
IN THE MATTER OF INTEREST ARBITRATION BETWEEN:

TOWN OF PLYMOUTH, MA

AND

PLYMOUTH POLICE BROTHERHOOD

JOINT LABOR-MANAGEMENT COMMITTEE

FOR POLICE AND FIRE

JLMC #19-7242

INTEREST ARBITRATION AWARD

ARBITRATION PANEL

Bonnie J. McSpiritt, Neutral Arbitrator, Chair

Frank Frederickson, Management Committee Member

Michael Perreira, Labor Committee Member

FOR THE TOWN OF PLYMOUTH

Attorney Jared M. Collins, Town Counsel, Kopelman & Paige Law, PC

Attorney David C. Jenkins, Town Counsel, Kopelman & Page Law, PC

FOR THE PLYMOUTH POLICE BROTHERHOOD

Attorney Leigh Panettiere, Sandulli Grace, PC

Attorney James Racine, Sandulli Grace, PC

HEARING DATE

January 29, 2020

PANEL MEETING

February 24, 2020

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NOTE TO PARTIES

The Panel for the Patrol Officers' bargaining unit were composed of the same panelists who issued JLMC #18-6653 - Town of Plymouth, MA and the Plymouth Superior Officers' Association Interest Arbitration Award on December 20, 2019 (Superior Officers). The majority of the documents received in this arbitration were the same documents the Parties submitted in the Superior Officers' arbitration. Consequently, some sections of this award will repeat information and/or discussions from the Superior Officers' award. However, the Panel members assure the Parties all the evidence and arguments submitted during the arbitration hearing proceedings were considered in the Award.

BACKGROUND

Characteristics of the Town of Plymouth, the Police Department and the Patrol Officers' Bargaining Unit

The Town of Plymouth (Town or Plymouth) is located on the southeastern coast of Massachusetts in Plymouth County. It is bordered by Bourne to the southeast, Wareham to the southwest, Carver to the west, Kingston to the north and Duxbury at the land entrance of Squish Neck.¹ The Town is the oldest town in Massachusetts and one of the oldest town in the country given it was established in 1620 when the Pilgrims arrived from England on the Mayflower. Plymouth is primarily a residential community; however, one of its largest tax payers is the Pilgrim Nuclear Power Station (Power Station). The Power Station, which has been providing 6% of the tax base, has been decommissioned and its reactor was shut down in May 2019. The Town, as of May 9, 2019, was “. . . negotiating with [the Power Station] to develop a successor payment-in-lieu-of-taxes (PILOT) agreement to sunset these payments steadily during the next three to five years. Currently, PILOT include \$9 million for fiscal year 2018 and \$8.5 million for fiscal 2019”. (UX8B)

Plymouth's population in 2019 was over 60,000 people living in approximately 103 square miles and 587 road miles. (UX8O) It is the largest municipality in Massachusetts. (UX8B) Pursuant to the Department of Revenue, Division of Local Services Data Base (UX8C) the Town's tax levy for FY2019 was primarily supported by residential property taxes, which is \$174.8 million or 66.40% of income revenue. The remaining revenue came from State Aid - \$34.9 million or 13.25%, Local Receipts - \$42.2 million or 16.04% and Other Available Funds \$11.3 million or 4.31 for total income revenue of \$263.2 million. The FY2019 Levy Limited is \$178.6 million and the Excess Levy Capacity is \$3.87 million.

At the beginning of FY 2019, Plymouth's Free Cash was \$5,686,497, the FY2018 Stabilization Fund was \$10,055,440 and the FY2019 Overlay Reserves was \$1,140,937. In 2015, Income per Capita was \$34,950 and Equalized Valuation per Capita in 2016 was \$165,672. In FY 2019, the Town's residential, commercial, industrial and personal property tax rate was \$16.54. The average single family tax bill in FY 2018 was \$5,831. The average assessment of a single-family home was approximately \$ 354,936 and in 2016 the unemployment rate was 4.0%.

The Plymouth Police Department consists of a Chief, 2 Captains, 7 Lieutenants, 13 Sergeants and 96 Patrol Officers. The Patrol Officers are represented by the

¹<https://www.google.com/search?q=is+plymouth+ma+in+plymouth+county&og=ls+Plymouth+Ma+in+Plymouth+C&aqs=chrome.3.69i57j33l4.18319j1j7&sourceid=chrome&ie=UTF-8>, December 6, 2019.

Plymouth Police Brotherhood (PPB). The Police Department budget for FY2018, the last year of the current agreement was \$10.769 million, which was 10% over FY2017.

Bargaining History and Town Wage Compensation and Benefits Study

The Town of Plymouth and the Plymouth Police Brotherhood (Union or PPB) are Parties to a collective bargaining agreement (Agreement) effective July 1, 2015 to June 30, 2018. Prior to the Agreement expiring the Town decided to conduct a town-wide compensation and classification study (Study) and a proposal was present to the Town's Advisory and Finance Committee on September 2, 2015. The Town's Director of Human Resources Melissa Brinkmann (HR Brinkmann) presented the study proposal and the minutes of the Advisory and Finance Committee (UX4A) reported HR Brinkmann stated the following:

The Town is proposing a comprehensive study to evaluate salaries for all positions within the Town and Schools for both internal equity as well as comparison externally to similar communities to ensure salaries are at the proper level. We would like to ensure we can offer competitive salary packages that attract and retain talent. In a constantly changing economic climate, keeping the Town thriving requires staying in tune with the climate. Salary survey analysis identifies incumbents who are paid significantly less than the market, providing an opportunity to make adjustments over time to bring those salaries up to a competitive level. It can also identify any areas where a position may be getting overpaid and allow to control costs and make any adjustments. There may also be positions that are being paid at the proper level and there would not be a need to make any changes. The survey will be conducted by a third party, with no association with the Town. . . . The Town is currently struggling with recruitment at all levels so we need to look at all the pieces.

A motion was made to recommend the study to Town Meeting and it was passed. Plymouth informed the Town's Unions of their plans to perform the compensation study at some point after the Study was passed by the Advisory and Financial committee.

On April 11, 2016, Plymouth put out a Request for Proposal (RFP) for the Study (UX4C), which stated the following in pertinent part:

. . .a comprehensive compensation analysis to (1) evaluate salaries, including step increases or similar raises, (union and non-union employees) for internal equity and develop recommendations for improvements; and (2) compare the Town's salaries and benefits (Including but not limited to vacation time, sick time, personal time, holidays, health insurance) to peer communities salaries and benefits with the objective of demonstrating how Plymouth can offer competitive packages that attract and retain talent.

* * *

The general objectives of the study were:

- To develop a peer community list that can be used exclusively for comparing compensation and other benefit plans,
- To physically show where Plymouth's total compensation plan lies in comparison to other peer communities; and
- To develop recommendations that will assist Plymouth in offering competitive pay and benefits plans in comparison to other municipal employees. . .

* * *

It is anticipated that the comprehensive report will include: a recommended list of comparable municipalities to use as the Town's "Peer Communities" in terms of salaries and benefits; a recommended compensation and benefits plan with salary ranges for all positions that will provide internal equity; a display of where Plymouth's total compensation and other benefits plan falls in comparison to other per communities with recommendations on how that could be changed to further attract and retain talent . . .

The Town awarded the RFP to Human Resources Services, Inc. (HRS) and HRS consultants began the study promptly; however, unexpectedly the Study was not completed until the last year of the 2015 – 2018 Agreement on August 25, 2017. (UX4F).

On or about August 30, 2017 the President of the Plymouth Police Brotherhood received the Compensation and Benefits Study from Town Manager Melissa Arrighi (Town Manager Arrighi or Ms. Arrighi). In Town Manager Arrighi's transmittal letter (UX4E) she stated:

In the Fall of 2015, Town Meeting voted to appropriate \$42,000 for an independent study of salaries and benefits of Town and School employees for both internal equity as well as comparison externally to similar communities. This comprehensive study was needed to demonstrate where Plymouth falls in terms of total compensation to our workforce. The scope of this study was shaped by the Town's interest in understanding and comparing total compensation, including benefits and pay, rather than simply pay. Although we often speak about our generous benefits package, we do not typically quantify it in any detail.

