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In the matter of Compulsory Interest Arbitration  
concerning the negotiations impasse between

**DECISION AND AWARD**

The Borough of Spotswood

and

of

Police Benevolent Association Local 225

Frank A. Mason, Arbitrator

PERC Docket IA-2011-0048

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**APPEARANCES**

**FOR THE BOROUGH:** Arthur R. Thibault Jr., Esq., Apruzzese McDermott Mastro  
& Murphy, PC

Ron Fasanello, Administrator, Borough of Spotswood

**FOR PBA LOCAL 225:** Richard D. Loccke, Esq., Loccke Correia Linsky &  
Bukosky

Michael Gardini, President, Local 225

Brian Keenan

Joseph Vitale, PBA Delegate

This case assignment by the Public Employment Relations Commission was made pursuant to the legislative changes imposed upon the parties as well as the arbitrator. The imposition of a 2% budget enlargement is effective in this matter but the 2% limit on the increase of police compensation was deemed not applicable in this case by the PERC.

The parties first met with the arbitrator on April 14, 2011 to discuss the dispute and to explore the possibilities for a resolution. We met again on May 6, 2011. Discussions did not produce an agreement and the parties submitted post hearing briefs in defense of their final positions on May 12, 2011.

At hearing the parties presented argument and evidence and were given the opportunity to examine and cross examine witnesses. The record of hearing was closed on May 12, 2011.

**ISSUE:** What shall be the terms of a successor Agreement to that which expired on December 31, 2010 and what shall be the duration of that Agreement?

## FINAL OFFERS OF THE PARTIES

### PROPOSALS OF THE PBA:

A four year contract from January 1, 2011 through December 31, 1014

#### Economic proposals:

**Wages:** a 3.5% increase across-the-board effective January 1, of each calendar year.

**Terminal Leave:** Increase the current Cap from Twelve Thousand Dollars (\$12000) to Fifteen Thousand Dollars (\$15000)

**Compensatory Time:** Increase maximum compensatory time bank from sixty to eighty hours.

**Extra Duty Rate:** Increase extra duty rate for outside contractors to Sixty Dollars (\$60) per hour and to add a provision for a minimum of four hours for such contracted duty.

**Vacation Notification Leave Time:** The PBA proposes that the current seventy-two (72) hour leave time notice requirement be deleted. In its place would be the following provision: "Employees may use accumulated compensatory time at any time at the Employee's sole option subject to prior Departmental approval. Prior Departmental approval, or requests made on less than three (3) day's notice shall be subject to Departmental Discretion and not subject to grievance."

### PROPOSALS OF THE BOROUGH

The term of a new Agreement shall be for three years, 1/1/2011 through 12/31/13.

Wage increases shall be 0% for 2011; 1% for 2012 and 1.5% for 2013. In addition there shall be two new steps included in the current salary range.

Modify the provisions of the Grievance Procedure at paragraph J so that any grievance not presented for arbitration within 10 days of response at Step 4 shall be deemed abandoned and a bar to arbitration.

**Longevity:** Freeze longevity at 2011 rate and convert to flat dollar amount for employees currently receiving longevity. Employees not receiving longevity in 2011 and new hires will not be eligible for longevity.

**Overtime:** a. Overtime for being called in to work a holiday designated in this contract shall be at two times the member's regular rate of pay. b. Clarify that overtime will be paid

to a member to attend a disciplinary hearing when requested/ordered to do so by the Borough of Spotswood, but not by the PBA. c. Eliminate the word typewriter in paragraph D and replace it with computer and/or word processor.

**Holidays:** a. Reduce holidays to eight (8) by eliminating the following holidays: Martin Luther King Birthday; Washington's Birthday; Good Friday; Election Day and the Day after Thanksgiving. b. Any snow day declared by the Borough will not result in a day off for officers.

**Sick Leave:** Change annual sick leave for new hires to 10 days.

**Personal Days:** Clarify that personal days must be used in year earned or they will be forfeited.

**Terminal Leave:** a. Remove the last sentence in paragraph A. b. Rewrite the last sentence of paragraph B to state, "In the event an officer is killed in the line of duty or dies while employed by the Borough as a police officer and before retirement, terminal leave benefits under this article shall be paid to his/her survivors."

