

STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION  
CN 429  
TRENTON, NJ 08625-0429

Docket No. IA-96-113

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In the Matter of Arbitration Between

**TOWN OF NEWTON**

-Employer-

and

**PBA LOCAL 138 SOA**

-Union-

OPINION

AND

AWARD  
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**ARBITRATOR:** Ernest Weiss, mutually chosen by the parties pursuant to the rules and regulations of the New Jersey Public Employment Relations Commission.

**MEDIATION**

**SESSIONS/HEARINGS:** August 13, 1996, October 28, 1996, and January 24, 1997. February 19, 1997 Both counsel thereafter filed post-hearing briefs, and counsel for the Town filed a reply brief.

**APPEARANCES:**

For the Town

William E. Hinkes, Esq.

Camille Furguele, Manager

For the Union

Allen Hantman, Esq.

Donald T. Donofrio, Police Sergeant

Michael Pandiscia, Police Sergeant

## **BACKGROUND**

This interest arbitration involves the Newton Superior Officers Association in the Town of Newton, Sussex County, New Jersey. The SOA represents six members, five sergeants and one captain. The organizational chart contains a slot for a lieutenant, but the position has never been filled.

The parties met on seven occasions from late 1994 through 1995. This Arbitrator was appointed by letter dated May 24, 1996 from Timothy Hundley, Acting Director of Arbitration of the New Jersey Public Employment Relations Commission. The formal petition for compulsory arbitration had been filed on February 29, 1996 by Allen Hantman, Esq., counsel for PBA Local 138 SOA. Hearings were held in this matter on October 15, 1996 and October 28, 1996 at the Town Hall in Newton. Briefs were submitted on March 18, 1997 by both counsel, and William E. Hinkes, Esq., counsel for the Town of Newton, filed a reply brief as permitted under the parties' agreement on April 2, 1997.

This interest arbitration is being conducted pursuant to the Police and Fire Public Interest Arbitration Reform Act (Chapter 425, Laws of New Jersey, 1995) which vests the arbitrator with conventional authority absent the parties' agreement to an approved alternate method. The parties did not reach such an agreement and, accordingly, this Award is issued under conventional authority.

**FINAL OFFER OF THE ASSOCIATION**

(Exhibit SOA - 2)

In addition to the items previously agreed upon, this Last Best Offer is submitted on behalf of the Newton Superior Officers Association.

**1. Term**

Four (4) years: 1995; 1996; 1997; and 1998

**2. Salary**

1995	5%
1996	5%
1997	5%
1998	5%

**3. Salary Guide**

1997 Sergeants - Step Guide - Eliminate Step 2  
1998 - Eliminate Step 3

**Lieutenant Salary**

1996, applicable for life of contract, shall be set at 8.5% above top sergeant.

**Captain Salary**

1996, applicable for life of contract, shall be set at 8.5% above Lieutenant.

**4. Uniform Allowance**

1996 \$50.00 increase above existing allowance  
1997 \$50.00 increase above existing allowance

1998 \$50.00 increase above existing allowance

5. **Medical Benefits**

Continuation of existing medical benefits for the life of the contract.

6. **Sick Leave Buy-Back**

1998 - 50% of accumulated unused sick leave upon retirement.

1998 - Detectives shall be entitled to receive cash payment for all unused compensatory time in excess of 50 hours up to a maximum of \$2,500.00 each year.

**FINAL OFFER OF THE TOWN**

(Town counsel's brief)

The disputed economic issues involve the Superior Officers' demand for 5% raises for the years 1996, 1997, and 1998, while in its Last Best Offer the Town increased its offer of 2% annual raises to 3% in each of those years. The Town proposes that medical and dental benefits cover the employee only; the Superior Officers' position is for the continuation of benefits at the prior contract's level of full family coverage. The Superior Officers demand an annual increase in clothing allowance, while the Town proposes that the payments be maintained at current levels. The officers seek the elimination of Steps 2 and 3 in the Sergeant's Scale, while the Town would keep the Scale intact. Finally, the officers request an increase in the percentage of sick leave value that can be bought back prior to retirement and that detectives be permitted a new compensatory time buyback, both of which the Town has rejected.

