, Newton's residential tax rate was \$10.45 while, commercial, industrial tax and personal property rates were \$19.94. The average single family tax bill in FY 2019 was \$12,393. The average assessment of a single-family home was approximately \$1.2 million and in 2016 the unemployment rate was 3.0%.

Newton is a decentralized City that is broken up into 13 separate villages, which are distinctly different from one another. Both the T and commuter rail services run through the City, so a significant number of commuters come in and leave Newton daily. Overall Newton is considered an affluent City but it has a diverse population. Some residents of Newton live at or below the poverty line but other residents are very prosperous. The value of real estate is somewhat skewed as there are very high real estate values but others that are very low. Some residents earn very large salaries while others earn modest salaries. Newton is also a very safe community to live, which is a credit to the Police Department.

² The Association stated Newton's stabilization fund was \$20 million but AX16 documented it was at 0. NPSOA did not present any other documentation to support the \$20 million figure.

Characteristics of the Newton Police Department and the Superior Officers' Bargaining Unit

The Police Department has 149 sworn Officers and approximately 50 non-sworn employees. The Department has eight Bureaus: Uniform Patrol; Traffic; Detective, Community Services, which includes domestic violence, Elder Affairs, School Resource and Community Outreach; Dispatch, Communications, Special Operations and Information technology. The majority of the Bureaus are directed by Captains, a Lieutenant directs Community Services and a civilian is in charge of the Information Technology Bureau. The Department answers approximately 34,000 calls for service per year; 18,000 to 20,000 directed patrols and 52,000 to 54,000 directed police activity and response calls. The Department proposed budget for FY2020 is \$22.8 million, which is a 1.75% increase over FY2019.

The Superior Officers Bargaining Unit consists of six Captains, eleven Lieutenants and 20 Sergeants. All the positions are covered by Civil Service. The Chief of Police and two Lieutenants, serving as the Executive Officer and Internal Affairs Officer, are excluded from the bargaining unit.

JLMC Certified Issues

At the JLMC 3A hearing, the City submitted the following issues:

1. Good Faith Errors in Detail Assignments;
2. Supplemental Detail Personnel;
3. Drug Language;
4. Electronic Attendance Computer Software Program; and
5. Video System Policy.

The Association submitted the following issues:

1. Longevity;
2. Residency Allowance;
3. Investigation of Members;
4. Administrative Stipend; and
5. Strike Details.

Comparables

External

Association Position

The NPSOA's external comparables are a total of eight communities, who all have Aaa ratings from both Moody's and Standard and Poor's bond rating. These communities are Acton, Boston, Cambridge, Hingham, Lexington, Wellesley, Weston and Winchester.

City Position

The City proposed that the Panel consider Brookline, Cambridge, Framingham, Malden, Medford, Melrose, Quincy, Somerville, Waltham, and Watertown for comparables. Chief David MacDonald (Chief MacDonald or Chief) explained that selection of comparables was based on three criteria: 1) Proximity to Boston, 2) Total Population and Crime Rates. After determining the comparables, the City looked at how Newton's Superior Officers compared to the 10 communities.

Discussion

Based on the evidence submitted by the City for their proposed comparables (CX4A-4C, CX5A-5G and CX8A-8J), where the Association only criteria was bond ratings, the Panel considered the comparable communities to be Brookline, Cambridge, Framingham, Malden, Medford, Melrose, Quincy, Somerville, Waltham and Watertown.

Internal

Association Position

NPSOA argued this interest arbitration is based on internal comparables, specifically the Patrol Officers and Firefighters, not external comparables or ability to pay.

City Position

The City compared the Superior Officers to the internal comparables of Patrol Officers and Firefighters. The City concluded that Superior Officers are paid very well. The reason for this is that their wages are benchmarked off the Patrol Officers' wages.

The City did settle with NPA and admittedly the City gave Patrol Officers substantial raises. Accordingly, given wages and duration are already set, when the Award is issued Superior Officers will receive salary increase way above internal and external comparables and recent JLMC interest arbitration awards. Having said that, the City argued they need “. . . to be careful not to let the total compensation package get too far ahead of the market and to make sure that we don’t create imbalance in the way the City internally increase raise for all our employees”.³ The City contends if this occurred the disparity could create resentment within the City’s workforce and the City has strived not to have that occur.

Discussion

The Panel placed significant weight on wages and benefits of the City’s Patrol Officers Bargaining Unit (NPA) as compared to the Superior Officers because the parties have a history of negotiating wage parity between the two (2) bargaining units and the JLMC guidelines requires the Panel to do so. In addition, the Panel compared the wages and benefits of the City’s Firefighters to the Superior Officers.

Statutory Criteria Guiding Interest Arbitration

Chapter 589 of the Acts of 1987 sets criteria to guide interest arbitration awards for police and fire. These criteria are the financial ability of the town to meet costs; the interests and welfare of the public; the hazards of employment, physical, educational and mental qualifications, job training and skills involved; comparative wage and employment conditions with employees performing similar services and with other; decision and recommendation of factfinder, if any; employees generally in public and private employment in comparable communities; the cost of living; the overall compensation currently received by employees, including direct wages and fringe benefits; any changes of the foregoing circumstances during the pendency of the dispute; such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, factfinding, arbitration or otherwise between parties, in the public services or in private employment; and the stipulation of the parties.

In addition to the criteria above the Panel believes that novel and untried solutions and/or proposals that seek a significant change from a mature Agreement are

³ TI, p18.

rarely awarded in interest arbitration. Therefore, the Panel has rendered this Award after considering the Parties' proposals in conjunction with all the criteria listed above.

Ability to Pay

City Position

Although Newton is more affluent, the City is not protected from economic trouble. The City is susceptible to financial difficulties because the City's is self-insured for healthcare and has significant pension and Other Post-Employment Benefits responsibilities. The City's Chief Financial Officer, Maureen Lemieux (CFO Lemieux or Ms. Lemieux) explained the Mayor of Newton has established numerous goals for the City, e.g. Newton is safe; academic excellence and education equity are provided; the City is prepared for weather events; reasonable and fair employee benefits and compensation is provided; a rainy day fund is maintained; AAA bond ratings are maintained; long term Liability for pensions and OPEB are dealt with; etc.⁴ To accomplish these goals revenue resources coming into the City have to be maintained and increased.

As indicated above, the main revenue for the City is property taxes at 82%; however, those taxes can only be increased by 2.5% each year because of Proposition 2 and 1/2. To live within the City's means significant cost drivers need to be identified and dealt with. Those costs are 1) student enrollment; 2) snow and ice removal; 3) self-insured health care costs; 4) unexpected cost and initiatives; e.g. recyclables, new kindergarten program, market correction(s), interest rates, debit service. The biggest challenge for the City is funding OPEB, i.e. healthcare insurance for newer retirees and the City's pension liability. For OPEB, Newton has paid \$11 million toward OPEB and in FY 2020 plans to contribute an additional \$3 Million. Thus, Newton has paid 1.7% of the City's overall liability towards OPEB, which is currently at \$635 million and is scheduled to be completely funded by 2045. In rebuttal to the Association's argument that the City was able to decrease the OPEB by \$47 million from FY2016 to FY2017, CFO Lemieux explained:

[General Accounting Stands Board] and rating agencies . . . tried to standardize how municipalities record liability. So prior to this point, the City of Newton was using two percent as its discount rate. So we were assuming that we were earning two percent on the investments in this fund and then we were assuming seven percent on actual real cash.

⁴ TII, pp 20-21.

What has happened is GASB has decided that everybody ought to be using the same amount which I believe at this point is about 3.94 percent. So what that did is if we were assuming that funding that we have that isn't really even there is earning 3.9 percent, it lowered our liability as compared to if it were only earning two percent and so that how the liability dropped. It was strictly an accounting decision.⁵

Regarding pensions, the City's unfunded liability is \$322 million and statutorily the liability has to be paid off by 2040. However, the City needs to do this at a quicker pace and plans to fund the liability by 2030, which was a date set by the retirement board but Newton agreed to do.

