

May 26, 2009

RE: ARBITRATION AWARD: A NEW DIRECTION FOR PUBLIC EMPLOYEE CONTRACTS, OR A MINOR DETOUR

Dear Mayor:

In a decision dated May 5, 2009, Labor Arbitrator James Mastriani issued an award in a public employee contract dispute. We reported this to you in our letters of May 12 (<http://www.njslom.org/ml051209-arbitration.html>) and May 15 (http://www.njslom.org/ml051509-binding_arb.html).

The case involved the State of New Jersey and P.B.A. Local 105, which represents corrections and parole officers. In this award, Arbitrator Mastriani gave significant weight to the "ability to pay" argument presented by the State of New Jersey. He stated, "The State's submission on finances is overwhelming and is rooted in hard evidence rather than in speculation." While the award is 82 pages long and deserves a thorough reading, we take particular note of the decision that affects fiscal year 2010 in which no increase to salary is provided for any employee represented by the local. There is no increase in the salary guide, and step increases are frozen at the prior year level. In January 2011, contributions to health insurance will begin. For those of us that have been watching the evolution of the interest arbitration process, this decision represents a reason for hope and a potential recipe for future successes.

A thorough reading of the decision clearly indicates that the arbitrator was heavily influenced by negative conditions of the State and national economy. He stated, "This evidence supports the conclusion that the State has experienced sharp and deepening revenue shortfalls that have crippled its ability to balance the current budget and, in particular, the upcoming FY 2010 budget." The State's inability to pay clearly played a very significant role in the decision. Those negotiating collective negotiation agreements currently should pay attention to this decision.

This decision provides a dim light at the end of a very dark tunnel. However, it does so when economic conditions have reached the breaking point. What happens when a mandated contract award doesn't literally break the budget of a municipality, but "only" threatens its fiscal integrity? What consideration will be given to the tax-payers' inability to turn over more and more of their "discretionary income" to fund the cost of local governmental services? The "ability to pay" argument, relied upon by Arbitrator Mastriani, must be given greater weight by arbitrators, rather than the usual "comparability analysis," which focuses on what other law enforcement or fire officers are making in other jurisdictions.

Arbitrator Mastriani's award demonstrates that in the current economic crisis, when presented with competent testimonial and documentary evidence, an arbitrator can, and will, make the tough call and issue an award that is fair and reasonable under the circumstances, even if it calls for a wage and step freeze.

Please consult with your municipal attorney and your labor relations counsel to discuss what this could mean in your municipality.

Very truly yours,

William G. Dressel, Jr.
Executive Director