

PUBLIC EMPLOYMENT RELATIONS COMMISSION
OPINION AND AWARD

In the Matter of the Interest Arbitration

between

BOROUGH OF NEW PROVIDENCE

and

PBA LOCAL 132

Docket No. IA 96-169

BEFORE: Barbara Zausner

AWARD DATED: January 6, 1998

APPEARANCES:

David A. Wallace
Attorney for the Borough
By, David A. Wallace, Esq.

Whipple, Ross & Hirsh
Attorneys for the Union
By, Donald B. Ross, Jr., Esq.

PROCEDURAL BACKGROUND

I was appointed interest arbitrator by the Public Employment Relations Commission on June 27, 1996. I met with the parties on September 4, 1996, February 25, and June 10, 1997. Testimony and evidence were received on all three dates and the hearings were transcribed. Provision was made for briefs and the reply briefs. I closed the record when I received the final briefs. The due date of the award was extended at my request and by mutual agreement.

The decision is by conventional arbitration. Both parties propose a three year term, covering calendar years 1997, 1998 and 1999.

FINAL OFFERS

PBA

1- Salary

Increase base rates by 5.25% per year payable on March 1 of each year.

2 - Longevity

Eliminate cap on longevity.

3- Clothing maintenance allowance

Increase \$50.00 in each contract year.

4- Officer in Charge

A patrolman who performs the duties of sergeant shall be paid at the sergeant's rate of pay for all time worked in such capacity from the first day so worked.

Borough

1- Salary

| <u>Class</u> | 1997 | 1998 | 1999 |
|--------------|-------|-------|-------|
| Sergeant | 54565 | 55656 | 56769 |
| 1st Grade | 49394 | 50381 | 51389 |
| 2nd Grade | 47167 | 48110 | 49072 |
| 3rd Grade | 44941 | 45840 | 46757 |
| 4th Grade | 42807 | 43664 | 44537 |
| Probationary | 24892 | 25390 | 25898 |
| Recruit | 18439 | 18807 | 19183 |

2- Longevity

Future hires: delete, eliminate longevity.

3- Personal Days

Future hires: three (3) days per year (reduced from 5).

4- Clothing Allowance

Increase both annual clothing allowance (currently \$525) and annual laundry allowance (currently \$375) by \$25 in each contract year, 1997, 1998, 1999.

5- Insurance

1. Current employees:

- a. Increase deductibles from \$100/\$200 to \$200/400
- b. Revise coinsurance from 80% of \$2,000 to 80% of \$3,000
- c. Remove all first dollar benefits
- d. Institute mandatory second opinion
- e. Institute pre-admission certification/ continued stay review.

2. Future hires: After completing six (6) months of employment, covered by New York Life's NYLCare HMO Plan, as per all other Borough employees.

DISCUSSION AND OPINION

The bargaining unit consists of twenty employees; twelve patrolmen, two detectives, one corporal and five sergeants. The Borough is 3.5 square miles and had a 1994 estimated population of 12,044. (B-9). This is smaller than most other municipalities in Union County. The ratio of population to police (497:1) is well above the County average (370). (PBA-3). The equalized tax rate in New Providence was \$2.17 in 1995. The average in the County was \$3.02. (PBA-15). The average assessed value of a home in the Borough is \$148,600. (PBA-16). In the 1997 budget, public safety accounts for 16.2% of the total. The figure for 1996 is 15.7%. (PBA-25).

The PBA argues that "despite its suburban character and relative wealth, New Providence has failed miserably in maintaining adequate levels of compensation for its police officers as compared with other officers in Union County." The Union maintains that comparison "with other similarly situated police officers within the county continues to be among the most important factors which must be considered in interest arbitration." (Brief, p. 7).

The Borough claims the PBA's approach to a reasonable settlement, which focuses on comparison with other police units, ignores "unrealistically inflated police settlements that essentially ignored the trends elsewhere and the economic realities that caused the[m]...." (Reply Brief, p. 2). "There is not one scintilla of evidence or logic that supports the proposition that the interest arbitration process is intended to produce police settlements that are unique to themselves and out of step with the rest of the labor world." (Id., p. 3).

