

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In The Matter Of The Interest Arbitration Between

BOROUGH OF ROSELLE

and

ROSELLE SUPERIOR OFFICERS ASSOCIATION

Docket No. IA-2000-14

AWARD OF ARBITRATOR

The undersigned, having been designated as Interest Arbitrator by the Public Employment Relations Commission in accordance with the New Jersey Police and Fire Public Interest Arbitration Reform Act, N.J.S.A. 34:13A-16, and having been duly sworn, and having duly heard the proofs and allegations of the parties, AWARDS as follows:

Based on the evidence submitted, the following changes in the collective bargaining agreement between the parties shall be implemented, effective immediately unless otherwise specified:

1. The term of the new collective bargaining agreement shall be from January 1, 1999 through June 30, 2003.
2. In addition to the increase to base salary implemented for 1999 and previously paid retroactively to January 1, 1999, the base salary for Police Lieutenants and Captains

shall be increased by a lump sum payment of \$1500.00 on base which shall constitute the increase for 2000 and shall be paid within thirty days after the date of this Award; and by across the board increases of 3.35%, effective January 1, 2001; 3.5%, effective January 1, 2002; and 3.5%, effective January 1, 2003.

3. A promotional differential of 12% above the Sergeant base salary shall be paid to all police supervisors promoted to the rank of Lieutenant after January 1, 2001 for a period of one year after promotion, following which interval the full 15% rank differential shall be paid. Similarly, a promotional differential of 12% above the full Lieutenant base salary shall be paid to all police supervisors promoted to the rank of Captain after January 1, 2001 for a period of one year after promotion, following which interval the full 15% rank differential shall be paid.

4. Those bargaining unit employees assigned to plainclothes duty by the Chief shall receive \$100.00 additional clothing allowance for 2000, 2001, and 2002, to be paid with the first payroll in June, except for the 2000 payment, which shall be paid forthwith.

5. The sick leave incentive shall be modified in accordance with the description herein to provide for two six month intervals from January 1 to June 30 or from July 1 to December 31 for computing whether an employee is eligible for this benefit. An employee who uses no sick days in a semi-annual period shall receive \$500.00. An employee who uses up to two sick days in any six month period will suffer a \$200.00 per day reduction in the sick leave incentive benefit for that six-month interval for each of the first two sick days used. An employee who uses two sick days in a six month interval defined above and, therefore, receives \$100.00 in sick leave incentive can receive no additional sick leave incentive in the next six month interval if the employee uses more than one sick day during the next six month interval. In other words, the Borough's exposure for bonus payments remains at three days in any twelve month interval, but bargaining unit employees who are absent in excess of two days in one six month interval retain the opportunity to earn the \$500.00 incentive bonus for not using any sick leave, or a \$300.00 incentive bonus if they use only one sick day, in the subsequent six month period.

6. The Borough may implement a bi-weekly payroll period upon not less than thirty days prior notice to the SOA and to all bargaining unit employees, provided that the bi-weekly pay period shall not be effective for the SOA

bargaining unit until it is also effective for all other Borough employees.

7. The Borough may hereafter compute and express all compensable time in terms of hours, rather than days, provided that there be no diminution of any benefit enjoyed by the bargaining unit or alteration to the detriment of the bargaining unit of any practice or procedure as a result of this record keeping change.

8. The prescription co-payment obligation of the SOA bargaining unit shall be increased, effective not less than thirty days after the date of this Award, to \$5.00 per prescription for generic drugs and brand name drugs for which there is no generic alternative and \$10.00 for brand name drugs for which there is a generic equivalent, provided that this higher co-payment also goes into effect for all other Borough bargaining units at the same time, in which case the higher co-payment shall also apply for the SOA bargaining unit as soon as the increase becomes effective for all bargaining units.

9. The dental insurance option, health insurance opt-out alternatives, point of service health insurance incentives, and terminal leave revisions stipulated by the parties are hereby adopted.

10. All employees promoted to Lieutenant or Captain after January 1, 2001 shall receive a 12% promotional differential for their first year in the new rank, after which they shall receive the full 15% rank differential.

11. Effective January 1, 2002, there shall be a cap of 300 hours on compensatory time that an employee may accrue. The balance over 300 hours as of January 1, 2002 shall be repurchased by the Borough, at its option or the option of the employee, at the straight time hourly rate, including longevity, in effect on December 31, 2001.

12. All other proposals and demands by either party are hereby denied. The collective bargaining agreement previously in effect shall continue unamended except for the changes in the terms and conditions of employment governing the police supervisory bargaining unit that have been explicitly ordered in this Award. The Arbitrator hereby retains jurisdiction to resolve any dispute that may arise regarding the implementation or computation of the changes ordered pursuant to this Award.

October 13, 2000


Daniel F. Brent, Arbitrator

State of New Jersey
County of Mercer

On this 13th day of October, 2000 before me personally came and appeared Daniel F. Brent, to me known and known to me to be the individual described in the foregoing instrument, and he acknowledged to me that he executed the same.

Philip Q. Shaver Esq.

An Attorney at Law of the
State of New Jersey

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Interest arbitration hearings were held on February 3, March 7 and April 10, 2000 in the above-entitled matter at the Roselle Borough Hall before Daniel F. Brent, duly designated by the New Jersey Public Employment Relations Commission as Interest Arbitrator. Both parties attended these hearings, were represented by counsel, and were afforded full and equal opportunity to offer testimony under oath, to cross-examine witnesses, and to present evidence and arguments. A verbatim transcript was made of the proceedings, and the parties submitted post-hearing briefs. The record was declared closed on June 30, 2000. Pursuant

to the New Jersey Police and Fire Public Interest Arbitration Reform Act, N.J.S.A. 34:13A-16, the parties mutually granted the Arbitrator an extension of time until October 15, 2000 within which to conduct these hearings and to render his Award.

APPEARANCES

FOR THE EMPLOYER

Mark S. Ruderman, Esq. of Ruderman & Glickman, Esqs.

