

**COMMONWEALTH OF MASSACHUSETTS**  
**JOINT LABOR MANAGEMENT COMMITTEE FOR MUNICIPAL POLICE**  
**AND FIRE**  
**JLMC-14-4174**

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**IN THE MATTER OF ARBITRATION BETWEEN:**

CITY OF SOMERVILLE

&

SOMERVILLE POLICE EMPLOYEES ASSOCIATION

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**AWARD AND DECISION BY THE ARBITRATION PANEL**

**Background**

The City of Somerville ("City" or "Employer") and the Somerville Police Employees Association ("Union") are parties to a Collective Bargaining Agreement ("Agreement") that expired June 30, 2012. The parties engaged in direct negotiations and mediation, and agreed upon a number of matters, but were unable to reach a successor Agreement. A petition was filed for the Massachusetts Joint Labor Management Committee ("JLMC") to exercise jurisdiction, and the JLMC then exercised formal jurisdiction over the ongoing dispute between the City and the Union.

An Arbitration hearing commenced on June 27, and continued on July 20, and August 28, 2016 in Somerville, Massachusetts before a Tri-partite Panel consisting of Gary D. Altman, Esq. Neutral Panel Member, Mayor Dean Mazarella, Management Panel Member, and William DeMille, Union Panel Member. Alan J. McDonald, Esq., represented the Union and Philip Collins, Esq., represented the City of Somerville. The parties submitted post-hearing briefs.

## **Analysis and Issues**

Under the Collective Bargaining Laws of Massachusetts, the Interest Arbitration process is utilized when "there is an exhaustion of the process of collective bargaining which constitutes a potential threat to public welfare". In reaching the conclusions in the present award, the Arbitration Panel has considered the criteria set forth in the statute including the municipality's ability to pay, wages and benefits of comparable towns, and the cost of living. It must also be noted that large gains or major concessions are not achieved in the format of arbitration. An arbitrator is reluctant to modify contract provisions where the parties, in past years, have already reached agreement, the contract article has been in the contract for a considerable period of time, and there has been no ascertainable problem with the contract language.

## **Background**

The City of Somerville is located in Middlesex County. It has a population of approximately 80,000 people in a land area of 4.2 square miles. The City is governed by a Mayor and has an eleven member Board of Aldermen. The bargaining unit is composed of approximately eighty-eight patrol officers. The most recent Collective Bargaining Agreement expired on June 30, 2012.

The JLMC conducted a Section 3A hearing on November 12, 2015. At the outset of the hearing each party submitted a list of outstanding issues to the JLMC. On November 23, 2015 the Committee determined that there was "an apparent exhaustion of the process of collective bargaining which constitutes a potential threat to public welfare." The JLMC certified the following issues to be decided in the arbitration proceeding:

**Joint Issues**

1. Wages and Duration p. 3

**Union Issues**

1. Article XIX - Education Incentive p. 15  
2. Article New - Hazardous Duty Pay p. 24  
3. Article XIX - Longevity Pay p. 26  
4. Article VI - Detail Rate p. 28  
5. Article VI - Detail Jurisdiction p. 30

**City Issues**

1. Article II - Management Rights p. 33  
    A. Body Cameras p. 38  
    B. GPS p. 40  
    C. NARCAN p. 40  
2. Article XI - Ballistics Vests p. 42  
3. Article XVIII - Seniority p. 43  
4. Article XXI - New Alcohol Testing p. 47  
5. New Provision - Civilian IT Duties p. 48

**Wages and Duration**

The most recent collective bargaining Agreement expired on June 30, 2012, and the parties have been negotiating over the terms of a successor Agreement for an extended period of time. The parties' proposals on wages and duration are as follows:

**CITY'S POSITION**

The City proposes a one-year contract for the period of July 1, 2012 through June 30, 2013 and a three-year agreement from the period of July 1, 2013 through June 30, 2016.

**One Year Agreement - 7/1/12 - 6/30/13**

2% across the board increase.

**Three Year Agreement 7/1/13 - 6/30/16**

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

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

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

Under the City's proposal, wage increases would be retroactive for those employees who are still employed and those who retired, but not to those employees who resigned or were discharged.

#### Summary of the City's Arguments

The City maintains that its proposal of an 8% wage increase over the four-year period should be awarded. The City states that the list of six municipalities presented by the Union are not comparable, and should not be used in considering wages and benefits for Somerville police officers. The City strongly objects to the Union's inclusion of Boston as a comparable community, arguing that it has significant demographic and economic differences from Somerville. Specifically, the City maintains that the City of Boston and Somerville have considerably different populations, as Boston has a population of 650,000 which is considerably larger than that of Somerville, with a population of 78,804. The City also asserts that Boston, as the Capital of the Commonwealth, is a tourist destination with many hotels and mass transportation venues, whereas Somerville has only two hotels and only one subway station.

Most significantly, the City argues that the financial resources of Boston are in no way comparable to what exists in Somerville, and that in communities chosen by the Union the per-capita income is considerably higher than exists in Somerville. On the other hand, the City contends that the communities that it has chosen as comparable are more appropriate; that they are closer in proximity, have populations nearer in size to Somerville, that income and budgets are more comparable to Somerville, and they have previously been used as comparables in negotiations for other City bargaining units.

The City argues that the wages and benefits of Somerville Patrol Officers compare well with their counterparts in other comparable communities, and that Somerville Patrol Officers rank at the top in terms of total compensation. The City states that this is due primarily to a high base salary rate paid to its Patrol Officers, which is the third highest in its list of comparable communities. The City thus maintains that there is no justification for any type of equity adjustment. Moreover, the City states that a review of wage increases awarded by arbitrators in other jurisdictions shows that its wage proposal is justified. The City also points to the settlements reached with other City of Somerville bargaining units. The City contends that its proposal is almost identical to what the other City bargaining units agreed to for the same time period, and reflects the City's ability to pay for this contract period.

The City also states that because of the high base rates provided to Somerville Police Officers, there are no recruitment or retention issues for the Somerville Police Department. The City also maintains that its wage proposal is currently above the consumer price index for the relevant time period.

The City also maintains that its ability to pay is reflected in its wage proposal made to the Union. The City acknowledges that the City has seen an economic resurgence, although there are still a number of financial issues that confront the City. Specifically, the City points to cuts in State Aid, which is down \$12.4 million from what it was in 2008. Further the City states that it is facing rising pension and post retirement benefits, and multi-million dollar infrastructure costs. The City points to the delay

in the Green Line extension, and, as a result, new growth projections have been adjusted downward. The City concludes that there is no justification to grant wage increases to Somerville Patrol Officers more than provided to any other City of Somerville bargaining unit.

#### UNION'S POSITION

The Union proposes a three-year agreement for the period July 1, 2012 through June 30, 2015.

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

July 1, 2012 - 3% across the board increase.

July 1, 2013 - 3% across the board increase.

July 1, 2014 - 4% across the board increase.

The Union also proposes that "evergreen" language should be added to the parties' agreement, which reads:

If negotiations for a new agreement continue beyond June 30, 2015, this Agreement shall continue in full force and effect until a successor agreement is executed.

#### Summary of the Union's Arguments

The Union maintains that the agreement should be for a three-year duration, not four years, as proposed by the City. The Union states that whether a three or four year agreement, the parties must immediately begin negotiations for a successor Agreement, as the terms of the arbitrated agreement will have already expired. The Union maintains that in the vast majority of arbitration cases, Arbitrators are reluctant to award an agreement of more than three years. The Union further states that it should be up to the parties to negotiate the terms going forward and not have the fourth year determined by an arbitration panel, when the parties have not negotiated over this additional year.

The Union further asserts that its proposed evergreen language should be added to the parties' Agreement. The Union states that in the past the parties worked under an evergreen clause, and the most recent contract had an evergreen clause that was in effect for only two years. The Union states that after the expiration of the evergreen clause the parties have had to resort to filing charges at the Division of Labor Relations, and that nineteen charges were filed by the Union alleging contract violations or changes in past practice. The Union maintains that a review of contracts in comparable communities shows an overwhelming practice of having evergreen clauses in the police labor agreements. The Union maintains that the City has not presented a legitimate argument as to why there should be no evergreen clauses in the Agreement.

