

**STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION**

In the Matter of the Arbitration *

Between *

New Jersey Institute of Technology *

and *

Fraternal Order of Police Lodge #93 *

**Docket No. IA-099-9
Jeffrey B. Tener
Interest Arbitrator**

Appearances

**For NJIT:
Andrea Morganelli, Esq.
Holly C. Stern, Esq.**

**For the FOP:
Peter Polidoro, Esq.
Kenneth P. Sirkin, Esq.**

OPINION AND AWARD

Background and Procedural History

I was appointed as the interest arbitrator in this unusually protracted matter by letter dated December 9, 1998 from Timothy A. Hundley, Director of Arbitration, Public Employment Relations Commission ("PERC"). I met informally with the parties on January 28, 1999 to explore the issues which separated the parties in their negotiations for a successor to their July 1, 1992 to June 30, 1995 agreement. It appeared at that time that a large number of issues would be submitted to arbitration. Transcribed hearings were held on April 19 and 23, 1999 during which the FOP presented evidence. Edward Magnan, President of FOP Lodge #93, testified for the FOP. Ms. Morganelli represented the New Jersey Institute of Technology ("NJIT" or "University") on those dates and Mr. Polidoro represented the FOP.

Thereafter, the parties agreed to engage in mediation and sessions were held on May 26, June 8, September 22 and September 29, 1999. At those sessions, considerable progress was made in resolving issues. On September 29, 1999, the parties signed a memorandum under the terms of which they agreed that, for the period July 1, 1995 through June 30, 1999, all issues had been resolved except for Article XI, Posting, Hiring and Promotion (provisions B and C) and Article XXVI, Salary Program and Compensation. They also agreed that, except for several articles, including Article XXIII, Uniforms, and Article XXVI, Salary Program and Compensation, all other items had been resolved for the period through June 30, 2001. They further agreed that, unless they resolved the salary issues by October 15, 1999, they would submit to me the determination of Article XXVI, Salary Program and Compensation for a period of six years.

The parties engaged in direct negotiations. While a complete agreement was not reached, all issues were resolved except those relating to Article XXVI, Salary Program and Compensation, and, for the final two years, Article XXIII, Uniforms. Hearings on these issues were held on January 21 and February 1 and 2, 2000. At these hearings, Mr. Magnan and Vincent J. Foti, financial expert, testified for the FOP and Robert H. Avery, General Counsel and Executive Director of Employment Policy and Relations and Gail D. Weiner, Assistant University Counsel, testified on behalf of the University. Ms. Stern, Associate General Counsel and Director of Legal and Employment Affairs, represented the University; Mr. Sirkin represented the FOP. Following the hearing, I requested information from NJIT which was necessary to calculate the total net annual changes for each year of the agreement. This was submitted. Thereafter, following several approved requests by the FOP for extensions of time within which to file briefs, the parties filed briefs. These were received by May

19, 2000, thereby marking the close of the hearing. Mr. Avery, Ms. Weiner and Ms. Stern were on the brief of NJIT. Robert J. Ricci, Esq. was on the brief of the FOP.

This proceeding is governed by the Police and Fire Public Interest Arbitration Reform Act, P.L. 1995, c. 425, which was effective January 10, 1996. That Act at N.J.S.A. 34:13A-16f(5) calls for the arbitrator to render the opinion and award within 120 days of selection or assignment. The parties agreed to extend the time for the issuance of a decision to July 1, 2000, as set forth in a letter dated May 11, 2000 from Ms. Stern to Thomas Possumato, FOP Consultant.

The parties did not agree to an alternative terminal procedure. Therefore, the terminal procedure in this case is conventional arbitration. The arbitrator is required by N.J.S.A. 34:13A-16d(2) to "separately determine whether the total net annual economic changes for each year of the agreement are reasonable under the eight statutory criteria listed in subsection g of this section"

Statutory Criteria

The statute requires the arbitrator to:

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

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

(2) Comparison of the wages, salaries, hours, and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours, and conditions of employment of other employees performing

the same or similar services and with other employees generally:

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

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

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

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

(4) Stipulations of the parties.

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

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

designated by the governing body in a proposed local budget.

(7) The cost of living.

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

Final Offers

FOP The FOP submitted a final offer which includes a salary increase for each of the six years of the agreement which is covered by this decision and an increase in uniforms for the last two years of that agreement.¹ Specifically, the FOP has proposed the following across-the-board salary increases:

Effective July 1, 1995, there shall be a three and one-half percent (3½%) increase.

Effective July, 1, 1996, there shall be a three and one-half percent (3½%) increase.

Effective July, 1, 1997, there shall be a three and one-half percent (3½%) increase.

Effective July, 1, 1998, there shall be a three and one-half percent (3½%) increase.

Effective July, 1, 1999, there shall be a four percent (4%) increase.

Effective July, 1, 2000, there shall be a four and one-half percent (4½%) increase.

¹ See Exhibit FOP-3.

The FOP has proposed that Article XXIII, Uniforms, be changed to provide a total annual allowance of \$1,250 effective July 1, 1999 and of \$1,350 effective July 1, 2000. It also has proposed that there be a single payment rather than the current two payments of this allowance.

NJIT The final offer of the University provides for certain across-the-board salary adjustments and, in the final year of the agreement, the elimination of automatic increments and their replacement with a merit compensation program.² The specific proposal follows:

There shall be no across-the-board adjustment effective the first full payroll of Fiscal Year ("FY") 1996. Eligible officers will receive salary increments.

There shall be no across-the-board adjustment effective the first full payroll of FY 1997. Eligible officers will receive salary increments.

There shall be an across-the-board adjustment of three and one-half percent (3½%) effective the first full payroll of FY 1998. Eligible officers also will receive salary increments.

There shall be an across-the-board adjustment of three and one-half percent (3½ %) effective the first full payroll of FY 1999. Eligible officers also will receive salary increments.

There shall be an across-the-board adjustment of two and one-half percent (2½%) effective the first full payroll of FY 2000. Eligible officers also will receive salary increments.

There shall be an across-the-board adjustment of two percent (2%) effective in the first full payroll of FY 2000 and there shall be an across-the-board adjustment of one and one-half (1½%) effective in the first full payroll of January 2001. The increment

² See Exhibit I-1B.

program will be eliminated and replaced with the following Merit Compensation

Program:

Fiscal Year 2000-2001

Commencing July 1, 2000, there shall be a merit compensation program available to all Officers in the bargaining unit with at least one year of service as defined herein. The Program shall be administered as follows:

- a. Each position in the bargaining unit shall consist of eighteen (18) equal steps from minimum to maximum salary.
- b. Movement from one step to the next higher step shall occur only through the awarding of performance based compensation, consistent with an Officer's performance over the past year as regularly codified in performance evaluation.
- c. The merit pool shall consist of monies equivalent to 1% of the base composite salary of the bargaining unit as of July 1st of each year of the Program.
- d. The maximum award to an individual shall be four steps in any given year of this program.
- e. An Officer at the 18th step of his/her respective salary range is eligible for an award in a non-base merit bonus up to the value of four steps in any given year of this program.
- f. all monies pooled for distribution will be paid over to eligible members of the bargaining unit, rounded to the nearest whole step value.
- g. The Merit Compensation Program has a Merit Appeal System enabling a member of the bargaining unit, with formal support of the FOP, who is denied a merit award inconsistent with performance, a limited right of appeal to the Merit Appeal Committee (the Committee).³

³ The proposal also includes a description of the Merit Appeal System and Employee Performance Evaluation.

NJIT has proposed no change in the amount of the total annual allowance for maintenance, repair and replacement of uniforms nor in the method by which this allowance is paid. Thus, the allowance would continue to be \$1,100 payable in two equal payments.