FOR THE ASSOCIATION

Bruce D. Leder, Esq. of Schneider, Goldberger, Cohen, Finn, Solomon, Leder & Montalbano, Esqs.

HISTORY OF THE DISPUTE

The Borough of Roselle and the Roselle Police Superior Officers Association (SOA) are parties to a collective bargaining agreement, effective from January 1, 1996 through December 31, 1998, governing the terms and conditions of employment for Police Lieutenants and Captains. There are currently no Captains and six Lieutenants in the bargaining unit, pending promotion of two Lieutenants to Captain and the confirmation of a Captain as Chief. The Table of

Organization has historically included one Chief (who is not in the bargaining unit), two or three Captains, and five or six Lieutenants.

The parties convened several bargaining sessions to negotiate the terms of a new agreement, but were unsuccessful. The Interest Arbitrator participated as mediator in additional sessions, narrowing the number of unresolved issues prior to the formal arbitration hearings conducted on February 3, March 7 and April 10, 2000. The parties did not seek an alternative format, so the instant dispute was conducted as a conventional interest arbitration based on the final offers of the parties, which are set forth below.

FINAL OFFERS OF THE PARTIES

SOA'S FINAL OFFER

Article III Salaries

- (1) Increase the salaries of lieutenant and captain.
 - 4% effective January 1, 2000
 - 4% effective January 1, 2001
 - 4% effective January 1, 2002
- (2) Delete last Paragraph concerning holiday pay.

Article VIII - Holidays and Vacation

(1) Add to Paragraph A - All holiday pay shall be paid as part of base pay. Appendix A - Salary guide shall reflect the base salary including all holiday pay.

(2) Modify Paragraph C effective 1/1/99 as follows:

<u>Years</u>	<u>Patrol</u>	<u>Administration</u>
5-9	15	17
10-14	16	18
15-19	18	20
20 or more	22	24

Article V - Overtime Call-in-Time, Court Time, Training Bank, Sick Leave Incentive - Effective 1/1/00

(1) Modify paragraph H:

Any member covered by this Agreement who does not use any sick days between January 1 and June 30 or between July 1 and December 31 shall be compensated \$500 payable on the second pay period after June 30 or December 31. A member is eligible to receive a total of \$1,000. For each sick day used, \$200 shall be deducted up to 2 days. Any sick days in excess of 2 days in one or the other six-month period will make the member ineligible to receive any compensation.

Article IX - Clothing and Equipment

Increase clothing allowance:

Effective January 1, 2000 by \$100
 Effective January 1, 2001 by \$100
 Effective January 1, 2002 by \$100

Borough OF ROSELLE'S FINAL OFFER

1. Duration - The contract shall commence on January 1, 1999 and end on June 30, 2003.
2. Bi-weekly payroll - Within thirty (30) days of this Award, the SOA will move to a bi-weekly payroll.
3. Hour as basis for all time - For ease of computing and consistency among all employees, compensable time shall be recorded and reported in terms of hours. This shall not affect any scheduling practice or procedure.
4. Accrual and payment of Comp time - SOA members may accrue and obtain one hundred twenty (120) hours of comp time. The Borough and the SOA members shall each have the option to buy down any amount of accrued time in excess of one hundred twenty (120) hour benchmark. All comp time in excess of one hundred twenty (120) hours shall be paid down. These payments shall be made in July for the preceding year and the rate of pay on June 30.
5. Dental Insurance - The Borough shall make one or more dental options available to SOA members. Any premium expense above the amount that is currently borne by the Borough shall be borne by the employee through a payroll deduction.
6. Prescription Co-Pay - The prescription co-pay shall be \$5.00 generic and \$10.00 brand name with all other reimbursements to cease immediately.
7. Voluntary Opt-Out Insurance - SOA members who can show proof of an alternative source of health insurance for themselves, their spouse or their dependents, may voluntarily opt out of the Borough's health coverage. When the SOA member qualifies for and requests this opt out, the member will be paid fifty (50%) percent of the premium savings on a monthly basis. If the alternative source of insurance ceases to exist, the SOA member and all eligible dependents shall be immediately reinstated to the Borough's point of service health plan with no waiting period or limitation or pre-existing conditions.
8. Point of Service Health Insurance Incentive - To encourage SOA members to enroll in the Point of Service Health Insurance Plan, the Borough shall offer the following incentive:

a. Drop existing coverage and enroll in Point of Service Health Plan.

1. June 30, 2000: Pay SOA member \$500 during the first two (2) weeks of July 2000.

2. June 30, 2001: Pay SOA member \$300 during the first two (2) weeks of July 2001.

3. June 30, 2002: Pay SOA member \$100 during the first two (2) weeks of July 2002, or

b. Drop prescription benefit plan in exchange for waiver of any premium payment requirement pertaining to the selection of the dental plan.

9. Voluntary Election of Terminal Leave - A member who will retire within twenty-five (25) or more years of service to the Borough of Roselle may elect to take three (3) months terminal leave in lieu of receiving three-twelfths (3/12) of last annual salary. Personnel may use their benefit after completing twenty-four (24) years and nine (9) months of service to the Borough of Roselle. Personnel on terminal leave shall not accrue any additional paid time off such as vacation days, etc. Personnel on terminal leave shall be considered to have finished their service and shall not be eligible for recall except in the case of state-wide or national emergency. Decisions pertaining to the retention of duty weapons and shields shall be predicated upon state law and/or departmental policy.

10. Salary upon Promotion - Effective May 1, 2000, all employees promoted to the rank of Lieutenant or Captain shall receive an eleven (11%) percent increase in base pay. Upon completion of one (1) year in grade the pay will be increased by an additional one (1%) percent. Upon completion of two (2) years in grade the pay will be increased by an additional one (1%) percent.

11. Cost of Living Offset - In lieu of any permanent adjustments in pay in 2000, SOA members will receive a lump sum off base one of \$1,200 cost of living offset.

