

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
495 WEST STATE STREET
CN 429
TRENTON, NJ 08625-0429

Docket No. IA-95-126

In the Matter of Arbitration Between :

LAKESWOOD TOWNSHIP :

-Employer- :

and :

LAKESWOOD TOWNSHIP POLICE
SUPERIOR OFFICERS :

-Union- :

O P I N I O N

A N D

A W A R D

ARBITRATOR: Robert E. Light, mutually chosen by the parties pursuant to the rules and regulations of the New Jersey State Public Employment Relations Commission.

HEARINGS: Meetings of July 17, 1995 and October 2, 1995; hearings of March 26, 1996 and April 1, 1996. Both counsel thereafter filed post-hearing briefs.

APPEARANCES: For the Township
James Holzappel, Esq., Citta, Holzappel, et al
Gregory C. Fehrenbach, Municipal Manager
Michael J. Lynch, Chief of Police

For the Union
Richard Loccke, Esq., Loccke & Correia
Robert Lawson, Sergeant

PROCEDURAL BACKGROUND

Pursuant to Chapter 85, Public Law of 1977, the act providing for compulsory interest arbitration of labor disputes in police and fire departments and, in accordance with NJAC 19:16-5.6 (b), the undersigned was duly designated as Interest Arbitrator in the above matter. This designation was communicated to the parties and the Interest Arbitrator by letter dated May 11, 1995 from the Acting Director of Arbitration of the Public Employment Relations Commission.

Mediation sessions were held on July 17, 1995 and again on October 2, 1995. Attempts at a resolution of this interest arbitration which once appeared hopeful, ultimately proved to be unsuccessful. As a result, formal hearings were held on March 26, 1996 and April 1, 1996. By virtue of the statutory revision to NJSA 34:13(a)1, et seq., by the passage of the Police and Fire Interest Arbitration Reform Act (A-3296, C. 425 L1995) as well as by agreement of the parties themselves, conventional authority is vested in the Arbitrator to decide the issues in dispute.

The revised statute cited above imposes upon the Interest Arbitrator the duty to:

"...g. The arbitrator or panel of arbitrators shall 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. . c. (C.) (now pending before the Legislature as this bill): provided, however, that each party shall have the right to submit additional evidence concerning the comparability of jurisdictions for the arbitrator's consideration.

[(b) in comparable private employment.

(c) In public and private employment in general.]

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

(4) Stipulations of the parties.

(5) The lawful authority of the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by 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 monies have been designated by the governing body in a proposed local budget, or (c) initiate any new programs and services for which public monies 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...."

THRESHOLD ISSUE

During the arbitration process, SOA counsel raised the issue of the arbitrability of three issues, viz. terminal leave, health insurance and workers compensation. These issues were first raised by Township counsel at the initial formal arbitration hearing on March 26, 1996. The parties were directed to submit their arguments on the issue in their final briefs. This procedural issue shall be dealt with prior to proceeding to the substantive issues.

THE SOA'S ARGUMENT

SOA counsel argues that no contention is made that the three disputed demands are not generally arbitrable. Rather, they are not arbitrable in this proceeding because they were not cited on the Town's response to the formal interest arbitration petition filed by the SOA on April 21, 1995. In fact, counsel notes that no response to the petition was ever filed by the Town. Under NJAC 19:16-5.5(a)1, the respondent (herein the Town) "shall file within seven (7) days of receipt of such notification or petition, a statement of response setting forth the following:

"1. Any additional unresolved issues to be submitted to arbitration....."

Counsel notes that it was not until March 26, 1996, nearly a year after the Town was required to file a responsive statement, that it ever listed the three issues cited above that it seeks to have adjudicated in this arbitration.

Counsel cites the argument he made on the record (Transcript I, pages 13, 14, 20-21) when Town counsel first sought to present these issues during that first day of hearing. Moreover, he cites and discusses at length various prior decisions in support of his contention. Specifically, he cites Borough of Rutherford and Rutherford PBA Local 300, Docket #IA-87-169; Borough of Bogota 9 NJ PER 14110(1983); Newark Fireman's Mutual Benefit Association, 90 NJ 44(1982); Borough of Carlstadt and Carlstadt SOA (IA-94-129); and Emerson Borough and PBA Local 206 (PERC Docket No. IA-95-143).

