

NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of Interest Arbitration Between the

TOWN OF PHILLIPSBURG

"Public Employer"

-and-

PHILLIPSBURG PBA LOCAL NO. 56

"Union."

**INTEREST ARBITRATION
DECISION
AND
AWARD**

Docket No. IA-2000-11

**Before
James W. Mastriani
Arbitrator**

Appearances:

For the Employer:

Steven S. Glickman
Ruderman & Glickman, P.C.

For the Union:

Fred M. Klatsky, Esq.
Klatsky & Klatsky

I was appointed arbitrator by the New Jersey Public Employment Relations Commission in accordance with P.L. 1995, c. 425, in this matter involving the Town of Phillipsburg [the "Employer" or "Town"] and PBA, Local 56 [the "PBA"]. Pre-arbitration mediations were held on February 3 and March 22, 2000. Because the impasse was not resolved, formal interest arbitration hearings were held on July 28 and August 8, 2000. Testimony was received from William Vine, Jr., PBA, Local 56 President and Phillipsburg Police Officer, Michele Broubalow, Joseph Hriczak, Bob Banca, Robert Schmeltzly and Richard Ames and both parties introduced evidence. Post-hearing briefs were submitted by November 16, 2000.

FINAL OFFERS OF THE PARTIES

The Town and the PBA submitted the following final offers:

PBA LOCAL 56

1. **Duration** -- January 1, 1999 to December 31, 2001.
2. **Salary** -- The PBA proposes that all classes and incremental salary steps, including, but not limited to, each Class from A through F and Trainee shall be increased as follows:

4.9% effective January 1, 1999
4.9% effective January 1, 2000
4.9% effective January 1, 2001.

3. Vacation (Article VII)

The PBA proposes to amend Section G.1 to remove the following language:

All employees assigned to the Patrol Division who leave the service of the Town in good standing after providing proper notice of their termination of employment shall be compensated for all vacation days accrued and unused prior to January 1, 1995 on day-for-day basis with a day being equal to eight hours.

The PBA also proposes to retain the language providing that “employees shall be compensated for all vacation days accrued and unused on a day for day basis with a day equaling twelve hours.”

4. Holidays (Article VIII)

The PBA proposes to amend Section E to change 8 hours to 12 hours for holiday pay, because the work schedule is four days on, four days off with twelve hour days. The fourteen holidays in Article VIII have been in existence for over a decade. However, when the work schedules switched from eight to twelve hours several years ago, the PBA forgot to change the holiday payment from eight hours to twelve hours. Specifically, the PBA proposes to amend the pertinent language as follows:

Employees not scheduled to work on a holiday shall continue to receive holiday pay equal to twelve (12) hours pay at their regular base salary rate.

5. Sick Leave (Article X)

The PBA proposes to add a new section G to allow officers to work on their own time for other officers who are sick/injured and have no more sick/vacation time to use. The PBA proposes the following language for this provision:

If an employee is injured off-duty or is sick, and this employee does not have any sick and/ or vacation time to use, then another employee may be allowed to work his or her scheduled day off for the injured or sick employee, and this would allow the sick or injured employee to receive his or her salary, and the Town would also have an employee working. The employee who will be working for the injured or sick employee will notify the Town twenty-four hours in advance that there will be a substitute employee working for the injured or sick employee.

The PBA also proposes to amend Article X to change 8 hours to 12 hours for sell back of sick days on an annual or upon retirement basis. This contract provision would allow employees to sell back earned and unused sick days, but only at eight (8) hours for each day. This provision was not changed from eight (8) hours to twelve (12) hours when the work schedule was changed a few years ago from eight (8) hours to twelve (12) hours. The PBA proposes the following changes to Article XB-2:

Employees assigned to Patrol Division choosing to "sell back" sick leave on an annual or upon retirement basis shall have each sick day sold back to the Town calculated upon twelve (12) hours compensation at the employee's base hourly rate of pay for each sick day.

The PBA also proposes that Article X.B-3 be amended to conform to current Town policy. Accordingly, the PBA proposes that Article X.B-3 be amended to provide as follows:

Each employee shall be entitled to fifteen (15) days sick leave per year earned at the rate of one and one quarter (1¼) days for each month of service. (The remainder of this section shall remain the same.)

6. Funeral Leave (Article XI)

The PBA proposes to amend Subsection A to provide five days of funeral leave in the event of the death of a brother or sister. The PBA proposes to amend Section B to provide three days of funeral leave in the event of the death of a brother-in-law or a sister-in-law. The PBA proposes to amend Section C to provide two days of funeral leave in the event of the death of a spouse's grandparent.

7. Court Time (Article XVII)

The PBA proposes to amend this provision to remove the language "and has left their place of work." The PBA proposes that the amended provision provide as follows:

Any employee who is called for appearance in court, after completing their regular shift shall be guaranteed a minimum of two

(2) hours pay at time and one-half rates, provided however, such hours do not overlap into the employees regular work hours.

8. Longevity (Article XXI)

The PBA proposes to switch from dollar amount longevity to percentage longevity to match the Superior Officers. The PBA's longevity proposal is as follows:

- a. In 1999, add \$200 to each step at each of the increments; and
- b. Beginning January 1, 2000, increase each step at each increment of longevity by \$250; and
- c. Beginning January 1, 2001, have the same percentage longevity as the Superior Officers of 4% after 5 years, 5% after 10 years, 6% after 15 years and 7.5% after 20 or more years of service.

9. Travel Allowance (Article XXIII)

The PBA proposes to eliminate the mileage allowance and to replace it with the provision, "the Town will supply a travel vehicle." The PBA also proposes to increase the allowance for Breakfast from \$3 to \$5; for Lunch from \$6 to \$10 and for Dinner from \$9 to \$12.

10. Grievance Procedure (Article XXIV)

In Section B, the PBA proposes to change the term "grievance" to include "minor disciplinary action of five (5) days or less."

11. Desk Duty (Article XXXVI)

The PBA proposes to add a new subsection B as follows:

Any employee assigned to work the desk duty involving assignment to the computer system shall be paid time and one-half (1.5) for all time worked on desk duty.

The PBA proposes to add a new subsection C as follows:

All employees will be afforded the opportunity to be trained in the operation of the desk in case such assignment should arise.

12. Vacation (Article VII)

The PBA proposes to increase the number of employees per shift who are permitted vacation leave at the same time subject to maintaining minimum staffing levels. Accordingly, the PBA proposes the following language be included as the revised Paragraph C:

Selection of vacation leave shall be made by members of this bargaining unit based upon seniority and by shift assignment. At least two employees per shift shall be permitted vacation leave, subject to maintaining minimum staffing levels of four (4) employees.

13. Grievance Procedure (Article XXIV)

The PBA proposes to increase 10 days to thirty (30 calendar days) in Step One and increase two days to ten calendar days in Step Two and change ten (10) days to fourteen (14) calendar days in Step Three.

14. Retiree Benefits

The PBA proposes that the increases in all benefits set forth in any agreement for 1999, 2000 and 2001 shall be paid to and given to any and all employees who retire after January 1, 1999 through December 31, 2001.

The Town of Phillipsburg

1. Duration

January 1, 1999 through December 31, 2001.

2. Salary

Effective January 1, 1999	2.5% increase
Effective January 1, 2000	2.5% increase
Effective January 1, 2001	2.5% increase

3. Longevity

The Town proposes that Longevity be eliminated for all employees hired on or after January 1, 2001.

4. Vacations

The Town proposes for all employees hired on or after January 1, 2001 to reduce the vacation entitlement beginning with the sixth year of service by four days per year.

5. Prescription Plan

The Town proposes that effective January 1, 2001, the prescription plan shall be modified to provide for a \$0.00 generic, \$15.00 name brand co-pay. If no generic is available, or permitted, the employee shall have to pay only the \$15.00 co-pay. If a generic is available and permitted and the employee selects the name brand, the employee shall pay the \$15.00 co-pay and the difference in cost between the generic and name brand drug. Mail order prescriptions (90-day supply) are available on the same basis as the co-pay. Therefore, generic prescriptions ordered through the mail are subject to the \$0.00 generic co-pay. Name brand prescriptions ordered through the mail are subject to the \$15.00 co-pay, but only one (1) co-pay will apply for the length of the mail order (i.e. 90 days), as opposed to the multiple co-pays ever time a prescription is renewed directly through the pharmacist.

The Town and the PBA have offered testimony and considerable documentary evidence in support of their final offers. Numerous Town and PBA

exhibits were received in evidence. I am required to make a reasonable determination of the above issues giving due weight to those factors set forth in N.J.S.A. 34:13A-16g(1) through (8) which I find relevant to the resolution of these negotiations. I am also required to indicate which of these factors are deemed relevant, satisfactorily explain why the others are not relevant, and provide an analysis of the evidence on each relevant factor. These factors, commonly called the statutory criteria, are as follows:

(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 (C.34:13A-16.2) provided, however, 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 economic 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 the P.L. 1976 c. 68 (C.40A:4-45 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 on 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 its 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.

BACKGROUND

The Town of Phillipsburg is the largest of the 13 municipalities in Warren County in Northwestern New Jersey. A suburban municipality covering 3.4 square miles, it has a population of approximately 15,757, with a median family income of \$33,451, as of 1989.

In 1998, Phillipsburg had a nonviolent crime rate of 24.8 crimes per 1,000 and a violent crime rate of 1.3. Also in 1998, the total number of crimes remained stable, at 411, down from 418 in 1997.

The Town's tax rate has been relatively stable and decreased from .83 in 1997 to .82 in 1998 and to .81 in 1999. At the same time, the Town's total tax levy was stable at \$14,828,099 in 1997, \$14,714,633 in 1998 and \$14,736,688 in 1999.

The Phillipsburg Police Department is composed of 23 Patrol Officers, four Sergeants, three Lieutenants and a Police Chief. The PBA represents the Patrol Officers.

POSITIONS OF THE PARTIES

PBA, LOCAL 56

Initially, the PBA reviews the economic conditions of the Town, pointing out that its tax rate has remained stable from 1997 through 1999. Specifically, the PBA points to the testimony of Town Chief Financial Officer Hriczak that the tax rate decreased from .83 in 1997 to .81 in 1999. The PBA also notes that the overall tax rate for Phillipsburg residents has remained stable during that same period. In 1999, the total tax rate including municipal, county and local school tax was 2.71 in 1997 and 1998 and it decreased to 2.70 in 1999. Again citing the testimony of Chief Financial Officer Hriczak, the PBA notes that the Town's revaluation will not affect revenues.

