

**STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION**

In the Matter of Interest Arbitration Between :
: **SUPPLEMENTAL**
BOROUGH OF FORT LEE : **INTEREST ARBITRATION**
"the Borough or Employer" : **DECISION**
:
and : **Docket No: IA-2007-087**
:
PBA LOCAL 245 :
"the PBA or Union" :

Before: Robert M. Glasson, Arbitrator

APPEARANCES

FOR THE BOROUGH:

J. Sheldon Cohen, Esq.
DeCotiis, Fitzpatrick, Cole & Wisler

FOR THE PBA:

Michael A. Bukosky, Esq.
Loccke, Correia, Schlager, Limsky & Bukosky

Background

The following is the chronology of events in this matter. I issued an interest arbitration award on December 18, 2008. On January 6, 2009, the Borough appealed the award to the Public Employment Relations Commission (“PERC”). On May 28, 2009, PERC remanded the decision to me to issue a Supplemental Award and entered the following Order:

The award is remanded to the arbitrator to issue a supplemental decision addressing the projected savings from the new salary schedule and comparability to private and public sector employment in general and, if appropriate, to modify his award no later than 30 days from the date of this decision. The parties may file briefs in response to the supplemental decision consistent with this opinion. The award is stayed pending issuance of the arbitrator’s supplemental decision.

On September 24, 2009, PERC issued a decision affirming my award. Following PERC’s affirmation, the PBA sought enforcement of the award and PERC sought to intervene to advocate enforcement of the award. On November 5, 2009, the Borough filed an appeal of the award with the Appellate Division. By letter dated November 25, 2009, PERC withdrew its motion to intervene because the Borough began implementing the compensation and insurance portions of the award: “[t]he Commission Chairman (reviewed the Borough Counsel’s letter and determined that the Borough’s action will put it in substantial compliance with the Commission’s decision affirming the interest arbitration award.” The PBA was not satisfied that the Borough was in full compliance and filed a motion to enforce and implement the award. Subsequently, the matter was argued in the Appellate Division in October 2010 and the parties await the Appellate Division’s decision. (Some of the above procedural history is taken from the October 12, 2010 decision of the Superior Court of New Jersey, Law Division, Bergen County by Judge Robert P. Contillo which was included in the Borough’s submission).

On March 26, 2010, I received a copy of a letter dated March 5, 2010 from PBA Labor Counsel, Michael Bukosky, requesting a meeting regarding “several contract issues with undetermined contract language.” The PBA notes that I retained jurisdiction on certain issues when I issued my interest arbitration award on December 18, 2008. The PBA contends that the parties have been unable to agree on language and requests that I schedule a meeting to “formalize the contract language.”

On April 2, 2010, I received an email from Lee Cohen, Borough Labor Counsel, acknowledging receipt of the PBA’s March 5 letter and suggesting that the PBA’s “assertion of your continued jurisdiction is at odds with representations he has made to Judge Contillo that your award is final.”

On April 2, 2010 and April 5, 2010, I received additional written statements from the PBA and the Borough. I need not repeat all of the statements in these letters except to note that the PBA continued its request that I schedule a conference and the Borough reiterated its position that I did not have continued jurisdiction. The Borough stated its willingness to meet and negotiate with the PBA on the outstanding issues.

On April 9, 2010, I conducted a telephone conference with Borough Labor Counsel and PBA Labor Counsel. I advised the parties that, before I made a decision on my continued jurisdiction, they should make serious efforts to resolve these matters directly without my assistance. Labor Counsel both agreed that they would promptly schedule direct negotiations and make a good faith effort to resolve the open issues. The Borough agreed to the telephone conference “without prejudice to any issue concerning continuing jurisdiction.” (E-mail from Borough Labor Counsel on April 6, 2010).

On July 9, 2010, I received a letter from PBA Labor Counsel stating that “pursuant to your suggestion the parties met several times to discuss finalization of contract language.”

PBA labor Counsel further stated that “the parties were unable to agree on contract language” and requested a meeting . . . so we can finalize the contract language.”

