

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

In the Matter of the Arbitration *

Between *

Borough of Somerville *

and *

P.B.A. Local No. 147 *

**Docket No. IA-97-69
Jeffrey B. Tener
Interest Arbitrator**

Appearances

**For the Borough of Somerville:
Steven S. Glickman, Esq.**

**For P.B.A. Local No. 147
Dr. Simon M. Bosco**

OPINION AND AWARD

Background and Procedural History

P.B.A. Local No. 147 ("PBA") filed a Petition to Initiate Compulsory Interest Arbitration which was docketed by the Public Employment Relations Commission ("PERC") on January 28, 1997. The PBA listed a number of economic and non-economic which were in dispute. The Borough responded by letter dated February 5, 1997 and stated that there were no additional issues and that it agreed with the PBA's identification of the issues as economic and non-economic.

By letter dated April 10, 1997 from Timothy A. Hundley, PERC's Acting Director of Arbitration, I was informed of my appointment as the arbitrator pursuant to the mutual request of the parties.

I held an informal session with the parties on May 27, 1997. The parties agreed that all non-economic issues either had been or would be resolved by the parties. No agreement could be reached on the economic issues, although some issues were resolved.

Formal hearings were held on September 11 and 18, 1997. Both parties filed post-hearing briefs, the last of which was received on November 12, 1997, 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 December 29, 1997 as set forth in a letter dated November 24, 1997 from Mr. Glickman to Mr. Hundley.

The parties did not agreed 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.

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

Borough of Somerville The Borough's final offer consists of the following three economic elements:

1. Term: January 1, 1997 to December 31, 1999.
2. Salary increase: 3% across-the-board January 1st of each year of the agreement.
3. One additional step to be added to the salary schedule.

P.B.A. Local No. 147 The PBA's final offer consists of the following five economic elements:

1. Term: January 1, 1997 to December 31, 1999.
2. Salary increase: 6% across-the-board January 1st of each year of the agreement.
3. Clothing maintenance: \$25.00 increase January 1st of each year.
4. Out-of-rank pay: Any officer assigned or required by regulations to assume the duties and responsibilities of an officer of a higher rank for two or more hours shall be compensated at the rate of the higher rank retroactive for all hours worked during which said duties or fractions thereof were performed.
5. Longevity benefit: Those employees no longer eligible for longevity benefits under the current contract and who reach fifteen years of service and thereafter shall receive a two (2%) percent annual adjustment to their respective base salary.

Economic Differences Between the Parties' Final Offers

The bargaining unit includes patrol officers and sergeants. At the end of December 1996, there were 23 patrol officers and five sergeants.¹ Salaries for those 28 officers for 1996 were \$1,476,924. The 1994 to 1996 agreement at Article VI listed the salaries effective January 1, 1996 as follows:

<u>Classification</u>	<u>Salary</u>
Patrolman - Starting	\$39,129
Patrolman - 1 st year	\$42,260
Patrolman - 2 nd year	\$45,640
Patrolman - 3 rd year	\$49,291
Patrolman - 4 th year	\$53,235
Sergeant	\$58,558

¹ Not included in the unit are the chief, captain and two lieutenants.

Additionally, Section C, Senior Status Differential, provided that officers with five or more years of service who were ineligible to receive longevity were to be paid a senior status differential of 4% above base pay annually as of the anniversary date of the qualifying year. Nineteen officers are receiving this benefit.

Section D, Longevity Increments, provides longevity increments for officers hired before January 1, 1977 based upon continuous employment of 2% after five years, 4% after ten years, 6% after 15 years and 8% after 20 years. Five officers are receiving this benefit, one of whom is no longer actively working and will be off the books as of the end of 1997.

The Borough's salary proposal is 3% increases each of three years or a total of 9.27% with compounding. The PBA's proposal is 6% each of three years or a total of 19.1% with compounding.

There are increment costs associated with the final offers of both parties. These total \$13,813 or .94% in 1997, \$14,919 or 1% in 1998 and \$7,595 or .5% in 1999.²

The total impact of the Borough's salary proposal, including increments, when the .27% cost of compounding is spread evenly (.09%) over the three years, is 4.03% in 1997 (3% + .09% + .94%), 4.09% in 1998 (3% + .09% + 1%) and 3.59% (3% + .09% + .5%) in 1999. This is a three-year total of 11.71%.

The total impact of the PBA's salary proposal, including increments, when the 1.1% cost of compounding is spread evenly (.37%) over the three years, is 7.31% in 1997 (6% + .37% + .94%), 7.37% in 1998 (6% + .37% + 1%), and 6.87% in 1999 (6% + .37% + .5%). This is a three-year total of 21.55%.

² Increment costs are built into the existing salary schedule.

There are additional costs associated with the PBA's final offer. The proposed increase in clothing of \$25.00 per officer per year is \$700 (28 officers times \$25.00) or .05% per year.

The Borough computed the cost of the proposed change in out-of-rank pay at \$990 or .07% in 1997. This calculation was based on the occurrences during the first two-thirds of 1997 and then annualizing these occurrences.

Finally, the Borough computed the cost of the proposed new longevity benefit at \$17,035.20 (16 employees in the bargaining unit have fifteen or more years of service and 2% of the top salary in 1996 is \$1,064.70).

When these benefits are added to the PBA's salary proposal, the total cost of its offer is 8.58% in 1997, 7.42% in 1998 and 6.92% in 1999 or a total over the three years of 22.92%.

Argument of the Borough

The Borough cited the New Jersey Supreme Court decisions in PBA Local 207 v. Borough of Hillsdale, 137 N.J. 71 (1994) and Township of Washington v. New Jersey PBA Local 206, 137 N.J. 88 (1994) as being extremely significant in the interest arbitration process. In those decisions, the Court discussed the sufficiency of evidence and the relevance of the statutory criteria. It directed arbitrators to determine which factors are relevant, to weigh them and to explain the award in writing, including an explanation as to why any factor is deemed irrelevant. Hillsdale, Id. at 84 and 85. As viewed by the Borough, the statutory criteria have three underlying themes: 1) the public interest, 2) comparability and 3) financial ramifications.

In this proceeding, the terminal procedure is conventional arbitration in which the arbitrator has the authority to render a compromise award. The Borough asserts,

however, that it did not follow the normal strategy in negotiating with the PBA but instead made a reasoned determination as to what would be a fair and reasonable offer in relation to the statutory criteria and it made that offer to the PBA. It did not hold back in anticipation of the arbitrator later selecting a position between the positions of the two parties.

The Borough contends that its salary proposal will result in a continuation of the very competitive compensation package which is received by the officers. It has offered salary increases which will cost the Borough 11.71% over three years: 4.03% in 1997, 4.09% in 1998 and 3.59% in 1999. This is said to be consistent with the Borough's ability to pay. In contrast, the PBA has proposed a wage increase which would cost 21.55% over three years: 7.31% in 1997, 7.37% in 1998 and 6.87% in 1999. Additionally, the PBA has proposed increases in clothing maintenance, out-of-rank pay and longevity which would bring the total cost of the PBA's package to 22.92%: 8.58% in 1997, 7.42% in 1998 and 6.92% in 1999.

The Borough analyzed each statutory criterion in relation to the facts of this case, arguing that the result must be a determination that the Borough's proposed package reflects a more reasonable approach than does that of the PBA.

The first factor is the interest and welfare of the public. As viewed by the Borough, this factor focuses upon the priority to be given to public employee wages and benefits within the limited financial budget and plans of the municipality. A balance needs to be struck between satisfying the employees, thereby avoiding labor strife, while maintaining a stable level of government services. This means that a municipality should not sacrifice fairness to its employees by providing frivolous government services but it also means that excessive demands of public employees must be resisted so as not to require a reduction in essential government services.