The Borough argues that it is "a community of less than average means, ranking fourteenth or fifteenth out of the 18 comparable municipalities along the [Route 22] corridor." These include the Union County towns, Berkeley Hts., Mountainside, Scotch Plains, Summit and Westfield as well as Bedminster Tp. (Somerset), Bernards Tp. (Somerset), Bernardsville (Somerset), Chatham and Chatham Tp. (Morris), Far Hills (Somerset), Florham Park (Morris), Madison (Morris), Mendham Boro and Tp.(Morris), Millburn Tp., (Essex), and Watchung (Somerset), (B-9).¹

Interests and Welfare of the Public

While this criterion is of considerable importance, there is little record evidence of what specific interests and welfare might be at stake. The parties emphasize competing interests which this award attempts to balance. Those are, to attract and maintain a competent and motivated police force while controlling the associated wage and benefit costs.

¹The exhibit consists of pages from the NJ Municipal Data Book. There is no evidence in the record which compares such indicators as tax rate, population to police ratio, workload, staff size, etc., among the municipalities selected by the Employer for comparison.

The PBA argues that "the paramount public interest to be considered in determining which economic package should be awarded is the safety and security of the people who live and work in the Borough.... New Providence police are doing their job well and the interests of the people are thus well-served by their efforts." (Brief, p. 17). The police also generate income; \$97,596 in 1996.² (Municipal budgets in evidence, sheet 4).

The PBA notes that the "impressive results have been obtained despite ... personnel reductions" (Brief, p. 18). It concludes, "the interest and welfare of the public are best served where there is a satisfied and fairly compensated police department." (Brief, p.18).

The Borough cites current "troubled economic times of recession, unemployment, layoffs, givebacks, budget crises, spiraling health insurance costs" and taxpayer pressure to contain costs and "hold the line at the negotiating table." (Brief, p. 11). For reasons detailed below, I have concluded that the Employer's goal of controlling costs can be met while improving police salaries at a cost somewhat higher than the Borough's offer. To some extent, an award of the Borough's health care proposals will provide the necessary funds.

Financial Impact and Lawful Authority

The financial impact of the award is a very significant factor. Unless the Employer can fund an award without adverse impact on the taxpayers or the ability to provide services, an award which is otherwise justified under the statutory criteria must be reduced. No unlawful proposal is made nor is there evidence of a "cap problem."

The tax history and analysis provided to the public by the Borough shows that the tax rate increased considerably in 1988, '89 and '90. Thereafter, the rate changed by only 1 and 2 % for the next two years. There followed two years of 7% increases. In 1995, '96 and '97 the level of change was down to 3% for the first two years and 4% in '97. (PBA-25). The same exhibit shows that school

² Court revenues generated by the police department have increased from \$54,133 in 1993.

taxes (the largest part of the budget) and county taxes have continued a steady increase while the local purposes portion has remained stable since 1994. While no tax increase is suggested, the impact of an increase in this area would be quite small.

According to the PBA, implementation of its offer is "within the statutory authority of the employer ... [and] does not include any benefit or proposal which is preempted by ... law or regulation" (Brief, p. 33). It also argues that the "net economic changes proposed by the PBA are eminently fair and reasonable." (Brief, p. 35).

The Borough's beginning year surplus has declined from over \$1.1 million in 1989 to \$346,773 in 1996. The balance (after funds appropriated for use in the current budget) for the years 1991 through 1996 is: \$73,504, \$57,944, \$54,061, \$27,495, \$68,943, \$46,773, respectively. Administrative costs, legal costs, insurance, other services and debt service have increased considerably between 1983 and 1996. (B-13). The taxpayers' percent of the budget has ranged from 65% in 1988 to 68% in 1996 with slight variations higher or lower. (B-14).