- a. January 1, 2001 3% over 2000 base salary,
- b. January 1, 2002 3% over 2001 base salary,
- c. January 1, 2003 3% over 2002 base salary.

12. Holiday Pay Schedule - Two (2) weeks semi-annual payments will be made to each SOA member in June and November of each year.

13. Recognition of Holiday Pay - Since the member's share of the cost is deducted from their paycheck on a regular and recurring basis, holiday pay shall be recognized as pensionable income. Holiday pay shall not be included when computing standard overtime.

14. Vacation Pay - Article V, paragraph A2 was deleted as per auditor requirements.

15. Retention of Personal Time - The number of personal days that may be accrued shall be capped at fifteen (15). Any SOA member having more than fifteen (15) days upon the date of ratification shall not lose any time, however, the year-end balance may never be higher. The SOA member is expected to consume the excess days as soon as scheduling and other operational demands permit. Upon retirement an SOA member will not be paid for more than fifteen (15) unused days unless it can be documented that it was not possible to consume the excess.

NATURE OF THE CASE

The criteria governing the outcome of the instant interest arbitration dispute are established by the New Jersey Police and Fire Public Interest Arbitration Reform Act, N.J.S.A. 34:13A-16, (The Act), which sets forth eight factors that an Interest Arbitrator must weigh in fashioning an Award. Individual factors may be afforded substantial weight of negligible weight depending on the evidence in the record and the circumstances of the employees and the governmental entity involved in the dispute, but the Interest Arbitrator must explain the relative weight afforded to each statutory factor. The parties to the instant dispute have not agreed to an alternative framework, such as last best final offer, so the Arbitrator enjoys

conventional authority pursuant to the Act to fashion appropriate terms and conditions of the successor collective bargaining agreement on the issues in dispute.

Analysis of the documentary and testimonial evidentiary record must include not only an examination of each of the eight statutory factors, but also consideration of the net annual economic impact of each party's final offer and of the Arbitrator's determination on the Borough of Roselle and its taxpayers. In addition, an Interest Arbitrator must explain the Arbitrator's rationale for affording greater weight to some statutory factors than to others. This detailed explication follows below.

The issues in dispute between the parties include:

- the term of the agreement,
- annual salary increases,
- clothing allowance,
- rolling holiday pay into the base,
- additional vacation,
- sick leave incentive,
- conversion to bi-weekly payroll intervals,
- conversion of the computation of benefits using hourly increments,
- dental insurance,
- prescription co-payments,
- health insurance opt-out alternatives,

point of service health insurance incentives,
terminal leave revisions,
promotional differentials,
holiday pay scheduling,
vacation pay procedure, and
retention of accrued personal leave.

Of these eighteen areas of dispute, four have been settled amicably. These include the dental insurance option proposed by the Employer, the health insurance voluntary opt-out, the point-of-service conversion incentive, and the voluntary election of terminal leave in lieu of working the last three months before retirement. The parties have acknowledged their willingness to implement these incentives as options that a bargaining unit employee may elect, effective immediately upon issuance of this Award. Therefore, the Arbitrator need not discuss these options in detail, as they have been set forth in detail in the Employer's offer and in the testimony, except to note that the potential savings to the Borough cannot be ascertained as the number of employees who will elect to participate in these options is speculative. The benefits of certain incentives will be shared with the participating employees, but the positive financial benefit to the Borough cannot be predicted.

APPLICABLE STATUTORY CRITERIA

The Police and Fire Public Interest Arbitration Reform Act, N.J.S.A. 34:13A-16(d)(2), requires an Interest Arbitrator 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.

N.J.S.A. 34:13A-16(g) directs the arbitrator or panel of arbitrators 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. The arbitrator or panel of arbitrators shall indicate in the Award 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. The factors are:

(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 Township by P.L.1976, c.68 (C.40A:4-45.1 et seq.).

(2) Comparison of the wages, salaries, compensation, hours, and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours, and conditions of employment of other employees performing the same or similar services and with other employees generally:

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

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

(c) In public employment in the same or similar comparable jurisdictions, as determined in accordance with section 5 of P.L.1995, c.425 (C.34:13A-16.2); provided, however, 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 economic benefits received.

(4) Stipulations of the parties.

(5) The lawful authority of the Township. Among the items the arbitrator or panel of arbitrators shall assess

when considering this factor are the limitations imposed upon the Township (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.

DECISION AND ANALYSIS

The public interest demands a fair balance between the burden upon the taxpayers and the compensation earned by police supervisors, who provide an essential component of a critical public service, assuring a safe community. The citizens of the Borough of Roselle have a valid interest in assuring that the police supervisors who oversee the provision of police protection are fairly paid in order that their level of compensation and benefits will encourage the very best in professionalism. The taxpayers also have a right to establish reasonable priorities in the expenditure of scarce public funds, including allocation of increases in compensation to police superior officers, when such increases may adversely affect the Borough's ability to continue or augment other worthy public functions. A thorough evaluation has been made of the terms and conditions currently governing the employment of bargaining unit employees and of the potential impact on the Borough and the bargaining unit flowing from the modifications to the collective bargaining agreement proposed by each party

in order to assess the balance between fiscal prudence and increased compensation that best serves the long term interests of the citizens of Roselle and the bargaining unit.

The bargaining unit is entitled to reasonable increases in compensation in order to avoid erosion of purchasing power caused by inflation and to remain within the range of remuneration received by similarly situated employees. The importance of providing adequate remuneration for police and firefighters was recognized by the Legislature when it enacted a statute to resolve intractable disputes through final and binding interest arbitration. The criteria for balancing these competing interests are found in the eight statutory factors established by the Act, as augmented by the standards of comparability set forth in the New Jersey Administrative Code at Section 19:16-5.14

Statutory factors such as the continuity of employment recognize the importance of good morale to the mission of the Police Department. A police force disgruntled by woefully inadequate compensation or onerous working conditions may not evoke the level of confidence in the security of a community that its citizens reasonably expect. Conversely, very few people are thrilled with the level of compensation they receive for their labors, and accept reasonable compensation as adequate remuneration. The

Borough of Roselle has fairly compensated its police supervisors in the past, and they remain squarely within the mid-range of similarly situated police supervisors in comparable communities.

