

STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Interest Arbitration Between:

**BOROUGH OF FAIRVIEW**

**AND**

**FAIRVIEW PBA LOCAL NO. 45**

Docket No. IA-97-56

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BEFORE: ERNEST WEISS, ARBITRATOR

APPEARANCES :

FOR THE PBA:

RICHARD D. LOCCKE, ESQ.  
LOCCKE & CORREIA

FOR THE EMPLOYER:

JOHN L. SCETTINO, ESQ.  
GIBLIN & GIBLIN

## **PRELIMINARY STATEMENT**

I was designated to serve as Interest Arbitrator in accordance with the rules of the Public Employment Relations Commission. Prior to my arrival the parties engaged in a series of collective bargaining sessions and were successful in resolving some outstanding issues. Initially I attempted to mediate the remaining disputes on April 17, 1997 and April 30, 1997, in order to help resolve the outstanding issues voluntarily. Although some additional issues were resolved in this informal manner, the major issues such as wages and other economic benefits, remained outstanding.

As a result, I convened formal Arbitration sessions on July 1, 1997, July 2, 1997, July 16, 1997, July 30, 1997 and September 11, 1997. During the formal hearings the parties were afforded the opportunity to present documents testimony and argument in support of their respective position. The proceedings were transcribed and the parties were afforded the opportunity to submit post hearing briefs which I thoroughly considered.

Since the parties failed to agree upon an alternative form of submission, I am mandated by statute to decide the outstanding issues with conventional authority.

## **FINAL PROPOSAL OF THE PBA**

The PBA presented 2 economic issues as follows:

1. **Wage Increase-** A 5% across the board increase at each rank, step and position covered by the agreement in each of the three contract years.
2. **Clothing Allowance -** The PBA also proposes a clothing allowance increase of \$100.00 annually.

Both parties agreed to a three year agreement to run from January 1, 1997 through December 31, 1999

There were no non-economic issues presented by the PBA it merely seeks to have the present Agreement continue with only housekeeping changes such as adjustments of dates.

## **FINAL PROPOSAL OF FAIRVIEW**

1. **DURATION:** January 1, 1997 through December 31, 1999
2. **SALARY:** Effective January 1, 1997 a 0% salary increase across the board. Effective January 1, 1998 a 2% salary increase across the board. Effective January 1, 1999 a 2% salary increase across the board.

Effective January 1, 1997 a new rate step shall apply to all officers hired on or after January 1, 1994 as follows:

<u>Patrolman Rank</u>	<u>1997</u>
4 <sup>th</sup>	\$45,031.00
3 <sup>rd</sup>	\$45,031.00
2 <sup>nd</sup>	\$46,500.00
1 <sup>ST</sup>	\$48,500.00

Effective January 1, a new wage step shall apply to officers hired on or after January 1, 1996 as follows:

<u>Patrolman Rank</u>	<u>1997</u>
Academy Step	\$26,000.00
7 <sup>th</sup>	\$28,000.00
6 <sup>th</sup>	\$30,000.00
5 <sup>th</sup>	\$33,000.00
4 <sup>th</sup>	\$34,000.00
3 <sup>rd</sup>	\$36,000.00
2 <sup>nd</sup>	\$38,000.00
1 <sup>st</sup>	\$40,000.00

3. ARTICLE XI - HOURLY RATE - All Police Officers shall be required to work a 40 hour week. The work schedule shall be five (5) days on two (2) days off. The prevailing hourly rate shall be the rate obtained by using the Employee's yearly base salary and longevity divided by 40 work hours by 52 weeks per year.

4. ARTICLE XIII - TRAINING PAY - Employer agrees to compensate all Employees covered by this agreement at the Officer's hourly rate for attending training courses designated and authorized by the Chief.
5. ARTICLE XV - SHIFT CHANGES TO - To be deleted.
6. ARTICLE XVI - LONGEVITY - Maximum longevity to be reduced from 15% to 12.5%. Longevity for all Employees hired after January 1, 1994. 1 ½% of the employees base annual salary per year for each for (4) years of service reaching 7 ½ % after 20 years. After the 24<sup>th</sup> year of service, the Employee shall receive an additional ½% to a maximum of 8%
7. ARTICLE XIX - PERSONAL LEAVE - Reduce five (5) days to four (4) days.
8. ARTICLE XX - HOLIDAYS - All Employees shall be entitled to twelve (12) paid holidays per year.
9. ARTICLE XXI - SICK LEAVE - Shall read as follows: (as described in exhibit a)
10. ARTICLE XXIV - TERMINAL LEAVE - Accumulated sick time up to one (1) year shall be paid at base rate of salary plus longevity based upon the base salary at the time the sick days accrued.
11. ARTICLE XXVI - MEDICAL CONTRACT AND INSURANCE - The Employer will provide and pay for Blue Cross, Blue shield, Rider J.

Major Medical Insurance for Employees covered by this agreement and their families or equal or better.

12. ARTICLE XXX - CEREMONIAL ACTIVITIES - In the event a Police Officer in another Department in the State of New Jersey is killed in the line of duty, the Borough will permit at least two (2) uniformed Police Officers of the Borough to participate in funeral service for the said deceased Officer.

