
In the matter of Compulsory Interest Arbitration
concerning the negotiations impasse between
The City of Camden, New Jersey as Remanded
and

The Camden Organization of Police Superiors

PERC Docket IA-2013-007
As remanded for reconsideration by this Arbitrator
by action of the PERC.

APPEARANCES

FOR THE CITY: Michael DiPiero, Esq., and Mike Watson, Esq., Counsels for the
City., Brown & Connery.

FOR THE UNION: Stuart Alterman, Esq., and Christopher Gray, Esq Attorneys for
COPS, Alterman & Associates

Both parties had additional representtion as had been present at the original hearing.

My award, after the conclusion of hearings of this matter, was executed on December 17, 2012 and delivered through the PERC to both parties immediectly thereafter. The terms of the award were appealed almost immediately by the Union. The PERC held the matter in abeyance for a short period and on January 8, 2013 advised the Union to file an amended brief. This was done on January 9th. Some parts of that submission were deemed to be acceptable in the record, but other items offered were not so accepted. The request of the Union to present oral argument was denied with the explanation that the matter had been fully briefed.

The PERC noted that the award had been of conventional nature after consideration of the final positions of the parties in light of the statutory factors which the arbitrator is obligated to consider and weigh in the determination of his conclusions.

In its evaluation of the content of the elemennts of my award there were found to be several questions and concerns identified by the Commision which were spelled out instructively and as to which it requested clarification. The specific comment as to the first of these was directed at a part identified as "Appointment process". The Union had advanced the proposal, during the hearing of this dispute at arbitration conducted by me, that all supervisory officers will be appointed based on established Civil Service

Commission Standards and Promotional exams. It went on to articulate its views that no "Executive officers, Commander or Team Leader" positions should be utilized or recognized.

My response, or lack thereof, became the underlying basis for this issue being raised. The reasons for my unwillingness to be responsive in any detail were several. In the first place there was no specific claim or evidence offered which would have suggested these "titles" were anything more than a means of identifying functional responsibilities within an established job title and certainly no evidence suggesting there had been any included impact on the rate of pay provided to any officer so designated. My second and even more basic reason to ignore the Union's request, was my conviction that such matters were within the jurisdiction of Civil Service and as such should have been submitted to the Commission. The Union offered no rationale for its demand that the Employer cease use of such designations beyond a fit of pique. I could not identify any evidence to the effect that such informal titles were of real consequence and set the demand aside as an issue introduced primarily as a challenge to any show of or the exercise of functional ability by the Employer. Lastly, I felt that an allegation of improper action concerning the exercise of Civil Service's responsibilities would certainly be most appropriately be brought to the attention of that agency and not held in abeyance awaiting an arbitration proceeding. It is also worthy of note that the Union failed to introduce a shred of evidence suggesting that the City had violated any Civil Service standards or promotional examinations. Finally I repeat my expressed reservation that if such had been the case, as the Union inferred, the appropriate recourse available to it was to seek a resolution from Civil Service, an available channel for such matters, which apparently was ignored..

I trust I have clarified my handling of this issue.

A singular issue was raised concerning the allegation that this Arbitrator failed to consider evidence that the City had recently agreed to provide other City employees with wage increases similar to those sought by COPS. Frankly, the "recently" tag on this information, whether or not accurate, places the introduction of that complaint beyond the date of my hearing as was the even more recent decision of the County to take over the police function in the City

.This brings me to remind all involved that this remand did not mandate the abandonment of my findings of December, 2012 which provided the backbone for my award. Then and since that time the Union has regularly reiterated claims as to the payments of monies to other units of personnel. These have been found to be without merit in almost every situation. Moreover, there are the most compelling factors, which have to do with other of the police and fire personnel, which provided unavoidable limitations as to comparability or equality being becoming a standard to be followed when dealing with this SOA unit. The fact is that the pay for many units of the City, including the SOA, have been financed by other than the City and those financial arrangements are not within the control of the City. For instance a singular example had to do with payments made to Fire Personnel who were treated as if the City was no longer in the position to control that decision: and

it was not! In effect the City could no longer direct any provided funds to any other purpose. The fiscal control of the employment structure had been removed from the City and, in effect, these several groups of affected employees have become totally dependent on the State and Federal government's, now shrinking, sources for compensation. The effect of this has meant the compensation of such officers is controlled by those agencies which also impose standards and conditions with out input from the City, effectively making them employees of other authorities who dictate the salary and other conditions of their employment. More recently these changes have been underscored by a complete takeover of all City police and the removal from employment by the City of all officers affected; a development beyond my term of original assignment and one which is precluded from my considerations. This has been visited upon all personnel with a vengeance as prior pay levels or entitlements and all benefits have evaporated and other elements of compensation including rates of pay, if offered employment by the County, as well as accumulated indicia of years of service and benefits have been eliminated. The offers of employment extended to such persons specifically excluded consideration of any carryover of entitlements from employment with the County and have been at significantly reduced pay rates.

