

**NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION**

In the Matter of Interest Arbitration Between

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**NEW JERSEY TRANSIT,**

"Public Employer"

-and-

**PBA, LOCAL 304**

"Employee Organization"

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Docket No. IA-97-136

**INTEREST ARBITRATION  
DECISION  
AND  
AWARD**

**Before  
James W. Mastriani, Arbitrator**

**Appearances:**

**For the Employer:**

Desmond Massey, Esq.  
Beth A. Hinsdale, Esq.  
Grotta, Glassman & Hoffman, P.A.

**For the Union:**

Richard D. Loccke, Esq.  
Loccke & Correia, P.A.

I was appointed arbitrator by the New Jersey Public Employment Relations Commission in accordance with P.L. 1995, c. 425, in this matter involving New Jersey Transit (the "Transit") and PBA Local 304 ("PBA"). The issues were narrowed in pre-arbitration mediation. Because the impasse was not resolved, formal interest arbitration hearings were held on April 13, July 30, November 25, 1998 and February 26, 1999. The mandatory terminal procedure of conventional arbitration was used to decide all issues in dispute. Under this procedure the arbitrator has the authority to fashion an award which he believes represents the most reasonable determination of the issues in dispute.

At the arbitration hearing, each party argued orally, examined and cross-examined witnesses, and submitted extensive documentary evidence into the record. Post-hearing briefs were filed on May 3, 1999.

### **FINAL OFFERS OF THE PARTIES**

Before beginning the formal hearing, New Jersey Transit and the PBA submitted the following final offers:

#### **PBA LOCAL 304**

1. **Salaries -**

1. Each year the annual salaries for all employees covered by this agreement shall be computed based upon the current year maximum base annual salary (top step) for Patrolmen in law

enforcement agencies listed in Appendix B. The maximum NJ Transit Police Officers' base annual salary (top step) for each year shall be at the fifty (50%) percentile of the maximum base annual salaries for Patrolmen in the respective agencies listed in Appendix B. Not less than fifty (50%) percent of those agencies shall have a maximum base annual salary for Patrolmen for said year which is below the maximum base annual salary of the New Jersey Transit Police Officer. All computations shall be from the top of the list.

2. Computation shall be based upon the current year salaries for the said agencies and shall be settled as of September of each respective year at the then current wage rates.
3. The initial base annual salary for Police Officers hired during the term of this Agreement shall be \_\_\_\_\_ Dollars.

There shall be five (5) equal automatic annual salary step increments to maximum base annual salary (top step) for Police Officers. The effective date for the entitlement to such annual automatic salary step increments shall be the anniversary date of the individual employee's initial date of hiring. The pay rate for each annual salary step for those Police Officers below the maximum for their grade shall have their annual rates computed by subtracting the starting salary from the maximum annual salary rate for Police Officers in each the said years and dividing the difference by five (5). After five (5) years of service, a Police Officer shall receive the maximum base annual salary for his grade.

4. Recognizing that some of the agencies listed in Appendix B may finalize their annual pay rates after January 1 of each either of the said years, the parties to this contract agree that there shall be an advance payment across the board annually payable as soon as practicable after January 1 of each year for all employees covered by this Agreement. Final pay rate adjustments as provided herein shall be made not later than September 1 of each year, respectively, for each of the years covered by this Agreement. The annual advance payment due on January 1 of each year, or as soon thereafter as it can be paid, shall be one thousand (\$1,000) dollars.

2. Longevity - Add 1% longevity pay for each three years of service.

3. Rules and Regulations - The PBA proposes that a 60-day notice be provided whenever possible for any changes in the Rules and Regulations. The notice shall include a copy of the proposed change or changes. The 60-day notice period shall be calculated back from the date of compliance.
4. Fully Bargained Provision - The PBA proposes to delete this article (XXXVII) from the agreement.
5. Off-Duty Employment - The PBA proposes that members shall be able to work in off duty positions in non-security jobs. The only other prohibition would be positions which are violative of specific law.
6. Secure Parking for Employees - The PBA seeks secure parking for employees at the two Newark job sites of the Broad Street Station and Pennsylvania Station.

### **NEW JERSEY TRANSIT**

1. Wages - Amend Article IX to provide wage increases consistent with the settlement reached with New Jersey Transit and ATU.
2. Promotions - Amend Article IV to eliminate the last sentence of Section 1(B) beginning with "In all cases." Amend Section 3 to eliminate existing

language and to substitute the following: "To be eligible for promotion an individual must have received a minimum written score of 60%."

3. **Probationary Period - Amend the first sentence of Article V to provide:**

A Police Officer hired by NJ Transit under this Agreement shall be subject to a probationary period of one (1) calendar year from the date of certification or from date of hire, (if certified at time of hire) during which time he/she may be discharged with or without cause and for any reason without recourse to the grievance/arbitration provisions of this Agreement.

4. **Discrimination or Coercion - Replace the current Article XII with the following:**

The provision of this Agreement shall be applied equally to all employees without discrimination as to age, sex, marital status, race, color, creed, national origin, sexual orientation, perceived sexual orientation, disability, perceived disability, affectation or political affliction.

There shall be no discrimination, interference, restraint or coercion by NJT or any of its representatives against any of the employees covered under this Agreement because of the membership or non-membership in the Association or because of any lawful activities by such employees on behalf of the Association. The Association, its members and agents, shall not discriminate against, interfere with, restrain or coerce any employees covered under this Agreement who are not members of the Association.

5. **Rights and Privileges - Amend Section 5 of Article XIV to add the phrase "by the Chief" to the sentence that currently provides:**

The PBA President or his duly authorized representative shall not be required to lose time from their regular assignment for attending scheduled monthly meetings with the Manager and/or Director of

Labor Relations or other meeting which the PBA President or his duly authorized representative is requested to attend.

6. Training, Programs, Schools, Seminars - Amend the first sentence of Section 2 of Article XXX, Section 2 to reflect the semi-annual qualification required by the Attorney General's Office. Eliminate the remainder of Section 2.

7. Insurance Benefits - Replace the existing provisions of Section 7 with the following:

1. Provide for employees to make contribution towards the cost of their benefits.

2. The health benefits to be provided will be what is known as the Blue Select Plan.

The Medical Plan shall include a non-duplication of benefits.

The following cost containment means will also be included.

- A) Pre-admission certification with a \$1,000 penalty for non-compliance.
- B) Mandatory second opinion.
- C) Mandatory ambulatory surgery.
- D) No weekend admission.
- E) Hospice Care.
- F) Post operative home care nursing.
- G) Exclusion of coverage for all medical conditions which existed during the twelve (12) month period preceding the date of employee enrollment for twelve (12) months after enrollment.

The Company has the right to change insurance carriers and plans, provided such change will result in equal or better coverage.

Company will provide for full-time employees on the first of the month following three (3) full months of full-time employment a Preferred

Provider Organization (PPO) Dental Plan which will provide with a \$500 maximum per person, as follows:

- Group 1 -- Preventative -- 90%
- Group 2 -- Basic Restorative -- 60%
- Group 3 -- Major Restorative -- 0%
- Group 4 -- Orthodontic -- 0%

Company will provide full-time employees on the first of the month, following three (3) months of full-time service, a drug prescription plan, including contraceptive and mandatory mail order programs for family, provided they are enrolled in the medical plan.

8. Agency Shop - Replace Article XXXV with the following:

Upon the request of the Association, the employer shall deduct a representation fee from wages of each employee who is not a member of the Association.

These deductions shall commence thirty (30) days after the beginning of employment in the unit or ten (10) days after re-entry into employment in the unit.

The amount of said representation fee shall be certified to the employer by the Association, which amount shall not exceed 85% of the regular membership dues, fees and assessments charged by the Association to its own members.

The Association agrees to indemnify and hold the employer harmless against any liability, cause of action or claims of loss whatsoever arising as a result of said deductions.

The employer shall remit the amounts deducted to the Treasurer of the Association on a weekly basis.

The Association shall establish and maintain at all times, a demand and return system as provided by N.J.S.A. 34:13A-5.5 and 34:13A-5.6 (L.1979, C.477.2 and 3) and membership in the Association shall be available to all employees in the unit on an equal basis at all times. In the event the Association fails to maintain such a system or if membership is not so available, the employer shall immediately cease making such deductions.

9. Civilian on Radio Desk - Amend Article XLII to change five (5) sworn agreement personnel to two (2) sworn agreement personnel.
10. Schedule Committee - Add a new clause to create a committee composed of PBA representatives and Chief's representatives to review existing work schedule and propose to the Chief new work schedules which would be beneficial to the Police Officers and the Department.

The New Jersey Transit and the PBA have offered extensive argument and documentary evidence in support of their final offers. 115 Transit and 225 PBA exhibits were received in evidence. In addition, both the PBA and the New Jersey Transit offered oral testimony from witnesses as described fully within this award.

I am required to make a reasonable determination of the above issues giving due weight to those factors set forth in N.J.S.A. 34:13A-16g(1) through (8) which I find relevant to the resolution of these negotiations. I am also required to indicate which of these factors are deemed relevant, satisfactorily explain why the others are not relevant, and provide an analysis of the evidence on each relevant factor. These factors, commonly called the statutory criteria, are as follows:

- (1) The interests and welfare of the public. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by (P.L. 1976, c. 68 (C. 40A:4-45.1 et seq.)).



(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 private employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.

(b) In public employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.

(c) In public employment in the same or similar comparable jurisdictions, as determined in accordance with section 5 of P.L. 1995. c. 425 (C.34:13A-16.2) provided, however, each party shall have the right to submit additional evidence concerning the comparability of jurisdictions for the arbitrator's consideration.

(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 economic benefits received.

(4) Stipulations of the parties.

(5) The lawful authority of the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by the P.L. 1976 c. 68 (C.40A:4-45 et seq. ).

(6) The financial impact on the governing unit, its residents and taxpayers. When considering this factor in a dispute in which the public employer is a county or a municipality, the arbitrator or panel of arbitrators shall take into account to the extent that evidence is introduced, how the award will affect the municipal or county purposes element, as the case may be, of the local property tax; a comparison of the percentage of the municipal purposes element, or in the case of a county, the county purposes element, required to fund the employees' contract in the preceding local budget year with that required under the award for the current local budget year; the impact of the award for each income sector of the property taxpayers on the local unit; the impact of the award on the ability of

the governing body to (a) maintain existing local programs and services, (b) expand existing local programs and services for which public moneys have been designated by the governing body in a proposed local budget, or (c) initiate any new programs and services for which public moneys have been designated by the governing body in its proposed local budget.

(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 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.

### **BACKGROUND**

The PBA represents approximately 160 police officers and detectives employed by New Jersey Transit.

New Jersey Transit provides commuter rail and bus service to over 332,400 riders daily covering a total of 5325 square miles. New Jersey Transit's passengers make a total of 193 million trips each year, including 143.4 million bus trips and 49.5 million rail trips. Its bus operations cover 78.1 million annual route miles. New Jersey Transit's 12 rail lines cover 542 miles of track with 695 cars in service. In total, New Jersey Transit's rail operations cover 1.1 billion annual passenger miles. In addition, the Newark City Subway has a daily ridership of 17,000 passengers in 24 subway cars.

