

PUBLIC EMPLOYMENT RELATIONS COMMISSION

XX

In the Matter of the Arbitration Between)

COUNTY OF ATLANTIC,)

EMPLOYER)

FOP LOCAL 34,)

UNION)

XX)

**SUPPLEMENTAL
INTEREST ARBITRATION
OPINION AND
AWARD**

DOCKET NO. IA-2007-057

**BEFORE
GERARD G. RESTAINO
INTEREST ARBITRATOR**

APPEARANCES:

FOR THE EMPLOYER
ERIC BERNSTEIN, ESQ.

COUNSEL FOR EMPLOYER

FOR THE UNION
KEITH WALDMAN, ESQ.

COUNSEL FOR UNION

PROCEDURAL BACKGROUND

I submitted an Interest Arbitration Award (Docket No.: (IA-2007-057) between the County of Atlantic and FOP Lodge 34. The Award was dated April 2, 2010. The County filed an appeal with PERC. PERC submitted notice to the party concerning submitting briefs for arguments on the appeal. On August 12, 2010, PERC rendered a determination in which they remanded the matter back to me to clarify three specific issues. The issues are: (A) \$1,200 equity adjustment; (B) Retiree Health Benefits; and (C) Mandatory overtime.

1. \$1,200 Equity Adjustment:

I awarded a \$1,200 equity adjustment similar to the equity adjustment Arbitrator Robert Glasson had recommended and added to the maximum step in a voluntary settlement involving Atlantic County and Sheriffs' Officers represented by PBA Local 243 (Docket No.: IA-206-026). At page 69 of my Award, I stated, *"I incorporated the equity adjustment for the top for the December 31, 2006 Salary Guide for the very same reason utilized by Arbitrator Glasson (Docket No.: IA-2006-026, County of Atlantic and Sheriffs' Officers represented by PBA Local 243) to maintain experienced and qualified Correction Officers. There is no question that the Correction Officers in Atlantic County are not paid at the same level as PBA 243. Nevertheless, to remain a stable workforce, the \$1,200 equity adjustment must be placed on Step 7 of the December 31, 2006 Salary Guide."* (Arbitrator's Opinion at pg. 83).

N.J.S.A. 34:13A-16g (2) states: *"Comparison of the wages, salaries, hours and conditions of employment of the employees involved in the arbitration proceedings, with wages, hours and conditions of employment of other employees performing the same or*

similar services and with other employees generally: (a) in private employment; (b) in public employment in general and (c) in public employment the same or similar comparable jurisdiction as determined in accordance with Section 5 of P.L. 1995, c.425(C); 34:13A-16.2.”

I utilized the above cited criterion in reaching my determination concerning the \$1,200 equity adjustment. I reviewed the voluntary settlement set forth above and Atlantic County Prosecutor’s Office and PBA Local 77 and the SOA, PERC Docket Nos.: IA-2007-105/106. I was the Interest Arbitrator in the two latter matters which resulted in voluntary settlements.

My focal point was to look at what had been done with other law enforcement bargaining employees in Atlantic County. My understanding is that within Atlantic County there are at least three law enforcement groups employed by the County; Sheriffs’ Officers represented by PBA Local 243; Prosecutor’s Officers rank and file and SOA represented by PBA Local 77; and Correction Officers in this case represented by FOP Lodge 34. While there may be other bargaining units within those three, they are the only three I was referencing with respect to the instant matter.

It is incumbent upon all Interest Arbitrators to review comparable wage settlements as set forth in N.J.S.A. 34:13A 16g (2), and in particular public employment in the same or similar comparable jurisdictions. That is what I did with respect to the equity adjustment. PBA 243 and PBA 77 both had an equity adjustment added to the top step of the Salary Guide. For both the Superiors and the Rank and File, represented by PBA 77, \$2,800 was added to the top step and then a percentage of that \$2,800 was added to each individual step. Nevertheless, the \$2,800 for the

Prosecutor's Office was placed on the top step of the Salary Guide as an equity adjustment for the same reasons that Arbitrator Glasson used in placing a \$1,200 equity adjustment on the top step of Sheriffs' Officers represented by PBA 243; to maintain a stable workforce.

I incorporated the exact same rationale utilized by Arbitrator Glasson in that it was my intent to award an equity adjustment at the top of the Salary Guide to maintain a stable workforce within the FOP 34 bargaining unit. The \$1,200 equity adjustment was incorporated into my Award to ensure that adequate compensation was placed on the top step of the Salary Guide for Correction Officers.

