

NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of Interest Arbitration Between

TOWNSHIP OF SCOTCH PLAINS

"Public Employer"

-and-

SCOTCH PLAINS PBA LOCAL 87

"Union."

**INTEREST ARBITRATION
DECISION
AND
AWARD**

Docket No. IA-98-38

**Before
James W. Mastriani, Arbitrator**

Appearances:

For the Employer:

Judith A. Babinski, Esq.
Brett M. Reina, Esq.
Bivona, Cohen, Kunzman,
Coley, Yospin, Bernstein
and DiFrancesco

For the Union:

Richard Loccke, Esq.
Loccke & Correia, P.A.

I was appointed arbitrator by the New Jersey Public Employment Relations Commission in accordance with P.L. 1995, c. 425, in this matter involving the Township of Scotch Plains (the "Township") and PBA, Local 87 (the "PBA"). The petition initiating interest arbitration was filed on January 7, 1998. A pre-arbitration mediation was held on April 21, 1998. Because the impasse was not resolved, a formal interest arbitration hearing was held on July 16, 1998 at which the parties examined witnesses and introduced evidence. Post-hearing briefs were submitted on October 22, 1998. The mandatory terminal procedure of conventional arbitration was used to decide all issues in dispute. Under this procedure, the arbitrator has the authority to fashion an award which he or she believes represents the most reasonable determination of the issues in dispute.

FINAL OFFERS OF THE PARTIES

Before beginning the formal hearing, the Township and the PBA submitted the following final offers:

PBA LOCAL 87

Economic Issues

1. Duration--January 1, 1998 to December 31, 2000.

2. Wages-- Across the board salary increases as follows:

- 5% effective January 1, 1998
- 5% effective January 1, 1999
- 5% effective January 1, 2000

Implement a 10% rank differential formula, effective January 1, 1998.

3. New Employee Clothing—

Modify Article XX, Section 2(A) to add a provision that the Township “shall supply all clothing and materials utilized in basic academy training, including a bullet proof vest, for the new employee.”

4. Clothing Allowance –

Increase the clothing allowance by \$100 per year in each year of the agreement.

Non-Economic Issues

5. Disciplinary Coverage in the Grievance Definition-- The PBA proposes that minor discipline be included in the current grievance procedure.

6. Fully-Bargained Clause-- The PBA proposes to delete Article XXIII, the fully bargained clause.

Township of Scotch Plains

1. Duration--January 1, 1998 to December 31, 2000

2. Salaries--Across the board salary increases as follows:
 - 2% effective January 1, 1998
 - 2% effective January 1, 1999
 - 2% effective January 1, 2000

3. Longevity -- Modify Article XIV to provide no longevity payments to employees hired after January 1, 1999.

4. Clothing Allowance -- Modify Article XX, Section 3A to provide a clothing allowance of \$400 in the first year, \$425 in the second year, and \$450 in the third year of the agreement.

The Township and the PBA have offered testimony and considerable documentary evidence in support of their final offers. Witnesses included Police Chief Thomas O'Brien, Patrolman Mark Hampton, Township Manager Thomas Atkins, Township Financial Manager Ulrich Steinberg, and New Jersey Budget Expert Vincent J. Fodi. 48 Township and 34 PBA exhibits were received in evidence. I am required to make a reasonable determination of the above issues giving due weight to those factors set forth in N.J.S.A. 34:13A-16g(1) through (8) which I find relevant to the resolution of these negotiations. I am also required to indicate which of these factors are deemed relevant, satisfactorily explain why the others are not relevant, and provide an analysis of the evidence on each relevant factor. These factors, commonly called the statutory criteria, are as follows:

- (1) The interests and welfare of the public. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by (P.L. 1976, c. 68 (C. 40A:4-45.1 et seq.)).
- (2) Comparison of the wages, salaries, hours, and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours, and conditions of employment of other employees performing the same or similar services and with other employees generally:
 - (a) In private employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.
 - (b) In public employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.
 - (c) In public employment in the same or similar comparable jurisdictions, as determined in accordance with section 5 of P.L. 1995. c. 425 (C.34:13A-16.2) provided, however, each party shall have the right to submit additional evidence concerning the comparability of jurisdictions for the arbitrator's consideration.
- (3) The overall compensation presently received by the employees, inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received.
- (4) Stipulations of the parties.
- (5) The lawful authority of the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by the P.L. 1976 c. 68 (C.40A:4-45 et seq.).

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

(7) The cost of living.

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

BACKGROUND

Scotch Plains is a predominantly residential community in Union County with approximately 22,700 residents. 75% of the Township's 8000 dwellings are detached homes. Scotch Plains has nine municipal parks with sports facilities including a 9 hole golf course.

The Scotch Plains Police Department is an effective and constantly improving law enforcement agency. Crime is down and the Police Department's public image is high. The Department has improved its productivity over the years and has increased the number of summons to 3,620 in 1997. Auto thefts, one major source of crime in the Township, have decreased by over 50%.

The Scotch Plains Police Department consists of 46 sworn officers, including the Chief of Police. There are 32 patrol officers, including 4 in the Detective Bureau, 6 Sergeants, 5 Lieutenants, 2 Captains and a Chief of Police. During the term of the previous agreement, 8 officers left the Department, including a Captain, 2 Sergeants, 2 Detectives and 2 Patrolmen. These officers have been replaced with entry level patrol officers.

In the Police Department's 1997 Annual Report, the Chief reported that while crime is down nationwide, including in Scotch Plains, increased calls for service, as well as additional services provided by Police Officers are straining

the Department. However, despite these burdens and personnel shortages, the Chief noted that the Department had been able to reduce overtime expenditures.