The New Jersey Transit Police Department is divided into a Field Operations Bureau, a Policy/Special Operations Bureau, a Professional Standards & Investigations Bureau, and an Administrative Services and Support Bureau. Within the Field Operations Bureau, the Radio Motor Patrol Unit with its 35 sworn officers is responsible for patrolling all of the agency's bus and rail facilities as well as all the rail lines and the Newark City Subway. The Train Patrol/Mobil Enforcement Unit with its 15 sworn officers, targets trains and buses with a history of incidents. The Penn Station Command, with its 28 sworn officers maintains the safety of Pennsylvania Station in Newark and staff the detention facility located in the Station. That unit made 559 arrests in 1997. The Atlantic City Command maintains a safe environment and provides policing services at Atlantic City's Bus and Rail Terminals. In addition, the law enforcement jurisdiction of New Jersey Transit covers all of its operations which extend throughout the State of New Jersey.

The Policy and Special Operations Union is responsible for the review, development and monitoring of policy and procedures and for the preparation, coordination and implementation of Special Events and Operational Orders for crowd control. The Professional Standards and Investigation Bureau is charged with ensuring the members of the department perform their jobs in a professional, fair and effective manner.

The New Jersey Transit Police Department also includes a domestic violence unit, emergency management teams for terroristic contingencies, mobile enforcement units for special details, juvenile crimes units and officers certified as emergency management technicians.

N.J.S.A. 27:25-15.1 provides Transit Police with full police powers:

The transit police officers so appointed shall have general authority, without limitation, to exercise police powers and duties, as provided by law for police officers and law enforcement officers, in all criminal and traffic matters at all times throughout the State and, in addition, to enforce such rules and regulations as the corporation shall adopt and deem appropriate.

New Jersey Transit Police Chief Mary Rabadeau compared transit policing to municipal policing and described them as follows:

Too much can be made of the differences between municipal and transit policing. I prefer to see the similarities. . . . I think in transit we have both the privilege and the responsibility of being able to concentrate on quality of life issues. Municipalities have developed their answer to quality-of-life situations through community policing.

In that interview, Rabadeau continued by describing the New Jersey Transit community:

Our home community is our employees. There are 10,000 New Jersey Transit employees, the majority of them right across the street from... [Penn Station, Newark]. Commuters and anyone using our facilities are also our community. When they are under our jurisdiction, they depend on us for their safety and security.

## **POSITIONS OF THE PARTIES**

### **The PBA**

The PBA's main contention in this proceeding is that the salaries for unit personnel are "abysmal", compare negatively with law enforcement personnel generally in virtually every type of governmental subdivision, and has led to a "hemorrhaging" of personnel in the form of turnovers. The PBA cites the current level of compensation as being many thousands of dollars below the general level of compensation for law enforcement personnel throughout New Jersey and in the New York/New Jersey metropolitan area, including the Port Authority of New York and New Jersey. The last increase in pay for police officers was effective July 1, 1995. That increase created the following salary schedule.

### **Article IX - Wages**

Section 1(d). Effective July 1, 1995, the rates of pay for police officers covered by this Agreement shall be:

	<b><u>Hourly Rate</u></b>
Patrolman	\$18.88
Detective	19.81
Sergeant	20.74
Detective Sergeant	21.76
Lieutenant	22.79

The Agreement also provides for the following wage progression for new hires through maximum pay.

**Section 2.**

<b>Months of Service as Police Officers at NJ Transit</b>	<b><u>% of Base Pay</u></b>
0 - 12	80%
13 - 24	90%
25	100%

When the above hourly rates of pay are converted to an annual salary based upon a 2080 hour work year for comparison purposes, the annual salaries for unit personnel at the 100% level would be calculated as follows.

	<b><u>Annual Salary</u></b>
Patrolman	\$39,170.40
Detective	41,204.80
Sergeant	43,139.20
Detective Sergeant	45,260.80
Lieutenant	47,403.20

The PBA seeks to improve wages for Transit Police by adopting a pay formula tying Transit Police compensation to compensation for county and municipal police throughout New Jersey (see pages 1 & 2). The PBA maintains that such a formula would reduce turnover and is supported by each of the statutory criteria.

The PBA asserts that its proposals support the interests and welfare of the public. The PBA points to Chief Rabadeau's interview with the television program "History of Railroad Police produced for the History Channel. In that interview, Chief Rabadeau described Transit Police as "municipal police plus" who wear "many hats" to maintain a low percentage of crime in the Transit system. The PBA also points to the testimony of Officer Griggs. Officer Griggs recounted incidents of officers being stabbed with hypodermic needles, apprehending mentally ill individuals, and contracting infectious diseases in performing their job. The PBA cites the recognition plaque received by Transit Police Officer for their assistance in apprehending a serial murderer. Other exemplary deeds cited by the PBA include rescuing an abandoned newborn baby, arresting a fugitive on the FBI's most wanted list, rescuing victims from a burning building, saving an individual drowning in a river, and deeds associated with coming to the aid of officers in distress. Transit Police issue motor vehicle summons, and have helped quell the Belmar riots, and were assigned to protective details for visits by the President, Vice President and Holy Pontiff. Additionally, Transit Police are assigned to protect the Transit system during special events such as the Greek Festival, fireworks displays, Steeple Chase or a St. Patrick's Day parade.

The PBA notes New Jersey Transit's efforts to promote public safety with messages, announcements, and the Transit on Patrol program. The PBA points out that Transit Police Officers are armed and are specifically authorized to carry

weapons across state lines, many are trained as Emergency Medical Technicians and the New Jersey Transit Police Department works with Federal and local law enforcement agencies on such matters as the Auto Theft Task Force.

The PBA expresses concern that current working conditions place the public and public safety at risk. Specifically, the PBA asserts that the New Jersey Transit Police Department is "hemorrhaging employees." The PBA calculates that the New Jersey Transit Police Department has lost over 18% of its police officers to other law enforcement agencies since the beginning of these proceedings. The PBA detailed 5 resignations between April and July of 1998. In each case, the resigning officer was hired by a municipal police department or by the State Police. According to the PBA, the New Jersey Transit Police Department acts as a training ground for law enforcement officers. The PBA maintains that an 18% turnover rate does not serve the interest and welfare of the public. According to the PBA, the turnover rate results from poor compensation and benefits and a lack of career opportunity. Several police officers, including Montgomery Police Officer Bruce Heddy, Sayreville Police Officer Jack Fitzsimmons and DEA Special Agent David Torres, testified that they left the Transit Police Department for economic reasons.



At present, the PBA contends that the public is not served by the New Jersey Transit Police Department when officers are sent to the Police Academy and trained on the job and then move on to better paying positions.

Turning to comparison of wages, compensation, hours and conditions of employment, the PBA asserts that the record supports its final offer. As evidence of the economic disadvantage resulting from the compensation package for New Jersey Transit Police Officers, the PBA cites an annual salary of \$39,270.40 after two years and one day. According to the PBA, that salary is not supplemented by longevity, shift differential, guaranteed overtime opportunities, compensatory time, educational benefits, minimum premiums for court time or call back, night differential, or release time for PBA business.

The PBA rejects New Jersey Transit's position as seeking an award which would be within the general range of increases found in New Jersey interest arbitration awards. According to the PBA, such a proposal is not supported by the record because any such increases would yield insufficient compensation to unit personnel who earn well below salaries provided to county and municipal police officers. To illustrate its point, the PBA turns first to the interest arbitration award covering the Borough of Fairfield and the Fairfield PBA, Local 81. That award provided a 4% increase effective January 1, 1997; 3.875% effective January 1, 1998; and 3.75% effective January 1, 1999. The PBA points out

however, that those increases were added onto a top step base wage of \$51,748.

Likewise, the interest arbitration award for the City of Garfield and the Garfield PBA, Local 46 provided a 3.75% increase effective January 1, 1997, 3.75% effective January 1, 1998; and 4% effective January 1, 1999. The PBA points out that at the beginning of the contract, the top step base salary for police officers was \$61,243. At the end of that agreement, the PBA calculates that the top or sixth step will be \$68,559 without other benefits.

Similarly, the PBA points to the 2% semi-annual increases in the Township of Woodbridge from January 1, 1996 through July 1, 1998. As a result the PBA calculates that as of July 1, 1998, a fourth step or senior patrol officer in Woodbridge earned \$59,771. The PBA notes that Woodbridge police officers enjoy longevity, tuition reimbursement and other benefits. Accordingly, the PEB argues that 3 or 4% increases are appropriate where police already earn salaries and benefits sufficient to make a career. Since these are not the conditions at New Jersey Transit, the PBA argues that "simple reliance upon low single digit wage adjustments" will not reduce the turnover rate. The PBA also notes that New Jersey Transit seeks to lower current benefit levels by reducing health benefits.

The PBA contends that New Jersey Transit's Police functions and responsibilities are similar to those of Police at the Port Authority of New York and New Jersey and suggests that the Port Authority is a comparable employer. The Port Authority contract with the PBA provides a top step base salary of \$57,267 with five years of service. Additionally, the PBA notes that Port Authority police enjoy a longevity benefit of 1.5% at five years and .5% each year thereafter to a maximum of 10%. According to the PBA, other benefits provided to Port Authority police include a shift differential of 10% of base hourly wages for tours of duty commencing after 2 p.m. and ending before 10 a.m.; a uniform benefit of 1.5% of maximum base salary, education benefits; a detective differential; 15 minutes pay for roll call, and a 5% differential for plain clothes assignments. The PBA also points out that Port Authority Police work 1946 hours annually compared with 2080 for Transit Police.

The PBA asserts that its comparison to the Port Authority Police should weight more heavily than with New Jersey Transit's comparisons to out-of-state law enforcement agencies. Nonetheless, the PBA asserts that compensation for Transit Police fall short when measured against out-of-state agencies. Focusing on the new Metropolitan Transit Authority Police agreement, the PBA asserts that MTA officers earn a maximum base salary that exceeds that of Transit Police by 19%. Additionally, MTA officers receive a shift differential, a longevity package, annuity pay, 12 personal days per year, unlimited sick time, meal allowance, two-man patrols from 4:30 p.m. to 8:00 a.m., tuition reimbursement,

free transportation on the MTA system for himself and his family, retirement after 20 years and contributes only 5% to pensions.

Although characterizing the Massachusetts Bay Transportation Authority (MBTA) Police Department agreement as "outdated," the PBA points out benefits in excess of those provided to Transit Police. Specifically, the PBA points to a four hour minimum overtime guarantee, greater vacation benefits, night and shift differentials, tuition reimbursement, longevity, greater pension benefits and enhanced base wages from 10% with an Associate's degree to 25% with a Master's degree.

Turning to Pennsylvania, the PBA calculates that police employed by the Southeastern Pennsylvania Transportation Authority (SEPTA) earn a base wage that exceeds the Transit Police base wage by 25%. Additionally, the PBA points out that SEPTA Police enjoy longevity benefits, meal allowance, greater health benefits, minimum recall overtime provisions, shift differentials and greater vacation benefits.

Noting that the Police agreement for the Washington Metropolitan Area Transit Authority (WMATA) dates back to October of 1992, the PBA points out that at that time WMATA Police earned top base pay of \$46,515 compared to \$39,170 received by Transit Police Officers in June of 1996. Other benefits included in that agreement are greater uniform maintenance, educational

benefits, minimum premiums for call back time and for court time, shift differential, vacation benefits and release time for union business. The PBA also points out that even though Conrail and Amtrak are strict rail operations, those contracts provided benefits and entitlements not enjoyed by Transit Police.

