

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

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**In the Matter of the Arbitration** \*

**Between** \*

**Borough of National Park** \*

**and** \*

**P.B.A. Local #122** \*

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**Docket No. IA-98-5  
Jeffrey B. Tener  
Interest Arbitrator**

**Appearances**

**For the Borough:  
Stephen E. Trimboli, Esq.**

**For the PBA:  
Thomas M. Barron, Esq.**

**OPINION AND AWARD**

**Background and Procedural History**

PBA Local #122 ("PBA") filed a Petition to Initiate Compulsory Interest Arbitration with the Public Employment Relations Commission ("PERC") on July 14, 1997. As set forth in a letter dated September 3, 1997 from Timothy Hundley, PERC's Director of Arbitration, I was informed of my appointment to serve as the interest arbitrator pursuant to the mutual request of the parties.

I met informally with the parties on October 16, 1997 to explore the possibility of a voluntary settlement. Although no voluntary agreement was reached, the PBA agreed to prepare a comprehensive proposal and to submit it to the Borough. The Borough agreed to cost out that offer and to consider it to see if the matter could be resolved before the formal hearing which was scheduled at that time.

The parties were not able to reach an agreement prior to the scheduled hearing and a formal hearing was conducted on January 5, 1998 in the Municipal Building in National Park. The hearing was not transcribed. Christopher Wachter, Treasurer of PBA Local #122, which represents 17 of the 23 municipalities in Gloucester County, and James Magee, Patrolman, testified on behalf of the PBA. Robert Dougherty, Clerk Administrator, and Stephen Duncan, Councilman, testified on behalf of the Borough.

The parties agreed to await the availability of certain financial records before filing briefs. The Borough's brief was received on April 1, 1998. The PBA's letter submission was received on April 24, 1998, thereby marking the close of the hearing.

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. That Act, at N.J.S.A. 34:13A-16f(5), provides for the arbitrator to render the opinion and award within 120 days of selection or assignment. The parties, however, agreed to extend the time for the issuance of this decision to June 15, 1998 as set forth in separate letters from Messrs. Trimboli and Barron to Mr. Hundley.

The parties did not agree upon an alternative terminal procedure. Accordingly, the terminal procedure in this case is conventional arbitration. The arbitrator is required by N.J.S.A. 34:13A-16d(2) to "separately determine whether the total net annual economic changes for each year of the agreement are reasonable under the eight statutory criteria in subsection g. of this section." Additionally, N.J.S.A. 34:13A-16.2 calls for PERC to promulgate guidelines for determining the comparability of jurisdictions. The comparability guidelines adopted by PERC appear at N.J.A.C. 19:16-5.14.

This bargaining unit consists of five officers whose dates of hire and base salaries are as follows: Lt. B. Wasson (1983) - \$35,859, Ptl. G. Roberts (1988) -

\$33,744, Ptl. J. Magee (1989) - \$33,744, Ptl. A. Hinkson (1989) - \$33,744, and Ptl. H. Zimmer (1997) - \$19,084 (annualized).

The 1996 salary schedule was as follows: zero to one year of service - \$19,084, one to two years of service - \$29,520, two to three years of service - \$31,292, three years and over - \$33,744, and lieutenant - \$35,859. There is a shift differential of \$500 which is paid to all officers and that differential increases to \$600 for officers with five or more years of service. The lieutenant receives an additional shift differential of \$250. Officers also receive six paid twelve hour holidays per year.

### **Statutory Criteria**

The statute requires the arbitrator to:

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

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

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

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

(b) In public employment in general; provided, however, each party shall have the right to submit

additional evidence for the arbitrator's consideration.

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

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

(4) Stipulations of the parties.

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

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

(7) The cost of living.

(8) The continuity and stability of employment including seniority rights and such other factors not confined to the

foregoing which are ordinarily or traditionally considered in the determination of wages, hours, and conditions of employment through collective negotiations and collective bargaining between the parties in the public service and in private employment. (N.J.S.A. 34:13A-16(g))

### Final Offers

The parties submitted final offers at the opening of the hearing. These final offers included economic issues only. Both parties proposed a three-year agreement to cover the term January 1, 1997 through December 31, 1999.

**Borough of National Park** The final offer of the Borough is as follows:

1. Duration - January 1, 1997 to December 31, 1999.
2. Salary increases:
  - a. 3% effective January 1, 1997
  - b. 3% effective January 1, 1998
  - c. 3% effective January 1, 1999
3. Incorporate new Amerihealth insurance program into contract.

**PBA Local #122** The final offer of the PBA is as follows:

1. Include the shift differential amounts as set forth in Article XII into the current salary system. In the event that the Borough utilizes permanent shifts, the parties shall negotiate shift differentials. In the event that the parties cannot agree, the parties submit the matter for interest arbitration.
2. Annual salary increases of 5.0% (1997), 4.75% (1998) and 4.5% (1999).
3. Provide a retirement health insurance premium benefit for retired members and their spouses.
4. Provide a college tuition reimbursement of \$100 per credit hour for courses leading to a police science or law enforcement degree in which a grade of "C" or better is obtained.

5. Provide for a longevity schedule as follows:

<u>Years</u>	<u>Rate</u>
5+	1.5%
7+	2.0%
10+	2.5%
15+	3.0%
20+	3.5%

**Argument of the Borough**

The Borough notes that the arbitrator must apply the statutory criteria and identify those criteria which are deemed relevant, assess the evidence on the relevant criteria, give a "reasoned explanation" why the other criteria are not relevant and balance the relevant criteria in rendering the award. PBA Local 207 v. Borough of Hillsdale, 137 N.J. 71, 84 (1994) The Borough, citing the Governor's Conditional Veto Message, Senate Bill No. 1144, December 18, 1995, argues that the Police and Fire Public Interest Arbitration Reform Act sought to address the problem posed by escalating costs of police and fire union labor contracts which have increased well beyond increases in the cost of living and increases in the public and private sectors.

The arbitrator possesses conventional authority and must determine whether the total net economic changes for each year of the agreement are reasonable under the statutory criteria.

As a preliminary matter, the Borough objects to the inclusion of two items in the PBA's final offer: retiree health insurance and college tuition credit. The objection is based on the fact that the PBA provided no evidence, nor does the record include such evidence, regarding the cost of either of these proposals. The total net economic changes cannot be included in the required calculation so these items cannot be considered by the arbitrator.

The Borough submitted evidence which shows that the total compensation received by the five officers in the unit in 1997, based on the 1996 salary figures, was \$197,840. This figure includes overtime, shift differential and holiday pay and assumes that Zimmer worked a full year.<sup>1</sup> As calculated by the Borough, the cost of the Borough's proposal would be \$5,840.70 in "new money" in 1997, \$6,015.92 in "new money" in 1998 and \$6,196.40 in "new money" in 1999. The cumulative cost over the three years would be \$35,750.34 which is 18% of the current payroll.

The Borough calculated the cost of the PBA's salary proposal as \$9,734.50 in "new money" in 1997, \$9,710.21 in "new money" in 1998 and \$9,636.06 in "new money" in 1999 or a total cumulative cost of \$58,259.98 or 29.4% of the current payroll. If the shift differential were included in base salary, there would be an additional cost of about \$155 per year or a total cumulative three-year cost of \$942.63. The PBA's longevity proposal, based on 1996 salary rates, would cost \$2,922 in "new money" 1997, an additional \$338 in 1998 and additional \$338 in 1999. The annual cost of longevity under the PBA proposal would be \$2,922 in 1997, \$3,270 in 1998 and \$3,608 in 1999 or a total cost of \$9,800. With the salary increases proposed by the Borough, the total cost of the PBA's longevity proposal would be \$10,421.36; with the salary increases proposed by the PBA the total longevity cost would be \$10,811.62.

