

STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Arbitration Between

MONTGOMERY TOWNSHIP

and

PBA LOCAL 130

Docket No. IA-95-064

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AWARD OF ARBITRATOR

The undersigned Arbitrator, having been designated in accordance with the arbitration agreement entered into by the above-named parties, and having been duly sworn, and having duly heard the proofs and allegations of the parties, AWARDS as follows:

Based on the evidence submitted, and after due consideration of each of the statutory criteria contained in N.J.S.A. 34:13A-16, and evaluation of the evidence and arguments submitted by the parties into the record, the following changes shall be made in the current collective bargaining agreement between the parties.

1. The term of the agreement shall be from January 1, 1995 through December 31, 1997.

2. There shall be an across-the-board wage increase of 4% effective January 1, 1995; 4% effective January 1, 1996; and 5% effective January 1, 1997. Bargaining unit employees shall be paid retroactive wage increases from January 1, 1995 through the date of payment within thirty days after the issuance of this Award.

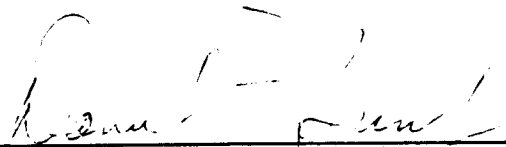
3. Employees currently eligible and employees who become eligible to receive twenty vacation days as the maximum vacation benefit shall, effective January 1, 1997, receive twenty-one days as the maximum benefit.

4. The medical cafeteria plan carry over limit shall be increased from \$1,300.00 to \$1,700.00, effective December 31, 1996.

5. Employees hired on or after January 1, 1997 shall achieve the maximum wage rate in five equal annual steps, rather than the current four annual steps. Effective January 1, 1997, all new employees shall remain at step 1, which is equal to the current starting salary, for their first six months of employment and then move to step 1A for the second six months of their employment. Step 1A shall be paid at the current starting salary, as augmented by the applicable wage increases in this Award.

6. All other demands made by both parties are hereby denied.

October 15, 1996

  
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Daniel F. Brent, Arbitrator

State of New Jersey  
County of Mercer

On this 15th day of October, 1996 before me personally came and appeared Daniel F. Brent, to me known and known to me to be the individual described in the foregoing instrument, and he acknowledged to me that he executed the same.

*Philip A. Sharov Esq.*

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An Attorney at Law of the  
State of New Jersey

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Mediation sessions were held on October 18, 1995 and February 26, 1996 by Daniel F. Brent, duly designated as Interest Arbitrator. The Interest Arbitrator was unable to resolve all of the outstanding issues between the parties, and a formal hearing was held in the above-entitled matter on May 24, 1996. Both parties attended this hearing, were represented by counsel, and were afforded full and equal opportunity to offer testimony under oath, to cross-examine witnesses, and to present evidence and arguments. Post-hearing briefs were submitted by both parties, and the record was declared closed upon the receipt of briefs on July 29, 1996. The parties granted the Arbitrator an extension of time within which to render his Award.

APPEARANCESFOR THE EMPLOYER

Steven S. Glickman, Esq. of Ruderman & Glickman, Esqs.  
Peter Rayner, Township Administrator

FOR THE PBA

Richard Loccke, Esq. of Loccke & Correia, Esqs.  
Jim Davenport, PBA Delegate  
Robert E. Palmer

NATURE OF THE CASE

The instant case is controlled by the 1996 modifications of the Police and Fire Interest Arbitration Act. The parties did not agree upon an alternative framework for decision. Therefore, the Arbitrator exercises conventional authority in the instant case.

The Township submitted nine exhibits. The PBA submitted sixty-seven exhibits. The collective bargaining agreement between the parties was submitted in evidence as Joint Exhibit No. 1. The Arbitrator has carefully

considered each of these exhibits in applying the statutory criteria established in the Police and Fire Public Interest Arbitration Reform Act, N.J.S.A. 34:13A-16.

The parties were unable to resolve their dispute within the grievance procedure, and the matter was brought to arbitration.

