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In the matter of the Interest Arbitration  
concerning the negotiations impasse  
between

DECISION AND AWARD

The Township of West Caldwell, New Jersey

of

and

Frank A. Mason, Arbitrator

West Essex PBA, Local 81, [West Caldwell  
Unit]

Re: PERC Docket IA-96-128

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APPEARANCES

For the Township: Robert L. Podvey, Esq., & Margaret Lambe Jurow, Esq.,  
Podvey, Sachs, Meanor, Catenacci, Hildner & Cocozziello

Russell Jarger, Chief Financial Officer

Ben Martorana, Administrator

William E. Payle & Richard C. Norgard, Councilmen

For the PBA Richard D. Loccke, Esq., Loccke & Correia

Richard F. Valentine, Lieutenant, President, Local Unit

Michael Moran, Sergeant

Gerard Paris, Detective

INTRODUCTION AND PROCEDURAL BACKGROUND

On March 21, 1996 The Public Employment Relations Commission recorded a filing of a petition to initiate compulsory interest arbitration based on a declaration of impasse, by Richard F. Valentine, President of Local 81, PBA, West Caldwell Unit, concerning negotiations with the Township of West Caldwell involving a unit of police employees in the titles of Patrolman, Sergeant and Lieutenant, now numbering 28. The petition included a listing of economic and non-economic issues which were described as unresolved mandatory subjects of negotiation. These negotiations concerned a successor Agreement to that which had been in effect from January 1, 1992 through December 31,

1995. The filing indicated there had been several negotiations meetings which had taken place between November, 1995 and February, 1996.

The Township filed a response to the PBA petition on April 1, 1996 and included a notice of intention to file a petition for Scope of Negotiations Determination which addressed eight of the PBA demands, six of which were described as permissive and two of which were considered improper subjects of negotiation. This was subsequently undertaken, [SN-96-107], and they were ultimately determined to be mandatorily negotiable by the PERC. That determination was issued on November 1, 1996 and not timely available to the parties prior to the close of the last day of hearing on November 4th. Neither party expressed a need for additional time to introduce further evidence in the record as to the issues involved, relying on the record and the post-hearing briefs.

On April 2, 1996 the Township submitted an amendment to its response of April 1st. This did not produce any resistance but, on August 29th the Township submitted a further amendment to its original response to the PBA filing for Interest Arbitration. The issue was the elimination of any longevity payment plan for employees hired on or after July 1, 1996. The PBA, in a letter to the Commission, resisted this as untimely and inconsistent with the rules of the Commission. On September 12, 1996 the Acting Director, Arbitration responded to the parties and indicated that the issue was under the exclusive jurisdiction of the arbitrator who would make a determination.

The PERC, assigned Docket IA-96-128 and on May 20, 1996, by the Acting Director, Arbitration and pursuant to the mutual request of the parties, appointed this arbitrator to conduct a hearing in accordance with provisions of P.L. 1995, C. 425 and to render a determination of the impasse. An initial date of hearing was postponed and the parties first met with the arbitrator on July 1, 1996 on an informal basis in an attempt to mediate the dispute. The mediation process continued on August 23rd but did not resolve all issues. Formal hearings were set and conducted on September 10th and November 4th, 1996. The parties elected to file post hearing briefs and a response brief which was received on February 28, 1996 at which time the record of the hearing was closed.

During the formal hearings the parties were given opportunity to introduce argument and evidence and to examine and cross examine sworn witnesses. They had been reminded by the arbitrator of the obligation under the statute to identify the relevance and relative importance of all statutory criteria and to address those in their presentations and that the consequence of failing to do so would be interpreted by my assumption that any criterion not addressed were not considered appropriate for consideration.

In the midst of the hearing proceedings the Township raised an objection to the presence of a consultant to the PBA based on considerations of impropriety and conflict of interest. This was not readily resolved at hearing and the parties were asked to make formal submissions of position as to the issue. The Township, on September 20th, 1996, filed a formal Motion to Exclude, along with an accompanying certification and a legal Memorandum in which it set forth its position and reasoning. The PBA immediately filed

a Memorandum of Law in opposition to the Employers Motion. After consideration of these documents and related research as to the foundation for such determinations I issued a Disposition of Township Motion on October 9, 1996. That decision placed certain limits on the proper participation of the individual and left open an avenue of appeal to the Township but otherwise rejected the request. The Township acknowledged my Disposition, declined to undertake the appeal suggested, but reserved any right of appeal it might later undertake. I note that none of these documents are to be considered a part of this Decision and Award and are not made part thereof.

The parties did not reach an agreement as to an alternate format of the interest arbitration process which resulted in conventional arbitration as the method to be employed. In this scenario the arbitrator is authorized to resolve each disputed item based on a fair and equitable consideration of the facts presented and application of the statutory criteria. In the following pages I shall indicate the determination of each impasse issue and the reasoning which underlies my decisions. \*

## POSITIONS OF THE PARTIES

### FINAL OFFER OF THE TOWNSHIP

#### ECONOMIC ISSUES

1. **Wages:** For the first contract year beginning January 1, 1996 there shall be an increase of 3.5%; and in each of the following years, effective January 1st, additional increases of an amount equal to the percentage increase in the cost of living plus .5%. The Agreement to terminate on December 31, 1998.
2. **Compensatory time:** Officers must use compensatory time in the year earned. Compensatory time owed to an officer at year end will be paid in cash or placed in a deferred compensation plan if the officer is eligible. Officers with compensatory time already accumulated may continue to "bank" that time up to a maximum of 480 hours as dictated by the Fair Labor Standards Act.
3. **Longevity payments to be eliminated for all employees hired after July 1, 1996.** This is the issue noted above to be in dispute and to be determined by the arbitrator.
4. **Work schedules:** A regular shift will consist of between 80 and 84 hours every two weeks at the discretion of the Chief.
5. **Medical benefits:** Full health benefits plan for each officer equal to the First Option Preferred Provider Plan.

### FINAL OFFER OF THE PBA

#### ECONOMIC ISSUES

1. Wages: A three year Agreement with annual increases of 6% effective on January 1st.
2. Longevity fold-in: Current longevity payments to be added to the regular wages of officers so that they become included in base for computation of all wage based benefits, including overtime pay and pension credits.
3. Holiday fold-in: Current payment for holidays should be added to base wages as stated for longevity in #2 above.
4. Senior officer differential: Officers with 20 years of service shall be granted an additional step in their pay equal to one half of the difference in the current base rate and that of the next higher rank.
5. Higher rank pay: Elimination of the current 10 day waiting period for eligibility for higher rank pay when temporarily performing duties at the next higher rank.

#### NON-ECONOMIC ISSUES

1. Rules and regulations: Require that modification of same be subject to 10 day advance notification to the membership before enactment, and provision of an updated manual of same to all officers in the unit.
2. Embodiment of Agreement: The introduction of a Preservation of Rights clause to replace the current Article XII and incorporate broadly a maintenance of standards concept regarding all benefits, rights, duties, obligations and conditions of employment applicable to any officer under any rule, regulation, instruction, directive, memorandum, statute or otherwise.
3. Ceremonial activity: Proposal to incorporate the current practice of the Township as to providing leave and a Township vehicle to attend funeral services for any officer killed in line of duty in New Jersey in the Agreement.
4. Light duty: Proposal to define the concept of light duty for officers injured and incorporate the current practice in the Agreement.
5. Grievance Procedure: To be modified to incorporate a broader definition of a grievance by adding complaints arising from the application of rules or regulations, policies, agreements or administrative decisions to the current contractual definition which rests on interpretations or application of the terms of the Agreement.

#### PRELIMINARY DISCUSSION

During the hearing of this matter the focus was directed toward the economic differences of the parties. Each emphasized the comparative data criterion which was relied upon in

much of the discussion both as to wages and benefits values as contrasted with other public employers of police. Other of the statutory criteria were drawn into consideration or measurement of the impact of issues presented but the emphasis was clearly on the comparability factor. The parties supported their positions by introduction of numerous documents into evidence. Most of these exhibits were in the form of copies of original documents, principally labor agreements, which established and described the terms and conditions of employment of police of public employers asserted to be comparable to West Caldwell but also included other materials related to the economic issues presented.