The Town submitted as an exhibit (T-1) at the first day of formal hearings a four-page document which represented its final offer. Association counsel argues that Page 1, which represents the Town's salary response, is the only page which should be permitted into evidence and considered by the Arbitrator. Pages 2, 3, and 4 must be excluded since they were not listed on the initial petition and were first formally introduced into the record as of March 26, 1996.

In conclusion, counsel argues that NJAC 19:16-5.5(a)1 is clear, precise, mandatory and not subject to interpretation. The cited case law follows the rule. No room for interpretation exists, and the Arbitrator must exclude the items found on Pages 2, 3, and 4 of T-1 from consideration in his final award.

THE TOWN'S POSITION

Counsel for Lakewood argues that, whereas the Association broadly identified one topic in its petition as "health issues", it thus acknowledged itself that numerous health-related issues were in dispute and were to be negotiated by the parties. The Association should not now be allowed to exclude the Township's proposals on non-wage issues under the assertion that they are not encompassed under the "health issues" topic it listed on the formal petition for arbitration.

Counsel submits that the three issues the Association seeks to exclude are encompassed in the term "health issues". The

modification to the health insurance indemnity plan is a health issue; the workers compensation modification deals with benefits which apply when the health of an employee is affected by a line-of-duty injury; and the accumulated sick leave provision directly relates to the amount of sick leave an employee accumulates. Moreover, these issues all have been dealt with in negotiations. The Association cannot claim surprise. The Arbitrator heard testimony on the issues in the hearings. Finally, a "narrow construction" of the term health issues would frustrate the liberal purposes of the statute.

Counsel argues that the regulation cited and relied on by the PBA does not contain an absolute bar against late submissions, and since the statute is intended to be liberally construed, the Arbitrator has the discretion to allow a party to submit issues after the seven-day period called for in the regulation. Counsel cites the Newark FMBA (op. cit.) Supreme Court decision for the proposition that it would be improper to exclude these issues on a technical basis since to do so would fly in the face of the goal of the statute.

DISCUSSION

Association counsel has established a prima facie case that the Town's three issues, first formally submitted in March of 1996, should be excluded. It is clear that the Town did not submit a response within seven months, let alone seven days of the Association's filing of its formal interest arbitration petition. The trier of fact must now examine the defenses the Town seeks to assert to the SOA's plea to exclude these additional unresolved issues.

The assertion that the three demands relate to the term "health issues" and should be considered proves unavailing. Each argument made as to the three topics involves a "stretch". Clearly, the accumulated unused sick days provision and the proposed workers compensation modification are related to "health issues" so tangentially as to not allow their consideration through a "back door, after-the-fact attempt to include them". The provision relating to health insurance modifications, while further inside the "tent" of the term "health issues" so as to be plausible, is not substantiated by any proof that the Town intended it to be included at the time. The simple fact remains that the Town never filed a response and never formally identified these issues.

Counsel argues that these three provisions are significant because they are among 39 specific recommendations contained in the Local Government Review study done for the Township by the Division of Local Government Services. He goes on at length to cost out the

possible savings the Township would realize from these changes and comments that three of the Town's bargaining units (AFSCME/clerical-technical; AFSCME/clerical-library; and FMBA-EMT) agreed to all of these proposals in their newly-negotiated contracts. These contentions - far from supporting the inclusion of these eleventh-hour demands - argue against it. Obviously the Township was aware that it wanted to obtain these three provisions in bargaining well before the SOA petition was filed. Accordingly, being included as recommendations in that study make them all the more significant and offers less reason why it was not timely contained in a response to the Association's petition.

The cases cited by Association counsel contain varying fact patterns. Certainly this is a fact-sensitive issue and respective holdings in these cases can seem to be more deserving or less deserving of excluding a respondent's attempts to arbitrate issues not responded to or introduced in the notice that NJAC 19:16-5.5(a)1 mandates. In this case, the only equitable argument advanced by the Township is that these issues were discussed between the parties in negotiations, and therefore the SOA cannot claim surprise. Association counsel, in his brief, denies that they were discussed in negotiations. However, such an argument leads to the question of the reason for the existence of the regulation in the first place. The validity of such a regulation must be presumed, and the urging of the respondent to consider these issues even though they were not formally raised until eleven months after the petition leads to the next question of where

should such a cut off be drawn - after 12 weeks or 12 months? In other words, to accede to the Town's urging is to, in effect, totally disregard the regulation. Had the petitioner failed to formally list an issue in its initial petition, should the same relaxation of the rules be accorded to it merely because the parties discussed it in negotiations? These are but a few of the troubling issues that would be raised were the Town's plea to include these issues be granted. The final conclusion, however, rests on the simple premise that a regulation exists which has not been complied with by the Town without any justification whatsoever. The regulation exists and, in the instance where the Association seeks to enforce its rights thereunder, no choice remains but to rule accordingly.