This factor is said always to be important because, as the Court noted in Hillsdale, Id. at 76, the public is a "silent party" to the proceeding and will inevitably be affected by the outcome. It is the taxpayers who will feel the ultimate effect.

In considering the interests and welfare of the public, the Borough urges the arbitrator to keep in mind that between 1986 and 1996, average wage increases granted to the police officers and firefighters greatly exceeded increases in the cost of living. It suggests that this occurred because arbitrators relied much too much on police and fire comparability data and too little on the other factors, resulting in an increasing burden on the taxpayers. The Borough asserts that, in developing its proposal, it was cognizant of all of the statutory criteria, including its lawful authority and the financial impact of the increase on the taxpayers and residents, whereas the PBA, quite properly, considered only the needs and desires of its members.

The Borough points out that this moderate sized community has relatively low ratables and very low per capita income, median family income and median household income while also having a very high tax rate and a low tax collection rate.

A comparison of all municipalities in the County, which the Borough believes are the appropriate municipalities for purposes of making comparisons, reveals that Somerville ranked 12th of 19 municipalities in Somerset County which have police departments in terms of equalized value of ratables but had the second highest equalized tax rate. It ranked 17th of the 21 municipalities in the County in per capita income with a 1989 figure of \$17,804. This is far below many other municipalities in the County: Far Hills - \$48,975, Bernardsville - \$42,781, Bedminister - \$39,780, Watchung - \$38,936, Peapack and Gladstone - \$33,796, Montgomery - \$32,673 and Warren - \$31,664. Somerville ranked 18th of 21 in median household income and median family income. Its tax collection rate ranked only 16th.

This combination of factors - a high tax rate and low income - indicates that it is in the public interest to provide a reasonable salary increase but not one which matches the increases provided by those municipalities which have greater wealth, ratables and resources. The Borough contends that its offer does consider the public interests and welfare while also providing a competitive wage and benefit package to the police officers.

The Borough next examined comparability as well as overall compensation. It notes that three comparisons are to be made and that overreliance on comparisons only with other police departments was criticized by the Supreme Court in Hillsdale with the Court noting that it was not the legislative intent that any one factor be dispositive. Id. at 85. Comparisons of wages, hours and conditions of employment of other employees performing the same or similar services and with other employees generally are to be made with 1) private employment in general, 2) public employment in general, and 3) public employment in the same or similar comparable jurisdictions. Additionally, overall compensation is to be considered.

Private sector comparisons are said to demonstrate the reasonableness of the Borough's offer. Increases in the private sector essentially equate to the Borough's offer. Increases in the private sector in major collective bargaining agreements in 1995 and the first part of 1996 have averaged less than 3% over the term of new agreements.

Furthermore, and a very important point, unlike private sector management, the Borough is not seeking to decrease the health benefits of the officers by increasing the deductible or the co-pay. The Borough cited evidence which shows that there is a very strong trend toward managed care and away from traditional health care plans such as that the Borough provides to its employees. The employees of the State of New Jersey

now pay a portion of health care costs if they continue to opt for the traditional plan as opposed to managed care or an HMO. IBM ended free health care for its employees in 1993. Thus, the health care benefits received by the police officers exceed those received by private sector employees and this fact is said to further indicate the reasonableness of the Borough's total offer.

The Borough cited data which show that the Employment Cost Index ("ECI") which is compiled by the Bureau of Labor Statistics and which measures increases in total compensation including wages and the employer's costs of benefits, increased by only 2.8% in 1995, a decrease from the still low figure of 3.1% in 1994. Again, this is said to demonstrate that the wage offer of the Borough is reasonable in comparison to what is occurring in the private sector.

Turning to comparisons with public employees in general, the Borough cites recent settlement involving the employees of the State of New Jersey which provided for increases of 7% on base plus 2% in bonus payments over four years or an average of 2.25%, less than the Borough's offer. It also cites the settlements with New York City's public employee unions which provided for wage increases of 13% over five years or an average of 2.6%, again less than the 3% offered by the Borough of Somerville.

The Borough also cited a 1992 figure for median wages of police and detectives nationally. That figure was \$33,904. The top salary in Somerville in 1992 was \$47,099 or \$13,195 above the national average. Therefore, Somerville's officers are extremely well paid compared to police officers nationally.

The third comparison is with public employment in the same or comparable jurisdictions. As an initial point, the Bough asserts that this must not be considered to be the prime factor in deciding this case. This is said to be much less significant than

the Borough's ability to pay. Having said that, the Borough recognizes that it is a factor to be considered.

The Borough asserts that the evidence demonstrates that its officers enjoy competitive standing in the County. In fact, they ranked 6th of 17 departments for which data is available in 1996. This ranking far exceeds the Borough's ranking in per capita income, median household income and median family income. Furthermore, the data show that the Borough's total package, including paid time off such as holidays, personal days and clothing allowance, is more than competitive.

The Borough provided an exhibit which lists W-2 earnings for members of the Police Department. This shows that overtime earnings were \$150,000 in 1996 or an average of \$3,000 per officer. One sergeant earned over \$15,000 in overtime and even the lowest man earned over \$1,000.

Again, the Borough urges that comparisons be considered in relation to the demographics of the municipality. Salaries and benefits far exceed the demographic indicators.

The Borough submitted an exhibit which lists the number of steps on salary schedules in the County. There are five steps in Somerville and the average in the County is 5.6. This is said to support the Borough's proposal to add a step.

Looking at the other Borough employees, the Borough notes that very few Borough employees are paid even close to the salaries received by police officers. Only a few of the department heads receive as much as a top patrolman and only eight Borough employees earned as much as \$40,000 in 1996. This is compared to the salary of a top patrolman of \$53,235 in 1996.

The next factor concerns the lawful authority of the employer and this requires a consideration of the New Jersey Local Government Cap Law, N.J.S.A. 40A:4-45.1 et

seq. This law limits the employer's lawful authority by limiting overall budget increases, thereby restricting wage increases. The law was enacted to control "the spiraling cost of local government" and to protect homeowners.

The law limits the amount by which final appropriations can be increased from year to year. The limitation does not apply to any particular line item but is an overall limitation. Budgets must be balanced and salary increases, including those which are the result of interest arbitration awards, must be included within the overall limitations. While emergency appropriations are a possibility, these simply delay the disastrous financial impact; they do not eliminate it since the extra expenditures must come out of the following year's budget with its Cap restrictions.

The Borough notes that it is the municipality's governing body which possesses the primary responsibility for allocating available funds among competing public services and this might require that police or other services be reduced if an interest arbitration award exceeds the amount budgeted by the municipality. Layoffs would have to be considered.

Furthermore, living within the Cap limitations is increasingly difficult for municipalities because the Legislature has narrowed and reduced the items which are exempt from the Cap. For example, losses in federal revenue sharing, the purchase of police vehicles, increases in insurance costs over 1985 levels, solid waste expenses and state and federal mandates prior to January 1, 1991 now must be included within the appropriations which are subject to the Cap limit. The Borough singled out increases in insurance costs as having been especially onerous because of the amount by which they have increased.