In addition, inflation has been relatively low. Consequently, no major adjustment to the status quo is necessary to redress any glaring inequity that would inure to the detriment of the Borough, its citizens or its supervisory police employees.

The public interest will be best served in the instant case by a counterbalanced set of prudent alterations to the existing terms and conditions of employment which not only augment the Borough's expenditures, but also improve police protection by better administrative techniques, and maintain the bargaining unit in the same position relative to salary, benefits and other terms and conditions of employment received by police supervisors in comparable communities, other Borough employees, and comparable employees in the private sector.

The public interest is also well served by the implementation of rational relationships between the levels of compensation and degree of improvements to the conditions of employment provided to various groups of Borough employees. Although police and fire fighters are unique

among municipal employees in the nature of their responsibilities and the degree of danger and stress they confront on every tour of duty, these units already enjoy better compensation than other Borough employees that reflects the differences in their duties. The Borough must recognize and reward the level of experience of this bargaining unit, as well as its extraordinary productivity while the Police Department has been operating with less than a full complement of supervisors.

The public interest criterion is paramount, but this statutory factor is so broad that it overlaps several other statutory factors. These other criteria help define the balance of competing interests that underlie the Interest Arbitrator's Award in the instant case.

The Borough's financial condition weighed heavily in determining that the SOA cannot receive the full measure of the contractual improvements it sought for its members. Some of these improvements, particularly salary increases, can be achieved in the context of trade-offs, such as bi-weekly payroll, that do not significantly disadvantage the bargaining unit. Savings that are achieved through even minor modifications of existing benefits permit the Borough to increase its expenditures for police supervision prudently, without sacrificing other programs and valid

municipal priorities and without unduly increasing the impact on Borough taxpayers.

Because Borough property values, as reflected in evidence submitted regarding equalized valuation, are stagnant or declining, increases in expenditures require increased tax levies. The Borough must either raise its tax rate or curtail its programs, as the record indicates

N.J.S.A. 34:13A-16(g) expressly requires an Interest Arbitrator to assess the limitations imposed by P.L. 1976, c. 68 (C. 40A: 4-45.1 et seq.). Nothing in the evidence submitted establishes that the level of salary increase or benefit increase ordered pursuant to this Award, especially when offset by savings accruing to the Borough from increasing the prescription co-pay and introducing bi-weekly payroll, will cause the Borough to exceed the CAP limitations on spending established by this statute.

The second statutory criterion requires a comparison of the wages, salaries, compensation, 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;
- (b) In public employment in general;

- (c) In public employment in the same or similar comparable jurisdictions, as determined in accordance with section 5 of P.L.1995, c.425 (C.34:13A-16.2).

Members of this police supervisory bargaining unit are highly skilled law enforcement officers, some with many years of experience supervising police officers in the performance of their duties. They are amply compensated in comparison to other employees at various levels of government, especially when the shared nature of their responsibility for the efficient functioning of the Police Department is considered. They are not, however, excessively compensated in comparison to some public sector managers. Borough Police supervisors are paid within the range received by such public managers as school principals and assistant principals. Bargaining unit employees are also paid equitably in comparison to managers in the private sector with similar expertise and responsibility.

According to the documentary evidence in the record, the level of base salary for Lieutenants has increased by 61.38% and has increased for Captains by 65.75% since 1990, compared to a cumulative increase in the cost of living of 26.3 % during the same interval. Bargaining unit employees enjoy vacation and holiday benefits that are in the mid-range of the comparable communities for which data was submitted into evidence by both parties. These included

adjacent communities and nearby jurisdictions of similar size.

Neither party's offer will radically alter the relative position of the bargaining unit in relation to other comparable jurisdictions. However, the Borough's offer of \$1200. lump sum off base for 2000, followed by three annual increases of 3% is inadequate, as this offer barely covers the recently low inflation rate and will cause the bargaining unit to lose ground relative to police supervisors in comparable communities.

The third statutory criterion involves the overall compensation presently received by bargaining unit employees, inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received. The overall level of compensation currently received by the bargaining unit is not inadequate, if augmented to protect against erosion of purchasing power by inflation and to keep pace with the average increases enjoyed by other employees of the Borough and employees with similar responsibilities in comparable communities.

For example, Police Lieutenants in Roselle earned base pay in 1999 of \$75,274, which placed them in the upper one third of comparable communities cited by the SOA. By

comparison, Lieutenants in Springfield earned \$76,744. in 1999 and Lieutenants in Rahway earned \$74,301. The next five lower communities averaged \$69,632. in base pay for Lieutenants. A 3.0% increase for 2000 would result in Lieutenants receiving a base pay of \$77,532.22, which would preserve their ranking at third in the communities cited as comparable by the SOA. A flat \$1500.00 increase to the base would also maintain the Lieutenants' salary relative to similarly situated supervisors in other police departments. The \$1200.00 flat increase proposed by the Borough, to be paid off the base, would unduly increase the gap between this bargaining unit and the salaries paid by communities such as Springfield, an effect that would be compounded as the gap is perpetuated in the future.

There is no salary inequity in the case of Roselle's Police Captains. Police Captains in Roselle topped the SOA's list of salaries paid in comparable communities for 1999 at \$86,565. As the Borough points out, this level of compensation exceeds the salaries paid to the Chiefs of many departments in comparable communities.

The Borough provides all uniforms, but plainclothes employees receive a clothing allowance of \$400.0 per year. This clothing allowance is substantially below the amounts paid in all but a few of the comparable communities cited. An average of eight dollars per week is barely adequate to

dry clean one suit or sports jacket and slacks and does not provide sufficient funds for replacement necessitated by wear and tear of personal clothes worn on duty. Therefore, employees assigned to plainclothes duty at the Chief's discretion or who do not wear Borough-provided uniforms in their regular assignments shall be awarded an increase of the clothing allowance in the amount of \$100. per year for 2000, 2001, and 2002. The clothing allowance increase shall be paid with the first payroll in June of each year.

