

**COMMONWEALTH OF MASSACHUSETTS**  
**JOINT LABOR MANAGEMENT COMMITTEE FOR MUNICIPAL POLICE**  
**AND FIRE**  
**JLMC-17-6072**

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**IN THE MATTER OF ARBITRATION BETWEEN:**

CITY OF SOMERVILLE

&

SOMERVILLE POLICE SUPERIOR OFFICERS ASSOCIATION

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**AWARD AND DECISION BY THE ARBITRATION PANEL**

**Background**

The City of Somerville ("City" or "Employer") and the Somerville Police Superior Officers Association ("Union") are parties to a Collective Bargaining Agreement ("Agreement") that expired June 30, 2012. The parties engaged in direct negotiations and mediation, and agreed upon a number of matters, but were unable to reach a successor Agreement. A petition was filed for the Massachusetts Joint Labor Management Committee ("JLMC") to exercise jurisdiction. The parties then entered into a Voluntary 3A Agreement to submit the unresolved disputes to Arbitration.

An arbitration hearing commenced on May 11, and continued on May 18, 2018 in Somerville, Massachusetts, before a Tri-partite Panel consisting of Gary D. Altman, Esq., Neutral Panel Member, Mayor Dean Mazzarella, Management Panel Member, and Richard R. Pedrini, Union Panel Member. Alan J. McDonald, Esq., and John O. Killian, Esq., represented the Union and Philip Collins, Esq., and Melissa R. Murray, Esq. represented the City of Somerville. The parties submitted post-hearing briefs.

## **Analysis and Issues**

Under the Collective Bargaining Laws of Massachusetts, the Interest Arbitration process is utilized when "there is an exhaustion of the process of collective bargaining which constitutes a potential threat to public welfare". In reaching the conclusions in the present award, the Arbitration Panel has considered the criteria set forth in the statute including the municipality's ability to pay, wages and benefits of comparable towns, and the cost of living. It must also be noted 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.

## **Background**

The City of Somerville is located in Middlesex County. It has a population of approximately 80,000 people in a land area of 4.2 square miles. The City is governed by a Mayor and has an eleven member Board of Aldermen. The bargaining unit is composed of thirty-one (31) Superior Officers, comprised of four Captains, eleven Lieutenants, and sixteen Sergeants.

The parties initially engaged in direct negotiations for an agreement covering the period from July 1, 2012 through June 30, 2015. They were, however, unable to reach agreement for this three-year period of time. In the meantime, Interest Arbitration proceedings were completed for the Somerville Police Association and the City, covering the period of July 1, 2012 through June 30, 2015. The Superior Officers and the City have agreed that the

subjects of wage increases, GPS/Narcan, Ballistic Vests, Alcohol Testing, Post Quinn Education Incentive Benefits, Traffic Control Jurisdiction Language, and Evergreen Clause, that were awarded in the 2016 Patrolman's Arbitration Decision shall be adopted and applied to the Superior Officer's Agreement. Accordingly, these subject matters are hereby incorporated and made part of this Arbitration Decision.

The Union and the City also submitted a list of those issues that were not resolved, and would be submitted to arbitration, which were as follows:

**Joint Issues**

- |                       |      |
|-----------------------|------|
| 1. Wages and Duration | p. 3 |
|-----------------------|------|

**Union Issues**

- |                           |       |
|---------------------------|-------|
| 1. Night Availability Pay | p. 14 |
| 2. Sergeant Base Rate     | p. 16 |
| 3. Senior Longevity Pay   | p. 19 |
| 4. Hazardous Duty         | p. 23 |
| 5. Weekend Differential   | p. 25 |

**City Issues**

- |                                   |       |
|-----------------------------------|-------|
| 1. Seniority - Professional Picks | p. 28 |
| 2. Union Leave                    | p. 31 |

**Wages and Duration**

The parties' proposals on wages and duration are as follows:

**CITY'S POSITION**

The City proposes a six-year agreement from the period of July 1, 2015 through June 30, 2018 with the following wage increases:

July 1, 2012 - 2.5% across the board increase.

July 1, 2013 - 2% across the board increase.

July 1, 2014 - 2% across the board increase.

July 1, 2015 - 2% across the board increase.

July 1, 2016 - 2% across the board increase.

July 1, 2017 - 2% across the board increase.

#### Summary of the City's Arguments

The City maintains that its proposal of annual increases of 2% over the three-year period from July 1, 2015 through July 1, 2018 is fair and reasonable and should be awarded.

The City argues that the wages and benefits of Somerville Superior Officers compare well with their counterparts in other comparable communities, and that Somerville Superior Officers rank at the top in terms of total compensation. The City states that this is due, not only to a high base salary, but also the generous benefits that are provided to the Superior Officers. The City thus maintains that there is no justification for any type of equity adjustment or increase in existing benefits. The City argues that the Union's proposal, which totals more than 24% over the six year contract period, is not warranted by reviewing either the external or internal comparisons. Moreover, the City states that a review of wage increases awarded by arbitrators in other jurisdictions shows that its wage proposal is reasonable and justified.

The City points to the settlements reached with other City of Somerville bargaining units. The City contends that six of the seven City bargaining units that settled for FY 2016, the first year of the second three-year contract under consideration, agreed to 2% across the board increases. In addition the City states that Fire

Dispatchers, Police Dispatchers, Crossing Guards, and School Custodians settled for 2% for FY 2017 and FY 2018. The City states that this wage pattern demonstrates that its proposed annual increase for this two three year contract period is fair and should be awarded in this proceeding.

The City maintains that the fact that it provided equity or market adjustments to certain non-union management positions is not relevant to this proceeding. Specifically, the City states that non-union employees did not receive the same wage increases that have been provided to Unionized employees, and in fact received wage freezes while Police and Fire received more than a 20% increase over this same time period. The City argues that it was necessary to provide compensation levels for these non-union positions that are comparable to the market rates, and such equity adjustments are not warranted for Police Superiors who have received annual wage increases, and whose total compensation is well above the levels provided to Superiors Officers in comparable communities. The City states that the Police Department has had no issue retaining its Superior Officers.