Police Officers participating in such funeral service shall not be entitled to any compensation during the time in which they are participating in said funeral service unless otherwise agreed to by the Chief of Police.

13. ARTICLE XLVII - CLOTHING ALLOWANCE - Each new Employee, his first year of employment, shall receive his weapon and his first issue of leather goods. Each year thereafter the Employee shall receive an allowance of Five Hundred (\$500.00) dollars. Each member of the department must submit a receipt for clothing purchased and will then be reimbursed within 30 days by the municipality.

14. ARTICLE LIII - COLLEGE CREDITS - All Employees shall be paid for courses being taken at the rate of \$50.00 per credit hours for all courses leading to a degree in Police Science or related to Police work.

Prior to enrollment the institution and courses must be approved by the Chief of Police and Mayor and Council.

15. ARTICLE LV - DENTAL PLAN - The borough shall maintain the existing dental plan or equal or better.

16. APPENDIX B - VACATION SCHEDULE

<u>Years of Service</u>	<u>Number of Days</u>
0-1	One day for each month of service up to 10 days
2-5	10 days
6-10	15 days
11 and over	20 days

17. LEGAL REPRESENTATION - The following article shall be added:

1. The Borough of Fairview shall provide legal representation to Employees covered by this Agreement pursuant to law.
2. In circumstances where legal representation is to be provided, the Employee shall have the right to select the attorney who will represent him/her.
3. The hourly rate for attorneys selected shall be not more than seventy-five (\$75.00) Dollars per hour.

18. BI-WEEKLY PAY PERIOD - The Employer shall have the right to select a weekly or by weekly pay period.

19. HEALTH BENEFITS - All Employees shall be responsible for contributing 10% of the total cost of their health benefits.

## STATUTORY CRITERIA

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

1. The interest and welfare of the public. Among the items the arbitrator or panes 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, 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 service 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 jurisdiction, 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 too submit additional evidence concerning the comparability of jurisdictions for the arbitrator's consideration.



3. The overall compensation presently received by the employees, inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other benefits received.
4. Stipulations of the parties.
5. The lawful authority of the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering the 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 dispute in which the public employer is a count or a municipality, the arbitrator or panel of arbitrators shall take into account, to the extent that evidence is introduced, how the award will effect 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 employee' 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 taxpayer 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 © initiate any new programs and services for which public moneys have been designated by the governing body in a proposed local budget.
7. The cost of living.
8. The continuity and stability of employment including seniority rights and such other factors not confined to the foregoing which are ordinarily or traditionally considered in the determination of wages, hours and conditions of employment through collective negotiations and collective bargaining between the parties in the public service and in private employment. (N.J.S.A. 34:13A-16g)

## 1. THE INTEREST AND WELFARE OF THE PUBLIC

The PBA argued in relevant part that the interest and welfare of the public are best served by the maintenance of a competitively compensated and efficient police department. It pointed out that the New Jersey legislature recognized police and fire to be unique in public sector employment when it provided interest arbitration. Therefore, comparisons with other blue and white collar employees should not be given great weight in determining police compensation.

With respect to the Fairview police department specifically, the PBA pointed out first that it is a full service police agency which provides for the law enforcement needs of its citizens with a high level of professionalism. Further, the PBA stressed the excellent productivity of the department at every level. In this regard it gave some specific examples such as municipal court fees and fines which rose over 22% from 1994 to 1996 fiscal years. In support of its productivity position the PBA introduced into evidence the 1996 "Fairview Police Department Activities Report"(P2) from which it highlighted a number of elements including the facts that there were 8,874 traffic summonses issued and that 105,909 miles were logged by the marked patrol cars. Also the police desk handled 14,245 calls in 1996 of which 3,673 were of an emergency nature. Additionally there were 348 alarms, 261 criminal arrests, 160 juvenile cases, 447 Motor Vehicle & contempt warrants, 237 domestic violence, 21 Psychiatric evaluations, and 167 municipal holding cell events. The PBA stressed that all of

this work was accomplished with less staff than had been available during the prior contract. Although some additional officers were hired, they were required to take their academy training during the period in question herein.

In furtherance of its position that a competitively paid police force is in the interest of the public, the PBA criticized the Employer's proposal to reduce many of the existing benefits including the creation of two tier pay system. It stressed that there can be no justification in paying two employees performing the identical job as much as \$19,000.00 difference in base pay. It pointed out that this arrangement does not exist anywhere else in the state and cannot be justified under the statutory criteria.

The PBA was also opposed to the work-schedule change proposed by the Employer. It argued that the existing schedule has been in place for many years and replacing it would create an upheaval. Moreover, the Chief of Police was not even called to testify on this question and the Mayor, who did testify, cannot be expected to understand the enormous ramifications of such a drastic change. It concluded that in the absence of credible supportive evidence in this regard the arbitrator is left merely with the opinion of an elected official who has no direct experience in the intricate art of scheduling a police force.

Additionally, the PBA argued that the Employer was unable to justify its proposal #4 involving shift changes. Here also, there was no consultation with the

Chief or the scheduling officer. The PBA pointed out that to make such changes without a rationale would be contrary to the best interest and welfare of the public.

