

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

-----X
In the Matter of the Interest Arbitration

between X

CITY OF NEW BRUNSWICK X

"City" X

• -and- X

NEW BRUNSWICK POLICEMEN'S BENEVOLENT
ASSOCIATION LOCAL NO. 23 AND LOCAL NO. 23A X

"Association" X

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Docket No.
IA-99-2

APPEARANCES

For the City

Schenck, Price, Smith & King, LLP
Kathryn V. Hatfield, Esq.

For the Association

ABRAMSON & LIEBESKIND ASSOCIATES
Marc D. Abramson, Consultant

BEFORE: Martin F. Scheinman, Esq., Interest Arbitrator

BACKGROUND

The parties are signatories to Collective Bargaining Agreements which expired on December 31, 1997.¹ After the Agreement's expiration, the parties entered into negotiations for successor agreements. Those negotiations proved unsuccessful, whereupon the Association demanded interest arbitration. Pursuant to the rules and regulations of the State of New Jersey Public Employment Relations Commission ("PERC"), I was designated as the Interest Arbitrator to hear and adjudicate these disputes. By consent of the parties, both disputes were consolidated into a single proceeding for purposes of hearing and decision.

Initially, I met with the parties at their joint request in an attempt to mediate a settlement of these disputes. While the mediation did narrow the scope of the disputes between the parties, it was ultimately unsuccessful in producing a mutually acceptable settlement. Accordingly, the matter was set down for formal interest arbitration hearings.

Hearings were held before me on June 17, 1999, June 28, 1999, August 2, 1999 and October 7, 1999. At those hearings, the parties were afforded full opportunity to introduce evidence and argument in support of their respective positions. They did so. Each side introduced extensive evidence relevant to the statutory criteria. This included budgetary and financial information. The parties

¹Local 23 of the Association and the City are parties to an Agreement covering the City's Police Officers. The Agreement between the City and Local 23A of the Association covers Superior Officers in the ranks of Sergeant, Lieutenant and Captain.

submitted charts, graphs and data dealing with all of the statutory criteria.

Thereafter, the parties submitted briefs in support of their final offers. Each party also submitted a reply. Upon my receipt of same, the record was declared closed.

POSITIONS OF THE PARTIES

The Association proposes a four (4) year Agreement with a term of January 1, 1998 through December 31, 2001.²

The Association also proposes across the board increases in the base salaries of all Police Officers of four percent (4%) effective January 1, 1998, four percent (4%) effective January 1, 1999, four percent (4%) effective January 2000, and four percent (4%) effective January 1, 2001.

The Association maintains that its proposed salary increases are realistic, reasonable and fair. It contends that this conclusion is compelled by a consideration of all of the relevant statutory criteria specified in N.J.S.A. 34:13a-16(g).

However, before addressing the statutory criteria, the Association makes several observations about the City's demographics in relation to other communities within Middlesex County. It asserts that the City, in addition to having one of the largest populations in the County, also has the second highest density of population to patrol and protect. Further, the Association notes that the City is classified as an "urban center," and that its crime and other policing needs have an urban character. The Association notes that its comparative data is drawn from three categories of communities: (1) the municipalities of Middlesex County; (2) the communities that border the City; and

²Unless otherwise indicated, the proposals are for both the Police Officer Agreement and the Superior Officer Agreement.

(3) a focus community, in this instance Perth Amboy, chosen for its demographic similarities.

The first statutory criterion involves the interests and welfare of the public. The Association contends that the interests and welfare of the public demand a high caliber of police protection which must be considered in tandem with the needs of the City's police officers. It notes that interest arbitrators have long recognized the interdependence between the interests and welfare of the public and the interest and support police officers receive from the community. The Association maintains that the City's police officers demonstrate their interest and support for the community by putting forth their best efforts to protect its citizenry. In turn, according to the Association, the City and its taxpayers are able to show their support for and appreciation of the police officers' efforts by granting them an equitable and reasonable salary increase. The Association contends that it has proposed such an increase.

The Association maintains that the statistics reported in the 1997 Uniform Crime Report ("the Report") demonstrate the extraordinary efforts and exemplary achievements made by its members in handling crime on behalf of the City and its residents. According to the following data submitted by the Association, for 1997, the last year of the Report, the City had the second highest total crime index of all County municipalities:

1997 Total Crime Index

Middlesex County

<u>Municipality</u>	<u>97 TCI</u>
Woodbridge	3,918
NEW BRUNSWICK	3,422
Edison	3,152
Perth Amboy	2,343
East Brunswick	1,420
Old Bridge	1,272
North Brunswick	1,167
Piscataway	1,049
Sayreville	988
South Plainfield	802
South Brunswick	754
Carteret	713
Monroe	342
Highland Park	320
South River	318
Metuchen	309
Plainsboro	309
Middlesex	275
South Amboy	220
Dunellen	193
Spotswood	125
Jamesburg	94
Milltown	77
Cranbury	69
Helmetta	22
Average	947

(Association Exhibit 4.)

Data submitted by the Association further shows that in the last year of the Report, the City had the County's highest violent crime index:

1997 Violent Crime Index

Middlesex County

<u>Municipality</u>	<u>97 VCI</u>
NEW BRUNSWICK	418
Woodbridge	383
Perth Amboy	314
Edison	265
Piscataway	110
Sayreville	87
Carteret	70

Old Bridge	70
North Brunswick	60
East Brunswick	53
South Plainfield	34
South River	34
Dunellen	24
South Brunswick	21
South Amboy	18
Highland Park	14
Monroe	12
Metuchen	11
Plainsboro	11
Middlesex	10
Jamesburg	7
Milltown	5
Helmetta	4
Cranbury	1
Spotswood	1
Average	81

(Association Exhibit 4).

So, too, the number of crimes per officer is higher in the City than any other County municipality:

1997 Crimes Per Officer

Middlesex County

<u>Municipality</u>	<u>97 VCI</u>	<u>97 # Off</u>	<u>97 CPO</u>
NEW BRUNSWICK	3,422	137	25.0
Perth Amboy	2,343	117	20.0
Woodbridge	3,918	200	19.6
Edison	3,152	173	18.2
East Brunswick	1,420	88	16.1
Old Bridge	1,272	85	15.0
Dunellen	193	13	14.8
Carteret	713	50	14.3
North Brunswick	1,167	82	14.2
South Plainfield	802	57	14.1
Sayreville	988	78	12.7
Highland Park	320	26	12.3
Piscataway	1,049	86	12.2
South Brunswick	754	68	11.1
Metuchen	309	28	11.0
South River	318	30	10.6
Plainsboro	309	31	10.0
Monroe	342	36	9.5
Jamesburg	94	10	9.4

South Amboy	220	24	9.2
Middlesex	275	32	8.6
Spotswood	125	19	6.6
Cranbury	69	11	6.3
Milltown	77	13	5.9
Helmetta	22	4	5.5
Average	947	60	15.8

(Association Exhibit 4).

Also for 1997, the City had the highest crime rate in the County, for both violent and non-violent offenses, measured as crimes per one thousand (1000) persons:

1997 Total Crime Rate per Thousand

Middlesex County

<u>Municipality</u>	<u>97 TCR</u>
NEW BRUNSWICK	82.4
Perth Amboy	55.4
Woodbridge	41.4
South Plainfield	38.8
Carteret	37.4
North Brunswick	34.3
Edison	33.5
East Brunswick	31.7
Dunellen	29.3
South Amboy	28.0
Sayreville	26.5
Cranbury	26.4
South Brunswick	24.5
Highland Park	24.1
Metuchen	24.0
South River	22.8
Old Bridge	21.4
Middlesex	20.9
Piscataway	20.6
Plainsboro	19.8
Jamesburg	16.8
Helmetta	15.7
Spotswood	15.3
Monroe	13.8
Milltown	10.9
Average	28.6

(Association Exhibit 4).

Nevertheless, according to the Association, the statistical data in the Report reveals that the Total Crime Index for the last two years of the Report was at its lowest level since 1990, and for the same period, the Total Crime Rate per 1000 is at an all-time low. So, too, the Number of Crimes per Officer was at its lowest level for the last two years of the eight-year period covered by the Report. Further, according to the Report, the violent crime index for the City went down by more than 200 in 1994, and has stayed down are down since 1993, and non-violent crime is at its all time low for the eight-year period.

According to the Association, the recent steady reduction of the crime rates in the highest crime area of the County is directly attributable to the hard work and dedication of its members. The trends that emerge from the 1997 Uniform Crime Report reflect the high caliber of police protection the City's Police Officers have given its residents.

The Association asserts that the City has offered no exhibits or analysis regarding police productivity, and has failed to give deserved recognition to the exemplary achievements of the Association's members. In making its economic proposals, the Association argues, the City failed to connect the demonstrated productivity of its police force to the interest and welfare of the public. Rather, according to the Association, the City improperly tied the public interest and welfare solely to economic factors confronting the taxpayers. Thus, the Association argues that the

City has ignored the needs of its Police Officers which are bound to the interests and welfare of the City's residents. It asserts that the Township must provide a fair and equitable wage increase in order to maintain its outstanding Police Department. Accordingly, the Association insists that its salary proposal best serves the interests and welfare of the public.

As to the criterion regarding a comparison with the wages of employees in private employment, the Association argues that the available statistics may be of limited value. It points to several analyses of private sector wage trends which note that wage increases do not reflect the performance of private sector employers because profits are shared with employees in the form of lump-sum bonuses and other incentives. Nevertheless, according to the Association, private sector wages in New Jersey increased on average 4.3% in 1996. Middlesex County ranked fourth highest among the State's twenty-one (21) counties with an average 1996 wage increase of 4.9%.

The Association argues that available wage data for the State of New Jersey demonstrates that police salaries properly were higher than other service-related occupations, and are on par with those of civil engineers, data base administrators, dental hygienists, management analysts, physical therapists, psychologists, surveyors and sales representatives. The Association notes that although police officers do not ordinarily possess the formal education of those other professions, police salaries are equated with those of formally trained professionals

because of the vigorous specialized training required for police work and because of the inherent risks of the profession.

As to the criterion regarding comparisons to public employment in general, the Association points to the fact that the City and its teachers settled their contract with four percent (4%) average wage increases for the 1996-97, 1997-98, 1998-99 and 1999-2000 school years. The Association argues that this settlement demonstrates that its own proposal to increase its members base salaries by four percent (4%) for each rank in each year of the new Agreements is a realistic final offer position.

