

IN THE MATTER OF
ARBITRATION BETWEEN

MASSACHUSETTS COALITION OF POLICE, Local 215

and

TOWN OF SEEKONK

Interest Arbitration
Case No. JLMC-11-04P

Arbitration Panel: Sherrie Rose Talmadge, Esq., Neutral Arbitrator
Judith Robbins, Management Representative
Kenneth Scanzio, Police Representative

Appearances:

For the Town: Joseph S. Fair, Esq.
Kopelman and Paige, P.C.

For the Union: Bryan C. Decker, Esq.
Sandulli Grace, P.C.

Decision and Award
By the Arbitration Panel

Background

The Town of Seekonk (Town) and the Massachusetts Coalition of Police, Local 215 (Union) are parties to a collective bargaining agreement (Agreement) that expired June 30, 2010. The Union represents a bargaining unit composed of all permanent full-time regular members of the Police Department, excluding the Police Chief.

A petition was previously filed with the Massachusetts Joint Labor Management Committee (JLMC). On October 17, 2011, a subcommittee of the JLMC held a hearing with the parties on the issues in dispute, the positions of the parties, the views of the parties concerning how the continuing dispute should be resolved, and the preference of the parties as to the mechanism to be followed in order to reach a final agreement between the parties. At its October 20, 2011 meeting, the JLMC concluded that "there is an apparent exhaustion of the processes of collective bargaining, which constitutes a potential threat to public welfare." The JLMC further directed the parties to proceed to

arbitration, pursuant to Section 3(a) of Chapter 589 of the Acts of 1987, before a tripartite panel.

At its meeting on November 17, 2011, the undersigned neutral was appointed by the JLMC to serve as the Chair of the Arbitration Panel. The Management member of the panel was JLMC Committee member Judith Robbins, and the Union member was JLMC Committee member Kenneth Scanzio.

An arbitration hearing was held on February 27, 2012, before the tripartite panel. At the hearing, the parties were given full opportunity to present evidence and make arguments on their outstanding issues. The Parties submitted their briefs electronically on May 2, 2012 to the panelists, and the parties self-exchanged their briefs.

Issues in Contention

The parties have agreed that the award should provide for a three-year contract effective from July 1, 2010 to June 30, 2013. In addition, at the outset of the hearing they agreed that an award would be rendered on each of the following issues:

Union's Issues

1. Wages:
FY2011 – 0%
FY2012 – 3%
FY2013 – 3%
2. Personal days: Increase from two (2) to four (4)
3. Paid detail rate:
Private details: Increase rate to 1.5 times the rate of a top step patrol officer with a master's degree (currently \$44.88).
Town details: Increase rate to 1.5 times each officer's overtime rate
4. Education Incentive:
All employees receiving a benefit under the Quinn Bill, G.L. c. 41, Section 108L shall continue to be paid said benefit pursuant to current contract language.

Employees hired after 7/1/2009, or otherwise not eligible for participation in the "Quinn Bill," shall be entitled to the following educational benefit:
 - 5% for an Associates' degree in law enforcement or 60 points earned towards a Baccalaureate degree in law enforcement;
 - 10% for a Baccalaureate degree in law enforcement;
 - 12.5% for a Master's degree in law enforcement or law.
5. Clothing allowance: Increase from \$500.00 to \$650.00 and add reimbursement as an option.

Town's Issues

1. Wages:
FY2011 – 0%
FY2012 – 0%
FY 2013 – 1%

2. Bi-weekly payroll

3. Shift reassignments

Add new paragraph to end of Article III, Section 4, as follows:

“Notwithstanding the other provisions of this Article, the Chief of Police may establish alternate work shifts to assist in the coverage of temporary vacancies created by retirements, resignations or terminations or by military, injury, FMLA, maternity or other leave periods that are expected to exceed thirty (30) calendar days in duration. In such instances, the Chief may temporarily reassign an officer to alternate work shift hours established by the Chief for the period of the temporary vacancy. A minimum of two (2) weeks notice will be provided to the officer prior to any such temporary reassignment taking place.”

Wages

The current collective bargaining agreement, effective from July 1, 2008, expired on June 30, 2010. Wages are addressed in Article VII, Section 1 of the expired agreement.

Union's Position

The Union proposed zero percent (0%) increase during FY 2011, and three percent (3%) increase in each of the following two years of the contract (FY 2012, FY 2013). The Union argued that members of the Seekonk Police Department lag significantly behind officers in neighboring and comparable communities. The Union and the Town submitted different “universes” of communities comparable to Seekonk. Officer Amaral testified that the Union chose its large group of comparables (Seekonk and fifteen other communities) by size, proximity to Seekonk, comparability of income and comparability of department size. The Union noted that reviewing the comparables, the officers in Seekonk trail their peers in other communities by a large margin. The Union argued that its universe of comparables, included nearby towns and other towns of similar size and income levels, should be adopted as a more comprehensive universe of other communities.

Reviewing the financial data in the comparable universe shows that Seekonk is very similar in terms of financial strength. The average per capita income for the 16

communities is \$25,773 compared with Seekonk at \$24,058. The average tax bill in the 16 communities is \$4,129 and for Seekonk it is \$3,485. Significantly, Seekonk does collect meal/hotel taxes in excess of the average for the 16 other communities.