The total cumulative costs of the PBA's package would be \$12,814.00 in 1997, \$23,029.32 in 1998 and \$33,159.29 in 1999 or a total cost of \$69,002.61. When the longevity is calculated on the basis of the salary increases proposed by the PBA the total cost of the PBA's proposal is \$70,014.23.

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<sup>1</sup> Hinkson earned \$42,929; Magee earned \$41,322; Roberts earned \$42,847, Wasson earned \$46,846 and Zimmer earned \$25,896 on an annualized basis.

Expressed as percentages, the Borough's proposal costs 3% each year or a total of 9%. The PBA's proposal cost 6.5% in 1997, 6.3% in 1998 and 6.2% in 1999 or a total of 19%.

The Borough asserts that the public interest, which must be considered by the arbitrator, would best be served by an award consistent with the Borough's offer. The Borough is said to be unique. It is approximately one square mile in area and is surrounded on three sides by West Deptford Township with the Delaware River on the east. It was founded as a Methodist meeting community in 1894. Its population declined between 1970 and 1980 and again between 1980 and 1990. Over 92% of the property valuation is classified as residential and only 5.39% is commercial. None is industrial and only 1.81% is classified as vacant. One half of the housing stock is over 50 years old and the newest residential construction occurred in the 1960s.

Per capita income at \$11,947 in 1990 was the second lowest of the 24 municipalities in Gloucester County and well below the County average of \$15,118. Median family income was the fourth lowest in the County. National Park has the third lowest median home value: \$77,800 compared to the County average of \$101,625. Significantly, the valuation per capita of National Park is by far the lowest in the County at \$27,490 as against a County average of \$48,538. The Borough's figure is well above the figures in the municipalities selected by the PBA as "comparable": Greenwich - \$104,780 (highest in the County), Logan - \$83,340 (third), West Deptford - \$66,699 (fourth), East Greenwich - \$49,940 (seventh) and Paulsboro - \$44,370 (thirteenth).

National Park has been ranked 31<sup>st</sup> on the list of the State's top 50 distressed municipalities. This is based on such factors as population change, AFDC children per



thousand residents, unemployment, average local tax rate, age of housing stock, per capita income, percentage of substandard housing and equalized valuation per capita.

The Borough notes that, as shown by PBA Exhibit U-14, between 1993 and 1996, the median property tax bill increased by 23%, a figure matched only by South Harrison in Gloucester County. The dollar increase was \$410, second only to South Harrison.

Additionally, several large employers in the area have closed or cut back. These include Coastal Oil, the Philadelphia Naval Yard, Mobil and DuPont. This has affected the Borough's residents and taken away many well-paying jobs.

The Borough went bankrupt in 1952 and remained in receivership until 1960. This fact, coupled with the very limited economic means at its disposal, has caused the Borough to take a very conservative approach to expenditures and to attempt to keep the cost of government as low as possible. There are only 35 Borough employees and only 13 of those, including six police officers (the bargaining unit plus the Chief), are full-time.

There was no Police Department until 1980. Until then the Borough used part-time officers and services provided by West Deptford. When it started the Department, the Borough consciously and as a matter of policy envisioned a small department which would not attempt to be competitive with neighboring communities in salaries. Rather, it intended to hire inexperienced officers who would obtain training and some experience and then move on to other communities with these officers being replaced by other inexperienced officers. Even with these intentions, police salaries consume 52% of the Borough's payroll.

Based on this background, the Borough asserts that its 3% salary proposal should be awarded. It matches the increases given to other Borough employees and

will prevent police salaries from absorbing an even greater proportion of the payroll, it exceeds the rate of inflation and it exceeds private sector salary increases. It reasonably balances the legitimate needs of the officers with the Borough's limited financial circumstances and the limited means of the residents. The Borough also contends that the other economic proposals of the PBA should be denied as contrary to the public interest since they would only add to the Borough's costs.

The Borough next turned to a consideration of the financial impact which the arbitrator must consider and which cannot be equated simply to the ability to raise taxes. In addition to reiterating the previous factors, the Borough pointed out that the Borough must raise revenue for the County and the local elementary and regional high schools. The school taxes increased by 13.5% in 1996 and 2.4% in 1997. The tax collection rate has been fairly constant at about 92% but this is comparatively low. All of the school and County tax levies must be paid so the Borough loses when taxes are not collected.

An examination of the 1997 budget reveals that less than 50% of the Borough's revenues come from property taxes. Of particular concern is the fact that the Borough receives approximately \$350,000 in Gross Receipts/Franchise Tax payments from the State. This is 24% of the Borough's appropriations and it is over twice as much as the Borough receives from the State under the Consolidated Municipal Property Tax Relief Act ("COMPTRA"). The Gross Receipts/Franchise Tax has been abolished and the revenues have been guaranteed by the State only until 2002. Thereafter, this major source of revenue will no longer be available to the Borough and will have to be replaced or the budget will have to be cut. Therefore, it is asserted, the arbitrator must be very careful in imposing any increases in on-going or continuing expenditures on the

Borough. The Borough also is concerned that other State aid which it receives is not guaranteed. If it is reduced, the Borough will have very serious problems.

Appropriations have increased in spite of the Borough's efforts to minimize them. Deferred charges and statutory expenditures, including a 360% increase in public employee pension contributions, have increased and the Borough made a \$20,000 down payment on capital expenditures.

Thus, there is a low ratable base. The tax rate has increased significantly. The school districts impose a heavy tax burden on the residents. The equalized tax rate was the seventh highest in Gloucester County in 1996. There is a very heavy reliance on non-tax funding for over 50% of the Borough's appropriations and one quarter of this comes from a source that has been abolished and will end in 2002. Appropriations have continued to increase. The Borough simply cannot afford more than it has offered as a wage increase to the PBA.

The Borough points out that police officers constitute approximately 20% of its employees (including two special part-time officers) but receive over 50% of the salaries. The same result is reached when police salaries are measured against the municipal purpose tax levy, a factor which the arbitrator is to consider under N.J.S.A. 34:13A-16g(6). Under the Borough's proposal, the figure would be 51.6% in 1997 whereas it would increase to 53.4% under the PBA's proposal.

Both parties' proposals, of course, will result in increases in the municipal purposes elements of the property tax but the increases proposed by the Borough will be less deleterious than those proposed by the PBA: 1.13% v. 2.5% in 1997, 2.3% v. 4.5% in 1998 and 3.5% v. 6.4% in 1999. Furthermore, the real impact would be much greater because, as stated above, less than 50% of the Borough's revenues come from property taxes. Thus, the impact on those property taxes would be far greater and, it

must be recalled, the Gross Receipts/Franchise Tax, which provides almost 25% of the Borough's revenue for appropriations, has been abolished.

The Borough is particularly concerned about the establishment of a costly new benefit such as longevity in view of the factors set forth above. The PBA's proposal would add 1.5% to the Borough's costs when established and should not be considered without a countervailing concession.

The Borough agrees that it has a \$360,000 surplus. This is said to be irrelevant because a municipality is not required to prove that it would be financially crippled or that it lacks the ability to fund the increase proposed by the union before its financial impact argument is accepted. Also, the surplus would be drained in one year by the loss of the Gross Receipts/Franchise Tax revenue. It is true that tipping fees have been reduced and this will result in lower Borough expenditures. This does not mean that police officers are entitled to this money. Furthermore, salary increases and longevity plans impose ongoing costs rather than one-time expenditures and the cost impact compounds over time. Absent a recurring and dependable revenue source, it would not be reasonable to impose these increased costs on the Borough.

Next, the Borough considered continuity and stability of employment. As noted, the Police Department is relatively new and it was determined when it was established that it would be small and that the salaries would not be competitive with neighboring communities. It was expected that officers would be hired, get trained, gain some experience, and move to higher paying municipalities. Councilman Duncan testified that the Borough, although it would prefer not to, is prepared to abolish the Police Department and contract out that service if the cost of maintaining it becomes excessive. He said that the amount which could be saved has been discussed.

