
In the matter of Compulsory Interest Arbitration
concerning the negotiations impasse between

City of Orange Township, New Jersey

DECISION AND AWARD

and

of

Orange Superior Officers Association

Frank A. Mason, Arbitrator

Re: PERC Docket IA-2000-71

APPEARANCES

FOR THE CITY:

Thomas M. McCormack, Esq., McCormack & Matthews

Jack Kelly, Chief Financial Officer

Thomas Banker, Consultant & University Professor

FOR THE ASSOCIATION:

Richard D. Loccke, Esq., Loccke & Correia

Lawrence Dorsey, President, SOA

Frank Benevento, Samuel Battista and Hakim Sims,
SOA Negotiations Team Members

INTRODUCTION AND PROCEDURAL BACKGROUND

The City of Orange Township and the Orange Police Superior Officers Association were parties to an Agreement which expired on December 31, 1999. Negotiations for a successor Agreement covering officers in the ranks of Sergeant, Lieutenant and Captain reached an impasse and a petition to initiate compulsory interest arbitration was presented to the Public Employment Relations Commission. It was Docketed as IA.2000-71 and filed on February 25, 2000. On May 31, 2000 the PERC appointed Frank A. Mason as arbitrator under its auspices to conduct such proceedings as were necessary to resolve the dispute between the parties. There followed a series of informal mediation meetings whereby attempts were made to overcome the negotiable elements of the impasse. Many such items were disposed of but the core focus of the dispute which concerned financial matters proved to be insoluble and the proceedings were advanced to the formal hearing level. Hearings were conducted in October and November of 2000 at which each party presented argument and evidence and had opportunity to examine and cross examine sworn witnesses. Numerous exhibits were incorporated in the record. After the hearing transcript was completed the parties filed post-hearing briefs and the record was closed

on March 1, 2001. There being no contrary agreement of the parties the arbitration method was conventional arbitration as provided by statute.

POSITIONS OF THE PARTIES

FINAL OFFER OF THE EMPLOYER

TERM OF THE CONTRACT: Four years

ECONOMIC ISSUES:

WAGES: There shall be across the board increases in wage rates of 3.7% on January 1, 2000; 3.5% on January 1, 2001; 2% on January 1, 2002 and 2% on January 1, 2003.

OTHER ECONOMIC ISSUES:

1. Article V, Payment For Sick Leave, be amended to, "...include language expressly prohibiting any employee being paid for or otherwise accruing, sick days in excess of 15 days per year..".
2. Section 1: A. to be modified so that the definition of "accident" for which an employee might use sick leave be changed to "non-workplace accident".
3. Section 7: to be amended so that the language granting the option for a retiring officer to utilize accumulated sick leave credits by remaining on the payroll for a period of up to one year be removed. This change would allow such sick leave credits only to be paid in cash as a lump sum or over time at the employee's option.
4. Article XIV, Bereavement Leave, be modified by elimination of Section 3, which provides that in the event of a death occurring while an employee is on vacation that his bereavement entitlement be used and no vacation leave charged.
5. Article XX, Seniority, be amended by elimination of Sections 2, 3, and 4, which provide, "Seniority days off..." meaning that paid leave time be granted as a function of service years beginning with 4 and reaching a maximum of 12 days per year; that there is provided additional paid leave time based on rank, 3 days for Sergeant, 4 days for Lieutenant and 5 days for Captain; and that such leave time not utilized in the year granted may be accumulated.
6. Article XXIII, Wages, be amended to increase the current employee co-payment for non-salary benefits from \$600 to \$1000 per year.
7. The Agreement be drawn to include a payment of \$2000 annually to any employee who opts out of the Employer provided Health Benefits Plan but with the condition of the Employee having a right to re-enroll on an annual basis under certain circumstances.

NON-ECONOMIC ISSUES

1. The term, "police surgeon", as used in the Agreement be replaced with, "City physician".
2. The second sentence of Article V, Section 1: A. shall be changed to clarify the meaning.
3. The Section 5 of same article be changed so that Employees' requests for sick leave be received by the Employer at least 2 hours before the beginning of a scheduled shift.
4. Article XVIII, Clothing and Maintenance Allowance be modified so that the term, "Sam Browne Belt" be replaced with, "one duty belt", and the term, "9mm semi-automatic weapon " be replaced with, "one service weapon".

FINAL OFFER OF THE ASSOCIATION

TERM OF THE CONTRACT: Three years.

ECONOMIC ISSUES

WAGES: There be across the board increases of 6% on January 1, 2000; 6% on January 1, 2001; 6% on January 1, 2002.

OTHER ECONOMIC ISSUES

1. The Holiday benefit currently being paid apart from wages be folded into the wage structure without regard to years of service.
2. Elimination of the Article IX, Hours, Section 3., provision that requires Employees to attend training for up to 8 hours annually without compensation.

NON-ECONOMIC ISSUES: None presented.

PROFILE OF THE CITY AND ITS ECONOMIC CONDITION

The City of Orange Township was described in testimony presented as one of the larger municipalities in the urbanized northern sector of the State of New Jersey which has been characterized as one of the State's most distressed cities based on the several facets of economic condition used for such measurements. It is a place where there is little room for new growth of taxable properties, a failing commercial economy and a general aura of decline. Increasingly its capacity to sustain the primary services to its residents has become inadequate resulting in a combination of conditions which include dependence on State financial support, imposition of unusually high property tax burdens and reduction

of the quality of services. There have been reductions of staff, delay or elimination of maintenance and other public service needs and even the disposition of assets to avoid financial crises.

Some of these conditions have fed on themselves so that the decline has become less correctable. For example, as property taxes have risen relative to housing values these become less desirable or affordable. Frequently this results in poor maintenance as well as unattractive neighborhoods and a real estate market where investment is discouraged by lack of potential return. It has become a community where the quality of life is diminishing, where there is a high rate of criminal activity, relatively poor schools and few opportunities for good jobs, where even personal safety is seen as threatened.

