

BOARD OF CHOSEN FREEHOLDERS

COUNTY OF HUDSON

COPY OF RESOLUTION

approval & implementation of Arbitrator's award to Crossing Guards

No. 14-1-1982

On motion of Freeholder

DiVincent

Seconded by Freeholder

O'Malley

Hudson County Board of Chosen Freeholders

WHEREAS, the Board of Chosen Freeholders of the County of Hudson and the Crossing Guards, affiliated with Laborers International Union of North America, AFL-CIO, Local 1412, were engaged in an unsuccessful negotiation towards the creation of a Collective Bargaining Agreement for the period commencing July 1, 1981 to June 30, 1984; and

WHEREAS, the County of Hudson and the Crossing Guards submitted the matter to the New Jersey Public Employment Relations Commission for a final and binding award pursuant to the Compulsory Interest Arbitration Statute, N.J.S.A. 34:13A-16, and a hearing on said matter was held before Joseph F. Wildebush, appointed by the parties to serve as Arbitrator; and

WHEREAS, on December 17, 1981, Arbitrator Joseph F. Wildebush rendered an opinion providing for certain awards required to be implemented in a contract between the said parties covering the period from July 1, 1981 through June 30, 1984.

NOW, THEREFORE, BE IT RESOLVED by the Board of Chosen Freeholders of the County of Hudson, that:

1. The Board of Chosen Freeholders of the County of Hudson hereby authorizes and approves the implementation of the terms of the December 17, 1981 opinion and award of Arbitrator Joseph F. Wildebush and directs that the County Executive implement the

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For Terms:

See page 15 of award.

X July 1, 1981 - June 30, 1984, awards and extends 1980-1981 agreement

BOARD OF CHOSEN FREEHOLDERS

COUNTY OF HUDSON

COPY OF RESOLUTION

No.
PAGE TWO

On motion of Freeholder _____
Seconded by Freeholder _____

terms of such award which is filed with the Clerk of the Board of Chosen Freeholders.

2. This resolution shall take effect immediately.

I, _____ FRANK E. RODGERS _____, Clerk of the Board of Chosen Freeholders of the County of Hudson in the State of New Jersey, DO HEREBY CERTIFY the attached resolution to be a true copy of a resolution passed at a meeting of said Board held on _____ January 21, 1982 _____

PUBLIC EMPLOYMENT RELATIONS COMMISSION
DOCKET NO. FF-82-8

IN THE MATTER OF THE ARBITRATION :
BETWEEN :
THE COUNTY OF HUDSON : OPINION AND AWARD
AND :
LOCAL 1412, LABORERS INTERNATIONAL :
UNION OF NORTH AMERICA, AFL-CIO, :

BEFORE: JOSEPH F. WILDEBUSH,
ARBITRATOR

APPEARANCES:

ROBERT EMMET MURRAY, ESQ.
Labor Counsel to the County

BRUCE D. LEDER, ESQ.
Counsel for the Union

JOSEPH DIGLIO
For the Union

BACKGROUND AND PROCEDURES:

This negotiations between the County and the Union was for the second Collective Bargaining Agreement between the parties. The Union was certified in March 1980 pursuant to the Public Employment Relations Act and in accordance with that recognition negotiated a Collective Bargaining Agreement which expired on June 30, 1981.

The parties commenced negotiations for a successor Agreement but were unable to come to a full agreement on such successor.

The parties jointly requested that this Arbitrator serve in the capacity of Interest Arbitrator for purposes of bringing a final and binding settlement for the new Agreement. The Arbitrator's authority was designated as conventional authority which by its terms granted the Arbitrator complete discretion in reviewing the evidence on the open issues to make a final decision. Specifically, the Arbitrator was not bound to make a finding completely in favor of the County or the Union on any particular issue whether it be economic or non-economic.

The standard that the Arbitrator was to follow in evaluating the evidence, as agreed by the parties, was a standard as set forth in the Police-Fire Interest Arbitration Statute.

Specifically, the Arbitrator was to be guided by the criteria as set forth in N.J.S.A. 34:13A-16:

- "(1) The interest and welfare of the public
- (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 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, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other relevant 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 not confined to the foregoing which ordinarily are traditionally considered in the determination of wages, hours and conditions of employment to collective negotiations and collective bargaining between the parties in public service and in private employment."

