
In the matter of Compulsory Interest Arbitration
concerning the negotiations impasse

DECISION AND AWARD

between

of

Borough of Caldwell, New Jersey

Frank A. Mason, Arbitrator

and

Caldwell PBA Local #81

Re: PERC Docket IA-2000-104

APPEARANCES

FOR THE BOROUGH

Stuart R. Koenig, Esq., Stickel Koenig & Sullivan

Paul G. Jemas, Mayor

Edward Sandve, Borough Administrator

Harvey N. Lawshe, Captain & Police Officer In Charge

FOR THE PBA

Richard D. Loccke, Esq., Loccke & Correia

William B. Styskal, President

Chester Andraka, Patrolman

Vincent J. Foti, Consultant

INTRODUCTION AND PROCEDURAL BACKGROUND

The parties enjoyed a prior Agreement which extended until December 31, 1999. The PBA represents a unit of employees engaged in police work in the titles of Patrolman, Sergeant and Lieutenant. In September of 1999 the PBA requested the commencement of negotiations for a successor Agreement. The Borough resisted that request as being untimely filed and a dispute as to this issue led to proceedings before the Public Employment Relations Commission. The Commission issued an interim order to have the parties begin negotiations pending final disposition by its authority. That final order has not yet been received by the parties or this arbitrator.

Negotiations began in March of 2000 and continued until there was a declaration of impasse by the PBA in June of 2000. The PERC reviewed the application for initiation of compulsory interest arbitration and on July 19th duly appointed this arbitrator under its auspices to conduct hearings and to issue a determination as to the elements of impasse. The matter has proceeded with the understanding that the arbitrator's authority is defined as conventional arbitration. The Borough claimed its reserved rights as to any remedy available under a final disposition of the appeal, noted above, pending before the PERC.

The parties joined in mediation procedures with the arbitrator and met several times in the attempt to fully resolve all of the elements of their impasse. While some success was gained, it became apparent that not all issues would be satisfactorily agreed upon and formal interest arbitration proceedings were initiated with the submission of final offers of the parties. During the ensuing hearings both parties presented argument and evidence and were given opportunity to examine and cross examine sworn witnesses. After the close of hearings the parties filed post-hearing briefs and when no request was made to file response briefs the record was closed on January 31, 2001.

POSITIONS OF THE PARTIES

The parties agreed that the term of a new Agreement would be three years extending until December 31, 2002; with the continuing reservation of the Employer as to any effect of a PERC determination as stated above.

FINAL OFFER OF THE BOROUGH

ECONOMIC ISSUES ONLY

1. WAGES

Wages to be increased by 2.75% on January 1st of each of the three years.

2. VACATION SCHEDULE

Vacation allowances to be reduced from prior Agreement; less 3 days from years 6 through 10; less 2 days from years 11 through 15; less 1 day for years 16 through 20; less one day from years 25 and beyond. No change for years 1 through 5 and no change for years 20 through 25.

3. SICK DAYS

The current allowance of 15 sick days per year to be reduced to 12 days per year.

4. DENTAL INSURANCE

Elimination of dental coverage for officers and dependents after retirement; not meant to change benefit for those already retired.

5. UNUSED SICK DAY COMPENSATION

The elimination of granting additional compensatory time off to officers who do not utilize any sick leave in a calendar year.

FINAL OFFER OF THE PBA

ECONOMIC ISSUES

1. WAGES

Wages to be increased by 6% on January 1st of each year of the Agreement.

2. LONGEVITY

Modification of the longevity provision of the prior Agreement to apply the final adjustment from 8% to 10% to become effective with 24 years service as opposed to 25 years service.

3. HOLIDAY PAY

The current practice of payment of a lump sum for 6.5 holidays be changed so that the equal sum be included in the base pay of all officers and to be part of compensation for computation of overtime and all other pay benefits.

NON-ECONOMIC ISSUES

1. GRIEVANCE PROCEDURE

The Grievance Procedure be modified to allow grievances concerning minor disciplinary actions to be appealed through the procedures including binding arbitration.

2. HOURS OF WORK

The PBA proposes that the current work schedule of 12 hour days be incorporated in the Agreement.

3. PERSONNEL FILES

The proposal would require the establishment of a personnel file for each officer to include confidential records; be available for review by the individual concerned; included items to

be copied to the individual with opportunity to respond; should it be determined there is cause for disciplinary action then all relevant items to be utilized be furnished to the officer including disclosure of any complainant's identity; all elements placed in file to be maintained permanently and removal of file materials to subject person doing so to disciplinary action.

PROFILE OF THE BOROUGH

The Borough of Caldwell in Essex County is a small community of only 1.9 square miles and approximately 7315 citizens in 1998 estimate, down 3% from 7542 survey of 1990. It is a mature community with very little open space and an aging population, near 20% beyond 65 years in 1990, whose average household income was \$69388 in 1998, up from \$60634 in 1990 or +14.4%. Real estate values have been relatively constant but show modest increases on an annual basis. Turnover is not high and there appears to be a very low vacancy rate. The Borough is largely residential except for a main street retail shopping section and a rather limited commercial sector. The Borough is situated in the far western part of Essex County and at some considerable distance from the County's highly urbanized sections. The Borough sees itself as one of eight "West Essex" [WE] communities with which it should be identified in making comparisons concerning employment. The other seven are West Caldwell, North Caldwell, Roseland, Fairfield, Essex Fells, Verona and Cedar Grove. The Borough asserts that other more widespread communities in the County or elsewhere in the northern part of the state do not represent a logical basis for comparison of terms and conditions of employment and urges the arbitrator to focus on the WE group for those purposes. The PBA expresses a more global view of the appropriate comparison base as will be discussed below.

DISCUSSION

The Borough's Administrator testified extensively as to the financial circumstances and policies of the Borough. The political/financial program of the Borough has been to carefully manage in an attempt to reduce the tax burden on its citizens. Drawing attention to the equalized tax rate among the eight WE communities, in order to illustrate the relative impact of taxes on its residents, it was pointed out that Caldwell was either at the highest rate or the next highest rate during most of the last five years. In the 1999 analysis the rate in Caldwell was noted to be 2.88. just .01 point less than Verona but well above the average of 2.42 of the other seven WE communities and in even sharper contrast with the 2.24 average of the lowest five. Since 1996 Caldwell has recorded almost the same 2.88 rate in each year, except 2.77 in 1997, while the average of the seven has risen from 2.29 to 2.42. The 2000 rate for Caldwell was essentially unchanged.