The Township proposed that the proper group of employers to be utilized in making comparisons were those described as the "West Essex" communities. These were Caldwell, Fairfield, Cedar Grove, North Caldwell and Essex Fells. In each of these communities the representation of police was by West Essex PBA, Local 81. These communities were geographically in close proximity and were said to offer a similar socio-economic configuration to that of West Caldwell. The PBA proposed a much more diversified group of communities as appropriate for the comparisons suggested. Some of these were quite distant and clearly less similar to West Caldwell particularly as to size, residential versus commercial makeup, relative wealth as measured by average income and other factors. In an attempt to determine a proper group of comparables I examined all of those proposed. The Township raised particular resistance to certain of PBA's suggested inclusions and I found their reasons generally persuasive, particularly in the case of communities at substantial distance from West Caldwell or where they were of very different size or economic circumstance.

Some of Township's presentations included reference to other than the West Essex group and several of these were communities suggested by PBA as comparables. There were six which seemed to satisfy all reasonable standards of comparability. Curiously they had not been included in Township's list. Upon closer examination it was found that the West Essex group were generally paying lower annual salaries than were paid by the other communities which were both close by and otherwise comparable. After careful review I decided that these six communities should be added to the West Essex five in order to provide a comprehensive overview of the circumstances of police employment in the area. The six additions are Montville, East Hanover, Livingston, Lincoln Park, Roseland and Milburn. There were one or two others which might have warranted inclusion but there was little data presented on them and I felt a group of eleven to be sufficient for the purposes of my analysis. None of the six additions were on the list of those which Township had rejected as inappropriate.

The limitation of the scope of comparison to these eleven comparable communities [hereafter 11CC] assists in making reasoned analysis and conserves time while providing a viable and understandable basis for any conclusions to be drawn. There is also the advantage of being a group which the parties have suggested and is exclusive of other suggestions which were not considered proper inclusions by both. Further, the situation is that the West Essex communities did not include much data as to future years and as the anticipated agreement period was to extend through 1998 I felt it was imperative to gain

as much information as was available. The added six have a similar limitation as to future data but when added to the West Essex group do provide a more comprehensive basis for conclusions to be drawn. The 11CC will be used for discussions to follow except as otherwise noted.

My analysis and determinations will be fundamentally the result of applying the eight statutory criteria to the consideration of each of the issues presented. I will demonstrate my conclusions as to relative importance and relevance of those criteria in the discussions of each issue.

## THE POSITION OF THE TOWNSHIP

West Caldwell is a suburban community of approximately 10400 residents in a 5.5 square mile area with approximately two thirds residential and one third commercial composition. There is relatively little land available for future development and the Township is seen as mature in terms of its growth. Township employs only one hundred full time employees of which thirty are police and 28 of these are in this negotiations unit.

At the outset the Township is critical of the PBA's posture in this proceeding in that it asserts the PBA has failed to comprehensively address the burden imposed by the Police and Fire Public Interest Arbitration Reform Act particularly as to the requirement to fully address and describe issues of relevance and relative importance of the demands presented to the statutory criteria to be used for determination of the merit of those proposals. It points out that PBA has failed to provide evidence in support of its non-economic demands as well and suggests that this failure should weigh heavily in the arbitrator's consideration of such proposals as was suggested in my communication to the parties prior to the formal hearings. The Township indicates it has addressed those statutory criteria and has provided a factual relevance of its proposals and that the arbitrator should adopt those proposals which are described as a fair balance of consideration of the public interest, primarily as tax payers concerned with control of increasing costs of local government, with the interests of police personnel. It asserts that the police already enjoy superior economic circumstance as contrasted to those employed in other comparable communities and that its proposals will, if adopted, continue to provide fair and reasonable gains.

The Chief Financial Officer [hereafter CFO] of the Township testified extensively and noted the property tax rate was \$2.87 per one hundred dollars valuation. he indicated that his subordinates compiled certain financial data to be used in the Township's presentation. On one such document he noted that police wages had been increased at a substantially larger annual percent than non-police employees of the Township during each of the years of 1989 through 1995. The difference varied between .5% to as much as 1.5% during that time frame. He noted also that the increases were in excess of changes in the Consumer Price Index [CPI] for each year for both police and other employees. Police wages increased 56%, other employees' wages increased only 43% and the CPI increase was 31%.

The CFO provided insight as to exhibits showing comparisons of wage increases with other municipalities. In the case of Milburn he explained that a split increase of 2% in January and 2% in July of a year was construed to be a 3% increase because of the value of the payout in that year. He also described an assumption as to the value of the Township proposal for 1997 and 1998 at 3.2% per year as being based on a continuing CPI rate of change of 2.7% annually plus the .5% suggested to be added and noted that this could fluctuate upward or down if the CPI turned out to be other than 2.7% in either year. He had selected the figure of 2.7% as that had been the rate of CPI increase as of August, 1996, the most recent figures available at the time of his testimony.

He described the Township's position concerning compensatory time as necessary to get the Township out of a situation where the accumulations can be delayed and remain unfunded liabilities until the employee chose to retire at which time they would have to be paid at then current daily rates. The alternative proposed allowed the employee to accept cash payout annually or to place the accumulation for that year into a deferred compensation account which would be invested as chosen by the employee. Historically those investments have grown at a greater rate than the wage increases so that the employee would, most probably, receive more from the deferred investment plan than an accumulation of credit with the Township. This would also eliminate all bookkeeping responsibility from the Township and allow it to avoid the hanging liability of future payments. He illustrated the genesis of this problem by providing information as to thousands of hours of such liability already on the books adding up to a value of nearly a hundred thousand dollars to be paid in the future and noted that the Township should not become an investment or banking function. He further illustrated the problem by noting the example of an employee having accumulated 1800 hours. This is equivalent to almost a year of compensation and could be taken whenever the individual decided to retire but could not be reliably anticipated in budget preparation. Under the established 457 Plan each employee could defer up to \$7500 of such compensatory time in a year with choice or mix of investment modes.

The CFO also testified as to the increase in wages in Essex County in 1995 as being 3.9% in contrast to Township's police who received 6% and other Township employees at 4.5%.

He also commented on Township's proposal to change the Health Benefits plan. It was his opinion that the Township could utilize a preferred provider plan with the dual advantages of lessened annual costs to the Township as well as to the employees while maintaining a comparable degree of benefits. To the extent that an employee were to utilize services out of the PPO network there would be increased costs but the option would always be there. In addition employees would have direct access to specialists without the need for first seeing a primary physician and such visits would be less costly to both Township and employee even for the same provider. Cost of Doctors' office visits would be at \$10, a significant advantage.

He described the potential savings to the Township as being nearly 10% of current premium costs which, for family coverage, would mean about \$600 annually for each family covered, in addition to reduced costs to employees based on lowered costs of hospitals and doctors participating in the plan. As family coverage has been driven from \$4487 in 1990 to \$7938 in 1996 he suggested it was both prudent and appropriate to take steps to restrain future cost growth which adoption of the PPO plan would accomplish. He did admit that out of network, and this would be particularly the case for out of state situations, would involve greater costs than under the current plan.

He emphasized that costs of many other employee benefits are not within the Township's control and illustrated this with figures concerning police pension contributions which have risen from \$168,000 in 1990 to \$249,000 in 1996 making overall employment costs much higher.

He also provided an illustration of the costs of the PBA economic proposal for a three year contract as compared with the Township's offer. This included the impact of wage increases on other wage driven costs and was presented in a cumulative analysis. Under the PBA proposal the overall costs for a three year period would be \$760,434 while the Township plan would require new dollars in the amount of \$365,384, a much more affordable cost. He equated the PBA proposal costs to being 8 tax points as a one point increase produces just over \$100,000. Such a one point increase is the equivalent of \$21 on the average homeowner per year. I note that had the PBA proposed program been implemented in the budget for 1996 it would have required only a 1.4 point increase in 1996, a further 1.1 point increase in 1997 and something like a 1.2 point increase for 1998. Thus the total would have been an increase of 3.7 points or just over 1% of the tax base over the three year period. Of course since the only year of the three year period available for adjustment of budget is 1998, the Township's flexibility is somewhat lessened except as there has been provision for anticipated increases in the 1996 and 1997 budgets which would reduce the need for additional funding. This computation is entirely hypothetical as the rate of wage increases for the three year period has not yet been determined.

