

STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Interest        \*

Arbitration between                \*

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    \*        DECISION

    \*        AND AWARD

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BOROUGH OF MADISON                \*

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    \*        Docket No.

    \*        IA-97-46

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Before: Joel M. Weisblatt, Arbitrator

Appearances:

For the Borough  
Stanton, Hughes, Diana, Zucker & Salsberg  
By: Richard M. Salsberg, Esquire  
Matthew J. Giacobbe, Esquire

For the P.B.A.  
Fox & Fox  
By: David I. Fox, Esquire  
Stacey B. Rosenberg, Esquire

## D E C I S I O N

The Borough of Madison (the "Borough" or the "Employer") and P.B.A. Local No. 92 (the "PBA") are parties to a collective bargaining agreement which had a duration through December 31, 1996. Negotiations for a successor agreement reached an impasse and a Petition to Initiate Compulsory Interest Arbitration was filed. Pursuant to the Rules and Regulations of the Public Employment Relations Commission, the undersigned Arbitrator was duly appointed to serve in this matter.

The Arbitrator met with the parties on June 18, 1997 and July 16, 1997 in an effort to assist them in achieving a voluntary resolution to their dispute. The impasse persisted. Evidentiary hearings were scheduled and held on October 17, 1997. Both parties were afforded an opportunity to argue orally, present documentary evidence and examine and cross-examine witnesses. An extensive record was established including voluminous documentary exhibits and some expert testimony. Both parties have submitted written,

post-hearing briefs expressing their arguments with great specificity. Both parties executed a Mutual Agreement to Extend Interest Arbitration Time Limits, pursuant to N.J.S.A. 34:13A-16f(5), extending the time limits for the rendering of the Award herein until May 10, 1998.

The Arbitrator has reviewed the entire record and has analyzed the evidence in light of all of the eight statutory criteria set forth in N.J.S.A. 34:13A-16g; relevancy and determinative weight are discussed in the *Analysis and Discussion* section of this Decision. The ultimate determination herein shall award the most reasonable resolution of the issues in dispute. That determination is achieved through application of the statutory criteria to the issues and evidence presented by the parties.

### **Final Offers**

The Borough's final offer is as follows:

#### **I. Salaries**

Effective January 1, 1997: 3% increase in base salary plus steps

Effective January 1, 1998: 3% increase in base salary plus steps

Effective January 1, 1999: 3% increase in base salary plus steps

#### **II. Health Benefits**

Effective January 1, 1997: Each employee shall, by payroll deduction, contribute ten (10) percent of the total premium for the medical insurance program in which the employee is enrolled.

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The PBA's final offer is as follows:

1. 6.5% salary increase for each year, 1997, 1998, & 1999.

2. All employees comprising the Division of Investigation shall be compensated \$1,000 for being on stand-by, and paid time and one half for being called out for investigative work during his day off, during time off, or during a vacation day.

3. Every member of the bargaining unit shall receive an additional 2 holidays for a total of 14 per year. Each individual member shall have the option of taking the holiday days as days off, or in pay in the first pay of December. A member may use partial holiday days for days off and be paid for the remainder in December.

4. Police officers assigned to perform police services for employers other than the Borough shall be compensated at a rate of \$30.00 per hour.

5. Five (5) weeks vacation shall be granted an employee during the calendar year in which the 20th anniversary of his employment occurs.

6. Employees shall be entitled to 15 sick days in advance at the beginning of their second full calendar year, and every year thereafter.

7. Each employee in the bargaining unit shall be allowed 3 days personal leave per calendar year with full pay without charge to his sick time.

8. A sum of \$500.00 shall be paid annually to each officer to assist in defraying the cost of maintenance of his uniforms.

9. Tuition shall be reimbursed in full up to a maximum of \$125.00 per credit at the conclusion of the course, provided the employee receives a grade of C or better.

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### **Positions of the Parties**

The PBA contends that its final proposals are the more reasonable and should be awarded. It further asserts that the existing health insurance program should be maintained in its current form without employee premium co-payment.

The PBA presents arguments related to all eight statutory criteria. Its arguments with respect to the *public interest and financial impact on the taxpayer* criteria center on the fiscal health of the community. The PBA notes the testimony of its expert that the Borough is so fiscally strong that there is very little pressure on property taxes. The unique revenue resources of the Borough are cited as well as high tax collection rates and a substantial budget surplus. Additionally, the steady tax rate over time and the relatively flat level of the municipal tax levy (measured in dollars) over a six year period are noted as indicative of the Employer's ability to fund the

PBA's proposals without an adverse effect on the public interest.

The PBA also argues that the cost of health insurance premiums to the Borough have been reasonable stable for at least five years. It describes the Borough's proposal for employee premium co-payments as "...totally unnecessary and even inappropriate...."

The PBA claims that the *comparability* criterion supports an award of its position. It focuses on an examination of base salaries, fringe benefits and health insurance provided to patrolmen and sergeants in Morris and surrounding counties. The PBA asserts that its patrolmen rank 28th among 38 Morris County municipal and county police agencies when comparing maximum salary rates and longevity benefits. Similar comparisons in Union, Essex and Somerset counties were also noted. Specific comparisons with respect to salary rates and particular other municipalities were relied upon by the PBA and comparisons were also specifically presented with respect to sick leave

benefits, detective stipends, personal days and uniform allowances.

