

NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of Interest Arbitration Between the

TOWNSHIP OF VERONA

"Public Employer"

-and-

PBA LOCAL NO 72

"Union."

**INTEREST ARBITRATION
DECISION
AND
AWARD**

Docket No. IA-2002-67

**Before
James W. Mastriani
Arbitrator**

Appearances:

For the Employer:

Sandro Polledri, Esq.
Genova, Burns & Vernoia

For the Union:

Richard D. Loccke, Esq.
Loccke & Correia, PA

I was appointed interest arbitrator by the New Jersey Public Employment Relations Commission in accordance with P.L. 1995, c. 425, in this impasse involving the Township of Verona [the "Employer" or "Township"] and Verona PBA Local No. 72 [the "PBA"]. One (1) pre-arbitration mediation session was held. Because the impasse was not resolved, a formal interest arbitration hearing was held on October 22, 2002. Testimony was received from Patrolman Robert Parsons, PBA President – Laura Fanuele, Employee Benefits Broker, LBT Consulting Group – Douglas Huber, Township Manager and Public Safety Director – and Marc Ferrara, Vice President of Employee Benefits Division, First Union Insurance Services. Both parties introduced substantial documentary evidence. Post-hearing briefs were submitted by both parties.

The statute requires each party to submit a last or final offer. I have set forth below the last or final offer of each party.

FINAL OFFERS OF THE PARTIES

The Township and the PBA submitted the following final offers:

The PBA

1. **Wage Increase** – The PBA proposes a three (3) calendar year contract (January 1, 2002 through December 31, 2004) with a 5% across-the-board increase in each calendar year effective on each January 1st.

2. **Holiday Fold-In** – The PBA proposes that the holiday benefit be compensated in equal installments and paid along with regular payroll and as such used for all computation purposes.
3. **Longevity** – The PBA proposes that the current top step of the longevity benefit be changed from an effective date after 25 years of service to 24 years of service. The PBA also proposes a deletion of the grandfather provision of this article.
4. **Hours of Work and Overtime** – The PBA proposes a deletion of paragraph 8 at the bottom of page 6 of Article VI of the contract.
 8. Overtime shall be paid for work as prescribed in this article except under the following special circumstances:
 - Signing of Complaints
 - Uniform Fittings
 - Medical Examinations
 - Unacceptable Reports
 - Department Hearings (if the employee is found guilty)
5. **Sick Leave** – The PBA proposes a deletion of paragraph 9c of Article XVII on page 17 of the contract.
 9. c) When the Director of Public Safety, or his designee, is unable to contact the employee within a period of twenty-four (24) hours.
6. **Entirety of Agreement** – The PBA proposes a deletion of the second sentence in paragraph 1 and all of paragraph 2 of Article XLII of the contract. (Contract page 36).
 1. The parties acknowledge that during the negotiations which resulted in this Agreement, each had the unlimited right to make demands and proposals with respect to any subject or matter not removed by law from the area of collective negotiations. They, therefore, each voluntarily and without qualification, waive the right for the life of this Agreement to negotiate collectively with respect to any subject or matter not specifically referred to or covered by this Agreement.
 2. This contract represents the entire Agreement between the parties and no other agreements or practices are binding upon either party hereto with respect to wages, hours, or conditions of employment of the employees covered thereby.

7. **Preservation of Rights** – The PBA proposes new language be added to the contract.

The parties agree that all benefits, rights, duties, obligations and conditions of employment relating to the status of the Police Department which benefits, rights, duties, obligations and terms and conditions of employment are not specifically set forth in this Agreement, shall be maintained in not less than the highest standards in effect at the time of the commencement of collective bargaining negotiations between the parties leading to the execution of this Agreement

Unless a contrary intent is expressed in this Agreement, all existing benefits, rights, duties, obligations and conditions of employment applicable to any Officer pursuant to any rules, regulations, instruction, directive, memorandum, statute or otherwise shall not be limited, restricted, impaired removed or abolished.

8. **Extra Duty Work** – The PBA proposes a codification of extra duty work procedure. This proposal would add the following language to the contract:

1. All extra duty work between the hours of 7:00 am and 7:00 pm would be paid at the \$35.00 per hour rate.
2. All extra duty work between 7:00 pm and 7:00 am would be paid at the \$50.00 per hour rate.
3. The Township has the right to add up to \$3.00 per hour for administrative costs attached to extra duty work administration.
4. All payments shall be made through the Township payroll system.

9. **Priority for Overtime** – The PBA proposes the substitution of current language at Article VIII “Allocation of Overtime” (contract pg. 7) with new language captioned “Priority for Overtime”.

Allocation of Overtime

Insofar as possible, and based upon operational requirements of the Department, the Director of Public Safety, or his designee, shall provide for a fair and equal system of overtime allocation.

However, in the event of operational necessity, as determined by the Director of Public Safety, or his designee, employees covered by this Agreement shall accept overtime assignments.

Priority For Overtime

Overtime for regularly scheduled shifts and details will be offered to regular full time employees of the department first, in an order of preference based upon a rotating seniority roster. There may be certain situations in which the department, because of special skills or other attributes of a particular officer, determines that it is in the best interest of the employer to bypass an employee or employees on the seniority list. While this Agreement contemplates such possibilities, it is agreed and understood that such bypassed employee or employees must become next on the list for the purposes of the overtime roster. The purpose of this clause is to equalize overtime among employees and same shall not be defeated by the employer's selection of special persons for special details as set forth herein. Such overtime will be offered to persons other than full time employees only if it has first been refused by each member on the seniority roster aforementioned.

The Township of Verona

- A. **Term of Agreement:** Two (2) year term effective January 1, 2002 through December 31, 2003.
- B. **Wages:**
 - 1. Effective January 1, 2002, 2.75% wage increase.
 - 2. Effective January 1, 2003, 2.75% wage increase.
- C. **Health Insurance:** The Township agrees to revise Articles XXII and XXIII to reflect that, at its option, the employer will:
 - (i) provide health insurance benefits pursuant to the New Jersey State Health Benefits Program; or
 - (ii) provide health insurance benefits which are substantially equivalent to the benefits afforded by the New Jersey State Health Benefits Program.
- D. **Prescriptions:** Insurance and reimbursement for prescriptions will be administered and paid in accordance

with the terms of the health insurance program selected by the employee.

- E. **Academy Rate:** An Academy wage rate, in the annual amount of \$25,000 will be established for police recruits while they are enrolled in the Police Academy.
- F. **Vacation:** The following vacation schedule will be established for police officers who are hired after January 1, 2003:

2 nd and 3 rd years:	12 days
4 th year:	15 days
5 th through 10 th years:	16 days
11 th through 15 th years:	18 days
16 th through 20 th years:	20 days
Commencement of 21 st year:	23 days

The Township and the PBA have offered testimony and considerable documentary evidence in support of their final offers. Numerous Township and PBA exhibits were received in evidence. I am required to make a reasonable determination of the above issues giving due weight to those factors set forth in N.J.S.A. 34:13A-16g(1) through (8) which I find relevant to the resolution of these negotiations. I am also required to indicate which of these factors are deemed relevant, satisfactorily explain why the others are not relevant, and provide an analysis of the evidence on each relevant factor. These factors, commonly called the statutory criteria, are as follows:

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

arbitration proceedings with the wages, hours, and conditions of employment of other employees performing the same or similar services and with other employees generally:

(a) In private employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.

(b) In public employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.

(c) In public employment in the same or similar comparable jurisdictions, as determined in accordance with section 5 of P.L. 1995. c. 425 (C.34:13A-16.2) provided, however, each party shall have the right to submit additional evidence concerning the comparability of jurisdictions for the arbitrator's consideration.

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

(4) Stipulations of the parties.

(5) The lawful authority of the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by the P.L. 1976 c. 68 (C.40A:4-45 et seq).

(6) The financial impact on the governing unit, its residents and taxpayers. When considering this factor in a dispute in which the public employer is a county or a municipality, the arbitrator or panel of arbitrators shall take into account to the extent that evidence is introduced, how the award will affect the municipal or county purposes element, as the case may be, of the local property tax; a comparison of the percentage of the municipal purposes element, or in the case of a county, the county purposes element, required to fund the employees' contract in the

preceding local budget year with that required under the award for the current local budget year; the impact of the award for each income sector of the property taxpayers on the local unit; the impact of the award on the ability of the governing body to (a) maintain existing local programs and services, (b) expand existing local programs and services for which public moneys have been designated by the governing body in a proposed local budget, or (c) initiate any new programs and services for which public moneys have been designated by the governing body in its proposed local budget.

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

BACKGROUND

The Township of Verona is located in the northwestern part of Essex County. It has 13,533 residents who occupy 2.58 square miles.

The Chief Operating Officer of the Department is the Director of Public Safety who also serves as the Township Manager. The bargaining unit is composed of thirty-one (31) police officers. There are two (2) Captains, four (4) Lieutenants, four (4) Sergeants, two (2) Detective Sergeants, one (1) Detective, and eighteen (18) Patrolmen.

The department is a busy one having received 10,884 calls for service during 2000. The main sources of crime committed in 2001 are larceny (150), burglary (40) and auto theft (25). As of October 15, 2002, the total base pay for the bargaining unit was \$2,043,059. The average patrolman received \$57,112 in base pay and the average superior officer received \$79,827 in base pay.

