

NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of Interest Arbitration Between the

TOWNSHIP OF WEST CALDWELL

"Public Employer"

-and-

PBA LOCAL 81

"Union."

**INTEREST ARBITRATION
DECISION
AND
AWARD**

Docket No. IA-2001-73

**Before
James W. Mastriani
Arbitrator**

Appearances:

For the Township:

Beth Hinsdale, Esq.
Grotta, Glassman & Hoffman

For the Union:

Richard D. Loccke, Esq.
Loccke & Correia

I was appointed arbitrator by the New Jersey Public Employment Relations Commission in accordance with P.L. 1995, c. 425, in this matter involving the Township of West Caldwell [the "Township"] and West Caldwell PBA, Local No. 81 [the "PBA"]. Two (2) pre-arbitration mediation sessions were held. Because the impasse was not resolved, formal interest arbitration hearings were held on June 18 and 21, 2002. Testimony was received from Sergeant Michael Rauschenberger, Township Chief Financial Officer Russell Jarger and Township Administrator Benedict R. Martorana. Both parties introduced evidence. Post-hearing briefs were submitted.

FINAL OFFERS OF THE PARTIES

As required by statute, the Township and the PBA submitted the following final offers:

The PBA

1. **Wage increase** - The PBA will propose a 4 calendar year contract with 5% across the board increase effective on each successive January 1st in each of the four years.
2. **Article V, Holidays** - The PBA proposes that the entire holiday benefit be folded in and paid along with regular base compensation. As such the holiday benefit value would be utilized in all calculations.

3. **Departmental Investigations -**

In an effort to insure that departmental investigations are conducted in a manner which is conducive to good order and discipline, the following rules are hereby adopted:

1. The interrogation of a member of the department shall be at a reasonable hour, preferably when the member of the department is on duty, unless the exigencies of the investigation dictate otherwise.
2. The interrogations shall take place at a location designated by the Prosecutor or designee. Usually it will be at the Prosecutor's office or the location where the incident allegedly occurred.
3. The member of the department shall be informed of the nature of the investigation before any interrogation commences. Sufficient information to reasonably apprise the members of the allegations should be provided. If it is known that the member of the department is being interrogated as a witness only, he should be so informed at the initial contact.
4. The questioning shall be reasonable in length. Fifteen (15) minutes time shall be provided for personal necessities, meals, telephone calls, and rest periods at the end of every two (2) hours.
5. The member of the department shall not be subject to any offensive language, nor shall he be threatened with transfer, dismissal or other disciplinary punishment. No promise of reward shall be made as an inducement to answering questions.
6. At every state of the proceedings, the Department shall afford an opportunity for a member of the department, if he so requests, to consult with counsel and/or his Association representative before being questioned concerning a violation of the rules and regulations during the interrogation of a member of the department, which shall not delay the interrogation beyond one (1) hour for consultation with his Association representative.
7. In cases other than departmental investigations, if an officer is under arrest or if he is a suspect or the target of a criminal

investigation, he shall be given his right pursuant to the current decisions of the United States Supreme Court.

8. Nothing herein shall be construed to deprive the Department or its officers of the ability to conduct the routine and daily operations of the Department.
9. No employee covered by this Agreement shall be subjected to any urinalysis or blood screening unless one of the two (2) circumstances exist: (1) Where the employer has probable cause to suspect that there is a job-related individualized impact with respect to the specific employee being tested. (2) Where the urinalysis or blood testing is done as part of a bona fide annual physical examination which is done for the Prosecutor's Office.
10. Under no circumstances shall the employer offer or direct the taking of a polygraph or voice print examination for any employee covered by this Agreement.
11. Under no circumstances shall an employee be subject to any charge whatsoever after 45 days. The 45 day period shall be calculated consistent with N.J.S.A. 40A:14-147.

The Township of West Caldwell

Wages:	4.0% per year in 2001, 2002 and 2003 Addition of two new steps to the beginning of the salary guide for new hires.
Longevity:	Eliminate for all new hires.
Health Benefits:	Movement of all officers into the PPO plan, supply prescription card and diagnostic "well care", such as the Calcium Scoring Coronary Artery scan. Provide fully paid medical benefits to spouses in the event of death of retired officer with 25 years of service.
Terminal Leave:	The Township proposes to provide a cash payment, subject to a \$15,000 cap, for 1/3 of all accumulated sick leave at the time of retirement for all new hires.

Vacation: Limit vacation carryover to 20 days.

Payment for Outside Services: Payment for outside services (extra duty) shall be at the rate of \$47.50 per hour for "outside work" (such as construction traffic control) and \$35.00 per hour for "inside work" (such as retail store security work during holidays). As is currently the practice, such payments are not part of the officers' salary for any purpose, including but not limited to pension, overtime, holiday pay, pay for compensatory time, etc.

Compensatory Time: Limit all comp time banks to 40 hours total. Create automatic pay down schedule to get all employees to 40 hours.

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

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

(2) Comparison of the wages, salaries, hours, and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours, and conditions of employment of other employees performing the same or similar services and with other employees generally:

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

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

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

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

(4) Stipulations of the parties.

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

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

services for which public moneys have been designated by the governing body in its proposed local budget.

(7) The cost of living.

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

BACKGROUND

The Township of West Caldwell is a suburban municipality in Essex County covering 5.05 square miles. It has a population of approximately 11,000 residents.

The West Caldwell Township Police Department is composed of twelve (12) Patrolmen, two (2) Detectives, three (3) Corporals, five (5) Sergeants, four (4) Lieutenants, one (1) Captain, and a Police Chief. [Ex. P-8]. The PBA unit represents officers below the rank of Captain.

Sergeant Michael Rauschenberger testified to recent and current residential and commercial activities occurring within the Township. Sergeant Rauschenberger also testified to several separations from employment since January 1, 1999. There were two retirements, one of which occurred due to a work disability, and five due to transfer to law enforcement positions in the U.S. Secret Service and the municipalities of Hackensack, Manalapan, Montvale and

Wayne. With respect to those who transferred to other departments, Sergeant Rauschenberger testified that he did not know the reasons for the separations. Sergeant Rauschenberger believes that the department has become more proactive and testified to many recent departmental initiations and activities such as Domestic Violence Divert where police officers spend time training volunteers in domestic violence counseling, defibrillator training and community policing. He also testified to the mutual aid relationships among West Caldwell, Fairfield, Caldwell and Essex Fells and training involvement of certified West Caldwell police officers at the police training academy.

Township testimony was received from Russell Jarger, Chief Financial Officer. Jarger testified to police and non-police salary comparisons, overtime rates and hours, the amount and value of banked time, health insurance costs and financial and budget issues.

Township testimony was also received from Benedict Martorana, Township Administrator. Martorana's testimony covered the issues and rationale in support of the Township's final offer and, in particular, the details and issues involved in the Township's health insurance proposal.

POSITIONS OF THE PARTIES

PBA, LOCAL 81

Addressing N.J.S.A. 34:13A-16g (1), the interest and welfare of the public, the PBA describes the Township as a “wealthy upper middle class municipality lying in western Essex County.” The PBA points out that the Township has one of the highest average household incomes and growth rates in the County. The PBA presented several photographs that illustrated the County’s increased land use and residential and commercial growth. The PBA indicates that the work load has increased due to increased police training and because the police work force has remained constant since 1980 (thirty (30) sworn officers in 1980 compared to twenty-nine (29) today). According to the PBA, the current level of compensation has caused several police officers, who trained and gained valuable work experience at the expense of the Township, to accept positions with other law enforcement agencies.

Addressing N.J.S.A. 34:13A-16g (2) and (3), the PBA stresses the fact that the Department has recently lost a number of young officers to other law enforcement agencies. According to the PBA, almost half of the patrolmen in the past two (2) years departed for other law enforcement agencies. The PBA compares various benefits in the Department’s compensation program to those of other agencies in the immediate region as well as the State.

The PBA presents the following chart comparing annual sick leave benefit:

**Chart No. 1
Annual Sick Leave Benefit
Comparison Based on PBA Evidence**

Town	Annual Sick Leave Benefit	Annual Sick Hours
Roseland	Unlimited	NL
Caldwell	15 work days (12 hr. days)	180
North Caldwell	150 hours	150
Cedar Grove	12 working days (12 hr. days)	144
Verona	15 working days (12 hr. days)	180
Livingston	12 working days (12 hr. days)	144
Hanover	96 hours per year	96
Ringwood	15 working days	120
E. Hanover	120 hours per year	120
Montville	15 working days	120
State Police	As needed - no stated limit	NL
Average annual sick hours		139.3
West Caldwell Sick Leave	96 Annual Hours	
West Caldwell Sick Leave & hours compared to average		(43.33) (45.1%)

Based upon the comparison chart above, the PBA indicates that its annual sick leave is well below the comparison average.