The PBA claims "there has been little increase in the tax rate during three years of declines in the tax base and certain extraordinary expenses." These are "counterbalanced by unusual and short term revenue sources or cost savings." (Brief, p. 39). A "one point increase in the tax rate would result in an additional \$71,000 in revenue based upon current assessed valuation in the Borough." (Brief, p. 39). The Borough's proposal results in new money costs of \$32,770 in 1997 which equals less than .5 points on the tax rate. (Citing, Tr., 6/10/97, p.36). This would cost the average taxpayer \$7.00 in new money (in 1997)..

According to Exhibit B-15, the 1996 tax rate per \$100 valuation would be \$1.015 using \$400,000 from the sale of a firehouse. The rate would increase to \$1.07 without the firehouse sale proceeds. This gives some indication of the impact on the taxpayer of a change of \$400,000.

Borough Exhibit 1 shows a 1995 base salary cost for the unit of \$976,570. Total wage, including longevity, clothing, and other, amounted to \$1,032,006. Under the Borough's offer, in 1999 the

total cost would be \$1,121,253 of which \$1,054,681 is base salary. The exhibit shows that the Borough's salary offer would result in an increase of about 2.0% per year.

The Borough provides an analysis of the cost of the PBA's proposed 5.25% increases. An award of the PBA's offer would result in a 1999 cost for salary and some benefits for the unit of \$1,299,934. The difference between the two offers is over \$178,000 by this measure.

The PBA's analysis of the costs of the proposals yields these results: (new money)

| PBA: | | | BOROUGH: | |
|------|----------|-------------------------|----------|----------|
| 1997 | \$42,724 | salary | | |
| | 17,166 | longevity | | |
| | 1,166 | acting sgt. | | |
| | 1,000 | clothing | | |
| Tot. | \$62,056 | | | \$32,700 |
| 1998 | \$45,594 | salary | | |
| | 8,545 | rollover 2 mos from '97 | | |
| | 21,471 | longevity | | |
| | 1,000 | clothing | | |
| Tot. | \$76,610 | | | \$27,713 |
| 1999 | \$46,935 | salary | | |
| | 8,545 | rollover | | |
| | 28,671 | longevity | | |
| | 1,000 | clothing | | |
| Tot. | \$85,724 | | | \$28,764 |

Difference between the parties in new money costs:
 \$135,213 (U. Brief, pp.38-40).

No figure is provided for '98 and '99 acting pay.

The PBA's cost analysis also shows the impact on the tax rate of the two proposals:

| | PBA | BOROUGH |
|------|--------------|--------------|
| 1997 | .87 of \$.01 | .46 of \$.01 |
| 1998 | 1.079 | .39 |
| 1999 | 1.207 | .40 |

If three tax points³ = "\$45.00 for the average home in New Providence, ... one point equals approximately \$15.00" and "the cost per household" of the proposals is:

| | PBA | BOROUGH |
|------|---------|---------|
| 1997 | \$13.05 | \$ 6.90 |
| 1998 | 16.18 | 5.85 |
| 1999 | 18.10 | 6.00 |

The PBA argues from this analysis that the average household can "afford to spend \$6.15 more [in 1997] than the Borough has offered ... for its police officers." (Brief, p. 41).

The difference for the three years is \$28.58. The PBA points to the municipal purposes portion of the 1997 budget which is \$10,764,358. The impact of the difference between the parties on the budget is "insignificant" in the PBA's view as is the impact on the taxpayer. It also has no effect on the Borough's "ability to deliver programs or services." (Brief, pp. 41-42).

Comparisons - police employees in other municipalities

The record does not include evidence by which to compare all of the relevant factors of the municipalities cited by the parties as comparable. To the extent that comparison with other police employees is important to this decision, I have based my judgment on municipalities which appear to be of similar socio-economic character.

³ PBA-25, the mayor's message in the document prepared for the public hearing on the 1997 budget.

