
In the matter of the Interest Arbitration
concerning the negotiations impasse

OPINION AND AWARD

between

of

Newark Housing Authority [NHA]

Frank A. Mason, Arbitrator

and

Newark Special Police, Local 202

Re: New Jersey State Public Employment
Relations Commission Docket IA-2006-028

APPEARANCES

FOR THE AUTHORITY: Gerald L. Dorf, Esq., Dorf & Dorf

FOR THE UNION: Sandford R. Oxfeld, Esq., Oxfeld Cohen, PC

INTRODUCTION

The Newark Housing Authority [NHA] is a federally funded agency which has, as its mission, the provision of low cost housing for families having low income in the greater Newark area. It is not an organization funded by the City of Newark. The mission is accomplished by development and ownership of apartment units in many areas of Newark which are rented to occupants at rates well below market prices in keeping with their inability to pay for the ordinary costs of such facilities. The housing units under control of the NHA number in excess of seven thousand; 8107 according to U. S. Department of Housing and Urban Development figures in its calculation of Operating Subsidy of March 30, 2006. Although occupants pay a portion of the costs the major part, usually in excess of seventy or eighty percent of the actual cost is provided by one or another public assistance program entirely funded by the federal government.

The NHA is the employer of some twenty five Newark Special Police personnel whose jurisdiction is essentially to function within the individual housing locations but whose responsibilities are monitored and directed by the City of Newark Police Department. The actual duties and authorities of these persons can extend beyond the boundaries of the facility where they are employed as circumstances require and where authorized by the Department. They have the authority to arrest, carry and use weapons, patrol on foot or in marked vehicles and perform their work in police uniforms specifically marked to define them as Special Police. In addition they may be called upon to assist the City's police as may be required. There is a daily assignment of these officers from the Police Department

which maintains radio contact and control as needed. Each Special Police employee carries a radio to assure contact as required. The overall performance of these Special officers is a responsibility of the City's Police Department which establishes methods and procedural aspects of the mission to be accomplished. None of the costs of their function are paid by the City and they are not considered to be employed as a part of the Newark Police Department.

The Special Police had a negotiated Agreement with the NHA which expired on March 31, 2004. The provisions of that Agreement were continued whilst negotiations for a successor contract were undertaken. Those negotiations did not result in an overall agreement and as to the economic terms an impasse was reached. The Union appealed to the N. J. State Public Employment Relations Commission [PERC] to provide interest arbitration, under its jurisdiction, in order to resolve the matters in dispute. The Employer resisted this claiming these employees were not police in the ordinary sense and thus not entitled to the provisions of the PERC Act. A determination of that disagreement was subsequently handed down by PERC wherein the employees were determined to be police within the definition of the statute and entitled to assistance by an arbitrator in the circumstance of an impasse in negotiations for a new contract. This arbitrator was subsequently appointed by the PERC in keeping with its procedures and preferences of the parties to hear the dispute and to make a determination of the unresolved issues. The attorney for the Authority had recommended the PERC decision be appealed but his advice was not accepted and the case moved forward in interest arbitration.

The first meeting was on August 22, 2006 and devoted to discussion of the procedures and methods of resolution to be followed. There followed a meeting on December 20, 2006 devoted to more expansive efforts to mediate a settlement. This did not materialize but we met again on April 9, 2007 in continuing attempts to reduce the differences of the parties to an agreement. Again this effort failed. The last formal meeting took place on April 25, 2007 with an extensive hearing of the parties differences.

Briefs were to be filed but the process was interrupted by a sudden determination of the Employer, in June of 2007, to terminate all of the unit employees. No specific rationale was presented except that the reason was for economy and efficiency. The employees were essentially locked out of their work on June 12, 2007, the date of notification. The letter of notice included the provision that pay status was extended to June 15, 2007. The City of Newark undertook the work previously performed by the Union by assignment of City police to perform their work. The Union resisted this move and filed an unfair practice charge with the PERC in an effort to regain employment to the certified representation rights of Local 202 members. It entered a request for interim relief by the PERC which was rejected thus requiring the issue to be scheduled for formal hearing. To date there has been no resolution of that matter by the PERC.

