

**STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION**

IN THE MATTER OF THE IMPASSE

Between

TOWNSHIP OF WESTAMPTON

-and-

WESTAMPTON FOP LODGE # 147

**COMPULSORY INTEREST ARBITRATION AWARD
LAWRENCE I. HAMMER, ARBITRATOR
PERC # IA 97/13**

Under date of August 5, 1996, the FOP piled a petition with the Public Employment Relations Commission seeking to initiate Compulsory Interest Arbitration pursuant to P. L. 1995, c. 425.

Under date of August 20, 1996, the undersigned was designated by . Glickman, Esq. the Public Employment Relations Commission of the State of New Jersey to serve as the Interest Arbitrator in an effort to resolve the continuing impasse involving the above indicated parties.

Said appointment was made by the Public Employment Relations Commission after giving recognition to the designated order of preference, if any, expressed by the parties.

APPEARANCES

FOR THE TOWNSHIP

Ruderman & Glickman, Esqs.
(by) Steven S. Glickman, Esq.
Jim Lutz
Harry Adams

Counsel

Councilman
Councilman

FOR FOP LODGE # 147

Szaferman, Lakind, Blumstein,
Watter & Blader, P.C.
(by) Sidney H. Lehmann, Esq.
Joseph M. Otto

Counsel

President

Anthony J. Marino
Rick Smith
Chris Howe

Committeeman
Committeeman
Committeeman

Hearings under the subject impasse took place on September 18, 1996 and May 20, 1997¹ at the Westampton Municipal Building located at 710 Rancocas Road in Westampton, New Jersey. At the initial session, mediation, at the request of both parties was undertaken, with a considerable amount of movement toward resolution made.

At the commencement of the May 20, 1997 session, the parties presented in written form, their respective final positions.

The final offer of FOP Lodge # 147 was as follows:

All matter which have been previously agreed to as set forth in the Stipulation of the Parties. With respect to the matters in dispute:

1. The salaries, and steps, for the new contract shall be calculated by taking the one hundred and four (104) hours of built-in overtime provided for in Article 9, Paragraph F of the existing Collective Negotiations Agreement and rolling it into the base, and then utilizing the agreed upon percentage salary increases to determine the new salary guides.

2. If the Arbitrator concludes that the built-in overtime should be rolled into the base, the overtime hourly rate must be calculated using the eighty-four (84) hours actually worked in the fourteen (14) day work period, rather than utilizing eighty-six (86) hours in that 14 day work period.

3. The detective sergeant should have his work period increased to eighty-four (84) hour per work period. Either by increasing his ten (10) hour shifts ten and one half (10.5) hours per shift, or by placing him on the twelve (12) hour shifts worked by patrol, and his salary should include the built-in overtime which the FOP seeks for all officers including sergeants.

¹ The delay between these two face-to-face sessions was two-fold. Initially, the parties requested the delay in order to provide them with the opportunity to endeavor to amicably settle their differences, and then due to a health problem suffered by the Arbitrator. During the latter time the Arbitrator conducted several meaningful telephone conference sessions with the chief negotiators of the parties.

The final offer of the Township of Westampton was as follows:

All matters which have been previously agreed to as set forth in the Stipulation of the Parties. With respect to the matters in dispute:

1. The salary guides should be calculated utilizing the agreed upon percentage salary increases, but without rolling the built-in overtime currently provided for in Article 9, Paragraph F, into the base.

2. If the Arbitrator concludes that the built-in overtime should be rolled into the base, the overtime hourly rate should be calculated utilizing eight-six (86) hours in the fourteen (14) day work period, not the eighty-four (84) hours actually worked, since 86 hours reflects the additional two (2) hours per 14 day work period resulting from utilizing overtime hours.

3. The Chief of Police, with the approval of the Township, should be given the discretion to establish the hours of the detective sergeant either at the current forty (40) hours per week of four (4) ten-hour days (80 hours within each 14 day work period), or to increase the detective sergeant's hours to 84 hours per 14 day work period. If the Township chooses to keep the detective sergeant at the current work week, (80 hour work schedule), the detective sergeant should be receive the built-in overtime as part of him compensation.

At the second session, both sides were afforded a full opportunity to present testimony, offer evidences and to advance arguments in support of their respective position, on the very limited remaining unresolved item or items. The parties were able to resolve almost every item that was initially involved in the impasse. A copy of the stipulation relating to all settled issues, is set forth at the end of this Award, and will be referred to again under the criteria involving "stipulations".

Notwithstanding their having submitted LOBO's, the Parties stipulated that the only issues to be determined by the Arbitrator, combining their LOBO's were:

1. Should the built-in overtime currently provided for in Article 9, Paragraph F of the existing Collective Negotiations Agreement, be rolled into the base as part of the calculation of the new salary guide utilizing the agreed upon percentage salary increases, to determine the new salary guides; or should the new

salaries be calculated using the existing base salaries and agreed upon percentages without rolling the said built in overtime into the base?

2. If the Arbitrator concludes that the built in overtime should be rolled into the base, should overtime be calculated using the eighty-four (84) hours, worked in the fourteen (14) day work period, or utilizing 86 hours in that 14 day work period?

3. If the Arbitrator concludes that the base salary should include the built in overtime, as set forth in question one, should the detective sergeant have his work week increased to 84 hours per 14 day work period and receive the same salary as other sergeants; or should there be a separate salary for the detective sergeant based upon 80 hours of work in the 14 day work period?

In stipulating these limited issues, the parties have agreed that all other items, which had previously been agreed upon during the negotiations, including the mediation session conducted by the Arbitrator, will be included in the Arbitration Award as provisions of the new contract. Those items which have been agreed upon are set forth in a separate stipulation which is being jointly submitted to the Arbitrator as part of this proceeding.

The Compulsory Interest Arbitration Statute [P.L. 1995, c.425] mandates that the Arbitrator decide the dispute based upon a reasonable determination of the issues, giving due weight 'to those factors listed below that are judged relevant for the specific dispute, satisfactorily explain why the others are not relevant, and provide an analysis of the evidence on each relevant factor'.