**Vacations:** a. Vacation days for new hires shall be as follows; 1-6 years, 10 vacation days; 7 - 15 years, 15 vacation days, 16 years or more, 20 vacation days. b. Cap selling back of vacation days to 5 per year once employee has used at least 10 vacation days.

**Health Insurance:** a. Effective 1/1/11, all employees must contribute the greater of 2.% of their salary or 10% of the actual costs of the health care plan they select. On 1/1/12 the 10% rises to 20% and on 1/1/13 the 20% rises to 30%, unless the 2% of pay is greater. b. All employees must select NJDIRECT 15 plan or pay the difference if a more costly plan is selected. c. For employees hired after 1/1/11 no medical benefits will be provided for spouses of retirees.

**Education Incentive:** Eliminate this provision from the Agreement

**PBA Expenses:** Eliminate paragraph A. from the Agreement.

**Detailing of Employees:** Modify paragraph F to require 5 days of working out of title.

**Compensatory Time Off:** Eliminate compensatory time off for employee's birthday.

**Bill of Rights:** Replace the standard of proof provision with, "preponderance of evidence".

In this matter before the arbitrator the determination of the Public Employment Relations Commission was that the special 2% limitation as to increases in salary items for those represented employees, entitled to compulsory interest arbitration for the resolution of negotiations impasses, is not to be observed due to the date of the termination of the prior agreement being before January 1, 2011. The general limitation, imposed by the State Legislature, of the overall budget of the involved public employer at a maximum of 2%, with some specific exceptions, was specifically confirmed and is to be observed in any determination of an arbitration award.

**THE REQUIRED STATUTORY CRITERIA: in abbreviated format.**

1. The interests and welfare of the public.
2. Comparison of the wages, salaries, hours, and conditions of employment ...with others performing the same or similar services and with other employees generally.
3. The overall compensation presently received including wages and benefits.
4. Stipulations of the parties.
5. The lawful authority of the Employer including any limitations imposed under law.
6. The financial impact on the governing unit, its residents, and taxpayers. It should include, to the extent that evidence is introduced, the impact on taxes.
7. The cost of living.
8. The continuity and stability of employment.
9. Statutory restrictions imposed on the employer.

**THE POSITIONS OF THE PARTIES**

The position of the PBA is that it has earned consideration of its proposal as to wage increases for several reasons. The performance of its unit has been excellent, a factor which was confirmed by the testimony of managerial personnel. The service performed has been extended as there is a fast growing demand for responses from residents and sharply increased traffic in the Borough along with the growth of shopping activity. One officer described this increase in part as heavily reactive to needs encountered whilst on patrol. In addition there has been an emphasis on training which has resulted in superior performance and preparedness of officers on duty. These accomplishments are the more significant as the police force has been reduced without replacement of departed officers. The feeling is that this has resulted in lessened opportunity for promotions.

The claim is that officers in Spotswood are not as highly paid as others in nearby agencies; below average without any offsetting benefits. The PBA's comparison illustrated this claim by computing an average pay of \$92905 for 14 communities in the County while Spotswood pay was \$89487, or \$3417 less. However, two of the closest neighboring communities were at an average of \$85346 and even with the inclusion of East Brunswick, a much larger, by population, and more prosperous community with diverse commercial activity, at \$96146 the average of closest communities became \$88936, just \$551 less than Spotswood.. It is my conclusion that the Spotswood wage is very comparable to that paid in the immediate area of communities offered by the PBA for comparison. Curiously, no data was supplied for Old Bridge, an adjacent community of comparable complexion as a primarily residential area.

The PBA also claims the number of holidays provided by Spotswood is fewer than the average of some 19 County communities by 1.4 days per year. Except for East Brunswick at 18 days the span of holidays ranges from 13 to 16 with eight at 13 days, five at 14 days, five at 15 days and 3 at 16 days. clearly this is a relatively narrow range but just as clearly Spotswood is in the group of eight at the bottom which compromises 40% of the total reported, and a substantial support for not reducing that portion of the benefits provided.