On July 27, 2010, I advised PBA and Borough Labor Counsel as follows:

“I am well aware that there is continued litigation concerning the award that I issued on December 18, 2008. It would be inappropriate for me to participate in any discussions regarding this continued litigation. A review of my award shows that I retained jurisdiction as follows:

1. **Health Benefits:**

I awarded the Borough’s proposal which consisted of a number of components that are listed in the award. The award states: “I shall retain jurisdiction to resolve any disputes over the specific terms of the health insurance and prescription drug coverages including the language to be included in the 2007-2010 CBA in the event the parties fail to agree within thirty days of the receipt of the award.”

2. **Health Insurance Opt-Out:**

I awarded the PBA’s proposal. The following is excerpted from my award: “Effective January 1, 2009, an Opt-Out provision at 50% of the premium cost shall be implemented. The Opt-Out provision shall be applicable to both medical insurance plans and prescription drug plans. I shall remand to the parties, the development of the procedures for the implementation of the Opt-Out provision. I shall retain jurisdiction in the event the parties fail to agree on the final language within thirty days of the receipt of the award.”

3. **Legal Representation Plan:**

Both the PBA and the Borough proposed a \$150 payment for the purchase of legal defense insurance. The following is excerpted from my award: “The PBA and the Borough appear to be in agreement on the major component of providing a \$150 payment for each bargaining unit member annually for the purchase of legal defense insurance. Accordingly, effective January 1, 2009, the Borough shall make a \$150 annual contribution for each officer in the bargaining unit for the purchase of legal defense insurance. I am aware that this issue has been the subject of grievances and arbitrations in the past and that the parties desire to avoid disputes on this issue in the future. While there appears to be a stipulation on the \$150 payment for each bargaining unit member, it is unclear how this will be implemented. Thus, I shall remand to the parties the development of the procedures

for implementation of the legal defense insurance. I shall retain jurisdiction to issue a final and binding decision in the event the parties fail to agree on the final language within thirty days of the receipt of the award.”

4. **Holiday Pay:**

I awarded the inclusion of holiday pay in base salary. The following is excerpted from my award: “Effective January 1, 2009, holiday pay shall be included in base salary as compensated time, paid with regular payroll and utilized for all computation purposes. The holiday pay shall be included by increasing all steps and ranks on Appendices A-1 and A-2 by 5% effective January 1, 2009. The parties are directed to modify the current language of Article VIII and Appendix B to comport with the inclusion of holiday pay in base salary. I shall retain jurisdiction in the event the parties fail to agree on the final language within thirty days of the receipt of the award.”

I recognize that the Borough may continue to challenge my jurisdiction to issue a decision on the remanded issues. However, before I make a decision on the Borough’s assertion that I do not have jurisdiction, I want to schedule an informal conference with the parties to explore voluntary resolution. The scheduling of this informal conference will not prejudice either parties’ position regarding my jurisdiction.” (Letter to PBA and Borough Labor Counsel, July 27, 2010).

PBA and Borough Labor Counsel agreed to participate in an informal conference to explore voluntary resolution. On August 11, 2010, I met with the parties to explore voluntary resolution. The meeting was productive and I was hopeful of a full resolution on the outstanding issues. However, on September 1, 2010, the PBA advised that the parties had an impasse on the “specifics of the language concerning health benefits” and requested that I set up an additional meeting. The Borough confirmed this continuing impasse on September 7, 2010. There have been continuing discussions and correspondence (PBA on 9/23/10, 10/25/10, and 11/3/10; Borough on 11/4/10) culminating in a teleconference that I conducted on November 11, 2010. Regrettably, despite extensive efforts by PBA and Borough Labor Counsel, the parties have not reached a voluntary resolution.

On November 16, 2010, I advised the parties as follows:

“Pursuant to the terms of my interest arbitration award, as outlined above, I retained jurisdiction on four issues if the parties failed to reach agreement on final contract language. Specifically, I retained jurisdiction on Holiday Pay, Health Insurance Opt-Out, and Legal Representation Plan “in the event the parties fail to agree on the final language within thirty days of receipt of the award.” On Health Benefits, I retained jurisdiction “to resolve any disputes over the specific terms of the health insurance and prescription drug coverages including the language to be included in the 2007-2010 CBA in the event the parties fail to agree within thirty days of the receipt of the award.”