POSITIONS OF THE PARTIS

The PBA begins by pointing out the success of the Scotch Plains Police Department in serving the public interest. Review of the Police Department's annual reports for 1995, 1996, and 1997 shows that the Department has reduced criminal activity, specifically, larcenies and auto thefts. Additionally, arrests have increased, and in 1997, were above the five year average. In 1997 alone, the Department responded to 16,522 calls, a significant increase over the level of calls in 1996. The PBA points out that the Department's productivity exceeds all expectations, including those of its leadership.

On the other hand, the PBA points out that the Department has experience high turnover during the contract term (a total of 8 out of 46 sworn officers) and the Chief of Police has called for the hiring of additional officers. In the Police Department's 1996 annual report, the Chief pointed out that Scotch Plains has a lower than average ratio of police per thousand residents:

Scanning the latest figures published by the New Jersey State Police (for the year 1994), it is noted that Union County continues to average 2.8 police officers for every 1,000 of its population. The average in the State of New Jersey continues to remain at a level of 2.4 officers for every 1,000 residents.

Based on these figures and keeping in mind that we have an approximate population of 22,000 (plus and growing) in Scotch Plains, we should have 57 Police Officers to maintain an average rating by Union County standards. Or, by State average of 2.4 officers per 1,000 residents, we should have 52 officers.

We presently have a total staff of 45 sworn personnel on staff. If we are to meet the future demands that will be required on all Police Departments we will need additional personnel.

The PBA notes that the Chief of Police testified that the public interest is well served by the Township's Police Department.

The PBA begins its comparison of wages, terms and conditions of employment by noting that the Township's benefits program is, at best, average. Specifically, the PBA asserts that the clothing allowance provided to police officers is below average when compared to other Union County municipalities. Comparing Scotch Plains to Clark, Watchung, Berkeley Heights, Fanwood, Springfield, and Rahway, the PBA calculates that the Township's present clothing allowance of \$625 is 37.4% below the average benefit of \$859. The PBA also points out that each of these municipalities provides educational incentives to its police and Scotch Plains does not. Additionally, the PBA notes that the Township provides only an average number of holidays compared with these same communities.

Turning to wage rate comparisons within Union County, the PBA suggests that the Township's comparison is flawed because it includes pay rates from

different years, but some towns have settled new agreements and others have not. Additionally, the PBA notes that pay rates in Scotch Plains do not compensate for personnel shortages or increased productivity. The PBA asserts that average police wage increases support its final offer. Examining increases to base wage rates only, the PBA asserts that the average increase for 1998 is 4.25% and 4% for 1999. The PBA bases this comparison upon increases in Clark, Watchung, Fanwood, Plainfield, Plainfield SOA, Rahway, Lodi, Woodbridge and the Somerset Sheriff's Office.

The PBA asserts that the rates of increase submitted by the Township also support its final offer. First, the PBA notes that the maximum base salaries submitted by the Township are not for the same municipalities in each year. However, based upon the municipalities for which the Township submitted maximum base salaries for 1997 and 1998, the PBA calculates that the average increase for 1998 was 4.05%. Those municipalities, which include Somerset, Mountainside, Clark, Fanwood, Rahway, Rosell, Westfield, Cranford, Elizabeth, Roselle Park, New Providence and Garwood, have increases ranging from 3.7% in Somerset to 4.5% in Rahway and Fanwood. The PBA also asserts that comparison of maximum base salaries submitted by the Township shows that increases for 1999 support the PBA's final offer.

In contrast, the PBA argues, the Township seeks "major inroads into longstanding benefits" combined with a wage increase that is less than half of the

average increase demonstrated by the Township's own comparables. The PBA asserts that the wage rate changes which the Township claims would result in double digit increases result from a 4.25% increase awarded by Arbitrator Carl Kurtzman establishing the terms of the previous agreement.

The PBA notes that the Township has settled with its Public Works bargaining unit at a split 4% increase in 1998, with a 3% increase on January 1, and an additional 1% increase on April 1, 1998. Additionally, the PBA contends that the Scotch Plains – Fanwood Board of Education agreements that provide increases almost double those offered by the Township.

Although the PBA suggests that greater weight should be given to public sector comparisons, it asserts that comparison with private sector employees justifies higher increases for police officers. In support of this contention, the PBA points to Interest Arbitrator Kurtzman's award in Borough of River Edge and PBA Local 201 where the arbitrator discussed the unique responsibilities of public sector police officers. The PBA expands upon the unique nature of police work citing the need for police to be prepared to act at all times, the right to be armed and laws unique to police officers. As examples, the PBA cites the lack of portability of police pensions after age 35; their exemption from coverage by the New Jersey State Wage and Hour Law, N.J.S.A. 34:11-56a, et. seq.; the statutory creation of police departments and the chain of command and control, N.J.S.A. 40A:14-118; specific statutory qualifications for police employment

including U.S. citizenship, physical health, moral character, and no criminal record, N.J.S.A. 40A:14-122; statutory limits on unexcused absences, N.J.S.A. 40:14-122; statutorily controlled promotional exams, N.J.S.A. 40A:14-122.2; residency requirement, N.J.S.A. 40A:14-122.8; statutory hiring criteria, N.J.S.A. 40A:14-123.1a; statutory age restrictions for initial employment as a police officer, N.J.S.A. 40A:14-127.1. statutory acceptance into the Police Retirement System, N.J.S.A. 40A:14-127.3; statutorily created minimum wage for police officers below the New Jersey minimum wage, N.J.S.A. 40A:14-131; statutory governance of the length of the work week, N.J.S.A. 40A:14-133; statutory limitation on the overtime rates, N.J.S.A. 40A:14-134; maximum age of employment; exemption from ERISA; and coverage by unique statutorily created hearing and complaint procedures for departmental charges. N.J.S.A. 40A:14-147-151.

Above all, the PBA stresses the obligation entailed with the power of arrest as conferred by N.J.S.A. 40A:14-147-152.1, as well as the authority to carry a weapon at any time. The PBA also points to other qualities unique to police work such as the training received at the police academy and limitations on mobility not duplicated in the private sector.

