

NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of Interest Arbitration Between

BOROUGH OF AVON-BY-THE-SEA,

"Public Employer"

-and-

PBA LOCAL NO. 50,

"Union."

**INTEREST ARBITRATION
DECISION
AND
AWARD**

Docket No. IA-96-88

**Before
James W. Mastriani, Arbitrator**

Appearances:

For the Employer:

Desmond Massey, Esq.

Alan I. Model, Esq.

Grotta, Glassman & Hoffman, P.A.

For the Union:

Richard D. Loccke, Esq.

Loccke & Correia, P.A.

I was appointed arbitrator by the New Jersey Public Employment Relations Commission on October 6, 1997 in accordance with *P.L. 1995, c. 425*, in this matter involving the Borough of Avon-By-The-Sea [the "Borough"] and PBA Local No. 50 [the "PBA"]. The issues in dispute were narrowed during pre-arbitration mediation. Because the impasse was not resolved, a formal interest arbitration hearing was held on March 10, 1998. The mandatory terminal procedure of conventional arbitration was used to decide all issues in dispute. Under this procedure the arbitrator has the authority to fashion an award which he believes represents the most reasonable determination of the issues in dispute.

At the arbitration hearing, each party argued orally, examined and cross-examined witnesses and submitted extensive documentary evidence into the record. Post-hearing briefs were received on May 1, 1998. The Borough filed a reply brief on May 14, 1998.

The PBA represents all Police Officers below the rank of Captain employed by the Borough. At present, the unit includes 2 Lieutenants and 7 Patrolmen. The Captain was promoted to Chief in 1997, and at present, the Borough does not employ an officer in the rank of Captain.

FINAL OFFERS OF THE PARTIES

Before beginning the formal hearing, the Borough and the PBA submitted the following final offers:

PBA LOCAL 50

Economic Issues

1. **Duration**--January 1, 1996 to December 31, 1999.

2. **Salaries**--

Across the board salary increases as follows:

6% effective January 1, 1996
6% effective January 1, 1997
6% effective January 1, 1998
6% effective January 1, 1999

3. Modify the current longevity fold-in time of 20 years so that longevity payments are folded in throughout the employee's career subject to the longevity entitlement provided by the current contract.

4. Increase the current 2-hour call minimum to a 3-hour call minimum.

Non-economic Proposals

5. Amend Article IV of the contract to provide for arbitration pursuant to the rules of the Public Employment Relations Commission rather than the American Arbitration Association.

6. Amend the grievance procedure definition in Article III to add coverage for minor discipline. Define minor discipline as "5 days of suspension or equivalent fine or any lesser penalty."

Borough of Avon-By-The-Sea

Economic Issues

1. Duration—January 1, 1996 to December 31, 1999.

2. Working Hours —

Amend Article VI, Section 5 to delete the language, "It is understood that paid time off is part of the forty (40) hour week."

Amend Article VI, Section 8 to provide that employees held over on duty at the end of their regular shift receive one and one-half time compensation for time worked in excess of one-half hour.

Delete Article VI, Section 10 which provides compensatory time to unit members who work when there is an unscheduled closing of the Borough's offices, such as in inclement weather.

3. Vacation--

Amend Article VIII, Section 1 to provide, "As used in this Article, one (1) week is defined as five (5) working days."

4. Holidays--

Add a new Section 3 to Article IX which would provide that newly hired employees who have not completed two (2) years of full-time service shall be eligible for ten (10) paid holidays. These employees shall not be allowed to accumulate more than five (5) holidays to be cashed in at the end of the calendar year.

5. Sick Leave—

Delete Section 1(b) of Article X, which provides for a sick leave bank.

Add a new Section 3 to Article X which would provide that employees who use zero sick days per year receive two (2) additional vacation days and employees who use one (1) sick day per year receive one (1) additional vacation day. The additional vacation day(s) are to be used in the year credited.

7. Hospitalization, Life Insurance & Welfare—

Amend Article XVII, Section 3 to provide that, the Borough "shall have the right to require eligible employees to remit a co-payment for hospitalization and medical insurance, the amount of such to be determined within the sole discretion of the Employer."

Amend Article XVII, Section 5 to provide that the Borough "shall have the right to require eligible employees to remit a co-payment for a prescription plan, the amount of such to be determined within the sole discretion of the Employer."

8. Salary--

Amend Article XXII to provide across the board salary increases as follows:

0% effective January 1, 1996
2% effective January 1, 1997
2% effective January 1, 1998
2% effective January 1, 1999

9. Longevity--

Amend Article XXIII, Section 1 to provide that newly hired employees will not be entitled to longevity pay.

10. Terminal Leave--

Amend Article XXIII, Section 2 to provide that newly hired employees will not be entitled to terminal leave upon retirement or death.

The Borough and the PBA have offered considerable documentary evidence and testimony in support of their final offers. Twenty-five Borough and 43 PBA exhibits were received in evidence. In addition, the Borough presented the testimony of Mayor Hauselt, and the Borough's Registered Municipal Accountant Robert A. Hulsart. The PBA presented testimony from Chief Jack Carroll and Patrolman Robert Kepler.

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

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

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

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

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

(c) In public employment in the same or similar comparable jurisdictions, as determined in accordance with section 5 of P.L. 1995. c. 425

(C.34:13A-16.2) provided, however, each party shall have the right to submit additional evidence concerning the comparability of jurisdictions for the arbitrator's consideration.

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

(4) Stipulations of the parties.

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

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

(7) The cost of living.

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

BACKGROUND

The Borough of Avon-By-The-Sea is a one-half mile square town. The record establishes that it is a middle-income community which relies principally upon its tax base to raise funds to balance its budget. The Borough, with its 2,165 residents, has little local industry, but the local economy benefits from a significant influx of vacationers each summer. Most of its residents are of working age (19-64). The median family income, based upon the 1990 census, was \$51,968.00. Homes in the Borough are mostly single family detached owner-occupied residences with a median value of \$241,500.00 according to the 1990 census. The Police Department is a full service law enforcement agency which handled over 1200 calls for service and issued 1,000 summons during the Summer of 1997. Although the Department is small, police activity is at a high level year round. The record further establishes that the Borough's police officers are professional and effective, and provide many extra services.

including picking up prescriptions for residents and participating in community and children's events.

The Borough is generally a tranquil community. According to the New Jersey State Police report for 1996 there were three instances of violent crime and 85 incidents of non-violent crime. The Borough has been free of homicides, although it has some burglaries and the police are frequently called to intervene in marital disputes.

