PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Arbitration Between:

TOWNSHIP OF MANCHESTER

-and-

PBA LOCAL 246

OPINION and AWARD

Docket No. AR-2017-118
(Grievance: 27th Pay Period)

Before
Timothy A. Hundley
Arbitrator

Appearances:

For the Township:

Stephen E. Trimboli, Esq.
Trimboli & Prusinowski, LLC

For the PBA:

James M. Mets, Esq.
Mets Schiro McGovern & Paris, LLP

PROCEDURAL HISTORY

This matter was set in motion on December 1, 2015, when Donna L. Markulic, the Business Administrator for the Township of Manchester ("Township") sent a memorandum to all of the Township's salaried employees. The document was titled "Payroll Pay Periods CY 2016" and it read in pertinent part as follows:

> Calendar Year 2016 has 27 pay periods instead of the normal 26 pay period cycle. This cycle occurs once every twelve years. As full time employees, you are paid an annual salary. In Calendar Year 2016, you will be paid your annual salary but it will be distributed over 27 pay periods. Since your salary is divided by 27 it will show less of a bi-weekly payment than if it was divided by 26, but be assured your yearly salary will remain the same. An example would be if your salary is $30,000 a year and you get paid in 26 pay periods your bi-weekly salary would be $1,153. With a 27 pay period cycle your bi-weekly salary would be $1,111.
>
> Please note the first pay date in January will be Monday, January 4, 2016. The normal pay date would have been January 1, 2016, but it is a holiday and since this is your first pay for 2016 the pay date will be moved to January 4, 2016.
>
> Moving forward, the pay periods will continue to be every other Friday. [Exhibit J-3]

Several of the Township's unions responded to this communication, with some submitting proposals to retain 26 pay dates in 2016. However, on December 22, 2015, Markulic advised all of the Township's union representatives that the Township and the unions had been unable to agree on a proposal to address the 2016 pay cycle. She advised that the Township would proceed to implement 27 pay dates in 2016 (Exhibit J-4). The PBA Local 246 ("PBA") grieved this action, and the parties agreed to submit the matter directly to arbitration (PBA Brief, p. 1).

At the arbitration hearing on January 23, 2017 and February 6, 2017, the parties argued orally; examined and cross-examined witnesses; and submitted documentary exhibits into evidence, including the 2015 and 2016 pay stubs for PBA President Detective Robert A. Maccaquano and Sergeant Paul S. Bachovchin. Maccaquano and Bachovchin each testified on behalf of the union, as did Andrew Fingerhut, a CPA whom the PBA presented as its financial expert. Diane Lapp, the Township's Chief Financial Officer/Director of Finance (CFO), testified on behalf of management.

At the February 6, 2017 hearing, the PBA objected to the admission of Exhibit T-4, a document prepared by Lapp in advance of her testimony. I reserved decision on the PBA's objection, and the PBA's motion is addressed later in this opinion.

Post-hearing briefs were received by April 7, 2017, and the record was closed on that date.

ISSUE:

The parties were unable to agree on a statement of the issue to be decided but submitted their respective proposals for my consideration. I have framed the issue as follows:

> Did the Township violate the negotiated agreement, and fail to pay employees their proper contractual salaries for 2015 and 2016, when it implemented 27 pay periods in 2016? If so, what shall be the remedy?

BACKGROUND

The PBA is the exclusive representative of all patrol officers, sergeants, lieutenants and captains employed by the Township (Exhibit J-1, p. 1). It and the Township are parties to a negotiated agreement covering the January 1, 2015 through December 31, 2018 time period. Article III, Section A of that agreement governs Management Rights and states that, except as limited by the contract, the management and direction of the Township Police Force is vested exclusively in the appropriate Township officials. Article III, Section B in turn provides that personnel rules and policies that are not specifically inconsistent with the Agreement may be amended or changed from time to time.

Article XV governs salary and Article XV.D specifies that salaries for unit employees "shall be as set forth in Appendix A attached hereto" (Exhibit J-1, p. 22). Appendix A in turn includes both a 15-step patrol officer base salary guide for 2015 to 2018 and a separate Supervisor Step Guide that lists base salaries for the positions of Sergeant 1, Sergeant 2, Sergeant 3, Lieutenant and Captain. Finally, paragraphs A through C address minimum differentials between ranks; step movement on the guide; increases for patrol officers who have reached step

15; and raises for supervisors who have attained the ranks of Sergeant 3, Lieutenant and Captain (Exhibit J-1, pp. 39-41).

