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

Borough of Union Beach

And

PBA Local 291

PERC Docket No.: IA-2013-026

APPEARANCES

FOR THE BOROUGH; RAMON E. RIVERA, ESQ., Scarinci & Hollenbeck, LLC

 JENNIFER MAIER, BOROUGH ADMINISTRATOR

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 BRIAN J. Manetta, ESQ, Mets Schiro & McGovern, LLP

 GABRIEL Farese, PBA REP., Local 291

INTRODUCTION

The parties to the negotiation of a new contract began meetings for a successor agreement in 2011 after months of no response to requests to start talks made by the Union. These attempts to achieve a settlement for a new agreement continued thereafter until it became apparent to the parties that an accord was unlikely to be reached. The matter was brought to the N. J. PERC by a request for Interest Arbitration and this arbitrator was appointed to hear the dispute and to render a binding resolution of negotiable matters.

I met with the parties for a comprehensive introduction to the shared dispute. At the close of that meeting the parties agreed to the detailed submission of all matters of concern for my consideration. There was a time set up for cross response to the original submissions. In this award I will present my determinations as to the terms of a new Agreement.

In its presentation the Union concentrated on rebuttal of many initiatives undertaken by the borough in its proposals. It concentrated on the economic circumstance facing the membership with particular emphasis on the needs to provide substantial improvements in wages to offset the added burden being imposed by rising costs of medical insurance

as well as anticipated increases in the overall cost of living and the negative impact which would be imposed should the demands for give backs of the Employer be awarded. I shall describe those in greater detail. Suffice it to say, that at this juncture, they were widely apart particularly with regard to economic terms.

The focus of the employer bore little resemblance to that of the Union. Instead much was the concern as to the impact of the catastrophic hurricane which the City had endured and which had been very costly both as to damages sustained to homes as well as to streets, buildings, vehicles and equipment and the beaches. Another problem stems from the loss of taxes from the destruction of more than 250 houses and other structures which ordinarily provide substantial tax revenues but which now have become liabilities as all costs of clean up also involve replacement in the form of new or improved roads and ancillary services such as plumbing and electrical repairs.

I shall attempt to illustrate the extreme tactics which have been adopted to bring about normalcy in the management of the aftermath of that crisis, some of which have had a major influence on the proposals which have been perceived as essential, and thus imposed by the City from a budgetary point of view.

Proposals of the parties.

The Union proposed a five-year contract. This was described as necessary because it wished to stabilize the contractual relationship and expressed a desire to reach a contract with future application for an additional period from the date of execution. The Borough responded with a three-year proposal which would expire on December 31, of this year. This would suggest the Parties would be forced to reopen negotiations almost immediately in order that an Agreement be in effect at the beginning of 2014. When one considers the history of negotiations between these parties the expectation reached is another period of prolonged conflict would ensue.

What makes this a virtual certainty is the combination of historical behavior on the part of these parties. What adds to that conclusion is the experience gained from their current inability to address issues which should be of common interest. The clearest example of this comes from an analysis of the record. In the information discussed by the Union concentration is virtually all centered on their arguments supporting their perception of the Borough's ability to pay as was derived from current budgetary analysis. In addition it was strengthened by the claims of entitlement due to pay losses resulting from increased co-payments and other higher deductions from earned wages as well as the negative effects of cost of living increases.

On the other side of this argument there are the greatly increased costs derived from the impact of the hurricane on properties and facilities which have required application for financial assistance which amount to millions of dollars of loans some major portion of which must be paid by the Borough in each year. Much of these costs will have to be paid over time but they become overhead obligations which must be met and this, at the time when recovery costs are escalating and as income from property taxes levels

shrink. This has led to the nearly ten percent reduction of tax income which must be replaced in order to meet obligations. One approach to this loss of such money is the reduction of controllable costs, but without lay off of essential personnel. It is these cost reduction goals, for the elimination or reduction of certain benefits and conditions of employment which are included in the Employer's proposals as to the terms of a new agreement, which have angered the Union.

The conditions which have arisen are not the doing of either the Union or of the Borough. The suggested resolution of the Union is to continue the benefits and increase them to offset costs introduced by changes which are contrary to their interests. Other than such adamant demands, which cannot be afforded by the borough, I have yet to hear of a viable resolution which I can justly award.

In the post hearing brief of the Employer a change of posture was presented. The change was to modify its position as to length of contract from three years to a four-year term. This change was very meaningful as it eliminated the prospect of a new agreement expiring almost immediately after being established and precipitating a new demand for negotiations. This had been discussed at my request during the day of hearing but no receptivity had been expressed as to altering the posture of the Borough.

