

PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Interest Arbitration *

Between *

Township of Jackson *

-and- *

Jackson PBA Local 168 *

Docket No. IA-2004-022
Jeffrey B. Tener
Interest Arbitrator

OPINION AND AWARD

Background and Procedural History

I was appointed as the interest arbitrator in this matter by letter dated October 3, 2003 from the Public Employment Relations Commission ("PERC"). I held an informal initial session with the parties on January 9, 2004 at which I believed that an agreement was reached but it was not. The parties, however, have resolved a number of issues and narrowed their differences on other issues for what will be a successor agreement to their January 1, 1999 through December 31, 2002 agreement. A formal hearing was necessary and this was held on June 9, 2004. The Township was represented by Steven S. Glickman, Esq.; the PBA was represented by David J. DeFillippo, Esq. Following receipt of the transcript, both parties filed post-hearing briefs. These were received by August 5, 2004, thereby marking the close of the hearing.

As set forth in letters to Timothy Hundley, PERC's Director of Arbitration, dated August 11, 2004 from Mr. DeFillippo and August 20, 2004 from Mr. Glickman, the parties agreed, in accordance with N.J.S.A. 34:13A-16f(5) and N.J.A.C. 19:16-5.9, to an extension of time for the issuance of this decision so that the decision was to be issued on or before October 1, 2004.

This proceeding is governed by the Police and Fire Public Interest Arbitration Reform Act, P.L. 1995, c. 425, which was effective January 10, 1995. Because the parties did not agree to an alternative terminal procedure, this is a conventional arbitration proceeding. The arbitrator is required by N.J.S.A. 34:13A-16d(2) to "separately determine whether the total net annual economic changes for each year of the agreement are reasonable under the eight statutory criteria in subsection g. of this section."

Statutory Criteria

The statute requires the arbitrator to:

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

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

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

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

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

(c) In public employment in the same or similar comparable jurisdictions, as determined in accordance with

section 5 of P.L.1995, c.425; provided, however, that each party shall have the right to submit additional evidence concerning the comparability of jurisdictions for the arbitrator's consideration.

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

(4) Stipulations of the parties.

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

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

(7) The cost of living.

(8) The continuity and stability of employment including seniority rights and such other factors not confined to the foregoing which are ordinarily or traditionally considered in the determination of wages, hours, and conditions of employment through collective negotiations and collective bargaining between the parties in the public service and in private employment. (N.J.S.A. 34:13A-16(g))

Final Offers

Final Offer of the PBA The final offer of the PBA consists of the following ten proposals:

1. Duration: Four (4) years – January 1, 2003 to December 31, 2006.
2. Article V – Sick Leave: The PBA seeks to codify in the collective bargaining agreement the current practice of permitting employees to use up to 40 hours of sick time in one year to care for a family member such as a spouse or child.

Additionally, it proposes to expand the scope of the use of permissible sick time to care for a life partner as well as any relative living in the residence of the employee.
3. Article VIII – Overtime: Section 5(B) shall be revised so as to provide one (1) hour of comp time for each day that a PBA member is “on-call.”
4. Article XI – Bereavement Leave: Section 2 – Expand the definition of “immediate family” to include step-brother and step-sister as well as life partner, nephew and niece.
5. Article XII – Holidays: Section 2 – This clause must be revised so as to compensate any officer working overtime on a holiday at the rate of double time and one-half, regardless of whether the officer was scheduled to work on the holiday in question.

Section 3 – Consistent with the above proposal, this clause must be revised so as to apply to any employee who is ordered or volunteers to work overtime on any holiday.
6. Article XVIII – Wages: 5% annual increase for each year of the new contract at every step of the salary guide. All such increases shall be retroactive to

January 1, 2003 and applicable to all employees who terminated employment with the Township after January 1, 2003.

Section 3 – No officer hired after January 1, 1995 is currently entitled to receive longevity pay. The PBA proposes to delete Section 3 in its entirety.

7. Article XXII – Court Appearances: Section 1 – Revise the second sentence of this clause to read as follows: “Employees are, however, guaranteed a minimum of four (4) hours pay at the rate of time and one-half his/her regular rate of pay.”

Section 2. – This clause shall be revised so as to provide that when a police officer is required to appear in all other courts while off duty, the officer shall be compensated for all travel time to and from said court.

8. Funeral Expenses (New Article): Consistent with the Opinion and Award of Arbitrator Gerard G. Restaino dated September 10, 2001, the following provision shall be inserted in the contract: “In the event that a police officer is killed in the line of duty, that police officer’s spouse or beneficiary shall receive payment for all accrued vacation and personal days. There shall be no pro-rating of those days.”

9. Shift Bidding (New Article):

Section 1. Shift assignments shall be made, where all qualifications are equal, pursuant to a seniority based bid system. Standard slips shall be developed and distributed to all affected personnel in the second week of November of each year. The employee shall list his/her choices giving a first, second and third preference. Assignments shall then be made based on seniority and posted no later than the first week of December. This process shall be repeated annually. These assignments shall take effect as of

January 1st and remain in effect until the procedure is repeated the following year.

Section 2. This shall not be interpreted to mean that duty assignments, such as Detective Bureau, Traffic Safety, Services, etc. are to be put to bid. Those assignments remain the prerogative of the Director of Public Safety, which shall be in accordance with controlling statutes, judicial decisions, and this agreement. Further, in order to meet the needs of training and/or specialized qualifications, shift assignments may need to be altered in order to meet the bona-fide safety needs of the citizens of the Township. In these cases, the change shall be made with timely notice and written explanation. The change shall last until such time as the specific needs have been met, at which time the said employee shall be returned to his/her bid shift. This section cannot be used as subterfuge to avoid overtime.

Section 3. This article shall be applied equally, among members of the same rank. Patrol officers shall bid with patrol officers, sergeants with sergeants, etc.

Section 4. This article shall not preclude employees from voluntarily switching or swapping with one another, prior to the re-bid date. However, as is the current practice, such switches must occur with the approval of the Director of Public Safety or his designee. Such approval shall not be arbitrarily or capriciously denied.

10. Non-Patrol Personnel Stipend (New Article): Any officer assigned to a unit, position, division or bureau other than the Patrol Division shall receive an annual \$1,000 stipend. In the event that an officer is transferred during the calendar year from the Patrol Division to another unit, or vice-versa, said

officer shall still be entitled to the \$1,000 annual stipend which shall not be pro-rated.

Final Offer of the Township The Township's final offer consists of the following seven items:

1. Article VIII – Overtime, Section 5A: Modify this section to provide that the call-back minimum guarantee shall not apply when the call-back is contiguous with the employee's regularly scheduled shift.
2. Article IX – Vacations: the Township has proposed a new vacation schedule for employees hired on or after January 1, 2003 so that they receive one working day of vacation leave upon completion of employment for each month of their first year, up to 13 working days; that employees with one but less than five years of service receive 13 working days of vacation each year; that employees with five but less than ten years of service receive 15 working days of vacation each year; that employees with ten but less than 15 years of service receive 17 working days of vacation each year and that employees with 15 for more years of service receive 20 working days of vacation each year.¹

The other part of this proposal is that employees who terminate their employment or employees whose employment is terminated by the Township will be entitled only to pro-rated vacation time or vacation pay in their last year of employment.

3. Article X – Personal Days: 1. Re-letter as "1A" and on the first line after the word "employee" insert "hired on or before January 1, 2003" and 1B (Insert

¹ This proposal was modified during the hearing to apply only to employees hired after the date of the award. (Tr. 104 and 105)

the following new paragraph): "All employees hired on or after January 1, 2003 shall receive two (2) personal days per year."²

4. Article XIII – Hospital and Medical Insurance: Effective upon the signing of the agreement, all newly hired employees will be eligible for the NJ Plus health insurance plan. If any employee elects health insurance coverage other than NJ Plus and the premium exceeds the premium for NJ Plus, the employee shall be responsible for the difference.
5. Article XXIII – Wages
 - a. Effective 1/1/03: 3.25% across-the-board increase
 - b. Effective 1/1/04: 3.5% across-the-board increase
 - c. Effective 1/1/05: 3.75% across-the-board increase
6. Article XXII – Court Appearance: Reduce the four hour guarantee in Sections 1, 2 and 5 to a two hour guarantee from a four hour guarantee.
7. Article XXVII – College Credit Program: 3. Payment for college credits shall be based upon the per credit cost at the New Jersey State University System. Any per credit fee above the per credit cost at the New Jersey State University System shall be borne by the employee.³

Stipulated Issues

Prior to the commencement of the arbitration hearing, the parties agreed to the following items which shall be included in the new agreement:

1. Article XI – Bereavement: Section 1. The parties agreed to provide that bereavement leave is to be four consecutive regularly scheduled working days and not to include an employee's days off.

² This proposal was modified during the hearing to apply only to employees hired after the date of the award. (Tr. 104 and 105)

³ This proposal would not apply to employees currently enrolled in college programs. (Tr. 106)

2. Article XIV – Clothing and Maintenance Allowance: Section 2. The parties agreed upon a new clothing list which reflects the uniforms and equipment which is presently required.⁴ They also agreed that if the Township institutes any change in the standard uniform and/or equipment, the Township will satisfy the cost for the initial issuance of this uniform/equipment. They also agreed to provide that upon completion of the Police Academy, the Township will reimburse newly appointed Police Officers for all clothing and equipment that said officer was required to purchase by the Police Academy.
3. Article XIII – Mileage Allowance: The parties agreed to increase the mileage rate from \$.18 per mile to the IRS rate (currently \$.31 per mile).
4. Article XIV – Grievance Procedure, Section D: The parties agreed to extend the time period for the Township Committee to act upon a grievance from fourteen (14) working days to twenty (20) working days.
5. Article XXI – Children of Employee: The parties agreed to the following language:
“The children of an employee who dies in the line of duty shall be given a scholarship to the college of their choice at the Township’s expense with expense/reimbursement in the amount of \$7,500 per year.”
6. Funeral Expenses (New Article): The parties agreed that the Township shall contribute \$10,000 as payment to defray the cost of funeral and other related expenses if an employee dies in the line of duty.
7. FTO Stipend (New Article) – The parties agreed to provide Field Training Officers with forty-five (45) minutes of compensatory time for each shift in which they are performing this duty.

⁴ The items are listed in an attachment to the June 2, 2004 letter to Mr. Glickman from Mr. DeFillippo.

Evidence

The parties submitted voluminous quantities of evidence. While this will be discussed in more detail in reviewing the arguments of the parties and in my consideration of the evidence in relation to the statutory criteria, I shall generally describe the evidence submitted by the parties.

The PBA submitted the 1999-2002 and the 1995-1998 collective bargaining agreements between the Township and the PBA. It provided a roster of the Police Department showing names, ranks and dates of employment. It provided a copy of the 2002-2005 collective bargaining agreement between the Township's Board of Education and the Jackson Education Association. It submitted governmental reports as well as newspaper accounts describing the state and national economies. It provided demographic, educational, economic and other data on communities in Ocean County. It submitted data from The New Jersey Municipal Data Book on the municipalities in Ocean County. It submitted articles relating to the stress associated with the job of a police officer, including reference to a Jackson Township police officer who was killed in the line of duty in 2001. It submitted data showing the crime rate in Jackson Township and throughout New Jersey.

