

**NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION**

In the Matter of Interest Arbitration Between

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**TOWNSHIP OF MAPLEWOOD,**

"Public Employer"

-and-

**MAPLEWOOD PBA LOCAL 44**

"Employee Organization"

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Docket No. IA-99-57

**INTEREST ARBITRATION  
DECISION  
AND  
AWARD**

**Before  
James W. Mastriani, Arbitrator**

**Appearances:**

**For the Employer:**

Angelo J. Genova, Esq.  
Brian O. Lipman, Esq.  
Genova, Burns & Vernoia

**For the Union:**

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

I was appointed arbitrator by the New Jersey Public Employment Relations Commission on March 25, 1999 in accordance with P.L. 1995, c. 425, in this matter involving the Township of Maplewood [the "Township"] and PBA, Local 44 [the "PBA"]. Pre-arbitration mediations were held on July 19 and November 15, 1999. Because the impasse was not resolved, formal interest arbitration hearings were held on January 14, 2000 at which the parties examined witnesses and introduced evidence. Post-hearing briefs were submitted by March 24, 2000 and thereafter the record was closed. The mandatory terminal procedure of conventional arbitration was used to decide all issues in dispute. Under this procedure, the arbitrator has the authority to fashion an award that he believes represents the most reasonable determination of the issues in dispute.

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

#### **PBA, LOCAL 44**

1. **Duration:** January 1, 1999 through December 31, 2001.

2. **Wages:**

Effective January 1, 1999 5% across the board  
Effective January 1, 2000 5% across the board  
Effective January 1, 2001 5% across the board

The PBA defines "across the board" to mean that the rate increase is to be effective at each rank, step and position covered by the Agreement."

3. Fold in of Holiday and Longevity: The PBA proposes that the values for holiday and longevity be folded in and used for all calculation purposes.

4. Vacation: The PBA proposes that employees be permitted to carry over up to one (1) year's annual vacation accumulation. If such time were not used by the end of the second year then it shall be paid as paid compensation at the straight time rate. The PBA also proposes that vacation utilization shall be carried as "Days of Work" and regular days off shall not be carried as vacation. Therefore there would not be utilization of the current nomenclature "Vacation Week" which effectively blocks out time where no one is on scheduled time off yet others are not permitted to take vacation time.

5. Work in Higher Rank Compensation: The PBA proposes that officers working in higher rank status shall be compensated at said higher pay rate status.

#### **Non-economic Proposals**

6. Notice of Change in Rules and Regulations: the PBA proposes that any new rule or regulation be supplied in writing to the PBA not less than 60 calendar

days before the time of the required compliance. The 60-day time line shall be applicable in all cases except those of unforeseeable emergency.

7. Fully Bargained Provision: The PBA proposes to delete Article XXII of the prior contract.

**THE TOWNSHIP OF MAPLEWOOD**

1. Duration: January 1, 1999 through December 31, 2001

2. Wages: The Township proposes that wages, and stipends be increased retroactive to January 1, 1999 as follows:

January 1, 1999	3.95%
January 1, 2000	3.55%
January 1, 2001	3.25%

3. Longevity: The Township proposes that Police Officers hired on December 23, 1999 and thereafter shall receive longevity in accordance with the following schedule:

Completion of five consecutive years of service	\$800.00
Completion of ten consecutive years of service	\$1,600.00
Completion of fifteen consecutive years of service	\$2,400.00
Completion of twenty consecutive years of service	\$3,200.00
Completion of twenty-five consecutive years of service	\$4,000.00

4. Base Pay: The Township proposes that the Agreement will be modified effective January 1, 1999 to provide as follows:

Longevity and holiday pay will be rolled into base pay for all purposes as required by law, including pension calculations. (By way of example, the parties recognize that holiday pay will not be included in base pay for purposes of overtime calculations; longevity pay will be rolled into base pay for purposes of the hourly base rate, pension calculations and overtime calculations; holiday pay will be rolled into base pay for purposes of pension calculations.)

5. Clothing Allowance: The Township proposes increase the clothing allowance by \$50.00 per year as follows:

1999	\$925.00
2000	\$975.00
2001	\$1,025.00

6. Hours of Work and Overtime: The Township proposes to delete Section 1 of Article XVI in its entirety because it is no longer applicable. The Township also proposes to add the following new language:

with respect to compensation for special assignments such as crime prevention assignments, DARE programs and bicycle patrols, officers shall receive their wages or compensatory time at the time and one-half rate for hours worked in excess of their regular tour. However, such assignments shall not be subject to the callback or minimum pay requirements.

### Non-Economic Proposals

7. Leave of Absence: The Township proposes to amend the last sentence of Article XII, Section A to provide: "Immediate family shall be defined as follows: mother, father, son, daughter, sister, brother, husband, wife, grandparents and grand children of the officer, mother-in law and father-in-law."

The Township proposes to re-title the Maternity Leave provision in Article XII, Section D to Family Leave and to add the following language:

To the extent permitted by law, paid leave time must be used concurrently with a leave that qualifies under the federal Family and Medical Leave Act and/or New Jersey Family Leave Act. Employees must substitute and utilize other forms of paid leave while they take leave that qualifies under the foregoing statutes.

8. Sick Leave: The Township proposes to add the following provision to

Article XIII:

Administrative Illness List

a. If an officer accumulates more than three (3) illnesses, regardless of duration, during a single quarter of a calendar year (i.e. January through March; April through June; July through September; October through December), the officer shall be placed on the Administrative Illness List.

b. An officer who is placed on the Administrative Illness List shall obtain a written report from a physician describing the medical condition of the officer to verify additional sick leave that may be claimed by the officer during the remainder of the calendar year.

c. The cost for obtaining the medical report and the physician's visit shall be at the expense of the officer. The Township may also direct the officer to be examined by the Township physician at its expense.

d. The Administrative Illness List procedure shall not apply to work-related illnesses or injuries.

Chronic Illness List

a. If an officer is placed on the Administrative Illness List for two (2) or more consecutive quarters of a calendar year, he shall be placed on the Chronic Illness List for one calendar quarter.

b. An officer is removed from the Chronic Illness List when he does not use any sick time for one (1) calendar quarter.

c. During the time that an officer is on the Chronic Illness List, he shall not be eligible for overtime work, special assignments, pay jobs or "swaps."

d. The Chronic Illness List procedure shall not apply to work-related illnesses or injuries.

The Township and the PBA have offered testimony and considerable documentary evidence in support of their final offers. Witnesses testifying at the hearing included Maplewood Detective John M. Perna, former Township Administrator W. David Carew, current Township Administrator Michele Meade and Police Chief Kenneth W. Gorsky, Jr. In addition, final offers and numerous Township and PBA exhibits were received in evidence. I am required to make a reasonable determination of the above issues giving due weight to those factors set forth in N.J.S.A. 34:13A-16g(1) through (8) which I find relevant to the resolution of these negotiations. I am also required to indicate which of these factors are deemed relevant, satisfactorily explain why the others are not relevant, and provide an analysis of the evidence on each relevant factor. These factors, commonly called the statutory criteria, are as follows:

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

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

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

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

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

(3) The overall compensation presently received by the employees, inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received.

(4) Stipulations of the parties.

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

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



been designated by the governing body in its proposed local budget.

- (7) The cost of living.
- (8) The continuity and stability of employment including seniority rights and such other factors not confined to the foregoing which are ordinarily or traditionally considered in the determination of wages, hours and conditions of employment through collective negotiations and collective bargaining between the parties in the public service and in private employment.

### **BACKGROUND**

Maplewood Township is a primarily residential Essex County community with a population of 20,765. The average median value of a single-family house is \$199,300. The median household income is \$57,568, or tenth among the 22 municipalities in Essex County. The Township has enjoyed economic health in recent years and has an AA credit rating from Moody's. As of 1990 Maplewood's median household income was \$57,568. Its net taxable valuation in 1998 was \$556,167,900. Maplewood has maintained a positive annual results of operations. In 1998 the results of operations was \$1,341,222 and budget revenues were \$80,847 in excess of the anticipated \$21,376,992. Maplewood also enjoys a stable municipal tax rate of 2.19 for 1996 and 1997. The municipal tax rate decreased by one cent to 2.18 for 1998 and 1999. The Township's total tax levy of \$51,996,225 and the per capita tax levy is \$2,070.44. Its tax collection rate for 1998 was 96.40%.

The Township's Police Department began the Year 2000 with a new mission statement for the new Millennium. That statement provides that the Police Department will:

Serve the Community and promote a unique degree of public trust and cooperation, strive to improve quality of life issues and protect the lives and property within the Township through vigilance, determination and professionalism. Bring compassion and strength to our department by developing diversity, knowledge and special contributions of each officer.

The Township's Police Department has undertaken a variety of innovative programs including the K-9 program, bicycle patrol, Universal Police Officer position, temporary assignment of patrol officers to the Detective Bureau, Y2K compliance, state of the art computer systems including mobile data terminals in patrol cars, a lottery ticket incentive program, and an enhanced D.A.R.E. program. The PBA has provided support for these initiatives and several are cooperative efforts.

The Township Police Department consists of 42 Patrolmen, eight Sergeants, five Lieutenants, two Captains and the Police Chief. All except the Chief are represented by PBA, Local 44.

## **POSITIONS OF THE PARTIES**

### **PBA, LOCAL 44**

The PBA addresses the interest and welfare of the public criterion pointing out how well served the public is by the Maplewood Police Department. Pointing to its pride, performance and esprit de corps, the PBA cites the January 3, 2000 memo from Chief Kenneth Gorsky, Jr. expressing his pride in the Department and setting forward its mission for the new Millennium. Additionally, the PBA cites departmental statistics showing inroads into criminal activity as well as an article appearing in the September 10, 1998 Star Ledger announcing, "Maplewood celebrates 22% drop in crime." The Detective Bureau reported clearance rates of 33.4% and 35.6% in the last two years respectively and, according to the PBA, crime has dropped in virtually every category including robbery, assault, burglary, larceny, and motor vehicle theft. In addition to the exceptional productivity as shown by crime statistics over the last three years, the PBA points out that the Maplewood Police Department has provided new and innovative initiatives to the public. These include the K-9 unit, the Universal Police Officer position, state of the art computer software and Y2K compliance preparation, bike patrols, participation in the community First Night, and the temporary assignment of patrol personnel to the Detective Bureau. The PBA also cites the testimony of Detective Perna that the Department is trying "different initiatives to get the community involved and reduce the amount of crime in Maplewood." Another unique initiative cited by Detective Perna is the "lottery

ticket program" where citizens are given lottery tickets for positive acts as a method of reinforcing safe conduct the Police Department seeks to encourage. The PBA points out that this initiative was the result of financial cooperation between the Township and the PBA. Other efforts, including expansion of the D.A.R.E. program have been supported and encouraged by the PBA as well.

The PBA points out that these initiatives have taken place despite the limited size of Maplewood's Police Department. According to the PBA, the Police Department employed 57 Officers in 1972 and ultimately shrunk to 50 officers in the 1980's and only recently returned to a complement of 57 Officers. According to the PBA, the Maplewood Police Department has recently lost several skilled officers who went to work for other law enforcement agencies. For each of these officers who left employment with the Maplewood Police Department, the PBA maintains that the Department lost a substantial expenditure of time, energy, money and effort to recruit and train new officers. The PBA summarizes the effort involved in hiring and training a police officer, including advertising, screening, testing, background checking, training in the Police Academy, and further on the job training, all at the Police Department's expense. The PBA provided a list of 14 Maplewood Police Officers who left the department since January 1, 1996. Three of those Officers retired, one left to take a non-law enforcement position and the remaining seven officers transferred to other law enforcement agencies in New Jersey, including the Bergen County Prosecutor's Office, the Somerset County Prosecutor's Office, the Ocean County Prosecutor's

Office, the Essex County Sheriff's Office, and the police departments in Wall Township, Bernardsville, Newark, Freehold and South Orange. According to the PBA, one reason for this turnover is that the Township's police officers are not well compensated compared to their peers in other departments. According to the PBA, benefits are at or below average in virtually every category and is not competitive with that offered by other police departments. Nonetheless, the PBA points out that, as testified to by Detective Perna, morale and the esprit de corps in the Maplewood Police Department remains high.

