

PUBLIC EMPLOYMENT RELATIONS COMMISSION
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In the Matter of the Arbitration

Docket #IA-97-8

between

BOROUGH OF BOGOTA,

Hearing: March 20, 1998

"Company"

-and-

P.B.A. LOCAL NO. 86,

"Union"

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APPEARANCES

For the Borough:

MURRAY, MURRAY & CORRIGAN
Robert E. Murray, Esq.

For the Union:

LOCCKE & CORREIA
Richard D. Loccke, Esq.

I. BACKGROUND

Certain background information is useful: The Boro and the PBA have had a collective bargaining relationship for many years. Their last agreement was due to expire on December 31, 1995. Negotiations for a successor agreement extended into late 1996. They were unsuccessful.

On December 9, 1996, I was appointed to serve as Interest Arbitrator. I met with the parties on March 20, 1997. An effort to mediate the dispute was unsuccessful. A formal hearing was set for May 13, 1997. The parties presented an enormous amount of documentary evidence, as well as testimony.

On September 10, 1997, I rendered a "conventional" decision. The only matters at issue were economic in nature: salaries; term; medical insurance plan; vacations; and compensatory overtime. (The latter three issues were raised by the Boro, not the Union.)

I ruled that the Boro had failed to put forth sufficient justification for switching to a different medical plan. For that reason (and others set forth on page 35 of my award), I rejected the Boro's proposal. I also rejected the Boro's proposal to reduce the existing vacation schedule for newly hired employees. I agreed that the compensatory time issue should be resolved based upon a December 20, 1993 letter defining a settlement.

These issues, suffice it to say, were not at the core of the parties' dispute. The two principal economic items

in dispute were clearly term and salaries.*

The Boro's proposal was for a two year (January 1, 1996-December 31, 1997) contract term. The Union's was for a four year (January 1, 1996-December 31, 1999) contract term.

The Boro's salary proposal was two-pronged. It proposed two four (4%) percent wage increases, one to be effective on January 1, 1996 and one to be effective on January 1, 1997. However, this proposal was contingent upon a change in the text of the Agreement (specifically, Article LV) which would give it the right to hire civilian dispatchers to replace police dispatchers. In the event Article LV was not modified (i.e. that it did not obtain the right to replace police dispatchers with civilians), the Boro proposed two three (3%) percent salary increases: the first to be effective on January 1, 1996 and the second to be effective on January 1, 1997.**

Since I had ruled that the replacement of police dispatchers issue was barred from consideration in the proceeding, I said "...I will assume the Boro's wage proposal is

*One issue the Boro sought to raise - the use of civilians to replace police dispatchers (also referred to as "assignment of personnel") - was denied on procedural grounds. That is, I held that the issue was beyond the scope of the proceeding. The Boro, I said, was "barred from raising it in this arbitration."

**The Boro also sought to establish a "new hire salary guide" effective January 1, 1997. The new guide would "freeze" the existing hiring rate and replace the current five step progression with an eight step progression.

for two three (3%) percent wage increases."*

The Union's proposal was a series of four five (5%) percent increases on January 1st of 1996, 1997, 1998 and 1999.

After reviewing the statutory criteria, as I was obliged to do, I reached these key decisions on the two core economic issues: I held that a two-year (January 1, 1996-December 31, 1997) term was appropriate. I held that two across-the-board increases of 4.5 percent in each of two years was appropriate. That is, a 4.5 percent increase on January 1, 1996 and 4.5 percent increase on January 1, 1997.