In cross examination the CFO admitted there were several substantial new ratable projects under construction including the renovation of an industrial complex and development of a 280 unit senior citizen accommodation. He also admitted the selection of comparable communities for contrasting salary and benefits did not include all towns close to West Caldwell and that there were other towns which probably could have been considered. When queried as to whether the number of hours to be worked for an annual salary was an important consideration he indicated, "Sure." He also indicated an understanding that the hours required in the work schedule performed in West Caldwell was significantly greater than in some other communities. This is an issue I will address in my analysis below.

When asked about the way in which the past two Agreements were negotiated with the police the CFO indicated that they were voluntary settlements. He also agreed that the relative differential afforded to police during the prior six year period had reflected a



trend toward smaller differences between the two rates but that the figures demonstrated that there was a pattern of paying the police substantially greater increases than was afforded to other employees, that both groups had been granted increases well beyond the rate of increase of the CPI and that the police settlements exceeded the CPI increases by about four percentage points in each year.

Further in this examination the CFO indicated that a portion of the information presented in exhibits of the Township had to do with the conditions as they existed at the end of 1995. As there had been a number of retirements there was a consequent inaccuracy of that data as of the time of submission in this proceeding, particularly with reference to the cost predictions of the new contract proposals by PBA as well as those of Township and of the underlying payroll. There is some offset to Township costs due to Federal support for two newly hired employees at approximately 75% of listed salary.

When asked to explain certain details of the deferred compensation plan the CFO indicated that the returns historically realized were not guaranteed nor principal investment in the funds insured.

The Chief of Police also testified particularly concerning the impact of certain PBA proposals on the operational aspects of the department. He indicated that the request for advance notice as to rule changes would interfere with the prerogative to take such action as was deemed necessary. However, he said he had no reason to object to the presentation of a new rule to the police personnel before it was due to be effective whenever the matter did not require timely implementation which would not allow a specific time period for introduction. There is a procedure which involves the department and the Mayor and Council which, together, adopt such changes by resolution. The requirement to review these things with the PBA could interfere with the normal administrative process. This was seen as an intrusion on management's right to control and direct the department.

He was equally resistant to the suggestion that the current practices concerning both ceremonial time off and provision of light duty to injured employees be incorporated into the Agreement, as this would unduly interfere with the exercise of managerial judgment required when such circumstances arise and must be considered against a backdrop of operational, safety and functional needs. He pointed out that he had granted appropriate time off for ceremonial participation which he perceived as the representation of the Township and of the PBA on such occasions but which should not be seen as limited to representation of the PBA. He was of the opinion that such should remain the operative procedure. Likewise he noted the need for careful consideration of the particular circumstances surrounding the issue of assignment of light duty. There must be a reserve of flexibility in order that such situations be appropriately dealt with, a flexibility which he indicated the record of such events would suggest had been carefully exercised until now. He stressed the need for evaluation both of the officer involved and of the availability of a proper assignment which might be made so that both the employee and the Township interests were satisfied.

This was the extent of the testimony of Township witnesses. No emphasis was placed on financial records or the relation of expenses incurred as a function of negotiations with budget caps or the capacity of the taxpaying residents to bear associated costs. Certain documents reflecting the fiscal circumstances of the Township were introduced by the PBA and were relied upon in assertions as to the relative impact of the PBA proposals on the fiscal condition of Township.

In the post hearing brief filed by the Township and in its response brief emphasis was placed on the issues discussed during testimony at hearing and outlined above. However certain additional information was highlighted. In part there was a further reminder of the failure of PBA to meet the test of the defense of its proposals as contemplated by the Legislature when it set forth the statutory criteria for consideration of issues in the dispute as well as added criticism of the lack of accuracy of PBA's data. Township went on to note that the moneys set aside for the satisfaction of negotiations resolutions for the years 1996 and 1997 were not elastic enough to accommodate all of the costs of demands made by the PBA.

Township championed the case for consideration of its demand for elimination of longevity payment plan for future hires. In this endeavor it was pointed out that the issue had been brought to the attention of PBA and was an issue throughout the negotiations, and never removed from the table. The inadvertent omission should therefore not preclude consideration of this issue by the arbitrator. It claims that PBA will not be prejudicially disadvantaged by such consideration as the issue was discussed in the unsuccessful mediation sessions held as part of this proceeding and therefore the PBA had knowledge of its importance to the Employer. I note, however, that the specific condition of the mediation sessions was that issues discussed and positions taken would not be considered in the formal hearings if no mediated resolution were to be reached.

In addition Township claimed that the supplement to its Response was made on August 29th in plenty of time for the PBA to consider any necessary rebuttal or challenge to Township's evidence on the topic. It should be noted that the record of the formal hearings is devoid of any such evidence or testimony in support of that proposal.

While I can readily empathize with the anguish of Township for its inadvertent omission of this issue in the Response, I do not understand why it did not pursue the making of a complete record as to its reasons for the elimination of the program with supportive documentation and/or testimony. Had this taken place PBA would have had a more sufficient opportunity to present any contrary views or data and I would have had a reasonable basis of information upon which to determine the substance of the matter and the degree, if any, to which the Township ought to be relieved of the timeliness obligations contemplated in the rules. Under the circumstance I do not feel I have reason to set aside the rule in favor of the Township's request.

Among the instances of claimed PBA error and/ or disputed method of measuring or calculating certain data noted in Township's brief are a number of examples which are somewhat complicated by the use of comparability data from municipalities which I have chosen not to consider as explained above. For this reason I shall not attempt to analyze or explain these incidents. There were errors and misleading conclusions presented, of this there can be no doubt, although there is no absolute corner on the market by the PBA. The cure for this is for me to extract the information upon which my determinations rest from the evidence and to draw my own conclusions.

What is surprisingly absent from the Township's case is the provision of detailed information to demonstrate the impact of an award and specific consequent limitations on the fiscal plans of the Township or on its priorities or as to services for the residents except as the award might be reflected in terms of tax rate increases. The PBA shares in this omission although it did present a number of financial records of the Township in evidence which, it claimed, demonstrated the relatively minor impact such demands as were made would have on taxpayers.

In its briefs the Township emphasizes the need to reject the unwarranted intrusion on management prerogatives which would follow an award favorable to the PBA on changes in the definition of grievances and of the "Embodiment" clause. Township points out that, in addition to such being intrusive of the public employers responsibility to effectively manage the operations of the Township, the PBA has failed to meet the test of having to justify those demands.

#### THE POSITION OF THE PBA

During the hearing and in its brief the PBA has placed emphasis on the comparison of changes experienced by other police units to the demands placed before the Township. In addressing the statutory criteria PBA points to the evidence of this police organization having an excellent record of performance in the public interest. It claims to be well organized and competent to meet the changing needs for crime prevention and public safety in an environment of increasingly complex law enforcement. In the face of increasing workload the size of the department has been reduced at the highest level of experience but the performance remains effective.

The PBA made a concerted effort to demonstrate the relative value of pay and benefits compared to other jurisdictions using the highest pay rate for Patrolman as the measurement standard. This is done because most employees are in that position and because it is the common position among various police departments. Both the Employer and the PBA placed great importance on this comparability criterion and I will do the same. Because I have determined to use a group of 11CC in my comparisons it is unnecessary to dwell on examples of either party in their submissions as they are distorted by data concerning municipalities not considered most comparable or are taken from samples too small to provide a sufficient picture of the situation. In my analysis below I will more fully explain all conclusions reached. Suffice it to say here that this criterion has

emerged as the single most important consideration. It is, of course, at least potentially offset by others, but none of them have emerged in the presentations of the parties as having been of great significance in the consideration of economic issues, the core of the impasse, at this proceeding. Neither party has advanced contrary priorities except as to a concept of overall costs and, in the case of non-economic demands of PBA, intrusion on managerial prerogatives and the potential effects on delivery of services.

