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

DECISION AND AWARD

The Borough of North Arlington

of

and

Frank A. Mason, Arbitrator

Police Benevolent Association Local 95

PERC Docket IA-2011-050

APPEARANCES

FOR THE BOROUGH: Randy T. Pearce, Esq., Pearce Law, LLC Borough Atty.

James A. Mangin, Chief Financial Officer

Terence Wall, Borough Administrator/Clerk

Gregory Randazzo, Esq., Associate Attorney

FOR THE PBA: Richard D. Loccke, Esq., Loccke Correia Linsky Bukosky

Michael Bukosky, Esq., Associate Attorney

David Ryan, PBA President

Robert Evans, Vice President

Michael Hofman, Michael Horton, John Cangelosi, Robert
Evans and Richard Leister, PBA Members

This Interest Arbitration dispute was assigned to me by the Public Employment Relations Commission On April 21, 2011 in accord with the Arbitration Reform Act. The provision of that act which incorporates a 2% limitation on the wages and related income was determined not to apply to this arbitration proceeding. The limitation placed on the Borough as to its overall within Cap limit does apply.

The parties first met with the arbitrator on May 6, 2011 at which meeting there was an attempt to mediate a resolution to this dispute. Although some real progress was made at that meeting no accord was achieved. The parties met again on May 31, 2011, the earliest time when all were able to do so. This meeting was devoted to a comprehensive hearing at which both parties offered testimony and exhibits and at which witnesses testified and

were cross examined. There was a date set for post-hearing briefs to be delivered to the arbitrator for consideration and the preparation of a binding determination of the merits of each party's positions. These were received on June 6th. This instrument represents my study of many documents and some twenty-five hundred pages of exhibits as well as the record of hearing and my notes to be evaluated and utilized for a determination of the terms of a new Agreement.

At the hearing of May 31, the PBA reduced its proposals to a single issue for my consideration, that being the proposed wage increases of 3.5% for each year of a four year term of Agreement. However, as the Employer had included, as one of its demands, the change of the medical insurance plan currently in effect to be replaced by a State plan. The Attorney for the PBA advanced the argument that such a demand by the Employer was statutorily prohibited. And as this was placed before the further development of the Union's positions concerning the overall contractual dispute I shall respond to that here as well. I believe the thrust of the statute, N. J. S.A.34:13A-18 as captioned, "Limitations on finding, opinion, order of arbitrator". The first sentence of the law reads as follows, "The arbitrator shall not issue any finding opinion or order regarding the issue of whether or not a public employer shall remain as a participant in the New Jersey State Health Benefits Program or any governmental retirement system or pension fund or statutory retirement or pension plan; nor in the case of a participating public employer, shall the arbitrator issue any finding, opinion or order regarding any aspect of the rights, duties, obligations in or associated with the New Jersey State Benefits Program or any governmental retirement system or pension fund, or statutory retirement or pension plan; nor shall the arbitrator issue any finding, opinion or order reducing, eliminating, or otherwise modifying retiree benefits which exist as a result of a negotiated agreement, ordinance or resolution because of the enactment of legislation providing such benefits for those who do not already receive them."

While I understand the PBA's perspective as to this law being dispositive of the question as to whether or not a public employer may negotiate a change involving a health benefit plan in place as a result of collective negotiations, I do not conclude that the Employer is foreclosed from negotiating such a change as is proposed. The reason is that no award which could be made would be contrary to the specifically limited types of reserved jurisdictions expressed therein. Clearly the legislature intended to preclude an arbitrator from making any award which would have the effect of modifying a statutorily based plan for either health benefits or pensions. It did not preclude the parties to a plan not governed by the provisions of law from negotiating whatever they might choose which did not effectively modify a legislated plan. This leaves the Employer freedom to negotiate with reference to the content of any non-legislated plan or to negotiate to abandon such a plan entirely. In this instance the Employer is posing the change from such a non-regulated plan and offering the State plan in its place. I find this not to be prohibited by statute, the position advanced by the PBA's Attorney, and as such will consider it as I would any other demand by a party to this arbitration proceeding.