The PBA maintains that the best source for comparison with New Jersey Transit is the police departments throughout New Jersey. To that end, the PBA has compiled an index that provides "an across the board survey of salaries in the communities in which Transit Police Officers work day in and day out." With that survey, at the 50% bracket of communities, the PBA asserts that there is an "evenly applied compensation package which reflects those communities who compensate police officers most generously and who's citizens travel through New Jersey Transit's 'city' within those cities where economic conditions do not lend themselves to the generous compensation packages" of more financially secure communities. The PBA's index results in a salary of \$52,018 at the 50% point. The top annual salary on the index is \$70,329 and the lowest annual salary on the index is \$33,306.

Based on these results, the PBA would place Transit Police Officers on the index at \$52,018 for 1996, the first year of the agreement. Additionally, the PBA proposes to create a five step annual increment towards maximum pay. According to the PBA, this would create a career ladder for police officers and would reduce the current turnover rate. The five step annual increment would

also limit the cost of new hires for New Jersey Transit. The PBA asserts that its proposal for longevity, of 1% for every three years of service is modest when compared to the existing longevity provisions in many contracts in evidence.

The PBA emphasizes that "only four tiny communities" paid their police officers less in 1996 than New Jersey Transit. The PBA urges an award that will limit future turnover and will pay Transit Police in proportion to the jobs they perform.

Looking at the universe of comparability beyond law enforcement agencies in New Jersey and nearby states, the PBA argues that the only valid comparisons are other law enforcement agencies. The PBA contends that the evidence submitted by New Jersey Transit supports this and that the record contains a substantial body of law enforcement settlements and awards. As support for its contention, the PBA notes that there are significant variations between Transit Police Officer positions and other titles. According to the PBA, there are additional differences between all law enforcement personnel and non-law enforcement personnel. Noting that this proceeding is conducted under a separate bargaining law distinct from non-public safety dispute resolution processes, the PBA asserts that valid parallels between public safety and non-public safety positions are tenuous and difficult. In support of this argument, the PBA cites the analysis of Interest Arbitrator William Weinberg in Borough of Ridgewood. Accordingly, the PBA asserts that comparison with hundreds of law

enforcement agencies is valid, but comparison with bus drivers, trainmen, or clerical employees is not. According to the PBA, this civilian work differs from that of police officers and their compensation and benefits should differ as well. To that end, the PBA emphasizes the economic reasons for the high turnover rate among Transit Police Officers as supported by the testimony of several police officers who left transit for substantially higher pay.

Addressing the lawful authority of the employer, the PBA argues that this criterion focuses on local authorities subject to the New Jersey "Cap Law." That law is found in Title 40A, which focuses on municipal and county governmental authority. The PBA notes that New Jersey Transit has not argued that it is subject to the "Cap Law." Likewise, the PBA asserts that the criterion covering the financial impact of the governing unit, its residents and taxpayers applies to counties and municipalities. In support of this contention, the PBA cites the plain language of criterion g6:

When considering this factor in a dispute in which the public employer is a county or a municipality, the arbitrator or panel of arbitrators shall take into account . . .

According to the PBA, the only interpretation of this "legislative mandate" is to limit the application of this criterion to instances where the public employer is a county or municipality. Based upon the PBA's interpretation of this criterion, the only portion that applies in this case is "the financial impact on the governing unit, its residents and taxpayers." According to the PBA, the financial impact of

its proposal is so small that it is almost imperceptible and the impact on a New Jersey Transit user is incalculable. New Jersey Transit riders have not had a fare increase for over nine years, and the PBA cites the testimony of Albert Hasbrouck that fares are subsidized 40% by a tax base contribution from State and Federal sources. Additionally, the PBA points out that non-agreement New Jersey Transit employees receive annual wage "enhancements" of up to ten percent. Citing an article in the Bergen Record, the PBA asserts that former executive director Shirley DeLibero awarded raises of 8-10% to thirty employees earning in excess of \$100,000. According to the PBA, DeLibero stated that the raises were "based on the employees' job performance, the market rate for their positions, and the agency's accomplishments, such as avoiding fare increases for eight consecutive years," and that "the agency won't be able to retain quality employees without competitive salaries.

Analyzing the economic situation at New Jersey Transit, the PBA contends that it is "looking better." The PBA points out that New Jersey Transit forecasts reduced State aid, but Hasbrouck testified that the forecasts were only projections and that New Jersey Transit was working hard to maintain existing funding levels. Additionally, the PBA points to ample reserves in capital funds to meet New Jersey Transit's obligations and projects. Additionally, the PBA asserts that New Jersey Transit's fiscal condition for the future indicates strength and growth. In support, the PBA cites New Jersey Governor Christine



Whitman's February 10, 1998 budget message to the legislature and to the public. Included in that message is the following:

Fortunately for all our citizens we've steered the ship of State in a new direction and once again we are on familiar shores, New Jersey is on sound financial footing. For example, we virtually wiped out the use of one shot revenues to balance the budget. We brought one shots down from more than a billion dollars five years ago to next to nothing today. And we balance the budget without relying on enormous structural deficit; difference between spending and revenues in any one year. Five years ago the structural deficit stood at 1.5 billion dollars, we have cut it by 75%. And because of that success I can make this pledge today, before my term is over, we will have fully eliminated the structural deficit.

Over the past four years we've cut taxes 17 times, these cuts range from our historic 30% tax cut, income tax cut to eliminating the yellow page sales tax. Altogether we will have saved taxpayers more than 6 billion dollars, that is a record for which we can be proud. And let's not forget, we started cutting taxes when it wasn't easy, when it required tough decisions and really fiscal discipline. So now we can build on our already strong record, we can cut taxes for the eighteenth time.

Today, the budget surplus tops Five Hundred Fifty million dollars and because our economy is so strong, we should add to that surplus, we should bring it up to Six Hundred Fifty million dollars which will give us the largest budget surplus in New Jersey history.

Faced with this evidence of fiscal well-being throughout the State, the PBA contends that New Jersey Transit's efforts to rely upon "speculative future 'cuts'" is specious. The PBA also cites Hasbrouck's testimony that certain New Jersey Transit investment funds have produced over 15 million dollars in interest on investments in one year and excellent financial news included in New Jersey Transit's 1998 annual report. The "good news" cited by the PBA includes

Governor Whitman's \$30 billion blue print to enhance and upgrade existing transportation systems and \$100 million earned through "leveraged leasing activities" over the past ten years. The PBA suggests that the cost of its proposal would be "lost in the tidal wave of money now pounding Transit's shores."

The PBA asserts that its final offer is strongly supported by the cost of living criterion. According to the PBA, give backs over the last 15 years have resulted in New Jersey Transit Police losing ground to cost of living increases over the past ten years. In addition, the PBA points to the high cost of living in New Jersey with the most expensive automobile insurance and high property tax rates. When viewed from this vantage, the PBA contends that the Consumer Price Index which includes states with a lower cost of living, such as Alabama, Arkansas and Idaho, is less relevant. According to the PBA, the more pertinent information is the cost of living in New Jersey.

Additionally, the PBA points out that the CPI must be considered in the context of the base salary to which it is applied. According to the PBA, a 4% increase on a salary of \$100,000 is "vastly different" from that same increase when applied to the facts of this case. The PBA argues that employees earning substandard wages should not be limited by increases in the cost of living that serve to maintain the substandard nature of their wages.

The PBA interprets the continuity and stability of employment criterion to suggest consideration of the private sector concepts of "area standards" and "prevailing rate." When either base wages or total compensation is examined, the PBA contends that the Transit Police earn far less than comparable law enforcement agencies.

According to the PBA, Transit Police should be compared only to other law enforcement officers. As such, the PBA asserts that the record supports its remaining proposals. First, the PBA points out that members of the public and members of other police departments are free to pursue second jobs and Transit Police should enjoy the same freedom. The PBA also seeks secure parking lots for all employees, particularly in high crime areas.

Responding to proposals put forth by New Jersey Transit, the PBA suggests that each of these proposals, including the proposal to amend the rights and privileges under Article XIV, the proposal to reduce the number of sworn personnel at the radio desk and the proposal to create a committee to change scheduling, should be rejected.

### **New Jersey Transit**

New Jersey Transit characterizes its final offer as "fair and well-reasoned" because it balances Transit's needs to maintain equity among all Transit

employees (including both police and non-police units) with the PBA's concerns over the retention of experienced Police Officers. Specifically, Transit proposes across the board increases similar to those received by all other settled Transit unions. These increases are effective annually commencing July 1, 1996 are proposed for police officers hired before January 1, 1999 and range from \$0.11 per hour (1%) for 1996 to \$0.73 per hour (3.5%) in 2000. Transit also proposes the creation of a new wage scale that reduces starting salaries for new hires while correspondingly increasing the salaries of experienced officers. Experienced officers would be those with more than five years of service and would receive a range of additional 1% to 4% for service beyond five completed years to twelve completed years commencing July 1, 1999. To that end, New Jersey Transit's modified wage proposal follows:

**Section 1(a):** Effective July 1, 1996, the base rate of pay for Police Officers hired before January 1, 1999 shall be:

	Hourly Rate	
Patrolman	\$19.07	(1.0%)
Detective	\$20.01	

**Section 1(b):** Effective July 1, 1997, the base rate of pay for Police Officers hired before January 1, 1999 shall be:

	Hourly Rate	
Patrolman	\$19.74	(3.67%)
Detective	\$20.71	

**Section 1(c):** Effective July 1, 1998, the base rate of pay for Police Officers hired before January 1, 1999 shall be:

Hourly Rate

Patrolman	\$20.33	(3.0%)
Detective	\$21.33	

Section 1(d): Effective July 1, 1999, the base rate of pay for Police Officers hired before January 1, 1999 shall be:

	Hourly Rate	
Patrolman	\$20.94	(3.0%)
Detective	\$21.97	

Section 1(e): Effective July 1, 2000, the base rate of pay for Police Officers hired before January 1, 1999 shall be:

	Hourly Rate	
Patrolman	\$21.67	(3.5%)
Detective	\$22.74	

Section 2: Police Officers hired before January 1, 1999 shall be paid according to the following wage progression:

Months of Service as Police Officers at NJ Transit	% of Base Pay
Training	70%
0-12	80%
13-24	90%
25-60	100%
61-95	101%
95-120	102%
121-180	103%
180 +	104%

Section 3: Police Officers hired on or after January 1, 1999 shall be paid according to the following wage progression:

	1/1/99	7/1/99	7/1/2000
Training Rate	\$10.00	\$10.00	\$10.00
0-12 Months	\$12.00	\$12.00	\$12.00
13-24 Months		\$13.22	\$13.68
24-36 Months		\$15.20	\$15.74

37-48 Months	\$17.48	\$18.09
49-60 Months	\$20.94	\$21.67
61-95 Months	\$21.15	\$21.89
96-120 Months	\$21.36	\$22.11
121-180 Months	\$21.57	\$22.33
181 + Months	\$21.79	\$22.55

(Those police officers who have completed training to certified police officer consistent with NJ Transit requirements prior to beginning employment with NJ Transit will be paid consistent with the 0-12 month rate at the time of hire).

New Jersey Transit also modified its proposal for health benefit changes to follow the plan included in its agreement with the United Transportation Union (UTU) and to "bring them in line with all other employee groups, with State employees and with public and private employers generally." According to New Jersey Transit, this proposal will improve dental benefits, provide an HMO/PPO component and will require employee contributions that average only \$3.00 per week, a sum New Jersey Transit views as the cost of a cup of coffee and donut.