Turning to the comparison criteria, the PBA asserts that Maplewood's Police Department is one of the lowest compensated in Essex County and in the general geographic area of New Jersey. The PBA argues that the Township's assertions are an attempt to diminish benefits that are already substantially below average. Comparing wages, the PBA asserts that top step base pay for a Maplewood Police Officer is one of the lowest in Essex County and substantially below the area average. Based upon the PBA's comparison, the average 1998 top step patrol rate among comparable communities was \$57,289 compared to \$53,161. For this comparison, the PBA analyzed top step patrol salaries in Fairfield, Caldwell, Bloomfield, West Caldwell, Cedar Grove, Mountainside, Springfield, Summit, Milltown, Union, South Orange, Montclair, Livingston, Newark, Scotch Plains, Bernardsville, Belleville, Nutley, Roseland, Verona, North Caldwell and the State Troopers' salary. The result, according to the PBA, is that the 1998 top step patrol salary in Maplewood is \$4,128 or 7.76% below average.

The PBA asserts that benefits received by Maplewood Police Officers do not offset their low base pay rate. Comparing Maplewood's longevity benefits with those provided to the same comparable communities, the PBA asserts that the 1998 maximum value of longevity based on top step base pay is 15.6% or \$861 below average. The PBA reaches this conclusion by comparing top step base pay at the maximum level of longevity pay. Among the communities the PBA deems comparable, the maximum longevity benefit ranges from 10% in several communities including Maplewood to a high of 14% in Newark. Based upon its calculations, the PBA asserts that it would take a 15% increase in longevity benefits to bring Township longevity benefits up to average. Additionally, the PBA points out that the maximum benefit is not attained until the 26<sup>th</sup> year and most other longevity plans reach the maximum benefit level with fewer years of service and most of the longevity plans are included in the creditable salary base computation upon the attainment of the statutory 25 years of creditable service.

The PBA argues that comparison of longevity benefits is of particular importance because the Township seeks to reduce this benefit for new employees. According to the PBA, Maplewood's Police Officers are among the poorest paid in Essex County and have one of the poorest longevity plans in the county and the Township seeks to reduce the already slim benefit. The PBA contends that the Township's proposal would have an enormous negative impact

on the future employees without justification. Accordingly, the PBA maintains the Township's proposal would have a negative impact upon the interest and welfare of the public and would effect its future recruiting ability. In order to demonstrate the cost of the Township's proposal to Police Officers hired after December 23, 1999, the PBA compares current longevity benefits to the Township's proposals based upon non-supervisory 1998 pay rates. Based upon these calculations, an Officer under the Township's proposal would earn \$262 less per year in longevity pay after five years. After ten years, an Officer would earn \$524 less per year in longevity benefits, and after 15 years, an Officer would earn \$1,048 less per year in longevity benefits. Continuing the calculations, after 20 years, an Officer would earn \$1,048 less per year under the Township's proposal, and after 25 years, an Officer would earn \$1,316 less per year under the Township' proposal. Further calculations of the earnings an Officer would lose over the course of a career under the Township's proposal, based upon 1998 dollars, results in a total loss of \$19,680 over the course of a career. The PBA speculate that the actual cost would be greater since, under the present longevity plan, longevity benefits would rise with salary and under the Township's proposal, they would not. Additionally, other factors, such as overtime, which impact on the calculation of present longevity benefits, have not been included in the calculation and could further widen the disparity.

The PBA also calculates the impact of the Township's proposal on retirement benefits. Assuming a 20 year life after retirement and pay based upon

1998 levels, the PBA calculates that an employee retiring with 26 years of service would lose an additional \$16,978 under the Township's proposal. Similarly, an employee retiring with 30 years of service would lose an additional \$18,424 under Township's proposal according to the PBA's calculations. Based upon these calculations, the PBA calculates further that the total impact, including the impact during an Officer's career and the retirement impact would be \$31,394 for an Officer with 26 years of service and \$38,104 for an Officer with 30 years of service. The PBA emphasizes that these calculations assume no raises, no cost of living increases, no promotions and no other additions to salary. The PBA argues that the Township has not justified such a radical change in benefits for new officers. The PBA contends that the only rationale offered by the Township is that the FMBA agreed to such terms. Therefore, the PBA argues that the Township seeks a "windfall" without paying for the cost of the benefit.

The PBA argues that other benefits are either at or below area standards. Citing vacation leave benefits, the PBA maintains that the average maximum annual vacation benefit among comparable communities is 27.22 days compared to the 25 day maximum in Maplewood. The PBA maintains further that the holiday benefit is also substandard because Maplewood Officers are entitled to 13 paid holidays while the average among comparable communities is 13.263 days. The PBA notes that it does not seek additional holidays, but points out that both parties have agreed that holiday pay should be rolled into base pay. The



PBA asserts that most contracts in evidence in this case already include such a provision.

The PBA asserts that the average rate of increase for municipalities in Essex County and the area generally favor its position. The PBA's review of salary increases in comparable municipalities shows that increases averaged 4.233 in 1999, 4.230 in 2000 and 4.195 in 2001. These calculations are based upon review of increases in Cedar Grove, Caldwell, Fairfield, West Caldwell, Mountainside, Summit, Millburn, Livingston, Newark, Scotch Plains, Woodbridge, Bernardsville, Seaside Park, Belleville, the Essex County Sheriff's Office, the Essex County Jail and the State Troopers. The PBA calculates that increases over the three-year period total 12.653%, but in order to achieve an average salary over the life of the agreement, the PBA maintains that an additional 7.76% adjustment would be required at the beginning of the contract to bring Maplewood Police up to average. Adding 7.76% and the average increases totaling 12.653%, the PBA concludes that the total increase necessary to bring Township police up to average salaries over the three year period is 20.413%, or 6.80% per year. Noting that the PBA has not sought such an increase, it maintains that if its proposal were awarded, Maplewood's Police would continue to earn below average salaries, when compared to other police.

According to the PBA, the Township has based its case upon its settlement, for less than that sought by the PBA, with another bargaining unit.

The PBA argues that such a showing is insubstantial when compared to the substantial body of empirical data it has presented. Asserting that the best comparisons are police to other police, the PBA contends that it is not appropriate to "cherrypick" contracts in an attempt to make a case for comparability. When looking at comparisons, the PBA asserts that it has met its burden, but the Township has not.

Acknowledging the valuable services performed by firefighters, the PBA asserts that it is a different type of job. Comparing police work to fire fighting, the PBA maintains that police work is proactive with police patrolling the streets to keep them safe and prevent crime while firefighters react and wait to be called. Pointing to another difference, the PBA notes that firefighters have beds in the firehouse because firefighters wait to be called, but Police do not wait at the police station for crimes to be committed, then after completing an activity, return to wait for another crime to be committed. According to the PBA, the basis underlying the Township's position is that the Police should be held to the same standard and accept the same settlement as firefighters. Using the issue of beds in the firehouse as an example, the PBA contends that such an assertion is untenable. Further, the PBA asserts that historically, there have been differences in compensation between Maplewood Police and Firefighters. As evidence of such differences the PBA cites the October 24, 1984 award of Arbitrator Joan Parker Weitzman. In that Award, Arbitrator Weitzman rejected the Firefighters' attempt to establish parity with Police Officers. As explained by

the PBA, the firefighters had accepted a pay freeze in the early 1980's Arbitrator Weitzman ruled that, "there is no creditable evidence to support the union's contention that the township promised to compensate firemen for the pay freeze by giving them parity with the police in 1984." (Award at p.18).

The PBA also cites to the Township's exhibit #60 which demonstrates that PBA members have historically received greater increases than firefighters. According to the PBA such a difference is justified since policing and fire fighting are different types of jobs. In contrast, the PBA asserts that it has provided substantial credible evidence, including contracts, demonstrating that Township Police are among the lowest paid in the County. The PBA also points out that based upon the evidence submitted by the Township, the relative ranking of Maplewood's firefighters, public works employees and library employees is unknown. The PBA characterizes the Township's position that it should be compared to the FMBA as random, suggesting that if Police are to be compared to random public employees, then Police should be compared to teachers and work 185 days, Monday through Friday, and receive increases in excess of those sought by the PBA in this proceeding.

Responding to the Township's comparisons with private employment, the PBA maintains that it is not an appropriate comparison. According to the PBA, the unique statutory provisions applying to police in New Jersey results in "strong justification for significantly higher compensation" for police employees. Citing

the interest arbitration award in Borough of River Edge/PBA, Local 201, the PBA asserts that private sector comparisons should not be controlling in this case. Specifically, the PBA asserts that no private sector job compares to that of a police officer. According to the PBA, a New Jersey police officer must be prepared to act and may be armed at all times while within the State. Additionally, the PBA points out that police operate "under a statutorily created public franchise of law enforcement with on and off duty law enforcement hours." The PBA also notes that after age 35, police pensions are not portable and police officers are not free to transfer their skills to policing in other states. The PBA cites several state and federal laws that control the relationship of police officers to their employers. These laws include:

1. Fair Labor Standards Act, 29 U.S.C. § 201 et. seq. (different standards applied to private sector employees and to police.)
2. New Jersey State Wage and Hour Law, N.J.S.A. 34:11-56a et. seq. (does not apply to police).
3. N.J.S.A. 40A:14-118 (specific statutory provisions creating and regulating police departments including powers and duties, specifics for assignment of subordinate personnel and delegation of authority.)
4. N.J.S.A. 40A:14-122 (specific qualifications for police officer employment, as well as provisions for dismissal based upon absence without cause, statutorily controlled promotional exams, residency requirements.)
5. N.J.S.A. 40A:14-123.1a (sets hiring criteria and order of preference.)
6. N.J.S.A. 40A:14-127.1 (minimum and maximum age restrictions for initial hire and rehire as a police officer)

7. N.J.S.A. 40A:14-127.3 (acceptance into Police Retirement System as a condition of employment)
8. N.J.S.A. 40A:14-131 (statutorily created minimum police salary that is below current minimum wage).
9. N.J.S.A. 40A:14-133 (Police work week shall not exceed six days "except in cases of emergency.")
10. N.J.S.A. 40A:14-134 (extra duty work paid not in excess of time and one-half.)
11. Maximum age of employment for a police officer is age 65.
12. N.J.S.A. 40A:14-147 - 151 (unique hearing and complaint procedure for departmental charges).
13. N.J.S.A. 40A:14-152.1 (power of arrest).

Additionally, the PBA points out that police are specifically exempted from State fire arms laws, and are trained and retrained in police academies. The PBA points out that failure to maintain required training and retraining can lead to loss of certification as a police officer. The PBA maintains that, few if any, of the requirements and regulations covering police officers apply to private sector employees and that private sector employees enjoy many benefits not provided to police. Specifically, the PBA notes that private sector employees are not restricted by a residency requirement. Therefore, a private sector employee may travel across the country in search of alternate employment while a police officer is restricted by certification to working within the State.