I have considered the Borough’s argument concerning my jurisdiction and conclude that I retained jurisdiction in the event the parties failed to reach agreement on the final language to be included in the collective bargaining agreement. The parties, despite their extensive efforts, have failed to reach an agreement. Thus, under the clear terms of my award, I am required to finalize the language on the four issues outlined above.

Accordingly, the parties shall have fourteen (14) days to submit proposed language on each of the four issues on which I retained jurisdiction: Holiday Pay, Health Insurance Opt-Out, Health Insurance and Legal Representation Plan. I encourage the parties to discuss and submit a ‘Stipulated Agreement’ on the final contract language for any of the above four issues.”

On November 24, 2010, the PBA submitted its position. On November 30, 2010, the Borough submitted its position. At the outset, I want to be very clear regarding the scope of my retention of jurisdiction. I have been mutually selected in more than 300 interest arbitration cases in the last fifteen years. 90% of these cases have been resolved during the mediation phase of the interest arbitration process. In those cases that required an award as well as those cases that the parties requested that I submit the terms of a “Recommended Settlement” it is common to remand the final drafting of one or more issues to the parties. This is never intended to alter the substance of the award. The substance of the award is not subject to any change in the event that the parties cannot agree on final contract language. Moreover, the parties’ arguments must be limited to the evidence in the record on December 8, 2008, the date that I issued the award.

The Borough argues strenuously that under the doctrine of “functus officio,” I do not have authority to “retain jurisdiction in the event the parties fail to agree on the final language within thirty days of the receipt of the award.” The Borough’s argument regarding my authority was ruled on by PERC in its decision affirming my award. PERC stated the following concerning the Borough’s argument that my decision was not a final decision:

“With regard to the legal representation plan, the decision finds that while the PBA and the Borough may disagree about the contract language for the benefit, the parties appear to agree on the major component of providing a \$150 payment for each unit member annually for the purchase of legal defense insurance. The arbitrator awarded such a payment effective January 1, 2009. He noted that this issue had been the subject of grievances and arbitrations in the past and that the parties desire to avoid disputes on the issue in the future. The arbitrator remanded the issue to the parties for development of the procedures for implementation of the legal defense insurance. He retained jurisdiction to issue a final and binding decision in the event the parties failed to agree on the final language within thirty days of receipt of the award. Given the arbitrator’s willingness to give the parties an opportunity to resolve the issue, and his clear statement that he retained jurisdiction in the event attempts failed, the Borough’s argument that the award should be vacated because it does not comply with N.J.S.A. 2A:24-8 is unavailing.” (Borough of Fort Lee and PBA Local 245, PERC No. 2010-17, Docket No. IA-2007-08, issued on May 24, 2009).

The final contract language on the four outstanding issues must be finalized. PERC has determined that the Borough is “in substantial compliance with the Commission’s decision affirming the interest arbitration award.” It is undisputed that the parties, despite their recent good faith efforts, failed to agree on the final language within thirty days of the receipt of the award. A review of Judge Contillo’s decision indicates that the parties have agreed to the final contract language on all of the issues except for the medical opt-out provision. Unfortunately, neither party acknowledged any of these agreements in their recent submissions. Also, while the parties may have reached agreement on the final contract language on one or more of the four issues during the discussions on August 8, 2010, I am

not authorized to include such agreements since I was serving as a mediator on August 8, 2010 and thus all discussions were “off the record” and confidential.

I shall now issue my decision on the final contract language. I have considered the parties’ proposals and arguments and have determined that the language of the predecessor 2003-2006 collective negotiations agreement (“CNA”) must be modified to conform to the terms of the award on all four issues. Any arguments raised by either the PBA or the Borough based on events that occurred after the close of the record are not properly before me. Clearly, my decision on all of the issues was based on the documentary exhibits, testimony and arguments before me when the record was closed in 2008. Thus, the predecessor 2003-2006 must be modified to conform to the specific terms of the 2007-2010 award. Therefore, any arguments put forth concerning events that post-date the close of the record in 2008 are beyond my authority and not properly before me.

