

**PUBLIC EMPLOYMENT RELATIONS COMMISSION**  
**CN 429**  
**495 STATE STREET**  
**TRENTON, N. J. 08625-0429**

Case No. IA - 99 - 21

-----  
TOWNSHIP OF NORTH BRUNSWICK  
Employer

and

P. B. A. LOCAL 160 (Superior Officers)  
Union  
-----

OPINION

AND

AWARD

ARBITRATOR: Daniel J. Hussey, Esq., mutually chosen by the parties  
pursuant to the rules and regulations of the New Jersey  
Public Employment Relations Commission.

HEARING: December 16, 1998 at the Municipal Building, North  
Brunswick, New Jersey.

APPEARANCES: **For the Township:**  
Thomas J. Savage, Esq.  
Savage & Serio  
J. Paul Kellar

Labor Counsel  
Business Administrator

**For the Association:**  
Simon Bosco, Ed. D.  
Ken McCormack  
Don Conry  
Ken Pado

Association's Consultant  
Association President  
Association Vice-Pres.  
Negotiation Committee

**PROCEDURAL HISTORY**

The selection of the undersigned as the Interest Arbitrator was agreed to by the parties who then communicated that choice to the Director of Arbitration of the New Jersey Public Employment Relations Commission. The official letter

designating the Interest Arbitrator was sent by the Director on December 3, 1998. The record shows that the only formal interest arbitration session was held on December 16, 1998. Subsequent to the hearing both parties submitted post-hearing briefs which were submitted toward the middle and end of January 1999. Subsequent to receipt of the briefs the arbitrator received a letter from Lori Berger, Esq. notifying him that the firm of Greenbaum Rowe had been appointed counsel to the town and she and James Patterson, Esq. of the firm would be handling this matter and were presently in the process of deciding if they wanted to file a brief in answer to the Association's brief. The undersigned conveyed to counsel that he reserved on the issue of whether to grant or deny such request in light of the fact that the briefing schedule had been completed. In any event it was conveyed that the arbitrator would entertain a request to submit a brief if that was the decision new counsel arrived at in their discussion. Eventually the arbitrator received notice in mid - March indicating new counsel would not seek leave to file a brief.

#### **P. B. A. Rank & File Award**

The parties have tracked the earlier interest arbitration award in which Interest Arbitrator James Mastriani issued an award providing for increase to the rank and file of :

- 4 % effective January 1, 1997
- 4 % effective January 1, 1998
- 4.5 % effective January 1, 1999
- 4.75 % effective January 1, 2000

Under date of December 2, 1998 the parties signed a **Memorandum of Agreement** which reads:

1. The parties agreed to "accept and incorporate the rulings of Interest Arbitrator James Mastriani, in the PBA's case (Docket No. IA - 98 - 114 to resolve and settle all outstanding negotiations matters except the following issue.

2. The Parties have not reached agreement on the issue of Rank Differential increases and said issue is still open...."

Consequently the only issue pending in this arbitration is that of whether the rank differential should be increased. Since the parties have not agreed to any alternate method of determination of the present impasse the issue must be decided in accordance with the provisions of P. L. 1995, c. 425 which grants conventional authority to the arbitrator.

The revised statute cited above imposes upon the Interest Arbitrator the duty to:

"...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 explained why the others are not relevant, and provide an analysis of the evidence on each relevant factor.

(1) The interest 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:40A4-45 1 et seq.).

(2) 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:

(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 the public employment in the same or similar comparable jurisdictions, as determined in accordance with Section 5 of P.L. c. (C. ) (now pending before the Legislature as this bill): provided, however, that each party shall have the right to submit additional evidence concerning the comparability of jurisdictions for the arbitrator's consideration.

[ (b) in comparable private employment.

(c) In public and private employment in general.]

(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.

