

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

----- *

In the Matter of the Interest	*	
Arbitration between	*	
	*	
	*	DECISION
	*	AND AWARD
TOWN OF HARRISON	*	
	*	
	*	
-and-	*	
	*	Docket No.
	*	IA-2008-078
FRATERNAL ORDER OF	*	
POLICE, LODGE NO. 116	*	
	*	
	*	
----- *	*	

Before: Joel M. Weisblatt, Arbitrator

Appearances:

For the Town
Robert E. Murray, Esquire

For the FOP
Markowitz & Richman
By: Matthew D. Areman, Esquire

D E C I S I O N

The Town of Harrison (the "Town" or the "Employer") and the Fraternal Order of Police, Lodge No. 116 (the "FOP" or the "Union") are at impasse in negotiations for a collective bargaining agreement to begin on January 1, 2007. The impasse led to the filing of a Petition to Initiate Compulsory Interest Arbitration was filed. Pursuant to the Rules and Regulations of the Public Employment Relations Commission, the undersigned Arbitrator was duly appointed to serve in this matter.

The Arbitrator met with the parties on October 28, 2008 and January 2, 2009, in an effort to assist them in achieving a voluntary resolution to their dispute. The impasse persisted. At the mutual request of the parties, the matter was held in abeyance pending the issuance of an interest arbitration [Docket No. IA-2007-090] award for the unit of police officers (represented by PBA Local No. 22) supervised by this bargaining unit. Evidentiary hearings were scheduled

and held on October 6, 2009. Substantial progress was made toward narrowing the issues in dispute; the parties have stipulated to the modification of their positions on nearly all the items to match the terms of the Interest Arbitration Award issued on September 19, 2009, resolving the PBA dispute.

The parties were provided with the opportunity to argue orally, present documentary evidence and examine and cross-examine witnesses. An extensive record was created at hearing by fully incorporating the evidence presented by the Town and the PBA in the interest arbitration proceeding covering the rank and file PBA contract. The parties were provided with the opportunity to supplement the record with evidence specifically relevant to the issues presented in this interest arbitration.

The entire record has been carefully considered. The evidence has been evaluated in light of the nine statutory criteria set forth in *N.J.S.A. 34:13A-16(g)*.

The parties failed to mutually agree to a terminal procedure. Therefore, under N.J.S.A. 34:13A-(d)(2) the dispute shall be resolved through a determination by conventional arbitration. This resolution shall be reached through application of all of the relevant statutory criteria, giving due weight as appropriate, to the issues presented by the unsettled elements in dispute.

Statutory Criteria

N.J.S.A. 34:13A-16(g) provides as follows:

g. The arbitrator or panel of arbitrators shall decide the dispute based on a reasonable determination of the issues, giving due weight to those factors listed below that are judged relevant for the resolution of the specific dispute. In the award, the arbitrator or panel of arbitrators shall indicate which of the factors are deemed relevant, satisfactorily explain why others are not relevant, and provide an analysis of the evidence on each relevant factor:

(1) The interests and welfare of the public. Among the items the arbitrator or panel of arbitrators 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.).

(2) Comparison of wages, salaries, hours, and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours, and conditions of employment of other employees performing the same or similar services and with other employees generally:

(a) In private employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.

(b) In public employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.

(c) In public employment in the same or similar comparable jurisdictions, as determined in accordance with section 5 of P.L. 1995, c. 425

(C:34:13A-16.2); provided, however, that each party shall have the right to submit additional evidence concerning the comparability of jurisdictions for the arbitrator's consideration.

(3) The overall compensation presently received by the employees, inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received.

(4) Stipulations of the parties.

(5) The lawful authority of the employer. Among the items the arbitrator or panel of arbitrators 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.).