It submitted the Township's budgets for 2001, 2002, 2003 and 2004 as well as excerpts from the Township's Audit for the year ended December 31, 2002. It submitted articles reporting the high cost of living in Ocean Township. It provided general information as well as information from the Jackson Township Chamber of Commerce on Jackson Township relating to real estate, government, Great Adventure and the school system. It submitted excerpts from Official Statements for bonds issued in 2001 and 2003. It submitted data on real estate values in Jackson Township. It submitted evidence related to changes in the consumer price index, unemployment, starting salaries, contract settlements, compensation changes, the job outlook, per capita

incomes, etc. It submitted excerpts from the Abstract of Ratables for Ocean County for 2003. It submitted the opinion and award of Arbitrator Restaino referred to in its final offer. It submitted charts showing salaries plus longevity for the municipalities in Ocean County from 1999 through 2005 for top patrolmen after ten years and for top sergeants after ten years. It submitted charts on longevity and minimum call-in for court appearances in Ocean County. Finally, it submitted data showing PFRS pension contributions from 2001 to 2004.

In addition to this documentary evidence, Joseph Oleksy, President of PBA Local 168, testified regarding the composition and structure of the Police Department, the work schedule, and the various proposals of the PBA.

The Township submitted demographic data from Ocean County which reflected the land area, equalized ratios, median family income, social security recipients, general tax rate, equalized tax rate, median household income, percentage of households receiving public assistance, population, median rent, median home values, net valuation taxable, per capita income, percentage valuation of vacant land, equalized value, percentage of commercial/industrial valuation, and percentage valuation residential.

The Township submitted evidence relating to internal and external comparisons. This included benefit comparisons including working hours, vacations, holidays and personal days, longevity, starting and maximum patrol officer salaries and salaries for sergeants. It submitted the contracts between the Township and PBA Local 168A, which covers superior officers, the Township and AFSCME Local 3304 – A, which covers clerical employees, the contract between the Township and Transport Workers Union of America Local 225, which covers blue collar employees, and the Township and AFSCME Local 3304 – A, which covers telecommunications employees. It also submitted the 2004 salary ordinance covering confidential employees, department heads and other employees.

The Township submitted data relating, generically, to its ability to pay. This included a detailed financial summary prepared by Mr. Glickman of both revenue sources and expenditures highlighting the significant changes in expenditures from 2003 to 2004. Extensive back-up data was provided: the 2004 Budget, an analysis of reserve accounts, tax map changes, the waste management contract entered into on May 6, 2002, data regarding the School Board, landfill costs, excerpts from Annual Financial Statements, and fund balance and fund balance utilized data in recent years.

It submitted evidence relating to increases in the Consumer Price Index and the costs of health care as well as evidence that employers are limiting coverage for retirees. Finally, it submitted evidence which it asserts relates to the interest and welfare of the public as well as continuity and stability of employment. Property taxes and increases in property taxes were discussed.

Mr. Glickman explained the Township's proposals in response to questions from Mr. DeFillippo. Township Administrator John Kennedy also responded to questions about the proposals and other factual issues.

The roster as of May 24, 2004 shows that there are two captains and five lieutenants who are not in this bargaining unit and nine sergeants and 67 police officers who are in the unit. These figures include detectives. The Department is headed by a Director of Public Safety.

Argument of the PBA

The PBA recognizes the obligation of an arbitrator to apply the eight above-listed statutory criteria. The amendments did not so much change the application of the criteria as much as they codified decisions which the Appellate Division and the New Jersey Supreme Court had issued. The factors must be considered and any not deemed relevant must be explained in terms of the facts and evidence. Not all factors

must be given the same weight but there must be an explanation as to why some factors are considered more important than others. Private as well as public sector wage and benefit comparisons must be made and the Cap Law must be considered as part of the lawful authority of the public employer. The only really significant change in the 1995 amendments was the change from final offer to conventional arbitration as the terminal procedure unless the parties mutually agree otherwise.

The PBA began with a consideration of the lawful authority of the Township and the Cap Law. This deals with two of the statutory factors: public interest and lawful authority, N.J.S.A. 34:13A-16g(1) and (5). It makes two points. First, the Township has consistently budgeted below the statutory maximum. Budgets can be increased by 5% under the Cap Law. In the last four years, the Township budgeted increases of 4% in 2001, 2.5% in 2002, 1% in 2003 and 2.5% in 2004. Thus, it utilized only half of its authority under the law. Second, even within the lesser amounts which were budgeted, the Township did not utilize all of those funds. In 2001, with the Cap "bank" that was available, the Township budgeted over \$1.5 million less than it could have. This continued in the subsequent years. The 2002 figure was \$866,869; the 2003 figure was \$1,019,685; the 2004 figure was \$1,809,976. The total which was not appropriated exceeded \$5 million in the four years or an average of \$1.3 million. Accordingly, it cannot be claimed that the Township has a Cap problem or that the proposal of the PBA would exceed the lawful authority of the Township.

The PBA next addressed the financial impact factor, N.J.S.A. 34:13A-16g(6). It noted that the Township has maintained what it describes as an extremely healthy surplus over the years. The surplus at the beginning of 2004 stood at \$1,242,492 after deducting the amount utilized in the budget for that year from the prior December 31, 2003 balance. With its consistently healthy year-end fund balances, the Township has been able to utilize a large portion of that balance in the following year's budget but then

to regenerate a healthy surplus again by the end of the year. This has been the recurring pattern. In fact, as illustrated by the PBA, the Township regenerated an average of over \$5 million each year between 2001 and 2005.

There are a number of ways in which surplus can be regenerated. One is by underestimating the percentage of taxes to be collected. The Township underestimated its tax collections by .67% in 2001, by 1.27% in 2002 and by 1.21% in 2003. The underestimating in 2002 resulted in excess tax collections of almost \$1 million. In 2002 and 2003, the Township generated over \$5 million in excess revenue over expenses.

While the Township spoke of declining revenues, including an end of "one-shot" deals, the PBA pointed out that the total revenue increased by almost \$2 million between 2000 and 2003. The Township has consistently low-balled its estimate of revenues. One consistent source of revenue has been approximately \$1.5 million from Uniform Construction Code fees in each of the last four years. It has received \$1.7 million in revenue from Consolidated Municipal Property Tax Relief each year from 2000 to 2003. It has collected almost \$500,000 in municipal court fines and costs annually.

Based on these figures, it can be seen, according to the PBA, that the Township is in excellent financial shape and the PBA's proposal would not have an adverse impact on the governing unit, its residents or taxpayers.

The PBA also argues that the municipal tax rate in Jackson Township has steadily declined in recent years while the assessed valuations have rapidly increased. From 1998, when the municipal tax rate was .682, to 2003, when that rate was .576, there has been a decline of 16%. The rate was unchanged between 2002 and 2003. At the same time, assessed valuations have increased by over \$650 million in that same period. This is an average increase of over \$130 million.

The 2003 general tax rate of .576 in Jackson Township was exceeded by 16 of the other 32 municipalities in Ocean County. Thus, the general tax rate is right in the

middle in the County. Again, these figures are said to demonstrate that the Township is in excellent financial condition with a declining municipal tax rate and increasing ratables.

The PBA also argues that the national and New Jersey economies are booming. The rate of unemployment is declining and personal income in the private sector is rising. It cited an article by Rutgers University economists Joseph Seneca and James Hughes who testified before the Senate Budget Committee that the State's tax and spending plan for 2004-2005 are extremely bright. Most of the jobs lost in the 2001-2002 recession have been recovered. They described New Jersey as "the regional dynamo" (PBA Exhibit D-1(1) The Treasurer reported that the State would have \$692 million more in revenue than initially expected because of higher income and corporate business tax collections. This prediction was matched by the Office of Legislative Services.

The PBA asserts that its proposed 5% annual increases for four years are in line with the 5.6% increase in personal income enjoyed between January 2001 and January 2002 in New Jersey. Nationally, the figure during this period was reported to be a whopping 6%. Personal wages increased by 3.9% from January 2002 to January 2003. Thus, the 3.25% proposed by the Township in the first year of the agreement is clearly inadequate and not in line with private sector trends. On a more local basis, the PBA cites the three-year settlement of the St. Rose Grammar School teachers who received increases of 5.5%, 6% and 6%. The Monmouth County sheriff's officers hired in 2001 received a 25% increase after the first year under an interest arbitration award. The Jackson Township teachers start at \$40,000, a figure which far exceeds the starting police salary of \$31,000.

A four-year agreement should be awarded because the prior agreement expired at the end of 2002. Thus, the "new" agreement will be almost two years old when the award is issued.

The PBA argues that the Township is an affluent community and that Ocean County is one of the most expensive and desirable places in the country to live. This is said to relate to the interests and welfare of the public, N.J.S.A. 34:13A-16g(1). Money Magazine recently ranked the Monmouth/Ocean County area as the 38th best place to live in the United States. At the same time, median prices of existing homes soared 16.6% from the first quarter of 2003 to the first quarter of 2004, so that the median price now is \$298,000. The increase was three times larger than the national average. This has been an on-going trend. In Jackson Township, the average home sale increased by 58.8% from 2000 to 2003 to stand at \$226,497.

Jackson Township also has one of the highest median household and family incomes in Ocean County. The median household income in 2000 according to the 2000 census was \$65,218, a figure which was surpassed in only two Ocean County municipalities. The figure in Jackson Township exceeded the County average by almost \$20,000. The family income figure in Jackson Township was \$71,045 in 1999 and only three Ocean County municipalities had higher figures. Again, the figure in Jackson Township exceeded the County average by almost \$15,000. Both the household and median family incomes have been increasing rapidly in Jackson Township in the last decade.

Jackson Township is a rapidly growing community in terms of population, subdivision and site plan approvals, and new housing construction. A total of 3,258 new residential units were authorized between 1997 and 2002. It also is a diverse community spread over 100 square miles – the third largest municipality in New Jersey – and with 4,000 acres remaining for additional development. It is close to the Turnpike,

the Parkway and Interstate 195. It hosts not only Six Flags Great Adventure, the second largest private employer in Ocean County and the Township's largest taxpayer which brings in 20,00 to 40,000 visitors a day, but also the Wild Safari park and the new Hurricane Harbor. There are 71 factory outlet stores in Outlet Village and there are a number of campgrounds.

Despite its size, diversity and growth, Jackson Township is extremely safe with the third lowest crime rate in the County in 2002. At the same time, the police officers are busy.

The PBA compared the teachers in Jackson Township with the police officers, noting that the taxpayers pay for both groups. The teachers work many fewer hours and days per year than do the officers and, unlike the teachers, must provide around-the-clock coverage and must work on holidays. Starting salaries for teachers exceeded those of officers by over \$7,000 in 2002.

The PBA also notes that the Township saved over \$2 million in PFRS contributions between 2002 and 2004. The Township was not required to make any pension contributions in 2002 and 2003. There will be reduced contributions in 2005 and for several years thereafter.

