

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Interest Arbitration Between:

BOROUGH OF LITTLE FERRY

AND

P.B.A. LOCAL NO. 102

Docket No. IA-98-62

BEFORE: ERNEST WEISS, INTEREST ARBITRATOR

APPEARANCES:

FOR THE PBA:

RICHARD D. LOCCKE, ESQ.
LOCCKE & CORREIA

FOR THE BOROUGH: BRIAN T. GIBLIN, ESQ.
GIBLIN & GIBLIN

PRELIMINARY STATEMENT

The above parties are signatories to a Collective Bargaining Agreement for the term of January 1, 1995 through December 31, 1997. The bargaining Unit consists of all regular full time Police Officers employed by the Borough except the Chief of Police.

Since the parties were unsuccessful in negotiating a successor agreement, I was designated to serve as Interest Arbitrator in accordance with the rules of the Public Employment Relations Commission. Prior to my arrival the parties engaged in a series of collective bargaining sessions and were successful in resolving some outstanding issues.

Initially I attempted to mediate the remaining disputes in order to help resolve the remaining issues voluntarily. All the remaining issues, except those set forth below, were eventually resolved by the parties. The parties also agreed that the duration of the new Agreement will be for three years.

As a result, I convened a formal Arbitration session on July 31, 1998. During the formal hearing the parties were afforded the opportunity to present documents, testimony and argument in support of their respective position. The proceedings were transcribed and the parties were also afforded the opportunity to submit post-hearing briefs which I thoroughly considered.

Since the parties failed to agree upon an alternative form of submission, I am mandated by statute to decide the outstanding issue with conventional authority and in accordance with the revised statutory criteria, which is as follows:

STATUTORY CRITERIA

The Statute requires the arbitrator to: Decide the dispute based on a reasonable determination of the issues, giving due weight to those factors listed below that are judged relevant for the resolution of the specific dispute. In the award, the arbitrator or panel of arbitrators shall indicate which of the factors are deemed relevant, satisfactorily explain why the others are not relevant, and provide an analysis of the evidence on each relevant factor.

1. **The interest and welfare of the public. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by P.L. 1976, c. 68 (C.40A: 4-45.1 et seq.)**
2. **Comparison of the wages, salaries, salaries hours, and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing the same or similar service and with other employees generally:**
 - (a) **In private employment in general: provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.**
 - (b) **In public employment in general; provided, however each party shall have the right to submit additional evidence for the arbitrator's consideration.**
 - (c) **In public employment in the same or similar comparable jurisdiction, as determined in accordance with section 5 of P.L.1995, c. 425 (C.34:13A-16.2); provided, however that each**

party shall have the right too submit additional evidence concerning the comparability of jurisdictions for the arbitrator's consideration.

3. The overall compensation presently received by the employees, inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other benefits received.
4. Stipulations of the parties.
5. The lawful authority of the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering the factor are the limitations imposed upon the employer by P.L. 1976, c. 68 (C.40A:4-45. 1 et seq.)
6. The financial impact on the governing unit, its residents and taxpayers. When considering this factor in dispute in which the public employer is a count or a municipality, the arbitrator or panel of arbitrators shall take into account, to the extent that evidence is introduced, how the award will effect the municipal or county purposes element as the case may be, of the local property tax; a comparison of the percentage of the municipal purposes element or, in the case of a county, the county purposes element, required to fund the employee' contract in the preceding local budget year with that required under the award for the current local budget year, the impact of the award for each income sector of the property taxpayer of the local unit; the impact of the award on the ability of the governing body to (a) maintain existing local programs and services, (b) expand existing local programs and services for which public moneys have been designated by the governing body in a proposed local budget, or © initiate any new programs and services for which public moneys have been designated by the governing body in a proposed local budget.
7. The cost of living.
8. The continuity and stability of employment including seniority rights and such other factors not confined to the foregoing which are ordinarily or traditionally considered in the determination of wages, hours and conditions of employment through collective negotiations and collective bargaining between the parties in the public service and in private employment. (N.J.S.A. 34:13A-16g)