The average family income in Orange is very low compared to other more prosperous communities and the percent of that income being fed into property taxes is disproportionately high leading to increasingly strident resistance from owners. The total value of taxable property has been declining in each of the past eight years whilst many other communities have experienced more substantial growth.

In order to maintain the meager level of public services Orange has depended on Federal and State support but such support dollars are becoming increasingly difficult to find. More than 75% of the education costs are realized from such support programs. Should they be reduced the costs would have to be controlled by reduction of programs and increases in taxes which already have become so onerous as to preclude property value growth. The current underpinning of the City's budget is heavily predicated on sources which are not dependable from the point of future availability. Witnesses who testified in this proceeding have described Orange as a city in financial and economic crisis. The administration has endeavored to cope with this by making all resources stretch as far as is possible and to avoid expenditures wherever practicable. This has meant the approach to the negotiations is focused on the costs of providing personnel services and attempts to curtail those costs. The key issue in this dispute is the money involved in wages and benefits and what is seen by the administration as unacceptable and/or unwarranted ancillary costs. They did not deny knowledge of the relatively higher wage increases being provided by other municipalities. They simply indicated that those levels of improvements were not affordable in Orange.

The final offer of the City was characterized by its attorney as being more than the City could afford and less than these employees deserve. There is apprehension that the reductions in staff which have already been made will prove to be insufficient, especially when increased costs are factored into the equation, and that increases provided to these employees will negatively impact on the City's need to conserve its resources in dealing with other employee groups.

In the balancing of the Municipal budget for FY2001 the City has been able to utilize \$1.65 million of non-recurring revenues. While these dollars are a godsend they can't be depended upon to be available in future years and should some or all of those dollars not

be forthcoming the result will be a very severe strain on the future budget processes. And the future prospect for such monies to be as readily available is considered not good based on the political climate at the State and Federal levels. To replace that sum with higher taxes would mean an increase of \$447 on each taxpayer.

Viewing this from a slightly different perspective the consultant, Banker, testified that it was his opinion that the City was reasonably well managed and had taken the difficulty of budget balancing seriously. It had increased municipal taxes by some 70% in the past 9 years to maintain a reasonably sound fiscal picture. But he noted that the course of action taken has the down side of creating an environment of disincentive for investment and real estate ownership which eventually will manifest itself in the deterioration of the community and its ability to sustain itself. This would mean added dependence on outside funding and his noted opinion was that this was an unlikely source to support the needs of the residents. In added comment he indicated that there have been nominal improvements in the fiscal condition of the City from 1997, the time of his last analysis, but indicated this was accomplished by use of devices which will not stand up over time. As these have been years of unusual prosperity which may not continue he concluded that the future economic condition of the City was not bright taking a long term view.

THE PERSPECTIVE OF THE SUPERIOR OFFICERS ASSOCIATION

In its presentation the SOA defended its short list of economic demands and rebuked the City for its attempt to remove certain long term benefits enjoyed by its members. In particular the SOA has decried the basic salary as substandard. In its attempt to statistically describe this condition the SOA chose a group of thirteen communities in Essex County, all of which are quite close to Orange, as a comparison base. For the purpose of satisfying the concept of comparative area wages the sample seemed to be very reasonable, not drawing on especially affluent municipalities and including most of the surrounding geographic area. In the comparison as to base wages at the maximum of the salary range for 1999 Orange pay rates were the lowest for each of the three ranks with one exception, that being sergeant in East Orange where the pay rate was \$954 below Orange. However, the Orange rate was 5.5% lower than the average or \$3313 less for sergeants, \$6878 lower than average for lieutenants or 10.3% less and \$9500 or 13.5% less than average for captain.

When the SOA extended the scope of the comparables to five other cities in neighboring counties the Orange pay rates were the lowest and were nearly 23% lower than average for the 1999 year, a difference which amounted to just less than \$15000. In addition to these relatively low pay rates the SOA pointed out that there had been significant reductions of personnel by attrition or assignment thus leaving fewer employees to handle the work which was increasing in terms of police incidents but in complexity as well.

The SOA also presented data concerning the vacation allowance in Orange compared to the communities in Essex County which are nearby. In that comparison the maximum

allowance in Orange was 23 days or 3.5 days less than available on average in the other municipalities, a negative differential of 15%.

The SOA presented additional evidence concerning the rate of change in salaries of similar rank employees in surrounding communities for the period 2000 through 2002. At the time of the hearing the information concerning those future time periods was considerably less than was available for the 2000 year. However, using only those elements of data which came from the municipalities claimed to be valid comparables for earlier data it was demonstrated that the increases to base wages would average 4.175% for 2000 and more like 4.6% in 2001 but based on a significantly smaller statistical base. Likewise the 2002 average increase was calculated on an even smaller statistical base but for all of the original municipalities used for salary comparison and which had reported the average was in excess of 4%. Thus the SOA concluded that the proposal of Orange was less than average in each year of the anticipated contract period compared to the group and that the result of the applications of those increases would be to enlarge the gap between pay rates in Orange and further reduce the level of comparability both as to wage rate increases and as to the annual salary differential which resulted. This result is sharply criticized by the SOA as being inconsistent with the Legislatively supported criteria for establishing pay rates and not reflective of the dedication and quality of services offered by these employees.

SOA places particular emphasis on the facts presented as to the wage adjustment demanded indicating that if the SOA demands were to be awarded the employees involved would remain at or near the bottom of the wage rates paid in the surrounding communities in spite of a modest gain. For instance, in year 2000, were the SOA to be granted a 6% increase the resulting salary for sergeants would still trail the average by \$2351 instead of the 1999 lag of \$3313 and the Orange maximum salary would remain behind all but one of the comparable communities. Of course a 6% program would also help to close the gap at the higher ranks but Orange would remain substantially behind the average and in the lowest position.