The Town argues that the regulation does not call for a bar of proposals not timely filed in a response. To accept such an argument is to conclude that the regulation creates a regulation it makes mandatory, then omits a remedy or a penalty. The preclusion of such a late filed additional topic as an issue must be implied from the very existence of the regulation itself.

The only argument that offers any justification for the Town's position is its claim that it was discussed in negotiations by the parties. While such a claim is denied by the Association (SOA brief, page 3), the Town failed to place on the record any affirmative testimony as to the length and breath of such alleged discussions. Its claim that testimony in the arbitration was taken on these three issues fails to note that the Association had made

an objection to exclude these topics and to bar all relevant testimony, which motion the Arbitrator reserved decision on until this final award was issued. Accordingly, testimony was taken on the subject under that understanding.

In this time of judicial and legislative scrutiny of the entire arbitration process, close compliance with the statute and the regulations promulgated thereunder is advisable. The appropriate governmental branch implemented these regulations, and for any arbitrator to allow these issues to be submitted and considered nearly a year beyond where the regulation mandates their timely filing would represent the clearest case of exceeding statutory authority. Accordingly, the Township's final offer is limited to its counter offer on wages. Notwithstanding this ruling, the entire final offer the Town attempted to submit (identified as pages 1 through 49 within the text) is recited below to make the record complete.

FINAL OFFERS OF THE PARTIES

SUPERIOR OFFICERS ASSOCIATION

Economic

1. **Wage Increase** - The SOA has proposed a 3 year contract with a 6% wage increase to become effective on January 1 of each year. (This issue was set forth as issue 1A on the proposal sheet marked in evidence as P-1).

2. **Senior Officer Differential** - The SOA is seeking the same benefit in this category as was mutually agreed upon between this same public employer and the rank and file unit in the same police department, the PBA. The SOA's proposal is identical to that benefit now enjoyed by the PBA and is set forth on the proposal sheet (P-1) as issue 1B.

3. **Holiday Fold In** - The SOA has proposed that seven of the currently available 14 holidays be folded in and paid along with regular compensation. This issue appears as item 6 on the proposal sheet (P-1). This does not increase the number of holidays but rather changes only the method of compensation. The holidays would be paid uniformly to all bargaining unit members as a single day's value folded in to annual compensation over the course of and divided equally among the regular pay checks.

4. **Clothing Allowance** - The SOA is proposing that the current clothing allowance be terminated as of the end of calendar year 1996. Effective January 1, 1997 the amount of \$900.00 would be folded in and paid along with regular pay. This issue appears as item 8 on the proposal sheet (P-1).

Non-Economic

1. Deletion of the third paragraph of the Witnesseth clause set forth at page two of the prior contract (J-1).

2. ARTICLE II, SUPERIOR OFFICER'S RIGHTS (page 3) - the SOA proposes a replacement of the second section of this article with the attached Personnel Files clause.

3. ARTICLE III, MANAGEMENT RIGHTS (page 3) - the SOA proposes the addition of the following language "This Article is subject to the Public Employment Relations Act and other applicable New Jersey and Federal law."

4. ARTICLE VI, GRIEVANCE PROCEDURES (page 4) - the SOA proposes that all references to "not binding" or "non-binding" shall be deleted and replaced with binding arbitration.

THE TOWNSHIP

Salary Proposal (page 1)

		<u>1995</u>	<u>1996</u>	<u>1997</u>
Deputy Chief		3.50%	3.00%	3.00%
Captain		3.50%	3.00%	3.00%
Lieutenant	1-1-95	3.00%	4.25%	4.25%
	7-1-95	1.50%		
Sergeant	1-1-95	3.00%	4.25%	4.25%
	7-1-95	1.50%		

Article VII, Section VII (New) (page 2)

At the time of retirement, the employee shall be entitled to pay on the basis of one-half day per full day of verifiable sick leave accumulated and not previously used which amount shall not exceed \$15,000.

Article VIII, Section III (New) Workers' Compensation (page 3)

When an employee is injured in the line of duty, said employee shall receive those benefits provided in the statutes, N.J.S. 34:15-12.

