

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

In the Matter of Interest Arbitration Between :
 :
TOWNSHIP OF ROCHELLE PARK :
 "the Township or Employer" :
 :
 and :
 :
ROCHELLE PARK PBA, LOCAL 102 :
 "the PBA or Union" :
 :

**INTEREST ARBITRATION
DECISION
AND
AWARD**

Docket No: IA-2003-035

Before: Robert M. Glasson, Arbitrator

APPEARANCES

FOR THE EMPLOYER:

Mark S. Ruderman, Esq.
Of Counsel
Ellen M. Horn, Esq.
On the Brief
Ruderman & Glickman, P.C.

FOR THE PBA:

Richard D. Loccke, Esq.
Of Counsel & On the Brief
Loccke & Correia P.A.

Background & Procedural History

The Township of Rochelle Park (the “Township”) and Rochelle Park PBA Local 102 (the “PBA” or “Union”) are parties to a collective bargaining agreement (the “CBA”) which expired on December 31, 2002. Upon expiration of the CBA, the parties engaged in negotiations for a successor agreement. Negotiations reached an impasse, and the parties mutually filed a petition with the New Jersey Public Employment Relations Commission (“PERC”) on January 16, 2003 requesting the initiation of compulsory interest arbitration. The parties followed the arbitrator selection process contained in N.J.A.C. 19:16-5.6 that resulted in my mutual selection by the parties and my subsequent appointment by PERC on February 21, 2003 from its Special Panel of Interest Arbitrators.

I met with the parties in a voluntary mediation session on April 2, 2003. The mediation session did not resolve the issues included in the impasse. Formal interest arbitration proceedings were invoked and a hearing was conducted on September 25, 2003 when the parties presented documentary evidence and testimony in support of their positions. Both parties filed post-hearing briefs. The matter was declared closed on November 20, 2003 upon receipt of the briefs. The parties agreed to extend the time for the issuance of the award to May 1, 2004.

This proceeding is governed by the Police and Fire Public Interest Arbitration Reform Act, P.L. 1995, c. 425, which was effective January 10, 1996. While that Act, at N.J.S.A. 34:13A-16f(5), calls for the arbitrator to render an opinion and award within 120 days of selection or assignment, the parties are permitted to agree to an extension.

The parties agreed upon an alternate terminal procedure. The following “last offer” procedure was approved by Timothy A. Hundley, PERC’s Director Arbitration by letter dated May 27, 2003:

Arbitration under which the award on the economic issues in dispute is confined to a choice between (a) the last offer of the employer on the economic issues as a single package and (b) the employee representative's last offer on the economic issues as a single package; and, on the non-economic issues in dispute, the award is confined to a choice between (a) the last offer of the employer on each issue in dispute and (b) the employee representative's last offer on that issue.

Accordingly, the terminal procedure is last offer arbitration. The arbitrator is required by N.J.S.A. 34:13A-16d(2) to "separately determine whether the net annual economic changes for each year of the agreement are reasonable under the eight statutory criteria in subsection g. of this section."

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 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 condition of employment of the employees involved in the arbitration proceedings with the wages, hours and condition 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 jurisdictions, as determined in accordance with section 5 of P.L. 1995, c. 425 (C. 34:13A-16.2); provided, however, each party shall have the right to submit additional evidence concerning the comparability of jurisdictions for the arbitrator's consideration.

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

(4) Stipulations of the parties.

(5) The lawful authority of the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by the P.L. 1976, c. 68 (C.40A:4-45.1 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 municipality, the arbitrator or panel of arbitrators shall take into account to the extent the evidence is introduced, how the award will affect the municipal or county purposes element, as the case may be, of the local property tax; a comparison of the percentage of the municipal purposes element, or in the case of a county, the county purposes element, required to fund the employees' contract in the preceding budget year with that required under the award for the current local budget year; the impact of the award for each income sector of the property taxpayers on the local unit; the impact of the award on the ability of the governing body to (a) maintain existing local programs and services, (b) expand existing local programs and services for which public moneys have been designated by the governing body in a proposed local budget, or (c) initiate any new programs and services for which public moneys have been designated by the governing body in its proposed local budget.

(7) The cost of living.

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

Final Offers

Rochelle Park PBA Local 102

1. **Term of Contract:** January 1, 2003 to December 31, 2005.
2. **Wage Increase:** The PBA proposed a 4.0% across-the-board increase at each step to be effective April 1, 2003, April 1, 2004 and April 1, 2005.

Township of Rochelle Park

1. **Term of Contract:** January 1, 2003 to December 31, 2005.
2. **Wage Increase:** The Borough proposes a 3.75% across-the-board annual increase effective January 1, 2003; January 1, 2004 and January 1, 2005.

Arguments of the Parties

The Borough and the PBA successfully concluded negotiations on all issues except annual salary increases. The parties requested that I acknowledge the agreement reached before the conclusion of the hearing regarding compensatory time. The parties agreed to increase the compensatory time bank to forty hours and to use the following language from paragraph 13.5 in the Borough's CBA with its SOA bargaining unit:

13.5 Each employee shall have the individual option of receiving overtime compensation as either a cash payment (time and one-half) or as compensatory time off (C.T.O.) At the rate of time and one-half. When C.T.O. is elected by the employee then the C.T.O. shall accumulate in the C.T.O. Bank and shall be used at the employee's sole option, subject only to prior Police Department approval.

At no time shall any employee's C.T.O. Bank contain more than forty (40) hours. Once the maximum C.T.O. Bank amount is reached, then all additional overtime compensation shall be paid compensation (time and one-half).

PBA's Arguments

The PBA notes that this is unique since its salary proposal costs less to implement than the Township's salary proposal. The PBA further submits that the close proximity of cost of the Township and PBA salary proposals significantly reduce the impact of the "lawful authority" and "financial impact" criteria (g5 and g6) in choosing a last offer. The PBA contends that the comparability criteria under the Act are most relevant and strongly support an award of its salary proposal.

Interests and Welfare of the Public

The PBA asserts that the interests and welfare of the public are well served by the Rochelle Park Township Police Department. Rochelle Park is centrally located in Bergen County and is at or near the crossroads of many major thoroughfares. The PBA cites the testimony of Patrol Officer Joseph Eppi who described in detail the significance of the geographic location of Rochelle Park and its impact on police activities. Officer Eppi testified that while the town's nighttime population is approximately 5,000, it swells to more than 20,000 during the daytime business hours. This is largely due to the significant industrial/office/professional business use within the municipality. Citing recent traffic counts Officer Eppi described Department of Transportation statistics to substantiate the heavy traffic flow within the municipality and described the recent growth of many new buildings as well as the established land use.

The PBA notes that the Garden State Plaza Mall is on the border of the Township. While the Mall is within the territorial boundary of bordering Paramus, the only way to get there from the south is through Rochelle Park. The main thoroughfare heading north to the Mall is Route 17, which effectively bisects the Township of Rochelle Park. Another major

thoroughfare leading in is the Garden State Parkway. The ramp from the Garden State Parkway leading toward the Mall is in Rochelle Park and requires passing through the Township. Most important perhaps is the fact that standing orders within the Rochelle Park Police Department provide for regular patrol within the Borough of Paramus near the Mall boundary. Officer Eppi described the requirement to patrol such avenues as the Plaza Way service road as part of regular Rochelle Park Police Department duties which means that Rochelle Park Police Officers patrol in the Borough of Paramus and work directly on a daily basis with the Paramus Police.

The PBA asserts that the interests and welfare of the people of Rochelle Park and all of the persons who pass through the municipality, are well protected by the sworn members of the Rochelle Park Police Department.

***Comparison of the Wages, Salaries,
Compensation, Hours, and Conditions of Employment***

This PBA submits that this case is unique for several reasons. This is a case where both parties have elected to use the "Last Offer" process. Further, both parties have submitted a single issue for the Arbitrator's consideration, wages. The PBA submits that what is most unique is that the cost of implementing the PBA's last offer on salary is less than the cost of the Township's last offer on salary.

The PBA contends that the comparability data under criteria g(2) and g(3) provides strong support for an award of its last offer on salary. The PBA contends that it submitted extensive evidence included in six bound volumes of contracts, settlements and Interest Arbitration awards throughout the region in support of its position and that the Township has basically waived presentation on this criterion. The PBA emphasized comparisons with surrounding municipal Police Departments whereas similar comparisons were not made by the Township.

The PBA asserts that its last offer providing for 4% annual increases is fully and completely supported by the proofs in evidence. The PBA relies on the following data in Chart 1:

CHART 1
Base Wage Percentage Changes Based on PBA Exhibits

	2003	2004	2005	2006
Ridgewood	4.5			
Glen Rock	4			
Allendale	4.	4.		
Bergenfield	4.	4.		
East Rutherford	4.	5.		
Edgewater	4.			
Emerson	4.			
Englewood PBA	4.2			
Englewood SOA	4.2			
Fairview	4.	4.	4.	4.
Hasbrouck Hts.	4.	4.		
Leonia	4.			
Lodi	4.	4.25		
Moonachie	4.	4.		
New Milford	4.	4.		
Saddle Brook	4.5	4.5		
South Hackensack	4.	4.		
Wood Ridge	4.			
Rutherford	4.			
NJ State Police	4.			
Averages	4.07%	4.175%	4%	4%

The PBA asserts that its 4% last offer position is fully and completely supported by the evidence introduced and is actually slightly below the area average for 2003 and 2004. The PBA notes that the data in Chart 1 references only the base pay component of the settlement. In virtually every town there were other improvements achieved through settlement or by Arbitrator's award. The PBA provided the following examples:

1. The PBA cites the Interest Arbitration award in Allendale which provides, in addition to the base wage increases, a clothing allowance increase and an additional annual personal day.
2. The East Rutherford settlement included an improved Detective Differential, improved uniform allowance, and improved PBA time off provisions.
3. The Glen Rock settlement agreement provides, in addition to base wage improvement, a new concept of a "Senior Police Officer Stipend" and improved rank differential as well as an improved Detective Supervisor Stipend.
4. The Interest Arbitration Award for the neighboring Borough of Hasbrouck Heights included holiday fold-in as a new benefit.
5. The Moonachie Interest Arbitration Award included, in addition to the 4% across-the-board wage increases, a holiday fold-in benefit.
6. The bordering municipality of Saddle Brook settlement agreement included, in addition to the wage increase of 4.5% across the board in each of the contract years, the new benefit of holiday fold-in, an increase of \$100 per annum in the clothing allowance and several other minor non-economic points.

The PBA submits that salary increases in Chart 1, if recalculated to include the value of other economic improvements, would create an average total increase much higher than those reflected in the calculations above providing further support to the PBA's last offer which is confined to only a wage adjustment.

The PBA asserts that base compensation is important in most towns beyond the actual value of the base payroll amount. In every town placed in evidence by the PBA there

was a longevity program. In Rochelle Park the longevity program was grandfathered five years ago and is no longer available to the new officers. The PBA submits that this is significant for two reasons. First, there is a considerable short fall in compensation for those employees who do not qualify for longevity when compared with compensation programs with longevity in other municipalities. Second, the testimony of Officer Eppi shows the employees without longevity, “the have nots”, are approaching majority status in the bargaining unit. The PBA maintains that this is not an appropriate time to create further problems with compensation by implementing less than average wage increases.

The PBA calculated the significance of the loss of longevity to the bargaining unit in Chart 2 below. Chart 2 takes the various towns placed into evidence by the PBA and reflects the value of the longevity program. The actual maximum longevity formula is set forth in Column C. Column B reflects the 2002 maximum base rate for patrol officers.

CHART 2

**Annual Longevity Benefit Comparison at Maximum
Based on PBA Exhibits (Based on 2002 Base Wage Rates)**

(A) Municipality	(B) 2002 max Rate ratio	(C) Max Longevity formula
Ridgewood	7,751	10% max @ 20 years
Allendale	7,827	2% ea. 4 yr. max 10%
Bergenfield	6,572	max 8% @ 24 yr.
East Rutherford	9,356	2% ea. 4 yr., max 12%
Edgewater	8,920	2% ea. 4 yr., max 12%
Emerson	6,480	max 9% @ 24 yr.
Englewood	7,710	max 9.5% @ 24 yr.
Fairview	10,157	2.5% ea. 4 yr. max 15%
Hasbrouck Hts.	8,152	10% max @ 20 yrs.

Leonia	9,212	12% max @ 24 yrs.
Lodi	9,550	2% ea. 4 yr., max 12%
New Milford	5,800	max 8% @ 24 yrs.
Saddle Brook	7,943	10% max @ 28 yrs.
South Hackensack	8,220	10% max @ 20 yrs.
Wood Ridge	7,110	9% after 24 yrs.
Wyckoff	6,569	8% @ 20 yrs.
Rutherford	7,287	9% after 24 yrs.
Average	\$7,330	

The average value of the longevity program in the area towns is more than \$7,300. The PBA asserts that this must be weighed when considering comparability with other towns. Further, the increases in base rate cost less to implement in Rochelle Park than in the other towns. A 4% increase to a Police Officer who has no longevity in Rochelle Park costs 4%. The same increase in Ridgewood, for example, would cost 4.4% at maximum because the Ridgewood maximum longevity is 10% at 20 years of service. The PBA contends that it costs less to implement the wage increase in Rochelle Park than in any other town listed on Chart 2.

The PBA notes that the only Township reference to base rates is a chart set forth in the Township's Exhibit Book on the first page of Tab 2. This chart purports to reflect base pay rates in Rochelle Park and other towns and then create a ranking. The PBA contends that the chart is inaccurate. In Rochelle Park, holidays are folded into base pay and are 6% of base pay. The PBA asserts that the rate shown on the salary schedule on Appendix A of the contract must be reduced by 6% to be compared with the base salaries of police officers in other municipalities. The PBA submits that this adjustment of the base will reduce the base in Rochelle Park by approximately \$5,000 to \$80,361. The PBA contends that this reduces

the Township from the number three position to a midrange position in the comparisons. The PBA asserts that a proper comparison must take into account the holiday fold-in and the two-tier longevity benefit. The PBA further notes that the starting wage is below the County average.