The Union contends that a review of comparable salaries and benefits demonstrates that more must be done to improve the wages and benefits for Somerville Patrol Officers. The Union first states that the comparable communities selected by the City are not appropriate, as they are too large a group, many of which are non-urban communities, and share little in common with Somerville. The Union argues that its list of comparables is smaller and more appropriate. Specifically, the Union contends that Boston should be considered as comparable due to its close proximity, its population density, and the fact that it is faced with similar urban policing concerns. The Union argues that a review of its comparable communities shows that wages and benefits of Somerville Patrol Officers lag behind what is provided in these other communities.

The Union argues that a review of total compensation of patrol officers in the comparable communities shows that

Somerville Patrol Officers receive less, and under the City's proposal will fall even further behind. The Union argues that recent wage settlements show that the region has recovered from the great recession and have provided wage increases to attract and retain their police officers.

The Union further argues that the wage settlements provided to other bargaining units in the City of Somerville should not be controlling in this proceeding. The Union asserts that the proper benchmark as provided by the arbitration law is wages and benefits paid to comparable employees, which means it is more appropriate to look at wages and benefits provided to other municipal police officers. Moreover, the Union asserts that in the present case there is ample justification to provide wage and economic benefits higher than recently agreed to by other Somerville bargaining units, including Somerville Firefighters who work under different working conditions, and have a history of different benefits.

The Union further argues that the City has the financial ability to pay for the Association's proposal, and that the City has not presented any evidence that it does not have the financial means to pay the Union's proposed increases. The Union points to the City's free cash and stabilization fund, and that the City currently has an Aa2 bond rating, which shows the financial health of the City. The Union also contends that the City is enjoying new growth and commercial development, and an expanding housing market. The Union maintains that more must be done to increase the wages and benefits of Somerville Patrol Officers to ensure that they remain competitive with their police colleagues in the area.

**Discussion**

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

I. Somerville Wage Increases

The wage settlements for Somerville municipal employees for the most recent round of contract negotiations are as follows:

	<u>FY 13</u>	<u>FY 14</u>	<u>FY 15</u>	<u>FY 16</u>
Fire Fighters	2.5%	2%	2%	N-S
Fire Alarm	2.5%	2%	2%	N-S
SEIU Local 888 E-911	2%	2%	2%	2%
SEIU Local 888 X-Guard	2%	2%	New scale	2%
NCFO Local 3	2%	2%	2%	2%
SMEA Unit A	2%	1%	2%	2%
SMEA Unit B	2%	1%	2%	2%
SMEA Unit D	2%	1%	2%	2%

II. Comparability

The parties disagree as to which communities should be the basis for comparisons with Somerville. The City asserts that the communities of Arlington, Brookline, Cambridge, Everett, Framingham, Lowell, Malden, Medford, Melrose, Newton, Peabody, Quincy, Revere, Waltham and Weymouth should be used as comparable communities for considering wages and benefits. The Union's universe of comparable

communities is much smaller and includes the communities of Medford, Lynn, Cambridge, Newton, Boston, and Quincy.

There is no right or wrong answer in deciding which communities are in fact comparable. Comparability does not mean that the communities must in fact be equivalent in each and every respect. There in fact may be reasons to compare various conditions of employment that exist for Somerville Police Officers with the police officers in a large number of municipalities. For example, the facts may show that there is a consistent state-wide trend, for example, working hours or shift schedules for police officers. Thus, a comparison with a large number of communities would be most relevant in this regard.

In 2012 the City of Somerville engaged the Collins Center for Public Management at the University of Massachusetts to conduct a classification and compensation study for the City's for non-union positions. In the survey the Collins Center stated:

The criteria considered in recommending comparable municipalities included geographical proximity to Somerville, similarity of population size, and similarity in terms of having a goal of employing the most innovative methods of municipal service delivery, both locally and nationally. The Collins Center project team met with the Compensation Advisory Board and presented several suggested comparable municipalities.

Those communities chosen in the Collins Center classification study were Arlington, Brookline, Cambridge, Lowell, Malden, Melrose, Newton, Quincy, and Waltham. It is these communities that will be considered for review, and the City of Medford will also be reviewed, since both the

Union and City agreed that it was appropriate to be considered.

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

<u>Community</u>	<u>FY 13</u>	<u>FY 14</u>	<u>FY 15</u>	<u>FY16</u>
Arlington	3%	2.75%	2.75%	2.80%
Brookline	2%	2%	2%	2%
Cambridge	2.50%	2.50%	NS	NS
Lowell	2.25%	3.50%	2.50%	NS
Medford	1.00%	1.00%	2.00%	
Malden	3%	2%	2%	2%
Melrose	2%	2%	2%	NS
Newton	\$700+1.5%	1.50%	NS	NS
Quincy	1%	2%	2%	NS
Waltham	2.50%	NS	NS	NS

The wage adjustments in surrounding communities for the relevant time period show that the wage increases proposed by the City are in line with the wage increases agreed to in these surrounding communities. Moreover, the evidence also demonstrates that the overall compensation (including wages and benefits) provided to Somerville Police, although not the same, is comparable to what is provided to police officers in these other communities. There is, therefore, no justification for any large-scale equity adjustments to the Somerville Patrol Officer wage increases.

As of FY 2012, the wage rates for Somerville Police Officers and Somerville Firefighters were essentially equal: Somerville Police \$59,783 and Somerville Fire \$59,742. The Union proposal would significantly alter the basic wage parity relationship that has historically existed between these two public safety groups. There is, therefore, no compelling justification for this Panel to

award increases higher or lower than have been agreed to with Somerville Firefighters for the same contract period.

#### Duration

The City also proposes agreements covering a four year-time period, fiscal years 2013 through fiscal year 2016, whereas the Union proposes a three-year agreement, 2013-2015. Both parties argue that it is the other party's fault for the protracted delay in negotiations. It is not this Panel's role to assess fault for the length of time involved for the contract negotiations for this successor Agreement.

No matter whether the City's proposal or the Union's proposal is awarded, on the date that this Arbitration Award is finally issued the parties will again be out of contract. There is, certainly, justification to award a contract for as many years as possible. Nonetheless, this Panel will not award a contract for more than three years. First and foremost, a review of internal settlements shows that the Somerville Firefighters Union, the other large public safety unit, has not reached agreement for FY 2016. This Panel, as opposed to reviewing the existing wage pattern, would for all practical purposes, be setting the future wage pattern for the City's public safety employees. Moreover, a review of the external comparables shows that there are not many wage settlements for Fiscal Year 2016, and thus this Arbitration Panel does not have sufficient data to make a rational decision to award wage increases for this additional year.

#### Evergreen Clause

The Union proposes to add a provision to the duration clause known as "an evergreen clause". The Union's proposal reads:

If negotiations for a new Agreement continue beyond June 30, 2015, this Agreement shall continue in full force and effect until a successor agreement is executed.

The Union contends that the terms of an evergreen clause, which continue the terms of a collective bargaining agreement until a new agreement is reached, provides stability of labor management relations and protects the provisions of the negotiated agreement. The Union states that with the benefits of an evergreen clause, the Union has been forced to challenge any changes in contract terms or the status quo at the Department of Labor Relations, which has been costly and contentious. The Union further maintains that the overwhelming number of police agreements in the Commonwealth have evergreen clauses.

#### City Position

The City opposes adding an evergreen clause to the parties' Agreement. The City maintains that the absence of an evergreen clause had no impact on the parties' labor relations, and that the Union has had the ability to challenge allegations that the City has made unilateral changes by resorting to the Department of Labor Relations, and has done so on repeated occasions. The City further argues that the most compelling evidence on this issue is the fact that no other City bargaining unit now has an evergreen clause, and the lack of such clause has not had a negative effect on labor relations in the other City bargaining units.

#### Discussion

The facts show that, except for the City of Somerville, evergreen clauses are almost a universally

accepted provision in labor agreements in the Commonwealth. Indeed, whether looking at the City's list of comparable communities or the Union's list of comparable communities, contract language exists in these agreements that provides that the terms of the Agreement will continue after the expiration date of the Agreement.

