

**STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION**

In the Matter of Interest Arbitration)	
)	
Between)	
)	
THE BOROUGH OF MIDLAND PARK)	PERC DOCKET #IA-96-061
)	
and)	
)	
MIDLAND PARK PBA LOCAL 79)	OPINION AND AWARD
<hr/>		

Before: **J.J.Pierson, Esq.**
 Arbitrator

For the Borough of Midland Park: Robert T. Regan, Esq.

For PBA Local 79: Richard D. Loccke, Esq.

The undersigned was appointed by the New Jersey Public Employment Relations Commission ("PERC") to serve as Interest Arbitrator in the impasse between the herein named parties. Appointment was made pursuant to N.J.A.C. 19:16-5.6. (See Appointment letter dated February 21, 1996). The proceedings were initiated under the Compulsory Police and Fire Interest Arbitration Act P.L. 1977, c. 85 (C:34:13A-14 et seq.), and continued after January 10, 1996 under the newly adopted interest arbitration statute P.L. 1995, c. 425., entitled "The Police and Fire Public Interest Arbitration Reform Act". The procedures utilized by this Interest Arbitrator were those in effect at the time of decision and application.

BACKGROUND:

The Borough of Midland Park (a public employer, hereinafter referred to as the "Borough") is located in Bergen County, comprises 1.6 square miles and, as of a 1992 census, enjoys a population of approximately 7,109 people. (See B-2).¹ The Borough and Midland Park PBA Local 79 (hereinafter, the "PBA" or the "Union", the recognized representative of approximately one dozen police officers employed within the Borough) have been parties to a series of Collective Bargaining Agreements ("Agreement"), the most recent of which concluded with a term through December 31, 1995. (See Joint Exhibit J-1). The parties met prior to the expiration date to negotiate a successor Agreement, however, negotiations were not successful and resulted in a petition being filed by the PBA with PERC on November 21, 1995 for initiation of interest arbitration.

The PBA's petition included the following schedule of issues which have been regarded and identified as economic and non-economic within the meaning of N.J.A.C. 34:13A-1 et.seq., and considered mandatory items for negotiations:

Economic Issues:

1. Wage Increase (Sr. Officer Differential)
2. Article IV, Hazardous duty increment
3. Article IX, Work Week & Overtime
4. Article X, Hourly Rate
5. Schedule change notice
6. Longevity

Non-Economic Issues:

1. Schedule Change Notice

1. For purposes of the record Joint Exhibits are identified by the letter "J"; PBA exhibits are identified by the letter "U"; and Borough exhibits are identified by the letter "B".

The Borough did not file a response to the PBA petition, nor did the Borough submit an application before PERC to amend the items listed by the PBA for consideration during the interest arbitration process. Rather, it was not until after this Interest Arbitrator was appointed by PERC², initiated mediation efforts and convened the hearing³ that the Borough sought to include issues relating to educational benefits and medical coverage into the proceeding.⁴ The interest arbitration hearing proceeded on May 2, 1996, with due notice to the parties, at Midland Park Borough Hall, Midland Park, New Jersey. The Union challenged the submission of additional issues at the time of hearing and the Borough countered with a challenge to this Arbitrator's authority (relating to the negotiability) of the PBA's proposal regarding schedule changes. Both challenges were resolved by this Arbitrator in an Interim Award issued on May 16, 1996, and specifically addressed in detail within the Opinion below. Briefly, this Arbitrator found the Borough waived its right to introduce additional issues during the interest arbitration and that the Arbitrator was without authority to address the negotiability aspects of the PBA's proposal regarding schedule changes.

2. As indicated earlier, PERC appointed the undersigned as Interest Arbitrator by letter dated February 21, 1996.

3. A mediation session was conducted on March 28, 1996, but proved unsuccessful. Accordingly, a formal hearing for interest arbitration was scheduled with due notice to the parties. Because the parties did not agree upon a terminal arbitration procedure, the interest arbitration was conducted in accordance with the statutory procedure for "conventional arbitration".

4. In fairness to the Borough and Counsel, the record must note that Mr. Regan was retained by the Borough subsequent to the PBA filing for interest arbitration and after the statutory period for filing an amendment to the PERC petition had elapsed..

The parties were nevertheless afforded the opportunity to present evidence and witness in support of their economic and non-economic positions and, upon completion of the hearing, the parties submitted post-hearing briefs. The record was declared closed upon receipt of briefs.

Appearing for the PBA:

Richard D. Loccke, Esq.
Officer Greg Cinelli, PBA Representative
Officer Marra, PBA Representative

Appearing for the Borough:

Robert T. Regan, Esq.
Michelle Dugan, Township Administrator

FINAL ECONOMIC OFFERS

Final Economic Offer Of The PBA

1. An increase of 6.0% in each year of the three (3) year agreement.
2. A modification of Article IV, Hazardous Duty Pay, to provide compensation in the amount of one percent (1%) of base salary for each four (4) years of completed service.
3. A codification of a 4/2 work schedule under Article IX, Work Week and Overtime.
4. A modification of Article X, Hourly Rate, changing the hourly rate formula to 1,946 hours per year.
5. **The addition of a Schedule Change Notice provision which would require the Employer to notify members of any schedule change within 14 calendar days or pay officers at the overtime rate for short notice changes.**

Final Economic Offer Of The Borough

1. An increase of 2.6% in 1996, 3% in 1997 and 3% in 1998.
2. An increase in the uniform allowance (Article XXII) of the contract of \$50.00, effective in the first year of the new contract (1996).
3. Article XXIII, Hospitalization, subparagraph (A) shall be amended to read as follows:

The current medical benefits program, or a program substantially equivalent thereto, shall be continued.

4. Article XXXIII shall be amended to add the following:

Notwithstanding the yearly stipends payable hereunder, such stipends shall not be payable to officers hired after January 1, 1996.

5. Appendix A shall be amended so as to modify the number of steps in the rank of Patrolman which shall be as follows:

1st 6 mos. (In Academy)
2nd 6 mos. (Probationary)
During 2nd year
During 3rd year
During 4th year
During 5th year
During 6th year
During 7th year
After 7th year (Maximum)

INTEREST ARBITRATION

Interest Arbitration is permitted in labor disputes for the public fire and police departments within the State of New Jersey per N.J.S.A. 34:13A-14 et. seq. The statute provides that, in the event the parties do not agree on any designated acceptable terminal procedures or do not fashion one of their own with the approval of PERC, the mandatory procedures of the statute shall be implemented. Pursuant to N.J.S.A. 34:13A-16(d)(2), the impasse in the negotiations herein are to be

by "conventional arbitration" arbitration.⁵ Moreover, under Subsection 3(d) of the Act, this Arbitrator is directed to "separately determine whether the total net annual economic changes for each year of the agreement are reasonable under the eight statutory criteria set forth under [N.J.S.A. 34:13A-16g]."

STATUTORY CRITERIA

The criteria which require such consideration are listed under the statute (at N.J.S.A. 34:13A-16g) as follows:

1. The interests and welfare of the public. Among the items the arbitrator...shall assess when considering this factor are the limitations imposed upon the employer by P.L. 1976, c. 68 (C.40A:4-45.1 et seq.).
2. Comparison of the wages, salaries, hours and conditions of employment of the employees involved in the arbitration proceedings with the wage, 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 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.

2. This Arbitration is governed by the "Police and Fire Public Interest Arbitration Reform Act" pursuant to P.L. 1995, c.425, which was signed into law on January 10, 1996 and establishes "conventional arbitration (as opposed to last and final offer arbitration) as the terminal procedure to be utilized when ... unable to reach a new collective agreement (contract).

3. The overall compensation presently received by the employees, inclusive of direct wages, salaries, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits and all other economic benefits received.
4. Stipulation of the parties.
5. The lawful authority of the employer. Among the items the arbitrator...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...shall take into account, to the extent the 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 opportunity and stability of employment including seniority factors not confined to the foregoing which are ordinarily or traditionally considered in the determination of wages, hours and conditions of employment through collective bargaining between the parties in the public service and in private employment."

The statute further requires that the arbitrator:

Shall decide the dispute based on a reasonable determination of the issues, giving due weight to [the above listed factors]...and...indicate which of the factors are deemed relevant, satisfactorily explain why other are not relevant, and provide an analysis of evidence on each relevant factor. See Id.

SUMMARY OF THE PBA POSITION

The PBA contended that Midland Park officers were members of a highly productive police department, although faced with career advancements limited by the decreasing number of supervisory positions and the declining opportunity for promotion. Accordingly, the PBA argued that, without traditional means of promotion, contractual benefits were the only means for advancement. While acknowledging that police officers earn competitive base salaries, the PBA maintained that their overall contractual benefits fall short of the benefits found in contracts of officers in neighboring communities. The PBA argued that the Borough had the financial resources and budget flexibility (including latitude within CAP expenditures) to pay the "reasonable" increases sought by the PBA. The PBA argued that an award of the PBA increases would be without significantly impact on taxpayers and, therefore, the PBA position should be awarded by the Arbitrator.

SUMMARY OF THE BOROUGH'S POSITION

The Borough contended that Midland Park police officers are well compensated and would continue to benefit under the Borough's offer. The Borough further contended that the municipal budget was expanded within an authorized 3.5% under the CAP law and approved reasonable increases to the PBA. The Borough argued that its employment package was consistent with and, in many instances, superior to average salary paid to police officers in neighboring communities.

The Borough maintained that an increase in the amount to be raised by taxation is required as a result of a decline in the municipality's ratable base due to tax appeals and loss of tax revenue. The Borough argued that, with the decline of ratables and loss of revenue, present taxpayers (primarily homeowners) will be faced with increased financial burden. Characterizing a "difficult financial condition" facing the municipality, the Borough opined that additional increases would be fiscally imprudent and burdensome upon its residents. The Borough requested the Arbitrator to find in favor of its position.

THE EVIDENCE

I. THE PBA'S CASE

COMPENSATION AND WAGE INCREASE COMPARISONS

RECENT COLLECTIVE BARGAINING AGREEMENTS FOR POLICE IN NEIGHBORING COMMUNITIES

P-1	Franklin Lakes	(1/92 - 12/94)
P-2	Ramsey	(1/91 - 12/92)
P-3	Wayne	(1/91 - 12/93)
P-4	Wayne	(1/94 - 12/96)
P-5	Allendale	(1/93 - 12/94)
P-6	Glen Rock	(1/93 - 12/95)
P-8	Cresskill	(1/94 - 12/96)
P-10	Hillsdale	(1/94 - 12/97) ⁶
P-11	Paramus	(1/94 - 12/96)
P-12	Ho-Ho-Kus	(1/95 - 12/97)
P-14	Ridgewood	(1/93 - 12/95)
P-15	Waldwick	(8/95 - 12/97)
P-17	Wyckoff	(1/95 - 12/97) ⁷
P-18	Oakland	(1/96 - 12/98)
P-19	Saddle Brook	(1/94 - 12/95)

6. See also the related Memorandum of Agreement.

7. See also the related Memorandum of Understanding.

P-20	Saddle Brook	(1/96 - 12/98)
P-21	Mahwah	(1/92 - 12/94)
P-23	Mahwah	(1/96 - 12/97) ⁸
P-27	Rochelle Park	(1/95 - 12/97) ⁹
P-29	Demarest	(1/95 - 12/97) ¹⁰
P-31	Norwood	(1/96 - 12/98) ¹¹
P-32	West Milford	(1995 - 1997) ¹²
P-33	Wallington	(1/94 - 12/96) ¹³

RECENT INTEREST ARBITRATION AWARDS FOR POLICE IN NEIGHBORING COMMUNITIES

P-7	Cresskill	(1/94 - 12/96)
P-13	Ridgewood	(1/93 - 12/95)

ECONOMIC INDICATORS FOR BERGEN COUNTY

P-35	County Equalization Table	(5/95)
------	---------------------------	--------

8. See also Memorandum of Agreement, effective 1995.

9. See also P-24, the related Memorandum of Understanding; P-25, earlier agreement (prior to amendments); and P-26 related Consent Award.