When the change appeared in the brief there had been no opportunity for the considerations which should have been part of a joint negotiations meeting with the Union. In addition there was no accompanying explanation as to how that modification might impact on the overall provisions of the contract except for changes advanced as to compensation. I find this to be less than sufficient as a basis for completion of an overall award.

The modification of position by the Borough was a very significant matter. The changes which were made in the overall compensation proposal which offered were of such consequence as to warrant their having been presented at a negotiations session in order that both parties have an opportunity to present views and perhaps counter proposals or at least to achieve a full understanding of positions taken.

If left to my own devices I most likely would have injected suggestions to modify the new submission as to compensation as I am of the impression that a two year extension would provide much greater opportunities for the parties to explore the details of an expanded contract term in a mutually beneficial manner. While the future is yet obscure the probability is that a longer contractual horizon might provide a greater opportunity to consider of the appropriate course to pursue by each party, in their quest of a rational compromise which could be acceptable as to the economic terms of a new contract.

I realize that I have not as yet included details to which I had made reference earlier. I shall make up for that further in the pages of my decision. First of all I wish to point out that these parties have proceeded on very separate tracks with the Union focusing almost exclusively on its objectives as to economic progress and the maintenance of benefits which are seen as being targeted by the employer in search of huge cost

reductions. Many of those involve benefits which have immediate as well as long term consequences both in income as well as paid time off and situations which mandate premium payment. The list of those demands and their consequential costs represent a very substantial portion of the payroll beyond wages for the police. It is the position of the Borough that these are excessive as well as unaffordable. The fiscal bind caused, to a large extent, by the overwhelming expenditures attributable to the recent hurricane and its aftermath in the form of reduced income from taxes as well as huge costs for repairs, replacements of everything from vehicles, roads, buildings and demands for services including emergencies placed an unmanageable economic burden on the Borough. It was forced to seek assistance and received generous fiscal help. But much of the assistance provided must be repaid over the next five years. The indebtedness from many sources has amounted to the multi-millions of dollars level. All of which has come about at a time when income has been faltering dramatically, significant factor as to income also appears to be very bleak. This is especially onerous as the costs of replacement vehicles and many other long life items must now be shouldered on an immediate basis. Even the restoration of recreation facilities and in particular the beaches, as well as school grounds now present money hurdles beyond any normal levels of budgeting which would have spaced such costs over years but which now must be met at highest prices and in a very compressed time as needs for most items are immediate as contrasted to normal long term plans and gradual acquiescence on a planned acquirement schedule.

It is this set of factors which have caused the budget emergency and the tough stand as to elimination of any and all costs which can represent savings. In spite of this the focus has been on achieving as much normalcy as is possible. The revised proposal of the Employer did contain some advances in wages. The Union's response to those proposals was that they were inadequate. The offers included a 1% increase on July 1 of 2011, another increase of 1% eighteen months later on January 1, 2013, and a further increase of .75% on January 1, 2014. The Borough estimated the total costs of its proposed increases would be \$35,645. The Union made proposals, which included \$22,688 or 2% for 2012, and for 1.75%, an increase of \$10,107 for additional costs in 2012, and then further increases for 2013 of 1.75% costing \$23,256 and for an increase of 1.89% in 2013 costing \$24,865. The Union also added the year 2015 at 1.79% which would cost \$21,935. The total cost for the Union's proposal would be \$102,934.

While it is asserted that neither would be in violation of limits imposed by the statutes of the State it is obvious that there is a wide cost differential between the offers of the two parties. However, the gap between the offers is actually wider when the demands for give backs and changes are considered. Many of these are authored by the Borough and take the form of eliminating provisions which may be costly but represent invasion of what the Union sees as gains earned in prior negotiations and which represent important elements of their contract. They range from imposing limitations on the amount of paid time allowed to attend conventions to a limit on the number of comp days an officer can accumulate or a requirement for officers to complete 16 hours of unpaid voluntary training to such things as freezing the level of longevity to the amount already earned and provide that all new hires are not to earn longevity credit for more than \$15,000. It cuts by more than half the budget money and modifies the compensation of police students to

reimbursement based on grades achieved as well as the reduction in the available paid education leave. There are limits on outside employment and legal representation.

