PUBLIC EMPLOYMENT RELATIONS COMMISSION
495 WEST STATE STREET
CN 429
TRENTON, NJ 08625-0429

Case No. IA-95-079/IA-95-073

In the Matter of Arbitration Between	
TOWNSHIP OF RANDOLPH	
-Employer-	
and	O P I N I O N
RANDOLPH FOP LODGE 25 (PATROLMEN'S UNIT AND SUPERVISORS' UNIT)	A N D
-Union-	A W A R D

ARBITRATOR: Robert E. Light, mutually chosen by the parties pursuant to the rules and regulations of the New Jersey Employment Relations Commission.

HEARINGS: May 10, 1995 (preliminary meeting) and September 14, 1995 (formal interest arbitration) in Randolph, New Jersey. Both counsel thereafter filed post-hearing briefs.

APPEARANCES:

For the Township
Steven S. Glickman, Esq., Ruderman & Glickman
Michael Soccio, Director of Finance
James McLagan, Chief of Police
Stephen Mountain, Assistant Township Manager
Jasmine Lim, Township Manager

For the Union
Manuel Correia, Esq., Loccke & Correia
Lloyd D. Henderson, Detective Lieutenant
William Worters, Patrolman
James H. Brady, Patrolman
Craig D. Wolfson, Patrolman
Bernard Re, CPA, Registered Municipal Accountant

PROCEDURAL BACKGROUNDS

Pursuant to Chapter 85, Public Law of 1977, the act providing for compulsory interest arbitration of labor disputes in police and fire departments and, in accordance with NJAC 19:16-5.6 (b), the undersigned was duly designated as Interest Arbitrator in the above matter. This designation was communicated to the parties and the Interest Arbitrator by letter dated March 7, 1995 from the Director of Arbitration of the Public Employment Relations Commission.

The parties' previous contract expired on December 31, 1994. The parties negotiated on September 27, 1994, October 10, 1994, October 25, 1994, November 8, 1994 and December 8, 1994. The initial petition for compulsory arbitration had been filed by Manuel A. Correia, Esq., counsel for FOP Lodge 25 on January 12, 1995. The Township's response to the petition was dated February 21, 1995. The formal interest arbitration hearing in this matter was held on September 14, 1995 whereafter both counsel submitted briefs. There had been a prior mediation session on May 10, 1995.

The statute providing for the compulsory arbitration of labor disputes in public, fire and police departments, NJSA 34:13 A-14 to 34: 14A-21 requires that, in the event that the parties do not agree upon some other acceptable terminal procedure for the resolution of impasse, the award of the economic issues in dispute shall be confined to a choice

between the last offer of the Employer and the Employee Representative "as a single package". With respect to non-economic issues in dispute, the statute provides that a choice be made between the last offer of the Employer or the last offer of the Employee Representative "on each issue in dispute". The statute also imposes upon the Interest Arbitrator the duty to:

"...decide the dispute based on a reasonable determination of the issues giving due weight to those listed below that are judged relevant for the resolution of the specific dispute.

1. The interests and welfare of the public.

2. Comparison of the wages, salaries, hours and conditions of employment and 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 public employment in the same or similar comparable jurisdictions

(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 and hospitalization benefits, and all other economic

benefits received.

4. Stipulations of the parties.

5. The lawful authority of the employer.

6. The financial impact on the governing unit, its residents and taxpayers.

7. The cost of living.

8. The continuity and stability of employment including seniority rights and such other factors 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."

RELEVANT REGULATIONS

19:16-5.5 Response to the notification or petition requesting the initiation of compulsory interest arbitration

(a) In the absence of either a jointly submitted notification or joint petition requesting the initiation of compulsory interest arbitration, the respondent shall file within seven days of receipt of such notification or petition, a statement of response setting forth the following:

1. Any additional unresolved issues to be submitted to arbitration;

2. A statement as to whether it disputes the identification of any of the issues as economic or noneconomic;

3. A statement as to whether it refuses to submit any of the issues listed on the notification or petition to arbitration on the grounds that they are not within the required scope of negotiations; and

4. Any other relevant information with respect to the impasse.

(b) Proof of service on the petitioner of the respondent's statement shall be supplied to the Director of Arbitration. If a party has not submitted a response within the time specified, it shall be deemed to have agreed to the request for the initiation of compulsory interest arbitration as submitted by the filing party. The substance of this response shall not provide the basis for any delay in effectuating the provisions of this chapter.

(c) Where a dispute exists with regard to whether an unresolved issue is within the required scope of negotiations, the party asserting that an issue is not within the required scope of negotiations shall file with the Commission a petition for scope of negotiations determination pursuant to chapter 13 of these rules. This petition must be filed within 10 days of receipt of the petition requesting the initiation of compulsory interest arbitration or within five days after receipt of the response to the petition requesting the initiation of compulsory interest arbitration. The failure of a party to file a petition for scope of negotiations determination shall be deemed to constitute an agreement to submit all unresolved issues to compulsory interest arbitration.

