

PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Interest Arbitration *

Between *

City of Trenton *

-and- *

Trenton Superior Officers Association *

Docket No. IA-2006-071
Jeffrey B. Tener
Interest Arbitrator

OPINION AND AWARD

Background and Procedural History

This case has been marked by a series of highly unusual circumstances. As the case now presents itself to me, the differences between the parties are relatively narrow and the range of options realistically available to me is circumscribed.

I was appointed as the interest arbitrator on May 24, 2006. Mediation sessions were held on September 24, 2006 and June 1, 2007. Hearings were held on December 7, 2007, April 10 and September 5, 2008, and April 7, 2009. An additional mediation session was held on February 27, 2009. The causes for this extended period of time, in addition to the normal scheduling challenges associated with busy counsel and an arbitrator, included direction by the arbitrator to the parties to return to the table to engage in further negotiations, delays associated with illness, a cancelled hearing due to a snow storm, the unavailability of the former City Business Administrator on a scheduled hearing date, legal issues regarding the status of the former City Police Director, the issuance of an interest arbitration award involving the rank and file police unit, a voluntary settlement between the City of Trenton and the Trenton Fire Officers Association ("TFOA"), and private meetings between the parties not involving the arbitrator.

The City of Trenton ("City") was represented by Stephen E. Trimboli, Esq.; the Trenton Superior Officers Association ("TSOA") was represented by G. Robert Wills, Esq.

At this time, the matter has been fully litigated. The City introduced in excess of 180 exhibits and the TSOA submitted substantial documentary evidence as well. There was testimony from former Business Administrator Jane Feigenbaum as well as from the current Acting Business Administrator Dennis Gonzalez and they submitted certifications. The TSOA was assisted by its financial expert, Vincent Foti, who also prepared a financial report. The City has submitted a comprehensive brief. In its post-hearing submission, the TSOA elected to focus on the items which it believes, as a practical matter, to be in dispute at the present time. It relied upon the submission of Trenton PBA Local 11 ("PBA") and the documentary evidence to the extent necessary to fully develop the record. These submissions from the parties were received by June 10, 2009, thereby marking the close of the hearing.

This case has been significantly affected by the award of Arbitrator J. J. Pierson involving the City and the PBA. This award was issued on December 31, 2008. It has a number of critical elements which bear on the case now before me.

The term of that award was January 1, 2006 through December 31, 2010.

It provided for across-the-board wage increases of 3.75% each January 1 retroactive to January 1, 2006 except January 1, 2008 when the increase was 3.5%.

It provided for a medical insurance co-pay of \$19.00 per pay for single coverage and \$23.00 per pay for all others effective January 1, 2009. These amounts were increased to \$21.00 per pay for single coverage and \$25.00 per pay for all others effective January 1, 2010. It provided for a three tier prescription co-pay system effective January 1, 2009 with generic drugs at \$10.00, preferred drugs at \$20.00, and brand drugs at \$35.00. Mail order drugs were \$3.00, \$10.00 and \$15.00, respectively, for these categories.

The award included a provision for full union release for the PBA President with that individual to be assigned to a Monday to Friday, eight hour daytime schedule.

Sick leave verification was required after three days' use of sick leave and the "three instances rule" was abolished.

A new hold harmless provision was added.

The so-called "meal period" grievance settlement was memorialized and incorporated into the agreement.

The negotiated unit work schedules were memorialized and incorporated into the agreement.

An overtime provision was added which provided that prior to mandating overtime, the City would offer overtime to qualified employees who had volunteered except in emergencies.

A vacation selection provision was added to the agreement.

Arbitrator Pierson denied a number of non-economic proposals of both the City and the PBA.

He also incorporated a number of stipulations of the parties:

- 1) The parties agreed that the City would provide the PBA with a complete draft contract for review within 90 days of ratification.
- 2) They agreed to add a new provision that the City would continue the current practice of providing the PBA with an office in Police Headquarters.
- 3) They agreed to add the following provision: "Officers on the 4 on/4 off schedule shall not be required to work the four calendar days before and the four calendar days following an approved vacation week."¹
- 4) They agreed to eliminate the tri-partite committee for resolving shift differential disputes and to allow such disputes to be processed through the regular grievance procedure.
- 5) They agreed to clarify language in Section 17.07 as to wages, hours and benefits to provide that nothing in the Agreement shall subject such fiscal matters to interest arbitration.
- 6) They agreed to eliminate the Sick Leave Committee.

¹ This language also is included in the vacation selection provision.

7) They agreed to replace "Chief" and "Public Safety Director" with "Police Director" throughout the Agreement.

8) Finally, they agreed to incorporate the settlement agreement dated May 23, 2008 regarding the TAC schedule.

All other provisions of the prior agreement were carried forward into the new agreement.

The City and the TFOA entered into a Memorandum of Agreement ("MOA") on February 5, 2009 which has been ratified by both parties. As set forth in the MOA, the term of that agreement was seven years from January 1, 2006 through December 31, 2012.

It provided for the following across-the-board salary increases:

January 1, 2006	3.5%
January 1, 2007	3.5%
January 1, 2008	3.5%
January 1, 2009	3.5%
January 1, 2010	3.0%
January 1, 2011	3.5%
January 1, 2012	3.5%

It called for an increase in longevity, effective January 1, 2010, of 1% from 12% to 13% for employees after 24 years of service and from 13% to 14% for employees after 29 years of service.

The MOA included the same medical insurance and prescription drug co-payments which were awarded by Arbitrator Pierson.

A sick leave bank was established for those employees who elected to participate in it by March 31, 2009.

It was after the Pierson Award on December 31, 2008 and the TFOA MOA on February 5, 2009 that I called on the parties to engage in a further effort to resolve this dispute. I indicated candidly at that time that, given the Pierson award and the TFOA MOA, it was likely

that any award I would issue would be one of three possibilities. First, I indicated that I could follow the award of Arbitrator Pierson. That award covered the rank and file employees in the Police Department and thus has a close historical and working relationship with the TSOA. Second, I identified as a possibility the terms of the TFOA MOA. That agreement, like the case before me, covers superior officers in a public safety department who are eligible for interest arbitration and that agreement could serve as the model. Third, and what I conveyed was the most likely possibility, I could craft a hybrid award incorporating elements of both the Pierson Award and the TFOA MOA. All of the possibilities, I indicated, would almost certainly include the medical and prescription drug insurance co-pay changes awarded by Arbitrator Pierson and accepted by the TFOA.

While the parties came close to a voluntary settlement on the basis of this “advice” from the arbitrator, no agreement was reached, either at the time or following further efforts during the last day of the hearing on April 7, 2009 or even after that session as the parties continued their efforts to reach an agreement and obviate the need to prepare briefs and await the issuance of an award by the arbitrator.

The TSOA, undoubtedly mindful of the realities and the arbitrator’s advice, modified its final offer in its brief, perhaps bowing to what seemed to be the inevitable.

This proceeding is governed by the Police and Fire Public Interest Arbitration Reform Act. P.L. 1995, c. 45, effective January 10, 2005, as amended by P.L. 2007, c. 62. The parties did not agree upon an alternative terminal procedure. Therefore, in accordance with N.J.S.A. 34:13A-16d, this is a conventional arbitration proceeding. The arbitrator is required by N.J.S.A. 34:13A-16d(2) 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 in subsection g. of this section.”²

² The statute as amended now lists nine criteria.

Statutory Criteria

The statute requires the arbitrator to:

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

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

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

(4) Stipulations of the parties.

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

(6) The financial impact on the governing unit, its residents and taxpayers. When considering this factor in a dispute in which the

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

(7) The cost of living.