The PBA asserts that its proposals will not interfere with the Town's statutory obligations and would not have adverse financial impact on the governing body or its residents and the Cap Law does not present a problem in Phillipsburg. According to the PBA, the Town could have budgeted an additional \$754,658 in 2000 within the Cap, but did not do so. Specifically, the PBA calculates that the maximum allowable general appropriations within the Cap for 2000 was \$8,218,214.60. But, the PBA points out that the Town appropriated \$7,653,256 in 2000. Accordingly, the PBA calculates that the excess unused amounts within the Cap for 2000 was \$564,958. Additionally, Chief Financial Officer Hriczak testified that the Town could have increased the index rate to 5%

rather than use a 2.5% index rate. The PBA relies upon the analysis and calculations of municipal budget expert Vincent Foti who calculates that the total unused Cap for 2000 was \$754,658. Mr. Foti reaches this conclusion by subtracting the \$7,653,256 contained in the municipal budget from the total allowable expenditures with a 2.5% Cap index rate or \$8,407,914. The PBA also cites the testimony of Chief Financial Officer Hriczak that Phillipsburg did not have a Cap problem in 1999 or 2000. Using similar calculations, the PBA concludes that the town did not have a CAP problem in 1999. Specifically, the PBA calculated that the excess unused Cap for 1999 was \$240,580. The PBA also notes that in 1999, the town use a 1.5% Cap index rate, which equals \$108,142, rather the 5% that was permitted. The PBA also points out to that the Town's financial summary in this proceeding is misleading, to the extent that it does not include funds in previous years Cap bank in its calculations. According to the PBA, this misleading information taints all other Town arguments and affects its credibility.

The PBA also points out that the Town experienced its highest surplus in 1999, with a fund balance or surplus of \$2,530,920. The PBA compares the surplus to the \$2,088,312 surplus in 1998. Additionally, the PBA notes that the Town used \$1,300,000 of its 1996 surplus of \$1,818,027 as a revenue source in 1997. In contrast, in 2000, the Town used \$1,700,000 of its surplus as of December 31, 1999 of \$2,530,930 as a revenue source in 2000. According to the PBA, the Town has successfully used and regenerated its surplus in recent

years. The PBA explains that the Town has a surplus of \$2,088,312 at the close of 1998 and used \$1,860,000 of that amount in 1999, leaving only \$228,312 as surplus. However by the end of 1999, the Town had regenerated a surplus of \$2,530,920.

Additionally, the PBA points out that the Town has \$4,500,000 in two cash reserve accounts. The PBA highlights that the Town's 1999 financial statement reflects a cash reserve of \$3,683,526 and a capital projects cash reserve account of \$943,366. Accordingly, the PBA asserts that the Town does not have an inability to pay argument.

Further, the PBA calculates that from 1997 through 1999, the Town has averaged \$1,791,000 in excess revenues over expenses each year. According to the PBA, the Town has used several budget techniques to create such surpluses. First, the PBA asserts that the Town underestimates interest income earned on investments. Specifically, the PBA points to the testimony of Chief Financial Officer Hriczak that the Town collects school taxes quarterly and holds the funds for the School Board and distributes them on a monthly basis. In the interim, Hriczak explains, the tax dollars are invested and the interest is earned by the Town, not the School Board. The PBA points out that in its 1999 budget, the Town estimated that it would earn \$150,000 of interest income, but actually collected \$252,687. Therefore, the PBA calculates that in 1999, the Town earned \$102,687 in interest on investments in excess of its estimate. According

to the PBA, the Town also underestimated the reserve for uncollected taxes. The PBA points out that the reserve for uncollected taxes in 1998 was \$910,853 based upon the Town's estimates that it would collect 94% of the real estate taxes. However, the PBA points out that the Town collected 95.96% of real estate taxes, resulting in an additional \$273,000 of revenue for the Town in 1998.

As a result, the PBA cites the 1999 Annual Financial Statement to show that the Town generated additional revenues over actual expenses of \$2,292,684. In sum, the PBA concludes that, based upon the results of operations, the Town regenerates a surplus of approximately \$1,700,000, or about 16% of its \$11 million annual budget.

Addressing the statutory criteria of interest and welfare of the public and the financial impact on the governing unit, its residents and taxpayers, the PBA points to the vote on the school tax levy as an indicator of the taxpayers true feelings about their own interest and welfare. Specifically, the school tax for the past three years has averaged 1.16 out of the total tax rate of 2.71, which is about 42% of the total tax rate. In contrast, the PBA points out that the municipal tax rate has averaged about .82 out of the total tax rate of 2.71 which is only 30% of the tax rate. The PBA notes that in 2000, residents approved the school budget for the first time since 1996. The PBA asserts that passage of the current school budget is a clear indication that the Town's taxpayers are not in rebellion against current tax levels. Additionally, the PBA cites an April 22, 1999 article in

the Newark Star Ledger that provided, "across the State, voters approved 456 out of 551 budgets. That is an 82.8% approval rate that outstripped last year's 74.6% rate of passage." Specifically, the PBA points out that in Warren County, 20 budgets were approved and three rejected and in neighboring Morris County, 36 budgets were approved and only three rejected. The PBA suggests that the taxpayers' opinion is what must be considered when evaluating the interest and welfare of the public and the financial impact on its residents and taxpayers.

Focusing on its salary and longevity proposals, the PBA asserts that they will not cost additional money. Specifically, the PBA contends that in 1999 the savings of \$92,000 from the base year of 1998 would result under the PBA's salary and longevity proposals. Several patrol officers who were employed as of December 31, 1998 have either been fired, taken other employment, or retired, and ten new patrolman were hired in 1998, 1999 and 2000, and six patrolmen were promoted to Sergeant in 2000. The PBA asserts that these personnel changes would result in a \$92,000 cost savings in 1999 based upon its salary proposal. Based upon the PBA's calculations, the total cost for the 23 patrolman in 1998 for salary and longevity was \$1,112,108. The PBA calculates further that its proposal of 4.9% for all steps plus an increase in longevity of \$200 per step involves a total cost for salaries and longevity for all PBA members of \$1,020,097 in 1999. Accordingly, the PBA calculates that the total cost has been reduced by \$92,011 from 1998 to 1999.

The PBA cites the turnover within the bargaining unit as the reason for the decrease in the total cost. Specifically, four patrolmen were promoted to Sergeant, one Patrolman retired and another Patrolman left the Department in 1999. Also in 1998, one new Patrolman was hired. In 1999 a total of eight Patrolmen were hired. For this reason, the PBA calculates that in 2000 there will be a cost savings of approximately \$78,000 based upon the PBA's salary and longevity proposal. Specifically, the PBA calculates that the cost of its proposed 4.9% increase for 2000 as well as an additional increase of \$200 for each longevity step results in a total cost of \$1,033,268. The PBA calculates further that this sum is a decrease in the total cost of \$78,884 from the 1998 total cost of salaries of \$1,112,108. Additionally, the PBA points out that in 2000, six more Patrolmen were either promoted, retired, left the department, or were fired. One other patrol officer was also hired in 2000. Again due to the staffing changes, the total cost of the PBA's proposal for 2001, which includes another 4.9% increase, and a switch in longevity from dollar amounts to a percentage has a total cost of \$1,021,092. The PBA calculates that this is a decrease of \$91,016 from the total cost in 1998. The PBA reiterates that the reason for the third decrease from the base year 1998 is that by 2001, 12 of the original 23 Patrolmen who were on payroll in 1998 have either been promoted, left, or were fired in 1999 and 2000, and they have been replaced with ten new Patrolmen who earn lower salaries and who are not eligible for longevity for five years. In sum, the PBA calculates that under its proposal for salary and longevity, there is a total savings of approximately \$261,000 over the three years. Since its salary and longevity

proposals will not result in any cost to the Town, the PBA urges that there is sufficient reason to award such proposals. Instead of increasing costs, the PBA argues that its proposal would save the Town approximately \$250,000 during the term of the contract. In sum, the PBA calculates that the total savings for the 1998 base year, based upon its salary and longevity proposals, would be \$261,991. The PBA notes that the interest and welfare of the public, the lawful authority of the employer, and the financial impact on the governing unit its residents and taxpayers are supported by the cost savings generated from the PBA salary and longevity proposals.

Turning to the comparability criteria, the PBA asserts that Phillipsburg teachers earn approximately 45% more per hour than do its Police, though teachers work substantially less. The PBA calculates that Town Police work 2190 hours per year as a result of a 12 hour workday with four days on and four days off. Noting that both Town Police and Phillipsburg teachers are paid by Phillipsburg taxpayers, the PBA calculates that teachers work 1480 hours per year. The PBA points out further, that a teacher at the top step of the salary guide which is for 11 years, earns \$48,554 without longevity. In contrast the top step Police Officer salary in Phillipsburg in 1998 was \$49,291 without longevity. However, when annual salaries are divided into hours worked, the PBA calculates that teachers earn \$32.80 per hour while Police earn \$22.50 per hour. The PBA reiterates that an experienced Phillipsburg teacher earns \$10.30 more per hour than a Phillipsburg Police Officer, which is a 45% difference.

Additionally, the PBA asserts that teachers have better working conditions than Police Officers in Phillipsburg. Looking at a comparison of conditions of employment, the PBA points out that Phillipsburg teachers do not carry a gun, work holidays, work weekends, work night shift, work during snowstorms, arrest people, and have to know and implement the Constitution. Additionally, the PBA calculates that Town Police work 710 hours more per year than do Phillipsburg teachers which, the PBA calculates, is almost a 50 percent differential. The PBA also points out that teachers are guaranteed a daily duty free lunch of at least 30 minutes, while police officers do not have a guaranteed duty free lunch. The PBA also points out that teachers who are required to work and cover a class during a duty free lunch period are paid time and one-half for covering the class. Looking at additional benefits, the PBA points out that Phillipsburg teachers have two personal days per year while its Police Officers do not have personal days. Additionally, Phillipsburg teachers have bonus sick days if they have used all other six days while Police Officers do not have such bonus sick days. In sum, the PBA contends that given the hours worked, working holidays, working nights, working weekends, etc., the working conditions of a Town police officer do not compare favorably to those of a Phillipsburg teacher.

Looking to public employment and private employment generally, the PBA compares its request for a 4.9% increase in each year of the agreement with the 5.6% increase in personal income in New Jersey in 1999 and the 5.6% increase in personal income in 1998. Citing the New Jersey Economic Indicators for

2000, the PBA asserts that personal income in New Jersey rose 5.6% from 1998 to 1999. Asserting that this is the most comprehensive indicator of a comparison of wages in public and private employment generally, the PBA asserts that its request for a 4.9% salary increase in 1999 is well below the average increase in personal income in the State. The PBA asserts that personal income rose 5.6% in 1999. The PBA also points out that personal income increased 5.6% in 1998, while Town Police received a 3.25% increase in that year. Based upon the 5.6% increase in personal income in 1998 and 1999, compared with the 3.25% salary increase received by Police in 1998, the PBA contends that Town Police salaries rose 2% less than the average in New Jersey in 1998. Accordingly, the PBA maintains that Town Police salaries will not make up the 2% loss, but the 4.9% annual increases sought by the PBA would simply maintain the status quo.