Though all of the issues that existed at the commencement of these proceedings except for these three items set forth above under "issues to be determined" have been amicable agreed to and settled, it is incumbent upon the Arbitrator to examine the criteria set forth in P.L. 1995, c.425 as same applies to and affects the interests of the people of the Township of Westampton.

The specific factors that were to be considered in the making of an award, paraphrased are:

1. The interests and welfare of the public.
2. Comparison of the wages, salaries, hours and conditions of employment of the Township of Westampton Police Department with the wages, hours and conditions of employment within other Police Departments and with other employees

performing the same or similar services, as well as with other employees generally.

- [A] In private employment in general
- [B] In public employment in general
- [C] In public employment in the same or similar comparable jurisdictions.
- [D] In comparable private employment,

3. The overall view of compensation received by members of the Department, including direct wages or salaries, vacations, holidays, personal leave, insurance, pensions, clothing, allowance and all other benefits capable of an economic assessment.
4. Stipulation of the parties.
5. The lawful authority of the employer ²
6. The financial impact on both the Municipality and its residents and taxpayers.
7. The Cost of Living for the area as published by the B.L.S.
8. The continuity and stability of employment including seniority rights and such other factors not confined to the foregoing which are ordinarily or traditionally considered in the determination of wages, hours, and conditions of employment through collective negotiations and collective bargaining between the parties in the public service and in private employment.

XXXXXX

BACKGROUND

The Township of Westampton is located in the center of Burlington County, approximately 20 miles south of Trenton and has a population, as of the latest figures available (1994) of 6,319 persons within 11.04 square miles.

² The revised Statute, under this section specifically states that "among the items the arbitrator shall assess when considering this factor are the limitations imposed upon the employer by P.L. 1976. c.68(C.40A:4-45. 1 et seq.)."

The Township is bordered by Mount Holly Township (the County seat), Willingboro Township and Burlington Township.

The most recent figures available show the median household income being \$51,984.00 with a per capita income of \$21,278.00.

Of the 1,679 family households, some 282 were on Social Security and some 78 were receiving public aid.

The General Tax Rate per \$100.00 of assessed valuation has been rather steady over the past three years, being \$2.446 in 1994, \$2.459 in 1995, and \$2.434 in 1996.

Westampton is primarily a residential and light industry community. Of the 2,620 parcels of property on the tax rolls, 2,153 were residential in nature, while 86 were classified as commercial or industrial. There were 279 vacant properties.

The median value of a single family dwelling had been \$120,900.00, though the last several years the ratables have increased, primarily through the construction of more and more expensive housing and the completion of a private country club and golf course which is part of a residential community. In addition several companies such as ATT and IKEA have located substantial warehouse facilities within Westampton's light industrial part area.

The Westampton Police Lodge # 147 (hereinafter referred to as either the FOP or merely the Lodge) represents a unit of 17 police officers, comprising 5 sergeants (including 1 detective sergeant) all assigned to the Patrol Division. The Department also has a single Lieutenant and a Chief of Police, neither of whom are within the FOP unit.

GENERAL ECONOMIC COMMENTS

While the Statute controlling Compulsory Interest Arbitrations sets forth some eight guidelines for the neutral arbitrator to examine, consider and weigh, the one heretofore usually given the greatest weight involved wage comparability.

This emphasis has been over the past two years or so, subjected to judicial criticism. Criticism that far too much weight was being given to comparability, while not enough consideration, in fact far too little weight was being given to the ability of a Municipality and its citizens to pay the sums awarded though the Compulsory Interest Arbitration process.

Until most recently patterns would develop. Each Award would grant increases financially similar to those awarded in earlier cases or similar to those instances where no Award was involved, but where the parties were able to amicably resolve their differences and agree upon wage increases.

In the past if a Municipality, offering an economic package much below that representing earlier settlements, defended its offering upon the financial restraints of its budget and the ability of its taxpayers to bear a bigger burden, it rarely was successful.

For years when such argument was made by the employing Municipality, it may well have been a case of the governing body crying "wolf" needlessly. The 1980's evidenced an economic boom. Most governing bodies, in the form of either local surpluses or in the form of ever increasing State Aid, were able to fund the settlement awarded.

With the real estate markets hitting all time highs, with unemployment hitting new lows, the overall economic environment was such that the statutory criteria concerning the ability to pay became less and less crucial.

During the past couple of years a vast economic change has developed. Unemployment, especially in New Jersey has increased. Wage increases, where there are increases, have come down. The spiraling real estate market has all but collapsed. Real Estate, an item representing a good portion of one's wealth, simply cannot be sold at near past expectations. Employee benefits are being cut back by hard pressed employers. In short, the economic climate of the 90's is vastly different from that which prevailed during the 80's.

The ability of a Municipality to find a way to pay wage increases can no longer be accepted as a "given".

The budgetary problems of the State has cut into and diminished the flow of State Aid. No longer can such aid be anticipated so as to offset financial plights of local governments.

Thus, far more weight to the ability to pay criteria, and the effect thereof on the taxpayers must be given.

While the parties have stipulated to a settlement of all issues with the sole exception of those involving "built-in-overtime" it is still incumbent upon the Arbitrator to look to the Statutory guideline and to make certain that the welfare and wellbeing of the citizens of the Township were adequately protected.

Does the Township of Westampton have the financial ability to fund the agreed upon and stipulated settlement? This, together with the other criteria set forth in the Statute will be addressed hereafter.

ECONOMIC DISCUSSION

We could, at this point reiterate most of the comments set forth under "General Economic Comments" above, as well as the data set forth under the aforestated demographics. Once, however, should be sufficient.

One cannot overlook the fact that it is most common and most appropriate to give considerable amount of weight to settlements already negotiated with other employees of the same Municipality. Sound labor practices, practices that tend to create harmony amongst the work force, dictate that treatment amongst all employees should be more or less equal.

The existence of settlements, if any, made with other Municipal employees, however, is not the true concern before us. The real question, in light of everything, and carefully considering the Statute criteria set forth in P.L. 1995, c.425 is what is both a reasonable, deserving, warranted, and affordable settlement.