The PBA argues that in order for the Township to attract the best police candidates and to maintain parity, it is necessary to award the PBA's salary proposal. It also asks that longevity be restored to all officers.

The PBA asserts that these officers have not received salary increases in the last several years which match those given throughout the County, although it acknowledges that the officers are among the highest paid in the County. Average increases in the County in 1999 were 3.78% when these officers received 3.7%. In 2000, the figures were 3.83% in the County and 3.5% in the Township. In 2001, the County average was 4.02% whereas the Township granted only 3.3%. In 2002, the County average was

4.37% whereas these officers received 3.1%. The County average in 2003 was 4.79%, a figure very close to the 5% proposed by the PBA. In contrast, the 3.25% proposed by the Township would be the second lowest in the County and would cause the gap to continue to grow between these officers and those throughout the County in terms of wage increases. Average increases in 2004 in the County were 4.43% so again the PBA's 5% proposal is much closer to the average than is the 3.5% proposed by the Township. A 3.5% increase would match the lowest increase in the County. At present, the average increase in the County in 2005 is 3.94%⁵ and this, too, exceeds the 3.75% offered by the Township. The Township's proposal would jeopardize the standing of Jackson Township's status as having an elite Police Department.

The Township is said to be one of the few municipalities in the County not to provide longevity to all police officers and a combination of the Township's wage proposals and a failure to restore longevity would have a devastating effect on the morale of these officers and their ability to serve the public. Officers would have little incentive to remain with the Department after having completed the Police Academy or to accept an offer from the Township, a situation that would only be aggravated if the Township's vacation proposal were to be adopted. These are all considerations required by N.J.S.A. 34:13A-16g(2).

Continuity and stability, N.J.S.A. 34:13A-16g(8) also is a statutory criterion and, argues the PBA, an award of its proposal will enhance the continuity and stability of employment whereas the opposite would be true if the Township's proposal were to be awarded. This also is said to relate to N.J.S.A. 34:13A-16g(1), the interests and welfare of the public. Senior officers are said to be more valuable to the community than are junior officers. They know the people and the trouble spots and geography. Their experience makes them more efficient and effective. They also train junior officers.

⁵ The figures shown on PBA Exhibit W-4 shows 3.87%.

Looking at its various proposals, the PBA argues that they should be adopted because they will promote continuity and stability of employment. Thus, its sick leave proposal, while not expanding this benefit, merely seeks to codify the present practice of permitting officers to use up to 40 hours annually to care for family members. The PBA also is seeking to expand the definition of family member to include life partners, a change said to be consistent with contemporary social norms. It also would include family members who reside in the home of an officer.

The on-call proposal is intended to deal with those officers who are required to be on-call such as detectives who receive no compensation for fulfilling this obligation. Payment can be in the form of compensatory time so there need be no economic impact on the Township.

The proposal to change bereavement leave would also expand the definition of immediate family by adding life partner, step-brother, step-sister, nephew and niece. These groups should be covered by bereavement leave, given the changing composition of families.

The PBA has proposed a slight modification to the holiday article by providing payment at double time and one-half to any officer who works overtime on a holiday, whether ordered to work or volunteering to work the overtime. Again, enhanced morale is cited as the justification for this proposal.

Finally, the PBA is seeking several changes in court appearance compensation. It asks that officers receive a four-hour guarantee at time and one-half for court appearances rather than four hours at straight time. It also seeks payment for travel time for court appearances under Article XXII, Section 2. Some of these appearances require several hours of travel time and this should be compensated. This, too, would enhance morale and contribute to the continuity and stability of employment.

Several of the PBA's proposals call for new benefits and, the PBA argues, these, too, should be awarded. Shift bidding is very important to the PBA. Officers in the Patrol Division work a 4-2 schedule with 8 ½ hour days. There are three shifts and the offices do not rotate. At present, officers are assigned to shifts. A shift bidding procedure would permit officers to select shifts based on seniority. This would greatly enhance morale, productivity and efficiency. The proposal would not apply to duty assignments such as detective bureau, traffic safety bureau or the services division. The Director of Public Safety would continue to make assignments to these areas. Furthermore, the PBA recognizes, in its proposal, that there may be a need to alter shifts to meet training or other needs. The proposal, it is asserted, would have little impact on the Township and the Director of Public Safety failed to articulate any basis for a rejection of this proposal at the hearing. Oleksy testified that, in a recent survey of the officers in the Patrol Division, only three expressed a desire to be on a shift different from that to which they are assigned. Thus, while the impact on the Township would be small, it would be of great importance for several officers.

There was a grievance arbitration decision in which, following the death in the line of duty of Officer Robert Ventura on March 18, 2001, Arbitrator Restaino ordered the Township not to pro-rate vacation and personal days for the spouse or beneficiary of an officer killed in the line of duty. The PBA is simply seeking to codify this into the parties' agreement.

Finally, the PBA asks that a Non-Patrol Personnel stipend of \$1,000 be established. This was an item which the PBA believed had been agreed to by the parties. The recipients would be those assigned to the Services Division. Detectives and traffic safety officers already receive such a stipend. For those in the Services Division, unlike the detectives and traffic safety officers who have the \$1,000 added to

their base salaries, the stipend would be a lump sum payment. The PBA notes that these officers work several more days per year than do those in the Patrol Division.

The PBA also asks that the proposals of the Township be rejected. These proposals, if awarded, would have a detrimental impact on employee morale, according to the PBA, and would adversely affect the continuity and stability of employment. The Township has proposed to create two classes of officers for the purposes both of vacation and personal days. Newly hired officers would receive a maximum of 20 vacation days in contrast to the 27 days currently enjoyed by the officers after 15 or more years of service. The Township provided no justification for this proposal. Indeed, based on a review of the vacation data provided by the Township, the PBA contends that its members do not receive excessive vacation leave. The vacation proposed by the Township would be at or near the very bottom in the County. Additionally, only one municipality in the county – Stafford – has a two-tiered vacation system.

Turning to personal leave, again the PBA refers to the information submitted by the Township. The four days received by these officers is in line with the norm throughout the County. A reduction to two personal days would place Jackson Township among the lowest in the County for personal days. There also are no other two-tiered personal day systems. The ability to attract and retain officers would be harmed by this as well as the Township's vacation proposals.

The Township's health insurance proposal would be a radical departure from the current system. Newly hired employees would not be able to receive traditional coverage as a benefit provided by the Township. The Township provided no justification or support for this proposal. None of the Township's collective bargaining agreements include such a provision and these all agreements all run through 2005. There is said to be no reason to impose additional costs on newly hired police officers while all other Township employees are exempt from such a burden. Additionally, the PBA reserved

the right to challenge the legality of the Township's proposal in the event it were to be awarded. The PBA contends that the Township, which is in the State Health Benefits Program, is required to provide benefits on a uniform basis to all employees regardless of their date of hire. (Tr. 103 and 104)

The Township's final proposal relates to college credits. The Township failed to provide information on the costs of the program as it currently exists or the savings it hopes to realize. This, too, should be rejected.

Accordingly, based upon the above, the PBA asks that its proposals be awarded by the arbitrator and that those of the Township be rejected.

Argument of the Township

The Township emphasizes the obligation of an interest arbitrator under the Police and Fire Public Interest Arbitration Reform Act to resolve all unsettled issues by conventional arbitration and to separately determine whether the total annual economic changes for each year of the agreement are reasonable under the statutory criteria.

Preliminarily, the Township makes several points. First, it notes that the Township already is paying (and will continue to pay) more than competitive wages and benefits to its police officers and this must be kept in mind in deciding the current dispute. Second, it asks the arbitrator to be mindful of the fact that the Township already has agreed to accept several of the demands of the PBA in this round of negotiations. It has agreed to the expansion of the definition of immediate family for the purposes of bereavement leave; it has agreed to grant additional clothing allowance provisions; it has agreed to increase the mileage allowance; it has agreed to establish a college scholarship fund for the children of a bargaining unit member who dies in the line of duty; it has agreed to contribute \$10,000 toward the funeral expenses for bargaining unit

members who die in the line of duty; and it has agreed to provide compensatory time for Field Training Officers.

As a legal argument, the Township notes that the interest arbitration law, as amended, places greater emphasis on the interests and welfare of the public. Thus, the statute provides that:

It also is the public policy of this State to ensure that the procedure so established fairly and adequately recognizes and gives all due consideration to the interests and welfare of the taxpaying public... (N.J.S.A. 34:13A-14b.)

The scope of authority delegated to arbitrators is prescribed and statutorily limited and infused with "stringent safeguards." The Township notes that with conventional arbitration, the arbitrator is permitted to award the economic as well as non-economic position of either party with respect to each economic item as well as to reject the position of either party and to fashion his or her own economic package.

The Township also cited the two companion decisions issued by the New Jersey Supreme Court prior to the enactment of the amended interest arbitration statute, Hillsdale PBA Local 207 v. Township of Hillsdale, 137 N.J. 71 (1994) and Township of Washington v. New Jersey State Policemen's Benevolent Association, Inc., Local 206, 137 N.J. 88 (1994) as informing the interest arbitration process and providing necessary guidance to arbitrators and the parties in such cases. Arbitrators must address and consider all statutory criteria, including those deemed not to be relevant.

The Township argues that the PBA in this case has failed to meet its burden of proof with respect to its economic demands and contends that it failed to provide testimony, argument or direct evidence to support to statutory criteria. The PBA acknowledged that the officers, both patrol and sergeants, in Jackson Township are among the leaders in Ocean County and it acknowledged that its aim was to keep them near the very top. The Township asserts, however, that the PBA failed to present

evidence indicating why the bargaining unit members should receive wage increases in excess of the "going rate" or why they should remain "near the top."

The only rationale offered for the PBA's shift bidding proposal was that it would boost morale. At the same time, it acknowledged that a survey of its members revealed that only three of its officers were interested in changing shifts. The Township asserts that there is no need for this proposal.

The PBA has demanded a new "on-call" benefit whereas at present, officers are compensated only when they are actually called in for duty. As computed by the Township, this proposal would cost 730 hours of compensatory time annually or the equivalent of one-third of a patrol officer. If the officer on compensatory time had to be replaced by an officer on overtime, the cost would exceed \$37,000 annually.

The PBA is said to have provided absolutely no justification for its demand that officers receive a guaranteed four hours at time and one-half for court appearances.

There also is said to have been no justification for the PBA demand that all holiday overtime be compensated at two and one-half times. This is purely economic and, suggests the Township, is a thinly disguised effort to provide an opportunity for detectives and special services officers who generally do not work on holidays and who set their own schedules to work on holidays and earn two and one-half times their hourly daily rates.

The demand for a stipend for non-patrol personnel is another obvious attempt to obtain additional money and it was not otherwise justified.

The PBA also has asked to restore longevity to all members of the bargaining unit even though this was discontinued for officers hired after January 1, 1995 and has been discontinued for all other Township employees. Again, the PBA failed to justify this position.

The Township asks that each of these demands of the PBA be denied and, indeed, argues that they must be denied because the PBA failed to meet its burden of proof with respect to each demand. The PBA failed to justify any of its proposals in relation to the statutory criteria and notes that no new evidence is permitted to be introduced in the post-hearing briefs. It contends that reliance upon evidence submitted by the Township and collective bargaining agreements does not provide the support required under the case law and the statutory law.