Based upon these differences, the PBA asserts that local comparisons with other police departments are more relevant. In support of that contention, the PBA quotes Interest Arbitrator William Weinberg's award in the Village of

Ridgewood. According to the PBA, "the police officer lives and works within a narrowly structured, statutorily created environment in a paramilitary setting with little or no mobility." For these reasons, the PBA maintains that comparison of private sector work generally to a police career should result in police employees receiving compensation at a higher level than private sector employees generally.

Addressing the stipulations of the parties, the PBA notes that the only substantive stipulation is to a three-year contract term.

Turning to the lawful authority of the employer, the PBA asserts that its final offer is well within the lawful authority of the Township as established by the Cap Law. Analyzing the Township's 1998 budget, the PBA begins by noting that the Township did not use all of the statutory flexibility available under the Cap Law. Rather, the Township used only a 2.5% index rate and did not vote to use another rate up to the 5% maximum. The PBA calculates that the Township, by electing to use the 2.5% index rate, "effectively waived" \$272,307 in available statutory flexibility. However, the PBA asserts that the budget adopted by the Township provides additional flexibility resulting from Cap banking. According to the PBA, the maximum allowable Cap appropriation under the Township's budget is \$11,447,394. Of that sum, \$11,273,265 has been appropriated. Therefore, the PBA calculates that \$174,129 in additional flexibility is available under the current Cap rate. Since the Cap law provides that the Township may

carry forward unused flexibility for two additional budget years, the PBA asserts that the Township will not have a Cap problem for budget years 1999 or 2000 either.

Turning to its proposal in this case, the PBA calculates that the total payroll is currently \$2,675,030 and a one percent increase at the base rate is \$26,750. Based upon those figures, the PBA calculates the cost of a 5% increase as \$133,750, which is less than the available flexibility. Additionally, since the cost of the Township's final offer is included in the budget, the difference between the parties is far less than \$133,750. Also, several patrolmen are not yet at the top rate upon which these calculations are based. The PBA asserts that a percentage point is actually worth less than the \$26,750 upon which it bases its calculations, providing further support for its contention that its final offer will not impinge upon the Township's lawful authority.

Characterizing the Township as a "wealthy community," the PBA asserts that its final offer would have "an extremely small and almost imperceptible impact" upon the Township, its residents and taxpayers. According to the PBA, the municipal budget is a very small portion of the tax levy, and the impact of the PBA's position on that portion would be very small. Pointing to increases in the annual assessed value in the Township from \$894,677,817 in 1994 to \$932,152,700 in 1998, the PBA asserts that assessed values in the Township

are growing and there has been significant growth in the ratable base, including almost \$38 million in the last 5 years.

Examining local tax rates within Union County, the PBA points out that of the 21 municipalities in the County, Scotch Plains ranks 18th in equalized tax rate. Included in the municipalities with higher equalized tax rates are communities PBA considers comparable, such as Springfield, Mountainside, New Providence and Kenilworth. The PBA notes that in his testimony, Township Administrator Atkins acknowledged that each of these communities is comparable to Scotch Plains in some fashion. The PBA also points to a recent article in the New York Times describing the growth in real estate value in Scotch Plains. The PBA suggest that growth in real estate value in the Township is supported by its proximity and easy access to New York City as well as its three local golf courses. The PBA points to the high rate of tax collection, averaging well above 98% over the last five years, as further evidence that the Township “has little or no problem . . . meeting the tax obligations as they accrue.” According to the PBA, the Scotch Plains tax burden is driven by the school portion of the levy that is 62.3% compared with the 20% municipal portion. In Scotch Plains, school taxes are more than one and one half times the combined county and municipal taxes, yet only 13.9% of eligible voters chose to vote on school taxes.

Since the statutory criteria focuses on the total levy on the taxpayer, the PBA argues that the police portion is very small. The PBA calculates that the total impact of the police bargaining unit base wages on the average homeowner is \$319.20, or \$26.60 per month. The PBA asserts that the monthly cost of police wages is less than the monthly cable bill for average homeowners and the PBA considers this cost to have a *de minimus* impact.

The PBA points out that the Township has provided a 4% increase for those employees who have settled for 1998. The Scotch Plains Public Works and Recreation Work Association received 3% effective in January and 1% effective in April of 1998. The Chief of Police and the Township Manager each received 3% increases on January 1, and an additional 1% on July 1, 1998. The PBA cites the testimony of Manager Atkins that most Township employees received a total of 4%, with 3% in January and 1% in July, 1998. The PBA further cites Mr. Atkins testimony that the Chief of Police recommended a 4% across the board wage increase for police employees in 1998.

Additionally, the PBA points out that the Chief's recommendations did not include any "give backs" the Township seeks in this proceeding. Assuming that the recommendations of the Township Manager and the Chief of Police have been included in the budget process, the PBA asserts that the difference between the parties' positions is really that between 4% and 5% and there is no evidence to support a rollback of any benefits. Additionally, the PBA points out

that the municipalities considered comparable by the Township did not include reductions similar to those proposed by the Township. The PBA also cites the testimony of Vincent Foti, an expert in the field of New Jersey Budget Law. Mr. Foti testified that the Township has "the ability to pay the 5% per annum requested by the PBA . . . in each of the three years without having to go to the taxpayers.

Turning to the cost of living, the PBA asserts that it should not be dispositive and national data is of questionable value when considering a municipality in New Jersey because it is recognized that New Jersey is one of the most expensive places to live in the country. Instead, the PBA points to wage report data prepared by the New Jersey Department of Labor and published by PERC. According to the PBA, the most recent pre-hearing publication of that data, in September of 1997 showed an average percent change in base wages of 4%. Looking at base wages impacted by unemployment insurance, the PBA notes that the average increase was 4.3%.

