

PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Arbitration *

Between *

Borough of Cliffside Park *

and *

PBA Local No. 96 *

98
Docket No. IA-98-91
Jeffrey B. Tener
Interest Arbitrator

Appearances

For the Borough:
Christos J. Diktas, Esq.

For PBA Local No. 96:
Keith J. Roberts, Esq.

OPINION AND AWARD

Background and Procedural History

PBA Local No. 96 ("PBA") filed a Petition to Initiate Compulsory Interest Arbitration with the Public Employment Relations Commission ("PERC") on April 22, 1998. I was appointed by lot as the interest arbitrator in this matter on July 30, 1998 by Timothy A. Hundley, PERC's Director of Arbitration. I met informally with the parties on September 30, 1998 in an effort to bring about a voluntary settlement of the dispute. This effort was not successful.

A hearing was held on January 7 and February 18, 1999 in the municipal building in Cliffside Park. Following receipt of the transcripts, both parties filed post-hearing briefs and reply briefs. These were received by May 19, 1999, thereby marking the close of the hearing.

This proceeding is governed by the Police and Fire Public Interest Arbitration Reform Act, P.L. 1995, c. 425, which was effective January 10, 1996. That Act, at N.J.S.A. 34:13A-16f(5), calls for the arbitrator to render the opinion and award within 120 days of selection or assignment. The parties, however, agreed to extend the time for the issuance of a decision to July 5, 1999, as set forth in separate letters to Mr. Hundley.

The parties did not agree upon an alternative terminal procedure. Therefore, the terminal procedure in this case is conventional arbitration. The arbitrator is required by N.J.S.A. 34:13A-16d(2) to "separately determine whether the total net annual economic changes for each year of the agreement are reasonable under the eight statutory criteria in subsection g of this section."

The parties' prior agreement covered the term January 1, 1996 through December 31, 1997. The bargaining unit consisted of 42 officers in 1998, of whom 25 were patrolmen, twelve were sergeants, three were lieutenants and two were captains. There was one less sergeant in 1999. There also is a chief who is not in the unit.

Statutory Criteria

The statute requires the arbitrator to:

decide the dispute based on a reasonable determination of the issues, giving due weight to those factors listed below that are judged relevant for the resolution of the specific dispute. In the award, the arbitrator or panel of arbitrators shall indicate which of the factors are deemed relevant, satisfactorily explain why the others are not relevant, and provide an analysis of the evidence on each relevant factor:

(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; provided, however, that 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 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 P.L.1976, c.68 (C.40A:4-45.1 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 of 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 a 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. (N.J.S.A. 34:13A-16(g))

Final Offers

Borough of Cliffside Park The final offer of the Borough has the following components:

1. Three-year agreement covering the term January 1, 1998 through December 31, 2000.
2. Salary increase:
 - a. 1998 - 0%
 - b. 1999 - 0%
 - c. 2000 - 0%
3. Addition of two steps to the salary guide.
4. Either the elimination of "letter days" or the addition of an acceptable clarification to the past practice regarding "letter days."
5. Draft and include in the new agreement a provision regarding the rights of officers in the event they are arrested by any municipal, county, state or federal entity.

PBA Local No. 96 The final offer of the PBA is as follows:

1. Three-year agreement covering the term January 1, 1998 through December 31, 2000.¹
2. Salary increase:
 - a. 1998 - 4.0%
 - b. 1999 - 4.5%
 - c. 2000 - 4.5%
3. The addition of one paid holiday.
4. An increase of \$200.00 in the clothing allowance.

Argument of the PBA

The PBA cites the above-listed statutory criteria as the factors on which a reasonable determination of the issues in dispute are to be decided by the arbitrator. It notes that, as specified by the New Jersey Supreme Court in Hillsdale PBA Local 207 v. Borough of Hillsdale, 137 N.J. 71 (1994), the arbitrator is required to consider all eight factors, to identify the relevant facts, analyze the evidence, and explain why any factor is not relevant.

The arbitrator is to fashion an award from the parties' final offers in this conventional proceeding based on the evidence and the statutory criteria. According to the PBA, there are two basic themes in the eight factors. The first is the interest and welfare of the public. The second is comparability, as discussed by the Supreme Court in Hillsdale. The evidence must be assessed and the relevant factors, which are sometimes competing, must be weighed and balanced.

The PBA points out that Cliffside Park is located in southeast Bergen County near the border with Hudson County. It is in close proximity to the municipalities of

¹ Initially, the PBA proposed a four-year contract but it agreed to a three-year agreement as proposed by the Borough.

Fairview, Fort Lee, Edgewater and Ridgefield. Cliffside Park is a densely populated residential community with approximately 21,000 residents residing in single and multiple family dwellings. It is almost fully developed with little potential for further development. The median family income in 1989 was \$48,040 in 8,779 households. There is a crime rate of 18.8 per thousand and a violent crime rate of 1.3 per thousand.

Cliffside Park has a public library and a public school system with over 2,300 students. The cost per pupil is \$7,400. Debt service is \$29.19 per capita.

The PBA asserts that the wage increase which it has proposed will serve the interests and welfare of the public, who enjoy a high level of service from this Police Department, and that the wage increase will not burden the community.

To demonstrate the extent of activity in the Police Department, the PBA cited the 1998 Annual Report of Chief Joseph Dickman. The Chief reported that the Department had begun to advance the community policing philosophy in Cliffside Park. A new Community Policing Bureau has been added to the existing Juvenile, Detective and Traffic Bureaus. He noted that there had been an increase in workload across-the-board including calls, arrests and other calls for service but stated that they had continued to provide quality service quickly, effectively and within the budget. There was a total of 16,058 cases which were assigned case numbers in 1998. There were 3,965 calls to 911, 523 adult arrests and 113 juvenile arrests. The number of DWI arrests increased from 48 in 1997 to 79 in 1998 and several officers were awarded individual commendations by the Bergen County Department of Highway Safety. There were 82 domestic violence cases, 649 motor vehicle accidents, 43 burglaries and 35 stolen vehicles. The Department issued over 20,000 motor vehicle summonses including over 17,000 involving meters, sweepers, etc. The Juvenile Bureau continued

to deliver services under the D.A.R.E. program for the ninth year to the students in the four public elementary schools as well as one parochial school.

The PBA asserts that the Department remains an essential component in serving the needs of the community by fighting crime and maintaining a relatively low level of reported incidents in an area which is densely populated and has a relatively high crime rate. The members of the Department are extremely busy and active handling a wide array of problems and issues. Sergeant Frank Biasco, who generally is assigned as a desk sergeant, testified that typically 30 to 40 calls come in each shift from 8:00 a.m. to 4:00 p.m. and again from 4:00 p.m. to midnight. There are many speeders and traffic accidents, especially as people rush home at the end of the day. The calls cover a wide range and include complaints involving loud music and barking dogs as well as more serious domestic violence and juvenile problems.

The PBA also contends that the Borough has the lawful authority to pay the proposed wage increase and that this can be done without significant financial impact on the community.

The PBA provided the expert testimony of Rafael Caprio, Ph.D. Dr. Caprio was accepted as an expert witness and his credentials support this designation. He has had extensive experience in the broad area of public finance, he has headed study commissions dealing with the impact of property revaluations in several cities, he has appeared at PERC training seminars for interest arbitrators, and he has testified in numerous interest arbitration proceedings over the last six years.

Dr. Caprio prepared a comprehensive study based on numerous financial and other records including audits, budgets and annual financial statements in Cliffside Park for the last four years and the 1998 municipal budgets in Fairview, Ridgefield, Fort Lee, Palisades Park, Little Ferry and Ridgefield Park. This enabled him to demonstrate the

Borough's ability to pay and to compare Cliffside Park with other neighboring municipalities.

As of January 1, 1998, the Borough had a surplus of \$4,582,721. This represented an astonishing 25.3% of its budget. The Borough had almost twice as large a surplus as Ridgefield (\$2,332,914) which had the next largest surplus in these seven communities. Cliffside Park was able to fund 17.7% (\$3,200,000 of a budget of \$18,105,634) of its budget from its surplus because that surplus was so large. Palisades Park, the municipality which used the second largest percentage of surplus to fund its budget, was able to fund only 8.5% or less than half the amount that Cliffside Park could fund. He also noted that the surplus had increased even though the Borough lost almost \$4 million in State aid between 1993 and 1997.²

When the entire County with its 70 municipalities is included in the analysis, the 17.7% of the anticipated revenue which is provided by surplus in Cliffside Park is the sixth largest percentage. Thus, the other 64 municipalities in Bergen County derive a smaller portion of their revenue from surplus than does Cliffside Park. This use of surplus as a revenue source means that taxes do not have to be generated to cover that amount of revenue.

Dr. Caprio noted that the ratable base in Cliffside Park was over \$1.27 billion in 1998 and this was down only two percent from 1995 when it was \$1.29 billion. Based on the equalized value of ratables, the decline was an even smaller .6%. This represented an \$8.6 million drop when the equalized value of ratables was over \$1.31 billion. Dr. Caprio pointed out that this was not a massive decline and that 25 or 30 of the 70 other municipalities experienced declines in that period in Bergen County. (T1 at

² Dr. Caprio provided an exhibit which listed 26 municipalities which lost State Aid to Densely Populated Municipalities between 1993 and 1997 when the aid ended altogether.

25 and 26).³ This is important because the property tax is the municipality's largest source of revenue and that revenue comes from the ratables. According to the PBA, the data demonstrate that Cliffside Park is a stable community with no real concern about an eroding tax base.

Dr. Caprio also looked at the tax rate in Cliffside Park and throughout the County. Starting with Cliffside Park, the equalized rate in 1998 was \$2.293, up from \$1.690 in 1993. When that rate is adjusted only for increases in the Consumer Price Index ("CPI-U") and the fact that the Borough lost almost \$4 million in State aid over that period, Dr. Caprio concluded that the equalized rate had increased only a very modest \$.015 more per year than would have been expected, considering the increase in the CPI and the loss of State aid. Further, he concluded that the Borough had weathered the loss of State aid, which was phased out over a four year period with the last payment being received in 1996, "exceptionally well." (T1 at 31). The loss of this aid was anticipated and taken into account as the budgets were prepared and, he said, it is no longer a factor in the community's financial well being. (T1 at 31 and 32).

Dr. Caprio also compared the equalized general tax rates in 1998 throughout Bergen County. Cliffside Park's rate of \$2.293 ranked 31st in the County. This was slightly below the average of \$2.297 and the median of \$2.395. The rate in Cliffside Park is lower than it is in 38 other municipalities in the County. According to Dr. Caprio, this shows that Cliffside Park is not "a heavily taxed community relative to Bergen County sister municipalities." (T1 at 33). The PBA contends that the evidence is that the Borough is in excellent financial condition to accept an award as proposed by the PBA and that this is fully justified in view of the exceptionally high level of services which the citizens receive from the Police Department.

³ T1 refers to the transcript of January 7, 1999 and T2 refers to the February 18, 1999 transcript.

Dr. Caprio pointed out that if the tax rate in the Borough were equal to the median rate, the additional revenue generated would be \$1.2 million. (T1 at 34).

The tax levy increased from \$24.9 million in 1993 to \$28.9 million in 1997, an increase of \$4 million which was almost exactly the same as the loss of State aid. The amounts collected increased from \$23.9 million in 1993 to \$28.3 million in 1997. During that time, there was an increase in the tax collection rate. The figure in 1993 was 95.85% and it was up to 97.78% in 1997 and projected to be 97.88% in 1998. This is a very high rate and the increase in that rate, even with the loss of State aid, is said to show that the taxpayers are not having any problem paying for the governmental services which they are receiving. (T1 at 36).

Dr. Caprio considered sources of funds which would be available to fund the proposed 1998 increase. He noted that actual collections of property taxes significantly exceeded budgeted collections by \$1.153 million in 1994 and up to \$1.741 in 1997. He conservatively projected that the figure in 1998 would be \$1.6 million. Delinquent taxes were projected to provide an additional \$.355 million. The actual collection of delinquent taxes has consistently and significantly exceeded the budgeted collection amounts. The budget reflects a planned surplus on December 31, 1998 of \$1.383 million and he projected that the actual surplus would be \$4.3 million, leaving an additional \$3.217 million in surplus. Dr. Caprio projected, based on the experience in the previous five years, that Cliffside Park would have at least \$.325 million in miscellaneous revenue not anticipated and also that there would be \$.600 million from unexpended balances of appropriation reserves. Adding these figures leads to a projected \$4.258 million in additional resources which will be available in 1998. (See Ex. P-1, #17).

Dr. Caprio noted that even though the tax burden in Cliffside Park had increased, due in large measure to the loss of State aid, the total tax delinquency has decreased.

Tax delinquencies constituted 4.1% of the tax levy in 1993 and they had declined to 2.3% in 1998. In dollars, the decrease was from \$1.023 million to \$.0666 million. This represents a 35% reduction even though the Borough lost almost \$4 million in State aid during this period. The loss of the State density aid has not significantly impacted on the Borough's financial health or its ability to regenerate surplus.