The total tax levy for the Township during 2002 was \$7.33 per hundred dollars of assessed value of which the municipal portion is \$1.74 or 23.74% of the tax revenues it collects. The municipal tax rate has risen from \$1.28 per hundred dollars of assessed value 1.74 in 2002. The total tax levy in 2001 was \$35,002,935 which the Township collected at a rate of 98.14%. This collection rate has remained constant during the prior five years. In 1999, the median household income was \$74,619 and the per capita income was \$41,202. The Township relies heavily on property tax with more than 84% of its revenues coming from the property tax.

Against this general backdrop the parties have offered the following arguments and statements of position which I address in summary form.

POSITIONS OF THE PARTIES

PBA LOCAL 72

The PBA contends that its last offer is reasonable, supported by all of the statutory criteria and should be adopted in its entirety. The PBA first addresses

N.J.S.A. 34:13A-16g (1), the interests and welfare of the public. The PBA describes the Township as a “uniquely situated municipality in Essex County.” It is bordered by Cedar Grove, Montclair, West Orange, North Caldwell and Essex Fells, and includes “the cross roads of western Essex County and the greater region...”. Some of the facilities within the Township’s borders include the following:

- 15 Schools and educational organizations
- Senior Citizens Complex
- Area Waste or Treatment Plant
- 600 commercial addresses
- Numerous new homes being built
- 15 apartment/condominium complexes
- Public swimming pools, numerous parks
- Eagle Rock Reservation
- Essex County Park System used by persons largely from outside the Township
- UMDNJ Mental Health Clinic
- Mountainside family practice
- Shopping centers
- Numerous corporations which were identified both photographically and explained in the power point presentation
- Numerous fast food and full service restaurants
- 4 major banks

The PBA cites the Department’s regular interaction with other area municipal, county and state level law enforcement agencies due in part to the existence of major highways and arteries within its approximately 2.5 square miles. The PBA indicates the Township’s population density ranks in the 63rd percentile State-wide and in the 84th percentile nationally. With respect to school enrollment, the Township ranks in the 65th percentile State-wide and nationally.

The PBA points out that the police work force has remained constant since 1975 but the Department operates without a Police Chief and the work load has significantly increased. According to the PBA, the number of service calls during from 1975 to 2000 increased from 3,971 to 10,884 annually – an increase of 174%. The PBA indicates that the crimes committed in the Township in 2001 break down in the following categories:

Crimes Committed in 2001

MURDER	1
Rape	0
Robbery	3
Assault	4
Arson	0
Auto Theft	25
Burglary	40
Larceny	150

The PBA points out that the Township's crime index ranks in the 69th percentile State-wide and in the 70th percentile nationally.

The PBA indicates that since the beginning of the parties' last Agreement the following services are either new or have been expanded:

- Domestic Violence – DIVERT Team
- Columbine High School necessitated school violence training
- Enhanced DARE – supported in part by PBA contributions
- Car seat program – supported in part by PBA contributions
- Defibrillator Training – New equipment and training
- Mobile Data Terminals (MDT) – ordered and on the way at the time of the hearing
- Megan’s Law Enforcement Enhancement
- Jail Cell protocol
- New Radio system
- Computer Aided Dispatch (CAD)
- 9-1-1 cell phone procedure
- Increased accent on training both in house and at the Essex County Training Facility

The PBA stresses the regular interaction the Department has with other law enforcement agencies within the proximate area. According to the PBA, the specific interactions include the following:

- Cedar Grove Police
- Wayne Police – towns along Route 23 including Little Falls and Totowa due to traffic patterns and commercial activity
- Mutual Aid Agreements with area towns
- The impact of the Wayne Malls and interactions with Wayne Police operations
- State Police Operations on a regular basis – including State Highway Route 23 which passes through town, forensics, AFIS, Breathalyzer Certification and Training, CDS, Northstar Helicopter Medivac
- DMV Check points, truck safety, special operation

The PBA finds the interactions outlined above are instrumental in determining the “universal comparisons” of terms and conditions of employment.

The PBA points out that the community benefits from having 23 of the Department's 31 police officers residing within the Township. Their community involvement includes, but is not limited to, the local rescue squad, the volunteer fire department, and scouting. According to the PBA, the Department is well received by the community, that little or no type of disciplinary action takes place and that the filing of any type of complaint is rare.

Addressing N.J.S.A. 34:13A-16g (2) and (3) concerning comparability and compensation levels, the PBA contends that the compensation program for Township officers is below average when compared to its "universive comparison". The PBA points to the base wage and the grandfathering of longevity as the two (2) major factors contributing to the Department's "below average compensation program." According to the PBA, the "universive comparison" must be based upon two (2) main factors: geographic positioning and daily law enforcement interaction. The PBA presented at hearing the labor agreements of its universive comparisons. With respect to average base rates, the PBA provided the following chart for calendar year 2002:

CHART NO. 3

	2002 Base
Totowa	\$73,987
Bloomingtondale	66,506
Essex Fells	64,952

Cedar Grove	69,144
North Caldwell	63,038
Little Falls	63,775
Caldwell	60,533
Roseland	65,820
Fairfield	65,242
STFA	72,659
East Hanover	71,652
Hanover	66,161
Livingston	74,203
Montville	66,899
Average	67,469
Verona 2001 Base	63,288
Increase required to catch average for 2002	6.61%

According to the PBA, the 2001 average base salary for the Township's officers is \$4,181 less than the comparison average (\$63,288 to \$66,899). The PBA indicates the following in its brief:

The Verona Police Officer in 2001 had a top step rate of only \$63,288. It would take therefore a 6.61% increase for the year 2002 just to reach average among the Verona Police Officer's peers. In this case the PBA has proposed a 5% increase for the year 2002. Therefore, if the PBA's full wage position were awarded the Verona Police Officer still would not reach average in the year 2002. The statistics above and evidentiary showing as argued earlier, supports an award of the full value of the PBA wage position.

The PBA also pointed to base rate increases received for its comparisons for 2002 through 2004:

CHART NO. 4

	2002	2003	2004
Cedar Grove	5		
Bloomingtondale		5 (3/2)	4.2
Essex Fells		4	4
Totowa		4.1	4.1
No. Caldwell	4		
Caldwell	4.1 (2/2.1)		
Roseland	4.5 (2/2.5)		
Fairfield	4		
STFA	4	4	
State Police NCO	4	4	
Wayne	4	4	4.25
East Hanover	4.5 (2/2.5)	4.5 (2/2.5)	4.5 (2/2.5)
Hanover	5.8 (4/1.8)	5.6 (3.95/1.7)	
Livingston	4	4	
Montville	4		
Glen Ridge	4		
Averages	4.30%	4.35%	4.21%

The PBA asserts the following in its brief:

As has been illustrated above, it would take a 6.61% increase to achieve average in 2002. It would take an additional 4.355% to maintain that average in 2003 and an additional 4.21% to maintain that average positioning in 2004. The total of these three changes, 2002 (6.61%) and the 2003 and 2004 column listed

on chart no. 4 above is 14.665%. This uncompounded number would be required to represent increases over the three years proposed by the PBA. Divided by 3, the result is 4.9%. The PBA's last offer position is almost precisely what it would take to attain and maintain average over the course of this agreement. One fact that must be kept in the forefront of any evaluation of compensation in this municipality for Police Officers is that the Verona police longevity program has been grandfathered. All employees hired after the end of 1996 do not, and will not have any access to any longevity value whatsoever. This is a significant detriment to the compensation plan and will almost certainly create problems in the future. The PBA has sought a modification of this grandfathering program and urges the Arbitrator to consider it as an equity issue in addition to the financial value to future officers.

According to the PBA, its holiday fold-in proposal has "virtually no economic impact" because the Township has made no pension payments. As for its proposal to eliminate exclusions for overtime compensation, the PBA maintains the proposal has "no significant or calculable impact".

The items listed are clearly work effort by the employer. What is presented here is an employer provision that it doesn't have to pay if it doesn't like certain types of work and actually calls an officer back to do additional work. It would appear to be a clear Fair Labor Standards Act violation. If the employer doesn't like the way a report has been prepared then the employer has two options. First the employer can wait until the officer is next working and have the report redone. The second option is to order the employee in on overtime.

The PBA contends that the following Township proposals are unsupported by the evidence and/or fail to meet the statutory requirement of review: wages, health care "give back" and vacation modification.

As for the Township's comparison of its officers to employment in the private sector, the PBA contends that private sector comparisons, due to the unique qualifications, duties and responsibilities of a police officer [i.e. obligation to act as law enforcement officer at all times] and given the strict statutory regulations under which an officer must perform, are not entitled to significant weight. The PBA relies upon an award issued in Ridgewood, IA-94-141.

Addressing N.J.S.A. 34:13A-16(g)5, the lawful authority of the employer, the PBA maintains that the Township does not and will not have a Cap problem and can fund the PBA's proposals. The PBA indicates that the Borough elected to utilize only 2.5% of the 5.0% Cap maximum permitted by statute in its 2002 budget. According to the PBA, the Township had an additional \$246,223 of Cap flexibility in 2002 but not to use it.