The City also maintains that its wage proposal is well within the range of wage settlements that have occurred in comparable communities. The City states that its wage proposal for a 6.5% (2.5% 2%, and 2%) increases for the first three year agreement is above the wage increases agreed to in the comparable communities. The City also states that in those communities in which the parties agreed to more than 6.5% over the three year period (Arlington and Malden), the wage rate and total compensation for Superior Officers in these communities

lags far behind the wages and total compensation paid to Somerville Superior Officers.

The City also states that when reviewing the wage rates of Somerville Police Superiors, they compare well with the counterparts in other comparable communities; the rate for Somerville Sergeants is third highest in the list of comparables, Lieutenants have the highest base rate except for Quincy. For the second three-year period the City maintains that its wage proposal of 2%, 2%, and 2% fares well with the wage rates given to other Superior Officers. Accordingly, with the City's wage offer, Somerville Police Superiors will continue to be paid at the top of the wage scale.

The City also maintains that its ability to pay is reflected in its wage proposal made to the Union. The City acknowledges that it has seen an economic resurgence, but contends that potential future growth should not be the basis of this proceeding, which is considering pay increases for past years. The City points to cuts in State aid from FY 08 to the present, that it is facing rising pension and post retirement benefits, the construction of a new high school, and must contribute an additional \$50 million for the Green Line extension. The City also contends that it is facing multi-million dollar infrastructure costs, due to years of unaddressed needs. The City points to the delay in the Green Line extension, and, as a result, new growth projections have been adjusted downward. In addition the City states that it is running a structural deficit. The City concludes that there is no justification to grant wage increases to Somerville Superior Officers more than provided to any other City of Somerville bargaining unit.

The City contends that its wage proposal of annual 2% increases for the last three years of the Agreement, the same rate agreed to by a number of other City Unions, should be awarded.

#### UNION'S POSITION

The Union proposes a three-year agreement for the period July 1, 2015 through June 30, 2018.

#### Three Year Agreement 7/1/12 - 6/30/15

July 1, 2012 - 2.5% across the board increase.

July 1, 2013 - 2% across the board increase.

July 1, 2014 - 2% across the board increase.

July 1, 2015 - 3% across the board increase.

July 1, 2016 - 3.5% across the board increase.

July 1, 2017 - 4% across the board increase.

#### Summary of the Union's Arguments

The Union contends that a review of the ten comparable communities considered in the Patrolman Arbitration demonstrates that the total compensation of Somerville Superior Officers has fallen behind the total compensation levels provided to Superior Officers in these other communities, and there is ample justification to increase the wage rate of Superior Officers higher than the 2% proposed by the City. In particular, the Union points to settlements in communities such as Arlington, Cambridge and Lowell, that have increased the amounts at various steps and have rolled benefits into base salary and have provided other benefit increases. The Union maintains that these communities have recognized that the recession has passed and have provided wage and benefit increases significantly higher than offered by the City of Somerville.

The Union contends that increases in the total compensation of Superior Officers in these comparable

communities shows that Somerville Patrol Officers will lose ground when compared to their colleagues in these other communities. The Union argues that recent settlements show that these communities have provided wage increases to attract and retain their superior officers. The Union also points to large increases recently provided to non-union employees in the City of Somerville, rates considerably higher than have been offered to Superior Officers.

The Union further argues that the wage settlements provided to other bargaining units in the City of Somerville should not be controlling in this proceeding. The Union contends that unlike the Patrolman's arbitration where all City Units had already agreed to wage settlements, in the present case, less than half of the City's Union have reached agreements and none of the other public safety units has reached a successor agreement. Moreover, the Union maintains that it is important for the Panel to consider the unique job duties and responsibilities performed by public safety officers when considering the appropriate wage increase. Specifically, the Union asserts that the proper benchmark, as provided by the arbitration law, is wages and benefits paid to comparable employees, which means it is more appropriate to look at wages and benefits provided to other superior police officers not civilian employees working in the City.

The Union states that the cost of living has increased 3.6% in the previous twelve months. The Union contends that the City has the financial ability to pay for the Association's proposal, and that the City has not presented any evidence that it does not have the financial means to pay the Union's proposed increases. The Union points to the City's free cash (\$11.6 million) and stabilization fund



(\$34.1 million), and that the City currently has an Aa2 bond rating, which shows the solid financial health of the City. The Union also contends that the City is enjoying new growth and commercial development, and an expanding housing market. The Union states that recently the Mayor extolled the financial condition of the City in his 2018 budget, stating that "free cash and rainy day funds remain at the highest in our history", and the bond rating "remains the highest in the City's history".

The Union maintains that more must be done to increase the wages and benefits of Somerville Superior Officers to ensure that they remain competitive with their colleagues in the area. The Union concludes that its wage proposal should be awarded.

### **Discussion**

Determining the "appropriate" salary increase is not an exact science. In general, arbitrators consider the cost of living, wages and benefits of comparable employees, the ability of the employer (or citizens) to pay for an increase in wages, the bargaining history of the parties and recent contract settlements. Arbitrators often pay great attention to wage settlements that have occurred within the municipality, as internal wage settlements demonstrate the so-called "going rate" and the municipal employer's ability and willingness to pay, in the current economic times.

#### **I. Somerville Wage Increases**

There is no dispute over the appropriate pay increases for Superior Officers for the FY 2013 - 2015 three-year period. Specifically, Superior Officers and the City agreed that the increases awarded in the Patrol Officers Award for this three-year period should apply to Superior Officers.

Accordingly, these increases shall be made part of this Award.