## **POSITION OF THE SOA**

In his brief, counsel for the SOA addresses the eight statutory criteria and offers the following comments and arguments in support of the SOA's final offer under the criteria.

1. Counsel argues that The Interest and Welfare of the Public is the maintenance and encouragement of an experienced department which, in this case, quite often means a sergeant working as the single officer on duty. He argues that this primary benefit, i.e. an experienced and motivated department, outweighs any detriment that a tax increase necessary to fund this offer might bring.

2. Comparability. Counsel argues that, in light of the unique duties of a police officer, any comparison with the private sector must be understood against the contrast of a civilian's hours and duties as compared to those of a police officer. However, given that caveat, he cites 1996 increases for supervisors employed by nearby AT&T and Beneficial Technology Corporation and argues their range of increases from across the board 4% raises plus merit increases to potential 17% salary increases clearly contrasts favorably with the mere 5% per year the SOA is seeking.

Moving to the statutory criteria of comparability with other public employees within Newton itself, counsel notes that the Town's non-organized employees or organized employees not free to invoice interest arbitration were "compelled to accept 3% across-the-board raises." However, teaching professionals within the Newton Education Association received a top pay rate of \$58,500.00, plus a

possible \$7,000.00 increment for their supervisory responsibilities, which total salary far exceeds any offers on the table to the SOA.

Finally, in comparison with public employment in similar jurisdictions, counsel cites Hopatcong Boro, Vernon and Sparta and argues they all have no more than two steps at maximum to top sergeant wage rate, whereas Newton has four; Newton's salary is substantially lower than Sparta and Vernon, ranging from \$2,000.00 to \$6,800.00 lower in 1995. These municipalities have also already received 4% increases which will put Newton further behind even if it were to receive a comparable 4% increase.

Counsel also asserts that the fact that a comparison of sergeants' salaries is absent from the detailed survey the Town offered strongly suggests the figures would not justify the salary Newton is currently paying its superiors or its 3% offer.

3. On the subject of Overall Compensation, the SOA representative contends that, with the exception of clothing allowance and the detective compensation buy-back it receives, virtually the same benefits are paid to all other Township employees. Argument is made, however, that the Town's attempt to limit the family health and dental coverage seems either to be a punitive gesture since it is presently aimed only at the SOA or a throw-away item used as a ploy in the negotiation process.

4. Counsel claims the Stipulations of the Parties reached is limited to the agreement that all other existing contract provisions remain in place.

5. Counsel asserts that the Town failed to ever claim that the awarding of the requested increases would exceed the Town's legal authority under the CAP provision.

6. The Association claims that the myriad of proofs the Town submitted prevent us from ascertaining the real impact the SOA request would have on the

Town. Counsel argues that the SOA proposals for rank differential of 8.5% between top sergeant, lieutenants and captains and its step two and three elimination in sergeant's steps have no financial impact during the term of this contract.

7. Cost of Living. Argument is made that the excess cost the SOA seeks above the stipulated 3% cost of living increase is made merely in an attempt to play catch-up with officers in such towns as Vernon and Sparta.

8. Finally, on the subject of job stability, counsel asserts that, with the anticipated growth within the Town, no scenario exists which would anticipate any decline of officers in a layoff.

In conclusion, SOA counsel argues that the proposed 5% wage increases; the elimination of two vacant sergeant steps; the creation of a proper rank differential; increase in clothing allowance and the maintenance of existing benefits have been proven and should be awarded.

### **POSITION OF THE TOWNSHIP**

In his brief and reply brief, counsel for the Town of Vernon argued these points under the eight statutory criteria.