Argument of the FOP

The FOP urges acceptance by the arbitrator of its salary proposal for across-the-board salary increases of 3.5% plus increments in each of the first four years of the agreement and of 4% and 4.5% plus increments in the final two years. There would be no change in the structure of the salary schedule nor in the increment program and there would be no merit compensation program. There would continue to be nine pay steps. There would, however, be no increases in the first two steps of the schedule throughout the term of the new agreement.⁴ Thus, the first step would continue to be \$31,545 and the second step would continue to be \$33,122. The total across-the-board increase would be 22.5% over the six years of the new agreement, July 1, 1995 through June 30, 2001. This is an average increase of 3.75% per year. The maximum salary would increase as follows: July 1, 1994 to June 30, 1995 - \$44,165; July 1, 1995 to June 30, 1996 - \$45,710; July 1, 1996 to June 30, 1997 - \$47,310; July 1, 1997 to June 30, 1998 - \$48,966; July 1, 1998 to June 30, 1999 - \$50,680; July 1, 1999 to June 30, 2000 - \$52,707; and July 1, 2000 to June 30, 2001 - \$55,079.

While the FOP did not specifically demonstrate its method of calculation in its brief, it did project that the cost of its salary proposal over six years would be \$484,405. (I note that this is considerably lower than the figure provided in Exhibit FOP-29 which listed the cumulative costs over the six years at \$551,576. When the FOP prepared that

⁴ Employees have not been hired at either of these steps in recent years.

exhibit, the University had not yet provided a roster of employees so it was not possible to know exactly how many employees had been employed at what steps. Thus, estimates were necessary.)

The FOP contrasted its salary proposal with that of NJIT which provided for increases of 3.5% in Fiscal Year 1997, 3.5% in Fiscal Year 1998, 2.5% in Fiscal Year 1999, and 2% and 1.5% plus 1% merit in Fiscal Year 2000. This is a total of 13% over six years or an average of 2.16% per year.⁵ Again without demonstrating its method of calculation, the FOP stated in its brief that the cost of the NJIT proposal was \$252,272.

The FOP notes that the parties agree on the duration of the new agreement which will run for six years but they disagree over the size of the salary increase, the lower salary steps and whether to add a Merit Compensation Program. The University would eliminate the nine-step increment system and create a total of 18 steps but movement through the steps would occur only through awards of performance-based compensation with a maximum of four steps being available to an employee in any one year.

Among the concerns voiced by the FOP regarding the Merit Compensation Program is its complexity. The FOP noted that the University had submitted various versions of such a proposal and that a new version was submitted on the final day of arbitration. Also, the FOP points out that NJIT provided no evidence that any other police department outside of NJIT had implemented a merit program of the nature proposed by the University. Furthermore, within the University, while different employee groups do have merit programs, they are all different. (The FOP asserts that the Superior Officers Association, which represents the sergeants at NJIT, is dissatisfied

⁵ The FOP placed the average increase at 2% per year in the belief that NJIT had proposed a 6 ½ year agreement. That is not my understanding of the University's proposal.

with its merit program but I would not permit its witness to testify about this because of its hearsay nature.)

In addition to the salary issue, there is an issue regarding the amount of the allowance for uniforms. Newly hired officers are required to purchase their own university, standard issue uniforms. They are reimbursed for this in full after six months of continuous employment in good standing. Thereafter, officers are responsible not only for purchasing their uniforms but also for maintaining and repairing them.

Officer Magnan testified about this issue, noting the increased costs to both purchase and clean uniforms. He provided price quotes from a commonly used vendor of uniforms to show the cost of uniforms and increases in those costs from one year to another. Thus, for a group of items which represent only part of what officers must have, the cost in April 1999 was \$937. That had increased to \$981 by January 2000. Those figures do not include leather goods.

Officer Magnan noted that there has been inflation since June 1995 when the prior contract expired and that the uniform allowance has not been increased since that time. Other police officers have received increases in their uniform allowance. The current \$1,100 allowance is lower than the \$1,435 allowance received by officers in the SLEU group.⁶ Further, the recent contract between NJIT and OPEIU provided for an increase in the uniform allowance for security officers in that unit. Officer Magnan testified that it is no longer possible to get boots resoled and that boots last an average of about one year. He said that raincoats are plastic and can be damaged in interactions with others. They cannot be repaired and must then be replaced. He estimated that he spends an average of \$9.00 to \$12.00 per week on dry cleaning

⁶ This is the State Law Enforcement Unit of the State of New Jersey which is represented by the State Law Enforcement Conference. The unit includes campus police officers at certain New Jersey State Colleges.

alone. There are items which are not required but which most officers elect to carry. This includes flashlights and knives. Also, employees buy turtlenecks and long underwear. They provide their own handcuffs. They have to buy gloves.

Officer Magnan estimated that each year he spends - and he believes that the other officers spend - more than \$1,100 on uniform purchases and maintenance, although he does not have supporting receipts. Thus, the FOP asks that the arbitrator grant the proposal of the FOP to increase the uniform allowance to \$1,250 on July 1, 1999 and to \$1,350 on July 1, 2000.

In deciding an interest arbitration case, the FOP notes that the arbitrator is required to make a reasonable determination of the issues giving due weight to the statutory criteria and that he must explain why a factor is not relevant even if the parties fail to produce evidence on that factor. All factors or criteria must be considered and addressed. Accordingly, the FOP proceeded to submit arguments regarding each of the statutory criteria.

The first factor is the interests and welfare of the public and this is a factor to which an arbitrator is required to devote attention. NJIT is located in the City of Newark and the FOP points out that it is in an urban area bordered by Lock Street, Martin Luther King Boulevard, Central Avenue and Warren Street. To the immediate east of the University is Rutgers University. To the south and west of NJIT is the University of Medicine and Dentistry of New Jersey ("UMDNJ"). The campus occupies some 45 acres and consists of approximately 20 buildings plus a number of parking facilities. Public streets run through the University.

The officers receive regular training as police officers and have the full powers of police officers. They perform traditional police functions such as responding to crimes and emergencies, issuing summonses, arresting perpetrators, attending court

proceedings, controlling traffic and exercising the full range of police powers. They carry lethal weapons. In addition to these attributes, they also are required to have special training in order to function effectively in the unique environment of an international academic community. They have special responsibilities to act with restraint because this world class university also serves *in loco parentis* for its students.

The FOP examined crime rates as set forth in the Uniform Crime Reports for recent years. The City of Newark and Essex County, in which it and NJIT are located, are high in every category of crime compared to other cities and counties. Furthermore, Officer Magnan testified that the officers at NJIT actually handle more crime than the reports attribute to them. In order to protect students, crime is underreported and a number of matters are handled internally by the University.

Officer Magnan testified regarding the nature and extent of activities of the police officers who provide protection seven days a week and twenty-four hours a day. There is a great deal of activity with many people walking and driving to and through the campus which is not enclosed by gates and fences. There are typically only three officers on the evening shift, four on the day shift and two on the night shift. Additionally, there are one or two supervisors in the evenings and at night and two or three during the day. The officers patrol the streets and areas off campus such as fraternity houses. He testified that he personally had responded to two carjackings and five armed robberies in the past four years, had taken about 35 reports of auto thefts or breaks and entries, made many burglary reports and had been assaulted. There were, of course, other incidents in which other officers were involved.

In further support of its position, the FOP cites the College Community Crime Study which reported on risk at various campuses as reported in the Newark Star Ledger. The study ranked campuses across the country by level of risk from one to ten.

Only Rutgers - Camden was ranked at ten (highest risk) but NJIT and Rutgers - Newark were ranked at nine.

Additionally, the FOP reminds the arbitrator that the officers have not received a wage increase since 1994 and it contends that morale suffers when police personnel see the University evaluating their services as though they were the same as those in the University who do not face the risks faced by the officers nor the disruption to the lives with which the officers live. It also asserts that other units in the University are compensated at the highest levels and provided a newspaper account which stated that the President of the University received a salary in 1998 of \$214,000. Further, it contends that the police officers are paid a rate far below the prevailing rate in comparable communities and it refers to the high level of turnover in this unit as proof of a problem with the compensation at NJIT.

Therefore, it is the position of the FOP that the interests and welfare require the arbitrator to award the salary proposal of the FOP and to reject that of the University.