Article XIV, Hospital, Medical and Dental Benefits Section V (New)
(page 4)

The health insurance indemnity plan set forth in Section 1 above shall be modified in accordance with the following provisions effective 1 January 1995.

A. Medical/Hospitalization coverage shall be subject to utilization management incorporating the following techniques:

- i Hospitalization pre-certification
- ii Second surgical opinion
- iii Large case management
- iv Continued stay review
- v High risk pregnancy management

B. Major medical deductibles will be \$200 for single coverage and \$400 for family coverage. Co-insurance of 80%/20% of the next \$4,000 and 100% thereafter.

C. Prescription coverage
Pharmacy copay of 5% of cost of prescription

D. All other features of the 1994 Township plan of benefits will remain unchanged.

Non-Economic

None

POSITION OF THE SOA

In his post-hearing brief, Association counsel advanced the following arguments as to the economic and non-economic aspects of its final offer:

1. The history of the Superior and rank and file police units discloses a pattern of a 15% rank differential for all ranks over the rank of patrolman. This pattern resulted from mutuality and not binding arbitration. Effective with the 1995 contract, the PBA (non-supervisory or rank and file unit) received a 4.5% increase across the board, as well as a Senior officer Differential (S.O.D.). The SOA seeks to preserve the historical differential between these two units by obtaining a S.O.D. provision in its new contract. For calculation purposes, a 1% wage increase payable to this unit amounts to an expenditure of \$13,386. Hence, the awarding of *minimus* impact on the Town's finances. The 1% base wage point adjustment discussed above creates a mere .0002% increase be raised on the tax levy.

2. Counsel recites testimony from the record detailing the job performance of this department in relation to its training and responsibilities. From an efficiency perspective, the increase in workload is contrasted with the attrition of four Superior officers who have not been replaced. Despite these positives, it is claimed the Town, without having offered any justification, seeks to deviate from the long standing pattern of rank differential by refusing to offer to the SOA the 4.75% increase and senior officer

differential voluntarily given to the rank and file. Counsel urges that the 1995 wage pattern increase of the PBA remain in effect and be applied to the SOA.

Counsel seeks to tie this dilemma to the "interest and welfare of the public" criteria. He quotes his witness, Sergeant Lawson, as to the morale problems created by the diminished salary gap between a senior sergeant and a senior patrolman. Counsel emphasizes the problem was solely created by the Township's voluntarily awarding the S.O.D. to patrolmen while it now seeks to correct what it now perceives to have been a mistake by denying it to the SOA. In conclusion, counsel argues the interest and welfare of the public will be best served by awarding the senior differential to the Association.

3. Likewise, counsel claims that the comparability criteria derived from the statutory criteria two and three favors the Association. Counsel notes the difficulty in making any meaningful comparison to the private sector by virtue of the unique nature of public law enforcement. He argues consequently that those comparisons offered by the Town should be given little weight.

To the contrary, counsel argues that comparisons with the Lakewood PBA unit, other Lakewood employees and neighboring police departments should be afforded the most weight. This argument is essentially that the PBA unit accepted less than the comparable increase paid to local departments because it was voluntarily granted the senior differential by the Town. Counsel notes that to deny that identical package to twenty supervisors in the same year

it provided it for eighty rank and file members constitutes discrimination against supervision where, if anything, they are entitled to deference over the rank and file because of their employment service and job responsibilities.

In conclusion, counsel argues that the comparability evidence warrants the identical compensation increase paid to patrolmen in 1995 with subsequent years following the six percent wage increases justified in evidence by the Association's other proofs.

4. Counsel notes that the stipulations reached by the parties in arbitration were purely procedural, having no effect on the outcome herein. As to the criteria citing the lawful authority of the Employer, counsel addresses this issue to cap considerations and asserts that the record conclusively establishes that Lakewood can pay the SOA's last offer without exceeding its CAP authorization. Counsel highlights the conclusions of Association expert witness John Laezza, former Director of the New Jersey Division of Local Government Services, which are that Lakewood has available significant flexibility within the cap law to provide more than adequate monies to fund the SOA proposal. Counsel specifically reviews Laezza's assessment of a strong tax base, rate of collection, substantial tax appeal reserves and the substantially improved financial position the Town has enjoyed during Mr. Fehrenbach's tenure, as support for Laezza's conclusions.

