

STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Interest Arbitration	:	
between	:	
BOROUGH OF AVALON	:	DECISION AND AWARD
	:	
and	:	Docket No.
P.B.A. LOCAL NO. 59	:	1A-95-074

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Before:           Joel M. Weisblatt, Arbitrator

Appearances:

For the Borough

Gruccio, Pepper, Giovinazzi, DeSanto & Farnoly  
By: Lawrence A. Pepper, Jr., Esquire

For the P.B.A.

Loccke and Correia  
By: Richard D. Loccke, Esquire

DECISION

The Borough of Avalon (the "Borough") and P.B.A. Local No. 59 (the "P.B.A.") are parties to a collective bargaining agreement which provided a duration through December 31, 1994. The parties engaged in negotiations for a successor contract but those negotiations reached an impasse. Pursuant to the Rules and Regulations of the Public Employment Relations Commission, the undersigned Arbitrator was duly appointed to serve in this matter.

The Arbitrator met with the parties on June 22, 1995 in an effort to assist them to achieve a voluntary resolution of the dispute. The impasse persisted. An evidentiary hearing was held on October 12, 1995. Both parties were afforded an opportunity to argue orally, present documentary evidence and examine and cross-examine witnesses. An extensive evidentiary record was established. Both parties filed post-hearing briefs in December of 1995. The Borough made a special request to submit a supplementary post-hearing brief for the limited purpose of addressing certain non-economic issues which it had not initially attended to. The Arbitrator granted that request and the supplementary brief was submitted, postmarked January 10, 1996. The Arbitrator requested, and was formally granted an extension

of time until February 29, 1996 to issue this Decision and Award.

The Arbitrator has carefully reviewed the entire record, which includes voluminous documentary evidence, testimony (including that of expert witnesses), and both oral and written arguments. Since the formal hearing, including the taking of testimony, occurred prior to January 10, 1996, the legislative revisions enacted on that date do not apply to the case at hand. Therefore, the statute in effect prior to those revisions shall govern this Decision and Award. Specifically, under N.J.S.A. 34:13A-16d, the economic issues shall be decided with the selection of the more reasonable last offer on a single package basis. The non-economic issues shall be determined with the selection of the more reasonable last offer on an issue-by-issue basis. In each instance, concerning economic packages and non-economic issues, the determination as to which offer is more reasonable shall be made through application of the eight statutory criteria set forth in N.J.S.A. 34:13A-16g to the evidence and issues of this case.

The aforementioned statutory criteria read as follows:

- (1) The interests and welfare of the public.

(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 public employment in the same or similar comparable jurisdictions.

(b) In comparable private employment.

(c) In public and private employment in general.

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

(4) Stipulations of the parties.

(5) The lawful authority of the employer.

(6) The financial impact on the governing unit, its residents and taxpayers.

(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.

All eight criteria have been given consideration; due weight has been given in accordance with the facts and issues presented in this particular case. The Analysis section of this Decision outlines the attribution of due

weight in reaching the ultimate determination under the statute.

FINAL OFFERS

The final offer economic package of the P.B.A. is limited to the single issue of wages. Specifically, the P.B.A. proposes the following wage increase, to be applied across-the-board and compounded:

<u>Wage Increases</u>		
Effective 1/1/95		2.5%
Effective 7/1/95		2.5%
Effective 1/1/96		2.5%
Effective 7/1/96		2.5%
Effective 1/1/97		2.5%
Effective 7/1/97		2.0%

The final offer economic package of the Borough addresses wages, health insurance and longevity. Specifically, the Borough proposes the following:

<u>Wages Increases</u>	
Effective 1/1/95	4.0%
Effective 1/1/96	4.0%
Effective 1/1/97	4.0%

Health Insurance, Major Medical

Deductible: \$200.00 per person per calendar year.  
\$400.00 per family per calendar year.

Hospital Admission

Deductible: A separate \$100.00 per person per hospital admission  
Maximum of \$200.00 per calendar year.

Hospital Emergency

Room: Covered only if life threatening condition or in need of immediate care.

Co-Insurance: When you or your Dependent pays 20% of those Covered Expenses until you have

paid \$400.00 (\$800.00 per family) then  
this Plan pays 100% of Covered Expenses.

