



COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF LABOR RELATIONS  
CHARGE OF PROHIBITED PRACTICE  
M.G.L. c.150E

DO NOT WRITE IN THIS SPACE

Case No.

Date Filed

INSTRUCTIONS: Answer all applicable questions. Failing to provide information may result in the dismissal of the charge.

Note: Pursuant to 456 CMR 15.04, the DLR will not issue a complaint unless the charging party has complied with the applicable provisions of M.G.L. c.150E, §§13 and 14.

1. Employer <b>Town of Chelmsford</b>	2. Representative to contact <b>Paul Cohen, Town Mngr.</b>	4. Telephone Number <b>978-250-5201</b>
3. Address (street and No., city/town, state, and ZIP code) <b>50 Billerica Road</b>		5. Fax Number <b>978-250-5252</b>
6. Employee Organization (if any): <b>NEPBA Local 20</b>	7. Representative to contact <b>Gary G. Nolan</b>	9. Telephone Number <b>978-454-3800</b>
8. Address (street and No., city/town, state, and ZIP code) <b>73 Princeton Street, Suite 306, N. Chelmsford, MA 01863</b>		10. Fax Number <b>978-454-2767</b>
11. This charge is filed against (check one) <input checked="" type="checkbox"/> Employer <input type="checkbox"/> Employee Organization		

12. The above named employer or employee organization has engaged or is engaging in a prohibited practice within the meaning of Massachusetts General Law, Chapter 150E, Section(s) (enter all appropriate sections/subsections)

**Section 10(1), (5) & (6)**

*Failing to specify an appropriate section/subsection may result in the dismissal of the charge.*

13. Summary of basis of Charge (be specific as to names, dates, addresses, etc.)

**Subsequent to its filing of Charge No. MUP-19-7227, an investigation by the Union revealed that the Employer engaged in a significant amount of misconduct during a JLMC arbitration proceeding, specifically undermining the arbitration process, directly leading to the failure of the Award's funding article at Town Meeting. Such conduct is probative of bad faith in violation of GL c. 150E despite the Town's submission of the JLMC award for funding. Comm. of Admin. and Finance v. CERB, 477 Mass. 92 (2017). SEE ATTACHED "EXHIBIT A" FOR A MORE DETAILED DESCRIPTION OF THE CHARGE.**

**The Town and JLMC management arbitrator Andrew Flanagan had extensive ex parte communication during the arbitration proceeding, shared confidential information and worked cooperatively to undermine the JLMC Final Award in order to ensure it would not be funded by Town Meeting. For example, (1) Flanagan supplied confidential deliberative information to the Town prior to its submission of its post-hearing brief (which information was apparently used to craft arguments in the Town's brief); (2) Flanagan shared with the Town the confidential draft arbitration award during the deliberative process, then, together with the Town, forced delays of the panel's issuance of the award in order to influence the panel to reduce the compensation awarded; (3) the Town, well after the submission date for post-hearing argument, supplied Flanagan with additional arguments to oppose the draft award and influence the panel to change its decision; (4) Flanagan made those late arguments, ghost-written by the Town (arguments, according to the Neutral, apparently were not even based on the record evidence); (5) Flanagan shared with the Town the substance of the confidential Final Award days ahead of its official release to the parties; (6) the Town's attorney - not Flanagan - authored a dissenting opinion analyzing the confidential, inappropriately leaked final award; and (7) Flanagan then submitted the ghost written, highly negative, dissent -verbatim - as his own. Town Meeting voting reps. received only the dissent, not the majority award. They were told the dissent was authored by an arbitrator. Based solely on that dissent, the contract was not funded.**

By these and other acts, the party complained of has interfered with, restrained, and/or coerced rights guaranteed by the Law.

14. (a) Is there a collective bargaining agreement that may apply to the conduct that is alleged to have violated the Law?  Yes  No

(b) If you checked "Yes" in question 14(a), please list all of the clauses alleged to apply and attach a copy of each.

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(c) Is there a grievance concerning this matter pending?  Yes  No

15. Without limiting your rights to later amend your remedial request, please explain what remedy you seek. Include the amount of any financial remedy to which you claim entitlement.

**Make the union whole for all damages, including attorney's fees. Order equitable relief as appropriate.**

16. Have you attempted to settle this case?  Yes  No  
If not, why not?

**The union has proposed a settlement which was rejected by the Town.**

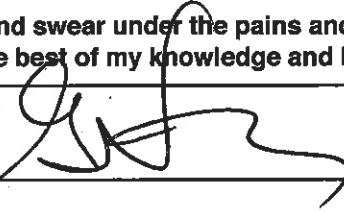
*Note: The DLR may decline to issue a complaint unless reasonable settlement efforts have been made by the charging party. 456 CMR 15.04(1).*

INFORMATION ON CHARGING PARTY

17. Name <b>Chelmsford Police Superior Officer's Assoc.</b>	18. Representative to contact <b>Gary G. Nolan</b>	20. Telephone Number <b>978-454-3800</b>
19. Address (street and No., city/town, state, and ZIP code) <b>73 Princeton Street, Suite 306, N. Chelmsford, MA 01863</b>		21. Fax Number <b>978-454-2767</b>
22. The Charging Party is an: <input type="checkbox"/> Individual <input checked="" type="checkbox"/> Employee Organization <input type="checkbox"/> Employer		

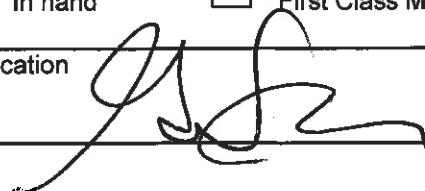
DECLARATION

I have read the above charge of prohibited practice and swear under the pains and penalties of perjury that the information contained in it is true and complete to the best of my knowledge and belief.

Name (print) <b>Gary G. Nolan</b>	Signature 	Title (if any) <b>Counsel</b>
Address (street and no., city/town, state, and ZIP code) <b>73 Princeton Street, Suite 306, N. Chelmsford, MA 01863</b>		Telephone Number <b>978-454-3800</b>

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of this Charge of Prohibited Practice on the following representative of the opposing party.

Name <b>Paul Cohen c/o Marc Terry Esq</b>	Address (street and no., city/town, state, and ZIP code) <b>50 Billerica Road</b>	Telephone Number <b>978-250-5201</b>
Method of Service <input type="checkbox"/> In hand <input type="checkbox"/> First Class Mail <input checked="" type="checkbox"/> Other (specify): <b>email to counsel</b>		
Signature of Person making Certification 		Telephone Number <b>978-454-3800</b>

**EXHIBIT A**  
**FURTHER ALLEGATIONS TO CHARGE OF PROHIBITED PRACTICE**

As part of its investigation into this matter, the union requested public records from several Town of Chelmsford agencies, including the Board of Selectmen, Town Manager and Finance Committee. Records were also requested of Andover Manager Andrew Flanagan. The records received (and attached hereto) demonstrate the occurrence of the following relevant events.

1. **June 8, 2018** - neutral arbitrator informed parties that matter would proceed to arbitration by order of the JLMC.
2. **October 19, 2018** - arbitration hearing held and concluded.

It is evident from public records that immediately following the hearing, the panel deliberated privately and agreed to award a wage increase similar to the one the parties negotiated in a 2016 Memorandum of Agreement (MOA) ultimately not approved by the Board of Selectmen. The panel members apparently settled upon an award of 9.35%, which they all thought was consistent with the value of the wage-step proposal (2%, 1.65% and 5.7%) included in that 2016 MOA. That consensus decision by the arbitration panel is reflected repeatedly in the neutral arbitrator's notes and emails. See attached emails amongst panel members dated 1/8/19 and 1/17/19. See also attached email amongst panel members dated January 30, 2019, in which the neutral arbitrator referenced several times the consensus agreement (9.35%) reached by the panel at their post-hearing meeting. **SEE ATTACHED EXHIBIT 1.**

3. **October 22, 2018** - a few days after the arbitration hearing, but prior to the submission of post-hearing briefs, the town's attorney and Panel Member Andrew Flanagan (Town Manager of Andover, MA) apparently had a discussion outside of the other parties' presence about the wage-step proposal. The Town was billed for this discussion. See Town Counsel Invoice dated October 22, 2018. **SEE ATTACHED EXHIBIT 2.**
4. **December 11, 2018** - the Town shared a draft of its post-hearing brief with Arbitrator Panel Member Flanagan, asking for feedback, prior to formal submission of the brief to the arbitration panel. See email dated December 11, 2018 attached hereto. **SEE ATTACHED EXHIBIT 3.**

5. **January 8, 2019** - Arbitrator Wolfson shared her draft award with the other arbitration panel members, referencing the panel's earlier discussion on a wage increase equivalent to 9.35%. The sensitivity on the email is marked as "confidential." See emails between arbitrators Flanagan and Wolfson dated January 8, 2019.<sup>1</sup> **SEE ATTACHED EXHIBIT 1.**
6. **January 12, 2019** - Flanagan forwarded Arbitrator Wolfson's confidential email and draft award to the Town's counsel with a note stating, "Let's discuss." See email from Arbitrator Flanagan to Town's counsel dated January 12, 2019. **SEE ATTACHED EXHIBIT 4.**
7. **January 14, 2019** - the Town's counsel responded to Flanagan's sharing of Wolfson's confidential communication. The town expressed a strong objection to the decision, stating, "You have got to be kidding me!" As explained in paragraph no. 8 below, the dates of these discussions are important. Emails demonstrate that both Flanagan and the Town were privy to the draft award on or before January 12<sup>th</sup>, and that they were discussing the award on or before January 14<sup>th</sup> (this is also confirmed by invoices from Town Counsel, reflecting discussions with Flanagan on January 14<sup>th</sup> ("regarding draft award") and with Manager Cohen on January 16<sup>th</sup> ("regarding draft award"). See email from Town Counsel dated January 14, 2019 (ATTACHED EXHIBIT 5) and Counsel's legal invoice entries of 1/14/19 and 1/16/19 (ATTACHED EXHIBIT 6).
8. **January 15, 2019** - Flanagan is contacted by the other arbitrators and is reminded that their final award is due Friday. Flanagan responded that same day, stating, "I haven't had a chance to review. I plan to take a look today." This statement appears to be false, given that he shared the draft award with Town counsel on January 12<sup>th</sup> ("let's discuss"), had telephone calls with Town counsel about it on January 14<sup>th</sup> (see legal invoice), and received emails from Town counsel about it also on January 14<sup>th</sup>. See

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<sup>1</sup> None of the communications between members of the panel suggest that their draft awards, or confidential deliberations would be shared with the parties or their lawyers. Nor does a single communication by a panel member even hint that they were sharing such confidential information with anyone but themselves. Just the opposite - Flanagan took steps to copy and paste arguments from the Town and holds them out as his own, apparently so that such communications were not revealed.

email from Flanagan to fellow arbitrators dated January 15, 2019. SEE ATTACHED EXHIBIT 7.