The second factor deals with several types of comparisons. Initially, it cites an arbitration decision in which Arbitrator John Sands stated that no private sector employees perform the same services as do police officers.⁷ Arbitrator Sands noted that private sector employees had been faring well in the current strong economy with negotiated wage increases at or exceeding 3% for all industries in the last three years. He also said that wages in New Jersey exceed the national rate. The FOP cites data from the Bureau of Labor Statistics which showed hourly costs of \$20.94 for employers in private industry in the northeast. Therefore, it argues, this aspect of the comparison criterion favors an award equal to the proposal of the FOP.

⁷ Rutgers, The State University & Fraternal Order of Police, Docket Nos. IA-97-72 and 97-41, April 20, 1998. (Exhibit FOP-25).

More important are said to be public sector comparisons. The FOP notes that NJIT has proposed increases in the first four years (0%, 0%, 3.5% and 3.5%) which are the same as those awarded by Arbitrator J. J. Pierson in the State Law Enforcement Unit.⁸ Additionally, the award included a cash payment of \$1,435 for uniform maintenance payable on January 1st of each year of the agreement.

The FOP points out that the campus police officers covered by the SLEU agreement are employed at various state colleges and universities and that these are located in suburban or even rural areas and not, like NJIT, in urban ones. Those institutions do not have city streets going through them or public traffic to deal with, as does NJIT. This is said to make it more likely that officers at NJIT will have to deal with members of the general public as well as students. In Officer Magnan's opinion, these officers are not comparable to those at NJIT.

In response to a contention of the University, the FOP points out that Arbitrator Sands stated that the UMDNJ campuses were not really urban in character but, in Newark, that is it an island in the city with no city streets running through it and with members of the general public coming on campus only to receive medical treatment. Thus, NJIT should not be compared to UMDNJ, it contends.

Notwithstanding the differences, however, the FOP notes that there is a nine-step salary guide at UMDNJ which had a top step in 1999 of \$47,860.

The group of employees which most nearly resembles the police officers at NJIT, according to the FOP, are the municipal officers especially in Newark⁹ and, more generally, in the bordering or surrounding communities. It offered contracts covering the

⁸ The Opinion and Award was not provided as an exhibit in this proceeding. I take arbitral notice of it. (Docket No. IA-96-13, January 31, 1997) The award did include a cash payment of \$250 in FY 1997.

⁹ Officer Magnan testified that he believes that the officers at NJIT are comparable to those in the City of Newark.

police officers in Newark with a top salary of \$64,031, Belleville with a top salary of \$54,748, East Newark with a top pay of \$52,739, Maplewood with a top pay of \$53,161, East Orange with a top pay of \$52,311, Elizabeth with a top pay of \$49,590, Harrison with a top pay of \$49,824, Irvington with a top pay of \$57,157, Rutgers with a top pay of \$50,837, Orange with a top pay of \$53,703 and UMDNJ with a top pay of \$47,860.¹⁰

The FOP provided salary data from a number of the Big Six cities in addition to Newark and Elizabeth. It showed that the top salary in Trenton is \$ \$54,169; in Camden it is \$55,664 and in Jersey City it is \$57,251. Thus, in the Big Six - within which NJIT is located - the salaries well exceed those paid to officers by NJIT.

If the arbitrator were to award the FOP proposal, the top salary at NJIT would be \$55,079 in June 2000. Looking at the top rates in various years, the top rate in 1999 would be 8.5% less at NJIT than it was in Newark in that year, it would be 3.9% less than it was in Belleville in 1999, it would be 4.9% less than it was in Maplewood in 1998, it would be 13% less than it was in Jersey City in 1998, it would be 12.8% less than it was in Irvington in 1998 and it would be 10.65% less than it was in Trenton in 1999. This shows that, throughout the term of the new agreement, even under the proposal of the FOP, top salaries would lag significantly behind those in comparable municipalities. The unfairness to the officers at NJIT is said to be even more glaring when it is remembered that NJIT's officers require special training in addition to regular police training and that they handle a full array of traditional functions as well as unique responsibilities by virtue of the fact that they work in an international university environment.

Officer Magnan testified that once the above-cited award of Arbitrator Sands involving the police officers at Rutgers University was issued, that became very important to the FOP. The FOP then modified its demands to conform to what had

¹⁰ These salaries were for the final year of those contracts.

been awarded. Officer Magnan testified that the FOP hoped that this would lead to a settlement and avoid the need for arbitration. Arbitrator Sands awarded increases of 3.5% on July 1, 1995, July 1, 1996, July 1, 1997 and July 1, 1998. These are the same years as the first four years involved in these proceedings. Additionally, the award provided for officers to continue to receive automatic increments on their anniversary dates.

The FOP recognizes that the University has placed great emphasis on the compensation levels and negotiated agreements which it has reached with other units of employees. The University wants to maintain what it claims is a pattern and to apply it to the FOP unit as well. There are differences, however, among the units. One is that the police officers are subject to the Police and Fire Public Interest Arbitration Reform Act. They have access to interest arbitration and this is in contrast to virtually all other University employees. The arbitrator is required to consider and apply statutory criteria in deciding this case. He is not simply to follow a pattern developed by others who do not have a right to interest arbitration. Access to interest arbitration provides enhanced leverage to the FOP which the University's other units do not possess. This permits a different outcome for these proceedings pursuant to the statute and its criteria.

Furthermore, the police officers face risks and discomfort in the course and nature of their work which distinguishes them from other employees of the University. The factors which make them different from private sector employees also makes them different from other employees of NJIT. Again, these officers are said to be most similar to other municipal police officers and to police officers at Rutgers which, like NJIT, has a campus which is in and a part of the City of Newark with its crime rate that exceeds that even of other cities and regularly provides much more challenging police issues.

The FOP points out that the University settled with the OPEIU unit for the period from July 1, 1999 through June 30, 2003 for a total increase of 14.5%. This averages 3.625% a year and that is very close to the 3.75% proposed by the FOP over the term of this agreement. Even looking only at the comparable years - 1999-00 and 2000-01 - the FOP is seeking 4% and 4.5% compared to an average for the OPEIU of 3.75%, a difference of .375% in the first of those years and of .875% in the second of those years. This agreement covers the security officers and the salaries in this unit go up to \$86,466, well above those of police officers. Therefore, the officers represented by the FOP are entitled to a slightly larger increase.

The FOP asserts that the AFSCME unit received salary increases which averaged 1.78% for the years between 1995 and 1999 plus an additional 6.08% in merit compensation during that period. This increases the total significantly.

The Professional Staff Association, which represents professors and other professional employees, received an average increase of 1.4% in the four years from 1995 to 1999 plus an additional 4.75% in merit money, again increasing the size of the increase substantially.

The document provided by NJIT indicates that the Superior Officers Association has a memorandum with the University and that these employees only receive merit increases which came to 2.56% over four years and increments of 11.21%.

The other employees of the University are non-aligned and not covered by labor agreements. The information provided by the University indicates that while they did not get increments, they did receive merit increases of 3.5% in FY 1996, 3.5% in FY 1997, 3% in FY 1998, 4.5% in FY 1999 and 3.9% for FY 00. This is a total of 14.5% over four years plus almost an additional 4% in the last year.

The FOP examined the non-aligned employees and asserted that they received merit increases in the five years from FY 1996 to FY 2000 which totaled 18.4% or an average of 3.68% per year. The FOP argues that this is slightly in excess of the 18% which it has proposed in salary increases in those same five years.

It is the position of the FOP that, based on a review of the salary histories of the various units at the University, it is clear that there is not and never has been comparability among the various bargaining units and groups of employees. NJIT is said to be stretching now in order to attempt to make its argument that there should be consistency or comparability among the various units.

The third criterion concerns overall compensation. The FOP recognizes that its members receive various benefits including vacation (three weeks for employees with one to eight years of service and four weeks for those with over nine years of service), sick leave (15 days after the first year), sick leave at retirement (one-half of unused accumulated sick leave), thirteen holidays, three days of administrative leave, military leave, overtime at time and one-half, call-back (four-hour guarantee), uniform allowance, health benefits including prescription drug, eye care and dental care, membership in the New Jersey Police and Firemen's Retirement System and an educational benefit similar to other employees at NJIT. There is no bereavement leave. The most significant item missing from the list of benefits, however, is longevity, a benefit enjoyed by most municipal police officers. This payment is added to the regular wages of the officers and is utilized in calculating pension benefits. Thus, in this major area, the officers at NJIT are at a distinct disadvantage in terms of their overall compensation.