The PBA summarized its facts concerning comparative police wages and benefits in other areas of public employment and found that West Caldwell was about average in the latter but trailed in wages. Based on this it criticized the Township's proposals as to wage increases as below that of the average of increases being provided by other employers. In pursuit of this PBA relies on the fact that other arbitrators have found the work of police to be sufficiently different from other occupations as to warrant comparisons only with other police. In its brief PBA notes that the disparity between the rate of salary increases granted to police in contrast to other employees has become the norm as illustrated by the example of West Caldwell during the past six years when voluntary settlements consistently favored police employees, a condition replicated and demonstrable in most municipalities and affirmed by testimony of the CFO.

The use of comparison data to private sector employment was also decried as unrealistic as the nature of the work and the hazards police must face are unique. PBA maintains there is really no other job in private sector employment which is comparable in scope and responsibility to that of a policeman in the public sector where the work involves the understanding, application and enforcement of the law, demanding hours of work and response to many emergent situations.

PBA also argues against the consideration of CPI as a determinant of wage increases. It points to the lack of any correlation of CPI and wage increases in the past, either when CPI was advancing at very substantial rates or in the last six years while CPI has been relatively steady and modest in annual change and while the Employer has regularly chosen to improve wages on a more generous scale for all its employees. This was confirmed by the testimony of the CFO cited above.

As to the lawful authority of the Employer, PBA maintains that there is nothing in the cost value of the proposals made which would, if awarded, cause any violation of the cap limitation on Township budget. The carry-forward of unused budget cap availability came to \$330,842 in the 1996 fiscal plan and it was anticipated that amount would have increased in the available limit of the 1997 budget. This flexibility along with the appropriation reserves for the payment of contract related costs leaves the Township, "with no lawful authority problem".

PBA also maintains that an award of the magnitude requested by the Union would not make a significant impact on the tax burden of the citizens, whom it describes as not upset about taxes. It illustrates this point by an examination of the last school budget vote in which fewer than six percent of the registered voters cast negative votes and only 16.5%

bothered to vote at all. The assertion is that a concerned citizenry would be protesting taxes by voting if they did not feel confident in the way in which the Township was managed. The conclusion is that the impact on taxpayers is not at all a critical consideration in West Caldwell, a community which is experiencing a healthy rate of growth under a competent fiscal management plan.

The continuity and stability of employment is considered, by PBA, to be a reference to the existence of terms and conditions of employment ordinarily found in similar employment situations. This suggests that there be a reasonable comparability as to the situation in the Township with conditions found elsewhere and the need to provide changes in wages and benefits sufficient to maintain or improve the relative status of these employees. There is no indication of instability in employment and the grant of PBA suggested improvements would not impact on that stability in any material way such as forcing the Employer to consider lay-offs. In fact, PBA asserts, the stability of employment will be assured by providing these represented employees with proper working conditions which will assure good morale and continued loyalty to the Employer.

## DISCUSSION OF SPECIFIC ISSUES

### WAGES, BENEFITS AND OTHER ECONOMIC ITEMS

As indicated above I have chosen a group of eleven communities to be utilized for comparison purposes. The parties relied almost exclusively on comparisons in defense of their proposals as to wage and benefits increases. However they used a number of communities which have been determined to be inappropriate for such comparisons or an insufficient group not fully representative of the area around West Caldwell. The first step in this analysis is to establish a basis for comparing West Caldwell with the 11CC. Most of the information given me at hearing related only to annual pay rates and percent increases. However the work schedule was found to vary materially from one comparable to another. To eliminate this distortion I have expressed the annual salaries in rate of pay per hour worked. In this way the annual 2080 hour schedule in one community can be fairly measured against that of a schedule involving 2007 hours in another or 1886 hours in a third. For my purposes I have grouped the communities considered to be comparable and have generally expressed the comparison of West Caldwell against the average of them.

The West Caldwell police are scheduled to work 2190 hours each year but are given 104 hours of compensatory time off as an offset to the schedule. In effect they were, in 1995, paid for 2086 hours at an hourly rate of \$24.08. The 11CC average annual salary was \$49729 in 1995 and the average hourly pay of those reporting annual hours was \$24.29. It is reasonable to describe these hourly rates as essentially comparable although it is also true that there are significant variances within the 11CC group. Of all reporting a work schedule of 2080 hours the average hourly rate was \$24.06, almost identical to West Caldwell and not surprising as the difference between West Caldwell and the 11CC

average annual salary was less than 1% with West Caldwell in 4th place from the top salary paid.

The rate of salary increase provided for the West Essex group for the 1996 year is known to be 4.94% on average. The rate change for the 11CC is 4.96% although it reflects only nine of the eleven having set 1996 salaries. There is a very narrow variation in these rates of increase for the 1996 year. It is apparent that West Caldwell would have to grant just under 5% in order to keep its police in the same relative position in comparison to either the West Essex group or the larger 11CC group [which includes the West Essex five]. An increase of 4.95% would leave the West Caldwell hourly rate at \$25.27 just about the same as that of the 11CC using a 2080 schedule average hourly rate which would increase from \$24.06 to \$25.25. If the arbitrator awarded the offer of the Township, which is 3.5% for 1996, the hourly rate would be adjusted from \$24.08 to \$24.92. The result of this would be that West Caldwell patrolman pay rate would be \$.33 per hour less than average instead of the \$.02 more paid in 1995. The 6% proposed by PBA would result in a rate of \$25.52 or \$.27 more than the group average.

At the time of the completion of the hearing and briefing schedule there were only a small group of the 11CC which had established salary increases for 1997 or 1998. In both years there were figures for only three communities and they averaged 4% in each year. The offer of Township was cost of living plus a half percent in each year. PBA claimed this was not a firm or definitive offer and argued the statutory command was to provide more tangible proposals which could be measured against the criteria set forth. The argument of Township was that the offer allowed flexibility to increase wages in lock step with the movement of the economy. PBA noted that such use of CPI was not made in past years and that it failed to provide certainty for anticipation of the actual wages to be earned in each year, an important objective of PBA.

The 1996 year has since ended and the rate of CPI increase was 2.9% so that the 1997 proposal of Township would now be calculable as 3.4%. As contrasted to the 4% attributed to the small sample of known increases the 3.4% raise would be 15% smaller. Recent developments suggest that there is a threat of increased inflation. The Federal government has pressed interest rates upward in an attempt to avoid same, but the rise in interest rates may have the effect of influencing price increases as well.

It is my experience that the rate of increase in contract settlements or in arbitrated awards has been declining over the last several years. To examine the appropriate salary increase for 1996 at this time and using 1997 trend perspective as a basis for that determination would probably result in a different judgment than if the same determination had been made in 1995. In order to be fair and consider 1996 as it should be one has to rely on the actual changes which took place in that year. Fortunately there is adequate data to do that. The view of the future is much more speculative as there are far fewer settlements in evidence.

In order to reach a reliable comparison of the West Caldwell police with other of the 11CC as to a wage and benefits package it is essential to consider the other wage related costs. To determine an appropriate award those facts have to be weighed along with the other relevant statutory criteria. I shall begin with the benefits portion of the income package.

It is virtually impossible to accurately assess every cost related to benefits because the evidence supplied does not include sufficient precise detail. However, there is substantial information provided as to certain benefits. Among these are the number of Holidays and vacation days provided, sick leave, uniform maintenance, personal days, the medical plan and longevity program.

In comparing these key benefits as provided by West Caldwell with the average of the 11CC there was found a rather remarkable similarity between them. The maximum annual vacation in Township was 25 days and in the 11CC it was 24.95. Holidays in both were 13 per year and 9 of the 11CC paid a longevity plan maximum of 10%, as did West Caldwell, with one paying 5% and another 12%. All of these communities provided either the State Health Benefits Plan or an equivalent traditional plan, although several specifically provided the option for the Employer to change carriers with comparable benefits. In addition all had a paid dental plan including family coverage plus some had separate prescription drug plans and eye care assistance. The specifics of many of these plans are not available in the evidence so can't be contrasted on a detailed basis. None had negotiated a preferred provider hospital/medical program, as was proposed by West Caldwell.

The 11CC each have included a payment for uniform maintenance and in some cases replacement as well. The average payment was \$873 and the range was from \$600 to \$1350 per year. West Caldwell makes no specific payment but allows unlimited cleaning costs and replaces uniform items as necessary.

