

PUBLIC EMPLOYMENT RELATIONS COMMISSION
OPINION AND AWARD

In the Matter of the Interest Arbitration

between

BOROUGH OF FORT LEE

and

PBA LOCAL 245

Docket No. IA 96-133

BEFORE: Barbara Zausner

AWARD DATED: December 30, 1997

APPEARANCES:

Savage and Serio
Attorneys for the Borough
By, Thomas J. Savage, Esq.

Loccke & Correia
Attorneys for the Union
By, Richard D. Loccke, Esq.

PROCEDURAL BACKGROUND

I was appointed interest arbitrator by the Public Employment Relations Commission (PERC) on September 18, 1996. I met with the parties on December 19, 1996, February 10, and March 18, 1997. Other scheduled meetings were adjourned.

On February 10 and March 18, 1997, I held formal hearings which included testimony and documentary evidence. I closed the record on receipt of the parties' post-hearing briefs. The due

date of the award was extended at my request and by mutual agreement.

FINAL OFFERS

PBA

1- Three year contract with a 6% increase in each year, 1996, 1997 and 1998.

2- Change Article VIII, "Holidays" to reflect the Borough's practice of granting Martin Luther King's birthday as a 13th holiday.

3- Article XVII, "Personal Days", "if the days are requested but not granted they shall be paid at the time and one half rate at the end of the year (January of the year following, in practice.)"

4- Increase the clothing allowance by \$50.00 per contract year.

BOROUGH

1- Two year contract for the years, 1996 and 1997.

Across the board increases of 3% each year plus a stipend ranging from \$300 (for the 4th Grade Patrol Officer) to \$550 for Lieutenants.

2- Reduce the starting rate and establish a new wage scale for new hires as follows:

Current (1995) Salary Guide:

<u>Year #1</u>	<u>Year #2</u>	<u>Year #3</u>	<u>Year #4</u>	<u>Year #5</u>
\$27,538	\$45,218	\$49,460	\$53,521	\$60,348
			<u>Year 5</u>	
			\$53,955	
		<u>Year 4</u>		
		\$47,564		
		<u>Year 3</u>		
		\$41,173		
	<u>Year 2</u>			
	\$34,782			
<u>Year 1</u>				
\$28,391				

Academy rate: \$22,000

New hires will be paid \$22,000 until graduation from the Academy. They, then will be paid \$28,391 for the next twelve months and progress through each step thereafter until they reach the maximum pay, \$60,348.

** 3- Reduce terminal leave paid to a retiring officer to a maximum of ninety (90) accumulated sick leave days.

** 4- Personal Leave: In the event an officer earns one or two "shooting days" pursuant to Article XXXI then the number of personal leave days under this Article shall be reduced accordingly.

** 5- New Hire Health Insurance

"Subject to the Borough's application to the New Jersey State Health Benefits Commission for a ruling on the legality of the program, and provided all other municipal employees are similarly affected, all new hires will pay the dependents' [portion of the health insurance until they reach maximum pay at which time the Borough will assume the payments."

** 6- Freeze longevity at current payment levels for all currently employed officers and eliminate the longevity program for all new hires.

PRELIMINARY ISSUE

The PBA contends that the above asterisked issues within the Borough's offer are not arbitrable; specifically, longevity, terminal leave pay, health insurance and shooting days. The PBA filed the interest arbitration petition on April 1, 1996. It listed seven economic issues and one non-economic one: wage increase; holidays (Art. VIII); vacations (Art. IX); sick leave payout (Art. XI); personal leave (Art. XVII); clothing allowance (Art. XXIII); PBA business (Art. XXXV); and space availability for the PBA. The Employer did not add issues to those listed in the petition before this proceeding began. The parties discussed a number of other issues in talks aimed at voluntary settlement. The PBA cites PERC rules and case law in support of its argument that it is not obliged to arbitrate issues not listed in the petition.

The Borough argues that "although the Act does not expressly provide for revision of offers during the process of arbitration, the Courts and PERC have recognized that the parties may revise their

**The PBA challenges the arbitrability of these issues.

last offers ... at any time before the conclusion of the hearing." (Brief, p. 13).