For all of the reasons cited above - including limited property tax revenue, less than favorable demographics, disproportionate reliance on State aid, the elimination of the Gross Receipts/Franchise Tax revenue which equals almost 25% of the Borough's appropriations - the Borough's policy decision to maintain a small and low cost police force cannot be said to be arbitrary. Rather, it simply is a reflection of fiscal reality.

Police salaries above the entry rate in 1996 exceeded those of all other municipal employees in 1997 except the Administrator and even the entry rate exceeds the rate of all but the Administrator and the Tax Collector. Other municipal employees received 3% increases both in 1996 (when the PBA received a 5% increase) and in 1997. Salary relationships would be further distorted if police officers were to receive more than 3% increases. Also, increases above 3% would reduce the funds available for other employees in 1998 and 1999.

The Borough notes that in spite of what it concedes are low police salaries, there has been very little turnover of police officers. The average length of service is nine years. Thus, there has been stability of employment. This has been true even though unemployment in this part of the State has been well above the State and national averages. This also is evidence that the PBA's proposal for a costly longevity program is not necessary. The shift differential, which all officers receive, is akin to longevity and provides additional salary. Furthermore, other municipal employees do not receive longevity, although such a benefit as a reward for long service basically would apply to them as well.

There is no evidence that there have been reductions in force among the Borough's police officers nor that they have accepted wage freezes or made concessions. In fact, they received a significant benefit in the form of a comprehensive

health care package in 1997 which includes not only comprehensive health care but a dental plan and other new coverage.

Again, this factor is said to point to the offer of the Borough rather than that of the PBA.

The cost of living factor also favors an award consistent with the Borough's proposal. While the PBA presented no evidence in this area, it must be considered by the arbitrator. The CPI increase in the Philadelphia-Wilmington-Trenton area from October 1996 to October 1997 was only 1.7% and for urban wage earners and clerical workers it was only 1.6%. The rate showed a downward trend in 1997. The increase was 2.9% in 1991 and continued at close to that level until dropping to 2% in 1995. It went up to 3% in 1996 before dropping again in 1997.

Police officers received increases of 4% in 1994 when the CPI rose 2.8%; they received 4.5% in 1995 when the CPI rose 2%; they received 5% in 1996 when the CPI rose 3%. Over those three years, salaries rose 13.5% while the CPI rose 7.8%.

The 3% offered by the Borough will provide increases in real earnings of almost 2% which is the same as those which the officers received under the prior contract. In contrast, the PBA's proposal is far in excess of the rate of inflation. Thus, a 3% increase is said to be reasonable in light of the historically low rate of inflation.

Internal comparability also is an important factor to be considered. Police officers are not to be compared only to other police officers. The Borough has offered the PBA the same increase it granted to other employees and, as noted above, the police officers are far more highly paid already. Also, while the police officers may have low salaries in relation to those of other police officers in neighboring communities, the same is true of other Borough employees when compared to their colleagues.

The 3% offered by the Borough is consistent with the increases awarded generally in New Jersey in police and fire interest arbitration. The Borough cited an average increase of 3.52% for awards covering 1997. Many awards, of course, are less than that as are many negotiated settlements. Within the County, the Borough cited increases of 3.5% for Westville police officers in 1997 and increases of 3%, 3% and 3.5% in 1997, 1998 and 1999 in Monroe Township for the police officers.

The Borough asserts that in the past several years, these officers have received salary increases in excess of average public sector increases. The increases were reported to be 2% in the first year for contracts negotiated in 1995 and 2.3% in subsequent years. National Park's officers received 4.5% in 1995 and 5% in 1996.

Private sector increases also are to be considered. These were reported to be 3.4% in the State and only 1.6% in Gloucester County in 1995. Both figures are below the increases received by the Borough's officers.

The Borough contends that public sector employees, including these officers, cannot be said to receive lower salaries than are received by private sector employees. These employees, whose average earnings were over \$38,000 in 1997, earned much more than the average private sector manufacturing employee who earned less than \$30,000 in 1996. The Borough noted that the PBA offered no evidence on internal comparability, the public sector generally or private sector settlements.

Thus, the 3% increases offered by the Borough are said to be reasonable in relation to police and fire interest arbitration awards, public employment settlements in general and private sector settlements.

The Borough argues that the data on comparability offered by the PBA must not be considered because the municipalities selected - Paulsboro, West Deptford, Greenwich, East Greenwich and Logan - simply are not comparable to National Park.

The Borough referred to PERC's comparability guidelines at N.J.A.C. 19:16-5.14(d). The PBA's argument is that the Borough's officers receive lower pay than officers in certain communities and that those officers also receive longevity.

Whether it is population density (except for Paulsboro, the others are far less densely populated than National Park), area (only Paulsboro, with twice the area, is even close to National Park), per capita income (the others, again except for Paulsboro, have far higher per capita income), equalized valuation taxable (all greatly exceed National Park) or valuation per capita (all significantly exceed National Park), the municipalities are vastly different from National Park. They are all much wealthier and therefore better able to generate local revenue to pay higher salaries to police officers.

The PBA submitted data which show that the tax increases in National Park far exceeded those in its "comparable" communities. The increase was 23% in National Park from 1993 to 1996. The next highest increase was 15% in West Deptford and it was only 7% in Greenwich, 8% in Logan and 9% in Paulsboro. The municipalities selected by the PBA all have police forces which are over two times as large as National Park's force. The Borough's unique financial circumstances have been discussed above and there is no evidence that the other municipalities are similar in any way.

The Borough asserts that geographical proximity alone does not establish comparability. Thus, Cedar Grove and Newark in Essex County are not comparable nor are Deal and Asbury Park, although they are contiguous, as are National Park and West Deptford. The fact that the employees in the municipalities selected by the PBA are represented by the same PBA local does not establish comparability; this is not a factor listed in PERC's comparability guidelines.



Because the municipalities selected by the PBA are not comparable, the Borough argues that the PBA has failed to demonstrate that its proposal is warranted based on the salaries and benefits received by police officers in those communities.

Finally, the PBA argues that under the lawful authority criterion,<sup>2</sup> the Borough must extend health insurance for retirees to police officers because this benefit was given to a municipal employee. To counter this argument, the Borough cites Fair Lawn Retired Policeman v. Borough of Fair Lawn, 299 N.J. Super 600 (App. Div. 1997) in which it was held that an employer which, like the Borough, is not a participant in the State Health Benefits Plan, need not adopt an all or nothing approach with respect to this benefit. Even if that were not correct, however, the Borough still contends that the PBA's proposal could not be granted because the arbitrator does not have the authority to extend the benefit to other non-police municipal employees which would be required under the PBA's theory. Thus, for these reasons as well as the fact that the PBA failed to provide cost data, this proposal must be rejected.

For these reasons, the Borough urges the arbitrator to award a three-year contract with salary increases of 3% per year, with no other economic benefits and with the incorporation of the Amerihealth insurance program into the contract.

#### **Argument of the PBA**

The PBA relied primarily upon the testimony of its witnesses, the exhibits and arguments made at the hearing by counsel as supplemented by a brief written closing submission.

The PBA has proposed that the current shift differentials be incorporated into base salaries. The Borough currently assigns the officers to rotating shifts so all

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<sup>2</sup> The Borough stated that it was not making a CAP argument under N.J.S.A. 40A:4-45.1 et seq. but noted that the budget cap increased only 2.5% in 1997.

officers receive this benefit. Therefore, there is currently no need for a separate shift differential since all of the officers work rotating shifts and it is argued that the payment should be included in base salaries. In the event that the Borough were to go to permanent shifts, the PBA asks that the parties negotiate a shift differential. If the parties are not able to agree upon what this differential should be after three negotiating sessions, the PBA asks that the matter be submitted to an interest arbitrator for determination.