The PBA also provided information concerning the pay increases which have been set for 2011, 2012, 2013 and 2014 in contracts concluded for select communities. South River has only 2011 and 2012 at increases of 1.5 and 6.7 %. All others in the exhibit show an average of 2.6% for 2011 and 2.38% for 2012. Therefore the proposal of the PBA of 3.5% in each year is substantially higher than the example of increases it placed before the arbitrator. In its explanation of this proposal the PBA noted that the imposition of the 1.5% contribution toward health benefit costs by the State was seen as an offset of the 3.5% demand and net value to the officers was only 2%. As the imposition of the 1.5% contribution by the State was intended as a means of relieving the local government costs of health insurance it would seem to be contrary to that intent to automatically increase base salary to cover the required payment by police officers. For this reason I perceive the PBA proposal of 3.5% to be just as it appears. Further, there is no indication in the record to suggest that other employers' terms of contracts were offset by that 1.5% requirement. Thus the comparison of the position of Spotswood with other municipalities should be without consideration of that 1.5% required contribution. Having said that however does not reduce the PBA demand.

The observation was made by the PBA that the announced zero increase in compensation for the blue/white collar employees in year 2011 of their newly negotiated Agreement should be considered as if it were an increase in pay amounting to 1.15% due to the addition of three personal days being provided.

However upon closer examination of the contract language it is clear that the three personal days are provided only for newly hired employees and actually represent a reduction of two days from the prior contract period which provided five such days off. In addition, whilst on the topic of time off, it should be noted that use of these days does not include the entitlement to payment at double time as do actual holidays.

In addition to the above concerning scheduled days of work, the new Local 888 Agreement included the give back of four holidays as well as a day off for an employee's birthday. Thus the new Agreement includes concessions of four holidays, two personal days for persons employed after January 1, 2007 as well as the day off for the employee's birthday which, for most employees represents five days and for those hired after January 1, 2007, seven days. These concessions and the zero wage program are meaningful and were achieved in open negotiations and represent the Union's acquiescence to the announced program of no wage increases in 2011 for all employees of the Borough, including managerial and other non-represented personnel. A noteworthy regard for the fiscal circumstance of the Borough for at least one year of the Local 888 contract.

That program was established when the Employer was attempting to create a budget for 2011. The 2% limit of the budget cap left the margin of only \$105 remaining; all without any provision for wage increases for any of its employees. This computation was set in place prior to the time of negotiations with the PBA and became the basis for the Borough's position in this proceeding.

The PBA has indicated that the money shortage for increased wages in its negotiations is more a function of clever accounting practices in spite of there being available funds. For one thing it notes that there is a substantial reserve for surplus which could be considered more than adequate even with a wage increase to the police. To reinforce this position it claims there is a strong tendency on the part of the Borough to understate income from taxes and the complete ignoring of the reality and reasonableness factors which support the PBA's demand for a 3.5% increase.

The Borough provided details demonstrating the steep reduction of its surplus accounts in recent years where year end surplus of \$1,677,714 in 2008 fell to \$1,538,175 in 2009 and again fell in 2010 to \$1,341,431. Further the 2011 figure is reduced to \$1,058,931 and the expectation for the 2012 year is a further reduction to \$913,937. These figures represent a dangerous trend and limited actual resource from an accounting perspective which could have substantial negative impact on the fiscal stability of the Borough and which very well would result in higher borrowing costs as well. These projections were made with the input of the anticipated expenditures reflecting the offerings to the PBA and set forth in these negotiations; but did not include the money values of the PBA demands.

