

STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Interest \*  
Arbitration between \*  
\* SUPPLEMENTAL  
\* DECISION  
COUNTY OF ESSEX, ESSEX COUNTY \* AND AWARD  
SHERIFF'S OFFICE \*  
\*  
\*  
-and- \*  
\* Docket No.  
\* IA-2008-098  
ESSEX COUNTY SHERIFF'S OFFICERS, \*  
P.B.A., LOCAL NO. 183 \*  
\*  
\*  
- - - - - \*

Before: Joel M. Weisblatt, Arbitrator

Appearances:  
For the Employer  
Genova, Burns  
By: Angelo J. Genova, Esquire  
Brian W. Kronick, Esquire  
Carolyn Buccerone, Esquire  
  
For the PBA  
Loccke, Correia, Schlager, Limsky & Bukosky  
By: Richard D. Loccke, Esquire

**S U P P L E M E N T A L   D E C I S I O N**

The County of Essex and Essex County Sheriff's Office (the "County" or the "Employer") and the Essex County Sheriff's P.B.A., Local 183 (the "PBA") are parties to a collective bargaining agreement which had a duration through December 31, 2007. Negotiations for a successor agreement reached an impasse and a Petition to Initiate Compulsory Interest Arbitration was filed. Pursuant to the Rules and Regulations of the Public Employment Relations Commission, the undersigned Arbitrator was duly appointed to serve in this matter.

The Arbitrator met with the parties on October 29, 2008 and January 8, 2009 in an effort to assist them in achieving a voluntary resolution to their dispute. The impasse persisted. Evidentiary hearings were scheduled and held on: March 23, 2009; April 3, 2009; June 1, 2009; August 19, 2009; and August 20, 2009.

The parties were provided with the opportunity to argue orally, present documentary evidence and examine and cross-examine witnesses. An extensive record was created over the course of the five days of hearing. Numerous witnesses were examined including several called to present expert testimony.

The parties filed comprehensive post-hearing briefs addressing the issues in dispute in this interest arbitration. The briefing process was completed in March of 2010. The parties executed a mutual agreement to extend the time, until July 31, 2010, for the issuance of the Interest Arbitration Decision and Award.

The entire record was carefully considered. The evidence was evaluated in light of the nine statutory criteria set forth in *N.J.S.A. 34:13A-16(g)*.

The parties failed to mutually agree to an alternate terminal procedure. Therefore, under *N.J.S.A. 34:13A-(d)(2)* the dispute was resolved through a determination by conventional arbitration. Under conventional arbitration, neither party's proposals are deemed to be presumptively valid

and require each party to offer substantial credible evidence in the record to support any aspect of its proposals. The procedure vests with the Arbitrator the authority to craft or fashion an award that may fall within the positions expressed in the parties' proposals and meet the standards for review of an interest arbitration award. These standards recognize that the disposition of the disputed issues also involves an application of the arbitrator's judgment and discretion and labor relations expertise. The Arbitrator issued a Decision and Award, reached through application of all of the relevant statutory criteria, giving due weight as appropriate, to the issues presented by the unsettled elements in dispute.

Pursuant to the above, the Interest Arbitration Decision and Award was issued on July 29, 2010. The contract duration was to be January 1, 2008 through December 31, 2010 as a result of the decision to award a three year term, pursuant to the County's proposal, rather than a four year term, as proposed by the PBA. The Award decided many issues in dispute including: Duration, Wages, Separate Retroactive Paycheck, Health Insurance Benefits, Prescription Benefits, Overtime, Parking, Holidays, Work Schedule, Vacation Benefits, Release Time, and a Maternity/Paternity Provision. Thereafter, an

appeal was filed with the Public Employment Relations Commission and the matter was reviewed by the Agency. The appeal specifically addressed the issues of Wages, Work Schedule, Health Benefits, Holidays, and Overtime. It also raised issues relating to: statutory and constitutional preemption, an objection to evidence, and an allegation of a material mistake of fact.