1. Town Manager Camille Furguiele's compendium of relevant facts captioned Police Arbitration Report (Exhibit T-1), among other facts, establishes that: (A) the per capita income in Newton is \$14,767.00 which ranks the Town 446th out of 567 New Jersey municipalities; (B) Newton is the county seat which helps explain why 33 1/3% of the land and structures are not taxable; (C) from 1992 to 1996, Newton's assessed real property valuation fell \$38 million or nearly 10% of its prior valuation; (D) anticipated new ratable will only produce \$15,510.00 in additional tax revenues. It is argued that these factors, among others, identify the

“public” whose “interest and welfare” the Arbitrator is compelled to consider under the statute when appraising the parties’ final offers.

2. Counsel next asserts that the CAP, as applied to Newton, limits its unbudgeted cost increases to \$27,150.00 which would be more than exhausted were the SOA package to be awarded. In summary, the Town argues its legal authority via the cap limit is best honored by the adoption of the Town’s final offer.

3. Under the criteria of comparability, it is argued that the data presented by the Association as to AT&T and Beneficial Technology must be rejected since the statute requires comparable data “in private employment in general” whereas these comparisons are quite specific.

On a local basis counsel argues that all other union and non-union municipality employees are recipients of 3% increases for 1997 which the SOA totally ignores while highlighting salary figures from the Newton Board of Education’s teachers’ bargaining unit. Counsel notes that testimony established the Board is independent of the municipality and has had its budget rejected three out of the past four years by the voters.

As to comparability among similar law enforcement agencies, the Town argues that those “comparables” selected by the SOA (Vernon, Hopatcong and Sparta) are from towns with significant budget surpluses and greater per capita income. In brief, towns better able to afford higher sergeant salaries.

4. As to the officers’ Overall Compensation, reference is again made to the Police Arbitration Report which documents the actual cost of the various benefits the superior officers enjoy from longevity to health and dental benefits. Note is made that these officers earned from 14% to 28% in supplemental pay by working quasi-duty jobs such as traffic control at construction sites.



5. Counsel views the Stipulations of the Parties merely as relating to the list of job responsibilities and the overall municipal budget both parties stipulated to in the hearings.

6. In discussing the Lawful Authority criteria, once again counsel cites the budget which shows that of the approximately \$201,000.00 of additional expenditures allowed in the 1997 budget, only \$27,151.00 is left after known expenditure increases such as the mandated \$40,000.00 increase in pension contributions are budgeted. It is argued that as Exhibit T-11 shows, the Town would need nearly an additional \$14,000.00 to cover the SOA demands in 1996, \$26,000.00 additional for 1997, and \$33,000.00 in 1998. In brief, counsel notes that, were the SOA final offer to be awarded, it would clearly put the Town over the applicable 5% cap limit.

7. Financial Impact. Although Newton held taxes constant from 1992 through 1995, in 1996 the local purpose portion rose 11% representing a 6.8% increase in the overall property tax levy. Several eminent factors including loss of state and federal grants and declines in both state aid and non-tax revenue threaten to require a significant tax increase or manpower and service reductions. While the Town had budgeted 3% in wage increases for 1996, 1997 and 1998 within its cap allowance, the 2% above the 3% the SOA seeks would result in an additional \$13.00 per year tax increase per house. As an option to the tax increase, the Town could also rescind non-union worker salary increases, delay hiring a 20th police officer or not fill the lieutenant's slot. Counsel provides a further laundry list of even less palatable options to demonstrate the adverse impact the awarding of the SOA offer would have on the governing unit, residents and taxpayers.

8. Counsel reviews CPI statistics and argues that, if anything, its offered 3% increase in reality exceeds the actual inflation rate whereas the SOA demand is more than 2% higher than the CPI without any offered justification.

9. Counsel merely notes that in Newton job security is a given as evidenced by the fact that all of the officers in this unit have at least ten years of service with the Town.

In conclusion, counsel goes on at length paying proper tribute to the officers and avering that, had it the wherewithal to do so, the Town would gladly pay the requested 5% increases sought, but that economic reality precludes it. Unfortunately, the Association request is not reasonable, whereas the Town's offer clearly is. As a result, the Town requests that the Interest Arbitrator adopt the Town's final offer.