The Arbitrator held the hearing in Jersey City at the County Administration Building on October 20, 1981. Counsel represented both parties at that hearing. Before the Arbitrator, each party indicated the issues that were unresolved and furnished the Arbitrator with the last final offers that had been presented in the course of negotiations.

The County has proposed essentially a three year Collective Bargaining Agreement between the Union and the County. The County's position may be summarized to say that the pattern of settlement as previously established for the period July 1, 1981 to June 30, 1982 should be applied to this bargaining unit. The County further indicates that its last offer properly reflects the adjustments necessary to improve salary and wages, and fringe benefits in accordance with the settlements it has achieved in negotiations or other arbitrations with all its other unions for this period. For the next two years of the three year Agreement, as proposed by the County, the County argues that there should be a pro rata formula granting comparable increases as negotiated by the other unions for this Union.

The Union at the hearing on October 20, 1981 stated that it recognized its position in the scheme of county-wide negotiations and also proposed that it receive a pro rata increase as negotiated by the other larger unions. The Union, however, disagrees with the County's calculations for purposes of determining the pro rata amount that should be granted to the members of its bargaining unit.

The Union also disagrees with the County as to the offer for the first year of the proposed three year Agreement. The Union contends that in order to accept a pro rata increase in the second and third years a more substantial increase must be granted in the first year.

At the hearing the County provided for the first year a \$150 bonus and a \$1.00 increase effective July 1, 1981 in the per diem rate. The current \$16.00 per diem rate would be maintained as a starting salary.

The parties indicated that they had reached agreement on four items in the negotiations, specifically: leave of absence; reimbursement for public transportation; maternity leave and miscellaneous provisions.

The other items all remain open and essentially are economic in nature.

Both parties were given the opportunity to submit post-hearing briefs setting forth any modifications in their final offers as well as argument in support of their respective positions.

The Union submitted by its counsel its brief dated November 10, 1981. The County filed its brief dated November 11, 1981. Copies of these briefs were submitted to each respective party.

At the hearing the Union argued that the workday commenced with a required call-in at 6:00 a.m. and a workday that comprised four and one-half (4 1/2) hours.

The County disagreed with the Union's position and indicated that the actual work time was substantially less and that the call-in requirement should not be considered in determining the percentage factor when compared to other units. The County noted the official work hours for members of this unit was four (4) hours per day.

The members of this bargaining unit are required to work 180 days in their professional capacity as School Crossing Guards. At the present time they enjoy no holidays unlike other employees of the County.

POSITIONS OF THE PARTIES:

The Union by its letter of November 10, 1981 submitted its final offer as follows:

1. A one year Agreement;
2. Six (6) paid holidays;
3. Establishment of a Longevity Plan similar to the County program for other County employees;
4. Salary - bonus of \$250 payable immediately, an additional \$1.00 per day effective March 17, 1981, and an additional \$2.00 per day effective January 1, 1982;
5. The Union withdrew its request for vacation and its request for winter boots.

The Union argues its position as follows:

As testified at the hearing, the County has collective negotiations agreements with 15 unions. All of those contracts are settled in accordance with the "County package." What this means is that all contracts have similar or identical terms and conditions and all have the same termination date.

In fact, the recently expired contract between the parties covered the period March 17, 1980 through June 30, 1981. The reason that this agreement covered 15 1/2 months rather than a traditional year (or multiple years) was to put this

new unit on a track similar to all other County units. This prior contract was the first executed by Local 1412 on behalf of the crossing guards.

Hence, if the crossing guards are to receive similar terms and conditions as other County employees it is absolutely necessary that the expiration of their contracts be identical to the expiration of other County contracts. This will enable this unit to be in position to get benefits at the same time other County employees get them. If the contract does not expire June 30, 1982, the unit will be severely disadvantaged as compared to all other County workers.

Regarding the issue of holidays, all other County workers receive 13 holidays with applicable pay. As full time employees, the crossing guards should be entitled to some holiday pay. Local 1412 is not seeking days off for holidays, but rather, pay for six holidays in recognition of the invaluable service rendered by the guards. In recognition of the years of hard bargaining done by other County units, Local 1412 seeks not 13 but only six holidays.