While increasing funding for OPEB and the pensions, the City also made a commitment to improve the Police Department by increasing staff and improving public safety's infrastructure, capital improvements and training opportunities. The City has accomplished this by one, hiring police officers in an effort to get back to total staffing that existed prior to 2006. Two, the City replaced the public safety radio equipment hub with a state-of-the-art communications building. Three, Newton spent \$700,000 to renovate the dispatch center. Four, they improved towers, antennas, repeaters and generators to ensure that all public safety personnel were safe and able to communicate with each other throughout the City. Five, radios were installed in all the schools and the principal's office so that the school have a direct link to the Dispatch Center. Six, they budget \$350,000 per year for vehicle replacement, e.g. an incident command vehicle has been purchased, Toughbooks were installed in police cruisers and a new radio system was purchased. Finally, the firing range has been upgraded, a security project was completed in the police lobby, renovations were done on the Department's Chestnut Street building and the roof on the police garage was repaired.

CFO Lemieux explained that since the City was in better financial situation in FY2015 to FY2017 and all the City's unions had worked with them during several periods of financial crisis that when the City starting negotiating they wanted to thank the employees for working through the severe times. Therefore, the City negotiated substantial increases with all the unions. With NPA, the City settled at 23.1% and since NPSOA's entire salary structure benchmarks off of NPA's top step that meant that before negotiations even began the Superior Officers knew what wage increases they were going to receive. As a result, the Association, without even considering their proposal, is receiving 25.1 cumulative increase and an average annual increase of 6.3%. These increase are well above CPI, well above any of the other Unions in the

⁵ TII, p.42-43.

City, well above what any of the comparables received, and far above what other JLMC panels have issued over the last four or five years. Therefore, the City needs to be careful that the Superior Officers' total economic package does not create an imbalance for internal comparability purposes, which would create disharmony/moral problems. (T17-18)

Finally, CFO Lemieux discuss the total cost of the Association's proposal. In base wages alone it will cost approximately \$1.7 million for the 35 Superior Officers. When other benefits are included, i.e. holiday pay, shift differential, and education, the City has agreed to \$2.2 million. This results in Sergeants receiving approximately \$14,000/year, Lieutenants \$17,000/year and Captains \$19,000 per year for the four year period. If the Panel awarded NPSOA's economic proposals the total cost would be \$2.5 million. CFO Lemieux stated "I never want to say that the people of City of Newton do not have the ability to pay and I know that's the language that you use here with your panel. It's not about the ability to pay. It's about how much can we possibly pay to a union of 35 people and still be fair to the \$3,000 people that work for us."⁶

Association Position

NPSOA argued that the City has the ability to pay for the benefit enhancements the Association. Newton is one of nine cities and towns in Massachusetts to have a Triple A bond rating, which is the highest rate that can be achieved. The City issued a bond prospectus on February 7, 2019 that stated Newton's net OPEB liability decreased \$47 million as of June 30, 2017. Newton receives 83% of their revenues from residential property taxes, the average assessed value of a home in the City is \$1.2 million and the average property tax on a home is \$12,000. The City can, and did, raise the tax levy by 2.5% in FY2019 and also received approximately \$5.8 million in new growth. Three years ago, the City's health insurance plans were over funded and employees experienced a "health holiday" where upon the employees and the City do not have to make a contribution. The most recent health holiday was for two weeks. Also older employees pay an 80/20 premium split while newer employees, hired after July 1, 2011, pay a 75/25 split. The Association contends that despite the City's financial issues raised by the City they have still maintained a Triple A bonding rate and CFO Lemieux admitted the City had the ability to pay therefore, this interest arbitration is about internal comparability and fairness.

⁶ TII, p. 190.

Discussion

The Panel acknowledges the City's significant commitment to improve the Police Department by increasing staff and improving public safety's infrastructure, capital improvements and training opportunities. The Panel understands Newton's position that because the Superior Officers' wages benchmark off of the Patrol Officers' wages they will be receiving substantial wages increases. However, the Panel notes the parties, together, reached agreement on creating that wage structure and the City admitted that they have the ability to pay, although they seek fairness to other employees working in Newton.

The Panel has considered the above and all the Parties' evidence and arguments and determined that Newton has the ability to pay reasonable benefits enhancements as discussed in the issues below.

Issue #1

Article VIII - Paid Details and Overtime, Section 8.05 **Good Faith Errors in Detail Assignment**

Current Language

None

City Proposal

Add to Section 8.5:

In the event of a good faith error in the assignment of a detail by the Police Department, officers shall be afforded compensatory hours equal to the hours of the missed detail up to a maximum of eight (8) compensatory hours. If an officer works a detail or overtime shift for the same number of hours at the detail rate and in the same shift as the missed detail shift, that will be deemed to satisfy the City's obligation under this paragraph. If an officer works a detail or OT shift during the same hours of the missed detail shift that consists of fewer hours or a lesser rate of pay than the hours or rate of pay for the

missed detail shift, he/she shall be paid the difference in pay between the two details in compensatory time. The conversion of detail time to compensatory time for purposes of this provision shall be on an hour for hour basis.

Association Proposal

Add the following sentence to the City's proposal:

Upon request, the City will provide evidence (written or recorded) verifying the source of the error.

City Position

The Agreement does not include language how to handle errors that are made when the Department assigns detail. However, there is a practice, for both the NPSOA and NPA, that when the Department makes an error the Superior Officer or Patrol Officer receives compensatory time. The City's proposal memorializes the current practice. In addition, the City negotiated the same language with the NPA, who represents more than two-thirds of the Department.

Association Position

The City's proposal is included in the NPA Agreement. The Association is not opposed to the proposal if upon request by NPSOA that the City will provide written or recorded documentation verifying whether the Police Department or the vendor made the error.

Discussion

It is undisputed that there are times the Department makes errors when details are assigned and there is a practice that Superior Officers receive compensatory time when errors are identified. Memorializing the practice in the Agreement benefits both the City and Superior Officers. The remaining issue is whether to add the language proposed by the Association which requires the City to provide documentation if the error was made by the Department or a vendor.

When the City makes an error assigning details Superior Officers received compensatory time. When a Vendor makes an error and a Superior Officer shows up to work the detail, the City is reimbursed by the vendor and Superior Officer receives payment for the detail instead of compensatory time. Based on this fact, NPSOA's

proposal to document who made the error is not an unreasonable request. Therefore, both the City's and the Association's proposals are awarded.

Award

The following paragraph will be added to Section 8.5:

In the event of a good faith error in the assignment of a detail by the Police Department, officers shall be afforded compensatory hours equal to the hours of the missed detail up to a maximum of eight (8) compensatory hours. If an officer works a detail or overtime shift for the same number of hours at the detail rate and in the same shift as the missed detail shift, that will be deemed to satisfy the City's obligation under this paragraph. If an officer works a detail or OT shift during the same hours of the missed detail shift that consists of fewer hours or a lesser rate of pay than the hours or rate of pay for the missed detail shift, he/she shall be paid the difference in pay between the two details in compensatory time. The conversion of detail time to compensatory time for purposes of this provision shall be on an hour for hour basis. Upon request, the City will provide evidence (written or recorded) verifying the source of the error.

Issue #2 **Article VIII, - Paid Details and Overtime, Section 8.10** **Strike Details**

Current Language

Superior Officers who are assigned in a non-supervisory capacity to strike details or any other details involving public demonstrations, picketing, publicity and/or any other employment dispute in which an employer has requested a detail due to the potential for disruptive or violent behavior in the workplace shall receive a detail rate that is equal to twice the regular detail rate. If a Superior Officer is assigned to such a detail in a supervisory capacity, his rate shall be calculated by applying the above-listed supervisory differentials to the aforesaid Patrol Officers' rate - i.e. twice the regular detail rate.

Association Proposal

Amend third paragraph of Section 8.10 by deleting existing paragraph and replacing with the following:

Superior Officers who are assigned in a non-supervisory capacity to strike details or any other details involving public demonstrations, picketing, publicity and/or any other dispute in which an employer has requested a detail due to the potential for disruptive or

workplace violence shall receive a detail rate that is twice the regular detail rate. If a Superior Officer is assigned to such a detail in a supervisory capacity, his/her rate shall be twice the supervisory rate for “regular details”.