10. In reply to the SOA brief, Town counsel makes the following points:

A. Contrary to the SOA's claim, the Town painstakingly detailed how a 5% award would exceed the Town's CAP or lawful authority. To award the Association's offer would exhaust or exceed the 1997 and 1998 CAP allowance.

B. A review of the proofs relied on by the SOA calls attention to the fact that it seeks to divert attention away from Newton's problems to more affluent towns which, as a result, makes their proofs irrelevant.

After further similar discussions, the Town ends its formal rebuttal by asking that its final offer be selected.

## DISCUSSION

Under the statutory criteria, the following is noted:

**Stipulations.** Beyond a stipulation as to the officers' job functions, there are no significant stipulations relevant to the decision of the most reasonable offer. The record must note that the parties' offers for 1995 have been mutually agreed upon leaving 1996, 1997 and 1998 to be resolved.

**The Lawful Authority of the Employer.** The Town limited its detailed discussion of the CAP law to 1997. While it asserts that only \$27,151.00 is left after paying for known increases to cover all other municipal operating expense increases/overruns in a \$3.7 million dollar budget, it fails to discuss available solutions beyond the 5% cap limitation. The mere fact that, as presented by the Township, only \$27,151.00 theoretically remains to fund such increases does not require that a final wage award be dictated solely by that fact. As discussed below, the ultimate wage package award varies little over what the Town has budgeted for, but the wage award is not dictated exclusively by the figure cited in the CAP calculations. Again, while noting that the Town's recitation of the \$27,151.00 figure is not dispositive of the determination of which is the more reasonable final offer, other facts exist which are supportive of that conclusion. The Town asserts that in each of the past five years, it has adopted ordinances authorizing it to increase the annual CAP over and above the respective Index Rate for each of these years. This fact, along with other elements of Ms. Furguiele's testimony and report on the financial condition of the Town as related to the CAP, further support the

conclusion that the Town's offer is more reasonable when viewed under this particular criteria.

**Cost of Living.** The Town's offer is by far the more reasonable in any discussion of the cost of living. Ample documentation is offered establishing the cost of living for the period from June 30, 1993 through June 30, 1996 at below 3% each June to June period. The actual cumulative three-year annual average cited calculates to an actual average 2.6% increase. Counsel further calls attention to a recent report by the Borkin Commission on behalf of the Congress that concludes that the CPI overstates the inflation rate by 1.1 percent. While not blindly accepting this report, it does serve to add support to acceptance of the Labor Department's CPI calculations as a maximum statement of any actual cost of living increase these officers and their families encounter.

**Continuity and Stability of Employment.** This criteria has little relevance in the decision issued in this Interest Arbitration Award. As noted by Town counsel, all of the superior officers have more than ten years of service, and Newton has never had a layoff of police officers.

**The Interest and Welfare of the Public.** This criteria is most relevant in the analysis of the parties' offers. Newton Town Manager Camille Furguiele authored a document captioned Police Arbitration Report which was introduced as an exhibit. The report is a compendium of Town financial statistics and police compensation statistics. Town counsel relies heavily on this report to argue that its final offer best serves the interest and welfare of the public -- the citizens of Newton. Counsel's arguments, relying as they do on specific factual data, more convincingly demonstrate that the interests and welfare of the public would be better served by the adoption of the Town's final offer vis a vis that of the SOA. Specifically the fact that Newton has a \$14,767.00 per capita income (albeit based on 1989 report); the

loss of \$38 million dollars in assessed valuation; anticipated minimal tax receipts from new ratables; and the past additional CAP history prove that the interest and welfare of the public will be best served by the issuance of an award much more closely aligned with the Town's final offer than the Association's. While Association counsel offers arguments which theoretically are sound (recognition of the value of experience; increments to acknowledge the increased value of such experience), they are clearly outweighed by the economic realities argued by the Town.

**Comparability.** The Town prevails in the evaluation of both parties' final offers under this most relevant criteria.

As to the private employment category, the SOA relies on AT&T and Beneficial Technology Corporation's 1996 salary increases. AT&T is generally recognized as one of the most desirable national employers to work for as a result of their compensation and benefit packages. The mere recitation by the SOA of AT&T's salary compensation package for "middle to low level managers" proves little. Much of it relates to a merit program which is not subject to comparison in this matter. Similarly, Beneficial's raise was 4% across the board plus merit raises.