The PBA also compares its annual holiday allocation to other law enforcement agencies:

Chart No. 2
Comparison of Annual Holiday Benefits
Based on Contracts Placed into Evidence by PBA

Roseland	13
Caldwell	13
North Caldwell	13
Cedar Grove	12
Verona	14
Livingston	13
Fairfield	13
Hanover	13
East Hanover	14
Wayne	13
Montville	13
State Police	13
Average	13.08 annual holidays
West Caldwell Holiday Benefit	13 annual holidays

Based upon this comparison, the PBA describes its benefit as “average at best”.

The PBA submitted into evidence its comparison group for average base salary increases:

Chart No. 3
Average Base Rate Increase
Based on PBA Contracts in Evidence

	2001	2002	2003	2004
Roseland	4 (2/2)	4.5 (2/2.5)	4	4
Caldwell	4.125 (2/2.125)	4.125 (2/2.125)		
North Caldwell	4	4		
Cedar Grove	6 (3/3)	5		
Verona	6 (3/3)			
Livingston		4	4	
Hanover		5.8 (4/1.8)	5.75 (4/1.75)	
Fairfield	4	4		
Ringwood		4	4	
East Hanover		4.5 (2/2.5)	4.5 (2/2.5)	4.5 (2/2.5)
Totowa		3.9	4.1	4.1
Wayne	4	4	4	4.25
Montville	4	4		
State Police	4	4	4	4
State Police NCO	4	4	4	4
Orange SOA	4 (3/1)	4 (3/1)	4	
Averages	4.375%	4.255%	4.235%	4.121%

The PBA maintains the average wage rate increase clearly supports an award of the PBA's last offer rather than the Township's. According to the PBA, the Township selected contracts of municipalities that are not similar in environmental and socioeconomic status in order to present a lower average base rate increase. Nevertheless, the PBA contends the average base rate increase for the Township's comparison group supports the PBA's last offer as well. The PBA points out that its last offer is well below the increases received

by the Montclair SOA presented in the Township's comparison chart. The PBA explains as follows:

Even the employer's list, apparently to their chagrin, shows that Montclair Supervisors reached an average rate of 6.75%. A word of explanation is in order here. Referring to employer Exhibit T-5i at page 55, the salaries for the Supervisors in Montclair may be calculated. Each of these increases in 2001, this contract's first year, has a split raise. The sergeant rate went from \$65,566 to \$68,843, a 5% increase effective January 1, 2001. At the end of the year there was another 7/10ths of 1% increase. The Lieutenant's rate went from \$72,827 to \$76,673 at the beginning of 2001, a 5.3% increase. That rate was increased by another 1.4% at the end of the year. The captain's rate went from \$81,121 to \$86,069, a 6.1% increase at the beginning of the year and an additional 1.75% increase at the end of the year. These cumulative increases are 5.7% for Sergeants, 6.7% for Lieutenants and 7.85% for Captain. The average of these three composite rate increases is 6.75%. 6.75% is more than the PBA has requested in this case.

The PBA maintains the Township desire to eliminate longevity benefits for new employees is unsupported by the evidence at hearing. The PBA presents the following chart:

Chart No. 5
Availability of Longevity Benefits
Based on Employer Selected Municipalities

(A) Employer Selected Municipality	(B) Is there a longevity plan for all employees?	(C) Is any employee grandfathered out of longevity?
Glen Ridge	Yes	No
Bloomfield PBA	Yes	No
Bloomfield SOA	Yes	No
Belleville	Yes	No
Newark	Yes	No

Newark SOA	Yes	No
Montclair PBA	Yes	No
Montclair SOA	Yes	No
South Orange	Yes	No
South Orange SOA	Yes	No

The PBA stresses the fact that no other municipality in the local area has eliminated longevity for any sworn personnel. Similarly, the PBA contends the Township's request to modify terminal leave is unsupported by the record evidence. According to the PBA, no Interest Arbitrator has ever awarded a one-third value formula for accumulated sick leave time, and the Township failed to present an adequate basis for its request.

The PBA indicates that the Township has also failed to support its requests to limit vacation carryover and to reduce health care benefits. The PBA emphasizes its point that the Township currently is unable to retain its younger police officers.

As for the Township's comparison of its officers to employment in the private sector, the PBA contends that private sector comparisons, due to the unique qualifications, duties and responsibilities of a police officer [i.e. obligation to act as law enforcement officer at all times] and given the strict statutory regulations under which an officer must perform, are not entitled to significant weight. According to the PBA, an officer must work locally and therefore must be compared to employees who work locally.

Addressing N.J.S.A. 34:13A-16(g)5, the lawful authority of the employer, the PBA maintains that the Township has not encountered Cap problems and can fund the PBA's proposals. The PBA indicates that the Borough elected to utilize less than the 5.0% Cap maximum permitted by statute in its 2002 budget. According to the PBA, the Township could have budgeted an additional funds in 2002 within the Cap, but did not do so and that there is no evidence that the PBA's proposal would force the Township to exceed the Cap.

The PBA asserts that its proposals will not interfere with the Town's statutory obligations and would not have adverse financial impact on the governing body or its residents and the Cap Law does not present a problem in West Caldwell. According to the PBA, the Township could have budgeted an additional \$430,724 in 2002 within the Cap, but did not do so. Specifically, the PBA calculates that the total allowable general appropriations within the Cap for 2002 was \$9,072,473. But, the PBA points out that the Township actually appropriated only \$8,641,749 in 2002. Accordingly, the PBA calculates that the excess unused amounts within the Cap for 2002 was \$430,724.

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

Chart No. 6
Bargaining Unit Base Rate Calculation

(A) Rank	(B) Census	(C) Base Rate	(D) Col (B) x Col (C)
Lieutenant	4	\$78,854	\$315,416
Sergeant	5	\$69,845	\$349,225
Patrolman	18	\$61,661	\$1,109,898
Totals	27		\$1,774,539
			1% = \$17,745

Based upon the chart, the total base pay for four (4) Lieutenants, five (5) Sergeants and eighteen (18) patrolmen is \$1,774,539 and a salary increase of one percent (1%) would cost the Township \$17,745. When compared to the Township's Cap, the Cap represents over 24 percentage points. Therefore, the PBA maintains that the Township has no Cap problem.

Addressing N.J.S.A. 34:13A-16g (6), the impact on the Township, its residents and taxpayers, the PBA asserts that an award of its entire offer would have "no perceptible impact" upon the taxpayers and residents. The PBA describes the Township as a "wealthy upper middle class community with exceptional ratables and an expanding tax base." At hearing, the PBA presented Essex County's final equalization tables for 2001 and 2002. The PBA points out that the Township's aggregate assessed value is \$1,200,942,200 and is only one (1) of six (6) municipalities in Essex County that has more than one billion dollars

in aggregate assessed value. The PBA compares the aggregate assessed value of the Township to other Essex County municipalities:

“To put this in another perspective, the aggregate assessed value in West Caldwell is approximately 150% of the aggregate assessed value of the County Seat, City of Newark. The aggregate assessed value in West Caldwell is almost exactly ten times the aggregate assessed value of neighboring Caldwell. It is close to four times the aggregate assessed value of Cedar Grove Township. It is approximately five times the aggregate assessed value of the employer designated comparable Glen Ridge. Even Irvington would have to have an almost quadrupling of this aggregate assessed value to catch West Caldwell. Roseland, with all of its developed commercial areas, is approximately one-quarter of the aggregate assessed value in West Caldwell. This is a wealthy town with exceptional ratables.

The municipal tax rate in the Township of West Caldwell has been essentially flat since the mid 90's. The PBA refers to the Township's municipal tax rate from 1995 to 2001:

Chart No. 7
Tax Rate History - West Caldwell
Municipal Tax Rate (Source T-33)

Year	West Caldwell Municipal Tax Rate Increase
1995	2¢
1996	2¢
1997	1¢
1998	0
1999	0
2000	2¢
2001	2¢
Annual Avg.	1.2¢

Based upon the information provided above, the PBA describes the Township's annual average municipal tax rate increase of 1.2 cents as "essentially flat" and "extremely low".

The PBA contends the Township has no taxpayer pressure. The PBA refers to voter turnout for the school budget. According to the PBA, approximately sixteen percent (16%) of those eligible to vote in 2001 and 2002 actually cast ballots.