(d) Where a dispute exists regarding the identification of an issue as economic or noneconomic, the party contesting the identification of the issue shall file with the Commission a petition for issue definition determination. This petition must be filed within 10 days of receipt of the petition requesting the initiation of compulsory interest arbitration or within five days after receipt of the response to the petition requesting the initiation of compulsory interest arbitration. The failure of a party to file a petition for issue definition determination shall be deemed to constitute an agreement to submit all unresolved issues to compulsory interest arbitration.

THE THRESHOLD PROCEDURAL ISSUE

The parties have submitted identical offers with the exception of longevity. Initially, counsel for the SOA raises a procedural argument to the effect that:

> "...the Public Employer has asserted a Last Offer position which includes the modification of longevity which is legally defective and not awardable. PERC's Rules and Regulations set forth that all economic and non-economic issues be submitted in the Petition. This was done for both labor groups in its January 12, 1995 submissions... Therein, there is no suggested modification of the longevity provision which is a separate and distinct provision within the work contract. The Township of Randolph never included any additional items in the submission to PERC which would suggest a longevity revision...."

Briefly, Association counsel acknowledges that the issue of longevity was raised in a February 2, 1995 letter from the former Township Manager to the President of the FOP to the effect that the Council still believed a longevity adjustment or health insurance modification would be incorporated into the FOP contracts, but he asserts the Township's formal response to the Association's January 12, 1995 petition was more than six weeks after the Association's submission, and it does not identify longevity as an issue in dispute. In summary, FOP counsel argues that it is "highly unlikely and unreasonable to believe that the Employer has now included longevity into its proposals and has abided by the regulations of PERC in submitting this as part of its Last Offer position.

Counsel for Randolph Township cites various PERC decisions that can best be described as being analogous if not "on all fours" with the issue at hand. In essence, counsel claims these PERC decisions can be summarized for the concept that both parties have the right to enter into Interest Arbitration with full knowledge and notice of the other parties' issues which any fair evaluation reveals is what took place in the present scenario. Counsel asserts that, since the longevity issue was mentioned in the February 2, 1995 letter, notice was had. Moreover, the identification of "salary rates for employees" as an issue must also be recognized as including the concept of longevity.

In this case, I believe that persuasive rationalizations exist. The FOP Lodge had direct notice from the Township Manager a scant 21 days after the filing of the FOP's petition that longevity and/or health benefits were potential issues. Here we are talking about notice being technically a mere 14 days late. Counsel for the Township notes, the FOP's attempting to assert that the mere omission of the longevity issue in the Township's February 21, 1995 response to PERC to the Petition represents an "overly restrictive" interpretation of the correspondence and the regulations.

I agree with that statement as to the unique facts and circumstances of <u>this particular case</u>. Accordingly, I deny the Lodge's request that the Township's proposal to end

longevity for those employees hired on or after January 1, 1996 not be considered.

SOLE REMAINING ISSUE

The parties' final proposals are identical as to every economic issue except that the Township proposed the elimination of longevity for all employees hired after January 1, 1996. Accordingly, while all of the statutory criteria will be noted, some will have little or no relevance or at least will not need to be discussed at length. However, given the diminishing spotlight of inquiry in this rather unique case, it will prove to be more intense as to those relevant criteria particularly since the "costing out" of the economic offers is the same and the final economic difference between the offers will be speculative.

POSITION OF THE FOP

In his post-hearing brief, counsel for Lodge No. 25, Fraternal Order of Police, advances the following arguments in support of its request that its Final Offer be chosen over that of the Township's as the more reasonable:

1. Absolutely no justification exists for the removal of longevity for new hires. Only four out of 38 Morris County

after January 1, 1996 as Randolph seeks to do. No justification exists to create a two-tier bargaining unit.

2. Any alleged cost savings is purely speculative at this juncture. To the contrary, Mr. Bernie Re, a Registered Municipal Accountant and Chief Financial Officer of Union County, noted an average increase of 3% per year for 12 years to the tax base; three consecutive years of increases in the tax collection rates; strong non-tax revenues; stable tax rate; and significant fund balances. The Township itself acknowledges three years of sharp growth in residential development; slight improvement in the '94 surplus position; decreased reserve for uncollected taxes; a comparable state aid award; increased water and sewer revenues; a budget coming in $700,000.00 below the cap limit; and other favorable indices of a very strong financial condition.