On June 30, 2011, PERC issued a decision [PERC 2011-092]. PERC rejected the appeal as it related to the specific issues of Wages, Work Schedule, Holidays, and Overtime. It further rejected the appeal based on: the County's claim that interest arbitration for Essex County was pre-empted by a statute that grants executive power to a County Executive, and also by the New Jersey Constitution; the objection to evidence; and the contention of a material mistake of fact. PERC remanded the decision to the Arbitrator on the sole issue that concerned the Employer's health insurance proposals. PERC specifically ordered that:

The interest arbitration award is remanded to the Arbitrator for further analysis of the County's health benefits proposals.

The PERC Decision further ordered that this Supplemental Decision be issued by July 15, 2011. This decision is directed towards satisfying the issue on remand.

The County's health benefits proposals read as follows:

Medical Benefits:

The existing Health Insurance and Prescription Program shall remain in effect for the life of the Agreement except as follows:

A) Effective January 1, 2009 and for each year thereafter, the Prescription drug co-pays are as follows:

1. Non-Mail Order
  - A. Generics - \$10.00 per thirty (30) day supply
  - B. Preferred Brands and Non-Preferred Generics - \$25.00 per thirty (30) day supply.
  - C. Non-Preferred Brands - \$40.00 per thirty (30) day supply.
2. Mail Order
  - A. Generics - \$15.00 per ninety (90) day supply.
  - B. Preferred Brands and Non-Preferred Generics - \$37.50 per ninety (90) day supply.
  - C. Non-Preferred Brands - \$60.00 per ninety (90) days supply.

B) Effective January 1, 2009, and each year thereafter, the County will implement a list of drugs as directed by the County's insurance carrier that require prior authorization due to the drug's potential for serious side effects or the drug's potential for misuse or "off label" use.

C) Health Care Insurance:

Effective January 1, 2008 and each year thereafter, employees hired prior to June 16, 1993 shall pay 2% of their pensionable salary as a contribution for health care coverage.

Effective January 1, 2008 and each year thereafter, the rate cap contained in the parties' prior Agreement, freezing contributions at 1993 rates, will be removed.

Effective January 1, 2008 and each year thereafter, employees hired after June 16, 1993 who have single coverage shall pay 2% of their pensionable salary as a contribution for health care coverage.

Effective January 1, 2008 and each year thereafter, employees hired after June 16, 1993 who have Husband/Wife, Parent/Child or Family coverage shall pay an increase percentage from twenty (20%) to twenty-five percent (25%) co-pay for dependent coverage. In addition, if the employee selects a plan that is not the County selected HMO (in 2008 HMO Blue), the employee must also contribute fifteen percent (15%) of the difference between the County selected HMO and the full cost of the selected plan. Contributions will vary based on annual renewal rates.

If an employee voluntarily waives all coverage under the County's Health Care plan and provides a Certification to the County that he/she has other health care coverage, the County will waive the 2% health care contribution for that employee for the period of time the County did not pay for health benefits for the employee.

Employees may select any health plan offered by the County. However, employees hired after the date of the arbitrator's decision shall not be eligible for Traditional coverage.

The County reserves the right to change, without negotiation, the manner in which Health Benefits are provided as long as substantially similar benefits are provided.

Mandatory second surgical opinion and pre-admission review programs will continue.

The PBA's final offer proposed no changes with respect to the health benefit provisions of the contract. It opposed the proposals of the Employer and, in particular, that its members be required to make contributions towards health insurance.

The original Interest Arbitration Decision and Award included the following discussion [pp. 70-71] of health benefits:

At this point it is important to discuss the issue of health benefits and the Employer's proposal to address employees' contributions toward premiums. The County has presented a complicated and comprehensive proposal with respect to contributions to health insurance premiums. However, earlier this calendar year, 2010, the State Legislature enacted a statutory approach to health insurance contributions by public employees, see Chapter 2, P.L. 2010. The record herein otherwise would have been supportive of the establishment of a system of flat dollar contributions, relating to the specific coverage provided each employee, rather than a percentage of salary. That would have provided the Employer with a significant measure of cost containment in the area of health insurance benefits. It is likely that this Arbitrator would have awarded such a plan. However, the State Legislature has, as a practical (rather than legal) matter, pre-empted that issue with respect to the impasse at hand. The Arbitrator believes that the legislative approach, now in effect for unit employees, cannot be reasonably reconciled with the approach that was likely to have been awarded under the record herein. Further, the 1.5% of salary contribution, provided for in the statute, is more than adequate to address the



reasonable need for cost containment in the contract at hand. Therefore, the Arbitrator determines that all health insurance contributions under the contract, effective upon the implementation date of the statutory contributions, shall be consistent with those provided for by Chapter 2, P.L. 2010. This will provide the Employer with a new substantial cost containment factor in 2010.

