

NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of Arbitration Between

BOROUGH OF TINTON FALLS :
MONMOUTH COUNTY, NEW JERSEY :
 :
 "Borough" :
 :
 AND : INTEREST
 : ARBITRATION
 : AWARD
 POLICE BENEVOLENT ASSOCIATION :
 LOCAL 251 :
 "PBA" : (1995-1997)
 :
 :
 PERC DOCKET NO. IA-95-26 :

The Borough lies within Monmouth County. The PBA represents all members of the Department of Public Safety, Division of Police, excluding civilian employees, all Superior Officers and the Chief of Police.

PROCEDURAL HISTORY

The Borough and PBA have been parties to a series of Collective Bargaining Agreements. The most recent expired on December 31, 1994. The parties engaged in discussions for a successor contract but were unable to reach agreement. The statutorily mandated interest arbitration procedure was then invoked. The undersigned was selected as the interest arbitrator through the procedures of the New Jersey Public Employment Relations Commission. The parties met with the Arbitrator in an unsuccessful attempt to voluntarily agree upon a new Collective Bargaining Agreement.

Thereafter, the formal interest arbitration hearing took place. A voluminous record was developed. During and following the hearing, both sides made modifications in their final offers. The differences between the parties were narrowed considerably. When full agreement was not achieved, however, the final offers of both parties were "frozen". The parties subsequently submitted extensive post-hearing briefs.

FINAL OFFER OF THE BOROUGH

1. Duration: January 1, 1995 through December 31, 1997.

2. Wages:

Effective January 1, 1995	4.25%
Effective January 1, 1996	4.25%
Effective January 1, 1997	4.25%

Effective January 1, 1996, the Police Academy rate shall be increased from \$20,000 to \$23,000.

3. Article XVI, Section (D)(2) shall be amended to provide that the corporal assignment lump sum differential shall be increased to eight hundred and fifty (\$850.00) dollars per year, effective January 1, 1995.

4. Article VI, Section (D), shall be amended to provide:

<u>Length of Service</u>	<u>Weeks of Benefits at Full Pay</u>
Less than 1 year	12
1 to completion of 4th year	16
5 to completion of 9th year	18
10 to completion of 14th year	22
15 to completion of 19th year	26
20 or more years	32

5. Borough Proposal #6, shall be modified to provide as follows:

Article XVII

B. Each full-time member of the police department shall be entitled to sick leave with pay at the rate of one (1) day for each thirty (30) calendar days, to a maximum of twelve (12) days in any calendar year. Any police officer commencing employment after January 1, 1985, shall earn one (1) day for each thirty (30) calendar days commencing with the first date of employment. Unused sick days may be accumulated without limitation. It is understood that for purposes of buy out, a maximum of only one hundred ten (110) days may be accumulated, which includes those days accumulated, if any, as of December 31, 1981, as further discussed in Paragraph "D" hereafter.

C.1. Upon death, or upon retirement, with not less than twenty (20) years nor more than twenty-five (25) years of service credited to the pension system, the Borough shall pay the police officer or, where appropriate, their estate, for all accumulated sick leave in an amount equal to one (1) day's pay for each five (5) days of accumulated sick leave as of the first of the month following the date of death or retirement as aforesaid, not to exceed twenty two (22) days for one hundred ten (110) days accumulated.

C.2. Upon death, or upon retirement, with not less than twenty-five years of service credited to the Pension System, the Borough shall pay the police officer or, where appropriate, their estate, for all accumulated sick leave in an amount equal to three days' pay for each five (5) days of accumulated sick leave as of the first of the month following the date of death or retirement as aforesaid not to exceed sixty six (66) days for one hundred ten days (110) accumulated.

6. Article XIX, entitled Insurance, Section D, shall be amended to provide as follows:

D. The Borough will assume the entire cost of hospitalization and major medical and pay all of the premiums for employees who have retired in a disability pension or after 25 years or more service credited to the pension system, or have retired and reached the age of 62 or older with at least 15 years of service with the Borough.

7. Withdrawal Proposals #1, #2, and #7

8. All other items previously agreed to:

Borough Proposal #3
Borough Proposal #4
Borough Proposal #5
Borough Proposal #8
PBA Proposal #6
PBA Revised Proposal: Article X - Personal Days (Pg. 20)

At the present time there is a five (5) - days prior written notice provision which should be changed to 72 hours.

PBA Proposal: Article VIII - Section D (Pg. 16)- Outside Employment

The Contract states the hourly rate is \$23.00; however, the hourly rate now in effect is \$30.00 and \$25.00 for the high school and \$21.00 for Tinton Falls schools. The Contract shall reflect the current rates.

FINAL OFFER OF THE PBA

A. NON-ECONOMIC

1. Article I - Recognition (Page 1)

We would suggest a statement indicating that corporals are included as part of the bargaining unit. Corporals are referred to on page 31 of the Contract and it would seem incongruous not to include them in the Recognition article in this Contract.

2. Article III - Grievance Procedure (Page 4)

Section C. Modify the sentence which allows thirty (30) days to file the grievance to the following:

An aggrieved employee or the P.B.A. on behalf of an aggrieved employee shall institute action under the provisions hereof within thirty (30) calendar days following the occurrence of the alleged grievance, or within thirty (30) calendar days of when the aggrieved employee knew or should have known of the occurrence.

B. ECONOMIC

1. Article II - Section 4 (Page 2) - Attendance at Negotiation Sessions

Increase from one representative to two representa-

tives who may attend negotiating sessions during working hours at discretion of Borough, as long as it does not interfere with the efficient operation of the police department.

2. Article II - Section 5 (Page 3) - Attendance at P.B.A. State Convention

The P.B.A. has withdrawn this proposal.

3. Article XIV - Overtime, Section D (Page 28)

Please add to the end of Section D as follows:

Compensatory time off may be utilized only with the prior approval of the police chief or his designee, which approval should not be unreasonably withheld.

4. Article XVIII - Longevity (Page 37)

The P.B.A. is withdrawing any request to increase the extremely low dollar amount longevity for employees hired after January 1, 1993. Therefore, the longevity for the new and old employees will remain status quo through this Contract.

5. Corporal Pay (Page 31)

At the current time the corporals are paid a \$500 stipend, which should be increased to \$750 as of January 1, 1995, \$900 as of January 1, 1996, and \$1,000 as of January 1, 1997.

6. Salaries (Page 31)

(a) A reduction in the number of steps. At the present time there are eleven steps, including the Police Academy Step which is approximately four months and Officer Class E Step which is approximately eight months. The P.B.A. considers these to be two different steps since they have different salaries.

Previously, for 1995, the P.B.A. had proposed to remove one step, however, in this revised final P.B.A. proposal, it will not be removing any steps in 1995.

Previously, for 1996, the P.B.A. had proposed to remove one step, however, in this revised final P.B.A. proposal, it will not be removing any steps in 1996.

For 1997, remove one step which will leave nine steps plus the Police Academy Step for a total of ten steps.

In 1997, the steps would be equalized with First Class being the top patrolman and Ninth Class being the rate after the Police Academy. See salary guide attached with new proposal.

(b) The salaries across the board should be increased as follows:

January 1, 1995	4.6%
January 1, 1996	4.75%
January 1, 1997	4.75%

(c) Salary guide attached.

C. AGREED TO

1. Article VII - Funeral Leave (Page 15)

Please include any and all relatives living with the employee within 45 days of the relative's death.

2. Article VIII - Section D (Page 16) - Outside Employment

The Contract states the minimum hourly rate is \$23.00; however, the minimum hourly rate now in effect is \$30.00 and \$25.00 for the schools. The Contract shall reflect the current rates.

3. Article X - Personal Days (Page 20)

At the present time there is a 5-days prior written notice provision will be changed to 72 hours prior notice.

4. Article X - Personal Days (Page 20, Section B)

The first part of Section B should be reworded as follows to correct a typing error and include additional officers as follows:

Detectives, DARE Officers, Bicycle Patrol, Traffic Safety, and officers assigned to the patrol and/or working rotating shifts may elect to be paid for up to and including 15 designated personal days and holidays,...