10. See also P-28, the related Memorandum of Agreement.

11. See also P-30, the related Memorandum of Agreement.

12. This was the Memorandum of Agreement, subject to ratification.

13. See also P-34 whereby the parties, pursuant to a Memorandum of Agreement agreed to extend the prior contract by one year with wage adjustments.

- P-39 Chart: Median House Values for Bergen County for 1980 and 1990
- P-44 Unofficial Results of Midland Park Annual School Election 4/95

COMPARISON OF POLICE WORK HOURS

- P-45 Outline of Police Hours for Departments in Bergen County.

Testimony presented on behalf of the PBA:

Officer Greg Cinelli offered testimony on behalf of the PBA relative to his twenty years experience within the Midland Park Police Department. Officer Cinelli described a staff of twelve officers and the reduction in the number of supervisors. According to the witness, aside from the Chief of Police, supervision previously included one Captain ("now defunct"), one Lieutenant, three Sergeants ("now two, since August 1992 ... in the past, there were three"). One new Patrolman was hired in 1994.

Officer Cinelli also described the "mutual aid" agreement with the towns of Waldwick, Ridgewood and Wykoff. Dispatch is no longer performed by the Department. Since 1994, no civilians have performed on the desk. The dispatch function is performed from central dispatch in Ridgewood.

Officer Cinelli also offered his opinion on the inherent problems in the work schedule (5/2;7/2)¹⁴ of 2,080 hours per year. Officer Cinelli testified that the PBA negotiated improvements in the 1993-95 Agreement with a (4/2)¹⁵ work chart modification utilized in 1994. According to the witness, when the chart was negotiated and discussed with the Chief, there was an acknowledgment that the work schedule worked to the benefit of the PBA ("the Chief had no problem with the chart ... and we could schedule a year in advance ... productivity was better ... there were no short swings ... and the shift change was easier."). Officer Cinelli claimed that, despite "delivering services", the work scheduled was "switched back to a 5/2". The witness acknowledged that, when challenged, "PERC decided that the Borough acted within its power".

14. Five days working ("on"), two days "off"; followed by seven days working ("on") and two days "off".

15. Four days working ("on"), followed by two days "off".

II. THE BOROUGH'S CASE¹⁶

ECONOMIC INDICATORS & DEMOGRAPHICS

- B-2 Socioeconomic statistics for Midland Park and Neighboring Municipalities¹⁷
- B-10 Sunday Record article as to job insecurity
- B-11 New York Times article as to the downsizing of America

COMPENSATION AND WAGE INCREASE COMPARISONS

- B-9 Midland Park Police Salary Information (1995 costs & 1996 projections)
- B-3 Recent Collective Bargaining Agreements for Police in Neighboring Communities
 - Ho-Ho-Kus (1/95 - 12/97)
 - Oakland (1/96 - 12/98)
 - Waldwick (8/95 - 12/97)
 - Washington (1/91 - 12/98)
 - Wyckoff (1/95 - 12/97)
- B-4 Outline of Average Salaries for Top Step Patrolmen in Above Noted Municipalities for 1995¹⁸

ECONOMIC VITALITY OF MIDLAND PARK AND RELATED BUDGETARY CONCERNS

- B-12 1996 Budget

16. Borough Exhibit B-1 was a written submission of the Borough's Final Offer.

17. Source: 1994 N.J. Legislative District Data Book.

18. A figure for top step Patrolmen in Glen Rock was also noted in this particular exhibit.

- B-13 Tax Projection for Municipal Government Purposes
- B-14 School Tax Analysis and Combined Increase in Municipal and School Tax
- B-15 Listing of Properties, Tax Court Judgments
- B-16 Listing of Vacant Land Parcels
- B-17 Analysis of Police Line items, 1996 Budget
- B-5 Outline of Base Salaries for Top Step Patrolmen in the Above Noted Municipalities for 1996-1998
- B-6 Military Pay Tables for 1996 and 1997¹⁹
- B-7 New York Times article as to increase in wage and benefits for employees of American companies in 1995.
- B-8 New York Times article indicating that the index of pay and benefits rose 2.9% in 1995.

Testimony presented on behalf of the Borough's position:

The Township Administrator and Chief Financial Officer, Michelle Dugan offered testimony relative to the budget and the compensation package offered to Midland Park police officers.

Ms. Dugan testified that she participated in the formulation of the municipal budget with the goal of delivering an end product of balanced appropriations and revenues. As such, the witness was aware of various items including fixed costs ("12%"), debt service, PFRS (Police and Fire Retirement System) payments ("increase of 20%"), CAP figures and grants. According to the witness, total appropriations amounted to \$5,457,968.70 which equated to a \$75,000. or 1.4% increase over the previous year's budget. This included a budget under CAP of \$3,172,027.98.

In referring to revenues, the witness testified to a decrease in the fund balance by \$300,000. resulting from tax appeals. She noted that a refund from the fund balance caused a \$180,000. decline.

19. Source: OASD Legislative Affairs, Washington, D.C.

The witness pointed to a thirteen (13%) percent increase in the tax rate in 1996 (see B-13), an average home assessed value of \$188,000., a decline in the assessed valuations (see B-18) and the lost revenues in tax appeals. She also testified that there were only a limited number of (vacant) properties available for development (and increased tax assessment) were, in the most part, were non-conforming lots. In Ms. Dugan's opinion, the basis to expand ratables "is limited significantly ... new construction since 1993 amounted to only five new properties".

Ms. Dugan also noted that the Borough had a significant senior citizen population who were on limited incomes and benefited from by tax reductions on "six percent of the residential properties".

Ms. Dugan testified to the CAP law and its application to the budget. In her opinion, costs to maintain line items within the Police Department reduced flexibility in preparing the budget. (see B-17). The witness stated that W-2 earnings by members of the PBA were considered in preparation and projection of the budget. (see B-9).

On cross-examination, the witness was pressed to explain the total tax levy on residents and the Borough's decision in establishing the fund for uncollected property taxes. Ms. Dugan explained that, while a figure less than the actual collection rate is used, obligations to pay county and school taxes in a timely fashion required a balance in funds to be retained.

CONSIDERATIONS UNDER THE STATUTORY CRITERIA

N.J.S.A. 34:13-16(g)(1) requires consideration of the "interests and welfare of the public."

Although a "silent party" to the interest arbitration,²⁰ the public inevitably carries the weight of its outcome. Under this criterion, the parties highlight that the public welfare is impacted not only by the cost, but also by the quality of police services.

The PBA's arguments under this criterion focus primarily upon the latter aspect - quality of service. The PBA submitted that the interest and welfare of the public would best benefit from a police force that was adequately compensated and efficiently staffed.

With respect to adequate compensation, the PBA directed attention to the responsibilities and work environment of the Midland Park Police and asserted that the Borough's Police Department is a highly productive, full service agency, which works in conjunction with neighboring communities through a police networking system. According to the PBA, police morale would be best maintained if compensation levels remained consistent with those police departments in the surrounding areas and those police forces which work together with the Borough's Police Department.

In its analysis of "adequate compensation", the PBA noted that its concerns went beyond base salary figures. The PBA submitted that recent staffing changes and fewer supervisory positions within the department had negatively impacted the police force.²¹ Specifically, the Union argued that

20. See Hillsdale PBA Local 207 v. Borough of Hillsdale, 137 N.J. 71, 82-83 (1994).

21. This argument was supported by the testimony of Greg Cinelli who explained the Midland Park police department is currently staffed by twelve individuals and composed of one chief, one lieutenant, two sergeants and nine patrolmen. The witness explained that the Captain's position is now defunct and there had previously been three sergeants.

subordinate personnel are now burdened with increased work responsibilities and discouraged by fewer promotional opportunities and departmental advancements through rank.

Beyond these concerns, the PBA argued that the Borough's method of scheduling its officers was a disservice to the public. The PBA explained that the Borough had previously modified the work schedule (on a conditional basis) for the 1994 calendar year and successfully implemented 4/2 work schedule. Maintaining that the 4/2 schedule successfully increased productivity and utilized time more efficiently, the PBA contended that the Borough nevertheless reverted back to its former scheduling method at the conclusion of the trial period.

Thus, the PBA sought an amendment of Article IX of the Agreement to require implementation of a 4/2 work schedule. Alternatively, the PBA requested that, if their proposal for a modification was not granted, the Arbitrator should afford stability to department personnel by awarding a fourteen day minimum notice requirement for schedule changes.

The Borough argued from a different perspective and maintained that its wage proposal was structured to provide police officers with competitive salary increases within a fiscally responsible budget. The Borough submitted that its proposal afforded police officers future earnings that would be comparatively superior to their peers in other police departments.²² The Borough characterized the "higher" PBA wage increases as "exorbitant".

In turning to its economic status, the Borough represented (through the testimony of its Chief Financial Officer, Michelle Dugan) that it was working with an "extremely tight" budget and, if

22. Here, the Borough's specific comparison was drawn between Midland Park and police officers in three other communities --- Oakland, Washington Township and Saddlebrook. The collective agreements, each effective through 1998, were introduced into the record. (See B-3 and PBA-20). Under the Borough's proposal, Midland Park officers would receive salaries similar to their peers in the above noted communities through 1998.

required to implement the PBA's proposal, would "wreak havoc" on its financial condition. According to Ms. Dugan, if required to extend expenditures and fund wage increases past its present proposal, the Borough would be forced to further increase municipal taxes²³ and possibly consider employee lay offs.

Considering the interest and welfare of the public, the Borough predicted that the public would unduly suffer the burden of increased taxes if required to fund the PBA's proposal. The Borough submitted that its proposal would best serve the public interest by providing PBA members with a compensation package competitive with officers in other communities and evidently sufficient to attract new recruits and maintain a strong police force.

Finally, although not addressed in Brief specifically under this criterion, the Borough protested the Union's proposal to modify Article IX of the Agreement. By imposing a 4/2 work schedule, the Borough maintained that a downward adjustment of work hours would result. The Borough argued that the PBA ignored the concept of a managerial prerogative in scheduling of the workforce and failed to provide adequate evidence to justify the schedule change. The Borough further submitted that the overwhelming majority of collective agreements in surrounding communities did not contain a schedule change notice deadline as sought by the PBA.

As recognized by both parties, one of the primary considerations under this criterion is that salary increments be absorbed into the Borough's budget without negatively impacting the public. The figures offered by the Borough are based upon a conservatively managed budget and a conscious decision to restrain its CAP increase within a 3.5% figure. The Borough recognized that its decision

23. As Ms. Dugan testified, if the Borough were to follow the PBA's suggestion and increase its cap index from 3.5 to 5%, it would be forced to increase the municipal tax rate by 14.31%. (See p. 6 of the Borough's brief).

will not take full advantage of its lawful authority²⁴ to expand its budget beyond a CAP index of 3.5% and accommodate the higher increases sought by the PBA.