Addressing the continuity and stability of employment, the PBA notes that the Township has modified the rank structure and reduced certain supervisory positions. Although the PBA acknowledges that the rank structure may not be a mandatory subject of bargaining, it notes that the span of control of supervisors has been expanded and the career path for non-supervisory and subordinate supervisors has been diminished. As a result, of the reduced rank structure,

police officers will spend more time in the rank of patrolman. These factors do not justify less than an average increase. The PBA also notes that these changes are resulting in cost savings to the Township since the newer work force costs less on average per officer.

THE TOWNSHIP'S POSITION AND ARGUMENT

Beginning with comparison with the private sector, the Township asserts that the average salaries of Scotch Plains Police exceed private sector salaries in Union County and in the State in general. Using the average base salaries for its Police of \$54,379 in 1997 and \$58,648 in 1998, the Township asserts that the Union county privates sector average salary would require a 43.9% increase in 1997, and a 47.8% in 1998 in order to match Police salaries. Since such increases are not likely to occur, the Township asserts that its proposal of 2% increases will keep its average police salary ahead of the average private sector salary.

The Township asserts that the public sector data published by PERC demonstrates that its final offer is reasonable. The Township asserts further that its Police Officers' salaries compare favorably with the average public sector salary in New Jersey of \$37,954 in 1996. The Township estimates that local public sector salaries with the 5% increases proposed by the PBA would be \$39,852 in 1997 and \$41,845 in 1998. According to the Township, the 1996

average New Jersey local public sector salary would require a 43.3% increase to match the 1997 salaries of Scotch Plains Police, and 47.2% to match them in 1998. In contrast, the Township argues that a 2% annual increase will maintain salaries for its Police well in excess of salaries earned by public sector employees generally.

Turning to comparison with other Scotch Plains employees, the Township demonstrates that 40 of its 50 highest paid employees are police employees in the bargaining unit. According to the Township, its police are the highest paid group of Township employees. The Township asserts that the 5% increases sought by the PBA exceed the increases received recently by other Township employees. The Township notes that Tom Atkins, its Manager, testified that those increases resulted in a payout of approximately 3.51%. Additionally, the Township points out that the actual percentage increases officers would receive as they progress through the salary guide, counting horizontal movement plus step increases, range from 8% to 42%.

According to the Township, its police officers also enjoy benefits not received by other Township employees. Notably, Police are entitled to 10% longevity after 23 years which is greater than the longevity payments provided to other Township employees. Additionally, the Township has eliminated longevity payments for its non-police employees hired after May 1, 1996. According to the Township, it has eliminated longevity payments for all non-police employees

hired after May 1, 1996 due to the high cost of maintaining that benefit. The Township seeks to eliminate longevity for newly hired police employees as well.

The Township also points out that all non-police employees hired after January 1, 1991 are required to cover 25% of their health insurance costs. The Township also has a self-insured prescription plan with an annual limit of \$750 for all non-police employees hired before January 1, 1991. All Police, regardless of hire date, participate in this plan without a benefit limit.

According to the Township, Police salaries and benefits are better than those provided to other Township employees. In light of this disparity, the Township asserts that a 2% increase is more reasonable and compatible with the interest of other Township employees and the public than a 5% increase. The Township contends that awarding increases "consistent with those received by other Township employees " serves the public interest. Viewed in light of the public interest, the Township contends that the 5% increases sought by the PBA are excessive.

Analyzing salaries of police officers in comparable municipalities, the Township asserts that other Union County municipalities are the most relevant for comparison. The Township suggests that geographic and socio-economic considerations as well as the fact that the municipalities are all part of the same political subdivision support its comparison with other Union County

municipalities. The Township calculated salaries for 1998, 1999 and 2000 by using 1997 salaries and projecting a 2% increase in each year. As a result of that comparison, the Township concluded that Scotch Plains has the third highest salary in Union County for 1998, and using fewer municipalities in 1999 and 2000, Scotch Plains is second in the county. The Township maintains that focusing on actual dollar increases, rather than percentage increases, is an important factor for comparison. The Township also asserts that even if 5% increases were projected for each municipality used in its comparison, Scotch Plains police salaries would continue to rank among the top in Union County.

Turning to the rank differential sought by the PBA, the Township asserts that Scotch Plains Sergeants, Lieutenants and Captains are already competitively compensated and additional increases for these ranks is not reasonable. The Township suggests that the public interest would be best served by no change in the rank differential.

The Township also points out that its police officers receive a full range of other benefits which are highly competitive with other municipalities in Union County. Among those benefits, the PBA seeks changes only in clothing and equipment allowances. Currently, the clothing allowance is \$400 annually and the maintenance allowance is \$225 annually. The Township proposes to increase the clothing allowance by \$25 in 1999 or 6.3% and by another \$25 in 2000, or 5.9%. The Township asserts that this proposal is competitive with

other municipalities and constitutes a significant increase. The Township calculates that under its proposal, the cost of the clothing allowance over the life of the agreement would be \$18,000 in 1998, \$19,125 in 1999, and \$20,250 in 2000 for a total cost of \$57,375. The Township contrasts its proposal with the PBA's proposal to increase the clothing allowance by \$100 in each year of the three-year agreement. Based upon the Township's calculations, the PBA's proposal would cost \$22,500 in 1998, \$27,000 in 1999 and \$31,500 in 2000 for a total cost of \$81,000. The Township calculates further that the cost difference between the two proposals is \$23,625 over the life of the agreement. According to the Township, the PBA has not presented evidence justifying its proposal and has not considered that Scotch Plains police officers already earn salaries that are generally higher than those earned by police in other Union County municipalities.

The Township also asserts that the PBA has not provided justification for its proposal that the employer supply "all clothing and materials utilized in basic academy training, including a bullet proof vest for each new employee." According to the Township, this provision would be a new benefit for police officers, provision of bullet proof vests is costly, and vests have limited life spans and need replacement after several years. Therefore, the Township views this as a new recurring expense that will increase over the years. The Township expresses additional concern based upon experiences related by other municipalities and law enforcement officials. Specifically, many officers do not

wear vests regularly because they are uncomfortable, thus defeating the purpose of purchasing vests. Additionally, the Township points out that the PBA has not demonstrated that the lack of bullet proof vests results in exposure to danger or hazards.