At this same time the police have asked for much more generous treatment particularly in basic income. The observation is made that they will be subject to changes as to costs such as medical insurance as well as local tax increases and rising cost of living which have the effect of reducing the value of income. So the case was made for wage increases which would limit the negative impact of these unavoidable economic conditions. The demands for increases would impact both basic wages and a number of affected ancillary income items which are also tied to pay changes.

The Union confronted the Borough with heated resistance concerning its demand for deletion of those provisions for extra compensation which they were anxious to maintain. Most have to do with added pay based on such things as time of day worked, hours worked later than normally scheduled, participation at events or voluntary substitution for others which result in overtime hours.

At the outset of these negotiations the Borough identified a lengthy list of these activities and demanded they be halted. I am of the persuasion they may be permitted but only if the employer should grant the request for each person involved at each event or by identifying such approval by an announcement.

The Employer made demands for changes in many benefits now enjoyed. The following are hereby awarded:

These include a reduced limit on the number of consecutive sick days which require a doctor's note from five consecutive days to two; provide that the administration can call for a fitness for duty examination whenever there is a pattern of absenteeism. In Article VI the provision for attendance at a funeral shall be four days, including the day before the wake, the day of the wake, day of the funeral, and the day after the funeral. In Article X, Overtime, Section One, shall be amended to provide that the maximum accumulation of compensatory time off in lieu of overtime is 100 hours. Section G provides that the past practice concerning the flex day schedule which is paid at straight time, shall be continued. Article XI, Vacation, Section One, is amended to reflect all current officers are frozen at their current step in vacation allowance. Section D will provide that vacation use may be limited to certain times of the year unless there is no conflict in terms of staff requirements as determined by the Employer. Article XVI shall be eliminated. Article XX, Arbitration, Section Two, is amended to provide that the parties shall adhere to the appointment process of the Public Employment Relations Commission. Article XXI Section Three, is amended to provide a freeze on longevity for all current officers. Longevity pay shall be measured in dollar amounts rather than percentages. Section Three is further amended to provide that new hires are not eligible for longevity. Article XXIII, Section One will provide that all current and new employees will be capped at \$15,000 for unused sick leave. The \$15,000 will apply to all current employees that have less than \$15,000 in accrued sick leave. Current employees

with more than \$15,000 credit shall be capped at that level as of July 1, 2011. Article XXV Education, Section Two, is amended to provide that the Borough will pay a maximum of \$3000 annually for the entire department in total for courses taken with the Chief's approval. New Article, Drug Testing, Borough will implement drug testing procedures using AG guidelines, including illegal use of steroids.

The Union also made many proposals and the following are hereby awarded:

Article VI, Special Leaves: should a death in the family occur and services are out of state, the attendance leave may be increased to five days. Article X Overtime Section One: the Borough agrees that overtime at the rate of time and one half shall be paid to all employees in compensatory time or cash for hours worked in excess of the regular work day. Article XXVI, Duration: negotiations for a successor agreement shall be initiated according to law. Article XXIX Duration, Section One: all internal affairs investigations will be conducted in accordance with New Jersey Attorney General guidelines. Article XVII Discharge and Suspension, Section One: amended to read that all discipline will be issued in accordance with the Rules and Regulations promulgated by the New Jersey Civil Service Commission and New Jersey State law.

The salary changes and effective dates will be as follows and are notably different than either party had proposed. The pay increases will be less than the Union's demands and somewhat greater than those proposed by the Borough. However this plan will preclude the need for further negotiations for a period of two years which should provide a reasonable recovery time for renewal of peaceful co-existence and a more stable economic environment.

As noted above, there will be no increases in earnings beyond the following scheduled changes. The design is to provide a plan which can be afforded by the Borough and come reasonably closer to the demands of the Union without producing a financial crisis. Bearing in mind there have been some savings built into the changes I have already provided above, in addition this award will restrict the immediacy of application in order to deliver reasonable increases as are affordable and which will be tolerated by the Borough. It is my intent that all parties recognize the need for offering conservative commitments in these years of fiscal crisis which surrounds us.

The first wage increase will be in 2011. The increase of 1 % shall be granted on October 1, 2011. There shall be a second increase granted on September 1, 2012, in the amount of .75%. A third increase shall be granted on March 1, 2013 and the amount shall be 1.25%. A fourth increase shall be in the amount of 1.25% and shall be granted on March 1, 2014, and there shall be a fifth increase in the amount of 1.50% granted on February 1, 2015 with an expiration date of December 31, 2015.