The gravamen of the PBA's grievance is that unit members were denied proper bi-weekly compensation when, in 2016, the Township changed from 26 pay periods to 27 pay periods. The parties' sharp disagreement on this point centers on their divergent interpretations of the 2015 and 2016 payroll records for PBA Maccaquano and Bachovchin, which the parties agree reflect the payroll practices governing all unit members. Many of the material facts are undisputed, and the following factual findings are based on pertinent exhibits and the testimony of Maccaquano, Bachovchin, Lapp, and Fingerhut.

- Maccaquano's 2014 salary was $84,825, corresponding to step 8 of the patrol officer's guide. Bachovchin's 2014 salary was $120,149, corresponding to step 14 of the patrol officer's guide (Exhibit T-2). During calendar year 2015, the parties were in negotiations for the 2015-2018 agreement. Therefore, the paychecks unit members received during 2015 reflected their 2014 salaries (PBA Exhibit 3; Exhibit T-3).

- The Township and the PBA concluded their negotiations for the 2015-2018 contract in February 2016. In March 2016, unit members received retroactive payments for 2015 and 2016 (PBA Exhibit 5, 3/11/2016 retro check for Bachovchin; PBA Exhibit 2, 3/11/2016 retro check for Maccaquano).

- The Township's "retro calculations" for Maccaquano reflect these changes in his salary.

Current salary	$84,825	(step 8)
Salary as of 1/1/15	$90,713	(step 9)
Salary as of 10/24/15 anniversary	$96,600	(step 10)

Salary as of 10/24/16 anniversary	$102,487 (step 11)
[PBA Exhibit 3]	

- The Township's calculations for Bachovchin set forth these salary increases.

Current salary	$120,149 (step 14)
Salary as of 1/1/15	$128,037 (step 15)[1]
Salary as of 1/1/16	$130,037 (step 15)
[Exhibit T-3]	

In addition, Bachovchin was promoted to Sergeant as of November 30, 2016, at Sergeant 2 salary of $136,121 (Exhibit J-1, p. 40).

At the arbitration hearing, Fingerhut and Lapp offered their opposing perspectives on whether unit members' bi-weekly paychecks in 2016 resulted in their receiving the contractual compensation to which they were entitled.

Fingerhut explained that he began his analysis by reviewing the negotiated agreement and the pay stubs of Maccaquano and Bachovchin. In particular he focused on the first paychecks for 2016, which were dated January 4, 2016. These documents indicated that the pay period began on December 20, 2015 and ended on January 2, 2016. Fingerhut concluded from this information that the bulk of the January 4, 2016 paycheck (11 days or 72 out of 80 hours) was attributable to work performed in 2015. Put another way, some of the compensation was a "carryover" from 2015.

[1]The step 15 salary is $126,037 and paragraph A following the salary guide states that officers who attain step 15 shall receive a $2,000 increase to their base salary each January 1.

After his review, Fingerhut prepared PBA Exhibits 7 through 10, which show that the officers received lower biweekly paychecks when the Township switched to 27 instead of 26 pay periods. Fingerhut also testified that, in 2016, the officers did not receive the annual salaries to which they were entitled because part of the monies received during that calendar year were attributable to work performed in 2015.

Lapp offered a different viewpoint. Preliminarily, she recalled that she has been the Township's CFO since 2009 and, prior to that, served as the Township's Comptroller and senior accountant. With respect to the January 4, 2016 pay stubs highlighted by the PBA, Lapp maintained that they did not include a carryover of compensation for work performed in 2015. Instead, she testified that the Township's longstanding practice has been to take an employee's annual salary, as set out in Appendix A, and divide it into 26 equal installments, which employees receive in their bi-weekly checks. Lapp added that, for salaried employees, the pay periods that are noted on the pay stubs are used only to identify the overtime compensation, off-duty payments, and grant pay attributable to those time frames. In addition, part-time Township employees are paid based on the number of hours worked in these pay periods.

Lapp also addressed Exhibit T-5, a chart listing each of the Township's pay dates for 2005 through 2016. She explained that Exhibit T-5 indicates that in 2005 (when the Township operated on a State Fiscal year basis), the Township scheduled its pay periods so that three weeks elapsed between the August 13, 2005 and September 3, 2004 paychecks. This was done in order to maintain 26 pays in 2005.[2] Conversely, in 2012, the Township changed from a fiscal year to a calendar year budget. During this time frame, the Township added a payroll in July so that there would be 26 pays instead of 25 (Exhibit T-5).

Overall, Lapp testified that she had reviewed the payroll records for Maccaquano and Bachovchin, and was satisfied that they were paid what they were owed in both 2015 and 2016.

