

**STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION**

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In the Matter of Interest Arbitration Between :  
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**BOROUGH OF FORT LEE** : **SUPPLEMENTAL**  
 : **INTEREST ARBITRATION**  
"the Borough or Employer" : **DECISION**  
 :  
and : **Docket No: IA-2007-087**  
 :  
**PBA LOCAL 245** :  
 :  
"the PBA or Union" :  
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**Before: Robert M. Glasson, Arbitrator**

**APPEARANCES**

**FOR THE BOROUGH:**

J. Sheldon Cohen, Esq.  
DeCotiis, Fitzpatrick, Cole & Wisler  
Of Counsel & On the Brief  
Hadley J. Groft, Esq.  
On the Brief

**FOR THE PBA:**

Richard Loccke, Esq.  
Loccke, Correia, Schlager, Limsky & Bukosky  
Of Counsel & On the Brief

On May 28, 2009, the Public Employment Relations Commission (the "Commission") considered the appeal filed by the Borough of Fort Lee (the "Borough") from the interest arbitration award that I issued on December 18, 2008. The Commission entered the following Order:

The award is remanded to the arbitrator to issue a supplemental decision addressing the projected savings from the new salary schedule and comparability to private and public sector employment in general and, if appropriate, to modify his award no later than 30 days from the date of this decision. The parties may file briefs in response to the supplemental decision consistent with this opinion. The award is stayed pending issuance of the arbitrator's supplemental decision.

On June 15, 2009, the Commission granted my request to extend the time to issue my Supplemental Decision to July 6, 2009.

First, I will address the issue concerning the projected savings from the new salary schedule. The Commission, in its decision, noted the following concerning the new salary schedule:

Based on the new salary schedule for new hires, effective January 1, 2009, the arbitrator projected savings to the Borough of nearly \$80,000 in cumulative earnings as each new officer progresses through the steps of the salary schedule to the maximum step. The arbitrator estimated, based on the past hiring patterns, that with the new salary schedule the Borough could save nearly \$1 million in cumulative savings as new officers moved through the salary guide with the two extra steps. (Commission decision at 13-14).

The Borough also asserts, however, that the award incorrectly projects \$1 million in savings to the Borough from the revised salary schedule and that the decision incorrectly states that the new salary guide balances, in part, the fold-in of holiday pay into base wages. Using evidence submitted into the record establishing that 12 police officers were hired between January 2005 and January 2007, the arbitrator approximated that the Borough could realize nearly \$1 million in cumulative savings if the same number of officers were hired between January 2009 and January 2011 (assuming an approximate savings of \$80,000 in cumulative earnings as each of the 12 new officers progresses through the steps of the salary schedule to maximum). The

savings result from a lower starting salary and lower incremental costs resulting from the additional years to maximum. (Arbitrator's decision at 92). The arbitrator projected a \$1 million savings based, in part, on the Borough's hiring 12 new officers during the last two years of the award. However, the Borough correctly argues that the evidence indicated that a hiring freeze began in 2008. The arbitrator determined that the holiday fold-in was offset by the new salary schedule, below-average and delayed wage increases, and the award of the Borough's health insurance proposal. However, the arbitrator's decision did not address the impact of the hiring freeze. Accordingly, we will remand this issue to the arbitrator to address the projected savings of the new salary steps in light of the Borough's hiring freeze. (Commission decision at 19-20).

Initially, I note that there is no evidence in the record regarding the Borough's hiring freeze in 2008. The exhibit that the Borough is relying upon was submitted with the Borough's post-hearing brief submitted on April 23, 2008. The exhibit was identified as Exhibit B-22 and included as an attachment to the "Additional Certification" of Borough Labor Counsel, Hadley J. Groft, Esq. In her Additional Certification, Hadley noted: "Attached to this certification are the following Additional Exhibits. (Underlining by Hadley). In my award, I sustained the PBA's objection to the inclusion of the four exhibits submitted with the Borough's post-hearing brief:

The Borough and the PBA filed their respective briefs which were received by April 23, 2008. I exchanged the briefs simultaneously to the Borough and the PBA. On April 29, 2008, the PBA objected to the Borough's inclusion of four additional exhibits (B-20, B-21, B-22 & B-23) in its brief.

