

IN THE MATTER OF
INTEREST ARBITRATION
BETWEEN

INTERNATIONAL BROTHERHOOD
OF POLICE OFFICERS, LOCAL 364

-AND-

CITY OF SPRINGFIELD

JLMC-13-2559

AWARD

A. DURATION OF CONTRACTS:

Contract #1 July 1, 2012 – June 30, 2013
Contract #2: July 1, 2013 – June 30, 2016

B. ASSIGNMENTS:

Status quo.

C. COURT TIME:

Effective July 1, 2014, amend Article 17 (Court Time) Section 17.01 to provide a minimum of four (4) hours pay at the overtime rate of compensation for a court appearance on a scheduled work day.

D. MOBILE DIGITAL RECORDING SYSTEM:

Joint Study Committee

E. WAGES:

Contract #1: July 1, 2012 – No increase
Contract #2: July 1, 2013 – 2% across-the-board wage increase applied to the salary schedule in effect on June 30, 2013
July 1, 2014 – 2% across-the-board wage increase applied to the salary schedule in effect on June 30, 2014
July 1, 2015 – 2% across-the-board wage increase applied to the salary schedule in effect on June 30, 2015

F. UNIFORM ALLOWANCE:

Status quo.

G. EDUCATIONAL INCENTIVE:

Amend Article 24 (Educational Incentive) to include the following provisions:

Police officers eligible for benefits pursuant to G.L.c. 41, §108L shall receive such benefits regardless of reimbursement by the Commonwealth of Massachusetts to the City. Police officers not eligible for G.L.c. 41, § 108L benefits shall receive 50% of such benefits, if they satisfy the degree requirements of that statute.

Police Officers eligible for benefits pursuant to G.L.C.41, §108L shall receive the following educational incentive, regardless of the contribution by the Commonwealth of Massachusetts to the City of Springfield:

10% base salary increase for an Associate's Degree;
20% base salary increase for a Bachelor's Degree;
25% base salary increase for a Master's Degree.

Effective July 1, 2014, Police Officers not eligible for benefits pursuant to G.L.C.41, §108L shall receive the following educational incentive benefits:

5% base salary increase for an Associate's Degree;
10% base salary increase for a Bachelor's Degree;
12.5% base salary increase for a Master's Degree.

H. TEMPORARY RESTRICTED DUTY/WORK HARDENING ASSIGNMENTS:

New provisions added to the collective bargaining agreement (See pages 20-23 for terms and conditions):

Effective July 1, 2014, a Temporary Restricted Duty/Work Hardening Assignments Program is awarded.

Effective July 1, 2014, a 1.5% Temporary Restricted Duty/Work Hardening Assignments stipend shall be applied across-the-board to the salary schedule in effect on June 30, 2014.

I. INJURED-ON-DUTY:

Disputes referred to grievance arbitration.

J. SWAPS:

Amend Article 19 (Interchange of Work Hours) §19.01 as follows:

Swaps implemented and applied over a six (6) week cycle.

K. DRUG AND ALCOHOL TESTING:

In addition to the current Article 32 (Drug and Alcohol Testing) provisions, a one (1) time drug test during the Agreement (July 1, 2013 through June 30, 2016) is awarded.


Paul Birks
Union Panelist


Richard Boulanger, Esq.
Chairman and Neutral Panelist


Judith Robbins
City Panelist

Dated: 01/29/14

Dated: 1/29/14

Dated: 1/29/14

I. INTRODUCTION

The Joint Labor-Management Committee (JLMC) interest arbitration panel is composed of Union Representative, Paul Birks; Neutral Panelist and Chairman, Richard Boulanger, Esq.; and Management Representative, Judith Robbins. The arbitration panel was appointed by the JLMC to resolve a contract dispute between the International Brotherhood of Police Officers, Local 364 (Union) and the City of Springfield (City). In addition to Wages and Duration, the parties submitted their issues for hearing. The Union's issues are Educational Incentive, Court Time, Uniform Allowance, Swaps and Injured-on-Duty. The City's issues are Assignments, Education Incentive, Mobile Digital Recording System, Light Duty, and Random Drug Testing.

The interest arbitration case was heard by the arbitration panel on October 29, 2013 at the Forest Park Commissioner's Office, Springfield, Massachusetts.

The Union was represented by Mr. Kevin Coyle, Esq. Mr. Joseph Gentile, IBPO, Local 364 President, testified for the Union:

Mr. William Mahoney, Esq. represented the City. The following individuals testified for the City: Dr. Barry Magnus, Concentra; Mr. Glenn Hembling, Regional Vice President Coban Technologies; Police Commissioner William Fitchet; Chief Administrative and Financial Officer T.J. Plante; Deputy Chief Robert McFarlane; Deputy Chief John Barbieri; Captain Robert Cheetham; Sergeant Phil Tarpey; and Mr. Chris Kulig, Senior Financial Analyst

The parties were given full opportunity to present evidence and make arguments.

In formulating its award, the panel considered the following provisions of c.589 of the Acts of 1987:

- 1) the interests and welfare of the public;
- 2) the hazards of employment;

- 3) physical, educational and mental qualifications;
- 4) job training and skills involved;
- 5) comparative wage and employment conditions with employees performing similar services and with other employees generally in public and private employment in comparable communities;
- 6) the cost-of-living as determined by the Department of Labor;
- 7) the overall compensation presently received by the employees, including direct wages and fringe benefits;
- 8) tax levy limit - Prop 2½ ;
- 9) comparable property tax rates;
- 10) municipal growth rates- residential/commercial;
- 11) Free Cash/reserves;
- 12) mean residential income;
- 13) debt/projected expenses;
- 14) other settlements in the municipality and in other comparable communities for employees similarly situated; and
- 15) changes in any of the foregoing circumstances during the pendency of the dispute.

In formulating its award, the panel applied all of the statutory elements to the parties' evidence. The panel carefully reviewed and applied relevant internal and external comparability data to the parties' issues.

Based on the evidence submitted, the panel concludes that the awarded proposals are justified, and that the City has the requisite ability to pay for the financial components of the award, as discussed in more detail below. The terms of the parties' July 1, 2009 to June 30, 2012 collective bargaining agreement remain in effect from July 1, 2012 through June 30, 2013, Contract #1, and from July 1, 2013 through June 30, 2016, Contract #2, except as awarded herein by the arbitration panel, or as otherwise modified by the parties. Tentative agreements reached by the parties if any shall be included in the parties' July 1, 2012 through June 30, 2013 contract (Contract #1), and in their July 1, 2013 through June 30, 2016 collective bargaining agreement (Contract #2).