Flanagan received notice of the award on Jan. 8<sup>th</sup>. He shared it with the Town on Jan. 12<sup>th</sup>, and had phone discussions and emails about it by Jan. 14<sup>th</sup>, he told his fellow arbitrators on the 15<sup>th</sup> that he hadn't read it yet.

9. **January 16, 2019** -The Town emailed Flanagan - well after the submission date for post-hearing briefing - and set forth additional detailed arguments against the draft award. The Town commented on the evidence and criticized the award as "awful, and poorly reasoned." Of significant concern is the statement made in Paragraph No. 4 of that email, where counsel complained that a particular argument in the Town's brief was made specifically because Flanagan had earlier informed the Town that Arb. Wolfson had "decided to go with the MOA." **SEE ATTACHED EXHIBIT 8.**

10. This January 16<sup>th</sup> communication suggests that before the briefs were submitted, Flanagan leaked to the Town the panel's confidential post-hearing deliberations, including, as the Town put it, the decision to "go with the MOA," thereby affording the Town the advantage of using such inside information in its post-hearing brief. The conversations described in paragraph no. 3 above (and reflected in the Town's legal invoices) are relevant to this point.

The communications show that the panel deliberated after the hearing, and apparently settled on a wage increase equivalent with the wage step proposal agreed upon in the earlier failed MOA. On October 22nd, immediately following those deliberations, Town counsel had a discussion with Flanagan about the wage-step proposal. That same day, Counsel had a discussion with Town Manager Cohen about the wage step proposal. Finally, on January 16<sup>th</sup>, counsel complained to Flanagan that the only reason the Town included the wage step proposal's value in its brief was because Flanagan told them about the panel's earlier decision to "go with the MOA." The only conclusion, based on these discussions, is that Flanagan was sharing with the Town the substance of his private deliberations with other arbitrators even before the briefs were submitted.

11. After receiving the Town's objections to the Draft Award, Flanagan emailed his fellow arbitrators on January

16<sup>th</sup> stating, "I have concerns. I'll send them along in a separate email later today..." See email dated 1/16 (3:41 pm) from Flanagan to panel members. **SEE ATTACHED EXHIBIT 9.** As demonstrated below, the concerns he later sent did not appear to be his own, as he simply cut and pasted the argument from the Town's January 16<sup>th</sup> email.<sup>2</sup>

12. **January 17, 2019** - Flanagan (after a few tweaks to personalize it) submitted the Town's late submitted arguments to the arbitration panel as his own. See email of 1/17/19 (9:34 am). **SEE ATTACHED EXHIBIT 10.**

In order to influence the process, Flanagan appears to have plagiarized the Town's ex-parte email arguments and, through the magic of cut and paste, passed them off as his own to his fellow arbitrators. Flanagan is not the Town's lawyer, nor is he an employee or agent of the Town. He is a JLMC Panel Member with a background in management. As a member of a State Agency's (JLMC) arbitration tribunal, he is subject to State Ethics laws. Ethics laws specifically prohibit a special state employee from acting as an agent for parties appearing before that agency.

13. **January 17, 2019** - Flanagan's efforts resulted in a delay in issuing the Final Award, causing the panel to require a further extension. Arbitrator Wolfson emailed Flanagan, saying it would have been nice to get his concerns "sooner than a day before the extension for the decision." She explained that she wrote the award based on the notes she made from the panel discussion after the hearing. Wolfson's email shows that the panel members deliberated immediately after the hearing and were apparently in agreement, which served as the basis for Arb. Wolfson's draft award. It appears that Flanagan decided to change his opinion only after he leaked the draft award to the Town and received the Town's strong objections on January 16<sup>th</sup>. Flanagan appears to have used arguments solicited from the Town (well after the close of the record in the case) as his own in order to influence the panel to likewise deviate from their prior deliberative agreement.

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<sup>2</sup>The emails make clear that none of this communication was part of the normal JLMC process, but instead was going on behind the backs the other panel members as well as the union. As explained in Arb. Wolfson's later emails, Flanagan and the Town's efforts here caused the panel to reduce the compensation in the draft award (from 9.35% to 9.00%) and ultimately led to the rejection of the funding article at Town Meeting.

See email from Beth Wolfson of 1/17/2019. **SEE ATTACHED EXHIBIT 11.**

14. **January 30, 2019** - Arbitrator Wolfson responded to Flanagan's/the Town's objections. She explained why Flanagan/Town's arguments were invalid, and particularly rejected Flanagan's claims (cut and pasted from the Town's Jan. 16<sup>th</sup> email to him) that the Town had made longevity comparison arguments at the hearing and in its brief (see par. 2 of Arb. Wolfson's Jan. 30<sup>th</sup> email to Flanagan - **ATTACHED AS PART OF EXHIBIT 1**).

Arb. Wolfson's response to Flanagan demonstrates why ex-parte communication with arbitration panels during a pending matter or deliberation is prohibited. In her response to Flanagan, Ms. Wolfson referenced several times her notes from the panel's earlier deliberations, and did so seemingly to highlight Flanagan's sudden, unexplainable change of position. Significantly, not once in these many communications does Flanagan indicate that he is communicating with the Town, that he has shared confidential deliberations or the draft award with the Town, or that he has solicited and then adopted as his own objections he received from the Town.

15. **January 30, 2019** - After receiving the email from Arb. Wolfson, Flanagan, that same evening, emailed Town Manager Cohen and Town counsel about the substance of the ongoing deliberations within the arbitration panel. He assured them he would not sign the award unless it was further reduced to close to 7%. Manager Cohen emailed Flanagan directly, thanking him for his ongoing efforts, and counsel thanked Flanagan for his continued advocacy on behalf of the Town.<sup>3</sup> **SEE ATTACHED EXHIBIT 12.**

16. **January 31, 2019** - Flanagan emailed Town counsel and apologized for sending him a particular email. He explained, "this is a game I'm playing with Alan and Sean." Alan, of course, is Alan Andrews, one of his fellow arbitrators. Sean McArdle is the union's representative. This game Flanagan is playing - whatever it is - is clearly unknown to the other two arbitrators and parties during a critical phase of a formal, State ordered arbitration

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<sup>3</sup> After a recent Board of Selectman's Meeting, Manager Cohen was quoted in the *Lowell Sun* as stating he never communicated with Flanagan directly during this process. The public records, however, do not support that statement.

proceeding. As a result, the other panel members, in order to appease Flanagan, actually agreed to reduce the original value of the draft award so that Flanagan would sign-onto it as a unanimous decision. Despite reducing its overall value, however, Flanagan still would not sign the final award. See email from Flanagan dated 1/31/19 (8:24 pm). **SEE ATTACHED EXHIBIT 13.**

17. **February 1, 2019** - Arbitrator Wolfson shared her "confidential" final Decision and Award with Arbitrators Flanagan and Andrews. Importantly, she suggested Flanagan read the discussion section, which explained that the award was similarly valued to the patrol award (the patrol award is quoted in the final award; Wolfson hoped that would convince Flanagan that the decision should be unanimous). Arb. Wolfson asked Flanagan if he planned to dissent, stating she needed the written dissent no later than 5pm the following day (Saturday). See Feb. 1, 2019 (1:03 pm) email from Arbitrator Wolfson to Flanagan and Andrews. **SEE ATTACHED EXHIBIT 14.** It is important to note that the Special Town Meeting was scheduled for Monday, February 4<sup>th</sup>.

18. Following Arb. Wolfson's explanation and plea, Flanagan again appears to have deliberated directly with the Town.<sup>4</sup> Counsel's invoice, in fact, reflects multiple discussions amongst Flanagan, Town Counsel and Manager Cohen on February 1<sup>st</sup>, the same day Arb. Wolfson sent the final award. Following his discussions with the Town, Flanagan replied to Wolfson that he would dissent (**SEE ATTACHED EXHIBIT 15**); however, instead of doing it by Saturday as instructed originally, Flanagan sent his opinion on Monday, only hours before the start of the Special Town Meeting, ensuring that there would be almost no time for the Town Meeting representatives to properly digest the award (or as it turned out, even see it), nor time for the union to advocate in advance of the meeting for its funding. **SEE INVOICE ATTACHED AS EXHIBIT 17.**

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<sup>4</sup> It appears that Flanagan continually leaked to the Town the substance of the panel's confidential deliberations, and then, rather than act as an arbitrator, he treated the matter as a negotiation in which he was an advocate for the Town. Through the end of January 2019, Flanagan and the Town continually discussed levels of compensation that would be acceptable to the Town, and Flanagan, rather than decide the case on the record evidence, continued to press the panel to award items proposed to him by the Town (but always claiming such proposals as his own). He did this as late as February 1, 2019 (**see emails attached as EXHIBIT 16**).



19. **February 3, 2019 - Town's counsel emailed Arbitrator Flanagan the so-called Dissenting Opinion. Counsel prepared it, billed for it, and the Town even paid for it.** The dissent ignored the explanations provided by Arb. Wolfson to Flanagan, and simply adopted arguments that the Town previously submitted to Flanagan during the many post-hearing ex parte communications, including arguments spelled out in its January 16<sup>th</sup> email to him. Flanagan, like he did with the Town's earlier ex-parte arguments, submitted the dissent to the panel, verbatim, as his own. Ironically, the dissent cites the panel's "extensive deliberations," but fails of course to mention that the Town, along the way, was an intimate part of those deliberations, becoming essentially a secret member of the panel. See email from Town Counsel to Flanagan dated 2/3/10 (1:18pm). **ATTACHED EXHIBIT 18.**
20. **February 4, 2019 -** Arbitrator Wolfson emailed a copy of the Final Award and Dissenting Opinion to the parties, including Mr. McArdle and Town Counsel. There is no indication in her letter that she knew the Town (1) had prior notice of the draft award, (2) had been so intricately involved in the post-hearing deliberations, or (3) had drafted a significant part of the very award she was now issuing to them. **ATTACHED EXHIBIT 19.**
21. **February 4, 2019 -** Town Manager Cohen emailed the Arbitration Award with Dissent to the Chelmsford Finance Committee. He advised them that both he and the Board of Selectmen are required to favorably present the decision to Town Meeting, but adds, "However, you have no such constraint." **ATTACHED EXHIBIT 20.**
22. **February 4, 2019 -** Special Town Meeting was held. The Finance Committee, having been advised by Cohen that they need not support the award, distributed copies of Dissenting Opinion to representatives, but did not distribute actual majority Award. The Finance Committee pointed to the highly negative Dissenting Opinion as the reason it unanimously opposed funding the award. The Committee Chairman actually read aloud the dissenting opinion - word for word - to the meeting representatives as its sole basis for its opposition.
23. During the meeting, voting Representatives echoed the Finance Committee's focus on the Dissenting Opinion. Representatives commented that the Town should send the

matter back to the arbitration panel "so the other two arbitrators can consider the argument of the dissenting arbitrator," and further commented to the effect that, given the dissenting opinion, the other arbitrators must have been asleep. The Finance Committee Chairman argued to the effect that when he gets a dissenting opinion like that, the Committee has an obligation to oppose funding the Award.