(8) The continuity and stability of employment including seniority rights and 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.

(9) Statutory restrictions imposed on 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 section 10 of P.L. 2007,c.62 (C.40A:4-45.45). (N.J.S.A. 34:13A-16(g))

Final Offers

TSOA The TSOA submitted its initial final offer on the first day of hearing. (TSOA-1) It submitted a modified final offer at the September 5, 2008 hearing. (TSOA-1A) As set forth in its post-hearing submission, the TSOA further modified its final offer at that time. I have accepted that modification to the extent that it resulted in a narrowing of the dispute. No new issues were added. The TSOA also accepted the insurance provisions and other relevant portions of the Pierson Award as they apply to the TSOA, including the stipulations set forth in that award. At the present time, the TSOA is proposing the following items:

- 1) Term of agreement: January 1, 2006 through December 31, 2012.

2) Across-the-board salary increases, retroactive to January 1, 2006, as follows:

January 1, 2006	3.75%
January 1, 2007	3.75%
January 1, 2008	3.0%
January 1, 2009	3.75%
January 1, 2010	3.75%
January 1, 2011	3.5%
January 1, 2012	3.5%

- 3) Release time for the TSOA President of 1/5th or 20% reflective of the differential in membership between the TSOA and the PBA.*
- 4) An increase in the annual uniform allowance of \$300 from \$1,225 to \$1,525.*
- 5) Reduce the current eligibility requirement for receipt of what the TSOA calls the "death benefit," including unused vacation, compensatory time and sick time, from 25 years to 20 years for deceased officers who have served at least 20 years but have not retired.
- 6) Place an officer who is promoted to the rank of Sergeant with 20 or more years of service at the maximum salary for Sergeants so that the existing steps for Sergeant would not apply in such cases.*

The items listed above with an asterisk ("*") were included in the TSOA's offer of September 5, 2008 (TSOA-1A) but modified in its post-hearing submission. The terminal leave benefit proposal was unchanged.

Additionally, the TSOA seeks the inclusion in the agreement of the other items awarded by Arbitrator Pierson which are relevant to the TSOA. Thus, it agrees that the following items should be included:

- 1) The medical and prescription insurance co-payments included in the Award.

- 2) A requirement of sick leave verification after three days' use of sick leave and the removal of the "three instances rule."
- 3) The incorporation of an indemnity clause.
- 4) The incorporation of the "meal period" grievance into the agreement.
- 5) The incorporation of the negotiated unit schedules into the agreement.
- 6) A provision that prior to mandating overtime, the City will offer overtime to qualified employees who volunteer except in emergencies.
- 7) A provision regarding vacation selection.

Furthermore, it asks that items which the City and the PBA stipulated, as reflected in Arbitrator Pierson's Award, be included:

- 1) The City will provide the TSOA with a complete draft contract book for review within 90 days of ratification.
- 2) Add a provision which states: "Officers on the 4 on/4 off schedule shall not be required to work the four calendar days before and the four calendar days following an approved vacation week.
- 3) Eliminate the tri-partite committee for resolving shift differential disputes; allow such disputes to be processed through the regular grievance procedure.
- 4) Incorporate language of Section 17.07 in the PBA agreement as to wages, hours and benefits to provide that nothing in the Agreement shall subject such fiscal matters to interest arbitration.
- 5) Eliminate the Sick Leave Committee
- 6) Replace "Chief" and "Public Safety Director" with "Police Director."
- 7) Incorporate the Settlement Agreement dated May 23, 2008 regarding the TAC schedule.

Finally, the TSOA asks that all provisions of the existing collective bargaining agreement be carried forward except as modified by the Award.

City The City's final offer on economic issues is as follows:

- 1) Term of agreement: January 1, 2006 through December 31, 2010.
- 2) Across-the-board salaries of 3% each year effective April 1 of each year.
- 3) Changes in the co-pays for medical and prescription drug insurance as awarded by Arbitrator Pierson and accepted by the TFOA.
- 4) Article V, Pay for Extended Illness: eliminate Section 5.01 to 5.04, which provides for payment for a maximum of one year to employees for illness, injury or recuperation and replace this with 15 sick days per year. Additionally, it seeks to change the benefit for employees who are on Workers' Compensation so that they receive only the Workers' Compensation benefit of 70% of pay.
- 5) Eliminate "red circling" for officers who are demoted or reduced in rank or title for any reason so that they will be placed on the salary step for the demotional job title that corresponds to the step the employee had been on in his/her previous title.
- 6) Add a provision to the effect that the failure to enforce a provision of the agreement shall not be deemed a waiver of that section and that there can be no deviation from the agreement without the written permission of the Business Administrator.

Additionally, the City submitted a number of non-economic items:

- 1) Eliminate provisions pertaining to the Sick Leave and Training Committees.
- 2) Eliminate all references in the Agreement to Deputy Chiefs.
- 3) Require sick leave verification after three days' use of sick leave and eliminate the "three instances rule."
- 4) Add an indemnity provision.
- 5) Replace references to "Chief" or "Director of Public Safety" with "Police Director."
- 6) Eliminate the tri-partite committee for resolving shift differential disputes and allow such disputes to be processed through the regular grievance procedure.

Disputed Issues

Based on the TSOA's modification of some items, several items are no longer in dispute. Of major significance, the TSOA has accepted the position of the City regarding medical and prescription drug insurance co-pays. It also agreed to all of the City's non-economic proposals. Thus, it has agreed to the elimination of the sick leave and training committees. It has agreed to the elimination of references to Deputy Chiefs. It has agreed that sick leave verification will be required after three days' use and that the "three instances rule" will be eliminated. It agreed to the addition of an indemnity provision. It agreed to replace references to "Chief" and "Director of Public Safety" with "Police Director." It agreed to eliminate the tri-partite shift differential committee.

Based on the modified position of the TSOA, the following items are before me for a decision:

- 1) Term of agreement.
- 2) Salary increase.
- 3) The replacement of up to one year at regular pay for disability due to illness, injury or recuperation with 15 days of sick leave per year and the elimination of salary in addition to Workers' Compensation.
- 4) The elimination of "red circling" for officers demoted or reduced in rank.
- 5) A provision indicating that the failure to enforce a provision of the agreement shall not result in a waiver and that there can be no deviation from the agreement without the written permission of the Business Administrator.
- 6) Release time for the TSOA President of 20% with a Monday to Friday day schedule.
- 7) An increase in the uniform allowance of \$300.00 per year.
- 8) Change the death benefit so that an officer who dies and has not retired and who has 20 years of service in the Department receives the terminal leave benefit.

- 9) Officers who are promoted to Sergeant with more than 20 years of service will move to the top step of the Sergeant salary schedule so that the steps would not apply.
- 10) The incorporation of the "meal period" grievance into the contract.
- 11) The incorporation of unit schedules into the contract.
- 12) A provision that prior to employees being mandated to work overtime, the City will offer overtime to qualified employees who volunteer, except in emergencies.
- 13) A provision regarding vacation selection and utilization.
- 14) A provision that within 90 days of ratification, the City will provide the TSOA with a complete draft contract book for review.
- 15) A sentence regarding vacations: "Officers on the 4 on/4 off schedule shall not be required to work the four calendar days before and the four calendar days following an approved vacation week."
- 16) Clarify language found at Section 17.07 of the PBA agreement regarding fiscal matters such as wages, hours and benefits not being subject to interest arbitration.
- 17) Incorporate the Settlement Agreement dated May 23, 2008 regarding the TAC schedule.