In summary, the two selective-cited examples of private employers' 1996 supervisory wage increase packages on their mere face do not serve to argue convincingly for a four-year, 5% per year wage increase over that of a one-year, 5% increase and a three-year, 3% wage increase package.

Town counsel notes that the statutory language speaks of comparison of wages, salaries, hours and conditions of employment ...(a) in private employment in general ..." and offers that language to discredit the SOA proof and to support its citation of Labor Department statistics showing "working supervisory" level

employees receiving increases of less than 3% in the past year. This argument is most convincing and establishes the Town's 3% offer as the more reasonable as to private employment comparability.

Turning to public employment, comparability in the same or similar comparable jurisdictions, the SOA again limits itself to a single category - i.e. teachers in the Newton Public School system. In brief, it cites the top teacher rate of \$58,580.00 for academic 1995-1996 and cites, without documentation, additional increments for supervisory duties allegedly bringing this salary to \$65,217. There are several obvious arguments to question the legitimacy of this comparability argument. Again, the SOA example is selective; the Board of Education is a semi-autonomous employer; no actual rate of annual wage increase is cited over the '94-'95 academic year; and the 3% increase to Newton Township employees is ignored. In brief, the single citation of a gross wage rate to teachers fails to argue convincingly for a 5% versus 3% final wage offer.

Of most relevant inquiry, at least based on the ability to view a one-to-one comparison, are the proofs dealing with other police superiors in similar comparable jurisdictions. No real argument based on comparability is made by the SOA on the wage increase final offers with the exception of a list showing only four Sussex County municipalities on which Newton is second lowest or third highest. Statistics offered by the Town in the Police Arbitration Report show that the other three municipalities, viz. Vernon, Hopatcong and Sparta appear on the face of such statistics to be in considerably better economic and budgetary condition than Newton and better able to afford higher salaries.

The SOA relies on comparability of other Sussex police departments to substantiate its request that two of the four present steps under the Sergeant

category be removed. It cites seven departments and argues they have either a single or, at most, a two-step sergeant rank.

Similarly, the SOA cites Hopatcong and Vernon in support of its argument that an 8.5% step differential be established between the ranks of sergeant to lieutenant and lieutenant to captain.

In summary, the Association failed in its limited comparison of three other municipalities sergeants' wage rates to have its proposed 5% increase implemented over the Town's offered 3%.

The Town disputes the SOA claim that the elimination of two steps of four in the Sergeants' classification would not cost the Town during this contract period. Newton asserts it would cost the Town \$2,207.00 in 1997. Based on the arguments before me, I am convinced that the SOA's proposal is meritorious and, as noted below, it is adopted in the final award.

As to the 8.5% wage differential the SOA seeks, Newton costs this provision out at \$6,269.00 for 1997 and 1998 -- 1995 and 1996 having been waived. I have not been convinced by the proofs submitted by the SOA that an imposed differential rate is more reasonable than the Town's position as of this contract term. There is ample support in police organization textbooks arguing for the general principle of a set percentage rank differential. In this instance, there is insufficient proof to overcome the additional cost factor to the Township.

**Overall Compensation.** The evidence in the record discloses that the SOA's members enjoy a standard assortment of benefits inclusive of wages, vacations, holidays, insurance, pensions and health benefits among others. The only noteworthy issue of relevance in this arbitration is the Town's proposal to limit medical and dental benefits to the employee only. As discussed more fully below, this proposal is not convincingly supported and is rejected.