The PBA points out that the clothing allowance received by Rochelle Park officers is below average. Chart 3 provides a comparison of clothing allowance provisions in the various contracts placed in evidence by the PBA.

CHART 3
Annual Clothing Allowance Comparisons

Municipality	Annual Clothing Allow.
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Municipality	Annual Clothing Allow.
Ridgewood	\$800
Allendale	\$800
Bergenfield	\$850
East Rutherford	\$1150
Emerson	\$550
Englewood	\$600
Fairview	\$700
Franklin Lakes	\$1000
Glen Rock	\$800
Hasbrouck Hts.	\$1050
Saddle Brook	\$1150
Wood Ridge	\$900
Rutherford	\$500
Average	\$832
Rochelle Park	\$750
Rochelle Park compared to average	(82) (11%)

The PBA notes that the Township provided an unsigned contract from the Borough of Ramsey. The PBA contends that the Township's reliance on this contract is misplaced. The PBA asserts that while the increases in the base rate appear to be 3.5%, the actual settlement far exceeded that amount. The PBA submits that an analysis of the Ramsey CBA and the Memorandum of Agreement show the following negotiated increases:

1. Extensively improved retiree medical provision. This includes an improvement in the extent of the period of coverage for retiree medical.
2. The dental benefit was increased to \$1500.
3. The clothing allowance was increased from \$1000 to \$1500 during the term of the contract.
4. Bereavement Leave was increased.
5. Sick Leave days cashed in at retirement will be changed from the previous system of being paid at the rank earned and will instead be paid at the rank achieved at retirement. Therefore under the previous system where a previous patrol officer's day had a value at that rank when that person may hypothetically be a lieutenant, said person would now cash that same day in at the lieutenant's rate upon retirement.
6. Improved personal days.
7. Additional holiday time for work on Christmas and New Year's Day.
8. The annual bureau stipends were improved.

The PBA further notes that a Senior Officer pay status was created for officers completing twenty-three years of service and providing almost \$4,000 per year in this new benefit. The PBA calculates that this Senior Officer step will increase the top step from \$84,354 in 2003 to \$88,340, an increase of \$3,986 representing a 4.73% increase over the previous top step base. The PBA notes that this increases the annual increase in 2003 to more than 8% for those employees with twenty-three or more years of service. The top step longevity program in Ramsey provides for a 10% longevity benefit at top step. The value of this senior officer

step is therefore increased by approximately \$400 by application of the longevity schedule. The PBA contends that the Ramsey settlement, not counting the value of the new retiree medical plan, is worth more than 5% on average to Ramsey Police Officers.

The PBA disputes the Township's reliance on the settlement with the SOA bargaining unit. The PBA contends that wage comparisons cannot be made based upon the Township's evidentiary showing. The PBA notes several points that differentiate the SOA and PBA collective bargaining agreements when comparing J-1 and Tab 2 of the Township's Exhibit Book.

1. Detective Differential of \$500 per annum provided in the SOA contract (§9.5.2).
2. Detective schedule adjustment day provided in the SOA contract (§9.5.4) but does not appear in the PBA contract.
3. Compensatory Time Off Bank provisions exist in the SOA contract (§13.5) but do not exist in the PBA contract. This difference was remedied in a pre-arbitration settlement in this case, however, it should not be overlooked that the SOA has enjoyed this benefit for years.
4. The grandfather provision for longevity for employees hired after 1998 while it exists in the SOA contract as in the PBA contract, has no impact on anyone in the SOA bargaining unit.
5. The vacation scheduling provisions are less restrictive in the SOA contract (see Article XVI).
6. There are no limits to the educational incentive plan coverage in the SOA contract whereas there are specific limits on numbers of credits which may be paid for in the PBA contract (J-1, Article XXIII).

Private Sector Comparisons

The PBA contends that any comparison with non-police is worth little if any weight and that the best comparisons are made with other Police Officers. Due to the unique statutory obligation and treatment of police officers under New Jersey Law, any comparison

of said law as it applies to private sector employees as compared to police officers must result in a strong justification for significantly higher compensation to be paid to police officers. The PBA cites the decision of Arbitrator Carl Kurtzman regarding private sector comparisons:

As other arbitrators have noted, it is difficult to compare the working conditions of public sector police officers with the working conditions of private sector employees performing the same or similar services because of the lack of specific private sector occupational categories with whom a meaningful comparison may be made. The standards for recruiting public sector police officers, the requisite physical qualifications for public sector police and their training and the unique responsibilities which require public sector police to be available and competent to protect the public in different emergent circumstances sets public sector police officers apart from private sector employees doing somewhat similar work. Accordingly, this comparison merits minimal weight. (Borough of River Edge and PBA Local 201, PERC IA-97-20, pg. 30)

The PBA asserts that private sector comparisons should not be considered controlling in this case. In the first instance, there is no comparable private sector job compared to that of a police officer. A police officer has obligations both on and off duty. This is most unusual in the private sector. A police officer must be prepared to act and, under law, may be armed at all times while anywhere in the State of New Jersey. Certainly this is not seen in the private sector. The police officer operates under a statutorily created public franchise of law enforcement with on and off duty law enforcement hours. Again such public franchise and unique provision of statutory authority are not found in the private sector. There is no portability of pensions in the law enforcement community after age thirty-five. Police officers may not take their skills and market them in other states as one may market one's own skills in the private sector. A machinist or an engineer may travel anywhere in the county to relocate and market their skills. This is not possible for a police officer. The certification is valid locally only. The nature of police work is inherently one of hazard and risk. This is not frequently seen in the private sector.

The following represents certain statutory and other precedential laws controlling the relationship of police officers to their employers.

1. The Federal Fair Labor Standards Act, 29 USCA sect.201, et seq. applies different standards to private sector employees and police officers. Whereas private sector employees have the protection of the 40 hour work week and the 7 day work cycle, police officers are treated to much less protection. Police officers have only relatively recently been covered by the Act by virtue of the 7k amendment.
2. The New Jersey State Wage & Hour Law, NJSA 34:11-56a, et seq. does not apply to the employment relationship between a police officer and the officer's public employer. Private sector employees are covered under New Jersey Wage and Hour Laws. Such protections as are therein available are not available to the police, **Perry v. Borough of Swedesboro, 214 NJ Super. 488 (1986)**.
3. The very creation of a police department and its regulation is controlled by specific statutory provisions allowing for a strict chain of command and control. Included are statutory provisions for rules and regulations, specifying of powers and duties, specifics for assignments of subordinate personnel, and delegation of authority. **NJSA 40A:14-118**. There is no such statute covering private employment in New Jersey.
4. **NJS 40A:14-122** provides for specific qualifications which are statutorily mandated for police officer employment. Such requirements as US Citizenship, physical health, moral character, a record free of conviction, and numerous other requirements are set forth therein. No such requirement exists by statute for private employment in this state.
5. If an employee in a police department is absent from duty without just cause or leave of absence for a continuous period of five days said person, by statute, may be deemed to cease to be a member of such police department or force, **NJS 40A:14-122**. No such provision exists as to private employment.
6. Statutorily controlled promotional examinations exist for certain classes of police officers in New Jersey under title 11 and other specific statutory provisions exist under **40A:14-122.2**. There are no such private sector limitations on promotion.
7. A police officer in New Jersey must be resident of the State of New Jersey, **NJS 40A:14-122.8**. No such restriction exists for private sector employees.

8. Hiring criteria and order of preference is set by statute **40A:14-123.1a**. No such provision exists for private employees in New Jersey.
9. There are age minimums and age maximums for initial hire as a police officer in New Jersey. No such maximum age requirements exist for private employment in this state. Even if an employee in a police department who has left service seeks to be rehired there are statutory restrictions on such rehire with respect to age, **40A:14-127.1**. No such provision exists for private employees in this state.
10. As a condition for employment in a police department in the State of New Jersey there must be acceptance into the applicable Police Retirement System, **NJS 40A:14-127.3**. No such requirement exists in private sector. The actual statutorily created minimum salary for policemen in New Jersey is set at below minimum wage **NJS 40A:14-131**. Private employees are protected under the Fair Labor Standards Act. Days of employment and days off, with particular reference to emergency requirements are unique to police work. A police officer's work shall not exceed 6 days in any one week, "except in cases of emergency". **NJS 40A:14-133**. The Fair Labor Standards Act gives superior protection to private sector employees.
11. **NJS 40A:14-134** permits extra duty work to be paid not in excess of time and one-half. This prohibits the higher pyramided wage rates which may be negotiated in private sector. There is no such prohibition in the law applying to private sector employees.
12. The maximum age of employment of a police officer is 65 years. No such 65 year maximum applies to private sector employees.
13. Police Officer pensions are not covered by the federal ERISA Pension Protection Act. Private sector employees pensions are covered under ERISA.
14. Police officers are subject to unique statutorily created hearing procedures and complaint procedures regarding departmental charges. Appeals are only available to the court after exhaustion of these unique internal proceedings, **NJS 40A:14-147** to **40A:14-151**. No such restrictions to due process protections for private employees exist. Private employees, through collective bargaining agreements, may also negotiate and enforce broad disciplinary review procedures. The scope is much different with police personnel.

The PBA contends that local comparisons are more relevant with police wages. The PBA cites the following excerpt from a decision issued by the well known arbitrator William Weinberg in the Village of Ridgewood case.

Second of the comparison factors is comparable private employment. This is troublesome when applied to police. The police function is almost entirely allocated to the public sector whether to the municipality, county, state or to the national armed forces. Some private sector entities may have guards, but they rarely construct a police function. There is a vast difference between guards, private or public, and police. This difference is apparent in standards for recruiting, physical qualifications, training, and in their responsibilities. The difficulties in attempting to construct direct comparisons with the private sector may be seen in the testimony of the Employer's expert witness who used job evaluation techniques to identify engineers and computer programmers as occupations most closely resembling the police. They may be close in some general characteristics and in "Hay Associates points", but in broad daylight they do seem quite different to most observers.

The weight given to the standard of comparable private employment is slight, primarily because of the lack of specific and obvious occupational categories that would enable comparison to be made without forcing the data.

Third, the greatest weight is allocated to the comparison of the employees in this dispute with other employees performing the same or similar services and with other employees generally in public employment in the same or similar comparable jurisdictions (Section g. 2(a) of the mandatory standards.) This is one of the more important factors to be considered. Wage determination does not take place without a major consideration of comparison. In fact, rational setting of wages cannot take place without comparison with like entities. Therefore, very great weight must be allocated to this factor. For purposes of clarity, the comparison subsection g,(2), (a) of the statute may be divided into (1) comparison within the same jurisdiction, the direct employer, in this case the Village, and (2) comparison with comparable jurisdictions, primarily other municipalities with a major emphasis on other police departments.

Police are a local labor market occupation. Engineers may be recruited nationally; secretaries, in contrast, are generally recruited within a convenient commute. The nearby market looms large in police comparisons. The farther from the locality, the weaker the validity of the comparison. Police comparisons are strongest when in the local area, such a contiguous towns, a county, an obvious geographic area such as the shore or a metropolitan area. Except for border areas, specific comparisons are non-existent between states. (Ridgewood Arbitration Award, Docket No.: IA-94-141, pages 29 - 31)

The PBA asserts that a police officer is a career committed 25-year statutorily oriented specialist who is given by law the highest authority and most important public franchise. The police officer should be considered on a higher wage plane than private employment generally.

The Lawful Authority of the Employer

The PBA contends that a review of this case consistent with criteria g5 and g6 under the Act provides absolutely no prohibition to an award of the PBA's salary proposal. The PBA points out that the impact of an award of the PBA's salary proposal will result in a lower cost than an award of the Township's salary proposal.

The PBA notes that the total annual cost of its salary proposal is 11% which is one-quarter percent less than the total annual cost of the Township's salary proposal of 11.25% in calendar years 2003, 2004 and 2005. The PBA proposed a 4% increase effective April 1 in 2003, 2004 and 2005. The net annual cost to the Township of a 4% increase in 2003 effective on April 1 is 3%. The PBA notes that with the "roll-over" the actual annual cost to the Township in 2004 and 2005 is 4%. The total cost of funding the PBA's salary proposal is 3% in 2003, 4% in 2004 and 4% in 2005 for a total cost of 11%. The Township's proposed 3.75% annual salary increases cost 11.25% over the same three-year period. Therefore for the years 2003, 2004 and 2005 it will cost one-quarter percent less to fund the PBA's salary proposal. The PBA contends that this is in the public interest.

The PBA contends that there is no CAP problem in Rochelle Park. The PBA points out that the CAP index rate was used without reference to a bond ordinance which could have expanded the Township's flexibility significantly. The PBA notes that the adopted budget was brought well within the terms of the lower 1% index rate. Notwithstanding the use of the index rate, Rochelle Park was able to carry substantial sums forward into 2004

under the "CAP bank concept". There is no CAP problem in 2003 and there will almost certainly be no CAP problem in 2004.

Rochelle Park is a town with a strong fiscal picture and a strong ratable base. The Township is in a growth phase with ratables surging. The PBA introduced substantial photographic evidence of the new growth patterns within the Township and the significant commercial ratable base. This is not a municipality where undue burdens are placed upon residential taxpayers since significant commercial taxpayers exist. This is a town where major firms and industries locate. This is a town where a financial firm having suffered loss in the World Trade Center disaster relocated its principal metropolitan office. The largest switching station in the metropolitan area is found within the Township. No doubt the key geographic location of the municipality and its surrounding major highways and roads are key factors in the desirability of doing business within the Township. The equalized valuation of the Township for 2002, the most recent data in evidence, was \$690,880,580. This is a substantial ratable base.

