
In the matter of the remand to this arbitrator
of the interest arbitration award rendered
which concerned the County of Morris,
Morris County Sheriff,s Office and PBA
Local No.298,

PERC Docket IA-2012-35.

This matter involved an appeal by the County of Morris and a cross appeal by Local 298 of an award rendered on July 19, 2012. The Commission issued a determination to remand the matter to this arbitrator for a supplemental award to be presented within 45 days from July 19, 2012. The arbitrator was reminded of the necessity to identify which of the statutory factors were deemed to be relevant, to explain why others are not relevant and to provide an analysis of the evidence on each factor. The statutory factors 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, that 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 P. L. 1976, c. 68 (C.40A:4-45.1 et seq.).
- (6) The financial impact on the governing unit, its residents, the limitations imposed upon the local unit's property tax levy pursuant to section 10 of P. L. 2007, c. 62 (C.40A:4-45.45), 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 municipality 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 tax-payers 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 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 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 of employment through collective negotiations and collective bargaining between the parties in the public service and in private employment.
- (9) Statutory restrictions imposed on 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 section 10 of P. L. 2007, c. 62 (C.40A:4-45.45).

In the remand the Commission made comments identifying some specific elements of the information which was determined to have been required but not presented in my analysis of this proceeding. I will address those concerns. I must add that this was a case which required extensive and time consuming thought. Perhaps this contributed to my skipping a more detailed presentation of elements of my considerations and insufficiently supported conclusions.

I determined that the most significant of the statutory factors was the first, the interests and welfare of the public. Underlying this conclusion was some of the history of the relationships of the employer to all of its employees. It was noted that the County has an unusually positive record of managing its affairs. It has controlled debt, excellent credit history and generally been well managed in functional ways. For example the corrections facility has an excellent record as to its achievements and obligations and clearly is well managed right down to its physical plant and the working conditions made evident by visiting the prison, even to a casual observer such as myself. However there is an additional element of consideration which would not be obvious to a visitor. It stems from the need to provide a full staff for all operational needs. This has resulted in a situation where the needs for reduction of staff on a county wide basis to conserve employment costs have been shouldered by virtually all departments of government except the corrections facility where the structure of coverage mandates prescribed numbers of personnel at every position. This is understandable as there would be risks to the effectiveness of the program as well as dangers to personnel if not fully staffed. However the result has been a very disparate treatment of other functions. In fact the County has reduced its staffing by more than 400 persons being relieved from employment over the past four years. This amounts to a reduction of approximately 25% of staff while the corrections function has been fully staffed and has been able to afford a substantial number of promotions to higher paying positions in the prison.

I have no way of measuring the precise impact of these reductions as to public services although logically there must have been some and the loss of jobs during this period certainly has led to lengthy periods of unemployment as well as loss of important benefits for those affected. These lay offs were not made to trim fat. They were a product of economic necessity and the resultant impact was distributed over the non-police portion of those employed by the County. It is of note that these financial reductions were not shared with the police/corrections community.

In my award I included the payment of increments in the first year of the contract. This was done because of the particular provision of the expired agreement which I defended as being enforceable. Both parties provided statements indicative of the costs involved being approximately equivalent to 1.9 to 2% of annual base wages. My examination of the underlying data revealed some interesting facts. In the year 2011 forty five of the officers were at maximum salary and would not participate in any wage improvement related to the increment. Of the remaining 72 officers each would have an advance in salary effective on the anniversary date of employment. Thus each would advance in pay but would not experience the total value of that increase in the year in which it was granted, rather it would be spread into the following year. The individual increases varied with the years of service and the then current income. However, the range of salary improvement was from \$1813 for the most recently hired who were at the lowest pay grade to \$6907 for someone at step 9, the last step before maximum in the pay structure. These new steps would, on an annual basis, amount to a gross cost of \$298,257 added to base salary. Only about \$153,584 would actually be paid in 2011, the 1.9% noted above, but the remaining

\$144,673 would be realized in 2012, the 2%. The increased pay schedule attributable to the increment grant varied from just over 4% of the starting pay in year for first year employees, to an approximate average of 9.5 % per year for those at top four steps and an average of 7% for those at each of preceding four years of service.

Thus it can be seen that the first year of the Agreement awarded provides generous financial support for these employees in sharp contrast to the plan laid on non-police personnel who contracted for zero increases and this after four years of layoffs affecting nearly a quarter of the County staff. The Union contends that this was accomplished by the Employer threatening further layoffs and that the County has the resources to afford more generous contracts. My appraisal of the situation is that the County has achieved a record of fair and equitable treatment in the past and that it was simply designing its fiscal plan with regard to current expectations and the maintenance of a sound fiscal program. It was the profound implications of further foreshortening of the non-police staff and the strictures undertaken to reduce spending coupled with demands for an unacceptably expensive agreement for corrections personnel which convinced me to rank the interests and welfare of the public as the prime consideration as to the statutory factors to be considered.

