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

DECISION AND AWARD

The Borough of Waldwick, New Jersey

of

and

Frank A. Mason, Arbitrator

PBA Local 217, Waldwick Unit

PERC Docket No. IA-2011-049

APPEARANCES

FOR THE BOROUGH: Mark Ruderman, Esq., Ruderman & Glickman

Gary Kratz, Borough of Waldwick Administrator

FOR THE PBA: Richard Loccke, Esq., Loccke Correia Limsky & Bukosky

Douglas Moore, Sergeant, PBA Local 217

David Laski, Troy Seifert and Jeffrey Mandel, Officers

This case assignment was made by the N. J. Public Employment Relations Commission pursuant to the legislative conditions imposed by the N. J. State Legislature which are instructive to the parties and the arbitrator. The limit as to the annual increases in the Borough's overall budget is effective in this matter but the restriction as to increases in wages permissible was not deemed applicable to police salary adjustments in this case.

The Borough's attorney had raised this latter element as an issue for my resolution, asserting that the 2% limit on wages was to be observed. I denied this interpretation of the law and issued a ruling to that effect. He appealed that decision to the PERC which subsequently confirmed it. Mr. Ruderman further requested a review of that determination on a formal appeal basis. The PERC rejected that request. Therefore determinations in this matter will not involve adjustments to reflect the statutory 2% limitation on wages and certain related costs.

The parties first met with the arbitrator on May 9, 2011. Efforts to resolve the conflict of positions were not successful. A further meeting was scheduled for May 20, 2011 at which time a record of the hearing was made and testimony taken as to the issues in dispute. At that time the Attorney for the Borough had not yet exhausted his right to appeal the above noted issue so he advanced arguments and information as if there would be a 2% limit on wages. Post hearing briefs were scheduled and received on May 28th for

the PBA and on May 31, for the Employer; apparently delayed because of the weekend holiday.

The hearing, of May 20 was conducted to afford the parties an opportunity to fully explain their respective positions. Sworn witnesses were examined and cross examined and related exhibits were received. The time for submission of post hearing briefs was set. Arguments and explanations of elements of positions were made.

FINAL PROPOSALS OF THE PARTIES

EMPLOYER

WAGE INCREASE

1. An Agreement for the period from January 1, 2011 through December 31, 2012 with no adjustments in the guide except as provided in #2 below..
2. Add six steps to the salary guide equalizing all steps including employees currently on the step guide and lowering starting salary to \$35000.

MEDICAL INSURANCE

1. Retroactive to January 1, 2011 increase co-pay contributions to 2.5% as well as adding a provision that says that should the legislature change the existing 1.5% it would be immediately implemented regardless of the term of the collective bargaining agreement.
2. Upon issuance of the award, employees shall receive the Direct 15 Plan at no cost. Should an employee elect the HMO and/or Direct 10, they shall pay the difference [premium cost] between one of those plans and the Direct 15.

UNION

1. WAGE INCREASE

The PBA proposes a four year contract for the period from January 1, 2011 through December 31, 2014 with a wage increase of 3.5% across-the-board effective on January 1st of each of those years.

2. WORK INCURRED INJURY

The proposal was to extend the coverage from the current 90 days to one year.

3. DETECTIVE STIPEND FOLD-IN

The PBA proposes a modification of the current \$1000 detective stipend payment so as to have said payment folded-in to base salary to be used for all computation purposes.

4. TWELVE HOUR WORK SCHEDULE

The PBA proposes a modification of the work chart to a twelve (12) hour work schedule. This would be a modification of contract page 6.

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 or partially 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. Un private or public 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. 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; the 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 of an award 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.

GENERAL OVERVIEW

Waldwick is a relatively small community of something less than two square miles located in the very northeastern portion of the state north of and near Paramus. It lies between and close to substantial vehicular traffic lanes and is a center of local commerce in a largely residential setting. The population is under 10,000. Many of the residents are employed beyond the town and the in town railroad connection is a valuable asset for commutation. The commercial activity is seen as expanding and there have been special events and attractions which also tend to bring non-resident persons into the town causing extension of needed the police presence. There is little in the way of industry. There are several other small towns nearby and the police have developed extensive mutual assistance programs to be brought into place as needed. There has been a recent increase in all police activity.