Decision on Preliminary Issue

The Public Employment Relations Act, NJSA 34:13A-11, governs this proceeding. The PERC rule cited by the PBA is Rule 19:16-5.5(a)1 which provides:

(a) In the absence of either a jointly submitted notification or joint petition requesting the initiation of compulsory Interest Arbitration, the respondent shall file within seven (7) days of receipt of such notification or petition, a statement of response setting forth the following:

1. Any additional unresolved issues to be submitted to arbitration.

For reasons cited by the PBA, the motion to limit arbitration to those issues raised in the PBA's original petition is granted. (See, Glasson letter of 9/10/87; Bogota, 9 NJPER 14110 (1983); Newark EMBA, 90 NJ 44 (1982); Carlstadt, IA 94-129; Emerson, IA 95-143; Midland Park, IA 96-061; Middlesex County, IA 96-115, Interim Award 10/10/96).

This determination leaves the following issues for resolution by conventional arbitration: term of the contract, wages, holidays, personal days, and clothing allowance.

DISCUSSION AND OPINION

All of the issues in dispute have some economic impact.

The Borough of Fort Lee has a population of 31,997, almost 24% of which is 62 old or older. (E-10). Approximately 27% of the population is between the ages of 25 and 44. The Borough employs 91 in the police department; 87 in the bargaining unit.(E-2).

The Borough focuses on the current level of wages and benefits in the unit and argues that "the total compensation package is significantly higher than the base salary and is comparable to the benefits provided for in other municipalities." (Brief, p. 26, E-2, J-1).

The PBA contends that the Borough "is one of the busiest law enforcement communities in the State." The high level of commuter traffic and commercial activity as well as the dense population make for "an extremely active law enforcement community." (Brief, p. 13).

Public Interest.

The Borough argues that its proposal attempts to balance the "public desire to control the ever increasing costs of local government with the obvious necessity of police protections, as well as other municipal services." (Brief, p. 21). It also asserts a "limited ability to add ratables" which places the burden of covering cost increases on the tax payers.

The PBA points to workload factors and the high volume of "vehicles per day [which] pass through the borough." (Brief, p. 13, P-1; P-3, p.5). Exhibit P-7 is an account of criminal offenses in the month of January. The exhibit shows January 1992 through January 1996. The number of police assaults, for example, has increased dramatically. The number of arrests has remained about the same. "Virtually every type of crime and need for police response has been experienced by the Fort Lee Police Department." "Due to the wealth in town and the presence of many extremely valuable properties ... there is a high level of property crime." (Brief, p. 13).

The PBA concludes from a 1994 organizational study of the Department that manpower remains below what is recommended resulting in increased workloads for the existing officers. The complement decreased from 97 police officers in 1986 (105 in 1990) to 91 at the present time. 32 officers have retired since January 1, 1993. They "were replaced by 26 rookies." (Brief, p.16, P-5). This leaves the bargaining unit either short handed (until the new employees are trained) or staffed with junior employees. (P-11 lists 32 senior police officers who were replaced with new employees, shown on P-12).

The PBA also argues that the level of productivity and efficiency in the unit "is exceptional." (Brief, p. 18, P-6). Activity levels in various police services have increased.

The PBA argues,

Exceptional increases in work load and significant reductions in personnel available to perform the work have clearly established a high level of citizen service and public interest. This level of productivity has served the public well by saving a significant amount of money in staffing costs alone. While this money is being saved ... the police officers have generated an extremely high level of monies and increases in rates of contribution in the municipal court. (Brief, p. 19, citing the recent budget, P-33, Sheet 4).

On this basis, the PBA argues that "a reasonable wage increase consistent with this type of performance, proficiency and productivity be recognized as a positive point in favor of the police and further that great weight be given under this criterion to an award of the PBA position." (Brief, p. 20).

