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

DECISION AND AWARD

The Borough of Point Pleasant, New Jersey
PERCH Docket No. IA-2012-018
and

Frank A. Mason, Arbitrator

Point Pleasant Borough PBA Local 158

In combination with

The Borough of Point Pleasant, New Jersey
PERC Docket No. IA-2012-019
and

Point Pleasant Superior Officers Association

APPEARANCES

FOR THE BOROUGH:

Jerry J. Dasti, Esq., Dasti, Murphy McGuckin Ulaky
Cherkos & Connors

Robert Sabesik, Councilman & Negotiating Committee

William Schroeder, Mayor

Christopher Leitner, Council Member

Lawrence Williams, Chief of Police

David Maffei, Boro Clerk/Administrator

FOR THE UNIONS:

Richard D. Loccke, Esq., Loccke Correia Linsky &
Bukosky

Robert Wells, PBA Delegate and Officer

Christopher Leonhardt, David Radsniak & Edward Miller,
PBA & Richard Larsen & Robert Lokerson, SOA

These case assignments were made by the New Jersey Public Employment Relations
Commission pursuant to conditions and limitations imposed by the N. J. State Legislature
which are instructive to the parties and the arbitrator.

The parties first met with the arbitrator on April 2, 2012 and again on April 11th at which time there were attempts made to resolve elements of this dispute. Some of the issues were resolved and or otherwise removed from consideration leaving the following items to be determined in this award. The parties submitted many documents deemed relevant into the record and sworn testimony was entered as well

THE LIST OF ISSUES TO BE RESOLVED.

The issues presented by the Employer:

1. A four year Contract for the period from January 1, 2012 through December 31, 2015.
2. Wage increases in 2012 of 0%; 2013 of 1%; 2014 of 1% and in 2015 of 1.5%. All to be effective as of the first day of January in respective years.
3. Folding of the contractually provided existing longevity payments into base pay and elimination of longevity for new hires as of January 1, 2012
4. Reduce the number of paid holidays to 10 by removing Veterans Day, Election Day, employee's birthday and Easter Sunday from the current list.
5. Elimination of medical benefits for spouses or family members of officers hired after January 1, 2012.
6. Increase the number of steps in the salary guide to 15 for officers hired after January 1, 2012.
7. Health insurance reimbursement:
 - a. All employees shall pay 2% of salary or 10% of the premium for health insurance as of January 1, 2012, whichever is greater.
 - b. Beginning on January 1, 2013 the rate of contributions shall be increased to 2% of salary or 20% of the premium, whichever is greater.
 - c. Beginning on January 1, 2014 the rate of contributions shall be increased to 2% of salary or 30 % of premium, whichever is greater.
 - d. Beginning on January 1, 2015 the rate of contributions shall be increased to 2% of salary or 35% of premium, whichever is greater.
8. The demand is that the Union acknowledge that Blue Cross/Blue Shield of New Jersey Direct 10 [State Health Plan] is the Borough's Health Insurance Company.
9. Delete the 1 year guaranteed salary clause in Article VIII, Section 6[f] from the PBA contract, [J-2].

The issues presented by the combined Unions:

1. Wage increases across the board of 2.5% for both units on each January first of a four year contract beginning on January 1, 2012. Additionally there was a demand that the Out of Title provision contained in the PBA contract [Section 4. p. 10] be extended to the SOA contract.
2. Overtime Compensation: The Associations proposed a modification of Article V so as to increase the current maximum of fifty [50] hours of compensatory time which are permitted to be carried.
3. Personnel Files: The Associations proposed a modification of the Personnel Files language in each of the respective contracts so as to include a provision that the final result of any disciplinary action involving a bargaining unit member be the subject of notice to the respective Association.
4. Unpaid Attendance at Meetings: The Associations proposed a deletion of the current provisions [p. 38 of the PBA Contract and p.31 of the SOA Contract] so as to delete the respective uncompensated meetings there referenced.