### POSITIONS OF THE PARTIES

#### I. THE PBA PROPOSAL

1. Wages. The PBA proposed a three-year term to the collective bargaining agreement with a 6% wage increase across the board in each contract year. In addition, the academic degree differential would be eliminated.

2. Longevity. The PBA proposed a longevity allowance be added, calculated at 2% of base pay for each two years of completed service.

3. Terminal Leave. The PBA proposed a new benefit in the form of terminal leave, calculated at one-half the value of all accumulated sick leave in existence at the time of an employee's retirement. The value said accumulated amount would be fifty percent of the total value of daily compensation for each day accumulated as sick time.

The amount so calculated would be payable by the Employer to the retiring employee upon retirement.

4. Personal Days. The PBA proposed one additional personal day.

5. Vacation Days. The PBA proposed two additional vacation days at each step of the vacation schedule.

6. Medical Cafeteria Program. The current contract provides for \$850.00 per year allocated to a medical cafeteria program. Employees may carry forward all unused portions of this allocation up to a maximum accumulation of \$1,300.00. The PBA proposes removing any limit on the carry-forward for future use.

7. Non-Economic Proposal. The PBA also proposed one non-economic proposal, seeking four months' prior notification of a "squad change" other than in an emergency situation. According to the PBA, this provision would obligate the Township only to use its best efforts to provide such prior notification.

## II. THE TOWNSHIP'S PROPOSAL

The Township offered a two-year collective bargaining agreement with a salary increase of 4% effective January 1, 1995 and an additional 4% effective January 1, 1996. The Township proposed freezing all starting salaries and adding an additional step in the Salary Guide for all new employees in both 1995 and 1996.

REVISED STATUTORY CRITERIA

N.J.S.A. 34:13A-16(g). The arbitrator or panel of arbitrators shall decide the dispute based on a reasonable determination of the issues, giving due weight to those factors listed below that are judged relevant for the resolution of the specific dispute. In the Award, the arbitrator or panel of arbitrators shall indicate which of the factors are deemed relevant, satisfactorily explain why the others are not relevant, and provide an analysis of the evidence on each relevant factor:

(1) The interests and welfare of the public. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by P.L.1976, c.68 (C.40A:4-45.1 et seq.).



(2) Comparison of the wages, salaries, compensation, hours, and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours, and conditions of employment of other employees performing the same or similar services and with other employees generally:

(a) In private employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.

(b) In public employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.

(c) In public employment in the same or similar comparable jurisdictions, as determined in accordance with section 5 of P.L.1995, c.425 (C.34:13A-16.2); provided, however, that each party shall have the right to submit additional evidence concerning the comparability of jurisdictions for the arbitrator's consideration.

(3) The overall compensation presently received by the employees, inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received.

(4) Stipulations of the parties.

(5) The lawful authority of the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by P.L.1976, c.68 (C.40A:4-45.1 et seq.).

(6) The financial impact on the governing unit, its residents and taxpayers. When considering this factor in a dispute in which the public employer is a county or a municipality, the arbitrator or panel of arbitrators shall take into account, to the extent that evidence is introduced, how the award will affect the municipal or county purposes element, as the case may be, of the local property tax; a comparison of the percentage of the municipal purposes element or, in the case of a county, the county purposes element, required to fund the employees' contract in the preceding local budget year with that required under the award for the current local budget year; the impact of the award for each income sector of the property taxpayers of the local unit; the impact of the award on the ability of the governing body to (a) maintain existing local programs and services, (b) expand existing local programs and services for which public moneys have been designated by the governing body in a proposed local budget, or (c) initiate any new programs and services for which public moneys have been designated by the governing body in a proposed local budget.

(7) The cost of living.

(8) The continuity and stability of employment including seniority rights and such other factors not confined to the foregoing which are ordinarily or traditionally considered in the determination of wages, hours, and conditions of employment through collective negotiations and collective bargaining between the parties in the public service and in private employment.

