
In the matter of Compulsory Interest Arbitration
concerning the negotiations impasse between

The Borough of Surf City

and

PBA Local 175

PERC Docket IA-2013-001

APPEARANCES

FOR THE BOROUGH: Mary P. Madonna, Administrator/Municipal Clerk

Fran Hodgson Council President

Bill Hodgson, Councilman

William Collins, Chief of Police

FOR THE PBA: Stuart Alterman, Esq. Esq., PBA Attorney

Chistopher Gray, Esq., PBA Attorney

Victor Rice, President, PBA Local 175, Patrolman

Michael Giberson, PBA Local 175, Patrolman

Dr. Raphael Caprael, Ph.D., Expert witness.

This case assignment was made by the N. J. Public Employment Relations Commission pursuant to the imposition of specific considerations and regulations of the N. J. State Legislature which are instructive to the parties and to this arbitrator. It is my understanding the 2% limit for annual wage increases per se under the statute will not be imposed in this situation, due to the contract expiration date being December 31, 2010, however, the 2% limit on the enlargement of property taxes is in effect and must be considered.

Introduction to the unusual circumstances surrounding this dispute are in order. The Borough is a small community on the shore of New Jersey. It encompasses only just less than one square mile. It is essentially a summer resort environment with a population jumping from year round occupancy of only 25% to a full 100% or greater due to visitors

during summer months. There is little in the way of any industrial development but a substantial emphasis on recreational and services employment. Much of the work of police in the non-summer months is devoted to local security of properties 75% of which are unoccupied by owners whose year-round homes are elsewhere.. It is a shore community bordered by the ocean and is a small part of the recreational center of attraction for New Jersey residents and visitors.

Surf City was 16th in rank of 566 municipalities state wide as to a "wealth of resources" index and was 7th of Ocean County communities having a per capita tax base of \$1,441,119 in June of 2012.

STATUTORY FACTORS

The required consideration of the arbitrator includes topically each of the following factors. I shall set them forth here in abbreviated form so as to reduce the space devoted to that exercise. However, the overriding instruction to the arbitrator is the requirement for him to establish and generally state which of these factors he has determined to be relevant and which not particularly so and to express reasoning for those determinations.

1. The interests and welfare of the public. Including any limitations imposed upon the employer which are relevant.
2. Comparison of wages, salaries, hours and conditions of work with others similarly employed or with others generally. In private or public sector employment in general and in employment in similar or comparable jurisdictions to include wages and the entire range of economic benefits.
3. The overall compensation of employees including wages and benefits,
4. Any stipulations of the parties.
5. The lawful authority of the employer including limitations imposed by law.
6. The financial impact on the governing unit, its residents, taxpayers and the impact on the property tax levy. How the award would impact on property taxes, purpose elements of taxation particularly in comparison with prior years and the impact on taxpayers at varying income levels. The effect of an award on the governing body as to its programs and services and ability to maintain same; potential impact on a local budget and in particular the potential impact on new programs or services if proposed for a new budget.
7. The cost of living.
8. The continuity and stability of employment including the impact on factors traditionally considered in determination of collective negotiations in public or private sectors.

9. Statutory restrictions imposed on the employer including limitations resulting from legislation. Among the items which shall be assessed are the limitations imposed upon the employer by section 10 of P.L. 2007,c62 (C40A:4-45.45).

The interests and welfare of the public.

This factor can not be ignored and as the public can be quick to complain if the situation arises it must be given consideration. However the public seem to be very satisfied with the Borough's leadership. Taxes have been consistently under control and services, particularly police services, have been of an exceedingly high level with very little in the way of complaints. The physical plant of the Borough is well attended and the citizenry appears to enjoy the services afforded by all and in particular the protective practices of police. I find this to be a meaningful factor for evaluation but have no evidence of any discomfort by the citizenry. In particular there appears to be a good deal of confidence in the Borough's leadership and their capacity to provide excellent and efficient fiscal management without the threat of unbridled tax escalations. The administration has maintained excellent controls of all financial indicia.

Comparison of wages Hours etc.