The Attorney for the Employer filed a post hearing brief but the Union turned its attention to the prospect of retaining its rights as certified representative and delayed any filing of its brief for many months. In part this was in hopes of regaining the employment of its

members and in part because it claimed the positions it had taken at the table were predicated on continuing employment and now their focus was shifting to litigation as to the right of the Union to remain the exclusive representative and the possibility of terminal compensation.

Circumstances brought about the determination by the parties to limit the scope of this proceeding to the time period from April 1, 2004 to June 15, 2007, inclusive, and it was agreed that my authority was limited to that time frame.

THE FINAL OFFERS OF THE PARTIES

The Union's position concerning economic issues is as follows:

1. Effective on April 1, 2004, a payment of \$10,000 added to the base pay as an adjustment to bring the pay scale more closely in line with other police employees.
2. Effective on April 1, 2004 and on April 1, 2005 and April 1, 2006 and on April 1, 2007 there shall be additional increases of 4% to the base salary of all employees.
3. The longevity provision of the prior Agreement shall be adjusted to reflect the base pay increases noted above and the changes due to years of service.
4. Previous demands for compensation for uniforms, insurance and equipment allowances are withdrawn as those demands are considered to be subsumed in the demand for special payment noted in #1 above.

There were no other economic demands and there were no non-economic issues presented for consideration. The matter of reinstatement to employment was to be litigated before the PERC but this statement as to no non-economic issues is not to be considered a bar to such should the Union prevail before PERC.

The position of the Employer as to its final economic offer is as follows:

1. Effective on April 1, 2006 a \$2500 increase in base pay for all employees.
2. A clothing allowance of \$600 to be paid as a cash stipend not related to base pay.
3. Retroactive to April 1, 2006 a stipend of two days pay at straight time for fire arms qualification training costing \$300.
4. A payment of \$1000 for liability insurance.
5. Overtime hours worked after April 1, 2006 would be paid at the increased base pay.

This offer represents a total payment of \$4400 for each employee for the period from April 1, 2004 through March 31, 2007 although the Agreement extends until June 15, 2007

THE STATUTORY CRITERIA

In this proceeding the arbitrator is to be guided by the statutory requirement to consider nine specific factors and to indicate which he has determined to be relevant and which, if any, are not and satisfactorily explain the reasoning relied upon in making those decisions. He must also provide an analysis of the evidence on each relevant factor. As these factors are well known I shall here show an abbreviated listing.

1. The interests and welfare of the public including restrictions imposed on the Employer by law.
2. Comparison of wages, hours and conditions of employment of these employees with others performing the same or similar services generally: a. In private employment in general; b. In public employment in general; and c. in public employment in the same or similar comparable jurisdictions provided in each case herein listed the parties shall have the right to submit additional evidence for consideration.
3. The overall compensation presently received inclusive of direct wages and all economic benefits received.
4. The stipulations of the parties.
5. The lawful authority of the employer including any limitations imposed by statutes.
6. The financial impact on the governing unit specifically as to taxes and alternative use of funds and the maintenance of services.
7. The cost of living.
8. The continuity and stability of employment.
9. Statutory restrictions imposed on the employer, here referencing State imposed restrictions on the increase in annual budgets.