(6) The financial impact on the governing unit, its residents and taxpayers. When considering this factor in a dispute in which the public employer is a county or a municipality, the arbitrator or panel of arbitrators shall take into account, to the extent that evidence is introduced, how the award will affect the municipal or county purposes element, as the case may be, of the local property tax; a comparison of the percentage of the municipal purposes element or, in the case of a county, the county purposes element, required to fund the employees' contract in the preceding local budget year with that required under the award for the current local budget year; the impact of the award for each income sector of the property taxpayers of the local unit; the impact of the award on the ability of the governing body to (a) maintain existing local programs and services, (b) expand existing local programs and services for which public moneys have been designated by the governing body in a proposed local budget, or (c) initiate any new programs and services for which public moneys have been designated by the governing body in a proposed local budget.

(7) The cost of living.

(8) The continuity and stability of employment including seniority rights and other such factors not confined to the foregoing which are ordinarily or traditionally considered in the determinations of wages, hours, and conditions of employment through collective negotiations and collective bargaining between the parties in the public service and in private employment.

(9) Statutory restrictions imposed on the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by section 10 of P.L. 2007, c.62 (C.40A:4-45.45).

Final Offers of the Parties

FOP's Final Offer

The final offer of the FOP consists of the items set forth below:

(1) Duration

There shall be a five-year agreement effective January 1, 2007 through December 31, 2011.

(2) Health Insurance

Prescription co-pay: effective January 1, 2010 the co-pay shall be \$5.00 co-pay for generic drugs; \$10.00 for brand name drugs and \$20.00 for exotic drugs. Prescription on maintenance drugs shall be ordered through the mail order refill program. The corresponding amounts for mail order shall be the same for a ninety (90) day supply.

Effective January 1, 2011, unit employees shall contribute \$30.00 per month towards health insurance premiums regardless of plan selection coverage. The Town shall provide a Section 125 Plan to allow for pre-tax deductions. Employees hired after the date of the Award shall be entitled to medical insurance under the HMO option.

(3) Salaries

The salary schedule shall be increased by 3.5% effective on January 1, 2007, 3.5% effective January 1, 2008, 3.5% effective January 1, 2009, 3.5% effective January 1, 2010 and 3.25% effective January 1, 2011.

Effective January 1, 2008, the Firearm Protective Equipment and Maintenance stipend will be increased to 1.25%. This stipend shall be increased effective January 1, 2009 to 1.5%, effective January 1, 2010 to 1.75% and effective January 1, 2011 to 2.0%.

All economic terms, unless provided otherwise, are retroactive to each effective date for those presently employed and those who were employed on each effective date and retired on ordinary or disability pension prior to the date of the Award.

(4) Extra Duty Pay

Include language from the Town of Harrison Resolution 20468 regarding Extra Duty Assignment Pay in the contract and increase the hourly rate by \$5.00 to \$62.75 effective as soon as practicable. The Town shall have the right to increase the additional charges to the Extra Rate to reflect Social Security rate and/or the Town's charge for administration so long as the hourly rate received by the police officers remains unaffected. Any such changes shall be preceded by thirty (30) days notice to the PBA.

(5) Direct Deposit

As soon as practicable after the date of the this Award, the Town shall take steps to allow a unit employee, at his or her option, to have his or her paycheck directly deposited into the bank account of that employee's choice.

(6) Clothing Purchase and Maintenance Allowance

This allowance shall be \$650 in 2008, \$675 in 2009, \$700 in 2010 and \$725 in 2011.

(7) Work Schedule

Superior Officers (i.e., Sergeants, Lieutenants and Captains) shall work a fixed schedule of three (3) days on and three (3) days off, consisting of ten (10) hour days ("3-3 Schedule"). The parties

may, upon mutual agreement, modify/change the work schedule of any individual unit member or group of unit members, and in such cases, unit members shall receive no less than forty-five (45) days notice of an agreed upon change in work schedule. The parties shall form a joint committee, which shall meet periodically, to address issues relating to the existing work schedule and any proposed modifications to said schedule.