This list includes certain items awarded by Arbitrator Pierson as well as items stipulated to by the parties in that proceeding. It does not include items accepted by the TSOA which were included in the Pierson Award such as the health insurance changes. The City did not explicitly express a willingness to accept some of these items even though it stipulated to them in the PBA proceeding.

Statutory Framework and the Terms of the Award

As stated, N.J.S.A. 34:13A-16d(2) requires the arbitrator to "separately determine whether the total net annual economic changes for each year of the agreement are reasonable under the eight statutory criteria..." The arbitrator must give "due weight" to those factors which

are deemed to be relevant. Each one must be considered. Those deemed relevant must be explained and there must be an explanation as to why any criterion is deemed not to be relevant.

I subscribe to the widely held view of interest arbitrators that a party seeking a change to an existing contract provision bears the affirmative burden of justifying that change with supporting evidence, a principle which has been endorsed by PERC as well. See, for example, *County of Union*, P.E.R.C. No. 2003-33, 28 NJPER 459, 460 (2002).

I have carefully considered the evidence which has been presented as well as the arguments of the parties. As discussed below, I have considered the evidence and arguments in light of the statutory criteria. I have considered each criterion and found each to be relevant although, as discussed, I also have determined that the weight to be given to the factors varies. I also have determined the total net annual economic changes for each year of the agreement in order to conclude that those changes are reasonable under the criteria.

To make my analysis of the evidence and the parties' arguments more meaningful, I shall set forth the terms of the Award at this point. In this conventional arbitration proceeding, it is the terms of the Award rather than the final offer of one party or the other which must be reasonable. It is the arbitrator who fashions the terms of the Award.

- 1) I shall issue an Award which covers seven years, January 1, 2006 through December 31, 2012.
- 2) I shall order the following across-the-board salary increases, retroactive to January 1, 2006:

January 1, 2006	3.75%
January 1, 2007	3.75%
January 1, 2008	3.5%
January 1, 2009	3.75%
January 1, 2010	3.75%

January 1, 2011 3.5%

January 1, 2012 3.5%

- 3) I shall award the changes in medical and prescription drug insurance co-pays as proposed by the City.
- 4) I shall deny the extended sick leave proposal of the City but I shall provide that officers on Workers' Compensation receive their full salaries, minus normal payroll deductions, and sign over their Workers' Compensation checks to the City.
- 5) I shall not award the "red circling" provision proposed by the City.
- 6) I shall not award the City's proposal regarding the failure to enforce a contract provision.
- 7) I shall provide for the elimination of the Sick Leave and Training Committees.
- 8) I shall provide for the elimination of all references in the Agreement to Deputy Chiefs.
- 9) I shall require sick leave verification after three days' use of sick leave and eliminate the "three instances rule."
- 10) I shall award the addition of an indemnity provision.
- 11) I shall provide for the replacement of references to "Chief" and "Director of Public Safety" with "Police Director."
- 12) I shall provide for the elimination of the tri-partite committee for resolving shift differential disputes and allow such disputes to be processed through the regular grievance procedure.
- 13) I shall provide for release time for the TSOA President of 1/5th or 20% with the President to be assigned a Monday to Friday daytime schedule.
- 14) I shall not award an increase in the annual uniform allowance of \$300.
- 15) I shall not change the current eligibility requirement for receipt of terminal leave benefits from 25 years to 20 years for deceased officers who have served at least 20 years but have not retired.

- 16) I shall not direct that an officer who is promoted to the rank of Sergeant with 20 or more years of service be placed at the maximum salary for Sergeants.
- 17) I shall direct the incorporation of the "meal period" grievance into the agreement.
- 18) I shall direct the incorporation of the negotiated unit schedules into the agreement.
- 19) I shall award a provision requiring that prior to mandating overtime, the City will offer overtime to qualified employees who volunteer except in emergencies.
- 20) I shall award language regarding vacation selection.
- 21) I shall direct the City to provide the TSOA with a complete draft contract book for review within 90 days of the Award.
- 22) I shall add clarifying language to the grievance procedure as to wages, hours and benefits to provide that nothing in the Agreement shall subject such fiscal matters to interest arbitration.
- 23) I shall direct that all terms and conditions of the prior agreement which have not been modified by this Award be carried forward.

Total Net Annual Economic Changes

The statute requires the arbitrator to "separately determine whether the total net annual economic changes for each year of the agreement are reasonable under the eight [nine] statutory criteria..."

The City submitted evidence which shows that the base salary in 2005, which was the last year of the prior agreement, was \$6,419,033. It used a "roll up" factor of 30% as an approximation for the cost of economic benefits, putting the total costs at \$8,344,743. Thus, a 1% salary increase would cost \$64,190 in salary alone and \$83,447 with the "roll up" factor being included. The City calculated the cost of its proposed salary increase of 2.25% with its delayed implementation to April 1 of each year with the attendant roll over into the following year of .75%. It also provided cost-out data for the TFOA settlement. Using these figures, which do

not include the cost of increments, the costs of the salary increases of the Award and the other agreements for the salary increases are as follows:

<u>Year</u>	<u>Award</u>	<u>City</u>	<u>TFOA</u>	<u>Difference*</u>
2005	\$8,344,743	\$8,344,743	\$8,344,743	-----
2006	\$8,657,671	\$8,532,500	\$8,636,809	\$20,862
2007	\$8,982,234	\$8,788,475	\$8,939,097	\$43,237
2008	\$9,296,716	\$9,052,129	\$9,251,965	\$44,751
2009	\$9,645,343	\$9,323,693	\$9,575,784	\$69,559
2010	\$10,007,043	\$9,603,404	\$9,863,058	\$143,985
2011	\$10,357,290	-----	\$10,208,265	\$149,025
2012	\$10,719,795	-----	\$10,565,554	\$154,241

* The difference is between the Award and the TFOA settlement which the City indicated would be acceptable to it.

There is one other item in the Award which affects the total net annual economic changes in the agreement. It relates to the changes in the medical and prescription drug co-pays.

Arbitrator Pierson placed a value of .5% on the changes in the medical insurance co-payment. He said the savings associated with the increase in prescription drug co-payments were speculative and could not be determined until after the fact. Using the figure of .5%, and providing for this change to go into effect on July 1, 2009, the savings to the City are as follows:

2009 (one half year)	\$24,113
2010	\$50,035
2011	\$51,786
2012	\$53,599

Thus, the cost to the City is .5% less beginning July 1, 2009 and going forward this savings will be reflected in reduced costs.

Positions of the Parties

City of Trenton The City has emphasized its precarious financial condition and its concern about the impact of an Award on that condition. There are real and significant financial limitations which face the City and its residents and taxpayers. It cited the decision of Arbitrator Pierson who made the following factual finding:

[T]he City of Trenton faces a daunting budgeting task in the face of drastically reduced revenues and significantly increased benefit costs (both health care and pension) for its personnel. The evidence established that the financial limitations expressed by the City are 'neither illusory nor exaggerated.' The proofs clearly evidence the harsh reality of budgetary gaps and imposing financial limitations. (page 21)

The City has noted that the cost of health insurance has risen 23% between 2005 and 2009. There have been even larger increases in the pension contribution and Workers' Compensation costs.

Disturbingly, the City's financial condition has worsened since Arbitrator Pierson issued his award and the national economy has fallen into a recession, creating the gravest financial crisis since the Great Depression.

In addition to its financial situation, the City asserted that the internal pattern of settlement, including both an interest arbitration award and a voluntary settlement, is an overriding consideration. These are said to reflect the City's extreme financial circumstances. Both resulted in employee contributions to health insurance premiums and prescription drug co-payments. They are long-term contracts with limited economic increases. The TFOA increase averages only 3.43% per year with a modest longevity increase for senior officers while the PBA award had only a salary increase which averaged 3.7%.

