

NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Interest Arbitration between

TOWNSHIP OF MONTGOMERY

and

Interest Arbitration
Opinion and Award

MONTGOMERY PBA LOCAL 355

PERC Docket No. IA 98-34

BEFORE : Barbara Zausner, Arbitrator

AWARD DATED: February 23, 1999

APPEARANCES

Ruderman & Glickman
Attorneys for the Township
By, Steven S. Glickman, Esq.

Loccke & Correia
Attorneys for the Association
By, Richard D. Loccke, Esq.

PROCEDURAL BACKGROUND

I was appointed interest arbitrator by PERC on February 19, 1998. I met with the parties on August 13, 1998 and on October 26, 1998. I held a formal hearing on October 26 and closed the record on receipt of the parties' briefs. The parties agreed to extend the due date of the award. The decision is by conventional arbitration and covers the period from January 1, 1998 through December 31, 2000.

FINAL OFFERS

PBA *Economic*

Wages	Effective January 1, 1998, 6% increase
	Effective January 1, 1999, 6% increase
	Effective January 1, 2000, 6% increase

Senior Officer Differential

Upon completion of 20 years of police service, the officer would be paid at a step which is one half the difference between the top step pay rate of a patrolman and the sergeant. For purposes of this proposal, police service would be defined as set forth in the New Jersey police and fire pension system.

Reimbursement (Article XVI)

The PBA proposes an increase in the maximum annual reimbursement for the four enumerated items at the middle of page 24 in the contract.

[These are dental services, optical services, prescription drugs, and premium costs for dental and disability insurance] and an increase in the cap to \$1500 (from \$1300). There would be a commensurate increase in the carry over provision provided in the last paragraph of this article.

PBA Delegate

The Association proposes that the PBA delegate be permitted time off to attend state and county meetings without loss of regular compensation.

Private Duty

The Association proposes a modification to section 3 of Article XXIV, Private Duty, to increase the rate to the officer from \$25.00 to \$40.00.

Non-economic

Grievance definition

The PBA proposes a change in the definition of a grievance to:

For purposes of this Agreement, the term 'grievance' means any complaint, difference or dispute between the employer and any employee with respect to the interpretation, application, or violation of any of the provisions of this Agreement or any applicable rule or regulation or policies, agreements or administrative decisions affecting any employee(s) covered by this Agreement.

Minor disciplinary matters (less than six (6) days of fine or suspension or equivalent thereof) shall be included in this Grievance Procedure.

Preservation of Rights

This is a proposal for new language which would read:

The parties agree that all benefits, rights, duties, obligations and conditions of employment relating to the status of the Montgomery Police Department which benefits, rights, duties, obligations, terms and conditions of employment are not specifically set forth in this Agreement, shall be maintained in not less than the highest standards in effect at the time of the commencement of collective bargaining negotiations between the parties leading to the execution of this Agreement.

Unless a contrary intention is expressed in this Agreement, all existing benefits, rights, duties, obligations and conditions of employment applicable to any Officer pursuant to any rules, regulations, instruction, directive, memorandum, statute or otherwise shall not be limited, restricted, impaired, removed or abolished.

Township

Wages For Patrol Officers

2% salary increase effective January 1, 1998
except freeze starting salary

2% salary increase effective January 1, 1999
except freeze starting salary.

Thereafter, a new salary guide would be established for all Patrol Officers hired on or after January 1, 1999, adding two (2) steps to the

present salary guide. This would be accomplished by taking the starting salary and top salary and creating six (6) intermediate steps ending with the seventh (7th) year.

2% salary increase effective January 1, 2000, except freeze starting salary.

For Sergeants

2% increase effective January 1, 1998

2% increase effective January 1, 1999

Thereafter, a three step guide would be established for all Patrol Officers promoted to the rank of Sergeant on or after January 1, 1999, by taking the 1998 salary as the starting salary, the 1999 salary as the top salary, and creating an intermediate step between these two steps.