Citing the interest arbitration award by Arbitrator William Weinberg in the Village of Ridgewood, the PBA maintains that local comparisons are more

relevant to police wages. Accordingly, the PBA contends that private employment is "an overly generalized category" without the specialized skills and standards required of police. As such, police wages "should be considered on a higher wage plane than private employment generally," according to the PBA.

Other than procedural stipulations, the PBA points out that both parties seek an agreement with a three-year duration and that the Township has included the PBA's holiday and longevity benefits fold in proposal in its final offer.

Turning to the lawful authority of the employer, the PBA asserts that that Township does not have a problem with the CAP Law. First, the PBA notes, the Township used a 1.5% index rate rather than the full 5% rate permitted by the Cap Law. Based upon the 1.5% index rate, the Township was able to add \$225,296 to the expenditure level permitted for 1999. That resulted in a total allowable expenditure of \$16,341,767.00. The PBA calculated that within that amount, the Township actually used \$14,914,405.00 with the remaining \$1,427,362 going into the Cap bank. The PBA calculated further that had the Township used the 5% Cap, the Township could have appropriated an additional \$525,692, which has been waived. Combining the waived amount (\$525,692) and the amount available, but not spent (\$1,427,362), the PBA finds that the Township has a total of \$1,953,054 banked for future budgeting flexibility.

Looking at the Township's budget historically, the PBA points out that the Cap Bank was \$350,502 in 1997, and \$671,171 in 1998, before it tripled to \$1,953,054 in 1999. Pointing to the trends, the PBA notes that there has been Cap Bank flexibility in each of the last three years and that the Cap Bank has been increasing exponentially during that period. Accordingly, the PBA asserts that the Cap Law does not pose a problem in this case.

Comparing the magnitude of the fiscal flexibility available to the Township to the actual value of base wages of the bargaining unit, the PBA asserts that total wage costs of \$3,282,683 are not substantial where the Township has almost \$2 million in Cap Bank flexibility. Alternatively, the PBA points out that one percentage increase in Police base salaries costs \$32,826 and the amount of flexibility waived in the 1999 budget process (\$1,953,054) exceeds 59 bargaining unit base wage percentage points. Therefore, the PBA maintains that there is no cap problem or issue of the lawful authority of the employer.

Turning to the impact on Maplewood's taxpayers and residents, the PBA asserts that the Township is wealthy with strong ratables and below average taxes. The PBA suggest that the cost of police services is minimal and is a bargain for local residents and taxpayers. Therefore, the PBA maintains the impact of this award will be almost imperceptible. Specifically, the PBA compares the total cost of bargaining unit base wages (\$3,282,683) to the total tax levy in Maplewood (\$51,996,225). Based upon this comparison, the PBA

calculates that only 6.3% of the tax levy is need to cover the entire base wage cost for the bargaining unit. Expressing the cost of police salaries as compared to standard monthly bills, the PBA calculates that the cost of police bargaining unit salaries is approximately \$21.10 or an amount less than a monthly cable TV bill. Using an annual \$4000 residential tax bill as an example, the PBA finds that the resident's annual tax bill devoted to police salaries is \$253.20 (6.33% X \$4,000), or \$21.10 on a monthly basis. The PBA calculates further that a 1% increase in Police salaries has a \$.21 per month impact, which the PBA considers to be *de minimus*.

Looking to local tax collection rates as a barometer for the tax burden, the PBA notes that Maplewood's tax collection rates have exceeded 96% in each of the last three years. In 1998, the most recent year in evidence, the tax collection rate was 96.4%. Pointing out that such rates are well above the State average, the PBA maintains that the current tax burden is not untoward. Looking beyond current tax collections, the PBA points out that in 1998 Maplewood had an 87.18% collection rate of delinquent taxes. From that, the PBA concludes that virtually all taxes are collected either in the year they are due or in the succeeding year.

The PBA notes that the difference between the parties' positions on base wages is small. In the first year, the difference is 1.05%, in the second contract year, the difference is 1.45% and in the third year the difference is 1.75%. Based



upon the \$32,826 cost of a percentage point, the PBA maintains that the total impact is also very small. According to the PBA, each percentage point equals only .0006%. The difference between the parties' positions is reduced by the Township's offer to increase the clothing allowance by \$50.00 each year. The PBA calculates the cost of that benefit, which the PBA notes it has not sought, is .28% over three years.

Looking generally to Maplewood's financial condition, the PBA observes that in 1998 its results of operations showed \$1,341,221. The PBA also observes that budget revenues have exceeded anticipated amounts in each of the last three years with the 1998 excess in at \$80,847. Additionally, the PBA observes that the unexpended balance of appropriation reserves has grown in the past two years. According to the PBA, the unexpended balance of appropriation reserve cancellations from 1997 was \$566,118 and that was substantially higher than the preceding year's cancellations which were \$482,745. The PBA also notes that over the past four years the municipal portion of the tax rate has remained the same or has dropped. In 1996 the municipal portion of the tax rate was \$2.19 and that remained stable in 1997, decreasing to \$2.18 in 1998 and 1999. At the same time, the PBA observes, the total tax levy has increased in each of the last three years from \$46,655,193 in 1995 to \$48,149,235 in 1996, and \$49,354,886 in 1997 and to \$51,996,225 in 1998. At the same time the ratable base has remained strong according to the

PBA, with the net assessed valuation taxable reported in the 1998 Report of Audit as follows:

1996	\$548,294,600
1997	\$547,442,200
1998	\$556,167,900

In addition, the PBA observes that the Township's borrowing power is substantial with an equalized valuation as of December 31, 1998 of \$1,404,653,860, the 3.5% equalized statutory valuation basis provides a borrowing limit of \$49,162,885. Since the Township's net debt is \$15,274,013, the PBA calculates that the Township's remaining borrowing power is \$33,888,872. The PBA points to this amount only as an indication of the Township's fiscal status and stability and not because it suggests that the Township borrow to fund the award. Noting also that the Township enjoys an AA rating with Moody's, the PBA also points to the current fund cash balance of \$2,459,295 on December 31, 1998 and notes that on that same date the capital fund was \$1,606,659. The PBA also notes that the interest on cost and taxes alone increased by over 50% to \$306,616 in 1998 and the revenue from interests on investments and deposits more than doubled in 1998 over the amount anticipated (1999 budget, sheet 4). Pointing to the Township's ability to use the utility operating surplus, in 1999 \$175,000 was available and anticipated for utilization. The PBA notes that Joint Meeting Sewer User charges provided additional funds with the anticipated sum of \$437,000. According to the PBA, no such additional funds were available in the previous year. Finally, the PBA notes

that at the end of 1998 there was over \$287,818 reserved and the Township anticipates \$64,680 in additional COPS More funds for 1999. Based upon all of this information, the PBA asserts that the Township has significant revenues and flexibility and presents a fiscally strong picture. Citing the Township's response concerning the impact of a recently settled tax appeal, the PBA asserts that the amount of the adjustment resulting from the appeal is subsumed in the increased ratable picture in the Township. Therefore, the PBA urges that consideration of the *di minimus* impact of an award of its position on the Township be viewed in light of the Township's fiscal strength. Additionally, the PBA asserts that an award of its position would have no appreciable impact on Maplewood's residents and taxpayers.

Acknowledging that the cost of living data is somewhat below the PBA's final offer, the PBA nonetheless reminds that it is only one of eight criteria and seeks to place it in the proper context. Pointing out that cost of living data is regional, the PBA notes that all of the evidence with respect to wages, settlements and arbitration awards that it placed in evidence is also regional and those jurisdictions felt the same impact of changes in the cost of living. The PBA would consider cost of living as an indicator only and suggests that it not be used to dictate increases. According to the PBA, employers' reliance on the cost of living is situational, and when increases in the cost of living are small, employers seek to tie increases to that indicator and when increases in the cost of living are high, employer's do not seek to provide increases tied to the cost of living.

Acknowledging that cost of living data does not support its position, the PBA points out that the Township did not provide evidence on cost of living.

Addressing the continuity and stability of employment, the PBA raises the concepts of "area standards" and "prevailing wage" and asserts that these concepts support the PBA's final offer. The PBA maintains that it has compared Maplewood Police to other police departments. In contrast, the PBA notes that the Township has compared its police to its Firefighters where there is no history of such comparability. For example, the PBA notes that Firefighters receive E.M.T. stipends while certified Police Officers do not. The PBA points out that the FMBA contract includes a Training Office Stipend but the PBA agreement does not. According to the PBA, additional issues surround the definition of a personal day under the FMBA contract. According to the PA, the value of a personal day is 2.3% on personal time as well as the .7% increase in clothing allowance not sought by the PBA result in an additional 3% enjoyed by FMBA members which the PBA has not sought. However, the PBA notes that the difference between the parties' positions is little more than 3%. Accordingly, the PBA maintains that the value of its position is not significantly different than the value of the FMBA package.

## **MAPLEWOOD TOWNSHIP**

Initially, the Township asserts that its proposal is more reasonable when compared to the wages, salaries, hours and conditions of employment of other employees performing the same or similar services and with other employees generally.

First, the Township addresses the comparison with other Maplewood employees by stressing that its Police Officers and its Firefighters have maintained wage parity for over a decade and have negotiated five separate agreements, receiving the same wages in each year. The Township also stresses that, when benefits apply to both bargaining units, its Police Officers and Firefighters have received equal benefits historically. Detailing the historic pattern of settlement between the PBA and the Firefighters Mutual Benevolence Association, Local No. 25 (FMBA), the Township begins with the 1989 agreements. The 1989 FMBA agreement was reached through interest arbitration and the Township points to Arbitrator Tener's award (hereinafter Tener) which provided that, "there has been a history of parity between police officers and firefighters." In the Matter of the Arbitration Between Township of Maplewood and FMBA, Local 25, IA-89-120 (July 7, 1990, J. Tener). The Township cites further from Arbitrator Tener's conclusions that "there is a history of pattern bargaining in Maplewood between police officers and firefighters. It would take an overwhelming set of circumstances to convince me not to accord

the same benefit to the firefighters and no such case has been presented.” According to the Township, pattern bargaining between the PBA and FMBA has continued through their last contracts with the Township, both of which ended in 1998. As additional evidence of parity, the Township points to the further wage adjustment provided to the PBA so that salary for a firefighter and the salary for patrolman were identical for all ranks at each step in both bargaining units. Since then, the salaries for both units have remained identical according to the Township. Addressing the PBA’s argument that wage parity is an illegal subject for bargaining and cannot be considered, the Township rejects use of the term “parity” to refer to a “me too” clause in favor of its use to refer to a historic pattern of equality among bargaining units. Such a practice is common and legal according to the Township.

The Township maintains that Arbitrator Tener referred to the history of pattern bargaining or parity between all uniformed employees. The Township characterizes the PBA’s objection to parity as an “attempt to obfuscate a clear history of pattern bargaining” in order to receive benefits in excess of those received by other Maplewood uniformed employees. Noting that its position has not changed during the course of bargaining, the Township points out that the PBA had ample opportunity to pursue a scope of negotiations petition before PERC if it believed that the Township’s position was an illegal subject for bargaining. Citing the interest arbitration award issued by Arbitrator Weisblatt in City of Asbury Park and Asbury Park Superior Officers Association, PBA Local

No. 6, Docket No. IA--88-92, the Township maintains that "pattern bargaining is a factor which is traditionally applied in many collective negotiations settings." The Township also points out that Arbitrator Weisblatt noted that by fostering consistency among employees, pattern bargaining promotes stability of employment.

The Township stresses that in addition to receiving the same salary increases over the last five separate agreements, the PBA and FMBA have a history of receiving similar benefits over the last five separate agreements. For example, the Township points out that both bargaining units receive the same holidays, identical longevity benefits, and clothing allowance.