FINDINGS AND OPINION

A. **DURATION:**

1.) **UNION PROPOSAL:**

The Union proposes a one (1) year agreement, from July 1, 2012 through June 30, 2013 followed by a three (3) year agreement, from July 1, 2013 through June 30, 2016.

2.) **CITY PROPOSAL:**

The City proposes a two (2) agreement from July 1, 2012 through June 30, 2014.

3.) **DISCUSSION:**

The award date is more than six (6) months into Fiscal Year 2014. Therefore, in order to afford the parties some labor relations stability as well as cost and compensation predictability, contracts effective through June 30, 2016 are awarded.

4.) **AWARD**

Contract #1: July 1, 2012 – June 30, 2013
Contract #2: July 1, 2013 – June 30, 2016

B. **ASSIGNMENTS:**

1.) **CITY PROPOSAL:**

Delete certain terms of Article 7.01 and Article 29.02 in their totality.

2.) **UNION COUNTER-PROPOSAL:**

Reject the City's proposal as unnecessary.

3.) **DISCUSSION:**

According to the City, deletion of certain terms of Article 7.01 and Article 29.02 in their totality is necessary because their provisions preclude the Police Commissioner from assigning Police Officers based on their skills. Rather, those terms require

assignment by seniority, ruled invalid by the Massachusetts Supreme Judicial Court in City of Boston v. Boston Police Superior Officers Federation, 466 Mass. 210 (2013). It is important that the Commissioner assign Police Officers based on ability rather than by seniority in order to make maximum use of limited resources. The comparability data supports the City's position on assignment.

The Union rejects the City's proposal as unnecessary. According to the Union, the City presented no evidence that the current sector seniority assignment system has created a problem for it. Moreover, for a number of years, the Union bargained for seniority-based sector assignments, and made concessions in connection therewith. Moreover, only twelve (12) to thirteen (13) sectors are staffed by the seniority bidding process. In all other cases, Shift Commanders may assign Patrol Officers at their discretion. Additionally, the parties negotiated a term allowing the Commissioner to deviate from the seniority-based assignment process in "exceptional circumstances."

Due to the intricacies of assignment logistics, the panel believes that changes to the current system of assignment, if any, are best left to the parties to negotiate. Except for approximately twelve (12) assignments, Shift Commanders are not impeded by seniority when making assignments. Furthermore, the Commissioner is excused from making seniority-based assignments in "exceptional circumstances."

4.) AWARD

Status quo.

C. **COURT TIME:**

1.) **UNION PROPOSAL:**

All off-shift court appearances are to be compensated at a minimum of four (4) hours at the overtime rate.

2.) **CITY COUNTER-PROPOSAL:**

Status quo.

3.) **DISCUSSION:**

The Union seeks a uniform court time benefit.

The City argues that the current benefit is a generous one, and it is supported by the comparability data. According to the City, it does not have an ability to pay for the expanded court time benefit sought by the Union.

City Police Officers currently receive a minimum of four (4) hours pay at their overtime rate when appearing in court on their days' off. They receive a minimum of three (3) hours pay at their overtime rates when appearing in court on a work day, but not during their regularly scheduled shift.

The panel awards the Union's proposal to increase the offset to lost detail and overtime earnings, and as a component of its compensation package as consideration for the City's Light Duty program. The City has an ability to pay for the increased court time payment.

4.) **AWARD**

Effective July 1, 2014, modify Article 17 §17.01 to provide a minimum of four (4) hours payment at time-and-one-half a Police Officer's straight-time rate of pay.

D. MOBILE DIGITAL RECORDING SYSTEM:

1.) CITY PROPOSAL:

The City proposes the installation of a video camera recording system in Departmental vehicles, and an audio recording device to be worn on a Police Officer's uniform.

2.) UNION COUNTER-PROPOSAL:

The Union urges the panel to reject the City's proposal.

3.) DISCUSSION:

The City contends that installing video camera recording systems in the police cruisers, and equipping Police Officers with an audio recording device would be of great advantage to the Department and its Police Officers, as they are elsewhere in Massachusetts and in other states. They would allow Police Officers to testify accurately as to arrests, and other law enforcement encounters. Moreover, the video camera recording system will reduce the liability faced by the City, the Department and its Police Officers. A pilot video and audio recording system was undertaken in the City for a period of eighteen (18) months. It received a favorable review by the Police Officer who volunteered for the program. The City expects to pay for such devices by means of grants. According to the City, the Union failed to introduce evidence indicating that the City's proposal should be rejected.

The Union argues that, at most, the panel should order a joint study committee to evaluate the video camera recording system, and the audio recording device to be worn on a Police Officer's uniform in more depth than occurred during the parties' bargaining.

It contends that the City was non-specific as to its video and audio policy during the parties' bargaining. The Union argues that before the City's proposal can be considered much more discussion and bargaining between the parties must take place as to all issues regarding the devices, their costs and all employment-related issues.

Due to the potentially far-reaching impact of the City's proposal, and the lack of such systems in universe communities, the panel does not award the City's proposal. In an August 8, 2006 Memorandum of Agreement, the parties agreed that either one of them could initiate bargaining on this issue. Therefore, the issue should be remanded to the parties for further bargaining preceded by a Joint Study Committee.

4.) **AWARD**

The formulation of a Joint Study Committee comprised of four (4) bargaining unit employees appointed by the Union President, and four (4) Management officials appointed by the Commissioner. The Joint Study Committee shall meet regularly and develop recommendations to be referred to the parties' bargaining committees in advance of the negotiations for a successor contract to the July 1, 2013 to June 30, 2016 collective bargaining agreement.

E. **WAGES**

1.) **UNION PROPOSAL:**

The Union seeks an 8% wage increase over a four (4) year contract period.

2.) **CITY COUNTER-PROPOSAL:**

The City is proposing a 1% wage increase effective July 1, 2013, contingent on a Quinn Bill award in its favor.

3.) **DISCUSSION:**

The Union argues that the universe evidence, and the City's ability to pay supports its wage demand.

The City contends that the comparability data, and its inability to pay support its wage increase proposal.

