

# NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of Interest Arbitration Between

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**BOROUGH OF POINT PLEASANT,**

"Public Employer"

-and-

**BOROUGH OF POINT PLEASANT  
SUPERIOR OFFICERS ASSOCIATION**

"Union."

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INTEREST ARBITRATION  
DECISION  
AND  
AWARD

Before  
**James W. Mastriani, Arbitrator**

**Appearances:**

**For the Employer:**

Craig L. Wellerson, Esq.  
Dasti, Murphy & Wellerson, P.C.

**For the Union:**

Michael A. Bukosky, Esq.  
Klatsky & Klatsky

I was appointed arbitrator by the New Jersey Public Employment Relations Commission on May 14, 1997 in accordance with P.L. 1995, c. 425, in the impasse involving the Borough of Point Pleasant (the "Borough") and the Borough of Point Pleasant Superior Officers' Association (the "SOA"). Their collective negotiations agreement expired on December 31, 1995. A formal interest arbitration hearing was held on December 2, 1997. The mandatory terminal procedure of conventional arbitration was used to decide all issues in dispute. Under this procedure the arbitrator has the authority to fashion an award which he believes represents the most reasonable determination of the issues in dispute.

At the arbitration hearing, each party argued orally, presented testimony and submitted extensive documentary evidence into the record. Post-hearing briefs were received on February 16, 1998.

The SOA represents Superior Officers including the ranks of Lieutenant and Captain, employed by the Borough of Point Pleasant. The unit includes one Captain and two Lieutenants.

## FINAL OFFERS OF THE PARTIES

The parties agree upon a two year duration from January 1, 1996 through December 31, 1997, and upon all other terms and conditions of employment, except salary. Before beginning the formal hearing, the Borough and the SOA submitted the following final offers:

### SOA

#### Salaries--

Across the board salary increases as follows:

5% effective January 1, 1996  
5% effective January 1, 1997

### Borough of Point Pleasant

#### Salaries--

Across the board salary increases as follows:

3.75% effective January 1, 1996  
3.5% effective January 1, 1997

The Borough and the SOA have offered considerable documentary evidence, testimony and argument in support of their final offers. 88 SOA and 42 Borough exhibits were received in evidence.

I am required to make a reasonable determination of the above issues giving due weight to those factors set forth in N.J.S.A. 34:13A-16g(1) through (8) which I find relevant to the resolution of these negotiations. I am also required to indicate which of these factors are deemed relevant, satisfactorily explain why the others are not relevant, and provide an analysis of the evidence on each relevant factor. These factors, commonly called the statutory criteria, are as follows:

(1) The interests 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. 40A:4-45.1 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 public employment in the same or similar comparable jurisdictions, as determined in accordance with section 5 of P.L. 1995. c. 425 (C.34:13A-16.2) provided, however, each party shall have the right to submit additional evidence concerning the comparability of jurisdictions for the arbitrator's consideration.

(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.

(4) Stipulations of the parties.

(5) The lawful authority of the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by the P.L. 1976 c. 68 (C.40A:4-45 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 element, or in the case of a county, the county purposes element, required to fund the employees' contract in the preceding 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 on 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 moneys have been designated by the governing body in a proposed local budget, or (c) initiate any new programs and services for which public moneys have been designated by the governing body in its 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 of employment through collective negotiations and collective bargaining between the parties in the public service and in private employment.

### **BACKGROUND**

The evidence submitted reflects that the Borough of Point Pleasant values highly its police department including its superior officers. The Borough is in Ocean County, a fast growing and desirable community. Money magazine ranked the county as one of the top places to live in the United States.

The Borough is fiscally conservative, adopting a 2.5% Cap in 1997, rather than the maximum 5% Cap permitted by P.L. 1976 c. 68 (C.40A:4-45 et seq). In 1997, the Borough projected that it would underutilize its Cap by \$123,245.00. The Borough's 1997 budget reflected a 1995 Cap bank of \$154,568.05. In 1995 the Borough adopted a 2.5% Cap. The 1997 budget also reflects that for 1996, a year in which the Borough adopted a 3.5% Cap, \$95,064.23 remains in the Cap bank.

The Borough's 1997 budget shows an anticipated surplus of \$1,417,000.00 for 1996 and \$1,517,000.00 for 1997. Appropriations in the 1997 budget for public safety wages and salaries include \$37,179.25 reserved from 1996 and a total

expenditure of \$2,110,306.00 in 1997. That is an increase of \$92,465.00 over 1996's \$2,017,841.00 appropriation for police wages and salaries.