In contrast to the presentation of the PBA, the Township contends that it presented substantial evidence in opposition to the demands of the PBA and in support of its own proposals in the form of demographic and comparability exhibits and its analysis of the budget and its financial summary. The Township asserts that it met its burden of proof by demonstrating that it could not easily absorb the additional costs associated with the demands of the PBA and that its wage offer and cost containment proposals were consistent with its financial abilities.

The Township notes that the PBA's only objection to the Township's two-tier vacation schedule was that this would create dissension among the members. If this rationale were to be accepted as a sufficient basis for rejecting such a proposal, the Township notes that municipalities would never be able to obtain concessions or to engage in cost containment. The Township notes that it did eliminate longevity for new hires in 1995 and there is no hard evidence that this has had a detrimental effect on morale or that it has created dissension.

The Township's proposal regarding college credits would impact only a few officers. According to Kenney, only two or three officers are taking courses at this time and three already have BAs. Under its proposal, the State University system tuition limits would apply only to those not currently in a program. (Tr. 106)

The Township notes that it is in the State Health Benefits Program and it is not proposing to leave that program. Rather, its proposal is limited in that it would apply only to new hires and it would require those officers to pay the difference, if any, in rates between New Jersey Plus and whatever plan the employee selected. The monthly premium for New Jersey Plus in 2004 for family coverage is \$784.59 whereas the cost under the traditional plan is \$1,046.83, a difference of \$262.24 per month or \$3,146.88 on an annual basis.

The Township points out that the statute requires the arbitrator to make "a reasonable determination of the issues" based upon an application of the eight statutory criteria to which the arbitrator must give "due weight." It then addressed each of these criteria and argued how they should be applied in this case.

The first criterion is the interests and welfare of the public. This is a factor which the arbitrator is required to consider. It calls for an examination of the priority to be given to the wages and other economic benefits received by the officers within the framework of the finite budget of the municipality and its plans. There is the need for a balance between the desires of the employees so that labor strife can be avoided while at the same time maintaining a stable level of governmental services. Fairness to employees cannot be sacrificed so that a municipality can provide lavish and frivolous services to its residents but at the same time a municipality should not reduce its essential services to meet the demands of over-reaching public employees.

The Township cited Hillsdale, in which the Supreme Court stated that although the interest arbitration process is an adversarial one, the public is a "silent party" to the proceeding and it is the taxpayers who feel the ultimate effect. The Township argues that this factor frequently is not given sufficient weight by arbitrators and urges this arbitrator to consider the effect of the award on the citizens and taxpayers of the Township. It cites the testimony of Administrator Kennedy who said that the Township

has imposed a staffing freeze throughout the Township, with the sole exception of the Police Department. (Tr. 103) The Township argues that it would not be in the public interest to grant the demands of the PBA, described as "unreasonable," when there is a hiring freeze. This, it is said, would unduly burden the taxpayers or require a reduction in services.

The Township asserts that the interest arbitration process has been criticized by the public because of the high awards which have been issued. These awards are said to have exceeded both the rate of inflation and private sector salary increases. This results in an increasing burden on the taxpayers. On the other hand, the Township contends that its economic package is consistent with the public interest while still providing reasonable salary increases to the police officers.

The Township notes that in formulating its demands, the PBA simply considers the desires of its members and it does not take into account the public interest or the impact on taxpayers or the lawful authority of the Township or its ability to pay. This is said to be in stark contrast to the Township which considers not only the needs and desires of the bargaining unit but also all of the other factors which it must consider. Thus, the Township is said to be in a better position than the PBA to gauge and weigh the statutory criteria and, for this reason, the Township argues that the arbitrator should award the position of the Township on all issues notwithstanding his conventional authority.

The demographics are cited. This municipality is said to have extremely low per capita income and net valuation taxable and state equalized value while at the same time being saddled with a high tax rate on both a general and equalized basis. In Ocean County, Jackson Township ranks 18th of 33 municipalities in per capita income and its general tax rate is the fourth highest. It is the tenth highest on an equalized basis. Its net valuation taxable is 28th and it is 29th with respect to State equalized values. Thus,

Jackson Township simply does not have the property value or wealth to support the demands of the PBA. It cannot afford to continue to pay its officers at or near the highest rates in the County. It cannot afford to restore longevity. It cannot afford the other economic demands of the PBA.

The proposals of the Township are said to be reasonable. They provide for wage increases while introducing a measure of cost containment for new employees. This is said to make the offer of the Township reasonable and warranted and consistent with the interests and welfare of the public. The Township notes again that it already agreed to a number of proposals of the PBA as listed above and these must be considered in assessing the positions of the two parties.

The second and third criteria involve comparisons and overall compensation. When considering comparisons, the total compensation of the police officers must be compared with those of other employees performing the same or similar services and with other employees generally 1) in public in the same and comparable jurisdictions, 2) in comparable private employment and 3) in public and private employment in general. Overall compensation also must be considered. Again, the Township insists that under these criteria, its offer is the more reasonable and must be selected.

The Township first examined comparable municipalities. It considered all municipalities in Ocean County and examined salaries in 2002, the final year of the expired agreement. Starting salaries for the Township's patrol officers ranked 10th highest and the maximum salary was the 2nd highest. Sergeants also received the 2nd highest salaries in the County. If the demands of the PBA were awarded, the Township asserts that the officers would not only maintain their unjustifiably high salary ranking but the gap actually would widen. On the other hand, the Township asserts that with its offer, relative salaries would rank higher than they did in the 1980s and would exceed

the municipality's ranking on per capita income, median family income and median household income.

Not all municipalities are required to provide the same salaries and benefits. If this were the case, then wages and benefits would be unchanging. At the same time, the comparability criterion does consider State and national trends and requires a consideration of when "enough is enough." If the PBA's longevity proposal were to be awarded, this would unreasonably increase the economic ranking of the Township compared to others in the County. There is no longer said to be a need for this benefit which originated at a time when inadequate salaries were paid and longevity was a means of boosting these salaries based on length of service. There is a Statewide trend to eliminate or to make longevity payments on a flat-rate dollar basis rather than as a percentage which increases automatically as salaries increase.

The Township argued that its vacation proposal is an attempt to recognize that while historically public employees were given generous vacation benefits at a time when they received inadequate salaries, that is no longer the case with salaries but overly generous vacation benefits continue to be provided. Jackson Township provides among the highest vacation benefits in Ocean County. The Township is seeking to grandfather those benefits and to reduce the maximum vacation entitlement for newly hired officers.

Turning to the other Township employees, the Township notes that the police officers receive much larger salaries than do those employees. The highest salary for a clerical employee in 2005 will be \$51,074 and the union which represents those employees negotiated flat rate increases of \$1,225 annually for three years. This works out to increase of 3.72% for starting salaries and 1.64% for maximum salaries. The highest blue collar salary will be \$41,000 in 2005 and the maximum salary increase for a blue collar employee who was off the salary guide was \$1,450 or 1.95%. The

telecommunications employees will have a maximum salary of \$46,375 in 2005 and they accepted annual increases of \$1,225 for three years. This represents an increase of 3.72% for starting salaries and 1.64% for maximum salaries.

The Township submitted the 2002 salaries of all of its department heads and non-unionized employees and noted that the top rate for a patrolman exceeds all Township salaries except that of the Municipal Administrator, Chief Financial Officer, Tax Collector, Municipal Engineer and Director of Public Safety.

Under the Township's salary proposal, the police officers will increase their high salaries to an even higher relative level compared to other Township employees. More dollars will be generated by the Township's officers than the other Township employees received. Additionally, the Township notes that its superior officers, who are represented by PBA Local 168A, received annual increases of 3.75% from 2003 through 2005. Given the high relative salaries of the patrol officers and sergeants, there is no justification for them to receive larger salary increases than those received by the superior officers.

The longevity still received by members of the bargaining unit exceeds that received by other Township employees so no increase in longevity can be justified when other Township employees are considered. The other Township employees had their longevity ended as of 1993.

National trends and private sector increases also are said to support the offer of the Township. The Township asserts that many salary increases across the nation are based on increases in the cost of living and the Township says that its salary proposal more closely approximates these increases, especially when increases in the health care and gasoline are excluded. It notes that these employees do not bear the costs of health care.

Private sector wage increases in New Jersey, as compiled by the New Jersey Department of Labor, show an increase statewide of only 1.6% from 2001 to 2002. This was an increase of an average of \$726, bringing the average salary in 2002 to \$44,879. This is far below the wages paid to bargaining unit members and the increase offered by the Township far exceeds this 1.6% figure. Additionally, as reported by the Labor Relations Reporter, collectively bargaining settlements from January 1, 2003 through September 29, 2003 averaged 3.1% in the first year. There was a decrease in median increases from 3.5% in 2002 to 3% in 2003. The Township asserts that private sector unions recognize that if they overreach in their demands, the jobs of their members will be lost. It cites settlements between the United Auto Workers and the Big Three auto makers where there was a wage freeze in the first and second years, a 2% increase in the third year and a 3% increase in the fourth year. The CWA and Verizon reached a five-year settlement with a lump sum payment of \$1,600 in the first year and 2% increases in the other four years. Other low settlements were cited by the Township as well.

When these things are considered, the Township argues that its offer is more consistent with the comparability and overall compensation criteria than is that of the PBA and it asks that arbitrator to award that offer in full exactly as presented.

The next factor cited is the lawful authority of the employer. Again, this is a factor which must be considered and it must include a consideration of the Cap Law, N.J.S.A. 40A:4-45.1 et seq. That law limits the overall budget increases in municipalities and thus restricts their ability to provide wage increases to their employees. The Cap Law was enacted to control the spiraling cost of local government which, it was recognized, had to be controlled to protect the homeowners. At the same time, municipalities had to have the ability to provide necessary services to their residents.

Under the Cap Law, local governments cannot increase their tax levies by more than 5% over the previous year's levy. While the law does not limit any particular component of the budget to that 5% figure, the overall increase cannot exceed that amount. It is not a line by line limit but it is an overall limit. Salary increases fall within these limits and arbitrators must consider the impact of the Cap Law in rendering an award, as determined in N.J. State P.B.A., Local 29 v. Township of Irvington, 80 N.J. 271 (1979) and City of Atlantic City v. Laezza, 80 N.J. 255 (1979). While there may be emergency appropriations in narrow circumstances to fund an arbitration award, this merely postpones the impact until the next budget year. Thus, municipalities may have to decide whether to lay off police officers or other municipal personnel. Additionally, the amended Cap Law eliminated a number of items which had been exceptions to the Cap Law including the purchase of police vehicles, insurance costs over 1985 levels, 9-1-1 equipment, budgeted solid waste expenses and State and Federal mandates prior to January 1, 1991. The effect of these changes is to put more items under the Cap Law and this further restricts the budgetary flexibility available to municipalities.

The Township argues that the mere fact that a municipality has not budgeted to the limit permitted under the Cap Law does not mean that it can afford or has the ability to pay salary increases proposed by an employee organization. This would ignore long-term budget strategies, the need for capital improvements, debt service, etc. Jackson Township has budgeted less than it could have under the Cap Law but this was dictated by other considerations, it asserts.