Comparisons and current compensation

The PBA argues that comparison with similarly situated employees "clearly identifies the Fort Lee compensation program to be average to poor among appropriate comparables." The PBA cites as comparable, Paramus, Englewood and Hackensack, among selected others. Fort Lee benefits are "average to poor", the "work schedule ... requires the highest annual work obligation among any town in evidence." (For example, Hasbrouck Hts.,

Lyndhurst, Hillsdale, Englewood, Garfield, Saddle Brook and East Rutherford.) Fort Lee employees have less time off than any of the comparables. (Brief, p. 21). According to PBA figures, the average maximum vacation time among a number of nearby communities is 28. The maximum in Fort Lee is 22. (Brief, p. 22, Chart 3).

The average clothing allowance benefit in the group of comparables offered by the PBA is \$725. The allowance is \$600 for this unit. The PBA claims the educational incentive is also low. (Brief, p. 25, chart 5). The PBA provides similar comparisons for annual holiday benefits (Fort Lee, 13; average 13.46).

The PBA calculated "base wage increases expressed in percentage of change" using police contracts in evidence. It found the following average increases: 1996, 4.859%; 1997, 4.503%; 1998, 4.44%; 1999, 4.23%. These are from agreements voluntarily reached at various locations across the state. (Brief, p. 26, Chart 7). The base wage increases are independent of other economic changes.

The PBA characterizes the Borough's offer as an attempt to "dismantle the wage program, freeze various benefits and sharply reduce other benefits." (Brief, p. 28). It cites the wage increase paid to Fort Lee teachers whose salaries are funded from the same source. "Teacher salaries rise to a high of \$83,158 at the top of the guide in 1999" for a work year of 186 days. The increases for most teachers ... are in the range of 5%, plus or minus." (Brief, p. 29). The PBA concludes that the "key consideration is a comparison with employees doing the same or similar jobs." (Brief, p. 30).

According to the Borough, "PBA members are provided superior economic benefits" compared with other Borough employees and with their counterparts in other jurisdictions. The Borough contends its offer "is in keeping with the overall economic trend in both public and private employment" (Brief, p. 21).

Compared with other Borough employees, the PBA bargaining unit members are much higher paid. "Only three members of the Department Head Unit received a base pay higher than [the PBA maximum rate] in 1995." (Brief, p. 22, B-9). The PBA's offer would greatly increase the gap.

Employer's exhibit 9 is a set of salary ordinances with wage schedules showing rates of pay for employees in other bargaining units. The Borough argues that the exhibit "clearly demonstrates that members of the PBA receive a salary which far exceeds that of other Borough workers." (Brief, p. 22). "The average patrol officer had a higher salary than all other municipal employees, except the Borough Administrator, the Human Resources Director (retired) and the Municipal Court Judge." (Brief, p. 23, E-9). No supervisor earns more than the average patrol officer. Sergeants and lieutenants earn "well in excess of other Borough employees." (Br., p. 23).

The Borough developed an exhibit summarizing contracts in evidence from which it argues that employees in this police unit "compare more than favorably with their counterparts in other jurisdictions." (Brief, p. 24, Exhibit 1 attached to the brief.) The 1995 maximum patrol officer salary in Fort Lee was \$60,348. This is higher than many other neighboring municipalities. Within the county, only Midland Park, Bergen County Investigators, Paramus and Closter have a higher maximum. The Employer's offer would result in a maximum patrol officer salary in 1997 of \$64473 (\$64023 + \$450 stipend). The "average police officer salary for the 130 listed municipalities by the Borough was \$50,672.50 for 1996 and for 1997 it was \$52,953.00." (Brief, p. 25, B-4).

The Borough's list includes municipalities in Atlantic, Ocean, Camden, Burlington, Cumberland and other counties which are not comparable by customary measures. Many of the municipalities are considerably less populous and wealthy and have much lower crime rates. Comparison should be limited to similarly situated employees and employers.

If averages are constructed from the listed municipalities within Bergen County, the figure is considerably higher. The 1997 maxima for some of those towns are: Alpine (1996), \$62,696; Carlstadt, \$62,469; Creskill, \$58,275; Hasbrouck Hts, \$66,732; Ho-Ho-Kus, \$63,643; Leonia, 1996) \$63,418.