The longevity benefit received by bargaining unit employees reaches a maximum payment of ten per cent after twenty-five years of service. Although the percentage is consistent with other comparable jurisdictions, the interval of service necessary to reach the maximum is longer than all but two of the other communities cited as comparable. The maximum longevity benefit could be adjusted if other statutory factors, such as continuity of employment and impact of the taxpayers, justified a determination that shortening the length of service to reach the maximum longevity benefit from twenty-five years to twenty-four years was feasible financially or would appreciably increase the Borough's ability to attract and retain senior supervisors.

The Borough's precarious financial position will be discussed more thoroughly, but the tiny balance of unexpended Borough funds, 1.66%, at the end of fiscal 1999, following a surplus of only 1.01% at the end of fiscal 1998, does not afford the Borough sufficient leeway to increase the longevity benefit. Moreover, there is no evidence that the Borough experiences any difficulty in attracting candidates for promotion into the bargaining unit or in retaining senior Lieutenants and Captains that would justify increasing this benefit under the prevailing circumstances. Consequently, there is no compelling justification in the record to alter the present longevity parameters.

The bargaining unit receives thirteen holidays per year. This opportunity for respite from duty or to earn extra compensation when scheduled for duty on a holiday is adequate, notwithstanding that four communities provide one or two more holidays per year, especially when compared to the number of holidays enjoyed by private sector employees. Furthermore, thirteen holidays is the level of benefit provided by most of the comparable communities cited by the SOA. Consequently, no change in the number of paid holidays is warranted.

The SOA urged the holiday pay for all bargaining unit employees will be rolled into their base pay for purposes other than the computation of overtime rates. This proposal

was made pursuant to the SOA's status as the certified bargaining representative for individual bargaining unit employees, who unanimously endorsed the SOA position regarding this change according to the SOA. The law governing the ability of individual employees to waive inclusion of holiday pay as a component of overtime calculation is unclear. Moreover, the parties have not agreed to roll holiday pay into the base for all calculations except overtime. Although the same effect could be achieved under the prevalent practice of permitting individual employees the option of rolling holidays into their base for purposes other than overtime, the parties themselves must agree on this procedure.

The number of vacation days earned by the bargaining unit is among the lowest of the comparable communities cited by the SOA. Nevertheless, the availability of twenty four days (or 192 tour hours) of paid vacation per year affords bargaining unit employees the opportunity to schedule several vacations of sufficient length to rest and recover from the stressful life and responsibilities of a police supervisor. The vacation benefit is consistent with the range of vacation benefits afforded mid-level and senior managers in the private sector and other Borough employees. Given the financial conditions that the Borough is encountering, which are discussed more fully below, and the level of vacation afforded to other Borough employees, there

is no basis in the record to justify any increase in vacation benefits for this bargaining unit.

The prescription co-payment obligation of bargaining unit employees is currently \$2.00 per prescription. The Borough proposes to modify Article XIII by increasing this co-payment to \$5.00 per prescription for generic drugs and \$10.00 per prescription for brand name drugs. The Interest Arbitrator can take arbitral notice of the steep increase in prescription medication prices and the concomitant pressure on employers who provide prescription plan benefits. The spiraling increase in the cost of prescription drugs has been well documented in the press and discussed at length in the current presidential campaign.

Sharing of these price increases between employers and employees has been bargained or unilaterally imposed in many settings both in the public and private sectors. There is no foreseeable likelihood that the price increases for prescription medications will abate. Consequently, it is not unreasonable that the beneficiaries of these pharmaceuticals, with ever more efficacious capabilities, should participate in absorbing the increased burden in providing this benefit. A modest increase in the co-payment is further warranted because the scope and extent of the sustained increase in the price of prescription drugs far

exceeds the benefit contemplated by the parties when they negotiated this benefit.

The co-payment for the bargaining unit represented by the SOA should not exceed the co-payment imposed upon or agreed to by any other Borough bargaining unit, but the co-payment should be increased to the level negotiated by other Borough bargaining units, especially other uniformed services with access to binding interest arbitration. The Borough and the FMBA recently negotiated an increased prescription co-payment of \$5/\$10. Such an increase must be contingent on the agreement or award of a higher co-payment for all the other units.

Although the percentage increase from \$2.00 to \$5.00/\$10.00 is substantial, the size of the increase proposed by the Borough is not excessive, especially in view of the recent agreement by FMBA, representing Roselle's firefighters, to accept this level of increased co-payment. Therefore, the prescription co-payment obligation of the SOA bargaining unit shall be increased, effective not less than thirty days after the date of this Award, to \$5.00 per prescription for generic drugs and brand name drugs for which there is no generic alternative and \$10.00 for brand name drugs for which there is a generic equivalent, provided that this higher co-payment also goes into effect for all other Borough bargaining units at the same time, in which

case the higher co-payment shall also apply for the SOA bargaining unit as soon as the increase becomes effective for all bargaining units.

The fourth statutory criterion involves stipulations of the parties. The SOA has agreed to modify the collective bargaining agreement to implement several Borough proposals that create options for individual bargaining unit employees. These proposals include the provision of one or more dental insurance options from which an employee may choose, an incentive to opt out of Borough-paid health insurance coverage, an incentive to switch to point-of-service coverage under the menu of health plan options, and an election to convert the last 3/12ths of the annual salary of an employee retiring after twenty-five or more years of service into terminal leave. The proposed modifications are set forth in greater detail in the recitation above of the Borough's final offer. There is no ascertainable adverse financial impact as a result of these modifications either because they incur no cost for the Borough or because the degree to which employees will choose an option with positive financial implications for the Borough is speculative.