The parties stipulated to and signed off on a wide range of issues which were resolved in mediation with the arbitrator.

The statute requires the arbitrator to consider the lawful authority of the employer and specifically limitations imposed by the Cap Law. The Cap Law, however, does not apply to NJIT and there are no other statutory limitations on the lawful authority of the employer which have any bearing on this proceeding.

The next factor is the financial impact on the governing unit, its residents and taxpayers. NJIT is not a municipality or a county so there are no residents or taxpayers. The University has stipulated that it is not claiming that it lacks the ability to pay the increases proposed by the FOP.

Vincent Foti, the FOP's financial expert, calculated the cost of the offers of the parties based on the information provided by NJIT and he refined this based on the more complete information which the arbitrator directed NJIT to provide. Based on that information, which included a roster of employees which reflected actual employment levels for the first four plus years of the new agreement, he calculated that the FY 1996 increase cost \$24,280, the FY 1997 increase cost \$21,853, the FY 1998 increase cost \$21,090, the FY 1999 increase cost \$21,321, the FY 2000 cost \$25,631, and the FY 2001 increase cost \$32,875. Adding these increases to reflect the total additional costs so that the first year increase is counted six times, the second year increase is counted five times, etc., the total six year cost is \$484,405.

Using that same methodology, Mr. Foti calculated that the increase in costs based on the offer of the University was \$19,476 in FY 1998, \$19,650 in FY 1999, \$14,784 in FY 2000, \$13,406 in FY 2001 (with a rollover in FY 2002 of an additional \$5,128). This leads to a total six-year cost of \$252,272.

The FOP further asserts that even if its proposal is awarded by the arbitrator, these employees will fall further behind their counterparts. Also, since almost five of the six years of the agreement have passed, it is clear that the University has an ample

financial surplus so granting the wage increases proposed by the FOP will not have any impact on the University's ability to pay for the increases. According to the FOP, its wage proposal is modest and supported by the comparative wages of comparably employed police officers, particularly when the relative workloads are considered. The total net annual economic changes in each year of the agreement are well within the means of NJIT and the FOP urges the arbitrator to award its wage proposal.

Cost of living increases is another factor which must be considered by the arbitrator. The FOP cites figures from the Bureau of Labor Statistics ("BLS") which show that the Consumer Price Index ("CPI") increased by about 12% from July 1995 to March 2000. Further, the Employment Cost Index ("ECI"), also published by the BLS, increased by 16.1% in the five years from 1995 through 1999. The evidence establishes that employment levels are high both in New Jersey and in the northeast as a region and also that the level of unemployment is low. The BLS data show that earnings in the State and the region have increased considerably from 1995 through March 2000. The economy is booming and the FOP should share in the benefits of this expanding economy.

The final factor is the continuity and stability of employment. The FOP asserts that its package will allow the University to maintain a stable work force in the police department. On the other hand, according to the FOP, to award the package proposed by the University would increase the already high levels of turnover. According to the FOP, ten officers have resigned from this small Department since 1995. Only five of nineteen officers were at the maximum salary level as of July 1, 1999. Officer Magnan testified that a total of twelve officers had left the unit since the prior agreement expired and this does not include those who were promoted out of the unit. This is said to be an indication of low morale and employee dissatisfaction with terms and conditions of

employment. Further, the University is seeking to make changes in the status quo which the FOP believes would only contribute to the turnover and instability. By doubling the number of steps on the salary schedule, the University would elongate what is already an unusually long schedule. Even more important, if a Merit Compensation Program is imposed, there would be a very significant impact on the morale of the employees in this unit. A certain limited number of favored employees would benefit somewhat but the majority of employees, all of whom do their jobs, would not benefit and would remain at their current step on the salary schedule. This would be very destructive to the morale of the bargaining unit and the FOP urges the arbitrator to reject this proposal of the University.

In summary, the FOP argues that each statutory criterion supports the position of the FOP. Its proposal is modest and appropriate. It is supported by comparisons of wages and benefits of comparably employed police officers and by the workload demands of the officers represented by the FOP. The proposal is within the parameters of the settlements submitted by both parties. NJIT acknowledges that it has the ability to meet the proposal of the FOP. The total net annual economic change for each year of the agreement is well within the means of the University. The fact that such a large portion of the period covered by this agreement has already gone by makes it evident that there will be little or no financial impact of an award consistent with the proposal of the FOP. Accordingly, the FOP asks that its proposal be awarded.

Argument of NJIT

NJIT emphasizes that it is a stand-alone employer and that it has an overall compensation and employee relations scheme or what Mr. Avery referred to as an "employment culture." (Tr. 2-1-00 at 163) That approach includes merit pay and this is the only remaining group of University employees which does not have some form of

merit program (aside from movement to the top step of the salary schedule). It has continually negotiated with the FOP and attempted to reach an agreement but it contends that the FOP has waited for better settlements to come along and then, when the Sands award at Rutgers University was issued, it became fixated on the salary increases contained in that award. The FOP also has totally rejected pay based on performance and this should not be permitted to continue.

Initially, the University notes that many economic and noneconomic issues were resolved by the parties and the only open issue for the first four years of the agreement is the salary issue. Among the agreements of the parties was that eligibility for a fourth week of vacation would be reduced from the beginning of an officer's thirteenth year of consecutive service to the beginning of an officer's ninth year of consecutive service. The parties also agreed that the new agreement would cover a total of six years.

NJIT, like the FOP, recognizes that the arbitrator must make a reasonable determination of the issues through conventional arbitration under all of the eight statutory criteria and that he must separately determine whether the total net annual economic changes for each year of the agreement are reasonable.

The University notes that under its offer, the officers would continue to receive increments for the first five years of the agreement under the existing conditions. As set forth in Article XXIII of the prior agreement, Section A 1 h, "Employees, who have been at the eighth (8th) step of the same salary range for eighteen (18) months or longer, shall be eligible for movement to the ninth (9th) step, providing their performance warrants the salary adjustment." The significance of this, according to the University, is that it demonstrates that the final increment on the salary schedule is not automatic but rather is dependent on the University's assessment of performance.

The University notes that the cost of its proposal, in addition to the across-the-board element, includes the cost of increments. It computed these costs as follows: FY 1996 - 2.14%, FY 1997 - 1.82%, FY 1998 - 1.66%, FY 1999 - 1.53% and FY 2000 - 1.95%. Under its offer, increments would be eliminated in FY 2001 and replaced with a Merit Compensation Program. In addition, the officers would receive a uniform allowance of \$1,100 each year of the agreement.

NJIT asserts that the overall compensation received by its officers is not only reasonable but generous. In addition to salary, which topped out at \$44,165 under the expired agreement for officers at the top step, there are generous leave benefits: vacation (which the University agreed to improve in these negotiations), sick days (fifteen days), holidays (thirteen days) and administrative leave (three days). Officers receive payment for accumulated sick leave on retirement under a State-funded program. They are covered under the New Jersey State Health Benefits Program, Eye Care Program, Dental Care Program and Prescription Drug Program. They are members of the Police and Firemen's Retirement System. They receive an annual uniform allowance of \$1,100.

The University argues that it has established that its final offer is reasonable standing alone and in relation to that of the FOP when measured against each of the relevant statutory criteria and that it should be awarded in its entirety.

For the first four years, July 1995 through June 1999, its offer is the same as that awarded by the arbitrator in the SLEU case: 0% in FY 1996, 0% in FY 1997, 3.5% in FY 1998 and 3.5% in FY 1999. The final two years are consistent with the first two years of the NJIT settlement with the OPEIU. Under the terms of that agreement, salaries were increased by 2.5% in July 1999, by 2% in July 2000, by 1.5% in January 2001, by 2% in July 2001, by 2% in January 2002, by 2% in July 2002 and by 2.5% in January 2003.

