

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
CN 429
TRENTON, NJ 08625-0429

Docket No. IA-95-071

In the Matter of Arbitration Between

BOROUGH OF ALLENDALE

-Employer-

and

ALLENDALE PBA LOCAL 217

-Union-

ON REMAND

FROM PERC

ARBITRATOR:

Robert E. Light, mutually chosen by the parties pursuant to the rules and regulations of the New Jersey Public Employment Relations Commission.

HEARINGS/MEETINGS:

April 1, 1996; July 22, 1996; October 25, 1996. A stenographic record of the hearings was taken, and thereafter both counsel filed briefs.

APPEARANCES:

For the Borough

Robert Emmet Murray, Esq., MURRAY, MURRAY & CORRIGAN

Valerie J. Dion, Esq., MURRAY, MURRAY & CORRIGAN (on the brief)

For the Union

Richard D. Loccke, Esq., LOCCKE & CORREIA

PROCEDURAL HISTORY

This matter is before me on remand from the Public Employment Relations Commission which vacated my earlier arbitration award in this matter. In so doing, the Commission explained its rationale:

"For all these reasons, we affirm the Arbitrator's ruling limiting the arbitration proceeding to the issues raised in the PBA's petition. However, while the Arbitrator correctly applied NJAC 19:16-5.5, we believe that the Borough was disadvantaged by the fact that the Arbitrator did not rule on the PBA's objection until he issued his final Award and Opinion. Because of the timing of the procedural ruling, the parties submitted post-hearing briefs without knowing the parameters of the dispute. Moreover, the Arbitrator considered the Borough's salary offer without evaluating other proposals which, the Borough maintains, were an integral part of its economic package. The Borough might have changed the proposals considered by the Arbitrator had it known its other proposals would be excluded.

If the Arbitrator had ruled on the PBA's objection before the formal hearing, the Borough could have submitted a final offer in light of his ruling. We thus conclude that it was a reversible error for the Arbitrator to have deferred his ruling until he issued his award. We therefore vacate the Award and remand this matter to the Arbitrator for reconsideration." (Opinion, pages 9-10).

Certain facts occurred during the pendency of the interest arbitration which are not reflected in the Commission's Opinion and which, it is believed, will serve to complete the record. The PBA filed its formal petition under NJAC 19:16 on or about January 9, 1995. The Borough never filed an answer under NJAC 19:16-5.5 which reads:

(a) In the absence of a joint petition requesting the initiation of compulsory interest arbitration, the non-petitioning party shall file within seven days of receipt of a petition, a statement of response setting forth the following:

1. Any additional unresolved issues to be submitted to arbitration;

2. A statement as to whether it disputes the identification of any of the issues as economic or non-economic;
3. A statement as to whether it refuses to submit any of the issues listed on the notification or petition to arbitration on the ground that such issue is not within the required scope of negotiations; and
4. Any other relevant information with respect to the nature of the impasse.

(b) Proof of service on the petition of the respondent's statement shall be supplied to the Director of Arbitration. If a party has not submitted a response within the time specified, it shall be deemed to have agreed to the request for the initiation of compulsory interest arbitration as submitted by the filing party. The substance of this response shall not provide the basis for any delay in effectuating the provisions of this chapter.

PBA counsel first raised the issue of the Borough's failure to file an answer to the formal petition before this Arbitrator at the April 1, 1996 mediation session. A prior arbitrator was appointed and withdrew after conducting three mediation sessions. (see Transcript I, pages 8-9). Although PBA counsel raised the issue at the April 1, 1996 session and thus alerted the Arbitrator and Borough counsel to its contention, neither he nor the Borough's attorney requested a ruling from the Arbitrator. At the first day of formal hearing on July 22, 1996. PBA counsel formally raised the issue. The discussion, which is quoted in its entirety from the transcript, follows:

MR. LOCCKE: Yes. PBA would object to the following items being introduced to this interest arbitration proceeding and those are as follows: eliminate red dot days, next, delete eye care clause, next, vacation modification, and fourth, holiday and personnel vacation day carry over limitation.

It's the position of the PBA that those four items are not responsive to the list set forth on A-1 in evidence and therefore, are not arbitrable in this proceeding.

To clarify, the PBA is not suggesting that such items may not be negotiable. In the general sense, the PBA is maintaining the specific position that in this case those items are not arbitrable based upon the rules and the case law as has been developed.

THE ARBITRATOR: Can you amplify that a little bit more, sir, with respect to?

MR. LOCCKE: Yes. There's a specific rule which I believe off the top and I don't have it in front of me, but I think it's rule 19:16-5.5 D. Well, any way, it's 5.5 and in that rule there is a provision for a 10-day period within which a party may add to a list of issues which are presented for arbitration.

That 10-day period has long since passed. There are numerous cases on the point and numerous decision [sic] which have consistently limited the arbitrable issues to those on the petition or a response which comports with the rule.

Here we never even get to the point of whether it was a timely addition or not because there was no addition filed through the required PERC channels as are mandated by the rules and the rule language is written in mandatory terms. It's not a discretionary manner.

THE ARBITRATOR: Well, I don't know if you want to respond at this point, Mr. Murray.