In light of the internal and external comparability data, and the City's ability to pay, as discussed in more detail below, the panel awards the following wage increases:

Contract #1: Effective July 1, 2012 – No increase.

Contract #2: Effective July 1, 2013 – 2% across-the-board wage increase applied to the salary schedule in effect on June 30, 2013;

Effective July 1, 2014 – 2% across-the-board wage increase applied to the salary schedule in effect on June 30, 2014;

Effective July 1, 2015 – 2% across-the-board wage increase applied to the salary schedule in effect on June 30, 2015.

a. **JUSTIFICATION**

It is clear that City officials expect much of their Police Officers. In the Fiscal Year 2014 Budget Introduction, Mayor Dominic Sarno and Mr. Timothy Plante, City Administrator and Financial Officer, commented as follows: "Public safety also is a vital component to quality-of-life in Springfield. This budget strived to underscore the City's commitment to the most important responsibility of any local government." (See City Exhibit #5.) The Police Commissioner noted drugs, gangs, guns, homicides (sixteen (16) as of early December, 2013), and other crimes as challenges faced by City Police Officers. Moreover, they are facing such risks and dangers with far fewer Police Officers than in the past. The Commissioner testified that 492 funded Police Officer positions were included in the 2000 budget while 372 such slots are funded in the 2014 budget.

The panel acknowledges the higher wage increases paid to City public safety employees in the 2007-2012 period as compared to non-public safety workers. However, City school department employees bargained wage increases of an un compounded 8.5% from Fiscal Year 2013 -2016, with a 2% increase July 1, 2012 and a 2 ½% increase effective July 1, 2013. Furthermore, Northampton and Westfield negotiated a 1% wage increase with its Police Officers in Fiscal Year 2013 . West Springfield bargained a 1% increase effective July 1, 2012, and another 1% increase effective January 1, 2013. Pittsfield has not yet settled its Police Officer contract. Chicopee and Holyoke did not negotiate wage increases in Fiscal Year 2013.

In Fiscal Year 2014, the City bargained 2% wage increases with two (2) City bargaining units, NAGE Building Inspectors Union, and AFSCME Council #93, Local 15961A. In Fiscal Year 2014, the City also provided a 2% wage increase to a non-union employee group. Universe wage increases of 1% to 1½% in Fiscal Year 2014 are within the range of the 2% wage increase granted herein, particularly where no wage increase is awarded in Fiscal Year 2013 to City Police Officers, but negotiated in some universe communities, and in the City's School Department. Consequently, a 2% wage increase effective July 1, 2013 is justified based on internal and external comparability data. Two percent (2%) wage increases effective July 1, 2014 and 2015 are also justified based on internal comparability data. Additionally, as consideration, the panel awards an enhanced drug and alcohol testing program based on the City's proposal.

b. **ABILITY-TO-PAY**

While the City has a limited ability to pay, the panel's wage increase award is

within its ability to pay. The cost of a 1% wage increase is \$267,000, and the panel has not awarded more than a 2% wage increase in any one (1) fiscal year. Effective July 1, 2012, a wage increase of 2% was negotiated on the City's school side. However, unlike the City's School Department and some universe communities, the panel does not award a wage increase in Fiscal Year 2013. A Fiscal Year 2013 wage increase is not awarded by the panel to lessen by at least eighteen (18) months the City's retroactive burden as well as the compounding impact of such an increase.

Effective July 1, 2013, the City's School Department negotiated a 2.5% wage increase with its unions, but the panel awards a 2% increase to its Police Officers, the same increase that the City negotiated with two (2) bargaining units and one (1) non-union group. Moreover, the panel has not awarded the retroactivity of the educational incentive to employees not eligible for Quinn Bill benefits per G.L.c.41, §108L, but makes it effective July 1, 2014. It is the same educational incentive benefit that has been financed by the City for its Firefighters since July 1, 2002. It should also be noted that in April 1995, the City agreed to a 3% wage increase as consideration for the Police Superior Officer Association's agreement to the City's light duty proposal awarded herein, but with a 1.5% stipend effective prospectively on July 1, 2014. Moreover, the City contributes 5%-10% less in health insurance payments than do most universe cities and towns. Pittsfield subsidizes 85% of all of its health insurance plans. Chicopee contributes 85% of the costs of an HMO Single Plan and 80% of HMO Family Plan costs. Westfield and Northampton finance 80% of their HMO plans. West Springfield contributes 75% of HMO costs.

State aid is the City's largest source of revenue, double that provided by City property taxes. (See City Exhibit #4.) Although the City's Unrestricted General Government Aid from the State dropped from \$45 million in Fiscal Year 2008 to \$32 million in Fiscal Year 2010, it has remained stable at \$32 million through Fiscal Year 2013 . (See City Exhibit #3.) Unrestricted state aid increased by \$750,000 in Fiscal Year 2014. (See City Exhibit #5.)

As to increased revenue, in July, 2013, City voters approved the City's Host Community Casino Agreement (Casino Agreement) with MGM. (See Union Exhibit #7.) In the Casino Agreement, MGM pledged one million dollars (\$1,000,000) as an "unrestricted grant to the City paid in July 2013" when the first 2% wage increase is payable to City Police Officers. (See Union Exhibit #5 and City Exhibit #5.) The one million dollars (\$1,000,000) is an "upfront and advance payment" and it is not contingent on the Casino's opening. (See Union Exhibits #5 and #6.) In addition to that "signing bonus," Mayor Sarno and Mr. Plante noted that a four million dollar (\$4,000,000) payment would be made by MGM to the City in Fiscal Year 2014 if it is chosen as the location of the Western, Massachusetts casino. (See City Exhibit #5.) There is no other Western Massachusetts community vying for a license.

Although the City is the only Massachusetts community at its levy limit, as a result of stringent financial control measures,

"...the General Fund actually had budgetary surpluses (deficits) of \$300,000, (\$8) million, \$12 million, \$23 million, \$14 million, and \$8 million, in 2012 2011, 2010, 2009, 2008, and 2007, respectively, where revenues and transfers in exceeded expenditures and transfers out. These surpluses are all exclusive of amounts transferred to/from the stabilization funds established by the City. The actual results far exceeded the initial

expectations but the City believes the structural deficit still exists since some of the surplus was the one-time collection of past due amounts. The result of these favorable results has increased the General Fund total budgetary fund balance to \$71 million at June 30, 2012.” (See City Exhibit #3.)