New Jersey Transit's modified health benefits proposal follows:

Traditional plan shall remain as is until July 1, 1999. Effective July 1, 1999, the Blue Select (PPO) will be offered to all employees. Effective July 1, 1999, HMOs as well as Traditional and Blue Select will be offered to all employees and each July 1 thereafter all employees will have the opportunity to select coverage from available plans.

- Improved Dental Plan

- Basic Plan for new hires (Attachment 3a on T-115)
- For current employees (Attachment 3b on T-115)
- Annual limit raised from \$1,000 to \$1,500 per year
- Annual deductibles reduced from \$50.00 to \$35.00

- Orthodontia limit raised from \$750 per year to \$1,000.00 per year.
- Eligibility for Health and Life Insurance Benefits
- Disabled Employees: Employees hired on or after the date of ratification with less than one year of service shall be eligible for continuation of health and life insurance benefits under the terms of the agreement until the first month after three (3) full months of disability. After one (1) year of service, such employees shall have the same eligibility for these benefits as all other employees. It is understood that this provision does not apply nor change the current eligibility requirements for benefits due employees who are injured while on duty.
- RX: Employees and dependents eligible only if enrolled in the Medical Plan.
- Dental: (A) Basic: 1st month after three (3) full months of service. (B) Standard: One (1) full year of enrollment in the Basic Plan. Dependent Children: End of year age 19; full-time students end of year age 23.
- Health & Welfare Contributions

**Traditional/Weekly Contribution    Blue Select Weekly Contribution**

	<b>Before Tax</b>	<b>After Tax</b>	<b>Before Tax</b>	<b>After Tax</b>
Single	\$2.00	\$1.20	\$1.25	\$0.75
Parent/ Child	\$4.00	\$2.40	\$2.50	\$1.50
Husband/ Wife	\$7.50	\$4.50	\$5.00	\$3.00
Family	\$9.00	\$5.40	\$7.50	\$4.50

In contrast, New Jersey Transit characterizes the PBA's proposal as one that "removes complete control of the wages paid to Transit officers" from both parties. According to New Jersey Transit, the PBA's wage proposal would illegally transfer budgetary decision-making to "unsuspecting and unqualified

municipalities” and would prevent Transit from budgetary planning based upon set salary costs. Therefore, New Jersey Transit contends the PBA’s proposal is unjustified. Since the PBA has not provided support for another wage demand, New Jersey Transit argues that an award supporting New Jersey Transit’s final offer is compelled.

New Jersey Transit asserts that the PBA’s wage proposal is based upon future events outside of the parties’ control and the impact of the proposal on Transit’s budget or Transit’s ability to fund the proposal are unknown. Transit points to Albert Hasbrouck’s testimony that the budget has been reduced while costs have increased over the past several years. Accordingly, Transit points out that increased costs of wages for PBA members will result in the elimination of costs elsewhere. Transit contends that it should not be faced with choosing to eliminate jobs or to raise fares to fund a wage and benefit package that exceeds that received by any other group of Transit employees.

New Jersey Transit also urges rejection of the PBA’s proposal to create a new longevity schedule where none has existed. Transit argues that the PBA has not justified such a proposal in light of the recent trend to eliminate or reduce longevity for new hires. Additionally, New Jersey Transit points to its proposal to add up to an additional 4% in wages for its police depending upon years of service.



Turning to the statutory criteria, New Jersey Transit asserts that its Police are better compensated than other Transit employees and they are comparable to other bargaining units of transit police in surrounding states and earn more than public and private sector employees generally. Focusing on other New Jersey Transit employees, Transit asserts that its proposal is consistent with wage increases and terms and conditions of employment agreed to by all other Transit unions including the Amalgamated Transit Union (ATU) and UTU. Transit points out that the health benefit revisions it proposes are identical to those agreed to by UTU and that ATU units at both Transit and Mercer already contribute greater sums towards their health benefits than the amounts included in the current proposal.

New Jersey Transit also asserts that its proposal exceeds the wages settlements with the State of New Jersey and its bargaining units, including CWA, AFSCME, IFPTE, PBA (representing approximately 6000 corrections officers) and the State Troopers. In its comparison, Transit considers increases in FY 1996 through FY 1998. It finds that its proposal would provide 9.5% increases over those three years (including a 2% bonus not included in base in the first year) compared to 6.25% for the non-police units, 7% for the PBA, and 7.5% for the State Troopers. Additionally, Transit points to the health care contributions included in the State's agreements with CWA, AFSCME and IFPTE, as well as overtime givebacks for corrections officers resulting in a savings of \$17 million annually and a phase in of maintenance allowance

payments for new hire State Troopers and the elimination of double increments and other work rule modifications. According to Transit, the phase in of maintenance payments for State Troopers, along with the other givebacks, quoting the arbitrator, would “substantially modify future labor costs and serve to offset the salary increases.” In comparison, New Jersey Transit notes that it seeks only a modest contribution to health benefit costs averaging \$3.00 per week.

New Jersey Transit also compares its final offer to settlements throughout the State. Specifically, Transit asserts that settlements at the New Jersey Turnpike, the Garden State Parkway, the State’s nine state colleges and one university, the New Jersey Institute of Technology, and the University of Medicine and Dentistry of New Jersey follow the State pattern, including wage freezes in the first two years.

Transit places great emphasis on the settlement reached at the Port Authority of New York and New Jersey. The Port Authority employs approximately 1000 police who patrol its bus terminal, the PATH System as well as the six bridges and tunnels, ports and three major airports, including Newark Airport. New Jersey Transit describes that agreement as providing annual increases of 3.565% per year over five years. New Jersey Transit, however, calculates that the increases were offset by “givebacks” including: (1) a two year wage freeze in starting salary for new hires; (2) replacement of the indemnity

health plan for officers hired on or after July 1, 1998 with a less costly group health plan; (3) elimination of 16 positions; (4) use of officers to perform work previously assigned to detectives; (5) increased use of administrative work charts; (6) reduction of schedule change premiums; and (7) reduction in health insurance premiums due to a new prescription drug plan.

Next, New Jersey Transit asserts that comparison of its base wages with those paid by comparable Transit agencies across the country demonstrates that its officers receive base wages falling squarely at the average level among comparable transit police units. Transit compares top base pay and starting base pay at the Washington Metropolitan Area Transportation Authority (WMATA), PATCO, Conrail, Southeastern Pennsylvania Transportation Authority (SEPTA), Metropolitan Boston Transportation Authority (MBTA), and the National Rail Passenger Corporation (Amtrak). New Jersey Transit's comparison shows that its starting base pay is \$31,416 (based upon 1995 salaries) compared with \$27,601 at SEPTA, \$27,000 at the MBTA, \$27,873 at PATCO, \$29,216 at Amtrak, \$29,575 at WMATA, \$32,100 at LIRR, and \$37,000 at Conrail. Turning to top base pay, New Jersey Transit's comparison shows that its top pay is \$39,270 compared with \$32,463 at Amtrak, \$34,000 at MBTA, \$35,547 at SEPTA, \$37,000 at Conrail, \$43,573 at LIRR, and \$51,710 at WMATA. New Jersey Transit also compares its final offer to the increases received by Police at Metro-North Commuter Railroad. They received a 2% increase in 1995, 2.5% in 1996, 3.5% in 1997 and a 2% increase in 1998.

Additionally, Transit points out that police at MBTA, Amtrak and Conrail do not receive longevity payments and police at the MBTA contribute 15% towards the cost of health benefits, and for the first 24 months of employment, SEPTA's new officers contribute 30% towards the cost of health benefit premiums. New Jersey Transit contends that comparison with local police departments should be given no greater weight than comparisons to public employees generally. Specifically, New Jersey Transit asserts that municipal police officers "perform different functions than Transit police officers." Transit likens the responsibilities of its police force to that of security work in that they guard Transit property and great arriving and departing passengers. Transit cites N.J.S.A. 27:25-15.1 as providing that Transit police are responsible for "police and security" functions and provides for the use of local police forces when appropriate. Accordingly, Transit maintains that most of the activities engaged in by Transit police "include ejections, with comparatively few arrests." Transit cites the statement of its Police Chief Mary Rabadeau that Transit work is a "different kind of policing and its police are more involved in "quality of life" issues. Transit maintains that since its police are very important, but are different from municipal police, comparison with municipal police should be given no greater weight than comparison with public sector employees generally.

When making that comparison, New Jersey Transit maintains that the wage and benefits package provided to its Police "vastly exceeds" wages and

benefits received by public and private sector employees generally. Additionally, Transit asserts that its proposal will keep its police officers far ahead of public and private sector employees. Citing "The State of Working in New Jersey" prepared by the New Jersey Center for Economic Policy, New Jersey Transit asserts that New Jersey workers and their families have "lost ground economically speaking" between 1990 and 1995. According to New Jersey Transit, average hourly earnings declined by \$.41 per hour or by 3.1% during that period. At the same time, Transit asserts that its Police have increased their hourly earnings from \$14.87 per hour in 1997 to \$18.88 in 1995. Transit points out that its final offer would provide an additional 21% over the succeeding five years.

Again citing the Center for Economic Policy and Education, Transit points out that wage stagnation and decline has pressured working families to maintain their standard of living, but between 1988 and 1995, median household income decline by 2.4% for married couple households and by 12.4% for all other households. Transit points out that its Police have avoided the general trend and under its final offer, will continue to do so. Additionally, Transit asserts that its proposal will permit its Police to continue to outpace public and private sector employees generally. Looking at more recent statistics, Transit cites data prepared by the Bureau of National Affairs that the median increase under contracts covering all United States employees was 3% in 1997 and 3% in 1998, which is less than Transit's final offer.

Turning to the financial impact on the governing body, and its ability to maintain and expand existing programs and services and initiate new programs and services, Transit is mindful of the impact of both final offers on its budget. Pointing out that its budget reflects its policy determinations, Transit asserts that its final offer should be awarded because the PBA's final offer cannot be costed out. Transit suggests that absent a final offer that can be costed, there is no way to determine the financial impact or Transit's ability to pay.

Looking to New Jersey Transit's budget, Albert Hasbrouck testified that Transit's FY 2000 budget is \$877.8 million, or 7.6% less than its FY 1999 budget. Transit also points out that State appropriations to New Jersey Transit have been reduced by \$45.2 million in the FY 2000 budget. Transit calculates this to be 30% decrease in State funding from \$194.3 million to \$149.1 million. Transit points out that despite these decreases, it must fund increasing costs of pensions, health benefits and wages. In order to balance its budget, Transit indicates that it has eliminated 100 positions through attrition, as well as enhancing efficiency and enacting cost cutting measures. Against this budgetary background, Transit argues that PBA should not receive more than was provided to other Transit employees. Although fares have not increased in over two administrations, Transit resists doing so because the individuals whose fares would be increased are typical New Jersey residents who "are the very people least able to afford additional monetary demands." Additionally, Transit notes that

stable fares have increased ridership, which leads to increasing fare collections. According to Transit, increasing fares would lead to a decrease in ridership and hurt Transit's economic position.

Focusing on the cost of living, Transit asserts that its proposal will permit its Police to continue to outpace the cost of living. According to New Jersey Transit, its Police Officers have received increases outpacing the cost of living over the last ten years and, its proposal also exceeds the cost of living. New Jersey Transit compares the CPI for 1996 through 1999 with its final offer and calculates that its final offer exceeds the cost of living to date by 4.1%. Specifically, Transit compares the CPI increase of 2.9% in 1996 to its proposed 3% increase (1% across the board and 2% lump sum); the CPI increase of 2.3% in 1997 with its proposed 3.5% increase; the CPI of 1.5% with Transit's proposed 3% increase and the cost of living for 1999 to date of 1.7% compared to its proposed 3% increase.

