

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

In the Matter of the Arbitration *

Between *

Borough of Middlesex *

and *

PBA Local 181 *

**Docket No. IA-2002-070
Jeffrey B. Tener
Interest Arbitrator**

Appearances

**Borough of Middlesex:
Mark S. Ruderman, Esq.
Ellen M. Horn, Esq., on the Brief**

**PBA Local 181:
Robert M. Gluck, Esq.**

OPINION AND AWARD

Background and Procedural History

The parties engaged in direct negotiations for a successor to their January 1, 1998 to December 31, 2001 agreement on October 3 and 24, November 18 and December 1, 2001 and February 20, 2002. Therefore, they jointly filed a Petition to Initiate Compulsory Interest Arbitration with the Public Employment Relations Commission ("PERC") on April 2, 2002. By letter dated April 17, 2002, the parties were notified by letter from PERC that I had been appointed as the arbitrator in accordance with their mutual request. I held a mediation session with the parties on July 20, 2002 and it became apparent that a voluntary agreement could not be reached.

Hearings were held on December 18 and 19, 2002. Following receipt of the transcript, both parties filed post-hearing briefs. These were received by March 28,

2008. On April 11, 2003, the PBA advised me that it was not going to exercise its right to file a reply brief and the hearing was deemed closed as of that date.

As set forth in separate letters to PERC, the parties agreed to extend the time for the issuance of a decision in accordance with N.J.A.C. 19:16-5.9 to May 27, 2003.

This proceeding is governed by the Police and Fire Public Interest Arbitration Reform Act, P.L. 1995, c. 425, which was effective January 10, 1996. The parties did not agree to an alternative terminal procedure. Therefore, the procedure in this case is conventional arbitration. The arbitrator is required by N.J.S.A. 34:13A-16d(2) to “separately determine whether the total net annual economic changes for each year of the agreement are reasonable under the eight statutory criteria in subsection g. of this section.”

The parties agree that this bargaining unit at present consists of one captain, two lieutenants, six sergeants and 22 patrolmen (four of whom have been designated as corporals; this is an assignment and not a rank), a total of 31 officers.

Statutory Criteria

The statute requires the arbitrator to:

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

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

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

conditions of employment of other employees performing the same or similar services and with other employees generally:

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

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

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

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

(4) Stipulations of the parties.

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

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

designated by the governing body in a proposed local budget.

(7) The cost of living.

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

Final Offers

Borough of Middlesex The Borough's final offer includes both economic and non-economic issues.

The economic issues are the following:

1. Article V - Base Salaries:
 - a. 1/1/02 - 3%
 - b. 1/1/03 - 3%
 - c. 1/1/04 - 3%
 - d. 1/1/05 - 3%
2. Article V - Salaries: All employees hired after January 1, 2003 shall work a ten equal step salary guide with a starting salary of \$28,000 frozen for the life of the contract.
3. Article VII - Clothing. The Borough proposes to change section 2, paragraph 1 to read:

Upon determination by the Chief of Police that a uniform, wrist watch, wide glass/contact lenses have been damaged while in the performance of the officer's duty, except in the opinion of the Chief of Police such damage is due to negligence by an omission or commission of the employee, the Borough shall pay the affected employee the following amounts in addition to the regular clothing allowance.
4. Article VIII - Holidays. The Borough proposes to delete paragraph 2.
5. Article XV - Retention of Benefits. Deletion of article.

6. Article XIII - Insurance Policies. Employer reserves the right to change insurance carriers so long as "substantially similar" benefits are provided.
7. New Article - Fully Bargained. The Borough proposes to include this new article with the following language:

This agreement represents and incorporates the complete and final understanding and settlement by the parties of all bargainable issues which were or could have been the subject in negotiations. During the term of this Agreement, neither party will be required to negotiate with respect to any such matter, whether or not covered by this Agreement, and whether or not within the knowledge or contemplation of either or both parties at the time the negotiators signed this Agreement.

The non-economic issues are as follows:

1. Article III - Grievance Procedure. The Borough proposes to include the following language:

The arbitrator shall have no authority to add to or subtract from the agreement. The arbitrator shall be bound by the applicable laws of the State of New Jersey and the laws of the United States in decisions of the courts of the State of New Jersey and courts of the United States. The arbitrator must address only the issues submitted to arbitration and shall not have the authority to determine any other issues not so submitted, nor shall the arbitrator render observations or declare opinions which are not essential in reaching a determination. The parties direct the arbitrator to decide, when asked, as a preliminary question, whether he/she has jurisdiction to hear and decide the matter in dispute. In rendering his/her decision, the arbitrator shall indicate his/her findings of fact and reasons for making the award.

2. Article X - Sick Leave. Specify that employees may take sick leave pursuant to statute for up to one year time. ("Mere codification of current practice.")

3. New Article - Management Rights (As set forth fully in the Borough's Fair and Final Offer, Exhibit B-1)

PBA Local 181 The final offer of the PBA also includes economic issues and one non-economic issues.

The economic issues are as follows:

1. Term of agreement – four years: January 1, 2002 to December 31, 2005.
2. Salaries (retroactive to January 1, 2002):
 - Patrol – 5% annually.
 - Sergeants – 5 ¼% annually.
 - Lieutenants – 5 ½% annually.
 - Captains – 5 ¾% annually.
3. Corporal stipend – 5 ¼% annually.
4. Longevity – 2% for each five years of service, beginning after five years, maximum of 8%.
5. Call In Time – Minimum of three hours.
6. On Call Compensation - \$1,500 per year for detective bureau personnel at the rank of sergeant and below.

The non-economic issue is as follows: Include the current schedule in the contract. (The PBA Fair and Final Proposal includes specific items.)

Argument of the PBA

The PBA called two witnesses and submitted numerous exhibits to support its position on the issues in dispute in this proceeding. It called Jim Bacon, President of Local 181, and Thomas Banker, a consultant in management, finance, systems and development and lecturer at Columbia University. Mr. Banker prepared a report assessing the financial condition of the Borough. The PBA provided collective

bargaining agreements from a number of communities it regards to comparable to the Borough. From these, it provided comparative data on a variety of issues including salaries for patrol officers, corporals, sergeants, lieutenants and captains; the number of steps in the salary guides; salaries and increases in the selected municipalities; data on longevity; rank differentials; detective stipend; call in provisions; shift differentials; inclusion of the work schedule in the contract; sick leave; retention of benefits; and management rights. It also submitted data showing the UCR crime index summary; an annual activity summary; top base salaries plus longevity in Middlesex County from 2000 through 2005; information on the settlement negotiated by the Borough's teachers with the Board of Education; information about the library renovation and construction; receipts from municipal court; State PBA data on the average size of voluntary settlements and conventional interest arbitration awards; an article on the expected recovery in New Jersey; and comparative crime data in the municipalities selected as comparable to Middlesex Borough.

Bacon testified that the officers enjoy an excellent relationship in the Borough, in part because of the success and effectiveness of community policing and in part because of the wide range of activities which they assist and support including DARE, PRIDE, a bike rodeo, a school resource officer, etc. He said that they are aggressive in quality of life areas which contributes to the respect and appreciation they have achieved.

This is supported by an examination of the UCR Crime Index Summary which compares the crime rate in Middlesex Borough with the rates in Middlesex, Union and Somerset counties. The rate in the Borough has consistently been lower than the rate in any of the three counties and is approximately half of the rate in Middlesex County. The violent crime rate is even lower and closely parallels the rate in Somerset County. Looking specifically at crime statistics in ten municipalities deemed comparable by the

PBA, as discussed below, the rate of crime per 1000 stood at 13.9 in 2001, a figure which is less than half of the Middlesex County average and below all rates except that in South Bound Brook which had a rate of 6.5.

Even more impressive, according to Bacon, is the clearance rate for crimes. The officers clear approximately 50% of the reported crimes each year, an excellent record. The clearance rates in Middlesex and Somerset Counties are under 18% and in Union County it is only 14%. This clearance rate has been maintained in spite of a large increase in the number of calls for service which totaled approximately 17,000 in 2001.

The PBA selected ten municipalities for comparative purposes. Two of these, like Middlesex, are in Middlesex County (Piscataway and Dunellen); one is in Union County (Plainfield); seven are in Somerset County (Bound Brook, Bridgewater, Green Brook, Manville, North Plainfield, Somerville and South Bound Brook). Six of those actually share borders with the Borough: Bridgewater, Bound Brook, Dunellen, Green Brook, Piscataway and South Bound Brook. Bacon testified that the municipalities were selected primarily on the basis of geographical proximity. The other four – Manville, North Plainfield, Plainfield and Somerville – share the feature of sitting along a transportation corridor which includes Routes 22 and 28 as well as the New Jersey Transit bus and rail lines and the Conrail tracks.

Bacon argued that the municipalities selected were the best basis for comparisons because they are the ones with which these officers work on mutual aid calls. This is said to be more important than population, number of officers, density, per capita income or other possible measures of comparability. Bound Brook, like Middlesex Borough, suffered damage from Hurricane Floyd. It has lower per capita income but is otherwise said to be very similar to the Borough. Bridgewater is more affluent and less densely populated with a larger land area and much higher police salaries. Dunellen is said to be very similar to Middlesex Borough in many ways although the officers in

Dunellen are more highly compensated. Green Brook, on the Borough's northern border, also had storm damage and is otherwise similar, although its income is higher. Manville is said to be very similar to the Borough. North Plainfield is only one mile from the Borough and shares Route 28 and the New Jersey Transit lines but has a higher density with lower per capita income and a higher tax rate.

The PBA is seeking to increase the differential between ranks by proposing slightly higher percentage increases for the superior officer ranks: 5 ¼% for sergeants, 5 ½% for lieutenants and 5 ¾% for captains. It also seeks to apply the 5 ¼% rate increase to the corporals who presently receive only \$805, an amount which does not reflect the downside of being a corporal because of the loss of seniority for vacations, holidays and shift selection.

Bacon discussed longevity. Officers hired before 1984 receive longevity but this benefit was discontinued for officers hired in 1984 and later. At present, only the seven most senior officers (of 31) receive longevity. One of the proposals of the PBA is to reestablish longevity. This is a benefit which is widely enjoyed in comparable communities and its absence in Middlesex Borough has the effect of reducing the relative standing of the officers in the Borough in terms of overall compensation.

The PBA also is seeking an increase in the call-in time from the current two hours to three hours. He said that this does not often come into play because officers called in usually remain more than two or three hours but Bacon testified that a minimum of three hours would more reasonably reflect the time actually spent. The PBA notes that two of ten municipalities it regards as comparable pay a minimum of four hours for call-in and two others pay a minimum of three hours for call-in.

The PBA also is seeking the establishment of on-call compensation for those in the rank of sergeant and below who are assigned to the Detective Bureau. These officers typically work eight hour days, Monday to Friday, but they are subject to being

called and must be available if needed to investigate a crime, do technical work or investigative work, etc. There are three or four officers who would be affected. The PBA is asking that they receive on-call compensation of \$1,500 per year in recognition of sharing the on call responsibility. The PBA notes that detectives in Bridgewater receive a stipend of \$4,500, those in Green Brook receive \$2,500, those in Manville receive \$1,550, and those in Piscataway receive \$1,000 plus a shift differential. Detectives in Bound Brook receive an additional 4.2% in salary.