In Orange the differential between the maximum salary of a sergeant and that of a lieutenant is \$4470 and the further step to captain's salary is \$5525. In sharp contrast among the comparable communities the average differential from sergeant to lieutenant is \$9035, or twice that of Orange, and the step to captain is \$6847. The Orange potential movement from sergeant to captain was, in 1999, \$9995 while the others reported enjoy promotional increases of \$16182. This reflects another negative comparison as to the value of employment in Orange versus other communities and it is compounded by the fact that Orange is not allowing promotions to those higher rank positions when they become vacant due to the decision not to fill those jobs and to add the work ordinarily performed to others, a decision based on the desire to achieve payroll savings.

The SOA does not share the dire predictions of the City as to its ability to pay what it views as reasonable increases in salaries to its members. In the first place it points to the lawful flexibility allowed for within-cap increases of 5% and notes that the City used only

the 3.5% available under the cap formula for its 2001 budget. The City could have opted for the higher number which would have allowed substantially greater budget growth of \$464,000. In the budget actually adopted the anticipated expenditures are set below the figure available under the lesser cap by \$146,790, an amount which could be utilized for salary increases richly deserved. In its extrapolation from these budget figures the SOA notes that the carry over of within cap flexibility was over \$1,170,000 for the 2002 fiscal year. Thus it concludes the City has no problem related to cap limitation in consideration of salary adjustments for this unit.

In furtherance of its views concerning the issue of salary increases the SOA noted that the interests of the taxpayer may also support the its proposals. The reasoning is that this unit is a vital group of employees intimately involved with the protection of the population and the control of rampant criminal activity. Thus it concludes that the support of the police function by provision of a salary program which demonstrates the willingness of the City to provide a reasonable income level will be translated into a work force more dedicated to those objectives even in the face of reduced staff and limited promotional opportunity. The morale of these employees and their leadership, as related to the patrol officers supervised, is a consideration which is negatively affected by the City's plan to keep them at the lowest income level of all the neighboring municipalities. While the City has made significant improvements in the facilities and equipment available it has turned aside from correction of the salary deficiencies pointed out above in spite of the vexing and escalating problem of public safety and criminal activity.

In its examples concerning this the SOA notes that a 1% increase to this unit amounts to about \$25,474 [in 1999 terms] and that the difference between the SOA proposals and those of the City are under \$60,000 for 2000 and under \$70,000 for 2001. In seeking to demonstrate the impact on taxpayers it noted that the cost of this unit of police represents only about 8% of the budget. Thus the cost for a taxpayer with a \$4000 property tax bill is only \$320 per year. Even a substantial increase in that cost would still not present a burden beyond its inherent value to the citizenry, and a 6% increase in salaries for 2000 would result in an increase of monthly taxes to the average taxpayer of only \$1.60 and the amount which exceeds the offer of the City is only 61 cents. These added costs could be accounted for by the annual savings [over \$300,000] attributable to the reduction of staff since 1999. The SOA equates its proposal to being only a small portion of those savings and an expense well within available resources of the City, not requiring any added taxes.

Not only did the SOA claim that the budget for 2001 had ample monies available for the level of increases requested but it also noted that the City's claim of overburdened taxpayers was not real. In that sense the SOA introduced charts showing the per capita debt in 22 Essex County cities. The range was from \$0 to \$1751.88 with residents of Orange at the median \$488.66. SOA also showed the tax levy per capita with a range of \$679 to \$3978.51 with Orange in 19th position of 22 at \$934.64 and where 18 of the 22 were above \$1500. The conclusion was drawn that the taxpayers in Orange are not overburdened relative to their ability to pay and compared to other municipalities. The per capita income figures from 1989 supplied by the City demonstrated that Orange residents

income compared favorably within a group of cities, all larger than Orange, in New Jersey but that the percent of income required for property taxes was 8.4% in 1999 compared to 8.0% for the group and only one had a higher percent of income dedicated to taxes than Orange. The City also provided figures illustrating the per capita municipal portion of the tax burden in Orange compared to other cities in the state where Orange was set at \$550.20 per year in 1999 and the average of the group was \$456.30. However the same chart illustrated that the Orange levy was much closer to the overall Essex County average of \$527.50. It may be noteworthy that this latter figure has been virtually unchanged in Orange from 1997 through 1999 [actually slightly reduced] while the overall County group has experienced a net growth of about 4%. In that same chart the Orange tax payer was earning more money annually than any in the other cities by an average of more than 10%.

The City provided other information concerning the relative economic health of Orange. In one chart it demonstrated that of 22 municipalities ten, including Orange had experienced a reduction of Net Valuation Taxable from 1998 to 1999. The average actually was positive by .17% for the 22 while Orange property values declined by 1.6%, more than any municipality except for Newark at minus 2.72%.

DISCUSSION AS TO APPLICATION OF THE STATUTORY CRITERIA

This dispute is one which presents a rather complex situation to be resolved. While there many specific and often conflicting facts and figures in the record the weight to be given to them remains somewhat subjective. At the outset it is clear that the City has been attempting to improve its economic climate and its financial condition for some time. These efforts have not been of salient success leading to reduction of employees, cuts in many parts of the budget to offset increased costs, the extensive use of non-recurring elements of income to bridge the gap left by insufficient tax revenues, increasing dependence on the State and Federal governments for assistance and in some areas reduction of the quality or character of governmental services. In such circumstance it could be argued that any attempt at cost control should be applauded and confirmed in an arbitration award as is to be provided here. Offsetting the easy temptation to accommodate this end are numerous considerations. It could be said that elimination of the police function would result in a great cost saving. But would it? Are the taxpayers better served by reducing the quality of police protection in the face of increasing criminal activity or should there be an effort to extend and even enlarge the police organization? How much of the City's anticipation of the negative impact of nominal cost increases because of better pay to such personnel is reality as contrasted to the benefits in performance which might flow from better salaries? These are the kinds of questions which remain unanswered by even a very careful distillation of the facts presented at hearing. Poring over the details of budgets and forecasts of future economic circumstance did not provide an entirely objective basis for decisions which are so obviously correct as to merit acceptance by all concerned. Such questions as how does the continuation of substantially lower salaries impact on taxpayer interests are difficult to resolve. Likewise if those lower salaries are rectified to some degree will the interests of the taxpayers be

well served or will the impact on the overall employment situation become overwhelming? My determinations below will represent what I believe to be the best answers to the resolution of those matters in this dispute using the statutory criteria as a guide. One of the undercurrent conditions which exists is that these are employees whose circumstance is to be virtually locked in to employment with this Employer until retirement. They have dedicated themselves to police work as a profession and career.