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

- The results of operation for 2001 were \$1,969,047.00. This information represents budget flexibility and is in an important schedule as it indicates the amount of surplus generated during the year. Conceptually, it gathers or summarizes the closing entries to operations of various holding accounts (Source: AFS Sheet 19).
- The budget revenues have run in excess of anticipation in recent years. For 2001, the most recent year reported, the amount anticipated was \$13,496,729.00. The amount realized was \$15,121,033.00. This is in excess of \$1,624,303.00. Once again this information shows the municipality's ability to generate excess revenues (Source: AFS Sheet 19).
- The unexpected balance of appropriations reserves shows annual cancellations in recent years once again illustrating additional budget flexibility. For 2000 year's cancellations the amount was \$147,790.00. 2001 cancellations from the year 2000 were \$231,811.00. (Source: AFS Sheet 19).

- The surplus has increased by 65% or \$930,268.00 from 1996 to 2001. (1996 - \$1,430,201.00; 2001 - \$2,360,469.00). (Source: AFS Sheet 21, 2000 Report of Audit). The tax levy has risen steadily in all years in the proofs.

Chart No. 8
Tax Levy

2000	\$31,826,288
1999	\$31,384,361
1998	\$30,334,945
1997	\$29,671,168
1996	\$29,294,354

- There has been an 82.8 million increase in assessed values from 1996 to 2002. The value of one tax point is \$108,088. Chart No. 9 below illustrates the increase the increase in assessed values by year (Source: 2000 Report of Audit).

Chart No. 9
Assessed Values

2002	\$1,102,033,600
2001	\$1,090,152,700
2000	\$1,080,876,100
1999	\$1,059,829,300
1998	\$1,039,548,300
1997	\$1,028,542,100
1996	\$1,019,230,900

Valuation of 1 Tax Point = \$108,088
They had an \$82.8 million increase in assessed values from 1996 to 2002

- The collection rate of taxes has been extremely high and almost perfect over recent years. It is actually risen slightly in each year. The reason that it has risen slightly is that there is very little room to improve when one is collecting over 99% annually.

Chart No. 10
Collection Rate

Year	Actual Rate
2001	99.16%
2000	99.03%
1999	98.64%
1998	98.58%

- The borrowing power is well below the statutory debt limit. The statutory debt limit is \$39,656,245.00. The current net debt is \$6,594,448.00. This is approximately 1/7th the statutory borrowing power. While the PBA is not suggesting that the employer borrow to pay for an Arbitrator's award, this is certainly a valid barometer of fiscal stability.
- As of December 31, 2001 the cash balance in the current fund was \$3,592,978.00. (Source: AFS Sheet 9).

The PBA makes the following observations with respect to the Township's comparison charts: the Township did not separate reimbursed overtime from overtime cost calculations; the Township receives administrative fees when its officers perform services for outside sources; the Township failed to reflect its cost savings from officers who recently left the Department.

The PBA notes the Township is the recipient of an annual cost savings of \$141,718 as a result of legislation (S-1961) passed affecting pension cost abatement. According to the PBA, the cost savings represents 17.99 police department percentage points. The PBA maintains that this costs savings alone is enough to pay for the PBA's offer.

The PBA contends the Township's proposal to modify the medical plan is statutorily unawardable. The PBA asserts the Township failed to present sufficient evidence to conduct a complete evaluation of its proposal and a comparison of the current plan and the proposed plan. According to the PBA, the Township's witnesses failed "to establish that the plans are the same or better, as is required by the contract." [Union Brief, p. 47]. At most, the Township proved it was seeking to modify the plan in order to stabilize costs. Notwithstanding the above, the PBA points out that most of the officers are in the plan the Township seeks to implement upon all of its officers. The PBA indicates that 84.9% of officers' claims are within the projected network. The PBA is equally concerned that the proposed plan will pressure physicians to keep their costs down by under-treating patients. For these reasons, the PBA contends that the Township's plan has no logical support as is required by law.

Addressing N.J.S.A. 34:13A-16g (7), the cost of living, the PBA contends the only cost of living figures presented at hearing favor its proposal. The PBA points to data from the New Jersey Department of Labor which indicates the total percent change for all industry was 6.4% for the test period. Further, the average annual wages for the private sector increased by 6.9%. The PBA contends the Township's exhibits entitled "Historical Salary Progression" are unclear and misleading. The PBA indicates the following in its brief:

In the first instance, when salary progression is considered from early career to late career (T-18A) this chart skews the numbers. It

doesn't pick up step increase. The hypothetical employee is hired in 1997 and the start rate is listed as compared to a maximum rate at 2001. This is not a valid comparison. It is extremely misleading. The top step pay rates went up at a modest increase over the illustrated term. Nobody's pay doubled. The employer is trying to mislead the Arbitrator by comparing a start rate of pay for an employee in the Academy with a maximum rate of pay for an employee who is at top step. In Chart T-16A the employer once again adds to the confusion by now adding longevity on top. When the employer compares a 1989 new recruit to a 2000 max officer at the second longevity step, the comparisons are of little to no validity. A recruit does not compare to a senior officer. What must be compared is maximum to maximum. Here some comparisons may be made using Charts T-13 and T-14. T-13 is a top step Police Officer salary increases and T-14 is non-union salary increases. What the employer has established in T-13 and T-14 is a clear and well defined history of "standard deviation". The Police Officers have historically received more than other municipal employees. So should be the case in this proceeding. The employees in other departments for 2001 and 2002 have received 4% annually. The Police Officers should get more. This supports the PBA case. While everybody in town got 4%, the police should be receiving a higher number. The employer's own proofs establish that fact.

Addressing N.J.S.A. 34:13A-16g (8), the continuity and stability of employment, the PBA contends the private sector standards of "going rate" and "area standards" support an award of its offer. The PBA refers to the comparability data and proofs it analyzed under criteria g (2) and g (3). The PBA notes the only two (2) items it seeks outside of base wages are the fold-in of holidays and "The Police Officers Bill of Rights". With respect to the fold-in of holidays, the PBA indicates the following:

The folding in of holidays is a benefit to the citizens as well as the officers, as it guarantees officers will be at work and not off on holidays. All holidays would be paid under the PBA proposals and folding into base pay. This results in every holiday being a day of

work at straight time. There is no cost to the employer because they are already paying for the holidays at present and there is no pension impact because the employer's don't pay pension on police salaries (S-1961, P-41 in evidence). This is only a benefit shift. There is no cost impact. It is a significant benefit however to the employees as it evenly parcels out the amount of money and makes it more readily available to the employees during the course of their career.

As for Departmental Investigations, the PBA maintains "The Police Officers Bill of Rights" would provide an "orderly processing of an internal investigation" for officers who could be facing loss of employment. If implemented, the procedure would have no cost impact upon the Township.

TOWNSHIP OF WEST CALDWELL

Addressing N.J.S.A. 34:13A-16g (2) and (3), the Township indicates that its officers receive significantly higher wages and better benefits than other Township employees. The following figures represent the top base pay for the following titles at top step effective December 31, 2000: Patrol Officer - \$61,661; Sergeant - \$69,845; Lieutenant - \$78,854. According to the Township its final offer these figures will respectively increase to the following by the end of 2003: \$69,360; \$78,565 and \$88,699. Aside from wages, the Township notes the other benefits that police officers have that non-police employees do not:

In addition, police employees receive longevity of up to 10%, fully paid health benefits (including both a traditional plan and a PPO), up to 200 hours of vacation (which can be carried over without limit), 104 hours of paid holiday leave and 96 hours per year of sick

leave which can be accumulated and used as terminal leave (at 50%). (A-3). Police employees are also eligible to work outside overtime at significant overtime rates as a benefit of being a police officer in the Township (T-20 and 21), and also receive pension entitlements under the Police and Fire Retirement System.

Non-police employees, on the other hand, receive considerably less in base wages, are not eligible for outside overtime, do not receive longevity (for employees hired after 5/1/97), may only carry over a maximum of 20 vacation days and receive terminal leave of 1/3 of accumulated sick time - compared to 1/2 received by police. (T-10, T-11, T-12).

The Township compares its police officers' salaries to its non-police employees. As indicated above, a top step patrolmen in 2000 earned \$61,661. By comparison, a rank and file public works employee in 2000 earned between \$44,710 and \$50,206. Further, the titles of Tax Collector, Water Foreman, Public Works Foreman and Chief Mechanic earned less in 2002 than a rank and file officer in 2000. The Township notes that these titles require "significant educational background", earn very little overtime, and receive no outside work directly resulting from their Township position.

