

PUBLIC EMPLOYMENT RELATIONS COMMISSION

OPINION AND AWARD

In the Matter of the Interest Arbitration

between

CITY OF PLAINFIELD

and

PBA AND SOA LOCALS

PERC Docket No. IA 96-148, 96-149

BEFORE: Barbara Zausner, Arbitrator

AWARD DATED: October 24, 1997

APPEARANCES

DeMaria, Ellis
Attorneys for the Employer
By, Brian N. Flynn, Esq.
and Kathryn V. Hatfield, Esq.

Schneider, Goldberger, Cohen, Finn, Solomon, Leder & Montalbano
Attorneys for the Union
By, Bruce D. Leder, Esq.

PROCEDURAL BACKGROUND

The City and the Unions (PBA and SOA) are parties to collective bargaining agreements which expired on December 31, 1995. Both collective bargaining units sought interest arbitration. The PBA represents all rank and file police officers employed by the City. The SOA represents sergeants, lieutenants and captains. I was appointed interest arbitrator by the Public Employment Relations Commission on October 24, 1996 in both matters. The interest arbitration proceedings were consolidated.¹

I met with the parties on November 4, 1996, January 17, and May 28, 1997. I closed the record, which consists of testimony, documents, and argument, on receipt of the parties' post-hearing briefs. The due date of the award was extended by agreement of the parties and at my request to October 24, 1997. The parties did not agree on an alternate procedure, therefore, the decision is by conventional award.

FINAL OFFERS

Term: January 1, 1996 through December 31, 1998

PBA

Salaries:

Effective 1/1/96	6% increase to base
Effective 1/1/97	6% increase to base
Effective 1/1/98	6% increase to base

Article VII, "Hours of Employment"

Section 1 (f): Modify to provide seventy-two (72) hours notice instead of the current 24 hours.

¹ Where "Union" is used, the reference is to both bargaining units.

Article X, "Sick Leave and Leave of Absence", Section 3:

Modify to provide that police officers may take up to twelve month leave of absence with pay just prior to retirement.

Article XI, "Insurance Protection", Section 7:

Modify to provide that the retiree's health insurance shall be the same coverage as provided to active police officers.

Article XII, "Vacations and Holidays":

Add new section to provide that all police officers shall be entitled to three (3) personal days.

Article XIII, "Longevity"

Modify Section 1 to increase each step of the longevity guide by \$1,000.

Article XIV, "Miscellaneous",

Section 14.5

Any uniformed member of the Police Division who is directed by the Chief to serve an assignment deemed necessary by the Chief shall be paid the appropriate rate of pay for all hours worked on said assignment.

Section 14.7

Increase clothing maintenance to \$500 per year and add a new provision that provides a \$300 per year allowance for detectives to purchase clothing.

CITY
Salaries

Effective January 1, 1996	3.5% of 1995 base salary
Effective January 1, 1997	2.0% of 1996 base salary
Effective July 1, 1997	2.0% of 1/1/97 base salary
Effective January 1, 1998	2.0% of 1997 base salary
Effective July 1, 1998	2.0% of 1/1/98 base salary

Article III, "Grievance Procedure", Modify to read:

Step Five - Arbitration: If the grievance is not satisfactorily resolved at Step Four, the Association may file a written demand for arbitration with the New Jersey State Board of Mediation, 50 Park Place, 7th Floor, Newark, New Jersey, within twenty (20) calendar days from the date the Step Four answer was received or should have been received. A copy of the demand for arbitration shall be simultaneously filed with the City Administrator.

Article X, "Sick Leave and Leave of Absence", shall be modified to include the following language:

10-1 However, sick leave credit shall not accrue on any succeeding January 1 after an employee has resigned or retired, although his or her name is being retained on the payroll until exhaustion of sick leave, vacation leave or other compensatory leave.

The City Administrator may schedule medical examinations for all employees annually or more frequently if required.

10-2 Payment of Accumulated Sick Leave, add the following:
Effective January 1, 1996, payment of accumulated sick leave under the provisions of this Article shall be capped in the amount of \$15,000, regardless of the number of such days accumulated. The six (6) months leave of absence set forth in section 10-3 shall be excluded from the cap herein.

10-3 Terminal Leave, substitute the following language:

Immediately prior to the effective date of retirement, an employee shall be entitled to utilize up to six (6) months leave of absence with pay and have such time charged against his/her accumulated and unused sick leave days. A letter of commitment to retire must be signed by the employee and submitted to the Police Chief prior to the grant of terminal leave. The balance of the employee's accumulated and unused sick leave days thereafter shall be paid at the time of retirement on the basis of one-third (1/3) day per full day of verifiable sick leave accumulated and not previously used. Vacation and sick leave time shall not accrue during terminal leave.

10-4, "Other Leaves of Absence", add new section

Leaves of absence other than sick leave and terminal leave shall be as set forth in section 11:9 of the Municipal Code of the City of Plainfield.

Article XI, "Insurance Protection"

11-1, The City shall pay the entire cost of the Traditional Plan (hospitalization coverage administered by Blue Cross and Blue Shield of New Jersey, Inc. and medical/surgical and major medical coverage administered by the Prudential Insurance Company of America) for all employees and their eligible dependents covered by this Agreement. For those employees choosing to participate in the New Jersey Plus Plan (hospitalization, medical, surgical and major medical coverage administered by Blue Cross and Blue Shield of New Jersey, Inc.) or the various Health Maintenance organization Plans (hospitalization, medical, surgical and major medical coverage administered by group practice or individual practice health insurance carriers) options instead of the Traditional Plan, the City's financial obligation shall be no higher than the cost of the corresponding Traditional Plan.

11-3 Non-Job Related Disability Income Protection. Delete and substitute the following language:

Those Police Officers who have not yet completed five (5) years of service will be provided a long term disability insurance plan, which will provide income of fifty 50% percent of the employee's present salary

following the utilization of all sick and vacation leave that would be forthcoming or a one hundred eighty (180) day waiting period. Such payment of fifty (50%) percent of salary will be provided following determination by the City physician that the employee's illness or injury is of sufficient quality and duration that it could qualify the employee for long term disability coverage.