The Borough analyzed both the revenue and expenditure sides of the budget. On the revenue side, it noted that there are only four sources of revenues: one-time

sources, surplus, State aid and taxes. No one-time revenue sources are available. Projected surplus remaining is only \$51,518, a minimal amount. The Borough points out that while it budgeted only 2% for salary increases, it has offered 3% by planning to use most of its surplus to fund this extra 1% increase. The small remaining surplus is said to demonstrate the tight fiscal constraints in Somerville. State aid has been stable and the Borough notes that it has been a recipient of State discretionary funds which are allocated on the basis of extraordinary needs and budget problems. That leaves only taxes and, as stated, the taxpayers have the second highest equalized tax rate in the County coupled with low per capita, median family and median household incomes. Because of its concern with the tax rate, the Borough actually budgeted \$740,000 below the maximum amount permitted by law.³

The Borough introduced documentary evidence as well as the testimony of Janet Kelk, its Chief Financial Officer and Tax Collector. It asserted that its surplus has been declining and it is not able to regenerate surplus to the extent necessary to offset the decline in surplus. The amount of appropriations in the budget in 1997 which will be available to cancel will not lead to the regeneration of surplus. The Borough regenerated \$276,637 more surplus in 1996 than it utilized in its 1996 budget. It did this by restricting expenditures in 1996 and by canceling \$224,000 of appropriations. It also collected \$872,202 of \$931,000 or 94% of its delinquent taxes after having anticipated \$750,000. Without the very high collection of delinquent taxes and cancellation of appropriations, the Borough would have generated less surplus than it utilized, thereby reducing surplus. These sources, however, will not be available in 1997 so the amount regenerated will be less. Given the Borough's small surplus, any salary increase awarded will have to be funded by higher taxes in 1998 and 1999. This

³ The Borough admits that it had lawful authority under the Cap Law to spend more than it spent.

is said to militate against selection of the proposal of the PBA which calls for not only large salary increases but also increases in other areas.

Because its 1997 budget was tightly drafted, there will not be excess appropriations in the amount of \$224,000 which can be canceled to regenerate surplus. Also, there is less in outstanding delinquent taxes so that even if the Borough were again to collect 94%, the amount of surplus generated would be only \$56,000 as opposed to the \$122,000 generated in 1996.

The Borough denies that the new mall is going to provide the kind of revenue windfall suggested by the PBA's financial expert and asserted that in any event this was speculative. Mr. Glickman described the situation regarding the mall, which is presently involved in litigation, and represented that it will not generate any revenues during the term of this collective bargaining agreement.

The Borough prepared an extensive analysis of its expenditures to show the constraints under which it is operating. It budgeted 2% for wage increases with no increases in manpower. The Borough reviewed all budgetary line items which show a change of over \$1,000 from the amount actually expended in 1996 compared to the amounts appropriated in 1997 and explained these changes. It also reviewed 1997 expenditures through September 2, 1997 and explained those which appear, based on arithmetic projections, to indicate that there will be significant surpluses or deficits.

One major area of surplus is expected to be retirement and sick pay benefits for which \$200,000 was budgeted. That figure reflected possible retirements in 1997. It now appears as though only \$32,000 will be expended for this purpose, leaving a surplus of \$168,000 in this line item. It was based upon this that the Borough increased its wage proposal to 3%.

The police salaries and wages account shows a decrease of \$36,018 which reflects retirements plus the 2% projected salary increase.

The Borough's concern is that in future years, when there is projected to be less surplus available and no other revenue sources, services and/or staffing will have to be reduced and/or taxes will have to be increased on this already highly taxed and low per capita income population.

The next criterion relates to the financial impact of the award on the governing unit, its residents and taxpayers.⁴ This is not simply to be equated with the ability of the employer to pay or to raise taxes. Furthermore, given the state of the economy and the income of the residents and the present high level of taxes, the Borough contends that it cannot raise taxes further to fund an award beyond its offer. The Borough cites the large number of layoffs in the area, in part due to the breakup of AT&T. This has had an effect on the taxpayers and makes them less able to afford tax increases. Also, these taxpayers have not seen salary increases as large as those given in the past and now offered by the Borough to the police officers.

The 1996 equalized tax rate in Somerville was \$3.298, only \$.045 below the rate in South Bound Brook which is the highest in the County. The tax collection rate in 1993 in Somerville was only 94.26%, almost 1.5% below the County average of 95.62%. This placed Somerville 16th of 19 in the County. Somerville ranked 16 of 18 municipalities in the 1990 assessed value of a median single family home which was almost 50% below the County average. The figure in Somerville was \$160,900 and the County average was \$228,350.

The Borough notes that the Police Department consistently consumes approximately 25% of the municipal budget which now is approaching \$11 million.

⁴ Much of the discussion in the previous section applies to this criterion as well.

The Borough points out that since 1990, its net valuation taxable has actually declined by a small amount. Thus, it cannot rely upon an expanding tax base to fund municipal services. While it is true that there is a relatively large amount of commercial property on which taxes are collected and which generally requires fewer (especially school) services, there also is a large amount of tax-exempt property due, in large measure, to the fact that Somerville is the county seat.

Thus, by any measure, the residents and taxpayers of Somerville face a high tax burden and they do so with lower incomes and less assessed valuation than the County average. This award will impact upon them, even if the Borough's proposal is awarded. Accordingly, the Borough argues that its offer must be selected.

Increases in the cost of living also are to be considered. The Consumer Price Index ("CPI") measures changes in the cost of living based on the change in prices over time of a fixed basket of goods and services. The Borough notes that its salary offer of 3% increases exceeds the increases in the CPI every year beginning in 1991.

The 1996 CPI increase was only 2.7% and the police officers received an increase of 4.5% that year. Over the last ten years, salary increases have averaged 6.1% and the CPI has increased an average of 3.64%. Thus, wages have gone up 61% whereas the CPI has gone up 36.4%. Each year, wages have gone up an average of 2.46% more than the cost of living. According to the Borough, there is no rational basis for the officers to obtain additional gains over the CPI during the term of this agreement.

Finally, the Borough looked at continuity and stability of employment. This is said to be an important factor and one which calls for the selection of the Borough's final offer if the continuity and stability is to be maintained. Selection of the PBA's proposals would jeopardize the continuity and stability of employment by compelling the

Borough to consider reducing the level of personnel or otherwise reducing services. This would not be consistent with either stability and continuity of employment or the public interest. The Borough's offer is said to take this factor into consideration.

The Borough notes that layoffs in the private sector, including businesses in Somerset County, have been widespread. Unemployment has been very high in the recent period of time. Public entities, including the State of New Jersey, have resorted to layoffs. The Borough is anxious to avoid this step.

In summary, the Borough argues that its offer takes into consideration each of the statutory criteria and that, measured against those criteria, its offer is reasonable. It asks the arbitrator to award its package as proposed notwithstanding the conventional authority possessed by the arbitrator to fashion an award. The Borough repeats that it made its offer based on an assessment of its situation and what it could reasonably afford. Its assessment is reasonable and should be supported by the arbitrator.

Argument of the PBA

The PBA notes that the Legislature, in enacting the Police and Fire Public Interest Arbitration Reform Act, recognized the "unique and essential duties which law enforcement officers and firefighters perform for the benefit and protection of the people of this State" and was "cognizant of the life threatening dangers these public servants regularly confront in the daily pursuit of their public mission." The Legislature pointed out that these employees do not enjoy the right to strike and determined that an expeditious and effective procedure for resolving impasses was "requisite to the high morale of the such employees, the efficient operation of such departments, and to the general well-being and benefit of the citizens of this State." N.J.S.A. 34:13A-14.

The PBA points out that, as the Supreme Court mandated in Hillsdale, Ibid., all of the statutory factors are to be considered in deciding this case and there must be an explanation of the relevant factors as well as of any factors found not to be relevant.

The PBA devoted a considerable amount of attention to the Borough's claimed inability to pay claim because the Borough placed such importance on this argument. The PBA denies that the Borough was able to prove that it could not pay the increases proposed by the PBA or even that it could not afford to pay more than the 3% increases which the Borough offered.

