

**American Arbitration Association
Tammy Brynie, Esq., Arbitrator**

In the matter between:

Boston Superior Officers
Federation

- and -

City of Boston

AAA No. 01-18-0004-2849

Class Action:

Sergeants, Lieutenants,
Captains - Detail Rates

Decision and Award

For the City

Kristofer Wilson, Esq.

For the Union

Patrick Bryant, Esq.

Background

This matter was submitted for decision based on stipulated facts and exhibits, followed by comprehensive and detailed written submissions. The parties stipulated to the following issue:

Whether the Detail Rates violate Article XIV of the CBA?

If so, what shall be the remedy?

The "detail rates" referred to in the stipulated issue are the hourly pay rates, specified by rank, received by police officers for work performed at the request of third-party vendors.¹ The 1979-1981 collective bargaining agreement between Boston Police Superior Officers Federation (Union or Federation) and the City of Boston (City), (Joint Exhibit #2A) addressed "Paying Details" at Article XIV. Article XIV, in relevant part, provides:

Section 1. All paying details of three or more patrolmen at one location shall require a superior officer on that detail and each additional multiple of three patrolmen on a detail will require an additional superior officer.

Section 2. It is agreed that superior officers will supervise the posting of patrolmen details, but that supervision will not include the physical act of posting by the superior officers.

Section 3. No paying detail assignment shall be made until the person, firm, corporation or entity requesting or required to have such detail has agreed to pay the following rates of pay:

Effective July 1, 1979 -

Rank: Sergeant - Minimum hourly rate . . .	\$12.00
Lieutenant- " " " . . .	\$13.50
Captain - " " " . . .	\$15.50

Effective July 1, 1980 -

¹ The parties' Joint Stipulations, at paragraph 2, outlines the process and mechanics of the current detail system. Further description is also found at City of Boston, 31 MLC 25(2004).

Rank: Sergeant -	Minimum hourly rate	. . .	\$13.00
Lieutenant-	" " "	. . .	\$14.50
Captain -	" " "	. . .	\$16.50

with a guarantee of a minimum of four (4) hours' pay per detail for each employee so assigned. The Federation and the Police Commissioner hereto may, by mutual agreement, from time to time, revise upward the said hourly rate and the minimum number of guaranteed hours per detail aforementioned and establish premium rates of pay for certain details. **But, in no event will the rate of pay as set forth above be less than the regular hourly rate of the various ranks described.** Joint Exhibit #2A, Emphasis Added.

The term "regular hourly rate," is not recurring with the parties' negotiated agreements. For example, within the same 1979-1981 contract, the parties' negotiated a comprehensive Compensation provision, at Article XVII, and addressed compensation considerations in other areas of the agreement as well. Aspects of the agreement referred to shift differentials; assignment differentials; and a "straight-time hourly rate" (for overtime compensation) as "one fortieth of an employee's regular weekly compensation." Joint Exhibit 2A, pp. 11,

15, 28-31A. There is no other reference to, or definition of, "regular hourly rate" within the agreement.

The stipulated record reflects an on-going lack of agreement concerning superior officers' detail rate of pay. For example, paid detail rates were an aspect of Arbitrator Holden's Interest Arbitration Award (2004), when he, without explanation, raised the rate by \$4 and changed/clarified payment with respect to specific blocks of detail time. While the parties agreed to integrate aspects of Holden's award into their later MOA, there is no indication that Article XIV, Section 3 was deleted, or that the "regular hourly rate" standard was no longer applicable.

Other changes in detail rates occurred following the filing of grievances alleging that the City had failed to raise the hourly detail rate in violation of the collective bargaining agreement. (Joint Exhibit #3A; Joint Exhibit #3B). In other years, it appears that the City and all sworn police unions finalized global settlements with respect to paid detail rates. Joint Exhibit #4.

The current paid detail rates resulted from another global settlement between the City and its sworn police unions. The Union, in 2013, filed a grievance contending that the City had violated the contract by failing "to properly compensate Federation members because the detail rate is below the regular hourly rate." Joint Exhibit #3C, p.1. While denying the grievance, the City indicated that "[t]he contract does not specifically define how to calculate the regular hourly rate for purposes of comparing it to the detail rate." It further explained that "its practice for calculating the regular hourly rate is to compare the types of compensation (i.e., base wages) and [it had] historically excluded types of compensation such as Quinn payments because not all officers receive these additional types of compensation..." Joint Exhibit #3C, p.3. The grievance response, however, did not detail the City's parameters concerning, or a functional definition of, "base wages."

Nonetheless, another global settlement with all sworn police unions resulted in new detail hourly rates, effective June 6, 2015. The hourly retail rates for superior officers, which remain in effect, are:

Sergeants - \$53.00
Lieutenants - \$55.00
Captains - \$60.00

Joint Exhibit #3C, p.8.

The City and the Union finalized a Memorandum of Agreement on February 15, 2018, to amend the City of Boston Classification and Compensations Plans, Schedule A, for the Boston Police Superior Officers Federation, with 2% base salary increases effective in July 2016, July 2017, July 2018 and July 6, 2019. The latest MOA contained further monetary benefits, including Cumulative Risk Enhancement Adjustments, increases in Educational Incentives and increases in Hazardous Duty compensation. Joint Exhibit #5. the regular hourly rate of pay for all superior officers.