One of Cliffside Park's greatest strengths is its very healthy surplus or fund balance. The fund balance increased by \$.271 million or 6.3% between 1993 and 1998, again in spite of the loss of State aid. The figure was \$4.312 million in 1993 and \$4.583 million in 1998. As of the beginning of 1999, the figure was almost \$5 million. (T2 at 138). The Borough has been able to utilize an average of 63% of its surplus as a revenue in the next year's budget and still regenerate additional surplus for use the following year.

To demonstrate the extent to which this factor points to the health of the finances in Cliffside Park, Dr. Caprio ranked the municipalities in Bergen County on the basis of the percent that anticipated revenue from surplus would contribute to the budget. The figure of 17.67% in Cliffside Park ranked sixth in the County which is in the top 10%. The average figure in the County is only 8.32%, less than half the rate in Cliffside Park. In dollars, the \$3.2 million from this source which Cliffside Park used in 1998 was the third highest amount in the entire County.

Dr. Caprio also compared Cliffside Park and six neighboring communities - Fairview, Ridgefield, Fort Lee, Palisades Park, Little Ferry and Ridgefield Park - on their use of surplus as a revenue source. The 17.7% figure in Cliffside Park was over twice as high as the next highest municipality, Palisades Park. Additionally, the total surplus in Cliffside Park in 1998 was 25.3% and the next highest figure was 17.8% in Ridgefield. In Fairview, the figure was only 2.5% and it was 3.3% in Ridgefield Park and 5% in Fort

Lee. Thus, again, it can be seen that the surplus in Cliffside Park is very healthy by any comparative measure and that Cliffside Park is very healthy financially.

Dr. Caprio calculated the impact on an average taxpayer of the cost of a three-year contract which contained annual salary increases of 4%. If these costs all had to be paid in only one year, he estimated that the cost would be \$100.15 for the year or \$8.35 per month. Based on the much more realistic assumption that the increases would be paid over three years, the cost would be \$1.72 a month in the first year, \$3.44 per month in the second year and \$5.16 per month in the third year. This assumes that not a single penny from the Borough's very large surplus was used to fund this increase.

Dr. Caprio expressed the opinion that Cliffside Park has the ability to meet a settlement comparable to those reached in other municipalities without any negative impact financially or on the overall well-being of the community. (T1 at 40). Based on this evidence, the PBA asserts that it has demonstrated that there is more than enough surplus revenue for the Borough to fund the requested 4% increase without any negative impact on the taxpayers.

In short, Dr. Caprio concluded that the Borough enjoys a healthy financial situation (T1 at 20) and that the impact of the contract proposed by the PBA would be "minimal, negligible with no deleterious effect on the community whatsoever." (T1 at 22) It is his opinion that the Borough can pay for an award which is comparable to those currently being issued - he placed the figure at between 3.75% and 4% - under the Interest Arbitration Reform Act. (T1 at 20).

The PBA also cited the testimony of both Joseph Kelly and Frank Berardo who testified for the Borough. Mr. Kelly is both a CPA and an RMA and a Senior Manager at Lerch, Vinci and Higgins. He serves as the auditor in a number of municipalities including Cliffside Park. Mr. Berardo is Cliffside Park's Chief Financial Officer. They

both agreed that if the Borough paid the full amount proposed by the PBA in 1998 from surplus funds that the impact would be negligible. (T2 at 67 and 146). Mr. Berardo agreed that the impact of cutting a check for \$121,000, which was the projected cost of the PBA proposal that year, would be "negligible." (T2 at 146).

The PBA asserts that the amount it has asked the arbitrator to award is both reasonable and comparable to the amounts being awarded to similar PBA locals in Bergen County. The amount requested is within the proper discretion of the arbitrator to award and would be consistent with comparable wage settlements. The Borough can pay those increases. There are excess funds and property tax collections have exceeded anticipated amounts. The PBA asks that its proposal be granted.

Turning briefly to the lawful authority factor, Dr. Caprio testified that the Cap Law simply was not an issue. He said that the Borough had not budgeted up to the 2.5% index figure, let alone the 5% figure which it could have gone to. Furthermore, the Borough has a Cap bank of about \$500,000 for 1996 and another \$300,000 for 1997. (T1 at 72). Thus, the Cap Law does not limit the Borough's ability to fund the increase proposed by the PBA.

The PBA next compared the Borough's police officers with other employees. Starting with an analysis of wages and looking at other police officers in southeast Bergen County, the PBA asserts that the Borough's officers are the lowest paid. It compared these officers with those in eleven other municipalities in that part of the County: Bergenfield, Carlstadt, Cliffside Park, Fairview, Fort Lee, Leonia, Little Ferry, Moonachie, Palisades Park, Ridgefield and Ridgefield Park.

The salaries of officers in their second year were compared, thereby removing any variations due to special academy or training or probationary rates. The PBA used either 1999 rates or the latest negotiated rate. The rate in Cliffside Park is \$31,981 and

this is below every other rate except the \$30,227 rate in Carlstadt. The average figure was put at \$39,269.25. Thus, Cliffside Park is said to be far below the average for a second year officer.⁴

The PBA also looked at the earnings of an officer over 25 years of service and it included longevity in the calculation. The average salary over 25 years in Cliffside Park was calculated to be \$53,237 and the average longevity over that period was calculated to be \$4,565 for a total of \$57,803. The next lowest figure was in excess of \$63,000 and the average is said to be \$68,176.50, thus showing how far behind is Cliffside Park. Not only does Cliffside Park start much lower than the average but it takes longer - eight years - to get the top of a lower maximum rate which is only \$56,442. Salaries and earnings in Cliffside Park are indeed very low.

The PBA also argues that, in addition to the requested salary increase, there should be one additional paid holiday. The PBA notes that neighboring Fairview, Ridgefield and Edgewater receive thirteen paid holidays. The officers in Fairview and Edgewater work the same schedule as do those in Cliffside Park.⁵ The PBA asserts that both the other Borough employees as well as those of the Cliffside Park Board of Education also receive thirteen paid holidays.⁶

The PBA recognizes that work schedules must be considered but contends that even with the extended schedule worked by the officers in Fort Lee and Ridgefield compared to Cliffside Park, the officers in Cliffside Park are still underpaid by a

⁴ A major problem with these and the other comparative salary figures which are given in the next several paragraphs is that the PBA did not use the same year for all municipalities. Thus, for example, the figure for Cliffside Park is the 1997 figure and the figure for Carlstadt is the 1999 figure. I have not relied upon Ex. PBA-17 in deciding this case.

⁵ The contracts offered by the PBA do not appear to reflect the work schedules and there was no testimony on the work schedules.

⁶ No evidence was produced regarding the holidays for Borough employees or for those of the Board of Education. The contract between the Board and the Cliffside Park Education Association does not seem to indicate the number of holidays.

considerable sum. A second year officer in Fort Lee earns \$39,000 compared to \$31,981 in Cliffside Park. That officer reaches the top step after only five years, compared to eight in Cliffside Park, and yet the top salary is \$67,833 compared to \$56,442. Similarly, in Ridgefield, a second year patrolman earns \$35,039, reaches a top step of \$63,100 in the eighth year and gets thirteen holidays. Fairview is said to be the most compelling example. A second year officer receives \$42,491 and a top step, after four years, of \$62,866. Those officers receive thirteen paid holidays.⁷

The PBA argues that the low compensation in Cliffside Park is hard to understand. Cliffside Park is extremely densely populated and has twice the number of households as does Fairview. Cliffside Park also is much larger and has a much stronger financial position. The outstanding debt in Cliffside Park is only one-third of the debt in Fairview and Fairview ranks 66th in the County in equalized tax rates. This contrasts with the ranking of Cliffside Park which is 31st. Further, 17.7% of Cliffside Park's budget revenue comes from surplus whereas the figure in Fairview is only .87%.

None of the neighboring communities is said to have the strength that Cliffside Park has in fund balance and the ability to regenerate surplus, yet Cliffside Park remains among the lowest paid departments in southeast Bergen County.

The PBA also is seeking a \$200 increase in the clothing allowance. Officers in Fairview receive \$500. Those in Ridgefield and Fort Lee receive \$600 and those in Edgewater receive \$800. Those in Cliffside Park receive \$550. The justification for the proposal is said to be the cost of purchasing required articles of clothing and of cleaning the uniforms. Officer Ellis Haroldson testified about these costs. He identified items which cost \$2,959 which an officer is required to purchase when he joins the force.

Officers also have to replace certain items regularly. Pants cost about \$80 and shirts cost about \$36. General accessories including tie, hat, gloves, bands, etc. must

⁷ Again, the years being compared for these municipalities are not the same.

be purchased along with a nylon belt, shoes and boots, and a uniform jacket which costs \$250. Additionally, the uniforms must be dry cleaned and this costs \$10 to \$20 per week.

When these costs are considered, the PBA contends that its proposal for an increase of \$200 in the clothing allowance is justified and, indeed, reasonable and necessary. The current allowance is simply not adequate.

The PBA also looked at the wage increase it has proposed in relation to private sector and public sector increases in general and contends that its proposal is reasonable. It cited the wage report produced by the New Jersey Department of Labor for PERC. This is said to be critical evidence which an arbitrator must consider. The report provides average wage changes by county. The change between 1996 and 1997 in Bergen County was 5%. The wage change for government services in general, both State of New Jersey and local, was reported to be 3%. The PBA asserts that its proposal for increases of 4%, 4.5% and 4.5% is consistent with these increases and reasonable. As Dr. Caprio testified, the average increase for police officers has been about 4% and that figure is precisely between the 5% private sector figure and the 3% figure for government employees.

Finally, the PBA contends that its final offer is consistent with wage increases awarded and reached voluntarily in Bergen County. It cites the award of Arbitrator Zausner in Fort Lee in which she awarded 4% for 1996, 4% for 1997 and 4% for 1998; the award of Arbitrator Kurtzman for River Edge for 4% in 1996, 4% in 1997 and 4% in 1998; the award of Arbitrator Weiss in Garfield for 3.75% in 1997, 3.75% in 1998 and 4% in 1999; the award of Arbitrator Weiss in Fairview of 3.5% in 1997, 3.5% in 1998 and 3.5% in 1999; and the award of Arbitrator Hammer in Paramus of 3.6% in 1997, 3.8% in 1998 and 4% in 1999. It also cited voluntary settlements in Bergenfield of 3.5%

on July 1, 1997, 2% on July 1, 1998, 2% on January 1, 1999 and 4% on July 1, 1999 as well as Wallington of 3.5% in 1998, 3.5% in 1999 and 3.5% in 2000.

In summary, the PBA cites a number of factors as supporting its final offer as reasonable and consistent with the statutory criteria. It points to the healthy financial condition of the Borough, the large amount of surplus funds available, the high level of services provided by the officers, the comparative financial strength of the Borough in relation to neighboring communities, the relatively low taxes that the residents will continue to pay, the negligible impact of the award in 1998, the fact that the increase proposed is comparable to that received by similarly situated Bergen County police officers, the importance of the morale of the Department to the welfare of the community and the absence of evidence of a negative impact which would result from the award.

The PBA asks that wage increases of 4% in 1998, 4.5% in 1999 and 4.5% in 2000 be awarded along with an increase of one paid holiday and an increase of \$200 in the clothing allowance.

Argument of the Borough

The Borough cited the changes in interest arbitration when, in the aftermath of the New Jersey Supreme Court's decision in Hillsdale, the statute was revised by the Police and Fire Public Interest Arbitration Reform Act. Under the Reform Act, it is explicitly required that the arbitrator consider each of the eight statutory factors identified by the legislature in determining whether an award is reasonable.

As viewed by the Borough, prior to Hillsdale and the Reform Act, the single factor of economic comparability had been the supreme determinant in deciding interest arbitration cases. That has been changed. One indication of the change is that the legislation, at N.J.S.A. 34:13A-16.2, directed PERC to promulgate guidelines for determining comparability under N.J.S.A. 34:13A-16g(2). Consistent with that mandate,

PERC has adopted comparability guidelines as set forth at N.J.A.C. 19:16-5.14. PERC separately identified comparability considerations within the same jurisdiction as well as for similar comparable jurisdictions.

The Borough argues that the Reform Act was designed to end the use of comparability as the exclusive basis for arbitration awards and thus requires arbitrators to address every one of the statutory criteria and not only to indicate which are deemed relevant but also to explain why any are deemed not relevant. The evidence on each relevant factor is to be analyzed. Also, the legislature itself, at N.J.S.A. 34:13A-16g(6), specified certain factors to be considered in assessing financial impact.

It is the responsibility of the arbitrator to devise an award in this conventional arbitration proceeding by making a reasonable determination after giving due weight to the statutory factors which are judged relevant.

The Borough asserts that it has provided evidence which will permit the arbitrator to formulate a reasonable award which is consistent with the statutory requirements. It also asserts that the PBA relied solely on comparability and the Borough's ability to pay. The Borough notes, however, that a municipality is not required to prove inability to meet the demands of the employee organization.⁸ According to the Borough, the PBA is attempting to continue the cycle of forcing one municipality to keep up with the awards rendered in other municipalities notwithstanding the changes in the statute and the case law. The Borough also criticizes over-reliance on documentary evidence by the PBA - there was only limited testimony from three PBA witnesses - and cites which it describes as the prior arbitrator's ruling regarding the use of such evidence.