In addition to the police department, the Borough employs public works employees, a borough clerk, tax collector, secretary and two municipal court employees. The Borough has collective negotiations agreements with the employees in the public works department and the supervisors, as well as with the police officers.

Although the Borough had financial difficulties in 1996, through a combination of fiscal austerity and tax increases, the Borough has kept its budget within the 5% Cap limits. In 1996, the Borough used a 3½% Cap limitation, but increased that to 5% for 1997 and 1998. The Borough's increase in the index rate to 5% has allowed it to address the financial difficulties in 1996 and to project a Cap bank of \$102,519.00 in 1998.

The Borough was faced with significant costs in 1995 stemming from a major boardwalk and beach restoration project required to repair damage caused by severe storms in 1994. The total costs for the boardwalk and beach restoration project were \$1,600,000.00. \$1,100,000.00 was covered by federal and state grants, and the Borough was required to fund the remaining \$500,000.00. By 1996, the Borough's financial difficulties also included a combination of increased fixed costs, including payroll costs, a slight decrease in net valuation taxable (ratables) and the Borough's purchase of the "Buckingham Property".

In 1996, with the approval of the residents and taxpayers, the Borough purchased what is known as the "Buckingham Property" in order to prevent development out of character with its location in the Borough. As a result, the Borough has been making annual payments of \$72,755.00 to pay for the purchase. The "Buckingham Property" has presented a significant and unusual cost issue for the Borough. However, the "Buckingham Property" is scheduled to be sold to a developer to be turned into luxury homes. The sale of the "Buckingham Property" will result in significant funds for the borough. Not only will the Borough stop its annual \$72,755.00 payments for the property, but presumably, the amounts already paid will be recouped. Additionally, once the luxury homes are completed, they will add to the Borough's tax base.

The main areas in dispute concern salary and other economic issues. The parties' calculation of the costs of their proposals differs significantly. The Borough's calculations include a Captain, although at present, the police force includes only two Lieutenants and seven Patrolmen. The record does not reflect the Borough's intentions with respect to if and when the Captain's position will be filled. Also, the Borough's calculations are based upon income as reported on 1997 W-2 forms, rather than on base salaries. Since income reported on W-2 forms may include overtime and the costs of other benefits, I find that the appropriate salaries for costing this award are top step base salaries. Based upon the current bargaining unit top step base salaries, the annualized total base salary costs for 1995 were \$485,792.00 and one percentage point is \$4,858.00.

THE PBA'S POSITION AND ARGUMENT

Initially, the PBA argues that, pursuant to N.J.A.C. 19:16-5.5, the Borough's proposals regarding vacation, sick leave and terminal leave should not be considered because they were not included in the Interest Arbitration Petition.

Turning to the merits, the PBA asserts that application of the statutory criteria to the evidence justifies an award supporting its final offer. Citing the

Borough's newsletter, "The Avon News," as well as the testimony of Chief Carroll, the PBA asserts that the police department's activities, including "extra" personal service provided to the Borough's residents, amply demonstrates that the interest and welfare of the public is well protected and served by its police officers. Specifically, in addition to traditional police activities, the department engages in "proactive" community policing, including warnings to citizens, and special advisories. The police department also interacts with other area law enforcement agencies to provide mutual aid and support.

Citing the total compensation program, the PBA asserts that comparison to both public and private sector employment supports its proposal. According to the PBA, comparison of the clothing allowance, annual holiday benefits, annual vacation benefits, educational incentive programs and wage increases demonstrates that Borough patrolmen receive below average wages and benefits. Specifically, the PBA asserts that wage increases in area police departments average 4.692% in 1996, 4.3% in 1997, 4.283% in 1998 and 4.295% in 1999. Therefore, the PBA reasons that it would require these wage increases just to maintain its relative position, which it asserts is below average for the area.

The PBA argues further that the Borough's proposed increases are "impossible to support" given the rates of increase in comparable communities.

Turning to settlements cited as comparable by the Borough, the PBA notes that the average increase in these communities is 4.25% in 1997 and 4.2% in 1998. The settlements cited by the Borough include limited information for 1996 (approximately 4.9% increase in Spring Lake and 5% in Bradley Beach) and none for 1999. The PBA asserts that, lacking other comparable data for 1996 and 1999, its comparables become more important.

Turning to the Borough's agreement with the Supervisors' unit, the PBA points to 5% annual increases for 1997, 1998 and 1999, while the contract also provides for a 35 hour week and 5 weeks of vacation annually. The Borough's police officers work a 40-hour week and receive a maximum vacation entitlement of 4 weeks annually. The arbitrator notes that the Supervisors did not receive an annual increase in 1996.

According to the PBA, the Borough's agreement with the public works unit includes annual increases of 3.5% in 1997, 1998 and 1999, as well as an additional holiday, which is worth 4/10ths of one percent; and an increase in the annual clothing allowance, which is worth 1/10th of one percent. The PBA calculates that the 3.5% increase, together with the additional holiday and the increase in the annual clothing allowance results in an increase "in excess of 4%." The PBA notes further that the public works agreement includes vacation benefits better than those received by the police, as well as an historical entry

rate which exceeds that paid to new police officers. The Arbitrator notes that the public works employees did not receive an annual increase in 1996.

As additional comparability evidence, the PBA points to the agreement between the Avon Board of Education and the Avon Education Association. While acknowledging that the Avon Board of Education is a separate employer, the PBA notes that the wage increases included in that agreement exceed those sought by the PBA in this proceeding. Since the schools constitute a significant portion of the local tax levy, the PBA contends that this agreement is significant.

As a final note on comparability, the PBA points out that most comparable police departments use the Public Employment Relations Commission (PERC) as their arbitration agency. The PBA asserts that PERC's procedures are swifter, easier and cheaper than those of the American Arbitration Association (AAA). The PBA notes that the cost savings achieved by using PERC instead of AAA accrue to both the Borough and the PBA.

Turning to comparability with the private sector, the PBA urges that private sector comparisons not be considered controlling in this case. Citing several statutes which illustrate the unique statutory authorities and duties of police officers, the PBA notes that police officers must be prepared to act at all

times, even when off duty. The PBA cites unique provisions of the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*, and the New Jersey State Wage and Hour Law, N.J.S.A. 34:11-56 *et seq.* which apply only to police officers, as well as statutory provisions governing the creation of police departments, the hiring criteria and requirements for police officers, residency requirements and age limits and statutory pension and discipline procedures. Noting that police officers operate under a "statutorily created public franchise of law enforcement" which is a unique provision of authority not found in the private sector, the PBA points out that police officer pensions are not portable after age 35 and that police officers may not take their skills to the private sector. The PBA also notes that police officer certification is local and the nature of a police officer's work is hazardous and risky.