The Township compared the wage rate increases of non-police employees to police officers since 1985. The Township presented the following chart in its brief:

Year	Non-Police	Police
1985	7.0%	7.0%
1986	7.0%	7.0%
1987	5.0%	6.75%

1988	7.0%	7.0%
1989	6.5%	7.0%
1990	5.9% to 7.9%	7.0%
1991	5% to 6.5%	7.0%
1992	3.75% to 4.75%	6.0%
1993	4% to 5%	6.0%
1994	3.65% to 4.75%	6.0%
1995	4.5%	5.0%
1996	3.5%	5.0%
1997	3.0%	4.0%
1998	4.0%	4.0%
1999	4.0%	4.0%
2000	4.0%	4.0%
2001	4.0%	
2002	4.0%	
Non Compounded Total 1985-2000	81.1%	92.75%

Based upon the information provided above, the Township indicates that police officers have received higher wage rate increases than non-police employees and, for this reason, a disparity exists between salaries. According to the Township, assuming the salaries for top-step police officers and non-police employees to be the same in 1985, the salaries for police officers have increased 26% more than non-police employees since 1985 on a compounded basis. The Township contends, therefore, that an award of a wage rate increase beyond that given to its non-police employees is unjustified. The Township notes that the PBA's holiday fold-in proposal would further increase the base wage rate for police officers.

The Township compares the PBA's wages and benefits to those received by officers in comparable municipalities in Essex County. The Township presented the contracts of all Essex County municipalities except for East Orange, Irvington, Maplewood, and Millburn. According to the Township, the "Most Comparable Group" includes Caldwell, Fairfield, Cedar Grove, North Caldwell, Essex Fells, Glen Ridge, Verona, Livingston and Roseland because, in general, they have similar socio-economic configurations, crime rates, tax burdens and relatively small police departments. The Township indicates its officers will continue to receive higher wages and benefits than officers in that group even if its offer is awarded. The Township presented the following charts in support of its position:

BASE PAY FOR PATROLMEN

	2000	2001	2002	2003
Belleville	\$56,801.00	\$58,931.00	\$61,141.00	
Bloomfield	\$56,760.00	\$62,436.00		
Caldwell*	\$58,111.00	\$60,533.00	\$63,055.00	
Cedar Grove*	\$60,276.00	\$63,946.00	\$67,144.00	
Essex Fells*			\$64,952.00	\$67,550.00
Fairfield*	\$60,320.00	\$62,733.00	\$65,242.00	
Glen Ridge*	\$58,075.00	\$60,398.00	\$62,814.00	
Livingston*		\$61,710.00	\$64,178.00	\$66,745.00
Montclair	\$58,032.00	\$60,498.00		
North Caldwell*	\$58,282.64	\$60,613.94	\$63,038.50	
Orange	\$53,703.00			

Roseland*	\$60,511.00	\$62,956.00	\$65,820.00	
South Orange	\$58,494.00	\$60,541	\$62,963.00	\$65,482.00
Verona*	\$59,655.00	\$63,288.00		
West Caldwell*	\$61,661.00	\$64,127.00**	\$66,692.00**	\$69,360.00**
West Orange	\$60,309.00	\$62,429.00		
Average	\$58,642.00	\$61,795.00	\$64,276.00	\$67,284.00
Average Most Comparable Group	\$59,611.00	\$62,256.00	\$64,770.00	\$67,885.00

*Municipalities in the "Most Comparable Group".

**Under the Township's Final Offer.

BASE PAY FOR SERGEANTS

	2000	2001	2002	2003
Belleville	\$65,321.00	\$67,771.00	\$70,312.00	
Bloomfield	\$65,275.00	\$71,803.00		
Caldwell*	\$65,084.00	\$67,796.00	\$70,622.00	
Cedar Grove*	\$67,509.00	\$71,620.00	\$75,201.00	
Essex Fells*			\$71,578.00	\$74,441.00
Fairfield*		\$68,578.00	\$71,321.00	\$74,174.00
Glen Ridge*	\$65,575.00	\$68,198.00	\$70,926.00	
Livingston*		\$70,178.00	\$72,985.00	\$75,904.00
Montclair	\$65,556.00	\$69,343.00		
North Caldwell*	\$65,539.76	\$68,161.35	\$70,877.80	
South Orange	\$67,268.00	\$69,622.00	\$72,407.00	\$75,303.00
Verona*	\$70,143.00	\$74,415.00		
West Caldwell*	\$69,845.00	\$72,639.00**	\$75,544.00**	\$78,565.00**
West Orange	\$67,539.00	\$69,968.00		
Average	\$66,786.00	\$70,007.00	\$72,178.00	\$75,677.00
Average Most Comparable Group	\$67,282.00	\$70,198.00	\$72,383.00	\$75,771.00

*Municipalities in the "Most Comparable Group".

**Under the Township's Final Offer.

BASE PAY FOR LIEUTENANTS

	2000	2001	2002	2003
Belleville	\$75,119.00	\$77,936.00	\$80,859.00	
Bloomfield	\$75,154.00	\$82,669.00		
Caldwell*	\$72,895.00	\$75,933.00	\$79,098.00	
Cedar Grove*	\$78,311.00	\$83,080.00	\$87,234.00	
Essex Fells*			\$80,999.00	\$84,239.00
Fairfield*	\$78,508.00	\$81,648.00	\$84,914.00	
Glen Ridge*	\$68,465.00	\$71,204.00	\$74,052.00	
North Caldwell*	\$70,166.72	\$72,973.39	\$75,892.33	
Nutley	\$71,085.00			
Verona*	\$77,157.00	\$81,856.00		
West Caldwell*	\$78,854.00	\$82,008.00**	\$85,288.00**	\$88,699.00**
West Orange	\$76,376.00	\$79,061.00		
Average	\$74,735.00	\$78,836.00	\$81,042.00	\$86,469.00
Average Most Comparable Group	\$74,908.00	\$78,386.00	\$81,068.00	\$86,699.00

*Municipalities in the "Most Comparable Group".

**Under the Township's Final Offer.

The Township contends its comparison group is more comparable to West Caldwell than the group the PBA presented which includes non-Essex County municipalities such as Manalapan and Wayne Township. The Township notes the following:

For example, the PBA offers Manalapan - located in Central New Jersey, Monmouth County - which has double the number of

officers employed in West Caldwell, double the population and six times the square miles. Wayne Township is similarly not comparable - sitting in Passaic County - having 134 officers (compared to 28 in West Caldwell), a crime rate double that in West Caldwell, at least three major highways running through it, hundreds of retail areas, dozens of strip malls, at least one major shopping mall and over four times the population and square miles as in West Caldwell.

The Township indicates its wage rate increase proposal is higher than the following: the average annual wage rate increase for jobs covered by unemployment insurance in Essex County (3.5% increase between 1999 and 2000); the wage rate increase for local government (2.7%) and federal government (3.4%). The Township also maintains that its officers receive wages superior to those received by the average employee in Essex County for 1999 and 2000.

The Township compares the across-the-board raises received by the PBA to the cost of living since 1985 and presented the following chart in its brief:

Year	Police ATB Increase	CPI
1985	7.0%	3.7
1986	7.0%	3.3
1987	6.75%	5.1
1988	7.0%	4.8
1989	7.0%	5.6
1990	7.0%	6.0
1991	7.0%	4.5
1992	6.0%	3.6

1993	6.0%	3.0
1994	6.0%	2.4
1995	5.0%	2.5
1996	5.0%	2.9
1997	4.0%	2.3
1998	4.0%	1.6
1999	4.0%	2.0
2000	4.0%	3.1

The Township stresses the fact that the PBA's annual increases, exclusive of step and promotional increases, have always surpassed the Consumer Price Index ("CPI"). The Township's proposal of a 4% wage rate increase for 2001 and 2002 once again exceeds the CPI (2.5% for 2001, 2.25% for 2002).

When compounded, the Township's wage proposal for three (3) years is 12.49% compared to the PBA's 21.55%, four (4) year proposal. In addition, the Township's proposal is equal to or better than the average increase for the following police departments:

	2001	2002	2003
Belleville	3.5%	3.75%	
Bloomfield	4.0%		
Caldwell	2.1%/2%	2.1%/2%	
Cedar Grove	3%/3%	5%	
East Hanover		2%/2.5%	2%/2.5%
Essex Fells			4.0%
Fairfield	4.0%	4.0%	

Glen Ridge	4.0%	4.0%	
Hanover	3.8%	3.8%	3.8%
Little Falls	3.75%	3.75%	3.75%
Livingston	4.0%	4.0%	4.0%
Manalapan	3.75%	4.0%	4.0%
Montclair	4.3%		
Montville	4.0%	4.0%	
New Jersey Troopers	4.0%	4.0%	
Nutley			
Ringwood		4.0%	4.0%
Roseland	2%/2%	2%/2.5%	
South Orange	3.5%	3.5%	4.0%
Totowa			
Verona	3%		
Wayne	4%	4.0%	4.0%
West Paterson	3.9%	3.9%	3.9%
Average	3.9%	4.0%	4.0%

Under the circumstances, the Township asserts that its proposal must be awarded.