In this Arbitrator's opinion, Ms. Dugan's testimony revealed that the Borough has sought fiscal stability and economic order and endeavored to follow sound business principles in formulating their budget. Moreover, it is clear from the record that increased expenditures would inevitably be borne directly by Midland Park residents through property tax increases, since the opportunity for expansion of other tax ratables are not apparent.

It is not to say that the public welfare is merely be evaluated in terms of tax dollars or budget percentages. Quality and reliability of police service are more important concerns to the public welfare and competitive wages and benefits are necessary to meet that goal. However, as the Borough expressed, the considerations of economics, the interests of the public and the increases to wages must be balanced.

24. Among the items which the arbitrator is required to assess when considering the interests and welfare of the public are the limitations imposed upon the employer by P.L. 1976, c. 68 (C.40A:4-45.1 et seq.) or, as commonly referred, the "Cap Law". Under this law, the Legislature sought to prevent fiscal instability and economic disorder within a municipality and its budget. The Supreme Court has similarly and repeatedly upheld the legislative intent and required local governments to follow sound business principles in their budgetary practices. See State v. Boncelet, 107 N.J. Super. 444, 450-451 (App.Div. 1969) and Morris County v. Skokowski, 86 N.J. 419, 423 (1981).

The "CAP" is specifically addressed and more thoroughly discussed under subsection (5). However, given overlapping concerns and statutory directive, the CAP has merited reference under this criterion as well.

N.J.S.A. 34:13A-16(g)(2) requires "comparison of the wages, salaries, hours, and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours, and conditions of employment of other employees performing the same or similar services and with other employees generally:

- (a) In private employment in general.**
- (b) In public employment in general.**
- (c) In public employment in the same or similar comparable jurisdictions.**

N.J.S.A. 34:13A-16(g)(3) requires consideration of 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."

The above criteria have been addressed by the parties through overlapping evidence. As such, this Arbitrator will address both subsections concurrently and attempt to facilitate a cohesive and comprehensive analysis of the arguments raised.²⁵

Under the criteria comparing wages and conditions of employment, the PBA submitted that "Midland Park Police Officers are not well compensated among their peers." The PBA argues that, while officers may earn a competitive base salary, they rank significantly below their peers in terms of ancillary contract benefits. According to the PBA, the Midland Park compensation package is profoundly diluted by bottom scale longevity benefits²⁶, vacation and holiday entitlements, uniform allowances and, now, proposed percentage increases.

25. In its brief, the PBA likewise combined its arguments on both criteria.

26. The PBA argues that poor longevity payments have a two fold impact, as they presumably contribute to poor compensation during the employee's career and upon his or her retirement.

The PBA submitted that there should not only be a modification to increase hazardous duty pay (equated to longevity benefits) but also an upward adjustment in the officers' salaries to compensate the lack of other benefits.

The following PBA charts were submitted to clarify and support the PBA's position on comparable benefits found within other police departments:

PBA Chart No. 1

Comparison of Longevity Benefits²⁷

Allendale	10% at 20 years
Norwood	8% at 24 years
Hillsdale	10.5% at 25 years
Paramus	10% at 25 years
Ridgewood	10% at 20 years
Hohokus	\$3,000.00 at 25 years
Waldwick	10% at 23 years
Wyckoff	10% at 23 years
Oakland	10% at 21 years
Saddle Brook	10% at 28 years
Rochelle Park	12% at 24 years
Demarest	1% ea. 3 years, no max
Wallington	4% at 10 years
Cresskill	8% at 23 years + 5% Senior Officer pay at 22 years
Wayne	12% at 23 years
Midland Park	\$280 at 4 years + \$70 per year

PBA Chart No. 2

Comparisons of Maximum Vacation Benefits

Cresskill	32 days
Allendale	25 days
Norwood	26 days

27. There was no direct comparison of the longevity benefit for officers in Mahwah. Reportedly, they receive only \$75.00 for each year of service, payable after completion of the fourth year of service.

Hillsdale	26 days
Paramus	30 days
Ridgewood	31 days
Hohokus	22 days
Waldwick	24 days
Wyckoff	25 days
Oakland	29 days
Saddle Brook	30 days
Mahwah	5 weeks at 15 years
Rochelle Park	25 days
Demarest	22 days
Wallington	22 days
Average	25.92 days
Midland Park	21 days
Midland Park	(4.9 days)
Compared to Avg.	(23.4%)

Chart No. 3
Comparison of Holiday Benefits

Glen Rock	13	Oakland	1	4
Norwood	13	Saddle Brook	14	
Hillsdale	14	Mahwah	14	
Paramus	12	Rochelle Park	15	
Ridgewood	13	Demarest	13	
Hohokus	13	Wallington	12	
Waldwick	13	Cresskill	13	
Wyckoff	13	Wayne	13	
Average	13.3			
Midland Park	12			
Midland Park	(1.3 days)			
Compared to Avg.	(10.8%)			

Chart No. 4
Comparison of Uniform Allowances²⁸

Norwood	\$600	Saddle Brook	\$800
Hillsdale	\$900	Mahwah	\$650
Paramus	\$600	Demarest	\$475
Ridgewood	\$800	Wallington	\$600
Hohokus	\$500	Allendale	\$550
Waldwick	\$550	Wayne	\$700
Wyckoff	\$575	Cresskill	\$725
Oakland	\$900		

Average \$661

Midland Park \$500

Midland Park (\$161)

Compared to Average (33%)

PBA Chart No. 5
Comparisons of Wage Increases
Expressed in Percentages of Change

	<u>1996</u>	<u>1997</u>	<u>1998</u>
Norwood	5%	5%	5%
Hillsdale	5%	5%	
Paramus	5% (3/2)		
Hohokus	5%	4.75%	
Waldwick	5.5%	5%	
Wyckoff	4.75%	5%	
Oakland		4%	3.5%
Saddle Brook	5%	5%	
Mahwah	4.55	4.5%	
Rochelle Park	5%	4.75%	
Demarest	4%	4%	
Wallington	5%(3/2)	5%(3/2)	
Cresskill	5%(2.5/2.5)		
Wayne	5(2/3)		

28. This Arbitrator recognizes that the Rochelle Park contract was included, but did not contain an express provision for uniform allowance.

The PBA asserted that, in the communities cited, the average percentage increases in base wages in 1996 was 4.9%; in 1997 will be 4.727% and in 1998 will be 4.25%.

While the charts are self-explanatory and give an accurate portrayal in the comparisons cited, the figures do not fully depict the entire compensation comparison of wages and benefits enjoyed by the respective police departments.

The Borough's comparisons were drawn from the same communities referenced in the PBA's charts, but presented with a different focus. The Borough presented a narrower comparison between the earnings of Midland Park officers and their counterparts in three contiguous communities --- Ridgewood, Waldwick, and Wycoff. The evidence offered in this respect demonstrated that, although Midland Park ranked significantly lower than these communities in terms of population, residential value and per capita income, its top step patrolmen were similarly compensated. Additionally, upon broadening its comparison with three additional neighboring communities (Ho-Ho-Kus, Washington Township and Oakland), the Borough calculated that, even under its own proposal, Midland Park patrolman at the top step of compensation earn significantly more than their peers in those neighboring communities. These calculations indicate that, given the Borough's proposal, Midland Park officers, on average, would earn \$1,115. more than their peers in 1996, \$118. more than their peers in 1997 and \$1094. more than their peers in 1998. (See B-5 and Borough Brief at p. 12). Without question, the disparity would be much broader under the PBA's proposal.²⁹

The Borough further demonstrated that the PBA exhibits support the Borough's argument that Midland Park officers at top step on the salary guide, on average, fare better than their

29. The Borough calculated the difference to be between \$3,000. to \$7,400. more for Midland Park officers during that term. The final cost figures will be addressed more fully in the Opinion below.

counterparts under the Borough's wage proposal. In this regard, the Borough charted the 1996 salaries for top step patrolmen under collective bargaining agreements in the municipalities referred to the PBA.

<u>Municipality</u>	<u>1996</u>
Wayne	\$60,292.-\$62,101. \$61,196. (average)
Cresskill	\$56,853.-\$58,275. \$57,564. (average)
Hillsdale	\$60,127. (eff. 2/96)
Paramus ³⁰	\$67,611.
Ho-Ho-Kus	\$60,757. (7 years)
Wyckoff	\$63,423.
Waldwick	\$64,997.
Oakland	\$60,850.
Saddle Brook	\$61,324.
Mahwah	\$66,856.
Rochelle Park	\$65,885.
Demarest	\$60,491. (eff.4/1/96)
Norwood	\$64,484.
Wallington	\$60,517.-\$62,333. \$61,425. (average)
Average	\$62,642.

30. Paramus police officers enjoy the highest salary and, thus, their wages increases the average salary. However, the Borough argues that Paramus is largely dissimilar to Midland Park and should not necessarily be factored into the average equation. While Paramus is arguably an anomaly, it is nevertheless included in noting averages.

The Borough also questioned the inclusion of the Wayne contract with the Union exhibits, again arguing that Wayne is not even remotely similar to Midland Park. Again, this Arbitrator includes the salary as a means of reaching an actual average.

Extending its comparisons further, the Borough offered evidence relevant to wage earnings in the private sector (see B-7 & B-8) which indicated that recent salary increases in the private sector average under 3% per year. Without question, the Borough's proposal is more consistent with those figures.

The Borough's analysis did not conclude with present salary increases, but proposed a change in the salary scale from seven to nine steps which would affect the compensation package for new officers entering the department after January 1, 1996. The Borough argued that its proposal was consistent with provisions in contracts with several neighboring communities, namely, Ho-Ho-Kus (8 steps over 7 years),³¹ Waldwick (9 grades),³² and Oakland (9 steps)³³.

Upon considering compensation beyond base salary, the Borough countered that its officers enjoy benefits comparable to their peers in other police departments. Specifically, the Borough argued that its officers receive more sick days than their counterparts, earn hazardous duty increments which are in some cases greater than hazardous duty (or longevity payments) received by police in neighboring communities. Additionally, the Borough expressed that, as depicted in Exhibit B-9, the average cost to employ each police officer in 1995 exceeded \$80,000. The Borough calculated that the value of each officer's annual leave benefits alone averaged a cost of approximately \$10,000.

The arguments raised under these criteria evidence that comparisons can easily be drawn to support varying positions. No doubt, the process of comparison is complicated by those unique aspects of the individual employment agreement introduced into the equation. Thus, even when

31. See B-3 and PBA-12.

32. See B-3 & PBA-15.

33. See B-3 and PBA-18.

salary comparisons are drawn with neighboring police departments, it should be understood that each department may still differ in terms of how such compensation accrues, how other benefits factor in, and how work responsibilities and how specify job hazards³⁴ impact such comparisons.³⁵

The comparative analysis begins with the basic recognition of the overall compensation received by all Midland Park police officers. The Agreement addresses base salary (Article III); Hazardous Duty Increments (IV); Overtime Payments (Article IX); Minimum Court Time Payments (Article XI); Sick Leave (Article XIII); Bereavement Leave (XIV); Leaves of Absence (Article XV); Work Related Disability Benefits (XVI); Holidays (Article XVII); Personal Leave (Article XVIII); Minimum Payment Guarantee for Recall (Article XIX); Uniform Allowance and Maintenance Payments (Article XXI); Professional Insurance (Article XXIII); Vacation Benefits (Article XXVI); Hospitalization Benefits (Article XXVIII); Dental Insurance (Article XXIX); Terminal Leave Benefits (Article XXX); and Educational Incentive Benefits (Article XXXIII). Without question, and due to the nature of employment, many of these benefits are not enjoyed by individuals in private sector employment. The list of benefits described above, however, are generally found in comparative police contracts.