Police Officers with more than five (5) years of service are covered for disability income under the Policemen's and Firemen's Retirement System providing that the employee retires as a result of the disability. The City agrees to provide a supplemental disability income insurance plan to Police Officers with more than five (5) years of served. Such plan will not become effective until such time as the employee has exhausted all of his or her sick leave and vacation leave and will provide coverage from the time of exhaustion of benefits up until one (1) year from the time the injury or illness commenced. Such payment shall be at fifty (50%) percent of salary and will be provided following a determination by the City physician that the employee's illness or injury is of sufficient quality and duration that it could qualify the employee for long term disability coverage. One year from the date of the incident or the beginning of the illness all non-job related disability payments will stop and the employee must take advantage of the disability benefits available to the uniformed employee through the Police and fire Pension Plan, pursuant to Revised City Ordinance 11:9-11A.

11-5: Prescription Plan

Increase co-pay to \$3.00 for generic prescriptions and \$5.00 for name brand prescriptions.

Article XII, "Vacations and Holidays", 12-2 (b) Delete and substitute the following language:

All sworn personnel not assigned to the Uniform Patrol, CIB, Youth Section and Narcotics shall receive the aforementioned holidays which shall be taken on the day which they occur or celebrated by the Employer. Such sworn personnel shall not be entitled to a 'paid days' option. If such personnel are assigned as indicated during the year,

adjustments will be given on a prorated basis which shall be set forth in writing prior to assignment.

Article XIII, "Longevity",

13-1, add new sentence to end of section:

Bargaining unit employees hired on or after January 1, 1996 shall have no right or entitlement to any longevity payment.

Article XIV, "Miscellaneous".

14-8, amend to include the following language:

College incentive: This program shall be amended so that it shall apply only to prior approved job related courses of instruction with a satisfactory grade of C or better; the college course work must be directly related to the employee's job or be part of a curriculum leading to a degree which is directly job related.

14-10, add a new paragraph to end of section:

If during the term of this Agreement, the State of New Jersey, the Federal Government or any agency thereof mandates minimum benefits in any area, the parties agree to reopen negotiations to bargain over the effect and impact of such mandated benefits on the parties' Agreement.

Include new Article XVI, "Drug Policy - Urinalysis/Drug Screening

This Article incorporates the language of General Order No. 8, as amended, of the Plainfield Police Division and further provides for urinalysis/drug screening as part of the annual physical examination for uniform police personnel as follows:

The urinalysis/drug screening of a permanently appointed Police Officer may be conducted as part of a bona fide scheduled physical examination. Regularly scheduled physical examinations shall be rendered no more than once in any twelve month period. Notice of such examination shall be provided thirty (30) calendar days in advance of the examination.

DISCUSSION AND OPINION

Introduction *Economic Issues*

All of the proposals in the Unions' final offer have an economic impact. The City's proposals to cap the sick leave payout, limit leave accrual conditions, add a new copayment, eliminate longevity for new hires, and add limits on tuition reimbursement would reduce the City's costs in those areas. The proposals modifying the disability insurance provision might represent an increase in cost. Some of the City's proposals are offered to codify in the contract benefits or provisions in the municipal code.

The City argues that its final offer on salaries is "the same as that accepted by the Fire Officers' Association (FOA, superior officers) and that offered to the Fireman's Mutual Benevolent Association (FMBA, rank and file)." (Brief, p. 9, C-62).² The offer is also greater than raises received by non-uniformed city employees. (C-63-65, blue and white collar employees. The other employees received increases totaling 8% over three years). The City relies, in part, on an internal pattern of settlement.

In general, the City's offer is aimed at saving money. The City claims that its "current financial position" leaves it "hard pressed to provide the same level of essential services as it has in the past without imposing an additional tax burden on its citizens" (Brief, p. 19). The City must appropriate funds not only to pay for the wage increase but also to cover increases in "longevity, health care costs, step increments and other benefits which exact a heavy financial toll on the City. Such costs account for a large portion of the City's total labor costs." (Brief, pp. 19-20).

The Union highlights the risks and demands of the job. Testimony of police officers documents the particular difficulties in Plainfield. In Union county, the assault rate per 100 police officers in 1995 was 28.7, higher than that in any other county by a wide margin. (U-J-6). In addition to fighting crime, these employees "have successfully tackled the Community's quality of life issues such as noise, traffic complaints, loitering

² City exhibits are identified as C-; Union exhibits are identified as U-.

and littering." (U-K-9). According to the Union, "the compensation package proposed by the City will result in sub-par wages and benefits which are not justified by the evidence on the record and thus must not be awarded." (Brief, p. 23).

The Union also asserts comparisons with police officers in neighboring municipalities. It argues that most other units are much better compensated.

THE EVIDENCE

Plainfield is an urban center located in Union County, New Jersey. Its 1994 population is estimated at about 45,000. (E-4,5). The 1990 population is shown on Plainfield's "Home Page" as 46,567. (U-A-1). In 1989 the per capita income was \$14,742. (E-7). 12.03% of the population lived in poverty. (E-8). The City describes itself as "culturally diverse". (U-A-2).

The average personal income in Union County was \$25,643 in 1990. (U-H-3, a NJ DOL report). The median household income in Plainfield was \$38,463 in 1989. (U-H,3). The per capita income, at \$14,742 is among the lowest in the state. (U-H-3). The 1991 general tax rate per \$100 assessed value was similar to that in Rahway and North Plainfield. It was about twice the rate in Union and about half the rate in New Brunswick. (C-12).³ The percentage of vacant ratable property in Plainfield was .75 in 1991. The rate is lower than in many other municipalities (in all of those cited as comparable by the City except N. Plainfield). (C-15). The tax rate decreased slightly in 1993 and increased slightly in 1994. The 1996 rate, 3.39, is about the same as the 1994 rate, 3.37. (C-43).

The City is considered part of the Greater New York area and is "the core city for several surrounding communities...." It is 18 miles from Newark, 12 miles from Elizabeth; it borders Dunellen, Piscataway, South Plainfield, Edison, Scotch Plains and Fanwood. (U-A-1).

