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

The City of Camden

and

Camden Organization of Police Superiors

PERC Docket IA-2013-007

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APPEARANCES

FOR THE CITY: Michael DiPiero, Esq., Counsel for the City, Brown & Connery  
Mike Watson, Esq., Counsel for the City, Brown & Connery  
Michael Lynch, Deputy Chief of Police  
Glynn Jones, Director of Finance

FOR THE UNION: Stuart Aterman, Esq., Attorney for COPS, Alterman & Associates,  
Cristopher Gray, Esq., Attorney, Alterman & Associates.  
Sergeant Kevin Wilks, President, COPS  
Lieutenant John Sosinavage, Vice President, COPS  
Lieutenant Anthony Carmichael, Financial Secretary, COPS  
Lieutenant Wayne McFadden, Treasurer  
Raphael J. Caprio, Ph.D.

This case assignment was made by the N. J. Public Employment Relations Commission pursuant to the specific considerations and regulations of the N. J. State Legislature. It is my understanding the 2% limit for annual wage increases per se imposed by law is not applicable in this situation due to the time of expiration of the prior contract. It is my further understanding that the 2% limit as to the impact of an award on property taxes has, in this circumstance, been generally replaced by a 3% limitation.

The conduct of this hearing and resolution of the parties dispute by the rendering of an opinion and award by the arbitrator is governed by a 45 day limit. Due to the circumstance of the hurricane the due date was set as December 17, 2012. There were two days devoted to hearings: December 6 and December 17th. A hearing scheduled for December 14, was postponed because of the hurricane. Post hearing briefs were received on December 12, 2012.

The fiscal circumstances of the City which have been identified, and which I deem to be highly relevant, are so unusual as to command the greatest level of the arbitrator's attention. In my many years of experience with the arbitration scene I have rarely been exposed to circumstances which, even remotely, are so compelling when one has to formulate a solution as to the underlying issues presented.

## THE RELEVANT STATUTORY FACTORS

### 1. The interests and welfare of the public.

Both parties have addressed the elements of mandatory consideration and discussion statutorily required by the arbitrator. I am required to explain those judged to be most significant and provide reasoning as to my conclusions.

The first, and I deem to be of greatest significance, is the interests and welfare of the public. This emphasis is a reflection of the conditions of residents on several very significant bases. One of the most important of these is the fact that the average income in the entire city is among the lowest in the nation. This is accompanied by the highest level of criminal activity; number one as to serious crimes in the nation. Income levels are at the lowest in the state and are compounded by the very high level of unemployment, which is further evident by the failure of many to pay taxes, and the fact that property taxes represent only about 17% of the City's income. These and related factors have produced an untenable situation wherein the State has been required to join with the City in an effort to find financial assistance. Much of this has become increasingly problematic as funding has been inadequate and what funds are made available have been provided in progressively declining amounts which are tied to achievement of self help to match or continue assistance programs. During the recent past the City has undertaken draconian measures in an unsuccessful attempt to regain fiscal control and financial stability.

These efforts have produced no or few improvements whilst the overall situation has rapidly deteriorated. The net result may be illustrated by several examples. The police workforce has been reduced by nearly one third whilst the crime rate has flourished. The State support by payments in lieu of taxes was diminished in 2010 when the \$8Million plan was reduced to \$4Million. Since 2010 The State funding of the City has declined by 13.7%. Transational aid from the State declined by 28.9% from 2010 to 2013. Further, these aid programs are scheduled to be discontinued in 2014.

Of special note is the circumstance flowing from recent arbitration awards for services performed for wages in the past three to four years were ordered to be paid. These "debts", which amount to millions of dollars, have not been paid for lack of funds, and have been, or will be, appealed by the City. It is worthy of note that in one circumstance the arbitrator ordering such an award accompanied his decision with an apologetic statement in which he acknowledged an understanding of the City's inability to make the payments ordered.