My Award is consistent with the fact pattern that was presented to me based upon documents submitted by the parties, as well as my experiences working with law enforcement groups in Atlantic County. I placed emphasis on N.J.S.A. 34:13A 16g (2) with respect to comparisons in the same jurisdiction. I did not deviate from the pattern established by the voluntary settlements with PBA 243, (IA-2006-026) or PBA 77 (IA-2007-105/106). I continued that same pattern for Correction Officers, the third category of Atlantic County law enforcement employees.

Moreover, it was also my intent to create a new salary guide structure by adding additional steps and reducing the \$12,400.00 bubble step between steps 6 and 7 of the December 31, 2006, 7 step guide. That was a 7 step guide. I added one (1) step in 2007, one (1) step in 2010, and reduced the bubble step in 2010 to \$3558, which created a more equitable salary guide and a better progression between steps. In order to accomplish that goal it was necessary to add the \$1,200 equity adjustment on step 7 in 2007. There were 82 Officers on step 7 of the December 31, 2006, guide and as of

January 1, 2010, there were 115 Officers on step 9. Had I not added the \$1,200 equity adjustment, the \$12,400 bubble step would have had some compression, but would still have grown to an unwieldy number. By simply adding 2% each year to the \$12,400 it would have increased to \$13,422. The December 31, 2006, scattergram shows there are 176 Officers in the bargaining unit, and ninety-four (94) Officers are not at maximum. As those ninety-four (94) Officers progress through the salary guide they all would have received the benefits of that bubble step.

The \$1,200 equity adjustment was part of a comprehensive method to add steps to the guide, reduce the \$12,400 bubble step, create a more equitable salary progression and allow for a more affordable guide for the County.

Accordingly, the clarification requested has been submitted, and I believe any confusion has been cleared by my clarification.

2. Retiree Health Benefits:

At page 96 of my Award at I. 2. (a) I stated: *“Employees hired on or before December 31, 2006, shall be eligible for the provisions of this Article...”*

That was a typographical error. It should read ***Employees hired on or before December 31, 2009 shall be eligible for the provisions of this Article....”*** (emphasis applied). The change is not effective until 2010. Therefore, the status quo for 2007, 2008 and 2009 is maintained. The change occurs as my Award indicates in Section I. 2. (b) on January 1, 2010, as referenced on page 97 of my Award. Therefore, I believe the response submitted clarifies the confusion over 2006 versus 2009.

3. **Mandatory Overtime:**

In order to clarify my Award, it is necessary to have a full understanding of what happens with mandatory overtime for Correction Officers. There are only three (3) recognized holidays in the Agreement; Thanksgiving Day, Christmas Day and New Year's Day. The current practice is that a Correction Officer can refuse mandatory overtime once in a five year period. The language of the Agreement at Article IV,

Section A states: *"There shall be overtime payment at one-and one-half times regular pay for all hours worked over 40 hours per week. For overtime purposes, time worked included all hours actually worked, New Year's Day, Thanksgiving and Christmas Day, granted bereavement and administrative leaves. Overtime shall be paid no later than the second pay period after the overtime is worked".*

Section B: *"If overtime is necessary, the Employer shall first attempt to secure volunteers based upon seniority. If unable to secure sufficient volunteers, the Employer shall have the right to assign overtime based upon **the mandatory overtime list (also known as the stick list)**. If an Officer on the stick list refuses overtime, they are subject to disciplinary action. It is understood and agreed that the top three people on the **stick list** cannot request to go home early. Any Officer who volunteers for a minimum of four hours shall move on the stick list. It is understood that both voluntary and mandatory overtime shall be distributed as effortlessly as possible."* (emphasis added)

Paragraph C states, *"Paragraph B above does not apply where an employee assigned to a particular duty is to be held beyond the expiration of his shift, up to a maximum of two hours."*

Paragraph D states, *"The Employer agrees to announce the mandatory overtime list at each roll call."*

Paragraph E States: *"...In addition, no Officer will be mandated to work overtime on the last day of that Officer's regular workweek or the day before an approved minimum 5 day vacation".*

It was established that the mandatory overtime list (stick list) is controlled by seniority. Currently, most senior officers can refuse overtime and junior officers are assigned. Additionally, the record reflected at the eight informal sessions and the four formal sessions that the County was running into a severe problem with Officers utilizing the 13 recognized holidays in the Agreement plus Superbowl Sunday as days that they can refuse mandatory overtime. To address this issue both parties proposed specific contract language. The County proposed:

“An Officer shall have the right to refuse mandatory overtime two (2x) times per calendar year without being subject to disciplinary action. This provision shall not apply in emergency situations and whether a situation is deemed an emergency shall be determined by the Shift Commander. The right of overtime refusal shall not take place in any of the thirteen (13) recognized holidays nor on Superbowl Sunday. This refusal privilege shall be limited to one (1) Officer per shift and in the event of multiple requests, seniority shall prevail. An Officer shall assume individual responsibility for making sure he/she does not exceed the requisite limits. If an Officer exceeds the limits, then the Officer shall be subject to discipline.”