The Borough objected to all or virtually all of the PBA's exhibits because, it contends, they were not supported by any testimony regarding the eight statutory

⁸ It cited the Appellate Division decision, Hillsdale Local PBA 207 v. Borough of Hillsdale, 263 N.J. Super. 163, 191 (App. Div. 1993).

criteria or the comparability guidelines. The PBA is seeking to rely exclusively on comparability without providing evidence to support a comparability argument. The Borough asserts that it was unable to respond to the PBA or to engage in cross-examination. It argues that by providing only the contract, the rate of increase in the first year cannot be known, the increases proposed by the two parties cannot be known, and what was negotiated in exchange for benefits cannot be known. There also was no evidence to support any claim that the municipalities were comparable.

The Borough contends that the PBA failed to support its proposals for an additional holiday and an increase in the clothing allowance. Counsel also objected to a spread sheet prepared by counsel for the PBA, asserting that this placed Mr. Roberts in the position of a fact witness in contravention of court rules.⁹

The Borough next turned to a discussion of the eight statutory criteria, beginning with the interests and welfare of the public. As a general statement, the Borough posits that the interests and welfare of the public are best served by granting fair compensation to public employees while setting municipal budgets and tax rates at reasonable levels in light of prevailing economic realities. Governmental services should not be sacrificed.

It is the position of the Borough that the police officers currently receive a fair and even generous economic package. This is said to be the result of the operation of the prior interest arbitration act under which each municipality was compelled to keep up with the others, thereby artificially inflating wages through evolution. The interests of the citizens allegedly were not considered.

The Borough asserts that the PBA is motivated to serve only the interests and welfare of its members. The Borough, on the other hand, exists to serve the public

⁹ This is Ex. PBA-17 which, for other reasons, I have not relied upon.

interest. It wants to continue to provide public services and meet current and future expenses while minimizing the financial impact on the residents and taxpayers.

According to the Borough, the PBA did not even consider the public interests and welfare in developing its proposals. The PBA's financial expert acknowledged that he did not consider major projects the Borough is required to undertake, although he did acknowledge that these projects would effect the Borough's ability to raise taxes and impact the community. (T1 at 82 to 84).

The Borough faces the following tasks: 1) upgrading the entire sewer system which has an expected cost of \$2,500,000, 2) redevelopment which will cost \$5,410,000, 3) repair for Oxen Hill which is expected to cost \$134,000 not including the costs of condemnation, and 4) the Board of Education referendum which will cost the Borough \$5,400,000. The total cost of these projects prior to financing is \$13,444,000 and after financing the cost will be \$21,332,305. As projected by the Borough, these projects will cost an average homeowner \$144 per year in additional taxes. (Exhibit B-5, #34). Additionally, due to the loss of State aid, as calculated by the Borough, taxpayers will incur an additional \$527 annually in taxes. (Exhibit B-5, #29 and #30).¹⁰

Homeowners will have to pay of average of an additional \$40 annually because of a decrease in assessed values. (Exhibit B-5, #33) This adds to \$711 in additional taxes with no other changes in the budget. The Borough places the cost of the PBA's proposals at \$34 annually or \$102 over the three-year term of the agreement. (Exhibit B-5, #36) The Borough asserts that an increase of \$745 in taxes would substantially affect the finances and the interests and welfare of the Borough and its taxpayers.

¹⁰ In arriving at this figure, the Borough subtracted the total of all State aid received in 1993 (\$5,343,413) from all State aid received in 1999 (\$1,429,500) and obtained a difference of \$3,913,913. It then calculated that the tax rate would have to be 31 points higher to raise this money and that this would result in a cost of \$527 to the average homeowner.

The tax rate has increased by 23% in the last five years already, from \$1.93 in 1993 to \$2.37 in 1998. This is twice as fast as the CPI has increased over that period. The residents and taxpayers would not benefit from additional expenditures for wages and benefits for its police officers. Other services, too, must be funded.

The officers are already being fairly compensated. Their wage increases have exceeded increases in the CPI by an average of 2.8% over the last thirteen years. (Exhibit B-5, #26) Furthermore, even under the Borough's proposal, 73% of the officers will be earning over \$70,000 by 2000. Average compensation, including longevity, fringe benefits (holidays, clothing allowance, Medicare and insurance), overtime, and pensions, will be \$78,939 in 1998, \$80,592 in 1999 and \$82,716 in 2000. Therefore, according to the Borough, the officers are in a position to withstand a brief salary freeze as the Borough copes with its financial restrictions.

The burden on the taxpayer is said to be especially critical because while taxes have gone up, property values have declined. The total decline in assessed value over the last five years has exceeded \$37,000,000, an annual loss of \$7,408,844. This reduction in means that taxpayers must accept higher tax rates just to raise the same revenue. The effect on the average home in 1998 was \$22. (Exhibit B-5, #32).

Additionally, independent of tax rates and revenues, the Borough is constrained by the Cap Law.

The Borough has calculated that the average taxpayer's taxes, including the cost of the PBA's proposal, will increase by \$745 or 18% to an average of \$4,774. Therefore, it contends, it is not in the interests or welfare of the public to incur an additional tax burden. At the same time, there is no evidence that the lack of a wage increase will have any negative impact on the public or the services provided by the

Police Department. The Borough's final offer is said to be compelling on the basis of this major criterion.

The Borough asserts that there are two criteria for determining comparability: comparables within the same jurisdiction and comparables in similar jurisdictions. It cited the above-referenced provisions of the Administrative Code. It argues that the collective bargaining agreements submitted by the PBA have no evident relationship to N.J.A.C. 19:16-5.14 (c) or (d). The Borough states that the PBA failed to submit contracts for law enforcement officers or firefighters from the Borough. It also did not submit evidence on employees of the Borough not in negotiating units.

The Borough denies that the employees of the Cliffside Park Board of Education, whose contract with the teachers the PBA submitted, are comparable. The Board states that teachers, unlike police officers, are required to have BA degrees and that those employees do not receive longevity or a clothing allowance. Also, the employees of the Board are said to have a cap on their health insurance, unlike the municipal employees.

The contracts submitted by the PBA are said to be devoid of evidence that the municipalities are comparable under N.J.A.C. 19:16-5.14(d). The Borough criticized the PBA presentation for including the entire contracts rather than portions of the contracts relating to the demands of the PBA: wages, clothing allowance and holidays. The contracts do not explain the negotiations process in those municipalities or compromises reached, etc. They do not address resources, budgetary restrictions, geographics, socio-economics, financial considerations, and compensation in those jurisdictions. There is no evidence that any of these municipalities are facing the factors faced by Cliffside Park including four major projects at a cost of \$21 million or the loss of State aid or decline in ratables or an 18% increase in taxes without anything else being considered. Accordingly, the Borough argues that these contracts do not fit with the

intention of the Reform Act and should not be considered. They have no evidentiary weight or value.

Furthermore, under the Reform Act, the arbitrator must consider the wage increases given to other municipal employees as part of the comparability consideration. The Borough points out that other municipal employees did not receive wage increases in 1998 or 1999. The Borough argues that this is significant and that if the PBA were to get a raise when the others did not, it would undermine the negotiation process for the other municipal employees. This would cause them to demand a wage increase. On the other hand, it contends, if the arbitrator follows the pattern and awards no wage increase to the PBA, it will promote quick settlements. The fact that the other employees got a zero increase is said to show that the Borough is experiencing financial difficulties. Those employees also do not receive longevity or a clothing allowance.

Even if the municipalities cited by the PBA were shown to be comparable to Cliffside Park, the Borough insists that the very generous longevity benefit enjoyed by Cliffside Park's officers must be taken into account. By 1999, every officer on the force will receive this benefit. Cliffside Park ranks first among the southeastern Bergen County municipalities on longevity. Only the officers in Cliffside Park and Fort Lee receive 15% longevity after 20 years. Those in Ridgefield and Fairview do not receive that amount until 24 years. In Edgewater the top rate is 12% after 30 years. The maximum rate in Palisades Park is only 10% and that is not reached until 24 years. The top rate of only 8% is not reached in Leonia and Ridgefield Park until 24 years. The Borough noted that this trend was true when the larger group of municipalities for which the PBA submitted agreements was considered as well. Thus, the Borough's longevity benefit is extremely important, adding 7% to 10% to the compensation received by its officers in relation to that received by most other municipalities. Furthermore, longevity

payments in Cliffside Park are received between four and ten years earlier in Cliffside Park than they are in the other municipalities. The Borough argues that its longevity payment, and the compound effect of any wage increase, must be considered when evaluating the parties' proposals.

The Borough next looked at overall compensation and again argued that these officers will receive an increase in overall compensation even without a wage increase based on movement on the salary guide and receipt of greater longevity. This will result in 66% to 73% of the officers earning over \$70,000 in the next three years and an annual compensation in 2000 of \$82,716. These facts, coupled with the financial difficulties experienced by the Borough, detailed above, are said to justify a temporary wage freeze as well as the addition of two steps to the salary guide, which it says the PBA did not oppose, and which will prevent skewed salaries and morale problems and it will prevent the department from becoming top heavy. The Borough notes that the freeze is not aimed at the PBA specifically but rather is being applied to all municipal employees.

The Borough contends that the officers have been the beneficiaries of an arbitration system which spiraled out of control and that has created an expectation that they deserve a raise, regardless of the municipality's financial circumstances. Citing a recent interest arbitration award in Atlantic City which also involved police officers in which Arbitrator Martin Scheinman¹¹ awarded 0% increases for several years, the Borough submits that a temporary wage freeze is justified.

The Borough denies that the PBA provided justification for an increase in the clothing allowance. It asserts that the PBA, in its attempt to justify an increase, included items which last longer than one year or which are not required by the Department.

¹¹ Docket No. IA-97-112 (March 22, 1999). Although the Borough cited this decision, it did not provide a copy. I have obtained a copy and considered this decision.

Based on the testimony of Officer Ellis Henderson, the Borough calculated that the actual annualized cost of required items is only \$328, a far cry from the \$2,959 worth of items listed by the PBA. The actual annualized cost of \$328 is below the current clothing allowance by \$222 so no increase is needed. The PBA seeks to include the cost of dry cleaning in its calculations but the Borough asserts that other employees of the Borough also incur dry cleaning expenses but do not receive any clothing allowance. Thus, the Borough argues that there should be no increase in the clothing allowance.

Similarly, the Borough argues that the PBA failed to offer any testimony or justification for one additional holiday which it proposed. The PBA simply cited contracts from other municipalities but it failed to demonstrate that those municipalities were comparable nor did it provide an overall picture so that a comprehensive assessment could be made. An additional holiday would impose a cost on the Borough. Given the Borough's financial difficulties, the Borough argues that no additional holiday should be awarded.

The Borough is seeking an explanation or clarification regarding what are called "letter days." The Borough is not seeking any change in the form of a reduction in compensation or time off. It is asserted that officers receive either money or time off for "letter days" but, as Frank Berardo, the Borough's Chief Financial Officer and Tax Collector testified, neither he nor the Mayor and Council have any idea what the "letter days" mean or how they are accrued. Because this is a form of compensation, the Borough contends that it is part of the compensation package and must be considered in calculating the award. The Borough cannot quantify this because it does not know what it is.

The Borough points out that the officers enjoy uncapped, noncontributory and unrestricted health care benefits. The cost of this benefit, which is paid entirely by the

Borough, ranged from \$3,264 to \$8,402 per officer in 1998 and, according to the Borough, will increase to \$3,493 to \$8,991 in 2000.

Another major factor to be considered is longevity. These officers rank highest on this benefit in southeastern Bergen County comparable communities. While the Borough is not seeking to reduce this benefit, it notes that the value of the longevity payments is substantial. Citing a reported per capita income of \$23,813 in Cliffside Park and the fact that some officers will receive up to \$11,000 in longevity in 2000 under the Borough's proposal, it asserts that it is evident that this is an extraordinary salary supplement. By 1999, all of the officers in the Department will receive longevity so this benefit not only is large but universal. The Borough notes that longevity increases as do wages.

The only stipulation is the agreement of the parties that the new agreement should cover three years.

The Borough, however, also refers to a stipulation made by the former counsel to the PBA to include language modeled after the decision in Banca v. Tp. of Phillipsburg, 181 NJSuper 109 (1981). It cites an excerpt from the transcript of the previous interest arbitration proceeding, the decision of Arbitrator Kurtzman where he referred to the parties' agreement to include a clause regarding police officers' rights and said he would retain jurisdiction over this issue,¹² and a letter dated December 18, 1997 from former PBA counsel on this subject which included proposed language on "Departmental Investigations." The Borough asserts that the sole purpose of this language is to protect the officers and asks that the award in this proceeding include a provision to insure and protect the rights of officers in the event an officer is arrested or is subject to a departmental investigation.

¹² Opinion and Award of Arbitrator Kurtzman at 39 and 40.