Town's Final Offer

The final offer of the Town consists of the items set forth below:

(1) Duration

There shall be a five-year agreement effective January 1, 2007 through December 31, 2011.

(2) Health Insurance

Prescription co-pay: effective January 1, 2010 the co-pay shall be \$5.00 co-pay for generic drugs; \$10.00 for brand name drugs and \$20.00 for exotic drugs. Prescription on maintenance drugs shall be ordered through the mail order refill program. The corresponding amounts for mail order shall be the same for a ninety (90) day supply.

Effective January 1, 2011, unit employees shall contribute \$30.00 per month towards health insurance premiums regardless of plan selection coverage. The Town shall provide a Section 125 Plan to allow for pre-tax deductions. Employees hired after the date of the Award shall be entitled to medical insurance under the HMO option.

(3) Salaries

The salary schedule shall be increased by 3.5% effective on January 1, 2007, 3.5% effective January 1, 2008, 3.5% effective January 1, 2009, 3.5% effective January 1, 2010 and 3.25% effective January 1, 2011.

Effective January 1, 2008, the Firearm Protective Equipment and Maintenance stipend will be increased to 1.25%. This stipend shall be increased effective January 1, 2009 to 1.5%, effective January 1, 2010 to 1.75% and effective January 1, 2011 to 2.0%.

All economic terms, unless provided otherwise, are retroactive to each effective date for those presently employed and those who were employed on each effective date and retired on ordinary or disability pension prior to the date of the Award.

(4) Extra Duty Pay

Include language from the Town of Harrison Resolution 20468 regarding Extra Duty Assignment Pay in the contract and increase the hourly rate by \$5.00 to \$62.75 effective as soon as practicable. The Town shall have the right to increase the additional charges to the Extra Rate to reflect Social Security rate and/or the Town's charge for administration so long as the hourly rate received by the police officers remains unaffected. Any such changes shall be preceded by thirty (30) days notice to the PBA.

(5) Direct Deposit

As soon as practicable after the date of the this Award, the Town shall take steps to allow a unit employee, at his or her option, to have his or her paycheck directly deposited into the bank account of that employee's choice.

(6) Clothing Purchase and Maintenance Allowance

This allowance shall be \$650 in 2008, \$675 in 2009, \$700 in 2010 and \$725 in 2011.

(7) Work Schedule

The Memorandum of Agreement concerning the work schedule shall be incorporated into the Agreement. In the event that the Town decides to change, alter or modify the current work schedule, the Town must provide the FOP with no less than twenty-one (21) days notice before making such a change, except in the case of emergency.

The parties have agreed to revise the Grievance Procedure by modifying the current single arbitrator structure with the creation of a panel of three arbitrators, James Mastriani, Martin Scheinman and Joel Weisblatt, who will hear matters processed to arbitration under the Grievance Procedure on a rotating (alphabetically) basis.

Positions of the PartiesPosition of the FOP

The FOP points out at the outset of its argument that the bulk of the issues initially presented at interest arbitration have been dealt with through the stipulation of the parties. Specifically, the final offers of the parties differ only with respect to the single issue of work schedules. Therefore, the *Stipulations of the Parties* criterion is emphasized concerning the bulk of the issues.

The Union seeks to "memorialize the *status quo*" through its proposal herein. It asserts that to have the unit employees work "under inconsistent, unpredictable and unsafe work schedules" would not be in keeping with the public interest nor would it provide for continuity and stability of employment, noting two of the nine statutory criteria. The FOP raises the concern that such changes would lead to "lower morale, lower productivity, higher accident rates and higher turnover."

The Union maintains that the schedule sought to be memorialized, a 3-3 schedule with 10 hour days, has generally been in effect for nearly four years. However, it claims that the Police Chief has "whimsically, without justification and without notice" made changes to individual unit member's work schedules. The Union argues that frequent disruptions to work schedules can have a serious negative impact on the work place.