The Borough also cites comparison with other municipalities in support of its proposal to reduce the hiring rate and provide a new salary guide for new hires. If the unusually high rate in Saddle Brook is ignored, the average hiring rate among 12 Bergen County

municipalities is a little higher than \$24,000. (Attachment 2 to the Borough's brief).

Fort Lee's population size is three times the average in the County's 70 municipalities. The "average value" is about average in 1996. The equalized value is more than twice the average in 1996. The tax rate (1996, \$2.18) is below the average (\$2.26). Other indicators also place Fort Lee among the "richer" municipalities. (E-7,8).

Private sector

The PBA argues that "private sector employment should be given very little weight ... in this case." (Brief, p. 30).

The Employer offers exhibits 21-33 to show a trend of "lower rates [of pay and wage increases] to meet the economic realities of today's market." (Brief, p. 22).

Lawful Authority and Financial Impact

The Borough relies on constraints within the CAP law. The budget is developed with an eye to the impact on taxpayers and the need to keep costs within the CAP. "Although the increases proposed by the Borough are within the CAP limit, it is evident that the increases proposed by the PBA would have a greater negative impact on that limit." (Brief, p. 33).

The Borough maintains that its "overall financial picture ... is precarious. Acceptance of the Borough proposal will act to minimize the impact on the governing unit, residents and taxpayers." An award of the PBA's position would "exacerbate the already strained financial situation which exists in the Borough." (Brief, p. 33). The Borough has lost "significant amounts of State aid which must be recouped through the local budget." (Brief, p. 34, E-5). The municipal tax levy has increases resulting in a "rise of 12.35 tax points." (Brief, p. 34, E-6). The Borough points to a decrease in municipal court revenue "generated ... by the activity (or lack thereof) of municipal police" and to increases in municipal salary appropriations and pension obligations. (Brief, p. 34, E-6). The total tax levy has increased by seventeen percent in the five years between 1992 and 1996. (E-11). The true value of assessed

property has decreased. The Borough has also lost numerous tax appeals resulting in a long term loss of income and the expense of reimbursements. (E-12,13).

The Borough also notes its lack of success in the last interest arbitration proceeding with the PBA. As a result of that award, the "Borough found itself unable to pay the amounts due ... [and had] to pass a refunding bond ordinance providing for an emergency appropriation" of over \$1 million. (Brief, pp. 36-37, E-14).

The Borough argues that its budgets and financial statements (E-16 through 20) "buttress the conclusion that [its] final offer must be accepted." (Brief, p. 37). Reliance on the 1996 fund balance, which "appears to be substantial ... would be misplaced." (Brief, p. 37). The surplus has decreased.

Citing the large proportion of senior citizens in the Borough's population, the Employer contends that "an increase in municipal salaries has a negative impact on the retired citizens...." (Brief, p. 38). Several residents testified about their own reduced means (fixed incomes) and increases in social security payments which are lower than the rise in the cost of living, .

The PBA argues that Fort Lee voters do not "show much concern for their taxes" based on the fact that only 13 percent of those eligible voted on the most recent school budget. (P-31). The education portion of the levy exceeds \$27.9 million and is the only budget on which taxpayers may vote. (P-27, the 1996 AFS)

The PBA claims "the Borough budget for 1996 was brought in more than \$54,000 under the cap limitation." The "cap bank" exceeds that amount. (Brief, p. 33, P-33, the 1996 budget). Ongoing construction "results in an expanded cap base and increased cap flexibility." The PBA also points to savings which resulted from promotions out of the bargaining unit. (P-13).

According to the PBA, "an award of [its] position will have an ... imperceptible effect on the governing unit., its residents and taxpayers." The PBA developed a base wage computation to show that the value of a one percent increase is \$55,570. The total tax levy for 1996 was "in excess of \$62,252,000." (Brief, p. 36, P-27, sheet 22, line 5). The PBA compares the cost of the difference between

the parties' offers to the taxpayer with the average monthly cable bill. The latter exceeds the former by six times. (Brief, p. 37). The Borough's tax collection rate has increased from 93.10% in 1993 to 96.86% in 1996. Delinquent taxes have been collected at an increasing rate. "The tax rate in Fort Lee is below average for Bergen County" at \$2.31. This is considerably below neighboring towns, including Fairview, Englewood, Leonia, Palisades Park, Ridgefield and Teaneck. (Brief, p. 40, P-34). Further savings result from the retirement of higher paid police officers and their replacement with new employees.