The Union noted that Seekonk officers earn less at every rank than their counterparts and provided the following numbers:

	Patrol Officer	Sergeant	Lieutenant
Seekonk	\$49,795.75	\$57,265.11	\$62,991.62
Average	\$54,860.13	\$65,591.77	\$81,309.56

At the patrolmen rank, only Rehoboth officers trail Seekonk, and by less than \$120.00 leaving Seekonk 15th out of 16 communities, and at the Sergeant and Lieutenant rank, Seekonk is 16th. Assuming those towns settle for less than 3% per year, even the 3% increases sought by the Union for FY 2012 and FY 2013 Seekonk would remain in the bottom third of wages among the comparable universe.

Despite the Town's smaller universe of comparables, officers in Seekonk lag the average of their peers at every rank. The Town's proposals would guarantee that Seekonk falls to the bottom of the comparable universe at every rank. The only reason the Town gives for offering a 0% increase in FY 2012 is that it decided not to give raises this year. Rather, the Town has available funds to easily grant the reasonable wage increases sought to the Union.

The Town is in a position to fund the proposals. During questioning from Panel Member Robbins, Town Finance Director Alexander admitted that he estimated FY 2012 revenues after having been directed to budget for "no raises". Proper budgeting is performed by first estimating available revenues, then determining what expenditures are possible. The Town first determined that it would not give raises, and then purposefully underestimated revenues to balance the budget.

As to FY 2011, the Union has not requested a wage increase, along with all other Town Unions.

The Town suggested that the Union's proposals would cost \$96,000 in FY 2012 and \$155,000 in FY 2013. The Town's exhibits regarding its finances demonstrate that they are strong. After decreasing in FY 2009 and 2010, local receipts rebounded in FY 2011 to \$3,854,386. The local receipts in FY 2011 were almost 2% higher than the prior peak year of FY 2008 (\$3,787,539.37). Despite this healthy rebound, the Town responded to local receipts in FY 2011 by budgeting a 19% decrease in local receipts to

\$3,136,750. Finance Director Alexander testified that he budgeted a decrease in local receipts to make revenues match the Town's desire not to give raises.

The Town has received additional revenues from the hotel and meals tax. Seekonk has a number of restaurants and hotels as a neighbor of Providence, RI. In January 2010 the Town took advantage of a state law which allowed it to raise its meal/hotel tax revenues. As a result, the actual revenue from the tax almost doubled from FY 2010 – FY 2011, rising from \$474,858 to \$915,991. There is no reason to think that these revenues would decrease in FY 2012. As of February 13, 2012, the Town had collected \$326,817.19 in Hotel Tax and \$233,697.41 in Meals Tax for a total of \$560,514.60. These taxes are collected quarterly, so this represents one half of the year. It is conservative to estimate that meal/hotel tax revenue for all of FY 2012 will approach \$1,000,000. This is consistent with a slight increase in the FY 2011 actual receipts of \$915,991. Thus, at worst, level funding expectation for meal/tax should have been budgeted, the Finance Director budgeted a \$233,241 decrease in these taxes. The Town's 25% decrease to \$682,750 is inexplicable. Rather, assuming that collections level off and the year's total is \$1,000,000 for this tax, an additional \$317,250 is available to the Town over its budget. The amount attributed to meal/hotel taxes alone would fund the Union's proposals in this case.

The Town also failed to acknowledge the substantial unrestricted funds it holds in both Free Cash and its Stabilization Fund. On February 13, 2012, the Finance Director reported that the Town had \$1,715,058 in its Stabilization Fund and \$302,043 in Free Cash. The Town could fund all three years of the Union's proposals using only cash at hand.

Furthermore, the Town has adopted the "health care reform" law passed by the General Court last year that has led to significant savings in other communities. It must be assumed that the Town's portrayal of out of control health insurance increases is no longer valid.

Despite the Town's desire not to grant any wage increases to its employees in FY 2012, there are multiple sources of money presently available to easily fund all of the Union's proposals. The Union requested that the panel adopt its proposal and award 3% increases to base wages in FY 2012 and 2013.

Town's Position

The Town proposed zero percent (0%) increase in FY 2011 and 2012 and one percent (1%) increase in FY 2013. In support of its position, the Town noted that the

panel should place great emphasis on the financial challenges facing the Town and the Town's inability to pay in light of these challenges. The panel should also consider the Union's requested wage increases in comparison to what the other Town unions have received over the same time period. Moreover, a comparison of benefits paid to Town police officers will demonstrate that they are fairly compensated relative to comparable communities.

The Town selected four comparable communities, all within Bristol County, because of their geographic proximity and similarity in a number of socio-economic and other areas. Seekonk's total population, unemployment rate, per capita income and median income are similar to those for Norton, Rehoboth, Somerset and Swansea. The total assessed values for these communities are all relatively close with the exception of Rehoboth, which is a bit lower. The total revenues for Seekonk are relatively close to those in Norton, Somerset and Swansea, although higher than Rehoboth. With the exception of Rehoboth, the number of police officers in each of these departments is similar. The Town looked at communities with the same geographic area as Seekonk, examined their comparative characteristics and arrived at a list of towns that were very similar to Seekonk in the relevant areas of measurement.