The 2015 paid detail rates, however, have remained unchanged to date. As a result, the Union filed a grievance asserting that the City refused to raise the hourly detail rate of pay above the regular hourly rate of pay for Sergeants, Lieutenants and Captains. The City denied the grievance. Joint Exhibit #3D, pp 3, 5-6. Absent resolution through the grievance process, the dispute is now at arbitration.

Contentions of the Parties

The Union asserts the parties, since 1979, have agreed that the Detail Rate will be set at flat hourly amounts per rank that may be re-negotiated upward, but that "[I]n no event will the rate of pay as set out above be less than the regular hourly rate of the various ranks described." JX2, Art. XIV, Section 3.

The current hourly Detail Rate - \$53 for Sergeants; \$55 for Lieutenants; and \$60 for Captains, is less than the officers' "Regular Hourly Rate" regardless of how the latter is defined.

The context, purpose and history of the provision demonstrate that the reasonable interpretation of "Regular Hourly Rate" is that the phrase refers to the top rate within the rank, including years of service and wage augmentations. This result would ensure that all officers receive a premium, however slight, for working third-party details and that they would be paid an hourly rate no less than their usual and customary rate.

It is clear that the phrase "Regularly Hourly Rate" must be interpreted to include recurring and total earned compensation. The parties' distinct use of that phrase reflects their understanding that it represents different, and greater amounts, than the "straight time rate" that is also referred to in the 1979-1981 agreement.

If the Arbitrator is unwilling to adopt the top rate within a rank as "the Regularly Hourly Rate", she can be guided by the City's own interpretation - that the phrase includes all wages common to all officers within the rank. The universal wages earned by all superior officers include hazardous duty pay², day shift differential and holiday pay.

Upon analyzing and interpreting the meaning of "Regular Hourly Rate" - and specifying how it is calculated -- the Arbitrator should remand the grievance back to the parties for purposes of remedy.

Jurisdiction should be retained for up to 90 days if the parties are unable to reach agreement.

² Hazardous Duty pay, the Union asserts, is so intertwined with basic compensation for all officers that the augment is included in "straight time" (aka the hourly rate) used by the City to calculate overtime and shift differentials.

* * *

The City agrees that this case involves the interpretation of Article 14, Section 3 of the parties' 1979-1981 collective bargaining agreement. From the City's perspective, Article 14, Section 3 offers mechanisms to create clarity for third-party payment arrangements and mitigate the risk to an officer of non-payment or partial payment:

1. The Federation and the Department set a regular hourly rate (The "Paid Detail Rate"), along with hourly minimums and premium rates that must be agreed to by the customer before the customer can schedule an assignment.
2. The Paid Detail Rate may be negotiated upward by mutual agreement.
3. "But in no event" may the Paid Detail Rate be negotiated downward or discounted. City Brief, p.2.

The City maintains that the Union does not contest that the parties can negotiate the Paid Detail Rate upward by mutual agreement. The Union, however, erroneously seeks to anchor the Paid Detail rate to an undefined wage based on Article 17 considerations - with Article 17 being a separate and distinct contractual provision that sets compensation rates for sworn superior officers for performing police duties within the City. For the past 20 years (at least), the parties

never automatically increased the Paid Detail Rate based on the highest, average or even lowest Article 17 compensation rate.

The unique terms of Article 14 explicitly differentiate that pay from the other forms of compensation detailed at Article 17. The language of Article 14 does not support the automatic increases proposed by the Federation.

The interpretations advanced by the Federation would necessarily require to Arbitrator to significantly alter the language of Article 14, Section 3 to establish a right to an automatic adjustment to the Paid Detail Rate. This type of rewriting the contract is strictly prohibited.

Given the plain language of the contract, the industry standards and the parties' past practices, the Arbitrator should find that the Federation is not entitled to an automatic raise in Paid Detail Rate.

Should the Arbitrator determine that a remedy is warranted, the Article 14, Section 3 provision that refers to the "Regular Hourly Rate" is modified by the phrase "of the various ranks." Thus, the plain language indicates that the hourly rate is applied on a rank basis - not on an individual basis. Moreover, if the Federation believes the Paid Detail Rate should be raised, they could have brought that issue to the table. They have not done so. Accordingly, the City asks that the grievance be denied.

Opinion

Boston Police Superior Officers, like other members of the sworn ranks within the Boston Police, have the opportunity to work additional hours at the request of a vendor. In March of 1991, then-Police Commissioner Francis Roache, issued Rule Number 325, "Paid Details". In its 'General Considerations,' Rule Number 325 provides:

Police Officers are first and foremost employees of the Boston Police Department. The fact that a private business is providing compensation to the City of Boston for the services of the officer shall have no relevance in the performance of his official duties. Officers have the primary responsibilities for enforcing the laws of the

Commonwealth, City Ordinances and protecting members of the public.³

The City and the Federation reached an agreement concerning the monetary terms of superior officers' participation in paid detail work, on behalf of third-party vendors, in their 1979-1981 collective bargaining agreement. At that time, the parties' agreed, at Article XIV, Section 3, upon set hourly detail rates for Sergeants, Lieutenants and Captains, effective July 1979 and, with an increase, in July 1980. In addition to setting initial detail rates, the parties further agreed that the Union and Police Commissioner "may, by mutual agreement, from time to time, revise upward the said hourly rate and the minimum number of guaranteed hours per detail ...". They also agreed, "But in no event will the rate of pay as set out above be less than the regular hourly rate of the various ranks described." Joint Exhibit #2A.

