
In the matter of Cumpulsory Interest Arbitration of PERC Docket IA-2011-050 as remanded, on the basis of considered appeal, by the Emloyer, Borough of North Arlington for re-consideration of the award of arbitrator, Frank A. Mason, by the N. J. PERC issued on July 19, 2011.

Police Benevolent Association , Local 95
Respondent.

The appeal in this matter was based on the contention that the wages awarded, as a package and part of a three year contract, were inconsistent with the lawfully required consideration of factors affecting the financial conditions faced by the Employer. Specifically, the Employer has asserted that the award of pay increases by the arbitrator were substantially influenced by a fraudulent exhibit entered into evidence by the Union.

This issue was brought before the Public Employment Relations Commission for hearing which resulted in a decision issued on June 13, 2011 which vacated the arbitration award and remanded it to this author for issuance of a new award.

In the findings of the PERC was specific mention as to the authenticity of the of a part of the Union's evidentiary submission which was seen as conflicting with that of the Employer and found to be untruthful. This was seen as being an unfortunate circumstance which could not have been known by the arbitrator at the time of the submission. The Commission excused the Employer for not having challenged that submission when offered and placed in evidence as being inadvertent.

The Employer asserted that this admission of the false evidence precipitated considerations by the arbitrator which could be seen as fundamental to the final determinations of the terms of the award. The Commission's attention was drawn to portions of the award which it felt were indicative of my having relied on the, now found to be, false evidence. The Commission pointed to several comments which I had included in narrative support of elements of that award.

This appears to have been a reflection of the case presented by the Employer which concentrated on just two points; the false information and my mention of the relationship of wage adjustments to parallel the treatment of the Chief of Police.

Here I intend to clarify my rationale for the determinations which I made as awarded in my decision. To do so requires attention to a number of details and misinterpretations. First I categorically deny that the wage adjustments awarded were a function of what supposedly was included in the Chief's contract. Clearly had the Chief's contractual salary increases been a fundamental factor the award for the police unit would have been equivalent. The

Chief's contract presented in evidence, and now found to be fraudulent, called for a series of increases. For the 2011 year the increase was to be 2.8%. In each of the next years that figure was 3%.

While it is certainly true that I mentioned justification of increases in part on the treatment of the Chief it must be obvious that this was not seen as a mandate for the rank and file as my award was 0% in 2011 and delayed increases in each of the next two years, neither of which equaled 3%. My explanation for this is stated in the Award, "There shall be no across the board increase in 2011." "In 2012 the impact from savings from the modified Health Benefits change will be sufficient to support an increase of 2.5% effective on April 1, 2012 and a second 2.5% increase on April 1, 2013." Further my comment in support of these increases makes no mention of any salary changes for the Chief. Instead I explained the basis for those increases as, "It is my best judgment that without the modification of the Health Benefits Plan (which the Union had resisted) I could not have justified these increases." I further explained in contractual terms, so that the officers involved would be able to see the rationale for my award, "I make that award with full cognizance of the continued income problems faced by the Borough but my award is in part due to the dedicated efforts of the short handed police organization which is providing services beyond the normal expectation as well as gains provided to the Chief of Police." And to my knowledge at that time the Chief was to be rewarded much more handsomely.

For anyone to describe my award as being predicated on the changes which I believed to be factual, concerning the adjustments to be afforded to the Chief, they would have to possess a totally different view of what would universally be seen as equal treatment.

In my award I felt it only logical to assuage the police with regard to the limits of salary increases granted. I almost decided to include an apology for the Borough having made the now seen to be outrageously generous deal with the chief. Out of respect for the Borough I did not do so. My other comments as to consideration of the apparent good luck of the Chief lending credibility to the improvements provided to the police unit members were meant to be constructively supportive of the Department and instructive as to the morality of reasonably equivalent consideration of all personnel. I certainly made no attempt to bestow equality of wage improvement on all, an unaffordable target. There is no provision in my award of a beneficial condition or economic change being attributable to the terms of or dependent on the contract between the Borough and the Chief.