The wage settlements for Somerville municipal employees for the six year period is as follows:

	FY 13	FY 14	FY 15
Fire Fighters	2.5%	2%	2%
Fire Alarm	2.5%	2%	2%
SEIU Local 888 E-911	2%	2%	2%
SEIU Local 888 X-Guard	2%	2%	New scale
NCFO Local 3	2%	2%	2%
SMEA Unit A	2%	1%	2%
SMEA Unit B	2%	1%	2%
SMEA Unit D	2%	1%	2%

	FY 16	FY 17	FY 18
Fire Fighters	N-S	N-S	N-S
Fire Alarm	2%	2%	2%
Patrol Officers	N-S	N-S	N-S
SEIU Local 888 E-911	2%	2%	2%
SEIU Local 888 X-Guard	2%	2%	New scale
NCFO Local 3	2%	2%	2%
SMEA Unit A	2%	N-S	N-S
SMEA Unit B	2%	N-S	N-S
SMEA Unit D	2%	N-S	N-S

## II. Comparability

In the Police Arbitration Award the Panel decided to review a listing of comparable communities that was utilized by the Collins Center for Public Management at the University of Massachusetts, when conducting a classification and compensation study for the City's non-union positions. Those communities chosen in the Collins Center classification study were Arlington, Brookline, Cambridge, Lowell, Malden, Melrose, Newton, Quincy, and Waltham. The parties also agreed to consider the City of Medford as an appropriate comparable. These communities were used in the Police Arbitration and will be reviewed in this Decision.

Wage adjustments in these communities over the relevant time frame are as follows:

<u>Community</u>	<u>FY 13</u>	<u>FY 14</u>	<u>FY 15</u>
Arlington	3%	2.75%	2.75%
Brookline	2%	2%	2%
Cambridge	2.50%	2.50%	NS
Lowell	2.25%	3.50%	2.50%
Medford	1.00%	1.00%	2.00%
Malden	3%	2%	2%
Melrose	2%	2%	2%
Newton	\$700+1.5%	1.50%	NS
Quincy	1%	2%	2%
Waltham	2.50%	NS	NS

<u>Community</u>	<u>FY 16</u>	<u>FY 17</u>	<u>FY 18</u>
Arlington <sup>1</sup>	2.8%	2%	2%
Brookline	2%	NS	NS
Cambridge <sup>2</sup>	2.4%	2%	2.5%
Lowell <sup>3</sup>	1%	3%	3%
Medford	2%	2%	2%
Malden	2%	2%	NS
Melrose	2.5%	2.5%	2.5%
Newton	NS	NS	NS
Quincy	1%	2%	2%
Waltham	2%	NS	NS

The facts show that the base wage rate for Somerville Police Superiors is well above the average rate for the group of comparable communities.

<u>Community FY 2015 Max Base</u>	<u>SGT</u>	<u>LIEUT</u>	<u>CAPT</u>
Arlington	\$66,812	\$78,169	\$90,676
Brookline	\$74,808	\$88,274	\$103,281
Cambridge	\$71,377	\$84,222	\$99,382
Lowell	\$80,644	\$90,321	\$101,159

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<sup>1</sup> The parties in Arlington rolled into base a number of stipends that have been separately paid. In the prior Police Arbitration Award the amount reported was 2.8% for FY 2016.

<sup>2</sup> These increases are based on the base wage rates set forth in the Agreements that were provided at the Arbitration Hearing for the Cambridge Police Superior Officers Association. There were also a number increases in differentials for this contract period.

<sup>3</sup> The Union states that Superior Officers received the equivalent of a 1% increase for that year.

Malden	\$67,547	\$77,003	\$87,784
Medford	\$78,707	\$91,300	\$105,909
Melrose	\$63,515	\$73,677	
Newton	\$73,956	\$86,528	101,238
Quincy	\$80,188	\$98,630	\$121,316
Waltham	\$65,725	\$77,556	\$91,516
<b>Somerville</b>	<b>\$78,736</b>	<b>\$92,514</b>	<b>\$108,704</b>
<b>AVERAGE</b>	<b>\$72,328</b>	<b>\$88,274</b>	<b>\$100,251</b>

The evidence further demonstrates that the overall compensation (including wages and benefits) provided to Somerville Police Superiors, although not the same, is comparable to what is provided to police superiors in these other communities. In fact the total compensation for Somerville Police Superiors is above the average provided in the comparable communities. The Union's wage proposal for the last three years of the six-year agreement of 3%, 3.5% and 4%, is well above the base wage increases that have been agreed to in comparable communities. There is, therefore, no justification for increases of this magnitude to the Somerville Superior Officers for this three-year period.

On the other hand, the data also shows that what was a prevailing pattern of 2% increases for Police Departments that were agreed to for the past three-year contract period is edging higher than 2% annual adjustments, and this can be seen in some of the comparable communities (e.g. Lowell, and Cambridge). This is also the case with the consumer price index, which is seeing increases above the 2% level, and also wage increases in the region are higher than 2%. There is no good economic justification to provide pay increases for this second three-year period that are less than received for the first three-year period; the economy

is stronger now than it was for the first three years as demonstrated by the City's bond rating. In FY17, Somerville realized \$291.9 million in new growth valuation, more than any other year in its history. Moody's Investment Services increased the City's bond rating from Aa2 to Aa1 in July of 2017, which is within the period of the second three-year contract. The City announcing the upgrade issued a press release stating:

Moody's has a favorable view of the Somerville economy, noting in its report that "the city experienced seven consecutive years of assessed value growth including a strong 13.1% in fiscal 2017 growth (compared to fiscal year 2016), which is the third largest increase of any municipality in the Commonwealth.

Moreover, it must also be stated that for FY 17 and FY 18 less than half of the employees are under agreement in the City, and none of Somerville's Public Safety employees have reached agreement for the second three-year period. This is unlike the situation that was in place for the Patrol Officers Arbitration when all other public safety groups were under contract for the relevant time period, and there was a clearly defined City pattern of wage settlements.

#### **AWARD - DURATION & WAGE INCREASES**

The Panel Awards wage increases for the six-year period as follows:

FY 2013 - 2.5%  
FY 2014 - 2%  
FY 2015 - 2%  
FY 2016 - 2%  
FY 2017 - 2.5%  
FY 2018 - 2.5%

## **UNION ISSUES**

### **Night Availability Pay/Educational Incentive**

The current contract provides that Superior Officers receive night availability pay of 7% that is calculated on Superior Officers' base pay. All Superior Officers receive this payment no matter what shift they are assigned to work. At the present time Quinn Educational incentives are paid on A Superior Officer's base pay without factoring in other incentives such as the Night Availability pay.