* * *

The Town and Schools should consider both benefits and compensation when determining the total compensation administration program. While the salaries are slightly below market the benefits add to the total compensation equation, and this factor should be considered in all compensation decisions moving forward.

* * *

Finally, in looking at discussing a 'philosophy', with both union rules and the political environment, is it truly possible to adopt a philosophy and maintain it? For example, let us say that Plymouth determines that they want to pay more competitively on base salary and reduce the other financial benefits; is that truly sustainable? Management teams can attempt to negotiate better salaries in return for reducing benefits, however, if the Unions do not agree, this may not occur. Three Unions on the Town side have the ability to go to a state forum who can independently decide what changes should be in a successor contract award. If

the majority of elected Town Meeting officials fund that award, even if the award does not match the 'philosophy', then all the other union groups could suffer as a result, creating major inequities internally. Just as critical to consider is that some unions may agree to the 'philosophy' and negotiate accordingly; some may not. Some union negotiators may agree with it in the first round of negotiations, and then a change of union representation occurs, and that changes. Now, the new union officials are bargaining back in those 'other financial benefits' and, if the majority of the elected officials do not object, the 'philosophy' is not effective.

The HRS Study stated that a "comprehensive wage and benefits survey was conducted" and the "comparable communities were chosen based on a set of criteria by the Town . . . and they included a cross-section of communities throughout the Commonwealth that provided the best match for the positions". (UX4F) The Study in Section 5 – Classification and Pay Plans – Town reported:

Overall the Town's classification structure has not drastically changed in this study, however, the accompanying compensation plans have fallen somewhat out-of-sync with the market and are in need of updating. Consideration of the external market as well will benefit the organization in a number of ways. A competitive pay structure will allow the Town of Plymouth to be an effective recruiter in the market place, contribute to a reduction in employee turnover, and set the precedence to offer comparable base salaries for positions.

Section 8 of the Study made 14 recommendations; those that are pertinent to this Interest Arbitration follow:

8.1 The salaries/wages of the positions significantly below the entry levels need to be brought into line with the new ranges provided. Salary adjustments need to be made to these positions as soon as possible in order to avoid turn-over or poor morale. . . If it is too costly to do in one fiscal year, then the Consultants recommend a two-year implementation process. . .

* * *

8.4 In particular wages for police officers . . . appear to be somewhat lower as compared to the overall market. This is the case when looking at total other compensation for police officer. . . Continually paying below market could be problematic for recruitment, retention and moral of employees. At a minimum, these positions should match the market benchmarked.

* * *

8.10 All union positions need to go through the collective bargaining process. It is important for management and unions to work together in a fair and equitable manner for implementation of the proposed plans and pay ranges. Nothing can be unilaterally adopted without union input.

Currently, Patrol Officers have a five step wage matrix. The July 1, 2017 base salary for Patrol Officers is \$51,809 and their maximum salary is \$58,966. There is a 13.8% range between the minimum and maximum. In addition, the Parties have

negotiated a Senior Step 6 that Patrol Officers are placed on after they reached seven years of service. The Study proposed to broaden the wage matrix by doubling the number of steps to eight with a range spread of 23%. The Study also advised the Town not to cut employee's wages when placing them on the new pay plans but place the employee at or above their closest pay rate.

In the spring 2018, the Town and the Union began bargaining for a successor Agreement and met six times concluding on February 26, 2019. Union witness, President Thomas Kelly (President Kelly) talked with the former PPB President about the HRS study. The former PPB President said that there had been discussion with Assistant Town Manager Derek Brindisi that once the wage study was completed it would be addressed in the successor contract negotiations. President Kelly indicated the Union would have reopened the 2015-2018 Agreement at the time to deal with the wage disparity between Plymouth Patrol Officers and the comparable communities in the Study. However, unlike the Superior Officers' Agreement the PPB did not have reopening language. Consequently, based on the results of the Study, the Union put forth economic proposals of 15% to increase wages and/or benefits in an effort to minimize the wage disparity. In turn, the Town offered, as it did with the other bargaining units, six percent (6%) over the three years. The PPB believed the total wages would leave them significantly behind the comparables. The Town also offered there would be no change in health insurance over the three year Agreement but the Union had already moved to a 75/25 split on June 30, 2018. The PPB continued to argue that they were under paid and the parties were unable to reach an accord.

On March 25, 2019, the Union filed a Petition for Exercise of Jurisdiction with the JLMC and the JLMC exercised jurisdiction. The Parties participated in mediation but a resolution of their Agreement was not reached and the JLMC held a 3(a) hearing on November 7, 2019. The Parties prioritized their issues that remained unresolved and submitted them at the 3(a) hearing, participated in mediation but did not reach an accord. Subsequently, the JLMC set up an expedited hearing. The Parties met with the interest arbitration panel on January 29, 2020 and they 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:

Town

Lynn Barrett, Director of Finance

Union

Patrol Officer Thomas Kelly, President of Plymouth Police Brotherhood

Post hearing briefs were filed and members of the arbitration panel met on February 24, 2020 to discuss the award.

JLMC Certified Issues

At the JLMC 3(a) hearing, the Town submitted the following issues:

1. Duration
2. Wages
3. Bi-Weekly Payroll
4. Use of Sick Leave for Family Members - Limit of 5 Days
5. No Accrual of Vacation Time on Unpaid Status
6. No Accrual of Sick Leave Time on Unpaid Status
7. Amend Shift Swap Language

The PPB submitted the following issues:

1. Duration
2. Wages
3. Step Increases
4. Night Shift Differential
5. Education Incentive Pay
6. Hazard Duty Stipend
7. Court Time

Comparables

For external comparables, the HRS Consultants, working in conjunction with the Town and without input from Union, selected salaried for patrol officers' from Barnstable, Billerica, Bourne, Charlton, Falmouth, Marshfield, Taunton and Weymouth as the external comparable communities. The Panel used all the comparable communities identified in the Study except for the Town of Charlton. The Panel excluded Charlton because it is substantially smaller than Plymouth with a population of 13,406, square miles of 42.18 and road miles of 155.92.² In addition, Charlton's Police Department is significantly smaller than the Town with 3 Sergeants and an estimated 14 Patrol Officers.³ Also, the Panel used all the Study's Benefits Survey for the Town of Plymouth – Police Union (UX4F, p.103) and the Study's comparative wage and benefits

² https://www.townofcharlton.net/DocumentCenter/View/1054/PB_Charlton-Report-9-15-16_Lynne-Sweet-PDF?bidId=, December 18, 2019.

³ <https://www.townofcharlton.net/directory.aspx?did=10>, December 18, 2019.

chart (UX4F, p.81) to compare Plymouth wages and benefits, i.e. total compensation, to the comparables.⁴

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 employees generally in public and private employment in comparable communities; the decision and recommendation of factfinder, if any; 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 interest arbitration is a conservative process therefore, novel and untried solutions and/or proposals that seek a significant change from a mature Agreement are rarely awarded. The Panel has rendered this Award after considering the Parties' proposals in conjunction with all the criteria listed above.

Ability to Pay

In the Standard and Poor's, Town of Plymouth, Massachusetts: General Obligation; Note (UX8A) dated May 24, 2018 the following was reported:

The rating reflects our opinion of the following factors for Plymouth, specifically its:

- Very strong economy, with access to a broad and diverse metropolitan statistical area (MSA);
- Strong management, with "good" financial policies and practices under our Financial Management Assessment (FMA) methodology;
- Strong budgetary performance, with a slight operating surplus in the general fund and break-even operating results at the total governmental fund level in fiscal year 2017;

⁴ Note: The Panel did not use the data from the Benefits Survey for the Town of Plymouth – Police Union (UX4F, p.103) for Mansfield because the Study's comparative wage and benefits chart cited Marshfield and not Mansfield.

- Very strong budgetary flexibility, with an available fund balance that we expect will improve in the near term from its fiscal 2017 level of 15.0% of operating expenditures;
- Very strong liquidity, with total government available cash at 33.3% of total governmental fund expenditures and 6.4x government debt service, and access to external liquidity we consider strong;
- Weak debit and contingent liability position, with debt service carrying charges at 5.2% of expenditures and net direct debt that is 66.6% of total government fund revenue, and a large pension and other postemployment benefit (OPEB) obligation and the lack of a plan to sufficiently address the obligation, but overall low net debt at less than 3% of market value; and
- Strong institutional framework score.