The PBA, citing an interest arbitration award issued by John T. Dunlop in the transit industry going back 50 years which discussed the weight to be given to ability to pay,⁵ asserts that generally wages should be increased by slightly above the amounts suggested by other standards if the firm has been highly profitable, by slightly less than the amounts suggested by other standards if the firm has been consistently unprofitable and by the amounts suggested by other standards if the firm falls between those extremes. Ability to pay is important but an employer's claim of inability to pay the "going rate" must be subjected to greater than normal scrutiny.

In this case, the Borough's claim of an inability to pay a "going rate" increase rests on its claimed inability to regenerate surplus. The PBA asserts that, contrary to the Borough's argument, the Borough has been able to regenerate surplus regularly. This has occurred due to a variety and combination of factors including receipt of revenues not anticipated, cancellation of appropriation balances and the use of unexpended reserve balances.

In the last five years, the Borough has had a fund balance of between \$1 million and \$1.46 million each year and it has utilized between \$800,000 and \$1,075,000 in

⁵ Twin City Rapid Transit Co., 10 LA 581 (1948).

the succeeding year. This has worked out an average of over \$900,000 each of those five years. This hardly matches with the "checkered history" of regeneration claimed by the Borough.

The PBA cites the testimony of its financial expert, Vincent Foti, a CPA and Certified Finance Officer, that there is no demonstrable reason to believe that the Borough will not continue to be able to regenerate surplus. Further, the PBA cites the construction of the shopping mall which will surely increase the Borough's revenues.

The PBA notes that each of the last four years, the Borough has been able to cancel unexpended balances from reserve appropriations. This is a steady source of funds for surplus.

The evidence indicates that the Borough has consistently had a surplus and that it has used this surplus prudently to reduce the tax rate. At the same time, it has not used all of its surplus.

Furthermore, the Borough's results of operations have ranged from over \$800,000 to over \$1.1 million each of the last four years. Again, this reflects the ability of the Borough to regenerate surplus. It also provides funds on which interest and therefore additional revenue can be earned.

Because it has been shown that the Borough has been able to regenerate surplus for use in subsequent years, the PBA asserts that the Borough has failed to sustain its claim of an inability to pay. This is a healthy financial situation and not one which will have a deleterious effect on the taxpayers.

Additionally, the PBA contends that the Borough has underestimated its revenues in all categories as well as its tax collection rate while at the same time over-budgeting its reserve for uncollected taxes. All of this is said to lead to the conclusion

that the PBA's 6% wage proposal for each of three years is more reasonable than the 3% offer of the Borough.

The Borough's budget for 1997 anticipated a tax collection rate of only 93.87%. The actual rate in 1996 was 96.54%, a difference of over 2.5%. Kelk could not plausibly explain the low figure used by the Borough and Foti testified that, based on his years of experience, a figure of 95% would have been a more reasonable figure. By using a low figure, the Borough has limited artificially the amount of money available for expenditures while also requiring a higher tax rate which is an unnecessary burden on the taxpayers for whom the Borough has claimed such concern. What this really does is assure that surplus will be regenerated for use in the next year's budget.

The PBA points out that the tax collection rate has been steady or increased in the last three years. It was 95.76% in 1994 and 95.53% in 1995 before increasing to 96.54% in 1996. At the same time, the tax levy has been remarkably stable. The Borough budgeted \$1,375,000 in its reserve for uncollected taxes in 1996. The 1995 figure was \$1,275,000. Thus, the Borough built into its 1996 budget additional slack or flexibility by increasing this reserve, especially with an increasing tax collection rate. This money was available to go into surplus in the 1997 budget. By anticipating only 93.87% of taxes and creating a reserve of \$1,300,000 for uncollected taxes in 1997, the Borough is again assuring money for surplus going into 1998.

The PBA asserts that the Borough underestimated revenues from investments as well as municipal revenues not anticipated ("MRNA"). Additionally, it failed to take advantage of its ability to allocate certain expenses to capital expenses which could be funded through bonding in accordance with Chapter 20. Finally, it elected to pay \$22,000 in pension payments in 1997 that could have been made in 1998.

Somerville is said to have no Cap problem. It budgeted under the allowable figure in 1997 and had a Cap bank of \$665,584.31. This assures the availability of funds and flexibility needed for the 1998 budget.

While net valuation taxable was essentially unchanged over the past several years, it increased by almost \$12 million between 1987 and 1992. The large percentage and value of commercial property not only decreases the burden on homeowners and individual taxpayers but results in a lower demand for services. The Borough will be the site of a large new mall and while construction has not yet begun, the Borough will receive significant revenues from the permits associated with this project in the near future.

The Borough's tax collection rate has been steady or increasing and it is above the average in the County. Thus, taxpayers are able to pay their taxes and there is simply no evidence that the taxpayers are over-burdened with taxes.

The PBA agrees that the equalized tax rate is relatively high in Somerville but it also notes that the tax levy per capita is relatively low at \$1,531, far below the figures in Peapack and Gladstone and Far Hills which exceed \$3,000 and those in Watchung, Bernardsville, Warren, Montgomery and Bernards which exceed \$2,000.

Unemployment in Somerville consistently has been below the State rate, suggesting that the residents of the Borough are economically secure, even though they do have a per capita income that is below the County average.

The municipal purposes tax rate has been quite stable, having risen only from \$1.16 in 1994 to \$1.25 in 1997. This is an increase over four years of only 7.76% or 1.94% per year. In dollars, the increase was \$.0225 per year. The increases were below the rate of inflation in those years which themselves were characterized by very low inflation. Thus, according to the PBA, the Borough has been able to hold tax

increases to a minimum and this further undermines the Borough's ability to pay arguments.

The PBA calculated the cost of a 4% salary increase for each of four years. The cost would total about \$216,982 based on a patrolman's salary of \$56,000. This works out to \$.49 per month per resident or \$1.88 per residence in the Borough. These figures show the very modest effect of such an increase.

The PBA next turned to a review of the other statutory criteria, arguing that these, too, support an award consistent with the proposal of the PBA as opposed to that of the Borough.

The PBA points out that the Supreme Court in Hillsdale, Ibid., referred to the importance of the interests and welfare of the public in rendering an interest arbitration decision and the ultimate effect that an award will have on the taxpayers. Thus, the Court stated that the public is a silent party to the proceedings. The evidence is said to demonstrate that the public interest will best be served by an award in favor of the final offer of the PBA.

The only stipulations of the parties were that all remaining issues were economic and thus that there are no non-economic issues before the arbitrator.

Lawful authority is said not to be applicable in this case. There is no dispute between the parties regarding the negotiability of any issue. The Borough had a significant Cap bank going into 1997 which may be carried for two years. Thus, there is no question about the legal authority of the Borough to fund the increases proposed by the PBA. This factor is said not to be relevant.

Cost of living is the next criterion discussed. The PBA asserts that little weight should be given to this factor. Either party cites this factor, depending upon whether inflation is high or low. Furthermore, if this factor were relied upon uncritically, the

result would be stagnant real wages. In fact, over the years real wages have and should continue to increase, reflecting increases in productivity. Gains in productivity should continue to be shared by all employees as measured by rising real wages. Thus, wage increases of 3% as proposed by the Borough, which is approximately the recent increase in the cost of living, would result in stagnant real wages.

Furthermore, the PBA argues that a competent analysis of this factor would require a comprehensive analysis of comparative wages at a point in time and the demands of different jobs and changes in the demands of those jobs in relation to changes in the cost of living. Neither party undertook this study and the PBA asserts that this factor should be accorded little weight.