There are a number of conditions involved with this dispute which affect the applicability of some of the above noted criteria to the determination of an award. In the first criterion, which is the consideration of the welfare of the public and the specific limitations of P.L. 1976,c.68[C.40A:4-4.5.1et seq.], the focus of the legislation has to do with the impact of the award on public employers and on the community served. Those limitations are absent in this matter due to the fact that no community is involved as the NHA, the employer, is entirely supported by federal funding. This circumstance almost entirely eliminates the

structure of an award having impact on the public, meaning those residents of the area in which these employees are employed. In a very peripheral sense whether the members of Local 202 are gainfully employed can be considered as a part of the welfare of the public but that is not what I believe to be the focus of this factor. And as the institutions affected will not be appreciably impacted as to function I do not think this factor should be given significant weight in my consideration of an award. However, as the employees affected are a very small part of the public their compensation is a significant consideration but better addressed in consideration of other factors. I therefore do not attribute significant relevance to this factor.

The comparison of the compensation elements to those of other employees in the same or similar services is a factor which can be readily seen to be highly relevant and therefore deserves appropriate consideration. The actual comparison is not as easily made however, because there appear to be very few places where the same services are performed by special police classified as Class Two Officers with limited performance qualifications as is found here at the NHA facilities. None were introduced in evidence where the same employment conditions were present. As there is some similarity to police services and as these employees are directly controlled and directed by the Newark police force some relevance can be established. The more significant part of this factor is the comparison with other employees generally and in particular with other employees of this employer. I therefore conclude that this criterion is of important significance in my considerations as will be identified in the body of this opinion and award.

The overall compensation received is another significant factor but this can be subsumed within the criterion above. And it is a relevant area of consideration.

There were no stipulations of the parties and no relevance given to this factor.

The lawful authority of the Employer, while not limited by the N. J. State law cited is nonetheless a factor worthy of consideration in this matter. In its determination that this matter was within its authority as to mandating the dispute be subject to interest arbitration the PERC specified that the arbitrator would have to carefully evaluate the Employer's ability to fund any award involving economic issues and it included the circumstance of the Employer being less able than other governmental bodies as it has no independent authority to raise funds for its operations. For this reason I shall give this factor significant weight in the determination of my award.

The impact of an award on the ability of the employer to maintain services or to otherwise accomplish the goals for which the Authority was established I conclude deserves careful scrutiny and I see this factor as important in the determination of my award.

The cost of living could be of importance but in this matter I do not believe it to be nearly as important as are the other considerations noted above. It certainly will not be a pivotal issue and I therefore do not ascribe great importance to this factor. There are so many

other factors which bear on the resolution of this matter that cost of living falls by the wayside as an influencing consideration.

The factor involving continuity and stability of employment would ordinarily be seen as being an important factor but in this situation, where the Employer has summarily dismissed the employees it would be hard to define the importance of this factor. It is unfortunate that the Employer resorted to that action but it is not a part of my authority to pass judgment on such events with the possible exception as to the economic consequences of that action. I will carefully review the application of this factor in my determination of an award.

The last factor has to do with statutory restrictions which are placed on the Employer in these matters. The restrictions involving the State statute do not enter into this matter as the economic circumstances of this Employer are solely dependent on federal funding. However, the entire source of financial support for the NHA, beyond the limited income derived from rental income, is appropriated by the Federal government and distributed to local authorities after giving careful consideration to their performance. The NHA is under great pressure to improve its record and the level of funding has been declining because of failure to achieve fiscal objectives. Thus it is of some importance that this factor be carefully evaluated.

THE CIRCUMSTANCES OF THE EMPLOYER

The NHA has functioned as an extension of the federal government under the U. S. Department of Housing and Urban Development. It is not a City of Newark agency and is dependent on the federal government for its financial support. In recent years the management of the NHA has failed to fulfill its mission in many ways but of key interest here is the failure to contain its expenditures to the anticipated levels set forth by that Department. This has precipitated the NHA being designated as a 'troubled agency', a reflection of it not having met guidelines as to expenditure levels for past years. The NHA has made significant efforts to control its costs over the last few years principally by reducing its workforce population from something over 1000 to 522 as of recent count. One such step has been the determination to discontinue employment of security personnel; the workers involved with this dispute. This is a step which has been implemented by authorities in many other locations in efforts to offset the reduced federal funding level while facing higher operational costs. One of those costs in particular which is largely out of the control of the authorities is that of utilities, a function of much elevated costs of energy.