Furthermore, the City notes that AFSCME Local 2286, which is the City's largest bargaining unit, accepted a five-year contract with annual salary increases averaging 3.4% and health care cost containment similar to that in the PBA award and TFOA settlement.

Particularly because of Trenton's extreme financial limitations, the City argues that internal patterns, which always carry significant weight, are entitled to special significance under these circumstances. Again, it points out that Arbitrator Pierson recognized these limitations.

The City pleads for the arbitrator, even if he is not persuaded to award the City's proposed package, to be guided by the TFOA settlement as the one most comparable to the TSOA and reflective of the City's current economic condition. The case is even stronger because the salaries of those represented by the TSOA exceed those of TFOA members and, according to the City, the TFOA is the unit most comparable to the TSOA. Further, the economic situation has deteriorated since Arbitrator Pierson issued his award covering the PBA.

The City notes that PERC, in deciding appeals of interest arbitration awards, has recognized the importance in labor relations of patterns of settlement which are relied upon by both labor and management. To deviate from a pattern can affect continuity and stability of employment and undermine employee morale. It is part of the comparability criterion.

The City argues that the arbitrator should award a five-year contract unless he adopts the terms of the TFOA settlement as the basis of his award in which case a seven-year award would be appropriate. The City vigorously opposes cherry-picking so that the TSOA would receive the best of the PBA award and the TFOA settlement. Thus, the longevity increase received by the TFOA was predicated on lower salary increases than were awarded to the PBA. Only with the TFOA salary increases should the arbitrator consider the longevity increases.

The City also asks that the arbitrator grant its request to provide 15 sick days per year. This is consistent with what the members of the TFOA receive. That unit gave up unlimited sick leave in 2000. If this is done, then the City would be willing to consider establishing a sick leave bank similar to that established for the TFOA.

Additionally, the City argues that the interests and welfare of the public – identified as a “silent party” to the proceedings by the New Jersey Supreme Court³ - as well as the financial impact require acceptance of the City’s final offer or, in the alternative, the terms of the TFOA settlement. The City submitted data regarding demographics, its historical structural deficit, its reliance on State assistance, uncontrollable increases in expenditures, the decline in locally generated revenue even with a tax increase, etc. Half of the City’s property is tax exempt or tax reduced. The State has imposed very tough limits on the City’s expenditures as a condition of its receipt of State assistance. Capital Health Systems, which has 3,000 employees, is moving a significant portion of its operations out of the City. Property values dropped between 1995 and 2002 and by 2006 were still below the level of 1995. Over one fifth of the residents are below the poverty level and median household income is only \$31,074 with a per capita income of \$14,621. The unemployment rate is tied with Camden for the highest rate among the Urban 15 by a large margin. The net valuation per capita is less than half of that of the Urban 15 and is the lowest in that group except for Camden.

At the same time, health benefit costs increased by 23% from 2005 to 2008. The pension contribution increased from \$1,218,436 in 2004 to \$13,910,070 in 2008. The cost of Workers’ Compensation increased about \$1,000,000 from 2005 to 2007. State aid has decreased and is expected to decrease further in FY 2010. An additional hike in the property tax rate is anticipated.

The City notes that a 1% increase in salaries for this bargaining unit represents .4 of a tax point increase in the municipal purpose tax rate with \$.01 of the tax rate generating \$210,000 in FY 2008. The tax rate, as the evidence indicated, increased by 44% between 1993 and 2007 and by an additional 5.2% in FY 2008. These are staggering increases in this City given its demographics. An award of the TSOA offer would have an even more deleterious effect on the taxpayers than would an award limited to the City’s offer or the TFOA settlement.

³ *PBA Local No. 207 v. Borough of Hillside*, 137 N.J. 71, 82 (1994).

While Mr. Foti made various assertions about the condition of the City, Ms. Feigenbaum refuted or explained these in her certification. It is noted that Mr. Foti, who also appeared as an expert for the PBA, was not persuasive in that proceeding to Arbitrator Pierson. Contrary to Mr. Foti, the City's "excess revenue" has been decreasing and the City has been compelled to cancel appropriations in order to have any "excess revenue" at all. Without this action, there would have been a deficit in the City's Results of Operations. While there are some excess funds in prior year budgets, these were reserved to pay retroactive salary increases.

The arbitrator also is required to consider the lawful authority of the City. This includes not only the expenditure cap which dates to the 1970s but, effective April 3, 2007, a new and separate cap on increases in the property tax levy. The total amount by which municipal purpose property taxes can increase is limited to 4% from the prior budget year with certain limited exceptions. Labor contracts and arbitration awards are not among the exceptions. This legislation was enacted to address the concern of the Legislature with rising property taxes. This is intended to bring down long term costs. The City's proposal and that of the TFOA settlement will keep the City's salary costs within the 4% limit which has been imposed. At the same time, the expenditure cap was subject to a 2.5% increase in FY 2005, 2006, 2007, 2008 and 2009 and this figure makes the City's proposal more reasonable as well, given these limitations on expenditures.

Comparability and overall compensation also are said to favor the City's final offer. The City notes that the officers have a very favorable work schedule with four ten-hour days on followed by four days off. Those on a standard five and two work schedule receive an additional 176 paid hours off to equate to those in the patrol division. Only 18% of the State's police departments provide such a favorable schedule. Considered along with a competitive level of benefits, such as vacation, holidays, premium pay, pensions, medical insurance and other benefits, it is apparent that the overall compensation received by the officers is fair and reasonable.

This is particularly true when one considers the various demographic, economic and financial factors that an arbitrator is required by PERC guidelines, *N.J.A.C. 19:16-5.14(d)*, to take into account in determining whether other municipalities are comparable. The evidence makes it clear that Trenton, with its high rate of unemployment, low median home value, declining population, high equalization rate, reliance on State aid, etc., is not comparable to any other Mercer County municipality.

Looking at internal comparability, the City cites the Fire Superiors who receive lower salaries than do Police Superiors. For example, Police Captains in 2005 received \$103,377 whereas the corresponding rank in the Fire Department, Battalion Chief, received \$98,898. The Battalion Chiefs work 2,184 hours compared to 1,825 for Police Captains. Police Superiors also receive more than other supervisory level employees in the City and they earn as much as managerial executives in the City even without considering their overtime earnings.

The City's largest union, AFSCME Local 2286, settled a five-year contract with average increases of 3.4% along with health care cost sharing and a change in Workers' Compensation leave which provides for them to receive 100% of their regular compensation with all regular deductions instead of actually receiving more when on Workers' Compensation when they are working, a perverse incentive. This settlement is said to be important and should be considered by the arbitrator. Salaries of other police officers is not the dispositive factor.

The most comparable municipalities to Trenton are said to be East Orange and Camden. Even among the Urban 15, Trenton is at or near the very bottom by most demographic and economic measures. Trenton's Police Superiors receive higher salaries than do those in East Orange, Camden and even Newark which has more favorable demographics. The City notes that salary increases in the range of 3.4% are not unheard of and it cites the Township of Union, Borough of Mountainside and City of North Wildwood as examples of municipalities with lower wage settlements and increases in co-pays or insurance contributions and which are on a far healthier economic base. The City rejects comparisons with

municipalities such as Cinnaminson, Edison, Midland Park and Pompton Lakes which the TSOA cherry-picked in making its argument.

The City also cites the New Jersey Department of Labor figures which show average increases in local government salaries of 3.3% in 2006 and average public sector increases nationwide as reported by the United States Department of Labor Bureau of Labor Statistics of 3.1% in 2005, 3.5% in 2006 and 3.5% in 2007. Private sector increases in the Trenton-Ewing metropolitan area were 2.7% in 2006. Thus, by these measures, the City's offer is reasonable.