While there is expected resistance from the PBA it must be noted that there was a great deal of financial analysis by competent, well trained personnel who provided the basic information upon which the decision to institute rigid fiscal controls was arrived. That all managerial, professional personnel and members of Local 888 were convinced of the need for this posture including a no increase in pay for a year and some substantial modifications of terms and conditions of employment speaks convincingly as to the universally perceived need for such action. Part of the underlying concerns of the Borough are a reflection of the taxpayers resistance to paying more for services but more importantly is the loss of revenue attributed to the reduction of the value of taxable real estate properties as well as the loss of tax income from what was the largest manufacturer in the Borough and the threat of further claims for tax relief including one from the now highest tax payer which has indicated its assessment will likely be appealed, jeopardizing the \$300,000 tax income from that source. Coupled with this is the fact that there are very few available areas for development of new taxable properties and a recent record of that source dwindling even as improvements to some properties have provided a modicum of relief.

On the obverse side of this argument is the position of the PBA claiming the police in Spotswood are underpaid when contrasted to comparable employment in other communities. This is fortified by factual details of the wages and benefits available in those districts. However the distinctions are not huge and there is no exact replication of the conditions or demands placed on officers in various locations. Some, such as East Brunswick, clearly enjoy substantially higher levels of tax receipts due to more expensive properties. But police living there must also contribute to higher real estate costs and taxes as well. In any event I have concluded that the fiscal conditions and actions of its management in Spotswood require more consideration than matching the pay increases in other communities or the make-up of the 1.5% reduction of pay imposed by the State on all police and fire personnel to offset health benefit costs paid by employers. This is, after all, an expression of the public interest by the Legislature and it would be inappropriate for me to award an additional wage increase to counter the level of savings intended by the law which would then be obfuscated.

In its data regarding comparison with the Local 888 terms of the new contract the PBA notes that there are only 4 steps in the salary guide to maximum pay while there are seven in the 2010 PBA contract. Presumably this comment is directed to diminish the validity of the Employer's demand that there be an extension from the current seven steps to nine in the future contract. It should be noted that the range of the 888 salary structure does have only four steps, however the incremental annual movement, if earned, is only 4.45% of base rate; and the total movement from initial pay rate to maximum is just 12.9%. This is in sharp contrast to the current salary range of the police which, in 2010 was seven steps but included pay starting at \$40482 and extending to maximum pay of \$94196 in six years,

(step 7). This step is 232% of base and includes annual increases of 18.3% to as much as 37%. Thus the range increases in the police unit at the lowest level are greater than the total lifetime change provided for non-police personnel. Therefore I find the argument of the PBA concerning the extension of the number of steps in salary range is totally unrelated to the situation found in the 888 contract. The extension of the PBA range to nine steps would obviously slow down the progression toward maximum pay but it would still increase pay by an average of \$6714 each year as the individual moves from starting pay to maximum plus any increase attributable to overall structural increases. This would provide annual step increases at a minimum of 7% and a maximum of nearly 20%. Clearly these completely exceed the figures posted in the 888 Agreement and make the negative comparisons advanced by the PBA meaningless.

The interests and welfare of the public include the services of its police force but also the contributions of all employees. It serves no justifiable end to treat all who have sacrificed in their negotiations of give backs and very modest contractual terms or those in the non-represented group of employees who also endured a year of no increases to the obvious disparity of treatment requested by the PBA. The reasons for the fiscal conservatism of the Employer are deep seated concerns for the needs of its residents and of the fiscal health of the Borough. While the PBA may legitimately challenge the efficacy of those convictions its expression of such challenges does not confirm that they are inaccurate or improper. The long range view of the Borough's leadership is that the future is increasingly dim from a financial viewpoint. It has estimated imbalance in its 2012 budget forecast of more than \$600,000. Much of the increases are beyond its control and if realized or extended will have the effect of need to raise property taxes more drastically than the 7% applied in 2010.

The Borough has viewed this as a major problem for its citizens many of whom are seniors whose lifestyle and ability to absorb tax hikes is limited by dependance on income supported by Social Security. . It is also concerned that higher taxes may not survive challenges to tax levies by citizens and has experienced resistance from the business sector already. There are also concerns as to the possible impact of the reduction of credit rating should the Borough not maintain acceptable levels of fiscal stability and reserves.