1. THE INTERESTS AND WELFARE OF THE PUBLIC

One of the key elements of this criterion is the consideration of the cap law as a guide to the annual growth of the municipal budget. We are well into the term of this Agreement and have the luxury of looking at the budgets cast for the first and second year of the three or four year Agreement. At this point the City has been able to maintain a substantial level of surplus without increasing tax rates or drastically reducing services and all comfortably within the cap limitations. The City has not found it necessary to extend itself to use the full flexibility afforded by the law and has built a sufficient appropriation into the Police Department budget to pay for salary adjustments within a reasonable cost range and should have sufficient flexibility to fund an award without undue tax ramifications.

The quality of the relationship between the City and the SOA members has an important impact on the function of these officers and in particular on the overall function of the Department in which they are responsible to manage and/or supervise. All employees deserve fair treatment and I anticipate an award which reflects this. The need for an effective and dependable police organization is of considerable importance in Orange especially as the level of criminal activity is high and the need for personal safety is a prime concern of the government. I intend to try to create a balance between cost considerations as they affect taxpayers and a fair compensation package for these officers.

I believe this is an important criterion and will weigh it carefully. I believe that consideration supports an award of somewhat greater value than has been proposed by the City and that some costs can be offset by modifications of other contractual provisions.

2. COMPARISON OF SALARIES BOTH PUBLIC AND PRIVATE

It is apparent from the information above that there has been little focus on the comparison of the compensation of these officers with compensation in the private sector. This is largely because there are no very comparable positions outside of the police function and those exist only in the public arena. However, there is a somewhat parallel course of change in terms of overall compensation which is generally affected by a combination of many factors including changes in cost of living, the competition for superior personnel and the need to maintain a competent work force. The statistics concerning the movement of wages and salaries in the private sector during the period between 1990 and 1999 was presented in the record wherein the details had to do with national data for private employment contrasted with the advances negotiated with the SOA. This data is not specific to New Jersey and difficult to relate to police but showed

the SOA to have an advantage of 29% over those ten years. Other data from the State of New Jersey indicates that the private sector advances during the 1998-2000 period to have surpassed the improvements received by police in New Jersey nearly 2% per year. The difference would be somewhat greater compared to what was granted by Orange to the SOA. For these reasons I do not place much emphasis on the private sector as a basis for the determination of a salary program for police.

In the presentation of the City there was little attempt to justify its position on the basis of comparable salary movements in either public or private employment. Instead the underlying argument and evidence was directed almost exclusively to the fiscal condition of the City and the potential impact of salary adjustments on the municipal tax rate. The City has been single minded in its attempt to control costs because of the impact that increases have or may have on the taxpayers directly and on the general economic climate of the community. Here the concern is that residents have comparatively limited income with a high relative tax bite taken from it. This is considered to have resulted in limited appreciation in real estate values and a minimal enthusiasm for investment or redevelopment in the city. While neighboring communities have prospered Orange has not shared in this and the result has been highly negative. With little commercial establishment and no real room for further development the city has been in an economic and fiscal decline for a number of years. Consultants who have worked with the city have not been enthusiastic as to its future pointing to the fact that Orange has not shared in the surging economy of the late nineties and seems not to have the resources to do any better in the less optimistic economic circumstance of the near future. As noted above the City is of the opinion that it really can't afford the proposal it made to the SOA but made it in a good faith attempt to balance the demands of the SOA and the reality of the struggle it faces to make Orange a turn around community.

It has been the SOA which has been pressing the details of the surrounding communities as to current [1999] wage rates and the data illustrating the changes which are being implemented from 2000 forward. The picture is one where the Orange compensation program has fallen behind appreciably and where the proposal of the City will accelerate the negative relationship of SOA members to employees in comparable positions in nearby communities. The Essex County figures described above are not very different from the State as a whole. According to a Public Employment Relations Commission report the rate of police salary increases state wide, for 2000, averaged just about 3.7%, the figure proposed by the City. All data published since that time seem to indicate that the rate of change has, if anything, gone higher than 3.7% for 2001. Certainly the Essex County data cited above would suggest in that part of the state the rate of increase is just above 4%. Clearly the proposal of the City is not competitive, or perhaps comparable is a more appropriate term, with what is happening in the market place. To endorse it would suggest embracing the City's position and disregarding other indices of equity.

One of the penetrating arguments of SOA is that their compensation is at the lowest among the comparable communities cited and that the work performed in Orange is every bit as demanding as elsewhere if not more so because of short staffing and a virulent

criminal environment not shared in all of those communities. In addition the opportunity to move by promotion has been stifled and the rate of salary improvement, should there be a promotion, from sergeant to lieutenant and to captain is very substantially below that of other municipalities affecting current income and the value of a retirement after this career.

I view the concept of comparability as a very significant criterion because in an otherwise free market it is probably the key underlying factor in the setting of wages. This factor is included among those to be considered because it is so fundamentally basic to making judgments as to the fairness of compensation granted to a particular position. This factor is widely relied upon in the resolution of police negotiations. Of course it is not the only consideration to be made, and I will endeavor to give appropriate weight to each of them.

CONSIDERATION OF OVERALL COMPENSATION

While this criterion is largely subsumed in the elements of comparability as discussed above there are several considerations to be made here. In its attempts to eliminate costs seen to be excessive in terms of the current and foreseeable fiscal condition of the City the SOA has been asked to accept revision of certain benefits. The first of these is the amount of money each officer contributes to the cost of benefits provided by the City. That amount has been \$600 in prior years and the City has indicated that as a proportion of the costs it has been on a continuing decline. It therefore has suggested a number which would have the effect of restoring the approximate proportion of the total cost which was incorporated in the prior Agreement. It argues that costs continue to spiral upward, that there has been an understanding that these costs should be shared and that it follows that the time to raise the dollar contribution of the officers is now. I find this argument to have reasonability as it follows a fundamental element of the prior Agreement which I presume to have been a factor in reaching an accord at some time in the past. Certainly the City has demonstrated it is not in the kind of fiscal situation to graciously accept these added costs if the ordinary understanding of the parties was to share them.

