

**PUBLIC EMPLOYMENT RELATIONS COMMISSION
CN 429
495 STATE STREET
TRENTON, N. J. 08625-0429**

Docket # IA - 99-25

TOWNSHIP OF IRVINGTON
Employer

and

P. B. A. LOCAL 29
Union

OPINION

&

AWARD

ARBITRATOR: Daniel J. Hussey, Esq., mutually chosen by the parties pursuant to the rules and regulations of the New Jersey Public Employment Relations Commission.

HEARINGS

LOCAL: Irvington Parking Authority, Irvington, N. J.

APPEARANCES:

For the P. B. A.

Fredric M. Knapp, Esq.
COURTER KOBERT
Harold Wallace
Brian Bartiromo
Robert Powers
Barry Halpern
John Ezyseke, CPA
Frank McEnerny

P. B. A. Counsel
Patrolman
Patrolman
P. B. A. President
S. O. A. President
Financial Expert
Financial Expert

For the Township

Thomas M. McCormack, Esq.
MATTHEWS & McCORMACK
Elvis Gooden
John A. Martin
Robert Rankin

Township Counsel
C. F. O.
Financial Expert
Police Director

Statutory Requirements

By virtue of the statutory revision to NJSA 34:13(a)1, et seq., by the passage of the Police and Fire Interest Arbitration Reform Act (A-3296, C. 425 L1995) as well as by agreement of the parties themselves, conventional authority is vested in the Arbitrator to decide the issues in dispute.

The revised statute cited above imposes upon the Interest Arbitrator the duty to:

“ . . . g. The arbitrator or panel of arbitrators shall decide the dispute based on a reasonable determination of the issues, giving due weight to those factors listed below that are judged relevant for the resolution of the specific dispute. In the award, the arbitrator or panel of arbitrators shall indicate which of the factors are deemed relevant, satisfactorily explained why the others are not relevant, and provide an analysis of the evidence on each relevant factor.

(1) The interest and welfare of the public. among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by P.L. 1976 c.68 (C:40A4-45 1 et seq.).

(2) Comparison of the wages, salaries, hours, and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours, and conditions of employment of other employees performing the same or similar services and with other employees generally:

(a) In private employment in general: provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.

(b) In public employment in general: provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.

(c) In the public employment in the same or similar comparable jurisdictions, as determined in accordance with Section 5 of P.L. c. (C.) (now pending before the Legislature as this bill): provided, however, that each party shall have the right to submit additional evidence concerning the comparability of jurisdictions for the

arbitrator's consideration.

[(b) in comparable private employment.

(c) In public and private employment in general.]

(3) The overall compensation presently received by the employees, inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received.

(5) The lawful authority of the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering these factors are the limitations imposed upon the employer by P.L. 1976, c.68 (C.40A:4-45. 1 et seq.)

(6) The financial impact on the governing unit, its residents and taxpayers. when considering this factor in a dispute in which the public employer is a county or a municipality, the arbitrator or panel of arbitrators shall take into account, to the extent that evidence is introduced, how the award will affect the municipal or county purposes element, as the case may be, of the local property tax; a comparison of the percentage of the municipal purposes required to fund the employees' contract in the proceeding local budget year with that required under the award for the current local budget year; the impact of the award for each income sector of the property taxpayers of the local unit; the impact of the award on the ability of the governing body to (a) maintain existing local programs and services. (b) expand existing local programs and services for which public monies have been designated by the governing body in a proposed local budget, or (c) initiate any new programs and services for which public monies have been designated by the governing body in a proposed local budget.

(7) the cost of living.

(8) the continuity and stability of employment including seniority rights and such other factors not confined to the foregoing which are ordinarily or traditionally considered in the determination of wages, hours, and conditions or employment through collective negotiations and collective bargaining between the parties in the public service and in private employment. . ."

BACKGROUND

PBA Local 29 and the Township of Irvington are parties to a collective bargaining agreement which ran from January 1, 1996 through December 31, 1998. The parties met on four occasions in unsuccessful attempts to negotiate a new contract. Subsequently the PBA filed a petition to initiate compulsory Interest Arbitration on December 1, 1998. The Township filed an answer to the petitions and consequently the undersigned was appointed to arbitrate this matter. The undersigned met unsuccessfully with the parties in an attempt to mediate their respective differences. Subsequently formal hearings were held on August 17, 1999, September 2, 1999, September 17, 1999, November 1, 1999 and January 5, 2000.

This arbitration is somewhat unique because of the acknowledged financial difficulties that the Township of Irvington finds itself in. A recent history shows that the Division of Community Affairs, Department of Local Government Services, first came to Irvington in 1996 either as the result of an invitation or automatically under the terms of a state statute requiring such supervision after a town has overspent its budget by a certain percentage in four consecutive years. After the DCA left Irvington the Township remained in contact and apparently the DCA continued its supervision in that matter. The DCA has been more actively involved in the past two years. Accordingly there will be much emphasis on the financial impact of the parties' respective offers.

TOWNSHIP FINAL OFFER

The Township presented its proposal for a successor contract in the alternative:

Alternative I

TERMS OF CONTRACT:	2 Years	
SALARY INCREASE:	JANUARY 1, 1999	0%

JANUARY 1, 2000 0%

ALTERNATIVE II

TERMS OF CONTRACT: 4 Years

SALARY INCREASE: JANUARY 1, 1999 0%

JANUARY 1, 2000 0%

JANUARY 1, 2001 CAP*

JANUARY 1, 2002 CAP*

The funding for salary increases in years three and four to be achieved through the awarding of "give backs" sufficient to fund said salary increases.

