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In the matter of the Interest Arbitration of a dispute concerning the negotiations impasse

between

Borough of Pompton Lakes: Respondent

and

Pompton Lakes PBA Local No. 161: Charging Party

Re: N. J. Public Employment Relations Commission Docket IA-2007-055

Remanded by PERC for issuance of a new decision as Docket IA-2008-058

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APPEARANCES

FOR THE RESPONDENT: Joseph J. Ragno, Esq., of counsel; Struble Ragno, Attorneys

FOR THE CHARGING PARTY: Gregory G. Watts, Esq., of counsel; Loccke Correia Schlager Limsky & Bukosky, Attorneys

INTRODUCTION: Part One.

On January 8, 2008 the PBA Local 161 appealed the interest arbitration opinion and award which had been executed by this arbitrator on December 24, 2007. On January 15, 2008 the PBA proposed a supplement to that appeal to the Special Assistant to the Chairman of PERC. That supplement focused on the dispute between the parties as to the topic of the twelve hour chart which had been submitted for resolution in this matter.

The first part of the supplement dealt with an assertion that my award reversed a prior decision of the Commission. It was noted that the Commission had ruled on the arbitrability of this subject in an appeal concerning these two parties on May 31, 2007 finding it to be mandatorily negotiable. The assertion was then made that my award included the following, "...if it is the opinion of the Mayor and Council that the desired goals of the change to a twelve [12] hour shift had not been satisfactorily achieved, the Mayor and Council will unilaterally decide if the shifts should return to the prior eight [8] hour shift schedule or not..." The claim was further made that, "As such, the Arbitrator has not only reversed the longstanding mandatorily negotiability status of this issue but in addition has reversed the actual "law of the case" in this issue as stated by the

Commission." It further alleged, "This reversal of Commission precedent represents a violation of N.J.S.A. 2A:24-8[d] in that the arbitrator exceeded or so imperfectly executed his powers and authority that a final and definitive Award upon the subject matter was not made." And, in conclusion the Union had the effrontery to suggest, "This finding and Order of Arbitrator Mason further violates N.J.S.A.34:13A-5.4[b] in that it usurps power that is preempted by statute in the Commission." "Only the PERC can make such a determination as to negotiability on the subject matter." I must point out that even if I had refused to alter the past contract language there would not have been any grounds for these allegations as the award would have constituted a part and result of the negotiations of that subject. The Union went on to state that, "The merits of this decision are directly affected by the statutory and rule violations referenced in the above paragraph."

The interpretation which I make of this diatribe is that there is proposed I have violated the law and have usurped the reserved authority of the Commission and that this action produces a dark cloud over the entirety of my award which, I presume, is intended to be of influence in the deliberations of the Commission.

May I repeat that had I made that decision it would have been within the authority of the arbitrator to resolve as a negotiable matter presented as a disputed issue to me. The provision could have been incorporated in a new Agreement just as it had been by agreement of the parties in the past contract. The language is not inherently unlawful! However, the entire quote as to the reserved right of the Mayor and Council was not of my authorship. That language was agreed to in the prior Agreement negotiated by these parties; which shouldn't have been any surprise had the writer of the appeal read the Agreement; and the Union had presented it to me as a demand that such language be removed from the Agreement by my award. So if there was any deficiency as to that language being inappropriate as to its origin or negotiability the Commission might ask the Union why it negotiated it in the first place.

This can not be eradicated from this record. The Union knew the issue had been presented and there had been a response from the Employer which did not entirely satisfy the Union and which motivated it to press ahead on the issue in this arbitration. It would not have taken much effort on the part of the Attorney who authored the appeal to find the actual facts before attacking my integrity; or to present the Commission with the actual facts as to the "settlement" and withdrawal of this issue. And it would have been common curtsey to inform me of the 'mistake' along with an apology for the aspersions it must have known accompanied those unfounded allegations.

My second problem with this issue is that I did include a determination of that demand and ordered the particular language quoted by the Union to be removed from the new Agreement. Had the Union read my award it would have noticed that I ordered removal of all of that language along with some exceptions which might be effected by the Employer in limited circumstances.

