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**IN THE MATTER OF INTEREST ARBITRATION BETWEEN:**

**TOWN OF ARLINGTON, MASSACHUSETTS**

**AND**

**ARLINGTON POLICE PATROLMEN'S ASSOCIATION**

**JOINT LABOR-MANAGEMENT COMMITTEE  
FOR MUNICIPAL POLICE AND FIRE  
JLMC# 22-9174**

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**INTEREST ARBITRATION AWARD**

**FOR THE TOWN OF ARLINGTON**

**Attorney Nicholas J. Dominello, Valerio Dominello & Hillman, LLC**

**FOR THE ARLINGTON POLICE PATROLMEN'S ASSOCIATION**

**Attorney John O. Killian, McDonald Lamond Canzoneri, LLC  
Attorney Alan J. McDonald, McDonald Lamond Canzoneri LLC**

**ARBITRATOR**

**Bonnie J. McSpiritt**

**HEARING DATE**

**May 2, 2024**

**Introduction**

The Town of Arlington, MA (Arlington or Town) and the Arlington Police Patrolmen's Association (APPA or Association) are parties to a collective bargaining agreement (Agreement) dated July 1, 2018 to June 30, 2021, which was awarded from a Joint Labor Management Committee (JLMC) Interest Arbitration Panel, Case# JLM

19-7773 on February 10, 2021. The parties began bargaining for a successor Agreement but were unable to reach a settlement. A petition was sent to the JLMC to resolve the outstanding issues. The JLMC voted to exercise formal jurisdiction in the parties' dispute, but a settlement could not be reached. A JLMC 3A hearing was conducted and the parties proceeded to interest arbitration.

The parties met with the Tripartite Interest Arbitration Panel consisting of Management Committee Member Richard Tranfaglia, Labor Committee Member Alan Andrews, and Neutral Committee Member Bonnie J. McSpiritt on May 23, 2023. The outstanding certified issues were:

Town of Arlington

Wages

1. Global Positioning System (GPS)
2. Body Worn Cameras
3. Education Incentive
4. Travel Restrictions
5. Direct Deposit/Electronic Pay Advices

Arlington Police Patrolmen's Association

Wages

1. Step Increment
2. Article XII – Paying Police Details
3. Article XIX - Stipends and Differentials

Prior to the beginning of the hearing, the parties met without the Panel Members and reached a Memorandum of Agreement (MOA). In the MOA, the parties agreed to the following regarding the Town's second issue above, Body Worn Cameras:

### **Body Worn Cameras**

The Union agrees that the Town has satisfied its bargaining obligations pursuant to MGL c. 150E regarding the implementation of body cameras and may direct officers to utilize body worn cameras consistent with Arlington Police Department policy.

The Town anticipated proposing a Body Worn Camera Policy consistent with recommendations offered by the MA POST Commission. The Town and Union will work collaboratively to adopt a policy. The parties agree that the Town shall provide a first draft policy and the parties shall have 30 days from that date to come to a mutually agreeable policy (this timeline may be extended by mutual agreement of the parties).

Should the parties be unable to arrive at a mutually agreeable policy the parties shall submit their last best offers (total policies) to the JLMC appointed Arbitrator McSpirtt. The arbitrator shall select either the Town's policy or the Union's policy in totality. This shall be an expedited arbitration where each side shall be provided a maximum of two hours to present their case.

Body-worn cameras shall be implemented at any date at the Town's discretion following final agreement to a policy or a policy implemented by the arbitrator. The Town need not require body-worn cameras to be implemented immediately once the policy is a final agreement or a policy is implemented by the arbitrator. The Town may wait to implement body-worn cameras due to funding issues or potential grant opportunities.