THE PBA's FINAL OFFER

1. Duration

January 1, 1999 through December 31, 2002

2. Wages

Effective July 1, 1999 - 3.0 percent across the board.

Effective January 1, 2000 - 2.0 percent across the board.

Effective January 1, 2001 - 2.0 percent across the board.

Effective July 1, 2001 - 2.0 percent across the board

Effective January 1, 2002 - 4.0 percent across the board

3. Schedule

Revise current work schedule to 4x4/4x3 work schedule.

4. Clothing allowance \$650 to offset taxes Article XII Section 1(a)

5. Clothing allowance to be paid after six months on job (not to be included in same years allowance).

6. Gun maintenance allowance \$200 to offset taxes Article XII Section 2.

7. Detective allowance increased to \$1250.

8. Sick incentive days 2 days = 6 months, 5 days = year.

9. K-9 allowance \$200.
10. K-9 allowance to be paid in second check of month.
11. 20 years or more of service with Town and 25 in pension, allowed to retire with same benefits as 25 years with Town.
12. Eyeglass plan.
13. Increase dental to \$2000 per year.
14. Time-due limit increased to 250 hours. Article IX Section 2(6).
15. Time-due to be deducted from accumulative time first before contract time.
16. Medical bills paid within 60 days instead of 75 days Article XVII Section 3.
17. Two individuals allowed to attend labor seminars yearly with no loss of time or pay.
18. President allowed one day per week for PBA business (Article XXI Section 12).
19. College credits.
20. Day after Christmas and New Year Day when they fall on a Thursday as time on books (8 1/2 hours each day) In accordance with award of Arbitrator Vernon Jensen, docket No. AR-98-503 [See Appendix Tab 1].
21. PBA office in building (Reverend's office) Article III, Section II.
22. Lower prescription cost to \$5.
23. Change number of days grievance procedure to working days in each step.
24. Computer on-call to be compensated (minimum 3 hours if need to come into HQ - 1 hour if corrected over telephone).
25. Holiday pay to be included in base pay from date of hire, Article XV, Section 3.
26. Clothing allowance and gun maintenance to be included in base pay from date of hire, Article XII, Section 3.
27. Additional vacation day across the board.
28. Bereavement leave to be increased 1 day each.
29. Increase attorney fees to \$150.00 Article XXI. Section 8.

30. Time-due shall be granted without the anticipation of a manpower shortage if there is no present shortage at the time of the request.
31. Counselling forms shall not be made part of the Internal Affairs file when Internal Affairs did not conduct investigation.
32. Counselling forms shall be removed from both Personnel and Internal Affairs files after 6 months upon request.

THE POSITION OF THE PARTIES

Under the statutory requirements the parties argued each of the criteria listed within the statute in support of their positions. These arguments are summarised below.

THE POSITION OF PBA LOCAL 29

Interest and Welfare of the Public

The PBA argument is lengthy. PBA counsel argues that the interest and the welfare of the public is best served by the adoption of its final offer. To begin with counsel portrays the fact that the Irvington police officer is exposed to a much higher degree of danger than other patrolmen in Essex County municipalities with the possible exception of Newark. Based on the fact that Irvington has a high degree of population density, a high crime rate, high rate of violent crime, counsel contends these factors, taken with the same number of officers that it had twenty years ago, places extreme pressure on officers. As one specific example, he notes that the average crime rate for all of the county municipalities is 46.75, while Irvington has a 106.71 rate and has had the highest number of crimes per officer in Essex County at least going back to 1993. Converting these statistics into a comprehensible view of the actual danger encountered by an Irvington police officer counsel cites the testimony of Patrolman Harold Wallace. Wallace testified that he himself was fired upon by an individual early

in his career. He documents the experience of Sergeant Kenneth Hogan who was shot four times and nearly lost his life. This was followed by Officer Milvin who was dragged a half a block by a motorist who was attempting to kill him. Officer Lino Santiago was killed in the line of duty this past year. Wallace cites two other Irvington police officers who were murdered in the line of duty. Counsel also cites Officer Bartiromo's testimony concerning the day to day problems these officers run into which often result in a backlog of calls. He concludes that this "not receiving back up" results from the high crime rate and poor scheduling which clearly impact the public.

In support of the PBA's request for an alternate schedule counsel cites Officer Wallace's opinion that the schedule would have a favorable impact upon morale. He also cites the testimony of Patrolman Brian Bartiromo who had prepared an analysis of the other municipalities who had adapted the 4 X 4 schedule or comparable schedules. Many of the towns geographically surrounding Irvington have adopted such schedules and greatly benefited the officers in those towns. These sentiments were echoed by PBA President Powers and SOA President Halpern both of whom have more than twenty years service with the Township.

Counsel notes that the Township failed to refute any of the evidence that it presented in support of the adoption of the 4 X 4 schedule. The Township's sole attempt at refuting this demand came from the testimony of Police Director Rankin who harkened back to his service in the Newark Police Department. Rankin testified he never supervised patrolmen who worked more than eight hours and that he believed that scheduling was a management prerogative and didn't belong in interest arbitration. The PBA elicited the testimony of police officers who had worked the 4 X 4 schedule in Irvington for a brief trial period when the Township cancelled it without reason back in early 1990's. Counsel also refers to the Rutgers University study dealing with the Piscataway Police Department in which it was concluded a similar schedule to the 4 X 4 would be most beneficial as to morale and the use of manpower.