HEALTH BENEFITS

The 2003-2006 predecessor CNA provided the following language regarding medical benefits:

ARTICLE VI **MEDICAL BENEFITS**

1. The Borough shall provide all Employees and members of immediate family with New Jersey Public Employees Standard Blue Cross-Blue Shield Major Medical Plan (1420 Series), including extended Rider "J".
2. The Employer shall provide a program of dental insurance covering the Employee and the Employee's immediate family. The Employer agrees to pay the entire premium cost and the Employee shall not be required to pay any cost. Participation in the plan shall be mandatory. The plan which is to be implemented and maintained shall be the same plan as is currently in effect. This is commonly referred to as the "Delta Plan".

3. If in the event that the present insurance carrier shall refuse to continue to afford said insurance, or in the event that the Borough shall choose to place said coverage with a different insurance company, the transfer to coverage shall be made so that there shall be no interruption of coverage or loss of benefits to any of the Employees or the members of their families. In the event that any change in coverage shall take place, and for any reason whatsoever the benefits of the Employee shall be denied by reason of the change in insurance carriers, then the Borough will reimburse the Employee for said medical bills incurred as a result of the change in insurance carriers.

The Borough shall provide a Five Dollar (\$5.00) co-payment prescription plan for each covered Employee and his/her dependents, but not to exceed a premium cost of more than Five Hundred Forty-One Dollars (\$541.00) *per annum* per covered family. If the premium cost exceeds Five Hundred Forty-One Dollars (\$541.00) *per annum* the parties shall meet to discuss changes in the program in order to keep the premium costs no more than Two Hundred Dollars (\$200.00) *per annum* per family.

I awarded the following terms regarding health benefits:

Health Benefits

- (a) I shall award the Borough's proposal to move police bargaining unit members from the current PBA Traditional and Direct Access Plans to the current "Civilian" Traditional and Direct Access Plans as outlined in Borough Exhibit 16. This shall be effective January 1, 2009, or as soon as practicable thereafter, to allow bargaining unit members the opportunity to elect coverage under the terms of either the Traditional Plan or the Direct Access Plan.
- (b) Effective January 1, 2009, or as soon as practicable thereafter, the current prescription copays shall be increased to \$5 for Generic, \$15 for Brand Name per 30-day supply and to \$10 for Generic and \$30 Brand Name for a 90-day supply by mail order.
- (c) Effective January 1, 2009, Article VI, Medical Benefits, Section 3, shall be deleted from CBA.
- (d) Effective January 1, 2009, the Borough shall establish and pay the administrative fees for a voluntary Medical Savings Account for covered employees.
- (e) All employees hired on or after January 1, 2009, will be ineligible for enrollment in the Traditional Plan.
- (f) I shall retain jurisdiction to resolve any disputes over the specific terms of the health insurance and prescription drug coverage including the language to be included in the 2007-2010 CBA in the event the parties fail to agree within thirty days of the receipt of the award.

The language to be included in the 2007-2010 CNA regarding Health Benefits shall read as follows:

ARTICLE VI
MEDICAL BENEFITS

1. The Borough shall provide all Employees and members of immediate family with the current "Civilian" Traditional and Direct Access Plans in effect in December 2008. This shall be effective January 1, 2009 or as soon as practicable thereafter, to allow bargaining unit members the opportunity to elect coverage under the terms of either the Traditional Plan or the Direct Access Plan. All employees hired on or after January 1, 2009, are ineligible for enrollment in the Traditional Plan.
2. The Employer shall provide a program of dental insurance covering the Employee and the Employee's immediate family. The Employer agrees to pay the entire premium cost and the Employee shall not be required to pay any cost. Participation in the plan shall be mandatory. The plan which is to be implemented and maintained shall be the same plan as is currently in effect. This is commonly referred to as the "Delta Plan".
3. Effective January 1, 2009, or as soon as practicable thereafter, the current prescription copays shall be increased to \$5 for Generic, \$15 for Brand Name per 30-day supply and to \$10 for Generic and \$30 Brand Name for a 90-day supply by mail order.
4. Effective January 1, 2009, the Borough shall establish and pay the administrative fees for a voluntary Medical Savings Account for covered employees.