Although the Municipality has been able to control its portion of the property tax burden over these years it has not been able prevent a rise in the tax rate from 12.24 in 1996 to 13.61 in 2000. From 1994 through 2000 the municipal budget has been reduced each year from a rate of 3.2673 to 3.2000. It has used several means to accomplish this including reduction of staff, consolidation of services with other communities and contracting services. In addition it has regularly controlled the rate of increases in wages and benefits

to its employees to assist in the maintenance or reduction of the tax burden. In its post hearing brief the arbitrator was reminded that, as contrasted to the other seven WE communities, "...Caldwell seeks a lower increase in keeping with the history of settlement within the West Essex communities in which Caldwell typically has the lowest percentage increase as a result of the makeup of the community and the burden on the property taxpayer".

The overall rise in the tax rate is attributed to those portions which are outside the control of the Borough, specifically the School and County shares. During the 1994 through 2000 period while the municipal portion of the taxpayer burden was reduced by 3% the school portion increased by 30% and the County portion was up 19.2%. Clearly much of these increases would have to be attributed to personnel costs as both budgets are driven largely by those expenses. Therefore, while the Mayor and staff have pressed very hard to control expenses, it appears other governing bodies have been less concerned or less successful. The school tax rate rose from 5.3007 to 6.8900 during that period and the County rate expanded from 2.9510 to 3.5200. It is a matter of some interest that the budgets for the school system have regularly been approved by the voters which typically have been a very small minority of those eligible to vote, under 10%. Does this suggest the overall population favor such increases in their taxes or are they simply indifferent?

The Administrator also testified that although the average increases for public works employees during the last three years were between 3.95% and 3.61% Caldwell granted increases in a range from 1.75% to 2.5%. As such, "The Caldwell increases were, by far, the lowest of the West Essex Communities.", according to the Employer's brief. Therein it was also pointed out that these other communities had generally granted comparable increases to their non-police and police employees while Caldwell had routinely provided greater increases for its police personnel. The brief continues, "...while all of the other municipalities in West Essex treat all of their employees similarly in terms of percentage of increase, Caldwell provides a higher percentage of increase to police than it does to either the department of public works or non-union municipal employees." "There is a consistent pattern." This set of historical facts is offered as an entreatment for the arbitrator to conclude the offer of 2.75% to this police unit, by bearing a similar relationship to the 1.75% to 1.5% provided to public works and non-union employees, should be seen as an appropriate rate of increase for police. Such consideration will be weighed in my further analysis of the statutory factors as required by law.

As to the other economic issues raised by the Employer; the reduction of the vacation allowances, the reduction of sick leave days, the elimination of dental benefits for retirees and elimination of the payment for non-use of sick time, these are described as desirable objectives because of their inherent dollar costs and in order to synchronize them with the overall benefits plan set forth in the Employee Handbook and provided to other employees.

In an exhibit [B45] entered into the record the Borough illustrated the current vacation leave plans of the WE communities. In computing the allowances from that data I find

that the Caldwell employee would receive 460 vacation days in a period of 25 years. Cedar Grove provides only 412 vacation days but all six of the remaining WE communities provide more than Caldwell with 461 at West Caldwell and ranging up to 500 at Essex Fells. The average of the six granting more than Caldwell is 484 days. The reduction proposed would trim the vacation allowance to 430 days or a 7% reduction.

The Employee Handbook limits all employees to 12 sick days per year but the Police Agreement provides 15 days. The Borough wishes to reduce this to what all other employees are entitled to. In Borough's exhibit [B48] there is a comparison of the entitlements for police under Agreements in the WE communities. Examination fails to reveal a consistent pattern; the allowances range from unlimited to 12 days. Two are at 12 days, one at 12.5 days, one, in addition to Caldwell, is at 15 days, one has a 90 day allowance but with a non-cumulative condition and there is the unlimited situation. One was not reported on. The Borough proposal would reduce the police plan by 20% to 12 days. It is claimed by the PBA that the number of days as a basis for comparison with the WE communities is improper in that the Borough's own exhibit [B49] clearly demonstrates that these other communities provide twelve hour sick days while the Borough allows only eight hours for each of the 15 days granted. Thus the allowance in Caldwell for fifteen sick days is really fifteen eight hour days while other contracts provide 12 twelve hour days or an annual difference of 24 hours, leaving Caldwell's plan the least generous of all WE communities. The Borough did not clearly reveal this element in its argument. However the distinction between Caldwell police and other Caldwell employees sick leave allowances does show the police in an advantageous position.

In the situation of the community providing 90 days it is clear that this number is renewed each year but the offset is that employees retiring are only entitled to 60 days terminal leave and not a payment for accumulated sick time. Likewise, in the situation where unlimited sick leave is afforded there appears to be no sick leave payout at retirement.

The Borough's demand to eliminate dental coverage for an employee and dependent is intended to apply only to those not yet retired. Testimony suggests there are three persons in the negotiations unit who are close enough to retirement during the contract period to make use of this benefit. Most others are considerably further from retirement and will remain so for a number of years thereafter. For those three the elimination of the plan on the eve of its utilization after years of anticipation would seem unfair particularly if the benefit was part of their overall compensation program for a lengthy time period. The Borough provided information as to the cost of this plan as is now being experienced and for the nine retirees the current premium for the coverage is \$9852. It was expected this will increase at a nominal rate of 5% per year so the fifteen year projection for those now retired amounts to over \$200,000. The benefit is only paid until age 65 and no information was given as to future entitlement of those now retired so that forecast is somewhat hypothetical. Still, the Borough insists it is the only WE community providing such a benefit and in its quest for relief of taxpayer costs it is suggested this should be a part of any Agreement.