Addressing the overall level of compensation currently received by Township police officers, the Township lists the benefits its law enforcement personnel receive in addition to their salaries and wage increases. Those benefits include: longevity, comprehensive medical insurance and a prescription plan, overtime compensation, court time compensation, recall compensation (2 hour minimums), pay for travel, mileage and meals, competitive uniform and maintenance allowances, 13 holidays, three personal days, three bereavement days, sick leave permitted for up to one year continuously, dental insurance, retirees' medical insurance, liability insurance, vacation days, pay for unused sick leave and vacation, military leave, legal defense and provision for working equipment by the Township. Based upon the Township's police budget for 1998, salaries, wages, longevity and holiday pay for 41 officers totaled \$2,648,225. According to that same document, longevity costs for 1998 were estimated to be \$115,743 and holiday costs were estimated to be \$135,371. Based upon the salary and benefit package provided to its police officers, the Township asserts that the overall benefits package is equal to or better than benefits packages in other municipalities.

Addressing the statutory criteria, the Township notes that the parties have stipulated to a three-year agreement.

Turning to the lawful authority of the employer, the Township acknowledges that no CAP problem is likely to arise under either its proposal or the PBA's. However, the Township remains responsible for financial planning. Accordingly, the Township points out that each financial commitment it enters impacts upon the overall budget and generally requires concessions elsewhere. The Township stresses that "trends in decreased revenues and increased expenses which are expected to continue" require prudent and conservative budget management.

The Township points out that in considering the interests and welfare of the public and the financial impact of the award upon the Township, the arbitrator should not award the PBA's proposed increase simply because the Township can afford it. Rather, the Township asserts that the interests and welfare of the public are best served when law enforcement personnel are treated fairly in terms of overall compensation. Fair treatment results in high employee morale and a productive and efficient work force. The Township also maintains that the public interest also requires enough police officers to meet the community's security needs. Additionally, the Township contends that the public has a strong interest in obtaining police services at the lowest cost possible. In sum, the Township asserts that "lower compensation allows the municipality to afford more

Officers, allows taxes to be lower, and allows for the provision of more public services.”

The Township points out that Police Chief Thomas F. O'Brien testified that the Township “should have sixty-one (61) Police Officers to maintain an average rating by Union County standards.” Chief O'Brien also testified that the Township should have 53 officers to maintain the State average ratio of 2.4 officer per 1000 residents. Currently, the Scotch Plains Police Force consists of 46 officers and the Township states that it has added officers to the force in recent years. The Township, while not making any representations concerning this issue, states that high salary increases could have an impact on hiring decisions in the future. The Township maintains that if it fully implemented Chief O'Brien's recommendations, it would have to increase the size of the force by 8 to 16 new officers, which would have a major financial impact upon the cost of maintaining the department.

Further, the Township points out that even if there were no increases for 1999, base wages for police would increase in excess of \$100,000 due to step increases and longevity enhancements. According to the Township, longevity increases will rise \$6,234.42 in 1999 based upon the terms of the existing contract. The Township maintains that these increases do not include overtime or holiday pay. According to the Township, for each percent increase in the pending agreement, the effect on police base pay is approximately \$30,000.

Therefore, the Township maintains that the difference between its proposal and the PBA's is "very significant." The Township also points to other expenses that must be considered. These expenses include final payments for unused sick leave and vacation time. The Township demonstrates the effect of these expenses with each retiring law enforcement officer by pointing out that while its surplus has risen 12.4% over the last five years, use of the surplus has risen 38.9% during the same period. The Township points out that its surplus could disappear quickly if there were serious fluctuations in its cash flow. As an example, the Township notes that it pays monthly installments of over \$2.5 million to the Board of Education. At the current surplus level, the Township would be unable to cover even one payment if its cash flow suffered a serious interruption. The Township also points out that its primary revenue sources are not anticipated to increase. Instead, revenue from some sources is declining and is expected to continue to decline. Additionally, the Township's property tax collection rate of 98.5% is not likely to increase. The second largest source of Township revenue is State aid, which has declined over the last five years. Additionally, construction fees have declined steadily, and the Township anticipates that they will continue to do so as the availability of real property suitable for development decreases.

The Township also points out that its debt is expected to double from 1995 to 2000. Specifically, problems with the sewage infrastructure have increased Township debt and have become a serious budget concern. Due to the recent

sale of a 4.4 million-dollar bond issue sold on June 11, 1998, the Township's 1999 debt service budget will increase by \$150,000.

The Township notes that its prudent financial management was acknowledged by New Jersey budget expert Foti, the PBA's expert witness at the hearing, but it cannot serve as a basis for granting the PBA the wage increases it has proposed in light of what it believes is a stagnant or declining financial climate. Accordingly, the Township asserts that the public interest would be best served by the more conservative approach to wage increases which is reflected in its final offer.

Turning to the cost of living criterion, the Township contends that 1997 saw a 1.7% increase, or the smallest increase in the nation's CPI in eleven years. The Township points out further that the CPI for the New York and Northern New Jersey region rose only 2.0% for 1997. The Township also notes that interest rates remain low. Based upon these facts, the Township asserts that its final offer is more reasonable in light of the "record low cost of living."

Addressing the continuity and stability of employment, the Township urges consideration of the level of continuity and stability of employment within the Scotch Plains police department and within law enforcement in general. According to the Township, turnover within its police department results from recent retirements and hiring of new officers to replace those who have retired.

The Township notes that the PBA has not produced evidence that turnover is the result of low morale or discontent resulting from low salaries. The Township asserts that no credible evidence has been submitted to demonstrate that there is not continuity and stability of employment and that employee morale and job satisfaction are suffering.

