

**COMMONWEALTH OF MASSACHUSETTS
JOINT LABOR-MANAGEMENT COMMITTEE FOR MUNICIPAL POLICE AND FIRE
CASE NO. JLMC-22-9158**

Arbitration Panel

**Theodore H. OBrien, Neutral
Richard Pedrini, Labor Panel Member
Richard Tranfaglia, Management Panel Member**

In the Matter of Interest Arbitration between:)	
BROOKLINE POLICE UNION)	
and)	AWARD
TOWN OF BROOKLINE)	
)	

INTRODUCTION

On October 13, 2022, the Joint Labor-Management Committee (“JLMC”) appointed the undersigned arbitrator to serve as Chair and Neutral member of a tripartite panel in the matter of the Town of Brookline and the Brookline Police Union. The panel presided over evidentiary hearings on January 18, and 24, 2023, during which documentary evidence was admitted and witness testimony was offered.

Appearing on behalf of the Town of Brookline (the “Town” or the “Employer”) was Michael Downey, Esq., Associate Town Counsel. Appearing on behalf of the Brookline Police Union (the “Union” or “BPU”) were Alan J. McDonald, Esq. and John O. Killian, Esq. of McDonald Lamond Canzoneri. Each party filed a post-hearing brief on March 31, 2023.

ISSUES CERTIFIED BY JLMC

The JLMC held a 3(a) Hearing on August 25, 2022 and certified the following issues for arbitration. The issues certified are the following:

Duration: The parties agreed on a three-year collective bargaining agreement (“CBA”) to be in effect from July 1, 2020 to June 30, 2023.

Wages: The Union proposes across-the board increases of 3% on July 1, 2020, 3% on July 1, 2021, and 3% on July 1, 2022. The Town proposes across-the-board increases of 2.5% on July 1, 2020, 1% on July 1, 2021, and 3% on July 1, 2022.

Union Issue – POST Commission Stipend: The Union proposes a stipend equal to 6% of base pay in recognition of this significant new obligations imposed by the Police Reform Act of 2020 (Chapter 253 of the Acts of 2020). The stipend to be implemented as follows: 2% on July 1, 2020, an additional 2% on July 1, 2021, and 2% on July 1, 2022.

Union Issue – New Six-Year Step: The Union proposes adding a new maximum step after six years of service effective July 1, 2021 in an amount four percent (4%) greater than the current maximum step, which shall be relabeled as Step 3.

Union Issue – Moving the Senior Step: The Union proposes moving the senior step from a 20-year step to a 10-year step.

Union Issue – Equalized Education Incentive: The Union proposes that the current non-Quinn Eligible Employees be awarded the same Quinn equivalent incentive as other employees: 10% for an Associate’s Degree, 20% for Bachelor’s Degree, and 25% for a Master’s Degree.

Union Issue – President Release Time: The Union proposes a new benefit granting the Union President two shifts off per each six-day work cycle to attend to union business.

Town Issue - New Article - Body Worn Cameras: The Town proposed adding a new article to the parties' CBA consisting of language contained in the attachment entitled "2-9-22 BPD Body Cam Proposal."

Town Issue – New Article – In Car Video: The Town proposes adding a new article to the CBA relative to In Car Video, consisting of language contained in the attachment entitled "2-9-22 BPD Body Cam Proposal.

Town Issue – New Article – GPS: The Town proposes adding a new article to the parties' CBA, consisting of the following language:

GPS is an effective tool in providing officer safety, public safety, operational efficiency, and in investigations. The Union acknowledges and agrees that the town has satisfied its bargaining obligations with respect to the use of GPS in current and future equipment, vehicles, and technology. The parties agree that such GPS is and will continue to be used for officer safety, efficiency, police operations, incident response, dispatching, complaints, investigations, plan development and strategy, and deployment of personnel. With the exception of employees on early intervention plans ("EIP") and employees who have been previously counseled and/or disciplined about performance, the parties agree that the Town will not use GPS for the purpose of active monitoring of employee performance.

Town Issue – Article VI (12), Sick Leave: The Town proposes to amend Article VI (12)(A), as follows:

A. Employees injured in the line of duty and who cannot perform full duty because of such injury shall, to the extent possible, be assigned to the Chief of Police to perform duties in the department consistent with their physical condition. Although priority must be given to all line of duty injury cases under this section, the Chief may thereafter consider employees injured off the job for assignment on a similar basis as employees injured in the line of duty.