It is also worthy of note that some of the State assistance provides payment for new police hires for a limited time but is conditioned on the City making a similar move. If these hires do not result in permanent employment the program is discontinued.

For all of these reasons I place this factor as a mandated concern. The cited circumstances alone place limits on the employer of such magnitude as to dwarf other consideration. My accompanying frustration really is accentuated by the absence of options to provide alternate relief.

2. Comparisons of wages really only relate to other police in this situation. These police are well paid in comparison with others within a reasonable area where data has been provided. However my concerns in this situation have shifted to the underlying crisis as noted above and distinctions in wage rates or total compensation are seen as a distant secondary factor in my consideration of a decision.

3. The overall compensation presently received is another secondary concern as there is virtually nothing which I could impose which would make a meaningful change. If there was evidence of availability of funds for this employer to make any improvements, the first target for the application of those funds would have to be making additions to the work force as there is a long list of personnel who have been forced off the active list. Thereafter, some attention could be addressed to further use of available funds.

4. The parties made no separate stipulations other than introduction of facts concerning the unfortunate circumstances now faced.

5. The lawful authority of the employer is not an issue. The king size issues presented have to do with financial conditions beyond the control of the employer; although the limitations concerning expansion of payroll costs would be at the top of the list, should there be any such reserves available.

6. The Financial Impact on the governing unit and residents.

There is no flexibility on the part of the employer as to payment of any cost elements of a prospective award by me, as the employer has demonstrated it can not make payments involving other awards which date back over several years. Such failure has been challenged and is in the realm of litigation at this time. I draw the added conclusion which is that, at this juncture, any award which would incur added costs a), can not be

defended and b). would have no meaningful impact as this current situation exists. Should the Legislature rule in favor of providing for paying for past awards which are not being paid at this time or if there is such action by the State via initiation of other grants to satisfy those, I would be in favor of re-opening these proceedings and would welcome any appropriate motion to do so.

7. The cost of living.

I believe this to be an important consideration principally because the economy of the city of Camden has receded into desperate circumstances of unemployment, exceedingly low incomes and very active and apparently uncontrollable criminal activity. Prices of basic living needs have escalated and residents are fearful of personal safety. As higher paying employment opportunities have become scarce these lower income residents can not afford upward cost of living changes and at the limited level of income are in no position to cope with increases in cost of living. This is reflected in delinquency in payment of taxes and these indicia lead to the conclusion that tolerance for increased costs of living would not be tolerated well. Of course dependency on supplement to income from various public assistance sources, which are shrinking, add to intolerance for increases in costs of all necessities as well. These conditions add to the need for limiting cost of living as an essential policy consideration target when evaluating the impact of any expenditures which could result from contract negotiations.

8. The continuity and stability of employment.

This criterion becomes of more vital concern and greater significance in the circumstances, as exist here, of widespread unemployment and, in the specific case of police, the threat to the security of the population due to reduced staffing which could be aggravated by further reduction of funds. I therefore, find it to be essential to not further endanger the residents by any tactic which would reduce availability of funds from taxation or any other source. The avoidance of such a situation is a vital element of concern as to stabilizing or improving opportunity for employment of the residents of the City.

9. The statutory restrictions imposed.

This is not of great concern as to limiting the flexibility of the arbitrator. This is essentially because there is virtually no available source of funds to support any award which might otherwise be made under the circumstances as have been outlined above. I am not tempted to make an award which can not be afforded without further drastic lay offs. Such a result must be avoided at all costs.

## FINAL PROPOSALS OF THE PARTIES

The final proposals of the Union are presented here in essence but in abbreviated form.

## Article III - UNION REPRESENTATION AND MEMBERSHIP

The term of the contract shall be January 1, 2009 through December 31, 2014.

