

City of Boston and Boston Police Patrolmen's Association

JLMC No. 12-32P

OPINION OF NEUTRAL PANEL CHAIR

Date issued: November 20, 2013

Background

After the parties were determined to have exhausted the collective bargaining process, the Joint Labor Management Committee appointed the undersigned Arbitrator to serve as the neutral panel chair. Under the procedure selected by the agency, the City and BPPA each appointed a party arbitrator to serve on the panel: John Dunlap, Chief of Labor Relations and Human Resources for the City; Susan Horwitz, Esq., partner in law offices of Sandulli Grace, P.C. for the BPPA.

Based on the submissions of the parties to the JLMC, six BPPA issues and seven City issues were certified by the agency for resolution by the arbitration panel. In addition, five issues characterized by the City as impact bargaining issues were also forwarded to the panel. The parties were able to resolve all the impact bargaining issues in dispute without a final award with the exception of the matters growing out of the installation of the GPS equipment and related software in City police vehicles. The City withdrew one issue from consideration before deliberations on the award started.

The quality of the information presented by the parties was uniformly high and the arguments advanced were forceful and skillfully crafted. In the end, I was persuaded by the weight of the evidence that the following award was consistent with the principles guiding arbitration under the law enabling the JLMC, c. 1078, acts of 1973, as amended.

In particular, I considered the limits of my authority as defined by the Section 3(a) of the law, and the factors to be given weight under the law: the appropriation limits of c. 59, the financial ability of the municipality to meet the costs, the interests and welfare of the public, the hazards of employment, mental and physical, educational and other requirements of the job, a

comparison of wages, hours and conditions of employment the employees involved in the arbitration with that of other similarly situated employees in the City, and the overall compensation of the affected employees, including direct wages and fringe benefits.

This Opinion does not purport to comprehensively describe the evidence received in the arbitration or the nuances of the arguments advanced by the parties. It is an attempt to explain the rationale for several pieces of the award. It does not address the revision of the Comp time provisions in the parties contract incorporated into the Award but which is the product of negotiations before and after the parties' presentations on that topic. Other topics have not been addressed because I have sought clarify the specific issues of concern to the City Council.

Wages

With respect to the final two points it is fair to say that a majority of the time in the hearing was devoted by the parties to wage issues and the City's financial picture. From the outset the City argued vigorously and consistently that the wage award should follow the pattern accepted by the majority (if not all) of other non-uniformed City unions: two three year contracts, with base wage increases of 0-1-2-3-3-3 per cent, with some improvements for the existing educational incentive program offered as the hearing more sharply on compensation questions.

The Union's initial wage proposal was a complicated and through revision of the existing three step wage structure and replacing it with a five step structure. It involved abolishing the City-only funded educational incentive program and the existing longevity payments by moving officers to a five step wage scale. Step 1 would have equaled the current police first year shift base rate; step five was to be the current fifth year firefighter base with the TCAP increase---a base percentage multiplier found in the firefighter's contract. Officers would have been moved to the highest step corresponding to their base rate including longevity and Quinn Bill incentives where applicable. After this preliminary realignment, percentage annual base wage increases would apply, although at a higher level than the City's non-uniform employee pattern. This proposal introduced themes that persisted throughout the arbitration and deliberations--the BPPA desire to capture the TCAP wage benefit found in the fire contract, the desire for wage parity for pension purposes with firefighters, and the BPPA's frustration and disappointment engendered by the loss of half of the value of the educational incentive benefits when the State entirely withdrew any support for the Quinn program in 2010.

The impact of the state's action was significant. The loss of the State funding of the Quinn Bill meant that police officers who had earned relevant degrees experienced annual reductions in base pay as follows: AA- \$3400, BA \$6842, MA \$8553, effective 2009 through the 2013. It should be pointed out that of the roughly 1460+ bargaining unit members, only 699 were receiving the educational incentive benefits when the hearing closed. There was considerable discussion and disagreement on the reasons for the low rate of penetration of this benefit compared to neighboring municipalities and towns, but it is clear that the fact that less than fifty percent of the bargaining unit participated in the educational incentive program also contributed to the difficulty in devising a wage settlement that would equitably address the bargaining unit as a whole. About 390 members were eligible for longevity payments in some form; around 370 members had less than ten years longevity and under the expired contract were not eligible for either longevity or educational incentive pay.