Maximum Benefit: \$1,000,000.00 per person lifetime.

Maximum Benefit for Mental, Nervous, Drug Addiction,  
Tuberculosis & Contagious Diseases:

\$25,000 per person Lifetime Maximum for  
In-and-Out Patient Services.

Calendar year Maximum (In-Patient) will be limited to  
30 days.

The daily limit for out-of hospital or Approved  
facility for a minimum of 4 hours and a maximum of 16 hours  
in any 24 hour period is 60 days.

The maximum amount of expenses paid for psychiatric  
visits for outpatient and out-of -hospital mental care  
is \$1,000.00 per calendar year.

Longevity

Longevity does not apply to employees hired after  
January 1, 1995. (There have been no new employees  
hired after January 1, 1995 thus no current employee  
is effected).

The P.B.A. presents a final offer position on five non-  
economic issues as set forth below:

(1) Long Weekend

ARTICLE XI, WORK WEEK AND OVERTIME- The PBA  
proposes a clarification of the "Long Weekend" in the  
work chart in paragraph (C). Paragraph C should be  
modified to provide that the "Long Weekend" shall begin  
at 0800 hours on Wednesday at the conclusion of the  
midnight shift and continue until the following Monday  
at the beginning of the employee's 0800 shift.

(2) Vest Replacement

Upon periodic examination, vests which are found faulty or otherwise defective should be replaced.

(3) Fully Bargained Agreement

Under Article XXXIV, delete the second sentence of paragraph (A) and all of paragraph (B).

(4) Response Time on Time Off Requests

There shall be 72 hours for response where a member requests time off.

(5) Replacements

No full time employee covered by this Agreement shall be replaced by any non-police officer, part time or other personnel. No post presently filled by a full-time employee covered by this Agreement shall be covered by any non-police officer, part time or other personnel.

The Borough's final offer position presents two non-economic proposals. The deletion of subsection A, modification of subsection B and clarification of subsection C of the Manpower provision (Article III-B); and the addition of the following new subsection as Article XXVI, Section C:

Defective Vehicles

A vehicle will only be taken off the road and placed out of service when the vehicle has a mechanical or equipment problem which makes it unsafe to operate. (i.e. bad brakes, steering improperly, etc.) If the problem is correctable by the officer, i.e., the change of a bald tire with a replacement, then the officer is to do so in accordance with Subsection B. above.



Positions of the Parties

The P.B.A. asserts that its final offer economic package is more reasonable than that of the Borough. It seeks a ruling in favor of that last offer economic position.

The P.B.A. points out that its position actually has a 0.25% lower payout cost in 1995 than that of the Borough while the 1996 total cost is calculated as only 1.0% higher. Similarly, the 1997 total cost difference is calculated as only 0.75%. The P.B.A. suggests that its wage position is merely 1.5% higher over the 3 years, which it contends is a total cost difference of \$12,436, using the known wage rates for 1994.

The P.B.A. addresses the statutory criteria in its presentation. It claims that the public interest criterion supports the P.B.A.'s final offer. This is generally based on the contention that a reduced staffing level is conducting an increased work load. This increased productivity is noted as providing the public with a "substantial benefit from the forbearance of this employee organization's members." It argues that an extra measure of compensation is warranted to the remaining officers whose

productivity provide services with less support and fewer promotional opportunities.

The P.B.A. places substantial emphasis on comparisons with other employees performing the same or similar functions in comparable jurisdictions. It provides data establishing a range of percentage wage increases in selected communities from a low of 4.75% to a high of 10.0%. The P.B.A. maintains that this data illustrates higher increases in other shore communities than those it proposes herein. Noting sick leave and clothing allowance in particular, the P.B.A. contends that there is no offsetting benefit package to account for a shortfall in wages. The P.B.A. further argues that the Borough's exhibits actually support the P.B.A.'s final offer under the comparison criterion. With direct focus on the Avalon tax payer, the P.B.A. urges consideration of the Avalon Board of Education contract with its teachers as a comparison weighing heavily in favor of selecting the P.B.A. position as more reasonable.