The Employer's proposal to reduce the annual personal days by 20% was also opposed by the PBA. With respect to holidays, the PBA pointed out that the other bargaining units in town have the same number of holidays as the police. Upon learning this fact during cross-examination the Mayor was willing to equalize them. This, according to the PBA, was merely change for the sake of change. The same inconsistency was found in the employer's sick leave proposal. The Blue and White collar units have 15 sick days just as the police. There was no reason offered as to why the police should have only 10 sick days as proposed by the town. The PBA also asks; why should a new officer have to pay for his initial police weapon and initial issue of leather goods as proposed in employer proposal #12? Also, in proposal #15, the vacation schedule, the employer seeks to have the amount reduced without a rationale or explanation.

With respect to health benefits the employer is seeking to have the members of the unit contribute 10% of the cost without providing a rationale or evidence regarding the need for such a contribution. The PBA argues that the absence of evidence makes the award of such a proposal a statutory impossibility.

On changing the current weekly pay schedule to a biweekly pay period, the PBA stressed that the employer has recently lost this issue before the Public Employment relations Commission by a unanimous vote of the commission.

The PBA explained that it elected to evaluate the proposals of the Employer under the criteria of "Interest and Welfare of the Public" since it regards the proposals as an attack upon existing long standing benefits. The PBA charged that the employer is attempting to revise virtually every aspect and facet of police employment which is contrary to the Interest and Welfare of the citizens of Fairview. The PBA argued that the Act was not intended to be a vehicle for the employer to revise the entire method of delivering police services and the public would not be served by any serious consideration of the employer's position.

The Borough agreed that "the most effective method to serve the public interest is to treat public employees fairly while maintaining a stable level of governmental services." However it insisted that a balance is necessary and essential governmental services should not be sacrificed "in order to satisfy the economic demands of an overreaching public employee group."

The Borough argued that its 36 month proposal represents an extremely fair and sensible economic package and is within the Borough's ability to pay. It insisted that the demands of the PBA are well beyond fairness and ignore the economic conditions of the of the Borough and the ability of the taxpayers to pay the outrageous salary increases. It further argued that the PBA demands ignore the salaries and benefits of other employees in the Borough or other police departments in the county.

The Borough also pointed out that the interest and welfare of the public requires the Arbitrator to select, at least in significant part, the Borough's economic package. Also, the Arbitrator should consider that in making its proposals the PBA merely considers the wants of its membership and giving little weight to the interest and welfare of the public. The Borough on the other hand must take into account the economic realities of the of the municipality which has a large senior citizen population who cannot afford the increased taxes which would be necessary to fund the PBA proposal. The Borough is faced with dire economic conditions. A continuing loss of State aid a continuing decline in the tax collection rate and the problem of raising taxes on residents who simply cant afford to pay more as illustrated by the 1996 and 1997 Supplemental Municipal Property Tax Relief Act Discretionary Aid Application(CC) . The Borough received \$500,000.00 in discretionary aid in 1996 and \$400,000.00 in 1997. This fund is established to assist those municipalities whose financial conditions warrant State aid.

The borough further argued that the tax rate increased in 1995 from \$2.58 to \$3.05 per hundred. In 1996 it increased to \$3.32 this amounts to \$775.50 in 1995 and an additional \$445.50 in 1996 on a house assessed at the Borough average of 165,000.00 The borough further pointed out that as the tax rate increases the collection rates decrease. In 1995 the collection rate dropped to 93.72% and in 1996 to 93.73%

A rising tax rate also brings with it an increase in the tax appeals and refunds to taxpayers. In 1995 the Borough returned \$188,895.00 and in 1996 \$218,265.00 was returned. From 1992-1997 a total of \$732,589.41 in tax decreases were awarded. A refunding bond ordinance in the amount of \$900,000.00 was adopted, which is to be paid back over five years. With \$171,000.00 to be included in the 1998 municipal budget.

Losses in density aid amount to a total of \$850,000.00 from 1992 through 1997. The 1997 budget had a total loss of over \$320,000.00 in State aid as compared to the previous year. Additionally the surplus of the Borough has declined. In 1996 the budget reflects a surplus of \$588,755.00 as compared to \$1,267,535.00 surplus in 1994. The Borough also argued that the prognosis for the future also looks very bleak. The discretionary aid of \$400,000.00 received in 1997 may not be anticipated in the 1998 budget. Consequently, the Borough may have to increase the tax rate by 16 points for 1997. Additionally, with the deregulation of solid waste system, the revenue of \$364,200.00 previously generated, may be substantially reduced in the future.

During 1995, 96 and 97 the Borough eliminated several positions including the Administrator, Payroll Clerk, Senior Account Clerk, Deputy Court Clerk, Police Director, reduced the police Department by one position through attrition as well as two positions in the Road Department and a number of positions were converted to part time. These reductions in force resulted in a reduction of

spending of approximately \$170,000.00 due to the financial difficulties of the Borough. In addition the Borough is in the third year of a five year 4.5 million lease purchase agreement involving annual payments of \$900,000.00

Also, as a result of the Borough's economic problems its infrastructure and public buildings are in dire need of repair and the per pupil spending is about 1,000.00 less than the State average. Its teachers are the lowest paid in Bergen County and the board had laid off some teachers and staff employees.