Town Issue – Article XIV, Other Leave: The Town proposes to amend Article XIV (1), as follows:

Military Leave of Absence - Any employee of the Town who is a member of the Armed Forces of the Commonwealth or a reserve component of the Armed Forces of the United States shall be entitled to a leave of absence with pay during the time of compulsory military service as provided in Chapter 33, Section 59 of the General Laws as may be amended from time to time. Employees shall also be entitled to the same leaves of absence or vacation with pay given to other like employees.

The employee must present his/her military order to the Human Resources Director for authorization of the leave prior to the beginning of the requested leave.

TOWN'S MODIFIED PROPOSAL - JANUARY 17, 2023

A letter dated January 17, 2023, addressed to Union President Michael Keaveney and signed by Town Administrator Charles Carey, was admitted into

evidence as Town Exhibit No. 30. The letter included a modified settlement proposal by the Town, the terms of which are summarized as follows:

1. **Cost-of-Living Wage Increases:** The Town offered wage increase of 2.5% in Fiscal Year 2021, 1% in Fiscal Year 2022, 3% in Fiscal Year 2023, and 3% in Fiscal Year 2024.
2. **Steps:** Effective July 1, 2023, create a new maximum step after ten (10) years of service at 2% above the current non-senior maximum step, which shall be relabeled as Step 3.
3. **Education Incentive:** The Town agreed to adopt full Quinn level for all degrees for which Brookline is currently providing an incentive. The effective date for this benefit would be January 1, 2023.
4. **Body Worn Cameras and In-Car Video/GPS Policy:** The Town's proposal stated: "Added to contract upon finalization of policy."
5. **Sick Leave:** The Town's proposal stated: "Add previously agreed language to contract upon ratification by Union and Town Meeting."
6. **Military Leave:** The Town proposal stated: "Parties agree to add Town proposal as amended to include 'or any other state or federal law pay requirements' after the reference to Chapter 33, Section 59 of the General Laws."

Mr. Carey's proposal stated further: "All other proposals withdrawn."

STATUTORY FACTORS CONSIDERED BY THE PANEL

The JLMC Statute (Chapter 589 of the Acts of 1987) lists the following factors which must be considered by the arbitration panel.

“The factors to be given weight in any decision or determination resulting from the mechanism or procedures determined by the committee to be followed by the parties in order to reach final agreement pursuant to this section shall include, but not be limited to:

1. Such an award shall be consistent with: (i) section twenty-one C of chapter fifty-nine of the General Laws, and any appropriation for that fiscal year from the fund established in section two D of chapter twenty-nine of the General Laws.
2. The financial ability of the municipality to meet costs. The commissioner of revenue shall assist the committee in determining such financial ability. Such factors which shall be taken into consideration shall include but not be limited to: (i) the city, town, or district’s state reimbursements and assessments; (ii) the city, town or district’s long and short term bonded indebtedness; (iii) the city, town or district’s estimated share in the metropolitan district commissions deficit; (iv) the city, town or district’s estimated share in the Massachusetts Bay Transportation Authority’s deficit; and (v) consideration of average per capita property tax burden, average annual income of members of the community, the effect any accord might have on the respective property tax rates on the city or town.
3. The interests and welfare of the public.
4. The hazards of employment, physical, educational and mental qualifications, job training and skills involved.

5. A comparison of wages, hours and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally in public and private employment in comparable communities.
6. The decisions and recommendations of the fact-finder, if any.
7. The average consumer prices for goods and services, commonly known as the cost of living.
8. The overall compensation presently received by the employees, including direct wages and fringe benefits.
9. Changes in any of the foregoing circumstances during the pendency of the dispute.
10. Such other factors, not confined to the foregoing, which are normally and traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, facts-finding, arbitration or otherwise between parties, in the public services or in private employment.
11. The stipulation of the parties.

AWARD

After a thorough examination of the evidence presented by the parties, and with consideration of the statutory factors, the panel finds that the following adjustments to the wages, hours and working conditions of the members of the bargaining unit represented by the Brookline Police Union are warranted and are so ordered.

Article XVI, Wages.

Article XVI shall be amended by adding an across-the-board increase of 2.5% effective July 1, 2020, an increase of 3% effective July 1, 2021, and an increase of 3% effective July 1, 2022.