## POSITIONS OF THE PARTIES

### SOA

According to the SOA, the Borough has the lawful authority to pay for its economic proposal under the Cap law, P.L. 1976 c. 68 (C.40A:4-45 et seq). The SOA points out that the Borough could fund the SOA's request within its 1996 and 1997 budgets. While the SOA acknowledges that, due to the timing of this proceeding, the interest arbitration award will fall within the 1998 budget, it asserts that, within the confines of the Cap Law, the Borough will be able to fund the requested increase. Under the SOA's calculations, using a 5% cap, the Borough could increase its budget by at least \$346,253 in 1998. The SOA points out that a sum of approximately \$165,821 remains in the Cap bank from 1997 and a sum of \$95,064 remains in the Cap bank from 1996.

Noting that a Money magazine poll ranked Ocean County number three among the best places to live in the United States, the SOA asserts that the Borough has a stable and healthy economy. The SOA cites statistics showing that Ocean County's job growth has well exceeded the national average and that the County is

in a period of strong economic growth. The SOA points out that total revenues in the Borough rose from \$31,333,818.00 in 1995 to \$32,877,821.00 in 1997 and its surplus has also risen dramatically during that period. According to the SOA, all of New Jersey, and Ocean County in particular, is experiencing an economic upswing.

The SOA also points to a potential economic windfall for the Borough resulting from recently adopted legislation which, according to the SOA, permits the Borough to "cash in on anticipated property tax receipts before they are even paid" thus guaranteeing municipalities 100% tax collection rate. According to the SOA, this new law permits the Borough to eliminate the reserve for uncollected taxes in the budget and by using its right to sell its tax levy, the Borough can then use its 1998 property tax reserve of \$1,498,917.00.

According to the SOA, the Borough has budgeted for a 14.4% increase in overall police salaries from 1994 to 1997. The SOA's review of the Borough's budgets during this period leads it to conclude that the Borough has anticipated increases of 4.6% in 1995, 6.8% in 1996 and 3.0% in 1997 and can afford the SOA's proposal.

The SOA calculates that the total difference between its proposal and the Borough's is a net cost of \$6823.00 over the life of the agreement. The SOA further



calculates that the Borough's proposal would cost \$7613.00 in 1996 and \$8557.00 in 1997, for a total net cost of \$16,189.00, including longevity payments. In contrast, the total net cost of the SOA's proposal is calculated to be \$23,012.00 or \$10,875.00 in 1996 and \$12,137.00 in 1997.

Turning to comparison with other patrol officers in Ocean County, the SOA asserts that the minimum reasonable increase is that of the increase received by Ocean County's top step patrolmen of approximately 5.42% in 1996 and 4.74% in 1997. Since the Borough is not in economic trouble, the SOA argues that the "going rate" in Ocean County would be most reasonable. The SOA bases this argument upon increases in other Ocean County municipalities including the 4.75% and 4.25% received by the Borough's patrol officers in 1996 and 1997 respectively. The SOA also notes that Captains and Lieutenants in other Ocean County municipalities received average increases of 7.14% and 7.15% respectively in 1996 and 6.3% and 4.45% respectively in 1997.

The SOA asserts that the Borough can afford the SOA's economic proposal without adverse financial impact upon the Borough, its residents and taxpayers. Given that the SOA calculates the difference between its proposal as \$7,613.00 in 1996 and \$8,557.00 in 1997, the SOA considers that the cost difference would reflect a change of approximately 0.04% in both the 1996 and 1997 budgets.

Turning to the cost of living, the SOA acknowledges that the CPI for the New York-Northeastern New Jersey urban region rose 2.9% from June 1996 to June 1996 and the CPI for the entire United States rose 2.3% during that period.

The SOA asserts that the Borough will have difficulty retaining junior officers if the Borough's economic proposal is awarded, because junior officers will transfer to other departments with better salaries and benefits for senior superior officers. The SOA points out that the senior officers know the people, streets, geography and trouble spots in the Borough. Therefore, reasons the SOA, the senior police officers are more efficient, better able to detect patterns of criminal activity and can help train junior police officers. Continued continuity and stability of employment among the senior officers in the Borough will provide these benefits according to the SOA.

The SOA asserts that the interests and welfare of the public will be served best by awarding its final offer. The SOA asserts that the Cap Law is not a consideration under this factor and that this factor must consider recognition and fair treatment of public employees to ensure that services are maintained efficiently and effectively, while keeping tax rates and municipal budgets at reasonable levels. The SOA submits that its proposal maintains that balance and will raise and maintain morale while increasing salaries modestly.