The PBA reviewed the financial documents of the Township. The following comments represent observations made on those documents:

1. The budget revenues realized for 2002 were \$7,654,758.
2. The results of operations for 2002 were \$1,932,163. For 2001, the results of operations were \$855,763. The Township has more than doubled its ability to regenerate surplus which clearly indicates there will be assets and capabilities. (source: AFS, sheet 19, 2001 Report of Audit)
3. At the end of 2002 there was cancelled an amount of unexpended balance of appropriation reserves from the year 2001 in the amount of \$78,748. This represents excess budget funds indicating flexibility. (Source: AFS sheet 19)
4. Reviewing the fund balances from 1996 to 2002 one notes that the surplus has increased by 63% from 1996 to 2002 which more than demonstrates the Township's ability to increase its funding sources. The amount utilized in

the 2002 budget was only 26% of what was available. Since a tax point is worth \$68,000, the Township could have reduced the tax by several points without any negative effect to the taxpayers. (Source: 2001 Report of Audit, 2002 Report of Audit, AFS)

5. Reviewing the Municipal Tax Rates from 1998 to 2002 one notes only a small increase up to 2001 and a reduction in 2002. In 2002, a re-valuation year, the Municipal Tax Rate was .672 whereas it had been .998 in 2001. It is clear that the Township Tax Rate has not had any significant increases from 1998 to 2001 and the nominal increases during those years are normal and recommended by the credit rating agency so as to keep pace with normal cost increases. (Source: 2002 Report of Audit).
6. The municipal portion of the tax levy has actually dropped from 1998 to 2002. In 1998 the municipal portion of the levy was 39%. In 2002 the municipal portion was 37%. The cost of the municipal portion in being reduced, reflects the conservative approach of the governing body.
7. The property values continue to increase, even before the re-valuation. From 1996 to 2001 there was an increase of over 69 million dollars, or 18%. The Township's ratables have been steadily increasing. (Source: 2002 Report of Audit, 2001 Report of Audit)
8. The tax collection rate was extremely high in every year sampled. From 1996 to 2002 the tax collection rate was above 98% in every year. (Source: 2001 Report of Audit, 2002 Report of Audit)
9. The debt service in Rochelle Park is low. The equalized valuation statutorily created percentage basis of that debt permits \$20,718,280. The actual net debt in the municipality is only \$8,620,750. The remaining borrowing power is \$12,097,530. Of the statutory net debt of 3.5% ceiling, only 1.4% is being utilized. The Township is below the 50% statutory max. While the PBA is not suggesting that money be borrowed to pay salaries, these figures clearly establish strong fiscal credentials. (Source: Annual Debt Statement 12/31/02.)
10. The Moody's Credit Rating for Rochelle Park is "AAA". This is the highest rating one can receive from Moody's regardless whether the bond issue is insured or not. (Source: 2001 Municipal Data Book)
11. The cash balances as of December 31, 2001 were substantial. The current fund contained \$843,239. The investment account contained \$2,050,000.00. The New Jersey Cash Management Account contained \$250,000.00. The Capital Fund contained \$1,677,007. The Township's cash position is more than sufficient to meet current requirements. (Source: AFS sheet 9)

12. This Municipality used the lowest possible sum, a 1% index rate, in calculating its cap formula. Notwithstanding the utilization of this lowest possible amount the allowable operating appropriations was \$5,411,155. The approved budget for 2003 was \$5,233,205. The amount available for cap banking was \$177,950.
13. While the school portion of the levy represented over 51%, only approximately 24% of those eligible to vote in the school election in April 15, 2003 (P-11) ever voted. (Source: AFS 2002, sheet 17)

The PBA notes that there are thirteen officers in the bargaining unit and assuming everyone was at maximum rate the total cost is \$1,107,379. A 1% factor is \$11,073. If one compares the total cost of this bargaining unit to the total levy of \$12,279,490 (AFS, sheet 22, L.5) there is a resultant factor of .09%. To a homeowner paying a \$6,000 tax bill, this represents \$540 per annum. Looked at another way, the base pay of this entire bargaining unit costs about \$44 per month to the taxpayers paying a \$6,000 annual tax bill.

The PBA submits that its salary proposal is strongly supported by the fact that the taxpayer will save money by an award of the PBA salary proposal for the next three years.

The Continuity and Stability of Employment

The PBA contends that a review of this criterion requires consideration of the private sector concepts of "going rate" and "area standards". The PBA submits that both concepts support an award of its salary proposal. The PBA maintains that the data in the record support its salary proposals. The PBA notes that the Township has not challenged the correctness of the better than 4% average salary increases negotiated in other Police Departments in the region.

The PBA asserts that the "area standards" concept is important here because Rochelle Park is one of the very few departments in all of northern New Jersey that no longer has longevity. This is a key factor in considering total compensation. The PBA contends that the Rochelle Park Police Officer earns considerably less total compensation than his peers

when longevity is factored in. The PBA submits that the impact of longevity in other towns is calculated in Chart 2.

The PBA submits that the Township has based virtually its entire case on the settlement it reached with the SOA bargaining unit. The PBA points out that its salary proposal costs less than the SOA salary agreement in 2003 and when 2003 and 2004 are combined, the PBA's salary proposal still cost less than the SOA's.

The PBA submits that there is a history of disparate treatment between the SOA bargaining unit and the rank-and-file bargaining unit. Over the years there have been many differences in compensation and benefits between the SOA and the PBA. The SOA even agreed to "two-tier" their compensation plan so that future promotees, which statutorily can only come from the rank-and-file unit, will earn less than other officers in the same rank. The PBA submits that a rank-and-file officer works without a longevity benefit and when he is promoted into the SOA bargaining unit he will make less than other SOA members because of the two-tiered salary schedule. The PBA notes that the copy of the SOA contract noted in the Township's Exhibit Book at Tab #1 does not contain a wage page. The PBA's proofs were more complete. The PBA disputes the value of some of the comparability data submitted by the Township. The PBA contends that the Township has conceded the "going rate" argument to the PBA calculated in Chart 1.

Based upon the evidence introduced at hearing and the testimony provided in support of its position, the PBA asks that its last offer be awarded. The PBA submits that this is a unique case since the last offer package of the PBA for the years 2003, 2004, and 2005 costs less to implement than the Township's last offer package.

Township's Arguments

The Township provided a detailed cost-out of the PBA salary proposal and its salary proposal. The PBA proposes 4% salary increases that take effect on April 1 of each calendar year. As a result, the PBA will receive three-quarters of the 2003 increase in costing out as a 3.00% increase in 2003. Similarly, the PBA will receive the rollover of the 2003 increase in 2004 yielding a 4.00% increase in 2004. Finally, the PBA will receive the rollover from 2004 yielding a 4.00% increase in 2005. There is a 1.00% rollover in 2006.

Compounding Costs of Salary Demand

The Township points out that salary increases involve compounding costs and that the true costs of the PBA's salary proposal cannot be determined by simply adding the percentage salary increases over the three-year period. Compounding costs result because the salary proposal for 2004 must be computed on the 2002 base plus the 2003 increase. Similarly, the salary proposal for 2005 must be computed on the 2002 base plus the 2003 increase, plus the 2004 increase.

An award of the PBA's last offer would increase the maximum patrol officer's salary from \$85,183 in 2002 to \$88,590 in 2003, to \$92,134 in 2004, and finally to \$95,819 in 2005. Over the contract term, maximum patrol officer salary will increase by \$10,636. The bargaining unit would receive a 12% straight percentage increase which compounds to 12.49% increase over the three-year period.

Salary Increments

In 2002, PBA base salaries cost the Township \$863,052. In 2003, increments will add \$21,610 to police base salary costs. Without any percentage increase, increments will increase police base salaries during the first year of the contract by 2.50% over 2002 base salaries.

The 2004 increments will add \$27,988 to police base salary costs. Without any percentage increase, increments will increase police salaries during the second year of the contract by 3.16% over 2003 base salaries.

The 2005 increments will add \$32,310 to police base salary costs. Without any percentage increase, increments will increase police salaries during the third year of the contract by 3.54% over 2003 base salaries. Increment costs over the three years and three months total \$87,730.

Total Cost of the PBA's Salary Proposal

The Township costed out the PBA's salary proposal as follows:

	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>
Salary Increase	3.00%	4.00%	4.00%	1.00%
Compounding	0.16%	0.16%	0.16%	0.00%
Salary Increments	<u>2.50%</u>	<u>3.16%</u>	<u>3.54%</u>	<u>0.62%</u>
Total:	5.66%	7.32%	7.70%	1.62%

Three and 1/4 Year Total = 22.30% or 6.86% per Year

Cost Out of the Township's Salary Proposal

The Township also proposed a three-year agreement. The Township proposed 3.75% salary increases for 2003, 2004 and 2005.

Compounding Costs of Township's Salary Proposal

The Township's salary proposal, like the PBA's salary proposal, also involves compounding costs. An award of the Township's salary proposal would increase the maximum patrolman's salary would increase from \$85,183 in 2002 to \$88,377 in 2003, to \$91,691 in 2004, and to \$95,129 in 2005. Over the proposed three-year contract term, maximum police officer salary will increase by \$9,946. Although the bargaining unit would receive a 11.25% straight percentage increase, the bargaining unit would actually receive a compounded 11.68% increase over the three-year period.

Salary Increments

The Township notes that the salary increments discussed in the PBA analysis apply to the Township's offer in the same exact manner. As a result, even without a percentage salary increase, the total cost of police salaries in the Township will increase by \$87,730 from \$863,052 to \$950,782. Annually, these increases equal 2.50% for 2003, 3.16% for 2004, and 3.54% for 2005.

Total Cost of the Township's Salary Proposal

The Township costed out its salary proposal as follows:

	<u>2003</u>	<u>2004</u>	<u>2005</u>
Salary Increase	3.75%	3.75%	3.75%
Compounding	0.14%	0.14%	0.14%
Salary Increments	<u>2.50%</u>	<u>3.16%</u>	<u>3.54%</u>
Total:	6.39%	7.05%	7.43%

Three-year Total = 20.73% or 6.91% per Year

Comparison of the Township and PBA Salary Proposals

The Township notes that the differences center on two issues: the amount of the wage increase and the effective date of the increases. The Township submits that the major difference between the two salary proposals is the long term cost differential.

In 2003, the first year of the contract, the Township proposes a 3.75% increase effective January 1. The PBA proposes a 4.00% increase effective April 1. Because the PBA's proposal is not effective until April 1, the Township's offer exceeds the PBA's offer by 0.75% in 2003.

In 2004, the second year of the contract, the Township proposes a 3.75% increase effective January 1. The PBA proposes a 4.00% increase effective April 1. Thus, for 2004, the PBA's salary proposal with the rollover from 2003 exceeds the Township's offer by 0.25%.

In 2005, the Township proposes a 3.75% increase effective January 1. The PBA proposes a 4.00% increase effective April 1. Thus, for 2005, the PBA's salary with the rollover from 2004 exceeds the Township's offer by 0.25%.

The PBA's proposal results in a 1% rollover into 2006. The cost of the PBA's wage demands, including increments, exceeds the cost of the Township's salary proposal by \$2,018 in 2006.

The Township asserts that the PBA's salary proposal imposes significant costs that extend beyond the contract term. A calculation of the costs of the PBA's wage package over twenty years illustrates the additional costs that would be imposed upon the Township into the future. Without any additional salary increase in the successor contract term, the PBA's salary proposal, inclusive of increments, will cost an additional \$8,055.

From 2010 through 2022, the PBA's wage demand will impose an annual cost of \$8,970 more than the Township's salary offer. In total, the cost of the PBA's salary demand over the next twenty years will cost \$136,256 more than the Township's wage offer.

The Township submits that substantial wage increases cause police salaries to comprise a greater and greater percentage of the Township's budget, leaving the Township with an increasingly smaller percentage of the budget to pay for other essential services. The Township asserts that its salary proposal is a more reasonable proposal than the PBA's salary proposal under the State's interest arbitration law.

Legal Argument

The Township provided extensive legal argument in its brief reviewing the statutory and legal history of the Act and the procedural requirements of "last offer" arbitration. The Township notes that the Legislature designed final offer interest arbitration to foster reasonable negotiations and to encourage the parties to narrow their differences. Hillsdale

PBA Local 207 v. Borough of Hillsdale, 137 N.J. 71, 81 (1994). "Fear that the arbitrator will select the other party's offer provides each party with an incentive to be fair and reasonable." In theory, the final offer interest arbitration furthers negotiations until the parties' offers meet, eliminating the need for interest arbitration. The Township notes that in Hillsdale and Washington, the Court examined the sufficiency of the evidence which the parties must present to an Interest Arbitrator and the relevance of the various eight statutory criteria. In Hillsdale, the Court instructed that "[i]n general, the relevance of a factor depends on the disputed issues and the evidence presented." Hillsdale, 137 N.J. at 82 (citing N.J.S.A. § 34:13A-16(f)(5); N.J.A.C. § 19:16-5.9). The Court also directed the Interest Arbitrator to "determine which factors are relevant, weigh them, and explain the award in writing." Id. Further, the Court cautioned that the Legislature did not intend that any one factor would be dispositive. Id. The Court further explained,

As the statute states, an arbitrator need rely not on all factors, but only on those that the arbitrator deems relevant. An arbitrator should not deem a factor irrelevant, however, without first considering the relevant evidence. An arbitrator who requires additional evidence may request the parties to supplement their presentations. . . . [T]he arbitrator need not require the production of evidence on each factor. Such a requirement might unduly prolong a process that the Legislature designed to expedite collective negotiations with police and fire departments. Id. at 83-84.

In summary, "an arbitrator's award should identify the relevant factors, analyze the evidence pertaining to those factors, and explain why other factors are irrelevant." Id. at 84-85.

Additionally, as part of the eight statutory factors, the Reform Act expressly requires Interest Arbitrators to consider the impact of the New Jersey Local Government Cap Law (the "Cap Law"), N.J.S.A. 40A:4-45.1 et seq., in rendering an award and the effect of the award on local property taxes, the taxpayers, and the ability of the employer to maintain existing services and programs. N.J.S.A. 34:13A-16(g)(6).