Vacation Schedule

The Township proposes a modification in the vacation schedule for all bargaining unit members hired on or after January 1, 1999. The resulting schedule would reduce the vacation allowance by two days per year at each level.

Holidays and Holiday Pay

The Township proposes to modify the procedure for payment of holidays and holiday pay to provide that employees shall receive holiday pay in the amount of one and one-half (1.5) times their regular base rate of pay for all hours worked on a holiday instead of all employees receiving eight hours pay at their straight time hourly rate for fourteen holidays.

DISCUSSION AND SUMMARY OF EVIDENCE

The parties agree that the term of the contract shall be from January 1, 1998 through December 31, 2000. The Employer's offer is economic in nature. The PBA has two non-economic issues in addition to its economic proposals.

The difference between the parties' positions on economic issues is substantial. The PBA's salary proposal would increase bargaining unit wages by 18%¹ over the three year contract term. The other economic aspects of the offer would further increase costs. The Employer's offer would result in a wage increase of 6% over the term. Its proposals to add steps to the guide and to reduce the vacation and holiday pay costs would result in some future savings.

One indication of the magnitude of the difference between the parties is derived by applying the proposed wage increases to the 1996 budgeted figure for police salaries and wages (\$1,694,931).² The total adopted budget is \$12,697,543. (P-17, pp. 22 and 30). The PBA's demand would increase the salary line by more than \$305,000. The Employer's offer adds about \$102,000.

¹ The percentage increase also affects other costs such as pension contributions and payroll taxes.

² As of October 8, 1998, total base salary cost for the unit was \$1,215,857. This includes three new hires (as of 9/18/98).

The bargaining unit consists of eighteen patrol officers (including three hired in September 1998) and five sergeants.

Montgomery Township is located in Somerset County, New Jersey. The Township has a population of 9,612, slightly below the county average. It has about 33 square miles in land area; more than twice the average size. The per capita income is over \$32,000, \$5,000 above average in a range from \$16,000 to \$49,000. The Township has 1.125% of its population at the poverty level. The highest percentage in the county is almost 6%. Montgomery is among the lowest on this factor and in households receiving public assistance. It is also among the lowest in percent of households receiving social security. That factor is consistent with a relatively youthful population.

The Township is at the low end in percentage of property which is residential: 72.72%. 12.39% is in commercial property. Some of the larger municipalities, such as Hillsborough and North Plainfield, have a smaller percentage of commercial property. Both "richer" and "poorer" communities have a smaller percentage of commercial property and a larger percentage of residential property. Montgomery has the most vacant property, 8.03%. The bottom of the range is .46 %.³

³ The data cited in this section come from the Township's Exhibit book and are compiled from the 1998 NJ Municipal Data Book.

The median value of a single family home in the Township is well above average (\$228,000) at \$273,000. Median rent is \$858 where the average is \$711. Montgomery ranks 6th in total revenue (1993) at over \$28 million. It derives \$21.5 of its revenue from property taxes, 7th in the county. The percentage of revenue from property taxes is listed at 76.41% in a range of 71 to 84%. Montgomery is fourth from the bottom on this indicator. It receives the second highest level of revenue from state aid at \$1,838,115. Its percentage of revenue from the state, 11.28%, is the highest in the county by more than double -- the next figure is 5.81% -- considerably more than the relatively poorer and larger Boroughs of North Plainfield and Hillsborough.

The tax levy per capita in 1993 was \$2,070, sixth highest. Hillsborough, for comparison, is 16th at \$1,319. Montgomery collects 97.63% of its taxes. Somerville, at 94.14% has the worst collection rate. Montgomery's equalized tax ratio is 79.36, fourth lowest. Hillsborough is third, North Plainfield is 12th.

Montgomery ranks 8th in net valuation taxable (1997) and 6th in state equalized value. The total tax rate in 1997 was 2.99 in a range from 1.39 (Bedminster) to 4.42 (Somerville). The rate increased to 3.150 in 1998. (P-16, p.2). The equalized tax rate increased by 29% in the five years between 1992 and 1997. This is higher than many of the municipalities in the county, some of which saw

increases of 34% (Somerville and North Plainfield), 28% (Franklin Township), and 40% (South Bound Brook).