Article XVI shall be amended by adding a new section entitled “Certification Differential.” The details of the new section are found in the Union’s proposal regarding the Police Reform Act of 2020, the so-called, “POST Commission Stipend.”

The panel awards the following: A stipend equal to 2% of base pay shall become effective on July 1, 2021. The stipend shall be increased by an additional 2% effective July 1, 2022.

Article XVI shall be amended by replacing the current, twenty-year senior step with a new ten-year senior step. The new ten-year step shall become effective on June 30, 2023.

Article XVI, Wages, Educational Incentive Compensation.

The provisions of Article XVI regarding Education Incentive Compensation shall be amended in accordance with the Union’s proposal regarding “Non-Quinn Eligible Employees.” Such employees shall be awarded the same Quinn-equivalent incentive as other employees – specifically, 10% for an Associate’s Degree, 20% for a Bachelor’s Degree and 25% for a Master’s Degree. These provisions shall have an effective date of January 1, 2023.

Body Worn Cameras.

The Town's proposal regarding the implementation of a Body Worn Camera policy, entitled "2-9-22 BPD Body Cam Proposal," shall be added to the CBA.

All other Town and Union proposals, other than those previously agreed to, are rejected.

DISCUSSION and FINDINGS

In reaching the above decision, the panel considered the statutory factors listed in Chapter 589 of the Acts of 1987. The factors which were given weight are discussed below.¹

Financial Ability of Brookline to Meet the Costs.

The Town maintained that it derives approximately 90% of its revenue from residential property taxes, and that property taxes provide a stable, predictable source of revenue.² However, the Town argued, its ability to grow overall revenues is severely constrained by Proposition 2 ½. Further, the Town argues that constraints on revenue growth were negatively impacted by a decline in state aid between FY2022 and FY2023, a reduction of Chapter 70 Education Aid and a nine percent increase in its MBTA assessment.

Notwithstanding the assertion that its ability to grow overall revenues is constrained, the Town offered evidence touting the success of its fiscal strategy and planning.

¹ Factors not discussed here were found to be either inapplicable or of no probative to our decision.

² The Union argues that the actual figure reported to the state in Union Exhibit No. 5 is 83.44%.

In 2022, Moody's assigned the Town a Aaa rating and credited the Town's "strong fiscal management." Moody's offered the opinion that the Town can expect near-term stability due, in part, to its "maintenance of adequate reserves." (See, Union No. 36.)

The Union counters that although Proposition 2 ½ applies to every community in the Commonwealth, the limitation on tax revenues has not prevented twelve of the thirteen total comparison communities from paying its patrol officers more than Brookline does. Further, the Union argues, Brookline has a larger "override capacity" as a percentage of its levy ceiling than any of the other communities referenced by the Union.³

The Union argued further that the limitations on aid received from the state, specifically Chapter 70 funding, is the result of the Town's ability to pay for education services. That assertion was not refuted by the Town.

The panel has examined all of the evidence relative to the Town's finances and concluded that Brookline has the financial ability to meet the costs of the proposed three-year CBA. (See, "Award" section above.)

- Brookline has a budget of nearly \$400 million.
- The value of the average single-family home in Brookline is more than \$2 million. (See, Union Exhibit No. 5.)
- According to the Town's Long Range Financial Projection (Union Exhibit No. 33), revenue from Property Taxes is projected to increase every year from approximately \$281 million in FY 2023

³ Union Exhibit No. 5 – from DOR Data Analytics and Resource Bureau, shows that Brookline's Override Capacity is \$451,067,308., and that its Override Capacity as % of Levy Ceiling is 64.17%.

to more than \$332 million in FY 2027. (See also Union Exhibit No. 34, “FY2023 Financial Plan.”)

The Town has not sought a Proposition 2 ½ override since 2018. In 2018, the override was approved for approximately \$7 million. Of that amount, \$1-2 million went to the Town for building and library maintenance and to the DPW, with the remainder going to the School Department. Prior to that, there was an override in 2015. The funds approved by the Town Meeting in the 2015 override went to the School Department.

Comparison with Comparable Communities.

The Town offered seven (7) cities and towns in their proposed list of comparable communities. The Union offered a group of ten (10) communities. Four of these communities were on both parties’ lists - Arlington, Needham, Newton and Watertown. In addition to those four communities, the panel has elected to look at additional communities from each party’s proposed list. Thus, Wellesley, Everett, Lexington, Natick and Medford will round out the group of nine (9) communities whose wage and benefit packages warrant comparison. Excluded from our group are Boston, Cambridge, Quincy and Somerville which are dissimilar from Brookline in several ways.

