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Bergen County Edition

Police contracts cost towns big

Arbitration awards exceed inflation

By ADRIENNE LU
STAFF WRITER

In a cramped conference room on the second floor of Leonia's borough hall, lawyers and witnesses for the town and the police sit on opposite sides of a long table with their game faces on.

After two failed mediation sessions and a full day of hearings, the mood is serious.

At stake are the salaries and benefits for the Leonia Police Department — and the future tax bill of the residents of the eastern Bergen County community.

It's a critical day in the interest-arbitration process, the choreography established by the state to set the terms of employment for police and firefighters when the parties can't agree. Ar-

bitration is available only to those unions, and it's the mechanism by which police, at least, have become the best-paid of rank-and-file local employees.

Gerald L. Dorf, the lawyer for the borough, has offered 3 percent annual raises and asked for a laundry list of cost-saving proposals, including employee contributions toward health insurance and eliminating longevity bonuses for new hires.

Richard D. Loccke, the lawyer for the police, has asked for 5 percent pay hikes, overtime for detectives and stipends for officers substituting in higher ranks.

At the end of the day, the parties stand up and file out. They've done what they can, and now See **ARBITRATION** Page A-16



TARIQ ZEHAWI/STAFF PHOTOGRAPHER

Hillsdale police Sgt. Bob Francaviglia on patrol. For a snapshot of his day, and a closer look at Hillsdale's statistics, turn to Page A-17.

Runaway pay



Fifth of six parts

About the arbitrators

So who are the arbitrators at the heart of the complaints?

The state's Public Employment Relations Commission picks them.

Applications, which include reference letters, are reviewed by PERC's director of arbitration and conciliation and the commission's seven members make three-year appointments.

PERC currently lists 23 interest arbitrators. Typically attorneys for a police union and town pick the arbitrator together; the parties also split the fees. If they cannot agree, PERC randomly assigns one. Last year, 106 arbitrators were chosen mutually and only one was appointed by lot, according to PERC records.

James W. Mastriani, a former chairman of PERC, is by far the most popular arbitrator; he's handled about one-third of the 272

cases listed recently on the PERC Web site since 1996. The next most popular arbitrators, Robert M. Glasson and Robert E. Light, handled 21 and 20 cases, respectively.

Gerald L. Dorf, a management attorney who also serves as labor counsel to the New Jersey State League of Municipalities, said it's clear why Mastriani is so popular. "He's a very likable guy," Dorf said. "He is an effective mediator."

Mastriani said that "people are looking for predictability and competence."

Dorf said that if Mastriani weren't perceived as being fair, he wouldn't be chosen over and over again.

"The labor relations community is a small community," Dorf said. "We all know each other. There are times it's helpful."

— Adrienne Lu

How it works

Police arbitration in New Jersey is governed by the Police and Fire Public Interest Arbitration Reform Act.

According to the act, both sides are required to meet at least 120 days before the current contract ends.

If negotiations reach an impasse, either side may notify the Public Employment Relations Commission, a quasi-judicial administrative state agency that deals with labor relations issues concerning public employers, public employees and unions.

Both parties can select an arbitrator together, or have one randomly assigned by PERC.

The arbitrator tries to mediate a settlement. If that fails, the arbitrator holds a hearing where both sides present their final offers.

*The arbitrator must make a decision based on the following eight factors:

- The interests and welfare of the public.
- Comparison with other employees performing similar work in the private sector, in the public sector in general and in the public sector in comparable jurisdictions.
- Overall compensation currently received by the employees.
- Stipulations of the parties.
- Lawful authority of the employer.
- Financial impact on the governing unit, residents and taxpayers.

- Cost of living.
- Continuity and stability of employment.

Arbitrators must make an award within 120 days of their selection, unless both sides agree to an extension.

Awards can be appealed to PERC within 14 days on the grounds that the arbitrator did not apply the criteria required by statute.

PERC's decision can be appealed to the Appellate Division of Superior Court.

— Adrienne Lu

Calls for change

The New Jersey State League of Municipalities has formed a committee to reexamine the arbitration process and recommend changes to the Legislature. Among the suggestions the committee is considering:

■ Arbitrators would always be chosen randomly. Currently, the town and union can pick an arbitrator together.