The Township cites the four basic revenue sources: surplus, State aid, "one-shot" deals and property taxes.

As reflected in its Financial Summary, in evidence, the Township faces, at best, a stabilizing surplus and, more likely, one that will continue to decline. The reason for this is that the lapsing of reserves, which is a major component of regenerating surplus, is

less and less a source of funds. As of December 31, 2001, the Township had a balance of \$8,906,319. As of December 31, 2002, the balance had decreased to \$8,086,359, a decrease of \$819,960 or 9.2%. The Township Committee anticipated \$6,215,000 of this surplus in its 2003 budget. The surplus balance decreased to \$6,242,493 as of December 31, 2003, a 22.8% decrease. The amount which lapsed into surplus in 2004 from the 2002 reserve account was \$1,631,394. The most that could lapse into surplus in 2005 would be \$1,156,305 and this is based on unrealistic assumptions including the absence of a wage increase. Thus, the Township asserts, there will continue to be decreases in the amounts lapsing into surplus in 2005 and 2006. This is true because those line items in the 2004 budget which reflect sizeable reserves from 2003 were reduced and this further reduces the ability to regenerate the reserve account, thus further reducing the reserves available to lapse into surplus. There has been a pattern of increasing the percentage of surplus balance anticipated from year to year so that in 2004, over 80% was anticipated.

Two other revenue sources also have decreased or will decrease. The availability of "one-shot" deals has decreased as a means of increasing revenue and the deepening State deficit makes it clear that even stable State aid seems unlikely.⁶ The Township has enjoyed several "one-shot" deals including revenue of \$261,500 from liquor licenses in 2004. It also obtained \$94,000 in revenue as a result of liquidating a trust fund called Interfund. The Township also eliminated its Industrial Commission Trust Fund of \$2.2 million and appropriated as a reserve approximately \$1.5 million, thereby leaving about \$700,000. These funds will not be available as revenue sources in 2005 (except for the Industrial Commission funds which will have only half as much

⁶ The Township did acknowledge an increase of a "small amount" of State aid of \$100,000 in 2004. (Tr. 82)

money available). There also was a decrease in the collection of delinquent taxes in 2004 compared to 2003 and this, too, had an impact on revenue.

The other remaining source of revenue is property taxes. Jackson Township has a comparatively high total tax rate, municipal tax rate and equalized municipal tax rate. Thus, this is not a good source of revenue.

The expenditure side of the budget reflects the fiscal pressures felt by the residents with their extremely low per capita income and unreasonably high general and municipal tax rates. The Township noted that it received an unexpected bill in the amount of \$18,000 from the School Board for the use of sewer lines. Its contract with Waste Management reflected an increase in these costs and there was an increase in landfill costs. The Township provided salary increases of 3.5% for all non-union employees, 3.75% for police superior officers and an average of 3.3% for non-uniformed represented employees. Many line item increases reflected these salary increases. An increase in Audit Services of \$44,603 reflects the fact that the 2003 audit had not been completed and will be paid for in 2004.

There was an increase of \$763,843 in the Police Department salaries and wages line item. This reflected salary increases of 3.5% in 2003 and 2004, the hiring of four new officers in 2004 and the payment of incremental increases. Other expenses in the Police Department increased to reflect the cost of twelve new vehicles in 2004, an increase over the ten vehicles purchased in 2003.

The Township also reviewed other line increases and decreases and explained them. It asserts that, overall, it has created a tight budget while still providing for wage increases for the employees and while continuing present levels of service.

What this means is that salary increases awarded to police officers, if in excess of those proposed by the Township, will have a detrimental impact on municipal services and its required projects. Further tax increases will be required. The Township

suggests that its offer, as proposed, is reasonable and should not be modified or increased by the arbitrator. Again, the Township urges the arbitrator to remember that the Township already agreed to expand or add a number of benefits as enumerated above.

The Township noted that its total tax requirements as well as both the municipal and school district portions increased significantly in 2002 over 2001. The school district requirements went up from \$36.7 million in FY 2001 to \$41.5 million in 2002. (Township Exhibit, Section 3, Tab 3)

Next, the Township turned to a consideration of the financial impact on the governing unit and its residents and taxpayers. Citing Hillsdale, the Township notes that this is not the same as the ability to pay. Simply raising taxes is not the answer nor must the municipality prove that it does not have the ability to pay the increase proposed by the PBA.

The Township provided data from the Planning Board which shows that 692 residential units – not for senior citizens – were approved in 2004 and this was an increase from only 29 in 2003 and 141 in 2002. There were 723 in 2001 and 632 in 2000. The Township has a total of 21,318 lots or units.

According to the Township, its offer reflects the State's bleak economic condition and what it refers to as the property tax crisis. It cited newspaper articles and figures from throughout the State which highlight these problems. Layoffs and notices of plant closings also illustrate the situation. The economy affects the ability of the Township to raise taxes and, as discussed above, the budget – both on the revenue side and the expenditure side – show the pressure on the budget with its declining surplus, decreasing State aid, absence of "one-shot" deals, high tax rate, statutorily required expenditures, etc. To exceed the economic package proposed by the Township would negatively impact the Township's attempt to minimize projected tax increases and this

would have an adverse impact on the governing unit, its residents and taxpayers contrary to the statutory mandate.

The Township needs to be able to maintain existing services and programs and to expand those services for which money has been designated by the governing body and it has the right to initiate new programs. The Police and Fire Public Interest Arbitration Reform Act recognizes these rights of municipalities. The Township suggests that any increase beyond that proposed by the Township would have a negative impact on the governing unit and its residents and taxpayers.

The next factor is the consumer price index or cost of living. Wage increases which are the same as increases in the CPI, in theory, permit employees to maintain their standard of living. With a 2002 increase in the CPI of 2.4%, which was a reduction from the 3.4% increase in 2000, employees needed only a 2.4% increase in wages to maintain their standard of living in 2002. In 2003, the first year of the new agreement, prices rose by only 1.9%. Thus, the Township's proposed 3.25% increase well exceeds the increase in the CPI that year. The gain is even more dramatic when it is remembered that these employees do not have to pay for increases in the cost of health care. Wage increases, according to the Township, have consistently exceeded increases in the CPI over the years. Accordingly, the Township contends that its proposal is more realistic and reasonable than is that of the PBA in relation to changes in the cost of living and should be awarded.

The final statutory factor is continuity and stability of employment. The Township asserts that it has been able to maintain stable and continuous employment for its police officers and workforce generally but that this would be jeopardized if the PBA's proposal were to be awarded and, indeed, if an increase in excess of the Townships' proposal were to be awarded. The Township notes that it has imposed a hiring freeze throughout the Township with the sole exception of law enforcement personnel. A review of

staffing levels reveals that there has been a decrease in recent years except in the Police Department.

With a slowing economy in both the public and private sectors, it is said to be even more important to limit the increases to those proposed by the Township. According to the Township, the PBA submitted no evidence regarding this factor whereas the Township provided evidence of continued job losses in the State. Thus, this factor, like the others, favors the proposal of the Township.

All statutory factors are said to favor the position of the Township, as reflected in the above discussion of each of the factors revealed. The Township argues that in light of what it describes as the "nationwide recession" and with the effects of September 11, 2001 still being felt, this is not the time for an award which blindly follows the "going rate." It is certainly not the time to initiate new benefits such as stipends for non-patrol officers and longevity and overtime for employees who are "on-call." At the same time, its proposals regarding vacations and personal days will have no impact upon current employees and will serve to make these benefits more reasonable in the future. This is said to be especially true in light of the improvement in benefits to which the Township has already agreed in these negotiations. The PBA, it is asserted, failed to produce evidence regarding the statutory criteria and this precludes the arbitrator from considering, let alone awarding, these items.

Accordingly, the Township asks that the arbitrator award the wage increases and other changes which it has proposed and that the proposals of the PBA be denied.

Discussion and Analysis

As stated above, the arbitrator is required to "separately determine whether the total net annual economic changes for each year of the agreement are reasonable under the sight statutory criteria set forth in subsection g." Due weight must be given to those

criteria which are judged to be relevant. Each criterion must be considered. Those deemed relevant must be explained and there also must be an explanation as to why any criterion is deemed not to be relevant.

I have carefully considered the evidence which has been presented as well as the arguments of the parties. As described fully below, I have considered the evidence and arguments in light of the statutory criteria. I have considered each criterion and found each to be relevant, although the weight to be given to the factors varies, as discussed. I also have determined the total net annual economic changes for each year of the agreement in order to conclude that these changes are reasonable under the criteria.

I shall set forth the terms of the award at this time so that, in discussing the evidence and applying the statutory criteria, the actual terms of the award, rather than the proposals of the parties, will be the reference point. The parties necessarily based their arguments and related the evidence to the offers of the parties. I shall not do so because I have the authority and responsibility to fashion the terms of the award in this conventional arbitration proceeding.

The award shall cover the term January 1, 2003 through December 31, 2006. Although the Township proposed only a three-year award, the passage of time makes a four-year award more reasonable. The prior agreement expired on December 31, 2002, over one and two-thirds years ago. A three-year agreement would have a prospective application of only one and one-third years and the parties would be compelled to commence the negotiation and arbitration process in less than one year with its attendant costs. Both parties will gain predictability by having this agreement run through 2006. This will be especially helpful to the Township in preparing its budgets because its costs of police wages will be known.

The stipulated items shall be included in this agreement as follows:

1. Article XI – Bereavement: Section 1. The parties agreed to provide that bereavement leave is to be four consecutive regularly scheduled working days and not to include an employee's days off.
2. Article XIV – Clothing and Maintenance Allowance: Section 2. The parties agreed upon a new clothing list which reflects the uniforms and equipment which is presently required.⁷ They also agreed that if the Township institutes any change in the standard uniform and/or equipment, the Township will satisfy the cost of for the initial issuance of this uniform/equipment. They also agreed to provide that upon completion of the Police Academy, the Township will reimburse newly appointed Police Officers for all clothing and equipment that said officer was required to purchase by the Police Academy.
3. Article XIII – Mileage Allowance: The parties agreed to increase the mileage rate from \$.18 per mile to the IRS rate (currently \$.31 per mile).
4. Article XIV – Grievance Procedure, Section D: The parties agreed to extend the time period for the Township Committee to act upon a grievance from fourteen (14) working days to twenty (20) working days.
5. Article XXI – Children of Employee: The parties agreed to the following language: "The children of an employee who dies in the line of duty shall be given a scholarship to the college of their choice at the Township's expense with expense/reimbursement in the amount of \$7,500 per year."
6. Funeral Expenses (New Article): The parties agreed that the Township shall contribute \$10,000 as payment to defray the cost of funeral and other related expenses if an employee dies in the line of duty.

⁷ The items are listed in an attachment to the June 2, 2004 letter to Mr. Glickman from Mr. DeFillippo.

7. FTO Stipend (New Article) – The parties agreed to provide Field Training Officers with forty-five (45) minutes of compensatory time for each shift in which they are performing duty.