#### **Union's Proposal**

The Union proposes that Night Availability Pay should be included in the calculation of the educational incentives provided to Superior Officers, and that this should be retroactive to July 1, 2014.

The Union maintains that it must be remembered that Patrol Officers received an increase in educational incentive in the recent Arbitration Award, that provided significant increases in the existing benefit to many Patrol Officers: since the vast majority of Superior Officers have already earned an educational incentive, providing this benefit to Superior Officers is not a costly benefit increase for Superior Officers. Moreover, the Union states that a number of other changes awarded to Patrol Officers in the recent Patrol Officer Arbitration Decision, such as the evergreen clause, and traffic control language, were contract provisions that were already in place for Superior Officers, and thus Superior Officers will receive no "tangible benefit" for those changes that were awarded to Patrol Officers.

The Union also states that a review of comparable communities also supports its proposal. Specifically, the Union maintains that a majority of comparable communities

include night differential and other regular payments in the calculation of an Officer's educational incentive. The Union concludes that there is ample justification for Night Availability Pay to be included in the calculation of the Education Incentive Payment.

#### City's Proposal

The City is opposed to the Union's proposal. The City maintains that it is illogical to place this differential into an employee's base pay for purposes of determining an employee's educational incentive. The City also states that rolling the night pay into an employee's base pay is not provided to Somerville Patrol Officers or Somerville Firefighters. Moreover, the City contends that this is not a commonly accepted practice.

The City also contends that the Union's proposal is expensive, and would add an additional 7% cost to the Quinn payments that are now paid to Superior Officers, which the City now pays in its entirety after the State decided to no longer contribute half the costs of the Quinn Education Incentive. The City maintains that all Somerville Superior Officers receive the 7% Night Availability Pay, even those officers who are assigned to work the day shift. The City argues that paying all Superior Officers for night differential is generally not the prevailing practice in comparable communities, and there is insufficient justification to further increase this already generous benefit.

#### **Discussion**

At the present time Night Availability Pay is not factored in when computing educational incentives. This is the case not only for Superior Officers but also for the Patrol Officers, the largest bargaining unit in the Police

Department. It is true, as the Union points out, that a number of communities do, in fact, include night differential in the computation of educational incentives; it must be remembered that many of these communities only pay night differential to those officers actually working evening or night shifts, unlike in Somerville, where all Superior and Patrol Officers receive the benefit. Moreover, the fact that in the Police Arbitration Award the Panel awarded the Patrol Officers contract language that was already in place for the Superior Officers, such as the evergreen clause and traffic control language, is not justification to increase the educational incentive. Specifically, in the Patrol Arbitration Decision, the Panel did not consider the issue of calculating night shift differential based on Officer's education incentive.

**AWARD - Night Availability Pay/Educational Incentive**

The Union's proposal is not awarded.

**Sergeant Base Rate**

In the 2009 - 2012 Agreement the parties agreed that the Sergeant's pay should be set at 23.5% above the patrol officer's base pay. The 23.5% differential has continued since that Agreement, as Superior Officers have now agreed to the same base wage increases that were awarded to Police for the 2012 - 2015 period.

**Union's Proposal**

The Union proposes to increase the rank differential between Sergeant and Patrol Officer to 25%; a 1.5% increase over what now exists. The Union also contends that it is important to preserve and retain the rank differential that now exists in the parties' Agreement.



## City Proposal

The City opposes the Union's proposal to increase the differential, which essentially amounts to an additional 1.5% increase to base wages above and beyond the across the board increase. The City maintains that there is no justification for such an increase. The City argues that the current differential of 23.5% is now the highest differential in the comparable communities. Moreover, the City argues that it is well settled precedent that such fixed differentials between two distinct bargaining units is an impermissible subject of bargaining, and should not be awarded in this Interest Arbitration Proceeding.

## **Discussion**

A review of the rank differentials in comparable communities shows the following differences:

MUNICIPALITY	Sergeant - Patrol Differential	Lieutenant – Sergeant Differential	Captain - Lieutenant Differential
Arlington (FY2018)	18%	17%	16%
Brookline (FY2016)	20%	17%	17%
Cambridge (FY2018)*	15.2% (18.9%)	18%	18%
Lowell (FY2018)	20%	12%	12%
Malden (FY2017)	14%	14%	14%
Medford (FY2015)**	12%	16%	16%
Melrose (FY2015)	19%	16%	n/a
Newton (FY2014)	21.50%	17%	17%
Quincy (FY2020)	23%	23%	23%
Waltham (FY2016)	18%	18%	18%
Average	18.10%	16.80%	16.80%

\*CBA does not specify sergeant's pay is tied to patrol; higher number includes Master Patrol rate received after 5 years.

\*\* CBA does not specify sergeant's pay is tied to patrol. MOA for period FY16 to FY19 adds base pay increases (\$2,251, \$2,612, and \$3,028) to superiors' top steps (1/1/18).

The current differential between ranks in Somerville for sergeant is 23.5% above patrol officers, a Lieutenant

is 17.5% above Sergeant, and Captain is 17.5% above Lieutenant. As discussed above, the pay rate at all ranks for Somerville is considerably higher than the average, and the set differential for Somerville Superiors is higher than in those communities that specify rank differentials. Moreover, as stated above, the base wage rates of Somerville Superior Officers is well above the average rates paid to superior officers in other communities.

For the first three years of the Agreement under consideration, the wage increase provided to Patrol Officers is the same that will be provided to Superior Officers. Thus, the existing rank differential has been preserved. For the second three years of the Agreement Patrol Officers have not yet settled. Thus, it cannot be concluded that the differential between ranks has been eroded.