City Proposal

The City rejects the Association’s proposal and the current language should remain at status quo.

Association Position

NPSOA’s proposal seeks to make two changes to the current language. First, the language expands the payment of strike detail pay for situations beyond the workplace as the current language requires that there be an employment dispute for the double rate to apply. The Association wants to expand the benefit so that the incidents do not have to involve a dispute between an employer and employees but can cover events where an employer requests a detail because of threats imposed on their employees. NPSOA described a recent incident where Newton Wellesley Hospital hired a detail to the home of a physician employed by the hospital who had received threats from a relative of a patient. The Association believes these events should be covered by the Strike Detail language.

Second, the Association believed when the current language was negotiated that Superior Officers would receive double what they received for a regular detail, e.g. Sergeant – twice \$65.00 or \$130 as opposed to what the City is paying them, i.e. \$100.00 plus a \$15.00 supervisory differential. The new language corrects the improper strike detail pay rate currently being paid. In addition, NPSOA highlighted that as a result of a settlement agreement between the City and NPA regarding a violation of the Fair Labor Standards Act that Patrol Officers receive overtime pay when they work a City detail and Superior Officers only receive \$40/hour. To conclude their argument, the Association maintained that there is no economic impact on the City because strike details are paid by outside employers but acknowledged that the proposal is a low priority when compared to the other four proposals.

City Position

The City contends the current language, which limits strike details to employment dispute occurring at a workplace, accurately reflects the purpose of the language to compensate Superior Officers when they faced potential acts of violence during employer/employee strikes. By removing the limitation it will require the payment of strike details for every dispute that has a potential to be disruptive. Chief MacDonald explained the change will create gray areas and discord over when strike detail pay should be paid as opposed to regular detail pay rate. As a result, the Chief believes more grievances will be filed, which will negatively impact the parties’ relationship.

With regards to increasing the strike detail pay rate to \$130.00 for Sergeants, \$146.00 for Lieutenants and \$162.00 for Captains, the City objects to the increases. First, Superior Officers will automatically receive an increase in their strike detail rate because the City agreed with NPA to increase the regular detail pay rate from \$45.00 to \$50.00 and NPSOA's wages and detail rates benchmark off of NPA's wages and detail rates. Second, the Association did not provide justification for the increase except that there was no economic impact on the City because they would not pay for the increase. However, in accordance with Massachusetts General Law, Chapter 40, section 22F, Cities are required to set reasonable fees for services provided and the City contends the requested rate increases are not reasonable.

Finally, the City contends that one of the proposals in Section 8.12 should be removed given that NPSOA put forth two discrete proposals in this section for a total of six proposals overall and under JLMC guidelines each party is supposed to have a total of five proposals in addition to wages and duration. Based on the totality discussed above, the City requests that the Association's proposal is not awarded.

Discussion

The Panel does not find a compelling reason to expand the payment of strike detail pay to situations beyond the workplace, which is a unique benefit in and of itself. With regards to the Association's desire to receive a benefit thought to be previously negotiated but not received, the resolution of this issue rest with the grievance and arbitration procedures set forth in Article XIV. This determination is made because the language appears clear that differentials are not doubled and an analysis of the parties' bargaining history is needed to determine if the benefit was negotiated according to NPSOA's position and is being improperly administered.

Award

The current contract language shall remain as status quo.

Issue #3
Article VIII - Paid Details and Overtime, Section 8.12
Supplement Detail Personnel

Current Language

Only sworn Patrol and/or Superior officers are authorized to direct all traffic, either in person or by means of visible or audible signals, including at construction sites in the public way. However, in the event of fire or other emergency, to expedite traffic or safeguard pedestrians, officers of the police or fire department may direct traffic as conditions may require, notwithstanding the provisions of this Section. Unpaid auxiliary police shall not direct traffic at construction sites in the public way.

City Proposal

Amend Section 8.12 to read as follows:

Only sworn Patrol and/or Superior officers, approved retired special police officers (Sec. 24-6 of the Newton Revised Ordinances), active duty out of town officers under mutual aid agreement with the City, and supplemental paid detail personnel approved by the Chief of Police, are authorized to direct all traffic, either in person or by means of visible or audible signals, including at construction sites in the public way. However, in the event of fire or other emergency, to expedite traffic or safeguard pedestrians, officers of the police or fire department may direct traffic as conditions may require, notwithstanding the provisions of this Section. Unpaid auxiliary police shall not direct traffic at construction sites in the public way. Call-down of personnel shall be as follows: (1) active duty Newton Police Officers, (2) retired Newton special police officers, (3) active duty out of town officers under mutual aid agreement with the City, and then (4) supplemental paid detail personnel⁷.

Association Proposal

The Association did not present a proposal during the hearing stage of the Interest Arbitration. However, NPSOA stated in their brief, "The Association is willing to work with the NPD to add retired state troopers, municipal police officers, and sheriffs after the current detail hierarchy. However, these additional personnel would work under rules developed by the Newton Police Department Detail Committee, composed of representatives of both police unions".⁸

⁷ According to the City's proposed General Order regarding Newton Supplemental Traffic Detail Personnel Duties and Responsibilities the following qualifications and/or requirements are required:

- (1) Retired Massachusetts Police Officers based on superannuation;
- (2) Newton Auxiliary Officers;
- (3) Retired Massachusetts Sheriffs based on superannuation;
- (4) Retired Massachusetts State Police based on superannuation;
- (5) Prior law enforcement experience or training acceptable to the Chief of Police.

⁸ Association Brief, p. 14.

City Position

Newton has 308 road miles, which puts Newton 6th in the State for highest number of road miles. Constantly the roads are being worked for various projects that include water, sewer, storm water projects, paving, sidewalk work and tree work. The City seeks to expand personnel who can perform roadway work details because they have been unable to fill a substantial number of details and the need for details is increasing yearly. The City believes details are uncovered because a substantial number of Patrol Officers and Superior Officers refuse the opportunity to work. Although, the City acknowledges that detail work is voluntary, unless and until officers are ordered to work details, unfilled details jeopardizes public safety and completion of work projects for both City and private projects. As a result of unfilled details, the City has already expanded the detail pool to retired Newton Police Officers by obtaining a Special Act of the Legislature to increase the age of retirees to work details from 65 to 70.

Chief MacDonald is trying to maintain viability of the current detail filling plan and also covering smaller businesses who need details but cannot get them because of the location of details. The Chief believes it is getting harder to get police officers to fill details because younger officers value their free time more so they are refusing details when compared to long term officers. Facing this reality, the Chief and Lt. Daley in 2016 met with NPA's and NPSOA's Executive Boards to discuss the problem. The current proposal, the proposed Newton Supplemental Traffic Personnel Standard of Operations (SOP) (CX6J) and the proposed General Order regarding Newton Supplemental Traffic Detail Personnel Duties and Responsibilities (GO) (CX6K) stems from the information shared during the City and Executive Board meeting(s). For the personnel that have previous law enforcement experience or training acceptable to the Chief, this group would include people who have criminal justice experience, police academy experience, or have been summer special personnel on Cape Cod, etc.

The Chief also discussed filling details has become such a problem that 5-6 years ago the Department created a position, currently the Patrol Captain, to be in charge of the entire detail system. In addition, the Department has a Lieutenant, who goes out into the field and holds preconstruction meetings. ". . . to prioritize locations for details, prioritize and come up with a workable number of police officers for each job . . . whereby the job will get executed safely but we will be able to maybe conserve officers for other locations".⁹ The Chief also gets involved in prioritizing the details and some details are given a public safety designation, which moves the job to the top of the list because it is a difficult area and needs to be completed before other jobs where details are requested.

The City presented numerous exhibits (CX6M-6W) to depict the City's problem with filling details and the number of details that have been refused by both NPA and

⁹ T II, p. 112.