Turning to the continuity and stability of employment, Transit contends that the PBA did not demonstrate that its final offer would result in fewer resignations. Transit maintains that there are numerous reasons other than wages for its police to leave for municipal or other positions. Indeed, Transit posits that its officers leave because they believe that "they are 'inferior' to municipal police, that they work in the shadows unappreciated by the individuals they serve and that they lack a home community." Transit maintains that wage

increases will not change these circumstances. Citing the testimony of PBA witnesses, Transit asserts that officers leave enhance job prestige and to work closer to home. Nonetheless, Transit recognizes concerns about the turnover rate and has addressed the PBA's concerns in its final offer. Transit characterizes its offer as a balance between its need to maintain equity among employee groups and control over salary costs. Therefore, it proposes the creation of a new salary scale that lowers the rate for incoming officers while adding 4% on top pay for senior officers in addition to across the board increases. With this proposal, Transit asserts that police officer pay will increase during this contract term by as much as 21%. Transit points out that "Rome was not built in a day" and the PBA's concerns cannot be solved over a single contract term. Additionally, Transit asserts that the PBA's final offer would result in further cost reductions including the potential elimination of additional positions, which would impinge on the continuity and stability of employment.

Transit maintains that the interest and welfare of the public is best served by its final offer. Citing Hillsdale PBA, Local 207 v. Borough of Hillsdale, Transit asserts that great weight must be placed upon the position taken by governmental representatives as to how to best spend and prioritize governmental resources. Accordingly, Transit asserts that its final offer best balances the competing demands for shrinking resources at New Jersey Transit, by treating all employee units alike to the extent possible, while addressing the PBA's concerns over employment stability. Additionally, Transit raises concerns



that deviation from the pattern established with other employee groups could result in “feelings of inequity, anger and frustration by the 9500 other Transit employees.”

Turning to its proposals beyond wages and health benefits, Transit asserts that its remaining proposals, which it describes as non-economic, will: (1) aid in the operation of the department; (2) bring Transit in compliance with the law; and (3) foster cooperation between the department and the PBA.

According to Transit, its proposal to amend Article IV covering promotions is designed to establish minimum qualifications for promotion eligibility, to prohibit the promotion of candidates who fail the test and to give the Chief, instead of organizations with no connection to Transit, more control of who is determined to have the qualifications for promotion.

Transit proposes that its police officers serve a full year probationary period as trained police officers. Currently, half of the probationary period is consumed while the officer is in the police academy. Therefore, Transit proposes that all officers, whether certified when hired, or in need of academy training, would be required to serve one full year on probation as fully certified police officers.

Transit proposes to amend Article XII, covering Discrimination or Coercion to expand its policy against discrimination and to bring the provision into compliance with current law. Transit also proposes to add language to the provision that would prohibit the PBA from discriminating or coercing officers who decide not to become union members.

Transit seeks to amend the Rights and Privileges clause of the agreement (Article XIV) to clarify that the PBA president or his duly authorized representative would not lose time to their regular assignment when required to attend meetings called by Transit. New Jersey Transit also seeks to amend the provision to prevent the PBA from using the provision to address meetings not called for or participated in by Transit.

Transit seeks to amend Article XXX covering Training, Programs, Schools and Seminars, to bring the section into compliance with the guidelines of the Attorney General regarding weapon qualification.

Additionally, Transit seeks to amend Article XXXV covering Agency Shop. According to Transit, its proposed amendments to this provision would: (1) bring it into compliance with current law regarding a "demand and return system" that is not now in the agreement; (2) increase the time period in which Transit must begin the initial deduction from 20 days to 30 days to allow for administrative actions; and (3) provide that the Association will indemnify and hold harmless

Transit for any liability arising from the application of this provision. According to Transit, indemnification is standard in contracts with agency shop.

New Jersey Transit also seeks to correct the number of sworn personnel who must be assigned to the radio desk. Pointing to the testimony of John Bush, the five officers currently specified by the contract include rank and file officers as well as sergeants and lieutenants who are no longer covered by this contract. Transit seeks to modify this proposal to correct the number of sworn personnel to correct the provision to conform to the current practice of having two rank and file officers on the radio desk.

Transit also seeks to set up a union-management committee to review existing work schedules and propose a new schedule to the Chief to benefit officers and the department as a whole.

Transit objects to the PBA's proposal to include a 60-day notice provision for any modification to its rules or regulations. Transit does not object to this provision in principle, but asserts that the provision should not be subject to arbitration and that the remedy for any such violation must be limited to a provision that the 60 day notice provision must be adhered to when possible.

Transit objects to the PBA's proposal to eliminate the fully bargained provision of the contract as it would subject both parties to mid-term negotiations.

Addressing the PBA proposal that would permit Transit Police to work in any off-duty position unless prohibited by statute, Transit would accept such a provision provided that the following language is added "violative of specific law or NJ Transit policy, rule or regulation." Finally, Transit objects to the PBA proposal that Transit be required to provide parking for NJ Transit police in Newark. Transit asserts that the PBA offered no evidence on this proposal, so the cost is unknown. Transit emphasizes that the proposal would result in "significant cost" to its operations and would provide a benefit to Transit Police that is not provided to any other employee in Newark.

### **DISCUSSION**

As stated above, I am required to issue an award based upon a reasonable determination of all issues in dispute after giving due weight to the statutory criteria which I judge relevant. Transit and the PBA have articulated fully their positions on the issues and have presented testimony and submitted evidence and argument on each statutory criterion to support their respective positions. The evidence and arguments have been expertly advanced by respective counsel and have been carefully reviewed, considered and weighed.

I have considered the statutory criteria and conclude that all are relevant to the resolution of the dispute, although, as set forth below, not all have been

accorded equal weight. As required by law, I have also decided the total net annual economic changes for each year of the four-year award.

Initially, I note that several issues remain in dispute. One principle which is ordinarily and traditionally considered in the determination of wages, hours and conditions of employment through the bargaining process is that a party seeking such change bears the burden of showing the need for such modification. I apply that principle to the analysis of each issue.

Transit would amend the Rights and Privileges clause (Article XIV) to clarify that the PBA president or his duly authorized representative will not lose time to their regular assignment when required to attend meetings called by Transit. The proposal would preclude the PBA from using the provision to address meetings not called for or participated in by Transit. The evidence does not indicate that any problems exist which justify a change or clarification from the language which now exists. In the absence of such evidence, the proposal is denied.

New Jersey Transit seeks to replace the current agency shop provision with a new provision that would require the PBA to include a demand and return system in compliance with current law, increase the time period for the initial deduction of dues or fees from 20 days to 30 days and indemnify and hold harmless Transit for liability arising out of the agency shop provision.

New Jersey Transit and the PBA are subject to N.J.S.A. 34:13A-5.5 and 34:13A-5.6 whether or not the requirements of the New Jersey Employer-Employee Relations Act are specified in their agreement. Neither party produced evidence as to whether the PBA currently has a demand and return system. The record does not reflect any difficulty with the current 20-day period for commencement of deductions or the existence of any problems associated with the present agency shop provision. This proposal is denied with the exception of that portion which clearly specifies the existing statutory requirements and includes such specification in the agreement. I award the following language.

The Association shall establish and maintain at all times a demand and return system as provided by N.J.S.A. 34:13A-5.5 and 34:13A-5.6 (L.1979, C.477.2 and 3).

The PBA seeks to eliminate Article XXXVII, the Fully Bargained provision, but provides little rationale for its proposal. Transit suggests that such a provision is standard in most collective bargaining agreements and its elimination would result in continuous bargaining through the term of the agreement. No instances have been presented which reflect that Article XXXVII, as phrased, has obstructed the PBA's statutory rights or otherwise interfered with existing contractual rights. Absent compelling rationale for such a proposal, it is denied.

The PBA also seeks secure parking for employees at the Broad Street Station and Pennsylvania Station in Newark. The PBA's desire for safe and available parking for its members is understandable. However, at present, no other group of employees receives such a benefit in Newark and parking is both limited and costly. In light of this, this proposal is not feasible and it is denied.

New Jersey Transit seeks to amend the Probationary Period clause (Article V) to provide that the probationary period be one year from the date of certification in all cases. Specifically, Transit proposes that its police officers serve a full year probationary period as trained police officers. Currently, for new officers, half of the probationary period is consumed while the officer is in the police academy. Therefore, Transit proposes that all officers, whether certified when hired, or in need of academy training, would be required to serve one full year on probation as fully certified police officers. The PBA objects generally to extending the probationary period.

The probationary period is currently one year. Transit's proposal would clarify that the one-year extends from the time of certification or from the hire date for officers who are certified when hired. As presently drafted, officers who are certified when hired serve a one-year probationary period as a certified officer. Clarifying that all officers serve a one-year probationary period once certified would permit Transit to observe and evaluate all officers for a one-year probationary period, either after the conclusion of formalized training or after one

year on the job if training is not required. Since recruits are not working on the job while at the police academy, providing a full year probationary period after certification makes sense and is in the interest and welfare of the public. This proposal it is granted. Article V is amended as follows:

A Police Officer hired by NJ Transit under this Agreement shall be subject to a probationary period of one (1) calendar year from the date of certification or from date of hire (if certified at time of hire) during which time he/she may be discharged with or without cause and for any reason without recourse to the grievance/ arbitration provisions of this Agreement. The probationary period may be extended by mutual agreement between the PBA and NJ Transit.

Transit seeks to amend first sentence of Section 2 of Article XXX, titled "Training, Programs, Schools and Seminars" to reflect the semi-annual qualification required by the Attorney General's Office. Transit proposes to eliminate the remainder of Section 2. Transit's rationale for this proposal is to bring the section into compliance with the guidelines of the Attorney General regarding weapon qualification. Article XXX, Section 2 provides:

Police officers, as a condition of employment, shall be required to qualify annually with the use of a service weapon. Effective date of ratification, all eligible police officers on the property shall receive a three hundred (\$300.00) dollar qualification differential for 1989 and a five hundred (\$500.00) differential for 1990. For each subsequent year thereafter, this annual differential of five hundred (\$500.00) dollars will be paid to all eligible police officers on the property at the time effective November 1st of each year. The shooting pay of \$500.00 per year shall be added to the officer's base and will no longer be a lump sum payment. Officers who are on the payroll as of July 1, 1994 and remain on the payroll as of November 1, 1994 shall also receive a lump sum payment of \$250.00.



The change in the Attorney General's guidelines to provide for semi-annual qualification is sufficient justification to amend the first sentence of Article XXX, Section 2 to provide for semi-annual qualification. With respect to Transit's proposal to eliminate the remainder of Section 2, it would eliminate "shooting pay" an economic benefit. Transit, however, characterizes its proposal as non-economic. Additionally, eliminating "shooting pay" would not achieve Transit's stated goals of aiding in the operation of the department, bringing Transit in compliance with the law or fostering cooperation between the department and the PBA. It would also reduce the compensation of the officers. For these reasons, there is insufficient justification for the elimination of Shooting Pay. Transit's proposal to eliminate the remainder of Article XXX, Section 2 is denied.

Transit has proposed to amend Article XLII, Civilians on the Radio desk to change the number of sworn officers that must be assigned to the radio desk. The contract currently specifies that five sworn officers must be assigned. But the testimony of John Bush reflects that this number includes sergeants and lieutenants previously included in the bargaining unit, as well as rank and file officers. According to Bush's testimony, now that only rank and file members are included in the agreement, the number of sworn officers in the contract should be two which reflects the current practice regarding rank and file officers. The PBA objects to any change in the number of sworn officers on the radio desk.