The PBA also proposed that the Borough provide a health insurance premium benefit for retired members and their spouses. It argues that this is a benefit which the Borough provided to another Borough employee recently and that there is a legal obligation to extend this benefit to all employees. The PBA notes that none of its five officers are close to retirement so there will be no cost to the Borough for a number of years. Nonetheless, this is an important protection to employees.

It also is seeking payment for college credits. An educated police force is said to be in the public interest and the cost of this benefit would not be great. Also, it is claimed that this is a benefit which is common for police officers.

The PBA asks that a longevity plan be established. Under the plan, officers with five or more years of service would receive 1.5%, those with seven or more years of service would receive 2%, those with ten or more years of service would receive 2.5%, those with fifteen or more years of service would receive 3% and those with twenty or more years of service would receive 3.5%. This is a benefit which is almost universal in Gloucester County for police officers, as Wachter testified. All but one other municipality, out of 23, provides a longevity benefit. He said that these are paid either in flat dollars or, more often, as a percentage of base salaries.

Again, the PBA contends that the cost of this benefit, as proposed, would be minimal. The cost would be only \$3,547 in 1997, \$4,098 in 1998 and \$4,283 in 1999.

The PBA has proposed that salaries be increased by 5% in 1997, 4.75% in 1998 and 4.5% in 1999. This would cost approximately \$8,000 in each of the three years. The cost in 1997 is \$8,060, in 1998 it is \$8,562 and in 1999 it is \$8,582 or a total of \$25,214 in the three years.<sup>3</sup> As discussed below, these officers are the lowest paid in the County and they would remain the lowest paid if the PBA's proposal were to be adopted. Again as discussed below, the PBA contends that the Borough, which has been run extremely conservatively, can afford to pay these increases and there will be no impact on the taxpayers because the cost is minimal, the Borough has a large surplus, the Borough keeps a large amount of cash, the Borough is able to generate surplus of almost \$145, 000 in a budget of about \$1.5 million and there is no bonding.

Adding the cost of the proposed salary increases and longevity, the PBA places the cost at \$11,607 in 1997, \$12,660 in 1998 and \$12,865 in 1999 or a total of \$37,132 over the three years.<sup>4</sup>

The focus of the PBA's argument is that the officers in National Park are extremely low paid and that they will continue to be extremely low paid under both final offers. It is comparisons with other police officers which is said to be of greatest importance in deciding this case, especially since the cost of the PBA's proposal is small and the Borough has the ability to pay for it.

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<sup>3</sup> These figures are based on incorporating the current shift differential into the base salary.

<sup>4</sup> In its post-hearing submission, counsel for the PBA stated that since the close of the hearing, one of the senior officers left the department for a job in another community. Thus, the cost of its proposal will be even less than calculated. The Borough also will realize savings when it replaces that officer with a new officer at the starting salary. Mr. Dougherty testified on cross-examination that the Borough had applied for Federal funds to hire an additional officer. If obtained, this would provide \$75,000 over three years towards the cost of an officer.

The PBA has identified five municipalities with which it has compared salaries: Greenwich, West Deptford, Logan, East Greenwich and Paulsboro.

The PBA compared 1996 salaries and longevity payments in these municipalities. The starting salary was lower in National Park (\$19,984) than in any of the others (next lowest was West Deptford at \$23,557) and the salary for a top patrolman was by far the lowest in the group: National Park - \$33,744, East Greenwich - \$41,348, Paulsboro - \$41,969, West Deptford - \$46,425, Logan - \$46,899,<sup>5</sup> and Greenwich - \$49,724. Thus, the top salary in National Park is \$7,604 lower than the next lowest municipality.

The PBA notes that all of these municipalities provide a longevity payment to their officers and in all but Paulsboro, that payment is expressed as a percentage of base salary.

Thus, it is clear that National Park is far behind these communities not only in terms of salaries but also in terms of longevity. When longevity is added to salary, the difference becomes even greater. An officer with ten years of service earns \$42,588 with longevity in East Greenwich which is the next lowest in the group. This figure is \$8,844 above the figure in National Park. The differences are even greater after more years of service and in the other municipalities.

While there are differences in the communities selected, the PBA notes that the per capita income in Paulsboro is even lower than it is in National Park. In Paulsboro, the figure is \$10,321 whereas it is \$11,947 in National Park. This was a figure cited as important by the Borough. The PBA argues that if Paulsboro can afford to pay its officers a top rate of \$41,969 after one year - a figure which exceeds the top rate in

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<sup>5</sup> This is not the figure provided by the PBA. I have calculated the figure using the 1995 figure shown in the collective bargaining agreement (Exhibit U-1) and added 4% to it as specified in the memorandum of agreement which was submitted (Exhibit U-2).

National Park after three years by \$8,225 - and also pay longevity on top of that, then National Park can afford the modest salary increases proposed by the PBA.

The PBA notes that in Logan, the officers received salary increases of 5.5% in 1993, 5.5% in 1994 and 5% in 1995. These figures are greater than those in the Borough where the officers received increases of 4% in 1994, 4.5% in 1995 and 5% in 1996. The officers in Logan received increases of 4% in 1996, 1997 and 1998. Officers in East Greenwich received increases of 4% in 1997, 4% in 1998 and 4% in 1999. Thus, it is argued, even with the slightly larger increases proposed by the PBA, the officers in National Park will make up only a small amount of the distance between them and their counterparts. The PBA is attempting to begin to catch up a little with the others.

The PBA referred to the fact that the Borough made a point of the salary increases received by the officers in Westville and Monroe. The increases in Westville were 3% in 1996 and again in 1997. They were 3% in 1998 and 3.5% in 1999 in Monroe. While true, the PBA points out that the actual salaries in those two municipalities greatly exceed those in National Park. The starting salary in National Park in 1996 was \$19,084. In Westville it was \$30,885. In Monroe, the 1997 starting salary was \$36,616. The 1996 rate after three years in National Park was \$31,292. It was \$37,625 in Westville. It was \$50,137 in Monroe in 1997. The PBA noted that even the dispatchers earn far more in Monroe than do police officers in National Park. Thus, they started at \$30,456 in 1997 and earned \$40,298 after three years, \$9,000 more than a third year patrolman in National Park earned in 1996 and that figure would go up only to \$32,857 under the PBA's proposal for a 5% increase in 1997. Both Monroe and Westville also provide a longevity benefit which is not paid in National Park, further adding to the disadvantage of the officers in National Park.

The Borough cannot argue that National Park cannot afford to pay what Westville and Monroe are paying. The median household income in National Park is \$33,234. In Monroe, the figure is \$35,601 and in Westville the figure is \$31,660. Thus, all three communities have similar median family incomes and the residents in National Park are no less able to afford to pay their police officers than are those in the other communities.

To counter the Borough's contention that the Borough intends its officers to be low paid and its department to serve as a training ground for other municipalities, the PBA cited the testimony of Magee who said that when he was hired by the Borough, he was not told by the Chief or any other person that the Borough did not intend for him to have a career in National Park. It is the contention of the PBA that it cannot be in the public interest - a factor which the arbitrator is required to consider - for a municipality to have a police force which serves merely as a training ground and transfer station for other departments.

The PBA also addressed more general points. It cited figures and projections published by the Economic Advisory Service of Rutgers University which show that consumer prices have increased or are projected to increase by 2.5% in 1997, 2.8% in 1998 and 3.2% in 1999. With these increases, the officers will receive only slight increases in their real earnings with salary increases of 5%, 4.75% and 4.5% as proposed by the PBA.

That same service projected personal income to increase by 4.9% in 1997 and 1998 and by 5.1% in 1999. Thus, the salary increases sought by the PBA are in line with these projections and would result simply in the officers maintaining their position in relation to other employees in New Jersey.

The report cited strong corporate earnings and consumer confidence in New Jersey. Thus, the economic outlook in the State is very good. The officers should enjoy the gains which will occur.

The PBA also cited statistics on local property taxes in Gloucester County which showed an average increase in National Park of \$410 between 1993 and 1996. This is said to be a modest increase in that period.