The Borough stressed that the only way to increase its revenue is to increase its rates, increase taxes or reduce the number of employees. It pointed out that the only way to meet the PBA's unreasonable and unconscionable economic demands is to cut essential services or to raise the existing general property tax rate for its citizens which is already much too high. Contrary to the claim of the PBA expert testimony that there are areas where money can be found to fund the PBA demands, the Borough insisted that a close examination of his testimony reveals that he has failed to identify an appropriate source of the funding to pay for the salary increases of the PBA.

It is generally accepted in interest arbitration that the criteria of Interest and Welfare of the Public can relate to a array of topics in the collective bargaining process in the public sector. While the PBA argues the effectiveness, productivity and professionalism of the force and the necessity to fund salary increases to



guarantee the sustainability of those qualities. the Borough argues that the interests and welfare of the citizens of Fairview are best served by providing fair wages while insuring the economic viability of the City. Clearly, police officers in a critical people contact, public safety position, must be given recognition for their assumption of a job with such inherent risks. It is also obvious however, that no governmental entity can price itself out of its economic stability by inordinate raises.

Ironically, as has been correctly argued in other cases, many affluent towns can afford to pay its police force high wages, whereas urban cities where the job demands and risks are greater, cannot prudently afford such compensation.

Accordingly, many patrolmen in urban areas take exception to the unfairness of their compensation compared with their peers. In light of the economic realities involved in a financially burdened town such as Fairview, it is in the best interest and welfare of the public that an award issue at the rate set forth below, which while they exceed the average of the recent CPI's, are less then the average settlements the PBA counsel attributes to his list of comparable municipalities.

## 2. COMPARISON OF WAGES, SALARIES AND CONDITIONS OF EMPLOYMENT

The PBA argued that criteria g(2) and (3) also strongly support the PBA position. In this regard the PBA stressed that the Borough presented no empirical

evidence to support its position but merely used a "shot gun approach" shopping list to restructure the entire compensation package of the bargaining unit.

In support of its own position under the comparability criteria, the PBA referred to its Chart No. 1 showing that Fairview PBA is last with respect to top step Patrol Officers Pay Rate and the average pay among the municipalities on the chart is 9.20% or \$5,220.00 greater than Fairview. It pointed out that the Arbitrator would have to award double what the PBA has asked for just in order to bring the Fairview Officers up to average. It would take approximately 4% increase in base wage merely to catch the next to the last town on the list. The PBA stressed that this chart clearly demonstrates that the Fairview Police are not properly compensated and even if the full value of the PBA position is awarded the PBA will still lose ground on average.

The PBA urged that the average rates among all comparable towns in evidence supports the PBA position.

Chart No. 2. of the PBA reveals that the increases in base pay of the selected bargaining units in evidence for 1997, 1998 and 1999 closely approximates the last offer position of the Fairview PBA. The PBA stressed that on the basis of the these two charts it is demonstrated that the Fairview Police Officer is the poorest paid of all the comparables. Chart No. 3 represents the annual clothing allowance based on contracts in evidence. The PBA pointed out that this chart demonstrates that no comparable town pays its officers less than

Fairview with respect to clothing allowance and that it would take almost a 42% increase in this allowance merely to come up to average.

With respect to comparability and overall compensation, the Borough introduced numerous exhibits including contracts of other municipalities in order to attempt to demonstrate that the major benefits of the Fairview police are the highest or at least extremely competitive with the other municipalities in Bergen County. It pointed out for example, that the five days of personal leave is the highest in the county. Additionally, salaries, longevity, holidays, clothing allowance and medical coverage are also the highest or at least "very competitive" with the municipalities in Bergen County. Also it stressed that Police in Fairview work an average of 33.5 hours per week inclusive of a half hour for lunch and two 15 minute break periods. This is the least number of hours worked in the County by a police department. Therefore, the Borough concluded that on an hourly basis Fairview pays the highest starting salary and fifth highest top salary after four years in the Unit, even though its per capita income is the lowest in the County.

The Borough also argued that a comparison of other employees in the Borough reveals that they receive less salary and benefits and some work as much as 40 hours.

The PBA responded that the contract between the Fairview Board of Education and its Superintendent David Verducci calls for a 6% annual increase in salary and bonus. This is significant since it was a voluntary agreement.

Additionally, the blue and white collar union contracts established a 4% wage increase. Significantly, the PBA pointed out that, there were no give backs in the settlements of these other municipal Unions. There is obviously no justification in giving back previously won benefits, no evidence was presented to that effect, argued the PBA.. The PBA also argued that the “going rates” and “area standards” have been overwhelmingly documented and should be given great consideration. Additionally, the PBA urged that the private sector settlements are given slight weight by interest arbitrators since there is a vast difference between law enforcement and the private sector. It concluded that the evidence in the record clearly supports the PBA position under the statutory criteria g(2) and (3) as well.

With respect to the “Other Employment” criterion, the Borough introduced various exhibits including a chart based on a New Jersey Department of Labor survey indicating the average salaries for 1995 and 1996 and the percent change in each major industry in the private sector as well as the federal state and local government.

3. As to the OVERALL COMPENSATION criterion the Borough argued that the evidence it presented reveals that Fairview provides some of the most generous benefits in the County and its Officers work significantly less than those in other municipalities. It concluded that its desire to reduce personal leave,

holidays, longevity and vacation days is merely to bring the Borough in line with its surrounding municipalities.