The P.B.A. insists that the evidence establishes that there is no impediment, under the lawful authority of the employer criterion, to implementation of the P.B.A.'s

proposal. Specifically, it is noted that the Borough did not budget appropriations to the full 2.5% index rate of the CAP Law for 1995. Further, the difference can be banked to provide greater flexibility in the 1996 budget. The P.B.A. relies on the testimony of its own expert witness and that of the Borough Administrator to conclude that there is no CAP Law impediment to implementing its final offer.

The P.B.A. asserts that, "the impact on the residents and taxpayers of an award of the differential between the parties' positions in this case is almost incalculably small." The P.B.A. points out that police wages represent only 5% of the tax levy and that reductions in force have produced substantial savings. Further, the P.B.A. points to a fund balance which, as a ratio to appropriations, was higher than standard. Certain elements of tax collection and budgetary anticipation of tax collection are pointed to as areas responsible for budgetary flexibility. The lapsing of unused police department salary funds is also noted as an indication of available money without increasing taxes. Additionally, the 1995 tax rate is cited as second lowest in all of Cape May County. The relatively high value of tax ratables is also emphasized. The P.B.A. contends that there is no citizen uproar about taxes in Avalon, pointing out

that only 3% of all eligible voters cast ballots in the school budget election. It notes that the school budget is responsible for more than 60% of the overall tax levy.

The P.B.A. argues that the cost of living criterion should not be given determinative weight. It stresses the fact that wage rates didn't keep pace with double-digit inflation in the 1980's. The P.B.A. maintains that both positions reflect the downward tug of cost of living data. Finally, the P.B.A. relies on the eighth criterion for support. It suggests that the, "public employer has taken advantage of the attrition losses in the police force to achieve great savings at the expense of the remaining employees." It claims that some of these savings should be directed to the bargaining unit. The P.B.A. urges a consideration of morale under this criterion and a recognition that the "going rate" is a traditional factor in determining wages.

The P.B.A. also argues that its non-economic proposals are reasonable. The long weekend proposal is said to retain the existing work obligation but utilize the time to a better advantage. The P.B.A. maintains that this proposal is fully supported by the record. The P.B.A. claims that

its proposal that vests be examined and replaced is reasonable based on the understanding that some, "last longer than others, based upon utilization and exposure to the elements." The P.B.A. suggests that the fully bargained clause should be deleted due to a conflict with N.J.S.A. 34:13A-5.3. It further contends that the proposal delineating a response time to requests for time off is clearly reasonable. The P.B.A. emphasizes that it seeks no guarantee of approval, merely a defined period during which a response will be given. The P.B.A. characterizes its replacements proposal as primarily driven by safety concerns. It asserts a need to control the training and skill level of personnel with whom police officers may have to work in a dangerous situation. The reduced staffing levels though attrition are noted as a factor behind the need for this proposal. Finally, with respect to the Borough's non-economic proposals, the P.B.A. contends that neither the rationale nor the impact of the position was clearly established at the hearing.

In conclusion, the P.B.A. argues that the evidence supports a determination that its positions are more reasonable. It seeks an Award ruling in favor of its economic package and all its non-economic issues.

The Borough contends that the statutory criteria support the selection of its fair and final offer economic package. The arguments presented are summarized below.

The Borough stresses that the public interest requires that a "myriad of public services" be provided including but not limited to police protection. It suggests that the selection of the P.B.A. position, "would result in an unnecessary and disproportionate allocation of funds to the Police Department" having an adverse impact on the public interest. The Borough notes stagnant growth in assessed valuations, an increased overall tax rate, continued use of fund balance for operating expenses and the demands of coastal protection as significant factors weighing on the public interest. The Borough stresses the need to contain the cost to run government in order to continue to provide quality services to the public.

The Borough relies heavily upon the subsection of the comparability criterion which relates to other employees in the same jurisdiction. It emphasizes the fact that the Borough's final offer is solidly consistent with its negotiated agreement with two other unions and with the terms applied to all non-union employees of the Borough.

Specifically, the elements of wage increases, health insurance and longevity changes have been established uniformly with these other employee groups in the same jurisdiction. The Borough claims that the consistent, fair and equitable treatment of all employees is good for overall morale. Further, the concept of patterns as a function internal comparability is stressed.