(5) The lawful authority of the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering these factors 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 Township 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 Township purposes element, as the case may be, of the local property tax; a comparison of the percentage of the municipal purposes required to fund the employees' contract in the proceeding 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 monies have been designated by the governing body in a proposed local budget, or (c) initiate any new programs and services for which public monies 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 or employment through collective negotiations and collective bargaining between the parties in the public service and in private employment. . ."*

## **FINAL OFFERS OF THE PARTIES**

### **Association - In It's Brief (p. 8)**

*The final offers presented by the parties are set forth as follows:*

#### **For the SOA:**

*An increase in the level of rank differential is proposed as follows:*

1997	0% increase <sup>2</sup>
1998	0% increase
1999	1.5% increase
2000	1.5 % increase

#### **For the Township:**

*No increase in rank differential is proposed by the Township.*

*2. The reference to increase in rank differential as proposed herein shall mean the minimal percentage in base wage compensation levels between top patrol officer's base pay and that of a Sergeant; the minimal percentage in base wage compensation levels between Sergeant and Lieutenant; and the minimal percentage in base wage compensation levels between Lieutenant and Captain.*

### **Township - In It's Brief (p. 3)**

#### **A. Township's Final Offer.**

*The Township's final offer is as follows:*

##### **1. Rank Differential**

*The Township proposes to maintain the status quo with regard to the rank differential which is currently ten percent (10%).*

*Employing the agreed upon percentage salary increases as provided for in*

Arbitrator Mastriani's award for the four (4) year agreement maintaining the ten percent (10%) rank differential will result in salaries for the years 1997 through 2000 as follows:

Rank	1996	1997	1998	1999	2000
		+4.0%	+4.0%	+4.0%*	+4.0%*
Patrolman	54,371	56,546	58,808	61,160	63,606
Sergeant	59,808	62,200	64,688	67,279	69,967
Lieutenant	65,789	68,420	71,157	74,004	76,964
Captain	72,368	75,263	78,273	81,404	84,660

(\*considered by the arbitrator to be typographical mistakes which should read 4..5% and 4.75% respectively)

#### The Position of PBA Local 160

The PBA presented one witness, Sergeant Ken McCormack who has held a superior officer status for four of his sixteen years on the job. In his testimony he reviewed the operational structure of the department and the role the superior officers play in the day to day operations of the department. Primarily he emphasized that following the appointment of Police Director Maltese four years ago he began the task of improving the professionalism of the department. Specifically McCormack noted the following changes which required that additional tasks and duties be performed by the superior officers: Additional paperwork is now required in high speed pursuits; squads have been increased from six men to nine; off-duty assignments once run by the PBA and involving contractors and the like hiring off duty patrolmen are now filtered through the Township who contracts with the third party thus requiring that these patrolmen now come under direct supervision as though they were on duty; cell block management has now been

increased; the Community Policing policy is primarily the responsibility of supervisors; the Special Investigation Unit has been increased; the Department is seeking accreditation from the Commission on Accreditation for Law Enforcement Agencies, Inc. and in general the paperwork load has increased with the implementation of each of these programs and services. These changes, it is argued, have resulted in increased work load and supervisory responsibility which justifies the increase it now seeks in the percentage differential between ranks.

In counsel's post hearing brief the following statutory criteria are addressed and the following arguments are made:

#### **The Interest and Welfare of the Public**

The Association calls attention to the testimony it presented as to the recently increased level of duties, responsibility and accountability imposed on the superior ranks by the Police Director. While not contesting in any way the propriety of these increases in professionalism it does nevertheless argue that recognition should be given by the Employer to the achievements these program have accomplished. Simply put several other departments within the county enjoy differentials ranging from twelve to fifteen percent and based on these recent developments the payment of the thirteen percent differential to this unit would not be excessive. Finally the Association's consultant argues that such an increase would not prove to be disruptive of the relationship between the Township and the rank and file as the granting of additional holidays or vacation time might so prove since they could be viewed as disparate treatment whereas the differential increase would merely be viewed as a recognition of the increased professionalism within the department.

Turning to the criteria listed in the statute for the interest and welfare of the public the SOA's representative argues that while it is vague the CAP limitation should be one of the considerations. Calculating the cost of the requested increased differential at \$21,774 for 1999 and \$45,889 for the year 2000 produces a total expenditure over the four years of this contract of \$67,663 which translates into a 0,89% increase of the departmental budget. Comparing these figures to the CAP appropriation of 3% or \$503,545 demonstrates that no CAP consideration exists.

Turning to the philosophical view of this criteria the SOA avers that such a small increase is obviously in the best interest of the public as it compensates officers fairly and aids morale.

### **Comparability**

While acknowledging that a significant number of the departments in Middlesex County use a ten percent differential between superior ranks others pay more - up to and including fifteen percent. The SOA stresses that it is seeking to achieve a thirteen percent differential which would represent the middle ground of those other departments.