Additionally, the Township submits that comparison of crime statistics in municipalities in Union County shows that Scotch Plains has one of the lowest crime rates in the County. The Township asserts its low crime rate contributes to continuity and stability in employment. The Township also points out that law enforcement personnel enjoy extraordinary job security compared to non-law enforcement personnel. Specifically, the Township points to pervasive downsizing throughout the New Jersey private sector in the 1990's compared with the employment rate in protective services, including law enforcement. According to the statistics proffered by the Township, in 1997 overall unemployment in New Jersey was 4.9% as of November 1997 while the most recent figure for protective services was 2.4% in 1996.¹

Turning to longevity, the Township seeks to eliminate longevity payments for all new employees hired after January 1, 1999. The Township has been eliminating longevity payments for all new Township employees due to the high cost of maintaining the benefit. At this point, longevity payments have been

¹ The November 1997 rate was down from the 6.2% unemployment rate in New Jersey in 1996 as related by the Township.

eliminated for all employees hired after May 1, 1996 except for Police Officers. The Township now seeks to eliminate longevity for new Police Officers. The Township points to the testimony of Township Manager Atkins that elimination of longevity for new employees has been an important Township goal and it played an important role in negotiations in 1996 with the Scotch Plains Public Works and Recreation Association.

The Township asserts that longevity costs for 1998 totaled \$123,168 and will rise \$6,234.42 as a result of longevity enhancements. Additionally, the Township maintains that these costs will rise during the term of the agreement due to additional officers becoming eligible for the benefit. The Township points out that eliminating longevity payments for newly hired police officers will save money in the long term, but the savings will not be felt for several years. Also, eliminating longevity payments for new Police Officers will create more continuity among Township employees. The Township asserts its longevity proposal is fair and reasonable and should be awarded.

The Township is adamantly opposed to the PBA's proposal to add minor discipline to the scope of the grievance procedure. The Township disagrees with the concept that minor discipline could be subject to the grievance procedure and asserts that subjecting minor discipline to the grievance procedure would overburden the Township's system. The Township also asserts that including minor discipline in the grievance procedure could undermine the authority of

supervisors issuing minor discipline because the supervisor must defend each disciplinary action. The Township expresses concern that this could harm the morale of supervisors and lead to less discipline. The Township asserts that the PBA has not shown that amending the grievance procedure to specify minor discipline is the most reasonable way to insure fair results. Therefore, the Township asserts that the grievance procedure should remain unchanged.

Finally, the Township objects to the PBA's proposal to eliminate the fully bargained provision of the contract. The Township points to the final nature of the clause and asserts that the PBA has not demonstrated that the Township has ever sought to use the provision to evade statutory or other legal authority. Therefore, the Township seeks to retain the fully bargained clause of the agreement.

DISCUSSION

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

Initially, I note that several issues remain in dispute. One principle which is ordinarily and traditionally considered in the determination of wages, hours and conditions of employment through the bargaining and arbitration process is that a party seeking such change bears the burden of showing the need for such modification. I apply that principle to the analysis of each issue.

I conclude that burden has not been met with respect to most of the parties' non-salary proposals. The PBA has not provided sufficient rationale in support of its proposal to eliminate Article XXIII, the fully-bargained clause of the agreement. The Township's points of opposition to this change have merit. The PBA has not been disadvantaged nor has the provision caused any conflict by its presence. The proposal is not awarded.

Likewise, the PBA has not demonstrated a need for its proposal to include minor discipline in the grievance procedure. There is an absence of evidence that any disciplinary actions have resulted in unresolved grievances or that inequities have resulted from the Township's administration of disciplinary procedures. This proposal is not awarded.

The PBA also seeks to unify the rank differential at 10%, but does not provide sufficient rationale to justify increases in rank differential at this time. Any such increase would add to the net economic cost of the economic package at the expense of wages awarded herein. This proposal is not awarded.

The Township seeks to eliminate longevity payments for all Police Officers hired after January 1, 1999 in order to generate future savings. I have considered the rationale and evidence submitted in support of this proposal. The Township's main points are to bring the longevity benefit for Police Officers into conformity with the longevity benefit for its non-uniformed personnel, and to help offset the future costs of the salary and benefit package for future hires.

The Township has established the reasonableness of its objective to achieve future savings for new police officers. This goal is consistent with its efforts on a Township-wide basis. In particular, when the overall compensation presently received by the Township's police officers is examined [see N.J.S.A. 34:13A-16(g)(3),] Is it apparent that future employees can contribute to the Township's objective and yet maintain a very comprehensive salary and benefit package established by the current agreement.

I do not, however, award the Township's specific proposal to eliminate longevity for future hires. Instead, I conclude that the Township's goal can more appropriately be achieved by maintaining, with modification, the existing salary schedules [see Schedule A-1 and A-2] and existing longevity procedures set forth in Article XIV.

The Township and the PBA have already negotiated a separate wage scale for employees hired after September 1, 1995. [Schedule A-2.] This scale reduces labor costs for new employees but retains the salary maximum set forth in the salary schedule for all employees. Future cost savings, beyond that proposed by the Township, can be achieved for new employees hired after the date of this award by the setting of a new second step on Schedule A-2 at a level of 50% between the current first and second step and retitling the existing second through fifth steps as steps three through six. This modification to Schedule A-2 would be permanent but the modification would only affect the salary levels for new employees. This modification shall be made to the existing salary schedule A-2 prior to the salary adjustments made as a result of this award. The new step two will be \$41,497 prior to the salary adjustment at a future savings per employee of \$5,997.00 three years after hire. An additional savings of \$5,997.00 (prior to adjustment for future wage increases) would be realized in the year thereafter, the fourth year after hire. After adjustment, the modification to Schedule A-2 would yield a total savings of more than \$12,000.00 per employee during these two years. Additional savings are also achieved in subsequent years prior to the new hire achieving maximum pay. Under the Township's longevity proposal savings would not be achieved until the sixth year of employment and only at a level of 2% of base salary of that year. Inasmuch as the department's manpower has been reduced, it is reasonable to conclude that new hiring will occur resulting in a yielding of substantial savings to the Township.