The FOP proposed,

“An Officer shall have the option to refuse mandatory overtime (except in emergent situations) two (2x) times within each calendar year without being subject to disciplinary action.”

After reviewing all of the material presented to me by both parties, as well as the testimony in the record, I rendered the following modification of Article IV (see Section H of my Award):

“An Officer shall have the option to refuse mandatory overtime two (2x) times per calendar year without being subject to disciplinary action. Overtime refusal shall apply to Thanksgiving Day, Christmas Day and New Years Day. Overtime refusal shall not apply to the ten (10) remaining holidays or Superbowl Sunday. This provision shall not apply in emergency situations

and whether the situation is deemed an emergency shall be determined by the Shift Commander.”

However, it is my understanding that Article IV, Section A is implemented as follows:

The ten holidays in the Agreement are not named. The employees receive by November 15th of each year payment for the ten holidays at 1.5% of their daily rate of pay. When they work an unnamed holiday, they receive a full day's pay at eight hours because they have or will receive payment for that unnamed holiday.

The above simply means that because it is a correction facility that operates 24/7, employees are to be paid for holidays. The rate of pay for holidays is 1.5%, which is paid during the years. Utilizing that concept, PERC is correct that my original Award does not save the County money.

My Award was to save the County money by preventing Correction Officers from calling out on those unnamed ten holidays. However, since the ten holidays are unnamed, it is impossible to determine how the County would be saving money. For example, Martin Luther King's birthday is a paid holiday in the State of New Jersey. On Martin Luther King's birthday the employees are working, but they have already been paid for the holiday as Article IV, Section A sets forth. Therefore, on Martin Luther King's birthday, if they are at work, they will receive a full day's pay.

In order to save the County money, which was my goal, I tried to eliminate calling out for mandatory overtime on those ten holidays. Unfortunately, the way the current practice exists, I cannot do that. There are only three (3) ways to reduce the County's overtime costs: (a) modify Article IV, Section A, (b) change the 1.5% for holiday pay or (c) modify the use of Superbowl Sunday. The three named holidays clearly establish

that if you work on one of those days you will be paid time and one half of your daily rate of pay.

For example, if an employee is working the early shift on Thanksgiving Day and is then on the stick list and must work the next shift, that person receives his/her eight hours pay for the early shift and then time and a half their hourly rate of pay for the second shift . That is clear and I am not attempting to change that.

Modifying Article IV, Section A will save the County some money, but the true savings cannot be determined based upon the record. I have already rejected the County's proposal to modify holiday overtime pay from time and one-half to straight time. By that proposal the County recognizes the complexities in addressing holiday overtime pay.

Nevertheless, Superbowl Sunday is the method I will use for the County to save money on mandatory overtime. Mandatory overtime is currently controlled by seniority. Mandatory overtime is a problem for the County in that employees are calling out on particular days, and the County can't operate the facility without paying overtime. A modification of the use of Superbowl Sunday is the method in which they can save money. On Superbowl Sunday Correction Officers are not allowed to call off from the mandatory overtime list

This is not an anticipated savings to the County. This is a real savings for the County. I believe I have clarified the intent of my language in my original Award which should bring this matter to closure.


Section H of my Award (see page 96) is modified as follows:

On Superbowl Sunday Correction Officers assigned to work Superbowl Sunday cannot call out and utilize that day not to appear at work. That means the stick list is not being utilized or minimally utilized because of long-term absences on that particular day and all assigned employees will be present. If an Officer does call out sick at least one (1) day prior to Superbowl Sunday, Superbowl Sunday, and at least one (1) day after Superbowl Sunday, that Officer must produce a physician's statement. Personal days, vacation days and compensatory days cannot be utilized on Superbowl Sunday without prior approval of the Officer's immediate supervisor. Any verified violations of the above will result in disciplinary action against that Officer(s).

This supplemental Award addresses the three (3) issues determined by PERC to need clarification.

Very truly yours,

Dated: September 1, 2010



Gerard G. Restaino, Arbitrator

State of Pennsylvania)
County of Wayne) ss:

On this 1st day of September, 2010, before me personally came and appeared GERARD G. RESTAINO to me known to be the person who executed the foregoing document and he duly acknowledged to me that he executed the same.