The FOP points out that the single issue in dispute will have no effect on the financial impact on the governing body or the taxpayers. It argues that certain statutory criteria are not relevant to the determination of the single issue herein.

The Union contends that its proposal "provides a sufficient mechanism for the parties to address concerns and resolve issues that may arise with regard to the work schedules." It insists that this proposal clearly serves the public interest.

Finally, the FOP asserts that the clear presentation, in the contract, of the terms and conditions of the work schedule is in the public interest. It seeks the specific recitation of those terms rather than incorporating the pre-existing Memorandum of Agreement, as reflected in the Interest Arbitration Award covering the rank and file PBA bargaining unit. It claims this would "avoid any contractual disputes, mistakes, confusion and the subsequent legal challenges, which will surely accompany the interpretation of a pre-existing agreement."

The FOP concludes that its proposal is the more reasonable. It seeks an award adopting that proposal as the resolution of the work schedule issue.

Position of the Town

The Town initially points out that it has accepted all the findings and provisions of the Award issued by Arbitrator Mastriani regarding the rank and file police unit. It characterizes the work schedule item in that

Award, the one item that was rejected by the FOP, as a "key provision", favorable to the Employer.

The Employer argues that the flexibility of the provision, to the degree that it exists, is a "reasonable grant" in that it allows management to respond to "special circumstances in public safety" without waiting for negotiating the next contractual term for revisions. This is described as a component of protecting the safety of citizens and property.

The Town asserts that the various elements of an arbitration award present a balanced package and that the picking and choosing of components should not be allowed. It maintains that the elements of the package are "interrelated" and must be viewed together,

The Employer argues that the importance of keeping the integrity of the "pattern of settlement" is a "well-established labor law principle" and that incursions upon the pattern require nothing less than "compelling reasons." In the case at hand, the Town points out that the PBA (police rank and file) and the

FMBA (fire rank and file and superior officers) units are both resolved with virtually identical awards. It also notes, that the police superior officers have a bargaining history of identical contract terms with the rank and file.

The Town places great emphasis upon the importance that the schedules of police superior officers be "compatible" with the rank and file police officers that they supervise. It claims that the granting of the FOP proposed language would, in effect, deny the Employer the ability to exercise any of the flexibility found in the clause awarded in the rank and file unit. It insists that it would not be appropriate to have two different schedules for police personnel working "in an integrated fashion." The Employer expresses the claim that it would be "chaos" to have four commanders work a different schedule than the police officers under their command.

The Town concludes that its proposal and not that of the FOP should be awarded. It seeks such an Award.

Discussion and Analysis

The procedural history of this matter warrants some discussion at the outset. This is an interest arbitration for the initial contract for the unit of police superior officers, as a separate bargaining unit from the PBA, rank and file unit. Many elements of the basic contract were mutually agreed upon by the parties and their inclusion in the contract shall be properly incorporated in the Award herein. There were a core of disputed issues that remained in dispute at the same time that the PBA (police rank and file) and FMBA (fire rank and file and supervisors) bargaining units had already proceeded to interest arbitration. The parties herein mutually agreed to await the resolution of the other uniformed services units, making the process more efficient and cost effective.

Arbitrator James W. Mastriani issued interest arbitration Awards resolving all the issues in dispute in the PBA and FMBA bargaining units on September 19, 2009. Efforts to reach a voluntary resolution of the

dispute for the contract at hand were largely successful, however, the issue of the work schedule caused the impasse to persist. On October 6, 2009, the mediation format was put aside and the parties stipulated to the procedure at hand. The entire record from the interest arbitration hearing involving the police rank and file unit was marked into evidence with additional stipulations and the opportunity to supplement that record. Both parties herein have filed post hearing, written briefs and a substantial record has been constructed by the parties.