The financial problem for NHA is amplified by the rules enforced by the Department where a troubled agency is provided with mandated targets as to reduced expenditure levels. Failure to reach those targets precipitates a reduction of the funding by the Department and continued failure is compounded by further reductions. Faced with expenditures which are outside of the control of NHA, particularly the energy costs which have become a major part of their budget, it is finding the meeting of target levels of

reduced spending to be difficult, if not impossible to achieve. A further dimension of this problem is that the federal funding of the Department has been reduced in each of the past two years meaning that even the approved levels of support to agencies such as NHA are being reduced by substantial percentages. These factors combine to make it very difficult for the NHA to financially afford the proper and vital obligations inherent in its mission resulting in poor maintenance and services to the public it was designed to serve. Some of its facilities have been closed due to insufficient funds to provide required maintenance and improvements. This tends to compound the problem by failure to meet demands for facilities and by virtue of the fact that federal support funds are related to the numbers of recipients of assistance. Apparently the NHA does not believe that increases in rental income can be expected in the economic climate faced by those eligible for subsidized housing.

Having made these observations the proposal as to a settlement of this dispute reflects the employer's need to be conservative and its pronouncement that any award costing more than it has offered will likely result in the layoff of additional staff. Thus the basic underpinning of the Employer's case is the inability to pay more than it has offered. A condition to which I will give serious consideration. The Employer has made no contention as to the equity of its offer to these ex-employees as contrasted to the contractual gains of other of its employee groups and acknowledges that all received increases of 3.5% in each of the years of this dispute.

Thus the bottom line is that the Employer perceives its final offer to be an extraordinary effort to fairly compensate the Local 202 personnel it has now been forced to sever from its employment and it asks this arbitrator to confirm that position.

THE PERSPECTIVE OF THE UNION

The Union has argued that these police personnel have been victims of neglect as to their wages for many years. Specifically they point to higher pay rates provided by the NHA to virtually all other employees many of whom would ordinarily, in other jurisdictions, be paid at levels below that of Special Police. In its efforts to substantiate its demands, particularly a \$10,000 up front adjustment to their base pay, the Union has attempted to relate the Special Police compensation to that provided to regular police personnel. They argue that the actual work is the same as demonstrated by the fact that they perform under the direction and control of the Newark police command personnel and that they are in uniform, carry weapons and apprehend violators of the law. However there are substantial distinctions between them including the degree of training, their not being considered as police by the assignment to non-police status in their pension plan, that they do not have an appointment to employment on a permanent basis [their employment agreement being for a one year period and subject to renewal], that they may only exercise limited police powers and are restricted as to the areas of their authority, among them. In addition they are not restricted in their employment and can be hired by others for limited special police or non-police activities while employed by NHA.

In addition the Union points out that these employees are less well compensated than others of the NHA. This is illustrated by comparisons to truck drivers, skilled workers and clerical personnel. And they are accurate in those illustrations. They also draw a comparison to Special Police employed by New Jersey Institute of Technology, one of the few such public employers in the area, and note that the NJIT rates are at least 50% higher than that paid by NHA for similar work of comparably trained and certified personnel. The \$10,000 would sharply reduce the negative comparison they would like to change. And again the Union is correct in that assertion. Such an adjustment could be justified purely on the basis of comparability to other employees of this employer and to others similarly situated. It would not place them in the lead in terms of compensation but would make a respectable inroad on the negative gap now existent. A further parallel argument can be made in support of a dramatic change in their base pay in comparison to other non-police employees both within the employ of NHA and with other organizations in the public and private sectors.

It is noteworthy that these employees must provide their own liability insurance, weapons and ammunition, loss of pay while involved in required weapons training, uniform costs/maintenance and other expenses not ordinarily attributed to individuals' employment which substantially reduces the net value of their salary.