The next factor deals with the lawful authority of the employer. The Borough notes that municipalities are constrained by the Cap Law and that arbitrators are required to consider this. The Borough reiterated the financial hardship it has and will undergo, citing the cumulative loss of State aid of \$17,374,520 from 1993 to 1999 or \$527 in additional taxes to the average homeowner, the decline in ratables which results in an added \$40 in taxes, and the four mandated projected which will add an average of \$144 or 8.45 tax points to the tax bill over the next 20 years. Taxes will increase by \$711 without any other increases. The Borough cited the testimony of Mayor Joseph Calabrese to the effect that Cliffside Park is a blue collar town with no land for new ratables and which has to bond new projects, thereby creating what he described as a "not bright...future for the taxpayers of Cliffside Park." (T2 at 158).

In this situation, the request of the PBA for wage increases which would add an additional \$34 to the taxes, making the increase \$745 or 18%, is said to be unjustified. This is said to be particularly true since taxes increased by 23% between 1993 and 1998 when the CPI increased by only half that amount. This is contrary to the policy of the Legislature as expressed in the Cap Law wherein it was stated that the policy was "that the spiraling cost of local government must be controlled to protect the homeowners of the State and enable them to maintain their homesteads." N.J.S.A. 40A:4-45.1. The Borough argues that the fact that, through efficient administration, it has been able to operate under its Cap should not mean that it should be compelled to increase its Cap to pay a fiscally imprudent wage increase.

Another factor to be considered is the financial impact and again the Borough notes that there will be a financial impact even with no wage increase due to automatic salary increases and increases in longevity. Furthermore, the loss of State aid and

reduction in tax revenues due to declining property values point to a significant negative financial impact which any wage increase would have.

The fact that the Borough has a surplus does not mean that a wage increase is justified and, as the Supreme Court noted in Hillsdale, the Borough need not prove its inability to pay. (At 86). As Mr. Berardo testified, if a wage increase were paid out of surplus, the surplus would be depleted and the Borough's ability to regenerate surplus would be reduced. The Borough has chosen to maintain a fund balance in part to use as a reserve to offset taxes and it would not be prudent to liquidate surplus to pay for an arbitration award. (T2 at 149).

Given the loss of State aid, the mandated projects, the declining property values, and the fact that the other municipal employees received no wage increase, the Borough asserts that it makes little sense to require the Borough to provide a wage increase to officers who already receive a generous compensation package. Again, the Borough notes that prior to 1996 and 1997 when salary increases essentially matched increases in the cost of living, the officers had received increases well in excess of rises in the CPI.

The Borough has a population which includes a large portion of senior citizens - 18.45% - and 24% of the Borough's students are classified as low income. With 37% of the population being senior or low-income, it is not possible to distribute a tax increase evenly. The Borough's police officers already are paid more than fair compensation. The Mayor testified that the Borough eliminated through attrition its paid fire department. Only two paid firefighters, one of whom will retire this year, remain. He also said that services were being taken away (T2 at 157) and wondered if there were a law which said that police officers have to receive a wage increase every year. (T2 at 157).

The cost of living is another factor to be considered. The Borough points out that wage increases for its police officers have exceeded increases in the cost of living by an average of 2.8% between 1986 and 1999. These large salary increases, according to the Borough, were the result of the prior arbitration system before the Reform Act. It was not until 1996 and 1997 that the officers received wage increases in line with CPI increases. Because the wages were artificially inflated under the old arbitration system, the Borough contends that the officers can sustain a wage freeze without a detrimental impact on their quality of life.

The Borough notes that wage increases for State government increased by only 2.1% and the total government sector increased by only 3% from 1996 to 1997. The PBA demand for wage increases of 4% and 4.5% bear no relation to increases in the CPI and the Borough requests that the arbitrator in no event issue an award in excess of increases in the cost of living.

The final statutory factor is continuity and stability of employment. This factor, too, is said to support the Borough's offer. The Borough's ability to maintain a stable work force is necessarily linked to economic and fiscal considerations. It asserts that it might have to consider decreasing longevity or other benefits the officers currently enjoy if a wage increase is awarded or it may have to reduce services. Also, other Borough employees would feel resentment toward the officers if they received a wage increase with the other employees did not. Other departments might even have to be downsized, the Borough suggests.

The two additional steps proposed by the Borough are said to be necessary to avoid morale problems associated with skewed salaries and to prevent a top-heavy department. This would only affect newly hired officers and would contribute to stability.

The Borough argues that a three-year contract with a wage freeze provides the officers with a total net annual economic change which is reasonable under the statutory factors and asks that this be awarded along with two additional steps, a clarification of letter days, inclusion of language to protect an officer's rights, and no increase in the clothing allowance or holidays.

Rebuttal Argument of the PBA

The PBA's rebuttal argument was limited. It made two points. One asserted that the Borough's reliance on Hillsdale was misplaced and did not support a rejection of the evidence offered by the PBA nor a requirement that additional evidence be provided. The other asserted that the Borough, in its argument, failed to overcome the proof introduced by the PBA which establish that the Borough has the ability to pay the proposed increase without any negative impact on the taxpayers.

A major argument of the Borough has been that comparability is not to be the dispositive factor in interest arbitration proceedings. Thus, the Borough objected to the contracts introduced by the PBA from bordering municipalities. The PBA reviewed the decisions of both the Appellate Division of the Superior Court and the Supreme Court in Hillsdale. It observed that interest arbitration constitutes a delegation of legislative power to the arbitrator and that there is a presumption that all of the statutory factors are relevant. Evidence is to be submitted on each factor so that the arbitrator can properly determine the relevance of each factor. The arbitrator is required to explain why a factor is relevant and, if a factor is deemed not to be relevant, to explain why it is not. This is necessary in order to permit meaningful judicial review. In the Supreme Court decision, however, the Court, contrary to the Appellate Division, stated that an arbitrator need not require the production of evidence on each factor. (At 84).

Thus, the PBA argues, the arbitrator is required to consider all of the evidence which is deemed relevant and to explain why criteria are or are not deemed relevant but the arbitrator may still conclude that comparisons of police salaries in similar municipalities are the most important consideration as long as the reasons for this conclusion are provided. It is the arbitrator who must analyze the evidence and determine what is relevant and then form conclusions which will result in a new labor contract for the parties. The parties are to present the evidence and then the arbitrator is to determine its relevance in rendering an award.

The PBA's second point is simply that it provided evidence to support its final offer and that this can be funded without any negative impact on the community's taxpayers. Dr. Caprio considered all of the material presented by the Borough including the loss of State aid, the ratable trend, income levels, etc. He made projections which he described as conservative before arriving at his conclusions and, indeed, as the Borough's financial experts testified later when the figures were available, Dr. Caprio's projections in fact were conservative and understated the additional resources which would be available to the Borough at the end of 1998. Dr. Caprio projected that these would be \$4.258 million and the actual figure was \$4.9981 million, a difference of \$740,000. The Borough's experts conceded that the financial impact of the proposed 1998 wage increase would be negligible. The equalized tax rate in Cliffside Park is in the lower half of the County's municipalities. The Borough was able to regenerate and increase its surplus even as it was losing State aid.

The PBA notes that the several projects cited by the Borough as imposing a financial burden on it will be funded over many years. None of the projects had a cost in 1998. The total cost in 1999 will be only \$333,000 and the total cost in 2000 will be only

\$934,000. Thus, over the three-year term covered by the new collective bargaining agreement, the Borough's costs of the four projects will be only \$1,267,000.

Accordingly, the PBA asserts that the Borough cannot deny that it has more than sufficient reserves to fund these capital projects as well as a wage increase for the PBA. Again, the PBA contends that it has provided sufficient evidence to support its proposals for a wage increase, an increase in the clothing allowance, and the addition of one paid holiday.

Rebuttal Argument of the Borough

The Borough reiterated its objection to the comparative evidence offered by the PBA including the contracts which were introduced including those from what is called "Southeast Bergen" in the map provided by the Borough. (Ex. B-5). According to the Borough, there is no evidence that the municipalities discussed by the PBA are, in fact, comparable to Cliffside Park. It asserts that the municipal contracts, the Board of Education contract, the spread sheet prepared by Mr. Roberts and excerpts from the Municipal Data Book all should not be considered because they fail to establish comparability under the Administrative Code and that the PBA failed to establish comparability. It also argued that the PBA has placed undue weight on comparability and too little weight on the other statutory factors. It objected that the PBA spoke of the Borough's ability to pay when the Supreme Court has made it clear that the Borough need not prove its inability to pay. Further, it asserted that the PBA failed to consider the loss of State aid, the decline in ratables, the wage freeze imposed on other municipal employees and the four mandated projects which must be funded.

The Borough reviewed the eleven municipalities for which the PBA introduced contracts and argued that those municipalities were not comparable. Nine of the eleven had a lower median age than Cliffside Park. Seven of the eleven had higher median

household income and six of them had higher family income with an average \$6,805 higher than Cliffside Park. Ten of them had a significantly lower number of senior citizens. Furthermore, taxpayers in Cliffside Park will face an average tax increase of \$711 without any increase in wages for the PBA, increasing taxes from \$4,029 to \$4,740, a figure which represents 11.67% of their household income. Nine of the eleven had lower school enrollment and almost 25% of Cliffside Park's students are low income. Cliffside Park has more households than nine of the municipalities. It is said not to matter that Fairview has less revenue and more debt than Cliffside Park. For all of these reasons, the Borough contends that the PBA failed to prove comparability of the municipalities listed with Cliffside Park.

Turning to the proposed increase in the clothing allowance, the Borough not only repeated arguments that the PBA failed to prove that the actual costs incurred by officers on an annual basis exceed the current clothing allowance but also argued that even comparing the clothing allowance in Cliffside Park with the allowances offered by the other communities suggested by the PBA, the PBA failed to demonstrate a justification for the increase. Using the departments in the southeast quadrant of Bergen County, the \$550 provided by Cliffside Park is only \$53 below the average and \$25 below the median. Thus, an increase of \$200 should not be awarded.

Similarly, the Borough denies that the PBA justified an increase in the number of holidays. Even if the municipalities offered by the PBA are accepted as comparable to Cliffside Park, the mere fact that some of them provide 13 holidays does not support an increase. It is necessary to consider the vacation schedules in these communities as well. Officers in Cliffside Park in fact enjoy a more generous vacation schedule than do those in the other communities. A third year officer receives 18 days in Cliffside Park and a fourth year officer receives 21 days. In the other communities, the greatest

number of vacation days is 14 (Fort Lee) for officers in their third and fourth years. This advantage continues for many years, thus giving officers more paid time off than their claimed counterparts both in the southeast quadrant and the broader area suggested by the PBA. Additionally, the Borough notes that the PBA provided no evidence to support its assertion that the Borough employees receive 13 holidays or that the employees of the Board of Education receive 13 holidays.

Looking at wages, the Borough emphasizes that the other Borough employees received 0% wage increases in 1998 and 1999. Thus, the Borough's offer simply places the police officers in the same position as the other Borough employees. The Borough notes, too, that its other employees do not receive longevity or a clothing allowance.

The Borough also again argued that Mr. Roberts was in a position of conflict in that he prepared a spread sheet which was offered as an exhibit. In that document, he presented data on wages, longevity, vacation days and personal days for officers with different years of service in 12 municipalities including Cliffside Park. The Borough was not able to cross-examine Mr. Roberts and the document did not cover all municipalities in Bergen County. Another problem with that spreadsheet is that the years being compared were not the same. It makes no sense to compare 1997 salaries in Cliffside Park with 1998 or 1999 salaries in other municipalities.

The Borough counters the PBA's contention that the officers in Cliffside Park are the second lowest paid by noting that between 66% and 73% of them will earn over \$70,000 in the next three years under the Borough's proposal with an average compensation of \$82,716 in 2000. Thus, it is argued, the officers are compensated very generously.

The PBA made statements in its brief about work schedules in Cliffside Park and several other municipalities but in fact no evidence was introduced on work schedules.

The contracts which were introduced do not provide the work schedules. There is, therefore, no evidence to support the claims of the PBA regarding work schedules.

The Borough asserts that the officers cannot complain about step system, with its eight steps, when they designed that system. They did not propose any change in it. There is no evidence that the current system causes problems. Officers have not been leaving for other jobs in other departments with more compressed schedules.

The Borough cited contract provisions in five of the eleven contracts offered by the PBA which contain provisions on officer rights similar to what the Borough is proposing. This is said to be another reason for the arbitrator to adopt the proposal of the Borough on this issue.

The Borough also reviewed the statutory criteria and asserted that most of these were not even addressed by the PBA or its expert in the form of evidence or even argument. It argues that the PBA offered no evidence to support its assertion that an award of the PBA's offer would serve the public interest. The Borough believes that its officers are already well-compensated and they are successfully performing their function. It is recalled that the taxpayers will be facing large tax increases as a result of the loss of State aid and mandated projects even without a wage increase for the PBA.

According to the Borough, the PBA has failed to recognize that the Borough faces a Cap limit which precludes its funding of the PBA proposal. The cost over all three years must be considered and not simply the costs in the first year. Mr. Kelly calculated these costs and determined that over three years the cost of the PBA proposal over three years was \$756,845. Dr. Caprio failed to consider the mandated costs which Mr. Kelly did take into consideration in his analysis. The Borough argues that it must be permitted to continue its policy of fiscal conservatism and budgetary

prudence and notes that the Cap Law, which the arbitrator must consider, is consistent with these considerations.

