

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Interest *

Arbitration between *

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 * DECISION

 * AND AWARD

CITY OF UNION CITY *

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 * Docket No.

 * IA-2002-049

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Before: Joel M. Weisblatt, Arbitrator

Appearances:

For the City
 Martin R, Pachman, Esquire

For the SOA
 Cohen, Leder, Montalbano & Grossman
 By: Bruce D. Leder, Esquire

D E C I S I O N

The City of Union City (the "City" or the "Employer") and the Union City Police Superior Officers Association (the "SOA" or the "Union") are parties to a collective bargaining agreement which had a duration through December 31, 1998. Negotiations for a successor agreement reached an impasse and a Petition to Initiate Compulsory Interest Arbitration was filed. Pursuant to the Rules and Regulations of the Public Employment Relations Commission, the undersigned Arbitrator was duly appointed to serve in this matter.

The Arbitrator met with the parties on April 4, 2002 and May 17, 2002, in an effort to assist them in achieving a voluntary resolution to their dispute. The impasse persisted. Evidentiary hearings were scheduled and held on July 16, 2002, July 26, 2002, August 15, 2002, and October 23, 2002. The parties filed comprehensive post-hearing briefs which were received by January 15, 2003.

The parties were provided with the opportunity to argue orally, present documentary evidence and examine and cross-examine witnesses. An extensive record was created over the course of the four days of hearing. Numerous witnesses were examined including several called to present expert testimony. The parties submitted voluminous documentary exhibits. The entire record has been carefully considered. The evidence has been evaluated in light of the eight statutory criteria set forth in *N.J.S.A. 34:13A-16(g)*.

The parties failed to mutually agree to a terminal procedure. Therefore, under *N.J.S.A. 34:13A-(d)(2)* the dispute shall be resolved through a determination by conventional arbitration. This resolution shall be reached through application of all of the relevant statutory criteria, giving due weight as appropriate, to the issues presented by the unsettled elements in dispute.

Statutory Criteria

N.J.S.A. 34:13A-16(g) provides as follows:

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 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 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, that each party shall have the right to submit additional evidence concerning the comparability of jurisdictions for the arbitrator's consideration.

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

(4) Stipulations of the parties.

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

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

(7) The cost of living.

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

Final Offers

SOA Final Offer

The final offer of the SOA addresses four items and provides as follows:

(1) Day's Pay - The calculation of a day's pay shall be as follows:

Base pay including longevity, college incentive, detective bureau stipend plus holiday pay divided by 67.2 divided by 26. This will result in hourly pay.

(2) Convention Leave -

A leave of absence with pay shall be given to employees who are duly authorized representatives of the UCPSOA to attend any State or national convention of the organization, provided, however, that no more than ten (10%) percent of the employee organization's membership shall be permitted such a leave of absence with pay, except that no less than two (2) and no more than ten (10) authorized representatives shall be entitled to such leave. The leave of absence shall be for a period inclusive of the duration of the convention with a reasonable time allowed for travel to and from the convention, provided that such leave shall be for no more than seven (7) days. A certificate of attendance at the convention shall, upon request, be submitted by the representative so attending.

(3) Sergeant -

Effective on the issuance of the arbitration award, newly promoted sergeants shall be paid \$1,000 less than the contractually provided salary guide. On the first anniversary of promotion to the rank of sergeant, the sergeant shall receive the same pay as all other sergeants. All current sergeants receiving \$1,000 less shall be brought up to the full rate effective with the issuance of the award.

(4) Wages - The SOA proposes the following

salaries:

July 1, 1999	-	3.5%
July 1, 2000	-	3.5%
July 1, 2001	-	3.5%
July 1, 2002	-	3.75%
July 1, 2003	-	4.0%
July 1, 2004	-	6.75%

CITY Final Offer

The final offer of the City addresses two issues, one economic and one non-economic. The provisions of that offer are as follows:

(1) Salary - The City proposes to increase the base salaries for each rank covered by this agreement as follows:

July 2000	-	3.5%
July 2001	-	3.5%
July 2002	-	3.5%
July 2003	-	3.75%
July 2004	-	4.0%

(2) Grievance Procedure - The City seeks to replace the current Article XIII of the parties' agreement with the following language:

A. Definitions.

1. The term "grievance" as used herein, means an appeal by an individual employee or group of employees, from the interpretation, application, or violation of this Agreement, policies, rules and regulations or administrative

decisions affecting an employee or the Association.

2. No grievance may proceed beyond Step 1 herein unless it constitutes a controversy arising over the interpretation, application, or alleged violation of the terms and conditions of this Agreement. Disputes concerning terms and conditions of employment controlled by statute or administrative regulation, incorporated by reference in this Agreement, either expressly or by operation of law, shall not be processed beyond Step 1 herein.

B. The following constitutes the sole and exclusive method for resolving grievances between the parties covered by this Agreement and shall be followed in its entirety unless any step is waived by mutual consent.

Step 1. The aggrieved or the Association shall institute a grievance by filing a written submission to the Deputy Chief within ten (10) calendar days after the occurrence of the event giving rise to the grievance. The Deputy Chief shall report all grievances to the Mayor/Director of Public Safety, and no grievance may be resolved in favor of the grievant without approval of the Mayor/Public Safety Director. The Deputy Chief shall respond in writing within ten (10) calendar days of the date on which the grievance was submitted. Failure to submit the grievance within said ten (10) calendar days shall be deemed to constitute an abandonment of the grievance. Failure of the Deputy Chief to respond timely shall permit the matter to be moved to Step 2.

Step 2. If the matter has not been resolved within ten (10) calendar days of its submission to the Deputy Chief, the employee or the Association may present the grievance in writing within five (5) calendar days thereafter to the Chief of Police. The written grievance at this step shall contain the relevant facts and a copy of the preceding decision, the applicable section of the

contract violated, and the remedy requested by the grievant. The Chief of Police shall report any grievance brought to his level to the Mayor/Director of Public Safety, and no grievance shall be resolved in favor of the grievant without the approval of the Mayor/Director. The Chief of Police will answer the grievance in writing within five (5) calendar days of receipt of the written grievance.

Step 3. If the Association wishes to appeal the decision of the Chief of Police, it shall present its appeal in writing within five (5) calendar days after the receipt of the Police Chief's decision to the Director or his designated representative. The written grievance at this step shall contain the relevant facts and copies of the preceding decision, the applicable section of the contract violated, and the remedy requested by the grievant. The Director or his designated representative will answer the grievance in writing within ten (10) calendar days of receipt of the written grievance.

Step 4. If the grievance is not settled through Step 3, either party shall have the right to submit the dispute to arbitration pursuant to the rules and regulations of the New Jersey Public Employment Relations Commission. The costs for the services of the arbitrator shall be borne by the City and the Association. Any other expenses, including but not limited to the presentation of witnesses, shall be paid by the party incurring the same.