The reasonableness of the Association's final wage offer is further demonstrated, it argues, by the statewide voluntary settlements that resulted from the interest arbitration process. According to PERC summaries submitted by the Association, percentage increases ranged from three to six percent (3-6%) for 1998, three to five percent (3-5%) for 1999 and three to four and one-quarter (3-4.25%) for the year 2000. Where awards were issued, according to the Association, the percentage wage increases ranged from three and one-quarter to six percent (3.25-6%) for 1998 and three and three tenths to four and one-half percent (3.3-4.5%) for 1999. For the year 2000, two awards give increases of three and three-quarters percent (3.75%) and four percent (4%). The Association argues that its final offer of four percent (4%) is thus within the range of both voluntary settlements and awarded increases.

According to the Association, however, there are factors which must be considered in a determination of police wages that simply are not present for private and other public employees. These additional considerations include the fact that police departments operate on a twenty-four hour basis, seven days a week, that police officers are subject to work weekends and holidays, that they are subject to being on-call and available for call-backs and court dates on their time off. Further, police are subject to work in a street setting in all kinds of weather, are working under constant pressure from potential dangers, and are being evaluated by supervisors under public scrutiny. Thus, the Association maintains that there is no comparable private employment that is proper for comparison for purposes of police work. It argues that the most relevant wage comparisons are to the wages of other police officers.

As to the criterion regarding a comparison of the wages of other employees performing the same or similar services in public employment in comparable jurisdictions, the Association compares the City to all other Middlesex County communities, and, more particularly, to the following Middlesex County communities which are contiguous to New Brunswick: East Brunswick, Piscataway, North Brunswick and Highland Park. The Association also draws comparisons between the City and what it calls the "focus" community: Perth Amboy.

The Association maintains that the most important consideration under this criterion is an analysis of the current

trend in wage increases for police officers in Middlesex County, using the rank of top patrolman as the "benchmark." The City observes that in 1997 the top patrolman in New Brunswick ranked third in the County with a salary of \$56,797. According to the City's review of police contracts, interest arbitration awards and ordinances, in 1997 the Middlesex County average salary for officers in the position of top patrolman was \$52,208. The differential from average for the City's top patrolman was, therefore, \$4589.

The Association contends that if its proposal of a four percent (4.0%) wage increase, effective on January 1 of each contract year, were awarded, then its members would maintain their relative standing within the County. The Association asserts that in 1998, the County-wide average salary increase for officers holding the rank of top patrolman was four and sixteen hundredths percent (4.16%). It submits the following data in support of that assertion:

1998 Top Patrolman Percentage Increases

Middlesex County

<u>Municipality</u>	<u>97 Salary</u>	<u>98 Salary</u>	<u>98% Inc</u>
Carteret	52,474	55,622	6.00%
Spotswood	47,826	50,456	5.50%
Dunellen	50,714	53,261	5.02%
Monroe	49,876	52,371	5.00%
Helmetta	38,493	40,225	4.50%
Jamesburg	49,039	51,123	4.25%
Woodbridge	54,456	56,656	4.04%
Milltown	47,650	49,556	4.00%
South River	47,991	49,910	4.00%
Old Bridge	54,107	56,244	3.95%
Edison	56,811	59,027	3.90%
Metuchen	52,540	54,563	3.85%

Sayreville	55,541	57,679	3.85%
South Plainfield	55,056	57,121	3.75%
Middlesex	54,271	56,225	3.60%
Highland Park	51,431	53,231	3.50%
Plainsboro	55,459	57,261	3.25%
Perth Amboy	52,860	54,446	3.00%
Cranbury	54,857		
East Brunswick			
NEW BRUNSWICK	56,797		
North Brunswick			
Piscataway	58,123		
South Amboy			
South Brunswick			
Average	52,208	53,610	4.16%

(Association Exhibit 5).

For the year 1999, the Association claims that the average percentage increase in the County's top patrolman pay was four and three hundredths percent (4.03%), based on the following data:

1999 Top Patrolman Percentage Increases

Middlesex County

<u>Municipality</u>	<u>98 Salary</u>	<u>99 Salary</u>	<u>99% Inc</u>
Spotswood	50,456	53,231	5.50%
Woodbridge	50,456	53,231	5.50%
Helmetta	40,225	42,236	5.00%
Monroe	52,371	54,721	4.49%
Old Bridge	56,244	58,550	4.10%
Milltown	49,556	51,539	4.00%
Edison	59,027	61,329	3.90%
Sayreville	57,679	59,900	3.85%
Metuchen	54,563	56,609	3.75%
Middlesex	56,225	58,249	3.60%
Jamesburg	51,123	52,912	3.50%
Plainsboro	57,261	59,122	3.25%
Perth Amboy	54,446	56,080	3.00%
Highland Park	53,231	54,828	3.00%
Carteret	55,622		
Cranbury			
Dunellen	53,261		
East Brunswick			
NEW BRUNSWICK			
North Brunswick			
Piscataway			
South Amboy			

South Brunswick	57,121		
South Plainfield	49,910		
South River			
Average	53,265	55,181	4.03%

(Association Exhibit 5).

Thus, the Association argues, its final offer is reasonable in that it falls below the County average for the past two years. By contrast, it asserts, the City's proposal of three percent (3.0%) for 1998 is significantly less than the County average. The Association notes that in real numbers, the City's proposed 1998 salary represents only a \$1703 increase, which falls well short of the 1998 average wage increase for the County's top patrolmen of \$2132. The 1998 salary proposed by the Association, \$59,068, would merely maintain the City's ranking.

The City's offer, the Association asserts, is less than the "going rate" and it asserts that the City gave no rational reason why its offer should be selected other than simply to give less. The Association states that its own salary proposal by comparison is reasonable, equitable and affordable. The Association maintains that a decision to award the increases proposed by the City possibly would "disturb the delicate dialectical relationship between residents and police." It concedes that its members are well paid in comparison to their peers in other communities. Nonetheless, the Association argues, there is no reason to disturb the status quo and make the City's police worse off. To do so, it asserts, would cause a decline in police morale which, in turn, would jeopardize the public interest and welfare.

Thus, the Association insists that when all of the relevant comparisons are made, its wage proposal is clearly the more reasonable and ought to be awarded.

As to the criterion regarding overall compensation, the Association asserts that its members' longevity program, holiday pay, vacation benefits, work schedules, clothing allowance, personal days and bereavement leaves are similar to those enjoyed by their counterparts in other communities in Middlesex County. The Association argues that its proposals concerning these benefits seek only modest increases which likely will cause its members to fall behind their counterparts in the comparable jurisdictions. Accordingly, it argues that its proposed economic package is reasonable and should be awarded.

The Association asserts that its proposed modification of Article VIII of the Agreement to permit the accumulation of personal days from year to year is reasonable. It proposes a ten (10) day limit on the number of personal days that may be carried over is reasonable because its members no longer will be forced to exhaust their annual benefit in order to avoid losing it.

The Association argues that a modest increase in the uniform allowance of \$75.00 per year is justified because it has not been increased since 1993. It states that its proposal for a \$100 Gun Maintenance Allowance is reasonable because it will enable its members to take more target practice and thereby become better and safer marksmen. The Association asserts that its proposal to modify Article XIII (Pensions) to require the City to post holiday

pay as pensionable income for all employees merely would conform the Agreement with current law.

Further, the Association on behalf of its Superior Officers in Local 23A proposes a modification in the Superior Officer salary guide whereunder sergeant base pay would be calculated by adding a fifteen percent (15%) differential to the salary of officers in the rank of Senior Patrolman. Currently, the fifteen percent (15%) sergeant's differential is applied to the salary of officers in the rank of Step V Patrolman. The difference between Senior Patrolman pay and Step V Patrolman pay is three percent (3%). The Association also proposes a modification of Article XXX, Section 1 which will increase to \$25.00 the per diem meal allowance for officers required to attend a workshop, seminar or special training program. The current benefit is \$10.00, which the Association argues is not realistic. The Association also proposes to add to Article XXX, Section 2 (Meal Break) language which would entitle an officer who is unable to take a meal break to overtime compensation, since he has to work without enjoying the benefit of a break.

The Association also proposes that effective upon execution of this Agreement, the parties' current work schedule be changed to a schedule of four (4) days on/four (4) days off ("4-and-4 schedule") for officers in the Operations Division. It proposes a schedule of four (4) days on and three (3) days off ("four and three") for officers in the Administrative and Criminal Investigations Divisions.

The Association recalls that in my June 7, 1996 Interest Arbitration Award involving these parties, I made the following award:

The City has proposed that the City and the Association establish a committee to review work schedules and, if necessary, make recommendations to the City Administration regarding work schedules for the City's Police Officers. The City acknowledges that some of the work schedule issues raised by the Association during negotiations need to be addressed. The City's proposal will permit the parties to address work schedule issues in a thoughtful and logical manner. Thus, the City's work schedule committee proposal is clearly reasonable and shall be awarded.

In the Matter of Interest Arbitration Between City of New Brunswick and New Brunswick Policemen's Benevolent Association Local No. 23 and Local No. 23A, Docket Nos. IA-95-118 and IA-95-119. The Association asserts that during the current round of negotiations the City did in fact propose a work schedule change very similar to the schedule now proposed by the Association. According to the Association, that proposal was rejected by its membership in a ratification vote because the City insisted on lower wage increases in exchange for the revised work schedule, but insisted on an option to rescind the salary change without offering any upward salary adjustment in the event the option is exercised.

The Association maintains that the 4-and-4 schedule proposal is supported by the testimony and detailed analysis of Jeffrey Dockhorn, President of PBA Local 23. The Association also relies on the testimony of Robert Zavistoski, President of the PBA Local in Piscataway, New Jersey, and Kenneth Balut, a past President of the PBA Local in Perth Amboy, New Jersey. It asserts that the

testimony of all three (3) Association witnesses concerning the 4-and-4 schedule was unchallenged and unrefuted by the City.

The Association contends that Zavistoski's testimony established that the 4-and-4 schedule has been successfully utilized in Piscataway for a long period, during which time crime has gone down significantly while morale on the police force has gone up. According to the Association, Zavistoski's testimony about the experience in Piscataway demonstrates that a 4-and-4 schedule will improve manpower flexibility by increasing the number of available patrolmen during times at night when more coverage is required.

The Association notes the undisputed testimony of Balut that the 4-and-4 schedule in Perth Amboy was a major factor in lowering that city's crime rate. He also testified that the use of sick leave decreased following the implementation of the 4-and-4 schedule. The Association maintains that these same benefits can be expected if a 4-and-4 schedule is implemented by the City.