When I received the Supplement of January 15, 2007 I had the civility to have notice served on the Union as to its misunderstanding or misconstruing of my award. In a further letter from the charging party I noted that matter had been resolved and was therefore no longer in dispute. There was no attempt made to contact me and to recant the outrageous charges as to my integrity and the alleged violations of the law and of the authority of the Commission. And I note there was no record of any attempt to inform the Commission of the errors made in the accusations as to my integrity or unlawful actions. So I assume the declaration, included in the appeal, as to, "The merits of this decision are directly affected by the statutory and rule violations referenced in the above paragraphs.", was intended to remain on the record before the Commission! Thus the posture of the Union before the Commission was that Arbitrator Mason was incompetent and a violator of the law but that the Union had managed to achieve a settlement! The issue was never settled; it was instead a part of my award in favor of the Union's position and never a matter of discussion between the parties after my award was delivered.

Elsewhere in the appeal I found equally egregious allegations of comparable and unjustified attempts to malign my reputation by deliberate misstatements of the facts with a further allegation that I had failed to, "...properly apply N.J.S.A. 34:13A-16 [c], which provides in part: "c. Terminal procedures that are approvable include, but shall not be limited to the following: [2] Arbitration under which the award by an arbitrator or a panel of arbitrators is confined to a choice between [a] the last offer of the Employer and [b] the last offer of the employees' representative, as a single package. [3] Arbitration under which the award is confined to a choice between [a] the last offer of the Employer and [b] the last offer of the employees' representative, on each issue in dispute, with the decision on an issue-by-issue basis." The absence of inclusion of the c. 1. provision in this paragraph can not be seen as an oversight, but rather a deliberate attempt to provide a basis for the absurd claims as to my competence.

Thereafter follows a citation of the last offer of the Employer and the allegation that my award does not mesh with the terms of the last offer, "... and therefore are in violation of N.J.S.A. 34:13A-16[c]." The next statement in the appeal is that due to this inconsistency, "...the Arbitrator's Award concerning health care benefits should be vacated."

It is clear that the author of this appeal consciously chose to avoid including the No. [1] choice of arbitrator authority available to the parties which is the adoption of conventional authority for the arbitrator. Thus the author was able to make another unfounded assertion as to my not having issued an award in keeping with the law. Under the traditional authority of the arbitrator there is no requisite that the award 'mesh' with the demands as presented and may be modified or rejected as part of the exercise of that authority.

The coincidence of these obviously intentional attempts to represent me to the Commission as either incompetent or just a habitual violator of the law is regrettable. These events are unprecedented in all my years of experience in the field of labor relations.

They are equally inconsistent with my many years relationship with the law firm representing this Local. But my real concern is that if left unchallenged the Commission might very well be influenced in its deliberations by the allegations as to my competence or even as to my respect for the law and the rules of the Commission. For that reason I have concluded there is a necessity for me to correct this record.

In this last matter the parties had agreed on traditional authority of the arbitrator and therefore the violations argued by the Union's attorney are entirely without merit. I find it difficult to judge whether these errors are a deliberate and insidious attempt to defame me in the eyes of the Commission or simply the work product of someone unfamiliar with the details of this proceeding who failed to properly scrutinize the record or to have it reviewed by his superior. In any event I abhor the result. My presumption remains that the Commission, without having commented, would nevertheless have made its determinations ignoring the influence of such baseless arguments. And I further note the Commission referred to my award as being a product of conventional authority. However I believe it essential that the record be corrected.

INTRODUCTION: Part two.

In the body of the PBA's brief in support of its request that the Commission vacate the award issued by me in this matter there are numerous declarations as to deficiencies which are perceived as reason for that action. Many of these objections represent the general type of conclusions which are attributed to my award. As such they ought merit no more consideration than the PBA suggests be given to statements of mine. Some of them claim lack of information which was presented in support of my conclusions. For instance, the PBA Asserts that, "Only broad , baseless generalizations about the increase in national and healthcare costs are mentioned by Arbitrator Mason." However, I did include very specific data as to the increased costs of healthcare by the Employer for the past five years to have been compounding at an average annual rate of 18.5% for the traditional plan as contrasted to 14.3% for the N. J. Plus plan; hardly a broad generalization. The PBA claimed that there was no data, "...offered to show that these new choices [of plan coverages] will actually save the Borough any money or represent adequate health care for the employees." Yet my award clearly indicated both the gross amount of annual savings attributable to the change as well as a clear comparison of the Plus plan vs. the traditional plan with many advantages specified as well as cost savings to the employees to be enrolled. See p.27 of my award as to the comparison of those two plans as to coverage provided and p.28-29 as to the increased rates of premiums for the several plans as well as p.29 as to the rates of premium growth for recent years by plan. So it can be concluded that the PBA's assertion concerning adequacy of health care or the advantage as to overall costs to the Borough are a figment of purposeful imagination aimed at discrediting my award.