Subject to Town Meeting approval (to be held in Fall of 2023), the Parties agree that effective the next regular payroll following the date the policy is a final agreement or a policy is implemented by the arbitrator, current bargaining unit members, as of that date, shall receive a two percent (2.0%) increase to their base salary effective on the date. This two percent (2.0%) is subject to Town Meeting approval and no employee shall receive an increase in pay until after the Fall of 2023 Town Meeting.

The two percent (2.0%) increase is not retroactive to July 1, 2021; however, it shall be retroactive to the date the policy is agreed to by the parties or issued by the arbitrator.

The Parties agree that body-worn cameras shall be used on-shift and are not limited to training and testing purposes.

Over the next year, the parties worked on creating a new BWC Policy, and I checked on their progress periodically. On January 6, 2024, Attorney Dominello informed me, with copies to Attorney McDonald and Attorney Killian, and JLMC representatives, that the parties were seeking my assistance to resolve the final aspect of the BWC Policy. I responded to the parties and a hearing date was set for May 2, 2024. On that date, evidence and testimony was presented through the Association's witness, Attorney McDonald and the Town's witness, Chief of Police Juliann Flaherty. The parties agreed to submit briefs on or before June 21, 2024, and I informed the JLMC of the status of the hearing, the briefing schedule and that I received the briefs on the set date.

### **BWC Policy**

After reviewing the BWC Policy, the parties have collaboratively created a comprehensive Policy, and I commend the parties for what they have accomplished. The two proposals from the Town and the Association, are the same except that the Association proposed an additional article at the end of the Policy to incorporate the BWC Policy into the body of the Agreement. Article XIII reads:

The BWC Policy will be added to the contract as an independent article. However, after operating under its terms for at least six months, either party may request an amendment of its terms provided that the proposed amendments are operationally reasonable and do not adversely affect the material interests or protections of the other party. In such cases, the party to whom the proposed amendments are addressed will not unreasonably reject the proposed amendments. Otherwise, the terms and conditions of deployment of the cameras as reflected in the BWC Policy shall remain in force and effect until amended through the successor contract bargaining.

### **APPA Position**

The Association argued that throughout the bargaining of the BWC Policy, the APPA consistently proposed that the Policy would be incorporated into the Agreement while the Town consistently proposed that it would be an independent policy. The Town's argument that the APPA's proposal is not substantively arbitrable is meritless. The Town did not limit the scope of the bargaining or the Policy in the MOA. Implementation of the BWC Policy affects the terms and conditions of employment over the use of the cameras, discipline imposed, and the right to review the material on the cameras. The Town proposed to have a BWC Policy, but never bargained over the issue prior to the MOA. All the bargaining occurred after the MOA was reached, and the arbitrator is not limited to incorporate the Policy into the Agreement.

The Association asserted that their proposal should be awarded for the following reasons. The BWC Policy was created through prolonged bargaining that will be concluded by an arbitrator's decision. If the Policy is not in the Agreement, then the Town can modify its subject to impact bargaining. In addition, compatibility with other communities is an interest arbitration factor, and the evidence submitted established that the BWC Policy should be in the Agreement. The APPA submitted the following evidence.

1. The JLMC Panel under neutral Arbitrator Theodore O'Brien in Town of Brookline and Brookline Police Union, JLMC# 22-9158, awarded the implementation of a body camera policy that was added to the parties' agreement.
2. The Town of Needham has body camera language in Article 30 – Miscellaneous Provisions, Section 13 of their 2022-2025 Agreement. The language states that a camera policy will not be implemented without agreement between the parties

on the terms and conditions that are used. To date, a body camera policy has not been implemented in the Town, but that is irrelevant based on the agreed upon language.

3. The City of Somerville and the Somerville Police Employees Association agreed to a BWC Policy that was incorporated into their 2015-2018 and 2018 - 2021 Agreements.
4. In addition, Attorney McDonald testified that the Commonwealth's Department of Corrections and the Massachusetts Correction Officers Federated Union (MCOFU) reached an MOA on a BWC Policy on October 18, 2023. The Policy will be placed in the integrated Agreement, and correction officers are currently using body cameras. To date, there have been no requests to negotiate the BWC Policy.