The PBA asserts that its proposals will not interfere with the Township's statutory obligations and would not have adverse financial impact on the governing body or its residents. According to the PBA, the Township could have appropriated an additional \$690,360 in 2002 within the Cap, but did not do so. Specifically, the PBA calculates that the total allowable general appropriations

within the Cap for 2002 was \$10,443,597. But, the PBA points out that the Township actually appropriated only \$9,753,237 in 2002.

The PBA considered the Township's Cap bank and the costs associated with increasing the bargaining unit's salaries by one (1) percentage point. According to the PBA, the following chart represents the base pay of unit members:

**CHART NO. 5
CURRENT BARGAINING UNIT BASE WAGE**

(A) Rank	(B) Current Census (Per P-2)	(C) Base Rate (Per J-1)	(D) Column (B) X Column (C)
Captain	2	\$92,006	\$184,012
Lieutenant	4	\$81,856	\$327,424
Sergeant	6	\$74,415	\$446,490
Police Officer	19	\$63,288	\$1,202,472
Total	31		\$2,160,398 1% = \$21,603

Based upon the chart, the total base pay for two (2) Captains, four (4) Lieutenants, six (6) Sergeants and eighteen (19) patrolmen is \$2,160,398 and a salary increase of one percent (1%) would cost the Township \$21,603. When compared to the Township's waived cap flexibility of \$246,223, the Township waived 11.4 percentage points of base wage increase. The cash carried forward by the Township into 2003 (\$690,360) represents 31.95 percentage points of

base wage increase. Therefore, the PBA maintains that the Township has no Cap problem.

Addressing N.J.S.A. 34:13A-16g (6), the financial impact on the Township, its residents and taxpayers, the PBA asserts that an award of its entire offer would have "no appreciable impact" upon the taxpayers and residents. The PBA indicates the Township has "sufficient flexibility" to pay as a result of a number of recent officer retirements. The PBA provides the following chart in its brief:

CHART NO. 6
Base Pay of Positions Vacated During
Pers of last contract (See Chart #2, supra Ex. P-2)

(A) Rank	(B) No. retirees since 1/1/99	(C) Base Rate Per J-1	(D) Column (B) X Column (C)
Captain	2	\$92,006	\$184,012
Sergeant	1	\$74,415	\$74,415
Patrol Officer	4	\$63,288	\$253,152
Total Base			\$511,579

Based upon the above, the PBA contends the Township has incurred a direct savings of \$511,579 (23.68 percentage points) in base wages alone and notes the recent retirees also received longevity and benefits greater than currently employed officers.

The PBA indicates the Township is in the upper quartile of per capita income for all of Essex County. According to the PBA, the average Township

resident is approximately forty-one (41) years old and possesses a high level of education. The PBA points out that the Township's income ranks in the 68th percentile State-wide and in the 91st percentile nationally. The Township's adult education level exceeds the County and State averages and the average income for households with children was \$105,700.

The PBA also contends the Township has no taxpayer pressure. The PBA refers to voter turnout for the school budget which is 52% of the levy. According to the PBA, only 12.7% of those eligible to vote on April 16, 2002 actually cast ballots.

With respect to the Township's finance and fiscal stability, the PBA makes the following general observations in support of its offer:

- The amounts of operations show a balance in 1999 of \$785,390. This amount grew in 2000 to \$789,097. For 2001 a near doubling occurred to \$1,392,097. This is an extremely important schedule in that it indicates that amount of surplus generated during the year. Conceptually it gathers or summarizes the closing entries to operations of the various holding accounts. (Source: AFS, Sheet 19)
- Budget revenues have exceeded the amount anticipated in each of the last three years. For 1999 the excess was \$233,199. For 2000 the amount realized was \$426,449.00 over anticipation and in 2001 the amount was \$265,855 realized over anticipation. (Source: AFS, Sheet 17)
- The unexpended balance of appropriation reserves has grown significantly from 2000 to 2001. The amount cancelled in 2000 from the year 1999 was \$257,830. The amount cancelled in 2001 from the year 2000 was \$314,597. Verona continues to

have excess budget reserves which provides flexibility to the budget. (Source: AFS, Sheet 19)

- The fund balance (current fund) is significant. The surplus has averaged over 1.3 million over the last 5 years allowing the Township to anticipate 88.4% in the budget further demonstrating the ability to regenerate surplus. (Source: 2001 Report of Audit)
- The municipal tax rate has only increased an average of 12 points over 3 years, prior to that it remained flat actually decreasing 1 point from 1998 to 1999. (Source: 2001 Audit Report)
- The tax rate in Verona is below average for all tax rates in Essex County. (Source: Essex County Board of Taxation Certification)
- The total rate equalized of Essex County Tax Rates once again shows Verona to be in the lower half of all municipalities in the county. (Source: Essex County Board of Taxation)
- The tax levy shows only 24% applicable to municipal operations. (Source: 2001 Report of Audit) The assessed values have grown in each of the last 5 years reported.

Assessed Values	
2002	\$ ---
2001	\$497,546,000
2000	\$495,326,300
1999	\$493,018,400
1998	\$492,114,700
1997	\$491,968,800

The assessed values continue to increase. The increase has been 5.6 million since 1997. (Source: 2001 Report of Audit)

- The value of one tax point is \$49,755
- The reserve for uncollected taxes shows a very high collection rate which exceeds 98% per annum

Reserve for Uncollected Taxes

<u>Year</u>	<u>Actual Collection Rate</u>
2002	
2001	98.14%
2000	98.08%
1999	98.25%
1998	98.30%
1997	98.19%

- The borrowing power of Verona is well below the legal limit. On equalized valuation basis the debt limit is statutorily \$43,711,822. The actual net debt is only \$16,043,991. The remaining borrowing power is \$27,667,831. This positioning of well below the legal debt limit provides a strong indication of financial soundness. The PBA is not suggesting that this public employer borrow to pay the PBA position. Rather the PBA is suggesting that this Township is very strong from a fiscal standpoint.
- The Moody's Credit Rating is "AAA". This is an excellent Credit rating. (Source: 2002 Municipal Data Book)
- The cash balance in the current fund as of December 31 was \$6,821,705.00. The cash balance in capital fund was \$2,775,482. (Source: 2001 Report of Audit)

The PBA makes the following observations with respect to a certification the Township submitted from Dorothy M. Trimmer:

- Page 6 of the analysis shows a tax increase of only 9 points from 2001 to 2002. This is more than acceptable; they had two years, 1998 and 1999, with only a 1 point increase. The increase from 2000 to 2001 of 25 points has to realistically be spread over the preceding four years.
- Page 6A and 6B of the analysis are charts that show the Municipal and General Tax Rates equalized for the whole

county and places Verona in the lower half. This responds to item 3 in the certification of the CFO.

- Number 6 of the CFO's certification talks about State Aid, Verona is considered an affluent town and like all other towns who have excellent tax collection rates, and consistent surplus balances will always be subject to reductions in State Aid.
- Number 8 of the CFO's certification on Interest Income on Investments, is the result of overall market conditions. Verona's Interest on Investments is only approximately 2% of the tax levy.
- Number 9 of the CFO's certification on Solid Waste costs is speculative. It refers to 2003. This budget is not anywhere close to finalized and this was not documented in the certification.
- Number 11 of the CFO's certification refers to Tax Appeals, however, there is no reserve set up and page 63, #14b of the 2001 Report of Audit does not indicate any significant impact from tax appeals.
- The CFO's certification on page 5, #18, refers to Health Benefit Costs, however on page 14 of the 2002 Budget it reflects a Reserve Balance of \$217,894.78 from the prior year.
- The CFO's certification mentions staffing in the Police Department. In the 2001 Budget, page 15, a transfer occurred out of Police Salary and Wages the amount of \$7,500.00 and a reserve balance of \$70,546.95 was left over.

The PBA notes the Township has been the recipient of annual cost savings of \$160,014 as a result of legislation (S-1961) passed affecting pension cost abatement. According to the PBA, the cost savings represents 7.4 police department percentage points.

Addressing N.J.S.A. 34:13A-16g (7), the cost of living, the PBA submits data from the New Jersey Department of Labor which indicates the total percent

change for all industry was 6.4% for the test period. According to the PBA, local statistics and area standards must be given greater weight than the national statistics the Township provided such as the consumer price index (CPI).

Addressing N.J.S.A. 34:13A-16g (8), the continuity and stability of employment, the PBA contends the private sector standards of “going rate” and “area standards” support an award of its offer. The PBA focuses its discussion upon the Township’s health care proposal. The PBA contends the Township failed to present figures and calculations in support of its position and, therefore, the Township’s proposal cannot be awarded. The PBA refers to Ferrara’s testimony and maintains he “was not able to provide basic answers to fundamental questions involving the employer’s proposals.” [Union Brief, p. 41]. According to the PBA, the Township’s witness could not provide a projected cost for changes to the Township’s prescription plan. The PBA maintains the plan “purport[s] to change vested benefits for persons in retirement.” [Union Brief, p. 41]. The PBA claims the Township presented Ferrara’s testimony to explain the Township’s fiscal savings from the proposed plan. He, however, was unable identify the Township’s proposed plan from the options provided in the State Health Benefits Plan. According to the PBA, the proposed plans when compared to the Township’s current program are “very deficient”. [Union Brief, p. 45]. For these reasons, the PBA views the Township’s plan as unawardable and is best left to be discussed in direct negotiations.