The sick leave plans of the 11CC generally provided at least 15 days per year but this varied from 12 days to unlimited. There really was no pattern and among the six not utilizing the 15 day plan four were more generous and two were at 12 days. Most of the 11CC tied sick leave accumulation to a termination payout plan. Again there was no clear pattern and there were variations as to the maximum number of days from 30 to unlimited with the rate of payout percentage ranging from 50% to 100% of normal daily pay and in one case specifying a maximum payout as \$12,500 and in another specification of the addition of longevity pay to the computation of daily pay for this benefit. That practice could be more common, but it was not specified as such in most Agreements. Another employer provided termination pay separate from any unused sick leave accumulation at 90 days pay. West Caldwell's plan allows 12 days per year with unlimited accumulation and payout as terminal leave at the 50% of final daily pay level and an additional five days annually which do not qualify for terminal leave payout and which are only usable if ordinary days are exhausted.

Paid personal days was another benefit which varied considerably within the 11CC. In a few cases the provision of personal days was entirely separate from any other element and usually provided 3 or 4 days. In other circumstances the personal leave days were taken from accumulated sick leave balances or awarded based on non-use of sick leave and in some there was no provision for personal days. West Caldwell allows 2 personal days per year to be taken from sick leave balances.

It is impractical to attempt an absolute comparison of the value of all benefits given the variations in practices and of the use of the benefits which make the identification of a common denominator difficult, however, one can conclude that, as to the basic items, West Caldwell's plan is equal to the average of those comparison communities.

It should also be pointed out that the provision of a wage/benefits program by a particular employer appears to have been peculiar to the negotiations emphasis encountered so that, for example, a relatively smaller than average salary and vacation allowance may have been offset by higher than average sick leave, termination payout and richer longevity plan provisions as is the case in North Caldwell where the maximum salary was the lowest of the 11CC in 1995 but where the other benefits ranked near the top. In addition, North Caldwell provides a very enticing pension supplement which can deliver \$57000 over 15 years! Conversely there are situations where the wage/benefits package is richer in almost every category, as is the case of East Hanover where the 1995 salary was the highest of the 11CC and other benefits were above average.

The PBA has demanded other economic improvements among which are the fold-in to base salary of the holiday and longevity payments. An examination of the 1992-1995 Agreement, Article II Section E, reveals that longevity payments are already included in the calculation of overtime premiums and, in the final year of employment, in the base for purpose of computing retirement pension benefits. This treatment is reasonably generous and compares favorably to the situation present in the 11CC.

The fold-in of holiday pay would provide an additional boost to the pension computation. PBA presented no compelling argument as to this demand. It does not appear to be a practice among the 11CC based on a review of the evidence provided except that in East Hanover the holiday pay is included for pension purposes but not for computation of overtime premium. It would represent an added cost to the Township because this amount would be added to the base pay for overtime compensation and would also require pension contributions. In the normal course of scheduling police perform work on holidays if they fall on scheduled work days. The holiday allowance is 104 hours or 13 eight hour days. No special justification was proposed for these added costs of employment and in a period when the Employer has determined it should attempt to restrain unnecessary expense expansions it would seem such an adjustment, not common as a benefit, should be granted only with the most convincing reasons.

PBA also demanded a senior officer differential. This would be the equivalent of an additional promotional adjustment by moving the wage paid by half the difference between



the base rate and pay at the next rank. As this differential is at least 10% under the current Agreement it would result in a 5% salary improvement. The employees involved would take on none of the increased level of responsibility of the higher rank. This plan would be unique in the sense that none of the 11CC provide anything like it but PBA introduced evidence showing one agreement which included this benefit in a community not within the 11CC. The Township vigorously opposed this proposal indicating it was uncalled for, would simply exacerbate a situation wherein police employees were granted disproportionately higher income compared to other employees and, to the extent that police personnel with 20 years of service, described as the singular condition to be satisfied to qualify for the differential, would automatically gain this benefit, it would inflate the cost of this contract negotiation and future budgets of the Police Department in an unwarranted way.

The underlying predication of PBA as to entitlement to increased benefits was the conclusion advanced that West Caldwell police personnel were paid 4% less than in other comparable communities and that they did not enjoy a competitive benefits package which was described as, "from average to poor". PBA added, "There are no offsetting benefits which would make up for the low base pay rate." In particular PBA pointed to West Caldwell as having no program of educational assistance or pay for educational achievement and no cash payment for uniform maintenance. Curiously no demand was made by PBA as to either of these benefits and therefore I will not consider them except in evaluation of overall compensation. I note that the uniform maintenance payments are generally predicated, at least theoretically, on the sustained cost to employees and West Caldwell pays all such costs and provides replacement elements as needed.

These contentions as to the inadequacy or lower than competitive status of Township's compensation program have, as outlined above in some detail, been demonstrated as inaccurate at least as to the group of 11 communities chosen as appropriate for comparisons.

The last of PBA's economic proposals concerns the payment of an individual assigned to a higher rank for temporary duty. The current [1995] Agreement provides that officers or supervisors assigned to assume the responsibilities of a higher rank shall be paid the rate for that rank beginning on the 11th day of such assignment. This arrangement is not totally unsatisfactory, however, because of the way in which schedules are drawn, individuals are frequently called upon to substitute for someone but rarely for long enough periods to qualify for the increased payment. A review of agreements of the 11CC placed in evidence suggests only a few deal with this issue and only one provides a salary adjustment on a first day basis as was demanded by PBA and that provision is not entirely clear as it speaks of appropriate rate of payment and does not specify a waiting period. Some add a stipend of \$7.50 or \$10 per day and others require a waiting period of as long as 35 days to become eligible. Most make no provision at all.

It is obvious that the parties had reached conceptual agreement as to payment for working at a higher rank when this item was incorporated in their Agreement. So there is

no philosophical difference between them. The problem stems from the peculiarity of the shift changes which seem to preclude receiving the fruits of their agreement. Township insists this is also due to the circumstance of an individual absence for terminal leave and that the problem will go away in April of 1997. I believe this can and should be altered in a way which is reasonable to both parties. My determination will be expressed in the Conclusions below.

There were several economic demands made by the Township. The first was the requirement that the current compensatory time plan be changed so that officers must use the comp time in the year earned or, should there be a balance remaining at the end of a calendar year it would either be paid in cash or placed in a deferred compensation plan at the officer's choice. In exception to this, officers with current balances would be allowed to maintain a bank of that time up to a limit of 480 hours as imposed by the Fair Labor Standards Act [FLSA]. The rationale for this demand is that unlimited accumulation of earned comp time has led to the Township carrying an increasingly large unfunded liability. As these comp time hours are ultimately paid at the then current rate of pay, possibly many years after being earned, the value of that liability enlarges incrementally as wage rates increase. The CFO testified that as of December 31, 1995 there was a current value of comp time on the books in excess of \$106,000. Should all unit members achieve and maintain the FLSA limit of 480 hours that liability would exceed \$350,000. Because there is no certainty as to whether or when an officer would choose to cash such hours in this amount can't be budgeted.

Township perceives itself as being placed in the position of becoming a bank, which is inconsistent with its responsibility. It therefore offers the officers the option of accepting cash value which can be employed in any way by the officer or of placing the annual comp time accumulations in a deferred compensation plan which offers investment options which generally have produced higher gains than would the application of salary increases which underlie those comp time values.

PBA is resistant stating the deferred compensation plan does not offer a guarantee as to results of investment and that it is concerned about limits as to the flexibility of drawing down the funds. There is concern too that the principal amounts of such investments are not secured by insurance or a guarantee of the Township. PBA also points out that the "worst" experiences of the Township have related to redemptions of accumulations which were achieved prior to the limitation of FLSA and that the 480 hour restriction effectively reduces that potential problem. Township does not agree.