THE BOROUGH'S LAST ECONOMIC OFFER:

1. Duration: Three years
2. Salary: 3% across-the-board increase in each of the three (3) years of the contract.

THE PBA LAST ECONOMIC OFFER:

1. Duration: Three years
2. Wage Increase: 5% increase effective each successive January 1.
3. Longevity: Current maximum longevity, presently 9%, expanded to 10% and further, the last plateau of longevity which is presently 25 years, be reduced to 24 years.
4. Sick Leave: Current allocation of 12 days be increased prospectively to 15 days per year, and the current 120 day maximum accumulation bank formula be increased to 150 days.
5. Detective Increment: The current detective increment be increased to \$250.00 annually.

THE PBA NON-ECONOMIC OFFER:

1. Promotional Procedure: As set forth in Item No. 11 on P1.

THE INTEREST AND WELFARE OF THE PUBLIC

The PBA argued that the interest and welfare of the Little Ferry is well served by the 27 members of this Police Department. However, it pointed out that there has been a significant reduction in numbers of sworn officers and certain supervisory positions. Since 1996 the positions of Deputy Chief and a sergeant has not been filled. Additionally, a Senior Patrolman retired in 1997. The PBA regarded these changes in the staffing structure to be significant.

It further argued that the workload of the Department is substantially higher in both numbers of calls and types of services provided. It pointed out in Chart No. 2 that in 1981 there were 12,000 jobs dispatched with 28 officers whereas in 1997 that number increased to 16,275, an increase of 36%. The PBA also argued that the largest increase in workload occurred as a result of an agreement to provide police services for the Borough of Teterboro on shared basis with the Borough of Moonachie. The PBA now patrols Teterboro for which Little Ferry receives \$300,000 per year. This occurred during the last Contract and therefore no adjustment had been made for the additional workload and the \$300,000 generated by the members of the PBA. A further indication of the recognized need for additional staffing is the fact that the Borough filed a COPS FAST grant application.

The Borough acknowledged that the interest and welfare of the public are best served by providing fair wages and conditions of employment to police Officers while at the same time insuring the economic viability of the Borough and its inhabitants.

In contrast, the Borough also argued in relevant part that under this criteria the PBA is interested only in its own demands, considering only the needs of its membership. However, when the Borough formulates its economic proposal it takes into account not only the needs of the PBA but also the realities of the municipality which has a large senior-citizen population and an increase in taxes necessary to fund the PBA proposal.

In support of its position the Borough introduced the testimony of Councilwoman Henriquez, a life-long resident of the Borough. She stated in relevant part that the "...Council really respects its police department, and we've done a lot." She also pointed out that a 3% increase in salary for a top patrolman is about \$1,800 per year which equals \$35.00 more per week. She further pointed out that the per capita income in the Borough is about \$27 or \$28,000 per year. Therefore, \$35.00 per week is substantial.

The Borough also argued that the demands of the PBA ignores the economic conditions of the community and the ability of taxpayer to pay for those salary increases. In this regard the Borough provided, in its post hearing brief, a Chart showing the increases received since 1985 through 1997. During this period, the top patrolman's salary was increased an average of 7% per year. As a result the Borough concluded that its last offer will provide a fair and equitable wage package for the police officers while allowing the Borough to maintain a full complement of Officers.

COMPARISON OF WAGES AND TERMS AND CONDITIONS OF EMPLOYMENT

In analyzing this criteria the PBA argued that its members are not paid well in comparison to 13 other departments whose contracts were placed in evidence. This is particularly true since the expansion of the jurisdictional

obligations in neighboring Teterboro, which generates \$300,000 annually for the Borough. It pointed to its Chart No. 3, which depicts the average wage for 1997 for top patrolman to be \$65,173 as opposed to \$63,656 for Little Ferry, which is 2.4% below the average. The PBA reasoned that it would take more than 2% increase in 1997 wages just to bring this bargaining unit up to average prior to considering any wage increase herein.