The same kind of assertion is made by the PBA concerning my discussion of the Employer's objectives with regard to provision of adequate benefits and the reduction of costs without imposition of mandatory cost sharing: "Again, no calculations are offered

to support these statements." "The Employer did not present any factual data to support its request concerning health benefits." "There are no numbers offered to show that these new choices in plans will actually save the Borough money or represent adequate health care for the employees." These statements suggest the award was never read by the author of the appeal or that he simply wanted to discredit my conclusions. He went on to assert that, "Essentially, the Arbitrator made his decision concerning health insurance benefits without any information and data supporting such a decision." I am reluctant to have such absurd claims remain on the record without a challenge as to their veracity.

A further example of the inherent disregard for the facts of this case is found in this statement from the appeal; in reference to my statement in the award, "the New Jersey Plus plan has almost all of the advantages of coverage that are included in the Traditional plan but at much lower costs."; The arbitrator fails to list what those specific coverage advantages are and, of what the costs and savings, if any, are for either plan." Again it is clear that the author did not examine my award where, on page 27, I provided an overview of the advantages of the Plus plan vs. the Traditional plan. These included less copayments, enhanced skilled nursing and physical therapy, improved maternity and emergency coverage, no deductibles in network and an unlimited lifetime benefit as contrasted to the $1,000,000 limit in the Traditional plan. Thus it can be seen that the urge to discredit the terms of my award proved more important to the appeal author than the standard of honest evaluation.

THE ORDER OF THE COMMISSION

"The award is vacated and remanded to the arbitrator to issue a new opinion and award in this matter no later than 60 days from the date of this decision in accordance with this decision."

In the body of the decision the Commission stressed that it had no opinion as to the merits of the award. It also stated that it had remanded the matter for a more thorough application of the statutory factors. It stated that, "Arriving at an economic award involving health benefits is not a precise mathematical process." And it went on to point out, "...the treatment of health benefit proposals involves judgment and discretion and an arbitrator will rarely be able to demonstrate that an award is the only "correct" one." Further it stated, "Therefore, within the parameters of our review standard, we will defer to the arbitrator's judgment, discretion, and labor relations expertise." "However, an arbitrator must provide a reasoned explanation for an award and state what statutory factors he or she considered most important, explain why they were given significant weight, and explain how other evidence or factors were weighed and considered in arriving at the final award."

CONSIDERATION OF STATUTORY FACTORS

In my preparation of this response to the Commission I will attempt to demonstrate my reasoned judgments as to which of the statutory factors were considered to be of greatest importance and which I considered not to have great bearing on the matter in dispute

1. The interests and welfare of the public. This factor is considered to be of great importance due to the nature of this dispute which is basically a financial matter but which may have overtones as to the loyalty and performance of this key group of employees who provide protection, security and often helpful assistance or instruction to the citizens. It would be a mistake to jeopardize their dedication by treating them without due consideration.

2. The comparison of wages and conditions of employment to other employees performing the same or similar services. I abbreviate this definition because the PBA has gone to great detail to explain why the private sector should not be a consideration in these matters and the Employer has made no attempt to underscore its offer with private sector details. The focus of each has been on police employment. Additionally, the parties have accepted my award as it pertains to the salary adjustments for the duration of the proposed Agreement leaving only the issue of the health care matter to be determined. While I recognize that the Commission view is that the entire economic package is to be combined I seriously doubt the parties expect me to revise the wage improvement decision. Additionally I note that the insurance plan dispute has not been related to other economic positions by either party. The health benefit issue remains and is isolated. I will discuss it below. Thus I perceive this factor to be of potential importance but not having a primary role in this limited area of dispute.

3. The overall compensation is another factor which ordinarily is of great importance but less so in this situation where the area of dispute has been reduced to only one subordinate issue. My original decision was arrived at by a much more comprehensive analysis of the basic elements of this factor and has been accepted by both parties. With the singular exception that only the health care provision, as awarded, remains in dispute. Thus I conclude this factor is of limited concern.

4. There were no stipulations of the parties apart from the unrefuted declaration of the PBA in its appeal that the only issue to be resolved was the health care benefits. For that reason I do not consider this factor to be of importance.