In order to ensure the quality of its police force, a municipality must promote experience officers from within its department because they understand the community's problems and needs, according to the SOA. It follows, according to the SOA, that the Borough must offer a fair salary to retain its senior officers.

### **THE BOROUGH**

The Borough urges adoption of its proposal because it would aid in the Borough's goal of establishing a "harmonious and equitable working environment for all of its employees." Specifically, the Borough considers its proposal to be identical to that provided to all other Borough bargaining units, including the PBA, on behalf of patrol officers. The Borough is equally proud of the service provided by its senior officers, as well as its other patrol officers and other municipal employees.

The Borough asserts that the SOA's proposal exceeds the salary increases agreed to by the PBA on behalf of patrol officers. The Borough points out that senior citizens residing in the community will receive only a 2.1% increase in benefits, based upon the cost of living. The Borough considers the pay scale for Lieutenants and Captains in the Borough generous when compared to other police departments in Ocean County with comparably-sized police forces, such as Point Pleasant Beach, Seaside Heights, Stafford and Long Beach Township. Statistics cited by the Borough

demonstrate that these municipalities pay their Lieutenants up to \$9, 400 less annually. The Borough points to Dover Township, which has a department of over 100 officers and pays its Lieutenants only \$2, 200 more than that received by Borough Lieutenants. The Borough also points to the medical coverage it provides to its employees, which exceeds that provided by most municipalities and does not require its employees to use an HMO or pay greater out of pocket expenses.

According to the Borough, the public interest and the promotion of future labor relations in the Borough require the selection of its final offer. The Borough argues strenuously that to provide the superior officers with compensation beyond that provided to other patrol officers and other Borough employees would damage future bargaining in the Borough. According to the Borough, this small bargaining unit is the only unit without an agreement for 1996 and 1997, and bargaining has begun for successor agreements with other units within the Borough. If this unit were to receive a greater increase than other Borough employees, the Borough cautions that other units would hang back and wait for law enforcement arbitration awards before reaching settlement. Additionally, the Borough and the SOA have already agreed that the SOA would receive other benefits similar to those received by the patrol officers. The Borough argues that the SOA seeks the best of both worlds, in other words, to have the same benefits provided to the patrol officers, but higher wage increases than these patrol officers. If this occurred, the Borough contends that its

ability to bargain with the PBA and with other bargaining units would be harmed irreparably.

The Borough also points out that the current CPI is only 2.1% and the SOA's demand is more than double the CPI, exceeds the salary increase given to every other bargaining unit, and is more than 140% of the salary increase provided to executive employees within the Borough.

The Borough argues that to award the superior officers a wage increase in excess of that provided to other Borough employees, would destabilize labor relations within the Borough and limit severely the likelihood of future voluntary settlements.

The Borough notes settlements in the private sector, which include increases more modest than that it proposes and/or wage freezes and layoffs. Specifically, the Borough notes that private sector increases from 1993 to 1994 were only 2.8%, and from 1994 to 1995, 2.9%. According to the Borough, private sector increases continued to stagnate through 1996. The Borough also asserts that the generosity of its proposal should be compared to layoffs and more modest wage increases at such employers as 3M, IBM, AT&T, Mobil, Continental Airlines, UPS and Boeing. In

contrast, the Borough points to the continued job security, superior health benefits, holiday pay and overtime compensation enjoyed by its Lieutenants and Captains.

The Borough rejects the SOA's argument that inducement is needed to retain senior employees and suggests that the overall compensation package provided to its superior officers is already sufficient inducement to remain with the Borough's police department.

The Borough argues that cost of living statistics support its proposal and notes that many of its residents and taxpayers live on fixed incomes adjusted only to the degree of increases in the CPI. Additionally, limited taxpayer funds must be distributed to cover competing needs within the Borough. The needs cited by the Borough include sanitation, infrastructure, insurance and volunteer services. The Borough asserts that it can not ignore those needs simply to please the superior officers in the police department. Finally, the Borough asserts that it has neither difficulty recruiting or retaining quality police officers.

### **DISCUSSION**

As stated above, I am required to issue an award based upon a reasonable determination of all issues in dispute after giving due weight to the statutory criteria

which I judge relevant. The Borough and the SOA have articulated fully their positions on the salary issue and have submitted evidence and argument on each statutory criterion to support their respective positions. The evidence and arguments have been carefully reviewed, considered and weighed.

I have considered the statutory criteria and conclude that all are relevant to the resolution of the dispute, although, as set forth below, not all have been accorded equal weight. As required by law, I have also decided the total net annual economic changes for each year of the two year award.