The PBA argues that the Borough has the ability to fund the increases sought by the PBA. The Borough received an unexpected \$46,000 in State aid which enabled it to reduce the tax levy by that amount. A significant change has occurred in landfill costs. Tipping fees dropped from \$101 per ton to \$56 per ton. This change, which occurred in November 1997, will reduce the Borough's landfill costs, which were budgeted at \$201,000, by some \$80,000 over 1996 rates. The \$201,000 represented an increase of \$30,000 over the amount paid in 1996. Thus, this item will be \$110,000 less than was appropriated in 1997.<sup>6</sup>

The PBA notes that after the salaries of police officers, which are approximately \$250,000, and the salaries of other Borough employees, which are approximately \$240,000, tipping fees are the next largest item in this budget which approximates \$1.5 million.

The PBA attempted to put this dispute into perspective. If, as the PBA has proposed, salaries and longevity increased the Borough's costs by \$11,000, the tax rate would go up 1.2 cents. One cent raises \$9,000. With a median assessment for a home being \$81,000, the cost to the average taxpayer would be only \$9.72.

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<sup>6</sup> The Borough included in its post-hearing brief a letter written to Mr. Trimboli by Mr. Dougherty which states that the County had added an "Environmental Charge" of \$22 per ton so that the tipping fee will not be \$56 per ton but rather \$78 per ton. Assuming this to be true, the savings would be reduced by approximately \$40,000.

The Borough had a surplus balance of \$350,000 on January 1, 1996. That is a very large surplus for a budget of the size of National Park. There was an excess resulting from operations of \$145,000. The Borough appropriated \$129,000 of surplus in 1996 and thus had a December 31, 1996 balance of \$367,000. The Borough has been able to regenerate surplus the last several years and there is no reason to believe that it will not continue to do so. The Borough's long term debt is very small at under \$150,000 for a fire engine. The Borough has not exceeded the 2.5% cap in the last several years and cap banking has been allowed since 1996.

The Borough cited job losses in the area including the Philadelphia Naval Yard but the PBA notes that the Naval Yard has been sold to a private developer and there will be job opportunities for the Borough's residents.

Using the Borough's numbers, the difference between the two final offers is about \$35,000: \$70,014.23 for the Borough v. \$35,750.35 for the PBA. This is said to be insignificant in light of the \$80,000 savings which will be realized in tipping fees alone.

Thus, while acknowledging that the Borough is not a wealthy municipality and that it does have some problems, the PBA insists that the salaries the Borough pays to its police officers lag far behind those paid in neighboring communities. Some of those communities have median family incomes and per capita incomes similar to those in National Park, yet they are able to pay competitive wages to their police officers. National Park must do the same thing.

The PBA asks that the arbitrator award the salary increases and benefits proposed by the PBA. This will not permit these officers to get into the range of the others but will at least show the officers that their efforts are respected and give them



career hopes so that they do not suffer morale problems and/or seek other employment.

### Discussion

The arbitrator is required by the Police and Fire Public Interest Arbitration Reform Act to decide the dispute by making a reasonable determination of the issues, giving due weight to the eight statutory criteria listed above which are judged relevant. Each criterion must be considered. Those deemed relevant must be explained and also there must be an explanation as to why any factor is deemed not to be relevant. In making the decision, the arbitrator must separately determine whether the total net annual economic changes for each year of the agreement are reasonable under the statutory criteria.

I have carefully considered the evidence introduced by the parties in the form of exhibits and testimony as well as their arguments. I have considered the evidence in relation to the statutory criteria, as discussed below. I have discussed the weight which I have accorded to each factor, all of which I have found to be relevant. I have determined the total net annual economic changes for each year of the agreement in order to conclude that these changes are reasonable under the criteria.

The parties agree that the two final offers include only economic issues. Both are seeking a three-year agreement which will cover the term January 1, 1997 through December 31, 1999. Thus, I shall provide for a three-year contract in this award.

To make the discussion of the statutory criteria which follows meaningful, I shall set forth the terms of the award at this time. This will permit me to use the terms of the award, as opposed to the final offers of the parties, as the reference point in applying the statutory criteria. It is not necessary for me to relate the parties' final offers to the

statutory criteria since I shall not adopt the position of either party as the award. The parties, of course, did focus on the two final offers in their presentations because this was what they were defending or arguing against. I need only deal with the terms of the award which I shall render.

The term of the new agreement, as stated, shall be January 1, 1997 through December 31, 1999. Wages shall be increased across-the-board by 4% on January 1, 1997, by an additional 4% effective January 1, 1998 and by an additional 4% effective January 1, 1999. The shift differential shall be eliminated effective at the end of 1997 and replaced with the following longevity plan effective January 1, 1998:

<u>Years of Service Completed</u>	<u>Amount</u>
3	\$300
6	600
9	900
12	1000
15	1100
18	1200
24	1500

Article XVI, Health Benefits, shall be amended to incorporate the Amerihealth insurance plan. There will be no other changes.

The total net annual economic cost of these changes shall be computed. I place no cost on the change in insurance carriers. The Borough made this change for all Borough employees in the fall of 1997. It resulted in a reduction in premiums for the Borough of between \$4,000 and \$5,000 annually while at the same time maintaining standard health care and adding new dental coverage and other new coverage. Both parties benefited from this change.

The elimination of the shift differential will reduce the Borough's costs by \$3,150 in 1998 and 1999. The longevity plan will cost the Borough \$3,800 in 1998 and \$3,800 in 1999.<sup>7</sup>

The salary increases will cost the Borough \$6,247 in 1997, \$6,497 in 1998 and \$6,757 in 1999. These figures are computed on the base salaries of the officers and do not include overtime and holidays. They also do not include the cost of movement by Zimmer up the steps of the salary guide.<sup>8</sup>

Overall, the total net annual economic change is \$6,247 in 1997, \$7,147 in 1998 and \$7,407 in 1999. I have not included overtime because that it not guaranteed and it must be authorized by the Borough. It is not an entitlement as is the annual salary. The Borough has control over this cost. If overtime costs justify the hiring of an additional officer, then the Borough can make that decision. I recognize that there are certain costs which go up as the salary increases. These include the cost of overtime and holidays as well as pensions and certain other costs. These additional roll-up costs are not large since, with a 4% wage increase, they generally add 4% (or, in the case of overtime, 6%) to what they previously cost.

Having set forth the terms of the award and the total net annual economic changes in each year of the award, I shall discuss the award, the evidence and the arguments of the parties in relation to the statutory criteria.

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<sup>7</sup> This assumes that the five officers currently employed remain on the force. As stated above, counsel for the PBA stated in his closing statement that one of these officers has left. Thus, the actual costs of longevity to the Borough will be \$900 less in 1998 and 1999 since any replacement employee will not be eligible for any longevity until after three years of service.

<sup>8</sup> Zimmer replaced Patrolman Pasque. The record does not indicate whether Pasque was at the top step but he would have been if he was employed for over three years in which case the Borough will be paying less to Zimmer for three years than it would have paid to Pasque had Pasque remained. Again, assuming that one of the senior officers has left the department, the Borough's costs will be considerably less. If he were replaced immediately so that there was no gap between his departure and the hiring of a replacement, the Borough would lose an officer whose salary was \$33,744 in 1996 and replace him with an officer who, at 1996 rates, would be paid \$19,084 in his first year in \$29,520 in his second year.

**Interests and Welfare of the Public** The Supreme Court in PBA Local 207 v. Borough of Hillsdale, 137 N.J. 71 (1994) made it clear that the interests and welfare of the public must always be considered in rendering an interest arbitration award and that an award which failed to consider these interests was in danger of being deficient. The amended statute requires the arbitrator to consider the limits imposed by the Cap Law, N.J.S.A. 40A:4-45.1 et seq., in connection with this factor.