A comparison of the total compensation for patrol officers in the four communities agreed upon by both parties with patrol officers in Brookline shows that Brookline patrol officers are the lowest paid of the five communities. In fact, an average compensation of the four agreed-upon communities is approximately \$94,681, while the total compensation for Brookline patrol officers is \$84,954.

Significantly, patrol officers in Newton, a community that borders Brookline, are paid \$103,331 - approximately \$18,377 more than Brookline.

A comparison of the total compensation for Sergeants garners similar results. According to the evidence produced during the arbitration, a Sergeant in Brookline receives \$108,757. in total compensation. The average pay for the four agreed-upon communities is approximately \$116,141. Of that group, only Arlington receives a lower compensation package, \$106,088. The highest paid Sergeants in that group are the Newton Sergeants who are paid \$123,969.

When all nine (9) communities are compared, Brookline patrol officers are the second lowest paid of the group, with only officers in the Town of Wellesley receiving lower wages (\$83,548). The highest paid of the nine communities is Everett whose patrol officers receive \$106,002 compared to \$84,954 for Brookline.

An examination of the evidence regarding the compensation paid to members of the police departments in comparable communities supports the Union's contention that the members of the Brookline Police Union are drastically underpaid. (See Union Exhibits Nos. 6, 6A and 38.)

The Cost of Living.

Two documents relevant to the cost of living were admitted into evidence at the arbitration hearing, the Consumer Price Index Overview Table – New England (Union Exhibits No. 31) and the Consumer Price Index for Boston-Cambridge-Newton – November 2022 (Union Exhibit No.32.) According to the information supplied in those documents, the Consumer Price Index for All Urban Consumers ("CPI-U") increase by 7.0% for the twelve-month period ending in November of 2022.

These documents confirm that the cost of living in eastern Massachusetts area has been going up for, at least, the past two years.

The Union asserts that the cost of living during the first two years of this CBA was 4.3% and 7% respectively. That assertion remains unrebutted.

The Interests of the Public and the Hazards of Employment.

The Union argued that the Brookline Police Department has a recruitment and retention problem that is “nearing a breaking point.” It is further the Union’s contention that the “dramatic exodus” from the department is the result of paying poor wages.

The assertion that law enforcement agencies across the country and in Massachusetts are having difficulty recruiting qualified police officers and retaining the ones they have is not in dispute. The Town, in fact, conceded that communities across the state are “straining to find police officers.” In the City of Boston, Civil Service applicants seeking employment as police officers decreased by 43% over four years from 2017 to 2021. In Massachusetts, there was a 25% drop in the number of Civil Service applicants over the same period. (Employer Exhibit No. 26.)

The evidence presented by the Union shows that 12 of 126 police officers in the Brookline Police Department retired between December of 2021 and August of 2022. Further, in 2020 four (4) employees left the department for employment elsewhere. That number increased to five (5) employees in 2021 and to eight (8) employees in 2022. (Union Exhibits No. 22 and 23.)

In addition, the evidence (witness testimony) shows that the Town has had difficulty hiring new police officers. In 2021, the Town was authorized to hire nine (9) new officers. However, it only succeeded in hiring one. In 2022, the town sought to hire an additional ten (10) new officers. The Town received applications from four (4) residents and twenty (20) non-residents. Of that group of 24, only six (6) made it through to the academy.

The Union produced un rebutted evidence that the recruitment and retention problems plaguing Brookline are causing significant staffing shortages. As a result, officers are required to work forced overtime including double and triple shifts. As a result, there are fewer officers available to respond to calls from the public.

The POST Commission.

Chapter 253 of the Acts of 2020, the so-called “Police Reform” legislation, was signed by the Governor in December of 2020. The commissioners were appointed in the Spring and early Summer of 2021. Although, it is foreseeable that the work of this new commission will have an impact on the lives and work of police officers across the Commonwealth, it was not a fully functioning body until the end of Fiscal Year 2020. As a consequence, the POST Commission had no impact upon the Brookline Police during the first year of the CBA currently in dispute. There is no justification for a Certification Stipend on July 1, 2020.

