

**PUBLIC EMPLOYMENT RELATIONS COMMISSION**

---

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

**Between** \*

**City of Salem** \*

**and** \*

---

**Salem Police Officers' Association** \*

**Docket No. IA-98-29**  
**Jeffrey B. Tener**  
**Interest Arbitrator**

**Appearances**

**For the City:**  
**Mark S. Ruderman, Esq.**

**For the Association:**  
**Myron Plotkin, Consultant**

**OPINION AND AWARD**

**Background and Procedural History**

The parties jointly filed a Petition to Initiate Compulsory Interest Arbitration with the Public Employment Relations Commission ("PERC") on December 10, 1997. Pursuant to the mutual request of the parties, I was appointed as the interest arbitrator in this matter on December 12, 1997 by Timothy A. Hundley, PERC's Director of Arbitration. I met informally with the parties on March 25, 1998 in an effort to bring about a voluntary settlement of the dispute. This effort was not successful.

A hearing was scheduled for July 22, 1998 but was postponed as was a hearing scheduled for October 8, 1998. A hearing scheduled for January 8, 1999 was canceled because of the weather. A hearing finally was held on March 4, 1999. Both parties filed post-hearing briefs. These were received by April 6, 1999, 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), calls 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 a decision to June 1, 1999, as set forth in separate letters to Mr. Hundley dated March 31, 1999 from Mr. Ruderman and April 12, 1999 from Mr. Plotkin.

The parties did not agree upon an alternative terminal procedure. Therefore, 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."

The parties' prior agreement covered the term January 1, 1996 through December 31, 1997. The bargaining unit includes patrolmen, of whom there are 16, and sergeants, of whom there are six. The parties agree that the 1997 salary base is \$867,691.

### 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**

### **City of Salem**

1. The City proposes that Article III, Grievance Procedure, be amended at Section 3 B to provide that grievances be filed within five days. The prior agreement required unit members to institute a grievance within twenty-five days.
2. A. The City proposes a three-year contract with salary increases of 2% on January 1, 1998, 2% on January 1, 1999 and 2% on January 1, 2000.  
B. The City proposes that the probationary salary be frozen at \$28,179.91 for the term of the agreement.  
C. The City proposes the establishment of a three-step guide between patrolmen and sergeants with each salary being one third of the difference between patrolmen and sergeants' pay.
3. The City proposes that Article VI, Salary, Section 4, Longevity Payments, be amended to provide that employees hired after January 1, 1999 shall not receive longevity.
4. The City proposes that Article VII, Vacations, be amended to provide the following vacation schedule for patrolmen hired after January 1, 1999:
  - A. Completion of one through completion of nine years, 10 days.
  - B. From completion of 10 years through completion of 14 years, 12 days.
  - C. Completion of 15 years through completion of 19 years, 14 days.

- D. Completion of 20 years forward, 16 days.
  - E. Eliminate summer vacation guarantees.
5. The City proposes that Article X, Health and Welfare Insurance, be amended as follows:
    - A. Any increase in 1997 dental insurance premiums shall be borne by the individual employee.
    - B. The Employer retains the right to change insurance carriers as long as substantially similar benefits are provided.
  6. The City proposes that Article XX, Interest Provisions, be deleted in its entirety.
  7. The City proposes that Article XII, Telephones, Section 2 be deleted. Section 1 requires each unit member to have a telephone at his/her residence and to have the number listed at the dispatcher's desk with any changes to be reported within twenty-four hours. Section 2 requires the City to pay the basic cost of telephone service.
  8. The City proposes that a new article on out-of-title work be added under which "An employee must work in a higher position for 90 consecutive days in order to be compensated at that level."

**Police Officers' Association**

The POA proposed the following changes as economic issues:

1. A. Salary

1/1/98 -	6%
1/1/99	3.5%
7/1/99	3.5%
1/1/00	3.5%
7/1/00	3.5%

B. Longevity

- 0-4 years of service - None (No change)
- 5-9 years of service - 3.5% (No change)
- 10-14 years of service - 4.0% (No change)

15-19 years of service - 5% (Currently 4.5%)

20-22 years of service - 6% (Currently 5.5%)

23-24 years of service - 8% (Currently 5.5%)

25+ years of service - 10% (Currently 6%)

C. Shift Differential

Increase the shift differential for Shift No. 1 to \$.65 per hour.  
(Currently \$.55)

Increase the shift differential for Shift No. 3 to \$.60 per hour.  
(Currently \$.50)

2. Acting Shift Supervisor Pay

Any officer assuming the duties and performing the job function of a higher rank shall be paid at the rate of pay commensurate with the higher rank for all such time worked commencing on the first day of assuming such duty. If an employee assumes the duties of a higher rank for four (4) or more hours on any given shift, the employee shall receive the higher rank pay for his entire work shift. (Currently \$.50 per hour commencing first day)

3. Leaves of Absence

A. Pay for sick leave upon retirement: Maintain status quo on total amount paid (\$12,000) but change formula to pay 100% of per diem for all accumulated days. (Currently one-half the number of days)

B. Bereavement leave: Increase number of days from three to five.

4. Insurance

Optical care: Total maximum dollar reimbursement per year to remain status quo but allow usage of allotment for dependents care.

Insurance coverage upon retirement: add coverage for dependents at City expense.<sup>1</sup>

Insurance coverage for dependents upon death of a police officer: non-work related death - five years of coverage or until spouse remarries, whichever comes first; work-related death - coverage until age 65 or until spouse

---

<sup>1</sup> The City questioned the negotiability of the POA proposal regarding insurance coverage on retirement. Following a review of this issue, the POA advised Mr. Ruderman and the arbitrator by letter dated March 23, 1999 that the POA was withdrawing its proposal regarding full family retirement health benefits because the members of the Association currently receive full family health benefit coverage upon retirement.

remarries, whichever comes first.

5. Clothing Allowance

Increase detective's allowance from \$300.00 to \$500.00 per year.

6. College Credits

Maintain status quo as to fifteen dollars (\$15.00) per credit but modify so that employee receives the amount each year.

Add the following new college incentives:

Associates Degree/60 credits	\$300.00 per year
Bachelors Degree	600.00 per year
Masters Degree	1000.00 per year

7. Work Schedules and Notice

Permanent and Non-Permanent Shifts - Notice of any changes given at least 72 hours in advance or officer paid an additional eight (8) hours straight time pay except where notice is not possible due to an emergency.

8. Patrol Cars

Will agree to language consistent with PERC case law.

The Association has proposed the following change as a noneconomic issue:

1. Cleaning of Uniforms

The cleaning establishment shall be within the City of Salem or if outside of the City, the City shall arrange for pick-up and delivery at the police station.

**Argument of the POA**

The Association recognizes the relevance of the above-quoted statutory criteria but notes that, in this conventional arbitration proceeding, the arbitrator is free to fashion a settlement of all open issues on a reasonable basis and that the criteria give wide latitude to the arbitrator in fashioning the award. It is not required that each factor be given equal weight nor is it required that any one factor be viewed as controlling. While settlements within the City as well as those in the surrounding area are to be

considered, the POA urges the arbitrator to look at the full picture and the entire settlement in analyzing these settlements.

Additionally, the POA argues that a police officer really cannot be compared to any other public employee with the possible exception of a firefighter. Officers carry guns and wear bullet proof vests. It is not certain whether they will return home at the end of a shift. They face life-threatening situations each day and they are exposed to diseases during their normal workday. Unlike all other City employees, they provide services every hour of every day. Thus, the POA urges the arbitrator to keep these differences in mind as he reviews and applies the criteria.

Furthermore, Salem is said to be different from the surrounding communities because its crime rate is the highest in the area. While agreeing that Salem is not a wealthy community, the POA contends that, in part because of prudent management and the receipt of grants, it is in a position to provide a more substantial wage and benefit package to its officers than it currently provides.

The main issue in this proceeding is salaries and the salaries of these officers is the lowest in the area by a considerable amount. The working conditions are difficult. While the Association is asking for a wage increase which is greater than that received by other City employees and other police officers in the area, this is said to be justified because the other communities already provide a much more lucrative package to their police officers. The POA asserts that the City has the ability to fund the salary increases it has proposed and is attempting to minimize the impact by proposing split increases in the second and third years (as proposed by the City in an earlier round of negotiations).

The POA notes that Salem is an urban type community in Salem County with a population of 6,847. The average median value of a one-family home is \$52,400. The



total assessed property values in 1997 were \$122,386,807. This placed the City ninth of 15 communities in the County on this measure.

The POA accepts that a comparison with the "Big Six" (Camden, Elizabeth, Jersey City, Newark, Paterson and Trenton) has some relevance, as the City argued. Thus, the per capita income in Salem ranked fifth in this group but was only a little below the average. It ranked third highest in terms of the crime rate per 1000 residents, behind only Camden and Newark. The POA observes, however, that Salem had the third highest tax collection rate in this group and that its rate has been improving so that it stood at 90.91% in 1997. The POA points out, however, that the City did not do a salary and benefit comparison with the urban municipalities. The POA did provide such comparisons and these show that Salem's maximum patrolman salary is \$14,089 below the average in the "Urban 15" in 1997 without longevity and an even more distant \$17,932 below the average in those municipalities when longevity is factored in.

The POA also emphasizes the crime rate in Salem as a very important factor which must be considered. Salem had the highest or second highest ranking in the County between 1990 and 1997 in the total crime index per officer and in the crime rate per 1000. In fact, the POA points out that for many types of crime, the City accounted for close to or more than half of the incidents in the County: murder - 44%, rape - 65%, robbery - 61%, aggravated assault - 59%, etc. The high and rising crime rate in the County has been a matter of public concern, as expressed in editorials and news articles. The high crime in Salem adds to the stress of what is already one of the most stressful jobs in the country. This stress has been documented in studies cited by the POA.

The Association agrees with the City that a comparison with the "Big Six" is appropriate and it notes that Salem ranks third in the total crime index per officer in this

group, behind only Camden and Elizabeth. Salem is fourth in the crime rate per 1000 in this group, right in the middle and above Trenton, Jersey City and Paterson. Salem, however, as stated above, while even with the "Big Six" in terms of crime, lags far behind in salaries.

The POA makes several general arguments in support of its overall position. One relates to the ability to pay and the impact on the taxpayer; one relates to the cost of living; the third relates to pattern bargaining.

Beginning with the ability to pay, the POA points out that the City has not claimed that granting the POA proposals would cause the City to spend beyond its authority under the Cap Law, N.J.S.A. 40A:4-45 et seq., nor violate any other statute. The City did not exceed its budget cap and its 1998 appropriations were well within the limits. Additionally, it has funds available for banking under the Cap Law.

Relying in large measure on the testimony of Vincent Foti, the Association's financial expert, and the financial analysis he prepared, the POA asserts that the City can fund the POA increases without having an adverse impact on the taxpayers. As Mr. Foti computed, average increases of 5% would result in a cost to an average homeowner of approximately \$1.93 per month, a truly minor amount. The City may have had financial problems in the past but, the POA contends, due to good management, intelligent planning and the judicious use of grants, the City has been able to keep the municipal tax rate unchanged or with a small increase for some years. Thus, the rate was \$1.04 in 1995 and 1996. It went up to \$1.09 in 1997 and to \$1.14 in 1997. These are very modest increases. The municipal purposes increases in 1997 and 1998 were more than offset by drops in both the County and school rates in those two years so that the overall tax rate actually declined from \$3.92 in 1996 to \$3.71 in 1997 and to \$3.69 in 1998. The tax levy increased by less than \$400,000 between 1993

and 1998 and most of that was due to increases in school taxes. Assessed value in Salem decreased only a very small amount between 1994 and 1997 and this was a period of generally declining assessed values. Thus, Salem is more than holding its own.

Mr. Foti calculated the tax levy per capita in Salem County and determined that the City ranks at the very bottom with a rate of \$594.90. Five of the fifteen municipalities exceed \$1,000 per capita and three more exceed \$900.00. Thus, Salem City really has a low per capita tax levy.