The Town Manager, in the face of such opposition due to the "dissenting arbitrator's opinion," never informed the meeting representatives that, in fact, the dissenting opinion was actually written by the Town's own lawyer, or that the arguments of the so-called dissent, also written by Town, were considered and thoroughly rejected by the panel majority. The Town only provided copies of the Dissent. They did not publish or highlight the rationale in the actual Award. The Town Manager, Selectmen and Finance Committee simply stayed silent and did not respond to such concerns, all of which were a reaction to the Finance Committee's dissent focused presentation.

Intentionally kept in the dark about the true author of the Dissenting Opinion and the rationale of the Majority Opinion, the Town Meeting representatives rejected the contract funding article. See video recording of Special Town Meeting Feb. 4, 2019 posted on the Town's website.

24. **February 4, 2019** (9:54pm) - Immediately following the meeting, Town Manager Cohen emailed town counsel and Flanagan directly, letting them know that Town Meeting rejected the funding article. See email dated 2/4/19. **SEE EXHIBIT 21.**

25. **Town's Legal Invoices** - following the Town's presentation at Town Meeting, including what the union considered to be an unfair focus on the Dissenting Arbitrator's opinion, the Union requested copies of legal invoices paid by the Town related to the JLMC proceeding. It also requested correspondence from Andrew Flanagan, Town Manager of Andover, related to his involvement. The documents received in response make up the majority of the exhibits attached to this timeline.

The records show that the Town was in regular communication with Arbitrator Flanagan after the close of the hearing, after the close of the briefing period, and was deeply

involved in the deliberative process right through the final decision. The invoices show that the Town's counsel had multiple communications with Flanagan upon receiving the leaked draft award on January 12, 2019. The invoice reflects that counsel discussed the leaked award for some 25 minutes with Town Manager Cohen on January 16<sup>th</sup>, and then, that same day, emailed the substantive written objection to Flanagan (which Flanagan then passed off as his own).

Not only do the emails provided by Flanagan show direct communication between him and Manager Cohen during the above timeframe, but legal bills suggest that the Town Manager was completely aware of the communications, as well as the substance of the confidential deliberations, flowing back and forth between the Town and Flanagan.

Following the close of the formal hearing, the Union submitted a post-hearing brief and then waited for the panel's decision to issue. The Town, on the other hand, to the detriment of the union, continuously reacted to its receipt of confidential information by directing Flanagan to submit additional arguments, supplied by the Town, in order to influence the outcome of the case.

Most shocking - given how the Finance Committee relied so heavily upon "the dissenting arbitrator's opinion" - was the revelation in the second set of legal invoices received. On February 2, 2019 - the Town's lawyer issued a bill for drafting the dissenting opinion for Flanagan, and even charged the Town \$273.00 for doing so. According to the invoice, this dissent was drafted one day after multiple communications took place between counsel, the Town Manager and Flanagan about the impending award, suggesting a knowing, coordinated plan regarding the dissent. Despite their pointed questions on the issue, this material information was kept hidden from the Town Meeting Representatives - the elected officials charged with making funding decisions on the Award.

Given all of the ex-parte activity of the Town, up through its crafting of the dissenting opinion for Flanagan, it is in bad faith that the Town would present that same dissenting opinion as its sole reason for rejecting the funding article. The Town Manager certainly was aware of all these material facts, and made a choice to keep them

from Meeting Representatives who reacted negatively to the arguments laid out in the dissent.

26. **Public Records Requests.** During the Union's investigation of this matter, it requested copies of public records. The legal invoices reflect the Town was charged for things like "strategize regarding public records requests for legal invoices," and "strategize regarding public records requests." The Town contacted Flanagan to discuss these public records requests and billed the Town for it. Flanagan had called the Town's lawyer to discuss public records and the Town of Chelmsford was also billed for that. **SEE EXHIBIT 22.**<sup>5</sup>

**Ethics Violations and Interference with the Union's Contractual Relations.** As mentioned above, as a JLMC arbitrator, Flanagan is a special state employee, subject to the ethics laws in GL c. 268A. An arbitration panel is a quasi-judicial tribunal, and ex-parte communication is prohibited by Massachusetts Rules of Professional Conduct. Among other things, the union claims that the above detailed deliberate conduct by Town agents, as well as by Andover Manager Flanagan, unlawfully interfered with its members' contractual and other rights in violation of GL c. 258 and other Massachusetts law.

These failures to adhere to important ethical rules, including willfully concealing material information from Town Meeting representatives after a contract presentation which consisted primarily of the lone dissenting opinion, directly resulted in the Town meeting's rejection of the union's salary article, causing the union and its members significant damages, both retroactive and prospective, all in bad faith and in violation of GL c. 150E.

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<sup>5</sup> Significantly, Flanagan's initial response to the union's request for records was woefully incomplete. Only after the union's attorney sent a notice of claim to Flanagan did he produce a more complete response.

**Exhibit #1**

## Andrew Flanagan

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**From:** Andrew Flanagan  
**Sent:** Tuesday, January 8, 2019 4:20 PM  
**To:** Beth Wolfson  
**Cc:** Alanandrews7@msn.com  
**Subject:** Re: Chelmsford Police Superiors & Town of Chelmsford; JLMC-16-5509

**Sensitivity:**

Confidential

Hi Beth,

Please send along the attachment.

Best,


**Andrew P. Flanagan**  
Town Manager  
Town of Andover  
36 Bartlet Street  
Andover, MA 01810  
[aflanagan@andoverma.gov](mailto:aflanagan@andoverma.gov)  
(978)-623-8210

[Andoverma.gov](http://Andoverma.gov)

On Jan 8, 2019, at 4:15 PM, Beth Wolfson <[bawolfsonesq@comcast.net](mailto:bawolfsonesq@comcast.net)> wrote:

Dear Alan and Andrew,

Happy New Year! I am a bit behind where I wanted to be, but I now have a draft decision to send for your review. I just want to proof it tonight (I may have to do so after a meeting I have scheduled) and then I will forward it to you for comment, corrections, etc... You two are, after all, the most familiar with these parties and their situation.

 According to my notes we talked about a 2%, 1.65%, and 5.7% wage increase, but after reviewing all the material I suggest 2%, 2%, 2%, and 3% effective 1/1/19. I welcome your thoughts.

Also, I had a note about the mandatory testing standards, but for reasons I state in the decision I declined to award that. Gin, I welcome your thoughts.

Please feel free to challenge any reasoning, correct any math, etc... when you get the draft.

Finally, the decision is due this Friday (and I have a hearing). I gave the parties a 12 day extension for briefs, so I don't have any qualms about asking them for additional time to get this out. Please let me know your schedules for reviewing, commenting, correcting, and signing. My thought is to ask for time until Friday, 1/18 if that works for both of you.

I look forward to hearing from you.

## Andrew Flanagan

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**From:** Andrew Flanagan  
**Sent:** Thursday, January 17, 2019 1:51 PM  
**To:** Beth Wolfson  
**Cc:** alan andrews  
**Subject:** Re: Chelmsford Award

Hi Beth,

I'm sorry for the delay. I can meet on the 28th.


Best,

**Andrew P. Flanagan**  
Town Manager  
Town of Andover  
36 Bartlet Street  
Andover, MA 01810  
[aflanagan@andoverma.gov](mailto:aflanagan@andoverma.gov)  
(978)-623-8210

[Andoverma.gov](http://Andoverma.gov)

On Jan 17, 2019, at 1:28 PM, Beth Wolfson <[bawolfsonesq@comcast.net](mailto:bawolfsonesq@comcast.net)> wrote:

Andrew,

Appreciate your concerns, but it would have been nice to get them sooner than a day before the extension for the decision. That said, I am not trying to force a decision here. I worked on the draft off the notes I made of our panel discussion after the hearing. If I misunderstood what both you and Alan indicated for the bottom line I apologize. I would like to have a consensus decision, so if you both think it would be beneficial to meet, I will ask the parties for a longer extension so we can work this out. 

I would appreciate it if you both let me know ASAP if you can meet to discuss Andrew's concerns and find a date this month to do so. I cannot rework a decision in 24 hours with only e-mail contact. I am available the afternoon of 1/24, anytime on 1/25 and 1/28, and the morning of 1/29 after 9:30 AM.

Thanks,  
Beth

**From:** Andrew Flanagan [<mailto:aflanagan@andoverma.gov>]  
**Sent:** Thursday, January 17, 2019 9:34 AM  
**To:** Beth Wolfson  
**Cc:** alan andrews  
**Subject:** Re: Chelmsford Award

## Andrew Flanagan

---

**From:** Andrew Flanagan  
**Sent:** Wednesday, January 30, 2019 2:16 PM  
**To:** 'Beth Wolfson'  
**Subject:** RE: Chelmsford Award

Hi Beth,

Thanks for taking the time to review my comments. Please see my notes in **bold**.

1&4. Andrew, are you suggesting we do 3/2/2, or 2/2/2, with an additional 1% as of 1/19? With respect to the steps, the Town stated clearly in its brief that it considered steps only because the Union proposed them, and would prefer an award with no steps "than one that exceeds the pattern of 2% base wage increases...." I understand the Town does not want an award that exceed its pattern, but if the Panel believes something more is warranted, we are not bound by either parties' position and can award more than the Town suggests but less than the Union wants. Based on the analysis, and in light of your comments, I would suggest we consider 2/2/2, with an additional 1% bump as of 1/1/19. [Note: During our discussions we apparently valued the steps in the unratified Memorandum as being the equivalent of 2/1.65/5.7.]

**I am conformable with the 2/2/2 with an additional 1% bump as of 1/1/19. I think it is reflective of the value of the other decisions.**

I will correct the reference to the value of the firefighters' EMT stipend on page 14 (the sentence would now read: "Because all firefighters in the Town are required to have an EMT certification, the increased stipend applied to all firefighters, the value of which amounted to approximately \$565, \$575 and \$587 respectively for each CBA year." (Am I correct on the values of the stipend increase?)

