

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Interest Arbitration Between

CHERRY HILL TOWNSHIP

and

FOP LOCAL 28

Docket No. IA-95-110

AWARD OF INTEREST ARBITRATOR

The undersigned Arbitrator, having been designated in accordance with the arbitration agreement entered into by the above-named parties, and having been duly sworn, and having duly heard the proofs and allegations of the parties, AWARDS as follows:

Based on the evidence submitted and after due consideration of each of the statutory criteria contained in N.J.S.A. 34:13A-16 as well as evaluation of the evidence and the arguments submitted by the parties into the record, the following changes shall be made in the current collective bargaining agreement between the parties.

1. The term of the agreement shall be from January 1, 1995 through December 31, 1997.

2. There shall be an across-the-board wage increase of 3% effective January 1, 1995; 3.5% effective January 1, 1996; and 3.5% effective January 1, 1997. Bargaining unit employees shall be paid retroactive wage increases from January 1, 1995 through the date of payment within thirty days after the issuance of this Award.

3. In addition, effective January 1, 1996, there shall be a \$260.00 cash payment to all bargaining unit employees, including Investigators/Detectives. This payment shall be paid with the first payroll after January 1st of each year to each Police Officer who has submitted a written statement certifying that the money will be used solely for cleaning and maintenance of police uniforms.

4. Effective January 1, 1997, bargaining unit employees, including Investigators/Detectives may allocate \$150.00 of their current clothing allowance to be paid as a cash payment with the first payroll after July 1st of each year. This payment shall be paid with the first payroll after January 1st of each year to each Police Officer who has submitted a written statement certifying that the money will be used solely for cleaning and maintenance of police uniforms.

5. The Township shall provide a bullet-proof vest every five years for each bargaining unit member. A system shall be established to track and document the vest warranties and guarantees so that the vests shall be maintained in an effective condition. These vests shall be

provided at no cost to the bargaining unit employee and shall be of equal or better quality than the vests which have been provided to the bargaining unit in the past.

6. Effective January 1, 1997, the Township may pay the bargaining unit every two weeks on a Thursday.

7. The starting salary for Police Officers shall be frozen at its 1994 level for the term of this Agreement.

8. All other demands made by both parties are hereby denied.

December 9, 1996


Daniel F. Brent, Arbitrator

State of New Jersey
County of Mercer

On this 9th day of December, 1996 before me personally came and appeared Daniel F. Brent, to me known and known to me to be the individual described in the foregoing instrument, and he acknowledged to me that he executed the same.

Philip A. Shaver Esq

An Attorney at Law of the
State of New Jersey

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Several mediation sessions were conducted by Daniel F. Brent, duly designated as Interest Arbitrator to resolve the instant dispute. As no voluntary settlement was reached during mediation, formal arbitration hearings under the Police and Fire Public Interest Arbitration Reform Act were held at Cherry Hill Township Hall on July 15 and 16, 1996 before the Interest Arbitrator. Both parties attended these hearings, were represented by counsel, and were afforded full and equal opportunity to offer testimony under oath, to cross-examine witnesses, and to present evidence and arguments. Both parties submitted post-hearing briefs, and the record was declared closed on September 5, 1996. The Arbitrator requested and was granted by the parties an extension of time within which to render his Award.

APPEARANCES

FOR THE TOWNSHIP

J. P. Lee Cohen, Esq. of Decotiis, Fitzpatrick and Gluck,
Esqs.

Susan Jacobucci, Esq., Township Solicitor

Susan Bass Levin, Mayor

Francis Blaum-Naughton, Esq.

Tracie Valleley, Mayoral Aide

FOR THE FOP

Steven C. Richman, Esq. of Markowitz & Richman, Esqs.

Robert Balzer, President

Robert W. Fox, Past President

Ed Giordano, FOP State Labor Committee Chairman

Joseph W. Vitarelli, Jr., Second Vice President

TOWNSHIP POSITION

The Township proposed a three-year term consisting of calendar years 1995, 1996 and 1997, with across-the-board wage increases of 3%, 3% and 3.5% respectively for each year.

The Township further proposed that all managed healthcare (HMO) hospital and medical benefits currently provided to employees and their families by the Township be retained, except that the Township reserved the right to alter during the term of the collective bargaining agreement the medical prescription and dental insurance plans if equivalent benefits are substituted. The Township would be limited to effectuating such a change in the type of plan not more than once during a twelve-month period.