A chart of 1998 Somerset County tax rates compares previous with total tax rate. Most of the municipalities in the county sustained an increase at least as great as that in Montgomery.

The demographic data support the conclusion that Montgomery Township is among the wealthier municipalities and that it has a relatively high standard of living. These factors should be considered when wage rates are compared.

With respect to the PBA demand for an increase in the hourly rate for private duty, the testimony is that the contractor who needs police assistance pays the Township an hourly rate for that service. The rate was adjusted to \$29.00, from which the Township takes a \$6.00 fee. The PBA proposes to keep the fee at \$6.00 but raise the net rate to the contractor to \$46.00.

There is no evidence that the rate is not comparable. Most of the contracts in evidence are silent on the private duty rate.

The PBA's proposal to change the grievance definition adds minor discipline to the procedure and expands the term "complaint" by adding "difference or dispute" to the first sentence.

Minor discipline is not now covered by the contract. The law was amended after the last contract was signed.

The PBA provides evidence of an increase in workload and in demand for services. Various crimes such as assaults, burglaries, thefts, etc. are increasing. Revenue generated by summonses is also up. Manpower, however, has declined. (P-3, series of exhibits). Accidents have increased because of the increase in population and the lack of improvement in area roads.

THE STATUTORY CRITERIA

Interest and Welfare of the Public

The PBA points to evidence that the "work load of the ... Department has increased in virtually every measurable area over the recent past." It argues that the police officers are "providing increased levels of service in virtually every area of need to the public." (Brief, p. 7). However, there has been no increase in staff "in many years." (Br., p. 8).

The PBA also contends that the department "has not been able to retain skilled experienced Police Officers." A number of officers have left to go to other law enforcement jobs. The PBA claims this is because "the compensation program in Montgomery is below average." It cites the absence of a longevity program

and the lack of promotion opportunities compared with other police departments in the area. These factors, it argues, have a negative impact on residents. "The interest and welfare of the public would be better served if there was a more competitive compensation program in Montgomery Township." (Br., p. 12).

The Employer asserts:

When the Township derives its economic proposal, it takes into account not only the needs and desires of the bargaining unit, but also the other [statutory] criteria. The Township is better equipped to properly gauge, weight and consider these statutory criteria. [Therefore] its proposal, which is reasonable and takes into account all of the statutory criteria, must be the position awarded by the Interest Arbitrator (Brief, p. 19, emphasis in original).

The Employer claims that although Township residents have a "moderate to high per capita income, [they] are 'saddled' with a high equalized tax rate, and high tax levy per capita." (Tp. Ex. Tab 2). The Township ranks 6th out of 21 municipalities in both equalized value of ratables and the equalized tax rate. Five years ago it ranked 10th. It ranks 7th in per capita income and 6th in tax levy per capita.

This criterion is given the most weight in this decision. There are two competing interests which this award attempts to balance.

Those are the need to maintain a competent and motivated police force while controlling the cost of providing that service.

The exhibits in the record do not support either parties' position. A key factor in this aspect of the decision is that a growing residential and youthful population needs and depends on effective police coverage. Therefore, it best serves the public interest of this municipality to maintain police wages at competitive levels so as to insure continuation of a professional and productive bargaining unit. The fact that employees hired and trained by the Township move on to other law enforcement jobs reinforces the decision to continue police compensation at a competitive level.

The comparative data also show that Montgomery has the means to maintain police compensation at about the level it has been over the past few years. Other municipalities are growing rapidly and have residents who shoulder an increasing tax burden. Nevertheless, both the financially strapped municipalities (those with a low tax base, with substantial numbers of people on public assistance, and with low per capita incomes) and those with greater resources have continued to increase police wages at about 4% per year.

This issue is further discussed in the comparison section below. As a general principle, comparison with other police departments in

the county is one objective measure of what it costs to provide the service in the Somerset County area.