### **Overall Compensation**

Without disputing the arguments made by the Township in its brief as to the overall compensation these superiors enjoy, the SOA does argue that the changed circumstances as to the added expectations and responsibilities imposed on these superiors warrants awarding its proposal.

### **Stipulations**

The SOA asserts that no stipulations exist between the parties beyond the fact



that the increased rank differential represents the only open contract item.

### **Lawful Authority of the Employer**

As stated earlier in his arguments as to the interest and welfare of the citizenry the representative reiterates that there is no CAP issue and accordingly this criteria should have little or no weight on the resolution of the pending arbitration.

### **Financial Impact**

Counsel asserts that the financial impact on the governing unit, its residents and taxpayers will not be discernible. Put most succinctly counsel asserts that the Township never at any time in the negotiation process or the interest arbitration process involving the rank and file made claim that it could not afford to fund the increase in rank differential the superior officers are seeking. In light of this failure on the Township's part the SOA representative argues it is only fair to conclude that ability to pay is not an argument the Township can validly advance in opposition to the requested increase in the differential. In fact the Township relies solely on a "pattern" argument and the overall economy to oppose the request.

Accordingly the SOA, citing reported authority, argues that the Township's failure to plead inability to pay requires of entities that have been highly profitable that wage rates would normally be increased slightly over levels indicated by other standards. It then cites the tax collection rate, the favorable comparison of its Combined Tax Rate with other county municipalities for 1995 and, by interpolation, the 1997 rates, and its sound revenue generating condition as proof of its ability to fund the modest increase sought by the SOA. Additionally the Association argues the Township's residents are tenth of twenty-five county municipalities in their

mean earnings and sixth highest as to mean household and per capita income and fifth in mean family income - all going to support its claim that the residents enjoy a strong financial basis within the county. He also argues the Township has seen its taxes stabilized and revenues and surpluses continually grow while enjoying one of the fastest growth rates within Middlesex. All of these facts augur well for the Township's future economic status.

### **Cost of Living**

It is also argued that this criteria is irrelevant to the present considerations due to the simple fact that the amount of the increase sought, unlike the wage increases agreed upon, is concerned with internal conditions within the department and not market place or inflationary demands.

### **Continuity and Stability of Employment**

The SOA dismisses the fifteen man layoff in the DPW cited by Township counsel due to the fact that it arose from the sale of North Brunswick's sewer responsibilities along with other force reducing modernizations. These layoffs do not represent a harbinger of economic instability and accordingly have no meaning for the arbitrator's deliberations.

In conclusion the SOA argues that the evidence presented warrants that its final offer be awarded.

### **The Position of the Township of North Brunswick**

In his brief Township Counsel advances the following arguments under the statutory criteria in support of the Township's offer of no increase in the wage

differential of the superior officers:

### **Interest & Welfare of the Public**

In discussing this criteria counsel argues the Township's offer represents its attempt to reach a balance between the desire to control spending while supplying adequate police protection and other municipal services. Counsel states that the superiors enjoy excellent financial compensation when compared with other township employees as well as their peers in other departments in the county.

### **Comparability**

Counsel argues that not only are superior officers well paid but with the addition of the percentage increases prescribed in the Mastriani Award the gap between the superiors and other township employees as well as their peers throughout the county will increase. Were the increased differentials to be awarded the gap would widen even further. Note is made that with the exception of the police director the superiors earn more than all other supervisory employees within the town. The increase the town has voluntarily agreed to pay exceeds most, if not all, arbitration awards and voluntary settlements from comparable municipalities and accordingly no differential increases are offered.

### **Overall Compensation**

As shown in Township Exhibit 3 the superior officers receive additional income in overtime, holiday and longevity pay. Recent contractual changes in clothing allowances, overtime compensation, funeral leave, work hours, vacations, longevity, health benefits either compares favorably with other departments or reflects increases for the superiors.

### **Stipulations of the Parties.**

Counsel notes the record reflects no stipulations have been agreed to by the parties and consequently this criteria has no relevance in this arbitration.

### **Lawful Authority of the Employer.**

Counsel concedes the expenditures the Township might be liable for under the superior's final offer would not be outside the CAP.

### **Financial Impact on the Governing Unit, its Residents & Taxpayers**

Counsel asserts that the overall financial picture of the Township is "precarious" and while acceptance of its offer will minimize any impact on the town, its residents and taxpayers, acceptance of the SOA's offer will "...exacerbate the (township's) already strained financial situation". Counsel then cites various indices such as the tax levy, collection rate, and layoffs which, it is argued, weigh heavily in support of adoption of the Township's final offer. Noted specifically is the impact the adoption of either offer will have on citizens in each income sector, particularly senior citizens.