II. The Boro's Appeal

Following the issuance of my decision on September 10, 1997, the Boro filed an appeal with the Public Employment Relations Commission ("PERC"). It requested that PERC vacate my award and remand it to a new arbitrator. It asserted I erred in excluding its civilian dispatcher proposal. It argued it was

*On page 28 of my decision, I wrote:

"There is no doubt in my mind that the Borough designed its "double barreled" wage proposal for a single purpose. It wanted to force me to reconsider its proposal to transfer the dispatcher function from the police unit to civilian personnel. It took exception to my ruling at the May 13, 1997 hearing. It spent much of its post-hearing brief continuing to press for a change in that position. I find that action neither in keeping with the letter nor the spirit of the Act. Section (f) 1 requires the parties to submit their final offers on each economic issue at dispute. That is required so that an Arbitrator can apply the various sub-section g factors to reach an appropriate conclusion, to determine whether the total net cost of economic changes are reasonable. An "either/or" position to force an item ruled outside the proceedings defeats that purpose...."

prejudiced by the timing of my ruling on the issues to be included in the proceeding, and that I erred in finding the PBA had submitted a final offer which satisfied N.J.A.C. 19:16-5.7(f). It also asserted I failed properly to apply the relevant statutory criteria and all of its evidence.

III. PERC'S RULING

On January 30, 1998, PERC issued its decision. It rejected the Borough's procedural arguments. It found no prejudice to the Boro by my alleged failure to determine the issues to be included in the proceeding prior to the start of the formal hearing. It concluded I had ruled expeditiously (with three weeks of the PBA's objection) and before any evidence was presented or testimony taken. The timing of my ruling, it said, "did not prejudice the Borough." (p.4)

PERC also rejected the Boro's claim that in submitting its final offer, the PBA referenced its positions in mediation and did not restate them in a separate written document.

PERC found I had not abused my discretion in excluding, as untimely, the Boro's civilian dispatcher proposal. It accepted my analysis of the issue. Nor, it added, did the Boro suffer any injustice from the exclusion ruling. For it is maintaining a pending unfair practice proceeding wherein it asserts it has a prerogative to implement its dispatch proposal without negotiations.

PERC then analyzed my consideration of the evidence and application of the statutory criteria in N.J.S.A. 34:13A-

16g. It found I had given "considerable weight" to the "comparability" and "overall compensation" criteria. It found I had reviewed the evidence submitted on the "lawful authority," "financial impact," "cost of living" and other criteria. It noted the Boro did not dispute my findings concerning its financial condition or the impact of the CAP law (the "interest and welfare of the public").

However, PERC found my consideration of the Boro's evidence concerning private sector wage increases did not satisfy N.J.S.A. 34:13A-16g(2). It took specific exception to my (in hindsight, inartfully phrased) statement that relative to a report of private sector wage increases in Bergen County between 1994 and 1995: "There is serious doubt in my mind that such a general 'shot gun' approach should be given any real consideration in making a determination." Finding it was "inappropriate" for me to "seriously doubt" the survey prepared pursuant to N.J.S.A. 34:13A-16.6 should be given any "real consideration," PERC concluded a remand is required.

On remand, I was directed to consider the Boro's "evidence on private sector wage increases in conjunction with the parties' other evidence." I "may give that evidence the weight [I] deem appropriate, but may not decline to give it any real consideration...."

PERC also found a remand was required because I discussed the Boro's four (4%) percent increase proposal - in particular my reference to the small cost differential between

my (4.5%) awards and a 4% proposal.

PERC rejected the Boro's motion to remand the case to a new arbitrator. It expressed confidence I will reconsider my award in accordance with its opinion.

I was directed to complete reconsideration within 60 days of the remand.

IV. THE REHEARING

Following my receipt of PERC's order, on February 6, 1998 I wrote to counsel for the Boro and PBA.* In relevant part, I said:

Given the narrow scope of the Commission's concern, i.e., the weight afforded to private sector wage increases, I do not believe it is necessary to convene a rehearing. The parties can submit their views and/or arguments on the point in writing. If, after reviewing your respective positions I think it necessary to convene a rehearing, I shall do so.

Since the Commission has required me to complete reconsideration by March 30, 1998, an expeditious approach is appropriate. Please submit your positions to me postmarked no later than February 20, 1998.