With respect to other comparisons, the Borough argues that the maximum salary for patrolmen is comparable to other jurisdictions and competitive in keeping with other working conditions. A further comparison to the largest public employee unit in Cape May County is drawn, that being with the AFSCME unit of the County government. For the years in question, that contract provided: 3.25%, 3.5%, and 3.5% wage increases, health insurance concessions and grandfathered longevity benefits. The Borough notes the most recent public safety agreement in the County, the FMBA contract with the City of North Wildwood, as providing wage increases as follows:

1/1/95	2.5%
7/1/95	2.5%
1/1/96	3.75%
1/1/97	3.75%

The Borough points out that this total wage rate increase of 12.5% is closer to the 12.0% offered by the Borough than the

14.5% demanded in the P.B.A. final offer. With respect to private employment generally, the borough argues that its proposal is well above negotiated wage increase trends in the private sector.

The Borough claims that an analysis of the overall compensation currently received by unit employees, "furnishes overwhelming evidence of the reasonableness and fairness of the Borough's position." The Borough asserts that the benefit package is comprehensive without any critical shortfall or deficiency.

Under the lawful authority criterion, the Borough emphasizes the fact that the CAP Law index rate for 1995 is 2.5%, noting that this limits appropriations over the prior year's appropriations. It maintains that there is a potential \$250,000 annual cost for trash collection which will fall under the CAP restrictions if no renewal of inter-local services agreement with Sea Isle City is reached. The Borough stresses the impact of a 1.5% police salary rollover from a July 1, 1994 increase on the 1995 budget and CAP. It urges a determination that the added costs in the P.B.A. proposal are unreasonable under the lawful authority criterion.



The Borough maintains that acceptance of the P.B.A.'s final offer would place an undue burden on the taxpayers. The specific increases of the general tax levy from 1992 to 1994 are cited and the suggestion is made that the P.B.A. final offer would either cause increased taxes or force a reduction in services. The Borough contends that its own offer produces a better "harmony" between the taxpayers interests and fair treatment of the employees.

The Borough draws a nine-year comparison between wage increases and the inflation rate to reveal that wage increases have strongly out paced the increased cost of living. It points to continued low rates of cost of living increases (as measured by the C.P.I.) in contrast to substantially higher wage increases in the Borough's own offer. The Borough insists that the cost of living criterion must be viewed as supporting selection of its final offer.

The Borough argues that its offer promotes the continuity and stability of employment. It suggests that the added cost of the P.B.A. position might place pressure on staffing levels and could affect the morale among other Borough employees.

The Borough has proposed non-economic changes in the Manpower provisions of the contract. It seeks the deletion of the overall force manning provision and a revision of the provision restricting one-man patrol cars to certain hours. It argues that these contract provisions are impermissible under the law and are also inconsistent with the comparability criterion. The additional language sought in the Defective Vehicles clause is argued to be a proper clarification of the application of that provision.

With respect to the P.B.A.'s non-economic proposals, the Borough has no objection to the revision of the last sentence of Article XI, Section G, (long weekend) to read as follows:

For the purpose of this Agreement an employee's long weekend shall begin at 0800 hours on Wednesday at the conclusion of the midnight shift and continue until the following Monday at the beginning of the employees's 0800 shift.

The Borough opposes the vest replacement proposal noting its late inclusion among the issues in dispute and that it was not included on the petition to initiate compulsory interest arbitration. Further, comparability is cited as a factor, pointing out that other police contracts do not include this provision. Also, it points to Article XVII, Section E., to assert that it has negotiated a clause making the employees responsible for the replacement of the vests initially supplied by the employer.

The Borough argues that the fully bargained clause, or "zipper clause", is common and appropriate in collective bargaining agreements. It also argues that the comparability criterion supports retention of this provision.

The Borough does not object to the concept of the response time for time off requests but it argues that the 72 hour limit is too short. Weekends are noted as a factor which might render the 72 hours as inadequate. The Borough suggests that 7 days (or 168 hours) would be more appropriate.

The Borough opposes the P.B.A.'s replacements proposal

because it would interfere with the statutory authority to employ properly trained special officers. It stresses that there is no evidence to support the need for the proposed language change.