NPSOA officers. For example, in May 2019, 1187 officers were needed to cover details, 659 details were worked by Newton Police Officers, 81 retired Newton Police Officers and 86 mutual aid/Brookline Officers. However, 361 of the details were not filled and Newton Police Officers refused to work the details 397 times. This resulted in 30% of the details being unfilled.

The City contends their proposal will not take work from Superior Officers or Patrol Officers as they will always get first preference. After offering the details to Newton Officers, the City will move in priority of retired Newton police officers; police officers from cities and towns who have mutual aid agreements with the Department and then move to the new supplemental paid detail personnel proposed by the City. This group of people would include retired Massachusetts Municipal Police Officers, Massachusetts State Police, Massachusetts Sheriffs; Newton Auxiliary Officers, and individuals with prior law experience or training acceptable to Chief MacDonald. For example, the Towns of Boston, Waltham and Brookline do not have retiree agreements in place so the Chief is looking to draw from that group of personnel.

Association Position

The Association is “. . . vehemently opposed to the City’s desire to expand the eligible workforce, [who would perform details] to include unarmed civilians without arrest powers who must then be overseen by members of the Association’s bargaining unit”.¹⁰ Currently all details are assigned to sworn police officers who are uniformed and have arrest jurisdiction. The Union argued the City’s presentation and explanation why additional supplemental personnel was needed is not compelling for the Panel to award a proposal that would “. . . radically change [the] longstanding practice of only utilizing sworn police personnel in Newton streets but also require Newton Superior Officers to train and supervise these civilians”.¹¹

One, the statistics presented by the City for the number of refused details did not take into consideration that although details were refused they may have been filled by the next officer who was offered the detail. As a result, NPSOA contends the charts depicting refusals are inflated and should not be combined with unfilled details. Two, the Association via cross examination of the Chief highlighted that the SOP and GO lacked detail on what clothing the supplemental personnel detail force would wear when working a detail.

Finally, when the Association pressed Chief MacDonald, Lt. John Daly and CFO Maureen Lemieux on what projects were impacted because of lack of personnel to fill details; none of them could identify specific project that were delayed. Each witness answered in general terms, that delayed projects were a usual occurrence and the reasons given why details could not be scheduled were not based on lack of personnel,

¹⁰ Association Brief, p. 9.

¹¹ Ibid. p. 14.

e.g. a decision had to be made whether the detail work would be done during the day or at night, weather events, religious holidays, Boston College football games or City elections, etc. In addition, although projects may have been delayed one or two days the deadlines for the projects were not impacted.

Despite the City's lack of compelling evidence, the Association stated in their brief they were willing to include retired Massachusetts State Police, Municipal Police Officers and sheriffs in Massachusetts into the current hierarchy of personnel that fill details. However, this offer was conditioned upon that the retirees work under rules developed by a new Committee known as the Newton Police Department Detail Committee. The Committee would have members from the City, the NPSOA and NPA because the Association also argued both unions need to be include for the proposal to be implemented.

Discussion

The Panel believes the Parties did not reach agreement on this issue for two reasons, one, there is a difference of opinion as to whether filling paid details is a problem and two, the Association is being asked to move from sworn police officer with full police powers to civilians directing traffic on public ways. Looking at the first reason, despite the City not giving specifics examples of projects that have been negatively impacted by details going unfilled, the City's position that there is a problem filling details clearly exists. If there was not a problem then the Chief would not have needed to secure 12 detail mutual aid agreements or obtain a Special Act of the Legislature to increase the age of retirees to work details from 65 to 70.

Also, the City would not have had to hire an additional position at the Department of Public Works, whose responsibility is to attend construction meetings, work with the Police Department and be a liaison between the City's Engineering Department and the Police Department so details get filled. Chief MacDonald would not have created a position, currently a Captain and Patrol Commander, to be in charge of the overall detail system. In addition, the Department has assigned a lieutenant ". . . who goes out into the field and does preconstruction meetings in an effort to prioritize locations for details, prioritize and come up with a workable number of police officers for each job . . . whereby the job will get executed safely but we will be able to maybe conserve officers for other locations". Furthermore, there would not have been a need for the Department

to meet and discussed the problem of filling details with both the NPA and NPSOA Executive Boards in 2016.

With regard to the second reason, the Association's position of not leaping from sworn officers with police powers being authorized to direct traffic in public ways to civilians directing traffic is a legitimate concern. The Panel appreciated the Association's proposal to expand the detail pool to include retired Massachusetts Municipal Police Officers, State Trooper and Sheriffs. However, to only include that group will not solve the City's problem of needing additional personnel to fill the details. Therefore, the Panel, in an effort to elevate the detail problem, awards the City's Proposal with the condition that the Supplemental Paid Detail Personnel call-down order shall be: (1) Retired Massachusetts Police Officers based on superannuation; (2) Retired Massachusetts State Police based on superannuation; (3) Retired Massachusetts Law Enforcement Division Sheriffs based on Superannuation; (4) Newton Auxiliary Officers; and (5) Prior law enforcement experience or training acceptable to the Chief of Police.

The Panel also considered NPSOA's proposal to create a Committee to develop rules for these retirees to work under but the proposal is not awarded. One, all the personnel will not be retirees and two, Chief MacDonald should have the authority to formulate the rules for the Supplemental Paid Detail Personnel.

Award

Amend Section 8.12 to read as follows:

Only sworn Patrol and/or Superior officers, approved retired special police officers (Sec. 24-6 of the Newton Revised Ordinances), active duty out of town officers under mutual aid agreement with the City, and supplemental paid detail personnel approved by the Chief of Police, are authorized to direct all traffic, either in person or by means of visible or audible signals, including at construction sites in the public way. However, in the event of fire or other emergency, to expedite traffic or safeguard pedestrians, officers of the police or fire department may direct traffic as conditions may require, notwithstanding the provisions of this Section. Unpaid auxiliary police shall not direct traffic at construction sites in the public way. Call-down of personnel shall be as follows: (1) active duty Newton Police Officers, (2) retired Newton special police officers, (3) active duty out of town officers under mutual aid agreement with the City, and

then (4) Supplemental Paid Detail Personnel. The call-down for the Supplemental Paid Detail Personnel shall be as follows: (1) Retired Massachusetts Police Officers based on superannuation; (2) Retired Massachusetts State Police based on superannuation; (3) Retired Massachusetts Law Enforcement Division Sheriffs based on Superannuation; (4) Newton Auxiliary Officers; and (5) Prior law enforcement experience or training acceptable to the Chief of Police.

Issue #4
Article XXIII - Wages, Section 23.07
Longevity

Current Language

Any full time Superior Officer covered by the AGREEMENT who shall have completed the following requisite number of years of continuous employment with the City by June 1st of any year shall be entitled to receive an annual non-cumulative longevity payment in the following specified amounts for that calendar year:

| <u>Years of Continuous Service</u> | <u>Longevity Pay</u> |
|------------------------------------|----------------------|
| Between 10 and 14 years | \$650 |
| Between 15 and 19 years | \$800 |
| Between 20 and 24 years | \$2000 |
| 25 or more years | \$2500 |

* * *

Association Proposal

Effective July 1, 2015:

| <u>Years of Continuous Service</u> | <u>Longevity Pay</u> |
|------------------------------------|-----------------------------|
| 5-9 years | 1.0% of [Superior] base pay |
| 10-14 years | 1.5% of [Superior] base pay |
| 15-19 years | 2.0% of [Superior] base pay |
| 20-24 years | 3.5% of [Superior] base pay |
| 25+ years | 4.5% of [Superior] base pay |

City Proposal

The City offered two proposals.

