

**STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION**

IN THE MATTER OF THE INTEREST
ARBITRATION

DOCKET NO. IA-2013-016

between

CITY OF ATLANTIC CITY, NEW JERSEY

Public Employer,

-and-

ATLANTIC CITY POLICE BENEVOLENT
ASSOCIATION, LOCAL 24

Employee Organization

**SUPPLEMENTAL AWARD
ON REMAND**

BEFORE: MICHAEL J. PECKLERS, ESQ., INTEREST ARBITRATOR

**DATE OF
HEARING: March 18, 2013**

**POST-HEARING
BRIEFS: March 25, 2013**

DATE OF AWARD: April 11, 2013

**DATE OF SUPPLEMENTAL
AWARD ON REMAND: July 2, 2013**

APPEARANCES:

For the City of Atlantic City

Steven S. Glickman, Esq., RUDERMAN & GLICKMAN, P.C.

For the Atlantic City PBA Local 24

Mark Belland, Esq., O'BRIEN, BELLAND & BUSHINSKY, L.L.C.

BACKGROUND & FINDINGS OF FACT

On April 11, 2013, I issued a conventional INTEREST ARBITRATION AWARD in the instant matter. All findings made and conclusions reached are incorporated by reference herein. At Number 4 of the AWARD at page 139, I *inter alia* awarded salary increases of 1.59% (\$528,390) for 2013, retroactive to January 1, 2013, followed by 0 % for 2014 and 2015. In doing so, I aggregated the 2% maximum increase permissible under the hard cap, and front loaded the same into year 1 of the successor agreement. At pages 104-108, the Commission's New Milford decision in PERC No. 2012-53 was initially discussed, followed by the determination of the 2012 base salary.

Reference was made at page 106 to the fact that in calculating the total base salaries expended by the City of Atlantic City for 2012, the City agreed to utilize the PBA scattergram at Union Exhibit 4, to avoid any discrepancies. This reflected the following:

2012 SALARIES	\$28,035,697;
2012 LONGEVITY	1,341,914;
2012 EDUCATIONAL INCENTIVE	1,358,783

At my direction and over the objection of the PBA, the parties were instructed to prorate the retiree costs based upon their length of service during the year. Using the City's figure which took the actual retirement date into account, a total of \$1,788,264 for 2012 and \$692,604 for 2013 was then added to the previous

totals. By way of explanation the 2013 figures should have been included into the 2012 but were not. All told, these cumulatively were equal to \$33,217,262, which the parties jointly agreed was the 2012 base salary for the Atlantic City PBA. I accordingly concluded at page 107, that \$1,993,036 was the maximum permissible amount that could be awarded. See P.L. 2010 c. 105; N.J.S.A. 34:13.a.16-7.b.

At pages 107-109, I explained my rationale for determining that the maximum permissible increase of 2% for each year of the new C.B.A. was appropriate under the statutory criteria and reinforced this finding when discussing each subsection. As noted at ¶ 2 of page 109, there was "sharp divergence between the parties at this point, with respect to the cost of step increases, longevity, and educational incentive."

In resolving this tension, I ultimately used the Union's figures, which I was able to verify the accuracy of after breaking out the guide movement independently. In doing so, I remarked that I ordinarily would have used the City's figures, which were kept in the regular course of business. However, at page 110, I explained that despite a significant amount of time I had been unable to decipher them. The adopted PBA figures included:

	<u>2013</u>	<u>2014</u>	<u>2105</u>
INCREMENTS	\$644,734	\$302,434	\$1111,037
LONGEVITY	\$ 85,912	\$204,745	\$ 89,061

EDUCATION	\$ 20,706	\$ 4,312	\$ 1,704
TOTALS	\$751,352	\$511,491	\$201,802
GRAND TOTAL	\$1,464,645		

I then demonstrated that the figures proved at page 111:

\$ 528,390 (Available \$\$ to Finance Salary Increase);
+ \$1,464,645 (Cost of Step Increases, Longevity & Education)
<hr/>
\$1,993,035 (Maximum Aggregate Amount of 6%)

On April 19, 2013, the City of Atlantic City appealed my AWARD to the Commission. See PERC Docket No. 2013-82. After discussing the AWARD, at pages 4-5, PERC noted that: "[t]he City's appeal challenges the 1.59% salary increase effective January 1, 2013. Specifically, the City objects to the arbitrator's use of the PBA's incremental, longevity, and educational costs to make its calculations rather than its calculations. It challenges the arbitrator's finding that all of the PBA's figures prove as not supported by the record." At page 8, notice is taken by the Commission that "[t]he City objects to the salary award only."

After summarizing much of the foregoing considerations, the Commission provided me with guidance on pages 10-11, wherein it stated:

[t]he arbitrator then did his base salary calculation and proof that he was in compliance with the 2% cap. The parties' agreement reflects that the City pays increments on an officer's anniversary date. The arbitrator did not prorate the incremental costs to reflect the practice.

We remand the award to the arbitrator for re-calculation. In New Milford, we acknowledged that parties may not always agree on base salary information and calculations. In those

circumstances, the arbitrator must make a determination based on the evidence presented. We find the arbitrator's explanation that he could not decipher the City's calculations does not meet the standards under the amended interest arbitration law.

Thus, we remand this matter back to the arbitrator and direct the City and all public employers in interest arbitration, to provide arbitrators with the required base salary information and calculations. Such information must include, at a minimum, in an acceptable and legible format, the following information:

1. A list of all unit members, their base salary step in the last year of the expired agreement, and their anniversary date of hire;
2. Costs of increments and the specific date on which they are paid;
3. Costs of any other base salary items (longevity, educational costs etc.) and the specific date on which they are paid;
4. The total cost of all base salary items for the last year of the expired agreement.

We further clarify that the above information must be included for officers who retire in the last year of the expired agreement. For such officers, the information should be prorated for what was actually paid for the base salary items. Our guidance in New Milford for avoiding speculation for retirements was applicable to future retirements only.

[emphasis supplied in original document].

Following the remand of the case for reconsideration, I contacted counsel for Atlantic City, to facilitate the receipt of additional information. By mutual agreement, an informational meeting was scheduled at City Hall on June 11, 2013. The PBA was invited for the purpose of seeking clarification of any City documents, if necessary, and requested and was granted the opportunity to respond to the same.

At that time, Tom Monahan made a good faith attempt to explain the new City documents related to Step/Longevity projections, which had been provided to the Union and I. The difficulty with the same was that these were budget documents which depending on the date they were run, contained a different number of pages and totals. After roughly an hour and a half, an Executive Session was called with counsel. I then explained my concern that the City's new exhibit not only contained step movement and longevity figures going forward that were different than the original numbers proffered by the Employer in its original post-hearing brief, but also appeared to modify the 2012 base year calculations contained in Union Exhibit 4 that were previously agreed upon.

After receiving authorization to submit additional data consistent with its post-hearing brief figures, on June 17, 2013, the City filed a letter brief, with accompanying exhibits. The former memorialized the Employer's position with regard to the Commission's remand. It further argued in part that per New Milford, while the salaries, longevity payments and education incentive payments received by PBA members who retired in 2012 are included to calculate the statutory limitation placed upon my Award, the salaries, longevity payments and education incentive received by PBA members who retired in 2012 are not included going forward to determine the economic impact of step increases, longevity increases, and education incentive increases for 2013, 2014 and 2015.