This modification helps achieve the Township's goal while not eliminating the longevity schedule during this contract term. I do not believe the interests and welfare of the public would be served by the elimination of this major benefit for police officers whose integration of work with fellow officers in this community is necessary to promote the public health, safety and welfare. The issue can be revisited in future negotiations.

Both parties propose an increase in the clothing allowance. The PBA would raise the clothing allowance by \$100 in each year of the agreement, while the Township would raise the clothing allowance by \$25 in each of the last two years of the agreement. The current clothing allowance is \$400 annually, plus a \$225 maintenance allowance. Neither party proposes to adjust the maintenance allowance. Review of clothing allowances provided by other municipalities in Union County and those adjacent to U.S. Route 22 demonstrates that clothing and maintenance allowances in comparable communities range from a low of \$300 in Plainfield to a high of \$1500 annually in Hillside. Neighboring Fanwood's allowance is \$600. The Township's proposal to raise the allowance by a total of \$50 in the last two years of the agreement is reasonable and is awarded. It's cost approximates 0.1%. Therefore, the clothing allowance will be increased by \$25 in each of the last two years of the agreement. Assuming, as did the Township, that 45 Officers are entitled to a clothing allowance, the additional cost

of the clothing allowance is \$1,125 in 1999 and \$2,250 in 2000, for a total additional cost to the Township of \$3,375.

The PBA's proposal that the Township compensate new Police Officers for the cost of all equipment, including bullet proof vests, necessary for the Police Academy has not been justified. The PBA has not provided sufficient rationale in support for the Township to assume the total cost of this proposal, particularly in light of the Township's concerns about whether the bullet proof vests would in fact be worn. This proposal is not awarded.

The Township and the PBA agree upon the duration of the agreement, but sharply differ as to the appropriate salaries to be provided in each year. Each place great importance on the evidence submitted and the arguments advanced on the issue of salary. The PBA proposes 5% increases in 1998, 1999 and 2000. On the other hand, the Township proposes 2% increases in each year.

Based upon a total annualized base salary figure of \$2,411,471 for 1997, the Township's proposed increase of 2% annually costs \$48,229 in the first year, \$49,194 in the second year, and \$50,177 in the third year. Computing the cost of the PBA proposal for 5% increases in each of the three years, the cost is \$111,205 in the first year, \$126,133 in the second year and \$132,440 in the third year. The difference is a total of \$222,178. Cumulative costs resulting from the

effect on overtime, increments, longevity and other benefits would add to the difference.

Based upon the arguments and evidence submitted, and after applying the statutory criteria, I have determined that wage increases shall be set at 3% on January 1, 1998, 1% on July 1, 1998; 4% on January 1, 1999, and 3.8% on January 1, 2000, for a total net economic change of \$296,669. The award is \$73,109 less than the PBA's proposal and \$149,069 more than the Township's proposal over the three years. These figures are exclusive of roll up costs and assume no retirements, hiring or promotions. Because this is a three year agreement, the cost offsets provided herein will occur beyond the contract term. The analysis that leads me to this award is as follows.

Both parties place great emphasis on the interest and welfare of the public. The Township emphasizes the public interest in keeping costs low. The PBA stresses the public interest in maintaining a high level of arrests and low crime rates with a ratio of Police Officers to residents that is below State and County averages. This award serves that interest by maintaining salaries on an internal and external relative basis while recognizing the Township's concerns with offsetting some costs.

Turning to comparability factors, the PBA concentrates on comparisons with police settlements along the U.S. Route 22 corridor and secondarily within

Union County. On the other hand, the Township contrasts police salaries with private sector salaries and suggests that its final offer would permit police salaries to remain well above private sector wages. The Township also contrasts police salaries and benefits with the salaries and benefits received by other employees in the Township, pointing out that police employees are among the highest paid in the Township.

Focus on comparison with other police settlements and with other wage increases within the Township are important considerations and deserving of substantial weight particularly in light of the evidence that the levels of this award will not have adverse financial impact on the governing body or its residents. The Township has only one other organized group, the Scotch Plains Public Works and Recreation Work Association. Employees in that bargaining unit as well as all other Township employees received increases of 3% on January 1, 1998. Employees in the public works unit received an additional 1% on April 1, 1998 and all other Township employees received an additional 1% effective July 1, 1998. Comparability to other Township employees should be recognized and this award takes into account increases received by other Township employees in 1998.

Additionally, this award takes into account settlements received in other municipalities in Union County and in municipalities east and west of Scotch Plains along the U.S. Route 22 corridor. Comparables submitted by the PBA for

1998 averaged 4.25% and comparables submitted by the Township for the same year averaged 4.05%. Review of all of the agreements in the communities considered comparable by the Township and the PBA shows that in those communities with settlements for 1999, increases averaged 3.8%, and only two communities had settlements for 2000. In Summit, Police Officers will receive 3.8% in 2000 and in Hillside, Police Officers will receive 3.7% for the year ending June 30, 2000. This award is consistent with the data submitted on this criterion.

The PBA points out the differences between law enforcement and private sector employees. The Township seeks to compare Police salaries to the private sector. Private sector comparison, though relevant, is not a controlling consideration. Police work also includes education and training at the police academy, a comprehensive scheme of regulations covering police only, and the danger inherent in police work. Further, private sector comparisons are difficult to make, because there is a disparity in salary increases received in the private sector depending upon whether the work which is performed is in manufacturing or telecommunications, computers or real estate. When all private employees are considered together, as averaged, a more realistic figure emerges. An official private sector compilation prepared by the New Jersey Department of Labor reflected an increase in New Jersey of 3.4% to from 1994 to 1995 and 4.3% from 1995 to 1996, and 4.7% from 1996 to 1997. In Union County, these figures were 2.7%, 3.3% and 4.5% respectively. The increases set forth herein, averaging 3.93%, are generally consistent with the above private sector increases, which

averaged 3.5% in Union County and averaged 4.1% on a statewide basis. Also, while the increases set forth in the award are somewhat higher than the average increases for non-law enforcement public employees in general, the terms are also generally consistent with the reported average salary increases of voluntary settlements and interest arbitration awards for 1998, which have been reported by PERC at 3.77% and 3.87%.