In contrast, the Union's list of comparable communities is difficult to reconcile and the vast majority are very different from Seekonk and should be disregarded. In population the average population of the towns used by the Union is an average of 45% greater than Seekonk's population (13,722). Seekonk is bordered by Attleboro, Rehoboth and Swansea, but Amesbury, Dennis, Marshfield and Nantucket are nowhere near Seekonk in geographic proximity, and Bridgewater, East Bridgewater, Foxborough and Middleborough are several towns away from Seekonk and belong to different counties (Plymouth and Norfolk). Four towns, Easton, Foxborough, Mansfield and Nantucket have significantly higher per capita income than Seekonk making them much wealthier. The Union's own exhibit reflects that Seekonk is \$1,715.00 below the average of the supposedly comparable communities. Further, the average single family tax bill for Seekonk in FY 2011 was \$3,485.00 which places Seekonk well below the \$4,129.00 average tax bill that exists in the communities the Union asserted were comparable. This reflects the lower property values that exist in Seekonk relative to the Union's list of communities. Seekonk's unemployment rate is almost 20% higher than the average of the communities used by the Union. Additionally, the average total revenues for the Union's list of communities for FY 2011 was \$63,698,502, which is \$18,949,195 or 42%

high than Seekonk (\$44,749,307). Finally, there was a wide disparity in the 2011 total assessed real estate value figures of Seekonk versus the "comparables" cited by the Union. The average total assessed value in the Union's list of communities was 26% higher than the total assessed value in Seekonk demonstrating the disparity between Seekonk and the communities the Union is asserting are "comparable".

The Town noted that as to internal comparables, the Union conceded, consistent with all other unions, agreed to no base wage increase for FY 2011. None of the other bargaining units have reached agreements with the Town for FY 2012 or 2013. Thus, when considering the impact of the Union's proposed base wage increases of 3% for FY 2012 and 2013, each of the Town's other unions will be seeking based increase that are at least equal to what is awarded the police officers.

The dramatic increase in its major costs since FY 2008 coinciding with a substantial overall decrease in its major sources of revenue has left the Town with no ability to increase base wages in FY 2012 and limited ability to increase them in FY 2013. In FY 2011, the Town had to fund the prior wage increases for all bargaining units that had been granted during FY 2008 and FY 2010. With compounding, the total base wage increase over the relevant period had been slightly more than 10.0%. In addition to the increase in personnel costs, the Town has seen its health insurance costs increase by 45.6% since FY 2008, and the Town's annual retirement assessment by the Bristol County Retirement Board has increase and is nearly half million dollars higher than in FY 2008. Between insurance and retirement increases alone, the Town has had to come up with an additional \$2.23 million dollars per year since FY 2008.

In addition to increasing costs, the Town has been faced with substantial declines in its primary sources of annual revenue. The amount of State Aid the Town has received had steadily decreased since FY 2008 and is \$565,960.00 less in FY 2012 than it was in FY 2008 for a total decrease in State Aid of nearly 37%. The \$75,532 amount the Commonwealth was reimbursing the Town for its Quinn Bill obligations in FY 2008 had been zeroed out as of FY 2012. The Town new growth for FY 2012 is 36.6% lower than in FY 2008 for a decrease of nearly \$180,000. Finally, the Town's local receipts during the FY 2008 to 2012 have seen a marked overall decrease. The Town's local receipts in FY 2009 were \$422,303 less than they were in FY 2008 and that its local receipts continued to decline in FY 2010 by an additional \$136,628. Although the Town's local receipts did increase in FY 2011 to a level that was slightly above the FY 2008 level, as the Finance Director testified, this coincided with the first full year that the

Town had received the benefit of the increase in the local meals tax that the Town first voted into effect in FY 2010. Thus, the mere fact that the "Other Excise" portion of the Town's Tax Rate Capitulation sheet increased between FY 2010 and 2011 does not by itself demonstrate that the economic downturn for the Town since FY 2008 has turned around. As evidence of this, the Finance Director testified that the Town was forced to decrease the amount the Town could reasonably anticipate to receive in revenues for "Licenses and Permits" in FY 2012 as there were no major construction projects that were planned for the year and, thus, the Town could not reasonably expect the same amount of construction related building permits to be issued. Similarly, the Medicare and Medicaid reimbursements reported in "Miscellaneous Recurring" category were expected to be drop significantly from the prior year. Moreover, the drop in interest rates was expected to halve the Town's expected "Investment Income" and "Miscellaneous Non-Recurring" revenue to be cut by approximately \$50,000. The record shows that the Town's major costs have all been climbing since FY 2008 and this trend has continued through FY 2012. Similarly, the Town's evidence that the State Aid, New Growth and Quinn Bill reimbursement figures have steadily declined since FY 2008.

The only area the Union questioned the accuracy of the Finance Director's testimony was in the area of the Local Receipts and the only point of contention was whether the Town underestimated the "Other Excise" category where the local meals tax is reported. The questioning assumes that the increase in this category that the Town experienced in FY 2011 could be assured of recurring or at least remaining level in FY 2012, which is not a certainty. Even assuming the Town could expect that the "Other Excise" category would remain at its FY 2011 level, this would only result in a potential increase in revenue of \$233,240.54 which would be needed to cover increases in health insurance costs and retirement assessments that are expected to be coming for FY 2013, as well as offset the potential loss in other major revenue areas such as State Aid and New Growth.