Counsel notes that under the PBA salary proposal a 15.9 % total compounded

increase within the contract would result. A top patrolman who is currently earning \$57,157 would go to a maximum salary of \$66,274 at the end of the contract. This represents a total increase of \$9,117 over forty-eight months, for an average monthly increase of \$190 per month.

Contrast the Township proposal which would be approximately 1.5% per year for a total of 3% over forty-two months. That is entirely speculative since it is not known what the cap indices would be for the final two years. This speculative total increase would take a patrolman from the \$57,157 figure to only \$58,014 as of 1/1/01 and \$60,915 as of 1/1/02. Forty-eight months of the contract this would represent an increase of only \$3,758 or an average monthly increase of \$78.29 per month.

It is argued that the Township's witnesses were unable to cite any other municipality within the state in which a wage proposal comparable to that of the Administration had either been accepted or awarded by an interest arbitrator. While acknowledging that the Township has had better financial days, the PBA argues that the current economic situation did not arise overnight and it didn't result from paying police salaries. Counsel notes that the Township was able to pay all of its organized fire fighting personnel a 3% wage increase effective July 1, 1999 which it has refused to offer the PBA. In the last contract the PBA along with other organized units agreed voluntarily to defer ten days pay until they left the Township's employ. This year the town came with a similar proposal except it involved voluntarily surrendering three weeks pay never to be repaid to the units. As PBA expert witness John Ezyske, CPA, testified, numerous alternatives are available which the Township could employ in order to remedy some of the adverse financial conditions existing in the budget. None of these proposals were attempted by the Township as conceded by CFO Goodin.

Counsel argues that the exhibits and the testimony entered establishes a pattern of wage settlement in 1999 with other units. The Town settled all fire fighters agreements with a 3% increase and the establishment of a 24/72 schedule as well as

dental benefits for retirees. The Town here is unwilling to agree to a comparable package for the PBA. This is inconsistent with the concept of pattern bargaining. Counsel then reviews the principles behind pattern bargaining, particularly the fact that later settlements can undermine morale for a particular unit, fostering ill will and thereby providing the seeds for labor unrest. He cites the leading cases in which arbitrators have recognized the principle of pattern bargaining. Counsel argues that the Township with its voluntary agreement with the fire fighters provides compelling evidence and the same should be provided to the PBA. In conclusion counsel argues that based on a review of the testimony the PBA has provided the interest and the welfare of the public are best served by awarding the PBA's proposal.

Comparison of Wages, Salaries, Hours, and Conditions of Employment.

In private employment the parties have conceded the obvious that there are no jobs in the private sector that are truly comparable to those of an Irvington police officer. Nevertheless, examining increases in the public and private sectors over this period of time demonstrate that they have been substantially above those proposed by the Township. Counsel cites local government workers' wages increasing 4.1% between 1994 and 1995; Essex County employee's increase of 3.9%; the private sector state wide a similar 4.1% . Cited also is the 4.5% average rate of increase in 1997 for New Jersey workers covered by unemployment insurance. Counsel argues that an examination of the private sector demonstrate that members of the bargaining unit are receiving wages that are average or below average when compared on a state and national basis.

Public Employment

Counsel first cites an exhibit that he contends shows that public employees in Irvington earned less on average than their counterparts in many other Essex County municipalities. He cites a Department of Labor analysis from 1997 which shows that

the average Irvington employee was the lowest in actual wages for the government sector of all Essex County municipalities.

With regard to public employment in similar, comparable jurisdictions counsel merely cites the exhibits entered showing recent wage settlements and arbitration awards throughout New Jersey for 1999. He asserts the average settlement was 3.86% and for the year 2000 the average settlement was 3.94%. He notes the average increased in 2001 to 4.11% and in 2002 to 4.21% . As for arbitration awards the average in 1999 was a similar 3.87% and for those wage increases available in 2000 the average was 3.46%. Even the austere Atlantic City Award which covered a six year period produced a total increase in excess of 19.5% before compounding for an annual average of 2.8%. Counsel cites the agreement covering the Superior Officers in the Essex County Jail Annex which shows that they received a two year contract with a 5% increase in each year. Counsel cites the Scheinman Award in the City of East Orange in which he awarded three 3% increase and a final year 3.25% increase along with awarding the FMBA proposal for a 24/72 schedule based on his belief that it would improve the lives of fire fighters while producing savings for the city in sick leave and overtime expenditures. Counsel sites the Brent Award in Hillside in which he awarded increases averaging a 3.275% increase in each of the four years, while also folding in uniform allowance into base salary from year one. He also cites the recent settlement with the City of Newark and the FOP in which annual increases of 4.5%, 4.5%, 3.75% and 3.5% were agreed to for the period of 1998 through 2001.

Based on all of these arguments the PBA respectfully urges that its position is the more reasonable and should be awarded.

Overall Compensation

Counsel reviews the benefits which the PBA receives under recent contracts between the parties. He notes that with regard to those benefits they are seeking an increase from \$500 to \$650 for uniform allowance while proposing that it be placed in

the base salary from year one thus attempting to comply with the pension boards requirement that benefits, in order to be deemed pensionable, have to be included in employees' benefit package from year one forward. He next attacks the Township's seeking of a "give-back" noting that they have failed to introduce any proof of any similar "give-backs" in any other police department and that it has failed to present any compelling reason for eliminating any of the existing benefits. Counsel notes that any arguments of wage freezes, promotion freezes or hiring freezes the Township may make to support claims of hardship have not been substantiated with any formal memos. Moreover the list obtained from the employer shows that during the period from 1996 through 1998 more people were hired by the Township than left voluntarily or were terminated. He argues that the Township entitlement to a "giveback" of one day is not warranted.