5. Counsel asserts that the impact of the selection of the SOA's final offer on Lakewood's taxpayers is minimal. As previously noted, the impact on the tax levy equates with a .0002 point increase. A salary point is only \$13,300. Counsel claims these numbers cannot be equated with a significant adverse impact on Lakewood's taxpayers should the SOA offer be awarded. As support for such a claim, counsel notes that recent history demonstrates that voter concern simply does not exist. In a recent school board budget vote, barely 5,000 citizens out of a potential of nearly 24,000 voters exercised their right to vote. In that election the residents approved a budget which accounted for 46% of the total municipal expenditure.

6. Counsel acknowledges the low cost of living figures currently in existence. He cites the special cost of living adjustment federal law enforcement personnel receive in certain duty assignments, particularly the New York metro area which is currently at 16%. Counsel argues that this federal law provision calls into question the legitimacy of the national CPI wage figures as applied to our geographic area.

As to the continuity and stability of employment criteria, counsel takes a unique approach and argues that the awarding of the Town's offer would result in patrolmen being promoted out of benefits they currently enjoy (the S.O.D.) in order to advance their careers. In essence, counsel urges that Lakewood must not be allowed to disavow itself of the standard it voluntarily agreed to

with its patrolmen to pay a senior officer differential when it is now faced with a similar demand from its Superior officers.

Non-Economic Issues

7. Counsel argues for the acceptance of the four non-economic contractual language changes it seeks to have awarded. Briefly, counsel argues the following as to each issue.

A. The removal of Paragraph 3 of the Witnesseth provision of the contract would be consistent with NJSA 34:13A-5.3. The language, as it now exists, appears to zipper all subjects from interim bargaining. Counsel argues that the above statute mandates that new rules or modifications of prior working conditions be negotiated before implementation. Rather than face the litigation of this perceived conflict before PERC sometime in the future, counsel argues that the parties should resolve it in this matter, which the removal of paragraph 3 would accomplish.

B. As to personnel files, the Association merely seeks to have an amendment inserted to allow an officer to promptly submit his version of any incident for which he may have been written up.

C. The third proposal seeks to add language stating that the Management Rights clause is subject to the PERC Act and applicable state and federal law. Counsel argues such language strengthens the grievance procedure and avoids the possibility of expensive and time-consuming litigation were the parties ever to

arrive at a disagreement as to whether wage and hour disputes, as an example, should be processed through the grievance procedure or be civilly litigated at length.

D. Finally, counsel notes that while the PBA unit has binding arbitration, this supervisor's unit only has advisory arbitration. Counsel seeks to have this provision implemented under his theory that advisory arbitration is meaningless.

In conclusion, counsel asserts that, based on the testimony and the evidence introduced, the proofs compel but one result which is the adoption of the SOA package.

POSITION OF THE TOWNSHIP

In his post-hearing brief, counsel for the Township advances the following arguments in support of the selection of its final offer.

1. Dealing initially with NJSA 34:13A-16G(2) - the comparability criteria - counsel calls attention to the wage and salary information in the record relating to Superior officers in the geographically near and comparable communities of Jackson, Brick, Howell, Dover and Manchester Townships. In brief, counsel asserts that Lakewood's economic package will keep Superiors comparable with their peers in these communities while the Association's demands of 6%, Senior Officer Differential, and a roll-in of holiday pay and clothing allowances would result in an unwarranted and unreasonable increase when measured against these comparable communities. The Town emphasizes that Jackson Superiors have eliminated longevity for new hires after January 1, 1995, and Howell pays a flat rate versus Lakewood's percentage longevity.

Centering the comparability within Lakewood itself, note is made that two Township units settled in the 4-4 1/2% range, while the FMBA-EMT's settled for 0% in '95, 1% in '96, and 2% in '97. Even though lower paid, these Union's settlements realistically recognize the financial climate in the Town whereas, by contrast, the SOA's excessive demands are not substantiated by anything in the record presently before the Arbitrator. Counsel rationalizes the senior differential payment it gave the rank and file under the

claim that the Town only did so reluctantly "due to the fear that the possible alternatives would have (had) serious negative consequences." It notes it is presently back in arbitration with the rank and file seeking to eliminate that very senior differential.

Comparability is further emphasized among other Township supervisors. Counsel cites respective salaries showing that the four supervisory titles in the SOA rank in the top ten of all department heads and supervisors in Lakewood even without the excessive increases the Association presently seeks. In total, the Police Department, while comprising only 30% of the Town's workforce, is responsible for 50% of the personnel budget. In conclusion, counsel argues that these proofs compel a finding that its final offer is the more reasonable and should be awarded.