Continuity and stability of employment also show the reasonableness of the City's offer and that salaries are sufficient. There were civilian layoffs in 2009 but none in the Police Department. Salaries for Police Superiors are comparable to managerial executives in the City. Trenton's unemployment rate far exceeds that of other municipalities in the County. The City has not had any trouble attracting applicants for police officer positions and has 118 names on the Civil Service list. Turnover between 2005 and 2008 in the Police Department averaged 6.9% and this is lower than figures for government employment generally. These are all factors to be considered under continuity and stability of employment and point to the reasonableness of the City's offer.

Finally, the cost of living criterion also supports the City's offer. The CPI increased 3.8% in 2006 and 2.1% in 2007. These figures show that the City's offer exceeds these increases. Figures for January 2009 actually show a decline in the cost of living. Between 1997 and 2005, the Superior Officers received salary increases which outstripped the rate of inflation by 7.55% or almost 1% per year. Thus, there have been real increases in salary.

The City also argued that the other parts of its final offer should be awarded. First, it seeks to change the Workers' Compensation payments. Employees who are out on Workers' Compensation receive 70% of their regular pay. At present, the City "tops off" the remaining 30% from which it subtracts regular deductions. The Workers' Compensation portion, however, is untaxed so employees actually take home more pay when on Workers' Compensation than

they do when they are working. This provides a disincentive for employees to return to work. The City makes this proposal in part because of the huge increase in Workers' Compensation costs between 2005 and 2007 when these costs increased by 47%.

The City notes that it raised this issue with AFSCME and agreed with Local 2286 that an employee would receive full regular salary from the City, with full payroll deductions, and with the Workers' Compensation payments being signed over to the City. This is a common procedure in many municipalities. The City is seeking to have the same provision in the TSOA contract. It fairly addresses the legitimate interests of both parties. There is no loss of pay for injured officers but there also is no incentive not to return to work. This should help to control the City's Workers' Compensation costs.

The City asks that its sick leave proposal be accepted. It asks that the one year entitlement be replaced by 15 sick days per year and that the "three instances rule" be eliminated and replaced by a requirement that sick leave be verified after three days of use. There has been a 47% increase in the use of sick days between 1997 and 2005. Thus, the City needs to reduce this usage. The four on and four off schedule was intended to result in reduced sick leave but that has not been what happened.

The City asks that the "red circling" provision be changed so that officers who are demoted as a result of an administrative reorganization be placed on the appropriate step of the applicable salary guide for the lower rank. It is said not to be reasonable to continue such officers on their prior and higher salaries under these circumstances.

The City has two proposals regarding waivers. First, it asks that a "no waiver" provision be added to the contract which provides that the failure of a party to enforce a contract right does not waive enforcement of that right in the future. Such language is said to already exist in the PBA contract. Second, it asks that a provision be added which states that without the express written permission of the Business Administrator, no deviation or modification or exception to the terms of the agreement will be permitted.

The City also addressed the TSOA's other contract proposals and asks that each of these be rejected. It notes that the burden is on the TSOA to produce evidence to justify these changes.

The TSOA is seeking full release time for the President. (The TSOA modified this proposal in its post-hearing submission so that it now is seeking one-fifth release time for the President.) The prior PBA contract permitted the President to have release time (Section 3.04 of the PBA agreement) but this would be a new benefit for the TSOA. Thus, it is not part of the settlement to which the TSOA is entitled. There is said to be no evidence of difficulty in administering the TSOA contract or processing grievances or negotiating new agreements or preparing for litigation. The workload of the 72-member TSOA is in no way comparable to that of the 255-member PBA. The release of one patrol officer is much less burdensome than would be the release of one of the City's eight Captains.

The TSOA also asks that the President be assigned a Monday to Friday daytime schedule and this, too, is said to be unsupported by any justification. It would be unduly restrictive to compel the City to assign one of its eight Captains, if that person was the TSOA President, to the day shift.

TSOA The TSOA recognizes that, as a practical matter, the dimensions of this proceeding have been greatly reduced by events which occurred subsequent to the commencement of the proceeding. Thus, while it submitted evidence to support its proposals, particularly comparability data in Mercer County and elsewhere but also financial data including that pertaining to the Trenton Water Works, the TSOA understands that the PBA award of Arbitrator Pierson and the TFOA settlement restrict the options realistically available to the arbitrator in this proceeding.

It emphasized the importance of public safety as essential to Trenton's continuing improvement and cited Mayor Palmer's recognition of public safety as a cornerstone of the City's resurgence in his October 25, 2007 State of the City Address. The Mayor recognized that

public safety is a top priority and that the Trenton Police Department had been recognized nationally as a leader in community policing. The Mayor cited the declining crime rate.

The PBA understands, like it or not, that the determination of Arbitrator Pierson in dealing with the other police unit in the City is entitled to overwhelming deference. Furthermore, it acknowledged that the parties presented voluminous evidence and lengthy arguments in the PBA arbitration proceeding. The TSOA submitted as part of its post-hearing submission the briefs filed by the City and the PBA in that interest arbitration proceeding. It asserts that virtually everything that can be said about the positions of the parties has been said and it is not interested in restating things which have been fully considered by Arbitrator Pierson as he analyzed and applied the requisite statutory criteria.

The position of the TSOA is that that arbitrator should award a seven-year contract with salary increases which match those of the Pierson Award in the first five years and which match those in the TFOA settlement in the final two years.

The TSOA is willing to accept the results of the PBA's proceeding as to the remaining issues. Again, Arbitrator Pierson made determinations on these issues after considering all of the evidence and arguments and asserts or accepts that the results should be binding on the TSOA and the City in this proceeding as well. The TSOA is aware that Arbitrator Pierson rejected a number of the economic and non-economic proposals of both the City and the PBA and expects a similar result in this case. It acquiesces in the items which were included in that Award. It also acquiesces in the stipulated issues set forth in the Pierson Award.

In response to the City's argument that things have gotten worse for the City since the time of the Pierson Award, the TSOA is willing to accept the salary increases voluntarily negotiated by the City and the TFOA for the final two years of the TSOA contract. It notes that the settlement with the TFOA also included an improvement in longevity for officers with 24 and 29 years of service.

The TSOA has explicitly accepted the changes proposed by the City regarding medical, dental and prescription insurance.

Thus, it has attempted to take a reasonable and conciliatory approach in these negotiations and contrasts its approach with what it views as the unreasonable and uncompromising stance taken by the City.

The only remaining items that the TSOA is submitting for determination are those relating to release time for the TSOA President, an increase in the uniform allowance, a change in the terminal leave benefit, and the elimination of steps on the salary schedule for Sergeants who are promoted after 20 years of service.

It is requested that the TSOA President be given release time of one-fifth or 20% with a daytime Monday to Friday work schedule. It cites the award of Arbitrator Pierson:

The City agrees to full union release to the PBA President. The City agrees to assign the PBA President to a Monday to Friday, 8 hours daytime schedule. A shirt and tie or suitable casual business attire may be substituted for a police uniform. However, the uniform of the day shall be readily available in the event of an emergency that requires the PBA President to be utilized. This is to include attending the State PBA Meetings out of town.

The proposal for one-fifth time is said to reflect the smaller membership of the TSOA compared to the PBA. Thus, the benefit would be pro-rated.

The TSOA asks that the uniform allowance be increased from \$1,225 to \$1,525. That is the same amount received by the PBA and there is no justification for the superior officers receive less than the rank and file officers. The TSOA notes that there has been no increase in this benefit for many years even though the cost of uniforms has increased every year.