In conclusion, the Borough requests a determination that its positions are more reasonable. It seeks an award implementing the Borough's position on the economic package and each non-economic issue.

ANALYSIS

The Arbitrator has carefully reviewed the entire record and as discussed earlier, applied all eight statutory criteria to the evidence to determine the more reasonable final offer economic package and the more reasonable position on each of the non-economic issues.

It is appropriate at the outset of this analysis to calculate the cost differences between the economic packages. The Borough's position is quite straight forward in terms of the cost of wage increases. In each year of the contract the wage scale increases by 4.0% across-the-board over the prior year's schedule. For cost comparisons on a percentage basis we can call this 4% per year or 12% over three years. These increases represent both rand and cost payout figures. There is a cost factor of 1.5% which, as a rollover from the July 1, 1994 wage increase of the last contract, is a new money cost in 1995. However, this cost is considered and analyzed later in the Decision, it is constant for both offers and therefore has virtually no impact on the cost difference between positions. The P.B.A.'s final offer provides split increases in all three

years of the contract, compare the two offers:

	<u>BOROUGH</u>	<u>P.B.A.</u>
1/1/95	4.0%	2.5%
7/1/95	--	2.5%
1/1/96	4.0%	2.5%
7/1/96	--	2.5%
1/1/97	4.0%	2.5%
7/1/97	--	2.0%

The total rate increase of the P.B.A.'s wage proposal is 14.5% compared to the 12.0% of the Borough. The July increases "split" their cost impact with one-half the cost affecting the calendar year in which it falls and the other half rolled over in the following budget year. In this case the payout cost of each year of the P.B.A. wage position is: 1995 3.75%; 1996 5.0%; and 1997 4.75%. The 1995 cost is calculated by adding the full impact of the 2.5% in January to 1/2 of the 2.5% in July (1.25%) to reach 3.75%. For 1996 the full 2.5% of the January increase is added to the 1.25% rolled over from the 7/1/95 increase and to 1/2 of the 2.5% in July of 1996 (1.25%) to equal 5.0%. In 1997 the full 2.5% is added to the 1.25% rolled over from 7/1/96 and to 1.00% (one-half of the 7/1/97 rate increase of 2.0%). One percent of cost is also rolled over into 1998 as a result of the P.B.A. proposal. The cost comparison can be summarized with the following chart:

	Borough	P.B.A.	P.B.A.
	<u>Cost &amp; Rate</u>	<u>Cost</u>	<u>Rate</u>
1995	4.0%	3.75%	5.0%
1996	4.0%	5.00%	5.0%
1997	<u>4.0%</u>	<u>4.75%</u>	<u>4.5%</u>
Total	12.0%	13.5%	14.5%

(1% in 1998)

This method of cost comparison provides one valid measure of viewing the differences in positions by percentages. However, it is not a true mathematical calculation of differences in cost because it ignores the impact of the compounding of the increases. Ordinarily, the differences of compounding are relatively small; however, where one proposal compounds 3 times and the other six times, that differential grows dramatically.

To illustrate the above point, if the two proposals are applied to the current compliment of staff and carried through over the three years, the cost difference would actually be 2.44%

1994 Base Salaries

13 Patrolmen @ \$42,581	= \$553,553.
6 Sergeant @ 45,926	= <u>275,556.</u>
Total	= \$829,109.

The Boroughs wage offer costs out as follows:

1995  
13 x \$44,284 = \$575,692  
6 x 47,763 = 286,578  
Total = \$862,270

1996  
13 x \$46,056 = \$598,728  
6 x 49,674 = 298,044  
Total = \$896,772

1996  
13 x \$47,898 = \$622,674  
6 x 51,661 = 309,966  
Total = \$932,640

The P.B.A.'s wage offer costs out as follows (using the average of each year's rate due to 6 months at the 1/1 rate and 6 months of the 7/1/ rate):

1995  
13 x \$44,192 = \$574,496  
6 x 47,663 = 285,975  
Total = \$860,471

1996  
13 x \$46,428 = \$603,564  
6 x 50,076 = 300,453  
Total = \$904,017

1997  
13 x \$48,658 = \$632,554  
6 x 52,481 = 314,883  
Total = \$947,437

The direct comparison appears below:



	<u>Borough</u>	<u>P.B.A.</u>	<u>P.B.A. difference</u>
1995	\$862,270	\$860,471	- \$ 1,799
1996	896,772	904,017	+ \$ 7,245
1997	932,640	947,437	+ \$14,797

The net cost difference over 3 years between the two positions is \$20,243, or 2.44% of the 1994 total base of \$829,109. Once again, an additional cost of about 1% of the 1996 total base is rolled into 1998 and not accounted for above.