Russell Jarger ["Jarger"] is the Township's Chief Financial Officer and testified at hearing on behalf of the Township. Through Jarger's testimony, the Township pointed to a number of fiscal concerns. First, the Township has increased its use of a decreasing surplus. According to Jarger, the Township utilized approximately \$2.2 million of its \$2.6 million surplus (84%) as revenue in the 2001 budget. In 2002, the Township's surplus decreased to \$2.3 million and

94% of the surplus was used as revenue in the 2002 budget. Jarger believes the Township will continue to use more of its surplus as revenue each year. Second, the Township did not receive increases in State aid in 2002 including the cost of living increases it normally receives. Third, Jarger indicated that the Township's investment income dropped from its average of 6.5% per year to 2.5% and its expenses have increased. Under these circumstances, the Township maintains the PBA's proposals to increase base wages 5% per year and to fold in holidays cannot be justified. The Township estimates that the PBA's wage offer alone will cost the Township an additional \$115,079 over the duration of the Agreement.

Addressing N.J.S.A. 34:13A-16g (8), the continuity and stability of employment, the Township indicates the PBA has never suffered a layoff and the number of officers in the Department has remained steady since 1980. The Township stresses the fact that its officers are happy. The Township contends that its package takes into consideration the "desire to keep police officers at the top in terms of comparability with outside officers, while also recognizing the need to treat all Township employees equitably."

Addressing N.J.S.A. 34:13A-16g (1), the interest and welfare of the public, the Township refers to Hillsdale PBA, Local 207 v. Borough of Hillsdale, 137 N.J. 71 (1994), as support for deferring to the Township's elected representatives to determine how to best allocate the Township's resources. In this light the Township maintains it has presented a balanced package. The Township notes

it will incur an unfunded liability in the future due to the fact that officers can bank unlimited vacation and compensatory time and have the ability to take unlimited terminal leave at retirement. To that end, the Township has only proposed to limit these benefits for new hires. In addition, the Township's health benefits proposal will allow it to continue its self-insurance plan with minimal impact upon its officers.

The Township opposes the PBA's request for a four (4) year contract. According to the Township, there is too much State and federal fiscal uncertainty and a limited number of appropriate comparisons to award a fourth year due to the fact that Essex Fells is the only comparable municipality with a contract extending through 2004. Further, only one (1) of the last eight (8) contracts between the Township and the PBA had a duration of four (4) years.

The Township seeks to add two (2) new steps to the salary guide. If awarded, an officer would reach the top step in six (6) years. According to the Township, "these additional steps will move police officers closer to the other municipal employees in terms of step increases [i.e. Glen Ridge, Livingston, Verona, Cedar Grove and Caldwell], while simultaneously providing the Township with a way to level out the increments and provide more flexibility to deal with the significant increases in the face of other competing demands for budget resources." [Township Brief, p. 30]. Township Manager Martorana testified that the Township could achieve these goals with no impact upon current

police officers or the top step. In addition, the Township seeks a new Academy Rate that would not extend the number of steps to the top of the guide.

The Township proposes to eliminate longevity for new hires. According to Martorana, all of the Township's employees hired after 1997, with the exception of its police officers, do not have longevity benefits. Martorana testified that the elimination of longevity for newly hired police officers would bring them in line with other Township employees. In addition, Martorana contends longevity is an outdated concept because the inequities that used to exist between the salaries of private and public sector employees have been eliminated.

As for health care benefits, the Township seeks to eliminate the Traditional plan currently offered only to its officers. In exchange, the Township proposes to place the officers into the PPO plan, provide them with a prescription card and diagnostic "well-care", and provide to a spouse upon an officer's death fully paid medical benefits if the officer retired with 25 years of service. The Township noted Martorana's expertise in the area of health benefits:

Martorana is particularly qualified to testify on health benefit issues. He was appointed a Commissioner of the New Jersey Joint Insurance Fund in the early 1990's, was then appointed to the Executive Board, and currently serves as the Chairman. As Chairman and Executive Board member, Martorana has a fiduciary responsibility to be knowledgeable about insurance issues - and is responsible for analyzing, comparing and adopting reinsurance plans for over 40 municipalities. (Martorana, T:213-214). His knowledge of reinsurance plans is of particular importance herein.

According to Martorana, the Township is self-insured and moved from the State Health Benefits Plan in the early 1990's. The Township's goal was to provide the same level of benefits while containing its costs. The primary plan for non-police personnel is the PPO plan. Martorana pointed to several in-network advantages to the PPO plan: a \$10 co-pay; "well-care" benefits; fully paid physicals, a prescription card; and vitamins for children. Further, employees need not see a primary care physician before going to an in-network specialist. Martorana noted that 79% of the officers' claims for 2001 and 2002 were submitted under the PPO plan. The Township provided the following chart:

	01/01/01 to 12/31/01		01/01/02 to 5/31/02	
	Number of Claims	Amount of Claims	Number of Claims	Amount of Claims
Medical Claims PBA	1505	\$497,195.80	743	\$285,199.31
Claims Under PPO	1192	\$422,199.82	595	\$220,547.00
Percentage Claims Under PPO	79.2%	84.0%	80.1%	77.3%

According to the Township, the chart above reflects that the officers' acceptance of the PPO plan. Martorana maintains that the Township's self-insurance enables it to make immediate changes to the plan when necessary. Martorana further testified that maintaining two (2) plans drives up the cost of reinsurance and increases the Township's risk of significant loss. For example, the Township's maximum claim liability increased 78% from 1999 to 2002 (\$695,798 to \$1,237,927) while its cost for reinsurance over the same time period increased 142% (\$4.34 per employee per month to \$10.51). Martorana believes

the Township's insurance costs will be stabilized if the Traditional plan is eliminated. Further, the Township contends it can provide "essentially equivalent coverage benefits" to those officers who utilized the Traditional plan. The only difference, according to Martorana, would be out of network treatment. In those claims, officers receive 70% reimbursement for the first \$2,500 and 100% thereafter rather than 80% of the first \$2,000, and deductibles will increase \$50 for individuals and \$100 for family coverage.

The Township seeks to modify terminal leave benefits for new hires only. The current benefit for all officers amounts to 50% of their accumulated sick leave without limitation upon the number of sick leave days the officers can bank. The Township proposes to modify the accumulation payout rate to one-third (1/3) with a \$15,000 cap. According to Martorana, the Township needs the modification because the cost of terminal leave is an unfunded liability. The Township calculates the current unfunded liability to be \$340,987.64 assuming year 2000 payout rates. The Township notes that its proposal has no affect upon current officers. The Township indicates its "Most Comparable Group" supports its proposal because "the overwhelming majority of municipalities in this group have some maximum limit on terminal leave payout (with varying percentages of payout" not only for new hires but all officers.

The Township proposes to reduce the officers' current unlimited vacation time accumulation to twenty (20) days, the equivalent of 160 hours. Martorana

testified that the proposal would equal the current benefit for all other Township employees. Martorana indicated unlimited vacation time accumulation defeats the purpose of providing a productive break from work and results in unnecessary expense. When compared to the "Most Comparable Group", the Township notes that the only municipalities permitting vacation carry-over are Verona (maximum carryover of four (4) days), Caldwell (maximum carryover of one (1) year to be used by May 31 of next year), and Fairfield (elimination of carryover rights).

The Township seeks to increase the hourly rate for officers performing outside services. Under the Township's proposal, the hourly rate for extra duty would be increased from \$30.00 to either \$35.00 or \$47.50 depending upon the type of work performed. The Township notes that its proposal has no impact upon its budget but a positive impact upon take home pay for officers.

With respect to compensatory time, the Township proposes to limit accumulation up to forty (40) hours. Officers whose accumulation bank currently exceeds forty (40) hours will be permitted to cash out over a three (3) year period. According to the Township, the department average for accumulated compensatory time per officer is 178.8 hours. The Township contends its proposal will allow it to avoid the unpredictability of assessing its cost for accumulated compensatory time. In addition, the Township's proposal is more closely lined with the benefits in the "Most Comparable Group". The Township

notes that no municipality in the group allows unlimited accumulation and examples of maximum accumulations include the following: Caldwell, Cedar Grove, Roseland and Fairfield – 40 hours; North Caldwell – 60 hours; Essex Fells – 72 hours; and Glen Ridge – 96 hours.