C. 1. It is agreed between the parties that no arbitration hearing shall be held until after the expiration of at least thirty (30) days after the decision rendered by the Mayor/Director of Public Safety or his/her representative on the grievance. Further, it is the intent of the parties that no matter in dispute that is subject to the review and/or the decision of the New Jersey Department of Personnel may be submitted to arbitration. The parties herein direct the arbitrator not to accept

or decide any matter in dispute that is subject to review and decision by the New Jersey Department of Personnel.

2. The parties direct the arbitrator to decide, as a preliminary question, whether he has jurisdiction to hear and decide the matter in dispute.

3. The arbitrator shall be bound by the provisions of this Agreement and the Constitution and laws of the State of New Jersey, and be restricted to the application of the facts presented to him involved in the grievance. The arbitrator shall not have the authority to add to, modify, detract from, or alter in any way the provisions of this agreement or any amendment or supplement thereto. The decision of the arbitrator shall be final and binding.

4. The parties agree that only one (1) grievance shall be placed before one (1) arbitrator at any time. An arbitrator will be permitted to hear multiple grievances only upon the mutual agreement of the parties.

D. The time limits expressed herein shall be strictly adhered to. If any grievance has not been initiated within the time limits specified, then the grievance shall be deemed to have been abandoned. If any grievance is not processed to the next succeeding step in the grievance procedure within the time limits prescribed thereunder, then the disposition of the grievance at the last preceding step shall be deemed to be conclusive. If a decision is not rendered within the time limits prescribed for decision at any step in the grievance procedure, then the grievance shall be deemed to have been denied. Nothing herein shall prevent the parties from mutually agreeing to extend or contract the time limits for processing the grievance at any step of the grievance procedure.

E. In the event the aggrieved attempts to submit to arbitration a matter subject to review by the New Jersey Department of Personnel, the grievance shall be cancelled and the matter withdrawn from this procedure. In such event, the filing fees and expenses incurred thereby shall be paid by the grievant or the Association, whichever is responsible for the costs incurred.

Positions of the Parties

Position of the SOA

The SOA insists that its final offer is most reasonable under the statutory criteria. It specifically addresses the criteria in relation to the issues and the evidence on the record.

With respect to the public interest criterion, the Union points out the normal considerations involving the clear desirability of having the best possible police department to serve the public, also recognizing the need to provide that protection and service at the most economical cost level. The SOA stresses that the "dynamic" of this dispute is different in that the PBA, representing the police officers, has already resolved its contract terms with the Employer. The Union points out that the City "refused to offer the same basic economic benefits to its police supervisors." It emphasizes the contention that the offer to the

Superior Officers is "significantly less" than that provided to the police officers that they supervise.

The SOA poses the question of whether the public really wants the supervisors to receive less than the rank and file officers. It responds to this rhetorical question by pointing out that supervisory police units consistently receive the same economic package as the rank and file throughout the State. The SOA argues that the public interest is served through the high morale and avoidance of bickering within the department. The Union contends that providing different wage packages to the two police bargaining units "will certainly create tension."

Addressing the matter of cost effectiveness, the SOA notes that the number of calls responded to and the population density of Union City must be considered. In terms of work load, the Union maintains that it is inconceivable that the denial of a wage increase for a year and a half (as proposed by the City) serves the public interest. It further assails the City's proposal to pay police superiors 4% less over a five

year period than the rank and file officers they supervise.

The SOA addresses the comparability criterion with an initial effort to limit the impact of private sector comparisons. It asserts that there is absolutely no private employment similar to police work, noting the inherent dangers in the job. It contrasts the dangers that certain private sector employees face from industrial accidents with the demands of confronting intentional wrongdoers in order to keep the peace. It notes that no private sector jobs require a response to violence, as required of a police officer.

Notwithstanding the argument that the private sector is less relevant in comparisons, the Union presents evidence of private sector wage increases to support its final offer. It cites documentation of a five year period of annual private sector wage data (from 1996-2001) where the average annual wage increases ranged from 4.3% to 6.9%.

The SOA turns next to a comparison with the settlement of a contract with the non-police unit of the Union City Employees Association. It claims that this bargaining unit received a voluntary settlement with the City providing 4.0% annual increases, effective on January 1st of each year from 1999 through 2003 and a 5.0% increase effective January 1, 2004.

The Union notes that, through consideration of implementation dates, the comparison between the City's offer to the SOA and the non-police unit above reveals a glaring shortfall. In the first three years of the contract, the non-police unit would receive a 12% increase while the police supervisors would receive merely 8.75%.

The SOA discusses comparisons with other Hudson County municipalities as another element under the second criterion. The Union generally characterizes the benefit package as being about average in many areas, strong with respect to longevity and on the lower end with respect to vacations. It acknowledges that existing salary rates are in the upper third among

the comparison group but maintains that such placement is reasonable.

The SOA asserts that the wage increase package that it proposes is within the comparison standards set forth by the evidence on the record. It analyzes each year separately to argue that all of the years proposed are supported by the comparison data. The SOA emphasizes that first five years of the wage package exactly mirrors the PBA package, including the six month wage freeze at the outset. It argues that the sixth year, at 6.75%, is warranted in light of the total package received by the Union City Employees Association in its voluntary contract settlement.

Under the overall compensation (the third) criterion, the Union insists that the record indicates the overall compensation package to be consistent with other communities in the county. It characterizes the record as "remarkable in the relative similarities of these benefits."

The fourth criterion is the stipulations of the parties. This criterion, according to the Union, is not relevant because there were no such stipulations.

With respect to the lawful authority criterion, the SOA states that "A review of the City budget reveals that the Cap Law has no impact on the finances of Union City. Note that the SOA acknowledges that the discussion of the Cap situation relates to the public interest and financial impact criteria as well as the lawful authority component. Specifically, the Union points out that the City did not budget up to its Cap limit in 1999, 2000 nor 2001. It stresses that the City was then able to "bank" the amounts under Cap to have further Cap Law flexibility in future years. Due to additional under-Cap appropriations, the City moves through 2002 into 2003 with an excess of \$1,244,000 in its Cap bank.

In its analysis of the financial impact criterion, the Union emphasizes the ability of the City to gain grants for police services. It claims that those grants provide over \$1,200,000 for 2001 and over

\$1,500,000 for 2002. It notes that these grant funds are excluded from the Cap calculations and restrictions.

The Union acknowledges that the tax rate increased in 2000 but argues that the City has now successfully stabilized that rate. It asserts that there are positive fiscal indicators in various items in addition to the stabilized tax rate. Of note are: the realization of revenues in excess of those anticipated in the budget; the accumulation of fund balance increases; and increased State aid. The SOA notes that "The current City administration has done an admirable job in curing its fiscal health."

In relation to the cost of living criterion, the Union acknowledges that the inflation rate has been "relatively low." It notes figures of 2.0%, 3.2% and 2.6% for the period of 1999, 2000 and 2001. However, the Union notes that the City's proposal of a 7% increase over those three years is below even those low cost of living increases, totaling 7.8%. When the

City's wage proposal is adjusted for the July effective dates, the shortfall grows to 2.55%.