TOWNSHIP OF VERONA

The Township urges acceptance of its entire last offer which it asserts is more reasonable than that of the PBA. Addressing N.J.S.A. 34:13A-16g (1), the interest and welfare of the public, the Township indicates the Court in Hillsdale PBA, Local 207 v. Borough of Hillsdale, 137 N.J. 71 (1994) “focuses in part on the priority to be given to the wages and monetary benefits of public employees within a municipality’s budget and plans.” With that in mind, the Township contends that its final offer will accomplish the following public policy goals:

First, it will enable the Township to obtain medical insurance coverage from a commercial carrier and eliminate the inordinate amount of risk presented by the current self-insurance program. Not only would this better manage the element of risk and volatility presented by health care costs and the needs of individual employees, but it gives the Township a more predictable level of expenses for these benefits. The wage component of the final offer would enable the Township to better control its costs and the rate of municipal tax increases.

Further, the Township maintains that its offer serves the public’s interest and welfare because there is no evidence that municipal, school or county taxes will not increase over the duration of the proposed Agreement, and state aid will be extremely difficult to obtain because of the current economic climate.

Addressing N.J.S.A. 34:13A-16g (2) and (3) concerning comparability and compensation levels, the Township contends that its officers receive superior wages and better benefits compared to police departments in other municipalities

within Essex County. The Township presents the following comparison charts concerning salary, personal days and holidays:

**Essex County Salary Comparison for
Officers with 12 Years of Service**

Municipality	2001
Livingston	71,349
Essex Fells	64,952 (2002)
Cedar Grove	63,946
Verona	63,288
Roseland	62,956
Irvington	62,822
Fairfield	62,733
West Orange	62,429
Newark	61,866
West Caldwell	61,661 (2000)
North Caldwell	60,614
South Orange	60,541
Caldwell	60,533
Montclair	60,498
Glen Ridge	60,398
Maplewood	59,082
Bloomfield	59,030
Millburn	56,826 (1999)
Nutley	56,166 (2000)
Orange	54,509
East Orange	52,310 (1999)

**Essex County Comparison
Personal Days**

Municipality	
Belleville	None
Bloomfield	5 days
Caldwell	None
Cedar Grove	None
East Orange	2 days
Essex County	3 days
Essex Fells	2 days (of vacation)
Fairfield	3 days
Glen Ridge	1 day
Irvington	0 days
Livingston	0 days
Maplewood	up to 10 days
Millburn	4 days Patrol div 5 days
Montclair	.5 days per quarter of perfect attendance
Newark	0 days
North Caldwell	4.5 days of vacation time
Nutley	0-1 year = 0 days 1-3 years = 1 day 3-5 years = 3 days 5+ years = 4 days Lt. = 4 days Capt = 5 days
Orange	3 days
Roseland	1999 = 2 days 2000 = 2 days 2001 = 3 days 2002 = 3 days SOA 1999 = 3 days 2000 = 3 days 2001 = 3 days 2002 = 3 days
South Orange	6 days of vacation allowance
Verona	0-1 years 1 day 1-2 years 2 days After 2 years 4 days
West Caldwell	0 days
West Orange	3 days

**Essex County Comparison
Holidays**

Municipality	
Belleville	14 days
Bloomfield	15 days
Caldwell	13 days
Cedar Grove	12 days
East Orange	<22 years = 14 days 22+ years = 1 day
Essex County	14 days
Essex Fells	13 days
Fairfield	13 days
Glen Ridge	n/a 3 personal holidays
Irvington	11 days 2 comp days
Livingston	13 days
Maplewood	13 days
Millburn	13 days
Montclair	14 days
Newark	13 days SOA 16 days
North Caldwell	2000 13 days 2001 14 days
Nutley	14 days
Orange	14 days
Roseland	14 days
South Orange	13 days
Verona	14 days
West Caldwell	13 days
West Orange	13 days

According to the Township, its top-rate patrolman's salary ranked 4th highest in the County for 2001. And, assuming the Township's proposal is awarded, they would rank 5th highest for 2002. The Township compares average salary rates as well. According to the Township, the average Verona officer has 12.26 years of seniority and ranks 4th highest paid in the County. The Township indicates that its officers rank 7th highest paid in the County when salary, uniform allowance and longevity are considered.

The Township notes that officers' other benefits such as educational bonus, vacation, holidays and personal days rank amongst the best in the County. In sum, the Township maintains that its officers receive a total compensation package which is "well "ahead of the pack" when compared against other municipal police agencies in the County."

The Township also contends that its "officers receive an average compensation package which is 38% higher than non-uniformed Township employees." According to the Township, the average total base salary including for a Township officer in 2001 was \$69,545 compared to the average non-uniformed Township employee of \$50,347. The Township points out that between 1996 to 2001 the PBA's rate increases have unfairly outpaced those received by Department heads and civilian units:

During the six-year period between 1996 to 2001, Verona's civilian units received increases totaling 24.6%. (T-53. Note: Township department heads received 24.7% while OPEIU members received 24.5%.) In that same period of time, the PBA received increases totaling 32.2%, while the cost of living rose only 15.23%. (T-53). Furthermore, the PBA received particularly hefty increase in 2001, obtaining a 6% salary increase (which was paid as a 3% / 3% split in January and July 2001). During 2001, the Township department heads received a 4.5% raise, while OPEIU members received 4.0%.

The Township claims that the PBA's offer, if awarded, would continue to widen the salary gap. It refers to the recent settlement it reached with OPEIU:

The parties agreed upon a wage increase of 2.75% in 2002 and an increase of 2.75% in 2003. The Township and the OPEIU also agreed that, in the event the PBA received a three year contract in interest arbitration, the OPEIU would receive a 2.75% increase in 2004. Finally, the Township and the OPEIU agreed that health benefits would be provided by way of the N.J. State Health Benefits Program, or its equivalent, if that plan was awarded to the PBA.

The Township finds the OPEIU settlement significant for the following reasons:

First, it shows that the Township is asking all employees, not just police employees, to accept a moderate – but fair – wage increase in light of the current state of municipal finances and low inflation rate. It also demonstrates that, even if the Township's final offer is awarded, the PBA will maintain the same premium pay differential that it enjoys over non-uniformed employees.

The Township disputes the PBA's claim that the number of police service calls has increased 174% since 1975. Huber testified that various calls, such as non-arrest motor vehicle stops, escorts and general service calls were not necessarily recorded back in 1975. The Department now logs in and records every service call.

The Township also contends that its officers "have fared far better" than private sector employees. According to the Township, its survey of private sector

contract settlements includes wage freezes for a portion of the contracts and 2-3% increases for the remaining terms. The Township provides the following examples: United Water Utility Workers - 0%, 0%, 0%, 3%; United Tool and Stamping Electrical Workers – 0%, 0%, 3%; Avdel Cherry Textrom – 0%, 0%, 3%; Englewood Hospital – 0%, 2-3% for next two (2) years depending upon experience and seniority; and, Cooper Medical Center – 2.5%, 3%. The Township maintains that in light of the above that its proposal is reasonable and the PBA's proposal is excessive.

Addressing N.J.S.A. 34:13A-16g (5), the lawful authority of the employer, the Township contends that a two (2) year rather than a three (3) year Agreement is appropriate. The Township notes the following:

In light of the financial challenges facing the Township and state and county aid grants drying up, it is sensible to implement a two year contract and allow the parties to re-address contract issues when economic conditions have stabilized.

The Township claims that the PBA's proposal, unlike its own, fails to consider the necessary cost-savings measures the Township has or seeks to implement and fails to identify new or untapped revenue sources.

Addressing N.J.S.A. 34:13A-16g (6), the financial impact on the Township, its residents and taxpayers, the Township refers to Hillsdale PBA, Local 207 v. Borough of Hillsdale, 137 N.J. 71, 85 (1994), as support for the concept that this

factor “do[es] not equate with the municipality’s ability to pay.” Rather, the Court recognized an arbitrator’s responsibility to consider an award’s affect upon the Township’s overall budget and its employees.

The Township contends it is facing a number of fiscal problems and financial challenges including the following:

Employee Health Care Benefits: The costs related to employee health care and prescription benefits have risen by 83% since 1999. Further, the Township has a self-insurance program whereby the Township must assume much of the risk associated with employee claims.

- State Extraordinary Aid: Although the Township had been receiving such aid at the \$400,000 to \$500,000 level, it received only \$100,000 in extraordinary aid in 2002. The Township was able to obtain that aid only after the Mayor and Township Manager went to Trenton, met with state officials and explained the severity of the municipality’s fiscal problems. (T-11, ¶6).
- Interest and Investment Income: Due to declining interest rates, the income received from investments and bank accounts has dropped from about \$600,000 in 1998 to approximately \$250,000 in 2002. (T-11, ¶8).
- Reduced Revenue from Tax Appeals: The Township lost \$214,555 from reduced municipal tax assessments in 2002. (T-11, ¶11).
- Solid Waste Disposal Costs: Due to a court-mandate requiring municipalities to pickup waste at condominiums and apartments, these costs are

expected to increase by \$100,000 in 2003. (T-11, ¶9).