The Township contends the Union's Final Offer must be rejected in its entirety. The Township maintains that the Union's proposed wage increases of 5% for each of four (4) years are unreasonable. With respect to the proposed holiday fold-in, the Township refers to the Chief Financial Officer's testimony in which he indicated the proposal would increase an officer's hourly wage rate by 5%. Further, the Township points to the fact that no municipality in the "Most Comparable Group" offers the holiday fold-in.

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

DISCUSSION

I am required to issue an award based upon a reasonable determination of all issues in dispute after giving due weight to the statutory criteria which I judge relevant. The Township and the PBA have fully and expertly articulated their positions on the issues and have submitted evidence and argument on each

statutory criterion to support their respective positions. The evidence and arguments have been carefully reviewed, considered and weighed.

The economic issues in dispute include salary, health insurance and several compensation related issues. There is one non-economic issue, the PBA's proposal concerning departmental investigation procedures. In addition, the parties do not agree on the length of the agreement. I apply the commonly accepted principle that a party seeking change in terms and conditions of employment bears the burden of establishing the need for such modification. That principle has been applied to each issue in dispute.

The parties disagree on the duration of the agreement. The PBA has proposed a four year agreement extending through December 31, 2004. The Township has proposed a three year agreement extending through December 31, 2003. There are many considerations which I have reviewed in reaching a determination on this issue. The interests and welfare of the public will be served by an agreement of four years duration rather than an almost immediate resumption of negotiations which would be required if I were to award a three year agreement. Hearings in this matter did not conclude until June 2002 and post-hearing briefs were transmitted during late October 2002. Harmony and stability will be furthered by avoiding the efforts and costs associated with an agreement which expires on December 31, 2003. Further, the comprehensive record developed by the Township and the PBA allow for a review of evidence

which is relevant through calendar year 2004. For these reasons, I award a contract duration effective January 1, 2001 through December 31, 2004.

The only non-economic issue in dispute is the PBA's proposal providing procedures for departmental investigations. The proposed procedure is comprehensive in nature. The PBA, while advancing reasonable theoretical arguments on behalf of this proposal, has not established a basis or justification for a new investigative procedure or that the department has not afforded due process in any way to any police officer in the past. Thus, I do not award this proposal.

The remaining issues in dispute are all economic in nature. The Township has proposed an increase in payment for outside services or extra duty work. The current rate paid to officers for extra duty work is \$30.00 per hour. The Township proposes an increase to \$47.50 per hour for outside work which it defines as typically involving traffic control and \$35.00 for inside work which it defines as working inside a local business establishment such as a jewelry store during the holidays. The PBA does not accept this proposal and has not advanced one of its own. However, it responds to the Township's proposal by asserting that the rate should be time and one half or the overtime rate for extra duty hours. The Township objects to the PBA advancing a response in the form of an alternative proposal to its proposal. The record reflects that an increase in the rate for extra duty pay is warranted. The interests and welfare of the public

will be furthered by providing increases which will encourage officers to work additional extra duty assignments within the community. The existing rate is well below most relevant comparisons. The PBA disputes the Township's rationale for a two-tiered extra duty rate. The Township's justification is to create "an equitable structure for local businessmen" encompassing a lower rate for work which it terms as less difficult and having "less exposure for injury and to the weather". Township testimony reflects a belief that traffic control at a construction site is more difficult work than inside work such as in a hypothetical jewelry store during Christmas. I am reluctant to draw a distinction in the nature of jobs which would cause one hourly rate to be higher than the other. By its very nature, law enforcement work cannot be fragmented in this manner nor would the public interest be served by a perception that the protection and safety of the local business person and the consuming public are functions worthy of less compensation than the performance of traffic control on a road maintenance project. For these reasons, I award the Township's proposal for an adjustment in the extra duty rate to \$47.50 as modified by the requirement that this rate shall constitute a single rate for all extra duty work performed. This shall not preclude the parties from agreeing to a lesser rate for voluntary or charitable organization upon mutual agreement to do so. This rate shall be effective as soon as administratively practicable and shall not be retroactive.

The PBA has proposed that Article V, Holidays be amended to fold in the entire holiday benefit into regular base compensation. The existing agreement

provides each police officer with one hundred four (104) hours of paid holiday leave per year which shall be paid to them in one (1) payment on the second payday of each November at the rate of pay then in effect. There are many factors which the parties have put before me for consideration on this issue. The 104 hours of pay is currently being paid and is not a new benefit or new compensation. Thus, a fold-in does not cause the duplicate payment of holiday pay. The Township does not dispute this but points out that there are costs directly tied to the inclusion of existing holiday payments into base pay. These include the fact that a police officer's base pay will be increased for pension purposes and the Township must assume an increase in its portion of pension contributions in the amount of the difference of the worth of a working day as adjusted by the fold in of the holiday pay.

I have examined these costs. Based upon the existing rates of pay for Patrolman First Class, the increase in the Township's pension contribution calculates to approximately \$375 per employee or .059%. The total bargaining unit annual cost for increased pension contributions would be approximately \$10,000. In response, the PBA points out that the Township received savings of \$141,718 in 2001, and \$38,567 in 2000 in pension contribution savings due to S-1961 [P. Ex. #41]. A fold-in of holiday pay will also modestly increase the hourly rate of pay when calculating overtime rates. Based upon existing rates of pay unadjusted Award for Patrolman First Class, the regular hourly rate would increase from \$30.24 to \$31.75 and the hourly overtime rate would increase from

\$45.36 to \$47.62 [T. Ex. #29]. The record reflects [see T. Exs. #19 & #20] that overtime earnings in 2000 were \$90,761.34 and \$129,830.13 in 2001. Testimony indicates that the increase in total number of overtime hours worked in 2001 may have been caused by certain non-reoccurring circumstances concerning personnel. Nevertheless, if the figures of 2000 and 2001 are averaged at \$110,000, a projected increase in overtime costs as a result of the fold in based upon the Township's formula would be approximately \$5,500 annually or approximately than .03%. Assuming a consistent projection in overtime worked in the future, the total net economic change resulting from the fold in is not significant when balanced and weighed against the increased value of the fold in to the employee for the purposes of pension improvement. Holidays will be worked at straight time. The collective negotiations agreements in evidence reflect an increasing number of provisions which provide for fold-in of holiday pay. After due consideration of all of the above, I am persuaded that there is merit in the PBA's proposal to fold holiday pay into base pay and be used for all computation purposes. The implementation of this provision shall have an effective date of January 1, 2004.

The Township seeks some modifications to the existing health insurance program. It proposes to move all officers into the PPO plan, supply prescription card and diagnostic "well care," such as the Calcium Scoring Coronary Artery scan. The Township also proposes to provide fully paid medical benefits to

spouses in the event of death of retired officer with 25 years of service. The PBA does not accept the Township's proposals.

Currently the Township is self-insured. Testimony concerning the Township's health insurance plans was received from Benedict Martorana, the Township Administrator. Through Martorana, the Township introduced benefit summaries for its existing health insurance programs. [T. Exs. #36 & #37]. All Township employees receive benefits under Plan B [T. Ex. #36]. Employees in the police department receive Plan A. The Township refers to Plan B as its primary health insurance plan. The primary plan is a PPO Plan with in-network and out-of-network components. Plan B requires no premium co-payments but requires an employee to pay a \$10 co-payment when frequenting a physician. The employee does not have to file a claim and then seek reimbursement.

According to Martorana, the Township uses the Mastercare Network of Physicians after considering the stability of the network and because it included the best representation of physicians and providers in the West Essex area. Martorana testified that the PPO Plan allowed the Township to maintain benefit levels when it departed from the New Jersey State Health Benefits Plan in the early 1990s. The Plan is a self-directed plan which allows an employee physician choice within the network without a gatekeeper. Martorana testified [Tr. Pg 217]:

I should also point out under the PPO plan, that we have a plan that's called a self-directed plan, which gives the employee the choice of any physician within the network. There's no gatekeeper provision.

You don't have to go to a primary care physician for authorization to proceed to the level of specialization that you may need. We leave that decision to the employee and their physicians, and an employee can pick any physician in the network, any specialty, without having to go to a primary care physician.