An additional measure of the City's improved fiscal health is its climbing tax collection rate. That rate went up steadily from 85.83% in 1994 to 90.91% in 1997. This has permitted the amount reserved for uncollected taxes to be decreased. Mr. Foti suggested that if the City were to be more aggressive, it could increase its tax collection rate to the State average of 93%. Also, as he noted, ultimately the back taxes will be collected.

Mr. Foti also pointed out that the City derives a relatively small portion of its total budget from the taxpayers. Only 25% of its budget is derived from taxpayers and the rest comes from other sources. This is shown in the 1998 Municipal Data Sheet at Sheet 11.

The city has not exhausted its borrowing power. In fact, its remaining borrowing power exceeds its net debt. This, of course, results in less debt service than it might face. Thus, the City is not pressed.

The City's surplus has increased. It stood at \$550,795 in 1995 and while it dropped to \$351,173 in 1996, it went up to \$742,923 in 1997.<sup>2</sup> These changes have been similar to the changes in the City's results of operations which reflect its ability to

---

<sup>2</sup> The increase is much more dramatic if one goes back to 1992 when the surplus stood at only \$130,551.

regenerate surplus during the year. Thus, the results of operations in 1995 were \$550,795. They dropped to \$351,173 in 1996. They increased to \$742,923 in 1997. The increase in the surplus is said to be significant because it provides a means by which the POA salary proposal could be paid without any impact on the taxpayers.

The City's revenues have consistently exceeded the amounts anticipated and the amounts the City has been able to cancel from unexpended appropriation reserves add to the City's flexibility.

The POA asserts that the City really did not claim that it could not pay the increases the POA proposed; the City simply does not want to pay those increases. The reason for the City's reluctance is said to be its settlement with the Salem Blue Collar Workers Association ("BCWA") which represents the City's other organized employees. Those employees were given increases of 3.5% in 1998, 3.5% in 1999 and 3% in 2000. The POA points out, however, that the City did agree to provide much larger increases to its unorganized employees, thereby belying the City's claimed inability to pay. These employees received increases for 1998 which ranged from 3.5% to 36% and averaged 11.45% or \$3,393. Even excluding three employees the City claims got larger increases because they were promoted, the increases still ranged from 3.5% to 8.15% and averaged 5.73% or \$2,568. If the City could pay for these increases, the POA argues that the City also can pay for the increases proposed by the POA. An average increase of \$2,568 would translate into a 6.4% increase based on the top patrolman's salary in 1997 of \$39,740.

The POA argues that, given the present sound and stable financial condition of the City, now is the time for the police officers to begin to catch up to their counterparts in other municipalities. The City has the ability to pay and the impact on the taxpayers will be minimal.

A second factor which the arbitrator must consider is the cost of living. The most common measure of this is the Consumer Price Index ("CPI"). While the recent increases have been modest at 2.2% in 1997 and less than 2% in 1998 and probably around 2% in 1999, this should not be used as the sole determinant of the police salary increase. The POA points out that increases received by police officers throughout New Jersey, whether achieved voluntarily or through interest arbitration awards, have exceeded these figures with very few exceptions.<sup>3</sup> The POA argues that the City's police officers, who already are so poorly paid, should not be penalized, especially since this factor has been given such little significance elsewhere.

The third general factor addressed by the POA, in part because of the emphasis placed on this factor by the City, concerns pattern bargaining. The City's simplistic view is that because the BCWA accepted certain wage increases, the POA is entitled to no greater increases. The City cites stability within the City, fairness to all employees, the need to treat all employees the same, harmonious labor relations, etc. While the POA acknowledges that it is true that historically the salary increases received by the POA and the BCWA have been the same, it argues that there now is justification to break this pattern. The City now is in a position, because of its financial health and stability, to provide "catch-up" to these seriously underpaid and overworked officers who are working in an very high crime environment. They may have had to accept low wage increases in the past when the City was in financial difficulty but the City's condition has improved and, argues the POA, so should that of its police officers.

The POA challenges the City's rationale that all employees should be treated the same and that police officers should not receive more than the employees represented

---

<sup>3</sup> The POA cited the New Jersey League of Municipalities' Arbitration Reporter as the source of arbitrated awards in 1996, 1997 and 1998 and it also cited increases in Salem County and among the "Urban Fifteen" to support this argument.

by the BCWA. The problem with that argument is that the City granted its other employees far greater increases than it gave to the BCWA. The POA questions the pattern: is it the 3.5% received by the BCWA in 1998 or is it 5.73% average increase received by the non-union employees who are not represented? The POA denies that there is a pattern to follow. Furthermore, the POA increases must be determined in light of current conditions and not those which existed when the BCWA settled with the City.

Additionally, if a settlement or benefit concession by one group of employees automatically meant that other groups of employees must receive the same salary increase or make the same benefit concession, then there would be no point in any group negotiating after the first one. This is said to be especially true when the group which follows is a group such as the POA which under the law is entitled to interest arbitration. The POA argues that the arbitrator is not required to follow the BCWA pattern automatically and urges that there are good reasons not to do so.

Even if there were a presumption that a wage pattern will be continued, which the POA disputes, there certainly can be countervailing reasons for deviating from such a pattern. The POA asserts that pattern arguments are more compelling in a situation in which there are numerous bargaining units in the jurisdiction and, particularly, where there are multiple police and/or fire units. That is not the case here. There is only one other unit and it consists of employees who are neither firefighters nor police officers but rather blue and white collar employees who are completely different from police officers. Even as to the BCWA, the POA notes that the City did not include a number of the things which the City has included in its final offer to the POA and is asking the arbitrator to accept. These include the elimination of longevity for new hires, a dual tier vacation schedule, co-payment of dental premiums, etc. The City seems to have overlooked the

pattern when it comes to these items. The City is being selective in its application of a claimed pattern.

The POA recognizes that arbitrators have been placing increased reliance on pattern arguments raised by employers and this must be considered. The arbitrator, however, is not bound by any pattern, especially when it is not clear that a pattern exists. In this case, as discussed above, there is no pattern. The Interest Arbitration Law was intended to promote voluntary negotiations and not to replace collective bargaining. The arbitrator is asked to view the interest arbitration process as an extension of good faith negotiations and not as a process with a pre-determined outcome. The consequence of the City's pattern argument is parity. Yet PERC has determined that parity clauses are illegal and non-negotiable. The POA argues that there is a very close relationship between the City's pattern argument and an illegal parity provision. Pattern bargaining certainly chills a free exchange between the public employer and an employee organization by giving undue influence to another employee organization that is not party to the negotiations.

Finally, the POA notes that the pattern bargaining argument has not always been accepted by arbitrators. It cites the decision of Arbitrator Robert Light in In the Matter of Arbitration Between Borough of Allendale and Allendale PBA Local 217, Docket No. IA-95-071, Remand PERC No. 98-27, decided December 5, 1997.

Thus, even if the arbitrator were to find that a pattern exists, the POA argues that there is more than ample reason not to adhere to it in this case.

The POA next turned to a specific analysis of the issues in dispute. Wages are the most important issue. The POA provided salary comparisons, both with and without longevity, for all of the municipalities in Salem County plus neighboring Bridgeton, a total of seven municipalities, as well as with the "Urban 15." The POA asks that when

salaries are compared, it be remembered that the crime rate in Salem not only is the highest in the County and that the rate increased by 1% in 1998 when the crime rate in the State declined by 6% but also that the crime rate in Salem ranked with the rates in the "Big Six."

The rate for a top patrolman in Salem, without longevity, was \$39,740 in 1997. This was the lowest rate in the County, over \$10,000 below Carneys Point, and \$6,171 or 15.53% below the average of \$45,911.<sup>4</sup> The figures are slightly worse when longevity is included. Salem's officers are \$6,741 or 16% below the average when longevity is included. This illustrates just how low is the pay of police officers in Salem. This disparity, according to the Association, is abhorrent and an aberration which cannot be justified and that cries out to be corrected. Catch-up is required, although the POA recognizes that it will take time to bring its officers even up to the average.

Based on 1998 figures in these municipalities, the officers in Salem would have to receive \$9,199 or 23.15% to reach the average salary without longevity and \$10,879 or 25.8% with longevity to reach the average.

Salaries for the sergeants in Salem are comparatively even lower. With a 1997 salary of \$42,468 without longevity, Salem's sergeants were \$8,156 or 19.2% below the average of \$50,624. Including longevity only increases the disparity. On top of that, the City has proposed that there be a three-step guide for sergeants. There are no such guides in the County for sergeants.

The POA also looked at salary increases in the surrounding communities. It cites average increases of 4.56% in 1998 and 5.28% in 1999. The POA proposal of 6% in 1998 and split 3.5% increases in 1999, which would cost only 5.25%, is only 1.44% plus the rollover into 2000 above the average and this amount should be a modest

---

<sup>4</sup> The POA did not include Salem in its computation of averages.



"improvement factor" to begin to make up the very low salaries in Salem. Even with the Association's proposal, the top patrolman rate in 1998 in Salem would be \$6,815 below the average without longevity and \$8,353 below the average including longevity. These figures would improve very slightly in 1999 so that the officers would be \$6,760 below the average without longevity and \$8,209 below the average with longevity. Of course, under the City's proposal of 2% annual increases, the figures are far worse.

The City asked the arbitrator to compare Salem to the "Big Six." The POA agrees that comparisons with other urban municipalities are appropriate. It points out, however, that the City failed to provide data on salaries. Looking at the "Urban 15," the POA notes that the average salary increase received by a police officer in the "Urban 15" between 1996 and 1999 was 17.62%. The POA proposal for 1998 and 1999, added to what the officers actually received in 1996 and 1997, adds to 17.75%, virtually the same as the average percentage increase in the "Urban 15." This is said to constitute a comparable group and thus to justify the salary proposal of the POA.

Citing figures published by the New Jersey Department of Labor, the POA notes that the average hourly wage for a patrol officer in New Jersey in 1996 was \$25.52. The rate in Salem was only \$18.45. This is \$7.07 or 27.7% below the average.

The POA recognizes the validity of other comparisons as well. It points out that the teachers in Salem in 1997-98 had an average salary of \$44,701. This exceeded the County average of \$43,912. The top salary for a teacher with a BA in Salem is \$62,500, the fourth highest figure in the County. Thus, teachers in Salem are above the average in the County but Salem's police officers are far below the average and at the very bottom of the County. The POA asks how this can be justified when the same economic factors are in effect and the taxpayers are the same for both the police officers and the teachers.

The POA also considered private sector increases. Several surveys indicate that executive salaries increased by 4.1% in 1997 and by 3.8% to 4.3% in 1998. Salaries for clerical, administrative and technical employees increased by 4.1% in 1998. These figures are said to support the POA proposal when it is considered that the standards for recruiting police officers are very high, that there are physical qualifications for police officers, that police officers are required to undergo unique training, that police officers bear great responsibility and that they must be available and competent to protect the public in a variety of emergent circumstances. Police officers are unique and really cannot be compared to private sector employees.

The POA notes that the increases of 2% proposed by the City, or even increases of 3.5%, 3.5% and 3%, as the City gave to the BCWA, would only exacerbate the already extremely unfavorable salary position of these officers. The City's proposal fails to meet any test of reasonableness. The POA also opposes a freezing of the probationary rate as proposed by the City, noting that the hiring rate is not high in Salem.

Additionally, the POA notes that because of the elimination of the so-called "40 hour day" by the Mayor in 1996, the officers lost a considerable amount of guaranteed overtime. As set forth in a March 1, 1996 letter from Mayor Gage to police personnel, the overtime account was reduced by one-third from \$160,000 to \$110,000, thus resulting in a large savings to the City but an equally large loss of income to the police officers. The "40 hour day" had been in effect for thirty years. POA President Steve Dick testified that as a result of the change, he lost \$2,770 in overtime.

The POA is seeking an increase in the longevity package as part of its effort to improve the overall compensation package. The proposed increases are modest and would not affect any officer with less than 15 years of service. Its calculates that its

proposal would cost a total of \$6,354 over the course of the three-year contract. The POA notes that the average maximum longevity payment in 1997 in the five surrounding communities which had longevity was \$3,546. This is \$1,162 above the maximum in Salem of \$2,384. Thus, again, on a comparative basis, the proposed increase is said to be justified.