The Borough raises the issue of the 1995 impact of the rollover of 1.5% of cost from the July 1, 1994 3% wage increase. This is indeed a new cost in 1995 and cannot be ignored. The Borough's argument that its 1995 position actually includes a "new money" cost of 5.5% must be given some meaningful consideration. The rollover from the last contract cannot be ignored unless there is convincing evidence or the unusual scenario that the employer received full credit for that cost in the prior negotiations.

Other cost differences between the two final offers relate to the cost containment element of the Borough's health insurance proposal and the long term impact of the grandfathering of longevity sought by the employer. There would be no impact of the longevity proposal until four

years following the future hiring of any police officers.

The public interest criterion is of significant importance in any interest arbitration. In this particular case there are several elements of the public interest which require close examination. Of initial significance is the desirability of maintaining consistency among all employee groups within the jurisdiction. There is clear evidence that the Borough has attained virtually identical terms as it proposes herein through contracts negotiated two other unions, the Teamsters, Local 676 (covering blue collar employees) and the United Independent Union (covering dispatchers). Internal consistency is often an element of a sound labor relations policy as it supports overall morale in the workforce. This is especially true where the consistency is applied on a percentage basis because that allows better for recognition of differences in job responsibilities. For example, if a police officer is recognized to have special skills including perhaps a requirement to respond to a dangerous situation, that salary rate may reflect the special nature of the job. If that police officer salary rate and a lower rate for another job receive consistently applied percentage increases, the police officer rate will continue to receive greater dollar

increases reflecting the responsibility of the position.

An additional, and equally important element of the public interest is the desirability of maintaining a competitive salary and benefit package. This factor enables an employer to attract and retain highly qualified police officers and it reduces the costs and inefficiencies of high turnover.

A third significant element of the public interest is the balancing of providing a competitive compensation package with containing the costs in a responsible manner. A failure to reasonably contain costs could serve to place pressure on the delivery of public services. The diminution of public services is rarely in the public interest.

The fourth element of the public interest warranting discussion herein is the impact of establishing a two-tiered structure of benefits within an employment unit. Frequently this can lead to fragmentation and disunity among employees and it has the potential to negatively impact on morale. Two-tiered benefit structures can be found to be less effective than they appear to management if they serve to undermine sound labor relations.

The evidence presented in this record reveals the Borough's economic package to be the one which focuses on internal consistency as an element of the public interest. This factor is at odds with the fact that that consistency establishes two-tiered longevity benefit. However, the impact of the longevity change will not occur for at least four years. If it develops into a problem, the parties can address it in future contract negotiations. In this case, consistency outweighs the negative element associated with the Borough's longevity position. The Arbitrator finds both final offers to provide a reasonably competitive compensation plan. Neither package is likely to cause a loss of the Borough's ability to hire and retain qualified personnel. More specific discussion follows under the comparability criterion.

Lastly, the two offers both presents costs within parameters which would allow the Borough to maintain its public services. Neither offer presents costs which have been shown to place any immediate undue pressure on the budget or the tax structure. Neither offer is unreasonable with respect to costs, in actual, rather than comparative, terms. The future implications of the cost containment elements of the Borough's offer provide some greater value

in this element of the public interest. There are general trends toward reasonable containment of some benefits, especially health insurance. Moderate changes to address costs are reasonable and in the public interest so long as competitive compensation structure is maintained.

The public interest criterion, on balance, weighs in support of the Borough's final economic package. There are positive elements to both packages but it is the Borough's emphasis on consistency, providing some cost containment without sacrificing competitive position, which requires a determination that the Borough's final offer package is more reasonable under the public interest criterion.