The University asserts that the OPEIU increase mirrors that negotiated between the State of New Jersey and the Communications Workers of America. The University also notes that police officers at UMDNJ received no across-the-board increase in FY 1996 or FY 1997.¹¹

Furthermore and, according to the University, even more significantly, its offer to the FOP is consistent with or even slightly better than the increases negotiated with or accorded to all other groups at the University.

A chart entitled Summary of Economics (Exhibit I-2 (revised)) prepared by the University reflects across-the board increases, increments, merit and vacation costs for each unit at the University: FOP under the University and FOP proposals, OPEIU, AFSCME, PSA, SOA and non-aligned employees. The across-the-board table (Exhibit I-2B) shows that no unit or group of employees received an across-the-board increase in either FY 1996 or FY 1997. The non-aligned employees and the SOA received no across-the-board increases at all. The PSA received increases of 2.5% in FY 1998 and 3.13% in FY 1999. AFSCME received increases of 3.52% in FY 1998 and 3.6% in FY 1999. OPEIU received increases of 3.5% in FY 1998 and 3.58% in FY 1999.

In addition to the across-the-board increases, officers represented by the FOP also received increments, if eligible, for the first five years of the agreement. The cost of these was 2.14% in FY 1996, 1.82% in FY 1997, 1.66% in FY 1998, 1.53% in FY 1999 and 1.95% in FY 2000. The University has proposed to establish a Merit Compensation Program which, it contends, is responsive to the desire of the FOP to increase the earning potential of its members. Under this system, the most meritorious officers would be able to move rapidly along the salary matrix and those at the top of that matrix could earn a cash equivalent not added to base salary. The cost of this program would

¹¹ See Exhibit FOP-28 at 11.

be an additional 1% in FY 2001 and that is the same as that which the University and OPEIU have agreed to implement.

The University also pays the \$1,100 annual uniform allowance to these officers. It denies that there is any justification for an increase in this figure as proposed by the FOP. It suggests that Officer Magnan exaggerated (and admitted that he had done so on cross-examination) the number of uniforms which are needed and the frequency with which they have to be replaced. For example, he acknowledged that neither raincoats nor outer jackets have to be purchased every year. In any event, even the list which he produced showed a total cost of \$937 in 1999 and \$981 in 2000. As the FOP's own exhibit shows, the \$1,100 paid by the University for uniform allowance exceeds that of all departments listed except Trenton and Maplewood. The University asserts that the current uniform allowance actually exceeds the requirements of the officers and should not be increased.

The proposal of the FOP, in contrast to that of the University and the University's settlements with all other groups of its organized and unorganized employees, seeks across-the-board increases that are essentially twice as high over the first four years. The six-year total proposed by the FOP is 22.5% whereas the University has offered 13% and it settled with the OPEIU for 13.08%. Further, the FOP is seeking increments in FY 2001 and these would cost an additional 3.34% that year.

The only support for the proposal of the FOP appears to be that, for the first four years, the officers at Rutgers University received such an increase through arbitration. NJIT asserts, however, that there is no evidence to establish that the two groups of officers are comparable or that the scope of their duties is the same or similar. There was no support for the FOP proposal in the last two years

The arbitrator is required to consider comparability in both the public and private sectors and in relation to other public employees in the same or comparable employment. In reviewing the comparability guidelines established by PERC, NJIT contends that internal comparisons should be accepted as the most pertinent. This is true in part because the University has developed what it calls "a distinct, transparent, and patient strategic plan with regard to method of compensation and conditions of employment for all its employees..." (Brief at 19)

About 660 of the University's approximately 1100 employees are represented by the PSA. These are the faculty members and the other professional employees. OPEIU represents 230 clerical and support staff as well as the security officers. AFSCME represents about 100 maintenance and technical employees. The SOA represents seven sergeants and the smallest unit consists of the four lieutenants. In addition, there are approximately 200 non-aligned employees.

As noted above, none of the University's employees received an across-the-board increase in FY 1996 or FY 1997 and the University has maintained the same position with the FOP throughout these extended negotiations. This consistency must be maintained, asserts the University. It would be destructive of relations with the University's other groups of employees if the FOP were to obtain across-the-board increases in those years and it would discourage timely negotiations. The good faith of the University would be questioned by the other units.

Consistent with the University's pattern, the FOP and the University both agree that increases in FY 1998 and FY 1999 should be 3.5%, although the FOP is seeking to add those increases to a higher base.

Another fundamental goal of NJIT in these negotiations is to establish a Merit Compensation Program for this group of employees and the concomitant elimination, in

FY 2001, of annual increments. As shown by Exhibit I-2C (revised), there are no longer increments for OPEIU, AFSCME or non-aligned employees. They average only .63% for the PSA. According to the University, increments bear no relationship to job performance and it states that it intends to eliminate increments by 2001. Exhibit I-D (revised) shows that it is moving increasingly to a merit-based system of compensation.

Mr. Avery described the University's philosophy in this area. He noted that all employees are not the same. The University wants to reward its best employees. Automatic increments do not provide the kind of incentive necessary for employees to perform at their best nor does it hold those accountable who fall short of their required duties. Compensation should be related to the achievement of defined goals and objectives and demonstrated performance characteristics. He contends that the University has successfully administered such plans for most of its employees and that all units now have some merit component.

For non-aligned employees, their entire increase is based on performance. There is no across-the-board increase nor do they receive increments. The AFSCME program requires employees to meet specified skill requirements before they can move to the next of the three tiers under that system. According to Mr. Avery, there are testable and grievable standardized competency evaluations through which the employees must pass in order to advance. The entire salary increase for the recently organized unit which represents the lieutenants is based on performance. OPEIU, which represents the security officers, recently agreed to abolish the annual increment program and to go to a performance-based system.

Since all groups of University employees have performance-based salary programs, the University has made such a proposal to the FOP. This system, by abolishing automatic increments, would place more accountability on management to

document performance levels and would permit employees now at the top of the schedule to receive further increases.

In assessing its offer, the University points out that it also has agreed to improve the vacation schedule by moving eligibility for a fourth week of vacation from the end of thirteen years to the end of eight years. This results in the following additional costs: FY 1996 - .26%, FY 1997 - .28%, FY 1998 - .46%, FY 1999 - .35%, FY 00 - .79% and FY 01 - .67%. These must be considered as part of the total costs.

NJIT asserts that its officers are similar, in terms of wages, hours and conditions of employment, to other college and university police officers and that they are dissimilar from municipal police officers. It cites police officers at UMDNJ, Rutgers University - Newark and the College of New Jersey in the SLEU as the most comparable. The FOP seems to claim that municipal police officers in the most crime-ridden inner cities and particularly Newark are the most comparable. The FOP, however, provided no basis for comparing municipal police officers with those at NJIT and, the University contends, there are significant differences in the environment in which the two groups work, the ratio of officers, the areas in which they work, their funding, and many other things. NJIT is essentially encapsulated by virtue of its location with Rutgers University being across Martin Luther King Jr. Boulevard, Essex County College across Raymond Boulevard and UMDNJ about a block away on Raymond Boulevard and Lock Street.

The University notes that crime statistics for colleges and universities are listed separately from municipalities in the Uniform Crime Report, thus reflecting the difference between universities and municipalities. The number of crimes reported at NJIT was a tiny fraction of the total crimes reported for the City of Newark. Thus, in 1998, there was a total crime index at the University of 63 of which 51 incidents were larceny which is non-violent. In contrast, the total crime index in Newark was 24,519 and only 10,135

were non-violent larceny. There were more murders in Newark than there were total incidents at NJIT. The statistics make it abundantly clear that the officers at NJIT cannot reasonably be compared to those in the City of Newark.

Under the NJIT offer, officers at the top of the schedule in June 1999 would earn \$48,493. This exceeds the \$47,861 at UMDNJ and the \$44,301 for SLEU. It also exceeds the \$48,416 at Rutgers. There is a senior officer category at Rutgers which the University contends should not be considered since movement to that position is not automatic.