Once again, if the County package is applied, the guards are entitled to holidays. This won't result in the County having to hire substitutes as no work time will be lost. The County has offered no rationale as to why the guards should not receive holiday pay.

Regarding longevity, it is the position of Local 1412 that the County must recognize the importance of long term employees. The position of the County is that these employees are not full time. The work day start at 6:00 a.m. call in and ends at the earliest 4:00 p.m. In essence, these

employees are engaged for 10 hours per day. In recognition that these may not be all working hours, the employees are paid on a daily rate. Similarly, due to the varying hours, there is no overtime pay.

Due to the time commitment covering ten hours, these employees are effectively barred from other employment. Their dedication to the work keeps them at their assigned posts until all those needing assistance are served. They do not work by the clock. Recognizing these work hours, it is impossible to conclude that these guards are not full time employees.

As to the work year, the County cannot successfully contend that the guards are less than full time since they do not work all year. While it is true that the guards work only when school is in session (September through June), the guards would be part time if teachers were part time.

It is respectfully submitted that there is no way that the guards may be considered anything less than full time employees. As such and since the County recognizes the importance of long term employees in all other units, the arbitrator should award this unit a longevity program identical to that received by all other employees.

The Union then goes on to argue that in fact the proposal that it has submitted in the wage area in fact reflects a pro rata consideration for the hours worked by the members of this bargaining unit and urges the Arbitrator to fully sustain its position.

The Union then contested the comparability data submitted by the County at hearing. It is the Union's position that the County should be considered only with the City of Jersey and Bayonne.

Specifically, the Union urges that the other towns employ so few guards as to make comparison valueless. In conclusion, the Union argues that in addition to its pro rata argument that a comparison with the City of Jersey City and Bayonne that its last offer should be granted by the Arbitrator. Again, the Union notes that the Guards work 180 days a year (the normal school year). In conclusion the Union contends that the County cannot make any calculation in support of what it characterizes as a meager offer. It is the Union's calculation that the pro rata formula should be 70%.

The County filed a very extensive brief in support of its position. The Arbitrator will simply note the thorough arguments set forth by the County as well as the great length of its brief, some 50 pages.

The essential arguments set forth by the County may be summarized as follows:

1. Analysis and comparison of the parties' final offers demonstrates that the County's final offer is a reasonable pro rata share of the County's pattern settlement and fairly and appropriately compensates the Crossing Guards for the part-time work that they do in comparison with the inflated and excessive proposal submitted by the Union.
2. The continuity and stability of employment relations requires that the Fact-Finder give great weight to the history of pattern settlements in Hudson County when evaluating the reasonableness of the County's offer, which, in correlation with the part-time work schedule of the County's Crossing

Guards, is a proportional share of the current uniform settlement for the majority of the County's public employees.

3. Since School Traffic Guards regularly work a maximum of thirty-four percent of the hours per annum that full-time County employees work, the County's offer of a proportional amount of the uniform County payout is far more reasonable than the Union's demand for a seventy-five percent share of the County's pattern settlement.
4. The strained financial condition of Hudson County and its taxpayers substantiates the reasonableness of the County's economic offer, which represents a proportional share of the pattern County settlement.
5. The reasonableness of the County's final offer must be viewed in the context of the comfortable level of benefits currently enjoyed by the Hudson County Crossing Guards.
6. A comparison of the wage rate and benefits package enjoyed by Hudson County Crossing Guards shows that they receive a salary in the mainstream of what their local counterparts receive; as well as numerous fringe benefits which the County's municipal Crossing Guards are not given.
7. The Union's economic offer cannot be justified by an increase in the cost of living since the Arbitrator must consider that the consumer price index significantly exaggerates the rate of inflation.

In sum, the County urges that the Arbitrator apply on a pro rata basis the benefit improvement program for members of this unit for the period of the proposed Agreement. The County further argues

that even in addition to the pattern of settlement argument that it advances in several points, that based upon the comparison of other municipalities in Hudson County that its last offer should be sustained.