STATUTORY CRITERIA

The Township provided the following analysis of the statutory criteria in support of its position that its salary proposal is more reasonable than the PBA's salary proposal.

The Interests and Welfare of the Public

The Act requires the Arbitrator to consider "the interests and welfare of the public" in determining a reasonable award. Under the Reform Act amendment, the analysis under this factor requires the Interest Arbitrator to consider "the limitations imposed upon the employer by P.L. 1976 (C.40A:4-45.1 et seq., [the Cap Law]." This criterion focuses upon the priority to be given to the public employee's wages and other economic benefits within a public employer's finite budget and plans.

Generally, a public employer best serves the public interest by striking a balance between satisfying its employees, thereby avoiding labor strife, and maintaining a stable level of government services. While a municipality may have difficulty balancing these competing interests within the available budget, the municipality should not sacrifice fairness to its employees so that it may provide its residents with a plethora of frivolous government services. On the other hand, a municipality should not reduce essential government services to satisfy the economic demands of over-reaching public employees.

The Supreme Court recognized that although compulsory interest arbitration is an adversarial process between a public employer and its employees, the public is a "silent party" to the proceeding. Hillsdale, 137 N.J. at 82. The Court described the impact the interest arbitration process has on the public:

This case arises from a salary dispute between a municipality and its police department, but its resolution inevitably will affect the public. In an era of rising costs and budget caps, a municipality feels the initial impact of salary increases for police and fire departments. The taxpayers, however, feel the ultimate effect. Id. at 76.

The Court also observed,

Compulsory interest arbitration of police and fire fighters' salaries affects the public in many ways, most notably in the cost and adequacy of police and fire-protection services. Indeed, section 16g expressly requires the arbitrator to consider the effect of an award on the general public. Hence, an award runs the risk of being found deficient if it does not expressly consider "the interest and welfare of the public." Id. at 82-83 (citations omitted).

The Township asserts that in determining a reasonable award, the Interest Arbitrator must consider the effect the award will have on the Township's citizens and taxpayers.

Comparability and Overall Compensation

The Act requires the Interest Arbitrator to consider a 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 in (a) in private employment in general; (b) in public employment in general; (c) in public employment in the same or similar comparable jurisdictions. The Act also requires the Interest Arbitrator to consider the overall compensation presently received by the employees, inclusive of direct wages, salaries, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received.

The Township points out that in Hillsdale, the Court criticized the overemphasis on comparability with police departments in similar communities in rendering an award. The Court noted that the Legislature did not intend any one factor, including comparability to other police departments in similar municipalities, to be dispositive stating that section 16(g) "invites comparison with other jobs in both the public and private sectors."

The Township submits that this amendment implemented under the Reform Act changes the weight the Interest Arbitrator should attribute to the consideration of

compensation packages in private employment, public employment and in public employment in the same or similar comparable jurisdictions. Before the Reform Act, the Act required the Interest Arbitrator to consider:

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

Under the Reform Act, the Interest Arbitrator must consider a comparison with other employees (a) in private employment in general; (b) in public employment in general; (c) in public employment in the same or similar comparable jurisdictions.

Therefore, the Legislature altered the order of the three subfactors, moving comparability to employees in the private sector from the third subfactor to the first subfactor and moving comparability to public employment in the same or similar comparable jurisdictions from the first subfactor to the third subfactor. This amendment evidences legislative intent to reduce Interest Arbitrators' over reliance on wage and benefit comparability to public employees in the same or similar jurisdictions--an over dependence criticized by the Court in Hillsdale and Washington--and increase Interest Arbitrators' underemphasis of comparability to private employees in general. Consequently, the Interest Arbitrator must consider a comparison with other employees (a) in private employment in general; (b) in public employment in general; (c) in public employment in the same or similar comparable jurisdictions without unduly emphasizing comparability to public employment

in comparable jurisdictions and without minimizing comparability to private employment in general.

Finally, the third subfactor, which directs the Interest Arbitrator to consider a comparison with other employees in the same jurisdiction, requires the Interest Arbitrator to consider evidence of the employer's settlements with other unionized groups and its non-unionized employees, and whether those settlements create an internal pattern.

The Township asserts that the consideration of settlement patterns also falls under N.J.S.A. § 34:13A-16g(8), as an element bearing on the continuity and stability of employment. County of Union and Union County Corrections Officers, P.E.R.C. No. 2003-33, Docket No. IA-2001-46 (October 31, 2002) at 13-14 (“interest arbitrators have traditionally recognized that deviation from a settlement pattern can affect the continuity and stability of employment by discouraging future settlements and undermining employee morale in other units.”)

The Township submits that “pattern settlement” is a well-accepted concept in the public sector labor negotiations process. Interest arbitrators throughout the State of New Jersey recognize the concept of pattern. For instance, in Hudson County Board of Chosen Freeholders and Fraternal Order of Police Lodge #77, PERC, Docket No. I-79-44, Arbitrator William Weinberg emphasized that,

patterns are axiomatic in dispute settlements: they are a fact of life, the impact of a pattern has been established, it increasingly creates a burden for those advocating alternatives to the pattern, and they must have substantial overwhelming reasons for deviating from the pattern. Pattern is a fact of life and has been practiced and agreed to at all levels of public employment and is a factor in the private sector. Id. at 34.

Further, Arbitrator Joel Weisblatt in County of Essex and Essex County Correction Officers and PBA Local 157, PERC, Docket No. IA-84-93, noted:

[t]he existence of a pattern of agreements creates a significant presumption supporting the County's offer which fits within that pattern. Absent a showing of equal significant countervailing factors, special presumption could properly stand controlling element under the statutory criteria.

Additionally, Arbitrator Light in County of Essex and the Essex County Prosecutors, Detectives, and Investigations Association, observed:

The second element involved in this case is that of pattern. Pattern has long been recognized in interest arbitration as a policy to be honored in appropriate circumstances. The reasons for such adherence are obvious. It provides consistency, prevents bargaining unit rivalries, and promotes harmonious labor relations. Id. at 19.

Moreover, in City of Passaic and the Passaic PBA, Local 14, dated April 25, 2000,

Arbitrator Joel Weisblatt observed,

Consistency in negotiations is a concept that is generally in the public interest. It provides for greater morale among public employees and provides a predictability factor in the bargaining and budgetary processes. Presumably, differences in the responsibilities of various jobs are already reflected in the base wage rates that have developed over time. Therefore, the application of consistency in bargaining is most often a rational approach to maintaining the existing balance in compensation, reflective of the requirements of the job.

In applying this rationale, Arbitrator Weisblatt found that the public employer's two year settlement with its firefighters merited "important significance under the public interest criterion" in arriving at a reasonable award for the public employer's police officers. He observed,

The common relationship between police and fire units in the collective bargaining process is so engrained that it needs no lengthy explanation herein. It is an accepted fact of life in the negotiations of public safety agreements. It may not mean that there will always be an identical settlement or rate of pay but it does mean that negotiations in police and fire departments of the same employer will always take significant cognizance of each other.

The Township submits that "reasonable consistency" between the police and fire units promotes "good, sound labor relations policy." Thus, interest arbitrators recognize the

importance of consistency in internal settlements, especially in public safety, in rendering an award.

Interest Arbitrator Daniel Brent's decision in Township of Hillside and Township of Hillside Superior Officers Association, dated March 31, 1999, emphasized the significance of pattern settlements. In applying the concept of pattern bargaining, Arbitrator Brent awarded the Township's offer to Hillside's SOA unit. More specifically, Arbitrator Brent awarded the same package to the SOA unit as previously agreed to by three of the Township's uniformed collective bargaining units: the police officers, the fire fighters and the fire superior officers. Arbitrator Brent observed that deviating from the pattern established by these voluntary settlements would,

erode the reliance of the other units on the representations made by management and undermine the parties' ability to negotiate in the future, a condition that does not foster the public interest as much as following the pattern of settlement. . . .

Arbitrator Brent also noted:

The damage to collective bargaining that may accrue from awarding the SOA's position, thereby shattering the pattern of voluntary settlements achieved by the Township with other uniformed service bargaining units who also had access to binding interest arbitration, outweighs the impact of a minimal relative loss of position within the mid-range of overall compensation

Arbitrator Brent concluded that the concept of pattern bargaining deserved greater deference than the slight loss of position in salary comparability rankings.

The Township asserts that the failure to fully discuss and explain the parties' arguments concerning internal settlements warrants vacation of the interest arbitration award. County of Union and Union County Corrections Officers, (October 31, 2002) at 11.

In vacating and remanding the award, PERC noted that although the Reform Act does not quantify the weight to be accorded to internal settlements, it requires the interest

arbitrator to “carefully consider evidence of internal settlements and settlement patterns” and to articulate a rationale for following or not following a proved settlement pattern. *Id.* at 14.

In remanding the matter, PERC directed that the interest arbitrator “should make those determinations; discuss and apply the above-noted principles concerning pattern and internal comparability; and explain how he has weighed the [employer’s] arguments and evidence concerning the settlement vis-a-vis the [union’s].” Thus, in rendering an interest arbitration award, an arbitrator must fully explain how he or she analyzed the parties’ evidence concerning internal settlements.

Wages and Benefits in the Private Sector

The Township contends that wage and benefit packages in the private sector highlight the reasonableness of its proposal in comparison to the PBA's. The Township submits that national wage increases in the private sector support its last offer on salary. The Township provided the following data:

- The Labor Relations Reporter reported that recent collective bargaining settlements fell below 2002 settlements for the same period. Settlements in the first seven and one-half months of 2003 provided an average first-year increase of 3.2% while 2002 first year settlements over the same period averaged 4.0%. The median increases over the same period decreased from 3.6% to 3.0% over the same period.
- On June 24, 2002, the Bureau of National Affairs reported that the Wage Trend Indicator dipped to 3.5%, continuing a six consecutive quarter downward trend. The Wage Trend Indicator of 3.5% supports the reasonableness of the Township’s proposal.
- Lucent reached a twenty-month contract covering 5,400 hourly CWA employees. The agreement provided for increases totaling 4.0%, an average of 2.4% per year. It also required employees to cover more of their health care costs. Also, the Teamsters reached a tentative five-year agreement with major trucking companies providing for an average annual 1.55% increase.
- On December 6, 2001, The New York Times reported that tens of thousands of unionized workers find themselves fighting pay freezes. The article noted that “the climate for collective bargaining has turned far chillier in recent months because of a confluence of negative factors: the war against terrorism,

the recession, rising unemployment, soaring health care costs and slumps in many industries. . . .”

- On April 25, 2003, The New York Times reported that “[f]or the first time since the 1980's, the average pay of workers at all income levels is falling.” The weekly pay of the median worker fell 1.5% from early 2002 to early 2003. Several corporations, including Eastman Chemical, American Airlines, Boeing and Weirton reduced wages by as much as 5.0%.

The Township submits that benefits comprise a significant aspect of the wages and benefits factor under the Reform Act. The Township submitted considerable national data on rising health insurance costs and data concerning cost-sharing of health insurance premiums and recent trends showing that private and public employers have reduced health insurance benefits by requiring employees to contribute to their premiums. The Township submitted data showing that New Jersey employers have similarly felt and passed on rising health insurance costs to employees. According to a survey released in March 2003 by the New Jersey Business and Industry Association, employers paid an average of \$6,325 in premiums for covered employees, up 15% from \$823 the year before. While only 3% of employers surveyed opted to drop employee health insurance, a majority passed on costs to their employees. Forty-eight percent increased co-payments, 39% increased deductibles, and 35% increased premium co-payments.

The Township notes that despite rapidly rising costs, it continues to provide its officers and their families with comprehensive medical, dental, and prescription benefits at no cost to the employee. The Township, as a local government employer participant in the New Jersey State Health Benefit Program, is precluded from sharing premium costs for employee health coverage, but not dependent coverage, with its employees. Although it could negotiate up to 100% to the cost of dependent coverage, it opted to absorb increasing costs into its budget.

The Township asserts that national benefit trends support the reasonableness of its last offer on salary.

Wages and Benefits in the Public Sector

The Township asserts that wage increases in the public sector highlight the reasonableness of its salary proposal. The Township cites PERC's Biennial Report on the Police and Fire Public Interest Arbitration Reform Act dated January 2002 showing that the average increase in voluntary settlements from January 1, 2001 through December 31, 2001 was 3.91% and the average increase for awards issued in 2001 was 3.75%.

The Township cites the recent settlement between Essex County and the IBEW, its largest union. The contract affects 900 employees. It provides for a 3.0% wage increase effective July 1, 2002, no increase in 2003 or 2004, 1.0% effective January 1, 2005, and 2% effective July 1, 2005.

The Township asserts that recent interest arbitration awards in New Jersey provide further support for its last offer on salary.

- On May 27, 2003, in Borough of Middlesex and PBA Local 181, Arbitrator Jeffrey B. Tener awarded a four-year contract that provided for a 3.0% increase effective January 1, 2002, a 3.5% increase effective January 1, 2003, a 4.0% increase effective January 1, 2004 and a 4.5% increase effective January 1, 2005. The award averaged 3.75% per year.
- On February 28, 2003, in City of Union City and Union City Police Superior Officers Association, Arbitrator Joel M. Weisblatt awarded a six-year contract that provided for a 3.5% increase effective July 1, 1999, a 3.5% increase effective July 1, 2000, a 3.5% increase effective July 1, 2001, a 3.75% increase effective July 1, 2002, a 4.0% increase effective July 1, 2003, and a 4.0% increase effective July 1, 2004. These increases average 3.71% per year.
- On January 27, 2003, in County of Hudson and PBA Local 109 A, Arbitrator Daniel J. Hussey awarded a four-year contract that awarded 3.75% effective January 1, 1999, 3.75% effective January 1, 2000, 3.75% effective January 1, 2001, 3.75% effective January 1, 2002 and 3.75% effective January 1, 2003.