The Township's final offer to the PBA is exactly the same as the agreement it reached on January 1, 2000 with the FMBA. That agreement includes a wage increase of 3.95% on January 1, 1999, 3.55% on January 1, 2000 and 3.25% on January 1, 2001 as well as a \$50.00 increase in the clothing allowance on January 1<sup>st</sup> of each year of the agreement, a new longevity scale providing flat amounts of longevity benefits to employees hired after December 23, 1999. The agreement also rolls holiday pay and longevity into base pay for all purposes required by law, including pension calculations.

The Township argues that its final offer would maintain the historical pattern and any change in the pattern would destroy it and would have a "severe

and negative impact" on future negotiations between the Town and the FMBA. The Township asserts that the parties have relied upon the pattern in settling agreements and if the PBA received more than the FMBA, FMBA employees would feel "cheated" and would be less likely to settle agreements in the future. Such result could also recur if the circumstances were reversed. Such hard feelings would, according to the Township, result in "labor strife" and would "wreak havoc in the relationship between the Township and the FMBA," and potentially the other way around. Therefore, when comparing proposals to terms agreed to by other Maplewood uniformed employees, the Township asserts that its proposal is more reasonable.

Turning to Maplewood's civilian employees, the Township points out that the 1998 average base salary for Police was \$51,619.80 compared with the top salary for a public works employee of \$46,753.60 during the same year. The Township also notes that the top salary for a dispatcher in 1998 was \$30,000 and the top library salary for the Department Head was \$48,706.27. From these figures, the Township concludes that the average police officer earns more than its highest paid non-uniformed employees. According to the Township, the PBA's proposal for 5% increases would exacerbate the already large salary differential provided to Police. The Township also notes that from 1996 to 1998, public works and library employees received increases totaling 10.5% while police received increases totaling 12.7%. The Township points out that the Dispatchers' unit, which is the only civilian unit with an agreement in place for



1999 received a 3% increase and the Township's offer would provide Police with an increase that is .95%, or almost 25% more than the Dispatchers' unit. In contrast, the Township maintains that the PBA's offer, which is 2% higher than that provided to dispatchers would compound the substantial difference between the salaries in the two bargaining units, while the Township's offer would maintain the premium pay provided to uniformed employees but would not allow the PBA to outpace civilian units by an exorbitant amount.

The Township also points out that only uniformed employees receive a clothing allowance, which is currently \$875 per year and under the Township's proposal would increase by \$50 per year or by \$150 over the life of the agreement. Comparing longevity benefits, the Township notes that two of the civilian units receive a flat rate for longevity with a maximum payment of \$2500 after 25 years and the public works employees receive a maximum benefit of 10%, or \$3,675.36 after 25 years. The Township points out that PBA members also receive longevity benefits of 10% after 25 years, but based upon police salaries, the minimum benefit an officer would receive after 25 years is \$5,316.14. The Township notes that this benefit is significantly greater than that provided to its civilian employees.

Addressing its proposal to provide a flat rate longevity benefit to employees hired after December 23, 1999, the Township points out that this proposal would not effect current PBA members. Additionally, the Township

points out that its proposal to cap an ever increasing benefit would result in a top longevity rate of \$4,000, or \$1500 more than the top longevity benefit for civilian employees. Additionally, the Township compares this proposal to the PBA's proposal for a 5% increase in wages, which would increase the top longevity benefit to \$6,154.10 annually. The Township asserts that its longevity proposal would cap the benefit for new hires and curtail skyrocketing costs, while maintaining premium pay as PBA members are accustomed to receiving in benefits.

The Township also points out that PBA members receive greater vacation benefits than its civilian employees. Comparing vacation benefits, the Township notes that Police receive 23 days of vacation after 15 years, and 25 days after 20 years while civilian employees receive their maximum allotment of 22 days after 19 years. The Township notes that at each step of the vacation schedule, Police receive more vacation leave than do its civilian employees. Specifically, Police reach each step more quickly and once on the step receive more vacation leave.

The Township contends that its final offer promotes the internal parity and fairness, goals of salary administration. The Township explains that its final offer provides Police with increases which will maintain their tradition of earning premium pay within the Township without a deleterious effect on its budget. Pointing out that its proposal will result in base salary far higher than that received by civilian bargaining unit employees, an increased clothing allowance,

longevity benefits greater than those received by civilian employees and greater vacation entitlements than civilian employees, the Township argues that its proposal will maintain or slightly increase the gap between Police and civilian employees and the PBA's proposal would widen that gap to a "gross disparity."

Comparing its Police with other public sector employees, the Township asserts that its proposal is more reasonable. The Township compares the 4.5% received by its Police in 1998 and the 3.95% it proposes for 1999 to the median increase of 3% among state and local government employees (T-61 source). Based upon this comparison, the Township maintains that for 1998 and 1999 its Police would receive 2.45% more than the median increase provided to all state and local government employees. The Township points out that settlements and interest arbitration awards in New Jersey average lower increases than those included in the Township's proposal. According to the Township, the average voluntary settlement for 1999 was 3.53% and the average increase in interest arbitration awards was 3.47%. In contrast, the Township calculates that its proposal includes average increases of 3.58% over the next three years. Further, the Township highlights several recent interest arbitration awards that have included wage freezes. These awards include the State of New Jersey Division of State Police and the State Troopers Fraternal Association, the State of New Jersey Law Enforcement unit and the State PBA, Essex County and the Essex County Sheriff's Officers. The Township also highlights agreements where a bargaining unit voluntarily accepted wage freezes. These include

Guttenberg and the PBA, and the State of New Jersey and AFSCME representing 7,500 State hospital and institutional workers. The Township cites a variety of other recent settlements in the public sector including employees at Montclair State University who settled for 2% in July 1998 and 1.25% in January 1999 and New Jersey Transit and Transportation Local 60 who settled for a five year agreement with increases totaling 16% over the term. The Township also points to the Bergenfield Education Association who settled a three year contract providing 3% in the each of the first two years and 3.75% in the third year and the Lakewood PBA who settled a three year agreement with 3.5% in each year and the Newark Teachers Association who settled a two year agreement for a 2% increase in each year.

Asserting that Maplewood's Police are compensated far better than other public employees generally, the Township claims that over the past two years, its Police have received median increases greater than those of other state and local employees. In support of this argument, the Township points to wage increases included in interest arbitration awards and settlements from 1999 which average less than its final offer. Additionally, the Township asserts that the PBA's proposal far exceeds increases provided to public employees in New Jersey, without consideration of other economic benefits enjoyed by the PBA.

Citing Hillsdale PBA Local 207 v. Borough of Hillsdale, 263 N.J. Super 163 (App. Div. 1993), aff'd in part, rev'd in part, 137 N. J. 71 (1994), the

Township argues that it can not be assumed that police are entitled to the "going rate" for police in other municipalities or a higher rate than non-uniformed personnel. Quoting the Appellate Division, with approval, the Township stated that "comparability with police increases in other [jurisdictions] should not be dispositive." Again citing the Appellate Division in Hillsdale, the Township asserts that internal comparison, rather than external comparisons, is the most relevant factor.

Looking at comparisons with similar jurisdictions, the Township turns first to Essex County. Noting the diversity among communities within the County, the Township points out that it is an average municipality in a county of extremes. Looking to population, the Township points out that its population of 20,765 is between the 268,510 in Newark and the 5,220 people in Roseland and ranks eleventh out of 22 communities. Examining per capita income, the Township notes that its per capita income of \$25,448, which also ranks eleventh out of 22 municipalities, is between that of Newark with a per capita income of \$9,424 and Essex Fells with a per capita income of \$53,363. Turning to the number of crimes, Maplewood notes that its 787 crimes in 1998 were below the 25,519 in Newark and above the 25 in Fairfield. As a result of the disparities in population, per capita income and crime, the Township maintains that it is almost impossible to find comparable demographics within the County.

As a result, the Township asserts that comparison with certain communities should be dismissed outright because they are too dissimilar to compare to Maplewood. First, the high populations and low per capita income found in Newark and Irvington render them dissimilar for comparison purposes according to the Borough. Additionally, the Township cites Arbitrator Tener's 1990 decision where he determined that there was a significant difference in police work in Newark and Maplewood rendering comparison between the two communities inappropriate. On the other side, smaller communities with less than half the population found in Maplewood, such as Caldwell, West Caldwell, and Fairfield are also too dissimilar for comparison. The Township rejects comparison with Millburn and Livingston because their per capita incomes are substantially higher than per capita income in Maplewood. The Township rejects comparison with Cedar Grove because its crime rate is less than half of the crime rate in Maplewood.

Looking to the four remaining communities suggested for comparison by the PBA, Montclair, South Orange, West Orange and Bloomfield, the Township suggests that its salary compares favorably. Specifically, the Township asserts that its \$53,161 1998 maximum base salary for a patrol officer is higher than Bloomfield's top step and is near the top step in Montclair, South Orange and West Orange. The Township notes that South Orange PBA members will receive a 3% increase in 1999 and that its proposal of 3.95% would shrink the pay gap between the two municipalities to \$779.80 in that year.

The Township also suggests that comparison must include review of its high uniform and weapons maintenance allowances of \$1225, which the PBA proposes to increase by \$150 over the three-year agreement. In comparison, the Township cites the clothing and maintenance allowance of \$1100 in Bloomfield, \$803 in Montclair and \$600 in West Orange.

The Township compares the salaries received by its Police with those in Caldwell, Verona, Glen Ridge and Belleville. Pointing out that Caldwell's population is only one third of the Maplewood's population and has less than 14% of the total number of crimes in Maplewood, the Township asserts that its Police are better compensated than those in Caldwell. The Township compares total 1998 compensation in these communities as follows:

<u>Municipality</u>	<u>Total 1998 Compensation</u>	<u>Difference</u>
Verona	\$54,674.00	\$287.58
North Caldwell	\$54,536.00	\$149.58
Maplewood	\$54,386.42	-----
Glen Ridge	\$54,315.00	(\$71.42)
Caldwell	\$54,298.00	(\$88.42)
Belleville	\$53,368.00	(\$1,018.42)

Turning to the other communities that the PBA used for comparison purposes, the Township asserts that they are too dissimilar. Citing agreements with the Somerset County Prosecutor's Office, Bernardsville, the Ocean County Prosecutor's Office and Freehold Township, the Township acknowledges that

former Maplewood Police Officers are employed in those jurisdictions, but asserts that they are too dissimilar to provide a meaningful comparison.<sup>1</sup> Arguing that detectives in a prosecutor's office performs functions different from a municipal police officer, the Township points out the geographical differences between its location and each of these municipalities and county prosecutor's offices. Focusing upon the remaining agreements placed in evidence by the PBA, the Township cites the testimony of Detective Perna that he did not draw specific demographic information on these municipalities. Using Seaside Park as an example, the Township points out that it is located a seaside community in southern Ocean County with a population of 1920. Looking at a larger community, the Township asserts that Woodbridge, an "Urban 15" municipality with a population of 94,714 and a 240 employee police force is not comparable to Maplewood. The Township also rejects comparison of Maplewood's Police with New Jersey State Troopers.

The Township also rejects comparison to Essex County Sheriff's Officers and to Essex County Corrections Officers because they perform duties different from those performed by municipal police officers. Turning to comparison with several communities in Union County, the Township suggests that although Maplewood borders Union County, it pays Essex County taxes and uses Essex County utilities and other services. Additionally, the Township points out that about 20% of its tax rate funds Essex County programs. Therefore, the

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<sup>1</sup> The Township notes that a former Maplewood Police Officer is employed in Freehold Borough, a different jurisdiction from Freehold Township.