The PBA maintains that a comparison with non-uniformed Borough personnel justifies the higher rates of pay enjoyed by police employees. It relies on a greater length of work day, amounting to 338 more hours worked annually, and greater job-related hazards inherent in police work as the bases for the justification. The PBA also suggests that data as to private sector comparisons are supportive of its, rather than the Borough's offer. It maintains that the documentary evidence reveals the reported private sector contracts to be ranging above the 3.0% increase offered by the Borough.

The PBA suggests that a review of the two proposals indicates that the parties have stipulated to a three year contract duration. It points to this as the only element for consideration under the *stipulations of the parties* criterion.



The PBA contends that under the *lawful authority* criterion, there is no potential problem with implementing its proposals. The PBA cites expert testimony that the Borough has not needed to appropriate funds to the full extent of the lawful limits under the CAP law for the proposition that there are no significant CAP Law implications in the record at hand. It characterizes municipal spending increases as "modest" and reiterates the existence of a level municipal property tax rate. The PBA asserts that the record, "...demonstrates that, based upon the Borough's significantly strong fiscal condition, the Cap Law restrictions should not be a deterrent to awarding the PBA's final salary and benefits proposals."

The PBA's presentation with respect to the cost of living criterion was based on a 21 year analysis of the Consumer Price Index and salary increases for the bargaining unit. It concludes from the data considered that the average increase in "real purchasing power" was only 2% annually over that time span. By contrast, the PBA notes that the municipal taxes collected have increased at a rate far below inflation over the last

six years. The PBA also maintains that consideration of the cost of living should not be dispositive of the issues presented; it seeks to minimize the weight attributed to this criterion.

In relation to the eighth criterion, the *continuity and stability of employment*, the PBA observes that, "[T]his statutory criterion generally involves stability of employment as well as hours of work and the nature of the employment as well." The PBA insists that the Borough's proposal to have employees contribute to the cost of health insurance premium payments is not consistent with practices in Morris County or in the state as a whole. It suggest the potential for a drop in relative compensation as a result and argues that this might cause instability of employment. The possibility of high turnover rates or inhibiting the hiring of police officers is said to create a detrimental impact.

The PBA position placed special emphasis on certain factors relating to the Borough's proposals. Of initial importance to the PBA is the assertion that

implementation of the Borough's salary offer would negatively effect what it terms to be a pay scale "significantly less than their Morris County counterparts." It points out that all but one contract for Morris County municipal police units provide 1997 salary rate increases of between 4.0% and 5.0%. The one lower rate was that of 3.5% in Rockaway Township where salary rates and longevity are said to be higher than in Madison. It is further stressed that the Borough's proposed health insurance premium contribution actually reduces the value of the 3.0% salary increase offered.

The second area for special attention is that of the health insurance co-payment proposal from the Borough. The PBA asserts that with just a few exceptional examples, there is no comparative basis to support premium contribution for this unit. Further, it is pointed out that in each of the exceptional examples where a co-payment has been established, the employees have been accorded retiree health insurance coverage which the PBA does not presently enjoy. The PBA argues that the Borough has failed to consider

other cost savings mechanisms related to health insurance which might be less onerous to the employees.

The PBA supports its detective stipend proposal with comparative data suggesting a low rank among Morris County municipalities for the stipend currently paid. Similarly, the holiday proposal is based upon what the PBA characterizes as the norm in comparable communities. Comparability is also the basis for the PBA's position seeking increased sick leave benefits.

The PBA's outside duty pay proposal to standardize the pay rate, irrespective of whether the services are provided to a profit making contractor or for non-profit groups, is supported with the contention that the work is same for both groups. The current personal leave benefit is described as an aberration because personal days are charged to sick leave. The PBA claims that there is no true personal leave apart from sick leave, whereas the average Morris County municipal police contract provides three additional days of personal leave. The uniform maintenance allowance proposal is said to address a current

shortfall in the benefit level. The PBA proposal dealing with tuition reimbursement does not seek to increase the payment amount but instead focuses on adjusting the qualifying grade from B to C, in order to receive the benefit. It is stressed that a C is a passing grade and therefore should qualify.

In conclusion, the PBA claims that, based on the statutory criteria, the final proposals of the PBA are more acceptable than those of the Borough. It seeks a ruling to that effect and an award ordering the implementation of the PBA final offer as the resolution of the impasse dispute presented herein.

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The Borough, addressing the application of the statutory criteria to the record, contends that the evidence, "...overwhelmingly supports the Borough's final offer as by far the more reasonable." The Borough's arguments group certain criteria for presentation purposes. The comparability and overall compensation criteria are handled together. Similarly,

the public interest, lawful authority and financial impact criteria are grouped together for discussion purposes. The cost of living and the continuity and stability of employment criteria are presented independently for consideration.

The Borough asserts that the wages earned by unit employees compare quite favorably to average private sector wages in the county and the entire state. Further, it claims that its 3.0% offer is fully consistent with national increases for all sectors of employment, allowing unit members to keep pace. In addition to this general private sector comparison, the Borough suggests that bargaining unit salary rates and the proposed 3.0% annual increases compare favorably within a general public sector comparison as well.