5. The lawful authority of the Employer. Nothing in the resolution of this dispute would impact on the lawful authority of the Employer.

6. The financial impact on the governing unit, its residents and taxpayers. This factor is considered to be of great importance in this matter because of the long range potential impact of costs related to health care. The improvement in the wages base, as noted, was not a matter of contention by the parties but the costs of health insurance, while only a small portion of the costs of wages and benefits, has been escalating more rapidly than wages and the Employer's concerns as to some means of braking the rate of increase by

reducing the base costs was its primary objective in these negotiations. I will discuss this further below.

7. The cost of living. Neither party has expressed a position based on cost of living changes. Both recognize that the improvements in wages have exceeded the COL increases in many recent years. Therefore while this could have become a more significant item of contention the current or recent circumstances have reduced the focus on COL and neither party used the change in cost of living changes as a basis for their economic positions. I did not perceive it to of particular concern in the economic environment which was present at the time I wrote my decision, and do not at this time either.

8. The continuity and stability of employment. As these employees have registered no complaints concerning their terms and conditions of employment I do not believe this factor to be of great significance in this procedure. The wage improvements were accepted by the Union. The change in the work chart demanded by the PBA was awarded and I believe these were important parts of the Union's objective in these negotiations. The single element which could provoke some disenchantment would be the award of the changes in health care insurance plans. I realize this to be a point of consternation in that some of these employees will be forced to make changes in their selection of health insurance. However, they can still elect coverages which are comprehensive and free of premium costs. This factor must be considered along with the interests and welfare of the public and the difficulty is to determine which interest is of greater importance. I will deal with this below. My conclusion is that this factor is of moderate concern.

9. The original award which included annual wage increases has been accepted by the Employer and I presume it has done so with special attention having been paid to the spending limitations imposed by Section 10 of P.L.2007, c. 62 [C.40A: 4-45.45]. The Union has notified the PERC of its satisfaction with the increased wages I awarded in this procedure. The resolution of the health care benefit will not materially impact on the Employer's ability to contain expenditures within those guidelines. Should my award be upheld the total package of new expenditures will be slightly less demanding than if my award is reversed. The estimate of the savings/expenses is a minor portion of the total costs of new money needed to fund the wage increases and their impact on other elements of earnings such as overtime, pensions and the like. I will deal with this in greater detail in my analysis. If the Union's position of not approving any change in the health care insurance plans were to be ordered there could be additional costs dictated by changes in premiums by the State of New Jersey but not by an award of mine. For these reasons I do not see this factor as an important consideration.

PROCEDURE

I have carefully weighed all of the alternatives as to the presentation of this remanded decision and award. My conclusion is to defend the award as it was originally proposed but to answer the several questions posed by the Commission where there had been conclusions expressed as to insufficient substantiation presented to fully support my

award. As noted above I am concerned as to those deficiencies and will remedy them herein. In addition I will illustrate the thinking process which ultimately produced the decision now contested. However, notwithstanding the Commission's decision to expand this attempt at resolution to include the total package of economic elements, I will essentially address only those specifically bearing on the health care insurance segment of this dispute. The reason for this is, as I expressed above, that all other economic matters were deemed acceptable by the parties. It is not intended to, in any way, suggest a failure to understand the Commission's order. Rather it is simply a method to focus on the remaining issue in a readily understandable manner without reiteration of all the considerations involved in the resolution of this dispute.

DISCUSSION

At the outset of this remanded award I indicated that two key statutory factors in my evaluation of the health insurance issue I considered most important, were the interests and welfare of the public and the financial impact on the Borough, its residents and taxpayers. This concentration of attention was arrived at by examining all of the evidence provided by the parties. The decision reached was a judgment based on the record as well as influencing evaluations of the long term effects likely, based on the history and analysis of past trends in costs of this insurance. The judgment was also influenced by the interests of the PBA to maintain a dependable and vital benefit as well as the Borough's expressed concerns and willingness to provide its employees with a comprehensive health plan without imposition of costs to employees. This might seem to suggest that no change be made to the benefit plan. However there were many considerations as to the need to also address the interests of the taxpayers.