In view of the overwhelming practice in other communities, it cannot be said that the existence of such clauses has a detrimental effect on labor relations. The existence of evergreen language permits the parties to continue to resort to the grievance arbitration procedure after the Agreement has expired. In view of the inherent delay in negotiations in the public sector, and the evidence showing the overwhelming acceptance of evergreen provisions in police agreements, there is no good reason for this Panel not to award the Union's proposal to add an evergreen clause to the duration provision of the parties' Agreement.

**AWARD - DURATION & WAGE INCREASES**

The Panel Awards wage increases for the three-year period:

FY 2013 - 2.5%  
FY 2014 - 2%  
FY 2015 - 2%

The parties shall add to the duration clause the following language:

If negotiations for a new Agreement continue beyond the expiration date of this Agreement the terms of this Agreement shall continue in full force and effect until a successor agreement is executed.

## UNION ISSUES

### Article XIX - Education Incentive

The current contract provides that officers hired before July 1, 2009 who had been receiving Quinn Education Incentives continue to receive full Quinn Educational Incentives. Officers hired after July 1, 2009, who had not yet matriculated into a Quinn Bill criminal justice program by October 1, 2009, receive no educational incentive.

#### Union's Proposal

The Union's proposal reads as follows:

Article XIX, Compensation, shall be amended at Section 5 Education Incentive Pay by deleting Sections (b) through (e) and replacing them with a new (b) and (c) to read:

(b) The City, having accepted the provisions of General Laws, Chapter 41, Section 108L, agrees to and shall pay to all employees so entitled, police career incentive base salary increases, as provided in, and pursuant to said Chapter 41, Section 108L. If at any time the legislature should amend or repeal Chapter 41, Section 108L, and/or fail to appropriate the state's share of payments to eligible officers, resulting in a loss of incentive pay to officers who previously had eligibility for payments thereunder, the City shall nonetheless continue to pay such officers as if the pre-existing Section 108L were still in effect and fully funded, but as an independent contractual educational incentive requirement rather than a statutory requirement. The City shall, effective July 1, 2012, also pay to officers who are not eligible for payments under Chapter 41, Section 108L due to the 2009 legislative amendments thereto as if they were so eligible but as an independent contractual educational incentive system rather than a statutory requirement.

For purposes of this section should at any time the Board of Higher Education for any reason no longer certify institutions of higher learning under Section 108L, the City shall deem any such institutions as

certified if they have been previously certified by the Board.

The purpose of this section is to guarantee the continuation of educational incentive benefits to previously hired officers, and the provision of the same educational incentive degrees to all newly hired officers, in the amount of 25% of base pay for Masters degrees or law degrees in criminal justice; 20% of base pay for Bachelor degrees in criminal justice and 10% for Associate Degrees and/or 60 credits in a Bachelor's degree program in criminal justice. This provision shall be liberally construed to further this purpose.

Officers already employed by the City of Somerville at the time of the 2009 amendments who were rendered ineligible because they had not enrolled in a Quinn eligible program prior to October 1, 2009 will be eligible for the same educational incentive benefits as set forth in the preceding paragraphs if and when they meet the educational requirements for those benefits.

Officers who on or after July 1, 2009 laterally transfer into the Somerville Police Department and who were receiving educational incentive benefits in their previous Department under Chapter 41, Section 108L shall be paid those benefits according to their original hiring date with the previous department.

(c) Officers who do not have a degree in criminal justice, but have degrees in Sociology, Psychology, Computer Science, Education, Computer Analytics, Crime analysis, law, and other degrees to be mutually agreed upon by the City and the Association, shall receive an annual payment of \$3,000 for an Associates' Degree, \$6,000 for a Bachelors' Degree, \$7,500 for a Masters' Degree and \$10,000 for a Law Degree. Payment of the incentives under this provision shall be included in officer pay for the same purposes as pay under Section (b) above.

The Union maintains that it is necessary and appropriate that all Somerville patrol officers, who have earned the appropriate educational degrees, should receive

the full Quinn Educational Incentive. The Union states that in 2009 the Commonwealth stopped funding half of the costs of the Quinn incentive, and that although Somerville continued to provide full Quinn incentive payments to those who had earned degrees new officers hired since 2009 do not receive any educational incentive. The Union states that this has now created a bifurcated pay structure with officers. With higher education, hired before 2009 being paid significantly higher amounts than officers hired after 2009, even though they have the same education, and perform the same duties. The Union states that the loss of income over the career of an officer hired after 2009 can be staggering, ranging in the hundreds of thousands of dollars.

The Union asserts that in many communities, including its list of comparable communities, the municipalities have continued to pay all their police officers the full educational incentive. The Union argues that the City should encourage its officers to be better educated, to be able to address the more complex and legalistic policing environment and not continue the disparity in benefits for its patrol officers.

#### City's Proposal

The City proposes the following changes in the education incentive:

The City of Somerville proposes that officers hired after July 1, 2009, and officers hired before then who did not matriculate into a Quinn Bill qualifying criminal justice program by October 1, 2009, receive the following annual education incentive pay stipends for degrees meeting so-called Quinn Bill standards:

For an Associate's degree in Criminal Justice	\$3,000/year
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For a Bachelor's degree in Criminal Justice	\$6,000/year
For a Master's degree in Criminal Justice	\$7,500/year
For a Juris Doctor degree	\$10,000/year

Payments shall be made bi-annually, two equal payments in June and December, and shall not be included in base pay for any purpose. The June payment shall be based on degrees achieved and provided to the City before the preceeding January 1. The December payment shall be based on degrees achieved and provided to the City before the preceding July 1.

This provision will be effective on July 1, 2014.

The City maintains that the State's failure to fund half of the costs of the Quinn Educational Incentive placed severe financial costs on municipalities including Somerville. The City states that to prevent Somerville Police Officers from suffering large reductions in their pay if it only paid half of the Quinn Incentive, it continued to fully fund the education incentive for those officers who had qualified; this resulted in the City having to fund 50% of the costs that had previously been paid by the State, not an insignificant amount.

The City states that to now provide the full Quinn Educational Incentive to all officers hired after 2009 would be very costly, and that it must be remembered that even when Quinn was in place, communities were only responsible for half of the costs of the Educational Incentive. The City maintains that its proposal to now provide educational incentives to those officers hired after 2009, but set forth in flat dollar amounts, rather than on a percentage basis, is reasonable and an affordable

means to provide educational incentives for all Somerville Patrol Officers. Moreover, the City states that this is an approach that has been taken in other communities such as Brookline, which agreed to pay officers a flat dollar amount for educational attainment, and Quincy, which pays new officers half the original Quinn Incentive payments. The City maintains that it seeks to provide educational incentives for officers hired after 2009, but must do so in a manner that is affordable for the community.

### **Discussion**

The Quinn Bill, the so-called educational incentive, was enacted to encourage police officers in the Commonwealth to attain higher education, and better serve the citizens of the Commonwealth. The Quinn Bill provided that officers who attained degrees in criminal justice would be paid an additional 10% for an Associate's degree, 20% for a Bachelor's degree, and 25% for a Master's or Law degree. The Commonwealth reimbursed communities half of the cost of the total educational incentive paid to officers.

The landscape for educational incentives changed dramatically in 2009, when the Commonwealth decided to no longer reimburse communities for half of the costs of the educational incentive. Litigation ensued with respect to communities' obligation to continue to fully fund educational incentives despite the lack of State funding. In 2012 the Supreme Judicial Court ruled that the communities were not legally required to fully fund the educational incentive in the absence of State funding.

Faced with what would have amounted to significant pay cuts to officers' wages, many communities, including Somerville, decided to provide the full educational incentive to those officers who were eligible, and had been

receiving the benefit. As the chart below shows, some communities continued to fund full educational benefits for those officers hired after 2009, some provided lower incentives, and some, like Somerville, decided to provide no educational incentive for those hired after 2009:

Community	Associates	Bachelors	Masters	
Arlington	10%	20%	25%	crim just.
Brookline*	\$5,000	\$10,000	\$12,500	crim & related
Cambridge	10%	20%	25%	crim just.
Lowell	10%	20%	25%	crim just.
Medford**	0%	10-20%	12.5-25%	crim just.
Malden ***	10%	20%	25%	
Melrose	0	0	0	
Newton	10%	20%	25%	crim & related
Quincy****	5%	10%	12.50%	law enforc.
Waltham	10%	20%	25%	law enforc.