In this regard the PBA submitted Chart No. 4 depicting the increases for 1998, 1999 and 2000 averaging a total of 12.5% for the three years. It reasoned therefore that if one adds the 2.4% required to come up to average, it becomes 14.903%, which is almost exactly the PBA final position with respect to wages.

The PBA further argued that there are no offsetting benefits in Little Ferry to counterbalance the poor wage program. In this regard the PBA submitted Chart No. 5 comparing maximum longevity benefits for the contracts in evidence. The average maximum indicated is 11.444% as compared to 9% for Little Ferry. Here the PBA is seeking an additional 1% upon completion of 24 years of service. This would result in bringing Little Ferry up to 10%, still below the average of the contracts in evidence.

Another comparison of offsetting benefits would be the available sick days. In this regard the PBA argued that the 12 sick days available to the members of this bargaining unit is also significantly below average. In support of this position the PBA produced Chart No. 6 showing sick-day maximums among other Bergen County Municipalities in evidence. The average on this chart is 14.125 annual sick days, as opposed to 12 for Little Ferry. The PBA argued that this chart clearly supports the position of the PBA for an increase of sick-days.

Chart No. 7 compares holiday benefits of Little Ferry with 11 other communities. This benefit of 13 annual holidays is also slightly below average of 13.18.

With respect to the private sector comparisons the PBA argued in part that given the statutory obligations and treatment of police officers under New Jersey law, there can be no significant comparisons with the private sector and such comparisons should not be found to be controlling. This is particularly so since there are no private sector jobs that are comparable to the duties of an armed sworn officer charged with upholding the law and protecting the public.

Under this criteria, the Borough argued in part, that wages in general and those for other Borough employees have increased at a rate closer to the Borough's proposal. Other bargaining units of the Borough such as local 2326 of the UAW received wage increases from 2% to 3.5 % over a four-year period of the agreement. The Borough has also submitted numerous interest arbitration awards of other communities, which indicate settlements in the range of 3% to 3.5% per year. The Borough stressed that none of the awards approach the PBA demand of 15% wage increase over the three years of the proposed contract. In this regard it pointed out that in the contiguous community of South Hackensack the award was 9.75% over the three years of 1996, 1997 and 1998. The Borough concluded that on the basis of this criteria, the PBA presented no proof that such a large wage increase is justified.

With respect to the overall compensation presently received by the employees, the Borough pointed out that the members of the PBA currently enjoy a generous package of benefits other than wages. In this area the

Borough listed all the available benefits and concluded that they are very competitive, especially considering the small size of the community and the low crime rate.

STIPULATION OF THE PARTIES

Both parties proposed a three-year contract. The undersigned is not acquainted with any other stipulations except those of a procedural nature.

Here, the Borough also pointed out that prior to the evidentiary portion of the hearing the parties agreed to include items 5a and 5b of the PBA proposal (P1), involving vacations.

THE LAWFUL AUTHORITY OF THE EMPLOYER

Under this criteria the PBA argued in relevant part that this criteria presents no obstacle to the full funding of the PBA proposal. The focus of this criteria according to the PBA is essentially the "Cap Law".

In this regard the PBA pointed out that the Borough used 2.5%, the lowest of all cap options, and still adopted a budget that was significantly within the allowable amount. The borough elected not to use the discretionary cap ability to go as high as 5%. The PBA further pointed out that Cap flexibility not utilized in a budget year may be carried over to be used during the next two budget years. This amount, available for the Borough in 1998, is \$511,639. The PBA concluded that the Cap law presents no problem in this case.

