

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
CN 429
TRENTON, NEW JERSEY 08625-0429

Docket No. IA-95-090

In the Matter of Arbitration Between :
 :
 OLD BRIDGE TOWNSHIP :
 :
 -Employer- : O P I N I O N
 and :
 : A N D
 FOP LODGE 22 (SUPERIORS) :
 : A W A R D
 -Union- :

ARBITRATOR: Robert E. Light, mutually chosen by the parties pursuant to the rules and regulations of the Public Employment Relations Commission

HEARING: June 27, 1995 and October 27, 1995 in Old Bridge, New Jersey. Counsel for the Township and the representative for the Union thereafter filed post-hearing briefs.

APPEARANCES: For the Township
Robert T. Clarke, Esq., Apruzzese, McDermott, Mastro & Murphy
Tom Badcock, Director of Parks, Recreation, Social Services and Administration
John Coughlin, Business Administrator
Himanshu Shah, Director of Finance
Marsha Rosenbaum, Director of Human Resources

For the Union
William Cerra, Captain
Jeffrey W. Robbins, Lieutenant
Gary F. Ruzala, Lieutenant
Donald Fritz, Captain

PROCEDURAL BACKGROUNDS

Pursuant to Chapter 85, Public Law of 1977, the act providing for compulsory interest arbitration of labor disputes in police and fire departments and, in accordance with NJAC 19:16-5.6 (b), the undersigned was duly designated as Interest Arbitrator in the above matter. This designation was communicated to the parties and the Interest Arbitrator by letter dated March 6, 1995 from the Director of Arbitration of the Public Employment Relations Commission.

The statute providing for the compulsory arbitration of labor disputes in public, fire and police departments, NJSA 34:13 A-14 to 34:14A-21 requires that, in the event that the parties do not agree upon some other acceptable terminal procedure for the resolution of impasse, the award of the economic issues in dispute shall be confined to a choice between the last offer of the Employer and the Employee Representative "as a single package". With respect to non-economic issues in dispute, the statute provides that a choice be made between the last offer of the Employer or the last offer of the Employee Representative "on each issue in dispute". The statute also imposes upon the Interest Arbitrator the duty to:

"...decide the dispute based on a reasonable determination of the issues giving due weight to those listed below that are judged relevant for the resolution of the specific dispute.

1. *The interests and welfare of the public.*
2. *Comparison of the wages, salaries, hours and conditions of employment and 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 public employment in the same or similar comparable jurisdictions*
 - (b) *In comparable private employment*
 - (c) *In public and private employment in general*
3. *The overall compensation presently received by the employees inclusive of direct wages, salary, vacations and hospitalization benefits, and all other economic benefits received.*
4. *Stipulations of the parties.*
5. *The lawful authority of the employer.*
6. *The financial impact on the governing unit, its residents and taxpayers.*
7. *The cost of living.*
8. *The continuity and stability of employment including seniority rights and such other factors 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."

Due to the fiscal crisis, the parties agreed to delay negotiations until March 1994. The prior contract expired on December 31, 1991. The parties met several times through November 1994. The Township filed a Petition to Initiate Compulsory Interest Arbitration in early 1995. The undersigned was appointed and a mediation session was held on June 27, 1995. At the first day of formal hearing on October 27, 1995, the parties reached agreement on all but two items, viz. (1) the Township's proposal to limit the vision program to a \$200.00 maximum per family, and (2) agreement that all modifications in the future to the health insurance program instituted after July 1, 1995 would apply to the coverage retirees received who retired after January 1, 1995. The parties further agreed to implement wage increases retroactively while limiting the other revisions to the health benefit program to prospective applications. The parties agreed to submit briefs on the two remaining issues. Those briefs were received and, accordingly, this Award is issued.

BACKGROUND

A unique history proceeds this Interest Arbitration. Old Bridge Township went through a devastating financial crisis beginning on January 1, 1992 when the present administration took office. Quickly recognizing the dire financial straights of the Township, the Division of Local Government Services was invited in by the new administration to critique and remedy the pre-existing fiscal mismanagement of the Township. The extent of that crisis need not be detailed herein. Ample documentation of the seriousness of the crisis is found in Township counsel's brief and the Tener Award dealing with the PBA (see Township of Old Bridge vs. Old Bridge PBA Local 127, Docket No. IA-93-27). The S.O.A. does not - in reality - cannot dispute the extent of the crisis. Put succinctly, wages were frozen for 18 months and 20% of the Township's employees and 8 police officers were laid off. The fiscal cure involved, among other bitter pills, a 35% tax increase.