All categories in the Police Department's budget are affected by a base wage increase. Under the Town's base wage proposal for FY 2012 and 2013 of 0% and 1%, respectively, there would be no effect on the Police Department budget for FY 2012 and an increase of approximately \$23,184 in FY 2013. Subsequently, other Town bargaining units would be seeking at least a similar increase. A 1% increase in FY 2013 would result in a total increase of more than \$75,000 in personnel costs for FY 2013 on the government side and factoring in the School Department and its unions into the equation

the \$233,240.54 that the Union believes the Town underestimated its meals tax figures by would be swallowed up by a single 1% increase in base wages for FY 2013. If the Union's wage proposal is granted, it would have a catastrophic effect on the Town. The total price tag for the pair of 3% base wage increases would be approximately \$210,734 for just the police unit. If there is a similar wage increase for other governmental units and the School Department employees the financial impact would be catastrophic.

The Town asserted that the Free Cash balance is not a potential source of funding of the Union's requested increases. Free Cash is a revenue source which results from the calculation, as of July 1, of a community's remaining, unrestricted funds from operation of the previous fiscal year based on the balance sheet as of June 30th. It is a financial position as of a certain date and not a recurring revenue source. As of the hearing the Town's Free Cash balance was \$302,043, a small amount that leaves the Town with little margin for error or room to address any unexpected costs. The Free Cash is not a viable option for funding any base wage increases.

The Town also contended that the stabilization account, designed to insure against emergency repairs or other unexpected and/or unforeseen expenses, is not intended as a funding source for recurring costs such as wage increases. To appropriate money from the stabilization account a two-thirds Town Meeting vote is required. The amount maintained in its stabilization account is an important factor that is considered by bonding agencies when the Town is looking to borrow money. At the time of the hearing the stabilization account balance stood at \$1,715,058, for which there are numerous capital expenditures that the Town anticipates having to make in FY 2013 and beyond. The award being sought by the Union would require the Town to dip into its stabilization account which would begin to undo the positive progress the Town has made in its bond rating since the current Finance Director arrived and would potentially require the Town to forego badly needed capital improvements and repairs.

Furthermore, bargaining unit members are being compensated at the median level of the comparable communities (Norton, Rehoboth, Somerset and Swansea). The total compensation currently received by a Seekonk patrol officer with ten years of experience and Bachelor's degree, including clothing/cleaning allowance, education incentive and longevity is \$61,824.79 which is at the median of the compensation received by similarly situated officers in the four comparable towns. The total compensation at each rank is as follows:

	<u>Patrol Officers</u>	<u>Sergeants</u>	<u>Lieutenants</u>
Rehoboth	\$68,613.26	\$78,628.13	\$91,163.74
Swansea	\$65,322.22	\$73,148.88	---
Seekonk	\$61,824.79	\$71,261.09	\$79,249.57
Somerset	\$60,774.49	\$70,431.21	\$80,883.49
Norton	\$58,463.24	\$69,544.08	\$81,822.90

For the rank of lieutenant, the total compensation level is very close to the total compensation level for lieutenants in Norton and Somerset.

Discussion

In lieu of the parties coming to agreement, this Panel must determine the appropriate wage increase for the three-year contract sought by the parties. Arbitrators generally consider a number of factors when determining what wage increase should be granted including wages of comparable employees; wage increases for other town employees; cost of living; and the Town's ability to pay. The parties, through the hearing, their post-hearing briefs and document submissions, have provided the Panel with information on these factors. For the reasons cited below, this Panel concludes that for the three year contract sought by the parties for FY 2011 through FY 2013 (July 1, 2010 – June 30, 2013) a wage increase of 0% effective July 1, 2010, a wage increase of 1% effective July 1, 2011 and 2% effective June 30, 2012 (the last day of FY 2012), and a wage increase of 2% effective July 1, 2012 and 1% effective June 20, 2013 (the last day of FY 2013) is appropriate.

At the time of the hearing, none of the Town-side bargaining units had settled their contracts. Consequently, there was no evidence of wage patterns for the Town's other municipal employees to consider in determining the appropriate salary increases for the Town's police officers.

The Panel is persuaded that a review of the evidence concerning the wages of the police officers in comparable communities indicates that the Seekonk police officers are among the lowest paid. The Union presented a universe of 15 communities against which to compare Seekonk. The Union's analysis comparing base salary reflected that Seekonk's police officers were paid substantially below the average as follows:

	<u>Patrol Officer</u>	<u>Sergeant</u>	<u>Lieutenant</u>
Seekonk	\$49,795.75	\$57,265.11	\$62,991.62
Average	\$54,860.13	\$65,591.77	\$81,309.56

Even adopting the Town's assertion that the Union's universe of comparables is too diverse, a review of the four towns in its universe of comparable communities all within Bristol County reflects that Seekonk's officers are second to last or last in base salary. A review of the Town's comparables examining only base salary reflects the following:

	<u>Patrol Officer¹</u>	<u>Sergeant²</u>	<u>Lieutenant³</u>
Seekonk	\$49,795.75	\$57,265.11	\$62,991.62
Norton	\$49,913.24	\$60,894.08	\$73,072.90
Rehoboth	\$55,865.22	\$64,210.94	\$74,657.28
Somerset	\$47,995.48	\$55,697.72	\$64,052.04
Swansea	\$52,833.28	\$58,629.04	---

The Panel agrees with the Union that the wages of the Seekonk police officers should be increased to place them in a more competitive position with respect to the comparative communities.