2. Andrew, I am not sure what you mean by this. I referred to the Town's comparison of the external comparables as of 7/1/15 (which is the data the Town used (see Town's Ex. D24)). The only reference to longevity was the Town's reference (in that exhibit and its brief) that Dracut rolled its longevity payments into the base wage (although it used Dracut as an example, neither the evidence it presented nor its brief indicates any other comparable town does this). In addition, the Town does not do it. I have no notation that Attorney Terry mentioned the value of the Town's longevity payments and the Town did not present any evidence of its value or argue that in its brief.

3. You both sat on the patrol officer panel. In that decision the Panel acknowledged that the increase from 37.5 to 40 hours "represents a significant cost to the Town and a significant increase in pay to the police officers in the Union." That is the only reference I made to that decision (page 14). I did not say the Panel determined they were underpaid. Correct me if I am wrong, but I presumed the Panel in that case granted only 0.5% increases for each of the three years in light of the value of the change in hours.

5. I had in my notes that we discussed changing the standards to mandatory (and I thought we also discussed awarding the stipend increase). I have reviewed my notes again and saw that we wanted to know what the internal and externals had. As you know, the Town's police have a \$500 stipend. The three external contracts I have (Billerica, Dracut and Tewksbury) do not have such a stipend. I do not have the CBAs for Reading or Wilmington. Based on this, I would agree not to award the stipend increase (particularly if we are awarding a bit more in the wages).

**In light of awarding a bit more in wages, I agree the stipend should not be included.**



I did not include the light duty provision in the Award because my notes from our conversation after the hearing indicated we thought we should leave it to the parties to bargain as there was no consensus on the language. Although such language had been included in the Memorandum that was not ratified, as you know, the Town's proposed language is not what the parties agreed to. I am still leaning toward leaving this issue to the parties to bargain in their next go round, but I would appreciate both your thoughts on this again.

**Could we award the same language that was included in the patrol award?**

As I did not hear back from either of you, I guess you were not available to speak by phone today. I have flexibility tomorrow (except I am not available between 8:30-9:30 AM and again between 11:30 AM - 1:30 PM). I am available Wednesday from about noon on. I really would like to wrap this up as quickly as possible in order to make sure I have time to make edits and we have time to circulate the Award for signature.

I look forward to hearing back from you both on my comments and on scheduling a telephone conference if you believe one is necessary/will help us reach a consensus.

Thank you,  
Beth

**Andrew P. Flanagan**  
Town Manager  
Town of Andover  
36 Bartlet Street  
Andover, MA 01810  
[aflanagan@andoverma.gov](mailto:aflanagan@andoverma.gov)  
(978) 623-8200

**From:** Beth Wolfson [mailto:bawolfsonesq@comcast.net]  
**Sent:** Monday, January 28, 2019 3:54 PM  
**To:** Andrew Flanagan <aflanagan@andoverma.gov>; 'alan andrews' <alanandrews37@gmail.com>  
**Subject:** RE: Chelmsford Award  
**Importance:** High

Andrew and Alan,

I was working off my notes from our meeting, which analyzed the parties' Memorandum that was agreed to but never approved. As I said in the e-mail that accompanied the draft, it was a "Draft" and I expected feedback. Alan agreed, but until I heard from Andrew I did not know that he objected or what his objections were. Now that we all have that information, let's try to tweak the draft and come up with a unanimous Decision and Award that we believe will be funded.

In an attempt to get discussion going and get this finalized by us by 1/31 (I need time to get the signatures and get this out by the 2/4 deadline), I have some questions/comments/suggestions given Andrew's concerns:

1&4. Andrew, are you suggesting we do 3/2/2, or 2/2/2, with an additional 1% as of 1/19? With respect to the steps, the Town stated clearly in its brief that it considered steps only because the Union proposed them, and would prefer an award with no steps "than one that exceeds the pattern of 2% base wage increases..." I understand the Town does not want an award that exceed its pattern, but if the Panel believes something more is warranted, we are not bound by either parties' position and can award more than the Town suggests but less than the Union wants. Based on the analysis, and in light of your comments, I would suggest we consider 2/2/2, with an additional 1% bump as of

1/1/19. [Note: During our discussions we apparently valued the steps in the unratified Memorandum as being the equivalent of 2/1.65/5.7.]

I will correct the reference to the value of the firefighters' EMT stipend on page 14 (the sentence would now read: "Because all firefighters in the Town are required to have an EMT certification, the increased stipend applied to all firefighters, the value of which amounted to approximately \$565, \$575 and \$587 respectively for each CBA year." (Am I correct on the values of the stipend increase?)

2. Andrew, I am not sure what you mean by this. I referred to the Town's comparison of the external comparables as of 7/1/15 (which is the data the Town used (see Town's Ex. D24)). The only reference to longevity was the Town's reference (in that exhibit and its brief) that Dracut rolled its longevity payments into the base wage (although it used Dracut as an example, neither the evidence it presented nor its brief indicates any other comparable town does this). In addition, the Town does not do it. I have no notation that Attorney Terry mentioned the value of the Town's longevity payments and the Town did not present any evidence of its value or argue that in its brief.

3. You both sat on the patrol officer panel. In that decision the Panel acknowledged that the increase from 37.5 to 40 hours "represents a significant cost to the Town and a significant increase in pay to the police officers in the Union." That is the only reference I made to that decision (page 14). I did not say the Panel determined they were underpaid. Correct me if I am wrong, but I presumed the Panel in that case granted only 0.5% increases for each of the three years in light of the value of the change in hours.

5. I had in my notes that we discussed changing the standards to mandatory (and I thought we also discussed awarding the stipend increase). I have reviewed my notes again and saw that we wanted to know what the internal and externals had. As you know, the Town's police have a \$500 stipend. The three external contracts I have (BillERICA, Dracut and Tewksbury) do not have such a stipend. I do not have the CBAs for Reading or Wilmington. Based on this, I would agree not to award the stipend increase (particularly if we are awarding a bit more in the wages).

I did not include the light duty provision in the Award because my notes from our conversation after the hearing indicated we thought we should leave it to the parties to bargain as there was no consensus on the language. Although such language had been included in the Memorandum that was not ratified, as you know, the Town's proposed language is not what the parties agreed to. I am still leaning toward leaving this issue to the parties to bargain in their next go round, but I would appreciate both your thoughts on this again.

As I did not hear back from either of you, I guess you were not available to speak by phone today. I have flexibility tomorrow (except I am not available between 8:30-9:30 AM and again between 11:30 AM - 1:30 PM). I am available Wednesday from about noon on. I really would like to wrap this up as quickly as possible in order to make sure I have time to make edits and we have time to circulate the Award for signature.

I look forward to hearing back from you both on my comments and on scheduling a telephone conference if you believe one is necessary/will help us reach a consensus.

Thank you,  
Beth

**From:** Andrew Flanagan [<mailto:aflanagan@andoverma.gov>]  
**Sent:** Thursday, January 17, 2019 9:34 AM  
**To:** Beth Wolfson

## Exhibit #2

Client Matter: 01418-126  
 Superior Officers Unit Arb (JLMC) '17

November 14, 2018  
 Invoice 422427

**SERVICES RENDERED**

<b>Date</b>	<b>Tkpr</b>	<b>Description</b>	<b>Hours</b>	<b>Rate</b>	<b>Amount</b>
10/01/18	SDH	Strategize regarding preparation of additional exhibits.	.30	195.00	58.50
10/01/18	SDH	Prepare additional exhibits regarding police and fire Joint Labor Management Committee awards.	3.00	195.00	585.00
10/01/18	MLT	Telephone call to Town Manager regarding status of negotiations; telephone call to S. McArdle regarding same.	.50	195.00	97.50
10/01/18	MLT	Confer with S. Hunt regarding additional preparation for hearing based on issues raised at mediation.	.30	195.00	58.50
10/02/18	SDH	Prepare comparison chart of sergeants vs. fire captain wages.	.90	195.00	175.50
10/02/18	MLT	Review potential additional exhibit; confer with S. Hunt regarding additional exhibits related to arguments raised by Union at mediation.	.40	195.00	78.00
10/03/18	SDH	Draft e-mail to Chief Spinney regarding issue of sergeants and fire captains.	.20	195.00	39.00
10/06/18	MLT	Further analyze Union counter and cost of same; email to Town Manager regarding potential resolution to negotiations.	.80	195.00	156.00
10/09/18	MLT	Emails from/to Town Manager and email to S. McArdle regarding attempt to negotiate resolution.	.10	195.00	19.50
10/16/18	SDH	Further prepare additional exhibits regarding Police and Fire Awards.	.80	195.00	156.00
10/16/18	MLT	Review of exhibit binder and additional potential exhibits in preparation for hearing.	1.40	195.00	273.00
10/19/18	SDH	Clarify Injured-on-Duty incidents exhibit.	.10	195.00	19.50
10/19/18	MLT	Represent client at hearing.	6.20	195.00	1,209.00
10/22/18	MLT	Telephone call to Town Manager regarding step proposal; telephone call to A. Flanagan regarding same.	.20	195.00	39.00
10/22/18	MLT	Telephone calls from/to Chief Spinney regarding Officer in Charge process follow-up.	.20	195.00	39.00
10/25/18	MLT	Email to Arbitrator Wolfson regarding Officer in Charge issue.	.20	195.00	39.00
10/31/18	MLT	Multiple emails from/to S. McArdle and Arbitrator Wolfson regarding Officer in Charge documentation.	.20	195.00	39.00

**TOTAL SERVICES****\$ 3,081.00**

## Exhibit #3

## Andrew Flanagan

---

**From:** Terry, Marc L. <mterry@mirickoconnell.com>  
**Sent:** Tuesday, December 11, 2018 12:08 PM  
**To:** 'Cohen, Paul'; MMcCall@TownofChelmsford.us; 'Jeanne Parziale'  
(jparziale@TownofChelmsford.US)  
**Cc:** Andrew Flanagan; Hunt, Susan D.  
**Subject:** Sergeant/JLMC Brief  
**Attachments:** Town of Chelmsford's Post-Hearing Brief (A5753033-3).doc  
**Importance:** High

All,

Attached please find our draft Post-hearing brief with regarding the last of our JLMC proceedings for your review and comment.

We are due to file this by close of business tomorrow. If you have any feedback, please let me know as soon as possible so I can incorporate it into the brief.

Thanks, Marc

P.S. I will be having my assistant do a final read through for any final typos/formatting issues.