In the face of these elements for consideration the PBA has advanced the demand for wage payment to offset the State tax imposed on the health care costs and has completely ignored the efforts of the community to cooperate in what is a fiscal crisis. Instead the PBA asks that there be an Agreement imposed for a four year period specifically to avoid the need to be involved in negotiations during a period when the State law, an expression of the legislature to control costs of police and fire contracts, would be no longer in effect. Clearly a matter of self interest without any regard for the interests and welfare of the residents of Spotswood.



The circumstances found here are unique in my long experience in the field of labor relations. It is for this reason I have carefully investigated the record before me and have concluded the consideration of the interests and welfare of the residents should be considered of foremost importance. The statutory requirement is that I consider other factors and I shall but the significance of this one factor far outweighs others.

For example the cost of living is one which I feel must be largely ignored. My reasoning is that it has been relatively small as a factor in the last two years; witness the Social Security freeze on benefits; and that the history of contractual gains for police in Spotswood have far exceeded the more modest advances in cost of living. If COL were to be seriously considered there would be room for the consideration of reduction of wages based on the last ten year record. However there is no such claim before me. None the less I choose not to consider the cost of living changes as that measure might be a factor but is overshadowed by issues more demanding of attentive consideration.

To a substantial degree the comparison of the wages and benefits to that provided by other employers is inconsequential. The reason for this statement is that the situation is what it is and the current circumstance of the Borough of Spotswood is such that it does not have the financial capacity to alter those conditions. In spite of this conclusion I feel it to be of interest to note that an officer in Spotswood, in the middle of those who are at maximum of the salary structure, is receiving a salary and benefits package exceeding \$140,000 without overtime and as much as \$178,000 with overtime; and there are ten of the officers at the rank of patrolman who are at the maximum salary step, nine of whom earned, inclusive of overtime and benefits, total compensation in excess of \$165,000 in 2010. The one who earned less had total income costs of \$143,986.52.

Given these figures and comparing them with the earnings of all other employees of the Borough I find it difficult to concede that they should be receiving increases when all other employees have foregone same for 2011. Incidentally of those officers entitled to increments because of being at lower steps in the salary structure all received increments for 2011, and those increments have a value of more than \$7395 or greater than 15%.

Arguably one might note that these figures for top earners incorporate overtime payments ranging from \$9,150 to \$31,244 which are earned at the discretion of the Borough, but they are elements of income which enhance the earnings of the officers involved: and the arbitrator is instructed to consider all economic benefits received when evaluating the adequacy of the Borough's compensation plan. My conclusion is that the Borough need not be ashamed as to the overall compensation of its police employees. Certainly these figures very substantially exceed earnings of all other employees even those in executive positions with the Borough.

The cost of living aside, there are many elements of costs not playing a major role in that computation. A key item of such cost is health benefits. This cost has been advancing rapidly but as these employees are protected by shouldering only a small portion of those costs the growth has been largely a problem for the Employer and is a significant element in the forecast of needs for future budget plans. In some respects it may also be observed that police employees in Spotswood can afford to live locally and thus do not experience large commutation expenses and can find affordable housing as well. These are advantages not always available in employment in other communities.

The continuity and stability of employment is another standard for evaluation. There has been no forced turnover of police in Spotswood and none likely. There is considerable security as to the protection afforded by membership in the Union and the seniority rights enjoyed are spelled out in their contract. There have been no complaints concerning any injustices of the Employer brought to my attention. I see this as a non-issue.

The financial impact on the governing unit and taxpayers is an important consideration in this situation. However it can be stated simply that a large portion of the Borough's budget is directly involved with the police function. It has been noted that the Borough has taken what may be considered to be highly unusual steps toward balancing its budget in this and future years. There is an anticipation of as much as \$623,000 over levy cap for 2012 and this figure does not take into consideration any added costs of police negotiations beyond the Borough's proposals placed before this arbitrator. The total appropriations requirement for the Borough for the year 2012 are higher than 2011 because of anticipated increases in salary and wages of \$154,000, much of which involves commitments as to negotiated increases, but with only an anticipated increase for the PBA contract at 1% in 2012, which is unlikely, plus overtime costs. This figure will most likely be adjusted but such will not reduce the need for more money. There is a \$77,000 increase in pensions and an increase of \$218,000 related to anticipated costs of health care insurance. These figures also incorporate a reduction in the surplus account of \$211,000 from the 2011 figure of \$1,072,500 which represents what the Borough has stated to be a dangerous reduction. Neither party presented estimates of the impact on future tax rates.