2. On the subject of the financial impact on the Town and its residents, counsel rejects the testimony of the SOA's expert witness John Laezza that Lakewood has the ability to pay the Association's offer since his conclusion requires monies being diverted from reserves for tax appeals, uncollected taxes or delinquent tax receipts. Counsel recites numerous reasons why Laezza's conclusion is flawed and asserts the fact remains that the SOA proposal would have serious and unfavorable consequences on the Town and its taxpayers. In so doing, Counsel recites his arguments that, while economic conditions in Lakewood have improved through responsible fiscal management over the past few years, problems

inherent in the Town still render the economy fragile and unable to absorb the cost of the Association's package. The senior differential cost alone would be \$207,000, and folding in the holiday pay would require \$42,230 in additional monies. The reserves Laezza pointed to as sources to fund this package are just that - reserves - prudently put aside for contingent expenses. Moreover, the local Government Budget Review (T-1, page 36) recommended eliminating the PBA senior differential due to its cost, whereas the Association's offer, if accepted, would exacerbate an expense already deemed to be imprudent.

Counsel then reviews factors such as the highest unemployment rates in the County, the existence of a partial Urban Enterprise Zone, and the high AFDC population which portray a populace more susceptible to harm from the adoption of the SOA package than that found in other municipalities. In conclusion, counsel argues the Town's proposal reasonably compensates the supervisors while the SOA offer would inevitably result in a negative impact on the Town.

3. Counsel reviews recent CPI index figures and argues that the SOA package cannot possibly be said to be supported by these recent figures, and this conclusion alone adds but another statutory criteria favorable to the award of the Town's final offer.

4. Counsel makes an assertion that the awarding of the SOA offer "...most likely, would force a reduction in personnel and/or services." Review is had of the Town's current attempt to lay off

six Inspection Department employees, and the probability that such efforts would have to be undertaken under the police budget to fund the SOA package were it ever to be awarded. In essence, counsel notes the previous undisturbed continuity of employment stretching over 30 years and argues that only the awarding of the Town's final offer would protect that history.

5. As to the criteria dealing with the interest and welfare of the public, counsel argues that the economic impact previously argued can be said to be nothing but adverse to the citizens' interest and welfare. Lakewood's offer, however, will continue to allow effective law enforcement as the partial result of competitive and comparable salaries the Town has offered to pay this unit.

6. Counsel briefly reviews the total compensation package Lakewood's supervisors receive and argues that the Association's pending proposal is clearly unreasonable and unwarranted in that it seeks a senior differential on top of a percentage based longevity provision.

Non-Economic Issues

7. With respect to the four non-economic contract language changes requested in the Association's final offer, Town counsel opposes each of these for the reasons stated below:

In all four issues, the Association failed to present any

evidence in support of its request for these changes. In light of the direction of the New Jersey Supreme Court in interpreting and applying the Interest Arbitration Statute, proofs must support these positions. Without such proofs the Arbitrator should reject them.

Counsel offers additional arguments against any of four request changes with the exception of the request that binding arbitration be inserted in place of the present advisory arbitration in the Superiors' contract. In his argument, counsel contends that it must be rejected "because it purports to implement a procedure which is contrast (contrary?) to the law of this State". In brief, counsel argues that the Supreme Court in State v. State Troopers Fraternal Association 134 NJ 393(1993) at 412 recognized that NJSA 34:13A-5.3 does not apply to municipal police officers because of the availability of statutory appeal procedures for the review of discipline. In conclusion, counsel argues that it would be contrary to the law of this State to grant this request, and therefore it must be denied.

In conclusion, counsel argues that the final offer of Lakewood Township is the more reasonable of the final positions and warrants that it be awarded.

DISCUSSION

The Arbitrator has carefully weighed all of the evidence in the case including the testimony of the witnesses at the hearings, the arguments of respective counsel as set forth both at the hearings and in their briefs, the contract and the exhibits prior to reaching his decision.

Under the Police and Fire Interest Arbitration Reform Act (Chapter 425, Laws of New Jersey, 1995), eight criteria have been set down under which arbitrators are to evaluate the final offers of the parties have. The first four of these eight criteria have been amplified, and they will be considered initially.