The Township proposed elimination of the longevity plan for all officers hired after July 1, 1996. Although I have determined that this demand should not be considered as explained above, I will outline what considerations I would have made as to this issue as presented as the conclusion reached would have the same affect. Township asserted that the plan has the effect of enlarging the overall pay of individuals and produces unwarranted strain on limited budget resources. However, Township has made no compelling argument as to inability to pay current benefits and relies, in its post hearing brief, on a concept of the

public's desire to control ever increasing costs of local government and the overall compensation paid to police officers as its underlying motivation for the change. PBA describes this as a benefit common to virtually all police in New Jersey. In evidence presented at hearing every agreement includes such a plan and only one example was shown to incorporate elimination for new hires. Township concerns that police have too many advantages not affordable for the other public employees and that the growth of both salary and benefits costs have become unjustifiable leads to their demand that some brakes begin to be applied and that the proposal made does not impact on employees already on the payroll who may have made plans based on the benefits plan in effect. New hires would come into service without that same assumption and would not be "injured" by the change. My conviction is that a majority representative of employees is always concerned about the elimination of contractual benefits for new hires because of the potential future problem such distinctions pose. In this situation none of the new hires brought on board during this Agreement period or even the next will be affected or represent a cost to the Township. Absent more convincing evidence that there is a need to remove this widely accepted benefit I would be reluctant to eliminate it.

The Township has demanded the conditions surrounding the hours of work be changed to provide greater flexibility by allowing a variable number of hours, 80 to 84, to be worked in each two week period at the discretion of the Chief. This demand is somewhat difficult to evaluate as the related testimony presented from both parties was not very substantial. As there is already a contractual commitment to the 12 hour 2 on 2 off schedule with one give back 12 hour shift in each six week period I can assume this discretion might be implemented by reducing one work shift by 4 hours in each two week period as opposed to granting 12 hours at one time in the six week period. Neither side suggested that the impact of this flexibility would greatly change the current work situation but it could allow a more efficient schedule.

The last economic proposal of the Township involves the substitution of a full health plan equal to the First Option Preferred Provider Plan in place of the current traditional plan. Township indicates that this First Option Plan has previously been made available on an optional choice basis in order to familiarize employees with its benefits. It claims the medical benefits under the plan are superior, with cost savings to employees and to the Township resulting from the managed care aspect of the plan. The elimination of the option to continue enrollment in the traditional plan would simplify administration of this benefit and assure the relatively lower premium to the Township of approximately 7.6% in the case of family coverage. This is estimated to produce a saving of \$16,800 per year for the employees covered in this negotiations unit alone.

Under the First Option Plan employees would have the advantage of reduced costs of doctors visits, \$10 versus 20% in the traditional plan, plus the option to seek services of specialists without a primary care physician's approval. The employee would be limited to medical services by providers within the plan but could go outside the network and incur a 30% cost of all such services. Township indicates the in-plan providers include a broad spectrum of hospital facilities, doctors and specialists available throughout the state. In a

separate book entered into evidence there is a comprehensive listing of all such providers listed by County and service.

PBA denounces this change as a major reduction in benefit levels for its members and their families. It claims the Township has failed to adequately and comprehensively describe the plan and suggests this failure alone should be equated to a rejection of the proposal by the arbitrator as unreasonable and unwarranted.

In cross examination concerning this proposal the CFO indicated that plan coverage in retirement would be available but that out of state use was a problem yet to be addressed. He said that modifications to the plan could be made so that coverage could be made available in other states. This would require setting up a separate plan for retirees. He also stated that resolution of disputes concerning the equality of coverage or specific application of the plan would require the employee concerned to first deal with IDA, the administrator, and if not satisfied to bring the problem to him for consideration.

Further discussion and conclusions as to these economic issues will be presented below.

#### NON-ECONOMIC ITEMS

PBA has requested modifications of the Agreement in several ways. The first demand has to do with a requirement of the Employer to provide 10 days advance notice of rules changes and that each employee and the Association be provided an updated manual of rules and regulations. The testimony provided in support of this change suggested the reason to be that there be an adequate time for the Association to review and respond before a proposed change went into effect.

Township argues that such a requirement infringes on the managerial prerogative to operate the department and includes in this the right to make and impose rules not subject to the obligation to negotiate with PBA. It also points to current contract language which provides opportunity for unit personnel to grieve the reasonableness or justice of such rules or orders as are promulgated. Presumably this extends to the obligation to comport ones conduct to same and this would likely revolve around a concept of advance notice of such changes.

**As the PBA has provided no comprehensive evidence of a need for the modification proposed and as there was testimony to the effect that all personnel are routinely given as much notice of changes as are practicable given the circumstances, I believe it inappropriate and burdensome on the Employer especially as no instance of prior harm was shown to have taken place.**

A further proposal which relates to the above is to change and broaden the provision in the Grievance Procedure which defines a grievance. Based on the current construction of that provision, the introduction of the language suggested by PBA would have the effect of including in the issues grieveable to arbitration, rules, regulations, policies, agreements

or administrative decisions affecting the unit member. Most of this is already provided by the extension of the Grievance Procedure to include provisions of Article IX, Rules and Regulations paraphrased above. No substantial body of evidence was presented to demonstrate the need for further expansion of the definition and without persuasive evidence I am not prepared to order same. Virtually no other agreement of the IICC provides a more extensive definition of grievable issues which may ultimately be arbitrated than are contained in this Agreement. The breadth of the wording suggested can only be seen to encourage grievances and arbitration proceedings as to circumstances not part of the negotiated understandings of the parties.

PBA proposed the incorporation of the current policy of the Department concerning Ceremonial Activity into the Agreement. There is no evidence that these matters have not been adequately provided for in the past and therefore no basis for change other than to incorporate the policy in the Agreement. This is an area where the PBA and the Department have consistently evinced a singular attitude and desire to honor a deceased officer. The incorporation of such in the Agreement would have the indicia of changing this common courtesy to a one sided obligation as if the Township must be required or compelled to cooperatively participate. The Chief indicated his positive concern for continuation of this policy and there appears to be no reason to doubt his intention. Should there come a time when this mutual cooperative participation is endangered it will be time to consider whether it should be reduced to a contractual obligation and under what specific terms. To do so at this time would impose an unwarranted and undeserved stigma on the Department and Township. There is sufficient evidence of this as a past practice to assure continuation unless either party chooses to seek changes.

Light duty definition is another demand of PBA. Township is unwilling to give up its discretion in making judgments as to availability of light duty assignments or adequacy of individuals who, as partially disabled police, must be carefully evaluated as to the propriety of their being given such assignments including considerations of their personal safety. The record of Township providing such work to partially disabled employees is consistently good. Refusals have been rare and those appear to have been made for good and sufficient reason based on realistic assessments of the individual situations presented. I am convinced the Chief has performed well in this area and see no reason to tie his hands by contract language which would be difficult to properly draft without inclusion of the need for such judgments as the Chief has consistently made.

The last non-economic proposal of PBA is to replace the current Article XII, Embodiment of Agreement provision, which is essentially a complete agreement clause, with a broader statement requiring benefits issuing from any rule, regulation, instruction, directive, memorandum, statute of otherwise shall be maintained at not less than current levels and shall not be reduced or otherwise impaired. This represents a very broad restriction on matters well beyond the expressed knowledge, understanding or documentation of the parties. It would encourage disputes and the consequent litigation of matters which go far beyond the parties mutually expressed agreements. I find this to be unwarranted as no substantial supporting evidence has been presented to demonstrate the necessity for such a

provision, and so broadly drawn as to challenge the arbitrator to substantiate why the performance of his restricted statutory authority was properly exercised in making such an accommodating determination. I note also that the current language is virtually mirrored in most of the IICC agreements and most other contracts as well. It provides a statement as to the conclusiveness of the negotiations which serves both parties and deserves to be continued.

## CONCLUSIONS

### SUMMARY OF CONSIDERATION OF STATUTORY CRITERIA

The arbitrator is instructed to evaluate the application of the statutory criteria and indicate the relevance of those criteria to any determinations. In the body of this document above I have referred to most of those criteria and to the relative importance placed on them by the parties. I shall not repeat all of those observations here but attempt a summary of the considerations made.

The interests and welfare of the public is usually related to the question of the limitations imposed on municipalities spending by virtue of the application of the Local Government Cap Law. The situation in West Caldwell is such that those limitations do not play a significant role in this case. I do not intend to make an award which in any way infringes on those limits and the parties have not made any presentation or demand which, if granted, would incur such a problem.

The public interest and welfare extends to the need for an effective police force which depends upon their numbers and the efficiency of their work efforts as well as the circumstance of their morale. This is a highly effective police force and it is my judgment that the elements of this award will provide a sufficient level of satisfaction such as to continue their high level of morale and dedication to the Employer. At the same time I will have rejected those overtures which would have had the effect of diminishing the proper exercise of authority and supervision.