The fifth statutory criterion involves the lawful authority of the employer. Analysis of this factor must include an examination of the limitations imposed by

N.J.S.A. 40A:4-45.1 et seq., the New Jersey Local Government Cap Law (the Cap law). Under the Cap law, a municipality may not increase its tax levy beyond the applicable index rate, currently 2.5%, without an ordinance or referendum. Neither event has occurred in the Borough of Roselle. However, the level of increased expenditures mandated by compliance with this Award will not result in expenditures beyond the funds available to the Borough under its current tax levy.

The Borough alleges that the SOA's offer will exceed the 2.5% threshold, but this conclusion is not buttressed with evidence that the increased level of expenditure mandated by this Award will cause a Borough-wide increase in total expenditures in excess of 2.5%. Moreover, the Borough's own salary proposal exceeds the 2.5% level regarding this small bargaining unit.

In addition, the increased expenses for police supervision resulting from this Award are substantially offset by the increased productivity derived by the Borough from having fewer supervisors oversee the same size police force following the retirement and promotion of several bargaining unit members, thereby creating a pool of available funds that partially buffers the Borough from the impact of the additional expenses under the new agreement. Although this reduced staffing may not continue for the term

of the new agreement, the substantial savings to the Borough and the increased burden on the bargaining unit in the past few years cannot be ignored.

The Borough retains the legal authority to increase its tax levy, if necessary, to fund the level of benefits and salary increases for the new term of the collective bargaining agreement. There is, however, no compelling evidence in the record to support a conclusion that the incrementally higher costs mandated by this Award will materially impair the Borough's ability to operate within the parameters of its legal authority, including the level of municipal spending available under the current ordinances and statutes. Nothing in the package of changes imposed by this Award will place the Borough out of compliance with the Cap law or have any other adverse consequence regarding the lawful authority of the Employer. The prudence of such additional expenditures is analyzed at length below in the context of the sixth statutory factor: the financial impact on the governing unit, its residents, and taxpayers.

This factor is the dominant consideration in the outcome of the instant case. The evidentiary record demonstrates persuasively that the Borough of Roselle has experienced a decline in the valuation of its real estate ratables from \$859,226,970 to \$753,489,555 between 1990 and 1999, the second highest decline among the adjacent

communities and the third largest decline among the twenty-one municipalities in Union County during this interval. This decline in valuation imposes an increased burden on taxpayers even to maintain the current level of municipal services.

The Borough of Roselle increased its municipal purposes tax levy by 22.176% over 1998 and has raised its municipal purposes tax levy by more than 55% since 1990. The Borough has also experienced the highest rate of increase, 46.90%, in its total tax levy among the adjacent communities of Cranford, Elizabeth, Linden and Roselle Park during the past decade. These increases occurred in conjunction with the highest rate of increase in the municipal tax rate in Union County, a factor that also imposed greater burdens on the Borough's taxpayers. These circumstances significantly impair the ability of Borough's taxpayers to absorb more generous increases in salary and benefits than those awarded herein.

The Borough's year-end fund balance is very low, resulting in a surplus of reserves over expenditures of only \$400,467.36, or 1.66%, as of June 30, 1999 and \$234,777.69, or 1.01%, as of June 30, 1998. These skimpy margins indicate that the Borough cannot afford to increase salary or benefits dramatically within the current level of taxation or without reducing or jeopardizing municipal

services, especially in view of the substantial proportion of municipal expenditures devoted to police protection.

Police budget increases have accounted for major portions of the Borough's total budget increases in the past three years, ranging from 23.70% in the year ending June 30, 1999 to 165% of the budget increase in the year ending June 30, 1998 because of retroactive salary payments. Any unwarranted increase in the cost of providing police services creates a significant additional burden for the governing body, its citizens, and taxpayers. The demands by police supervisors, as articulated by the SOA, must be evaluated in this context.

The Borough of Roselle police supervisor bargaining unit is not underpaid. Unless municipal finances are dire, which has not been demonstrated in the instant case, key personnel such as police supervisors should be compensated at a level that reflects inflation, efficiencies and productivity achieved by the bargaining unit, through advancement in wages and benefits at a rate that is consistent with the Borough's financial strength and the progress made by other Borough employees, as well as similarly situated employees in comparable municipalities. The package of changes imposed by this Award balances the impact on the governing body, its citizens, and taxpayers and the overall compensation paid to the bargaining unit

compared to other employees in the public and private sectors, including other employees of the Borough of Roselle. Although the FMBA negotiated a new agreement with slightly higher nominal wage increases in the last two years, the FMBA unit had fallen farther behind the police in recent years and traded substantial concessions to achieve the 4% increases for 2002 and 2003 that the SOA bargaining unit has not conceded.

The seventh statutory factor, the cost of living, recognizes that employees should not be required to surrender the hard won gains of previous contract negotiations to the ravages of rampant inflation. However, inflationary increases to the cost of living have been moderate over the past ten years and have been far outpaced by the degree of increases in wages and benefits received by this bargaining unit. Consumer prices for the New York region rose only 2.4% during 1999, a lower rate of increase than the national average of 2.7% during the same period. The salary of Roselle Police Lieutenants increased an average of 3.51% per year above the Consumer Price Index between 1990 and 1999, and the salary of Roselle Police Captains increased 3.95% per year over the CPI during the same decade.

The cumulative impact of the salary increases to the bargaining unit between 1990 and 1999, over and above the Consumer Price Index, was 39.6% for Lieutenants and 45.23% for Captains in the Borough of Roselle Police Department. The magnitude of these increases supports the Borough's contention that the level of increase in salary and benefits sought by the SOA cannot be justified when assessed in conjunction with the Borough's constrained financial condition.

The bargaining unit is entitled to an increase in its compensation package that will enable police supervisors to keep pace with inflation and the bargaining unit retain approximately its current position relative to police supervisors in the comparable communities cited by the parties, especially when the potential savings derived from adjustments to payroll and the prescription co-payment are factored in. The Borough's offer may be adequate to accomplish the former, but it does not accomplish the latter purpose. The retention of approximate position relative to employees performing the same or similar services is a significant factor in maintaining the continuity and stability of employment, the eighth statutory factor and mandates awarding a package higher than the Borough's offer.