Finally the Borough seeks to remove the current contractual provision which entitles employees who have a full year of non-use of any sick leave to receive five days of compensatory time to be taken in the calendar year following. It can't be converted to cash, is not to be used as part of a vacation and may only be used with permission of the Chief of Police. It is not known what the origin of this provision may have been. The Borough indicates it is a potentially costly matter not in the Handbook for others and something they'd like to eliminate. The Borough, in its brief, indicated the cost of the program to have been \$17,922.69 in 1999. No explanation as to the means of assessing this cost figure were provided. I assume it reflects the time off taken at the current value of the time of employees using the compensatory time. Presumably the specific limitations of the terms of the Agreement allow the Chief to grant that time off only when he has a full enough staff to avoid overtime payments for replacements and since there is no cash in allowed I would expect the cost in not as suggested. In fact, for those who do not take any sick leave there are offsetting savings as no unexpected coverage involving overtime costs is incurred for that employee. The initiation of this plan would seem to have been a reflection of a desire to encourage the least use of sick leave possible. For some employees it appears to work. The PBA opposes its elimination based on the fact that they perceive it never to have been abused, that it is a reflection of negotiations past which involved compromises, beneficial to each party, including less than average salary improvements in exchange for a benefit which could be enjoyed without dollar cost to the Employer.

The Borough also addressed certain other economic issues presented by the PBA. The first of these is the demand that the 25 years of service requirement for the final increase in longevity payment be reduced to 24 years. The PBA describes this as a nominal matter and one enjoyed by other police organizations. It would have the effect of allowing an employee to retire after 25 years of service with the rate of pay reflecting the increase in longevity. Whereas now it is necessary to work 26 years to build that last increase into the pay level used for computation of retirement benefits. As with other economic demands the Borough suggests there is no persuasive argument to support this demand and rejects it as a matter which increases the cost burden of the police budget without an increase in the value of the services to the taxpayers. If an employee wants to improve the salary level for computation of retirement benefits there is only the need to complete the 26th year of service. The reduction of this requirement is a burden for which the PBA has not demonstrated any factual basis. It is simply seen as part of a wish list for more.

Likewise the Borough's response to the demand for folding into base salary 6.5 days of holiday salary now paid separately is seen as a means of increasing the base for retirement income at the expense of the Borough without a compelling reason for the change except the obvious which is to further enrich the employee at the expense of the taxpayers. Again, in this circumstance the Borough argued that this would also increase a number of other elements of compensation such as overtime which brought about a modification of the proposal by the PBA to be limited in effect to the impact on retirement income. The Borough opposes this modification as well as the basic concept that these employees are or should be entitled to further enrichments of an already significantly more lucrative

benefits plan than is otherwise enjoyed by other employees of the Borough. However, it is the cost and its effects on the taxpayers which is the key rationale for rejection. In addition the Borough pointed out that the PBA failed to provide any evidence as to this being a common benefit and asserted that only one of the WE communities had any provision for roll-in of holiday pay in such a plan. Here it was asserted that the arbitrator had not established any ground rules for the reduction of the initial proposal to be considered at this stage of the hearing. This is contrary to my position otherwise described below. Suffice it to say that the rejection of the modified plan of PBA was as vehement as it was to the original version. Further the Borough asserted it found these proposals to artificially enhance the retirement plan and thus were unacceptable.

In addition to these proposals and responses to PBA economic demands the Borough offered both testimony and argument concerning certain PBA non-economic proposals. The PBA desired that the current work schedule be incorporated into the Agreement. This is a reflection of a version of the twelve hour day, a plan which had been adopted on a trial basis some seven years ago. When this was discussed the Borough indicated it wanted to maintain the flexibility inherent in its, until now, reserved authority to adjust the work schedule. The PBA's position would, if granted, seem to incorporate both the twelve hour work day and the specific ways it functions in practice. In part the argument for flexibility by the Borough was answered by a PBA modification of its demand to limit the effect to the length of the work day only, thus leaving some flexibility as to other ramifications of the plan to be imposed. In its post-hearing brief the Borough raised the question as to the propriety of this modification being considered by the arbitrator suggesting, "...the arbitrator did not indicate whether he would permit the PBA to modify the final proposal from the original request...". There seemed to be an inference that the Borough had no opportunity to consider this matter at that stage of the hearing. However, the arbitrator clearly indicated that modifications of offers would be considered so long as the opposing party had an opportunity to respond and providing the modification was such as to bring the positions of the parties closer. Having established that ground rule at the outset of the hearing it should have been clear to the Borough that if it had reason to respond to modified positions such response would have been received and considered. My assumption is that the position taken in opposition to the initial positions of the PBA was continued and unchanged even as to modified versions.

What is clear on the record is that there was no substantive problem which had created this demand by the PBA. Instead it was introduced only because of the potential that the Borough might have reason to consider a change which the PBA might then find distasteful. This is largely due to the comfort of working the twelve hour schedule in exchange for fewer work days and the available alternative use of those non-work days as well as the effect that schedule has on reducing the number of days of late shifts. The question remains as to whether there should be a limit imposed on the Borough at this time. The Borough position is that this trial has worked very satisfactorily, that it has no intent to change the basic concept of twelve hour shifts but that it had made the agreement originally to include a reserve of authority to make changes if warranted. That consideration remains a key concern as the Borough recognizes the potential for meeting

demands placed on it for the safeguard of the public. While such potential changes are not on the horizon the Borough contends neither is the threat of change so that the parties should be willing to continue an accord reached many years ago because it has been successful and because future conditions are not absolutely predictable.

As to the remaining non-economic issues presented by the PBA; modification of the Grievance Procedure and introduction of a Personnel Files provision; the Borough pointed to the failure of the PBA to support these demands with any testimony or evidence during its case in chief. The Borough also strenuously objected to the fact that the PBA did not present its underlying case as to other elements of its demands, both economic and non-economic, instead relying on introduction of evidence by way of a "document dump" as to which there was no opportunity for examination on the record, and the PBA's introduction of argument as to their meaning and interpretation via post-hearing brief to which there was no opportunity for response. I feel I must point out that the parties were advised of the opportunity to file response briefs but they elected not to do so. In addition, the exhibits introduced by PBA were all subject to examination at the time and to challenge as to their incorporation in the record on whatever basis might have seemed appropriate. Except for the argument as to relevance of certain communities outside of the WE eight being considered for comparability purposes no such objections were made and the documents were accepted in the record. As such they become a basis for my consideration.