The eighth criterion speaks to continuity and stability of employment and also to ordinary and traditional factors in collective negotiations. The SOA contends that the record at hand provides no explanation for the separate treatment of the two bargaining units in the police department. It asserts that, under the eighth criterion there is an enormous burden upon the party seeking to divide the units through dissimilar wage increases. In recognition of the paramilitary nature of the department, noting the importance of the chain of command, the SOA characterizes the City's position as a "threat to play havoc with the stability" of the department.

With respect to the issues other than wages, the SOA insists that the proposal to include language with respect to the calculation of a day's pay is merely the incorporation of current practice. It maintains that this contention is uncontested on the record and that

the memorialization of the practice is reasonable and appropriate.

The Union claims that its convention leave proposal models new statutory language. It is said to simply provide leave to the same number of employees permitted by law. The SOA states that inclusion of the clause is needed to allow enforcement through the contractual grievance/arbitration procedure.

The SOA also assails the current provision restricting the pay for sergeants promoted after 1/1/98 at a rate \$1,000 below the contractual rate. It claims that this establishes a permanent gap between older and newer sergeants. The Union suggests that a one-year step at the lower rate is fair and reasonable, in route toward reaching the ultimate, unified salary rate.

The Union opposes the inclusion of changes in the grievance procedure proposed by the City. It argues that there is no basis to add a step which would increase the processing time for the administration of grievances. The SOA insists that the Employer has

provided no justification for the changes sought. It states that "Absent evidence that the current grievance procedure is flawed, there should be no changes awarded."

The SOA concludes that its final offer is more reasonable under the evidence presented. It seeks an award ordering the implementation of its position as the resolution of all issues in dispute.

Position of the City

The City contends that its position is the more reasonable under the evidence on the record. The City addresses the statutory criteria in its presentation. However, at the outset of its argument, the City maintains that the SOA "overwhelming places its emphasis, and the basis of its arguments, on comparative data." The Employer stresses the statutory requirement to apply all relevant criteria and lawful authority directing avoidance of an overwhelming reliance on certain comparisons. It suggest that the

SOA position contains an essential error in "its core reliance on alleged comparables as dispositive."

The City asserts that the public interest criterion supports the Employer's position. It notes that the community is an urban environment with a substantial portion of the population "deemed to be in poverty status." Nonetheless, it points out that the average property tax paid is the highest in Hudson County.

The City maintains that the public interest is best served through increased efficiency while preserving the effectiveness. It claims that the data as to work load relates more toward patrol officers and that there is some basis to believe that the supervisory ranks may be overstaffed and could engage in a longer work year. The Employer claims that the SOA's proposed package could cause taxes to reach even higher levels or the diversion of funds desperately needed for social services.

The City points out that the simple comparison of percentage salary increases is inadequate under the second criterion. It notes that the underlying salary rates and benefit packages include necessary information for the proper analysis of the impact of the salary increase percentage rates. The Employer relies upon Exhibit C-3 to assert that when the full picture is considered, SOA unit members would enjoy the highest hourly rates among the Hudson County comparison group, even under the salary package proposed by the City.

The City points out that the SOA's reliance on a comparison with the Union City Employees Association is misplaced. It argues that the comparison must consider the salary rates for each group and realize that the increases proposed for the SOA unit involve substantially greater dollars than the higher percentage increases for the civilian group. It further emphasizes the fact that the civilian settlement dramatically reduced the value of increments for those employees, saving the City \$700 annually, per employee eligible. The Employer characterizes the

Union's use of this comparison as "facile" and "not accurate."

The City also insists that the comparison with the PBA interest arbitration award "is not determinative of the instant dispute for a number of reasons." It asserts that the award, which issued in August of 2001, is based upon evidence placed on the record in mid-year of 2000. It points out that that data is over two years old. It further notes that the PBA proceeding was conducted, virtually entirely, prior to the current administration coming to office. It claims that there has been a "sea change in direction" since then. Specifically, the Employer notes the 26% tax increase in one year and the need to impose a hiring freeze. The central point is the assertion that there is a change in circumstances that must be considered along with the comparison to the PBA unit.

The Employer notes a comparison with the arbitration award issued in the North Hudson Regional Fire and Rescue matter, in which the arbitrator provided 3.0% annual increases (exclusive of

adjustments required by the unification), effective July 1st of 1999 through 2003 for a contract with a duration through June 30, 2004.

The City insists that its offer is most reasonable under the comparison criterion. It maintains that its own position would "in no way diminish the relative standing of its employees."

With respect to the overall compensation criterion, the Employer reiterates that the full consideration of the compensation component "must mitigate in favor of the City's position." It stresses the fact that there is no proposed give back nor any factual indication that any element of the compensation plan is missing or lacking.

The City notes that the stipulations of the parties criterion is not relevant to the dispute. There were no substantive stipulations entered into.

The Employer merged its discussion of the lawful authority and financial impact criteria. It

acknowledges that the Cap Law, relevant under each criterion, presents no restriction under law in the circumstances at hand. The City recognizes that it has not reached the Cap Law appropriations limit in any year since 1998. However, it stresses the importance of understanding that there is a difference between the lawful authority to appropriate funds and the financial ability to raise those funds. The City vigorously argues that "it is not enough to merely assert that the municipality has the ability to raise taxes." The allocation of financial resources and goal of establishing a sound revenue practice are urged as matters for consideration and weight.

The City points to the need to raise the tax rate by 26% in 2000 and the effort to get away from reliance on one-time revenue sources to fund operating costs as factors that require substantial impact on the determination herein. They are noted as part of the rationale for practices which will avoid continued tax rate increases.

The City points to the impact of the retroactive increases as a factor warranting careful evaluation. It claims that the amount would have a great impact in a single year and that the City cannot be held responsible for holding an unknown amount of money in reserve for this purpose. The Employer argues that it is entirely reasonable to reduce the supervisory police unit's retroactive "windfall" by \$165,000, the effect of applying the City's offer compared to that of the SOA. This is characterized as "fiscal restraint."

The City contends that its offer is most reasonable under the cost of living criterion. It notes that the Consumer Price Index (CPI) has risen from 170.8 in January of 1999 to 187.1 in July of 2002. This is a 9.5% increase. The Employer emphasizes the fact that its salary offer increases the salaries of unit employees by 10.9% over that same time period. It then stresses the likelihood that the increases scheduled for July 1, 2003 and July 1, 2004, would provide substantially greater improvement over the rise in the cost of living.

The City claims that its own economic offer will have virtually no impact on the continuity and stability of employment. It argues that the unit employees "will retain their preeminent economic position in relation to their peers." It insists that neither seniority nor job security nor health benefits nor work schedules would be adversely affected through implementation of the Employer's proposal.

The City points out that state monitors have recommended economies relating to increased work hours and reduced staffing. It suggests that if costs create added financial pressure, the efficiency recommendations may be necessary, perhaps resulting in some instability in the ranks.