In this regard, the Borough argued in part that in the past it had paid competitive wages and benefits to the members of the police department. The Borough further pointed out that the evidence reveals that the benefits

received by the members of the PBA exceed those receive by most or all of the Communities in Bergen County. The Borough stressed that if the PBA position is awarded it would increase the base salary of atop patrolman from \$63,656 in 1997 to \$73,690 by the end of the contract in 2000 not including the rise in the cost of benefits. This would represent an increase in wages of 15.76% over the life of the contract, which would be excessive by any standard. This, according to the Borough, would unfairly ask the taxpayers of Little Ferry to shoulder such a large financial burden.

THE FINANCIAL IMPACT ON THE GOVERNING UNIT, ITS RESIDENTS AND TAXPAYERS

The PBA insisted that its final proposal in this case would not present any adverse impact on the governing unit its residents and taxpayers. There is sufficient flexibility in the budget to more than accommodate the difference between the parties' positions. According to the PBA the Borough has a strong tax base and a very high current tax payment rate. This, argued the PBA, is an indication of solid fiscal strength. Additionally, the PBA provided Chart No. 9 indicating that Little Ferry is 22nd out of 27 Bergen County towns in "Total Tax Levy Per Capita" as set forth in Employer Exhibit T 34. It pointed out further that the municipal portion of the tax levy is approximately 37% while the school portion is 54%. Therefore, the PBA pointed out that the results of this proceeding in any event, would effect only 37% of the tax levy.

The PBA also submitted Chart No. 10 which indicates that the entire bargaining unit base wage totals \$1,712,651. This establishes that one percentage point is \$17,126.00 This amount is actually somewhat high since it assumes that all 17 of the patrolmen are at the maximum step, which

is not the case herein. This would equate to only about \$3.00 per year for a hypothetical \$3,000.00 tax bill. However, the PBA maintained that there is ample flexibility in the existing budget to fund the few percentage points separating the parties. The PBA insisted that the Police Department is paying for itself, given the \$300,000.00 annual income for patrolling Teterboro. It concluded that there is more than ample founding available for an appropriate award in favor of the PBA position.

Under this criteria the Borough argued that the average property values, assessed value and ratables have been decreasing steadily in the Borough. There has been 5.76% reduction in assessed value. During the same period the salaries of the PBA have on average, risen by 4.52% per year. The Borough pointed out that it had lost \$832,713.00 in State Aid over the last four years. It provided Chart No. 4, which shows that the dollar difference in the two offers amounts to \$265,146.00 over the life of the contract. The borough insisted that, under such economic conditions, the Borough's offer must be regarded at least as being reasonable or even generous. According to the Borough, the additional revenue generated by patrolling Teterboro should not be a factor. The patrolling of this area does not change the workload of the employees, they continue to perform the same type of work.

THE COST OF LIVING

Although the PBA recognizes that the cost of living data is somewhat below its last offer position, it argued that this is only one of 8 criteria and not the controlling one. It urged that one should consider the cost of living criteria only as an indicator.

On the Cost of Living criteria the Borough pointed out that the CPI is recognized to be one of the leading economic indicators used to measure inflationary trends. Because of its reliability in determining the cost of living, it is widely used to determine the reasonableness of proposed wage increases. The Borough reasoned that since the higher CPI in the past justified higher increases in wages, the modest CPI increases for the last several years, certainly justifies lower wage increases. The Borough argued that the PBA 5% proposal is twice the rise in the CPI in recent years. It pointed out that while there may have been reasons in the past to grant increases greater than the CPI, there was no evidence from the PBA to indicate that this should continue.