\* Brookline's Flat dollar amounts became effective July 1, 2014.

\*\* Malden's program is paid on January 1, after an officer's 3<sup>rd</sup> anniversary.

\*\*\* Medford's program provides half of the Quinn's percentages after five years of service, and provides full Quinn percentages after 8 years of service.

\*\*\*\* Quincy's program is paid after one full-year of employment.

There are now a significant number of Somerville patrol officers (32 out of 88 hired after 2009), who, by virtue of their hire date, receive no educational incentive. It is hard to justify paying officers hired after 2009 a significantly lower rate of pay when they have the same educational degree and perform the same police duties as officers hired before 2009. Moreover, it appears that even those communities that did not provide educational incentives to officers hired after 2009 are now making some effort to provide educational incentives to these newly hired officers.

At the present time both the Union and City acknowledge the appropriateness of providing educational incentives for officers hired after 2009. The Union seeks full Quinn percentage payments, and to expand the scope of the incentive to degrees even if they are not criminal justice related degrees, whereas the City proposes flat dollar amounts for criminal justice related degrees.

The approach recently agreed to in Medford provides a methodology to provide full educational incentives to all Patrol Officers. Phasing in the educational incentive over a period of time is a reasonable and affordable method to equalize the educational incentive for all Somerville Patrol Officers. This staggered time period for providing full benefits is not unusual in labor relations as parties often have pay scales which provide higher pay rates for continued service. Similarly longevity payments reward officers with more years of service.

Medford does not provide educational incentives to officers who have an Associate's degree. In this proceeding, the Union and the City both acknowledge the merit of paying officers with an Associate's degree some amount for this educational attainment. Further, a review of the data shows that the majority of departments continue to pay officers with an Associate's degree. Moreover, the Panel believes that five year the waiting period for receiving any educational incentive agreed to Medford is too long, and educational incentives should begin sooner than five years of service. Specifically, the Panel believes that half of the Quinn percentages should be paid after three years of service, and full Quinn Incentives should be paid after five years of service. Further educational payments under this provision shall not

commence until January 1, 2015. Accordingly, the panel Awards the following Educational Incentive provision be added to the parties' Agreement.

**AWARD - EDUCATIONAL INCENTIVE**

The following provision shall be added to the parties' Agreement:

Article XIX, Compensation, shall be amended at Section 5 Education Incentive Pay, by deleting Sections (b) through (e) and replacing them with a new section (b) to read:

b. The City, having accepted the provisions of General Laws, Chapter 41, Section 108L, agrees to and shall pay to all employees so entitled, police career incentive base salary increases, as provided in, and pursuant to said Chapter 41, Section 108L. If at any time the legislature should amend or repeal Chapter 41, Section 108L, and/or fail to appropriate the state's share of payments to eligible officers, resulting in a loss of incentive pay to officers who previously had eligibility for payments thereunder, the City shall nonetheless continue to pay such officers as if the pre-existing Section 108L were still in effect and fully funded, but as an independent contractual educational incentive requirement rather than a statutory requirement. The City shall, effective July 1, 2012, also pay to officers who are not eligible for payments under Chapter 41, Section 108L due to the 2009 legislative amendments thereto, as if they were so eligible but as an independent contractual educational incentive system rather than a statutory requirement.

For purposes of this section, should at any time the Board of Higher Education for any reason, no longer certify institutions of higher learning under Section 108L, the City shall deem any such institutions as certified if they have been previously certified by the Board.

The purpose of this section is to guarantee the continuation of educational incentive benefits to previously hired officers in the amount of 25% of base

pay for Master's Degrees or Law Degrees in criminal justice; 20% of base pay for Bachelor's Degrees in criminal justice and 10% for Associate's Degrees and/or 60 credits in a Bachelor's degree program in criminal justice. This provision shall be liberally construed to further this purpose.

Officers hired after July 1, 2009 shall be eligible for contractual educational incentives in the amount of 5% for an Associate's Degree in Criminal Justice, 10% for a Bachelor's Degree in Criminal Justice and 12.5% for a Masters' Degree in Criminal Justice or a Law Degree but only after three years of service with the City of Somerville Police Department; after the completion of five years such officers shall be eligible for 10% for an Associate's Degree, 20% for a Bachelor's Degree in Criminal Justice and 25% for a Master's Degree in Criminal Justice or a Law Degree.

Officers already employed by the City of Somerville at the time of the 2009 amendments who were rendered ineligible because they had not enrolled in a Quinn eligible program prior to October 1, 2009 will be eligible for the same educational incentive benefits as new hires as set forth in the preceding paragraphs if and when they meet the educational requirements for those benefits.

Officers who, on or after July 1, 2009, laterally transfer into the Somerville Police Department and who were receiving educational incentive benefits in their previous Department under Chapter 41, Section 108L shall be paid those benefits as per this Section and based upon their original hiring date with the previous department. For example, an officer who was hired in another City on 7/1/11 and is receiving "Educational incentive benefits" for a Bachelor's degree in that City laterally transfers to Somerville on 7/1/14; the officer will be eligible for "Educational Incentive Benefits" in the City of Somerville on 7/1/14 at the rate of 10%. The officer will be eligible for the full 20% on 7/1/16.

Educational Incentive payments provided under this provision shall commence effective January 1, 2015 to those officers based on their years of service and educational attainment at that time. For example if an

officer was hired in July 2009 and has a Bachelor's Degree effective January 1, 2015, the officer's educational incentive will be 20%.

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

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

#### Union Proposal

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

The Union maintains that its proposal recognizes the unique hazards of the job, and would ensure that the compensation would be part of patrol officers' base pay and would therefore be fully pensionable. The Union states that this change would only be a minimal increase in the current payments. The Union further states that hazardous day payments are common stipends paid to public safety employees throughout the Commonwealth, and such payments are often part of the employees' base pay.

#### City Position

The City is opposed to the Union's proposal. The City states that there is no justification to change the current stipends in the Agreement. The City states that the variation in the amounts for weapons qualifications is to reward officer with higher pay if they attain a higher qualification standard, and this incentive to achieve a higher score would be lost if the payment was converted to a percentage basis. Moreover, the City contends that eliminating the payment and substituting a hazardous duty

pay of 3% would be a significant increase in the amount of the two benefits, as the 3% would be added to not only base salary, but Quinn incentive, night shift differential, holiday pay and overtime. The City further states that Firefighter now receive an annual stipend of \$1,000 for hazardous duty, which is a little less than the weapons qualification and the hazardous duty stipend paid to Somerville Patrol Officers. For Somerville firefighters the \$1,000 hazardous duty stipend is paid in flat dollars, and is not rolled into their base pay.

**Discussion**

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

**AWARD - HAZARDOUS DUTY PAY**

The Panel does not award the Union's proposal.

**Article XIX - Longevity Pay**

Article XIX, Section 3(A), Senior Longevity, provides annual longevity payment as follows:

- (i) 20 Years of Service \$800
- (ii) 25 Years of Service \$1,600
- (iii) 30 Years of Service \$3,200

Union Position

The Union proposes to modify the current Senior Longevity schedule to read as follows:

- (i) 20 Years of Service 2%
- (ii) 25 Years of Service 4%
- (iii) 30 Years of Service 6%

The Union maintains that its proposal to convert from flat dollar longevity payments to percentage-based longevity payments would provide a modest increase to the longevity payments now paid to officers. The Union states that there have not been increases in the longevity payments in more than a decade. The Union further argues that when reviewing longevity payments in other communities the longevity pay for Somerville Police is lower than that provided in other communities, such as Boston, and Lynn. Moreover, the Union states that the longevity payments for officers at the highest years of service at the 20 and 25 levels, fall behind payments made to officer with same years of service in the other communities. The Union further maintains that at the present time Somerville firefighters and police superiors currently receive higher longevity payments at certain levels than Somerville Patrol Officers.

City Position

The City opposes the Union's proposal. The City first states that the Union seeks to convert the current flat

dollar longevity payments to a percentage basis, which would result in automatic increases every time the parties change the base rate, and would also increase overtime and other fringe benefits. The City states that longevity payments paid to other City employees are expressed in flat dollar amounts, not on percentage basis. The City states that the parties agreed that at thirty years of service officers receive \$3,200, an amount that is higher than paid in most other comparable communities.