All such comparisons and justifications would be of academic interest only due to the failing economic circumstance of this Employer and the determination of the PERC that the arbitrator must consider the imposed financial limitations of the NHA in consideration of any award. Were the NHA functioning in a healthy economic status such remedial adjustments to this class of personnel would certainly warrant serious consideration. However that is not the circumstance presented in this matter and to disregard the financial limitations of the Employer in making such an award would only lead to further litigation and likely reversal.

DISCUSSION

It is worthy of note that this Employer has achieved the unfortunate status of being characterized as a troubled agency by the federal authority. Clearly this has been a factor in the continuing reductions of financial support but it is also indicative of poor managerial controls. The fact that the numbers of personnel employed have been reduced from in excess of one thousand to just over five hundred while continuing the functions of the NHA poses a question as to how well those thousand workers were utilized or managed. The U.S. Department of Housing and Urban Affairs, not known for its diligence in making expenditures, apparently determined there were excess personnel employed for the mission of the NHA and was forced to tighten its control of the agency. The performance of the NHA appears to have improved but it had yet to be seen as compliant with goals imposed as of the closure of this hearing and the NHA'S continuing failure to meet those goals has resulted in repeated reductions of financial support.

This has been a continuing problem in recent years including further threats as to failure of compliance in 2007 and 2008. I have not been informed as to the degree to which the NHA has been able to deal with those threats.

The Employer describes its offer of settlement as a generous one given the plight it finds itself in. The elimination of employment of these represented special police was described as a necessary cost reduction move to help achieve greater efficiency of its operations. The Union described it as a union busting tactic and embarked on the declaration of an unfair practice charge with the hope that the PERC would order the reinstatement of the fired officers. I do not here attempt to forecast the result of that action but note that whatever proceedings may be involved will likely take a good deal of time. What is obvious to me in this situation is the NHA imposed its removal of these employees without any forewarning and with practically no severance period or payment. These actions certainly could have been foreseen and a more considerate manner adopted. The abrupt expiration of health benefits alone would have justified a much longer notice period. Apparently it was noticed that in Pittsburgh this action had been taken and an attitude of why not here adopted. These had been loyal employees and even if that action was necessary the NHA could have accomplished it in a more considerate way.

The Employer has indicated that should there be an award which involves greater costs than what has been offered it would almost certainly require further reductions in personnel. Certainly an informed management could have foreseen the need for limiting its increases in labor costs well in advance of the beginning of the negotiations with Local 202. In fact it negotiated many agreements for similar time periods as is anticipated in this matter. In all of those negotiations it provided annual increases of 3.5% as well as movement on steps in salary guides. Virtually all of the employees covered would have been at higher salaries so the compound effect was more dollar increases than would flow to Local 202 personnel if they received the same annual 3.5% package. One would think that if the Employer embarked on that course of wage improvements for hundreds of employees in other negotiations units it would have also set aside enough monies to cover the anticipated cost of a similar package for the Local 202 contract negotiations including what would be required for past services. Instead it now has taken the position that such can not be afforded and informs me that such would be the cause of further layoffs. This is an argument which the unemployed Local 202 members probably do not fully appreciate.

In evidence supplied during these proceedings the Employer indicated cumulative losses for the period from April 1, 2002 through March 31, 2006 at \$10,231,554. After making drastic reductions in staff it was anticipated that the loss projected to be \$6,694,202 as of March 31, 2008. Thus it can be seen that the efforts of the NHA to control its expenditures was expected to produce significant improvement. But the problems of higher energy as well as insurance and expanded employment costs coupled with reduced revenues from the federal authority are making the target of a balanced budget very elusive. It would seem that in the face of these very significant financial problems the NHA would have adopted a conservative approach in its negotiations with all unionized

units. Instead it carried out the same level of increases that it had provided in the prior three year agreements except when it came to Local 202 who represented less than 5% of the numbers in the work force and an even smaller share, likely about 3.5%, of the agency payroll. The elimination of the Special Police will have the effect of reducing the overall agency payroll by about \$1,200,000 annually an amount which will be of significance in the attempt to reach a balanced budget so the NHA did what some other similar agencies have done; they got out of the police safety business and left that responsibility to the City of Newark.