- On November 25, 2002, in Piscataway Township and Piscataway PBA Local No. 93 and Piscataway Township and Piscataway PBA Local No. 93A, Arbitrator James W. Mastriani awarded a four and one-half year agreement that provided for a 0.5% increase effective July 1, 2002, a 3.4% increase effective January 1, 2003, a 3.9% increase effective January 1, 2004, a 3.9% increase effective January 1, 2005, and a 3.9% increase effective January 1, 2006. The award averages 3.47% per year, well below the Township's offer of 3.75% per year and substantially below the PBA's salary demand of 4.0% per year. The award also imposed significant insurance "give-backs." It increased the prescription co-pay, increased the co-pays for the POS and PPO plans, and increased the dental plan deductible.
- On August 29, 2001, in City of Union City and PBA Local 8, Arbitrator James Mastriani awarded a five-year contract effective from January 1, 1999 through December 31, 2003. It provided for a 3.5% increase effective July 1, 1999, 3.5% effective July 1, 2000, 3.5% effective July 1, 2001, 3.75% effective July 1, 2002, and 4.0% effective July 1, 2003. The salary increases averaged 3.65% per year, well below the PBA's demanded increase in this interest arbitration.
- On July 27, 2001, in City of Asbury Park and PBA Local 6, Arbitrator Mastriani awarded a four and one-half year contract that provided for a 2.0% increase effective January 1, 1998, a 4.0% increase effective July 1, 1999, a 4.0% increase effective April 1, 2000, a 4.0% increase effective January 1, 2001, and a 2.25% increase effective January 1, 2002 through June 30, 2002. The award averages 3.61% per year.
- On May 17, 2001, in Phillipsburg Town and PBA Local 56, Arbitrator Mastriani awarded a three-year contract that provided for a 3.75% increase effective January 1, 1999, January 1, 2000, and January 1, 2001, mirroring the Township's wage offer in this interest arbitration.

The Township submits that recent settlements and awards in the public sector in New Jersey support the reasonableness of its final offer.

**Public Employment in the Same
or Comparable Jurisdictions**

The Township asserts that a comparison of the salary and benefits of the rank-and-file police officers to the salary and benefits received by its superior police officers shows that its wage offer of 3.75% per year is more reasonable than the PBA's wage offer of 4.00% per year effective April 1 of each year. Similarly, comparing the salary and benefits that

Rochelle Park provides its police officers with the salary and benefits comparable communities provide their police officers further shows the reasonableness of the Township wage offer.

Police Superior Officers

The Township submits that consideration must be given the salary increases provided to Rochelle Park police superior officers. For at least the last ten years, from January 1, 1993 through December 31, 2002, the SOA received the same percentage salary increases as the PBA. In 1993, the PBA and SOA received 5.0% on January 1, and 2.0% on July 1. In 1994, the PBA and SOA receive 6.0% on January 1, and 1.0% on July 1. In 1995, 1996 and 1997, the PBA and SOA received 5.0% increase per year. In 1998, 1999 and 2000, the PBA and SOA received 4.5% annual increases. In 2001 and 2002, the PBA and SOA received 4.0% increases per year. The Township maintains that it has established an undeniable pattern of negotiating the same salary increases with the PBA unit and the SOA unit from 1993 to 2002.

The Township's contract with its SOA unit is effective through December 31, 2006. It provided the SOA with a 4.0% increase in 2003, a 3.5% increase in 2004, a 3.0% increase in 2005 and a 3.0% increase in 2006, for an average annual increase of 3.375%. The Township asserts that its final offer of 3.75% per year more closely follows the pattern of settlement with the SOA.

The Township contends that its salary proposal will more closely maintain current rank differentials between the two units. The Township asserts that its fair and final offer should be awarded because it more closely continues pattern and reflects the increases provided to the SOA.

Bergen County Comparables

Bergen County comprises seventy-one municipalities and is divided into six geographic regions--Southwest Bergen, Southeast Bergen, Central Bergen, Northern Valley, Pascack Valley and Northwest Bergen. Rochelle Park is in Central Bergen County. The Township conducted its analysis by using all Bergen County municipalities as comparables.

The Township submits that the PBA randomly chose twenty-two Bergen County municipalities as comparables. More specifically, the PBA selected Allendale (Northwest Bergen), Bergenfield (Northern Valley), East Rutherford (Southwest Bergen), Edgewater (Southeast Bergen), Emerson (Pascack Valley), Englewood (Northern Valley), Fairview (Southeast Bergen), Fort Lee (Southeast Bergen), Franklin Lakes (Northwest Bergen), Garfield (Central Bergen), Glen Rock (Northwest Bergen), Hasbrouck Heights (Southwest Bergen), Leonia (Southeast Bergen), Lodi (Central Bergen), Moonachie (Southwest Bergen), New Milford (Central Bergen), Paramus (Central Bergen), Ridgewood (Northwest Bergen), Saddle Brook (Central Bergen), South Hackensack (Southwest Bergen), Wood-Ridge (Southwest Bergen), and Wyckoff (Northwest Bergen). The PBA's comparables include five Northwest Bergen municipalities, two Northern Valley municipalities, five Southwest Bergen municipalities, four Southeast Bergen municipalities, one Pascack Valley municipality, and five Central Bergen municipalities. In addition, the PBA selected the State Troopers Fraternal Association of New Jersey as a comparable.

The Township submits that the PBA did not introduce any rationale for randomly selecting under one-third of Bergen County's PBA units for analysis. The Township asserts that its comparability data represents a comprehensive County-wide analysis without any selectivity.

In comparison with the sixty other Bergen County municipalities who settled for 2002, Rochelle Park officers received the third highest base wage. Only Paramus and Franklin Lakes provided their patrol officers at maximum step with a higher salary in 2002.

In 2002, Rochelle Park provided its officers at maximum step with a base salary of \$85,183. Maximum patrol officer salary ranged from a high of \$90,413 in Paramus to a low of \$67,035 in Cliffside Park. The 2002 Bergen County average maximum patrol officer salary equaled \$77,655. Rochelle Park's maximum patrol officer salary exceeded the average by \$7,528, or 9.7%. Thus, in 2002, Rochelle Park officers received a base salary that substantially exceeded the Bergen County average maximum patrol officer salary.

In 2003, the Bergen County municipalities that settled for 2003 provide maximum patrol officer salaries that range from a high of \$94,030 in Paramus to a low of \$69,381 in Cliffside Park. The Bergen County average maximum patrol officer salary equals \$81,168. Even without any salary increase in 2003, Rochelle Park officers would continue to maintain a salary that significantly exceeds the Bergen County average. Rochelle Park's 2002 maximum patrol officer salary exceeds the 2003 Bergen County average by \$4,015 or 4.95%. With the Township's 3.75% offer in 2002, Rochelle Park officers would continue to enjoy their ranking as the third highest paid patrol officers in Bergen County. At \$88,377, Rochelle Park's salary would exceed the Bergen County average of \$81,168 by \$7,210 or 8.88%.

In 2004, in Bergen County municipalities that settled for 2004, maximum patrol officer salaries will range from a high of \$91,389 in Tenafly to a low of \$78,413 in New Milford. Maximum patrol officer salaries for 2004 average \$84,131. Even without a salary increase in 2003 or 2004, Rochelle Park officers would continue to enjoy a maximum patrol officer salary that substantially exceed the Bergen County average. Rochelle Park's 2002 maximum patrol officers salary of \$85,183 exceeds the 2004 Bergen County average of

\$84,131 by \$1,052 or 1.25%. The Township submits that Rochelle Park officers enjoy such a high maximum patrol officer salary in relation to the Bergen County average that it would take more than a two-year wage freeze to drop Rochelle Park officers below the Bergen County average. If the Township's fair and final offer is awarded, the maximum patrol officer salary in 2004 would equal \$91,691, the highest maximum patrol officer salary of municipalities that settled for 2004.

The average Bergen County maximum patrol officer salary increased by 4.00% from 2003 to 2004. The Township asserts that its final salary offer of 3.75% presents a more reasonable offer than the PBA's because Rochelle Park's maximum patrol officer salary stands substantially above the Bergen County average.

For those municipalities that settled for 2005, the average Bergen County maximum patrol officer salary increased by 3.90%. The Township notes that the PBA's salary proposal exceeds the 2005 average, causing an even greater deviation between Rochelle Park's maximum patrol officer salary and the Bergen County average.

The Township submitted considerable data on demographic comparability, aggregate true value, area in square miles, and population and its relationship with maximum salaries in Rochelle Park and other Bergen County municipalities.

The Township submits that a review of this data shows that Bergen County municipalities that pay a maximum patrol officer salary comparable to Rochelle Park have a much higher aggregate true value, cover more square miles and have a larger population than Rochelle Park. Conversely, Bergen County municipalities comparable to Rochelle Park in aggregate true value, square mile area and population provide much lower salaries.

1979 and 1993 Salary Data

The Township provided an analysis of the salary increases from 1979 to the present. At one time, Rochelle Park provided a maximum patrol officer salary that fell below the Bergen County average. The Township relies on the data included in the interest arbitration award in Township of Rochelle Park and PBA Local No. 102, issued on April 23, 1980, In 1979, Rochelle Park provided a maximum patrol officer salary of \$18,000. The award shows that Allendale, Closter, Cresskill, Englewood Cliffs, Hohokus, Mahwah, Maywood, Montvale, Paramus, Ramsey, Ridgewood, Saddle River, and Teaneck provided their police officers with a higher salary than Rochelle Park. Fort Lee, Leonia, Demarest, and Rutherford provided the same maximum patrol officer salary as Rochelle Park in 1979.

Among the municipalities listed in the award, Rochelle Park provided a maximum patrol officer salary that fell below average. The following municipalities and maximum patrol officer salaries are listed in the award:

1.	Mahwah	\$20,000
2.	Ramsey	\$20,000
3.	Allendale	\$19,710
4.	Closter	\$19,525
5.	Saddle River	\$19,200
6.	Paramus	\$19,148
7.	Hohokus	\$19,000
8.	Ridgewood	\$18,700
9.	Montvale	\$18,664
10.	Englewood Cliffs	\$18,522
11.	Maywood	\$18,515
12.	Teaneck	\$18,214
13.	Cresskill	\$18,200
14.	Rochelle Park	\$18,000
15.	Demarest	\$18,000
16.	Fort Lee	\$18,000
17.	Leonia	\$18,000
18.	Rutherford	\$18,000
19.	Harrington Park	\$17,800
20.	Fair Lawn	\$17,757

21.	Hasbrouck Heights	\$17,757
22.	Carlstadt	\$17,730
23.	East Rutherford	\$17,697
24.	Haworth	\$17,607
25.	Hackensack	\$17,600
26.	Bogota	\$17,500
27.	Oradell	\$17,140
28.	Emerson	\$16,910

Average: \$18,317

Rochelle Park's maximum salary fell below the Bergen County average in 1979. Over the past twenty-three years, Rochelle Park's maximum patrol officer salary soared from below average to the third highest in Bergen County.

By 1993, Rochelle Park had risen to providing the sixth highest maximum patrol officer salary in Bergen County. Rochelle Park provided a maximum salary of \$55,189. Bergen County maximum patrol officer salaries averaged \$52,762. Rochelle Park's maximum patrol officer salary exceeded the Bergen County average by \$2,427 or 4.6%. In 2002, Rochelle Park's maximum patrol officer salary exceeded the Bergen County average by 9.7%. Rochelle Park's ranking increased from the sixth highest maximum patrol officer salary to the third highest salary in Bergen County from 1993 to 2002.

The Township asserts that its final offer provides a significant increase, while taking into account Rochelle Park's relative standing in Bergen County, its demographics, and its maximum patrol officer salary. The Township submits that its 2002 ranking as the third highest paid in Bergen County, its demographic characteristics and salary history warrants an increase below the "going rate" permitting its officers to continue to enjoy a maximum patrol officer salary that is substantially above the County average maximum salary.

Other Bergen County Settlements and Awards

The Township contends that other Bergen County settlements and awards support the reasonableness of its fair and final salary offer. The Borough cites the recent four-year settlement by the PBA and the Borough of Ramsey providing for a 3.5% annual salary.

In 2002, Ramsey provided its patrol officers at maximum step with a base salary of \$81,501, \$3,682 or 4.5% less than Rochelle Park's maximum patrol officer salary of \$85,183. Ramsey's settlement with its PBA also included substantial insurance concessions. Ramsey officers will receive a PPO plan with 100% coverage in plan and 80% coverage out of plan, with a \$300 per person (up to two) deductible. Ramsey and its PBA agreed that Ramsey provides the PBA with the same medical insurance plan in effect for other Borough employees. The Township notes that it is not seeking any changes in the PBA's medical insurance benefits. The Township asserts that salary comparability data and recent settlements and awards in Bergen County support the reasonableness of its final offer on salaries.

The Lawful Authority of the Employer

N.J.S.A. 34:13A-16g(5) requires the Interest Arbitrator to consider the "lawful authority of the employer" in determining a conventional award. The Township provided a thorough analysis of the legislative and judicial history of the Cap law.

Because increasing its final appropriations to the 5% maximum would require the Township to increase taxes, the Township decided not to pass an ordinance or referendum increasing the Cap allowed increase to 5%. The PBA total package averages 6.86% per year. To the extent the PBA's total package exceeds the index rate, it would require the Township to reduce other expenditures which fall within the Cap to the extent the cost of the economic demands exceed the index rate.

**The Financial Impact on the Governing
Unit, its Residents and Taxpayers**

N.J.S.A. 34:13A-16g(6) requires the Interest Arbitrator to consider the economic offer's financial impact on the governing unit, its residents and taxpayers in determining a fair and final award.

The Township asserts that its offer considers the financial impact its award will have on the governing unit, its residents and taxpayers because it takes into account the Township's specific economic condition. The Township contends that the state economy directly impacts on its ability to raise revenue through taxes to pay for police salary increases.