The Borough requested that language be included to acknowledge that effective May 21, 2010, employee contributions toward the payment of healthcare premiums are being made in accordance with P.L. 2010, c. 2. As the Borough correctly notes, this is an obligation that has been imposed by operation of law and not by voluntary agreement of the parties. Thus, this matter post-dates the close of the record and is not properly before me. I have no authority to include in a collective negotiations agreement contributions made pursuant to a statutory obligation imposed nearly eighteen months after the issuance of my award.

HOLIDAY PAY

The 2003-2006 predecessor CNA provided the following language regarding Holiday

Pay:

ARTICLE VIII HOLIDAYS

The Employees shall have thirteen (13) paid holidays each year. The holidays shall be compensated as thirteen (13) working days of time off or as thirteen (13) days of pay at the straight time rate.

(A) Each Employee, if required to work a holiday by the Employer, shall have the option of taking all or part of the holiday worked, as either time off or paid compensation. If the time off is elected then the Employee shall schedule the time off pursuant to established Departmental procedures. If the Employee elects paid compensation, then the Employer shall be notified that such elected remaining time off is to be compensated as paid compensation. Said election to receive paid compensation shall be given to the Employer not later than the first day of November in each respective year.

(B) The thirteen (13) holidays shall be those as specified in **Appendix B**. If an Employee takes off on any of the designated holidays, it shall be charged to him as a holiday. It shall not be chargeable as, and shall not be taken as, a vacation day, personal day, shooting day, comp. day, etc. Failure to notify the Employer by November 1st shall indicate that the Employee will not receive paid compensation, but rather elect to take time due, which is to be scheduled pursuant to established Departmental procedures between the period from November 1st to December 1st of the current year. When the election to receive paid compensation is made by November 1st, said compensation will be paid not later than December 16th of that year, at the salary prevalent at the time the holiday was worked. Holidays shall not be carried into the succeeding calendar year.

(C) Two (2) holidays that fall within the period of November 1st to December 31st of the current year shall be treated as follows:

When the election to receive paid compensation is made, the Employee shall notify the Employer prior to December 31st of the current year and shall receive compensation no later than the second payroll period in January of the following year at the salary rate prevalent at the time the two (2) holidays were worked. If the Officer takes either or both of the two (2) holidays that fall between November 15th and December 31st (Thanksgiving and Christmas), they shall be deducted from the holidays that are held back for payment in January and not deducted from the holidays that are paid in December.

(D) If an Employee takes off on any of the designated holidays it must be designated in this Agreement as a holiday ("Holiday"). An Employee shall not take a vacation day, personal, shooting, comp. day, *etc.* An Officer can still take his thirteen (13) holidays off at any time during the year. If an Employee calls in sick on a holiday he/she will

be charged with a holiday unless he/she is sick for a period of three (3) working or off-duty days or more. If a holiday falls in any part of a vacation period granted to an Officer as set forth in **Article X**, the Officer will be charged a vacation day. Seniority will be the criterion up to twenty-one (21) days prior to a holiday request. Inside the twenty-one (21) days it will be a first-come, first-served situation to be off the holiday. If an Employee used all of his/her holidays prior to an upcoming holiday, he/she will be told to use other time off (shooting day, vacation day, personal, *etc.*) to be off on the holiday.

I awarded the following terms regarding Holiday Pay:

Holiday Pay

Effective January 1, 2009, holiday pay shall be included in base salary as compensated time, paid with regular payroll and utilized for all computation purposes. The holiday pay shall be included by increasing all steps and ranks on Appendices A-1 and A-2 by 5% effective January 1, 2009. The parties are directed to modify the current language of Article VIII and Appendix B to comport with the inclusion of holiday pay in base salary. I shall retain jurisdiction in the event the parties fail to agree on the final language within thirty days of the receipt of the award.