I agree with the Borough that police salaries must reflect current economic constraints and may not be set merely by comparison with other police departments. Comparison with other police employees is not a major factor in this decision. However, comparison with other police departments is entitled to some weight as it is an objective indication of what it costs to retain a competent professional police force in this part of New Jersey.

I have made some comparisons of police compensation and benefits in New Providence with other police departments, both in the county and along the Route 22 corridor. As the PBA observes, "only police officers enforce traffic laws and run the risk every time they pull over a vehicle of a violent confrontation." (Brief, p. 19). Therefore, comparison of police employees with other police employees has somewhat more weight than comparison with public or private sector employees in general.

Borough Exhibit 8 shows 1996 "average homeowner taxes" for the 21 municipalities in the County. The rate shown for New Providence is \$5744, third highest behind Westfield and Summit and close to Scotch Plains. Per capita income is 14th of the 18 municipalities on the Employer's list of comparables. (B-10). It also ranks 14th in median household income (B-11) and 15th in median family income (B-12) within that group.

New Providence has the lowest crime rate of any municipality in the Route 22 group and a relatively low ratio of police to population. (Data from B-9).

PBA Exhibit 5 lists 18 Union County police department patrol officer salaries, top step, for 1995, 1996 and 1997. In 1995, New Providence, with a top step of \$46,092, lagged considerably behind most other Union County municipalities and was well below the average top salary of about \$48,800.⁴

The average top rate in 1996 is about \$50,700 and in 1997 (with figures for 11 municipalities) it is about \$52,300. The New Providence sergeant's salaries ranked 16 (of 17) in 1995 and 11th of 14 in 1996. (PBA 6). Municipalities which pay considerably more

⁴The average includes Winfield where the top step is \$35,344, a figure more than \$10,000 below the next lowest rate.

than New Providence include those where the per capita income is lower than that in New Providence, including Scotch Plains (which has the lowest per capita income in the Route 22) group and Berkeley Hts., which is about the same size as New Providence. (B-9). Berkeley Hts. was recently awarded 4% increases in each of three years.

The PBA argues that it "seeks to retain its relative standing without a significant erosion of that position." Even an award of the PBA position would leave unit members "woefully underpaid." A higher rate of increase is necessary because of "New Providence officers' low salaries...." (Brief, p. 23). The increases proposed by the PBA and the deferred payments "address two objectives: 1) the police officers will receive a minor salary 'catch up' and 2) the cost to the Borough of such increases will be less during each calendar year." (Brief, p. 25).

- public sector in general

This factor has some relevance in that public employee salaries are funded at taxpayer expense. To some extent, the public decides what level and quality of public service it wants in terms of what the community can afford. Wage trends in the public sector have not always been in synch with private sector wages. Thus, the general level of wage increase in the public sector gives some indication of what the public is willing to spend for services.

The Borough cites teacher salary increases which, it argues, are "in response to the same factors mentioned previously: uncertainties in the economy and tax revolts...." (Brief, p. 14). Police officers in New Providence earn considerably more than the average New Jersey teacher "with a college degree and seven years of experience." (Brief, p. 14). (B-67). The comparison holds true on the national level. B-43 shows a 1995-96 average increase of 2.9% for the past three years.

State and local government employees averaged 2% and 2.3% increases under recently negotiated contracts. (B-41). More indicators of wage trends -- that is, wage increases lower than those sought by the PBA -- are found in Borough exhibits 68 through 74, among others.

- other Borough employees

"Unit employees are by far the highest paid non-supervisory, non-managerial employees in the Borough." (Employer Brief, p. 13, citing B-6). The unit has received higher percentage increases than other Borough employees. (B-7). The PBA's increases averaged 5.55% over ten years; other raises averaged 5.05% (DPW), 5.3% (Department heads), and 4.9% for others. PBA exhibit 19, a copy of ordinance 96-2, shows similar information.