MR. MURRAY: Just a couple of points. Maybe first a question. Mr. Loccke, are you suggesting that there's been a rule change, that this is part of a rule change that you're relying on?

MR. LOCCKE: Not so. This rule has been in existence for many years and it was not affected under rule amendments which occurred elsewhere in the rules as a result of the new interest arbitration act. This rule was reserved and noted as no change.

THE ARBITRATOR: Well, you are really, I guess I would characterize it, perhaps you may not agree with my characterization as a procedural arbitrability argument with respect to what the Borough may argue in this proceeding.

If that be so, then you certainly have that, you certainly may make that argument. I would guess that you would make that argument in written form subsequent to the end of this proceeding.

MR. LOCCKE: Well, it's a threshold type argument and for the record, this argument or point was raised at an earlier point than this proceeding, on April 1, when we stated at that time that this argument would be made if we want the hearing.

THE ARBITRATOR: *Strike my reference to procedural. I guess I really need substantive as distinguished from procedural. Perhaps it's both. Whatever it is, you will be given the opportunity, both of you, to fully argue that. I'm familiar with the argument. It's been raised elsewhere and certainly the township would be -- the borough, I'm saying township, would be given a position to argue whatever they wish with respect to that.*

MR. MURRAY: *Just a couple of comments. Now, Mr. Light in an interesting argument though in practice I know of no case that has ever restricted a party from raising an issue that that party wishes to bring to arbitration.*

The rules as to what issues the Arbitrator hears in 19:16-5.7 g, indicate that the Arbitrator shall hear all issues on mandatory subjects and may hear issues on mandatory subjects only if the parties agree.

That is the only mandate with respect to what may go before an arbitrator. But both practice and cases support the approach of parties having the right to bring up issues to hearing as parties see fit.

In the instant case, we have a petition that was filed to the commission with three items contained within it. If we're going to be this legalistic, it would appear the term is not even an issue because that is not designated as an item. And certainly that would be an innate [sic][inane?] result.

With respect to the petition, it has always been the practice that the petition for arbitration simply commences the appointment of an arbitrator. Nothing more and nothing less.

Obviously we will await Mr. Loccke's argument on that point in writing and we will answer it.

THE ARBITRATOR: *Okay. Mr. Loccke, you want to proceed?*

MR. LOCCKE: *Ready to proceed, yes.*

On the second and final day of formal hearing on October 25, 1996, some four months later, PBA counsel again raised the issue. The entire colloquy from the transcript is recited below:

MR. LOCCKE: *The PBA's objection to certain employer positions was made part of the record on the first day of hearing commencing at Page 20, Line 3 and it is amplified in the following lines and over the next page or two.*

I just wanted to reiterate that position. I will not spread it forth on the record again. We intend to make that argument as part of our post-hearing memorandum and will be including it in seeking a ruling on that as part of your arbitration award process.

THE ARBITRATOR: *I understand your position and perhaps I should articulate what I understand it to be, namely, that since the Borough did not indicate on the response to the petition which you filed initially those items which it now seeks to have as part of their package it is the position of the PBA that they should not be part of this proceeding.*

MR. LOCCKE: *That is correct. Our objection is set forth at Page 20, commencing at Line 3 of the first day of hearing, sets forth our precise objection.*

I just wanted to make sure that counsel and yourself were aware of that. I did not want to surprise anyone with that.

We are maintaining that position that was made at the outset and we are continuing that position.

THE ARBITRATOR: *I understand that. Of course, counsel for the Borough will respond to that I'm sure in his brief.*

The record should reflect that at no time did either counsel seek an interim decision on this issue before the filing of briefs which occurred in January 1997, nor did either counsel seek to reopen the hearing after receipt and review of his adversary's brief. Note is made that Borough counsel submitted Arbitrator Pierson's Award in State of New Jersey and State Law Enforcement Conference of the N.J.S.B.A. IA-96-013 (on February 20, 1997) after the record was closed. PBA counsel vigorously contested the Arbitrator accepting this Award in evidence in a letter to him dated February 26, 1997. Borough counsel responded to PBA

counsel in a subsequent March 6, 1997 letter. The undersigned did consider this exhibit in rendering his Award, notwithstanding the objection of PBA counsel.

The Arbitrator will be guided in the future by the Commission's rationale for its vacation of the initial Award. For the record, the Arbitrator notes that the comment made in the Commission's opinion that he "directed" the parties to address the issue in their post-hearing briefs (Opinion, page 2) is inaccurate to the extent that such comment implies that a submission at any other time of the issue for decision was precluded by the Arbitrator. In fact, neither counsel requested a ruling prior to the completion of the entire case. The Arbitrator granted leave for the parties "to fully argue that" (page 23) in the first day of hearing, Transcript I, and merely predicted in the second day of hearing in response to PBA counsel, again raising the issue ("I did not want to surprise anyone with that" - Transcript II, page 77) that "...counsel for the Borough will respond to that I'm sure in his brief." (Transcript II, page 27).