The Union's clear objective through its wage proposals (the original proposal changed over the course of the hearing) was to regain what it deemed to be parity with the firefighters union for pension purposes and to put its 1998 successful pursuit of Quinn Bill benefits in the past. This goal was most clearly articulated as a need to have the normative uniformed patrol officer at the same "pensionable" base retirement pay as the corresponding average firefighter.

The City consistently took the position that the loss of income to police officers caused by the State's withdraw of financial support was a consequence of the Union's opting for the Quinn Bill in 1998 and was a predictable result of relying on the State to honor its promises. Moreover, the City insists parity with the firefighters was not a useful measure. Rather, the City argued, the proper benchmark was the pattern accepted by non-uniformed employees --minimal wage increases in the first three years of their contracts with modest gains in FY 14-16.

According to the City's costing of the Union's opening proposal at the hearing, wages would have increased over the Union proposed three year contract (FY 11-12-13) by roughly 40% for officers at the starting base rate to 19% for officers receiving the MA level educational incentive pay. These numbers did not include increases in base rates in the out years (FY 14-15-16) for a City-proposed a six year contract package. The City entirely rejected the Union wage proposal that incorporated TCAP wage enhancements found in the firefighters contract which the City sought to have excised in the last round of bargaining. For reasons that do not appear in this record, the JLMC declined to certify the TCAP incentives for the arbitration.

In the course of the hearing the City did offer a substantial improvement its beginning proposals by including enhancements to the educational incentive plan which ultimately were incorporated into the award. The Arbitrator endorsed this increase as constituting a worthy and valuable commitment to deepening the educational achievement of patrol officers. The reasons for supporting enrichment of the educational resources of the police department hardly need elaboration--any cold assessment of the state of Massachusetts policing statewide since the adoption of the Quinn Bill would find that a better educated police force works smarter and harder. I supported the City's commitment to educational incentives over the Union's objections, and supported expanding the educational incentives to include officers (62 of 184) new to the force excluded by the state in 2011 amendments to the law. The cost of that expansion, following the pattern proposed by the City as laid out in the award was not remarkable and is consistent with the City's proposals.

Regarding the balance of the wage package, I note the following. The basis for comparing wages between police and fire is not the total average compensation received by a firefighter, who work the roughly the same total number of hours, but enjoy more whole non-scheduled days, compared to the total average compensation received by a patrol officer, who work a 4-2 schedule. The City argued from the outset of the hearing that any wage settlement should be based on the total compensation of the average or median police officer, including all overtime and detail pay.

I do not find that has been the historical basis for comparing wage structures in the uniformed services. Rather base wages that an officer or firefighter can expect to earn without working overtime or private paid details (which are far more likely to be worked by police officers under the laws of the Commonwealth) has historically been the grounds for analyzing and comparing the relative value of the public safety employees' wage settlements. In other words, the question is not what a firefighter or patrol officer can do to maximize their income, a measure that would make extraordinary work habits the norm, but instead what does an employee earn without working any additional overtime or any details. A police officer could approach or exceed the current or projected base wages of firefighter by working additional overtime hours or working additional details, but the total compensation would be the result of working more hours above the base, and moreover, while the additional hours of work might put more take home pay in the officer's pocket the additional compensation would not count toward

the officer's pension. It should also be noted that the total overtime hours available in the department is controlled by management both with respect to the size of the complement and the patterns of police assignments. Details, likewise depend on factors outside the control of police officers, including whether the Commonwealth will continue to maintain statutory and regulatory mandates for use of police officers in certain functions.