PROPOSALS MUTUALLY AGREED TO ON OCTOBER 22, 1995

Duration: January 1, 1992 through June 30, 1996.

Salary: Effective July 1, 1993, a 5.25% across the board salary increase.

Effective July 1, 1994, a 4.0% across the board salary increase.

Effective July 1, 1995, a 4.0% across the board salary increase.

Health
Benefits:

Effective the date of November 1, 1995 or as soon thereafter as possible, the present health benefits program shall be modified as follows:

Pre-admission screening/continued stay review.

Mandatory second surgical opinion.

Increase deductibles to \$150 individual/\$300 family.

Increase co-insurance threshold to 20% of first \$2,500 of covered expense.

Change dependent coverage from 25 years of age to 19 years of age; however, if the dependent is a student, coverage shall continue to 23 years of age.

Amend program to provide for pre-existing conditions limitations.

Prescription program shall be modified to provide for a \$5.00 co-pay for non-generic prescriptions; a \$2.00 co-pay for generic prescription; and, no co-pay for mail-order prescriptions of 90 days duration or longer.

A managed care health benefits program shall be available for any employee who voluntarily decides to utilize said program and avoid the costs associated with the Township's traditional health benefits program. All new hires shall be provided a managed care health benefits program in lieu of the above

traditional health benefits program. The co-payment level for all such plans shall be \$5.00 per visit.

Any employee shall have the option of surrendering coverage under the above provided health and hospitalization coverage annually in exchange for a lump sum cash payment of \$2,000. Said payment shall be made no later than January 30th of each year for which insurance is being surrendered. Each employee so opting shall notify the Township no later than November 1st of the year immediately proceeding the affected year.

Surrender for the following year shall not be considered automatic. Conversely, every employee shall be considered as covered and shall so be covered unless and until such time as an employee shall affirmatively notify the Township to the contrary. Any employee who had been covered and had opted out of said coverage for 1 or more years and subsequently determines not to opt out for a future year shall be covered irrespective of any pre-existing conditions.

Uniform Allowances:

Effective July 1, 1995, the uniform allowance shall be increased by \$50.00.

Accrued Sick Leave Cash-In:

Article X, entitled "Sick and Bereavement Leave", Section A(4) (c) shall be amended to provide that:

"Any employee hired after July 1, 1994 shall be permitted to accrue sick leave for severance purposes as follows:

One (1) day's pay for every two (2) days accrued sick days with a maximum cash payment of Fifteen Thousand (\$15,000) Dollars.

Those employees who are capped herein at one hundred (100) days shall be limited to a cash maximum of:

Sergeants \$41,000
 Lieutenants \$45,000
 Captains \$48,600

These employees who are capped herein at Two Hundred Eighty (280) days shall be limited to a cash maximum of:

Sergeants \$82,100
 Lieutenants \$90,100
 Captains \$97,300

Section A(5), first sentence, shall be amended to include:

"...in accordance with the cap set forth in Section C".

PROPOSALS IN DISPUTE IN THIS ARBITRATION

The following paragraphs are the only two portions of the Township's final offer that the S.O.A. has refused to accept. This language represents the Town's final offer, while the S.O.A. proposes to retain the existing language.

- A. Vision program shall be modified to provide for a \$200 per year family benefit.
- B. The present practice and level regarding said insurance for all employees who have retired prior to July 1, 1995 shall continue. Commencing with July 1, 1995 and thereafter, should any modifications in the insurances covered within this article, except for long term disability *and life insurance, affect bargaining unit members then the same modifications shall apply to retirees.

*This constitutes no admission by the Township that the present long term disability insurance is legal.

POSITION OF THE S.O.A.

In his post-hearing brief, the Union representative submitted the following arguments in support of the Association's final offer:

1. The Association made substantial economic concessions in the voluntary settlement it entered into on October 27, 1995 as reflected in the very terms of that agreement. Earlier concessions had been agreed to by the Association for the interest and welfare of the public when it voluntarily agreed to defer overtime payments. Against that background, the Association feels that the final concessions the Town seeks, if granted, will serve neither the interests and welfare of the public nor the Association.

2. Factually the average age of the members of the Association dictate that most of its family members are grown and therefore are not eligible for the vision benefits. The Town has failed to offer any savings data to economically justify the vision plan limitation it seeks to have imposed. The mere fact that it was awarded as part of the Town's final offer to the PBA in June 1994, where it may well have resulted in significant cost containment, is not a sufficient reason to impose it on the Association members.