The police department "generates significant sums" for the Borough in municipal court fines. (P-23). The amount is "approximately 20 times the amount at issue between the parties" (Brief, p. 41). Police services are not funded solely by local sources. The Borough receives various grants to help pay police salaries. (P-19, 20, 21, for example.)

Cost of Living

The Borough describes its offer as a cost of living increment. The cost of living increase for 1995-96 was 3.1%. It was 2.6% for 1996-97. In light of "financial difficulties", the Borough contends this is a fair offer. (Brief, p. 40).

The PBA points out that when the cost of living was "extremely high, sometimes double digit, the police officers did not receive double digit increases. (Brief, p. 44).

Continuity and stability of employment ...

The PBA argues that "area standards" and the "prevailing rate" are factors included within this criterion. It argues it "has made a strong showing ... with respect to comparability and prevailing rates of increase.... [T]he 'prevailing rate' of increase strongly favors an award of the PBA position...." (Brief, p. 45, P-26, and other exhibits).

CONCLUSIONS

Term of the Agreement

I have concluded that the term of the agreement must be three years in order to provide the parties with at least one year to live under this contract. I find that the shorter term, proposed by the Borough, is directly contrary to the public interest in stable employment and harmonious labor relations. The contract between the PBA and the Borough expired at the end of 1995. Acrimony surrounding the absence of an agreement undermines the morale of all concerned. Even a three year agreement puts pressure on the parties to commence preparations for negotiating a successor.

Wages

The PBA's argument there is "no evidence of an inability to pay its last offer position" (Brief, p. 32) is rejected as contrary to the intent of the statutory criteria and case law. The Borough has no obligation to show an inability to pay. The burden is on the bargaining unit to establish that its proposals are more reasonable than the Employer's. I have concluded that the PBA's salary offer, at 6% increases per year plus other cost increases, is way out of line by any analysis. On the other hand, the Borough's offer is inadequate and an award of a larger increase (coupled with savings in other areas) will not have a deleterious impact on the Employer's ability to provide services or on the taxpayers.

I conclude from the relevant evidence that base wages should be increased by 4% in each year of the contract. The Borough's offer amounts to slightly over 3%. The PBA's demand for 6% is unreasonable in light of comparisons, the public interest in controlling costs and the impact on the tax paying public. Even the PBA's data show a declining trend in wage increases to police officers. In other public and private employment, few employees are achieving raises as high as 4% in recent agreements.

Existing compensation is competitive and has resulted in a highly motivated and professional police force. Employment in the unit is stable. Documentary evidence amply demonstrates both the demands of the job and the high level of service provided by

the Borough's law enforcement personnel. The unit also generates considerable income for the Borough.

It is a fact that police employees are paid more than most other Borough employees including those with supervisory and administrative responsibilities. On the other hand, this pattern is an historic one which the parties have perpetuated over a number of years. Schedule D, for non-union personnel, reflects wage increases of 4% to those employees. (E-9). That fact provides some internal pattern support for this award.

In light of the favorable competitive position occupied by this unit in the county, it is reasonable to award an increase which is somewhat less than the average rate of change. Base wage changes are meaningless without a close comparison of the total economic package, the workload, the relative wealth of the community and other factors which appropriately influence wages. A 4% increase will maintain the unit's status while affording some relief to the Borough. The difference between the award and the Borough's offer is well under \$100,000 for the two years of the Borough's offer. The Borough is in a position to plan for 1998 and to press its negotiating demands for other cost savings in the next round. The Borough's wage proposal aimed at rationalizing the guide and reducing future costs is awarded in part, as reflected below.