The TSOA is seeking a change in the terminal leave benefit. This is a benefit which is payable upon retirement. There was an instance in which an officer died but had not retired. He had over 20 years of service but the contract required 25 years of service. In that case, with the assistance of an arbitrator, the parties agreed to extend the benefit to this officer because he was eligible for retirement. The service requirement for retirement is 20 years instead of the

former requirement of 25 years so it is said to be logical and reasonable to link eligibility for this benefit with eligibility for retirement. This is something which, in the memory of the TSOA's long-time counsel, has occurred only one time so it would not be a costly benefit but it would be helpful to the estate of a deceased officer who was eligible for retirement but who died prior to retirement.

Finally, the TSOA asks that an officer who is promoted to the rank of Sergeant with at least 20 years of service go immediately to the top step of the Sergeant salary schedule. It is argued that this might encourage earlier retirement with a consequent savings to the City.

The TSOA urges rejection of any other items proposed by the City. Many of these items were proposed in the proceeding before Arbitrator Pierson and rejected by him. This arbitrator should do the same thing, just as he should adopt those things awarded by Arbitrator Pierson.

Discussion and Analysis

I set forth the terms of the award above. In this section, I shall discuss my reasoning for these rulings and apply the statutory criteria to the economic items.

First, the term of the award is or may be at issue. The City has asked for a five-year award or, if the TFOA settlement pattern is followed, a seven-year award. The TSOA is asking for a seven-year award. I shall award a seven year contract. This agreement will be retroactive to January 1, 2006 so three and one-half years of the award are already behind the parties. Furthermore, the TFOA agreement covered 2011 and 2012 so there is a basis for extending this agreement. The difficulty the parties have had in reaching an agreement, as indicated by the amount of retroactivity, is ample evidence of the need for a long term agreement to provide both sides with certainty and an opportunity to develop a more constructive relationship. The additional years will also facilitate planning for the City which clearly faces unusual financial challenges and issues.

Second, there is an issue regarding the wage increases. I shall follow the pattern established for the PBA by Arbitrator Pierson for the first five years of the agreement. Arbitrator Pierson carefully analyzed the evidence and considered the arguments of the parties in reaching the decision he reached. He clearly took account of the facts that not only are the officers dedicated and serving their community effectively and lag behind their counterparts in Mercer County but also that:

The City of Trenton faces a daunting budgeting task in the face of drastically reduced revenues and significantly increased benefit costs (both health care and pension) for its personnel. The evidence established that the financial limitations expressed by the City are 'neither illusory nor exaggerated.' The proofs clearly evidenced the harsh reality of budgetary gaps and imposing financial limitations. (p. 21)

I am mindful of the City's argument that the financial situation has worsened since that Award was issued. While I do not believe this justifies a deviation from the wage portions of the Pierson Award, I do believe it justifies acceptance of the wage increase figures in the last two years of the TFOA settlement for the final two years of the agreement. Aside from providing predictability, this also respects the pattern which the City has established for those two years.

I shall not, however, award to the TSOA the longevity increases which are included in the TFOA settlement. The salary increases to be received under this Award total 25.5% or an average of 3.64% per year. Those received by the PBA under its five-year Award total 18.5% over five years or an average of 3.7% per year. Those received under the TFOA settlement total 24% or an average of 3.43 % per year. All three provide for employees to contribute to their health insurance and for an increase in prescription co-pays which reduces the cost to the City with the effective date of these contributions.

I believe that the minor difference between the TSOA and TFOA average salary increases is justified when the absence of a longevity increase for the TSOA is considered. Thus, the Award does take into account the City's worsening financial condition.

Third, the changes in medical insurance contributions and prescription drug co-pays proposed by the City shall be awarded. Indeed, these are included in the final offer of the TSOA. These elements appear in the Pierson Award and in the TFOA settlement and AFSCME Local 2286 has agreed to similar provisions. Thus, the City has implemented this relatively modest change – although I realize that it is a large change for the unions conceptually – uniformly. It does result in a savings placed by Arbitrator Pierson and not challenged in this proceeding at .5% per year.

Fourth, I shall deny the City's proposal to change sick leave from one year to 15 days per year (with the possibility of a sick leave bank). This was rejected by Arbitrator Pierson and while I understand the City's desire to make this change, it has not provided sufficient evidence to justify this fundamental change in an important fringe benefit.

I shall, however, grant the City's request to change the compensation received by officers on Workers' Compensation. I am aware that Arbitrator Pierson rejected this same proposal and said he was "not convinced that police officers have either abused the Workers' Compensation benefit or pursued a financial incentive to remain out of work after a work related injury." (p. 26) Nevertheless, the City's logic is compelling and the change is supported by the fact that the City made this change with Local 2286. There is no justification for paying an officer more when he is out on a work-related injury than he receives when he is working. The perception is that this creates an incentive for the employee not to return to work as soon as possible. It costs money to return to work which is indeed a perverse incentive which I believe cannot be justified. Thus, it makes sense to limit compensation to the amount the employee would receive if he or she had not been injured. This can be accomplished, as proposed by the City, by giving the employee the regular salary with the normal deductions and having the employee sign over to the City the Workers' Compensation check which he or she receives. This, of course, is more liberal than is required by Workers' Compensation so the benefit remains generous. The savings to the City associated with this change are speculative but it

has some value. I have equated it roughly to the City's cost of providing one-fifth release time to the TSOA President.

Fifth, I shall not award the "red circling" provision sought by the City. In addition to the fact that this change was rejected by Arbitrator Pierson, the City failed to show the frequency with which this occurs. It may be more important in other City units but it is not clear that it has significant applicability in the protective services.

Sixth, I shall not award the City's proposal regarding the failure to enforce a contract provision nor that requiring the Business Administrator to approve any deviations from the contract. I believe that most arbitrators permit prospective enforcement of an unenforced provision with proper notice of intent to do so. Thus, the first part of this proposal does not appear to be necessary. The second part seems to be within the control of the City. It must direct those charged with managing the Police Department with complying with the contract. This is a managerial issue and not a contractual one. Arbitrator Pierson also rejected these proposals.

Seventh, I shall provide for the elimination of the Sick Leave and Training Committees. There is no evidence that either of these is viable or has any present role to play. Arbitrator Pierson eliminated the Sick Leave Committee in the PBA Award.

Eighth, I shall provide for the elimination of references to Deputy Chiefs. The title no longer exists in this Department.

Ninth, I shall require sick leave verification after three days' use and eliminate the "three instances rule." This was awarded by Arbitrator Pierson and accepted by the TSOA in these proceedings.

Tenth, I shall award an indemnity provision covering dues deductions identical to that awarded by Arbitrator Pierson. Again, this was accepted by the TSOA.

Eleventh, I shall provide for the replacement of references to "Chief" and "Director of Public Safety" with "Police Director."

Twelfth, I shall provide for the elimination of the tri-partite committee for resolving shift differential disputes and allow such disputes to be processed through the regular grievance procedure. This, too, was included in the Pierson Award as a stipulation and accepted by the TSOA.

Thirteenth, I shall provide for one-fifth release time for the TSOA President with the requirement that the President be assigned a Monday to Friday daytime schedule. While the City objected that this tied its hands administratively, especially if the President was one of eight Captains, the alternative is that President would get time off for TSOA business when that time could not productively be used. It makes sense for the President to be available during the normal workweek to interact not only with his or her members but also with City officials, the City's labor counsel, etc.