3. The Township's second proposal to require the health benefits of retirees to follow changes implemented for active employees without the retirees consent is fraught with danger.

The retirees will have no input into such proposed changes, but rather will be at risk of having a much younger bargaining unit negotiate away health benefits critical for retirees in return for higher hourly wages or more time off.

4. Again, any savings the Town may seek to claim are speculative. The Town will still be burdened with providing benefits for pre-July 1, 1995 retirees at the prior existing benefit levels. The concessions to adopt such a plan that were made by other unions were done so to settle a contract in these difficult times and should not be awarded by an arbitrator.

5. When considering the two final offers on the table, the arbitrator must be made aware of the concessions the Association has made and the progress the Mayor has made in returning her third consecutive no tax increase budget. In light of the S.O.A.'s having voluntarily accepted the 18-month wage freeze and health issuance cost containment measures which were a significant element in the return to fiscal stability, the mere addition of these two remaining Town proposals offers no quantitative economic guarantees to the citizens and therefore are not in the best interests of the public. They can only auger "suspicion, turmoil and a tumultuous bargaining relationship in the future."

6. The history discloses that the S.O.A. separated from the PBA in 1987 and has since that time negotiated terms and

benefits distinct from the PBA's and more appropriate to its own membership. Hence, any pattern argument advanced by the Town should be rejected. The vision plan proposal and the retirees health benefits offer were either imposed on separate and distinct bargaining units in what was then difficult economic times or were agreed to after a voluntary meeting of the minds. This arbitration involves a different unit in a different time.

7. With reference to comparability, it is most difficult to properly compare health benefits between other police superiors in Middlesex County. Again, the fact remains that proposed savings have not been calculated and remain mere speculation.

8. Both proposals have no definable savings that the Town can point to as justification for the adoption of its final offer over that of the S.O.A. The interests of the affected employees in keeping these benefits as they are now far outweighs those of the Township in forcing them to change. These suggested revisions affect the current superiors' and future retirees' family budgets far more than it will the Town's.

9. No ability to pay argument was made by the Township. No financial impact on the Town's economic stability has been shown. The voluntary settlement the parties reached as to the majority of expense items eliminates any need to consider the

cost of living criteria. The parties' voluntary settlement on the majority of the issues accomplished providing continuity and stability of employment. Accordingly, the above-referenced statutory criteria offer no support for the adoption of the Township's final offer.

10. The S.O.A.'s final offer would maintain the continuity and stability of employment only for those current superior officers as well as anyone promoted to sergeant before December 1, 1995. Hence, anyone promoted from the rank and file will bring with them and be bound by the Township's two proposals contained within its final offer which the PBA has either previously agreed to on a voluntary basis or against which an Award has been entered.

For the foregoing reasons, the S.O.A. asks that its final offer be accepted as the more reasonable.

POSITION OF THE TOWNSHIP

In his post-hearing brief, labor counsel for the Township argued the following points:

1. Initially counsel recounts highlights of the fiscal crisis that grasped Old Bridge from 1992 through 1994. He argues that any claim by the S.O.A. that the budgetary woes from that time no longer exist must be disregarded since this Agreement is retroactive to that period of time. He repeats a theme echoed throughout his brief that no reason exists for the S.O.A. to enjoy better benefits as to vision care and retiree benefits than all of the Township's other employees.

2. Counsel points to the pattern of voluntary settlements with four Township bargaining units and the Tener Award in the PBA Interest Arbitration and argues that, based on recognized arbitration principles and legislative intent, its final offer to the S.O.A. should be deemed to be the more reasonable and should be awarded under the same pattern criteria Arbitrator Jeffrey Tener adopted to support his interest award in the PBA case.

Counsel painstakingly details each settlement and the Tener Award to note that the settlements are virtually identical and those minor deviations that do exist are insignificant and universally less than the final offer presented here.

3. Moving to the defensive, counsel asserts that the

S.O.A. has failed to offer one compelling argument to support its final offer. In order to succeed, the S.O.A. bears the burden of proving why the pattern argument should be rejected which it failed to do. To the contrary, Township counsel asserts that were the S.O.A.'s final offer awarded, it would be given to the Township's highest paid bargaining unit with the result that it would wreak havoc in future negotiations with those very groups who had accepted those concessions in this round of bargaining. In brief, the S.O.A. is trying to get more, and it has failed to bear the burden of proving why it should.