The City’s Fiscal Year 2012 Free Cash amount was nearly \$7.5 million, up from \$4.7 million in Fiscal Year 2011, and a far cry from the negative amounts from Fiscal Year 1989 through Fiscal Year 2004, but down from the Fiscal Year 2006 to Fiscal Year 2010 levels.(See City Exhibit #3.) In Fiscal Year 2012, the City’s Stabilization Fund was \$41 million, down from \$45 million in Fiscal Year 2011, but up from Fiscal Year 2009 and Fiscal Year 2010 amounts. (See City Exhibit #3.)

In their introduction to the “hold-the-line” Fiscal Year 2014 budget, Mayor Sarno and Mr. Plante noted “a modest increase in the City’s assessed valuation, and home prices are ticking upward...” (See City Exhibit #5.) They were also confident and testified that Free Cash would increase modestly over Fiscal Year 2013 levels. Although dealing with a “structural budget deficit,” they included “full funding” of a twenty-two (22) member police recruit class, as well as “one-time” funding for “computer and technology upgrades” in the Police and Fire Departments. (See City Exhibit #5.) In the Fiscal Year 2014 Budget’s Executive Summary, it was noted that “the Assessors have declared surpluses in the overlay accounts for Fiscal Year 2007, Fiscal Year 2008, Fiscal Year 2009, Fiscal Year 2010 and Fiscal Year 2013 totaling \$14.4 million. (See City Exhibit #5.) Ultimately, the surplus becomes a component of Free Cash. (See City Exhibit #5.)

As to the perennial cost-increasing nemesis of health insurance, the City reports

that:

At June 30, 2012 the Health Insurance Internal Service Fund has positive net assets of \$4.5 million compared with \$4.0 million in the prior year. The fund experienced a \$531,000 increase during FY2012. Employee benefits increased from \$77 million in FY2011 to \$79 million in FY2012. During fiscal year 2007, the City joined the Commonwealth's Group Insurance Commission (GIC) program in order to gain access to more favorable health insurance rates and further the initiative to reduce costs while still providing quality health coverage to its employees and retirees. The GIC program is fully insured. (See City Exhibit #3.)

It is expected to "provide significant savings for the City over the next several years." (See City Exhibit #3.) City officials noted a \$2.3 million dollar decrease in Fiscal Year 2014 health insurance costs due to the reconciliation of City-paid plans. (See City Exhibit #5.) In Fiscal Year 2014, the GIC was not forecasting increases to premiums, co-pays or deductibles. (See City Exhibit #5.) In Fiscal Year 2014, the City was increasing its cost projections by only 1% over Fiscal Year 2013. (See City Exhibit #5.)

Standard and Poor's recently upgraded the City's bond rating. Its rationale for the increase was as follows:

Standard and Poor's Ratings Services raised its issuer credit rating (ICR) on Springfield, Mass. to 'A' from 'A-' based on our view of the city's progress toward rebuilding its reserve levels, which is due, in part, to a proactive financial management team that took control of the city's finances after a period of commonwealth oversight.

At the same time, Standard & Poor's affirmed its 'AA' long-term rating on Springfield's commonwealth-qualified general obligation (GO) qualified school construction bonds (QSCB) and affirmed its 'AA' underlying rating (SPUR) on the city's previously issued commonwealth qualified debt.

The 'AA' ratings are based on the bonds' eligibility under the commonwealth's Chapter 44A Qualified Bond Act. The commonwealth's emergency finance board has authorized the city to issue bonds or notes, including this issuance, as commonwealth-qualified bonds.

The outlooks on all ratings are stable.

The ICR reflects Standard & Poor's opinion of the city's:

- Strong total available general fund balance that management expects to maintain;
- Full repayment of commonwealth loans in fiscal 2009, which were related to the city's 2005 budget deficit; and
- Low debt.

However, it expressed its concerns over the City's "limited economy, with decreasing assessed values (AV) and below-average, although adequate incomes, large other post employment benefit (OPEB) liability and historically high unemployment compared with the commonwealth and national averages." Nevertheless, its projection was as follows:

The stable outlook on the program rating reflects that of the commonwealth rating. The stable outlook on the ICR reflects the city's strong reserve levels and our expectation that management will maintain strong financial performance over the near term. As such, we do not expect to change the rating within the next two years.

Therefore, for all of the reasons delineated above, while the City does not have an unlimited ability to pay, it has and will have sufficient finances to fund the award.

4.) **AWARD**

July 1, 2012 – No increase

July 1, 2013 – 2% across-the-board wage increase applied to the salary schedule in effect on June 30, 2013

July 1, 2014 – 2% across-the-board wage increase applied to the salary schedule in effect on June 30, 2014

July 1, 2015 – 2% across-the-board wage increase applied to the salary schedule in effect on June 30, 2015¹

F. **UNIFORM ALLOWANCE:**

1.) **UNION PROPOSAL:**

The Union proposes an increase in the yearly uniform allowance from \$500 to

¹Wage increases shall be rounded to the next whole dollar amount based on the application of the percentage wage increases awarded herein.

\$1,000, and the elimination of the City's quartermaster system of providing uniform-related items per Article 16 (Uniform Allowance) §16.01 and §16.04 of the collective bargaining agreement.

2.) **CITY COUNTER-PROPOSAL:**

The City rejects the Union's proposal, and requests maintenance of the current benefit.

3.) **DISCUSSION:**

The Union argues that its uniform allowance proposal is efficient and more cost effective than the current Departmental program. The increased cost to the City would be minimal as elimination of the quartermaster system would result in savings which would nearly off-set the \$500 increase in the uniform allowance itself.

The City rejects any change to the current quartermaster system, and the \$500 increase to the current uniform allowance. The quartermaster benefit is not in any need of modification, and the Union did not present any evidence so indicating. Furthermore, the City does not have an ability to pay for the Union's proposal which would cost the City nearly \$200,000 in the first year of the agreement, increasing annually thereafter. Moreover, comparability data does not support the Union's proposal.

It appears from the comparability data that most universe cities and towns provide a single, dollar amount for uniforms. (See Union Exhibit #8.) However, the panel does not award the Union's proposal, preferring to focus City finances on other compensation increases, in light of panel awards of City proposals.