Stipulation of the Parties

Counsel acknowledges there have been no stipulations between the parties.

The Lawful Authority of the Employer

Counsel notes that such authority is generally associated with the CAP statute. The Township has received a waiver from the State and consequently the statute is not a relevant criterion in this arbitration.

Financial Impact on the Governing Unit

Counsel again refers to the Ezyske Report as to his analysis of the Irvington municipal budget. It is argued that supporting evidence from this analysis is found throughout his report. Counsel argues that Mr. Ezyske identified a total of \$6.7 million of revenue sources which were untapped by the Township. This figure was based on his opinion that a bulk tax lien sale would produce \$2 million; an accelerated tax lien sale would produce \$2.8 million; allowance for miscellaneous revenue not anticipated would

conservatively add \$500,000 and finally favorable budgetary variances resulting in cancelled appropriations would add \$1.4 million. This together with \$6.6 million in additional aid provided by the State would not produce any adverse effect on Township's financial position if a wage proposal of \$2.6 million over four fiscal years were implemented.

Counsel next reviews the Ezyske Report in detail. Specifically he notes the following positive signs which argue in support of the Township being able to fund the sought salary increases. Of specific note is the fact that under CFO Goodin expenditures have decreased and the cash reserve has increased. He also has accomplished the cancellation of more \$2.3 million of expenditures in 1998 thus the budgetary process has greatly improved. Cancellation of unexpended balances of appropriations averaged \$1.4 million in 1997 and 1998. Moving on to MRNA's Ezyske argues that reoccurring revenues of a half a million dollars a year are a given and such an anticipation in the annual budget would not be unreasonable. He also notes that the gross debt and debt service have shown positive trends in the Townships favour. Gross debt is the lowest it has been since 1993 having decreased by 9.3% over that time. Noted also is Ezyske's conclusion that the Township fund balance or surplus in 1997 and 1998 averaged approximately \$557,000 where as in 1995 and 1996 no fund balance existed. Ezyske also contends that the tax rate was significantly lower in 1998 than the proceeding year and the local tax rate decreased 19% during the same period. Tax collections have increased thus stabilizing the Township. He claims that if the Township availed itself of the opportunity to perform an accelerated tax lien sale it would, by projection, collect an addition \$2.8 million. He continues the same optimistic argument, if tax title liens were issued and delinquent taxes were aggressively pursued. In conclusion counsel argues that under the projected fiscal circumstances its salary proposal and contract's term are reasonable and its impact on governing unit, its residents and tax payers, would be more significant and accordingly should be awarded.

The Cost of Living

Counsel cites the CPI at recent levels of approximately 2.4% which the Township even failed to meet in its proposal. He argues that the Township's speculative wage proposal, based on CAP indices in the future, is very difficult to determine with regard to the cost impact. In conclusion he argues the PBA offer should prevail as being closest to the CPI.

The Continuity and Stability of Employment

Counsel argues that the potential turnover created by the failure of experienced officers to remain in the department causes poor morale and the hiring of inexperienced officers to work in an environment plagued by extreme stress and a high crime rate which impacts unfavourably on Irvington's citizens. This, he argues, creates discontent among the residents of the Township because unhappy, inexperienced police officers are unable to perform at their best. Counsel rejects the Townships' position of not offering any wage increases over a forty-eight period unless the PBA is willing to give up an existing benefit of at least two days give-back from either vacation, comp time or vacation. Finally counsel goes through its proposals for a wage increase, establishment of the 4 x4/4 x3 schedule and the rationale behind such requests. He contends his 15% (compounded) wage increase over 48 months is the more reasonable offer when viewed under this criterion.

In conclusion counsel argues that the PBA has brought evidence to the record that supports these proposals contrary to the Township's failure to produce any overwhelming testimony in opposition to such requests. In conclusion, he argues that under this criterion, as all others, the PBA proposal is more reasonable and should be awarded.

Background

Prior to his specific arguments counsel for Irvington offered some introductory remarks to set a backdrop against which this arbitration must be decided. Counsel notes for example that the New Jersey Office of State Planning ranked Irvington as the eighteenth most distressed municipality of the 567 municipalities in New Jersey. Counsel cites the testimony of Finance Director, Elvis Goodin, that net taxable evaluation has decreased \$3,000,000. in the last decade; the tax collection rate has dropped significantly; and the take-over of fiscal control of the Township in 1996 by the DCA confirms its gloomy financial condition. Counsel argues that the budget DCA foisted upon the Township in effect apparently created ongoing problems. For example, the Township owed \$11,000,000 in deferred charges which, when DCA prepared its budget were excluded. The taxes increased by approximately 30% for fiscal year 1997, and the tax collection rate subsequently declined. In 1998 the budget was balanced without any inclusion of the \$11,000,000 in deferred charges and despite that fact the Township wound up with \$1.4 million deficit directly attributable to the decline in the tax collection rate. For the 1999 a budget provision to pay 20% of the deferred charges was included. Yet the operating deficit of \$2.4 million actually resulted from shortfalls on the revenue side of the budget.