Asserting that local comparisons with other police officers are more relevant than comparison with private sector employees who have greater flexibility and mobility, the PBA points to an arbitration award in the Village of Ridgewood by Arbitrator William Weinberg discussing the limited comparability between police officers and private sector guards in comparison to the great weight which Arbitrator Weinberg accorded to local comparisons.

Turning to the lawful authority of the employer, the PBA asserts that the Borough is not limited by the Cap Law in this case. PBA notes that the Borough has a history of carrying money in its Cap bank. In 1995, there was a

Cap bank of \$50,313.00. According to the PBA's review of Borough budget documents, that rose to \$63,150.00 in 1996 and the budget was brought in at Cap in 1997. The PBA's review of the Borough's Municipal Data Sheet forms shows a Cap bank for 1998 of \$102,519.00 which will be carried forward into 1999. The PBA calculates this by subtracting the amount listed by the Borough as "Appropriations Within Caps" or \$2,296,775.00 from the "allowable Appropriation for Municipal Purposes" of \$2,399,294.00. According to the PBA, the Borough's estimate of a \$102,519.00 Cap bank to be carried forward into 1999 demonstrates that the Borough has flexibility and does not have a Cap problem. The PBA asserts that based upon its estimate of the amount in the Cap bank at the end of 1998, the Borough is unlikely to have a Cap problem in 1999 or 2000 because the \$102,519.00 may be carried forward for two years. The PBA points out that the Borough's accountant did not offer evidence that the Borough would have a Cap problem.

According to the PBA, the impact of its proposal on the Borough's residents and taxpayers would be extremely small. Relying upon the Borough's website, the PBA notes that median family income was \$52,000.00 in 1989 and 1996 NJ Department of Treasury Data shows the equalized value of homes to be \$241,500.00. The PBA also refers to the Borough's website, the PBA asserts that the majority of the Borough's population is of working age and 57.7% of its residents own their own homes. The PBA characterizes the tax

liens receivable which were referred to in the Mayor's testimony as *de minimis*. The PBA supports this characterization by noting that the Borough's December 31, 1996 fiscal year Report of Audit lists total tax liens receivable as \$583.49 compared to a net valuation of \$204,792,906.00. The most recent Certified Report of Audit, cited by the PBA, lists the 1996 tax collection rate as 98.10%, up from 96.04% in 1994 and 97.59% in 1995.

The PBA also characterizes the Borough's tax rate as below average because at \$2.24 for 1997, it was below the general tax rates in Wall, South Belmar, Neptune City, Neptune Township, Bradley Beach and Belmar. PBA places the tax rate in the context of the total payroll and the total tax levy. The payroll, based upon bargaining unit base salaries at the top rate, totals \$485,792.00, and the PBA, therefore, calculates the cost of a one percent increase in base pay as \$4,858.00. According to the PBA, the Borough's use of "income reported on the 1997 W-2 forms" is misleading because it includes overtime. PBA asserts that the relevant comparison is base wages.

The total tax levy for 1997 is \$4,597,119.00. Based upon these numbers, the PBA calculates that the impact of a one-percentage point increase in salary on a taxpayer with a \$3,000.00 annual tax bill is .0010% or approximately \$3.10. The PBA also notes that taxpayers do not bear the total impact of the cost of police wages because state and federal funds are also

used to pay police salaries. Citing the May 1997 "Avon News" bulletin, the PBA notes that the Avon police department received a \$75,000 federal grant "over 3 years for police salaries." The PBA notes that spreading the \$25,000.00 evenly over three years with a cost of \$4,858.00 for each percentage point increase would fund a 5.146% increase in each of three years. While the PBA does not suggest that the \$75,000.00 grant be used exclusively to fund salary increases, it does suggest that the increased funding would help the Borough to fund the cost of police salary increases.

During the term of the contract, two police officers have retired and one has been promoted to Chief. As a result, the PBA notes, the Borough has gained wage flexibility because a new Captain has not been appointed to replace Chief Carroll. The PBA suggests that the Borough's calculation of increased contributions to the police and fire pension fund is misleading, since the increased contributions reflect contributions before the retirement of Chief Vandebos and the consequent promotion of Captain Carroll to Chief Carroll. The PBA also notes that the Borough had an abatement of contributions for one year and the increased contributions are also a result of restitution of the abated funds. The PBA points out that the fact that no one has been promoted to Captain has produced additional savings because other bargaining unit officers are now performing the functions of the Captain.

While significant discussion was devoted to the cost of purchase of the "Buckingham Property," the PBA discounts its influence on the consideration for this award because those costs are about to end and because they were the result of a "voluntary discretionary act" of the Borough to "protect what was perceived as an appropriate use of land within the Borough." Referring to the total annual principal (\$45,000.00) and interest (\$27,755.00) in 1997, the PBA asserts that those costs will end when the property is sold and turned into luxury home sites. The PBA also asserts that the end of those costs and the addition of new luxury homes to the Borough's tax roles will increase the Borough's budgetary flexibility. PBA estimates that the total change from eliminating the cost of the Buckingham property, combined with the addition of new homes to the tax roles will result in a total savings of over \$100,000.00 to the Borough.

The PBA calculates the difference between its position and the Borough's as \$14,574.00 per year, plus a small amount of roll up. This calculation appears to be premised upon a PBA final offer of 5% per year rather than 6% per year. The PBA also notes that although the portion of the tax levy devoted to the schools has almost four times the impact of the total bargaining unit portion of the tax levy, in April 1997, only 15% of eligible voters cast ballots. According to the PBA, the lower voter turnout is evidence that taxpayers are content and are not pressured by their tax burden.

Turning to the cost of living, the PBA asserts that the wage data compiled by the New Jersey State Department of Labor and issued by PERC in September 1997 shows the total change to be 4%, with the total increase in private sector wages at 4.3%. The PBA asserts that these figures support its proposal for 1996 and 1997. The PBA contends that the difference between police wages and the CPI establishes a standard deviation of 3.56%. The PBA further contends that by adding the standard deviation to the 3% increase in the CPI, one is left with an appropriate increase of 6.56%, which justifies the PBA's final offer. Additionally, the PBA notes that, in 1996, the Borough's proposal for no increase is not supported by the CPI. The PBA notes that although the increase in the CPI was low in 1996, it did increase, and unlike the Borough's proposal for 1996, was not frozen. The PBA argues that the fact that other employees in the Borough accepted a wage freeze in 1996 is not dispositive on the PBA because the other employees are not covered by the Interest Arbitration Act, which requires the application of eight statutory criteria to the determination of police and fire wages.