The language to be in the 2007-2010 CNA regarding Holiday Pay shall read as follows:

ARTICLE VIII HOLIDAYS

The Employees shall have thirteen (13) paid holidays each year. The holidays shall be compensated as thirteen (13) days of pay at the straight time rate. The thirteen (13) holidays shall be those as specified in Appendix B.

(A) Commencing on January 1, 2007 and ending on December 31, 2008, compensation for holidays shall be payable by the Employer to each Employee in lump sum, not later than the fifteenth (15th) day of December in each respective year.

(B) Effective January 1, 2009, compensation for holidays shall be included in each Employee's base salary and used for all computational purposes. The holiday pay shall be included by increasing all steps and ranks on Appendices A-1 and A-2 by 5% effective January 1, 2009. The holidays shall be compensated in equal installments, which shall be paid periodically with the Employee's regular paycheck.

The Borough seeks to include a footnote stating that the phrase "for all computational purposes", taken from the interest arbitration award, does not include payment of pension contributions on the rolled-in holiday pay. As I clearly stated in my award, I made no finding

that holiday pay is creditable for pension purposes since only the Division of Pensions and Benefits could make such a determination. This is an ongoing dispute between the PBA and the Borough and I have no authority to add anything to the terms of the award.

LEGAL REPRESENTATION

The 2003-2006 predecessor CNA provided the following language regarding Legal Representation

ARTICLE XLII LEGAL REPRESENTATION

1. The Borough shall provide legal representation to Employees covered by this Agreement pursuant to law.
2. In circumstances where legal representation is to be provided, the Employee shall have the right to select the attorney who will represent him/her.
3. The hourly rate for attorneys selected shall be not more than Eighty (\$80.00) dollars per hour.

I awarded the following terms regarding Legal Representation:

Legal Representation Plan

Effective January 1, 2009, the Borough shall make a \$150 annual contribution for each officer in the bargaining unit for the purchase of legal defense insurance. While there appears to be a stipulation on the \$150 payment for each bargaining unit member, it is unclear how this will be implemented. Thus, I shall remand to the parties the development of the procedures for implementation of the legal defense insurance program. I shall retain jurisdiction in the event the parties fail to agree on the final language within thirty days of the receipt of the award.

The language in the 2007-2010 CNA shall read as follows:

ARTICLE XLII LEGAL REPRESENTATION

1. Commencing January 1, 2007 and expiring on December 31, 2008, the Borough of Fort Lee shall provide legal representation to Employees covered by this Agreement pursuant to law. In circumstances where legal representation is to be provided, the Employee shall have the right to select the attorney who will represent him/her. The hourly rate for attorneys selected shall be not more than eighty dollars (\$80.00) per hour.

2. Effective January 1, 2009, the Borough shall make a \$150 annual contribution for each officer in the bargaining unit for the purchase of legal defense insurance. The insurance plan shall be purchased by the PBA and proof of purchase shall be provided to the employer.

The PBA, in its brief, stated: "As to legal representation, the payment of \$150 will enable the provision of a level of legal services to be provided directly by the PBA at a minimal cost to the Borough." The Borough in its brief stated: "The Borough proposes to replace the current provisions of the contract and instead offer to pay no more than \$150 per officer, per year, toward legal defense insurance to be purchased by the individual police officers through the PBA. Thus, an officer in a damages lawsuit would be provided an attorney through the insurance carrier (assuming it's a covered issue), as well as indemnification insurance. In addition, the PBA insurance would provide individual counsel to the officer to the limits of its coverage. No longer would the Borough pay any attorney chosen by the officer."

The award of the \$150 annual contribution for each officer in the bargaining unit for the purchase of legal defense insurance is not an additional benefit beyond the existing requirements of paragraphs two and three in the 2003-2006 CNA. Thus, the legal representation requirements of paragraphs two and three are effective in 2007 and 2008 and are then replaced effective January 1, 2009 by the representation provided under the legal defense insurance. I encourage the parties to spell out any additional procedural safeguards consistent with the Borough's statement in its 2008 brief that: "It is a sensible and fair solution to the issue of providing individualized legal counseling as well as legal representation and indemnification insurance for PBA officers."