Further, the Arbitrator calculated that the 1.5% statutory health insurance premium contribution would generate an annualized revenue or cost offset to the Employer of \$407,084 for this collective bargaining unit alone, beginning on July 1, 2010 through the December 31, 2010 contract expiration. The New Jersey Department of Community Affairs requires these deductions to be reported as budgetary "revenue." As previously stated, the Award provided for a contract expiration of December 31, 2010. The actual cost containment impact in calendar year 2010 was calculated at \$249,368 for the PBA Local 183 bargaining unit. The annual cost reduction would remain at \$407,084 for future years, to increase or decrease with the personnel or salary changes of the bargaining unit.

The annual cost of health benefits to the County for all employees and retirees, not merely the Sheriff's Officers bargaining unit, [testimony of County Treasurer, T5, pp. 637-638] is reflected in Exhibit C-42, prepared by the County

Treasurer. That document charts the last ten years of increases; the most recent five years of data available at hearing reveals the following:

<u>Year</u>	<u>Expense</u>	<u>% Increase</u>
2005	46,140,042	2.55%
2006	45,735,913	-0.88%
2007	47,126,441	3.04%
2008	50,969,526	8.15%
2009	54,388,541	6.71%

There were some double-digit increases in the earlier years charted and it is reasonably anticipated that higher percentage increases would return with respect to cost escalation, making employee contributions, as a means of cost containment, a reasonable approach to dealing with increasing premium costs.

In its post-hearing brief, the County argued that its proposals to introduce premium contributions to this contract were reasonable. It cited five, then recent, interest arbitration awards where employee premium contributions were introduced to the contractual relationship. It should be noted that the record on this issue was developed during 2009

and consists of evidence available at that time. The awards submitted by the County included:

- (1) State of New Jersey and PBA Local 105, Docket No. IA-2008-014, Issued May 2009;
- (2) NJ Transit & PBA Local 304, Docket No. IA-2007-029, Issued October 2008;
- (3) Borough of Mountainside & PBA Local 126, Docket No. IA-2007-044, Issued January 2008;
- (4) Borough of Pt. Pleasant Beach & PBA Local 106, Docket No. IA-2007-088, Issued June of 2008; and
- (5) City of Trenton & PBA Local 11, Docket No. IA-2007-060, Issued January 2009.

All of these awards provided for flat dollar contributions to premiums. *In State of New Jersey & PBA Local 105*, the flat dollar premium contribution ordered was structured in accordance with the coverage chosen, specifically, \$40 per pay period for family coverage; \$30 per pay period for employee/spouse or parent/child coverage; and \$20 per pay period for single coverage. In both the *NJ Transit & PBA Local 304* and *Borough of Mountainside & PBA Local 126* contracts the employee contribution to premiums was

delineated at \$40 per month for all unit members. In *Point Pleasant Beach & PBA Local 106*, the award established a contribution of \$20 per month for single and \$40 per month for other coverages. Finally, in *City of Trenton & PBA Local 11*, the arbitration award set out employee premium contribution payments of \$21 per pay period for single coverage and an additional \$23 per pay period for the various levels of dependent coverage.

The five primary focus examples relied upon by the County in its argument to support the award of premium contributions in this dispute, all involved flat dollar contributions. The annual contribution cost per employee (assuming full family coverage) for those comparison contracts computes as follows:

State of NJ & PBA 105 - \$1,040  
 NJ Transit & PBA 304 - \$480  
 Mountainside & PBA 126 - \$480  
 Pt. Pleasant Beach & PBA 106 - \$480  
 Trenton & PBA 11 - \$1,144

By comparison, using the July 1, 2010 top step salary rate alone, the calculation of the dollar value of the cost savings generated through a 1.5% premium contribution equals \$1,206 per employee. Thus, the annual value of the contribution

awarded exceeds all five of the comparison examples relied upon by the Employer. The average salary in this unit is a little below the top step but any difference in the comparison is more than offset by the fact that the flat dollar rates above are all at maximum possible amounts and do not account for coverage variations which would cause the averages of the comparisons used by the Employer to be reduced.