Finally, turning to the stability and continuity of employment, the PBA argues that traditional concepts of "area standards" and "prevailing wage" support its position and the Borough's proposal of a wage freeze is unsupported under the statutory criteria. The PBA asserts that the longevity

fold-in and overtime minimum are supported by the record and its arbitration proposal to switch from AAA to PERC saves both parties time and expense. With respect to its discipline proposal, permitted by recent legislative change, the PBA asserts that it is comparable to standard "just cause" clauses in the private sector. Failure to add minor discipline to the agreement would result in continuation of the present situation where the aggrieved employee is required to go to Superior Court with its additional costs, publicity and delays.

THE BOROUGH'S POSITION AND ARGUMENT

According to the Borough, in 1996, as part of "an electoral mandate" to stabilize sky rocketing taxes and operating costs, it called for an across-the-board wage freeze for all Borough employees. Increased operating costs in 1996 cited by the Borough include: increased landfill fees, insurance, legal fees associated with Mt. Laurel litigation, unfunded but state-mandated hepatitis vaccinations, infrastructure repairs, payroll costs, annual retirement pay costs of \$22,000.00 for the next 15 years for one officer, increased contributions of \$21,995 to the police pension fund, \$40,000.00 per year (for five years) for the loss of the deferred school tax funding by the State, and a \$67,259.33 payment on a note on the Buckingham property. The budgetary problems in 1996 required the Borough to raise \$149,498 through additional taxation, without salary increases, in order to balance its budget. Therefore,

the Borough determined to contain remaining costs and to freeze employees' salaries. According to the Borough, in 1996, it raised the tax rate by \$.074 to cover the increased costs. Despite the Borough's wage freeze in 1996, the Borough points out that some officers received increments or longevity payments.

The Borough argues that the police should take a wage freeze in 1996 as a result of this arbitration, because all other Borough employees took a wage freeze in 1996. Failure to maintain the wage freeze in 1996 will cause failure of its program to stabilize tax rates, according to the Borough. Further, the Borough asserts that the pattern of all of its employees receiving the same rate of increase is unrebutted and, since the PBA has received the same wage increase as other Borough employees since 1988, the pattern should continue.

The Borough contends that its final offer of two- percent increases in 1997, 1998 and 1999 is necessary to contain increases in police salaries, which constitute the single largest appropriation in the budget. According to the Borough, its other proposals continue to contain payroll costs or clarify contract language. The Borough contrasts its final offer with the PBA's and calculates that the PBA's final offer exceeds the cost of its proposal by \$274,096.60 without the fold-in of longevity pay and the increase call-in minimums proposed by PBA.

The Borough asserts that its proposal is in the interest and welfare of the public because it stabilizes municipal taxes, which have risen by 30% since 1994. According to the Borough, it had to raise \$523,385.00 in 1998, or 31% more money through local taxation than it did in 1994. The cause of this dramatic increase in taxation is, according to the Borough, a combination of increased fixed costs and an escalating payroll, and a decreasing tax base. The Borough calculates that net valuation taxable ratables have decreased approximately 10% from \$206,327,854.00 in 1993 to \$204,792,906.00 in 1997. According to the Borough, ratables have declined in three of the last four years, and there are only three or four buildable lots in the Borough. The Borough believes that the only way to stabilize taxes is to control wages in salaries. Accordingly, the Borough determined to freeze wages in 1996 in order to maintain services currently provided to residents. According to the Borough, it chose not to reduce garbage collection from thrice weekly to once a week.

The Borough maintains that "crime is virtually non-existent in Avon," with only three instances of violent crime and 85 incidents of non-violent crime, such as burglaries, in 1996. Additionally, the extra service police provide to residents, such as delivering prescriptions, transporting people, canine control, attending kids events, and house checks are already covered by their existing salary.

The Borough further maintains that it is in the public interest and welfare to maintain the morale of all Borough employees. To maintain that morale, the Borough has, since 1988, granted the same annual wage increases to all of its employees. According to the Borough, maintaining this pattern requires the PBA to receive a wage freeze for 1996.

Turning to issues of comparability, the Borough contends that its police are better compensated than other Borough employees, private and public sector employees in general and police officers in neighboring municipalities. The Borough points out that its police receive higher salaries than do other Borough employees, but the rate of increase for all Borough employees has been the same since 1988. While the PBA points out that the starting salary for public works employees is currently higher than that for police officers, the Borough has recently negotiated a two-tiered wage scale for public works employees which lowers their starting salary by \$10,000.00. The Borough also points out that, as distinguished from public works employees, it incurs the additional expense of sending each new police officer to the police academy.

The Borough notes that after the supervisors took a wage freeze in 1996 "the Borough decided to break the pattern in 1997 and 1998 to properly compensate supervisors." The Borough disagrees with the PBA and maintains

that the 5% increase for supervisors does not "open the floodgate" to permit deviation from the pattern established with the public works employees. According to the Borough, it needed give the four supervisors a 5% increase in order to compensate supervisors "commensurate with their responsibility." As an example of this need, the Borough points out that one patrolman, by working overtime, earned more than the Chief of Police and every other employee in the Borough. The Borough also notes that although the school board did not follow the pattern wages in every bargaining unit, it is a separate employer, with a separate budget.

The Borough asserts that the wages and benefits of its police officers exceed those received by private sector and public sector employees in general. The Borough points out that its police officers have received annual wage increases in excess of the CPI and its proposal will not diminish their purchasing power. The Borough notes that its proposed wage increases are comparable or more generous than the packages provided to 60,000 New Jersey State employees, who received wage freezes in 1995 and 1996. The Borough maintains that its decision to freeze the wages of its employees should be given the same deference as the State's determination.

The Borough contends that the wages and benefits of its police officers exceed those received by police officers in neighboring municipalities. The

Borough compares a 6th year patrolman in Deal earning \$47,000.00 with a 6th year patrolman in Avon, earning \$53,172.00, based upon 1995 rates. The Borough maintains that it provides greater clothing allowance, fully paid family health coverage and 25% salary as terminal pay. The Borough also defends its low pay for new hires by noting that new hires receive yearly increases totaling 81.6% over five years by virtue of advancing on the wage schedule.