Reinforcing that conclusion has been the actions taken by the State Legislature which have been aimed at reducing an unacceptably high cost of police services. Key among those actions is the limits placed on local government expenditures and, more to the point at issue here, the imposition of cost sharing by police as regards pensions and health care. The counter demand by the corrections Union for added salary moneys to compensate for such costs is readily understandable but clearly contrary to the objectives of the Legislature. Had it wished the added costs of these benefits it could certainly have imposed those obligations on the public employers directly, but it chose not to do so.

I believe the information provided above should have shed light on my considerations as to the second statutory criteria, comparisons of wages to those paid in other employment. Because the central focus has clearly been on police compensation and because the record presented has only incorporated the circumstances affecting non-police of this employer I do not see the need for further analysis or greater detail as to comparative financial support. It is sufficient to say those in non-police positions harbor the feeling that they are being treated as second citizens when comparison is made with the police employed by the County.

The third factor, overall compensation, has not emerged as a separate issue in these proceedings and in the final stages of the hearings the focus was virtual entirely on those financial issues discussed above. There was no concentration as claims of superior compensation elsewhere with the exception of passing commentary which indicated that other employers had somewhat more generous pay plans. But this was raised as a specific demand.

As to item four, stipulations of the parties, none were introduced at bar in this matter.

The fifth factor seeks to identify whatever limitations were imposed by statute which would have confronted the parties in their attempt to find a resolution of this impasse. As it turns out the issues raised were not outside the boundaries of lawful flexibility of the Employer and no statutory impediments were claimed by either party. To a large extent this condition had been achieved by the drastic reductions of non-police employees from the payroll. However, what did emerge was the contention that the Union's demands for across the board increases it had become accustomed to receiving coupled with those lay-offs had stimulated a demoralizing effect on those remaining non-police employees and their regard for the integrity or fairness of County employment practices then claimed as being inequitable, a further consequence which the County sought to overcome.

The unconfirmed allegations of the Union that the County used threats of further reductions of staff if agreements were not reached on new contracts reflected, if true, the intensity of County's perceived need for fiscal containment. While it was never proved to be on the brink of financial disaster the intensity of effort made to conserve expenditures, as evinced by staff reductions of non-police personnel singularly, and contractual proposals which excluded many financial improvements over a period of four years certainly lends credibility as to its perceived need for conservative management of fiscal resources. One may argue, as did the Union, that there were no legal limitations which would have precluded higher levels of expenditures such as would have satisfied the Union's demands. However, it must be recognized that the County management was empowered to make determinations as to these fiscal considerations. In the situation presented the County made proposals for settlement which the Union determined to be inferior to its demands and less generous than would have been permitted under the statutory limitations. My determination was to provide a fair settlement of this dispute. Which is what I believe I did under all of the circumstances known. I found the Union's argument to the effect that, because the County offer was below the maximum spending limitations under State government regulations, its own proposal for settlement should be awarded, to be without merit under the condition of the County having been forced by stringent economic circumstances to drastically reduce by dismissal approximately one fourth of the non-police work force with resultant reduction in public services. And also because of other legitimate financial goals of the County administration.

The 6th factor mandates a consideration of the impact of an award on the governing unit and its local tax levy. As fashioned in my award the County raised no objection as to its impact and with only one objection as to the increment afforded in year one, accepted the conditions embodied therein. The Union's contention as to it not being sufficiently generous I find are not justified or at issue under the limited conditions of the remand. Given the acceptance by the County I conclude that the impact will not challenge the limitations imposed on the property tax level. The County did not raise any objection concerning the effects on property tax or other elements of expenditures: stating unequivocally, "With the sole exception of awarding of step increases in 2011, which is the subject of County's separate appeal, the Arbitrator met these requirements." "The challenges raised by Local No 298 must be rejected". Thus it is my conclusion that the

County, having examined the award, concluded that the impact adaption of the award would have no deleterious affects on taxpayers or the provision of services to the public.

As an exception to the endorsement of the terms awarded the County raised a continuing objection to my award of increments in the first year of the new contract. My explanation for this was the identification of a contractual extension embodied in the prior contract which I determined to be effective unless otherwise resolved, which I found not to have happened. The objection by the County did not include a demand for any other modification and specifically included the following statement: "With the sole exception of awarding step increments in 2011, which is the subject of the County,s separate appeal, the Arbitrator met these requirements." This conclusion was made with specific relevance to the factor 6. specifications of issues to be considered.