By letter dated August 27, 2008, I sustained the PBA objection to the inclusion of the four additional exhibits in the record and advised the parties that the record was now complete:

The Commission's interest arbitration rules at *N.J.A.C. 19:16-5.7 (k)* specifically state, in relevant part, as follows:

*“The parties shall not be permitted to introduce any new factual material in the post-hearing briefs, except upon special permission of the arbitrator.”*

The Borough did not request special permission to introduce new factual material in its post-hearing brief. Also, the PBA did not have the opportunity to review such material before filing its post-hearing brief nor did it have an opportunity to offer argument in response to the new factual material submitted by the Borough. Accordingly, I find that the exhibits submitted by the Borough in its post-hearing brief are not part of the record in this matter. (Award at 4).

The Commission affirmed my decision to exclude Exhibits B-21, B-22, B-23 and B-24 from the record. It appears that an ambiguity as to which exhibits are in the record occurred because of the Borough’s reference to the hiring freeze in its post-hearing brief which I included in my summary of the Borough’s arguments:

Additionally, the Borough recently enacted a Hiring Freeze which was necessary due to its severe fiscal restraints. See Borough of Fort Lee Resolution dated February 28, 2008, Ex. B22). (Borough brief at 21 and Award at 49).

The above sentence was included in the Borough’s arguments concerning “Cost Reduction and Containment Measures.” The Commission, in seeing this reference in my summary of the Borough’s position, assumed that B-22 was in the evidentiary record. In retrospect, I should have edited this reference to the “Hiring Freeze” out of the summary of the Borough’s arguments since I excluded B-22 from the record pursuant to N.J.A.C. 19:16-5.7 (k) which precludes the introduction of any new factual material in post-hearing briefs except upon special permission of the arbitrator.

Notwithstanding the exclusion of B-22 from the evidentiary record, I will address the projected savings of the new salary steps in light of the Borough’s hiring freeze. In my award, I provided the following analysis of the projected savings:

I have awarded a new salary schedule, Appendix C, for new hires to be effective January 1, 2009. This new salary guide will result in a savings to the Borough of nearly \$80,000 in cumulative earnings as each new officer progresses through the steps of the salary schedule to maximum. P-6 indicates that 12 officers were hired in the two-year period between January 2005 and January 2007. This means that if the Borough hired 12 new officers during the two-year period between January 1, 2009 and January 1, 2011, the Borough would save nearly \$1,000,000 dollars in cumulative earnings as the officers move through the steps to maximum.

The newly-hired officers will achieve the same maximum salary as other officers hired before January 1, 2009 but the Borough would not be exposed to high incremental costs as the officers take two additional years to reach maximum. The cumulative salary savings generated by Appendix A-3 to the Borough also benefits the bargaining unit as a whole. Police officer salaries in Bergen County are very competitive. It is undisputed that the salaries of Bergen County police officers are the highest in the State. Salary schedules that allow movement to the maximum step in four to five years will eventually undermine the ability of the parties to negotiate salaries for maximum step police officers since a significant expenditure of available funds will be needed to pay less experienced officers high salaries. As maximum salaries have increased significantly in the last 15-20 years, it follows that additional steps must be added to ensure that experienced officers continue to receive competitive salary increases. Ignoring this issue will create serious problems for the parties in future negotiations.

The modifications to the salary schedule will give the Borough considerable savings which will offset the cost of senior police officer salaries thus maintaining a competitive salary and the continuity and stability of employment that is essential to a productive and effective police department. These changes will not impact on the Borough's ability to recruit and retain police officers since the maximum salaries will remain the same on both salary schedules thus maintaining the career ladder for all Borough police officers. (Award at 91-92).