Bacon prepared charts showing the salaries in the ten comparable municipalities as well as Middlesex Borough for top patrolmen, sergeants, lieutenants and captains. He also provided information on longevity and the number of steps as well as the salaries and salary increases, to the extent available, for 2002, 2003, 2004 and 2005.

The number of steps ranges from a low of four in South Bound Brook to a high of ten in Bridgewater. Manville and North Plainfield have eight. None of the others have more than seven and Bound Brook has five, Green Brook has six and Plainfield has six.

The salary for a top patrolman in Middlesex Borough in 2001 was \$62,518. Five of the municipalities had higher rates and five had lower ones. When longevity is included, however, as the PBA asserts it should be, because it is pensionable compensation, then Middlesex Borough ranks ninth of the eleven communities. Eight of the ten comparable communities have longevity.

Reported salary increases were 3.5% and 3.75% in Bound Brook in 2002 and 2003; 13.6%, 4% and 4% in 2002, 2003 and 2004 in Bridgewater;¹ 4% each year in 2001,² 2002, 2003 and 2004 in Dunellen; 10.5%, 8.2% and 5% in Green Brook in 2001, 2002 and 2003; 4% in Manville in 2001; 4% in 2002, 2003, 2004 and 2005 in North Plainfield; 3.5/5%, 3.4%, 3.9% and 3.9% in Piscataway in 2002, 2003, 2004 and 2005;

¹ The 13.6% included adding holiday pay to base salaries.

² The increases in Middlesex Borough in 1998, 1999, 2000 and 2001 were 3.6% each year.

3/2% in Plainfield in 2002; 4% in Somerville in 2002; and 5.3% and 4% in South Bound Brook in 2002 and 2003.

Even with a 5% increase, as proposed by the PBA, salaries in Middlesex Borough would be well below the computed averages. The top patrolman salary in 2002 would be \$65,644 against an average, with longevity, of \$69,796 (based on nine settlements). In 2003, the salary in Middlesex Borough would be \$68,926 but the average would be \$73,160 (based on seven settlements). In 2004, the figures would be \$72,372 versus \$80,136 (based on four settlements) and in 2005 they would be \$75,991 versus \$85,607 (based on two settlements). This is said to show that the 5% increases proposed by the PBA are fully justified and necessary to maintain the relative position of these officers.

The PBA also calculated the salaries assuming a 4% increase and the return of longevity. With those assumptions, the top rate for a patrolman with 20 years of service would be \$70,219 in 2002, \$73,029 in 2003, \$75,950 in 2004 and \$78,988 in 2005. The corresponding figures for the comparable municipalities are \$69,796 in 2002, \$73,160 in 2003, \$80,136 in 2004 and \$85,607 in 2005.

Similar data was provided for the superior officers. The 2001 average for sergeants in the ten communities, inclusive of longevity, was \$73,186 whereas the figure in the Borough was \$67,256. With 5 1/4% increases the figures are \$76,503 in the comparable communities (based on eight settlements) in 2002 and \$70,787 in the Borough; in 2003, the figures are \$80,384 in the comparable communities (bases on six settlements) and \$74,503 in the Borough; in 2004, the figures are \$92,020 in the comparable communities (based on three settlements) and \$78,415 in the Borough; and

in 2005, the figures are \$96,195 in the comparable communities (based on two settlements) and \$82,531 in the Borough.³

Assuming a 4% increase plus the return of longevity, the salary for a sergeant with 8% longevity would be \$75,541 in 2002, \$78,563 in 2003, \$81,706 in 2004 and \$84,974 in 2005. These compare with salaries in the comparable municipalities of \$76,503 in 2002, \$80,384 in 2003, \$92,020 in 2004 and \$96,195 in 2005.

The 2001 salary for a lieutenant in the Borough (excluding longevity) was \$71,912. The average in the comparable municipalities, with longevity, was \$82,482. Assuming 5 ½% increases in the Borough, the figures would increase to \$75,867 in 2002 against an average in comparable municipalities of \$85,538 (based on eight settlements), \$80,040 in 2003 against an average in comparable municipalities of \$88,639 (based on six settlements), \$84,442 in 2004 against an average in comparable municipalities of \$102,591 (based on three settlements) and \$89,086 in 2005 against an average in comparable municipalities of \$107,239 (based on two settlements).

With a 4% increase plus the return of longevity, the salary of a lieutenant in 2002 with 8% longevity would be \$80,771, in 2003 it would be \$84,002, in 2004 it would be \$87,362 and in 2005 it would be \$90,857. These figures compare with \$85,538 in 2002, \$88,639 in 2003, \$102,591 in 2004 and \$107,239 in 2005 in the comparable municipalities.

Captains earned \$76,562 without longevity in Middlesex Borough in 2001. The average in comparable municipalities, with longevity, was \$97,407 (based on six reported salaries). With annual increases of 5 ¾% in the Borough, the figure would increase in 2002 to \$80,964 but the average in comparable municipalities would be

³ The PBA also noted that, because there are no longer dispatchers in the Borough, a sergeant generally has to function as a dispatcher in addition to performing supervisory duties. This has the effect of taking a uniform off the street and this has a negative impact on productivity while adding to the responsibility of sergeants.

\$103,820 (based on five settlements). In 2003, the Borough captains would receive \$85,620 and the average in comparable municipalities would be \$115,441 (based on three settlements). The 2004 and 2005 figures in the Borough would be \$90,543 and \$95,749 whereas the averages in comparable municipalities would be \$120,625 and \$126,039 (based on two settlements each of those years).

Assuming a 4% salary increase and the return of longevity, the salary for a captain with 8% longevity would be \$85,994 in 2002, \$89,434 in 2003, \$93,012 in 2004 and \$96,732 in 2005. These compare with salaries of \$103,820 in 2002, \$115,441 in 2003, \$120,625 in 2004 and \$126,039 in 2005 in the comparable municipalities.

The PBA also submitted data on salaries for patrol officers in Middlesex County as compiled by the State PBA. This shows a top salary, including longevity, of \$68,809 in 2001, \$72,140 in 2002, \$75,670 in 2003, \$80,645 in 2004 and \$81,870 in 2005. It also submitted State PBA data which show that the average voluntary settlement in 2002 was 4.83%, in 2003 it was 4.83% and in 2004 it was 4.68%. Conventional awards those same years were 4.29%, 4.31% and 4.5%. Contracts on file with the State PBA reflect average increases of 4.1% in 2002, 4.05% in 2003 and 4.46% in 2004.

The PBA noted that the teachers in the Borough received increases of 4.3% 2001-02, 4.7% in 2002-03 and 4.9% in 2003-04.

The PBA calculated rank differentials in comparable municipalities. The rank differentials in Middlesex Borough between patrol officers and sergeants was 7.58%; that between sergeants and lieutenants was 6.92% and that between lieutenants and captains was 6.47%. In the comparable municipalities the sergeant differential was 11.54%; the lieutenant differential was 10.01% and the captain differential was 12.54%. This is said to show the need and justification for larger percentage increases for the superior officers in the Borough.

In justifying its proposal to increase the corporal stipend, the PBA noted that seven of the ten comparable municipalities pay officers for working out of rank. That does not happen in Middlesex Borough. Instead, the assignment of corporal has been created and this was intended to be a rough approximation of the amount of time those senior patrolmen serve as shift commanders (which in other municipalities is compensated with out of rank pay).

Six of the ten comparable municipalities have a retention of benefits provision in their contracts and nine of the ten have management rights articles.

The PBA notes that there is one less captain than usual. A captain retired effective January 2001 and was not replaced by another captain. The Borough did hire two additional officers at the starting rate of \$28,799 and they moved to the probationary rate of \$43,173 upon completion of the Academy.

The Borough has decided to alter and expand its library at a cost of \$1,800,000 and it received a grant of \$325,000 toward that cost. That still leaves a large municipal expenditure which is said to reflect the availability of funds for items the Borough wants.

The PBA referred to the amount of court fines which have gone to the Borough over the years, a figure that generally has been increasing. The total was \$391,000 in 1999 and \$446,000 in 2000. It was down to \$429,000 in 2001. The decline is due to the loss of dispatchers and the need to take an officer off the street to handle dispatch, according to the PBA. Also, the laptops were lost and they provided a very efficient means of increasing productivity. Finally, a change in the philosophy of the prosecutor is said to have had a negative effect on the generation of income from this source.

Banker's analysis considered both what he called the "economic condition" of the Borough, which reflects its underlying ability to produce wealth and thus provides the framework for it to bear various levels of burden, and what he called its "fiscal condition," which deals with how good a job the Borough is doing in managing whatever economic

conditions exist. Thus, he said, a municipality with relatively weak economic characteristics, if well-managed fiscally, could still be in a position to continue financial activity that it otherwise could not afford to do.

His conclusion, based on a review of the two final offers, was that the Borough does have the ability to pay the amount in dispute between the parties over the course of the new contract. He placed a value of \$25,000 on each 1% difference, an amount which he claimed could readily be accommodated by the taxpayers without an undue burden or a significant reduction in services.

He described the Borough as a classic middle class community with average demographic and economic characteristics. The age and ethnicity of its population are typical. Its income is very close to the average for the State, County and region. Assessed valuations are average. Levels of poverty and unemployment are low. The residents are neither extremely young nor extremely old.

Most of the community lives in detached housing. Only 2% of the housing is in the form of multi-family dwellings. The residents are not made up of renters. About 20% of the ratable base is commercial and industrial, a level he deems reasonable for an older suburb. There are no extremely large taxpayers so this is not a company town which is vulnerable to a major shock if that company has problems. In fact, the top ten employers provide only 6.1% of the total tax base. The ratable base, measured by assessed valuation per capita, is only slightly below average. The municipality is virtually fully developed.

Banker said that the Borough is in a favorable location from a long-term stability viewpoint because it is in Middlesex County which led the State in growth in the 1990's and it has good access to major transportation corridor.

Banker then examined the tax burden in the Borough in relation to Middlesex County and the nearby comparable communities, looking at the total tax levy and the

municipal levy and the impact of those levies. The overall tax rate in the Borough is what Banker called slightly or modestly higher than the average for the County⁴ and the State but not by what he regards as an unusual amount for an older suburb. The levy per capita, he noted, is slightly below the County average. The equalized value per capita is slightly below the average for the County but not to the degree that would indicate any significant distress. The Borough is solidly in the middle, in his view.

Looking at comparable municipalities, Banker noted that the equalized tax rate in the Borough was lower than that in North Plainfield, Somerville, South Bound Brook and Plainfield. It is very close to the rate in Dunellen. It exceeds the rates in Piscataway, Bound Brook, Bridgewater, Green Brook and Manville. He noted also that both Bridgewater and Green Brook have twice the average for Middlesex County in equalized valuation per capita.