Although the Panel will not change the current rank differentials that now exist, the Panel recognizes the importance of rank differentials for Somerville Superior Officers and the past history of the parties negotiating over the subject of differentials. Accordingly, language will be added to the parties' Agreement that for the period of FY 2016 through 2018, should the Somerville Patrol Officers Association agree to higher across the board base wage increases, or should Somerville Patrol Officers be awarded an across the base wage increase higher than granted in this Award, the Union may request to reopen the Agreement, the reopener being limited specifically to the issue of base wage increases for the three year period.

#### **AWARD - Rank Differential**

The Union's proposal to modify the current rank differential is not awarded. There shall be added to the

Agreement language that provides for re-opener limited to base wage rates increases should Patrol Officers agree or be awarded base wage rate increases higher than awarded in this proceeding for the period of FY 2016 through FY 2018.

#### **Article XIX - Senior Longevity Pay**

The current longevity stipend for Superior Officers is as follows:

	5 YRS	10 YRS	15 YRS	20 YRS	25 YRS	30 YRS
Police Superiors	\$200	\$300	\$800	\$2,300	\$3,400	\$5,000

Under the current Agreement, only those Superior Officers who do not receive educational incentives receive the longevity stipend. There is also a one-time payment of \$3,000 for those Superior Officers who have attained thirty years of service.

#### **Union Position**

The Union proposes to add a Senior Longevity schedule as follows:

5 Years of Service	\$0
10 Years of Service	\$0
15 Years of Service	\$2,000
20 Years of Service	\$2,500
30 Years of Service	\$3,000

Under the Union's proposal, this longevity stipend would be available to those Superior Officers who also receive an educational incentive. The Union maintains that currently Somerville Patrol Officers and Somerville Firefighters receive longevity payments, and such payments are not tied to whether the employees receive an educational incentive, which both Patrol Officers and Firefighters also receive.

The Union also maintains of the comparable communities, all but Cambridge provide longevity benefits to all employees, without any condition as to whether the employee is receiving an educational incentive. The Union states that Cambridge provides a Master Superior Officer Differential, which is tantamount to longevity payments. The Union states that its longevity proposal would fall in the middle of the communities that now provide longevity payments to officers.

#### City Position

The City opposes the Union's proposal. The City states that years ago the parties agreed to provide longevity benefits to those employees who do not receive Quinn Bill benefits, with the intent that Superiors would pursue higher education, and that this, in fact occurred. The City further states that it is not unusual that Police who receive educational benefits do not also receive longevity benefits, as this is the case in Malden and Cambridge, which entirely eliminated longevity in 1977.

#### **Discussion**

The chart below shows longevity payments for comparable communities.

Community	5 YRS	10 YRS	15 YRS	20 YRS	25 YRS	30 YRS
Arlington	1%	2%	3%	4%	5%	5%
Brookline	\$0	\$500	\$650	\$800	\$800	\$1,000
Cambridge*	\$0	\$0	\$0	\$0	\$0	\$0
Lowell		.03% each yr				9%
Medford	\$0	\$300	\$300	\$700	\$1,100	\$1,100
Malden**		3%	3.5%	4%	10%	10%
Melrose	\$0	\$550	\$750	\$1,330	\$1,750	\$2,500
Newton	\$0	\$650	\$800	\$2,000	\$2,500	\$2,500
Quincy***	\$100	\$150	\$200	\$600	\$1,500	\$1,500
Waltham		7.5%	8.5%	9.5%	9.5%	9.5%

- \* Cambridge provides a masters superior stipend after five years.
- \*\* Malden – only available to officers not receiving education.
- \*\*\* Quincy – after 28 years officers receive 5% above the final step, and at 29 years officers receive an additional 5%.

The chart demonstrates that there is a wide variation in longevity payments from community to community. There is no prevailing pattern; some communities pay longevity on a percentage basis and some on flat dollar basis.

The comparison of longevity payments for other City of Somerville employees is as follows:

	5 YRS	10 YRS	15 YRS	20 YRS	25 YRS	30 YRS
Somerville Fire	\$300	\$400	\$900	\$1,650	\$2,200	\$2,200
Police Officers	\$0	\$0	\$0	\$800	\$1,600	\$3,200
SEIU 911/Dispatch	\$0	\$0	\$250	\$500	\$500	\$500
SMEA Unit A	\$500	\$600	\$850	\$1,250	\$1,400	\$1,600
SMEA Unit B	\$500	\$600	\$850	\$1,250	\$1,400	\$1,600
SMEA Unit D	\$500	\$600	\$850	\$1,250	\$1,400	\$1,600

It also appears that Somerville Patrol Officers and Firefighters currently receive longevity payments and their longevity payments are not tied to whether the employee receives educational incentive payments.

The Union's proposal would dramatically increase the longevity payments at the 20 and 25 year levels from what now exists for Somerville Patrol Officers. Moreover, granting the Union's request would provide two longevity schedules; one for those officers who do not have educational incentives (which is at the higher rates), and another for those who have educational incentives. There is no justification to provide two levels of longevity payments for Superior Officers, and there is no justification to award a longevity schedule that is different from what now exists for Patrol Officers. It

would certainly appear that the Union's longevity proposal would be more costly than the longevity schedule now in effect for Patrol Officers, as its proposal dramatically increases the payments that Officers would receive upon fifteen, twenty, and twenty-five years of service.

As Patrol Officers now receive longevity payments no matter whether they also receive educational benefits, it is appropriate that Superior Officers have the same longevity schedule as the Patrol Officers. This being the case, there should only be one longevity schedule, and no longer a separate and higher schedule as exists for those Superior Officers who do not have educational incentives.

Accordingly, as of July 1, 2017, the longevity schedule in place for Patrol Officers should be added to the Superior Officers' Agreement. The current longevity schedule for those Superior Officers, who do not have educational benefits, shall be eliminated from the Agreement as of July 1, 2017. Any Superior Officer who currently receives the payments provided by the current schedule shall be grandfathered, and continue to receive those longevity payments so long as they do not receive any educational payments. Finally, in view of the Panel's Decision to award the same longevity schedule as exists for Patrol Officers effective July 1, 2017, the one-time longevity payment of \$3,000 to Superior Officers who reach thirty year of service will be eliminated effective July 1, 2017.