³ There is an error in the arithmetic in the exhibit supplied by the City. I have recalculated the figures.

There were 138 employees in the two bargaining units as of the end of 1995. That translates to about 3.2 officers per 1,000 residents.⁴ The average ratio among the municipalities cited by the City as comparable is 3.7 per 1,000).

Crime rate statistics show Plainfield ranked 4th (among the City's comparable municipalities) after Irvington, New Brunswick, and Elizabeth. The rate was slightly higher than that in Paterson. (E-10). The violent crime rate in Plainfield, almost 17 per 1,000, is much higher than that in any other Union county municipality including Elizabeth (12.7). The county average, driven higher by the rates in Elizabeth, Plainfield and Hillside Tp, is 6.1. (U-J-8).

An October 1996 Star-Ledger article reports a 9% decrease in the crime rate for Plainfield in the first eight months of the year. "While the city is making some inroads in the war on crime, the rate still far exceeds that experienced in neighboring towns." Police Chief Driscoll attributed much of the crime to drug use and trafficking. "The police division has beefed up its narcotics squad from 10 to 14 officers while the tactical uniform squad ... was doubled to eight officers." (U-G-2). Testimony in the record establishes that police work is more hazardous in Plainfield than it is in many of the neighboring communities.

Raphael J. Caprio, offered by the Union as a financial expert, prepared a report, "Fiscal Analysis of Plainfield, NJ" which summarizes his review of the City's financial statements, budgets and audits for the past three years. He concluded that the City could afford to fund the Union's final offer. (U-Q). The City's financial analysis concludes that funding the Union's offer would result in a tax increase which the City cannot afford.

THE STATUTORY CRITERIA

Interest and Welfare of the Public

The Union argues that the "City's most valuable asset is its police force and the variety of police services delivered by PBA members to its citizenry." Therefore, "the interest and welfare of the public is best served when the City's police officers are provided with a fair and competitive

⁴ PBA Exhibit J-8 shows 3.08 police officers per 1,000 population. That document also shows the crime rate at 74/1000, violent crime rate at 17/1,000.

compensation package. Only such a package can ensure high morale and result in continued excellence in work performance." (Brief, p. 14).

The Union offers comparison with other police officer bargaining units to illustrate its view of a competitive compensation package.

The City points to the burden that the Union's proposal would impose on Plainfield's taxpayers. The City argues that its offer is "the maximum it can fund. It points out that Plainfield "is not a wealthy community and its taxpayers already bear a heavy tax burden." (Brief, p. 28). The City has a shrinking tax base. It claims the Union's offer would adversely affect its ability to continue to provide services required by the public. Therefore, the public interest is best served by awarding no more than the City's offer.

This criterion is entitled to primary consideration although there are little objective data for assessing how that interest might best be served. In my opinion, the evidence proves that the Plainfield taxpayers are in need of a highly motivated and qualified police department in order to deal with its numerous public safety issues. There is no question that the police force has worked productively and successfully to reduce crime and to improve the quality of life in Plainfield. Continued improvements in those areas should be a contributing factor in attracting a somewhat wealthier population. As the Employer notes, there is a large supply of grand, elegant and attractive housing in the City. Investing in the police force may help improve the economy. Comparison data (discussed below) point in the direction of compensation increases which are greater than the City's offer if the City can find resources to fund a greater package.

Turnover, some of which results from dissatisfaction with wages and benefits, weakens efforts to develop an experienced and dedicated police force. This factor also points in the direction of improvements.

Stipulations of the parties

Attached to the City's brief as Exhibit A, and incorporated herein by reference, is a list of contractual agreements which the parties reached before the record in these hearings was closed. They are the only written stipulations and have some bearing on proposals for additional modifications in the grievance procedure.

Comparisons

The City argues that comparisons should be based on "the more urbanized municipalities surrounding the City and/or other urban centers in the area." (Brief, p. 21). These include Elizabeth, Linden, Rahway, Union Township, North Plainfield, Irvington, New Brunswick and East Brunswick. (E-4). All but East Brunswick and Union Township, which are classified as suburban, are urban or urban-suburban areas. The City argues that comparison with those municipalities "demonstrates that PBA and SOA members [in Plainfield] are fairly compensated." (Brief, p. 22).

The Union urges comparison with other police bargaining units in the area. It points to the unique nature of the job and to the risks and requirements of the job. Its exhibits focus on other Union County municipalities. (U-D7 through D16).

I agree with the City that its comparison group includes municipalities which are more like Plainfield than the Unions' group which includes all of Union County. Both parties include Elizabeth, Linden and Rahway in their comparison groups. Those cities are also urban centers and have other factors (including proximity) in common. The Union County municipalities (Fanwood, Garwood, Mountainside, Springfield, and Westfield) offered by the Union are, for the most part, much smaller and wealthier than Plainfield.

According to the City, its offer "allows the PBA and SOA to maintain its relative wage and benefits ranking among comparable municipalities, yet will keep the cost within the City's ability to pay." (Brief, 20). The evidence does not support this argument as further discussed below.

The City points to the fact that it has the third highest starting salary in the City's comparison group. Union and Irvington pay slightly higher. (C-16). The starting rate is \$3200 higher than the average (\$28,365) of the Unions' comparison group. (U-D-8).

Starting rates have declined in many municipalities as the number of applicants for police officer jobs greatly exceeds the number of vacancies. Comparison on this variable may reflect the City's desire to compete for new applicants. Once in the employ of the City, the police officer's comparative standing drops substantially. In the 1996 Police Department "Chief's Report", Chief Driscoll asserts, "staffing ... remains stable ... in spite of the turnover effect we are known to have." (U-K, P.7). The statement has some internal inconsistency although the Chief may be referring to a stable number of police officers.

The top patrol officer's compensation is the conventional point of comparison. The vast majority of police employees in Plainfield are at that level. In the superior officers' unit, the majority of employees are top level sergeants. The top patrol officer rate is near the bottom of the City's comparison group (at \$47,076). (C-17). The Union's exhibit (D-11) shows an average annual maximum base of \$48,115 among Union County municipalities. However, the figure includes an atypically low rate in Winfield Township.