Salaries shall be increased as follows:

January 1, 2003	3.9%
January 1, 2004	3.9%
January 1, 2005	3.9%
January 1, 2006	3.9%

Employees who have retired shall receive these increases.

There shall be no change in Article XVIII, Section 3. Thus, longevity shall continue only for those officers hired before January 1, 1995.

Article V, Sick Leave, shall be modified to specifically provide that officers may use up to 40 calendar hours of sick time per year to care for a family member. This is not a change in practice but simply a codification of the existing practice. For the purposes of this provision, "family member" is defined as a spouse, children, stepchildren, life partner or other relative living in the residence of the officer.

Article VIII, Overtime, Section 5 (B) shall be revised to provide one (1) hour of compensatory time for each day that an officer is required to be "on call." Article VIII also will be revised to provide that the four-hour guarantee when an officer is called in to work shall not apply when the officer commences overtime immediately after the end of his/her shift or when the overtime runs up the beginning of the officer's shift.

Article XI, Bereavement Leave, Section 2 shall expand the definition of "immediate family" to include life partner.

Article XII, Holidays, shall be revised to make clear that any employee who actually works on a holiday, whether scheduled or not, receives total compensation of two and one-half times the normal daily rate.⁸

There shall be no change in Article XXII, Court Appearances.

A new provision will be added to the agreement incorporating the opinion and award of Arbitrator Restaino which was issued on September 10, 2001. The provision shall read as follows:

In the event that a police officer is killed in the line of duty, that police officer's spouse or beneficiary shall receive payment for all accrued vacation and personal days. There shall be no pro-rating of those days.

The following Shift Bidding article shall be added as a new article:

Section 1. Shift assignments shall be made, where all qualifications are equal, pursuant to a seniority based bid system. Standard slips shall be developed and distributed to all affected personnel in the second week of November of each year. The employee shall list his/her choices giving a first, second and third preference. Assignments shall then be made based on seniority and posted no later than the first week of December. This process shall be repeated annually. These assignments shall take effect as of January 1st and remain in effect until the procedure is repeated the following year.

Section 2. This shall not be interpreted to mean that duty assignments, such as Detective Bureau, Traffic Safety, Services, etc. are to be put to bid. Those assignments remain the prerogative of the Director of Public Safety, which shall be in accordance with controlling statutes, judicial decisions, and this

⁸ The PBA's proposal is not clear. If it is seeking double time and one-half plus straight time for officers who work on a holiday but are not scheduled to work on that holiday, then the request is denied.

agreement. Further, in order to met the needs of training and/or specialized qualifications, shift assignments may need to be altered in order to meet the bona-fide safety needs of the citizens of the Township. In these cases, the change shall be made with timely notice and written explanation. The change shall last until such time as the specific needs have been met, at which time the said employee shall be returned to his/her bid shift. This section cannot be used as subterfuge to avoid overtime.

Section 3. This article shall be applied equally, among members of the same rank. Patrol officers shall bid with patrol officers, sergeants with sergeants, etc.

Section 4. This article shall not preclude employees from voluntarily switching or swapping with one another, prior to the re-bid date. However, as is the current practice, such switches must occur with the approval of the Director of Public Safety or his designee. Such approval shall not be arbitrarily or capriciously denied.

There shall be no Non-Patrol Personnel Stipend.

There shall be no change in Article IX, Vacations.

There shall be no change in Article X, Personal Days.

There shall be no change in Article XIII, Hospital and Medical Insurance.

Article XXVI, College Credit Program, Section F, shall be revised to limit the payment for college credits to the per credit cost at the New Jersey State University System with the employee paying any cost in excess of that rate. This shall apply only to employees not currently enrolled in a college credit program.

It is necessary to calculate the total net annual economic changes for each year of the agreement. This cannot be not a precise calculation but a very good approximation is possible. By far the most significant of the cost items are the salary

increases. The parties did not provide a breakdown of the distribution of the police officers and sergeants on the salary schedule. Therefore, I have assumed that all officers in 2002 were at the top step of the salary schedule: \$74,516 for police officers and \$84,947 for sergeants. This, of course, overstates the actual cost to the Employer because not all officers are at the top step. Four officers were hired in 2004. Nevertheless, I shall use that assumption. With 67 police officers and nine sergeants on the roster in 2004, the 2002 base would be \$5,757,095 (i.e. $67 \times \$74,516 + 9 \times \$84,947$). The base will increase by 3.9% each year as a result of the annual salary increases of 3.9%.

Additionally, there are a number of other items. The provision of compensatory time for officers who are on call can be calculated. At present, two officers are on call each day. That is a total of 730 person hours (2×365 hours). The work year is 2068 hours. Dividing 730 by 2068 yields 35%. Thus, the cost of this benefit is .35 of a police officer. Based on the top rates in 2003, 2004, 2005 and 2006, the cost of this benefit will be \$27,098, \$28,154, \$29,252 and \$30,393, respectively, in those four years. This assumes that the Township will continue to have two officers on call each day. With a cost imposed on this assignment, the Township may decide that it is not worth the money or it may determine another and less expensive way to provide the same protection. Thus, the cost may be less than calculated. Also, of course, the time earned will be compensatory time so, in reality, the Township may well have a zero cost because it will not need to replace the officer when the officer uses the compensatory time.

There are a number of other items which have an economic impact but these are negligible. The parties provided no evidence to show the frequency that an officer performs field training and, as the parties agreed, will receive 45 minutes of compensatory time. Again, the Township may well be able to arrange it so that officers

who earn and take compensatory time for this activity do not have to be replaced so the real cost will be zero.

The other items awarded will have no or negligible or unquantifiable costs. The codification of the practice regarding the use of sick leave to care for a family will have no impact. The addition of life partners to the list of those eligible to receive such care will be minimal. That is true as well regarding the addition of life partners to those for whom bereavement leave can be taken. As I read the contract, officers working on a holiday already receive double time and one-half for working on holidays. Thus, this is not a change.⁹

The addition of the sentences based on the decision of Arbitrator Restaino will have no impact unless an officer is killed in the line of duty. If that should occur, the cost would be minimal: the difference between the maximum of the officer's total of vacation days and four personal days if none of those days had been used that year and the portion of those days which have been earned if earned on a pro-rata basis. (i.e. if the officer were to die in the line of duty on June 30 of a year, that officer would have earned half of his/her vacation and personal leave days on a pro-rated basis so the cost to the Township would be for the remaining 50% of those days).

The shift bidding provision will have no cost to the Township.

The college scholarship change from \$5,000 to \$7,500 for the children of an officer killed in the line of duty would be minimal if an officer with children were to be killed in the line of duty: a maximum of \$2,500 for each of four years for each child of the deceased officer.

⁹ Article XII, Holidays, provides in Section 1 that officers receive eight hours of holiday pay at straight time for the holidays which are listed. Section 2 provides that employees who have to work on a designated holiday "shall receive compensation at time and one-half in accordance with his regular rate of pay..." Thus, employees who work on holidays receive double time and one-half. As stated above, if the PBA is seeking triple time and one-half for some officers, the proposal is denied.

The change in bereavement leave to four consecutive working days also will be minimal but dependent upon the number of deaths in the immediate family and the schedules of the officers affects.

The change in the clothing and maintenance provision will have no economic impact.

The increase in the mileage allowance from \$.17 per mile to a current \$.31 per mile will be minimal.

The change in the grievance procedure will have no economic impact.

The provision of \$10,000 for funeral expenses will have no impact unless an officer were to be killed in the line of duty.

Finally, the Township's proposal, which will be awarded, to limit tuition expenses to the State University system rate per credit will result in a modest savings to the Township but only prospectively for officers who enter college programs after the date of this award. The savings cannot be quantified.

A reasonable estimate is that the net effect of these changes will be .1%. Adding that figure to the 3.9% increase for wages, I have calculated the total net annual economic changes as 4% each year.

Thus, the 2002 base is \$5,757,095.

The cost in 2003 will be \$5,987,379. This is a total net annual economic change of \$230,284.

The cost in 2004 will be \$6,226,874. This is a total net annual economic change of \$239,495.

The cost in 2005 will be \$6,475,949. This is a total net annual economic change of \$249,075.

The cost in 2006 will be \$6,734,987. This is a total net annual economic change of \$6,734,987.

The total difference in the cost of the award versus the cost of the Township's offer in \$43,178 in 2003, \$74,626 in 2004 and \$92,992 in 2005. The Township did not submit an offer for 2006.

I shall discuss these costs, and explain why I deem them to be reasonable under the statutory criteria, in the subsequent sections of this decision.

Interests and Welfare of the Public As the Township noted, the New Jersey Supreme Court made it clear in Hillsdale that an interest arbitrator must always consider the interests and welfare of the public in rendering an interest arbitration award. The Reform Act explicitly requires the arbitrator to consider the Cap Law in applying this criterion.

This criterion requires that competing interests be balanced. There must be an adequate level of services for the public including, obviously, police services. This Department does a good job based on the evidence. The area for which it is responsible is a very large one and there is much diversity in the economy with Six Flags Great Adventure and numerous commercial establishments along with a rapidly rising residential population but the crime rate is low. The data shows that the crime rate in Jackson Township in 2002 was the third lowest in Ocean County. Notwithstanding the fact that the officers are doing an excellent job, the public wants to obtain these police (and all other services) at the lowest possible cost so that taxes and tax increases can be kept to a minimum. The lower the salaries and benefits of police officers, the more officers and other employees and services can be provided.

The municipal purposes tax rate in Jackson Township ranked right in the middle of the County in 2003 and the effective tax rate was 11th of 32 municipalities. Thus, with an overall tax rate that is above the average in ranking and a municipal purposes rate that is in the middle, it cannot be said that taxes are excessively high in Jackson compared to the other municipalities in the County. Data provided by the Township

show that the median family income in the Township ranked fourth and median household income ranked third in the County. There is a very low percentage of social security recipients. The percent of households receiving public assistance was 1.36%. Median home value was 14th in the County. This is not the picture of a municipality whose residents are in great need of relief (although everyone would welcome lower property taxes).

To continue to attract and retain a highly qualified and productive and competent police force, it is necessary that they be adequately compensated. While management and supervision are important, and is provided in Jackson Township, a reasonable and competitive level of compensation is necessary for a productive and professional police department with high morale. This also is consistent with harmony and stability in labor relations. It assists in attracting qualified applicants and in the retention of those who are selected. The alternative is turnover; lower productivity; higher recruitment, selection and training costs; and labor unrest.

The salary increases awarded are slightly below average increases in Ocean County and these officers have received below average increases at least since 1999. The compensation, however, with the increases awarded, will permit the officers to remain near the top in the County and will not damage the ability of the Township to attract and retain superior officers. The relative position of these officers will decline only very modestly.

The increases exceed those generally received in the private sector and are above the increase in the cost of living, thereby assuring that the officers will continue to enjoy an increase in purchasing power and standard of living.

When the level of salaries is considered, it is clear that it is not necessary to reinstate the longevity system for officers hired after January 1, 1995 when the program was grandfathered. The trend appears to be to limit or eliminate longevity as a separate

benefit. A comparison of salaries in Jackson Township with salaries and, where it exists, longevity, in the other municipalities in Ocean County indicates that the officers are and will continue to be compensated competitively.