The real earning potential under the University's offer is illustrated by looking at FY 2001 when an officer at the top step, 18 or R, would earn \$50,205 and this could be increased by an additional \$3,156 to a total of \$53,361. This amount could be earned in as little as four years.

NJIT argues that its offer, unlike that of the FOP which is without foundation or evidentiary support, is consistent with the interests and welfare of the public as well as within the University's responsibility as a State-funded institution. That offer provides for equitable and appropriate compensation for the officers.

The University also faults the FOP's methodology of costing the offers of the parties. Because the unit is small, however, it is not claiming that it would lack the ability to pay the increases proposed by the FOP. Nevertheless, such an award would have an adverse impact on the University and its relationship with other bargaining units. It would damage the University's credibility and its ability to conduct and maintain a progressive labor relations system. The long term impact of such an award also could be irreparable.

Much of the University's funding comes from a State appropriation. NJIT has no residents or taxpayers from whom it can obtain revenue by a tax levy. The State and

tuition are its primary sources of funding. This requires the University to act responsibly in expending its funds, something which its offer accomplishes but which that of the FOP does not.

In summary, NJIT contends that the evidence supports the conclusion that its offer in its entirety is reasonable. The most compelling reason for this is that it conforms to the settlements which the University has reached with all of its other units and groups of employees. This is the criterion contained at N.J.S.A. 34:13A-16g(2). It also is consistent with the SLEU award and the State's settlement with the CWA. It provides salaries and benefits which compare favorably to comparable employees, i.e. those at Rutgers University, UMDNJ and College of New Jersey (SLEU). It provides for enhanced earning potential based on employee performance, as do all other agreements with the employees of NJIT. The FOP provided no evidence that any turnover in this unit was the result of dissatisfaction with salaries and wages and, in fact, most of the turnover is said to have been due to promotions. On the other hand, the FOP provided no logical or reasonable or evidentiary basis to support its proposal.

Discussion

The arbitrator is required by the Police and Fire Public Interest Arbitration Reform Act to decide the dispute by making a reasonable determination of the issues, giving due weight to the eight statutory criteria which are judged relevant. Each criterion must be considered and those deemed relevant must be explained. Further, there must be an explanation regarding any factor not deemed to be relevant. The arbitrator must separately determine whether the total net annual economic changes for each year of the agreement are reasonable under the statutory criteria.

I have carefully considered the evidence introduced by the parties. They provided testimony as well as documentary evidence. They also provided argument. I

have considered the evidence in relation to the statutory criteria, as set forth hereafter. I have discussed the weight which I have given to each factor, not all of which were relevant in this decision. I have determined the total net annual economic changes for each year of the agreement in order to conclude that these changes are reasonable under the criteria.

There are only two issues in dispute and they are economic issues: salary (including the entire structure of the program) and uniform allowance. The parties have stipulated, as part of their overall agreement which resulted in the resolution of the vast majority of open issues, that this decision should provide for a six-year agreement covering the term July 1, 1995 through June 30, 2001. I shall provide for a six-year agreement in the award.

I shall set forth the terms of the award at this time so that the following discussion of the statutory criteria can be related to the terms of that award. The terms of the actual award, rather than the final offers of the two parties, will be the reference point in analyzing the statutory criteria. The parties, of course, in their briefs, argued from the perspective of the two final offers but I need only address the terms of the award which I shall render.

The term of the agreement shall be six years: July 1, 1995 through June 30, 2001. This covers FY 1996, FY 1997, FY 1998, FY 1999, FY 2000 and FY 2001.

There shall be an across-the-board increase effective the first full payroll after July 1 of each fiscal year as follows:

FY 1996	0%
FY 1997	0%
FY 1998	3.5%
FY 1999	3.5%
FY 2000	2.5%
FY 2001	2% (first full payroll after July 1, 2000) 1.5% (first full payroll after January 1, 2001)

In addition, all increments to which employees are entitled under the terms of the prior contract will be paid and there will be no changes in the structure of the salary schedule which shall continue to have nine steps.

There will no merit compensation program.

There will be no increase in the uniform allowance.

There will be no other changes except those mutually agreed upon by the parties.

The total net annual economic changes for each year of the award involve only the salary changes plus an improvement in the vacation schedule upon which the parties agreed. During the hearing, the University did not provide the necessary information for me (or the parties) to determine the costs of the parties' salary proposals. Following my written request of March 3, 2000, the University did provide this information for FY 1995 through FY 2000. It did not provide the information for FY 2001. Because so much of the term of the new agreement has expired, it is possible to use actual costs rather than, as is typical when negotiations are prospective, projected costs.

Based on the information provided by the University, which the FOP reviewed and agreed to accept, changes in costs can be determined. The base year was the last year of the prior agreement, July 1, 1994 to June 30, 1995 (FY 1995). The data provided by NJIT indicate that there were sixteen unit members on the payroll as of June 30, 1995 and that they received salaries which totaled \$636,701.65 in that year.¹² In FY 1996, because of turnover, there were fifteen employees on the payroll as of June 30, 1996 and a total of 21 employees were employed at some point during that year. They earned a total of \$600,102.62. In FY 1997, according to the University's records,

¹² This includes money paid to the estate of an employee.

employees received a total of \$556,449.66. In FY 1998, at the end of which there were only eleven employees in the unit, salaries totaled \$541,952.00. In FY 1999, salaries for a group which stood at fifteen at the end of the year received a total of \$552,229.62. For FY 2000, the University projected the cost, **without any increase in salaries**, at \$616,387.34 for a group of seventeen employees. When that figure is increased by the 2.5% across-the-board increase, it becomes \$631,797.02.

The University has projected increment costs in FY 2001 at 3.34%. (Exhibit I-2C (revised)). Applying that figure to the FY 2000 base increases the base to \$652,899.04. With an across-the-board increase of 2% effective July 1, 2000, this will raise the cost to \$665,957.02. There also will be an increase of 1.5% effective January 1, 2001. This will bring the total projected cost for that year to \$670,951.69 with an additional rollover into FY 2002 of \$5,000.

To these figures a small amount needs to be added to reflect the added cost of the improvement in the vacation schedule. As set forth on Exhibit I-2E (revised), the costs of this improvement were .26% or \$1,560 in FY 1996, .28% or \$1,558 in FY 1997, .46% or \$2,493 in FY 1998, .35% or \$1,933 in FY 1999, .79% or \$4,991 in FY 2000 and .67% or \$4,495 in FY 2001.

Putting this information together, the total salary costs of \$636,701.65 in FY 1995 actually fell by \$35,039.03 in FY 1996. There was a further reduction of \$42,094.96 in FY 1997 and yet a further reduction of \$12,004.66 in FY 1998. There was an increase of \$12,210.62 in FY 1999 over the total cost in FY 1998 although this was still well below actual costs in FY 1995. Costs increased by an additional \$84,558.40 in FY 2000, bringing the actual costs to within \$5,000 of what they were in FY 1995. Not until FY 2001 does the actual cost to the University exceed FY 1995 costs for this unit. At that time, the cost is projected to be \$670,951.69 or less \$35,000 above FY 1995

costs with an additional rollover into FY 2002 of \$5,000. This reflects not only salary increases but also an increase in the number of officers.

Having set forth the terms of the award and the total net annual economic changes for each year of the award, I shall discuss the award, the evidence and the arguments of the parties in relation to the statutory criteria.

Interests and Welfare of the Public The Supreme Court in PBA Local 207 v. Borough of Hillsdale, 137 N.J. 71 (1994) made it clear that the interests and welfare of the public must always be considered in rendering an interest arbitration award and that an award which failed to do so was in danger of being deficient. The statute, as amended, also explicitly requires the arbitrator to consider the limits imposed by the Cap Law, N.J.S.A. 40A:4-45.1 et seq., in connection with this factor. Because the University is not subject to the Cap Law, this part of the criterion does not apply.