I do not consider this criterion to be of great significance in this instance primarily because it has not come into focus as an issue under assault but I have maintained a warranted focus on it in reaching my conclusions.

The comparison of wages and total compensation have been in the forefront of the presentations by both parties and are considered of critical importance in this impasse. The major thrust of demands have been on economic issues and the costs and rewards of a new multi-year contract are at the heart of the matter.

The Township has attempted to demonstrate the adequacy of its offers by making comparisons to other communities and other economic indicia such as private sector statistics and the circumstances of other than police employees, particularly in West Caldwell. PBA relied heavily on similar comparisons. I have explained above my

rationale for choosing the comparison base which I believe to be both fair and appropriate in these considerations. Having done so I was able to use the basic thrust of arguments of both parties applied to the data available from analysis of the conditions prevailing in the group of comparable communities to craft an appropriate award. My conclusions will generally maintain the relevant comparability of West Caldwell to that group and provide a level of cost which I believe to be within the fiscal capacities of the Township. Much of the comparative data is set forth above in the discussion of individual issues.

There were no stipulations of the parties to weigh heavily in these considerations. Both were agreed as to the proper length of the proposed Agreement. The Township did not claim the demands of the PBA would, if awarded, pose a threat to the lawful authority of the Employer although there was vigorous resistance to the possible fiscal impact of them or, in the case of some non-economic matters, of the impact on the managerial flexibility to carry out its responsibilities. I determined that the Township's concerns as to the invasion of its lawful authority was really more a matter of maintaining flexibility to manage effectively even though the issues presented were negotiable and did not present a danger to the lawful authority as such. It became clear that it was of great concern that a contract not be drawn which would endanger the continuation of delivery of a superior level of police services because of unwarranted interference as to the exercise of management's responsibilities. I gave these criteria substantial consideration and relevancy in my analysis of the demands placed on the table.

The fiscal impact of the terms awarded are believed to be within tolerable limits of the Township and will also provide reasonable improvements aimed at maintaining the general level of comparability established by voluntary settlements for the last six years of the police in West Caldwell to other communities. This was a stated objective of both parties. The selection of a proper base of comparison accounts for the differences in their interpretations as to what was required to accomplish that objective and my selection of the 11CC provides a somewhat different base but one which I believe is rationally determined.

The award of 4.95% for the 1996 calendar year produces a base salary plus longevity cost of \$70785 using the Township's data. We now know that data was not brought up to actual cost by virtue of changes in the complement of officers and offsetting reductions. It is very difficult to make a more definitive calculation. The impact of this increase would be less than 3/4 of a tax point and less than 1/4 of a percent of tax paid by the average residential taxpayer even using the Township's preliminary, but overstated, figures. That amount is under \$15 for 1996. This amount would in no way endanger the fiscal circumstance of the Township which had a non-used Cap limitation of over \$300,000 in 1996 and especially when it is known that the budget provided appropriation for most, if not all, of that amount in an account for negotiations increases. The increases for 1997 and 1998 as awarded will be much closer to those produced by the offer of the Township and likewise will not endanger the fiscal well being of the Township. In addition several of the additional economic demands of the PBA which were factored into the Township's

cost estimates of PBA's proposal will not be awarded thus conserving the cost application of this award to compensation increases shared on an equivalent basis by all employees.

These improvements cannot come about without impact on the budget and taxation requirements but they are not perceived to be at a level which would be considered onerous or which endanger the overall policy of fiscal restraint adopted by township management as reflective of the demands of taxpayers. It is my conclusion that this criterion is quite significant and I weighed the impact of this award carefully against that consideration. I'm aware that even modest increases have the long term affect of very substantial change and it is clear that the tax paying citizens are expecting and demanding Township officials to avoid budget expansion.

The cost of living was not a factor of great relevance in these considerations. Over the years the Township has consistently provided wage increases which were greater than CPI and estimated the differential to be 4% per year over the last six years. This award will continue to provide improvements beyond the CPI level expected but the margin will be less. I believe this is happening generally and is true of the 11CC agreements. It reflects a more conservative posture but one which continues to provide a buffer against loss of buying power of the income of employees. This is not happening universally, but is a reality in the settlement of police contracts.

There is no great likelihood of any dimension of this award materially affecting the stability or continuity of employment. I am not convinced that this criterion should be weighted heavily in this situation. However, there could be long term effects of any labor contract. The design here has been to provide continuity of critical elements of the Agreement, a fair settlement in both economic and non-economic terms while avoiding the introduction of factors which would have a deleterious impact on the employment relationship and fallout in terms of limitations of managerial flexibility or costs which cannot be sustained and which result in reduction of services.

## **DETERMINATION OF ISSUES PRESENTED**

### **WAGES**

The evidence supports a determination of salary increases in each year of the Agreement for the term January 1, 1996 through December 31, 1998 in the amount of 4.95% on January 1, 1996 and 4% on January 1st of 1997 and 1998. As outlined above these increases are in keeping with those provided by the 11CC and are consistent with the subjective descriptions of the goals of the parties as to reasonable comparability. They are fair and equitable as well as affordable.

The PBA was insistent on having a defined increase and I believe that was a reasonable goal. The CPI related offer of Township did not satisfy that consideration and I determined to present an award which had the advantage of providing a specific level of improvements. The conditions surrounding West Caldwell, both economic and otherwise



convinced me that these increases were appropriate to the resolution of this impasse and in accord with the statutory criteria which have been established to guide the arbitrator. The weighting of the relevance of those criteria is entirely consistent with these decisions.

### OTHER ECONOMIC ISSUES

The PBA demands concerning incorporation of holiday pay and longevity pay into the base wage rate were unsupported as to need or occurrence in comparable work situations. The result of granting such demands would have been to force Township to sustain greater costs of police employment for which justification has not been demonstrated. PBA noted that the proposal as to longevity pay was intended as a clarification of current policy. My examination discloses that longevity pay is included in base for computation of overtime and is considered part of base in the last year of service for computation of the retirement pension benefit. I know of no other application intended but the current contractual provision is clear as to my understanding of the proposal and further specification in the Agreement would seem superfluous. These are rejected for this reason and those set forth in the discussion above.

PBA also demanded introduction of a senior officer pay differential. This is also a virtually unprecedented benefit, at least as to the provisions of the 11CC, which would require pay increases of 5% without any significant rationale. The Township vigorously opposed this proposal indicating it was uncalled for, would exacerbate a situation wherein police employees were granted disproportionately higher income compared with other employees and, to the extent that present personnel qualify, would inflate the police budget without warrant. This is rejected.

PBA proposed the elimination of the 10 day delay for officers called to perform at the next higher rank becoming entitled to pay at that rank. As discussed above, there seems to have been a general agreement on the concept of such payments but the circumstances of shift change make the provision meaningless. I am proposing to adjust that provision as much as possible with continuity of the basic understanding of the parties whilst removing the stopper as to qualification for payment. "Whenever an employee is assigned to work at a higher rank in a particular position and performs at that position for 10 working day either at one time or cumulatively during several assignments during a calendar year that officer will be entitled for pay at the higher rank beginning on the 11th day of such assignment[s]." This provision maintains the concept of not paying such an officer until knowledgeable and proficient in the assignment but allows fair treatment once so qualified by continuing the learning period of 10 days and paying the differential thereafter. This proposal is awarded.

The Township has proposed the elimination of longevity provisions for officers hired after July 1, 1996. PBA challenged the introduction of this proposal. There were no compelling reasons advanced as to making an exception to the application of the rules of admissibility. There is no sufficient evidence to suggest this is a common situation among the 11CC wherein longevity programs are in effect for all employees except in Roseland

where there was an agreement to eliminate application to new employees. This appears to have been accomplished in negotiations with a voluntary settlement and may have resulted from an exchange of positions on other non-related matters. Given the lack of impact during this contract period, the conflict as to the late introduction and the exception to the general provisions of the IICC I have rejected this proposal.