However, the Union made a compelling argument that the POST Commission will have a significant impact on the working conditions of the Brookline Police going forward. It is foreseeable that the new statute will change the nature of police work in Massachusetts.

The Act created a new Massachusetts Police Training Committee which was granted broad authority to establish policies and standards for screening applicants, and to establish rules and regulations regarding the use of force.

The Peace Officer Standards and Training Commission (the “POST” Commission). The POST Commission is made up of nine (9) members who are authorized to create certification standards and to certify police officers every three years. The Commission is also authorized to revoke the certification of police officers. The only recourse for a decertified officer is to appeal that action to the courts.

Collective bargaining agreements negotiated by police officers and their employers have historically provided the employees with the right to have a disciplinary grievance heard by a neutral arbitrator with years of experience in labor law and the interpretation of contract language. The majority of collective bargaining agreements include “just cause” provisions which protect the employees from being disciplined unfairly or excessively.

The POST Commission, with only three of its nine members from the field of law enforcement, is vested with the authority to certify applicants and to “deny an application or limit, condition, restrict, revoke or suspend a certification, or fine a person certified for any cause that the commission deems reasonable.”

The new law has weakened the job protections gained by police officers through the give-and-take of collective bargaining.

The Act and the authority granted to the POST Commission, will have a significant impact on the lives and work of police officers. For the reasons discussed here, the panel finds that the Stipend granted in the Award section herein is reasonable and warranted.

CONCLUSION

The collective bargaining agreement between the Brookline Police Union and the Town of Brookline, effective July 1, 2020 through June 30, 2023, shall be adjusted in accordance with the forgoing section of this decision entitled “Award.” These adjustments are supported by the evidence presented by the parties. The panel considered and weighed the evidence presented in accordance with the statutory factors listed in Chapter 589 of the Acts of 1987.

Theodore H. O’Brien, Chair

Dated: April 25, 2023

Richard Tranfaglia, Management Member

Dated:

Richard Pedrini, Labor Member

Dated:

DISSENTING OPINION

In the matter between the Brookline Police Department and the Town of Brookline, I concur with the vast amount of the decision as drafted by Arbitrator O'Brien with the exception of an award for POST

The Police Reform Act enacted by the State legislature I believe the tripartite panel agreed; was the result of a knee jerk reaction by the State legislature in response to national poor policing issues that had arisen, without limited input from members of law enforcement.

The Union request for a stipend to be awarded for adhering to a State mandated requirement to be awarded by a neutral Arbitrator I believe is something that should be sent back to the respective municipalities to negotiate, and not be subject to an Arbitrator's decision. Throughout my limited history in Municipal government, my experience has been that any new benefit is the result of negotiation between the Municipality and respective Union.

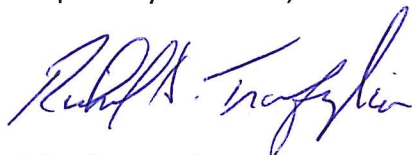
In the matter of Westport which recently settled with an award for POST, the position of the Town was to provide said stipend as a means of maintaining their COLA pattern with other settled contracts. The Town of Brookline opposed any stipend for said certification from the get go, and in my opinion was wrongfully allowed to be certified as an issue by the Chair.

In addition, I have difficulty awarding a stipend for certification as a condition of employment when other Municipal employees such as Teachers and EMT staff are held to certification requirements without the benefit of stipend being added for said certifications.

Furthermore, in the midst of a current national recession to award new stipends adds an additional burden to taxpayers of communities, and doesn't address the core issue of the implementation of the certification requirements as established.

In summation, I do not support the decision as issued regarding any stipend awarded for POST certification by the other two distinguished members of the tripartite panel in the matter of the Brookline Police Union, and the Town of Brookline,

Respectfully submitted,



Richard D. Tranfaglia

Management Member

CONCLUSION

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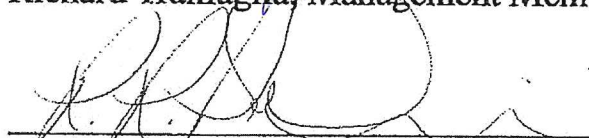

Theodore H. O'Brien, Chair

Dated: April 25, 2023


Richard Tranfaglia, Management Member

Dissent Opinion ATTACHED

Dated: 4-27-23


Richard Pedrini, Labor Member

Dated: 4/25/2023