The Employer argues that there are several bases for the changes sought in the contractual grievance procedure. It stresses that the rank and file PBA contract contains a grievance procedure limiting access to arbitration to alleged violations of specific and express contract terms. The City's argument goes beyond mere "pattern bargaining" in that it contends

that there is a sound basis for "uniformity in the administration of grievances within the police department." It maintains that there is "little sense" for one group within the department to have broader rights in this area than another. The Employer also asserts that limiting arbitration to the written terms of the agreement keeps the scope of the review to matters to which the parties have agreed to be bound.

The Employer urges rejection of the SOA's convention leave proposal. It claims that the statutory references, which the proposed language seeks to replace, are to legislation declared unconstitutional. It also assails the quantity of leave rights sought, arguing that to allow up to ten (out of fifty) unit members on leave at one time could cause an "unconscionable disruption" in the operation of the department. The City further notes the economic impact of allowing paid leave, when there would be replacement costs for covering the vacancies.

The City seeks the rejection of the SOA proposal to convert the post-1998 sergeants rate to a one-year

step. The Employer urges the recognition that this was a recently negotiated concession and its reversal would be unwarranted and is without justification. In response to the SOA claim that a two-tiered system is not in the public interest, the City notes that 14 of the 23 sergeants were promoted after the 1998 cutoff and it anticipates that as a result of promotions "in a relatively short time the pre-1998 rate will disappear entirely."

The Employer maintains that the SOA proposal relating to the calculation of salary requires further clarification and should not be included in the contract. It claims that the formula offered is used only for some calculations and not for others. It suggests that the lack of clarity requires a rejection of the proposal.

In conclusion, the City contends that the proper application of all the statutory criteria establishes that the Employer's final offer should prevail. It seeks an award implementing the City's proposals as the

resolution of all issues in dispute at interest
arbitration.

Discussion and Analysis

At the outset of this discussion, the Arbitrator finds it appropriate to indicate agreement with the City's initial point that the statute requires the determination herein to be based on more than the comparability criterion alone. The law requires the Arbitrator to consider all the criteria and afford due weight to each relevant element in accordance with the evidentiary record and the issues presented. In the case at hand, there are numerous elements of the statutory criteria which warrant significant weight in analyzing and deciding the matter. The following analysis will reveal the impact of various components of the statutory criteria leading to the ultimate determination resolving the dispute.

It must also be noted that agreement with the City's assertion that comparability alone should not be the determinative factor does translate into agreement with the City's conclusion that the SOA's position relied solely on comparisons. As revealed in the body

of the *Positions of the Parties* section of this *Decision*, the SOA presented evidence and argument relating to all the statutory criteria.

The *public interest* is always a relevant criterion in resolving an interest arbitration dispute. There are numerous elements to the public interest factor but the Arbitrator believes that this initial criterion is always worthy of substantial weight in determining the most reasonable resolution of the parties' dispute. Consider that the services rendered by the employees at issue are a particularly critical aspect of providing for the public safety. The City's ability to attract, retain and promote highly qualified police officers has a direct impact on the quality of life of the residents of the City. Fiscal responsibility is another component of the public interest that is directly relevant to the considerations in this interest arbitration. The public interest elements of the CAP Law must also be considered. Additionally, the morale of employees and the impact of this contract in the context of the overall labor relations process in the

City are important considerations in relation to the public interest.

The public interest criterion clearly includes the consideration of the tax impact on residents and the potential inter-relationship between revenue, costs and the delivery of services. The Arbitrator has considered the recent history with respect to the property tax rate in Union City. The City has placed an emphasis on tax rates and that is with good reason. Tax rate trends are an important indicator of the impact of operating expenses on the public and they are also a warning as to future problems in delivering services. In the case at hand, Exhibit C-25 reveals the tax rates experienced in 1998 through 2001. Consider the following:

<u>Year</u>	<u>Tax Rate</u>	<u>Increase or Decrease</u>	<u>% change</u>
1998	37.18	n/a	n/a
1999	37.18	0.00	0%
2000	47.11	+9.93	+26.71%
2001	46.30	-0.81	- 1.72%

The 2000 increase is a dramatic event in terms of both rate increase and percentage increase. The Arbitrator

notes, however, that it appears to have been a one year instance needed to stabilize the City's revenues. Whether this was a response to the loss of one-time revenue sources or the impact of a singular occurrence is not known. What is apparent is that there is not a continuing trend toward spiraling increases. The record includes evidence in Exhibit SOA-1, Sections 8(A), (C) and (D), that the Mayor announced that there would be no property tax increase in the 2002 budget. The Arbitrator is also aware of the high level of the average tax bill in dollars [Exhibit C-29] and its impact on the public. The otherwise problematic increase experienced in the 2000 tax rate has not become a repetitive specter for concern. The Administration appears to have provided a fiscally stable environment and there are indications on the record [Exhibit SOA-1, Section 8(D)] that budgetary provisions were made for payment of retroactive increases to the three bargaining units, the PBA, Union City Employees Association and the SOA.

Another indicator of improved fiscal health is that there has been a steady growth of the fund balance

reflected in yearend figures for the fiscal years ending on June 30, 2000, June 30, 2001 and June 30, 2002. This data is found in the Annual Financial Statements [Exhibits C-9, C-10 & C-11] and for 2000 and 2001, it is confirmed in the audits [Exhibits C-12 & C-13]. This is important because it is simply another indication that the fiscal health of the municipality has improved since 1999, despite the difficulty of the one, large tax rate increase. There is absolutely no indication of a serious danger that the issues presented herein are likely to cause any further tax increase nor any diminution of public services. The Administration appears to have been managing well and planning for the current and future needs.

The wage and benefit package provided for the police supervisors is clearly of a highly competitive nature. The Arbitrator finds that the City is not in a position where the public interest demands any extra measures to enhance the ability to attract and retain employees; the Employer should certainly be able to do that within any standard, moderate contract resolution. The specifics of the overall compensation structure

will be addressed under the third criterion, but it is important to understand that the current package reflects no need for extraordinary measures, driven by the public interest.

The public interest criterion also relates to the impact of the Cap Law. The record clearly establishes that the City has been able to budget its appropriations below the limitations set forth by the Cap Law and that it has also banked a considerable amount of flexibility under the law. The Cap Law has no public interest implications in the matter at hand.

Labor relations practices and policies have a direct impact on the public interest. There is great value for an employer to maintain a consistent, long term approach toward labor relations and, particularly, collective negotiations. Such consistency allows for better planning, improved predictability of costs and the ability to avoid different units from whip-sawing the employer in bargaining.

The record at hand provides evidence of a clear relationship between the SOA and PBA units in negotiations. Both parties' positions reflect an understanding of the existence of that relationship. Consider that the SOA proposes that the first five years of a six year contract provide an identical salary increase schedule as that received by members of the PBA unit. Indeed, even the City proposes that the last five years of a six year contract duration provide the same salary increase schedule as the first five years of the rank and file police officer agreement.