■ No arbitrator shall have more than four open cases at a time. Both sides complain the arbitration process often takes too long.

■ No municipality or police union would have the same arbitrator assigned twice in a row. Towns argue this would cut back on an arbitrator's incentive to act a certain way with the next arbitration in mind.

■ Limit salary increases so they cannot exceed the current state-mandated 2.5 percent to 3.5 percent cap on municipal budgets.

Arbitration: Awards to police have often exceeded inflation

From Page A-1

it's up to arbitrator Robert M. Glasson to make a decision.

His verdict comes eight months later, on Aug. 15, 2005.

Glasson, one of the busiest arbitrators in New Jersey, hands out 4 percent raises for each of the years 2004 through 2007. He gives each side minor concessions, but rejects most of the cost-saving provisions sought by the borough. All in all, a pretty typical arbitration award these days.

If 4 percent raises sound reasonable, consider this: Glasson's ruling means that a Leonia patrolman with seven years on the job will make \$103,000 next year — before overtime and other enhancements.

That, too, is typical. Many current contracts in North Jersey — reached either as a result of arbitration or from a fear of it — commit towns to six-figure salaries in the next year or two. Police officers in New Jersey are the highest paid in the country, according to the U.S. Department of Labor's Bureau of Labor Statistics.

Fringe benefits can add 50 percent to the cost of an employee, municipal officials say. And the costs don't end when officers retire, because towns continue to contribute to pensions and often health insurance premiums.

Those costs add to the growing tax burden for New Jersey residents, who already pay some of the highest property taxes in the country.

How did we get here? Some blame the arbitrators, who for most of the 29 years the system has been in place have routinely awarded pay increases that beat inflation. Others conclude the police are better organized. Still others argue that officials lack the stamina and political will to stand up to powerful police unions.

Whatever the case, a town heading into police contract negotiations in New Jersey can feel like David going up against Goliath.

"The system is stacked against us," said Bogota Mayor Steve Lonegan.

"We all support the police," he added. "We just don't want to go bankrupt doing it."

Police defense

Police will point out that they put their lives at stake every day. This is true even in affluent suburbia, where violent crimes are rare. Police still speak in hushed tones about the shooting death of 43-year-old Fair Lawn Police Officer Mary Ann Collura in 2003.

Whether on or off duty, New Jersey police can make an arrest if a crime unfolds in their presence. And most cops work tough schedules, often alternating between day, evening and midnight shifts.

New Jersey cops also contribute 8.5 percent of their salaries toward their pension, more than their counterparts in any other state, according to Loccke. Many are exempt from Social Security taxes, but that means they don't get any federal retirement benefits, either.



The high cost of arbitration

Police contract arbitration is expensive, which may be one reason far fewer towns are using the process than before. Here is a breakdown of recent negotiation and arbitration costs for two Bergen County municipalities:

Leonia

Contract: Jan. 1, 2004 to Dec. 31, 2007

Arbitrator fee: \$7,905 (Robert M. Glasson)

Labor attorney for arbitration: \$40,633 (Dorf & Dorf)

Labor attorney: \$4,675 (Murray Law Firm)

Total cost: \$53,213

Park Ridge*

Contract: Jan. 1, 2004 to Dec. 31, 2008

Arbitrator fee: \$6,330 (Ernest Weiss)

Borough attorney: \$166 (John J. D'Anton)

Labor attorney: \$3,613 (Raymond Wiss)

Labor attorneys: \$76,127 (Apruzzese, McDermott, Mastro & Murphy)

Labor attorney: \$30,095 (Joel Scharff)

Total cost: \$116,331

*Park Ridge switched law firms during the course of negotiations.



passed in 1996, arbitrators can fashion an award themselves.

Since 1996, the average number of petitions for arbitration filed each year has dropped from 200 to 113, according to statistics maintained by the state's Public Employment Relations Commission, the body charged with governing the conduct of collective negotiations in public employment. The average number of arbitration awards issued each year dropped from 74 to 24.

To some, those numbers are a sign that the reforms succeeded.