The County also urges that in consideration of the cost of living increase that the Union's last position cannot be granted.

OPINION:

The Arbitrator has carefully reviewed the evidence submitted at the hearing as well as the briefs submitted by counsel for the Union and counsel for the County. The Arbitrator would like to note that while the briefs differ in length, they do not differ in quality. Both parties have very thoroughly and professionally advanced their respective positions. This has been of invaluable assistance to the Arbitrator in considering the evidence and making the final decision.

The issues before the Arbitrator are really all economic.

Both the Union and the County have argued most strongly that the members of this bargaining unit are entitled to the same treatment as other unionized County employees have already received and will receive. There appears to be no disagreement on this score at all.

It is in the application of this concept that the parties have reached their impasse.

The County has argued with considerable force and persuasiveness that the pattern of settlement should control the final outcome for purposes of members of this bargaining unit.

There can be no question, and this Arbitrator agrees, that pattern of settlement in collective bargaining is of considerable weight in making a final decision. To promote labor harmony and peace (which is at the heart of the interest arbitration procedure) it is necessary that all employees be treated similarly. Unless highly unusual circumstances can be demonstrated to justify modification for either improvement or loss of consideration, the pattern of settlement should be applied to everyone.

The Arbitrator has carefully reviewed all of the evidence as well as the statutory criteria set forth earlier in this decision in coming to his final conclusion. The Arbitrator has placed great weight on the pattern of settlement between the County and all other bargaining units. In this connection the Arbitrator has made his own calculations in an attempt to structure a final settlement that will place this unit in the same condition as other bargaining units. In doing this the Arbitrator, of course, has noted the current compensation levels that members of this unit enjoy as well as the recently negotiated improvements that this Union won in its first Collective Bargaining Agreement with the County. Certainly, a long-term Collective Bargaining Agreement will promote the interest and welfare of the public and provide for stability for this unit. Such long-term Agreement will promote the continuity and stability of employment. Multiple year Agreements also are common between the County and its other bargaining units. Indeed, the last Agreement

between the parties in this case was for more than one year. Accordingly, the Arbitrator has determined to structure a three year Collective Bargaining Agreement for the period July 1, 1981 to June 30, 1983. It is the Arbitrator's opinion that such Agreement will provide for stability between the parties. In establishing the commencement of this three year period as July 1, 1981, the Arbitrator must reject the Union demand that would provide for a salary increase on March 17, 1981. The request for an increase on that date would make the salary increase retroactive to a date that was covered by the last Collective Bargaining Agreement. It is the Arbitrator's opinion that any improvements must be effective only for the period of the new Agreement.

In addition, the Arbitrator has given weight to the comparisons as shown in the County Exhibit C-1 as well as the Union position set forth in its memorandum to the Arbitrator dated November 10, 1981. While the primary consideration of the Arbitrator is the pattern of settlement, he has also considered the salaries and benefits in all other communities in the County of Hudson and has carefully considered as the Union has requested the salary and benefits paid in Jersey City and Bayonne.

With respect to the Union demand for the County longevity program, the Arbitrator must note that the County longevity program is not provided to part-time employees in other bargaining units. Therefore, the Arbitrator feels that it would be inappropriate to

apply the longevity plan for members of this bargaining unit. While the parties may disagree as to the appropriate pro rata calculation, it cannot be argued that employees in this bargaining unit work a full-time work schedule as all other employees work. Accordingly, within that context these employees must be considered less than full time. Accordingly, it would be inappropriate at this time to apply the longevity program to members of this unit.

Therefore, the primary consideration for the Arbitrator is salary, bonus, holidays for the new Agreement.

In reviewing all of the evidence the Arbitrator cannot agree with either the last offer submitted by the County nor with the last offer submitted by the Union. The Arbitrator is of the opinion that the appropriate final disposition for the new Agreement must lie someplace between the two last positions, particularly with respect to the first year of the new Agreement. It is the Arbitrator's intention that by structuring a longer term Agreement with particular emphasis to improvements in the first year that these employees may now be within the normal cycle of negotiations after this three year Agreement with all other County employees. To accomplish this, it is necessary for the Arbitrator to give particular attention to structuring a salary and bonus improvement in the first year of this contract. However, it must be emphasized that the Arbitrator's consideration was to take due regard to the entire three year period. It would not be possible to consider only a portion of this decision

concerning the term and the effective dates for increases. Accordingly, I hereby make the award as set forth.