The Borough contends that the PBA looked only at the Borough's ability to pay without really considering the financial impact. Particularly significant in this regard is said to be the mandated municipal projects. While the impact of a 4% increase in 1998 might not be significant, that is only the first year and ignores the future impact, reduction in surplus, and mandated projects which are now underway.

Using surplus to pay for expenses depletes the surplus and reduces the ability of the Borough to regenerate surplus. This is not prudent. The Borough uses part of its surplus to avoid tax increases. The Borough's taxpayers have seen a 23% tax increase in the last six years so taxes have had to be increased in order to maintain the fund balance. It is claimed that, particularly because of the \$21 million in mandated projects, the Borough needs more surplus than do many other municipalities. Additionally, the Borough has lost ratables in recent years and is projected to lose an additional \$12,818,844 in assessed value in 2000. The loss of State aid - a cumulative loss in excess of \$17 million - was reiterated along with its impact on taxes. The amount of non-budgeted revenue which Dr. Caprio projected the Borough would receive, even if it were appropriate to use this money for a PBA wage increase which the Borough disputes, would not be sufficient to fund that increase.

Even Dr. Caprio admitted that, while he did not take the mandated projects into account, bonding will affect the ability of the Borough to raise taxes. This is said to render his report useless. Projections based on the past are not valid in light of the mandated projects which the Borough must fund.

The Borough also denies that Dr. Caprio or the PBA established that the other municipalities were comparable to Cliffside Park nor was there evidence to establish that they are experiencing the same financial difficulties as is Cliffside Park.

The Borough notes that the PBA essentially disregarded the cost of living in its presentation and analysis and urges the arbitrator to note the recent increases in the CPI if he awards any wage increase.

Further, the PBA did not consider the continuity and stability of employment. It points out that there has been a stable work environment with job security which, although impossible to quantify, nonetheless is an important employment benefit. There is no evidence that any officer has left the Department because of any contract provisions.

The Borough denies that the data on wage increases published by the New Jersey Department of Labor were shown to be accepted as "fair and reasonable" as asserted by the PBA. Private sector wage increases are said not to provide a basis for wage increases in Cliffside Park which, of course, is in the public sector. The Borough does note, however, that the increase for government employees was reported to be 3% and that exceeds the amounts sought by the PBA in this proceeding.

The Borough argues that there it has provided evidence in support of its proposals and, at the same time, that the PBA has failed to provide support for its proposals. It asks that the arbitrator issue an award consistent with the proposals of the Borough.

Discussion

Both parties, and particularly the Borough, devoted considerable time and attention to the legal and statutory context of interest arbitration proceedings. The Borough emphasized the Supreme Court's Hillsdale decision. It certainly is true that

developments under the interest arbitration law as first enacted in 1977 led to judicial review and the very important decisions of the Supreme Court in Hillsdale and Washington Tp. v. New Jersey PBA Local 206, 137 N.J. 88 (1994) and that, subsequently, the Legislature amended the law and enacted the New Jersey Police and Fire Public Interest Arbitration Reform Act. I believe, however, that the Legislature fully considered the judicial decisions and other matters when it amended the law and that the law as now amended incorporates that changes which the parties and an arbitrator are required to consider. Thus, as set forth at N.J.S.A. 34:13A-16g, an arbitrator:

shall decide the dispute based on a reasonable determination of the issues, giving due weight to those factors listed below that are judged relevant for the resolution of the specific dispute. In the award, the arbitrator or panel of arbitrators shall indicate which of the factors are deemed relevant, satisfactorily explain why the others are not relevant, and provide an analysis of the evidence on each relevant factor.

Furthermore, the statute at N.J.S.A. 34:13A-16d(2) requires that:

The arbitrator shall separately determine whether the total net annual economic changes for each year of the agreement are reasonable under the eight statutory criteria set forth in subsection g of this section.

That is my mandate under the Reform Act and that is what I shall undertake to do.

I have carefully considered the evidence, both in the form of documents and testimony, which has been presented as well as the arguments of the parties. As set forth below, I have considered the evidence in light of the statutory criteria. I have considered each criterion and found each to be relevant. I have discussed the weight which I have accorded to each criterion. I also have determined the total net annual economic changes for each year of the agreement in order to reach the conclusion that these changes are reasonable under the criteria.

The parties' final offers each include a limited number of proposals, including a common proposal that the successor agreement should cover the three years from January 1, 1998 through December 31, 2000. Both parties submitted a wage proposal and the Borough also sought to add two steps to the salary schedule. The other components of the Borough's proposal were either the elimination or clarification of "letter days" and the inclusion of an officer's rights provision. The PBA's offer included proposals for one additional holiday and an increase of \$200 in the clothing allowance.

I shall set forth the terms of the award at this time so that, in the following discussion of the evidence and the statutory criteria, the terms of the award will be the reference. The parties, of necessity, addressed their own offers and that of the other party. I need not do this in this conventional arbitration proceeding because it is my obligation to fashion the award rather than, as was true under the prior statute, to select the final offer of one party or the other on all economic issues as a package and then to justify that selection.

Both parties agree that the term of the award should cover a three-year term, January 1, 1998 through December 31, 2000. I accept this agreement as a stipulation as to the term of the new agreement and shall award a three-year contract.

I shall award across-the-board salary increases of 3.5% effective retroactive to January 1, 1998, an additional 3.5% effective retroactive to January 1, 1999 and an additional 3.5% effective January 1, 2000.

I shall deny the Borough's request to increase the number of steps on the salary schedule.

I shall deny the Borough's request to eliminate or clarify "letter days."

I shall deny the Borough's request draft and include in the new agreement an officer's rights provision.

I shall deny the PBA's request for the addition of one paid holiday.

I shall deny the PBA's request for an increase of \$200 in the clothing allowance.

Before discussing the total net annual economic changes for each year of the award, I shall discuss my reasons for denying the proposals of the parties except for a salary increase. One factor in rejecting the proposals of the PBA for an increase of a holiday and in the clothing allowance, of course, is economic. These would cost money and I believe that the Borough's resources for its police officers are best devoted to the area of salaries where the officers rank low rather than in the area of fringe benefits where they are better off and in some cases such as longevity and vacation well off.

Aside from cost considerations, the PBA failed to justify an increase in either the clothing allowance or the number of holidays. Based on the clothing allowance received by officers in the southeast Bergen quadrant where Cliffside Park is located¹³ - Fort Lee, Edgewater, Fairview, Ridgefield Park, Ridgefield and Leonia - and excluding Palisades Park because the contract provided by the PBA was missing Article XI, the average clothing allowance outside of Cliffside Park is \$609.50. This is slightly less than \$60 above the current allowance of \$550 in Cliffside Park. Thus, an increase cannot now be justified on a comparative basis. Furthermore, the PBA failed to establish that officers in Cliffside Park spend more than they now receive on required items on an annual basis.

There also was insufficient justification for an increase in the number of holidays. While the PBA asserted that the Cliffside Park Board of Education's employees receive 13 holidays and that the Borough's employees also receive 13 holidays, the PBA did not submit evidence to support these assertions. Looking at the contracts of the municipalities in the southeast quadrant, five of the municipalities provide 13 holidays. Ridgefield Park provides 12 and Fairview provides 14. Therefore, Cliffside Park, with

¹³ For reasons discussed below, I believe that this is the appropriate group of communities to compare with Cliffside Park.

only 12 holidays, is behind the average by one day. However, as the Borough pointed out in its analysis of the evidence, the vacation benefits in Cliffside Park are superior to those in the other municipalities without exception in the early and middle years of employment and this advantage more than offsets the shortage of one holiday.¹⁴

The Borough failed to justify its request to increase the number of steps on the salary schedule by two while acknowledging that it may take officers in Cliffside Park longer to reach the top rate than it does in most other municipalities in the southeast quadrant. A review of those contracts indicates that none has more steps than Cliffside Park and most have academy or probationary rates plus five or six additional steps. Aside from claiming that this would prevent the Department somehow from becoming "top heavy," that it would avoid morale problems and that it would prevent skewed salaries, the Borough provided no comprehensive rationale for this proposal.

The Borough also asked for either the elimination or clarification of "letter days." Mr. Berardo testified that the Borough was not seeking to take away a benefit but that it simply wanted to know what the several "letter days" mean. No evidence was produced on this issue. It would seem that the obvious thing for Borough officials to do if they wonder about "letter days" would be to ask the Chief. In any event, I am unable to provide the requested clarification.

Finally, the Borough has asked that language be added to the agreement which, consistent with Banca v. Tp. of Phillipsburg, would protect the rights of officers and argued that this was stipulated to in the last arbitration proceeding between the parties. That proposal has been rejected for several reasons.

First, the Borough has not provided language which it believes should be added to the agreement. Thus, I am not in a position to specify the language which would be added to the agreement. While the Borough has the right to submit proposals, it must

¹⁴ It is true that the maximum vacation benefit is greater in several of the municipalities.

specify what it is seeking. It has not done so in. Second, Mr. Roberts, who now represents the PBA, has not agreed to the inclusion of the provision urged by the Township. Third, Arbitrator Kurtzman retained jurisdiction regarding that matter. That jurisdiction, absent mutual agreement, does not extend to another arbitrator in a different proceeding. Fourth, the former counsel for the PBA did develop such language, as set forth in his December 18, 1997 letter to Mr. Diktas. Apparently the language as proposed was not acceptable to the Borough because it was not added to the parties' agreement. Thus, it is not clear what the Borough is proposing. Finally, Mr. Diktas insists that what is sought is a benefit and protection for the officers and is offered only to protect them. In this proceeding, of course, Mr. Diktas represents the Borough and Mr. Roberts represents the PBA. Mr. Roberts, on behalf of the PBA, for whatever reason, has not agreed to the proposal. Thus, I shall deny it. Obviously, if the PBA believes that this is something which would protect its members, the parties can agree to include a mutually acceptable provision in their agreement.

I am required to determine the net annual economic changes for each year of the agreement in order to determine whether those changes are reasonable under the statutory criteria. The only change will be the salary change and that, of course, is economic. The parties agree that there were 42 officers in the unit in 1998 - two captains, three lieutenants, 12 sergeants, and 25 patrolmen - and that this dropped to 41 in 1999 with the retirement of a sergeant.

Neither party provided a figure for 1997 base salaries nor did they provide a breakdown of the unit by salary step in 1997. The Borough did provide a listing of each officer by year listing the salary under each party's proposal plus longevity and fringe benefits (holidays, clothing allowance, Medicare and insurance costs).¹⁵ Using the

¹⁵ The Borough focused on the difference between the costs of its proposal and that of the PBA in 1998, 1999 and 2000.

Borough's 1998 listing of employees and working backwards, it can be determined, with the exception of the number of senior officers, where each officer was in 1997.¹⁶ In order to calculate the net annual economic change between 1997 and 1998, I have assumed that the number of senior officers was the same both years. With this assumption, the cost of salaries in 1997 for the 42 officers in the unit was approximately \$2,162,167. The approximate cost of salaries in 1998 for 42 officers with a 3.5% across-the-board increase will be \$2,290,590 or an increase of \$128,423. The approximate cost of salaries in 1999 for 41 officers with an additional 3.5% increase will be \$2,359,092 or an increase of \$68,502. The approximate cost of salaries in 2000 for 41 officers with a further 3.5% increase will be \$2,511,794 or an increase of \$152,702.

To the salary figure must be added certain other costs which also will increase. Longevity costs will increase by 3.5% each year plus additional amounts as officers move from one longevity level to another.¹⁷ Holiday pay will increase by 3.5% per year of the salary and longevity increase. Medicare costs will increase modestly based on salary and longevity adjustments. Insurance costs will increase but this will be the same regardless of the award.¹⁸

¹⁶ Based on the evidence provided, it cannot be determined whether any officers moved from step 7 in 1997 to the senior officer level in 1998.

¹⁷ With a 3.5% salary increase, longevity costs will increase by approximately \$6,764 in 1998 beyond what they would be without a salary increase. Data were not provided to show whether any officers moved to a higher longevity level that year. In 1999, the increased cost of longevity will be approximately \$5,853 including the costs of officers moving to higher levels. In 2000, the increased cost of longevity will be approximately \$18,558 again including the costs of officers moving to higher levels. I have used the Borough's longevity figures, Ex. B-5, #4 to 15, in making these calculations.

¹⁸ The Borough listed the cost of fringe benefits based on the parties' proposals for each year of the agreement. It calculated that the difference in 1998 would be \$23,014; that the difference in 1999 would be \$26,779 and that the difference in 2000 would be \$37,001. These figures overstate the difference under the terms of this award because the award does not include an increase of \$200 in the clothing allowance, an additional holiday or wage increases as large as those proposed by the PBA. Removing the clothing allowance increase reduces the difference by \$8,400 in 1998 and by \$8,200 in 1999 and 2000. Removing the holiday further reduces the difference by approximately \$240 per officer (assuming an average salary of \$60,000) or about \$10,000 per year. The figure would be further reduced by a small amount because the salary increases awarded are 3.5%, 3.5% and 3.5% rather than the 4%, 4.5% and 4.5% proposed by the PBA. Thus, the added cost of fringe benefits is approximately \$5,000 in 1998, \$9,000 in 1999 and

Adding the salary, longevity, fringe benefit and insurance increases together, the total net annual economic changes approximate \$152,187 (\$128,423 + \$6,764 + \$5,000 + \$12,000) in 1998, \$95,355 (\$68,502 + \$5,853 + \$9,000 + \$12,000) in 1999 and \$202,260 (\$152,702 + \$18,558 + \$19,000 + \$12,000) in 2000.