I find this statement of the PBA, "It may be negotiated or even mediated", to be in conflict with its further conclusion; "The PBA maintains however, that participation in the New Jersey State Health Benefits Program is not a subject that may be legally awarded under the Interest Arbitration Act and any award on the subject matter would be statutorily defective." Apparently we do not agree on this confusing distinction.

THE REQUIRED STATUTORY CRITERIA: in abbreviated format

1. The interests and welfare of the public.
2. Comparison of the wages, salaries, hours and conditions of employment...with others performing the same or similar services and with other employees generally.
3. The overall compensation presently received including wages and benefits.
4. Stipulations of the parties.
5. The lawful authority of the Employer including limitations imposed under law.
6. The financial impact on the governing unit, its residents and taxpayers. It should include, to the extent that evidence is introduced, the impact on taxes.
7. The cost of living.
8. The continuity and stability of employment.
9. Statutory restrictions imposed on the Employer.

THE POSITIONS OF THE PARTIES

The PBA has made only a single demand but it has two dimensions. The proposal is for a four year Agreement from January 1, 2011 through December 31, 2014 with annual across the board salary increases of 3.5% in each year effective each January first, including back payment to January 1, 2011.

The Employer has requested a significant reduction in employment costs and a three year Agreement from January 1, 2011 through December 31, 2013.

Salaries: There are to be no increases in base salaries for the entire three years.

There shall be a reduction in wage rank differential from 9% to 4% for Superior Officers.

There shall be a new salary structure for all new hires. The new hire rate would be \$38000 and there would be annual step increases of \$4000 for movement to steps 1 through 10 with the final salary set at \$80,000.

Longevity pay: There shall be no longevity pay for new hires.

Longevity pay for current employees shall be 2% after 6 years, 4% after 10 years, 6% after 18 years and 8% after 24 years service.

The Educational Benefits provision shall be eliminated for all employees.

The Clothing Allowance provision shall be eliminated for all employees.

The Health Benefits Plan shall be replaced with the N. J. State Health Benefits Plan.

There shall be an employee contribution of 30% of the total cost made by payroll deduction with credit for the 1.5% of salary previously imposed in accord with P.L. 2010,c.2. In addition the employee shall make up that portion of payments not made from January 1, 2011 until this new plan is effective.

Terminal Leave entitlement to 90 days of pay upon retirement shall be eliminated. In addition the total of paid leave for sick leave shall not exceed \$15000 and the employee may not utilize more than \$15,000 worth of sick leave. And an officer shall not receive payment for any unused leave or compensatory time of all types in excess of 90 days paid leave at his daily rate of pay.

CONSIDERATION OF STATUTORY CRITERIA

The interests and welfare of the public have been well served by this police department. The personnel are well trained and equipped and have learned and utilize many advanced methods to assist the population and in detecting and reducing criminal activity. They have attended a wide range of specialized training including life saving and crime prevention programs. The level of service has not been compromised in spite of the substantial reduction of officers now on the payroll. The costs of police services have grown over the years but not disproportionately to other services. This is due at least in part to the shrinking numbers of officers who must perform at a high rate of excellence. This has been achieved in spite of greater demands for services, traffic growth and special educational programs provided. The high rate of issuing of summonses is a reflection of the intensity of enforcement provided. These have produced, during 2010, more than a third of a million dollars in municipal court revenues. While I do not consider this criterion a vital element in this proceeding it is certainly good to know that the public is well served. More significant are the considerations having to do with the fiscal realities involved in this process. Of course the costs of police services are intimately a part of the welfare of the public but will be considered in the following sections of this process.

Comparison of the wages and terms and conditions of employment. This criterion has to do with the relative values of the compensation plan provided by this Employer with others particularly as it pertains to police employees. It is very difficult to contrast the circumstances of police employment with civilian positions. As a general rule the proper comparisons are with other police. And it would be a rarity to find comparisons with civilian terms of employment used in the arbitration procedures. At this point in this report I will only touch on the comparisons in general terms. Later there will be a discussion of greater detail.

