

NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter Between

TOWNSHIP OF NORTH BRUNSWICK

Employer,

- and -

Docket No. IA-98-114

PBA LOCAL 160

Union.

**INTEREST ARBITRATION
OPINION
AND
AWARD**

**James Mastriani
Arbitrator**

Appearances:

For the Township:

Beverly Wurth, Esq.
Savage & Serio, PA

For the PBA:

James Mets, Esq.
Schneider, Goldberger, Cohen, Finn,
Solomon, Leder & Montalbano, PC

I was appointed arbitrator by the New Jersey Public Employment Relations Commission in accordance with *P.L. 1995, c. 425*, in this matter involving the Township of North Brunswick [the "Township"] and PBA Local 160 [the "PBA"]. An arbitration hearing was held on July 20, 1998. After the hearing, the parties continued to meet in an effort to resolve the impasse. Those efforts were not successful, although the Township and PBA Local 160 were successful in resolving all unresolved issues with the exception of salaries. A second day of arbitration hearing was held to complete the record with respect to the unresolved issue of salary. At that hearing, I received into evidence two memoranda of agreements which were executed by the Township and PBA Local 160 [Jt. Ex. #2 & #3] on all of the resolved issues.

The issues resolved in the memoranda have been incorporated by reference into this Award. At the arbitration hearing, each party argued orally, examined and cross-examined witnesses and submitted extensive documentary evidence into the record. Post-hearing briefs were filed by each part.

At the hearing, each party, as required by law, submitted its final offer. They are as follows:

FINAL OFFER OF THE TOWNSHIP

1. Effective 01/01/97, a sum of \$500.00 shall be paid to each employee currently on the payroll of the Township as of the date of the signing of this Memorandum. This sum shall not be added to the employee's base salary.
2. Effective 07/01/98, each bargaining unit employee's base wage shall be increased by 2%.
3. Effective 01/01/99, each bargaining unit employee's base wage shall be increased by 1.25%.
4. Effective 07/01/99, each bargaining unit employee's base wage shall be increased by 1.25%.
5. Effective 01/01/2000, each bargaining unit employees' base wage shall be increased by 2.50%.
6. Effective 01/01/2001, each bargaining unit employee's base wage shall be increased by 4.25%.
7. Effective 01/01/2002, each bargaining unit employee's base wage shall be increased by 4.50%.

FINAL OFFER OF PBA LOCAL 160

I. Duration of the Agreement

Four (4) years – commencing January 1, 1997 through December 31, 2000

II. Article XIX, Compensation

1. Effective and retroactive to January 1, 1997 increase in base salary by 5.0%.
2. Effective and retroactive to January 1, 1998 increase base salary by 5.0%.

3. Effective January 1, 1999, increase base salary by 5%.
4. Effective January 1, 2000, increase base salary by 5%.

III. Memorandum of Agreement and Addendum

All issues which were settled in the Memorandum of Agreement and the Addendum thereto shall be incorporated into the January 1, 1997 through December 31, 2000 collective bargaining agreement.

IV. Status Quo

All other terms of the January 1, 1994 through December 31, 1996 collective bargaining agreement between the parties shall remain status quo.

I am required to make a reasonable determination of the above issues giving due weight to those factors set forth in N.J.S.A. 34:13A-16g(1) through (8) which I find relevant to the resolution of these negotiations. I am also required to indicate which of these factors are deemed relevant, satisfactorily explain why the others are not relevant, and provide an analysis of the evidence on each relevant factor. These factors, commonly called the statutory criteria, are as follows:

(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, 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, 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 the P.L. 1976 c. 68 (C.40A:4-45 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 on 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 its 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.

BACKGROUND

The Township is located in Middlesex county on 12.04 square miles of land: 33% of the land is for residential purposes, 25% for industrial purposes, 5.5% for commercial purposes, 22% of the land is vacant and 14.5% is devoted for public purposes such as parks. There are 34,000 residents.

In 1997 the assessed valuations amounted to \$1,137,464,491: 56.88% of the assessed valuations came from residential sources, 11.26% from commercial, 14.08% from industrial and 17.8% from other sources. The total tax levy in 1997 was \$54,337,214. The total tax rate in the Township for 1997 was \$4.89: 24% of the property tax dollar is for municipal purposes, 59% for schools and 17% for the county. Thirty (30) percent of the municipal tax dollar is spend on public safety.

The Department of Public Safety has a Director of Police, 4 captains, 7 lieutenants, 11 sergeants and 58 police officers, with total annual salaries amounting to \$4,875,446.