As indicated earlier, the Statute establishes eight points, criteria or guidelines for consideration by the neutral arbitrator in weighing the positions presented. The undersigned Arbitrator has examined the data presented by both the Township of Westampton and the FOP Lodge # 147 and has taken into consideration each of the items set forth by the Legislature in P.L. 1994, c.425.

Some comments relating to each of the criteria are worthy of note.

1. INTEREST AND WELFARE OF THE PUBLIC

The interest and welfare of the public demands a high caliber of police protection which must be considered along with the needs of those making up the police department.

While members of the department evidence their interest and support for the community it serves by putting forth their best efforts to protect the citizenry, the Township, and its taxpayers have only a single way of exhibiting their support to and appreciation of their police, namely, by granting each and every one of them an equitable and reasonable salary increase.

A very simplistic view of this "interest and welfare of the public" criteria of the Statute might well be that the public is always best served by the governmental body spending less. This is not, and should not be inferred by the Statute or the intentions expressed by the Legislature.

The public is best served by a professional and well functioning police department. Productive and well motivated employees best serve the public and

their interests, not employees who work for the cheapest rate possible. This, notwithstanding that too many contracts involving safety are awarded to the lowest bidder.

A public employer best serves the public interest and public welfare by striking a balance between satisfying its employees, thereby avoiding labor strife, and maintaining a stable level of government services. While a Municipality, the Township herein, may have difficulty balancing these competing interests with budgetary financial restraints, it should not sacrifice fairness to its employees.

By the same token, a Municipality, any Municipality, should not reduce essential governmental services merely to satisfy the economic demands of its employees.

It should be noted once again, that the Township of Westampton at no point during these proceedings, indicated an inability to pay or that increases beyond its offer would create an undue hardship upon its citizens.

There can be absolutely no doubt but that the Westampton Township's police department has been serving the citizenry of the Township in a most commendable manner.

The FOP argued that too many of its members are required to work multiple jobs and/or that their households require multiple incomes and thus create a stress level that could likely affect productivity and performance.

That households today, probably the vast majority of households, be they police families or not, require multiple wage earners, is common. No matter what the salary earned is, most families, most households, are made up of multiple wage earners. The police are not unique in this respect.

2. COMPARISON OF WAGES AND OVERALL COMPENSATION AND CONDITIONS OF EMPLOYMENT

This portion of the Statute requires that the Interest Arbitrator consider a comparison of the wages, salaries, hours, and conditions of employees involved herein with the wages, salaries, hours and conditions of employment of other persons performing the same or similar services in public employment in comparable jurisdictions, in comparable private employment, and in public and private employment in general.

The comparability of wages, the top salary or "benchmark" that a police officer can earn, shows that those employed in the Township of Westampton do not earn as much as any of the departments which the parties compared themselves with.

The stipulation of the parties settling their impasse and agreeing upon a three year (1996/1998) successor agreement calls for wage increases of 4% retroactive for 1996, 4-1/4% in 1997 and 2-1/8 % on January 1, 1998 and another 2-1/8% on July 1, 1998.

In addition, the parties agreed upon a separate and distinct guide for those individuals hired on or after January 1, 1997. To date, there are no such new employees.

This new guide will add one step to the existing guide by freezing the starting wage at the 1995 level. The salary increases for Step 1 through 5 for pre-1997 hires will become Steps 2 through 6 for those hired after January 1, 1997.³

The 1995 starting wage for police officers in the Township was \$28,437.00.

Under the agreed upon settlement pertaining to wages, the starting salary will remain unchanged. New hires will hereafter, or at least until a successor agreement is negotiated for 1999, remain at the 1995 level. There are apparently a sufficient number of qualified potential police officers applying for the very limited number of openings at that rate of compensation.

During calendar year 1996, since the enactment of the revised Compulsory Interest Arbitration Statute in early 1996, there have been some two dozen voluntary settlements. Of these, the vast majority settled for sums in excess of the percentages agreed upon by the parties herein.

Likewise, amongst the 15 voluntary settlements reached during 1997, the settlements, though somewhat below 1996, were still in or close to the 4% per annum range.

Where voluntary accords could not be reached, and an arbitrator's award was required, the settlements still came in at or near, the 4% figure. Slightly higher or lower, but not much.

The most recently expired contract involving the Township and the FOP expired on December 31, 1995 and established the following salary schedule:

Patrolman

Step 1	(0 to 1 year of service)	\$28,437
Step 2	(1 to 2 years of service)	\$30,918
Step 3	(2 to 3 years of service)	\$33,397

³ The exact salary at each Step will be determined by the Arbitrator as a result of his decision on the "built-in-overtime" issue.

Step 4	(3 to 4 years of service)	\$35,878
Step 5	(4 to 5 years of service)	\$38,358

Sergeants ⁴

Step 1	\$41,471
Step 2	\$43,879
Step 3	\$46,286

The parties aimed their comparisons so far as wages were concerned upon the following:- Moorestown Township, Evesham Township, Burlington Township, Medford Township, Delran Township, Mount Laurel, Lumberton Township, Cinnaminson Township, Mount Holly and Florence Township.

How does the "benchmark" wage, the patrolman maximum, compare between Westampton and those the parties sought comparison with?

The "benchmark" for 1995 in Westampton was \$38,358.00. The 4% agreed upon increase for 1996 would raise same to \$39,892.37 (or slightly more depending upon the outcome of the "built-in-overtime" issue).

Amongst the other departments for which "benchmark" figures were submitted, the following appear to be that against which comparisons were made:-

Florence	\$45,065 in 1995
Cinnaminson	\$44,190 in 1996
Lumberton	\$43,625 in 1995
Delran	\$45,065 in 1995
Medford	\$54,504 in 1996 ⁵
Burlington	\$49,040 in 1996
Evesham	\$49,358 in 1996 ⁶
Moorestown	\$50,901 in 1996
Mt. Laurel	\$47,791 in 1997

⁴ Any one appointed to the position of "Detective" for one full years, was to receive an \$800.00 annual bonus.

⁵ Medford's guide is an 11 step guide, the "benchmark" being that which is earned in the eleventh year on the Force, while more others achieve "benchmark" after 4-6 years of service.