Very strong economy

We consider Plymouth's economy very strong

* * *

Plymouth continues to plan for the closure of Pilgrim Nuclear Station (Entergy Nuclear), scheduled for no later than June 2019. Although the plant is the Town's largest tax payer (representing 6% of the tax base), we do not believe the closing will have significant impact on the local economy, as the town is in ongoing negotiations with Entergy to develop a successor PILOT agreement to steadily sunset these payments over the next three to five years. Currently PILOTs include \$9 million for fiscal year 2018 and \$8.5 million in fiscal 2019. At the same time, we believe revenue from new growth and additional taxing capacity under the levy limit will mitigate the impact of the plant's closure on the town's finances. In addition, the town established a Special Purpose Nuclear Mitigation fund to reduce the impact on the tax levy during the decommissioning of the power plant, totaling \$4.89 million as of June 30, 2017.

Given the town's recent and prospective commercial and residential development, which continues to support healthy tax base growth, we expect our evaluation of Plymouth's economy to remain very strong.

* * *

Outlook

The stable outlook reflects our opinion that Plymouth will maintain its strong budgetary performance and flexibility. Strong management practices, along with the town's diverse and growing economy, help support the financial performance and lend additional stability to the rating. We do not expect the rating to change within our two-year outlook period.

The Standard and Poor's, Town of Plymouth, Massachusetts: General Obligation; Note dated May 9, 2019 (UX7B), followed the same findings as in 2018 and the rating remained at AA+/Stable. The Note states the following:

- Very strong economy with access to a broad and diverse MSA;
- Strong management, with good financial policies and practices under our Financial Management Assessment (FMA) methodology;
- Strong budgetary performance, with balanced operating results in the general fund and a slight operating surplus at the total government fund level in fiscal 2018;
- Very strong budgetary flexibility, with an available fund balance in fiscal 2018 of 15% of operating expenditures;
- Very strong liquidity, with total government available cash at 18.8% of total governmental fund expenditures and 2.9x government debt service, and access to external liquidity we consider strong;
- Weak debt-and-contingent liability position, with debt service carrying charges at 6.4% of expenditures and net direct debt that is 77.4% of total governmental fund revenue, and a large pension and other postemployment benefit (OPEB) obligation and the lack of a plan to sufficiently address the obligation, but low overall net debt at less than 3% of market value; and
- Strong institutional framework score.

Outlook

The stable outlook reflects S&P Global Ratings' opinion Plymouth will likely maintain strong budgetary performance and, at least, strong budgetary flexibility. We believe strong management practices and the town's diverse and growing economy help support financial performance, providing additional rating stability. Therefore, we do not expect to change the rating within our two-year outlook period.

Plymouth's FY2018 Report on Examination of Basic Financial Statement (UX7P) provided the following financial information:

Financial Analysis of the Governmental Funds

As noted earlier, the Town uses fund accounting to ensure and demonstrate compliance with the finance-related legal requirements.

Governmental funds. . . . As of the end of the current year, governmental funds reported combined ending fund balances of \$60.6 million, a decrease of \$18.8 million in comparison with the prior year. This decrease is primarily attributable to \$24.9 million of capital expenditures offset by the receipt of \$2.0 million of capital grants related to MSBA reimbursements related to the high school project, the sale of assets of \$632 thousand, the receipt of a BAN premium of \$235 thousand and the timing of the receipt versus the expenditure of grant funds.

The *general fund* is the chief operating fund. At the end of the year, unassigned fund balance of the general fund totaled \$27.0 million which is comprised of four components: a general fund balance of \$10.4 million and a stabilization fund balance of \$16.6 million (this includes the general stabilization fund balance of \$10.1 million, the Nuclear Plant Mitigation stabilization fund balance of \$4.9 million and the Pavement Management Plan Stabilization fund balance of \$1.6 million). Assigned fund balance, which represents amounts designated for the

2019 budget as well as amounts that have been reserved for the use of liquidating prior period purchase orders and contracts totaled \$4.4 million. Committed fund balance, which represents the Town's various capital articles, totaled \$5.6 million. Fund balance Restricted relates to \$1.7 million restricted for future debt service. As a measure of the general fund's liquidity, it may be useful to compare both unassigned fund balance and total fund balance to total fund expenditures. At year-end, unassigned fund balance equaled 11.0% of total general fund expenditures, while total fund balance equaled 15.8% of the same amount. (p. 9)

* * *

Pension and Other Employee Benefits Financial Highlights

The Plymouth Contributory Retirement System (the System) was established to provide retirement benefits to Town employees, the Town Housing Authority employees, and their beneficiaries. The System is presented using the accrual basis of accounting and is reported as a pension trust fund in the fiduciary fund financial statements. At the end of the year, the System had accumulated net position of \$177.7 million. This represents an increase of \$22.6 million from the previous year. The increase was the result of favorable market conditions that resulted in a net change in fair value of investments of \$24.9 million offset by an increase in retirement benefits.

The Other Postemployment Benefit Trust fund (the Trust) was established during 2012 to account for assets relating to the pre-funding of the Town's Other Postemployment Benefit liability. During 2018, the fund reported \$944 thousand of employer contributions and earned \$228 thousand in investment income resulting in accumulated net position of \$3.8 million at the end of the year. (p.10)

* * *

NOTE 2 – PROPERTY TAX LIMITATION

The amount that can be raised by the Town tax levy is governed by Proposition 2 ½. The gross tax levy for 2018 was \$162,811,487, which was \$7,976,950 less than the levy limit allowable for the year as computed under Proposition 2 ½. (p.35)

* * *

NOTE 10 - STABILIZATION FUND

Massachusetts General Law Ch.40 §5B allows for the establishment of Stabilization funds for one or more different purposes. The creation of a fund requires a two-thirds vote of Town Meeting and must clearly define the purpose of the fund. Any change to the purpose of the fund along with any additions to or appropriations from the fund requires a two-thirds vote of Town Meeting.

At year end, the balance of the General Stabilization Fund is \$10,055,440 and is reported as unassigned fund balance within the General Fund. During 2018, the fund earned \$36,787 of investment income. The general stabilization fund balance can be used for general and/or capital purposes upon Town Meeting approval.

At year end, the balance of the Nuclear Plant Mitigation Stabilization Fund is \$4,917,051 and is reported as unassigned fund balance within the General Fund. During 2018, the fund earned \$27,171 of investment income. The Nuclear Plant Mitigation Stabilization fund balance can be used for general and/or capital purposes upon Town Meeting approval. . . (p.51)

* * *

Note A – Stewardship, Compliance and Accountability

A. Budgetary Information

. . . The original 2018 approved budget authorized approximately \$224.0 million of appropriations and other amounts to be raised. During 2018, the Town meeting also approved appropriation increases totaling approximately \$10.9 million. (p. 79)

Union's Position for Ability to Pay

The Panel should find that the Town has the ability to pay the compensation increases proposed by the Union. In December 2019, the Panel found in the Superior Officer's Interest Arbitration Award, JLMC #18-6653, that Plymouth had the ability to pay a 3.5% increase. The PPB has requested the same 3.5% wage increase as the Superior Officers effective one year later on July 1, 2018. The Town did not present any new evidence since the issuance of the Superior Officers' award to establish they did not have the ability to pay. Town Exhibit 17, which allegedly purports the cost of the Union's proposal, is not substantial evidence to support the Plymouth's argument that they cannot pay an increase that is approximately .002% of the Town's budget.

In addition, the Town is hosting the "Plymouth 400" celebration this year and Plymouth's Executive Director of Plymouth 400 reported in the *Boston Globe* that the celebration is expected to attract 7 million visitors and net \$2.2 billion. (UX8S6) The Patrol Officers will be an active presence in the success of the celebration. Also, the 2019 Standard and Poor's Global Rating cited the Plymouth 400 celebration in their assessment that the Town's economy is very strong. Finally, the Union argued that Plymouth's position that they able to afford a celebration of this magnitude "by paying its employees low wages . . . is unacceptable" and should be rejected by the Panel.