Many of those documents submitted by PBA were elements of the Borough's creation, such as annual budgets and other financial reports, and they were used during the examination or cross examination of witnesses as well. Other of those exhibits were not discussed at hearing but are used in the post-hearing brief of PBA to form a fact base for the contentions as to pay increases and the like outside of the immediate area of the WE communities. At no time did the PBA agree with the contention of the Borough to define the appropriate communities for comparable data as limited to the WE group. My responsibility in such matters is to consider the relevance of all information presented in the record in reaching decisions as to disputed issues. Of course those exhibits which were exposed as part of the case in chief of either party and which were used to support testimony are most likely to be given a greater weight than exhibits which were not, although the facts incorporated therein may be seen as valid unless challenged or proven demonstrably inappropriate for consideration. In fact both parties introduced exhibits which were admitted into the record without proofs because no objections were made.

Neither party seriously addressed the PBA proposal as to an article concerning personnel files to be included in the Agreement. There was much discussion about this but no final resolution. The proposal language advanced by the PBA is complex and unduly restrictive in my view. It makes sense to consider it along with the request for arbitration of minor disciplinary actions as these matters have a dovetailing effect.

There was more attention given to the request for introduction of a change in the Grievance Procedure which would have the effect of making disputes about minor

disciplinary actions subject to the arbitration provision of the current Agreement. This has come about as a result of the changes in law which open the door for such a provision to be incorporated in negotiated Agreements. No highly detailed case was presented by the PBA as to circumstances where it believes members have been unfairly treated however and the Borough has indicated its resistance to this change as both unnecessary given the quality of the relationship between the parties and extremely low incidence of minor disciplinary actions being taken as well as the additional costs related to litigation beyond internal hearings. The PBA indicates that the case has been made for this form of relief on a statewide basis because of the inherently greater fairness which flows from the right to appeal a determination now being made by the Employer alone. This argument has won the case in that the change in pertinent legislation represents the public policy on the issue. As to the costs, PBA points out that these are shared and thus not undertaken frivolously and that the potential for an unwarranted black mark on an employee's record which could influence his promotability or choice of assignments clearly warrants the right to an appeal in situations where a disciplinary penalty may have been imposed without just cause.

CONSIDERATION OF STATUTORY CRITERIA

THE INTERESTS AND WELFARE OF THE PUBLIC

While there is reason to consider this criterion as intended to encompass the broad spectrum of the impact of an arbitration award on the public the practice has been to focus primarily on the limitations imposed on the Employer by the so called Cap Laws. In this instance both parties have chosen to concentrate primarily of economic terms of a new Agreement. The economic terms can hardly be seen as not having a potential impact on the interests of the public but my consideration of those issues will be more fully addressed below. The Employer has indicated that, should the positions of the PBA be awarded in this proceeding, the result would not jeopardize the need of the Borough to contain its budgets to limits of the Cap Law. In fact the Borough has demonstrated that it has not utilized the fiscal elasticity provided under the law and has accumulated a substantial "credit" which it could draw upon if it was motivated, or required, to increase spending. Of course the basic policy of the Borough has been to reduce spending and as noted above this objective has been achieved for the past six years.

The PBA also recognized the Cap Law as not being a factor but has taken the position that the needs of the represented employees should merit priority of attention in spite of the requirement for added spending; noting also that those demands which are being defended herein would not cause the Borough's budget to rise anywhere near the point of threatening the Cap Law limitations.

As there appears to be accord that this criterion is not a key element in this dispute I am inclined not to accord much relevance to it.

COMPARISON OF WAGES AND CONDITIONS OF EMPLOYMENT

The Borough has taken the position that this criterion is of the greatest importance and the PBA appears to agree with that assessment even if not with the Borough's related conclusions or the predicate adopted as to evaluation of the underlying facts. The Borough, after establishing with credible reasoning the West Essex communities as the most appropriate group for comparability purposes, has defended its position to provide the lowest pay increases on several grounds. It pointed to its historical position of providing lower increases to employees than the average of the WE group and defends that record on the basis of certain internal circumstances. Prime among them are the higher rate of property tax, the aging of the population and commensurate static nature of their household income, which is substantially less than the WE average, as well as the very limited opportunity for adding new tax ratables. This situation has resulted in the residents having to spend a greater proportion of their income on property taxes than is the case in the other communities. There is also the relatively low rate of appreciation of real property as contrasted to the WE group experience which is perceived to be reflective of a need to reduce the tax burden to make living in Caldwell more attractive. The lower rate of appreciation provides less incentive for improvement of properties and the Borough has adopted the lower tax policy in an attempt to reverse this trend thus improving the overall community and staving off its decline. The focus in this effort is on homeowners because they make up the large majority of the taxable property base.

As noted above, the Borough has punctuated its drive to contain costs by controlling employment costs, the single most expensive part of the budget, by adhering to a policy to grant modest compensation increases and by taking other actions to reduce payroll costs. It defends the offer, of 2.75% increase per year to this unit, as being substantially higher than increases provided in its other negotiated agreement, 1.75% for public works employees, and higher yet than the 1.5% it has granted its non-represented employees for 2000. The arbitrator's attention has been directed to this pattern of adjustments and I am asked to consider this as an underscoring rationale for accepting the proffer made to the police unit, both as to less than an average increase as contrasted to the WE communities and as to the reductions in benefits it seeks to reduce the police benefit plan costs to be more comparable to that provided to other employees. In addition the Borough claims the benefit plan of the police exceeds that which is generally provided to other WE communities. In particular the dental plan in retirement is not matched anywhere nor is the pay for sick leave not utilized found elsewhere. There was no attempt to demonstrate the actual cost differential of the WE versus Caldwell costs of the total benefits packages.

Much of the reasoning of the Borough rests on the objective of tax reduction. In reviewing the financial records of the Borough it is clear that further tax reductions could have been made in the 1999 and 2000 budgets than were granted. The reason is that both have substantial surplus anticipations and reserves for uncollected taxes which far exceed the experience of recent years. The PBA points to these facts to buoy its demands for higher rates of increases and maintenance of the benefits gained in past negotiations.