The Arbitrator has considered all of the statutory criteria. Since the single issue in dispute is narrow the ordinary relevance of many of the statutory criteria is reduced in impact since the positions of the parties are identical with respect to the overall cost of the package and the net annual costs. That is, both parties have presented final offers with the same duration, health insurance provisions, salary increases, extra duty pay provisions, direct deposit clauses, clothing purchase and maintenance allowances.

Consider that the resolution of the work schedule issue herein will have absolutely no effect on the financial impact of this contract on the governing body, the residents and the taxpayers. To that extent, the *Financial Impact* criterion deserves only very limited weight in this proceeding. The Arbitrator adopts and agrees with the findings of Arbitrator Mastriani [operating under a nearly identical record but with all economic items in dispute] that the package set forth in the PBA Award balances the *Financial Impact* and *Comparability* criteria addressing all the economic components, especially focusing on the salary and health insurance issues. It is worth noting that Arbitrator Mastriani was particularly cognizant of the "distressed city" status of the Town and its reliance on State aid revenues. Arbitrator Mastriani also noted that fears could not be dismissed that State aid levels in the future might be in jeopardy. Further, he took note of budgetary and levy caps in the balancing process that crafted the package awarded. That rationale is adopted herein along with the economics of that previous Award.

The Public Interest criterion is the statutory criterion of greatest relevance, warranting the most weight, in the resolution of the case at hand. The Arbitrator finds that there is substantial logic in finding that the work schedule language of the supervising unit should mirror that of the rank and file unit. The Town was most persuasive that it should have the reasonable flexibility to match the tour commanders' schedule to that of the police officers they supervise. Further, from a collective bargaining perspective, there is a public interest component to favoring the preference for application of a pattern of settlement among law enforcement units. Just as there is great logic to continuity and consistency in salary, health insurance and other compensation factors, there is a public interest in consistent negotiations results with respect to work schedule issues. This makes the process more predictable and stable in the future.

It is important to note that the Arbitrator herein interprets that the flexibility set forth in the Mastriani Award is limited in that it does not allow for the unilateral increase in annual work hours from

the schedules now in place, should a change be implemented. The Arbitrator notes that there may be different schedules in place for different functions (e.g., patrol compared to other roles), the annual hours would remain limited within the function. It is especially important to understand that there is absolutely nothing in the Mastriani Award requiring or encouraging the change of schedules. Indeed, no evidence exists to suggest that there is any need to change the current structure. However, part of the package that provides the economic components embraced by the FOP herein is the work schedule language of the Mastriani Award. It is founded upon both the status quo and a 2005 Memorandum of Agreement negotiated by the Town and the PBA.

The consistency of having the rank and file and supervisors with the same contractual work schedule language is supported by the eighth criterion as well. It is a traditional element of contract negotiations that rank and file and supervisory work schedules be compatible and inter-related, especially in a law enforcement setting. The use of compatible schedules,

particularly in a patrol setting, is clearly the norm; it provides for the stable and consistent administration of a police operation.

The Cost of Living criterion has no relevancy to the narrow issue presented herein. It has absolutely no meaning with respect to determining which language proposal would be more reasonable for the contractual work schedule provision. Since the parties' offers on all other issues are identical, it is not necessary to apply the cost of living to resolve the impasse.

The Stipulations of the Parties criterion provides a substantial basis for the items awarded herein. As indicated, the parties have provided significant stipulations toward the resolution of the contract terms. These stipulations are based upon the earlier arbitration of issues under virtually the identical record and with a well-crafted and well-reasoned Award issued by Arbitrator Mastriani. They also include all the "signed off" items from earlier phases of these negotiations. Additionally, the stipulations include an agreement to the revision of the Grievance Procedure

to create a rotating panel of three arbitrators. All the stipulations are recognized herein and shall be incorporated the Award hereto.