Looking at the municipal levy, the Borough has a higher than average equalized tax rate. It falls in the third quartile in the County.⁵ For the comparable municipalities, the Borough has an above average equalized tax rate for the municipal levy.

Banker also examined what he calls the "tax impact" which is a comparison of the total levy per capita and the income per capita. The levy is 7.1% of per capita income in the County but a slightly lower 6.7% in the Borough. This shows that the tax burden in the Borough is more affordable than it is on average in the County. The 6.7% figure is lower than it is in any of the three counties in the region and in the State. Among the comparable communities, the 6.7% figure in the Borough is lower than the corresponding figure in South Bound Brook, Somerville, Green Brook and Piscataway.

Looking at the municipal levy only, the Borough figure is 1.8% compared to a Middlesex County figure of 1.6% which means that for this portion of taxes, the Borough

⁴ The Borough's ranking is 17th of 25 municipalities in Middlesex County.

⁵ It is 38% above the County average, he calculated on cross-examination.

is slightly above the county average. The Borough figure was identical to the statewide average in 2001 and 2000, the last two years for which figures are available. Of the comparable communities, three had higher percentages than the Borough and Dunellen's 1.7% figure is very close to that in the Borough.

Overall, Banker concluded that there is a reasonable tax base in the Borough and that, relative to the economic condition of the people, it is not asking an extraordinary amount from the taxpayers. The impact is said to be at or slightly below what is typical of the State's municipalities.

Turning to financial data, he viewed the Borough as being in a very sound fiscal condition. Its cash position is strong, starting the year with approximately \$2,000,000. There has been a steady surplus averaging \$1,100,000 in the last five years and not all of the surplus has been used in the next year's budget. The Borough used 86% of surplus in 2002, a figure which has gone up in the last three years, although it stood at over 90% in 1998. The tax collection rate has been excellent, exceeding 98% in each of the last five years. The delinquent tax collection rate also is high, at over 67% in 2001. Very few liens have been sold and this is evidence of economic stability.

Budgeting practices are conservative and sound, as can be seen by comparing revenues anticipated and revenues collected. Similarly, there have not been overexpenditures or emergency appropriations. The years end with significant balances. In 2001, revenues exceeded unspent appropriations by over 5.5% and the figure has been even higher in earlier years. Another measure of the conservative and sound fiscal management in the Borough is the almost total absence of deferred charges. These have averaged an insignificant \$19,000 in the last five years and the vast majority of that is special emergency appropriations which permits the costs of certain extraordinary events to be spread over more than one year.

The level of debt has been fairly level and substantially less than statutorily permitted, standing at about one third of the permitted maximum. Additionally, the Borough has been very aggressive in paying off debt so that payments for debt will fall off dramatically after 2008 and be almost eliminated by 2010.

Banker noted that the consumer price index increased by an average of 2.17% annually from 1998 to 2002.

The Borough has no problem living with the budget cap restraints. Except in 1999, when the Borough appropriated the full amount permitted under the Cap Law, the Borough has budgeted less than the amount permitted. Further, in every year, including 1999, it has spent less than was appropriated. Thus, there is no cap difficulty in the Borough. Further, the maximum cap has increased slightly more than the CPI so there are no constraints.

Over the last five years, the equalized valuation has increased by 9.89% which is greater than both the CPI and the equalized tax rate, which has gone up by 4.83%.

The PBA argues that the only really relevant criterion among the eight listed in the statute is the financial impact on the governing unit, its residents and taxpayers. The Borough essentially has said that the PBA deserves the increases which it has proposed but that the Borough cannot meet that demand. Essentially, the Borough has said that it can afford 12% over four years but not 20% plus over four years. The difference is approximately \$50,000 per year since, as Banker testified, 1% equals \$25,000.

Assuming that the arbitrator determines that the Borough can afford to meet the salary and other demands of the PBA, then other criteria come into play including comparables, overall compensation and increases in the cost of living.

In responding to the Borough's position regarding the financial impact, the PBA cites the testimony and report of Banker who examined the economic and fiscal conditions of the Borough and concluded that the Borough was in a good position both

economically and fiscally. The Borough can meet the demands of the PBA from both an economic and fiscal standpoint without a significant reduction in services or significant increase in the burden on taxpayers.

The years analyzed by Banker began before Hurricane Floyd so the impact of that event was considered and reflected in the numbers which he reviewed.

The PBA notes that Steven Glickman, the Borough's expert, conceded that the Borough does have the ability to pay the increases proposed by the PBA:

And I think what the Borough will readily admit is on a very, very narrow basis the Borough does have the ability to pay the PBA's position. There is no dispute. There's room within the cap; the budget is large enough to pay it. (Tr. 196-197)

The amount in dispute is only \$50,000 per year so the PBA is not seeking to compel the Borough to utilize much more of its budget for police salaries. In fact, the additional amount represents less than 1% of the municipal budget.

The PBA notes that the Borough has saved a large amount of the difference between the parties because it failed to replace a captain and a corporal who retired. These vacancies existed from January 2001 and continue to exist.

The Borough, in looking at revenue sources, pointed out that it did not receive \$350,000 in extraordinary State aid in 2002 that it received in 2001. It only received \$100,000 in 2002. While this is a reduction, the PBA asserts that it is a reflection of the fact that the Borough was in sound fiscal condition, a fact conceded by Glickman who said: "Nobody is going to say that the Borough is not in, and I'll put this in quotes 'sound fiscal position'..." (Tr. 202) This aid was intended to help the Borough deal with the troubles caused by Floyd. It is the position of the PBA that the reduction reflects the health of the Borough and its recovery and not simply a decline in the State's finances.

The PBA points out that the Borough did not specifically or credibly claim that to grant the demands of the PBA would result in higher taxes or a reduction in services. It

notes that the Borough is expanding its library at a cost of about \$1,500,000. This is said to indicate that the Borough does have the money and is not financially troubled. It is were not in a sound position, it would not have undertaken this project.

The PBA briefly considered other factors, although it noted that the Borough has made this case dependent in the financial impact criterion. The parties differed in the communities they selected as comparable. The Borough chose five municipalities which are similar in size to the Borough. The PBA selected ten contiguous or nearby municipalities but six of those - North Plainfield, Green Brook, Bound Brook, South Bound Brook, Manville and Dunellen - are similar in size to the Borough. Dunellen was on the list of both parties. Conceding that four of the municipalities of similar size selected by the PBA are not in Middlesex County, the PBA points out that none of the municipalities selected by the Borough was affected by Hurricane Floyd. Because of the emphasis placed by the Borough on the impact of Hurricane Floyd as its reason for not being able to meet the position of the PBA, the PBA asserts that it is curious that the Borough has not selected other municipalities that experienced Floyd. The PBA's comparables did include municipalities which were harmed by Floyd.

The PBA also notes that the Borough excluded longevity in its comparisons. The municipalities selected by the Borough as comparable all provide longevity but the Borough does not. Longevity is pensionable and disposable income which must be included in any valid comparison. When longevity is included, the PBA contends that the salaries earned by the Borough's officers drop to the bottom even of the Borough's selected comparable communities. Thus, for example, the top rate for a patrolman in 2001 in the Borough was \$62,518. In Dunellen, it was \$62,306 without longevity but \$67,293 with longevity. This is almost \$5,000 above the figure in the Borough.

By including longevity, the comparisons are more accurate and reflect the total compensation received by the officers. When longevity is considered, the PBA asserts

that using either the Borough's or the PBA's comparable municipalities, it is apparent that the proposal of the PBA should be awarded. This is a true "apples to apples" comparison. The PBA notes it will remain below Dunellen, a municipality which the Borough accepts as comparable, even if its salary proposal is awarded.

The PBA points out that most of the municipalities treat holiday pay the same as does the Borough. Only Manville and Bridgewater include holiday pay in base pay. Also, according to the PBA, officers in those towns who work on holidays receive time and one-half. In any event, the rankings are not affected by the inclusion or exclusion of holiday pay.

The PBA also argues that the cost of living factor favors the position of the PBA, as discussed by Banker in his testimony and report.

While the PBA does not object to having the steps equalized, it does object to any increase in the number of steps on the salary guide, as proposed by the Borough. There is said to be no demonstrated need for an increase in the number of steps and the comparable communities show that the number of steps in the Borough is similar to those in those communities, including those selected by the Borough.

There is said to have been no demonstrated need to delete the compensatory time provision in Article VIII, Holidays. Also, the Borough failed to justify its proposal to remove the past practices article, Article XV. This is a streamlined contract which does not include all terms and conditions of employment. The parties have lived with this agreement with minimal problems. The PBA is unwilling to give up the past practices provision in the absence of an elaboration of all existing rights. Such a change would potentially erode the rights of its members.

The PBA also will not agree to the Borough's proposal that it be permitted to change insurance carriers provided the benefits are "substantially similar." That

language is too general. All Borough employees now are covered by the State Health Benefits Plan. This should not be changed.

The PBA asserts that Bacon justified the need for an increase in both call-in pay and on-call compensation.

While it is willing to accept the Borough's non-economic proposals regarding the grievance procedure and management rights, it is not willing to accept any change in the sick leave provision. Sick leave has worked well and there is no allegation of abuse or any other problem. This should not be changed.

The PBA does want to include the existing work schedule in the contract. This will simply formalize what currently exists.

For these reasons, and based on the testimony of its witnesses and its exhibits, the PBA asks that the arbitrator award the changes which it has proposed and, except as indicated, to reject the proposals of the Borough.

Position of the Borough

To provide a basis for comparison, the Borough calculated the costs of the proposals of the PBA and those of the Borough. The PBA's proposals would cost 8.69% in 2002, 10.10% in 2003, 9.32% in 2004 and 9.45% in 2005. These figures include not only the basis annual 5% salary increases but also the cost of compounding those increases, a total 1.55% over the four years. The proposal for higher increases for superior officers adds .16% in 2002, .27% in 2003, .43% in 2004 and .6% in 2005. Increments cost 1.33% in 2002, 2.19% in 2004, 1.15% in 2004 and .84% in 2005. The longevity proposal would cost 1.82% in 2002, 2.26% in 2003, 2.35% in 2004 and 2.62% in 2005. The Borough could not place a cost on the PBA's proposal to increase call-in pay or on-call compensation.

The cost of the Borough's proposal was calculated to be 4.47% in 2002, 5.33% in 2003, 4.29% in 2004 and 3.98% in 2005. These figures include the proposed 3% annual salary increase, compounding costs which total .55%, and the cost of increments: 1.33% in 2002, 2.19% in 2003, 1.15% in 2004 and .84% in 2005.

The Borough notes that savings from freezing the starting salary are speculative because they will depend upon the number of officers hired. This is true of its proposal to increase the number of steps, although it notes that this will not affect any currently employed officers.