Background Information

Point Pleasant is a "shore" community of modest size but bearing substantial traffic both of residents and visitors or those traveling through especially during the summer period. It is known as a great place to visit and a good place to live. The summer period is especially vital in terms of seasonal change in commerce and population and in the challenges faced by the police to adequately perform at a high level of proficiency in their most challenging of seasons. In recent years the number of police officers has been dramatically reduced by 20%. Yet their performance has been considered excellent. In recent years the call for police performance has increased in the critical elements of their services. This record of performance has been maintained during the time of the shrinking of the staff while developing better means of serving the public. The comparison with required police activity is very pronounced when the record of seven years ago is studied.

During the 2009 through 2010 period the Borough was experiencing a fiscal crisis which had resulted in the need to reduce spending. Although many steps were taken to bring about an affordable spending plan the Borough found it necessary to consider layoffs of police in order to create a balanced budget. That plan included the layoff of staff as well as a decision not to fill vacancies. The police function was one of the last to be identified for reductions. When the plan to lay off police was announced the PBA asked for a chance to assist in working out some compromise. An arbitrator was called in to assist the parties in that eventuality and with his assistance an agreement was reached to preclude the layoff. That accord was a negotiated agreement to modify terms their contract and to avoid the lay off. The Union agreed to accept compensatory time instead of cash payment

for overtime which was recorded in a separate bank. A second dimension of that accord provided that the wage increase due to be placed in effect on May 21, 2010 would be deferred until January 1, 2011. In addition, the Union agreed to forgo the negotiated uniform and equipment allowances otherwise due during the 2010 year of their contract. There was also an accord reached by virtue of which the "OIC" payment, provided in the contract, would be suspended for the remainder of 2010.

I feel it was appropriate to make mention of these meetings and concessions to demonstrate the level of cooperation and willingness of the parties to work together when circumstances required modifications of their contracts.

Now, however, there are economic considerations which have precluded these parties from a successful completion of new contracts. For the most part the sharply divergent positions are focused on current and long term economic circumstances which are both substantively significant but which also involve major demands to change terms of their costs for health00 benefits, a sharp extension of the number of steps to maximum pay in a salary structure for new employees, the elimination of health benefits for family members of newly hired officers, elimination of four paid holidays and a four year contract period during which the wage increases in total, amount to 3.5% of base salary, or less than 1% per year and with an average increase of 0.633% during the first three years.

Notwithstanding the economic circumstances which are jointly faced by the Borough and the employed police staff I must attempt to create an award which is reasonable and fair to both parties. One element of research has to do with the budget limitations placed on the Employer by the State. In this respect the testimony of the Budget Administrator shed detailed information as to those facts. He indicated that there was no issue as to flexibility concerning the limits imposed as the Appropriation Cap. In his testimony he noted that the Borough had for 2011 budgeted under the limit by \$2,110,976. This of course was part of the perceived need for conservative spending. That "saving" was not lost but instead provided additional flexibility for at least two years beyond 2011 in what is termed a Cap Bank, available to be used in the future which could include 2014 and 2015. Of course the "available" tag does not actually have anything to do with the provision of the money. In the case of the Borough the trend has been to accumulate those spending flexibilities but there has not been a determination to impose new taxes which could lead to utilization of that flexibility. In addition there is the issue of limits to spending under the Levy Cap. Again the testimony of the Borough Administrator confirmed the budget adopted for 2011 was measured at \$319,544 below that cap. Thus the Borough has managed to budget well within caps in the past. It is noteworthy that the unused Levy Cap flexibility also is carried forward and could be used in 2012 or thereafter.

In addition to these caps there is a concept of a 2% limit on costs of law enforcement increases by arbitration award. This limit is applicable in the matter before me. However the amount of any cost increase is measured against the same category of costs in the prior year. In the case before me there have been changes due to reductions in the

strength of the force which substantially expands the amount of money which can be applied to the terms of the 2012 year payroll for the police units.