#### **AWARD - LONGEVITY PAY**

The Panel awards the following changes in longevity payments for Superior Officers. As of July 1, 2017, the longevity schedule in place for Patrol Officers should be added to the Superior Officers' Agreement, and shall be

paid irrespective of whether the Superior Officer also receives educational payments. The current longevity schedule for those Superior Officers, who do not have educational benefits, shall be eliminated from the Agreement as of July 1, 2017. Any Superior Officer who currently receives longevity payments provided by the current longevity schedule shall be grandfathered and continue to receive those longevity payments so long as they do not receive any educational payments. Finally, the one-time longevity payment of \$3,000 to Superior Officers who reach thirty years of service will be eliminated effective July 1, 2017.

#### **Article New - Hazardous Duty Pay/Weapons Pay**

The parties' current Agreement provides for an annual Weapons of Mass Destruction stipend of \$500.00 and an annual Weapons Qualification stipend, currently between \$425.00 and \$600.00.

##### **Union Proposal**

The Union proposes to eliminate both annual stipends and in its place substitute a stipend of 3% for hazardous duty. Under the Union's proposal this benefit would be added to an employees' base pay.

The Union maintains that its proposal recognizes the unique hazards of police work in a major urban area, and ensures that the compensation would be part of superior officers' base pay, and would, therefore, be fully pensionable. The Union states that this change would only be a minimal increase in the current payments. The Union further states that hazardous duty payments are now common stipends paid to public safety employees throughout the

Commonwealth, and such payments are often part of the employees' base pay.

#### City Position

The City is opposed to the Union's proposal. The City states that there is no justification to change the current stipends in the Agreement. The City states that the weapons qualifications payment is intended to reward officers with higher pay if they attain a higher qualification standard, and this incentive to achieve a higher score would be lost if the payment was converted to a percentage basis.

The City further states that Firefighters now receive an annual stipend of \$1,000 for hazardous duty, which is a little less than the weapons qualification and the hazardous duty stipend paid to Somerville Patrol and Superior Officers. For Somerville Firefighters the \$1,000 hazardous duty stipend is paid in flat dollars, and is not rolled into their base pay.

Moreover, the City contends that eliminating the current payments and substituting a hazardous duty pay of 3% would be a significant increase in overall compensation, which is not warranted. The City also states that this issue was proposed by the Union in the Patrol Officers Arbitration proceedings, and was rejected, and there is no good reason at this time to now award this proposal for the Superior Officers

#### **Discussion**

This was an issue that was raised by the Patrol Officers in their recent arbitration, and the Arbitrator Panel rejected the Union's proposal. The neutral Arbitrator wrote:



There is insufficient justification to grant the Union's proposal. It is true that other Police Departments in the list of comparable communities provide additional financial recognition for the hazards of being a police officer. This is also the current situation for Somerville Police Officers who receive an annual Weapons of Mass Destruction stipend, and also a separate payment for weapons qualification; both stipends pertain to the unique duties and responsibilities of being a police officer. It cannot be said that it is a prevailing practice that such stipends are part of the base pay in other police departments. Moreover, the current hazardous duty stipend paid to Somerville Firefighters is paid as an annual stipend, and is not rolled into the firefighter base pay. Accordingly, there is insufficient justification to make any changes in this benefit at the present time.

Both Superior Officers and Patrol Officers receive the same weapons qualification pay and the Weapons of Mass Destruction pay. To grant the Union's proposal would not be an insignificant cost. Accordingly, there is insufficient justification to grant the Superior Officer's proposal, when the benefit was not granted to the Patrol Officers in the prior arbitration proceeding.

#### **AWARD - HAZARDOUS DUTY PAY**

The Panel does not award the Union's proposal.

#### **Weekend Differential**

In the current Agreement Superior Officers receive \$4.00 per hour for working weekend days, and \$3.00 for working the first half night on weekends.

#### **Union Proposal**

The Union proposes to increase the weekend day differential to \$7.00 an hour and increase the night differential for working to weekends to \$6.50. The Union states that its proposal would equalize the weekend

differentials to the amounts currently received by Patrol Officers. The Union maintains that it is reasonable and fair that Superior Officers receive the same weekend differentials provided to Patrol Officers.

#### City Position

The City opposes the Union's proposal. The City states that there is no good reason to increase the weekend differential as the total compensation for Superior Officers is well above average. Moreover, the City states that a review of the comparable communities shows that weekend differentials are not a common benefit for Superior Officers.

#### **Discussion**

Patrol Officers now receive a higher weekend differential rate than Superior Officers. It is appropriate and reasonable that Superior Officers receive the same weekend differential. Accordingly, the weekend differential rates for Superior Officers should be increased to \$7.00 for day differential and \$6.50 for the weekend night differential. This increase shall be effective June 30, 2018.

#### **Award - Weekend Differential**

The Union's proposal to increase the weekend differential is awarded. The higher differential shall commence as of June 30, 2018.

#### **City Issues**

The JLMC certified two issues submitted by the City: "Police Chief's Professional Picks" and "Union Leave". The Union maintains that even though the City presented these issues to the JLMC, the City never actually submitted its

proposed language on these two subject matters until a week before the Arbitration Hearing was scheduled to start.

The Union states that parties should not be permitted to present proposals in Arbitration that have never been presented during the parties' direct negotiations. The Union contends that the parties should have an opportunity to discuss proposals during their direct negotiations and not be presented with proposals for the first time at interest arbitration. The Union maintains that such tactics defeat the purpose of collective bargaining, which is for the parties to first address topics in their direct negotiations before presenting the proposals at interest arbitration, which is the final step of the negotiation process. Accordingly, the Union argues that the City's proposals relating to Police Chief's Professional Picks, and Union Business Leave should not be considered by this Arbitration Panel.