Police officers and their supervisors are acutely aware of their compensation relative to adjacent communities. They zealously focus on maintaining, if not improving, their standing in this regard as a measure of how well they are appreciated by their employers: the governing body, citizens and taxpayers. While no police supervisor in this bargaining unit is likely to abandon his employment with the Borough of Roselle because one offer rather than another is adopted, the job satisfaction of police supervisors such as those who comprise the bargaining unit represented by the SOA reflects the degree to which they perceive they are being fairly compensated.

The Borough's offer, which the Borough believes it can pay without undue hardship on the governing body, citizens and taxpayers, falls significantly below the level of wage increases negotiated by and awarded to other police departments cited by the parties in testimony and documentary evidence and is less than the wage increases negotiated with the FMBA. Consequently, the bargaining unit shall receive slightly larger salary increases than the Borough has offered, but below the level sought by the SOA.

The augmented size of the increase is further justified by the additional burdens imposed upon the bargaining unit by converting to a bi-weekly payroll and increasing the prescription co-payment, although the

effective dates of these changes are contingent on the occurrence of conditions precedent that are outside the purview and control of the Interest Arbitrator.

The New Jersey Police and Fire Public Interest Arbitration Reform Act requires the Interest Arbitrator to analyze the annual net economic change caused by the Award. The bargaining unit received a 5.12% increase for 1999, and the SOA does not seek additional compensation for the first year of the new contract term. The compounded impact of the salary increases proposed by the SOA would result in an 18.25% increase over the four-year period since the last agreement expired. This rate of salary augmentation will increase a Police Captain's base salary by more than \$15,000 in just four years, an untenable result in light of the Borough's declining ability to fund additional expenditures without a significant increase in its tax levy. A Police Lieutenant's base salary will increase by a similar magnitude. Additional costs associated with the base rate, such as pension contributions and overtime, will swell the Borough's expenditures for police supervision even further. Consequently, a smaller annual increase than the 4.0 % proposed by the SOA is appropriate.

The Borough's proposal to pay a \$1200.00 stipend off base in lieu of further salary increases in 2000 seeks to offset the 5.12% increase experienced by the bargaining unit in 1999. The Borough's justification for such an action is not only that the Borough will expend fewer dollars, but also that bargaining unit salaries will move closer to other comparable units. The Borough's motivation is understandable, but there is no compelling fiscal emergency or egregious distortion of compensation that justifies applying a 1.56% average annual increase for 2000 in a manner that does not build the bargaining unit's base for the future and that drags the bargaining unit away from the current position relative to other police departments that the bargaining unit earned over many years. If the bargaining unit were far ahead of other comparable communities, then the off base, lump sum adjustment suggested by the Borough for 2000 might be justified.

The increased prescription co-payments to be absorbed by the bargaining unit and the implementation of a biweekly payroll that will reduce costs for the Borough justify increasing the \$1200. stipend off base proposed by the Borough to \$1500. paid on the base for 2000, followed by annual increases of 3.35% for 2001, 3.5% for 2002, and 3.5% for the first six months of 2003. The compounded impact of these salary increases is 12.92% for Lieutenants and 12.62%

for Captains over three and a half years, in addition to the increase previously paid for 1999, and brings a Captain's base salary, exclusive of longevity, up to \$97,498. by the end of the contract term on June 30, 2003 and a Lieutenant's base salary up to \$84,997. This level of salary increase is well within the parameters of recent settlements and interest arbitration awards chronicled by the Public Employment Relations Commission, and is consistent with the increases in cost of living and private sector salary increases.

The sick leave incentive modification sought by the SOA is reasonable only if the revised incentive promotes judicious use of sick leave and encourages employees to report for duty when they are suffering from a minor malady that does not unduly impair their ability to function on the job. The SOA asserts that the annual computation of the sick leave incentive reduces the motivation to avoid sick leave use after an employee unavoidably uses several sick days, thereby disqualifying for incentive until the next year.

In order for this benefit modification to be cost neutral, yet enhance the likelihood that both the Borough and the bargaining unit can share the fruits of reduced sick leave usage, the SOA's proposal must be amended. The two six month intervals for compensation will be implemented,

provided that an employee who is absent for two days in any six month period from January 1 to June 30 or from July 1 to December 31 and, therefore, receives \$100.00 in sick leave incentive can receive no additional sick leave incentive in the next six month interval if the employee uses more than one sick day during the next six month interval. In other words, the Borough's exposure for bonus payments remains at three days in any twelve month interval, but bargaining unit employees who are absent in excess of two days in one six month interval retain the opportunity to earn the \$500.00 incentive bonus for not using any sick leave, or a \$300.00 incentive bonus if they use only one sick day, in the subsequent six month period. The probability that both parties will benefit from this modification to the collective bargaining agreement justifies its implementation.

The clothing allowance for supervisors assigned to plainclothes and administrative duties at the discretion of the Chief has been \$400.00. Enhancement of this benefit by \$100.00 per year in 2000, 2001, and 2002 reflects the increased cost of replacing clothing provided by the employee for the benefit of the Borough, which otherwise would bear the burden of uniform replacement. At most, the total cost of this benefit will be \$2100.00 over the term of the agreement, a negligible amount.

The SOA's request for additional vacation is denied on the grounds that the current vacation benefit provides ample opportunity for rest and recuperation and that additional time off, with the concomitant overtime costs for replacement coverage, cannot be justified in light of the Borough's financial condition.