Second, the dispute over the final wage award is not driven by inability of the City to pay for the projected cost of the award. By the all the measures and studies cited by the parties, the City by virtue of prudent management and solid fiscal policies enjoys enviable financial stability and AA+ bond rating in the most recent 2.26.13 bond underwriting by Standard & Poor's Rating Services. In that report Standard & Poor's noted the City's "deep and diverse economy...consistently strong and proactive management...strong financial position bolstered by strong financial management policies ...and low debt burden, with above-average amortization." The City's objections to the cost of the award center in the main on the notion that the wage pattern breaks the City's promises made to non-uniformed bargaining units which were, it argues, induced to take a 0-1-2 package for the what are the first three years of these contracts. There is no dispute that restructuring the premium contributions, plan attributes and co- pays have resulted in appreciable savings to taxpayers over the years as has inducing retired employees in the civilian and uniformed services to accept alternative insurance coverage. It is certain that the agreement by other City employees to take reduced benefits when the City's tax revenues and State revenue sharing were declining during the recent depression also were necessary and allowed the City to exit that crisis in a more favorable economic position. There is no dispute that the balance of the wage enhancements in the award exceed the packages negotiated with civilian bargaining units, but the costs of the award as a whole do not exceed the City's ability to pay and the wage increases in the first years of the agreement are offset by collective bargaining reserves, estimated at approximately 43 million dollars at the time of the hearing, and waived non FLSA retroactive overtime. In the course of writing this Opinion, the City has questioned whether the provision of the award waiving retroactive overtime is legal. The Union apparently agrees that the contract cannot waive employee FLSA overtime, and I concur. There is a continuing dispute on the amount of savings the waiver represents, but it was not the intent of the parties to impinge on statutory overtime rights. The waiver questions aside, as explained below the award is consistent with the trend in wage improvements enjoyed by the

members of the fire union but was not and cannot achieve strict parity between the police and fire unions.

Ideology and pattern bargaining aside, the City's core objection articulated at the hearing and in deliberations is that the increases in base wages will ultimately result in radically higher, economically unsupportable pension contributions. Assuming for the sake of discussion that this cost is within the statutory parameters guiding this arbitration, the ultimate pension impact of the award were not convincingly developed in the arbitration and were not rationalized compared to the increased costs taken on by the City after the 2010 Eichen award for the firefighters which also result in higher long term pension costs. A comparison costs of the firefighters contract to this award shows that by City's calculations, the total increase in earnings paid out over a five year period was approximately 102.5 million dollars or 3.4% per annum for a bargaining unit with about two hundred fewer members. From the record it is not evident that the City's estimate offered for public consumption during the debate over whether the award should be accepted by City Council in 2010 included the cost of the TCAP which adds approximately .1% to every negotiated base wage increase and thus increases the compounding effect of the negotiated wage package. I assume, as did the Union, that the TCAP will remain in operation at least until a new contract is negotiated with the firefighters Union and would thus probably continue to act as a wage multiplier increasing the negotiated base wage. For that reason, the Union argued that the actual cost of the last wage package agreed by City Council was >3.5% per annum and exceeded the figures cited by management. More importantly, from the Union's perspective, the implication for the application of the TCAP going forward was stark and coupled with the loss of half the Quinn benefit for roughly half the bargaining unit meant that at the end FY of the second contract, FY 16, the median police patrol officer would be paid ten to twenty percent less in base pay than the median firefighter.

Applying the City's wage pattern alone would mean that a third year day police officer's base pay (excluding details and overtime, but including some differentials) would increase from \$64,417 to \$75,443 (79,215 for an officer with an AA degree). A fifth year Firefighter who earned a base pay of \$70,880 at the end of FY 11 (based on the 2.5% and 1.5% authorized in the contract approved by the City Council) plus an average TCAP of \$12,117 for a total of \$82,998 for pension purposes. Applying a pattern of 0-1-2-3-3-3 to would produce a \$75,443 base for the third year patrolman (with no degree) effective June 30, 16; a fifth year firefighter would earn

\$95,678, including TCAP on the same date. There is a certain amount of apples/oranges in any set of comparators brought to my attention, but putting aside outliers, the overall conclusion was inescapable: the application of the civilian pay pattern to the patrolmen's unit would lead inevitably to a widening gap between the base wages of police and fire employees and because of the TCAP embedded in the fire contract, the gap would be in fact grow faster. These calculations do not include the overtime or details that may be earned by any officers or firefighters for reasons described above.