PARAMETERS OF THE COMMISSION'S REMAND

In its opinion, the Commission set clear parameters for the remand and the undersigned's consideration. Interestingly enough, although there is not readily apparent any basis to conclude that the PBA was any less "disadvantaged by the fact that the Arbitrator did not rule on the PBA's objection until he (the Arbitrator) issued his final Award and Opinion" (Opinion, page 10) than was the Borough, the Commission limited the submission of a new final offer to the Borough. As set forth in its entirety below, the Borough replaced its initial final offer with a "new final offer."

The Commission then limited the Arbitrator's basis for a new Opinion and Award "on the record already submitted", absent either mutual agreement of the parties or the Arbitrator's requiring additional submissions. No mutual request seeking to augment the record was received, nor did the Arbitrator see any need to reopen the record, *sua sponte*.

The following description of the parties' initial final offers is taken verbatim from Borough counsel's brief, pages 2 through 5:

ORIGINAL FINAL OFFERS and BOROUGH'S NEW FINAL OFFER

The Borough's Initial Final Offer

Statement of Offers

Final Offer, Borough of Allendale:

The Borough proposed a five-year contract, extending from 1/1/95 through 12/31/99. Second, the Borough has proposed the removal of "red dot days" from the work chart. "Red dot day" is a local term designating a day on which an officer is not required to report to work. Whereas there are six "red dot days," the Borough's proposal would have the effect of adding six (6) days to an officer's work year. The Borough also proposes elimination of the eye examination clause. Under the proposal submitted by the Borough, the vacation schedule would be modified to include one (1) fewer vacation day beginning year 7 through 25, effective 1/1/97. Further, all vacation, holiday and personal days which are carried over to the following year must be utilized by March 31st.

Final Offer, PBA:

The PBA is proposing a four year contract (1/1/95 - 12/31/98).

The PBA also proposed amendment of the bereavement clause in the contract to include grandparents. This proposal was assented to by the Borough.

The PBA also proposed an increase in Clothing Allowance, which was also assented to by the Borough.

Finally, the PBA proposed 5.5% wage increase across-the-board in each year during the life of the contract.

REVIEW OF OFFERS

Review of the proposals submitted by the PBA and the Borough of Allendale illustrates the issues in dispute. First, there is the proposal for wage increases and the contested ability to pay on the Borough's part. The effect of the borough's vacation proposal would be that after seven (7) years of service, an officer would be entitled to 15 working days vacation. After 9 years, the officer would be entitled to 16 working days. After 11 years, he or she would be entitled to 18 working days, and one (1) additional day per two (2) years of service thereafter, until year 25 and thereafter where the officer is entitled to 24 working days.

The Borough's vacation proposal will still insure that Allendale officers enjoy vacation equal to, or superior to, those of other police departments in Northwest Bergen County. Allendale officers can earn nearly five weeks of vacation in a year, more than three other municipalities: Saddle River, Waldwick and Ho-Ho-Kus. Only Franklin Lakes and Ridgewood earn more.

The Borough's final offer includes, with regard to wages, additional steps to be added to the salary scale. There would be an additional step created for each year in the life of the contract, which would represent a new maximum salary. This step, which would be effective

1/1/95, would be \$1,500 higher than the current maximum. Each year of the contract would see the creation of a new maximum step, with an additional \$1,500. Thus, the maximums for each rank would be increased by \$7,500 throughout the life of the contract. This increase in maximums, in conjunction with the percentage increase between the steps already in the contract, represents a fair cost-of-living increase. The current maximum for a patrol officer is \$57,665. An officer at maximum will ear \$59,165 in 1995. \$60,665 in 1996, \$62,165 in 1997, \$63,665 in 1998 and \$65,165 in 1999....."

The Borough's Present "New Final Offer" as Permitted by the Commission's Opinion

September 9, 1997

Via Fax and Certified Mail

Robert E. Light, Arbitrator
3830 Park Avenue
P.O. Box 3485 [sic]
Edison, New Jersey 08818

Re: Borough of Allendale and
PBA Local 217
Docket No. IA-95-071
Remand - PERC No. 98-27

Dear Arbitrator Light:

Pursuant to the determination by the Public Employment Relations Commission with reference to the Borough's appeal of the arbitration decision in the above-captioned matter the Borough hereby submits a revised final offer in this case.

Throughout the negotiations and unsuccessful mediation efforts by the two Arbitrators, the Borough consistently linked its salary proposal with its request for additional work time

As is well known in labor negotiations, economic matters such as salary and work time are simply interchangeable: proving the old adage that time does equal money.

In view of the restriction placed at this time on the Borough with respect to issues that may be considered in arbitration, the Borough modifies its last offer recognizing the time proposals will not be considered. The Borough also takes guidance from the State Arbitrator's decision which was entered in to the record of this case through arbitral notice, State of New Jersey and S.L.E.C. of N.J.P.B.A. (PERC Docket No. IA-96-013) (see Arbitrator's Decision at Page 22).

Therefore, like the State of New Jersey, the Borough of Allendale proposes a two year wage freeze as part of its final offer in this case.