Counsel argues that in light of this background the Township's only reasonable and responsible position that it can take for salary increases for these "valued and valiant employees" is the offer that it made of no increases for the two year period. The record shows that the Township has laid off employees, privatised certain municipal services and implemented salary deferral initiatives in an attempt to balance the budget. The deficits result from external economic conditions over which the administration has no control, not as a result of overspending on the Township part. Counsel argues that the statutory criteria must be viewed against this economic background.

The Interest and Welfare of the Public

Counsel notes that the Union's expert, John L Ezyske, admitted that in concluding that the Township could afford the PBA offer he did not consider the impact of similar settlements with other municipal unions or the increased cost to the Township for longevity, vacation, sick time, personal days, and other benefits which are impacted automatically by any salary adjustment.

He also argues that a result of any increases that might be awarded in this arbitration additional increases in the future will be based on such an outcome and the evidence demonstrates that the Irvington taxpayers are unable to afford the current tax burden, so much more any future increased tax burdens.

Counsel also argues that the evidence demonstrates that these employees receive the highest direct compensation of any comparable unit within Essex County. While acknowledging that they may deserve an increase, he argues that the taxpayers are as deserving as members of this unit. In conclusion he argues that the evidence demonstrates that the Township taxpayer is either at or dangerously near the breaking point. Accordingly he argues by implication that the Township's offer is the only reasonable choice under this criterion.

Comparison of Wages, Salaries, Hours, and Conditions of Employment.

Counsel discusses at length the testimony and analysis submitted on the Union's behalf by Frank McEnerney, CPA, which reviewed the contracts of all rank and file police officers within Essex County. Counsel basically argues that McEnerney's analysis is inadequate since he only took into consideration certain common contractual benefits contained in all the agreements he reviewed. Specifically counsel also disputes the fact that the Irvington PBA is the third highest compensated in the county which notes is the position taken by the PBA. It is based on Mr. McEnerney's conclusion that the Irvington police officer works 1,795 hours per year. He disputes this with the

introduction of a technical assistance project report completed by the Division of Criminal Justice which concluded that the average Irvington police officer works 1,571 hours per year considerable lower than other New Jersey police departments. Counsel concludes that if we accept this latter number of hours the Irvington police officer is compensated at the rate of \$37.39 per hour which would be the highest direct compensation paid to a trained police officer in Essex County.

Counsel next turns to the PBA's demand for a switch from the present 4 X 2 work schedule to a 4 X 4 / 4 X 3 schedule. Counsel argues that scheduling has historically been deemed to be a management prerogative. Police Director, Robert K. Rankin, Jr., who provided testimony stated that management should retain the right to place people where they need them in order to provide services to the community. In summary Rankin argued that the PBA proposal does not provide adequate coverage for the general public and does not fit the needs of the Township. He notes that the same schedule had been tried out in the early 1990's and it was determined by the Township that the schedule was unsuitable for the community and the current schedule was returned to. Counsel reviews the Rutgers University study that the PBA relies on and argues that the value of the study is very limited. In conclusion he argues that there has been no demonstration that it would increase the morale of the Department. It would merely provide more leave time to the Department. He stresses that none of the PBA's arguments have successfully demonstrated that the implementation of the proposed schedule is justified.

Overall Compensation

In this section counsel simply argues that in addition to a competitive salary the contract discloses that the Irvington patrolman receives additional economic benefits equal to or greater than the majority of municipal police departments within the County.

Stipulation of the Parties

Counsel notes that no stipulations relevant or material to this arbitration were entered into by the parties.

The Lawful Authority of the Employer

Counsel argues that with the exception the Township's position, that the work schedules are nonnegotiable management prerogatives, it would appear that there are no other disputes between the parties as to the lawful authority of the employer.

Financial Impact on the Governing Unit

In this section counsel summarises the economic argument previously made in his brief. He argues that under the McEnerney report the salary increase alone totals \$2.67 million and the employer's calculation of the additional economic proposals calculates to over one half a million dollars a year. He concludes that the true cost of the four year offer made by the PBA exceeds \$4 million. Note is made that the addition of the two figures that counsel relies upon comes to over \$3 million rather than \$4 million. Counsel notes that Financial Director Goodin argued that no funding was placed in the fiscal year 1999 or 2000 budgets for municipal salary increases.

Consequently any award in the arbitration will require such funding be budgeted in the 2001 fiscal year operating budget. He then argues that obviously any award in this case will effect the outcome of the Superior Officers arbitration currently pending, as well as any agreements that might be reached between the Township and the municipal employees currently without a contract. Absent a corresponding savings to the municipality a salary increase may have a catastrophic impact upon the Township.

Finally counsel touches upon the federal grant which the Township received to fund the cost of forty-one additional police officers for a three year period. The requirement is that at the end of the three years Irvington must absorb all costs associated with these officers. Counsel argues that Irvington cannot afford to fund any

salary increases no matter how one views the current situation. This is compounded by the future necessity of paying an additional forty-one officers.

The Cost of Living

Counsel notes that in the prior contract the PBA received a 15.5% increase over a three year period. The cost of the present offer would come to 15% over a four year period. Comparing the prior contracts increases with the consumer price index shows that a patrolman received more than double the CPI increase for that period of time. While no figures have been submitted as to the CPI for 1999 and 2000, Counsel urges that I take judicial notice of the same which will disclose that the offer the Union made again exceeds the CPI for the region . Although the Township's position of a wage freeze or a salary increase resulting from contractual give-backs will result in this unit failing to keep pace with the CPI, they are still well ahead of the CPI for a seven year period. This years salary adjustments, coupled with the fact that it is one of the highest compensated bargaining units in the county, clearly justifies Irvington's position. In conclusion counsel argues that any increase should not exceed the CPI for this region or the municipality's own CPI, namely the CAP adjustment.