The PBA argues that the differential in compensation is explained, in part, by the fact that they "work around the clock", "work weekends and holidays", "do not receive [as much] overtime" as other Borough employees, and "are exposed to harm and stress from which other Borough employees are insulated." (Brief, p. 26).

The PBA makes some important points about the appropriate application of the comparison criteria. It also notes the revenue generating function of the police force. The differential between police and other municipal workers has existed for many years. Changes such as reducing the differential in compensation among municipal employees are likely to occur over time just as it took years to increase the differential to current levels.

- private employment

This factor has some relevance because trends and conditions in private employment impact this municipality's taxpayers. When large numbers have been laid off or received zero wage increases, the public is less willing to grant generous increases to its employees. There is little record evidence on this criterion except by way of general guidance.

The Borough points to evidence that police officer salaries are higher than those paid in the private sector. (B-24 through B-40). B-24 shows "that the Borough top step police officer's 1996 hourly rate of \$23.28 exceeds the average 1996 private sector hourly rate of \$12.07 by 93%." (Brief, p. 13).

B-30 through 40 are news stories of staffing cuts and layoffs in New Providence and neighboring communities.

The PBA argues that this criterion should be given little weight in view of the significant difference in job duties and dangers faced by police officers as compared with most other workers.

Cost of Living

This factor has some relevance in helping to determine the most reasonable award. It is a fact that the cost of living is somewhat higher in the area of New Providence than it is, for example, in Burlington County. Overall indices do not take local factors into account.

The PBA argues that "public employees were routinely denied cost of living adjustments" in the 70s. These adjustments were not offered until "increases in the consumer price indices began to abate." (Brief, p. 43). The PBA points out that the Borough voluntarily has granted increases higher than the CPI increases.

The cost of living has increased at an average annual rate of 3.67% in the ten years from 1986 to 1997. It ranged from a high of 6% in 1990 to a low of 2.5% in 1995. The figure reported for 1996 is 2.9%. (B-5). The consumer price index for New York and Northeast New Jersey increased by 2.6% from December to December. Urban wage earners' salaries also increased by 2.6% in the same period. (B-5A). During this period "the PBA unit members received ... an average annual increase of 5.55%."

Continuity and stability of employment

This criterion has some relevance for deciding the dispute. There is no evidence in the record such as turnover rates (with reasons for leaving and destination), job openings and number of applicants, and other such indicators which might prove that a higher or lower rate must be paid to maintain stability. Seniority rights would be enhanced by the PBA proposal to eliminate the cap on longevity payments. The Borough's proposal to reduce benefits for new hires arguably has some impact on continuity and stability, within the bargaining unit if not on stability of employment in general.

As I read this criterion it refers back to the criteria dealing with comparisons and current compensation as those are "ordinarily" and "traditionally considered in the determination of wages, hours,

and conditions of employment" in both the public and the private sectors. If the evidence reveals a problem with an aspect of "stability and continuity" (such as retaining and attracting a competent and motivated police force -- to name the obvious factors) then rates should be increased to a level better than average for the employer to compete in the labor market.

The PBA argues that morale should be considered. I agree that is an important factor, especially in the context of public safety employment. The demands of the job are unique and significant. Poor morale has been blamed for corruption among public servants.

Although there are now more workers than jobs in the labor market, police work has special requirements that cannot be met by the average applicant. It is important to maintain a trained police force with good morale. The PBA argues that for those reasons, the award must prevent "erosion of the police officers' relative standing among fellow law enforcement ... employees." (Brief, p. 47).

Stipulations

There are no relevant stipulations. Agreements mutually made by the parties on issues not submitted to arbitration shall be incorporated into the collective bargaining agreement.

DECISION ON EACH ISSUE

Salary

A number of factors, including comparisons, financial impact, and morale indicate that base pay should be increased by 4% per year which would be partially funded by insurance savings and future savings through reduced benefits for new hires. These increases will prevent further erosion of the unit's relative standing among comparable municipalities and will raise the pay levels closer to the average in the area. The award will cost \$1,098,508 in base pay; an increase of about \$122,000 over the '95 base. This is not considerably more expensive than the Borough's offer, especially when cost savings awarded below are factored in.