The PBA has accepted the Borough's clothing proposal and this will not result in any savings to the Borough. The deletion of the compensatory time provision from the holiday article may result in savings but this, too, is speculative because it is dependent upon the number of "unusual occurrence/holidays" and this cannot be known. Savings from the Borough's insurance proposal are said to be too speculative to calculate. The same is true of its proposals to delete the retention of benefits provision and to add a fully bargained provision and management rights provision, both of which the PBA has accepted. The Borough points out that management rights provisions are common in collective bargaining agreements, as the PBA's submission demonstrates.

When the two packages are fully costed out, the total difference between the positions of the two parties was calculated to be \$436,668 over the four years. The additional cost was \$41,024 in 2002, \$82,680 in 2003, \$130,466 in 2004 and \$182,498 in 2005. These are very large amounts. The effect of awarding the PBA's proposals would be to require an ever larger share of the municipal budget to be devoted to police salaries and benefits and this reduces the ability of the Borough to provide other essential services.

Conventional arbitration is the procedure to be applied in this proceeding as provided in the 1996 amendments to the interest arbitration statute (the "Reform Act")

and the arbitrator must determine whether the “total net annual economic changes for each year of the agreement are reasonable under the eight statutory criteria.” “Due weight” must be given to the factors judged relevant and not only must relevant factors be identified but any deemed not to be relevant must be explained.

The legislature, in enacting the Reform Act, was guided by the decisions of the New Jersey Supreme Court in Hillsdale PBA Local 207 v. Borough of Hillsdale , 137 N.J. 71 (1994) and Township of Washington v. New Jersey State Policemen’s Benevolent Association, Inc., Local 206, 137 N.J. 88 (1994).

The Borough reviewed each of the statutory criteria. The first is the interests and welfare of the public and this must include a consideration of the limitations imposed by the Cap Law. According to the Borough, this factor requires a careful balancing between fairness to employees, thereby avoiding labor strife, and maintaining a stable level of governmental services. An array of frivolous government services cannot be provided at the expense to fairness to the employees but neither should over-reaching employees be permitted to reduce essential government services. As stated by the Supreme Court in Hillsdale 137 N.J. at 82, the public is a silent party to these proceedings, notwithstanding their adversarial nature. The effect of the award on the citizens and taxpayers must be considered by the arbitrator.

The Borough considered comparability and overall compensation together. More than comparisons with other police departments is required. The statutory changes are said to reflect a legislative intent to place more emphasis on comparisons of private employees and public employees in general and less on comparisons with comparable police officers. Further, comparisons must be made with other employees in the same jurisdiction. Settlements with these employees can create an internal pattern and, as cited arbitration decisions indicate, arbitrators recognize that a deviation from such an

internal pattern adversely affects the morale of other employees and undermines future negotiations.

Looking first at private sector wage increases, the Borough cites the U.S. Compensation Planning Survey which reported base pay increases of 3.4% in the first year of contracts for 2002 and projected increases of 3.8% for 2003. These figures demonstrate the reasonableness of the Borough's salary proposal and the unreasonableness of that of the PBA.

A very significant factor is the cost of health insurance. In the private sector, employers are reducing health insurance benefits and requiring employees to contribute to their cost. Most private sector employees pay a share of the premium costs. Further, these costs have been increasing dramatically. The Borough spent about \$130,000 more on health insurance in 2002 than it budgeted in 2001 and it projects an increase of \$207,587 or 21.66% in 2003. The Borough has absorbed all of these increases. It continues to provide a full range of health benefits to its employees and their dependents at no cost to the employees.

Because of the increasing costs, the Borough is seeking the right to change insurance carriers as long as it provides substantially similar benefits. This change would permit the Borough to more closely parallel developments and changes in the private sector in health insurance coverage.

The next comparison is with public employees in general. As set forth in a report published by the Public Employment Relations Commission of 35 voluntary settlements in 2001 with police and fire department employees, the average wage increase was 3.91%, a figure well below the 5% demanded by the PBA. The average award in that year was even less at 3.75%. The Borough argues that for other reasons unique to the Borough, particularly the settlement with its other union and the after-effects of Hurricane Floyd, the salary increase in the Borough should be even less than the 3.75% average.

The third comparison group is public employees in the same or comparable jurisdictions. The other group of employees in the Borough which is organized is the Department of Public Works employees. Those employees, represented by Local 286, United Service Workers, settled a four-year contract with the Borough in May 2002 which provides for salary increases of 3% in 2002, 3% in 2003, 3.5% in 2004 and 3.5% in 2005. This created a pattern which must be fully considered by the arbitrator in rendering his decision in this proceeding, as PERC has stated. Under the Borough's proposals, because the salaries are much higher for police officers than they are for DPW employees, the dollars generated by the Borough's proposal will significantly exceed the dollars received by the DPW employees.

The Borough argues that comparisons with other public employees in comparable jurisdictions is best done by comparing Middlesex Borough with four other municipalities in Middlesex County: Dunellen, Highland Park, Metuchen and South River. The demographic similarities among these municipalities support their selection for comparative purposes.

The selected Middlesex County communities share a number of features with the Borough. They all are reasonably close in land area. Middlesex is the largest at 3.45 square miles and Highland Park is the smallest with 1.8 square miles. They are all well below the County average of 12.44 square miles. The populations of the four are very similar at close to 13,000, again well below the County average of almost 27,000. They have similar ratables: \$433,140,700 in Metuchen, \$203,783,000 in Middlesex, \$193,634,200 in Highland Park, \$163,358,400 in South River and \$141,883,600 in Dunellen. Net valuation taxable is \$534,730,813 in Highland Park, \$491,371,751 in Middlesex, \$460,543,447 in Metuchen, \$361,437,761 in South River and \$147,127,479 in Dunellen. The County average exceeds \$1,274,000,000.

Furthermore, the selected communities all have a similarly small percentage of commercial property, from a high of 11.87% in Metuchen to a low of 7.09% in Middlesex Borough, meaning that they rely on residential land and the residents for taxes and tax increases. The percentage of residential land is 84.88% in South River, 82.1% in Dunellen, 78.68% in Metuchen, 74.09% in Middlesex and 73.4% in Highland Park. Also, are all highly developed with little vacant land, meaning that there is little potential for a growth in ratables. There cannot be much new construction. In Middlesex Borough, only 1.47% of the valuation is from vacant land.

Because of the similarities among the communities selected and because of the differences between Middlesex Borough and the other selected communities, on one hand, and, on the other hand, the larger municipalities in the County, the Borough did not compare the Borough with the entire County. The Borough cited a decision of Arbitrator Mitrani in South River,⁶ which is similar to Middlesex Borough, in which he rejected comparisons with the larger municipalities and selected instead those with similar demographic characteristics.

The Borough asserts that the comparables selected by the PBA are not comparable to the Borough. The PBA crossed county lines. The land areas of Bridgewater and Piscataway dwarf Middlesex Borough. The populations of Piscataway, Plainfield, Bridgewater and North Plainfield well exceed that in Middlesex Borough while that in South Bound Brook is only one-third that of the Borough. Further, the economic bases are different in terms of net valuation taxable, percentage of commercial and residential land as well as vacant land. In Somerville, 27% of the valuation is commercial land and it is 23.8% in Green Brook and 18.29% in Bridgewater compared to only 7.03% in Middlesex Borough. In Green Brook, 6.12% of the land is vacant compared to 1.25% in the Borough. The crime report classifications describe Middlesex

⁶ Docket No. AR-93-130 (November 29, 1993).

Borough as suburban whereas Somerville, Plainfield and Bound Brook are classified as urban centers. For all of these reasons, the Borough urges a rejection of the municipalities selected as comparable by the PBA and an acceptance of those identified by the Borough.

Using its comparable municipalities, the Borough asserts that the salaries and benefits received by its officers are above average in almost every category. Starting with salaries, the maximum 2001 figure was higher in the Borough than in the other four municipalities: Middlesex - \$62,518, South River - \$59,000, Metuchen - \$60,875, Highland Park - \$61,082, and Dunellen - \$62,307. The salary in the Borough exceeded the average by \$1,362 or 2.2%. Highland Park has settled for 2002 with a 3.5% increase and Metuchen settled for 3.75% in 2002 and 2003. Middlesex Borough will remain above those municipalities under the Borough's proposal.

The Borough provides a maximum of 32 vacation days and this is the most of any of the comparable communities and for days more than the average. Its thirteen holidays is right at the average.

The Borough seeks to remove the compensatory time provision from the holiday article. This led to an earlier grievance. While it was resolved short of arbitration, the Borough seeks to any further disagreements in this area.

The Borough provides a clothing allowance of \$1,400 annually and this is the most liberal of the comparable communities, exceeding the average by \$340 or 32.1%. Even among the communities selected by the PBA, the Borough's clothing allowance is the most generous.

Starting salaries in the Borough are above the average, thereby supporting the Borough's request to freeze starting salaries as a means of saving money on new hires, although the amount of savings cannot now be known. Also, the Borough wants to increase the number of steps. Two of the comparable municipalities have eight steps

and the Borough seeks to add, three steps, again to reduce costs. This will not affect current employees.

There is said to be no justification for an increase in call-in pay. Not only do two of the four Borough comparables but five of the ten PBA comparables provide a two hour call-in minimum. Further, as Bacon testified, it is "pretty rare" for an officer to be recalled only for two hours. This is said not to be a real issue.

The Borough urges a rejection of an increase in the rank differential as proposed by the PBA. Not only is the rank differential average within the comparable communities - 7.58% in Middlesex versus 7.6% in the comparables for sergeants and 6.9% versus 7.2% for lieutenants - but the proposal would cost the Borough \$26,700 over four years and those built-in costs would continue in the future.

The Borough currently provides unlimited sick leave to its officers. The statute, at N.J.S.A. 40A:14-137, limits "unlimited" sick leave to one year. The Borough asks that the statutory limit be adopted by linking sick leave to the statute. The Borough asserts that this is the current practice.

The Borough also is seeking the elimination of the retention of benefits provision from the contract. The benefits which are covered by that provision are not identified. This has the potential of leading to conflicts and disagreements between the parties. Furthermore, the Borough has developed an Employee Handbook and the Borough wants the provisions of that Handbook to prevail unless the collective bargaining agreement provides otherwise.

An interest arbitrator also must consider the lawful authority of the public employer in rendering an award. This includes a consideration of the limitations imposed by the Cap Law. That law restrains the authority of the employer by limiting overall budget increases, thus limiting its ability to provide wage increases. The intent of the law is to control the spiraling costs of local government in order to protect

homeowners. The law imposes a limit on increases in the tax levy. It does not impose a line by line limitation but only an overall limitation. The costs of an interest arbitration award are included within the Cap. Even if a municipality gets approval to enact an emergency appropriation, this only delays the problem to the following year. It is the responsibility primarily of the municipality to determine how to allocate its limited resources among various services.