The wage pattern of base increases in the award cannot by itself overcome this problem, because as the City argued, the fire union will most certainly demand the same pattern. But if parity, even rough parity, is desirable, and according to the record it has been a factor considered by the City and its uniformed employees since 1969 when Archibald Cox proposed parity as a benchmark in police contract mediation, then parity must be accorded some weight in this award. Exact parity cannot be the objective of the negotiations since the Union opted for the Quinn Bill in 1998 and by doing so put the Union base wages on a distinct trajectory that was not tied directly to the average base wage increase but included a substantial state subsidy. That subsidy was not based on the working conditions, years of service or other matters easily translated into the firefighters work, but grew out of the individual educational attainment of patrol officers. The TCAP might be seen as a balance to the Union's excursion into non-parity based wage enhancement, but it operates as a more explosive wage multiplier as seen in the examples above, and I could not endorse the Union's proposal to substitute a TCAP multiplier in place of the educational incentive program both because the City supports educational attainment in some modified form and because that incentive has contributed to department competence and improved public safety.

In lieu of the TCAP and mindful of the substantial economic losses experienced by almost half the members of the department, the Arbitrator endorsed the City's educational incentive improvements and expanded them to include officers hired after 2009. As shown by the examples cited above, without additional wage support the average police officer, with or without some higher education, would continue to lose ground. The City's answer--that the gap was created by the decisions of the police union, is not satisfactory on many levels. It is inconsistent with a history of efforts to compensate public safety employees in a roughly similar fashion and did nothing to answer the widening disparity in base wages. Accordingly, the wage

plan deviates from the civilian pattern by providing some wage increase in each contract year, even when the percentage in the first year of the contract, FY 11, is less than that provided the fire employees for the same period. The higher overall percentage increases are modulated by delaying the effective date of every annual increase in the second contract by three months (police contract wage increases historically took effect on July 1).

The award also moves toward parity by: incorporating a general strip base wage increase of \$2000 for all members of the bargaining unit effective January 1, 2014; 2) adding an additional longevity payment of \$2000 (not available to officers receiving educational benefits) for officers with five years seniority, effective January 1, 2014; and 3) as a means of approximating the cumulative effect of the TCAP on base pay, for patrol officers with highest longevity, and thus pushed further from the firefighter base wage, the award would add a \$6000 adjustment to the 25 year strip base and a \$3000 adjustment for employees with twenty years service.

The City characterizes this as a costly settlement and that is true. True because it covers a six year period, true because it addresses growing wage disparity between the police and fire employees, and true because attempts to maintain educational incentives the City values. It is not true in my opinion that pursuit of parity is the driving factor in the award. The award is consistent with the historic pattern of base wage parity, a factor recognized by the law as relevant in interest arbitration for police and fire employees. Equally important is that the award recognizes that the police force providing high quality public safety services in a more stressful, dangerous environment with effectively fewer human resources. Recent events have changed the nature of police work from patrol and response to responsibility for ensuring public safety at public events at levels unheard of in prior years. The life of great cities depends on citizens being able to live, work, recreate and assemble for any lawful purpose without fear of crime or terror. A motivated, disciplined police force makes those things possible and all the evidence persuades me that the award is consistent with the value the City receives from the police force. The economic stability of the City is widely recognized and while the benefits of that stability and prosperity may not have been equally distributed throughout the City, the City has been well governed and well policed factors which in turn contribute to the economic and political health of the City. Crime rates have dropped on many measures while there has been a despite a continuing reduction in the number of police patrolmen. Faced with a smaller staff and

increased demands for police services in new and more dangerous contexts, the department has continued to deliver high quality police services. The award recognizes this increased demand for police services and the fact that police patrol officers have delivered those services effectively. The award continues the history of City support for rank and file police officers that has led to increased public safety. It cannot answer the question, however, of whether it overcompensates police officers in the abstract or if less compensation would signal that the City values their service less than other uniformed services or the effect that signal might have on police morale.

Safe Street Teams

One of the City's issues that remained unresolved at the end of the hearing was its proposal on Safe Street Teams. That proposal would have amended the shift selection and overtime provision of the contract to permit it to staff Safe Street Teams (SST) as a centralized unit detailed to districts and to assign overtime to members of the team without regard to the normal practice of assigning overtime that have long been based on a "low man" principle. Opportunities for details would have also been received from the Area where the SST officer was detailed.

