

In the Matter of Arbitration Between:

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**TOWNSHIP OF MONTGOMERY**

"Employer,"

- and -

**PBA LOCAL 355**

"Union."

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**INTEREST ARBITRATION  
DECISION AND  
AWARD**

Docket No. IA-2006-008

**Before  
James W. Mastriani  
Arbitrator**

Appearances:

**For the Township:**

Steven S. Glickman, Esq.  
Ruderman & Glickman

**For the PBA:**

David J. DeFillippo, Esq.  
Klatsky, Sciarrabone & DeFillippo

On September 19, 2005, the Township of Montgomery [the "Township"] and PBA Local 355 [the "PBA"] reached a voluntary settlement for a new collective negotiations agreement [the "Agreement"] effective January 1, 2004 through December 31, 2006. At the time that this Agreement was executed, a single outstanding issue remained in dispute. The Township and the PBA agreed to submit that issue to interest arbitration for resolution. On October 13, 2005 I was designated to serve as interest arbitrator pursuant to the mutual request of the parties.

I conducted an interest arbitration hearing on November 18, 2005 in Montgomery Township, New Jersey. At the hearing, the Township and the PBA submitted documentary evidence and engaged in oral argument. Testimony was received from Patrolman Bruce Heddy, President of the PBA. The record of hearing was closed on that day.

### **THE ISSUE AND THE LAST OFFERS**

The sole issue in dispute concerns the placement of police officers on the salary schedule who are hired by the Township and who have prior law enforcement experience. It is the Township's position that it should have the authority to hire police officers with prior law enforcement experience at any step on the salary schedule other than the entry level step. The only limitation to this authority would be that the experienced police officer to be hired could not be

credited on the salary schedule with more years of experience than they had achieved prior to being hired by the Township. It is the PBA's position that the Township should have no discretion on the placement of a newly hired police officer regardless of the prior law enforcement experience of that officer and that such officers should be placed on the salary schedule at a level no higher than the Post-Academy step. Under the terms of the Agreement, the Post-Academy step is defined as "1<sup>st</sup> Year of Service (Trainee 2<sup>nd</sup> 6 mos)".

### BACKGROUND

The Township is located in the southern portion of Somerset County. It has approximately 19,000 residents living in a land area of 32.62 square miles. There are 30 employees in the police department including two (2) Lieutenants, eight (8) Sergeants, three (3) Detectives and seventeen (17) Patrol Officers. The two Lieutenants are in a separate bargaining unit of superior officers.

The Agreement provides for two separate salary schedules for police officers. Schedule A-1 is for police officers who were hired prior to January 1, 1999. Schedule A-2 is for police officers who were hired on or after January 1, 1999. Salary Schedule A-2 reads as follows:

Schedule A-2  
Employees Hires On or After January 1, 1999

<b>Step (Patrol Officer)</b>	<b>Eff. 1/1/06</b>
1 <sup>st</sup> Year of Service (Trainee 1 <sup>st</sup> 6 mos)	\$39,433
1 <sup>st</sup> Year of Service (Trainee 2 <sup>nd</sup> 6 mos)	\$47,546
2 <sup>nd</sup> Year of Service	\$54,081

3 <sup>rd</sup> Year of Service	\$60,617
4 <sup>th</sup> Year of Service	\$67,151
5 <sup>th</sup> Year of Service	\$73,685
6 <sup>th</sup> Year of Service	\$80,221
<b>Step (Sergeant)</b>	
1 <sup>st</sup> Year of Service	\$85,940
2 <sup>nd</sup> Year of Service	\$89,280

The Township has hired police officers who have prior law enforcement experience. Out of the existing complement of thirty (30) officers, there are thirteen (13) who were hired with prior experience. Four (4) of the thirteen (13) had experience limited to employment as special officers having been employed in the summer in various shore communities. All thirteen officers were hired at the Post-Academy step.

The Township contends that its proposal should be awarded because it is in the best position to make decisions concerning the operations of the police department that affect the department and the interests of the police officers, residents and citizens. This, it argues is necessary to allow for the hiring of police officers with the highest qualifications and experience without being hamstrung by having to select from a pool of applicants limited to those who are willing to work for the Township at an entry level and at sharply reduced salaries. Although the Township does not take the position that it should only hire experienced police officers, the Township asserts that it should be able to compensate an experienced police officer properly if that officer meets the qualifications that it seeks to set based on skills, training and experience levels. The Township contends that it should be able to fill a void on an immediate basis

and not have to eliminate a prospective hiree who has the qualifications that it may need simply because it can give no credit for prior experience. The Township also believes that existing police officers would benefit by having experienced police officers serving as backups. Experienced officers could step right in to any situation in which his background could help in the apprehension and detection of criminals as well as in maximizing the safety of a fellow officer. The Township takes the position that it has no intention to devalue any current employee by a decision to hire an experienced police officer and to place that officer on whatever step it deems appropriate on the salary schedule.