In contrast, the City is seeking to eliminate longevity for new hires, something which it did not do in the BCWA contract. Longevity is a very important part of an officer's overall compensation. Even based on 1997 maximum salary of \$39,740, and thus ignoring all future salary increases, an officer would lose a total of \$33,884 over a career. This is a very large loss which cannot be justified. The POA asks that the City's proposal be rejected.

The POA is seeking to increase the shift differential for the two shifts that receive that differential by \$.10 per hour. This would cost the City only \$208 per officer per shift or a total of \$1,248 a year. This is a minimal amount and would partially compensate the officers for working shifts, especially since, as described at the hearing, officers often have their shifts changed on extremely short notice.

The POA also is seeking to increase the pay for officers serving as the acting shift supervisor. Currently they receive only \$ 50 per hour or \$4.00 per shift when they assume this responsibility. Based on hourly rates in 1997, the difference between the top rate of a patrolman and a sergeant is \$2.43 per hour. The Association asserts that an employee who has the responsibilities of a shift supervisor should receive the pay of a shift supervisor. This is both logical and fair. The City's proposal to limit even the \$.50 per hour payment only to officers who serve for 90 days is said to be senseless. Officer Dick testified that this occurs with very great frequency and, in one case, for years.

The POA asks that the method of computing pay for accumulated sick leave upon retirement be changed so that 100% of the per diem rate, rather than 50% of that rate, is used. While the Association recognizes that a rate of 50% is fairly common in the area, it points out that several other communities have a higher maximum than the \$12,000 in effect in Salem and which the Association is not asking to increase.

The Association asks that the number of working days for bereavement leave be increased from three to five. Three days is said not to be sufficient for making arrangements, having a funeral and grieving. It asserts that this is a benefit which is not used frequently, cannot be abused - it has no objection to providing verification as proposed by the City - and should be increased to match the practice in the area.

There are several proposals which relate to health insurance. First, the Association rejects the City's proposal that officers pay the increase in the dental insurance premium since 1997. It notes that the City did not get the BCWA to agree to do this and wonders why the City is seeking it from the POA at this time. Second, the City made another proposal under which it would be able to change insurance carriers as long as substantially similar benefits are provided. The Association rejects this proposal. It is said to be unnecessary in that there is case law in this area under which the City has a right to change carriers but it must maintain existing benefits and coverage. There is said to be no justification to relax that standard, although the POA would not object to the addition of language which required the provision of equal or better benefits if the carrier were to be changed.

Third, the Association has proposed a liberalization in the use of the optical plan so that the currently budgeted amount of \$250 every two years be available to the dependents of the employee as well as the employee. This would match what is generally available in the surrounding area.

Fourth, based on the representation that the City provides health insurance coverage for dependents when an officer retires, the POA has withdrawn its proposal to provide such coverage and asks only that the contract language be amended to reflect this coverage.

Fifth, the POA is asking that the spouse of an officer who dies prior to retirement be given health insurance. If the death is job-related, it proposes that the coverage be continued until the spouse remarries or reaches age 65, whichever occurs first. If the death is not job-related, it proposes that the coverage continue for five years or until the spouse remarries, again whichever occurs first. This would be a new benefit which, it is to be hoped, would not be used but which, especially given the high crime rate in Salem, is said to be necessary and important for the security of an officer's dependents.

There are two issues which involve the clothing and cleaning allowance. The expired agreement provides that the City will provide dry cleaning of up to four sets of uniforms a week. The problem, according to the POA, is that the dry cleaner used by the City is located in Pennsville. This is not convenient for a number of the officers so they lose the benefit. The POA proposes that either the City use a vendor in the City or that it arrange for the pick-up and delivery of the dry cleaning at the police station. It is said that this could be arranged by the City easily and would make the existing contract benefit real and meaningful.

The second issue involves the clothing allowance for the detectives. That allowance now is \$300.00 per year. Like so many of the other benefits in this agreement, that amount is lower than the surrounding area. The cost to the City of increasing the figure to \$500.00 for one or two detectives would be minimal.

The Association also has two proposals which relate to education. The first is that the current provision under which an officer is paid, on a one-time only basis,

\$15.00 for each credit earned, be changed to make this an annual payment. Second, it asks that officers with an Associates Degree receive \$300.00 per year, those with a Bachelors Degree receive \$500.00 per year and those with a Masters Degree receive \$1,000.00 per year. It argues that educational incentives are common in police departments and that they constitute a recognition of an officer's educational attainment. An educated police force is to be encouraged because such a force will provide better police services to the citizens. This also is a means of improving slightly the City's overall compensation package. The impact of this proposal is minimal, however, because only one officer has an Associates Degree and only one has a Bachelors Degree. Again, the Association looks to the surrounding area and finds that Salem is lagging in this area.

Another proposal of the POA is that officers be given 72 hours' notice of any change in their permanent or non-permanent shift. If such notice is not given, the officer would receive an additional eight hours' pay unless the change was due to an emergency. As the testimony of Patrolman Robinson indicated, while there has been some improvement in this regard since a lieutenant took over the scheduling, the City still changes officers' shifts fairly frequently and on very little notice. Its purpose is to avoid overtime costs. This is very disruptive to the lives of the officers. The purpose of the Association's proposal is to avoid these disruptions except in cases of emergency. There are notice requirements in almost all of the surrounding communities. This shows that this is a common provision and one which does not unduly disrupt the operations of the department. The cost is totally within the control of the City. There will be no cost if it does not change officers' shifts without adequate notice except in emergencies in which case there also would be no cost.

Since at least 1983, the parties' agreement has included a provision that the City will pay the basic cost of telephone service. This came about because the City required the officers to have telephones so that they can be contacted. This requirement and its purpose continue and there is said to be no reason to discontinue the benefit.

The POA asks that the City's proposal to delete the interest provision, under which the City must pay interest if pay and benefits increased through arbitration are not implemented by certain dates. While this is a unique provision, it is in the agreement because there have been problems in this regard. There is said to be no reason to take it out. The City offered no rationale and the City is in full control of whether or not interest is paid.

Another issue raised by the City deals with vacations. The City is asking for a two-tier vacation schedule with new hires receiving less vacation than current officers. There is said to be no justification for this. Not only did the City not achieve this with the BCWA but the existing vacation schedule in Salem is below the average in the area, even though the officers in Salem confront more crime and work in more difficult conditions. This should not be adopted. Additionally, the POA urges rejection of the City's proposal to remove the prime time provision from the contract. The City provided no reason to make this change and it should be denied.

The POA also opposes the City's proposal to reduce the time for filing a grievance to five days. This is too short a period and there has been no demonstration of a need for any change.

While not at issue in these proceedings, the POA provided data on certain other benefits to show that the officers in Salem are not in the lead. In Salem, officers receive three personal days. The average number of such days in the area is 3.42 days. Thus, Salem is below the average. Salem has 13 holidays and that is the most frequently

granted number of holidays although it is slightly above the average of 12.14 days. Most of the municipalities provide at least some life insurance to their officers; Salem provides none. Thus, it cannot be argued that Salem is ahead in any significant area and, as the bulk of the POA argument has demonstrated, Salem lags far behind in salaries and in many other areas as well.

The POA closed its argument with a discussion which summarized the statutory criteria as they relate to this case. First, it asserts that the interest and welfare of the public will be enhanced by acceptance of its proposals and rejection of those of the City. It is argued that the public interest is best served when there is an experienced, well trained professional police force which has high morale and productivity and that this is best achieved when the police officers are reasonably compensated. These officers have a high level of training, experience, education and responsibility and this must be recognized in their total benefits and salaries. In Salem, in spite of what have been shown to be deplorable salaries and a very high level of crime while working in very difficult conditions, the officers have demonstrated a commitment to their careers. Officers in surrounding communities receive much greater compensation and this is an attractive draw to Salem's officers. The City would not be served by having its officers transfer to other departments. This is something that, as was testified to, is being considered by a number of officers. Mr. Foti demonstrated that the City now is in a financial position to fund the POA's proposals and this would begin to allow the officers to catch-up to their counterparts in surrounding communities. The city did not claim that it could not afford to pay for the salary and benefit increases proposed by the POA. A number of those proposals would have a minimal financial impact but they would help the officers financially and thereby serve the public interest and welfare.



The City argued that comparisons with the City's other group of organized employees supported an award equal to the salary increase negotiated by that group. The POA points out, however, that the City did not provide data which compared those municipal employees to their counterparts in the surrounding communities. Thus, unlike the police officers who have been shown to be far behind their police counterparts, it is not known if the City's other municipal employees are well paid or poorly paid in relation to their municipal counterparts. Furthermore, as discussed above, the teachers in Salem are among the highest paid in the County and this inconsistency is said to undermine the City's position, as does the fact that the City provided much greater increases to its own unorganized employees.

Comparisons with other police officers in comparable communities in the County clearly support the position of the POA. Not only are Salem's officers the lowest paid in salaries and benefits but the other officers received greater increases than those proposed by the City. The high crime rate in Salem and large number of calls responded to by Salem's officers indicate that these officers should be the highest paid, not the lowest.

The POA claims that its proposal is comparable to wage increases granted in the private sector.

The overall compensation received by these officers is far below that received by police officers in the surrounding communities and by the officers in the "Urban 15." The Association's proposal would not bring these officers even up to the average and anything less than the POA proposed would result in a further deterioration of their relative standing and overall compensation. Some of the City's proposals, such as the elimination of longevity and the reduction in vacations for new hires, would only exaggerate the situation.

The POA recognizes that the Cap Law must be considered. That Law, however, applies only to the overall appropriations and not to any particular line item. As Mr. Foti testified, the City is in a relatively healthy financial condition and it has not exceeded its spending limits under the Cap Law. In fact, there is plenty of room under that Law to fund the POA proposals. There is and has been a healthy surplus for the last number of years and there is no reason to expect that this will not continue.

Cost of living also must be considered but the Association notes that this is merely one factor. As demonstrated, other police officers in the County and throughout the State have received greater increases than those proposed by the City notwithstanding the relatively low increases in the CPI.

The final factor is continuity and stability of employment. Again, the POA argues that acceptance of its proposals would foster the desired continuity and stability of employment. It would serve to keep the officers in Salem rather than looking for employment elsewhere. This, too, should be considered as countering the City's pattern bargaining argument.

In conclusion, the POA asks that the arbitrator award the increases in wages and benefits proposed by the POA. The City's pattern bargaining argument should be rejected as should the draconian proposals of the City in its attempt to eliminate or reduce benefits received by this group of seriously underpaid officers who work in the area with the highest crime compared with the police officers in area municipalities with whom they are compared. The statutory criteria support this result.

### **Argument of the City**

The City initially calculated the cost of the parties' offers. It also analyzed some of the proposals of the POA.

The POA salary proposal of 6% in 1998, 3.5% on January 1, 1999 and 3.5% on July 1, 1999, and 3.5% on January 1, 2000 and 3.5% on July 1, 2000 adds to 20% but actually, with compounding, results in an increase of 21.26% over the three years. The top patrolman rate would jump from \$39,740 in 1997 to \$48,339 in 2000, an increase of \$8,599 or 21.26%. Increments add to the costs since not all of the officers are at the top step. The parties agree that there are 22 officers in the unit and that the 1997 salary base was \$867,691. In 1998, five officers will receive increments at a cost of \$5,820 or .67%. In 1999, four officers will receive increments at a cost of \$4,608 or .53%. In 2000, four officers will receive increments at a cost of \$4,608 or .53%.

The Association has proposed an increase in longevity of .5% for officers with 15 to 19 years of service, .5% for those with 20 to 22 years of service, 2.5% for those with 23 to 24 years of service and 4% for those with 25 years of service. According to the City, two employees are in the 15 to 19 year category so the cost to the City would be approximately \$850 or .1%.<sup>5</sup> While this is minor during the term of this agreement, the City asserts that the cost in the future would be "astronomical." The City points out that under the POA proposal, the officers would have a longevity schedule superior to that in Bridgeton, Lower Alloways Creek, Penns Grove and Pennsville (which pays only flat dollars). There is no longevity in Woodstown. Therefore, the City asserts that the POA proposal is totally unjustified.