AWARD:

1. A three year Collective Bargaining Agreement effective July 1, 1981 to June 30, 1984.
2. Each employee in the bargaining unit on the payroll on the date of this Award shall immediately receive a bonus payment of \$175. This shall not be included in annual compensation calculations.
3. Effective July 1, 1981 the starting salary shall remain \$16.00 per diem; all employees on the payroll on that date shall receive an increase to \$17.00 or a \$1.00 per diem increase.
4. Effective January 1, 1982 all employees on the payroll on that date shall receive an additional \$1.00 increase in their per diem wage rate.
5. Effective July 1, 1981 members of this bargaining unit shall receive two paid holidays per annum. This shall be interpreted to mean that each member of the unit shall receive two (2) days per diem in lieu of paid holidays.
6. Effective July 1, 1982 each employee in this bargaining unit shall have their respective per diem rate increased by an additional \$1.25; the starting salary shall be \$17.25 per diem.
7. Additionally, each employee in this bargaining unit shall receive

any other benefit that is negotiated by the Teamsters Union that is applied to part-time employees in that bargaining unit. Employees in this bargaining unit shall receive such benefits on a pro rata basis calculated at the rate of 35% of such benefit as accorded the full-time employees in the Teamsters unit. This shall not apply to salary increases negotiated in the Teamsters unit. Provided further that should the Teamsters Union negotiate any bonuses for the period July 1, 1982 to June 30, 1983 then members of this bargaining unit shall be entitled to a pro rata payment calculated at the rate of 35% payable on the same date as payable to members of the Teamsters Union. Provided further that should the insurance program which is currently applied on a universal basis to all employees without distinction to part-time or full-time employment be improved from the period July 1, 1982 to June 30, 1984 then such improvement shall be granted to members of this bargaining unit provided such benefit is covering part-time employees in the Teamsters unit.

8. Effective July 1, 1983 members of this bargaining unit shall receive a pro rata increase for the salary benefits negotiated by the Teamsters Union for the period July 1, 1983 to June 30, 1984. Such salary improvement shall be provided on a pro rata basis to the members of this bargaining unit which shall be calculated at the rate of 35% of that negotiated for full-time employees by the Teamsters Union. Additionally, any other bonus negotiated

by the Teamsters Union for the period July 1, 1983 to June 30, 1984 shall be provided on a pro rata basis to members of this bargaining unit calculated at the rate of 35%. Also, any other benefit negotiated by the Teamsters Union for this period of July 1, 1983 to June 30, 1984 that is applicable to part-time members of the Teamster bargaining unit shall also be applicable on a pro rata basis to members of this bargaining unit calculated at the rate of 35%. The insurance provision shall be as set forth in the foregoing point.

9. Effective July 1, 1982 the County shall provide an additional paid holiday to members of this bargaining unit for a total of three paid holidays.
10. Effective July 1, 1983 the County shall provide an additional paid holiday to members of this bargaining unit thereby providing four paid holidays effective July 1, 1983.
11. The starting salary shall be increased by the same rate as the per diem wages are increased for members of this bargaining unit effective July 1, 1983.
12. All other terms of the current Collective Bargaining Agreement, except as modified by this Award, shall be continued for the three year period as set forth in this Award; the four items that were agreed to in negotiations and indicated at the hearing as having been agreed by the parties and as set forth earlier in this Opinion and Award are hereby incorporated by reference into the Award and shall be effectuated in the new Collective Bargaining Agreement.

13. All other items and demands submitted by either party are hereby rejected.

Joseph F. Wildebush
JOSEPH F. WILDEBUSH

STATE OF NEW JERSEY:
COUNTY OF Passaic SS

On this 17th day of December, 1981, before me personally came and appeared JOSEPH F. WILDEBUSH, to me known and known to me to be the individual described in and who executed the foregoing instrument and she acknowledged to me that she executed the same.

Suzette T. Saland
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires Oct. 18, 1983