The Borough explicitly did not raise any Cap Law argument. Thus, the Borough's legal authority is not implicated in this case and the Cap Law poses no impediments to the implementation of this award.

The interests and welfare of the public are multi-dimensional. On one hand, the public interest is served by having a police force of sufficient size to provide the level of protection desired. Generally, of course, the lower the compensation of each officer, the more officers a municipality can afford to employ. The public likes to receive public services efficiently and at the lowest possible cost. At the same time, the public interest is served by having a police force that is sufficiently well compensated so that it attracts and retains a qualified and dedicated group of professional police officers. If the officers do not believe that they are treated reasonably and fairly, their morale will suffer and this will have implications for productivity, effectiveness and efficiency.

Given these competing considerations, it is necessary to strike a balance between a reasonably compensated police force and one which provides services at the lowest reasonable cost to the public. The policy statement set forth at N.J.S.A. 13:13A-14 reflects many of these points. Thus, it 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 regularly confront. The arbitration procedure is intended to reflect the need for high morale as well as for

the efficient operation of the department and for the general well-being and benefit of the citizens. The procedure is to give due consideration to the interests of the taxpaying public and to promote labor peace and stability.

I have determined that an award with salary increases of 4% each of three years along with the elimination of the shift differential and the creation of a longevity system expressed in dollars will best reflect the public interests and welfare. The cost of these increases can be borne by the taxpayers, although I recognize that their per capita income is the second lowest in the County, that the per capita valuation is the lowest in the County and that they are relatively highly taxed. These increases exceed by modest amounts the percentage increases which have been awarded generally in this State by interest arbitrators. They are similar to private sector increases. They exceed increases in the cost of living by about 2% per year at current rates. They also exceed the 3% increase given to other Borough employees in 1997. At the same time, they reflect the fact that by any comparative measure, these officers are by far the lowest paid police officers in Gloucester County and they will continue to be so at the end of the term of this award. The dollar amounts generated by the 4% increases will actually be less than the dollar amounts received by many other officers receiving lower percentage increases.

While I understand that the Borough intended, as a matter of "policy," that, when it established its police force in 1980, its police force would be small and as inexpensive as possible and that the wages not be competitive, there are limits to such a policy. The Borough must pay what other municipalities pay for police cars, supplies, electricity and other utilities, etc. It cannot expect to pay its employees too far below the norm. I also understand, as do the officers, that the Borough is not required to provide police services by employing its own force and that it can decide to enter into a

contract with West Deptford or another provider if it can obtain what it believes to be an adequate level of police service for less money. This is its option.

I believe that the award reflects a reasonable balance of the competing components of the public interests and welfare.

Comparisons Comparisons of the wages, salaries, hours and conditions of employment of the Borough's police officers are to be made with other employees performing similar services as well as with other employees generally in the following categories: 1) in private employment in general, 2) in public employment in general, and 3) in public employment in the same or similar comparable jurisdictions. I shall discuss each of these.

First, private sector comparisons are to be made with employees performing similar services as well as with private employees generally. Police officers do not really have private sector counterparts. They provide services which are uniquely governmental in nature. Comparisons, therefore, cannot be made between the Borough's police officers and employees providing similar services in the private sector. Thus, this part of the comparison is not relevant.

It is possible, however, to compare police officers with private employees in general. The Borough submitted a private sector survey which was prepared by the New Jersey Department of Labor for PERC and made available in August 1996. That survey showed an increase from 1994 to 1995 of 3.4% in New Jersey and 1.6% in Gloucester County. The subsequent report, issued in September 1997, was not introduced by the parties but I hereby take arbitral notice of that report.<sup>9</sup> It shows an average increase in New Jersey of 4.3% from 1995 to 1996 with an increase of 4.1% in Gloucester County. Average wages in Gloucester in 1996 for jobs covered by

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<sup>9</sup> See Borough of Allendale, PERC No. 98-123 (March 26, 1998).

unemployment insurance were reported to be \$27,199. The Borough cited a Department of Labor report of New Jersey Economic Indicators which showed average gross annual earnings for manufacturing workers to be \$29,722 for the month ending May 1996.

Given these increases, increases of 4% in 1997, 1998 and 1999 appear to be very much in line with the current figures for private sector employees in New Jersey and, while subject to greater fluctuation, in Gloucester County as well. Increases of 3%, as proposed by the Borough, or an average of 4.75%, as proposed by the PBA, would be out of line with private sector increases.

I believe that the private sector increases are an important factor in deciding this case. It is the private sector ultimately which supports the public sector. Private sector increases are dictated by economic considerations rather than political ones and are subject to market forces and discipline. The residents of National Park, for the overwhelming part, are employed in the private sector. As their wages increase, so does their ability to pay increased taxes to support public services, including police.

Second, comparisons are to be made with public employees in general. The only evidence which was submitted on this point was somewhat outdated data submitted by the Borough. It showed average increases for state and local government workers in the first half of 1995 - well before the expiration of the parties' prior agreement and the commencement of the new one - of 2.0% in the first year of the agreements and 2.3% annually over their term. Without more recent data, I am unwilling to place any significance on this aspect of comparisons although it does appear from this data that the increases were back-loaded, suggesting an increase in rates in the future.

Third, comparisons are to be made with public employees in the same jurisdiction as well as with those in similar comparable jurisdictions. Starting with comparisons in the same jurisdiction, the evidence is that the Borough's other employees, who are not organized, were given a 3% increase in 1997. Thus, if this were the only factor and regarded as determinative, the police officers would have to be given a 3% increase in 1997 as well, although 1998 and 1998 would be open to independent determination. While this can be and sometimes is a very important factor in deciding interest arbitration cases, this factor is not controlling in this case. I do recognize, as the Borough emphasized, that the police officers earn higher salaries than the other Borough employees with the exception of the Borough Administrator. In my view, this consideration is overwhelmed by the other aspect of this factor which is discussed below.

That aspect is comparisons with other police officers in comparable jurisdictions. Again, the evidence which was provided was not voluminous. The PBA selected five municipalities in Gloucester County and provided information on the top rates and longevity schedules for police officers in those municipalities. These were Paulsboro, Logan, Greenwich, East Greenwich and West Deptford. Additionally, the Borough provided the collective bargaining agreements for Monroe and Westville.

The top rates as of 1996 in these municipalities were as follows:

<u>Municipality</u>	<u>Top Rate</u>
National Park	\$33,744
Westville	40,346
East Greenwich	41,348
Paulsboro	41,969
West Deptford	46,425
Logan	46,899
Greenwich	49,724
Monroe	50,137 <sup>10</sup>

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<sup>10</sup> This is the 1997 rate.



The Borough correctly pointed out that the municipalities selected by the PBA were not really comparable to the Borough in important ways. It referred to the comparability guidelines published by PERC at N.J.A.C. 19:16-5.14(d). As the Borough noted, there are differences in population density, per capita income, average property value, valuation per capita, tax increases, size of the police force, crime rate, size, etc.

Having said that, there also are similarities. Significantly, all of the municipalities are in Gloucester County and together they represent one third of the municipal police forces in the County. Per capita income, while low in National Park, is higher than it is in Paulsboro: \$11,947 v. \$10,321. Thus, on this important measure, National Park exceeds one of the municipalities, yet its top police salary is behind that of Paulsboro by \$8,225 or 24%.

Notwithstanding the fact that the municipalities selected by the PBA are in many important ways different from National Park, the fact is that the top salaries in seven of the municipalities in Gloucester County, including those provided by the Borough, have been shown to be a minimum of \$6,602 above those in National Park and in four of those municipalities they are over \$10,000 above those in National Park. While it would be nice to have had better comparability data, nothing submitted by either party - indeed, the Borough trumpets it as a matter of "policy" - undermines the conclusion that these officers are grossly underpaid on any comparative basis.