This salary plan is somewhat more expensive than the proposal of the Borough and it is much less generous than that advanced by the Union. The combination of wage increases proposed by the Employer would total 2.75% for a period of 3.5 years while the Union's

demand for the same period would have cost 7.43% and the proposal of the Union was 9.2% for a period of 4.5 years. These figures are set forth as they would have been awarded but do not include the compounding of cost.

My award is for the 4.5 year plan set forth above and costing a total of 5% is the compromise I believe to be the fairest and can afforded by both parties. It has the advantage of extending the settlement for two years beyond the expiration of the originally proposed three year contract term which should provide a period of labor-management peace. An added advantage is that this agreement will not be subject to new regulations by the State, which may possibly become effective as early as January 1, 2014. This stabilizing effect coupled with a good will commitment of the parties should help to provide labor peace for the remainder of the contract.

DISCUSSION OF STATUTORY CRITERIA

Interests and Welfare of the Public

This is a key factor and especially so as the recent catastrophe of Hurricane Sandy has imposed many unusual demands on the Employer and the population in general. The unforeseen spectrum of damages to property and personal and public buildings and businesses has created demands for services and assistance by the Borough to an unprecedented level of costs. This means the focus of attention had to be on the repair and rehabilitation of the Borough as a whole. While this condition may rapidly come under control the focus will remain for perhaps years and will require very extensive economic resources. I rank this as the number one criterion in importance in this negotiations. As previously indicated the administration has been dedicating its efforts with substantial success. The Union personnel have risen to the occasion both in terms of effort and results.

Comparisons of Wages, Hours and Conditions of Employment

The administration has applauded the efforts of all employees in this time of crisis and the results have been extraordinary as to success. While the wages are under consideration in negotiations I feel it significant to indicate that the overall employee benefits for police are very similar to that found in nearby communities. I do not feel that it is proper to attempt comparison with non police employees.

Overall Compensation Received by Employees Inclusive of Wages and Other Benefits

These employees have enjoyed a highly competitive income and an array of benefits inclusive of health, vacation and holidays which make this criteria important for all

concerned but very much under control.

Stipulations of the Parties

Stipulations of the parties were made concerning three minor issues.

The Lawful Authority of the Employer

There is nothing in the statutes which has precluded complete and comprehensive submissions for resolution at this time.

The Financial Impact on the Governing Unit, Its Residents and Taxpayers

The terms of this award are not anticipated to have a negative effect on the municipal purposes element or local property taxes, although the costs of government derived from the impact of the hurricane have threatened to stretch the budget. There has been considerable thought given to the need for additional funds to provide for the expanded needs of the public due to the aftermath of the hurricane. To date, this an ongoing concern and will probably not be resolved for some time to come. Therefore, it is very possible that there will be an impact on the local budget.

The Cost of Living

As a factor this has not been extremely difficult to live with as the cost of living has remained in a manageable range. Therefore, this is not a key matter in this proceeding.

The Continuity and Stability of Employment

This is another factor which has been very much under control as evidence by long term employment services and successful collective negotiations.

Statutory Restrictions Imposed on the Employer

No issues have arisen which would suggest that these restrictions are likely to become a limiting factor during the term of this agreement.

My consideration of the parties proposals is governed by law. In arriving at this award, I conclude that all the statutory factors have some relevance, but not all are entitled to equal weight. My focus in the above award has been essentially on wages and benefits. I believe I have dealt fairly with the issues raised by both parties in reaching an overall new contract of employment.

As noted above issues, which may have been raised in negotiations but not explicitly dealt with in this award, are to be considered as having been rejected. This has been a singularly difficult negotiation, however, that process has led to a remarkable conclusion, which I believe to be fair, and in the best interest of all concerned.



Frank A. Mason

Pennington, Mercer County, New Jersey

On this 28th day of June, 2013 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.



6-28-13

Richard Burek
Notary Public
New Jersey
My Commission Expires 10-18-17
No. 2426326

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The salary changes and effective dates will be as follows and are notably different than either party had proposed. The pay increases will be less than the Union's demands and somewhat greater than those proposed by the Borough. However this plan will preclude the need for further negotiations for a period of two years which should provide a reasonable recovery time for renewal of peaceful co-existence and a more stable economic environment.

As noted above, there will be no increases in earnings beyond the following scheduled changes. The design is to provide a plan which can be afforded by the Borough and come reasonably closer to the demands of the Union without producing a financial crisis. Bearing in mind there have been some savings built into the changes I have already provided above, in addition this award will restrict the immediacy of application in order to deliver reasonable increases as are affordable and which will be tolerated by the Borough. It is my intent that all parties recognize the need for offering conservative commitments in these years of fiscal crisis which surrounds us.