With respect to comparisons in the same or similar comparable jurisdictions, the Borough insists that it has drawn meaningful comparisons while "...the PBA has introduced myriad exhibits that have virtually no relevance for comparison purposes." In particular, those municipalities located in Essex, Union and

Somerset Counties are assailed as irrelevant without any supporting evidence of similarity. The Borough identifies Morris County municipalities as comparable on the basis of population, area, density, number of officers, per capita income and crime rate. It concludes that Madison has similar demographics to those of the average Morris County municipality.

The Borough argues that comparisons with other employees in the same jurisdiction reveal that patrolmen and sergeants are the highest paid municipal workers. It urges the Arbitrator to attempt to maintain consistency among the various Borough employees. It claims that the awarding of the PBA's final offer "would elevate the Borough's police officers to a salary pinnacle far above all other Borough employees."

The Borough asserts that unit employees salaries exceed the average for law enforcement employees in Morris County. Specifically, it is claimed that the top patrolman salary rate for 1996 ranks 15th out of the 33 municipalities with data for that year. That

rank is said to be higher than the relative ranking for 1993 or 1991, revealing improving status on a comparability basis. The Borough argues that the PBA's own exhibits establish that the PBA proposal for 6.5% annual salary increases is excessive.

The Borough contends that the current level of overall compensation, salary and benefits, is above average for employees performing the same functions among comparable jurisdictions. It uses a benchmark of ten years' experience (approximately the average among unit members) to compare the various benefit areas. Since the PBA unit employees are said to already enjoy "superior benefits" the Borough seeks to have the proposals for further benefit improvements rejected characterizing any such increases as "tantamount to a windfall."

The Borough contends that its health insurance proposals are justified. It claims that the cost of "medical coverage is increasing at an alarming rate." The Borough cites reports of national statistics indicating that 73% current contracts provide for



employee contribution toward premium payments. It maintains that eight contracts in Morris County include provisions for law enforcement employees to make premium co-payments. The Borough argues that premium contributions by employees provide an incentive to moderate medical costs due to greater care in the use of coverages.

The Borough presents arguments relating to the first, fifth and sixth statutory criteria under one section dealing with the impact on its finances. Initially, the Borough stresses the proposition (citing the New Jersey Supreme Court and the Public Employment Relations Commission) that an employer should not necessarily be ordered to provide a union's demands merely because it may be able to afford that package of proposals. It maintains that the current budget surplus is the result of sound fiscal management and that that surplus is within established guidelines for budget practices. The Borough contends that the use of surplus to fund salary increases is not prudent or proper. This is especially true with respect to the electric utility surplus and the water utility surplus.

The Borough assails the PBA expert witness' suggestion that the governing body could adopt an increases budget CAP, by ordinance, in order to have added funds which could finance the PBA contract. It notes that the expert offered no justification for such an ordinance other than the PBA's desire for its proposed salary and benefit package.

The Borough claims that there is a trend a toward a declining tax base, measured by assessed valuation. It argues that this is the result of tax appeals and has the potential to create future fiscal stress on the community. The Borough also expressed concern over the possible decline in future electric utility revenues. It emphasizes the importance of control over salary and other labor costs in order to prudently manage the financial impact of the municipal budget on the taxpayers.

The Borough uses the Consumer Price Index as a measure of the cost of living and notes that this is the most generally accepted index measuring inflation and prices. It points out that increases in the cost

of living have been extremely low, especially in 1997, 1996 and 1995. The Borough insists that the PBA employees have received salary increases in excess of the cost of living every year since 1991 and that the Borough's current salary increase offer would continue that trend.

The Borough asks the Arbitrator to consider the high degree of continuity and stability of employment within the bargaining unit. Noting the history of low turnover, the Borough stresses the "extraordinary job security advantage law enforcement officers enjoy compared to non-law enforcement employees." The Borough contends that its sound fiscal management provides unit employees with increased job security and freedom from layoffs and wage freezes.

In conclusion, the Borough contends that application of the statutory criteria establish that its proposals with respect to 3.0% annual salary increases and employee contributions toward health insurance premiums comport with the "economic

realities" of Morris County. It seeks an award adopting the Borough's final offer as the resolution of the dispute presented in this interest arbitration.

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### **Analysis and Discussion**

The Arbitrator's determination herein is governed by the application of the eight statutory criteria to the evidence on the record in order to establish the most reasonable resolution of the issues in dispute. The criteria, set forth at N.J.S.A. 34:13A-16g(1)-(8), read as follows:

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

(2) Comparison of wages, salaries, hours, and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours, and conditions of employment of other employees performing the same or similar services and with other employees generally:

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

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

(c) In public employment in the same or similar comparable jurisdictions, as determined in accordance with section 5 of P.L.1995, c. 425 (C. 34:13A-16.2); provided, however, 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 economic benefits received.

(4) Stipulations of the parties.

(5) The lawful authority of the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by 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 on 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 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 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.

While the Arbitrator has given consideration to all eight criteria, the analysis and discussion herein shall provide an indication of the due weight given to each factor in light of the evidence and issues in the record presented.

The *public interest* criterion is relevant and important in all interest arbitration proceedings. The public has an inherent interest in the governing body's ability to provide for the public safety. An important element of providing for the public safety is maintaining a well-trained, skilled, effective and motivated police force. There are numerous factors that contribute to the ability of a municipality to maintain such a police department. One is the ability to attract and retain highly qualified police officers. Another is the ability to properly staff and equip that police force. A third is the ability to provide

adequate training and support for the continued effective operation of the department. Finally, the ability to sustain high morale among the staff.