Another element in dispute has to do with negative sick leave balances. Apparently there has been a practice to allow individuals to use unearned sick leave. This has also developed into a situation where such unearned leave balances have been allowed to continue on the personnel record of the individual without requiring replacement by paying them off with credits earned. As such the effect is to have loaned these individuals the salary value of these granted paid days without having them paid back perhaps until separation from employment. This is not a contractual matter per se. The Agreement sets forth the limits of sick leave entitlement and the use thereof. This matter was presented to the PERC by the SOA as a matter of unfair practice when the Employer decided unilaterally to eliminate the concept of unearned sick leave. The Commission found this to be a past practice which should be dealt with during negotiations. That decision led the parties to present the matter to me after the close of the hearings. While it is obvious that the SOA resists the elimination of the practice and the City has determined to end it neither party has had opportunity to fully justify their position during this proceeding. The agreement to have the determination of the PERC presented to me has suggested the

mutual desire for a determination of the conflict. I will therefore include this as if it were part of the final proposals submitted for consideration.

A second issue related to sick leave and described as peculiar to Orange has to do with the contractually established program for a terminal leave which allows individuals who have accumulations of unused sick leave at the time of retirement to opt to continue on the payroll rather than have the balance paid in accord with a formula. This option, by keeping an employee on the job after retirement, but before receiving a pension, has the effect of providing entitlement to all benefits enjoyed while working and precludes the City from hiring a replacement in his budgeted position. The City has asked that this contractual condition be excised and the employee be limited to a lump sum or staggered payments of any sick leave balance entitlement after actual retirement.

A further issue presented has to do with a program of granting paid leave of varying numbers of days depending upon seniority and an additional program to grant paid leave in numbers of days annually depending upon the rank of the employee. In combination the days could amount to as many as 17 for a captain at long service or as few as 7 for a sergeant at minimum service. The City has demanded these leave plans be removed from the Agreement.

These benefits plans obviously have substantial value and add a dimension to the consideration of the final offers proposed. In drawing my conclusions this criterion will be construed as having substantial relevance.

STIPULATIONS OF THE PARTIES

There were none of consequence and this criterion is therefore not relevant.

THE LAWFUL AUTHORITY OF THE EMPLOYER

There are two issues which bring into consideration the lawful authority of the City. The first is the demand for a modification of the concept of rolling into base salary the payments which are made for the holidays granted. In the prior Agreement the parties had an accord to the extent that at the point of entering the 23rd year of employment the holiday pay ordinarily provided as a lump sum in cash be incorporated into base salary so that the added amount would be part of pensionable income. That practice has now been declared to be unlawful and the entitlement of an employee to pensionable income is now required to be in place immediately upon employment. The SOA wants the City to extend the time of incorporation of the holiday pay to the point when an employee is first appointed. However, that date usually occurs when the person is first appointed in the Department, ordinarily at the patrolman level, a position not in this negotiations unit. The City maintains that the SOA's demand that all employees in the unit have their holiday pay rolled into base regardless of years of experience is inconsistent with the pension statutes. It claims that the requirement is now that the employee's holiday pay become part of base income while that employee is in another negotiations unit and that as the benefit does not

exist in the non-supervisory unit, from which these employees are promoted, such an inclusion would be without merit and contradictory to the law.

The second question posed as to lawful authority has to do with the demand of the SOA that the current contractual provision that employees be required to attend training for up to eight hours per year without compensation should be changed in order that the employees be paid for that time. While the demand for payment is clearly a mandatorily negotiable matter the reliance of SOA on the current provision being contrary to Federal law and should therefore be changed poses a somewhat different question. The City has taken the position that if such an assignment is inconsistent with the FLSA the option of the SOA is to raise the question with that agency and not present the legal issue at arbitration.

Otherwise there was nothing presented at this hearing which would raise the possibility of transgressing the lawful authority of the Employer. I thus conclude this is not a criterion of great significance but will carefully review the elements above in making an award.

THE COST OF LIVING

This issue has not been presented as a matter of great consequence by the parties. However it does represent something of a guide when considering appropriate salary adjustments and is a measure of the long term salary program of the Employer. During recent years the salary improvements have generally been higher than the changes in the cost of living. Furthermore the parties have not incorporated cost of living considerations in the past Agreement demonstrating the lack of dependency on that measure in the setting of wage policy. There is an ancillary application of the cost of living as it applies to the taxpayers' interests but in these years of relatively modest cost of living changes no great concern has been registered and I do not place a substantial weight on this criterion.

THE CONTINUITY AND STABILITY OF EMPLOYMENT

This is a situation where there is little instability of employment within the unit. However, there has been a plan adopted by the City to avoid filling positions when incumbents leave and this has presented an increased work load on those who remain. There hasn't been any indication of this affecting these employees relative to their quality of work for the City. The SOA maintains that attitudes are changing because of the unacceptable levels of remuneration suggested by the City. The possibility exists that this could materialize as an important factor. SOA notes that the relatively lower levels of pay provided by the City will have a negative impact on the quality and qualification of persons recruited to the Department. This could have a deleterious impact on future performance. It is a factor to consider but not at the forefront of considerations to be made in this proceeding.

THE FINANCIAL IMPACT ON THE GOVERNING BODY

This is the criterion which has been the focus of the Employer throughout this hearing. As I have reviewed a substantial body of the highly detailed evidence relating to this above I shall not do so here. However, it is possibly the most significant criterion to be concerned about especially if analysis demonstrates a substantially negative impact on the economic and fiscal function of the community as is anticipated by the City.

There is little doubt that the cost of an award will have some impact and that the higher those costs the more necessity to fully justify them and/or provide offsetting values to the City. My attempt is to craft an award which will be reasonable and fair to the employees concerned and not unduly burdensome to the financial condition of the City. This is a very important criterion and will be given the attention it deserves.