The only medical insurance plan for which the Township would pay the entire premium would be HMO coverage. Employees preferring to maintain Medallion Blue Select or other indemnity plan would pay the difference in the annual premium between the cost to the Township of the managed healthcare plan and such other plan.

The Township also proposed to supply each FOP bargaining unit member with a new bullet-proof vest once every five years, in addition to the Police Officer's annual clothing allowance.

FOP POSITION

The FOP sought across-the-board wage increases of:

2% effective 1/1/95	2% effective 1/1/96
2% effective 7/1/95	2% effective 7/1/96
4% effective 1/1/97	

The FOP seeks a uniform maintenance allowance effective 1/1/95 of \$260.00, paid annually in cash on the first payroll after July 1st.

In addition, the FOP proposed that, effective January 1, 1995, employees may elect to convert \$150.00 of their current annual clothing allowance to a cash payment to be used for uniform maintenance. This payment would also be made annually in the first payroll after July 1st.

REVISED STATUTORY CRITERIA

N.J.S.A. 34:13A-16(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 the 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 the wages, salaries, compensation, 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 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.

DISCUSSION

The Police and Fire Public Interest Arbitration Act mandates that Interest Arbitrators render their decisions in accordance with the applicable statutory criteria contained in N.J.S.A. 34:13A-16. The statute grants the Arbitrator the authority to "decide the dispute based on a reasonable determination of the issues, giving due weight to those factors . . . that are judged relevant for the resolution of the specific dispute." This Arbitrator has examined the numerous exhibits submitted by the parties, the oral testimony adduced at the arbitration hearing, and the arguments in the parties' briefs. The analysis of the Arbitrator's findings and conclusions based on the statutory criteria found in N.J.S.A. 34:13A-16(g) follows.

1. The interest and welfare of the public.

The interest and welfare of the public is comprised of many factors. The public's ability to rely on a well trained, professional police force is enhanced when police officers receive a salary commensurate with their skill, training, and responsibility. The stability resulting from the statutory prohibition against strikes by police officers is another benefit to the public which must be recognized when weighing competing interests to establish ample compensation for the bargaining unit without unduly burdening the taxpayers of Cherry Hill.

The Police and Fire Public Interest Arbitration Act requires that an assessment of the interests and welfare of the public consider the limitations imposed on the Employer by NJSA 40A:4-45.1 et seq., popularly known as the Cap Law. The Town of Cherry Hill is not in danger of exceeding its statutory cap, nor has the Town asserted an inability to pay based on the constraints imposed by the Cap Law. In fact, the Township has increased its cap bank during the past two years. Furthermore, the Township has not demonstrated that any project will be curtailed or eliminated if the level of increase sought by the FOP on behalf of bargaining unit Police Officers were granted.

This statutory factor highlights the continuing tension between the taxpayers' interest in maintaining a stable, preferably low, tax rate and the interest of the public in assuring competent police protection by professional police officers who are adequately compensated for their training, experience, and responsibilities. The citizens of Cherry Hill have enjoyed a tax rate that has not been increased for several years. There is no evidence that this tax rate cannot be maintained at its present level if the pattern of wage settlement which the Township has achieved with its blue collar, white collar, and managerial employees for the years at issue is not replicated exactly with the Police bargaining unit.

The budget documents in evidence support the FOP's contention that the Township has sufficient funds available to provide the increased benefits without exceeding the budget cap or without imposing an undue hardship on the taxpayers. For example, the Current Taxes - 1995 Levy calculation (Union Exhibit No. 13) shows that the Town collected 98.34% of the total 1995 levy. Yet, the 1996 budget creates a reserve for uncollected taxes based on an estimated percent of tax collections of 97.3%. While this may be a prudent estimate based on the fiscal year 1994 and 1995 percentages of collection, which average 96.625%, the increased reserve reflects the availability of funds. Union Exhibit No. 20 further establishes that the excess in revenue at the end of the 1995 fiscal year in the amount of \$846,057.00 would be sufficient to cover the incremental amount awarded above the Township's offer without imposing any undue burden on the taxpayers or restricting the program or operations of the Township. Furthermore, the independent operations of the Municipal Sewer Operating Utility also contains additional funds which are available to this purpose without adversely affecting the public interest. Consequently, the Township has ample funds set aside to provide the increased benefits without requiring an increase in taxes or a decrease in other programs.