4.) **AWARD**

Status quo.

G. **EDUCATION INCENTIVE:**

1.) **UNION PROPOSAL:**

Bargaining unit employees eligible for benefits pursuant to G.L.C.41, §108L shall receive 100% of c. 41 §108L benefits, irrespective of the financial contribution by the Commonwealth of Massachusetts to the City. Bargaining unit employees not eligible for benefits pursuant to G.L.C.41, §108L shall receive 50% of c. 41 §108L benefits.

2.) **CITY PROPOSAL:**

The City shall only pay its fifty percent (50%) statutory share, and any additional Commonwealth of Massachusetts contribution to bargaining unit employees eligible for Quinn Bill benefits. It rejects expansion of the stipend.

3.) **DISCUSSION:**

The Union contends that full Quinn Bill benefits have been an essential component of employee compensation since the parties first negotiated the benefit in 1993. Furthermore, despite the holding in *Adams v. City of Boston*, 461 Mass. 602 (2012), which was adverse to the Union's position, the City has continued paying the full benefit value.

The City argues that it should not be required to contribute to eligible employees any more than 50% to the benefit cost, as that was its original statutory obligation. The City cannot afford to pay the Commonwealth of Massachusetts' share of the benefit.

Quinn Bill eligible employees have historically received full Quinn Bill benefits.

Despite its sizeable cost, to the City's credit, it has continued to so provide, even after Adams Id. relieved it of any obligation beyond fifty percent (50%) of the benefit and any Commonwealth of Massachusetts contribution. While the panel acknowledges the failure of the Commonwealth to uphold its funding commitment to cities and towns, awarding the City's proposal would result in a severe and unwarranted reduction in employee compensation, and result in a 50% rescission of the consideration granted to employees for their attainment of requisite degrees. As Quinn Bill eligible Police Officers retire, the cost of education leave shall decrease. Moreover, the external comparability data supports the Union's proposal.

As to non-Quinn Bill eligible Police Officers, who have to date received no educational benefit, the panel awards the same education benefit as the City negotiated with the Firefighters' Union effective July 1, 2002. Furthermore, the external comparability data supports the panel's award. The communities of Chicopee, Holyoke, West Springfield and Northampton provide education achievement benefits to non-Quinn Bill eligible Police Officers. (See Union Exhibit #8.) The City has an ability to pay for the educational incentive awarded herein. However, mindful of the City's limited ability to pay, the panel awards no retroactive educational incentive benefits to non-Quinn Bill eligible employees. Moreover, of the fifty-seven (57) patrol officers hired after July 1, 2009, only thirty-one (31) or fifty-four percent (54%) have degrees that qualify for the educational incentive benefit. Additionally, the panel awards the City's no-increase wage proposal in Fiscal Year 2013, and it awards less of a wage increase than proposed by the Union in Fiscal Years 2014 through 2016.

4.) AWARD

Amend Article 24 (Educational Incentive) to include the following provisions:

- none
wld. be
eligible

Police officers eligible for benefits pursuant to G.L.c. 41, §108L shall receive such benefits regardless of reimbursement by the Commonwealth of Massachusetts to the City. Police officers not eligible for G.L.c. 41, § 108L benefits shall receive 50% of such benefits, if they satisfy the degree requirements of that statute.

Police officers eligible for benefits pursuant to G.L.c. 41, § 108L shall receive the following educational incentive, regardless of reimbursement by of the Commonwealth of Massachusetts to the City, if they satisfy the degree requirements of that statute:

- 10% base salary increase for an Associate's Degree
- 20% base salary increase for a Bachelor's Degree
- 25% base salary increase for a Master's Degree

Effective July 1, 2014, Police Officers not eligible for benefits pursuant to G.L.c. 41, §108L shall receive the following educational incentive if they satisfy the degree requirements of that statute:

- 5% base salary increase for an Associate's Degree
- 10% base salary increase for a Bachelor's Degree
- 12.5% base salary increase for a Master's Degree

H. TEMPORARY RESTRICTED DUTY/WORK HARDENING ASSIGNMENTS:

1.) CITY PROPOSAL:

The City proposes a light duty program similar to that implemented in the City's Fire Department as a result of a 2010 JLMC award. The Fire Department's light duty program includes Firefighters Injured-on-Duty (IOD), and off-duty, which the City's seeks in the instant case. It also seeks a twelve (12) week waiting period prior to the commencement of light duty as exists in the Fire Department program.

2.) **UNION COUNTER-PROPOSAL:**

If the panel awards the City's proposal, it should award a 3% base wage increase to Police Officers as the City granted a 3% salary increase to Police Superior Officers in exchange for their light duty concession. Moreover, it should consider the Union's concerns regarding sick leave and hours of duty.

3.) **DISCUSSION:**

The City argues that its proposal benefits the Department and injured Police Officers as it encourages a return-to-work when a Police Officer is medically cleared to do so. The City's proposal does not require a sick or injured Police Officer to be exposed to the normal dangers and risks associated with law enforcement, as the light duty program is restricted to clerical, supply, and property room assignments. The citizens of the City have a right to expect the performance of some employment duties while an IOD Police Officer is collecting his total salary. Moreover, the comparability data supports the City's position.

The Union argues that it has concerns regarding the impact of the City's proposal on bargaining unit sick leave and hours of work. Moreover, the City has placed a 3% base wage increase value on the light duty program with Police Superiors, and it should not be allowed to escape from its self-imposed consideration as regards Police Officers.

The communities of Chicopee, Holyoke, Northampton and Pittsfield have light duty programs. Moreover, the Light Duty program has been implemented in the Police Superiors and Firefighters bargaining units, the other two (2) City public safety units. A Light Duty program benefits both the City and the recovering Police Officer. The City

receives a level of services from an IOD Police Officer not yet medically cleared for full duty, but who is able to perform some support duties. Moreover, a Police Officer on sick leave performing light duty will utilize less sick leave than would otherwise be the case. Consequently, a Temporary Restricted Duty/Work Hardening Assignments provision is awarded.

As to the financial consideration for the Light Duty program, the parties agreed to the following terms in an August 8, 2006 Memorandum of Agreement:

Either the City or Local 364 may initiate bargaining on the subject of limited duty for members of Local 364 who are incapacitated from performing all of the essential duties of a police officer, and what if any financial or other benefit may appropriately be received by Local 364 if limited duty is implemented. If such bargaining does not produce an agreement either party may initiate mediation and final and binding arbitration by the Joint Labor Management Committee on this matter.