On February 19, 1998, Mr. Dorf wrote to request that: (1) the time for reconsideration be extended an additional 45 days, i.e., to May 15, 1998; and (2) a rehearing be scheduled. On February 23, 1998, Mr. Loccke objected to any extension. It resisted a rehearing, preferring to rely on written submissions given the narrow scope of the remand. However, it was willing to accede to my direction.

On February 26, 1998, I responded to Messrs. Dorf

*At the time, G. L. Dorf was still representing the Boro.

and Loccke. I rejected the Boro's request for an extension of time. I granted its request for a rehearing.

A rehearing was subsequently set for March 20, 1998. At that time the parties were given an opportunity to present testimony and documentary evidence. The hearing was declared closed at its conclusion. (Neither party sought to file post-hearing statements.)

On March 27, 1998, I advised PERC I could not comply with a March 30 deadline for reconsideration. I cited the fact (1) scheduling conflicts prevented the scheduling of a hearing prior to March 20, 1998; (2) the transcript was not available before March 26, 1998; and (3) dozens of exhibits filling three thick volumes had to be digested; and (4) the logistics of preparing, typing, proof-reading and mailing a decision within three days made compliance impossible. I requested a 30-day extension. PERC, on April 7, 1998, graciously granted my request.

V. RECONSIDERATION

It is time to turn to the core of this case. PERC, as noted above, remanded this case to me for reconsideration. It found my consideration of the Boro's evidence concerning private sector wage increases "...did not comport with N.J.S.A. 34:13A-16 g (2)."

N.J.S.A. 34:13A-16 g (2)(a) calls, among other things, for a comparison of wages of employees involved in this proceeding with those "in private employment in general." I am,

PERC said, obliged to consider evidence pertaining to "private employment in general" whether or not the work of private sector employees is similar to that of police (or fire) officers.

A. THE ORIGINAL PROCEEDING

At the initial hearing in this matter, the Boro submitted a single exhibit - No. 14 - relating to the "private employment in general" criterion. It was a report released by PERC on August 30, 1996. It related to private sector wage changes which had been compiled by the New Jersey Department of Labor ("N.J.D.O.L.") pursuant to N.J.S.A. 34:13A-16.6. The report showed "changes in the average wages of private sector jobs covered under the state's unemployment insurance system."

In its post-hearing brief, the Boro relied exclusively upon that report. It argued:

"The Borough's [3%, 3%] is reasonable when compared to private sector wage increases in Bergen County. Private sector wages in Bergen County increased by only three and six tenths (3.6%) per cent in fiscal year 1995. (Exhibit 14). The Borough's proposal is comparable to private sector wages to private sector wages (sic) which the union's demand of five (5%) percent far exceeds private sector wages."

It is fair to say that I rejected - or, at the least, discounted - the Boro's reliance on the DOL report. I found it unpersuasive. Rather than saying that, however, I remarked that I seriously doubted whether it "should be given any real consideration in making a determination." In that, PERC concluded, I erred. It held it was "inappropriate" for me to seriously doubt that the report, i.e., Exhibit 14, "should be

given any 'real consideration.'

Under the circumstances, it is proper that I now revisit Boro Exhibit No. 14, that I give it "real consideration."

The N.J.D.O.L. report analyzed wages changes in private sector jobs between 1994 and 1995 in 21 state counties. It shows that wages increased in all but one of the counties, Hunterdon. The average increase was 3.4 percent. The wage increase in Bergen County, where Bogota is located, was 3.6 percent.

It is interesting to note that 11 of the 21 counties surveyed had wage changes in private sector jobs which exceeded 3.0 percent. (That, of course was the Boro's wage proposal for 1996.) Those counties were:

Bergen	-	3.6%
Burlington	-	3.4%
Essex	-	3.9%
Hudson	-	5.6%
Middlesex	-	3.5%
Monmouth	-	3.1%
Morris	-	4.4%
Salem	-	3.8%
Somerset	-	4.9%
Sussex	-	6.6%
Warren	-	3.1%

The average increase of private sector wages in these 11 counties was 4.17 percent.