Having set forth the terms of the award and its total net annual economic changes for each year of the agreement, I shall discuss the evidence and the arguments of the parties in relation to the statutory criteria and explain how I arrived at that award and the weight I gave to each criterion.

Interests and Welfare of the Public The Supreme Court in Hillsdale made it clear that an arbitrator must always consider the interests and welfare of the public in rendering an interest arbitration award and that an award which failed to take this into account was in danger of being deficient. The public was said to be a "silent party" to the process whose interests must be considered. The amended statute also requires the arbitrator to consider the limitations imposed by the Cap Law as part of this analysis. I will discuss the Cap Law in more detail in the section on **Lawful Authority** but for now it is sufficient to state that the award will not cause the Borough to exceed its lawful authority under the Cap Law. The award can be funded without the Borough having to exceed its spending authority.

Because the interests and welfare of the public are complex and numerous, this is a difficult factor to assess. The public requires and, indeed, often demands, adequate public services; prominent among which are police or public safety services. It generally wants these services at the lowest possible cost in order to minimize taxes and tax increases. Lower salaries and benefits for police officers and other public employees

\$19,000 in 2000. Additionally, the Borough has stated that medical insurance will increase by approximately 3.5% per year and dental insurance will increase by 3% per year. (T2 at 33). I have rounded the cost of this increase to \$12,000 per year based on the figures provided by the Borough.

mean that the municipality can employ a greater number of officers and/or other public employees or that taxes or tax increases can be lower. The public interests and welfare, however, also are served when the compensation levels of police officers and other public employees are adequate to attract and retain a well-qualified, loyal, competent and productive work force. This requires reasonable levels of compensation because this contributes to a productive and efficient work force with high morale. It is important that the officers perceive that they are being compensated fairly. Reasonable levels of compensation also contribute to harmony and stability in labor relations and to the absence of labor unrest.

In its brief, the Borough recognized that "the public's interests are welfare are best served by granting public employees fair compensation while tax rates and municipal budgets are set at a reasonable level in light of prevailing economic realities." (Brief at 18). I believe that this award accomplishes that objective.

The arbitrator is required to strike an appropriate balance among these competing interests. This concept has been included in the policy statement of the amended interest arbitration statute. N.J.S.A. 34:13A-14 refers to the "unique and essential duties which law enforcement officers... perform for the benefit and protection of the people of this State" and the life threatening dangers which they confront regularly. The arbitration process is intended to take account of the need for high morale as well as for the efficient operation of the department and the general well-being and benefit of the citizens. The procedure is to give due respect to the interests of the taxpaying public and to promote labor peace and stability.

It is my determination that salary increases of 3.5% per year, with no other changes in the parties' agreement, are consistent with the interests and welfare of the public. As will be discussed in detail below when I address the other statutory criteria,

increases of this size will come close to preserving the existing position of these officers in relation to those of others in the southeast quadrant of Bergen County where, even with a superior longevity benefit, they rank low in compensation. These increases are modestly larger than recent increases in the cost of living. They are somewhat below private sector increases in New Jersey and Bergen County and they are slightly below most recent interest arbitration awards in New Jersey but they are slightly above the increases received by other government employees. The increases do exceed the increases which the Township imposed on its other employees in 1998 and 1999. The award will not have a significant impact on the governing unit or its residents and taxpayers and takes into account such significant factors as the four projects which the Borough will be funding.

It is my judgment that an award of 3.5% increases for each of the three years represents the proper balance which recognizes and respects the interests and welfare of the public including the provision of a fair and reasonable salary increase for the officers.

Comparisons Comparisons of the wages, salaries, hours and conditions of employment of the Borough's police officers are to be made with other employees performing similar services as well as with other employees generally in the following three categories: 1) in private employment in general, 2) in public employment in general, and 3) in public employment in the same or similar comparable jurisdictions. I shall discuss each of these.

First, private sector comparisons are to be made with employees performing similar services as well as with private employees generally.¹⁹ Police officers do not

¹⁹ The Borough's objection to the placement of any reliance on private sector wage increases is misplaced. The statute explicitly requires the arbitrator to make comparisons with private employment in general. The Borough has provided no evidence which convinces me that this part of the criterion is not relevant.

really have private sector counterparts. They provide services which are uniquely and inherently governmental in nature. Indeed, this is a core public service and function of government: the assurance of the safety of the public. It is not possible, therefore, to compare the Borough's police officers with employees providing similar services in the private section. This part of the criterion is not relevant.

It is possible to compare police officer in the Borough with private employees in general. The only evidence on this point was provided by the PBA which offered the report of private sector wage changes compiled by the New Jersey Department of Labor ("NJ DOL") for the Public Employment Relations Commission in accordance with N.J.S.A. 34:13A-16.6. As stated in that section, the survey of private sector wage increases is for use by all interested parties in public sector negotiations. The last such survey which was published is dated December 1998 and it shows that the percent change from 1996 to 1997 in private sector wages in New Jersey was 4.76%. The figure for Bergen County was 5%.

If an award were to be based on this factor alone, increases in excess of 3.5% would be justified. This certainly is an important factor which militates strongly against an award of 0% as proposed by the Borough but there also are a number of countervailing factors which will be discussed below which support a smaller wage increase. It must be kept in mind that no one factor is controlling or dispositive.

The next comparison is to be with public employees in general. The NJ DOL survey reported a 3% increase for all government with a 5% increase for the Federal government, 2.1% increase for state government and a 3% increase for local government. Increases of 3.5% are slightly above the overall rate of increase for government employees as well as for local government employees.

The third comparison has two parts: comparisons with public employees in the same jurisdiction and comparisons with public employees in comparable jurisdictions.

I shall begin with comparisons in Cliffside Park. The only other employees employed by the Borough are not organized, according to counsel for the Borough in response to my question (T2 at 42). Those employees were given 0% increases in 1998 and in 1999. This is a factor to be considered but it is less significant than it would be if the employees were organized. In other words, patterns of bargaining are important but this is not a pattern of bargaining situation. The Borough could, if it chooses to do so, provide a salary increase for its other employees following the issuance of this award. Also, it appears that in Cliffside Park the practice is for the Borough to offer 0% increases to its employees. Mr. Berardo testified that all of the increases received by the Borough's police officers at least since 1986 have been arrived at through arbitration and no increase was given voluntarily. (T2 at 154). Thus, this is not an employer which has been able to reach voluntary agreements with its police officers. In view of this history, and particularly given the economic condition of the Borough, as discussed below, I do not find the fact that the other Borough employees were not given an increase in 1998 or 1999 to be significant.

There is one other point to be made on this issue. The Borough cited an interest arbitration award in Atlantic City in which the arbitrator awarded two years of 0% increases. That is true but, as a review of the entire decision makes clear, the award covered seven years, January 1, 1996 through December 31, 2002. There was a 0% increase in 1996 and 1997 but the award was not issued until March 27, 1999. Therefore, the 0% increases for those two years simply meant that there was no retroactive increase for those years. The award provided for increases of 19.5% over the seven year period so the average annual increase was 2.8%. As Arbitrator

Scheinman's discussion made clear, there was a pattern of settlement with the City's four other unionized employees, including the firefighters who also are eligible for interest arbitration, of 0% increases for two years. The firefighters got 0% increases in 1996 and 1997. The arbitrator adhered to that pattern in those years but then provided increases in the subsequent five years covered by the award which would "permit them to retain their relative ranking." (At 56 and 57). The arbitrator also stressed that the City "is not flush with money" and that an award which was less than would be justified on the basis of the other factors was appropriate to avoid "an unnecessary burden upon the governing unit and its residents and taxpayers." (At 59). Thus, the Atlantic City decision cannot be read as simply one in which the arbitrator awarded 0% increases for two years. It must be read in its entirety as an award which covered seven years and which was issued after three years of the new agreement had already expired.

The other part of this comparison involves comparisons with similar employees in comparable jurisdictions. The parties may not agree upon what municipalities are comparable to Cliffside Park. The PBA provided contracts from eleven nearby Bergen County communities, including those from the other seven municipalities in the southeast quadrant of Bergen County. Dr. Caprio reviewed the budgets of six of the municipalities in the southeast quadrant.

The Borough spent a great amount of time objecting to the comparative data, including the collective bargaining agreements, provided by the PBA but did not explicitly identify the communities with which it believed Cliffside Park should be compared. Implicitly, however, the Borough did seem to recognize that the southeast quadrant municipalities were the most comparable. The Borough provided a map (Ex. B-5) which showed Bergen County divided into sections and one other those sections was southeast Bergen and included these eight municipalities. Its exhibit B-5, #25 listed

the maximum longevity in the eight municipalities in the southeast quadrant. Exhibit B-5, #38 listed the same communities with their per capita income and counsel questioned Mr. Kelly about per capita income in the East Bergen quadrant. (T2 at 55). Exhibit B-5, #39 listed the percentage of senior citizens in these same municipalities. Similarly, in its brief, the Borough, in discussing longevity, referred to "the southeastern Bergen County comparable communities." (At 41).

The Borough seems to have two main objections. One related to the admission of the collective bargaining agreements. It contended that the contracts should not be admitted except to the limited extent that they show that there is or was an agreement. The Borough cited the decision of Arbitrator Carl Kurtzman issued on September 17, 1997 in Docket No. IA-96-138. Mr. Diktas represented the Borough in that proceeding. Mr. Roberts did not then represent the PBA. Excerpts of Arbitrator Kurtzman's opinion and award were introduced.²⁰ The Borough also cited an excerpt from the transcript of that hearing. In that proceeding, the PBA also sought to introduce collective bargaining agreements from a number of jurisdictions in Bergen County and several from outside the County. The Borough objected, primarily on the basis that there was no proof that the communities were comparable. The arbitrator received the contracts in evidence and said that they addressed the comparability aspect of the statutory criteria and would provide the factual basis for both parties to argue the relevance and weight which should be accorded to them. He also noted the difficulty an arbitrator has in determining the size of the first-year salary increase from the collective bargaining agreement alone. See Exhibit B-16.

My ruling was similar. The contracts are admissible. They provide the factual basis for either or both parties to make arguments regarding the relative salary and

²⁰ I have considered the full decision.

benefits of the officers in Cliffside Park in relation to those of the officers in the other municipalities.

The other main objection of the Borough seems to be that the PBA failed to prove that the other municipalities are comparable to Cliffside Park under the provisions of N.J.A.C. 19:16-5.14. I am satisfied that the other seven municipalities in the southeast quadrant of Bergen County are sufficiently similar to Cliffside Park to justify their use in making comparisons under N.J.S.A. 34:13A-16g(2)(c). There is no requirement that municipalities be identical in order to be comparable. Indeed, it should be obvious that no two communities are identical.

I believe that the other municipalities are comparable for several reasons. All, of course, are municipalities in the State of New Jersey (as opposed to counties, authorities, etc.) and all provide police services. There is the fact of geographic proximity. All are in the southeast portion of Bergen County and, looking at the map provided by the Borough, it appears that five of them - Edgewater, Fairview, Ridgefield, Palisades Park and Fort Lee - are actually contiguous to Cliffside Park. See Ex. B-5. The estimated 1996 populations of these municipalities ranges from a high of 33,118 in Fort Lee to a low of 5,218 in Edgewater and 8,449 in Leonia. Cliffside Park's estimated population is 20,917 which is in the mid-range in this grouping. All of these communities are over 50% residential with Cliffside Park being the second most residential at 80.94%, below only Leonia (86.03%). See Ex. PBA-19.

The per capita income in Cliffside Park stood at \$23,814 in 1989. This was in the mid-range of the eight municipalities. The lowest per capita was reported in Fairview (\$14,935) but Palisades Park (\$17,995), Ridgefield (\$19,175) and Ridgefield Park (\$19,507) all had lower per capita incomes. The three higher ones were Leonia (\$25,443), Edgewater (\$28,294) and Fort Lee (\$31,758). See Ex. B-5, #38.

The proportion of senior citizens in Cliffside Park (18.45%) is lower than it is in Fort Lee (20.06%) and Ridgefield (18.83%) but it is higher than in the other five municipalities and well above the 10.12% figure in Edgewater. Ex. B-5, #39.

The crime rate and violent crime rate in Cliffside Park is typical within these municipalities. The violent crime rate per 1000 is 1.3. Ridgefield (.9) and Palisades Park (1.1) are lower; the rate is the same (1.3) in Leonia and Edgewater; it is slightly higher in Fairview (1.4) and Ridgefield (1.6); only in Fort Lee with a rate of 2.7 is the rate out of line. The overall crime rate in Cliffside Park is 18.8. This is above the rate in Edgewater (13.6) and Leonia (16.6). It is similar to the rate in Palisades Park (19.0). It is below the rate in Ridgefield Park (21.1), Fairview (23.7) and Ridgefield (28.6). Again, it is far below the rate of 38.3 in Fort Lee. See Ex. PBA-19.