Based on the above, a Policy can be incorporated into an Agreement because "[T]here is no prevailing condition of body camera policies existing exclusively outside Agreements".<sup>1</sup>

The Association also maintained that Chief Flaherty's testimony regarding receiving information from eleven (11) Police Chiefs who had BWC Policy that were not included in the Agreements, is inaccurate based on the information contained in the parties' stipulation regarding the eleven communities. APPA reported that nine (9) of the eleven (11) communities have an agreement permitting body cameras.<sup>2</sup> Four (4) of the eleven (11) communities do not have a Policy.<sup>3</sup> In two (2) of the communities,

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<sup>1</sup> APPA Brief, p. 8.

<sup>2</sup> The communities of Beverly, Fitchburg, Lowell, Lynn, Malden, Revere, Salem, Somerville and Taunton reference body cameras in their Agreements or MOAs. Brockton and Cambridge do not.

<sup>3</sup> The communities of Beverly, Brockton, Cambridge and Revere do not have a Policy and Fitchburg Lowell, Lynn, Malden, Salem, Somerville and Taunton have Policies.

Somerville and Lynn, BWC Policies are referenced in their Agreements.<sup>4</sup> Also, beyond the eleven (11) communities, the Town of Medford has a BWC Policy that is not incorporated into their Agreement. Therefore, the Association maintains that the evidence established that there was no prevailing standard that BWC Policies are outside the collective bargaining agreement but shows there are mixed approaches to how the Policy is incorporated.

APPA argued their proposal is a reasonable compromise which protects both police officers and the Town alike and should be awarded. The Association contends that Article XIII addresses the Town's interest in making changes to the Policy, and the concerns raised by the Town are insufficient to deny the inclusion of the language. The parties have included other major comprehensive terms and conditions of employment into the Agreement and dealt with changes without unreasonable delay. Based on the above, APPA respectfully requests that their proposal be awarded and incorporated into the Agreement.

### **Town of Arlington Position**

The Town argued that APPA's proposal is not procedurally or substantively arbitrable and outside the scope of the MOA. The incorporation of Article XIII into the Agreement will result in a multi-step, subjective process that would significantly restrict the ability to modify the BWC Policy in the future. The parties' practice is that operational policies are not integrated into the Agreement. When a change occurs in a

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<sup>4</sup> The communities of Fitchburg, Lowell, Malden, Salem and Taunton do not reference their Policies in their Agreements.

Policy, members of the Department must provide input which is received and considered prior to any modification. Also, the language in Article XIII language is ambiguous and will result in costly litigation and delay. The concerns raised by the Association do not outweigh the cost and delay. In addition, APPA did not establish the language was present and/or successful in any comparable community or Employer. Arlington asserts that the Association should not obtain through arbitration that which they could not secure at the bargaining table.

APPA's Article XIII proposal requires a duty on the parties to confer and bargain over any modification before it can be implemented. The language does not contain an exemption from the process when changes must be made quickly, resulting from accreditation standards, civilian or officer safety concerns, and/or changes in laws or government entities. The Association's comparison of the BWC Policy with the Agreement's Drug and Alcohol Use Policy is incorrect. The BWC Policy is an operational policy regarding equipment, and the Drug and Alcohol Use Policy is a personnel policy concerning health and safety that is tied to the Department's Rules and Regulations, not operational policies. The Drug and Alcohol Use Policy also deals with testing procedures for employees, which is a mandatory subject of bargaining.