The next factor considered - in what the PBA argues is the ascending order of importance to be given to the factors - is continuity and stability of employment. While employment has been stable over the years, the number of police officers employed by the Borough has decreased through attrition by at least five in the last decade. The result has been a dramatic increase in workload.

The number of incidents increased by 4,751 from 15,997 in 1992 to 20,748 in 1996. This is an increase of 30%. Returning to increases in the cost of living in the context of this factor, the PBA notes makes a point. While agreeing that salaries increased by 25.5% between 1992 and 1996 and that the CPI increased by 14.1% during that same period, suggesting a net wage gain of 11.4%, the fact is that during that period the workload of individual police officers increased by 29.7%. Thus, the increase in wages over CPI increases is said to have been more than offset by the increase in workload. Furthermore, over the last three years, the amount of overtime actually has decreased, notwithstanding the increase in workload and decrease in the number of officers. At the same time, the use of sick leave has improved or been

stable. It is evident that the officers are working harder. Somerville is the only municipality which is classified as an urban center in Somerset County. Thus, the officers encounter the problems associated with urban centers. Somerville has a high density population which is said to be correlated to workload. Somerville also is adjacent to a number of major highways, including Interstates 78 and 287, as well as State Highways 202, 206 and 22. While Somerville is not Newark, neither is it a Bedminster. The crime rate in Somerville is the fourth highest in the County. Thus, according to the PBA, all of the evidence supports the contention of the PBA that the officers should receive annual salary increases of 6%.

The final factors, and the ones which the PBA views as the most important, are wage comparisons and overall compensation. These are said to be the most frequently relied upon factors in interest arbitration and this is appropriate. The "going rate" or "prevailing practice" is the most extensively used standard. By using this standard, the arbitrator is simply extending the results of collective bargaining where it has been practiced successfully to situations in which the parties have been unable to reach an agreement through collective bargaining. Again, the PBA cited a decision issued 50 years ago, this time by Clark Kerr, in which he explained that one of the most compelling considerations in wage adjudication is what happened in free and successful collective bargaining.⁶ Kerr cited the "equality of treatment for persons in comparable situations" as a virtue of such reliance.

Particularly in the absence of bona fide financial considerations which would preclude payment of a "going rate" increase, this factor should be found to be the most compelling one. This is further supported by the fact that the workload has increased steadily and that the wage increases received by these employees have not been

⁶ Pacific Gas & Electric Co., 7 LA 528 (1947).

shown to have exceeded those received by others even though they have not been shown to have had similar increases in workload. In fact, the PBA demonstrated that the its members would have to receive a wage increase of 4.85% in order for this unit to retain its relative position in the County over the term of the prior agreement between the parties.

The Borough unilaterally budgeted only an unrealistic 2% for salary increases but this was self-serving and intended to influence the negotiations and arbitration process. The Borough cannot be permitted to dictate the outcome of the proceeding based upon its unilateral actions.

The PBA notes that both parties tacitly accepted comparisons with the other municipal police departments in the County as the relevant and appropriate universe for the purpose of making comparisons. The Borough introduced wage data going back to 1986. Looking at that data, the PBA notes that it shows that wages in Somerville traditionally have outpaced the County average but that Somerville's ranking went from 6th in 1986 up to 3rd in 1991, 1992 and 1993 before falling to 5th in 1994 and 1995 and to 6th in 1996. The PBA contends that the wage rates reflected the work expectations placed on Somerville's officers as well as the fact that they work in an urban center. There is said to be no justification for changing the historical relationship.

Turning to maximum base wages in that eleven-year period, there was an average difference of \$2,177 between the top rate in Somerville and the average top rate in the County. As a percentage, Somerville was 5.57% above the average. The difference, however, had declined to \$1,961 or 3.82% by 1996.

Based on the evidence submitted by the Borough, the average top rate in the County in 1997, based on eleven agreements, is \$53,666. The figure for 1998, based on five agreements, is \$56,284. To maintain Somerville's relative position, based again

on a three-year average and using the 1997 and 1998 settlements, salaries would have to be increased by 4.7% in 1997 and 4.87% in 1998. Such increases are said not to be out of line when it is noted that the two most recent settlements in the County were in Hillsborough where there were increases of 4.5% in 1996, 1997, 1998 and 1999 and Bridgewater (SOA) where the increases were 4.1% in 1996, 4.1% in 1997 and 4.2% in 1998. Those settlements also provided for improvements in other benefits.

The wage increases sought by the PBA are said to be consistent with a slight corrective wage adjustment to stop the downward spiral in wages in Somerville that occurred during the last contract term as well as with the increased workload. Furthermore, the PBA notes that there is no longevity program in Somerville - or, more accurately, it is limited to five long-term employees who were hired before 1977 - and that only Far Hills has no form of longevity benefits.

The \$25 annual increases sought by the PBA for clothing maintenance are said to be in line with increases in dry cleaning costs as well as with the increases received by others in the County.

The PBA also asks that an inequity be addressed by providing for out-of-rank pay for officers who perform this duty two consecutive hours or more and that such pay be retroactive to the beginning. Presently, an officer has to work six consecutive hours to receive the higher pay. Based on the shift schedule with overlapping shifts, an officer rarely works the required number of hours to receive extra pay for assuming the duties and responsibilities of an officer of higher rank. The financial impact of this proposal will be minimal.

Finally, the PBA opposes the proposal of the Borough to add an additional step to the salary schedule. The current schedule has five steps. The average in the County is 5.6 steps. The Borough provided no justification for extending the guide nor

does it claim that it will be hiring any significant number of officers in the near future.

The Borough is simply seeking to save money with this proposal.

It is the view of the PBA that the evidence support its proposals and not those of the Borough and that the arbitrator should accept the proposals of the PBA in his award.

Discussion

The statute requires the arbitrator to decide the dispute by making a reasonable determination of the issues by giving due weight to the eight above-listed statutory criteria 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 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' final offers included only economic issues. Both are seeking a three-year agreement to succeed the agreement which expired on December 31, 1996. Accordingly, I shall provide for a three-year contract in this award.

At this point, I shall describe the award so that, in discussing and applying the statutory criteria, the reference point will be the award rather than the proposals of the

two parties. The parties in their presentations and briefs necessarily focused on their own position and that of the other party but, because I shall not award the position of one party or the other in this conventional arbitration proceeding, I shall apply the statutory criteria to the award which I shall render.

The term of the agreement shall be three years, January 1, 1997 through December 31, 1999. Salaries shall be increased across-the-board on January 1st of each year of the new agreement by 3.5%. Pay for higher rank, Article VI B, shall be changed to provide for compensation for two consecutive hours or more rather than six consecutive hours or more.

The proposals of the parties to add a step to the schedule, to increase the clothing maintenance, and to provide a longevity benefit shall be denied. The new agreement also shall include the language issues upon which the parties agreed.

The total annual net economic changes consist of the salary increase and the reduction in the number of hours necessary to qualify for pay for higher rank.

The cost of the change in the eligibility for pay for higher rank, based on annualizing the experience of the first eight months of 1997 when payment would be received 24 times more than payment actually was received, is \$990.⁷ This is a nominal amount - .07% - but it will redress what I believe to be an inequity.

Base salaries in 1996 were \$1,476,924 for 28 officers. That figure will be increased by 3.5% each year. The increase in 1997 will be \$51,692. The increase in 1998 will be \$53,502. The increase in 1999 will be \$55,374.

Those figures do not include the cost of step movement which is built into the salary guide. These costs are not new costs because they are built into the salary schedule. As computed by the Borough, step movement or increments will cost

⁷ This is the Borough's calculation.