The inescapable conclusion is that the Boro's three (3%) proposal compares unfavorably with the results of the N.J.D.O.L. report. Bergen County private sector wage increases (3.6%) exceeded it by 20 percent. The state-wide private sector average increase (3.4%) exceeded it by 13.3 percent. And the average increase of the 11 counties which had increases of over 3.0 percent (4.17%) exceeded it by 39 percent.

Thus, it is apparent that a detailed analysis of the evidence submitted in the original proceeding simply did not lend real support to the Boro's position on this criterion. I am compelled to observe, then, that even if Boro Exhibit No. 14 had been given "real consideration" it would not have outweighed the other criteria on which I relied to make my award.

B. THE REOPENED HEARING

At the March 20, 1998 re-hearing following remand, the parties were given an opportunity to present evidence they deemed appropriate. Neither side presented testimony. The PBA submitted a written statement in support of its position. (PBA No. 1) The Boro presented three volumes of exhibits (Employer Nos. I, II and III). Its position, simply stated, is that this evidence justifies a modification of my original award.

I have reviewed the evidence presented in detail.

Employer Exhibits II and III contain evidence related to 15 "recent contract settlements," and comparisons of Bogota salaries (at the Patrolman, Sergeant and Lieutenant

ranks) with "major area cities." None of the material in Employer Exhibits Nos. II and III, in my judgment bears directly upon the "private sector in general" criterion at issue now. To wit:

Two of the "recent contract settlement" documents relate to the City of Philadelphia - an area far removed from Bogota. One (Exhibit G) concerns an arbitration award between the City of Philadelphia and the FOP covering the period January 1, 1992 through June 30, 1996. One (Exhibit H) concerns the City of Philadelphia and DC 47 of AFSCME (the City's "blue collar" group) for the period January 1, 1993 through June 30, 1996. Apart from the limited comparability information contained therein, the documents are more of historical than current interest.

A great deal of the information contained in Exhibits A-F and I-P relates to calendar years other than the two (i.e., 1996, 1997) at issue here. They deal with calendar years 1993-1995 and 1998-2000 - a three-year span on either side of 1996-1997. Other documents (Exhibits A, B and C) do not deal with municipal/county settlements or awards relating to police or fire officers. Rather, they relate to state-wide agreements involving non-uniformed employees. Exhibits P, Q and R seek to compare 1994 salaries in Bogota with those of "major cities." That is, to Jersey City, Atlantic City, Newark, Elizabeth, Camden, Trenton and New York City. These comparisons - apart from being dated - are not useful as a measure of comparability.

Salaries paid to police in those cities (regardless of year) have little bearing upon salaries paid to police in a small Bergen County community such as Bogota. There is relatively little relationship between Bogota's financial situation, its tax base, its population, etc. and "major cities" in New Jersey or New York City.

In sum, I conclude the evidence contained in Employer Exhibits II and III is not entitled to very much weight in general, and to even less weight as regards the central issue before me on remand: the "public employment in general" criterion.

A different conclusion must be reached as regards Employer Exhibit I. It is far more relevant - or at least parts of it are.*

Several of the documents introduced as part of Exhibit I reflect recent national trends. For example, Exhibit B reflects a July 30, 1997 report from the Bureau of National Affairs' Daily Labor Report that for the year ending June 30,

*Some parts simply do not appear to be very useful analytical aids. For example: Exhibit A, compares occupational average wages of Judges, Prosecutors, Financial Planners, etal with 1995 Bogota Police salaries; Exhibit C, is an article dealing with the way some business leaders expect to reward workers in ways other than salaries; Exhibit D, reports that lump sum payments were found in 26 percent of private sector pacts negotiated in 1996; Exhibit G, (among other things) compares hourly average wages of lawyers and judges; Exhibit H, relates to the recently negotiated six-year contract between the UAW and the Deere Co.; Exhibit I, reports that lump sum payments were found in 23 percent of private sector contracts in 1997; Exhibit J, reports on mass layoffs; Exhibits O, S and T, relate to continued low inflation rate expectations; Exhibit Q, predicts higher pay will elude many workers; and Exhibit U, forecasts a moderate growth rate.