Interest and Welfare of the Public

In summary, the Town argues that the Association's final offer, if implemented, would lead to increased governmental spending, increased taxes and layoffs within the Township which it concludes cannot but be detrimental to the interest and welfare of the citizenry. Conversely, Association counsel argues that the adoption of the Town's offer would further discriminate against this unit by paying it percentage-wise a significantly smaller wage increase than it had negotiated voluntarily to pay the rank and file. Noting that a 16% decline in supervision manpower, contrasted with a 20% increase in supervisees over the past two years, has taxed this unit and created morale problems. To award the Town's offer would be to slight this unit and could have

nothing but a negative effect as a result of this "disruptive pay practice".

There certainly are degrees of truth in each of these arguments. As will be explained more fully below, although the superiors are well paid, comparatively speaking, with their peers within the geographic region, the Town has, on its own, created this disparity between these two units; thus narrowing the gap. The Town's efforts over its very recent history to improve its economic condition is laudable and can be understood as motivating its refusal to offer the senior differential to the supervisors while seeking to take it away from the rank and file in present negotiations. Frankly, the Town's explanation that it conceded to grant the differential in negotiations with the rank and file lest it wind up with a more costly package is certainly less convincing that had the differential been awarded by an arbitrator. The same would apply to the 4.5% 1995 increase it voluntarily paid. Of the three dire predictions Town counsel claimed would result from awarding the SOA package, only the threat of increased taxes seems to have theoretically been proven by the Town. The cost factor of the SOA offer is not overwhelmingly significant, but such a conclusion does not lead inexorably to awarding it or to concluding that awarding it would have no significant impact on the interest and welfare of the public.

In summary, attempting to resolve the differential problem to some degree slightly outweighs the cost of the increased funding

required on the Township's part. Consequently I conclude, when fully evaluated, the interest and welfare of the public would be better served by an award denying the differential due to the high dollar value of its cost. While providing additional compensation in the wage package to help re-establish the traditional percentage separation between ranks.

Comparability

2. Comparability of law enforcement officers to those employed in the private sector is difficult at best. Inasmuch as grounds for comparability can be found and identified (middle level managers; supervision of varying numbers of men; etc.), one is reminded of the unique characteristics (public official, critical job duties, held to higher standards, etc.) which prevent any totally valid comparisons. As quoted by Association counsel in his brief, Arbitrator William Weinberg summarized the problem and announced the inevitable conclusion that "the weight given to the standard of comparable employment is slight, primarily because of the lack of specific and obvious occupational categories that would enable comparison to be made without forcing the data." (Ridgewood Interest Arbitration - PERC IA-93-141).

Virtually no specific comparisons are made by either counsel with respect to private employment comparability, and consequently this criteria has little, if any, relevance to the ultimate conclusion reached herein.

3. As to comparability within police superiors, each party engages in the traditional selective comparisons. The arguments address which comparables of those offered are more relevant to the Lakewood Department. The SOA includes the comparables of Brick, Jackson, Dover and Manchester. Lakewood includes these same four, as well as Howell Township. The SOA also lists Wall, South Amboy, State Police Sergeants, Little Egg Harbor, Hamilton, Ewing, and the Ocean County Prosecutor's Office. While these seven additional have been considered, the five offered by the Town are found to be somewhat more truly comparable since they geographically surround Lakewood and statistically fall equally above and below it in terms of number of department personnel and population. In the realm of these comparables, Town counsel's point is well taken that a review of these five does not substantiate the Association's 6% demand, much less the senior differential and the folding in of holiday pay and clothing allowance. Conversely, of those departments (including those opined above to be less comparable) where the 1995 increases are specified percentage-wise, the range is clearly 4% to 5%. If anything, this average is higher for 1996 and 1997 in those cited by the SOA. The Town's exhibits do not appear to counter these proofs for '96 and '97.

The remaining comparables offered by the Town, i.e. Town supervisory employees, other Town employees and private sector employees in Ocean County and the state support the Town's proposed increases from a strictly numerical review.

Comparability is indeed a significant factor to which much weight was accorded along with those other criteria so recognized in this award. In summary, the comparables suggested that initial rate of increase, before any consideration of the senior differential, supported a wage rate nearer to the Town's final offer than the SOA's.

Overall Compensation

The transcript and exhibits have been reviewed, and the contract has been audited to evaluate the total compensation paid to the police supervisors. The record reflects that they receive a myriad of benefits. The chair is familiar with the normal range of costs of such benefits. With the exception of the senior differential and the folding-in provision requested by the superiors, no other benefits are in contention. The Association would be hard pressed to complain about the level of benefits. As such, it is noted that they enjoy an ample benefit package and, accordingly, the advantage under this criteria, albeit that the criteria is relatively of minor impact, supports the Township's position.