The POA is seeking an increase in the shift differential of \$.10 per hour for two of the three shifts. This would cost approximately .5%. Because Bridgeton and Penns Grove have no shift differential and because Salem's benefit already superior to that in Woodstown, no increase is justified.

---

<sup>5</sup> I have corrected the City's figure on the cost of longevity and the shift differential.

The cost of the other proposals are largely speculative but, according to the City, cannot be justified. Only two of the other six towns selected by the POA as comparable provide acting shift supervisor's pay on the first day. Four of those towns have no payment of sick leave at retirement and the other two pay 50% as does Salem so the proposal to increase that to 100% cannot be supported. Salem's bereavement is the same as that in Bridgeton and Penns Grove and superior to that in Woodstown. Only Carneys Point and Pennsville are ahead of Salem now. Both Penns Grove and Lower Alloways Creek provide optical care for employees only so Salem is not out of the ordinary in terms of this benefit. Penns Grove does not provide any cleaning allowance so Salem is superior to Penns Grove in this area. Most of the municipalities do not provide insurance coverage for dependents upon the death of an officer so this proposal of the POA cannot be justified.

The Association's college credits proposal would provide a new benefit. Woodstown and Lower Alloways Creek do not provide this benefit. Payment for degrees in Carneys Point and Penns Grove is significantly less than the Association is proposing. The City does not know how many of its officers may be close to attaining degrees so it does not know the cost of this proposal. While there are notice of work schedule change provisions in some of the other contracts, the City notes that in Bridgestone and Carneys Point only 24 hours is required. Also, as an Association exhibit noted, the City succeeded in reducing overtime from \$160,000 to \$110,000. The City is concerned that if this proposal were adopted, overtime costs would increase greatly.

The City places the total cost of the Association's proposal at 7.15% in 1998, 6.2% in 1999 and 7.99% in 2000. Additionally, there is a rollover cost of 1.75% in 2001. This results in average increases of 7.7% for each of the three years.<sup>6</sup>

The cost of the City's proposal, on the other hand, is considerably less. It has proposed salary increases of 2% each year. A top patrolman salary would increase from \$39,740 to \$42,172. This is an increase of \$2,432 or 6.12% with compounding. The increment costs would be the same under the City's proposal as they would be under the POA proposal. Thus, increments would cost .67% in 1998, .53% in 1999 and .53% in 2000.

The City has proposed that the starting salary be frozen for the term of the agreement at \$29,500. This would result in savings to the City if it hires any new officers. Because the extent of hiring is not known, the savings are speculative. Similarly, the savings to the City associated with its proposal to eliminate longevity for new hires is speculative but there will be no savings during the term of this agreement. The same is true regarding the City's vacation proposal. Savings will result if new employees are hired. These savings would be immediate in that event.

The dental insurance premium increased by 7% from 1997 to 1998. The increase in 1999 is not known. The City asks that the officers pay these increases. It also asks that the City be permitted to change insurance carriers as long as "substantially similar benefits are provided." The savings associated with these proposals are not known.

The City wants to remove Article XX, Interest Provisions, from the contract. These costs are potentially onerous and the City's highly experienced labor counsel represented that such provisions do not appear in any other agreement known to him. The City also wants to remove the requirement in Article XXII that the City pay the basic

---

<sup>6</sup> I have used the City's figures but corrected the compounding figure.

cost of telephone service. This is said to cost \$123 per officer or a total of \$2,829 or .4% of the 1997 base.<sup>7</sup> No other town in the area provides this benefit.

The City asserts that its out-of-title work proposal, under which an officer would have to work in the higher title for 90 consecutive to get the higher rate, is exactly the same as the Civil Service provision. Again, the savings are speculative.

The total cost of the City's proposal is placed at 2.71% in 1998, 2.57% in 1999 and 2.54% in 2000. This totals 7.82% or 2.61% per year.

The City points out that there is a dramatic cost differential between the two proposals. The POA proposal costs \$34,947.17 more than that of the City in 1998. In 1999, the POA proposal costs \$66,777.76 more than that of the City. In 2000, the POA's proposal exceeds that of the City by \$118,902.21. This is a total difference of \$220,627.15 over the three years. This is a very large difference and it is one that would continue into the future.

Furthermore, the City notes at the outset that the police officers have received salary increases which have exceeded increases in the cost of living. Over the last twelve years, the average increase in the CPI has been 3.7% whereas wages have increased an average of 4.9%. The City asserts that this has resulted in police salaries absorbing an increasing portion of the budget, leaving less for other essential services.

Before analyzing the statutory criteria, the City introduced its main argument. That argument is that there has been established a pattern of settlements in Salem and that for the last six years, the police officers and the City's other organized employees, represented by the Salem Blue Collar Workers Association, have received identical

---

<sup>7</sup> Again, I have corrected the City's figure.

wage increases.<sup>8</sup> As will be repeated hereafter, the City argues that the Association presented no evidence which would justify a deviation from this pattern.

The City notes that the Legislature amended the interest arbitration statute effective January 10, 1996 in significant ways.<sup>9</sup> It made the terminal procedure conventional arbitration rather than final offer arbitration unless the parties agree otherwise. It also required the arbitrator to determine "whether the total net annual economic changes for each year of the agreement are reasonable under the eight statutory criteria." N.J.S.A. 34:13A-16d(2). The arbitrator is required decide the dispute based on a "reasonable determination of the issues" and must apply the eight enumerated statutory criteria in doing so. Each of these factors must be considered and given "due weight" and an explanation must be provided as to why any factor is deemed not to be relevant. There are three major underlying themes in the statutory criteria: 1) the public interest, 2) comparability and 3) the financial ramifications of the award.

The first criterion is the interests and welfare of the public. The arbitrator must consider the public interest and this expressly includes a consideration of the Cap Law. The focus of this factor is the priority to be given to public employee wages and other economic benefits within the framework of the public employer's overall budget and plans.

The City notes that Salem is not a wealthy community. Over 30% of its population is in poverty, a rate which exceeds that of all of the "Big Six" cities except Camden. Thus, there is a greater percentage of citizens in poverty in Salem than in

---

<sup>8</sup> The BCWA actually represents both blue collar and white collar employees so it is a broad-based unit.

<sup>9</sup> The City pointed out that these amendments were passed in the aftermath of two New Jersey Supreme Court decisions which had a major impact on the process: PBA Local 207 v. Borough of Hillsdale, 137 N.J. 71 (1994) and Washington Tp. V. New Jersey PBA Local 206, 137 N.J. 88 (1994). The amended interest arbitration law incorporated the principles contained in those decisions.

Newark, Jersey City, Paterson, Trenton and Elizabeth. The per capita income is very low. In 1997, it was \$9,810. To place this in some context, the City cited the per capita incomes in the "Big Six" and found that Salem's per capita income was the third lowest. Only Newark and Camden had lower per capita incomes and Salem was \$650 below the average of even this disadvantaged group.

It is necessary to strike a balance between satisfying the needs of the employees and thus avoiding labor strife on one hand and maintaining an adequate and stable level of government services on the other hand. It is difficult to strike this balance because of competing considerations. The municipality must be fair to its employees and the interests of the employees cannot be sacrificed merely so that a plethora of frivolous governmental services can be provided. Similarly, essential governmental services should not be reduced in order to meet the demands of over-reaching public employees.

As the Supreme Court pointed out in Hillsdale, while interest arbitration is an adversarial process between the public employer and an employee organization, the public is a silent party to the proceedings. The resolution of the proceeding will inevitably affect the public. The taxpayers are the ones who will feel the ultimate effect. The adequacy of police services will be affected as will the cost of that service.

The next factor concerns comparisons. The City makes two initial observations. First, it notes that the Supreme Court in Hillsdale criticized the arbitrator for over-emphasizing comparability with police departments in similar communities. It was in this context that the Court stated that it was not intended that any one factor be considered to be dispositive and it noted that the law, as then written, invited comparisons also with private sector and other public sector employees. Second, the amended statute changed the order of listing of the three sub-factors under comparability so that now



comparisons with private employment in general is listed first. This is followed by comparisons with public employment in general. Comparisons in the same or similar comparable public sector jurisdictions is not listed until third, a reversal of the original order. The City argues that this demonstrates a legislative that intent to reduce reliance on comparisons with other police officers in comparable jurisdictions and to increase reliance on comparisons with private sector employment in general and to place greater significance on internal comparisons.

The City asserts that a review of increases of both wages and benefits in the private sector shows the reasonableness of its offer especially in comparison to that of the Association. Private sector increases have been far lower than the 6% demanded by the POA in 1998 and 7% demanded in the last two years. In fact, as the evidence which the City introduced demonstrates, private sector increases have been approximately 3% in 1998, the same as in 1997, and, as the Bureau of National Affairs data indicate, the collective bargaining agreements negotiated in 1998 provided for 3% increases in their second and third years as well. These figures are far below the Association's demands.

Additionally, there has been a clear trend toward a reduction in health benefits for private sector employees. Fewer and fewer employers provide health insurance without cost to their employees. Deductibles are being increased and employees are being required to contribute. Numerous examples were provided.

It is with this in mind that the City is asking the POA members to pay the increases in the dental premium subsequent to 1997. This would be a very modest step toward what is commonplace in the private sector.

Finally, the City notes that the increase for recipients of social security benefits was only 1.3% in 1999 following an increase of only 2.1% in 1998 and, according to the

City, there are a number of such recipients in Salem. This is less than the wage increase proposed by the City for the police officers.

Accordingly, the City asserts that private sector wage and benefit data show that the City's offer is reasonable and should be awarded.

Wage and benefits developments in the public sector in general also are said to support the City's offer and to show how unrealistic is the offer of the POA. As reported in the Labor Relations Reporter, public sector settlements for state and local governments provided median wage increases of 2.9% in the first part of 1998. The City also cited a large number of specific settlements which made the same point. It referred to the settlement made by the Port Authority with its police officers which provided for an eight-year agreement with wage increases of 3.5% each year coupled with a major change in overtime which substantially reduced the cost of the settlement. Other settlements cited involved the Sports Authority, the New Jersey Highway Authority, the State of New Jersey and various of its unions including those eligible for interest arbitration. The State not only negotiated salary freezes in some years but also obtained significant insurance concessions from its unions. Examples from other jurisdictions including Philadelphia, Chicago, Detroit and Los Angeles also were provided. The point is that the City's offer is far more reasonable than that of the POA in comparison with other public sector settlements in general. This applies to both the salary and benefit portions of the parties' respective proposals.

While the City's offer in this conventional arbitration proceeding was not the same as its settlement with the BCWA, the City's arguments focused on that settlement and pattern bargaining and this suggests to the arbitrator that an award consistent to the BCWA settlement is what the City hopes will result from this proceeding. The City cited a number of prior interest arbitration awards in which arbitrators have recognized the

importance of patterns in the labor relations process in the public and private sectors. It quoted Arbitrator William Weinberg in Hudson County Board of Chosen Freeholders and Fraternal Order of Police Lodge 77, PERC Docket No. IA-79-44, in which the arbitrator discussed the burden on those advocating an alternative to a pattern and that there must be "substantial overwhelming reasons for deviating from the pattern." Arbitrator Weinberg referred to pattern as a "fact of life" that has been practiced and agreed to at all levels of government. Similarly, Arbitrator Joel Weisblatt in County of Essex and Essex County Correction Officers Association Local 157, PERC Docket No. IA-94-93 spoke of the "significant presumption" which is created by the existence of a pattern of agreements. The City asserts that in this case, the POA has not provided any valid reason to deviate from the agreement it has reached with the BCWA.

As additional support, the City cites the fact that Arbitrator Weisblatt issued an award in Essex County in January 1997 which provided for average increases of 3% over four years. This became the pattern and was either voluntarily accepted by other groups or awarded by other arbitrators.

The City also cites a recent award of Arbitrator John Sands, Township of Springfield and Local 76, Springfield Police Benevolent Association and Local 76A, Superior Officers Association, PERC Docket No. IA-97-140, in which the arbitrator awarded the same package to the PBA that another bargaining unit had settled for. This is significant not only for that reason but also because the amount of the salary increase awarded was less than the "going rate" but still the arbitrator accepted the primacy of the pattern.