Township maintains that comparison with communities within Essex County is more appropriate. The Township also highlights the Union County communities selected by the PBA for comparison and notes that Maplewood does not border Mountainside, Westfield or Scotch Plains. The Township cites N.J.A.C. 19:16-5.14(d)1 and argues that in order to compare municipalities based upon their geography, the two jurisdictions must neighbor or overlap or be nearby or similar in size and of the same nature. Looking to socio-economic factors for comparison of two or more jurisdictions, one must consider per capita income, the crime and population of the two jurisdictions, according to the Township. N.J.A.C. 19:16-5.14(d)2. Additionally, the Township cites N.J.A.C. 19:16-5.14(d)3 for guidance in comparing financial aspects emphasizing comparison of tax revenue, ratables, tax rate, tax collection, delinquent taxes, budget cap considerations, total expenditures on police services and police services as a percentage of total municipal functions. The Township notes that the PBA did not present evidence on these factors in the jurisdictions for which agreements were submitted and argues that these jurisdictions are not comparable anyway.

The Township asserts that examination of the comparable jurisdictions that its Police are compensated similarly to their peers and the Township's proposal would maintain that equivalency. In contrast, the Township argues that the PBA's attempt to compare Maplewood's Police to larger jurisdictions with larger departments and more crime or higher per capita incomes is not supported by evidence.

Turning to comparison with private sector employees, the Township asserts that its Police have fared far better than private sector employees. Looking at the first 50 weeks of 1998 and 1999, the median first year increase in private sector settlements was 3.0%. In contrast, the Township points out that its Police received a 4.5% increase in 1998 and will receive 3.95% under its proposal in 1999, for a total of 2.45% over the median increase. The Township also points to many private sector agreements that were below the national average such as an agreement between the Mount Laurel Nursing Home and the UFCW which included wage increases totaling \$2.05 per hour over a four year period. Another example cited by the Township is Runnells Hospital, which settled a three-year agreement with the Federation of Nurses and Health Professionals including an increase of 10.5% over the period. The Township also cites a six-year agreement between Johns Manville Corporation and the IUE for an increase of \$2.15 to \$4.20 per hour over the term of the agreement and a \$500 lump sum in the first and second years of the agreement. In addition, the Township lists the following private sector agreements:

**Transcare Supply Chain – Needletrades Employees**

3 year agreement with increases totaling \$2.00 per hour

**Sea-land Service – Marine Engineers Beneficial Association**

Five year agreement with a 10% increase over the term,  
ratified May 1999.

**Star Porcelain Co. – Electrical Workers (UE) Local 420**

October 1, 1997

3%

October 1, 1998	2.25%
October 1, 1999	2.25%

**Bristol Myers Squibb -- Oil, Chemical and Atomic Workers**

May 1998	2%
May 1999	2%

**Avdel Cherry Texstron -- Electrical Workers (UE), Local 417 (Ind)**

Ratified April 1998

1 <sup>st</sup> year	3%
2 <sup>nd</sup> year	3%
3 <sup>rd</sup> year	3%

**Leisure Village -- Transport Workers Local 225**

December 1998	2.25%
December 1999	2.5%
December 2000	2.75%

In comparison with these settlements, the Township asserts that the PBA's proposal for 5% increases in each of three years is excessive. The Township maintains that its final offer should be considered generous in comparison to many of the private sector settlements cited here. The Township calculates that under its proposal the PBA will receive increases averaging 3.58% over the term in contrast to private sector employees generally who received a median increase of 3% over the past two years. The Township calculates further that, under its proposal, its Police would receive increases that are 1.74% higher than private sector employees generally over the three year term. Additionally, the Township highlights that these increases would be to higher base salaries and in addition to a superior benefits package.

Turning to the financial impact criterion, the Township, again citing Hillsdale, 137 N.J. at 85, emphasizes that the financial impact criterion does not measure ability to pay, or require the public employer to demonstrate that it would suffer a "substantially detrimental result." Instead, the criterion focuses on factors including the percentage of citizens on fixed incomes and the impact of tax increases and other costs, according to the Township.

Looking to its own budget, the Township explains that it is straining to trim its budget and maintain public services without increasing taxes beyond what already may be required by the upcoming budget. Citing the declaration of its Chief Financial Officer Sherry Jenkins (T-12), the Township asserts that strict financial planning is required due to its precarious financial situation. According to the Township, in 1999 its operating expenditures were \$21,244,850 and \$2,942,328.86 or 13.85% of total expenditure were allocated to PBA members' salaries. The Township emphasizes that this amount does not include the costs of additional benefits, pension contributions or the salary increase to be provided to the PBA for 1999.

The Township points out that in 1999, an average Maplewood home had an assessed value of \$72,000 and the average homeowner paid \$7,000.00 in property taxes. Therefore, the Township calculates that with an average per capita income of \$25,448, average property taxes equaled nearly 27.5% of the average resident's per capita income. The Township points out that its 1999

general tax rate was \$9.68 per \$100 of assessed value, and 57% of that amount went to school taxes, 20% is apportioned to county taxes and 22% is apportioned to the municipality. As a result, almost 77% of the taxes paid by its residents are devoted to entities other than the Township. The Township also points out that it is fully developed and little new construction or development is in process. Therefore, the Township notes that its ratable base has been relatively flat over the past five years. Accordingly, its tax base increased \$8,578,900 over that period and its tax revenue increased \$830,437.52, of which only \$191,000 is devoted to the municipality.

As a result of this financial situation, the Township points out that it has relied increasingly upon its surplus to balance its budget and meet its financial obligations. The Township maintains that it began using its surplus in 1995 when it used \$500,000 or 55.5% of the then existing surplus from the previous year's budget. According to the Township, it began to use increasingly large portions of the surplus to pay for current expenses and used 81.95% of the surplus in 1998. As a result, the Township maintains that the surplus has dwindled to approximately \$150,000. The Township makes several points about its decreasing surplus. First, each year in which it dips into the previous year's surplus, it does not generate surplus in the current year. Next, as surplus funds are used and not replenished, the surplus dwindles until it is used up. Additionally, the Township has been using surpluses from other municipal accounts to meet its financial obligations. For example, the Township notes that

in 1999 it used \$175,000 of the surplus in the swimming pool account to fund its 1999 operating budget.

The Township also points to a recent decrease in tax revenues resulting from the settlement of a tax appeal with Ward Homestead, an assisted living center that is the largest taxpayer in Maplewood. As a result of the settlement of Ward Homestead's 1999 real estate tax appeal, Maplewood maintains that it lost ratables of \$4,019,800 and actual tax revenue of \$389,116. According to the Township, this settlement has given rise to other problems. First in order to raise the same amount of tax revenue, it needs to raise taxes and in turn, the higher taxes themselves increase the "already heavy" tax burden on the average homeowner. Specifically, the Township notes that the overall tax rate in Maplewood has increased from \$8.46 per \$100 of assessed valuation in 1995 to \$9.68 per \$100 of assessed valuation in 1999, or over 14% in four years. As a result, the Township asserts, its residents pay the eighth highest equalized tax rate in Essex County.

Additionally, the Township points out that its tax collection rate has decreased from 97.29% in 1995 to 96.32% in 1998. This in turn, results in a higher tax rate according to the Township. Therefore, the Township asserts that if it can not curtail costs and limit the tax burden on individual taxpayers, it will face an unending cycle of raising taxes to meet costs, resulting in lower tax collection rates.

The Township focuses on its other expenses, including the \$385,000 it paid to the Joint Utility Authority in 1999 to cover its share of the cost of capital improvements required by the sanitary sewer systems. That cost resulted in an increased assessment of \$43.00 imposed upon each Township dwelling. The Township suggests that as more improvements are needed and maintenance costs rise, its share will also rise.

The Township also points out that it maintains a self-insured fund to cover its workers compensation and general liability claims. Although the Township had not been required to make contributions to the fund, it needed to contribute \$226,449 in 1999. The Township also emphasizes expenses such as \$69,697 for the purchase of new police vehicles and \$54,000 in increased contributions to the Police and Firemen's Retirement System.

Given these significant expenses, the Township contends that the PBA's final offer on salaries alone, which would total 15% over the life of the agreement, is not supported by credible evidence. The Township also contends that an award other than its final offer will result in a decrease in spending on other services to cover the increased cost of Police salaries and benefits. The Township calculates that the difference between its proposal and the PBA's final offer is \$401,864.20 over three years. According to the Township, that amount would have a significant impact on the municipal budget. The Township asserts

that money would necessarily come from other service to fund an award in excess of its proposal and argues that raising taxes is impractical and would conflict with the public interest criterion.

Addressing the cost of living criterion, the Township asserts that its proposal is more reasonable when the CPI-U for the New York, Northern New Jersey and Long Island area from 1974 to 1999 is considered. Noting that increases in the CPI have been modest, the Township compares the 15.77% increase in the CPI between 1993 and 1998 and the salary increases of 29.20% enjoyed by its Police. The Township calculates that the PBA's increases over the past two contracts were 185% of the CPI during that period. The Township maintains that the PBA's proposal would widen the gap further. The Township compares recent increases in the CPI by 2.17% from January of 1998 through the first ten months of 1999 with the 5% sought in each year by the PBA. Noting that even its proposal outpaces the CPI, the Township points out that the PBA has not presented evidence showing that the CPI will approach the level of the PBA's final offer. Specifically, Maplewood asserts that over the past six years the CPI has averaged 2.63% and its proposal for 1999, 2000 and 2001 exceeds that by nearly one percent each year. Accordingly, the Township argues that the relatively low cost of living does not justify increases of 5% per year, while its proposal would provide increases to real wages above the cost of living.



Turning to the interest and welfare of the public, the Township, citing Hillsdale, 137 N.J. at 82-83, asserts that its proposals are more reasonable given its budget priorities and fiscal responsibilities. Specifically, the Township argues that any award that exceeds its "carefully planned, fiscally responsible budget" conflicts with the interest and welfare of the public. Asserting that, based upon the legislative history of the 1996 interest arbitration amendments, the public interest is the most important of the statutory criteria, the Township claims that its final offer is more supportive of the public interest than is the PBA's. According to the Township, the PBA's offer would cause it to either reduce funds to other programs or to raise taxes. The Township seeks to keep the tax burden relatively stable and notes that only 22% of that burden is devoted to the municipal portion. Despite the Township's efforts, it points out that the tax rate has increased 14.42% from \$8.46 per \$100 to \$9.68 per \$100 of assessed valuation and Maplewood residents pay the eighth highest equalized tax rate in the County. The Township anticipates that the County and School portion of the tax burden will continue to increase and it will continue to use a greater percentage of the previous year's surplus to fund its budget. Additionally, the Township points out that its tax base is not rising, the tax collection rate has decreased and delinquent taxes as a percent of the levy has increased.

The Township also emphasizes that the interest and welfare of the public are better served by its financially sound proposal. According to the Township, PBA members are already well paid, earning \$51,619.80 on average, which is

more than twice the \$25,448 per capita income. The Township contends that PBA members earn base salaries greater than its civilian employees as well. Additionally, the Township notes that its proposal is the same as that agreed to by its Firefighters and its falls within its budgetary boundaries. In contrast, the Township points out that the PBA can not demonstrate that its proposal will improve the level of services provided by the Maplewood Police Department. For these reasons, the Township argues that the interest and welfare of the public weighs heavily in favor of its final offer.