The sole issue in dispute is salary for the two Lieutenants and one Captain for 1996 and 1997. Simply put, the SOA urges adoption of its proposal of 5% in each year and the Borough urges adoption of its proposal of 3.75% in 1996 and 3.5% in 1997. Based upon a total annualized base salary figure of \$203,200 in 1995, the amount of the Borough's proposed increase is \$7,112 in 1996 and \$7,360 in 1997. The SOA has proposed an increase of 5.0% each year or an increase of \$10,160 in 1996, and \$10,668 in 1997. The difference in the proposals in terms of new money cost is \$2,948 in 1996, and \$3,308 in 1997, or a total of \$6,256. Cumulative costs resulting from the effect on overtime and other benefits would add slightly to the difference.

Based upon the arguments and evidence submitted, and after applying the statutory criteria, I have determined that wage increases shall be set at 4.75% in 1996, 4.25% in 1997 for a total net economic change of \$9,652.00 in 1996 and \$9,046.00 in 1997. This award exceeds the total cost of the Borough's proposal by \$4,226.00 and is \$2,130.00 less than the SOA's proposal. I place substantial weight on the 1996-97 salary rates provided for in the rank and file (PBA) agreement and conclude that similar increases are appropriate for the two Lieutenants and one Captain. The analysis which leads me to this award is as follows.

It is undisputed that the interests and welfare of the public are being served well by the Borough's police department, including the senior officers. It is equally undisputed that, looking only at the monetary cost of the SOA's proposal for three superior officers, the Borough can afford the PBA's proposal without significant impact upon the budget, the Cap Law, or its residents and taxpayers. The crux of the issue is not whether the Borough can afford the SOA's proposal, but the amount of increase reasonably due to the superior officers given all of the present circumstances. As discussed fully below, the Borough's ability to fund the award must be balanced against other considerations.

Comparison with the private sector generally, and in New Jersey specifically, as well as other police departments, and other settlements within the Borough all are



appropriate. The parties are well aware that comparisons of police officers with private sector employees are somewhat difficult. Their responsibilities to promote the public health welfare and safety, to arrest and detain and to bear and use arms are not easily compared. These superior officers are also vested with supervisory authority over the Borough's police officers.

Private sector data reflects an increase of 3.6% in average wages in Ocean County from 1995 to 1996. ["Trends in Employment and Wages", New Jersey Department of Labor']. Statewide increases by sector ranged from 3.1% in construction and retail trades to 4.6% in manufacturing. The increases awarded here are above these figures, but are not controlling on the instant result. I have discounted as substantially less than relevant the enormous jump of 10.8% in wages of those employed in the financial/insurance and real estate sectors.

Looking to comparison with the superior officers in other Ocean County municipalities cited by the Borough, those settlements range from 3.75% for Point Pleasant Beach superior officers to 5% for Long Beach Superior Officers in 1996. Averaging the settlements for Lieutenants in Point Pleasant Beach, Seaside Heights, Lakewood, Stafford, Little Egg Harbor, and Long Beach, increases averaged 4.4% in 1996. Of those same communities, only Point Pleasant Beach and Lakewood had settlements for 1997. Superior Officers in Point Pleasant Beach received a 3.75%

increase in 1997 and Lieutenants in Lakewood received a 4.5% increase while Lakewood's Captains received 3.75%.

Careful review of the agreements within the Borough, demonstrates that most bargaining units received increases in excess of the Borough's proposal of 3.75% in 1996 and 3.5% in 1997. Specifically, review of the salary guides for patrolmen demonstrates that patrolmen at the top step received an increase from \$50,679 to \$53,086, or 4.75% in 1996. Similarly, in 1997, patrolmen received an increase from \$53,086 to \$55,342 or 4.25% in 1997.<sup>1</sup> Patrolmen, Detectives, Sergeants and Detective Sergeants received additional percentages or stipends based upon the patrolman rate. Review of the agreements covering teachers and principals reveals similar increases.

It appears that the Borough's contention that the salary increase to the PBA is less than the 4.75% (1996) and 4.25% (1997) increases provided for at the patrolman maximum salaries is due to savings created by adoption of a "B" scale for new police officers. The "B" scale provides lower salaries in years one through five,

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<sup>1</sup>The Borough's agreement with the patrolmen created a new salary guide for patrolmen hired after July 1, 1995. However, at the top step, the new salary guide reaches the same salary level for patrolmen as the salary guide for patrolmen employed before July 1, 1995. Both salary guides provide similar increases in 1996 and 1997.

but catches up with the old salary guide after five years. Thus, while providing for 4.75% and 4.25% increases at patrolman maximum, savings were created for new employees during the course of time in which they move to maximum.