Average increases in interest arbitration awards as computed by the Borough are said to be 3.5%. The increases in Logan Township were 4% and 4% in 1997 and 1998. They were 4%, 4% and 4% in East Greenwich in 1997, 1998 and 1999. It was 3.5% in Greenwich in 1997. They were 3% and 3.5% in Monroe in 1998 and 1999. It was 3% in Westville in 1997.

Based on those Statewide and Gloucester County increases, increases for by far the lowest paid officers of 4% for 1997, 1998 and 1999 are justified. While this may be slightly above the average increase, the bottom ranking will continue for the officers in National Park. Indeed, a 4% increase generates only \$1,350 on the top rate in National Park in 1997. The 3% increase to be received by the officers in Westville in 1997, who have the second lowest top rate, will generate \$1,210. Thus, the officers in National Park will gain only \$140 compared to the next lowest paid officers and the difference between the two will still be \$6,462 or over 18%.

Accordingly, with respect to the factor involving comparisons, I believe that increases of 4% are reasonable based on private sector increases and the almost unbelievably low salaries of these officers compared to other police officers in the County.

Overall Compensation With the major exception of longevity, which is discussed below, there is no evidence in this record to suggest that the overall compensation of the police officers is significantly different from their counterparts, either in relation to other Borough employees or to other police officers. The Borough did change insurance carriers and was able to realize a savings for itself while at the same time providing increased benefits for all municipal employees, including the police officers.

The one major exception concerns longevity. Wachter testified that of all the municipalities in Gloucester County, only National Park does not provide a longevity benefit. It is true that the other Borough employees also do not receive longevity but, contrary to the argument of the Borough, there is no requirement that such a benefit apply to all municipal employees. Indeed, the evidence is that it is universal for police

officers. The Borough did not demonstrate that it also was universal for the other municipal employees throughout the County.

Accordingly, I shall award a longevity plan. I recognize, however, that this is a costly item. Therefore, to minimize the financial impact, I shall do two things. First, I shall eliminate the existing shift differential which actually works much like a longevity plan with a greater amount for officers who have been on the force longer. This will reduce the Borough's costs \$3,150 each year. Second, I shall establish a longevity program based on dollars rather than percentages. Therefore, it will not impose on the Borough built-in increases as salaries are increased in future years.

The plan will be modest and will cost the Borough \$3,800 in 1998 and 1999. This is \$650 above the 1997 cost of the shift differential. (This ignores the assertion of counsel for the PBA that one of the senior officers resigned subsequent to the close of the hearing. If that is true, then the actual costs to the Borough will be less than they were in 1997 and less than they would have been if the shift differential had continued.)

While discussing this criterion, I also note that there is no evidence to support the PBA's request for either a retirement health insurance premium benefit or a college tuition reimbursement program. The cost of retiree health insurance is very significant and, as stated above, no cost information was provided. Also, the PBA has not convinced me that the Borough has a legal obligation to extend this benefit to all employees even if it granted it to one employee in the past. The Borough argued persuasively to the contrary. Even if the PBA were correct, however, I would not have the authority to impose this benefit on all Borough employees which is what the PBA contends is required under the law. To whatever extent there is a legal issue regarding this matter, interest arbitration is not the appropriate forum for its resolution.<sup>11</sup>

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<sup>11</sup> I note that the Borough is not a participant in the State Health Benefits Program.

While an abstract argument can be made in favor of encouraging police officers to obtain college credits, there is simply no evidence to indicate either the cost of this benefit in National Park nor the extent which it exists throughout the County. Accordingly, both of these PBA proposals shall be denied.

**Stipulations** Beyond agreement on the term of the new agreement, there were no stipulations of the parties.

**Lawful Authority** The statute requires the arbitrator to consider the limitations imposed by the Cap Law when considering the lawful authority of the employer. The Cap Law limits the amount by which a municipality can increase its final appropriations from one year to the next and was intended to control the cost of local government to protect homeowners. This limitation, however, applies only to total appropriations and not to individual line items.

As stated above, the Borough explicitly disavowed any claim that its lawful authority under the Cap Law was implicated in this case. The Borough is extremely desirous of minimizing police salary expenditures but this is not based on a fear of exceeding its lawful spending authority. Rather, it is based simply on a desire to keep expenditures to a minimum and to keep taxes as low as possible. The Borough's rationale will be discussed more fully below.

I discussed the issue regarding health insurance premiums for retired employees above. The PBA suggested that this was statutorily required and would, therefore, involve the lawful authority of the Borough.

**Financial Impact** The financial impact of this award will be minimal. Salary increases of 4% will cost the Borough \$6,247 in 1997, \$6,497 in 1998 and \$8,757 in 1999. These are very small amounts in a budget of approximately \$1.5 million. The cost of 3% increases, as proposed by the Borough, would be \$4,685 in 1997, \$4,826 in

1998 and \$4,971 in 1991. These figures are based on base salaries alone and do not include overtime or built-in costs such as pensions, holidays, etc. Nevertheless, the figures show the proximity of the figures in dollar terms. They differ by less than \$1,800 per year, a truly minor amount and one which will have an imperceptible impact on taxpayers and the tax rate.

I do recognize, of course, that the Borough is not a wealthy one by virtually any measure. The per capita income, which in 1989 stood at \$11,947, was the second lowest in the County and well below the County average of \$15,118. Its median family income was the fourth lowest in the County at \$35,254, well below the County average of \$42,997. Its median home value was \$77,800, the third lowest in the County whose average was \$101,625. Its valuation per capita is the lowest in the County. The figure is \$27,490 and the County average is \$48,538. This is a large difference.

National Park has been classified as one of the 50 most distressed municipalities in New Jersey by the State. This classification is based on a combination of factors which include change in population - the Borough has been losing population over the last 20 years - number of families on AFDC per 1,000 residents, unemployment, average local tax rate, per capita income, age of housing stock and equalized valuation per capita.

The Borough's residents, of course, are the source of funding for the schools. The Borough must raise the money for the schools from the local property tax and this money has to be paid. These taxes increased by 13.5% in 1996 and by another 2.4% in 1997. Increases in school taxes, however, do not justify inadequate police salaries. The Borough does not control school taxes but they cannot be used as an excuse to underpay police officers.

The equalized tax rate in National Park is the seventh highest in the County. It was \$2.557 in 1997. Its tax increases between 1993 and 1996 were the largest in the County on a percentage basis at 23% and the second highest in terms of dollars at \$410. The Borough also has a relatively low tax collection rate of approximately 92%.

The fact that the Borough receives approximately the same amount in State aid as it generates through local property tax revenues means that a large part of its money comes from other sources and the residents do not have to raise this money. The reliance on State aid has the disadvantage of being uncertain and this is exacerbated considerably in National Park because it has received \$338,000 in Franchise and Gross Receipts Taxes, a tax which has been eliminated and the revenues from which have been assured only through 2002. Thus, at that time, the Borough will have to raise taxes, find other revenue sources or reduce expenditures in some combination to make up for this anticipated loss of revenue.

There is a large amount of delinquent taxes in the Borough. At the end of 1996, there was \$390,000 in uncollected property taxes. Of course, if the Borough were able to collect even a portion of this money, it would have a very positive but one-time impact on the municipal budget.

The Borough's appropriations have increased, despite its efforts to limit these expenditures. Its pension contribution went up sharply in 1997. Police salaries are a large and growing element of the municipal budget as would be expected in a municipality which consciously provides minimal services. Similarly, police officers constitute a significant portion of the labor force in the Borough and the salaries of police officers are higher than are the salaries of other Borough employees. Police protection is surely one of the core functions of local government.

It also must be recognized that the Borough's tipping fees were reduced.

Accepting the accuracy of the letter from Mr. Dougherty to Mr. Trimboli that the County imposed an "Environmental Charge" of \$22.00 per ton on the landfill fee, the Borough will still realize a significant reduction in this expense over previous and anticipated costs. The reduction in costs will be approximately \$40,000 which is significant and makes it clear that the Borough can fund the increases awarded.<sup>12</sup>

Additionally, the Borough has an admittedly large current surplus. While I understand that the maintenance of a surplus is necessary and fiscally prudent and also that money in the surplus account can be spent only once and is not recurring, nonetheless the existence of a large surplus demonstrates that the Borough can fund the increase awarded. Also, the Borough has demonstrated the ability to regenerate surplus from year to year.