Stipulations of the parties

There are no stipulations affecting this decision except as to the term of the contract.

Comparisons

The PBA maintains that the compensation program in this Department as compared with those in the area "is lacking." (Br., p. 13). It points to differences in the pension benefit available in Montgomery. (P-18, Br., 14-15, chart 1, p. 15). The Department is the only one in the "county without the full Police and Fire Pension System conversation." (Br., p. 15).

PBA Chart No. 2 compares "longevity/senior officer differential." Montgomery Township has neither. The PBA argues that an officer here earns "significantly less than his peers in surrounding towns." The vacation benefit, at 25 years of service, is lowest in this department. (Chart No. 3, Br., p. 18). There is no paid clothing allowance which is "more restrictive to the officer".

The PBA argues that total compensation must be considered and that hours of work are longer in Montgomery than in other municipalities. It cites an average wage increase in Somerset

County of slightly above 4% per year in 1998, 1999 and 2000. (Chart No. 5, p. 22).

Wage increase data provided by PERC shows average salary increases throughout the state at a level between 3.75% and 4% for 1997 and 1998. The comparative data point to an award that is between the two parties' offers.

The Employer points to evidence which shows the Township's patrol officers ranking third out of 18 Somerset County municipalities. Its offer would place the officers in fourth position in 1998, and third in both 1999 and 2000 (of those municipalities reporting wage rates for those years. (Tabs 2,3). The Township also provides an exhibit which shows the 25 year aggregate comparative value of extra compensation, such as longevity or deferred compensation. Montgomery ranks 14th, at \$28,744. The range is zero to \$71,626 in Warren Township. Some municipalities have negotiated a two-tiered system for extra compensation and some have phased out programs.

Sergeants ranked seventh out of 17 municipalities. Under the Township's offer, they would rank eighth (of 18). The Township argues that the Association's wage demand "would increase their ranking higher than it should be when reviewing demographic

comparability." (Tabs 2,3; Br., 23). New step guides for sergeants are also found in area contracts.

In response to the PBA's proposed senior officer differential, the Township points out that 3 of 19 municipalities have no longevity payments. Seven others have eliminated that benefit for new employees. Only one of those added a senior officer differential. One municipality has no longevity until the fifteenth year.

The Township emphasizes its deferred compensation plan under which the Employer contributes 2% of the employee's base salary. This benefit "more than compensate[es] for the lack of a longevity plan." (Br., p. 24). Officers' overall compensation over a 25 year period ranks 6th when additional compensation is added in, and if the Township's 2% wage increases were applied. This is "significantly higher than its equalized ratables and per capita income ranking." (Tabs 2 & 3, Br., 24).

I have made comparisons based on a top patrol officer salary of \$56,362 in 1997. In 1995, the maximum patrol officer's salary in Montgomery was third highest (and within about \$500 of the top) in the county. In 1996 it ranked fourth. The 1997 salary was back to third place. Under the Township's offer for 1998, the Township would be in fourth place, \$1300 behind the top salary.

An award of 4% would, depending on the percentage increase in Bernards, Branchburg, Bridgewater, and Manville, better maintain Montgomery salaries in the top four or five. It would also prevent creating a greater gap between Montgomery and the other departments. There is very little comparative data for 2000 but the trend of average increases around 4% appears to continue for that year as well. The Township's offer would be inadequate and the PBA's demand is excessive.

... other employee groups within the municipality

Township Exhibit Tab 3 shows that "the only managerial employees whose **1998** salaries exceed the **1997** salaries of the patrol officers are the Community Development Director, Construction Official, Health Officer, Township Engineer, Chief Financial Officer, Recreation Director, Sewer Superintendent, Township Administrator, and Assistant Township Administrator." (Br., p. 26). The Township points out that continuing to offer police officers larger percentage increases than those paid to other employees will further increase the gap between this bargaining unit and all other Township employees.