Cost of Living

Note is made of the most recent CPI as well as the fact that a trend has existed over the recent past of very modest inflationary rates. Although this criteria is indeed limited and

requires little, if any, analysis, the fact remains that it is one of the key criteria, and in this case it clearly supports the Town's final offer.

Stipulation of the Parties

No meaningful stipulations exist relevant to the determination of the selection of the final offers.

Continuity and Stability of Employment

With rare exception, indeed most law enforcement employees enjoy stable employment. In this case, the Town asserts that, were the SOA's final offer ever awarded, the possibility of reducing the Town's workforce would be an inevitable solution to finding the monies to fund the award. Note is made of that possibility and, as such, it constitutes one argument, albeit speculative, against the outright awarding of the Association's entire economic offer.

Lawful Authority of the Employer

Careful review has been made of both experts' analysis of the budget, the parties' final offers and the ability to fund within the cap law. It is not disputed that the Town could fund the awards. It also appears that, depending on the economic extent of the final package awarded, the funding could probably possibly occur within the 2.5% prescribed cap or within the allowable 5% provided the Town complied with the necessary requirements to move

within that range. The issue remains, of course, as to whether such an extension above the 2.5% cap is desirable or fiscally prudent, with the two parties taking their predictable positions on that issue.

Financial Impact

There is ample evidence and little dispute to the claim that Lakewood, within the past half dozen years, endured severe financial distress. Similarly, the steps taken to rebound from those dire days have likewise been documented. The Town is vastly improved, but still faces the necessity to continue prudent practices. Many of the problems are inherent as witnessed by the inordinately high AFDC numbers and high unemployment figures. Although many of the standard criteria used to evaluate a Town's economic health show recent improvement they also portray a continuing problem.

Inevitably, this significant criteria can only be deemed to support the Town's final offer or a variation closer to that standard than to the Association's.

With respect to the wage increases sought by the SOA proposal regarding the senior officer differential and the folding in of holiday pay and uniform allowance are cost items of enough significance that they must be considered together. In reference to the 1995 increase, the 4.5% figure voluntarily paid to the rank and file is fair and shall be awarded. It is certainly supported

by the rates of increase paid to those law enforcement officers in the mutually-cited comparable communities.

The issue of senior officer differential and the Town's announced intention to seek its removal from the rank and file unduly complicates the rates to be awarded for 1996 and 1997. My review of the comparables offered - superiors, law-enforcement units - fellow Township supervisors and employees - public and private sector in Ocean County and the state; along with the cost of living; the total compensation paid; cap concerns; financial impact; and interest and welfare of the public. All these factors have all been taken into consideration in preparation of the Award.

The Association's request for a Senior Officer Differential is denied, but the rates awarded above take into consideration the denial of that request in light of the fact that the PBA enjoyed it for at least a three-year period and, accordingly, the SOA has received rates of increase in wages enhanced due to the fact that they have not previously and will continue not to receive the differential. Put another way, the rates awarded to the SOA herein do not constitute a valid comparable for any other unit. It should be noted that for the years 1995, 1996, and 1997, one-half percent to one- and one-half percent increase in those years is attributable to absence of the senior differential for the SOA for those years alone. The Association's request for a "folding-in" of the vacation pay and uniform allowance is denied. These are items which require significant ongoing additional cost to fund, and no

justification has been offered to me for their implementation.

Non-Economic Items

The Association's arguments with respect to its proposals concerning the deletion of the third paragraph of the Witnesseth clause; the replacement of the second section of the Rights article with its proposal; and the addition of proposed language to Article III, Management Rights, were unconvincing and these proposals are not awarded.

In light of the fact that the rank and file unit has a binding arbitration clause and no sufficient legal or equitable argument has been offered by the Town in opposition to this request, the SOA proposal is granted. I am unconvinced by Town Council's argument against the awarding of a binding arbitration provision.

The record should reflect that I have determined, based on the information supplied to me, that the total net economic change for each year of the Agreement is reasonable under the eight statutory criteria set forth in NJSA:34:13A-16g.

Therefore the undersigned, having duly heard all of the proofs and allegations of the parties of this proceeding, makes the following:

described here and who executed the foregoing instrument, and he
duly acknowledged to me that he executed the same.

Ellen Orlandini

ELLEN ORLANDINI
Notary Public of NJ