The projected savings of nearly \$80,000 per officer for the hypothetical twelve officers that may have been hired in the two-year period from January 1, 2009 to December 31, 2011 (assuming similar retirements, resignations, etc.) is savings derived from a lower starting salary and two additional steps on the salary schedule. The savings are generated from lower salaries on all of the steps except the maximum step. The following is an example of how the savings are derived:

Officer A is hired before January 1, 2009 and will progress to maximum on Appendix A-2. Under A-2, Officer A will progress to 1<sup>st</sup> Grade at a salary of \$109,619 in 5½ years on January 1, 2010. If Officer A had been hired under Appendix A-3, Officer A's salary after 5½ years would be \$87,479 after progressing to 3<sup>rd</sup> Grade on the salary schedule. The reduced annual salaries at each step on Appendix A-3 on January 1, 2010 range from \$5,628 (Academy) to \$22,141 at 3<sup>rd</sup> Grade.

The above example is based on the current salary schedules and will be compounded by future negotiated increases. I recognize that the above discussion further illustrates the savings derived during a period when there is no hiring freeze. The projected savings were based on P-6 which showed that 12 officers were hired in the two-year period between January 2005 and January 2007 and assumed a similar hiring pattern during the two-year period between January 1, 2009 and January 1, 2011. The projected salary savings from A-3 are over a lengthy period of time as newly hired officers progress through the steps of the new salary schedule. These savings derive from reduced cumulative earnings as new officers progress to maximum.

The savings from a hiring freeze are immediate. There is no basis to know how long the Borough's hiring freeze will remain in effect. Providing police services is a critical mission of a municipality and reduced staffing may eventually impact on the Borough's ability to deliver quality police services. However, assuming the Borough's hiring freeze is in effect for two years and twelve officers retire or resign, the Borough's payroll will be reduced dramatically. The following illustrates the cost to the Borough for bargaining unit members:

- The current bargaining unit (at the close of the record) totaled 107 members including 82 Patrol Officers, 10 Sergeants, 10 Lieutenants and five Captains. The total base pay salary in 2006 was \$10,160,000. The 2007, 2008 and 2009 salary increases bring the base salary to \$11,373,672 in 2009. The

average annual salary is \$106,296. This does not include longevity which ranges from 3% to 15%. Neither party submitted costs for longevity. Longevity is calculated at 3% for each four years of service to a maximum of 15%. (J-1 at 28). I shall assume an average longevity of 9% (12 years of service) which brings the 2009 salary base, including longevity, to **\$115,862** per unit member.

- The Borough's pension contribution in 2008 is \$2,458,680. (B-2). The average annual cost is **\$22,978** per unit member.
- The Borough's cost for prescription drugs for the PBA bargaining unit in 2008 is \$413,516. (B-16). The average annual cost is **\$3,865** per unit member.
- B-12 shows that the total cost for health insurance in 2008 for all Borough employees is \$6,089,000. The Borough did not provide the cost of health insurance for members of the PBA bargaining unit. B-16-b shows that the monthly premium cost for the "Civilian Traditional Plan" in 2008 is \$596 (single), \$876 (parent/child), \$1,311 (employee/spouse) and \$1,525 (family). The Direct Access premium cost is \$375 (single), \$584 (parent/child), \$827 (employee/spouse) and \$963 (family). B-16(a) shows 62 unit members with family coverage, 11 with employee/spouse, 4 with parent/child and 38 single. This appears to include eight additional employees that are not in the bargaining unit. The total cost, if all employees are in the Traditional Plan is \$1,609,106. The average cost is nearly \$14,000. This totals \$1,498,000 for 107 bargaining unit members. The total cost, if all 107 employees are in the Direct Access Plan is \$932,452. The average cost is \$9,325. The average annual cost is **\$12,500** per unit member.
- The cost of holiday pay is 5% of salary. The 2009 salary base is \$11,373,672. I estimated that average longevity of 9% (12 years of service) which brings the 2009 salary base, including longevity, to **\$115,863** per unit member. The average annual cost is **\$5,793** per unit member. The average annual 2009 salary, including holiday pay and longevity, is **\$121,656**. The Borough estimated the average annual salary, including holiday pay and longevity, as **\$121,951** in 2009. (B-11).
- The annual clothing allowance is \$700. (J-1 at 27). The average annual cost is **\$700** per unit member.