As mentioned above, given that the Article XIII language is not in any collective bargaining agreements that were cited, nor any other Agreements, the evidence does not support that the language should be integrated into the parties' Agreement. The Town maintains that the APPA's reliance on agreements reached with the Towns/Cities of Brookline, Needham, and Somerville, and the Commonwealth's Department of



Corrections is misplaced. Needham is not actively using body cameras, and they do not have a BWC Policy in place. In addition, the language in the Needham Agreement does not state that language would automatically be contained in their Agreement. As for the other three (3) Agreements, while there are BWC Policies incorporated into their Agreements, the language is significantly different from what the Association has proposed. Furthermore, only two of them, Brookline and the Massachusetts Department of Corrections, are currently using body cameras.

Regarding the eleven (11) communities identified by Police Chief Flaherty, the Town anticipates that APPA will argue that Beverly, Fitchburg, Lowell, Lynn, Malden, Revere, Salem, and Taunton all contain terms regarding body cameras in their agreements. Arlington maintains this argument is overly broad and does not speak to the issue of whether the BWC Policies are integrated into their Agreements. Out of the eight (8) towns/cities, only Lynn has incorporated their BWC Policy into their Agreement. In addition, the Town maintained that Lynn's language is more limited than the Association's proposal stating:

However, the Lynn MOA expressly reserves the existing management rights of the City with respect to the policy, thereby reserving the City of Lynn's ability to exercise its managerial rights to modify the policy so long as the City of Lynn meets its bargaining obligations under G.L. c. 150E. This renders the language distinct from the language proposed by the Union which would impose bargaining obligations beyond what is required by G.L. c. 150E on the Town with respect to prospective modifications to the Town's body worn camera policy.<sup>5</sup>

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<sup>5</sup> Arlington Brief, p. 10.

Arlington argued that APPA's position that the BWC Policy must be incorporated into the Agreement to prevent the Town from unilaterally modifying the Policy is meritless. Chief Flaherty's unrebutted testimony described the process of how operational policies are updated. The process requires Officers to provide feedback and the final modifications to the policies are not implemented until the feedback process is completed. This process was recently executed when the Drone and Handgun Mounted Lighting System Policies were implemented on August 1, 2023, and December 11, 2023, respectively.

Finally, the Town asserted because the Association's proposal contained a highly subjective and ambiguous procedure for future modifications to the BWC Policy, thus the arbitrator should reject APPA's proposal. Arlington contends that Article XIII will cause substantial delays, prevent modifications, and will result in substantial litigation. In the first step of APPA's proposal changes cannot be made in the first six months. Chief Flaherty testified that Malden Police Department, whose BWC Policy was not in their Agreement, had to make fourteen (14) modifications within the first six (6) months (TX6). After six (6) months, the Association proposes that amendments can be requested, but the amendments must be "operationally reasonable" and "not adversely" affect the "material interest" and "protections" of the other parties. Arlington argued the language is ambiguous because it is not defined, and the party seeking the amendment would be required to file for arbitration, and/or file a charge to obtain a definition based only on extrinsic evidence available.

If the parties were able to get beyond the first step, APPA's proposal states that the amendment will not be "unreasonably rejected". This language is also ambiguous because it is not defined, and it does not identify who determines if an amendment is unreasonably rejected. Furthermore, if the amendment were rejected then the party proposing the amendment would have to wait to bargain over the change until negotiations for a successor agreement began. Arlington maintains that the parties' history on reaching agreements on their own accord has not occurred without the assistance of the JLMC. Therefore, the implementation of any modification will be delayed until the whole Agreement is settled.

Based on the above, the Town respectfully requests that their proposal be awarded and the BWC Policy remains as an operational Policy and not incorporated into the Agreement.

### **Discussion**

Contrary to the Town's argument, the Association's proposal is procedurally and substantively arbitrable. The language in the parties' MOA does not expressly state or imply there was an agreement to integrate the Policy into the Agreement, but the MOA also does not contain language excluding the BWC Policy from the Agreement. Therefore, the parties' issue has been properly placed before me.