1997, private industry compensation levels rose 2.9 percent - a relatively modest rate. That figure, of course, covers the entire country and - it is fair to assume - is skewed lower due to the inclusion of reported increases in states with relatively low salary rates (e.g. the south, the southwest). Exhibits E, F and R all report that median first year increases negotiated in 1997 were at 3 percent. As an analytical tool, medians are of limited value. They simply serve as a dividing point on a continuum. They are less useful than average mean increases, or weighted average increases. Exhibits K, L and M reflect specific settlements in three separate industries: railroads; electric power; and local transit. The first (AMTRAK/BMWE) resulted in three 3.5 percent increases, plus a lump sum and "equity" payments. The second (Northern States Power/IBEW) resulted in wage increases of 6 percent over a three-year term, plus increases in 401(K) plan matches and improvements in severance benefits. The third (Bay Area Transit/Transit Workers) reflected a \$3,000 lump sum payment, followed by three successive 4 percent raises.

It is fair to say that the above referenced exhibits lend some support to the Boro's position. I believe, however that another document - one not introduced in evidence - should be given arbitral notice. It is the N.J.D.O.L. report showing changes in the average wages of private sector jobs covered under the state's unemployment insurance program between 1995 and 1996. The report was prepared pursuant to N.J.S.A. 34:13A-16.6. It was provided to the PERC Special Panel of Interest

Arbitrators in November 1997. It is the September 1997 report which succeeds Boro Exhibit 14, referred to above. The report's relevance cannot be questioned. It is entitled to far more weight than the national BNA survey.

Table I of the report reveals that in a wide range of industries, the average increase in wages between 1995 and 1996 was 4.0 percent. Table 2 reflects the average increase in private sector wages in 21 counties was 4.3 percent. Only 2 counties (Passaic and Warren) had increases which fell below 3.0 percent. Ten counties had increases which ranged between 3.0 and 4.0 percent. Nine counties had increases which exceeded 4.0 percent. They are:

Burlington	-	4.6%
Essex	-	4.1%
Gloucester	-	4.1%
Hudson	-	7.1%
Hunterdon	-	7.7%
Middlesex	-	4.9%
Morris	-	6.6%
Salem	-	5.4%
Sussex	-	4.9%

I believe the N.J.D.O.L. report is entitled to considerable weight. For one thing, it is produced by the DOL pursuant to the Legislature's mandate. For another, it focuses upon private sector wage increases in this state. It shows that statewide average wage increases between 1995 and 1996 were 4.3

percent. That number was nearly a full percentage point higher than the previous year. It is significantly closer to the PBA's proposal (5 percent) than to the Boro's (3 percent). It very closely approximates what I concluded should be the level of increase: 4.5 percent.

Overall, I am persuaded that an analysis of the several statutory criteria fully supports an award of a 4.5 percent raise in 1996 and 1997.* To review, there is no reason to conclude the "interest and welfare of the public" will be adversely affected. The CAP law will not, as I found earlier, play any major role here. The Boro has underspent the Cap in the past few years. It has accumulated substantial "Cap reserves." It never asserted that the PBA's 5 percent proposals - let alone two 4.5 percent raises - would impinge upon its ability to meet its Cap obligations. Moreover, even if local taxes are relatively high, the Boro has taken a number of actions to reduce costs and to offset reduced State aid. It has reduced staff. It has cut hours. The Police Department was affected as well. There are fewer Captains, fewer Lieutenants and fewer Sergeants than in the recent past. The bargaining unit has shrunk by nearly 20 percent.