### **Cost of Living**

The Township points out that the proposed increases substantially exceed the annual cost of living.

### **Continuity and Stability of Employment.**

Note is made that the SOA failed to introduce any evidence on this criteria and counsel further notes that many of the officers have been employed for a significant period of time and nothing exists to suggest this stability will not continued to be enjoyed.

## Conclusion

Prior to reviewing the statutory criteria counsel reviews relevant history, application and judicial decisions on the meaning and interpretation of the interest arbitration statute within New Jersey. Of particular note are his comments interpreting the **Hillsdale** decision (**Hillsdale PBA Local 207 v. Borough of Hillsdale**, 137 N. J. 88 {1994} ) in which he asserts that since the SOA failed to present evidence that the adoption of its proposal will not negatively impact the interest and welfare of the public and other Township employees, were the arbitrator to render any decision in its favor it would be contrary to law as enunciated by the Supreme Court. To the contrary, it is asserted, the Township has provided sufficient evidence that its final offer will not negatively impact on the interests of the municipality, the public and other Township employees.

Counsel argues the evidence presented weighs heavily in favor of adoption of its fair and final offer and rejection of that offered by the SOA.

## DISCUSSION

In light of the fact that the Mastriani Award dealt in detail with the economic reality of awarding a four year contract which provides for approximately 17.5% in wage increases to fifty eight (58) patrolmen this interest arbitrator reviewed that award closely particularly in reference to the remaining financial issue before me. The conclusions reached therein are generally adopted as to the statutory criteria dealing with financial aspects such as ability to pay, financial impact, and cost of living. The issue before this arbitrator is viewed as deciding whether and to what extent an increased differential should be awarded based on certain of the criteria.

In order to reach the mandated task of finding the most reasonable outcome within the framework of the parties' final offers it is necessary to review each of the statutory criteria and to discuss the parties' proofs thereunder. Parenthetically it should be noted that there are 79 full-time members of the department: fifty-eight (58) patrolmen; ten (10) sergeants; seven (7) lieutenants; and four (4) captains.

### **Cost of Living**

Judged against current CPI figures for 1997, 1998 and 1999 to date, the SOA's final offer as to increased rank differential taken together with the wage increase already settled on when viewed as a percentage is excessive while the Town's offer is closer to the actual CPI for those years. When viewed in that strict construct the Township offer is clearly the more reasonable.

### **Continuity and Stability of Employment**

This criteria has been amply reviewed and evaluated. By the very nature of the position, job stability is relatively assured. Only dire economic times have led to actual lay offs of police in New Jersey. None have occurred to the neutral's knowledge within modern times. As a result of this evaluation the edge under this criteria must be given to the Town. Little weight will be afforded this category in the final determination of the more reasonable final offer.

### **Stipulations of the Parties**

No significant stipulations were entered into the record by the parties.

### **Overall Compensation**

As noted in the Mastriani Award part of the rationale for the increases sought and awarded relates back to past increases which are generally conceded to

have been inadequate and below the then existing average wage increases being negotiated and awarded. A review of the compensation the SOA is destined to receive as a result of both parties agreement to adopt the increases awarded to the rank and file, along with the other benefit levels it enjoys, shows its' overall compensation compares favorably with other superior officers in the county.

### **Comparability**

The record is replete with comparability exhibits. Since the superiors match the rank and file in virtually all of the benefits no need exists for this award to retread the same ground as the Mastriani Award.

As to the issue of comparability between the North Brunswick superiors and their fellow peers in the nine Middlesex County departments the following is noted: four departments utilize the ten percent differential; the superior officers in four departments enjoy a differential of above 10 % while officers in one department enjoy a sub-ten percent differential. The average differential of those nine departments quoted is 10.115%. The obvious thought occurs that some 16 or so departments are not reported. Consequentially comparability alone cannot be said to require the granting of the increase the SOA seeks, Evidence does exist in favor of some differential increase.

### **The Lawful Authority of the Employer**

The Township has conceded that no CAP issue exists in this dispute.