The Township notes that the State of New Jersey also faces a tight financial situation. In 2002, New Jersey residents faced the largest property tax increases in twelve years. The average home owner paid \$310 more in 2002 than 2001 for municipal, school and county services, an increase of 7% over 2001. One hundred sixteen out of New Jersey's 560 municipalities for which 2002 tax rates have been established faced double-digit increases in property taxes. The increase stems in part from the State's decision to cap or halt financial aid programs to local government and schools.

The Township asserts that increasing property tax burdens and continuing layoffs impact the Township's ability to pay for the salary increases and benefits awarded in this interest arbitration.

The Consumer Price Index

N.J.S.A. 34:13A-16g(7) requires the Interest Arbitrator to consider the consumer price index ("CPI") in determining reasonableness of the parties' economic proposals. The Township asserts that the recent decline in the CPI and the fact that the CPI increases in recent years were at their lowest level emphasize the reasonableness of its proposals.

Consumer prices for the twelve-month period ending April 2003 increased by only 2.2%. In April 2003, the consumer price index declined by 0.3%, the largest decline in eighteen months. The consumer price index for the twelve-month period ending in April 2002 increased by 3.0%.

Consumer prices for the twelve month period ending April 2003 in the New York region increased only 2.6%. The CPI in New York for April 2003 decreased by 0.2%, like the national consumer price index for the same period. In 2002, the CPI rose only 2.4%, well below the Township's 3.75% wage offer in this interest arbitration.

A comparison of the increases in Rochelle Park's maximum patrol officer salary to increases in the CPI demonstrate the Rochelle Park PBA's significant increase in purchasing power. In 1979, Rochelle Park officers earned a maximum patrol officer salary of \$18,000. Increases in the CPI are summarized on a Consumer Price Index chart issued by the U.S. Department of Labor attached as Exhibit 8. If Rochelle Park officers received wage increases equal to increases in the CPI, Rochelle Park would have paid a maximum patrol officer salary of \$42,384 in 2002. Their 2002 salary represented a \$42,799 annual increase in purchasing power since 1979. Dramatic salary increases have doubled Rochelle Park's officers' purchasing power since 1979.

The Township submits that both the Township and PBA proposals dramatically exceed increases in the CPI. Because the Township's offer is lower than the PBA's demand, the Township's offer more closely reflects the CPI than the PBA's demand. The Township submits that the fact that it has one of the highest paid municipal police departments in Bergen County supports its salary proposal which more closely reflects the CPI.

Continuity and Stability of Employment

N.J.S.A. 34:13A-16g(8) requires an Interest Arbitrator to consider the "continuity and stability of employment" in determining a reasonable economic package. The Township asserts that its salary proposal will maintain and continue a stable work force in the Police Department.

In conclusion, the Township maintains that its last offer more reasonably reflects the statutory criteria than the PBA's last offer and asks that I issue a decision awarding its last offer.

Discussion and Analysis

The arbitrator is required to decide a dispute based on a reasonable determination of the issues, giving due weight to the statutory criteria deemed relevant. Each criterion must be considered and those deemed relevant must be explained. The arbitrator is also required to provide an explanation why any criterion is deemed not to be relevant.

I have carefully considered the evidence as well as the arguments of the parties. I have examined the evidence in light of the statutory criteria. Each criterion has been found relevant, although the weight given to different factors varies, as discussed below. I have discussed the weight I have given to each factor. I have also determined the total net economic annual changes for each year of the agreement in concluding that those changes are reasonable under the statutory criteria.

A governing principle that is traditionally applied in the consideration of wages, hours and conditions of employment is that a party seeking a change in an existing term or condition of employment bears the burden of demonstrating a need for such change. This principle is not applicable to this matter since the parties' last offers on the single issue in dispute are relatively proximate.

Cost of Last Offers

I have determined that the 2002 base salary that the 2003, 2004 and 2005 salary increases will be applied to is \$863,052 for the twelve sworn police officers in the bargaining unit in 2002. I have calculated the cost of the increments. It is undisputed that the incremental costs are nearly identical with the only difference being the $\frac{1}{4}$ of 1% impact of the PBA's last offer on the steps on the salary schedule.

The cost of the parties' last offers do not assume any resignations, retirements, promotions or additional new hires. Changes since the close of the hearing are not relevant

since the parties' last offers will be applied to the same complement of officers. The costing out of the parties' last offers must be calculated on both "cost" and "rate" increases because of the PBA's April 1st effective dates which reduce the cost of the PBA's last offer in 2003, 2004 and 2005. The PBA's last offer also adds additional costs to 2006.

The cost of the Township's last offer is 11.25% over the three years of the new CBA. The cost of the PBA's last offer is 11% over the three years of the new CBA. The cost of the Township's last offer is $\frac{1}{4}$ of 1% more than the PBA's last offer over the three years of the new CBA.

The PBA's last offer increases the rate by 12% over the three years of the new CBA. The Township's last offer increases the rate by 11.25% over the three years of the new CBA. The PBA's last offer increases the rate by $\frac{3}{4}$ of 1% more than the Township's last offer over the three years of the new CBA.

The Township calculated the cost of increments in 2003 as \$21,610. The cost of the Township's 3.75% increase in 2003 is \$33,175. The new salary base in 2003, including increments, is \$917,837 under the Township's last offer. The rate increase generated by the PBA's 4% increase in 2003 is \$37,386. The real cost in 2003 of the PBA's 4% increase effective April 1, 2003 is \$26,540. The cost of the roll-over into 2004 created by the April 1, 2003 effective date is \$8,846. The new salary base in 2003 is \$920,048 under the PBA's last offer. The Township's last offer costs \$6,636 more than the PBA's last offer in 2003. The PBA's last offer in 2003 increases the salary base by \$2,211 more than the Township's last offer in 2003 (.25% of \$884,662).

The Township calculated the cost of increments in 2004 as \$27,988. The Township's 2003 base with 2004 increments costs \$945,825. The cost of the Township's 3.75% increase in 2004 is \$35,468. The new salary base in 2004, including increments, is \$981,293 under the Township's last offer.

The PBA's 2003 base with 2004 increments costs \$948,036. The new salary base in 2004, including increments, is \$985,957 under the PBA's last offer. The rate increase generated by the PBA's 4% increase in 2004 is \$37,386. The actual cost of the PBA's delayed 4% increase with the \$8,846 rollover from 2003 is \$985,351. The real cost in 2004 of the PBA's 4% increase effective April 1, 2004 is \$28,469. The cost of the roll-over into 2005 created by the April 1, 2004 effective date is \$9,859. The total new money in the PBA's 2004 last offer is \$37,315 ($\$28,469 + \$8,846$).

The PBA's 4% last offer in 2004 increases the salary base by \$2,370 more than the Township's 3.75% last offer in 2004 (.25% of \$948,036). The PBA's last offer, after calculating the rollover impact in 2003 and 2004, costs \$1,847 more than the Township's last offer in 2004 ($\$37,315 - \$35,468 = \$1,847$).

The Township calculated the cost of increments in 2005 as \$32,310. The Township's 2004 base with 2005 increments costs \$1,013,603. The cost of the Township's 3.75% increase in 2005 is \$38,010. The new salary base in 2005, including increments, is \$1,051,613 under the Township's last offer.

The PBA's 2004 base with 2005 increments costs \$1,018,267. The new salary base in 2005, including increments, is \$1,058,998 under the PBA's last offer. The rate increase generated by the PBA's 4% increase in 2005 is \$40,730. The actual cost of the PBA's delayed 4% increase with the \$9,859 rollover from 2003 is \$1,048,815. The real cost in 2004 of the PBA's 4% increase effective April 1, 2005 is \$30,548. The cost of the roll-over into 2006 created by the April 1, 2005 effective date is \$10,183. The total new money in the PBA's 2005 last offer is \$40,407 ($\$30,548 + \$9,859$).

The PBA's 4% last offer in 2005 increases the salary base by \$2,545 more than the Township's 3.75% last offer in 2005 (.25% of \$1,018,267). The PBA's last offer, after calculating in the rollover factors in 2004 and 2005, costs \$2,397 more than the Township's last offer in 2004 (\$40,407 - \$38,010 = \$2,397). The PBA's 2005 last offer adds \$10,183 to the 2006 salary base. This is the 1% that the Township saved in 2004. All of the above calculations do not take into account any resignations, retirements, promotions or additional new hires.

The following salary schedules reflect the differences in the parties' last offers:

Township's Last Offer

	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>
Step 1	\$28,347	\$29,410	\$30,512	\$31,657
Step 2	\$33,663	\$34,925	\$36,235	\$37,594
Step 3	\$40,159	\$41,665	\$43,227	\$44,848
Step 4	\$50,230	\$52,114	\$54,068	\$56,095
Step 5	\$62,447	\$64,788	\$67,218	\$69,739
Step 6	\$70,594	\$73,241	\$75,988	\$78,837
Step 7	\$76,024	\$78,875	\$81,832	\$84,901
Step 8	\$85,183	\$88,377	\$91,691	\$95,130

PBA's Last Offer

	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>
Step 1	\$28,347	\$29,480	\$30,660	\$31,886
Step 2	\$33,663	\$35,009	\$36,410	\$37,866
Step 3	\$40,159	\$41,765	\$43,436	\$45,173

Step 4	\$50,230	\$52,239	\$54,329	\$56,502
Step 5	\$62,447	\$64,945	\$67,543	\$70,244
Step 6	\$70,594	\$73,418	\$76,354	\$79,409
Step 7	\$76,024	\$79,064	\$82,228	\$85,516
Step 8	\$85,183	\$88,590	\$92,134	\$95,819

In summary, the PBA's last offer increases the rate by $\frac{3}{4}$ of 1% more than the Township's last offer over the three years of the new CBA. The actual cost of the PBA's last offer is less than the cost of the Township's last offer over the three-year term of the new CBA because of the savings generated by the delayed increases effective April 1 of each year. The actual salary base will be $\frac{3}{4}$ of 1% higher under the PBA's three-year salary proposal. The long-term impact of the parties' last offers is illustrated by a comparison of the two salary schedules. This shows that the PBA's salary schedule in 2005 is higher at all steps ranging from \$229 at entry level (Step 1) to \$689 at the maximum step (Step 8).

Statutory Criteria

I shall now discuss the evidence, testimony and the parties' arguments in relation to the statutory criteria.

Interests and welfare of the public

The interests and welfare of the public require the arbitrator to balance a number of considerations. These considerations traditionally include the Employer's desire to provide the appropriate level of governmental services and to provide those services in the most cost effective way, taking into account the impact of these costs on the tax rate. On the other hand, the interests and welfare of the public requires fairness to employees to maintain labor harmony and high morale and to provide adequate compensation levels to attract and retain

the most qualified employees. It is axiomatic that reasonable levels of compensation and good working conditions contribute to a productive and efficient work force and to the absence of labor unrest. The work of a Police Officer is undeniably and inherently dangerous. It is stressful work and is clearly subject to definite risks. Police Officers are certainly aware of this condition of employment. This is a given which is usually balanced by the appropriate level of increases in compensation to be received by a Police Officer from one contract to the next.

I agree with the analysis provided by Arbitrator Jeffrey B. Tener in an interest arbitration award issued in Cliffside Park. Arbitrator Tener's analysis:

"The arbitrator is required to strike an appropriate balance among these competing interests. This concept has been included in the policy statement of the amended interest arbitration statute. N.J.S.A. 34:13A-14 refers to the 'unique and essential duties which law enforcement officers . . . perform for the benefit and protection of the people of this State' and the life threatening dangers which they confront regularly. The arbitration process is intended to take account of the need for high morale as well as for the efficient operation of the department and the general well-being and benefit of the citizens. The procedure is to give due respect to the interests of the taxpaying public and to promote labor peace and harmony."

(In the Matter of the Borough of Cliffside Park and PBA Local 96, PERC Docket No. IA-98-91-14, page 45.)

The New Jersey Supreme Court in Hillsdale determined that the interests and welfare of the public must always be considered in the rendering of an interest arbitration award and that an award which failed to consider this might be deficient. The amended statute specifically requires the arbitrator to consider the CAP law in connection with this factor. I have considered and fully discussed the relevance of the CAP law in the section on Lawful Authority but at the outset it is sufficient to state that the award of either last offer will not cause the Township to exceed its authority under the CAP law. It is undisputed that the cost

of the Township's last offer exceeds the cost of the PBA's last offer over the term of the 2003-2006 Agreement. The award of either last offer can be funded without the Township exceeding its spending authority. I find that the award of either last offer will not cause an adverse financial impact on the Township, its residents or taxpayers nor will the award of either last offer conflict with the lawful authority of the Township.

The parties' last offers on salary are $\frac{1}{4}$ of 1% apart in 2003, 2004 and 2005. This is not a significant difference. This narrow difference is more pronounced given that the cost of the PBA's salary proposal over the three years of the new CBA is less than the cost of the Township's salary proposal. While it is true that the long-term cost of the PBA's salary proposal is higher than the Township's by $\frac{3}{4}$ of 1% over three years, the narrowness of the differences in the parties' last offers means that an award of either last offer will serve the interests and welfare of the public. An award in favor of the PBA's last offer will not impact on the Township's ability to continue to maintain a stable level of government services nor will an award of the Township's last offer have any effect on the obvious high morale of the officers and the continued delivery of high quality police services to the Township's residents and taxpayers.

A primary purpose of last offer arbitration is to encourage the parties to narrow their differences before final submissions at the arbitration hearing. As stated above, the parties have effectively narrowed their differences. This narrowing of differences is critical in maintaining high morale within the police department and the promotion of harmonious labor relations. In summary, an award that strikes a balance between a public employer's need to maintain a stable level of government services and a public employee's desire to maintain a reasonable level of compensation best serves the interests and welfare of the public. I find that the award of either last offer will satisfy the requirements of this criterion.