The bargaining unit consists of police officers whose job titles are below the rank of sergeant. The Department emphasizes Community Policing, a policy initiated in 1994. A major objective of Community Policing is to reduce crime through prevention efforts, and to integrate law enforcement activities with residents and community leaders. This program is, of course, in addition to the traditional law enforcement activities of the Department. The record reflects substantial law enforcement activity and a highly productive police force.

The last collective negotiations agreement was for a one-year period, January 1, 1996 through December 31, 1996. The salary increase for the year 1996 was 2.26%, a figure well below comparable increases in Middlesex County municipal police departments. That agreement also contained certain cost saving provisions for new hires in the area of longevity and salaries. The agreement reflected that the Township was experiencing fiscal problems resulting in 19 layoffs in 1997. Fifteen (15) of the layoffs were in the Department of Public Works, 2 in Welfare, 1 in Finance and 1 in Engineering. There were no layoffs in the Department of Public Safety.

The Township's 1997 budget reduced expenditures for operations as part of a fiscally prudent spending plan. The Township was particularly hard hit by reductions in outside aid. In 1996, only 24% of the budget was subsidized by state and federal aid compared to 42% in 1985. The Township has less municipal employees than it did in 1990 and has economized by creating inter-local agreements with other municipalities, in privatizing certain municipal functions.

The prior fiscal problems of the Township have shaped the parties positions with respect to salaries for the new collective negotiations agreement commencing on January 1, 1997. The Township recognizes that its proposal is substantially below that which has been provided for municipal law enforcement units throughout the State of New Jersey, but it believes that it is consistent with its spending plan to curb increases in municipal spending. The PBA acknowledges the prior fiscal difficulties in the municipality, but asserts that it has acted responsibly in the past and that acceptance of the Township's proposal would seriously erode its relative standing with police officers in like communities and have a harmful effect on its morale and the public interest and welfare. For these reasons, the PBA seeks the across the board increases of 5% in each of the four years of a new contract. The PBA asserts that the 1996 increases eroded its salary standing in like departments.

DISCUSSION AND ANALYSIS

The sole issue in dispute is salaries over a four year duration commencing January 1, 1997. In my analysis of this issue, I have considered and weighed the voluminous evidence expertly submitted by the Township and the PBA and their arguments with respect to this evidence and their applications to the statutory criteria. Among other things, this evidence includes tax rates and net assessment valuations, tax collection data, delinquent tax and tax title lien data, the 1997 and 1998 budgets (municipal data sheets), the 1997 and 1998 annual financial statements (AFS) of the Township (unaudited), cost of living data, surveys of interest arbitration awards and settlements, comparability surveys on salaries and benefits of Middlesex County police departments, uniform crime reports and various salary data and salary analysis of Township employees by department.

I have thoroughly considered all of this evidence when applying the statutory criteria and determining the relevance and weight to be accorded to the statutory criteria. After review and consideration of each of the statutory criteria, I conclude that all are relevant to the resolution of this dispute, although, as set forth below, the weight accorded each criterion varies. No single piece of evidence, nor any single criterion, compels a precise result. As required by law, I have also decided the total net annual economic changes for each year of the four-year award.

Based upon the arguments and evidence submitted, and after applying the statutory criteria, I have determined that wage increases shall be set at 4% on January 1, 1997, 4% on January 1, 1998, 4.5% January 1, 1999, 4.75% on January 1, 2000. As required by statute, the total net economic change in salaries for each contract year are \$140,676, in 1997, an additional \$146,338 in 1998, an additional \$171,216 in 1999, and an additional \$188,060 in 2000. This represents an average increase of 4.31% in each of the four years. These figures are exclusive of "roll up" costs and do not assume breakage or turnover, which could reduce the economic impact of these increases.

In rendering this Award, I have considered and weighed the evidence and the statutory criteria as follows:

The interests and welfare of the public are served by a competent, productive police force, which is effective at promoting the public's health, safety and welfare. Such law enforcement services, however, must be provided at a cost affordable to the municipality and its taxpayers. Also to be considered are the limitations imposed on the Township by N.J.S.A. 40A:4-45.1 et seq. (the Cap Law). Given my analysis below of the Award's financial impact on the governing unit, its residents and taxpayers, I have concluded that the Award is within the Township's lawful spending authority and

it would not compel it to exceed the Cap. Thus, other aspects of the interests and welfare of the public have been considered.

Neither party's salary position furthers the interests and welfare of the public. The proposal of the PBA is more costly than comparable settlements and Awards dealing with police officers. The PBA's proposal is also higher than increases afforded to public employees in general and that granted to non-law enforcement employees of the Township. It is also in excess of wage increases in the private sector in general, and thus, represents costs above what is required to promote the interest and welfare of the public. The Township's prior fiscal difficulties also speak in opposition to the increases sought by the PBA.