The PBA points to a substantial decrease in the unemployment rate in recent years, which it contends, correlates to larger salary emphasis and better overall compensation. Citing reports that the national unemployment rate has dropped as low as 3.9% in 1999 and 2000, specifically New Jersey's unemployment rate hit a 30 year low of 3.4% in early 2000. Given the robust booming economy and record low unemployment rates, the PBA examines the agreement between the City of New York and one of the largest unions in the New York - New Jersey area, the Transport Workers Union of greater New York and the Transit Authority. According to the PBA, that agreement calls for wage increases of 12.48% compounded over three years, 1999, 2000 and 2001.

Second, the PBA maintains that the employee pension contribution was reduced from 5.3% to 2% per year for some employees and was reduced from 3% to 2% for others. Third, buyout of unused and earned sick days at retirement was increased from 50% to 60% for those employees who have 70% of their sick leave at the time of voluntary separation or retirement from the Transit Authority. Fourth, the PBA notes that health benefits were improved to include larger lifetime coverage, etc. According to the PBA, it is estimated that the cost of the health benefit improvements was worth 2.37% over the three-year term of the contract. The PBA estimates that the total compensation increase for employees, depending upon seniority, is 15.85% to 18.15% for the three years. Additionally, the PBA points out that TWU did not agree to an increase in medical deductibles or changes to prescription coverage in return.

Turning next to its proposal to make the language concerning the length of a day for vacation purposes consistent with the current 12 hour shift, the PBA proposes that, "employees shall be compensated for all vacation days accrued and unused on a day for day basis with a day equaling 12 hours." The PBA proposes further that the portion of Article VII, section G1 providing that "vacation days accrued and unused prior to January 1, 1995 on a day-for-day basis with a day being equal to eight hours be deleted." The PBA points out that, at hearing, the parties stipulated that, "any reference in this Section G1 to eight hours will be removed and the PBA proposal that employees shall be compensated for all

vacation days accrued and unused from January 1, 1995 and thereafter will be on a day-for-day basis with a day equaling 12 hours." (1T. 10-11).

Additionally, the PBA proposes that holidays be credited at 12 hours, which is now the work day, rather than eight hours. The PBA explains that on January 1, 1995, Town police switched from an eight-hour day to a 12-hour day with four days on and four days off. The PBA explains further that as a result of the change to 12 hour shifts, Town Police currently work 2190 hours per year. However, Article VIII, Holidays, provides that "employees not scheduled to work on a holiday shall continue to receive holiday pay equal to eight hours pay at the regular base salary rate." Relying upon the testimony of PBA President Vine, the PBA testifies that it was an oversight that holidays were not switched from eight hours to 12 hours when the shift changed from eight hours to 12 hours. According to the PBA, given the change in hours the number of holidays has been decreased from 14 to 9.33 days, because the holidays were kept at eight hours and not changed to the current 12 hour working shifts. The PBA reasons that the Town allows 112 hours for holidays (eight hours times 14 days), but the shifts are 12 hours, so employees receive 9.33 holidays because it takes only 9.33 holidays for a 12 hour shift to total 112 hours. Accordingly, the PBA asserts that there has been a 33 percent reduction in the number of holidays from 14 to 9.33 without negotiations. The PBA acknowledges that its proposal would increase the total number of hours for holidays from 112 hours to 164 hours, or any increase of 52 hours. However, the PBA points out that when the work

schedule changed from eight hour shifts to 12 hour shifts, the Police Officer work year increased from 2080 hours to 2190 hours and Police Officers do not receive extra days off, extra holidays, extra vacation days, the extra sick days, or any extra personal days, to compensate for the additional 110 hours. According to the PBA, modifying the contract to provide that holiday is calculated at 12 hours, would provide Police with 14 full holidays and would allow Police now working an extra 110 hours to regroup 52 of those hours and holiday pay. Therefore, the PBA reasons, instead of working an additional 110 hours per year, Police Officers would be working an additional 58 hours per year without compensation.

The PBA focuses on principles of equity and fairness to justify its proposals concerning sick leave. First the PBA asserts that the current sell back of sick leave at eight hours is not equitable because a 12 hour shift is worked. Specifically, the PBA proposes that when sick days are sold back to the Town, either annually, or upon retirement, they should be compensated as 12 hours to parallel the current 12 hour shifts rather than eight hours as in the shifts before January 1, 1995. Relying upon the testimony of PBA President Vine, the PBA maintains that sick days are currently paid at a 12 hour rate upon retirement. However the PBA points out that the contract provides for the sell back of sick leave on an annual or upon retirement basis at eight hours. The PBA points out that if the buyback of sick leave on an annual basis remains at eight hours, then the Patrolman is losing four hours of the 12 hour day that he works, which is a 33% decrease in the value of the day. The PBA also points out that if its

proposal is implemented, and to the eight hours is switched to 12 hours and paragraph B-2, of Article X, then Police would be paid 50 percent of 12 hours which is six hours, and would still lose the entire 12 hours. The PBA points out that as the contract is currently written, if a Police Officer kept his unused sick days until retirement would receive 55 percent of his unused sick leave at the 12 hour rate, or would be compensated at 6.6 hours per day upon retirement. On the other hand, if that same Officer sold back his sick days at the end of the year, he would receive only four hours of pay, for half of his time based upon an eight hour day.

Next, the PBA proposes to include all employees, and not just Detectives, in the sick leave provision. Specifically, the PBA proposes that Section B-3 of Article X be amended to reflect that it applies to all employees, and not just Detectives. That provision currently allocates 15 sick days annually only to Detectives. The PBA relies upon the testimony of Detective Vine that Police do receive 15 sick days per year and asks that the contract be amended to reflect that. The PBA also points out that the Town stipulated to the wording change at hearing. (1T. 17-19).

The PBA seeks several changes to the current funeral leave provisions in Article XI. Specifically, the PBA seeks to add brother and sister to the list of relatives for whom five days of funeral leave is provided. Under the current provision, a Police Officer receives three days off in the event of the death of a

sibling. The PBA also seeks to add brother-in-law and sister-in-law to the list of relatives for whom three days of funeral leave is provided. Under the current provision, a Police Officer receives two days off in the event of the death of a brother-in-law or a sister-in-law. The PBA also seeks to add the death of a spouse's grandparents to the list of relatives for whom a Police Officer receives two days off.

The PBA also proposes to delete the clause "has left their place of work" from Court Time, Article XVII. Again relying upon the testimony of PBA President Vine, the PBA points out that the current custom and practice is to pay the minimum two-hour call in time for Court Time without the requirement that the employee "has left their place of work". Specifically, the PBA contends that the custom and practice is that if employee is called in to duty there's a two-hour minimum no matter what. The PBA points out that the Town has not submitted contradictory testimony or evidence.

Addressing its longevity proposal, the PBA asserts that it seeks to obtain a benefit similar to that received by Town Superior Officers. The PBA proposes to add \$200 at each step to longevity payments in both 1999 and 2000. However the PBA also proposes that effective January 1, 2001, its members receive the same percentage longevity as the Superior Officers, of 4% after five years, 5% after ten years, 6% after 15 years, and 7.5% after 20 or more years. Citing the testimony of President Vine, the PBA maintains that this switch in longevity

calculation would greatly help the morale of Patrolmen. The PBA points out that even if it received the same percentage longevity as the SOA, it would not receive the same dollar amount longevity because the salaries of SOA members are higher. The PBA also points out that in the SOA's contract covering 1999, 2000, and 2001 the percentage for longevity beginning in the 20th year increased from 7% to 7.5%. The PBA maintains that comparison of the wages salaries and conditions of employment of other employees performing the same or similar services within the same jurisdiction requires that Patrolman receive the same percentage longevity as members of the SOA, whom they work with daily.

The PBA's proposes to add binding arbitration as the final step for minor discipline. According to the PBA this protection is important to its members. The PBA notes that Police subject to minor discipline may go to Superior Court, but asserts that arbitration is more expeditious and costs less. The PBA also seeks to modify the number of days allotted to file a grievance to increase that number from 10 days to 30 calendar days in Step One. Additionally, the PBA seeks to increase the time for appeal from two days to 10 calendar days in Step Two and to change the time limit from ten days to 14 calendar days in Step Three. The impetus for this proposal is a discrepancy between the Memorandum of Agreement signed on March 4, 1997 and the language actually included in the parties' last agreement. According to the PBA, the March 4, 1997 Memorandum of Agreement states "Step one should be revised to provide a maximum of 21 calendar days in which to file a grievance." However the current contract

provides for only ten days, according to the PBA. Relying upon the testimony of President Vine, the PBA points out that it is forced to file a grievance in each instance automatically for fear of missing the deadline. According to the PBA, extending the time limit to file a grievance permits time for review of whether a grievance is necessary. The PBA's additional proposals to increase the time limits for filing from two days to ten calendar days in Step Two and from ten days to 14 calendar days in Step Three are needed clarifications according to the PBA. The PBA notes that the ten days listed in step three of the current agreement does not specify whether those days are calendar days or work days and clarification is necessary.

The PBA also asks that its proposals for Desk Duty and Travel Allowance be awarded. The PBA proposes to delete the language from Article XIXIII -- Travel Allowance that provides that employees will be reimbursed at a rate of 20 cents per mile for use of a personal vehicle in the event that a Town vehicle is not available. The PBA seeks to replace this language with language providing that the Town will supply a travel vehicle. The PBA also seeks to increase the travel allowance for meals from \$3.00 to \$5.00 for breakfast, from \$6.00 to \$10.00 for lunch, and from \$9.00 to \$12.00 for dinner. Again, the PBA relies upon the testimony of its President Vine, who refers to a problem with a Police Officer who was required to use his personal vehicle for Court, which was in direct relationship to his duties as a Police Officer, when his vehicle was damaged and the Town refused to compensate for that damage. According to

the PBA, having the Town provide a vehicle for all Police business would eliminate such a problem. The PBA seeks increases to the meal allowance when on travel since rates have not been increased for the past ten years according to PBA President Vine. The travel allowance is used fewer than 100 times per year for all for members of the Police Department and would have minimal cost, according to the PBA.

The PBA proposes that all employees be trained as dispatchers so that all employees can be fairly and equally assigned to desk duty. The PBA also proposes that if the Town is to continue to use Police Officers as dispatchers, then each Police Officer should have the opportunity to be trained as a dispatcher. The PBA also proposes that any Officer assigned to work desk duty as the dispatcher, will be paid time and one-half for all time worked on desk duty. Additionally, the PBA objects to the Town's proposal to remove the entire Desk Duty Article from the parties' agreement.

The PBA proposes to amend the agreement to permit two employees per shift to be on vacation at the same time. According to the PBA, the current agreement provides that "at least one employee per shift shall be permitted vacation leaves, subject to maintaining minimum staffing levels." The PBA seeks to amend the provision to provide that two Officers be allowed vacation per shift. The PBA emphasizes that it is willing to include language in the contract committing to a minimum level staffing level of four employees in order to

guarantee current minimum staffing levels. The PBA relies upon President Vine's testimony that permitting two employees per shift to take vacation would not interfere with minimum staffing levels. Specifically, PBA President Vine testified that presently there are six Officers on each 12-hour shift so if two Officers were on vacation, there would still be four per shift which is within current minimum staffing levels. The PBA points out that its proposal would not always allow two Officers to be on vacation, because if one Officer was out sick, there would not be sufficient manpower to maintain the four Officer staffing minimum. The PBA urges adoption of this proposal that two Officers per shift be allowed to go on vacation simultaneously because since shifts were switched from eight hours to 12 hours there are one-third fewer shifts at present.