CONCLUSIONS

The circumstances of this Employer are such that an analysis of the factors ordinarily considered to be relevant to making an award are largely inapplicable. For instance the cost of living changes while of potential interest where the employer has flexibility concerning payroll is of no consequence where the employer is essentially without resources. The same might be said about comparability with the improvements achieved in other employment situations, whether in public service or private employment. At the outset of my writing I indicated a concern as to which factors are relevant. I have concluded that the key focus must be on the internal circumstances of these employees as contrasted to others employed by NHA and the fiscal conditions and limitations of this employer.

The offer by the employer was advanced with an explanation that anything more costly than the offer would produce a situation requiring further layoffs. It probably is not an exaggeration as the resources of the employer clearly are not sufficient to make any added expenditures. In fact the offer probably represents expenditures which can only be expressed in terms of relative budget shortfall. The final offer including \$2500 in base pay was a \$4400 cost per employe but including the final two and a half months of employment would have been \$4925. Assuming the work force numbered 25 the total in back payments would be \$123,125. Should the head count have varied it could affect that computation. A further computation has to do with the actual annual cost of their employment which at an average pay of \$37,500 would be \$937,500 plus contributions to health care premiums which I estimate to average \$10,000 per year or a total of \$250,000. The actual total cost would be somewhat higher if incidental costs for longevity and overtime were considered but I do not have the detailed information to compute them. Using the regular pay plus health insurance premiums as a basis for comparison the annual payroll cost would become \$1,187,500 or \$98,960 per month.

The forced layoff of the work force on June 15, 2007 would thus save the employer a minimum of \$100,000 per month, assuming some extra expense for overtime and longevity costs. Added to savings would be social security, unemployment insurance and pension premiums. Thus it becomes apparent that the cost of the employers' final offer as a settlement would be offset completely by savings in a month, or less, and thereafter the annual savings would amount to something greater than \$1,200,000. Thus it can be understood that the incentive to eliminate the Local 202 employees was considerable

from a financial perspective by the Authority. The prospect of having the City police undertake the responsibility for safety and security without cost would have been hard to disregard. The continuing pressure to achieve an operating cost structure acceptable to the Department had to weigh heavily in the determination to eliminate the in-house police function as the Authority was going to reduce funding incrementally unless an acceptable level of costs was reached. That threat of further reduction of finances without alternative sources suggested the likelihood of services being eliminated.

Under these circumstances the key consideration in this proceeding has become the balance of two factors, the obligation of the Authority to perform within the framework of financial resources dictated by the Department and the issue of comparability of the treatment of the employees involved in this dispute to other employees of the NHA.

During the years when the resolution of this dispute would have been implemented the Authority negotiated and performed obligations incurred with all of its organized employees by virtue of the terms of new agreements. In each of those years there was great pressure to reduce costs and since employment costs were a major portion of the overall budget the Authority implemented a series of layoffs affecting more than four hundred employees. Notwithstanding the pressure from the Department to bring the expenses of the Authority into line with what were the expected costs to deliver services within its imposed formulae the NHA budget efforts never achieved those goals. This has resulted in non-performance penalties in the form of reductions of the amount of money provided to the Authority. While much of this problem became critical in 2006, there was clear evidence of the need to reduce costs much earlier as the Department had begun to be critical of the NHA's performance and costs related to employee population and inadequate services. NHA had operated with an agency wide deficit which, in 2005-2006 amounted to more than \$10,000,000.