This proposal was a departure from the contractual norm and the existing practice. The City proposed recognition of the SST as centralized units in order to expand the staffing pool to all qualified officers, City-wide. As currently constituted, six officers and sergeant patrol an area covering about ten square blocks that are selected by the department as high crime "hot spots". Weather permitting, SST officers patrol on bicycles and focus on developing close community relationships and police visibility which permits the development of street intelligence essential for crime prevention in some neighborhoods. SST officers have not normally responded to 911 calls which dispatch officers working from patrol vehicles. SST's have been deployed by the department for several years, but were district based which restricted the pool to district patrol officers. Centralized units in the department are staffed on a City-wide basis, also based on ability and qualifications, but the overtime and detail opportunities for centralized units are drawn from Area F, and not from the Area where the unit may be detailed.

The City's SST proposal would have permitted it to treat the SST's as centralized units, thus widening the pool to all officers in the department, but would have also permitted the members of the unit to be drawn on overtime opportunities from the district and outside details

from the area where the SST was detailed. The City argued that a centralized unit was needed to maximize the size of the pool to ensure that motivated officers would volunteer for a SST. Highly motivated and particularly fit officers are sought because the units would be on bicycles during temperate weather allowing rapid reaction and close street patrol work, a style of police operations not suited for all officers. Lack of volunteers for this strenuous operation has required the department to mandate officers to staff the SST at times, it was claimed, but the City did not produce any evidence documenting the frequency or location of forced assignment to the SST and did not show how assigning overtime and details under the rules of the old contract had thwarted the department's goals. The City maintains however that in order to make working as an SST officer attractive, officers in the teams should have access to details in the Area where the SST teams is working and that officers should receive SST overtime without resorting to the "low man" principle that currently governs overtime assignment in a district.

The award recognizes the City's concerns with respect to recruitment for the units by establishing the SST as centralized units detailed to districts thus widening the recruitment pool and allowing selection for the teams based on qualifications and ability. The award also stipulates that overtime work arising from SST operations is available for SST officers, but otherwise preserves the pattern followed for other centralized units by providing that SST officers draw details and non-SST overtime from Area F. That pattern has not inhibited the ability of the department to staff other centralized units and there was no convincing evidence that it would deter motivated officers from opting for SST operations. What the award does not accomplish is a declaration that the department is free to assign SST officers to any overtime opportunities arising in the district where the SST is operating without consideration of whether the overtime is derived from the specialized unit, which has long been recognized in arbitration as an exception to the contractual "low man" principle. I was not persuaded the SST operations could not function as well as other centralized units appear to function under the same overtime and detail assignment provisions.

GPS Equipment

I address this issue largely because it has received some notoriety in the media as of late. The City's proposal was squarely within conventional management prerogative to introduce new technology that allows the department to carry out its public safety and crime prevention

objectives. The Union raised several objections to the new technology, widely used in fleet operations and logistics management, which centered on alleged infringement of police officer's privacy interests. I found those objections unpersuasive. The GPS transponders are to be installed on department issued equipment operated for police business and do not track officers's private movements. Whatever slight privacy interests officers may bring to work and that might be conceivably infringed by the GPS supported dispatch system must be deemed secondary to the City's interest in improving the efficiency of police dispatch operations. While there was some argument that such systems have not always delivered as promised, the evidence was insufficient to overcome management's legitimate interest in improving police operations that will likely result from increased ability to track the location of police cruisers.

The Union also raised the specter of unauthorized access to the transponder's signals ("hacking") that might compromise the safety of officers by allowing individuals outside the dispatch and command operations to know the location of patrol cruisers. The evidence at the hearing shows that the transponder signals, like the signals from individual cell phones, are encrypted with military-level technology. The possibility of unlocking those signals by any person not possessing the software and hardware used by the system is extremely remote, if not practically speaking impossible.

In response to police concerns about the use of system for discipline before officers have had a reasonable opportunity to understand how the information generated by GPS monitoring may be used, the parties agreed to an extended notice period while the operation of the system is implemented and when possible technical problems that might lead to mistakes with respect to cruiser location are corrected.

The balance of issues brought to the arbitration were resolved by the parties and/or require no elaboration.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "T. Budala", is written in a cursive, flowing style.

Timothy J. Buckalew, Esq.