THE CONTINUITY AND STABILITY OF EMPLOYMENT INCLUDING SENIORITY RIGHTS AND SUCH OTHER FACTORS NOT CONFINED TO THE FOREGOING WHICH ARE ORDINARILY OR TRADITIONALLY CONSIDERED IN THE DETERMINATION OF WAGES, HOURS, AND CONDITIONS OF EMPLOYMENT THROUGH COLLECTIVE NEGOTIATIONS AND COLLECTIVE BARGAINING BETWEEN THE PARTIES IN THE PUBLIC SERVICE AND IN PRIVATE EMPLOYMENT

Under this criteria the PBA once again emphasized the additional revenue generated from the increased jurisdiction in Teterboro. The PBA also pointed out that there is now additional revenue being produced by its members due to increased court activity. In 1997 for example, the Borough anticipated \$129,518. The actual amount generated was \$170,108 an increase over anticipation of 31%. Also, the PBA argued that the Borough is assisted through the COPS FAST program grant. The Borough is paying

less for their police services and gaining significantly more by way of income into the general treasury.

The PBA concluded that based upon the testimony and the evidence introduced at the hearing, the Arbitrator should rule in favor of the last offer position of the PBA as set forth herein above.

The Borough insisted that there has been no showing that the continuity and stability of employment would be adversely affected by the Borough's' proposal or enhanced by the PBA's' proposal. It reiterated that this Bargaining Unit enjoys an extremely competitive wage and benefit package. Additionally, the Borough pointed out that it has not sought givebacks of any type and merely seeks to moderate the rate of salary increases in line with existing economic reality.

The Borough concluded that its offer would allow the PBA to maintain its competitive standing among the comparable municipalities and would allow the Borough to continue to pay a competitive wage and benefits in line with its ability to pay. The Borough claimed that its offer is reasonable and takes into consideration the fair application of the statutory criteria.

DISCUSSION AND OPINION

I agree with the sentiment of both parties that **the interest and welfare of the public** is best served by providing fair wages and conditions of employment to the officers who serve and protect the citizens of the community. However, differences exist in the definition of what and how much is fair. That, obviously is the basis of this Interest Arbitration. The PBA is seeking in part, a base wage increase of 5% whereas the Borough's

last offer was 3%. Although I instinctively resist splitting the difference in the position of the parties, in this instance I did arrive at a wage increase of 4%. This is exactly between the two positions of the parties with respect to base wage increases. However, the 4% is actually closer to the position of the Borough since I have also denied the non-wage economic proposals of the PBA involving longevity, sick leave and detective stipend.

I recognize that increased productivity in a police department is not necessarily a reason, by itself, to increase wages. In this instance however the additional productivity on a shared basis, involves patrolling Teterboro, a contiguous municipality. Additionally, this assignment generates an additional \$300,000.00 for the Borough of Little Ferry. Under these circumstances, the 4% wage increase is, in my considered opinion, not unreasonable. The 5% requested by the PBA is substantially beyond the 4.212% average granted other police departments in the state. I considered the testimony of Councilwoman Henriquez who pointed out that the 3% increase amounts to \$35.00 per week for a top patrolman. However, on balance, given the additional territory the Department is now patrolling, and the additional revenue generated, I am inclined to favor the 4% annual base-wage increase.

In reaching this conclusion, I also considered the **Comparison of Wages and Terms and Conditions of Employment**. In this regard, both parties were able to put forth statistics favoring their respective positions. The PBA produced Chart No. 3 showing that base-wage in Little Ferry is 2.4% below average and the settlements in Chart No. 4 average 12.5% for the three years considered herein. Consequently the PBA reasoned that just to bring this unit up to average, would take a wage increase of 14.903% which almost represents the 5% PBA proposal for wage increases.

However, I believe for the reasons stated above, that the 4% per year is more reasonable in light of all the statutory sub-criteria. While the comparison with the private sector is always difficult for many of the obvious reasons. I must consider that the taxpayers of this community are predominantly in the private sector and therefor the average wage increases in that sector necessarily effect the community's economic ability to shoulder the increases herein.

The overall compensation presently received by the other employees in the Borough was also considered to be significant. This sub-criteria supports the Borough's position that the 5% wage increase sought by the PBA was not reasonable. However, the other Units were not shown to have had a dramatic increase in jurisdiction as did the PBA and at least one of the units received an increase of 3.5% in one of the four years of that contract.