There are several categories in the statutory criterion relating to comparability. The Borough has understandably stressed consideration of that category addressing comparisons with other employees in the same jurisdiction. The P.B.A. has emphasized a comparison with employees performing the same or similar services in comparable jurisdictions. The record also includes evidence as to comparisons with public employment with private employment, generally.

The Borough has negotiated contracts with two other unions, the Teamsters, Local 676 and the United Independent Union which provide 4% wage increases. Further, both contracts include the identical medical benefit plan offered herein by the Borough. The Borough also negotiated the grandfathering of longevity in its contracts with these two unions, just as it is proposed herein. The internal comparison element of the comparability criterion weighs heavily in support of the Borough's final offer.

An analysis of comparisons with employees performing the same or similar services in comparable jurisdictions requires an examination of terms and conditions of employment and particularly salary rates over a relevant period of time. This record includes primary source data (contracts and/or memoranda of agreements) for the following comparable jurisdictions: Sea Isle City, Ocean City, North Wildwood, Middle Township, Wildwood Crest, Wildwood, Stone Harbor and Cape May City. As a baseline the 1994 maximum patrolman's salary rates compare as follows:

1994 Top Patrolman's Rates (12/31/94)

Sea Isle City	\$ 44,355
Ocean City	44,342
North Wildwood	43,765
Middle Township	43,461
Avalon	42,581
Wildwood Crest	42,531
Wildwood	42,402
Stone Harbor	41,835
City/ Cape May	41,399

The 1995 salary rate proposal would produce the following comparison:

1995 Top Patrolman's Rates

	Ocean City	\$ 46,577	(7/1/95)
	No. Wildwood	45,981	(7/1/95)
	Middle Twp.	45,643	
(PBA)	Avalon	44,737	(7/1/95)
	Wildwood	44,310	
(Borough)	Avalon	44,248	
	City/ Cape May	44,125	(7/1/95)
	Wildwood Crest	44,020	
	Stone Harbor	43,927	

The 1996 data available is limited but reveals the following:

1995 Top Patrolman's Rates

(PBA)	Avalon	\$ 47,001	(7/1/95)
(Borough)	Avalon	46,056	
	Stone Harbor	46,014	
	Wildwood Crest	46,000	

The Arbitrator finds that both salary positions are reasonable in a comparison of salary rates over time. The

P.B.A.'s proposal provides some relative improvement but not to an unreasonable degree and the lower rates proposed by the Borough remain quite competitive in the labor marketplace.

An examination of percentage increases for 1995 weighs in support of the P.B.A.'s salary proposal. Considering the following comparison:

	<u>1995</u>	<u>1996</u>	<u>1997</u>
Wildwood	4.5%		
Wildwood Crest	3.5%	4.5%	5.0%
City/Cape May	4.0% (1/1)*		
	2.5% (7/1)		
No. Wildwood	2.5% (1/1)		
	2.5% (7/1)		
Middle Tsp	5.0%		
Ocean City	4.0% (1/1)		
	1.0% (7/1)		
Stone Harbor	5.0%	4.75%	

\* This 4.0% figure expressly includes \$600.00 directly related to a reduction in the health insurance benefit.

Of the above comparable jurisdictions only Wildwood (4.5%) and Wildwood Crest (3.5%) are below the five percent rate increase sought in the P.B.A. proposal. However, the impact of the weight of this comparison in favor of the P.B.A. must be tempered by two factors. First of all, the contract at issue includes a rollover of 1.5% in 1995 which increases the value of the Borough's offer. Secondly, of the sparse



data for 1996 and 1997, only the 1997 increase of 5.0% in Wildwood Crest reaches as high as the 5.0% increase of the P.B.A.'s 1996 position. Indeed, although the Wildwood Crest Contract provides the same 9.5% rate increase over the two years of 1996 and 1997 as the P.B.A. herein, that contract had a 3.5% increase in 1995. In point of fact, the Wildwood Crest contract at 13.0% over the three years is closer in rate increases to the 12.0% offered by the Borough than the 14.5% sought in the P.B.A. offer.