**Financial Impact on the Governing Unit, Its Residents and Taxpayers.** The Town, in Exhibit T-11, has provided the most complete dollar cost analysis of the two final offers. The Town Manager was subject to extensive cross-examination on this analysis and on the overall subject of the financial health of the Town. To the undersigned, her testimony met the burden of proof necessary to convince this trier of fact that the Town's final offer would have a less deleterious impact on the Town and its residents and tax payers. While questions were raised by the SOA which argued to some extent for an award nearer its 5% final offer (e.g. - no municipal tax increase for five years; nearly \$60,000.00 decrease in budgeted police department salary appropriation for 1996 versus 1995), the sum total of her testimony, along with consideration of evidence from the other criteria (e.g. CPI rate; average public and private wage increases, rate of wage; \$14,767.00 Township per capita income), confirmed that the financial impact of the Town's final offer is the more reasonable of the two offers.



## **FINAL OFFERS**

Under the conventional authority vested in the Arbitrator, the following are the selections made from each of the final offers, together with appropriate rationale.

### **Wages**

The parties' offers for 1995 were both 5% and, accordingly, it is awarded. For 1996, 1997 and 1998, the Award shall be 3.5%, 3.5% and 3.5%. Calculations have shown that the approximate cost for 1996, 1997 and 1998 over the Town's 3% - 3% - 3% offer would be a \$5,612.00 total wage cost increase for the three-year period. Several factors have led to the conclusion that this is the most appropriate wage rate increase to be awarded, only one of which is the recognition that police superiors' wage increases more appropriately should exceed the increase the Town has offered its other employees due to the statutorily recognized "unique and essential duties" the police superiors perform.

### **Sergeants Steps**

The SOA proposal to eliminate Steps 2 and 3 of the present Sergeant's Guide is awarded. The lack of any significant cost to the Town during this contract and the rationale offered by SOA counsel in his brief have led to the determination that it is the more reasonable of the final positions.

### **Rank Differential**

As discussed above, the SOA failed to make a convincing argument that the called for 8.5% differential should be awarded. To do so would result in a cost to

the Town of approximately \$13,000.00 over the balance of the contract. Had proof been introduced that the present differential was inadequate witness reluctance of officers to seek these promotions, the decision could have resulted in a different conclusion. No such proof was offered, and the offer must be rejected.

### **Clothing Allowance**

The SOA produced a convincing argument by way of comparison with other departments, and when weighed against the cost increase to the Town of barely \$1,000.00, it is deemed the more reasonable and is awarded.

### **Detective Comp Time Buy-Back**

The SOA has failed to demonstrate the reasonableness of this proposal. If, in fact, the Town's present practice violates the Fair Labor Standards Act as the Association alleges, such a determination and remedy is best left to the Department of Labor.

### **Sick Leave Buy Back**

The SOA failed to establish the need or reasonableness of the increases sought within the present contract article and the proposal is denied.

### **Health Benefits Coverage**

The Town has failed to prove that its proposal to limit coverage to the individual employee is reasonable or warranted. Absent significant economic justification, such a proposal is unthinkable, and it is rejected.

For the reasons cited above, the following Award is hereby issued:

## AWARD

### 1. Wages

Effective January 1 of each respective year, the following salary and wage increases are awarded:

1995	5.0%
1996	3.5%
1997	3.5%
1998	3.5%

### 2. Sergeants' Wage Scale

1997 and 1998 -- Steps 2 and 3 are eliminated.

### 3. Uniform Allowance

1996	increased to	\$600.00
1997	increased to	\$650.00
1998	increased to	\$700.00

### 4. Wage Differential - Lieutenants and Captains

Denied.

### 5. Detective Comp Time Buy-Back

Denied.

### 6. Sick Leave Buy-Back

Denied.

7. **Medical and Dental Benefits**

1997 - The Town's proposal is rejected.

1998 - Full coverage shall remain in effect in 1997 and 1998 as provided for in 1995 and 1996.



ERNEST WEISS, Interest Arbitrator

STATE OF NEW JERSEY:

:SS

COUNTY OF MONMOUTH:

On this 7<sup>th</sup> day of June, 1997 before me personally came and appeared ERNEST WEISS to be known to me to be the individual described here and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.



**JILL E. FARKAS**

**NOTARY PUBLIC OF NEW JERSEY**

My Commission Expires May 5, 2000