### SECTION 4. The President

The President of the Union or his/her designee shall be assigned in a position which is conducive to his/her duties as Union President. Said position shall be one that will enable the Union President to properly and effectively perform his/her Union duties. The President of the Union SHALL devote full time to administering and enforcing the provisions of this Agreement. The President of the Union shall be excused from all duties and assignments where required to allow him/her to properly perform his/her duties as Union representative.

### SECTION 5

Four (4) authorized representatives of the Union shall be excused from all duties and assignments for the purpose of attending county or state Union affiliated meetings on the day of the meeting.

ADD: the Chief or his designee shall not deny Administrative Leave without written explanation outlining the specific detriment of public safety that is occurring on the day of the denied leave. Staffing shortages are not considered a detriment and shall be corrected by call for volunteers or use of overtime. (Detriment to public safety is defined as: Significant events included but limited to Murders, Injury to Officers, Riot, Large Scale Unrest, etc..)

## ARTICLE IX-WORK WEEK

### SECTION 1

The work week will be as follows:

A. There shall be three rotating shifts for Mobilized Patrol, Central Complaint and Telecommunications Units:

The first shift which shall be from 2300 to 0700 hours which shall be an eight (8) hour shift.

The second shift which shall be from 0700 to 1700 hours which shall be a ten (10) hour shift.

The third shift which shall be from 1500 to 0100 hours which shall be a ten (10) hour shift.

The rotation of these shifts shall be in clockwise rotation.

The personnel assigned to these rotating shifts shall be paid a shift differential of 7.5% for each day of the shift they actually work.

### Amended SECTION 1

The work week will be as follows:

A. There shall be two fixed (12) hour shifts for Mobilized Patrol, Central Complaint and Telecommunications Units:

B. The twelve hour shift work week will consist of a two day on and two day off followed by a three day on and three day off schedule where the employee will be off every other weekend.

The first shift, Day Shift, which shall be from 0600 hours to 1800 hours or 0700 to 1900 which shall be a twelve (12) hour shift and pay 4% as shift differential for time actually worked.

The second shift, Night Shift, which shall be from 1800 to 0600 or 1900 to 0700 hours which shall be a twelve (12) hour shift and receive 10% as shift differential for time actually worked.

The personnel assigned to the second shift shall be paid a shift differential of 10% for each day of the shift they actually work.

#### ARTICLE VII-VACATIONS

##### ADD=SECTION 8

ADD Interdepartmental transfer shall not be cause for rescinding of approved Vacation Leave. Approved Vacation leave will be adjusted to reflect new work days if Interdepartmental transfer occurs. All conflicts or staffing shortages caused by Interdepartmental transfer shall be cured by call for volunteers or overtime.

#### ARTICLE X-SICK LEAVE

##### SECTION 4

ADD-the practice of ordering a person who calls in sick to a medical facility or requiring them to accompany a member of Internal Affairs, Staff Inspector or Supervisor to a doctor's office will cease.

#### ARTICLE XIV-GRIEVANCE PROCEDURES

##### SECTION 3

##### Letter D

The costs for the service of the Arbitrator shall be borne by the losing party. Any other expenses incurred, including but not limited to the **attorney's fees, presentation of witnesses, and expert fees shall be paid by the losing party unless otherwise agreed to in writing.**

#### ARTICLE XV-FUNERAL LEAVE

##### SECTION 4

Current Language: Notwithstanding any other provision of this ARTICLE, special funeral leave with pay shall be granted for a period of twenty (20) calendar days due to the death of a spouse provided that such spouse shall leave a surviving minor child or children; otherwise, such leave shall be granted for a period of fifteen (15) calendar days.

Suggested Language: Notwithstanding any other provision of this ARTICLE, special funeral leave with pay shall be granted for a period of twenty (20) calendar days due to the death of a spouse, **ADD-Formal or Informal Domestic**

**Partner, or live-In Relationship of the same or opposite sex**, provided that such person shall leave a surviving minor child or children; otherwise, such leave shall be granted for a period of fifteen (15) calendar days.