Consequently, the parties envisioned independent, financial consideration to Police Officers for a Light Duty program. The Union seeks a 3% benefit as negotiated by the City and the Police Superiors Association in 1995. (See Union Exhibit #10.) However, while the City bargained a 3% value for the Light Duty program, based on its limited ability to pay, the panel awards a non-retroactive 1.5% value in conjunction with the enhanced non-retroactive court time benefit, and the no-cost, liberalized six (6) week swap mechanism. The City has an ability to pay for the 1.5% Light Duty stipend.

4.) AWARD

a.) A Temporary Restricted Duty/Work Hardening Assignments provision is awarded as follows:.

_.010 When an employee is on Injured on Duty or paid/unpaid sick leave status he/she shall be subject to placement in a temporary restricted duty work

hardening assignment, under the terms of this Article.

_.02. An Employee on Injured on Duty or paid/unpaid sick leave status may be assigned to a restricted duty/work hardening assignment when he/she is not able to perform all of his/her ordinary duties as a police officer. Temporary restricted duty work hardening assignments will be any assignment which does not require the use of a firearm. Such duties may include, but are not limited to, the following: nonphysical training, assisting with the academy class, dispatching, teletype operations, clerical work, crime prevention, assist in the property room or evidence room, and computer operations.

_.03. An Employee on Injured on Duty or paid/unpaid sick leave status shall comply with the applicable provisions of the Rules and Regulations of the Springfield Police Department relating to accidents, sickness or injury sustained in the performance of duty. This includes, but is not limited to submission of the appropriate Departmental forms, and attending physician certificates. The Commissioner or his/her designee may at any time make restricted duty work hardening assignments consistent with restrictions set forth in the certificate(s) of the Employee's treating/attending physician. The Department shall notify the employee and the Union when assignments are made under the terms of this Article.

_.04. If there is a disagreement between the Department and the employee's medical provider as to the intended temporary restricted duty work hardening assignment, the Department and the employee's medical provider shall confer in an effort to resolve their differences. In the absence of such a resolution, the Commissioner or his/her designee shall have the right to direct an employee who is on injured on duty leave, or paid/unpaid sick leave status to be examined by a physician designated by the City. For purposes of this Article, the City, when designating a physician, shall designate the physician from the impartial physician list established and maintained by the Massachusetts Department of Industrial Accidents, pursuant to Mass. G.L. c. 152, Section 11A ("the DIA list"). The City shall notify the Union, through either its President or Vice President, when it wishes to make a designation from the DIA list pursuant to this section. If the parties do not thereafter agree, within two (2) business days from such notification, to the name of a physician from the DIA list who shall be designated, both the Union and the City shall within the (2) business days, separately rank the top five (5) names on the DIA Springfield list for the appropriate medical specialty. (If there are multiple medical issues the selection shall initially be from a list for the primary injury.) The physician who is highest ranked considering both parties' rankings shall thereafter be designated. If the Union does not rank the physicians within two (2) business days, the City may designate any physician from the list. If there is not a Springfield DIA list for the appropriate specialty, the parties shall mutually agree to a physician from Bay State Medical Center or

Mercy Hospital. In no case shall the physician designated pursuant to this paragraph be the treating physician. The Commissioner or his/her designee may make restricted duty work hardening assignments consistent with restrictions set forth in the report(s) of the physician designated in accordance with this paragraph. Copies of any report received from a designated physician shall be provided to the employee and, provided that the employee so authorizes, the Union.

_.05. The report of the physician designated in paragraph .04 above shall be binding on the employee, the Union and the City, and will not be subject to review through the grievance/arbitration provisions of the parties' contract.

_.06. No paid Injured on Duty or paid/unpaid sick leave shall be granted or continued for any period after the Commissioner or his/her designee determines that a temporary restricted duty work hardening assignment is available for which the Employee is capable of performing, and the Commissioner assigns him/her to such position.

_.07. A temporary restricted duty work hardening assignment will not interfere with the employee's ongoing medical treatment.

_.08. An employee injured, re-injured, or whose injury is aggravated while performing a temporary restricted duty work hardening assignment shall be treated as an employee injured in the course of employment under Mass. G.L. c. 41, Section 111F.

_.09. During any temporary restricted duty work hardening assignment the employee shall receive compensation equivalent to what he/she was receiving prior to his/her injury. As to tax issues, employees on light duty shall be paid in accordance with applicable IRS regulations.

_.10. Either the Employee or the Department may initiate restricted duty work hardening assignment, and no Employee will be denied the opportunity to perform a restricted duty work hardening assignment, if otherwise eligible pursuant to this article.

_.11. In no case shall a temporary restricted duty work hardening assignment extend beyond the period of the Employee's incapacity from full duty. An Employee will be removed from his/her restricted duty assignment upon either of the following two events: (i) the Department submits an involuntary retirement petition for the Employee; or (ii) the Employee submits a voluntary accidental disability retirement petition and a medical panel is scheduled in accordance with the provisions of law concerning said petition. In the event that an employee is removed from restricted duty pursuant to the provisions of the preceding sentence, the Employee is required to cooperate in the completion of the retirement

application process. Otherwise, he/she may be placed back on restricted duty.

_.12. All employees assigned to Light Duty shall work their regular shift and schedule, or such other hours and schedule as may be mutually agreed by the employee and the Department with time off to be granted for medical treatment related to their illness or injury. When a police officer is required to receive medical attention during duty hours, such hours shall be considered as his/her hours worked in the computation of his/her weekly shift, not to include overtime. Employees shall be paid the same base weekly rate of pay as those employees assigned to rotating 4 on-2 off schedule.

_.13. Employees injured on duty may be compelled to return on light duty after twelve (12) weeks. The process to place an employee on light duty shall be completed as specified in the agreement between the parties during this twelve (12) week period.

_.14. Employees who are injured off duty may initiate a light duty assignment after the usage of eight (8) weeks of sick leave. Once an employee is placed on light duty they shall be removed in the same manner as an employee who is injured on duty. They shall not be removed due to the subsequent placement of an IOD employee on light duty.

_.15. Light duty assignments shall not continue beyond a period of one (1) year without the mutual consent of the Employee, the Union and the City.