The Arbitrator has carefully considered the FOP's concerns that the flexibility language of the Memorandum of Agreement may be used in a "whimsical", or unjustified manner without notice. The concern is noted and weighed. First of all, the provision proposed by the Town, as Awarded by Arbitrator Mastriani, provides reasonable notice. Additionally, should the flexibility be improperly applied in an arbitrary or discriminatory manner, the employees may have recourse through a grievance or other course of action. On balance, the arguments weigh strongly in support of the consistency of keeping the work schedule language identical in both the rank and file and the superior officers contracts. It shall be so ordered in the Award herein.

A W A R D

For the foregoing reasons IT IS HEREBY ORDERED that the terms of the collective bargaining agreement between the Town of Harrison and FOP Lodge No. 116 shall include the following:

(1) Duration

There shall be a five-year agreement effective January 1, 2007 through December 31, 2011.

(2) Health Insurance

Prescription co-pay: effective January 1, 2010 the co-pay shall be \$5.00 co-pay for generic drugs; \$10.00 for brand name drugs and \$20.00 for exotic drugs. Prescription on maintenance drugs shall be ordered through the mail order refill program. The corresponding amounts for mail order shall be the same for a ninety (90) day supply.

Effective January 1, 2011, unit employees shall contribute \$30.00 per month towards health insurance premiums regardless of plan selection coverage. The Town shall provide a Section 125 Plan to allow for pre-tax deductions. Employees hired after the date of the Award shall be entitled to medical insurance under the HMO option.

(3) Salaries

The salary schedule shall be increased by 3.5% effective on January 1, 2007, 3.5% effective January 1, 2008, 3.5% effective January 1, 2009, 3.5% effective January 1, 2010 and 3.25% effective January 1, 2011.

Effective January 1, 2008, the Firearm Protective Equipment and Maintenance stipend will be increased to 1.25%. This stipend shall be increased effective January 1, 2009 to 1.5%, effective January 1, 2010 to 1.75% and effective January 1, 2011 to 2.0%.

All economic terms, unless provided otherwise, are retroactive to each effective date for those presently employed and those who were employed on each effective date and retired on ordinary or disability pension prior to the date of the Award.

(4) Extra Duty Pay

Include language from the Town of Harrison Resolution 20468 regarding Extra Duty Assignment Pay in the contract and increase the hourly rate by \$5.00 to \$62.75 effective as soon as practicable. The Town shall have the right to increase the additional charges to the Extra Rate to reflect Social Security rate and/or the Town's charge for administration so long as the hourly rate received by the police officers remains unaffected. Any such changes shall be preceded by thirty (30) days notice to the PBA.

(5) Direct Deposit

As soon as practicable after the date of the this Award, the Town shall take steps to allow a unit employee, at his or her option, to have his or her paycheck directly deposited into the bank account of that employee's choice.

(6) Clothing Purchase and Maintenance Allowance

This allowance shall be \$650 in 2008, \$675 in 2009, \$700 in 2010 and \$725 in 2011.

(7) Work Schedule

The Memorandum of Agreement concerning the work schedule shall be incorporated into the Agreement. In the event that the Town decides to change, alter or modify the current work schedule, the Town must provide the FOP with no less than twenty-one (21) days notice before making such a change, except in the case of emergency.

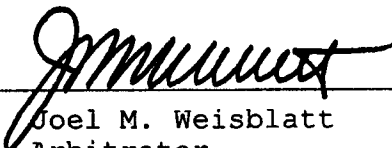
(8) Grievance Procedure

The Grievance Procedure shall be revised with the modification of the current single arbitrator structure to a rotating panel of 3 arbitrators: James Mastriani, Martin Scheinman and Joel Weisblatt. The selection of the arbitrator for grievance arbitration matters shall be rotated alphabetically.

(9) Previously Signed Off Items

All items previously signed off between the parties in the negotiations for this contract shall be incorporated in the collective bargaining agreement.

Dated: December 5, 2009
Skillman, N.J.


Joel M. Weisblatt
Arbitrator

On this 5th day of December, 2009, before me personally came and appeared Joel M. Weisblatt, to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.


Attorney-at-law