Thus, the average cost to the Borough for each police officer in 2009 is \$161,994.

This average includes rookie police officers, senior police officers, sergeants, lieutenants and captains. During a hiring freeze, both senior officers (retirement) and junior officers may

leave the department by retirement, resignation or dismissal. My analysis of the savings from the new salary schedule was restricted to police officers hired on or after January 1, 2009. The projected savings were based on P-6 which showed that 12 officers were hired in the two-year period between January 2005 and January 2007. The projected salary savings from the new salary schedule are over a lengthy period of time as newly hired officers progress through the steps of the new salary schedule to maximum. These savings derive from reduced cumulative earnings as new officers progress to maximum.

Thus, if six officers were hired in 2009, the Borough's savings in 2009 would be approximately \$80,000 per officer over the next 7½ years. This would also apply to the hypothetical six officers hired in 2010. The annual savings for each officer (comparing A-2 to A-3) ranges from approximately \$5,000 (Academy) to more than \$21,000 (1<sup>st</sup> Grade at \$105,887 to 3<sup>rd</sup> Grade at \$84,500). This means that the average annual savings to the Borough is approximately \$128,000. This was just one of the components that I identified as offsetting the cost of the holiday fold-in. The other components included below-average salary increases; reducing the annual cost of the salary increases by "split" raises; and by awarding the Borough's health care proposal.

Clearly, if a "hiring freeze" is in effect and the same six officers are not hired in 2009, the Borough's savings are significantly higher. I calculated the average cost to the Borough for each police officer in 2009 as \$161,994. This means that the Borough could save up to \$1,000,000 in 2009 alone by not replacing six officers. I recognize that the actual savings are determined by the mix of officers retiring or resigning. The Borough's savings will be higher if senior officers, sergeants, lieutenants and captains retire and are not replaced



whereas the savings will be lower if junior officers are not replaced. In either case, the savings to the Borough are considerably higher during a hiring freeze. In its brief, the PBA noted that ten officers (one Captain, two Lieutenants, two Sergeants, and five patrol officers) retired during the last CBA (2004-2007) with a total base salary of \$995,553. (P-5 and Chart 10 in PBA brief at 40). While these savings are not recurring (unless the Borough permanently reduces its staffing), the savings will be significantly greater than the savings that I projected from the new salary schedule. Moreover, the Borough, if and when it decides to lift the hiring freeze, will have the benefit of a reduced cost salary schedule for new hires.

For all of the above reasons, I conclude that the Borough's "hiring freeze" provides an even greater offset (against the cost of the holiday fold-in) than the projected savings for new hires on the new salary schedule.

I will now address comparability in private employment in general and public employment in general. The statute requires the arbitrator to decide the dispute based on a reasonable determination of the issues, giving due weight to those factors that are judged relevant for the resolution of the specific dispute. The arbitrator must 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 factor. There are nine statutory criteria. The second criterion is commonly referred to as the "comparability" factor. There are three sub-factors in the second criterion which require that the arbitrator compare the wages, salaries, hours, and condition of employment of the employees involved in the arbitration proceedings with the wages, hours and condition of employment of other employees performing the same or similar services and with other employees generally (a) in private employment; (b) public employment; and (c) in public employment in the same or similar jurisdictions.

In my award, I provided extensive analysis of the third sub-factor, 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 services in public employment. In other words, comparisons to other police officers in similar jurisdictions. (Award at 72-85 and 91-92). I note that both the PBA and the Borough also provided extensive analysis of comparisons of the wages, salaries, hours, and conditions of employment of Fort Lee police officers with the wages, hours and conditions of employment of other police officers performing the same services in public employment in similar jurisdictions.