The position of the PBA was to flatly refuse to negotiate with the Borough on this topic, or to discuss its reasons even in the face of this being a mandatorily negotiable matter. Thus no alternatives to the position of the Borough were advanced or considered except dropping it entirely or accepting the offer of the Borough. This became the issue in dispute in these proceedings. The PBA defended its position by claiming that the conditions of my award would substantially limit employees' free choice as to of providers of health services and that this would mean that some would have to change the doctors with whom they had established relationships. It also claimed acceptance of the Employer's offer would represent a step backward for the overall unit and that the Union had not come to the negotiations table with the loss of previously won gains an objective, rather than improvements in wages, hours and other conditions of employment.

The PBA claimed that I did not provide any sufficient supporting data to justify my decision and claimed that decision to be contrary to the law as noted above. In particular it stated I had not provided any details to support my conjecture as to specific future costs of health care insurance. There being no statistical data which could accurately say what those changes will be, I have to agree that I could not be specific about them. Instead I relied on data which has been collected from the facts of the past and made what I believe to be sound judgments as to the probability of insurance costs continuing to rise

and probably at a greater rate of increase than COL or wages. I know of no published figures which suggest that the costs of providing medical care will be shrinking in the foreseeable future. And, as I pointed out in my award, there are many reasons, including longer retirement years for example, to suggest that those historic trends will be with us for many years to come. At least that conclusion, based on the known facts and trend lines for several years, is the basis for my judgment. We do not know for certain what the future brings but to forecast a shrinking population, for example, would seem to reflect a bad judgment; the same quality of intellect would suggest future costs of health care insurance would decrease, albeit without the foresight to factually predict the degree of such change. The arbitrator is confronted with a need to use judgment in such matters; I put mine on the line. And I note that in 2008 the State of New Jersey has modified its Health Benefits Plan by eliminating the option for traditional coverage as a part of the attempt to reduce costs at the State level. While this may not be regarded as certainty of prediction of expanding costs it clearly suggests the changes were designed because of that expectation. And in any event it does not contradict my conclusions expressed above. I have respect for that judgment.

The motivating argument of the Borough was stated to be its need to be conservative as to budgetary costs and the impact of increased costs on taxes and/or limitations as to provision of necessary services to the community. It explained the underlying facts upon which it based those concerns. In my award I thought I had been quite clear as to the nature and value of those cost considerations and why they led me to the conclusion expressed in that award. But I shall attempt to be more comprehensive as to those considerations.

THE FINANCIAL CIRCUMSTANCES

The Borough of Pompton Lakes is not at a financial crisis but the Borough related a number of indicators which suggested the need for greater attention to its fiscal health. The Chief Financial Officer for the Borough testified at length regarding his determination that the Borough must pay greater attention to the Borough's fiscal circumstance. He cited several things in particular which concerned him. Among them was the requirement for the Borough to make greater payments for employee pensions, including an added $171,155 for police due to the State ending the forgiveness of Employer contributions, as well as other pension contributions bringing the total new money needed to $273,155 for 2008. He noted that the assessed valuation of properties in the Borough had risen only 8.5% between 2002 through 2007 meaning the burden of all new costs of operations was falling on a virtually static income source. The net asset valuation of real property improved by only 1.9% from 2004 to 2007 and the increase from 2005 through 2007 was just over .5%. A further indication of the fiscal circumstance of the Borough was the balance remaining after transfers from one year to the next during the period from 2002 when that figure was $1,580,893 to the situation for 2007 when that figure had deteriorated to $378,105. These indicators led the Chief to issue a warning as to the need for fiscal conservancy. That instruction was underscored by the potential return to service of three employees after long suspensions with associated costs which could range upwards of

$200,000 plus the addition of those three persons to the then current payroll which would be an additional annual expense to cover their wages and benefits. As I do not have information about where these people were situated in the salary schedule it is difficult to accurately predict what the cost of their return to service would be but I believe a conservative guess would be $200,000 or possibly more. The Chief's warnings led to the Borough's conclusion that there was need for attempting to curtail spending whenever practicable.

I found the Financial Officer's testimony to be credible and not biased as to the Borough's position in these negotiations with the Union. He was straight forward and obviously concerned about the fiscal climate. His views added to my conclusion that there should be significant attention given to the these two factors; interests and welfare of the taxpayers and the financial impact on the government and the taxpayers.