These factors may actually present competing interests at times. In certain settings, an effort to provide the compensation package that will attract and retain highly qualified officers could place financial pressure on a municipality's ability to hire a sufficient compliment of police. The key to the public interest criterion is careful balance. It is frequently possible to establish a compensation plan that is competitive in the labor marketplace yet which does not impede the governing body's ability to fund other necessary elements to provide for the public safety, or other public needs as well. The various factors may often compete for limited resources but they are not necessarily mutually exclusive. The competing interests must be balanced so that none is unreasonably neglected and that none becomes unduly dominant.



In the case at hand the evidence clearly established that the parties have achieved an admirable measure of balance in their prior negotiations. The compensation program is truly competitive and has obviously been quite successful in attracting and retaining highly qualified police officers. The Madison Police Department has provided effective police protection for the public and the Borough has maintained a sound fiscal position, with relatively low stress on the taxpayer. Specifically, there has been very little turnover on the force; only five employees have left the force over the last ten years. The productivity data set forth in various exhibits indicates an active and productive force. The budgetary data (to be discussed in full detail further on) reveals the Borough to enjoy an extremely stable fiscal position, with a relatively low equalized tax rate, strong revenue sources, reasonably moderate expenditures and sufficient surplus to protect against emergent needs.

The public interest criterion requires an examination of the impact of the CAP Law. This is

important because an award which results in undue CAP pressure could potentially cause a municipality to fail to meet the needs of the public interest in other areas. In the case at hand the CAP Law presents no current detrimental implications for the Borough. Both the 1996 and 1997 budgets were placed in evidence. Sheet 3b of each document provides an analysis of the CAP limitations on the Borough in contrast with current general appropriations for municipal purposes within the CAP. For the 1996 budget, the CAP limitations for the Borough were \$10,940,625 and the total general appropriations within the CAP were \$10,877,843. The Borough budgeted its appropriations approximately \$63,000 below the CAP limit. In the 1997 budget, the CAP limitations were \$11,168,601 and the total general appropriations within the CAP were \$11,118,420. The appropriations were approximately \$50,000 under the CAP restriction. These figures are clearly indicative of a fiscal circumstance in which the CAP appears to present absolutely no threat to the public interest. The Award herein is constructed to maintain that strong circumstance with respect to the CAP and the Borough's ability to provide for the public interest.

A critical issue in the dispute presented herein is that of health insurance. The Employer seeks major changes involving the contribution by unit employees, through payroll deduction, of 10% of the premium cost for all health benefits. The PBA resists any changes. The record reveals that there is a certain measure of inconsistency in the cost of health insurance. In some years there have been major increases while in other years there are no increases; there can even be decreases. The unpredictability of health insurance costs does present the governing body with certain long-term difficulties with respect to planning budgets. To the extent that health insurance costs can be moderated, the large swings in rate changes may be lessened. There is a clear public interest in reasonable moderation of health insurance costs that will provide current and future budget stability.

Although there have been some large swings (33.4% increase in the 1997 health insurance appropriations over 1996), the experience in Madison over the last five years has been for an average increase that is quite moderate. Despite the large percentage increase

in the 1997 appropriations, the average annual increase over the last five years has been about 4.5%, compounded. That figure is derived from a comparison of the appropriations amounts set forth in Exhibits B-57 through B-61. Further, the actual premium rates, set forth in Exhibit B-62 reveal similar facts. Specifically, the traditional plan family rate has increased from \$552.46 per month to \$687.10 from 1992 to 1997. The single employee traditional plan rate has increased from \$215.63 to \$270.45 over the same period of time. Both of these experiences are also approximately 4.5% compounded annual increases.

While the public interest may warrant some moderating measure toward health insurance, this record fails to support the dramatic changes sought by the Borough. There is simply no factual basis to establish the appropriateness of the change proposed. The Arbitrator finds that, under the public interest criterion, an adjustment of certain elements of the existing health insurance program is reasonable in order to provide a reasonable level of cost containment

for the Employer. The specifics are detailed further on in this analysis and discussion.

The *comparability* criterion contains several parts which can be addressed independently and in relation to each other. Exhibit B-37 presents a survey of average wages for private sector industries in New Jersey. The gross dollar values of the average wage data indicate that unit employees are compensated above the average rates for private sector employees in New Jersey. However, it is significant to note that the private sector data reveals an increase in that average wage, in the total private sector category, of 4.3%. The geographic breakdown of those averages show the increase in average private sector wages in Morris County to be 6.6%. Wage rates in the private sector in Morris County rank second among all the counties in the state. Other evidence reveals that national trends for private sector wage settlements average about 3.0% (all industries) for the most recent reporting periods. This aspect of the comparability criterion weighs more favorably toward the Borough's wage position of 3.0% than the 6.5% proposal of the PBA. However, the more

general nature of this evidence tempers its impact, the due weight is that of a piece of a larger puzzle.

The evidence in the record with respect to the public sector, generally, also reveals that salary rates for unit employees are reasonable strong. It further establishes that average salaries in local government, generally, have shown a 3.0% increase. Public sector salary rate increases have been generally moderating, as a trend. This sub-factor also supports a salary rate increase closer to the one proposed by the Borough than that sought by the PBA. Once again, this general comparative evidence presents limitations in applicable value since it represents a view less closely related to the specific labor marketplace in which the Borough and the PBA exist. The same arguments presented by the Borough, urging a rejection of consideration of police contracts from Union, Essex and Somerset Counties, serve to explain the limited weight to be given to the generally comparative data. Lastly, the general data simply fails to provide the same clarity of proof and specificity found in

comparisons with actual contracts from the same or comparable jurisdictions.