I will first consider the comparison of the wages, salaries, hours, and conditions of employment of the Fort Lee police officers (employees involved in the arbitration proceedings) with the wages, hours and conditions of employment of other employees performing the same or similar services in private employment. In its brief, the PBA argued persuasively and extensively that private sector comparisons should not be considered controlling since there is no comparable private sector job compared to that of a police officer. (Award at 22-27). It is well established that there are no easily identified private sector police officers who perform services similar to those performed by Borough police officers. Neither party submitted salary data on this sub-factor since none exists. A police officer position is a uniquely public sector position that does not lend itself to private sector comparisons.

I agree with the analysis of Arbitrator William Weinberg that comparisons to the private sector are difficult because of the unique nature of law enforcement. (Award at 26-

27). There is no data in the record to evaluate the comparison to other employees performing the same or similar services in private employment. I have given this sub-factor no weight.

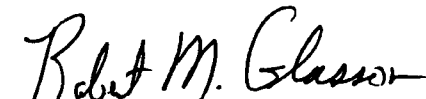
The second part of this sub-factor requires a comparison with other employees generally in private employment. Neither party emphasized private sector comparisons. The Borough, in its brief, cited an article showing that the median salary in the United States in 2007 was \$36,140; that the average 2007 pay increase nationally was less than 4%; and that employees paid an average of 11% of their annual health premiums. The Borough asserted that the average 2007 pay increase nationally, at less than 4%, was supportive of its proposed 4% annual salary increases. (Award at 46). The above private employment data was included in Borough Exhibit, B-21, which I excluded from the record since it was filed with the brief. In any event, even if B-21 was in the record, while supportive of my awarded salary increases, it is not entitled to significant weight.

I take arbitral notice that the awarded salary increases which average 3.75% annually, while somewhat higher than average salary increases in private employment in 2007 and 2008 (at the time the record was closed) is consistent with the requirements of this subfactor. I note that the awarded salary increases average 3.75% annually which is below the average 4% annual salary increases proposed by the Borough. I conclude that the awarded salary increases, while somewhat higher than private employment salary increases in general, is acceptable when measured against the totality of the terms of the award. This sub-factor, while supportive of the awarded salary increases, is not entitled to significant weight.

The next comparison is with public employment in general. Neither party submitted any salary data on public employment in general. I have served as a mediator, fact-finder and

interest arbitrator (binding fact-finding) in many cases involving other public sector employees; i.e., school district employees and non-police municipal and county employees. A review of this salary data shows that the average annual salary increases in public employment in general are consistent with the salary increases proposed by the Borough at 4% annually and the awarded salary increases that average 3.75% annually. This sub-factor is supportive of the awarded salary increases.

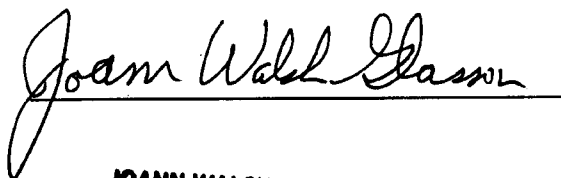
Accordingly, for all of the above reasons, I conclude that there is no basis to modify the terms of my Award.

  
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ROBERT M. GLASSON  
ARBITRATOR

Dated: July 6, 2009  
Pennington, NJ

STATE OF NEW JERSEY) ss.:  
COUNTY OF MERCER)

On this 6<sup>th</sup> day of July 2009, before me personally came and appeared ROBERT M. GLASSON, to me known and known by me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

A handwritten signature in cursive script that reads "Joann Walsh Glasson". The signature is written in black ink and is positioned above a solid horizontal line.

**JOANN WALSH GLASSON**  
**NOTARY PUBLIC OF NEW JERSEY**  
**Commission Expires 12/11/2011**