The 4-and-4 schedule proposed by the Association would consist of four (4) days on and four (4) days off for officers in the Operations Division. The work shift would be ten and one-quarter (10.25) hours. The Association seeks no change with respect to steady shifts or bidding by seniority. For officers in the other divisions, the 4-and-3 schedule would operate with a nine and one quarter (9.25) work shift.³

³References herein to the proposed "4-and-4 schedule" for the Operations Division incorporate the "4-and-3 schedule" that is proposed for the Administrative and Criminal Investigations

The Association contends that Dockhorn's testimony demonstrated that utilization of its proposed work schedule will reduce overtime, including court overtime, because of the increase in shift hours and the resulting shift overlap. It asserts that the testimony establishes that the 4-and-4 schedule will produce maximum shift strength during peak crime hours and provide greater coverage during peak traffic hours without engendering overtime obligations for the City. It maintains that the higher minimum staffing produced by the schedule change will improve employee morale.

According to the Association, a 4-and-4 schedule based on 10.25 hours per shift represents a seventy-six (76) hour reduction in annual hours from the current schedule. The Association has proposed additional range training as a quid pro quo for the schedule change.

The Association also proposes that absences be charged against contractual leave at ten (10) hours for Operations Division officers and nine (9) hours for officers in Administration and Criminal Investigations. It argues that while this is an obvious benefit for both its members, it also benefits the City by simplifying the "administrative bookkeeping nightmare" that is expected from having to keep track of fractions of an hour. Moreover, the Association argues, the proposed bookkeeping practice is only fair since some officers' responsibilities, like being

Divisions.

dressed in uniform and ready to begin work, traditionally have commenced fifteen (15) minutes prior to the start of their shift.

In response to the City's claims that the proposed new schedule will lead to numerous staffing and morale problems, such as increase officer fatigue resulting in greater use of sick leave and negatively impacting safety, the Association proposes an arbitral mechanism under which either party may request a return to the existing work schedule. Thus, for example, the Association proffers that if the benefits of the new schedule touted by the PBA, such as reduced overtime and reduced sick leave, are not realized, or for any other legitimate or emergent need, the City could request a hearing and propose the elimination of the 4-and-4 schedule.

In any case, the Association asserts that the objections to the 4-and-4 schedule presented through the testimony of Police Director Michael Beltranena should be given little, if any, weight. It argues that Beltranena's testimony about declining morale and a reduced "availability factor" was non-responsive and evasive and that his objections to the new schedule are hearsay allegations that lack supporting data. According to the Association, that the City has offered no direct evidence from other communities concerning the alleged negative effects of the 4-and-4 proposal.

As to the criterion regarding stipulations between the parties, the Association notes that the parties stipulated that a 4-and-4 schedule with daily shifts of ten and one-quarter (10.25)

hours would result in a seventy-six (76) hour reduction in annual work hours, or the equivalent of 7.4 days.

As to the criterion regarding the lawful authority of the City, the Association maintains that this requires an evaluation of the City's authority to pay for the Association's economic proposals pursuant to the requirements of New Jersey's Local Government Cap Law. It contends that New Jersey's Cap Law presents no impediment to my awarding the Association's economic proposals.

As to the criterion regarding the financial impact on the governing unit, its residents and taxpayers, the Association claims that the City Business Administrator Tom Loughlin testified that the City's economy is "very strong," having improved since the last interest arbitration, and that other City bargaining units received wage increases larger than what has been offered to the Association. The Association acknowledges that such increases were obtained in exchange for concessions, but disputes the City's characterization of those concessions as "significant." It argues that the City is ranked in the middle of Middlesex County's municipalities for State Equalized Value, and that when State aid is factored in, Total Revenues for the City place it seventh among the municipalities in the County.

The Association disputes the City's claim that Loughlin testified that the City is facing financial problems. It asserts that he merely testified that the City was facing the need to increase taxes, and that there is no record evidence of "financial problems." In short, the Association claims the City has the

ability to pay for the Association's wage proposal. Therefore, the Association argues, that pursuant to this criterion, its economic proposal is clearly reasonable and ought to be awarded.

As to the criterion concerning cost of living, the Association maintains that it is not a dispositive factor in this dispute. It asserts that the Consumer Price Index ("CPI") is not intended to equate to police salaries, and that wage adjustments exceeding a moderate CPI are not extraordinary.

As to the criterion concerning the continuity and stability of employment, the Association submits that the wages of police officers hold no special advantage over the wages of private sector employees or other public sector employees. However, it points out that police work calls for working shifts around the clock, seven (7) days per week, including weekends and holidays. The Association also notes that police work is an outdoor job much of the time and that police officers are under public scrutiny and pressure from potential dangers. It insists that these special aspects of police work are unique to public safety and must be considered in determining a fair wage and desirable schedule for the City's Police Officers, which will maintain the continuity and stability of their employment. Thus, the Association argues that pursuant to this criterion, its economic proposal is clearly the more reasonable and ought to be awarded.

The Association has proposed an upgrade of the Dental Plan whereunder the City's co-payment would be increased to seventy-five

percent (75%) of "Usual, Customary and Reasonable" coverage. The co-pay is currently fifty percent (50%).

The Association has proposed a Maternity Leave provision which acknowledges a disability phase of pregnancy during which phase individuals will be entitled to the benefits of the Agreement's Major Illness provision.

The Association further asserts that all of the City's proposals should be denied on the grounds they are either unreasonable or unnecessary. In particular, it objects to the City's proposal that officers who have retired by the time the contract is executed not receive retroactive payment of any awarded salary increments. The Association argues that the five (5) or six (6) affected individuals are among the City's longest and most senior employees and have devoted the major portion of their adult lives to police work for the City and its residents. According to the Association, the City's proposal of no retroactivity for these employees will harm them financially and will have a deleterious effect on the morale in the department.

In all, the Association submits that its final offer comports more closely than the City's with all of the relevant statutory criteria set forth in N.J.S.A. 34:13A-16(g).

The City, on the other hand, maintains that its final offer is the more reasonable one. It has proposed a three (3) year agreement from January 1, 1998 through December 31, 2000.

The City has proposed a three and one-quarter percent (3.25%) increase in base salary effective January 1, 1998, a three and one-

half percent (3.5%) base salary increase effective January 1, 1999, and a two and three-quarters percent (2.75%) base salary increase effective January 1, 2000.

As to the criterion regarding the interests and welfare of the public, the City asserts that its proposed economic package strikes the appropriate balance between its employees' interests and those of the citizenry at large. It asserts that its police force is one of the best compensated in the State, and observes that eighty-six (86) out of one hundred four (104) unit members are at the highest possible salary level, which for 1997 was \$56,796. It maintains that the superior officers are exceedingly well compensated, as well. It asserts that the salaries of Association members, exclusive of longevity, senior officer pay and other benefits, account for \$8.12 million out of an overall City budget of approximately \$45.46 million. It claims that its proposed increases will impose an additional cost of \$761,003 over the three-year life of its proposed Agreement. By contrast, the Association's proposal would create a cost increase of \$1,224,581. According to the City, this additional cost works significantly to the public's detriment.

This is particularly true, the City maintains, in consideration of the City's "lackluster fiscal condition." It notes Loughlin's testimony that its surplus is decreasing at the same time that it is experiencing a significant loss of payments in lieu of taxes. The City notes that the New Jersey Municipal Distress Index prepared by the New Jersey Office of State Planning

has ranked it as the twelfth (12th) most distressed municipality in the State.⁴ According to the City, the Association's economic package would only further burden a municipality that is already strained. Accordingly, it argues, the interests and welfare of the public, when balanced against the Association's demand for additional pay and benefits, dictate that the City's economic offer is the more reasonable.

As to the criterion regarding a comparison of the wages of other employees performing the same or similar services in public employment in comparable jurisdictions, the City argues that the most realistic group of municipalities from which comparable entities should be drawn is the pool of urbanized cities in the State. The City asks that I limit my comparisons to the following list of municipalities because they most share similar demographic and socio-economic characteristics with the City and, therefore, evidence the highest degree of similarity:

COMPARABLE COMMUNITIES CLASSIFIED BY COUNTY AND CHARACTER

<u>Municipality</u>	<u>County</u>	<u>Character</u>
Bayonne	Hudson	Urban Suburban
Belleville	Essex	Urban Suburban
Carteret	Middlesex	Urban Suburban
East Windsor	Mercer	Suburban
Elizabeth	Union	Urban Center
Highland Park	Middlesex	Urban Suburban

⁴ In 1993, it was ranked eighteenth (18th). Exhibit 56.

Linden	Union	Urban Suburban
NEW BRUNSWICK	MIDDLESEX	URBAN CENTER
Old Bridge	Middlesex	Suburban
Piscataway	Middlesex	Suburban
Plainfield City	Union	Urban Center
Sayreville	Middlesex	Suburban
South River	Middlesex	Urban Suburban
Trenton City	Mercer	Urban Center
Woodbridge	Middlesex	Urban Suburban

(City Exhibit 5).

The City argues that its financial outlook is "marginal, at best." According to the City's exhibits, its population falls exactly in the middle of the fourteen (14) comparable jurisdictions. (City Exhibit 6). Nevertheless, according to the City's documents, it is the fifth most densely populated municipality of the group, and has the highest percentage of residents in poverty at eighteen and two-tenths percent (18.2%). (City Exhibits 7 and 9). Of the comparable communities, the City has the lowest per capita income and the second lowest median value for single family homes. (City Exhibits 8 and 10). Twenty-seven percent (27%) of its income is derived from state aid. (City Exhibit 5). It has the second highest number of officers per one-thousand (1000) residents and its crime rate per one-thousand (1000) citizens is 82.9, which places it fourth highest among the comparables.

The City argues that for the purpose of interest arbitration, there is no statutory or judicial mandate that the relative ranking of its police salaries must improve relative to police compensation in other communities. It asserts that only the status quo need be maintained. According to the City, its relative ranking will be maintained if the salary increases it proposes are implemented. The City submits that the starting salaries of its police officers ranks relatively high among the comparable communities, and then improves in ranking as unit members gain seniority. Thus, it claims that the \$33,095 salary for first-year patrolmen in 1997 places the City sixth among the comparable jurisdictions, based on the following data:

1997 SALARIES -- FIRST-YEAR PATROLMEN

<u>MUNICIPALITY</u>	<u>SALARY</u>
East Windsor	\$44,378
Linden	\$35,000
Trenton	\$37,247/\$28,285†
South River	\$34,207/\$29,398††
Plainfield	\$34,270
NEW BRUNSWICK	\$33,091/\$33,095‡
Elizabeth	\$32,135
Woodbridge	\$31,757
Piscataway	\$28,189
Belleville	\$27,763
Carteret	\$27,500
Highland Park	\$24,000††

- † Represents salary if hired in 1993 or after
- †† Represents salary if hired in 1996 or after
- ‡ Step 1 for Patrolman hired after 5/1/95
- ‡‡ Average salary over first year

(City Exhibit 13).