The Borough notes that, at an average cost of 9.39% per year, the PBA's proposals would greatly exceed the index rate and force the Borough to raise taxes, reduce services, or both, in order to remain within permitted budget limits. The Borough elected not to pass an ordinance under which it could have gone to the 5% Cap figure maximum because this would have resulted in increased taxes for the taxpayers. Layoffs, which already occurred in the DPW, might be more widespread. It is said to be particularly important to consider the financial ramifications of the PBA's demands in light of the Borough's unique position. Hurricane Floyd caused significant damage. Over 212 properties experienced major damage and 26 homes were lost. This reduced the Borough's ratables.

The arbitrator also must consider the financial impact on the governing unit, its residents and taxpayers. As the Supreme Court made clear in Hillsdale, 137 N.J. at 85, this is not the same as "ability to pay." Simply raising taxes is not enough to satisfy the statutory criterion. There are many negative factors which the Borough cited. One is the increasing rate of unemployment. It now stands at 6%, a level not seen since 1994. Many manufacturing jobs have been lost and layoffs have been widespread. These have occurred in New Jersey - Lucent, Frigidaire and Federated Department Stores are but three examples - as well as nationwide. Indeed, in August 2002, the Borough laid off two workers in the DPW, the first budgetary layoffs in thirty years in the memory of Mayor Ronald Dobies. This caused a predictable outcry in the community.

The State's fiscal situation is getting tighter and 2002 saw the largest increase in property taxes in twelve years with increases averaging over 7%.

The decline in the stock market has had a major impact on the State's pensions which have lost billions of dollars. The PFRS pension holiday enjoyed by public employers has ended.

With its heavily residential base, increases in taxes mean that the increases must be borne by the residents of the community. While 65.32% of the land in the County is classified as residential, the figure in the Borough is a much higher 74.09%. Thus, there is a greater reliance on homeowners. All of this affects the ability of the Borough to fund the salary and benefit increases sought by the PBA.

Glickman prepared an extensive financial summary to support the Borough's position in this proceeding. He noted that the Borough had prepared its 2002 budget in accordance with the Cap Law. This permitted an increase in the current expense portion of the budget of 2.5%. The Borough could have appropriated \$8,829,633 when the Cap and Cap bank were considered but, exercising fiscal constraint and to minimize the impact of tax increases, it appropriated only \$8,490,028 or \$339,605 less than the permitted amount.

The Borough did budget less than the amount permitted under the Cap Law but it did this for good reasons. There are basically four revenue sources: surplus, State aid, one-shot deals and taxes. The Borough's surplus balance as of January 1, 2002 was less than it had been the previous January 1. Thus, this source of revenue declined. It does not expect that the surplus regenerated in 2002 to be sufficient to replenish the surplus. Municipal court revenue is less than expected and interest received is less than expected because of declining interest rates. Other things as well have occurred which have reduced the ability of the Borough to regenerate surplus.

The Borough applied to the State for \$350,000 in extraordinary aid but received only \$100,000. This loss had to be made up elsewhere in the budget. The Borough does not have any one-shot revenue sources. Therefore, all that was left to make up for the losses and to fund any increases in spending in 2002 was municipal taxes.

The Borough generally appropriated 3% for salary increases for all employees. For police salaries, 2002 appropriations exceeded 2001 expenditures by only \$39,296 or 1.62%. This occurred because of retirements and hiring replacements with lower salaries.

Glickman reviewed the Borough's expenditures through November 27, 2002 which was 92.3% of the year. With few exceptions, expenditures were on line with appropriations. Legal services were up because of the costs of this interest arbitration proceeding. Group health insurance costs are running slightly less than budgeted so that a surplus of \$16,978 is anticipated in this line item. A similar surplus is expected in the police salaries and wages item, as explained above. There is a surplus of \$16,014 in salaries for police officers and of \$43,600 for 911 dispatch since no dispatchers were hired.

Looking at 2003 and beyond, the Borough notes that the revenue side of the equation is not positive. Municipal court revenues will not be exceeded so this will not provide a source to increase the surplus. It expects to have less to add to the surplus from the revenue side.⁷ There are no one-shot deals and State aid in these times of increasing State deficits may not even be stable, let alone increased. The only thing left is to increase the tax burden on taxpayers who, according to the Borough, are already highly taxed even without an increase in the budget. The Borough notes that salaries

⁷ The Borough has projected a total excess of appropriations over expenditures in 2002 of \$305,076. This is less than the corresponding figure of a year earlier of \$390,000. Further, with the decline in court revenue of \$43,000 and loss of \$17,000 in interest, the Borough puts the figure at \$245,000.

will increase. Insurance cost increases have been astronomical and the costs of other insurance subsequent to September 11, 2001 have gone up considerably.

The index rate for 2003 for the Cap increase is only 1% based on the implicit price deflator, although municipalities can increase budgets by 5% if they are willing to increase taxes to pay for that increase.

All of these factors combine to make it necessary to limit salary increases to the amount proposed by the Borough.

The Borough, Glickman concluded, has budgeted tightly and prudently. It has provided for what it believes are reasonable wage increases and also for a continuation of present service levels. It did not want to decrease services but also understood that services could not be expanded. The Borough is concerned that any salary increase beyond the amounts it has proposed could require service or personnel cuts in the future. Also, dramatic tax increases are a possibility.

The Borough also looked at increases in the cost of living as measured by the consumer price index. The CPI increased nationally by 2% between October 2001 and October 2002. During that period, wholesale prices increased by only .9%, suggesting a continuing low rate of increase in the cost of living. Social Security recipients - of whom there are a number in the Borough - received only a 1.4% increase for 2003 following an increase of 2.6% in 2002 and 3.5% in 2001. The Borough notes that the PBA's salary demand of 5% far exceeds increases in the cost of living whereas the Borough offer of 3% is much more in line with that increase.

Finally, Borough asserts that its proposal, as a whole, will best serve to maintain and continue a stable work force not only in the Police Department but throughout the Borough. This is consistent with the final statutory criterion of continuity and stability of employment. The Borough notes that there have been layoffs in the area in the private sector and unemployment is high. The Borough is attempting to maintain a level of

spending that is consistent with maintaining current levels of employment in the Police Department and maintaining the current level of services in the Borough.

The Borough contends that the elements of its proposal more nearly reflect the statutory criteria when the public interest, overall compensation, internal comparisons, financial impact on the governing unit and increases in the cost of living are considered. It asks that its offer be awarded in this conventional arbitration proceeding.

Discussion and Analysis

The arbitrator is required to "separately determine whether the total net annual economic changes for each year of the agreement are reasonable under the eight statutory criteria set forth in subsection g." Due weight must be given to those criteria which are judged to be relevant. Each criterion must be considered. Those deemed relevant must be explained and there also must be an explanation as to why any criterion is deemed not to be relevant.

I have carefully considered the evidence which has been presented as well as the arguments of the parties. I have considered the evidence and arguments in light of the statutory criteria, as discussed below. I have considered each criterion and found each to be relevant, although the weight to be given to the factors varies, as discussed. I also have determined the total net annual economic changes for each year of the agreement in order to conclude that these changes are reasonable under the criteria.

I shall set forth the terms of the award at this time so that, in discussing the evidence and applying the statutory criteria, the actual terms of the award, rather than the proposals of the parties, will be the reference point. The parties necessarily based their arguments and related the evidence to the offers of the parties. I shall not do so because I have the authority and responsibility to fashion the terms of the award in this conventional arbitration proceeding.

The parties agree that the award should cover the term January 1, 2002 to December 31, 2005, a period of four years. I agree. The first one and one-half years have already run so that the agreement will be in effect for approximately two and one-half years prospectively.

Salaries shall be increased as follows:

January 1, 2002	3%
January 1, 2003	3.5%
January 1, 2004	4%
January 1, 2005	4.5%

The PBA's proposal to increase the salary differentials by providing progressively larger salary increases for corporals and sergeants, lieutenants and captains shall be denied.

The Borough's proposal to change the number of steps to ten steps shall be denied. Its proposal to equalize the steps, which the PBA accepted, shall be granted. The parties shall determine exactly how they want to equalize the steps. The Borough's proposal to freeze the starting salary for employees hired after January 1, 2003 shall be modified to provide a starting rate of \$28,000 in 2003, a starting rate of \$28,500 in 2004 and a starting rate of \$29,000 in 2005.

The stipend for corporals shall be increased to \$1,000 per year effective in 2003.

The PBA's proposal to establish a longevity benefit shall be denied.

The change in Article VII, Clothing, proposed by the Borough and accepted by the PBA, shall be incorporated in the new agreement.

The Borough's proposal to delete Article VIII, Holidays, paragraph 2 shall be denied.

The Borough's proposal to delete Article XV, Retention of Benefits, shall be denied.

The Borough's proposal to amend Article XIII, Insurance Policies, to be able to change insurance carriers shall be denied.

The PBA's proposal to increase the call-in guarantee from two to three hours shall be denied.

On-call compensation for officers at and below the rank of sergeant assigned to the Detective Bureau shall be established, effective January 1, 2003, in the amount of \$1,000 annually.

There shall be a new fully bargained provision as proposed by the Borough and as accepted by the PBA.

There also are several non-economic issues in dispute. The PBA's proposal to include the current work schedule in the agreement will be denied.

The proposal of the Borough to include additional language in Article III, Grievance Procedure, has been accepted by the PBA and will be included in the award.

The proposal of the Borough to modify Article X, Sick Leave, to limit sick leave to one year in accordance with the statute shall be awarded.

The proposal of the Borough to add a management rights article has been accepted by the PBA and shall be awarded.

Only two or three items affect the total net annual economic changes in each year of the agreement. The salary increases are involved each year. The corporal stipend and the on-call compensation provision affect only the second, third and fourth years.

The salary costs include not only the across-the-board increases but also compounding and increments. Increment costs are essentially the same under both parties' proposals and would occur even if the salaries were frozen all four years.

As set forth in a document prepared by the Borough,⁸ the cost of salaries for the 29 employees in this bargaining unit in 2001 was \$1,808,850.

Salary increases of 3%, 3.5%, 4% and 4.5% total 15% but, with compounding, this becomes 115.86% or an additional cost of .86%. If distributed evenly over the term of the agreement, this will add .22% per year.⁹ The cost of increments, without any salary increase, as calculated by the Borough, is 1.33% in 2002, 2.19% in 2003, 1.15% in 2004 and .84% in 2005. In dollars, this is \$24,144 in 2002, \$40,154 in 2003, \$21,504 in 2004 and \$15,880 in 2005.

The 3% salary increase in 2002, as calculated by the Borough, will cost \$1,962,122. This figure includes a total of 31 officers, two more than in 2001. It also includes the cost of increments and compounding. Thus, expenditures on police salaries will increase by \$153,272. The cost of a 3% increase for the same 29 officers who were employed in 2001, without increments, is \$54,266 (3% of \$1,808,850). The 2002 salary increase is the same as the Borough's proposal and is consistent with the 3% it budgeted for salary increases.

The cost in 2003 with a 3.5% increase will be \$1,992,555 for the 30 officers reflected on the Borough's scattergram. There is one less captain. This is an increase of only \$30,433 over the 2002 cost of salaries. To that must be added \$4,000 for the detective stipend.¹⁰ The total is \$14,192 more than the Borough's proposal for 2003.