Although the relevant statutory criteria require comparisons beyond other police contracts (and public sector employees), it is generally recognized that comparisons with other police

34. The issue of work responsibilities is addressed later under criteria (8). However, it is noteworthy that neither party argued that police work in Midland Park was any more or less hazardous than the hazards faced by officers in other departments where collective bargaining agreements were offered for comparison.

35. Although somewhat ambiguous, this is not necessarily an exhaustive list of those factors which might skew comparisons.

departments should be weighed more heavily in the subject analysis.³⁶ Thus, focus is initially drawn to comparisons with other police compensation packages.

In the opinion of this Arbitrator, Midland Park officers fare well (if not better than) among their counterparts in communities of comparisons in terms of base salary. Indeed, the Borough has convincingly demonstrated that even under its own proposal, Midland Park officers would remain above average in terms of base salary. A question remains, however, whether the Midland Park package is so deficient in other compensation or benefit areas to warrant higher salary adjustments.

One of the contract provisions which the PBA finds most troubling is the hazardous duty benefit (referenced as longevity benefits in other contracts). Apparently, the PBA does not find solace in receiving salaries which may reasonably be viewed as "above the average". If their argument is correctly captured, Midland Park officers do not believe wages redress perceived deficiencies in longevity. Accordingly, the PBA seeks to modify this benefit, presently calculated in a dollar figure³⁷ to provide for 1% of base salary for every four years of completed service.

36. Indeed, the Borough itself relies primarily upon comparisons with other police departments.

37. More specifically, Article IV of the present (expired) Agreement provides for \$280.00 upon completion of four years of service with an additional \$70.00 for each additional year of service. Assuming an officer with 8 years of service is earning \$61,500. per year, longevity payments equate to an additional \$560. per year over base salary; with 12 years of service earning \$61,500., longevity payments equate to \$840. per year over base salary; with 16 years of service earning \$61,500., longevity payments equate to \$1,120. per year over base salary; and with 20 years of service earning \$61,500., longevity payments equate to an additional \$1,400.

Under the PBA proposal, and using the assumptions above, the officer with 8 years of service would receive 2% of base salary (2% of \$61,500 or \$1,230.); with 12 years of service would receive \$1,845. (3% of \$61,500.); with 16 years of service would receive \$2,460. (4% of \$61,500.); and with 20 years of service would receive \$3,075 (5% of \$61,500).

Further comparisons, costs analysis and discussion is found on page 49.

Granted, the record reveals that almost every police contract in evidence calculates longevity benefits in the terms of a percentage of base salary. For the most part, those calculations result in payments which are higher overall than those received by Midland Park officers.³⁸ As officers advance in years of service, longevity pay begins to lag behind longevity payments enjoyed under other PBA contracts and, as a result, can effectively reduce “take home” (or net) pay.

Other benefits are contained within the Agreement. For instance, the Borough argued that officers enjoy sick leave entitlements far superior to their counterparts. (The PBA did not specifically address this benefit in brief). The record does reveal that Midland Park officers are entitled to more sick days per year than their counterparts in other communities. Officers with less than two years of service are entitled to 28 working sick days per year, and those officers with at least five years of service are entitled to 96 working sick days per year. This is a generous benefit. Typically throughout Bergen County, the range of sick days permitted ranges between 12 and 20 days per year.

Notwithstanding their entitlement to numerous sick days, Midland Park officers are not entitled to additional monies for unused sick time. Apparently, the provisions within the Agreement are designed to safeguard against abuse of the sick leave policy. This Arbitrator notes that, while other police contracts may provide for less sick time, many contracts do provide rewards (compensation) for unused sick time and permit monetary benefits for accumulation of sick days.

38. There are some noteworthy exceptions: Officers in Mahwah, who benefit from one of the higher top step salaries, earn \$75.00 for each year of service. (See PBA-23). Officers in Ho-Ho-Kus, where salaries fall below the average, do not receive a longevity benefit until after their ninth year of completed service. By the time officers in Ho-Ho-Kus reach maximum step on the salary guide, however, their longevity benefit is almost twice that of Midland Park officers with the same years of service. Although not demonstrated in the PBA's chart, this Arbitrator is aware that the longevity benefit in many contracts does not accrue until after the 5th year. The percentage calculations vary. However, even where longevity is 1% of base salary, the payment exceeds the dollar figure provided for in the Midland Park Agreement.

While not questioning the Borough's sick leave policy, the PBA did argue that other leave entitlements were lacking. PBA Chart No. 2 demonstrated that Midland Park officers are entitled to lower maximum vacation benefits than most of their peers. Officers receive a maximum of 21 days of vacation per year, as compared to the average of 25.92 days per year (based on PBA Chart 2). It is observed, however, and perhaps significant, that those officers who have completed more than twenty years of service are those affected by the total number of days. At the same time, vacation benefits for officers serving less than twenty years are comparable to counterparts in police departments where contracts were compared.

With regard to holiday benefits (presently 12 holidays), when the analysis is expanded to account for and include personal day entitlements, the Midland Park Agreement is equal to or better than those comparable departments listed. The Agreement provides for three personal days per year which, if not taken, are compensated through payment at the completion of the year. Less than one third of the police contracts entered into evidence offer their officers comparable personal days, and none expressly provide for compensation for unused days within the contract year.³⁹ Accordingly, while each comparable department allocates more holidays to its officers than does Midland Park, when both personal and holidays are combined, the Borough's officers fare well.

Another item of compensation which, according to the PBA, is deficient for Midland Park officers is the uniform allowance. In this regard, the record demonstrates that Midland Park officers compare below their peers in terms of payment or uniform allowance. The Board offered to increase uniform allowance by fifty (\$50.) dollars (or 10%), allotting \$550.00 per year. According the PBA's

39. Only the Saddle Brook contract offers more (4) personal days. (See P-18 & 19). That department also extends 14 "holidays" to its officers throughout the year.

calculations (PBA Chart No. 4), Midland Park officers would be receive approximately \$100.00 per year less than counterparts in terms of uniform allowance. Some departments impose a voucher or verification of expenditures system. (see P-12 Hohokus; P-15 Waldwick; P-33 Wallington).⁴⁰ Midland Park requires neither a voucher nor verification of utilization. While Midland Park officers will now receive \$550.00 per year for uniform allowance, it is inferred that the allowance is sufficient to cover the uniform (replacement and maintenance) costs.

This Arbitrator is of the opinion that, when all items of compensation are considered, Midland Park officers compare sufficiently to officers in other communities in terms of total compensation of base salary and benefits. This conclusion is reached despite the PBA's argument that the Agreement provides "poor" longevity benefits.

At the same time, when comparisons are drawn with private sector employment, it is apparent that Midland Park officers compare favorably in terms of compensation. Unquestionable, in the present economic climate of layoffs and placid wage increases, department members enjoy two economic benefits that far surpass the private sector --- job security and medical benefits (hospitalization and dental coverage). In this regard, the record reveals a economic climate in private industry where current wage increases and benefit entitlements increase between 2.7 and 3.0% per year.

The record evidences an economic downtrend effecting the entire private labor market and this has been considered. There is scant job stability in the private sector which can be compared to the job security of a Midland Park police officer. And while the average yearly wage increase in terms

40. It is noteworthy that the Saddle Brook Agreement (P-19) requires new hires to purchase their own uniforms.

of "percentage" found with private industry does not compare favorably in comparison with the wage increases in police and fire contracts in general, it is the consideration of job stability that places police officers in vastly dissimilar to employees in the private sector. Police officers, in this Arbitrator's opinion, enjoy a vastly better opportunity for economic improvement than employees in the private sector.⁴¹

N.J.S.A. 34:13A-16(g)(4) requires consideration of "stipulations of the parties."

The parties have stipulated to only two issues, which is expressed by the following:

1. The term of the contract shall be for three (3) years retroactive to January 1, 1996 and terminating on December 31, 1998.
2. Article XXI shall be amended so as to provide for an increase in the uniform allowance, which increase shall be in the sum of \$ 50.00 effective in 1996 and will result in a clothing allowance payable to department members of \$550.00 per annum in two (2) installments of \$275.00.⁴²

N.J.S.A. 34:13A-16(g)(5) requires consideration of the "lawful authority of the employer."

In contemplating this criterion, the Arbitrator looks to fiscal constraints imposed by the legislature under N.J.S.A. 40A:4-45.1 et. seq. (hereinafter, the "Cap Law").⁴³ It is well settled that the State Legislature has imposed specific guidelines which "require local governments to follow

41. Not the least of these opportunities is interest arbitrator and the statutory occasion fro a third party resolution of an impasse in negotiation.

42. The PBA failed to acknowledge this proposal as a stipulation during the Borough's proposal, but nevertheless discussed the acceptance of the uniform allowance increase in 1996.

43. N.J.S.A. 34:13a-16g(5) does not necessarily limit this Arbitrator's analysis to the Cap Law but, as in the instant case, this is the primary focus of discussion by the parties and the arbitrator.

sound business principles in their budgetary practices." Morris County v. Skokowski, 86 N.J. 419, 423 (1981).

The basic concept is that local government must hold yearly budget increases and expenditures within a limited range imposed by statute. In this respect, a municipality is encouraged to structure its budget by limiting increased expenditures to a specific "cap index" number. (The cap index for Midland Park in 1996 is 3.5%). The governing body may, by majority vote and without referendum, increase the cap figure for any given year to a limit of 5% (the Cap). If the municipality increases its CAP to the limit of 5%, but in fact utilizes a lesser percentage, it can "bank" the difference. Through this "cap banking", a local government has the lawful authority and flexibility of carrying forward unused CAP allocations into future budgets and permit additional budget increases.

Upon referring to these lawful guidelines, the PBA has argued that there is significant flexibility in the current budget to lawfully escalate the Borough's resources and fund the wage increase sought by the PBA in its final offer. Indeed, both parties recognize that the Borough has not taken full advantage of Cap limits in preparation of its 1996 budget. The Borough evidently chose to increase its budget authority by the lower 3.5% index rate, rather than the permissible 5% Cap, for 1996.⁴⁴ According to the PBA, the 1.5% difference could be translated into \$44,369.00 of flexible spending not utilized by the Borough. The PBA submitted that this sum was not only significant with respect to 1996, but also impacted later years, by virtue of Cap banking.⁴⁵ The Borough asserted that

44. This reflected in the Municipal Budget for 1996. (see P-37 at sheet 3b).

45. The PBA was careful to remark that it was not suggesting that the public employer utilize all of its Cap flexibility to fund the PBA increases.

the 3.5% figure was utilized as a means of limiting the increase in budget spending and preventing increases in taxes to the municipal residents. The Borough believed the 3.5% increase to be a prudent and sound budgetary decision.

The Borough forthrightly acknowledged the lawful "flexibility" of utilizing the Cap limits, but maintained that utilizing full lawful authority would not be fiscally responsible, especially if the reason for exceeding the CAP "index" figure was to accommodate an "unjustified" 6% salary increase for the PBA. In this regard, the Borough offered evidence demonstrating that the increase in the municipal tax rate for the current year was 12.81% over the 1995 rate.⁴⁶ Additionally, the Borough directed this Arbitrator's attention to the testimony of its chief financial officer, who calculated that a cap increase to 5% would result in a 14.31% increase in the municipal tax rate. The Borough strongly indicated that fiscal constraints caused by successful tax appeals and limited opportunity to develop new tax ratable within the municipality necessitated precautionary measures in budget preparation. This Arbitrator must agree with the position and arguments of the Borough --- to increase the CAP to the full limit of 5% and result in an addition 1.5% increase in the municipal tax rate (the difference between 14.31% and 12.81%) would neither be fiscally prudent nor managerially responsible.