The Township asserts that all of the problems it lists above are outside of its control. The Township indicates it has taken measures to meet its financial challenges and responsibilities:

Local taxpayers have shouldered much of the load as the municipal tax rate has increased by almost 36% since 1998. (T-11, ¶¶3, 4). The Township has used its surplus funds to cover some of its current expenses. As a result, the surplus account has dropped from \$1.6 million in 1998 to approximately \$500,000 to \$600,000 in 2002. (T-11, ¶10). In order to control expenses, the Township has decided not to fill several vacant positions and has converted some full-time positions with part-time employees. (T-11, ¶¶12-17).

Addressing N.J.S.A. 34:13A-16g (7), the cost of living, the Township presented data with respect to the Consumer Price Index ("CPI") and the CPI-U which measures income for all urban consumers. The Township makes the following observations:

The evidence demonstrates that both nationwide, and within the region, increases in the CPI have been modest, especially in comparison to the increases provided to members of the PBA. This trend was confirmed for July 2002 when the rate increase a modest 0.3%. (T-99, p. 2). A comparison of the CPI and past salary increases given to the PBA shows that the unit's wage levels have far outpaced the level of inflation. During the three year period of the prior contract (January 1999 through December 2001), the PBA received a total wage

increase of 15.2%. (T-3, Article IV, p.4). During that same period, the CPI increased only 7%. (T-99, p. 2). Consequently, the PBA has received pay raises which were more than twice the rate of the CPI. If the Township's final offer is implemented by the arbitrator, the PBA will receive an increase of 2.75% and still well outrun the current CPI rate of 2.2%. (T-99, p. 2).

Based upon the above, the Township maintains that there is no justification for awarding the PBA's wage proposals.

Addressing N.J.S.A. 34:13A-16g (8), the continuity and stability of employment, the Township notes the following:

The average seniority for a Verona police officer is 12.26 years. (T-4). Even though a member may retire after twenty (20) years of service, there are twelve (12) members of the unit (38%) with more than 20 years of service, and six (6) members (19%) with over twenty-five years of service. (T-4). More significantly, no Verona police officer has been laid off in over 20 years.

The Township contends that its health insurance proposal should be awarded. The Township is currently self insured through a plan administered by Health Network of New Jersey. The Township seeks to provide its employees with an equivalent level of health benefits to its employees through the New Jersey State Health Benefits Plan. The Township notes that its current plan's benefits consist of the following:

(i) in-network option which has a \$10.00 copay for physician office visits and preventive medical care service; and (ii) out-of-network option which has a deductible of \$100 per person and \$300 per family. After the deductible has been met, 80% of the first \$2,000 of medical expenses, as well as expenses which exceed the \$2,000 threshold up to the maximum, are covered under the plan. (T50:19-T51:3). (Exhibit B, Township of Verona, Group Health Plan).

According to the Township, self-insurance is “an ineffective, expensive way to provide medical benefits” for which the Township assumes the risk. [Township Brief, p. 24]. The Township’s insurance consultant recommends against self-insurance even though he will lose sales commissions if the Township changes to a commercial carrier. Unlike commercial carriers, the Township currently spreads its risk over a small number of employees (approximately 120 employees and retirees) and is “on the hook” for the first \$35,000 of care for every covered individual each year.”

The Township claims that its self-insurance program had a per capita cost of \$13,000 per year for 2003. Assuming the Township switches to a commercial carrier it will still be responsible for those claims incurred prior to the cancellation date but paid afterwards. The Township estimates this cost to be between \$120,000 and \$160,000.

The Township indicates that Union witness Laura Fanuele’s comparison of the self-insurance program to the NJ Plus plan was skewed. The Township

points out that Fanuele compared its current plan to the out-of-network benefits offered by NJ Plus. According to the Township, Fanuele should have considered NJ Plus' in-network benefits in her analysis. The Township provides a comparison of its self-insurance program with the in-network benefits provided in the NJ Plus program:

<u>Service/Procedure</u>	<u>Current In Network</u>	<u>Current Out of Network</u>	<u>NJ Plus In Network</u>
Office visits	100% after \$10 copay	80% after deductible	100% after \$5 copay
Hospital inpatient	100%	100%	100%
Surgical	100%	100%	100%
Maximum out of pocket cost per person (catastrophic limit)	No maximum	\$500 (including the \$100 deductible)	\$400
Maximum lifetime benefit	\$2 million	\$2 million	Unlimited
Maternity benefits	100%	100%	100% (after \$5.00 copay for first office visit)
Organ transplant	100%	100%	100% with approval
Blood processing and administration	100%	100%	100% (after \$5.00 copay)
Pre-admission testing	100%	100% of the first \$150 then 80% after deductible	100%
Emergency and accidental injury	100%	100%	100% (after \$25 copay if reported within 48 hours.; copay waived if admitted)
Skilled nursing	100% (Note: every 2 days reduces the 120 days of max. hospital care by one day)	100% (Note: every 2 days reduces the 120 days of max. hospital care by one day)	100% for 120 days
Home health care	100%	100%	100%
Obstetrics/ gynecological exams	100% (after \$10 copay)	100% (after deductible)	100% (after \$5 copay)
X-rays and lab copay	100%	100% of first \$150,	100% after \$5

		then 80%	
Chemotherapy and radiation	100%	100%	100%
Well child care	100% after \$10 copay	80% after deductible	100% after \$5 copay
Physical/speech therapy	100% after \$10 copay	80% after deductible	100% after \$5 copay
Private duty nursing	100% after deductible	80% after deductible	100% with prior approval
Ambulance	100%	80% after deductible	90%
Durable medical equipment/oxygen	100% reimbursement	80% after deductible	90%
Vision and eye examinations	No benefits	No benefits	100% after \$5 copay
Prescriptions	Generic: \$0 Brand: \$2	Generic: \$0 Brand: \$2	90% reimbursement (up to \$345 maximum per person/per year)

The Township contends that its health benefits proposal provides an equivalent level of benefits as its self-insurance program. The Township argues:

In fact, in several important respects, the NJ Plus In Network benefit levels are superior to the level of benefits that are currently provided. For example, the current in-network plan requires a \$10.00 copay for each office visit. The NJ Plus In Network plan only requires a \$5.00 copay for an office visit. (T-132). The current plan does not provide benefits for vision care or eye examinations. (Exhibit B, p. 17). The NJ Plus In Network plan, in contrast, provides 100% coverage for vision care and eye examinations after the \$5.00 copay is paid. (T-132). The current plan has a lifetime benefit of \$4 million. The NJ Plus In Network plan has an unlimited benefit level. (T-132).

It is also significant that the N.J. State Health Benefits Program provides employees with a number of choices and options. Employees can choose a traditional indemnity plan or seven HMO and managed care arrangements. Employees can review the benefit packages and decide which plan would be most beneficial in light of their needs and family circumstances.

The Township indicates that the NJ Plus program has approximately 50,000 providers and 300 hospitals enrolled in its local network. The Township points out that the Union “did not offer any criticism of the size of the NJ Plus network or even assert the argument that patient choice would be affected if the Township’s final offer was adopted.”

With respect to prescription benefits, officers currently have no co-pay for generic drugs and a \$2.00 co-pay for brand name drugs. The Township proposes to administer and pay for prescriptions pursuant to each employee’s choice of health insurance program. The Township indicates that employees choosing the NJ Plus in-network option will be “reimbursed for 90% of the cost of prescriptions up to \$345 per year.” The Township supports its proposal with the fact that the Township has absorbed the increased cost of prescription drugs and notes that prices have doubled between 1990 and 2000.

With respect to retiree health benefits, the Township contends that the parties’ Agreement “permits some deviation between the coverage provided to retirees and current employees.” It refers to the following language in Article XXIII, “In general, the retired employee shall be permitted to remain in the Township’s current group medical insurance policies.” The Township maintains that notwithstanding the parties’ Agreement, retirees do not have standing to assert a claim over a change in benefits. The Township cites the following cases in support of its position: N.J.S.A. 34:13A-1 et seq., City of Asbury Park, D.U.P.

No. 2002-9, 28 NJPER ¶¶33057 (2002), Borough of Belmar, P.E.R.C. No. 89-27, 14 NJPER ¶¶19262 (1988); Borough of Fort Lee PBA Local 245 (Maggio), D.U.P. No. 97-27, 23 NJPER ¶¶28043 (1996).

The Township contends that its academy rate proposal should be awarded. According to the Township, the \$25,000 wage rate applies only when its recruits are enrolled in the police academy. The Township points out that recruits are not certified police officers and cannot provide law enforcement services to the community. For these reasons, recruits should not be paid as police officers until they are able to perform police duties. The Township maintains its proposal does not affect current officers and would not serve as a "ceiling" to moving up the salary scale or to compete for promotions.