The City also cited the decision of Arbitrator J. J. Pierson in State of New Jersey and State Law Enforcement Conference of the New Jersey State Policemen's Benevolent Association, Docket No. IA-96-013. In this case, the arbitrator awarded the

same basic wage and benefit package to employees who were eligible for interest arbitration as was negotiated with the other State employees who were not eligible for interest arbitration. That is said to be the same as the situation involving the POA and the BCWA in Salem..

Of even greater significance, according to the City, is the fact that in Salem itself the POA has sought in the past to deviate from the pattern with the BCWA. Arbitrator Robert Mitrani issued a decision in City of Salem and Salem Police Officers Assn., Docket No. IA-93-033 on May 28, 1993. In that decision, he cited many of the arguments made by the POA and it is evident that the POA is making many of the same arguments in this proceeding. The POA then, as now, emphasized the high crime rate in Salem, the very low wages and the low benefits. Arbitrator Mitrani said that the statistics presented by the POA were "quite compelling" that the officers were the lowest paid in Salem County and also that their benefits were the lowest. (At 20). He went on to say, however, that "the arbitrator cannot ignore the settlement with the Salem Public Works Association." (At 21). In discussing why that settlement could not be ignored, the arbitrator stated that this was "because this other bargaining unit is in Salem and they are aware of the conditions in Salem. This is an important factor in the same jurisdiction and is in favor of the City." (At 21). Arbitrator Mitrani concluded that the settlement with the Public Works Association was more important than the comparative wage and benefit level. He also considered the fact that some individuals had received increases different from those provided to the Public Works Association. Thus, he wrote, "The Arbitrator has studied individual cases within Salem – but finds that the settlements with the Public Works Association to be more important." (At 21).

As a final argument in favor of pattern bargaining, the City notes that for the last six years, both with and without interest arbitration, the POA and the City's other

employee organization received identical wage increases. Thus, the pattern recognized by Arbitrator Mitrani was not an aberration. Furthermore, in his award, Arbitrator Mitrani noted that the top patrolmen and sergeants in Salem were \$11,500 below the next lowest paying municipality in the County. That is no longer the case. The POA's statistics, which include Bridgeton in another county, reflect that Salem was behind the average of those communities by just over \$6,000 in 1997.

The City recognizes that the POA made an extensive presentation regarding police comparables. The City asserts, however, that the most important evidence on police comparability is the settlements in Salem County. There are six paid police departments in the County. There are four settlements for 1998 and three for 1999. One, Penns Grove, is still in arbitration. The settlements for 1998 are as follows: Carneys Point - 3.5%, Woodstown - 3%, Pennsville - 2.9% and Lower Alloways Creek - 3%. These settlements average 3.1%. The 1999 settlements in the County are Carneys Point - 3.5%, Pennsville - 2.95% and Lower Alloways Creek - 3%. These average 3.15%. These averages are not only considerably lower than the 6% and 7% increases proposed by the POA but they also are lower than the 3.5% increases offered by the City for 1998 and 1999.

These increases, according to the City, are not unusual. As examples, the City cited the award of Arbitrator Carl Kurtzman in Township of South Hackensack and P.B.A. Local No. 192, Docket No. IA-96-109 (November 28, 1997) in which the arbitrator awarded wage increases of 3.25% in 1996, 3.25% in 1997 and 3.25% in 1998. It also cited a voluntary police settlement in Ventnor, based on an arbitrator's recommendation of 3% in 1998, 3.3% in 1999 and 3.3% in 2000.

The City also points out that some of the benefits enjoyed by the officers in Salem are superior to those enjoyed by other officers in the County. Longevity in

Pennsville is paid in flat dollars rather than, as in Salem, as a percentage of the salary earned. In Woodstown, there is no longevity at all. The number of holidays enjoyed in Salem is one more than the County average and this equates to an additional one day's pay. Salem is the only municipality which pays for basic telephone service for its officers. Therefore, argues the City, when looking even at police comparability, the City's offer is a reasonable one.

This discussion applies to the overall compensation criterion as well. Most of the benefits - holidays, medical and hospitalization benefits, pension, vacation, excused leave, etc. - received by the officers in Salem are comparable to those enjoyed by the other police officers in the County.

The City discussed the lawful authority criterion. An arbitrator is required to consider the lawful authority of an employer in rendering an award and the statute explicitly requires the arbitrator to consider the limitations imposed upon the employer by the New Jersey Local Government Cap Law, N.J.S.A. 40A:4-45.1 et seq. The Cap Law limits employers by limiting their overall budget increases and thereby restricts its ability to grant wage increases to its employees. The purpose of the law is to control the spiraling cost of local government to protect homeowners, although local government was not to be constrained to the point where necessary services could not be provided.

The limitation imposed by the Cap Law is on the tax levy. That levy can increase by only 5% or the index rate, whichever is lower. Individual line items are not affected but the overall level of expenditures which are within the Cap, including police salaries, are affected. An interest arbitration award has been determined to be something which must be included in determining if budget appropriations exceed the authorized limit. While there are narrow circumstances under which a municipality can exceed these limits and an emergency appropriation can be adopted, this merely delays the financial

crisis; it does not eliminate it. Any emergency appropriation, to the extent that it exceeds 3% of the previous year's operating appropriations, must be included in the following year's budget and be within its Cap limit. Thus, the problem is only delayed. There are, furthermore, very few exceptions to the Cap Law. Therefore, compliance is increasingly difficult.

Salem's governing body elected not to pass an ordinance nor was there a referendum to increase appropriations beyond the 2.5% index rate to 5%. Given the size of the POA proposal, which exceeds 6% each year, the City asserts that if the POA proposal were awarded, the City would be compelled to reduce other expenditures which fall within the Cap limits to make up for the excess. This might require a reduction in the number of police personnel or other employees through layoffs or a reduction of budgetary expenditures to offset the excess police salary increases in order to remain within the 2.5% spending limit.

Another important factor which must be considered is the financial impact of any award on the governing unit, its residents and taxpayers. As the Supreme Court made clear in the Hillsdale decision, this does not equate with a municipality's ability to pay. (Id. at 85). The answer is not simply that the employer can raise taxes to pay for the wage and benefit increases and the burden is not on the municipality to prove its financial inability to meet the union's demands.

The City asserts that its proposal did consider the financial impact on the governing unit, its residents and taxpayers. It took into account the impact that the past economic recession has had on the City's budget, noting the severe economic recession in the Philadelphia metropolitan region. Unemployment in New Jersey has been higher than the national figure. Corporations are continuing to downsize. Even the State has had layoffs and job losses through attrition.

Most telling, according to the City, are the 1998 tax rates in Salem County. The rate in Salem City was \$3.69. This was the highest rate in the County and 44% above the County average of \$2.57. That differential is larger than the salary differential which the POA claims exists. Therefore, if Salem's salaries for police officers are low, its property taxes are even more out of line.

Additionally, there has been a decline in assessments of over \$4,000,000 between 1993 and 1997. Added assessments in 1997 were a minuscule \$6,000. The City's contribution to the Police and Firemen's Retirement System was increased by \$48,000. The 1997 contribution was \$74,000. It jumped to \$122,000 in 1998. This increase alone represented an increase in costs of approximately 6% on the 1997 salary base of \$867,000. The 1999 contribution is not yet known.

The City's revenues from the court were essentially flat from 1992 to 1997. The City has used more and more of its surplus in recent years in an effort to hold down the tax rate. Thus, the City used \$610,000 of its surplus in 1998 after having used \$462,000 of its surplus in 1997 and \$324,000 in 1996. This is a disturbing trend and one which the City obviously cannot afford to continue.

The City notes that it is dependent upon discretionary State aid in making its budget. It receives a lot of grant money which it uses to make its budget. It also emphasizes that it lost over \$300,000 in municipal aid in the last four years. This is a significant loss. The City's indebtedness is 2.19%. While it is under the legal limit, the City points out that over 80% of New Jersey's municipalities have an indebtedness of less than 1%. Therefore, Salem does have much more debt than average and with it the added burden of debt service.



These factors all have a bearing on the municipality's governing unit, its residents and taxpayers and should lead, according to the City, to an award consistent with the City's proposal.

Increases in the cost of living are another factor which must be considered. The City notes that between 1986 and 1997, police salary increases averaged 4.9% per year. Increases in the CPI averaged 3.7% per year. Thus, salary increases averaged 1.2% above increases in the CPI. This meant not only that the officers were able to maintain their standard of living during this period but that they were able to enjoy a real increase in that standard of living of over 14%. This is said to point to the reasonableness of the City's economic proposals.

For the one-year period ending in January 1999, the CPI in the Philadelphia region increased by only 1.6%. The CPI is increasing at lower levels than it has in many years. The City asserts that its proposal for a 2% increase in 1998 will provide an increase in real earnings and that the same is likely to be true in 1999 as well.

Finally, there is continuity and stability of employment. It is the City's position that the elements of its economic proposals will more reasonably protect the continuity and stability of employment not only for the police officers but for the other municipal employees as well than will the elements of the POA economic proposals.

In summary, the City argues that its proposals more reasonably reflect the statutory criteria than do those of the POA. The City has considered the interests and welfare of the public, overall compensation of the police officers, salaries in the private sector, and salaries and benefits in nearby communities. It has considered the impact of the Cap Law and the City's lawful authority to grant wage increases and the financial impact on the governing unit, its residents and taxpayers. It has considered the very modest increases in the cost of living as well as the continuity and stability of

employment. Thus, it asks the arbitrator to award the salary and other economic proposals of the City as well as its non-economic proposals.

### **Discussion**

The arbitrator is required to decide this 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 there also must be an explanation as to why any factor is deemed not to be relevant. In making the decision, the arbitrator must "separately consider whether the total net annual economic changes for each year of the agreement are reasonable under the statutory criteria set forth in subsection g."

I have carefully considered the evidence which has been presented as well as the arguments of the parties. I have considered the evidence in light of the statutory criteria, as set forth hereafter. I have considered each criterion and found each to be relevant. I have discussed the weight which I have accorded to each criterion. I also have determined the total net annual economic changes for each year of the agreement in order to reach the conclusion that these changes are reasonable under the criteria.

The final offers of both parties included a number of elements. It is not realistic, in the context of an interest arbitration proceeding, for either party to expect an arbitrator to make wholesale changes in a collective bargaining agreement. I believe that drastic changes would constitute an inappropriate interference with the results of prior negotiations between the parties and have the potential to introduce unnecessary instability and unpredictability into their relationship. The parties are best served by voluntary agreements because these are agreements that the parties both believe are acceptable and in the interest of their relationship. Changes imposed by an arbitrator, while inevitable in the absence of a voluntary agreement, nonetheless risk upsetting an

established relationship. Thus, a party seeking to change the terms of existing agreement, whether by adding a new term or by deleting or modifying an existing term, generally are seen as having the burden of justifying the proposed change. Also, of course, its economic impact, whether positive or negative, must be considered as part of the overall award.

I shall set forth the terms of the award at this time so that, in discussing the evidence and applying the statutory criteria, the terms of the award will be the reference. The parties necessarily related the evidence and their arguments regarding the criteria primarily to their offer and that of the other party. I need not do this because in this conventional interest arbitration proceeding, it is my obligation to fashion the terms of the award rather than, as under a final offer format, select the final offer of one party or the other and then justify that selection.

Both parties agree that the term of this award should be three years, January 1, 1998 through December 31, 2000. I accept this agreement as a stipulation as to the term of the new agreement and shall award a three-year contract.

Salaries shall be increased by 3.5% retroactive to January 1, 1998, by an additional 3.5% retroactive to January 1, 1999 and by an additional 3% effective January 1, 2000. These increases shall be exclusive of salary increments.