The City asserts that the position of its first-year patrolmen among the comparables would improve if its wage proposal were granted. According to the City, if its 3.25% proposed raise for 1998 is implemented, its first-year patrolmen will rank fifth among the comparables. (City Exhibit 18). Thus, the City argues that its wage proposal is reasonable and ought to be awarded.

The City further maintains that in 1997, it ranked fourth among the comparable jurisdictions with respect to the salary paid to top step patrolmen. It submits the following data in support of that assertion:

1997 SALARIES -- TOP STEP PATROLMEN

<u>MUNICIPALITY</u>	<u>STEPS</u>	<u>SALARY</u>
Piscataway	6 steps	58,124
Woodbridge	6 steps	\$57,450†
East Windsor	6 steps	\$57,376
NEW BRUNSWICK	5 STEPS	\$56,796
Linden	6 steps	\$55,977
Highland Park	6 steps	\$53,231
Sayreville	6 steps	\$52,409
Carteret	4 steps	\$52,474
Plainfield	6 steps	\$41,162
Belleville	5 steps	\$50,618

South River	4 steps	\$49,910
Trenton	6 steps	\$48,324

† Represents salary of "senior" patrolman, effective 8/97 (City Exhibit 14).

The City claims that under its 3.25% proposal for 1998, its top step patrolmen will jump in rank to second among the comparables. (City Exhibit 19). Thus, the City argues that its wage proposal is clearly reasonable and ought to be awarded.

The City maintains that the relative compensation of its superior officers has an even higher rank among the comparable jurisdictions. It asserts that in 1997 it ranked second among comparable jurisdictions, based on the following data:

1997 SALARIES -- SERGEANTS

<u>MUNICIPALITY</u>	<u>SALARY</u>
East Windsor	\$66,152
NEW BRUNSWICK	\$65,315
Piscataway	\$64,205
Elizabeth	\$61,819†
Woodbridge	\$59,550
Plainfield	\$59,525††
Linden	\$58,250†††
Belleville	\$58,211‡
Sayreville	\$56,364/\$57,734‡‡
Carteret	\$57,448
Bayonne	\$56,722‡‡‡
Highland Park	\$55,546

South River

\$51,418

† Represents salary effective 7/1/96, upon promotion
†† Represents salary of top step Sergeant (Step 8)
††† Represents salary effective 7/96 upon promotion
‡ Represents salary for employee hired prior to 9/1/94
‡‡ Represents salary effective 7/96
‡‡‡ Effective 7/1/97 - retroactive to first pay in 7/96

(City Exhibit 15).

The City asserts that its sergeants will remain ranked second in 1998 if its proposed 3.25% increase is granted. (City Exhibit 20). So, too, the City asserts that its lieutenants currently ranked second in 1997 among the comparables with a salary of \$73,806 (City Exhibit 16), and would remain second in the event its proposed increase were implemented. (City Exhibit 21). In 1997, the City asserts, its Captains received the highest pay among their co-equals in other jurisdictions (City Exhibit 17), and its Captains' 1998 salary would remain the highest among comparable jurisdictions if the City's proposed 3.25% increase was granted. Thus, the City argues that its wage proposal is clearly reasonable and ought to be awarded.

The City also asserts that its salary proposals for the remaining years of the proposed Agreement will continue to maintain City police salaries at a competitive level with those received by other police force personnel in comparable jurisdictions. Further, it maintains that its salary proposal will afford both economic stability and security for Association members, and keep the City an attractive place to work. In support of this assertion, it offers the following data:

1999 SALARIES -- FIRST-YEAR PATROLMEN

<u>MUNICIPALITY</u>	<u>SALARY</u>
East Windsor	\$47,999
NEW BRUNSWICK	\$35,367/\$35,361†
Belleville	\$28,947

†For patrolmen hired after 5/1/95

(City Exhibit 23).

1999 SALARIES -- TOP STEP PATROLMEN

<u>MUNICIPALITY</u>	<u>STEPS</u>	<u>SALARY</u>
East Windsor	6 steps	\$62,058
NEW BRUNSWICK	5 STEPS	\$60,694
Belleville	6 steps	\$54,740

(City Exhibit 24).

1999 SALARIES -- SERGEANTS

<u>MUNICIPALITY</u>	<u>SALARY</u>
East Windsor	\$71,550
NEW BRUNSWICK	\$69,798
Belleville	\$62,961

(City Exhibit 25).

1999 SALARIES -- LIEUTENANTS

<u>MUNICIPALITY</u>	<u>SALARY</u>
East Windsor	\$80,765
NEW BRUNSWICK	\$78,872
Belleville	\$72,405

(City Exhibit 26).

1999 SALARIES -- CAPTAINS

<u>MUNICIPALITY</u>	<u>SALARY</u>
NEW BRUNSWICK	\$89,126
Belleville	\$83,266

(City Exhibit 27).

2000 SALARIES -- FIRST-YEAR PATROLMEN

<u>MUNICIPALITY</u>	<u>SALARY</u>
East Windsor	\$49,919
NEW BRUNSWICK	\$36,340/\$36,333†

†For patrolmen hired after 5/1/95

(City Exhibit 28).

2000 SALARIES -- TOP STEP PATROLMEN

<u>MUNICIPALITY</u>	<u>SALARY</u>
NEW BRUNSWICK	\$62,363
East Windsor	\$57,376

(City Exhibit 29).

2000 SALARIES -- SERGEANTS

<u>MUNICIPALITY</u>	<u>SALARY</u>
NEW BRUNSWICK	\$71,717
East Windsor	\$66,152

(City Exhibit 30).

2000 SALARIES -- LIEUTENANTS

<u>MUNICIPALITY</u>	<u>SALARY</u>
East Windsor	\$83,966
NEW BRUNSWICK	\$81,041

(City Exhibit 31).

Thus, the City argues that its wage proposal is clearly reasonable and ought to be awarded.

In further support of the City's claim that its position on economic issues is reasonable, it asserts that it offers a very competitive sick leave policy under which each officer receives fifteen (15) sick days per year and may accumulate up to one hundred seventy-five (175) days for terminal leave. To the extent more than 175 days is accumulated, employees may either bank the whole of the excess or receive compensation for half the excess and bank the remainder. (City Exhibit 33). The City further asserts that it pays the entire health insurance premium for all employees and their dependents. (City Exhibits 1 and 2). It asserts that it has competitive vacation and holiday benefits (City Exhibits 35 and 37), and a uniform allowance that ranks third among the comparable jurisdictions. (City Exhibit 38).

As for the criterion concerning comparisons to public employment in general, the City refers to the wage increases recently granted to the City's other municipal employees. It asserts that its agreement with Firemen's Mutual Benefit Association, Local 217 - Fire Officers' Association ("FOA") has only a two-year overlap with the City's proposed Agreement with the Association. The FOA contract provides for a three and three-quarters percent (3.75%) increase in 1998, and a three and one-half percent (3.5%) increase in 1999. (City Exhibit 54). The City argues that the higher increase in 1998 is justified because the FOA agreed to concessions such as a provision that the first ten

(10) days of a major illness will apply to an employee's accumulated sick time, increases in insurance co-payments, and modifications of the light duty provision.

According to the City, its contract with Municipal Employees Association Local 29 covers an identical term that is being proposed for the Association and the same wage increases in each year but the last, in which the municipal employees will receive a three and one-half percent (3.5%) increase. (City Exhibit 55). The City argues that the slightly better wage benefit in the third year of the Municipal Employees agreement is justified because the Municipal Employees also agreed to concessions. In addition, the City argues, in early 1998 when the Municipal Employees and the FCA executed their respective agreements with the City, the City's financial circumstances were more promising and warranted the wages agreed upon.

As to the criterion regarding a comparison with the wages of employees in private employment, the City asserts that its offer is "eminently reasonable," when compared to private sector wages. It refers to a report by the Bureau of National Affairs ("BNA") which asserts that the weighted average pay increase negotiated in the first half of 1999 was two and seven-tenths percent (2.7%). (City Exhibit 58). Further, the City states that the BNA report indicates that the median percent pay increase in contracts negotiated during the first quarter of 1999 was three percent (3.0%), the same level it has been since 1997. (City Exhibit 58). The City argues that its proposal exceeds these reported figures.

By contrast, it argues, the Association's four percent (4.0%) demand exceeds the salary settlements negotiated in the private sector. Thus, the City argues that pursuant to this criterion, its wage proposal is clearly reasonable and ought to be awarded.

As to the criterion regarding cost of living, the City asserts that the CPI is generally regarded as a valuable tool in determining the reasonableness of proposed wage increases because it holds an important place in the national economy and plays a major role in developing government policy. It notes that the CPI for urban wage earners and clerical workers in New York-Northeast New Jersey was 1.7% in 1998. (City Exhibits 49 and 59). In 1999, for the same group, the CPI has been 1.6%. (City Exhibit 59). The City argues that its proposed three and one-quarter percent (3.25%) increase for 1998 and its three and one-half percent (3.5%) proposed increase for 1999 outpace the CPA by 1.55% and 1.9%, respectively. It predicts that the City's two and three-quarter percent (2.75%) proposal for 2000 is likely to outpace the CPI for this year, given the stability of the index. Further, the City argues that the City has continued to absorb the costs of basic health insurance premiums, despite the fact the costs of medical care consistently increases at a faster rate than the CPI. Thus, the City argues that based on the cost of living criterion, its wage proposal is clearly the more reasonable and should be awarded.

The City opposes the 4-and-4 schedule proposed by the Association. It asserts that the proposed schedule is unreasonable

under the existing conditions in the City, and should not be adopted.

The City refers to the testimony of Police Director Beltranena that if the City were compelled to adopt the new schedule, it would be forced to disband the Neighborhood Police Team. According to Beltranena, the Neighborhood Police Team has contributed significantly to the twenty-seven percent (27%) decrease in the City's overall crime rate. The City argues that without the Neighborhood Police Team, it may be hindered in its ability to cope with police and civilian shootings, gangs, funeral details, demonstrations, and public and school security details. In addition, the City asserts that it would have to reduce staffing levels of the Traffic Safety Enforcement Unit, Anti-Crime Unit, Major Crimes Unit, and the Juvenile Aid Bureau in order to implement a 4-and-4 schedule.

In addition, the City claims that even after making the necessary cuts in such initiatives, it would have to split its Operations Division into two (2) separate platoons in order to accommodate the proposed new schedule. The City predicts a breakdown in intra-departmental communication and continuity from such "fracturing" of the Department. It asserts that procedures designed to remedy this problem will detract from time committed to policing activity.