Town's Position for Ability to Pay

The Town acknowledged both at the arbitration hearing and in their brief the importance of Patrol Officer and the hard work and sacrifice they exhibit everyday as they respond to dangerous crimes and accident scenes. Plymouth appreciates what Patrol Officers do to keep the Town safe and well protected. Given Plymouth's appreciation, the Town contends they have proposed appropriate compensation when Patrol Officers are compared with other Town employees, who have accepted an

annual increase of 2% for July 1, 2018 to June 30, 2021 Agreements. In addition, Plymouth maintains they have kept the Patrol Officers' compensation package competitive with other patrol officers employed by the comparable communities. The Town argued it has done this at the same time that they have lost a significant taxpayer with the closing and selling of the Power Station. Although, Plymouth had several PILOT Agreements with the Power Station over the past several years, the loss of the revenues from the Power Station is significant and the Town has to take that loss into account when budgeting in the future.

The Town contends they do not have the ability to pay for the unreasonable and excessive wage proposal presented by the Union. Director of Finance Lynne Barrett's (Director Barrett) cost analysis (TX17) established that the total cost of the Union's proposal over the three year Agreement is \$1.63 million. Accordingly, this cost is almost double what the Town had anticipated the cost would be of 2% in each fiscal year and the impact of the base salary increases on education, overtime, holidays and night shift differential benefits. PPB's request would have "... the Panel grant a 5.5% increase in a single year, which adjustment will set the Town on a course of ever-increasing salaries that cannot be reversed and, more importantly, is on a pace that was never contemplated by the Town or the JLMC".⁵

In addition, the Town recognized that they have the ability to provide an event such as the Plymouth 400 because the Town has been fiscal sound and careful with their finances. To attain fiscal soundness, Plymouth has had to make tough decisions to strike a balance between paying Patrol Officers a fair wage and being concerned with how taxpayers' monies are being spent. Based on the above, the Panel should conclude that Plymouth does not have the ability to pay the Union's extreme proposal to adjust the Patrol Officers' wages.

Discussion

The Town relied on the Union's ability to pay evidence except for TX17, a cost of the Union's proposal as compared to Plymouth's proposal. The Panel took TX17 and UX8A-UX8S into consideration and determined again that the Town has the ability to pay a reasonable compensation adjustment. Our determination follows the rationale we set forth in the Superior Officers' Award as reiterated below.

⁵ Town Brief, p. 11.

Clearly, the S & P Notes of May 24, 2018 and May 9, 2019 overwhelming support the Town has the ability to pay. This information is discussed in detailed above so it will not be reiterated here but the Panel highlights the following points to back up our determination Plymouth has the ability to pay. One, the Town has a strong economy despite the fact that the Power Station, which is the largest taxpayer, will be steadily decreasing payments to Plymouth. Two, Plymouth was also proactive to lessen the impact of decommissioning the Power Station by establishing a Special Purpose Mitigation Fund of \$4.89 million. Three, the Town has a strong management structure that provides good financial policies and procedures and follows recommended guidelines to maintain that good financial standing. Four, Plymouth has a strong budgetary performance in FY2018 by having a balanced operating result in the general fund of 0.1% of the expenditures and a slight surplus across all governmental funds of 1.1% of expenditures. Five, real estate and personal property taxes generated 68.8% of the general fund revenue and property tax collections have averaged 98% for the last three years. Six, financial officers are predicting there will be another surplus in FY2019.

Seven, Plymouth's budgetary flexibility is very strong because of available FY 2018 fund balances of 15% of the operating expenditures or \$37 million. Eight, the Town is maintaining a 3.8 million unused levy capacity in FY2019, which is about 1.5% of the general funds expenditures. Per the S & P Note, unused levy capacity is viewed as additional operating flexibility because the levy cap can be raised without an operating override. Nine, Plymouth's liquidity is very strong considering that available cash is 18.8% of the total governmental-fund expenditures and 2.9x governmental debt service in FY2018. Ten, the S & P Note expressed concern over the Town's weak debt-and-contingent-liability profile and specifically it sees the large pension and OPEB obligations as a credit weakness because Plymouth does not have a plan to address the obligation. Despite this concern, S & P does not expect to change the AA+/Stable rating during FY2020 and FY2021.

Although, the Panel understands that portions of available cash should not be used for recurring expenditures such as wage adjustments, the Panel determined given

the Town has an S & P AA+/Stable rating, a strong economy, a FY 2018 and FY2019 surplus and available cash then Plymouth has the ability to pay a reasonable compensation adjustment, if it is determined by the Panel that is appropriate.

ISSUE #1

ARTICLE XXXII – DURATION CLAUSE

The Parties' proposals called for the duration of the Agreement to be July 1, 2018 to June 30, 2021.

Award

The Panel awards the duration of the Agreement shall be July 1, 2018 to June 30, 2021.

ISSUE #2

ARTICLE XXIV – WAGES

COLA Increases & Step Increases

Current Language

Section 1: The parties agree to the following wage increases

FY 16 (effective 7/1/15)	increase of 2%
FY 17 (effective 7/1/16)	increase of 2.5%
FY 18 (effective 7/1/17)	increase of 3%

Union Proposal

The Union proposed the following at the 3(a) hearing:

Annual wage increases effective:

July 1, 2018	3%
July 1, 2019	3%
July 1, 2020	3%

Step Increases – additional step raises at year ten, 3% above current top step and at year fifteen, 3% above the new ten step.

After the Superior Officers were awarded a 3.5% across-the-board increase effective July 1, 2017, in addition to the 3% COLA increase previously negotiated by the Parties, the PPB altered their proposal:

1. The Union will accepted the Town's proposal of a 2% COLA increases on July 1, 2018, July 1, 2019 and July 1, 2020.

2. Based on the results of the wage Study and the Superior Officers' Award, the PPB proposed that the Patrol Officers receive a 3.5% across-the-board increase retroactive July 1, 2018, which is the same increase as the Superior Officers received effective July 1, 2017 but one year later.
3. The Union would withdraw their Step Increase proposal cited above.

Town Proposal

The Town proposed the following wage package at the 3(a) hearing:

- 1) July 1, 2018 2%
- 2) July 1, 2019 2%
- 3) July 1, 2020 2%

Union Position

PPB argued that the Study and the Superior Officers' Award support their proposal. The Study found that police salaries were lower when compared to the comparables communities and the Study did not make a distinction between Patrol and Superior Officers. The Study recommended an eight step salary matrix with a maximum salary increase over and above the current maximum by 6.3%. When the Study was released the Union would have requested a reopener on the 2015-2018 contract but they did not have an economic wage reopener like the Superior Officers. However, President Kelly stated that the former president had discussed with the Town's Assistant Town Manager that the results of the Study would be dealt with in the next round of negotiations.

During negotiations, the Union submitted various proposals requesting a 15% wage increase to make up for the disparity highlighted in the Study; therefore, contrary to the Town's argument their proposal for 5.5%, 2% and 2% is not regressive because it is only 9.5%. The Town's pattern wage package for other bargaining units in Plymouth of 2% for FY19, FY20 and FY21 does not acknowledge the disparity because it does not provide the compensation needed to create parity between the Patrol Officers and the Superior Officers or address the lag between Patrol Officers' total compensation to compete with the comparables in the Study. Parity with other employees in Plymouth who perform similar services, i.e. Superior Officers, and public and private employees in comparable communities are two of the factors to be given weight in the JLMC statute. The Superior Officer's Arbitration Panel found based on the result of the Study that Sergeants and Lieutenants lagged behind the comparables 4.8% and 5.9% respectively. Accordingly, the Panel awarded a 3.5% across-the-board increase effective July 1, 2017, in addition to the 3% COLA already negotiated by the parties on the same date.