The detrimental impact on the public interest which may arise if a police force becomes disgruntled because it is substantially underpaid in relation to the employer's resources and in relation to the remuneration received by similarly situated police employees in other jurisdictions adversely affects a community. That situation does not exist in the instant case. Whether the package of wages and benefits proposed by the Town, the package proposed by the FOP, or a modification of their positions is awarded in the instant case, the interests and welfare of the public will not be diminished or disturbed, particularly with reference to N.J.S.A. 40A:4-45.1 et seq.

2. Comparison of wages.

The second statutory factor requires a comparison of the 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. It is difficult to compare the unique role played by Police Officers with employees in the private sector. Although some private sector employees may be exposed to danger when intervening in disputes, notably in residential mental health facilities, or through exposure to hazardous working conditions, the knowledge of law and procedures, the emergency training, the street experience, and other attributes which enable a Police Officer to be

ready, willing and able to protect the public in a variety of exigencies is unparalleled in the private sector. Other municipal employees do not carry weapons, are not subject to the same type of liability for a monetary lapse in judgment or performance, and do not deal with the types of stresses and unpredictable situations that bargaining unit Police Officers frequently confront, whether by stopping vehicles at night, intervening in domestic disputes, or responding to crimes in progress.

Because of their training and the responsibility they bear as armed peace officers charged with protecting the public, Police Officers have traditionally been among the highest-paid non-management employees in public employment. The police are the highest-paid group of employees in Cherry Hill. Moreover, many Township clerical and other employees are paid salaries far lower than the salaries paid to the Police. Although any level of wage increase augments the bargaining unit's wages by larger dollar increases than those received by blue-collar or white collar employees because the percentage of wage increase is compounding on a higher base, the historic disparity between police and non-police salaries in Cherry Hill Township, achieved over years of collective bargaining, should not be precipitously disturbed.

The differential in the wage packages proposed by each party is approximately 2.5% over three years. A difference of less than 1% per year will not substantially effect the differential between the Police and other Cherry Hill employees if the FOP position were granted, nor would bargaining unit employees experience a markedly lower standard of living if the Township offer were awarded.

3. The over-all compensation presently received by the employees.

The Township's position is predicated on assertions that the current compensation of the bargaining unit is adequate, that the Police Officers do not deserve an increase of greater proportion than the increases received by the Superior Officers or other Township employees, and that a prudent allocation of Township resources sets a higher priority on maintaining a stable tax rate and providing other services to the community than on increasing over-all police compensation to the degree sought by the FOP. In summary, the Township argues that although they have the ability to pay more, there is no compelling reason to increase the level of compensation significantly beyond the rate of inflation in the cost of living.

The guidelines for comparison established by N.J.S.A. 34:13A-16.2 recite many aspects of comparability envisioned by the Legislature and promulgated by PERC. I have utilized these categories in evaluating the various benefits currently received by the bargaining unit. The wage adjustment ordered in this Award maintains the placement of the Cherry Hill Police bargaining unit in the mid-range of comparable communities in Camden and Burlington Counties. The bargaining unit's position will be neither significantly advanced nor materially diminished as a result of this Award.

The package of benefits, including longevity, enjoyed by the Cherry Hill Police Department is comparable to other similarly situated employees. It should be noted that the longevity benefits available to the Cherry Hill bargaining unit rank fourth among the other twenty-nine Camden County municipalities. Documents in evidence, particularly Union Exhibit No. 4 page 10, establish that the 1994 level of compensation received by the bargaining unit was approximately \$689.00 above the average of the other communities cited. A similar result obtains if the 1995 and 1996 figures for the same communities are compared to the augmented wages of a Cherry Hill Township Police Officer established by operation of this Award.