There is an unusually vast gulf between the final offers of the parties in this proceeding. It has two parts. The first consists of the salary proposals with the University having offered an across-the-board increase over six years which totaled 13% and the FOP having proposed across-the-board increases over the same period which totaled 22%, a difference of 9%. The second part, which is of equal significance, is the disagreement over the University's efforts to eliminate the existing automatic increment system and to establish a merit compensation program. The award, as set forth above, essentially adopts the University's across-the-board salary proposal but rejects its merit compensation proposal. This is consistent with my assessment of the interests and welfare of the public in this case.

As will be discussed in greater detail in the following section, the first four years of this award reflect across-the-board percentage salary increases which duplicate those awarded by Arbitrator Pierson in the SLEU decision. They are consistent with the

University's pattern of 0% across-the-board increases for all University employees for FY 1996 and FY 1997. They are consistent with or exceed the only across-the-board increases which the University negotiated with any groups of employees in FY 1998 and FY 1999. The FY 2000 increase of 2.5% and the FY 2001 split increase of 2% and 1.5% is consistent with the increases which the University negotiated with the OPEIU in those years. It also mirrors the settlement between the State of New Jersey and the Communications Workers of America in those years.

I believe that it would be damaging to the University's relations with its other employees if this unit were to receive a greater across-the-board increase than that received by the other units. The amounts awarded will permit the University to attract and retain a skilled, competent and dedicated force of police officers. This is necessary for the officers to be able to perform the essential function for which they were hired. The salaries are reasonable in relation to those earned by other college and university police officers in New Jersey. This should preserve their morale if accompanied by sound leadership in the Department of Public Safety, thus assuring a productive, efficient and effective police force.

At the same time, I have concluded that it would be contrary to the public interest to award the University's merit compensation program. I recognize that this is an issue of extreme importance to the University and that all other groups of University employees, those who are not organized as well as those who are organized, do have some form of performance-based compensation. This has been in issue throughout these negotiations. It is an issue which the FOP has rejected with as much vehemence as the University has advanced it.

While I understand the University's arguments in favor of such a plan, as well as its commitment to performance-based compensation and its sincerity in urging the

acceptance of such a plan for this unit, I do not believe that it can be successful without at least grudging acceptance by the employees affected. There is no time for the parties mutually to develop evaluation procedures or performance standards. The University has not identified specific skill levels (such as those used in the AFSCME system) or job competencies which would be used in evaluating employees. I appreciate that all other University employees are subject to some form of merit pay. I also note that the University was not able to provide a single example of law enforcement officers outside of NJIT who are subject to merit pay. Police officers are unique in that there are occasions in the performance of their duties when they must work together to protect themselves and others. I am concerned that a compensation system which is perceived by the officers as unfair and unacceptable would jeopardize their ability to perform their jobs in the safest and most competent manner.

Furthermore, the plan offered by the University, which also called for the elimination of increments, provided for a merit pool of only 1%, a very small amount of money for distribution, when the University has projected the cost of the increment in FY 2001 to be 3.34%. Thus, the unit would not only lose increments but 2.24% that it would otherwise receive if increments were not eliminated. The University stated that its purpose in proposing the plan was not to save money but its proposal, whether or not intended, does do precisely that.

Given the small amount of money proposed by the University and the elimination of increments, it is evident that a number of employees would not advance across the salary schedule. This is dictated by mathematics alone. One per cent of the FY 2000 salary base is about \$6,300. With steps of about \$900 as proposed by NJIT, there would be only seven merit steps available for the entire unit of 17 officers. If, as the University emphasized in "selling" this proposal as offering expanded earning potential

for outstanding performance, one officer were to receive the maximum of four steps, that would leave only three steps for the entire remainder of the unit. Even if seven officers each received one step, that would mean that ten of the seventeen officers would not move across the salary schedule. This might be more acceptable if the pay plan provided for a small salary range that closely approximated the journeyman rate for an officer but the University is attempting to graft its merit plan onto the existing structure which has a hiring rate which is over \$15,000 below the top rate. For the reasons expressed above, I am convinced that it would be contrary to the public interest to award it.

Comparisons There are several kinds of comparisons. The statute calls for comparisons of wages, salaries, hours and conditions of employment to be made with other employees performing similar services as well as with other employees generally 1) in private employment in general, 2) in public employment in general and 3) in public employment in the same or similar comparable jurisdictions.

The parties agree that private sector comparisons are not important, in part because of the fact that there are no private sector counterparts to police officers. Presumably for that reason, the University provided no evidence on this factor and the FOP provided very little. The FOP did cite the Employment Cost Index, a measure of compensation covering private nonfarm workers, which increased by 3.4% in the northeast over the year ending December 1999. In the last five years, it increased by 16.1%. Thus, the evidence on this factor supports a larger increase than I have awarded. The FOP also noted that employer costs in the northeast in March 1999 stood at \$20.94 an hour. Corresponding figures for the officers represented by the FOP were not provided. The FOP also cited the decision of Arbitrator Sands in the Rutgers

decision in which he stated that private sector wage increases over the three years prior to 1998 were 3% or more per year.

The parties provided virtually no evidence on comparisons with public employment in general. They each cited various contracts or interest arbitration awards but these are more appropriately considered under the next part of this criterion. Given the unique nature of police officers at a public university, I do not believe that comparisons with public employment in general are an important consideration.

The third part of the comparison triad really has two parts: comparisons with public employees in the same jurisdiction, which the University emphasized, and comparisons with employees in similar comparable jurisdictions, which the FOP emphasized.

The University, citing PERC's comparability guidelines, as set forth at N.J.A.C. 19:16-5.14, asserts that internal comparisons are the most important factor in deciding this case. These considerations favor adoption of a performance-based compensation system because all other groups of NJIT employees have such a system. They also favor adoption of the University's salary proposal. The University cited the SLEU award and comparisons with other college and university police office at UMDNJ, Rutgers University and College of New Jersey. The FOP emphasized the Rutgers award of Arbitrator Sands and comparisons with municipal police officers and particularly those in Newark.

It is clear that the internal comparison factor weights in favor of acceptance of the University's proposals. I have discussed why I have rejected its proposed merit compensation system in the previous section. I agree, however, internal comparisons do compel the selection of its salary proposal. No University employees received an across-the-board increase in FY 1996 or FY 1997. Increases of 3.5% or very close

thereto were given to the employees represented by both AFSCME and OPEIU. PSA received less than 3.5% and the other groups receive no across-the-board increase.

The increases awarded in the final two years are the same as the amounts negotiated between NJIT and OPEIU. While that settlement is not controlling, it certainly is significant. The fact of that settlement, combined with the fact that I have rejected the University's merit proposal and retained automatic increments for this unit, is what causes me to award the amounts awarded. The cost of increments in this unit is 1.95% in FY 2000 and 3.34% in FY 2001. These costs significantly increase the cost of the package to the University and make it more valuable to the employees. There is a further modest increase in costs associated with the improvement in the vacation schedule.

Furthermore, the total amount awarded in the first four years of the agreement, for which the University has reached agreements with all groups of employees, is 15.5% or 3.875% annually. This includes the total of across-the-board increases, increments and the vacation improvement. Extended to six years, only the OPEIU has settled with the University. Over the entire six years, the OPEIU received a total increase of 21.75% or 3.63% annually. This compares with the 28.25% or 4.7% annually provided to the FOP (without a merit system). Thus, this unit will receive a larger package than any other group of employees at the University in the first four years and a package about 6.5% higher than that negotiated by NJIT and OPEIU over six years.

An additional supporting factor is that the percentages awarded in the first four years of the agreement are the same as those awarded by Arbitrator Pierson in the SLEU award. That award applies to campus police officers in the State Colleges of New

Jersey, making that a legitimate comparable because the job functions appear to be similar.¹³ The final two years are consistent with the States' settlement with the CWA for those years. Notwithstanding the independence enjoyed by NJIT, it is evident, based on prior contract settlements, that the State pattern has been an extremely significant (and perhaps controlling) factor in negotiations by NJIT with other groups of employees.