As the Township has acknowledged, neither its proposal nor the PBA's proposal will cause a Cap problem. Both proposals and this award are well within the Township's Cap restraints and do not interfere with the Township's lawful authority. The record reflects that the Township's, financial condition would support an award consistent with either party's final offer. The record also reflects the recognized principle that the ability to fund a proposal does not require its adoption. Other factors herein, including cost of living data, comparables, and the broader financial impact on the governing body and its taxpayers weigh against awarding the PBA's proposal. The lesser costs of this award, will not adversely impact upon the Township's surplus, or upon the 1999 budget. In the context of a financial picture framed by an ample surplus and a high tax collection rate (98.5%), the new money cost of the award will not force the Township to exceed its cap or its lawful authority

The Township cautions that its financial performance may be nearing its peak. The Township Financial Manager, Ulrich Steinberg, testified there is little space left for development and its high tax collection rate leaves little room for improvement. The PBA points out that ratables continue to increase and that as a desirable community in the metropolitan area environs is assured of its continued financial growth. In an effort to sustain its current financial performance, the Township has sought to contain costs into the future.

This award balances those competing concerns as well as the financial impact on the taxpayer. Examination of the Township's 1998 budget reveals that included in its \$2 million surplus, it carried over \$130,650.57 in reserve from its appropriation for police salaries. This amount is 44% of the total new money cost of the increase awarded here. Additionally, the equalized tax rate of 0.451 in Scotch Plains ranks 18th out of 21 Union County municipalities. The residents and taxpayers of Scotch Plains, as demonstrated by the high collection rate, are able to shoulder their current tax burden. This award will maintain balance by providing offsets in salary for newly hired Police Officers.

I have also considered the cost of living data. The Bureau of National Affairs Employment Cost Index through the third quarter of 1997 reflects that private sector wages have increased 3.6% in the previous 12 month period and public sector wages have increased 2.7% for that same period. Although neither party provided CPI data beyond 1996, preliminary figures for 1997, indicated that

the CPI would increase by approximately 2.2%. The cost of living has been weighed in this proceeding. The preliminary CPI data for 1997 as well as the employment cost statistics published by the Bureau of National Affairs are higher than the Township's final offer, but lower than this award. I have given weight to this factor to the extent that the award is less than what the PBA has proposed and the additional step for new Police Officers will provide future offsets. The cost of living is a moderating factor, but I do not conclude that the terms of the award should be set at the equivalent level of the cost of living or that the cost of living should be the sole or determining factor in the determination of wage increases.

I have considered the total compensation and benefit package presently received in Scotch Plains. On this issue, unit members are favorably situated. The terms of this award maintain existing economic benefit levels, improving only the modest amount allotted to clothing allowance, a benefit both the Township and the PBA agree was in need of improvement.

The terms of this award preserve the continuity and stability of employment for police officers in Scotch Plains. Over the last contract term, turnover from retirements has been high. Eight Officers have retired leaving a current force of 46 uniformed Officers. Nonetheless, the Police Department has continued to keep crime levels down and arrest rates up. The Township and the PBA recognize that staffing levels are below both the County and State

averages. In view of these facts, the terms of this award provide for stability of employment by maintaining the reasonable relationship and balance between salary increases in law enforcement and the Township's financial abilities, including the terms and conditions of employment the Township has set for non-law enforcement employees.

Accordingly, and based upon all of the above, I respectfully enter the following Award as a reasonable determination of the issues.

AWARD

There shall be a three-year agreement effective January 1, 1998 through December 31, 2000. All proposals by the Township and the PBA not awarded herein are denied and dismissed.

1. Salary

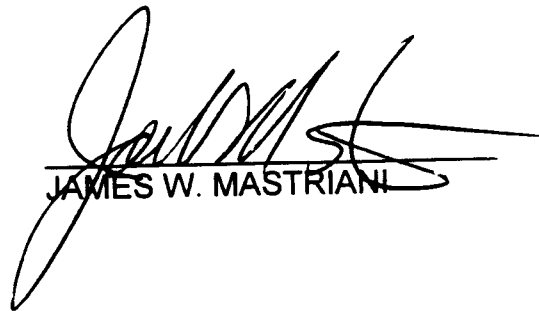
The increases shall be retroactive to January 1, 1998 and be applied to all steps of Salary Schedule A-1 and A-2.

3% effective January 1, 1998
1% effective July 1, 1998
4% effective January 1, 1999
3.8% effective January 1, 2000

2. Salary Schedule A-2 shall be modified as reflected by the terms and conditions set forth on page 33 and 34 of this decision and award. The modification shall be calculated prior to the application of the aforementioned base salary increases. Language shall be added to Schedule A-2 reflecting that it will be the new wage scale for employees hired after March 14, 1999.

3. **Clothing Allowance**

Article XX, Section 3A is modified to increase the clothing allowance by \$25 effective January 1, 1999, and an additional \$25 effective January 1, 2000.

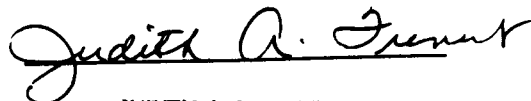


JAMES W. MASTRIANI

DATED: March 14, 1999
Sea Girt, New Jersey

State of New Jersey }
County of Monmouth }ss:

On this 14th day of March, 1999, before me personally came and appeared James W. Mastriani to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed same.



JUDITH A. FREVERT
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires June 9, 2002