Comparison of the wages, hours and conditions of employment

Comparisons of wages, salaries, hours and conditions of employment of the Township's police officers are to be made with private employment in general and with public employees in general and with public employees in the same or similar jurisdictions.

It is undisputed that no private sector employees provide the same services as police officers. Neither party submitted any comparisons with private sector employees who provide the same services as police officers. I agree with the analysis of veteran Arbitrator William Weinberg that comparisons to the private sector are difficult because of the unique nature of law enforcement. (See excerpt on page 18 of this Award). There is no data in the record to evaluate the comparison to *other employees performing the same or similar services in private employment*. I have given this sub-factor no weight.

Comparisons can be made to private employees in general. The parties submitted some limited private sector wage data. The Township submitted private sector wage data showing an average 3.2% increase through the first seven and one-half months of 2003 which was a decline from the 4% increase during the comparable period in 2002. The Township cited a June 24, 2002 report of the Bureau of National Affairs ("BNA") showing that the "Wage Trend Indicator dipped to 3.5%." The Township also cited BNA data compiled through March 31, 2003, showing that "the average first-year wage increase was 3.5%, compared with 4.3% in the comparable period of 2002."

The limited data in the record regarding comparisons with *other employees generally in private employment* shows that average wage increases are below the last offers of both the PBA and the Township. While, the Township's last offer is more in line with average private sector wage increases generally, the payout in the PBA's last offer is significantly less than the Township's in 2003 and slightly less than the Township's over the term of the CBA.

Accordingly, while this appears to favor the Township's last offer slightly, I have given this sub-factor limited weight in view of the limited private sector comparability data in the record.

I shall now address comparisons with public employees in general and with public employees in the same or similar jurisdictions.

The Township cites PERC's Biennial Report on the Police and Fire Public Interest Arbitration Reform Act showing that the average increases in voluntary settlements from January 1, 2001 through December 31, 2001 was 3.91% and the average increase for awards issued in 2001 was 3.75%. The PERC data shows that in 2002 the average increase in voluntary settlements averaged was 4.05% and the average increase for awards was 3.83%. The PERC data shows that in 2003 the average increase in voluntary settlements averaged was 4.01% and the average increase for awards was 3.82%.

Neither party submitted comprehensive salary data on comparisons with public employees in general. There is no evidence in the record concerning the results of negotiations between the Township and non-police employees.

The Township and the PBA submitted considerable data regarding comparisons with public employees in the same or similar jurisdictions. This data primarily focuses on internal comparisons with the SOA bargaining unit and external comparisons with other police officers in Bergen County. Both parties submitted selective data on external comparisons with police bargaining units outside Bergen County.

External Comparisons

The evidence in the record shows that salary increases in Bergen County averaged 4.07% in 2003 and 4.08% in 2004. The contracts in evidence, summarized in the PBA's

Salary Chart, show average increases in nineteen Bergen County municipalities of 4.07% in 2003. Contracts in evidence, not included in Salary Chart 1, are Paramus, Ridgewood, Franklin Lakes, and Garfield. The average increases in 2003, when Paramus, Ridgewood, Franklin Lakes, and Garfield are included is 4.06% for twenty-three Bergen County communities. I have not included the State Police contracts in the above averages. The Township correctly notes that this is approximately one-third of the municipalities in Bergen County. The Township did not submit salary data comparing increases for maximum-step police officers in Bergen County in 2003.

The contracts in evidence, summarized in the PBA's Salary Chart, show average increases in ten Bergen County municipalities of 4.175 % in 2004. The communities cited by the PBA: South Hackensack (4%), Saddlebrook (4.5%), Bergenfield (4%), Allendale (4%), East Rutherford (5%), Hasbrouck Heights (4.25%), Fairview (4%), Lodi (4.25%), South Hackensack (4%) and Moonachie (4%).

The Township submitted external comparisons with other police officers in Bergen County, calculating increases for maximum-step police officers in Bergen County in 2004 and 2005. The Township compared eighteen communities in 2004 and five communities in 2005. Seven of the communities cited by the Township in 2004 are included in the PBA submission: South Hackensack (4%), Saddlebrook (4.5%), Bergenfield (4%), Allendale (4%), East Rutherford (5%), Hasbrouck Heights (4.25%) and Moonachie (4%). The Township included eleven additional communities in its analysis: Fort Lee (3.75%), Tenafly (4.1%), Hackensack (4%), Hillsdale (3.75%), Midland Park (3.75%), Oakland (4.3%), Carlstadt (4%), Palisades Park (4.25%), Lyndhurst (4%), Woodcliff Lake (4%), and Westwood (4%). The Township data shows that the average increase at the maximum step in 2004 for the eighteen communities cited is 4.08% in 2004.

The data submitted by the Township and the PBA in 2004 includes twenty-two communities. The PBA cites ten communities with an average 4.175% increase at the maximum step. The three communities not cited by the Township: Fairview (4%), Lodi (4.25%) and South Hackensack (4%). The Township data shows that the average increase at the maximum step for the eighteen communities cited is 4.09% in 2004. Combining the comparables submitted by the PBA and the Township, after eliminating the duplication, yields an average increase at the maximum step of 4.08% for the twenty-one communities in 2004.¹

The Township submitted five communities in Bergen County in 2005: Fort Lee (3.5%), Hillsdale (3.75%), Oakland, (4.25%), Palisades Park (4.5%) and Lyndhurst (3.5%). This yields a 3.9% average increase at the maximum step in 2005. The PBA added Fairview at 4% bringing the average in Bergen County to 3.92%.

The contracts in evidence in 2005 represent a small sampling. A review of the PERC data reporting voluntary settlements and awards from January 1, 2003 to December 31, 2003 provides a larger sampling and shows the following 2005 salary increases: W. Orange/FMBA (4.5%), Fanwood (4%), Haledon (4%), Mercer County Prosecutor (4.75%), River Edge (3.9%), W. Orange/PBA (3.8%), Clinton (4%), Madison (4%), Morris Sheriff (4.14%), Atlantic County Prosecutor (4%), Chatham (4%), Manasquan (4%), South River (3.9%), Fairfield (3.75%), Somerville (4.9%), Rumson (4%), Watchung (4%), Passaic County

¹The Township submitted the Ramsey contract but did not include it in its analysis. The Ramsey contract provides for 3.5% annual increases. The inclusion of the Ramsey settlement reduces the annual average to 4.04 in 2003 and 4.05 in 2004. The PBA correctly notes that the Ramsey settlement includes other improvements to the salary schedule including the addition of a 4.7% "senior officer" step after 23 years of service. This is a significant improvement that will increase a career officer's salary by 4.7% above the annual 3.5% increases.

Prosecutor (3.75%), Washington Township (3.95%), Roselle Park (4%), Colts Neck 4.75%), Winslow (3.5%), Merchantville (4%), New Providence (5%), Pequannock (3.75%), Middlesex Borough (4.5%) and East Orange (3.5%). The PERC state-wide salary data shows that the average increase in twenty-seven communities in 2005 is 4.07%. When the PERC data is combined with the six communities submitted by the Township and the PBA, the average increase in 2005 for thirty-three communities is 4.05%.

All of the data on external comparisons with other police officers in Bergen County and throughout the State show average salary increases that favor the last offer of the PBA. The PBA's last offer of 4% annual salary increases is fully consistent with average increases negotiated between public employers and police officers in Bergen County and throughout the State. The delayed increases which reduce the Township's payout in 2003 to 3% and an average of 3.67% over the three years of the new CBA make the PBA's last offer more attractive. This is below the cost of the Township's last offer of 3.75% annual salary increases.

Accordingly, I find that external comparisons with police officers in Bergen County and throughout the State favor the PBA's last offer.

Internal Comparisons

The Township submits that consideration must be given the salary increases provided to Rochelle Park police superior officers. It is undisputed that rank-and-file and SOA police officers received the same percentage salary increases from 1993 to 2002. The Township maintains that it has established an undeniable pattern of negotiating the same salary increases with the PBA unit and the SOA unit from 1993 to 2002. The PBA concedes that the salary increases have been identical but noted the following differences:

1. Detective Differential of \$500 per annum provided in the SOA contract.
2. Detective schedule adjustment day provided in the SOA contract but does not appear in the PBA contract.
3. Compensatory Time Off Bank provisions exist in the SOA contract but do not exist in the PBA contract. This difference was remedied in a pre-arbitration settlement in this case, however, it should not be overlooked that the SOA has enjoyed this benefit for years.
4. The grandfather provision for longevity for employees hired after 1998 while it exists in the SOA contract as in the PBA contract, has no impact on anyone in the SOA bargaining unit.
5. The vacation scheduling provisions are less restrictive in the SOA contract.
6. There are no limits to the educational incentive plan coverage in the SOA contract whereas there are specific limits on numbers of credits which may be paid for in the PBA contract.

The Township notes that its contract with the SOA bargaining unit includes a 4.0% salary increase in 2003, a 3.5% salary increase in 2004, and 3.0% salary increases in 2005 and 2006. This is a 3.375 average annual increase over the four-year Agreement and a 3.5% average annual increase during the same three-year term as its offer to the PBA. The Township correctly notes that its final offer of 3.75% per year more closely follows the pattern with the SOA bargaining unit.

The Township provided excerpts from other interest arbitration decisions emphasizing the importance of settlement patterns. (See pp. 32-34). I agree with my colleagues' analysis of the importance of maintaining an established pattern of settlement. An established pattern of settlement promotes harmonious labor relations, provides uniformity of benefits, maintains high morale, and provides consistency in bargaining. I have

issued awards in which established patterns of settlement were given great weight.² However, for the following reasons I find that an “early” voluntary settlement with the SOA bargaining unit does not create an established pattern:

First, the Township’s settlement with the SOA is not in line with other police officer comparables in Bergen County and throughout the State. It is more than 1.5% less than the average three-year negotiated salary increases. The Township is proposing annual increases of 3.75% which are higher than the asserted “pattern.”

Second, I would give more consideration to the Township’s last offer if its settlement with the SOA was 3.75%. The Township’s last offer exceeds the SOA settlement because it recognized that in “last offer” arbitration, an average increase of 3.37% or even 3.5% would be difficult to justify under the statutory criteria. The Township’s settlement with the SOA would be entitled to greater weight if it had stood the test of interest arbitration. I note that the SOA settlement was reached directly between the parties without Labor Counsel.

Third, pattern bargaining is usually appropriate and applicable in situations where there are multiple bargaining units, i.e., municipalities with police and fire rank-and-file and SOA bargaining units; counties with multiple public safety bargaining units; state bargaining units; etc. Also, common relationships between fire and police bargaining units are maintained through pattern bargaining. This holds true for multiple bargaining units that have common relationships at the state and county level.

²See Ocean County Sheriff’s Office and PBA Local 309, PERC Docket No. IA-2003-026, issued 2/16/04; Somerset County Sheriff’s Office and FOP Lodge 39, PERC Docket No. IA-2002-046, issued 3-15-03; and State of New Jersey and NJ PBA Law Enforcement Supervisors Association, PERC Docket No. IA-2001-035, issued 11-1-02.

Fourth, the Township's reliance on the voluntary settlement with the SOA is flawed as a "pattern" argument since an award of the Township's last offer will not continue a pattern. While the Township's last offer is closer to the average increases negotiated with the SOA bargaining unit, an award of its last offer will not continue a pattern.

Fifth, I have served as mediator or arbitrator in thousands of negotiations disputes over the past thirty-one years. I have rarely, if ever, seen a pattern established by a settlement with an SOA bargaining unit. The common practice in negotiations is to settle with the rank-and-file bargaining unit first and then negotiate with the SOA bargaining unit. Carried to an extreme, a public employer could negotiate a very low wage increase with the SOA bargaining unit and then assert "pattern" in its negotiations with the rank-and-file bargaining unit. Simply stated: "The tail cannot wag the dog." The Township's settlement with the SOA would be given greater weight if it had stood the test of interest arbitration.

Maximum Salary

The Township submitted salary data showing that its police officers ranked third out of sixty Bergen County municipalities in 2002 at maximum salary. The Township notes that the Rochelle Park 2002 maximum salary of \$85,183 exceeded the County average of \$77,654.

The Township submitted salary data showing that its police officers would continue to rank third out of forty-five Bergen County municipalities in 2003 at maximum salary after a 3.75% salary increase. The Township notes that the Rochelle Park 2003 maximum salary of \$88,377 after the application of a 3.75% increase would exceed the County average of \$81,167.

The Township submitted salary data for twenty Bergen County municipalities showing that the average maximum salary in 2004 is \$84,130. The Township provided a smaller sampling of five municipalities in 2005 showing an average maximum salary of \$86,605.

The Township contends that its salary offer of 3.75% represents a more reasonable offer than the PBA's because Rochelle Park's maximum patrol officer salary stands substantially above the Bergen County average. The Township is essentially arguing that its last offer should be awarded because of the high ranking of its police officers in relation to other police officers in Bergen County.

For the following reasons I find that, while the relative standing of a police officer must be considered, it cannot be controlling and must be measured along with other salary components:

First, I have encountered this argument in reverse — where police bargaining units at the low end of a ranking seek to move up. This argument places a significant burden on the party seeking such a change. I recently rejected that argument in an interest arbitration award issued on February 1, 2003 in which the PBA sought to move up from its 7th out of nine position in the agreed-upon demographic grouping:

“The salary data submitted by both the PBA and the Borough shows that Allendale is in the upper or lower middle of all of the comparisons. Arbitrator Mastriani in his 1999-2001 Award illustrated this by comparing Allendale to communities which have ‘close geographic and similar community profiles.’ These ten communities included Mahwah, Franklin Lakes, Waldwick, Upper Saddle River, Saddle River, Ramsey, Hohokus, Oakland, Ridgewood and Allendale. Arbitrator Mastriani noted that six communities had higher maximum salaries and three had lower maximum salaries. In 1998, Allendale's maximum salary was \$67,135 with Mahwah on top at \$72,659 and Ridgewood was tenth at \$65,000.