Because of my determination as to the contractual dedication of the parties as to the 2011 increment to be paid, which I do not believe to have been contrarily determined, and because neither party has expressed such as being in excess of any statutorily imposed limitation I have concluded it is not essentially a matter requiring my further attention.

The 7th. factor involves the cost of living. As of the time of my award this factor was of relatively minor concern due to its stability at a subdued level. The overall condition of the economy had, with some exceptions, and in particular energy costs, remained within tolerable limits not historically precipitating wage adjustments on any widespread scale. At the same time the unemployment and real estate factors have risen to the forefront of most persons focus concerning costs. The remarkable stability of these factors as they relate to these employees adds to my determination that this is not a significant enough factor to require special attention as a part of income. The exception proposed in this situation has to do with costs peculiar to police as mandated by statute. These limitations were aimed at employee participation in pension and health benefit costs being, in part, imposed on these employees. That the Union seeks relief from these costs understandable. However, the Legislature specifically determined to shift a part of premiums to individual employees. It defended this move on its conclusion that costs had become intolerable to public employers and must be shared by beneficiaries, meaning those employed. It was also clear that this was an accompaniement to related limitations placed on increases in pay. To shift those costs back onto the employers involved and thus the taxpayers, would be contrary to the determination of the Legislature and is therefore impermissible. I therefore conclude that this factor should not be remedied as part of an arbitration award.

The 8th. factor has to do with the continuity and stability of employment. There was no indication of these employees being negatively impacted by this award. In fact their treatment clearly illustrates a priority for pay increases and continued employment to have been a priority consideration by the County as contrasted to civilian employees many of who were removed from pay status. So, while salary increases granted herein may not have been as generous as were requested there is nothing in the record to suggest a problem of turnover. I conclude this factor to be of it very limited importance in this proceeding.

The final criterion has to do with statutory restrictions imposed on the Employer. Clearly the Legislature has conveyed the message that Employers must limit their overall extensions of expenses. One of the few ways to do this is to carefully avoid an expansion of elements of controllable costs. The costs of payroll were obviously an intended target and represent a major portion of annual employee expense, thus becoming a marked target. The County responded to this by eliminating a quarter of its employees but the pressure to find further means of controlling personnel costs continues to exist. An obvious choice in response has been to provide modest increases to these employees which I find to have been, in part, directed by the Legislature. There might have been some greater flexibility as to the outer limitation possible but I find that does not suggest that such expenditures must only be granted to specific targets such as wage increases as requested here. That flexibility was left to the Employer for determination. I am satisfied that the County reasonably exercised that discretion in forming its proposals in this matter. I thus find no basis for any order to change the decisions related to this proceeding.

In the remand of this award the PERC specifically indicated a flaw in my submission was the failure to provide the cost of both step movement and the percentage increases for each year of the agreement. In the case of the cost of step movement it should be noted that the only year in which an increment was granted was 2011. The cost of that increment, in total was \$298,257. Because of the wide distribution of the dates of individuals' entitlement [by actual date of hire] the assertion of the Union was that only \$153,584 would be paid in 2011. However, the remaining \$144,673 would be paid in 2012. This number would actually be increased because of the January 1, 2012 2% across the board pay increase. The wages subject to the 2% increase for all employees would have increased in total in the 2012 year from \$7,751,238 in 2010 to \$8,049,495 which would then be further adjusted by the 2% increase to \$8,210,485 total paid in 2012. That total would be further advanced by the 2% effective on January 1, 2013 and cost an additional \$164,249 or a total payroll of \$8,376,735. Thus it can be seen that the overall payroll will have been increased from \$7,751,238 to \$8,376,735 per year during the three years of this Agreement. This amounts to \$623,457 improvement in the annual salaries to be paid in each future year of service.

The portion of the 2011 increment increase was 1.98% or \$153,584 paid in 2011 to which should be added the 2012 portion of that increment paid or 2.12% which provided an additional increase of \$170,000. Together these increases amounted to 4.10% or \$323,584. The base salary costs for all employees due to 2% increases in 2012 and 2013 would have approximated \$150,000 in each of those two years.