The specifics of the final offer of the Borough are as follows:

- 1. The term of the collective bargaining agreement shall be four years commencing January 1, 1995 to December 31, 1998.**
- 2. Clothing allowance as agreed to by the PBA of \$100. effective January 1, 1995.**
- 3. For the period January 1, 1995 to December 31, 1996, there shall be no adjustment to the salary schedule. Effective January 1, 1997, there shall be an additional salary step. The new step shall be at the maximum and shall be \$1,500 higher than the maximum step in effect December 31, 1996. The existing steps in effect December 31, 1996 shall not be increased. The effect of this proposal shall add one new step at the maximum. Effective January 1, 1998, there shall be an additional salary step. The new step shall be at the maximum and shall be \$1,500 higher than the maximum step in effect December 31, 1997. The existing steps in effect December 31, 1997 shall not be increased. The effect of this proposal shall add another new step at the maximum. (emphasis supplied)**

Accordingly, this proposal shall leave intact all existing wage steps. Steps shall be granted in accordance with practice during the life of this contract.

A new wage step shall be added for the year 1997, and a second new step shall be added for 1998.

Thus, the maximums for each rank shall be increased \$3,000 through the life of this contract by adding two steps.

As can be readily gleaned from the revised proposal, the Borough has accepted the Arbitrator's determination for a four year contract and modified its last offer accordingly.

Furthermore, the Borough has followed the two year wage freeze concept from the State of New Jersey in its arbitration decision for 1995 and 1996.

The Borough has proposed the \$1,500 additional and new maximum step for 1997 and 1998. This concept is exactly the same as originally proposed on an annual basis. Of course, the Borough has revised its last offer to follow the State Arbitration decision for a wage freeze in 1995 and 1996; therefore, there will only be two additional steps as set forth in the foregoing program over the life of the contract.

Lastly, the Borough has continued its acceptance of the PBA proposal increasing the clothing allowance \$100 effective January 1, 1995. This was done during the negotiations pre-arbitration time frame.

Very truly yours,

MURRAY, MURRAY, CORRIGAN & GARCIA

ROBERT E. MURRAY

REM:ks

cc: Mayor and Members of Borough Council
Susan Stanbury, Borough Administrator
Millicent A. Wasell, Chair, PERC
Timothy A. Hundley, Acting Director of Arbitration, PERC
Richard D. Loccke, Esq.

ANALYSIS OF NEW FINAL OFFER

Applying the above discussed remand directive from the Commission, it will be beneficial to discuss the "new playing field" facing the Arbitrator. As noted above, by Commission directive, the PBA offer must remain the same. This leaves only the changes in the Borough's position to be compared against the PBA's initial final offer. (see page 7 above). Briefly, the Borough has gone from a five-year proposal with five additional salary steps and a total five-year increase of \$7,500 which, for example, would take an officer at maximum from \$57,665 in 1995 to \$65,165 through 1999. This equates with a range of annual increases of approximately 2.35% to 2.6% for patrolmen at maximum to a range of approximately 2.18% to 2.38% for Sergeants.

The essential changes in the Borough's revised offer cuts the contract term to four years, provides a freeze for years one and two, adds one step at maximum and provides for a \$1,500 increase at each step for the 1997 and 1998 calendar years. Applying this to the presently existing maximum salary for patrolmen shows the following:

<u>1994</u>	<u>1995</u>	<u>1996</u>	<u>1997</u>	<u>1998</u>
57,665	57,665	57,665	59,165	60,665

This represents a \$3,000 salary increase over four years only for officers presently at the maximum step; a percentage increase of the following: 1995 0%; 1996 0%; 1997 = 2.6%; 1998 = 2.53% or a theoretical average annual increase for the four years of 1.2825%.

In lieu of the previously offered five additional steps, the Borough now proposes one additional step at maximum for 1997 and one additional step at maximum in 1998. Note should also be made that the Borough reiterated its concession to a \$100 clothing allowance increase beginning in 1995. No mention is made of the Borough's concession on the PBA-requested bereavement leave increase or the reduced starting pay of \$24,000 (six months); \$26,084 (in the final six months of the first year) followed by a first step salary of \$29,214 which it requested in its initial offer and which the Arbitrator awarded. By omitting these two items (that is, bereavement and revised starting pay) in its new final offer, the undersigned can only conclude that the Borough has abandoned these items, and they shall not be considered as part of the Borough's revised final offer.

DISCUSSION

The Arbitrator has reviewed the parties' original hearing briefs, the Interest Award itself, the parties' appeal briefs before the Commission and the Commission's decision. It has been concluded that the evaluations as to the statutory criteria of the Stipulations of the Parties, the Continuity and Stability of Employment, the Overall Compensation presently received by the employees, all have been sufficiently treated in the original Opinion and Award. Limited comment will be made on the criteria of the Lawful Authority of the Employer and Cost of Living. More extensive remarks will be addressed to the Interest and Welfare of

the Public, Comparability, the Financial Impact on the Governing Unit, Its Residents and Taxpayers and the Reasonableness of the Total Net Annual Economic Changes under the statutorily mandated criteria.

THE ARBITRATOR'S REVISED AWARD

The Commission, in its decision, granted the Borough the right to submit "a new final offer." Given this language without any further clarification, the Arbitrator concludes that the final offer submitted by Borough counsel in his September 9, 1997 letter (page 11 above) must be considered in its entirety as the Borough's "new, final offer."