**ARTICLE XXIV-CALL BACK**

**SECTION 2**

Any employee placed on what is referred to a telephone alert shall have the option to report for duty and be compensation (*sic*) for same or to remain on such alert and not be compensated for such time will be considered a call back under section 1 of this article. The actual telephone call for the "Telephone Alert" the officer will be compensated for (12) hour of overtime pay.

**ARTICLE XXVI-WAGES**

**SECTION 1**

Increases in wages shall be afforded on the first day of each calendar year of a six (6) year agreement beginning January 1, 2009-December 31, 2014:

2009	2010	2011	2012	2013	2014
3.75%	2.50%	2.00%	2.00%	0.25%	0.00%

**SECTION 2**

The practice of appointing employees to higher ranks in an acting capacity is discouraged. Any employee required to act in such higher ranking capacity after the completion of one full shift of work, shall receive pay commensurate with such position in which he/she acts.

ADD-All supervisory officers will be appointed based on established Civil Service Commission Standards and Promotional exams. No Police Administration created ranks such as: Executive Officers, Commander or Team Leader will be utilized or recognized.

**ARTICLE XXX-INSURANCE, HEALTH AND WELFARE**

The COPS agree to the City's request to enroll in the State Health Benefits Program. COPS proposes premium contribution in accordance with the terms of Chapter 78 in effect.

THE FINAL PROPOSALS OF THE CITY are likewise set forth in abbreviated form.

The proposed term of an agreement was January 1, 2009 through December 31, 2012.

Article IV, Retirement. Section 2, Deletion of the terminal leave provisions.

Section 3. Employees retiring on either regular or disability pension shall be paid for all accumulated holiday and vacation; said payments computes at the rate of pay based upon annual compensation due and owing during the last year of his/her employment prior to

the effective date of his/her retirement. Effective December 31, 1996, all accumulated days shall be frozen and future accumulation of days shall occur as set forth in this Agreement.

Section 5. Retirees retiring on either service or disability shall be entitled to compensation for those days earned but with a limit of \$15,000.

Section 6, having to do with payouts shall be eliminated. The provision concerning payouts exceeding \$45,000 is to be eliminated.

Section 11 having to do with accumulated vacation and holiday credits being paid out at retirement are limited to a total of \$15,000.

Article VII, Vacations. In Section 3. provides changes requested for deferred vacation must be accomplished by a written letter to a commanding officer and where no deferment is confirmed in writing those vacation leave days shall expire at the end of the of the following calendar year in which they were earned.

Section 4. An employee may accumulate 15 vacation days in a calendar year to be carried over into the next year, however, days not used within that time period shall expire unless deferred by the Employer.

Article XIV, Grievance Procedure. Step 4 is changed to read, The costs of the arbitrator's services shall be born equally by the parties regardless of the outcome.

Article XXVI, Wages. Section 1. The wages for employees shall be as provided for in Schedule A. attached hereto and made part hereof.

Effective November 19, 2012, the senior steps reflected in Schedule A. are made a part hereof.

Effective November 19, 2012 the senior steps reflected in Schedule A. are eliminated and salaries for the term of this agreement shall be frozen.

Section 2. The Practice of appointing employees to higher ranks in any acting capacity is discouraged. Any employee required to act in such higher ranking capacity after the completion of five consecutive full shifts of work, shall receive pay commensurate with such position. The employee to be so appointed shall be the highest ranking N. J. DOP promotional list or if none available the most senior employee in the department assigned to that unit.

Article XXVII, Pay Period. Employees shall be paid every two weeks for a period of fifty-two [52] weeks in accordance with the provision of the City Ordinance. However, on years where total number of pay periods exceed twenty six [26], employees shall be paid in twenty seven [27] equal installments.



Article XXX, Insurance, Health and Welfare. This provision confirmed the accord of the Union to adopt the State Health Benefits plan.