The number of police officers in Cliffside Park is 42. The smallest departments are in Edgewater with 24 officers and Leonia with 27. There are 30 officers in Ridgefield Park and 32 officers in Fairview and Palisades Park. Ridgefield, with half of the population of Cliffside Park, has 40 officers in its department. Again, Fort Lee is by far the largest with 112 officers. See Ex. PBA-19.

The equalized tax rate in 1988 in Cliffside Park was the lowest in the grouping at \$2.293. The next lowest rates were in Palisades Park (\$2.473), Ridgefield (\$2.447), Fort Lee (\$2.513) and Edgewater (\$2.531). It then jumps to \$2.816 in Ridgefield Park, to \$3.021 in Leonia and to \$3.121 in Fairview. Thus, on this very important measure, Cliffside Park is a much better position than any of the other municipalities in the southeast quadrant.

Similarly, Cliffside Park had a much greater surplus as of January 1, 1998 (\$4,582,721) than the others for which information was available: Ridgefield had the next highest surplus at \$2,332,914 which is half that in Cliffside Park. The surplus in

Fort Lee was \$1,949,355; in Palisades Park it was \$1,733,679; in Ridgefield Park it was \$405,561; in Fairview it was \$247,755.

Not surprisingly, the large surplus in Cliffside Park enabled that municipality to appropriate the largest amount (\$3,200,000) and this was the largest percentage of the budget at 17.67%, far above second place Palisades Park (10.15%) and two and one-half times third place Leonia (6.95%). Fort Lee, with its much larger budget of \$38 million compared to Cliffside Park's budget of \$18 million, was able to appropriate only \$1.5 million or 3.85% of its budget - and this was the second highest amount in these municipalities - in large part because its total surplus was only \$1,949,355.

The Borough collects a high percentage of its tax levy. Figures for 1993, as published in the 1998 New Jersey Municipal Data Book, indicate that the Borough collected 95.85% of its levy that year. This was the second highest in the group, behind only the 97.35% rate in Leonia and essentially identical to the rate in Ridgefield (95.74%). Edgewater was the lowest at 91.03% and the others were all over 94%.

The financial data shows that Cliffside Park, in a number of respects, is in a more favorable position than are the other municipalities in the southeast quadrant of Bergen County.

Salaries in 1997 were provided for each of the communities in the southeast quadrant as shown in the following chart:

1997 Salaries²¹

<u>Municipality</u>	<u>Top Ptlm.</u>	<u>Sergeant</u>	<u>Lieutenant</u>	<u>Captain</u>
Cliffside Park	\$56442	\$59851	\$62741	\$65630
Palisades Park	62990	65553	68919	72217
Leonia ²²	62948	65775	68595	
Ridgefield	63149	65818	68486	71041
Ridgefield Park	62534	66369		
Fairview	58705	62715	66836	70506
Edgewater	61097	65374	69950	74846
Fort Lee	65273	71800	78980	86877

Based on these 1997 salary figures, it is apparent that salaries in Cliffside Park lag considerably behind those in each of the municipalities in the southeast quadrant of Bergen County, ranking at the bottom for top patrolmen and all ranks of officers.

Fairview is the next lowest paying municipality. Its 1997 rate for a top patrolman was \$2,263 above the rate in Cliffside Park and this differential increased with each rank.

Fairview paid its sergeants \$2,864 more than Cliffside Park. It paid its lieutenants \$4,095 more than Cliffside Park. It paid its captains \$4,876 more than Cliffside Park.

When averages are computed, the average salaries, excluding Cliffside Park, are as follows:

Top patrolman (7)	\$62,385
Sergeant (7)	\$66,201
Lieutenant (6)	\$70,294
Captain (5)	\$75,097

Cliffside Park is below each of these averages by significant amounts and the amount increases going up the ranks. The difference for a top patrolman is \$5,943. The difference for a sergeant is \$6,350. The difference for a lieutenant is \$7,553. The difference for a captain is \$9,467.

²¹ All salaries are those in effect on January 1, 1997 except for Edgewater which is July 1, 1997.

²² The figures given are for high school graduates. Employees earn more if they have college credits and degrees. A patrolman with a masters degree, for example, earned \$65,955.

The award of 3.5% for each of three years will not quite bring the top patrolman in Cliffside Park in 2000 to the average of the other seven municipalities in 1997. Thus, it is evident that the officers in Cliffside Park will continue to have the lowest or among the lowest salaries of the group. A salary increase of 3.5% is exceedingly modest on a comparative basis.

Three of the municipalities in this group received interest arbitration awards which covered some of the years at issue in this proceeding. An award in Fort Lee, which covered 1996 through 1998, provided for a 4% increase in 1998 (and 4% increases in each of the other years as well when Cliffside Park's officers received increases of 3% and 3.5% from an interest arbitration award). An award in Fairview covered 1997 through 1999 and provided for salary increases of 3.5% in 1998 and 3.5% in 1999 (and for a 3.5% increase in 1997). An award in Leonia also covered 1997 through 1999 and it provided for salary increases of 4% in 1998 and 4.25% in 1999 (following a 4% increase in 1997).

Thus, an award of 3.5% will match the increase awarded in Fairview, which has the second lowest paid officers in the group, and will be below the awards in Leonia for 1998 and 1999 and in Fort Lee, which is the highest paying in the group, for 1998. Cliffside Park's relative salary position will decline in relation to the officers in Leonia and Fort Lee and remain the same in relation to the officers in Fairview.

Three of the other municipalities have settled for 1998 and beyond. The increases in Ridgefield were 3.75% in 1998, 4.25% in 1999 and 4.88% in 2000. The increases in Ridgefield Park were 4.25% in 1998 and 3.75% in 1999. The increases in Edgewater were 4% in 1998 and 4% in 1999 (effective July 1 of each year).

Thus, both the voluntary settlements and interest arbitration awards in the southeast quadrant have ranged from a low of 3.5% for 1998 and 1999 in Fairview to an

average of 4.3% in Ridgefield between 1998 and 2000. Looking at both the awards and the voluntary settlements, an award of 3.5% for each of three years is below the average.

In short, based both on the actual 1997 salaries of each rank and based on the salary percentage increases received by each rank in 1998, 1998 and 2000 (Ridgefield only), it is evident that an award of 3.5% in each of three years will not improve the relative salary ranking of the officers in Cliffside Park nor will they match in percentages, and even more so, dollars, the increases received by other police officers in the southeast quadrant of Bergen County. If comparative salaries were the only measure, then an award in excess of 3.5% for each of three years would be warranted.

An analysis which is limited to salaries, however, is unduly narrow. A significant component of compensation is longevity and here the officers in Cliffside Park enjoy a considerable advantage over all of the other officers in the group except those in Fort Lee and this reduces the salary disparity set forth above.

Officers in Cliffside Park and Fort Lee both receive 15% in longevity after 20 years of service. Payment starts at 3% after four years and increases by 3% each four years thereafter to the top rate. The same top rate of 15% is realized in Fairview and Ridgefield but officers must complete 24 years of service to reach the top rate. The top rate is 12% in Edgewater and that rate is not reached until 30 years. The top rate is 10% in Palisades Park after 24 years and it is 8% after 24 years in both Leonia and Ridgefield Park.

When the maximum longevity is added to the top rate for a patrolman - the salary which I believe is the most representative because it is the salary that most of the officers will earn after several or, in the case of Cliffside Park, up to eight years - officers in Cliffside Park remain at the bottom, behind second lowest Fairview by \$2,603. They

are \$4,868 below the average. This is over \$1,000 closer to the average, however, than is the case when longevity is not considered.

I mentioned above that although Cliffside Park, with its 12 paid holidays, is below the average of 13. Five of the municipalities in the group receive 13 holidays and Ridgefield Park receives 12 whereas Fairview receives 14. I also mentioned, however, that the officers in Cliffside Park enjoy an advantage in paid vacation which more than offsets its below average number of holidays. They receive 18 vacation days in their third year whereas no other officer in the group receives more than 14 vacation days at that time. An advantage continues until an officer has at least 15 or more years of service when several of the municipalities do provide more vacation time than does Cliffside Park.

I also have discussed the clothing allowance and noted that Cliffside Park is behind the average by only a small amount.

The Borough has argued repeatedly that these officers receive a generous and fair compensation package. Fairness, of course, is an imprecise and necessarily subjective concept on which reasonable people can disagree. Some people in Cliffside Park may well agree that these officers are highly paid already and should not receive an increase for three years. It is true that a large number of the officers will be earning in excess of \$70,000 in the years covered by this award and that the average income in the community is well below that figure. Surely, however, a component of fairness relates to what others doing essentially same job are paid for their work. It is in part for this reason that the Legislature included comparability in public employment in comparable jurisdictions as one part of the statutory criteria. On this measure, the Borough's officers are not generously compensated.

Overall Compensation I included some discussion of the overall compensation received by the officers in Cliffside Park above. These officers, like virtually all police officers in New Jersey, are in the New Jersey Police and Fire Retirement Fund ("PFRS") and therefore enjoy the same pension benefit formula as their colleagues throughout the State, although the actual benefit received is based on earnings. The officers in Cliffside Park receive a comprehensive and non-contributory insurance package including hospitalization, health benefits and a full family dental plan. There is no evidence that this benefit is significantly different from that enjoyed by the other officers in the area.

In short, except as discussed above, and with the significant exception of salaries both with and without longevity, the officers in Cliffside Park enjoy a competitive and generous package of fringe benefits which contributes importantly to their overall compensation. These officers lag only in the area of salaries.

Stipulations The only stipulation by the parties concerned the term of this award and the successor agreement. That agreement will cover the term January 1, 1998 through December 31, 2000. Contrary to the Borough's contention, and as discussed above, there was no stipulation to include a provision which parallels Banca v. Tp. of Phillipsburg in the new agreement.

Lawful Authority The statute requires the arbitrator to consider the lawful authority of the employer in rendering an interest arbitration award. There is an express requirement that the arbitrator consider the limitations imposed by the Cap Law, N.J.S.A. 40A:4-45.1 et seq.

While the Borough cited this law and the constraints imposed on municipal spending as a result, it failed to cite any evidence that the increases proposed by the

PBA, let alone the lower amount I have awarded, will cause the Borough to exceed its lawful authority under any statute including the Cap Law.

The Borough cited various things, including the loss of State aid, as having a bearing on this factor. It should be noted, however, that Cliffside Park - as well as all other municipalities in New Jersey which received this aid - last received density aid in 1996. This aid was phased out over four years and the last payment was received in 1996. Therefore, the Borough has adjusted to this loss. This factor, however, as well as others cited by the Borough, are more appropriately considered under **Financial Impact** and will be discussed in detail below. At this time, it is sufficient to state that there is nothing which suggests that this award will cause the Borough to exceed its lawful authority.

Dr. Caprio addressed this point directly in his testimony. He stated that his analysis had led him to conclude that it was not even necessary to present a table on this matter because it was clear in the 1998 budget that there was room within that budget, which used only the 2.5% index figure, to fund the PBA's proposal. As calculated by the Borough, the cost of the PBA proposal over three years is \$756,845. The Borough's surplus at the end of 1998 was just under \$5 million. Thus, the Borough has the money available to pay for all three years of the PBA's proposal by using a small fraction of its surplus. There simply is no lawful authority impediment to the award. Furthermore, Dr. Caprio testified, and the Borough did not refute, that the Borough's Cap bank included about \$500,000 for 1996 and an additional \$300,000 for 1997. These figures are based on the 2.5% index and not on the permissible 5% increase in appropriations. (T1 at 71 and 72). Thus, again, lawful authority is simply not an issue in this proceeding.

This was at least implicitly recognized by the Borough in its brief when Mr. Diktas argued that the Borough "cannot extend itself to the outer limits of its budgetary and cap restrictions and maintain its policy of fiscal conservatism and budgetary prudence." (Reply Brief at 37). This factor, however, does relate to extending to the outer limits in the sense that an employer cannot be directed to exceed its lawful authority. This award does not do so.

Financial Impact The issue is not whether the employer has the ability to fund the increases proposed by the employee organization nor whether these increases could be paid by raising taxes. The Supreme Court made this clear in Hillsdale. There is no burden on the Borough to prove that it cannot afford to pay the increases. Rather, the arbitrator must consider the financial impact of the award on the governing unit, its residents and taxpayers.

The impact of this award of three across-the-board salary increase of 3.5% in 1998, 1999 and 2000 will be minimal. Both Mr. Kelly and Mr. Berardo, respectively the Borough's auditor and chief financial officer, agreed that the impact in 1998 would be negligible. The Borough calculated that if the position of the PBA were awarded rather than that of the Borough, it would cost the average taxpayer an additional \$34 per year. I have not, of course, awarded the increases proposed by the PBA. I have reduced the salary increases from 4%, 4.5% and 4.5% to 3.5%, 3.5% and 3.5%. I also have denied the request for an increase of \$200 in the clothing allowance and for one additional holiday. Thus, the impact will be well under \$34 per year for the average taxpayer.