Fourteenth, I shall not award an increase in the uniform allowance. While the equities favor this proposal because the Superiors now receive \$300 less than the rank and file officers, I was not given evidence on the history of this situation and do not know if the TSOA received another benefit unique to it in place of an increase in the clothing allowance. In any event, this is not the time to require the City to spend an additional \$300 per year per officer. Available funds are more helpful if applied to the salary schedule.

Fifteenth, I shall not change the current eligibility requirement for receipt of terminal leave. The background of this issue also was not fully developed but it seems that on the one occasion in the past 30 years when the issue arose, the parties came to a resolution. This may best be handled on a case-by-case basis.

Sixteenth, I shall not direct that an officer who has at least 20 years of service who is promoted to the rank of Sergeant be placed immediately at the top step of the Sergeant schedule. The promotion has value to the officer and presumably the City is "paying" for experience as an individual works his or her way up the salary schedule. I shall not disturb the status quo.

Seventeenth, I shall incorporate the "meal period" grievance into the parties' agreement. This was awarded by Arbitrator Pierson. Uniformity between the two groups is appropriate.

Eighteenth, I also shall direct the incorporation into the agreement of the negotiated unit schedules. Again, this was awarded by Arbitrator Pierson and it makes sense to keep the two groups on the same schedule.

Nineteenth, I shall award a provision requiring that prior to mandating overtime, the City will offer overtime to qualified employees who volunteer except in emergencies. This will minimize forced or mandated overtime without inhibiting the ability of the City to assure the availability of qualified individuals to perform the assignments.

Twentieth, I shall award the same language regarding vacation selection which Arbitrator Pierson awarded. This is procedural and should assist both the Department and the Superior Officers in planning.

Twenty-first, I shall direct the City to provide the TSOA with a complete draft contract book for review within 90 days of the date of this Award. The parties' last comprehensive written agreement covered the term July 1, 1997 to June 30, 2000. This complicates the contract administration process. This provision was stipulated by the parties' in the PBA case.

Twenty-second, I shall add a provision, as did Arbitration Pierson, which reads: "Officers on the 4 on/4 off schedule shall not be required to work the four calendar days before and the four calendar days following an approved vacation week." This was stipulated by the parties in that proceeding.⁴

Twenty-third, I shall add a clarifying paragraph regarding fiscal matters and interest arbitration as stipulated by the parties in the PBA proceeding.

Twenty-fourth, I shall incorporate the Settlement Agreement dated May 23, 2008 involving the TAC schedule as stipulated by the parties in the PBA proceeding.

⁴ As stated, this also is included in the vacation selection provision. Therefore, I shall not include it as a separate item.

Twenty-fifth, and finally, I shall direct that all terms and conditional of the prior agreement which have not been changed or modified by this Award shall be carried forward unless the parties mutually agree to other changes.

The economic issues involved in this proceeding are the salary increases, insurance cost sharing, one-fifth release time for the TSOA President, and a change in the payment to recipients of Workers' Compensation. For the purposes of determining the cost of the award, I have equated the release time and Workers' Compensation proposals as offsetting one another. The salary increases are clear and the insurance cost sharing results in a saving to the City of .5% per year beginning with the second half of 2009. Thus, the net cost to the City is as follows: 2006 – 3.75%, 2007, 3.75%, 2008 – 3.5%, 2009 3.5% (3.75% minus half of .5%), 2010 – 3.25%, 2011 – 3% and 2012 – 3%. This is a total of 23.25% over seven years or an average of 3.4% per year.

Interests and Welfare of the Public This is always an important factor but it assumes outsize importance in this proceeding. While it is undisputed that the police officers in the City are doing a very effective job in reducing crime and dealing with a very challenging environment with more major crimes than all the other municipalities in Mercer County combined and that they are less well paid than their counterparts in Mercer County or even in most of the Urban 15 cities, the overwhelming factor in this proceeding is the City's precarious financial condition. As Arbitrator Pierson observed, the City's financial limitations are "neither illusory nor exaggerated." This statement is amply supported by the evidence which has been presented. Indeed, even the TSOA has recognized the situation of the City and has indicated its willingness to accede to the terms of the Pierson Award with the addition of the last two years of the TFOA settlement. This includes acceptance of the changes in health insurance as proposed by the City.

Very briefly, half of the City's property is tax exempt or tax reduced. Close to one-fifth of its families live below the poverty level. Per capita income is under \$15,000. It receives some 47% of its revenues from the State and the State is reducing this aid. The costs of health care,

pensions and Workers' Compensation have been soaring. This Award begins to address health care costs and Workers' Compensation costs but these are costs that will continue to increase. The City has been compelled by the State to reduce staff and obtain State approval before hiring.

This is truly a municipality where the costs of the Award and its effect upon both the City's budget as well as its citizens is unusually burdensome. This requires caution by an interest arbitrator and militates strongly against a "going rate" award. Thus, I have issued an Award which is even somewhat lower than that issued for the PBA and which is very close to the voluntary agreement reached by the City and the TFOA.

Comparisons Several comparisons are mandated by the statute. One is internal comparisons. On this basis, the Award is reasonable. It matches the increases awarded to the PBA in the five years of that contract and it provides the same increases in 2011 and 2012 agreed to by the City and the TFOA. Both the PBA and the TFOA agreed to the City's insurance proposals. Similarly, the City's settlement with Local 2286, its largest union, provided for average wage increases of 3.4% over five years and also includes comparable health care provisions.

The evidence indicates that public sector settlements have been in the area of between 3% and 3.5% in recent years and the private sector salary increases in the Trenton-Ewing area were 2.7% in 2006. The data provided by the New Jersey Department of Labor and Workforce Development, as provided to interest arbitrators by PERC, show an increase in the private sector in New Jersey of 4.3% from 2006 to 2007 and of 4.6% from 2005 to 2006. This would support a somewhat larger increase in this case but it is overwhelmed in significance by the other factors.

In Mercer County, not surprisingly, these officers do not compare favorably. They are at the bottom of the range. Aside from geographical proximity, however, it is difficult to argue that any of these municipalities is comparable to Trenton. As the evidence introduced by the City

made clear, even among the Urban 15, Trenton and Camden stand out as the least well off and least able to pay police officers and other employees. The Superior Officers are more highly paid than are their counterparts in both Camden and East Orange, as well as Newark, so it cannot be said that the City is not making an effort. It simply lacks the resources.

Overall Compensation The officers do work a very favorable work schedule of four ten hour days followed by four days off. Officers who do not work this schedule receive 176 hours to offset the extra hours worked on a five on, two off schedule. This is a schedule worked by fewer than 20% of the municipalities in the State and is an advantage enjoyed by these officers which contributes to their quality of life. It does not, of course, result in spending power.

These officers enjoy the usual benefits within standard ranges. The one area in which they will stand out in a negative way among their public sector counterparts is the health insurance contributions. Such contributions, while widespread in the private sector, are coming only slowly to police officers and firefighters in New Jersey but there appears at this time to be an unstoppable movement in that direction. The City cited not only the 2007 agreement between the State and the Communications Workers of America in which employees contribute 1.5% of base salary but a number of interest arbitration awards involving police officers. Officers in East Orange contribute \$40 monthly to the cost of their health insurance. The Trenton officers will not stand out for long on this basis as other municipalities succeed in sharing these costs as a means of controlling health care costs.

Stipulations While there were no formal stipulations in this case, I have incorporated, where appropriate, the stipulations of the City and the PBA as set forth in Arbitrator Pierson's Award.

Lawful Authority An arbitrator is required to issue an award which is consistent with the lawful authority of the public employer. This obligation was made explicit, if redundant, with the amendment effective April 3, 2007 which added the "ninth criterion" regarding the "statutory restrictions imposed on the employer." *N.J.S.A. 34:13A-16g*.