The top sergeant base rate in Plainfield was close to the bottom of the City's comparables at \$54,771, almost \$300 below the rate in Elizabeth. It is \$4,000 below the average of the City's comparables. (C-18). Under the City's offer, the rate in 1996 would drop to \$1100 below Elizabeth (C-23) and to \$3400 below Elizabeth in 1997. (C-28).

Overall, other benefits, including sick leave, bereavement leave, vacation, and holidays are lower in Plainfield than in other municipalities according to evidence presented by both parties. (C-36 through 42, inclusive; U-D-1 through 6, inclusive). Direct compensation in the form of longevity and uniform allowances is considerably lower in Plainfield.

Regardless of comparison group, the top step patrolman in Plainfield makes less (and will make less by 1998) in 1995 and under the City's offer than in any other municipality for which there are data in the record. In Elizabeth, where the top patrolman base salary was about \$300 lower than Plainfield's in 1995, the rate will be \$53,637 in 1998. The City's offer would raise the rate to \$52,223 (on average for the year), \$1400 lower than Elizabeth. Plainfield's rate fares worse in comparison with all other municipalities in the record.

In population, Plainfield (at about 45,000) is more like Linden (36,500), Rahway (25,700), Union Township (52,000), New Brunswick (41,000) and East Brunswick (25,455) than it is like other municipalities in the county or in the Employer's comparison group. The 1995 top patrolman rates within the above named four towns are \$51,688, \$50,298, \$50,395, \$52,260, and \$54,167, respectively. The City's offer would raise the rate in Plainfield to \$48,724 in 1996. It will be \$54,073 in Linden; \$53,219 in Rahway; \$51,856 in Union Township; \$54,481 in New Brunswick, and \$56,604 in East Brunswick. New Brunswick had a lower 1989 per capita income than Plainfield as did Elizabeth. Linden and Rahway were somewhat higher in per capita income.

East Brunswick has a much higher per capita income and a much lower percentage of its population living in poverty than Plainfield. The crime rate, by most measures, is also lower in East Brunswick. This highlights the anomalous condition that relatively safer wealthier communities pay their public safety employees more than police earn where the job is more hazardous and challenging.

The Municipal Distress Index provides some further indication of Plainfield's relative wealth. Plainfield ranks 34 (the lower number indicating greater distress) out of 567 municipalities on the overall index. It is less distressed than Elizabeth (25) and New Brunswick (18). Linden is ranked 194; Rahway is ranked 135. The index takes into account population changes, per capita income, unemployment, housing stock, tax rates, etc.

The percentage wage increase in other police contracts in 1996 is considerably higher than that offered by the City. Interest arbitration awards for 1996 average about 4% although the figure is meaningless unless it is applied to a specific wage rate.

As the City notes, "comparative data is often helpful in determining just and equitable levels of compensation for public employees" although these comparisons have also been given too much weight. (Brief, p. 22). I have given the greatest weight to the comparisons offered by the City. The city argues that "[t]hese comparisons will aid [me] in making a reasoned assessment as to whether [the City's police employees] are presently comparably well paid and whether they will continue to be well paid pursuant to the City's present proposal." (Brief, p. 22).

My view of the comparability data is that they support the Union's position that the City's police employees are not adequately paid by comparison nor are they paid a competitive wage rate. While their wages might be described as high compared with the per capita income in the City, in comparison with police employees in municipalities with similar fiscal problems and similar working conditions they are underpaid.

Public sector wage increases, in general, continue to be greater than those in the private sector although the percentage is smaller in recent years than in the past. Public employees are contributing more toward the cost of health benefits than they were a few years ago.

If the status quo is to be maintained (and the City argues that it should) the City's proposal will not accomplish the goal. The City claims its

proposal will "maintain police officers at their relative ranking among the comparables." (Brief, p. 24). The data do not support this claim.

Private Sector

Private sector wage increases are, on average, much lower than those negotiated in public sector contracts in New Jersey. The City cites a median private sector wage increase of 3%. The median wage increase in 1996 was also 3%. (Brief, p. 27, E-67).

The unemployment rate in New Jersey is about 6%. (U-F-1). The unemployment rate for Plainfield was 9.2% in a NJ DOL study for 1996. (U-F-3). This has little bearing on this decision because of Plainfield's unique public safety needs.

Internal Comparisons

The City urges that careful consideration be given to the salary increase granted to the City's Fire Officers Association. "Granting a higher percentage increase to the PBA and SOA ... [would] have an extremely detrimental effect upon employee relations throughout the City as well as creating financial havoc." (Brief, p. 19). It asserts "a pattern of settlement within the City." (Brief, p. 26).

The percentage increase to the Fire Officers, the only other uniformed bargaining unit with a contract for this term, would not create an internal pattern of settlement even if the parties had a history of parity between the police and fire units. The fire officers have a different schedule from police officers. They are among the highest paid employees in the City. Their compensation for the three years at issue here will be higher than that of most other City employees.

The fire fighter rank-and-file unit, a much larger group than the fire officers, is in interest arbitration and has not voluntarily agreed to the City's offer. Percentage increases paid to some of the City's other employees are considerably less than those offered to the police units and result in considerably lower wages than police employees receive. This has historically been true and may reflect the greater job hazards and personal risks associated with public safety employment.

The City Administrator's salary went from \$73,195 in 1994 (where it had been in 1992) to \$91,613 in 1997. The Department Director salary went from \$63,392 in 1994 to \$79,342 in 1997. These rates show a 25% increase over three years. (U-C-2).

A review of the internal comparisons in light of external comparisons convinces me that the more appropriate wage comparison is between Plainfield police employees and police employees in similarly situated jurisdictions.

I have given this criterion considerable weight in deference to the serious attention both parties have given it. Both the City and the Union rely on external comparisons to prove the reasonableness of their respective positions. In a sense, it is stipulated in this record that comparison within an appropriate group of similarly situated police employees would help establish what would be a reasonable increase in compensation for police employees over the term of the contract in the City of Plainfield.