There shall be no freezing of the probationary salary for the term of this agreement. The probationary rate in Salem is not out of line with the starting rates in other municipalities in Salem County nor, with the exception of Pennsville, have others frozen their probationary rates. The rate in Pennsville is frozen at \$33,000 through 1999, well above the rate of \$31,092 which will be in effect in Salem 2000. The hiring rate in Lower Alloways Creek is \$35,683 in 1999. There is a separate schedule for new hires in Carneys Point which provides a rate for new hires in 1999 of \$28,387. Given

the very low maximum rates in Salem, it does not make sense to reduce the earnings of officers as they move toward such a low top rate.

There shall be no three-step guide for sergeants. No other municipality in Salem County has a multi-step guide for sergeants and the salaries of sergeants in Salem are already very low on a comparative basis. It makes no sense to further reduce the earning of the sergeants.

Each party has submitted a longevity proposal. First, longevity will not be eliminated for new hires, as proposed by the City. Longevity is a benefit which exists for all police officers in the County except Woodstown. There is no evidence of a trend toward the elimination of this benefit. Furthermore, the City has not offered to incorporate this benefit into the existing salary structure. Second, longevity shall be increased, although not by the amount proposed by the POA. Longevity shall be increased, effective January 1, 1999, as follows: after 14 years - 5%, after 19 years - 6%, and after 24 years - 8%.

I will discuss the cost of this below.<sup>10</sup> At this point, I would like to address the abstract reasons for making this change independent of its cost. These increases - .5% for those with 14 years of service, .5% for those with 19 years of service and 2% for those with 24 years of service - are justified notwithstanding the fact that the current rates are the same as those enjoyed by the BCWA. The City has provided no reason to compare its police officers on one hand and its blue and white collar employees on the other hand on the basis of longevity. Longevity is a very widespread benefit for police officers; it is a much less common benefit for other municipal employees (other than

---

<sup>10</sup> Similarly, I shall consider the cost of each benefit which I shall award as part of the total net annual economic change. At this point, I shall simply set forth the terms of the award and the abstract rationale for it. I should also state at this point that in reviewing comparative data, I have confined the consideration to Salem County. I have not included Bridgeton, although the POA provided data from that Cumberland County municipality.

firefighters). Thus, although no evidence was provided on this point, I suspect that it is quite likely that the City's blue collar and white collar employees enjoy an advantage over their counterparts in terms of their longevity benefit. Also, the top longevity benefit in Lower Alloways Creek (8%), Carneys Point (10%) and Woodstown (\$4,800)<sup>11</sup> exceed the maximum payments in Salem. Thus, Salem is behind particularly at the top of the schedule where I have awarded the largest increase.

The shift differential shall be increased by \$.10 per hour for the first and third shifts, effective January 1, 1999. These differentials are now \$.55 per hour for the first shift and \$.50 per hour for the third shift. While it is true that the shift differential in Salem is pretty much in line with those throughout the County and is currently \$.05 per hour higher than that received by the BCWA, the increase is justified. First, no evidence was provided on the extent to which employees represented by the BCWA actually work other than the day shift. This may be largely a "paper" benefit for employees in that unit. Second, Lower Alloways Creek does provide a shift differential of \$.65 per hour to those on the first shift and a shift differential was rolled into the base salary for officers in Carneys Point. In Pennsville, \$4,000 was added to the base salary of the officers. Third, there is evidence that the City changes the shifts of officers on short notice in an effort to reduce overtime. While another proposal of the POA addressed this issue more directly, I believe that an increase in the differential is justified for this reason as well.<sup>12</sup>

The City has proposed the establishment of a two-tier vacation schedule for employees hired after January 1, 1999. This will be denied. The City provided no

---

<sup>11</sup> A payment of \$4,800 represents 8.2% of the top rate of a patrolman in Pennsville in 1999.

<sup>12</sup> Because of the around-the-clock nature of police work, I believe that it makes sense to incorporate the shift differential into base but neither party has proposed this.

evidence to support this change and the City does not have such a system in its BCWA contract.

The POA has proposed that the pay for an acting shift supervisor be increased from \$.50 per hour per shift to the rate earned by the higher ranking officer for all time worked in the higher rank. I shall grant this request, effective June 1, 1999. The current payment of \$4.00 per shift hardly compensates an officer for assuming the responsibilities and duties of a higher rank. Carneys Point rolled this benefit into base pay. A payment of \$4000 for assuming this responsibility was rolled into base in Pennsville. Payment in Woodstown is \$15.00 per shift, far above the \$4.00 now paid by Salem.<sup>13</sup> The City controls this situation. It can have a sergeant work and then the sergeant obviously receives the pay of a sergeant. If a patrolman is called upon to perform those duties, it is reasonable to provide the same pay to the patrolman. There is evidence that this occurs with some frequency in Salem. If the City needs to promote another patrolman to sergeant, it can do so and thereby minimize this occurrence.

The City's proposal to require an officer to work in a higher position for 90 consecutive days in order to receive the benefit cannot be justified. That would be a change from the present system in which the payment, as low as it is, begins with the first day worked.

The proposal of the POA to change the formula for pay for sick leave upon retirement from 50% to 100% per day, with the same maximum payment of \$12,000, is rejected. This benefit is not widespread in Salem County and there is no justification for any increase.

The POA also has proposed an increase in the bereavement for death in the immediate family. Currently, the officers receive three days. The POA has proposed

---

<sup>13</sup> Based on 1997 rates which will, of course, change under the terms of this award, the total cost per shift would be \$10.56 which is still well below the rate paid in Woodstown.

that this be increased to five days. Under the BCWA agreement, employees receive four scheduled work days. Officers in Carneys Point receive seven days and those in Pennsville receive five days. I believe that an increase to four days is justified. There is no reason for there to be different bereavement leave provisions for the City's two groups of organized employees. This change shall be effective with the date of this award. Consistent with Article X of the City-BCWA agreement, officers shall submit a slip from the funeral director to verify the occurrence.

There are several insurance proposals. The City has proposed that the individual officers bear the increases in dental insurance premiums since 1997. While it is very common in the private sector and increasingly common in the public sector for employees to contribute something toward the cost of their health insurance, I shall not adopt this proposal. These officers are very low paid and there is no evidence that their much higher paid counterparts throughout the County contribute to their health insurance premiums. Also, the City did not negotiate this with the BCWA.

The City also has proposed that the addition of contract language regarding its right to change insurance carriers as long as the benefits are "substantially similar." The City has certain rights under the PERC statute to change carriers. It is seeking something more favorable than the current law provides.<sup>14</sup> Such a change cannot be justified nor does such a provision appear in the City-BCWA agreement.

The POA proposes that the total amount of \$250 which is available every two years as an optical benefit for employees be usable by their dependents as well. In spite of the fact that the BCWA has the same limits as currently exist for the POA, I believe that the POA's proposal is reasonable and should be granted, effective beginning in 1999. Other municipalities in the County provide more generous optical

---

<sup>14</sup> The POA has expressed a willingness to add language to the agreement which reflects the current case law in this area.

benefits than does Salem. Woodstown provides \$400 per year for the family. Pennsville has a family plan. Lower Alloways Creek provides \$200 annually for the family. Carneys Point provides \$350 annually for the employee. Thus, an increase in Salem is justified on a comparative basis.

There should be a change to Article X, Section 1 B of the prior agreement so that it reflects the actual coverage enjoyed by retired unit members. The City represented that officers currently get full family retiree health benefits. The agreement should be amended to reflect this coverage. This is a common benefit in Salem County.

The final proposal in the area of insurance involves a request by the POA that coverage be provided for the dependents of an officer who dies on or off duty prior to retirement. Without a fuller exploration of the ramifications of this proposal, and with the knowledge that three of the other departments in the County also do not provide such a benefit, I am not willing to grant this proposal.

The clothing allowance for detectives shall be increased to \$500 from the current level of \$300 effective in 1999. The current rate in Salem is below the \$650 paid by Carneys Point, the \$700 paid in Lower Alloways Creek and the \$500 paid in Woodstown. The clothing allowance has been rolled into base salary in Pennsville.

The POA has proposed that the agreement's Article XVI, School Credits, provision be modified in several respects. It proposes that the existing requirement that the City pay \$15.00 for each approved job-related education credit earned on an officer's own time be paid annually and not only once. It also has proposed that officers who possess degrees be given annual payments of \$300 for an Associates Degree, \$600 for a Bachelors Degree and \$1,000 for a Masters Degree.

Credit payment is not found in Salem County outside of the City. I shall not change the \$15.00 provision. Payment for degrees is provided in Carneys Point (AA -



\$150, BA - \$300 and MA - \$450) and Pennsville (AA - \$300 and BA - \$600). I believe that it is in the interests of the residents and taxpayers of the City to have a well educated police force and that an educational incentive is consistent with this goal. This is even more important in a complex law enforcement environment such as that in which the officers of the City work. I shall, therefore, award a payment of \$250 for officers who possess AA degrees and \$500 for those who possess BA degrees.

The City has proposed the elimination of the requirement that it pay the basic cost of an officer's telephone service. While this is a provision unique to Salem if not New Jersey, the very low compensation received by these officers obviates against the elimination any financial benefit they now receive. I shall not grant this request.

The POA has proposed that the agreement be amended to provide notice of any change in an officer's schedule. This would be a new provision. The POA asks that at least 72 hours' notice of any change in permanent or non-permanent shifts be provided and that, failing such notice, the officer be paid an additional eight hours. The evidence is that this occurs with some frequency in an effort to reduce overtime. While that is a commendable objective, it should not normally be fulfilled at the expense of an officer's expected and assigned work schedule. There is a potential for abuse, although the witnesses for the POA testified that with a lieutenant doing the scheduling, the problem has been reduced. Other municipalities in the County do provide notice of shift changes and payment if this is not provided. Carneys Point gives 24 hours' notice or pays four hours at straight time. Penns Grove provides 72 hours or pays two hours. Pennsville provides 60 hours' notice or pays \$150.00. Woodstown provides five days' notice or pays time and one-half for all hours worked outside of the normal shift. Thus, notice and payment provisions are common in the County. I shall award the following benefit: except in cases of emergency, the City shall provide 48-hours' notice of any shift

change and if it fails to provide such notice, it shall compensate the officer at time and one-half for all hours worked outside the normal shift. This shall be effective June 1, 1999.

The City has proposed the elimination of Article XX, Interest Provisions. This provision requires the City to pay interest to the employees if the wages and benefits negotiated voluntarily or awarded through interest arbitration are not paid within specified periods. The parties did not provide any history regarding this provision but I assume that it is in the agreement because at some time in the past, there was a long delay in implementing the terms of a settlement or award. Such provisions are not common and there is no reason to believe that the City will not act promptly to implement the terms of this award. I shall grant the City's request. Obviously, if there are delays in implementation, the City can expect this provision to be returned to the agreement in the future.

The City has proposed that the agreement be amended to reduce the time for filing a grievance to five days from the current 25 days. While I recognize that 25 days is an unusually long time, there is no evidence that this filing period has created difficulties for either party. The BCWA agreement provides for filing within 24 days. The proposal shall be denied.

The POA has agreed to amend Article XIII, Patrol Cars, so that it is consistent with case law.

Finally, I shall grant the non-economic proposal of the POA that Article XV, Cleaning of Uniforms, be amended to provide that the City designate a dry cleaning establishment in the City of Salem or, if this is not done, that the City arrange for the weekly pick-up and delivery of uniforms at the police station.

I am required to determine the total net annual economic changes for each year of the agreement in order to determine whether those changes are reasonable under the statutory criteria. The major economic change will be the salary increase. The parties have agreed that the unit consists of 22 officers, of whom 16 are patrolmen and six are sergeants, and that the 1997 salary base for these officers was \$867,697. With salary increases of 3.5% in 1998, 3.5% in 1999 and 3% in 2000, this base will increase by \$30,369 to \$898,066 in 1998, by \$31,432 to \$929,498 in 1999 and by \$27,885 to \$957,383 in 2000. Five of the patrolmen were not at the top step of the salary schedule in 1997 and so will advance on the schedule. As computed by the City, this will add \$5,820 or .67% to the cost in 1998, \$4,608 or .53% in 1999 and \$4,608 or .53% in 2000.