Similarly, the Township's salary proposal does not serve the interests and welfare of the public, because it insufficiently rewards this group of employees who are obligated to risk their lives on a daily basis to preserve law and order within the community. The PBA contributed to the Township's solving of its prior financial problems, and in doing so, suffered a relative loss in compensation compared with increases received by police officers in Middlesex County. The level of increases proposed by the Township, I believe, would have an adverse effect on the morale of this group of employees. Because Cap restraints are absent, and because I have concluded below that the terms of this Award will not have an adverse financial

impact on the community, I find that the terms of the Award are consistent with the welfare and interests of the public.

I have reviewed stipulations from the parties entered into evidence as Joint Exhibits #2 & #3. These documents reflect voluntary agreements on non salary issues. These agreements are incorporated by reference into the terms of this Award.

I have carefully examined the data with respect to comparability. This factor requires consideration of comparisons with: 1) private employment in general, 2) public employment in general, and 3) public employment in the same or similar comparable jurisdictions. I shall examine each of these.

I note at the outset that it is difficult to compare the duties and services of police officers with private employees in general, because private employees, unlike police officers, do not provide this unique governmental law enforcement function. Further, some private employees have seen their income rise dramatically in the last couple of years, especially in the areas of real estate, telecommunication and in the computer industry, while blue collar manufacturing employees have not fared nearly as well. When all private employees are considered together, as averaged, a more realistic figure emerges. An official private sector compilation prepared by the New Jersey Department of Labor reflected an increase in New Jersey of 3.4% from 1994 to

1995 and 4.3% from 1995 to 1996. In Middlesex County, these figures were 3.5% and 4.9%, respectively. The increases of 4% in 1997 and in 1998 and the average increase of 4.3% over four years is consistent with the above private sector increases, especially in light of the 2.2% increase received by these police officers in 1996.

I have also considered salary increases among public employees in general and among law enforcement employees in comparable communities. This data reflects average increases for public employees in general at approximately 3%, a figure below that which I have awarded here. However, the data also reflects that the terms of this Award are substantially similar to average increases among law enforcement employees in comparable communities within Middlesex County. I have given careful consideration to the wage data reflecting the communities of East Brunswick, City of New Brunswick and Plainsboro, each of which has characteristics relevant to the Township of North Brunswick. I have also considered the fact that the salary increase in 1996 was 2% below the statewide average increase as then reflected in arbitration awards for law enforcement employees throughout the State of New Jersey. I give considerable weight to the above comparability data in the formulation of this Award.

I have also reviewed and considered the increases the Township has given the employees of the Department of Public Works. The Township's offer is consistent with increases given to employees of the DPW. I do not conclude that these increases

are controlling on the increases awarded herein to the PBA. I do not believe that the evidence warrants the imposition of a six (6) year agreement on the PBA. I also cannot conclude that the imposition of identical increases would be consistent with the interest and welfare of the public or the remaining evidence on comparability in both public and private employment. After having received an increase in 1996 of 2% below the statewide average, the first four years of the DPW agreement would result in an increase of 5.75% for the PBA during the 1997-2000 period. When coupled with the 1996 increases, the PBA would experience a substantial erosion in their relative salaries within the County and there is insufficient evidence to support this result. I am also persuaded that such a result would also adversely effect the continuity and stability of employment among the law enforcement officers.

I have also reviewed and considered 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.

The Township has made a persuasive case that the total compensation package for unit members is favorable and comparable to the benefits provided for law enforcement employees in other municipalities. Neither party in this proceeding seeks to either increase or narrow any existing levels of economic benefits, and when the

overall compensation presently received by these employees is considered, this factor does not serve to influence a wage award above or below that set forth herein.

I have reviewed the issue concerning the lawful authority of the employer and the limitations imposed upon the employer by the Cap law. When reviewing the annual budgets and the annual financial statements submitted into evidence by the Township, there is no evidence, nor does the Township argue, that the results of this process would compel it to exceed its lawful authority. Although the Township has made a persuasive case against awarding the increases sought by the PBA, there is no evidence reflected in the record to conclude that the terms of this Award would interfere with the limitations imposed upon the employer by the Cap law.

I have also considered the financial impact of the Award on the governing unit, its residents and taxpayers. Any Award which increases personnel costs has financial impact. Increases awarded herein have financial impact, but based upon the budgetary evidence on the record, will not adversely affect the governing unit, its residents and taxpayers.