**Discussion**

The chart below shows longevity payments for comparable communities.

Community	5 YRS	10 YRS	15 YRS	20 YRS	25 YRS	30 YRS
Arlington	\$540	\$1,081	\$1,621	\$2,161	\$2,702	\$2,702
Brookline	\$0	\$500	\$650	\$800	\$800	\$1,000
Cambridge	\$0	\$0	\$0	\$0	\$0	\$0
Lowell	\$983	\$1,967	\$2,950	\$3,934	\$4,917	\$6,556
Medford	\$0	\$550	\$550	\$1,250	\$1,650	\$1,850
Malden	\$1,689	\$2,252	\$2,534	\$2,815	\$5,631	\$5,631
Melrose	\$0	\$550	\$750	\$1,330	\$1,750	\$2,500
Newton	\$0	\$650	\$800	\$2,000	\$2,500	\$2,500
Quincy	\$100	\$150	\$200	\$600	\$1,500	\$1,500*
Waltham	\$0	\$0	\$4,048	\$4,588	\$5,127	\$5,667

\* Quincy – after 28 years officers receive 5% above the final step, and at 29 years officers receive an additional 5%.

The chart demonstrates that longevity payments vary from community to community. There is no norm; some communities pay longevity on percentage basis and some on flat dollar basis. The payment of \$3,200 for officers of thirty years in Somerville is within the norm of longevity payments. Moreover, longevity payments cannot be considered in isolated manner, as it is simply one benefit that must be assessed in the total compensation paid to patrol officers.

The evidence suggests that total compensation paid to Somerville officers is competitive with officers in surrounding communities.

The comparison for other City of Somerville employs shows:

	5 YRS	10 YRS	15 YRS	20 YRS	25 YRS	30 YRS
Somerville Fire	\$300	\$400	\$900	\$1,650	\$2,200	\$2,200
Police Superiors	\$200	\$300	\$800	\$2,300	\$3,400	\$5,000
SEIU 911/Dispatch	\$0	\$0	\$250	\$500	\$500	\$500
SMEA Unit A	\$500	\$600	\$850	\$1,250	\$1,400	\$1,600
SMEA Unit B	\$500	\$600	\$850	\$1,250	\$1,400	\$1,600
SMEA Unit D	\$500	\$600	\$850	\$1,250	\$1,400	\$1,600

No other Somerville employee receives longevity on a percentage basis. The Police Superiors do receive higher longevity payments, but this appears to be a long-standing practice. There is no evidence that any other city bargaining unit received increases in longevity amounts during the most recent round of contract negotiations. Accordingly, based on totality of facts there is insufficient justification to change the current longevity payments at this time.

**AWARD - LONGEVITY PAY**

The Panel does not award the Union's proposal.

**Article VI - Detail Rate**

The language in the current provision on paid detail rates provide:

After October 1, 2007; the Association, at its option, by written notice to the City, attention its Mayor, may increase the applicable detail hourly rate by an amount or amounts not exceeding, in the aggregate, \$3.00 per hour as its Executive Board shall determine. Said increase(s) shall be cumulative and shall become effective seven (7) days after receipt of said

notice(s) by the City, and this Section 8 shall be deemed amended accordingly.

#### Union Proposal

The Union proposes to amend the current provision to provide for an increase in the detail rate from \$43.00 to \$46.00 and to amend the current provision to read:

After January 1, 2016; the Association, at its option, by written notice to the City, attention its Mayor, may increase the applicable detail hourly rate by an amount or amounts not exceeding, in the aggregate, \$4.00 per hour as its Executive Board shall determine. When the Department designates as a priority detail, the detail rate shall be \$5.00 per hour higher than the regular detail rate then in effect.

The Union maintains the increase in the detail rate is justified based on the detail rate now paid in comparable communities. The Union further states that the language it has proposed would permit the Union to increase the rate to ensure that the rate does not fall behind the rate paid in comparable communities. The Union also contends that providing an additional amount for priority details would encourage officers to work these details. The Union contends that it is not unusual for other departments to have higher detail rate for certain details when liquor is served or for details worked during work stoppages.

#### City Position

The City opposed the Union's proposal. The City maintains that the current provision allows the Union to increase the current rate by \$3.00 per contract term, and that the Union already increased the rate during the period covered by this Award. The Union states that the union's proposal would allow the Union to increase the rate in advance of the next Agreement. The City further states that

there is no justification for the Union's language to pay more for priority details, as such language does not exist in agreements in any other comparable community.

**Discussion**

The current provision allows the Union to increase the current rate per contract by \$3.00 an hour. The testimony at the hearing shows the Union increased the detail rate by the \$3.00 to the current rate of \$43.00. The evidence shows that the majority of agreements do not grant the discretion to the Union, but rather the parties negotiate the specific detail rate. Thus, there is insufficient justification to amend the current provision. Moreover, the Union asks for the contractual right to increase the effective January 1, 2016, which covers a time period outside of this Award; the Union did not want to extend the duration for FY 2016. Thus, the contract at issue will have expired at the time of the issuance of this Award, and any increase in the detail rate will not be retroactive, and will be the subject of future negotiations. Further, the Union's proposed language for special rate for priority details is not awarded. The language proposed by the Union does not exist in any of the comparable communities.

**AWARD - ARTICLE VI - DETAIL RATE**

The Panel does not award the Union's detail proposal.

**Article VI - Detail Jurisdiction**

There is nothing in the parties Agreement with respect to using non-law enforcement officers to perform detail work on public roadways.

**Union Proposal**

The Union proposes to add a new section 9 to Article VI, which reads as follows:

## **Section 9. Traffic Control Jurisdiction**

The City and Association agree that public safety interests are best served when traffic control on and around the roads, streets, highways and other passageways for construction, repair and maintenance projects; utility construction, repair and maintenance projects; and all other activities requiring traffic control is performed by sworn police officers.

Therefore the City and the Association agree that traffic control on all such projects and activities where traffic control is deemed appropriate by the Police Chief or his designee will be performed only by sworn police officers pursuant to the current practice under the Department's paid detail system (i.e., limited to bargaining unit officers, superior officers, bargaining unit retirees, and City Housing Officers), provided that if there are insufficient sworn police officers/retirees within the Department to handle available details on a given tour of duty, sworn police officers from other law enforcement agencies may be used to fill them under terms and conditions agreeable to the Association and approved by the Police Chief. Nothing in this section shall alter the Police Chief's authority presently existing to determine the appropriate level of traffic control measures on such projects and/or activities.

The Union states that Commonwealth issued new regulations that allow municipalities to use civilian flaggers, rather than sworn police officers, on certain road projects. The Union states that its proposal would ensure that civilian flaggers would not be used for traffic control on the City's roadways. The Union contends that under its proposal that once the Chief or his designee determines that a traffic detail is appropriate, the work would then be performed only by sworn officers.

The Union maintains that there is a public safety benefit to having sworn police officers directing traffic as it provide an additional police presence in the community. The Union asserts that the City has implicitly

recognized the value of police officers performing detail by its own regulations, and that the language it has proposed is often found in collective bargaining agreements in urban communities. Finally, the Union states that the City's contention that the issue is not an appropriate subject of bargaining is without merit as the JLMC certified this issue as an appropriate subject to be presented in arbitration, and has, in fact, been the subject of prior Arbitration Awards in other communities.

#### City Position

The City opposes the Union's proposal. The City contends that the Union's "flagman" proposal is an issue that is not an appropriate subject to be resolved by this Arbitration Panel. The City, citing a number of court cases, argues that the matter of assignment is core managerial right of the Chief which cannot be delegated. The City further contends that the pecking order of who will receive details after details are assigned to sworn officers is not a mandatory subject of bargaining and is further reason to deny the Union's proposal.

#### Discussion

The City cites a number of legal arguments as to why the Union's proposal should be rejected. It must first be stated that the JLMC certified this issue as an appropriate issue to be resolved by the Arbitration Panel. Moreover, under the Union's proposal the Chief retains the management right to determine whether a detail is necessary and the number of officers to be used on any detail assignment. It is well known that throughout the Commonwealth private details are an extremely important and well-recognized means for police officers to supplement that their annual income, and private details also allow for communities to

provide additional police presence in the community which is paid for by private entities.