For new hires, the Township contends that its two-tier vacation schedule should be awarded to make their vacation benefits more in line with those in other Essex County departments. According to the Township, officers hired after January 1, 2003 would receive vacation as follows:

2 nd and 3 rd years:	12 days
4 th year:	15 days
5 th through 10 th years:	16 days
11 th through 15 th years:	18 days
16 th through 20 th years:	20 days
Commencement of 21 st year:	23 days

The Township seeks rejection of all of the PBA's proposals. The Township indicates the PBA failed to present evidence to support its proposals for holiday fold-in, longevity, hours of work and overtime, sick leave, entirety of agreement and preservation of right, extra duty work, and priority of overtime. With respect to holiday fold-in, the Township contends the PBA's proposal would increase base salary for pension and payroll purposes. With respect to the other proposals, the Township contends that the PBA failed to prove that the current benefits are unreasonable.

For all of the above reasons, the Township maintains that its proposal is reasonable in light of the statutory factors and should be awarded in its entirety.

DISCUSSION

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

I first address the non-salary issues in dispute, applying the well accepted principle that a party seeking change in existing terms and conditions of employment bears the burden of establishing the need for such modification.

The PBA proposes to delete paragraph 9 (c) of Article XVII, Sick Leave. Paragraph 9 does not allow for sick leave with pay under three specific conditions. One condition is set forth in paragraph 9 (c). Paragraph 9 (c) does not allow for sick leave with pay when the Director of Public Safety, or his designee, is unable to contact the employee within a period of twenty-four (24) hours. The PBA expresses the concern that there may be legitimate circumstances when an employee may not be able to be contacted through no particular fault of his or her own. It is not unreasonable that a police officer should not forfeit sick leave with pay if unique circumstances exist beyond a police officer's control which precludes the police officer from being contacted by the Director even if the officer has met his or her obligation to be available for contact. This concern can be accommodated by adding limited modifying language to this section rather than deleting paragraph 9 (c). I award the following modification to paragraph 9 (c).

9. c). When the Director of Public Safety, or his designee, is unable to contact the employee within a period of twenty-four (24) hours except when circumstances exist which are beyond the employee's control which prevent the Director from making contact with the employee. [modification underlined]

The PBA proposes to delete second sentence in paragraph 1 and all of paragraph 2 in Article XLII, Entirety of Agreement and also to add new language to the contract referenced as Preservation of Rights. These proposals are related. Article XLII, Sections 1 and 2 are commonly referred to as "zipper" clauses and the proposed new language is commonly referred to as a past practice or maintenance of benefits provision. The existence or absence of the language which the PBA proposes to delete or to add could theoretically effect some future interpretation of the Agreement through the grievance procedure but it has not been shown that the existence or absence of language has in any way rendered any grievance non-arbitrable, waived any statutory rights to negotiate over a lawful subject or has led to unnecessary litigation. Further, the absence of the language proposed by the PBA has not been shown to have resulted in the removal of any longstanding benefit or practice. For these reasons, the PBA's proposals are not awarded.

The PBA proposes language entitled Priority for Overtime which covers the system for the allocation for overtime. This language would substitute for the current language at Article VIII entitled Allocation of Overtime. The existing provision requires the director to provide for a "fair and equal system for overtime allocation." There are references in the existing overtime provision concerning operational requirements, operational necessity and also that the fair and equal system for overtime allocation be provided for "insofar as possible." The record does not reflect that the existing system has not been fair and equal or that the

director has abused whatever discretion is provided for in this article in an attempt to undermine the basic principles which are set forth in the existing language. I do not award this proposal.

The PBA proposes to add a provision concerning Extra Duty Work pay and procedures. Testimony on this issue was received from Patrolman Robert Parsons. Parsons serves as President of the PBA, has been employed for six years and has worked various shifts. According to Patrolman Parsons, the proposal of the PBA represents a codification of the current system in place and operating in the Verona police department. The proposal concerns rates of pay for extra duty work hours which occur between 7 a.m. and 7 p.m. and extra duty work hours which occur between 7 p.m. and 7 a.m. as well as Township administrative costs. Patrolman Parsons also testified that extra duty jobs are clearly posted on a departmental bulletin board but there are no specific procedures for the allocation of the jobs which are posted and filled. The PBA's proposal does not extend to the allocation of the extra duty assignments. The testimony of Patrolman Parsons is unrebutted and given the fact that the PBA's proposal represents a codification of the existing extra duty system, I award the PBA's proposal with one minor modification to reduce the existing system to writing and incorporate it into the Agreement. That modification concerns paragraph (3) which limits the Township to adding up to \$3.00 per hour for administrative costs. The Township has the right to assess costs which are related to extra duty administration. I modify paragraph (3) to read:

3. The Township has the right to add administrative costs attached to extra duty work administration in the amount of \$3.00 per hour or a rate commensurate with its costs of extra duty administration. Any modification of the \$3.00 per hour rate shall require ninety (90) days notice to the PBA prior to implementation.

The provision shall read as follows:

Extra Duty Work

1. All extra duty work between the hours of 7:00 a.m. and 7:00 p.m. would be paid at the \$35.00 per hour rate.
2. All extra duty work between 7:00 p.m. and 7:00 a.m. would be paid at the \$50.00 per hour rate.
3. The Township has the right to add administrative costs attached to extra duty work administration in the amount of \$3.00 per hour or a rate commensurate with its costs of extra duty administration. Any modification of the \$3.00 per hour rate shall require ninety (90) days notice to the PBA prior to implementation.
4. All payments shall be made through the Township payroll system.

The Township has proposed to establish a new vacation schedule for newly hired police officers. The schedule proposed compared to the existing vacation schedule is as follows:

<u>Years</u>	<u>Proposed</u>	<u>Existing</u>
2	12	13
3	12	14

4	12	16
5-10	16	18
11-15	18	20
16-20	20	21
Commencement of 21 st Year	23	25

While somewhat varied terms and conditions of employment for new hires is not uncommon in law enforcement agreements, this proposal for varied vacation terms is not accompanied by sufficient evidence to include the proposal in this award. The existing vacation schedule does not provide for an excessive amount of paid vacation time which might justify a lesser amount for new hires. Some Essex County municipalities provide for less paid vacation days (see Glen Ridge, Caldwell, Fairfield, Orange at 23 days), many provide for more (see Belleville at 29 days, Millburn at 27 days, Irvington at 26 days, South Orange at 32 days) and many municipalities provide the same number, a maximum of 25 days (see West Caldwell, Nutley, Maplewood, Roseland and Montclair). There is insufficient justification for the Township's proposal to provide a separate schedule for new hires. This proposal is denied.

The PBA proposes that the holiday benefit be compensated in equal installments and paid along with regular payroll and as such used for all computation purposes. Currently employees receive fourteen (14) paid holidays per year. In accordance with a formula set forth in Article XII, Section 1, holiday

pay is paid on a monthly basis in a separate check. The Township opposes the PBA's proposal.

After due consideration of the respective positions of the PBA and the Township, I conclude that the PBA's proposal to fold holiday pay into base pay and be used for all computation purposes has merit. The payment of holidays is not a new benefit. Holiday pay is being paid and the fold in does not cause the duplicate payment of holiday pay. The PBA does not propose additional paid holidays. This benefit enhances base salary for pension purposes at a reasonable cost. There are costs directly connected to the inclusion of holiday pay into base pay. Because the police officer's base pay will be increased for pension purposes, the Borough must assume an increase in its portion of pension contributions on the amount of the holiday pay. The Borough has been relieved of these costs for the last several years due to legislation shifting payment of the Township's pension contributions to the State. Recent legislation (P.L. 2003, c. 108) compels a five year phase for the Township to once again assume pension contributions commencing in budget year 2004 at a formula of 20% of the actuarially calculated amount. Thus, the Township's cost of pension contributions while not immediately calculable will be modest. The fold in will not increase the hourly rate of pay when calculating overtime rates because holiday pay is already included in the calculation of the overtime rate pursuant to Article XII, Section 2. Existing longevity benefits will be enhanced in varying amounts for those officers who are eligible for longevity payments. When the benefits of

this proposal are weighed against its costs, this balance falls heavily in favor of awarding the PBA proposal. I have also considered the merits of including this proposal in the context of the terms of the overall award in making a reasonable determination of all issues in dispute. The PBA's proposal is awarded effective January 1, 2004.

The PBA proposes that the current top step of the longevity benefit be changed from an effective date after 25 years of service to 24 years of service. The PBA also proposes a deletion of the grandfathered provision of this article. Article X provides for longevity payments in accordance with the following schedule:

Upon completion of:

<i>Five (5) years of service</i>	<i>2%</i>
<i>Ten (10) years of service</i>	<i>4%</i>
<i>Fifteen (15) years of service</i>	<i>6%</i>
<i>Twenty (20) years of service</i>	<i>8%</i>
<i>Twenty-five (25) years of service</i>	<i>10%</i>

Article X, Section 3 states that employees hired after January 1, 1997 are not eligible for longevity payments. The PBA seeks to eliminate this portion of the Agreement. The Township opposes both aspects of the PBA's proposal.

The change in the effective date of eligibility for the highest level of longevity from after 25 years of service to 24 years of service is a reasonable proposal. The cost impact of the proposal to the Township is minimal because it only affects employees who have completed 24 years of service and the additional 2% difference in cost exists only for a one year period because the plateau levels (percentages received) do not change. On the other hand, the receipt of this plateau during the twenty-fifth year provides an incentive for a police officer to retire one year earlier with the potential that the Township could receive substantial cost savings by hiring a new employee and reducing the payroll cost by the difference between the cost of a police officer at maximum step and longevity with a new police officer at the hiring step with no longevity. For these reasons, I award this aspect of the PBA's proposal effective January 1, 2002. I deny the portion of the PBA's proposal which would otherwise alter the status quo on longevity by rescinding Article X, Section 3 of the Agreement.