In my view, comparisons should be made between the subject municipality and those with similar means, needs and working conditions. The discussion above reflects that view and leads to the conclusion that the City's offer is not adequate.

Lawful Authority of the Employer and Financial Impact on Governing Unit...

I have given careful consideration to this criterion insofar as it is possible to do so on generalizations. There is no objective indication of what increases in police compensation the City can afford, assuming it can or must pay anything more than it offers. Comparison with other police employees in neighboring densely populated, relatively poor municipalities with a high crime rate and a low tax base points toward an economic package which is more costly than the City's offer.

Raphael Caprio testified for the Union about the City's financial condition. He noted that total revenue increased by over \$11 million from 1994 to 1996 although the revenue shown in the 1997 budget was \$44.82 million. Expenditures decreased from \$54.62 million in 1996 to a budgeted \$44.82 million in 1997. As elsewhere noted, property tax rates have remained quite stable over the 1994-96 period. (U-Q-1).

According to Caprio, the City has a history of underestimating its non-property tax local revenues. In 1994 it received \$.74 million over what it anticipated, \$.5 million in '95 and \$.74 million in 94. He speculated that if the average underestimation were applied to 1997, Plainfield would have another \$.5 million in 1997. (Id., Exh 2). He notes that Plainfield's property

tax collection rate (90% in 1996) is rising, from 86.3% in 1994. The rate was about the same in Irvington in 1994 and 1995. (Id., Exh 3). The City has also underestimated its delinquent tax collections "by a total of \$3.44 million or 42%" over the past two years. If the trend continues, there would be an additional \$.2 million in the budget in 1997. (Id., Exh. 4).

Caprio noted a 3.3% decline in property tax levies for municipal purposes since 1994 and concluded there is "some room" (which he amplified to "modest" on cross examination) to raise taxes. Between 1994 and 1996, the budget surplus grew to \$3.88, 140% over 1994. The City has also "averaged \$560,000 in canceled appropriations/reserves over the past three years." (Id., Exh. 8).

Thomas J. Morrison, III, Director of the Department of Administration, Finance and Health and Social Services of the City of Plainfield, also prepared a report which describes the City's fiscal condition. (C-72). He reports that "over-reliance on surplus, one time revenue items and state aid" is "the secret to Plainfield having a bright budget picture." (C-72). The rise in the tax collection rate "helped postpone a tax increase. These extraordinary events will not be matched in FY '98." (Id.) Other large one-time items, such as the cancellation of unused general capital improvement ordinance balances for six years and the loss of the sewer facility operating surplus are identified. The City has already moved to lay off nine or ten employees to avoid raising taxes.

The City relies on state aid. Revenues from those "sources are down \$200,000." It anticipates receiving "\$100,000 less than this year's \$9.1 million." It claims the only resource to cover the losses in revenue and increases in costs is the taxpayers. (Id.).

Morrison pointed to other losses resulting from tax appeals and foreclosures. The City faces significant increases in expenses (salaries, among the highest), a loss of state aid and other revenues; a "dangerously low" tax collection rate, an anticipated tax increase, and other fiscal problems.

The 1996 budget included a number of one-time revenues. "The Fiscal Year 1998 budget will generate a large tax increase with very negative consequences for Plainfield residents." (C-72). These include "a declining tax collection rate, property abandonment and a decline in services."

The City argues that its offer is "the maximum the City can fund." (Brief, p. 28). It is "extremely hard pressed to provide the same level of

essential services as it has in the past without imposing an additional tax burden on its citizens, notwithstanding funding unrealistic salary demands." (Brief, p. 19). The City also asserts the reasonableness of its proposal "under the prevailing economic conditions." (Brief, p. 27). The City further argues that other bargaining units will look to this agreement as "the minimally acceptable increase." Therefore, I "must consider the future impact of [my] award in the instant case." (Brief, p. 27).

The tax rate in the City has not increased in recent years. I am convinced that the City could sustain a modest increase as Dr. Caprio opined. The increase which would result to fund an economic package greater than the City's offer, even by the City's most dramatic estimate, is not a significant increase. As noted above, while negative consequences might flow from a tax increase, the City needs superior police protection to maintain its economic gains. If a stronger tax base can be attracted by greater improvements in public safety, an important public interest will be served through that investment.

The City prepared an analysis of the cost of its proposal. (C-60 and attachment to letter of June 19, 1997, Hatfield to Leder). Without a salary increase, 1996 salary and longevity expenditures (due to increments) will increase by 5.7%. (C-55). The total cost of a 3.5% salary increase for both units in 1996 is \$232,079. The 4% split raises in 1997 will cost \$281,563. The 4% split increases in 1998 will cost \$295,965. The three year total is \$809,607 which does not include the City's cost for fringe benefits and salary driven benefits. Health premiums, for which the City pays, have nearly tripled in ten years. (C-56). "[T]he City experienced an overall increase of 5.3% in PBA and SOA salaries, inclusive of longevity and health benefits" between 1995 and 1996. (Brief, p. 32).

According to Director Morrison,

on a tax rate of \$3.39, one cent is about \$130,000. Total police and fire salaries are about \$14 million. If the police request is granted, the extra two percent would cause a one percent increase in the tax rate for FY'98, another one percent in FY '99 and another one percent in FY 2000.... (C-72).

An estimate of the cost of the Union's wage proposal, 6% increases in each year, can be derived from the City's figures. An additional 2.5% in 1996 would increase the salary cost by approximately \$5800; 2% more in 1997 would cost about \$5600 and about \$5900 in 1998.

The 1995 salary cost for both units was \$6,629,985, calculated by adding existing employee salaries. A gross estimate of the difference between the two proposals is to multiply the 1995 total by the three year percentage increase. The difference (between 11.5% and 18% over three years is \$430,949). Although the City's split raises will cost less during the term of the agreement than would the same percentage increases applied at the beginning of the year, the rollover effect of the split raises will be felt immediately after the end of the contract term.