The Borough takes issue with many of the comparables proposed by the PBA. According to the Borough, many of the municipalities, including Freehold Township, Manalapan, Neptune Township, Ocean Township and Wall Township are larger and have greater ratables. Additionally, the Borough asserts that it is not comparable to Sea Girt because Sea Girt's ratables are two and one half times larger than Avon's. The Borough notes, however, that its police salaries are similar to those of the larger municipalities. Comparing itself to its neighboring communities, the Borough believes its employees to be well compensated and asserts that the PBA's proposal of 6% increases is unwarranted.

When considering the financial impact on the Borough and its residents and taxpayers, it asserts that its final offer is more reasonable, especially in light of the lawful authority of the employer. The Borough contends that the PBA's final offer would cost it \$338,775.00 in new money and would result in a

Cap problem, a significant tax increase, possible layoffs and possible cuts in social programs.

The Borough's calculation of the cost of the PBA's package as \$338,755.00 includes roll up of 30% for federal and state taxes and other mandated deductions, increased overtime, compensable time-off costs and longevity pay. The Borough calculates further that these figures equal a 52% increase in appropriations for police salaries in 1997, compared to the Borough's package which it estimates would cost 81% less than the PBA's package.

The Borough concludes that the PBA's proposal would result in a Cap problem in 1999 because the Borough's 1998 budget will be \$102,518.00 under the Cap and, by the Borough's calculations, the PBA's proposal would cost \$338,755.00. The Borough also contents that using its Cap bank, plus another \$236,237.00 for police salaries would restrict severely the Borough's use of its appropriations for other municipal purposes, and could result in layoffs, in 1999.

Aside from the Cap problem, the Borough asserts that it does not have the funds to pay 6% increases retroactive to 1996. While at the end of 1995, there was \$33,919.98 specifically appropriated for police salaries, accounting practices prescribed by the State of New Jersey have caused this money to

"lapse". Additionally, at the end of 1996 and 1997, the specific appropriation reserves for police salaries were \$.73 and \$.00 respectively.

The Borough explains that general appropriations reserves are not available to pay for police salaries either. The \$32,860.15 in general appropriation reserves for 1996 lapsed at the end of 1997 and was put into the general fund for the 1998 budget. The Borough contends that the \$67,109.00 in general appropriation reserves from 1997 has not yet lapsed, but may be used only to "meet specific claims commitments or contracts incurred during the preceding year." The Borough points out that \$42,056.00 of those reserves was appropriated for library maintenance. The Borough also points out that the surplus balance of \$96,529.70 from 1997 is a non-cash surplus held "solely for purposes of the deferred school tax" and can not be used for police salaries. Although voter turnout for approval of the school budget was low, the Borough urges that the school budget be considered irrelevant to this proceeding since the Board of Education is a separate employer.

The Borough calculates that to fund the PBA's package of 6% per year, it would have to lay off employees, or cut social programs or increase the municipal tax rate by \$169 to cover the costs. The Borough notes that for every \$20,000.00 increase in the municipal budget, the tax rate will increase by \$.01

In contrast, the Borough notes that its proposal would maintain the police officers' status as the best paid Borough employees while stabilizing tax rates.

The Borough further asserts that its final offer will permit police officers to continue to outpace the cost of living. According to the Borough, base wage increases for the PBA have outpaced increases in the CPI by 28.45% or an average of 3.56% per year. Accordingly, the Borough calculates that when considering the compounding effect of wage increases, police officers' salaries have exceeded the cost of living by 11.5% from 1988 through 1995.

The Borough asserts that its final offer promotes the continuity and stability of employment. The Borough notes that there is no evidence that police officers leave the Borough to seek better employment elsewhere, because its police officers already receive wages and benefits superior to those in neighboring communities. The only attrition has been through retirements. However, the Borough contends that continuity and stability of employment will be eroded for all Borough employees if the PBA's final offer is awarded, because other Borough employees would be demoralized and layoffs might occur.

Finally, the Borough urges adoption of the remaining items in its proposal as reasonable and urges rejection of the PBA's proposals as

unnecessary and expensive. The Borough maintains it does not have the funds to cover the longevity fold-in that would result in increased payroll costs from overtime, or the increased call-in minimum. Regarding the PBA's proposals to use PERC instead of AAA and to add minor discipline to the grievance procedure definition, the Borough argues that the PBA has not offered meritorious ground for such changes. On the other hand, the Borough's proposals to create a new package for new hires is necessary to reduce payroll costs and grant the Borough fiscal relief when hiring new officers. As an additional measure of fiscal relief, the Borough seeks to change the sick leave incentive to additional paid vacation time. The Borough seeks clarification of the definition of "one week" for the purposes of vacation time and to delete "obsolete" language from Article X. The Borough also seeks to reserve the right to require a co-payment for hospitalization, medical and prescription coverage. The Borough presently pays for employee and family coverage in full without a co-payment and seeks flexibility in the event health care costs escalate.

DISCUSSION

As stated earlier, I am required to issue an award based upon a reasonable determination of each issue in dispute after giving due weight to the statutory criteria which I find pertinent. The Borough and the PBA have presented and articulated their positions on each issue and have submitted

evidence and argument on each statutory criterion in support of their respective positions. Their comprehensive submissions and all of the evidence and arguments have been carefully reviewed, considered and weighed.

After review and consideration of each of the statutory criteria, I conclude that all are relevant to the resolution of this dispute, although, as set forth below, the weight accorded each criterion varies. As required by law, I have also decided the total net annual economic changes for each year of the four-year award.

Initially, I note that many issues remain in dispute. I am not persuaded that either party has made a convincing case warranting most of the contractual amendments sought. One principal 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 conclude that burden has not been met with respect to the PBA's proposals to fold in longevity payments throughout the employee's career and to increase the 2-hour call minimum to 3 hours. The PBA has not provided sufficient rationale supporting its proposals nor does the record contain

sufficient information to allow a reasonable estimate of the costs of each proposal.

With respect to the PBA's proposal to provide arbitration pursuant to the rules of PERC instead of the rules of the AAA, as an arbitrator, I am reluctant to substitute my judgment for the previous agreement of the parties as to which agency or organization and which rules should be followed in arbitration. The PBA raises important points in support of its proposal, but I conclude that the parties should agree upon the rules under which arbitration occurs. Therefore, and in the absence of any compelling reasons to do so, I do not award the PBA's proposal to amend Article IV of the contract to provide for arbitration pursuant to PERC's rules.