There is a truly an interest in maintaining balance between units in a police department. This is a paramilitary operation which is involved in front line public service each day of the year and around the clock. Employees function within a chain of command and the structure of the rank system is an ever-present element of the department. It's hard to imagine any supervisory unit having a closer working relationship with the rank and file they supervise than in a police department or a fire department. Almost universally, supervisors are promoted through the ranks and

typically there is a long-standing, rank differential salary structure. Sometimes that rank differential structure is expressly set forth; more often it is the result of a tacit, mutual belief in parallel salary and benefit packages.

This does not mean that the public interest criterion demands a "lock step" approach to negotiations between the rank and file and supervisory units. It merely suggests that there is a greater benefit to the department and to the public founded in consistency rather than not. Consider what the Employer's response would be if the SOA sought a greater schedule of salary increases in the coinciding years with the rank and file agreement. One would expect that the City would rely heavily upon the contention that consistency between the units is in the public interest. One reason would be that if the SOA were to achieve more than the PBA, the rank and file unit would push to recoup that amount the next contract. That kind of negotiations pattern leads to an upward spiral. The same concept of the desirability for consistency requires an examination of the proposed

lesser package in search of a substantial rationale to break with the preference for consistency.

In the case at hand, the City suggests that it is reasonable for it to merely reduce the retroactive pay costs by one year for the supervisors. It downplays the implications of the impact on labor relations and morale but that \$165,000 is not an abstract element, it would come out of the pockets of unit employees. The Arbitrator finds that, absent a reasonable basis to diverge from the norm, the police supervisors have a reasonable expectation to the same salary package as the rank and file. The failure to attain that reasonable expectation would certainly have an impact on supervisory morale; an impact with negative implications for the public interest of having a cohesive and motivated police department.

It must be understood that the salary implementation dates proposed by the SOA provide the City with a six-month wage freeze. The prior contract expired on December 31, 1998 and the first proposed increase would be effective July 1, 1999. The Employer

realized a measure of relief from retroactive costs with the six month wage freeze in the rank and file salary schedule and would receive such relief under the Union's proposal herein as well. Further, the Employer realized added cost and retroactive relief through the continuation of July rather than January salary increase implementation dates. This pattern of delayed cost increases served the public interest in providing a reduced impact to the governing body and tax payers of the salary rate improvements. The salary increase schedule was configured in the public interest in its inception, the interest arbitration award for the rank and file unit provided the City with cost savings on retroactivity and through delayed future implementation dates.

It is worth noting that the City's position actually creates a one and one-half year wage freeze because it adds a full year delay to the six month freeze under the rank and file program. In reality this would mean a period of two and one-half years between the implementation of salary increases. The last increase under the expired contract had an

effective date of January 1, 1998. The first increase proposed by the City would take effect on July 1, 2000. Two and a half years is a long time between salary increases; especially when the employees you supervise have received one. The potential negative morale impact under the City's proposal would be exacerbated when viewed in light of the fact that the City has reached a voluntary settlement with civilian employees [Exhibit SOA-1, Section 3] providing salary increases effective on January 1, 1999 and January 1, 2000; both occurring before the first increase under the City's proposal for the police supervisors. All the salary rate increases provided in the six year agreement with the Union City Employees Association are effective on January 1st of the applicable year. It is significant to note that this contract with the civilian union was finalized in March of 2002, during the term of the current administration.

The Arbitrator agrees with the City that there is desirability in providing an economic package for employees that is cost efficient and to this extent the Employer's proposal has some initial appeal under the

public interest criterion. It is also true that an employee unit which enjoys relatively good compensation can absorb some reasonable measure of cost containment without a negative impact on the interests and welfare of the public. However, there is a point where a lack of consistency suggests disparate treatment and carries that concept beyond the range of the public interest. The facts of the case at hand demonstrate just that divergence from the public interest. The rank and file police contract provided the Employer with a six month wage freeze and a reasonable measure of cost containment through the reduction of the retroactive payments due as a result of the shifting of the salary increase effective dates to July 1st of each year. The City has proposed carrying that concept to an unreasonable degree with respect to the police supervisors unit; the facts establish that the 18 month wage freeze and the lack of consistency in application of salary rate increases among employee bargaining units under the City's proposal would be unreasonable and in conflict with the public interest.

The *comparability* criterion is of significance and relevance to the case at hand. This statutory factor provides for the consideration of comparisons of wages, hours, benefits and other terms of employment among different comparison groups. The areas of comparison include employees performing the same or similar services in private employment, public employment generally, in similar jurisdictions and in the same jurisdiction as the employees involved in the dispute. The comparability criterion also requires consideration of evidence of comparisons with employees, generally in both the private and public sectors.

The Arbitrator finds that there are no employees in the private sector performing the same or similar functions as the police supervisors in Union City. Indeed, the nature of police work is uniquely public in purpose and scope and private sector comparisons can be only be general in nature. Therefore, the Arbitrator considers the general evidence relating to private sector salary increase data for the relevant time periods. This is information compiled by the New Jersey State Department of Labor.

An overview of this data is set forth in Exhibit SOA-1, Section 10(A) and the Arbitrator has taken administrative notice of the official New Jersey State Department of Labor annual report issued prior to the close of this record, under the statutory requirement set forth in N.J.S.A. 34:13A-16.6, covering the most recent data period. The evidence reveals that, on a statewide basis, private sector wages increased an average of 4.3% in 1999, 6.9% in 2000, and 1.2% in 2001. This represents an average annual increase of 4.13% for the three year period correlating to the duration of the contract at hand. The data must be weighed with some care because of the fairly volatile nature of the changes it presents. If the Hudson County data is separated out from the statewide figures the private sector increases/(decreases) are as follows: 8.6% in 1999; 11.7% in 2000; and (-0.3) in 2001. This is an average increase of 6.67% over the three years but the downward indicator for 2001 must be viewed as a signal to be cautious with the application of the higher numbers.

Interestingly, the data for public sector increases is lower in the first two years and dramatically higher in 2001. Consider these statewide public sector salary increase figures: 2.1% in 1999; 3.0% in 2000; and 3.3% in 2001. Viewed as a whole, these public and private sector salary rate increase averages weigh in favor of moderation. An argument can easily be made from each perspective in the case at hand that this evidence is in support of that position. The reality is that the key conclusion from the general private and public sector comparisons is that neither offer is unreasonable under this particular component of the criteria. It weighs equally in relation to the two final offer salary proposals, noting however, that there is little or no support for either an 18 month wage freeze in 1999-2000 (as proposed by the Employer) nor for an increase of 6.75% in 2004 (as proposed by the Union).

Both parties presented evidence relating to comparisons of Union City police supervisors with those in other Hudson County jurisdictions. The SOA comparison data focused substantially on salary rates

and salary rate increases. The evidence presented by the City filled in other important details including hours of work, paid leave benefits and longevity.

The work schedule comparison data [Exhibit C-3] established that the patrol schedule of 1752 hours annually and the detail schedule of 1877 hours are both reasonably advantageous to the employees but within the framework of the range of other municipalities. The patrol schedule range, among the various jurisdictions, is from 1734 hours to 2068 hours with an average of 1878 hours annually. The detail schedule range is from 1737 to 2068 with an average of 1906 hours per year. The SOA already enjoys the benefit of an advantageous work schedule and that must be given consideration when weighing salary comparisons.