This award was intended to demonstrate that the interests and welfare were considered as very significant. In my further discussion above as to these topics I noted my reasoning considering the forced reduction of the work force, other than the police, underscored the clearly diminished service to the public performed by non-police employees due to reductions in force. The much more advantageous economic treatment of the correction officers furthered my conclusion which was such was not in the public interest. I have

made no attempt to correct those practices but rather attempted to provide a new contract which would be more reflective of the economic circumstances of all the County,s employees while also including reasonable improvements to the correction officers. It should be noted that I made no attempt to offset the action of the State Legislature's imposition of shared costs, a basic complaint of these officers, due to the explained rationale expressed by that body. Thus I did not incorporate wage adjustments to offset those costs which were described as intended to be imposed on individuals to relieve the burden of local employers. Nor did I perceive it to be logical to grant further compensation improvements when the other County employees had to bear the effect of the 25% reduction in force and zero increases in pay as well. The award I provided substantially improved the pay of all corrections officers. The 65% of the force, below the maximum rate in each year who received an increment step award valued at an average of more than 7%, and up to nearly 10%%, in year one and two increases of 2% in years two and three of the new contract. For those at maximum there was a less generous payout of 2% per year and restricted to years two and three of the contract. In combination all officers were more handsomely awarded than all other employees of the County had been in dollar and percentage terms. I saw this as a reasoned response in the interest and welfare of the public which relies on the services of all public employees.

No issue was raised by either party as to an exercise of the lawful authority of the County and no challenge was presented as to restrictions imposed on it in these proceedings. The Union did not make any demands concerning conditions of employment beyond stating that these employees were employed on every day and night of the week and were deserving of somewhat greater consideration than those employed in less demanding schedules. But this is not a new condition and I did not find it required special remedy at this time because the conditions of work, not changed herein, had long since been incorporated in the remuneration formula enjoyed. There were no stipulations of the parties bearing on this procedure and no registered complaints as to other conditions of work.

The key area of dispute raised by the employer had to do with my award of increment pay in 2011. My determination of that issue was simply an interpretation of the commitment incorporated in the expiring agreement of 2010. Although this was disputed at hearing I found the claim of the Union as to the payment of increments to be convincing and awarded same. Clearly the parties had addressed that issue and formulated such payments as part of their prior agreement. The agreed upon option to revisit that commitment was never timely exercised by the County and no evidence to the contrary was offered. I did not find that the costs involved provided a sufficiently compelling rationale to warrant a change in what was determined to be a contractual obligation.

As to the question raised concerning the offer of the Union to abandon the higher cost premiums of certain health care plans I shall state forth here that offer was not made as a concrete exchange for any particular equivalent improvement. It certainly was made in good faith but there was no specific condition as to the offer and my interpretation was that there would be values to both parties particularly as the eliminated plans included

much higher premiums which, if continued, would require higher payments from both the employees involved as well as the County, and particularly of concern to the Union now threatened with the State's imposition of the greater portion of those shared premium costs to be born by employees. But no condition was set forth in the offer of the Union to abandon the higher cost plans. My conclusion was that the offer should be accepted in the new contract and that the increment provided in the 2011 year was substantial consolation for that accord, whether intended or not. I conclude that no absolute condition was attached to the Union's proposal regarding a change in health benefits insurance providers.

There were several specific elements included in the mandates for my consideration and conclusions particularly if pursued by either party. These included the description of the impact of a decision on the County as to County purposes tax, and on County property taxes as well as the ability to maintain services or to provide additional services. In the course of the original hearing these issues were not presented as significant considerations to be made and alternatives were not injected. However, in conformity of my understanding that these matters were not to be primary elements of my concern I offer the fact that the County approved my proposed award without reference to such items with the singular exception of the award related to increment payments being include. I therefor did not have a basis for detailed analysis of these or several related items without concentration of the parties interests as to their being of great concern.

The PERC has raised a question as to what my analysis might have made of the testimony and reports offered by experts speaking for the County and/or the Union. To the extent those elements of the record were of vital import they entered into my considerations and understanding of ether party's representations. In this award I have incorporated the conclusions drawn from the entire record which I propose to have been given appropriate weight and to all testimony as well as dictum from the Legislature as well as involved statutes. My conclusions as set forth in my award have not changed and suggested modifications of either party are rejected on the basis of my analysis of all conditions which were or could have been advanced in support of either party's alternatives. I believe this to have been a fair and objective resolution of the entire record in this dispute which should warrant the endorsement of the Public Employment Relations Commission.

Should there be a further consequential question left unanswered it will be my pleasure to clarify in response.

August
September 28, 2012, Pennington, N.J.


Frank A. Mason

On this date before me personally came and appeared Frank A. Mason, to me known and known to be the individual described in and who, in my presence, executed the foregoing opinion and award and he acknowledged to me that he executed the same.

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Jane Davidson-Barton
Notary Public of New Jersey
My Commission Expires April 12, 2016