The cost of the increase in longevity, as computed by the City, will add approximately \$850 or .1%.<sup>15</sup> This cost will arise in 1999. I recognize that in later years, there will be a greater cost to the City, particularly because of the increase in the maximum rate from 6% to 8% for those with over 24 years of service. The City is not correct, however, to state that this cost will be "astronomical." A 2% increase in the 2000 top rate for a patrolman would be \$877. While the parties did not submit information on hiring dates of the members of this bargaining unit, the added cost is likely to be limited because officers are eligible to retire after 25 years of service and this benefit is not payable until after 24 years of service. Therefore, officers will not receive this increase in the longevity rate for many years and since most officers retire after 25 years, most will receive it only for one year.

The cost of the increase in the shift differential, again as computed by the City, will be approximately \$5,000 or .5%.<sup>16</sup> This increase will commence in 1999.

---

<sup>15</sup> I have used the corrected figure.

<sup>16</sup> Again, I have used the corrected figure.

The cost of the increase in the detective clothing allowance is \$200 per detective, effective in 1999, a minor addition.

The cost of the new school credits provision will be \$750 in 1999, based on the fact that one officer possesses an Associates Degree and one officer possesses a Bachelors Degree.

There is no additional cost associated with the family retiree health coverage provision since that is the current benefit.

The cost of the change in the acting supervisor provision is not known. This is a cost controlled by the City.

The increased cost due to the increase in the number of bereavement days from four to five for deaths in the immediate family is unknown but cannot be more than a few days per year for the unit.

The change in the optical care plan also cannot be known but, again, it will be minor. The maximum cost of this benefit, now limited to the officer, is \$250 every two years. By extending the benefit to dependents, dependents will be able to use only the difference between \$250 and what the officer uses.

Finally, any increase in costs associated with the notice provision is within the control of the City. This cost is not known.

All other proposals of the parties shall be denied.

The total net annual economic changes in 1998 are as follows: salary increase - 3.5% or \$30,369 and increments - \$5,820 or .7%. This is a total increase in 1998 of \$36,189 or 4.2%. The total net annual economics change in 1999 are as follows: salary increase - 3.5% or \$31,432, increments - \$4,608 or .5%, longevity - \$850 or .1%,<sup>17</sup> shift differential - \$5,000 or .5% and school credits - \$750 or .1%. This is a total increase in

---

<sup>17</sup> I have accepted the City's figure, as corrected, in the absence of data on hiring dates.

1999 of 42,640 or 4.7%. The total net annual economic changes in 2000 are as follows: salary 3.0% or \$27,885 and increments - \$4,608 or .5%. This is a total of \$32,493 or 3.5%.

Having set forth the terms of the award and its total net annual economic changes for each year of the agreement, I shall discuss the evidence and the arguments of the parties in relation to the statutory criteria and explain how I arrived at that award and the weight that I gave to each criterion.

**Interests and Welfare of the Public** The New Jersey Supreme in Hillsdale PBA Local 207 v. Borough of Hillsdale, 137 N.J. 71 (1994) made it clear that the interests and welfare of the public must always be considered in rendering an interest arbitration award. An award which fails to do so is in danger of being deficient. The public was stated to be a "silent party" to the process. The amended statute also requires the arbitrator to consider the Cap Law in considering the public interests and welfare. As will be discussed in the **Lawful Authority** section of this discussion, the limits imposed by the Cap Law have no bearing on this case. The City can fund this award without exceeding its spending authority.

This is a difficult factor to assess because there are several public interests. The public requires adequate public services, including police services. The public generally wants to obtain these services at the lowest possible cost so as to minimize taxes and tax increases. Lower salaries and benefits for police officers and other public employees generally permit the employment of a greater number of officers or employees and/or lower taxes or lower tax increases. At the same time, it also is true that the interests and welfare of the public are served when the compensation levels of police officers and the other public employees are adequate to attract and retain a well qualified and productive work force. Reasonable levels of compensation contribute to a

productive and efficient work force and to the morale of the employees. It is important that the police officers be and perceive that they are being compensated fairly.

Reasonable levels of compensation also contribute to harmony and stability in labor relations and to the absence of labor unrest.

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

I believe that salary increases of 3.5%, 3.5% and 3% in 1998, 1999 and 2000 are in the public interest. As will be discussed below, the salaries in Salem are by a considerable amount the lowest in Salem County and the increase awarded will not improve their salary standing. Nevertheless, I believe that the salary increase awarded is in the public interest because it is the same as the increase negotiated by the City with the BCWA which represents the blue and white collar employees of the City. Were it not for that settlement, I would have awarded a larger salary increase. The award also is consistent with increases in the cost of living and with increases in the private sector. At the same time, the other components of the award - an increase in longevity, an increase in the shift differential, an increase in the compensation for acting shift supervisors, an increase in the bereavement leave, a liberalization in the use of the optical benefits, an increase in the detective clothing allowance, the adoption of a

payment plan for college degrees and the establishment of a notice requirement prior to shift changes - while modest in cost, will enhance the level of benefits to more competitive levels and will improve the working environment to some extent in a community which has the highest crime rate in the County.

It is my judgment, therefore, that the award represents the proper balance which comports with the interests and welfare of the public including the provision of fair and reasonable increases for the officers.

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

First, private sector comparisons are to be made with employees performing similar services as well as with private employees generally. Police officers do not have private sector counterparts. They provide services which are uniquely and inherently governmental in nature. It is not possible, therefore, to compare the City's police officers with employees providing similar services in the private sector. This part of the comparison is not relevant.

It is possible to compare the police officers in Salem with private employees in general. Private sector increases were approximately 3% in 1998 as reported by the Bureau of National Affairs, a figure similar to the increase in the period immediately preceding that year as well. The POA submitted the private sector wage survey conducted by the New Jersey Department of Labor ("NJ DOL") for PERC. The report showed an overall increase in the private sector of 4.76% and a decrease in Salem

County of .23% from 1996 to 1997. The POA also cited data which suggest that private sector wage increases for groups of employees - it selected executives and clerical employees - have been slightly above 4%. I am more comfortable with the more current and comprehensive and less variable BNA figures. Thus, on this basis, the City wage proposal is a reasonable one.

The next comparison is to be with employees in public employment in general. Again, as cited by the City, the BNA has reported average public sector increases of just below 3% for 1998. The NJ DOL survey also reported 1997 increases in State government of 2.1% and of 3% in local government. These figures, too, point to the reasonableness of the City's wage offer. It is true, as the POA pointed out, that the teachers in Salem, who are supported by the same taxpayers as those who support the police officers - although both the City and the school district also receive State funding - rank high in the County whereas the police officers rank low. This incidental fact does not change my overall assessment.

The third comparison has two parts: comparisons with public employees in the same jurisdiction and comparisons with public employees in comparable jurisdictions.

I shall begin with comparisons with public employees Salem. There are two groups of public employees in Salem other than the police officers. One is the blue collar and white collar employees who are organized and represented by the BCWA. The other is a group of unrepresented employees such as the chief of police, the city clerk, several supervisors, the court administrator and the housing inspector.

One of the City's main arguments is that the wage increases received by the BCWA employees have been the same as those received by the POA for a number of years. This was true even when the POA went to interest arbitration. Arbitrator Mitran in that proceeding recognized the high level of crime in Salem and the very low ranking



of the salaries and benefits of police officers in Salem compared to the rest of the County but he still awarded the same salary increase to the police officers as that which was received by the other organized employees. While I do not find this factor to be controlling, it is a strong argument in favor of a salary increase which matches that negotiated with the BCWA.<sup>18</sup>

The City cited a number of prior interest arbitration awards in which arbitrators have recognized the importance of patterns in bargaining.<sup>19</sup> Except for the case decided by Arbitrator Mitrani involving Salem City and a case involving the State of New Jersey, however, the cases cited involved comparisons with different groups of employees which both were eligible for interest arbitration such as police officers and firefighters. The argument is more compelling when applied to groups of arbitration-eligible employees such as police officers and firefighters or police officers of different ranks or different groups of law enforcement officers employed in a county but it nevertheless is worthy of serious consideration even when the other group of employees is not eligible for interest arbitration. Both groups are funded from the same source. Police officers generally are paid more than most other municipal employees - and, as the wage schedule for the employees represented by the BCWA reflects, this is true in Salem as well - so it can be argued that fairness requires that the higher paid employees not receive a larger salary increase than the lower paid and that such an increase would change the internal relationship between the two groups of employees.

---

<sup>18</sup> It is true, as the POA argued, that the City did not provide data from other municipalities in the County to demonstrate that Salem's blue and white collar employees were as poorly paid in comparative terms as are the police officers. It also is true, however, that the POA provided no evidence to show that the City's blue and white collar employees are higher paid, relatively, than are the police officers.

<sup>19</sup> The Allendale decision cited by the POA does not refute this proposition. That case involved an argument, rejected by the arbitrator, that a pattern in the State of New Jersey, when the State was the employer, should be accepted in a municipality.

Given the history of the identify of wage increases in Salem received by the two organized groups and the financial considerations discussed below along with a recognition of fact that other factors including increases in the cost of living and the private and public increases in general point to the reasonableness of the City's wage offer, I shall award it. In other words, it is the confluence of factors rather than the mere fact of the BCWA settlement standing alone which drives me to accept the BCWA salary increase as appropriate for the POA.

The unrepresented employees are a disparate group of ten individuals. Three employees in that group received promotions so naturally they received salary increases in excess of 3.5% in 1998. The salary of the city clerk went up 6.85% but it went up from a very low level. In fact, her salary in 1998 is lower than that of a top patrolmen in 1997. A number of the others also were below top patrolmen. The highest paid person in that group, the CFO/Tax Collector, received a 3.5% increase as did a confidential secretary. While the increases received by this group were not a consistent 3.5% - only two of the eight who were not promoted got 3.5% increases - these people perform unique jobs and appear not to be highly paid. This does not undermine my conclusion that the salary increases negotiated with the BCWA should be awarded to the POA.

The other part of this comparison involves comparisons with similar employees in comparable jurisdictions. As stated above, I have concluded that the most appropriate basis for comparisons is police departments in Salem County of which there are six: Carneys Point, Lower Alloways Creek, Penns Grove, Pennsville, Woodstown and Salem. A county with six departments forms a reasonable basis for comparisons and the POA did not offer any rationale for including Cumberland County's Bridgeton in the group.

There are two sets of statistics which are most important in this area. First, as emphasized by the POA, the ranking of salaries, based on the rate for a top patrolman, shows that Salem, with a 1997 rate of \$39,740, was below the next lowest municipality, Woodstown, by \$4,064. Salem was \$10,200 below Carneys Point, the leader, and it was \$6,171 below the average top rate in the County. This is a large differential. The picture is not significantly different when longevity is added to salary. This data, standing alone, certainly points to an increase beyond that proposed by the Township. It is interesting to note, however, that Arbitrator Mitrani determined that in 1993 the patrolmen and sergeants were \$11,500 below the next lowest paying municipality in the County. Therefore, the salaries of these officers have increased by more than the average in the intervening years, although not enough to change the ranking.

At the same time, the Township emphasized the fact that increases for police officers in the County in 1998, based on four settlements, averaged 3.1%. The average of three settlements in the County for 1999 is 3.15%.<sup>20</sup> These figures are slightly below the City's offer of 3.5% in each of those years and, on this measure, the City's proposal is reasonable.

The POA provided wage data from the "Urban 15" and noted that the City provided crime statistics, tax collection rate data, percent of population in poverty, and per capita income from the "Big Six." The POA argued that if the City wanted the arbitrator to compare Salem with the "Big Six" on these measures, then the arbitrator also should consider the salaries in urban New Jersey compared with Salem.<sup>21</sup> While I recognize that the maximum salary in Salem in 1997 was far below the average

---

<sup>20</sup> These figures exclude the \$4,000 which was added to base salary in Pennsville for the shift differential. The figures utilized by the POA of an 8.8% increase in 1998 and a 12.9% increase in 1999 are seriously distorted and, therefore, distort the average increase cited by the POA.

<sup>21</sup> The data presented by the City were used to argue that crime and poverty are high in Salem, and that tax collection and per capita income are low.

maximum salary in the "Urban 15," there is insufficient evidence to establish that Salem, with its population of a mere 6,847, should be compared to the "Urban 15" or the "Big Six." Accordingly, I have confined the comparative analysis to municipalities in Salem County which have police departments.