The police employees at North Arlington enjoy a broad range of valuable benefits. Many, such as the generous pension plan are common in virtually every community within a reasonable distance from North Arlington. The compensation plan includes insurance in the form of health, which is inclusive of family coverage, as well as life insurance. On the job injuries are provided for separately and generously. The hours of work are 37.5 per week and there is a very competitive sick leave allowance in addition to longevity pay of as much as 12% of base pay and a clothing allowance. There are generous allowances of vacation and holiday paid leave days as well. Most of these elements of compensation are common among police agreements. There are some which provide more or less than others but in the area of North Arlington the police are generally well compensated, and North Arlington pay rates are near the middle of the range paid in the area. The base pay range for 2010 of 14 communities in that part of the county was from \$87,052 to \$115,781 and North Arlington higher than seven at \$106,197 and lower than six of that group. However, it is not the current status of these wage and benefit plans which is most troubling in this proceeding. The real focus is on what the terms of employment will be in the next contract period. The only issue advanced by the PBA in this arbitration has to do with the rate of compensation change. If there were an award of 3.5% in each year the PBA would be very comfortable with that outcome. The difficulty lies with the demands from the Employer and its reluctance to improve salaries.

Because of this I will forego a more detailed analysis of the comparisons with employment in other jurisdictions. Suffice it to say, the overall compensation of police in North Arlington is not a problem at this time at least as far as the past is concerned. As to the future there are many challenges ahead.

Stipulation of the parties. This is not an issue in these proceedings as neither party has advanced any stipulation.

The lawful authority of the Employer including any limitations imposed under law. Although the Employer had not been able to finalize its budget for 2011 at the time of our last hearing it was clear that there was likely to be major difficulty in completing the budget even without any new money's being dedicated to police salaries. For this reason the Employer has placed on the table a zero increase in wages for the full three years of its requested contract term. It bases this demand on the elimination of some revenue sources

and on a dim forecast for the future in addition to sharply increased costs which can not be readily overcome. In the recent past there have been tax increases imposed and the Borough Council is anxious to avoid that at this time.

The sharply divergent views of this dispute became evident at hearing. The position of the PBA was to basically leave most of the Agreement unchanged with the exception of wage adjustments. The Borough's position was to vastly change the Agreement and to supplant it with a new wage schedule for new hires which differed not only in the time required to move through the salary guide to incorporate a maximum salary of \$80,000 which is one third less than the current maximum but to expand the years of service to reach maximum pay from seven to ten years, which has the effect of reducing the automatic annual step dollar changes from a range of \$6500 to over \$10,400 to a regular increase of \$4000; both in addition to any negotiated adjustment of the salary range. I presume this new hire range would also not be adjusted for the term of the Agreement. As there are no plans yet for hiring more personnel this may not be a vital issue but it is indicative of the Employer's desire to modify the structure and values of employees compensation. And this is only one example of the steps the Employer is advancing toward that goal.

The Borough Financial Officer testified at length. His focus was on the general fiscal condition of the Borough. He noted that the Borough was in the throes of what he called structural distress which was reducing any reserve growth. He noted there had been a broad layoff in 2004 which affected a substantial number of employees. The Borough has not recalled those involved except to part-time situations wherein there are no benefits or pensions payable. These lay-offs included all aspects of the Borough's activities including the Courts. There has been a move to employ outside services to achieve savings and preclude long term obligations as are associated with personnel on the payroll. He cited the fact that the Mayor and Council members are not granted health insurance and that there have been reductions in compensation for the Prosecutor and Borough Attorney related to the general sparsity of income to the Borough. An extensive listing of the actions taken to reduce spending and long term obligations was included as examples of the Borough's efforts to identify any unnecessary or limited priority expense and related costs such as pensions and other benefits. A partial example of facilities involved included the tax collector, finance office, library, court, administration, sub-code officials and many more. In November of 2009 there was an agreement made with PBA Local 95 to delay the salary adjustments associated with promotions for one year. I note this was done confidentially and will not use this information except to demonstrate the fact that the PBA had some notice of the criticality of this Employer's financial condition. The admission of this evidence was not objected to by the PBA.

He further testified that the fiscal condition led to engaging in shared services with other communities as well as efforts to train voluntary citizens for certain activities, particularly emergency services. Jobs requiring health benefits and/or pension credits were eliminated and/or were given to part time employees.