Martorana further testified that because the Township is self-insured, it has had the flexibility to make immediate changes and corrections to accommodate unforeseen faults in coverage. By way of example, Martorana testified that whenever an employee came to the Township after being told by his or her doctor that something was covered under the Traditional Plan but not under the PPO Plan, the Township made the correction. According to Martorana, the PPO Plan has many advantages in coverage, including fully paid physicals, well care benefits, prescription vitamins for children and high tech diagnostic programs such as MRI-type scans. The PPO Plan also allows an employee to use a physician of choice who is out-of-network. In this respect it is similar to a traditional plan. The out-of-network component of the PPO requires an employee to pay a deductible of \$150 per Covered Person per calendar year and \$300 per Covered Family per calendar year. According to the benefits summary, a Covered Employee must satisfy \$150 and one Covered Dependent must satisfy \$150. By way of co-insurance, the out-of-network plan pays 70% of the first \$2,500 for each covered person and then 100% of remaining eligible charges for the calendar year.

The existing health insurance plan for employees in the police department (Plan A) also provides for in-network and out-of-network components. The in-network component is identical to the in-network component of Plan B for all Township employees. A significant majority of employees in the police department have chosen the PPO, the in-network component of Plan A. The remaining employees have chosen the out-of-network component of Plan A. Based upon the testimony it is unclear as to whether the benefit levels in the out-of-network component of Plan A are equal to the benefit levels in the out-of-network component of Plan B. Martorana testified that he believes that they are equal and that the Township's intent is that they be equal. The major difference in the out-of-network component of Plan A is that the deductibles are 100/200 compared to the 150/300 deductibles in Plan B and the co-insurance which is 80% of \$2,000 in Plan A compared to 70% of \$2,500 in Plan B. In either plan, the employee has choice of physician by selecting the out-of-network component.

In 2001, 79.2% of PBA medical claims were made under the PPO and 84.9% of the \$497,195.80 paid out in claims were claims made in-network under the PPO. In 2002, 80.1% of PBA medical claims were made in-network under the PPO and 77.3% of the \$285,199.31 paid out in claims were claims made under the PPO. [T. Ex. #38].

The main thrust of the Township's proposal to have all employees in the police department be placed in Plan B has been an increase in the Township's cost for reinsurance which has risen 142% from 1999 to 2002. Martorana testified that the movement of all police employees into the PPO primary plan will stabilize or reduce the costs of re-insurance:

The key fact under cost containment since we're already getting good participation from the police, is the cost of reinsurance. To provide a self-insurance plan for a relatively small group such as ourselves, we have to provide what's called stop loss coverage.

This reinsurance has been difficult at best to get over the last three years. Its been a very expensive item ... Underwriters will look for any reason to either not write the policy or write it at a very high level. Insurance underwriters want predictable consistency. They want nothing irregular about a program now before they'll write: When they see that we have two plans, this leaves them with uncertainty, and that's absolutely reflected in our reinsurance costs and our ability to obtain competitive costs for self-insured retention which actually increases not only our expenses, but the cost of claims.

The PBA contends that the Township's position on the health insurance is solely driven by fiscal concerns and the PBA raises a fear that some of its unit members will receive less coverage. The PBA points to Martorana's testimony that he could not predict the future costs of reinsurance or the impact of the Township's proposal on reinsurance costs and further contends that the Township has not established that the plans are the same or better.

The Township's health insurance proposals also encompass a new benefit to protect the spouses of police officers in the event of their death after retirement. The Township proposes to continue fully paid health coverage for the spouses of deceased officers who retire with 25 or more years of service. The Township points to the testimony of Martorana that in the last few years the spouses of two deceased officers were left without health benefits.

I have evaluated all of the various considerations provided by the Township and the PBA on the health insurance issues. The record reflects that all Township employees except law enforcement are covered by Plan B and over 80% of police officers are covered by the PPO in-network component of Plan A which is identical to the in-network component of Plan B. In the police department, 80% of all claims and 80% of claim amounts are covered by the PPO, the in-network component of Plan A. The conversion of a small minority of police officers who have currently selected the out-of-network component of Plan A to the primary plan (Plan B containing in-network and out-of-network components) will enable the Township to administer a single Township-wide health insurance plan containing no premium sharing by any employee without affecting benefit levels or without affecting out-of-pocket costs for a significant majority of police officers. If Plan B were adopted, police officers who currently have chosen the out-of-network component of Plan A will continue to retain the ability to select an out-of-network physician in the out-of-network component of Plan B. Thus, there would be no change in physician selection. The adoption of

Plan B would change co-insurance from 20% of the first \$2,000 to 30% of the first \$2,500 and there would be an increase in deductibles of \$50 for individuals and \$100 for family coverage. The PBA has vigorously raised the issue that benefit levels would be diminished for those officers who currently select the out-of-network component of Plan A and who would be expected to select the out-of-network component of Plan B. By way of testimony, the Township has represented that if Plan B were adopted, any coverages which were available under the out-of-network component of Plan A and were unexpectedly not available under the out-of-network component of Plan B would be made equal. The Township has established that the cost of reinsurance has by far outpaced the maximum claim liability assumed by the Township and it anticipates that this cost will be significantly reduced or eliminated.

When all of the evidence and arguments on this issue are evaluated, I conclude that the Township has met its burden to justify the placement of all police officers into the Township's primary plan and to provide fully paid health coverage for the spouses of deceased officers who retire with 25 or more years of service. The interests and welfare of the public will be served by the Township administering a single plan which provides for comprehensive medical benefits with no premium sharing by its employees. More likely than not, the financial impact of the conversion on the Township and its residents and taxpayers will be favorable by avoiding the prospect that the continuation of rate increases for reinsurance will far exceed the rate of increases of the Township's maximum

claim liability. There is a substantial likelihood that this cost will be reduced or eliminated. The testimony of Martorana is credible on this point. He is familiar with the Township's health insurance plan and has considerable credentials in this field. The potential increase in deductibles or co-insurance costs for police officers affected by the conversion has been considered and will be reasonably offset by the economic terms of this award. The PBA has raised a fear that benefit levels will suffer as a result of the conversion. Whatever concerns may exist as to benefit equality, it will be erased by inclusion of language which I award that the Township will insure that the benefit levels for all police officers as a result of the conversion be equal to or better than what exists at the time of conversion. The effective date of the conversion shall be no earlier than January 1, 2004. This will allow sufficient time for the Township to implement its proposal in the manner it intends and is obligated to, as well as to allow sufficient time for police officers to review and become familiar with the terms of the primary plan. The Township's proposal which deals with fully paid retiree health benefits for spouses of deceased police officers who have retired with 25 or more years of service is also awarded and shall be implemented as soon as administratively possible.

The Township proposes three issues relating solely to new hires. The Township proposes to eliminate longevity for new hires, limit terminal leave for new hires to one-third of all accumulated sick leave at time of retirement subject

to a \$15,000 cap and add two new steps to the beginning of the salary guide. The PBA urges rejection of these proposals.

The Township's proposal to eliminate longevity for new hires is based upon its success in eliminating this benefit for its non-law enforcement employees and an underlying philosophy that the concept of longevity has become outdated and no longer necessary to attract qualified prospective police officers. The PBA objects to the elimination of longevity for new hires. I place less weight on the elimination of this benefit for non-law enforcement employees employed by the Township and greater weight on the continued existence of this benefit for law enforcement employees in municipalities in close proximity to West Caldwell such as the Borough of North Caldwell and the Township of Caldwell. I do not award this proposal.

The Township proposes to limit terminal leave for new hires to one-third of all accumulated sick leave at time of retirement subject to a \$15,000 cap. The PBA objects to any limitation imposed on new hires. Currently, police officers are eligible to receive terminal leave in the amount of 50% of their accumulated sick leave without limit. The Township calculates the current unfunded terminal leave liability at \$340,987.64 at year 2000 salary levels and raises a concern over having huge unfunded liability numbers. The Township points out that it does not seek to limit the accumulation of sick days but only to limit the cash out at the time of retirement. The record reflects that the Township has appropriated funds

for this purpose and, because of changes in the law, has begun to accumulate reserves. I have considered the strong possibility that a \$15,000 cap on terminal leave pay-out coupled with the maintenance of accumulated sick leave through point of retirement could reasonably cause a disincentive to the accumulation of days, thereby defeating the underlying premise of the Township's proposal. This would be detrimental to the Township and the public and, for this reason, I do not award this proposal.

The Township proposes to add two new steps to the beginning of the salary guide. The current salary schedule (for officers hired on or after 1/1/93) provides for a six month Academy/Probation step followed by 4 twelve month steps beginning with 4th Class and ending with 1st Class. The Township has established justification for one additional step rather than two additional new steps based upon a review of all relevant collective negotiations agreements in evidence. An additional twelve month step providing a Patrolman 5th Class between the 4th Class and Academy/Probation step for new hires would reflect an appropriate balance between the level of salaries, as adjusted by this award, and the amount of time for salary progression from date of hire to receipt of maximum pay. This shall be accomplished by awarding an increase in the Academy/Probation step only for calendar years 2003 and 2004 and creating a Patrolman 5th Class step at a level precisely between the current Academy/Probation step and the Patrolman 4th Class step. Thus, I award one additional step for new hires hired after the date of this Award.