Proposal A is the same benefit received by the Patrol Officers but based on NPA top step:

| <u>YEARS OF SERVICE</u> | <u>LONGEVITY PAY</u> |
|-------------------------|----------------------|
|-------------------------|----------------------|

| | |
|-----------------------|------|
| Between 05 - 09 years | 1.0% |
| Between 10 - 14 years | 1.5% |
| Between 15 - 19 years | 2.0% |
| Between 20 - 24 years | 3.5% |
| 25 years + | 4.5% |

Proposal B is the same benefit received by the Firefighters:

| <u>YEARS OF SERVICE</u> | <u>LONGEVITY PAY</u> |
|-------------------------|----------------------|
|-------------------------|----------------------|

| | |
|-----------------------|---------|
| Between 05 - 09 years | \$0 |
| Between 10 - 14 years | \$1,000 |
| Between 15 - 19 years | \$1,500 |
| Between 20 - 24 years | \$2,500 |
| 25 years + | \$3,500 |

Association Position

The Association is seeking the same longevity benefit as the Patrol Officers effective July 1, 2015. The NPA contract was amended to start longevity at five years instead of ten and be calculated as a percentage of each Patrol Officers' base pay. In addition, the Newton, Municipal Employees Association also received percentage increases effective July 1, 2014 and the firefighters received flat dollar increases effective July 1, 2015.

NPSOA argued that the City's calculation for longevity is incorrect given that the City based its figures on a four year benefit when it is a three year benefit. In addition, the Association stated, ". . . [it] is not naïve enough to believe that both its economic proposals, [Longevity and Administrative Stipends], will be awarded in their entirety. . . The NPSOA understands that, once the new agreement is in effect, the electronic attendance will be added to the Power DMS and the new camera system, with its sophisticated recording capacity, will be in place. Some economic enhancement, under these circumstances, is not unreasonable."¹²

City Position

The City negotiated with NPA and agreed to move from flat dollar amounts for longevity to a percentage of their base wage based on their years of service but not rank because the Patrol Officers are all at the same rank. The Association's proposal

¹² Association Brief, pp. 21-22.

uses the same percentages but ties the percentages to each Superior Officer's base wage. This amount of longevity is excessive and would throw this pay enhancements out of whack with other City bargaining units.

The City acknowledged given that NPA's and IAFF's, as well as Newton Municipal Employees Association, longevity rates were increased that NPSOA's rates will increase. However, the City believes the increase should be the same as IAFF's flat dollar amounts because they have a ranking system similar to NPSOA or NPA's percentages but tied to a Patrol Officer's top step as opposed to the base wage of the Association's ranks. Either proposal results in a substantial increase for Superior Officers of either 23.8% for Proposal A or 40% for Proposal B. In addition, Proposal A would keep Superior Officers at, or in most cases above, the wages for the same ranks in the comparable communities

The City cannot afford NPSOA's longevity proposal because Sergeants would receive a 50% increase, Lieutenants would receive a 76% increase and Captains would receive almost a 106% increase. The proposal is also substantial higher than the majority of the external comparables as can be seen in CX10K-10M.

Discussion

The Panel does not find because NPA received longevity percentage increases based on their individual salaries, where there is no differentiation of ranks, a compelling reason to increase Superior Officers' longevity payment substantial higher than both Patrol Officers and Firefighters. The Association's longevity has always been based on years of service with no differentiation among ranks. Proposals A and B provide significant increases, with Proposal B being the largest. Between awarding Proposal B and what the Panel has awarded NPSOA in Issue #5 –Administrative Stipend below provides reasonable economic enhancements for the implementation of the Attendance Software program and the Department's Video System Policy.

Award

Effective July 1, 2015:

| <u>YEARS OF SERVICE</u> | <u>LONGEVITY PAY</u> |
|--------------------------------|-----------------------------|
|--------------------------------|-----------------------------|

| | |
|------------------------------|----------------|
| Between 05 - 09 years | \$0 |
| Between 10 - 14 years | \$1,000 |
| Between 15 - 19 years | \$1,500 |
| Between 20 - 24 years | \$2,500 |
| 25 years + | \$3,500 |

Issue #5
Article XXIII - Wages, Section 23.09
Administrative Stipend

Current Language

All members of the Superior Officers Unit will receive an annual Administrative Stipend in the amount of six hundred and fifteen dollars (\$615) which shall be paid in a lump sum on the first pay day in July each year.

Association Proposal

The Administrative Stipend shall be increased from \$615 to 2% of a Superior Officer's base salary.

City Proposal

The City rejects the Association's proposal and the current language shall remain at status quo.

Association Position

Given the current administrative duties of Superior Officers, which has changed significantly since Chief MacDonald tenure, e.g. Commission on Accreditation for Law Enforcement Agencies accreditation, Power DMS System, increased training needs, etc., in conjunction with increased responsibility with the implementation of the Electronic Attendance Computer Software Program, the Association's proposal to increase the stipend from a flat rate of \$615 to 2% of a Superior Officer's base salary is reasonable. Captain Dennis Geary, who is in charge of the Department's Special Operations Bureau, testified in support of increasing the Administrative Stipend. His duties encompass all the administrative aspects of being in charge of special projects

for Chief MacDonald, e.g. dealing with all facets of civil service, training, being in charge of the firearms range, school safety, medical first aid kits/defibrillators, Infection Control Officer for the Department, Emergency Management Committee Liaison, security assessment of churches, temples and business and overseeing the NARCAN Program.

Captain Geary explained there are six Captains, eleven Lieutenants and 20 Sergeants. All the Captains and Lieutenants are assigned to administrative functions. All the Sergeants perform administrative work, e.g. evaluations, monthly inspections inspection of Patrol Officers' equipment, etc. Captain Geary discussed how his job duties have changed over 15 years. Initially, the Captain of Special Projects only oversaw the firearms range and the Chief's special projects; everything else noted above has been added. For example, training has increased which has impacted his Bureau's work load given training and drill sessions have to be developed, implemented and then an after action report has to be filed.

Also, the Department is accredited by the CALEA and to remain accredited, Captain Berube of the Special Services Bureau, has to certify that 480 standards are being followed and that the Document Management Services (Power DMS) is updated. All the GOs and SOPs are put into the Power DMS and it tracks whether Officers have read the GOs and SOPs. Captain Geary believed Power DMS has made more work because they are now electronically able to produce more documents and more training bulletins and takes more time for his bureau, Special Operations, to prepare documents and input them into the Power DMS system. This was not part of his job when he first became Captain of the Special Operations Bureau.

Captain Geary discussed the new Electronic Attendance Computer Software Program (Attendance Program) and that the Attendance Program will eliminate the previous card system and the information on the cards used to swap shifts, request time off, compensatory time fill, overtime fill, etc. will be done electronically. Captain Geary believed the implementation of the Attendance Program will increase the amount of work because Superior Officers will have to input information into Power DMS and then make sure all the rules are followed. The Association argued that Captain Geary's testimony concerning the extra duties assigned to his bureau and the Support Services Bureau was not rebutted by the City.

Finally, the City's argument that they do not convert benefits to percentages is meritless considering that the NPA and NMEA agreements have longevity percentages, IAFF have Enhancement Medical response and Hazardous Duty percentages. In addition, all three public safety Agreements pay night differential and education as percentages of base wages. Accordingly, the City's argument should be dismissed.

City Position

The City argued that out of the 35 members in NPSOA, 13 Superior Officers perform administrative duties. The Association's proposal seeks to increase the

Administrative Stipend from \$615 to \$1671 for Sergeants, \$1955 for Lieutenants and \$2287 for Captains. The increase result in a 172% increase for Sergeants, a 218% increase for Lieutenants and 272% increase for Captains. All of these employees also received rank differential pay above Patrol Officers. Therefore, Sergeants receive pay above Patrol Officers, Lieutenants receive pay above Sergeants and Captains receive pay above all three positions. Also, Superior Officers receive overtime when performing extra work that they could not complete during the regular workweek. Furthermore, in addition to the \$615 administrative stipend, Superior Officers receive a technology stipend of \$600.