The Township submits that its proposal cannot disadvantage any existing police officer because the seniority rights of any existing police officer would remain intact even if it were able to give credit on the salary schedule of prior to law enforcement experience. For example, time in grade for promotions would commence as of date of hire and the amount of vacation time accrued would be based solely upon seniority within the Township. Thus, no existing police officer would be affected in any way by hiring an experienced police officer above an entry level step. The Township claims a managerial right to do what it proposes limited only by not being allowed to provide additional credit on the salary schedule beyond the years of experience a police officer has achieved elsewhere.

The PBA disagrees with the Township's position. The PBA offers documentary evidence reflecting that the Township has sufficient substantial resources and incentives to attract qualified and experienced police officers to Montgomery Township without having to offer salaries above the Post-Academy step. Evidence of this is said to exist in the fact that many existing police officers have been hired by the Township at the Post-Academy step despite having prior law enforcement experience. The PBA cites the Township's many positive demographics, including an excellent school system, a low crime rate, convenient location, diverse recreation opportunities and a rural and suburban lifestyle within a cosmopolitan region. These features are said to be sufficient incentives to attract police officers who may wish to leave other police departments to come to work for the Township. According to the PBA, the Township has had no difficulty in hiring experienced police officers beyond the Post-Academy step. The PBA also points out that the authority the Township seeks is without any standards whatsoever, is too subjective and can be subject to abuse. For example, it could hire one police with experience and place that officer at step 6 and hire another police officer with similar experience and place that officer at the post-academy step. This would lead to morale problems within the department. The PBA points to the testimony of Patrol Officer Heddy who asserts that existing officers would be devalued by having experienced police officers hired at a higher level than police officers who were hired in the past with prior experience. A further impact on morale would be that an experienced police officer could be hired at a higher level and receive greater compensation

than police officers who have less experience overall but more experience within the Township.

### **DISCUSSION**

The Township and the PBA have fully and expertly articulated their respective positions on the issue in dispute. The evidence and arguments have been carefully reviewed, considered and weighed. I am required to issue an award based upon a reasonable determination of the issue in dispute after giving due weight to the statutory criteria that I judge relevant. Traditionally, in interest arbitration proceedings the party seeking to change a condition of employment must bear the burden to prove the basis for such modification. I apply that principal as part of my analysis of the issue in dispute. The criteria are set forth in N.J.S.A. 34:13A-16g(1) through (8) and they apply despite the fact that this dispute is very narrow in scope. They state as follows:

(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, 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, 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 the P.L. 1976 c. 68 (C.40A:4-45 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 on 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 its 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.

At the outset of this analysis, I conclude that certain of the statutory criteria are not relevant to a resolution of this dispute. When this circumstance exists, it is a requirement that it be noted. They include N.J.S.A. 34:13A-16g(5), the lawful authority of the employer. This criterion focuses on the budgetary implications of an award on the Cap law, P.L. 1976 c. 68 (C.40A:4-45 et seq.). The financial consequence of a determination on the issue in this dispute does not in any way implicate the budget cap. Similarly, N.J.S.A. 34:13A-16g(6) is not relevant because the financial impact of an award on the issue in dispute would have insignificant, if any financial impact on the governing unit, its residents and taxpayers. The department is small and hiring is limited. Any difference in financial impact would be very small in relation to the entire budget. N.J.S.A. 34:13A-16g(7), the cost of living, is irrelevant because an award on the issue in dispute has no effect whatsoever on the existing salary schedules. These schedules have been negotiated through 2006 and will undergo no change during this contract term as a result of this Award. For similar reasons, I conclude that N.J.S.A. 34:13A-16g(3) the overall compensation presently received including fringe benefits is not relevant because the existing salary schedules will remain unadjusted by any award on this issue. N.J.S.A. 34:13A-16g(8), the continuity and stability of employment including seniority rights is also

not relevant because an award will not cause a change in the existing manpower rosters or levels of employment. N.J.S.A. 34:13A-16g(2) concerns comparability. This factor is relevant but not entitled to significant weight. Any determination herein will not affect comparable salary schedules but only the determination of salary upon the hiring of an experienced police officer. The practice of salary placement under this circumstance varies. In any event, other agreements on this point are of limited value on an issue that deals with a local hiring practice. The criteria that is relevant and would be entitled to the most weight even assuming the relevance of other criteria is N.J.S.A. 34:13A-16g(1), the interests and welfare of the public.