#### DISCUSSION

The Police and Fire Public Interest Arbitration Reform Act requires, as did its predecessor, that interest arbitrators consider eight statutory criteria in determining the appropriate increase in compensation, if any, to be paid in a particular jurisdiction. Arbitrators are authorized to weigh certain factors more heavily than others, provided they explain why a statutory factor has been discounted or afforded less weight in reaching the arbitrator's determination.

1. The interests and welfare of the public.

Every interest arbitrator recites the importance of having adequate police protection provided by thoroughly trained, dedicated law enforcement professionals who are fairly compensated for their specialized skills, the stress and danger of their work, and their contribution to the

safety and well-being of the public. The public interest is well served neither by scrimping on the salaries and benefits paid to police officers nor by providing remuneration in excess of the amount justified by the characteristics of the job or by comparisons to other employees in the private and public sectors, both in the Township of Montgomery and elsewhere in the region.

In the instant case, the wage increase offered by the Township for the 1995 and 1996 will afford adequate compensation to the bargaining unit because the Township's 4% offer exceeds the rate of inflation as established by the evidence and yet will permit the bargaining unit to retain its relative position at or near the top of the municipalities in Somerset County and the jurisdictions contiguous to Montgomery in Mercer County.

However, the public interest will not be best served by placing the parties into a negotiating stance immediately upon issuance of this Award. Collective negotiations, especially when they have been as prolonged as the negotiations preceding the instant case, create additional and atypical stresses because of the uncertainty to the bargaining unit and management until the outcome has been determined. If the parties are constantly negotiating, the heightened tension and dissatisfaction with the other side which persists, regardless of how amicable and civil the

negotiations may have been, is detrimental to the smooth and harmonious operation of the Police Department, or of any employer. At some point, the parties must accept the relative benefits and shortcomings of their bargain and live under that bargain so they may decompress from the bargaining mode and focus their energies entirely on fulfilling the mission of the employer. Consequently, the two-year term of the collective bargaining agreement proposed by the Township is less beneficial to the public interest than the three-year term proposed by the PBA. A third year will permit the parties to enjoy a peaceful hiatus before recommencing bargaining during which hiatus the parties can evaluate the adequacy of their collective bargaining agreement and the necessity for further alterations in the terms and conditions of employment under which the bargaining unit works.

The revised Interest Arbitration statute requires the Arbitrator to make specific reference to Public Law 1976, c.68 (C.40A:4-45.1 et seq.), the Cap Law, in assessing the relative benefits and detriments of the parties' positions. The Cap Law imposes specific limitations on the ability of the Municipality to increase its budget. The wage increase granted herein for 1995 and 1996 is the amount proposed by the Township. This 4% annual increase in 1995 and 1996 will

not adversely affect the cap imposed under Public Law 1976, as the proofs demonstrated that the Township is not in danger of exceeding its cap.

Nor will the interests of the public be adversely affected by increasing police salaries for reasons discussed below. If the 4% increases were not paid to the bargaining unit for 1995 and 1996, this bargaining unit would fall behind the inflationary curve and lose position relative to other similarly situated police professionals in comparable jurisdictions. The public interest is not well served when police officers experience a substantial decline of the purchasing power or standing relative to police officers in other comparable jurisdictions.

2. Comparison of wages, salaries, compensation, hours, and conditions of employment.

The second statutory factor requires a comparison of the wages, salaries, compensation, hours, and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours, and conditions of employment of other employees performing the same or similar services and with other employees generally. The Montgomery Township Police Department has paid bargaining unit employees in a fair and equitable manner in recent years. These employees are among the highest paid Police Officers among comparable communities in Somerset County or

adjacent communities in Mercer County. While settlements in other towns, such as Princeton Township and Princeton Borough, have exceeded 4.0%, the wage increase offered by the Township would not substantially erode the Montgomery Township bargaining unit in 1995 and 1996. However, continuation of the 4% wage increase in 1997 would cause a loss of position relative to other police employees similar situated.