This is a police function of only eight persons reporting to the chief. The compensation for this group is very competitive for new hires and the positions, if open, would not lack for applicants. However the competitive comparison fades as employees move through the salary structure at least as to basic salary. In this category the pay at Surf City is very near the bottom when contrasted with other employers in the general area. This is known to the Borough and there is no discomfort in their view at being near or at that bottom. Admittedly the work demands at a Borough which is much less demanding than that found in a major city allows this view. And although the Union and officers would prefer the wages were more competitive there is a sense of trying to move up the relative economic ladder to a higher compensation level but not a feeling of despair; rather one of wanting to be more generously paid for the good work performed. Otherwise the conditions of work are enviable and the relationships sound. I see this as a criteria of interest but not one which demands great change. The work and hours are certainly important and these officers appear to be comfortably performing without complaint or stress.

The overall compensation presently received.

This criterion is largely addressed in the foregoing paragraph and I do not feel it requires much further discussion. These employees receive a comprehensive and generous package of benefits including insurances. With the possible exception of a more competitive salary structure I would conclude they should be very pleased with their employment.

There were no stipulations of the parties.

The lawful authority of the employer including limitations imposes under law.

The discussions in this arbitration proceeding have revealed that there should be no modifications awarded which would have a deleterious impact on any function of the Borough. The police function is relatively small and the overall fiscal condition of the Borough so sound that it is virtually unlikely that an award will bestir any threats to the authority of the Borough or issues having to do with limitations imposed by law. It is a criterion which deserves attention but is found not to raise issues here.

In support of this conclusion I note the following: Tax collection rates have consistently been at or around 98+% for five years: The fund balance has increased each of the past five years and is anticipated to be \$3,622,870 for 2012: The unencumbered fund balance has exceeded \$2,131,000 for four years including 2012: The anticipated fiscal year surplus in 2012 is in excess of \$3,623,000: The current tax levy is below the CAP by more than \$155,000. All of these figures help to present a general picture of financial soundness. It is for this reason that I do not place heavy emphasis on this criterion.

The financial impact on the governing unit.

I find this to be of no great consequence as my award will not disturb any property tax circumstance. The Police budget is too small to disturb the financial planning of the Borough. I see no interference with regard to ongoing programs or services and no significant impact on property taxes. It is my intention to provide an award which delivers a reasonable increase in base pay which should not produce any extreme impact on the overall budget and be viewed as deserved given all circumstances affecting these employees.

The cost of living.

The cost of living has risen slightly in recent months but still hovers at around 2%. What the future will bring is anybody's guess but it is unlikely to change dramatically and a reasonable increase in base pay should serve to assist these employees needs. The fact that the Legislature has undertaken a role involving certain elements of income can not be of my concern as that authority has indicated those actions are intended to be imposed on limited targets due to past history of events. Had the Legislature intended that other than police and fire personnel share those costs it could have directed the employing authority accordingly.

The continuity and stability of employment.

I see this criterion as significant when terms of an award are likely to be seen as improper. This award will provide a reasonable level of wage improvements in an environment where those improvements are clearly affordable and where the comparative wages for like employment in surrounding communities provides a reasonable basis for comparison as is the case here.

Statutory restrictions imposed on the employer.

I believe the above comments will suffice it to say that there have been no statutory restrictions imposed on the circumstances made evident in this case. The award will not imperil and statutory restrictions imposed by the legislature or stimulate any charge to the effect that there has been an abuse of the underlying concepts of a reasoned award.

The Police Department has a Chief and provision for sergeant rank but no employees beyond the rank of patrol officer. Of the eight at that level five were at the top step in terms of salary level in 2011 and 2012 with a sixth joining that step in 2013.

The Borough is generally very disciplined as to its financial condition and takes pride in having accumulated a surplus of \$3.5 Million which is in sharp contrast to a budget of only \$5 Million. This enviable condition is seen by the Union as clear evidence of the Borough's capacity to provide a contract on terms it proposed. The Borough has not refuted that conclusion. However, the Borough has adopted a highly conservative posture as to spending and is thus as conservative as to obligations which could be afforded within the confines of fiscal resources. It defends this on the basis of experience having to do with major unanticipated costs due to the vagaries of ocean-front exposure to costly storms damage as have befallen neighboring communities on Long Beach Island, where losses and repairs have amounted to hundreds of thousands of dollars as, for example, Harvey Cedars spent \$550,000 for beach repair and Township of Brick spent \$1,500,000 for storm related damage repairs. Thus it is a conservative fiscal policy which is said to be essential given the patterns of weather in recent years which can result in beach erosion and other costly property damage and which, if not corrected immediately, could imperil normal operations in the few months available in each financially precious summer season.