I agree with the Borough that the starting rate should be reduced along the lines of its proposal. The current guide starts at \$27,538 in year one and jumps to \$45,218 in year two. There is no reasonable basis for maintaining such a disproportionately high increase between the first two steps. The Borough's proposal would add an academy rate to be paid until graduation from the police academy after which the employee would be paid \$28,291 for the next twelve months. The Borough's salary proposal is aimed at reducing future costs while protecting current employees' compensation. That goal serves the public interest without adversely affecting any bargaining unit member. It is also reasonable to make the salary guide more rational by reducing the large jump for relatively junior employees and increasing the steps to spread out the increments. Further details are provided in the award section below.

The award results in a maximum patrol salary of \$67,883 by January 1, 1998. This point of comparison is traditional and it reflects the reality in this unit; that is, by that time, most patrol officers will be at maximum pay. In 1997, where there are more agreements to compare, the maximum \$65,272 compares favorably with a number of other Bergen County municipalities, including Creskill, Ho Ho Kus, Oakland, Ridgewood and, most likely, Teaneck. The 5% raise in 1996 in Paramus increased the difference in the maximum patrol officer's rate from about \$5,300 to about \$6,200. The gap between Fort Lee and other towns is decreased by this award.

Holidays

Article VIII, paragraph (B) of the 1995 contract provides, in part: "The twelve (12) holidays shall be those as specified in Appendix B." Appendix B lists thirteen holidays. Apparently, the Martin Luther King birthday holiday was added to the list in the appendix but the contract language was not made to conform with the list. I find no reason why the contract should not be changed to match the appendix and the reality.

The PBA's position is awarded. Article VIII, Section B shall be changed to refer to 13 holidays. There is no cost factor associated with the change.

Clothing allowance

I have concluded that it is more important to increase direct wages than to spread the economic expense of the contract to other areas of compensation. Therefore, no increase is awarded.

Personal Days

The PBA's demand creates a punitive remedy for denying officers access to their personal days off. There is testimony that officers have had difficulty using this leave due to staffing and other problems. It seeks to give "the highest priority" for this issue and argues that leave "should only be denied for an unforeseeable emergency affecting the police department as defined by the chief of police."

The PBA's proposal is not supported by sufficient evidence to warrant any change in this area. Such evidence would be examples of or grievances protesting unreasonable denials. Further, an award of this proposal could result in tremendous expense. The proposal increases the cost of the days by a factor of 50%. As such, it is unreasonable.

AWARD

Wages

Effective 1/1/96 the base wage rate shall be increased by 4% across the board.

Effective 1/1/97 the base wage rate shall be increased by 4% across the board.

Effective 1/1/98 the base wage rate shall be increased by 4% across the board for employees hired before 1/1/98.


The award results in the following salary guide for current employees:

	1/1/96	1/1/97	1/1/98
Academy	28640	29785	[24000]
Ptl 4th.Gr.	47027	48908	50864
3rd Gr.	51438	53496	55636
2nd Gr.	55662	57888	60204
1st Gr.	62762	65273	67883
Sergeant	69038	71800	74672
Lieutenant	75942	78980	82139
Captain	83536	86877	90352

A new salary schedule for employees hired after 1/1/98 shall be established with an academy rate of \$24,000 to be paid until the employee has completed academy training. There shall be five steps after the academy rate with the sixth step on the 1998 guide as the maximum. The Borough shall develop the new guide providing for increments which are reasonably even but which are greater as seniority increases. (That is, the difference between the fifth and sixth steps should be larger than the difference between the fourth and fifth steps.)

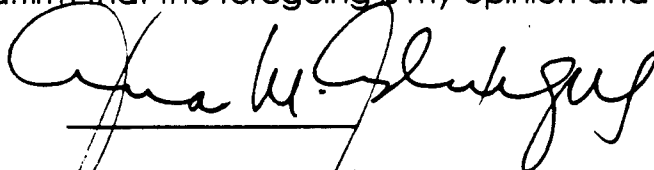
Holidays

Article VIII, Paragraph (B) shall be changed to refer to 13 holidays.

BY: 
Barbara Zausner, Arbitrator
December 30, 1997

New Jersey
Hudson

I affirm that the foregoing is my opinion and award.

Before: 

Witnessed and subscribed before me
this 30 day of Dec 1997.

ANA M. RODRIGUEZ
NOTARY PUBLIC OF NJ
My Commission Expires 10-2000