On balance given the very low standing of the police officers in Salem, I believe that this aspect of the comparisons favors an award in excess of that proposed by the City. I do not, however, accord this controlling weight in deciding this case.

**Overall Compensation** Discussion of this factor was interspersed throughout this proceeding by the parties and the arbitrator as proposals regarding various fringe benefits were discussed and considered. The City's two contracts, that with the BCWA and that with the POA, generally provide similar benefits but there are some differences (maximum payment for unused sick leave at retirement). I have cited the BCWA contract to justify several changes which I have awarded or rejected (elimination of longevity for new hires, two-tier vacation schedule, increase in bereavement leave) and in other instances I have deviated from that contract (longevity, shift differential) because I have concluded that other factors are more important.

The other changes which I have awarded generally found support based on a consideration of benefits enjoyed by other police officers in Salem County.

In general, it is accurate to say that the major fringe benefits enjoyed by the police officers in areas such as health insurance, pensions, holidays, vacations, longevity, and personal days are similar or within a fairly tight range throughout the County. Thus, except for obviously most important area of salaries, it cannot be said the overall compensation of the officers in Salem is significantly below that of their counterparts throughout the County.

This factor has been important to me in deciding to award the benefit increases which I awarded, particularly because of the constraints imposed by the BCWA settlement on what I believe to be an appropriate salary increase. Therefore, on the basis of overall compensation, I am satisfied that the award, as a whole, represents the proper disposition of this impasse.

**Stipulations** The parties agreed that the term of this agreement should be three years and I have awarded a three-year agreement. The parties also agreed that the bargaining unit consists of six sergeants and sixteen patrolmen with a 1997 base salary of \$867,697. I used those figures in computing the total net annual economic changes of each year of the award.

**Lawful Authority** As with the criterion relating to the interests and welfare of the public, this one explicitly requires the arbitrator to consider the limitations imposed by the Cap Law. The City provided in its brief a thorough analysis of the Cap Law and its operation but it did not substantiate its bald claim that an award in excess of 2.5% would cause the City to exceed its spending limits.

In fact, it is clear that the City hoped that the arbitrator would award salary increases identical to those received by the BCWA. The City fully anticipated an award of at least that magnitude and surely can fund such an award. The award for 1998 is precisely the same as the BCWA settlement so there can be no problem that year. The award for 1999 exceeds the BCWA settlement by under \$10,000 in this budget which in 1998 exceeded \$5,000,000. The City's 1998 budget indicates that the City opted not to increase its expenditures beyond the 2.5% index amount and I respect that decision. While the City asserted that any award in excess of 2.5% would require it to reduce personnel or other non-payroll costs, this assertion was totally unsupported. Given the large surplus balance, as discussed in the succeeding section, and the very modest cost

of this award beyond the City's proposal, it cannot credibly be claimed that this award will cause the City to exceed its lawful authority or to reduce police or other services.

**Financial Impact** As the New Jersey Supreme Court made clear in Hillsdale, the issue is not whether the City has the ability to fund the increases proposed by the POA nor whether the City could pay for the increases by raising taxes. The City need not prove that it cannot afford to pay the increases. Rather, the arbitrator must consider the financial impact on the governing unit, its residents and taxpayers.

The financial impact of this award will be minimal. The award incorporates what is clearly the City's intended salary increase which is by far the largest component of the award. The several items which I have added or increased will cost in the mere thousands of dollars and not even in the tens of thousands of dollars in this \$5,000,000 budget. As computed by Mr. Foti, even an award of 5% would cost an average taxpayer \$1.93 per month and, of course, I have not awarded increases of that magnitude.

It is true, as the POA noted, that the City was able to avoid an increase in its municipal purposes tax rate for several years. That rate was \$1.04 in both 1995 and 1996. It increased, however, in 1997 to \$1.09 and again in 1998 to \$1.14. Thus, that rate has increased in each of the last several years. Additionally, the total tax rate actually declined from \$3.92 in 1996 to \$3.71 in 1997 and further to \$3.69 in 1998. Of far greater importance, however, is the fact that rate in 1998, even after two years of reductions, was \$1.12 above the County average of \$2.57 and the highest in Salem County. In fact, it was \$.20 higher than the next highest community, Penns Grove, where the rate was \$3.49. The third highest rate was in Pittsgrove where the rate was \$.2.91 or \$.78 below the rate in Salem. The rate in Salem was 44% above the County average and this is an even larger differential than the salary differential. In other

words, among the communities in Salem County, the tax rate in Salem City is higher than the police salaries are low.

I recognize that the results of operations and surplus balances have shown increases in the last several years, that there has been an increasing excess of realized revenues over anticipated revenues, that money has been able to go into surplus from unexpended balances of appropriation reserves, and that, in part because of an increase in the tax collection rate, it has been possible to budget less in the reserve for uncollected taxes. I also recognize that the tax levy decreased very slightly between 1997 and 1998.

At the same time, assessed valuation has not yet gotten back to 1993 levels and almost no properties have been added to the tax rolls. Salem does have significant borrowing, and therefore debt service, although it is not at its legal maximum. The City's contribution to the Police and Firemen's Retirement System was increased by \$48,000 in 1998 over 1997 levels. Court revenues have been flat. The City has been using increasing amounts of its surplus to fund the next year's budget so that, while the surplus has been growing, so has the use of that surplus to minimize tax increases. Municipal aid has been reduced by \$3000,000 in the last several years.

Also, as the City pointed out, the City's per capita income, which is only \$9,810, is below that in four of the "Big Six" cities in New Jersey. Almost one third of the residents are classified as living in poverty and again this is a figure which exceeds the figures in five of the "Big Six" cities. Thus, it simply cannot be denied that Salem is an extremely poor City which has an extremely high tax rate. These factors make a strong argument for acceptance of the City's salary proposal. While it is difficult for the officers to accept, especially when they work in a more challenging environment than their counterparts and when the crime rate in Salem soars above that in the rest of the

County, it is not surprising that Salem, with its very poor citizens and very high tax rate, pays less to its police officers than do other municipalities.

**Cost of Living** Another factor which must be considered is the cost of living. The Consumer Price Index published by the Bureau of Labor Statistics is the most widely utilized measure of changes in the cost of living. The increase in the Philadelphia region, of which Salem County is a part, was only 1.6% in 1998. Thus, a salary increase of 3.5% provides an increase which not only matches the increase in the CPI but which provides for an increase in real wages of almost 2%. This is even more than the average excess of 1.2% which existed from 1986 to 1997.

There is no evidence that the CPI will increase at a rate which will obliterate the 3.5% wage increase in 1999 and 3% increase in 2000. Thus, increases of the amount awarded are reasonable on the basis of this factor.

**Continuity and Stability of Employment** Both parties, not surprisingly, argue that acceptance of their offers would promote the continuity and stability of employment in Salem. The POA argues that larger than average increases are required to reduce the gap - it will remain large - between wages in Salem and elsewhere in the County so that officers will be willing to remain in Salem. The City, on the other hand, argues that its offer will best allow the City to maintain and continue a stable work force not only in the Police Department but throughout the municipality.

While I do not deem this factor to be significant in deciding this case, I have attempted to fashion an award which, given the economic context in Salem, respects the legitimate aspirations and expectations of the officers while not imposing an excessive burden on the governing unit and the taxpayers of this low income, high tax municipality. Because of the relative immobility of police officers once hired and because the award will not jeopardize the financial stability of Salem in the short term or



the long term, I believe that the award properly balances the competing interests so as to promote the continuity and stability of employment. I do not anticipate a reduction in the number of officers or other municipal employees nor of municipal services as a result of this award.

#### **Weighting of the Criteria and Summary**

In the preceding discussion, I have set forth the terms of the award. I have explained why I have selected, rejected or modified the parties' proposals. I have calculated the cost of the award. In rendering the award, I have carefully considered the evidence and arguments of the parties. I have related these to the statutory criteria, each of which has been discussed separately.

The major element of the award, as is usual, is the salary increase. I have awarded increases over the three-year term of the new agreement which match those negotiated by the City with its blue and white collar employee union, the only other group in the City which is organized. I also have awarded a number of other relatively minor improvements in benefits which, I believe, will make the overall compensation of these officers more competitive with those throughout Salem County, although the overall compensation will remain well below the norm because of the low salaries in Salem.

I believe that salary increases of 3.5%, 3.5% and 3% are justified not only because that is what the City negotiated with its other union, although that is important in this City which has a very strong history of pattern bargaining, but also because increases of that magnitude are consistent with increases in the private sector in general, with increases in the public sector in general, and with increases received by other police officers in Salem County. Private sector increases are a particularly important gauge because they reflect economic conditions throughout the economy.

These increases consider such economic realities as profit and loss, the ability to compensate employees and to remain in business, inflation, interest rates, etc. In the broadest sense, the private sector provides the income which the residents and taxpayers of municipalities, including Salem, must have in order to pay their taxes and, indirectly, their police officers and the other public employees.

The increases awarded also are consistent with increases in the cost of living, allowing for wage increases which are slightly larger than CPI increases to provide the officers with an increase in real wages.

The award is an attempt to balance the differing interests of the public in maintaining a professional police force with high morale and effectiveness and with a sufficient number of officers to protect the public safety while considering the relative per capita incomes of the residents and the fact that the tax rate in Salem is the highest in Salem County and 44% above the average. Larger increases, in my judgment, would impose an unfair additional burden on the taxpayers. Smaller increases would jeopardize the morale and threaten the stability of the work force.

The award will not cause the City to exceed the spending limits under the Cap Law nor any other statutory constraints. The financial impact will be modest, although in this community the costs of government are already very high for the taxpayers.

#### **AWARD**

The term of the agreement shall be three years from January 1, 1998 through December 31, 2000.

Salaries shall be increased by 3.5% retroactive to January 1, 1998, by an additional 3.5% retroactive to January 1, 1999 and by an additional 3% effective January 1, 2000.

Longevity shall be increased effective January 1, 1999 to 5% after 14 years of service, 6% after 19 years of service and 8% after 24 years of service.

The shift differential shall be increased by \$.10 per hour effective January 1, 1999 to \$.65 per hour for the first shift and to \$.60 per hour for the third shift.

Acting shift supervisors shall receive the rate for the higher rank effective June 1, 1999 for all time worked in the higher rank.

Bereavement leave shall be increased to four working days effective with the date of this award and the officer shall submit a slip from the funeral director to verify the occurrence.

Article X, Section 7 shall be amended to provide that the City shall pay up to \$250 per officer every other year for eye care for unit members and their dependents.

Article X, Section 1 B shall be amended to reflect that officers receive full family retiree health benefits.

The clothing allowance for detectives shall be increased to \$500 effective January 1, 1999.

Article XVI, School Credits, shall be amended to provide that officers who possess an Associates Degree receive \$250 annually and those who possess a Bachelors Degree receive \$500 annually effective January 1, 1999.

A notice provision regarding a change in an officer's permanent or non-permanent shift shall be added, effective June 1, 1999, requiring 48 hours' notice of such a change and if the required notice is not provided, then the officer will be paid time and one-half for all hours worked outside of the normal shift.


Article XX, Interest Provisions, shall be deleted.

Article XIII, Patrol Cars, shall be amended to reflect the case law.

Article XV will be amended to provide that the City designate a dry cleaning establishment in the City of Salem or, if this is not done, that the City arrange for the weekly pick-up and delivery of uniforms at the police station.

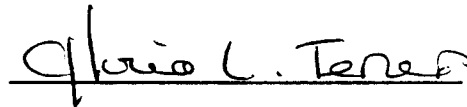
Except as the parties otherwise mutually agree, all other terms and conditions of the 1996 and 1997 agreement shall be continued in the new agreement.

Dated: May 10, 1999  
Princeton, NJ

  
\_\_\_\_\_  
Jeffrey B. Tener  
Arbitrator

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

On this 10<sup>th</sup> day of May, 1999, 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  
NOTARY PUBLIC OF NEW JERSEY  
MY COMMISSION EXPIRES SEPT. 8, 2009