The City submitted CX10S, which are the Commonwealth of Massachusetts Tasks Lists for Patrol Officer, Sergeant, Lieutenant and Captain. The exhibit shows the natural progression for what tasks are included at each level of rank. Most of the Police Officers tasks are patrol, incident response, traffic enforcement, investigations, arrest-related activities and internal and external communications and coordination. For Sergeants, Lieutenants and Captains their task include community relations, record and report management and direct supervision increase substantially; however “. . . [Superior Officers] are compensated by their rank for the administrative work that they do and if they need to work more hours, they are compensated either by earning overtime or comp time”.¹³

The City contends that the new attendance program will not increase the administrative workload, instead Superior Officers will be spending less time on administrative duties because they will not be filling out attendance paper work. The City maintains that Sergeants performing evaluations has not increased their administrative duties because Captain Geary testified that Sergeants have been conducting evaluations for 25 years. While Sergeants are now filling out after action reports for major incidents it is only for five or six patrol officers. Captain Geary said his bureau no longer has to make copies of training bulletins because the bulletins are now electronic and Officers can go back and reread bulletins which are easy to locate because they are in the Power DMS program. Finally, Captain Geary admitted that Power DMs has made parts of his job easier but it made other parts harder given that his Bureau is conducting more training so they have more things to review and to make sure officers are completing the trainings.

For all the reasons stated above, the City opposes any increase to the current Administrative Stipend.

¹³ TII, p. 169.

Discussion

The Panel recognizes that the Electronic Attendance Computer Software Program will decrease the amount of paper work Superior Officers are currently performing for attendance issues. However, Captain Geary's testimony highlighted that Superior Officer's duties and responsibilities have changed significantly since the last negotiated Agreement therefore the Association's proposal is not unreasonable. The Panel determined that taking the increase in duties and responsibilities and adding the increased training and supervision needed for implementing the Supplemental Paid Detail Personnel awarded in Issue #3 justifies increasing the current Administrative Stipend. Having said that, the Panel is not convinced that converting the flat dollar stipend to a percentage of a Superior Officer's base pay is warranted. Instead, the Panel has maintained the flat dollar stipend but increase it to \$1154.

Award

Effective July 1, 2015, the Administrative Stipend shall be increased to \$1154.

Issue #6

Article XXXII - Drug and Alcohol Abuse Program **Section 32.02 - Authorized Use of Prescribed Medication**

Current Language

Any Superior Officer who is undergoing medical treatment with any prescribed drugs(s) may, at his/her option, report this information to this/her supervisor, and a determination will be made as to that Superior Officer's ability to perform his/her regular duties while taking such medication.

City Proposal

The City proposes to delete the current language and replace it with the following language:

Any Superior Officer who is undergoing medical treatment with any prescribed drug(s) that may affect a Superior Officer's cognitive ability shall report this information and submit a note from a physician to the Department of Human Resources indicating that the manner and use of such medication will not interfere with the Superior Officer's ability to perform his/her duties, and an assurance that the medication will not be taken while on duty or before reporting for duty. A determination will be made as to that Superior Officer's ability to perform his/her regular duties while taking such medication.

Association Proposal

The Association rejects the City's proposal and the current language shall remain at status quo.

City Position

Currently, Superior Officers may voluntarily disclose to their supervisor that they are on medication that could affect their performance. As a result of legalized marijuana, the opioid crisis and a recent termination case dealing with prescription medication, the City contends it is essential that police officers are now required to provide information to Human Resources when they are on medication that may affect the officer's performance. The Department wants to take the reporting mechanisms out of the Department and put it with Human Resources for greater confidentiality and better oversight and that the information ends with Human Resources and not a Superior Officer's supervisor. The City maintains that they need to be assured that Superior Officers are functioning up to their full capabilities. Chief MacDonald contends that the language ". . . closes the gap between what our contract says today and what we don't or cannot know about a person who's being treated."¹⁴

Association Position

NPSOA vehemently opposes the change in language. The City is seeking to correct a problem that does not exist with Police Officers. The language is unprecedented, problematic, unenforceable and impossible to interpret. During cross-examination Chief MacDonald was asked if an Officer needed medication to treat depression or anxiety would the Officer be required to inform Human Resources. Initially, Chief MacDonald said if the Officer's cognitive ability would improve with the medication then Human Resources would not need to know. He then added that the

¹⁴ TII, p. 94.

Department is looking for medical treatments that would do the opposite and be a detriment to the Officer's ability to perform his/her duties.

The Association argued that his interpretation does not reflect the proposed language because it states: "Any Superior Officer who is undergoing medical treatment with any prescribed drug(s) that may affect a Superior Officer's cognitive ability shall report this information and submit a note from a physician to the Department of Human Resources. . ." Therefore, any prescribed medication, even if it improves an Officer's cognitive ability, must be reported. In addition, NPSOA contends, "Not only is there no evidence this language has ever been implemented in any public safety contract, but it potentially could further disincline officers in need of medical, and in particular psychiatric, help to shy away from it. Such a result would be particularly undesirable in a culture that needs to create incentives, not disincentives, for officers in need to seek treatment."¹⁵

Discussion

The Panel understands the purpose of the City's proposal and agrees that ensuring Police Officers are fit for duty when taking prescribed medication under a doctor's care is a reasonable request. However, the City's proposal is not awarded for three reasons. First, the Panel is disinclined to modify contract language that is novel and untried and is not supported by comparable communities. Second, the current language has been in the Agreement since at least July 1, 2006 and the Panel believes any change to the current language should happen thorough the "give and take" of negotiations. Third, the proposal, as written, is extremely restrictive and goes beyond what Chief MacDonald actually desires; therefore, more discussion between the parties is needed. Based on the above, the Panel does not award the City's proposal and the current language remains as status quo.

Award

The current contract language shall remain as status quo.

¹⁵ Association Brief, p. 16.

Issue #7
Article XXXIII – Civilian Complaints

This issue was resolved during the interest arbitration hearing. The Parties agreed to keep the language the same with the following changes:

1. The words “and Internal” will be added to the title between Civilian and Complaints.
2. In the first sentence after the word “civilian” and before the word “complaints” add “or internal”.

Based on the Parties reaching the above agreement, the article shall read as follows:

Article XXXIII – Civilian and Internal Complaints

33.01 The City agrees that a Superior Officer who is the subject of any investigation or inquiry arising out of a civilian or internal complaint, shall, prior to any interview, be appraised in writing of the following information: the date and nature of the complaint, including, but not limited to, sufficient information of knowledge of the extent of the complaint, in order to allow the Superior Officer to adequately respond to said allegations. For the purpose of this section, a complaint against a Superior Officer is one which alleges wrongful or improper conduct towards the complainant or a member of his/her family or which occurred in the presence of the complainant which, in the opinion of the Chief of Police or his designee, warrants an explanation or written report by the Superior Officer.

Superior Officers have the right to request the presence of an ASSOCIATION representative at any investigatory interview at which the Superior Officer reasonably believes there might be disciplinary action and also during any other stage of disciplinary proceedings.

Issue #8
New Article - Residency Allowance

Association Proposal

A new Article entitled “Residency Allowance” shall be added to the Collective bargaining agreement to read:

Effective July 1, 2016, within nine (9) months of employment by the City, a police officer must reside within the City of Newton or at any other place in the Commonwealth that is within thirty-five (35) miles of the perimeter of the City of Newton, except that all officers within the Association's bargaining unit employed by the City prior to July 1, 2016 shall be exempt from this provision.

City Proposal

Effective July 1, 2019, within nine (9) months of employment by the City, a police officer must reside within the City of Newton or at any other place in the Commonwealth that is within thirty-five (35) miles of the perimeter of the City of Newton.

Association Position

The Association appreciates the City's and Department's willingness to recognize the 35 miles but both the internal comparables, Patrol Officers and Firefighters, received the grandfathering benefit/condition of employment that they would be exempt from the City's residency requirement if they were hired prior to July 1, 2016. The Association is seeking to obtain the same benefit/condition of employment received by their fellow public safety colleagues. NPSOA contends that it is illogical for the City to have different residency policies within the same Police Department. In addition, the City's argument that it is necessary for Superior Officers to be available to provide supervision and command responsibilities but the Superior Officers also need Patrol Officers there to receive supervision and follow commands and orders.