That offer does not include the Borough's prior demand for a revised academy step and a second-year or "new first step" as Borough counsel characterizes it. Accordingly, the Arbitrator can only conclude that this particular request or demand has been abandoned by the Borough. Therefore, it cannot be awarded even in conventional interest arbitration under the Arbitrator's understanding of his authority to decide the dispute based on a reasonable determination of the issues since it no longer exists as an issue in light of the Borough's abandonment of the request.

Similarly, since the Borough, in its new final offer has not included its prior assent to the bereavement clause to include grandparents in the three-day absence category, the Arbitrator concludes that the granting or denial of this request proposed by the PBA is now

"joined" as an issue. Frankly, the PBA has failed to convince the Arbitrator of the reasonableness of this request, and it is therefore not awarded. Parenthetically, the Arbitrator notes that the PBA may well have been lulled into a belief that it need not offer testimony, proof or argument on this issue in light of the Borough's assent to the issue in its initial final offer only, quite unexpectedly, to later face the present situation where the Commission allowed the Borough but not the PBA the opportunity to submit a "revised final offer." Be that as it may, the PBA -- to this Arbitrator's knowledge -- did not seek to obtain the Borough's consent to supplement the record.

In conclusion, the Arbitrator declines to award the PBA bereavement demand.

The Borough, in its "new final offer", retained its assent to the PBA request for a clothing allowance increase of \$100 effective January 1, 1995. As cited in my initial Opinion and Award (page 25), the Borough's assent was to a one-time \$100 increase in the clothing allowance effective January 1, 1995, whereas the PBA, intentionally or not, sought to change the Borough's understanding which the Arbitrator likewise held of a one-time \$100-a-year increase. Accordingly, the proposal made by the PBA and assented to by the Borough of a one-time \$100 increase effective January 1, 1995, is hereby awarded.

The duration of the contract term has been mutually proposed as four years. The Borough revised its original five-year demand in its submission for its new final offer. Accordingly, the contract term awarded shall run from January 1, 1995 through December 31, 1998.

In its new final offer, the Borough modified its wage proposal of an additional maximum step and an additional \$1,500 per maximum step over five years to a four-year, two-year zero increase, two-year additional \$1,500 maximum step proposal. In effect, an officer at maximum under its initial final offer who would be making \$63,665 in 1998 would be making \$60,665 in 1998 under its revised offer. In real dollars over the four years of the contract term awarded herein, the same officer would fare as shown on this chart.

	<u>Initial Offer</u>	<u>New Final Offer</u>
1994	(57,665)	(57,665)
1995	59,165	57,665
1996	60,665	57,665
1997	62,165	59,165
1998	<u>65,165</u>	<u>60,665</u>
	247,160	235,160

In effect, counsel proposes an offer under which an officer would receive \$12,000 less in actual earnings over a four-year term. In his letter conveying that offer by Borough counsel, the only rationale appeared to be offered to justify the difference is the Borough's opportunity to have additional work time awarded as a result of this Arbitrator's decision not to consider the Borough's proposals in light of N.J.A.C. 19:16-5.5 (a) and (b). As counsel noted:

"Throughout the negotiations and unsuccessful mediation efforts by the two Arbitrators, the Borough consistently linked its salary proposal with its request

for additional work time. As is well known in labor negotiations, economic matters such as salary and work time are simply interchangeable, proving the old adage that time does equal money.

In view of the restriction placed at this time on the Borough with respect to issues that may be considered in arbitration, the Borough modifies its last offer recognizing the time proposals will not be considered."

The best "description" of "red dot days" is found in Borough counsel's cross-examination of Patrolman Carey. The contract provides for twelve holidays. If the department schedule has an officer scheduled off on a holiday, he is off. If he is scheduled to work on a holiday, he can either take premium pay or get credit for working that holiday and be entitled to an additional day off. Although an officer could earn as many as six red dot days, in practice they get less than six. (see Transcript I, pages 75-77). Assuming they were to get four at a patrolman's base daily wage rate [\$61,790 (average annual salary '95-'98) divided by 262 = \$235.84 x 4 = \$943.36], the total "savings" to the Borough per officer would seem to be less than \$1,300, even allowing an additional \$300 a year for a saved vacation day proposal. The perceived savings to the Borough appears to be far less than the \$3,000-a-year differential found to exist between Allendale's final offer and its new final offer as calculated **above**. The word "perceived" is appropriately chosen because the Borough's brief only argues in favor of its "red dot day" proposal by noting "It is axiomatic that this proposal best serves the interest and welfare of the public. No one can argue that additional days mean additional police serving, and more police patrol for the benefit of citizens and taxpayers. Also, this proposal makes sense because the officers already receive holiday

compensation of time and a half (1 ½ time) for working a holiday." Note should be made that on a holiday he is scheduled to work, an officer apparently, according to the testimony on the record, can choose to work at time and a half or take a "red dot day" -- not both.

In summary, on the proofs before me in the record, the wage offer presently on the table for the Borough far exceeds any savings it would have realized even had its initial red dot day and vacation take away day proposal been awarded.

In his submission of the Borough's new final offer, counsel also cites his reliance on Arbitrator Pierson's decision in State of New Jersey and S.L.E.C. of the N.J.P.B.A., IA-96-013. However, that Award had been considered in the initial Award in this matter as noted therein.