Section 3. Effective May 22, 2010 all employees shall contribute 1.5% of base salary toward the cost of health insurance. As of June 28, 2011 the amount of that contribution shall be as set by the provisions of P.L.2011 C.78. Premiums shall be deducted on a pre-tax basis. The City is to establish a Cafeteria Plan in accord with provisions of IRA rules.

Section 5 The City reserves the right to change the HB plan or Administrator provided the benefits remain comparable. The Union has the right to nominate changes for consideration.

Article XXXVI-Longevity. Effective December 31, 2012 all longevity payments shall be eliminated for all employees both current and future.

Summary of the problem faced in this matter:

It has become very clear that the positions taken by the Union are categorically inconsistent with those of the City. Of prominent clarity is the virtually absolute refusal of the Union to recognize the depth of the fiscal crisis. In spite of years of working without a new contract the approach of the Union here has been to largely ignore the depth of that issue. Instead the Union, seemingly guided by the achievements of others in negotiations with the City, has replicated all of the key issues which have been heard by other arbitrators and which have resulted, in some situations, to reasonably generous awards. The fact that the City has ignored those applying to its employees, which have been appealed on the basis of having no funds, seems to have been no factor.

As noted in my earlier statements I place a great deal of emphasis on the interests of the citizens. The City is virtually in abject poverty and heavily dependent upon the Federal government and the State for financial support. That support has been the source of more than 80% of the City's budgets for several years. During recent times the actual dollar value of support has shrunk or in some instances been provided with conditions attached which require the City to eventually pay greater proportions of the required revenues. Those support programs have begun to show a long range shrinkage and in some cases a complete discontinuance of funding.

At this time the City has already made very significant reductions of the police force. This has not helped to improve the safety and security of the residents who are experiencing outrageous rises in crime rates while, themselves, enduring markedly elevated levels of unemployment resulting in great stress on family and dependance on publicly provided assistance from food and fuel to hospital care. These burdens have caused the City to deteriorate rapidly. It has become a desperate situation for police as well as residents.

In the face of these realities the Union still presses for back pay to 2009 with annual increases. And to make matters worse adds demands for changes in working hours for which they tack on substantial percentage as differentials in addition to base rates. The demand is for 12 hour day schedules which as proposed would reduce the flexibility of the City in spite of the already thinned ranks and difficulties as to response to the ever increasing work load. I do not see how such requests are in any way responsive to the needs for crisis presences, especially in the circumstance of under staffing at already critical levels. Certainly the demand for extra compensation as a part of such program is no help for the City.

The wages for these officers compare favorably to many much more affluent employers in the general area, including the City of Philadelphia and local employers. The failure to improve their working conditions and compensation in recent years has not yet left them far in the rear on a comparison basis. However, the Union's efforts are fully justified when the future is taken into consideration. Unfortunately the future does not look promising. State aide programs are drying up as cost of living is expected to rise. And as yet there appears to be little prospect of a rise in employment. We are dealing with a city which is in crisis. I have spent many hours trying to find ways to overcome the truth of that statement. One particular thing has been the necessity to make the best use of available resources. Money is the key resource and it is very scarce. The City's leadership has tried valiantly to overcome these challenges and the most obvious track they have been forced to follow is the restriction of expenses wherever possible. This has extended to the refusal to fund awards of arbitrators. There has been no evidence of success by any organization attempting to get a compelling court order to do so. This is undoubtedly a reflection of the known realities of the situation.

For these reasons I feel compelled to take the side of the City. This is a reasoned judgment which will not be well recieved by the Union or its membership. But in the past there were endless cases where the impact of factors beyond the control of employers were equally important in the determination of contractual terms both favorable and unfavorable to one or another of the parties involved. In this situation I can not find a reasonable justification to rule in the Union's favor when I know such will be ignored because the City simply has no capacity to comply and where it is on notice that monetary support from both Federal and State assistance programs is shrinking and is predicted to shrink further. These are very difficult times for the City as well as its employees and residents. A Financial crisis which can not be ignored and is further exacerbated by rising costs of vital needs of all kinds.