---

## MIRICK O'CONNELL

ATTORNEYS AT LAW

### MARC L. TERRY

Partner

Mirick, O'Connell, DeMallie & Lougee, LLP

1800 West Park Drive | Suite 400 | Westborough | MA | 01581-3926

t 508.860.1447 | f 508.207.9345 | m 617.686.4017

mterry@mirickoconnell.com | Bio



Please visit our website: [www.mirickoconnell.com](http://www.mirickoconnell.com)

The information contained in this electronic message is legally privileged and confidential under applicable law, and is intended only for the use of the individual or entity named above. This electronic message and any attachments may also contain information that is protected by federal and state law, including the HIPAA Privacy Rule. If you are not the intended recipient, you are hereby notified that any dissemination, copying or disclosure of this communication is strictly prohibited. If you have received this communication in error, please notify Mirick O'Connell at (508)791-8500 and delete this communication immediately without copying or distributing it.

**Exhibit #4**

## Andrew Flanagan

---

**From:** Andrew Flanagan  
**Sent:** Saturday, January 12, 2019 6:08 PM  
**To:** mterry@mirickoconnell.com  
**Subject:** Fwd: Chelmsford Police Superiors & Town of Chelmsford; JLMC-16-5509 - DRAFT Decision & Award  
**Attachments:** DRAFT Decision & Award.docx; ATT00001.htm  
**Sensitivity:** Confidential

Let's discuss.

**Andrew P. Flanagan**  
Town Manager  
Town of Andover  
36 Bartlet Street  
Andover, MA 01810  
aflanagan@andoverma.gov  
(978)-623-8210

Andoverma.gov



## Exhibit #5

## Andrew Flanagan

---

**From:** Terry, Marc L. <mterry@mirickoconnell.com>  
**Sent:** Monday, January 14, 2019 9:08 AM  
**To:** Andrew Flanagan  
**Subject:** RE: Chelmsford Police Superiors & Town of Chelmsford; JLMC-16-5509 - DRAFT Decision & Award

**Sensitivity:** Confidential

You have got to be kidding me!

I'm in meetings this morning, but will call this afternoon.

---

## MIRICK O'CONNELL

ATTORNEYS AT LAW

### MARC L. TERRY

Partner

Mirick, O'Connell, DeMallie & Lougee, LLP

1800 West Park Drive | Suite 400 | Westborough | MA | 01581-3926

t 508.860.1447 | f 508.207.9345 | m 617.686.4017

mterry@mirickoconnell.com | Bio



Please visit our website: [www.mirickoconnell.com](http://www.mirickoconnell.com)

**From:** Andrew Flanagan <aflanagan@andoverma.gov>  
**Sent:** Saturday, January 12, 2019 6:08 PM  
**To:** Terry, Marc L. <mterry@mirickoconnell.com>  
**Subject:** Fwd: Chelmsford Police Superiors & Town of Chelmsford; JLMC-16-5509 - DRAFT Decision & Award  
**Sensitivity:** Confidential

This Message originated outside of Mirick O'Connell.

---

Let's discuss.

**Andrew P. Flanagan**  
Town Manager  
Town of Andover  
36 Bartlet Street  
Andover, MA 01810  
[aflanagan@andoverma.gov](mailto:aflanagan@andoverma.gov)  
(978)-623-8210

**Exhibit #6**

MIRICK O'CONNELL

Client Matter: 01418-126  
Superior Officers Unit Arb (JLMC) '17

February 13, 2019  
Invoice 429548

**SERVICES RENDERED**

Date	Tkpr	Description	Hours	Rate	Amount
1/14/19	MLT	Telephone call to A. Flanagan regarding draft award.	.10	195.00	19.50
1/16/19	MLT	Telephone call to Town Manager regarding draft award.	.40	195.00	78.00
1/16/19	MLT	Email to A. Flanagan regarding draft award; telephone call from A. Flanagan regarding same; email to Town Manager regarding same.	.80	195.00	156.00
1/22/19	MLT	Telephone call from Town Manager regarding status of draft award; communication with A. Flanagan regarding same.	.20	195.00	39.00
1/22/19	MLT	Further communication with Town Manager and A. Flanagan regarding Town's position.	.40	195.00	78.00
1/24/19	MLT	Telephone call from S. McArdle regarding appropriation of award; emails to/from Town Manager regarding same.	.40	195.00	78.00

**TOTAL SERVICES**

**\$ 448.50**

**SUMMARY OF SERVICES**

Name	Hours	Rate	Total
Marc L. Terry	2.30	195.00	448.50
<b>TOTALS</b>	<b>2.30</b>		<b>\$ 448.50</b>

**TOTAL THIS MATTER**

**\$ 448.50**

## Exhibit #7

Town of Andover  
36 Bartlet Street  
Andover, MA 01810  
[aflanagan@andoverma.gov](mailto:aflanagan@andoverma.gov)  
(978)-623-8210


[Andoverma.gov](http://Andoverma.gov)

On Jan 16, 2019, at 12:44 PM, Beth Wolfson <[bawolfsonesq@comcast.net](mailto:bawolfsonesq@comcast.net)> wrote:

Andrew,

Do you have any questions for either of us? The extended deadline is Friday.

Regards,  
Beth

 **From:** Andrew Flanagan [<mailto:aflanagan@andoverma.gov>]  
**Sent:** Tuesday, January 15, 2019 10:03 AM  
**To:** alan andrews  
**Cc:** [bawolfsonesq@comcast.net](mailto:bawolfsonesq@comcast.net)  
**Subject:** Re: Chelmsford Award

Hi Alan,

I haven't had a chance to review. I plan to take a look today.


---

Thanks,

**Andrew P. Flanagan**  
Town Manager  
Town of Andover  
36 Bartlet Street  
Andover, MA 01810  
[aflanagan@andoverma.gov](mailto:aflanagan@andoverma.gov)  
(978)-623-8210

[Andoverma.gov](http://Andoverma.gov)

On Jan 15, 2019, at 8:45 AM, alan andrews <[alanandrews37@gmail.com](mailto:alanandrews37@gmail.com)> wrote:

 Good morning Andrew, I hope all is well. Beth Wolfson asked me to reach out to you regarding her award. She has an extension until Friday. If need be give me a call at 9789145254.

**Exhibit #8**

## Andrew Flanagan

---

**From:** Terry, Marc L. <mterry@mirickoconnell.com>  
**Sent:** Wednesday, January 16, 2019 1:39 PM  
**To:** Andrew Flanagan  
**Subject:** RE: Chelmsford Police Superiors & Town of Chelmsford; JLMC-16-5509 - DRAFT Decision & Award

**Importance:** High  
**Sensitivity:** Confidential

Andrew,

I left you a couple of messages in response to your email below. Given we haven't been able to talk and the award is presumably going to be issued on Friday, I'd like to offer a couple of observations.

1. The Award incorrectly values the Firefighter's award. Specifically, the arbitrator states that the 1% increase in the EMT stipend is equal to three percent (1% per year). This is not the same as a 3% base wage increase, which, as you know, is paid at 3% per year. In other words, the Fire award is worth 7% not 9%. If she is looking for an equivalency, let's get an award that adds an extra 1% to the base on day 1 and be done with it.
2. She argues that our external comparison data was not persuasive because we compared pay at year 5. As I specifically represented to her at the hearing, we did this because the other contracts embedded longevity pay into the base wage schedule. If she is going to take this route, she needs to at least consider the value of Chelmsford's longevity.
3. She fails to acknowledge that the patrol officers, as I believe was referenced in that award, were underpaid in the market based on the 37.5 v. 40-hour issue.
4. Not that the steps we sought were a great savings, but she is missing the point of the comment in our brief. We would prefer the pattern of 2/2/2 to the steps plus something more. If she is going to ignore the pattern, we should at least get the steps. (I'll add that we only addressed the cost valuation of the steps because she indicated to you early on that she was going to go with the original MOA and saw the steps as fair exchange for the wage package. I'm not trying to throw you under the bus. It is fair (I think), however, for you to share that with her so she has context for the position we articulated in the brief.)
5. And, on top of the ridiculous base wage award, she is awarding them a \$500 increase in the physical fitness stipend when the Union provided absolutely no support for the increase and not awarding the Town the Light Duty proposal when it was included in the other two awards. Doesn't the concept of a "pattern" work in both directions? If we got light duty as part of a package with those units, shouldn't we also get it here.

In short, the award is not only awful; it's poorly reasoned. It will only continue the ongoing pattern of every one of these units looking (and succeeding) in one-upping each other with no respect for the long-term impact on the Town's finances or for the goal of equity with other bargaining units.

Please call me on my cell phone at your earliest convenience.

Thanks, Marc



## Andrew Flanagan

---

**From:** Terry, Marc L. <mterry@mirickoconnell.com>  
**Sent:** Wednesday, January 16, 2019 3:36 PM  
**To:** Andrew Flanagan  
**Subject:** RE: Chelmsford Police Superiors & Town of Chelmsford; JLMC-16-5509 - DRAFT Decision & Award

**Sensitivity:** Confidential

Andrew,

Another issue that arises with this award pertains to the police detail rate. Article 22 of the collective bargaining agreement provides that extra duty details are paid at a rate of time and one-half of the Sergeants hourly rate. This award increases the detail rate by 9% to \$58.12/hour. The patrol officers would also receive this detail rate.

Marc

---

### MIRICK O'CONNELL

ATTORNEYS AT LAW

**MARC L. TERRY**

Partner

Mirick, O'Connell, DeMallie & Lougee, LLP

1800 West Park Drive | Suite 400 | Westborough | MA | 01581-3926

t 508.860.1447 | f 508.207.9345 | m 617.686.4017

mterry@mirickoconnell.com | Bio



Please visit our website: [www.mirickoconnell.com](http://www.mirickoconnell.com)

**From:** Terry, Marc L. <mterry@mirickoconnell.com>  
**Sent:** Wednesday, January 16, 2019 1:39 PM  
**To:** 'Andrew Flanagan' <aflanagan@andoverma.gov>  
**Subject:** RE: Chelmsford Police Superiors & Town of Chelmsford; JLMC-16-5509 - DRAFT Decision & Award  
**Importance:** High  
**Sensitivity:** Confidential

Andrew,

I left you a couple of messages in response to your email below. Given we haven't been able to talk and the award is presumably going to be issued on Friday, I'd like to offer a couple of observations.

1. The Award incorrectly values the Firefighter's award. Specifically, the arbitrator states that the 1% increase in the EMT stipend is equal to three percent (1% per year). This is not the same as a 3% base wage increase,

**Exhibit #9**

## Andrew Flanagan

---

**From:** Andrew Flanagan  
**Sent:** Wednesday, January 16, 2019 3:41 PM  
**To:** Beth Wolfson  
**Cc:** alan andrews  
**Subject:** Re: Chelmsford Award

Hi Beth,

I have some concerns. I'll send them along in a separate email later today when I return to my computer.