After determining this and in conjunction with the evidence and arguments, the Town's proposal is awarded. First, comparability evidence is a significant factor to be considered in interest arbitration. Here, the Cities of Lynn and Somerville and the Commonwealth's Department of Corrections agreed in their MOAs to have BWC

Policies incorporated into their collective bargaining agreements. Regarding the Town of Brookline, a similar situation did not occur. The JLMC# 22-9158 Interest Arbitration Panel members awarded integrating BWC into the parties' Agreement, because the Town proposed that it be added. There is no evidence that the police union opposed the integration, therefore, the Panels' award to add the policy was not a contentious award to make.

The Town of Needham was also used as comparability evidence. Currently, there is no BWC Policy, and police officers are not required to wear body cameras. In addition, the parties' language in the present Agreement does not guarantee that if a mutually agreed upon Policy is created that it will be incorporated into the Agreement. Furthermore, Lynn's MOA implies that despite the BWC Policy being in the Agreement that the City's rights, after bargaining any modifications that impact terms and conditions of employment, still exist. Finally, out of the five (5) Agreements, none of them have the same language proposed by the APPA in Article XIII.

Regarding the remaining nine (9) comparable communities<sup>6</sup> in the parties' stipulation, seven (7) communities reference body cameras in their Agreements or MOAs, two (2) of them do not have a BWC Policy, and none have integrated a BWC Policy into their Agreements. In addition, the Union raised that the City of Medford has a BWC Policy, but it is also not incorporated into their Agreement.

Based on the above, the Association's argument of there not being a prevailing standard of BWC Policies being outside collective bargaining agreements, but instead

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<sup>6</sup> Beverly, Brockton, Cambridge, Fitchburg, Lowell, Malden, Revere, Salem, and Taunton.

communities had mixed approaches, is meritless. Out of the fourteen (14) communities mentioned above plus the Commonwealth's Department of Corrections, eleven (11) do not have BWC Policies incorporated in their Agreements. Moreover, none of them have the language proposed by the APPA in Article XIII. On comparability evidence alone, there is no compelling reason to award the Association's proposed Article XIII.

Second, I concur with Arlington's argument that operational policies historically have not been placed in the parties' Agreement and that the BWC Policy is an operational policy. Article XXIV-Drug and Alcohol Use Policy regards testing procedures and is a mandatory subject of bargaining. The side letter agreement pertaining to the Town's Maternity/Paternity Leave Policy is a personnel policy and speaks to the benefits officers receive, e.g., length of leave, use of sick leave and health insurance coverage. No evidence was submitted that Article IV-Management Rights, Employer Obligations and Employee Benefits and Practices, Section 5-Assessment Centers, Article VIII-Personnel Interrogation Procedures, Article XII-Paying Police Details and Article XX-Education Incentive Pay were policies that were incorporated into the Agreement. While it is true, that the Articles are complex they regard personnel policies that address the employee-employer relationship. Arlington's BWC Policy specifically outlines operational procedures for how and when the cameras will be used, review of recordings, and storage, retention and release of recordings. Therefore, there is insufficient evidence that the BWC Policy should be incorporated into the Agreement.

Finally, turning to the Association's proposed Article XIII, Attorney McDonald testified that whether the language in Article XIII is incorporated into the parties'

agreement is irrelevant because any changes must be made through contract negotiations. If the changes have an impact on the terms and conditions of officers' employment, Attorney McDonald is correct, and APPA's rights are protected.

Therefore, there is no need to add Article XIII, which is laden with words and phrases that are ambiguous and will lead the parties to litigate needlessly if the BWC Policy needs to be modified. I acknowledge that the Town's current policy modification input process is not ideal, but it is an avenue for constructive dialog over forthcoming changes. In the future, Arlington Police Officers must make a concerted effort to actively participate in the process to ensure their rights are protected.

**Award**

**The Town's Body Worn Camera Policy is awarded, and the APPA's proposed BWC Policy shall not be incorporated into the Agreement.**



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Bonnie J. McSpirtt, Arbitrator

August 5, 2024

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Date