The PBA created its chart No. 2 and Chart No. 3 to demonstrate the fairness of its position on wages and clothing allowance, as compared to the municipalities cited in the charts. However, the Borough also submitted exhibits demonstrating that the major existing benefits of the PBA are the highest or very competitive with its selected municipalities in Bergen County. It is obvious that both sides pre-selected the municipalities to most favorably support their position with respect to their economic proposals. However, there was no convincing support to justify the many givebacks of previously negotiated benefits proposed by the Borough. As a result, on balance, this criteria favors the PBA position more than the Borough.

#### 4. STIPULATIONS OF THE PARTIES.

Both parties submitted three year proposals which may be considered stipulations. Otherwise, the PBA correctly observed that, this criteria should not be very significant in the ultimate outcome of this award.

#### 5. THE LAWFUL AUTHORITY OF THE EMPLOYER

Under this criteria the PBA raised the New Jersey Cap Law. It pointed out that the Cap Law presents the question whether the existence of this Law presents any limitation in awarding the proposals of the PBA. The PBA argued that it is not an impediment since the Borough elected not to avail itself of the maximum

allowable of 5%. It elected to remain with the 2.5% index. Therefore, there is no cap prohibition to bar the full proposal of the PBA's last offer in this instance.

The PBA presented argument and chart NO. 4 to illustrate the difference in the wage proposals of the parties. It represented that the total base wage of the entire bargaining unit is \$1,812,444. It suggests however that this number is an overstatement since it presumes that all members are at the top steps in their category. Everyone is not at the maximum but it is easier to calculate. Therefore, one percent in base wage is \$18,124.00. The PBA calculated the 3% per annum differential between the parties to be as follows: In the first of the three contract years the difference is \$54,372.00 in the second year the difference is \$57,090.00 which is 5% higher than the first year. In the third year the cost differential between the parties' positions will be \$59,945. Therefore the PBA concluded that the Cap Law in no way negatively impacts this Borough from paying the full value of the PBA proposal in each year.

Here the borough again emphasized that it is faced with severe budgetary restrictions in 1995, 1996, and 1997 as well as in the foreseeable future. It pointed out again that the residents and taxpayers have experienced tax increases of 47 points in 1995, 27 points in 1996 and 10 point increase in 1997. They cannot afford any further increase in the tax rate. It further repeated that in 1998 the Borough is required to make the first payment on the \$900,000.00 bond issue for refunding of tax appeals.

The Borough also argued that it has budgeted up to its 2.5% cap. It rejected the PBA suggestion that it could have budgeted up to 5% given that the taxpayers are already saddled with a significant tax increase. Moreover, the Borough pointed out that the fact that the Borough has the authority to raise taxes is no reason to increase spending to fund an unreasonable and unjustified 5% salary demand

Here the PBA was able to clearly show that that the Borough, under its CAP limitations, could fund the entire PBA proposal. However, I agree that having the right to do so is not the same as having the means to do so.

#### 6. THE FINANCIAL IMPACT ON THE GOVERNING UNIT, ITS RESIDENTS AND TAX PAYERS.

The PBA argued that the impact on the governing unit and the community would be extremely small even if the entire PBA position is adopted. It reasoned that there are various categories of funds from outside sources such as COPS FAST and COPS MORE programs and the solid waste and sewerage account. These outside sources account for almost \$200,000.00 in offsetting income. The actual salary costs to the municipality therefore are extremely small in relation to the total tax levy of \$16,773,600.00 (P41) (sheet 22 line 5.) The PBA calculated one wage point to be approximately \$3.00 per average taxpayer but much of that cost comes from other sources. The PBA also points to the retirements which

have occurred during the term of the last contract. These replacements with new lower-salaried employees represents a substantial savings to the Borough. Additionally, there are now fewer officers and fewer supervisors. Also, the law enforcement activities involving fines and court costs resulted in substantial sums of money to the Borough. All of these factors served to reduce the payroll obligations of the Borough enough to offset the differential between the wage positions of the parties.

The Borough argued that if the PBA demand is awarded even in significant part, some municipal services would have to be reduced or eliminated. Given the already high tax rate, the financial impact on Borough would be tremendous. It would have a detrimental impact on the governing unit its residents and taxpayers.

The Borough concluded that its offer is realistic and in line with its ability to pay and considers its present economic condition. The Borough further insisted that its proposal would allow the PBA to continue its standing among comparable municipalities. Further, the Borough argued that its non economic proposal is also reasonable and its entire final offer as set forth, should be awarded.

The Borough convincingly argued that the 5% per-year wage proposal of the PBA would be excessive, but the 0%, 2%, 2% proposal of the Borough, is in my opinion likewise inadequate even under the existing economic circumstances of the Borough. Therefore, neither side totally prevails under this criteria.



## 7. THE COST OF LIVING

The PBA argued that there is support for its position if one argues the recent wage increases as compared to the rise in the cost of living. All the recent wage increases had a standard deviation of 2.74 %. Therefore, if the pattern would continue than the current increase should be 5.74%. which is 2.74% above the current 3% C. P. I.