Lawrence Henderson, the chairman of PERC, said settlements are always preferable to arbitration awards.

"In my opinion, the best resolution of any labor relations dispute is something that's mutually agreed to," he said.

But many local officials disagree, arguing — much as they did in the early 1990s — that arbitrators continue to place too much value on the going rate in neighboring communities. When arbitrators do offer towns givebacks, such as adding to the number of years it takes for newly hired officers to reach the top pay grade, the savings is typically small.

From 2001 to 2005, the annual raise in arbitration awards averaged 3.88 percent — well above inflation, which was 2.56 percent. Reported settlements yielded even higher raises, averaging 3.96 percent.

"It's not just the award," said Bill Dressel, executive director of the New Jersey State League of Municipalities. "It's the threat. Sometimes communities settle for a higher amount because they're afraid to go to interest arbitration."

For example, in 1990, Hackensack Mayor Jack Zisa and the council agreed to a three-year contract with increases totaling nearly 28 percent for that same reason.

Gerald Dorf, Leonia's lawyer, said that in many cases, unions don't even bother to negotiate seriously because they know at the very worst, they will fare well in arbitration.

"They don't need to. They tiptoe to the water without hardly getting wet," Dorf said.

Some wonder if the towns believe it's just not worth the effort to fight.

"Some town officials try to fight the battle. Others just roll over," said Mark Ruderman, a management labor attorney whose firm, he said, represents close to 100 public entities across the state.

After going to arbitration, Leonia officials considered, then rejected appealing Robert Glasson's award. They didn't think they would win and it would have been too expensive. So far, they have spent \$53,000 in fees.

Dressel said that with police costs spiraling ever upward, it's time again to reexamine how contracts are negotiated.

"All of the efforts we took in the '80s and '90s to contain these cost increases seem to be unraveling," he said.

This year, the League of Municipalities is urging local officials to ask their legislators for help.

Cardinale, the state senator, said he's drafting a bill that would allow local governments to hire new employees at market rates. He says under his bill, the interest-arbitration system would be "bypassed." Cardinale recognizes the bill has little chance of passing, but he hopes to get people talking.

"It's a big problem," said Rudy Wenzel, the Washington Township mayor. "Where's the money going to come from, other than property taxes?"

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"Nobody was complaining when cops were paid \$10K a year and working around the clock," said Michael J. Madonna, president of the New Jersey State Policemen's Benevolent Association. "It's a matter of time. Everything's gone up."

Loccke and his colleagues at his Hackensack law firm represent many police locals across the state. He believes focusing on his clients' salaries is misguided and estimates that base pay for police makes up only 5 percent of a typical tax levy, which includes school, county and local government.

Englewood Police Officer Joseph Doyle, who earned \$73,014 last year, said he thinks police salaries are "right where we should be."

"Our salary increases are very consistent with other careers, where they get 2, 3 or 4 percent a year," said Doyle, who has been on the force about seven years. He acknowledged that at 28, he's earning more than most of his non-police friends — including plumbers, electricians and teachers — but feels he's comfortable, not overpaid.

"You never get rich, but you won't go poor," Doyle said of police work.

Dorf, who serves as labor counsel for the New Jersey State League of Municipalities and is a frequent opponent of Loccke in police arbitrations, agrees that, once upon a time, police in New Jersey were underpaid.

But no more. "That time has long passed," Dorf said.

Uneven playing field

Police have good reason to

come to the bargaining table prepared. Their paychecks are at stake. Win or lose, they will see the results in their bank accounts and benefit packages.

When towns lose, the pain is spread among all taxpayers. Most will never know how much more of their tax bill will end up in the pockets of the friendly officer who waves hello every morning.

"I prepare for arbitration like it was the trial of a lifetime," said Matt Bagley, president of the Hamilton Township PBA in Mercer County, which is also represented by Loccke & Correia.

"I spent a month locked down, going over numbers, testimony. I'm testifying and what I'm doing is going to affect 180 guys. If I do a poor job, it will affect me," Bagley said. "I don't think they [towns] take it as serious as we do, because it's our livelihood."

Jim McGovern, a management labor attorney from Livingston, said towns sometimes don't support their claims with evidence.