5. Article VI - Work-Incurred Injury (Page 13)

N.J.S.A. 40A:14-137 allows the payment of injury leave up to one year for members of the local police department who shall be injured, ill or disabled from

any cause. At the present time there is a sliding scale of benefits from 12 weeks to 26 weeks. The benefits will be beginning January 1, 1996 the following:

<u>Length of Service</u>	<u>Weeks of Benefits at Full Pay</u>
Less than 1 year	12
1 to completion of 4th year	16
5 to completion of 9th year	18
10 to completion of 14th year	22
15 to completion of 19th year	26
20 or more years	32

6. Borough Final Proposal No. 5 (not Section B)

Article XVII - Sick Leave (Page 33)

C.1. Upon death, or upon retirement, with not less than twenty (20) years nor more than twenty-five (25) years of service credited to the pension system, the Borough shall pay the police officer or, where appropriate, their estate, for all accumulated sick leave in an amount equal to one (1) day's pay for each five (5) days of accumulated sick leave as of the first of the month following the date of death or retirement as aforesaid, not to exceed twenty two (22) days for one hundred ten (110) days accumulated.¹

¹ The current contract provides payment of earned unused sick days at retirement and the payment of medical premiums on retirement for any employee who has been with the Borough of Tinton Falls for 25 years or more. The parties have agreed to eliminate 25 years of service with the Borough and revise it to "25 years of service credit to the pension system". However, there are several current patrolmen including Mike Kruse and Jared Stevens who were dispatchers with the Borough of Tinton Falls and both parties had been relying on their years of service as dispatcher to be included in the 25 years of service with Tinton Falls which would permit these or other similar officers to retire after 25 years of service to Tinton Falls, even if two years had been as a dispatcher and 23 years had been as a police officer and these officers under the prior terminology would be paid for unused sick days and medical benefits pursuant to the Contract. Both parties have agreed that these officers shall continue in the new Contract (1995, 1996 and 1997) to be credited with whatever years of service they had as dispatchers with the Borough of Tinton Falls, and other similar employees. Therefore, there should be no detriment in the new Contract to any employee who had previously been a dispatcher and was going to be allowed to use those years of service under the prior terminology in the Contract. The Borough of Tinton Falls has made a written

C.2. Upon death, or upon retirement, with not less than twenty-five years of service credited to the Pension System, the Borough shall pay the police officer or, where appropriate, their estate, for all accumulated sick leave in an amount equal to three days' pay for each five (5) days of accumulated sick leave as of the first of the month following the date of death or retirement as aforesaid not to exceed sixty six (66) days for one hundred ten days (110) accumulated.1

7. Borough Final Proposal No. 6

Article XIX, Insurance, Section D (Page 38)

D. The Borough will assume the entire cost of hospitalization and major medical and pay all of the premiums for employees who have retired on a disability pension or after 25 years or more service credited to the pension system, or have retired and reached the age of 62 or older with at least 15 years of service with the Borough.1

8. Borough Proposal No. 3 from January 27, 1995

Article XII, Section A, entitled Clothing Allowance, shall be modified to include the following language:

The officer may have the option of vouchering the entire \$800.00 if the Commanding Officer is notified by January 15 of that calendar year. Said voucher may also be used for cleaning if the Dry Cleaning allowance is exhausted.

9. Borough Proposal No. 4 from January 27, 1995

Article XIII, entitled Dry Cleaning Allowance, Section A, shall be modified to include the following language:

representation by its attorney Bob Clarke, Esquire, in a letter dated December 28, 1995 which the P.B.A. and the individual members are relying on which states "I (Bob Clarke) contacted Helen Auringer, the Borough's Personnel Manager, who advised me that any police officer who previously worked for the Borough in a non-police capacity and was enrolled in the PERS Pension Program automatically had that credit transferred to the PFRS Pension Program. Therefore, in the case of the aforementioned officers or any other officers who fall into the same category, they would be covered by the Borough's Proposal."

The officer may have the option of vouchering the \$325.00 if the Commanding Officer is notified by January 15 of that year.

10. Borough Proposal No. 5 from January 27, 1995

Article VII, Section A, entitled Funeral Leave, shall be modified to include the following additional language:

...unless out of state travel is required, then said leave will extend to five (5) calendar days if properly documented.

11. Borough Proposal No. 8 from January 27, 1995

Article XX, Section G(2), entitled Professional Education, shall be deleted and replaced in the following language:

The officer should make an effort to obtain a turn-in credit to the municipality for the books used. If not possible, books so purchased shall remain the property of the Borough and shall be given to the Borough within thirty (30) days of the last day of classes.

ANALYSIS OF FINAL OFFERS

As reflected in the parties final offers, there are many items upon which they have reached agreement. Indeed, the final offers of the parties are very similar. There remain, however, several items in dispute. Those items are as follows:

1. Salary - Each party proposes increases effective January 1, 1995, 1996 and 1997. The increase proposed by the Association is somewhat higher than that proposed by the Borough. Specifically, the Association proposes increases of 4.6% in 1995 and 4.75% in 1996 and 1997. By contrast, the Borough proposes increases of 4.25% in each of the three years. The difference between the parties' positions is thus 1.35% non-compounded,

1.47% compounded.

2. Steps - Both parties' final offers propose maintaining the existing number of steps in 1995 and 1996. Concerning 1997, the Borough proposal continues to maintain the existing number of steps, while the Association seeks elimination of one step.

3. Corporal Pay - Both parties' final offers propose increases in the Corporal stipend, although at somewhat different rates. The Borough proposes that the lump sum differential be increased from the existing \$500 to \$850 per year, effective January 1, 1995, with no additional increase in the amount in 1996 or 1997. By contrast, the PBA proposes that the increase in this stipend be \$750 in 1995, \$900 in 1996 and \$1,000 as of January 1, 1997.

4. Attendance at Negotiating Sessions - currently Article II, Section 4 of the Contract states that "not more than one representative shall be granted time off to attend a [negotiation] session within working hours except at the sole discretion of the Borough." The PBA seeks modification of this language so as to allow an increase to two representatives who may attend negotiating sessions during working hours at the discretion of the Borough, so long as it does not interfere with the efficient operation of the Police Department. The Borough seeks maintenance of the current Contract language.

5. Compensatory Time - Currently, Article XIV (Overtime) of the most recent Collective Bargaining Agreement states that "compensatory time off may be utilized only with prior approval

of the Police Chief or his designee." The PBA seeks inclusion of a clause at the end of this provision stating that approval of the Police Chief or his designee should not be unreasonably withheld. The Borough seeks maintenance of the existing Contract language.

6. Sick Leave - On this item the final offer of the Borough is actually more advantageous to Officers than that of the PBA. Specifically, the Borough offer would allow for unlimited accumulation of sick leave, a modification from the current practice as set forth in Article XVII, Section D of the most recent Collective Bargaining Agreement. Although the PBA would of course like to have this benefit, its offer does not provide for such accumulation because its members have made a value judgement that salary increases are more important than unlimited sick leave accumulation.

7. Police Academy Rate - On this item also, the final offer of the Borough is arguably more advantageous to Officers than that of the PBA. Pursuant to the Borough's final offer, Police Academy rate shall be increased effective January 1, 1996 from \$20,000 to \$23,000. Under the PBA final offer, the Academy rate is increased at the same percentage rate as all other steps, resulting in rates of \$20,920 in 1995, \$21,914 in 1996 and \$22,955 in 1997.

8. Non-economic Items - The Association seeks to include in Article I of the Contract a statement indicating that Corporals are included as part of the bargaining unit. The Borough seeks

maintenance of the existing Contract language. The Association also seeks modification of Article III, Section C of the Grievance Procedure. The Contract currently states that an aggrieved employee or the PBA on behalf of an aggrieved employee shall institute action under the provisions thereof within thirty (30) calendar days following the occurrence of the alleged grievance. The Association seeks inclusion of a clause stating "or within thirty (30) calendar days of when the aggrieved employee knew or should have known of the occurrence." The Borough seeks maintenance of the current Contract language.

ARBITRATOR'S AUTHORITY

This arbitration proceeding was conducted in conformity with the statute in effect in 1995 providing for the compulsory interest arbitration of labor disputes involving the Borough and police officers. The statute stated that, in the absence of an agreement between the parties to the contrary, on economic issues in dispute the arbitrator must choose between the last offer as a whole of either the Borough or PBA. The arbitrator could not choose a compromise ground between the positions of the two parties.