The application of the 2.75% per year plan for police would increase the differential now experienced between Caldwell and the average of the other seven communities in the WE group. In 1999 the maximum salary provided to a patrolman in Caldwell was \$55786 which was short of the remaining WE group average of \$57698 by 3.4% or \$1912. The 2000 maximum rate for the WE group was increased to \$60108. The application of 2.75% in Caldwell would result in a salary of \$57320 which then would be lower by \$2788. To keep Caldwell only \$1912 behind the WE group would require an increase of 4.3+%. In a further extrapolation the application of the Borough's offer would expand the negative differential in dollar terms each year increasing it to approximately \$5150 in 2002, and increasing the negative percent from 3.4 to 8.5. In order to prevent the further deterioration of the comparative value of the Borough pay plan as contrasted to the WE group from negative 3.4% raises would have to provide average increases of more than 4.5% in each year. Such increases would still leave the Caldwell police behind every one of the comparable communities chosen by the Borough and with regard to the median salary of the seven, provided by Cedar Grove in 2000, it would leave Caldwell more than 6.25% behind in 2002.

The PBA position as to comparable employment is that by any measure Caldwell is falling behind the pay increases provided by other employers and is doing so at a time when the Borough is not utilizing its options as to current tax revenues by alternatively directing them into increased surplus or reserves and certainly not using any of the flexibility provided under the Cap limitations; all to the detriment of the police and other employees of the Borough whilst other employees of the Board of Education and of the County who are also supported by the property tax are not so treated. PBA claims the average income, while not equal to that of the other WE group is still above the state average. In addition the average property tax bill was \$5702 in 1999 of which only 25% or \$1425.50 was attributable to the municipal budget and of that less than 22% went for payment of police wages and benefits. This means the average tax payer was paying only \$309 for all police services for a year, a bargain when the quality of performance of the organization is considered.

The PBA calculated the cost of a 1% increase in police salaries to be worth \$10518 using the pay rates of 1999. This figure does not take into consideration the cost of fringe benefits and does not reflect a force which is less than fully staffed. However the PBA's argument in favor of a 6% increase is that the cost of 6% is only \$63000 or just \$34400 more than was offered by the Borough for year 2000. This number equates to just about one third of the reserve for uncollected taxes on which the Borough has spent practically nothing for the past three years while enjoying a better than 99.95% collection rate. Additionally the amount of surplus being generated far exceeds the additional cost of the increases requested by the PBA and it can be asserted that satisfying that demand would not have any immediate consequence as to the tax rate; the costs being covered more than sufficiently by alternate use of tax monies currently flowing to the Borough. Even factoring in added costs associated with overall compensation [wages plus other payroll related costs] the argument that no actual tax change would be required for the life of the Agreement is probably true.

Should the Borough maintain its need for current levels of surplus and reserves the prospect of an added point to the tax rate would produce an additional \$104297 in revenue. This would appear to be a minor adjustment given the decrease of 2% experienced for a period of six years. Such an increase would be significantly more than enough to cover the higher level of payroll costs requested by PBA. Additionally the department is functioning with five fewer personnel than were previously employed which has the effect of reducing the payroll by more than \$335000 annually in direct wages. The work of the short handed department is still performed very willingly and well by those who are on staff and PBA asserts they should be shown some consideration for making the reduction in staff possible by their extra efforts so as not to jeopardize the public safety. To be paid at less than the average pay of the other seven WE communities and to see the further decline in relative compensation as would be realized by adoption of the salary proposal of the Borough is hardly justified especially when compounded by the Borough's demand to reduce or eliminate several benefits of value to members as well.

Neither party has expressed an interest in making significant comparisons of the wages of police to those provided to non-police in either the public sector or in private employment; both apparently in agreement that there is a novelty about police work which makes drawing comparisons with other endeavors inappropriate. The Borough does draw some attention to what it has granted in new wage benefits provided to other Borough employees and the desire to bring the pattern of benefits afforded to all employees to a balanced level. It is clear that the main consideration for the positions taken is the impact on the tax rates. However Borough has acknowledged a history of differential treatment for police and the proposals made here reflect that posture. In an exhibit containing private sector statistics the increases received were higher than the average WE group has provided to its police.

The total compensation received is incorporated into these arguments and part of the comparability investigation but it has not been in the forefront of the parties' cases except as to the questions raised concerning reduction or elimination of benefits previously enjoyed and the resistance of the Employer to demands for new or expanded benefits as proposed by the PBA. I will deal with those issues below.

All of these factors considered along with the positions expressed by the parties draw me to the conclusion that this criterion is of the highest relevance and should be carefully evaluated when determining the merits of this dispute. This conclusion is further reinforced by the fact that the economic elements of this matter are the primary cause for the impasse.

STIPULATIONS OF THE PARTIES

The only stipulated issues discussed had to do with procedural matters and they were not deemed of significance to my deliberations. As such I do not perceive this to be a relevant criterion.

LAWFUL AUTHORITY OF THE EMPLOYER

The Employer stated that its lawful authority would not be threatened by an award which granted all of the PBA demands. The PBA also indicated it knew of no specific issues which had to do with that authority. I therefor concluded this criterion is not relevant to the my conclusions. In its presentations the PBA went to some length in demonstrating that the Employer's authority with reference to the Cap Law was not in jeopardy and illustrated this opinion with data and excerpts from pertinent Borough documents illustrating the flexibility available was much underutilized. PBA calculated that the 2000 budget, drawn with the consideration of the minimal 2.5% Cap limit, actually represented \$350000 of Cap flexibility not utilized.

THE FINANCIAL IMPACT ON THE BOROUGH

This criterion is always relevant. The key question has to do with magnitude of the impact and in particular what it may mean with regard to the limits placed on other services. The Borough has placed the containment of increased expenditures at the top priority in its long term plans. The focus is intended to continue the reduction of the rate of property taxes and to preclude what is seen as a potential danger in the form of economic decay of the fabric of the community. It has succeeded in holding down the movement of the property tax rate attributable to the municipal needs to a minus 2% for the last six years. For reasons stated above, and in particular the relatively high rate of taxes paid in Caldwell, the Borough believes this trend line should be continued. Although it supported this conclusion with specific data as to the comparative level of taxes in the WE group no actual evidence was introduced to demonstrate the feared economic decay was about to happen or that it had begun. One area of exception to this was the relatively slower growth rate in real estate in Caldwell which was attributed to the level of taxes.

The Borough's concentration on the tax rate effect was the singular point hammered home. There were no specific municipal projects or priorities which were declared to be in jeopardy as a result of higher than planned police costs.

I will give this criterion the consideration it commands in reaching an appropriate award.