The City maintains that bifurcating the Operations Division will require the City to incur the added expense of promoting three (3) sergeants to lieutenant and three (3) patrolmen to sergeant,

which will further burden its budget. In addition, it asserts that scheduling problems will result from the decreased availability of officers. It claims that the "availability factor" associated with the 4-and-4 schedule is only thirty-eight percent (38%), in contrast to being fifty-four percent (54%) under the present 4-and-2 schedule. These scheduling problems will be compounded by the fact the City will lose a total of seventy-six (76) hours of patrolman time per year, the City asserts.

The City predicts that the 4-and-4 schedule will result in greater overtime usage, and possibly abuse, particularly between the hours of 5:00 p.m. and 5:00 a.m. The City refers to the Alternative Work Schedules study (Association Exhibit 13) to point out that after Rahway Township instituted a 4-and-4 schedule, its officers engaged in overtime abuse by taking turns calling in sick to provide each other with overtime opportunities.

The City further predicts that the 4-and-4 schedule may lead to an eventual rise in sick leave. Thus, it points out that in Woodbridge sick leave went up to worse levels than existed before the 4-and-4 schedule was instituted. The City argues that the predicted increase in sick leave is linked to outside employment, as is fatigue, which also is predicted by the City. Thus, it asserts it may have to ban outside employment, which in turn will cause a decrease in morale, which will already be hurt by the loss of comradery caused by the splitting of the force into separate platoons.

For all the foregoing reasons, the City asserts that the 4-and-4 schedule should not be awarded.

However, the City proposes that if my award directs the implementation of the 4-and-4 schedule, that it further provide a for mechanism for the City, at its discretion, to use the seventy-six (76) hours of work per officer that will be lost under the new schedule. The City proposes that it will set aside thirty-two (32) hours of training, sixteen (16) of which would be committed to fulfilling the Attorney General guidelines relevant to shooting range qualifications. The City submits that it would use the other sixteen (16) training hours for programs related to matters like domestic violence, defense tactics and crowd control. The City offers that the remaining forty-four (44) hours would be deemed "bank time," which would be exhausted as the officer worked details outside the standard 10.25 hour tour. It suggests that if any officers do not deplete their bank time in the course of a given year, the remaining time would be counted against holiday pay they would otherwise receive. The City suggests that this manner of using the seventy-six (76) hours might alleviate some of its concerns about the schedule and also help avoid overtime costs, and it argues, therefore that it should be permitted to use the seventy-six (76) hours as it deems necessary.

For all of these reasons, the City insists that the proposed 4-and-4 schedule is not supported by the evidence concerning the relevant statutory criteria and should not be awarded.

The City has proposed amending the sick leave provision of the parties' Agreement so that the first ten (10) days of an approved major illness benefit will be charged against an employee's regular accumulated sick leave days. Currently, in the case of a major illness, there is no charge against accumulated sick leave until the employee has been absent from work for a period of one (1) year. The City argues that its proposal is clearly reasonable given the fact employees continue to accrue sick leave during periods of defined major illness.

The City has proposed to alter the prescription co-pay provision of the Agreement so that the co-payment for generic prescriptions shall be reduced from \$3.00 to \$1.00, and the co-payment for brand-name drugs shall be increased from \$5.00 to \$7.00. The City maintains that the proposed change provides a stronger financial incentive for employees to choose generic prescriptions, which in turn will create savings for the City on drug costs. According to the City, the increase in the brand-name co-payment will impose additional cost sharing on those officers who want to use brand-name drugs without working an undue burden upon them. It argues that this proposal, therefore, is clearly reasonable and ought to be awarded.

The City has proposed a new provision in the Agreement which will permit the City to change health plan providers to long as the benefits under the new plan are, in the aggregate, substantially equal to the previous plan. The City argues that this proposal reflects the current state of the law, and that it gives the City

much needed flexibility to pursue the most cost efficient insurance plan while maintaining the quality of health care that its employees already receive. It argues that this proposal is extremely reasonable and should be awarded.

The City has proposed to change the longevity provision of the Agreement so that new employees hired after July 1, 1999 will not receive the benefit. Currently, all employees receive a defined longevity increment starting after completion of four (4) years. The City argues that the benefit is costly and should be phased out as current employees retire or leave the force. According to the City, the savings associated with the elimination of this benefit will help alleviate revenue shortages caused by the conversion of payments in lieu of taxes into ordinary taxes.

Further, the City argues that the longevity benefit is not a necessary incentive to keep more senior and competent officers on the force. According to the City, the members of its police force are compensated at higher levels than most of their colleagues working in comparable jurisdictions, and the Agreement's exceptional wage and benefit package is a sufficient incentive to discourage early retirements and attrition.

Moreover, the City argues, current employees will be unaffected by this proposal. For these reasons, the City argues that its proposal to eliminate longevity benefits for new employees is clearly reasonable and should be awarded.

The City has proposed to change the number of holidays under the Agreement. Currently, employees are entitled to sixteen (16)

holidays per year. The City seeks to reduce the number of yearly holidays to thirteen (13). It asserts that this reduction would align its employees' holiday entitlement with the benefit received by police forces in the comparable jurisdictions. It claims that this proposal is clearly reasonable and should be awarded.

The City has proposed that only active employees who are on the payroll at the time of the new Agreement's execution will be entitled to retroactive pay increases. The City proffers that there are five (5) or six (6) employees who have retired or are on terminal leave who would be affected by this proposal. The City asserts that it makes this proposal in order to cope with its loss of revenue, and that the proposal is a lawful one. Accordingly, the City asserts that this proposal is clearly reasonable and should be awarded.

The City opposes all of the Association's other economic and non-economic proposals. It argues that those proposals, such as the increasing the City's co-payment for dental benefits to seventy-five percent (75%) of "Usual, Customary and Reasonable" coverage, permitting officers to accumulate unused personal days, and increasing the salary differentials for superior officers, are each unwarranted and unnecessary. The City asserts that its financial condition is distressed and that these proposals are only a further draw on its limited resources.

The City further maintains that the Association's requests for a gun maintenance allowance of \$100.00, a \$75 dollar per year increase in uniform allowance and a \$10.00 increase in the meal

allowance all are unreasonable in light of its financial condition. The present uniform allowance, according to the City, is the third highest among comparable jurisdictions, and \$170.00 higher than the average. The City argues that given its distressed financial condition and considering the generous allowances that are currently received by the City's police force, the Association's proposals to increase or add allowances are unreasonable and should not be awarded.

In all, the City maintains that the credible evidence adduced at the hearing demonstrates that its final offer is the more reasonable under all of the statutory factors set forth in N.J.S.A. 34:13A-16(g). It asks that its final offer be awarded.

OPINION

Several introductory comments are appropriate here. In the absence of an agreement to the contrary by the parties, the procedure to be used in this matter is conventional interest arbitration. As Interest Arbitrator, I must adhere, as follows, to the statutory criteria set forth in N.J.S.A. 34:13A-16(g).

[The Interest Arbitrator must] 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 the welfare of the public. Among the items the arbitrator 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) Comparisons of the wages, salaries, hours and conditions of employment of the employees involved in the arbitration proceeding 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 sections 5 of P.L. 1995, c.425 (C.34:13A-16.2); provided, however, that each party shall have the right to submit additional evidence concerning the comparability of jurisdictions for the arbitrator's consideration.

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

(4) Stipulations of the parties.

(5) The lawful authority of the employer. Among the items the arbitrator 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 shall take into account, to the extent the 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 © 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.

Accordingly, and with these principles in mind, I now turn to the facts of this dispute.

The Association has proposed a four (4) year Agreement for the period January 1, 1998 through December 31, 2001. The City, on the other hand, proposes a three (3) year term, extending through December 31, 2000.

I find that in the circumstances of this case, a three (3) year Agreement is of insufficient duration. It would require that negotiations between the parties begin immediately for their next agreement. This would be unduly burdensome on both the City and the Association. It also would run counter to the interests and welfare of the public.

In addition, a four (4) year Agreement makes good sense. It would enable the parties involved in this proceeding to at least have a limited period of time to resume their relationship free from the interruptions of collective bargaining. It will also provide an opportunity for the parties to live under the changes awarded, e.g. the new work schedule, in order to assess whether it is meeting their mutual interests.

Thus, I have formulated this Award based upon a contract term of four (4) years, from January 1, 1998 through December 31, 2001.

The Association has proposed across the board wage increases in base salary of four percent (4%) effective on January 1, 1998, four percent (4%) effective on January 1, 1999, four percent (4%) effective on January 1, 2000 and four percent (4%) effective on January 1, 2001.

The City has proposed a three and one-quarter percent (3.25%) base salary increase effective on January 1, 1998, a three and one-half percent (3.5%) increase effective on January 1, 1999 and a two and three-quarters percent (2.75%) increase effective on January 1, 2000.

I find both proposals to be unacceptable. The City's proposal cannot be justified under a proper application of the statutory criteria. After my full consideration of the statutory criteria I am persuaded that the statutory factors support increases larger than those proposed by the City. So, too, application of the statutory factors, particularly in consideration of the scheduling change which I grant, as set forth below, compels me to grant pay increases more moderate than those proffered by the Association, which were, in large measure, justified had the work schedule not been changed. In order to determine with specificity the appropriate economic package, it is necessary to analyze each of the statutory criteria in relations to the positions proffered by the parties.

As to the interests and welfare of the public, I agree with the City that its police force is one of the best compensated in the State. In addition, the evidence shows that the City's recent fiscal performance has been lackluster. The City recently has experienced a substantial loss of payments in lieu of taxes, which, together with its high rating (twelfth State-wide) on the Municipal Distress Index, supports a finding that an immediate improvement in the City's economic landscape is unlikely.

However, the public's interests and welfare are not limited to economic concerns. I agree with the Association that its members have provided outstanding service to a community that requires high standards of performance and productivity from its police officers. In the past, the City has agreed to generous wages which have

attracted high caliber police and which have rewarded their dedicated service. By supporting its police force economically, the public acknowledges the exemplary achievements of its police officers. This support contributes to the high morale among the force, which in turn, encourages officers to continue to give their best efforts in service of the community.

Thus, while the public interest and welfare are served by attention to containing costs, I am persuaded that an equally important benefit is derived from maintaining the relatively high economic standing of the City's police officers. Accordingly, I find that the statutory criterion concerning the interest and welfare of the public favors awarding a wage increase higher than what is proposed by the City. Whether that increase should be the four percent (4.0%) across the board increased proposed by the Association, or a more moderate raise, depends on other factors, as I discuss below.

The second criterion requires a comparison of the wages, salaries, hours and conditions of employment of City police officers with those of other employees performing the same or similar services in the public sector in comparable jurisdictions, in comparable private employment and in public and private employment in general.