The Union presents evidence that the City can afford the salary increases it proposes. The total tax rate has remained relatively stable from 1994 (\$3.37) to 1996 (\$3.39). The levy for municipal purposes has decreased slightly. Its budgets over the last few years have underestimated revenues in several areas. Surplus has grown. (U-Q, Exhs.1- 11). The PBA concludes that the City has "an estimated \$1.8 million available" to fund the contract. (U-Q, Exh. 12).

The Union also cites sewer revenues, planned improvements, state and federal grants and other sources of income. "The City did not present any evidence of a CAP problem.... The overwhelming evidence shows that the City's finances have improved significantly and will continue to improve in the next few years." (Brief, p. 56).

Current compensation

The Union offers evidence to show that there has been no change in various economic contractual benefits since the 1980-81 agreement. Holidays remain at 13 days; there are no personal or bereavement days; clothing and uniform allowance remains at \$300 per year; acting pay is paid after 25 hours in a two week period; a co-payment has been added to the health and medical benefit; life insurance remains at \$4000; and, the vacation benefit has not changed. (U-C.1). By comparison with police employees in comparable municipalities, this unit is inadequately paid.

Cost of Living

The City relies on the Consumer Price Index (CPI) as a measure of the cost of living. That figure has risen an average of 4.01% since 1987 compared with police salary increases which have risen an average of 5.75% per year (including the 3.5% raise offered for 1996). (C-61). The City pays for medical care, a rapidly increasing component of the CPI which does not affect individual police officers. (Brief, pp. 33-34).

This factor has some relevance for the decision. The City's offer is at the level of the increase in the cost of living. If the City's offer were awarded, police compensation in Plainfield would be substantially lower than it is in many other municipalities in the area. I have concluded that high turnover of police officers has a detrimental effect on the City's well-being. Therefore, a cost of living raise is not sufficient.

Continuity and Stability of Employment

The City claims its "proposal will maintain the continuity and stability of employment in the City." The offer "provides well-deserved salary increases but still allows the City to maintain its current level of services." It claims the Union's offer would require the lay off of other City employees which would "have a detrimental effect" on the stability and continuity of employment within the City. (Brief, p. 34).

This criterion is more often applied to the stability of employment within the unit than within the public entity. By that measure, a larger economic increase is warranted.

There is no data in the record bearing on the impact of an award for each income sector of the property taxpayers or on the ability of the City to maintain existing programs and services. Neither the impoverished nor those who do not own property will be directly affected by a change in the tax rate. They are the least able to afford any increase in the cost of services. It is the property owners who have the greatest investment in the City and that sector may well be willing to pay more for police protection than for some other services.

Discussion of each issue

Article IX. Salaries

I have concluded that the wage increase must be somewhat greater than the cost of living in order to maintain a motivated and competent police force. A greater increase than the City offers is also necessary to maintain Plainfield's relative ranking with comparable municipalities. Although it has ranked close to the bottom of that group at most levels of comparison, the difference between the second lowest paid and Plainfield would increase considerably if the City's offer were awarded. Plainfield police officers (at the top patrolman level) had the lowest 1995 base wage of any municipality (except Elizabeth) for which there are data in the record. In 1996, if the City's offer were awarded, Plainfield's rate would be the lowest; \$800 below Elizabeth but from \$2,000 to \$8,000 lower than in other comparable municipalities. By 1998, Plainfield would have a base \$1400 lower than that in Elizabeth.

Plainfield fares worse when longevity benefits are considered. Most other municipalities make longevity payments of over \$2,000 at about ten years of service. In East Brunswick, where the base wage is relatively high, longevity for the ten year employee was about \$3400 in 1995. Plainfield also compares negatively on clothing and maintenance allowance although the greatest difference is \$700 per year.

I have determined a wage rate by comparing the top patrol officer and top sergeant rates which would result from the City's offer with the rates (and average rates) in a comparison group composed of most of the municipalities proposed by the City as comparable. I have eliminated East Brunswick, a higher paying department with a much stronger tax base, and Paterson (for which there is insufficient data). The table below shows top patrol officer base salaries, and salaries resulting from the City's offer.

TABLE 1

	1995	1996	1997	1998
Plainfield	47076	48724	50692	52740
Elizabeth	46783	49590	51574	53637

Linden	51688	54073	55996	
Rahway	50928	53219	55614	58117
Union Tp	50395	51856	53360	54907
New Brnswk	52260	54481	56796	
Irvington	47746	50997	53740	56460
Average (rounded) excluding Plainfield	50,000	52,300	54,500	55,800

Although it is not reasonable to award an increase which would bring Plainfield's rate closer to the average, it is necessary to award more than the City offers in order to keep the rate within range of average. The City's offer would result in a considerable decline in the top patrol officer's base rate; from \$400 above Elizabeth (the lowest rate) in 1995 to \$900 below Elizabeth (still the lowest rate) in 1998. An increase of 4% in 1996, 4.5% in 1997 and 4% in 1998 would maintain Plainfield's rate at within \$400 of Elizabeth and at \$2400 below the average (among the group in the Table). It is reasonable, in light of all the relevant criteria, to establish a rate which is at least marginally competitive for the area.

I have made an estimate of the cost of the award over the cost of the Employer's offer based on City Exhibit 58. That document shows a total salary and longevity cost for the two units of \$6,320,193 in 1995. By the end of the contract, the cost would be \$7,080,621 (applying increases of 3.5, 2, 2, 2, and 2%). Multiplying the 1995 figure by 4, 4.5 and 4% yields a total of \$7,143,537. While these figures do not take the increased cost of fringe benefits or wage driven costs into account, they show a relative difference between the two offers of \$62,916 over the term of the agreement. That number represents a little over \$.05 on the tax rate (using Mr. Morrison's figure, \$.01 = \$130,000).

Award: Salaries shall be increased as follows:

Effective 1/1/96 4% across the board

Effective 1/1/97 4.5% across the board
Effective 1/1/98 4% across the board

City:⁵ Article III, "Grievance procedure"

The City's proposal to modify the grievance procedure would change the arbitrator designating agency from the Public Employment Relations Commission (PERC) to the New Jersey State Board of Mediation (NJSBM). It would also reduce the filing deadline for demands for arbitration to "within 20 days" of the lower step answer. The Association now has 45 days in which to file. The new language would also require that the demand for arbitration be filed "simultaneously" with the City Administrator.