It certainly appears that contract language restricting the use of flaggers or civilians to perform road details is not uncommon, and similar language is found in number of urban police departments such as Cambridge, Lynn, Medford, Newton and Quincy. Accordingly, there is merit to the Association's proposal to add its proposed language to the parties' Agreement. Indeed, the Union's proposal is modeled on the language in the City of Cambridge Police Agreement. Accordingly the Union's proposal is justified.

**AWARD - ARTICLE VI - DETAIL JURISDICTION**

The Union's proposal is awarded and its proposed language should be added to parties' Agreement.

**City Issues**

**Article II - Management Rights**

Article II, the current Management Right article provides that the City has the managerial right to "to determine the methods, means, and personnel by which the City's operations are to be conducted' and "exercise complete control and discretion over ... the technology of performing its work".

The City now seeks to add the following paragraph to the current Management Rights provision:

The City at its sole discretion, shall have the right to implement any and all technological enhancements or new technologies that may benefit the public safety and/or officer safety including, but not necessarily limited to: any use of Global Positioning System (GPS) technology, the administration of advancements or increased "First Responder" medical care to members of

the public or other enhancements in providing medical care, and the use of video, audio or other electronic or other recording devices, including body worn cameras. This provision includes the City's right to require officers to utilize tools, equipment and/or methods for which they have received department approved or provided training.

Although the proposed language expands the City's managerial rights in a broad and unspecified manner, in the present case the focus has been on three distinct subjects that it seeks implement at the present time; body cameras worn by members of the bargaining unit, GPS monitoring, and administration of NARCAN by members of the bargaining unit.

#### A. Body Cameras

The City seeks to adopt a program for members of the bargaining unit would be required to wear body cameras. The City states that having police officers wear body cameras would offer greater transparency to the public, and also provide protection for members of the public, and the patrol officers. The City points to United States Department of Justice report that found that body worn cameras by patrol officers improves public safety, reduces crime, and improves public trust between police and members of the public. The City also states that Massachusetts Police Chiefs Association now supports the use of body worn cameras.

The City maintains that body worn cameras has recently been adopted in the City of Methuen and Chief Solomon of the Methuen Department testified that the City and Union agreed to their implementation, and the procedures to be followed for the use of the cameras. The City states that Chief Solomon's explained that body cameras produce videos that capture the entire situation involving members of the

public and patrol officers, not just the portion that is produced by members of the public. The City states that body worn cameras are not intended to catch officers engaging in misconduct, but to provide officers with evidence that can show events that have actually occurred in an objective manner. The City again points to Chief Solomon's testimony that use of cameras has assisted to expeditiously resolved citizens complaints, and that reports show that citizens complaints go down when a Department has implemented body worn cameras.

The City also states that use of body worn cameras is consistent with public policy of both the State and Federal governments. The City points to the fact that both State and Federal governments are providing grants for departments to implement pilot programs for the use of body worn cameras. The City also points to a Department of Justice study that "recognizes body-worn cameras as a law enforcement strategy aimed at improving public safety, reducing crimes and improving public trust". The City states that body-worn cameras have been in adopted number of cities throughout the country, and that the data from these cities shows that the use of force is down, and citizens' complaints are also lower.

The City contends that body worn cameras are slowly being adopted in the Commonwealth that in addition to the City of Methuen, the Essex County Sheriff Department, Cape Cod National Seashore Rangers, and most recently a pilot program has been implemented in the City of Boston. The City argues that there is no convincing argument not to adopt body worn cameras for officers of the City of Somerville. The City further maintains that it has proposed a draft program that would allow officers to review any

videos before they complete their written reports, and is willing to negotiate the impacts of the trial program for as set period of time over the contours of a trial program to obtain input from those using the body-worn cameras during the trial period.

#### B. GPS

As part of the City' management right proposal it proposes to add language to the management rights provision would specifically allow the City to use Global Positioning System (GPS). The City contends that GPS technology is another technology advancement that would assist in the efficient dispatch of patrol units and would further assist in ensuring the safety of police officers that are patrolling the streets of Somerville. The City states that if an officer were involved in an accident or incident in which the officer was unable to respond, the GPS technology could determine the police officers location. The City disputes the Union's contention that the GPS technology would be used as means to monitor officers and spy on officers, and the City is willing to adopt language that bars random searches for disciplinary issues. The City further states that number of other Massachusetts communities have adopted GPS technology for its police cruisers and points to recent Interest Arbitration Award issued for Boston Police in which the Arbitrator adopted the City of Boston's proposal to add GPS technology.

#### C. NARCAN

The City states that the Arbitration Panel should specifically endorse the City's proposal that the existing management Right language should include the administration of NARCAN by its police officer. The City states that it widely recognized that the administration of NARCAN is

extremely effective in saving lives. The City further maintains that NARCAN is easy to administer, through a nasal spray that all public safety employees and First Responders in the City of Somerville have been trained in the administration NARCAN. The City also states that, at the current time, administration of NARCAN is included at police and fire training academies, and that most significantly as of the June 2016 arbitration hearing more than 55 lives have been saved by administration of NARCAN.

The City also states that Police Superior Officers now administer NARCAN, and that Somerville Firefighter also administer NARCAN and that the administration of NARCAN is often administered by police officers in other Massachusetts communities as part of their first responders duties.

#### UNION POSITION

The Union opposes the City's proposal to add the language to the management rights provision of the Agreement. The Union argues that three issues specifically proposed by the City in this proceeding, body worn cameras, GPS, and NARCAN have not been fully addressed in the parties' direct negotiations. The Union also contends that the changes proposed by the City are significant and controversial, and should not be awarded in an arbitration proceeding. The Union contends that the language proposed by the City is far reaching, and could potentially cover subjects and new technologies yet to be defined.

The Union maintains that with respect to the issue of body-worn cameras, this is still a new and controversial subject, and at the current time virtually no other police Departments in the Commonwealth of Massachusetts requires, as a condition of employment, that its officers wear body

worn cameras. The Union maintains that as body worn cameras are not in an accepted working condition for police officer in the Commonwealth, there is no justification to mandate such a new and controversial requirement at this time.

The Union also opposes the City's proposal on the use of GPS. The Union maintains that again a review of comparable communities demonstrates that GPS monitoring of Police Officers is not a well-accepted working condition. The Union further states that in a small City the size of Somerville, officers are readily available by radio communication and therefore the intrusion of privacy that comes with GPS monitoring, is not warranted.

The Union states that members of the bargaining unit have been administering NARCAN since directed to do so by the Chief, and the Union recognizes the value and the opportunity to save lives by use of NARCAN. The Union asserts, however, that the City has never negotiated over the impacts of its administration including safety protocols and other employment issues that could arise with the Administration of NARCAN, and that accordingly this matter should not be added to the parties' Agreement.

## **Discussion**

### **A. Body Worn Cameras**

There can be no dispute as to the national notoriety on the issue of having police officers being required to wear body worn cameras while performing their duties. Forceful and legitimate arguments have been presented by the City as to the need and importance for full transparency of police when they are performing their important public safety duties. Indeed, as Methuen Chief Solomon testified the public is using their cell phones to take videos of police thus it is only logical that police

have access to videos that show the entire incident and not just portions from a bystander's point of view.

Despite the forcefulness of the City's arguments for a number of reasons, the City's proposal cannot be awarded at this time. As stated at the outset of this Decision, novel and untried subjects are not generally awarded in interest arbitration proceedings. Arbitrators are interested in reviewing prevailing working conditions, and not establishing new conditions where there is no track record of success or failure of the subject matter at issue. The facts show that body worn cameras are not a prevailing working condition in the Commonwealth of Massachusetts. Except for Methuen, no other municipal police department has contract language addressing the complexities involving the wearing and the use of videos from of body worn cameras.