The cost in 2004 with a 4% increase will be \$2,095,944. This is \$103,389 more than will be spend on salaries in 2003. With the additional \$4,000 for the detective stipend, it is \$34,604 more than the cost of the Borough's proposal for that year.

⁸ Attachment 1, Borough Brief.

⁹ The cost of the increase without compounding is $3 + 3.5 + 4 + 4.5 = 15\%$. The cost of the increase with compounding is $100 \times 1.03 \times 1.035 \times 1.04 \times 1.045 = 115.86$. The difference is .86% or almost .22% per year.

¹⁰ The cost of the corporal stipend is included, as are the cost of increments and compounding.

The cost of a 4.5 % increase in 2005 will be \$2,208,482, an increase of \$112,538 over the previous year's total. This is \$67,316 more than the cost of the Borough's proposal that year when the \$4,000 detective stipend is added .

These figures represent the total net annual economic changes for each year of the agreement. As reflected in the following discussion, I deem those increases to be reasonable. I turn to a discussion of the evidence and the parties' arguments in relation to the statutory criteria.

Interests and Welfare of the Public The interests and welfare of the public must always be considered in rendering an interest arbitration award, as the Supreme Court made clear in Hillsdale. The Reform Act also explicitly requires the arbitrator to consider the Cap Law in applying this criterion.

As the Borough recognized in its brief, this factor requires a balancing of competing interests. On one hand, there must be adequate public services for the public and this, of course, includes, police services. The evidence is that this Department at present does an excellent job in providing police services and that it does so efficiently and with community support. There is a low crime rate in the Borough and a very high rate of clearance of crimes, although the former may at least in part be a reflection of geography and a similarity to Somerset County. Middlesex Borough is tucked into the northwest tip of Middlesex County with borders on four municipalities in Somerset County. On the other hand, the public wants these services at the lowest possible cost so that taxes and tax increases can be kept to a minimum. Generally, the lower the salaries and benefits, the more police officers and other employees a municipality can afford to employ for the provision of services.

The compensation of those employees, however, must be adequate to permit the municipality to attract and retain the quality of employee desired. This can be assisted if there is good management, as appears to be the case in Middlesex Borough, but a

competitive a level of compensation is certainly a component of a productive and professional police department with good morale. Reasonable and competitive levels of compensation also contribute to harmony and stability in the labor relations, the absence of turnover, with its attendant costs of recruitment, selection and training, and to the absence of labor unrest.

The increases awarded, I believe, are consistent with the interests and welfare of the public. While initially below average increases for other police officers, over the full term of the award the increases are very close to the projected average. This will permit the Borough to retain its relative position and to compete for and retain the current highly professional police officers which it employs.

These increases are close to increases in the private sector and the public sector in general, as discussed below, and they also are somewhat above increases in the cost of living, which assures that the purchasing power of the officers will be protected. At the same time, the increases, lower in the first years, recognize the fact that Hurricane Floyd did impose unusual costs or revenue losses on the Borough which take time to recoup.

Given the overall level of compensation and the benefits in place, it does not appear necessary to provide a longevity benefit nor to make any of the other economic changes proposed by either party except for the provision of an on-call stipend for officers assigned to the Detective Bureau and a slight increase in the stipend for corporals.

I recognize that the salary increases exceed those agreed to by the Borough and its other group of organized employees but I believe that the larger increases are justified when other factors, and particularly comparisons with other police officers, are considered. While internal patterns of settlement are important, they are much more important when the pattern involves other police officers or employees eligible for

interest arbitration. It is not the intent of the Reform Act that an employer can dictate the results by reaching an agreement with another unit of employees or, even more obviously, by determining the salary increase, if any, for employees who are not organized or represented by an employee organization.

As will be discussed more fully below in the section on **Lawful Authority**, the limits imposed by the Cap Law will not be exceeded by this award. Suffice it to note at this point that the Township's financial expert testified that, "There's room within the cap; the budget is large enough to pay for it."¹¹ (Tr. 197) This is not a careless concession. It simply reflects the reality. The Cap Law does impose limits on the ability of employers to increase expenditures but there is considerable flexibility within those limits and it is a rare public employer who could not fund any relatively typical or average salary increase. This really is a fail-safe protection to assure that an arbitrator does not render an award which an employer could not implement without exceeding the Cap limits.

Comparisons Comparisons of wages, salaries, hours and conditions of employment of the Borough's officers are to be made with private employees in general, with public employees in general and with public employees in the same or similar comparable jurisdictions.

It is undisputed that police officers provide an inherently governmental service and that there are no private sector employees who provide the same services as do police officers. Thus, there are no easily identified comparable private sector employees and no evidence was provided by either party on any such employees. Police officers cannot be compared to employees performing the same or similar services in private employment. This does not assist in deciding this case.

¹¹ That statement, of course, referred to the proposal of the PBA and not the smaller increase which I have awarded which is much closer to the Borough's proposal.

Police officers can be compared to private employees in general. The Borough submitted evidence which shows that in 2002, the base pay increases for all private sector employees equaled 3.4%. The increases for 2003 were projected to be 3.8%. This award, which provides for wage increases of 3% and 3.5% in the first two years, lags behind the average private sector increases by .4% in 2002 and by .3% in 2003. The third and fourth year increases of 4% and 4.25% are expected to make up for the lower first two years covered by the award.

I also note that, as is common for police officers and public employees generally, the Borough pays the entire cost of health insurance so these officers are spared any participation in costs which are shared or borne heavily or even completely by employees in the private sector. The Borough's health insurance costs have increased significantly from a budgeted amount of \$828,000 in 2001 to \$958,300 in 2002 to \$1,165,887 in 2003. In the private sector, employers have reduced health insurance benefits and required greater and greater employee participation in the payment of the premiums for these benefits, a fact which tends to be overlooked or ignored by public employees.

Second, the parties provided some limited data on public sector wage increases. Both relied on increases received by firefighters and/or other police officers. The Borough cited data published by PERC which show that voluntary settlements in 2001 averaged 3.91% and that awards that year averaged 3.75%. PERC has provided updated information through 2002 which shows that average voluntary settlements that year were 4.05% and awards were 3.83%. The PBA submitted data from the State PBA which showed average settlements of 4.83% in 2002, 4.83% in 2003 and 4.68% in 2004. Arbitration awards covering those years were reported to average 4.29%, 4.31% and 4.5%. The 2002 figures were based on 177 contracts; the 2003 figures were based on 87 contracts; the 2004 figures were based on 27 contracts.

Considering the figures submitted by either party as well as PERC, it can be seen that the increases awarded of 3%, 3.5%, 4% and 4.5% are below those figures. I believe that the figures provided by PERC for 2002 are the most relevant and reliable. Again, the smaller initial increases which I have awarded are based on conditions unique to Middlesex Borough.

Third, comparisons are to be made with employees in public employment in the same and similar comparable jurisdictions. The other group of employees in the Borough which has settled with the Borough is the employees in the DPW represented by Local 285 of the United Service Workers. That group settled with the Borough for increases of 3% in 2002, 3% in 2003, 3.5% in 2004 and 3.5% in 2005. The Borough's identical offer to the PBA is clearly justified on the basis of this part of this criterion. By offering an identical wage increase, the Borough would maintain the existing relationship between the police officers and the employees in the DPW. This would maintain the internal pattern, albeit one based on only one other bargaining unit and one which does not have access to interest arbitration.

I have determined that this factor, important though it is, should not be the exclusive, controlling or dispositive one. Such increases are simply too low in relation to other factors including comparisons in private and public employment in general and, as is about to be discussed, comparisons with comparable police officers. Nevertheless, the settlement with the Borough's other organized employees, which presumably reflects the Borough's budgetary comfort level, does support an award which provides a lower increase than might otherwise be justified.

The final aspect of this criterion is comparisons with other police officers in similar comparable jurisdictions. This is difficult because these parties, unlike many, do not share a sense of what communities are comparable. Often county-wide comparisons are used. At other times, contiguous communities are used. Still other

times, the parties accept that there is some kind of natural regional grouping which they both accept as the basis for comparisons.

In this case, the PBA has selected ten somewhat disparate although geographically concentrated communities while the Borough has selected four demographically similar but geographically scattered municipalities. The communities selected by the PBA include several, such as Bridgewater, Piscataway, North Plainfield and Somerville which, aside from proximity, share little with the Borough. These are generally much larger in land area and/or population and their economic characteristics including net valuation taxable, land use and classification as urban centers as opposed to suburban communities are appreciably different from those in the Borough. At the same time, the Borough showed that the municipalities it selected are generally similar in size and population and land use but there was a wide disparity in ratables and net valuation taxable in addition to their geographical dispersion.

Because of the lack of consensus and the disparities in the communities selected by each party as comparable, I will consider the data in the communities selected by each party but I also will examine the municipalities which are contiguous to Middlesex Borough. This may be that the most useful grouping for the purposes of this case. Reflecting the lack of consensus between the parties is that fact that this grouping includes only a single municipality, Dunellen, selected by both the Borough and the PBA. The six contiguous municipalities are Dunellen, Bound Brook, Bridgewater, Green Brook, Piscataway and South Bound Brook. This grouping does cross county lines into Somerset County but this is a result of the fact that Middlesex Borough is on the border of two counties. A consideration of the crime statistics suggests that Middlesex Borough is more like Somerset County than it is like Middlesex County. The crime rates in the Borough are quite close to those reported to Somerset County as a whole and about two-thirds or, more recently, one-half of the rate reported for Middlesex County.

The parties have both used the top patrolman as the primary focus of comparisons but they differ in that the PBA has added to the rate for a top patrolman the longevity received by that officer whereas the Borough has not included longevity in its figures. I believe that longevity, which was eliminated in the Borough in 1984 and is received by only seven employees who were hired before that date, should be included in the figures. Longevity is direct income and it is pensionable. It is just another way of providing money to officers and it should be included to permit apples to apples comparisons.

Using the municipalities selected by the PBA, the Borough's top rate of \$62,518 in 2001 was ninth of eleven. In 2002, a 3% increase in the Borough (\$64,394) places the Borough ninth of ten communities.¹² In 2003, with a 3.5% increase (\$66,648), the Borough ranks seventh of eight. In 2004, with a 4% increase (\$69,314), the Borough ranks fifth of five. In 2005, with a 4.5% increase (\$72,433), the Borough ranks third of three.¹³

Looking at the four municipalities suggested by the Borough, the available data was limited. The Borough did not include figures for Dunellen although, as explained above, I have done so. There has been no agreement in South River beyond 2001. Based on the information submitted by the Borough and including Dunellen, the 2001 salary plus longevity in the Borough ranked fifth with maximum longevity but second from the highest for officers with ten years. For 2002, the Borough ranked fourth of four at maximum longevity but second of four for officers with ten years. For 2003, the

¹² I have included the figures for Dunellen although counsel for the Township, who also represents Dunellen, represented that while there was a tentative agreement, it had not been finalized. He agreed that the salary increase was not in dispute.