The City indicated that its analysis would be based upon the exhibits

submitted as part of its presentation during the SOA/PBA interest arbitration proceeding. A final explanation was then offered that "[d]ue to the difficulty in reading this exhibit because of the substantial amount of data, I have isolated and enlarged the totals from page 4 of Exhibit A. I have further broken down Exhibit B into the final numbers for 2012, 2013, 2014, and 2015 individually as Exhibits C through F, respectively. Finally, I have resubmitted the summary introduced at the SOA and PBA hearings, attached hereto as Exhibit G." The letter brief then recited the same step increases, longevity, and education incentive figures contained in the City's original post-hearing brief without further clarification or proration. The only change was that they had been magnified and circled.

A conference call was conducted with counsel on June 19, 2013, for the purpose of discussing the City's submission. During the call, a bench ruling was issued. This initially determined that the City's scattergram at Exhibit A did not contain the same number of employees as Union Exhibit 4, which was agreed upon to determine the 2012 base salary of \$33,217,262. I went on to find that New Milford contemplates using the same scattergram to move people forward for the purpose of determining the future costs of guide movement, longevity, and education incentive. The City renewed its argument that it agreed to the use of Union Exhibit 4 only for the purpose of the computation of the 6% total aggregate amount available. I noted that this City argument surfaced for the first time in its PERC appeal brief.

In any event, notice was taken that the parties agreed to the \$33,217,262 figure. This was broken down per Union Exhibit 4 to a \$28,035,697 base salary (plus \$1,788,264 for 2012 retirees and \$692,604 for 2013 retirees who should have been included in the 2012 total). The resulting total figure for base salary alone was accordingly \$30,516,565. By virtue of the City's summary sheet attached to its June 17, 2013 letter brief, the Employer's 2012 base salary total is \$28,668,238, which is at variance with the foregoing. The City's longevity and education figures are also not consonant with the agreed upon 2012 base as follows: \$1,413,159.08 vs. \$1,341,914; \$1,425,393 vs. \$1,358,783. These considerations illustrate the unreliable nature of the documents and are precisely what I relied upon in concluding that I could not decipher the City's exhibit in my AWARD.

On June 21, 2013, the PBA filed a reply to the City's June 17, 2013 submission, with supporting documentation. This initially remarked that "PERC's May 13, 2013 remand requires that certain calculations be prorated and directs the City to submit acceptable and legible calculations. After receiving yet another bite of the apple, the City once again submits both a position and a scattergram fraught with inaccuracies which must be rejected. PERC has clearly ruled that the appropriate model to achieve compliance with P.L. 2010 c. 105 is to 'utilize the scattergram demonstrating the placement on the guide of all of the employees in the bargaining unit as of the end of the year preceding the initiation of the new contract and to simply move those employees forward through the newly awarded

salary scales.’ Borough of New Milford and PBA Local 83, PERC No. 2012-53, Docket No. IA-2012-008, * 15 (April 9, 2012).” [emphasis supplied in original].

The Union correctly argued that using the 2012 base number of \$33,217,262, the PBA’s scattergram progresses only current employees through step increases, longevity increases, and education incentive increases for 2013, 2014, and 2015. The 2012 retirees are left in the PBA scattergram and are progressed with the same exact 2012 numbers for purposes of continuity. This methodology therefore does not impact proposed salary increases for current employees, the actual increases the City is obligated to pay, nor does it impact the application of the hard cap analysis for future years. The City is then taken to task for its perceived erroneous argument in its June 17th correspondence that New Milford requires retirees who are not current as of 2012 to be stripped from the scattergram. Instead, the Union argued, PERC has only stated that a scattergram must place those employees remaining at the end of the base year on the guide and progress them “through the newly awarded salary scales and longevity.”

Finally, the PBA submitted that “[a]s recognized by the Arbitrator, in analyzing the various scattergrams submitted by the City, (1) prior to the second hearing; (2) at the second hearing, and (3) with its June 17, 2013 correspondence, they are vastly inconsistent. This severely prejudices the PBA in developing a full response to the City’s flawed numbers. PERC directed the City to provide the required base salary information and calculations in an acceptable and

legible format. The City failed to comply with PERC's mandate. The City again provided data which cannot be reconciled and should be properly discarded again."