The City of Boston this past summer agreed to a pilot program that after a rocky start has now been implemented. This program is only a pilot program and the results of this pilot program are not yet concluded, and thus nothing has been made public with respect to issues that have arisen with the adoption of this program. Thus, it is too early to assess the success or failure of the program for the City of Boston. As stated above, the contract at issue in this arbitration proceeding will have expired by the time the Award is issued. The parties will have ample time to review the results of Boston's pilot program by the time they begin negotiations for a successor Agreement. Accordingly, the City's proposal to adopt a body-worn camera program is not awarded by this Panel.

### Dissent by Mayor Dean Mazzearella

Mayor Dean Mazzearella dissents in the Panel's decision not to award body worn cameras. Mayor Mazzearella pointing to the recent events for the Boston Police believes that Somerville Police should adopt, at a minimum, a pilot program on the use of body worn cameras.

### NARCAN

NARCAN is also a subject that has received much national attention. The Administration of NARCAN is an entirely different matter than the issue of body cameras. The evidence demonstrates that the administration of NARCAN is fairly well accepted practice by public safety officers in the Commonwealth. Indeed, at the present time the Somerville Firefighters administer NARCAN as part of their duties, Police Supervisor administer Narran, and the testimony at the hearing is that the Somerville Patrol Officers also have been administering NARCAN. The testimony at the hearing also shows that the administration of NARCAN is now taught at the Police Academy and is an accepted responsibility of First Responders, and Somerville Patrol Officers are First Responders. The language of the parties Agreement must be amended to reflect that it is part of Somerville Patrol Officer duties to administer NARCAN when appropriate and necessary.

### GPS

The City seeks to add language that would allow any use of Global Positioning System in police cruisers. The inclusion of language on GPS is now accepted in some comparable communities (Newton and Quincy). Most recently

in an Arbitration Award in the City of Boston, Arbitrator Buckalew reasoned:

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 UPS 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.

Arbitrator Buckalew awarded the City's proposal on GPS.

Cities such as Newton and Quincy have contractually set forth provisions on use of GPS, and also provide that use of GPS cannot be used as primary source of evidence to impose discipline.

#### **AWARD ARTICLE II - MANAGEMENT RIGHTS**

Article II shall be amended to add the following sentence:

This provision includes the City's right to require officers to administer NARCAN to members of the public. The Police Department may implement Global Positioning System technology (GPS) for purpose of further enhancing the safety of the public, efficiency, quality and delivery of police services to the citizens of Somerville. It is further understood that the disciplinary actions and excessive monitoring is not the intended purpose of GPS monitoring. The Department shall not randomly review GPS data. GPS data may be used to verify specific events such as complaints by member of the public, or alleged incidents, and in such cases GPS data may then be used to verify the accuracy of such information.

## **Article II Section 2 - Ballistics Vests**

The current contract language provides that officers hired after July 1, 2011 are required to wear ballistic vests.

### City Position:

The City proposes to Revise Article XI, Section 3 to read:

Employees who are members of the bargaining unit shall wear ballistic vests as determined by the Chief of Police in his/her sole discretion.

The City states that its proposal makes common sense and there is overwhelming proof that the wearing of vests can save officers lives. The City contends that it difficult to come up with cogent arguments against wearing vests. The City states that the Union's objection that the wearing of vests should be a personal decision is misguided, when wearing vest can potentially save lives and prevent injuries. The City states that many police Departments in the United States require officers to wear vests. The City also points to recent Arbitration Award in the City of Lexington in which the same issues were raised and the Panel granted the City's proposal for officers to wear vests.

### Union Position

The Union opposes the City's proposal. The Union maintains that wearing of vests is a uniquely personal decision that may interfere with an officer's mobility and flexibility. The Union states that Officer do no object to having vests with them while patrolling in cruisers, but they should not be required to do so at all times during the work day. The Union argues that the City's decision is motivated, in part, by the Department of Justice's decision

to reimbursement communities. The Union also states that the money that the Department will receive in reimbursements should be considered in overall economic proposals sought by the Union.

### **Discussion**

There can certainly be no dispute of the dangers and safety risks for police officer in todays work. There are compelling arguments for requiring patrol officers whenever they are on patrol to wear ballistic vests. Although the facts show that ballistic vests are not commonly mentioned in collective bargaining agreements, there can be no question that patrol officers in many communities throughout the Commonwealth now wear ballistic vests. Somerville patrol officers hired after 2011 are now required to wear vests and there is no longer rational reason that this requirement should no apply to all Somerville Patrol Officers. Any reasonable method to reduce the potential of injury or death to patrol officers should be condition of employment.

### **AWARD - ARTICLE II SECTION 2 - BALLISTICS VESTS**

The City's proposal on ballistic vests is awarded.

### **Article XVIII - Seniority**

The current provisions on seniority that are issue Section 3(b) and Section 9 of Article XVIII, and read as follows:

Section 3(b). Patrolman employees in the Uniformed Division, other than those referred to in Section 3(a), shall have the right and option to pick their job assignment by seniority, on the shift they have first chosen in accordance with the provisions of Section 2 hereof, from the list of such assignments determined by the Chief of Police or a shift

Commanding Officer, at the commencement of each regularly scheduled work shift or tour of duty, in accordance with the patrol deployment formula established by the Chief of Police in 1996 (Memorandum 96-50, 10/01/96), which formula is incorporated by reference; provided, however effective upon implementation of the two new districts, such employees shall continue to pick their job assignment by seniority on a daily basis, on the shift and within the district they have chosen in accordance with the provisions of Section 2 hereof.

\* \* \*

Section 9. Professional Picks. The Chief of Police, at his discretion, may select not more than five (5) patrolmen in the Uniformed Division for assignment to any position in the Department, subject to the following provisions:

1. Picks will be no longer than six (6) months in duration, except when an employee is assigned to the police academy for the duration of an academy class.
2. Said picks will not be used to cover existing positions.
3. Officers selected for these positions shall be on a voluntary basis.
4. The same officers shall not be used more than once in each calendar year.
5. Officers shall be selected from the patrol division.

#### City Position

The City proposal is as follows:

1. Seniority. Modify Article XVIII, Section 3(b) to read as follows:
  - a. Patrol Officers will bid their assignment with reference to the annual job bids as is current practice. [The parties will incorporate specific language reflecting the current practice.]

b. Each tour of duty will have posted all available positions as is the current practice.

[The parties will incorporate specific language reflecting the current practice.]

c. Each day the first seven Patrol Officers will be allowed to bid their positions by seniority. Thereafter, any additional officers will be assigned to any remaining posted positions based on a list developed by the Chief of Police or his or her designee.

d. The Patrol Commander may take into consideration an Officer's seniority, as well as any special circumstances or skill set required for a particular task.

e. In the event that there is a need for additional/supplemental positions in either the station or another district, the Chief or Deputy Chief may authorize a bid at the beginning of a shift or tour of duty to be based on seniority with the assignment going to the most senior officer bidding, or the most junior if the assignment cannot be filled by a seniority pick.

In Section 9, The City proposes to revise the current contract language to allow up to ten (10) police officers to be picked by the Chief for specialty assignments for a duration of up to one year.

The City maintains that its proposal preserve job seniority for the first seven patrol assignments but for those shifts with more than seven officers it would allow additional flexibility for assigning officers to assignments or tasks that the City deems necessary, that would promote effective policing. The City states that its proposal would still preserve job picks for the seven cruiser assignments per shift.

The City further states that at the present time the Chief has discretion to pick five officers for so called

"professional picks", and that such picks are limited to a six month period of time. The City argues that the current positions at issue are limited to obsolete positions such as assignments to the police academy or to the City's Solicitor's officer, and the current language is too limited, and does not allow officer to become well versed in the subject area to which they are assigned.

#### Union Position

The Union opposes the City's proposal to change the current language and practice on specialty assignments. The Union contends that the current provision balances the seniority rights for employees and the City's operational needs. The Union contends that the City's proposal to modify Section 9 would create a number of positions that could be filled at the Chief's sole discretion. The Union further states that the City's proposal on Section 9 would double the number of officers that can be assigned not based on seniority, and also doubles the time period by which officers could be assigned to these duties.

#### **Discussion**

To grant the City's proposal to modify both Sections would seriously erode the current practice on seniority shift bidding. The Chief, however, presented compelling justification to amend the provision on the professional assignments referenced in Section 9. Specifically, the Chief should be allowed to chose five officers (the current number) to any specialty assignment that the Chief in his discretion believes is appropriate, and the assignment should not be limited to the positions set forth in Section 4 to current positions. Moreover, the assignment should be extended to a one-year period of time.