The Union maintains that the Patrol Officers' total compensation, excluding Charlton, lags 14% behind, which is even further behind the comparables than the

Superior Officers. Also, the comparable communities have been receiving wage increases beyond FY18 and other economic benefits, e.g. Taunton received a substantial increase in night shift differential; Weymouth received a 5% hazardous duty stipend, etc., while Plymouth's Patrol Officers have not. PPB contends that even if Plymouth's maximum education incentive column in the Study is raised to \$12,500 and Charlton is excluded the total compensation for Patrol Officers would still be 6.9% behind the comparables' total compensation. Therefore, no matter which way the study is manipulated it is evident Patrol Officers' wages should be raised by at least the 3.5% received by the Superior Officers. In addition, the Study supports the increase because "[A] competitive pay structure will allow the Town of Plymouth to be an effective recruiter in the market place, contribute to a reduction in employee turnover, and set the precedence to offer comparable base salaries for positions".⁶

PPB argued that increasing the Patrol Officers' base wage by 3.5% does not cause a ripple effect with other Town bargaining units. One, the Study found the total compensation of Plymouth's firefighters was competitive with the comparables given the average compensation of the comparables was \$4075 less than the Town's firefighters. Two, the Town's top step teachers were paid above the average comparable communities. Three, all but one of the Unions agreed in their Memorandums of Agreement that the wages they received covering July 1, 2018 to June 30, 2021 and with no change in health care would settle "any additional action and/or salary adjustment made as a result of the Study".⁷ Given that the other Unions agreed to this language and the 3.5% across-the-board wage increase for the Patrol Officers is based on the results of the Study, none of the Unions can come back at the end of their Agreements and request a similar increase. Four, each of the bargaining units received additional benefits, e.g. more personal days, less working days, increased call back pay, longevity increases, etc. to resolve any issues the Unions had with the results of the Study.

Based on the above, the Panel should award the 3.5% across-the-board increase effective July 1, 2018 and the 2% COLA increases for FY19, FY20 and FY 21.

Town Position

The Town requests that the Panel award the wage package, 2% COLA increase in FY19, FY20, FY21, received by all of Plymouth's bargaining units and not award the 3.5% across-the-board increase or the step increases. One, this is the second time in the past three contracts that the Patrol Officers have gone to JLMC to resolve their Agreement instead of negotiating a settlement. The Town argued by awarding the 3.5% across-the-board increase the Patrol Officers will have no reason to actually bargain to settlement in the future. Two, the Superior Officers had economic reopening language in their 2015-2018 Agreement and the Patrol Officers did not. Therefore, the factors

⁶ UX4F, p.16

⁷ UX7D, UX7F, UX7G, UX7H, and UX7I.

that allowed the Superior Officers to receive a market adjustment based on the Study's comparables are not present for the Patrol Officers. Three, the Panels should give substantial weight that all the other Town bargaining units, except for the Superior Officers who received more through the JLMC Award, agreed to 6% over three years. Consequently, awarding the 6% would maintain wage parity among the bargaining units. Four, the Union's proposal is regressive and was given in bad faith. Five, the cost of the proposal is unsustainable for the Town.

Plymouth maintains PPB cannot change its position on wage increases after the 3(a) because it violates JLMC Rule III (1). "To allow a party to change its position in such a significant manner after the JLMC has certified the issues for arbitration undermines the fundamental purposes and processes of the JLMC process and JLMC Statute, and cannot be permitted".⁸ The cost of the 5.5% wage increase or establishing a new Hazardous Duty Pay benefit of 3.5% into the base salary in year one of the agreement and its impact on subsequent year is more than double what the Town and the JLMC were anticipating based on the 3(a) hearing.

The Town contends the Union's new proposal is regressive, made in bad faith, a prohibited practice under Chapter 150E, Section 10(b) (3) and contrary to Section 9 of the JLMC statute, which provides procedures to resolve impasses. Accordingly, the Panel should heed findings in JLMC awards and other forums to resist validating regressive proposals and bad faith bargaining.⁹ PPB had the Study at the 3(a) hearing and submitted annual wage increases of 3% in FY19, FY20 and FY21 and a \$1200 Hazardous Duty Stipend. However, after the Superior Officers' Award was released their position changed significantly to a 5.5% increase in FY19 plus 2% in FY20 and FY21. The Parties never discussed this proposal and the Panel should not consider it.

Plymouth maintains the Union has presented internally inconsistent and unreliable information to show Plymouth's wages do not compete with comparable communities. PPB has given base salary figures that are not supported by evidence, i.e. Billerica, elevated Barnstable and Bourne's base salaries, had an incorrect maximum education incentive amount of \$7,500 for Plymouth when it is \$12,500 and did not take into account that Plymouth's Patrol Officers received a 3% wage increase in FY18 while the majority of the comparables received 2%. When these errors are corrected, the Town's total compensation is closer to the comparables than the Union portrays.

Finally, the JLMC statute identifies the factors to be given weight in determining an award, one of which is internal parity among other bargaining units within Plymouth. The Town argued that their proposal is fair and consistent with the wage increases of

⁸ Town Brief, p. 11.

⁹ Arbitrator Lawrence Holden, JLMC #12-2078 – City of Boston and Boston Police Benevolent Society (December 2015); MUP-5602 – County of Norfolk and Norfolk County Agricultural Federation of Teachers, Local 2335, AFT, AFL-CIO (January 1985); 4 MLC 1809 – Framingham School Committee (1978);

other bargaining units given they received 6% over the same three year period. By awarding Plymouth's proposal parity among the majority of employees will be maintained. "The principle of parity has been applied not only to and between a municipality's public safety units, but also among a town's other bargaining units in circumstances where there is no justification to deviate from the terms of already-accepted wage settlements."¹⁰ The Town presented three JLMC decisions to support their argument.¹¹

Discussion

The Panel acknowledges the Town's frustration with the changes the Union made to their proposal since the 3(a) hearing in November 2019 up to and including the date of the hearing. However, the Panel disagrees that the changes were regressive, made in bad faith, a prohibited practice under Chapter 150E, Section 10(b) (3) and/or violated the JLMC statute, Section 9. PPB stated their original total wage and compensation proposal was a 15% increase over what Patrol Officers were earning in FY18 and we did not receive evidence that the Union's proposals presented at the 3(a) hearing went above 15%. If this had happened then the Panel would agree PPB's proposal changes were regressive and made in bad faith. However, given it did not occur, the Panel has the authority to craft an award that takes into account all the evidence and the Parties' arguments to resolve the Parties' disputes.

The Town argued because the circumstances between the Superior Officers and the Patrol Officers were different, given the Superior Officers had an Economic Wage Reopener in their Agreement when the Study was released and the Patrol Officers did not, then a market adjustment is not applicable to the Patrol Officers. The Panel finds this argument to be unsubstantiated because the Study found in Recommendation 8.4:

In particular wages for police officers . . . appear to be somewhat lower as compared to the overall market. This is the case when looking at total other compensation for police officer. . . Continually paying below market could be problematic for recruitment, retention and moral of employees. At a minimum, these positions should match the market benchmarked. (Emphasis added)

¹⁰ Town Brief, pp. 16-17.

¹¹ Arbitrator Richard Boulanger, JLMC #1135F – City of Chelsea and Chelsea Firefighters, IAFF Local 937 (2013); Arbitrator Marc Greenbaum, JMLC #98-4F - City of Medford and IAFF, Local 1032 (1999); Arbitrator Sarah Garraty, JLMC #11-24F – City of Woburn and Woburn Firefighters Association, IAFF Local 971 (2013)

Also, the Study did not differentiate between Patrol Officers and Superior Officers; therefore, wages for all the police officers were lower when compared to the comparable communities. President Kelly testified without rebuttal that the Parties would discuss the results of the wage and benefit Study in the next round of negotiations, which is the July 1, 2018 to June 30, 2021 Agreement. The Panel understands that wage parity with other bargaining units in cities and towns can be taken into account when the facts arising from the wage dispute call for it; as Arbitrator Richard Boulanger, Arbitrator Marc Greenbaum and Arbitrator Sarah Garraty found in the three JLMC awards submitted by the Town.¹² However, based on the above, the facts here negate the need for internal wage parity for the Patrol and Superior Officers because of the Study.

Although the Town's argument that the Union presented inconsistent and unreliable information to show Plymouth's wage do not compete with the comparables may be true, the Panel believes it was not done intentionally. PPB used only the information that was provided to them in the Study. As was noted in the Superior Officers' Award if the Town has an issue with the FY17 maximum annual base salaries or school education maximum pay for new hires being incorrect the answer lies with the Study's HRS consultants who researched and acquired the rates. There is no evidence that Union purposely left the incorrect amounts to prove Plymouth's wages did not compete with the comparable communities. The only information the Superior Officers wanted changed¹³ was the maximum education incentive column because the amounts in the Study were not comparing apples to apples. The PPSOA did not change any other figures in the comparable wage and benefits charts on UX4, pages 82 and 83.