ASSOCIATION'S POSITION

The Association vigorously argues that the grievance must be sustained because officers were not paid their full contractual compensation for 2016. The PBA's analysis centers on PBA Exhibits 2 and 5, which include all of the 2016 pay stubs for Maccaquano and Bachovin, respectively. The PBA underscores that, for each individual, the January 4, 2016 pay check indicates that the pay period began on December 20, 2015 and ended on January 2, 2016, thus establishing that the first paycheck for 2016 represents payment for 72 hours of work performed in 2015.

[2] In her December 22, 2015 memorandum to union representatives, Markulic expressed the view that proposals to preserve 26 pay dates would be more detrimental to employees that implementing the 27 pays. She noted that the proposals would cause pay dates to be moved around several times, thereby requiring employees to wait three weeks between paychecks. In addition, she wrote that the proposals would create confusion among employees concerning when they would receive their regular paychecks and when their overtime would be paid (Exhibit J-4).

In this posture, the PBA asserts that the only way that the Township could conclude that there were 27 pay periods in 2016 is if it considered the January 4, 2016 as the first pay date for 2016. However, the union insists that it is proper to use a 27-pay divisor for officers' 2016 annual salaries if and only if the 72 hours in 2015 earnings for the December 20, 2015 through January 2, 2016 pay period are added to the 2016 annual salary. The PBA adds that, otherwise, there are only 26 pay dates in 2016. In support of this conclusion, the PBA cites Arbitrator Restaino's decision in *Township of Irvington and PBA Local 29, ISOA, and IWA*, confirmed 2009 *N.J. Super*. Unpublished Lexis 2596 (App. Div. 2009).

The PBA also addresses Lapp's testimony. It firmly rejects what it characterizes as her assertion that officers are paid in advance, with the result that officers received their full contractual 2015 compensation in calendar year 2015. In any case, however, the PBA stresses that the Township cannot have it both ways. If officers are paid in advance, and paychecks received in 2016 represent compensation for 2016 only, then officers received a bi-weekly pay reduction in 2016 when the Township divided their annual salaries by 27 instead of 26.

Overall, the PBA concludes that the Township created a 27th pay in 2016 without compensating officers for the wages earned from December 20, 2015 through December 31, 2016. To correct this loss, it states that the arbitrator may elect one of two remedies. If the arbitrator finds that officers are paid in advance, the PBA urges that the Township should be directed to reimburse officers for the bi-weekly shortfall that resulted when their annual compensation was divided by 27 instead of 26. In the alternative, if officers are not paid in advance, the value of the 72 hours worked on December 20, 2015 through December 31, 2015 must be added to the 2016 annual salary and then divided by 27. Finally, the PBA asks that the arbitrator retain jurisdiction until one of these remedies is implemented.

TOWNSHIP'S POSITION

The Township strongly counters that the grievance must be denied. It maintains that it acted in accordance with the language of the negotiated agreement, as well as established payroll practices, when it divided officers' annual salaries for 2016 into 27 equal pro-rated paychecks.

First and foremost, the Township emphasizes what it describes as Lapp's unrebutted testimony to the effect that the Township does not pay officers' their annual salaries on a per pay period or "lagging" basis. Therefore, the Township reasons, the base salary amount in a given paycheck is not compensation for hours worked in the preceding two weeks. Instead, the Township highlights Lapp's statement that the base salary payment in a given paycheck represents a pro rata share of the officer's annual contractual salary. Indeed, the Township insists that the PBA's own evidence shows this to be the case.

The Township first notes that Maccaquano and Bachovchin each acknowledged that their proper salary rates during 2015 were $84,825 and $120,149, respectively. The Township then stresses that PBA Exhibit 2 reflects that Maccaquano received 26 paychecks in 2015 at a regular pay rate of $3,262.50, or a total of $84,825 for the year. Similarly, Bachovchin received 26 paychecks of $4,621.13, or a total of $120,149. The Township performs similar calculations for 2016, and concludes that the union's own evidence reveals that the officers were paid a rate comporting with their annual contractual salaries, prorated exactly as Lapp testified.

Moreover, it rejects the PBA's focus on the pay periods and pay dates that are listed on the 2016 pay stubs. The Township observes that Lapp testified without contradiction that the pay periods are identified only for the purpose of determining overtime compensation and payment for off-duty work, as well as hourly wages owed to part-time and seasonal employees.

In continuing its argument, the Township underscores that the negotiated agreement speaks only of annual salaries and, as such, does not specify the number of pay dates per year; the number of paychecks an officer is to receive annually; or the amount of pay each officer is to receive per paycheck. In this posture, the Township contends that it did not violate any contractual provision when it determined that there would be 27 pay dates in 2016 and that officers' annual salaries would be divided into 27 equal pro rated paychecks. Indeed, the Township insists that these actions were a proper exercise of its Article III.B authority to create, amend and change personnel rules and policies that are not specifically inconsistent with the negotiated agreement.