The awarding of one hour of compensatory time for each day that an officer is required to be "on call" is a recognition that being on call limits the ability of the officer to engage in other activities and to be in a situation where he or she cannot be contacted to return to work on short notice. This inconvenience deserves to be compensated.

As stated above, the other items awarded, including those agreed to by the parties, are of minimal economic consequence and reflect what I believe is appropriate and justified.

While the salary increase exceeds the increases the Township gave to its unorganized employees or which it negotiated with the other organized employees, including the Police Superior Officers, I believe that the increases are justified when the officers are compared to other police officers in Ocean County. This consideration overcomes the internal comparisons.

As discussed more fully below in the section entitled **Lawful Authority**, the limits imposed by the Cap Law will not be exceeded as a result of this award. The Township has not argued that even an award of the PBA's proposal would cause it to exceed the limits imposed by the Cap Law. There is a considerable Cap bank which could be tapped, if necessary, although that will not be necessary.

Comparisons The law requires that the wages, salaries, hours and conditions of employment of the Township's officers be made to private employees in general, to public employees in general, and to public employees in the same or similar comparable jurisdictions.

First, police officers provide an inherently governmental service and there are no (or few) private sector employees who provide the same services as do police officers.

Thus, there are no easily identified comparable private employees with whom the Township's police officers can be compared and neither party submitted evidence which it claim compared any private sector employees performing the same or similar services to those performed by the Township's police officers. This is not a factor in deciding this case.

It is fruitful to compare the Township's police officers and private employees in general. The average annual wage change in the private sector in New Jersey, as reported by the New Jersey Department of Labor, was published in 2004 and related to the change between 2002 and 2003. It reported a change of 2.5%. The change reported for Ocean County was 3.4%.¹⁰

The U.S. Department of Labor Bureau of Labor Statistics makes data available on its web cite at www.bls.gov.¹¹ As reported in the Employment Cost Index for the private sector, total compensation increased by 3.9% from the first quarter of 2001 to the first quarter of 2002, by 3.8% from the first quarter of 2002 to 2003 and by 4% from the first quarter of 2003 to the first quarter of 2004. These figures are very close to the salary and benefit increases which I have awarded. Thus, on the basis of private sector comparisons in general, the award is reasonable.

Second, comparisons are to be made with employees in public employment in general. As with the private sector comparisons, the parties submitted very limited data most of which was limited to specific situations and did not permit generalization. The BLS reported increases in total compensation for state and local government of 3.9% from the first quarter of 2001 to the first quarter of 2002, 4.2% from the first quarter of 2002 to the first quarter of 2003 and 3.4% from the first quarter of 2003 to the first quarter of 2004. Again, these figures are close to the total compensation increases of

¹⁰ These annual reports are provided to interest arbitrators by PERC and the 1993 report was cited by the Township.

¹¹ I take arbitral notice of this data.

4% which I have awarded and, on that basis, I deem the award to be reasonable on the basis of general public sector comparisons. The data published by the New Jersey Department of Labor showed an increase of 3.6% for all government employees in New Jersey from 2001 to 2002 and an increase of 3.1% from 2002 to 2003.

Third, comparisons are to be made with employees in public employment in the same and similar comparable jurisdictions. The Township negotiated increases of \$1,225 across-the-board with its clerical employees and telecommunications employees and of \$1,450 with its blue-collar employees. It negotiated increases of 3.75% with the police superior officers for 2003, 2004 and 2005.¹²

Thus, the salary increases of 3.9% exceeds the increases of the Township's other organized employees, including, by less than .5% over three years, the increases received by the Township's two captains and five lieutenants.¹³ I believe that the other comparisons and the other statutory criteria outweigh this part of the comparisons.

The remaining comparison which is required is that between the Township's police officers and police officers in similar comparable jurisdictions. Both parties have accepted Ocean County as the relevant group for comparisons and that is reasonable.

The number of hours worked by police officers in Ocean County is 2080 for 23 of the 32 communities and 2068 hours for four of the others, including Jackson Township. The remaining three departments work fewer hours.

The Township submitted data which show that the starting patrol officer salary in 2002 in Jackson Township was \$32,926, a starting salary with ranked tenth in the County. The maximum salary of \$74,516 was the second highest in the County in 2002.

¹² The Township submitted salaries of department heads and others who are not represented for 2004 but not for the prior year so I do not know the increases received by these employees. In its brief, the Township place these increases at 3.5%.

¹³ No comparative data on the salaries of lieutenants and captains was provided so I do not know how their salaries and compensation compares to others of that rank in the County.

Salaries for sergeants in 2002 were \$84,947 and this, too, was the second highest in the County.

There is no longevity in Jackson Township for officers hired in 1995 and thereafter. The PBA provided data which includes both salary and longevity. This is the best way to fairly and properly compare officers in the County because an increasing number – and eventually all – officers will not receive longevity in Jackson Township.

In 2001, Jackson Township's top patrolmen ranked 2nd in the County when longevity is not included for the officers in Jackson but longevity is included for the other officers.¹⁴ The ranking was third in 2002. In 2003, with a 3.9% increase, the ranking will continue to be third. In 2004, with a 3.9% increase, the ranking will be second of the 15 reported settlements. In 2005, with a 3.9% increase the ranking will be first but there are only six reported settlements and the officers in Jackson Township will be over \$8,000 behind the 2004 rate in Brick Township where there is no settlement for 2005.

The significance of longevity can be seen as an addition to earnings when it is realized that 20 municipalities provided longevity ranging from a low of \$1,600 to a high of \$4,993 in 2002 for top patrolmen. (PBA Exhibit W-17) Fourteen departments in the County provided sergeants longevity ranging between \$1,600 and \$5,185 in 2002.

A significant fact concerns the salary increases received by the officers in Ocean County. In 1999, Jackson Township's officers received 3.7% and the County average was 3.78%. In 2000, the average increase was 3.61% and in Jackson Township it was 3.5%. In 2001, the average was 4.02% and in Jackson Township the increase was 3.3%. In 2002, the average was 4.09% whereas in Jackson Township it was only 3.1%. In 2003, the average increase was 4.39%, .49% above the 3.9% awarded in Jackson Township. In 2004, the average increase, for 14 reported settlements, was 4.13% and

¹⁴ The parties did not submit data showing that any other officers in Ocean County had their longevity grandfathered.

this, too, is above the 3.9% awarded in Jackson Township. In 2005, based on only five reported settlements, the average increase is 3.87%. Thus, at least since 1999, the officers have not, and under the terms of this award, will not, have received an increase equal to the average percentage increase in the County.¹⁵ Accordingly, I believe that the 3.9% annual increases are fully justified on a comparative basis.

The data for the sergeants are similar. In 2002, a top sergeant in Jackson Township after ten years received \$84,947, the second highest salary in the County inclusive of longevity for those in the County but not in Jackson Township. In 2003, with a 3.9% increase, they will receive \$88,260 which will continue to rank second. In 2004, with a 3.9% increase, they will receive \$91,702 and will again rank second of nine reported settlements. In 2005, with a 3.9% increase, they will receive \$95,278, the highest among the five reported settlements (although still over \$4,000 behind the 2004 rate in Brick Township).

The average percentage increases for sergeants in Jackson Township were consistently above those received by the sergeants in Ocean County from 1999 through 2002 and will continue to be behind those received by sergeants in the County in 2003 (3.9% v. 4.82%), in 2004 (3.9% v. 4.85%) and in 2005 (3.9% v. 4.1%).

Thus, for sergeants as well as patrol officers the increases awarded are fully justified on a comparative basis.

Overall Compensation In general, the overall compensation received by the officers in this bargaining unit has not been shown to be unusual or out of the mainstream in any way with the exception of the fact that longevity is a widely enjoyed benefit for officers in Ocean County whereas it has ended in Jackson Township for

¹⁵ In 2004, based on the five reported settlements, the increase will essentially match the current reported County average.

officers hired in 1995 and thereafter. I have taken this into consideration by comparing salaries plus longevity in the previous section.

The overall compensation has been discussed above in the context of private sector total compensation and total compensation for government workers. I would like to address several specific items raised by the parties. The Township has proposed several changes. One relates to health insurance. The second relates to vacation. The third relates to personal days.

The Township has proposed that newly appointed officers be limited to NJ Plus as their plan unless they pay the difference between the cost of that plan and a more costly plan selected by the employee. Putting aside the question raised by the PBA regarding the legality of such a proposal for a member of the State Health Benefits Program, this proposal cannot be justified. Not only does the Township not have a similar plan for any other Township employees but it did not demonstrate that such a plan is common in the County for police officers.

The Township also proposed a two-tier vacation schedule so that newly hired officers would receive less vacation than those currently employed. The maximum of 27 days received by officers in Jackson Township ranks tenth in the County whereas a maximum of 20 days, as proposed by the Township, would be tied for the lowest. Its proposal at other levels of seniority is even more out of line compared with others in the County. This proposal was not justified.

Sixteen of the municipalities provided four or more personal days. Thus, the Township's current personal day benefit is right in the middle of the County and the Township did not justify a reduction. When combining holidays and personal days, the officers in Jackson receive 19 days, tying them for sixth in the County with two other municipalities. Again, the Township failed to justify this proposed change.

I have considered these three proposals in the context of the overall settlement with its slightly below average wage increases. Thus, any reduction in benefits would be extremely difficult to justify.

Stipulations The stipulations of the parties were set forth above and will be incorporated in the award. There were no other stipulations.

Lawful Authority The arbitrator is required to consider the limitations imposed by the Cap Law as well as any other statutory or regulatory limitations on the authority of the employer. Neither party cited any such limitations except the Cap Law.

The Cap Law limits the amount by which a municipality can increase its final appropriations as a means of controlling the costs of local government and protecting homeowners. It does not, however, limit any particular line item but only the total appropriations.

The Township, while claiming that it is and will continue to face increasing budgetary pressures as a result of a leveling or reduction in revenues (excepting property taxes) and an increasing utilization of surplus, has not asserted that it has an inability to fund even the increases proposed by the PBA, let alone the amounts which I have awarded.

As the PBA noted in its brief, the evidence is that the Township has a substantial Cap bank and that it has consistently adopted budgets below the statutory maximum and has not been required to use all of the money that it has budgeted. The Township budgeted a total of 10% less than it could have under the Cap Law between 2001 and 2004. While it will not be necessary to the Township to utilize this authority to fund this award, it is evident that it has the statutory authority to fund this award and it has not claimed to the contrary. Indeed, the Township's 2004 appropriations were approximately \$1.8 million less than they could have been under the Cap Law. (PBA Exhibit J, Sheet 3b)

There are no limitations on the lawful authority of the Township which will be breached as a result of this award.

Financial Impact I recognize that the ability to pay a salary increase is not the same as justifying such a salary increase. The amended statute as well as Hillsdale and Washington Township make this clear. It is necessary to assess the financial impact of any award on the governing unit, its residents and taxpayers.