The PBA proposes to delete paragraph 8 at the bottom of page 6 of Article VI (Hours of Work and Overtime) of the contract. That paragraph states:

8. Overtime shall be paid for work as prescribed in this article except under the following special circumstances:

- Signing of Complaints
- Uniform Fittings
- Medical Examinations
- Unacceptable Reports
- Department Hearings (if the employee is found guilty)

According to the PBA, this provision "appears to be a clear Fair Labor Standards Act violation." This provision, while uncommon, is language currently contained in the collective negotiations agreement and the record is undeveloped on the manner in which this language has been implemented or impacts on a police officer with respect to time and compensation. Further, it has not been established that the implementation of this provision is inconsistent with the FLSA given the number of hours worked by police officers which fall below the hours of work for which mandatory overtime must be paid pursuant to the FLSA statute. For these reasons, the PBA's proposal is denied.

The Township proposes to revise Articles XXII and XXIII, Health Insurance to reflect that, at its option, the employer will: (i) provide health insurance benefits pursuant to the New Jersey State Health Benefits Program; or (ii) provide health insurance benefits which are substantially equivalent to the benefits afforded by the New Jersey State Health Benefits Program. The Township also proposes to modify the existing prescription program to provide that insurance and reimbursement for prescriptions will be administered and paid in accordance with the terms of the health insurance program selected by the employee.

Testimony concerning the Township's proposal was given by Marc Ferrara. Ferrara is Vice President of First Union Insurance Services in the Employee Benefits Division. First Union is the insurance broker of the Township

for both health care and dental care. Ferrara personally has handled the Township's account for three years and his company has been engaged by the Township for approximately 20 years. Ferrara testified that the current per capita cost of the Township's health insurance plan, exclusive of dental, is over \$13,000 for 2003 based upon 120 active and retired employees. The program is a self-insured one administered by HNA, a third party administrator. The plan is a PPO product with in and out-of-network providers. Ferrara testified that the Township is responsible for the first \$35,000 of any individual's claim in a given calendar year including employees and dependents of employees. According to Ferrara, the Township must purchase reinsurance coverage for claims which exceed \$35,000 per individual per year. Ferrara testified that the Township has an unusually small pool of subscribers (employees and retirees) which creates high and volatile costs for reinsurance premiums because its risks are larger compared to employers who have a larger pool of employees or subscribers where the risk can be spread.

Ferrara testified that the NJSHBP provides comprehensive health benefits through 8 distinct programs from which an employee could select. Ferrara testified on direct and cross-examination to various comparisons between the current plan and the various traditional, POS and HMO plans contained in the New Jersey State Health Benefits Plan ["NJSHBP"]. Ferrara acknowledged that the potential exists for employees to pay higher deductibles and costs for claims

under some of the NJSHBP benefit plans especially when compared with the in-network portion of the Township's current health insurance plan.

Laura Fanuele an employee benefits consultant employed by LBT Consulting Group, testified for the PBA in opposition to the Township's proposal. Fanuele testified on direct and cross-examination to various comparisons between the current plan and the traditional and POS programs contained in the NJSHBP. She did not offer testimony on the various HMO plans in the NJSHBP because she felt that comparisons to the traditional and POS programs were more appropriate inasmuch as they were the best options contained in the NJSHBP in her opinion. With respect to these plans, Fanuele testified to comparisons between the in-network and out-of-network portions of the POS and the deductible under the traditional plan. In general, Fanuele's testimony is that employees would have less out-of-pocket costs under the current program than under either the traditional and in-network POS programs in the NJSHBP and that the out-of-network portion of the POS involves greater out-of-pocket costs than the in-network portion. The majority of Fanuele's comparisons involved the out-of-network portion of the POS. On cross-examination Fanuele acknowledged that if some of her comparisons were made to the in-network portion of the POS, several of the comparisons would improve and go up to 100% in some circumstances.

Ferrara and Fanuele also testified to the prescription portion of the Township's proposal. Ferrara testified that prescription insurance could be provided by either a third party through a prescription card program or, if no separate program was established under the NJSHBP, the employee would be subject to the prescription portion of the NJSHBP depending upon which of its programs was selected by the individual employee. Each program contains its own prescription feature. Ferrara could not estimate the cost of a new prescription program because the cost would vary depending upon the type of program which was implemented. Fanuele testified to the manner in which the prescription plan would change when compared to the traditional and POS programs in the State Health Benefits Plan assuming that there was an absence of a free-standing prescription drug plan. Fanuele testified that the existing plan provides for no cost for generic prescriptions and \$2 for name brand prescriptions and that under the POS out-of-network prescriptions would be subject to 70% reimbursement after deductible and the in-network reimbursement rate would be 90%. Under the traditional State Health Benefits Program prescriptions are reimbursed at 80% after deductible if there is no free-standing prescription drug program.

The Township's proposal on health insurance must be evaluated not only on its independent merits but also in the context of the overall economic package of the terms of the Award.

The small pool of subscribers (employees and retirees) clearly makes the existing program subject to greater risks and volatility. The purchase of "reinsurance" does protect the Township against substantial and extraordinary claims in a given year but it also subjects the Township to significantly higher costs both immediate and long-term, in order to bear the risks associated with the small pool of subscribers who are eligible for claims under the plan's benefits. This observation was shared in a recent interest arbitration award¹ which noted that a self-insured plan in a small employee setting "lacks the number of subscribers necessary to spread risk." This observation was a major factor in awarding the same change in that jurisdiction "to the State of New Jersey Plan as many other communities in the area have." On this issue the award went on to note that:

This will not be cheap but has the advantage of superior administration and the spread of risks for individual claims over the subscription of hundreds of thousands of public employees. Additionally, it has the inherent advantage of providing a range of choices for each individual employee so that the choice can be a reflection of each employee's perceived best interests.

The Township's proposal on this issue is fortified by the acceptance of the State plan in many law enforcement bargaining units in the Township of Verona's geographical area including Essex Fells, North Caldwell, Little Falls, Caldwell and Fairfield, as well as a Memorandum of Agreement between the Township and OPEIU, Local 53, AFL-CIO which contains an agreement permitting the

¹ See Borough of Bloomingdale and Bloomingdale PBA Local 354, PERC Docket No. IA-2002-

Township to effectuate a change to the NJSHBP subject to an agreement or award to do so in the PBA unit. Township-wide participation is a necessary prerequisite to entry in the State plan and a relevant consideration is that financial savings would be enhanced by extending the State plan to all employees of that public employer. I have also examined the extent of benefits provided in the NJSHBP which are comprehensive with respect to hospitalization, doctor's visits, surgery, various medical services and supplies. While medical coverage may not be identical in each and every respect compared to the current plan, the record testimony reflects that the major distinction in terms of these plans is in the co-pays and deductibles which may cause out-of-pocket costs to increase depending on the nature of a given claim. These costs have ceilings and limitations which are not unreasonable in the context of a comprehensive health insurance plan. This latter point with respect to potential costs must also be weighed against the significant net economic changes in terms and conditions of employment provided for in this Award.

Based upon all of the above, I conclude that the Township shall have the authority to enroll all employees in the New Jersey State Health Benefits Plan subject to the following requirements. A standing alone prescription drug benefit must accompany enrollment simultaneously at a level not to exceed a co-payment of \$5.00 for generic drugs and \$10.00 for name brand drugs. If mail order is available under the plan, a mail order option shall be provided at a co-pay not to exceed \$2.50. A standing alone plan is warranted given the existing

level of benefit now provided which could otherwise be substantially altered by limiting employees to the prescription benefits provided solely within the plan options of the NJSHBP. In the event there is a change of insurance carriers for health benefits for a carrier other than the NJSHBP, any such change may be accomplished only if equal or better coverage to the NJSHBP is obtained at no additional costs to the employee. The "substantially equivalent" standard proposed by the Township might not provide for the benefit level intended to be enjoyed when and if any change is made. Enrollment in the New Jersey State Health Benefits Plan or by any other carrier shall provide such coverage at no premium cost or premium sharing by the employee regardless of the program selected by the employee or scope of coverage required by the employee (individual, husband and wife, family). The Borough shall continue to provide dental insurance at the same level of benefits currently provided.

An additional area of contention raised in this proceeding deals with the potential impact of any change in the contractual health plan on retirees. Article XXIII provides for medical coverage upon retirement. Article XXIII, Section F provides among other things, that the Township provide retiring officers with full medical insurance coverage to include major medical or their equivalent, at no cost to the employee, the employee's spouse and any dependent children and that the medical coverage shall be the same coverage the officer had at the time of his retirement. The Township does not propose to diminish medical insurance coverage for employees who retire in the future. The Agreement permits

employees to remain in the Township's group medical insurance policies enjoyed at time of retirement. I specifically do not address any potential action by the Township concerning the impact of a contractual medical insurance plan on those who have retired in the past under the self-insurance plan. The issue of coverage for those employees who have retired is beyond my jurisdiction and authority. My determination on the health insurance issue is limited to bargaining unit employees who remain actively employed and to those who will retire in the future under the eligibility requirements set forth in Article XXIII.