I conclude that a similar salary structure is warranted for the superior officers contract. The awarded increases will maintain the relative rank differentials which existed during 1995, but an entry level step below these rates will provide a similar type of future savings to those provided for in the PBA agreement. Thus, I award an entry level step at three (3%) percent beneath the adjusted 1996 and 1997 salaries set as a result of this award for both Lieutenants and Captains. Any new Lieutenant promoted after the date of this Award shall move to the entry level rate and remain at that rate for one (1) year before moving to the awarded rates.

The Borough has expressed great concern that this proceeding not result in an economic windfall for a small number of employees. If the employees in this bargaining unit were to receive an award in excess of that provided to other Borough employees, the Borough fears that its next round of bargaining would be harmed as each unit attempted to follow any settlements or awards received by police employees. The Borough raises an important concern. However, this proceeding requires that a result be awarded in light of the statutory criteria for law enforcement and parity with other employees is only one consideration to be factored into the

equation. This award falls clearly within the range of comparable settlements within the Borough and Ocean County. It does not reward employees with salary increases beyond those provided to similarly situated employees and it maintains the relative rank differentials within the Borough's police department, including the Sergeant rank as provided in the PBA agreement. Because the award is for 1996 and 1997, it does not tie the Borough's hands in future collective bargaining by providing an award for future years or provide greater increases which the SOA seeks merely because the Borough is able to pay more.

Examination of these comparisons yields an award greater than that proposed by the Borough and less than that proposed by the SOA. This award provides comparable salary increases to the SOA without damaging the stability of labor relations in the Borough. The award permits the superior officers to retain their relative position within the Borough's compensation plan, yet does not reward them beyond their relative position. Substantial weight must be given to this consideration. It also provides an entry level rate for new superior officers at a three (3%) percent rate beneath the existing scale.

Review of pay differential, longevity, vacation, holidays, personal days, bereavement leave, sick leave, overtime and clothing allowance benefits demonstrates that the Borough provides a generous benefits package which is well

within the range of the benefits provided by other municipalities in Ocean County. The benefits package, though generous, is comparable to other such packages within Ocean County and, when each factor is balanced, maintains the Borough's relative position within the County. The fringe benefits are not revised by this decision.

The financial impact of this award is not substantial. The additional cost of this award is \$6,256.00. Total appropriations in 1997 were \$9,247,822.00. In 1997, the 1995 Cap Bank held \$154,568.05 and the 1996 Cap Bank held \$95,064.23. While the payout for this award will occur in 1998, the new money cost of \$6,256.00 will not have a negative impact on a community with a healthy Cap bank, a projected \$1,517,000.00 surplus, and a robust economy.

Turning to the cost of living, the 2.9% increase in CPI is exceeded by both final offers, but to the extent that it is accorded some weight, this factor supports the Borough's position. On balance, however, other criteria deserve greater weight in a situation where comparability and stability play a greater role in determining the proper increases for superior officers.

The SOA expresses concern that increases inferior to those it proposed might lead to less continuity and stability of employment for the Borough's superior officers.

However, the record does not reflect significant turnover within the department, and this award, by maintaining the relative position of the superior officers minimizes the adverse impacts suggested by the SOA.

Finally, the Borough provided a reminder that it has competing demands on its funds, including sanitation, infrastructure, insurance and volunteer services. This award takes these competing funding needs into account by balancing the salary increase which maintains the relative position of the superior officers *vis a vis* other Borough police officers with a minimal impact on the Borough's budget.

AWARD

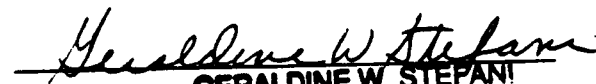
The salary schedule contained in the collective negotiations agreement shall increase by 4.75% effective January 1, 1996 and 4.25% effective January 1, 1997. All increases shall be retroactive. An additional step shall be created for each rank for new lieutenants promoted into this unit after the date of this Award. Any such employee shall be placed on a salary schedule which shall provide for an additional step beneath the existing rates set at three percent (3%) less the existing rates for Lieutenant and Captain. Placement at this new rate shall be for a period of one (1) year and movement to the maximum rate shall occur after one year at the lesser rate.

  
James W. Mastriani

DATED: June 24, 1998  
Sea Girt, New Jersey

STATE OF NEW JERSEY        }SS.:  
COUNTY OF MONMOUTH       }

On this 24th day of June 1998, before me personally came and appeared JAMES W. MASTRIANI to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed same.

  
GERALDINE W. STEPANI  
NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires June 27, 1999