I make these observations here as the conditions explained make it unnecessary to embark on highly detailed cost analyses. Certainly the economic proposals of the Borough are not influenced by those limitations and the proposals of the PBA would not appear to exceed those limitations either. The responsibility for determining the aggregate cost of the payroll which dictates the maximum amount which can be awarded in 2012 or thereafter can be a complex matter. However, in the situation before me there is an accord of the parties which sets the calculation limit of \$29,946.50 per year as the cost per each 1% adjustment which might be awarded. The PBA has noted that the reductions of total salary payout due to retirements will introduce \$198,230 the base salary savings of the combined units for the 2012 payroll year, less the amount of new salary required if the award were to be the 2.5%, or \$74,866 sought in the terms of the new contract. And as base pay will be reduced from the 2011 calculation by the reduction of two officers from the payroll the effective change from 2011 to 2012 will be a net reduction of \$123,364 in the annual payroll.

The PBA points out that this remainder saving of \$123,364 can be carried over to reduce the net value of a salary program awarded for the remainder of the contracted period ending December 31, 2015. As the PBA demand is for 2.5% each year the increase for 2013 would become \$76,738, the same movement for would 2014 would add \$78,656 and in the final year of the contract a further increase of total compensation for the units of \$80,662.

In his testimony the Administrator was asked about the availability of Municipal Miscellaneous Revenues Not Anticipated which he acknowledged did exist which had to do with a cell tower which pays the Borough \$144,534 annually. The Union asked if such monies could be used for any specific purpose and the response was that such monies were expendable as the Borough saw fit to use them. Thus it appears that there could be sufficient funds made available to fulfill the requirements of any possible award within the cap limits noted above.

The Borough has adopted the position of not wishing to increase property taxes. This position reflects the notion that having recently increased those taxes this is not the proper time to repeat this and order further tax burden to the residents. This reasoning is supported by the fact that the public is under great financial stress as the result of the weak economy. There is fear that real estate values will decline with the likelihood of many owners seeking tax relief based on shrinking values. In addition the recession has had a negative impact on available jobs and the local business community has been suffering due to reduced sales and profits. Even the recreational related sources of income appear to be having less business activity than would ordinarily be the case in the past two years and as such are not making the profits which they may have come to expect. All of which represents one dimension of the financial picture.

In addition to these matters the Borough is experiencing highly inflated prices for electricity, fuels and services, in particular medical and retirement costs contracted for, and other required functions of the Borough. These, in addition to the general resistance of the public to increased spending have produced an environment wherein the leadership of the administration have been loathe to take positive steps to add income by raising taxes.

This attitude has been a plank in the policies of the administration for several years. It was fueled by the near fiscal disaster in the 2009 and 2010 years and has made long memories of those problematic situations. The resistance of the Administration to set budget limits nearly as high as would be allowed under the strict overview of the State government is clear evidence of this constrictive fiscal viewpoint.

In addition the political wind emanating from the Statehouse and Legislature clearly indicate a public attitude which is demanding fiscal controls especially as to costs of police and fire contractual arrangements asserted to have gotten out of control at the expense of the public. The result of all these influences is a reluctance to inflate the costs of property taxes. And the expression of this concern has been the attempts to reverse those circumstances within the negotiations opportunity presented here.

On the other side of this picture is the very role of police and their devotion to duty. They have been accustomed to wage and benefits considerations as separate from other non-police employees. In general terms this has been an accepted distinction for many years even as to the legislation concerning benefits as well as functional requirements. The very existence of binding arbitration was made to assure their continued performance without any evidence of job action or interference with their responsibilities toward public service.

The new restrictions as to police and firemen in negotiations for new contracts were determined to be necessary because the costs of their services had become unduly burdensome to the public. Thus there have been imposed limitations on the range of changes which can be awarded in arbitration. This procedure is designed to evaluate the interests of both the police and the employers and to make a judgment as to an appropriate resolution of their differences as to the terms of a new contract. As noted above this involves very disparate viewpoints as well as comparisons of wages and benefit costs and the interests of the employing public.