The Township argues that its final offer is more reasonable when viewed in terms of the lawful authority of the employer. Pointing out that the 1999 and 2000 budgets are already complete and the PBA's proposal of 10% for those two years exceeds the amounts reasonably budgeted by the Township for Police for these years. Therefore, if the PBA's proposal is awarded, the Township would be forced to reduce other programs or increase taxes to fund the award. The Township points out that 13.85% of its 1998 budget was devoted to Police salaries and if the PBA's proposal were awarded that percentage would rise to 14.54% of total municipal expenditures. The Township reiterates that this would necessarily cut into other programs. In contrast, the Township points out that its final offer would not require increased taxes or program cuts and would permit its Police to receive increases in excess of those provided to most public and private sector employees.

Turning to overall compensation, the Township contends that its final offer is more reasonable. Specifically, the Township lists some of the economic benefits enjoyed by its Police. These benefits include sick leave of up to 72 days with pay, with an additional 72 days at half pay, 13 paid holidays (whether or not the office works on the holiday), medical and dental insurance benefits, \$1225 uniform allowance, up to five weeks vacation, longevity benefits of up to 105 of base salary, and the Police and Firefighters Retirement System pension plan. Given that the per capita income for Essex County is \$26,159, the Township asserts that based upon salary alone, its Police earn incomes substantially higher than the average Maplewood resident and the other benefits are added to that base salary. The Township argues that its final offer will permit its Police to maintain and increase this disparity while the PBA's final offer would enable Police to substantially increase the gap between Police salaries and those of the average Maplewood resident. Therefore, the Township argues that its final offer is more reasonable.

Addressing the continuity and stability of employment, the Township contends that its final offer is more reasonable. According to the Township, the average seniority for its Police Officers is nine years, 28% of its Police Officers, or 16 members of the Department, have over 15 years of service, and seven members of the unit have over twenty years of service. Additionally the Police Department has not been subject to layoffs or downsizing. The Township contrasts this with the current climate within the State and nationwide. Citing the

downsizing trend, the Township notes that Meridian Health Services laid off 450 employees and Holy Name Hospital reduced its staff by 50 employees. Additionally, the Township cites layoffs in December 1999 of 8,000 employees at Honeywell, 700 positions at Dunn & Bradstreet and 176 employees at Cedent. Addressing the PBA's claim that 14 Officers left the force since January 1, 1996, the Township points out that three of these officers retired, and three others went to work for county prosecutors' offices where they perform work different from that of a municipal police officer. One of these officers stayed in Essex County with another going to Bergen County and the other to Ocean County. According to the Township, two additional officers went to work for the Essex County Sheriff's Office performing work different from municipal policing, and of the remaining six officers, one left law enforcement, two went to Monmouth County police departments, one went to the larger Newark Police Department, and one went to the South Orange Police Department where the top step maximum salary is only slightly higher than in Maplewood. The Township cites the testimony of Detective Perna that he did not know why these officers chose to leave the Maplewood Police Department.

The Township also places great emphasis upon the remainder of its proposal. Specifically, the Township would place great weight on the fact that its proposal mirrors its settlement with its Firefighters. For the last five agreements, the Township's agreements with its Police and Firefighters have provided identical salary and benefit increases and the Township seeks to preserve that

relationship. To that end, the Township proposes a modified longevity schedule for employees hired after December 23, 1999. The Township asserts that its proposed schedule, which was agreed to by the Firefighters, would provide a maximum longevity benefit of \$4,000, would permit Police to earn a longevity benefit superior to that received by the Township's civilian employees and would provide cost savings. Additionally, a modified longevity schedule with flat rate longevity benefits would limit the cost of increases according to the Township. Noting that its proposal applies to new hires only, the Township points out that they would be aware of the benefit when hired, existing Police Officers would maintain the current longevity schedule, and the Township would enjoy reduce costs and the ability to better calculate and budget for its longevity costs in the future.

Additionally, the Township proposes to modify the calculation of base pay to include longevity pay and holiday pay for all purposes required by law, including pension calculations. The Township distinguishes its proposal from the PBA's proposal to roll holiday pay into base pay for all purposes. According to the Township, its proposal would roll holiday pay into base pay for purposes of pension calculations and would roll longevity pay into base pay for purposes of the hourly base rate, pension calculations and overtime calculations. The Township points out that this would provide Police with an increased hourly rate and increased final compensation for purposes of calculating their overall pension benefit at retirement. On the other hand, the Township urges rejection of

the PBA's proposal that all holiday pay be folded into base pay and used in all computations including base pay rate calculations, overtime calculations, longevity and pensions because it is too costly.

The Township also proposes to increase the clothing allowance by \$50.00 per year or by \$150.00 over the life of the agreement. According to the Township, this proposal would provide its Police with a clothing and maintenance allowance superior to that received by all other police in the County. The Township points out that this proposal mirrors the increase in clothing and maintenance allowance included in the Firefighters' agreement.

The Township explains that its proposal to modify the provisions of the Agreement covering hours of work and overtime would delete superfluous language and would provide pay at time and one half for special assignments with no callback or minimum pay requirements. Specifically, the Township proposes to eliminate Article XVI, Section 1 because it is superceded by the January 17, 1997 Memorandum of Agreement implementing a 4/3 schedule. Additionally, the Township proposes to compensate Police at time and one half for special assignments, including crime prevention assignments, DARE programs and bicycle patrols worked in excess of an Officer's regular tour of duty. The Township also proposes that special assignments would not be subject to callback or minimum pay requirements. The Township stresses that both parts of this proposal must be awarded together. Asserting that its proposal

is reasonable, the Township explains that the assignments are beyond the scope of traditional patrolling, are beneficial to the community because they increase the ability to curtail crime, and permit officers to become more involved in the community. However, the special nature of these programs may result in additional time commitments and the Township seeks to eliminate the need for callback or minimum pay requirements for these programs. The Township contends that without its proposal the programs would be curtailed to cut costs. For example, the Township points out that with a four hour callback period, if a DARE officer is needed for one hour, the Township might not call that officer back for fear of the excessive cost for the one hour. Therefore, the Township concludes that failure to award this proposal could result in a cutback in special services. The Township seeks the ability to use these special programs without concern regarding mandatory overtime costs.

The Township proposes to modify the funeral leave, maternity leave and leave of absence provisions. Specifically, the Township proposes to clarify the definition of an "immediate relative," for purposes of funeral leave so that a grandparent or grandchild must be a blood relative. The Township also proposes to amend the term "Maternity Leave" to "Family Leave" to clarify that male employees and female employees have the same access to leave. The Township also seeks to add language requiring paid leave to be used concurrently with Family and Medical Leave Act and/or New Jersey Family Leave Act leave. The Township asserts that this proposal would insure that Officers did

not receive excessive leave. According to the Township, if FMLA leave does not run concurrently with paid leave, an officer could be entitled to up to twelve weeks of family leave plus vacation and sick time for that year. Under that scenario, the Township would be paying the Officer's salary as well as overtime to another Officer covering for the absent Officer. The Township contends that it can not budget for family leave as it can for sick and vacation leave so the overlap is reasonable, particularly in light of the lengthy leave already provided to its Police.

For its last proposal, the Township seeks to modify the sick leave provisions to implement an administrative illness list and a chronic illness list to monitor the number of occurrences of sick leave during a three-month period. The Township cites the testimony of Chief Gorsky that he developed this proposal to limit the excessive and or abusive use of sick leave:

....In my opinion, as the Chief of Police, there is a clear indication that there are a select number of officers--and that varies from year to year--that utilize considerably more sick time than the average officer does....And when you take that average of five, and then look at some of the officers who have twelve, fourteen, twenty, thirteen, etcetera, those, as far as I'm concerned, start bordering on the excessive. It's two and three times the average, and none of those include long-term illnesses but for one, two, three days at a time. (T. 156-157).

The Township states that it seeks a method to evaluate whether small blocks of sick leave are due to illness and with 72 sick days per year, a small group of officers who abuse sick leave becomes a significant problem.



According to the Township, this proposal will require Officers with patterns of sick days to verify their illness but not those who are legitimately out sick for a week. The Township relies upon the Chief Gorsky's testimony that this proposal is designed to respond to a sick leave abuse problem.

The Township urges rejection of the PBA's proposal to carry one year's annual vacation accumulation and if it is not used by the end of the following year to receive compensation for the vacation accumulation at straight time. The Township emphasizes that the PBA has not show that Officers are losing their vacation because they fail to use it or that they desire to carry vacation from one year to the next. The Township points out that this benefit is not provided to other Maplewood employees, it would be costly and it is unlikely that any Officer would be able to use two-years' accumulation of vacation during a single year. As a result, the Township foresees paying officers for the unused vacation and adding a new cost for which the Township would have difficulty budgeting.

The Township opposes the PBA's proposal to carry vacation as "Days of Work" and to be permitted to take vacation in blocks of days rather than in weeks. According to the Township, the PBA has not provided evidence in support of a need to change the current vacation schedule.

The Township also opposes the PBA's proposal that all work performed in a higher pay rate status be compensated at the higher rate. The Township

points out that there is no evidence as to the cost of this proposal or evidence as to the need for such a proposal. The Township notes that no other Maplewood employee has such a provision and it would be outside the range of settlements. Additionally, the Township asserts that this proposal would not benefit the interest or welfare of the public.

Turning to the PBA's non-economic proposals, the Township urges rejection of the PBA's proposal that the Township inform the PBA in writing of any new rule or regulation not less than 60 calendar days before it is implemented, barring an unforeseen emergency. The Township maintains that this proposal is an unreasonable constraint on its management rights and it should not be required to wait 60 days each time it seeks to implement a rule or regulation. The Township also objects to the lack of a procedure for determining an emergency under this proposal. Additionally, the Township points out that the PBA has not presented evidence of a problem that such a proposal would remedy.

Finally, the Township opposes the PBA's proposal to delete the fully bargained provision from the Agreement. The Township points out that the PBA has not presented evidence or explanation as to why it does not want to retain a basic clause that provides that the Agreement represents the entire scope of the parties' contract.

## DISCUSSION

As stated above, I am required to issue an award based upon a reasonable determination of all issues in dispute after giving due weight to the statutory criteria which I judge relevant. If I deem any of the criteria irrelevant, the reasoning for such conclusion must be stated. The Borough and the PBA have expertly, thoughtfully and comprehensively set forth their positions on the issues in dispute and have submitted testimony, evidence and argument on each statutory criterion to support their respective positions. The testimony, evidence and arguments have been carefully reviewed, considered, and weighed.

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

The Township has proposed to delete Section 1 of Article XVI (Hours of Work and Overtime) in its entirety because it is no longer applicable. The Township also proposes to add the following new language:

With respect to compensation for special assignments such as crime prevention assignments, DARE programs and bicycle patrols, officers shall receive their wages or compensatory time at the time and

one-half rate for hours worked in excess of their regular tour. However, such assignments shall not be subject to the callback or minimum pay requirements.

The proposal to delete Section 1 of Article XVI is for purposes of clarification. This language has been rendered unnecessary because of the January 17, 1997 Memorandum of Agreement implementing the 4/3 schedule. This portion of the proposal is awarded. I do not award the remainder of the proposal. Although the continued inclusion of this section might cause pay requirements beyond hours which are actually worked, the Township does benefit by having police officers perform special assignments. Further, there is insufficient evidence that mandatory overtime costs have become burdensome to the Township. Accordingly, the remaining portion of the Township's proposal is denied.

The Township also proposes changes to the definition of an "immediate relative" for purposes of funeral leave. I do not award this proposal in the absence of evidence that the existing provision has been abused or has resulted in leave time not contemplated by the intent of the existing provision.