Moreover, Montgomery Township does not pay a longevity benefit to its Police Officers. (A 2% deferred wage is paid.) Many of the other jurisdictions paying substantially equal or better wages also have a longevity component in addition to their salary scale. Some recognition of this factor is necessary in order to maintain comparability. This is one factor underlying the award of 5% in 1997. A second factor underlying the 5% increase in 1997 is the growth of the work load, which is discussed in greater detail under Statutory Criterion No. 8.

Comparisons between Police Officers and non-law enforcement personnel are inapposite, as such comparisons overlook the unique nature of the duties and responsibilities of a Police Officer, the stress of shift rotation, the exposure to danger, and other circumstances not experienced by guards or other armed protective service employees, much less clerical, Road Department, or other

non-managerial municipal employees. The rate of wage increase in 1995 and 1996 is consistent with the increases granted to other Township employees.

3. Overall compensation presently received by the employees.

Although Montgomery Township Police Officers are not grossly underpaid, they should be able to maintain their standard of living in comparison to the moderate increases in the cost of living during recent years and should be paid commensurate with the professional skills they possess and the responsibilities and stresses of a police officer's duties.

Furthermore, Township Police Officers' rate of pay should reflect the nature of the community. Montgomery Township is an affluent community with high residential values and costs. There is a benefit to the community in having Police Officers who can afford to live in or near the community and who receive compensation which permits them to live comfortably.

The Township's offer allows the bargaining unit to outpace the recent rate of inflation and to maintain a standard of living commensurate with comparable employees. However, the total compensation received by the bargaining unit does not include longevity benefits, the length of



vacation and number of personal days enjoyed by some other comparable jurisdictions, nor is there an extensive educational benefit which rewards Police Officers with educational credits they have achieved. Many jurisdictions provide terminal leave benefits. Moreover, many of the other jurisdictions in Somerset County provide substantial clothing allowances, whereas Montgomery Township replaces items rather than providing a cash stipend.

The bargaining unit cannot reasonably expect to eradicate all of these disparities with the most highly compensated jurisdictions in one contract term. However,, Montgomery Township lags substantially behind other municipal jurisdictions in Somerset County that provide significantly more vacation days to senior employees. Consequently, some augmentation of this benefit is appropriate, especially in view of the improved productivity levels in recent years which were established clearly by documents in evidence and the increased demands resulting from the recent influx of residential development and commercial construction.

For all these reasons, the over-all compensation presently received by bargaining unit employees is not substantially better than similarly situated Police Officers.

4. Stipulations of the parties.

The Township acknowledged that it has the ability to pay the wage increase sought by the PBA and stipulated that the Township has established other priorities for expenditure of its funds which it values more highly than paying the increase in wages and benefits sought by the PBA.

5. The lawful authority of the Employer.

The wage increase awarded in the third year of the agreement is 1% more than the 4% offered by the Township in 1995 and 1996. Based on the current Police Department budget, this 1% difference will cost approximately \$9,000.00, a sum which is tiny in comparison to the Township's overall expenditures in each of the contract years and which will not adversely affect the Township's ability to maintain its expenditures within its cap limitations.

The Township has not demonstrated that a difference of this magnitude, including the additional monies to be expended by affording an additional vacation day to employees who are receiving the maximum number of vacation days, would create an onerous financial hardship. The impact of this Award on the taxpayers will be discussed more fully under the sixth statutory criterion below.

Notwithstanding the Township's extensive remarks regarding the impact of the cap law, which the Arbitrator has fully considered, the Township has argued that any funds paid above its offer will interfere only with the Township's ability "to preserve its maximum cap flexibility" for unforeseen contingencies and expanding municipal services. The Township has not substantiated, however, its claim that "any economic increase granted to the Association's members exceeding the Township's offer will have a detrimental impact on the Township's 'ability to pay' with respect to capital projects." Nothing in the record supports a conclusion that any element of the Award herein violates the lawful authority of the Employer.