In assessing the lawful authority of the Employer, this Arbitrator will not presume that the Borough should be required to make full use of Cap limits and flexibility. Indeed, the Borough has operated within the lawful confines of the applicable statute.

46. The Borough calculated the increase to translate into about \$316.57 more that the average homeowner would pay in taxes for the current year. (see p. 25 of the Borough brief).

N.J.S.A. 34:13-16(g)(6) requires consideration of the "the financial impact on the governing unit, its residents and taxpayers".

The PBA contended that the financial impact of its proposal on the governing unit, including its residents and taxpayers, would be "minuscule". Upon advancing its argument, the PBA offered various calculations based upon a "base wage point" of \$6,504.00. The "base wage point" represents one percentage point of \$650,423.00, the total base salary cost for Midland Park officers in the year 1995. (see B-9).

Upon drawing comparisons between its base wage point and the Borough's 1995 tax levy of \$14,588,654.00,⁴⁷ the PBA calculated that each percentage point of the base salary equaled only .0004% of the total 1995 tax levy. Utilizing these figures, the PBA calculated that each base wage point cost the average Midland Park homeowner/taxpayer only \$1.60 per year (assuming that each typical homeowner paid \$4,000. per year in taxes). In contrast to that figure, the PBA highlighted the representation of the Township Administrator that the average increase in school tax alone on the homeowners in Midland Park for 1996 was \$160.00.

These figures apparently demonstrate that the financial impact of each percentage increase for Midland Park officers is much less than that of the school tax. In this connection, the PBA has presented further evidence that only 13% of the registered voters came out to vote in the April 1996 school budget ballot. (see P-44). Presumably, the degree of taxpayer apathy in this respect supports the PBA's argument that the taxpayers would not be significantly impacted by its proposed wage increases. It is questioned that comparing a school budget vote to comprehending a property tax increase results in an objective answer.

47. This was the figure articulated by the Township Administrator at the time of hearing.

Beyond these arguments, the PBA submitted that the Borough could reasonably anticipate numerous surpluses in its budget. Notably, the PBA pointed to a strong tax collection rate, although budgeting for less revenue than was actually collected in the previous year. Again, this inference was raised to demonstrate that the Borough failed to take full advantage of monies which could be reasonably budgeted. The PBA submitted other, although less substantial, areas of budget flexibility including: (1) the unexpended and reserved amount of \$9,640. reflected under the 1995 municipal budget line captioned "Police: Salaries and Wages", and (2) the \$41,701. reserved from 1995 Operations. (see P-37).⁴⁸

The PBA's final point under this criteria was that Midland Park is an above (economic?) average municipality whose citizens enjoy above average housing values and one of the lower tax rates in the area. In support of this contention, the PBA has offered Exhibit P-39 which charts the median home values in Bergen County. The PBA's position with respect to the tax rate was further demonstrated through its Chart No. 6, which indicates the following figures:

PBA Chart No. 6
Equalized Tax Rates of Area Towns Referenced
By the Parties at Hearing

Allendale	3.13	Ramsey	2.12
Hillsdale	2.84	Cresskill	2.07
Wyckoff	2.59	Midland Park	2.06
Oakland	2.49	Wallington	1.98
Washington Township	2.48	Norwood	1.96
Waldwick	2.42	Saddle Brook	1.84
Glen Rock	2.30	Mahwah	1.62
Ridgewood	2.25	Paramus	1.56
Rochelle Park	2.17	Franklin Lakes	1.49
Demarest	2.13		

48. This argument, however, assumed that these amounts were unencumbered.

The PBA presented the comparison of equalized tax rates in the area communities to demonstrate that implementation of its proposal would have only a minimal impact on one of the lowest tax rates in the region. The Borough contested the impact on the taxpayers and explained that any increases extended to the PBA would have a significant impact on its economy, since 23% of its total budget is appropriated for the police.⁴⁹ The Borough stressed the tax implications of extending its budget to accommodate the increases sought by the PBA. Moreover, the testimony of its Chief Financial Officer credibly established that Midland Park is currently in a "difficult" financial position resulting from mounting and successful tax appeals by its commercial industry and an inability to mitigate its losses through new development. (see B-15 through B-18). Referring to her testimony, there is no property remaining for development and, in effect, lack of development stagnates the tax base. Ms. Dugan represented that, with an inability to expand the tax base or continue increases in the property taxes, granting the PBA's proposal would inevitably result in a reduction of services and/or employee layoffs.

In the opinion of this Arbitrator, the evidence presents critical issues in assessing the Borough's ability to finance increases. In its attempt to have the Arbitrator (and the PBA) fully appreciate the burden of funding its proposal, the Borough has produced convincing proofs that funding the increases of the successor Agreement will ultimately fall upon the Borough's homeowners who comprise 80% of the taxpayers in Midland Park. Even accepting that 80% of the taxpayers may not comprise an equal percentage in property tax revenue, the proofs lead to the conclusion that,

49. As the Borough's brief noted: "The line items attributable to police in the 1996 budget represent total appropriations of \$1.2 million, or 23 percent of the total budget of just over \$5 million. (see Borough brief page 27 and B-17).

without expanding tax ratables, the impact will rest with present homeowners and local property taxpayers. Thereafter, the secondary impact of this award will rest with the governing body's ability to maintain existing programs and services.

N.J.S.A. 34:13A-16(g)(7) requires consideration of the "cost of living".

The PBA acknowledged that the cost of living "is not as high as it once was", but submitted that it remained significantly higher than the Borough's proposal. The PBA argued that the Borough's proposal is below the CPI wage rate change.

The Borough took an alternate position, setting forth the following data:

Consumer Price Index

New York and Northeast New Jersey:

1995	3.0%
1994	2.1%
1993	2.86%

Nationwide Averages:

1995	2.5%
1994	2.6%
1993	2.7%

Referring to these statistics, the Borough argued that its proposal was consistent with the CPI indices and, alternatively, that the PBA proposal was two to three times greater than the CPI figures.

When considering the present salaries and wage (and benefit) increases in recent contracts, it is clear that raises in the level of contractual wages and benefits have afforded Midland Park police officers have exceeded the area and national CPI increases This factor clearly favors the position of the Borough while recognizing that the PBA will nevertheless receive a contractual increase exceeding the CPI.

N.J.S.A. 34:13A-16(g)(8) requires consideration of 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.

The final criterion requires this Arbitrator to consider the continuity and stability of employment. Upon addressing this aspect of the case, the PBA again stressed that its proposed wage increase was needed to offset other drawbacks for the Midland Park Police Department. According to the PBA, Midland Park officers are not only negatively impacted by shortfalls in their benefits package, but also faced with a limited career path due to a minimum of ranking positions within the department. The PBA argues that an increased base wage is the only economic goal reasonably attainable.

The Borough approached this criterion from another angle. In directing the Arbitrator to the recent onslaught of cutbacks and layoffs which have plagued private sector employees, the Borough argued that police officers have been relatively immune. The Borough cited recent statistics pertaining to layoffs in both New Jersey and the nation, and referenced a New York Times article which further illustrated the economic insecurity of the average worker. (See B-10 & B-11). In the face of these statistics, the Borough noted that there has never been a layoff in the Midland Park police department and that its officers have remained substantially ahead of the cost of living.⁵⁰

A point is established. Even considering only the present (top step) salary level, members of

51. To illustrate its point, the Borough commented upon the lack of any evidence to indicate that its compensation package had driven officers away from employment on the force.

this department enjoy a solid package of economic benefits and retain a firm foundation of employment.

Certainly, the Borough has presented a strong argument under this criterion and, notwithstanding the PBA's concern for limited career advancement prospects for officers, the stability of employment for Midland Park police officers if of impropportionate value.

INTERIM AWARD ON PROCEDURAL ISSUES

At the time of hearing, when the parties submitted their final positions, Counsel for the PBA objected to the arbitrability (actually, the submission) of the Borough's proposals on the subjects of educational benefits and medical coverage. In turn, the Borough claimed that certain items submitted by the PBA regarding schedule changes were non-arbitrable (actually, non-negotiable).

This Arbitrator reserved decision on these procedural questions and, with the procedural arguments on the record, instructed the parties to place their arguments in writing.⁵¹ The Interim Award, dated May 16, 1996, addressed the parties' arguments concerning the procedural aspects of this case. (Attached as "Addendum A" is copy of the Interim Award).

Issue I: Is the Borough permitted to include the issues of educational benefits and medical coverage to its economic proposal, when these items were neither included in the interest arbitration petition nor amended by application?

51. To facilitate the proceedings and because substantive presentations were completed in one hearing, the parties were asked to forward their positions in writing within one week of the hearing date and, upon issuance of the Interim Award, a date of approximately thirty (30) days would be set in order to submit post-hearing briefs on the substantive issues. Thereafter, and upon receipt of briefs, the Interest Arbitration Award would be issued.

The issue is addressed squarely within the administrative rules governing interest arbitration.

Rule 19:16-5.5(a)⁵² (hereinafter, "Rule") provides as follows:

(a) In the absence of either a jointly submitted notification or joint petition requesting the initiation of compulsory Interest Arbitration, the respondent shall file within seven (7) days of receipt of such notification or petition, a statement of response setting forth the following:

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

It is clear that the Rule sets forth a seven (7) day time limitation to submit additional issues and does not empower an arbitrator to entertain amendments or additions of items to the petition. Indeed, while PERC has granted such extensions when a proper and timely request is made, it has refused to permit late filings of petition amendments. See Borough of Rutherford and Rutherford PBA Local 300, Docket No.:IA-87-169; see also, Borough of Bogota, 9 NJ PER 14110 (1983)(which stresses the object of Interest Arbitration to narrow issues of dispute).

Likewise, arbitrators have enforced the time bar so as to preclude consideration of issues that were not properly filed with PERC. See Borough of Carlstadt and Carlstadt SOA (IA-94-129) and Emerson Borough and PBA Local 206 (PERC Docket NO.:IA-95-143).

Notwithstanding same, the Borough referred this Arbitrator's attention to legal authority which arguably permits late introduction of arbitral issues. Familiar with the provisions referenced above, consisting primarily of statutory guidelines governing the final positions (N.J.S.A. 34:13A-16c) and the proposed rules which would permit an interest arbitrator to accept revisions on the

52. The Rule is found under the New Jersey Administrative Code, promulgated by PERC pursuant to the provisions of the Public Employment Relations Act, N.J.S.A. 34:13A-11. Recent modifications to the Interest Arbitration Act (which went into effect in January of 1996) and the rule modifications proposed thereunder (which as of this date remain pending in a proposed format) do not alter the force and effect of the rule on this particular issue.

parties' final offers at any time before testimony or evidence is taken (N.J.A.C. 19:16-5.7(f)), this Arbitrator is of the opinion that neither regulation permits the introduction of issues not properly submitted at the petition stage. Rather, these regulations are designed to facilitate a narrowing of issues and attempting to close the positions between the parties. See, Borough of Bogota, 9 NJ PER 14110. Moreover, in the opinion of this Arbitrator, both references are to steps taken during the process in attempt to resolve the dispute, not to expand upon the issues.