⁶ The contract lists an hourly rate of \$23.73. The total is based on assuming a 2080 hour work year.

The 1996 "benchmark" in the Township, something still under \$40,000, is way behind what other benchmarks were even in 1995.

3. COMPENSATION AND FRINGE BENEFITS

A contract does not involve compensation, in the form of wages alone. When contracts between different municipalities and their police are compared, more than wages must be considered.

The most recently expired Collective Bargaining Agreement involving the parties herein, as pointed out elsewhere, covered calendar years 1993, 1994, and 1995.

Aside from the question of compensation, the last agreement included benefits covered by sick leave, personal leave, bereavement leave, vacations, holidays, health insurances, clothing-uniform allowances, court time minimums, overtime, stipends, etc., etc. In none of these categories are the police in the Township over indulged or put upon. Their benefits compare favorably, without going into a detailed comparison, item by item. They are treated fairly.

4. STIPULATIONS

As previously indicated, the parties herein were able to amicably settle all impasse items except for the three (3) items or questions set forth earlier at Pages 3 and 4.

The Stipulation of Settlement covering all agreed upon matters is set forth as an Addendum, signed by the parties and witnessed by the undersigned Arbitrator.

5. THE TOWNSHIP'S AUTHORITY TO GOVERN, RAISE TAXES, PASS ORDINANCES AND TO ENTER INTO CONTRACTS

The Township's lawful authority so far as the budget is concerned, was and is restricted by the New Jersey CAP Law. The neutral interest arbitrator is statutorily and constitutionally required to consider CAP restraints imposed upon the governing body.

The CAP Law has been in existence for some fifteen or sixteen years in one form or another. Said law is aimed at limiting local governmental costs and at the same time limiting the tax burdens on the home owner.

The New Jersey Local Government CAP Law [N.J.S.A. 40A: 4-45.1 et seq.] restrains the lawful authority of the employer by limiting overall budget increases. By limiting such budget increases, the ability of the Township to grant unlimited wage increases to its employees is restricted.

The 1990 amendments to the CAP Law was intended to slow the rate of increase in local property taxes. These amendments eliminated certain heavy expenditures from heretofore exceptions when computing the possible tax increase.

While the CAP Law does not impose a line item by line item limitation, it places a limit on the overall budget to the extent that it is subject to the CAP Law. Because salary expenditures fall within the CAP, the Legislature in a not so round about way has attempted to limit the maximum amount the Township or any municipality may increase taxes for the purpose of covering salary expenditures.

Costs incurred to fund a possible adverse interest arbitration award must be taken into account by the municipality in determining whether overall budgetary appropriations exceed the ceiling imposed by the CAP.

It is interesting to note that the tax rate per \$100.00 A.V. has not increased in the Township over the past five years. In fact, 1996 produced a slight reduction. This perhaps because while anticipating some \$4 Million in revenue, an additional \$800,000 was received.

The 1996 tax rate of \$2.434/\$100.00 A.V. increased for 1997 to \$2.466/\$100.00 A.V., with almost all resulting from an increase not by the Township itself, but by the Regional School District.

The Township CAP currently stands at 3.5%. It is not anticipated that the governing body will need to seek a waiver, something it has never applied for.

A most recent audit revealed a Fund Balance in excess of \$2 Million.

Again, it must be remembered, that the Township never contended it could not, or did not, have the ability to meet the FOP demand.

6. THE FINANCIAL IMPACT ON THE MUNICIPALITY AND THE TAXPAYERS

There is little that could be stated under this criteria that has not been stated under criteria # 5 above, or elsewhere in overall discussions herein.

7. THE COST OF LIVING

The Cost of Living Index or the Consumer Price Index has for many years been used in order to justify large wage increases.

The effect of changes in the Cost of Living on one's purchasing power is of prime importance to any worker. Will the increase keep pace with the increase in the Cost of Living so that he can continue to maintain the same standard of living?

Accordingly, the Statute mandates that the arbitrator, when rendering his award, consider the costs of living.

There are actually two C.P.I.'s issued. One covers "All Urban Consumers". This is the C.P.I.-U. The other covers "Urban Wage Earners & Clerical Workers". This is the C.P.I.-W.

While rising a bit lately, the national average cost of living increases as evidenced by the by the C.P.I.-U. for New York – Northeast New Jersey for the year 1996 totaled 3%, only 2/10 of 1% above the 1995 increase. This rise does not indicate that the C.P.I. points to an inflationary period appearing on the horizon, in spite of the Government's recent interest rate rise.

In computing the C.P.I., one cannot overlook the fact that it includes medical expenses, expenses which the FOP does not pay, as premiums for medical insurances are fully paid by the Township.

Even though no data was presented as to what percentage police raises were over the past decade, it is almost certain that their raises exceeded the 3.65% C.P.I. average increase between 1987 and 1996.

8. THE CONTINUITY AND STABILITY OF EMPLOYMENT

There is absolutely no question but that the continued employment of members of the Township Police Department is secure and will continue. One could, in fact, almost state that such continuation is guaranteed, else there would be no reason for the Township's proposing to retain the 1995 starting wage or for proposing, and the FOP agreeing to a new hiree salary guide.

XXXXXX

The unresolved items, those evidenced by the questions agreed upon by the parties as set forth herein on Pages 3 and 4 involve treatment of "built-in-overtime".

These questions will be discussed in detail at this point. Though set forth in full earlier herein, for the sake of ease in reading this Award, same will be repeated.

The first stipulated issue:-

Should the built-in-overtime currently provided for in Article 9, Paragraph F of the existing Collective Negotiations Agreement, be rolled into the base as part of the calculation of the new salary guide utilizing the agreed upon percentage salary increases, to determine the new salary guides; or should the new salaries be calculated using the existing base salaries and agreed upon percentages without rolling the said built-in-overtime into the base?

The issue on "built-in-overtime" arose when several years ago, the Westampton Police Department went to a 12 hour shift or tour of duty schedule.

The 12 patrol officers and four of the five sergeants all work the 12 hour tour of duty. The tours are worked on a schedule of two days on, two days off followed by three days one, two days off and then two days on, three days off. Therefore, within every 14 day period, the officers each work seven 12-hour tours and have seven days off. This, in turn, equates to 84 hours of work in every 2 week/14 day work cycle.