DISCUSSION AND CONCLUSIONS

The first order of concern is the length of the contract term. Three years would seem a proper period and sufficient given the nature of the facts ordinarily available at the time of a determination. Here we have moved substantially into the second year of the new contract period and have at our disposal facts such as comparative data and budget figures which cover the first two years. In most situations much of those economic details would only be guesswork and forecast at the time of a decision. In addition this has been a long and drawn out proceeding and if the term of the agreement were to be three years new negotiations would appropriately begin in the early fall of 2002, less than 1&1/2 years away. The City has asked for a term of four years. It will be of great advantage to the City to have a period of time when it is not required to be in negotiations and the longer term of the contract will stabilize the conditions which must be planned and prepared for. As it is likely the terms of this contract may have some influence on other fiscal decisions and other negotiations it will be best to settle this matter for the longer period. On the basis of these considerations and of the relatively stable overall economy I believe the needs of the City outweigh the considerations of the interest of the SOA for a shorter contract period. I will therefore make an award which is for the period from January 1, 2000 through December 31, 2003.

The salary improvement issue is of course the most complex of the issues to be resolved. The City's proposal for the year 2000 is 3.7% which is very close to the average increase afforded police for that year on a state wide basis. It is not fully competitive with the average increase granted in the Essex County area where over 4% was the norm. The 3.5% proposed for the 2001 year is also less than the area increases although fairly close. The 2% offer for 2002 and 2003 are clearly well short of the 4% trend and would, if awarded not only leave these employees at the very bottom of the list of comparable communities but drifting substantially further behind as well. On any basis for consideration, with the possible exception of the financial impact on the City and future plans for improving its economic situation, the salary increases awarded should be considerably higher than those offered by the City.

There is no doubt that the City's economic situation is not the best. As described above, this is a distressed city and it suffers from lack of growth and growth potential. The population has drifted lower and the physical condition of the community is not such as to attract real estate investment. But the City has made ends meet for the past several years while maintaining a very flat municipal tax rate. There has been a substantial surplus created in each year although the cash flow into the budget has increasingly been on less dependent "non-recurring" sources. That circumstance is not uncommon in all of the distressed cities and yet they seem to survive. In Orange the education budget is now funded mostly by non-property tax dollars but the impact on the City budget has largely been hidden because of the funding sources. The information concerning the ability of the taxpayers to pay offered by the City is at best crude. The per capita income figures, which happen to indicate a higher level of income than all but one of the distressed cities in the exhibit offered, are over ten years out of date and the unemployment statistics are old [1995] history. Even the tax burden being predicated on valuations which are long overdue for review are less convincing as to their reliability than I would like to have for this analysis. The City notes the municipal rate has risen 71% since 1990 but it must be noted that the increase since 1997 has been only 5.1%. Admittedly there have been relatively drastic measures taken to limit the need for new tax revenues, including the determination to not fill jobs in this negotiations unit, but this may be a reflection of a long overdue need for focusing on more efficient government. Certainly no one has indicated that the supervision of the Police Department has suffered from the reduction of the numbers of superior officers, the dollar value of which has much greater impact than would the payment of near average salaries to those still in service.

The SOA has registered a complaint that these officers are not well compensated as to the salary issue and that they suffer from a less generous benefit plan. In particular they point to the fact that the vacation allowance is lower than the average municipality in the comparable group by 3.5 days; 23 vs. 26.5 at maximum. What is not mentioned is that Orange has a unique program of paid leave for rank as well as seniority which for a sergeant can add 15 additional days off and at the captains level 17 days. In reviewing the exhibits offered by SOA for the comparison group I found no replication of this type of leave plan. Thus the time off with pay at Orange can very well become much greater, by nearly 3 weeks, than is afforded generally elsewhere. This has apparently become known to the administration as they have proposed removal of both of those leave programs. There was no information provided which would suggest the negotiations history which led up to the adoption of these plans and the cost was not discussed. However it is clear that a vacation of 23 days and additional 17 days for rank and seniority add up to 40 days or 8 weeks paid time off, a number not matched in any of the surrounding communities. When considering the relative compensation it must be recognized that Orange officers do not work as many days as do most other employees of Orange. Even those assigned to regular five days on and two off work weeks are granted an additional 12 days annually to make up somewhat for the even shorter work week program of those on 4/2 schedules. There is a value to be placed on this extra time off with pay and it is nominally worth about 5%. If this 5% were added to the basic wage comparisons submitted by the SOA the extra value of time off would bring the total compensation to very close to the average

at the rank of sergeant, the most populous of the ranks represented. It would have somewhat less impact at the lieutenant and captain ranks where their salaries trail the comparables by a more substantial margin; 5.5% for sergeants, 10.6% for lieutenant and 13.5% for captain.

The pension plans are virtually the same and the medical plans are all very comprehensive. There is also a sick leave plan which contains many variants but where the prime area of difference is in the sick leave payout and/or terminal leave provided. Many of the communities grant only a pay off for sick leave accumulation but some also allow terminal leave, wherein the individual is allowed to remain on the payroll without coming to work by using sick leave accumulations, or both. Orange has as generous a terminal leave plan as most of the others which allow retirement while on the payroll and it has proposed the elimination of that option in favor of a cash payment only plan because of the ancillary costs related to keeping a person on the payroll after he has essentially retired and because of the desire to eliminate costs which it feels are not fully justified. Unfortunately the City did not attempt to develop a cost analysis for use in comparing these expenses with any comparable group of communities. As this is a once in a career occurrence and as it may only involve a limited number of individuals who have managed to maintain substantial sick leave balances and of that group only those who opt for remaining on the payroll as contrasted to taking lump sum payments it is difficult to place a value on this benefit. And even if one were to synthesize such a value there remains the question as to how that value relates to the annual costs of benefits in Orange or in contrast to other municipalities. Again there was no proffer of information as to the negotiations which established this program and one can only guess as to any trade off which may have been made. I am not given to such guessing and will not attempt to do so as to this issue. In spite of this line of reasoning it is clear that the option of remaining on the payroll for a year is potentially expensive. If it were more limited the individual would still be compensated for the balance of sick leave accrued. As part of the attempt to find reasonable compromises the limitation of this option, which is generally more expansive than is found in the other comparable communities, appears to warrant an adjustment.