The PBA provided additional examples of inconsistencies in the City's scattergram submission. The Union charged that contrary to the City's assertion that only current employees were listed, numerous 2012 retirees remain in the data set, including Kirk Sutton, James Brennan, John Russell, Douglas Scogno, Kevin Burrows, Edward Rafter, Ralph Garrett and Francis Calabrese. Moreover, the retirees are listed at full salary. The further argument is made that the City's figures do not prorate.

As an Interest Arbitrator tasked with a virtually impossible assignment to be accomplished in an incomprehensible time frame, I greatly appreciate the prospective guidance the Commission provided to employers, which will hopefully assist my colleagues and I going forward. The unvarnished reality of the situation, however, is that there will be occasions as here, where a municipality will be unable to comply with this directive. In that event, the Arbitrator must be empowered to exercise the discretion to reject such evidence, in the face of a more reliable scattergram provided by a union.

My in-artful language regarding being unable to decipher the City's former evidence notwithstanding, that is exactly what I did in my initial AWARD, and on the bases of the totality of the foregoing findings of fact, I **REAFFIRM** my conclusion that the PBA's scattergram at Union Exhibit 4 and aggregate guide

movement, longevity and education incentive figures are more reliable. Such a result was and continues to be consistent with New Milford.

That said, the second prong of the remand was that the contract clearly provides for guide movement upon the anniversary date. I failed to do that in my AWARD, and have also determined that the longevity must be prorated in similar fashion. As I previously remanded the development of the new salary guide to the parties, I believe a directive that Union Exhibit 4 also be utilized to prorate the cost of guide movement and longevity for each ensuing year is the best vehicle for this to be achieved. And as I recognize that this will result in an additional salary increase, that should be utilized for year 2 in 2014. Jurisdiction will continue to be retained. IT IS SO ORDERED.

SUPPLEMENTAL AWARD

UPON REMAND AND RECONSIDERATION:

1. All elements of the April 11, 2013 Interest Arbitration Award not at issue herein are reaffirmed.
2. Number 4 Wages, shall remain at an award of 1.59% (\$528,390) for 2013, retroactive to January 1, 2013.
3. The PBA's scattergram at Union Exhibit 4 shall be utilized for all calculations with respect to the Instant Interest Arbitration Award, with the correct figures going forward found to be:

	<u>2013</u>	<u>2014</u>	<u>2015</u>
INCREMENTS	\$644,734	\$302,434	\$111,037
LONGEVITY	\$ 85,912	\$204,745	\$ 89,061
EDUCATION	\$ 20,706	\$ 4,312	\$ 1,704

4. Consistent with the guidance provided within, the matter is remanded to the parties for the proration of all 2013, 2014, 2015 incremental guide movement and longevity costs, per New Milford and Union Exhibit 4.
5. Following the proration, any available monies from the aggregate 6% award of \$1,993,035 beyond the 1.59% in 2013 shall be applied to 2014.
6. In conjunction with this remand, the parties shall mutually develop the new salary guides.
7. Jurisdiction continues to be retained pending the development of the salary guides and the proper proration of the increments and the longevity costs.

Dated: July 2, 2013
NORTH BERGEN, N.J.


MICHAEL J. PECKLERS, ESQ., ARBITRATOR

STATE OF NEW JERSEY

SS:

COUNTY OF HUDSON

ON THIS 2ND DAY OF JULY, 2013, BEFORE ME PERSONALLY CAME AND APPEARED MICHAEL J. PECKLERS, ESQ., TO BE KNOWN TO ME AS THE INDIVIDUAL DESCRIBED HEREIN AND WHO EXECUTED THE FOREGOING INSTRUMENT, AND DULY ACKNOWLEDGED THAT HE EXECUTED THE SAME.


NOTARY PUBLIC

ZOILA R. VARGAS #257097
NOTARY PUBLIC OF NEW JERSEY
Commission Expires 5/27/2018