My comments as to the relevance of the award to treatment of the Chief were meant to refer to the concept of all employees being treated as well as could be afforded, not that they were going to be treated in lock step with the Chief, which concept clearly was not advanced. The design of my award was to grant increases which I deemed to be deserved and affordable by implementation of the part of the award which took away the more expensive Health Benefits Plan. In fact the savings related to that change, which would and will now be imposed on other employees, was expected to provide substantially greater savings than the limited salary gains granted.

I might add that in a message from the Borough I was urged to expedite this remand process in order that the new Health Benefits Plan could be implemented as delay was costing the Borough \$50,000 per month in higher premiums. Only a small portion of those savings would more than offset the increased compensation to the police officers represented. This combination of changes should have been lauded by everyone.

In the meeting of August 18th some of this was discussed. The Employer asserted that none of the savings from a new Health Benefits Plan would be realized before November of this year due to these procedural delays and therefore none would be available to offset the pay increases. Apparently there was no cognizance of the fact that the first increase in pay awarded would not take effect until April of 2012! Seems soon enough to provide relief to me!

In the Award I clearly stated my position as, "I would like to reiterate my conviction that the adjustments awarded herein will not endanger the Borough's attempts to finalize a budget which would create need for additional taxes." "The combination of savings resultant from adoption of the State's Health Benefits Plan coupled with the reductions within the employment of the Police Department will prove to be substantially larger than the new costs of this award which will largely be deferred until the end of 2010 and into 2012 and are well deserved if modest." This was written at the time when I anticipated the award to be put into effect with the new Health Benefits plan installed in July of this year. I added, "...the employer has made strides to reduce the police budget by anticipating the retirement of several officers." "...the resultant savings will become more obvious in the next budget year and will be considerably greater than the costs which will be experienced as a result of this award." My further statement summarizes the design of his award, "This award will have been proven fair and in the public interest without creating a need for funds beyond the legal limits imposed by law." In fact it will have proven to create sufficient excesses to consider employing several new officers at the relatively low rates in the salary guide.

In the award I discussed the fiscal problems of the Borough at length. In that discussion it was noted that the police budget was to be reduced by some \$300,000. It was further noted that the anticipated retirements of police officers would lower payroll costs by about \$519,000 with an additional retirement later this year to further reduce the payroll by \$153,888 per year. These savings dwarf the entire new costs of my award for a three year period especially as they continue for the foreseeable future.

My conclusion is that the award which I made was in all ways a proper and reasonable exercise of my authority. I therefore do not propose any adjustments to the provisions therein. I regret having the parties undertake this challenge and the expenses involved with this litigation. Clearly there was no intent on my part to impose conditions of employment or costs thereof which were not fully justified and certainly not because of any agreement made with the Chief. The terms of my award will provide some limited and justified salary improvements while resulting in a reduced overall cost to the Borough which will continue to be realized well beyond the effective term of the Agreement

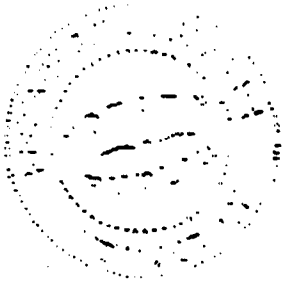
I therefore respectfully submit this explanation, as to the allegations and demands advanced to modify my original award, be construed as a complete and appropriate defense of all of the provisions of same award and fully deserving of its confirmation by the Commission as to all of its applications in this dispute.

AWARD


The terms of the original award are confirmed without change.


Frank A. Mason, Arbitrator.

On this date before me personally came and appeared Frank A. Mason, to me known and known to be the individual who, in my presence, executed the foregoing confirming document and he acknowledged to me that he executed the same.



This notary is for Frank A. Mason's
signature only


(REUNTOI SUNDARARAJAN)
8/22/11

Spain July 5th 2012