The PBA also pointed to the Department of Labor circular (YY) which indicates that the average wage rate change has been 4%. This is certainly closer to the PBA position.

In arguing the cost of living factor the Borough cited the Consumer Price Index. (C. P. I.) and pointed out that the 5% salary increase proposed by the PBA is more than twice the rise in the C. P. I. Which increased only 2.5% in 1994. 2.8% in 1995, 3.0% in 1996 and 2.0% in 1997. Additionally one must consider not just the past increases of the salary which exceeded the C. P. I. but the increase in the benefits as well.

Neither party prevails under this criteria since, as stated herein, the PBA wage proposal is substantially higher and the Borough proposal is somewhat lower than the CPI.

## 8. CONTINUITY AND STABILITY OF EMPLOYMENT AND OTHER FACTORS.

Here the Borough recognizes that it is human nature that a reduction of benefits will probably not make the employees happy and may even lower their morale. However, it reasoned that the statutory standard in interest arbitration is not necessarily the morale or contentment of the employees but the interest and welfare of the public. The Borough reasoned that the pendulum must swing both ways. When economic conditions dictate, then a tier system and givebacks as proposed by the Borough are appropriate. Even after the proposed reductions, the PBA members would still be receiving more than other employees in the Borough, and continue to be competitive with the surrounding police departments.

In terms of the stability and continuity of employment, the Borough pointed out that the Police Department constitutes 35.4% of the 1997 budget. Moreover it stressed that in the past 20 years no officers have left their employment other than thorough disability or retirement the Borough has had no difficulty filling the vacancies in the Department.

The Borough concluded that only the Borough's economic package, either in total or in significant part, can be awarded since it is the only package which is reasonable under the fair application of the statutory criteria. Therefore, it asks that the last offer as set forth in its brief, should be awarded.

The PBA argued in part, that the Continuity and Stability of Employment criteria embraces the notion of “area standards” and “prevailing wage” concepts that support the PBA position. In this regard the PBA repeated its arguments on comparability, suggesting that a competitive wage rate is in the best interest of maintaining continuity and stability of employment. However, I was not convinced that the facts under this criteria support the granting of the full PBA proposal.

Finally the PBA requests the arbitrator to ignore the ancillary points which are not supported by empirical data and are not even understood by the Employer’s witnesses. It argued that in proposing the many givebacks, the Borough would like the arbitrator to dismantle long standing contract benefits.

It concluded that on the basis of the evidence and argument at the hearings and the arguments in its post hearing brief, the last offer position of the PBA should be awarded.

### **DISCUSSION**

It is generally agreed in arbitration that the party seeking the changes in an existing collective bargaining agreement has the burden of substantiating the need for the proposed change. In this instance, the Borough presents extensive argument regarding its wage proposal. However, I have found no significantly convincing arguments for the decrease or modification of the many other existing benefits contained in the Borough’s final proposal.

The PBA is merely seeking an increase in wages and clothing allowance whereas the Borough seeks to change or reduce eighteen existing previously negotiated contractual economic benefits, in addition to its three year wage offer. I will discuss each of the proposals separately giving due weight to the statutory criteria where it was found to be relevant.

The differences between the parties with respect to wages is substantial. The PBA proposes over 15% compounded over three years. The Borough offers approximately 4% over the entire three year period with 0% in the first year of the Agreement and 2% in each of the remaining two years. Both wage positions are unconvincing. The 5% per year proposal of the PBA is, under the existing economic circumstances of the Borough, somewhat high. Whereas the Borough's 0% in the first year of the contract and 2% wage increase in each of the last two years of the contract is somewhat inadequate in my considered opinion. As a result, a finding somewhere between the two positions is obviously indicated.

Both parties agreed that in their post-hearing briefs that the interest and welfare of the public are best served by treating public employees fairly while maintaining a stable and effective level of government services. As previously stated, under the existing dire economic environment in Fairview, the 5% per year wage proposal of the PBA would not, in my opinion, further the interest and welfare of the overtaxed public. However, the 0%, 2% and 2% pre year wage proposal of the Borough would also in my estimation not result in fair treatment of

the employees. It would also be contrary to the stated desire of the Borough to maintain a "balance" between the needs of the employees and the welfare of the public. Therefore, as stated above, I have concluded that it is in the interest and welfare of the public to modify the wage proposals of both parties and award in-between the extreme positions of both parties as I did below in my award. The 3.5% in each year is 1½% less than the PBA proposal in each year and 1½% more than the last two year position of the Borough. The 0% wage increase proposal in the first year, was not convincing even after I thoroughly reviewed the economic condition of the Borough and the testimony of its experts. Such a result would certainly not conform to the stated philosophy of the Borough, that a balance between the needs of the PBA and the community is desirable. I determined that the 3 1/2% per year wage increase was appropriate even after considering the PBA argument that the blue and white collar units of the Borough, received a 4% wage increase, without interest arbitration. This conclusion was dictated by the economic condition of the Borough as confirmed by the necessity to raise taxes in 1995 by 43 points and in 1996 an additional 27 points. As a result, both the collection rate dropped and the number of successful tax appeals increased. Consequently, a \$900,000.00 Refunding Bond Ordinance became necessary. Additionally, the Borough had received discretionary State aid in 1997 which may not be automatically anticipated in 1998.