The Borough did not convince this Arbitrator that there existed any equitable reason why, several months after the petition was filed and the time to respond has expired⁵³, it should be permitted to add further issues of dispute to this proceeding.⁵⁴ Thus, the Borough's attempt to introduce new issues into the Interest Arbitration was clearly in opposition to the promulgated rules and rulings of PERC. This Arbitrator was simply without authority to permit post-petition introduced issues into this Interest Arbitration. Thus motion of the PBA to deny the Borough's introduction of the educational benefits and medical coverage issues into the interest arbitration was granted and the proceeding was limited to the issues set forth in the Interest Arbitration Petition, filed November 27, 1995, by the PBA.

Issue II: Is the Borough's request for a scope of negotiations challenge properly before the Arbitrator and, alternatively, is the Arbitrator permitted to address the scheduling issue in Interest Arbitration when the Borough did not file a Scope of Negotiations petition before to PERC?

3. Since the Union's petition for interest arbitration was filed with PERC on November 27, 1995, the Employer's right to amend the petition and submit additional issues to the interest arbitration expired on December 6, 1995.

4. It must be noted by this Arbitrator that Mr. Regan was not serving as Counsel to the Borough when PBA filed its petition. However, there is no offer that the Employer was unduly prejudiced by prior counsel.

As indicated above, the PBA's Petition to Initiate Compulsory Interest Arbitration was filed on November 27, 1995. The issues in dispute were set forth on Schedule A and included "Article IX, Work Week and Overtime" and "Schedule Change Notice" as two (of five) economic issues. The PBA's position on this issue was more clearly articulated in its final proposal before the Arbitrator wherein the PBA requested "implementation of a 4-2 work schedule."

The Interest Arbitration statute and the rules promulgated thereunder provide clear direction for choosing the proper forum and appropriate process to challenge the negotiability of items in dispute. N.J.S.A. 34:13A-5.4d provides as follows:

The commission shall at all times have the power and duty, upon the request of any public employer or majority representative, to make a determination as to whether a matter in dispute is within the scope of collective negotiations. (emphasis supplied).

N.J.A.C. 19:16-5.5(c) further directs:

Where a dispute exists with regard to whether an unresolved issue is within the required scope of negotiations, the party asserting that an issue is not within the required scope of negotiations shall file with the commission a petition for scope of negotiations determination pursuant to chapter 13 of these rules. This petition must be filed within 10 days of receipt of the petition requesting the initiation of compulsory interest arbitration or within five days after the receipt of the response to the petition requesting the initiation of compulsory interest arbitration. The failure of a party to file a petition for scope of negotiations determination shall be deemed to constitute an agreement to submit all unresolved issues to compulsory interest arbitration. (emphasis supplied).

These mandates are clear and unequivocal. However, they presume proper notice of an unresolved issue. In this regard, the Borough contended that it was not properly notified of the PBA's intent to seek reinstatement of the 4/2 work schedule.

Notably, the PBA's petition does not specifically explain the proposal nor expand on its position. However, when the PBA articulated the issues relating to the "work week and overtime" and a "schedule change", the Borough had a responsibility to pursue a fuller understanding of the PBA's position. Moreover, there has been a time lapse of months since the parties initiated negotiations. For the Borough to argue lack of notice is self-defeating. Accordingly, this Arbitrator is convinced that the Borough was given sufficient notice and opportunity to raise a timely challenge to the negotiability of the PBA's proposed schedule change, but failed to do so.

Having found due notice was given to the Borough in this instance, this Arbitrator has no authority to address the negotiability of the claim raised by the Borough. The authority to determine negotiability of disputed issues remains with PERC through the filing of a Scope of Negotiation Petition and, without the filing of the petition, it is clear that such challenges are subject to compulsory interest arbitration.

This Arbitrator held:

1. The Borough is not permitted to include the issues of educational benefits and medical coverage to its economic proposal, when these items were neither included in the interest arbitration petition nor amended by application.
2. The Borough's request for a scope of negotiations challenge is not properly before the Arbitrator and the Arbitrator is permitted to address the scheduling issue in Interest Arbitration when the Borough did not file a Scope of Negotiations petition before PERC.

OPINION

Having considered the testimony and exhibits offered in the context of the relevant statutory criteria, this Arbitrator reached an initial determination that the appropriate economic adjustment for Midland Park/PBA Agreement should be cautious and somewhat restrained. While neither party presented an argument so compelling to direct a decision in favor of their economic proposal as submitted on its face, the Borough's position can more easily be justified by the concerns for a relatively stagnant tax base and recent success in tax appeals. This is not necessarily obvious when reviewing the parties' analysis of the statutory criteria, although addressed in testimony by the Borough.

Based on the record, Article III and Appendix A of the Agreement shall be amended to implement a three (3.0%) percent across the board wage increase on base salaries effective January 1, 1996; a three and one-quarter (3.25%) percent across the board wage increase on base salaries effective January 1, 1997; and three and one-quarter (3.25%) percent across the board wage increase on base salaries effective January 1, 1998. The increase in wages for 1996 shall be retroactive to January 1, 1996 with retroactive payments determined and paid to employees within a reasonable period of time.

To facilitate discussion the effect of the wage increases are as follows:

<u>Top step wage rate as of December 31, 1995:</u>		\$61,569.00
	<u>Dollar Increase</u>	<u>Wage Rate</u>
3.0% wage increase effective January 1, 1996:	\$1,847.00	\$63,416.00
3.25% wage increase effective January 1, 1997:	\$2,061.00	\$65,477.00
3.25% wage increase effective January 1, 1998:	\$2,128.00	\$67,605.00
Total Dollar Increase over term of Agreement:	<u>\$6,036.00</u>	
Percent Increase in payout over term of Agreement:	<u>9.8%</u>	

Extensive review of evidence and statutory considerations have contributed to the formulation of this Arbitrator's final Award. It is important to note that the parties have provided a record of pertinent evidence and, as this Arbitrator determines, have met their obligations imposed in Fox v. Morris County Policemen's Association, PBA 151, 266 N.J. Super. 501, 517 (App. Div. 1993), cert. denied, 137 N.J. 311 (1994). Likewise, this Arbitrator has endeavored to comply with relevant statutory guidelines by identifying and commenting on those criteria found relevant to his decision. Indeed, this Arbitrator has found each of the criteria to be relevant and thus offered separate analyses under each criterion. Final comment is advanced to summarily illustrate how each of the criteria weighed in the final analysis and decision.

Certainly, the interests and welfare of the public were important considerations in the equation. Here, both the cost and benefit of securing a strong police force have been weighed and balanced. It is determined that the Midland Park Police Department serves the public well and would continue to well serve the public under either wage proposal. There is an obvious and immediate concern for reaction by the PBA to what appears to be a lower percentage wage increase. However, when considering the actual wage increase in dollars and considering the base wage upon which on the increase is awarded, the PBA has fared well, adding nearly ten percent (actually, 9.8%) to a wage base that will reach \$67,605. on January 1, 1998. When considering that an officer previously at top step on the salary guide was earning \$61,569. as of December 31, 1995, achieved increases in base salary will be \$1,847. in 1996 (to \$63,416.), \$2,061. in 1997 (to \$65,477.) and \$2,128. (67,605.). An officer at top step will receive a total increase on base wages exceeding \$6,000. and an increase of \$11,791. in actual dollars paid out over the three year term of the Agreement.

The payout of 11,791.⁵⁵ equates to a 19.15% increase over the 1995 base wage rate over the term of the Agreement. While an increased cost to the Borough, this wage increase will permit the continuation of quality service (since Midland Park officers will remain better compensated than many of their counterparts in neighboring police departments) while the interests and welfare of the public are served.

Again, the budgetary impact on the public has been predicted --- within the authorized and accepted increases in the CAP expenditure and relative to increases in the Consumer Price Index.

Comparability of compensation with police departments of contiguous and similar communities is a inherent consideration in the interest arbitration process. It also serves as both a benchmark and an insight. When comparing the wages, salaries, hours and conditions of employment of the employees involved in this arbitration proceeding with the wages, hours, and conditions of employment of other employees performing the same or similar service and with other employees generally, this Arbitrator easily reaches the conclusion that the Midland Park police officers are compensated within the norm of uniformed officers in surrounding communities, especially the contiguous communities of Ridgewood, Waldwick and Wyckoff. At top step, a Ridgewood police officer earned \$56,291. in 1995; a Wyckoff police officer earned \$60,547. in 1995; and a Waldwick police offer earned \$61,609. in 1995. These amounts are compared with the \$61,569. base salary for top step officers in Midland Park.

55. Pay out is determined by combing the actual dollar increases in each year by the number of years paid during the term of the Agreement. Herein, that calculation is \$1,847. times three years, plus \$2,061. times two years, plus \$2,128. for one year or \$11,791.00.

Thus, the evidence reveals that the PBA compares favorable in compensation with other police departments. Similarly, there is an equivalent, even if not equal, benefit package of vacation, longevity and holiday.

At the same time, comparing compensation of a municipal police force to the private sector is more difficult. Is there comparable employment in the private sector? Not to this Arbitrator. The nature and extent of the police function is unique and intrinsically attached to the public sector.

When considering the lawful authority of the employer, this Arbitrator has considered the fiscal constraints imposed by the State under N.J.S.A. 40A:4-45.1 et. seq. ("Cap Law") and observed that the Borough made considerable effort to follow sound business principles in preparing the budget and structuring a wage proposal. Moreover, it is observed that the Borough held proposed expenditures close to prior appropriations and limited those increases within the cap index. The cap index for 1995 was 2.5% and increased to 3.5% for 1996. While it is recognized that there is a degree of flexibility in the current budget, it is not significant. The figures reveal that the Borough made a conscious decision to maintain its budget with limited increases. The present Award fits within the parameters of the Borough fiscal constraints.

When considering the financial impact on the Borough and its taxpayers, this Arbitrator has relied upon documentary evidence and the forthright testimony of Michele Dugan. Her description of the present financial circumstances facing the Borough and her assessments of budgetary items were considered precise and accurate. Moreover, documents presented through the witness permitted the conclusions that there are legitimate concerns for a tax ratable base which is shrinking or stagnant and no foreseeable development due to the scarcity of available commercial and residential property. As stated above, it is clear that the Borough prepared their offer with fiscal

constraint and consideration of the financial impact on the municipality and local property taxpayers.

However, as a result of the wage increases, there should be no discontinuance of current or contemplated programs. The increases fit comfortably and suitably within the ability of the Borough's to pay and, thus, other municipal programs and services should not be affected.

The cost-of-living factor clearly enhanced the economic offer of the Borough, although both increases through wage proposals surpassed the CPI cited in the record.

Considering the continuity and stability of employment, the record clearly indicates a high level of job security and, while officers are limited in promotional advancement, there is an apparent immunity from layoff. The number of officers (12) to population (approximately 7,000) is a ratio (1:583) which could lead to the conclusion of employment opportunity. While a new hire was added in 1994, there was no evidence of additional hires. Notwithstanding, officers enjoy a stability of employment as compared to evidence introduced into the record. (see B-11).

Aside from considerations of wage positions, the proposed modifications to the Agreement, both economic and non-economic, were either items for which the appropriate forum is negotiation or an advance which did not find reason or resolve of a compelling nature. Considering that this Arbitrator has long taken the view that, unless a compelling argument is advanced for the amendment of a bargained for agreement and the requesting party has not met its burden of proof, contract provisions should remain without amendment through arbitration. The basic tenets of negotiation require the parties to structure the four corners of an agreement and fulfill their expectations through compromise and consideration. It is not for an interest arbitrator to displace that process with a sense of justice or equity nor replace a party at the negotiation. Keeping this principle in mind, the parties' request for changes, modification, deletions and/or additions relating to the police work schedule,

hazardous duty (longevity) benefits and additional steps on the wage guide should be denied. These items will be individually addressed below.