Given the record before me at that time, and given the fact that the awarded contract would expire on December 31, 2010, it was determined that, but for the mandated 1.5% contribution, a flat dollar contribution would have been awarded. However, the flat dollar structure that otherwise would have been awarded under the evidence in the record could not be "reconciled" with the level of contribution set forth in the legislation [p.71]. The record evidence strongly supported a flat dollar structure that would have been lower than that established by law. The contribution levels established by statute were then awarded because, as a floor to cost containment, the law required at least that amount of contribution, even where the record evidence might have suggested a somewhat lower result. Further, given the fact that the issues of employee contributions towards health

insurance and salary are major economic issues, the analysis of one could not be undertaken in total isolation from the other.

A primary element of the Employer's health benefits proposals centered on establishing premium contributions for all unit employees; Prior to this interest arbitration award, all pre-1993 hirees were free of any premium contributions; the County had proposed to eliminate this exemption. A second facet of the County's proposals was to eliminate the prior-existing cap on dependent coverage contributions which had continued to use the 1993 premium rates as the basis for the contract's partial contribution toward dependent coverage, for those hired after June 16, 1993. These proposals were resolved by the 2010 health care legislation. However, even if the legislation had not been enacted, the evidence pointed to the elimination of these constraints that appeared in the parties' expired contract. Instead, the 1.5% of salary contribution, required by law, served to effectively address both of these major goals established by the County in negotiations, including its desire for across the board contributions. It allowed for negotiations to continue for a new agreement effective January 1, 2011, that could further

address the health insurance issue after the December 31, 2010 contract expiration, based upon fresh evidence that could form the basis for any further revisions. In short, it was found that the 1.5% of base salary contribution, commencing on May 22, 2010, represented a reasonable determination of the health insurance issue in the context of the overall terms of the Award.

The County proposals for health care premium contributions are retroactive to January 1, 2008. The 1.5% contribution awarded is effective May 22, 2010. The latter is the more reasonable result under the facts of the dispute at hand. One aspect of the proposed health benefit changes relates to the belief that they impact upon the care decisions made by employees, eventually reducing costs. The retroactive application of cost containment measures cannot affect the past care decisions made by the employees. Retroactive changes imposing new contributions do have a monetary value to the Employer but their reasonableness cannot be analyzed independently of the other economic components of the package awarded and, in particular, the Award's disposition of the salary issue.

The economic package in an interest arbitration award is normally an inter-related entity where the nature of the individual components affects the proper level of other elements of the structure. For example, in the case at hand, the County Treasurer testified that there was 3.0% in the budget for salary increases in 2008 but that 2009 presented a much more difficult economic environment. The Arbitrator placed greatest emphasis on the salary component in the first two years of the three year contract. The initial year (2008) provided the highest annual increase (2.85%) but was still less than the 3.0% that was budgeted. The second contract year was structured with an eight month salary freeze, until September 1, 2009, resulting a payout cost to the Employer of less than 1.0% in calendar year 2009. These increases, as noted in the Decision and Award, were significantly below those that would have been driven by evidence under the comparability criterion and the overall compensation criterion which showed that these Sheriff's Officers receive lower overall compensation than those in many comparable counties. The emphasis was placed on keeping the cost of the 2009 salary increase at the lowest reasonable level under the record evidence. The Award balanced the statutory criteria. Part of that balance was to find that the retroactive implementation



of health benefit changes, to January of 2008, was not reasonable or warranted as a component of the overall compensation package. The appropriate balance for the implementation of the substantial (1.5% of salary) contribution toward health insurance premiums was the statutory date of May 22, 2010. It is important to note that the Arbitrator did not provide any extra aspect of the salary increase to "offset" the 1.5% premium contribution. Indeed, that contribution level was applied to provide the full measure of the legislative intent expressed at that point in time, namely, to reduce the Employer's health insurance costs.