\$13,813 in 1997, \$14,919 in 1998 and \$7,595 in 1999. It should be noted that while the Borough's costs do go up as an officer moves from one step to a higher step, such movement generally comes about because a senior officer has retired and been replaced by a new one. Thus, an officer now on the second step has replaced one - sometimes with a time lag that will result in further savings - who retired two years ago at a much higher salary than the new officer, resulting in a savings to the Borough. This is reflected in the Borough's 1997 budget. The Borough budgeted \$36,018 less for police salaries and wages in 1997 than it did in 1996, even including a 2% salary increase for 1997.

Thus, in computing the total net annual economic changes, I have included the cost of the annual 3.5% across-the-board salary increases plus \$990 in 1998 and 1999 for the improvement in pay for working in a higher rank. The total net actual economic change in 1997 is \$51,692; in 1998 it is \$54,492; in 1999 it is \$56,364.

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

Interests and Welfare of the Public The Supreme Court in Hillsdale, Ibid., made it clear that interests and welfare of the public always must be considered and that an award which failed to consider the interests and welfare of the public was in danger of being deficient. The amended statute also requires the arbitrator to consider the limits imposed by the Cap Law in connection with this factor.

The Borough acknowledges that it budgeted less than it was permitted to budget under the Cap Law and that it had the legal authority to spend more money. Its Cap bank exceeded \$665,000, as reflected in the 1997 budget. There was a surplus balance of \$1,186,520.11 as of December 31, 1996 and the Borough anticipated using

\$950,000.00 of that amount in its 1997 budget. That left \$236,520.11. Municipal appropriations in 1997 are almost \$11 million. An award of .5% above the Borough's offer costs an additional \$7,500. It is evident that this award will not cause the Borough to exceed its spending authority.

In considering at the public interests, several things must be taken into account. The public interests are best served by balancing competing interests. On one hand, the public wants and needs a sufficient number of police officers and other public employees to meet their legitimate service needs. Generally speaking, the lower the wages of those employees, the more of them the employer can afford to employ. Also, generally speaking, the public would like to obtain public services at the lowest possible cost so that taxes and tax increases can be kept to a minimum. On the other hand, the interests and welfare of the public are served by having a fairly compensated group of police officers. This will assure the ability of the Borough to attract and retain sufficient numbers of qualified and dedicated police officers. It will serve to maintain the morale of those officers which, in turn, will encourage them to be a productive, efficient and effective police force. It also will serve to minimize labor strife. A number of these considerations are reflected in the public policy statement of the 1995 amendments to the interest arbitration statute as set forth above.

It is true that the tax rate in the Borough is high and that the per capita income is relatively low. Also, the salary ranking of the officers is higher than might be expected, given the per capita income. This may well be why the Borough has decreased the number of police officers over the past five or more years. The Borough has taken measures to minimize tax increases and these measures appear to be justified by the socio-economic data.

Given these considerations, I have concluded that wage increases of 3.5% each year of the agreement are consistent with the interests and welfare of the public. As will be discussed, such increases generally exceed private sector and other public sector increases as well as increases in the cost of living but they are somewhat below the increases received by other police officers in Somerset County. Thus, the award balances the needs of the public while taking into consideration the desires of the officers.

Comparisons Comparisons are to be made with other employees performing similar services as well as with other employees generally in the following groups: 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 these in order.

First, private sector comparisons are to be made with employees performing similar services as well as with private employees generally. Police officers really do not have private sector counterparts. The services which they provide are quintessentially governmental in nature. Comparisons simply do not exist. Thus, this part of the comparison is not relevant.

The other part of this comparison calls for a comparison of police officers with other employees generally in private employment. I believe that such comparisons are extremely important for a number of reasons. Ultimately, the private sector supports the public sector. Private entities must make a profit in order to remain in business and, unlike governments, they cannot simply raise taxes when they need or want more money. Economic laws and the discipline of the market are controlling. Decisions are based on economic considerations rather than political ones. Also, most taxpayers are employed in the private sector so what goes on in that sector affects their ability to pay

the taxes which are used to compensate police officers and to provide all other governmental services. Changes in the earnings of private sector employees are related to their ability to pay their taxes.

A large number of complex variables come to play in the private sector including unemployment, employment levels, inflation, interest rates, taxes, technological changes, union strength, productivity increases and degree of competition. All of these factors influence private sector wage changes. In my opinion, this factor is one of the most significant guides in determining appropriate changes in public sector wages and compensation.

The Bureau of National Affairs publishes information on private sector wage increases covering 1,000 and more unionized workers. These figures show increases in both 1995 and 1996 of 3%.⁸ These, of course, are averages. Some private sector employees received larger increases and some received smaller ones. Given these increases in the private sector, annual increases of 3.5% exceed private sector increases by .5% per year. This excess is justified, in my view, by other considerations including, particularly, increases received by other police officers in the County as discussed below.

The Employment Cost Index ("ECI") is a figure published by the Bureau of Labor Statistics which reflects the costs of benefits as well as wages. It increased by 2.8% in 1995, by 3.1% in 1996, and by 3.2% for the twelve months ended September 1997. All figures are for private industry workers nationally.⁹

Second, comparisons are to be made with other public employees generally. The Borough cited data published by the Bureau of Labor Statistics which indicate that

⁸ The Borough submitted data for 1995 and the first quarter of 1996. I have taken arbitral notice of more recent figures which cover all of 1996.

⁹ Again, I have taken arbitral notice of the recent figures.

during 1995, wage settlements entered into by state and local governments averaged 3.2%. The ECI for state and local government workers increased by only 2.8% in 1996 and by that same rate in the first quarter of 1997. Thus, increases of 3.5% exceed this figures by .7% and again I believe that this is justified on the basis of comparisons with other police officers as discussed below.

Third, comparisons are to be made with public employees in the same jurisdiction as well as with those in similar comparable jurisdictions. Looking at comparisons within the same jurisdiction, neither party provided evidence of any settlements. This may well reflect the absence of any finalized agreements between the Borough and any of its other employees. Thus, this part of the comparison provides no guidance. There are no internal comparisons to be considered.

The other part of this criterion calls for comparisons with similar employees in comparable jurisdictions. Both parties provided data from the municipalities in Somerset County and I agree that these constitute the appropriate universe for the purpose of making these comparisons.

In 1996, the last year of the prior agreement, the top rate for a patrolman in Somerville was \$53,235. The average top rate in the County in 1996 was \$51,339. This figure is based on the salaries in 17 of the 19 municipalities in the County and excludes Franklin Township and Far Hills. At that time, Somerville's top rate was \$1,896 above the average.

The Borough reported twelve settlements for 1997 with the top rate salaries in those twelve communities averaging \$53,722. I have computed the increases in those municipalities for 1997. Similarly, the Borough reported six settlements for 1998. The average top rate in those municipalities is \$56,304. I have calculated the increases in these communities for 1997 and 1998. The salaries in these municipalities follow:

<u>Municipality</u>	<u>1996</u>	<u>1997</u>	<u>1998</u>
Manville	\$54,277	\$56,448	\$58,707
Bernardsville	54,087	56,521	
Bernards	53,794	55,811	58,044
Montgomery	53,678	56,362	
Bound Brook	52,372	54,336	56,401
Bedminster	51,977	54,186	
Bridgewater	51,651	53,769	56,027
Warren	50,818	52,978	
Hillsborough	50,435	52,705	55,077
Raritan	50,059	52,061	
Peapack & Gladstone	50,006	51,881	53,587
Green Brook	45,335	47,602	
Average	\$51,339	\$53,722	\$56,307

Comparing the increases from 1996 to 1997 of the 12 municipalities which have settled for 1997, the average increase in 1997 was 4.23%.