Turning to its salary proposal, the PBA asserts that it is more equitable to compare the Town with Morris County municipalities and Warren County municipalities because of the size of Phillipsburg's police force and its population. Specifically, Phillipsburg has 31 Police Officers and other municipalities in Warren County average 9.75 Officers. Additionally, the PBA notes that the population of Phillipsburg is approximately 15,707 compared with the average population of Warren County municipalities of 5,285. Because of the disparity in the size of the Police force and in the population between Phillipsburg and other or Warren County municipalities, the PBA urges comparison with neighboring Morris County as well. According to the PBA, Morris County has more municipalities with similar populations and similar size police departments.

According to an analysis of Warren and Morris County municipalities compiled by the PBA, the average number of Officers in Morris County departments is 28 and the average population among Morris County municipalities is 12,800. The municipalities used in the PBA's comparison include Parsippany-Troy Hills, Morristown, Mt. Olive, Montville, Morris Township, Randolph Township, Dover, Jefferson, Madison, East Hanover, Denville, Hanover, Long Hills Township, Pequannock, Boonton, Morris Plains, Butler, Chester Township, Kinnelon, Rockaway Borough, Mendham Township, Harding Township, Clinton Township, the Mendham Borough, Mount Arlington, and Chester Borough. Accordingly, the PBA's salary comparisons are with the ten Warren County towns and the 27 Morris County municipalities listed.

Initially, the PBA maintains that in 1997 and 1998, the PBA received a 3.25% increase which was substantially below the Warren and Morris Counties average of approximately 4.06%. The PBA notes that in 1997, Police received a 3.25% raise from \$46,200 to \$47,940. According to the PBA, the average raises for the 30 towns in Morris and Warren Counties in 1997 was 4.06%. The PBA notes that out of 25 municipalities for which it had 1997 agreements, Phillipsburg's raise for its Police Officers in 1997 was the 24th lowest. Turning to 1998, the PBA points out that Phillipsburg Police again received a 3.25% raise, while the average of the municipalities in Morris and Warren Counties was 3.94%. Based upon the 30 municipalities in Warren and Morris counties for which the PBA had agreements, Phillipsburg Police received the 25th lowest

percentage raise out of those 30. The PBA argues that Town Police should not continue to receive below average raises in 1999 and 2000. To the contrary, the PBA asserts that Town Police should receive a larger than average raise to compensate for its below average raises in 1997 and 1998. Accordingly, the PBA asserts that its salary proposal in 1999 of 4.9% should be awarded. According to the PBA's calculations, the average salary increase in 1999 for the Morris and Warren County municipalities for which contracts are available indicates an average raise of approximately 3.85%. The PBA notes that the salary comparisons do not include additional funds awarded to Police Officers in these municipalities, such as the additional \$1,000 to be added to sergeants pay before a 4% salary increase in Butler. Nor does this comparison include the \$1,550 to be added to base salaries for all patrolman with 15 or more years experience.

The PBA calculates that Phillipsburg Police Officers fell \$1,773 further behind the average salary to \$3,952 below average for 1996 to 1998. Specifically, the PBA notes that Town Police Officers receive a 4% increase in 1996, which was below the average of 4.57%, a 3.25% increase in 1997 which was below the 4.06% average, and in 1998 also received a 3.25% increase as compared to the average increase of 3.94%. As a result, the PBA maintains that Town Police Officers received approximately 2% lower salary increases over the last three years and that their salary has fallen substantially below average.

Turning to the final offer submitted by the Town, the PBA urges rejection of that proposal. According to the PBA, the Town did not present evidence or testimony to demonstrate how it would save money with its proposal. Specifically, the Town currently has a prescription plan in which the Police Officer pays \$3.00 each time for generic drugs and \$5.00 for name brand drugs. Although the Town seeks to change this program radically, to require \$15 co-payments for name brand drugs as well as the difference in cost between the generic name brand drugs, the Town did not present proof as to the current cost of the prescription plan. Nor, did the Town present proof that the cost of the current prescription plan provided to Police has been increasing, according to the PBA. Simply put, the PBA asserts that the Town offered no proof that a new plan would save any money. Addressing the testimony of Richard Ames, Principal Manager, Director and Principal in Benefit Services, L.L.C., the PBA notes several discrepancies in Mr. Ames testimony. Specifically, the PBA points out that Mr. Ames used the incorrect total of the cost of name brand prescriptions; that Mr. Ames was not familiar with the Town's current prescription plan; and that Mr. Ames' analysis was based upon 22 employees, but he was not aware of which 22 employees were covered by the exhibit. As a result, the PBA asserts that the Town did not present hard data about the true cost of the prescription drug plan and its burden on taxpayers. In contrast, the PBA points to the testimony of retired Detective Bob Banca. The PBA notes that Detective Banca takes 14 medications and has taken at least one of these for the past 15 years. According to Detective Banca, his doctor wants him to take name brand

medications and he currently pays \$5.00 dollars for the co-payment. The PBA points out that Detective Banca testified that his extensive use of prescription medication would cost him hundreds of dollars more per year if the Town's plan is adopted. The PBA also points to Detective Banca's testimony that he needed certain specific syringes and medication for his diabetes, and that the generic syringe's did not have the same penetration and that there was no generic insulin of the specific nature prescribed by his doctor. The PBA also cites the testimony of Officer Schultz who testified that he uses the specific brand of insulin because only one company makes the specific type of insulin his doctor prescribed and there is no generic equivalent.

PBA urges rejection of the Town's proposal to cut four days per year from the vacation entitlement from the 6th year forward for newly hired employees. According to the PBA, this is an arbitrary request to reduce the benefits that the PBA has earned for its members. The PBA argues that a two-tier system of vacation benefits for employees in the same department would not be good for morale. The newly hired employees would lose 80 vacation days between their 6th year and their 25th year under the Town's proposal. Given that Town employees were hired in 1998, 1999, and 2000, the PBA hypothesizes that in 20 years, under the Town's proposal, a 22 year veteran, hired before the new vacation proposal, would have 80 more vacation days than a 20 year veteran hired after the implementation of the new vacation allotment. The PBA also points out that the Town has not demonstrated that there has been any such

abuse of vacation time or that vacation time has caused a serious overtime problem.

The PBA also urges rejection of the Town's proposal to eliminate longevity for new hires. Noting that the Town currently has a modest dollar amount longevity program in comparison to other Warren and Morris County municipalities, and if longevity is eliminated, the total salary and longevity for Town Police Officers would fall further behind. Additionally, the PBA notes that the SOA, in its 1999, 2000, 2001 agreement, received an increase from 7% to 7.5% at the 20 year step of the longevity schedule.

The PBA points briefly to miscalculations in the Town's costing documents. First, the PBA points out that the Officer, hired on December 27, 1999 was listed as earning his full annual salary of \$33,075 for that year. Additionally, the PBA points out that the Town calculated the salary and longevity for Officers who retired during 1999 as if they had worked for the entire year. The PBA also points out that Police Officers who worked off-duty jobs for outside contractors are paid an hourly rate and an administrative fee is paid to the Town for off-duty police work. The PBA points to the testimony of Chief Financial Officer Hriczak that the fees totaling \$69,597 were paid by outside contractors for these off-duty Police jobs and the fees were used to cover a portion of the medical insurance. Additionally, the PBA takes issue with the Town's use of the first half of the year's medical expenses in 2000 on an annualized basis.

According to the PBA, it is meaningless to annualize expenses for the first half of the year without an analysis of prior year or years for comparison. The PBA also points to another source of funds used to pay Police called Cops Fast, which is a federal grant of \$25,000 per year for the officers for three years for a total of \$225,000. According to the PBA, this money has been available to the Town for several years and has been included in their budget as revenue, but has not been used. The PBA notes that Chief Financial Officer testified that the Town will use \$75,000 per year beginning in the year 2000 to pay the salaries for three Officers who were hired previously. Finally, the PBA points out that the job of a police officer is extremely stressful. The PBA also notes that the American Heart Association has found the rotating shift work raises heart attack risk. Accordingly, the PBA concludes that Police Officers are at three times the normal risk of death on the job, according to the Bureau of Labor Statistics. Viewed in that light, the PBA asserts that there is no justification for the limitation.

TOWN OF PHILLIPSBURG

The Town asserts initially that the PBA did not meet its burden of proof with respect to its economic demands. Specifically, the Town points out that the PBA merely submitted collective bargaining agreements and other documents into the record, but failed to present testimony, argument or direct "evidence" supporting each of its demands in light of the statutory criteria. The Town maintains that it would violate the statute and case law to grant the PBA's

demands. In contrast, the Town submits that its evidence, documents and testimony support its economic positions. The Town asks that its economic offer be awarded as is.

Addressing the interest and welfare of the public, the Town cites Hillsdale, and points out that the court considered the public a silent party to interest arbitration proceedings. The Town points out that the relative burden on the taxpayer of funding interest arbitration awards will continue to increase if wage increases continue to exceed the rate of inflation and private sector salary increases. The Town submits that it is in a better position than the PBA to assess its ability to pay, its lawful authority and the financial impact of a settlement upon the Town, its residents and taxpayers. Therefore, the Town maintains that its proposal, taking into account all of the statutory criteria, should be awarded.

The Town focuses on the demographics in relation to the interest and welfare of the public. According to the Town, its residents have low per capita income, low median family income and low median household income, but also have a high effective tax rate. Within Warren County, the Town points out that it is last of 22 municipalities with respect to per capita income, median family income, and median household income. On the other hand, the Town points out that the Town ranks first for the number of persons in poverty, and second for the number of persons receiving social security and public aide in the County. The

Town notes that it ranks 7th of 22 municipalities with respect to the effective tax rate and 18th out of 22 with respect to the tax levy per capita.

The Town asserts that the PBA's proposal to increase holiday pay to 12 hours is not in the interest and welfare of the public. Specifically, the Town cites the testimony of PBA President Vine that when the work schedule was changed, certain changes were made to equalize work schedules and work hours and others were not. Citing the Memorandum of Agreement reached by the parties on that issue, the Town points out that the Memorandum states specifically that holidays will continue to be calculated and paid at the rate of eight hours per day.

The Town asserts that it is in the interest and welfare of the public to limit the amount of time off with pay of employees from both a staffing and an overtime point of view. Accordingly, the Town argues that the PBA's proposal to permit officers to work for other officers who are absent due to illness should not be awarded.

The Town also maintains that the PBA's demand to increase pay for accrued sick leave is not in the interest and welfare of the public and should not be awarded. Citing the Memorandum of Agreement that dealt with changes made to equalize work schedules and work hours and others were not, the Town notes that the Memorandum specifically states that the parties agreed to

compensate sick leave "sell back" by calculating sick leave on an eight hour basis.