THE COST OF LIVING

The parties did not demonstrate a great concern for this criterion as a factor in reaching a determination of this dispute. This is attributable to the fact that the COL has been relatively stable in the rate of increase and that the rate has been quite low. Under such conditions there is not much recourse to this as a factor. Of course it is not to be ignored as its passive circumstance suggests no strong undercurrent for large offsetting wage increases. However as the parties don't place great weight on this criterion neither will I.

CONTINUITY AND STABILITY OF EMPLOYMENT

There seemed to be a general accord that this employment situation was generally a good one. There is little turnover and the PBA expressed satisfaction with working conditions and high morale. It was also noted that police services to the public were of the highest order and had been improving each year with the incorporation of new ideas and equipment to maintain the best safety and protection for the public. This was exemplified by the devoted service which involves interface with the public in many constructive ways beginning with children. This has been accomplished even with the erosion of the work force from a total of 23 in 1997 to 18 at present. PBA takes some credit for this as it means more work for fewer personnel and points out that this is a reason the Borough should not hesitate to grant wage increases as were requested especially noting the savings resulting from the reduced staff more than offset the costs of the PBA proposals.

Only one person has left the Caldwell Police Department for a position paying considerably more in recent memory. This is not seen as a threat or a trend by the Borough. There has been a reluctance to fill positions at higher rank to replace retired officers which is seen as a means to control costs by the Borough but as an unwarranted limitation on advancement by the PBA. The Borough has indicated the results of this proceeding must be considered in making its determinations as to filling any of these vacant positions, an area of judgment clearly reserved to it. Clearly if all positions were filled the argument as to the availability of surplus to pay increased police salaries would largely evaporate.

This criterion is not without relevance but it is far outshone by others as noted above.

ANALYSIS AND CONCLUSIONS

The key issue in this dispute is the difference between the parties positions as to the cost of the agreement to be awarded for the January 1, 2000 through December 31, 2002 period. The elements of difference are, of necessity, to be dealt with on an individual basis but the overall cost must be the focus. At the heart of this problem is the need to find a fair compromise between the intense efforts of the Borough to reduce the tax burden imposed on the resident population, which has been translated into the Borough's restrictive economic position, and the desire of the PBA to improve the circumstances of its members. As noted earlier the Borough has created an enviable record of budget and property tax containment as to the municipal portion of the budget. For a variety of reasons it has not been able to control, and is not responsible for, the sharply increased county or education components which collectively amounted to more than 75% of the total tax revenue in 1999. One of the results of this has been the imposition of substantial controls on the employment costs of municipal employees and adoption of measures such as reduction of staff to accomplish this end. During the three year period from 1998 through 2000 the Borough granted its non-police employees less than one half of the percent increases which the WE group afforded its personnel.

In defense of the position taken the Borough has emphasized its concerns that, as a result of tax burden and other economic factors, the community might begin a decline which could endanger the future viability of the environment now found in Caldwell. This would be punctuated by a downward drift of real estate values, shrinkage of the already limited commercial center and forced departure of residents no longer capable of sustaining the increases in property taxation now higher than in nearby communities. These concerns are real and the gravity of the responsibility to effectively manage the affairs of the Borough should not be and are not being taken lightly. However, at this time there is no evidence of a criticality in the circumstances of the Borough. Although the Borough decries the median family income as lower than other WE communities the actual level of income in 1998, \$69388, is above average for the state. The senior proportion of population was claimed to be another factor as it tends to confine residents to fixed income [although no factual data was submitted to prove this] but the data submitted reflected statistics from 1990 which were not radically different than the population in general. While home values have not risen as rapidly as have those in other WE communities the reasons are far from clear in the evidence presented. It is just as likely that new construction in some of them, a factor not present in Caldwell, has had a substantial influence on the growth rate of average home value in recent years because these communities have had the open space to allow new development of typically more expensive homes. The change in home values in Caldwell has continued to be quite positive and is hardly indicative of a community in decline. Nor was there other evidence of a pattern of substantial decline provided for consideration although there are vacancies in the retail sector, a red flag at least.

There has been little evidence introduced in the way of complaints from the residents concerning the tax burden. Voters have not rejected the need for the school budgets which have risen substantially in recent years and a vote from less than 6% of those eligible hardly suggests that there is an uprising against the tax burden required. Property tax dollars dedicated to the county and the Board of Education have grown steadily each year resulting in employees of those agencies not having undergone the degree of restrictive funding imposed on the municipal staff. The Borough has managed the situation very effectively in spite of substantial reductions of state assistance. In some of its innovative measures adopted to reduce costs one perceives the actions taken as a product of the need to make justifiable changes. This may include the staffing level of the police department which seems to function very well notwithstanding a reduction of five persons. It must be remembered however, that the amount of the surplus being carried over from the prior year's budget is in large measure a function of the savings due to the short staffing of the police department. The Borough did not indicate it saw the current staffing as having diminished the necessary function of that department.

The only part of the property tax burden under the control of the Borough is the share devoted to municipal purposes. This portion of the tax rate has not increased in six years. Even now, after reducing that part by 2+0% and sustaining reduced state assistance the 2000 budget shows a quite healthy surplus anticipated [as has been the case in recent years] as well as substantial reserves for uncollected taxes which are pegged at a level well beyond the collection experience. There is enough money in the now current budget to

provide for reasonable increases in the cost of services provided by the police; a function vital to the community and one unlikely to be replaced by contracting out services.

The Borough chose the communities with which it wanted to be compared as to the issue of compensation changes. These are communities geographically nearby where the nature of the police work is quite similar and as to which the Borough expresses satisfaction in having outstanding police performance. It has stated that it has occupied the bottom rung on the ladder of wage rates in that group and indicated it should be recognized that it historically grants less in increases than does the group as a whole. Still, in 1999 the maximum paid to a patrolman in Caldwell trailed the average of the seven WE communities by only 3.4% but declining from 1997 when the differential had been less at 2.5%. The PBA asserts this differential is substantially understated when contrasted to rates paid elsewhere in the area, a submission of which based on added communities in the North Jersey region show the negative difference to be much nearer 9%.