Best,

**Andrew P. Flanagan**  
Town Manager  
Town of Andover  
36 Bartlet Street  
Andover, MA 01810  
[aflanagan@andoverma.gov](mailto:aflanagan@andoverma.gov)  
(978)-623-8210

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On Jan 16, 2019, at 12:44 PM, Beth Wolfson <[bawolfsonesq@comcast.net](mailto:bawolfsonesq@comcast.net)> wrote:

Andrew,

Do you have any questions for either of us? The extended deadline is Friday.

Regards,  
Beth

**From:** Andrew Flanagan [<mailto:aflanagan@andoverma.gov>]  
**Sent:** Tuesday, January 15, 2019 10:03 AM  
**To:** alan andrews  
**Cc:** [bawolfsonesq@comcast.net](mailto:bawolfsonesq@comcast.net)  
**Subject:** Re: Chelmsford Award

Hi Alan,

I haven't had a chance to review. I plan to take a look today.

Thanks,

**Andrew P. Flanagan**  
Town Manager

**Exhibit #10**

## Andrew Flanagan

---

**From:** Andrew Flanagan  
**Sent:** Thursday, January 17, 2019 9:34 AM  
**To:** Beth Wolfson  
**Cc:** alan andrews  
**Subject:** Re: Chelmsford Award

Beth,

Here are my concerns:

1. The Award incorrectly values the Firefighter's award. I sat on that panel as well. Specifically, it is stated that the 1% increase in the EMT stipend is equal to three percent (1% per year). This is not the same as a 3% base wage increase, which, as you know, is paid at 3% per year. In other words, the Fire award is worth 7% not 9%. If we are looking for an equivalency, let's get an award that adds an extra 1% to the base on day 1 and be done with it.
2. The argument that the Town's external comparison data is not persuasive because it compared pay at year 5. Attorney Terry specifically represented at the hearing, that the Town did this because the other contracts embedded longevity pay into the base wage schedule. If you are going to take this route, I think we need to at least consider the value of Chelmsford's longevity.
3. There is no acknowledgement that the patrol officers, as was referenced in that award (I also sat on that panel) were underpaid in the market based on the 37.5 v. 40-hour issue.
4. I think the award is missing the point of the comment in the Town's brief. The town's clear preference would be the pattern of 2/2/2 to the steps plus something more. If the pattern is ignored, the Town should at least get the steps.
5. I object to the \$500 increase in the physical fitness stipend when the Union provided absolutely no support for the increase and not awarding the Town the Light Duty proposal when it was included in the other two awards.

The concept of a "pattern" should work in both directions If the Town got light duty as part of a package with those units, it should be awarded here. It was also part of the initial MOA which I thought we were working off of.

Short of resolving some of these concerns, I won't be signing the award.

Best,

Andrew

**Andrew P. Flanagan**  
Town Manager

## Exhibit #11

Town of Andover  
36 Bartlet Street  
Andover, MA 01810  
[aflanagan@andoverma.gov](mailto:aflanagan@andoverma.gov)  
(978)-623-8210

[Andoverma.gov](http://Andoverma.gov)

On Jan 17, 2019, at 1:28 PM, Beth Wolfson <[bawolfsonesq@comcast.net](mailto:bawolfsonesq@comcast.net)> wrote:

Andrew,

Appreciate your concerns, but it would have been nice to get them sooner than a day before the extension for the decision. That said, I am not trying to force a decision here. I worked on the draft off the notes I made of our panel discussion after the hearing. If I misunderstood what both you and Alan indicated for the bottom line I apologize. I would like to have a consensus decision, so if you both think it would be beneficial to meet, I will ask the parties for a longer extension so we can work this out.

I would appreciate it if you both let me know ASAP if you can meet to discuss Andrew's concerns and find a date this month to do so. I cannot rework a decision in 24 hours with only e-mail contact. I am available the afternoon of 1/24, anytime on 1/25 and 1/28, and the morning of 1/29 after 9:30 AM.

Thanks,  
Beth

**From:** Andrew Flanagan [<mailto:aflanagan@andoverma.gov>]  
**Sent:** Thursday, January 17, 2019 9:34 AM  
**To:** Beth Wolfson  
**Cc:** alan andrews  
**Subject:** Re: Chelmsford Award

Beth,

Here are my concerns:

1. The Award incorrectly values the Firefighter's award. I sat on that panel as well. Specifically, it is stated that the 1% increase in the EMT stipend is equal to three percent (1% per year). This is not the same as a 3% base wage increase, which, as you know, is paid at 3% per year. In

**Exhibit #12**



**Andrew Flanagan**

---

**From:** Cohen, Paul <PCohen@Townofchelmsford.us>  
**Sent:** Thursday, January 31, 2019 6:56 AM  
**To:** Andrew Flanagan  
**Cc:** Terry, Marc L.  
**Subject:** Re: Chelmsford JLMC

Andrew,

Thank you for your ongoing efforts.

Paul

Sent from my iPad

On Jan 30, 2019, at 11:11 PM, Andrew Flanagan <[aflanagan@andoverma.gov](mailto:aflanagan@andoverma.gov)> wrote:

Marc & Paul,

I am continuing to go back and forth with Beth and Alan. I think we are making progress and I hope to have a resolution tomorrow (Thursday). I've maintained a position that the total package has to be valued at or close to 7% if I'm going to sign the award.

I'll keep you posted.

Andrew

**Andrew P. Flanagan**  
Town Manager  
Town of Andover  
36 Bartlet Street  
Andover, MA 01810  
[aflanagan@andoverma.gov](mailto:aflanagan@andoverma.gov)  
(978)-623-8210

[Andoverma.gov](http://Andoverma.gov)

On Jan 22, 2019, at 5:35 PM, Terry, Marc L. <[mterry@mirickoconnell.com](mailto:mterry@mirickoconnell.com)> wrote:

Andrew,

Thanks for your continued advocacy on behalf of the Town.

You have asked for a "best case" outcome. The Town understands that a 2/2/2 base wage package is consistent with the pattern of wage increases. As such, this would be an acceptable outcome. The Town also believes that it should be awarded the light duty

proposal and firearms comp time provision (as in the initial draft award) as these are consistent with the other awards. That said, neither is of so substantial a value that they are worth a higher base wage increase. They should be awarded as a part of the pattern. Also, the Town does not believe the introduction of steps is worth enough to risk pursuing at this time. The arbitrator just seems to be overvaluing that item such that we are not going to get fair exchange for it so let's drop that from the discussion.

Realistically, we know the arbitrator is not going to fully eliminate the additional 3% she included in the draft award. Given that, the Town would accept an additional 1% base wage increase. This would be consistent with the additional 1% that was added to the Fire Award in the form of the EMT-stipend, which applied to all bargaining unit members. It is also defensible given that the comparability analysis Bonnie McSpirtt did in the Fire Award was between the patrol officers and firefighters. It was not between the Fire Captains and Sergeants. As such, we could later argue that the additional 1% allows the sergeants to keep pace with the fire captains. There is no basis for the \$500 increase to the physical fitness stipend as the Union introduced no evidence supporting it. The Town would agree to the implementation of the bi-annual shift bidding.

Please let me know if you have any questions.

Thanks, Marc

---

**MIRICK O'CONNELL**  
ATTORNEYS AT LAW

**MARC L. TERRY**

Partner

Mirick, O'Connell, DeMallie & Lougee, LLP

1800 West Park Drive | Suite 400 | Westborough | MA | 01581-3926

t 508.860.1447 | f 508.207.9345 | m 617.686.4017

[mterry@mirickoconnell.com](mailto:mterry@mirickoconnell.com) | Bio



Please visit our website: [www.mirickoconnell.com](http://www.mirickoconnell.com)

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## Andrew Flanagan

---

**From:** Terry, Marc L. <mterry@mirickoconnell.com>  
**Sent:** Thursday, January 31, 2019 8:28 AM  
**To:** 'Cohen, Paul'; Andrew Flanagan  
**Subject:** RE: Chelmsford JLMC

Thanks Andrew.

---

### MIRICK O'CONNELL

ATTORNEYS AT LAW

**MARC L. TERRY**

Partner

Mirick, O'Connell, DeMallie & Lougee, LLP

1800 West Park Drive | Suite 400 | Westborough | MA | 01581-3926

t 508.860.1447 | f 508.207.9345 | m 617.686.4017

mterry@mirickoconnell.com | Bio



Please visit our website: [www.mirickoconnell.com](http://www.mirickoconnell.com)

**From:** Cohen, Paul <PCohen@Townofchelmsford.us>  
**Sent:** Thursday, January 31, 2019 6:56 AM  
**To:** Andrew Flanagan <aflanagan@andoverma.gov>  
**Cc:** Terry, Marc L. <mterry@mirickoconnell.com>  
**Subject:** Re: Chelmsford JLMC

This Message originated outside of Mirick O'Connell.

---

Andrew,

Thank you for your ongoing efforts.

Paul

Sent from my iPad

On Jan 30, 2019, at 11:11 PM, Andrew Flanagan <[aflanagan@andoverma.gov](mailto:aflanagan@andoverma.gov)> wrote:

Marc & Paul,

I am continuing to go back and forth with Beth and Alan. I think we are making progress and I hope to have a resolution tomorrow (Thursday). I've maintained a position that the total package has to be valued at or close to 7% if I'm going to sign the award.

## Exhibit #13

## Andrew Flanagan

---

**From:** Terry, Marc L. <mterry@mirickoconnell.com>  
**Sent:** Friday, February 1, 2019 8:59 AM  
**To:** Andrew Flanagan  
**Subject:** RE: Value of Patrol  
**Attachments:** JLMC-16-5509 Town of Chelmsford's Post-Hearing Brief (A5786077x7A575).pdf

No worries. We valued the patrol officers award at 5.63%. The analysis is at page 10 of our brief. I've attached a copy for your reference.

---

## MIRICK O'CONNELL

ATTORNEYS AT LAW

### MARC L. TERRY

Partner

Mirick, O'Connell, DeMallie & Lougee, LLP

1800 West Park Drive | Suite 400 | Westborough | MA | 01581-3926

t 508.860.1447 | f 508.207.9345 | m 617.686.4017

mterry@mirickoconnell.com | Bio



Please visit our website: [www.mirickoconnell.com](http://www.mirickoconnell.com)

**From:** Andrew Flanagan <aflanagan@andoverma.gov>  
**Sent:** Thursday, January 31, 2019 8:24 PM  
**To:** Terry, Marc L. <mterry@mirickoconnell.com>  
**Subject:** Fwd: Value of Patrol

This Message originated outside of Mirick O'Connell.