The Town maintains that the interest and welfare of the public also supports rejection of the PBA's proposal to pay officers at an overtime rate for desk duty during their regular shift. According to the Town, it is in the public's interest to limit overtime payments to when employees work in excess of their normal shift and not for working their regular hours. The Town rejects the PBA's justification that paying its members at the overtime rate for desk duty would discourage the use of Police rather than civilian employees to perform those tasks. The Town asserts further that taking the PBA's proposal to its logical conclusion would require premium pay for any tasks the PBA deems to be undesirable.

Similarly, the Town urges rejection of the PBA's proposal to provide dispatcher training to all interested Police Officers is against the public interest. The Town contends that there is no evidence of the time or cost involved and taking the PBA's proposal to its logical conclusion would result in the Town paying for any specialized training desired by Police.

The Town also asks that the PBA's proposal that two officers on the same shift be permitted to be on vacation at the same time be rejected. According to the Town, the public interest supports maintaining scheduling flexibility while

allowing employees to use their vacation entitlements. Permitting two employees on the same shift to use their vacation at the same time limits the Town's flexibility and could create the need for overtime.

The Town asserts that its prescription drug coverage proposal requiring greater reliance on generic drugs is in the public interest as well. According to the Town, this proposal permits it to seek the best premium without impacting employees' medical coverage. The Town points to the articles documenting runaway prescription drug costs, increase in the use of generic drugs, and the fact that generic drugs are equivalent to name brand drugs. The Town also cites the testimony of Richard Ames, its benefit consultant, regarding the Town's current plan, its proposed coverage, and the employees' use of generic and name brand drugs.

The Town also maintains that it is in the interest and welfare of the public to be permitted to use on duty personnel before calling other employees in to work on an overtime basis. Accordingly, the Town asks that the awarding of its proposal to delete the Desk Duty article, which requires the Town to use dispatchers on an overtime basis before using officers for desk duty.

Turning to the comparability criteria, the Town suggests that those criteria support its final proposal. First, the Town compares the salaries of its Police with those in comparable municipalities. According to the Town, the salaries of its

Police are the second highest out of 13 municipalities in Warren County. The Town compares that ranking to its own ranking within the County for per capita income, median family income and median household income. The Town maintains that if its proposal were granted, the relative salary ranking of its police would still far exceed that of its per capita income, median family income and median household income rankings. According to the Town, comparability does not mean that all municipalities must provide the same benefits. Rather, the criterion includes trends throughout the State and the nation.

Noting that it has proposed the elimination of longevity pay for those employees hired on or after January 1, 2001, the Town maintains that even with the elimination of longevity, its economic package is comparable to other Warren County municipalities. In contrast, the Town asserts that the PBA's proposal to enrich longevity payments would unreasonably expand the economic differential between the Town and other Warren County municipalities. The Town argues that police salaries have risen to the point where longevity pay is no longer necessary to adequately compensate police. The Town cites the State-wide trend to either eliminate longevity or to recalculate it on a flat-rate dollar basis to provide a measure of cost containment for municipalities.

The Town points out that the trend to minimize longevity pay is true in Warren County as well. Specifically, the Town shows that for officers employed before May 1, 1996, 6 of 13 municipalities provide longevity on a percentage

basis, and 12 of 13 provided some form of longevity. The Town also shows that for officers employed after January 1, 1997, 4 of the 13 municipalities provided for longevity on a percentage basis, and only 11 of the 13 municipalities provided longevity in any form. The Town notes that on a flat rate basis, its Officers rank 7th out of 13 municipalities for 5th year longevity and 6th out of 13 municipalities for 10th year longevity, and 3rd out of 13 municipalities for maximum longevity. According to the Town, when longevity is added to salary, the Town continues to rank 2nd in compensation, but the difference between Town compensation and those municipalities ranking below is increased dramatically and unnecessarily.

The Town proposes that all employees hired on or after January 1, 2001 would have their vacation entitlement after six years of employment reduced by four days from the present entitlement. Examining the comparable communities, the Town points out that this reduction would result in the Town's officers being tied for fourth with nine other municipalities at the maximum level. The Town asserts that even with this reduction, maximum vacation entitlements would remain competitive when considering the Town's compensation package, per capita income, median family income, and median household income.

Although the Town points out that comparable data on prescription benefits has not been submitted, the Town notes that it has demonstrated the effectiveness of generic drugs and the increased use of generic prescriptions.

Turning to comparison with other Town employees, the Town points out that Police salaries far exceed those of other Town bargaining unit personnel, as well as most administrative and managerial employees in the Town. Therefore, the Town asserts that its proposal will allow Police to increase their comparatively high salaries when compared to other Town employees. According to the Town, the percentage increases it has proposed translate to dollar increases equal to or in excess of the dollar increases received by other Town employees. The Town asserts that the PBA's demands exceed salary increases provided to other Town employees on a percentage basis as well as a dollar basis.

According to the Town, its longevity proposal would bring this bargaining unit in line with most other municipal employees who do not earn longevity payments. In contrast, the Town argues that the PBA's proposal would only widen the gap between police and other municipal employees. The Town also asserts that its proposal to limit vacation entitlement for new employees would have no economic impact on current bargaining unit members, and would bring the vacation entitlement for newly hired employees in line with the vacation entitlement for other Town employees. On the other hand, the Town asserts that the PBA's demand for increased funeral leave grants police a benefit greater than that to which other Town employees are entitled.

The Town contends that national wage trends highlight the reasonableness of its economic offer. Citing BNA data compiled during the first 22 weeks of 2000, the Town asserts that State and local government contract salary increases decreased dramatically for 1999 and are substantially closer to the salary included in the Town's offer, than to the PBA's demands.

Turning to the lawful authority of the employer, the Town points out initially that the Cap Law controls the cost of local governments by prohibiting a municipality from increasing its tax levy by more than 5% over the previous years. Additionally, the Town points out that costs incurred to fund an adverse interest arbitration award must be taken into account by the municipality in determining whether overall employer budgetary appropriations exceeded the 5% ceiling imposed by the Cap Law. City of Atlantic City v. Laezza, 80 N. J. 255, 266 (1979). When considering the restrictions of the Cap Law, the Town emphasizes its declining surplus, which was inflated recently by "one-shot deals" involving sewer allocation agreements, decreasing State aid, and no additional "one-shot deals." Instead, the Town asserts that the only revenue source available to fund budgetary increases is municipal taxes. The Town notes that it already has a relatively high general effective tax rate. Turning to expenditures, the Town's budget recognizes the fiscal pressures on its residents, and its projected 2000 surplus of \$38,531 supports its contention of a tight budget. Addressing the PBA's assertions that the Town's budget figures were in accurate, the Town points to the PBA's stipulation that the Town has acted

appropriately (transcript of August 8, 2000 hearing, pp. 119-120). The Town also addresses the PBA's suggestion to artificially lower the estimated tax collection rate, thereby increasing the reserve for uncollected taxes, and thereby increasing surplus. The Town contends that this "maneuver" would require a tax increase to cover the artificially inflated reserve. The Town contends that any economic increase granted to the PBA's members exceeding the Town's offer, would have a detrimental impact upon its "ability to pay" without further impacting on a projected rising tax rate. Accordingly, the Town asserts that its offer is reasonable as it is with respect to the statutory criteria and no economic benefits exceeding the Town's offer should be awarded.

Addressing the financial impact on the governing unit, its residents and taxpayers, the Town asserts that its economic package takes into account the financial impact on the governing unit, its residents and taxpayers, because it considers the State's economic condition. Specifically, the Town cites numerous articles outlining the economic slowdown in the State and in the nation. According to the Town, the effect of granting an economic benefit in excess of that it proposes, would be a detrimental impact upon the Town's ability to minimize projected tax rate increases, strike that. The Town again cites the impact of the declining surplus, decreasing State aid, and the absence of "one-shot unquote" deals, and statutorily required expenditures on the town's tax rate.

The Town contends that present and projected cost of living figures favor its proposal. The Town asserts that its proposal is more realistic and reasonable than the PBA's economic demands, or any package in between them, based upon the standard of living. The Town asserts that the CPI increased 1.6% for 1998. According to the Town that was the 6th year in a row in which the CPI was under 3%. The Town notes that as of April 2000, the CPI increased by 3% percent over the previous 12 months. The Town also notes that its Police have consistently received wage increases dramatically in excess of the CPI.

Addressing the continuity and stability of employment criterion, the Town contends that its economic proposal would best allow it to maintain and continue at present workforce levels in the police department and the municipality. According to the Town, if an economic benefit in excess of the Town's offer were awarded, the Town's ability to maintain at the continuity and stability of present levels of employment would be hampered. The Town notes that the economy is slowing in both the public and private sectors. According to the Town, its economic position takes into consideration the continuity and stability of employment. The Town notes that its goal is to maintain, as much as possible, the stable level of double governmental services.

Focusing on non-economic issues, the Town urges rejection of the PBA's proposal to allow off-duty employees to work for other employees who were either injured off-duty or sick and have exhausted all of their accrued sick and

vacation time. Noting that the PBA considers this demand as non-economic, the Town asserts that it effectively would permit individual employees to control scheduling, which is a managerial prerogative. Additionally, the Town points out that the Fair Labor Standards Act requires that employees be compensated at time and one-half for overtime work and the employee can not waive this provision. Accordingly, the Town contends that even though the employee's motivation may be applauded, working extra hours for an ailing employee could require the Town to compensate that employee at a premium rate. Accordingly, the Town asserts that the PBA has failed to meet its burden of proof with respect to this demand and it should be denied.

The Town also addresses the PBA's demand for increases in Funeral Leave entitlements. Noting that this is technically an economic issue, though difficult to quantify, the Town asserts that the PBA failed to submit evidence supporting this demand. The Town also notes that Award of this proposal would grant PBA members a greater Funeral Leave entitlement than its other employees.

Addressing the PBA's demand for a change in Court Time, which is economic in nature, but difficult to quantify, the Town urges rejection of the PBA's proposal to compensate employees by providing a minimum guarantee for all court time. Presently, a minimum guarantee is paid only if the court time is not contiguous with the employee's regularly scheduled workday. The Town

maintains that the PBA failed to provide proof in support of this demand and it must be denied.

The Town seeks rejection of the PBA's proposal that minor disciplinary actions be subject to arbitration. The Town asserts that the PBA failed to present argument in support of its demand, and to meet its burden of proof.

The Town also urges rejection of the PBA's demand that two employees on the same shift be allowed to use vacation time concurrently. Citing the testimony of PBA President Vine, the Town asserts that President Vine was not positive there was sufficient staffing to allow two employees to be off on vacation per shift and to maintain the minimum staffing level of four employees. Accordingly, relying upon the PBA's testimony, the Town asserts that the PBA has not at its burden of proof and asks that this proposal be denied.