A key consideration has been the ability of the employer to pay for the police services. Now as is most often true the public is confronted with economic pressure and the desire to afford a reasonable standard of living. In the situation presented here the public interest has been to reduce costs and one of the effects of that pressure has been to reduce the population of employed police. The administration of the Borough have expressed their interests in reducing or at least controlling the costs of police as measured by their demands for essentially freezing the wages and reducing several of the side benefits now

afforded. This attitude can not be taken lightly as the rationale for such measures has become abundantly clear. To many these costs have intensified the interest in reductions.

There has been a lengthy list of demands as to changes affecting pay increases and the adoption of a new salary structure for future hires as well as sharing costs of benefits. My intent is to determine a balance of those interests and needs of both parties so as to form an agreement that is accepted as fair, given the social, political and economic circumstances confronting all concerned.

The arbitrator is instructed to take into consideration each of nine factors established by the State Legislature and to indicate the degree of influence each may have with regard to my determination of the issues in this dispute.

My choice is to abbreviate the identity of each factor and to then explain which I find to be more relevant to this situation

1. The interests and welfare of the public is recognized as a particularly important criterion. The Borough is a well established and relatively wealthy near shore community. It is the crossroad for much traffic particularly in the busiest summer period. There are many visitors and guests. The police are generously paid but have very busy schedules and demands for services. They are dedicated to service and perform many duties well including interface with the public. This is not a crime ridden community but the populace does expect many varied services. The costs of such services mandate a high level of professional performance.
2. The comparison of wages and benefits and other related factors is of considerable importance and in this instance draws particular attention because of the demands for many changes of elements of compensation and benefits being pursued by the Borough at a time when Legislative initiatives have added complexities to the arbitration process.
3. The overall compensation of the police is a matter for great attention as the employer has introduced many demands which could have long term influences on both parties. This matter has taken much of the time of the parties and myself and will be the central matter to be resolved.
4. There were virtually no stipulations of the parties which would bear significant attention. I therefore do not feel concern for this criterion
5. The lawful authority of the employer has not presented itself as a matter of conflict except as it might pertain to limits involving the pay. However, both parties have presented demands which are not likely to involve challenging interpretations of those matters. The resolution of compensation differences is, however, of singular importance.

6. The impact on the governing unit is of particular importance in this situation as the focus of its attention has been on demands for changes which are alleged to be essential in the search for fiscal stability. The underlying issue is property tax controls and long range economic planning. There is a fear that without sharply reduced modifications in its favor the Borough's fiscal plans could be in peril. This is a key area of dispute with the PBA and requires close attention

7. The cost of living has not surfaced as a matter on great import and I do not believe it to be an issue which I will have to address.

8. The continuity and stability of employment has not been seriously raised as an issue in these proceedings and will not be of great concern.

9. The statutory restrictions which surround these proceedings appear to be well understood by each parties attorney. Although there has been a great deal of discussion as to the impact of certain regulations it does not seem likely that issues surrounding the application of rules will result in discord. Neither party has raised differences of opinion as to the application of the strictures therein.

It is obvious that taking into consideration only the desires of the employer or those of the Union would simplify the matter of wages. Each party has a strong interest in this issue and each could be seen to have merit. But both can not be accepted. Thus I will attempt to find a rational basis for an award.

The issue of a wage program for a four year period is complicated by the several dimensions of this factor. The Borough has indicated a series related of demands which preclude the wage issue from being isolated from the broader concept of total new costs or the reduction of same. Preliminarily I point out two things. The first is that neither party has made a proposal which would conflict with the limits of new costs imposed by the State. The second is that programmatic changes such as the demand of the Borough to set in place a salary program for new hires does not lend itself to cost measurement until there are new hires and as such can not be measured as to costs or savings.