"I've seen that a lot of places like to say they can't afford it, but they haven't done the homework to prove it," McGovern said. For example, he said, towns sometimes balk at a police salary demand and then give higher raises to other municipal employees.

Some town officials say there are good reasons why they fare worse than the police unions at the negotiation table.

"One of the problems is there's elections every year, and there's a learning curve over and over again," said Rudy Wenzel, mayor of Washington Township. "That doesn't happen so much in the PBAs."



"The system is stacked against us. We all support the police. We just don't want to go bankrupt doing it."

STEVE LONEGAN, BOGOTA MAYOR



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MICHAEL J. MADONNA, PRESIDENT OF THE NEW JERSEY STATE POLICEMEN'S BENEVOLENT ASSOCIATION

In Leonia, for example, Dorf went into the arbitration session with an assistant from his office, newly elected Councilwoman Barbara Mitrani and the borough's new administrator.

On the other side, Loccke had the support of Lt. Tom Rowe, a veteran of 14 years, and a handful of other officers.

The police unions also develop regional strategies. "The problem is the PBA is very well-organized, and they have only one firm representing all of their arbitrations," Mitrani said, referring to Loccke's firm. "Each town comes to this individually," she added. "We all have to go up from scratch, hire a different attorney. So we are divided."

That big-picture view puts police unions in a position to maximize "whipsawing" or "leapfrogging" in which a concession by one town on any issue is used as evidence by police in another town that they should have the same.

With 70 towns, nearly all with their own police departments, Bergen County is particularly fertile ground for whipsawing.

For instance, the PBA in Leonia bolstered its case by showing that 24 other Bergen County police unions averaged raises above 4 percent from 2004 to 2008. The police noted that breaking out seven of the more recent settlements yielded an even higher average. Loccke also pointed to 17 other departments that already paid detectives overtime when they work extra hours.

Meanwhile, the borough relied on comparisons to its other employee unions, the inflation rate and data from the U.S. Department of Labor.

"I'll go in to negotiate and they'll say, 'Here's what they're making in Fort Lee and Ridgewood. Why can't we be paid on par?'" said Lonegan, the Bogota mayor.

There's no legal reason the towns couldn't coordinate their efforts as well, but there isn't an effective mechanism to do so. Just as important, especially in a state with a long history of home rule, few politicians are willing to concede that power.

"It would be a smart move for one attorney to represent all of the towns — say, OK, we're going to put you on retainer or something like that to get our guys up

to speed," said Northvale Mayor John Rooney, who said his town is lucky to have an amicable relationship with its department. "Unfortunately, it hasn't happened."

Police are also able to play on people's fears about crime, said Barbara Sacks, a former municipal administrator in central and northern New Jersey for more than 20 years, most recently in Clifton.

If a police department senses negotiations aren't going well, Sacks said, "They go to the public to say 'They're going to reduce police services or fire services' or 'We're not getting what we need.'"

It's an effective tactic, Sacks said. "People aren't aware, and they panic."

The process

Because it involves a third party, arbitration is billed as a neutral process yielding fair results. But in New Jersey, many town officials have come to loathe it.

In the early 1990s arbitrators routinely handed out raises averaging 9 percent, boosting cops' salaries to an all-time high. Towns still haven't fully recovered from the awards, which doubled salaries within a decade.

State Sen. Gerald Cardinale, R-Demarest, minces no words when it comes to police contract arbitration.

"The system is out of whack," Cardinale said. "We've passed laws that are undermined by the arbitrators."

Cardinale said arbitrators routinely hand out awards to police that exceed the state's cap for municipal budget increases, forcing towns to "raid" other programs to cover the raises.

Madonna, the state PBA president, said police don't always win in arbitration. He said it's a fair process where both sides give up one thing to get another. Madonna credited arbitration with elevating police salaries from the days when police were paid poorly.

Police arbitration in New Jersey dates back to 1977, when the Legislature granted cops the right to have an arbitrator intervene if negotiations reached an impasse.

Arbitrators initially had to choose either side's final offer, with no compromises allowed. But rulings routinely favored cops. In 1990, police won more than two-thirds of the cases that went to arbitration.

Now, as a result of reforms