Very sorry to bother you with the prior email. This is a game I'm playing with Alan and Sean.

Thanks,

### Andrew P. Flanagan

Town Manager

Town of Andover

36 Bartlet Street

Andover, MA 01810

[aflanagan@andoverma.gov](mailto:aflanagan@andoverma.gov)

(978)-623-8210

[Andoverma.gov](http://Andoverma.gov)

Begin forwarded message:

**From:** <[aflanagan@andoverma.gov](mailto:aflanagan@andoverma.gov)>  
**Date:** January 31, 2019 at 8:22:48 PM EST  
**To:** <[mterry@mirickoconnell.com](mailto:mterry@mirickoconnell.com)>  
**Subject:** Value of Patrol

Marc,

I'm sorry to bother you while your out of the office What is the Town's interpretation of the value of the patrol award ?

Thanks again,

**Andrew P. Flanagan**  
Town Manager  
Town of Andover  
36 Bartlet Street  
Andover, MA 01810  
[aflanagan@andoverma.gov](mailto:aflanagan@andoverma.gov)  
(978)-623-8210

[Andoverma.gov](http://Andoverma.gov)

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**Exhibit #14**

## Andrew Flanagan

---

**From:** Beth Wolfson <bawolfsonesq@comcast.net>  
**Sent:** Friday, February 1, 2019 1:03 PM  
**To:** Andrew Flanagan; alan andrews  
**Subject:** RE: Chelmsford Police Superiors & Town of Chelmsford; JLMC-16-5509 - Decision & Award  
**Attachments:** Decision & Award.docx  
**Importance:** High  
**Sensitivity:** Confidential

Dear Alan and Andrew,

Attached is the Decision and Award. Although there is some minor pagination tweaking, the only major changes are as follow:

1. Wages Discussion and Award, pp. 12-17;
2. Physical Fitness Discussion and Award, p.19; and
3. Summary of Award, p. 24

Andrew, I realize so far you have not agreed with my valuation of the police award. Please review the Discussion section, which quotes from the Police Decision & Award. I believe that is the one area in which we have not had unanimity. I hope the reasoning convinces you that we should have a unanimous decision. In any case, I need to know by 5:00 PM today if this convinces you to join in a unanimous Panel Decision & Award, or if you wish to dissent. )

Alan, if you are signing, please do so ASAP and send the signature page only (p. 24) to both Andrew and me.

Andrew, if you are going to dissent, I need to know by 5:00 PM today if you only want to note a dissent on your signature line, or if you want to include a written dissent. If you decide to only state you dissent, please sign and so indicate, and forward the signature page to me today. If you want to include a written dissent, I need it by 5:00 PM on Saturday in order to get this out by the second extension deadline of Monday.

I am not going to ask for another extension.

Thank you both for your work on this matter,

Beth



## Andrew Flanagan

---

**From:** Beth Wolfson <bawolfsonesq@comcast.net>  
**Sent:** Friday, February 1, 2019 9:49 AM  
**To:** Andrew Flanagan  
**Cc:** alanandrews37@gmail.com  
**Subject:** Re: Value of Patrol

I know what both parties argued. I had noted that in the decision text. I find more persuasive the language of the two other decisions, as I have previously stated.

I will be circulating a revised Decision & Award today. Please let me know no later than 5:00 pm if you will sign or dissent. I hoped for a unanimous decision, but I will issue it with a majority.

Thank you both for your diligent work. I enjoyed working with you.

Beth

Sent from my iPad

On Feb 1, 2019, at 9:25 AM, Andrew Flanagan <[aflanagan@andoverma.gov](mailto:aflanagan@andoverma.gov)> wrote:

FYI

**Andrew P. Flanagan**  
Town Manager  
Town of Andover  
36 Bartlet Street  
Andover, MA 01810  
[aflanagan@andoverma.gov](mailto:aflanagan@andoverma.gov)  
(978)-623-8210

[Andoverma.gov](http://Andoverma.gov)

Begin forwarded message:

**From:** "Terry, Marc L." <[mterry@mirickoconnell.com](mailto:mterry@mirickoconnell.com)>  
**Date:** February 1, 2019 at 8:58:39 AM EST  
**To:** 'Andrew Flanagan' <[aflanagan@andoverma.gov](mailto:aflanagan@andoverma.gov)>  
**Subject:** RE: Value of Patrol

No worries. We valued the patrol officers award at 5.63%. The analysis is at page 10 of our brief. I've attached a copy for your reference.

**Exhibit #15**

## Andrew Flanagan

---

**From:** Andrew Flanagan  
**Sent:** Saturday, February 2, 2019 4:19 PM  
**To:** Beth Wolfson  
**Cc:** alan andrews  
**Subject:** Re: Signature Page Chelmsford Superiors

Hi Beth,

I plan to dissent. I'll send the signature page along with my dissenting opinion.

Thanks,

**Andrew P. Flanagan**  
Town Manager  
Town of Andover  
36 Bartlet Street  
Andover, MA 01810  
[aflanagan@andoverma.gov](mailto:aflanagan@andoverma.gov)  
(978)-623-8210

[Andoverma.gov](http://Andoverma.gov)

On Feb 2, 2019, at 4:05 PM, Beth Wolfson <[bawolfsonesq@comcast.net](mailto:bawolfsonesq@comcast.net)> wrote:

Alan,

Thank you for sending this along.

Andrew,

Please sign and if you are dissenting please so indicate and then forward the page to me for the final signature.

Beth

**From:** alan andrews [<mailto:alanandrews37@gmail.com>]  
**Sent:** Saturday, February 02, 2019 3:47 PM  
**To:** Andrew Flanagan  
**Cc:** Beth Wolfson; Alan Andrews  
**Subject:** Signature Page Chelmsford Superiors

Attached please find signed signature page.

<Signature page Chelmsford Superiors Award.pdf>

**Exhibit #16**

## Andrew Flanagan

---

**From:** Terry, Marc L. <mterry@mirickoconnell.com>  
**Sent:** Tuesday, January 22, 2019 5:34 PM  
**To:** Andrew Flanagan  
**Subject:** Chelmsford JLMC

**Importance:** High

Andrew,

Thanks for your continued advocacy on behalf of the Town.

You have asked for a "best case" outcome. The Town understands that a 2/2/2 base wage package is consistent with the pattern of wage increases. As such, this would be an acceptable outcome. The Town also believes that it should be awarded the light duty proposal and firearms comp time provision (as in the initial draft award) as these are consistent with the other awards. That said, neither is of so substantial a value that they are worth a higher base wage increase. They should be awarded as a part of the pattern. Also, the Town does not believe the introduction of steps is worth enough to risk pursuing at this time. The arbitrator just seems to be overvaluing that item such that we are not going to get fair exchange for it so let's drop that from the discussion.

Realistically, we know the arbitrator is not going to fully eliminate the additional 3% she included in the draft award. Given that, the Town would accept an additional 1% base wage increase. This would be consistent with the additional 1% that was added to the Fire Award in the form of the EMT-stipend, which applied to all bargaining unit members. It is also defensible given that the comparability analysis Bonnie McSpirtt did in the Fire Award was between the patrol officers and firefighters. It was not between the Fire Captains and Sergeants. As such, we could later argue that the additional 1% allows the sergeants to keep pace with the fire captains. There is no basis for the \$500 increase to the physical fitness stipend as the Union introduced no evidence supporting it. The Town would agree to the implementation of the bi-annual shift bidding.

Please let me know if you have any questions.

Thanks, Marc

---

**MIRICK O'CONNELL**

ATTORNEYS AT LAW

**MARC L. TERRY**

Partner

Mirick, O'Connell, DeMallie & Lougee, LLP

1800 West Park Drive | Suite 400 | Westborough | MA | 01581-3926

t 508.860.1447 | f 508.207.9345 | m 617.686.4017

mterry@mirickoconnell.com | Bio



## Andrew Flanagan

---

**From:** Andrew Flanagan  
**Sent:** Wednesday, January 30, 2019 11:11 PM  
**To:** Terry, Marc L.; PCohen@Townofchelmsford.us  
**Subject:** Re: Chelmsford JLMC

Marc & Paul,

I am continuing to go back and forth with Beth and Alan. I think we are making progress and I hope to have a resolution tomorrow (Thursday). I've maintained a position that the total package has to be valued at or close to 7% if I'm going to sign the award.

I'll keep you posted.

Andrew

**Andrew P. Flanagan**  
Town Manager  
Town of Andover  
36 Bartlet Street  
Andover, MA 01810  
[aflanagan@andoverma.gov](mailto:aflanagan@andoverma.gov)  
(978)-623-8210

[Andoverma.gov](http://Andoverma.gov)

On Jan 22, 2019, at 5:35 PM, Terry, Marc L. <[mterry@mirickoconnell.com](mailto:mterry@mirickoconnell.com)> wrote:

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## Andrew Flanagan

---

**From:** Andrew Flanagan  
**Sent:** Friday, February 1, 2019 2:41 PM  
**To:** 'Beth Wolfson'  
**Subject:** RE: Chelmsford Police Superiors & Town of Chelmsford; JLMC-16-5509 - Decision & Award

**Sensitivity:** Confidential

Beth,

This may be too little too late but would you entertain a wage pattern that includes 3-2-2? That will increase the value of the agreement and I think it is closer to the other two awards.

Thanks,

**Andrew P. Flanagan**  
Town Manager  
Town of Andover  
36 Bartlet Street  
Andover, MA 01810  
[aflanagan@andoverma.gov](mailto:aflanagan@andoverma.gov)  
(978) 623-8200

**From:** Beth Wolfson [mailto:bawolfsonesq@comcast.net]  
**Sent:** Friday, February 1, 2019 1:03 PM  
**To:** Andrew Flanagan <aflanagan@andoverma.gov>; alan andrews <alanandrews37@gmail.com>  
**Subject:** RE: Chelmsford Police Superiors & Town of Chelmsford; JLMC-16-5509 - Decision & Award  
**Importance:** High  
**Sensitivity:** Confidential

Dear Alan and Andrew,

Attached is the Decision and Award. Although there is some minor pagination tweaking, the only major changes are as follow:

1. Wages Discussion and Award, pp. 12-17;
2. Physical Fitness Discussion and Award, p.19; and
3. Summary of Award, p. 24

Andrew, I realize so far you have not agreed with my valuation of the police award. Please review the Discussion section, which quotes from the Police Decision & Award. I believe that is the one area in which we have not had unanimity. I hope the reasoning convinces you that we should have a unanimous decision. In any case, I need to know by 5:00 PM today if this convinces you to join in a unanimous Panel Decision & Award, or if you wish to dissent.