The circumstances as to economic limitations are an influencing consideration. This dispute was determined to be outside of the State's imposition of police wage increases to be within a 2% maximum, however the limit placed on the town at 2% for the enlargement of the property tax levy presents a limiting factor, especially when there are cost increases encountered which are not within the discretionary control of the town. Further there has been no real evidence of loss of tax revenues but the specter of residential and commercial claims for reduction of property values and the resultant impact on the property taxes presents a consideration leading to conservative spending.

There was no exception taken to the assertion that this is a well disciplined and fully functional police force which serves the citizens of Waldwick with fine services. The PBA made a special point of illustrating the advanced training and special skills of the force both as to law enforcement and ancillary, protective and assistance services.

Both parties argue the application of the statutory factors favors the positions taken in this proceeding. I find some are significantly more applicable than others as I will explain .

THE INTERESTS AND WELFARE OF THE PUBLIC

None of the statistics presented suggest that the wages and benefits paid have been sharply out of synchronization with other nearby communities and both parties have indicated that the public is very satisfied with the quality of the police function. What has loomed as a matter of alarm to the Employer is the constrictions which have been placed upon its flexibility concerning financial matters. These are inclusive of the legislature's twice reducing the limit on property tax increases first to 4% and now in 2011 to 2%. While this does not stifle flexibility in spending entirely it does present a restriction to be reckoned with. These limitations were enforced by law in order to control the extent of property tax growth. This is a fundamental policy reflecting the state government view that the local governments have failed to reasonably protect the public interests. In addition the state has particularly focused on the costs of police and fire employment costs

by introducing a 2% maximum annual adjustment to wages for those two categories of employees. While the latter is not a restriction in the negotiations before me it none-the-less has become a statement of the Legislature's concerns. From the perspective of the tax payer it is welcomed because of the very high of property taxes having been imposed.

The Employer has indicated an elevated level of concern as to its capability to live within those restrictions while enduring costs of operations which are largely beyond their control: some of which are obvious; fuel costs, insurance costs, deflated property values and the real threat of inflation which seems to be anticipated by economists. In the face of these considerations the offer of the Employer appears to reflect the public interest and welfare more than does that of the Union.

My conclusion however is this must be considered as related to other circumstances and in particular the actions of the town as it has dealt with other or its employes.

COMPARISON WITH THE WAGES, HOURS ETC

There was an endless amount of data and explanation entered into this record to the tune of several thousands of pages. It is not practicable for me to try to distill absolute justice based exclusively on that volume of information. Much of which can be seen as somewhat related to the situation presented here. But I believe the comparisons of wages to be the significant matter before me. In order to best focus on this I have elected to concentrate on the comparisons presented by nearby communities as I see them as most like the Waldwick environment. In particular I include Ho-Ho Kus, Midland Park, Allendale, Woodcliff Lake and Wyckoff. There are others similarly nearby but the evidence before me is scant on those communities and in some cases the fundamental structure such as size makes them unlike Waldwick. Among these five communities, all relatively near Waldwick and with which Waldwick probably share some services the average base salary at maximum for the year 2010 was \$108,909, excluding an unknown at Woodcliff Lake. This compares to the Waldwick figure of \$115,781, making Waldwick the leader by 6.3%. This is hardly a negative comparison for Waldwick. This relatively advantageous position could be affected by any determination as to future years and would be very much diminished if the Employer's offer of 0% was to be awarded.

When comparing the data presented buy the Union as to percent increases for 2011, when reported in the record, for a much larger group of communities the average increase was 3.74%; but of only two of the communities I have selected for comparison purposes, which did report, the average was 2.98%. Hardly a comprehensive picture but clearly indicative of a reduced level of increases for the relatively smaller communities.

The hours of work for all police departments tend to be very similar even when consideration is given for the varying schedules, in particular the eight hour versus the 12 hour shifts which were described by the PBA as follows, "The current schedule requires each officer to work 2080 hours a year." "The 12-hour schedule meets this requirement." For this reason I do not see a reason to examine this issue here.

THE OVERALL COMPENSATION PRESENTLY RECEIVED

The compensation of these officers is both comprehensive as to benefits and competitive as to wages. There are some benefit structures which are more generous on particular dimensions but those provided in Waldwick include good to excellent wages, a comprehensive program of sick, vacation, holidays and other leave time as well as medical insurance, the State retirement plan and protection for family members and longevity pay. The costs of these benefits place the employees in a highly rewarding and protected situation. There are some programs which are more generous and many less so. The overall compensation I believe to be generous and attractive for others interested in such employment.