Some patrols by police were adjusted for hours when less need would allow for reduced coverage without creating a threat to the public. Certain costs have drawn particular attention and the foremost of these is health care insurance where there has been a 60% increase in premiums within the last five years. Employer's view is that State Plans are very comparable to that now provided to the police and could provide savings of substantial consequence for the Borough and in some situations to insured persons as well.

There have been some disappointments as to expected revenue sources. There was to be a golf course built with anticipation that it would produce more than \$400,000 in taxes when in operation. That has not happened and may not be available for the foreseeable future. The Borough sought emergency Transitional Aide from the State in the amount of \$400,000. In April of 2011 the Borough was advised that its request had been denied. This led the Administrator to issue a notice to all department representatives to the effect that the spending freeze on all non-essential items would be continued. They were further advised that , "If a purchase is not exceptionally important at this time, please cancel it, hold it or call to discuss."

A tentative budget had been discussed by the time of our meeting. In that document there was found to be a need for increased taxes of about 11+%. During the hearing it was learned that there had been some success in relieving the requirements of that budget and the effort had brought the increase down to a possible 5% level and that there would be a continuing effort to further close the gap with the objective of eliminating the need to raise property taxes. However, it was learned that the draft budget was cast with the understanding that there would be no pay increases for police and that it included a \$300,000 budget reduction for the police department. The PBA view of this was that there might yet be room for a reasonable settlement of their wage demands.

The PBA also made note of the fact that there were retirements which would lower the police payroll by the cost of wages and longevity pay by \$519,098. And that there is to be the retirement of a Captain, now on terminal leave, whose salary and longevity pay for a year amount to \$153,888 per year. It was also noted that there has been no replacement hiring for these persons. This it believes will provide plenty of savings for the satisfaction of the demand for wage increases which the PBA claims are very much the equal of what are being granted in comparable districts. The savings of \$617,369 even if not entirely applicable to the 2011 year should be viewed as more than a sufficient amount to cover the requested increases which would amount to less than \$400,000 for its four year proposed term of Agreement. The savings realized by these retirements would also continue to some substantial degree beyond the year when first realized even if eventually offset by hiring new officers, at much lower salaries and without longevity payment for years to come, and even to make promotions which have not as yet been announced.

There is an added consideration as to a choice between 3.5% increases each year and 0% as offered. The Borough entered an Agreement with the Chief of Police for a six year

term in which he is granted 2.8% increase in salary in 2010 and 3% annual increases each year from 2011 through 2015. In addition he is to receive 12% of salary as longevity pay and 36 vacation days, as well as other benefits equivalent to those negotiated by PBA Local 95. This Agreement went into effect as of December 31, 2009 and expires on December 31, 2015. There is a special benefit which the Chief also enjoys. That is an unmarked automobile to be used for work and personal use. The Borough agreed to pay all costs associated with this grant including insurance, maintenance, fuel and any repairs. On the report of his salary this is listed at a value of \$4500 per year which I feel is an understatement.

Notwithstanding the fact that this agreement was entered for the year 2010 I am persuaded that it was done some time well after the Borough began to experience fiscal constraints as it was executed at about the same time as Local 95 was convinced of the need to delay increases due to promotions for one year at that time. Certainly this was done because the Union was asked for that concession in order to conserve money for the Borough.

One of the key considerations I believe should be made is that any employees, particularly those doing related work, should be considered with some sense of equity. This will preclude the development of poor or disrespectful relationships and strengthen the cooperative working partnership of such personnel. To do otherwise would have the opposite effect. This does not mean they must be in lock-step, but given reasonably comparable consideration. A hand-out of a six year salary plan to the Chief does not measure up to the proposed three or four year plan the Borough has suggested for the corps of police under the Chief's control and leadership. This is especially pertinent at a time when the officers have been asked to do much with fewer and fewer personnel. It can only be seen as unfair to them and would most likely be reflected in their diminished commitment to succeed in their service to the public. I do not translate this reasoning into a mandate for precisely equivalent consideration but it certainly leads me away from a determination that no increase in pay for the duration of the new Agreement is reasonable or defensible.