That being said, the Panel did check the Town's salary amounts for the FY17 base salaries for Barnstable and Bourne and corrected the chart. The Panel also increased the Patrol Officers' education incentive rate to \$12,500 pursuant to Arbitrator

¹² Ibid.

¹³ UX5A

Loretta Attardo arbitration award.¹⁴ The Panel did not change the FY17 base salary for Billerica even though the Town contended the figure was incorrect for two reasons. One, the Study, which was commissioned by Plymouth, stated \$67,964 was the FY17 base salary for Billerica and the Town did not correct the figure. Two, the Union submitted Billerica's 2013-2016 Police Officers' Agreement, and there was no evidence that the base salary was not the most current base salary. With regards to Plymouth's contention that PPB did not take into account that the Patrol Officers received a 3% in FY17 when the other comparables received a 2% is irrelevant given that all the base salaries were FY17 amounts, except for Billerica, which was FY16.

The Panel took the revised chart and recalculated the average figures and found, even though the Town's total compensation was closer to the comparables than the Union portrayed the Patrol Officers still lag behind the comparable communities by 5.5%. This percentage is more than the Sergeants and a little less than the Lieutenants, who also lagged behind the comparables and this Panel awarded the Superior Officers a 3.5% across-the-board increase retroactive to July 1, 2017.

Based on the Study's findings, the corrected data, the evidence and arguments submitted during the hearing proceedings and the Panel's determination that Plymouth has the ability to pay, the Panel awards a 3.5% across-the-board increase for Patrol Officer retroactive to July 1, 2018. The 3.5% increase is awarded to bring the Patrol Officer's maximum annual base salary up, which essentially eliminate the lag between Plymouth's Patrol Officer and the comparable communities. Furthermore, the increase maintains the wage parity between the Superior and Patrol Officers. It is the Panel's expectation that as a result of this increase and the remaining aspects of this award that in the next round of negotiations the Parties will not find themselves at the JLMC again but will settled their disputes at the bargaining table because the Patrol Officers' total compensation is now competitive with the comparable communities.

¹⁴ AAA #01-17-005-8809, Plymouth Police Brotherhood, MCOP Local 453 and Town of Plymouth (June 2018)

Award

Effective July 1, 2018 a retroactive 3.5% across-the-board increase and a 2% COLA increase for a total of 5.5% shall be implemented. Effective July 1, 2019 and July 1, 2020 respectively a 2% COLA shall be implemented.

ISSUE #3

ARTICLE IV – SPECIAL LEAVE

Current Language

Each employee in the bargaining unit may be granted special leave with pay for a day on which he is able to secure another employee to work in his place, said leave to be for an unusual occurrence or for some purpose not in the normal course of events. This leave will be allowed providing:

* * *

F. All shift swaps shall be repaid within sixty (60) days.

Town Proposal

The Town proposes that Article IV be amended to read as follows:

- F. All shift swaps shall be repaid within sixty (60) days.
- 1) The 60-day time period for payback of a swap begins on the day the first swap is worked.
 - 2) If an officer participating in a swap is unable to repay the swap due to injury or illness lasting over 2 weeks, which has rendered one of the officers involved in the swap incapable of participating in a swap, then the 60-day payback period will resume once the injured or ill officer returns to work in a capacity where the officer can participate in swaps.
 - 3) Officers who participate in a swap which is not repaid within the 60 day time period will be sanctioned by being barred from participating in any new swaps (either the sanctioned officer working in place of another officer or having another officer work in place of the sanctioned officer) for a period of 60 days from the date the SWAP is repaid.
 - 4) Any officer who is sanctioned according to Section 3, will only be barred from participating in new swaps during the sanction period. Officers who are in a sanction period will not be barred from repaying swaps which were initially worked prior to the beginning of the sanction period or having owed swaps repaid.

- 5) The chief of police, at his/her discretion, may extend the 60-day payback period if unusual circumstances arise.

Union Proposal

Current contract language.

Town Position

The Union acknowledged they were agreeable to the Chief's new language subject to further discussion on adding detailed procedural swap language. The Town offered the cited language back in July 2018 and maintains that PPB has had enough time to review it and identify any problems. Therefore, the Panel should award the Chief's language.

Union Position

The Union contends if an agreement was reached on wages during negotiations then the Chief's new language regarding the procedure to limit swaps to 60 days would have been acceptable to PPB with the proviso that the details be worked out by the parties.

Discussion

In Issue #2 – Wages, the Panel has awarded the 3.5% across-the-board increase as proposed by the Union. PPB has had time to review and comment on the language; therefore, the Chief's language is awarded.

Award

The following language shall be added to **Article IV – Special Leave, Section F:**

- 1) The 60-day time period for payback of a swap begins on the day the first swap is worked.
- 2) If an officer participating in a swap is unable to repay the swap due to injury or illness lasting over 2 weeks, which has rendered one of the officers involved in the swap incapable of participating in a swap, then the 60-day payback period will resume once the injured or ill officer returns to work in a capacity where the officer can participate in swaps.
- 3) Officers who participate in a swap which is not repaid within the 60 day time period will be sanctioned by being barred from participating in any new swaps (either the sanctioned officer working in place of another officer or having another officer work in place of the sanctioned officer) for a period of 60 days from the date the SWAP is repaid.

- 4) Any officer who is sanctioned according to Section 3, will only be barred from participating in new swaps during the sanction period. Officers who are in a sanction period will not be barred from repaying swaps which were initially worked prior to the beginning of the sanction period or having owed swaps repaid.
- 5) The chief of police, at his/her discretion, may extend the 60-day payback period if unusual circumstances arise.

ISSUE #4

ARTICLE IX – SICK LEAVE

Limiting Days for Family Illness

Current Language

Section 1. Sick leave shall be limited to absence from duty without loss of pay when an employee or a member of his immediate family as defined in Article XIII, is sick, injured, or disabled, or is required to undergo emergency medical, optical or dental treatment, when such treatment cannot be accomplished during off duty hours.

Sick leave may not be used for any other purpose except illness, injury or disability which prevents the employee from performing his/her normal duties. With regard to an employee's use of sick leave arising out of a family member's illness, injury or disability, the reporting and notice requirements of this Article will still apply.

Town Proposal

The Town proposed the following changes to the current language:

Sick leave may not be used for any other purpose except illness, injury or disability which prevents the employee from performing his/her normal duties. ~~With regard to an employee's use of sick leave arising out of a family member's illness, injury or disability, the reporting and notice requirements of this Article will still apply.~~ Employees may use a maximum of five (5) days of sick leave for the illness of a member of the household or family member each fiscal year.

Union Proposal

Current contract language.

Town Position

The majority of Plymouth's bargaining unit limits the number of sick days employees can use for family illness. The purpose of this proposal is to establish parity with the other bargaining units.

Union Position

The Union is not opposed to the limitation if the Town agrees to include an exception for long term illness. Based on discussions during the parties' negotiations PPB believes Plymouth would agree to an exception based on the definition of "serious health condition" in the Family Medical Leave Act.

Discussion

The Panel found the Town's proposal to limited the number of family sick days for parity purposes is reasonable as is the Union's proposal to have an exception for long term illness. Therefore, the Panel merged the Parties' proposals by adding the following language to Article IX – Sick Leave, Section 1:

Section 1. Sick leave shall be limited to absence from duty without loss of pay when an employee is sick, injured, or disabled, or is required to undergo emergency medical, optical or dental treatment, when such treatment cannot be accomplished during off duty hours. Sick leave may not be used for any other purpose except illness, injury or disability which prevents the employee from performing his/her normal duties.

Employees may use a maximum of five (5) days of sick leave for the illness of a member of the household or family member defined in Article XIII each fiscal year. Upon an employee's request, the Chief of Police may approve additional sick leave for the employee when a member of the household or family member has a long term illnesses.