I also conclude that any such change may not be implemented until at least six months after the issuance of this award. This time period will allow for thorough review by each employee of the various programs from which each may select, will allow the Township a reasonable period of time to administer any changeover as well as to review the impact, if any, of any change on retirees. The Township, as it has acknowledged, will be required to maintain a reserve for claims which are incurred prior to the changeover but paid out thereafter which it estimates exceeding \$100,000.

I next address the remaining issue in dispute, the amount of general salary increases. The PBA has proposed 5% per year for contract years 2002, 2003 and 2004 while the Township has proposed an increase of 2.75% per year for contract years 2002 and 2003. I conclude that the contract duration shall be for three (3) years. The extended nature of the negotiations and arbitration

process requires a duration longer than what the Township has proposed as well as the ability of the parties to implement all of the terms of the Award.

The positions of the Township and the PBA on the issue of salary increases and the evidence in support of those positions have already been summarized and need not be set forth once again. The record evidence compels an award higher than proposed by the Township but lower than that proposed by the PBA.

In evaluating the merits of the respective wage proposals, I conclude that an application of the statutory criteria compels an award of 4.0% effective January 1, 2002, an additional 4.125% effective January 1, 2003, and an additional 4.25% effective January 1, 2004. Although the Township and the PBA disagree on what the precise set of comparables should be, there can be little dispute that communities such as Essex Fells, North Caldwell, Caldwell, West Caldwell, Roseland and Fairfield are geographically nearby and have comparable characteristics to Verona. The salary increases in these jurisdictions, on average, closely parallel that which I have awarded herein and must be given weight when applying the factor of comparability in law enforcement. The increases are above those provided to non-law enforcement personnel in the Township of Verona but in the absence of any history of an internal pattern requirement, I decline to give equal weight to those adjustments than that accorded to adjustments in law enforcement in nearby jurisdictions. I

have also considered the potential impact of any additional out-of-pocket costs for health insurance claims which might arise out of any change in carrier which may be made by awarding modestly higher increases in contract years 2003 and 2004 as well as the placement of holiday pay into base pay for all calculation purposes. This will provide for a substantial increase in base pay for pension purposes as well as additional compensation in longevity benefits for those police officers who qualify for longevity payments. I have also awarded a rate for those enrolled in the police academy as proposed by the Township but at a greater amount than proposed. An academy rate is commonplace in law enforcement labor agreements. This rate, effective after the date of this Award, shall be set at \$27,500 for police recruits while they are enrolled in the Police Academy.

Based upon a total payroll cost of \$2,160,398, the new money cost of the Award will be \$86,412 in 2002, an addition \$92,600 in 2003, and an additional \$95,900 in 2004. Assuming no new hires or retirements, the new base salaries will total \$2,438,898, an increase of \$278,500. When the salary increases are applied to the salary schedules, the new salary schedules will read:

Years of Employment	01/01/02 4.0%	01/01/03 4.125%	01/01/04 4.25%
Academy Rate		\$27,500	\$27,500
1 st Year	\$41,552	\$43,266	\$45,104
2 nd Year	\$46,406	\$48,321	\$50,374
3 rd Year	\$50,559	\$52,645	\$54,882
4 th Year	\$55,414	\$57,700	\$60,152

5 th Year	\$60,266	\$62,752	\$65,19
6 th Year	\$65,819	\$68,534	\$71,447

Sergeants	\$77,391	\$80,583	\$84,008
Lieutenants	\$85,130	\$88,641	\$92,408
Captains	\$95,686	\$99,633	\$103,867

The terms of the Award will not compel the Township to exceed its statutory spending limitations nor cause adverse financial impact on the governing body nor its residents and taxpayers.

The Township has submitted evidence reflecting some financial concerns. These include reductions in State extraordinary aid, a decline in investment income as a result of lower interest rates, a \$214,555 loss in revenue from tax appeals in 2002 and anticipated increases in solid waste disposal costs. The Township has also in recent years seen a drop in its surplus account from 1998 to 2002. Notwithstanding these concerns, the Township remains in good financial health. It continues to generate surpluses and budget revenues consistently exceed the amounts anticipated in the annual budgets. Its tax rate and equalized tax rate are in the lower half of all municipalities in Essex County. The Township consistently collects more than 98% of taxes. The Township maintains a Moody's credit rating of (AAA). The Township has also benefited from the retirements of seven law enforcement personnel since 1998 which has yielded savings in its base payroll costs. In sum, the total net economic changes

awarded can be funded without adverse financial impact on the governing body or the community.

The remaining factors are also relevant and have been considered in the fashioning of all terms of this Award. The continuity and stability of employment will be maintained by the adjustments provided for in the Award and none of these terms will have any negative impact on the continuity and stability of employment. The data with respect to the cost of living have weighed against awarding the PBA's salary proposal but do not dictate terms of an award less than that provided for. The interest and welfare of the public will be served by the overall terms of this Award which will maintain comparable wages and benefits to bargaining unit personnel without burdening the Township with excessive costs. The interest and welfare of the public will also be served by allowing the Township to change its health insurance program for all of its employees to control the financial risks it currently bears with its self-insurance plan.

Accordingly, and based upon all of the above, I respectfully enter the following award.

AWARD

1. All proposals by the Township and the PBA not awarded herein are denied and dismissed. All provisions of the existing agreement shall be carried forward except for those modified by the terms of this Award.
2. The increases in salary shall be retroactive to their effective date and received by all eligible unit employees, including those who have left employment in good standing between the effective date of the salary adjustments and their last date of employment.
3. **Duration** – There shall be a three year Agreement effective January 1, 2002 through December 31, 2004.

4. **Article XVII, Sick Leave**

I award the following modification to paragraph 9 (c) effective January 1, 2004.

9. c). When the Director of Public Safety, or his designee, is unable to contact the employee within a period of twenty-four (24) hours except when circumstances exist which are beyond the employee's control which prevent the Director from making contact with the employee. [modification underlined]

5. **Extra Duty Work** – the following language shall be added to the Agreement under a separate article.

1. All extra duty work between the hours of 7:00 a.m. and 7:00 p.m. would be paid at the \$35.00 per hour rate.
2. All extra duty work between 7:00 p.m. and 7:00 a.m. would be paid at the \$50.00 per hour rate.

3. The Township has the right to add administrative costs attached to extra duty work administration in the amount of \$3.00 per hour or a rate commensurate with its costs of extra duty administration. Any modification of the \$3.00 per hour rate shall require ninety (90) days notice to the PBA prior to implementation.
4. All payments shall be made through the Township payroll system.

6. **Holiday Fold-In**

Effective January 1, 2004, holiday pay be compensated in equal installments and paid along with regular payroll and as such used for all computation purposes.

7. **Longevity**

The current top step of the longevity benefit shall be changed from an effective date after 25 years of service to 24 years of service. This modification shall apply to officers who advance to the after 24 years of service plateau after January 1, 2002.

8. **Health Insurance**

Effective no earlier than June 15, 2004, the Township shall have the authority to enroll all employees in the New Jersey State Health Benefits Plan or a plan equal to or better than the terms of that plan. A standing alone prescription drug benefit must accompany enrollment simultaneously at a level not to exceed a co-payment of \$5.00 for generic drugs and \$10.00 for name brand drugs. If mail order is available under the plan, a mail order option shall be provided at a co-pay not to exceed \$2.50. In the event there is a change of insurance carriers for health benefits in the future, any

such change can be accomplished only if equal or better coverage is obtained at no additional costs to the employee. Enrollment in any new carrier shall provide coverage at no premium cost or premium sharing by the employee regardless of the program selected by the employee or scope of coverage required by the employee (individual, husband and wife, family). The Borough shall continue to provide dental insurance at the same level of benefits currently provided.

9. **Salaries**

The existing salary schedule shall be adjusted at each step, retroactive to the effective dates stated by the following percentages:


- January 1, 2002 4.0%
- January 1, 2003 4.125%
- January 1, 2004 4.25%

A new salary schedule shall reflect an additional step for recruits who are enrolled in the police academy.

Years of Employment	01/01/02 4.0%	01/01/03 4.125%	01/01/04 4.25%
Academy Rate (while enrolled in the Academy)		\$27,500	\$27,500
1st Year	\$41,552	\$43,266	\$45,104
2nd Year	\$46,406	\$48,321	\$50,374
3rd Year	\$50,559	\$52,645	\$54,882
4th Year	\$55,414	\$57,700	\$60,152
5th Year	\$60,266	\$62,752	\$65,419
6th Year	\$65,819	\$68,534	\$71,447

Sergeants	\$77,391	\$80,583	\$84,008
Lieutenants	\$85,130	\$88,641	\$92,408
Captains	\$95,686	\$99,633	\$103,867

Dated: December 13, 2003
Sea Girt, New Jersey



James W. Mastriani

State of New Jersey }
County of Monmouth

}ss:

On this 13th day of December, 2003, before me personally came and appeared James W. Mastriani to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed same.



GRETCHEN L. BOONE
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires 8/13/2008