While Borough counsel emphasizes a general reliance on the two-year wage freeze concept awarded in State of New Jersey and S.L.E.C. of N.J.P.B.A., no arguments have been offered in either phase of this arbitration to warrant a "knee jerk adherence" to that concept. In fact, several reasons exist which distinguish the state award from the present interest arbitration. To begin with, the state was relying on a "pattern argument" arising out of previous agreements it had with 60,000 state employees. Secondly, the bargaining unit itself offered a one-year wage freeze as part of its final offer. Four non-economic issues were involved in the arbitration. The economic issues were exceedingly complex and multi-faceted. The presentations encompassed eleven separate bargaining units and just under 5,800 law enforcement personnel running the gamut from park rangers to prison

guards. The parties met in six sessions and forty-three witnesses and representatives took part in the arbitration. In the instant case, there were only two days of hearing, with the PBA calling three witnesses and the Township none. Little, if any, comparability as it is generally understood existed and, by the nature of the Employer encompassing various state agencies, the pattern argument appeared to be the key determinant of the final Award in the State of New Jersey case.

Having rejected the Borough's initial final offer, per se, as not being the most reasonable resolution of this dispute, and not being convinced that its new final offer which reduces the wage offer far in excess of what projections show the Borough would have saved even had its red-dot day, reduced vacation entitlement and eliminated vision benefit had been awarded, it too, that is, the Borough's new, final offer, per se, is also rejected as being the most reasonable resolution of the parties' positions.

After re-reviewing the entire record, the Arbitrator remains convinced that the original wage increase award is the most reasonable resolution of this interest arbitration. Accordingly, I award the following increases:

- effective January 1, 1995 4.25% across the board
- effective January 1, 1996 4.00% across the board
- effective January 1, 1997 3.75% across the board
- effective January 1, 1998 3.50% across the board

DISCUSSION

Background

The record discloses that the bargaining unit in question represents twelve police officers employed by the Borough of Allendale, nine of whom serve as patrolmen. The positions of Lieutenant and Captain have been vacant since 1995 and 1989 respectively. Two unit members serve as Sergeants and one as a Detective. The prior contract covered the period from January 1, 1993 to December 31, 1994.

Cost of Living

As noted earlier, the average wage increases proposed by the Borough for this unit is now 0% for 1995 and 1996; 2.6% for 1997 and 2.53% for 1998 or an average of 1.283% per year over the term of the contract. The increases, as awarded herein, average 3.875% over the four-year period. The PBA final offer represented a 5.5% increase per year over a three-year period. The actual CPI for 1995 was 2.5% and 2.9% for 1996. Given the Borough proposal, a patrolman would be 5.4% behind the CPI for that two-year period while exceeding it by 2.85% under the awarded increase. Recognition has been given to the fact that the cost of living increases in metropolitan areas even exceed figures allowed for in the above Department of Labor citations. Clearly, while the figures awarded exceed the CPI for the comparable period of time, they do so by a smaller number than both the PBA offer exceeds

it on the high side and the Borough's offer (for 1995, 1996 and 1997) falls below it on the low side.

Public Interest and Welfare

The Commission directed that this matter shall be "based on the record already submitted" (page 10). The record should reflect that the Borough presented no witnesses on any subject. Its proofs rested on the cross-examination of the PBA's three witnesses (only one of whom was an officer employed by Allendale), its brief and the voluminous exhibits it entered into the record. The PBA likewise submitted voluminous exhibits which included the budget, financial statement, audit reports and debt statements of the Borough.

From these exhibits and the arguments of counsel in their briefs, full consideration of the Interest and Welfare of the Public has again been exercised in reaching the within Award. The Borough, in its eight pages of arguments on the Interest and Welfare criteria, spends part of those pages in a discussion of its proposal to eliminate "Red Dot Days" which is no longer before me. The balance is occupied in a discussion of state aid lost and then regained with \$112,000 in **additional state monies**. In brief, although counsel asserts that the Borough will continue to **prepare budgets** anticipating this \$900,000 loss in state aid, as of the date of the brief it was not lost nor apparently were the other state aid losses counsel seeks to have considered. As an example, he prophesizes:

"In 1995 and 1996, the Borough received \$100,000 in Discretionary Supplemental Municipal payments Relief Act aid.In any given year the

state could choose not to grant this discretionary aid". (page 50 - Borough hearing brief) (emphasis supplied).

Again, nothing before me tells me this or any other anticipated funding has been lost.

Counsel cites a \$5,000 elimination of funding for its drug abuse resistance program, the discontinuation of a \$4,000 donation to a Mental Health Center; a 50% cut in aid to its First Aid Squad and 7.6% reduction in the library budget. Note is also made of the appropriation of no money for a Capital Improvement Fund in 1996, whereas \$92,000 was appropriated in 1995. Counsel then offers the conclusory opinion that "Diminished capital is indicative of an unhealthy municipal budget." No witnesses were provided to substantiate the nexus between these cuts and counsel's conclusions.

On balance, with the exception of citing that the police budget represents 20.8% of the 1996 budget and the reserved funds in that budget would only support a 3% increase in the first year, the Borough has not established any specific proofs properly supported and substantiated that lead to any conclusion that justified a wage freeze for the first two years of the contract or an average 1.28% wage increase over the four years under discussion.