The Township also stresses that its actions are consistent with established, relevant arbitral law. It maintains that the facts here are distinguishable from those in the *Irvington* award and urges that the more pertinent award is *Township of Howell,* (PERC Docket No. AR-89-386 (Scheinman, 1989 (Exhibit T-6).

Finally, the Township urges that even if the union had somehow demonstrated that Manchester violated a contract provision, unit members suffered no cognizable harm when the employer divided their annual salary into 27 installments. The Township contends that the union's calculations regarding alleged pay shortages are based on a misunderstanding of Manchester's payroll practices, as well as on alleged contract provisions that the union's expert could not identify and that do not exist. It maintains that the PBA's calculations should be given no weight whatsoever.

Based on the foregoing, the Township asks that the grievance be denied.

DISCUSSION AND ANALYSIS

This is a contract interpretation case in which the PBA has the burden of proving that the Township violated the negotiated agreement when it implemented 27 pay periods during 2016. Both sides have articulately presented their positions and I have carefully considered the arguments, testimony, and exhibits in this matter. I conclude that the grievance must be denied.

As a preliminary procedural point, I sustain the PBA's objection to the admission of Exhibit T-4, a detailed written version of Lapp's proposed testimony, prepared in advance of the second hearing date. As I indicated at the hearing, Lapp's review of Manchester's payroll procedures was best elicited on direct and cross-examination, not via reliance on prepared documents. Therefore, I have not admitted Exhibit T-4 into evidence and I have not relied on it in the preparation of this award.

Turning to the merits, the starting point for discussion is Appendix A, which sets forth annual base salaries for unit members and governs step increases; minimum differentials between ranks; and increases for officers who have reached the top salary for their rank. The salient point is that Appendix A focuses solely on annual salaries. Neither it nor any other contract provision specifies that unit members shall receive 26 paychecks per year; delineates unit members' bi-weekly compensation; or otherwise addresses pay periods. In this posture, the Township did not violate any express provision of the negotiated agreement when it instituted 27 pay dates in 2016. Instead, the measure was a reasonable one that allowed the Township to reconcile the configuration of the 2016 calendar with the Township's usual practice of paying officers every two weeks. Most critically, the PBA has not shown that the change to 27 pay dates resulted in officers receiving less than their full annual compensation.

The PBA's core argument is that the first of the 27 paychecks that officers received during 2016 represented compensation for work primarily performed in 2015. Therefore, it alleges that officers experienced a shortfall in their 2016 compensation when the Township divided their annual salaries by 27 instead of 26.

This view is not unreasonable on its face. The January 4, 2016 pay stubs for Maccaquano and Bachovchin plainly state that the January 4, 2016 paycheck corresponds to the pay period that began on December 20, 2015 and ended on January 2, 2016. It is logical to infer from this information that the check constituted compensation for work performed during that time period.

Nevertheless, Lapp, an individual with over 15 years' experience as the Township's senior accountant, comptroller and, finally, CFO, testified that there was no carryover in compensation from one year to the next. Instead, Lapp unequivocally stated that police officers and other salaried employees are paid an annual salary that is prorated equally over the number of pay dates in a given year.

In other words, the Township does not pay officers on a per pay period or lagging basis.

Lapp was a credible and convincing witness and given her extensive experience in processing payroll and overseeing the payroll process, her testimony must be given significant weight. However, the linchpin of my analysis is that the Township's payroll records dovetail with her testimony and illustrate the practices she described.

Thus, PBA Exhibit 1 shows that Maccaquanno received annual compensation of $84,825 as of his December 18, 2015 paycheck. This is the exact amount which he was owed in annual compensation. Each 2015 paycheck in turn reports regular earnings of $3,262.50 and, multiplied by 26, those paychecks total $84,825.

Similarly, PBA Exhibit 4 reflects that Bachovchin received 26 paychecks between January 2, 2015 and December 18, 2015, listing $4,621.13 in regular earnings. Again, that figure multiplied by 26 equals $120,149, Bachovchin's annual salary for 2015. In sum, going into 2016, these officers had already received their full annual 2015 salaries.

The documents for 2016 similarly reflect that for each of the 27 pay periods in 2016, officers were paid a pro rata portion of their annual 2016 salaries. Thus, at the outset of 2016, before negotiations for the 2015-2018 agreement were completed, Maccaquano's and Bachovchin's salaries remained at $84,825 and $120,149, respectively. Accordingly, Maccaquano's initial paychecks for 2016 stated regular earnings of $3,141.67—an amount which, when multiplied by 27, yields $84,825 (PBA Exhibit 2). Similarly, Bachovchin's first paychecks for 2016 stated regular earnings of $4,449.98, a figure which, when multiplied by 27, equals $120,149 (PBA Exhibit 5).