The Town proposes to eliminate the article in the agreement covering Desk Duty. The Town seeks to eliminate only the requirement to calling dispatchers on an overtime basis before using PBA members already on duty. The Town maintains that this is not an economic item, in that the PBA's bargaining unit members will not be economically affected. According to the Town, the only issue is the Town's managerial discretion to deploy its employees in the most efficient manner and the best interest of the town. The Town asserts that it has shown that this proposal meets the burden and it should be awarded.

For all of these reasons the Town asks that its economic package be awarded "as is."

DISCUSSION

I am required to issue an award based upon a reasonable determination of all issues in dispute after giving due weight to the statutory criteria which I judge relevant. The Town and the PBA have fully articulated their positions on the issues and have submitted evidence and argument on each statutory criterion to support their respective positions. The evidence and arguments have been carefully reviewed, considered and weighed.

Many other issues besides salary remain in dispute. I apply the commonly accepted principle that a party seeking change in terms and conditions of employment bears the burden of establishing the need for such modification. That principle has been applied to each issue in dispute.

I conclude that this burden has been met with respect to the PBA's travel allowance proposal to increase the meal allowances. The PBA seeks to increase the allowance for breakfast from \$3.00 to \$5.00; for lunch from \$6.00 to \$10.00; and for dinner from \$9.00 to \$12.00. PBA President Vine testified that the rates had not been increased in ten years and that the meal allowances are used less

than 100 times per year. As such, the increase in these allowances are reasonable and are awarded in the absence of objection by the Town. The PBA also seeks to eliminate the mileage allowance and to replace it with the provision "the Town will supply a travel vehicle." The Town has not objected to this proposal and it is awarded with a minor modification that the unavailability of a town vehicle shall not prevent the assignment from being performed. If and when this should occur, the mileage allowance shall be substituted at the IRS rate.

The PBA has proposed to amend the grievance procedure to include minor disciplinary disputes. This proposal would allow review of disciplinary disputes in the arbitration process rather than in Superior Court for grievances involving the imposition of discipline up to five days in length. The Legislature made this subject matter mandatory negotiable by recent legislation which states that:

Public employees shall negotiate written policies setting forth grievance and disciplinary review procedures ... such procedures may provide for binding arbitration of disputes involving the minor discipline of any public employees ... other than public employees subject to discipline pursuant to R.S. 53:1-10 (State Troopers)

The New Jersey Employer-Employee Relations Act reflects a preference that disputes over terms and conditions of employment should be resolved, if possible, through grievance procedures. The informal nature of arbitration would

most likely be more efficient and less expensive than pursuit of formal proceedings by Actions in Lieu of Prerogative Writs in New Jersey Superior Court and would thereby serve the interests and welfare of the public. Arbitral review would be limited to reprimands through five days of suspensions and any award under this proposal would require compliance with a public interest standard as required by arbitration case law. For these reasons I conclude that there is merit to the PBA's proposal and it is awarded.

The PBA also seeks to amend the time limits for filing grievances. Initially, the PBA seeks to increase the number of days to file a grievance at step one from ten to 30 calendar days. According to the PBA, the parties' March 4, 1997 Memorandum of Agreement changed the time limit for filing grievances to 21 calendar days, but the change was not included in the subsequent contract. The PBA also seeks to increase the time limit for appealing at Step Two from two days to ten calendar days and to increase the time limit for filing appealing at Step Three from ten days to fourteen calendar days. The PBA notes that the agreement does not specify whether the days are workdays or calendar days. The Town does not object to this proposal and it is granted.

The PBA proposed to amend the vacation provisions to delete reference to vacation days earned before January 1, 1995 and the rate at which employees are compensated for those days. According to the PBA, this language is no longer necessary because vacation can be carried for only one year. The Town

has stipulated that all reference to eight hours will be removed from Article VII, Section G.1. Accordingly, Section G.1 shall provide as follows:

Employees shall be compensated for all vacation days accrued and unused on a day for day basis with a day equaling twelve (12) hours. In the event the Town or the PBA desires to terminate the work schedule, employees will be compensated for all accrued and unused vacation days on the same hourly basis upon which those days were earned as calculated above. Compensation will be based upon the employee's rate of pay at the time of their termination.

However, the PBA has made several other proposals premised upon the fact that Officers work 12 hours shifts. Specifically, The PBA proposes to amend Article VIII, Section E to change 8 hours to 12 hours for holiday pay for those employees not scheduled to work. Currently, employees working on holidays receive time and one half pay for each hour worked, or a total of 18 hours straight-time pay, based upon a 12 hour shift. The agreement however, does not recognize the change in the length of shift for employees who are not assigned to work and they receive pay for eight hours. The PBA asserts that this was an oversight that has resulted in a 33% reduction in the number of holidays from 14 to 9.33.

The Town urges rejection of this proposal, citing the testimony of PBA President Vine that when the work schedule was changed, certain changes were made to equalize work schedules and others were not. The Town states that the Memorandum of Agreement reached by the parties on this issue states that

holidays will continue to be calculated and paid at a rate of eight hours per day. Additionally, the Town asserts that providing additional time off is not in the public interest.

The PBA also proposes to amend the sick leave provisions of the agreement to change 8 hours to 12 hours for sick leave buy back purposes. The Town urges rejection of this proposal as well, also arguing that the PBA's proposal is a request for increased pay for unused sick leave and is not in the public interest from both a staffing and an overtime point of view.

It is significant that when the Town and the PBA negotiated a change in the work schedule from 8 hour shifts to 12 hours shifts in 1995, the parties also negotiated over which specific situations would be compensated based upon an 8 hour day and which would be compensated based upon a 12 hour day. The agreements which the Town and the PBA reached on these issues, including those which are commonly referred to as "conversion of time," are clear and unambiguous, and explicitly set forth in a three page Memorandum of Agreement. Given the explicit terms of the Memo, I am compelled to conclude that the understandings reached thereto reflected the true intent of the parties as part of an overall package to alter the work schedules rather than constituting an oversight or a mistake. Although there is nothing to suggest that the Town and the PBA could not renegotiate and agree upon time conversions based upon a twelve hour day, I decline to award the PBA's proposals on these issues based

upon the additional costs associated with the proposals in terms of time and money. The economic costs of these proposals are chargeable by the terms of the arbitration statute and not justified at this time above and beyond the economic adjustments set forth in this Award.

The PBA has also proposed two amendments to the Sick Leave provision in Article X. The first would allow police officers to work on their own time for other officers who are sick/injured and have no more sick/vacation time to use. The Town's objections to this proposal have merit which require that this proposal be denied. There are potential legal issues which could arise from the substitution of work without payment to the officer who assumes the position of the officer who cannot work and is without additional paid time off. I am not satisfied on this record that these issues have been resolved and accordingly, this proposal is denied. The second proposed amendment to Article X would amend Section B-3 to conform the earning and calculation of annual sick leave to existing Town policy. This section currently allocates 15 sick days annually only to Detectives. At hearing, the Town stipulated to the PBA's proposal. Accordingly, Article X.B-3 shall be amended to provide as follows:

Each employee shall be entitled to fifteen (15) days sick leave per year earned at the rate of one and one quarter (1¼) days for each month of service. (The remainder of this section shall remain the same).

The PBA has proposed several changes to the current funeral leave provisions in Article XI. Currently that provision provides one, three or five working days leave without loss of pay depending upon the relationship of the employee to the deceased. The PBA proposes to add brother and sister to the list of relatives for whom five days of funeral leave is provided. That proposal is consistent with the bereavement leave benefit provided for in Article 16, Section A of the Town's Agreement with AFSCME and is hereby awarded. The remaining portions of the PBA's proposal are denied.

Article XVII, Court Time, includes language stating "and has left their place of work." The PBA proposes to amend this provision to remove the language "and has left their place of work." I credit the testimony of PBA President Vine that the current custom and practice is to pay the minimum two-hour call in time for Court Time without the requirement that employees have left their place of work. In the absence of contradictory testimony or evidence, I award the deletion of the clause "has left their place of work" from Court Time, Article XVII. The amended provision shall provide as follows:

Any employee who is called for appearance in court, after completing their regular shift shall be guaranteed a minimum of two (2) hours pay at time and one-half rates, provided however, such hours do not overlap into the employees regular work hours.

The PBA has proposed two amendments to Article XXXVI, Desk Duty. The first is to pay a police officer time and one-half for all time worked on desk

duty. No credible evidence has been submitted warranting premium pay for desk duty rather than straight time for performing the field duties of a police officer. This proposal is denied. The second proposal is to afford a police officer the opportunity to be trained in the operation of the desk in case such assignment should arise. Although this second proposal offers the logic that a police officer should be trained in an assignment he or she is required to perform, there is insufficient evidence as to the nature of the training to be provided or the time which would be necessary to complete such training. For these reasons, I do not award the PBA's proposal, although I recommend, but not award, that the Town devote a portion of any training time which it provides, towards training in the operation of the desk to any police officer who may be required to perform such assignment and who, in the opinion of the Chief, is insufficiently trained to perform that assignment.

The PBA has proposed to allow two employees per shift to take vacation leave subject to the Town's ability to maintain minimum staffing levels. I credit PBA President Vine's testimony that permitting two employees per shift to take vacation would not interfere with minimum staffing levels and that two rather than three shifts per day as a result of the schedule change from 8 to 12 hours helps to accommodate the PBA's proposal. The Town's main concern is that permitting two employees to take vacation at the same time would limit its flexibility and could create the need for overtime. Article VII, Paragraph C currently states that "at least one employee per shift shall be permitted vacation

leaves, subject to maintaining minimum staffing levels.” The current language does allow for two employees per shift to take vacation leave because, as written, it states “at least one employee per shift shall be permitted vacation leaves.” In order to accommodate the PBA’s proposal without creating the need for overtime and without interfering with minimum staffing levels, I award the following language:

At least one employee per shift shall be permitted vacation leave, subject to maintaining minimum staffing levels. An additional employee may be permitted to take vacation leave on the same shift subject to maintaining minimum staffing levels providing that the taking of such leave shall not result in an overtime assignment during that shift.

I now turn to the parties’ proposals on longevity. The Town proposes to eliminate the longevity benefit for future employees. The PBA proposes to increase the existing schedule by \$200 in 1999, by an additional \$250 in January 2000 and to convert this benefit from dollars to percentages patterned off of the existing longevity schedule for superior officers. In evaluating the merits of these proposals, the main area of analysis must include the history of the parties’ negotiations on this issue, the cost impact of the proposals, the comparative longevity schedules within the County and a comparison of the superior officers longevity schedule with that for the rank and file.

The existing longevity schedule for superior officers is as follows:

<u>Years of Completed Service</u>	<u>Annual Increment</u>
Five	4.0% of annual base salary
Ten	5.0% of annual base salary
Fifteen	6.0% of annual base salary
Twenty or more	7.5% of annual base salary

The maximum step of this longevity schedule was increased from 7% to 7.5% in the new Agreement entered into between the Town and the superior officers association for the years 1999 through 2001.