Clear contract language details the parties' agreement that bargaining unit employees' paid detail rates of pay may not be "less than the regular hourly rate of the various ranks described." It appears

³ See City of Boston, 31 MLC 25, (2004).

however, that the parties never agreed about the meaning of, or the constituent parts of officers' compensation that would comprise a "regular hourly rate" for Sergeants, Lieutenants and Captains, as described Article 14, Section 3. Instead, over the years, the parties appear to have used paid detail rates as determined through interest arbitration or achieved as a result of grievance settlements.⁴ It appears that, with respect to the most recent "Paid Detail Rate" grievance, JX #3D, the parties have decided to address the interpretation and application of the paid detail rate, as set forth in Article 14, Section 3 of the parties' collective bargaining agreement.

Here, the critical question is: How is the phrase "regularly hourly rate of the various ranks described" to be interpreted and applied?⁵ It is clear that the parties used "regular hourly rate" only in the context

⁴ The pertinent grievance settlements, of course, contained language indicating that the agreement would not prejudice either party, not involve any admission of a contract violation, while also reserving both parties' claims and legal arguments pertaining to Article 14 and the calculation of the detail rate.

⁵ Contrary to the City's contention, this analysis does not alter, amend, add to, or detract from, the parties' agreement. My role is simply to interpret and apply the parties' 1979 contract language. The parties agree that Article 14, Section 3 of their contract remains in effect. Thus, interpreting that provision and then consistently applying that interpretation is a logical and expected extension of an arbitrator's permissible authority.

of paid details. Within the same 1979-1981 collective bargaining agreement, the parties' referred to "straight time" and "regular weekly pay." Joint Exhibit #2A. Thus, at the outset, I determine that the "a regular hourly rate" must be distinguishable from "straight time" - a term that the parties utilized elsewhere.

Next, the Union's argument that a "regular hourly rate" necessarily refers to the top rate within a rank is not persuasive. The agreed-upon contract language does not refer to "maximum" or "top" hourly rate within various ranks. As a result, I reject the Union's interpretation that the parties intended to use the maximum hourly rate to ensure that officers received a premium, however slight, for working third-party details.

By the time the parties negotiated the 1979-1981 agreement, terms and concepts detailed within the 1938 Fair Labor Standards Act had common acceptance within the labor and employment community. The term "regular rate" under the FLSA captures most employment remuneration. A "regular rate" may be augmented, over

time, by newly afforded benefits. Conceptually, a "regular rate" is not a synonym for a "straight time" rate. Rather, a "regular rate" would capture wage augmentations that were common to Superior Officers within the ranks of Sergeant, Lieutenant and Captain. This perspective is consistent with the City's stated position that a "regular hourly rate" is comprised of compensation that the ranks have in common. See Joint Exhibit 3C, p.3.

In addition, a "regular hourly rate" is not fixed in time, as it necessarily encompasses additional remuneration common to the ranks of Sergeant, Lieutenant and Captain. The common augmented compensation components for those three ranks includes: day shift differential; hazardous pay⁶, and holiday pay. This interpretation excludes night shift differentials, education payments and specialty assignment stipends; remuneration that are not common to all bargaining unit members.

⁶ The Union notes that Hazardous Duty pay is now so intertwined with basic compensation for all officers that it is included within "straight time," as used by the City to calculate overtime and shift differentials.

I have analyzed and interpreted the Article 14, Section 3 "regular hourly" detail rate to necessarily encompass the common compensation shared by bargaining unit members. Similarly, I determine that relatively common longevity amongst the ranks should be a further factor in determining the applicable the applicable "regular hourly rate." As a result, the median position within Sergeant, Lieutenants and Captains with respect to pay steps and longevity award is appropriately used when determining a "regular hourly rate" for detail purposes.

It appears, based on my rough calculations, that the City has violated the collective bargaining agreement by paying detail rates at less than the "regularly hourly rate" as I have analyzed, interpreted and defined, for members within the Federation's bargaining unit ranks.

As relief, the matter is remanded to the parties, to determine a remedy. I will retain jurisdiction for 90 days, renewable upon request, for remedial purposes.

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AWARD

The Detail Rates violate Article XIV of the Collective bargaining agreement.

As remedy, the matter is remanded to the parties, to apply the described formulation of a "regularly hourly rate" for Sergeants, Lieutenants and Captains for paid detail purposes, and to craft a make whole remedy.

I will retain jurisdiction for resolution of remedial issues only, for 90 days, renewable upon request.

/s/ Tammy Brynie
Tammy Brynie
Arbitrator
October 20, 2021