Based upon the testimony of Bush, there is merit to amending this provision to reflect current practice. Accordingly, the provision is amended as follows:

**Effective immediately, anytime it is deemed appropriate to have non-bargaining unit personnel assigned to the radio desk, NJ Transit may make such assignment provided that there are at least two (2) sworn officers from this bargaining unit assigned to the radio desk position.**

New Jersey Transit seeks to create a committee composed of PBA representatives and Chief's representatives to review the existing work schedule and to propose to the Chief a new work schedule that would be beneficial to the Police Officers and to the Department. Transit seeks to change the work schedule in a way that will aid in the operation of the department and will foster cooperation between the department and the PBA. The PBA opposes the creation of such a committee, but does not offer rationale for its opposition.

The concept of creating a committee to make recommendations to the Chief for a new work schedule would foster cooperation and communications between the department and the PBA. However, Article III of the current agreement provides for a Standing Committee to consider Uniforms and Equipment, Improving Cooperation and Communications, Efficiency of Operation and "any other issue of a general nature which is of importance to the Police Department as a whole." This Committee can address the work schedule issue under the terms of Article III. In light of the existence of a Standing Committee,

the work schedule issue shall be directed to its jurisdiction and the language in Article III shall be amended to add "Work Schedule" to the issues enumerated therein. This issue shall be considered upon demand of either party. Further amendment of the agreement to cover this issue is unnecessary. To the extent that Transit seeks the creation of a new separate committee solely to address work schedules, its proposal is denied.

Transit seeks to amend Article XII, the Discrimination or Coercion provision, to expand the current policy against discrimination and coercion and to bring the provision into compliance with current law and practice. Transit also seeks to add a provision providing specifically that "the Association, its members and agents, shall not discriminate against, interfere with, restrain or coerce any employees covered under this agreement who are not members of the Association." The PBA objects to this provision. Article XII currently provides:

There shall be no discrimination, interference or coercion by NJ Transit or any of its agents against the employees represented by the PBA because of membership or activity in the PBA. The PBA or any of its agents shall not intimidate or coerce employees into membership. Neither the Employer nor the PBA shall discriminate against any employee because of race, creed, color, age, sex, or national origin.

Transit's proposal to update the clause to include additional forms of discrimination now covered by law is appropriate and the provision shall be modified to include additional forms of discrimination. On the other hand, there is insufficient evidence or argument in support of any need to include Transit's

proposal to expand the coverage of this clause to prohibit certain actions by individual PBA members. Therefore, Article XII is amended as follows:

There shall be no discrimination, interference or coercion by NJ Transit or any of its agents against the employees represented by the PBA because of membership or activity in the PBA. The PBA or any of its agents shall not intimidate or coerce employees into membership. Neither the Employer nor the PBA shall discriminate against any employee because of race, creed, color, age, sex, marital status, sexual orientation, perceived sexual orientation, disability, perceived disability, affectation, political affiliation, or national origin.

The PBA seeks to add a new provision to the Agreement which would require Transit to provide 60-day notice "whenever possible for any changes in the Rules and Regulations." The PBA proposes that "the notice shall include a copy of the proposed change or changes" and "the 60-day notice period shall be calculated back from the date of compliance." According to Transit, the principle behind this proposal is acceptable, but it proposes that such a provision would not be subject to arbitration and that the remedy for any violation must be limited to a provision that the 60 days be adhered to if possible. Transit seeks to avoid arbitration over the issue of when the 60-day notice can be provided due to operational needs.

The PBA and Transit accept the principle that there be 60-day notice for changes in New Jersey Transit's rules and regulations "whenever possible." Transit's objection to arbitration over such a provision and its proposed limitations over the remedy for violation of such a provision would severely limit

the effectiveness of such a provision. In support of its non-economic proposals, Transit has stated its desire for provisions that would “aid in the operation of the department” and “foster cooperation between the department and the PBA.” The PBA’s proposal would do both, and as such, is in the interest and welfare of the public inasmuch as it would only require notice whenever possible. The proposal also recognizes Transit’s need to more quickly promulgate rules when operational needs dictate. The respective concerns of each party can be addressed by adding the phrase “...the Employer, in its sole discretion, determines that...” to the proposal as underlined. Accordingly, the following new provision is added to the agreement:

Transit will provide the PBA with 60-day written notice of changes to its rules and regulations whenever such notice is possible. Such notice will not be possible when the Employer, in its sole discretion, determines that the operational needs of the department require immediate changes to rules and regulations. Such circumstances include, but are not limited to changes in the law, or changes in response to emergent circumstances.

The PBA also proposes to include a new provision permitting Transit Police to work in off-duty positions in non-security jobs. Under the PBA’s proposal, the only other prohibition would be positions that are “violative of specific law.” Transit has no objection to a provision permitting off-duty work by its Officers, but would include a prohibition on work in off-duty positions in violation of “NJ Transit policy, rule or regulation.”

The PBA and New Jersey Transit agree that a provision permitting Transit Police to engage in off-duty work is appropriate. They disagree only over whether Transit may implement rules or regulations regarding off-duty work. Police officers have a legitimate interest in off-duty work. Police at comparable transit agencies, including SEPTA and WMATA, are permitted to engage in off-duty work. On the other hand, Transit, and the public, have an interest in the off-duty work performed by Police. The fact that State law places limitations on the off-duty work that may be performed by police demonstrates the public interest in such matters. Therefore off-duty work will be subject to rules and regulations promulgated by Transit but should also be subject to the grievance procedure to permit review of denials that may be arbitrary or unreasonable. The off-duty work clause will provide as follows:

Police Officers may work in off-duty positions in non-security jobs so long as such positions do not violate a specific law or NJ Transit rule or regulation. Denials of such requests shall be subject to the grievance procedure.

The next issue to be considered is Promotions. Under the current Promotions provision of the agreement, promotions to Sergeant or Lieutenant are determined through written and oral examinations conducted by the New Jersey State Chiefs of Police Association or other independent body. Section 1(b) of Article IV presently provides: "In all cases whether an officer is qualified for promotion shall rest with the State Chiefs of Police Association or independent body, except for those employees that have been disqualified by

the Chief of Police of NJ Transit as set forth in Section 5.” Transit proposes to eliminate this provision in order to give the Chief, instead of organizations with no connection to Transit, more control of which officers are found to be qualified for promotion.

Transit’s desire to give the Chief of Police greater control over the promotion process is understandable and I conclude that language should be added to add authority for the Chief, but not to the extent sought by Transit. The clause as currently written provides the Chief adequate opportunity to exclude unqualified candidates from sitting for the examinations and provides for examinations conducted by an independent entity. There is no evidence that this process has resulted in poor screening or in inadequate candidates for promotion. However, the Employer is the Chief and not an expert outside body. Accordingly, I modify Article IV, Section 1(b) to read:

In all cases whether an officer is qualified for promotion shall rest with the Chief of Police after receiving a recommended determination by the State Chiefs of Police Association or independent body, except for those employees that have been disqualified by the Chief of Police of NJ Transit as set forth in Section 5.” In the event that the Chief of Police does not accept such recommended determination, the Chief shall issue a written statement to the candidate setting forth the specific factual basis and reasons for his/her determination that the candidate is not qualified.

Additionally, Transit seeks to eliminate the existing Section 3 of Article IV and replace it with the following: “To be eligible for promotion an individual must have received a minimum score of 60%.” Section 3 currently provides:

The highest standing police officer appearing on the promotion list for such rank shall be notified in writing of such promotion and will, within five (5) calendar days, notify the Chief of Police, in writing, of his desire to accept or decline the promotion.

If the highest standing officer on the promotion list declines the promotion, his name will be removed from the promotion list unless the position is located more than 30 highway miles from the Officer's present headquarters and the officer with the next highest standing on the promotion list will be offered the promotion.

According to Transit, this modification is designed to establish minimum qualifications for promotion eligibility and to prohibit the promotion of candidates who fail the test. Transit's desire to prohibit the promotion of candidates who fail the promotion examination is reasonable. Promotion of candidates who fail the promotion examination is not in the interest or welfare of the public, nor is it in the best interest of other police officers. I deny that portion of Transit's proposal which would eliminate the remainder of the current notice and selection process. Therefore, Section 3 of Article IV is amended as follows:

Provided that he or she received a minimum score of 60% on the written examination, the highest standing police officer appearing on the promotion list for such rank shall be notified in writing of such promotion and will, within five (5) calendar days, notify the Chief of Police, in writing, of his desire to accept or decline the promotion.

If the highest standing officer on the promotion list declines the promotion, his name will be removed from the promotion list unless the position is located more than 30 highway miles from the Officer's present headquarters and, provided that he or she received a minimum score of 60% on the written examination, the officer with the next highest standing on the promotion list will be offered the promotion.



New Jersey Transit proposes a health benefit plan for Police that is the same as that included in the Memorandum of Understanding with the UTU. According to Transit, this proposal would bring its Police "in line with all other employee groups, with State employees and with public and private employers generally." Additionally, Transit maintains that its proposal would improve dental benefits, provide an HMO/PPO component and require employee contributions averaging \$3.00 per week.

The PBA opposes this plan, asserting that it would reduce benefits and require a new employee contribution. The PBA points out that its health benefit plan is already poorer than that provided to SEPTA police and that Transit's Police Officers receive fewer benefits than police at other transit agencies. The PBA argues that Transit Police receive lower wages and benefits than do municipal police departments and comparable transit agencies and any diminution in health benefits will exacerbate that difference.

There are two components to Transit's proposal. First, Transit seeks to require that employees receive coverage from Blue Select (a PPO) or an HMO. Transit also seeks contributions from employees electing the PPO option. Under Transit's proposal employees would have a choice of the Blue Select (PPO) or an HMO. The highlights of the Blue Select plan offered by Transit include no in-network deductibles; in-network 90%/10% co-insurance; catastrophic coverage

in-network after out-of-pocket co-insurance maximum of \$500; and catastrophic coverage out-of-network after out-of-pocket co-insurance max of \$1,500 of eligible expenses. Transit's proposal would provide the current plan to new employees for the first 12 months of employment and improved dental benefits for all current employees and for new employees after 12 months of employment. Transit also maintains that its proposal would improve the coverage of prescription drugs. Under the current prescription drug plan, employees pay up to \$6.50 per prescription. Under Transit's proposal employees would pay 10% of the cost of generic prescription drugs, 20% of the cost of single source brands and 30% of the cost of multi-source brands. Enrollment is currently available as of the first of the month after three months of service.

Under all of the relevant circumstances, Transit's proposal to provide the Blue Select (PPO) and HMO options has merit. Transit has established that these are efficiencies and cost savings by including all of its employees in the Blue Select Plan. The proposal would maintain comprehensive health insurance and Blue Select has a vast network of physicians from which to choose. That plan would provide an out-of-network option similar to the indemnity plan currently provided to Police and would place Police in the same plan as that being provided to Transit's rail employees represented by UTU and Transit's bus employees. State employees also are provided with a preferred provider option. Providing the Blue Select Plan to Police as well as bus operations employees

and certain rail employees would result in cost savings to Transit without a significant diminution in benefits. Therefore, the traditional indemnity plan may be replaced with the Blue Select plan including dental and prescription benefits and HMO options.

Such replacement shall not occur prior to July 1, 2000 in order to afford a full opportunity for review of options by the affected employees.