4. The Township's health benefits proposal is fair. Four units accepted it and an arbitrator awarded it. At maximum, the Township spent \$13,533.00 per year per family for health benefits. At its present modified cost level, it still represents the most generous and costly in the county. It is much more costly than the Teamster plan in place for two of the present Township units and the S.O.A. alone continued to enjoy the prior plan for two years while all of the others had already accepted the changes.

Vision benefit plans are not common in public or private employment. These employees enjoy this rare benefit. The other provision tying retiree health insurance terms to those of the present employees is fair since the benefits can be improved as well as be diminished. In summary, the Town's

offer is indeed the more reasonable and should be awarded.

5. All of the relevant statutory criteria, when applied, requires the awarding of the Township's final offer. A review of the arguments made as to the interest and welfare of the public support the Township. Failing to control these two benefits - vision benefits and retiree health benefits - will further burden an already burdened public. Awarding the S.O.A.'s package will create havoc in the next negotiations.

The Town has experienced no difficulty in recruiting officers and no proof exists that awarding the Town's final offer would change this.

The S.O.A. already enjoys a more generous package than the PBA as Arbitrator Tener noted, and therefore to award the S.O.A. offer would only widen the present gap between these units without reason.

Awarding the S.O.A.'s offer would break a pattern without any justification. Awarding the Town's would provide a "breather" that both the Town and the public need.

6. A comparability study shows that the S.O.A.'s members are better paid than all but department heads; and they have also accrued liabilities in owed time exceeding all other Township employees. The wage increase they will receive is a comparable percentage and, hence, will widen the present salary gap over the other units. These members compare favorably with other Middlesex police forces and far exceed

all benefits provided those other officers.

Comparison with other state and governmental units bear out the same facts. With settlements and increases averaging between 2% and 3%, the S.O.A. will be receiving 4+% in each of the years from a town that just passed through a financial crisis. The fact remains that these S.O.A. members have substantially out distanced most public sector workers. These facts strengthen the conclusion that the Town's offer is clearly the more reasonable.

7. Counsel examines the remaining statutory criteria and makes appropriate arguments in support of his contention that the Town's offer is far and away the more reasonable.

In conclusion, counsel marshalls his arguments and notes that Old Bridge's final offer is the more reasonable after the statutory criteria has been applied to the facts at hand in this matter. Conversely, the S.O.A. failed to make one argument that would justify breaking from the pattern of settlement as all of the other remaining units have accepted. The S.O.A. must share the obligation to continue to assist in the economic rehabilitation of the Town.

DISCUSSION

The Arbitrator has carefully weighed all of the evidence in the case including the testimony of the witnesses at the hearing, the arguments of respective representatives of the parties as set forth both at the hearing and in their briefs, the contract, the stipulated facts and the exhibits prior to reaching his decision.

This is indeed a unique Interest Arbitration case. The factors that make it so include the perhaps unparalleled economic crisis Old Bridge underwent from 1992 through 1994 which laid the groundwork for the settlements and Tener Interest Award. The fact that the only issue before me is a two-pronged health benefit proposal also makes this case unique and renders many of the statutory criteria of little impact in reaching the final determination of which parties' offer is the more reasonable.

The parties have stipulated the agreement they entered into on October 27, 1995 as to all other issues in dispute. No other stipulations exist.

The continuity and stability of employment are relatively insignificant at this point beyond noting that the crisis caused a brief layoff of police and the overall size of the force has declined from 104 in 1987 to some 80 in 1994. Note is made that the economic crisis took its toll in those years - a fact to be reflected on generally when considering the

economic impact arguments.

The Town certainly experienced CAP problems in the critical '92 - '94 budget years and, again, this history should be borne in mind generally under the criteria of the legal authority of the employer when economic impact arguments are considered.

The cost of living is significant to some degree and has been evaluated. The problem with this criteria, and to a lesser extent with other economic criteria, is the fact that the parties' two proposals at odds have not been costed out primarily because they are essentially speculative as to the vision plan and truly indeterminable as to the retirees health benefits proposal. Rather, what is reflected in this conflict are issues more involving a philosophy or a trend rather than defineable costs. Consequently, it is impossible, for example, to say whether the cost difference between the parties' final offer on these two issues when apportioned exceeds or is within the cost of living. As noted, this problem carries over to more significant criteria such as financial impact and comparability.

Turning to the issue of overall compensation, it cannot be denied that the SOA receives a very generous compensation package. Again, the awarding of the Town's offer certainly would not diminish this in a significant way to any perceptible degree.