The related proposal of the Borough which involves new hires in a new salary range in which those hired would not be entitled to health care coverage for dependants adds to the complexity of the costs issue. Here, however, having examined the basic pay rate proposed which would be no higher than \$43,784 during the term of this agreement less an anticipated contribution to pension and another to health care plus the further health insurance coverage for dependents as well as income taxes suggests the entire proposal be rejected. I find the denial of dependent health care coverage for a new hire to be an unacceptable condition of employment and frankly, a condition which, if allowed, would logically preclude the interest of any otherwise qualified applicant from pursuit of such an appointment especially within the suggested new salary guide. I therefore reject the proposal of the Borough.

The issue of annual wage adjustments is a yet more complex matter. The proposal of the Borough for a 0% increase in 2012 and increases of 1% in 2013 and 1% in year 2014 with a further increase of 1.5% for year 15, must be considered both from the point of view of the Borough and that of the staff officers. In the most characteristic way of making such judgments the Arbitrator is guided by the changes which are provided within comparable employment, the cost of living, the ability of the employer to pay and other considerations. The counter proposal of the Union is for significantly greater changes in all four years; 2.5% in each year. This represents a wide gap and the need for fundamental considerations.

The Borough's proposal is based fundamentally on a desire to preclude a need to increase property taxes. Hardly a position which the resident population would criticize. However there is no other rationale posited to support this offer. The neighboring communities have provided an average increase of 2.5% for 2012 and 2.18% for 2013. With fewer reported changes for 2014 the data becomes less significant, however the few rates reported for 2014 are significantly higher at 2.46% on average. In addition, the Public Employment Relations Commission report shows an average of more than 2% for a geographically more widespread group of communities and a slightly less than 2% of increases reached on non-arbitration basis. Measured against these figures the 2.5% demand of the PBA appears to be somewhat higher than surrounding communities and the broader sample as well. Even the data submitted by the Borough showed an average increase of 1.93% for 2012 and the selection of municipalities included in that survey was of questionable relevance to the immediate vicinity of Point Pleasant which could be seen as more important.

In addition to the zero salary offer for 2012 that offer is accompanied by the deletion of four holidays which have a pay value of nearly \$800 at straight time; more if required to be worked with overtime premium pay, which equates to 3/4 of 1% of annual earnings. There is an additional demand for payment of a portion of health care premiums at 2% of salary. These two items reduce the salary offer from 0% to a minus 2.75%. And these further proposals carry into future years with the prospect of even higher co-payment for health benefits by the employee. For example, if the proposal to increase wages for 213 at 1% were added to base salary and the rate of co-pay for insurance were to then be 30% of premium and if the family coverage were to cost \$20,000 the premium share at 30% would be \$6000 to be paid by the employee. It thus appears that the salary improvements offered would never produce income increases on a net basis. In fact the net income realized by each employee would diminish every year of the proposed new Agreement.

The backdrop against these proposals have been made by the Borough also suggest information as to future economic circumstances which can only be guessed at by me. However there is plenty of indication to lead one to the conclusion that an economic growth period is more likely than further recession over the next or years. Thus the likelihood of higher levels of cost of living appear to be most likely. But even at a very modest rate of 2 to 3% such changes would negate a similar rise in increased wages. This would make the offer of the Borough less than welcome.

All of the above considerations lead me toward adoption of the PBA offer. However, that offer is somewhat predicated on the retirement savings as outlined above. I can not accept those savings as an entitlement vehicle for the PBA to balance their requests for wage increases. Nor do I think that reasoning would seem logical to the taxpaying citizens. I therefore view any wage increase as added overhead for the Borough, notwithstanding any savings which might be forthcoming from retirements. The reduction of the PBA proposal to 2% in 2012 which will increase wage costs by an estimated \$59,893, as attested to by the Borough Administrator, is seen as a reasonable compromise and is awarded. I would also award a similar 2% increase effective on January 1, 2013 at an added cost of approximately \$60,500

Thereafter the future becomes a bit more foggy as to forecasting but it would seem that the condition of the economy will be more favorable and this will be accompanied by further increases in cost of living. Therefore I award further increases in base wages of 2.5% to be effective on January 1, 2014 and another to be effective on January 1, 2015. Each of these increases will involve new expenditures of approximately \$ 62,000 in 2014 and \$63,700 in 2015. While modest numbers in each year they do involve cumulative costs, some of which may be reduced by another retirement. They are not heavy costs as to the entire budget and would not likely trigger further taxation, especially as there were substantial savings due to earlier retirements.