_.16 An officer on light/limited duty status shall not be held responsible for failure to render emergency assistance. Light duty is understood by the parties not to be used as a means of punishment or punitive in nature but to enhance an officer's return to work.

_.17 Disputes regarding interpretation of or the application of this Policy, including c. 41 §100 and §111F eligibility, will be subject to the grievance/arbitration procedures of Article 5 (Grievance Procedure) notwithstanding any contrary, contractual provisions.

_.18 An employee shall be eligible for all rights, benefits, and privileges without diminution under the collective bargaining agreement.

b.) Effective July 1, 2014, a 1.5% Temporary Restricted Duty/Work Hardening Assignments stipend shall be applied across-the-board to the salary schedule in effect on June 30, 2014.

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I. **INJURED-ON-DUTY:**

1.) **UNION PROPOSAL:**

The Union proposes grievance arbitration to resolve IOD disputes between the parties.

2.) **CITY COUNTER-PROPOSAL:**

The City counter-proposes the status quo.

3.) **DISCUSSION:**

The Union argues that arbitration of an IOD dispute is more effective, and less costly than court litigation, the current dispute resolution mechanism.

The City asserts that the current process of IOD dispute resolution should not be altered.

Most, if not all disputes between the parties are resolved through the grievance procedure, culminating in final and binding grievance arbitration. It is far more cost effective and time sensitive than traditional litigation. Furthermore, all universe communities have agreed to submit IOD disputes to grievance arbitration. (See Union Exhibit #8.)

4.) **AWARD**

Add the following term to Article 25 (**Miscellaneous**) §25.02 "including those provided by G.L.c. 41."

Add the following provision to Article 5 (**Grievance Procedure**) §5.10:

Notwithstanding any contract provision to the contrary, in order to resolve a c.41 §100 or §111F IOD dispute, either party is entitled to process such a dispute through the

grievance procedure, including to arbitration pursuant to Article 5 terms..

J. SWAPS:

1.) UNION PROPOSAL:

The Union proposes a modification of collective bargaining agreement §19.01 to expand the swap period from one (1) week to six (6) weeks.

2.) CITY COUNTER-PROPOSAL:

The City rejects the Union's proposal as unwieldy.

3.) DISCUSSION:

The Union argues that based on a 4/2 weekly work schedule, a six (6) week swap cycle is necessary in order that Police Officers have attractive weekend days to trade with other Police Officers, as Saturdays and Sundays are at a premium. The Union's proposal has no cost impact on the City, and will likely reduce sick leave usage. Moreover, the City's computerized payroll system will be able to track the swaps. The Union's proposal does not alter Police Officers' obligation to notify Shift Commanders of swaps.

The City contends that the 4/2 schedule, long sought by the Union, is a sufficient scheduling benefit without tying an expanded swap system to it. As a result of the 4/2 scheduling, Police Officers receive seventeen (17) additional days off per year as compared to a 5/2 shift schedule. They also receive compensatory time off which allows them more time away from the job. The evidence reveals that it is difficult enough to track current swaps, and that its expansion would be considerably more complex. Moreover, the payroll implications of a six (6) week program would likely create difficulties with the Commonwealth of Massachusetts retirement system (PERAC). The

Union's proposal may also increase overtime costs which the City is currently ill-able to afford.

The evidence reveals that Firefighter swaps are unlimited as to trade deadlines in a calendar year. The panel awards the Union's proposal as partial consideration for the City's Temporary Restricted Duty/Work Hardening Assignments. Over a six (6) week cycle, the swap system should be more productive allowing Patrol Officers to more efficiently trade shifts, decreasing the use of paid leave benefits. Furthermore, the Departmental TeleStaff payroll software tracks swaps and should be able to do so over a six (6) week cycle. (See Union Exhibit #12.)

4.) **AWARD**

Amend Article 19 (**Interchange of Work Hours**) §19.01 as follows:

Swaps implemented and applied over a six (6) week cycle.

K. **DRUG AND ALCOHOL TESTING:**

1.) **CITY PROPOSAL:**

The City proposes random drug and alcohol testing of Police Officers.

2.) **UNION COUNTER-PROPOSAL:**

The Union rejects the City's drug and alcohol testing proposal as unnecessary.

3.) **DISCUSSION:**

The City contends that its random drug and alcohol testing proposal is necessary to ferret out drug abuse by Police Officers, even if by a minority. According to the City, evidence of recent drug abuse by Police Officers supports its proposal. Reasonable suspicion drug and alcohol testing, as in the current collective bargaining agreement, is

not an effective discovery tool. Random testing not only benefits the City's citizens, but also the drug abusing Police Officer and his/her colleagues. Sound Police Officer judgment, his/her physical fitness, and quick reaction time are critical to the performance of law enforcement duties and responsibilities. Drug testing is common throughout the country for Police Officers. It should be awarded in the instant case.

The Union contends that the City has not demonstrated a need for random drug and alcohol testing. It has not availed itself of the current contractual reasonable suspicion standard. The Union and its members have considerable, well-founded insecurities regarding random drug and alcohol testing. Invalid test results can damage and even end an otherwise stellar law enforcement career. It should not be awarded in the instant case.

Public safety employees must be free from the adverse effects of alcohol and drug abuse. Their job duties and responsibilities require sound judgment, instantaneous decision-making and the physical ability to implement strenuous activity. When the City sought Firefighter random drug and alcohol testing, a JLMC panel awarded one-time drug and alcohol testing during the life of the contract. Moreover, universe data does not support random drug and alcohol testing. While Chicopee, Holyoke and Westfield have the right to an annual test, similar to the City's Firefighter award, there is no evidence of random testing in the universe. (See Union Exhibit #8.) Consequently, the panel awards one-time drug and alcohol testing during the life of the collective bargaining agreement.

4.) AWARD

Include the existing terms of Article 32, except as modified herein.

Each Patrol Officer shall submit to one (1) drug test during the life of the 2013-2016 collective bargaining agreement as follows:

Add new Section 32.07a.

At the City's option, within sixty (60) days of the execution date of this contract each member of the bargaining unit shall submit to a drug/alcohol test. This shall be a one-time event only and shall not be repeated during the life of this collective bargaining agreement. No bargaining unit member shall lose any pay during the administration of this particular test. An employee testing positive shall be referred to the §32.08 rehabilitation program and shall be subject to its terms as well as other Article 32 provisions.