As a separate element of the City's request for changes related to sick leave there is a proposal which would preclude an individual officer from being paid for more than 15 days sick leave time in any year. This does not appear to have much merit. Employees are granted sick leave with the understanding that they may accumulate them presumably so that they will have paid leave available when sickness makes work impossible. This is really an insurance plan. If an employee had conserved his annual allowances and incurred an illness or had an accident which required his not attending work for a period of longer than 15 days such a limitation as was proposed would frustrate the basic concept of the sick leave program. I can not support this proposal.

Elsewhere in the same Article V the City asked for modifications of language. The first had to do with a change in the definition to modify the application of sick leave to "non-workplace" accidents presumably to demonstrate that Section 1B is intended to provide the exclusive program for workplace accidents. I agree that Section 1B is intended to

provide relief for workplace related absences. But I see no reason why the individual could not also use regular sick leave if the amount of Section 1B allowed for absence were to be exhausted and as the current Agreement reads that could happen. The incorporated limits on abuse of sick leave offer adequate protection to the City without the modification sought and no real justification for the change was presented.

In Section 1A in the second sentence there is a need for modification to make the structure and meaning clear. As this was part of the submission I am making the following change; after the word disease there shall be added, "for which".

The City has demanded the current provision of Article XIV, Bereavement, which allows the substitution of bereavement leave for vacation when an event which would ordinarily entitle the use of bereavement leave which occurs while the employee is on vacation, should be deleted. I find no persuasive reason to deny the use of bereavement leave at the time of a death of a family member. Whether the employee happens to be in work status or on vacation seems not to be relevant. This request will be denied.

As to the issue of the demand that all holiday pay be rolled into base wages for all years of service I note first that conceptually the parties have an accord as to the enrichment of salary to be used for computation of pension benefits. Both parties have benefitted from the provision in the 1999 Agreement which delays the combination until the 23rd year since neither makes contributions to the pension for years before that point and the addition to salary is not a function of overtime or other base salary rates prior to the inclusion. However the Pension Division has made it clear that to be an accepted part of the pay rate for computation of pension benefits the holiday pay or any other element to be considered to be salary must be incorporated for the entire period of employment. That is generally construed to have begun, in the case of police officers, at the time of initial appointment. Superior officers are frequently not an initial appointment. The City argues that as long as the PBA unit of patrolmen, the source of appointments to the ranks in this unit, do not have such a program, that is incorporation of holiday pay at initial appointment or when the Pension Division may have otherwise allowed, there is no value to the individual to effect a change in this unit. On the other hand, should the demand be rejected and should such an acceptable plan be initiated for patrolmen, then when they are promoted to sergeant they would become ineligible for the value of holiday pay as a part of their pensionable wages according to the terms of the SOA 1999 Agreement. This would seem to be unfair and probably a disincentive for accepting the promotion as well. If one can presume that such a program, if consummated with the PBA unit, has the support of the City, then having an Agreement with the SOA which precludes it remaining effective appears to be inappropriate. Based on this line of reasoning I intend to provide a remedy for this situation which reflects the circumstances outlined above.

The final proposal of the SOA has to do with the contractual provision that as many as eight hours of training be performed annually without compensation. This modification is rejected by the City and it argues that this is not an issue properly before the arbitrator because of the argument advanced by SOA that such work without compensation is a

violation of Federal law. However, I am not impressed with that argument as questions concerning hours of work are certainly within the scope of the mandatorily negotiable issues and notwithstanding whatever arguments are advanced concerning the issue remain so under the State statute. If either party is of the persuasion that this matter should be remedied by an appeal to the FLSA or determined by application for a scope determination before PERC I see no reason for either of those courses not to be pursued. However, as the provision has been negotiated and in the Agreement for many years and as the total hours of work now scheduled including meal time appear to be somewhere between 1947 and 1984 hours annually there is not a strong likelihood that the current plan would be found to conflict with FLSA. I find no reason not to respond to the demand and will do so.

It is my general conclusion that elements of the former Agreement should not be disturbed unless there is convincing evidence to suggest making a change. That evidence would have to demonstrate the rationale for making the change. Although there has been much argument concerning the several demands for modification of prior Agreement provisions there has been little in the way of hard facts provided to warrant the undoing of those elements negotiated in the past. While it may be true that if such provisions were being initially sought in these negotiations the prospect of a confirming award would seem slight, the fact remains that elimination of those same provisions previously incorporated is dependent upon a different quality of consideration and very persuasive facts. Notwithstanding that concept where there is need to craft an overall Agreement I do not see the negotiations process as a one way program. There is reason to carefully consider the possible modification of some of these provisions just as there is to consider the demands for salary adjustments especially where the overall costs are basic to the mandated consideration of the criteria set forth in the law.

The facts before me clearly establish that the City is convinced of the need to carefully conserve its financial resources. It has taken meaningful steps to do this over a substantial period of time and is apprehensive as to the need for continuation of that plan. A number of its demands here are for give-backs which would reduce the costs of compensation for SOA members. The record establishes that the City is one of the most distressed in the state and that a very sizeable proportion of its financial resources are in the form of receipts from outside agencies. No one can have a serious doubt as to the need of the City to be conservative in its expenditure plans or that there are more community needs than can be fully financed under the present circumstances.

The record also establishes that the salaries for these officers are at the lowest in comparison with surrounding communities and that the offer of the City will only make that comparison less favorable. These officers perform vital service to this community and they do so in an environment which is demanding as to the safety and protection needs of the residents.