As to the criteria the arbitrator was to use in choosing between the two final offers, N.J.S.A. 34:13A-16(g) provided as follows:

The Arbitrator or panel of arbitrators shall decide the dispute based upon a reasonable determination of the issues, giving due weight to those factors listed below that are judged relevant for the resolution of the

specific disputes.

- (1) The interests and welfare of the public.
- (2) Comparison of the wages, salaries, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours, and conditions of employment of other employees performing the same or similar services and with other employees generally:
 - (a) In public employment in the same or similar comparable jurisdictions.
 - (b) In comparable private employment.
 - (c) In public and private employment in general.
- (3) The overall compensation presently received by the employees, inclusive of direct wages, salary, vacations, medical and hospitalization benefits, and other economic benefits received.
- (4) Stipulations of the parties.
- (5) The lawful authority of the employer.
- (6) The financial impact on the governing unit, its residents and taxpayers.
- (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.

CONTENTIONS OF THE PARTIES

Both parties wrote extensive briefs setting forth their positions. The summary of positions set forth herein is not intended to be inclusive of every argument raised. All arguments, however, have been fully considered by the arbitrator

in reaching his Award.

Position of the PBA

The law continues to allow the Arbitrator to weigh the eight statutory factors of N.J.S.A. 34:13A-16g and judge the relevancy of each one in each specific dispute. The New Jersey Supreme Court does not require an Arbitrator to weigh all eight of these factors equally, but only requires the Arbitrator to analyze the facts as to the eight statutory factors and explain why certain factors are more important in a case and others are not important or relevant.

In this case, the cost differential between the two economic proposals of the parties is so miniscule as to be di minimis. The term "di minimis" is defined by Black's Law Dictionary as "very small or trifle". Clearly, the cost differences between the salary proposals for 1995, 1996 and 1997 are so miniscule as to constitute the epitome of di minimis. The difference amounts to no more than \$4,871 in 1995, \$11,216 in 1996, and, \$20,928 in 1997. The Borough simply cannot argue that the PBA economic proposal will harm the interest and welfare of the public, will unjustly increase the PBA's overall compensation, will exceed the lawful authority of the Borough, will have a negative financial impact on the taxpayers and residents of the Borough or will exceed the cost of living. Therefore, as required by the Supreme Court in Hillsdale, the PBA has identified five statutory criteria (Factors 1, 3, 5, 6 and 7)

which are not relevant to this interest arbitration process because the cost differential between the final offers of the two parties is di minimis. One of the other remaining factors is the "stipulations of the parties" (Factor 4) which is also not particularly relevant to this matter.

Consequently, the two most important statutory factors in this case are Factors 2 and 8. Factor 2 requires a comparison of wages, salaries, hours and conditions of employment with other policemen in Monmouth County as well as with public school teachers in Tinton Falls and also with other employees in Tinton Falls. Factor 8 requires an analysis of longevity and other seniority rights to encourage the continuity and stability of employment. Since the cost differential between the two proposals is so small, the real issue in this case involves Factor 2, comparisons. Since there is no doubt that a Tinton Falls Patrolman will continue to fall below the average in the County in terms of salary, longevity (especially with respect to a Tinton Falls Patrolman hired after January 1, 1993) and other fringe benefits, the Association's economic proposal should be awarded.

Moreover, evidence concerning the Borough's economic condition reveals that it can easily afford the PBA's economic proposal without incurring any financial impact upon its governing unit, residents and taxpayers. The Borough's surplus as of January 1, 1995 exceeds the amount it needs to raise for municipal purposes by taxation in 1995. The Borough's equalized

municipal tax rate is the 7th lowest out of the 53 municipalities in the County. The Borough's equalized tax rate has remained extremely stable from 1993 through 1995 while the Borough's equalized evaluations have increased during the past several years. The amounts raised by taxation in the Borough remained stable in 1994 and 1995. The Borough's general equalized tax rate dropped significantly between 1994 and 1995. The Borough generated over 1.2 million of excess revenue over expenses in 1994. The Borough also has a growing tax base which reduces any financial impact on taxpayers. In sum, the Borough is clearly an expanding and growing community, which reduces the financial impact of increased police salary and wages.

The Borough also has the lawful authority to pay the PBA economic proposal. As previously noted, the cost difference between the Association's economic proposal and the Borough's economic proposal is di minimis. The Borough's 1995 budget could have been increased by \$261,150 under the cap law. Consistent with the cap law, the Borough could have increased its 1995 budget by an additional \$196,000.

Turning to Factor 2, comparison of Borough Police Officers' salaries to other Monmouth County police officers is extremely relevant. If the Borough's economic proposal is awarded, Patrolmen will receive the second lowest percentage salary increase as well as the second lowest dollar amount salary increase in Monmouth County. Further, even if the Association's own salary proposal is adopted, a Patrolman will receive the

fifth lowest percentage salary increase as well as the fifth lowest dollar amount salary increase in the County. If the Borough's salary proposal is awarded, Patrolmen will receive the lowest percentage salary increase and lowest dollar amount salary increase in 1996 in Monmouth County. Even if the PBA's proposed raise of 4.75% was awarded, a Patrolman would only receive a salary increase in 1996 that was in dollar amounts the third lowest increase in Monmouth County. There is no law, statute or case which requires Borough Patrolmen to continue to fall farther and farther behind in salary. Moreover, the average interest arbitration salary award for 1996 is 4.83%. If the Borough's proposal is awarded, Patrolmen will receive the second lowest percentage salary increase in the State among all interest arbitration awards for 1996. Even if the Association's proposed rates of 4.75% for 1996 was awarded, a Patrolman would still receive the third lowest percentage salary increase in 1996.

Consideration of the salary raises received by Superior Officers within the Borough also supports the Association's position. While the Borough contends that superiors received a mere 4.25% salary increase in 1995, the Borough's contentions were proven to be false. Nine Superior Officers received an average percentage salary increase of 12% in 1995, which was nearly triple the 4.60% salary increase sought by the PBA for the same year. Also, Superiors received an average dollar amount salary increase in 1995 of \$6,661, far in excess of the dollar amount salary increase sought by the PBA of \$2,256 in 1995.

Additionally, the Borough unexpectedly agreed to pay one SOA member, Sgt. Petersen, an annual salary well in excess of his contractual entitlement in the years 1995 and 1996. Obviously, the Borough was able not only to afford the substantial raises given to members of the SOA but also to afford to pay one SOA member well in excess of the annual salary he was otherwise entitled to under the terms of the SOA Contract. Clearly, the Borough could have utilized the \$3,612 of "additional" compensation generously paid to Sgt. Petersen in 1995 and 1996 to substantially fund the PBA's 1995 salary proposal.

As required by N.J.S.A. 34:13A-16(g)(2) and (3), the PBA has also done a comparison of the total compensation of a Borough Police Officer. Total compensation of a Patrolman hired prior to January 1, 1993 has sharply declined from 1993 and will continue to decline in 1995 and in 1996 under both the PBA and Borough's salary proposal. Moreover, for those Borough Patrolmen hired after January 1, 1993 ("new hires") a sharp decline in total compensation between 1993 and 1996 would be even more pronounced. More specifically, if the Borough's salary proposal was awarded, then from 1993 to 1996 the total compensation of a Borough top Patrolman would fall more than \$1,400 as compared to the County average. The decline in the Borough Patrolman's total compensation will continue in 1995 and 1996 even if the PBA's salary proposal is awarded, but not at as great a rate. Moreover, the Borough's 4.25% salary increase for 1996 will place the total compensation of Borough Patrolmen significantly

below the 1996 Monmouth County average. The total compensation of the Borough's top Patrolmen will continue to decline between 1993 and 1996 even if the PBA's salary proposal is awarded.

In sum, if the Borough's salary proposal is awarded, the total compensation of a Patrolman hired prior to January 1, 1993, which exceeded the County average in 1993 by \$1,054, will actually fall below the County average by \$348 in 1996. Furthermore, the total compensation paid to Tinton Falls Patrolmen hired after January 1, 1993 was well below the County average in 1993 and the deficit will quadruple by 1996. While the total compensation for these new hires will continue to drastically decline under the PBA's proposal in 1995 and 1996 as well, the decline will not be as pronounced as under the Borough's salary proposal.