Notwithstanding the 84 hour/14 day work period, the current practice and the contract provides that the officers are still paid on a 40 hour/7 day work week. Therefore, in addition to their base pay, the 16 individuals involved (12 patrol officers and 4 sergeants) are paid for 4 additional hours at overtime rates in every 2 week pay period, or when computed on an annual basis, 104 hours of overtime per year.

Therefore, each officers' bi-weekly paycheck covers 80 hours at straight time plus 4 hours at the time and one-half overtime rate. This, pursuant to Article 9, Secs. A,D,F & G which appear as follows:

A. The normal work day shall consist of one twelve hour tour in a twenty-four hour period which shall commence at 12:01 A.M. except that if an employee's shift shall begin before the end of one day and end the following day, overtime shall be calculated as in paragraph D below. The work week may consist of more or less

than forty hours so long as there are not more than seven tours in a fourteen day period.

D. For those employees who regularly work an average of forty hours per week, overtime compensation shall commence when the employee's time exceeds twelve hour per tour. The rate shall be one and one-half (1-1/2) times the regular rate of pay.

F. An additional 104 hours per year of built-in-overtime due to the 12 hour shift schedule, will be paid weekly (2 hours per week) to all employees working a twelve hour shift.

G. All compensatory time shall be in compliance with the FLSA.⁷

It is these 104 hours of overtime per year which the parties and this Award refer to as "built-in-overtime".

However, notwithstanding the fact that this payment is specified in Article 9, it does not reflect this reality.

While Secs. A and D of Article 9, speak in terms of 40 hour work weeks, and overtime calculations based upon a 40 hour week, the same paragraphs refer to the 12 hour shifts. Therefore, the existing contractual language is neither clear nor unambiguous, and creates a substantial potential for misunderstanding and misapplication in determining how salary and overtime are to be calculated. It is therefore in the best interests and welfare of the public, that the salary guide set forth in Article 4, as well as the tours of duties, shifts, work periods and overtime as contained in Article 9, be consistent with the schedules that in actuality, exist. Such a change, one that would clearly and unambiguously define the work schedule would surely resolve, if not head off, any potential labor dispute.

The FOP's proposal is intended to address this confusion and at the same time to have the contract accurately reflect both the apparent intent of the parties as well as the practice of the parties.

Rolling the "built-in-overtime" into the base would have the effect of reducing the disparity in the base salaries paid to the Westampton officers compared to that earned by other police officers in the County of Burlington and elsewhere around the state, while not adding any significant additional cost to the Township.

⁷ FLSA meaning Fair Labor Standards Act.

The Township acknowledged that whether one applies the agreed upon salary increases to the existing base and then pays the officers the "built-in-overtime", or rolls the "built-in-overtime" into the base, before applying the agreed upon percentage increase, the annual income to the officers, and thus the costs to the Township is the same.

The second stipulated issue:-

If the Arbitrator concludes that the "built-in-overtime" should be rolled into the base, should overtime be calculated using the eight-four (84) hours, worked in the fourteen (14) day work period, or utilizing 86 hours in that 14 day work period?

Creating a salary guide that reflects the reality of the Westampton work schedule would alleviate some of the morale problems that are created amongst the existing officers whose base salaries are substantially less than that of their fellow offices in other nearby municipalities.

It would also enable the Township to attract more quality candidates for vacant positions by creating a salary guide more comparable to those of surrounding and other area municipalities.

At this time, it becomes fairly obvious that the Arbitrator, in response to the first issue presented will direct that the "built-in-overtime" henceforth be rolled into the officers' base salary.

It is, as pointed out elsewhere herein, practically a "no cost" item. Thus, the affirmative answer to the first question brings us to the second.

Having concluded that the "built-in-overtime" be rolled into the base as a part of the calculation in formulating new salary guides, it now must be determined how "overtime" be calculated in the future. Specifically, should "overtime" be computed using (1) the 84 hours worked in the 14 day work period, or (2) the 86 hours paid for in the 14 day work period?

The Township's rationale for utilizing the 86 hours paid for in a 14 day work period is founded upon the fact that the officers in Westampton are paid time and one-half for the 4 hours of work above 80 hours in the 14 day work period, resulting in their receiving compensation for 86 hours.

Their contention is thus that the regular hour rate should be calculated using 86 hours, not 84.

The Township argues that using 84 hours, rather than 86 hours, increases the overtime rate slightly. This difference was calculated by the Township as

being 50 cents per hour, for each overtime hour worked in excess of 84 hours in any 14 day work period.

There can be no argument pertaining to the mathematical computations argued by the Township. An analysis thereof, however, offers a different answer.

Under the existing language of Article 9, the regular hourly rate upon which overtime is based is derived by using a 40 hour work week, rather than the 42 or 84 that the FOP is currently proposing. Therefore, while the overtime hourly rates proposed by the Township is somewhat less than the FOP's (using 86 rather than 84 hours), the FOP's use of 84 results in a lower "regular rate" than does the existing contract which uses 40 hours in a 7 day work week (80 hours in the 14 day work period). Using the Township's figures, this translates into \$1.00 savings per overtime hour over the current practice.

The difference, whether the overtime rate is computed so as to net a dollar an hour savings to the Township, or cost them an additional 50 cents an hour is a secondary consideration.

Is the position of the Township legal under the Fair Labor Standards Act (which will hereafter be referred to as FLSA)?

Regulations implementing Chapter 778 of the FLSA, 29C.F.R. sec. 778.101 et seq., sets forth the regulations on determining how overtime is to be calculated. As set forth in that portion of the Code of Federal regulations submitted during the hearing, Sec. 778.107 sets forth the general standards for overtime pay.

Said section states that the FLSA requires "...that overtime must be compensated at a rate not less than one and one-half times the regular rate at which the employee is actually employed".