Comparing the increases in 1996, 1997 and 1998 of the six communities which have settled for 1997 and 1998, the average increase in 1997 was 4.0% and the average increase in 1998 also was 4.0%.

Therefore, the increases of 3.5% which I shall award for 1997, 1998 and 1999 are .5% below the average increases reported for the six municipalities which have settled through 1998.

The PBA argued that wages in Somerville have traditionally outpaced the County average and that its ranking fell from 3rd in 1991 to 5th in 1994 and 1995 and to 6th in 1996. It is argued that this should not continue, especially in view of the high work load and the fact that Somerville is a small urban center. I do not believe that the high ranking in Somerville is consistent with the Borough's financial situation. The low per capita income and high tax rate militate against such a high relative ranking. This is not meant to detract in any way from the work and effort put forth by the officers. It is simply a reflection of ability of the residents of the municipality to pay.

Increases of 3.5% for the three years of the agreement will cause the top rate to increase from \$53,235 in 1996 to \$55,098 in 1997 to \$57,027 in 1998 and to \$59,023 in 1999. This will result in a ranking of 5th among the 13 reported settlements for 1997. Somerville also ranked 5th in this same group of communities in 1996. It will result in a ranking of 3rd of seven communities which have settled for 1998. Somerville also ranked third in this group in 1996. Thus, its ranking will not be adversely affected by this award although its relative position will decline somewhat, as the analysis prepared by the PBA demonstrated.

The PBA also cited two recent settlements: four 4.5% increases in Hillsborough starting in 1996 and increases of 4.1%, 4.1% and 4.2% for the Bridgewater SOA. These, however, were not awards so they do not reflect the application of the statutory criteria.

If comparability were the only factor - and the Supreme Court explicitly stated in Hillsdale, Id. at 85, that no one factor should be considered to be dispositive - then a larger increase would be justified. In light of all of the statutory factors, however, I believe that the 3.5% increases awarded are reasonable and consistent with the statutory criteria.

Overall Compensation I discussed ECI figures in the previous section for both public and private sector employees. These relate to overall compensation and demonstrate that the increases which I shall award are somewhat higher than the increases received by private employees and public employees in general.

The Borough submitted data which showed the extent to which employees in the private sector are being placed in managed care plans and compelled to contribute to the cost of health insurance. The employees in Somerville (and many others in the public sector in New Jersey although the State recently required a contribution by

employees who remain in the traditional plan) continue to enjoy a traditional indemnity plan with no employee contribution. This places these employees in a favorable position vis-à-vis private sector employees.

The benefits enjoyed by Somerville's police officers are generally in line with those received by others in Somerset County. They receive an average number of holidays, one more personal day than average, one less than the average number of sick days, an average number of death days, and average vacation time. Their uniform and maintenance allowance is several hundred dollars above the average, although the PBA accurately notes that not all of the benefit in Somerville is paid in cash. Vouchers are required for \$600 of clothing purchases. Five hundred dollars is provided in two payments for clothing maintenance. The PBA's proposal to increase the clothing allowance certainly cannot be justified either standing alone nor can it be justified as part of the overall package.

Educational benefits are varied throughout the County. The officers in Somerville receive 75% of the cost of tuition but they do not receive compensation for an AA or BA degree as do officers in four of the municipalities in the County. On the other hand, over half of the officers receive no educational reimbursement or degree compensation.

One of the most variable benefits is longevity. Somerville's longevity benefit has been grandfathered and is received only by officers hired before January 1, 1977. However, there is a senior status differential which is received by Somerville's officers who are not eligible for longevity and this is 4% of base pay for officers with five or more years of service. The data submitted by the PBA indicate that approximately half of the police officers in the County do not receive longevity payments. Those in six departments receive longevity expressed as a percent of salary and those in four

others receive longevity payments expressed in dollars. With the senior status differential, the officers in Somerville receive more money faster than any other municipality in the County. No other unit receives 4% before ten years of service. Also, the amount received exceeds all of the dollar payments in three of the municipalities which provide payments in dollars and it exceeds those payments through 19 years in the other one (Bernards).

Given this picture in the County, the PBA's proposal for the additional payment of 2% annually to officers who reach 15 years of service is not justified. The trend is in the other direction toward the elimination or reduction of this type of benefit.

While the parties did not submit evidence on the practice in the County regarding payment for working in a higher rank, the system now in place in Somerville can and does result in officers working for a number of hours in a higher rank without receiving additional compensation. This is an inequity which can be rectified at a nominal cost.

The Borough has proposed that a step be added to the salary schedule. The current number of steps is five. The average in the County is 5.6. If this is an item of interest to the Borough, it can propose it in the next round of negotiations. At this time, the Borough has not provided sufficient justification for a change.

Except to the very limited extent discussed above, there is no evidence that the overall compensation received by the officers in Somerville is such as to distinguish them favorably or unfavorably in relation to their colleagues throughout the County. Accordingly, I find this factor to be one which calls for neither a significantly above-average nor below-average increase.

Stipulations The parties' stipulated that non-economic issues upon which they had agreed will be included in the new agreement and that the term of this agreement should be three years.

Lawful Authority The statute requires the arbitrator to consider the limitations imposed on the employer 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 it was intended to control the cost of local government to protect homeowners. The limitation, however, applies only to total appropriations and not to any single appropriation or line item.

It may be true, as the Borough asserted, that its budget was tightly drafted. This is supported by the Borough's analysis of expenditures through September 2, 1997. The Borough also budgeted \$740,000 less than it could have under the Cap Law.

The Borough candidly acknowledged that it had the lawful authority under the Cap Law to spend more money than it spent. Its unwillingness to spend more was not based on its lawful authority but other considerations including the high tax rate and a desire to limit tax increases.

The Borough projected a surplus of \$168,000 in the retirements line item. An additional 1.5% - the 1% offered by the Borough plus .5% more which I shall award - represents approximately \$22,500 for this bargaining unit. Furthermore, the Borough, even with its tight budgeting, projected a surplus remaining of \$51,518. Thus, an additional .5% for this unit, which will cost \$7,500, can be funded from that surplus remaining.¹⁰ Additionally, the Borough has shown the ability to regenerate surplus in the last several years. The results of operations have been over \$800,000 each of the

¹⁰ I realize, of course, that money spent from the surplus remaining (or any other source) will not be available the following year as surplus to be appropriated but in this section the concern is with the lawful authority of the employer. The next section will deal with the financial impact.

last four years. Even taking into consideration that in 1996 the Borough took unusual measures to limit expenditures and that it collected an unusually high percentage of its delinquent taxes and canceled \$224,000 of appropriations, the pattern has been fairly consistent. Similarly, surplus has exceeded \$1 million each year since 1992 and was \$1.4 million in 1996. Particularly significant is the fact that the Borough anticipated collecting only 93.87% of its taxes in 1997 after having collected 96.54% in 1996. The Borough could have anticipated up to 96.54% in 1997, although that would have been risky because the 1996 figure was 1% higher than the 1995 figure. It is virtually certain, however, that the Borough will collect more than 93.87% of its taxes, thus assuring a contribution from this source to surplus. The \$1.3 million budgeted in the reserve for uncollected taxes also will provide money for surplus going into 1998.

Finally, I note that the police salaries and wages appropriation actually shows a decrease of \$36,018 below 1996 expenditures. This figure reflects cost reductions due to retirements as well as a 2% salary increase. Thus, expenditures in this line item will be less in 1997 than they were in 1996, even when the 3.5% salary increase is added.