N.J.S.A. 34:13A-16(g) requires a comparison in public employment in the same or similar comparable jurisdictions. Most notable in this regard is that Tinton Falls teachers work less and earn more than Tinton Falls Patrolmen. Even though the Tinton Falls teacher works approximately 30% less, the experienced Tinton Falls teacher earns far more than the Tinton Falls Patrolman. Moreover, the Tinton Falls taxpayers not only approve the salary raises given to teachers which were significantly higher than what is presently sought by the PBA, these same taxpayers also approve the \$10,387,464 tax levy for school purposes in 1995 and an increase in the 1995 school budget of approximately \$440,000. Clearly, there is no tax revolt in

Tinton Falls. It is also notable that several Tinton Falls employees have received larger raises than Tinton Falls Patrolmen. Indeed, Tinton Falls Patrolmen receive the lowest percentage increase out of 13 Borough employees between 1984 and 1994.

Additionally, the Tinton Falls Police Officer will not compare favorably with public and private employment rates as earned in 1995 and 1996. According to the Rutgers Economic Advisory Service, it is anticipated that in 1995 personal income will rise 5.5% and in 1996 6%. By way of example, 110,000 private sector AT&T employees will be receiving at least a 6.01% increase plus other increases during 1995, 1996 and 1997. There is even more bad news for Tinton Falls Police Officers due to the fact that Monmouth County is an extremely affluent area in which to both reside and work. The percentage increases in both the public and private sector are misleading because Tinton Falls Police Officers live in Monmouth County which has one of the highest median family incomes not only in New Jersey but in the United States as well. The Tinton Falls median family income of \$55,131 exceeds the Monmouth County average of \$53,590. Therefore, Tinton Falls Police Officers must continue to be paid at somewhat of a competitive salary if they are expected to purchase and maintain homes, support themselves and raise families here.

Concerning the interest and welfare of the public, it must be kept in mind that the "public" in Tinton Falls is uniquely

different from the "public" in most of the other municipalities in Monmouth County as well as New Jersey because of its affluence and support of public services. The PBA economic proposals will best serve the interest and welfare of this public by modestly increasing salaries which will have the effect of raising morale and also enable the Police Department to attract and retain qualified and experienced officers. A low salary, extremely low dollar amount longevity for Police Officers hired after January 1, 1993 and the exorbitant number of steps in the salary guide has created extremely poor morale in the Police Department.

Concerning the cost of living, Monmouth County has experienced economic growth with a substantial increase in jobs during the past five years, which is unique from most of the other counties in New Jersey as well as the remainder of the United States. Therefore, the cost of living index pertaining to a large regional basis, such as New York and New Jersey, does not accurately reflect the growth of the economy and jobs in Monmouth County. Moreover, the cost of living is one of the eight factors that was considered by all arbitrators in the fourteen interest arbitration awards for 1996, yet arbitrators still awarded an average of 4.83% for that year.

As two of the eight statutory criteria require an analysis of the overall compensation received by Police Officers and a comparison of that overall compensation to other employees in the public and private sectors, it is significant that Tinton Falls Police Officers have poor fringe benefits and one of the lowest

longevity payments in Monmouth County. As the 1993-1994 Tinton Falls PBA Contract more than doubled the number of salary steps for Tinton Falls Patrolmen from five steps to eleven steps, Tinton Falls Police Officers now have by far the most salary steps in the County and are more than twice the Monmouth County average of six steps. It now takes a Tinton Falls Patrolman a minimum of nine years to achieve top pay status whereas the average patrolman in Monmouth County will achieve top pay status in just five years. Furthermore, the 1993-1994 Contract radically changed the longevity payments for Tinton Falls Police Officers hired after January 1, 1993 (new hires) by switching the longevity from a percentage basis to a flat dollar amount. As a result, the longevity for Tinton Falls new hires is less than 50% of the percentage based longevity paid to a Tinton Falls Patrolman hired before January 1, 1993. Moreover, the longevity for Tinton Falls new hires is one of the worst in Monmouth County and is substantially below the average of the 24 comparison Monmouth County towns. This low longevity pay to Tinton Falls new hires is one of the main factors why the PBA's economic proposals should be awarded because the PBA is seeking to only modestly increase salaries paid to the Patrolmen and is not looking to increase the extremely low longevity amounts paid to Tinton Falls new hires. It is also seeking to eliminate only one of the eleven salary steps, which would take effect in 1997. Furthermore, in other areas, such as sick days, holidays, detective stipend, and out-of-rank pay, the Tinton Falls PBA

Contract does not compare favorably.

As to stipulations of the parties, the present interest arbitration matter is unique in that the parties were able to agree upon several proposals. Those agreements are listed in the PBA's final offer.

The eighth factor, continuity and stability of employment, is just as important as the cost of living factor. Moreover, this factor is linked to the "interest and welfare of the public" because senior officers are more valuable to the Borough than junior officers. The PBA's proposals to increase the number of representatives who may attend negotiating sessions and modifying the Contract to enable a Police Officer to utilize compensatory time off only with the prior approval of the Police Chief or his designee "which approval should not be unreasonably withheld" will increase stability of employment. Similarly, the PBA proposal to increase the stipend for the five Corporals presently in the Police Department is also very reasonable. The Corporal stipend issue is also significant because the Borough has also offered an increase in this area, which demonstrates that money is not an issue in the present interest arbitration. Moreover, the cost difference between the PBA and Borough proposals concerning Corporal stipend is only \$100 per Corporal over the length of the Contract.

Finally, determinations as to how and where money is to be utilized for the benefit of the PBA should be left to the Tinton Falls Patrolmen and not Borough Officials. In addition to the

increase in the Corporal stipend, the Borough's sick leave proposal also provides that unused sick days may be accumulated without limitation. The Borough's economic proposal also calls for an increase in Police Academy rate, effective January 1, 1996, from \$20,000 to \$23,000 whereas the PBA economic proposal calls for a 1996 Police Academy rate of only \$21,914. The fact that the Borough's proposal calls for a 1996 Police Academy rate which is \$1,086 higher than the PBA's proposal again demonstrates that money is not an issue in the present interest arbitration and that the Borough does possess sufficient funds to afford the PBA's economic proposals.

In sum, the Tinton Falls interest arbitration is unique. The Borough does not have any financial difficulties. It is not only an affluent community located in an affluent County but is also a community which has experienced phenomenal growth over the last 15 years. Tinton Falls is located in an affluent County, the total cost difference between the two proposals is di minimis and Tinton Falls Patrolmen, especially new hires, receive lower salary and longevity as well as poor fringe benefits when compared to 24 other Monmouth County towns. For all these reasons, the PBA economic proposals should be awarded as well as the PBA's two non-economic proposals which seek to clarify the recognition statement as well as the grievance procedure.

Position of the Borough

The world of interest arbitration has changed dramatically over the last few years. As a result of decisions in Hillsdale and Washington Township all the statutory criteria enumerated in N.J.S.A. 34:13A-16(g) now have, in effect, a new meaning and much greater emphasis. The Borough is convinced that after the arbitrator applies the evidence in this case to the criteria and the statute, he will find the Borough's position is more reasonable than the PBA's position.

A cost analysis of the final offers is revealing. The Borough's final offer is very reasonable. Most importantly, it provides for the identical salary increases granted to all of the Borough's other union and non-union employees. The Borough's final offer will actually cost the taxpayers 14.25% over three years. When compounding is taken into consideration the cost increase is 16.05%. All calculations are based upon 20 Police Officers in the bargaining unit, the number present on December 31, 1994, the last day of the expired Collective Bargaining Agreement.

More specifically, effective January 1, 1995, under the Borough's final offer the salary schedule would be increased by 4.25%, plus increment where due. In addition, the Corporal stipend would be increased to \$850. The actual cost of this, however, is 5.0% or \$49,049, after advancement on the salary schedule is taken into consideration. Moreover, at the hearing, Personal Administrator Helen Auringer testified and Exhibit No.