The demographic data presented by the Borough convincingly establishes that Madison is very much like the average community in Morris County. A county-wide comparison is a reasonable selection of comparable jurisdictions. Consider the following:

MORRIS COUNTY MAXIMUM PATROLMAN SALARY COMPARISON

<u>Jurisdiction</u>	<u>1996</u>	<u>1997</u>	<u>%</u>
Boonton Town	50,717	52,492	3.5%
Butler	52,737	55,374	5.0%
Chatham Boro	53,353	55,968	4.9%
Chester Boro	44,984	47,008	4.5%
Chester Twp	52,226	54,785	4.9%
Denville	56,405	58,943	4.5%
Dover	53,164	55,290	4.0%
East Hanover	54,744	57,071	4.25%
Florham Pk	51,712	53,780	4.0%
Hanover	51,846	53,661	3.5%
Harding Twp	54,928	57,125	4.0%
Jefferson	52,345	54,439	4.0%
Mendham Boro	53,742	56,160	4.5%
Morris Plains	48,765	50,765	4.0%
Mount Arlington	45,707	47,535	4.0%
Mount Olive	50,654	52,933	4.5%
Parsippany	53,715	56,282	4.8%
Randolph	55,338	58,160	5.0%
Rockaway Boro	52,092	54,305	4.25%
Rockaway Twp	53,933	55,821	3.5%
Roxbury	50,440	52,992	5.0%
Washington	52,488	53,538	2.0%
Wharton	51,075	52,862	3.5%

Average	52,048	54,230	4.18%
Madison-Boro offer	52,491	54,066	3.0%
-PBA offer	52,491	55,903	6.5%

The above chart compares the maximum patrolman salary for the 23 Morris County municipalities with data in the record for both 1996 and 1997. There are several communities with data in the record for one but not both years. That data has been considered independently but it does not lend itself to the computations that follow because use of a varied field skews the calculations of means and ranking. This is the most meaningful and accurate way to analyze the data presented at hearing. Note that the use of the maximum patrolman salary rate as a benchmark for comparison is almost universally accepted as the best measure for comparing police unit salaries. That is because this is the "journeyman" rate for police officers. Due to the normal structure of police departments the maximum patrolman rate is virtually always the most common, or modal salary. It is also the place in the police force salary structure that employees tend to occupy for the longest period of time in their careers.



In 1996, the top patrolman salary rate in Madison (\$52,491) was about \$440 above the average for the 23 communities compared above and that rate ranked 11th among the 24 jurisdiction, including Madison.

Implementation of the Borough's 3.0% offer would drop the Madison rate below the 1997 average for the group and it would drop the ranking to 14th among the 24 municipalities. On the other side of the coin, the PBA proposal to increase salaries by 6.5% would drive the 1997 rate far above its current position, relative to average, and would also raise the ranking for the comparison rate to 8th among the 24 communities.

It is significant to note that a 4.0% salary increase for 1997 would leave the Madison rate at about the same spot relative to the average as it had in 1996 and that 4.0% increase would also leave the ranking of the salary virtually the same at 12th of the 24 jurisdictions. While 4.0% is slightly below the average percentage increase for 1997, it does represent the most commonly experienced increase factor, the

modal rate for salary increases among the comparison group.

All but one of the settlement figures reported fall within the range of 3.5% and 5.0%. Neither the offer of the Borough nor that of the PBA fall within the range of settlements established by the other communities in the comparability group. That element of the comparability criterion which focuses on employees performing the same or similar function in comparable jurisdictions does not support the position presented by either party. The Borough's final offer is a little closer to the mark, but the Arbitrator must find a more reasonable result than the extremes presented by the parties.

It is important to point out that the record at hand requires this particular comparability factor to warrant substantial weight. It is a comparison in which many jurisdictions that share a great deal in common with Madison are represented in the record. There is an unusually close comparison basis, based on demographics, within the Morris County communities.

Further, both parties have relied heavily on the Morris County comparison. Additionally, a comparison among employees who perform essentially the same functions in the same labor marketplace is a particularly compelling basis for determining the most reasonable resolution of the dispute over terms and conditions of employment. This comparison among municipal police officers is given substantial weight in the process of deciding the basis for resolving the dispute at hand but it is certainly not the sole determinative factor. It is one of several major bases among the elements given weight for the award herein but it must be placed in some balance with other important factors.

The record contains substantial comparative evidence relating to the Borough's health insurance proposals. In a general context, the Borough provided documentation that a Bureau of National Affairs survey (of 137 employers not in multi-employer benefit plans) established that 73% of negotiated agreements provide for some premium sharing by employees toward their health insurance protection. The Borough also established that employees of the State of New Jersey

have negotiated contracts with health insurance premium co-pay components. Further, the Borough has established, in an even more specific context, that there are eight law enforcement units in Morris County with some type of premium contribution by employees.

This comparative data offered by the Borough is countered by that submitted by the PBA revealing that premium contribution is the exception and not the rule in the most closely relevant comparison group. It also established that there are numerous aspects of those examples cited within Morris County which differentiate the "exceptional" cases from the situation in Madison and from the Borough's offer.