During the period from 2002 through 2007 the property tax rate increased from 4.06 to 5.32 dollars per $100 valuation. This is an increase of 31%. It may not in of itself be dramatic compared with other communities but the population of the Borough has been virtually constant for many years and the costs of government necessarily keep rising. There are few new taxable properties, only 8 new construction projects in 2006, down from 88 in 2003 and there is little vacant space for increased construction. The impact on financial planning has been the realization that there can be little likelihood of large new taxable properties in the immediate future to buffer these escalating costs, reinforcing the opinion of the Chief as to conservation of income for essential services and to attempt to rebuild a greater resource base in order to deal with costs which are outside the Borough's functional control. This extends to energy costs as well as those items mentioned above. Another cost which is not readily controlled given the mission requirements of the Borough and the attendant reliance on fuels to function effectively.

The need to find a way to achieve fiscal soundness while minimizing the expansion of taxation of residents thus became a key management objective. The Chief Financial Officer noted that the property taxes had been increased substantially in recent years; 10.6% in 2005; 16.7% in 2006 and 7.1% in 2007. The rate of increases was seen as unacceptably high and steps should be taken to remedy the pace of those increases. As property taxes were the major source of revenues it was important to improve the situation. This was seen as especially true because the alternate sources of money, such as the State, were becoming less dependable; witness the assistance for pension contributions which has been brought to a halt. Thus the economic future was beginning to look bleak; costs were rising, sources of income failing, the cash balances dropping dramatically to a dangerously low level and significant new expenses threatening.

Given this background one of the areas studied in search for potential savings was health insurance costs subject to the Borough's determination to continue a policy of fully paying the costs of health care insurance. This led to negotiating for reduction of costs by making the insurance changes it incorporated in its demands in these proceedings. The underlying examination of this budget element had revealed that the costs of health

insurance had risen dramatically in recent years. The total health insurance cost for the Borough had escalated by 73% from 2002 to 2007 and the dollar cost went from $667,768 to $1,154,300 or an increase of $486,532. The cost of that insurance had risen from 7.1% of municipal revenues to 10% between 2002 and 2007. The costs associated only with police officers in this unit were calculated to be $281,057 for health insurance in the 2006 calendar year. This is an average cost of $12,220 for each officer. The demand advanced at the table was to provide only the N. J. Plus plan at no cost but to allow selection of alternate plans, if chosen, with the premiums which exceeded those of the Plus plan to be paid by the employee making that choice. This proposal was calculated to reduce the overall annual cost of health insurance by $63,264 which equated to a saving of 22.5%. This saving would be equivalent to a reduction of 2.94% of the combined cost of payroll and health care insurance for these officers or 3.4% of just payroll costs in 2006.

My award was not precisely what the Employer had requested. I reasoned that many of the officers had exercised a preference for an HMO styled plan. That reasoning was predicated on the presumption that each officer would choose the plan which better suited his or her circumstance and the argument advanced by the PBA in support of such choice as a fundamental concern. Although the Aetna plan was about 10% more costly than the Plus plan I concluded that such a choice should be available. As the Borough had expressed as its objective the provision of health care insurance without cost to the employee I reasoned the additional cost would be offset by greater receptivity of the alternatives incorporated in the choice of coverage which would have a positive impact on employee morale. As there is no way to know what individual choices will be made of these options the savings cannot be determined on an absolute basis. My guess the savings will be reduced to approximately $60,000, plus or minus. This would still represent a respectable compromise between the needs of the Employer and those of the PBA. It is also noteworthy that the history of increases in costs of these plans would suggest that the savings to the Borough will grow comparatively over future years as the higher priced Traditional plan builds costs on a substantially elevated basis than that of the Plus plan and the Aetna plan combined. My judgment would be that the savings of $60,000 in the first year of this change would rise to $75,000 in the following year. These savings would be a substantial offset to the increases of the basic wage costs awarded. In fact the greatest percentage of the cost of the awarded increases might be offset by the savings due to the modification of the health insurance plan as awarded. The estimates of the new costs of wages, including longevity, but excluding the cost of in range movement would be about $75000 in the 2007 year and $82000 in 2008. So it can be seen the projected savings provided by the savings projected from the health insurance plan at $60000 in the first year and $75000 in the second year would be a substantial offset to the increased costs awarded for wages, regardless of the actual date of effecting the change in the health care plan. Undoubtedly the Borough will not realize a surplus from this change, but a modification of the costs of the police budget!

In a more meaningful way the limited plan selections made available are not only less costly at this time but also present a much more favorable record of cost containment over many years. From 2002 to 2007 the rate for the Traditional plan escalated 138%.