The Employer contends that its offer will preserve the working relationship with these officers, that employment would be attractive should there be need to hire new personnel and that it is fair with regard to the taxpayer interests. I am concerned that this is an overly optimistic view as there have been no agreements concerning police wages, to my knowledge, that have failed to provide some reasonable level of wage improvement even in the environment of restrictions on the Employer as to raising taxes. Here there has been no convincing evidence provided as to not being able to afford some wage improvements. This is particularly so in the circumstance which was created by the Employer when it agreed to provide significant increases to its managerial personnel and to the white and blue collar employees as well which over a three year period were 4%, 3% and 3%. While none of these employees are paid as generously as are the police it never-the-less poses a posture of discriminatory treatment.

4. STIPULATIONS OF THE PARTIES

As there were none I do not offer any comment.

5. THE LAWFUL AUTHORITY OF THE EMPLOYER INCLUDING LIMITATIONS IMPOSED UNDER LAW.

This criteria contemplates the consideration of the lawful flexibility of the Employer as to any requirements concerning spending which might be imposed by binding arbitration. In this particular situation there has been substantial reduction of employment costs due to two retirements of officers which reduced the payroll in excess of \$339,000. While there may be substantial expenses incurred in replacement of these officers the relative amount for two new persons at incoming salary would not very substantially erase those savings as the new hire rate, or even for an officer with two years experience who would be under \$60,000. Thus it appears that there will be a considerable safety net as to total payroll expense for at least two years even if new officers were hired immediately. Those savings could be further reduced should there be a promotion to the vacated Sergeant position but this added cost would be only at the rate of about \$8000 per year.

In addition to the salary savings noted above the PBA asks that there be added credits related to the reduction of the health benefits premiums paid by the Employer due to the imposition of the 1.5% of payroll each officer now pays which lessens the amount due from the Employer. I reject this thought process out of hand as it would suggest that the intent of the Legislature, which was to reduce the costs to the town, should now be thwarted by raising the wages or giving credit for the savings against other expenses. Clearly this would be seen by the Legislature as a means of countering its intent. By doing so the expense to the town would not be relieved and additional pensionable income would be added which would also influence overtime and related costs. A further credit sought by the PBA is the amount of dollars, imposed in municipal court for fines and costs attributable to police work, should be considered as income it afforded to the town. If conceptually such "credits" were appropriately turned over to police income, which will not happen here, the judges might, with correlated reasoning, anticipate a personal income share of such fines. How inappropriate would it be to peg the income of a judge on the severity of fines he or she might impose?

As illustrated in the PBA's brief, the 2010 anticipated surplus exceeded the 2009 by more than 13% without inclusion of investment income. The net corrected costs of police services would be lessened in 2011 compared to 2010 except to the extent of my award.

The Municipal Budget was completed and certified on March 11, 2011. It describes the general appropriations within CAP for the year 2011 to be \$9,520,285 and the total appropriations subject to CAP as set forth in the Budgeted as \$8,570,457 leaving a residual of \$949,828. This is a comfortable cushion. At the bottom line of the Tax Levy Calculation sheet for 2011 here appears an Available Future Cap Bank figure of \$192,274 which will be carried over and added to that fund.

The budget for 2011 reflects some of the changes anticipated which include a reduction of \$185,292 for the police budget, probably reflecting the savings of wages from the two retirees and is evidence of the expectation of overall reduced costs for police. This, of course may make the savings noted above a part of the plan to accomplish the budget figure and may result in a modification of the amount of funds anticipated to be part of available future CAP Bank levels.