Section 778.108 discusses "regular rate" of pay in the following manner:-

"Regular rate of pay, under the Act, cannot be left to a declaration by the parties as to what is to be treated as the regular rate for an employee; it must be drawn from what happens under the employment contract The Supreme Court has described it as the hourly rate actually paid to the employee for the normal, non-overtime work week for which he is employed an 'actual fact' ..."

Thus it would appear that, regardless of whether the additional four hours per work period are deemed "built-in-overtime", or are rolled into the base, the

undisputed fact is that these officers work 84 hours within each 14 day work period.

Section 778.109 goes on and defines "regular hourly rate" as follows:-

"The regular hourly rate of pay for an employee is determined by dividing his total remuneration for employment (except statutory exclusion) in any work week by the total number of hours actually worked by him in that work week for which such compensation was paid".

Pursuant thereto, it is that "regular rate" which is an "actual fact" and which is based upon the normal, non-overtime work week for which an employee is employed. The overtime rate is then calculated using such rate.

Either 80 hours or 84 hours must be used in order to calculate the overtime rate. In no way does 86 hours relate to the hours actually worked.

Pursuant to Section 778.107, and Section 7 of the FLSA, the overtime rate is then required to be calculated by multiplying that "regular rate" times no less than 1 and ½ to determine the overtime rate. Section 207(k) allows that substitution of 84 hours in the 14 day work period for the "work week" specified in the regulation.

The calculation of the overtime rate is required by Law to be calculated in the manner contained in the FOP proposal. For the Arbitrator to utilize the calculation contained within the Township's offer would require a redefining of "regular rate" and be inconsistent with the actual facts. Police officers in Westampton do not work 86 hours in a 14 day work period. They work 84 hours.

The third stipulated issue:

If the Arbitrator finds that the base salary should include the "built-in-overtime", as set forth in question one, should the detective sergeant have his work week increased to 84 hours per 14 day work period and receive the same salary as other sergeants; or should there be a separate salary for the detective sergeant based upon 80 hours of work in the 14 day work period?"

The one current exception to the 84 hour/14 work day period is the detective sergeant. He currently works four 10 hour shifts per week.

The FOP, recognizing this solitary exception, proposed that the hours of the detective sergeant be increased to 84 hours per 14 day work period, in one of three ways. Either by increasing his shifts to 10-1/2 hours each, or by putting

him on the 12 hour shift schedule, or by having him continue to work a 10 hour shift, but creating a bank of unused overtime hours which could then be used by the Township to offset the overtime which the detective sergeant routinely works.

The FOP advances several cogent arguments to support its position on point.

It argued that the detective sergeant is the most senior officer in the Department and as such he routinely works more than 40 hours in a week and is on call even when he is not actually working.

It argued that the offer of the Township would result in the most senior officer in the Department earning less than all the other sergeants.

The FOP argued that its position, which was to have the Arbitrator either increase the detective sergeant's hours to 84 hours per 14 day work period, or to exercise conventional authority and create a bank of hours which the detective sergeant would then owe the Township in lieu of overtime.

The Township on point, argued that at worst, the Chief of Police should, with the approval of the Township, be allowed to establish the hours of the detective sergeant at either the current 40 hours per week, 4 ten hour shifts which results in 80 hours of work within each 14 day work period or to increase the hours of the detective sergeant to 84 hours per 14 day work period.

The Township further took the position that if it decided to keep the detective sergeant on the current work week (80 hour work schedule), the "built-in-overtime" should not be calculated as a part of his base compensation.

It was indicated at the hearing that the increasing of the detective sergeant's hours was supported by the Chief.

While it makes sense, as the same work shift would create uniformity amongst salaries for all sergeants in the Department, rather than having a separate one person category, the final determination thereon should remain with the Chief, subject to concurrence by the Township's governing body.

NOW THEREFORE as the duly selected Arbitrator herein, after considering all of the arguments advanced herein, and after carefully considering the provisions of the revised Compulsory Interest Arbitration and the criteria therein contained, **I MAKE THE FOLLOWING AWARD -**

1. That all matters which have previously been agreed to and which are set forth in the "Stipulation of Settled Issues" attached as an "Addendum" herein, be made a part of the 1996/98 Collective Bargaining Agreement.

2. That the salaries, and steps, for the new contract be calculated by taking the one hundred and four (104) hours of "built-in-overtime" provided for in Article 9, paragraph F of the 1993/95 Collective Bargaining Agreement and rolling it into the base, and then utilizing the agreed upon percentage salary increases to determine the new salary guides.

3. That the overtime hourly rate be calculated using the eighty-four (84) hours actually worked in the fourteen (14) day work period, rather than utilizing eighty-six (86) hours in the 14 day work period.

4. That the Chief of Police, with the approval of the Township shall have the authority to decide if the detective sergeant shall work an eighty (80) hour work period of eight (8) ten (10) hour tours of duty per fourteen (14) day work period, or an eighty-four (84) hour fourteen (14) days work period.

5. If it is determined that the detective sergeant's regular work schedule is 80 hours per 14 day work period, the salary and wages for the detective sergeant shall be as follows retroactive to the dates set forth below in the guide:

STEPS/YRS OF SERVICE	1/1/96	1/1/97	1/1/98	7/1/98
1 (0 to 1 year)	\$43,130	\$44,963	\$45,918	\$46,894
2 (1 to 2 years)	\$45,634	\$47,574	\$48,585	\$49,617
3 (2 to 3 years)	\$48,137	\$50,183	\$51,250	\$52,339

6. That if the detective sergeant works an 84 hour, 14 day work period, the salary and wages for the detective sergeant will be the same as the other sergeants except that the detective sergeant will also receive the detective bonus set forth in Article 4, Section B 4 of the 1993/95 Agreement.

Dated: Jamesburg, N.J.
June 12, 1997

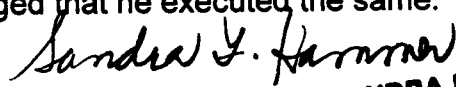

LAWRENCE I. HAMMER

State of New Jersey)

SS:-

County of Middlesex)

On the 12th day of June, 1997, before me came LAWRENCE I. HAMMER, to me known and known to me to be the person who executed the foregoing Arbitration Award and he duly acknowledged that he executed the same.