The interests and welfare of the public are affected by the disposition of the issue. Given the PBA's view, existing police officers who were hired with prior experience would suffer morale problems if and when the Township hires a police officer with prior experience and credits that prior experience on the salary schedule. By way of example, a police officer with five (5) full years of experience and has or will commence his sixth (6<sup>th</sup>) year of service or more could be hired at \$80,221, the Patrol Officer top step on Schedule A-2. This, it is argued, could create discontentment for a police officer with less than 5 years or more of service who earns less or one with five years or more of service and who was given no credit for prior experience at time of hire. Some, but not exclusive, weight must be given to this position. Though somewhat speculative, intra-departmental interests such as morale are important, especially given the close

knit nature of law enforcement work. The public could suffer from morale problems should they develop as a result of my acceptance of the Township's final offer.

The interests and welfare of the public could also be impacted by acceptance of the PBA's final offer. Under this offer, no flexibility would be afforded to the Township. The PBA argues that the Township has had no flexibility in the past and has not established that it, or the public, has suffered in any adverse way. But this argument, while appearing to be accurate, dwells solely in the past and has limited value prospectively. The Town, as the hiring representative, should not be completely limited in its efforts to hire police officers with demonstrated competence and experience. The police department is small. Each hire is important. While also somewhat speculative, it is reasonable to conclude that the impediment now present could impact on the Township's ability to hire a police officer that it has deemed would add the most value to the department's law enforcement efforts and needs. This could be by way of skill, education and experience. Not only would the public be deprived of the best candidate to fulfill the requirements the Township seeks in a new hire but it could also impact on existing police officers by theoretically having a less skillful and less experienced police officer working with them when such skills or experience may be of assistance in detection and apprehension of criminals or during situations where mutual safety concerns are paramount. It also insures that the

Township could hire police officers with experience if it confronts retirements or turnovers.

When these interests of the Township, the PBA and the public are weighed and balanced, a conclusion emerges that represents a fair and reasonable determination of the issue. Some flexibility should be afforded to the Township. However, as a result of the well articulated arguments of PBA counsel, any such flexibility should not be as great as the Township seeks. Patrol Officer max of \$80,221 pursuant to Schedule A-2, is now reached in the sixth (6<sup>th</sup>) year of service. The interests and welfare of the public will be served by allowing the Township the flexibility to grant no more than three (3) full years of service to a police officer who has at least three (3) full years of prior service as a full time police officer for a municipality, a county or the State, all of which is in the State of New Jersey. For those police officers who have more than three (3) full years of service, the Township's flexibility cannot exceed giving credit for the three (3) full years.<sup>1</sup> For those with less than three (3) full years of service, the Township's flexibility shall be limited to crediting one (1) or two (2) full years of experience on the salary schedule.

As I have concluded, this represents a reasonable determination of the issue after due consideration of the full record of this proceeding. The effective date for the exercise of this discretion shall be on or after the date of this award.

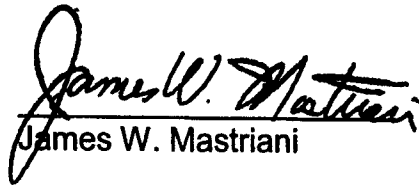
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<sup>1</sup> This determination shall be limited to police officers and shall not extend to the rank of Sergeant.

**AWARD**

The Township shall have the discretion to credit each full year of prior experience up to, but not to exceed, three (3) full years of credit. This prior experience shall be as a full time police officer for a municipality, a county or the State, with all jurisdictions being in the State of New Jersey.

Dated: March 27, 2006  
Sea Girt, New Jersey

  
James W. Mastriani

State of New Jersey     }  
County of Monmouth    }ss:

On this 27<sup>th</sup> day of March, 2006, before me personally came and appeared James W. Mastriani 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 same.

  
GRETCHEN L. BOONE  
NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires 8/13/2008