Award

The Panel awards a combination of both Parties' proposals by deleting the first two paragraphs in Article IX – Sick Leave, Section 1 and replacing it with the following language:

Section 1. Sick leave shall be limited to absence from duty without loss of pay when an employee is sick, injured, or disabled, or is required to undergo emergency medical, optical or dental treatment, when such treatment cannot be accomplished during off duty hours. Sick leave may not be used for any other purpose except illness, injury or disability which prevents the employee from performing his/her normal duties.

Employees may use a maximum of five (5) days of sick leave for the illness of a member of the household or family member defined in Article XIII each fiscal year. Upon an employee's request, the Chief of Police may approve additional sick leave for the employee when a member of the household or family member has a long term illnesses.

ISSUE #5

ARTICLE IX – SICK LEAVE & ARTICLE XIX - VACATION

New Language - Leave With Out Pay - No Sick Leave and Vacation Accrual

Current Language

No current language in Article IX – Sick Leave or Article XIX – Vacation.

Town Proposal

The Town proposes that employees shall not earn or accrue sick leave or vacation time while they are on unpaid status effective 7/1/18. The following language will be added to Article IX and Article XIX respectively:

Employees shall not earn or accrue sick leave while they are on unpaid status.

Employees shall not earn or accrue vacation time while they are on unpaid status.

Union Proposal

No change from current language in Article XXVI – Pro-Rated Benefits.

Town Position

The Town stated that “the purpose of [the proposal] is not intended to limit accrual of paid time off for any employee absence, merely those absences under circumstances where state law, Town policy or the CBA dictate that said employee should not be compensated while retaining employment status”.¹⁵ Plymouth argued employees who are on unpaid leave and not available to work should not accrue benefits because the Town’s cost double. One, the cost doubles when Plymouth has to pay another employee overtime to fill the vacant shift when the employee is on unpaid leave and two, when the employee uses the accrued leave in the future given the Town has to pay overtime again to fill the vacant shift. By the Panel awarding the proposed language, employees will only receive benefits when they are actually working. This would result in increasing efficiency while reducing costs.

Union Position

President Kelley stated that the proposal was vague as it was unclear what the Town was seeking to accomplish. PPB believed the proposal meant to eliminate a long term benefit for employees who are sick or on injured-on-duty leave. In addition, Article XXVI – Pro-Rated Benefits already reduces the amount of sick and vacation leave, as well as clothing allowance, that employees receive because they are absent from work whether they are paid or not. The Union contends the evidence was insufficient to

¹⁵ Town Brief, p. 23.

establish there was a problem with the current language or why the language was inadequate; therefore, the Panel should reject the proposal.

Discussion

Due to the vagueness of the proposal and that only one Town bargaining unit, SEIU, has agreed to the language, the Panel does not award it. If the Town is seeking to remove a long term benefit for employees who are sick or on injured-on-duty leave then the Panel concurs with the Arbitration Panel in JMLC #14-4174 - City of Somerville and Somerville Police Employees Association (December 22, 2016) that:

. . . large gains or major concessions are not achieved in the format of arbitration. An arbitrator is reluctant to modify contract provisions where the parties, in past years, have already reached agreement, the contract article has been in the contract for a considerable period of time, and there has been no ascertainable problem with the contract language.¹⁶

Award

The Panel does not award the Town's proposal that employees do not receive sick leave or vacation accrual when an employee is on leave without pay.

ISSUE #6

ARTICLE XII – COURT TIME

(See Appendix B)

Current Language

Any employee who is required to attend Court after his regular shift or on his day off for matters which arise out of the performance of his/her duty for or on behalf of the Town of Plymouth, or as a result of being sent to another town to provide mutual aide, will be paid at a rate of time and one-half for such time in Court, and shall be guaranteed a minimum of three (3) hours of pay at this rate.

Union Proposal

Change current 3 hour minimum to 4 hours minimum.

Town Proposal

No change to the current contract language of a three (3) hour minimum.

Union Position

The Study showed all the comparables communities receive a four (4) hour minimum. Accordingly, for external parity purposes the Panel should award the Patrol

¹⁶ JLMC #14-7174, p. 2.

Officers a one (1) hour increase from three (3) hours to four (4) hours for time spent in court.

Town Position

Plymouth argued neither the Superior Officers nor the Town's firefighters have a four (4) hour minimum for Court Time. Patrol Officer seek parity in wages with the Superior Officers; and the Superior Officers only get three (3) hours. Internal parity is consistent now and should remain intact. If Patrol Officers receive the additional hours it will be difficult for Superior Officers to work with the Patrol Officers and perform the same duties but not receive the same court time pay.

Discussion

The Study's comparable communities evidence supports the Panel to award the Union's proposal to increase the three (3) hours Court time to four (4) hours even though the Superior Officers and firefighters only receive three (3) hours.

Award

The Panel awards the Union's proposal of increasing the court time hours from three (3) to four (4) hours effective March 4, 2020.

Issue #7

Article XX – Educational Incentive Pay

Current Language

* * *

Section 6. Effective upon ratification only permanent full-time police officers hired prior to July 1, 2012, shall be eligible for benefits under sections 1 through 5 above. Employees hired as full-time police officers by the Town of Plymouth after July 1, 2012 shall be eligible for annual payment of \$5,000 for a bachelor's degree in law enforcement or criminal justice, and \$7,500 for a master's degree in law enforcement or criminal justice or a Law degree. In order to receive this benefit, all such degrees pursuant to this section must be received from an accredited institution of higher learning accredited by an accrediting agency listed as nationally recognized by the United States Secretary of Education.

Union Proposal

Effective July 1, 2018 change flat rates for Non-Quinn to 10% for a Bachelor's Degree and 20% for a Master's Degree.

Town Proposal

No change from current contract language.

Union Position

The Union argued the proposal corrects a parity issue with the Superior Officers receiving Quinn Bill educational benefits. More than 2/3 of Patrol Officers or 63 members received the lower flat rate of \$5000 for a Bachelor's Degree (BA) as opposed to the 20% that Superior Officers receive. Consequently, Plymouth is not attracting educated officers because total compensation is low when compared to the comparables.

To award the proposal there would not be an undue economic cost on the Town because only 15 of the 63 Patrol Officers who are eligible for education incentive receive it. There are five members who receive \$12,500 (BA + MA), nine that receive \$5000 and one member who receives \$7,500. In addition, the Study confirmed that the Town's understanding that the low wages in Plymouth were hurting the recruitment and retention of employees. If the Town wants to attract good candidates then it needs to pay more for educational incentives. Finally, the proposal is supported by the internal comparables, beyond the Superior Officers, because all the other bargaining units received additional benefits beyond the pattern wage package.

Town Position

Plymouth acknowledges that 66% of the Patrol Officers are too new and recently completed school to obtain the same benefit Superior Officers receive. However, the parties negotiated a flat rate, not a percentage at a cost to the Town. Rather than seek the percentages Superior Officers receive that results in a substantial cost to Plymouth in this Agreement and subsequent Agreements, PPB could have proposed an increase in the flat dollar rates. The parties negotiated a flat dollar education incentive and as a result, the Town can predict future cost where percentages will change based on COLA increase and other negotiated benefits. Accordingly, the Panel request that the Panel retain the current benefit.

Discussion

The Panel awarded the 3.5% across-the-board increase and increase the minimum Court Hours retroactive to July 1, 2018 to raise the Patrol Officers' total compensation and eliminate the wage disparity between Plymouth and the external comparables in the Study. Accordingly, the Panel sees no compelling reasons to award PPB's proposal. If the Union seeks an increase in the current education incentive this must be done at the bargaining table through the give and take of negotiations and not through a JLMC Interest Arbitration Award. New Patrol Officers received the current benefit at the bargaining table and any changes should occur there in the future.

Award

The Panel does not award the Union's proposal to change the flat dollar educational incentive pay to percentages.

ISSUE #8

ARTICLE XXV – NIGHT SHIFT DIFFERENTIAL

Current Language

Officers are eligible to be paid compensation in addition to their base salary for scheduled regular shifts between the hours of 3:30PM and 8:00AM.