97 established that Officers Pierson, Scrivanic and VanLew are going to be advanced an additional step on the salary guide in accordance with the Borough's discretionary right under Article XVI, Section C of the Contract, and this cost analysis does not take into consideration the additional cost of the acceleration. Effective January 1, 1996, the salary schedule would again be increased by 4.25%, plus increment where due. The actual cost of the across the board increase would be 5.25% or \$53,810. Finally, on January 1, 1997, the salary schedule would again be increased by 4.25%, plus increment where due. The actual cost of this increase would be 5% or \$53,696, when the cost of increment is included. Considering that inflation has consistently run below 3% and the cap has consistently been set by the State at 1.5%, the Borough's offer must be viewed as very generous.

The cost analysis of the PBA's final offer reveals that it substantially exceeds the cost of living and the increases received by the Borough's other bargaining units. One might be able to understand the PBA's final offer if the only deviation from the pattern of settlement was reducing the number of steps in the salary guide or increasing the Corporal stipend. On top of that, however, the PBA is seeking larger across-the-board salary increases than received by any other union or by the Borough's non-union employees in general. In 1995 the PBA is seeking a 4.6% increase along with the \$250 increase in the Corporal stipend. The Actual cost of this proposal is 5.7% or \$55,567. In 1996 the PBA's final offer calls for a 4.75%

increase, and another Corporal stipend increase in the amount of \$150. This would cost 5.5% or \$56,329. In the final year, the PBA final offer provides for another 4.75% across-the-board increase plus another Corporal stipend increase, this time in the amount of \$100. The actual cost of this proposal is 5.4% or \$58,616. Thus, over a three year period, if the PBA final offer is awarded, it will cost Tinton Falls taxpayers 16.6% or 17.5% when compounding is considered. Considering that the average Tinton Falls residents will probably only receive a 6 to 9% increase over the same period, this proposal must be considered excessive.

Comparison of the final offers reveals that over the three year period in question the PBA's final offer will cost the taxpayers an additional \$25,991 plus roll-up costs. This is only the beginning, as this difference in cost will continue even after the instant Collective Bargaining Agreement expires. Moreover, in the next round of bargaining all the Borough's other bargaining units are going to seek to catch up to the PBA. If they are successful, the price tag to the public will be substantially more than the \$25,991 here. If they are not successful, labor relations in the Borough will become very contentious.

Turning to the individual statutory criteria, the interests and welfare of the public are best served if the Borough's final offer is awarded. As made clear by Hillsdale/Washington Township, the "interest and welfare of the public" is an integral

part of the arbitration process, and "the public is a silent party to the process." It is clearly not in the public's best interest to award Police Officers, who already receive higher salaries and benefits than all other Borough employees, a better settlement than that already received by those same Borough employees. Disparate treatment of employees in collective negotiations can only lead to labor disharmony. Here, all the Township's employees, union and non-union, have received 4.25% salary increases for all of the years in question. The same 4.25% should now apply to the PBA. Arbitrators's awards have consistently emphasized the importance of uniformity in salary increases within a municipality.

Moreover, it is not in the public's best interest to pay Police more than has been allocated for them in a municipal budget, thereby forcing the Borough to take money designated for use elsewhere in the budget to pay for the Arbitrator's Award. While the thrust of the PBA's argument at the hearing was that if the Borough could afford its final offer the Arbitrator should award it, the PBA never addressed the interest of the public. Moreover, the PBA inaccurately attempted to paint a picture of a public employer which is unaffected by budget constraints and property tax rates.

The evidence reveals that the Borough has a number of serious economic concerns. The Borough has a very high senior citizens population who generally are on a fixed income and not able to afford tax increases. Housing prices illustrate a

significant decline in relative wealth of Borough residents over only a ten year period. The same downward trend occurred with respect to median income. Tinton Falls median income rates 24th highest in the County, whereas ten years before it ranked 18th in the County. The Borough's equalized tax rate was the 16th highest in the County in 1994 at 2.52% and dropped to the 23rd highest in 1995 at 2.45%. While at the hearing the PBA focused on the municipal portion of the tax rate, claiming that Tinton Falls was the seventh lowest in the County, the interest and welfare of the public compels the Arbitrator to consider the total tax impact on the taxpayer. Statistics demonstrate that every year since 1990 taxes have increased for Tinton Falls residential taxpayers. The Borough's growth has remained virtually constant since 1990. The Borough cannot count on increasing its tax collection rate as a source of revenue. While the PBA inferred at the hearing that a surplus was a source of funds that the Borough could easily tap without impact on the taxpayers, that surplus has suffered a dramatic decline and if it is used to fund ongoing current expenses such as salaries at some point it will be depleted. In addition, one of the major problems facing the Borough is that it has been notified that its largest taxpayer is filing a State tax court judgment against the Borough. Moreover, in 1995, UPS, a large rateable in the Borough, was successful in a tax appeal. It is also anticipated that in 1995 only \$188,000 would lapse to appropriation, which is only 1.8%. This not only demonstrates a reduction in the revenue

source but also shows a very lean budget. Evidence further reveals that the future for Tinton Falls taxpayers is bleak. When all these factors are taken into consideration, it becomes very clear just why the Borough is so concerned about the difference in cost between the parties' final offers and why the public interest and welfare dictates that the least expensive final offer be awarded.

In sum, there simply are no reasons why it would be in the public's best interest to award the PBA's final offer. There is nothing in the record to indicate that there is a need to increase salaries for the purpose of attracting more or better qualified Police Officer candidates. In fact, the last time the Borough hired it received over 300 applicants for three positions, even after the Borough increased the number of steps in the salary guide. Clearly, the PBA cannot argue that the interest and welfare of the public dictate that the number of steps in the salary guide be reduced. There is also nothing in the record to indicate that there is a need to improve the present level of salaries so that the Borough does not lose police officers, as there is no turnover in the Police Department. Nor is there anything in the record to indicate a need to reduce the differential between Superiors and the rank and file, but if the PBA's final offer is accepted that is exactly what will happen. If that were to occur, it would be adverse to the public's interest and welfare because of the internal conflict and morale problems it would cause. If morale

in the Department was now low because of the compensation levels, differentials or even other settlements, the PBA would have placed some evidence on the record. It did not. The reason it did not is because morale in the Department is excellent, which is evidenced by the lack of turnover problems. The evidence overwhelmingly proves that for all the aforesaid reasons it is in the public's best interest and welfare to award the Borough's final offer.

As to the second statutory criterion, the Borough urges the Arbitrator to place substantial weight on internal comparabilities, as that is the truest basis of comparabilities. While in the past arbitrators had a tendency to overlook the importance of internal comparabilities, after Hillsdale that is no longer possible. Moreover, good labor relations does not allow for a double standard simply because one bargaining unit has access to interest arbitration and the others do not. Even in cases involving internal patterns with extreme give backs, interest arbitrators have felt themselves compelled to follow internal patterns.

It is therefore very important that Tinton Falls Police Officers earn substantially more than all other Tinton Falls employees. Police Officers occupy 27 out of the 37 highest earning positions in the Borough. The present disparity between Police Officers and other unionized employees would increase were the PBA's final offer awarded, as it would provide for 1.47% compounded greater across-the-board salary increases. Moreover,

Police Officers already enjoy better benefits than the Borough's public works and clerical bargaining unit employees. As a result of this interest arbitration, Police Officers will also enjoy substantially greater disability benefits than all other Borough employees. Finally, Police Officers have much greater earning capacities than non-police officers. Not only are their base salaries and longevity benefits much larger, but their overtime earnings are greater. Police Officers also enjoy the unique benefit of working outside employment at a pre-determined rate, as agreed upon by the parties. Thus, there is absolutely no justification for granting the PBA greater across-the-board salary increases than received by everyone else in the Borough.

The pattern of settlements within the Borough is also extremely important. The first settlement reached, in June, 1994, was with the Superior Officers. The salary increases in each year of the contract were 4.25%, the same as offered by the Borough to the PBA. In addition, in return for eliminating steps for the ranks of Captain and Lieutenant, the parties agreed to add a fourth step for the Sergeant's level, plus replaced the Chief of Police with the lower paying position of Major. The savings to the Borough is obvious.