Having concluded the appropriateness of wage increases for FY 2012 of 1% on July 1, 2011 and 2% on June 30, 2012, and for FY 2013 of 2% on July 1, 2012 and 1% on June 30, 2013, the Panel must now consider whether the Town is able to pay these increases. The Town has argued that as a result of the dramatic increase in its major costs since FY 2008 coinciding with a substantial overall decrease in its major sources of revenue, the Town has no ability to increase base wages in FY 20012 and limited ability to increase them in FY 2013. The Panel is not convinced of the Town's inability to pay. The Town has estimated the cost of the Union's proposals \$96,000 in FY 2012 and \$155,000 in FY 2013, without including costs from an increase in the Town detail rate. The Town's exhibit reflects that after decreasing local receipts in FY 2009 and FY 2010, local receipts rebounded in FY 2011 to \$3,854,386 which was 2% higher than during the prior peak year of FY 2008 (\$3,787,539.37). As noted by the Union, one of the biggest gains for the Town was in the hotel and meals tax. When, in January 2010, the Town employed a state law entitling it to raise its meal/hotel tax revenues. Consequently, the actual revenue from this tax almost doubled from FY 2010 – FY 2011, rising from \$474,858 to \$915,991. These revenues do not appear to be decreasing in FY 2012. As of February 13, 2012 the Town had collected \$326,817.19 in Hotel Tax and \$233,697.41 in Meals Tax totaling \$560,514.60. This represents one half of the year. A conservative estimate is that the Meal/Hotel tax revenue for FY 2012 will approach \$1,000,000, an increase over the FY 2011 receipts of \$915,991. The Hotel/Meals tax revenue provides

¹ Assume 10 years of service and bachelor's degree

² Assume 15 years of service and bachelor's degree

a continuing and repeating income to the Town. The Panel concludes that in addition to acknowledging that the Town had substantial unrestricted funds in its Free Cash and Stabilization Fund, the Hotel/Meals tax revenue could fund the Union's proposals.

Award – Wages/Duration

There will be a three (3) year contract covering July 1, 2010 to June 30, 2013, with a wage increase of 0% effective July 1, 2010, a wage increase of 1% effective July 1, 2011 and 2% effective June 30, 2012 (the last day of FY 2012), and a wage increase of 2% effective July 1, 2012 and 1% effective June 20, 2013 (the last day of FY 2013).

Personal Days

Union's Position

The Union seeks to increase the number of personal days (Article VI, Section 2) from two to four. The Union argued that because Seekonk officers trail their peers in pay, it is appropriate that the panel award them four personal days, which is slightly higher than the average of the Town and the Union's comparables. The average number of personal days enjoyed by officers in both the Union's and the Town's universes is three. Because the Union will continue to lag in pay even if its wage proposal is granted, the Union proposes that it is appropriate for the panel to award the union one more personal day than the average.

Town's Position

The Town contends that the Seekonk officers should continue to receive two personal days per year. This is the same amount received by Somerset officers and one less than Norton officers receive. Although Swansea officers receive four personal days, the contract reflects that those days were granted in part "in lieu of one-half (1/2) day leave for the shift working during any period of time off granted prior to Christmas Day, New Year's Day, Good Friday or any other such time off granted to Employee of the Town who are not members of the Bargaining Unit". The Town assessed the cost of the Union's proposal as \$10,752.00.

Discussion

A review of the Town's comparable communities reflects that Somerset is the only other town besides Seekonk in which officers receive two personal days; Norton officers receive three personal days, Swansea officers receive four personal days and

³ Assume 20 years of service and bachelor's degree

Rehoboth officers receive five personal days. The Panel concludes that it would be appropriate for the Seekonk officers to increase the number of personal days from two to three.

Award – Personal Days

The number of Personal Days (Article VI, Section 2) will be increased from two to three days.

Detail Pay Rate

Union's Position

The Union seeks to change the rates of pay for "Town Details" and "Private Details" which are discussed in relevant part in:

Article XII, Section 1 – Special Details:

Special details shall include all work performed that is not paid directly from a Police Department budget appropriate. Any bargaining unit member who is assigned to a special detail shall be compensated at the following rate:

Effective upon ratification - \$40.00 per hour

All Town details, i.e. Town school events, Town DPW, etc. shall be at the rate of \$30.00 per hour. Effective 7/01/09, that rate shall be \$31.00 per hour....

The Union proposal:

For "Town Details" - 1.5 times the officer's rate and
For Private Details – Change rate to 1.5 times the rate of a top step patrol officer with a master's degree (currently \$44.88).

The Union, noting that under the expired contract "Town details" are paid at the rate of \$30.00 per hour, and private details are paid at \$40.00 per hour, proposed changing the method of computation for the detail rate to one that reflects officer base pay instead of a set dollar amount. For "private details", the Union's proposal of 1.5 times the rate of a top step patrol officer with a master's degree would result in a current rate of \$44.88, which is less than the \$45.00 that the town offered during negotiations. The average detail rate of the Union's comparables is \$41.15. Because the officers in Seekonk lag their counterparts in pay rate, the Union proposed that an award of a detail rate slightly higher than the average is appropriate. The private detail rate is not paid by the Town, but by the third party who contracts with the town for police coverage. The Town earns money on each private detail worked, and by statute charges a 10%

premium on all details billed, to offset the administrative costs (MGL. c. 44, Section 53C). The ability of the Town to generate revenue from the private details, coupled with the low wages paid the Seekonk officers justifies the grant of this proposal.