The Continuity and Stability of Employment

Counsel argues that none of the members of this unit have left the Townships employ to seek other comparable employment as a result of the compensation package that they are presently enjoying.

The Fiscal / Economic Condition of the Township

In the 1999 budget the State required Irvington to include \$1.2 million and \$1.4 from deferred charges of the 1996 and 1998 budget as well as the sum of \$2.5 million owed to the Board of Education. Counsel argues with the inclusion of these sums Irvington found itself with an anticipated budget gap of \$9 million. The State provided

\$6.5 million under the threat of Irvington resorting to massive lay-offs. Despite this aid Irvington wound up with a \$2.4 million deficit, primarily consisting of funding of successful tax appeals. The 2000 budget gap of approximately \$2.3 million resulted from a revenue shortfall. The Township is also burdened with \$9.5 million in TANS (Tax Anticipation Notes) to be addressed over the next five years. Counsel asserts that it does not require a registered municipal accountant or financial expert to recognise the serious trouble Irvington find itself in. It has resorted to lay-offs, hiring freezes, salary deferrals, and debt restructuring in an attempt to help solve this shortfall.

Conclusion

The Township applauds and appreciates the members of this bargaining unit but it cannot ignore its responsibility to the overburdened taxpayers which would compromise the community. Given the present compensation and benefits these employees receive any salary increase would require infusion of additional funds which cannot be justified. Counsel argues that such an award would accelerate the downward spiral in which this community finds itself. Counsel respectfully submits that after consideration of all the statutory criteria the arbitrator must award one of the two alternate salary proposals of the Township. Counsel argues that based on the evidence in the record the PBA offer must be rejected along with the work schedule being proposed by this bargaining unit.

DISCUSSION

The Interest and Welfare of the Public

The statutory criterion requires that the arbitrator examine the interest and welfare of the public engaged against both parties proposals. Although the consideration is largely financial there are other arguments which concern the performance and the morale of the of the Police Department. In this particular case

several arguments compel the conclusion that the PBA prevail under this criterion.

The arguments of the Township simply do not overcome the arguments presented by the PBA. Township Counsel argues for example that the impact of any increases that might be awarded in this arbitration require additional increases in the future for other Irvington Units. To begin with this is true to an extent under a pattern argument in interest arbitration, namely that of the Police and Fire Units. Should these units go to arbitration, patterns could be broken were a dooms day fiscal crisis to emerge. While the Township may argue that any award covers all the other Units in the Township it does so only based on the Town's willingness to provide comparable percentage increases. Moreover his claim that the value of any award in this arbitration would push the Irvington taxpayer over the edge with regard to future increased tax burdens is simply not statistically substantiated. What the arbitrator sees in this matter is a town that has not budgeted any wage increases for 1999 or 2000, voluntarily settling with the Fire Fighters for a 1.5% effective raise for 1999 and a change in scheduling while refusing to extend a similar offer to the Police Department. In conclusion when balanced the PBA prevails under this argument to the extent of the conclusion ultimately that it is entitled to a certain percentage increase for the years covered. The Township failed to establish that the awarding of a modest increase would in any way produce such a significant tax increase burden so as to effect the tax collection percentage within the Township.

Contrasted with the small increased tax burden that might be visited on the taxpayers, I conclude that the interest and welfare of the public would most reasonably be served with the increases found below in the Award section. It would appear higher morale and more police coverage would be of greater benefit to the public in this high crime environment.

Comparison of Wages, Salaries, Hours, and Conditions of Employment.

The general consensus is that there are no truly comparable jobs in the

private sector. Examining the exhibits entered into evidence it is fair to conclude that the average increase for the past two or three years in the public sector within Essex County and beyond, clearly exceed the percentage increases ultimately awarded below. Township Counsel bases his argument on the contention that the Irvington Patrolman is the highest compensated per hour. This results in his conclusion that the Irvington patrolman had the highest direct compensation paid to him in Essex County law enforcement. The PBA concedes that it is the third highest paid in the County. I have not been convinced by either argument as to the basis upon which they reach conclusions as to the yearly amount of hours an Irvington patrolman works. In conclusion, I do find that they are one of the highest paid units within the County. Counsel also attacks the change of schedule demand by the PBA, while acknowledging that this is not a cost item, counsel bases his whole attack on a management prerogative theory without citing any authority or case law.

While acknowledging that Police are either first or third within the County and they do enjoy a high rate of compensation when compared to many Essex Units that fact alone does not need a decision declaring this category for either side. Note has been made of both parties arguments in reaching what the arbitrator deems the most reasonable and appropriated increase as set forth below.

Note has been taken of the evidence supplied by the PBA as cited in their argument above as to much higher percentage increases awarded within comparable communities, to Essex County law enforcement personnel and state and region-wide increases in the private sector. None of those comparisons involve towns with severe financial problems and accordingly they seem to be inapplicable.