Although the tax rates increased from 1996 to 1997, the rates have decreased from 1997 to 1998. The general total tax rate decreased from \$4.89 to \$4.86 per \$100 of assessed value and the municipal portion of the rate decreased from \$1.34 to \$1.15.

The Township's fiscal policies appear to have resulted in a stabilization of its fiscal problems.

The assessed valuations of the Township have increased from \$1,128,664,000 in fiscal year 1996, to \$1,132,303,600 in 1997 to \$1,135,487,900 in 1998. Although the Township points out that its ability to expand its total evaluations have decreased, the above figures reflect an expansion of its overall evaluations.

The Township is also reasonably placed within the County with respect to its tax levy per capita for 1997. Out of twenty-five municipalities, the Township, at \$1,279.33, has the sixteenth lowest tax levy per capita, a figure lower than Piscataway, Woodbridge, East Brunswick, South Brunswick and Old Bridge.

Another area of data which reflects the reasonably healthy financial posture of the Township is its total property value. In Middlesex County, the Township is ranked ninth out of the twenty-five municipalities at \$2,103,481.

The annual financial statements reflect that the Township has generated surplus (results of operations) during the fiscal years of 1996 and 1997 due to realizing additional revenues over anticipated revenues.

The amount was \$1,579,321.00 in fiscal year 1996 and increased to \$1,955,003.00 in 1997. The surplus balance at the end of fiscal year 1998 was \$2,021,651.00 and was \$1,794,671.00 at the end of fiscal year 1997. Although the Township correctly asserts that these monies do not justify salary increase entitlements, they are evidence that the amounts awarded herein will not adversely impact its financial status.

The Award also will not have adverse impact upon the Township's taxpayers. The Township's actual tax collection rate increased from 96.91% in fiscal year 1997 to 99.23% in fiscal year 1998. The reserve for uncollected taxes decreased from \$1,787,891.00 in 1997 to \$874,149.00 in 1998, a decrease in \$913,742.00. This figure translates into an approximate amount of 4.71 tax points. The terms of the Award reflected an average of 1.42 tax points per year or a total of 5.70 tax points over the life of the four year agreement. These facts reflect that the amounts awarded will not adversely impact on the Township's taxpayers.

When the cost of living factor is applied to the remaining evidence in this proceeding, the following observations are apparent. For the four years of this Award, it is a reasonable estimate that cost of living increases will be more than what the Township has offered and less than what the PBA has demanded. The position of the Township, however, is clearly more in line with the cost of living data than that of the

PBA. This Award also exceeds the increases in the cost of living. I conclude that this factor requires an award less than what the PBA has demanded, but that this factor not be given such substantial weight as to require the Award to be the equivalent of cost of living increases. The evidence submitted reflects that this unit has received increases beneath the cost of living increases when the CPI has been at a high extreme, and above the CPI when inflation has been extremely low. When the 1996 to 2000 period is averaged, the result is an average of 3.9% over this time period. This figure exceeds the cost of living data, but is consistent with the evidence provided with respect to comparability data.

The final factor requires consideration of the continuity and stability of employment. As I have noted above, the wage increases sought to be imposed by the Township have a potential to adversely effect the continuity and stability of employment of these police officers inasmuch as their wages would only have increased by 8.0% over a five year period, from 1996 to 2000. This observation is reasonable given the smaller than average increases received in 1996, the substantially higher levels of agreements and awards for law enforcement employees and the increasing demands which have been placed upon the police officers in this Township. The massive commitment to community policing and crime prevention requires a more alert, better trained and higher skilled police officer. The success of this program

requires the retention of the Township's police officers and the terms of this Award should serve this objective.

Accordingly, and based upon all of the above, I respectfully enter the following Award as a reasonable determination of the issues.

AWARD

1. There shall be a four-year agreement effective January 1, 1997 through December 31, 2000.
2. The prior Memoranda of Agreements set forth in joint exhibit #2 and #3 shall be incorporated into this Award.
3. All remaining proposals not subject to the terms of this award are denied and dismissed.
4. The salary guides set forth in the collective negotiations agreement expiring on December 31, 1996 shall be adjusted as follows:

- 4.0% effective January 1, 1997
- 4.0% effective January 1, 1998
- 4.5% effective January 1, 1999
- 4.75% effective January 1, 2000


James W. Mastriani

DATED: October 28, 1998
 Sea Girt, New Jersey

State of New Jersey }
County of Monmouth }ss:

DOLORES BRITO
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires Feb. 24, 2002

On this 28th day of October, 1998, before me personally came and appeared James W. Mastriani to me know and know to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed same.