At this point I must concentrate on the requirement that mandates I consider the effect of limitations imposed under law. I do not believe this is a factor in this situation. The reason for this is the entire fiscal plan of the Employer was aimed at reducing spending as opposed to trying to keep within statutory limits. And I have been given enough information to convince myself that there will not be any threat to that lawful limit as to increasing the budget within the foreseeable future. The Employer has taken many steps to reduce spending with notable success. The further shrinking of the police force is one evidence of this effort among other initiatives.

I made note above of the computed value associated with the retirement of several officers.

It is unlikely they will be replaced and even if there were to be new hires they would each be earning salaries at least \$55,000 lower than the officer who was replaced for several years. The Employer has indicated it had reduced the police budget by some \$300,000 as a result of those retirements. However the real impact far exceeded that figure and with the additional retirement of the Captain there will be nearly \$180,000 more savings annually. The PBA would have me see that as money they contributed to the Borough and to which they are entitled as a credit against any increases in payroll. In a sense they may be right as the totality of work performed may not be diminished. However, the responsibility of the Borough is to use its funding in the most effective way and in consideration of the taxpayers interests. So, if economies are brought about the value of those does not accrue to the workers who remain. The public interest is in having the best services which can be provided within limited costs and when cost reductions are realized the money is not required to become a property to be granted to others.

Turning my attention to the other demands of the Employer I find the theme of the fiscal management to be such as to require attention to spending with a view of regaining a balanced budget and providing all customary services as may be affordable. In this respect I have examined the demand that there be a movement to the State Health Benefits Program which is said to be very comparable with regard to benefits of the plan now provided but with significantly reduced costs. In my review of the suggested Horizon Direct 10 plan proposed I find that it fairly meets the coverages enjoyed under the Aetna Patriot X plan now in effect. It has some advantages and some disadvantages but certainly provides a comprehensive plan particularly within network. It is somewhat less so for out of network. But as all of these employees are residents of New Jersey the incidence of out of network coverage is nominally of less important. The savings for the Borough however are very substantial and if granted provide a reasonable basis, combined with some considerations outlined above, for me to conclude that the compromise of a reasonable wage increase with the savings of the Direct 10 plan may be more appropriate than granting one without the other.

My examination of much of the remaining proposals of the Employer here follow. The first of these is to adopt a salary plan which has both more steps and pays much less than the current plan. It represents such a drastic change that I believe it would be a threat to long term loyalty of new employees and even at maximum salary would provide only 75% of what other employees of the Borough would be earning. This would almost certainly have a heavy impact on the morale of anyone so dramatically less well rewarded. Certainly too is the likelihood of reduced loyalty. And last of all such pay rates would not stand up well with my attention to the obligation to consider comparative payments of other employers. So I reject this plan but will consider some relief as there is a high desire for qualified applicants and many willing to make some sacrifice to be granted the opportunity to gain employment in police work.

In the last Agreement the issue of longevity was considered and a significant reduction was made for those hired after October 1, 2008. This is not seen to be the kind of benefit which deserves modification as it was part of the career long compensation plan, rather likened to the pension system. It has been so universally made part of police compensation that it is difficult to find reason to single out the employees of this Borough to be denied same and I therefore reject this demand.

The Employer demands the discontinuance of the education assistance plan. Based on the costs encountered and the asserted lack of relevance to the work of police I grant this demand.

The demand for elimination of clothing allowance is another story. In the first place it has been a staple element of all police Agreements for many years. In the second place the Borough saw it to be appropriate, for the higher paid with less likelihood of clothing damage than are the patrolmen, when it gave the Chief a six year contract which included same. I therefore reject that demand.

As to the terminal leave demand there is ample evidence that this type of compensation is endemic in police contracts and this Employer has made the attempt to have the allowance reduced substantially in this procedure. The key argument presented has to do with the costs involved at a time when the Borough is trying to find ways to economize in order to avoid pressure to raise taxes. However, the agreement it made with the Chief, previously mentioned, provides the same type of plan that the subordinates have. And the opportunity to begin to restrict that program was not pursued. The singular element of the current plan which I find to be beyond defence is the statement therein which is, "During such period of compensation, the retiring Employee shall be entitled to full compensation and accrual of all Employee benefits." "Annual benefits for such Employee shall be pro-rated so as to cover the period of continued compensation." I find this provision to be without merit as there is no work obligation from which the Employee might be sick or otherwise earn any leave benefits. Except for the removal of that clause I have found no substantial basis for sustaining the demand of the Employer. Therefore I award a modification of the termination provisions in the Agreement to eliminate the sentences quoted above.