The Association acknowledges that the wages of the City's police officers compare well with their counterparts in other Middlesex County communities. The Association asserts that its wage proposals are reasonable and fair in that they merely ensure

that the City's police will maintain their relative economic standing in comparison with police in the comparable municipalities.

Thus, for example, the Association notes that the County-wide average salary increase in 1998 for officers holding the rank of top patrolman was four and sixteen hundredths percent (4.16%); so, too, in 1998, the average percentage increase in top patrolman pay among comparable County municipalities was four and three hundredths percent (4.03%). The Association argues that its proposal of four percent (4%) per year, therefore, merely seeks to maintain the status quo, while the City's proposals, if adopted, would lower officers' pay in relation to the police in the comparable Middlesex County communities.

I agree. Although the City's proposal, at least in 1999, is not dramatically less than the proposal of the Association, the overall effect of the proposal would be to slow the growth of its police officers' salaries relative to their counterparts in neighboring communities, a development which might hurt morale in the Department.

This analysis applies, as well, if the comparables are drawn from a list, proposed by the City, of municipalities in the State which share many of the City's demographic and socio-economic characteristics. Among those communities, the City's top patrolmen would maintain their relative standing under the City's proposal, but under the Association's proposal, actually improve in relative standing.

Thus, under a group of comparable communities within the County, the Association's proposal would tend to maintain the status quo. If the list of comparable communities were drawn from state-wide urban centers and urban/suburban communities, the City's proposal appears to preserve the relative economic standing of its police officers.

The foregoing persuades me that the City's proposal are somewhat low. On the other hand, the Association's proposals, although not unprecedented, are on the high end. Plainly, the City's police are very well paid, and the Association's proposal is a modest attempt at keeping the City's police officers at the top of their field among comparable New Jersey communities. I agree with the Association that its proposed four percent (4.0%) annual raise in base salary would merely preserve the relative standing of the City's police officers in comparison with their counterparts in nearby communities as well as in municipalities with which the City shares some basic urban traits.⁵

With respect to the criterion regarding comparisons to public employment in general, the City acknowledges that for 1998 it agreed to economic terms with the FOA that are more generous than what it has proposed in this case. The FOA Agreement contained a three and three-quarter percent (3.75%) increase for 1998, as opposed to the three and one-quarter percent (3.25%) being offered here. The City argues that this was reasonable because the FOA

⁵Thus, in the absence of the change implemented regarding the work chart this would, in all likelihood, have been the appropriate salary adjustment.

agreed to concessions such as a provision that the first ten (10) days of a major illness will apply to an employee's accumulated sick time. Likewise, the City's contract with its municipal employees contains better economic terms than those being offered to the police. Again, the City's reasoning is that the municipal employees agreed to concessions.

On the basis of the foregoing comparisons, I decline to adopt either parties' proposed salary increases. In view of my finding that the City's proposal to modify Section 3(a) of the Agreement to provide that the first ten (10) days of an approved major illness benefit will be charged against an employee's regular accumulated sick leave, the City's wage proposal is too low. At the same time, because, as set forth below, I grant the schedule change proposed by the Association, I find that the Association's salary proposal is too high.

Thus, I find that the evidence of comparability presented by both the City and the Association support the awarding of a wage increase greater than the increase proposed by the city, but less than that proposed by the Association. In reaching this conclusion, I have considered the data from the private sector as required by statute. However, I find that data less persuasive than other criteria in large measure due to the volatility of that sector. For example, Association draws comparisons with the private sector based on data from 1996, a year in which wages grew at substantial rates. The City, on the other hand, focuses on 1998, a period of slower economic growth.

In any case, I note that annual salary increases between three and four percent (3%-4%) compare favorably with private sector trends during the initial period of the contract.

The next criterion deals with the overall compensation received by the City's police officers. I agree with the City that the overall compensation received by its police officers is good. The Association also asserts that its members' overall pay and benefits are similar to those enjoyed by their counterparts in other communities in Middlesex County. I am persuaded that the overall compensation of the City's police should keep pace with the compensation package enjoyed by comparable police units. The fact that the City's police actually fare better than police in other communities is not an argument against a substantial wage increase. If such an increase is necessary for the police to maintain their overall economic standing in relation to the police in other municipalities, then it is justified.

In addition, an analysis of the overall compensation must also factor in any changes in the compensation package that are under review in this interest arbitration. As noted above, I find that a higher salary increase than that proposed by the City is warranted because the City has requested, and I have awarded, a change in Article VI, Section 3(a), which currently provides that members who are not working due to a major illness for a period of up to one (1) year, are not charged sick time. I grant the City's proposal to charge the first ten (10) days of a major illness leave of absence to the employee's sick leave bank.

I agree that this is a reasonable proposal in light of the fact the City's police officers continue to accrue sick leave during periods of defined major illness. It makes no sense to permit accruals during a period of absence which cannot be charged against sick leave. I agree that ten (10) days is a reasonable charge. However, because the City has not demonstrated the actual cost associated with the current benefit, or the savings that will be realized if its proposal is granted, I have determined that a charge of ten (10) sick days should be a yearly maximum. Accordingly, employees on leave due to major illness may not be charged more than ten (10) sick days total for all major illnesses in a year. Otherwise the change would disproportionately impact members who experience multiple incidents of relatively short-term hospitalization.

Thus, for the foregoing reasons, I find that the criterion of overall compensation also demonstrates the appropriateness of awarding a wage increase larger than the City's proposal but smaller than the proposal by the Association. I note further that the City has stated that the higher FOA salaries reflected that organization's acceptance of the major illness/sick leave modification proposed in these negotiations by the City. Nevertheless, the increases I award herein are somewhat lower than those in the FOA Agreement.

As to the criterion concerning the stipulations of the parties, I find that the only stipulation relevant to my resolution

of the dispute is the parties' waiver of the statutory time limits for determining this case.

As to the lawful authority of employer, I note the existence of New Jersey's Cap Law. This criterion requires an evaluation of the City's authority pursuant to the requirements of the Cap Law, to pay for the increased costs of the Agreement. The Association argues that New Jersey's Cap Law presents no impediment to my awarding the Association's economic proposals. The Association, thus, contends that the City has the budgetary flexibility to pay for the Association's wage proposal within the framework of the State's Cap Law. The City has not presented any persuasive evidence to the contrary.

This is not to say that the City has failed to present a compelling case that it is not flush with money. However, that type of evidence is more appropriately considered when evaluating the financial impact on the governing unit, its residents and taxpayers. Thus, there can be no dispute that the Association has met its burden of establishing that the City has the lawful authority to pay for the wage increases awarded herein, which fall between the increases proposed by the City and those proposed by the Association.

The statutory criteria concerning the financial impact of the parties' proposals on the governing unit, its residents and taxpayers, essentially asks for an analysis of the City's ability to pay for the parties' proposals.

The City has argued that it is in a "distressed" financial state. While I do not think the evidence supports such an extreme view of the City's economic health, I do agree that the evidence supports a finding that the City should undertake additional economic burdens with caution. While the City is not in crisis, evidence shows the existence of a recent drop in its surplus, due largely to the conversion of large payments in lieu of taxes to conventional taxes.

At the same time, however, record evidence shows that the City's ratable base largely has rebounded to 1994 levels, and reflects stability:

<u>Year</u>	<u>Net Valuation Taxable</u>
1994	\$1,294,610,318
1995	NO DATA
1996	\$1,261,238,020
1997	\$1,257,200,113
1998	\$1,285,415,098

(City Exhibit 57)

This evidence, however, does not support a finding, proposed by the Association, that there are no financial concerns. The absence of any reliable indicators of long-term financial growth persuade me that salary increases should be relatively modest.

For all of these reasons, I have determined that the appropriate wage increase is a three and one-half percent (3.5%) across-the-board increase effective January 1, 1998, a three and one-half percent (3.5%) across-the-board increase effective January 1, 1999, a three and one-half percent (3.5%) across-the-board increase effective January 1, 2000, and a three and one-half

percent (3.5%) across-the-board increase effective January 1, 2001. This results in an average annual increase of three and one-half percent (3.5%) in each year of the Agreement. This is substantially less than the increase proposed by the Association, which over the life of the Agreement would have averaged four percent (4.0%). The average annual rate of three and one-half percent (3.5%) is also greater than the average annual rate increase of three and seventeen hundredths percent (3.17%) proposed by the City.

This increase also is far less than awards issued recently in New Jersey by interest arbitrators. Police officers in Woodbridge, Piscataway and Old Bridge, all three communities identified as comparables by both parties, each received increases higher than what I grant herein. In an award covering the period January 1, 1996 through December 31, 1998, Old Bridge police received average annual increases of three and eighty-seven hundredths percent (3.87%). See IA-97-044 (12/7/98, Mastriani). In an award covering the period January 1, 1996 through December 31, 1998, Woodbridge police received average annual increases of four percent (4.0%). See IA-96-119 (2/17/98, Mastriani). In an award concerning only an April 1, 1997 increase, I awarded the Piscataway police an increase of four and one-quarter percent (4.25%). See IA-97-039 (6/22/98, Scheinman).

Similarly, for Trenton, a community identified by the City as a comparable, I awarded an average annual increase of three and eighty-seven hundredths percent (3.87%) for the period July 1, 1997

through June 30, 2000. See IA-98-001 (12/28/98, Scheinman). In North Brunswick and South Brunswick, communities identified as comparables by the Association, the police received increases that outpace what is awarded here. In North Brunswick, an arbitrator awarded average annual increases of four and thirty-one hundredths percent (4.31%) over the four year period January 1, 1997 through December 31, 2000. See IA-98-114 (11/4/98, Mastriani). For the same period, police in South Brunswick received average annual increases of three and three-quarters percent (3.75%). See IA-97-128 (7/1/99, Light). In fact, record evidence shows that for the period 1998 through 2001, the annual percentage rate increases for both voluntary settlements and interest arbitration awards statewide, exceed the increases I award herein (Association Exhibit 6). As previously stated, lower increases on this case are warranted because of the change to a 4-and-4 schedule awarded herein.

I recognize that the increases awarded herein, like both parties' wage proposals, are higher than current increases in the cost of living. However, I also recognize that in the past, police did not receive wage increases equal to the cost of living when the jump in the cost of living was running in or close to double digits. Under those circumstances, common sense required that salary increases be less than the cost of living.

This is not surprising. It is ordinarily the case that in periods of very high inflation, salary increases tend to lag behind the rate of inflation. Conversely, in time of low inflation, when

the cost of living is quite moderate, wage adjustments somewhat exceed the cost of living. Pursuant to historic trends in the cost of living and police wage rates, I find that the wage increases awarded herein to be the appropriate result. The awarded increases slightly exceed recent increases in the cost of living, but reflect the long term historic trends in the cost of living.