On the other hand, the PBA's proposal to add minor discipline to the scope of the grievance procedure is a result of new law and is awarded. Granting the PBA's proposal will allow disputes over minor discipline to proceed to arbitration rather than to Superior Court. I believe that the cost savings and relative speed of arbitration compared to the costs and delays inherent in a court setting will benefit both parties and is in the interest and welfare of the public. Additionally, keeping minor discipline cases off the Superior Court docket will limit judicial backlogs and also serves the public interest.

Turning to the Borough's non-salary proposals, most would reduce or limit existing benefits contained in the expired labor agreement. In addition to cost savings, the Borough seeks clarification of certain contract clauses.

Initially, the Borough seeks to limit holiday benefits, longevity and terminal leave benefits for newly hired employees. These proposals were not included in the Interest Arbitration Petition and the PBA seeks their dismissal pursuant to N.J.A.C. 19:16-5.5. In response, the Borough asserts that the PBA's failure to raise this issue during the hearing constitutes a waiver of its right to raise this issue. The Borough also argues that terminal leave benefits are included in Article XXIII covering longevity and therefore are included in the Interest Arbitration Petition. I need not address this procedural issue. I have reviewed these proposals on their merits. The Borough has not offered sufficient justification in support of its terminal leave proposal or other benefit limitations for new hires other than undefined cost savings and assuming that these proposals have been properly submitted, I conclude that they should be denied.

Turning to the Borough's remaining non-salary proposals, the proposals to clarify Article VI, covering working hours, to include paid time off as part of the 40-hour week and to pay overtime only for "time worked in excess of one-half hour" at the end of the regular shift, appear to be substantive changes with

potentially significant consequences to police officers. The Borough's only rationale for these changes is that they will generate cost savings. However, the record does not reflect the extent of cost savings to be generated or the potential effect on police officers. I find insufficient evidence of the need for these proposed changes.

The Borough's amendments to the sick leave provisions of the expired agreement would eliminate the sick leave bank,¹ and would provide additional vacation days, in lieu of a cash incentive, to employees who use zero or one sick day in a year. These proposals are justified only by reference to an unidentified cash savings and the assertion that the sick leave bank is obsolete. The record does not include the cost of the sick leave bank or of the cash incentive or an estimate of savings projected by changing the incentive from cash to time off. In light of the insufficient evidence proffered in support of these changes, I decline to include them in this award.

The Borough's proposal to eliminate the provision of compensatory time to police officers who work when there is an unscheduled closing of the Borough's offices increases efficiency and has merit. Since the proposal covers only work during unscheduled closings, the impact on police officers is minimal

¹The Borough's final offer seeks elimination of Section 1(b) of the sick leave provisions. The contract does not include a section 1(b), and the Borough appears to be referring to Section 2(b).

when balanced appropriately with the Borough's legitimate expectation that police officers be available for regularly scheduled duty, especially in the case of inclement weather which results in an unscheduled closing of the Borough's offices. The Borough's proposal to eliminate compensatory time payments for working during unscheduled closings is therefore awarded. There is insufficient evidence in the record to award the Borough's proposal to define one week as five working days for vacation. If this proposal is a necessary clarification the parties should consider further discussion of this issue on a voluntary basis.

The Borough also proposes to require co-payment for hospitalization, medical insurance and the prescription plan. The Borough points out that at present employees do not make co-payments and the Borough pays for employee and family coverage without a premium. The Borough seeks flexibility to contain health care costs in the event that such costs escalate. However, the Borough seeks to be permitted to adopt and to set the amount of co-payments "at the sole discretion of the employer". While the Borough is understandably concerned over health care costs, the amount of any co-payment must be defined. I reject the Borough's proposal with respect to Article XVII, Section 3, but I determine that Section 5 should be amended to provide that the Borough shall have the right to require eligible employees to remit a \$5.00 co-payment for generic and \$10.00 for brand name drugs for the prescription plan.

The Borough and the PBA agree upon a four year duration for the new agreement, but have significant differences as to the appropriate salaries to be provided in each year. Each place great importance on the evidence submitted and the arguments advanced on the issue of salary. The Borough has proposed a wage freeze for 1996, and 2% increases in each of the following three years. The Borough points out that "roll up" costs, which measure the increased costs of benefits which are based upon salary, are not included in these calculations. These costs typically include overtime expenditures and pension payments. The Borough, including federal and state taxes and other mandated deductions, estimates "roll up" costs to be an additional 30%. The PBA seeks increases of 6% in each of the four years.

Based upon the arguments and evidence submitted, and after applying the statutory criteria, I have determined that wage increases shall be set at 0% on January 1, 1996, 3% on July 1, 1996; 3.75% on January 1, 1997, 3.875% on January 1, 1998, and 4% on January 1, 1999. This represents a total net economic change in wages of \$7,287.00 in 1996, an additional \$26,050.00 in 1997, inclusive of a \$7,287.00 credit for one half of the 1996 rate increase, an additional \$20,765.00 in 1998 and an additional \$21,595.00 in 1999. The difference between the PBA's proposal and the award is \$21,860.00 in 1996, \$26,706.00 in 1997, \$38,691.00 in 1998, and \$51,811.00 in 1999. The difference between the Borough's proposal and the award is \$7,287.00 in 1996,

\$23,622.00 in 1997, \$34,477.00 in 1998, and \$45,964 in 1999. The difference between the Borough's proposals and the PBA's proposals is \$29,147.00 in 1996, \$50,328 in 1997, \$73,168.00 in 1998, and \$97,775 in 1999. The award represents an average increase of 3.66% over four years (although 1.5% is not paid out during 1996) for a total percentage increase over the four years of 14.625%. This result contrasts with the 6% proposal of the Employer over four years and the 24% proposal of the PBA. These figures are exclusive of roll up costs and assume no retirements, hiring or promotions. The analysis which leads me to this award is as follows.