To the contrary, the Association has made cost comparisons between the respective offers and cites police department wage salary savings alone the Borough has realized since January 1, 1995 as a result of two retirements and an untimely death which equates to \$185,811 per year. The Association's brief further documents from the budget a history of funds in "non-budgeted revenue" as well as \$100,000 plus from 1993 through 1995 of surpluses lapsing. Even using the same \$38,665 cited by the Borough as salary reserve in

the 1995 budget, PBA counsel argues this amount is sufficient to cover the 5.5% wage increase the Association requests. A review of the numbers found in the record leads to the conclusion that ample funds are available to fund the wage package awarded herein.

The total cost of the Borough's four-year offer (calculated solely on base salary) is \$54,000 or an annual average of \$13,500. The PBA final offer would cost out at a total four-year increase over the 1994 budget of \$699,608 (4th year projected at 5.5% also) or an average of \$174,152 per year. The Award as issued herein costs out to a total of \$292,304 above the current base over four years for a \$73,076 average per year increase. This assumes no attrition and resultant savings therefrom. This represents what the Arbitrator has determined to be the most reasonable resolution of the two final offers. Mathematically, the cost of the Award exceeds the Borough's offer by \$238,304 over the four years of the contract which is an average of \$59,576 per year. The cost, of course, is not an even \$59,576 but, rather, accelerates from a first year \$29,878 to a final year \$79,458 increase. Although PBA counsel's figures as to the 1995 cost savings due to attrition seem somewhat exaggerated since two of the three officers' service was concluded late in 1995, it is apparent that the savings were at least \$100,000, if not the \$185,811 counsel claims. However, as of the date of the brief, nearly a year and a half later, none of the three had been replaced, and therefore it appears the Town enjoyed approximately \$185,811 in savings through attrition in 1996 and 1997.

The Arbitrator has considered the Interest and Welfare of the Public from the Financial Impact of this Award. Note should be made that Allendale has a population of 6,000 people. The average home value is \$354,500. The average family income is \$126,900. (see Exhibit P-9). As noted in the original Award, PBA counsel established through financial exhibits such as the budget and audits that the Town enjoys a 98% tax collection rate, an expanding tax base, and significant budget surpluses. Borough counsel set the police budget at 20.8% of the municipal budget but, in reality, it is only 6% of the total levy when County and the School Board budgets are factored into the assessment. Although Borough counsel attacks some of this evidence (real estate values, ongoing home building) as being unreliable, the recitation of these facts came out in testimony from an Allendale policeman who testified as to how he gathered average home sales figures as an example. His testimony was subject to cross-examination. The Borough presented no such testimonial evidence nor evidence to contradict it.

Incorporated within this Opinion are those comments made in the initial Award dealing with the Interest and Welfare of the Public and the Financial Impact of the Award on its Citizens, Taxpayers and Residents.

While Borough counsel submitted a lengthy brief and dealt with all of the criteria, much of it concentrated on comparability arguments that carried less weight and were less relevant than comparability with other Bergen County towns. Although this is not intended to revisit the comparability conclusions reached in the initial Award, it is cited as part of a

discussion of Financial Impact, the wages awarded and their Overall Impact on the Public Interest and Welfare. Note only be made that comparisons with Camden, Newark, Jersey City, Philadelphia, Atlantic City and New York City fail on their face. It is common knowledge that each of these, by and large, are urban areas with declining tax bases and tax collection rates. In brief, many of them have been subject to severe financial problems, some with state takeovers of school systems, others being declared enterprise zones in an attempt to improve dismal retail and wholesale business climates. In brief, a town like Allendale has extremely little in common with these urban areas.

Counsel's numerous citations to private sector increases have also been considered. However, the mere recitation of zero or low percent increases in diverse industries and geographical locations are not dispositive of a public sector increase for police subject to a binding interest arbitration statute in one of the wealthiest counties in the country. Moreover, arbitral notice is taken here (just as it was of Borough counsel's citation of the Pierson Award in the initial Award) of recent statistics released by the New Jersey Department of Labor showing a percentage increase in wages of 3% in local government and 3.3% in federal government **between 1995 and 1996**. (copy attached). Even the 2.1% factor reported for the state government must take in the various zero or low percentage increases Borough counsel cites in support of Allendale's new offer of two zero percentage increases (1995 and 1996) followed by a 2.6% and 2.53% (1997 and 1998).

Note is also taken that the private sector figures taken from this same report by County shows a 3.6% increase in Bergen County in 1996 and a state-wide increase of 4.00% and 4.3% depending on the category. These figures, generated by a state agency and dealing with different sectors with specificity, clearly support the wage award issued herein.

Although no separate section is set up to examine the cost of the award as related to the relevant statutory criteria on a year-by-year basis, an analysis is undertaken and discussed within the award. Perhaps the Borough's offer can best be summed up by noting that, if the two years of zero increases and the final two years of 2.6% and 2.53% increases were awarded, it would be saving a total of approximately \$234,000 over four years or \$59,000 per year over the increases awarded.