After further considering the recent private and public sector wage increases, the comparisons of wages, hours and conditions of employment of law enforcement employees in comparable jurisdictions, and the increases in the Consumer Price Index, I still conclude that under mandated statutory criteria, the 3 ½% per year wage increase with nothing else added or taken away, is the most equitable result in this Interest Arbitration.

I also considered the rest of the Borough's economic package and found the following:

The new three-tier proposal creating significantly lower wage steps for employees hired after January 1, 1994, and an even lower rate for employees hired after January 1, 1996 was not convincing. There was no credible evidence to demonstrate that this unorthodox wage arrangement would be practical and that it could work without serious disruption. Such a wage plan could be potentially extremely divisive and devastating to the morale of the Unit. To grant this portion of the Borough's proposal would in effect create a three-level wage system as described in Borough proposal 2. If granted, employees performing the same job would receive three different rates of pay for doing the same work with the same responsibilities. Employees who receive less than equal pay for equal work would undoubtedly be resentful and unhappy. The morale of the Unit would most certainly be destroyed. This would inevitably lead to a diminished performance of

the entire unit. Such a scenario would clearly not be in the interest of the public. As a result, I must reject the Borough's multi-tier wage arrangement proposal.

ARTICLE XI - HOURLY RATE- I have insufficient evidence for the need to change the existing method of calculation of the hourly rate, or the present work schedule. Such a rate is usually determined by dividing the hours worked into the salary of the employee. In this instance, there was no testimony, from the Chief or an experienced scheduling officer, to demonstrate that the existing arrangement of the parties regarding the work schedule should be disturbed. Therefore, the proposal of the Borough to change the hourly rate and the existing work schedule is hereby denied.

ARTICLE XIII - TRAINING PAY- This proposal eliminates the premium pay of time and one-half for attending training courses. I was not convinced by the Borough argument that the courses are primarily for the benefit of the employee. In the existing provision the courses are designated and authorized by the Chief and are obviously related in part to the police work of the Unit. A better trained police force is desirable and serves the interest and welfare of the public. As a result, this proposal must also be denied.

ARTICLE XV - SHIFT CHANGES - The necessity to delete this provision was not demonstrated by the Borough. That is, there was no showing that there have been problems in scheduling or that the Borough had been inhibited in the scheduling process. In the absence of such evidence I must conclude that the

existing language of Article XV shall remain as it has previously been negotiated by the parties.

ARTICLE XVI - LONGEVITY - The Borough's proposals to reduce the existing additional compensation for length of service, must also be denied for essentially the same reasons. Over the years the parties have negotiated a longevity schedule. The existing schedule provides for 2 ½% for every 4 years of service up to a maximum of 15%. The Borough is seeking to reduce this compensation to a maximum of 8%. While this existing 15% maximum is certainly a generous amount it is, according to the record, not that unusual in Bergen County. Again, since I have very little evidence or testimony as to why this economic benefit should be slashed so drastically, I must leave the parties where I found them on the question of longevity. Therefore, this proposal of the Borough is hereby denied.

ARTICLE XIX - PERSONAL LEAVE - This proposal merely seeks to reduce the existing five days of personal leave to four days. While this reduction, as the others, would have the effect of reducing the overall compensation, I have nothing in the record to prove that it is necessary. Therefore, for the reasons stated above I must also deny this proposal.

ARTICLE - XX - HOLIDAYS Here the Borough seeks to reduce the number of holidays from fourteen (14) to twelve (12) paid holidays per year. The Borough merely points out that the average number of holidays in other



municipalities in Bergen County is thirteen (13). Obviously if the average is thirteen, (13) than there are a substantial number at fourteen (14). Again, other than a desire to reduce costs, the Borough failed to show why this negotiated existing benefit should be reduced at this time. In the absence of such a showing the proposal must be denied.

**ARTICLE XXIV - TERMINAL LEAVE -** The Borough is seeking to have accumulated sick time up to one year to be paid at the base rate plus longevity based on upon the salary at the time the sick days accrued.

The Agreement (J1) provides for payment "...at the respective retiring Employee's base rate..." However, Employees hired after January 1, 1986 receive only 50% of the full value of their accumulated time. The Borough proposal if granted as requested, would give full value even for employees hired after January 1, 1996. I'm not certain that this was intended by the Borough. However, in the absence of additional proofs of a specific need to change this benefit I must leave it as it has evolved over years of negotiations by the parties.

**ARTICLE XXVI - MEDICAL CONTRACT AND INSURANCE -**

The existing Agreement specifically provides for Blue Cross, Blue Shield, Rider J. the Borough is seeking to add the option of selecting another plan providing it is equal or better. In view of the guarantee by the Borough that the existing benefit will not be diminished, I hereby grant the proposal.

**ARTICLE XXX - CEREMONIAL ACTIVITIES -**

The existing language of the Agreement merely provides that the past practice regarding this benefit shall continue. The Borough is seeking to provide contractual language regulating this benefit in order to avoid future controversies relating to this benefit. However, again I am without adequate evidence as to the existing practice and I have not heard any testimony to suggest that there have been controversies or grievances in the past regarding the implementation of the existing practice. Therefore, I must again deny this proposal of the Borough.