Although the Plus plan was much less it still increased 98% over those years. But the base rate for the Traditional plan was higher than the Plus plan in 2002 so the cost growth in dollars was much more than the 40 percentage points would suggest. There are similar contrasts between the HMO type plans with the Aetna plan costing 74% more in 2007 while the Cigna plan escalated by 92%. So it can be seen that the future costs of these plans, while not yet established, might be expected to continue their record of more efficient services and lower costs. One can only make educated judgments as to such developments but my considered opinion is that the record of the past is a good predictor of the future and even if that does not prove to be the case the Borough will enjoy savings now and if appropriate consider alternatives at some future time. Certainly the most efficient providers deserve to be rewarded with the business the Borough provides as a publicly supported entity.

One might raise the question as to the quality of services as a part of the equation as to choice. This is a difficult matter to measure but the State has chosen all of these providers based on standards that were considered and I have not seen anything which would suggest that Aetna is not the equivalent of Cigna as to services of employees. And I note again that members of this unit have freely chosen the Plus plan and the HMO plans in the past.

In making this determination as to the Plus plan I had carefully contrasted most of the aspects of that plan with the provisions of the Traditional plan. In many ways the Plus plan was equal to or more beneficial than what was provided in the Traditional plan. Notwithstanding the claim of the PBA to the contrary, I did include many of the details of my comparison of features in my original award and they were mentioned on page 5 above.. But I shall repeat part of those comments here. The Traditional plan has annual deductibles of $200/$400 while the Plus plan has none. Traditional inpatient cost required after 365 days [after deductible] at 80% coverage while the Plus plan has no cost. Skilled nursing care is 30 days in the Traditional plan and 120 days in the Plus plan: Traditional covers physical therapy at 80% after deductible and Plus covers at 100% with a $10 visit charge. Maternity care is another feature of the Plus plan where there is a $10 first visit charge and then 100% coverage while the Traditional plan covers basic benefits at 100% and the balance at 80% after deductible. Similar advantages go to the Plus plan when Emergency care is required. The total lifetime limit in the Traditional plan is $1,000,000 while the Plus plan has no lifetime limit, a comforting thought should there ever be a need for such extended care. It can be seen that the Plus plan is family friendly and less expensive. I believe this information should satisfy the Union's complaint that there was, "No adequate explanation was given as to why the health benefits Award was made."

The Union also complained that although the Employer had provided the cost of each plan there were, "...no calculations performed for each of the different plan choices available to quantify the costs for each." I presume that this means the Union did not have a calculator to perform the multiplication of the rates times the number of employees subscribing to each plan as those numbers were also supplied by the Employer. Clearly an oversight! The Union also charged , "Arbitrator Mason's statements incorrectly lead to the

assumption that simply because fewer employees chose the Traditional health plan it is therefore an inferior or undesired health plan." This is an absurd conclusion as I said nothing to suggest to anyone that the Traditional plan was in any way an inferior choice. What I did state was, "Thus it can be said that the actual preference of the majority of the employees covered, even in the face of choice for a more expensive policy, has been for other of the plans available." Any assumption that I had made a judgment as to the Traditional plan being inferior is clearly in the mind of the author of the appeal. I add this to the long list of deliberate misstatements by that person intended to create sympathy for the Union's position at the cost of my reputation. The same can be said for the Union's statement, "No adequate explanation was given as to why the health benefits Award was made."

In the face of these many considerations as to the relative need for the Borough to press ahead to reduce costs versus the arguments raised by the PBA in contradiction of that effort I am inclined to side with the Borough. All of the economic arguments above summarized lead to that conclusion. The result of such a change in the health care insurance plan will not have a major impact on the employees involved with the exception as to choices of providers which may result in changing doctors or the inconvenience of the location of services. In fact it will only have an immediate impact on those using the Traditional plan or in the Cigna or Healthnet plans. And it may be that the new Plus plan would be an attractive choice to many because of some of the benefits, including reduced costs, I have mentioned above. But all employees will enjoy full medical coverage which in many ways reflect improvements or less out of pocket expenses. In weighing the inconvenience and resistance to change affecting some of the employees against the threat to the fiscal foundations of the Borough I find the latter to be the more justifiable position to support.