The Township also proposed that the current Medical Benefits plan be replaced by a plan equal to the First Option Plan. Exhibits were presented which identified the Plan as non-contributory, provided a schedule of benefits with corresponding limits of coverage in terms of money costs per occasion, number of such covered or annual limits for certain services and outlined a number of plan requirements and its limitations. There was no comparable description of the current plan placed into evidence to enable an item by item comparison by the arbitrator. In the 34 page booklet provided there were numerous limits set forth for procedures beyond which presumably no reimbursement would be made even under the major medical portion of the coverage and certainly not under the out of network. These specific provisions were defined as if they were the universal usual, customary and reasonable limits for each procedure which would apply to any claim. In my examination of these specific limitations I reached the conclusion that they were frequently substantially below commonly experienced charges for such services. For examples, a Cesarean Section delivery paid only \$651, a kidney removal \$683, the initial visit to a doctor in case of an accidental injury \$15, an appendectomy \$368 and a D&C, Diagnostic just \$126. I would certainly want to be able to compare these limitations with those incurred in the current traditional plan before passing judgment but those facts were not made available to me. My sense of these limits is that they are serious limitations. In addition I noted that among the exclusions of coverage are costs related to an occupational accident or disease. Given the relatively hazardous circumstance of police employment I judge this to be a considerable shortcoming of the First Option Plan.

In one part of the booklet there is a statement to the effect that expenses covered under the State Health Benefits Plan would be eligible under this plan. It does not elaborate as to the application of this to out of network incidents and doesn't define whether the "expense" refers to services not otherwise presented in the booklet or to the level of expense covered. If it were the latter and the same applied to out of network situations why write up a plan booklet with a myriad of limits and exclusions? Why not simply enumerate the "superior" benefits and make a statement that all other terms of the State Plan would be honored?

There are other significant elements which would represent formidable barriers to making a judgment that this plan is, "superior" to the traditional coverage now enjoyed by these employees. In fact, I would venture to guess that if both plans were available to employees most would choose the current plan. In fact the Township has made both plans available and few, if any, employees appear to have been convinced that the First Option Plan was superior or less costly. If they thought so wouldn't they have joined?

Although the Township is entitled to attempt reduction of costs wherever such can be achieved there is an obligation to demonstrate clearly what the impact of any such change is likely to be, particularly in the circumstance of a previously negotiated contractual benefit. Here the Township has relied on the potential savings to be persuasive of the determination to justify approval of the change. The assertion that this can be accomplished while providing "superior" benefits to employees has not been demonstrated to my satisfaction. The plan limits compared to the current plan are far from clear, there are significant questions concerning development of an alternative plan for retirees, the costs of plan utilization are uncertain at best and insufficient documentation has been presented to provide a reliable basis for me to make an intelligent determination in favor of the change. For all these reasons this proposal is rejected.

Township has also proposed a change as to the payment of compensatory time accumulations. This issue was discussed in some detail above and I believe the Township position to be adequately founded. The FLSA regulations were intended to protect employees by the mandate to pay premiums for overtime hours worked but were made less rigid because of the nature of work schedules common to police employment and to afford a degree of flexibility in the obligation to make such payments because the nature of the work made employer control of overtime less feasible. I was not the intent to mandate that employers provide a banking service in the handling of this problem. Of course the situation now presented to the Township is of their own making as they must have agreed to the current plan at some time. Still it is clear that the problem has grown to be out of control from a financial planning perspective and a remedy is called for.

Although PBA's arguments raise issues of some consequence, particularly the lack of insured result of the deferred compensation plan, I am persuaded that the proposal provides sufficient flexibility of choice to individual officers and is very likely to provide an economic advantage as to long term growth of funds invested. An officer not wishing to participate in the deferred option can accept the cash at year end and make alternate investment decisions or spend the money as chosen. The public interest is better served as the current year expenses for police service would not be partially carried over to future years and because the requirement to make such payment in the year the obligation is earned mandates the overtime budget limitations be responsibly managed.

It is also true that some accumulation of such earned hours is allowed in many jurisdictions, but among the 11CC there is none other than West Caldwell which permit 480 hours. Because there is precedent for this benefit and because it does afford some flexibility to the officer involved I believe its total elimination is uncalled for. Therefore I award the proposal of the Township with the conditions expressed therein and add the continuation of the plan for accumulation of up to 40 hours for all employees not otherwise granted a higher limit based on previous accumulations now on record. This is not seen as providing the kind of fiscal problem complained of by Township.

The final economic proposal of the Township was the adjustment of the flexibility of the work schedule as discussed above. This kind of change may provide valuable flexibility to

the Township. It would not appear to have a catastrophic impact on an employee as there is already a substantially reduced requirement as to the number of days to be worked each year compared to a five day work week. In addition an occasional relief from the 12 hour shift may prove to be very welcome. Therefore I will award the Township proposal with the understanding that the application is not intended to reduce the annual base salary of any officer and the provision that reduction adjustments to any scheduled work day are in increments of four hours unless mutually agreed to be otherwise and the officer affected by the change shall be given reasonable notice five days in advance except in the event of an emergency.

## NON-ECONOMIC ISSUES

The discussion of all non-economic proposals above included both analysis and the basis for a determination to refuse to award them. I see no reason to repeat that reasoning beyond stating that no non-economic proposals are awarded.

## AWARD

After careful examination and analysis of the arguments and evidence presented at hearings and with due consideration of the statutorily mandated criteria for such determinations including reasoning more fully set forth in the body of this document I make the following award.

1. Wages shall be adjusted effective as of January 1, 1996 by application of a 4.95% increase to all elements of the wage schedules in effect on December 31, 1995

There shall be an additional adjustment effective as of January 1, 1997 by application of a 4% increase to all schedules created by the above provision.

There shall be an additional adjustment effective as of January 1, 1998 by application of a 4% increase to all schedules created by the above provision.

The term of the Agreement shall be January 1, 1996 through December 31, 1998.

2. PBA proposal to modify the current Agreement provision as to payment for assigned work at higher rank is awarded as modified here by incorporating the following language into the Agreement. "Whenever an employee is assigned to work at a higher rank in a particular position and performs at that position for 10 working days either at one time or cumulatively during several assignments during a calendar year that officer will be entitled to pay at the higher rank beginning on the 11th day of such assignment[s]." This provision shall become effective immediately.

3. The Township proposal as to compensatory time is awarded as modified here by incorporating the following language into the Agreement in Article III, Overtime, Section A [8]. "Officers must use compensatory time beyond forty hours accumulation in the year

earned. If the year ends with compensatory time beyond forty hours owed to an officer those hours beyond forty will be paid in cash or placed in the deferred compensation account of the officer, at the officers election, if the officer is eligible for additional contributions to the deferred compensation plan. Officers with compensatory time already accumulated may continue to "bank" that time up to a maximum of 480 hours as dictated by the Fair Labor Standards Act." This provision shall become effective in the 1997 contract year.

4. The Township proposal concerning a variable work schedule is awarded by modifying Article III, Overtime, Section A [2], by the following addition. "A regular shift will consist of between 80 and 84 hours every two weeks at the discretion of the Chief provided that the reduction adjustment to any scheduled day is in increments of four hours unless mutually agreed to be otherwise and the officer affected by the change shall be given reasonable notice of five days in advance except in the event of an emergency." It is understood that such modification of the Agreement shall not serve to reduce the annual base salary of the officer involved and that no work day scheduled will be less than eight hours.

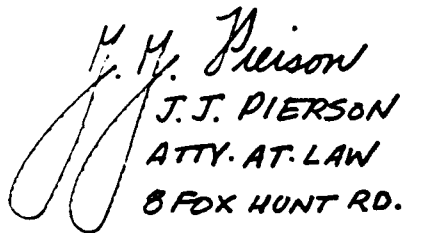
All other proposals are rejected for the reasons expressed herein.

All other elements of the prior Agreement are to be continued except as this award may impose changes, limitations or additions thereto.

  
Frank A. Mason, Arbitrator

Pennington, Mercer County, New Jersey  
April 10, 1997

On this 10th day of April, 1997 before me personally came and appeared Frank A. Mason, to me known and known to be the individual described in and who executed the foregoing opinion and award and he acknowledged to me that he executed the same.

  
J. J. PIERSON  
ATTY. AT LAW  
8 FOX HUNT RD.  
NEW VERNON, NJ  
07976-0604

Apr 10 2 23 PM '97

PERC