Thus, I have incorporated relevant evidence concerning the cost of living into this Award. Stated otherwise, the increases awarded herein reflect and take into account the declining cost of living.

The final criterion concerns the continuity and stability of the employment of the City's police officers. The evidence establishes that the present complement of police in the City have a high level of continuity and stability in their employment. That is, there is no evidence to suggest that the City's police face the imminent threat that their positions will be eliminated or that the number of police on the force will be reduced. As a result, this criterion favors a more moderate increase than the one sought by the Association.

In summary, in light of all of the statutory criteria, as described in detail above, I award the following salary increases to the City's police:

January 1, 1998 3.5% across-the-board increase, exclusive of increments.

January 1, 1999 3.5% across-the-board increase, exclusive of increments.

January 1, 2000 3.5% across-the-board increase, exclusive
of increments.

January 1, 2001 3.5% across-the-board increase, exclusive
of increments.

These increases balance the legitimate right of the City's police to be compensated appropriately without unduly burdening the residents and taxpayers of New Brunswick.

I now turn to the parties' other economic and non-economic proposals.

The Association has proposed that effective upon the execution of this Agreement, the parties' current work schedule be changed to a "4-and-4 schedule." The City, although initially having proposed the schedule change, now opposes it. Accordingly, the burden is on the Association to justify the proposal.

The Association has made a compelling case based on first-hand reports that implementation of a 4-and-4 schedule for police in comparable communities has resulted in reduced sick leave and overtime. It also has made a strong case that implementation of a 4-and-4 schedule among the City's police could improve the lives of those officers and thereby boost Department morale.

The City, on the other hand, argues that the experience of other communities that converted to a 4-and-4 schedule shows that reductions in overtime and sick leave usage may be only temporary. The City's evidence, however, was largely anecdotal. Its concerns about breakdowns in communication, a drop in officer availability

and a loss of the flexibility to provide neighborhood policing, were not supported by direct evidence from other communities.

The evidence persuades me that the proposed 4-and-4 schedule, if administered efficiently, will provide opportunities for greater police coverage, particularly during peak crime hours and especially given the additional hours awarded beyond those created by this schedule. The anticipated reduction of overtime and sick leave promises to reduce costs. The evidence persuades me that the 4-and-4 schedule actually increases the number of officers available to work, which gives the Director greater flexibility in running his Department. The record evidence persuades me that the 4-and-4 schedule will further the public interest and the continuity and stability of employment by increasing productivity and improving morale by increasing personal time between work details. I find that supervisory efficiency and teamwork is achievable because superior officers and patrolmen will be working the same schedule. In sum, the Association's evidence demonstrates that the schedule change to a 4-and-4 work schedule is justified.

I have considered the Director's assertion that the 4-and-4 schedule may require the hiring of additional staff. Although this claim, too, is based largely on speculation, I credit his concerns. It goes without saying that the City can ill-afford, at this point in time, to be stuck with a costly new work schedule. That would not be in the interests of the City or its police.

As discussed above, the wage increases ordered herein take into account the Director's concern that he may be faced with costs

caused by staffing shortages or reduced flexibility. While I think the record evidence supports yearly wage increases more on the order of those proposed by the Association, and I find that the Director's objections to the costs of the 4-and-4 schedule are based on speculation rather than on real experiences of particular communities, I have awarded lower wage increases based on my concern that the 4-and-4 schedule, which still is not widely utilized, may have hidden costs that have not been anticipated by the parties.

Moreover, the Director's genuine concern about potential problems with the new schedule supports implementing the Association's 4-and-4 work schedule proposal on a one (1) year trial basis in order to evaluate its effectiveness. After this one (1) year trial period, if the City believes that there has not been sufficient progress in meeting the objective discussed above, namely a reduction in overtime and sick leave over levels in effect in 1996, 1997 and 1998, or due to another legitimate or emergent need, the City may petition me to eliminate the 4-and-4 work schedule and return to the status quo ante. I shall retain jurisdiction to address any such petition which may be filed by the City. My jurisdiction shall include the authority to make adjustments to the wage increases awarded herein, which were based on the implementation and retention of the 4-and-4 work schedule.⁶

⁶ After the one (1) year trial period, unless the City has filed a timely request for me to review the 4-and-4 schedule under my retained jurisdiction, the trial period shall be over and the City may thereafter withdraw the schedule. However, in accordance with PERC's decision in Township of Teaneck and Teaneck Firemen's Mutual Benefit Association, Local No. 42.

The parties have stipulated that the proposed 4-and-4 schedule will result in a reduction of seventy-six (76) scheduled hours. This equates to approximately 7.4 days at ten and one-quarter (10.25) hours per day.

The City argues that it should be permitted to use the seventy-six (76) hours as it deems necessary. The City states that it intends to allocate thirty-two (32) of those hours to training, sixteen (16) of which will be for shooting range qualification. The City proposes that the remaining forty-four (44) hours would be classified as "bank time" which would be exhausted as the officer worked details outside the standard 10.25 hour tour. According to the City, if any officers do not deplete their bank time in the course of a given year, the remaining time would be counted against holiday pay they would otherwise receive. The City suggests that this manner of using the seventy-six (76) hours might alleviate some of its concerns about the schedule and also help avoid overtime costs.

Generally, the City's "bank time" proposal makes sense. After all, the Association acknowledges that the revised schedule would result in a seventy-six (76) hour reduction in annual work hours, or the equivalent of 7.4 days. The Association itself has proposed additional range training as a quid pro quo for the schedule change.

P.E.R.C. No. 2000-33 (October 29, 1999), because the schedule is awarded on a trial basis, it shall not become part of the status quo for successor contract negotiations.

I conclude that the City is free to use its seventy-six (76) hours in accordance with its stated intent provided adequate notice is provided to the officers of assignments. I shall retain jurisdiction only for the first year of implementation should there be disputes as to how the City schedules the seventy-six (76) hours.

I reject, however, the City's proposal that unused bank time may be charged against holiday pay. The City has argued that one of its primary objections to the 4-and-4 schedule is a loss of flexibility, particularly with respect to neighborhood policing. In view of these concerns, which I am sensitive to, it makes little sense to charge officers' bank time to holiday pay rather than assign officers to additional details outside their standard tours.

The Association made one additional proposal in connection with the 4-and-4 schedule change. It proposes that absences be charged against contractual leave at ten (10) hours for Operations Division officers and nine (9) hours for officers in Administration and Criminal Investigations. It argues that this accounting method benefits the City by simplifying the "administrative bookkeeping nightmare" that is expected from having to keep track of fractions of an hour under the new schedule. Moreover, the Association argues, the proposed bookkeeping practice is only fair since some officers' responsibilities, like being dressed in uniform and ready to begin work, traditionally have commenced fifteen minutes (15) prior to the start of their shift.

I am not persuaded that keeping track of fractions of an hour for purposes of calculating leave is so great a hardship that it warrants adding another cost to the schedule change. In fact, all days of leave or entitlements in the Agreement will have to be converted to hours or to "new days" in light of the change to the 4-and-4 schedule. Both parties agreed that they would implement the necessary recalculations or prorations of accruals.

The Association's proposal to modify Article VIII to permit the accumulation of unused personal days is rejected. One of the purposes of the 4-and-4 schedule is to create the opportunity for officers to have more free time. Accordingly, there is no justification for a change in the rules governing the accumulation of personal days.

The Association has proposed a modification of Article XI, Sections 1 and 2 which will increase the uniform allowance \$75.00 per year of the Agreement. I recognize, as the Association points out, that this benefit has not been increased since 1993. Nevertheless, my analysis of the record shows that the uniform benefit under the Agreement has maintained its standing as one of the highest among the comparable municipalities designated by the Association. See (Association Exhibit 12). The record does not contain evidence concerning the cost of uniforms or of the percentage of that cost that is covered by the allowance. Absent such evidence, I am unwilling to award a large and permanent increase in the benefit.

Yet, because the costs of uniforms has increased since 1993 without a corresponding increase in the benefit, I conclude an increase in the uniform payment of \$75.00 shall be paid at the time of the payment of the uniform allowance in November 2001. This payment is relatively modest, and will offset some of the increased costs of clothing since 1993.

The Association has proposed adding a new Section 6 to Article XI which create a gun maintenance allowance of \$100.00 per year. The Association asserts that the two (2) days of annual shooting practice mandated by the State is not sufficient time for officers to maintain their shooting skills. According to the Association, its members voluntarily engage in target practice, but that the hourly fee plus the costs of ammunition, targets and cleaning solvents, discourages officers from practicing their shooting. The Association maintains that the gun maintenance allowance will provide a needed incentive for officers to go to the shooting range with greater frequency. I reject this proposal. It is up to the State, not an arbitrator, to determine how much shooting practice is necessary for police serving the State's various communities to maintain their skills in safe and efficient use of firearms. The State has determined that two (2) days per month is sufficient.

The Association proposal for an upgrade of the dental benefit to not less than seventy-five percent (75%) of the co-pay is not supported by compelling evidence regarding the statutory criteria. The proposal is rejected.

The Association initially proposed a change in Article XIII of the Agreement so as to make holiday pay pensionable income for officers who have twenty (20) years of service within the pension system, rather than just with the City. The Association has sought to change that proposal to one seeking to modify Article XIII of the Agreement by eliminating the phrase "at the employee's option," on the grounds impending legislation will require that holiday be posted as pensionable income for all employees. The Association claims that this change will bring the pension benefit into compliance with the law. I reject the proposal. The statutory criteria do not justify granting this proposal at this time.

The Association further proposes a change in the method of calculating superior officers' base pay. Under the proposal, the salary of officers in the rank of sergeant would be based on a fifteen percent (15%) differential over the salary of Senior Patrolman. The current differential is based on the salary of Step V Patrolman. Senior Patrolman's pay is based on a differential of three percent (3%) over the pay of certain Step V Patrolmen. I reject this proposal. Based on the three and one-half percent (3.5%) across-the-board increase granted herein for all police officers, the resulting pay increase for superior officers would be six and six-tenths percent (6.6%). There is no record support for this benefit increase.

Moreover, I am satisfied, on this record, that the current differential between Step V Patrolman and Sergeant is sufficiently

large to serve as an incentive for patrolmen to seek promotion to superior officer status.

Article XXX, Section 1 of the Agreement currently provides a \$15.00 per diem meal allowance for officers who are required to attend a workshop, seminar or special training program. The Association proposes increasing the allowance to \$25.00. This is a reasonable change that makes sense. I grant the proposal.