The PBA's request for increases in hazardous duty or longevity pay merits analysis. Article IV of the present (expired) Agreement provides for \$280.00 upon completion of four years of service with an additional \$70.00 for each additional year of service. Utilizing the analysis of Footnote 37 above, and assuming an officer with 8 years of service is earning \$61,500. per year, longevity payments equate to an additional \$560. per year over base salary; with 12 years of service earning \$61,500., longevity payments equate to \$840. per year over base salary; with 16 years of service earning \$61,500., longevity payments equate to \$1,120. per year over base salary; and with 20 years of service earning \$61,500., longevity payments equate to an additional \$1,400.

Under the PBA proposal, and using the assumptions above, the officer with 8 years of service would receive 2% of base salary (2% of \$61,500 or \$1,230.); with 12 years of service would receive \$1,845. (3% of \$61,500.); with 16 years of service would receive \$2,460. (4% of \$61,500.); and with 20 years of service would receive \$3,075 (5% of \$61,500).

Based on these figures, the average hazardous duty payment to each officer would increase by approximately 120% and increase total longevity costs to the municipality by a minimum of \$12,000. per year. (Assuming 12 officers with an average of 12 years of service). These assumptions do not consider increases to base salary in year 1996, 1997 and 1998 which would have an additional increase and impact on the proposal. These figures are not conceivable.

Thus, the PBA's request for a modification of Article IV, Hazardous Duty Pay, to provide compensation in the amount of one percent (1%) of base salary for each four (4) years of completed service shall be denied.

With respect to the PBA's request for a codification of a 4/2 work schedule under Article IX, Work Day, Week and Overtime, Officer Cinelli testified that the PBA was seeking to exercise its contract right in response to the Borough's decision to move to a 5/2 schedule. There is little question that the 4/2 schedule works to the benefit of officers and allows twenty-four hours between shift changes.⁵⁶ It also provides officers with the ability to schedule personal time off and, in this Arbitrator's opinion, that is not an insignificant consideration in police work.

However, the employer presented a convincing argument with respect to the police work schedule --- and addressed the 4/2 work schedule, the number of work hours, and the proposed notice requirement for schedule changes. The Borough also raised lawful considerations.

Establishing the overall work schedule of the police force is a managerial prerogative and not an appropriate subject for an Arbitrator's intervention. As recognized by the court in Borough of Atlantic Highlands v. Atlantic Highlands PBA Local 242, for an Arbitrator to alter the schedule would be "an intrusion on the exercise of the express and inherent police power functions of the municipality and would significantly interfere with the exercise of the inherent managerial prerogative necessary to the proper operation of the police force." 192 N.J.Super. 71, 77 (App.Div. 1983), cert. denied 96 N.J. 293 (1984); Contra., Matter of Township of Mt. Laurel, 215 N.J.Super. 108 (App.Div.1987)(where there was merely a request to memorialize an existing schedule as opposed to an attempt by the PBA to alter the standard⁵⁷ schedule). These are considerations not lightly view. Accordingly, this Arbitrator must defer to the judgement of the Borough with respect to the most

51. PBA witness Cinella fully described the advantages of the 4/2 schedule and the personal difficulties associated with the present schedule.

52. The record evidences that the 4/2 schedule was implemented on a trial basis for the 1994 calendar year.

efficient and fair means of scheduling its police force. While there is little question that a change to a five day work schedule does not meet with the approval of the PBA, the argument that a 4/2 work schedule improves the delivery of services to the public is a concept which is absent of proof. Although the 4/2 schedule permits a more liberal scheduling of personal time, there is no evidence to establish that the implemented 5/2 schedule works to the detriment of the public, the department or individual officers. Without compelling evidence to support its request, the proposal shall be denied.

Similarly, the PBA's request for a Schedule Change Notice provision under Article IX, seeking to require the Borough to notify PBA members of any schedule change within 14 calendar days or pay officers at the overtime rate for short notice changes, shall similarly be denied. While it is expected that a manager would give reasonable notice of change to its department personnel, wide latitude must be extended to a department chief to meet both the unexpected and exigent circumstances of department management.

The PBA's request for a modification of Article X, Hourly Rate, seeking to change the hourly rate formula to 1,946 hours per year, shall be denied. Employees in both the public and private sectors are aware that the normal work year is considered to be 2,080 hours. While it is only assumed that this issue is discussed at the time of hire, there is no evidence to infer that management represented to employees that a lesser formula would exist in the Midland Park police department. Moreover, members of the police department have "always worked a 2,080 hour work year, except for one year" (Cinelli, cross-examination), similar to the police forces of the communities of Wykoff, Ho-Ho-Kus and Glen Rock. Thus, any reduction in work hours is a prerogative within management's right to determine or an item to be gained in negotiation.

Notwithstanding economic constraints, the parties stipulated to amend Article XXI to implement a Fifty (\$50.) Dollar increase to the uniform allowance and uniform maintenance payment, effective January 1, 1996. While the Agreement provides for the payment to be made in two installments, the entire Fifty (\$50.) Dollar payment for 1996 shall be made to employees in one payment disbursed within a reasonable period of time after the issuance of this Award.

At the same time, the Borough's request for amendment to Article XXVIII, Hospitalization, subparagraph (A), seeking the ability to change the current medical benefits program to "a program substantially equivalent", shall be denied for the reasons set forth in the Interim Award dated May 16, 1996. (See Addendum A).

The Borough's request for an amendment to Article XXXIII, seeking to cease yearly stipends payable under the Agreement to officers hired after January 1, 1996, shall be denied.

The Borough's request for an amendment to Appendix A, seeking to modify and add steps to the salary guide, shall be denied.

Having considered the exhibits offered in the context of the relevant statutory criteria, this Arbitrator is convinced that a reasonable wage increase on base salaries in each of three years will best serve the parties and give the PBA an allowable economic increase in light of the economic limitations facing the Borough through increased (and successful) tax appeals and leveling of property tax revenue sources.

Based on a review of the evidence submitted, inclusive of testimony, documents and post-hearing briefs and after due consideration of the offers of the parties taken together with the statutory criteria of N.J.S.A. 34:13a-16, this Arbitrator hereby renders the following:

AWARD

PERC DOCKET IA-96-061 BOROUGH OF MIDLAND PARK -and MIDLAND PARK PBA LOCAL 79

1. As stipulated by the parties, Article I of the Collective Bargaining Agreement shall be amended to read:

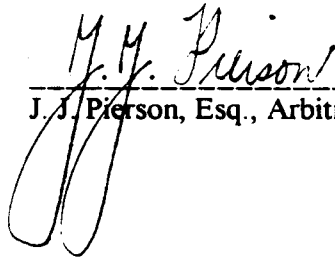
"The Borough and the Association hereby establish the terms of this contract beginning January 1, 1996 and ending December 31, 1998."
2. Article III and Appendix A of the Agreement shall be amended to implement:

A three (3.0%) percent across the board wage increase on base salaries effective January 1, 1996; a three and one-quarter (3.25%) percent across the board wage increase on base salaries effective January 1, 1997; and three and one-quarter (3.25%) percent across the board wage increase on base salaries effective January 1, 1998. The increase in wages for 1996 shall be retroactive to January 1, 1996 with retroactive payments determined and paid to employees within a reasonable period of time.
3. The PBA's request for a modification of Article IV, Hazardous Duty Pay, to provide compensation in the amount of one percent (1%) of base salary for each four (4) years of completed service shall be denied.
4. The PBA's request for a codification of a 4/2 work schedule under Article IX, Work Day, Week and Overtime shall be denied.
5. The PBA's request for an addition of a Schedule Change Notice provision under Article IX, seeking to require the Borough to notify PBA members of any schedule change within 14 calendar days or pay officers at the overtime rate for short notice changes, shall be denied.
6. The PBA's request for a modification of Article X, Hourly Rate, seeking to change the hourly rate formula to 1,946 hours per year, shall be denied.

AWARD
PERC DOCKET IA-96-061
BOROUGH OF MIDLAND PARK -and MIDLAND PARK PBA LOCAL 79

7. As stipulated by the parties, Article XXI shall be amended to implement a Fifty (\$50.) Dollar increase to the uniform allowance and uniform maintenance payment, effective January 1, 1996. While the Agreement provides for the payment to be made in two installments, the entire Fifty (\$50.) Dollar payment for 1996 shall be made to employees in one payment disbursed within a reasonable period of time.
8. The Borough's request for amendment to Article XXVIII, Hospitalization, subparagraph (A), seeking the ability to change the current medical benefits program to "a program substantially equivalent", shall be denied for reasons set forth in the Interim Award dated May 16, 1996.
9. The Borough's request for an amendment to Article XXXIII, seeking to cease yearly stipends payable under the Agreement to officers hired after January 1, 1996, shall be denied for reasons set forth in the Interim Award dated May 16, 1996.
10. The Borough's request for an amendment to Appendix A, seeking to modify and add steps to the salary guide, shall be denied.
11. All other terms and conditions of the Collective Bargaining Agreement which expired on December 31, 1995 shall remain in full force and effect, without modification or amendment.

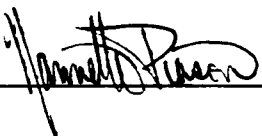
Dated: December 4, 1996



J. J. Pierson, Esq., Arbitrator

State of New Jersey)
) :ss
County of Morris)

On the 4th day of December 1996, before me personally came and appeared J.J. Pierson, Esq., to me known and known to me to be the person described herein who executed the foregoing instrument, and he acknowledged to me that he executed the same.



NANNETTE PIERSON
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires Mar 5, 2001

J. J. PIERSON, P. C.

A PROFESSIONAL CORPORATION

THE ARBITRATION CENTRE
8 FOX HUNT ROAD - BOX 604
NEW VERNON, NEW JERSEY 07976
TELEPHONE: (201) 377-9292

FACSIMILE: (201) 377-9220

J. J. PIERSON
Arbitrator/Mediator/Attorney at Law

ALASHIA CHAN
Mediator/Attorney at Law

December 5, 1996

By Fax 201-664-3836

Robert T. Regan, Esq.
345 Kinderkamack Road
P.O. Box 214
Westwood, NJ 07675

By Fax 201-488-8051

Richard D. Loccke, Esq.
Loccke & Correia
24 Salem Street
Hackensack, NJ 07601

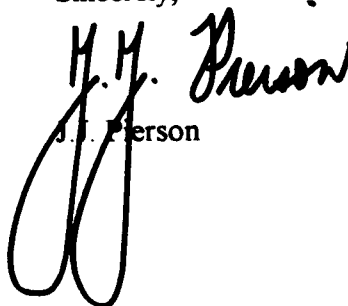
Re: PERC Docket No. IA-96-061
Midland Park -and- PBA Local 79
Interest Arbitration Award

Dear Bob and Dick:

I have just finalized the last read and edit on the Interest Arbitration Award completed yesterday. Recognizing that the writing has taken longer than originally anticipated, I am sending you the summary and Award portions, contained on pages 44 through 54 of the entire document. While PERC directs that all copies be forwarded to their offices in Trenton, I will be sending you full copies of the Award this date.

Thank you for your cooperation.