SANDRA F. HAMMER
NOTARY PUBLIC OF NEW JERSEY
Commission Expires July 30, 2001

— ADDENDUM —

SZAFERMAN, LAKIND, BLUMSTEIN, WATTER & BLADER, P.C.
SIDNEY H. LEHMANN, ESQ.
QUAKERBRIDGE EXECUTIVE CENTER
SUITE 104
LAWRENCEVILLE, NEW JERSEY 08648
(609) 275-0400
ATTORNEYS FOR Westampton FOP
Lodge #147

	:	STATE OF NEW JERSEY
In the Matter of the Interest	:	
Arbitration Between	:	
	:	PUBLIC EMPLOYMENT RELATIONS
Westampton FOP Lodge # 147,	:	COMMISSION
	:	
Employee Organization,	:	PERC Docket No: AR-97-13
	:	
and	:	BEFORE INTEREST ARBITRATOR
	:	LAWRENCE I. HAMMER
	:	
Township Of Westampton,	:	
Public Employer.	:	

STIPULATION OF SETTLED ISSUES

Westampton Fraternal Order of Police Lodge #147, (the "FOP"), and the Township of Westampton submit the following list of items as a stipulation of those matters upon which agreement has already been reached. These items are to be included in the Interest Arbitration Award as changes to be made in the existing 1993-95 contract between the parties. Provisions of the 1993-95 contract which are not specifically modified by these agreements, or the matters submitted to the interest arbitrator, are to be included within the new contract, with appropriate changes in the dates, if necessary, to make them relevant to the terms of this new agreement. The matters which have been agreed upon are:

Preamble - The name of the majority representative will be changed from the "Westampton Township Police Association" to the "Westampton Police Lodge No. 147, Fraternal Order of Police", and references throughout the contract to the "Association" will be

changed to either "FOP" and/or "Lodge 147".

Article 2 Recognition and Management Rights - Paragraph A, change the words "bargaining unit" in the first sentence, to "bargaining agent". In the next to last sentence the reference to the "contract" should be "Police Manual"; so that the last portion of that sentence will now read:

" . . . provided that if the terms, conditions, and provisions of this contract are in conflict with the terms, conditions and provisions of the ~~contract~~ Police Manual then the terms, conditions, and provisions of this contract shall govern".

Article 4 - Salary

Paragraph B - Salaries and Wages - The percentage wage increases shall be: four percent (4%) for 1996, which raise is retroactive to January 1, 1996; four and a quarter percent (4.25%) for 1997, which raise is retroactive to January 1, 1997; two and one eighth percent (2.125%) effective January 1, 1998; and two point one eighth (2.125%) effective July 1, 1998. In addition there will be a separate guide for police officers hired after January 1, 1997. (This date has been selected based on the understanding that no police officers have been hired in 1997, as this new guide is not to effect any current member of the negotiating unit). The new guide will add one (1) step to the existing guide by freezing the starting salary at the 1995 level. The salary increases for Steps 1 through 5 in the guide for pre-1997 hires will be Steps 2 through 6 in the guide, for officers hired after January 1, 1997. (The exact amount of the salary at each Step will be determined as a result of the Arbitrator's

decision on the matters in dispute submitted to the Arbitrator).

The annual stipend for detectives shall be increased from eight hundred (\$800.00) dollars to one thousand (\$1,000.00) dollars per year, retroactive to January 1, 1996. (The question as to the proper calculation of the salary for the detective sergeant is one of the items submitted to the Interest Arbitrator; although it is agreed that the detective sergeant will receive the same percentage wage increase as set forth above, and will receive the detectives stipend regardless of how this issue is determined).

Paragraph D - Shift Supervisor Compensation - The compensation for shift supervisor shall be increased from ten (\$10.00) dollars per shift to fifteen (\$15.00) dollars per shift, effective June 1, 1997.

Article 6 - Holidays

Paragraph F - This provision is modified to provide that if an officer works a minimum of five (5) hours on a holiday, the officer shall receive time and one half (1 ½) for the entire shift. Paragraph F shall now read as follows:

"If an officer works a minimum of five (5) hours on a holiday, the officer, in addition to his/her regular pay, shall be paid at one and one half (1 ½) times his/her regular rate for all hours worked during his/her shift including those which fall within the holiday and those which fall outside the holiday for that shift".

Article 7 - Bereavement Leave - The amount of bereavement leave for a death in the officer's immediate family shall be increased from the maximum of five (5) days to a maximum of seven (7) days provided that the leave includes the day of death, and/or the day of the funeral. Article 7, shall now read as follows:

"A maximum of seven (7) days paid leave of absence shall be granted to full-time employees in the event of the death of an employee's mother, father, spouse, or child, provided that the leave includes the day of death and/or the day of the funeral. A maximum of three (3) days paid leave shall be granted to full-time employees in the event of the death of other family members. The said leave of absence is to be determined in accordance with Section 4, 9.6 of the Police Manual, which shall not be inconsistent with this Article. An additional day shall be granted for travel requirements in excess of one hundred (100) miles, one-way, said requirement to be determined by the Township Committee".

Article 9 - Hours of Work and Overtime

Paragraph E - The last sentence of this paragraph will be modified to provide that the minimum guarantee of three (3) hours of overtime does not apply if the overtime hours occur immediately before or after the officers normal shift. That sentence will now read as follows:

"If an officer is called into duty prior to his/her shift beginning, or remains at the end of his/her normal shift, the officer will be paid overtime for the hours actually worked contiguous to his/her regular shift, but the three (3) hours guaranteed overtime call-in pay shall not apply".

Depending upon the decision of the Arbitrator with respect to the matters in dispute the following modifications will be made to other provisions of Article 9. If the Arbitrator determines that the built-in overtime shall be included within the base, paragraph F, providing for the additional one hundred and four (104) hours per year of built in overtime shall be deleted.