The Township has also proposed to limit vacation carryover to 20 days and to limit all comp time banks to 40 hours total. In order to accomplish these objectives, the Township has proposed to “pay down” these accumulations and banks to the levels it has proposed. Although the Township has clearly set forth its rationale for these proposals, I am compelled to deny these proposals for the following reasons. I have examined the documentation with respect to the amount and value of banked time [T. Exs. #22 & #23]. The existing system which provides for unlimited accumulation of vacation hours and comp hours (to be taken in time or money) is not typical. However, an award requiring the Township to pay down the banked time would be substantial and Township testimony is not clear as to whether it is able to pay down this sum in a lump sum in one budget year or whether it seeks a longer or periodic payout of its liabilities. It has not proposed the latter. Further, there has not been sufficient examination of the potential impact that these proposals might have on the amount of overtime which might be caused to cover the amount of time which the police officers would be required to take if they were unable to bank the time. There may be a relationship between the existing system and the Township’s ability to have maintained constant staffing levels despite increases in workload. I am not persuaded on this record that the Township’s proposal would not create operational concerns. The Township may examine these issues and renew these or similar proposals during the next round of negotiations.

The remaining issue is salary. I have already concluded that a four year contract is appropriate with effective dates from January 1, 2001 through December 31, 2004. The Township has proposed increases of 4% for each year over a three year duration and the PBA has proposed increases of 5% for each year over a four year duration.

The Township and the PBA have submitted substantial evidence on this issue in support of their respective positions. I have considered this evidence in conjunction with other portions of this award which affect total annual net economic change. These issues include the financial costs of the holiday fold-in as well as cost offsets, current and future, associated with health insurance modifications and revision of the salary schedule for new hires. I have also considered and applied the relevant statutory criteria. After doing so, and for the reasons set forth below, I render the following salary adjustments.

January 1, 2001 – 4.0%
January 1, 2002 – 4.25%
January 1, 2003 – 4.25%
January 1, 2004 – 4.0%

These adjustments, coupled with the revised salary guide, will reflect the following new schedule:

	4.0% 2001	4.25% 2002	4.25% 2003	4.0% 2004
Lieutenant	82,008	85,493	89,125	92,691
	79,901	83,296	86,836	90,310
Sergeant	72,638	75,725	78,943	82,101
	70,541	73,538	76,664	79,730
Patrolman 1 st Class	64,127	66,852	69,693	72,481
Patrolman 2 nd Class	56,151	58,537	61,025	63,466
Patrolman 3 rd Class	48,175	50,222	52,356	54,451
Patrolman 4 th Class	40,202	41,910	43,691	45,439
Patrolman 5 th Class			37,997	39,517
Academy/Probation	30,987	30,987	32,303	33,596

The PBA asserts, and Township testimony acknowledges, that the terms of an award within the parties' proposals would not compel the Employer to exceed its lawful authority under spending limitations imposed upon the Employer by P.L. 1995. C. 425 (C.34:13A-16.2). [Tr. pg. 123].

The terms of the award will not cause adverse financial impact on the governing unit, its residents and/or taxpayers. The Township is very well managed. The record reflects that the Township's assessed values have increased annually over the last several years. There has been an \$82,800,000 increase in assessed valuation from 1996 to 2002. The Township's collection rate is high and has risen from 98.58% in 2000 to 99.16% in 2001. The Township generates a considerable amount of surplus annually and this figure has increased to \$2,360,469 in 2001.

Based upon current base aggregate salaries of \$1,774,539, a percentage point difference in the parties' positions is \$17,745. The cost impact of the award

in 2001 is \$71,096, representing a cost impact equivalent to the Township's proposal. The cost impact of the award in 2002 is an additional \$78,439, representing a cost impact of \$4,614 over the Township's proposal. The cost impact of the award in 2003 is an additional \$81,773, representing a cost impact of \$4,808 or \$9,422 cumulatively over the Township's proposal. The cost impact of the award in 2004 is an additional \$80,223. In addition to the base salary costs, the total bargaining unit annual cost for increased pension contributions as a result of the fold in of holiday pay is approximately .059% and the projected increase in overtime costs is approximately .03% totaling an additional \$15,600. Given the fact that the value of one tax point \$108,088, the additional cost of the award beyond the Township's proposal, including the impact of the increases on roll-up costs such as overtime and longevity, are well within the financial means of the Township without causing adverse financial impact.

The terms of the award will have no appreciable impact on the continuity and stability of employment of unit employees. The base pay for West Caldwell police officers at salary maximum are at or near the top in the County and, after calculation of base wage increases and fold in of holiday pay, will maintain this rank. There is evidence that several officers have recently left the department although there is no evidence as to why they have left. Assuming that compensation was a reason for their departure, the pensionable salary increases awarded will provide an incentive for officers to remain. The maintenance of this

ranking without causing adverse financial impact serves the interests and welfare of the public.

I have also considered the parties' arguments with respect to wage comparisons. The Township and the PBA have focussed heavily on this evidence. The record reflects that the terms of the award are within the range of increases set in comparable communities such as Roseland, Caldwell, North Caldwell, and Fairfield and are clearly supportable based upon these comparisons. The rate of increases are slightly above those provided to non-law enforcement Township employees but I am not persuaded, given the history of wage increases between these two groups as reflected in T. Exs. #13 and #14, that the wage terms awarded must be identical to those given to other Township employees.

The cost of living data is of less relevance given the fact that the proposals of the parties are each above these indicators. To the extent that it is relevant, it weighs against the 5% wage proposals submitted by the PBA.

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

AWARD

All proposals by the Township and the PBA not awarded herein shall be denied and dismissed. All provisions of the existing agreement shall be carried forward except for those modified by the terms of this Award.

1. **Duration** - There shall be a four-year agreement effective January 1, 2001 through December 31, 2004.

2. **Extra Duty/Outside Work Increase**

Payment for outside services (extra duty) shall be at the rate of \$47.50 per hour. As is currently the practice, such payments are not part of the officers' salary for any purpose, including but not limited to pension, overtime, holiday pay, pay for compensatory time, etc.

3. **Holiday Fold-In**

Effective January 1, 2004, the holiday benefit shall be folded in and paid along with regular base compensation. The holiday benefit value would be utilized in all calculations.

4. **Health Insurance**

Effective no earlier than January 1, 2004, all officers shall be placed in the Township's primary care plan (Plan B). The benefits shall be equal to or better than those set forth in Plan A.

Effective with the date of this Award, the Township shall provide fully paid medical benefits to spouses in the event of death of a retired officer with 25 years of service.

5. **Salaries**

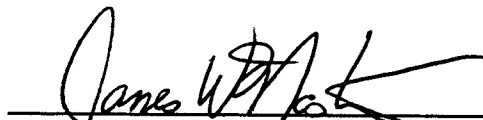
The existing salary schedule shall be adjusted at each step, retroactive to the effective dates stated by the following percentages:

- January 1, 2001 – 4.0%
- January 1, 2002 – 4.25%
- January 1, 2003 – 4.25%
- January 1, 2004 – 4.0%

A new salary schedule reflecting an additional step for new hires shall be implemented for employees hired after receipt of this Award. Existing employees shall receive increases pursuant to the pre-existing salary schedule.

	4.0% 2001	4.25% 2002	4.25% 2003	4.0% 2004
Lieutenant	82,008	85,493	89,125	92,691
	79,901	83,296	86,836	90,310
Sergeant	72,638	75,725	78,943	82,101
	70,541	73,538	76,664	79,730
Patrolman 1 st Class	64,127	66,852	69,693	72,481
Patrolman 2 nd Class	56,151	58,537	61,025	63,466
Patrolman 3 rd Class	48,175	50,222	52,356	54,451
Patrolman 4 th Class	40,202	41,910	43,691	45,439
Patrolman 5 th Class			37,997	39,517
Academy/Probation	30,987	30,987	32,303	33,596

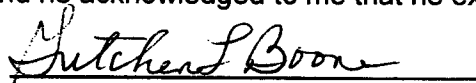
Dated: April 3, 2003
Sea Girt, New Jersey


James W. Mastriani

State of New Jersey
County of Monmouth

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On this 3rd day of April, 2003, before me personally came and appeared James W. Mastriani to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed same.


GRETCHEN L. BOONE
NOTARY PUBLIC OF NEW JERSEY
Commission Expires 8/13/2003