All officers who are regularly assigned to a shift between those hours shall be paid additional compensation in the amount of 2 ½% of the officer's annual a base salary. Amount will increase to 3% effective July 1, 2004. Amount will increase to 4% effective January 1, 2015. The amount will increased to 5% effective July 1, 2016. The amount will increase to 5.5% effective July 1, 2017. The amount will increase to 6% effective June 30, 2018.

The differential shall not be used in the calculation of any overtime rate of compensation

Union Proposal

The Night Shift Differential shall increase:

July 1, 2018 increase from 6% to 6.5%

July 1, 2019 increase from 6.5% to 7%

July 1, 2021 increase from 7% to 8%

Town Proposal

No change to current contract language.

Union Position

The Panel should award the proposed increases for several reasons. One, the current night differential rates are significantly behind Weymouth, Barnstable, and Billerica. In addition, Patrol Officers rates are now behind Taunton based on their recent July 1, 2017 to June 30, 2020 Agreement where Patrol Officers' night shift differential increased from 3% to 7% to 9%. Two, night shift differentials stem from the base salary rate and the base salary of the comparable communities have been increasing while Plymouth's wages have been stagnant. Finally, all of the other bargaining units in the Town have settled their Agreements and each of the units received additional benefits over the pattern wage package. The fact that this occurred

justifies the proposed increase in the Patrol Officers' night shift differential and the Panel should award PPB' proposal.

Town Position

Plymouth argued that the Union did not present significant evidence to support their proposed increase to night shift differential. Currently, Patrol Officers' differential is higher than the Superior Officers and the firefighters by .5% and 3.5% respectively. When looking at the comparables the Town's rate of 6% is higher than the majority of the communities. The proposal equates to a substantial wage increase for the majority of the bargaining unit at a cost of \$62/week that is not justified; therefore, the Panel should not award PPB's proposal.

Discussion

As discussed above, the Panel awarded the 3.5% across-the-board increase in the first year of the Agreement so the Patrol Officers' total compensation competes with the Study's comparable communities. Based on the evidence and arguments of the Parties, the Panel finds no compelling reason to award the Union's proposal and the current night shift differential shall remain at 6%.

Award

The Panel does not award the Union's proposal to increase the Patrol Officers' night shift differential.

Issue #9

Article XL – Medical Stipend

New – Hazardous Duty Stipend

Current Language

None

Union Proposal

Add a 3.5% Hazardous Duty Stipend into the base salary effective July 1, 2018.

Union Position

The Union stated they would bypass this proposal if the Panel awarded the 3.5% across-the-board wage increase retroactive to July 1, 2018 in addition to the 2% COLA increase effective the same date.

Town Position

The Union's proposal has fluctuated over the course of negotiation, during mediation and at the arbitration hearing. PPB's current proposal to add a new 3.5 Hazardous Duty Stipend into the base salary effective July 1, 2018 is unreasonable and more than the majority of the comparables. Consequently, the Panel should denied the Union's proposal.

Discussion

The Panel has awarded the 3.5% across-the board increase retroactive to July 1, 2018 in addition to the 2% COLA increase effective the same date. Accordingly, the PPB's proposal has been withdrawn.

Award

The Panel does not award the Union's Hazardous Duty Stipend proposal because it has been withdrawn.

ISSUE #10 **IMPLEMENTING A BI-WEEKLY PAYROLL**

Current Language

None

Town Proposal

The Town proposes changing to a bi-weekly payroll rather than a weekly payroll.

Union Proposal

No change to current weekly payroll period.

Town Position

The purpose of the Town's proposal is to increase efficiency and reduce administrative cost. In discussion with the Union, they are not opposed to the change if there can be a reasonable period to adequately notify and prepare Patrol Officers that the biweekly payroll is going to occur. PPB believes this is necessary because members may have to financially adjust to receiving their paychecks every other week. PPB has not defined what the reasonable period is and the Town wants to implement the biweekly payroll period as soon as practicable and seeks a brief notice period.

Given the Union is not opposed to the change the Panel should award the proposal with a brief notice period.

Union Position

The Town will receive significant financial and administrative savings with the award of this proposal. PPB would agree if they received a significant wage package, employees are given reasonable notice and all other unions in Plymouth must agree to the change.

Discussion

The Panel awards the Town's bi-weekly payroll period proposal, which shall be implemented 12 weeks after the Patrol Officers and the Union have been notified of the change.

Award

The Panel awards the Town's biweekly payroll period proposal, which shall be implemented 12 weeks after the Patrol Officers and the Union have been notified of the change.

SUMMARY OF AWARD

Issue #1: Article XXXII – Duration Clause

The Panel awards the duration of the Agreement shall be July 1, 2018 to June 30, 2021.

Issue #2: Article XXIV – Wages - COLA Increases & Step Increases

Effective July 1, 2018 a retroactive 3.5% across-the-board increase and a 2% COLA increase for a total of 5.5% shall be implemented. Effective July 1, 2019 and July 1, 2020 respectively a 2% COLA shall be implemented.

Issue #3: Article IV – Special Leave

The following language shall be added to Article IV – Special Leave, Section F:

- 1) The 60-day time period for payback of a swap begins on the day the first swap is worked.
- 2) If an officer participating in a swap is unable to repay the swap due to injury or illness lasting over 2 weeks, which has rendered one of the officers involved in the swap incapable of participating in a swap, then the 60-day payback period will resume once the injured or ill officer returns to work in a capacity where the officer can participate in swaps.
- 3) Officers who participate in a swap which is not repaid within the 60 day time period will be sanctioned by being barred from participating in any new swaps (either the sanctioned officer working in place of another officer or having another officer work in place of the sanctioned officer) for a period of 60 days from the date the SWAP is repaid.
- 4) Any officer who is sanctioned according to Section 3, will only be barred from participating in new swaps during the sanction period. Officers who are in a sanction period will not be barred from repaying swaps which were initially worked prior to the beginning of the sanction period or having owed swaps repaid.
- 5) The chief of police, at his/her discretion, may extend the 60-day payback period if unusual circumstances arise.

Issue #4: Article IX – Sick Leave – Limiting Days for Family Illness

The Panel awards a combination of both Parties' proposals by deleting the first two paragraphs in Article IX – Sick Leave, Section 1 and replacing it with the following language:

Section 1. Sick leave shall be limited to absence from duty without loss of pay when an employee is sick, injured, or disabled, or is required to undergo emergency medical, optical or dental treatment, when such treatment cannot be accomplished during off duty hours. Sick leave may not be used for any other purpose except illness, injury or disability which prevents the employee from performing his/her normal duties.

Employees may use a maximum of five (5) days of sick leave for the illness of a member of the household or family member defined in Article XIII each fiscal year. Upon an employee's request, the Chief of Police may approve additional sick leave for the employee when a member of the household or family member has a long term illnesses.

Issue #5: Article IX – Sick Leave – LWOP No Sick Leave Accrual and Article XIX–Vacation–LWOP No Vacation Accrual

The Panel does not award the Town's proposal that employees do not receive sick leave or vacation accrual when an employee is on leave without pay.

Issue #6: Article XII–Court Time

The Panel awards the Union's proposal of increasing the court time hours from three (3) to four (4) hours effective March 4, 2020.

Issue #7: Article XX–Educational Incentive Pay

The Panel does not award the Union's proposal to change the flat dollar educational incentive pay to percentages.

Issue #8: Article XXV–Night Shift Differential

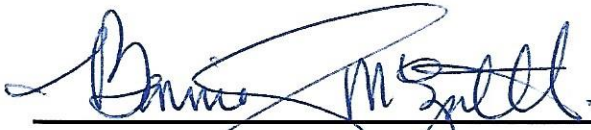
The Panel does not award the Union's proposal to increase the Patrol Officers' night shift differential.

Issue #9: Article XL–Medical Stipend- New-Hazardous Duty Stipend

The Panel does not award the Union's Hazardous Duty Stipend proposal because it has been withdrawn.

Issue #10: New-Bi-Weekly Payroll

The Panel awards the Town's biweekly payroll period proposal, which shall be implemented 12 weeks after the Patrol Officers have been notified of the change.



Bonnie J. McSpirtt, Neutral Arbitrator, Chair

3/4/20

Date



Frank G. Frederickson, Management Committee Member

3/4/20

Date



Michael Perreira, Labor Committee Member

3/4/20

Date