The Borough's proposed increases would, when contrasted to the WE group movement, bring the difference to just under 4.9% for 2000. While the information as to 2001 and 2002 is less complete, there being only six of the seven reported for 2001 and four of the seven reporting for 2002, the trend strongly suggests that the average increase will be above 4.3%. The average increase for the 2001 six communities is 4.67% and that for the four reported for 2002 is 4.375%. The impact of endorsement of the Borough's proposed 2.75% in each of those years would drive the maximum patrolman's salary down bringing the Caldwell maximum rate to more than 8.5% below the WE group average or a loss against this Borough chosen comparable base of an additional 5+9% during the three years of this contract. This would result in a difference between the Caldwell pay rate and the average for the WE group of \$5150 per year, meaning Caldwell would remain at the lowest level of comparability.

It is my view that the result of these three years should not substantially erode the comparative salary rate comparison from what it had been in 1999. In part the reason for this is that the Borough has, in previous contracts, set the wages paid on the basis of the WE group. While the PBA makes a serious case for much greater improvement at the 6% per year level one must not dismiss the concerns and efforts of the Borough to preclude unwarranted increases in the property tax load to be borne by the residents. As noted above I believe the means taken to preserve the economic stability of the Borough have great merit. However, the municipal employees are bearing the lions share of the load. As the cost of living has risen to three percent and threatens to go higher these employees are experiencing a net loss of pay and consequent reduction in their financial life style. Moreover, I believe there is considerable room in the budget picture to provide these employees with a more adequate income without seriously threatening the tax rate. The citizens of Caldwell have been fortunate in not seeing an increase in the municipal tax for six years. This is an enviable record but there comes a time when the needs of the employees must also be considered. Given that the police are in the position of being the lowest paid in the area, for me to force them into a contract which makes, in each year, a further reduction in pay comparison requires more evidence than was presented as to a

clear and present economic danger to the community. The Borough has set forth its concerns about this but there is little hard evidence to suggest that a reasonable settlement of this dispute would precipitate financial disaster.

In addition to the issue of wage changes I have before me the Borough's requests for elimination or modification of certain of the benefits now enjoyed by the police. The primary reason given has been that these benefits are greater than those given to other employees. Perhaps it seems unusual to the administration that the negotiations process produces different results in different negotiations units but having made agreements as to these differences it is incumbent on the Employer to demonstrate more than a desire to have everyone treated equally to justify reducing all differences to a common denominator.

I do not have access to all of the underlying reasons for the nature of the agreements which contain the specific benefits at question here. No one else seemed to know that history either. But it is generally understood that the content of an Agreement represents just that, an agreement, the result of reducing demands from either side to a settlement. Such commitments, particularly those which involve long term programs, as is the case of the dental plan in retirement which is only activated as to benefits after many years of service, should not be dismissed lightly. When these things are undertaken the parties are presumed to have given thought to those long range consequences. When an agreement was struck the relative value of such benefits became part of an overall compensation plan. Now, when years have passed, the Employer has asked that benefit be eliminated. The reasons given are the potential cost and the fact that other employers do not afford a similar program. These conditions should have been well known or anticipated when that agreement was made. To justify elimination of such a plan would require the demonstrated inability to afford the costs and the Employer has not done this. The fact that the Employer does not provide such a benefit to other of its employees is likewise an insufficient reason for me to award a discontinuance.

These are troublesome economic times for the Borough. There is much concern as to the desirability of making further reductions in the property taxes. However, the circumstances of the employees are to be considered in this equation. The current situation is that there is ample tax revenue to continue past benefits and provide reasonable increases in wages without increasing taxes. Of course any utilization of the cushion represented by the surplus and reserves accounts will reduce the opportunity to make reductions. But this is the determination which must be made. I am directed by the statutory scheme here involved to weigh the proposals of the parties against the backdrop of a set of criteria and to make decisions which demonstrate proper consideration of them.

In recent years the contracts between public employers and police employee representatives have come to a level of maturity so that the key focus is generally not on substantial revision of the language of agreements but the economic issues for the next term. It is unusual to find any substantial number of non-economic items reaching the level of impasse. This pattern is seen in these negotiations. The issues presented by the PBA have to do with the change in the grievance procedure to accommodate the

movement of minor disciplinary action disputes to the arbitration provisions in the Agreement and further to incorporate a new section involving personnel files and the access to same by the individual concerned. The Borough presented little in the way of testimony or argument in resistance to these requests except for the concern about related costs and lack of prior problems necessitating such changes.

The PBA request as to grievances in order that disciplinary actions being made susceptible to binding arbitration reflects a relatively recent modification of the law allowing such to be negotiable. As such it is my feeling that the public policy on this issue has changed to support of the concept. While there have never been a great number of disciplinary action problems between these parties there is still significant value in having a remedy which is perceived by the individual involved as being resolved by a neutral party. As these matters can have a dramatic influence on the career of the individual concerned I am in favor of providing the remedy requested. As mentioned above I don't believe the cost of such proceedings to be prohibitive and the likelihood of abuse is small.

The personnel files issue is a common enough request and in the circumstance of incorporation of minor disciplinary actions in the Grievance Procedures it may well be of significant value to the parties to formalize the collection, storage and sharing of information which may be relevant to such matters. If there have been abuses related to requests for information by employees I have not learned of them. It would be wrong for me to presume existence of conditions which add undue complexity to the Agreement absent compelling reasons to justify my doing so. I will therefore award slightly modified language as contrasted to that suggested by PBA so that the Agreement includes appeals of minor discipline actions and adequate access to personnel records.

The PBA also pressed an issue as to codification of the current work schedule in the Agreement. It was clear that the Employer had no intent to change the underlying twelve hour day schedule now in effect. However the PBA is concerned that having nothing in the Agreement to prevent such a happening could lead to no defense should such be undertaken. I have not seen any criticality in this issue and in consideration of it I find that on balance the Borough needs to have as much flexibility as it has enjoyed in the past. This is primarily because the Borough is facing the circumstance where its financial resources are being stretched thin and will be even more so by the terms of this award. In weighing the possible impact of the award I am very concerned that the Borough not be unduly restricted in terms of its ability to maintain appropriate services particularly if because of procedural limitations imposed by me. Put another way, I am persuaded the most important consideration as to the needs of these employees is reasonable improvement in wages and the continuity of benefits previously achieved. This Employer cannot provide that along with other financial advances and provisions which limit its capacity to manage in the most efficient manner. Happily that combination will be of benefit to the Borough and also to the employees because it will assist in the maintenance of high morale and performance and the continued stability of employment in the department.