¹³ The PBA also submitted data for Middlesex County compiled by the PBA. The figures were maximum base salary with longevity. In 2001, the County average was \$68,809 whereas the figure in the Borough was \$62,518. With the increases I have awarded, the 2002 Borough figure of \$64,394 compares with an average in the County of \$72,140 (for twenty reported settlements of the twenty-five municipalities in Middlesex County); the 2003 Borough figure of \$66,648 compares with a County average of \$75,670 for eleven reported settlements); the 2004 Borough figure of \$69,314 compares with a County average of \$80,645 (for seven reported settlements).

Borough ranked third of three with maximum longevity but second if three for officers with ten years. For 2004, the Borough ranked second of two at maximum longevity but first of two for officers with ten years.

The increases for these municipalities were 4% in 2002, 2003 and 2004 in Dunellen; 3.5% in Highland Park in 2002; 3.75% in Metuchen in 2002 and 2003. When the percentage salary increases are considered for the municipalities selected by the Borough as comparable, the percentages I have awarded are the lowest of the four in 2002 and the lowest of three for 2003. The increase matches the 2004 increase in Dunellen at 4%.

Based only on the six contiguous communities, the Borough's top patrol salary in 2001 ranked fifth of seven considering salary plus maximum longevity. The ranking in both 2002 and 2003 was sixth of seven. In 2004, it was fourth of four. In 2005, it was second of two. Looking at the percentage increases, the 3% increase in 2002 was the lowest of the seven increases; the 3.5% increase in 2003 was the sixth lowest (with Piscataway at 3.4% being .1% lower); the 4% increase in 2004 was the same as that in two of the other municipalities and .1% higher than the third municipality; the 4.5% increase in 2005 exceeded the 3.9% increase in Piscataway (although the top patrolman salary in Piscataway that year will be \$90,125 compared to a top salary in the Borough of \$72,433).

As stated, the only municipality upon which the parties agree as a comparable is Dunellen. Without longevity, the top patrolman salary in the Borough exceeded the salary in Dunellen in 2001 and it will exceed that salary in 2004 when the Dunellen contract will expire. At the same time, an officer with 8% longevity in Dunellen exceeded the top patrolman in the Borough in 2001 and will continue to exceed that officer in 2004. The relationship between the two municipalities will not change significantly, although officers in Dunellen will receive salary increases of 12% in the three years when those in

the Borough will receive 10.5%. The 4.5% increase to be received by officers in the Borough in 2005 may exceed the 2005 increase in Dunellen.

Thus, looking at this criterion overall, the increases which I have awarded are somewhat lower than average private sector and reported public sector increases and they are generally lower than the increases received by other municipal police officers, whether the group is that chosen by the Borough or the PBA or whether it is the contiguous communities.

Overall Compensation In part, overall compensation has been discussed in the previous section. I shall also consider the general level of benefits received by these officers and the remaining economic proposals of the parties.

Both parties submitted data on benefits received by these officers and their counterparts. The maximum vacation days in the Borough is 32 which exceeds those in the other municipalities used by the Borough for comparative purposes. The clothing allowance, at \$1,400, also was the highest of these municipalities. Holidays were average and starting salaries were \$1,100 above average. The number of steps was average with two of the four communities having seven steps, like the Borough, and the other two having eight steps. Minimum call-in was below the average with two municipalities also providing two hours but two providing four hours. The differential between patrolmen and sergeants averaged 7.6% and is 7.58% in the Borough; the differential is 7.2% between sergeants and lieutenants whereas it is 6.9% in the Borough.

The PBA computed the rank differential as 11.5% between patrolmen and sergeants and 10.1% between sergeants and lieutenants and 12.5% between lieutenants and captains in the municipalities with which it compared the Borough.

In most of the comparable municipalities, officers who assume the duties of a higher rank receive out of rank pay. The Borough pays a stipend to corporals who

generally have this responsibility. The PBA notes that for a stipend of \$805, corporals must give up their seniority for purposes of vacation and holiday time off. A number of the municipalities provide a detective stipend which is a benefit sought by the PBA. Piscataway pays a stipend of \$1,000; Manville pays \$1,550; Green Brook pays \$2,500; and Bridgewater pays \$4,500. Bound Brook pays 4.2%. Several of the other departments have no detective bureau so there is no issue in those departments. The uniform allowance in the Borough is higher than that in the communities used by the PBA for comparisons although in some cases, the municipalities provide and replace the uniforms. Call-in pay ranges from two to four hours. Holidays range from eleven to fifteen with the Borough in the middle at thirteen. Seven of the ten do include their work schedules in the contract. All but Dunellen have some kind of a sick leave buyback. Health insurance is generally comparable. Most of the contracts have retention of benefits provisions. A majority has a college incentive program but there is none in the Borough. Most have both management rights and officer's rights provisions.

Generally speaking, the level of benefits in the Borough appears to be consistent with the level of benefits of other police officers. These officers receive a more generous clothing allowance and maximum vacation benefit than most but they lag in other areas while most benefits are within the normal range. There is no reason, on the basis of overall compensation, to change the salary and stipends as set forth above.

I shall begin with a discussion of the proposals of the Borough.

The evidence does not support the Borough's request to increase the number of steps from seven to ten. Even the municipalities selected by the Borough as comparable have a maximum of eight steps and two of the four have seven steps. No need for this change was demonstrated.

The Borough seeks to freeze the starting salary at \$28,000 for the four years of this agreement. A more prudent course is to increase the figure from \$28,000 in 2002 to

\$28,500 in 2003, \$29,000 in 2004 and \$29,500 in 2005. This should assure that the Borough remains competitive in hiring quality officers.

It is appropriate for the steps to be equal as proposed by the Borough and as accepted by the PBA but the parties must agree on exactly how to implement this change.

The change in the clothing article, accepted by the PBA, streamlines the process by eliminating the Police Committee from the process. This makes sense.

The Borough is seeking to remove a benefit enjoyed by these officers when the other Borough employees, due to unusual occurrences, are given time off. Aside from the stated rationale of seeking to avoid future disputes, the Borough provided no basis for the elimination of this benefit. As a list compiled by the PBA demonstrated, many municipalities provide a distinctive benefit to their employees. In the absence of a demonstrated need for the elimination of this benefit, I shall not change it.

The Borough did not justify its proposal to eliminate the retention of benefits article. Most contracts contain such a provision, including the municipalities selected by the Borough as comparable.

The Borough also failed to justify its proposal to be able to change insurance carriers. This is potentially significant and also likely to lead to disputes and controversies. At least half of the municipalities in the group selected by the PBA are in the State Health Benefits Plan, as is the Borough. The Borough did not submit evidence to show that many municipalities have the right to change insurance carriers unilaterally if the benefits are "substantially similar."

Fully bargained provisions are widely accepted and the PBA has agreed to accept the Borough's proposal. It is fully justified.

The PBA also has indicated a willingness to accept the Borough's proposed additional language in the grievance procedure. This is common and sets forth explicit

limits on the authority of an arbitrator, although generally such limits exist without the language as well.

The Borough is seeking to specify that sick leave is limited to one year pursuant to the statute. While the PBA opposes this limit, this is the standard limitation when sick leave is "unlimited," as it is in the Borough. It may be that the Borough's statutory authority is limited to one year whether or not expressed in the parties' agreement. In any event, the limit is a reasonable one and the PBA has not presented any evidence to show that one year is not adequate.

The PBA also has agreed to accept the Borough's management rights proposal. Such provisions are almost standard in collective bargaining agreements. This is a reasonable proposal which will be included in the award.

Turning to the proposals of the PBA, the proposal for larger percentage increases for the sergeants, lieutenants and captains is not justified. While the differentials are low in relation to the municipalities selected by the PBA, they are right on target in relation to those selected by the Borough.

It is reasonable to increase the stipend paid to the four patrolmen assigned as corporals. That stipend now is \$805. An increase to \$1,000 effective in 2003 will make the assignment more attractive and help to compensate the corporals for the loss of seniority among the patrolmen for vacation and holiday purposes. The cost will be negligible: less than \$800 per year for the four corporals or a total of \$2,400 over the term of the agreement.

The PBA is seeking to re-institute a longevity benefit. That benefit was removed prospectively in the Borough in 1984. Currently, only seven of the superior officers receive longevity. This is not a universal benefit, especially in Somerset County. Furthermore, I have taken longevity into account in making salary comparisons because,

as discussed, it is a component of compensation which I believe must be included in order to draw valid comparisons.

The case for increasing minimum call-in is not strong. As many departments provide two hours as provide three or four hours. Also, as Bacon acknowledged, it is unusual for an officer to be called in and to work only two hours. Thus, this is not a major problem.

I shall provide for on-call compensation for officers assigned to the Detective Bureau. They are required to be available on a rotating basis and this limits their freedom. They should received compensation for fulfilling this requirement. A stipend in the amount of \$1,000, effective in 2003, shall be awarded. Again, the cost of this is small. If there are four patrolmen and sergeants assigned to the Detective Bureau, the cost is \$4,000 per year or \$12,000 over the term of this agreement.

Finally, the PBA has sought to include the current schedule in the agreement. While I recognize that it is not unusual to include the schedules, Bacon acknowledged that Chief was adamantly opposed to doing this. Insufficient evidence was offered to convince me that it is necessary. Indeed, I do not even know if the proposal of the PBA comports with the current schedule. Without a greater understanding of this issue and its implications and without more evidence, I am not willing to impose this commitment on the Borough.

Stipulations Aside from the proposals of the Borough which the PBA has indicated a willingness to accept, as set forth above, there were no stipulations of the parties.

Lawful Authority This criterion requires the arbitrator to consider the limitations imposed by the Cap Law as well as any other limitations on the authority of the employer. The only such limitation cited in this proceeding was the Cap Law and even with respect to that, as the above-cited quotation of Glickman indicated, the Borough is

not really asserting that it lacks the lawful authority to fund even the proposals of the PBA, let alone the notably smaller increases which I have awarded. Banker also testified that, "Middlesex really has no problem living with cap constraints." (Tr. 179) There is simply no evidence that the Cap Law will impinge on the Borough as a result of this award.

The Cap Law limits the amount by which a municipality can increase its final appropriations as a means of controlling the costs of local government and protecting homeowners. It does not, however, limit any particular line item but only the total appropriations.

I have awarded a 3% increase in 2002 and that is precisely not only the amount proposed by the Borough for that year but also the amount budgeted. Clearly, this will not create a Cap problem for the Borough. For 2003, the salary award is only .5% above the offer of the Borough, with an additional \$4,000 for detectives and \$800 for corporals. As stated above, the salary increases awarded are only \$14,000 above the amount proposed by the Borough. There was a surplus in at the end of 2002 in the police salary and wage account with exceed that amount. While it is true that every dollar matters, in a budget of this magnitude – total appropriations in 2002 were approximately \$12,000,000 – an additional expenditure of \$17,000 can be managed.