Comparison of Wages and Benefits

While neither side argued this point extensively, a reading of the prior contract shows that this unit enjoys an average, if not slightly higher range of benefits. However, none of the benefits seems excessive. The awarding of a give-back of one

day from the offered categories seems reasonable to help fund any awards. This would free up approximately \$60,000. The give-back would provide the Township with approximately .74 percent of the 2002 percentage increase awarded for the fourth year.

Stipulation of the Parties

The parties entered into no relevant stipulations in this arbitration.

The Lawful Authority of the Employer

In this case no cap arguments were made. The Township has received a waiver from the State and accordingly this is not a relevant criterion in this arbitration.

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

The fiscal condition of Irvington dictates that this criteria is most important in the analysis of the final offers and my reaching of the Award found below. Both sides experts understandably presented cases most favorable to their side. Whether it is how many hours an Irvington Patrolman actually works a year, or whether it is wise fiscal policy to resort to an advance tax lien sale represent two different views, one seeing a half full glass of water, the other seeing a half empty glass of water. These expert reports were beneficial in analyzing actual and potential sources of revenue and the actual cost of the Union's proposal when taken together with a salary increase.

I have taken judicial notice of an article in the Newark Star Ledger, dated December 24, 2000, which was spawned by the Mayor's press conference highlighting improvements to the Town's fiscal condition. Specifically she heralded a 90% tax collection rate along with other signs of improvement within the Township. Ostensibly, from the arbitrator's point of view, these would argue in favor of the PBA's offer. However, the same article contains critical and cautious comments from Ulrick Steinberg, head of Local Government Services, who acknowledged this was an improvement but went on to cite several deficiencies in the Township's fiscal

governance. He cited open supervisory titles, the Mayor hiring without prior clearance to obtain waivers and violating the hiring freeze while giving credit to the increases in tax collection to the simple fact that a full time collector was finally on duty. These comments alone by a state agency indicate to me that while small improvements have been made they are not sufficient in and of themselves to totally vary the outlook of the Township. While acknowledging that Irvington made fiscal improvements and the Township is financially healthier largely due to the effort of Mr. Elvis Godden, it appears that it has a long way to go to reach normality. Accordingly I have concluded that the Township carries this statutory criterion in my overall assessment of both parties demands and in the ultimate wage pattern set below. To begin with, rather than raise the specter of unit against unit which certainly complicates the Township's life, the first year, namely 1999, will be awarded as it had been to the Fire Department and other Township employees. Hence 3% effective July 1, 1999 the award shall be in the amount of 3% which costs the Township the equivalent of 1.5% for that year of the contract.

With regard to the following three years of the contract I have reached the numbers shown below based on my assessment that the police are entitled to compensation which is slightly more than recent CPI increases but less than its own demand and those of the average settlements and awards which have been in the 3.5 % to 4% range.

It is clear the Township has spent money where perhaps it shouldn't have, vis a vis its claim of dire necessity. The Township has also failed to fill vacancies, which when filled could only improve budgeting items within the respective departments. The PBA would seek to lay the blame for the Township's two alternate positions on the fact of management's failure to avail itself of opportunities to significantly increase revenues. That is management's choice in this matter. The officers find themselves working for a township with these valid economic arguments in its favor. However no mismanagement so egregious exists so as to conclude that the PBA should receive its

final demand, its final offer. At the same time I am not penalizing the Township for what appears to be valid criticism. Note is taken that, to one degree or another, the Township has brought upon itself and finds itself in this financial crisis.

However I think the Township's request for the surrender of one day from various categories from each Police Officer by way of a give back would help the Township fund the final year of the Award set forth below and accordingly it has been awarded.

Cost of Living

The statistical evidence introduced into the hearing demonstrates that the CPI for 1999 was 2.41 and 2% for the first six months of 2000. The Township's offer is extremely difficult to calculate vis a vis its proposed increases as opposed to projected CPIs'. Under the Township's ultimate proposal certainly the PBA's final offer exceeds the cost of living increases for 1999 and as Township counsel pointed out the increases this unit received over the prior contract years more than double the comparable CPI for those years. In this case and given Irvington's crisis, I conclude that the PBA final offer is unacceptable. The Township's offer is unreasonable. Accordingly the Award below attempts to accomplish a most reasonable award of compensation increases over the four year period.

Continuity of Employment

The PBA's argues that there has been significant turnover created by the poor work conditions among other factors such as crime rate, lack of raises and inadequate organization which has led to experienced officers leaving the Department. The PBA has not convinced me by its argument. The testimony it introduced was largely second and third hand accounts of people leaving their jobs to go to other departments or back to civilian employment. Moreover it represented only a handful of examples in a 130 man unit. The Award issued below has taken into account both sides arguments

under this criteria.

The issue of the change in schedule was decided in part by the testimony offered by police officers concerning the boost in morale such a change would effectuate.

Consideration also has to be given to the ability of the Township to keep police employed in light of its fiscal crisis. However the record shows that the State throttled an announced cut in police and fire forces contemplated by the Township in the recent past. Also considered was the PBA's unrefuted evidence that such a change would provide better coverage for the Township's residents while potentially saving overtime and decreasing sick time.

Guidance in deciding the change of schedule proposal was taken from the Commission's Decision in the Township of Teaneck and Teaneck Fireman's Mutual Benevolent Association, Local 42, IA-97-45. Specifically I have evaluated the fiscal, operational, supervisory implications of such a proposal as well as its impact on employee morale and working conditions.

It must be noted that the Township agreed that this was a non-economic issue. In any event it appears that some costs might logically be incurred in implementing the schedule, nevertheless, the Township did not claim nor substantiate any such costs.