The existing longevity schedule for the PBA is as follows:

<u>Years of Completed Service</u>	<u>Annual Increment</u>
Five (5) Years	\$700
Ten (10) Years	\$1,200
Fifteen (15) Years	\$1,700
Twenty (20) Years	\$2,200
Twenty-four (24) Years	\$2,700

This longevity schedule reflected increases of \$50 annually in contract years 1997 and 1998.

In Warren County the following municipalities maintain a percentage longevity schedule. That percentage at maximum and the dollars yielded is as follows:

<u>Municipality</u>	<u>Percentage</u>	<u>Dollars</u>
Hackettstown	7.00%	\$3,452
Blairstown	7.50%	\$3,037
Washington Township	5.00%	\$2,439
Washington Borough	5.175%	\$2,396
Mansfield	4.50%	\$2,168

Oxford	3.00%	\$1,357
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The following municipalities maintain a dollar longevity structure yielding the following dollars at the longevity maximum:

<u>Municipality</u>	<u>Dollars</u>
Phillipsburg	\$2,700
Alpha	\$2,500
Independence	\$2,300
Pohatcong	\$1,600
Lopatcong	\$1,500
Belvidere	\$600

In percentage terms, the dollar value of the PBA's longevity payment after 24 years is 5.5% and 4.5% after 20 years. Although the superior officers currently have a percentage longevity scheme, this fact, standing alone, does not compel the awarding of a percentage longevity scheme for the PBA. These differentiated longevity schemes predated the prior agreements and the cost of this conversion would represent a substantial cost impact and net economic change not warranted above and beyond the salary increases which have been awarded herein. For example, a longevity payment of 4.0% of annual base salary would increase a police officer's longevity by approximately \$1,100 after 5 years of service. A longevity payment of 5.0% of annual base salary would increase a police officer's longevity by approximately \$1,300 after 10 years of service. A longevity payment of 7.5% of annual base salary would increase a police officer's longevity by approximately \$1,400 after 20 years of service. On an across-the-board basis, the PBA's proposal for 2001 would constitute a net

economic change exceeding 2% and is denied. However, the PBA has sustained its burden of establishing a basis for some increase in longevity payments. The PBA has received dollar increases during the last agreement. The additional 0.5% increase in the longevity schedule for superior officers yields a higher longevity payment for superior officers with 20 or more years of completed service of \$300 or more. Also, the longevity amounts for superiors increase with increases in base salary even without an increase in the percentage longevity rates. I conclude that a similar increase expressed in dollars is also warranted for police officers eligible for this benefit. Accordingly, I award a modification to the existing longevity schedule for the following steps at the following amounts effective January 1, 2001.

Five (5) Years of Completed Service	\$1,000
Ten (10) Years of Completed Service	\$1,500
Fifteen (15) Years of Completed Service	\$2,000
Twenty (20) Years of Completed Service	\$2,500
Twenty-four (24) Years of Completed Service	\$3,000

The employee roster reflects that 13 of the 23 officers are eligible for this increase. The net annual economic change of \$300 for the 13 officers calculated upon current gross salary amount of \$1.2 million, yields an additional \$3,900 or .033% for contract year 2001. I do not award the Town's proposal to eliminate the longevity schedule for new employees. The record reflects some conversion from percentage to dollar amounts within Warren County but insufficient support for an elimination of the longevity benefit in its entirety.

I have carefully reviewed the Town's proposal with respect to the existing prescription benefit. I conclude that the Town's proposal be sustained in part and denied in part. The testimony of Richard T. Ames, Principal Manager and Director of Benefit Service LLC, does reflect potential cost savings from greater use of generic rather than name brand drugs. The current prescription co-pay provision is now set at \$5 brand name and \$3 generic. A \$7 rather than \$2 differential between name brand and generic drugs would provide a greater incentive for employees to use generic drugs with resulting cost savings in premiums for this benefit. Accordingly, effective as soon as can be implemented after the date of this award, the name brand co-pay shall be increased to \$10. Mail order prescriptions (90 day supply) are available on the same basis as the co-pay. Name brand prescriptions ordered through the mail are subject to the \$10 co-pay, but only one (1) co-pay will apply for the length of the mail order (i.e. 90 days), as opposed to the multiple co-pays every time a prescription is renewed directly through the pharmacist.

The Town has proposed to reduce the vacation entitlement beginning with the sixth year of service by four days per year. The Town points out that the then existing vacation schedule was reduced by four days for employees hired after January 1, 1997 through five years of service. That Agreement reduced the number of vacation days from 16 to 12 for employees in that category. A similar reduction for the next four levels of vacation benefits is reasonable and is awarded for employees hired after the date of this award. That schedule would

reflect a uniform four day reduction for every level of benefit but will still allow for a fair and reasonable amount of paid vacation leave for new hires. The new schedule shall not negatively impact on the vacation entitlement of any employee hired before May 15, 2001. The new schedule shall read as follows:

Years of Service

From date of hire until the following
December 31
Thereafter through 5 years of service
6th through 10th years of service
11th through 19th years of service
20th through 24th years of service
25 years of service or more

Vacation Leave

One (1) working day for each month of
service completed
12 working days
15 working days
18 working days
20 working days
25 working days

I turn now to the issue of salary. The PBA has proposed 4.9% across the board increases annually and the Town has proposed a 2.5% across the board increases in each year. In other words, the PBA proposes 14.7% over the three years while the Town proposes 7.5%. When these proposals are applied to the existing salary schedule and projected forward for an additional three years, the proposed salary schedules would read as follows:

Step	1998	1999 Proposals		2000 Proposals		2001 Proposals	
		Town 2.5%	PBA 4.9%	Town 2.5%	PBA 4.9%	Town 2.5%	PBA 4.9%
Trainee (0 to 1 years of service)	\$32,469	\$33,280	\$34,060	\$34,112	\$35,729	\$34,965	\$37,480
Class F (1 to 2 years of service)	\$34,410	\$35,270	\$36,090	\$36,152	\$37,865	\$37,055	\$39,720
Class E (2 to 3 years of service)	\$36,351	\$37,259	\$38,132	\$38,191	\$40,001	\$39,146	\$41,961
Class D (3 to 4 years of service)	\$38,293	\$39,250	\$40,169	\$40,231	\$42,138	\$41,237	\$44,202
Class C (4 to 5 years of service)	\$40,894	\$41,916	\$42,866	\$42,964	\$44,967	\$44,038	\$47,170
Class B (5 to 6 years of service)	\$45,043	\$46,169	\$47,250	\$47,323	\$49,565	\$48,506	\$51,994
Class A (6+ years of service)	\$49,291	\$50,523	\$51,706	\$51,786	\$54,240	\$53,081	\$56,898

There is some disagreement as to the precise amount of total payroll costs at the point in time that the previous contract expired on December 31, 1998. For the purposes of evaluating the projected costs of the parties' proposals and the projected costs of the award, I will assume that all 23 police officers in the negotiating unit are at maximum step of the salary schedule. The top step salary in 1998 is \$49,291 and would yield a total payroll cost for the salary schedule alone of \$1,113,593. The Town's proposal would cost \$27,839 in 1999, \$28,535 in 2000 and \$29,249 in 2001 culminating in a total payroll cost of \$1,199,216 or \$85,623 above the 1998 total payroll cost. The PBA's proposal would cost \$54,566 in 1999, \$56,234 in 2000 and \$59,989 in 2001 culminating in a total payroll cost of \$1,284,283 or \$170,690 above the 1998 total payroll cost.

When all of the statutory criteria are considered and weighed, and after full consideration of the arguments and evidence submitted by the parties in support of their respective positions, I have concluded that a reasonable determination of the wage issue results in wage increases below that proposed by the PBA but above that proposed by the Town. For the reasons stated below, I have awarded wage increases of 3.75% effective January 1, 1999, 3.75% effective January 1, 2000 and 3.75% effective January 1, 2001 for a total of 11.25% over the three years. The terms of the award will cost \$41,759 in 1999, or \$13,920 above the Town's proposal and \$12,807 below the PBA's proposal. In 2000 the award will cost \$43,325, or \$14,790 above the Town's proposal and \$12,909 below the PBA's proposal. In 2001 the award will cost \$44,950, or \$15,701 above the

Town's proposal and \$15,039 below the PBA's proposal. The total payroll cost of the award is \$44,411 above the projected payroll cost of the Town's proposal and \$40,656 less than the projected payroll cost of the PBA's proposal. These figures are exclusive of pre-existing step increases and roll up costs, and assume no resignations, retirements, hiring or promotions. The new salary schedule, when measured against the proposals of the parties shall read:

Step	1998	1999 Proposals			2000 Proposals			2001 Proposals		
		Town 2.5%	PBA 4.9%	Award 3.75%	Town 2.5%	PBA 4.9%	Award 3.75%	Town 2.5%	PBA 4.9%	Award 3.75%
Trainee	\$32,469	\$33,280	\$34,060	\$33,686	\$34,112	\$35,729	\$34,949	\$34,965	\$37,480	\$36,260
Class F	\$34,410	\$35,270	\$36,090	\$35,700	\$36,152	\$37,865	\$37,039	\$37,055	\$39,720	\$38,427
Class E	\$36,351	\$37,259	\$38,132	\$37,714	\$38,191	\$40,001	\$39,128	\$39,146	\$41,961	\$40,595
Class D	\$38,293	\$39,250	\$40,169	\$39,728	\$40,231	\$42,138	\$41,218	\$41,237	\$44,202	\$42,764
Class C	\$40,894	\$41,916	\$42,866	\$42,427	\$42,964	\$44,967	\$44,018	\$44,038	\$47,170	\$45,669
Class B	\$45,043	\$46,169	\$47,250	\$46,732	\$47,323	\$49,565	\$48,484	\$48,506	\$51,994	\$50,302
Class A	\$49,291	\$50,523	\$51,706	\$51,139	\$51,786	\$54,240	\$53,057	\$53,081	\$56,898	\$55,046

The new salary schedule as incorporated into the new agreement shall read:

Step	1999 3.75%	2000 3.75%	2001 3.75%
Trainee (0 to 1 years of service)	\$33,686	\$34,949	\$36,260
Class F (1 to 2 years of service)	\$35,700	\$37,039	\$38,427
Class E (2 to 3 years of service)	\$37,714	\$39,128	\$40,595
Class D (3 to 4 years of service)	\$39,728	\$41,218	\$42,764
Class C (4 to 5 years of service)	\$42,427	\$44,018	\$45,669
Class B (5 to 6 years of service)	\$46,732	\$48,484	\$50,302
Class A (6+ years of service)	\$51,139	\$53,057	\$55,046

Application of several factors included in N.J.S.A. 34:13A-16g requires an inquiry into the Town's financial status and the financial impact of the terms of this Award which I have considered in rendering the above terms. These include the interests and welfare of the public [g(1)], the lawful authority of the employer

[g(5)] and the financial impact on the governing unit, its residents and taxpayers [g(6)].