**AWARD - ARTICLE XVIII - SENIORITY**

The Panel awards the City's proposal to amend Article XVIII, Section 9 to allow the Chief to make professional picks for up to five officers to be assigned to an assignment determined by the Chief for up to a one-year period of time.

**Article XXI - New Language Alcohol Testing**

**City Position**

The City proposes to amend Article XXI, the contract provisions addressing drug testing to add alcohol testing, to the existing contract language wherever drug testing is provided for or called for in the Agreement. The City's proposal would specify that .02 BAC would constitute a positive test result.

The City maintains that it is not unusual for police agreements in comparable communities to have provisions for drug and alcohol testing. The City states that currently there is language for both drug and alcohol testing for Somerville Fire Fighters. The City further argues that a .02 BAC level is appropriate to trigger a positive test result, maintaining that such standard was recently awarded in an Arbitration Decision for Lexington Police, and further that it is appropriate that police due to their duties and responsibilities have lower limits than fire fighters due to the inherent dangers of the position.

**Union Position**

The Union states that subjects such as drug and alcohol testing are controversial. The Union states that some years ago it agreed to drug testing, but contends that no evidence has been presented to demonstrate the need for officers to also be subject to alcohol testing. The Union

further maintains that alcohol testing is not a prevalent working condition for police officers in the region, citing Boston and Lynn departments, as examples. The Union also states that even in those communities that have alcohol testing in their police agreements they provide for a BAC limit of .04 not the .02 proposed by the City. The Union concludes that there has been insufficient evidence presented justifying the City's proposal.

**Discussion**

As the chart shows alcohol testing for public safety officers is not an unusual contract provision:

Community	Alcohol Testing
Arlington	Yes
Brookline	No
Cambridge	Yes
Lowell	No
Malden	No
Medford	Yes
Melrose	No
Newton	Yes
Quincy	No
Waltham	No
 Somerville Fire	 Yes

A review of the Newton Police, Cambridge Police and Medford Police agreements, as well as the Somerville Fire agreement, show that a positive result is reached at .04 BAC. Accordingly, the Panel concludes that .04 BAC is an appropriate level to trigger the applicable consequences set forth in the policy.

**AWARD - NEW LANGUAGE ALCOHOL TESTING**

The Panel Awards the City's proposal, as written, with the exception that .04 BAC should be the applicable standard.

### **New Provision - Civilian IT Duties**

There is no language on the use of civilian employees performing Information Technology (IT) services for the Department. The current practice has been that a member of the bargaining unit has performed IT services for the Police Department.

#### City Position

The City proposes to add the following language:

Notwithstanding prior assignments of trained police officers to assist in information technology matters, the Chiefs right to "determine the methods, means and personnel by which the City's operations are to be conducted" shall include the assignment of any and all information technology tasks and duties to trained professionals who are not members of the police officer bargaining unit.

The City maintains that Information Technology of the Somerville Police Department is today more complicated and require the best possible candidate to perform the duties. The City states that issue of IT security and technology were recently brought to the forefront as thee Massachusetts police departments have had their systems hacked. Moreover, the City states that it makes more sense that Chief the have the discretion to assign officers to patrol or other police functions, and not be required to continuously fill any IT positions in the police Department with bargaining unit employees.

#### Union Position

The Union opposes the City's proposal. The Union maintains that for the past fifteen years a patrol officer, a members of the bargaining unit, has been assigned to perform the Department's IT services, and the City's justification to make the change is that the City's

Director of IT did not get along with a former member of the Police Department who performed the services, not that the work was deficient. The Union further contends that it is beneficial for a police officer, who knows the working of the Department and the nature of police work, to be assigned to perform these duties. The Union states that it is not unusual for police departments in the region to have members of the bargaining unit perform IT services for their respective police departments.

**Discussion**

The issue of assigning IT duties in the police department has been a controversial issue between the parties. It is logical and appropriate with the ever changing demands of information technology that the Department should have access to the most up to date technology, and the personnel to perform such duties. This can be accomplished not by eliminating the current IT assignment to a patrol office, but allowing the Department the ability to supplement and use outside contractors or other City employees, to assist and supplement the Police IT Department, when necessary, without the Union challenging such assignment as an improper assignment of work outside the bargaining unit.

**AWARD - CIVILIAN IT DUTIES**

The Panel awards the following paragraph to be added to the parties Agreement.

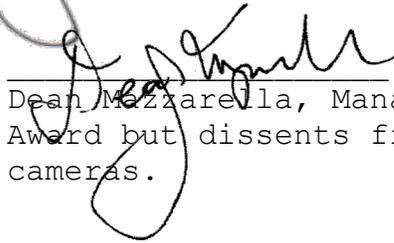
The Chiefs shall the right to use trained professionals who are not members of the police officer bargaining unit to assist and supplement the information technology tasks and duties now performed by members of the bargaining unit. Such assingment shall not displace members of the bargaining unit who have been previoulsey assigned to perform these duties.

**Conclusion**

The Panel has considered the statutory criteria in an effort to balance the interests of the bargaining unit employees, the City, and the citizens of the City of Somerville. Although all concur in this result, except for Mayor Mazzarella's dissent on the subject of body worn cameras, it must be noted that the reasoning set forth above is that of the neutral arbitrator.



Gary D. Altman, Esq., Neutral Arbitrator



Dean Mazzarella, Management Panel Member, Concurs in this Award but dissents from the Panel's Decision on body-worn cameras.

*William DeMille*

William DeMille, Union Panel Member, Concurs in this Award

Dated: December 22, 2016

## Body Worn Cameras

The following is the reasoning for my dissent from the Chair's decision on the issue of body worn cameras. It is my opinion that the decision undercuts the agreement the Police Association already made to grant the City the management right to "exercise complete control and discretion over the technology of performing its work". Body worn cameras certainly fit within that authority.

The opinion of both the Chair and the Union's designee seems to be based on the fact that only one Massachusetts municipal police department (Methuen) has implemented a full body worn camera program and that this is sufficient reason to not have Somerville become the second. This opinion does not weigh the strong evidence presented by the City, much of which is stated in the Chair's description of the City's position. That evidence, which was not rebutted by the Union, includes the following:

- That these programs are working in a number of major cities across the United States and in Methuen.
- That the body worn camera will record the entirety of an incident, as opposed to a bystander's video of an officer's reaction to some provocation or threat not recorded.
- That the camera will also provide valuable evidence about criminal behavior as well as the interaction of our police officers with our citizens.
- That in communities with body worn cameras, use of force and civilian complaints have been significantly reduced.
- That the U.S. Department of Justice and Massachusetts Police Chiefs Association are both supporting these programs.

These are all strong reasons for using this technology as a tool to benefit law enforcement. The opinion and the award do not take into account the evidence presented that there should be such a program.

In my opinion, the Association has not engaged the City on this issue, but just repeatedly rejected the proposal without offering any questions or concerns about the City's proposed policy even at arbitration. Instead of sanctioning this approach, the Panel should be encouraging the parties to work together toward what will clearly be a beneficial tool for law enforcement and a program likely to increase transparency

and public confidence in our police. As Methuen Police Chief Solomon testified, those videos will also have the benefit of expeditiously clearing officers of alleged wrongdoing where a citizen's complaint is unfounded. We saw a good example of this in the recent DUI arrest in Scottsdale, Arizona of a newly acquired Patriot's player.

The program is currently working in Methuen with the support of its police officers and Boston is conducting a trial. In short, we need more trials of this promising technology, rather than simply ignoring the successful implementation in Methuen and elsewhere and/or waiting for the results of one trial with a rocky start in the Boston Police Department. I believe that the panel should have at least endorsed a trial period of one year, with a labor-management committee, including representatives from both police bargaining units.

The public in Somerville and its public representatives have supported this initiative for two years. This Panel should have moved the process forward rather than sending the parties back to their very divergent positions, as they start bargaining in 2017 for a multi-year agreement.

In explaining my dissent, I do so with the respect for the views of the Chairman, and for the admirable job he did in evaluating not just the economic issues but also the other significant issues presented in this case.