For "Town details", the Union proposed that officers be paid at their overtime rate. The Union pointed out that because "Town detail" work is not covered by the partial exemption to the FLSA afforded by section 7(p)(1), the Town may not pay officers less than the applicable overtime rate when performing Town details. The Union's proposal to pay Town details at the officer's overtime rate is designed to ensure FLSA compliance. The hourly rate for a 1st class officer is \$23.85 for whom the overtime rate is \$35.78. At the current \$30.00 rate for Town details, the Town risks FLSA violations for every detail worked. Because the only employer in a Town detail is the Town, the FLSA requires this outcome.

Town's Position

Although the Town does not pay officers for private details out of Town funds, the Town is concerned about the Town's private detail proposal for several reasons. First, the amount of the increase from the present rate would be quite substantial and will negatively affect local business during a time when the Town needs those businesses to thrive. Additionally, the Chief testified about his concern that the officers would be "pricing themselves out of the market". Under the Union's proposal, the rate for private details would be converted from a flat rate to 1.5 times the rate of a top step patrol officer with a master's degree. Not only would this mean an immediate increase in the hourly rate to \$44.88, it also would result in the private detail automatically increasing whenever an increase in the base wage is given. Using the Union's current wage proposal of 3% in FY 2012 and 3% in FY 2013 this would mean that effective July 1, 2012 the new rate would actually be \$47.44 or an overall increase of \$7.44 an hour. Moreover, the rate the Union is seeking is not in line with what the vast majority of the comparable communities are charging. The current private detail rate of \$40.00 is the same rate paid by Swansea, close to the \$41.00 rate paid by Somerset and not far off from the \$42.83 paid by Norton. On Rehoboth, at the rate of \$48.00, pays officers the kind of rate the Union is seeking.

Additionally, the Union is also proposing an increase in the Town detail rate from the current flat amount of \$31.00 per hour to a variable amount of 1.5 times each officer's overtime rate. The switch from the current flat rate system to a percentage based system would cause the rate to vary depending on which officer worked the detail

and as a result, would cause significant administrative issues for the Town. Depending on whether or not an officer is eligible for Quinn Bill benefits, this proposal by the Union would result in a variety of different Town detail rates depending upon which officer is ultimately assigned to work it. Further, since Town details are paid out of the budgets of the various Town departments that request them, the Union's Town detail proposal would dramatically increase the cost to those departments for such details. Moreover, the amount of the rate increase being sought exceeds what any of the comparable communities are paying. The current Town detail rate of \$31.00 is similar to the \$34.00 rate paid by Somerset and Swansea, and even the Rehoboth rate is only \$35.00.

Discussion

The Panel is in agreement with the Union that Town details should be made akin to all overtime worked by police officers and supports changing the Town detail rate from \$30.00 per hour to payment of officers at their overtime rate. For the private detail rate, the Panel determined that the current rate of \$40.00 per hour should be increased to a flat fee of \$44.00 per hour. The Panel felt that this amount was significantly higher than the average rate of the Union's comparables (\$41.15), and felt that a flat fee would keep the Seekonk officers' competitive and would be administratively easier to handle than the Union's proposed rate of 1.5 times the rate of a top step patrolman with a master's degree.

Award – Detail Pay Rate

In Article XII, Section 1, Town Details will be paid at 1.5 times the officer's rate and Private Details will be paid at the rate of \$44.00 per hour.

Temporary Shift Assignments

Town's Position

The Town proposed adding the following language to the end of Article III, Section 4:

"Notwithstanding the other provisions of this Article, the Chief of Police may establish alternate work shifts to assist in the coverage of temporary vacancies created by retirements, resignations or terminations or by military, injury, FMLA, maternity or other leave periods that are expected to exceed thirty (30) calendar days in duration. In such instances, the Chief may temporarily reassign an officer to alternate work shift hours established by the Chief for the period of the temporary vacancy. A minimum of two (2) weeks notice will be provided to the officer prior to any such temporary reassignment taking place."

The Town is seeking language that is designed to help the Police Chief address long term temporary staffing shortages that arise in the Department due to military leave, FMLA leave, injury leave etc. It would apply to temporary vacancies only and would help the Chief to be able to better manage the overtime costs these situations create. All of the comparable communities, Somerset, Norton, Swansea and Rehoboth, have contractual language that afford their respective chiefs with some ability to address temporary staffing shortages either in the form of split shifts or temporary reassignment powers.

Union's Position

Chief Charon testified that the Town's proposal on shift reassignments was intended to address staffing issues that are caused by temporary vacancies in excess of thirty (30) days. The Union does not oppose allowing the chief greater flexibility in this area. The Union requested that the Panel modify the proposal to make clear that temporary vacancies caused by "retirements, resignations or terminations" as opposed to those that are caused by an officer on leave, will be subject to the chief's right to reassign so long as the "Town takes reasonably prompt action to fill the vacancy". In other words, if the vacancy is caused by an officer leaving the department, the Town will not delay in filling that position.

Discussion

The Panel, along with the Union, acknowledges the Police Chief's need for greater flexibility to address staffing issues that are caused by temporary vacancies in excess of thirty calendar days. However, the Panel also recognizes the Union's concern that the proposal be modified to clarify that temporary vacancies caused by "retirements, resignations or terminations" as opposed to those that are caused by an officer on leave, will be subject to the Chief's right to reassign so long as the "Town takes reasonably prompt action to fill the vacancy".