The Arbitrator recognizes that the collective bargaining process is best served when the parties have an opportunity to review and discuss the merits of specific proposals during their direct negotiations, well before resorting to interest arbitration. In an agreement dated January 8, 2018, the issues of Professional Picks and Union Leave were listed as issues to be raised by the City in the arbitration proceedings. Whether the Arbitration Panel agrees that a party has demonstrated the need to change an existing contract provision, the Panel, nonetheless, believes that it must consider and address the issues certified by the JLMC to be decided in this Interest Arbitration proceeding. Accordingly, the fact that the City did not present the actual language of its proposals to the Union until two weeks before the Arbitration hearings,

while unusual, does not bar the City from presenting its specific proposals and the Panel will consider these issues in this proceeding.

#### **Article XVIII - Seniority Professional Picks**

The parties have detailed language on seniority bidding and what assignments are excluded from seniority bidding, Known as Chief's Picks. At the present time Patrol Supervisor positions and positions of Lieutenant Detail Supervisor, Lieutenant Day Detective Commander, Lieutenant Night Detective Commander, Lieutenant Family Services Coordinator, Lieutenant Traffic Commander, Sergeant Traffic Supervisor, Sergeant Night Detective Supervisor first and second positions, Sergeant Superior Court/Evidence, Sergeant Police Supervisor are bid by seniority.

#### **City Position**

The City proposal is as follows:

Notwithstanding any prior contract provision or past practice the following provisions shall govern the selection and assignments of Superior Officers not in the Patrol Division. By making this proposal the City does not waive, but rather reserves, all rights of the Police Chief to assign officers as a non-delegable managerial prerogative under established case law.

1. The Chief of Police shall determine what non-patrol assignments and functions to create and fill, and the decision not to fill a particular assignment shall not diminish the Chief's right to do so in the future.
2. All Captain's duties shall continue to be assigned by the Chief.
3. Posted Lieutenant and Sergeant assignments outside of patrol shall be made by the Chief using his discretion to select the most qualified Superior Officer to best address current Public Safety concerns.

The City maintains that under Section 4A of the JLMC statute the right to assign is a non-delegable management right that is vested with the Chief of the Department. The City states that this management right is predicated on the interests of public safety and cannot be a subject to this interest arbitration proceeding. The City contends that the Chief should be the entity that decides whether it is necessary to fill a specialty assignment, that appointments should be made based on qualifications, and that there should be no limitations on the length of time for the specialty assignment. The City states, for example, that the Lieutenant assignment for Special Operations is a Chief's Pick, but the Sergeant's Special Operations position is a seniority pick, and this is illogical.

The City further contends that positions of Homeland Security, CID, Court Liaison, Lieutenant Night CID, Lieutenant Traffic Commander, Lieutenant Day Detective, Sergeant Traffic Supervisor, and Sergeant Special Operations should not be seniority picks but should be based on qualifications and the decision who should fill these positions should be made by the Chief, not based on solely on an employee's seniority.

#### Union Position

The Union opposes the City's proposal to change the current language and practice on specialty assignments. The Union contends that the current provision balances the seniority rights for employees and the City's operational needs. The Union further maintains that the City never presented any reason to the Union during direct negotiations as to the need for the wholesale revision of the contract language and modifying the parties' past

practice. Moreover, the Union states that there has been insufficient justification presented during the arbitration hearing to justify the change presented by the City, as the Chief has indicated that the incumbents holding the current positions are performing in an excellent manner.

#### Discussion

The parties have negotiated over the topic of specialty assignments for many years. The oldest contract introduced into evidence in this proceeding was for the period 1997 through 2000 and the subject of job picks was set forth in that Agreement. In fact, that Agreement refers to a 1987 Agreement that excluded certain designated positions from seniority bidding. That is a more than a thirty year history in which the parties have negotiated over which specialty positions should be excluded from seniority bidding. Indeed, in the most recent Agreement (2009-2012) the parties agreed upon and made changes, and added a position to be a Chief's Pick. This Arbitration Panel will not nullify this long established history and practice of negotiating over this subject matter.

As was the case with the Patrolmen, the subject of certain specialty positions was raised in Arbitration, and the Panel in that case made modifications to the language as the evidence warranted changes in the current language. In the present case, there is no evidence that there are operational problems with the current specialty assignments. Specifically, the Chief indicated that those Superior Officers assigned to the various specialist positions are doing an excellent job. If the City seeks to change what positions should be deleted or to add additional positions from the seniority bidding process, this matter must first be addressed in the parties' direct

negotiations. This can certainly occur now, as the Agreement under consideration expired this past June, and the parties will soon engage in negotiations for a successor Agreement and can directly negotiate as to changes that should be made to the current contract language.

**Award - Article XVIII - Seniority Professional Picks**

The City's proposal is not awarded.

**Article III - Employee Rights**

Article III of the current Agreement provides as follows:

\* \* \*

Section 2. Association officers (not to exceed two (2)) shall be granted reasonable time off during working hours without loss of pay or benefits to investigate, process and settle complaints or grievances, provided that they shall request permission from the Chief or his designee.

Section 3. The members of the Association Bargaining Committee, not to exceed four (4), who are scheduled to work a day tour of duty during the collective bargaining negotiations or who are on a "short-day" so-called between two night tours of duty, shall be granted leave of absence without loss of pay or benefits for all meetings between the City and the Association for the purpose of negotiating the terms of a contract, or supplements thereto; such members on a "short-day" so-called shall be credited with a tour of duty for each such meeting. Such meetings shall normally be scheduled for the daytime but if such negotiations continue into the evening hours, such members then working a night tour of duty on their "long-day" so-called shall similarly be granted leave of absence without loss of pay or benefits for all such meetings.

Section 4. Association officers and shift representatives shall be permitted to discuss official Association business (a) with employees during work provided such discussion does not interfere with police business; (b) with the Chief of Police or the Deputy Chief of Police at all mutually convenient times; and (c) with employees prior to on-duty roll call or following off-duty roll call.