In summary, counsel argues that all of these factors confirm that Randolph is in very good financial condition, and it is unable to assert that it will be in a lesser financial position in the future. Included in these significant factors is the acknowledgement that 4.5% was budgeted for increases including salary compensation adjustments. In addition, counsel argues that the removal of a benefit such as longevity, absent a substantive demonstration of lack of financial ability to fund it, cannot be granted.

POSITION OF RANDOLPH TOWNSHIP

In his post-hearing brief, counsel for the Township makes the following arguments under the statutory criteria as to why the Township's Final Offer should be accepted:

1. Under the statutory criteria and the spirit of the Supreme Court's reminder that the public is a "silent partner" to this process, careful attention must be paid to the chosen Award's impact on the interest and welfare of the public. The speculative nature of the removal or retention of longevity payments is nonetheless relevant since it involves the economic impact beyond the life of this contract. This is particularly applicable to Randolph where little growth is expected after 1997 and the Township is saddled with a comparably high general tax rate (6th of 38th in Morris County), which contrasts with an average median income and per capita income (15 of 38). By its very nature, the Lodge's Final Offer represents its desires for an economic package which fails to consider the interest and welfare of the public. Accordingly, the Township's Final Offer prevails as to this criteria.

2. Randolph's police officers are ranked 5th of 37 departments which is significantly higher than the Township residents rated in per capita income and median household income comparisons noted above. Within Morris County, four communities have no longevity and six have provisions

eliminating it for employees hired after a certain date. A clear trend is evidenced moving toward elimination of this type of benefit.

Recently in Chatham Borough, Arbitrator Weisblatt's Award accepted the PBA's higher Final Offer noting, as one rationale for the decision, the fact that Chatham lacked a longevity provision. Counsel for the Township here argues conversely that in this Interest Arbitration, its Final Offer is rendered the more reasonable since its salary offer is balanced by the elimination of longevity for new hires. Counsel asserts that the Lodge has failed to establish any long-term basis for its economic demands whereas the Township has.

Counsel reviews recent settlements within the Township and notes that they universally came in at lower percentage and dollar increases than the offer for the FOP. Moreover, longevity for new hires in those other units had been eliminated years before the effective date of January 1, 1996 proposed for the police.

Progressing further outward as to comparability, counsel reviews recent settlements in the metropolitan area and nationwide asserting that they prove the reasonableness of the Township's Final Offer. Particular emphasis is placed on the generosity ot the Township's continuation of health coverage without increasing co-pays or deductibles in the face of increasing costs it must bear.

3. After an extensive review of the Cap Law, counsel argues that the $61,973.00 projected surplus aptly demonstrates the tight fiscal constraints the Township finds itself under, this factor alone offers support for the reasonablenss of the Township's Final Offer. The "ability to pay" argument relates to future ability. Anticipated declining one-time revenue sources, together with the projected ceasing of added assessments, requires the Township to effectuate of cost containment measures such as longevity elimination. The recognition by Arbitrator Hammer in City of Pleasantville, PERC Docket No. IA-92-133 that a municipality's ability to pay must be given far more weight supports Randolph's argument that its Final Offer is more in line with its future ability to meet the economic demands of the Lodge.

4. In addressing the Financial Impact criteria, counsel reviews statistics such as New Jersey's March 1995 6.8% unemployment rate; recent announced "RIFs" at nearby Home Products, Mobil, Lockheed and the State of New Jersey itself and argues that against this climate the Lodge's demands are clearly unreasonable.

Reviewed also are recent CPI figures which clearly show the Township's offer to be the more reasonable than the Lodge's in light of both present and projected cost of living figures. The same result, it is argued, carries over to the stability of employment criteria. Noting that the Lodge

advanced no information on this criteria, counsel asserts that "...an award of the Lodge's package could very well lead to that situation (lay-offs) in the Township in the future."

In conclusion, counsel notes that the lack of projected growth in 1998 and beyond, taken together with the interest and welfare of the public, the total compensation package, comparable wages, the impact of the Cap Law, and recent modest cost of living increases, all argue in support of the conclusion that the Township offer is the more reasonable of the two Final Offers.

DISCUSSION

The Arbitrator has carefully weighed all of the evidence in the case including the testimony of the witnesses at the hearing, the arguments of respective counsel as set forth both at the hearing and in their briefs, the contract and the exhibits prior to reaching his decision. In reaching a decision as to the more reasonable of two offers, the statutory criteria must be reviewed and applied where and as appropriate. As Township counsel noted, this is a most unique Interest Arbitration with the entire difference coming down to an economic cost that is pure speculation. The fact that it is pure speculation does not eliminate grounds on which it can be evaluated. Below the appropriate criteria will be reviewed

and discussed.