Award – Temporary Shift Reassignments

The following language will be added to the end of Article III, Section 4:

"Notwithstanding the other provisions of this Article, the Chief of Police may establish alternate work shifts to assist in the coverage of temporary vacancies created by retirements, resignations or terminations that are expected to exceed thirty (30) calendar days in duration. In such instances, the Chief may temporarily reassign an officer to alternate work shift hours established by the Chief for the period of the temporary vacancy so long as the Town takes reasonably prompt action to fill the vacancy. A minimum of two (2) weeks notice will be provided to the officer prior to any such temporary reassignment taking place."

Clothing Allowance

Union's Position

Article X, Section 1 – Clothing Allowance states:

All members of the bargaining unit shall be granted an annual Clothing Allowance of \$500.00 to be paid on the first pay period of the Fiscal Year.

The Union seeks to change the language of Section 1 by increasing the annual Clothing Allowance from \$500 to \$650 and adding reimbursement as an option. The Union argued that this proposal is a modest increase in clothing allowance from \$500 to \$650 per year, an amount that was tentatively agreed to by the Town during negotiations, although subsequently withdrawn by the Town Administrator. This modest proposal would not even bring Seekonk to the average of comparable communities. When the current clothing allowance is combined with the contract's cleaning allowance, the \$825.00 received by Union members is \$571.15 less than the \$1,396.15 average of the comparable communities. If the Union's proposal is granted, that gap shrinks to \$421.15, still dramatically 50% less than the average of the comparables. The fact that the Town had tentatively agreed to this modest increase also favors acceptance by the Panel.

Town's Position

The Union has requested that the uniform/cleaning allowance (\$825.00 in total) be raised per employee. No evidence was offered by the Union, however, to demonstrate that the current amount of \$825.00 is somehow insufficient to meet the uniform/cleaning costs that officers must incur on an annual basis. For this reason alone the Union's proposal should be rejected. Additionally, the Union's proposal would cost the Town just shy of \$10,000 overall and would add approximately \$5,000 per year to the Department's budget. By itself, this proposal might seem affordable, but in light of the Union's other economic proposals; it is an increase that the Town cannot afford at this time. Also, while the current uniform/cleaning allowance is lower than what the comparable towns are paying, the Town's much higher longevity benefit more than makes up for any disparity.

Discussion

A review of the Town's comparables indicates that Seekonk's clothing/cleaning allowance at a total of \$825.00 is significantly below the average of \$1220. The clothing/cleaning allowance provided by Norton to its officers is \$1,550, by Rehoboth is

\$1,575, by Somerset is \$1,100 and by Swansea is \$1050. The clothing allowance sought by the Union is reasonable and the Town can afford to pay these costs.

Award – Clothing Allowance

The annual Clothing Allowance to all members of the bargaining unit, as described in Article X, Section 1, is to be increased from \$500 to \$650 and reimbursement is to be added as an option.

Bi-weekly payroll

Subsequent to the hearing in this matter, the parties reached an agreement and the Union agreed to accept the Town's proposed bi-weekly pay and to withdraw its unfair labor practice charge.

Award – Bi-weekly Payroll

The Union has agreed to accept the Town's bi-weekly pay proposal.

Education Incentive

Union's Position

The Union proposed to modify Article VII, Section 4 – Incentive Pay as follows:

All employees receiving a benefit under the Quinn Bill, G.L. c.41, Section 108L, shall continue to be paid said benefit pursuant to the current contract language.

Employees hired after 7/1/2009, or otherwise not eligible for participation in the "Quinn Bill", shall be entitled to the following educational benefit:

- 5% for an Associate's Degree in law enforcement or 60 points earned towards a Baccalaureate degree in law enforcement;
- 10% for a Baccalaureate Degree in law enforcement;
- 12.5% for a Master's Degree in law enforcement or law.

The Union noted that for many years Seekonk was able to attract quality applicants in part due to its ability to offer educational incentives to new hires. Under the Quinn Bill, MGL c. 41, Section 108L, officers received base wage increases for the receipt of college degrees in law enforcement or law. In 2009, the General Court amended the Quinn Bill to exclude any officers hired after July 1, 2009 and also any then current officers not enrolled in an eligible program by September 1, 2009.

The Union's proposal would provide new hires (and currently ineligible officers who acquire a qualifying degree) with an educational incentive equal to one half of the benefit conferred by the full Quinn Bill. The Union's proposal would allow the Town the ability to attract more qualified applicants, and would lessen the impact of the disparity in benefits within the bargaining unit caused by the state's closure of the Quinn Bill to new hires. Chief Charon testified that he would like the ability to offer an educational incentive to potential hires, as many surrounding communities were doing. The provision of an educational incentive to potential new hires will attract better candidates and will prevent Seekonk from becoming a "stepping stone" department. The Town has the ability to pay this modest proposal.

Town's Position

It is the Town's position that the Union's Quinn Bill proposal is beyond the scope of the Panel's authority in light of the provisions of G.L. c. 150E, Section 7(d) Chapter 27 of the Acts of 2009 and the Supreme Judicial Court's decision in Adams v. City of Boston in which the Court found that the City of Boston was only obligated by Section 108L to pay its 50% share of the Quinn Bill plus whatever reimbursement amounts, if any, it received from the Commonwealth for the Commonwealth's 50% share. See 461 Mass. 602 (2012). Since neither the Quinn Bill nor Chapter 27 of the Acts of 2009 are statutes that are mentioned in G.L. c. 150E, Section 7(d) as being subordinate to the terms of a collective bargaining agreement, the Town cannot be compelled by the Panel to provide a greater benefit to officers than that which is set out in the relevant statutes.