Internal comparison is a significant and important factor. However, the need to maintain a rational internal compensation system must be balanced by the need to recruit and maintain a

competent police force. There are no data in the record which compares salaries for non-police municipal employees and no indication as to whether or not the salary levels in Montgomery are reasonable or comparable. On the other hand, ample data exist with respect to terms and conditions of employment for public safety employees. Thus, that comparison is given more weight than comparisons within the Township.

... public and private sector in the Metropolitan Area

A recent BNA wage survey shows a 3% average increase for state and local government contracts. The figures are up from 1997. (Tp. Exh, Tab 4.) Wages in all industries increased by about 3% in 1997. Port Authority Police received pay increases of 25% over 7 years (slightly over 3% per year). Wage savings were also reported.

This criterion is given little weight except that the award will not greatly exceed wage increases to many other public sector employees. New Jersey public safety employees continue to get greater wage increases than do other public servants.

... private sector

National wage increases of less than 3% are reported overall.

This criterion is irrelevant for this decision. There are no comparable private sector employees and there is no evidence that public sector wages or wage increases would provide any guidance in deciding this matter. The increases awarded are more in line with public sector than with private sector changes but private sector increases, for the years covered, are close.

Lawful Authority of the Employer and Financial Impact on Governing Unit...

The Township "readily admits that it has the 'ability to pay' ... the association's demand... [but] to do so, the Township's budget strategy to develop a fund and utilize current expense appropriations to cover capital expenditures while maintaining a maximum budget 'cap' would be hampered." (Brief, p. 34).

A review of the budget shows that salaries for the entire department (including those outside this bargaining unit). In 1996 that figure was about 13% of the total budget. By 2000 the figure may be lower due to an increase in new employees and the retirement or departure of higher paid police officers. Salary increases of 12% over the next three years will not impair the Township's ability to continue its cost cutting efforts.

Other economic considerations asserted by the Township are the increase of residential development, "a 'tax loser'", a "plummeting surplus due to the necessity to offset debt service", a "skyrocketing tax rate due to the implementation of necessary capital projects", and a "dramatically shrinking" capital improvement fund. (Brief, p. 35).

The Township argues that its exhibits show how the Township has "a significantly declining ability to stabilize future budgets, fund capital projects, and insulate its taxpayers from a skyrocketing tax rate." (Br. 36. Tab 6). It contends that the current economy "impacts upon the Township's ability to raise taxes to pay the Association's economic demands." (Br., p. 38). The data show that Montgomery has an excellent tax collection rate and a tax burden not unlike that of similarly situated public employers.

My analysis of the record shows that Montgomery is in a better position to fund a wage increase of about 4% than are many neighboring municipalities. Moreover, notwithstanding that residential development is a mixed blessing, the fact is that a burgeoning population has a greater need for police services than do those with stable growth or those in rural communities with less dense populations.

Current compensation

The 1995 - 1997 contract (J-1) has a salary schedule which distinguishes between employees hired before January 1, 1997 and those hired after. This factor is very important for the decision on creating another two-tiered guide for vacations. I have concluded that such an award would create too many classes of patrol officer benefits and would have an adverse effect on the morale of the unit.

Cost of Living & CPI

The Township cites a 2.7% increase for 1997 which "represents the fifth year in a row the CPI was under 3%." (Br., p. 40. Tab 8). The Township's offer is below the cost of living increase. The award is slightly above the increase in the cost of living but is aimed at maintaining a competitive wage and not at keeping pace with the cost of living.

Continuity and Stability of Employment

There is evidence that the continuity and stability of employment would be best served by an award which is mid way between the parties' offers. This criterion is very important for the decision in light of testimony about turnover and has an impact on other weighty criteria discussed above (specifically, the public interest and comparisons).

CONCLUSIONS

TERM: January 1, 1998 through December 31, 2000. (By stipulation).

WAGES:

Wage Increase (Sergeants and Patrol Officers)

Effective January 1, 1998, 4% increase across the board.
Effective January 1, 1999, 4% increase across the board.
Effective January 1, 2000, 4% increase across the board.