Sincerely,


J. J. Pierson

JJP:np

STATE OF NEW JERSEY - PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of Interest Arbitration)
Between)
BOROUGH OF MIDLAND PARK)
and)
MIDLAND PARK PBA LOCAL 79)
_____)

Case No. IA-96-061

INTERIM AWARD

Re: **PROCEDURAL ISSUES**

Before: J. J. PIERSON, ESQ.
Arbitrator

Appearing for the Borough: Robert T. Regan, Esq.

Appearing for the PBA: Richard D. Loccke, Esq.

The Borough of Midland Park (hereinafter, the "Borough") and Midland Park PBA Local 79, (hereinafter, the "PBA") have been parties to a series of Collective Bargaining Agreements, the most recent expiring on December 31, 1995. As the parties were unable to reach a negotiated settlement of a successor Agreement, Interest Arbitration was initiated by the PBA.

By letter dated February 21, 1996 and pursuant to N.J.A.C. 19:16-5.6, the New Jersey Employment Relations Commission (hereinafter "PERC") appointed the undersigned to serve as Interest Arbitrator in the impasse between the parties.

During the proceedings, procedural matters arose relating to certain issues being included in the economic proposals. This Arbitrator directed the parties to submit their arguments, in writing, upon which, in return, the Interim Award below would be issued.

BACKGROUND

On November 27, 1995, PBA Local 79 filed a Petition with PERC, setting forth five economic issues and one non-economic issue in dispute within the meaning of N.J.S.A. 34:13A-1 et. seq.:

Economic Issues

1. Wage Increases (Sr. Officer Differential)
2. Art. IV, Hazardous duty increment
3. Art. IX, Work Week & overtime
4. Art. X, Hourly Rate
5. Schedule change notice

Non-Economic Issues

1. Schedule Change notice

The petition ultimately resulted in the appointment of the undersigned as Interest Arbitrator (on February 21, 1996). A mediation session (on March 28, 1996) followed and, upon notice, formal proceedings commenced on May 2, 1995.

At the time of hearing when the parties were entering their final positions, Counsel for the PBA objected to the arbitrability (actually, the submission) of the Borough's proposals on the subjects of educational benefits and medical coverage. In turn, the Borough claimed that certain items submitted by the PBA regarding schedule changes were non-arbitrable (actually, non-negotiable).

This Arbitrator reserved decision on these procedural questions and, with the procedural arguments on the record, instructed the parties to place their arguments in writing.¹

1. To facilitate the proceeding and because substantive presentations were completed in one hearing, the parties were asked to forward their positions in writing within one week and, upon issuance of

This Interim Award addresses the parties' arguments concerning the procedural aspects of this case.

Issue I: Is the Borough permitted to include the issues of educational benefits and medical coverage to its economic proposal, when these items were neither included in the interest arbitration petition nor amended by application?

The instant interest arbitration arises from a Petition filed by the PBA with PERC. That petition, identified herein as Exhibit A-1, was properly served upon the Borough and docketed with the PERC on November 27, 1995. The Borough neither filed a response to this petition nor applied to amend or add to the items listed for interest arbitration. Rather, it was during the parties' initial meeting with this Arbitrator on March 28, 1996 (utilized as a mediation session) that the Borough first indicated its intention to arbitrate issues relating to educational benefits and medical coverage.

The Union challenged the Borough's attempt to introduce these issues on the grounds that the Borough's was untimely. Alternatively, the Borough argued that there was no authority to preclude these modifications, particularly since the Union was aware of the proposals prior to the hearing date.

the Interim Award, a date of approximately thirty (30) days would be set in order to submit post-hearing briefs on the substantive issues. Thereafter, and upon receipt of briefs, the Interest Arbitration Award will be issued.

The issue herein is addressed squarely within the administrative rules governing interest arbitration. Rule 19:16-5.5(a)¹² (hereinafter, "Rule") provides as follows:

(a) In the absence of either a jointly submitted notification or joint petition requesting the initiation of compulsory Interest Arbitration, the respondent shall file within seven (7) days of receipt of such notification or petition, a statement of response setting forth the following:

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

It is clear that the Rule sets forth a seven (7) day time limitation to submit additional issues and does not empower an arbitrator to entertain amendments or additions of items to the petition. Indeed, while PERC has granted such extensions when a proper and timely request is made, it has refused to permit late filings of petition amendments. See Borough of Rutherford and Rutherford PBA Local 300, Docket No.:IA-87-169; see also, Borough of Bogota, 9 NJ PER 14110 (1983)(which stresses the object of Interest Arbitration to narrow issues of dispute).

Likewise, arbitrators have enforced the time bar so as to preclude consideration of issues that were not properly filed with PERC. See Borough of Carlstadt and Carlstadt SOA (IA-94-129) and Emerson Borough and PBA Local 206 (PERC Docket NO.:IA-95-143).

Notwithstanding same, the Borough has referred this Arbitrator's attention to legal authority which arguably permits late introduction of arbitral issues. Familiar with the provisions referenced above, consisting primarily of statutory guidelines governing the final positions (N.J.S.A. 34:13A-

2. The Rule is found under the New Jersey Administrative Code, promulgated by PERC pursuant to the provisions of the Public Employment Relations Act, N.J.S.A. 34:13A-11. Recent modifications to the Interest Arbitration Act (which went into effect in January of 1996) and the rule modifications proposed thereunder (which as of this date remain pending in a proposed format) do not alter the force and effect of the rule on this particular issue.

16c) and the proposed rules which would permit an interest arbitrator to accept revisions on the parties' final offers at any time before testimony or evidence is taken (N.J.A.C. 19:16-5.7(f)), this Arbitrator is of the opinion that neither regulation permits the introduction of issues not properly submitted at the petition stage. Rather, these regulations are designed to facilitate a narrowing of issues and attempting to close the positions between the parties. See, Borough of Bogota, 9 NJ PER 14110. Moreover, in the opinion of this Arbitrator, both references are to steps taken during the process in attempt to resolve the dispute, not to expand upon the issues.

The Borough has not convinced this Arbitrator that there exists any equitable reason why , several months after the petition was filed and the time to respond has expired³, it should be permitted to add further issues of dispute to this proceeding.⁴ Thus, the Borough's present attempt to introduce new issues into the Interest Arbitration is clearly in opposition to the promulgated rules and rulings of PERC. this Arbitrator is simply without authority to permit post-petition introduced issues into this Interest Arbitration. Thus motion of the PBA to deny the Borough's introduction of the educational benefits and medical coverage issues into the interest arbitration is granted and the proceeding is limited to the issues set forth in the Interest Arbitration Petition, filed November 27, 1995, by the PBA.

3. Since the Union's petition for interest arbitration was filed with PERC on November 27, 1995, the Employer's right to amend the petition and submit additional issues to the interest arbitration expired on December 6, 1995.

4. It must be noted by this Arbitrator that Mr. Regan was not serving as Counsel to the Borough when PBA filed its petition. However, there is no offer that the Employer was unduly prejudiced by prior counsel.

Issue: Is the Borough's request for a scope of negotiations challenge properly before the Arbitrator and, alternatively, is the Arbitrator permitted to address the scheduling issue in Interest Arbitration when the Borough did not file a Scope of Negotiations petition before to PERC?

As indicated above, the PBA's Petition to Initiate Compulsory Interest Arbitration was filed on November 27, 1995. The issues in dispute were set forth on Schedule A and included "Article IX, Work Week and Overtime" and "Schedule Change Notice" as two (of five) economic issues. The PBA's position on this issue was more clearly articulated in its final proposal before the Arbitrator wherein the PBA requested "implementation of a 4-2 work schedule."

At the time of hearing, and for the first time, the Borough challenged the arbitrability of the schedule change, arguing that the scheduling issue was a managerial prerogative and not mandatorily negotiable. Additionally, Counsel argued that the PBA failed to give proper notice of its intent to seek a reinstatement of the "4/2 work schedule", thereby causing a delay in opposing the proposal and prevented the filing of a Scope of Negotiation petition before PERC.

The PBA countered by arguing that the Borough's challenge was not only time barred but outside the interest arbitration forum for resolution.

The Interest Arbitration statute and the rules promulgated thereunder provide clear direction for choosing the proper forum and appropriate process to challenge the negotiability of items in dispute. N.J.S.A. 34:13A-5.4d provides as follows:

The commission shall at all times have the power and duty, upon the request of any public employer or majority representative, to make a determination as to whether a matter in dispute is within the scope of collective negotiations. (emphasis supplied).

N.J.A.C. 19:16-5.5(c) further directs:

Where a dispute exists with regard to whether an unresolved issue is within the required scope of negotiations, the party asserting that an issue is not within the required scope of negotiations shall file with the commission a petition for scope of negotiations determination pursuant to chapter 13 of these rules. This petition must be filed within 10 days of receipt of the petition requesting the initiation of compulsory interest arbitration or within five days after the receipt of the response to the petition requesting the initiation of compulsory interest arbitration. The failure of a party to file a petition for scope of negotiations determination shall be deemed to constitute an agreement to submit all unresolved issues to compulsory interest arbitration. (emphasis supplied).

These mandates are clear and unequivocal. However, they presume proper notice of an unresolved issue. In this regard, the Borough contended that it was not properly notified of the PBA's intent to seek reinstatement of the 4/2 work schedule.

Notably, the PBA's petition does not specifically explain the proposal nor expand on its position. However, when the PBA articulated the issues relating to the "work week and overtime" and a "schedule change", the Borough had a responsibility to pursue a fuller understanding of the PBA's position. Moreover, there has been a time lapse of months since the parties initiated negotiations. For the Borough to argue lack of notice is self-defeating. Accordingly, this Arbitrator is convinced that the Borough was given sufficient notice and opportunity to raise a timely challenge to the negotiability of the PBA's proposed schedule change, but failed to do so.

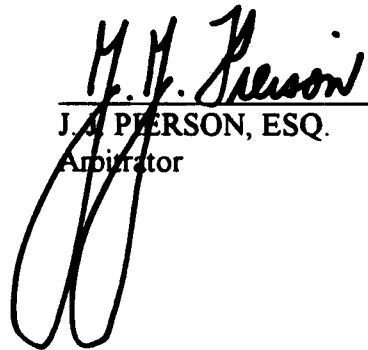
Having found due notice was given to the Borough in this instance, this Arbitrator has no authority to address the negotiability of the claim raised by the Borough. The authority to determine negotiability of disputed issues remains with PERC through the filing of a Scope of Negotiation Petition and, without the filing of the petition, it is clear that such challenges are subject to compulsory interest arbitration.

In consonance with the proof, and upon all the foregoing, the undersigned Arbitrator hereby renders, decides, determines, and issues the following.

INTERIM AWARD

1. The Borough is not permitted to include the issues of educational benefits and medical coverage to its economic proposal, when these items were neither included in the interest arbitration petition nor amended by application.
2. The Borough's request for a scope of negotiations challenge is not properly before the Arbitrator and the Arbitrator is permitted to address the scheduling issue in Interest Arbitration when the Borough did not file a Scope of Negotiations petition before to PERC.

Dated: May 16, 1996



J. J. PIERSON, ESQ.
Arbitrator

STATE OF NEW JERSEY)
 :SS
COUNTY OF MORRIS)

On the 16th day of May, 1996 before me personally came and appeared J. J. PIERSON, ESQ., to me known and known to me to be the person described herein who executed the foregoing instrument, and he acknowledged to me that he executed the same.



**NANNETTE PIERSON
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires Mar 5, 2001**