A 3% increase effective January 1, 1995 will raise the top Patrolman's salary to \$47,458.28. A second year raise will increase the maximum salary received by a Cherry Hill Patrolman to \$49,119.32. In addition to their salary, bargaining unit employees receive substantial longevity payments. Most Police Departments of other comparable jurisdictions cited by the parties, including other jurisdictions in Camden County, receive lower salary and longevity benefits than the Cherry Hill bargaining unit. With their comparatively high longevity benefits, bargaining unit police officers will not be substantially below their colleagues in Voorhees (Camden County), and will be better paid than Patrolmen in Camden City. With the exception of Pennsauken, the maximum salary plus longevity payable at the 1996 salary rate is not significantly different from the maximum base salary with longevity enjoyed by other comparable communities cited by the parties, such as Camden, Gloucester, Voorhees and Winslow. The other benefits and wages enjoyed by the bargaining unit are not significantly below those enjoyed by Police Officers in comparable communities cited by the parties. Consequently, when the level of increase provided by the instant Award is computed, the bargaining unit retains its current approximate ranking with regard to other similarly situated communities.

Testimony by the Township's witness corroborated the Arbitrator's examination of the budget documents in establishing that the Township's history has been to generate greater surplus than it has retained as a balance at the end of each of year. The Township lowered the tax rate in 1996 compared to 1995 and generated a sewer utility operating fund surplus. The tax rate was reduced from 32¢ to 28.76¢ per \$100 valuation in 1996 versus 1994 and 1995. The tax rate in 1993 was 31¢ per \$100 valuation. The Township's operational surplus that is the excess of revenues over expenditures was \$7,722,658.00. In addition, there is non-budget revenue included in the surplus of \$147,354.00. Moreover, the Township earned \$718,000.00 extra interest on investments and had a higher collection rate of delinquent taxes than was anticipated in the current budget. This brought in \$4,773,681.00 in extra current taxes.

Unspent appropriation items roll over into a category called Appropriation Reserves. Any balance remaining in Appropriation Reserves at the end of the second year lapse into surplus by operation of statute. The 1995 audit report shows that \$600,000.00 lapsed into surplus. According to the Township, 30% of appropriated revenues actually lapsed into surplus in the following year during each of the past three years. Approximately \$1,300,000.00 lapsed into surplus in fiscal year 1996. The Township also reduced the

estimated delinquent tax collections from \$4,000,000 to \$1,400,000 in 1996 versus 1995. In addition, the Township only anticipated \$2,184,000 versus \$1,800,000 in fiscal year 1996.

The Township maintains a profitable sewer utility which contributed \$900,000 to the general fund and then generated a substantial surplus in addition. The Township budgeted \$2,347,996.00 below the 3% cap level without banking. Therefore, the Township can afford the FOP's request.

There is a philosophical question of how much is enough in terms of lowering taxes or in terms of compensating Police Officers. The fact that municipal employees enjoying less bargaining leverage than the police have accepted settlements at 3%, 3% and 3.5%, along with changes to the health plan, is not dispositive of the instant dispute. Neither is the fact that the Superior Officers opted for this same level of wage increase in order to achieve an amendment to their pension contribution rates which would inure to the benefit of retirees. Given the longevity of the constituency in each bargaining unit, this proposed benefit is of much less value to the police bargaining unit than to the Superior Officers bargaining unit.

However, the Township is also attempting to reduce the scope of employer-paid medical and hospitalization benefits by forcing employees who have elected the indemnity plan previously provided to pay the difference in premium cost between the cost of the indemnity plan and the HMO elected by their colleagues provided free of charge to all other Township employees. This co-payment represents a major alteration in the terms and conditions of employment. Such a major change in an important benefit, which affects an employee's ability to select a physician or to change physicians, should be effectuated through negotiation. Impasse on an issue which affects the right to choose one's physician should not be resolved by the fiat of an Arbitrator.

The parties' inability to negotiate voluntary abandonment of the contractual right to an indemnity plan without substantial consideration supports this conclusion. Were an arbitrator to order such a result, the level of wages should be augmented on the order of an additional .7% per year for each of three years to compensate for the increased costs incurred by the significant minority of the bargaining unit who continue to elect the indemnity plan coverage option, as averaged over the entire bargaining unit. The Township has not offered a wage increase that includes a component of this magnitude allocated to achieving this goal. Consequently, there is inadequate

basis to award such a result unless the Arbitrator imposed a substantial wage increase reflecting additional compensation of this magnitude.

4. Stipulations of the parties.

There were no stipulations of the parties.