There is no record evidence as to what purpose the Borough would expend the savings created by this decision. There may be no need to speculate about that if the three suspended employees were to be returned to their former positions with the possibility of back wages. The amount of savings will not materially alter the overall impact of the fiscal dilemma facing the Borough but it represents one facet of the Borough's attempt to cope with the problem. And, as I mentioned above, the likelihood is that savings will be absorbed in funding the salary account for these employees. I am not party to whatever other initiatives are being pursued in this attempt to improve the fiscal condition of the Borough. But I believe the citizen taxpayers' interests are best served by a management team dedicated to that task especially when the result is not as damaging to the interests of employees as would be the alternative, for example, of a lay off to save funds which could affect the quality of services afforded by the Borough.

To the extent that specific facts and figures concerning future costs of health care benefits are not provided herein, as was suggested by the Union, I apologize for not having access to the future. In the world of labor relations there are many times when judgment must be employed to resolve problems. This is one of those situations. I base the decision reached on the facts rendered above and on considerations of exposed trends and my observations

of the economic circumstances which surround us and, of course, the evaluation of those factors presented in the statute as I have weighed and considered them. Thus is a judgment made.

I know the Union has been critical of many things in my award. But that is their role in the negotiations of contracts. The substance of their demands were considered and fairly dealt with. The relative position of these employees as contrasted with the comparable group will not have changed appreciatively. Their top pay will remain ahead of the vast majority of those communities and the benefits will be very comparable. Although this award may be seen as a set-back by the Union I see it as a rational attempt to balance the interests of the Union with the needs of the Employer where the consequences of this decision are of much greater financial impact and satisfy a need which I deem an important objective in the fiscal management of the Borough.

AWARD

WAGES

There shall be an increase in wage rates of 4% for the period January1, 2007 through December 31, 2007. Wage rates will be increased by 4.25% in each of the remaining years of the Agreement effective on January 1, 2008 and on January 1, 2009 and on January1, 2010. Retroactive payments shall be made promptly and in no case later than 60 days from the date of issuance of this award.

HOLIDAY PAY AND PERSONAL LEAVE

The Union's request as to this issue was denied for reasons set forth in my award of December 24, 2007.

WORK IN HIGHER TITLE

When an officer works in a position of higher rank, responsible for the decision making activity of a higher ranking officer, for at least a whole shift he/she shall be paid at the lowest rate of the next higher rank providing this does not apply to circumstances where the assignment is due to replacement for a vacation leave.

HEALTH BENEFITS

There shall be a modification in the health insurance plan which will provide that the individual may choose any plan as before but in the choice of conventional plans only the NJ Plus plan will be provided without cost. In the choice of HMO plans the Aetna plan will be without cost. All choices of plans having higher premiums will incur payment of the difference by payroll deduction. No extra credit will be given if the Aetna cost should fall below that of the NJ Plus plan. The option to make a change is selection of a plan will not be changed.

The new plan shall be put into effect at the earliest time available for enrollment. No change or contribution will be required until that time. The Employer shall make every effort to convey these changes to all personnel at the earliest time and include the anticipated time for enrollment changes so that those affected may have time to consider their options and the consequences of such changes.

THE TWELVE HOUR CHART

The language of the current Agreement shall be changed. The first paragraph of Section 3 of Article V shall be modified by the elimination of, "The twelve hour schedule shall be subject to 6 month reviews by the parties for the length of the Agreement." And, "Following such reviews, if it is the opinion of the Mayor and Council that the desired goals of the change to a 12 hour shift have not been satisfactorily achieved, the Mayor and Council will unilaterally decide if the shifts should return to the prior 8 hour shift schedule or not."

New language shall be added to that section s follows: The Employer may impose a change to the 8 hour shift, without negotiations, for temporary periods when there are emergencies, for training which would be better achieved on 8 hour shifts, or if there are circumstances as to service to the community which may be optimized by a shift change.

CALL IN

This item was agreed to during the hearings and is to become part of this award.

TERM OF AGREEMENT

This Agreement shall be for a four year period beginning January 1, 2007 and expiring on December 31, 2010. All changes required by application of the terms of this Award shall be implemented at the earliest time practicable except for retroactive applications. Provisions of the prior Agreement not modified here shall be continued.

Frank A. Mason

Pennington, Mercer County, N.J.
July 23, 2008
On this date before me personally came and appeared Frank A. Mason, to me known and known to be the individual described in and who, in my presence, executed the foregoing opinion and award and he acknowledged to me that he executed the same.

WAYNE S. MERNONE
Notary Public - New Jersey
2311592
My Commission Expires February 23, 2009