HEALTH INSURANCE OPT-OUT

The predecessor 2003-2006 CNA did not include any provisions that provided for an employee to “Opt/Out” of any of the Borough’s medical and prescription drug plans.

I awarded the following terms regarding Medical Opt-Out:

Health Insurance Opt-Out:

Effective January 1, 2009, an Opt-Out provision at 50% of the premium cost shall be implemented. The Opt-Out provision shall be applicable to both medical insurance plans and prescription drug plans. I shall remand to the parties, the development of the procedures for the implementation of the Opt-Out provision. I shall retain jurisdiction in the event the parties fail to agree on the final language within thirty days of the receipt of the award.

The language in the 2007-2010 CNA regarding Opt-Out shall read as follows:

ARTICLE VI MEDICAL BENEFITS

5. Opt-Out: Effective January 1, 2009, employees shall be permitted to opt-out of medical insurance and prescription drug coverage provided by the Borough provided that the employee furnishes the Borough with documentation to establish that the employee has medical insurance and/or prescription drug insurance coverage from another source. Employees who elect to opt-out of coverage provided by the Borough shall receive an end-of-year payment in the amount of fifty percent (50%) of the applicable premium for the insurance plan, in lieu of the insurance, based on the number of months that the insurance was waived during the year. Payment for opting out will be made on or about December 1 of each year.

An employee who waives coverage shall be permitted to resume coverage by making an application for coverage during an open enrollment period. Further, an employee who waives coverage shall be permitted to immediately resume coverage if the employee ceases to be eligible for other health care coverage for any reason, including, but not limited to, the retirement or death of the spouse or divorce. An employee who resumes coverage shall repay, on a pro rata basis, any amount received from the Borough which represents an advance payment for a period of time during which coverage is resumed. An employee who wishes to resume coverage shall notify the Borough in writing.

The Borough proposed a payout equal to twenty-five percent (25%) of the premium for the “Current Civilian Direct Access Plan” individual coverage. The Borough further asserts that their ability to negotiate such coverage is governed by the terms of legislation enacted in May 2010. The terms of the “Opt-Out” provision are effective January 1, 2009. While subsequent legislation may limit (or eliminate) the Borough’s obligation under this contractual provision, my authority on this issue is limited to the record in this matter. Any legislation enacted in 2010 post-dates the close of the record and is not properly before me.

This completes my discussion regarding the final contract language of the above issues. Accordingly, after carefully considering the parties’ submissions, the contract language in the 2003-2006 predecessor agreement and the terms of my award, I respectfully issue the following Supplemental Award finalizing the contract language regarding Health Insurance, Holiday Pay, Legal Representation and Opt-Out:

SUPPLEMENTAL AWARD

1. The language to be included in the 2007-2010 CNA regarding Health Benefits shall read as follows:

**ARTICLE VI
MEDICAL BENEFITS**

1. The Borough shall provide all Employees and members of immediate family with the current "Civilian" Traditional and Direct Access Plans in effect in December 2008. This shall be effective January 1, 2009 or as soon as practicable thereafter, to allow bargaining unit members the opportunity to elect coverage under the terms of either the Traditional Plan or the Direct Access Plan. All employees hired on or after January 1, 2009, will be ineligible for enrollment in the Traditional Plan.
 2. The Employer shall provide a program of dental insurance covering the Employee and the Employee's immediate family. The Employer agrees to pay the entire premium cost and the Employee shall not be required to pay any cost. Participation in the plan shall be mandatory. The plan which is to be implemented and maintained shall be the same plan as is currently in effect. This is commonly referred to as the "Delta Plan".
 3. Effective January 1, 2009, or as soon as practicable thereafter, the current prescription copays shall be increased to \$5 for Generic, \$15 for Brand Name per 30-day supply and to \$10 for Generic and \$30 Brand Name for a 90-day supply by mail order.
 4. Effective January 1, 2009, the Borough shall establish and pay the administrative fees for a voluntary Medical Savings Account for covered employees.
2. The language to be in the 2007-2010 CNA regarding Holiday Pay shall read as follows:

**ARTICLE VIII
HOLIDAYS**

The Employees shall have thirteen (13) paid holidays each year. The holidays shall be compensated as thirteen (13) days of pay at the straight time rate. The thirteen (13) holidays shall be those as specified in Appendix B.