6. THE FINANCIAL IMPACT ON THE GOVERNING UNIT

It is clear to my satisfaction that the impact of my award will not disturb the circumstances surrounding the property tax as noted above. As the funding required for the police covered by the Agreement will have been diminished for the reasons outlined there can be no impact on taxes and no interference with ongoing programs and services. It is my intent to provide a reasonable increase in base pay for the police but this will not have any extreme impact on the overall budget or the services to be provided to the community. In part the decision to provide pay increases to police rests on the prior behavior of the town in its program of escalation of pay for each group of employees up to and including management at 4% in 2010 and 3% in 2011 and 2012. To be inconsistent with no

advancement for the police would be to ignore the desirability of supporting the concept of fair treatment within an Employer's work force and thus cause ill feelings which could reasonably be expected to negatively affect morale. In short the distinct denial of reasonably similar treatment of one class of employees would likely have a negative impact on the labor relations posture of the Employer. This does not infer that all units of employees must or should be treated in lock-step. To some degree the determination should take into consideration the relative needs of affected personnel. As the cost of certain necessary items of consumption are encountered at all levels of income it stands to reason that lower paid persons be treated somewhat advantageously in terms of per cent increases in pay to provide similar relief from costs. An increase of one per cent of a \$35,000 income will hardly equate with one per cent of another at \$105,000. These distinctions are seen as unfair and inequitable by the former.

In the circumstances of this economy and with a highly questionable future there is an understandable reluctance on the part of taxpayers to increase the burden they must shoulder. Settlements of labor contracts have begun to illustrate this just as past upswings produced higher settlements. I am therefore awarding 2% annual increases in this award to reasonability provide the kind of increase which can be afforded and to preclude the effort of the town to isolate the police from all other employees. There has been no rationale presented which convinces me that a zero adjustment is warranted especially in the face of the voluntarily granted raises to all other employees.

In addition this award will be for a three year period only. The PBA demand for a longer period flies in the face of economic uncertainty. It also protects the Employer in the sense that the legislative protection will not have expired thus giving the Employer a lawfully established basis for those negotiations. I believe this to be in the public interest and in keeping with many past years of similar contract duration.

7. THE COST OF LIVING

I see this criteria as being of nominal significance. Recent changes in the cost of living were not sufficient to impel the terms of negotiated agreements be adjusted. Over many years the wage and benefits increases have generally exceeded the COL and there is no way to identify what the future will bring.

8. CONTINUITY AND STABILITY OF EMPLOYMENT

This criteria is of significance mostly when the terms of an award are likely to provoke negative responses. I believe to have made a defensible award both as to the monetary aspects of this new accord as well as evident consideration of internal reaction from other employees; punctuated by the apparent fairness of treatment and concern for the personnel affected as well as all others of this Employer.

9. STATUTORY RESTRICTIONS IMPOSED ON THE EMPLOYER

I believe these restrictions have been dealt with above. There is no indication that this award will imperil any statutory restriction imposed by the legislature.

There are several additional issues before me in this proceeding. One of these is the demand of the PBA to change the work schedule from eight hour days to twelve hour days. The Employer resists this for several reasons among which is the expectation that it would prove to provide less flexibility in assignment of personnel. The PBA asserts the officers would be more alert and rested and thus provide a more dependable work force. There is no way that these opposing views can be compromised. The Employer is content with the status quo and voices strong opposition to change. The PBA is obviously interested in the advantages a 12 hour shift program would provide. Both claim to be the equal in number of hours worked. Although the PBA claims the 12 hour schedule will provide more alert and rested employees there is no real proof of that. And there is the long held opinion that employees should not work more than eight hours unless with incentive pay which was ordered to discourage longer assignment days. I do not believe a person is as capable and alert in a twelve hour situation as would be the case in working only eight hours. Most people tire as the day goes on and I see no compelling rationale to believe police are of different stuff. Police have power and responsibility to be at their top of performance at all times. I find it hard to believe longer hours would enhance performance. More days off would certainly provide more options as to use of days. Because I cannot find any compelling reason to order the change I will not. However there was ancillary issue in the form of a complaint as to working seven consecutive days on a scheduled basis. I believe that complaint warrants correction and award the concept that work schedules shall not be regularly inclusive of seven consecutive days without the consent of the individual involved.

The demand that the \$1000 detective stipend be added to base pay is also denied. The mood of the legislature is decidedly unfavorable as to adoption of means of increasing the pension liability of local government. The demand would accomplish only that objective and offers no advantage to the Employer.

The PBA also demanded that the work incurred injury allowance be expanded from the current 90 days to one year. I find the 90 days is somewhat shorter than others provide and compromise to extend the 90 days to 180 days under the same conditions as are now in effect.