To begin with, the continuity and stability of employment criteria appears to have little if any real application to the fact situation at hand. Frankly, Township counsel's assertion that the adoption of the Lodge's Final Offer could lead to a reduction of personnel - assumed to mean within the Department - seems implausible and certainly counsel offers no projection for the near future where such a situation might even arguably present itself. In conclusion, this particular criteria appears on the record before me to be of little note. Clearly the cost of living can only be applied to those costs presently in effect. Absent any projections (read it as "speculation" also) as to when new hires will come on board and then reach the 1st level of longevity, no conclusion can be reached that either offer is the more reasonable under this criteria. The mere fact that one, almost of necessity, has to acknowledge that it <u>will</u> cost the Township some additional dollars <u>in the future</u> is too speculative to conclude that not having to pay those "some dollars" at "some point in time" renders the Township offer the more reasonable.

As to the financial impact on the governing unit, its residents and tax payers, again the far removed speculative conclusion that "some" extra dollars will have to be expended at "some" point in the future is similarly too tentative and fine a projection to establish any real financial impact so as

to render either offer more reasonable to any significant degree.

The lawful authority of the Employer, i.e. the Cap Law and our practical considerations have not been demonstrated by either side to have actually been effected by the proposed elimination of severance payments to prospective employees.

There were no stipulations by the parties. The overall compensation must be viewed as the compensation package exists today. Pending final resolution of the Interest Arbitration, the bargaining unit will be earning the same under either Final Offer. To that minimal extent - if one is recognized - that the Township will benefit from the removal of longevity at some point in the future, a slight edge would be technically credited to the Township if the theory is accepted that at some indeterminate point in the future, the removal of the obligation to pay a yet as undetermined total sum renders that Award the more reasonable.

The evaluation of the prior listed criteria leaves only the issue of comparability to be examined. It is clear that within the Township itself, the Township's offer is the more reasonable since it would bring about consistency on the longevity issue within the Township's bargaining units. On a county-wide basis within law enforcement units, although a minority (perhaps one-third) is comparable, the Lodge's overall wage and compensation problem exceeds the majority of

the units and results in the conclusion that the Township offer is the more reasonable within that group. Reaching for comparisons into public and private employment in general again renders the Township's Final Offer more reasonable simply because common experience teaches us longevity rarely, if ever, exists there.

In conclusion, when speaking on a comparability issue merely as to the existence or non-existence of a longevity provision, the conclusion must be reached that the Township's Final Offer is the more reasonable.

This leads to the argument advanced by Lodge counsel, i.e. that in order to remove an existing benefit, a substantial burden rests on the party proposing the removal of the benefit to prove the financial necessity of such an action. Very little, if any, argument is offered by Township counsel to meet the substantial burden that is required to justify removing an existing benefit. This Arbitrator has consistently believed and held that benefits such as longevity are vested benefits which have been earned and presumably for which consideration was given. In order for the Township to meet the substantial burden of justifying removing an existing benefit, it must establish that its Final Offer is the more reasonable by a significant margin. It has failed to do so.

In brief, to select the Township's Final Offer it would have to establish that the gain, if you will, to the Township

from the elimination of longevity is real, significant, and results in actual and substantial savings. I have not been so convinced. Beyond a "me too" argument, very little has been offered by counsel to justify the elimination of longevity.

Conversely, as stated previously, I view the existence of an in-place longevity provision as having an inherent legitimacy which the party seeking to remove it must convince me is outweighed by its Final Offer. Certainly no financial proof, if any, of substance has been offered. What Township counsel asserts is a trend of removing longevity throughout Morris County certainly is clearly a minority trend, if it be a trend at all.

Although the Township prevailed as offering the "more reasonable" of the two parties' Final Offers in most of the criteria examined, it prevailed by insignificant advantages. In fact, it could only be said to have prevailed under those criteria solely based on the presumption that if the Township theoretically spends a few hundred dollars less over the course of a contract, then all other costs being equal, it prevails as being the more reasonable.

I place most weight in this arbitration alone on the interest and welfare of the public criteria. Here I feel that the removal of longevity, albeit not effective until January 1, 1996, nevertheless represents a detriment to the public as a result of its effect on the bargaining unit. It

creates a two-tier system for which no justification has been offered. By offering an identical wage and benefit package while keeping the longevity provision, the Lodge has succeeded in providing the more reasonable of the Final Offers and it shall be awarded.

A W A R D

The Final Offer of FOP Lodge 25, which includes the current provision concerning longevity remaining status quo, is accepted.

Robert E Light

ROBERT E. LIGHT, Arbitrator
Dated: April 15, 1996

STATE OF NEW JERSEY:
:SS
COUNTY OF MIDDLESEX:

On this 15th day of April, 1996 before me personally came and appeared ROBERT E. LIGHT to be known to me to be the individual described here and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

Ellen Orlandini

ELLEN ORLANDINI
Notary Public of NJ