Alan, if you are signing, please do so ASAP and send the signature page only (p. 24) to both Andrew and me.

Andrew, if you are going to dissent, I need to know by 5:00 PM today if you only want to note a dissent on your signature line, or if you want to include a written dissent. If you decide to only state you dissent, please sign and so

**Exhibit #17**



MIRICK O'CONNELL

Client Matter: 01418-126  
Superior Officers Unit Arb (JLMC) '17

March 13, 2019  
Invoice 435948

**SERVICES RENDERED**

Date	Tkpr	Description	Hours	Rate	Amount
2/01/19	MLT	Multiple communications with Town Manager and A. Flanagan regarding potential Award.	.40	195.00	78.00
* 2/02/19	MLT	Draft dissenting opinion for Management Panel member.	1.40	195.00	273.00
2/04/19	MLT	Initial review of final Award; email to Town Manager regarding same.	.30	195.00	58.50
2/04/19	MLT	Telephone call from Town Manager regarding appropriation for Award.	.20	195.00	39.00
2/06/19	MLT	Review recent Supreme Judicial Court decision regarding scope of duty to support appropriation request.	.40	195.00	78.00
2/08/19	MLT	Emails from/to S. McArdle regarding failure of appropriation.	.40	195.00	78.00
2/08/19	MLT	Telephone calls to/from Town Manager regarding status of case.	.60	195.00	117.00
* 2/08/19	BRF	Strategize regarding public records request for legal invoices.	.20	195.00	39.00
2/15/19	MLT	Evaluate public records request and request for information pursuant to Chapter 150E; determine whether union has right to requested information under 150E; email to Town Manager regarding same.	.70	195.00	136.50
2/15/19	BRF	Strategize regarding public records request issue.	.20	195.00	39.00

**TOTAL SERVICES**

**\$ 936.00**

**SUMMARY OF SERVICES**

Name	Hours	Rate	Total
Marc L. Terry	4.40	195.00	858.00
Brian R. Falk	.40	195.00	78.00
<b>TOTALS</b>	<b>4.80</b>		<b>\$ 936.00</b>

**TOTAL THIS MATTER**

**\$ 936.00**

**Exhibit #18**

## Andrew Flanagan

---

**From:** Terry, Marc L. <mterry@mirickoconnell.com>  
**Sent:** Sunday, February 3, 2019 1:18 PM  
**To:** Andrew Flanagan  
**Subject:** Chelmsford/Sergeants JLMC  
**Attachments:** Minority Opinion (A5861516x7A575).docx

Andrew,

Attached for your consideration is a draft dissenting opinion based on my understanding of the basis of the likely Award.

Please let me know if you want to talk.

Thanks, Marc

---

### MIRICK O'CONNELL

ATTORNEYS AT LAW

**MARC L. TERRY**

Partner

Mirick, O'Connell, DeMallie & Lougee, LLP  
1800 West Park Drive | Suite 400 | Westborough | MA | 01581-3926  
t 508.860.1447 | f 508.207.9345 | m 617.686.4017  
mterry@mirickoconnell.com | Bio



Please visit our website: [www.mirickoconnell.com](http://www.mirickoconnell.com)

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## Dissenting Opinion

I cannot join in the Award because it is based on a fundamental error in valuation.

During the Panel's extensive deliberations, the majority reasoned that it was appropriate to increase the base wages by a total 9% over the duration of the contract. The 2% base wage increases on July 1, 2017, 2018 and 2019, were entirely consistent with the Town's established pattern of base wage increases. I support these increases.

The majority, however, reasoned that it was also appropriate to award the bargaining unit of sergeants an additional 3%, split as 1.5% base wage increases on January 1 and June 30, 2019, because the Panel in the recent Firefighters case awarded a 1% increase in the EMT stipend, retroactive to the first day of the contract. The majority found that the 1% EMT stipend increase (which applies to the entire bargaining unit) is equivalent to an additional 3% increase to the base wage because the 1% EMT stipend was paid for 3 years. The additional 3% increases, the majority, reasoned will be implemented in the third year of the contract, giving them a lesser value. I cannot support these additional increases.

The following illustrates the flaw in the majority's valuation. A \$100 increase on the first day of the contract costs an employer \$100 every year thereafter. A \$300 increase, regardless of when it is implemented, costs \$300 per year every year thereafter, except in the first two years of the contract. So, while the cost may be the same over the limited duration of a 3-year contract, the value over time is not.

If the majority was truly seeking to issue an award comparable to the Firefighters award, it should have awarded the 2% per year base wage pattern increase with an additional 1% base wage increase in the first year of the agreement. Further, although the Patrol Officers Award did not follow the pattern, it explicitly stated the intent was to approximate the value of the Firefighters Award. I, therefore, would have supported a 7% total award as it would have been equal in value to the Firefighters Award. (I also object to failure to award the Town its light duty proposal as its light duty proposal was awarded in both the Firefighters and Patrol Officers cases.)

Ultimately, I cannot sign on to the Award of a 9% base wage increase because it is based on a flawed valuation of the Firefighters Award and is not supported by the evidence. Moreover, the Award unfairly sets up the Town for ongoing battles with its fire and patrol officer unions which, undoubtedly, will seek to obtain the increases awarded here, arguing that the sergeants received a more generous award.

For these reasons, I decline to join in the Award.

**Exhibit #19**

## Andrew Flanagan

---

**From:** Beth Wolfson <bawolfsonesq@comcast.net>  
**Sent:** Monday, February 4, 2019 10:05 AM  
**To:** smcardle@nepba.org; mterry@mirickoconnell.com; efile.dlr@massmail.state.ma.us  
**Cc:** alan andrews; Andrew Flanagan; heather.bevilacqua@state.ma.us; Driscoll, George (DLR); Cummings, Donald (DLR); 'Sean McArdle'  
**Subject:** Chelmsford Police Superiors & Town of Chelmsford; JLMC-16-5509  
**Attachments:** Decision & Award (pp 1-23).pdf; Summary of Award Signature Page (p 24).pdf; Dissenting Opinion\_APF.pdf

Dear Attorney Terry and Mr. McArdle:

Attached please find the executed Decision & Award, with Dissent, in the above-captioned matter. I will be sending a bill for services, along with a copy of my 2019 W9 to assist with payment processing, shortly.

Very truly yours,

*Beth Anne Wolfson*

Beth Anne Wolfson, Arbitrator  
P.O. Box 55  
Dedham, MA 02027-0055  
Tel. (781) 461-1024  
Fax (781) 326-2814  
[bawolfsonesq@comcast.net](mailto:bawolfsonesq@comcast.net)

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**Exhibit #20**

## Cohen, Paul

---

**From:** Cohen, Paul  
**Sent:** Monday, February 04, 2019 1:34 PM  
**To:** Clancy, James; Tanini, Annita; Langford, Ameena; Katherine H. Duffett; eric chambers; David Goselin; VickyLParks@icloud.com  
**Cc:** Lussier, Darlene; Sousa, John  
**Subject:** Police Superior Officers (Sergeants) Arbitration Award  
**Attachments:** Decision & Award (pp 1-23).pdf; Summary of Award Signature Page (p 24).pdf; Dissenting Opinion\_APF.PDF

Finance Committee Members,

I have attached the arbitration award pertaining to the Police Superior Officers (Sergeants) collective bargaining agreement.

Under the provisions of Massachusetts General Laws, the Board of Selectmen and Town Manager are required to favorably present the decision to Town Meeting. However, you have no such constraint.

Town Accountant Darlene Lussier will calculate the required appropriation from the Stabilization Fund.

Paul E. Cohen  
Town Manager  
Town of Chelmsford  
50 Billerica Road  
Chelmsford, MA 01824  
978-250-5201  
978-250-5252 (fax)

*Please be advised that the Secretary of the Commonwealth has determined that all email messages and attached content sent from and to this email address are public records unless qualified as an exemption under the Massachusetts Public Records Law (MGLc.4,§7(26)).*



**Exhibit #21**

## Andrew Flanagan

---

**From:** Cohen, Paul <PCohen@Townofchelmsford.us>  
**Sent:** Monday, February 4, 2019 9:54 PM  
**To:** Marc L. Terry  
**Cc:** Andrew Flanagan; McCall, Michael; Parziale, Jeanne  
**Subject:** Chelmsford Town Meeting Rejects Appropriation for Arbitration Award

Marc and Andrew,

This evening, the Chelmsford Representative Town Meeting rejected an appropriation of \$108,531 by a vote of 26-89-5 to fund the Police Superior Officers arbitration award.

Paul E. Cohen  
Town Manager  
Town of Chelmsford  
50 Billerica Road  
Chelmsford, MA 01824  
978-250-5201  
978-250-5252 (fax)

Sent from my iPad

**Exhibit #22**

Client Matter: 01418-126  
 Superior Officers Unit Arb (JLMC) '17

April 9, 2019  
 Invoice 438238

**SERVICES RENDERED**

Date	Tkpr	Description	Hours	Rate	Amount
3/01/19	MLT	Telephone calls from/to Town Manager regarding status of negotiations.	.60	195.00	117.00
3/04/19	MLT	Telephone call to A. Flanagan regarding public records request.	.10	195.00	19.50
3/08/19	MLT	Prepare compensation analysis.	2.50	195.00	487.50
3/11/19	MLT	Update comparability analysis to include EMT stipend; double check all numbers and calculations.	1.80	195.00	351.00
3/11/19	MLT	Telephone call from A. Flanagan regarding public records request; telephone call to J. Hanson regarding same	.60	195.00	117.00
3/11/19	MLT	Telephone call from Town Manager regarding compensation analysis.	.40	195.00	78.00
3/11/19	MLT	Meet with Board of Selectmen and Town Manager regarding negotiation strategy.	3.40	195.00	663.00
3/13/19	MLT	Emails from/to Town Manager regarding communication from union regarding parameters for negotiations for a 6-year contract.	.20	195.00	39.00
3/14/19	MLT	Telephone call to J. Hanson regarding status of negotiations.	.10	195.00	19.50
3/25/19	MLT	Telephone call to J. Hanson (Joint Labor Management Committee) regarding status of case.	.40	195.00	78.00
3/29/19	MLT	Review litigation hold letter from Union; email to opposing counsel regarding no contact with client.	.20	195.00	39.00

**TOTAL SERVICES** **\$ 2,008.50**

**SUMMARY OF SERVICES**

Name	Hours	Rate	Total
Marc L. Terry	10.30	195.00	2,008.50
<b>TOTALS</b>	<b>10.30</b>		<b>\$ 2,008.50</b>

**TOTAL THIS MATTER** **\$ 2,008.50**