I have been convinced by the PBA that it would have a beneficial impact on employee morale, working conditions and police coverage and efficiency. However the implementation of the new schedule must be on a trial basis from July 1, 2001, through December 31, 2002. It is not to be considered part of the status quo. Absent the parties agreement or the subsequent awarding of the schedule anew interest arbitration, the old schedule shall be returned. After this trial period, the parties can argue based on experience whether it has produced the promised benefits.

With regard to concerns about operational, supervisory and managerial implications, no evidence was offered by the Township that the schedule would create such problems. Testimony, albeit speculative, was introduced by the PBA that the 4x4,

4x3 schedule would cut overtime, absenteeism and injury leave. No evidence was introduced to refute such claims. Neither side introduced any statistics about the prior trial period under this schedule in the early 1990's. Moreover, the Township failed to distinguish how its voluntary agreement to a similar schedule with the Fire Fighters in any way could be distinguished from the proposal here under consideration.

The only scenario from Teaneck that could apply here, is the fact that while the fire units both have a similar schedule, here the Police Supervisor's do not. The supervisors are in arbitration before me, awaiting the decision in this arbitration. Without having had even an initial meeting, it would appear a pattern agreement would be made by the Supervisors. In light of the failure of the Township to raise a claim of operational difficulties, I see no reason to condition this Award on the awarding or agreement of the parties to the same schedule for the Supervisors.

The percentage wage increases awarded below were determined to be the most reasonable under the circumstances. The first year equals that awarded to the Fire Fighters and other employees. Per patrolman this equals \$857, unit-wide \$111,410. The identical increases for 2000 and 2001 would result in \$1595 and \$1640 per year increases for a patrolman; \$207,350 and \$213,200 unit wide. The final year would be \$1991 per patrolman and \$258,830 unit wide. With the implementation of the one day give-back, this unit total for 2002 would equal \$198,830.

Thus this Award costs out, without any allowance for benefit cost increases, for four years at \$730,790 and would provide a patrolman with a \$6083 four year increase, an average of \$1520 per year representing a total increase of 10.25% or 2.56% increase per year. In light of all the factors dealing with the financial impact on the Township and the calculations I find this to be the most reasonable settlement of the wage increase issue.

Even using the Township's contention that a 1% increase would cost \$90,000 the 1999 toll would be \$135,000; 2000 and 2001 would approximate \$228,000; and 2002,

allowing for the give-back, would cost out at \$232,5000. This totals additional costs of \$823,500 over the four year contract. Using either expert's cost of a 1% increase, the Award made below still seems to be the most reasonable when viewed against the total budget, the Police Department budget and the small percentage impact on the overall budget and the tax rate.

Non-Economic and Economic Issues

PBA

Of the PBA's thirty demands the following non-economic and economic issues were determined not to be justified in light of the Township's fiscal condition, often because although modest in cost they build in future costs which are not justified or warranted at this time. The need for non-economic issues denied were not justified. Items numbered 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 16, 19, 20, 21, 22, 24, 25, 26, 27, 28, 29, 30, 31, and 32 therefore are denied.

The following items are deemed to be reasonable and are awarded.

14. Time-due limit increased is non-economic and is hereby awarded.
17. Labor Seminars once a year without loss of time or pay. This shall be limited to 4 days per year for each officer.
18. President allowed two days per month for PBA business (Article XXI Section 12).
23. Grievance time for processing grievances counted by working days rather than calendar days.

Township

The Township's request for a "give-back" of one and a half days from either vacation time, holiday time or other unit-wide paid leave is awarded effective 2002 and modified to a one day "give-back."

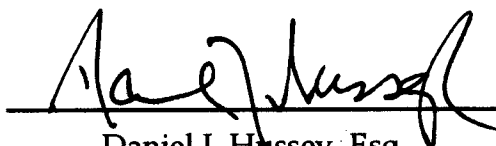
AWARD

1. The term of this contract shall be from January 1, 1999 to December 31, 2002.
2. The salary increases are awarded as follows:

3%	effective	7/1/99
2.75%	effective	1/1/00
2.75%	effective	1/1/01
3.25%	effective	1/1/02
3. A change in the working schedule from the present 4/2 to a 4/4, 4/3 shall be implemented on or before July 1, 2001 under the terms set forth in this decision.
4. Effective January 1, 2002 each officer shall surrender one day's entitlement at his/her option from either his/her vacation days, holiday time or other unit-wide time off.
5. Two officers shall be allowed to attend labor seminars yearly up to a limit of 4 days each without loss of pay or time.
6. The PBA President shall be allowed two days a month for attending to union business.

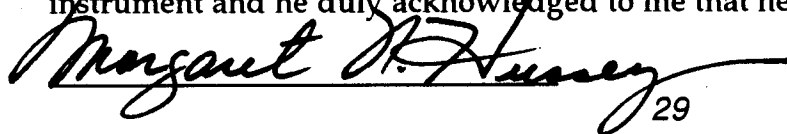
The arbitrator retains jurisdiction for the settlement of any disputes that may arise concerning the interpretation or implementation of this Award.

Dated: January 15, 2001


Daniel J. Hussey, Esq.
Arbitrator

STATE OF NEW JERSEY:
COUNTY OF MIDDLESEX:

On this 15th day of January 2001 personally came and appeared DANIEL J. HUSSEY known to me to be the individual described herein and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.


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MARGARET W. HUSSEY
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires 8/4/2003