The Borough seeks to create a graduated pay scale for newly promoted Lieutenants and Captains whereby the newly promoted supervisor will receive 11% increase in base pay upon promotion, followed by two annual 1% promotional increases. There is merit to the Borough's assertion that a newly promoted supervisor requires some time in grade to achieve full productivity at the higher rank. However, there is no compelling basis to abandon retroactively for all newly promoted supervisors the current 15% rank differential awarded by the previous Interest Arbitrator, presumably in the context of other trade-offs and considerations underlying his award. Consequently, all employees promoted to the rank of Lieutenant or Captain after January 1, 2001 shall receive a 12% promotional differential for their first year in the new rank and thereafter receive the full differential between ranks. This interim step represents eighty per cent of the full rank differential while the newly promoted supervisor acquires expertise in the full range of duties required by the higher rank.

The health plan and dental incentives agreed upon by the parties may have a positive impact for the Borough, but the extent of participation in these shared savings is speculative. Likewise, the terminal leave modification may result in cost savings, but only if future retirees avail themselves of this option. Therefore, no changed economic impact can be attributed to these stipulated modifications to the collective bargaining agreement.

The annual net economic changes predicated on these modifications to the collective bargaining agreement are difficult to ascertain, because the effective dates of pending promotions and the number of vacant positions have not been clearly defined. However, assuming a full complement of two Captains and five Lieutenants from July 1, 2000 through June 30, 2003, the termination date of the new agreement, the annual net economic changes would be as follows:

for 2000: \$10,800.00

for 2001: \$15,855.00

for 2002: \$20,260.00

for the first half of 2003: \$10,483

The total net economic change attributable to salary increases for the final three and a half years of the four and a half year term of the new agreement is \$57,398. plus a nominal increase attributable to clothing allowance increases for an undetermined number of bargaining unit

employees. This latter amount will be offset, in whole or in part, by cost reductions derived from sick leave incentives and bi-weekly salary administration savings.

The Borough may hereafter compute and express all compensable time in terms of hours, rather than days, provided that there be no diminution of any benefit enjoyed by the bargaining unit or alteration to the detriment of the bargaining unit of any practice or procedure as a result of this record keeping change. This modification to the collective bargaining agreement has no financial impact.

The Borough seeks to place a 120-hour cap on the accrual of compensatory time in order to avoid having to buy back this time at a higher rate in the future. There is merit to this concept, but the limit is too low because it may force bargaining unit employees to use compensatory time when it is not convenient in order to preserve the time, which they have accrued for the benefit of the Borough. The Borough retains the right to buy back any and all accrued compensatory time at the employee's discretion. However, the mandatory buy back cap should not unduly restrict an employee's ability to utilize earned compensatory time. Therefore, the mandatory cap after which the Borough may mandate buy back of the excess shall be 300 hours, effective January 1, 2002. There is no immediate or discernible financial impact on the Borough from imposing this limit.

The Borough asserts that, according to its auditor, the practice of paying employees their accrued and earned vacation time at the beginning of their vacation is illegal. This assertion has not been buttressed in the record with any definitive evidence of a court decision or administrative agency ruling mandating that this longstanding Borough practice be abandoned. Consequently, until a court or administrative agency of competent jurisdiction has ruled unambiguously that the procedure set forth in Article, VIII, Paragraph E.2 violates a statute or state administrative regulation, this contract term shall remain in full force and effect.

The Borough's proposal to limit the accrual of personal days to fifteen days must also be denied. Personal days, like sick days, remain available in reserve for use when appropriate circumstances arise. Unlike vacation, which should be enjoyed regularly because the refreshment and replenishment of energy and enthusiasm that can be achieved from prolonged time away from the stress and routine of work inure to the benefit of both employee and employer, personal days are earned and banked to permit an employee to engage in a wide range of activities that require the employee to be absent from work. Examples of legitimate use of personal days include house closings, doctor's appointments, funeral attendance for persons who are not immediate family members,

and caring for children or parents. If events such as these do not arise for a prolonged interval, there is no reason to deprive an employee who faithfully reports to work of the right to use accrued personal days when an appropriate occasion occurs in the future.

In summary, the evidentiary record mandates the conclusion that the Borough's underlying financial strength does not permit increasing the package of salary and benefits paid to police supervisors to the extent sought by the SOA for its members. The public interest--particularly the financial impact on the governing unit, its residents, and taxpayers--combined with the overall compensation presently received by bargaining unit employees in comparison to employees performing similar duties in comparable municipalities and the level of compensation received by middle managers in the private sector dictate the granting of a more moderate improvement in salary and benefits, coupled to efficiencies of administration that may produce offsetting cost savings. The foregoing statutory factors, evaluated in the context of the Borough's declining ratable base, rising expenses, and limited ability to preserve the Borough's present level of programming and public services without a significant tax increase if the full extent of the SOA's demands were granted, have been afforded the greatest weight.

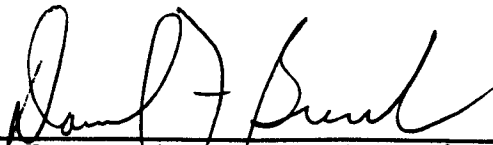
The cost of living has been relatively stable and any adverse impact on the purchasing power of the bargaining unit will be fully absorbed by the level of salary increase awarded herein. The continuity and stability of employment is unlikely to be adversely affected and has been afforded relatively little weight.

The Borough seeks to introduce a bi-weekly payroll. This administrative change is cost efficient because it reduces the substantial processing costs associated with a weekly payroll. The adverse impact on the bargaining unit is minimal, except perhaps for the first pay period under the new system. The benefits to the employer far outweigh the burden on the employee and generate additional money to help fund the increase in salaries. Consequently, the Borough may implement a bi-weekly payroll for the SOA bargaining unit at the same time that bi-weekly payroll is implemented for all other Borough employees. The Borough shall afford bargaining unit employees and the SOA not less than thirty days prior notice before implementing the transition to biweekly payroll.

All other proposals and demands by either party are hereby denied. The collective bargaining agreement previously in effect shall continue unamended except for the changes in the terms and conditions of employment governing

the police supervisory bargaining unit that have been explicitly ordered in this Award.

October 13, 2000

A handwritten signature in cursive script, appearing to read "Daniel F. Brent".

Daniel F. Brent, Interest Arbitrator