Paragraph A, shall read as follows:

Except as otherwise provided in this

Agreement, the normal tour of duty for officers covered by this Agreement shall consist of one twelve (12) consecutive hour shift in a twenty-four (24) hour period, which 24 hour period may begin in one day and end the following day. Except as otherwise provided in this Agreement, the normal work period for officers covered by this Agreement shall consist of fourteen (14) consecutive days during which an officer shall work no more than seven (7) 12-hour tours for a total of no more than eighty-four (84) hours with the 14 day work period. Officers working twelve (12) hour shifts, shall receive overtime for any hours worked over twelve (12) hours per tour and/or 84 hours per work period".

If the Arbitrator decides in favor of the FOP, Paragraph C, shall read as follows:

"For the purpose of payroll calculations, the work period shall commence at 12:01 a.m. Sunday and shall end fourteen (14) consecutive days thereafter; except that a tour that begins on the immediately proceeding Saturday and continues into the first Sunday in the work period shall be considered to be part of the new work period".

Depending upon the Arbitrator's decision, Paragraph D shall be modified to provide as follows:

"If the Detective Sergeant is scheduled to work eighty (80) hours per fourteen (14) day work period, (eight (8) ten (10) hour tours of duty), overtime compensation shall commence when the detective sergeant's hours exceed ten (10) in each shift and/or eighty (80) hours per work period".

There will be a new paragraph F, which shall provide that the overtime rate shall be one and one half ($1 \frac{1}{2}$) times the officers regular rate of pay. However again, depending upon the outcome of the Interest Arbitrator's decision, the balance of this new paragraph shall read:

" . . . The overtime rate shall be calculated

utilizing the officers gross pay inclusive of longevity, if any, for the eighty-four (84) hour 14 day work period, dividing that gross amount by 84 hours to determine the hourly rate upon which the one and one half (1 ½) overtime hourly rate will be based. If the detective sergeant works eighty (80) hours per 14 day work period, the overtime rate for the detective sergeant shall be calculated by using 80 hours to determine the hourly rate".

Article 11 - Worker's Compensation, Safety and Health -

Paragraph A, add the following sentence to the end of that paragraph:

"Such leaves of absence with pay for work-incurred injuries shall be limited to one (1) year under N.J.S.A. 40A:14-137".

Article 13 - Grievance Procedure

Paragraph C, Section 2:

The number of days in which an aggrieved employee can institute action under this subparagraph shall be modified from "thirty (30)" to "twenty-one (21)".

Paragraph D, Level 5 - This paragraph shall be modified as follows. The first sentence of the paragraph remains the same; however, the following shall be substituted for the balance of the paragraph on Level 5, beginning with the second sentence:

"The Arbitrator shall be selected from the Public Employment Relations Commission Panel, and shall be bound by the rules for labor arbitration of PERC. In deciding the case, the Arbitrator shall be bound by the provisions of this Agreement and by the applicable laws of the State of New Jersey and the United States and the decisions of the Courts of the State of New Jersey and the United States. The Arbitrator shall not have the authority to add to, modify, detract from, or alter the provisions of this Agreement or any Agreement or supplement thereto. The Arbitrator's decision shall be final and binding upon the parties subject to applicable Court proceedings. The parties shall share

the cost of the Arbitrator's fees and expenses equally; however, each party shall be solely responsible for its own counsel fees, costs and expenses".

Article 15 - Medical and Surgical Coverage - Paragraph A shall

be modified to read as follows:

"Each employee and his/her family shall be provided with AmeriHealth Medical and Prescription Plan or an equivalent Plan, at no charge to the employee".

Paragraph B, shall now read:

"The Township reserves the right to change insurance carriers provided that prior written notice is given to the FOP, including notice of any and all proposed changes in the level of benefits provided in such coverage; and provided further that the level of benefits is equal to or greater than the level of benefits which exist under the plans currently in effect. In determining the existing level of benefits, the existing plan is recognized to be the AmeriHealth Medical and prescription plans, which went into effect on or about May, 1997, and the dental plan in effect on or about that date, including the provision for pediatric dental care for children ages 2 through 12.

Paragraph C, shall remain the same.

Paragraph E, will now read as follows:

"In the event that the total combined cost to the Township for the health insurance, prescription and dental plans for this unit exceeds the total cost to the Township for members of this unit for the calendar year 1996, then the members of this unit will pay no more than five percent (5%) of the amount by which the cost exceeds the combined 1996 cost".

Paragraph F, shall remain the same.

Article 17 - Uniform Maintenance Allowance

Paragraph A - The uniform maintenance allowance as set forth

in paragraph A, shall remain at \$590.00 for calendar year of 1996, shall be increased to \$690.00 for calendar year 1997, and to \$790.00 for calendar year 1998.

Paragraph C has been modified so that it now reads:

"C. If appointed after January 1, of any year of this Agreement, full-time sworn employees shall receive a pro-rated share of the aforementioned clothing allowance and uniform maintenance allowance for that fiscal year based on their date of hire".

Article 24 - Use of Personal Property - This Article has been modified to substitute the Internal Revenue Service milage rate. The paragraph will now read:

"When using a personally owned vehicle on any Township business with prior approval, except in the event of an emergency, an employee shall be reimbursed for the use of such vehicle at the per mile rate established by the Internal Revenue Service for business use of personal vehicles. In matters such as, but not limited to, Court and schooling, the provisions of this Article shall apply if a Township vehicle is unavailable.

Article 26 - In addition to the benefits set forth in this Article, the Township will pay one thousand (\$1,000.00) dollars towards the funeral expenses for an officer who dies while in the performance of his duties. The last sentence of this Article will be modified by changing the period to a semi-colon and adding the following phrase:

" . . . as well as providing a payment of one thousand (\$1,000.00) dollars to the family of the deceased officer to help pay for the funeral expenses".

Article 27 - Term and Renewal - This Article will be modified to provide for a three (3) year contract covering the period from

January 1, 1996 through and including December 31, 1998.

FOP Lodge #147

Dated: 5/20/97

By: 

SIDNEY H. LEHMANN, ESQ.
Szaferman, Lakind, Blumstein,
Watter, & Blader, P.C., attorneys
for Westampton FOP Lodge No. 147

Township of Westampton

Dated: 5/20/97

By: 

STEVEN S. GLICKMAN, ESQ.
Ruderman & Glickman, attorneys for
Township of Westampton


PERC ARBITRATOR