Last December as I completed my involvement as Arbitrator in this dispute there was as yet only a threat that such a take over, by the County, could possibly happen in the future, some time in 2013. I determined the best course of action I could follow was to issue an award which might reduce the uncontrolled excesses which were firing the County and State concerns about the management of the City and, in particular police, employees and which had so radically contributed to the results now visited upon them.

In addition I awarded a contract which extended until the end of 2013. My reasoning for this was this provided some semblance of order, stability and continuity during a period in which the parties might be enabled to overcome their differences, and perhaps providing the officers an opportunity to utilize some of the credits for time off which they had been accruing in excessive numbers by working overtime on a virtually every opportunity basis. The advantage of such overtime work was two fold. The pay was at premium rate and for each such day a credit was gained which allowed an officer to take a regularly scheduled day off with pay.

The President of the Union testified that he had advised the members to take those days off if five were accrued; to do so because he foresaw these credits would not be paid off in extra cash but rather would be lost. He followed that advice and took such extra overtime credits in alternate days off as had been intended when the plan was negotiated. Most of the members failed to heed this advice because they anticipated the credits to result cash payment. This raised their normal income and the expectation that the addition of the overtime pay in cash probably would increase their retirement pay.

I found nothing in the original contractual language which would have supported unlimited accumulation of such credits and as the President had indicated there had been understood a limit of five days accumulation as the maximum allowed to be taken before

such credits could again be earned. The Union, however began to assess these equivalent days off as dollar credits. The net result was unlimited overtime with the added cost anticipation of another days pay in the "bank", raising the total value of such days worked to a total return of 2 and one half days pay for each day worked. This precipitated the accumulation of more than \$1,250,00 of future payment liability in addition to what was actually paid when the overtime hours were performed.

I observe no explanation was entered into this record as to why, if there was such a consistent need for extra work, that no effort was made to recall laid off officers to fill those needs. As there had been a lay-off of nearly a third of the work force it would seem such opportunities to work, even if only on a part time basis, would have been welcomed at straight time pay, equivalent to a third of the obligation using overtime. Unless there were regulations which prohibited this. It is significant to note that the same situation involving the subordinate officers has also resulted in what they see as entitlement for pay enrichment which, when combined with the SOA has amounted to more than Nine Million dollars which the City can not afford to pay. A program which got out of hand! That seems to be a great deal of extended compensation premiums especially as it represents the amount due beyond the overtime pay received for the time actually worked.

As noted in my award, I have placed special emphasis on the criterion of interests of the public. When considering the above information in this remand to me for reconsideration I am now persuaded that the practices permitted in administration the compensation system were diametrically opposed to and violative of the central obligations therein stated. In that earlier decision I had determined this criterion to be of singular importance. Further examination of the details now before me suggest I may have understated the emphasis it deserved!

In returning to my response to the information provided by the SOA, one element of their claim was that I had ignored the fact that the City had paid other awards in full and that the City had recently agreed to make some payments to non-police personnel. There may be some truth to the latter element of the claim which involved those employees at much lower levels of income. However that portion of the statement having to do with an expectation that other awards have been fully paid or were now agreed to be paid by the City, which denied those allegations, and that such should be considered by me and influence me to modify my award I found to lack substantiation. Furthermore, these claims have not been timely in that my award was made on the basis of facts before me in 2012. They are contradicted by testimony of the City and are, timewise, beyond my jurisdiction. Other claims of the SOA as to other arbitration awards granting wage increases and thus should be used as a guide by me, are also discounted by me because they have become known after I issued my award and/or they have been proven to be false. In at least one such case the original award has been set aside and the case assigned by PERC to another arbitrator. So I have concluded the claims of the SOA as to these issues are either misleading, inaccurate, not supported by the evidence before me at the hearing or even later, involve employees whose pay and conditions of work are

determined by other authorities or represent what the SOA sees as action yet to be taken and thus are inconsequential.