The first wage increase will be in 2011. The increase of 1 % shall be granted on October 1, 2011. There shall be a second increase granted on September 1, 2012, in the amount of .75%. A third increase shall be granted on March 1, 2013 and the amount shall be 1.25%. A fourth increase shall be in the amount of 1.25% and shall be granted on March 1, 2014, and there shall be a fifth increase in the amount of 1.50% granted on February 1, 2015 with an expiration date of December 31, 2015.

This salary plan is somewhat more expensive than the proposal of the Borough and it is much less generous than that advanced by the Union. The combination of wage increases proposed by the Employer would total 2.75% for a period of 3.5 years while the Union's

demand for the same period would have cost 7.43% and the proposal of the Union was 9.2% for a period of 4.5 years. These figures are set forth as they would have been awarded but do not include the compounding of cost.

My award is for the 4.5 year plan set forth above and costing a total of 5% is the compromise I believe to be the fairest and can afforded by both parties. It has the advantage of extending the settlement for two years beyond the expiration of the originally proposed three year contract term which should provide a period of labor-management peace. An added advantage is that this agreement will not be subject to new regulations by the State, which may possibly become effective as early as January 1, 2014. This stabilizing effect coupled with a good will commitment of the parties should help to provide labor peace for the remainder of the contract.

DISCUSSION OF STATUTORY CRITERIA

Interests and Welfare of the Public

This is a key factor and especially so as the recent catastrophe of Hurricane Sandy has imposed many unusual demands on the Employer and the population in general. The unforeseen spectrum of damages to property and personal and public buildings and businesses has created demands for services and assistance by the Borough to an unprecedented level of costs. This means the focus of attention had to be on the repair and rehabilitation of the Borough as a whole. While this condition may rapidly come under control the focus will remain for perhaps years and will require very extensive economic resources. I rank this as the number one criterion in importance in this negotiations. As previously indicated the administration has been dedicating its efforts with substantial success. The Union personnel have risen to the occasion both in terms of effort and results.

Comparisons of Wages, Hours and Conditions of Employment

The administration has applauded the efforts of all employees in this time of crisis and the results have been extraordinary as to success. While the wages are under consideration in negotiations I feel it significant to indicate that the overall employee benefits for police are very similar to that found in nearby communities. I do not feel that it is proper to attempt comparison with non police employees.

Overall Compensation Received by Employees Inclusive of Wages and Other Benefits

These employees have enjoyed a highly competitive income and an array of benefits inclusive of health, vacation and holidays which make this criteria important for all

concerned but very much under control.

Stipulations of the Parties

Stipulations of the parties were made concerning three minor issues.

The Lawful Authority of the Employer

There is nothing in the statutes which has precluded complete and comprehensive submissions for resolution at this time.

The Financial Impact on the Governing Unit, Its Residents and Taxpayers

The terms of this award are not anticipated to have a negative effect on the municipal purposes element or local property taxes, although the costs of government derived from the impact of the hurricane have threatened to stretch the budget. There has been considerable thought given to the need for additional funds to provide for the expanded needs of the public due to the aftermath of the hurricane. To date, this an ongoing concern and will probably not be resolved for some time to come. Therefore, it is very possible that there will be an impact on the local budget.

The Cost of Living

As a factor this has not been extremely difficult to live with as the cost of living has remained in a manageable range. Therefore, this is not a key matter in this proceeding.

The Continuity and Stability of Employment

This is another factor which has been very much under control as evidence by long term employment services and successful collective negotiations.

Statutory Restrictions Imposed on the Employer

No issues have arisen which would suggest that these restrictions are likely to become a limiting factor during the term of this agreement.

My consideration of the parties proposals is governed by law. In arriving at this award, I conclude that all the statutory factors have some relevance, but not all are entitled to equal weight. My focus in the above award has been essentially on wages and benefits. I believe I have dealt fairly with the issues raised by both parties in reaching an overall new contract of employment.

As noted above issues, which may have been raised in negotiations but not explicitly dealt with in this award, are to be considered as having been rejected. This has been a singularly difficult negotiation, however, that process has led to a remarkable conclusion, which I believe to be fair, and in the best interest of all concerned.



Frank A. Mason

Pennington, Mercer County, New Jersey

On this 28th day of June, 2013 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.



6-28-13

Richard Burek
Notary Public
New Jersey
My Commission Expires 10-18-17
No. 2426326