Transit also seeks employee contributions for those employees who elect the PPO instead of an HMO. Transit asserts that these contributions, which it states would average approximately \$3.00 per week, are minimal. Specifically, these contributions would cost \$1.25 per week for a single person for the Blue Select (PPO) Plan and \$7.50 per week for family coverage. Maintaining the traditional plan would cost \$2.00 per week for an individual and \$9.00 per week for family coverage. Employees selecting HMO coverage would not be required to contribute to the cost of their coverage.

Transit asserts that its proposal compares favorably to the costs of providing health benefits for its employees covered by bus and rail agreements. Transit pays 85% of the medical coverage premium and 100% of the cost of prescription coverage for bus agreement employees. Transit pays 100% of the cost of traditional medical and prescription coverage for rail operations

employees. However, Transit recently entered an agreement with UTU that includes the same employee contributions that Transit seeks here.

Of the comparable transit agencies, only the MBTA and SEPTA require an employee contribution. Looking to State health benefits programs the record reflects that employee contributions are required only for the traditional fee for services plan, but not for the PPO option, and State Troopers are completely reimbursed for their health care costs. Additionally, few municipal police agreements in evidence include employee contributions to health benefits premiums and none for coverage. In sum, few employees throughout the public sector, or in the rail industry, contribute to the cost of health benefits premiums for a preferred provider benefit.

Based upon an average weekly contribution of \$3.00 per employee, under this proposal Transit would save \$24,960 annually. Although these employee contributions to health care premiums are of a limited nature, I do not award employee contributions for health insurance during the term of this Agreement. Transit will benefit from the switch that it has proposed in the form of savings on premiums and the efficiencies it will achieve by covering its employees under a single plan. The actual savings to be achieved will not be known until after the employees exercise their option effective July 1, 2000. This will enable the Employer and the Union to assess the actual cost savings achieved by the

switch which will then form an additional basis for negotiations in the future as to whether, and to what extent, there should be employee contributions.

I now turn to the issue of compensation. Both New Jersey Transit and the PBA recognize that the current compensation system needs repair and both have made innovative and thoughtful proposals.

The PBA's proposal provides a formula which would compensate Transit Police at the average level earned by municipal police in New Jersey. Although the PBA's assertion that municipal police compensation must be considered in determining Transit Police compensation has merit and deserves weight, its proposal cannot be adopted in this proceeding. The proposal would create costing and budgeting difficulties and, more importantly, would delegate salary determinations from the authority of New Jersey Transit and the PBA to a rigid formula creating immediate costs which are overly substantial. Specifically, the PBA's proposal would require annual calculation of the average municipal police salary within New Jersey. Further, given that many police contracts throughout the State remain open on their effective date, considerable delay in determining the average municipal police salary would result. The PBA proposes to resolve that problem with a guaranteed \$1,000 interim increase at the start of each contract year. This proposal would require the adoption of a salary system providing unknown future costs which may not be sensitive to the financial posture of the employer whose financial health is dependent upon fares and

subsidies. The PBA also proposes longevity payments of 1% for each three years of completed service.

New Jersey Transit's modified proposal would provide a two-tiered wage progression. Current employees would reach full pay after 24 months of certified service. Instead of longevity payments, Transit proposes that after 60 months of service, current employees would receive additional 1% increments at 61 months of service, 96 months of service, 121 months of service and after 180 months of service, employees would receive a total of 104% of base pay. A steeper wage progression, with lower starting pay is proposed for new hires. Transit also proposes cents per hour increases ranging from 1% in the first year (1996) through 3.5% in the final year. Although Transit's proposal recognizes years of service and provides increases in each year, its proposal has been shown to be inadequate by the PBA in light of the evidence on substantial employee turnover and poor comparability of existing salaries with that of law enforcement salaries in other jurisdictions.

Given the above observations, I turn to the relevant evidence on the issue of compensation.

Transit has experienced an 18% turnover rate among its police officers in recent years. Several former Transit Police who left the force for higher compensation in municipal police employment testified at the hearing. Their

testimony reflects that in order to insure enhanced continuity and stability of employment, greater compensation than that offered by Transit is warranted. The present compensation system has a reasonable starting salary, it achieves full pay after two years of service, but it has a low comparable maximum salary and no additional longevity. This structure has led new police officers to join the Transit Police force, be trained at employer expense, and leave as seasoned officers for other law enforcement employment. In order to break this pattern and to entice experienced officers to remain at Transit, the creation of a more equitable and meaningful wage progression is necessary. Transit and PBA have both recognized and addressed this issue in their proposals. Creation of more equitable and meaningful wage progression must occur, however, within the context of Transit's budget, as well as within the context of wages and terms and conditions of employment for Transit's other employees and for comparable employees, including municipal, transit and railroad police. This requires that consideration and weight be given to county and municipal police settlements in New Jersey as well as to settlements at other Transit agencies and to other settlements at New Jersey Transit.

Using top step base annual salary for 1996, the PBA has created a comprehensive and thorough index of county and municipal annual wages throughout the State of New Jersey. Based upon that index, the PBA calculates that the average police salary for that year is \$52,018 or almost \$13,000 per year more than Transit police. That index reflects that in order for police officers to

reach the average salary on this particular index, the base salary must be increased by over 33% at the outset of this Agreement. Although this level of wage increase cannot be justified it nonetheless illustrates the market in which Transit employs its police officers. The index demonstrates that the salaries for experienced police officers in New Jersey is substantially higher than is currently paid to Transit's officers. The testimony of several former members of the Transit Police Department who left for higher salaries in municipal police departments reinforces the information included on the index. Although Transit contends that reasons other than salary motivated the resignations, I credit the testimony of these officers that the opportunity to earn more income was the primary reason for leaving.

Both Transit and the PBA emphasize the agreement between the PBA and the Port Authority of New York and New Jersey. For 1996 the top step annual base wage for Port Authority Officers hired before January 1, 1998 is \$57,267.08. The PBA points out that this salary is \$19,000 more than provided at Transit, excluding other benefits. That agreement is a seven year agreement providing increases of 4% effective March 15, 1997; 4% effective May 1, 1998; 4% effective July 15, 1999; 4% effective September 1, 2000; and 5% effective November 15, 2001. Transit calculates that this results in annual increases averaging 3.65% and also points out that work rule changes resulted in significant cost savings to the Port Authority. Transit contends that its proposal on percentage terms compared favorably with that at the Port Authority.



While the PBA places great emphasis on law enforcement salaries in New Jersey generally and the at the Port Authority, Transit emphasizes police agreements at other transit agencies. Transit includes Amtrak and Conrail and private sector passenger and freight railroads traveling through New Jersey. Top step base pay and salary increases for patrolmen at those agencies or railroads is as follows:

Agency	Annual Salary 1996
Amtrak	\$32,463
Conrail	\$38,480
LIRR	\$43,573
MBTA	\$34,000
Metro-North	\$42,973
NJ Transit	\$39,270
PATCO	\$39,020
SEPTA	\$35,547
WMATA	\$51,710
<b>Average</b>	<b>\$39,670</b>

The evidence tends to favor Transit's proposal over that of the PBA. However, the wages provided to New York-New Jersey based police officers such as Metro-North and the LIRR, which I conclude are more relevant for comparison purposes, suggest wage increases beyond that proposed by New Jersey Transit.

Transit also compares its final offer with other settlements at New Jersey Transit. Transit's final offer to the PBA is higher than its settlement with ATU and similar to its settlement with UTU, which it uses as a basis for comparison.

Transit's settlement with ATU provided operators with a \$.26 increase effective January 3, 1998 and a \$.55 increase effective July 4, 1998. All other employees covered by the ATU agreement received a 1.52% increase effective July 5, 1997; a 1.46% increase effective January 3, 1998 and a 3.1% increase effective July 4, 1998.

The UTU agreement covering Rail Passenger Conductors and Trainmen provides a 1% general wage increase, a 2% lump sum effective July 1, 1996 through June 30, 1997; a 3.5% general wage increase effective July 1, 1997, a 3% wage increase effective as a lump sum July 1, 1998, a 3% general wage increase effective July 1, 1999, and a 3.5% general wage increase effective July 1, 2000.

These internal agreements must be given weight, but not to the extent urged by Transit. The agreements do not demonstrate an agency-wide pattern, nor does the evidence reflect a history of pattern settlements which would weigh against a resolution of this compensation issue. They do weigh heavily against the proposal advanced by the PBA, but they do not preclude greater emphasis to be placed upon police agreements at other transit agencies and among county and municipal police agreements within New Jersey.

In determining the level of compensation to be awarded, consideration must be given the lawful authority of the employer and the financial impact on

New Jersey Transit. The PBA points out that the lawful authority of the employer criterion is directed primarily towards county and municipal governments covered by the CAP Law. Transit does not contest this interpretation, but points out the financial impact of an award in excess of its proposal. Therefore, I focus on the financial impact on Transit, its passengers and taxpayers. The PBA asserts that the financial impact of this proposal on taxpayers is infinitesimal. The PBA points out that State subsidies are down and there has not been a fare increase in nine years. New Jersey Transit cautions that an award in excess of its proposal could result in additional staff reductions. Specifically, Transit notes that approximately 100 non-police positions have been eliminated through attrition and that its FY 2000 budget has been reduced to \$45.2 million. Transit also points to a reduction in State subsidies. The overall financial health of Transit is, however, quite positive as reflected in the financial data in the 1998 annual report as well as the testimony on the gains achieved in Transit's investment funds. Review of all of the credible evidence on financial and budgetary issues reflects that Transit has the ability to absorb the costs of the award without adverse impact on its budget, the taxpayers or passengers. Future budgets will also benefit from the lower costs for new officers as well as the cost-savings resulting from the change in the health insurance plan.

Additional considerations are also relevant. Some tend to favor the PBA, while others favor Transit. A comparison of benefits between unit employees with law enforcement employees in other jurisdictions reflect that Transit Police

officers do not compare favorably. They work 2,080 hours annually, a full 134 hours less than Port Authority police. An examination of work schedules among the many contracts in other jurisdictions which are in evidence, reflect that a majority of the work schedules yield annual hours less than that worked at Transit, although the salaries are substantially higher. Transit police receive no longevity, while the substantial majority of contracts in evidence reflect longevity payments, many of which are at a level of 8% or above. The same analysis applies for benefits such as shift differential and meal allowances.

The data with respect to private sector comparability tends to favor the proposal of Transit over that of the PBA. A report of private sector wage changes, compiled by the New Jersey Department of Labor and issued by PERC pursuant to its statutory requirement, reflects increases in private sector employment in New Jersey of 4.3% in 1996 compared to 1995 and 4.76% in 1997 compared to 1996. These increases, however, are in excess of the proposal offered by Transit and are more consistent with the terms of this Award.

The cost of living criterion also tends to support Transit's proposal over the PBA's. Although this award exceeds recent increases in the consumer price index (2.9% in 1996; 2.3% in 1997; 1.5% in 1998), the PBA has established that wages at New Jersey Transit require an adjustment in excess of these cost of living figures. The continuity and stability of employment for Transit police officers has been shown to need improvement and wage increases in excess of

the cost of living are necessary to attract and retain a quality police force. Recognizing this need, both parties have made proposals exceeding recent increases in the CPI.