The State of New Jersey contractual experience with health insurance premium contribution is duly noted by the Arbitrator and given some weight as a distant but still relevant comparison. It stands more for the possibility of the beginning of a trend, rather than clear evidence that the trend has taken hold among municipal employers. Of the eight examples noted by the Borough, three are in county government where the

record reveals that contributions are only for those choosing the Medallion Plan, leaving the option of a wrap-around traditional plan, without premium contribution, available to employees. Additionally, the Mendham Township and Florham Park agreements provide for premium co-payments only by future hirees; then current employees are not effected. All instances of Morris County law enforcement contracts with premium contributions were in a fixed dollar amount format; none provide the percentage contribution sought by the Borough herein.

The Arbitrator finds that there is some comparative evidence to support the concept that employee premium contribution is within the realm of consideration for police contracts in Morris County. There is, of course, absolutely no evidence of a program as extensive or invasive as that proposed by the Borough. In point of fact, there is far greater comparative evidence supporting the retention of the status quo with respect to health insurance premium contributions. Comparability weighs more toward the PBA's position on this issue than toward the Borough's

proposal, however, the matter must be left open for consideration in relation to the entire evidentiary record and the other criteria.

It is noteworthy that the most common municipal health insurance deductible amounts in the data on the record is a \$100/250 level; the contract at issue herein has deductibles of \$100/200. The county law enforcement units all have \$200/400 deductible factors. The vast majority of health insurance plans for municipal police units in Morris County include a lifetime maximum coverage of \$1,000,000. The benefit for this bargaining unit has no lifetime maximum.

The PBA bargaining unit compares quite favorably, in terms of salary and benefits with other employees of the same employer. The Borough established that PBA salary rates predominate in comparison to other Borough bargaining units. While this is not unusual in a municipal setting, the Arbitrator takes note of this factor and it may have a moderating influence on the construction of the ultimate package awarded herein.

The record includes specific evidence with respect to comparisons of benefit levels among Morris County municipal police units. Using 10 years of experience as a measuring point (the average length of service for unit members is just over ten years) the Borough established that holiday pay, vacation leave and uniform allowance benefits are all above average in the comparison group. The Arbitrator observes that these benefits are reasonably competitive on a general basis, beyond the particulars of the comparisons, as well. Greater specifics of the benefit package will be addressed under the overall compensation criterion, however, it can be noted that the 12 holidays in the contract is consistent with the most common level of that benefit among Morris County police contracts. Similarly, 25 vacation days as a contractual maximum is the modal level for that benefit in the comparison group. Despite somewhat lesser benefits in longevity and personal leave, the benefit package appears to be quite competitive as a whole, when viewed under the comparability criterion.

An overview of the comparability criterion reveals that certain concepts found in each final offer are reasonable under the record presented. However, it is abundantly clear under this criterion that some elements of the parties' proposals are simply not supported by the evidence.

As noted above, the overall compensation of unit employees is generally quite good. The salary rates are above average although the longevity component is relatively low. Vacations reach three weeks in the fifth year of employment and four weeks in the calendar year in which the employee reaches the tenth anniversary of hire. Beginning in the twentieth year, additional days accrue, one per year, to a maximum of five weeks. This maximum rate is fairly standard.

The contract provides for twelve holidays, which is a standard measure, although slightly below the average. Unit employees receive 13 contractual sick days per year as compared to the standard 15 found in most comparable contracts. PBA unit members receive 3 personal leave days per year, however, unless their



sick leave usage is less than three days, those personal days are charged against sick leave.

The contract provides for a \$575 clothing allowance and an additional \$475 maintenance allowance. These amounts are reasonably competitive. The educational incentive benefit reimburses tuition to a maximum of \$125 per credit provided the employee attains a grade of B or better.

The contract provides fully paid health insurance and a dental insurance plan. Employees' overall compensation also includes a life insurance benefit.

The overall compensation criterion reveals an economic package which is generally competitive. There are certain elements that are below standard levels but on an overall basis, the contractual benefits are sound. There is no glaring shortfall and nor any unreasonably generous provision.

There were no express *stipulations of the parties*. However, to the extent that both final offers propose a

duration of three years, the parties have effectively stipulated to that contractual duration period.

The *lawful authority of the employer* criterion requires consideration of the CAP law as a matter of statutory directive. As noted under the public interest criterion, the CAP Law presents no determinative weight in the case at hand. The Borough has not experienced CAP difficulties and the record does not suggest any likelihood that such difficulties will develop in the foreseeable future. As specified earlier on, the 1996 budget appropriations were about \$63,000 below the CAP limitations and the 1997 budget appropriations were approximately \$50,000 below the effective restrictions of the CAP Law.

There were no other issues raised which present questions of the employer's lawful authority. Noting that there is no CAP Law problem presented under the facts at hand, this criterion is not of determinative weight.

The *financial impact on the governing unit, its residents and taxpayers* criterion is an important factor for consideration. As noted under the public interest criterion, governing bodies must balance their ability to provide services with the ability to fund the cost of operations. The record clearly establishes that the Borough enjoys an excellent fiscal position; the residents and taxpayers reap the benefits of that in terms of available services and reasonable costs. The Arbitrator stresses that the Borough correctly argues that the mere availability of funds does not require an arbitrator to award contract terms beyond otherwise reasonable levels. However, the Arbitrator must determine what financial impact the contract resolution will have on the governing unit, its residents and taxpayers.