City Position

There is no dispute that the City negotiated the grandfather provision with the Patrol Officer; however, Chief MacDonald has a problem grandfathering Superior Officers because it allows them to live anywhere. The Chief is comfortable allowing Superior Officers to live within 35 mile perimeter from Newton because currently all of the Superior Officers live within that perimeter and the requirement would not present a hardship on anyone. However, the Chief explained during NPA's negotiations they were getting close to settle the Agreement and he agreed to the language when he should have given it more thought.

Chief MacDonald has now had the opportunity to think about the impact of the grandfather language and he maintains because there is a three-to-one ratio of Patrol Officers to Superior Officers and it is more important to have Superior Officer on a crisis scene than an extra Patrol Officer therefore, he cannot have Superior Officers living beyond the 35 mile perimeter. In addition, each Captain rotates and they are City Commanders every 6th weekend. The Duty Commander is in charge of the Department after 5:00pm on Friday and they are the first person called if the Officer in Charge has an issue that s/he feels they cannot handle or they need advice on. The Duty Commander also has the option of notifying the Chief if the need arises.

By allowing the Duty Commander and all other Superior Officers the opportunity to move anywhere public safety is jeopardized given periodically Captains must physically respond to work events for supervisory and command responsibilities, which is not a responsibility of Patrol Officers. The City cannot have Superior Officers living in the Berkshire or on Cape Cod and be assured Superior Officers can respond promptly.

Therefore, the City request that the Panel does not award the Association's Residency Allowance.

Discussion

The Panel acknowledges the City's and Chief MacDonald's position; however, the internal comparisons support the award of the Association's language. The City agreed to grandfather Firefighters, who have a supervisory ranking hierarchy similar to the Superior Officers, on February 24, 2016 and subsequently agreed on August 4, 2016 to grandfather the Patrol Officer. Clearly, this five month period between agreements was sufficient enough for the City to conclude that grandfathering Patrol Officer was not a good idea and could impact the NPSOA negotiations given historically Superior Officers receive wages and benefits that mirror the NPA and vice versa.

Also, if the City believed supervisors should be readily available then the agreement with IAFF should not have occurred as it could impact the availability of ranking officers in the Fire Department. In addition, the Panel agrees that having two different Residency Allowance in the Police Department does not make sense. For example, if a Patrol Officer hired before July 1, 2016 was promoted to Sergeant and s/he owned a home outside the 35 mile perimeter then the Officer would have to sell his/her home and buy a home inside the perimeters. This would result in a hardship for the promoted Patrol Officer.

Award

A new Article entitled "Residency Allowance" shall be added to the Collective bargaining agreement to read:

Effective July 1, 2016, within nine (9) months of employment by the City, a police officer must reside within the City of Newton or at any other place in the Commonwealth that is within thirty-five (35) miles of the perimeter of the City of

Newton, except that all officers within the Association's bargaining unit employed by the City prior to July 1, 2016 shall be exempt from this provision.

Issue #9
New Article
Electronic Attendance Computer Software Program

City Proposal

The City proposes to adopt an electronic attendance computer software program as follows:

The Police Chief shall have the discretion to adopt a new attendance program upgrade. The department will impact bargain the implementation of the new attendance system, such impact bargaining to conclude no later than June 30, 2019.¹⁶

Association Proposal

The Association does not oppose the introduction of the program; however, NPSOA wants to ensure that all of its members are properly trained in how to use it. Accordingly, the Association proposes that the City's proposal be granted with the following requirements:

- a. All unit members be trained during off-duty time for a minimum of eight hours; and
- b. The panel be clear that the granting of this proposal is limited to precisely what it says: a new attendance system.

City Position

The Department needs a new attendance system because the current one is obsolete. The new Attendance System, "On Duty" was up and running in late 2018 but the paper card system used by Superior Officers is still being used. The Department is maintaining all the cards and doing all the redundant, extra steps until the parties reach agreement and it can be implemented. The new system will be electronic but the current practice will not change; only the cards will be eliminated. The On Duty System will allow Superior Officers to have greater access to their calendar and they will have immediate access to their balances, which are not currently accessible and Officers have to wait two weeks to look at their pay stubs. The new system will also notify them directly whether their leave requests are approved or denied.

¹⁶ In the City's brief the following was noted: It was the City's intent to afford the NPSOA a 3-month time frame to impact bargain over the electronic attendance computer software program, notwithstanding the fact that the date set forth in the City's proposal expired.

Association Position

The Association requests that the Panel remain mindful of the added workload which the Attendance Program will impose on Superior Officers and supports the Association's request to increase the Administrative Stipend. In addition, all Superior Officers should receive eight hours of off-duty training on the new attendance system. NPSOA understands only the Attendance Program on the system will be implemented and request that be made clear to the City.

Discussion

The Panel awards the Electronic Attendance Computer Software Program in conjunction with the increase to the Administrative Stipend discusses in Issue #5 above. In addition, all Superior Officers shall receive training on the On Duty Attendance Program during off-duty time for a minimum of four hours. Finally, the granting of the City's proposal is limited to implementation of the new attendance system.

Award

The Police Chief shall have the discretion to adopt a new attendance program upgrade. The Department will impact bargain the implementation of the new attendance system. All Superior Officers will be trained during off-duty time for a minimum of four hours on the new Attendance Program. The granting of this proposal is limited to implementing only the new attendance system.

Issue #10 **New Policy** **Video System Policy**

City Proposal

The Newton Police Department shall adopt the following Video System Policy:

I. PURPOSE:

The Newton Police Department makes limited use of video systems on its property. Video systems are primarily used to record access at building entrances, cellblock, booking area and headquarters lobby. Video cameras also provide surveillance of the exterior of the building. Video cameras are never used in areas where employees would have a reasonable expectation of privacy, such as restrooms or locker rooms. The primary purpose of the video system is the safety and security of Newton Police Headquarters and all department personnel.

The system may also be used to assist in after the fact investigations and all other lawful purposes. The video system shall not be used for the purpose of searching for violations of department policy not specifically related to a complaint or investigation. The video system is not intended to be used as a method of tracking the work habits or productivity of individual employees.

II. MANAGEMENT OF VIDEO SYSTEMS:

The Newton Police Department Information Technology Bureau is responsible for the video system used in the Newton Police Department Headquarters building. Responsibility for the Support Services Bureau video system resides with the Office of the Chief of Police.

III. VIDEO MONITORING:

The video systems located in headquarters are capable of being monitored from the Dispatch/Communications Bureau on the overhead monitors. The systems in headquarters can also be monitored in the O.I.C.'s office, the cellblock office, and the Chief's office desktops.

IV. VIDEO RECORDING:

(1) All video cameras are recorded continuously by a digital video recording system. All persons should be aware that the video system is not actively, or continuously monitored 24/7. The Police Department Information Technology Bureau is responsible for the management of the video system and has primary control of the release of video recordings produced by this system.

(2) Recorded video is not made directly available to employees or the general public, unless otherwise required by law. In the event that a security incident occurs, employees should report the incident to the Internal Affairs Officer. If the event occurred in an area where video coverage is available, the Internal Affairs Officer will review the recorded video and make a determination if any video relevant to the incident is available. This video will be used by the Internal Affairs Officer to investigate and resolve the reported security incident.

(3) Requests to provide video recordings directly to non-employees (such lawyers or general public records requests) will be managed in the same manner as all other public records requests.

(4) Recorded video is generally stored for a period of thirty (30) days. Any video associated with a specific security incident or event is generally converted into a permanent video clip and stored for the duration of the investigation. Video clips, which could become evidence in civil or criminal proceedings, are kept in accordance with the current state laws pertaining to record retention.

V. VIEWING RIGHTS:

(1) The OIC shall have video playback features to allow supervisors and officers the ability to review incidents recorded at Newton Police Headquarters.

(2) User rights contained in SOP 000-00 will be determined by the Chief of Police and may not be altered without impact bargaining any changes that may affect the working conditions of employees.

VI. APPROPRIATE USE AND CONFIDENTIALITY:

All video and images captured with the Newton Police video system are the sole and confidential property of the Newton Police Department. No footage or reproduction shall be shown, disclosed or disseminated to the media, public, internet or any other unauthorized person(s) without prior written approval from the Chief of Police.