As Banker testified, the Borough has not budgeted up to the limit permitted by the Cap Law and it has not spent up to the limits permitted by that Law. The Borough could have appropriated, with a 2.5% Cap, \$8,278,966 plus its Cap "bank"¹⁴ for a total of \$8,829,633. Its actual appropriations were \$8,490,028. Thus, the Borough - partly to minimize taxes - appropriated considerably less than it could have under the Cap Law.

There is simply nothing to suggest that the Borough faces limits on its lawful authority or that it will face such limits as a result of this award.

¹⁴ The "bank" was \$78,863 in 2001 and an additional \$206,974 in 2000.

Financial Impact The Borough is a middle class community. Income, whether measured as median household income, median family income or per capita income, is slightly above the State averages and just below (median household and median family) or just above (per capita) income levels in Middlesex County. Poverty is about half of the State and County averages. Unemployment is below the State and County averages. There are predominantly one and two-family homes and 20% of the ratables are industrial and commercial. Thus, it is mainly a residential community which is almost fully developed. This is very little vacant land for development.¹⁵

The Borough's equalized tax rate, both the municipal portion and the total tax rates, are above the State and County averages. The total equalized rate in 2002 was \$2.976 per \$100 of equalized assessed valuation whereas the County average was \$2.56. In 2001, the figures for the Borough, the County and the State were \$2.894, \$2.62 and \$2.46. Of the municipalities selected as comparable by the PBA, the Borough had the fifth highest rate among the eleven communities. The municipal rate in the Borough in 2002 was \$.797 whereas the County average was \$.575. In 2001, the municipal rates in the Borough, County and State were \$.776, \$.598 and \$.636 respectively. The Borough's municipal tax rate was sixth of the PBA's eleven comparable municipalities in 2002.

One of the major arguments of the Borough has been that Hurricane Floyd in 1999 resulted in major damage to the Borough with the destruction of a number of houses and consequent reduction in the tax base. While it is true that the hurricane caused extensive damage to a number of properties and destroyed some, an examination of equalized valuation fails to show a lasting impact. The equalized valuation in 1998 was \$780,037,537. It declined by .65% in 1999 to \$774,952,243. By

¹⁵ There is even less vacant land in Highland Park, Metuchen and Dunellen, three of the Borough's four comparables.

2000, it had rebounded completely with a 2.31% increase to \$792,882,264. Growth continued in 2001 (2.78%) and 2002 (5.18%) so that the equalized valuation in 2002 stood at \$857,174,680, an increase of almost 10% over the pre-hurricane 1998 rate. Equalized valuation has grown at a slightly higher rate than increases in the CPI in those years. In that same period of time, the equalized tax rate increased by a total of less than 5%.

As demonstrated by the PBA, the Borough places less of a burden on its taxpayers than average for the County or State based on a comparison of per capita taxes and per capita income. For the municipal levy alone, the burden in the Borough is above the County average and equal to the State average. The per capita levy in the Borough and Dunellen are quite similar at 1.8% and 1.7% of per capita income respectively.

Turning to an examination of the Borough's budget, it is true that the Borough did not receive the amount of extraordinary aid it sought in 2002 and that the amount received was less than it received in 2001. The outlook for State aid is undoubtedly not good, a fact that will impact on all municipalities in the State and not just Middlesex Borough. The Borough relies primarily and predominantly on property taxes for revenue and this means that the taxpayers provide the bulk of the revenue.

The Borough's budget position has been and remains sound. It has consistently had a cash surplus from the prior year, although there has been a decline in the cash surplus from a high of \$1,256,000 in 2000 to \$1,211,000 in 2001 and to \$1,135,000 in 2002. Also, the percent of surplus utilized has increased after dropping from 90.67% in 1998 to 71.43% in 1999. It was up to 85.9% in 2002, still below the 1998 level.

The tax collection rate has been consistently high at above 98% which indicates that the taxpayers have been able to pay their taxes. The delinquent collection rate also

has been good. Additionally, the Borough has consistently collected more in revenue than anticipated.

The soundness of the Borough's financial management is reflected in the very low level of deferred charges which represent over-expenditures or unanticipated expenses. There have been unspent appropriations at the end of the years and this figure went up significantly in 2001 over the 2000 level. In 2001, unspent appropriations and excess revenues amounted to \$653,000 or 5.56% of total appropriations. The Borough also has created and maintained appropriation reserves which, in 2001, stood at \$401,000. All of this is a tribute to the conservative and responsible financial management in the Borough.¹⁶

The Borough does not have a high level of debt and it has aggressively established a schedule under which that debt will mature in the next eight years, thereby eliminating that debt.

I have arranged the salary increases to permit the Borough further time to recover from the effects of the hurricane and in recognition of the fact that revenue from court fines and costs was \$43,000 less than anticipated in 2002 and that interest revenue was \$17,000 less than anticipated. Miscellaneous revenue also was less than anticipated by some \$66,000. Health insurance as well as other insurance costs have been increasing at a high rate. Thus, the award in the first two years has been kept within .5% of the amount proposed by the Borough in order to minimize the budgetary impact.

As reflected in Glickman's analysis, even with a 3% budgeted increase, expenditures for police salaries in 2002 were only 1.62% or \$39,296 above the 2001 levels due to the retirement of a captain and another officer. (Exhibit B-2, Tab 3, p. 12)

¹⁶ I recognize also that the Borough laid off two DPW employees in 2002 in an effort to reduce spending and control taxes.

There was a surplus of \$43,600 which had been appropriated for dispatchers but none was hired so that money was not spent. The police salary and wages line item ended 2002 with a surplus of \$16,000, an amount that essentially will pay for the amount by which my award exceeds the Borough's proposal for 2003.

The Borough has noted the cost of increments in setting forth the costs of the two proposals. It must be noted that the cost of increments is the same under both offers. It also is important to note that but for the turnover of officers which permits the Borough to replace higher paid officers with lower paid ones for the first number of years of employment, the Borough actually would be paying more for its police officers. The Borough actually saves money as a result of this turnover, thereby reducing overall costs even though there are added costs (increments) each year until an officer reaches the top step of the salary progression at which point the cost of increments is \$00.00. This is reflected in the report prepared by Glickman wherein he noted that in 2002 the appropriations for police salaries exceeded the 2001 amount by only 1.62%.

There is no evidence that with this award, the Borough will not be able to maintain current levels of public service or that it will require a significant tax increase. The difference between the salary increases proposed by the Borough and the salary increases awarded is not large in dollar terms. In fact, in the first year of the new agreement there is no difference and the difference in the second year, 2003, is nominal.

Cost of Living Changes in the cost of living also must be considered. This is generally measured by the Consumer Price Index. The CPI in the New York metropolitan area rose by 3.1% in 2002, a figure very close to the salary increase which I have awarded. There is no evidence or reason to believe that the CPI will increase at a significantly higher rate during the term covered by this award.¹⁷ Therefore, with salary

¹⁷ The figure for the 12-month period ending in February 2003 was 3.3% for the New York metropolitan area as reflected in the publications of the Bureau of Labor Statistics.

increases of 3.5% in 2003, 4% in 2004 and 4.5% in 2005, the officers should not only keep up with increases in the cost of living but should realize a modest improvement in real wages which would continue the long-term historical trend made possible by increases in the productivity of the national economy.

Continuity and Stability of Employment I believe that this award will not cause police officers to leave the Borough because of their salary or overall compensation nor do I believe that this award will cause the Borough to have to reduce the level of police (or other municipal) employment. There is no evidence to challenge either of those assertions. I note that no officers have left the Borough for jobs in other police departments in at least the last eight years. Accordingly, I am convinced that the continuity and stability will not be jeopardized by this award.

Summary

I have carefully considered the evidence and the arguments of the parties in relation to the statutory criteria. I have considered each of the statutory criteria and found each to be relevant. In rendering an award which falls between the salary proposals of the two parties, I have concluded that the amounts awarded, which slightly lag behind the public and private employment increases as well as behind comparable police officers in the first two years, should make up most of that difference in the second two years. The relative position of the officers in relation to the comparables selected by both the Borough and the PBA as well as within Middlesex County as a whole will be maintained. While internal comparisons, standing alone, militate in favor of an award which exactly matches the proposal of the Borough, the other factors counterbalance this and require a somewhat higher award. I am mindful that the award does not impinge on the lawful authority of the employer, an obviously necessary result. Further, the award is consistent with the public interest and will not have a significant

financial impact on the governing unit or its residents and taxpayers. Further, the award provides for increases which initially match but will, in the later years, exceed increases in the cost of living which is consistent with historical trends.

Accordingly, I hereby issue the following:

AWARD

The term of the new agreement shall be four years, January 1, 2002 to December 31, 2002.

Salaries shall be increased by 3% retroactive to January 1, 2002, by an additional 3.5% retroactive to January 1, 2003, by an additional 4% effective January 1, 2004 and by an additional 4.5% effective January 1, 2005.

Starting salaries for employees hired after January 1, 2003 shall be \$28,000, \$28,500 in 2004 and \$29,000 in 2005.

Steps shall be equalized in a manner which is mutually acceptable to the parties. I retain jurisdiction over this issue in the event of a dispute.

The corporal stipend shall be increased to \$1,000 annually effective in 2003.

There shall be established on-call compensation for sergeants and patrolmen assigned to the Detective Bureau of \$1,000 per year.

Article VII, Clothing, Section 2, paragraph 1 shall be changed to read:

Upon determination by the Chief of Police that a uniform, wrist watch, wide glass/contact lenses have been damaged while in the performance of the officer's duty, except in the opinion of the Chief of Police such damage is due to negligence by an omission or commission of the employee, the Borough shall pay the affected employee the following amounts in addition to the regular clothing allowance.

There shall be a new Fully Bargained article as follows:

This agreement represents and incorporates the complete and final understanding and settlement by the parties of all

bargainable issues which were or could have been the subject in negotiations. During the term of this Agreement, neither party will be required to negotiate with respect to any such matter, whether or not covered by this Agreement, and whether or not within the knowledge or contemplation of either or both parties at the time the negotiators signed this Agreement.

Article III, Grievance Procedure, shall be amended to include the following language:


The arbitrator shall have no authority to add to or subtract from the agreement. The arbitrator shall be bound by the applicable laws of the State of New Jersey and the laws of the United States in decisions of the courts of the State of New Jersey and courts of the United States. The arbitrator must address only the issues submitted to arbitration and shall not have the authority to determine any other issues not so submitted, nor shall the arbitrator render observations or declare opinions which are not essential in reaching a determination. The parties direct the arbitrator to decide, when asked, as a preliminary question, whether he/she has jurisdiction to hear and decide the matter in dispute. In rendering his/her decision, the arbitrator shall indicate his/her findings of fact and reasons for making the award.

Article X, Sick Leave, shall be amended to limit sick leave to one year.

There shall be a new Management Rights article as proposed by the Borough.

All other proposals of the parties are denied. The remaining provisions of the prior agreement shall continue unchanged in the new agreement except as mutually agreed by the parties.

Dated: May 27, 2003
Princeton, NJ



Jeffrey B. Tener
Arbitrator