The **Stipulation of the Parties** essentially contained an agreement for a three-year contract, and the inclusion of items 5a and 5b of the PBA proposal (P1). However, this does not foreclose any other agreements of the parties, that may have been reached prior to my arrival and the procedural changes necessary to conclude the contract.

In the **Lawful Authority of the Employer**, the PBA essentially argued that the Borough had the authority but elected not to use its discretionary cap ability which is as high as 5%. Instead, the Borough elected to use only 2.5%, the lowest of all cap-options available. It further pointed out that the Borough had a carry-over for 1998 of \$511,639.00. However, this is obviously not money actually available but merely the amount by which the Borough could legally exceed its budget. I must also note that the ability to pay was not an issue herein. However, the ability to

fund the entire PBA proposal does not necessarily mean that the entire proposal is reasonable.

The Borough pointed out that if the entire wage proposal of the PBA were to be awarded, a top patrolman's base wage would clime from \$63,000.00 to \$73,000.00 by 2000. This would equal about 15.76% in wage increases alone over the life of the contract. Here, I agree with the Borough argument that under these circumstances, this amount would be excessive by today's standards. The record made before me in this case does not justify a wage increase of such magnitude. However, as already stated above, the 3% offer of the Borough falls slightly short of what I believe is reasonable.

The Financial Impact on the Governing Unit, its Residents and Taxpayers, would not be immediately devastating even if the entire PBA proposal were to be awarded. However, as stated above, being able to afford the increase is not necessarily the controlling factor in determining its reasonableness. When all eight statutory factors are taken into consideration the 4% wage increase appears, in this case, to be most reasonable.

The Cost of Living criteria favors the Borough position since the CPI increases have not been significant in recent years and inflation has been mostly under control. The Borough argued convincingly here that since the CPI has been decreasing the wage increases should also decrease.

In the Continuity and Stability factor the PBA again emphasized the additional \$300,000.00 revenue generated by the Teterboro arrangement. It further pointed out that the revenues from increased court activity exceeded anticipation by 31%. Although I agree that such substantial increases in productivity should be rewarded, I continue to believe that 5% increase in each of the three years of the contract is somewhat high.

The Borough correctly pointed out that there was no hard evidence that the **Continuity and Stability of Employment** would be negatively affected by the Borough's proposal or enhanced by the PBA proposal. However, such evidence is difficult to gather and most often it is speculation. The best evidence of course, in this regard, is the turnover of employees, where officers give up their seniority in order to seek a position elsewhere for greater compensation. I have nothing in the record to indicate that such a condition exists in Little Ferry.

Nevertheless, both sides agreed that maintaining a competitive and fair compensation program in the police department is desirable and is in the best interest of the citizens and taxpayers. With this in mind and considering all the revised statutory criteria, I have concluded, for the reasons stated above, that the PBA wage proposal was somewhat high and the Borough's proposal was found to be somewhat low.

Therefore, after thoroughly considering all the evidence in light of the revised statutory criteria as required, and after reviewing the respective positions and the post hearing arguments of the parties, I make the following:

AWARD

1. Duration: January 1, 1998 through December 31, 2000

2. Wages: Wage increases to apply across the board on each step, rank and position in the PBA contract as follows:
 - a. Effective January 1, 1998 an increase of 4%
 - b. Effective January 1, 1999 an increase of 4%
 - c. Effective January 1, 2000 an increase of 4%

The Borough proposed no other changes. All other economic and non-economic changes proposed by the PBA in its final offer herein are hereby denied. The present agreement shall continue for the above duration, with the appropriate "housekeeping" changes and the changes, if any, as agreed upon by the parties, prior to the formal hearing in this arbitration.



ERNEST WEISS, ARBITRATOR

STATE OF: NEW JERSEY
COUNTY OF: MONMOUTH

On this ^{08th} day of December 1998, before me personally came and appeared Ernest Weiss, to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged that he executed same.



JILL E. PARKAS
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires May 5, 2000