CONCLUSIONS AND AWARDS

My attention is first drawn to the issue of the term of the new Agreement. I am persuaded that the Borough's proposal is warranted. There are several reasons including the uncertainty of the future economic conditions which affect the parties. Moreover, there is the State law which was intended to govern the economic limitations of a negotiated Agreement. To extend the term of this award to four years would clearly deny the Employer of whatever protection that law might otherwise provide. It is clear that the four

year agreement term suggested by the PBA is essentially aimed at the avoidance of that but there is no good reason to extend the Agreement and it is the public policy and intent of the Legislature that law be observed. Therefore the term of the Agreement will be from January 1, 2011 through December 31, 2013.

I will award the Employer's proposal to change the carrier for the Health Benefits of these employees. This is partially because of the demonstrated absolute need for the Borough to rein in expenses as this will provide a substantial savings in excess of \$200,000 per year. As I indicated above, this saving could influence a determination as to improvements in compensation. The effect of this change can not be felt immediately as there are requirements having to do with the transfer which may take substantial time. But the impact of the savings will certainly be felt in the latter portion of this year and in 2012.

I have concluded that the steps in the current salary plan as changed in 2008 do not reflect the current economic conditions facing the Employer. The changes made in 2008 left automatic annual steps of greater than \$10,000 which drives the overall budget. I am of the impression that those steps can be reduced without addressing the range, which had been demanded by the Borough, in its totality. Therefore I am awarding a modified range as follows to replace the range in effect as of October 1, 2010. No change in date of hire pay. Steps thereafter are to be, 1. \$42,079; 2. \$48,574; 3. \$54,000; 4. \$60,500; 5. \$67,000; 6. \$73,500; 7. \$80,000; 8. \$ 86,500; 9. \$93,000; 10. \$100,750; 11. \$106,107. There would be no changes in the superior officers plan. Employees now earning a salary which falls between these steps will be moved to the next higher salary, regardless of the step number, on October 1, 2011. There shall be no across the board increase for the calendar year 2011. In 2012 the impact of the savings from the modified Health Benefits change will be sufficient to support an increase of 2.5 % effective on April 1, 2012 and a second 2.5% increase on April 1, 2013. These changes are a reflection of the conditions which befront the Employer at this time but which also reflect the anticipated additional income from the modified benefits plan as noted. It is my best judgment that without the modification of the Health Benefits Plan I could not have justified these increases. I make that award with full cognizance of the continued income problems faced by the Borough but my award is in part due to the dedicated efforts of the short handed police organization which is providing services beyond the normal expectation as well as the gains provided to the Chief of Police..

I reject the demands for changes in the longevity plan and the clothing plan. The demand to remove the education assistance plan is awarded. The change I described above having to do with terminal leave is also awarded with the quoted language removed.

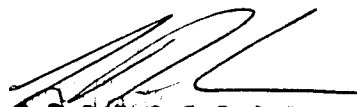
I would like to reiterate my conviction that the adjustments awarded herein will not endanger the Borough's attempts to finalize a budget which would create need for additional taxes. The combination of savings resultant from the adoption of State's Health

Benefit Plan coupled with the reductions within the employment of the Police Department will prove to be substantially larger than the new costs of this Award which will largely be deferred until the end of 2011 and into 2012 and which are well deserved if modest. As noted above the Employer had made strides to reduce the police budget by anticipating the retirement of several officers. The costs attributable to those retirements rendered realization of those reductions for many months. However, those post retirement costs will have been placed behind during this year and the resultant savings will become more obvious in the next budget year and will be considerably greater than the costs which will be experienced as a result of this award. This award will have been proven fair and in the public interest without creating a need for funds beyond the legal limits imposed on the Borough by law.

All other demands not specifically dealt with above are to be considered as rejected.


Frank A. Mason

On this thirteenth 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.

 6-13-11