Finally, it should be recognized that, assuming the accuracy of PBA counsel's statement that one of the senior officers has resigned, the Borough will not have to pay that officer's salary and longevity for a large part of 1998. It would pay the starting salary for the rest of 1998 and no longevity for a replacement, if a replacement were hired immediately with no gap in coverage. The top rate in 1998 will be \$36,498 and the longevity for that year would be \$900 for each of the senior officers. Thus, the Borough will reduce its costs by \$37,398 on an annual basis, although I do not know when in 1998 the officer left. Similarly, the Borough's costs for a new hire in 1998 would be \$20,641. Again, I do not know how much of the year that rate will be in effect. On an annual basis, which obviously overstates the case since I know that the senior officer did not leave at the first of the year, the reduction in the Borough's costs

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<sup>12</sup> This is not to imply that the police officers are automatically entitled to all or even some of this "savings" but it does demonstrate that the Borough has more money than is necessary to fund the difference in costs between a 3% and a 4% salary increase.

would be close to \$17,000. If the change were effective May 1, 1998, about two thirds of the savings or \$11,300 would be realized. This alone is more than the cost of the increase which I have awarded. Thus, what is sometimes called "breakage" - the difference between the salary of an officer who leaves and that of the replacement - more than funds the award in 1998.

Cost of Living The Consumer Price Index published by the Bureau of Labor Statistics for the Philadelphia-Wilmington-Trenton area (CPI-U), which includes National Park, increased by 1.7% from October 1996 to October 1997. The annual increases in that area were 2.5% in 1996, 2.7% in 1995, 2.7% in 1994, 2.5% in 1993, 3% in 1992, 4.5% in 1991, 6.1% in 1990 and 5% in 1989. Thus, in the last several years, the increases have been approximately 2.5% and there has been a further trend downward in the last year. There is no evidence that this will change in the near term.

The salary increases received by the police officers in National Park were 4% in 1994, 4.5% in 1995 and 5% in 1996. Thus, these increases totaled 13.5% during three years when the CPI increased by 7.9%, thereby providing the officers with an increase in real wages during that period of 5.6%. This is an average of just under 2% more than the annual increase in the CPI.

Annual salary increases of 4% are consistent with this relationship between increases in the CPI and wage increases. Obviously there must be greater wage increases than CPI increases if employees are to realize improvements in real wages and, while this cannot be guaranteed nor is this an automatic right or entitlement, it is consistent with long term trends. Employees have been able to experience increases in real wages because of improvements in technology and productivity. Having said that, this factor is not a large one in my decision-making. Thus, while I believe that 4% salary increases are justified on the basis of cost of living, this is not the main reason



for an award in that amount. Rather, as stated above, it is the very low salaries which these officers receive in relation to other police officers in the County that compels the conclusion that a salary increase which is moderately above the average 3.5% increase is justified.

Continuity and Stability of Employment While this could be a significant factor, given the Borough's willingness to consider contracting out police services, I do not believe that salary increases of 4% per year will cause the Borough to decide to eliminate its Police Department. If it makes that decision, which I recognize as a possibility, it will be based on total costs and not on the marginal increase in costs associated with 4% wage increases.

If it is true that a senior officer has left the Department, then the actual costs to the Borough are very likely to be less in 1998 than they were in 1997. A new police officer at the entry salary earned \$14,660 less than an officer with three or more years of service at 1996 rates and that officer also received a shift differential of \$600.<sup>13</sup> A 4% salary increase along with the change from a shift differential to a longevity plan costs only \$7,147 in 1998, approximately two thirds of the savings which the Borough will realize if it immediately replaces a senior officer with a new hire.

I recognize that the rate of unemployment in the area which includes National Park exceeds the State and national averages and that there have been significant job losses in the area in which the citizens of National Park tend to work. Also, police officers have not been laid off nor have they experienced wage freezes or reductions or other givebacks. Also, there has not been much turnover of police officers, although apparently one of the five officers left after the hearing closed.

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<sup>13</sup> All of the Borough's senior officers had over five years of service. A new officer will not receive longevity until after three years of service whereas a newly hired officer immediately received a shift differential of \$500. Thus, the savings to the Borough will be greater.

Given what even the Borough acknowledges are the extremely low wages of these officers, I am concerned that a merely average percentage wage increase would increase the likelihood of employee turnover with its attendant effects on the continuity of employment and the costs and disruption of hiring, training and breaking in new officers.

Thus, I believe that annual salary increases of 4% will not, by itself, cause the Borough to eliminate its Police Department and that such increases will make it more likely that the current officers will remain with the Borough, thereby contributing to the continuity and stability of employment.

### Summary

I have carefully considered the evidence and the arguments of the parties. I have considered each of the eight statutory criteria. The most important factor in my decision to award annual salary increases of 4%, given the extremely low salaries of these officers, is comparisons with other police officers in Gloucester County. Such an award exceeds the size of the average interest arbitration award by .5% annually. If ever there were a case for an above average percentage increase - and obviously approximately half of the awards exceed the average and the other half are below the average - it is in National Park. This is true even though there are compelling financial realities in National Park which explain why the salaries of police officers and, presumably, other Borough employees, are so low compared to municipal employees.

An award of 4% is very close to the current rate of increase in private sector wages in New Jersey. It is fairly consistent with the historical relationship between wage increases and increases in the cost of living. It will not create lawful authority problems for the Borough by requiring reductions in other areas in order to comply with the Cap Law. It will have a very minor impact on the tax rate and the taxpayers and,

indeed, given the apparent loss of a senior officer, there will be a reduction in costs in 1998 compared to 1997, although obviously that reduction would be even greater - by a small amount - if the wage increase were the 3% proposed by the Borough rather than the 4% which I shall award. The Borough has a large surplus and a demonstrated ability to regenerate surplus. It also realized a savings of between \$4,000 and \$5,000 by changing insurance carriers. Therefore, the financial impact of this award will be very small.

The 4% increase awarded in 1997 is larger than the 3% granted by the Borough to its other, unorganized employees. The salaries for those employees have not been set for 1998 and 1999. There is nothing, of course, which would prohibit the Borough from matching (or exceeding) the amounts awarded to the police officers in those years when it sets the wage increases for the other Borough employees.

Accordingly, I hereby issue the following:

#### AWARD

The term of the new agreement shall be three years from January 1, 1997 through December 31, 1999.

Salaries shall be increased across-the-board by 4% effective January 1, 1997, by an additional 4% effective January 1, 1998 and by an additional 4% effective January 1, 1999.


The shift differential shall be eliminated as of December 31, 1997.

A longevity plan shall be implemented effective January 1, 1998 as follows:  
three or more years of service - \$300, six or more years of service - \$600, nine or more years of service - \$900, twelve or more years of service - \$1,000, fifteen or more years

of service - \$1,100, eighteen or more years of service - \$1,200, twenty-four or more years of service - \$1,500.

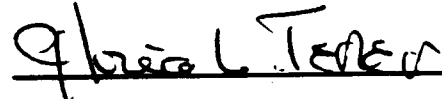
Except as otherwise mutually agreed by the parties, the terms of the January 1, 1994 through December 31, 1996 agreement shall be continued without change in the new agreement.

Dated: May 28, 1998  
Princeton, NJ

  
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Jeffrey B. Tener  
Arbitrator

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

On this 28<sup>th</sup> day of May, 1998, before me personally came and appeared JEFFREY B. TENER to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

  
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GLORIA L. TENER  
NOTARY PUBLIC OF NEW JERSEY  
MY COMMISSION EXPIRES SEPT. 8, 1999