Similarly as to comparability, it has to be conceded that these officers enjoy a very respectable position at or near the top with other comparable units within the county. They clearly exceed all other Old Bridge units by a significant measure. Indeed, this favorable position as to comparability carries over into the private sector comparison.

The interest and welfare of the public is the key criteria in this assessment. It has been earlier noted that a local purpose tax increase of 35% was one of the necessary hardships the tax payers of Old Bridge endured in order for the Town's fiscal house to be put back in order. As with the criteria dealing with financial impact, the issue becomes one of a philosophy or a trend. As noted, it is impossible to cost out the differences between these two final issues. Accordingly, the determination must rest on what is perceived as the more reasonable offer. The Town has seen fit to include in its efforts to stabilize its economic condition these two minor proposals in its health benefits package. Accordingly, it is viewed as being motivated by a sound reason and absent any proof to the contrary from the S.O.A., it must be deemed to be the more reasonable.

In light of the fact that the S.O.A. presented little argument to establish the reasonableness of its final offer, the only conclusion that can be reached is that the Township's offer is the more reasonable and will be awarded.

Key to this determination is also the fact that a pattern clearly exists in the Town among all remaining bargaining units - a tested pattern that was voluntarily entered into by four units and awarded in the fifth. The S.O.A. has offered virtually no argument of sufficient merit to justify breaking this pattern. In effect, the S.O.A.'s argument has come down to a request that the 18 current incumbents be frozen as to the existing vision plan and the past practice of freezing medical benefits for a retiree at the level they are at when he retires.

For the reasons expressed herein, it is determined that the final offer of the Town of Old Bridge is the more reasonable and will be awarded.

A W A R D

FINAL OFFER OF OLD BRIDGE

Duration: January 1, 1992 through June 30, 1996.

Salary: Effective July 1, 1993, a 5.25% across the board salary increase.

Effective July 1, 1994, a 4.0% across the board salary increase.

Effective July 1, 1995, a 4.0% across the board salary increase.

Health Benefits: Effective the date of the Arbitrator's Award or as soon thereafter as possible, the present health benefits program shall be modified as follows:

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Mandatory second surgical opinion.

Increase deductibles to \$150 individual/\$300 family.

Increase co-insurance threshold to 20% of first \$2,500 of covered expense.

Change dependent coverage from 25 years of age to 19 years of age; however, if the dependent is a student, coverage shall continue to 23 years of age.

Amend program to provide for pre-existing conditions limitations.

Prescription program shall be modified to provide for a \$5 co-pay for non-generic prescriptions; a \$2 co-pay for generic prescriptions; and no co-pay for mail-order prescriptions of 90 days duration or longer.

A managed care health benefits program shall be available for any employee who voluntarily decides to utilize said program and avoid the costs associated with the Township's traditional health benefits program. All new hires shall be provided a managed care health benefits program in lieu of the above traditional health benefits program. The co-payment level for all such plans shall be \$5 per visit.

Vision program shall be modified to provide for a \$200 per year family benefit.

The present practice and level regarding said insurance for all employees who have retired prior to July 1, 1995 shall continue. Commencing with July 1, 1995 and thereafter, should any modifications in the insurance covered within this Article, except for Long Term Disability* and Life Insurance, affect bargaining unit members then the same modifications shall apply to retirees.

*This constitutes no admission by the Township that the present Long Term Disability Insurance is legal.

Any employee shall have the option of surrendering coverage under the above provided health and hospitalization coverage annually in exchange for a lump sum cash payment of \$2000. Said payment shall be made no later than January 30th of each year for which insurance is being surrendered. Each employee so opting shall notify the Township no later than November 1st of the year immediately preceding the affected year.

Surrender for the following year shall not be considered automatic. Conversely, every employee shall be considered as covered and shall so be covered unless and until such time as an employee shall affirmatively notify the Township to the contrary. Any employee who had been covered and had opted out of said coverage for 1 or more years and subsequently determines not to opt out for a future year shall be covered irrespective of any pre-existing conditions.

Uniform Allowance:

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Those employees who are capped herein at one hundred (100) days shall be limited to a cash maximum of:

Sergeants	\$41,000
Lieutenants	\$45,000
Captains.	\$48,600

Those employees who are capped herein at Two Hundred Eighty (280) days shall be limited to a cash maximum of:

Sergeants	\$82,100
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Captains.	\$97,300

Section A(5), first sentence, shall be amended to include:

". . . in accordance with the cap set forth in Section C."