### **Financial Impact**

The statutory criteria discusses the financial impact of each parties offer on the residents and taxpayers of the community. Clearly the impact of the adoption of the

awarded increases to the superior ranks has been calculated and accepted by the Township. The SOA representative argues that the adoption of its proposed final offer would cost \$21,774 in 1999 and \$45,889 in the year 2000. This total two year expenditure of an additional \$67,663 is said to represent a total net expenditure increase of approximately 0.897%. My calculations using the SOA's proposed 11.50% in 1999 and 13% in 2000 show that the figure totals much higher. Although the amount is still small when viewed in the context of the overall police salary budget or the municipal budget, it is nevertheless viewed as having an unnecessary financial impact as proposed by the SOA. One of the key elements that must be kept in mind is that the granting of such a differential extends indefinitely into the future. That serves as but one of the reasons the final Award is structured as it is.

#### **The Interests & Welfare of the Public**

The Appellate Division has indicated that the Legislature intended this topic to include more than the mere financial impact on a town. Many interest awards have likewise interpreted this topic to be viewed so as to take in the criteria of professionalism, added duties, greater responsibilities, present performance, among other measures of the interest and welfare of the public. As discussed earlier the arrival of a Police Director - much to his credit - can indeed be said to have required an overall higher degree of professionalism. If not mentioned before these include obtaining certification, holding superiors to higher standards of conduct, and expanding pro-active policing. While counsel for the Township forced Sergeant McCormack to admit that many of the items cited represent merely the expected behavior and professional conduct of police superiors, I conclude that the officers



have had their duties and responsibilities increased and are entitled to compensation and incentive for further professional growth.

**More Reasonable Criteria.** This award must be premised on certain comments. The cost of the increase awarded is tempered by several factors. To begin with it comes at the final year of a four year contract. Based on the settlement the Township adopted after identical percentages were awarded to the rank and file its cost is very reasonable. The calculated cost of this increase in the final and fourth year of the contract amounts to just under \$12,000. Spread over 21 superior officers it represents an average of approximately \$563 a year. While it should not be viewed totally as compensation per se for the Director's attempts to increase the professionalism of the department since these officers are indeed well compensated - it can be viewed in part as an incentive, a differential from other departments, a symbolic compensation for a task undertaken and well done to this point.

With respect to any future "me too" claims that other units, least of not being the patrolmen, might seek to make, it should be clearly understood by those groups and any future neutral viewing this issue that the increase should be considered unique to the superior officers as representing a reward and incentive for the professionalism the Director is bringing to the department. Along these same lines it should be borne in mind that this increase should be viewed as a one time increase. Only exceptional circumstances should warrant any further increases above this differential. Note is taken that just as each comparable group has its own story behind it and greater differentials might well be enjoyed by other departments, this increased differential is awarded under the given circumstances in North

Brunswick and is not based on comparable ten percent plus differentials any other town sees fit to pay its superiors. Accordingly any such rationale used in the future by the SOA in seeking to increase this differential should be given short shrift.

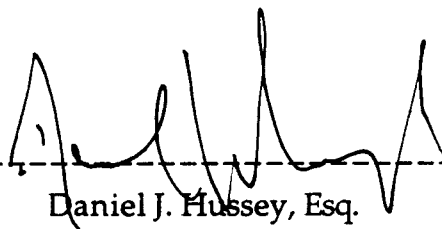
Based on the evaluation of the limited relevant statutory criteria in this narrowly defined interest arbitration and for the reasons stated herein the undersigned hereby issues the following:

#### AWARD

1. An increase in the level of rank differential is awarded as follows:

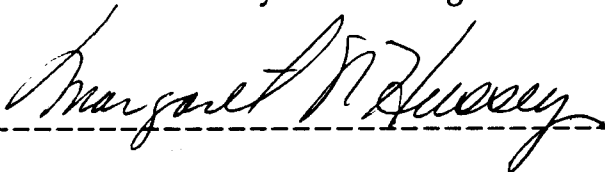
1997	0 % increase
1998	0 % increase
1999	0 % increase
2000	.0075 % increase

May 18, 1999

  
-----  
Daniel J. Hussey, Esq.  
Arbitrator

STATE OF NEW JERSEY :  
COUNTY OF MIDDLESEX :

On this 18th day of May 1999 before me personally came and appeared Daniel J. Hussey, Esq. to be known and known by me to be the individual described herein and who executed the foregoing instrument and who duly acknowledged to me that he executed the same.

  
-----

MARGARET W. HUSSEY  
NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires 8/4/2003