The Town further asserted that even if the Panel did have the authority to award the Union's proposal, there is absolutely no evidence in the record that a similar benefit exists in any of the comparable communities. The cost of adding this benefit for the currently ineligible employees would at the current wage rates be approximately \$14,360.00 for FY 2012 and approximately \$14,939.00 for FY 2013 for a total cost to the Town of \$29,299.00.

Discussion

The Panel has the authority to award the Union's proposal. The Panel, appointed by the JLMC, derives its authority from the contract and not the statutes. The statutes do not prohibit the Town and the Union from negotiating about an educational incentive for the police officers who are not eligible for participation in the Quinn Bill. The Panel steps into the shoes of the parties who have reached impasse in determining an appropriate resolution between the parties.

The Panel finds that the Union's modification of Article VII, Section 4 that, in addition to maintaining the Quinn Bill benefit for those employees currently receiving those benefits, would provide an educational incentive benefit for employees hired after July 1, 2009 or otherwise not eligible for participation in the Quinn Bill. The Union's educational incentive would provide new hires (and currently ineligible officers who acquire a qualifying degree) with an educational incentive equal to one half of the benefit conferred by the full Quinn Bill. Currently there are three officers who would be potentially affected. The Town has had a history of providing educational incentives to the police officers. It is noteworthy that Chief Charon testified that he would like the ability to offer an educational incentive to potential hires, as many surrounding communities were doing. As the Union pointed out, such a provision would encourage an educated and well-rounded police force and reduce disparities within the bargaining unit. The Panel has also concluded that the Town has the ability to pay this proposal.

Award – Education Incentive

The Panel has awarded the Union's Education Incentive proposal modifying Article VII, Section 4 in the following manner:

All employees receiving a benefit under the Quinn Bill, G.L. c.41, Section 108L, shall continue to be paid said benefit pursuant to the current contract language.

Employees hired after 7/1/2009, or otherwise not eligible for participation in the "Quinn Bill", shall be entitled to the following educational benefit:

- 5% for an Associate's Degree in law enforcement or 60 points earned towards a Baccalaureate degree in law enforcement;
- 10% for a Baccalaureate Degree in law enforcement;
- 12.5% for a Master's Degree in law enforcement or law.

Summary of Award

Award – Wages/Duration

There will be a three (3) year contract covering July 1, 2010 to June 30, 2013, with a wage increase of 0% effective July 1, 2010, a wage increase of 1% effective July 1, 2011 and 2% effective June 30, 2012 (the last day of FY 2012), and a wage increase of 2% effective July 1, 2012 and 1% effective June 20, 2013 (the last day of FY 2013).

Award – Personal Days

The number of Personal Days (Article VI, Section 2) will be increased from two (2) to three (3) days.

Award – Detail Pay Rate

In Article XII, Section 1, Town Details will be paid at 1.5 times the officer's rate and Private Details will be paid at the rate of \$44.00 per hour.

Award – Temporary Shift Reassignments

The Town's proposal for Temporary Shift Reassignments, with certain modifications, is awarded. The following language will be added to the end of Article III, Section 4:

"Notwithstanding the other provisions of this Article, the Chief of Police may establish alternate work shifts to assist in the coverage of temporary vacancies created by retirements, resignations or terminations that are expected to exceed thirty (30) calendar days in duration. In such instances, the Chief may temporarily reassign an officer to alternate work shift hours established by the Chief for the period of the temporary vacancy so long as the Town takes reasonably prompt action to fill the vacancy. A minimum of two (2) weeks notice will be provided to the officer prior to any such temporary reassignment taking place."

Award – Clothing Allowance

The annual Clothing Allowance to all members of the bargaining unit, as described in Article X, Section 1, is to be increased from \$500 to \$650 and reimbursement is to be added as an option.

Award – Bi-weekly Payroll

The Union has agreed to accept the Town's bi-weekly pay proposal.

Award – Education Incentive

The Panel has awarded the Union's Education Incentive proposal modifying Article VII, Section 4 in the following manner:

All employees receiving a benefit under the Quinn Bill, G.L. c.41, Section 108L, shall continue to be paid said benefit pursuant to the current contract language.

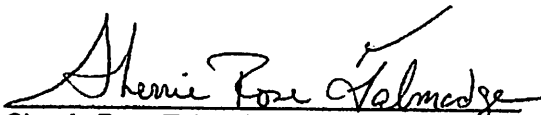
Employees hired after 7/1/2009, or otherwise not eligible for participation in the "Quinn Bill", shall be entitled to the following educational benefit:

- 5% for an Associate's Degree in law enforcement or 60 points earned towards a Baccalaureate degree in law enforcement;
- 10% for a Baccalaureate Degree in law enforcement;
- 12.5% for a Master's Degree in law enforcement or law.

Respectfully submitted this 8th day of June, 2012,


Judith Robbins, Management Representative


Kenneth Scanzio, Union Representative


Sherrie Rose Talmadge, Neutral Arbitrator