Initially, there are certain elements of the Borough's financial circumstances that warrant particular attention. The Borough enjoys a strong revenue position. Although total revenues from 1992 to 1997 have grown from about \$15m to about \$18m, the level from property taxes has remained reasonably flat,

rising from about \$7.93m to \$8.17m, or only 3.0% over five years. Property tax collection rates are very strong and have consistently been above 98%, a factor which is indicative of reliable revenues and also avoids the potential budget pressures created by the need for added reserves for uncollected taxes. The revenue picture in Madison is uniquely enhanced by revenues from the Borough of Madison Electric Utility. There are only ten municipalities in the State with such a revenue resource and it has consistently provided major funding for the municipal purposes. The Arbitrator notes that the record indicates a declining value to the revenues from the electric utility. This trend is of some long term concern, however, this revenue source still appears quite substantial. The declining trend in electric utility revenues is given consideration in viewing the revenue picture as a whole.

The Arbitrator acknowledges that the PBA's expert witness presented opinions suggesting that electric utility surplus could be a funding source for the contract at issue herein. The Arbitrator rejects any

reliance on the electric utility surplus as a funding source for justifying the contract terms awarded herein. All conclusions with respect to the financial impact are made independent of reliance on those utility surplus funds.

The Borough has been able to maintain a solid budgetary surplus within its operating budget. As the Borough points out, this is an element of sound fiscal management. The existence of sufficient surplus funds allows a governing body to deal with emergencies and it also assists the Borough in moderating the impact of the budget on the tax levy. Further, the evidence reveals that the Borough, which has used surplus funds as a revenue source, has been able to regenerate significant fund balances in order to sustain the strong surplus. Finally, the equalized valuation of real property ratables in Madison is among the elite in comparison to Morris County communities.

The strength of the revenue situation noted above is in combination with a relatively low equalized tax position. The equalized tax rate in 1997 of 1.8848

ranks 28th among the 39 municipalities, in the lowest third of the group.

The cost of the package awarded herein as the resolution of the parties' negotiations dispute will not appear to have an impact on the municipal purposes element of the local property tax. The terms awarded should be within the parameters of the budget as constituted. Future years do not appear likely to require any tax rate increase as well.

The parties did not present any evidence as the percentage of the municipal purpose element that would be attributed to the funding of this contract in any of the various years under consideration. Nor did they present evidence with respect to the impact on any particular income sector of the local taxpayers. Finally, no evidence was introduced to deal with the specific ability to continue to provide programs or to provide new programs. However, the financial picture presented as a whole allows the Arbitrator to conclude that the award will not endanger any existing programs,

nor should it prevent the governing body from embarking on any planned programs.

The financial impact criterion has been given substantial weight in order to construct an award that will not interfere with the Borough's continued ability to use sound fiscal management. The revenue sources have been conservatively valued by the Arbitrator. Continued reasonable moderation in expenditures is an appropriate guideline for negotiated terms and conditions of employment. The package awarded herein shall provide employees with a competitive compensation package which will place no undue stress on the taxpayers in terms of tax rate or reduced services.

The *cost of living* criterion involves a factor that has traditionally been given meaningful consideration by parties in collective bargaining as a measure of economic trends. While this element has not necessarily dictated specific settlement results, it has often provided a context within which the parties to negotiations have accepted a certain direction with respect to wage trends. The most commonly used measure

of the cost of living is the Consumer Price Index. as computed by the U.S. Department of Labor. From 1992 through 1997 CPI increases have consistently remained between 2% and 3%. This has represented a remarkably long era of low inflation. The reasonable effect of this has been a trend toward moderated and lower wage rate increases. This criterion is worthy of meaningful weight in the case at hand and has played a formative role in the construction of the package awarded.

The terms and conditions of employment awarded herein are designed to maintain the high level of *continuity and stability of employment* currently in place for members of the bargaining unit. This unit has experienced low turnover; it receives a competitive contractual compensation package. The salary and benefit adjustments awarded are designed to enhance the Borough's ability to retain its employees and to properly staff the department in order to maintain the high level of public safety service currently provided.



The Arbitrator finds that the most reasonable resolution of the salary component of the dispute is as follows:

Effective January 1, 1997 - 4.0% across-the-board  
Effective January 1, 1998 - 4.0% across-the-board  
Effective January 1, 1999 - 3.5% across-the-board

The salary component was formulated on consideration of the full set of statutory criteria, as reflected in the foregoing discussion. However, certain factors should be highlighted. The 1997 4.0% increase is fully consistent with the all the comparability evidence. It places weight on specific comparisons but attributes some balance to the general evidence presented. The second and third year increase figures are reflective of economic trends, comparative trends and the public interest in maintaining a reasonably competitive compensation package. The need to allow the governing unit to continue to be able to manage its fiscal affairs with prudence was another significant factor in the formation of the package.

With respect to the health insurance issue, the Arbitrator finds the Borough's proposal for employee

premium contribution not sufficiently supported by the evidence. However, the concept of some measure of health insurance cost containment was compelling and the Arbitrator shall award an increase in the existing deductible structure from \$100/200 to \$200/400, effective January 1, 1999. While this structure is not common among the municipal law enforcement units it is consistent with the deductible amounts for county law enforcement units in Morris County government. Additionally, the Arbitrator shall award the establishment of a \$1,000,000 lifetime maximum benefit which is nearly universal among the municipal units in Morris County.