6. The financial impact on the governing unit, its residents and taxpayers.

The Township's equalized tax rate is eleventh out of twenty-one municipalities in Somerset County. According to the evidence in the record, the municipal tax burden is not substantially higher, whether measured per capita or otherwise, than other Somerset County towns. The 5% increase in 1997, coupled with an additional vacation day for employees who have earned the maximum vacation benefit, represents an insignificant increase over the level of wage increase offered by the Township for 1995 and 1996. Furthermore, the benefit of deferring the next round of

negotiations and the transactional costs of each round of negotiations more than offset the additional 1% awarded for 1997.

The Township demonstrated persuasively that it faces enormous outlays for new schools because of intensive residential development now in progress or approved for construction. Although funds for new school facilities will be raised through taxes imposed by the School District, rather than the municipality, the effect on the taxpayers of Montgomery Township will be significant. The increased ratables which will accrue as residential developments are completed will not fully offset the cost of new school construction.

Capital projects are traditionally funded through the capital budget, which is not constrained by the cap law. Nevertheless, these costs will affect the Montgomery Township taxpayer and must be carefully considered in awarding any wage increase.

Simply because the taxpayers can afford to grant the demands of the bargaining unit does not mean that the Township's ability to pay should be ignored. In balancing the needs of the bargaining unit to retain its approximate rank among similar communities in terms of over-all

compensation, one must also consider carefully the needs of the taxpayer. For this reason, the PBA's offer cannot be granted in its entirety.

The Township has sought further relief by freezing starting salaries and adding an additional step in the Salary Guide for all new employees in both 1995 and 1996. This retroactive change in the terms and conditions of employees who were hired in 1994, 1995 or 1996 and who have not yet reached the maximum wage rate is unwarranted inasmuch as the Township is not in dire financial straits. Nevertheless, comparison with other communities does support the addition of one step to the Salary Guide for those employees not yet on the payroll.

The four-year interval from new recruit to the top salary level is the shortest in Somerset County, although Montgomery is not alone at this level. It is not unreasonable for a newly hired Police Officer to wait five years before achieving the maximum rate of pay. The extent that this additional delay in moving to the maximum salary is a disincentive for recruitment of new police officers is speculative.

Given the historical deluge of applicants for vacancies in Montgomery Township, the Township's request to freeze the starting salary for the first six months of employment is not unreasonable. However, if the entry salary is frozen, then an additional step should be created to which a new recruit automatically moves after the first six months. This substep (1-A) shall be the current starting salary as augmented by applicable wage increases for 1995, 1996, and 1997. New employees remain on Step 1A for six months before moving to Step 2.

Savings to the Township by freezing the starting salary for six months of an employee's first year and by lengthening the interval from date of hire to achieving maximum salary from four years to five years for new hires must be recognized as imposing an additional burden on the bargaining unit. In consideration of this additional burden and the attendant savings to the Township, the third year rate of wage increase has been increased from 4% to 5%.

The record did not establish that the additional funds necessary to implement the wage increases established by this Award will unduly burden the municipal purposes element of the local property tax or that any income sector of property taxpayers in the municipality will be disproportionately affected. Nor is there any evidence that the additional funds ordered by this Award will impair the

ability of the governing body to maintain local programs and services, to expand existing local programs and services for which public monies have been designated by the governing body in a proposed local budget, or to initiate any new programs or services for which public monies have been designated by the governing body in a proposed local budget. The Township has not established such impairment. Consequently, my examination of the evidence in the record leads me to conclude that the total net economic changes in each year of the three-year term of this collective bargaining agreement are reasonable.

7. Cost of Living.

The annual increases in the cost of living since 1994 have been lower than the wage increases offered by the Township. Consequently, cost of living is not a primary factor in determining the size of the wage increases. Moreover, there is no justification for adopting the PBA's proposal on the basis of an onerous increase in the cost of living during the years preceding the term of this agreement. Nor does the evidence support a projection that the cost of living will rise suddenly during the third year of the term of this agreement.