Section 5. Association officers, representatives, and grievance committee members, not to exceed three (3), may while on duty request permission to attend meetings of the Board of Aldermen or other public body without loss of pay or benefits. Said permission shall not be withheld by the Chief when the subject matter on the agenda concerns the Somerville Police Department, except in cases of emergency.

Section 6. In addition to all other Association leave provided in this Article, the President shall receive two (2) shifts off per week without loss of pay or benefits for Association Business. All other executive Board members shall receive four (4) hours off per month without loss of pay or benefits for Association Business. In the absence of the President, the Vice President or other E-Board member so designated shall maintain the duties of the President and receive the two (2) shifts off without loss of pay or benefits for Association Business. Leave under this section shall be subject to approval by the Chief of Police, but shall not be unreasonably denied. The Chief shall have the right to deny the second day and/or the four hours off if replacement will cause overtime.

#### City Proposal

The City proposed the following language Bold is proposed new language:

a. Article III, section 2. **Except as herein provided, Union business shall be conducted by Association officials on off-duty hours.** Association officers (not to exceed two (2)) shall be granted reasonable time off during working hours without loss of pay or benefits to investigate, process and settle complaints or grievances, provided that they shall request



permission from the Chief or his designee **in advance**. **Such officers shall also be granted reasonable time off from duty to represent employees at disciplinary hearings and investigations/interrogations, district court proceedings, or otherwise before the Department Head and/or Command Staff, or at the office of the Mayor. Association officials and representatives shall conduct Association business in a manner which shall not be disruptive to the City's operations or any City employee's work. The Association will furnish the City with a list of the designated Association officials.**

b. Article III, DELETE Section 6 of the current Agreement.

The City states that the evidence demonstrates that there has former Union President abused union business leave and that many of the days the former Union President took leave for Union business to work paid details. The City contends that this demonstrates that there was no need to conduct Union business on these dates, and that the current Agreement provides more Union release time than is necessary to attend to Union business.

Moreover, the City contends that the Union cannot show why it needs so much time off as the evidence demonstrates that hardly any grievances or prohibited practice charges have been filed by this Union that would require so much time off. The City states that there is no justification to continue the time off provided by Section 6, and this Section should be deleted.

#### Union Position

The Union first maintains that the City has not presented justification to amend Section 2. The Union states that there has never before been a requirement of advance notice to utilize Union business. The Union also contends that there is insufficient justification to delete

Section 6 of the current provision. The Union acknowledges that the former Union president did use Union leave to work paid details. The Union states, however, that the current provision provides that leave is subject "to approval of the Chief". The Union maintains that the Department never required the former Union President to justify his leave, and thus is partly to blame for allowing this use of Union Leave.

### **Discussion**

The City's proposal to modify Section 2 is reasonable. Specifically, it specifies those instances in which Union officials can take time off and the reasons for the leave. It is also appropriate that permission for the leave be requested in advance. Specifically, Superior Officers have major responsibilities overseeing Patrol Officers and the various divisions of the Department. Their primary responsibility must be to ensure the operation of the Department. Moreover, the City's proposed change will allow for better record keeping of those instances in which Union leave is taken, preventing disputes over the use of such time.

Section 6 was added to the parties' Agreement in the 2006-2009 Agreement. The evidence demonstrates that a former Union President was taking such leave, and working paid details. This certainly demonstrates that there was no need for so much leave time. Accordingly, this is a situation in which sufficient justification has been presented to modify the status quo. Prior to 2006-2009 the Association President was granted one shift off per week. It is therefore appropriate to revert back to the previous practice and grant one shift per week. This change shall be

effective thirty days after the implementation of this Award.

### **AWARD - ARTICLE III - Employee Rights**

Article 3 shall be amended to read as follows:

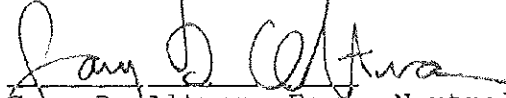
Section 2. Except as herein provided, Union business shall be conducted by Association officials on off-duty hours. Association officers (not to exceed two (2)) shall be granted reasonable time off during working hours without loss of pay or benefits to investigate, process and settle complaints or grievances, provided that they shall request permission from the Chief or his designee in advance. Such officers shall also be granted reasonable time off from duty to represent employees at disciplinary hearings and investigations/interrogations, district court proceedings, or otherwise before the Department Head and/or Command Staff, or at the office of the Mayor. Association officials and representatives shall conduct Association business in a manner which shall not be disruptive to the City's operations or any City employee's work. The Association will furnish the City with a list of the designated Association officials.

Section 6. In addition to all other Association leave provided in this Article, the President shall receive one (1) shift off per week without loss of pay or benefits for Association Business. All other executive Board members shall receive four (4) hours off per month without loss of pay or benefits for Association Business. In the absence of the President, the Vice President or other E-Board member so designated shall maintain the duties of the President and receive the two (2) shifts off without loss of pay or benefits for Association Business. Leave under this section shall be subject to approval by the Chief of Police, but shall not be unreasonably denied. The Chief shall have the right to deny the four hours off if replacement will cause overtime.

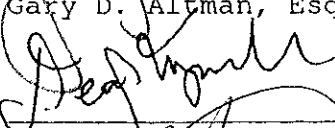
### **Conclusion**

The Panel has considered the statutory criteria in an effort to balance the interests of the bargaining unit employees, the City, and the citizens of the City of

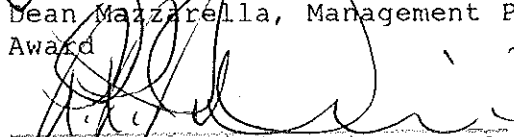
Somerville. It must be noted that the reasoning set forth above is that of the neutral arbitrator.



Gary D. Altman, Esq., Neutral Arbitrator



Dean Mazzarella, Management Panel Member, concurs in this Award



Richard Pedrini, Union Panel Member, Dissents on the issue of wages but concurs in all other issues in this Award

Dated: October 3, 2018