There is the demand of the Employer that there be six steps added within the salary guide. This would increase the guide from ten (beyond academy) to sixteen. The prior Agreement which expired on December 31, 2010 included changes for employees hired after December 1, 2010. The provisions of that plan slowed the wage progression during the first three years of employment and then accelerated the annual increases rather dramatically from the fifth year through the ninth year. The effect of the 2010 Agreement was to accelerate advancement through the steps of the salary guide which has the effect of providing more income during the progression from the lowest step at \$45026 through the top step at \$115,781.

It is my experience that salary guides are usually meant to be a contractual promise to employees as to their progress after being hired. This proposal would have the effect of changing all steps and those changes would impact every employee at any but the top steps. It would be unique in the annals of police agreements and unsupported by any evidence as to comparability. Policemen are trained and gain experience as well as instruction throughout their years of employment. By virtually all employers they are seen as having earned the normal maximum step in the salary structure within five to eight years. Admittedly this means unusually large annual increases in pay as contrasted to others in civil services positions but it is understood that the nature of police work places an emphasis on performance at the full level of expectation in the job. This may or may not have been a proven hypothesis but it has been widely adopted. Except for the desire to slow the financial growth of the individual I can see no merit in the proposal. And as it is unique compared with universally practiced programs and unsupported by convincing evidence I reject this demand.

The Employer also directed attention to Medical Insurance and made two demands. The first of these is that the employee statutorily required contribution of 1.5% of pay be expanded to 2.5% retroactive to January 1, 2011 and adding a provision which would further extend the contribution if the legislature were to enact an increase from the 1.5% now in effect. I believe that it is not appropriate in my role as arbitrator to deal with what may happen in the Legislature and therefore will not incorporate any such condition here. However, the Employer has previously made contract with its employees in which there is a provision for a co-payment of 2% for family medical coverage. That accord is persuasive as to the situation involving much more highly paid employees being expected to participate in such premium costs. I therefore award a .5% added co-payment for those members who have enrolled in coverage for more than the individual officer to be made by payroll deduction.

The second of the medical coverage issues has to do with limiting the plan options to be provided. The Employer argues that the Direct 15 plan it wants to be universally used is more comprehensive in coverage than the currently subscribed to plan. In addition it has the important advantage of having a much lower premium cost which would assist the Employer financially. So it is seen as a win-win situation which the PBA, until now, has refused to embrace. There was no testimony introduced which would contradict the assertion that the Direct 15 plan offers at least as comprehensive coverage as the plan currently subscribed to the premiums for which are lower due to much broader participation. The Employer has also offered to continue the HMO or the Direct 10 plan to those who feel it better fits their needs or habits providing the employee making such selection pays the differential cost, if any, of the premium for such choice.

Because of the advantages in terms of costs as well as the sufficiency of plan coverage I will award this demand. The timing of a change in carriers is subject to the Employer making necessary agreements and is therefore not set by me. However the Employer shall keep the PBA and employees advised of any schedule as to this change-over and in

particular advise employees of the options as to alternate plan choices and the anticipated co-payments which may be required well in advance of the implementation of this new plan.

CONCLUSIONS AND AWARD

Most of the elements of my award are set forth in the body of this decision and will not be replicated here. Conditions attaching to those elements of the Award are intended as if re-stated in this listing.

1. Awarded is a three year Agreement from January 1, 2011 through December 31, 2013.
2. There shall be increases in the wages in each year at 2%. The first increase shall be on July 1, 2011, the second on January 1, 2012 and the third on January 1, 2013.
3. There shall be an extension of the period of work incurred injury to 180 days.
4. There shall be changes in the medical insurance plan and adjustments as to choices of alternate plans as are more particularly set forth above.
5. There shall be an added .5% co-payment for medical insurance coverage.
6. While not reflecting the core of the issue I awarded the condition that employees on an eight hour schedule not be required to work on seven consecutive days.

All other demands by either party are rejected for reasons set forth above.

These determinations reflect a thorough consideration of the statutory requirements and of the merits of the submissions. The decisions reflect the current fiscal conditions affecting all and the questionable future as well. It was intended that the basic elements of my award are seen as reasonable and reflective of a thorough distillation of each party's views. I have endeavored to create a balanced award which represents the best Agreement for these parties under the circumstances and economic conditions faced by the parties and the public which is served


Frank A. Mason

On this forth day of June, 2011 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.