I understand that Arbitrator Sands accepted that comparisons with police officers in Middlesex County were the most relevant. He noted that the campuses were integrated into the cities of New Brunswick, Newark and Camden. He contrasted UMDNJ in Newark which he described as an "island" within the city. Based upon that conclusion, he awarded amounts which exceeded the State pattern. I agree that if municipal police comparisons were accepted as the most important ones that an award higher than I have awarded would be appropriate.

The record evidence in this case, however, does not support such a conclusion. Not only is NJIT surrounded on several sides by other institutions of higher learning - Essex County College, Rutgers and UMDNJ - which at least partially insulates it from the rest of the city - but a review of the crime statistics indicates that officers at NJIT work in a totally different environment from Newark police officers. That is not to say that there is no crime at NJIT. There is. It occurs on a much lower order of magnitude and generally is less violent. Therefore, the comparisons provided by the FOP with municipal police officers, including those in Newark, do not overcome the strength of the internal comparisons, the award covering SLEU, and the State-CWA settlement.

I note that the top rate for a police officer at NJIT in the fourth year of this agreement will be \$48,493. The top rate at UMDNJ is \$47,861. The top rate under the

¹³ In its Brief, the FOP stated that the arbitrator also awarded clothing allowance in addition to wages in FY 1996 and FY 1997. (At 14 and 15) The decision makes it clear, however, that the clothing allowance was not a new benefit and amount of that benefit did not change. (At 73)

SLEU agreement is \$44,301.07. The top rate under the Rutgers agreement is \$50,837. Thus, the rate at NJIT is second only to that at Rutgers¹⁴ in this group which I believe provides the greatest job comparability to officers at NJIT.

I note also that the vacation schedule is somewhat superior at NJIT compared to both Rutgers and UMDNJ. AT NJIT, officers receive a fourth week of vacation after eight years of service. They must complete twelve years at Rutgers, UMDNJ and in the SLEU.

The FOP did not justify an increase in the uniform allowance. Officer Magnan's testimony failed to establish that the current allowance of \$1,100 is not sufficient for replacing, repairing and maintaining uniforms. Further, the FOP exhibit which compared clothing allowances shows that the amount at NJIT was behind only those in Trenton and Maplewood. Uniforms are provided at UMDNJ, an offer made by the University to the FOP in this proceeding but rejected by the FOP. Rutgers provides uniforms and provides a payment of \$525 for maintenance, a figure which corresponds closely to the \$600 allocated for maintenance under the NJIT-FOP agreement. While it is true, as the FOP argued, that the security officers represented by OPEIU did receive an increase in their clothing allowance, that increase was only to the level already enjoyed by the FOP.

Overall Compensation There is no evidence that the officers represented by the FOP do not enjoy a comprehensive and competitive level of overall compensation. They receive the usual array of benefits received by other employees at NJIT and by police employees at other colleges and universities. They do not receive longevity which is a benefit very widely enjoyed by municipal police officers. This benefit,

¹⁴ The appropriate rate for comparison purposes is the top rate for a senior officer at Rutgers. Movement to that position is virtually automatic. It requires only that an officer have completed six years of service, that he notify his supervisor of this fact, and that he not have been suspended for poor work performance in the previous year. (Exhibit FOP-25 at 15)

however, does not exist for the officers at Rutgers, UMDNJ or SLEU. This factor is not significant in deciding this case.

Stipulations The parties stipulated that the term of the agreement covered by this award shall be six years and they resolved all issues except the salary program and the uniform allowance. The University also agreed that it was not raising ability to pay as a significant issue in this proceeding. (See, for example, Tr. 2-2-00 at 55)

Lawful Authority It is undisputed that the Cap Law does not apply to NJIT nor has the University cited any other statutory or other constraints on its ability to fund the proposal of the FOP.

Financial Impact The financial impact of this award will be minimal and, as stated, the University has stipulated that this is not an issue. Not only have virtually five years of the agreement already passed but the amounts awarded are consistent with the proposal of the University except for FY 2001 when the award exceeds the proposal of the University by 2.24% (which is the difference between the increment cost of 3.34% which the University wanted to eliminate but which I have retained and 1% which is the amount the University proposed spending on its merit compensation program which I did not award).

In fact, as stated above, the costs of the salaries and the improved vacation schedule were actually less in FY 1996, FY 1997, FY 1998, FY 1999 and FY 2000 than they were in FY 1995. They do not exceed the FY 1995 level until FY 2001 when they do exceed the FY 1995 level by some \$35,000 with a rollover into FY 2002 of \$5,000. These are amounts which, as the University stipulated, it could easily afford to pay (putting aside the potential future implications in terms of its negotiations with other units.)

Cost of Living The Consumer Price Index increased by just under 12% between July 1995 and March 2000, as reflected in the data submitted by the FOP. This agreement will continue fifteen months beyond that date. At the current rate of approximately 3% per year, the rate will have increased by perhaps 16% over the term of the agreement. The across-the-board component of this award is 13%, a figure below that cost of living increase and a fact which, standing alone, which justify a larger increase. This factor is not controlling, however. I note that in the bargaining unit as it is presently comprised, only five of the seventeen members in FY 2000 were at the top step so twelve of the members are still eligible for increments and increments costs in FY 2001 will be 3.34%, thus substantially increasing the salaries of most members of this unit and more than making up for increases in the cost of living. Overall, adding the across-the-board increases and increments, compensation will increase by 25.44% over the six years of this award or an average of 4.2%, a figure which comfortably exceeds the estimated 16% increase in the cost of living.

Continuity and Stability of Employment This factor has a bearing on my decision to reject the University's merit proposal. I believe that the imposition of such a system, without at least a degree of acceptance by the officers, would contribute to turnover which, in turn, increases training and hiring and other costs and is destructive of morale. Turnover has been an issue in this unit although a significant part of that turnover has resulted from promotions of unit members out of the unit. There is no evidence of turnover based on dissatisfaction with salaries or benefits, as Officer Magnan acknowledged.

Summary

I have carefully considered the evidence and the arguments of the parties. I have considered each of the statutory criteria, although those relating to lawful authority

and financial impact were determined not to apply or not to be significant. The interests and welfare of the public were very important in this case. They strongly supported the rejection of the University's merit proposal and also supported the salary increase which adheres to the University's pattern. Comparisons with private employment and public employment in general were not significant but I did find internal comparisons to be very important. That factor and the public interest were the most important in deciding this case. I was not persuaded that the officers at NJIT could properly be compared to municipal police officers, based in major part on a review of crime statistics data which differentiates the two groups. Parallels with police officers at Rutgers, UMDNJ and in SLEU were deemed to be significant. Overall compensation was not important. Cost of living was not determined to be significant since the increases awarded will allow most employees in this unit to well exceed increases in the cost of living over the period covered by the award. Continuity and stability of employment was another factor which contributed to my decision to deny the University's merit proposal.

Accordingly, I hereby ~~issue~~ issue the following:

AWARD

The term of the new agreement shall be six years from July 1, 1995 through June 30, 2001.

Salaries shall be increased across-the-board by 0% in the first full payroll after July 1, 1995, by 0% in the first full payroll after July 1, 1996, by 3.5% in the first full payroll after July 1, 1997, by 3.5% in the first full payroll after July 1, 1998, by 2.5% in the first full payroll after July 1, 1999, by 2% in the first full payroll in July 2000 and by 1.5% in the first full payroll in January 2001.

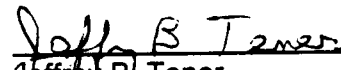
Increments shall be paid throughout the term of the agreement under the prevailing conditions.

The structure of the salary schedule in terms of the number of steps shall not be changed.

All other changes contained in the attachment to the September 29, 1999 Memorandum of Agreement shall be incorporated into the new agreement.

There shall be no other changes to the agreement except as mutually agreed by the parties.

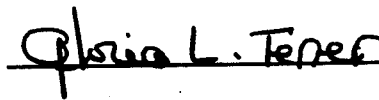
Dated: June 19, 2000
Princeton, NJ



Jeffrey B. Tener
Arbitrator

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

On this 19th day of June, 2000, before me personally came and appeared JEFFREY B. TENER to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.



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