I note also that the claim mentioned as a justification for this remand having to do with a recent agreement of the City to provide some other employees with a wage increases similar to those sought by the SOA should be addressed. My first reaction is that this development was not in place when I concluded the Arbitration hearing. My next reaction is that those employees never saw wages and benefits remotely similar to what is paid to SOA employees. And they would certainly never have been given increases similar to those sought by the SOA. Additionally I make the observation that I know of no compelling evidence that the terms and conditions employment of white collar or blue collar employees were ever related to the income of police superior officers and reason this certainly is not the time, even if the Union's claim were to be true, although untimely as to my jurisdiction, for such a less than significant reason to influence my overall determinations and for these reasons I decline any attempt to do so

The most compelling reason for me to isolate the compensation plan afforded to police is that the income of that group has become a function of other elements of government. The situation is such that the City has lost complete control due to the total dependency on the County or State for funding of such operations. It is as if the role of employer has been captured by the State which determines not only the amount of funding but conditional requirements which must be fulfilled to justify that assistance. In the recent past the funds made available have been reduced each year.

With the above backdrop of information I assume the determinations I made as part on my award should have become obvious. I have always been reluctant to upset terms of an agreement which was previously negotiated. But in this case I could not avoid the very unusual circumstances presented. I spoke exhaustively about the unrelenting economic and social pressure under which the residents of Camden live. I made it clear that I found the key focus as to the statutory factors application must be on the interests and welfare of the public and supported that determination with many irrefutable facts.

A second part of that same element of my decision had to do with a request for clarification of my use of the following language: The \$15,000 limit for payout of accumulated vacation and holiday credits. Here again the cost factor was the most limiting consideration given the bankrupt circumstance of this employer. However, the City made an overture to make limited payments of a maximum of \$15,000 to each officer who had a legitimate claim. While I found this to be a reasonable concession it was clearly intended to assuage those the officers of their feelings of loss. I adopted the proposed \$15,000 as the payment in full for all earned vacation and holiday credits as was offered. This award was intended to be full compensation for all or any earned credits and it was to confirm that condition had become part of my award.

In the instruction to me as to needed information by the PERC there was included the topic of key witnesses for the City not having been present for examination. I did not

anticipate absence of any witness who might have testified. At the hearing the SOA raised the matter to my attention. The response which came from the City was that its representatives at the hearing were fully capable and had been given authority to respond to any inquiry which might be made. As the hearing had begun and as I anticipated a very full day's work I suggested we proceed and should there be unanswered questions we deal with that eventuality in the most propitious manner practicable. The issue did not come up again although the Union had represented it had questions which it wished to address to management. As these procedures are characterized by unanswered inquiry I did not pursue the matter further and no additional request was made for another hearing day.

An other issue was identified in the remander. That being, ".that the arbitrator mistakenly believed that the City hasn't paid other awards which were paid in full." At the time of the hearing there were claims of several such incidents. The testimony of the Employer indicated otherwise although there was an admission having to do with some non-uniformed employees receiving some money. They were distinctive in the sense the City itself made the payments but this was in sharp contrast to the circumstance of the police and fire officers, each of the several groups of which were paid from dedicated State and Federal funding programs. The fire officers were indeed paid from such governmental funds. Each of those several groups were, to the extent they were paid, treated with specifically designated funds which were not within the control of the City as to who was covered. The officers in the matter before me were never included in wage improvements of that kind and thus remained on their regular pay plan. The refusal of those paying agencies to include other groups was never explained to me, although it is my understanding it had to do with the limits of dedicated monies. Those funding monies have been reduced in each of two years and could be further reduced. The change effected by the County very recently had been contemplated as mentioned earlier.

This demonstrates the lack of control which earlier had been rested from the City fulfilling the role of employer/manager seat and which had the effect of switching that employer role to the State and Federal governments; and removing the City. This dramatic change was basic to my conclusion that one could not properly tie economic changes afforded to employees of the City to those who were no longer so employed. It is this distinction which caused me to disregard suggested proposals which were based, in large measure, on the concept of equal treatment for all as if employed by a singular entity.

I note a question was raised about my reference to "2006 Freezes". That referral had only to do with the history of the relationship between the parties and it had no impact on the my considerations within the functional bounds of this award.

There was nothing in the proposals made during this remand hearing which I found to be of such moment as to warrant modification of the previously published terms of my award. I have included numerous language modifications incorporated in elements of the discussion above which were designed to assure understanding and/or clarification by

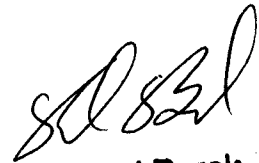
incorporation of more detailed wording or expansion as necessary. I trust I may have satisfied the questions and concerns specified in the remand notice.



Frank A. Mason
Arbitrator

April 5, 2013
Pennington, New Jersey

On this date before me personally came and appeared Frank A. Mason, to me known and known to be the individual who, in my presence, executed the foregoing opinion and award and he acknowledged to me that he executed the same

 4-5-13

Richard Burek
Notary Public
New Jersey
My Commission Expires 10-18-17
No. 2426326