These opposing circumstances both merit as much support as can be given. The endorsement of either party's concerns is somewhat at the expense of ignoring those of the

other. This is a situation where there is need for compromise. I have concluded that a reasonable salary program must be supported if at all possible because of the long term impact it has both as to personal finances and the sense of fairness needed to assure the dedicated service of the officers to their responsibilities. The City has identified several areas of potential cost savings. My analysis reveals these employees have an unusually large amount of paid time off as documented above. The City needs these officers to be on the job and is in a bind due to lack of funds to support replacements for retired officers. One of the ways to assist in this would be to reduce the amount of paid time off duty. To an extent this kind of saving would help substantially to offset salary increases. Give-backs have been a part of negotiations and will continue as the needs for changes occur. In this situation there is such a need. Negotiations resolutions must reflect the needs of both parties. It is not a one way street to ever more improvements for employees without consideration of the public interests. I will attempt to establish a balance as to the opposing needs of these parties as required under the law in New Jersey. The provision for seniority days under Article XX, Seniority is the obvious target for such an adjustment as it is a unique benefit and a costly one. Reduction of such leave time will immediately provide greater service to the public without too harshly reducing the vacation or other leave time available to these employees and will have a sufficient financial benefit to help justify the higher level of increases in salary, than were proposed by the City, that I feel are warranted.

One of the City's demands, that there be established a pay-out plan to employees who voluntarily waive enrollment in the City provided medical insurance plan, appears to make sense. There is no reason for the employee to do this unless coverage is available from another source. In that circumstance the duplication of coverage represents an expense which could be avoided. Providing the employee involved can demonstrate such separate coverage and conditioned on the employee having a reasonable opportunity to re-enroll in the City plan if that duplicate coverage is discontinued I believe the suggested program should be adopted. The employee will be rewarded with the annual \$2000 offered and the City will save considerably more than the \$2000 in premium costs for its plan. In accepting this payment the employee must be informed in writing as to the conditions for re-enrollment and of the fact that during the time while the annual payment is being made that there is no recourse to the City plan, a consequence to be given considerable thought. As this plan would be offered on a voluntary basis I leave the wording of the proposal to the City with the understanding that such meets the conditions above.

The City has proposed an increase in the co-payment for the benefits plan provided to these officers. When this concept was set in place in the Agreement the employee contribution was set at \$600. This amount was a portion of the costs realized by the City. It has asked the co-payment be increased to \$1000 and has indicated that the \$1000 will represent a smaller share of the current costs of benefits than did the \$600 when it was adopted. The concept of a shared cost plan was agreed upon and I see no reason why that concept should not be brought up to date at this time. There was no contradiction as to the assertion of the City concerning the proportionate value of the contribution.

AWARD

1. The term of this Agreement shall be four years from January 1, 2000 through December 31, 2003.
2. The salary increases shall be:

January 1, 2000, 4%

January 1, 2001, 3% & July 1, 2001, 1%

January 1, 2002, 3% & July 1, 2002, 1%

January 1, 2003, 4%
3. Holiday pay shall be incorporated into base salary for all years of service. The amount of pay to be so converted shall be 95 hours at the base rate in effect on January 1st of any year for that calendar year. This shall be effective as of January 1, 2001
4. The Employee contribution to the annual costs of benefits provided by the City shall be increased to \$1000 effective on January 1, 2000.
5. Article XX, Seniority, shall be amended in Section 2 to provide, "Seniority days off per year shall be allowed as follows: After 5 years service, 4 days; After 10 years service, 6 days." No further allowance shall be provided. This provision shall become effective as of January 1, 2001. Should there have been situations where more than these allowances were utilized for the 2001 year before this award was issued the excess used shall be deleted from other leave balances or future seniority leave accruals.

Section 4 is modified to limit the accumulation and carry over of rank leave to not more than twice the annual allowance and is effective January 1, 2001.

6A. The City's proposal to allow individual employees to voluntarily waive the Employer provided medical insurance coverage and to be paid for this waiver in the amount of \$2000 annually is awarded subject to the conditions outlined in my discussion above. Should a dispute as to wording of this provision arise the parties are instructed to submit their proposals as to the matter to me in writing and I shall issue an addition to this award to resolve the dispute.

6B. Unearned sick leave has been granted in the past. The issue has become whether the City can mandate such leave be repaid or may the employee involved delay indefinitely such repayment. After consideration I am of the persuasion that the possibility of such grants should not be precluded. However the Employer should have the absolute discretion to grant requests, to impose specific limits on the amount granted and to establish the manner and time of replenishment. Such is so awarded.

7. The City has requested modifications of Article V, Sick Leave, in several areas. In the discussion above I have indicated disposition of several of these items. The limit of 15 days use of sick leave annually is denied. The inclusion of the limiting use of the term "non-workplace accident" is denied. The replacement of the term "police surgeon" with "city physician" is awarded. The requested clarification of the second sentence in Section 1A was made above and is awarded. The change with reference to notification as to use of sick leave from one hour to two hours is awarded.

Section 7, Terminal Leave has a number of provisions some of which depend on hiring dates. The provision which allows terminal leave, meaning the continuation on the regular payroll, as an option shall be limited to a maximum period of a 120 calendar day period. This is intended to eliminate all options for a longer period and is effective July 1, 2001.

8. I believe the parties have an agreement to adjust the language of the Clothing and Maintenance Article to reflect "one duty belt" and "one service weapon" to replace prior language and same is awarded.

9. The proposal of the SOA to eliminate the obligation to perform up to eight hours training without compensation is denied.

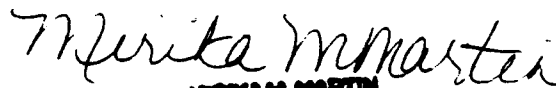
10. All other provisions of the prior Agreement except appropriate changes in dates are intended to be continued during the term of this Agreement.

SUMMARY

The elements of this award are intended to provide a fair and just determination of the issues which were at impasse and to be consistent with the applicable and carefully evaluated statutory criteria. I believe the balance of improvements and other adjustments reasonably represents the best Agreement under the circumstances of this Employer and the current economic conditions which face both parties.


Frank A. Mason

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


MIRITA M. MARTIN
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires March 01, 2002

May 12, 2001