An examination of evidence relating to vacation, personal day, and holiday benefits [Exhibit C-3] also establishes that the SOA unit members enjoy a relatively high level of benefits. It is important to understand that they clearly fall within the normal range of leave time benefits. When viewed as a whole

the leave time benefits are above average but not the best in the county. These benefits, too, must be considered when comparing salaries among comparable jurisdictions.

The salary increase comparison evidence [Exhibit SOA-1, Section 5 and SOA-1, Section 2] establishes that for the years of the duration proposed by both parties herein there is a range of increases from 3.0% to 6.0%. The data presented for the average percentage increases for supervisors can be summarized as follows:

2000 - 4.2%

2001 - 4.37%

2002 - 4.0%

The PBA arbitration award [Exhibit SOA-1, Section 2] reveals that the average percentage salary increase for rank and file units for the year 1999 was 3.8%. A comparison of the supervisor and rank and file data reveals absolutely no instance where there is an inconsistency between rank and file salary rate increases and increases for supervisors.

The Arbitrator believes that it is important to consider salary rate increases in light of the actual salaries they represent. Therefore the following charts are relevant to provide context for the analysis:

<u>Sergeants</u>					
<u>Town</u>	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>
Secaucus	79,477 n/a	82,259 3.5%	84,727 3.0%		
Jersey City	74,252 3.5%	76,851 3.5%	79,541 3.5%	82,325 3.5%	85,206 3.5%
Union City					
SOA (7/1)	69,981 3.5%	72,430 3.5%	75,146 3.75%	78,152 4.0%	83,427 6.75%
City (7/1)	67,614 3.5%	69,981 3.5%	72,430 3.5%	75,146 3.75%	78,152 4.0%
Hoboken	68,262 3.75%	70,822 3.75%			
Weehawken (7/1)	67,507 3.5%	69,865 3.5%			
West N.Y. (6/30)	65,020 n/a	66,971 3.0%	68,980 3.0%	71,394 3.5%	74,071 3.5%
Guttenberg (7/1)	63,692 5.0%	66,877 5.0%	70,221 5.0%		
Bayonne (split increase)	61,083 2.5%/ 2.5%	64,803 3.0%/ 3.0%	68,750 3.0%/ 3.0% (10/1)	70,812 3.0%/contract ends	
Harrison			68,574 n/a	71,146 3.75%	74,525 4.75%

Lieutenants

<u>Town</u>	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>
Secaucus	87,349 n/a	90,406 3.5%	93,118 3.0%		
Jersey City	81,974 3.5%	84,844 3.5%	87,814 3.5%	90,877 3.5%	94,068 3.5%
Union City SOA (7/1)	80,479 3.5%	83,296 3.5%	86,420 3.75%	89,877 4.0%	95,944 6.75%
City (7/1)	77,757 3.5%	80,479 3.5%	83,296 3.5%	86,420 3.75%	89,877 4.0%
Hoboken	77,678 3.75%	80,591 3.75%			
Weehawken (7/1)	77,629 3.5%	80,346 3.5%			
West N.Y. (6/30)	76,076 n/a	78,358 3.0%	80,709 3.0%	83,534 3.5%	86,666 3.5%
Guttenberg (7/1)	73,245 5.0%	76,907 5.0%	80,752 5.0%		
Bayonne (split increase)	70,244 2.5%/ 2.5%	74,522 3.0%/ 3.0%	79,060 3.0%/ 3.0% (10/1)	81,432 3.0%/contract ends	
Harrison			73,125 n/a	76,598 4.75%	80,237 3.75%

Captains

<u>Town</u>	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>
Secaucus	95,226 n/a	98,559 3.5%	101,516 3.0%		
Jersey City	89,512 3.5%	92,645 3.5%	95,888 3.5%	99,244 3.5%	102,718 3.5%
Union City SOA (7/1)	92,550 3.5%	95,789 3.5%	99,381 3.75%	103,356 4.0%	110,333 6.75%
City (7/1)	89,420 3.5%	92,550 3.5%	95,789 3.5%	99,381 3.75%	103,356 4.0%
Hoboken	94,155 3.75%	97,686 3.75%			
Weehawken (7/1)	89,271 3.5%	92,395 3.5%			
West N.Y. (6/30)	89,011 n/a	91,681 3.0%	94,432 3.0%	97,737 3.5%	101,402 3.5%
Guttenberg (7/1)	84,233 5.0%	88,445 5.0%	92,867 5.0%		
Bayonne (split increase)	80,782 2.5%/ 2.5%	85,701 3.0%/ 3.0%	90,921 3.0%/ 3.0% (10/1)	93,648 3.0%/contract ends	
Harrison			78,394 n/a	81,334 3.75%	84,382 3.75%

The series of salary rate increases awarded by the arbitrator with jurisdiction over the rank and file PBA agreement is particularly appropriate, given the

evidence set forth above. That package provided increases in a moderate range on a percentage basis. Further, reflective of the somewhat higher existing levels of salary, the percentages are not at the upper end of the established range. Indeed, the costs of the package were then contained through the implementation of a six month wage freeze and the subsequent delayed effective date of each annual salary increase. These are all elements of moderation highlighted through comparisons of the percentage increase and actual salary data.

There is absolutely no convincing comparative evidence to support the 18 month wage freeze proposed by the City nor the 6.75% increase in 2004 proposed by the SOA. Each of those two elements of the respective final offers appear unreasonable under this part of the comparability criterion.

The Arbitrator notes that the City raises specific comparisons with the arbitration awards issued for two units of employees, firefighters and fire supervisors, of the North Hudson Regional Fire and Rescue [Exhibit

C-32]. The award provided annual 3.0% salary rate increases, in addition to the adjustments necessary to merge salary guides from the regionalized departments. The City suggests that the annual 3.0% increases present a lesser package than that sought by the SOA. However, it is important to understand that those added adjustments presented a substantial cost over and above the 3.0% increases. The comparison with the North Hudson Regional Fire and Rescue case does not strongly support the City's offer herein.

Typically, comparisons with other employees performing the same or similar functions for the same employer is a very important element of the comparability criterion. Its relevance is obvious; the prior existing salary structure probably already reflects the job responsibilities of the employees in relation to each title. The structure has taken shape over a period of years and, absent evidence to suggest any imbalance, can be assumed to reflect the parties' own intent in forming rank differentials in accordance with job responsibilities. Many of the significant factors discussed under the public interest criterion

are equally meaningful for why the natural comparison of employees in the same departmental structure (in promotional titles from the rank and file) have a common interest making salary rate increase comparisons relevant for both employees and management.

The City's argument that the rank and file award should be discounted because the evidence on that record is now old or stale is not convincing. To the contrary, the Arbitrator finds that the additional data presented, which updates the findings of the Arbitrator of the PBA case, is fully consistent with the prior record. Indeed, consideration of the extended evidence serves to strengthen the significance of that prior arbitration award.