This award will impose costs on the Township beyond those offered by the Township in its offer of \$43,178 in 2003, of \$74,626 in 2004 and of \$92,992 in 2005. The Township did not submit an offer for 2006. These amounts obviously are miniscule in relation to the Township's total appropriations in 2004 of approximately \$30 million. They are on the magnitude of less than 1/10th of a percent in 2003 and .015% in the 2004 and 2005.¹⁶

The Borough has argued that its revenue sources aside from property taxes are unlikely to increase and may decrease. Thus, it cites State aid as not likely to increase and one-shot deals as ending soon. Also, it has been utilizing increasing amounts of surplus in recent years. That leaves only property taxes as a source for raising additional revenues.

While it is true that the surplus balance has been declining, the Township still had a sizeable surplus of \$1.2 million as of January 1, 2004 and has demonstrated an ability to regenerate surplus. The amounts regenerated have been large: \$5 million in 2001, \$5.6 million in 2002 and \$4.3 million in 2003. The Township – and this is not to suggest that its budgeting has not been prudent – has consistently underestimated the amount of taxes which will be collected. This permits revenues to exceed the budgeted amount, thereby contributing to the regeneration of surplus.

¹⁶ These figures are high, as noted above. Because the parties did not submit a breakdown of the officers on the salary schedule, I assumed that all officers were at the top of the guide. Thus, actual costs to the Township will be less than discussed in this decision.

An important feature of Jackson Township has been its growth. This have resulted in increased assessed valuations and the attendant increase in property tax revenue.

Although the Township has asserted that it has an unreasonably high tax rate, the fact is that the municipal purposes tax rate, which provides the revenue for police officers and other municipal expenditures, this rate has actually declined in recent years. It was .682 in 1998 and has declined or remained stable every year since that time and stands at .576. Sixteen of the municipalities have higher rates. Thus, the Township is exactly in the middle of the County on this measure.

Assessed valuations increased by over \$650 million between 1998 and 2003. In 2004, 692 residential units were approved by the Planning Board. Therefore, these increases will continue. There is a large amount of remaining vacant land: 8.69%, the fourth highest figure in Ocean County.

The effective tax rate in 2002 was 2.278 and this was the 12th highest in the County of 33 municipalities. (PBA Exhibit U-4, Abstract of Ratables, Ocean County, 2003) This is a relatively high ranking but it is far from the highest.

The Township also has cited what it describes as "extremely low per capita income" in Jackson Township as a factor to be considered. The data submitted by the Township, however, paints a much more positive image. Median family income ranked fourth in the County, median household income ranked third, the percentage of households receiving social security ranked near the bottom at 30th, and the percentage of households receiving assistance ranked 20th. Even per capita income, which the Township singled out, was 18th in the County, only slightly below the midpoint.

The Township has not cited any services or programs, either new or existing, which it claims will be jeopardized by an award of the magnitude provided by this

decision. Indeed, as stated, the award exceeds the amounts proposed by the Township by very small amounts.

Cost of Living Changes in the cost of living must be considered. These changes generally are measured by the Consumer Price Index which is published by the Bureau of Labor Statistics. The increase in 2003 was 2.8% in the New York-Northern New Jersey area. Comparing June 2003 to June 2004, the increase was 4.6%. Thus, salary increases just below 4% are quite close to recent increases in the CPI.

The increases awarded should permit the officers at least to maintain their standard of living and, consistent with historical trends, it is hoped that they will be able to improve their standard of living along with all other citizens as increased productivity permits the overall economy to grow.

Continuity and Stability of Employment While both parties argued that the adoption of their offers was necessary for the continuity and stability of employment, this is not a strong factor in deciding this case. Of course, an award between the proposals of the parties goes at least part way toward meeting the arguments of each party. There is no evidence that officers have been leaving the Township recently nor that the Township has had difficulty filling new positions. This award is one which does not provide a significant change in the status quo. While a little below the "going rate" received by other officers in the County, the salaries will remain high because they are starting high, even without a longevity benefit for employees hired in and after 1995.

I have not adopted those proposals of the Township which could, I believe, at least over time, adversely affect the ability of the Township to attract and retain the best police officers. I refer to the Township's proposals to limit the amount of health insurance it would provide to new hires and to limit their vacation and personal days as well. I also have rejected a number of the PBA's proposals, including, significantly its proposal to restore longevity for all officers, as unnecessary to maintain stability.

The award will not compel the Township to curtail police or other services. Nor is there any reason to believe that the award will cause current officers to seek employment elsewhere based on the contract terms nor to believe that the Township will experience difficulty attracting new officers as required. I do believe that the awarded shift bidding proposal, while only a few officers may change shifts as a result of bidding, nonetheless is a very important benefit for those few officers and one which will contribute to continuity and stability of employment.

Summary

I have carefully considered the evidence and the arguments of the parties in relation to the statutory criteria as, I believe, the extensive presentation above demonstrates. I have considered each of the statutory criteria and found each to have relevance. The award, as is typical in a conventional arbitration proceeding, falls between the final offers of the two parties and both accepts and rejects some proposal of each party.

The only economically significant item awarded is the 3.9% salary increase for each of four years. That increase is a little below the average increase realized by police officers in Ocean County but it will permit these officers to retain their high ranking in the County. Overall compensation will continue to be well within the norm for police officers, even without longevity. It also will preserve their purchasing power or standard of living. It provides salary increase very close to those being received by other employees, both public and private, in general. It does not conflict with the lawful authority of the Township nor, specifically, the constraints imposed by the Cap Law. I do not believe that it will have an adverse impact on the governing unit, its residents or taxpayers. As noted, the amounts awarded exceed those proposed by the Township only by very modest amounts. The award also is consistent with the interests and welfare of the public. It will not jeopardize continuity and stability of employment.

Accordingly, I hereby award the following:

AWARD

The term of the new agreement shall be four years, January 1, 2003 through December 31, 2006.

Salaries shall be increased as follows:

January 1, 2003	3.9%
January 1, 2004	3.9%
January 1, 2005	3.9%
January 1, 2006	3.9%

Employees who have retired shall receive these increases.

There shall be no change in Article XVIII, Section 3. Thus, longevity shall continue only for those officers hired before January 1, 1995.

Article V, Sick Leave, shall be modified to specifically provide that officers may use up to 40 calendar hours of sick time per year to care for a family member. This is not a change in practice but simply a codification of the existing practice. For the purposes of this provision, "family member" is defined as a spouse, children, stepchildren, life partner or other relative living in the residence of the officer.

Article VIII, Overtime, Section 5 (B) shall be revised to provide one (1) hour of compensatory time for each day that an officer is required to be "on call." Article VIII also will be revised to provide that the four-hour guarantee when an officer is called in to work shall not apply when the officer commences overtime immediately after the end of his/her shift or when the overtime runs up the beginning of the officer's shift.

Article XI, Bereavement Leave, Section 2 shall expand the definition of "immediate family" to include life partner.

Article XII, Holidays, shall be revised to make clear that any employee who actually works on a holiday, whether scheduled or not, receives total compensation of two and one-half times the normal daily rate.

There shall be no change in Article XXII, Court Appearances.

A new provision will be added to the agreement incorporating the opinion and award of Arbitrator Restaino which was issued on September 10, 2001. The provision shall read as follows:

In the event that a police officer is killed in the line of duty, that police officer's spouse or beneficiary shall receive payment for all accrued vacation and personal days. There shall be no pro-rating of those days.

The following Shift Bidding article shall be added as a new article:

Section 1. Shift assignments shall be made, where all qualifications are equal, pursuant to a seniority based bid system. Standard slips shall be developed and distributed to all affected personnel in the second week of November of each year. The employee shall list his/her choices giving a first, second and third preference. Assignments shall then be made based on seniority and posted no later than the first week of December. This process shall be repeated annually. These assignments shall take effect as of January 1st and remain in effect until the procedure is repeated the following year.

Section 2. This shall not be interpreted to mean that duty assignments, such as Detective Bureau, Traffic Safety, Services, etc. are to be put to bid. Those assignments remain the prerogative of the Director of Public Safety, which shall be in accordance with controlling statutes, judicial decisions, and this agreement. Further, in order to met the needs of training and/or specialized qualifications, shift assignments may need to be altered in order to meet the

bona-fide safety needs of the citizens of the Township. In these cases, the change shall be made with timely notice and written explanation. The change shall last until such time as the specific needs have been met, at which time the said employee shall be returned to his/her bid shift. This section cannot be used as subterfuge to avoid overtime.

Section 3. This article shall be applied equally, among members of the same rank. Patrol officers shall bid with patrol officers, sergeants with sergeants, etc.

Section 4. This article shall not preclude employees from voluntarily switching or swapping with one another, prior to the re-bid date. However, as is the current practice, such switches must occur with the approval of the Director of Public Safety or his designee. Such approval shall not be arbitrarily or capriciously denied.

There shall be no Non-Patrol Personnel Stipend.

There shall be no change in Article IX, Vacations.

There shall be no change in Article X, Personal Days.

There shall be no change in Article XIII, Hospital and Medical Insurance.

Article XXVI, College Credit Program, Section F, shall be revised to limit the payment for college credits to the per credit cost at the New Jersey State University System with the employee paying any cost in excess of that rate. This shall apply only to employees not currently enrolled in a college credit program.

The stipulated items shall be included in this agreement as follows:


1. Article XI – Bereavement: Section 1. The parties agreed to provide that bereavement leave is to be four consecutive regularly scheduled working days and not to include an employee's days off.

2. Article XIV – Clothing and Maintenance Allowance: Section 2. The parties agreed upon a new clothing list which reflects the uniforms and equipment which is presently required.¹⁷ They also agreed that if the Township institutes any change in the standard uniform and/or equipment, the Township will satisfy the cost of for the initial issuance of this uniform/equipment. They also agreed to provide that upon completion of the Police Academy, the Township will reimburse newly appointed Police Officers for all clothing and equipment that said officer was required to purchase by the Police Academy.
3. Article XIII – Mileage Allowance: The parties agreed to increase the mileage rate from \$.18 per mile to the IRS rate (currently \$.31 per mile).
4. Article XIV – Grievance Procedure, Section D: The parties agreed to extend the time period for the Township Committee to act upon a grievance from fourteen (14) working days to twenty (20) working days.
5. Article XXI – Children of Employee: The parties agreed to the following language: “The children of an employee who dies in the line of duty shall be given a scholarship to the college of their choice at the Township’s expense with expense/reimbursement in the amount of \$7,500 per year.”
6. Funeral Expenses (New Article): The parties agreed that the Township shall contribute \$10,000 as payment to defray the cost of funeral and other related expenses if an employee dies in the line of duty.
7. FTO Stipend (New Article) – The parties agreed to provide Field Training Officers with forty-five (45) minutes of compensatory time for each shift in which they are performing duty.

¹⁷ The items are listed in an attachment to the June 2, 2004 letter to Mr. Glickman from Mr. DeFillippo.

Except as the parties otherwise mutually agree, the other provisions and terms and conditions of the prior agreement shall continue in the new agreement unchanged. Any proposal not specifically addressed in this award is denied.


Dated: September 22, 2004
Princeton, NJ



Jeffrey B. Tener
Arbitrator

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

On this 22nd day of September 4, 2004, before me personally came and appeared JEFFREY B. TENER to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.



GLORIA L. TENER
NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES SEPT. 24, 2004