While the PBA insinuated at the hearing that this settlement was a sham and that a deal was cut so that everyone would receive a promotion and therefore greater than a 4.25% increase, the facts show that this would have been impossible. The SOA Contract was settled in June, 1994. Retirements in the ranks of

Chief, Captain and Sergeant occurred in 1994. The criteria for future promotions was announced on June 6, 1994 in response to a question as to what the criteria for promotions would be when the promotions actually took place. The announcement that there would be promotions was not until October, 1994. The actual promotions did not take place until March 1, 1995, almost one year after a settlement was reached with the SOA. Obviously, there could not have been a sham because in June, 1994 no one knew how many positions would be open for promotions nor who would be promoted. More importantly, in return for adding a new step to the Sergeant's rank, the Borough received a restructured superior salary guide which eliminated steps, replaced the Chief's salary with a significantly lower Major salary, and substantially reduced the future earnings capacities of all Lieutenants, Captains and Majors. An accomplishment of that magnitude is not a sham but is a feat.

While the PBA contends that Sergeant Peterson's March 1, 1995 advancement on the salary guide breaks the pattern of settlement, there is absolutely no basis for this argument. The Borough accelerated Peterson on the salary guide, many months after the Borough/SOA settlement, in accordance with Article XVII, Section C of the Contract which provides that the Borough may accelerate steps based upon performance and may, at its discretion, withhold steps for up to six months for inadequate performance. Similar language is contained in all the Borough's collective bargaining agreements, including the PBA Agreement.

In fact, the PBA itself benefited from this contractual language when three of its members were accelerated on the salary guide, at substantial cost to the Borough.

Thus, the record evidence proves that the SOA settlement was not a sham due to the 1995 promotions. Moreover, the PBA never attacked the second or third years of the SOA settlement, which provide for 4.25% increases, yet in those same years the PBA is seeking 4.75% increases. There is no justification offered for that.

Furthermore, the pattern of settlement upon which the Borough here relies was not limited to the SOA Agreement. Rather, the pattern continued in an October 18, 1994 settlement with clerical employees represented by the Teamsters. It was followed again in a December 5, 1994 settlement for public works employees also represented by the Teamsters. In each case, the bargaining units received a 4.25% across-the-board salary increase.

In sum, the PBA is clearly seeking to obtain more than has already been determined through negotiations to be fair for other bargaining units in the same jurisdiction. If the PBA's final offer is accepted, the impact on the other bargaining units would be devastating. Moreover, it would defeat the very purpose of the interest arbitration statute. The PBA has not placed substantial credible evidence on the record to warrant the breaking of the pattern of settlement.

Consideration of comparable private employment further

supports the Borough's position. A review of the results of a study conducted by the Bureau of National Affairs shows that Tinton Falls Police Officers do extremely well regardless of whom they are compared with in the private sector. The salaries of Tinton Falls Police Officers has risen dramatically more than private sector employees in recent years. Clearly, tremendous disparity has existed for almost a decade between private sector and New Jersey public sector settlements. Hillsdale/Washington Township mandates that this disparity be given proper weight.

Comparison made with public employment in general also supports the Borough's position. Recently, the uncontrolled wage and benefit increases in the public sector during the 1980s and early 1990s has declined drastically. On a nationwide basis, increases in major collective bargaining agreements negotiated with state and local governments in 1995 dropped to 2% in the first year of a contract and 2.3% over the life of the contracts. Thus, the final offer submitted by the Borough far exceeds the national average. Furthermore, in New Jersey settlements between the State and its Unions have involved major concessions and State workers are being laid off.

As to comparability with other police officers, the Supreme Court made clear in Hillsdale/Washington Township that this is not a dispositive factor. In any event, the Borough's final offer is not only reasonable but will also permit Borough Police Officers to continue to receive salaries and benefits comparable to their peers throughout the County. If comparisons are made

with the entire County, as properly done by the Borough, the Borough's \$49,042 maximum Patrolman's salary, without longevity, ranked twelfth out of the 45 municipalities in the County. Considering that Tinton Falls is not a wealthy community, nor are its officers burdened with a more dangerous work environment than in most other Monmouth County communities, this is an excellent ranking. Furthermore, the PBA's basis of comparability is a selected group of 24 municipalities in a County with 45 police departments. The PBA offers no rhyme or reason as to how these 24 communities were comparable to Tinton Falls in 1993, 1994 and 1995. The Arbitrator is therefore urged to ignore all of the PBAs comparability exhibits. Moreover, the PBA's analysis does not state whether or not the settlements include "give backs". The interest arbitration awards submitted by the Borough, however, illustrate a pattern of "give backs" in the public sector. These Awards are also compelling because they are so recent. Nonetheless, the Borough is not here seeking one "give back."

The Arbitrator must also consider "conditions of employment", which is referred in N.J.S.A. 34:13A-16(g)(2). There is no evidence that the Borough's Police Officers have undesirable conditions of employment. Moreover, as the Appellate Division suggests in Hillsdale, the Arbitrator should compare the compensation of Tinton Falls Police Officers to some of the urban municipalities in the State.

In short, the comparability survey done by the Borough

establishes without question that the compensation of Tinton Falls Police Officers compares very favorably with other municipalities throughout the County. This will continue and even increase even if the Borough's final offer is awarded over that of the PBA. Thus, there can be no dispute that Tinton Falls Police Officers enjoy substantially greater salaries, benefits and conditions of employment than all other Tinton Falls employees; than public sector employees in general; than similar private sector employees; and even other Monmouth County Police Officers.

It is also important that the overall compensation package of Tinton Falls Police Officers is excellent. Sick days, temporary disability leave, clothing allowance, health benefits, life insurance, education stipends, working off-duty benefits, and salary and longevity benefits are all excellent. Everyone except new hires is at the maximum salary of \$49,042 and enjoy excessive longevity benefits. Even Officers hired after January 1, 1993 continue to receive longevity benefits, albeit more in line with the high salaries now received by Police Officers. Tinton Falls Police Officers also have the unique benefit of Corporal assignment which pays a \$500 annual stipend, which the Borough has agreed to increase even further during this Contract.

The Arbitrator must also give considerable weight to the cost of living. Over the last twelve years PBA salaries have increased 31% more than the cost of living. A 14.1% non-compounded offer is not realistic when the CPI was 2.8% in the

first year of the Agreement and is projected to be the same in the future.

The cost of the PBA's 19.1% final offer exceeds the lawful authority of the Borough and would have a negative financial impact on the Borough. While the Borough cannot argue in good faith that awarding the PBAs final offer would force the Borough to exceed the cap, the Borough can argue in good faith that awarding the PBAs final offer will force the Borough to exceed what has been allocated in the budget for Police salaries and wages. Hence, in that regard the PBAs final offer both exceeds the lawful authority of the Borough and will impact negatively on the Borough and its residents and taxpayers.

The continuity and stability of employment enjoyed by the PBA is far better than what any other public or private sector employees enjoy. When Court mandated considerations concerning this criterion are analyzed, it becomes clear that the continuity and stability of employment in Tinton Falls is excellent.

Finally, there is no evidence on record to justify granting the PBAs non-economic proposals. While the PBAs proposal to amend the recognition clause to include Corporals assumes that Corporal is a rank the same as Patrolman, Sergeant, Lieutenant, Captain and Major, it is not. A review of Article XVI, Section D shows Corporal is an "assignment" at the discretion of the Borough, the same as Detective is an assignment. In addition, amending the grievance procedure in the way sought by the PBA

would be a significant change, as the parties would be forced to litigate that a grievant "should have known of the occurrence of the grievance." The PBA has not placed anything in the record to justify this change.

For these reasons, the final offer of the Borough should be awarded.

OPINION

Although the parties were unable to reach full agreement on a new Contract, the pressure of the "final offer" interest arbitration process caused both parties to resolve many items completely and greatly narrow their differences on the few items which remained unresolved. Indeed, the PBA contends that the cost differences between the salary proposals for 1995, 1996 and 1997 are now so minuscule as to constitute the epitome of di minimis. While the Borough does not consider the cost differences between the final offers to be di minimis, it does acknowledge that over the three year period here in question the difference between the final offers of the parties is less than \$26,000, plus roll-up costs.