Both parties final offers herein reveal acceptance of the relevance of the rank and file agreement. The first five years of the SOA offer is identical to that of the rank and file contract and the last five years of the City's proposal are also identical to the first five years of the PBA award. The only differences are the SOA's additional (and excessively high) proposed

increase for 2004 and the City's effort (unsupported by convincing evidence) to convert the 6-month wage freeze in the rank and file contract to an 18-month freeze for the supervisors.

Consider the following graphic display of the parties' offers, both for a contract having a duration of January 1, 1999 through December 31, 2004:

<u>Party</u>	<u>7/1/99</u>	<u>7/1/00</u>	<u>7/1/01</u>	<u>7/1/02</u>	<u>7/1/03</u>	<u>7/1/04</u>
City	0.0%	3.5%	3.5%	3.5%	3.75%	4.0%
SOA	3.5%	3.5%	3.5%	3.75%	4.0%	6.75%

The Arbitrator finds that the first five years of the SOA proposal are strongly supported by comparisons and that the sixth year of the City's proposal is also supported by the comparative evidence [see the bold face type above].

Another important comparison is the City's voluntary settlement with the Union City Employees Association. This settlement provides annual four percent (4.0%) increases, effective January 1st of each year for the initial five years of the contract. It then adds a five percent (5.0%) increase for the 6th

year, effective January 1, 2004. It is significant that this is a voluntary resolution entered into by the City for the exact same duration of contract at issue herein. While unit employees receive greater salary rates than the civilians in the unit noted above, those rates reflect unique and exacting job responsibilities, including supervision in the intensity of a public safety environment. It may also be true that the civilian settlement reduced the existing increment structure for that unit but those increments are paid in addition to the negotiated salary increases; the percentage salary rate increases are clearly relevant.

Internal comparisons are very important and revealing because they often involve evidence of the parties' own perceptions of the same issues in similar context. In some jurisdictions negotiations take shape in a manner so as to develop a "pattern of settlement" which is so internally consistent as to provide an extremely effective guideline for the resolution of outstanding disputes. Patterns can actually develop to a degree that presents some very strong presumptions in favor of maintaining the pattern. While these

presumptions can be successfully rebutted with persuasive evidence for deviation, they are substantial and important elements of the negotiations process in a multiple-unit work environment. In the case at hand there is no pattern of settlement. There have been two contracts resolved with other bargaining units and there are differences between the two resolutions. The unit of greater persuasive importance is the rank and file police unit; the civilian unit provides some significant evidence as well. Both of those comparisons are worthy of weight in the construction of the resolution of the dispute herein.

The evidence on the record establishes that the *overall compensation* received by bargaining unit members is highly competitive. In addition to salary rates well above average, the longevity benefit is also particularly good for the employees. There is no evidence that any benefit area warrants adjustment for inadequacy. The leave provisions: vacations, personal days and holidays are all highly rated. The evidence reveals that there is no benefit area which is clearly abnormal; certainly, none is so lacking as to warrant

attention and none is so unreasonably high as to need adjustment. It is a very good compensation package and each component is within the standard range of benefits normally provided for employees in the titles at issue.

The *stipulations of the parties* criterion is not relevant herein because there were no substantive stipulations offered or presented by the parties.

The *lawful authority* criterion has been given due weight in reaching the result awarded herein. This criterion, in the present context, relates to the application of the Cap Law, which imposes restrictions on the appropriations of public employers. In the case at hand, the evidence clearly establishes that the Cap Law presents no impediment to the Employer with respect to its budgeting of appropriations in the current and, by all reasonable predictions, into the future years of this contract period. The City has been able to budget its appropriations under the Cap Law limitations for several concurrent years. The statute provides for the banking of the unutilized cap restriction for future application. The City has been able to bank sufficient

funds to conclude that the limitations of the Cap Law present no impediment for the City's budget in the foreseeable future.

The Arbitrator notes that the lawful authority discussion of the Cap Law is but one aspect of the significant fiscal implications of contract negotiations. While that criterion may establish no impediment to the appropriation of expenditures, the fiscal picture cannot be properly examined without consideration of the revenue side of the equation. If there is an insufficient revenue base to support the appropriations, it would be unrealistic to conclude that the expenditures are fiscally sound.

The Arbitrator has given substantial weight to the evidence presented with respect to the *financial impact* criterion. As noted earlier, this criterion shares many elements of the public interest and lawful authority criteria. The record includes five municipal budgets [Exhibits C-4 through C-8] from the 1998 and through the 2002 budget. It also includes the annual financial statements (AFS) for 2000, 2001, and 2002

[Exhibits C-9 through C-11]. There are four municipal audits, from 1998 through 2001, which have also been introduced into evidence [Exhibits C-12 through C-15].

The record reveals that the City has recently stabilized a fiscal situation that required a 26% tax rate increase in 2000. The City sought to undo a reliance on one-time funding sources and the efforts have apparently been successful in that the tax rate has actually gone down slightly since. Over a period of several years, the major rate increase in 2000 is the only rate increase. Further, the documents establish that the tax collection rate has been extremely good, the last two budgets were based on a 98% and 99% collection rate, respectively.

The City presented credible evidence that the municipality is fully developed, with new ratables incumbent on replacing existing structures. However, the SOA presented evidence that such redevelopment is indeed taking place and improving the tax base. It also submitted evidence that the City is examining new

revenue sources including certain fee for service arrangements.

The City calculates the unit's total base salary (including longevity) at \$4,060,198 [from Exhibit C-1]. Calculated upon that base for salary and longevity the annual dollar value of the increases generated by the percentage rate improvements awarded herein would be as follows:

Effective July 1, 1999	-	\$142,107
Effective July 1, 2000	-	147,081
Effective July 1, 2001	-	152,228
Effective July 1, 2002	-	168,810
Effective July 1, 2003	-	186,817
Effective July 1, 2004	-	194,290

Of course there are additional economic costs attributable to salary rate increases and these would be in excess of the base salary and longevity calculations.

Nothing in the record would indicate that the salary increases awarded herein would have a negative impact on the taxpayer beyond the normal expectations

of costs for services in an urban municipal environment. Indeed, some of these costs will undoubtedly be offset by retirements and replacement at lower salary rates through the ranks. The City raises the specter of the one-time impact of the retroactive impact of the contract resolution in 2003. The record includes evidence that the City was well aware and had a budgetary plan for the impact of retroactive pay. The amounts could have been reserved in the last budget and carried forward as balances. Indeed, the financial documents indicate that there has been an extremely healthy growth in the fund balances in the most recent budget years, reversing a prior experience of inadequate fund balances.

The voluntary settlement of the Union City Employees Association at somewhat higher percentage salary rate increases is evidence of the City's own view of its fiscal ability to absorb retroactive increases and their costs. This is often very valuable evidence of an employer's own perception of its fiscal capabilities. That settlement, fully retroactive to

January 1, 1999, was entered into voluntarily and without the binding intervention of arbitration.