The Association's proposal that Article XXX, Section 2 should be modified to require pay at overtime rates if an officer is unable to take a meal break is rejected. The record does not contain evidence demonstrating that the change is necessary. Officers who are required to work through their meal break should resolve pay issues administratively by requesting approval for overtime.

The Association proposes a new Maternity Leave provision which acknowledges a disability phase of pregnancy during which individuals will be entitled to the benefits of the Agreement's Major Illness provision. I am persuaded that this is a benefit change that makes sense. In any pregnancy, whether or not there are complications that require prolonged hospitalization, there is a period of time that the officer would be unable to work in her position. That holds true both for conditions prior to pregnancy as well as post-partum complications.

The record evidence persuades me that ordinary pregnancies, where the officer is out of work less than ten (10) days, should be treated like ordinary illnesses, regardless of the circumstances.

However, if the period of absence due to pregnancy, or to medical conditions related to pregnancy or delivery, is for ten (10) or more days, then the officer should be entitled to the protections of the major illness provisions of the Agreement.

The City has argued that fifty percent (50%) of approved maternity leave should be charged to an employee's sick leave accumulations. The City also proposes that officers on major illness maternity leave should not accrue sick leave or personal leave during the term of their absence. The problem with these proposals is that they are discriminatory. The rules governing major illness leaves of absence must be gender neutral.

The issue regarding use of sick time is moot. Heretofore, leaves of absence due to other major illnesses were not charged to employees' sick time banks. However, under this decision, the first ten (10) days of a leave of absence due to major illness, subject to a maximum charge of ten (10) days in any one (1) year period, will be charged to sick time banks. Officers who qualify for a major medical maternity leave shall therefore be required to charge the first ten (10) days against their accumulated sick leave.

The City's proposal to eliminate accruals is not so easily resolved. My decision to charge ten (10) days of major illness leave to sick leave banks was based on the premise that employees on a major illness leave of absence continue to accrue sick leave. The record therefore does not support a change in the rules

governing accrual of sick and personal leave for officers on major medical leaves of absence.

The City proposes a modification of Article XII, Section 3 under which it reserves the right to change health care providers, provided that in the aggregate a new plan is substantially equal to the previous plan. This proposal is reasonable provided that benefits and coverage under any new plan are substantially equal to the plan now in effect. Further, any disputes about a change in coverage or benefits under this proposed change should be subject to expedited arbitration.

The City proposes to modify Article XII, Section 5 to reduce the co-pay for generic prescriptions from \$3.00 to \$1.00 and increase the co-pay for brand prescriptions from \$5.00 to \$7.00. the City asserts that other bargaining units agreed to this change. I believe the modification is a reasonable attempt to reduce medical costs. I, therefore, grant the proposal, provided however that the co-pay change should not apply where the physician who has ordered the prescription certifies in writing, that the brand name drug is medically necessary.

The City proposes to eliminate the longevity benefit in the Agreement for new employees hired after July 1, 1999. According to the City, the elimination of this benefit for new hires is reasonable and should be awarded. The City argues that the longevity benefit is costly, that its elimination will help alleviate revenue shortages, and that it is not a necessary incentive to keep more senior and competent officers on the force.

The City argues that its police officers are compensated at higher levels than police in comparable jurisdictions, and that the Agreement's exceptional wage and benefit package is a sufficient incentive to discourage early retirements and attrition. The City further argues that current employees will be unaffected by this proposal.

I reject the City's proposal on the grounds that it has not provided evidence that the longevity benefit has been eliminated in comparable jurisdictions. Absent such evidence, I find no justification in the record for creating a two-tier pay scale in the City's police force. However, in consideration of the cost factors raised by the City, I find that a slower phase in for new hires is reasonable. Accordingly, for new hires after the date of this Award, Article XV of the Agreement shall be modified as follows: Upon the completion of four (4) years, the longevity increment shall be one and one-half percent (1.5%) of annual base pay; upon the completion of eight (8) years, the longevity increment shall be three percent (3%) of annual base pay; upon the completion of nine (9) years, the longevity increment shall be four percent (4%) of annual base pay. Upon the completion of twelve (12) years, and thereafter, the longevity increment for all employees shall be the same and shall be those benefits previously set forth in the 1995-1997 Agreement.

The City's proposal to reduce the contractual holidays from the current sixteen (16) to thirteen (13) is rejected. The City argues that thirteen (13) holidays would bring the benefit in line

with the holiday benefits enjoyed by other City bargaining units. I do not find that argument persuasive. The record does not explain the historic difference among the bargaining units. Perhaps certain contracts have sixteen (16) holidays because in a prior agreement, that the union gave up another benefit in exchange for additional holidays. Similarly, the City's other units may have agreed to a reduction of holidays in exchange for a benefit. The record evidence does not support awarding this benefit.

The City proposes that only active employees who are on the payroll at the time of the Agreement's execution will be entitled to retroactive pay increases. The City further proposes that employees who have retired or are on terminal leave at the time of the Agreement's execution will not be entitled to retroactive pay increases. I reject these proposals. I do not believe the purposes of the statute would be served if officers who were in active service during the term of the new Agreement were precluded from enjoying the new Agreement's salary increases merely because they are retired or on terminal leave. Such a provision unfairly penalizes recent retirees, could be utilized as a precedent, and might encourage dilatory tactics in the future.

In summary, I have carefully considered all of the relevant statutory criteria, as well as the type of standards normally evaluated in interest arbitrations of this kind, in reaching my findings above. In my view, they balance the rights of the members of the bargaining unit to fair improvements in their terms and

conditions of employment with the legitimate needs of the City to budget its economic resources.

Accordingly, the changes herein are awarded to the extent indicated by this Opinion.

AWARD

1. TERM

The Agreement shall have a term of four (4) years, from January 1, 1998 to December 31, 2001.

2. WAGES

January 1, 1998 ---	3.5% across-the-board increase, exclusive of increments.
January 1, 1999 ---	3.5% across-the-board increase, exclusive of increments.
January 1, 2000 ---	3.5% across-the-board increase, exclusive of increments.
January 1, 2001 ---	3.5% across-the-board increase, exclusive of increments.

3. 4-AND-4 WORK SCHEDULE

Thirty (30) calendar days after the date of this Opinion and Award, and subject to the modifications set forth in the foregoing Opinion, the Association's 4-and-4 work schedule of ten and one quarter (10.25) hours (including the 4-and-3 work schedule of nine and one quarter (9.25) hours for the Administrative and Criminal Investigations Divisions) shall be implemented by the parties on a one (1) year trial basis in order to evaluate its effectiveness. All leave entitlements shall be converted to hours or to the appropriate number of these new days.

After this one (1) year trial period, if the City believes that there has not been sufficient progress in meeting the parties' objectives for this work schedule, namely a reduction in overtime and sick leave over levels in effect in 1996, 1997 and 1998, or due to another legitimate or emergent need, the City may petition to

eliminate the 4-and-4 work schedule, and return to the status quo ante. I shall retain jurisdiction to address such petition which may be filed by the City, and such jurisdiction shall include the authority to make adjustments in wages, based on the elimination of the 4-and-4 work schedule and on the record in this Interest Arbitration. In accordance with controlling P.E.R.C. decisions, because the 4-and-4 work schedule is awarded on a trial basis, I have no jurisdiction to make it part of the status quo for successor contract negotiations. I shall also retain jurisdiction, in the first year of implementation, over any disputes regarding how the City schedules the extra seventy-six (76) annual hours.

4. UNIFORMS

Effective at the time of the payment of the uniform allowance in November 2001, the uniform allowance shall be increased by \$75.00.

5. MEAL ALLOWANCE

Effective on the date of this Award the per diem meal allowance in Article XXX, Section 1 of the Agreement shall be increased from \$15.00 to \$25.00.

6. MAJOR ILLNESS

Effective on the date of this Award, Article VI, Section 3 of the Agreement shall be amended as follows:

a. The definition of major illness shall recognize a disability phase of pregnancy during which individuals will be entitled to the benefits of the Agreement's Major Illness provision. Major illness shall include a period of absence due to

pregnancy or medical conditions related to pregnancy or delivery, where the absence is for ten (10) or more days.

b. The first ten (10) days of a leave of absence due to major illness, subject to a maximum charge of ten (10) days in any one (1) year period, will be charged to sick time banks.

7. HEALTH PLAN PROVIDERS

The City may change health plan providers, provided that the benefits and coverage of any new plan are, in the aggregate, substantially equal to the plan now in effect. Any unresolved disputes about whether the benefits and coverage of a proposed new plan are, in the aggregate, substantially equal to the plan now in effect, may be submitted to expedited arbitration.

8. PRESCRIPTION CO-PAY

Effective on the date of this Award, the co-pay for generic prescriptions shall be reduced from \$3.00 to \$1.00 and the co-pay for brand prescriptions shall be increased from \$5.00 to \$7.00, provided however, that the co-pay for brand name prescriptions shall remain \$5.00 where the physician who has ordered the prescription certifies in writing, that the brand name drug is medically necessary.

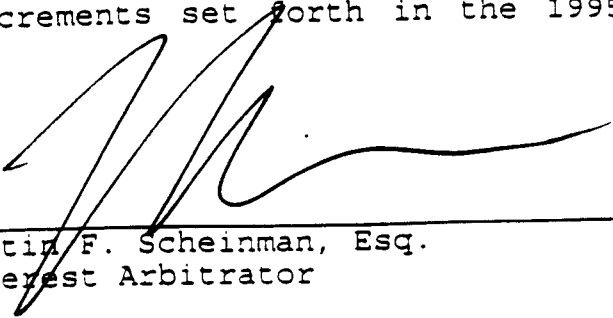
9. LONGEVITY INCREMENT

Article XV of the Agreement shall be modified as follows only for new employees hired after the date of this Award:

Upon the completion of four (4) years, the longevity increment shall be one and one-half percent (1.5%) of annual base pay; upon

the completion of eight (8) years, the longevity increment shall be three percent (3%) of annual base pay; upon the completion of nine (9) years, the longevity increment shall be four percent (4%) of annual base pay. Upon the completion of twelve (12) years, and thereafter, the longevity increment for all employees shall be the same and shall be those increments set forth in the 1995-1997 Agreement.

July 13, 2000.



Martin F. Scheinman, Esq.
Interest Arbitrator

On this 13 day of July 2000, before me personally came and appeared MARTIN F. SCHEINMAN, ESQ., to me known and known to me to be the individual described herein and who executed the foregoing instrument and he acknowledged to me that he executed the same.



NOTARY PUBLIC

SINIA Kartseles
Reg. # 0145423951
County of Queens
Exp. 7/31/00