Association Proposal

The Association will accept the new policy by adding the following sentence to Section V(1):

Police officers, with union counsel and/or representatives, shall be permitted to view relevant video and images recorded by the video system prior to providing a statement, written or oral, pursuant to an internal affairs investigation.

City Position

Lieutenant Daley discussed the video system policy explaining that the City has had numerous video systems in place for 15 years at the police station. The systems have been upgraded over the years in an effort to protect employees and to monitor points of entry. Under the old system there were approximately 14 cameras and the City has installed 16 to 18 new cameras that record at building entrances, cell blocks, booking areas, headquarters, common areas and the back yard of the police station.

The current cameras have been places in the same areas and the majority of them have a livestream. Some of the cameras are also recording but in only those areas where the cameras had recorded previously. The cameras will not be used to monitor Officers work habits but monitor and identify potential safety threats. The City seeks to increase the number of cameras, record and have a policy to govern the use of the new camera system. The new system is capable of recording and keeping the recordings for 30 days. The City does not intend to record audio just video as this was an obstacle with the Command Staff and the NPA and NPSOA.

Association Position

The Association agrees to accept this policy provided that its members have the opportunity to view relevant footage if they are being asked to write a report or answer questions concerning something that was captured by the system. While the Association recognizes the value of updating an outdated system, it vehemently opposes having the new technology turned into an instrument for unjustifiably disciplining its members. "The policy states that its primary purpose is 'safety and security' and not to seek out employee infractions or track 'work habits or productivity'.

Nevertheless, undoubtedly, incidents will be recorded and “video will be used by the Internal Affairs Officer to investigate and resolve the reported security incident”.¹⁷

Discussion

The Panel awards the City’s Proposal to adopt a Video System Policy that includes the following sentence as point (2) in Section V: Viewing Rights:

“Police officers, with union counsel and/or representatives, shall be permitted to view relevant video and images recorded by the video system prior to providing a statement, written or oral, pursuant to an internal affairs investigation into a non-criminal matter.”

Award

The Panel awards the City’s Proposal cited above to adopt a Video System Policy that includes the following sentence as point (2) in Section V: Viewing Rights:

“Police officers, with union counsel and/or representatives, shall be permitted to view relevant video and images recorded by the video system prior to providing a statement, written or oral, pursuant to an internal affairs investigation into a non-criminal matter.”

Summary of the Award

Issue #1:

Article VIII - Paid Details and Overtime, Section 8.05 - Good Faith Errors in Detail Assignment

The following paragraph will be added to Section 8.5:

In the event of a good faith error in the assignment of a detail by the Police Department, officers shall be afforded compensatory hours equal to the hours of the missed detail up to a maximum of eight (8) compensatory hours. If an officer works a detail or overtime shift for the same number of hours at the detail rate and in the same shift as the missed detail shift, that will be deemed to satisfy the City’s obligation under this paragraph. If an officer works a detail or OT shift during the same hours of the missed detail shift that consists of fewer hours or a lesser rate of pay than the hours or rate of pay for the missed detail shift, he/she shall be paid the difference in pay between the two details in compensatory time. The conversion of detail time to compensatory time for purposes of this provision

¹⁷ Association Brief, p.19.

shall be on an hour for hour basis. Upon request, the City will provide evidence (written or recorded) verifying the source of the error.

Issue #2:

Article VIII, - Paid Details and Overtime, Section 8.10 - Strike Detail

The current contract language shall remain as status quo.

Issue #3:

Article VIII - Paid Details and Overtime, Section 8.12 - Supplement Detail Personnel

Amend Section 8.12 to read as follows:

Only sworn Patrol and/or Superior officers, approved retired special police officers (Sec. 24-6 of the Newton Revised Ordinances), active duty out of town officers under mutual aid agreement with the City, and supplemental paid detail personnel approved by the Chief of Police, are authorized to direct all traffic, either in person or by means of visible or audible signals, including at construction sites in the public way. However, in the event of fire or other emergency, to expedite traffic or safeguard pedestrians, officers of the police or fire department may direct traffic as conditions may require, notwithstanding the provisions of this Section. Unpaid auxiliary police shall not direct traffic at construction sites in the public way. Call-down of personnel shall be as follows: (1) active duty Newton Police Officers, (2) retired Newton special police officers, (3) active duty out of town officers under mutual aid agreement with the City, and then (4) Supplemental Paid Detail Personnel. The call-down for the Supplemental Paid Detail Personnel shall be as follows: (1) Retired Massachusetts Police Officers based on superannuation; (2) Retired Massachusetts State Police based on superannuation; (3) Retired Massachusetts Law Enforcement Division Sheriffs based on Superannuation; (4) Newton Auxiliary Officers; and (5) Prior law enforcement experience or training acceptable to the Chief of Police.

Issue #4:

Article XXIII - Wages, Section 23.07 - Longevity

Effective July 1, 2015:

YEARS OF SERVICE LONGEVITY PAY

| | |
|-----------------------|---------|
| Between 05 - 09 years | \$0 |
| Between 10 - 14 years | \$1,000 |
| Between 15 - 19 years | \$1,500 |
| Between 20 - 24 years | \$2,500 |
| 25 years + | \$3,500 |

Issue #5:

Article XXIII - Wages, Section 23.09 - Administrative Stipend

Effective July 1, 2015, the Administrative Stipend shall be increased to \$1154.

Issue #6:

Article XXXII - Drug and Alcohol Abuse Program, Section 32.02 - Authorized Use of Prescribed Medication

The current contract language shall remain as status quo.

Issue #7:

Article XXXIII - Civilian Complaints

Based on the Parties reaching agreement, the article shall read as follows:

Article XXXIII – Civilian and Internal Complaints

33.01 The City agrees that a Superior Officer who is the subject of any investigation or inquiry arising out of a civilian or internal complaint, shall, prior to any interview, be appraised in writing of the following information: the date and nature of the complaint, including, but not limited to, sufficient information of knowledge of the extent of the complaint, in order to allow the Superior Officer to adequately respond to said allegations. For the purpose of this section, a complaint against a Superior Officer is one which alleges wrongful or improper conduct towards the complainant or a member of his/her family or which occurred in the presence of the complainant which, in the opinion of the Chief of Police or his designee, warrants an explanation or written report by the Superior Officer.

Superior Officers have the right to request the presence of an ASSOCIATION representative at any investigatory interview at which the Superior Officer reasonably believes there might be disciplinary action and also during any other stage of disciplinary proceedings.

Issue #8:

New Article - Residency Allowance

A new Article entitled “Residency Allowance” shall be added to the Collective bargaining agreement to read:

Effective July 1, 2016, within nine (9) months of employment by the City, a police officer must reside within the City of Newton or at any other place in the Commonwealth that is within thirty-five (35) miles of the perimeter of the City of Newton, except that all officers within the Association's bargaining unit employed by the City prior to July 1, 2016 shall be exempt from this provision.

Issue #9:

New Article - Electronic Attendance Computer Software Program

The Police Chief shall have the discretion to adopt a new attendance program upgrade. The Department will impact bargain the implementation of the new attendance system. All Superior Officers will be trained during off-duty time for a minimum of four hours on the new Attendance Program. The granting of this proposal is limited to implementing only the new attendance system

Issue #10:

New Policy – Video System Policy

The Panel awards the City's Proposal cited above to adopt a Video System Policy that includes the following sentence as point (2) in Section V: Viewing Rights:

"Police officers, with union counsel and/or representatives, shall be permitted to view relevant video and images recorded by the video system prior to providing a statement, written or oral, pursuant to an internal affairs investigation into a non-criminal matter."


Bonnie J. McSpirt, Neutral Arbitrator, Chair

10-29-19
Date


Dean Mazzarella, Management Committee Member

10-29-19
Date


Michael Perreira, Labor Committee Member

10/29/19
Date¹⁸

¹⁸ Please note that Michael Perreira's signature could not be received via email. I requested his vote and approval via an email and he approved it at 5:32PM on October 28, 2019.