#### ARTICLE XLVIII - CLOTHING ALLOWANCE.

The Borough seeks to change the existing provision wherein the Borough will require a receipt to prove that the \$500.00 allowance was in fact spent on clothing.

However, there was no showing that the officers are not maintaining a proper and professional appearance or that the allowance is not being used for the purchase and maintenance of clothing. Therefore, I must deny the Borough's proposal to have the officers submit proof of purchase and then wait for the reimbursement within 30 days. In this regard I have also denied the PBA proposal for an increase of \$100.00 annually in the existing clothing allowance.

ARTICLE LIII - COLLEGE CREDITS - The change sought by the Borough involves the prior approval by the Mayor and Council of the educational institution and courses, and eliminates the police-science-only restriction. I am inclined to grant this proposal since it appears to benefit both parties. However, I

would suggest that the approval be made by the Chief or his designee instead of the Mayor and Council since it may be cumbersome to have such approvals made by the Mayor and Council. Nevertheless, the method of approval portion of this proposal may be determined later by the parties.

**ARTICLE LV - DENTAL PLAN** - The borough proposes that it shall maintain the existing dental plan or one that is equal or better. Here it seems the Borough merely desires to express the ability to change carriers but maintain a plan that is equal or better than what is in existence at this time. Therefore, this proposal is hereby granted.

**APPENDIX B - VACATION SCHEDULE** - The Borough's proposal for the reduction of the present vacation entitlements is hereby denied for essentially the same reasons as put forth above. Although this may be a cost reduction for the Borough, there was no compelling evidence or argument to persuade me that this existing benefit should be reduced at this time.

**LEGAL REPRESENTATION** - The Borough proposes to add the following article:

1. **The Borough of Fairview shall provide legal representation to Employees covered by this agreement pursuant to law.**
2. **In circumstances where legal representation is to be provided, the Employee shall have the right to select the attorney who will represent him/her**

3. The hourly rate for attorneys selected shall be not more than seventy-five (\$75.00) Dollars per hour.

I was not sufficiently convinced about the potential future ramifications of all the elements of this proposal and therefore, I can not grant it.

**BY-WEEKLY PAY PERIOD** - The Borough is seeking to change the existing weekly pay schedule to a by-weekly pay period. However, the parties have recently litigated this issue before PERC.(P45) On its face, such a request appears to be relatively benign. However, the full ramification of such a change has not been thoroughly explored in the record made before me and therefore, I am not in the position to grant this request in this proceeding.

**HEALTH BENEFITS** - The Borough proposes that all Employees shall be responsible for contributing 10% of the total cost of their health benefits. This proposal is somewhat vague and is not convincingly supported in the record. The only rationale put forth by the Borough was that in these times of rising health costs more and more Employers, both in the public and private sectors are seeking to have employees contribute to the cost of health care. Although this argument may have some validity I do not have sufficient supporting evidence in the record to enable me to grant such a radical increase in cost to the employees in order to maintain this previously negotiated benefit. Also, there is nothing in the record to indicate for example, whether any other municipal employee group in Fairview shares the cost of this benefit at this time. Additionally, there was no explanation

as to how this proposal would be implemented. For example, would the 10% employee contribution be at the premium or at the provider level? Therefore, for these and other reasons stated above I have no choice but to also deny this proposal of the Borough.

Finally I must add that many of PBA counsel's arguments relating to financial impact are well-founded. His explanation of the percentage share taken up by the school budget and the county budget and the small amount of the overall budget that police appropriation actually represents are accurate and impressive. However, those portions of the budget segments and expenditures are susceptible to the natural restraints of political pressure and grater accountability. In dealing with contract negotiations for police salaries, the State legislature created this unique interest arbitration statute. In effect, a third party, usually unconnected with the community, has been statutorily injected in the process. The interest arbitrator must exercise his statutory authority with a view toward the impact of any increases or decreases on the community and on the members of the Bargaining Unit.

In addition to taking into account the impact of my award upon the community and the members of the Unit, I have thoroughly considered all the evidence gathered during the five transcribed hearings, in light of the statutory criteria as mandated, including the arguments and allegations of both parties, at the

hearing and in their extensive post hearing briefs. Accordingly, I hereby make the following:

AWARD:

1. DURATION: Three year agreement. 1/1/97 through 12/31/99
2. WAGES: Increases to apply across the board on each rank, step and position in the existing Collective Bargaining Agreement as follows:
  - A. 1/1/97 an increase of 3.5%
  - B. 1/1/98 an increase of 3.5%
  - C. 1/1/99 an increase of 3.5%
3. Articles XXVI and LV shall be modified to grant the Borough the right to change health insurance and dental insurance carriers providing that all the benefits are equal or better.

All the other remaining proposals of both parties are hereby denied. The present Agreement shall continue with only housekeeping changes such as adjustments of wage rates, dates and any changes created by the parties prior to this Interest Arbitration.



ERNEST WEISS, ARBITRATOR

STATE OF : NEW JERSEY)  
COUNTY OF: MONMOUTH)

On this 21<sup>st</sup> day of April 1997, before me personally came and appeared ERNEST WEISS, 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.

**JILL E. FARKAS**

NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires May 5, 2000