In conclusion, the current administration has done an excellent job of putting the City in a sound fiscal position. It clearly has planned for many aspects of the realities of municipal finances in the current climate. The record clearly indicates that the economic package awarded herein will not be the direct cause for a tax increase and will not produce any abnormal impact on the finances of the municipality nor affect the ability to provide other services to the public.

The *cost of living* criterion is addressed in the record at hand with documentation of the Consumer Price Index (CPI) as measured in the New York-Northern New Jersey area by the U.S. Department of Labor [Exhibit C-27]. This data reveals annual increases in the cost of living as follows: 1999 - 2.0%; 2000 - 3.2%; and 2001 - 2.6%. The first nine months of 2002 represent a 3.2% over the CPI figure at the end of 2001.

There are elements of the cost of living analysis which support each position. For example, due to the delayed effective dates, the cost of the 1999 salary rate increase is 1.75%, very close to the 2.0% CPI rise for that year. The payout cost of the 2000 salary rate increase is 3.5%, also very similar to the CPI increase figure of 3.2% for that year. The proposal of the SOA severely diverges from the cost of living evidence when the year 2004 increase of 6.75% is considered. Similarly, the City's proposal for no wage increase at all in 1999 is at variance with the cost of living evidence. The salary rate increases awarded herein are clearly reasonable under the cost of living criterion. This conclusion is true on both a year-by-year basis and in relation to the total package, viewed over time.

The eighth criterion relates to the *continuity and stability of employment* and also to *ordinary and traditional factors* in determining terms and conditions of employment. The Arbitrator is convinced that there is no evidence in the record to indicate that the continuity and stability of employment is at risk from the issues presented herein. This unit of employees

receives a highly competitive compensation package which would serve to maintain the continuity of employment under even the City's final offer, as proposed. Certainly, the package awarded herein will not have any adverse effect on the continuity and stability of employment.

An evaluation of ordinary and traditional factors in determining terms and conditions of employment strongly supports the award of the package herein. The first five years of that package mirror the contract of the rank and file police officers supervised by the employees represented by the SOA. It is extremely common to preserve internal consistency within a municipal police department. This keeps established rank differentials in ratio and it provides predictability, stability and balance in the negotiations process. It strongly suggests that there be a reasonable basis to diverge from consistency; there is an absence of evidence in support of variation from the norm in the case at hand.

The eighth criterion also supports the 6-year duration awarded herein. Note that both parties proposed a sixth year for the contract. That final year is 2004; thus, extending the contract through that year prevented this current year from being the last of the agreement, placing the parties immediately back into negotiations for a successor contract.

The Arbitrator concludes that the Award herein shall order the salary issues to be resolved as follows:

Effective July 1, 1999 - 3.5%

Effective July 1, 2000 - 3.5%

Effective July 1, 2001 - 3.5%

Effective July 1, 2002 - 3.75%

Effective July 1, 2003 - 4.0%

Effective July 1, 2004 - 4.0%

These increases represent the most reasonable resolution of the salary issue when applying the statutory criteria to the evidence, according due weight as warranted to the various components of the criteria.

The Union presented three additional proposals: calculation of a day's pay; convention leave; and sergeants' pay. The City proposed the major revision of the grievance procedure. The Arbitrator finds that the record does not support any of these additional proposals for contractual revision.

The record failed to sufficiently define the application of the current day's pay calculation for this Arbitrator to include it in express terms in the contract. The Arbitrator conceptually agrees that it would be reasonable to include in the contract the current practice with respect to the calculation of a day's pay but is unable to discern with certainty the nature of that current practice. Further, it is not clear for what specific purposes it has been applied, including whether it is applied uniformly for various purposes. It is assumed that the practice would be continued and it is strongly recommended that the parties directly discuss the voluntary inclusion of the practice once they clearly define its elements.

The sergeants' pay issue relates to the current contract provision that sergeants promoted after January 1, 1998 receive \$1,000 less than the contractual base pay for the job. Exhibit C-1 reveals that 14 of the 23 sergeants (more than half the group) were already receiving the lower rate. This cost containment through base adjustment for post-1998 promotees was newly negotiated in the last contract. There is no evidence supporting the immediate reversal of the newly gained concession. The Arbitrator has considered the two-tiered nature of the provision and the downside implications of that structure. However, it appears that over a reasonably brief period of time, the promotional process may have the effect of eventually placing all the sergeants in the now majority tier, at the reduced rate. The Arbitrator must assume that there was a basis for the negotiation of the concession last contract and, in the absence of evidentiary support that the reversal is warranted, the proposal is hereby rejected.

The SOA proposal with respect to convention leave is modeled after N.J.S.A. 11(a):6-10. The record does

not adequately establish the basis for inclusion of the newly proposed language. The Arbitrator points out that, if the SOA believes its statutory rights to be in excess of current contract language, the current contract [Exhibit SOA-1, Section 1] protects such rights at Article V, Section E.

The grievance procedure changes sought by the City are not supported by the evidence. There is an insufficient basis to conclude that it is necessary or reasonable to replace the existing grievance procedure. The record at hand does not establish the proposed procedure to be more reasonable than the one set forth in the prior contract. Absent evidence of the reasonableness of the change, the Arbitrator hereby rejects the proposal.

In conclusion, the Arbitrator finds that the Award herein reflects the most reasonable resolution of all issues in dispute at interest arbitration. It applies the entire evidentiary record to the statutory criteria in order to develop the most reasonable result,

according due weight to each criterion as indicated in this *Discussion and Analysis*.

A W A R D

For the foregoing reasons, IT IS HEREBY ORDERED that all issues in dispute at interest arbitration in Docket No. IA-2002-049 shall be resolved as follows:

(1) Salary rates shall be increased:

Effective July 1, 1999 - 3.5%

Effective July 1, 2000 - 3.5%

Effective July 1, 2001 - 3.5%

Effective July 1, 2002 - 3.75%

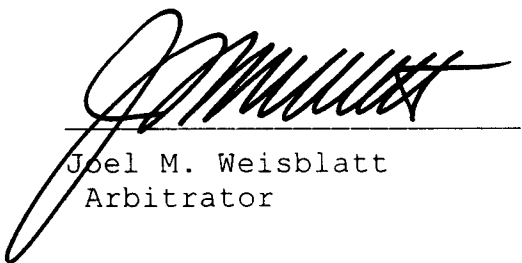
Effective July 1, 2003 - 4.0%

Effective July 1, 2004 - 4.0%

(2) All other proposals are rejected and shall not be included in the contract through this interest arbitration procedure.

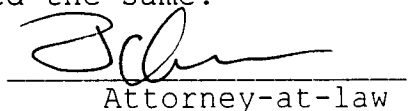
Dated: February 28, 2003

Skillman, N.J.



Joel M. Weisblatt
Arbitrator

On this 28th day of February, 2003, before me personally came and appeared Joel M. Weisblatt, 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 the same.



Attorney-at-law