The lawful authority of the Employer is not to be overlooked in this matter. The arbitrator is statutorily and constitutionally required to consider the constraints imposed by the Local Government Cap Law. The purpose of that law, "...seeks to achieve two ends: (1) containment of spiraling costs of local government, and (2) avoidance of imposition of such severe fiscal restraints upon municipalities that residents will be deprived of necessary services." The lawful authority of the employer is further constrained by that legislation which limits the total levy of municipalities to not exceed 2%, with some exceptions. Thus it is clear that there is an intent of the legislature, as a matter of public policy, to observe carefully the fiscal impact, as a result of arbitration, to be conservative and in conformity with resources of governing bodies affected as well as the specific limitations imposed by law. I shall attempt to abide by these imposed limitations.

There were no stipulations of the parties for consideration.

## **CONCLUSIONS AND AWARD**

Based on the discussion above and inclusive of the lack of capacity to reliably forecast the future I find the appropriate duration of the contract to be properly limited to three years, January 1, 2011 through December 31, 2013.

As to the proposals of the PBA and the Borough concerning wages I feel it imperative that the 2011 calendar year be without a salary increase for the reasons above cited

For the calendar year 2012 I find the need to impose a 2% increase in base wages with the condition that it begin on July 1, 2012. The reason for this is that there are many factors suggesting that a fair increase be granted and in this environment that would be conservatively 2%. However, because of the special fiscal conditions existing in Spotswood the impact of that increase would cost the same as a 1% increase for 2012.

For 2013 there shall be another increase of 2% which I believe to be reasonable and for which the Borough shall have sufficient time to prepare.

The Borough's demand that longevity entitlements be frozen at current rates and converted to flat dollars for employees receiving longevity is awarded. The elimination of entitlement to longevity for employees not presently longevity pay is also awarded. These decisions are the result of the fully demonstrated need to curtail expenditures for at least the period of this Agreement.

Any snow day declared by the Borough will not result in a day off for officers required to work.

Sick leave for new hires shall be 12 days annually. The request to impose a limit of 10 days is rejected. This is a standard long in existence in the public service.

Personal days granted must be used in the year in which they are earned except if extended by the Chief of police, whose determination shall not become grievable.

Overtime will not be paid for officers called in to attend a disciplinary hearing by the PBA without prior approval by the Chief.

The Terminal Leave: Changes as to elimination of the last sentence in section A, and the rewrite of the last sentence of section B. are awarded.

The modification of vacation allowances for officers employed after the date of this award shall receive allowances as set forth in the demand of the Employer.

Health Insurance: As of July 31, 2011, or when otherwise established, the Borough shall provide the NJDIRECT 15 plan for health insurance with an employee contribution of 2% of base salary. Should an employee select another plan which has higher premium costs the difference in cost shall be paid by the employee making such choice.

The Education Incentive plan is to be removed from the Agreement

The provision concerning PBA Expenses in Article 19 shall have Section A. removed.

The provision for compensatory time off for a birthday is to be eliminated.

The payment for Extra Duty for outside contractors hours shall be raised from \$50 to \$55 with a minimum assignment of two hours for such duty.

All other proposals by either party are rejected. This is not without having been given careful thought.

These determinations reflect what I believe to have been a thorough consideration of the merits thereof. It is intended that all be adopted at the time of receipt of this award as provided by PERC rule. The fiscal circumstances involved have represented a difficult problem as to resolution. I trust that the determinations made herein will be accepted even though they may not satisfy the desires of either party. I believe the balance of improvements and related adjustments represents the best Agreement under the circumstances of this Employer and the current economic conditions facing the parties.



Frank A. Mason

On this twenty third day of May, 2011 before me personally came and appeared Frank A. Mason, to me known and known to be the individual described in and who, in my presence, executed the foregoing opinion and award and he acknowledged to me that he executed the same.