Karen Dabney, Director of Personnel, testified that the City expects to save money by this proposal because "the costs of arbitration at the State Board are less than PERC." (Brief, p. 10). Further, only the police units do not use the Board. A reduction in the filing time would allow the "processing of grievances at a quicker pace in order to prevent issues getting stale." (Brief, p. 10).

The proposal to file demands for arbitration simultaneously with the agency and with the City Administrator would eliminate situations where the City does not learn a demand has been filed until notified by its labor counsel. The City points out that the Union did not oppose any of its proposals for Article III.

This issue is primarily non-economic in impact. Although the City argues there might be a cost savings, I find that the potential reduction in cost is speculative and not measurable. The decision to change agencies should be based on more than the speculation that it will save money because of the Board's lower limit on arbitrator per diem fees. PERC lists the same arbitrators as the Board, for the most part, and additional arbitrators who are not listed on the NJSBM's panels. Arbitrators on both agency panels have a wide range of experience and fees. There are more arbitrators on PERC's panel familiar with public sector issues than there are on the State Board's panel.

There is no evidence of dissatisfaction with the arbitration process as currently administered under PERC's jurisdiction. The parties' stipulations

⁵ Each issue is identified by the party proposing it.

(attached to the City's brief and incorporated in the Union's brief) have a major bearing on the decisions on this issue. It is evident that the parties spent a fair amount of time dealing with proposed changes to the grievance procedure. They did not agree to change to a different agency or to decrease the deadline for demanding arbitration.

There is no record indication of why the parties did not mutually agree that notice should be served on the City administrator when a demand for arbitration is filed. They did agree to delete a step, moving the grievance to the City administrator level earlier. That is now the step before arbitration. It makes good sense to notify the administrator when the decision at that level is being appealed and a demand for arbitration is filed. There is no added burden in copying the Administrator with the demand and the process will be expedited.

There is no evidence or argument that any other statutory criterion has a bearing on this issue.

Award: Modify the arbitration step to provide that the demand for arbitration be simultaneously served on the City Administrator. No other changes in this Article (except those set forth in the stipulations).

Union: Article VII, 7-1.(f)

This proposal would increase the required notice period for a starting time change from 24 hours to 72 hours. The existing language deals with changes made to the "exact starting time for ... [those] assigned ... to the four days on, two days off schedule "to provide for unforeseen needs for Police service.

It is unclear how notice can be increased when the need arises is of the sort which may arise on a moment's notice. There is no evidence of how the current system affects those whose schedules are changed (or whether this occurs at all). Therefore, I do not find adequate justification for a change in the language.

Award: No change

City: Article X, "Sick Leave and Leave of Absence" 10-1.

This section now provides "Sick leave and leaves of absence shall be determined as set forth in Section 11:9-6 of the Municipal Code of the City of Plainfield." The City's proposal would "codify the current practice

that sick leave credits do not continue to accrue after an employee has resigned or retired." (Brief, p. 35). This proposal and others which codify benefits should be added to the contract so that they are all set forth in one place. The City had a problem with another unit and wants all contracts to have the same language.

The City also proposes to include language permitting the scheduling of medical exams "annually or more frequently if required." There is insufficient record support for this proposal. The City has the managerial right to order such medical examinations as might be necessary to insure that police employees are fit for work. The proposal does not indicate who would pay for the examinations, the City or the individual.

Award: Language which reflects Municipal Code provisions on earning sick leave credits shall be included in the contract. The proposal on scheduling medical exams is not awarded.

City: 10-2. Accumulated unused sick leave is now paid at a rate set forth in the contract "on the basis of one-third day per full day" The City would cap payments at \$15,000.

This proposal would save the City considerable money. PBA Exhibit N shows the sick leave accumulation for the bargaining units (and including some civilians). There are some patrol officers and superior officers who have accumulated between 1,000 and 2,800 hours. The \$15,000 cap proposed by the City exempts the six months leave. Days not used as terminal paid leave are paid at 1 for 3. An employee with 2800 accumulated hours would have 1720 hours left. At \$25 per hour (a figure chosen for convenience) the time would be worth \$14,000. \$25 per hour is considerably more than the rate which would apply for purposes of this provision.

Very few bargaining unit members would be adversely affected by the proposed cap. I conclude that the cap should be awarded so as to assist the City in its laudable goal of containing costs. I also find that this tradeoff will lessen the burden of the salary increase awarded above.

Award: Payment of accumulated sick leave shall be capped at \$15,000.

City: 10-3 Delete terminal leave and substitute language allowing an employee to use up to six (6) months leave of absence with pay when an employee is retiring.

This proposal would make the Chief aware of anticipated retirements. Notice is not now required but is usually given. The proposal does not change a benefit but rather gives contractual assurances "so that the City can fill the vacant position." (Brief, p. 36). The proposed language confirms that the benefit is a "terminal" leave as it is identified in the contract. It puts no burden on the employee beneficiary. This proposal is awarded.

Award: The City's proposal is awarded.

Union: 10-3 The Union would increase the maximum terminal leave to 12 months.

I do not see a basis for changing the language of this section. Staffing problems arise when employees cannot be removed from the payroll because they are in a paid leave status. They cannot be replaced with employees at lower salaries. The proposal is contrary to the public interest in economic and efficient staffing.

Award: No increase in terminal leave.

City: 10-4. New section, "Other Leaves of Absence."

This proposal codifies the status of leaves covered in the Municipal Code.

Award: Provisions from the municipal code concerning "other leaves" shall be added to the contract.

City: Article XI, "Insurance Protection", 11-1: Medical insurance.

This language "reflect[s] the fact that the City will pay the entire cost of the Traditional Plan for health insurance for all employees and their eligible dependents." It codifies existing benefits and eliminates terms which no longer apply. The proposal does not change the level of benefits. Employees have the option to select a different plan and requires that they pay any difference in premium. As the City's exhibit confirms, the traditional plan is more expensive than the others so "there

would be no impact on employees." (Brief, p. 36, C-56). There is no record objection to the change. Therefore, it is awarded.