Nonetheless, as some differences do exist between the final offers of the parties, it is my responsibility to select the final economic offer of one side in its totality. Consistent with Hillsdale/Washington Township precedent, I undertake this responsibility by analyzing the record evidence within the context of all of the statutory criteria.

Interest and Welfare of the Public

The PBA correctly notes that the "public" within the Borough is not a poor one. A variety of economic statistics cited by the Association indicate that the Borough's citizens generally have economic resources above the norm and have supported economic initiatives, particularly as it relates to the local school system. This adds credence to the Association's argument that the public has the economic resources to fund the PBA's final offer if it is otherwise in the public's best interest to do so.

Nonetheless, the Borough has correctly noted that the "public" within the Borough is not without current and future economic concerns. A variety of economic statistics cited by the Borough indicate that there has been a decline in the relative wealth of the taxpayers and Borough and that economic pressure on both is increasing. This adds credence to the Borough's argument that this public should not be required to use its economic resources to fund the PBA's final offer if it is not otherwise in the public's interest to do so.

Thus, it is necessary to consider other factors to determine what is in the best interest of the public. From the perspective of the PBA, chief among those additional factors is the matter of morale. According to the PBA, there is extremely poor morale in the Police Department, and awarding the PBA's final offer would therefore be in the public's interest because it would have the effect of raising morale and enabling the Department to attract

and retain qualified and experienced officers.

I certainly agree that morale is an important consideration. I also have no doubt that Police Officers would react favorably to my granting the PBA's final offer. The Association's leadership and counsel has argued strenuously in favor of that result throughout this proceeding, and I have no reason to doubt that their feelings reflect those of the rest of the rank and file Officers. Indeed, it is logical that my adoption of the PBA's final offer would enhance Police Officer morale, as it would provide them with modestly increased economic benefits, including the elimination of one step on the salary guide.

Nonetheless, I do not find that the matter of morale weighs heavily in favor of my concluding that it is in the public's best interest to award the PBA's final offer. The Borough correctly notes that there is little objective evidence to support the PBA's contention that morale within the Department is now extremely low. Rather, the objective evidence reveals that it is turnover within the Department which has been extremely low. Similarly, there is little objective evidence to support the PBA's conclusion that awarding of the PBA's final offer is in the public's interest so as to attract and retain senior officers. There is little evidence that experienced officers have avoided working in the Borough due to pay, steps in the guide or other economic considerations, and even less evidence that the difference between the two final offers of the parties would make the difference between a senior officer working or not working in

the Borough.

Given the absence of objective evidence concerning poor morale, instability in the work force, or difficulty in attracting qualified applicants for available positions, there is little reason to conclude that awarding the PBA's final offer would be in the public interest. For reasons detailed later in this Opinion, however, there is good reason to believe that awarding the Borough's final offer would be in the public interest, as it best conforms to the remaining statutory criteria.

Comparisons

This criterion involves comparisons of wages, salaries, hours and conditions of employment of PBA members with various other employees performing same or similar services, with other employees generally in public employment, and comparable private employment, and public and private employment in general.

Concerning internal comparisons, Superior Officers must be the starting point of analysis. Superiors comprised the first bargaining unit to negotiate an Agreement covering 1995-1997. They also comprise the only other uniformed bargaining unit in the Borough.

The parties hotly dispute whether consideration of salary increases received by the Borough's Superior Officers ("SOA") in 1995, 1996 and 1997 favors adoption of the Association or Borough's final offer. The Borough contends that the SOA, like

all other Borough employees, received negotiated salary increases limited to 4.25% in each of these years. According to the PBA, however, a close analysis of the salaries earned by each of the nine members of the SOA reveals that superiors received an average salary increase in 1995 of 12%, which is nearly triple the 4.6% salary increase sought by the PBA for the same year, and that their dollar increases in 1995 averaged \$6,661, far in excess of the \$2,256 average dollar increases sought by the PBA in the same year.

I conclude that the Collective Bargaining Agreement negotiated by the Borough and SOA covering the years 1995, 1996 and 1997 does contain pay raises limited to 4.25%. While this Agreement also contains a provision calling for a revision in the number of salary guide steps in certain SOA represented positions, the PBA has insufficient evidence available to rebut the Borough's contention that these changes were desired by it and perceived to be in the Borough's long term best financial interest.

While it is true, as stressed by the Association, that the Borough granted at least one SOA member, Sgt. Petersen, a step increase in 1995 well in advance of when it was contractually obligated to do so, this action does not reflect negatively upon the integrity of the negotiated SOA/Borough settlement. The Agreement was entered into in June, 1994 and Sgt. Petersen's accelerated advancement on the salary guide did not occur until March 1, 1995. Moreover, there is no evidence that this

accelerated step movement for Sgt. Petersen was an explicit or implicit part of the Collective Bargaining Agreement. The Borough also persuasively argues that this accelerated movement was done entirely consistent with the terms of the Borough/SOA Collective Bargaining Agreement. That Agreement, like those in the Borough/Teamsters' public works Contract, Borough/Teamsters clerical Contract, and the Borough/PBA Contract contains a provision stating that the Borough may accelerate the granting of Steps. Indeed, there is evidence in the record that at the time of the hearing in this case the Borough had made a determination to grant three PBA members accelerated guide placement through the same contractual procedure.

Similarly, while in 1995 the economic compensation of Superior Officers was increased through various promotions, there is also insufficient evidence upon which to conclude that these promotions were an explicit or implicit part of the 1995-1997 SOA/Borough Collective Bargaining Agreement and therefore a cost fairly attributable to that Agreement. As previously noted, this Agreement was actually reached in 1994. At that time, it could not be fully certain what promotions would be available, when they would be available, or who would receive those promotions.

In these circumstances, I conclude that the SOA/Borough negotiated Agreement for 1995-1997 established a precedent of 4.25% increases in 1995, 1996 and 1997. Consideration of the non-uniform unionized employees in the Borough reveals that this precedent subsequently became an internal pattern. It is

undisputed that the Borough and Teamsters entered into separate Collective Bargaining Agreements for public works and clerical employees for 1995, 1996 and 1997, both of which called for wage increases of 4.25% in each year. It follows that adoption of the Borough's final offer would maintain that internal pattern of settlement, while adoption of the Association's final offer would not.

Turning to external comparisons, the PBA has established that prior to 1994 pay for workers in New Jersey rose beyond 4.75%. It has also established that at least some experts projected that personal income in the State would continue to grow above 4.75% in 1995 and 1996. It has further noted certain specific locations where public and private sector employees have recently received wage increases above 4.75%. These include certain highly paid State employees, certain Rutgers employees, and AT&T employees. Each of these factors favors adoption of the PBA's final offer.

The Borough, however, has also cited a number of external comparisons favorable to its position. In the past ten years, PBA salaries have increased dramatically beyond median private sector increases. In recent years, private sector wage settlements for unionized employees have been well below 4.25%. Moreover, in public employment negotiated increases have decreased dramatically, and on a national basis are now also well below 4.25%. In addition, a number of major New Jersey public sector Contract settlements, including those with the State, have

included financial terms significantly inferior to those contained within the Borough's final offer.

Finally, the Association places great weight upon comparisons with other settlements and Awards involving police officers in other jurisdictions. It contends that the Monmouth County average for 1995 wage increases is 5.23% and for 1996 is 4.86%. The Association argues that if the Borough's final offer is awarded it will translate into one of the lowest, if not the very lowest, percentage and dollar increases in the County. According to the Association, even if its final offer is awarded the raises still will not compare favorably to the County average.

While I am persuaded by the PBA that the Borough's final offer does not compare favorably with the average for other police settlements and Awards, I do not believe that adoption of the Borough's final offer will disadvantage the PBA's members nearly so much as it fears. The final offer of the Borough is notable in that it does not contain a single economic give back. By contrast, in a number of other jurisdictions police are making significant give backs. Moreover, the Borough offer contains some economic improvements beyond wage increases, such as increase in the Academy rate, sick leave accumulation, and in the Corporal stipend, which further enhances the value of the offer. The parties have also reached agreement on various additional items which will also benefit Association members.