Salary Guide

Freeze starting salary and add one step to the salary guide for patrol officers and one step to the guide for sergeants after advancing those hired (or promoted) before January 1, 1999 using the method proposed by the Township.

The objective indicators show that a 4% increase in each year will maintain the unit's current standing with respect to comparable police departments in the area. This is necessary in order to serve the public interest in attracting and retaining a competent and motivated police force. The cost of this increase is offset to some degree by the future savings to be gained by adding steps to the salary guides for both patrol officers and for sergeants. No other costly economic improvements shall be awarded in consideration of the Employer's efforts to control its budget.

Senior Officer Differential

This benefit will not be added at this time in order to insure funds to maintain base salaries at a competitive level. None of the criteria warrants the addition of another substantial increase for the most senior patrol officers.

PBA Delegate

Article XX, "Time Off for PBA Conventions" now provides for time off to attend a state or national convention, and time off to deal with PBA issues in the Township and for negotiations. A review of the record shows little support for increasing paid time off in this area. For example, there is no evidence that delegates for this unit cannot effectively represent the unit or is otherwise limited in obtaining information of state-wide importance to this PBA. Comparison of similar provisions in area contracts does not support an increase in paid time off for PBA representatives.

Private Duty

There is no evidence that private duty is paid at a lower rate in Montgomery than elsewhere. There is no history to show that the rate is too low to provide effective service or to recruit officers for private duty work.

Reimbursement

An important justification for awarding twice the increase offered by the employer is that cost saving features are also awarded to offset the cost of maintaining a competitive base salary. Absent evidence that the existing benefit is inadequate, there is no support for the demand.

Vacation Schedule

The Township's proposal to reduce the vacation benefit for new hires is not warranted. The vacation benefit (21 days at maximum), is well below average. There is no other evidence to support a reduction in this benefit.

Holidays and Holiday Pay

The Township's proposal is not supported by evidence of the savings to be generated by a major change in the holiday pay system. Most other jurisdictions have similar provisions to that which is currently in the contract. (Article VIII).

Grievance definition

There is some support for the proposal to add minor discipline to the grievance procedure in that an enabling statute became law after the last contract was negotiated. However, there is insufficient data in the record to support that change now. The

parties should gather evidence of the types of discipline imposed on police officers and on the sort of matters which might be brought under the grievance process. That information might lead to mutual agreement on handling minor discipline.

There is no evidence in support of the proposal to expand the definition of a grievance by adding to the word "complaint" to the terms "difference or dispute." The ordinary meaning of all three words is similar. There is no indication that anyone has been precluded from filing a grievance under the existing definition. There is no history of problems with the language.

Most of the contracts in the area have a definition similar to the existing one. A change at this point can only add confusion and raise questions about the purpose of the change. Absent a good reason to change the grievance definition, the proposal is not awarded.

Preservation of Rights

There is no evidentiary support for the proposed new contract article. There is no history of the need for the language such as evidence of arbitrary changes in "benefits, rights, duties," etc. Some area contracts have a similar provision but many do not.

AWARD

Wage Increase (Sergeants and Patrol Officers)

Effective January 1, 1998, 4% increase across the board.
Effective January 1, 1999, 4% increase across the board.
Effective January 1, 2000, 4% increase across the board.

Salary Guide

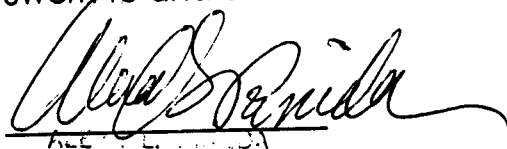
Freeze starting salary and add one step to the salary guide for patrol officers and one step to the guide for sergeants after advancing those hired (or promoted) before January 1, 1999 using the method proposed by the Township.

All other terms and conditions which are not dealt with in this award and are not the subject of agreements between the parties shall remain unchanged.

By: 
Barbara Zausner

New Jersey
Hudson

Sworn to and affirmed before me on February 23, 1999



NOTARY PUBLIC OF NEW JERSEY
My Commission Expires Nov. 18, 2002