The final proposals of the parties.

The PBA presented a list of final proposals on September 4, 2012 as follows.

1. A new Agreement with wage increases of 3% in 2011, 3% in 2012, 2.5% in 2013 and 2014.
2. The removal of the longevity clause from the past agreement and replacing that section with a roll in of those scheduled costs into base pay along with the creation of an entirely new salary guide.
3. The PBA also proposed an alternative modification which would leave the longevity clause as it has been in the prior Agreement and provide 3% base salary increases in each of the four years, 2011 through 2014.

Non- Economic Proposals.

1. Add this language to the Management Rights clause; at Section A....following rights...
"...are subject to this contract and New Jersey and Federal Law." And in Article 4, Section 3. To suspend, demote, discharge or take other disciplinary action for "just" cause.

In Section C. add ---laws or ordinances, "...subject to State and Federal law in this Agreement".

4. Article 5. Grievance Procedure.

Section A. Add after The parties shall have 30 days to file for arbitration, "after it is either known or should have been reasonably known that the grievance was denied at the last step proceeding arbitration. All Days shall be deemed business days."

5. Article 8, Rights of Patrolman and Sergeants.

Section F. Any and all benefits previously enjoyed by members of the PBA ..."shall continue to be enjoyed unless otherwise negated by both parties."

6. Article 10-Vacations.

In sentence #2 addshall not "accumulate unless a member was denied the ability to use vacation days due to department needs. If an employee was unable to use all of his vacation time in he given year, he shall be allowed to carry over 10 vacation days into the next year which must be used."

7. 12- Leaves and Holidays

Add. "The Borough shall provide three months salary to any spouse or children of the decedent if the officer dies in the line of duty." And, a further demand was for permission to utilize bereavement time to attend events involving all step relatives.

8. 16- Uniforms and Equipment

PBA seeks to increase the uniform allowance by \$25 in each year of the agreement.

9. 18-Maintenance of operations.

C. Nothing contained in this agreement shall be construed to, "limit or restrict the Borough or PBA in its right to seek and obtain" judicial relief as it may be entitled as to law or inequity for injunction or damages, "or both in the event of such breach by the association or the Borough".

The Borough proposals were much fewer and were not formalized in a post hearing brief although discussed at length at the final meeting of the parties with the arbitrator. This lack of formal confirmation has been objected to by the Union particularly as changes were incorporated which could have influenced the length of the new contract, the wage improvements offered and the status of the proposal concerning the issue of the roll in scheme as a way to eliminate the longevity provision of the past contract. The proposal having to do with financial matters included a demand to eliminate longevity by reducing the then current allowances for each person now receiving longevity to 30% of that dollar amount and adding it to such individual's pay. It was understood that officers who were not receiving longevity pay or future employees would not be entitled to such in the future. It was also noted that the amount of any roll over would then be frozen and not later expanded.

The borough proposal as to wage increases had been 2% for each year in a four year contract. During the later discussions and in related paperwork the 2% was spoken of as the last offer but there came a time when the 2% was reduced to 1% and the four year contract term changed to a three year offer. Neither of these changes was actually formalized and the post hearing material was extremely vague. However I am of the conviction that the original intent had not changed.

There is one element of this situation which bares heavily on any conclusion I might advance. The Union describes its proposal regarding the roll in of longevity into base salary as to costs without noting the fact that the longevity plan would be continued for all present and future employees except that the values would have been reduced to 80% but the plan expenses would continue. I note this is in sharp contrast to the offer made by the Borough wherein the amount to be rolled over was to be 30% of the then current entitlement with no future adjustments. Thus there is a world of difference between the two proposals. In addition it should be recognized that the intended plan of the Union would substantially affect the ultimate costs of the enhanced pensions for all present and future employees. This must be seen as contrary to the intent of the Legislature where it has taken steps to reduce such expenditures. The further fact that current employees have not contributed to the higher average earnings which would follow suggests the State would demand higher contributions to justify these higher averaged levels of pensionable income. A result which, as noted above, would be contrary to the State's objectives and which would result in shifting the higher contribution levels required to the Borough.