As the officers' annual earnings rose after ratification of the 2015-2018 contract; step increases; and promotions, their bi-weekly pay continued to represent a 1/27th portion of their new compensation. Thus, as of March 11, 2016, Maccaquano's annual salary was $96,600, and his biweekly pay stated regular earnings of $3,577.78; once again 27 times $3,577.78 equals $96,600. Finally, on his October 24, 2016 anniversary date, Maccaquano moved up to step 11 of the guide, at a salary of $102,487. His bi-weekly pay increased to $3,795.81, a figure which, when multiplied by 27, equals $102,487 (PBA Exhibit 2).

Bachovchin's pay records reflect a similar progression. As of March 11, 2016, Bachovchin's bi-weekly paychecks reflected regular earnings of $4,816.19, 1/27th of his 2016 salary of $130,037 (Exhibit T-3). After his promotion to Sergeant 2 on November 30, 2016, Bachovchin's salary was set at $136,121. His final two paychecks for the year showed regular earnings of $5,041.52. Again, 27 times $5,041.52 equals $136,121.

As noted earlier, Maccaquano's and Bachovchin's pay stubs illustrate the payroll practices that the Township applied to all unit members. In this posture, I find that the record establishes that unit members received their full annual compensation in 2015 and 2016. Accordingly, the Township did not violate the negotiated agreement when it established 27 pay dates in 2016, thereby reducing the bi-weekly compensation below that which officers would have received under a system of 26 pay dates.

In so holding, some points warrant additional discussion. First, I have reviewed the *Irvington* award on which the PBA relies, and am satisfied that it does not weigh in favor of sustaining the grievance. The contract provisions that the *Irvington* arbitrator construed; the employer's payroll procedures; and the adjustments made by the employer during a year in which there were 27 pay periods, are all quite distinct from the circumstances in this case.[3]

On the other hand, my analysis parallels that in *Township of Howell* where, because of the vagaries of the 1988 calendar, the employer also increased the

[3] The *Irvington* contract specified that salaries were to be paid in fourteen day intervals, with bi-weekly pay calculated by dividing annual gross salary by 26. During a year in which there were 27 pay periods, the employer continued to divide employees' salary by 26 but lengthened the interval between several paychecks. In sustaining a resulting grievance, the arbitrator wrote that employees did not receive their full annual salaries in any one year, because a portion of their compensation was rolled over into the following year. However, in reaching that conclusion, the arbitrator substantially relied on the testimony of the Township's Director of Revenue to that effect. By contrast, the CFO in this matter testified that Manchester officers do receive their full annual salary in each calendar year and the documentary evidence supports that position. Accordingly, *Irvington* does not support the PBA's contention that unit members here are entitled to an additional 72 hours in compensation attributable to 2015.

number of bi-weekly paychecks from 26 to 27. The arbitrator concluded that the change did not violate the negotiated agreement, which referred only to annual salaries. He also stated that the employer's action did not disadvantage employees; did not cause them to receive less than their contractual annual salaries; and enabled the Township to preserve the parties' historical practice of paying employees every two weeks. Further, the arbitrator wrote that the switch to 27 pay periods was consistent with a Township ordinance which, although it referred to 26 pay periods as the normal method of payment, also recognized that alternate methods might sometimes be required. The reasoning in *Howell* pertains here, with the notable exception that there is no Manchester Township ordinance that refers to 26 pay periods as the normal method of payment.

The grievance is denied. Unit members received their full annual compensation in 2015 and 2016. The Township did not violate the negotiated agreement when it established 27 pay dates in 2016, thereby reducing the bi-weekly compensation below that which officers would have received under a system of 26 pay dates.

AWARD

The grievance is denied. Unit members received their full annual compensation in 2015 and 2016. The Township did not violate the negotiated agreement when it established 27 pay dates in 2016, thereby reducing the bi-

weekly compensation below that which officers would have received under a system of 26 pay dates.

Dated: June 16, 2017
Princeton, N.J.

Timothy A. Hundley

Timothy A. Hundley
Arbitrator

State of New Jersey }
County of Mercer }ss:

On this 16th day of June 2017 before me personally came and appeared Timothy A. Hundley to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed same.

Virginia G. Hundley

Virginia G. Hundley
Notary Public of New Jersey
My Commission Expires 6/22/2020