## AWARD

1. The first element of my award has to do with the term. The City seeks an expiration date of December 31, 2012 and dating from January 1, 2009 while the Union seeks an expiration date of December 31, 2014. My decision is a compromise of the termination date to December 31, 2013. I reason the 2012 date would propel the parties immediately into continuous fruitless negotiations and the 2014 date may allow a more rational opportunity which could take into consideration events of 2013 which may be significant. Such date is also more in conformity with the State Legislature's intentions as I have read them.

The City's proposal for a continued freeze of wages for the term of this new agreement is reluctantly awarded. The reasons for this decision are incorporated in the following pages.

2. The Union has proposed a significant change in the Union President's work obligation. I do not find the current plan to be insufficient and therefore reject the proposal for 100% release from duty. The Union has only 31 members at this time. Surely they do not warrant the degree of daily attention sufficient to justify a full time senior officer to their circumstances. Given the needs for productivity of all staff members his absolute release from duty is unwarranted.

3. The Union seeks a mandate as to a requirement of the Chief to provide written explanation as to his decisions concerning excuseing officers from duty and also that he not consider staff shortages as reason for such refusal and that he provide written explanation for such judgments. I find these requests to be unacceptable. The position of Chief is not to be subjected to the contrary views of subordinates even though requests for reasons may not be inappropriate per se. This demand is denied.

4. The Union has demanded that officers assigned to rotating shifts be granted a differential in pay of 7.5%. This demand is rejected. Such assignments are ordinary in police work and in the particular economic environment found here would be excessive.

There is also a demand concerning changes in the work week and the times of the day worked for added compensation in 4% or 10% differentials. I do not find justification for such grants in compensation for whichever shifts are worked. Such changes are in the nature of such employment and unaffordable by this employer. This, too, is rejected.

5. The Union requests that choices of approved vacation time not be changed when the officer is reassigned by interdepartmental transfer. Such situations shall be avoided when practical and volunteers may be asked to supplement the staff at overtime rate if required. This demand is approved.

6. The practice of requiring accompiament for certain sick leave situations should be used with consideration but I do not order it to be discontinued.
7. The demand for all costs associated with an arbitration proceeding be shared by both parties is rejected. Each party must bear costs it precipitates. This is normal procedure and eliminates the possibility of it influencing either party's participation or withdrawal.
8. The proposed language changes in the Funeral Leave artical are accepted and ordered.
9. The demand for 12 hours of pay at overtime in situations of on call in the circumstance indicated is rejected.
10. The wage increases proposed are rejected as being beyond the reasonable capacity of the City. They were set forth above.

The appointment of officers to alternate positions was ruled upon above. Any other demand made by the Union is rejected.

The further demands of the City.

Some of these seem extreme even in the fiscal circumstances faced. I do not conclude that all longevity credits already earned should be eliminated. However, in the face of these economic circumstaces suspension of additional rights is more acceptable and awarded Future conditions may influence this. And a future contract might reflect better economic conditions; maybe. The \$15,000 limit for payout of accumulated vacation and holiday credits at retirement is likewise approved as is the same limit for a payment at retirement for disability or service. The 2006 freezes on such credits are also continued.

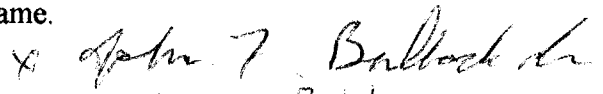
All other proposals by either party should be considered to have been rejected. Those listed abve as approved are to be considered parts of my overall award.

  
Frank A. Mason

December 17, 20112  
Pennington, New Jersey

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

**John F Bullock Jr**  
**Notary Public**  
**New Jersey**

X   
Notary Public

**My Commission Expires 12-30-16<sup>3</sup>**