Effective January 1, 1999, the award shall provide for the separation of the three contractual personal days from the accumulated sick leave benefit. These days shall be available without charge to sick time, irrespective of sick time use. The existing system is extremely unusual. When combined with the relatively low number of sick days provided in the contract it presented an area of the benefit package requiring some adjustment. It is significant to note that,

theoretically, the Borough's maximum exposure for personal leave utilization is not increased since the possibility always existed that all unit members would qualify for uncharged personal days. From a practical perspective, the Arbitrator acknowledges that this benefit change has some very real cost implications for the Employer.

The Arbitrator further finds that the PBA's proposal for a single rate for outside employment work, regardless of whether the employer is a for profit or non-profit operation. The current system of \$25.00 per hour for non-profit and \$30.00 per hour for other work essentially requires the employees to subsidize the work for certain outside groups. The police officers perform the same functions for the two groups of employers; it is reasonable that the work all be compensated at the same rate. If the Employer chooses to subsidize a particular group of outside employers, it should consider doing so with its own funds rather than the wages of the police officers. The traditional and ordinary component of the eighth criterion is the driving factor behind this determination. The

consistency element is also in keeping with the public interest.

The Arbitrator has calculated the net annual economic change for each of the three years of the contract. For 1997, the net economic change is 4.0%, the amount of the salary increase for that year. In terms of dollars, computed on a 1996 unit base salary of \$1,480,707, that represents a net increase of \$59,228. For 1998 the calculations are similar. The net cost increase is 4.0%, or \$61,597 on the new 1997 base of \$1,539,935. Note that there is no cost attributed to the outside duty pay change since that cost is realized by outside employers.

For 1999, the calculations of the net change are a little more complex. The salary component is 3.5%, or \$56,054 on the new 1998 base of \$1,601,532. However, there will clearly be a cost savings to the Borough for the health insurance changes awarded. The record does not provide adequate evidence for the measurement of the value of the health insurance cost savings. The Arbitrator must acknowledge that a savings exists

without benefit of full quantification. Similarly, the personal day change cannot be simply quantified. Theoretically, the maximum exposure of the employer does not increase at all, but the Arbitrator acknowledges that there must be some very real costs attributable to the change awarded. Had the three days been granted from scratch, rather than adjusting the prior benefit, the standard costing mechanism would be 0.38% per day. Since that assumes full utilization and no prior benefit, one can assume that the actual cost of the adjustment awarded is considerably less than that.

The above calculations of net annual economic change have not addressed the issue of salary step movement because the costs attributable to that movement would have occurred irrespective of the award herein. While those costs are real expenses to the Borough, which have been given consideration with respect to the financial impact criterion, they are not net annual economic changes under this award. However, to be completely accurate, the application of the negotiated salary increase percentage to the step

increase values can be added to the dollar computation of the annual net economic change (it does not implicate the percentage values). The 1997 step increase cost is \$33,949; the 4.0% factor of that amount is \$1,358. The 1998 step increase cost is \$21,762; the 4.0% factor of that amount is \$870. The 1999 step increase cost is \$20,658; the 3.5% factor of that amount is \$723.

The total net economic changes for each year of the agreement are clearly reasonable under the statutory criteria.

The Arbitrator finds that the record does not support awarding any of the remaining proposals of the PBA. There is simply a lack of sufficient compelling evidence to warrant changes in those contractual provisions. Further, as noted earlier on, the key to formulating an award in the public interest is balance. The Arbitrator finds the package awarded herein to be in reasonable balance as presented. It shall be awarded as set forth.

**A W A R D**

For the foregoing reasons IT IS HEREBY ORDERED that the issues in dispute in the interest arbitration at hand shall be resolved with the implementation of the following contractual terms; all other proposed changes are hereby rejected:

(1) DURATION: The duration of the contract shall be three years, from January 1, 1997 through December 31, 1999.

(2) SALARY: Salary rates shall be increased, across-the-board, as follows:

Effective January 1, 1997 - 4.0%

Effective January 1, 1998 - 4.0%

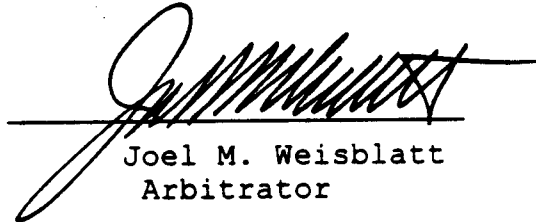
Effective January 1, 1999 - 3.5%

(3) HEALTH INSURANCE: Effective January 1, 1999, the current deductibles shall be changed from \$100/200 to \$200/400. Further, there shall be a maximum lifetime benefit of \$1,000,000.

(4) PERSONAL LEAVE: Effective January 1, 1999, the personal leave provision of the contract shall be revised to eliminate the charging of personal leave days to accumulated sick time.

(5) OUTSIDE DUTY PAY: Effective thirty days from the issuance of this Award, the outside duty pay rate shall be \$30.00 per hour for all employers.

Dated: May 8, 1998  
Skillman, N.J.

  
Joel M. Weisblatt  
Arbitrator

On this 9th day of May, 1998, before me personally came and appeared Joel M. Weisblatt, 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.

  
Attorney-at-law