8. Continuity and stability of employment.

This factor is being given minimal weight in the instant case because both parties acknowledge that the Township has experienced no problem attracting quality candidates for vacancies or retaining the current members of the bargaining unit. The Township is an attractive place to work, and it receives many times the number of applicants for every vacancy. Notwithstanding the disagreement between the parties as to the appropriate wage increase, the Montgomery Township Police Department attracts and retains good Police Officers. There is no evidence of any impediment to retaining the highly qualified and devoted complement of professional Police Officers now in the Township's employ. Therefore, this factor does not strongly militate towards granting a high wage increase or adding a longevity benefit.

The medical cafeteria plan carryover limit was not demonstrated to be inadequate or to have deprived specific employees of an earned benefit. However, the principle that an earned benefit should not be forfeited because an employee has not sought to invoke the benefit is compelling. Therefore, the cumulative carry over limit shall be increased to \$1700.



The PBA has requested that the Arbitrator establish a contract provision requiring the Township to use its best efforts to give four months' prior notice of a non-emergent squad change. The Arbitrator recognizes the potential disruption to family plans and other outside arrangements which occur when an unanticipated squad change is announced. Therefore, the Arbitrator suggests that the parties themselves negotiate contract language which would obligate the Employer to use its best efforts to give as much advanced notice as practicable in the event that a squad change is anticipated.

It is in the Employer's best interest to advise bargaining unit employees as soon as possible and to make such decisions as far in advance as practicable. Nevertheless, the establishment of this contract provision should be the result of a negotiated agreement between the parties. I suggest that the parties meet and discuss the implementation of such a provision.

I am not convinced that four-months' notice is feasible or necessary. However, the Township should use its best efforts to give sixty-days prior notice of a squad change, except in emergent situations. To the extent feasible, the Township should undertake to provide such notice with explicit understanding that there shall be no penalty or grievance if the Township fails to provide sixty days'

notice. I suggest that the parties incorporate such language into their agreement or, in the alternative, agree by side-bar letter to establish such a practice.

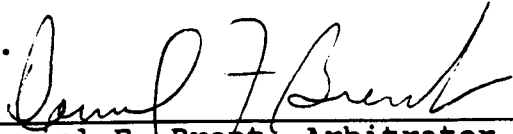
Having given due weight to the statutory factors discussed above, all of which have been judged relevant for the resolution of the instant dispute, the Arbitrator hereby determines that the following Award constitutes the best balance of the competing requests of the parties. I have specifically addressed the implications of and limitations imposed by Public Law 1976 (40A:4-45.1 et seq.), as well as the interest and welfare of the public.

The taxpayers of Montgomery Township are best served by increasing the compensation paid to their Police Department by an amount within the range of the cost of living, augmented to permit the bargaining unit to retain a semblance of its high ranking among comparable Police Departments within Somerset County and adjacent communities in Mercer County. It is also prudent to provide some relief for the Township should the marked increase in building development now in progress within the Township require the hiring of additional Police Officers. This relief can be achieved by partially freezing the starting salary and extending by one year the length of time it will take a new recruit to reach the maximum salary.

Until the Township hires additional Police Officers, the record convincingly demonstrates that current members of the bargaining unit will be required to continue their demonstrable and commendable increases in productivity, as established by ample documentary evidence, and to continue providing increasing levels of services to a rapidly expanding community. As more houses are built and more businesses move in, the demands on the current bargaining unit escalate. This increasing work load fully justifies an extra increase in wages for 1997 and a slight increase in vacation benefit for senior employees, as Montgomery is last among comparable jurisdictions in maximum vacation benefits, and far behind the average.

When the work load cannot, in the opinion of the Township, be satisfactorily handled by the current force, the addition of new Police Officers will occur under circumstances which are slightly more salutary for the Township. The package of wage increases awarded herein recognizes the increased demands on the bargaining unit in the near future and the longer term goals of the community, thereby balancing the interests of the bargaining unit and the interests and welfare of the citizens of Montgomery Township as contemplated by the Police and Fire Public Interest Arbitration Reform Act.

October 15, 1996

  
Daniel F. Brent, Arbitrator