There now are two financial caps with which municipalities must comply. There is the expenditure cap which has been in effect since the 1970s and now there is a new cap on the increase in the property tax levy. This cap limits an increase in the amount a municipality can collect in its property tax levy to 4% over the prior budget year with certain limited exceptions which do not include labor contracts or interest arbitration awards.

The City has argued that in light of these restrictions, an award which is consistent with its final offer or its settlement with the TFOA is required. Such an award will keep costs within the 4% limit on municipal tax levy increases. Additionally, the City notes that there has been an expenditure cap of 2.5% from FY 2005 through FY 2009 so an award which parallels the TFOA settlement is consistent with the cap as well.

The total salary increases agreed to by the City and the TFOA were 24% over seven years plus a 1% increase in longevity for officers with at least 24 years and 29 years of service coupled with health care cost sharing. The salary increases I shall award total 25.5% over seven years along with the same health care cost sharing. Ignoring the longevity increase, for which cost information was not provided to me, this is a difference of 1.5% or approximately .2% per year. It is under the tax levy cap. These figures do not take into account the savings associated with the health care cost sharing provisions in these agreements. Thus, the actual cost to the City will be less. There is no reason to believe that this Award is inconsistent with the lawful authority of the City, including its obligations under the expenditure and tax levy caps.

Financial Impact A significant portion of the evidence submitted by the City as well as its arguments demonstrate the challenges and limitations faced by the City. The TSOA does not really dispute these. It acknowledged and accepted the analysis of Arbitrator Pierson in the award which he issued covering the PBA. I previously quoted him to the effect that the financial limitations faced by the City are "neither illusory nor exaggerated."

The financial impact of the Award can be measured by expressing the difference between the cost of the Award and the cost of the TFOA settlement, which the City indicated

would be acceptable to it, and converting that difference to tax points. The table below expresses these figures. The calculations are based on the 2008 municipal tax for which 1 cent or one point generated \$210,000.

<u>Difference</u>	<u>Tax Point Increase Required</u>
2006	.09
2007	.21
2008	.21
2009	.33
2010	.69
2011	.71
2012	.73

Thus, it can be seen that the effect of this Award on the tax rate is relatively minor, ranging from one-tenth of a point in 2006 up to almost three-quarters of a point in 2012. I am persuaded that salary increases below those awarded would impose an undue burden on the TSOA and be contrary to the public interest in maintaining a competent and professional police force with the requisite morale to continue performing as they have been.

Cost of Living The evidence is that the increases received by the Superior Officers between 1997 and 2005 exceeded increases in the cost of living by almost 1% per year. This means that they enjoyed a real increase, after inflation, in their earnings. The increases as reported by the Bureau of Labor Statistics were 3.8% in 2006 and 2.1% in 2007. The Award matches or exceeds those figures. Inflation has been relatively flat in recent months so there is no reason to believe that the officers will not continue to enjoy an increase in real earnings, albeit not of the magnitude enjoyed by other police officers in Mercer County or throughout the State.

Continuity and Stability of Employment There is nothing to suggest that the continuity and stability of employment factor should have an impact on this Award. There have

been layoffs in the City but none in the Police or Fire Departments. This indicates the relative advantage enjoyed by employees in public safety, along, of course, with their significantly higher salaries which are in the range paid to the City's top managerial executives. This takes place in the context of a very high unemployment rate in the City, a rate which greatly exceeds that in the rest of the County, and further demonstrates the relative advantage of these officers.

Additionally, the turnover data do not indicate that there has been an unusual loss of officers and this is particularly true of Superior Officers. Also, the City has the ability to fill any positions which become available, as evidenced by the Civil Service list which has the names of 118 applicants. Thus, nothing in this evidence indicates a need for an Award in excess of that provided.

As should be clear, I have considered each of the statutory criteria as I have examined the evidence submitted and the arguments of the parties. While, as expected, the award is between the final offers of the two parties, it is very close to the final offer of the City. This result is dictated by three main considerations. One is the award of Arbitrator Pierson covering the rank and file police unit. The second is the voluntary settlement between the City and the TFOA. The third is the financial condition of the City. As I read the evidence and as I understand my obligations under the statute, these factors impose significant constraints on the arbitrator. The interests of the public, considerations of financial impact, and statutory restrictions, including the two cap laws, require an award of the nature I have provided.

Accordingly, I hereby issue the following:

AWARD

The term of the new agreement shall be seven years, January 1, 2006 through December 31, 2012.

Salaries shall be increased across-the-board as follows with the increases being retroactive to January 1, 2006:

2006	3.75%
2007	3.75%
2008	3.5%
2009	3.75%
2010	3.75%
2011	3.5%
2012	3.5%

Health insurance shall be changed as proposed by the City so that employees will contribute \$19 per pay for single coverage and \$23 per pay for all others effective July 1, 2009 and \$21 per pay for single coverage and \$25 per pay for all others effective January 1, 2010. Additionally, also effective July 1, 2009, prescription co-pays shall be \$10 for generic drugs, \$20 for preferred drugs and \$35 for brand drugs. The corresponding amounts for mail order drugs shall be \$3, \$10 and \$15.

Officers on Workers' Compensation shall receive their full salaries, minus normal payroll deductions, and shall sign over their Workers' Compensation checks to the City.

The Sick Leave and Training Committees will be eliminated.

References to Deputy Chiefs shall be removed from the agreement.

Sick leave verification shall be required after three days' use of sick leave and the "three instances rule" shall be abolished.

The following indemnity provision shall be added to Section 6.01:

The Union shall indemnify and hold the employer harmless against any and all claims, demands, suits and other forms of liability that may arise out of, or by reason of any action taken or not taken by the Employer in conformance with this provision. The Union shall intervene in and defend any administrative or court litigation concerning this provision.

References to the "Chief" and "Director of Public Safety" shall be replaced with "Police Director."

The tri-partite committee for resolving shift differential disputes shall be abolished and shift differential disputes shall be processed through the regular grievance procedure.

The City shall provide one-fifth or 20% release time to the President of the TSOA and the President shall be assigned a work shift on Monday through Friday during the day.

The "meal period" grievance shall be incorporated into the agreement.

The negotiated work schedules shall be incorporated into the agreement.

The following language regarding overtime shall be added: "Prior to employees being mandated to work overtime, the City will offer overtime to qualified employees who have volunteered to work overtime, except in emergencies."

The following vacation selection language shall be added:

Employees with more than one year but less than 15 years of service will be required to designate at least two full weeks of vacation in November for the following year and will be permitted to schedule their remaining allotment in single days or fractions thereof. Employees with 15 or more years of service will be required to designate at least three full weeks of vacation in November for the following year and will be permitted to schedule their remaining allotment in single days or fractions thereof. All vacation time requested in November shall be approved by January 1 of the following year. Employees on the four on/four off schedule shall not be required to work the four calendar days before and the four calendar days following an approved vacation week.


The City is directed to provide the TSOA within 90 days of this Award a complete draft contract book for review.

Clarifying language shall be added to the grievance arbitration provision to make it clear that such fiscal matters as wages, hours and benefits are not subject to interest arbitration.

All items not specifically awarded proposed by the City and the TSOA are denied.

Except as the parties otherwise mutually agree, the provisions and terms and conditions of the prior agreement shall continue in the new agreement unchanged.

Dated: July 8, 2009
Princeton, NJ



Jeffrey B. Tener
Arbitrator

State of New Jersey)
County of Mercer) ss.:

On this 8th day of July, 2009, before me personally came and appeared JEFFREY B. TENER to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.



Gloria L. Tener

GLORIA L. TENER
NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES OCT. 19, 2009