The Borough's new final offer calculates to approximately \$126,000 less than its initial final offer over four years or approximately \$31,500 per year less. Whereas its initial offer was therefore \$26,922 per year less than what was awarded, its new final offer is \$58,442 per year less than what was awarded. The Borough clearly failed to prove that the exclusion of the "red dot days" and the reduced vacation proposals, even had they been awarded, justify the issuance of a proposed salary award of such a substantial discrepancy.

Twelve Step Salary Guide

The Borough in its first final offer proposed the addition of salary steps which would bring the salary guide to twelve steps from the previously existing seven steps. The rejection of that proposal as part of the Borough's first final offer need not be discussed since Allendale has effectively withdrawn the proposal. In its place, it has proposed to add two additional steps at maximum, one each at the beginning of the 1997 and 1998 contract years. These "steps", in effect, merely replace the presently existing maximum step by adding \$1,500 to each step. In effect, it has eliminated increases across the board by keeping the remaining existing steps at their present level, that is, at the salary rate paid those levels in 1994. While the proposal to add steps is not viewed as being unreasonable, the offered increases that accompany those two steps are deemed not reasonable. That reason, taken together with the ultimate conclusion that the wage package awarded is the most reasonable resolution of this dispute, leads me to reaffirm the wage package initially awarded.

For the record, the analysis and discussion contained in my initial Opinion and Award are adopted herein in their entirety. Except as noted within the original Award, it is reissued as follows for essentially the same reasons stated therein and as extended herein.

AWARD

1. The duration of the Agreement between the Borough of Allendale and New Jersey State Patrolmen's Benevolent Association, Local No. 217 shall be for four (4) years, namely, January 1, 1995 through December 31, 1998.
2. Effective January 1, 1995, the clothing allowance shall be increased by \$100 to \$650 per employee per year.
3. Salary increases across the board and effective on January 1st of each contract year are awarded as follows:

1995	4.25%
1996	4.00%
1997	3.75%
1998	3.50%

The Salary Guide as to steps and structure remains as it was prior to the initial Award, but with the above increases calculated thereon.

4. Any and all other requested changes by both parties are hereby rejected.



ROBERT E. LIGHT, Arbitrator

Dated: December 5, 1997

STATE OF NEW JERSEY:

:SS*

COUNTY OF MIDDLESEX:

On this 5th day of December, 1997 before me personally came and appeared ROBERT E. LIGHT to be known to me to be the individual described here and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.



ELLEN ORLANDINI
Notary Public of NJ

TABLE 1

AVERAGE WAGES IN EMPLOYMENT
COVERED BY UNEMPLOYMENT INSURANCE
BY MAJOR INDUSTRY DIVISION IN NEW JERSEY
1995 and 1996

<u>Major Industry</u>	<u>1995</u>	<u>1996</u>	<u>Percent Change</u>
Construction	\$37,353	\$38,510	3.1
Manufacturing	42,171	44,126	4.6
Transportation/ Communications/ Public Utilities	41,769	43,381	3.9
Wholesale Trade	43,700	45,405	3.9
Retail Trade	17,820	18,366	3.1
Finance/Insurance/ Real Estate	45,469	50,391	10.8
Services	31,979	33,082	3.5
Total Private Sector ¹	33,890	35,351	4.3
Federal Government	40,864	42,216	3.3
State Government	40,214	41,048	2.1
Local Government	36,840	37,954	3.0
Total Government	<u>38,122</u>	<u>39,194</u>	<u>2.9</u>
TOTAL	\$34,534	\$35,928	4.0

¹ Also includes smaller categories not shown separately: agriculture, forestry, forestry, fishing and those firms which have failed to provide sufficient information for industrial classification.

TABLE 2
PRIVATE SECTOR
AVERAGE WAGES
FOR JOBS COVERED BY UNEMPLOYMENT INSURANCE
BY COUNTY
1995 and 1996

<u>County</u>	<u>1995</u>	<u>1996</u>	<u>Percent Change</u>	<u>Average Wages</u>	
				<u>1995</u>	<u>1996</u>
Atlantic	\$26,249	\$27,231	3.7	16	16
Bergen	36,853	38,189	3.6	4	5
Burlington	29,800	31,172	4.6	14	12
Camden	28,651	29,720	3.7	15	15
Cape May	20,013	20,610	3.0	21	21
Cumberland	25,221	26,053	3.3	18	19
Essex	36,077	37,541	4.1	7	8
Gloucester	26,141	27,199	4.1	17	17
Hudson	33,677	36,053	7.1	10	9
Hunterdon	35,317	38,038	7.7	8	6
Mercer	34,037	35,147	3.3	9	10
Middlesex	36,428	38,209	4.9	6	4
Monmouth	30,162	31,104	3.1	12	13
Morris	40,387	43,044	6.6	2	2
Ocean	23,016	23,832	3.6	20	20
Passaic	31,795	32,108	1.0	11	11
Salem	36,986	38,989	5.4	3	3
Somerset	41,607	43,180	3.8	1	1
Sussex	25,091	26,316	4.9	19	18
Union	36,603	37,812	3.3	5	7
Warren	29,813	30,488	2.3	13	14
Total Private Sector	\$33,890	\$35,351	4.3		