The more stringent limitations of federal funding have been imposed are continuing in 2007 and 2008. One of the factors affecting the budget objectives has been the dramatic increase in utility costs not susceptible of Authority control and which have become the single largest portion of their budget. These increases have been offset by reductions in other areas of expense, principally payroll, but have also forced reductions and delay of needed maintenance and related costs. Compounding the problem has been the reduction of the federal funding of approved levels of expenditures due to restrictions placed on the Department's budget and the further reduction of federal assistance because of the Authority's failure to meet scheduled efficiencies.

All of the above clearly establish the limits placed on the Employer as the major consideration in my analysis of this dispute. However, as noted above the comparison with the compensation of other employees of the Authority remains a vital consideration.

The Union has made a case for a \$10,000 increase in pay at the outset of the new contract period beginning in 2004. It supported this demand with much reliance on the pay schedules of NHA employees in clerical and skilled or semi-skilled positions. In the

comparison the Union pointed out that the Special Police are at the lowest pay level generally and that they suffer from not having a salary guide as do others whereby there are salary adjustments for years of service. In addition these workers have to meet the costs of uniforms, weapons and insurance which further reduces their income. They also illustrated the paucity of their wages by making comparisons with other police including the City's personnel and the pay of Special Police at the New Jersey Institute of Technology where they note differences of 40% or more. Although these employees are clearly under paid by almost any measure my focus is not on where their pay rates were in the prior Agreement but what is to be afforded in the 2004-2007 contract. It is clear that this Employer is not in a position to revisit the prior contract terms and to consider a remedy which would, in the eyes of the Union, amount to a new positioning of the Special Police in the salary plan.

The Union advanced the \$10000 issue along with 4% annual increases as their bottom line while dropping specific items such as liability insurance payment, clothing allowance, reimbursement for time required for weapons training and equipment costs. It supported these demands by noting that the cost of living for northern New Jersey had risen 8.6% in the 2004-2006 period, making the 4% demand a means of almost keeping in step with those increased costs but not providing any improvement in their employment.

The response from the Employer was as noted above and contained no salary increases for the period from April 2004 through March 2006 but did acknowledge the need to provide reimbursement for insurance and time devoted to weapons training as well as a stipend for clothing costs based on actual expenditures.

A key consideration in this dispute is that the Employer did make payroll increases to all employees in accord with Agreements for all negotiations units beginning in 2004. Although many of those employees may no longer have jobs with the Authority, when they did they received the annual increases as well as adjustments for service where called for in their salary guides. I do not know precisely when those agreements were executed but it is my understanding that the salary adjustments therein began in 2004 and they all provided 3.5% increases annually. It would seem to me that the Authority had pressed to make all of those agreements contain similar terms, which they did, and that those were the terms to be offered to the Special Police unit, which they were. Having done that it would also seem that the Employer would have realized that the outcome of negotiations with the Special Police would result in wage increases not less than had been offered at the negotiations table. From this I take the further step to conclude that there should have been an anticipation of the need to reserve, as if already committed, sufficient funds to provide this similar treatment to the Special Police unit personnel.

The Special Police unit was a very small portion of the overall employee population, even at the time of their discharge limited to approximately 5%. The amount of the new monies to have been set aside for their anticipated Agreement would have been considerably less than 5% of the overall costs of all new agreements because their earnings base was considerably less per employee than that of the average person in other units. It would

seem to have been prudent for the NHA to set aside an amount sufficient to satisfy those anticipated annual costs. They apparently did not and now claim paying such could result in additional layoffs; and they may be right. But these employees were deserving of at least the same consideration as was given to all other employees. They eventually were terminated without a reasonable period of notice and lost all income, health and other benefits abruptly with only three days pay. That decision, as noted above, provided a substantial economic cushion for the Employer, with annual value in excess of \$1,200,000, but was imposed without any consideration for the impact on employees involved. My conclusion is that this award should provide a well deserved remedy even though it will, to a very minor degree, worsen the economic circumstances of the Authority until the savings realized from their removal from the payroll were sufficient to offset those costs.