It also cannot be ignored that the County and/or State

average for police officer increases in 1995 and 1996 is at least in part a reflection of settlements and awards made in a different economic climate. In this regard, the Borough has cited a number of recent settlements and interest arbitration awards which include raises at or near those contained in the Borough's final offer.

Overall Compensation

The overall compensation package received by Police Officers includes salary, longevity (at different levels for those hired before and after January 1, 1993), personal days, holidays, vacation, sick leave, accumulated sick leave, temporary disability benefits for non-job related injuries or illness, supplemental work incurred injury benefits (increased during this round of negotiations by agreement of the parties), clothing allowance, dry cleaning allowance, fully paid State Health Benefits, fully paid dental plan, life insurance, educational incentives and the right to earn off duty pay at specified levels. There is, however, no Detective stipend and Police Officers do not receive out of rank pay.

The Borough has established that this overall compensation package is excellent when compared to other Borough employees. With few exceptions, Police Officers are relatively well paid and receive superior benefits.

The Association, however, has established that the overall compensation of PBA members does not fair well when compared to

Tinton Falls teachers. Senior teachers generally work fewer days and hours but receive substantially greater compensation than senior Police Officers. In addition, teachers have recently received salary increases well in excess of those here sought by the PBA.

Both parties have made telling points concerning the overall compensation received by PBA members when contrasted with that received by other Police Officers. In base salary, the maximum patrolman's salary in 1994, without longevity, ranked 12th out of 45 municipalities in the County. Moreover, a recent ten year analysis demonstrated that in salary the Borough's Police Officers fared very well against the County average. The overall compensation of PBA members also fares well when seen relative to that received by Police Officers in certain urban jurisdictions.

Nonetheless, the Association persuasively argues that certain fringe benefits received by the PBA are well below average when considered relative to that received by other Police Officers. Most notably, the salary guide contains the most steps in the County and the number of steps is far above the County average. Adoption of the PBA final offer would reduce that guide by one step, while adoption of the Borough's final offer would leave it unchanged. In addition, longevity received by Police Officers hired after January 1, 1993 is dramatically lower than that in place for Police Officers hired before that date and well below the County average. The PBA's final offer is notable in that it does not seek to increase longevity for new hires so as

to make the overall offer more attractive.

Finally, the Association also persuasively argues that the overall compensation of its members will be reduced relative to other Police Officers no matter which final offer is accepted. While the exact figure is one of dispute, it appears clear that the Borough's final offer is below the County and State averages for comparable years.

Stipulation of the Parties

As detailed in the statement of the parties' final offers which is set forth above, each side has stipulated to several proposals of the other side. Several of these understandings benefit the PBA and its members, other understandings benefit the Borough.

Lawful Authority of the Employer

I conclude that the granting of either the Borough or PBA economic package would not infringe upon the lawful authority of the employer. While the Borough has raised the issue of its financial condition, it wisely has not argued that it would be unable to fund the PBA final offer consistent with its lawful authority. In addition, while I am well aware of the cap constraints, the evidence is clear that the PBA final offer, as well as the Borough's, could be funded within the cap.

Financial Impact on the Governing Unit, Its Residents and Taxpayers

It is clear that the PBA final offer would entail greater financial impact. It is also clear, however, that the difference in the financial impact between the two final offers for 1995, 1996 and 1997 would not be great. Moreover, the Borough seriously undermined its financial impact argument when it voluntarily decided to accelerate Sgt. Petersen's step placement in 1995. If the Borough had the financial resources to take this action, it also has the financial resources to pay the PBA's final offer.

Cost of Living

The final offer of both parties is in excess of the current cost of living. This fact cannot be negated by the Association arguments that the cost of living index does not accurately reflect the growth of the economy in Monmouth County. Moreover, in the past decade PBA salaries have increased dramatically over the cost of living. While the exact cost of living for the rest of 1996 and 1997 is unknown, there is no evidence in the record indicating that it will substantially increase.

Continuity and Stability of Employment and Other Factors

As previously noted, the PBA has argued that this criterion favors adoption of its final offer. More specifically, it contends that a decrease in the number of steps, and a betterment

in salary, would have a positive impact upon Police Officers in enticing them to remain in employment with the Borough. As I have previously stated, however, there is little evidence of record to establish that the Borough has had difficulty retaining Officers. I also do not believe that the increases in the number of representatives who may attend negotiating sessions, or the addition of language stating that the Police Chief shall not unreasonably withhold compensatory time, or the small difference in the Corporal stipend between the two parties' final offers will seriously enhance stability of employment. I do, however, believe that maintenance of an internal pattern of settlement will enhance stability in the Borough's work force.

Finally, the Borough correctly noted that Borough Police Officers, unlike individuals in many other employment situations, face no threat of layoffs.

After considering all of the statutory criteria, I determine to Award the final economic offer of the Borough over that of the PBA.

In reaching this conclusion, I place substantial weight on the fact that the Borough's final offer adheres to the pattern of settlement for all other bargaining units in the Borough for 1995, 1996 and 1997, while the Association's final offer does

not.

The importance of an internal pattern of settlement has been previously recognized by myself and many other arbitrators in interest arbitration proceedings. For example, in a case involving the City of Asbury Park and Asbury Park's Superior Officers, Arbitrator Weissblatt stated that "the concept that a pattern of bargaining is a major consideration under the statutory criteria is well accepted as part of the interest arbitration process. This concept has regularly been given considerable even controlling weight by arbitrators....". In a case involving the Township of Union, Arbitrator Tener stated that "[W]hen a pattern is shown to exist, it will be adhered to absent an overriding reason to the contrary. The burden rests upon the party challenging the pattern to show, by compelling evidence, why the pattern should be broken".

Were I here to grant the final offer of the PBA, one of two results, or a combination thereof, would likely occur. Either the morale among other Borough employees would be negatively impacted by realization that the PBA members had received better wage increases than that which they had achieved, or these other employees would use the PBA Award as a springboard to seek increased benefits during the next round of negotiations. Both results would adversely effect the continuity and stability of employment and the public interest.

It is important to note, however, that the internal pattern for bargaining units in 1995, 1996 and 1997, and indeed

comparisons in general, are far from the only consideration I have included in my decision making process. To the contrary, I have considered and factored into my analysis each and every statutory criterion, including their subdivisions. As previously noted, many of these other criteria, at least in part, also favor adoption of the Borough's final offer.

In sum, rarely if ever do all the statutory criteria favor selection of the final offer of one side over that of the other. Neither does that situation exist here. Rather, application of the statutory criteria including its subdivisions leads to mixed results, with some favoring the PBA and some favoring the Borough. On balance, however, the statutory considerations weighing in favor of the Borough in my judgment outweigh those weighing in favor of the PBA. It follows that the Borough's final offer is therefore the one that I am compelled to award.

I now turn to address the non-economic items which remain in dispute. The PBA seeks changes in two Articles of the most recent Collective Bargaining Agreement.

I deny the PBA's demand to change the recognition clause to include Corporal. The record evidence does not clearly justify a change in the status quo. Moreover, if the PBA wishes to clarify the bargaining unit, it can do so through the appropriate PERC procedures.

I do, however, grant the PBA's demand to amend Article III, Section C of the grievance procedure to include the phrase "or within 30 calendar days of when the aggrieved employee knew or should have known of the occurrence." This is not an unusual clause in collective bargaining agreements. It is a fair provision, as it does not hold an employee responsible for knowing of an event of which he or she could not reasonably have been expected to have knowledge. Moreover, while there is not evidence of a problem with this matter in the past, such a problem could arise without warning at any time.

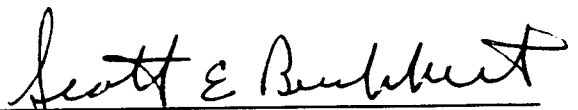
AWARD

The final economic offer of the Borough is granted.

The non-economic demand of the PBA concerning the recognition clause is denied.

The non-economic demand of the PBA concerning the grievance procedure is granted.

Signed this 23rd day of August, 1996.


SCOTT E. BUCHHEIT, ARBITRATOR

*State of New Jersey
County of Camden
Mattia R. Kazels*

MATTIA R. KAZELS
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires Jan. 5, 1997