The Township also proposes to amend the term "Maternity Leave" to "Family Leave" to clarify that male employees and female employees have the same access to leave. Although this proposal appears to be reasonable and designed to comply with legal requirements, I do not award this proposal. No legal issues have arisen as a result of the existing provision and I am reluctant to modify the provision in the absence of an agreement between the parties as to

what specific language should be modified to implement the intent of the Township's proposal. I encourage them to do so, but in the absence of an agreement, I do not award this proposal.

The Township further proposes to add language requiring paid leave to be used concurrently with Family and Medical Leave Act and/or New Jersey Family Act Leave. The Township asserts that this proposal would insure that officers do not receive excessive leave. The record does reflect, as the Township suggests, that police officers are entitled to a fair and reasonable amount of paid leave. The Township's concern is that the police officers could receive excessive leave in the absence of an adoption of the Township's proposal. The record does not reflect, however, that the Township's concern has been realized and that police officers are now receiving excessive leave by non-concurrent use of paid leave time. In the absence of such showing, I deny the Township's proposal.

The Township has proposed to add an administrative illness list and a chronic illness list to monitor the number of occurrences of sick leave during a three-month period. Chief Gorsky testified in support of this proposal (see T. 156-157). Chief Gorsky's testimony is credible that a select group of officers may use considerably more sick time than the average officer. I have scrutinized the Township's proposal. There is, of course, merit in the goal of curtailing any abuse of sick leave. However, the Township already maintains a strong managerial prerogative under the existing case law to monitor sick leave and to

have illness verified. I conclude that the exercise of this prerogative should be pursued before pursuing substantial modifications to the existing agreement are made. For this reason, I deny the Township's proposal. The Township may pursue this issue in future negotiations in the event that it believes that sick leave abuses continue to occur.

The PBA proposes that officers working in higher rank status shall be compensated at said higher pay rate status. In the absence of evidence that the integrity of rank and pay rate status has been compromised, I do not award this proposal.

The PBA proposes that employees be permitted to carry over up to one (1) year's annual vacation accumulation and that, if such time were not used by the end of the second year, it shall be paid as paid compensation at the straight time rate. A review of the record does not reflect that police officers are currently losing vacation time because of a failure to take vacation time or that a police officer would be in a greater position to use more than one year's accumulation of vacation during one year. For these reasons, I deny this portion of the PBA's proposal. The PBA has also proposed to change the current vacation schedule to take vacation in blocks of days rather than in weeks. There is insufficient credible evidence in the record to support a change in the current vacation schedule. This portion of the vacation proposal is also denied.

The PBA proposes to delete article XII of the existing agreement which contains a Fully Bargained Provision. There is no evidence that the Fully Bargained Provision has disadvantaged the PBA or prevented the PBA from pursuing negotiations after the Township has made any unilateral change. There is also no evidence that Article XII has resulted in the denial of any statutory rights of the PBA with respect to the mutual obligation of the parties to negotiate mandatorily negotiable terms and conditions of employment. Accordingly, I deny this proposal.

The PBA has proposed that any new rule or regulation be supplied in writing to the PBA not less than 60 calendar days before the time of the required compliance. The 60-day time line would be applicable in all cases except those of unforeseeable emergency. There is merit to the concept that the PBA have knowledge of a new rule or regulation before compliance is required. Prior notice would further the goal of compliance and also allow for input from employees who are required to meet any duties expected of them. I award this proposal with the following modification. The 60-day time period proposed is unduly long, and although there would be an exception for emergencies, a shorter time period would be more appropriate. Accordingly, this proposal is awarded with the modification that the time period be reduced to thirty (30) days.

I now turn to the main components of the parties' proposals which deal with compensation and compensation-related issues. The PBA has proposed

annual increases in wages and the fold in of holiday and longevity pay into base pay for all calculation purposes. The Township has proposed annual wage increases, the fold in of longevity pay into base pay for purposes of the hourly base rate, pension calculations and overtime calculations, the folding in of holiday pay into base pay for purposes of pension calculations but not overtime calculations, an annual increase in clothing allowance and a new longevity schedule for police officers hired on December 23, 1999 and thereafter, as expressed in specific dollar amounts rather than percentages.

The parties have submitted arguments and evidence on their respective positions and have cited the relevant statutory criteria in connection with the fully developed record. Upon review of same, I find that all of the statutory criteria are relevant, but some I have given more weight than others.

At the outset of this analysis, I conclude that there is nothing in the parties' respective positions which would undermine the lawful authority of the employer [see subsection (g) (5)] pursuant to P.L. 1976 c. 68 (C.40A:4-45 et seq). The Township's Results of Operations in 1998 reflect an amount of \$1,341,222 and the employer has realized more budget revenues than anticipated in years 1996, 1997 and 1998. This data does not resolve the issue of financial impact of the respective proposals, but establishes that the differences in the parties' positions which are between 1-2% per year, are not so substantial that the Township



would be forced to exceed its statutory spending limits by an adoption of either party's proposal.

The cost of living is also a factor which has been considered [see subsection (g) (7)] but cannot be found controlling on the terms of this award. Both the Township and the PBA positions are not limited by the cost of living figures which have been submitted into the record. By doing so, the parties themselves acknowledged that this data, standing alone, is not dispositive of the result of this proceeding. It is a relevant consideration, however, and when applied to this record, the data does tend to favor the Township's position.

By virtue of the evidence and arguments submitted by the Township and PBA, the most substantial references in the record and in the briefs relate to the criteria which involve internal and external wage comparisons, the interest and welfare of the public and the financial impact of the terms of an award on the governing unit, its residents and taxpayers.

The PBA favors comparisons with law enforcement units within Essex County while the Township places emphasis on internal comparisons and comparisons with public employment and private employment in general. The Township also contends that its proposal is generally favorable when compared with law enforcement settlements within Essex County [see subsection (g) (2)].

The main point of contention between the Township and the PBA is the relevance and weight to be given to the terms of a voluntary agreement entered into between the Township and the FMBA, the organization which represents the Township's paid firefighters. That agreement has formed the underpinnings of the Township's proposal in this proceeding. In response, the PBA has proposed a 5% increase in each year of the new agreement, as well as a fold in to base salary of other areas of compensation.

The agreement with the FMBA provides for wage increases to the salary schedule in the amount of 3.95% for 1999, 3.55% for 2000 and 3.25% for 2001. It is significant that the respective salary schedules for the FMBA and the PBA for the prior agreement which expired on December 31, 1998 reflect the identical salary amounts. For example, a Captain Firefighter received \$70,704 and a Captain Police Officer received \$70,704; a First Grade Firefighter earned \$53,161 and a Patrolman First Class received \$53,161. In the event that the percentage wage increases of the FMBA agreement were applied to the PBA, the following salary schedule would be created.

For police officers hired before July 10, 1996

	1998 Contract	1999 3.95%	2000 3.55%	2001 3.25%
Captain	\$70,704	\$73,497	\$76,106	\$78,579
Lieutenant	\$64,856	\$67,418	\$69,811	\$72,080
Sergeant	\$59,008	\$61,339	\$63,516	\$65,581
Patrolman 1st Class	\$53,161	\$55,261	\$57,223	\$59,082
Patrolman 2nd Class	\$50,712	\$52,715	\$54,587	\$56,361
Patrolman 3rd Class	\$48,357	\$50,267	\$52,052	\$53,743
Patrolman 4th Class	\$45,908	\$47,721	\$49,415	\$51,021
Patrolman 5th Class	\$43,554	\$45,274	\$46,882	\$48,405

For police officers hired on or after July 10, 1996

	1998 Contract	1999 3.95%	2000 3.55%	2001 3.25%
Captain	\$70,704	\$73,497	\$76,106	\$78,579
Lieutenant	\$64,856	\$67,418	\$69,811	\$72,080
Sergeant	\$59,008	\$61,339	\$63,516	\$65,581
Patrolman 1st Class	\$53,161	\$55,261	\$57,223	\$59,082
Patrolman 2nd Class	\$50,712	\$52,715	\$54,587	\$56,361
Patrolman 3rd Class	\$48,357	\$50,267	\$52,052	\$53,743
Patrolman 4th Class	\$45,908	\$47,721	\$49,415	\$51,021
Patrolman 5th Class	\$43,554	\$45,274	\$46,882	\$48,405
Patrolman 6th Class	\$35,705	\$37,115	\$38,433	\$39,682
Patrolman 7th Class	\$30,449	\$31,652	\$32,775	\$33,841

Counsel for the PBA makes vigorous argument that the development of an award which patterns the terms of the FMBA voluntary settlement would require the application of parity principles which have not been found to be lawful. I do not determine this question of law but I will note that the issue before me involves pattern of settlement rather than the creation of a parity clause. The issue of pattern of settlement has been reviewed in the courts. It has been considered to be within the purview of the statutory criteria [see Fraternal Order of Police, Lodge 36A and Lodge 36B v. The County of Hudson, Superior Court of New Jersey Law Division - Hudson County, Docket No. I-19755-78, Decided March 22, 1979]. In a related vein, the Public Employment Relations Commission has held that, under N.J.S.A. 34:13A-16(2)(c), interest arbitrators in proceedings involving county or county prosecutor law enforcement units would have to consider evidence relating to an interest arbitration award involving a county prosecutor unit in the same county. It rejected contentions that an interest arbitrator's recognition that his award could affect on other county units raised

the same concerns as parity clauses. Hudson Cty., P.E.R.C. No. 98-88, 24 NJPER 78 ( 29043) (1997). I take administrative notice of these decisions.

In evaluating whether the pattern of settlement contention is relevant, and if so what weight should be given to its terms, I have considered the prior arbitration awards, the prior voluntary settlements between the paid firefighters and the police officers, the relevance and weight of internal comparisons with the Township's civilian employees, and the terms of the Township's proposal in relation to all of the statutory criteria, including the reasonableness of the net annual economic change which would result from the adoption of its terms.

The record reflects that the PBA has consistently received terms of settlement which exceed that received by the Township's three civilian units, including the Department of Public Works, the Dispatchers and the Library Workers. During the time of the hearing for this proceeding, the only such unit to have reached an agreement was the Dispatchers who received a 3% increase in 1999. The Township's offer of 3.95% for 1999 exceeds these terms even without consideration of the costs of the longevity and holiday pay roll-ins and the increases in clothing allowance. To the extent that the PBA has sought differentiated increases from that of civilian employees, it has met its burden that such increases are warranted. The terms of the Township's offer, in response to the negotiating efforts of the FMBA and PBA, are consistent with the PBA's

contention that PBA salaries should be increased beyond that provided for the Township's civilian employees.

The PBA also contends that the terms of the award should reach beyond the terms of the FMBA settlement. This contention first requires an examination into the history of salary terms between the uniformed personnel. The record reflects that there has been a strong pattern of settlement between police officers and firefighters for at least ten years, covering five separately negotiated agreements. In 1990, Arbitrator Tener found that "there has been a history of parity between police officers and firefighters." Tener also concluded that "there is a history of pattern bargaining in Maplewood between police officers and firefighters. It would take an overwhelming set of circumstances to convince me not to afford the same benefit to the firefighters and no such case has been presented." At least since the time of that award, the salaries for the Township's firefighters and police officers have been identical. The Township points to a wage adjustment given to the PBA in 1991, which was agreed upon in order to insure that salaries for police officers were identical at each step for all ranks. There is nothing to reflect that either the FMBA or the PBA salary terms have been out of balance with one another, at least for the last ten years.

The strength of consistency of treatment in the relative salaries between firefighters and police officers requires that a substantial showing be present warranting a deviation. Any potential deviation could evolve from a change in

circumstances or a showing that the terms of a proposed pattern of settlement are unreasonable or cannot withstand scrutiny after application of the statutory criteria.