Longevity

There shall be no change in this provision for current employees. The existing cap (\$2400) maintains this costly benefit at a manageable level. There are many police contracts across the state where the longevity benefit has been reduced, eliminated, converted to flat dollars, and changed for new hires. By comparison, \$2400 is a fairly generous reward for continued service. (PBA-8).

Most significant is the cost of eliminating the cap on longevity. By the PBA's estimate, the new money cost of longevity payments under its proposal would be \$67,308 for the three years of this contract. The amount is enough to cover half the increase resulting from the award on base pay. The PBA's analysis shows how the cost escalates exponentially. I conclude that it is more important to put the new money in direct compensation than to change the agreement to eliminate the cap.

For new hires, I shall award the elimination of this benefit. This is a fruitful area for controlling exponentially escalating costs and for reducing the costs of adding to the force. No current employee is harmed. The award is justified by cost and comparisons. Better salary levels (base wage, that is) can be counted upon to continue to attract high caliber applicants.

Personal Days

The Borough's proposal to reduce the benefit for new hires is awarded. Time off is expensive and the change does not affect any current employee. Five days is a very generous benefit. Current compensation includes a reasonable and comparable level of paid time off. This is another saving for the Borough, reducing the cost of this benefit by 40% per police officer in the future.

Clothing Allowance

Both parties propose an increase which amounts to \$50.00 per year. Therefore, the increase is awarded. The cost, by the PBA's estimate, is \$1,000 per year.

Officer in charge

James V. Guerriero, PBA President, testified that one has to work in the higher title for 120 hours before getting paid the differential. That amounts to 15 days. He calculated the outside exposure to the Borough of paying the differential from the start of the assignment. For 1996 the amount would be \$1166.

The Borough points out that this provision was improved in the last round of negotiations. There is insufficient justification for further change at this point. Objective data are absent.

Insurance

The record does not reveal what would be the cost savings of some of the Borough's proposals. I have decided not to adopt the provision affecting new hires because it is not clear that the Borough legally can maintain differential health benefits within this unit.

The Borough has made a number of other proposals affecting current employees. It is in the public interest for individuals to contribute to their health care benefit. This provides an incentive to monitor and control the cost of health care. Therefore, I shall award the increased deductibles to \$200/400 and revise the coinsurance to 80% of \$3,000. The record does not provide support for "remov[ing] all first dollar benefits" nor is there any evidence of the cost, feasibility or impact of this proposal.

The Borough's other proposals, to institute mandatory second opinions and to institute pre-admission certification and continued stay review are awarded. These features make sense for the provider, the Employer and the employees. They also save premium dollars, among others.

AWARD

Term: Three years, 1997, 1998, 1999.

Salaries:

Increased by 4% per year on each step and across the board effective January 1 of each year.

Longevity:

Eliminate for employees hired after 1/1/98.

Clothing Allowance:

Effective Jan 1, increase clothing and laundry allowances by \$25.00 each in each of the three calendar years.

Insurance:

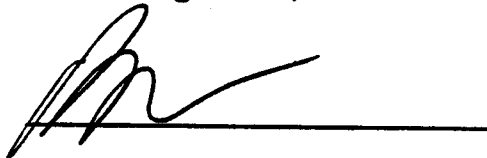
- 1- Increase deductibles to \$200/400.
- 2- Revise coinsurance from 80% of \$2,000 to 80% of \$3,000.
- 3- Institute mandatory second opinion.
- 4- Institute pre-admission certification/continued stay review.

Personal Days

Future hires: three (3) days per year (reduced from 5).

All other terms and conditions not addressed by this award shall remain unchanged.

By:



Barbara Zausner

Sworn to and affirmed before me on January 6, 1998.

Corrected January 21, 1998; original notarized.