The public interests and welfare are well served by the Borough's police department. The department responds to over 1,200 calls each summer, with lesser numbers during the rest of the year. Calls range from marital disputes and burglaries to disorderly conduct. While violent crimes are few, it is an active department, and its officers are active in a variety of community activities which provide the public with additional services. The overall level of compensation and benefits have contributed to the motivation and morale which creates this level of service. The Borough's proposal is substantially less than police comparables, as well as that provided to its other bargaining units, and the PBA's is substantially more. The Borough's strategy to minimize taxes while maintaining the current level of services for residents requires a substantially lower level of increase than that demanded by the PBA, but one

which compares reasonably to police salaries in comparable jurisdictions, is within the Borough's ability to pay without negative financial impact on the tax payers, and one which is responsive to the police officers' relative position within the Borough. A salary increase averaging 3.66% over four years accomplishes this balance and the six-month delay of a salary increase in 1996 creates a modest retroactive cost of \$7,287.00, well within the Borough's ability to pay. The 3% increase in 1996 at a 1.5% cost, is below the salary increases which exist for surrounding communities and police units within the County of Monmouth.

The interest and welfare of the public requires assessment of the limitations placed upon the Borough by *N.J.S.A. 40A:4-45.1 et seq.* As I discuss below, this award is well within the Cap constraints and does not interfere with the Borough's lawful authority. This award also permits the Borough to maintain its fiscal restraint by permitting the imposition of a co-payment for prescription. This will permit the Borough to address the public interest in reducing health care costs, while insuring that other health benefits are maintained. I conclude that the interest and the welfare of the public will not be served by an award costing more or less than what has been awarded herein.

The comparability data has been carefully reviewed and examined. This criterion includes comparisons with similarly situated police officers and with public and private employment in general. It also includes comparison with other employees employed by the public employer. Each of these comparisons are relevant though due different weight. In this case, the data includes figures which conflict with other elements of the comparability criteria, as well as with each party's position on this factor.

In this case, comparisons with other police departments and with other Borough employees deserve substantial weight and attention. Data on comparisons with other police departments provided by the Borough and the PBA reflects average wage increases above those proposed by the Borough, below those proposed by the PBA and above that awarded here.

The arbitrator recognizes that no two communities are identical. The 1996 wage adjustment at a 1.5% cost (\$7,287.00) and 3% rate increase is substantially below any of the wage data contained in the record for 1996 in nearby Monmouth County communities. The increase prevents a substantial erosion in such relative salaries, but is responsive to the Borough's fiscal concerns. The 3.875% average for 1997, 1998 and 1998 is compatible with the Sea Girt settlement averaging 3.83% for these three years, the 3.75% average in South Belmar for 1997 and 1998 and the 3.83% average in Belmar for 1997,

1998 and 1999. Belmar, Deal, Neptune and Spring Lake Heights all reflect increases averaging 4% and above for 1997 and 1998. All of the municipal comparables reflect 1996 increases above that awarded here. The Borough's 1996 fiscal crisis affects the comparisons, both because salary increases for 1996 are necessarily limited, and because recovery from the fiscal problems of 1996 is a multi-year process. Thus, the 3.66% average over four years is somewhat less than the surrounding communities, but the police officers, like other Borough employees, must contribute to the Borough's successful efforts to restore its fiscal health. Comparables with other police settlements remain important in this case, but factors including the Borough's fiscal crisis in 1996 and its internal settlements temper the great weight the PBA seeks to be given to police comparables.

The Borough points to a strong internal pattern of comparable settlements with the Borough's other two bargaining units from 1988 through 1995. In each of those years the police received the same rate of increase as the Borough's supervisors' and public works bargaining units. However, settlements for 1996 through 1998 have diverged from that pattern for reasons relating to the Borough's fiscal difficulties in 1996. The factors discussed herein which led to the Borough's fiscal difficulties in 1996, led to the cancellation of scheduled increases for supervisors and public works employees in 1996. However, an inadvertent clerical error resulted in public works employees

receiving the 4% increase for the first four months of the year, or the equivalent of a 1.33% lump sum payment for 1996. The rate increase was rolled back. For 1997 and 1998, public works employees received 3.5% in each year. In addition, public works employees received an additional holiday and an increase in the annual clothing allowance. The supervisors' unit received 5% increases in each of those two years and an increase in the clothing allowance. The Borough justifies this divergence as a reward to the supervisors for their extra work and as a partial offset for the 1996 wage freeze. Although the Borough has presented evidence of an eight-year pattern, the financial circumstances of 1996 led the Borough to substantively different settlements at least for this contract term. Under these circumstances, the prior history of an internal pattern must be given less weight for this contract term than would normally be accorded. For the 1996, 1997 and 1998 contract years, this award averages 3.54% on rate with a 1.5% pay-out for 1996. Further, the police officers did not receive the 1.33% non-base increase received by public works in 1996, nor increases in paid days off or clothing allowance. The terms of the two voluntary settlements are different from each other and this award. The weight given to the settlements does cause less weight to be given to the comparables in the surrounding communities, but does not dictate that the identical terms of either settlement be adopted for the police officers.

Turning to comparisons with the public and private sectors generally, the PBA urges that little or no weight be accorded to private sector comparisons,

while the Borough points out that its proposal compares favorably to the last settlement provided to State workers, which included wage freezes in 1995 and 1996. The Borough suggests that it should be provided the same deference as the State to impose a wage freeze to bring order to its fiscal house. The Borough's 1996 fiscal problems play a significant role in this award. At this juncture, however, I must evaluate the Borough's current financial situation in light of all of the statutory criteria. There is no single factor present on this record which compels a single conclusion. I conclude that comparison of the proposals to other settlements in the public sector generally, including the settlements between the State of New Jersey and its unions, while relevant, merit less weight than the voluntary internal settlements and comparisons with other municipal police departments as discussed above.

The PBA, pointing to the unique statutory authorities and duties of police officers, urges that private sector comparisons not be considered controlling in this case. The PBA has provided a comprehensive and detailed description of the differences between the duties, responsibilities, benefits and benefit restrictions, notably the limitations on pension portability after age 35, of police officers, and private sector employees. In contrast, the Borough points to the superiority of salary and benefits enjoyed by its police officers compared to some private sector employees. The distinctive responsibilities of police officers do limit the effectiveness of private sector comparisons, although the Borough properly asserts that the private sector economy is relevant.

Based on all relevant data reflected in the record, this award has accorded weight to private sector wage increases. They are substantially below the PBA's demands and substantially above the Borough's offer. The average private sector wage increase in the New Jersey Department of Labor Report for 21 counties reflected an average increase of 3.4% between 1994 and 1995. The increase in Monmouth County was 3.1%. The award's 3.0% rate increase with a 1.5% pay out in 1996 compares favorably. I also give arbitral notice to the September 1997 report of the New Jersey Department of Labor reflecting changes in the average wages of both private sector and governmental jobs between 1995 and 1996. This report reflects an average increase in these combined sectors of 4.0%, a figure above that awarded herein and 4.3% for private sector alone. An average 3.66% award, as here, is clearly within a range of reasonableness reflected in the private sector data.