On the first point, the record does simply not reflect a substantial change of circumstances warranting deviation. I have also examined the reasonableness of the terms. The total annual net economic change resulting from the Township's proposal in the salary schedule above is 3.95%, 3.55% and 3.25%, or 10.75% with no compounding of interest. An increase in clothing allowance of \$150 over the three-year term results in an increase of an additional .29% assuming a \$53,161 average annual salary for police officers. There is also an economic change resulting in the benefit of rolling longevity and holiday pay into base salary. In this bargaining unit, the patrolman maximum would increase from \$53,161 to \$59,082 under the Township's proposal. Because the roll-in could not occur until January 1, 2001, a ten percent (10%) longevity payment at the maximum of the longevity schedule would amount to \$5,908.20 per year rolled into base for purposes of the hourly base rate, pension and overtime calculations. Unit members also receive thirteen (13) holidays. Utilizing an approximation of .038% of annual compensation per day, the holiday pay would amount to approximately five percent (5%) of base pay or \$2,950.00 per year. No cost impacts can be projected for overtime costs as a result of the roll-in of longevity due to an absence of overtime projections for 2001. However, a \$5,908 increase in base, divided by 2,080 hours, times 1 ½ overtime pay could

yield an increase per hour of \$4.26 in the overtime rate for any overtime hours worked in 2001. As stated, I do not project or speculate on any annual economic changes for this factor.

When longevity and holiday are rolled into base pay, based upon this reasonable example, an increase of \$8,858 is yielded. These increases in base pay are pensionable. The Township's contribution to pension cannot be precisely calculated but normally runs at approximately 12%. Taking a figure of 12% on the amount of roll-in, the additional benefit to employee and cost to the Township is approximately \$1,062.96 per year or approximately 1.79% per year. This estimate may be high given the example of a police officer who is at the maximum of the longevity schedule which, under the Agreement, requires twenty-five (25) years of service. Therefore, I will assume a more modest longevity cost of 6% at fifteen (15) years to calculate the net annual economic change of this proposal. At 6%, the longevity benefit is \$3,544 and the additional cost of the Township's pension contribution is \$779.00 ( $\$3,544 + \$2,950 \times 12\% = \$779.00$ ) or 1.3%. Using this example, when the costs of the clothing allowance and roll-in are added (.29% + 1.3%), the total cost of the Township's proposal amounts to 12.34% over the three years, or an annual average of 4.11%.

When the annual net economic change (4.11%) per year is compared to the comparability data presented in the record by both the Township and the

PBA, I am compelled to draw the conclusion that the terms are reasonable and also fall squarely within the application of the statutory criteria when they are considered as a whole. The record reflects that there are municipalities which have achieved greater and those which have achieved less. Based on this data, the Township and the PBA offer argument for terms which could be more or less than what I have Awarded. On balance, the increases herein would raise the patrol maximum from \$53,161 to \$59,082 and cause a reasonable relationship in salaries to be maintained over the course of the three years with the neighboring municipalities surrounding Maplewood, especially in light of the economic benefits of these terms which go beyond the salary schedule itself.

I also note that only one year of this contract term is left after an award which spans three years. This fact, coupled with the PBA's stated desire to advance terms independently from the contract terms of other, cause an examination into an additional year of contract duration. The record reflects that an increase of four (4%) percent would represent a continuing balance in salary among comparable communities, be within the lawful authority of the Township, cause no adverse financial impact on its residents or the governing body and would further the interest and welfare of the public by providing an additional year with no further delays or expenditures to the parties. Accordingly, I award an additional four (4%) to each step of the salary guide commencing January 1, 2002 through December 31, 2002. This will increase base pay for patrol



maximum from \$59,082 to \$61,446 or by an additional \$2,364.00. The new salary schedule would read as follows:

Police Officers hired before July 10, 1996

	1998 Contract	1999 3.95%	2000 3.55%	2001 3.25%	2002 4.0%
Captain	\$70,704	\$73,497	\$76,106	\$78,579	\$81,723
Lieutenant	\$64,856	\$67,418	\$69,811	\$72,080	\$74,963
Sergeant	\$59,008	\$61,339	\$63,516	\$65,581	\$68,204
Patrolman 1st Class	\$53,161	\$55,261	\$57,223	\$59,082	\$61,446
Patrolman 2nd Class	\$50,712	\$52,715	\$54,587	\$56,361	\$58,615
Patrolman 3rd Class	\$48,357	\$50,267	\$52,052	\$53,743	\$55,893
Patrolman 4th Class	\$45,908	\$47,721	\$49,415	\$51,021	\$53,062
Patrolman 5th Class	\$43,554	\$45,274	\$46,882	\$48,405	\$50,341

Police officers hired on or after July 10, 1996

	1998 Contract	1999 3.95%	2000 3.55%	2001 3.25%	2002 4.0%
Captain	\$70,704	\$73,497	\$76,106	\$78,579	\$81,723
Lieutenant	\$64,856	\$67,418	\$69,811	\$72,080	\$74,963
Sergeant	\$59,008	\$61,339	\$63,516	\$65,581	\$68,204
Patrolman 1st Class	\$53,161	\$55,261	\$57,223	\$59,082	\$61,446
Patrolman 2nd Class	\$50,712	\$52,715	\$54,587	\$56,361	\$58,615
Patrolman 3rd Class	\$48,357	\$50,267	\$52,052	\$53,743	\$55,893
Patrolman 4th Class	\$45,908	\$47,721	\$49,415	\$51,021	\$53,062
Patrolman 5th Class	\$43,554	\$45,274	\$46,882	\$48,405	\$50,341
Patrolman 6th Class	\$35,705	\$37,115	\$38,433	\$39,682	\$41,269
Patrolman 7th Class	\$30,449	\$31,652	\$32,775	\$33,841	\$35,194

I also award an additional \$50.00 in clothing allowance representing an additional cost of .09% for a total net economic change of 4.09% for year 2002. When added to the net annual economic change of the first three years, the net economic change (inclusive of salary, clothing allowance and roll-in) is 16.42% over the four years.

I now apply the remainder of the contract terms. The relevance and weight of the firefighter terms for the first three years compels, and the Township's reliance on those terms, dictates that there be reasonably equivalent value of the terms of the two agreements. The present and future cost impacts of those terms must be applied to each group. Simply put, the value of one must be yielded for the other. This requires the incorporation as to the Award of the following terms. The longevity schedule expressed in dollars for new employees shall be included and take effect on January 1, 2001:

**Longevity:** Police officers hired on January 1, 2001 and thereafter shall receive longevity in accordance with the following schedule:

Completion of five consecutive years of service: \$800.00  
Completion of ten consecutive years of service: \$1,600.00  
Completion of fifteen consecutive years of service: \$2,400.00  
Completion of twenty consecutive years of service: \$3,200.00  
Completion of twenty-five consecutive years of service: \$4,000.00

**Stipends:** All stipends in the PBA agreement shall be increased by:

3.95% - 1999  
3.55% - 2000  
3.25% - 2001  
4.00% - 2002

I also award the adoption of an Attendance Reward Program. The record reflects that this is a key element in the firefighters terms [see Ex. T. 89] which have not been included in the Township's proposal. The record also reflects a desire by the Township for improved work attendance by certain police officers.

Thus, such a program will also promote the interests and welfare of the public by promoting the meritorious goal of perfect attendance. The firefighter program provides for one (1) personal day to be earned for every three (3) months of perfect attendance. I do not award specific details for the mechanics of this program here because they should be mutually devised as to its administration in the police department. It shall take effect on January 1, 2001 and the personal day earned shall be equivalent to the length of a patrolman's workday in effect on January 1, 2001. I do not assess a net economic cost to this proposal because it is speculative as to who would achieve eligibility for the personal day or days and the cost savings by the avoidance of sick leave and overtime cannot also be assessed.

There is no evidence that the terms of this Award will have adverse financial impact on the Township, its residents or taxpayers [see subsection (g) (6)]. The Township has consistently realized revenues beyond anticipated and has generated surpluses on a consistent basis. The municipal tax rate has been stable (2.19 in 1996, 2.19 in 1997, 2.18 in 1998, and 2.18 in 1999). The tax levy has risen from \$46 million in 1995 to \$52 million in 1998 and its assessed values have increased modestly during these years. Further, the Township, by virtue of its proposal, has anticipated the increased costs of these terms.

The terms of the Award are also consistent with the continuity and stability of employment of police officers by maintaining reasonable comparability and the

raising of the level of pensionable income within the financial ability of the Township. I have examined the PBA data with respect to departmental turnover but I conclude that the overall terms of the new Agreement are sufficiently reasonable to attract and maintain police officers.

Accordingly, I respectfully enter the following Award.

**AWARD**

1. **Duration**

There shall be a four-year agreement effective January 1, 1999 through December 31, 2002

2. All proposals by the Township and the PBA not awarded herein are denied and dismissed.

3. All provisions of the existing agreement shall be carried forward except for those modified by the terms of this Award.

4. **Salary and Stipends**

The salaries and all contractual stipends shall be adjusted by the following percentage increases at each step and shall be retroactive to the dates provided for herein.

January 1, 1999	-	3.95%
January 1, 2000	-	3.55%
January 1, 2001	-	3.25%
January 1, 2002	-	4.00%

5. **Clothing Allowance**

Clothing allowance shall be increased in each year by:

1999	- \$50
2000	- an additional \$50
2001	- an additional \$50
2002	- an additional \$50

6. **Rules and Regulations**

Any new rule or regulation shall be supplied in writing to the PBA not less than 30 calendar days before the time of the required compliance. This 30 day time limit shall be applicable in all cases except those of unforeseeable emergency.

7. **Hours of Work**

Section 1 of Article XVI is clarified to delete language which is inconsistent with the January 17, 1997 Memorandum of Agreement implementing the 4/3 work schedule.

8. **Roll-In to Base Pay**

The Agreement will be modified effective January 1, 2001 to provide as follows: Longevity pay and holiday pay will be rolled into base pay for all purposes as required by law, including pension calculations. (By way of example, the parties recognize that holiday pay will not be included in base pay for purposes of overtime calculations; longevity pay will be rolled into base pay for purposes of the hourly base rate, pension calculations and overtime calculations; holiday pay will be rolled into base pay for purposes of pension calculations.)

9. **Attendance Reward Program**

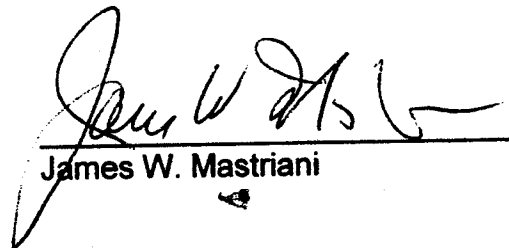
Effective January 1, 2001, there shall be an Attendance Award Program providing for one (1) personal day to be earned for every three (3) months of perfect attendance. The mechanics of this program shall be mutually devised as to its administration in the police department.

10. Longevity for New Hires

Effective January 1, 2001, the longevity schedule for new hires shall be in accordance with the following schedule:


- Completion of five consecutive years of service: \$800.00
- Completion of ten consecutive years of service: \$1,600.00
- Completion of fifteen consecutive years of service: \$2,400.00
- Completion of twenty consecutive years of service: \$3,200.00
- Completion of twenty-five consecutive years of service: \$4,000.00

Dated: December 8, 2000  
Sea Girt, New Jersey

  
James W. Mastriani

State of New Jersey    }  
County of Monmouth    }ss:

On this 8<sup>th</sup> day of December, 2000, before me personally came and appeared James W. Mastriani to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed same.

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