The Arbitrator was able to consider the higher levels of contribution sought by the County but found that, although it was within his power to award those changes, they would have been unreasonable, during this contract term, under the criteria because they were out of balance with the structure to keep the salary rate increases at levels below those suggested by comparability evidence. As was noted in the PERC remand, "[T]he arbitrator awarded what he found to be lower than average salary increases that the County could fund without any impact on its taxpayers. The County has not shown that the evidence compelled the award of its final offer or

that it [the arbitrator's award] was not supported by the substantial credible evidence in the record." [PERC No. 2011-092, at p. 15, (2011)]. Further, at that time, there was absolutely no comparison evidence to support the level of health benefit changes proposed by the Employer. Further, the record included no specific evidence of cost savings associated with certain aspects of the Employer's proposals. This meant that considering their true value was difficult and could not be accomplished with the precision required to determine the relative economic impact of the proposals. For example, there was no means to evaluate the impact of the proposal that employees hired after 1993 be required to pay the difference between their coverage and the "County selected HMO." Further, no specific evidence was available to allow for the evaluation of cost savings with respect to the Employer's proposals involving the traditional plan.

The evidence in the record, at the time that the record was developed, suggested that more modest, flat dollar contributions were reasonable. Clearly, the legislature, in enacting the 1.5% contribution factor, sought to provide more meaningful cost containment to public employers than that revealed in the evidence of flat dollar contribution levels

submitted by the County in support of its proposal. The record established that application of the statutory provision would be a reasonable approach to the disputed issue at hand through the contract's December 31, 2010 expiration date. It serves the public interest and addresses the financial impact criterion, as a cost containment function, yet still remains in balance with the comparability and tradition considerations criteria. Additional note must be taken that the health insurance issue has evolved subsequent to the Award and the prior legislation. Thus, the health insurance award contained in the contract that expired on December 31, 2010 has now been modified by additional recent legislation that requires more substantial contributions from unit employees, linked to both premium costs and salary levels. This recent enactment is now applicable to unit employees.

In addition, the County's proposal regarding the prescription co-pay (to be effective January 1, 2009) was considered and analyzed. To the extent that the PERC remand may address this issue also, I note that the prior award did not grant this proposal for the following reasons:

The Employer has proposed certain changes in the Prescription Drug Plan. The Arbitrator finds that the record does not support the implementation of those changes at this time. The substantial savings

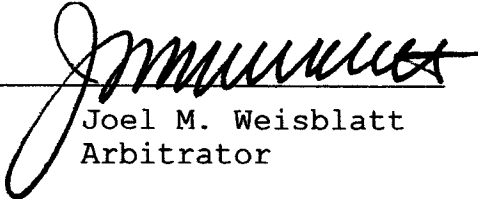
with respect to the health insurance component are recognized as sufficiently addressing the fiscal responsibility and financial impact factors concerning health benefits. Further, the comparison evidence presented by the County (comparing with other Sheriff's Departments) establishes that the current prescription co-pay is solidly within the norm. In fact, the co-pay levels are at the upper end of the range. The evidence does not support any change in the prescription co-pay benefit in this contract. The current contract provision shall remain unchanged.

Given the above, it was decided that the existing provisions on prescription be unchanged through the expiration of the awarded contract.

In conclusion, the further analysis of the Employer's health insurance proposal based upon the evidence of this record, as applied to the statutory criteria, establishes that the health benefits issue is most reasonably resolved for the contract that expired on December 31, 2010 as follows:

Health insurance premium contributions under the contract, effective upon the implementation date of the statutory contributions, shall be consistent with those provided for by Chapter 2, P.L. 2010. It is assumed that these contributions shall be in accordance with a Section 125 account and paid in pre-tax dollars.

Dated: July 13, 2011  
Skillman, N.J.

  
Joel M. Weisblatt  
Arbitrator

On this 13th day of July, 2011, before me personally came and appeared Joel M. Weisblatt, to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

A handwritten signature in black ink, appearing to read "Joel M. Weisblatt", written over a horizontal line.

Attorney-at-law