Award: The City's proposal is awarded

City: 11-3: Non-Job Related Disability benefit.

The proposal takes into account changes in the PFRS concerning disability retirement. It includes language in the Municipal Code. The proposal "merely attempts to codify an existing ordinance." (Brief, p. 37). There is no objection to including this language. Therefore, it is awarded.

Award: The City's proposal is awarded.

City: 11-5: Prescription Plan co-payments.

The City claims that an increase in the co-payment to "\$3.00 for generic drugs and \$5.00 for name-brand drugs would result in a 10% decrease in the City's annual premium rate." The current annual premium is \$6,500. There is now no copay for generic drugs and a \$2.00 copay for name brand prescriptions.

The nominal contribution which employees are asked to make to the cost of generic and name brand prescription drugs results in a significant savings on insurance premiums. The contribution also creates an incentive for insurance beneficiaries to monitor prescription costs. Both goals serve the public interest in controlling insurance costs, an area which has increased significantly and is in need of containment. Therefore, it is awarded.

Award: The City's proposal is awarded. The copayment for prescriptions shall be increased to \$3.00 for generic and \$5.00 for name brand drugs.

Union: 11-7

This proposal would grant retirees the same health insurance coverage as is provided to active officers. The benefit is prohibitively expensive and not justified under any of the criterion.

Award: No change

City: Article XII, "Vacations and Holidays". 12-2. (b)

This section now provides that sworn personnel assigned to the Administrative Bureau shall receive the named holidays but not the paid days option. The new language provides that employees "not assigned to the Uniform Patrol, CIB, Youth Section and Narcotics shall receive the holidays on the day they are celebrated by the Employer. Those employees would not be entitled to a paid days option.

There is no evidence in the record on the effect of this provision. I find no basis for a change absent adequate explanation.

Award: No change

Union:

The Union seeks three personal days. The contract provides for none at this time. Comparisons show that Plainfield officers are at the bottom of the totem pole when it comes to compensation and paid leave. They have less vacation, sick leave, and fewer holidays than most other police officers. However, part of the justification for awarding a larger increase than the City claims it can afford is to increase the base salary. I have concluded that it makes more sense to put the economic costs on the salary line than to grant increases whose impact cannot so readily be measured.

Award: No change

City: Article XIII, "Longevity", 13-1

This proposal eliminates longevity for new hires (after January 1, 1996) and creates a two-tiered benefit. The City would adjust the date to avoid an impact on those who have recently been hired.

Union:

The PBA seeks an increase of \$1,000 on each step of the longevity guide.

I have concluded that the cost of this award should be concentrated in the salary area. Even though the longevity benefit does not compare favorably with those in similar jurisdictions, I do not believe it should be increased at this time. On the other hand, I do not find adequate justification for eliminating the benefit for new hires.

Award: No change

Union: Article XIV, "Miscellaneous", 14.5

The Union seeks pay for all hours worked in an assignment directed by the Chief. These are usually work in a higher classification. The language now provides for "the appropriate rate of pay" after 25 hours in a two week period.

There is no evidence as to how often or for how long officers work in a different classification at their usual rate of pay. Unless there is a showing that these assignments are burdensome or otherwise made in order to avoid staffing higher paying jobs, there is no basis for changing the language. This is another cost item whose impact cannot readily be measured.

Award: No change

Union: 14.7

The Union seeks an increase in the clothing maintenance allowance and a new \$300 allowance for detectives.

The clothing and maintenance allowance, like other economic aspects of the contract, is lower than it is in other municipalities. However, for reasons cited in the discussion on longevity, I do not find that the benefit should be increased.

Award: No change

City: 14.8 The City's proposal would limit payment of this stipend to those who have prior approval for courses, attain a grade of C or better and in courses which are related to the employee's job or are part of a curriculum leading to a job-related degree.

The changes proposed by the City are reasonable. Limiting the courses to those which are job-related will insure that the City gets an equal benefit out of its expenditure in this area. As tuition reimbursement is something of a luxury and is not enjoyed by everyone in the unit, I believe this is an area where the City should be granted the relief it seeks.

Award: The City's proposal is awarded.

City: New article, Drug Policy

The City claims this article "would incorporate the language contained in General Order No. 8 as amended ... and provide for urinalysis/drug screening as part of the annual physical examination for uniformed police personnel. According to Ms. Dabney, uniformed fire personnel have already agreed to this proposal.

1 The City's proposal to include a new article on the drug policy should be subject to further negotiations. The Union supports the notion that employees should be drug free. This question is the subject of various statutes and court decisions. The City's ability to act in this area is not limited by provisions of the contract and no contract language is needed to permit the City to exercise its managerial rights with respect to public safety personnel.

Award: No change

AWARD

Salaries:

Effective 1/1/96	4% across the board
Effective 1/1/97	4.5% across the board
Effective 1/1/98	4% across the board

Article III, Grievance Procedure

Modify the arbitration step to provide that the demand for arbitration be simultaneously served on the City Administrator. No other changes in this Article (except those set forth in the stipulations)

Article VII, Hours of Employment

1 (f).

No change

Article X, Sick Leave and Leave of Absence

10-1 Include language from the Municipal Code.

No change regarding scheduling of medical exams

10-2 Cap sick leave payout at \$15,000.

10-3 no change

10-4 Provisions from the municipal code concerning "other leaves" shall be added to the contract.

Article XI, Insurance Protection

11-1 The City's proposal is awarded

11-3 The City's proposal is awarded

11-5 The City's proposal is awarded

11-7 No change

Article XII, Vacations and Holidays

No change

Article XIII, Longevity

No change

Article XIV, Miscellaneous

14-5 no change

14-7 no change

14-8 The City's proposal is awarded

Article XVI, Drug Policy

no change

By:


Barbara Zausner

Sworn to and affirmed before me on October 24, 1997



ERICA S. TENER
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires 3/29/2001