5. The lawful authority of the employer.

The Cap Law, N.J.S.A. 40A:45.1 et seq., is not a significant factor in the instant case because the Township of Cherry Hill has ample funds in its cap bank and would not approach exceeding its allowable cap expenditures, even if the FOP position were granted. The budget contains items such as investment income and collection of delinquent taxes which are subject to adjustment by the Township and which demonstrate that substantial funds remain available for the payment of the difference between the parties' two positions without approaching the Cap limits, raising the tax rate, or requiring the discontinuation of any program. Consequently, there is no legal impediment to granting the wage increase and benefit adjustments sought by the FOP.

6. The financial impact on the governing unit, its residents, and taxpayers.

The Police and Fire Public Interest Arbitration Statute requires the Arbitrator to:

. . . 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.

Although the budgets submitted for 1995 and 1996 provide adequate funds for the level of increase proposed by the Township, the differential between the parties' positions could also be absorbed without having any significant impact on the municipal purposes element of the local property tax because the differential can be paid by other accumulated monies which, upon analysis of the Township's most recent two budgets, are available to fund more than the Township's proposed wage increase.

No evidence has been introduced regarding the impact of the award for each income sector of the property taxpayers of the local unit or on the impact of the Award on the ability of the governing body to maintain existing local programs and services, to expand existing local programs and services for which public monies have been designated by the governing body, the proposed local budget, or to initiate any new programs or services for which public monies have

been designated by the governing body in the proposed unit. Therefore, this aspect need not be analyzed further given the statutory predicate and the absence of evidence that there will be any adverse impact.

At the least, the taxpayers of Cherry Hill must absorb an increase of approximately \$477,000 in police salaries over the term of the collective bargaining agreement. Much of this incremental increase is due to movement of Police Officers earning less than maximum salary through the salary guidelines established by previous collective bargaining agreements. The new money previously committed must be paid regardless of the outcome of the instant case. The additional costs represented by the Award herein will have minimal additional impact on the municipality or the taxpayers.

7. The cost of living.

The annual increases in the cost of living since 1994 have been lower than the wage increases offered by the Township. Consequently, the cost of living is not a primary factor in determining the sufficiency or desirability of the wage increases. The cost of living has not increased to an extent which would justify adopting the FOP's proposal. Nor does the evidence support a projection that the cost of living will rise appreciably during the term of the new collective bargaining agreement.

8. Continuity and stability of employment.

According to the testimony, the Township has experienced no problem in retaining bargaining unit employees or in attracting quality candidates for vacancies or retaining current members of the bargaining unit. The Township's offer will not materially erode the relative position of this bargaining unit compared to other local police departments in terms of attracting qualified candidates as vacancies occur, nor will the FOP's position materially enhance the Township's ability to retain or attract competent Police Officers. Consequently, the starting wage rate for a Patrolman shall remain unchanged during the term of this contract.

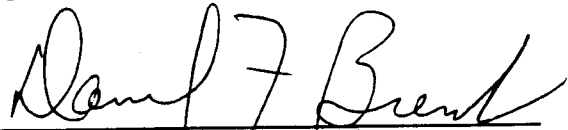
In summary, the Township's offer is not unreasonable. However, the Township's offer will slightly diminish the standing of the bargaining unit compared to similarly situated police jurisdictions in comparable communities. Therefore, some augmentation of the Township's offer is appropriate.

The addition of an additional .5% in the second year and an enhancement of the clothing allowance, a benefit unique to the Police Department, will permit this bargaining unit to continue receiving comparable wages and benefits to their colleagues situated nearby without unduly straining

the Township's resources. No further amelioration of the Township's medical insurance situation can be justified without substantial additional wage or benefit inducements, which should not be imposed by an Interest Arbitrator, but should be negotiated directly by the parties. Absent such other inducement, the wage pattern offered by the Township, minimally enhanced, satisfies the applicable statutory criteria for determining appropriate package of salary and benefits for this contract term.

Having given due weight to the statutory factors discussed above, all of which have been judged relevant for the resolution of the instant dispute, except for the absence of stipulations between the parties, the Arbitrator hereby determines that the following Award constitutes the best balance of the competing interests of the parties. In so doing, the Arbitrator has specifically addressed the implications and limitations imposed by Public Law 1976 (N.J.S.A. 40A:4-45.1 et seq.). The wages and benefits paid to the bargaining unit shall be increased as set forth in the accompanying Award of Interest Arbitrator.

December 9, 1996


Daniel F. Brent, Arbitrator