*I note that at the March 20, 1998 hearing, the Boro raised an argument to the effect the incremental nature of any increase must be considered. I agree. But that is true for any cost analysis. Part of the argument raised relates to the age-old dispute over "old" money/"new" money. I - as do most (if not all) arbitrators - believe the costs incurred in creation of schedules such as salary progressions cannot repeatedly be charged against the overall cost of a package. The assumption must be that that cost was considered - and "charged" - when originally adopted.

Second, heavy weight must be given to the "comparability" factor. The evidence established beyond any doubt that a Bogota Police Officer's salary is low compared to other communities. Their over-all benefits are not excessive when compared with other local communities. They certainly do not make up for the relatively low salaries. It is true (as I noted on p.30 of my initial award) that four communities the Boro stressed were most comparable to Bogota had relatively low percentage raises in 1996 and 1997. But two of those four communities had a top-rated Patrolman's base salary 1996 which exceeded Bogota's 1995 salary by over \$9,000. That is, by a margin of over 12 percent. Even two 4.5 percent raises will not "catch up." Police in other Bergen County communities received raises far closer to 4.5 percent increases than the Boro's proposed 3.0 percent increases.*

The "private sector" criterion has been discussed extensively above. It is necessary to say only that the evidence supports the PBA's position appreciably more than the Boro's.

The Boro's December 31, 1996 audit statement reflects a community which is not in financial straits. There is no real revenue problem. Tax collections actually increased

*I have not considered at all the Boro's original "alternate" proposal of two 4.0 percent increases. For it was tied to a proposed replacement of Police Dispatchers with civilians. I ruled this aspect of the Boro's proposal could not be considered in the proceeding. The Boro did not raise the subject at the remand hearing.

by \$45,000. Overall revenues increased despite a decline in miscellaneous revenue services. Expenses were under control. Wage and salary expenditures were reduced, as were "other" expenses. School expenses did increase. But they were largely offset by the savings in salary and "other" expenses. There is, in short, no evidence that the salary increases awarded will adversely affect the Boro's financial status.*

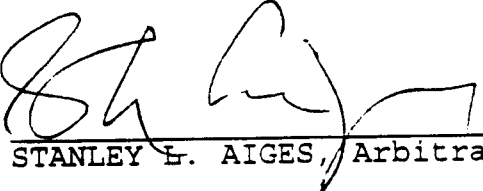
The "cost of living" is, all recognize, reasonably stable. It is not a criterion which should have a major impact upon wage increase deliberations. Nor does the "continuity and stability of employment" criterion.

While it is true that all of the statutory criteria must be considered, it does not follow each is entitled to equal weight in every case. Rather, the criteria must be balanced. Some are simply entitled to more weight in individual cases. It is the balancing which must lead to a fair and reasonable determination. In my judgment, that result will best be achieved by an award of: a two-year term (January 1, 1996 - December 31, 1997); two 4.5 percent increases (on January 1, 1996 and January 1, 1997); no modification of the existing salary structure; no modification in the existing medical plan; no reduction in vacation schedules for newly hired officers; and the adoption of the December 20, 1993 settlement dealing with compensatory overtime.

Simply stated, upon reconsideration of the evidence

*The Boro did not present a more recent audited statement.


and a careful review of the evidence related to the "private employment in general" criterion, I see no reason to modify the terms of the award issued on September 10, 1997. It is reawarded.


STANLEY L. AIGES, Arbitrator

DATED: April 29, 1998

STATE OF NJ)
COUNTY OF BERGEN) : SS.

On this 29 day of April, 1998, before me personally came and appeared Stanley L. Aiges, to me known and known to me to be the individual who executed the foregoing instrument and who acknowledged to me that he executed the same.


ROSANNE F. MARDARELLO [Notary]
A Notary Public of New Jersey
My Commission Expires 11-17-2002