The Borough has a Cap bank of over \$600,000 so there will be no legal constraints on meeting the costs of this award in 1998 and 1999.

The very modest amounts awarded in excess of the Borough's offer - 2% of which it included in the budget for 1997 and the other 1% of which it plans to take from the surplus from the retirements line item - can be paid without jeopardizing the Borough's spending limits or putting the budget out of balance. Neither the Cap Law nor any other lawful limitations on the authority of the Borough have been cited which will be threatened by the award. Thus, the award will be consistent with the lawful authority of the Borough, including the Cap constraints.

Financial Impact The financial impact of this award on the governing unit, its residents and taxpayers will be modest. The award is .5% above the offer of the Borough. A .5% increase costs about \$7,500. With a municipal budget of approximately \$11 million, the magnitude of that figure is obvious. This will not be difficult for the Borough to pay. There are a number of different ways it can be funded. The Borough has projected a surplus of \$168,000 in its retirements line item in 1997. While it used this source to increase its offer from 2% to 3%, this did not use up the full amount of the surplus. As stated, an additional .5% costs about \$7,500. The Borough used an exceedingly conservative tax collection rate of 93.87% in 1997 although it collected 96.54% of its taxes in 1996. This difference of 2.67% is much more than is likely to be necessary. To the extent that over 93.87% of the taxes are collected, the Borough will regenerate surplus for use in 1998. The \$1.3 million in the reserve for uncollected taxes also is likely to prove larger than necessary and this, too, is a very likely source of regeneration of funds for surplus. Even by the Borough's projections, it has a projected remaining surplus of over \$50,000 and this money can be used to fund the additional \$7,500 required by this award in 1997.

While it appears to be true that the Borough will not be able to general surplus from several major sources utilized in 1996 including canceling of appropriations and very high collection of delinquent taxes, it also is true that the results of operations in each of the last four years have been in excess of \$800,000.

The Borough made \$22,000 in pension payments in 1997 that it did not have to make until 1998. This means that the payment will not have to be made in 1998.

All of these facts indicate that the Borough can pay the additional \$7,500 mandated by this award and that the impact of this requirement on a budget of this magnitude will be minimal.

At the same time, it must be borne in mind that this is not a wealthy community. The per capita income ranking is 17th in Somerset County, far above the Borough's ranking for police salaries. Furthermore, the taxpayers have the second highest equalized tax rate in the County. Thus, they are relatively less well off than others in the County and they are more heavily taxed. Also, the tax collection rate in 1993 ranked only 16th in the County and this, too, is a reflection of the financial pressures on the taxpayers.¹¹

Viewed comprehensively, I believe that the evidence indicates that the Borough can meet the costs of three 3.5% salary increases without significant impact but at the same time I believe that the low per capita income and high tax rate point toward relatively modest salary increases for the police officers. All salary increases, even modest ones, increase the base and build in higher costs for the future. There is a significant difference over a few years between increases of 6% as proposed by the PBA and 3.5% as awarded. The top rate would go to \$63,404 with 6% increases but will go to \$59,023 with 3.5% increases, a difference on the top rate of \$4,381 per officer. That difference is significant.

Cost of Living The Consumer Price Index for the New York-Northeastern New Jersey area (CPI-U) published by the Bureau of Labor Statistics increased by 2.1% in the twelve months ending September 1997. The increases in the last few years have been approximately 3%. There is no reason to believe nor is there evidence in the record to indicate the likelihood of significant increases in the CPI in the next year or so. Thus, a salary increase of 3.5% annually will in 1997 and is likely in 1998 not only to keep the police officers ahead of increases in cost of living but to provide an increase in

¹¹ The collection rate has gone up considerably in Somerville since that date. Its 1996 collection rate of 96.54% would have ranked 9th in the County if the other municipalities kept their 1993 rates (which I have no reason to believe they did).

real earnings in those years. The differential in recent years of almost 2.5% between increases in the CPI and increases in wages has been larger than this award will provide but such a differential cannot be justified. While increases in real wages are possible because of increases in productivity which are brought about largely by technological change, these increases must be closely related to overall increases in productivity if they are to be sustained.

An award of 3.5% is justified on the basis of this factor even though it exceeds the recent increase in the cost of living. I do not, however, accord this criterion great weight in deciding this case.

Continuity and Stability of Employment This, too, is not a significant factor in deciding this case. While an award of 6% as proposed by the PBA might jeopardize overall employment levels and thus the continuity and stability of employment,¹² increases of 3.5% in each of three years should not have an adverse impact on the Borough's willingness and ability to provide police and other municipal services. Having said that, I am aware that the number of police officers has decreased by about five in the last number of years. This reflects the Borough's efforts to control spending. It is true that the number of incidents has increased overall and that the decrease in manpower has led to an even greater increase in the number of incidents handled by each officer. This is an inevitable consequence of this combination of factors. It does not, however, justify an overlarge salary increase. Relatively modest 3.5% salary increases are consistent with continuity and stability of employment.

¹² Three increases of 6% would result in a top rate for a patrolman in 1999 of \$63,404 rather than the figure of \$59,923 which will result under this award. This would cost the Borough the equivalent of approximately one and one-half officers in 1999.

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 factors in my decision to award salary increases of 3.5% each of three years were the public interest, financial impact, increases received by employees in the private sector, and comparisons with other police officers in Somerset County.

If the only factor were comparability with other police officers, an award in excess of 3.5% would have been justified. Increases received by other police officers have been approximately 4% or a little more. That figure, however, is greater than can be justified when the other factors are taken into account.

Private sector increases have been about 3%. Increases of 3.5% exceed those in the private sector. I believe that private sector increases are extremely important in determining appropriate increases in interest arbitration because the private sector drives the entire economy and supports the public sector.

The financial impact criterion also suggests an award which is somewhat below the increases received by other police officers because the residents and taxpayers of Somerville are less able to afford taxes and tax increases than are those in most of the rest of the county. Not only does per capita income rank 17th and median household rank 18th but the equalized tax rate is the second highest in the County. This is not a combination which supports as high a level of employee wages as now exists in Somerville. Again, this is not a reflection on the officers and their work, professionalism and competence but rather is a recognition of the economic realities in the Borough.

The public interest is important and while this factor requires a balancing of competing considerations, I have concluded that an award of 3.5% will fairly compensate the officers while not unduly adding to municipal costs and taxes.

Less important in deciding this case, but generally consistent with the award, are increases in public employment in general and increases in the cost of living. Both of these are close to or slightly below 3%. Thus, 3.5% increases exceed both of those figures and, as is appropriate, provide an increase in real earnings for the officers.

The award is fully consistent with the Borough's lawful authority, including the limitations imposed by the Cap Law. It also is consistent with maintaining a stable level of employment and the continuity of employment.

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 by 3.5% across-the-board on January 1st of each year of the agreement (with the 1997 increase being retroactive).

Effective January 1, 1998, any officer assigned or required by regulations to assume the duties and responsibilities of an officer of a higher rank for two or more hours shall be compensated at the rate of the higher rank retroactive for all hours worked during which said duties or fractions thereof were performed.

The new agreement shall incorporate the non-economic items upon which the parties reached agreement.

Except as otherwise mutually agreed by the parties, the terms of the prior agreement shall be continued unchanged in the new agreement.

Dated: December 5, 1997
Princeton, NJ

Jeff B. Tener
Jeffrey B. Tener
Arbitrator

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

On this 5th day of December, 1997, 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.

Gloria L. Tener
GLORIA L. TENER
NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES SEPT. 10, 1999