All of this has led me toward consideration of an alternative plan such as was proposed by the Union. That is, to set in place a more conventional resolution of this dispute particularly as the Union had indicated that course of action could be a means of settlement. I have not fully resolved this point in my mind but the much greater potential costs of the roll in proposals, particularly that of the PBA plan, clearly suggest an alternative would be in order. This is especially true when one takes into consideration the roll over concept was first advanced by the Borough but in such form as to be totally unacceptable to the Union. It would have placed an immediate reduction of that benefit as

well as the elimination of gradual increases as a function of years of service and would have provided no benefit for future employees.

I have reviewed the available data which had been the basis for the Union's claim that the wages paid in Surf City for police were significantly below the going rates in nearby communities. I found the claim to be accurate as had been confirmed by the employer. For example the 2010 top of the range in Surf City was \$81,733 whereas the top pay in Barnegat was \$87,189; the top pay in Ocean Township was \$85,161 and Barnegat paid \$87,189. This was replicated elsewhere and known to the Borough which had reacted by stating, "...some one had to be at the bottom", but by a margin of approximately 5% or more in some cases. This record contains an indication of the Borough having consummated negotiations with another unit of its employees which included annual increases of 3% albeit on different terms.

It is of note that the Union advanced a proposal for four years with increases of 2.5% in the first two years, 2011 and 2012 and then 2.0% in 2013 and in 2014. This offer was made as part of a package which included the roll over concept which I have dismissed.

When pressed by the arbitrator for an alternate proposal excluding any roll over the Union responded with a proposal for a four year plan with increases of 3% in each year, and no change as to inclusion of a roll over concept, for the years 2011 through 2014.

During these difficult discussions the Borough spoke first of a counter proposal of 1.5% in each of four years though that was modulated later to 1% in each of two years. The post hearing brief of the Employer was not explicit on this point. However, what is obvious is that an award of the latter of the Borough's offers, a two year term would mean there could be no Agreement as soon as January 1, 2013 for a successor contract. This would make no sense as the parties would already be delinquent in renewing negotiations. Viewing this matter from another angle with renewed focus on the roll in plan proposed by the Borough, I find no justification which supports those Employer's proposals. The granting of the proposal to adopt the roll over plan on the terms offered can not be justified as I noted above as it would mean a substantial loss to all employees affected without any alternative gain. Given the financial condition of this employer such a move simply could not be endorsed by the arbitrator.

Thus I find myself confined to the determination of an alternative but just solution. In arriving at this conclusion I turned my attention first to the offers of the Union. One was the abandonment of the change in the longevity plan and instead incorporation of 3% annual increases for the full four years of a new agreement. This would continue the current provisions for longevity increases of approximately \$57,000 during the four years of such proposed contract or something less than \$14,000 per year on average. These figures would move higher as changes in base wages might influence them. However, given the 2011 total wage base of approximately \$600,000 the annual cost implication is small, less than 3 tenths of one percent per year. Given the prevailing negative attitude as to wage increases emanating both from the Borough and from the Legislature I am

somewhat discomfited by the 3% annual figure suggested by the Union. I recognize the fact that this Employer has, with a history of maintaining annual expenditures at \$150,000 below the 2% levy CAP, reasonable flexibility from a financial perspective as to this demand. The case records also indicate that such a grant would have limited impact on property taxation which was estimated, by their celebrated financial authority advising the Union, to average only \$1.35 per month annually for each home, in increased costs using the 3% annual wage adjustment as the computation base. Even if this number were flawed or, as might be expected, change over the four years of an agreement, the net impact on each household would remain in very manageable limits. Neither party introduced serious questions concerning issues within the scope of this arbitration posing any threat concerning impact on the property tax levy or of the municipal or county purposes element of the local property tax; nor was there expressed evidence from either party concerning these matters as of direct import to these negotiations.

As mentioned above, the historical circumstance of the Borough reflects a very deliberately conservative approach to fiscal management which is underscored by the many years of improvement in expenditure costs versus CAP limitations and in the surplus account which has grown in virtually every recent year and is now over \$3.6 million, representing careful management with a concerned view as to future requirements. Another circumstance which provides substantial comfort to the Borough is the fact that this is a wealthy community where property values are exceptionally high and stable or rising. As noted above the owners of 75% of residential properties are part time residents of considerable wealth which lends stability to the financial horizon, at least as to reliability of property tax income, which annually is at or above the 98% level of collection; as does the fact that real property values have been on a consistently rising curve which underscores future tax values as well as collateral tax assessments.