The PBA's economic demands included a change from 25 years to 24 years service for eligibility to the last longevity step. The reason for this would be to improve the overall compensation one year before the desired option to retire with 25 years of service. This would provide a significant boost in the pension income and of course additional pay in that 24th year. Although the PBA suggests this would not involve any substantial new costs it is obvious that somehow those costs would have to be paid. While it might be a nice gesture to make a more lucrative retirement available I am not convinced that this Employer is in the financial condition to undertake more future liability at this time of very limited resources.

In a further demand the PBA seeks to have the 6.5 days of holiday pay incorporated into the base salary. There is a history as to how the current provision of the Agreement came about. It represented a compromise acceptable to both parties. As stated elsewhere I am not convinced the Employer is in the position to provide new benefits at this time. The PBA's modification of this proposal to make it applicable only to pension income as contrasted to hourly rates and overtime I perceive to be inappropriate and as stated above I am convinced that any new costs of an agreement should be concentrated in base salary improvement.

On the basis of these considerations I conclude there needs to be a compromise as to the changes proposed in salary adjustments but there is insufficient reason to dramatically alter the benefits structure as proposed by either party with some minor exceptions. My award as to the salary issue is structured so as to provide sufficient improvement to keep salaries paid in Caldwell to remain somewhat comparable to the remainder of the WE group. To accomplish this I have carefully weighed the elements of appropriate criteria in order that the costs of this award not impose unduly on the efforts of the Borough to contain growth in property taxes while affording wage rate increases which are fully deserved. The plan will keep Caldwell wages at the bottom of the list of the WE communities and there will be some further loss reflected in the decline from minus 3.4% to minus 4.14% compared to average pay rates as well as an increase in the dollar spread from a minus \$1912 in 1999 to minus \$2613 in 2002. This is unfortunate but reflects consideration of the fiscal circumstances of the Borough as a determining factor. The imposition of the Borough's plan would have dramatically greater impact; the percent of salary lag would have advanced from 3.4% to 8.5% and the dollar gap would have increased from \$1912 in 1999 to \$5150 in 2002.

It should be noted that all computations concerning wages have been based on the maximum pay rate for patrolman. This is so because it is the most available information presented by both parties and because the evidence reflects a common position easily compared. Additionally, the Agreement in Caldwell makes special provision for the salary rates of higher ranking employees as a function of the patrolman rates. The cost of the Borough plan if implemented would have been \$9374 for a patrolman at maximum salary. The cost of the plan in my award will be \$10608 for that same employee. It is substantially offset by the phasing in of increases on a split schedule in January and July of each year. The new pay plan provides a maximum rate during the latter half of 2002 of

\$63054 While the Borough plan would have provided a maximum of \$60516. Thus it can be seen that a substantial portion of the impact of the award is on rate increases beyond the term of the contract. Costs related to the budgets for 2000 and 2001 will be higher than expected but not so much so as to have more than a minor impact on the anticipated surplus. My quick estimate for 2000 would be under \$7000 including all benefits. This would escalate to something like \$13000 for 2001 and \$19000 in 2002. Set against a base budget of \$1,390,652 for police salary and wages for 2000 these annual amounts don't exceed 1% on average for the three years. A larger portion of that surplus will be required in 2002 as the base salaries move more substantially ahead of budget plan. In this way I have tried to find a legitimate compromise between the fiscal circumstances of the Borough and the minimum level of salary increases I have determined to be fully justified while allowing the Borough time to plan for the higher costs to be realized in 2002 and beyond.

The overall increase in pay rate under the Borough's proposal would have amounted to 8.5% when compounded. The awarded plan will provide a rate increase of 13%. This is still less than the WE communities at nearly 14% and a bit more than the average of approximately 12% overall anticipated increases provided to police units by agreements of the parties and arbitration awards around the state as a whole.

As to the Borough's concerns about the costs of the dental plan for retirees I believe there is room for consideration of some relief in the form of shared premium contributions; an increasingly present factor in health benefits programs. While I believe the case has not been made for elimination of the plan it is apparent that assistance in the form of a moderate co-payment from the employees who choose to be enrolled could be very helpful as that money could be productively invested for the years until the employee retires. The co-payment of \$10 per month would, during a period of 25 years employment, if invested in an instrument with a return of 6%, produce a meaningful offset of approximately \$6097 to be used toward payment of premiums in retirement years.

AWARD

A. The Agreement shall be for the period January 1, 2000 through December 31, 2002. Salary increases shall be effective as follows: On January 1 of each year there shall be a 2% increase: On July 1 of each year there shall be a 2.125% increase. Retroactive payments shall be made at the earliest time but not later than 60 days from the date of this award.

B. All employees who elect to be continued in the dental plan for retirement shall enroll in a co-payment plan at the rate of \$10 per month. All employees shall have only one immediate opportunity to enroll in the plan. Those deciding not to do so will not be able to join at a later date. New employees shall be required to make that determination within 60 days of permanent employment.

C. Article VI, Grievance Procedure, Section B, Definition of a Grievance, shall be modified to include, "minor disciplinary matters [less than 6 days of fine or suspension] shall be included in this Grievance Procedure."

D. A new article titled "Personnel Files" shall be incorporated in the Agreement. This article shall read as follows: A personnel file shall be established for each employee which will include records concerning performance and deportment of the individual. These records shall be considered confidential but shall be available for inspection by the individual concerned upon request and at a mutually convenient time. When additions to the file concern complaints or materials which could involve disciplinary actions or opportunities for promotion or assignments a copy of any such document shall be given to the person involved. The employee may elect to respond to such documents and such responses shall be included in the file. Where complaints may be confidential as to the originator the name of the author may be withheld unless or until there is a determination to take disciplinary action based on the information provided at which time disclosure shall be made to the employee.

E. All other demands of either party are rejected.

F. All terms of the prior Agreement not in conflict with the Award shall be continued during the term of this Agreement.


Frank A. Mason

Pennington, Mercer County, New Jersey

On this date before me personally came and appeared Frank A. Mason, to me known and known to be the individual described in and who executed the foregoing opinion and award and he acknowledged to me that he executed the same.

 3.3.01

MIRIAM M. MARTIN
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires March 13, 2002