In Section 32.08, add the words "and/or" after the word "results" and before the word "for."

Add new Section 32.08a.

Any employee who is found to have tested positive for either drugs or alcohol will be required to submit to a drug/alcohol test prior to returning to duty. Said test will be administered once an employee has been cleared to return to duty by a substance abuse professional (SAP). The SAP shall confer with and weigh the recommendation of the employee's drug/alcohol counselor prior to ordering a return-to-work drug/alcohol test; in the event that there is a conflict of opinion about return-to-work testing between the employee's counselor and the SAP, the employee may request that the Medical Review Officer (MRO) involved in his/her case make the outcome-determinative decision. Employees must successfully pass a return-to-work test in order to be reinstated to active employment.

In the event that an employee fails to pass his/her first return to work drug/alcohol test, the employee shall be returned to rehabilitation and afforded one more opportunity to pass a return to work, drug/alcohol test. In the event that the employee fails his/her second return to work, drug/alcohol test, the employee shall be subject to discipline up to and including termination of employment.

Replace the first sentence of Section 32.10 with the following provision:

Any employee who successfully passes a return to work test will be subject to random, follow up drug/alcohol testing as often as determined by the employee's SAP for a period not to exceed 18 months following the employee's successful return to work.

Include the second sentence of Section 32.10.

Add 32.13

An employee shall be accorded the right of Union representation for either breath or urine testing provided that the securing of such representation does not unreasonably delay the conduct of such test.

Testing for alcohol may be done either by breathalyzer or by urine sample. The breathalyzer test shall be performed by a certified breath alcohol technician (BAT). If alcohol testing is done by breathalyzer and if the test result is positive, either the Employer or the employee may request a confirmatory urine test at a certified laboratory.

Testing for drugs shall be done at a certified laboratory. Urine testing shall be done with due regard for the chain of custody. Each urine sample shall be subdivided into primary and split specimens. If the primary specimen has a positive test result, the employee shall be deemed to have tested positive unless the employee within 72 hours after the consultation with the MRO requests that the split specimen be tested at another certified laboratory. If the split specimen also has a positive test result, then the employee shall be deemed to have tested positive. In cases where the employee has requested further testing, i.e., the testing of a split sample, and the test is positive, the employee shall bear the expense of the test of the split sample. If the split specimen has a negative test result, then the primary specimen shall be deemed to have been negative, and the employee shall be recorded as having a negative test result overall. All testing costs shall be borne by the Employer except where otherwise specified in this Policy.

All test results shall be reviewed by a medical review officer prior to the result being reported to the Employer. In the event of a positive test result, the MRO shall contact the employee and conduct an interview to determine if there are any legitimate reasons for the positive test result. If the MRO determines that there is a legitimate medical explanation for the positive test result, the MRO will report the test result as a negative result. The employee shall bear no testing costs under circumstances where the MRO declares a negative test result. The Employer may be asked by the MRO to assist in getting the employee to contact the MRO; the MRO shall divulge no testing information to the Employer prior to reporting the test result to the Employer. Any employee who has a final positive test result on the first occasion for alcohol/drugs shall receive no discipline provided the employee seeks and participates in treatment for his/her condition.

Any refusal to participate in treatment shall result in the discharge of the employee.

Any employee who has a positive test result for drugs/alcohol on the second occasion or subsequent occasions shall be subject to discipline up to and including termination of employment excepting an initial positive test result, followed by a positive first return-to-work test result per §32.08a.

Add 32.14

Any interference with the testing process or a refusal to submit to testing shall be grounds for disciplinary action up to and including termination. Interference with the testing process includes, but is not limited to, the following: tampering with a specimen, offering bogus specimens, substituting specimens, altering specimens, and obstructing the testing process. In the event that a test result is a dilute negative as defined by the MRO, an employee will be subject to retesting and will bear the cost of such retest.

Add 32.15

Any employee who voluntarily comes forward at any time prior to undergoing a test for drugs/alcohol or being charged criminally regarding drugs/alcohol and discloses to the Employer that s/he has a drug/alcohol problem shall be granted an opportunity to seek treatment, shall be granted 30 days paid administrative leave for such treatment, and shall further be permitted thereafter to use accumulated sick or vacation leave for the period of treatment, and shall not be subject to discipline. First-time treatment which arises in the course of employment by the City shall be at no cost to the employee for the duration of the time the employee is on paid administrative leave plus any time covered by use of the employee's sick and/or vacation leave. The SAP bears the responsibility for determining the employee's treatment plan after consultation with the employee's counselor, if any.

Following treatment an employee will be subject to return to work testing and follow-up testing pursuant to the terms set forth in this contract with respect to each.

Nothing herein shall preclude disciplinary action against an employee who is under criminal investigation for drug/alcohol related misconduct.

Add 32.16

An alcohol level of .03 or greater shall be considered a positive test result. An employee with an alcohol level of .01 to less than .03 will be relieved of duty, in such event the employee may, if s/he chooses, use sick leave, vacation leave, compensatory time, or leave without pay to cover the balance of his/her absence from the remainder of the shift.

The drugs tested for shall be those comprising the standard DOT 5 panel screen, namely, marijuana (THC), cocaine, amphetamines, phencyclidine (PCP), and opiates including heroin, oxycontin, & oxycodone. Standard cutoffs shall be used in determining whether or not an employee has a positive test result. Standard cutoffs and the drugs tested for may be changed by agreement of the parties.

An employee who has a valid prescription for medication and who

receives a positive test result shall bring such prescription to the attention of the MRO.

Add 32.17

Employees who are out of work due to an on-the-job injury may be required to be available for drug/alcohol testing if they are otherwise authorized by this article.

Except as otherwise provided in this Drug/Alcohol Policy, the Employer shall bear all costs associated with the alcohol/drug testing. of its employees.

Add 32.18

Any disputes concerning the interpretation or application of Article 32 shall be resolved through the parties' grievance and arbitration procedure (Article 5).

Add 32.19

Should any portion of this Alcohol/Drug Policy be held unlawful by any court of competent jurisdiction within Massachusetts, the remaining provisions of this Policy shall remain enforceable provided that the portion struck down does not so cripple the policy as to make it dysfunctional. The parties agree to try to negotiate a substitute provision for any provision struck down.