I believe this represents a well reasoned solution as to the equity of the wage increases and should not become an unbearable burden to the tax payers of the Borough. Police are a vital part of those services and should be accorded as much consideration as any other. In the long run the Borough may have to consider improving tax revenues but the increased costs of services of police will represent only a small portion of those budget needs. And the reasonable result of these negotiations may well serve to maintain morale and the highest level of performance of the force.

I have indicated the implementation of the 2% of salary or 10% of premium for healthcare beginning on January 1, 2012 is awarded. I do not award further employee contributions.

I also award the acknowledgement of the Blue Cross/Blue Shield New Jersey Direct 10 [State Health Plan] is the Borough's Health Insurance Company.

I also award the proposal to fold in longevity pay and to eliminate longevity for new hires as of January 1, 2012.

I also award the removal of the employee's birthday from the list of paid holidays as a matter of attempting to relieve the costs of employment and in order to justify increased pay rates otherwise awarded.

Finally I have reviewed the suggested salary plan for new hires and reject the plan as proposed. Alternatively I do award a new hire salary plan to be effective as of January 1, 2012 which shall have ten steps with a base rate of \$35000 and increases of 10.5% on annual anniversary dates of hire. The entire wage structure shall be adjusted by any across the board increases afforded after December 31, 2012.

I believe this change will allow reasonable opportunity for recruitment of qualified new personnel and limit their period of reduced wages before reaching maximum pay and having the advantage of improvements predicated on negotiated changes affecting the PBA Unit as a whole. Thus I see this as a more rational approach than proposed by the Borough. There are yet considerable savings available but in a much more equitable compensation program for new hires.

The SOA had presented a demand which would extend the maximum of 50 hours of compensatory time off permitted to be carried over in Article V. The degree of the extension was not specified. This was a request which had been rejected by the Borough at negotiations. The principal effect of this provision is the conversion of overtime earnings to time off with pay. With adequate reserved control as to the times when such compensatory time could be utilized it would appear to be an accommodation which would not interfere with normal operations. That control would remain with the Employer. Under that circumstance and given the variable needs for services on a seasonal basis I believe a nominal extension to 70 hours can be easily managed, and that is awarded.

The PBA also presented a request for a minor change in regulations concerning Personnel Files. The request, if granted would require the Borough to notify the associations of the result any disciplinary action taken against a member. I see this as a reasonable request and likely to improve communications between the Borough and these representatives and therefore grant that request.

There is further demand which involves Out of Title circumstances when an SOA officer is assigned to cover elements of ordinary work of a superior officer. The provision within the PBA contract is clear in its interpretation and applications. The SOA unit would like the same language. The Employer makes some distinction as to under what circumstances such an assignment will involve modification sufficient to warrant pay at the higher rank. I am satisfied that the applications as to the issue of higher pay by the Employer in such matters have been reasonable and therefore deny this demand.

The final demand of the PBA involves a demand to modify language involving uncompensated meetings which appears in both contracts. The record before me is not persuasive as to the need to change that language being warranted and it is rejected.

OPINION AND AWARD

My award in this matter is for accross the board increase in each year of this four year contracton to begin on January first of each year. The 2012 amount is to be 2%; the 2013 increase is to be 2%; the increase for the year 2014 is to be 2.5%; and the increase for 2015 is to be 2.5%.

I have presented my remaining conclusions and explanations in the body of this decision and therefore will not replicate them here but incorporate them as final and dispositive of all issues presented to me for resolution. Any matter not so disposed of here should be considered as having been denied.



Frank A. Mason

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 opinion and award and he acknowledged to me that he executed the same.



Notary Expires
on July 31 2012

This notary is for
FRANK A. MASON'S
Signature