Based upon all of the above considerations and analyses, I render the following award which I conclude represents a reasonable determination of the wage issue in dispute. As previously indicated, each party recognizes the need for a more equitable and meaningful wage progression. The wage structure proposed by Transit, as modified below, accomplishes this goal in a fashion more consistent with its financial posture and other relevant criteria, than that proposed by the PBA. The PBA's proposal requires immediate substantial increases and creates a formula for future increases which cannot be calculated in advance and is inconsistent with Transit's need for long-term financial planning. The wage structure proposal by Transit, however, falls short of its stated goals and requires modification in the amounts awarded as well as in its specific structure.

There is no need to address a modification in salary schedule prior to January 1, 2000. The new salary schedule shall be effective January 1, 2000 and will apply to all police officers hired on or after that date, as well as to current officers who reach or have reached their 61<sup>st</sup> month of service. That salary schedule will require that a police officer receive 100% of base pay at the beginning of the 49<sup>th</sup> month of employment through the 60<sup>th</sup> month compared to the 25<sup>th</sup> month of employment in the existing agreement. The salary schedule

will also reduce the training level to 65% of base pay with a progression of an additional 10% of base pay after completion of the training period, an additional 10% for the first and second years of employment, and an additional 5% annually through the time that 100% is achieved at the beginning of the 49<sup>th</sup> month. This will achieve Transit's objective of providing for salary cost offsets for new hires. Police officers employed prior to January 1, 2000 shall remain on the existing salary schedule set forth in Article IX, Section 2 until 100% of base pay is achieved at the beginning of the 25<sup>th</sup> month of service. After January 1, 2000, a wage progression shall be adopted which will be consistent with the new salary schedule with a wage progression of 101% of base pay commencing in the 61<sup>st</sup> month of employment through the 72<sup>nd</sup> month of employment, with an additional 1% of base pay added annually commencing in the 73<sup>rd</sup> month of employment through the 109<sup>th</sup> month of employment. Thus, the maximum level of this wage progression would be 105% of base pay between 109<sup>th</sup> month and 120<sup>th</sup> month and thereafter. Current employees who achieve 100% of base pay, but have not reached the 61<sup>st</sup> month of employment, shall continue to receive 100% of base pay until their 61<sup>st</sup> month of employment. Employees hired on or after January 1, 2000 who have completed training to certified police officer consistent with NJ Transit requirements prior to beginning employment with NJ Transit will be paid consistent with the 0-12 month rate at the time of hire. This wage progression shall be included in the new agreement as a new section to Article IX.

<u>Months of Service as Police Officers at NJ Transit</u>	<u>% of Base Pay</u>
Training	65%
0-12	75%
13-24	85%
25-36	90%
36-48	95%
49-60	100%
61-72	101%
73-84	102%
85-96	103%
97-108	104%
109-120	105%

The above wage progression balances Transit's desire for costs savings for new hires while also rewarding longer term employees which should promote the continuity and stability of employment for Transit's police officers. I do not award a permanent two-tier wage system as proposed by Transit. The rationale for a permanent two tier wage system is absent here; namely, that the wage level for existing employees are at such a level that new employees should be precluded from receiving that level in the future.

I now turn to increases to the base hourly rate. When all of the relevant criteria are applied to the evidence and arguments presented, a reasonable determination of this issue compels an award of 3% effective July 1, 1996, 3.25% effective July 1, 1997, 3.5% effective July 1, 1998, 3.75% effective July 1, 1999 and 4% effective July 1, 2000. These increases averaging 3.5% annually shall be to base salary and form the basis to compute the modified wage progression

set forth above and effective on January 1, 2000. The wage award is set forth as follows:

Section 1(a): Effective July 1, 1996, the base rate of pay for Police Officers covered by this Agreement shall be:

	<u>Hourly Rate</u>	<u>Percent</u>	<u>Increase Per Hour Over 1995</u>
Patrolman	\$19.45	(3.0%)	.57
Detective	\$20.61		.60

Section 1(b): Effective July 1, 1997, the base rate of pay for Police Officers covered by this Agreement shall be:

	<u>Hourly Rate</u>	<u>Percent</u>	<u>Increase Per Hour Over 1996</u>
Patrolman	\$20.08	(3.25%)	.63
Detective	\$21.28		.67

Section 1(c): Effective July 1, 1998, the base rate of pay for Police Officers covered by this Agreement shall be:

	<u>Hourly Rate</u>	<u>Percent</u>	<u>Increase Per Hour Over 1997</u>
Patrolman	\$20.78	(3.5%)	.70
Detective	\$22.03		.75

Section 1(d): Effective July 1, 1999, the base rate of pay for Police Officers covered by this Agreement shall be:

		<u>Hourly Rate</u>	<u>Percent</u>	<u>Increase Per Hour Over 1998</u>
Patrolman	\$	\$21.56	(3.75%)	.78
Detective	\$	22.86		.83



Section 1(e): Effective July 1, 2000, the base rate of pay for Police Officers covered by this Agreement shall be:

	<u>Hourly Rate</u>	<u>Percent</u>	<u>Increase Per Hour Over 1999</u>
Patrolman	\$22.42	(4.0%)	.86
Detective	\$23.78		.92

I respectfully enter the following award:

**AWARD**

There shall be a five-year agreement effective July 1, 1996 through June 30, 2001. All proposals by the Borough and the PBA not awarded herein are denied and dismissed. All provisions of the existing agreement shall be carried forward except for those which are modified by the terms of this Award.

**Article XXXV - Agency Shop**

NJ Transit's proposal is denied with the exception of that portion which clearly specifies the existing statutory requirements and includes such specification in the agreement. I award the following language.

The Association shall establish and maintain at all times a demand and return system as provided by N.J.S.A. 34:13A-5.5 and 34:13A-5.6 (L.1979, C.477.2 and 3).

**Article III - Standing Committee**

Article III is amended to add "Work Schedule" to the items which may be considered. This issue shall be considered by the Committee upon the demand of either party.

**Article IV - Promotions, Section 1(b)**

Section 1(b) is modified as follows:

In all cases whether an officer is qualified for promotion shall rest with the Chief of Police after receiving a recommended determination by the State Chiefs of Police Association or independent body, except for those employees that have been disqualified by the Chief of Police of NJ Transit as set forth in Section 5." In the event that the Chief of Police does not accept such recommended determination, the Chief shall issue a written statement to the candidate setting forth the specific factual basis and reasons for his/her determination that the candidate is not qualified.

**Article IV - Promotions, Section 3**

Section 3 is amended as follows:

Provided that he or she received a minimum score of 60% on the written examination, the highest standing police officer appearing on the promotion list for such rank shall be notified in writing of such promotion and will, within five (5) calendar days, notify the Chief of Police, in writing, of his desire to accept or decline the promotion.

If the highest standing officer on the promotion list declines the promotion, his name will be removed from the promotion list unless the position is located more than 30 highway miles from the Officer's present headquarters and, provided that he or she received a minimum score of 60% on the written examination, the officer with the next highest standing on the promotion list will be offered the promotion.

### **Article V - Probationary Period**

Article V, Probationary Period, is amended as follows:

A Police Officer hired by NJ Transit under this Agreement shall be subject to a probationary period of one (1) calendar year from the date of certification or from date of hire (if certified at time of hire) during which time he/she may be discharged with or without cause and for any reason without recourse to the grievance/ arbitration provisions of this Agreement. The probationary period may be extended by mutual agreement between the PBA and NJ Transit.

### **Article XII - Discrimination or Coercion**

Article XII, Discrimination or Coercion, is amended as follows:

There shall be no discrimination, interference or coercion by NJ Transit or any of its agents against the employees represented by the PBA because of membership or activity in the PBA. The PBA or any of its agents shall not intimidate or coerce employees into membership. Neither the Employer nor the PBA shall discriminate against any employee because of race, creed, color, age, sex, marital status, sexual orientation, perceived sexual orientation, disability, perceived disability, affectation, political affiliation, or national origin.

### **Article XLII - Civilians on the Radio**

Effective immediately, anytime it is deemed appropriate to have non-bargaining unit personnel assigned to the radio desk, NJ Transit may make such assignment provided that there are at least two (2) sworn officers from this bargaining unit assigned to the radio desk position.

### **60-Day Notice of Changes**

The following new provision is added:

Transit will provide the PBA with 60-day written notice of changes to its rules and regulations whenever such notice is possible. Such

notice will not be possible when the Employer, in its sole discretion, determines that the operational needs of the department require immediate changes to rules and regulations. Such circumstances include, but are not limited to changes in the law, or changes in response to emergent circumstances.

### **Off Duty Work**

Police Officers may work in off-duty positions in non-security jobs so long as such positions do not violate a specific law or NJ Transit rule or regulation. Denials of such requests shall be subject to the grievance procedure.

### **Health Insurance Coverage**

The Blue Select Plan, including dental and prescription benefits and HMO options, as proposed by New Jersey Transit, will replace the traditional indemnity plan. Such replacement shall not occur prior to July 1, 2000 in order to afford a full opportunity for review of options by the affected employees. Transit's proposal for employee contributions is denied.

### **Wages**

#### **Increases to Base Rate of Pay for Police Officers**

All increases set forth below shall be retroactive to the effective dates set forth herein.

Section 1(a): Effective July 1, 1996, the base rate of pay for Police Officers covered by this Agreement shall be:

	<u>Hourly Rate</u>	<u>Percent</u>	<u>Increase Per Hour Over 1995</u>
Patrolman	\$19.45	(3.0%)	.57
Detective	\$20.61		.60

Section 1(b): Effective July 1, 1997, the base rate of pay for Police Officers covered by this Agreement shall be:

	<u>Hourly Rate</u>	<u>Percent</u>	<u>Increase Per Hour Over 1996</u>
Patrolman	\$20.08	(3.25%)	.63
Detective	\$21.28		.67

Section 1(c): Effective July 1, 1998, the base rate of pay for Police Officers covered by this Agreement shall be:

	<u>Hourly Rate</u>	<u>Percent</u>	<u>Increase Per Hour Over 1997</u>
Patrolman	\$20.78	(3.5%)	.70
Detective	\$22.03		.75

Section 1(d): Effective July 1, 1999, the base rate of pay for Police Officers covered by this Agreement shall be:

		<u>Hourly Rate</u>	<u>Percent</u>	<u>Increase Per Hour Over 1998</u>
Patrolman	\$	\$21.56	(3.75%)	.78
Detective	\$	22.86		.83

Section 1(e): Effective July 1, 2000, the base rate of pay for Police Officers covered by this Agreement shall be:

		<u>Hourly Rate</u>	<u>Percent</u>	<u>Increase Per Hour Over 1999</u>
Patrolman		\$22.42	(4.0%)	.86
Detective		\$23.78		.92

Wage Progression

Effective January 1, 2000, the following wage progression shall be adopted and implemented. Police officers employed on the date of this Award shall remain on the existing wage progression set forth in Article IX, Section 2, unless they have already achieved their 61<sup>st</sup> month of employment or until they reach their 61<sup>st</sup> month of employment.

<u>Months of Service as Police Officers at NJ Transit</u>	<u>% of Base Pay</u>
Training	65%
0-12	75%
13-24	85%
25-36	90%
36-48	95%
49-60	100%
61-72	101%
73-84	102%
85-96	103%
97-108	104%
109-120	105%


Dated: December 21, 1999  
Sea Girt, New Jersey



James W. Mastriani

State of New Jersey }  
County of Monmouth }ss:

On this 21st day of December, 1999, before me personally came and appeared James W. Mastriani 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.



GRETCHEN L. BOONE  
NOTARY PUBLIC OF NEW JERSEY  
Commission Expires 8/13/2003