Using a CAP index rate of 2.5% for 2000, the Town exercised fiscal restraint when it declined to appropriate an additional 2.5% which would be allowable under P.L. 176 c. 68 (C.40A:4-45 et seq.). Likewise, in 1999, the Town used a CAP index rate of 1.5%, declining to appropriate another 3.5% which would have been permitted under the Cap Law. The PBA contends that the Town could have increased its recent annual budgets by significantly more amounts than it did because it consistently underutilized its lawful authority by adopting actual CAPs much less than the 5% allowable by law. Although the PBA's point has been considered, I am compelled to examine the Town's lawful authority by virtue of the CAP increase it has adopted rather than the CAP increase it could have adopted. Having done so, I conclude that this award can be funded without interfering with the Town's lawful authority pursuant to the CAP law and therefore does not compel the Town to exceed its lawful authority. This conclusion is supported by the financial data which reflects that the Town has consistently enjoyed surplus balances and has routinely been able to regenerate significant surpluses which it has appropriated as a general revenue source for ensuing budget years. The Town has also budgeted for salary increases and the terms of the Award will not require any expenditure of funds beyond the Town's lawful authority.

I also conclude that the terms of the Award will not have adverse financial impact on the governing unit, its residents and taxpayers. The additional \$44,411 above the Town's proposal over three years can be funded without adverse financial impact, as well as the additional \$3,900 in longevity payments. The Town will also realize savings in premiums from an increased prescription co-pay and future cost offsets by a reduced vacation schedule for new hires. The evidence presented by the Town does compel an Award substantially less than sought by the PBA. However, that evidence does not reflect that the terms of the Award beyond the Town's final offer cannot be funded within its financial capabilities or that its financial impact will detrimentally affect its financial posture in a manner adverse to the public's interests or welfare. I have considered the Town's argument that it has successfully regenerated its surplus in recent years in part by a series "one-shot deals" and that the Town maintains that it has used up its "one-shot deals." But the Town's concern that its only available revenue source to fund budgetary increases is municipal taxes is ameliorated by the increased revenue it has realized from other sources, including Municipal Court revenues of \$222,803 and parking meter revenues of \$252,667. These two revenue sources together generated over \$165,000 more than anticipated in 1999. The municipal tax rate did not increase in 1999. The Town has consistently generated excess revenues over total expenses and has consistently collected taxes well above the amount of taxes it estimated would be collected which has helped to generate surplus revenues.

Both parties place great emphasis on comparisons with other groups of employees, but differ as to the most relevant comparisons. The PBA emphasizes comparison with other law enforcement agencies in Warren and Morris Counties, while the Town would emphasize comparison only within Warren County. The Town emphasizes internal comparison of total salary and benefits with its other employees and the PBA places great emphasis on comparison of its salaries and benefits to those provided to Phillipsburg teachers.

As both parties recognize, other police settlements within Warren County provide a relevant basis for comparison. Based upon my review of the record, while relevant, comparison to police in Morris County are entitled to some, but lesser weight. The Morris County communities the PBA would use for comparison are either larger, have more fully developed residential or commercial property and have greater significantly higher ratables. While Phillipsburg is one of the larger communities in Warren County, its size alone does not merit that significant weight be given to comparisons with police departments in wealthier, more developed municipalities outside the county. The PBA's comparison with the salary and benefits received by its members to Phillipsburg teachers, while relevant, is also due less weight than the comparison to law enforcement employees within Warren County. It should also be noted that the time it takes a police officer to reach top step is substantially less than a Phillipsburg teacher who earns far less after six years of service than the police officer who has achieved maximum pay.

Phillipsburg is among the highest paid law enforcement departments in Warren County. The terms of the Award should and will enable the department to maintain its relative ranking within the county and the Town has not established any basis for a diminution in its relative posture. The record reflects 1999 increases ranging from a high of 4.0% in Mansfield and Pohatcong to a low of 2.71% in Lopatcong. In 2000, the record reflects increases ranging from a high of 4.0% in Mansfield to a low of 3.0% in Washington Boro. The terms of this Award, 3.75% annually, are within the ranges of increases within the county and place Phillipsburg second in the county below only Hackettstown.

The terms of the Award are consistent with the private sector wage data submitted into the record. Private sector data cited by the Town shows increases averaging 4.3% in the first half of 2000 and median increase was 3.5%. This Award falls within that range. The terms of the Award are also consistent with the private sector wage survey compiled by the New Jersey Department of Labor. These figures reflect an increase in Warren County from 1996 to 1997 of 5.86%, from 1997 to 1998 of 3.2% and 2.4% from 1998 to 1999. The average statewide increase in private sector employment in New Jersey from 1998 to 1999 was 3.9%.

The data submitted by the Town with respect to the increases in the cost of living has also been considered. The Town contends the cost of living criterion

strongly favors its proposal over the PBA's. This factor is relevant and substantially weighs against the 14.7% increases sought by the PBA, although it does not compel an Award of 7.5% as proposed by the Town. The CPI factor, while weighing against the terms of the PBA's proposal, is not a controlling factor and must be, and has been, weighed against the remaining statutory criteria. The continuity and stability of employment for police officers employed by the Town will be maintained by the terms of the Award. The Award will have no appreciable affect on this factor. I also conclude that the interests and welfare of the public will be served by the terms of the Award which is within the lawful authority of the Town, will have no adverse financial impact on the governing body, its residents and taxpayers and will maintain the police officers relative standing within Warren County.

Accordingly, and based upon all of the above, I respectfully enter the following Award.

AWARD

There shall be a three-year agreement effective January 1, 1999 through December 31, 2001. All proposals by the Town and the PBA not awarded herein, unless mutually agreed to prior to arbitration proceeding, are denied and dismissed. All provisions of the existing agreement shall be carried forward except for those modified by the terms of this Award.

1. **Travel Allowance**

- A. Meal allowances shall be adjusted to the following amounts, effective May 15, 2001.

Breakfast - \$5.00

Lunch - \$10.00

Dinner - \$12.00

- B. Mileage allowance

The Town will supply a travel vehicle in lieu of the mileage allowance. In the event that a Town vehicle is not available, the unavailability of the Town vehicle shall not prevent the assignment from being performed and a mileage allowance shall be substituted at the IRS rate.

2. **Grievance Procedure**

Article XXIV is amended to reflect that minor discipline is subject to the grievance procedure, including binding arbitration.

Article XXIV, Section C is amended as follows:

Step One: An aggrieved employee shall institute action under the provisions hereof within **thirty (30) calendar days** of the act being grieved...

Step Two: In the event that the grievance is not settled by Step One, then within **ten (10) calendar days** following the determination of the Chief of Police.

Step Three: If the grievance is not settled through Step One and Step Two, either party may refer the matter within **fourteen (14) calendar days** after the determination by the Town Council or its designee to an arbitrator...

3. **Vacation**

A. Article VII, Section G.1. shall state:

Employees shall be compensated for all vacation days accrued and unused on a day for day basis with a day equaling twelve (12) hours. In the event the Town or the PBA desires to terminate the work schedule, employees will be compensated for all accrued and unused vacation days on the same hourly basis upon which those days were earned as calculated above. Compensation will be based upon the employee's rate of pay at the time of their termination.

B. Article VII, Section A shall provide a new vacation schedule for employees hired after May 15, 2001. This provision shall not negatively impact on the vacation entitlement of any employee hired before May 15, 2001. The new schedule shall state:

Years of Service

From date of hire until the following
December 31
Thereafter through 5 years of service
6th through 10th years of service
11th through 19th years of service
20th through 24th years of service
25 years of service or more

Vacation Leave

One (1) working day for each month
of service completed
12 working days
15 working days
18 working days
20 working days
25 working days

4. Article A, Section B.3 shall be amended to state:

Each employee shall be entitled to fifteen (15) days sick leave per year earned at the rate of one and one quarter (1¼) days for each month of service. (The remainder of this section shall remain the same).

5. **Funeral Leave**

Article XI, Section A shall be amended to include an entitlement to five working days leave with pay because of the death of an employee's brothers and sisters. Reference to brothers and sisters shall be deleted from Article XI, Section B.

6. **Court Time**

Article XVII shall be amended to delete the clause "and has left their place of work." The amended provision shall state:

Any employee who is called for appearance in court, after completing their regular shift shall be guaranteed a minimum of two (2) hours pay at time and one-half rates, provided however, such hours do not overlap into the employees regular work hours.

7. **Vacation Leave**

Article VII, paragraph C shall be amended to state:

At least one employee per shift shall be permitted vacation leaves, subject to maintaining minimum staffing levels. An additional employee may be permitted to take vacation leave on the same shift subject to maintaining minimum staffing levels providing that the taking of such leave shall not result in an overtime assignment during that shift.

8. **Longevity**

Effective January 1, 2001, the longevity schedule shall be amended to state:

<u>Years of Completed Service</u>	<u>Annual Increment</u>
Five (5) Years	\$1,000
Ten (10) Years	\$1,500
Fifteen (15) Years	\$2,000
Twenty (20) Years	\$2,500
Twenty-four (24) Years	\$3,000

9. **Insurance**

Article XVIII, Section B.2. shall be amended to state that the prescription co-pay provision shall be changed to \$10 brand name / \$3 generic to be effective as soon as can be implemented after May 15, 2001. Mail order prescriptions (90 day supply) shall be available on the same basis as the co-pay. Name brand prescriptions ordered through the mail are subject to the \$10 co-pay, but only one (1) co-pay will apply for the length of the mail order (i.e. 90 days), as opposed to the multiple co-pays every time a prescription is renewed directly through the pharmacist.

10. **Retiree Benefits**

All benefits set forth in the new agreement for 1999, 2000 and 2001 shall be paid to and given to any and all employees who retired after January 1, 1999 through December 31, 2001.

11. **Wages**

Effective January 1, 1999 - 3.75% on each step of the salary schedule
 Effective January 1, 2000 - 3.75% on each step of the salary schedule
 Effective January 1, 2001 - 3.75% on each step of the salary schedule

Step	1999 3.75%	2000 3.75%	2001 3.75%
Trainee (0 to 1 years of service)	\$33,686	\$34,949	\$36,260
Class F (1 to 2 years of service)	\$35,700	\$37,039	\$38,427
Class E (2 to 3 years of service)	\$37,714	\$39,128	\$40,595
Class D (3 to 4 years of service)	\$39,728	\$41,218	\$42,764
Class C (4 to 5 years of service)	\$42,427	\$44,018	\$45,669
Class B (5 to 6 years of service)	\$46,732	\$48,484	\$50,302
Class A (6+ years of service)	\$51,139	\$53,057	\$55,046

Dated: May 15, 2001
 Sea Girt, New Jersey



 James W. Mastriani

State of New Jersey }
 County of Monmouth }ss:

On this 15th day of May, 2001, before me personally came and appeared James W. Mastriani 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 same.



GRETCHEN L. BOONE
NOTARY PUBLIC OF NEW JERSEY
Commission Expires 8/13/2003