In its post hearing brief several points were made to illustrate the posture of the Borough. It reminded all of the fact that it does not extend itself with long term debt, it uses its funds [i.e. surplus] to pay for projects and large purchases following a pay as you go practice concerning expenditures. It takes pride in having established considerable surplus which is seen as insurance against non-ordinary required expenditures such as emergency repairs to its beaches or other storm damaged properties such as ocean front, roads and buildings, equipment, etc, an unfortunately common problem for an ocean front location. These needs can require immediate attention as the entire economy is focused on the reliability of its special attractions as a beach resort community. They underscore its conservative fiscal policies. It should be emphasized that neither party has asserted an argument that an award within the confines of the scope of issues before me would jeopardize the continuity of services to the public, impose limitations on the governing body as to expansion of local services or substantially expand current expenditures so as to exceed State guidelines. I conclude there is no reason to explore this further.

OPINION AND OVERVIEW

Here I turn my attention to the demands of the Union. The first of these has to do with the financial elements and duration of a new contract. As noted above it is my conviction that nothing is gained by limiting an award to two years and I firmly believe such would be a disservice both to the parties, who need to have a period of peace, and to the arbitration process as advanced by the Legislature and the Public Employment Relations Commission.

Economic demands of the Union

1. Salary changes for, 2011,2012, 2013 and 2014.
2. Clothing allowance to be expanded by \$25 in each year of the contract

Non-economic demands of the Union inclusive of my determinations as to incorporation in the forthcoming contract, in whole or as I may modify each. Some with explanations.

1. The language changes as to the Management Rights clause are rejected because of the potential conflict as to rights for litigation of issues within contract procedures being extended to issues beyond the Contract and reserved for the courts. The "just cause" language is to be incorporated in the contract.

The added language suggesting, "subject to State and Federal law in this Agreement appears to be either unnecessary or potentially expansive beyond the State and is rejected.

2. As to Article 5 concerning Grievance Procedure The addition of the clause providing 30 days to file for arbitration is approved and the following clause is also approved, "after it is known or should have been reasonably known that the grievance was denied at the last step proceeding arbitration." The remainder of that submission is not approved.

3. The Article 8, Section F. submission is denied. Too vague and undefined and questionable as to source of authority involved.

4. As to vacation days being carried over, this should have been negotiated as to time limits and as written is rejected. This issue was never presented to the Borough or to me during earlier meetings as would have been appropriate.

5. This clause regarding rights of officers Section F. is also written in too widely encompassing language and is rejected.

6. That portion which provides for three months salary in case of death of an officer during line of duty is approved and ordered. The remainder is too broad and without limits or other conditions and is rejected.

7. The addition of the words "or the PBA" in the entitlement phrase is approved concerning judicial relief.

8. This request appears to relate to entitlements already known. Why then add further language. And the preliminary, "Nothing in this Agreement.." raises a question as to allegiance to the terms of the contract. It being either contra-indicative or vague. It is rejected.

Any and all other non-economic demands which may have been advanced by the Union are rejected.

Economic demands of the Borough.

The proposal of the Borough as to economic increases was somewhat unclear at the last consultation of the parties however I was of the conviction that the wages proposal was for 2% in each of two contract years. this offer also included the adjustment of the longevity to placing all current recipients of longevity on a new agreement which included their currenpay with 30% of the longevity pay as a new salary. No new longevity entitlement would ever be added to that package and for any employees who had not yet begun to beentitled none would ever be granted. New employees would have no entitlement either, regardless of years of service before being hired. The longevity pay rolled into salary would extend as base salary into retirement if otherwise entitled and would be part of base salary for computation of any salary increases.

AWARD

There shall be a four year Agreement inclusive of 2011, 2012, 2013 and 2014.

There shall be wage increases of 2.5% effective on January first of each year.


There shall be an annual increase of \$25 for maintenance of uniforms paid in each year on or about July first.

Any and all other demands are denied.


Frank A. Mason

September 18, 2012

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


John F. Bullock Jr
Notary Public
New Jersey