In the case of an average employee, at \$35,000 per year in 2004, the earnings for the three years of the Agreement would have been \$105,000. Increasing their salary by 3.5% would bring the total to \$112,523 or \$7,523 for each of 25 employees or a total of \$188,075. The proposal of the Employer would have been to add \$2500 to base for the 2006-2007 year so that the average wage for the final year would have been \$37,500 or \$1305 less in annual salary than compounded 3.5% increases. Since the period of employment extended two and a half months beyond March 31, 2007 the extra pay would have been \$272 for each employee or a total of \$6800 bringing the total for the 38.5 months to \$194,875 as the cost of the annual 3.5% increase. The offer of the Employer to increase the pay by \$2500 effective on April 1, 2006 would have resulted in a monthly increase of \$208.33 per [average] person and that would have produced a total of \$3021 for the 14.5 months or a total of \$75,520. The total difference in salary positions thus would be \$119,355.

The offer of the Employer also included \$1000 for insurance, \$600 for clothing and \$300 for training in the year 2006-2007. The total of \$1900 would amount to \$47,500 for the unit population. When this is subtracted from the difference of \$119,355 as illustrated above the added cost would become just \$71,855. That amount would have been recovered in just about three weeks by the eliminated cost of wages and benefits after the Special Police were terminated. The termination of the Special Police would, after the three weeks, produce a savings in excess of \$100,000, per month or more likely \$125,000.

I see the application of the increases awarded to other employees to be a reasonable solution of this impasse. The Special Police will not have achieved any of the make-up payments sought but will have been treated a bit better than the other employees when the value of the extra benefits is taken into consideration. And the concerns of the Employer as to having to lay off personnel due to an award in excess of what was offered will have been reduced to a level which should not precipitate such an extreme action.

I believe my consideration of the statutory factors will be seen as sufficient to justify this award. The circumstances of this Employer are such that changes in its costs of settlement do not trigger the application of most of those factors. The internal comparison of improvements and the limitations imposed on the Employer by federal funding were factors which overshadowed all others in my considerations. This award is

intended to be a fair resolution to the impasse by all measures which the arbitrator is instructed to consider. In further defense of this determination it should be noted that the Employer will enjoy additional indirect savings from the termination of police activities including but not limited to those attributable to costs of maintenance, repair or replacement, fuel and insurance of its police vehicles; but as these are not herein determinable and because they do not relate directly to the compensation of employees involved in this dispute they are mentioned only to support the concept of balancing savings with the costs of this award while providing reasonable compensation to the employees who have lost their livelihood.

AWARD

1. There shall be an increase in the wages of Special Police effective on the first day of April in each of the three years of this agreement at the rate of 3.5% beginning April 1, 2004. The terms of the Agreement shall extend beyond its termination of March 31, 2007 without change until the date of termination on June 15, 2007.
2. There shall be a payment to each employee of \$1000 for reimbursement of insurance costs payable within 30 days of receipt of this award.
3. There shall be a payment of \$600 to each employee as a clothing allowance and this too shall be paid within 30 days of receipt of this award.
4. There shall be a payment of \$300 to each employee in as compensation for time spent in weapons qualification training and this too shall be paid within 30 days of receipt of this award.
5. It is intended that the salary increases awarded will be included in all longevity and overtime compensation paid during the 36 months of this Agreement and its extension of 2.5 months. These adjustments shall be made on an expedited basis but it is recognized that the search of records and computation of earnings may be complicated.


There were no other economic or non-economic issues to be resolved.



Frank A. Mason

Pennington, Mercer County, New Jersey

On this 19th day of September, 2008, 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.



WAYNE S. MERNONE
Notary Public - New Jersey
2311592
My Commission Expires February 23, 2009