The 2001 salary data shows the following for the same ten communities:

Franklin Lakes	\$84,424
Saddle River	\$81,526
Mahwah	\$81,338
Waldwick	\$80,653
Upper Saddle River	\$78,430
Ramsey	\$77,737
Allendale	\$75,263
Hohokus	\$74,092
Ridgewood	\$74,176
Oakland	\$74,000

Again, Allendale is seventh. The Mastriani Award maintained Allendale's position in relation to the other nine communities. The salary data submitted by both the PBA and the Borough, when averaged, is just above or just below 4% annually. The award of 4% annual increases will maintain Allendale's relative position in the above grouping. There is simply no basis to award the PBA's 5% annual increase to narrow the gap with the highest paid communities nor is there any basis to award the Borough's 3.75% annual increase which will widen the gap. (See Borough of Allendale and PBA Local 217, PERC Docket No. IA-2002-032, issued February 1, 2003.)

The salary data submitted by both the PBA and the Borough, when averaged, is just above or just below 4% annually. The award of 4% annual increases will maintain Allendale's relative position in the above grouping. There is simply no basis to award the PBA's 5% annual increase to narrow the gap with the highest paid communities nor is there any basis to award the Borough's 3.75% annual increase which will widen the gap." (Allendale/PBA 217 IA-2002-032, at 51).

My award in Allendale maintained the relative position of police officers in relation to their peers. This relationship had been in place for many years and had been evaluated by Arbitrator Mastriani in the prior contract. A party seeking a change in order to move up or down in a ranking bears a considerable burden. The PBA did not meet this burden in Allendale, and the Township has not met its burden in this matter.

Second, the police officers in Rochelle Park have enjoyed their high ranking for many years. The record indicates that the Township and the PBA have voluntarily negotiated salary increases that have maintained the Township's salary maximum within the County.

Third, while there is no question that Rochelle Park police officers receive a very competitive salary, there are other factors that must be evaluated. Rochelle Park negotiated a two-tier longevity provision that "grandfathers" all officers hired before 1998. The current longevity provides for 2% after four years up to a maximum of 12% after twenty-four years. This means that all Rochelle Park police officers hired since January 1, 1998 are not eligible for longevity. This is a considerable benefit to the Township which provides moderate savings now and will provide substantial savings in the future.

Two-tier longevity provisions are not common in Bergen County contracts and must be factored into any evaluation of maximum salaries. Most other police officers in Bergen County continue to receive full longevity benefits. Factoring in two-tiered longevity reduces the relative standing of Township maximum salaries within the County.

Fourth, the Township's reliance on the Ramsey settlement is revealing when fully examined. Maximum salaries in Ramsey are increased not only by longevity but also by the establishment of a "senior officer" step. Evidence in the record does not establish how many other salary schedules in Bergen County include a senior officer step. The senior officer step in Ramsey is 4.7% above Step 8 and increases the maximum salary to \$88,340 in 2003. The maximum salary in Rochelle Park in 2003 would be \$88,377 under the Township's last offer and \$88,590 under the PBA's last offer. These maximum salaries are nearly identical. In addition, all police officers in Ramsey also receive a maximum longevity benefit of 10%.

Fifth, the salary schedule in Rochelle Park includes the value of the fifteen holidays included in the salary schedule. These fifteen holidays are equal to 6% of base salary or approximately \$5,000 at the maximum police officers' salary. The Township's data on maximum salary does not show which other municipalities include holiday pay in base salary. Some municipalities continue to disburse holiday pay in a separate payment while other municipalities provide additional leave time instead of payment for holidays. A review of the Ramsey contract shows that holiday pay is not included in base salary.

The Township notes that the Rochelle Park maximum police officers' salary at \$81,168 in 2002 exceeded the \$77,655 Bergen County average by \$4,015 or 4.95%. This differential is maintained in 2003, 2004 and 2005 under the PBA's last offer and reduced by .75% by the Township's last offer. A 6% reduction in the Rochelle Park maximum salary in 2002 reduces the maximum salary to \$76,550 which is less than the Bergen County average. Let me be perfectly clear on this. Many bargaining units in Bergen County receive compensation for holidays. Undoubtedly, many of these units include holiday compensation in base salary.

Therefore, if all of the data was available, it is likely that the Rochelle park maximum salary would be equal to or somewhat higher than the Bergen County average. As discussed above, a heavy burden is placed on a party that submits a last offer designed to move up or down in relation to peers within a particular grouping. The Township has not met its burden.

Sixth, a review of the settlement data from 1993 to 2002 submitted by the Township shows that the average increase for this ten-year period was 5.05%. PERC data indicates that no interest arbitration awards were issued in Rochelle Park during this ten-year period. They achieved the 5.05% average increases through voluntary settlements. A review of the PERC

salary data for the same ten-year period shows that the average salary increase for reported voluntary settlements was 4.26% and the average salary increases awarded was 4.18%.³ This comparative data shows that the Township and the PBA (and SOA) voluntarily increased salaries at a much higher rate than state-wide averages.

The Rochelle Park rank-and-file and SOA salary schedules increased by 8.7% more than average salary increases awarded and 7.9% more than average increases achieved through voluntary settlements from 1993 to 2002. The first five years from 1993 to 1997 achieved much higher than average increases with 7% increases in 1993 and 1994 followed by 5% increases in 1995, 1996 and 1997. The 1998-2001 CBA included the elimination of longevity for all police officers hired after January 1, 1998. This was a major concession won by the Township and was achieved after much higher than average salary increases in the two prior agreements. This major concession eliminating longevity must be measured against the higher than average salary increases voluntarily negotiated by the parties.

I find that the external comparability data detailing salary increases in other municipalities in Bergen County is the most relevant factor in this proceeding and favors an award of the PBA's last offer. After all, this is salary data for all other police officers in Bergen County. This data shows that the average settlement in Bergen County is slightly above 4% in 2003, 2004 and 2005. I note that the external Bergen County comparability data is in line with my experience throughout the State. This data is also consistent with the summary data provided by PERC on the average salary increases achieved by the parties voluntarily and by award. The PBA's last offer will maintain the relative standing of

³Biennial Report of the Public Employment Relations Commission on the Police and Fire Interest Arbitration Reform Act at page 14. (January 2004)

Rochelle Park police officers in relation to their peers in Bergen County and at the same time costs less than the Township's last offer over the term of the 2003-2005 CBA. I have found that Rochelle Park maximum salary is certainly competitive but it must be offset by the inclusion of holiday pay and the elimination of longevity for all police officers hired since January 1, 1998. While the internal settlement with the SOA is closer to the Township's last offer, I find that it is not an established pattern and is therefore not entitled to much weight. The internal settlement with the SOA, for all of the reasons cited above, cannot outweigh the Bergen County and state-wide comparability data.

For all of the above reasons, I find that the comparability factor is the most relevant factor in this last offer proceeding and favors an award of the PBA's last offer. This is the factor that both the Township and the PBA placed the greatest emphasis on in their evidentiary submission and in their arguments in the respective briefs.

Overall Compensation

I have considered the overall compensation received by the Township police officers and find that the terms of my Award in favor of the PBA's last offer will maintain the existing levels of economic benefits. The current overall compensation is competitive and will not be diminished by an award of the PBA's last offer. Rochelle Park police officers will maintain their current ranking in comparison to their peers in Bergen County. This ranking is lower than suggested by the Township. The high maximum salary in Rochelle Park must be offset by the inclusion of holiday pay in base salary and the elimination of longevity for all employees hired after January 1, 1998. The terms of my award are consistent with other external settlements in Bergen County and throughout the State thus maintaining a consistent level of benefits. I need not discuss other benefits (vacation, clothing allowance, stipends,

holidays, etc.) received by Township police officers since there are no such benefits in dispute and neither party has submitted data on these other benefits. The level of benefits of Rochelle Park police officers seems consistent with the level of benefits of other police officers.

Lawful Authority of the Employer

This factor, among other things, requires the arbitrator to consider the limitations imposed on the Township by the CAP Law which, generally, limits the amount by which appropriations of counties and municipalities can be increased from one year to the next. This was intended to control the cost of government and to protect homeowners. The limitation applies to total appropriations and not to any single appropriation or line item.

This can be a significant factor in interest arbitration matters when the parties fair and final offers on salary are extreme or when a party is asserting that the CAP Law affects their ability to fund salary increases.

The Township is obviously well managed. The Township is not asserting that the CAP Law affects their ability to fund salary increases. It is undisputed that the PBA's last offer costs less than the Township's last offer over the term of the new CBA because of the April 1 effective date of the 4% salary increases. The PBA's rate increase exceeds the Township's rate increased by $\frac{1}{4}$ of 1% in each of the three years of the new CBA. The $\frac{1}{4}$ of 1%, if effective January 1 of each year, would increase the Township's cost by an additional \$2,211 in 2003, \$2,370 in 2004 and \$2,545 in 2005. These calculations do not take into account any resignations, retirements, promotions or additional new hires. Turnover caused by retirements and resignations creates "breakage" which benefits the Township. The Township achieves considerable savings when a senior officer is replaced by a junior officer.

This breakage is worth more than \$60,000 in Rochelle Park when a senior officer is replaced by a junior officer.

The 2006 salary schedule, assuming no turnover, will cost approximately \$7,400 more in 2006 because of the additional ¼ of 1% applied to the salary schedule. This is a small difference with no impact on the lawful authority of the Township. There is absolutely no evidence in the record to show that my award will cause the Township to approach the limits of its financial authority or to breach the constraints imposed by the CAP Law in funding the salary increases I have awarded.

**Financial Impact on the Governing Unit,
its Residents and Taxpayers**

As discussed above, the financial impact of my award is minimal. The last offer of the PBA costs less than the last offer of the Township. There is no evidence to suggest that the Township will not be able to maintain current levels of police services. Based on the evidence submitted, I conclude that the financial impact of my award will not adversely affect the governing unit, its residents and its taxpayers.

Cost of Living

Arbitrators must consider changes in the cost of living. The cost of living data shows that the increase in the Consumer Price Index ("CPI"), as published by the U.S. Department of Labor, Bureau of Labor Statistics ("BLS"), for New York-Northern New Jersey is below the terms of my Award in 2003. The CPI increased by 3.1% in 2002 and 2.8% in 2003. The last offer of the PBA and the last offer of the Township exceed the increase in the CPI in 2003.

The 2004 CPI data is inconclusive. The most recent data shows that the CPI increased by 3.2% for the year ending March 2004. However, most of that increase came last month

in March when the CPI increased by 1.1%, the largest month-to-month increase since 1990.⁴ There is no reason to believe that this trend of higher month-to-month increases will continue and it is more likely that the awarded salary increases will exceed the CPI resulting in an increase in real earnings of bargaining unit members for the 2003-2005 duration of the new CBA.

I conclude that the awarded salary increases, while higher than the increases in the cost of living in 2003 (and probably higher in 2004 and 2005), provide for an acceptable increase in real earnings that must be measured against the continued delivery of quality police services.

Continuity and Stability of Employment

The terms of my Award will maintain the continuity and stability of employment for Township police officers. The salary awarded in this matter will not jeopardize either employment levels or other governmental services. The salary award will maintain a competitive salary and permit the Township to continue to recruit and retain qualified police officers.

Accordingly, I am convinced that the terms of this award will maintain the continuity and stability of employment and satisfy the requirements of this factor.

Conclusion

I have carefully considered the evidentiary record in this matter including the testimony of the parties' witnesses and the numerous exhibits. I have calculated the cost of the award each year. I have also carefully considered the arguments advanced by the parties in support of their respective positions. I have considered the evidence and arguments in

⁴New York-Northern New Jersey CPI, U.S. DOL, Bureau of Labor Statistics "News" issued April 14, 2004.

relation to the statutory criteria which I am bound to consider and apply. Each of the statutory criteria has been considered and given due weight. I have found each factor to be relevant although I have accorded more weight to some factors than others.

Accordingly, I hereby issue the following:

AWARD

1. Term of Agreement:

The term of the new agreement shall be January 1, 2003 to December 31, 2005.

2. Salary:

Salaries shall be increased by 4% retroactive to April 1, 2003; by an additional 4% retroactive to April 1, 2004; and by an additional 4% effective April 1, 2005. All salary increases are across-the-board on all steps of the salary schedule.

3. Overtime:

The parties agreed to increase the compensatory time bank to forty hours and to use the following language from paragraph 13.5 in the Borough's CBA with its SOA bargaining unit:

13.5 Each employee shall have the individual option of receiving overtime compensation as either a cash payment (time and one-half) or as compensatory time off (C.T.O.) At the rate of time and one-half. When C.T.O. is elected by the employee then the C.T.O. shall accumulate in the C.T.O. Bank and shall be used at the employee's sole option, subject only to prior Police Department approval.

At no time shall any employee's C.T.O. Bank contain more than forty (40) hours. Once the maximum C.T.O. Bank amount is reached, then all additional overtime compensation shall be paid compensation (time and one-half).

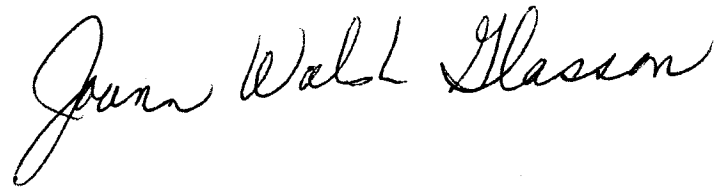
Dated: April 30, 2004
Pennington, NJ



ROBERT M. GLASSON
ARBITRATOR

STATE OF NEW JERSEY) ss.:
COUNTY OF MERCER)

On this 30th day of April 2004, before me personally came and appeared ROBERT M. GLASSON, to me known and known by me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.



Joann Walsh Glasson
Notary Public
State of New Jersey
Commission Expires 12-11-06