The Borough cited a number of factors which should be considered. The major one was the loss of State density aid. The Borough received almost \$3.9 million of State Aid to Densely Populated Municipalities in 1993 and, I assume, prior to that time. This was phased out over four years so that there was a final injection of such aid in

1996 in the amount of \$1,060,740. In what I interpreted as an effort to maximize the apparent impact of the loss of State aid, the Borough aggregated the loss of all sources of State aid between 1993 and 1999 and determined that a cumulative loss of \$17,374,520 had been incurred. This cost the average homeowner a total of \$2,346. Comparing aid figures in 1993 and 1999, the average annual loss of State aid was just under \$4 million which the Borough calculated represented an average annual cost of \$527 to an average homeowner.

The loss of State density aid is, of course, a fact. This aid has been phased out. This aid also had been received by three other municipalities in the southeast quadrant of Bergen County, Palisades Park, Fairview and Ridgefield Park, and these municipalities also have lost this aid, although they had received less than Cliffside Park. The last year that such aid was received, however, was 1996. The loss of this aid was recognized by Arbitrator Kurtzman in his award which covered 1996 and 1997, the last year that the aid was received and the first year that no such aid was received. The Borough has made the adjustment to the loss of this aid and I do not believe that this is a factor which can be carried forward indefinitely and cumulatively as the Borough has proposed.

I recognize that there has been a modest loss of ratables in Cliffside Park which total \$37 million on an assessed value base now listed at \$1.26 billion. This loss has cost the average taxpayer an average of \$22 per year since 1994, although the Borough projected that it would cost \$40 in 2000 based on the loss of ratables plus a loss due to condemnation and redevelopment. I note also that the decline in ratables reached a peak in 1997 of \$16.5 million and has been reduced to \$1.7 million in 1998 and to \$4.1 million in 1999.

The Borough also will be funding a number of projects. One of these is a \$5.4 million bond issue of the Board of Education for a school addition. The total cost of this project over 20 years, with financing, will be \$8,594,555. The Borough also decided to undertake, as set forth in ordinances, a redevelopment project which encompasses 11 parcels. The cost of this project is expected to be \$5,410,200 or, with financing over 20 years, a total of \$8,616,750. Following litigation, the Borough has been ordered to condemn and repair portions of Oxen Hill Road. The cost of this project has been placed at \$134,000 or, over twenty years, a total of \$154,750. Finally, the Borough has been ordered by the Department of Environmental Protection to upgrade sewer system due to a flow problem with the storm and sanitary sewers. The cost of this project is projected to be \$2,500,000 or \$3,966,250 over 20 years with finance costs. The total of these four projects is \$21,332,305. The Borough has calculated that the cost to the average homeowner of these projects over 20 years will be \$144 per year. I note, however, that there was no cost for these projects in 1998 and that the cost in 1999 will be only \$333,000. It will be \$934,000 in 2000.

The tax rate in Cliffside Park has increased from \$1.93 in 1993 to \$2.37 in 1998. This is an increase of \$.44 or 23%. At the same time, the equalized tax rate in Cliffside Park is 31st in the County out of 70 municipalities. Thus, the community's tax rate is in the lower half of the County. Per capita income is just about in the middle of the communities in the southeast quadrant of Bergen County so the community, even with its relatively high proportion of senior citizens, is not disproportionately impoverished nor burdened with taxes.

It also must be recognized - and this is to the credit of the Borough, its leadership and its financial administration - that the Borough is in very sound economic condition. Its tax collection rate was 97.78% in 1998 and has been going up in recent

years. Delinquent taxes have decreased. The current fund balance in 1998 was \$4,583,000 which was actually larger by \$271,000 than the 1993 surplus before the loss of State density aid. The very large surplus permits the Borough to anticipate a significant amount of revenue from surplus. In fact, it anticipated 17.67% of its revenue in 1988 from surplus, a percentage that was exceeded by only five municipalities in the County. The nearest one in the southeast quadrant was Palisades Park at 10.15%. The Borough was able to anticipate \$3.2 million of its \$18 million budget from surplus.

The Borough demonstrated a strong ability to regenerate surplus over the years. In 1998, the Borough had \$3.5 million in additional resources beyond those budgeted including \$1,848,000 in actual collections over budgeted collections, \$606,000 in delinquent taxes, \$482,000 in miscellaneous revenue not anticipated, and \$600,000 in the cancellation of unexpended balances. There was an additional \$1,383,000 which the Borough had as a planned surplus. Thus, at the end of 1988, the Borough had a surplus of just under \$5 million. This is money which could be used to fund the award or a portion of the award if the Borough elects to do so in order to further minimize the tax impact.

Based upon this evidence, it is apparent that the Borough is in a position to fund the salary increase to be awarded with only a very modest impact on the governing unit, its residents and taxpayers.

Cost of Living Another factor which must be considered is the cost of living. The Consumer Price Index ("CPI") published by the Bureau of Labor Statistics ("BLS") is the most widely utilized measure of changes in the cost of living and both parties provided data from the BLS. Using the annual figures for the Consumer Price Index-All Urban Consumers, New York-Northern New Jersey, Long Island area, the CPI has increased by 3% or less every year since 1993 and by 2.3% in 1997 and only by 1.6% in

1998. The increase has been 1.7% from April 1998 to April 1999. Thus, the increase remains low.

Given these figures, a salary increase which provides for 3.5% increases in 1998 as well as in 1999 and 2000 clearly results in an increase in real earnings for the officers in 1998 and appears very likely to do so again in 1999. The 1998 increase in real wages will be 1.9% ($3.5\% - 1.6\% = 1.9\%$). While this figure is below the average of 2.8% since 1986 as computed by the Borough, it nonetheless represents what I believe is an adequate increase in real earnings. There is no evidence to suggest that the CPI will increase at a rate which will offset the 3.5% awarded for 1999 and 2000. Therefore, increases of the amount awarded are reasonable on the basis of this factor.

Continuity and Stability of Employment While the Borough has argued that an award of the PBA's final offer - and my award, of course, is considerably below that proposal - would jeopardize the level of employment and/or services in the Borough, that is not supported by the evidence. This Borough, given its very healthy surplus and relatively low tax rate as well as its spending authority under the Cap Law, need not reduce services or employment as a result of this award. It may, of course, elect to enact various economies and service reductions as a matter of policy - it is in the process of eliminating its paid Fire Department and now has only one or two remaining employees in the Fire Department - but such a result will not be the inevitable consequence of this award.

As computed by the Borough, the cost of the PBA's award to an average homeowner would be only \$34 per year and, as stated, my award is considerably less. My award provides for 3.5% annual salary increases rather than the 4%, 4.5% and 4.5% proposed by the PBA. Also, I have not granted the \$200 increase in the clothing

allowance and the additional holiday proposed by the PBA. Thus, the increase will be well below the \$34 computed by the Borough.

On the other hand, to impose a three-year wage freeze as proposed by the Borough would not, I believe, be consistent with continuity and stability in the Police Department. It certainly would have an adverse impact on the morale of these officers who already are the lowest paid in the southeast quadrant in Bergen County. I do not know whether it would cause any officers to leave the department. It is not easy for officers to move to other departments, especially after they have worked in one municipality for some years. The Borough's ability to attract and retain the best of the new recruits would be adversely affected if that is what it wants to do.

This factor is not an important one in deciding this case except to the extent that I am satisfied that the award will not compel the Borough to reduce either police or other public services in the community.

Weighting of the Criteria and Summary

In the preceding section, I have set forth the terms of the award. I have explained why I selected, rejected or modified the proposals of the parties. I have calculated the cost of the award each year. In rendering the award, I have carefully considered the evidence and arguments of the parties. I have related the evidence and the arguments to the statutory criteria and discussed each criterion separately.

I have found each factor to be relevant although I have accorded more weight to some factors than to others. The only change which will result from this award will be three annual wage increases of 3.5% each.

I believe that annual increases of 3.5% are consistent with the interests and welfare of the public. They will provide moderate wage increases to the employees and thus contribute to the morale, productivity and effectiveness of the police officers in

providing their essential public safety services to the community without imposing unduly burdensome additional costs on the public.

The salary increase awarded is somewhat below the rate of wage increases in the private sector in New Jersey and in Bergen County. Private sector increases are a very important factor in deciding interest arbitration cases because increases in the private sector, unlike those in the public sector where it is possible to raise more money simply by raising taxes, are driven by harsh economic realities such as profit and loss, the ability of employers to compensate employees and remain in business, inflation, interest rates, etc. Also, of course, the private sector, directly or indirectly, provides the income which most of the residents and taxpayers of Cliffside Park must have in order to pay their taxes and, indirectly, to pay the police officers and other public employees. I have awarded less than would be indicated by this consideration standing alone but this aspect of the statutory criterion strongly militates against the three-year wage freeze proposed by the Borough. On the other hand, the increase awarded is slightly more than the average increase in the public sector in New Jersey for local government employees. It also is 3.5% more than the Borough has, at least to date, elected to give its unorganized employees in 1998 and 1999. At the same time, it is less than the average increase for police officers in the southeast quadrant of Bergen County which I believe is the appropriate group for such comparisons. The increases will leave these officers at the bottom of this group in salaries. This disadvantage is somewhat offset when the superior longevity benefit in Cliffside Park is factored in but still these officers will be the lowest paid. The increases received by the other officers in the group, whether the result of interest arbitration awards (as three of them are) or voluntary settlements (as three more have been) have increased by a minimum of 3.5% in 1998 and 1999 and the average increase has been 4% which is greater than I have awarded.

Thus, based only on comparisons with fellow officers in the immediate geographic area and the private sector, I would have awarded a larger increase. The award has been tempered by other considerations including, particularly, the public interest and financial impact.

There is nothing in the overall compensation received by these officers which requires either a larger or smaller salary increase than would otherwise be warranted. These officers are not out of line with their counterparts. They enjoy comprehensive health benefits and are in the same pension plan. Their other fringe benefits are generally consistent with the pattern. They do enjoy a more generous vacation benefit, particularly in the early years of employment, which offsets a slight holiday deficiency. Their longevity benefit is matched only by that in Fort Lee (which also happens to be the highest paying municipality in the group and which received a 4% increase in 1998).

Stipulations were not important in deciding this case except that the parties did agree upon the term of the agreement and the award is consistent with that agreement.

There is no evidence that this award will cause the employer to exceed its lawful authority under the Cap Law or any other statute, regulation or requirement so lawful authority is not a factor in fashioning this award. Suffice it to say that I recognize that the award could not compel the employer to exceed its lawful authority and it does not.

The financial impact of the award on the governing unit, its residents and taxpayers is an important consideration to which I have given considerable weight. While the cost of this award to the average taxpayer will be well less than the \$34 per year difference calculated by the Borough as the difference between the parties' final offers, it also is true that the Borough faces what appears to be an unusually heavy capital burden as a result of several programs it must or has chosen to undertake and finance. Not only does this include a \$5.4 million school construction bond but also a

mandated sewer upgrade (\$2.5 million), a redevelopment cost (\$5.4 million) and the Oxen Hill project (\$134,000). The Borough has lost State density aid but the last payment was received in 1996 so this is no longer a factor. This was cited in the prior arbitration award and the Borough has made the adjustment as required to the point that its surplus is greater now than it was in 1993 when density aid was at its peak. In fact, State aid has increased very slightly in 1998 and 1999. The equalized tax rate in this community, with its relatively modest per capita incomes, is just about in the middle of the County and this award will not jeopardize that ranking. As the Borough's financial witnesses testified, the impact of the award will be negligible in 1998 and I am satisfied that the impact will be very modest in 1999 and 2000.

I have considered increases in the cost of living in rendering this award. These increases have been very modest in the last several years. The award will assure the officers an increase in real wages at least in 1998, almost certainly in 1999 and very probably in 2000. The salary increases are closer to the actual increases in the cost of living than has been the historical average in Cliffside Park and I believe this is appropriate.

Continuity and stability of employment will not be adversely affected by this award. This is not an important factor in deciding this case. The award will not compel the Borough to reduce employment in the Police Department, thus jeopardizing either the level of this vital public service or the continuity and stability of the employees immediately affected by this award, nor will it compel the Borough to reduce employment in other areas of the municipality.

For these reasons, I hereby issue the following:

AWARD

The term of the agreement shall be three years from January 1, 1998 through December 31, 2000.

Salaries shall be increased across-the-board by 3.5% retroactive to January 1, 1998, by an additional 3.5% retroactive to January 1, 1999 and by an additional 3.5% effective January 1, 2000.

Except as the parties shall otherwise mutually agree, all terms and conditions of the 1996 and 1997 agreement shall be continued in the new agreement.

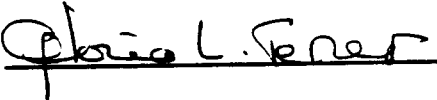
Dated: June 24, 1999
Princeton, NJ



Jeffrey B. Tener
Arbitrator

State of New Jersey)
County of Mercer) ss.:

On this 24th day of June, 1999, before me personally came and appeared JEFFREY B. TENER 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 the same.



GLORIA L. TENER
NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES SEPT. 8, 1999