Turning to the overall compensation presently received by the employees, the Borough's police officers are well compensated, and are the highest paid employees in the Borough. They receive better benefits compared to other Borough employees in some areas and other Borough employees receive better benefits than that received by police officers in other areas. The PBA notes that new police officers receive less compensation than new public works employees. That situation should be short-lived since the current agreement between the Borough and the public works employees provides a lower pay scale for new hires. The PBA's salary schedule currently provides for

an academy and a probationary step starting at \$25,000 and already provides for a relatively low pay schedule for new hires compared with other jurisdictions. There is nothing in this award which expands upon the existing benefit package already provided to police officers. The only modification is the institution of a co-pay in prescription coverage.

With respect to the Borough's lawful authority to fund this award, the Borough focuses on its fiscal problems in 1996, resultant tax increases and increase in its Cap calculations from a 3.5% limitation to 5%. The Borough had significant financial difficulties in 1995 and 1996 that resulted in a 30% jump in the municipal tax rate since 1994. By increasing its Cap index rate to 5% in 1997 and 1998, the Borough has managed to stabilize its tax rate and forecasts a Cap bank for 1998 of \$102,519.00. The cost of the award, including back pay for 1996, 1997 and the beginning of 1998 is within the Borough's lawful authority. The salary costs for the entire unit have also been tempered by virtue of an unfilled vacancy of a highly compensated position. This fact is significant given a table of organization of ten or less. It does not cause an award higher than that provided as suggested by the PBA but it does represent an additional source of funding. Additionally, the sale of the Buckingham property will free funds currently dedicated to paying the principle and interest on the property, as well as any funds currently invested in the property. The Borough may also realize appreciation on this highly valued property although I have not taken this factor into consideration. Based upon these factors, I

conclude that this award does not adversely impact upon taxpayers or the Borough's lawful authority to maintain its budget within the limitations of the Cap law.

The Borough's taxpayers have been required to shoulder a significant increase in their tax burden in the last five years. The causes of this increase include rebuilding the boardwalk, the Buckingham property, and, to some extent, the Borough's payroll. Therefore, the impact of this award on the Borough's taxpayers merits careful consideration. The tax rate, at \$2.24 in 1997, is less than that levied in nearby municipalities, including Wall, South Belmar, Neptune City, Neptune Township, Bradley Beach and Belmar. At a projected increase of \$0.01 per \$20,000 of cost, the impact of this award on the Borough's tax rate would not result in adverse consequences to the Borough's taxpayers. If the entire costs of this award, based upon new money cost per year, were borne by the Borough without any other budgetary offsets or savings, the new costs per year average less than \$0.01 on the tax rate. Additionally, the costs of the award is somewhat offset by the Borough's ability to achieve health care cost savings by implementing a co-payment for prescriptions. As I have also noted, the Borough has achieved substantial productivity savings during the term of this agreement by leaving the position of Captain vacant at least up until the time that this record was closed. On balance, the award provides reasonable cost increases for taxpayers in

exchange for the continued policing and other services provided by police officers and health care cost savings. Additional savings may be accrued from rule changes eliminating compensatory time for working a regularly scheduled shift when the Borough's offices are closed unexpectedly.

I have also considered the evidence submitted concerning the cost of living criterion. The average increase of this award at 3.66% is higher than the 2% increase in the CPI reflected in the 1997 data for the New Jersey-New York metropolitan area and the 1995 increase of 3% and the 1996 increase of 2.9%. The PBA's proposal at 6% annually is substantially more than the cost of living data and the Borough's proposal, averaging 1.5% annually, is less than the cost of living data. The CPI data is relevant, but not controlling. Its weight is such that the PBA's demand for increases at or above the County average must be denied by virtue of the weight to be given to the Borough's data concerning its 1996 financial circumstances and the CPI data.

I also conclude that this award is consistent with the statutory criterion concerning the stability and continuity of employment. The record reflects that turnover is minimal and most attrition within the Police Department results from retirement. This is a small but productive police department. A vacancy has existed in the Police Department's table of organization. This award will maintain the stability and continuity of employment by not substantially

diminishing the terms and conditions of employment of the Borough's police officers in relationship to the terms and conditions of employment of police officers within the County and surrounding communities. On the other hand, the PBA's proposal, if awarded, could so substantially increase personnel costs that the levels of employment could be reduced. I conclude that this award will result in a reasonably competitive wage and benefit package which will preserve the continuity and stability of employment which has existed within this police department. Accordingly, I respectfully issue the following award.

AWARD

There shall be a four-year agreement effective January 1, 1996 through December 31, 1999.

Salary

0% effective January 1, 1996
3.0% effective July 1, 1996
3.75% effective January 1, 1997
3.875% effective January 1, 1998
4.0% effective January 1, 1999

The 3% increase effective July 1, 1996 shall not be applied to the hiring rate for any employees hired after the date of this award.

Overtime

Delete Article VI, Section 10 which provides compensatory time to unit members who work when there is an unscheduled closing of the Borough's offices, such as in inclement weather.

Health Insurance

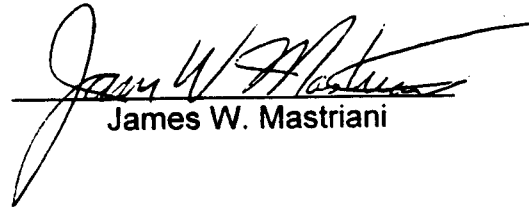
Article XVII, Section 5 is amended to provide that the Borough shall have the right to require eligible employees to remit a co-payment for a prescription plan of \$5.00 per prescription for generic and \$10.00 for brand name drugs effective at any future date at the discretion of the Borough.

Non-economic Proposals

The grievance procedure definition in Article III is amended to include minor discipline. Minor discipline is defined as "5 days of suspension or equivalent fine or any lesser penalty."

Remaining Proposals

All remaining proposals are denied for the reasons set forth herein.


James W. Mastriani

DATED: September 24, 1998
Sea Girt, New Jersey

State of New Jersey }
County of Monmouth }ss:

DOLores BRITO
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires Feb. 24, 2002

On this 24th day of September, 1998, before me personally came and appeared James W. Mastriani to me know and know to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed same.