(A) Commencing on January 1, 2007 and ending on December 31, 2008, compensation for holidays shall be payable by the Employer to each Employee in lump sum, not later than the fifteenth (15th) day of December in each respective year.

(B) Effective January 1, 2009, compensation for holidays shall be included in each Employee's base salary and used for all computational purposes. The holiday pay shall be included by increasing all steps and ranks on Appendices A-1 and A-2 by 5% effective January 1, 2009. The holidays shall be compensated in equal installments, which shall be paid periodically with the Employee's regular paycheck.

3. The language in the 2007-2010 CNA regarding Legal Representation shall read as follows:

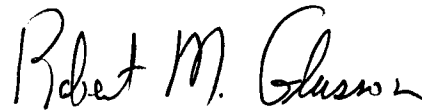
**ARTICLE XLII
LEGAL REPRESENTATION**

1. Commencing January 1, 2007 and expiring on December 31, 2008, the Borough of Fort Lee shall provide legal representation to Employees covered by this Agreement pursuant to law. In circumstances where legal representation is to be provided, the Employee shall have the right to select the attorney who will represent him/her. The hourly rate for attorney selected shall be not more than eighty dollars (\$80.00) per hour.
 2. Effective January 1, 2009, the Borough shall make a \$150 annual contribution for each officer in the bargaining unit for the purchase of legal defense insurance. The insurance plan shall be purchased by the PBA and proof of purchase shall be provided to the employer.
4. The language in the 2007-2010 CNA regarding Opt-Out shall read as follows:

**ARTICLE VI
MEDICAL BENEFITS**

Opt-Out: Effective January 1, 2009, employees shall be permitted to opt-out of medical insurance and prescription drug coverage provided by the Borough provided that the employee furnishes the Borough with documentation to establish that the employee has medical insurance and/or prescription drug insurance coverage from another source. Employees who elect to opt-out of coverage provided by the Borough shall receive an end-of-year payment in the amount of fifty percent (50%) of the applicable premium for the insurance plan, in lieu of the insurance, based on the number of months that the insurance was waived during the year. Payment for opting out will be made on or about December 1 of each year.

An employee who waives coverage shall be permitted to resume coverage by making an application for coverage during an open enrollment period. Further, an employee who waives coverage shall be permitted to immediately resume coverage if the employee ceases to be eligible for other health care coverage for any reason, including, but not limited to, the retirement or death of the spouse or divorce. An employee who resumes coverage shall repay, on a pro rata basis, any amount received from the Borough which represents an advance payment for a period of time during which coverage is resumed. An employee who wishes to resume coverage shall notify the Borough in writing.

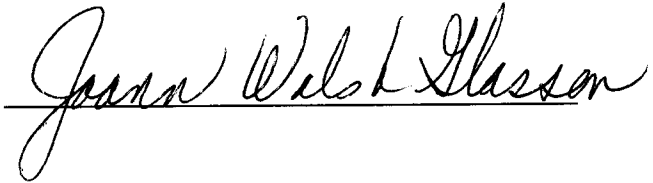


ROBERT M. GLASSON
ARBITRATOR

Dated: December 21, 2010
Pennington, NJ

STATE OF NEW JERSEY) ss.:
COUNTY OF MERCER)

On this 21st day of December 2010, before me personally came and appeared ROBERT M. GLASSON, to me known and known by me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

A handwritten signature in cursive script that reads "Joann Walsh Glasson". The signature is written in black ink and is positioned above a horizontal line.

JOANN WALSH GLASSON
NOTARY PUBLIC OF NEW JERSEY
Commission Expires 12/11/2011