The 1995 comparative data supports the P.B.A. position but the P.B.A.'s proposal for 1996 and 1997 is, in fact a weak link in its final offer, even under the comparability criterion. Of special significance is a comparison to the most recent public safety contract negotiated in a comparable jurisdiction that of the F.M.B.A. and the City of North Wildwood. That contract matched the 1995 split 2.5% increases (totalling 5.0%) of the P.B.A. but it produced salary rate increases of 3.75 % in each of 1996 and 1997. While there were other economic elements of that contract which were gains for the union, it is illustrative of a downward trend in salary rate increases which the P.B.A.'s offer herein does not adequately acknowledge.

The police unit comparisons under this criterion also

weigh somewhat toward selection of the P.B.A. with respect to health insurance and longevity. However, this weight must also be tempered. Most of the police contracts do not reflect health insurance cost containment of the measure sought here and none reveal a grandfathering of longevity. Nonetheless, two contracts Wildwood Crest and Cape May City include recent health insurance changes of substantial significance with respect to deductibles and co-payments. Further, the Avalon longevity benefit retained under the Borough's proposal for current employees remains among the very best in the comparison group.

The P.B.A. must be credited in its comparison with the local teachers contract negotiated with the school board. That contract included increases substantially higher than those at issue herein for a contract funded by the same taxpayers who support the municipal police services.

The comparison drawn by the Borough to the Cape May County contract with AFSCME is illustrative of comparisons with the public sector generally. That unit is the largest public sector collective bargaining unit in Cape May County. That contract provides annual wage increases of 3.25%, 3.5% and 3.5% for 1995, 1996, and 1997 respectively. It also

includes major medical deductibles equal to those proposed by the Borough herein and, lastly, it grandfathers longevity to employees hired prior to August 13, 1985. This comparison weighs in support of the Borough's final offer.

The record includes several Daily Labor Reports providing survey data as to collective bargaining trends in the private sector, generally. The most relevant evidence established wage settlements with a median increase of 3%. Other notable trends reveal that there was an increase in the number of contracts with reduced benefits for new hires and twenty-one percent of the contracts analyzed revealed health care cost containment provisions. These general private sector comparisons warrant some weight in favor of the Borough's final offer but that weight is limited because the general comparisons are less persuasive than the more specific comparative evidence discussed early.

There are certain elements of the comparability criterion which weigh in favor of the P.B.A.'s position, but on balance, the Borough's final offer is more reasonable under the comparability criterion. Of particular significance are the internal comparisons and the comparative facts for 1996 and 1997.

The overall compensation criterion does not warrant determinative weight. Current compensation levels are reasonably competitive. Salary rates are clearly within a normal range for the region. Fringe benefits are basically strong, some are better (longevity) than others (sick leave) but none is terribly lacking. Further, none is unreasonably high. Under either final offer, the overall compensation structure will fall within a reasonably normal range; it will be neither substandard nor unreasonably generous.

Under the lawful authority criterion, both final offers are reasonable. Under this record the lawful authority criterion substantially entails an analysis of the impact of the CAP Law which restricts budgetary appropriations. For 1995, the Borough was operating under the 2.5 index which restricted appropriations to 2.5% above the prior years appropriations. That index would have allowed the Borough to increase its 1995 appropriations by approximately \$165,000 over the prior year's budget. However, the 1995 level of appropriations established by the Borough used only about \$45,000 of the available CAP limit. It decided not to use \$120,000 of its lawful authority to budget increased appropriations. On cross-examination, the Borough Administrator acknowledged that there was no CAP problem in

1995 nor any likely problem in 1996. The 1996 prediction is based on a recent statutory revision which allows a municipality to bank unused CAP availability and apply it to the CAP amount in future years. This provides added flexibility for the Borough in the case at hand. As noted earlier, the cost difference of the two salary proposals is about \$20,000 over three years. Both final offers fall well within the available lawful authority under the CAP Law; both final offers are reasonable under this criterion.

Under the financial impact on the taxpayers criterion, both final offers are reasonable. The Borough has been remarkably successful at keeping the municipal purpose portion of the tax rate at a flat level. The 1992 rate was \$.358; the rate in 1993 was \$.359; and in 1994 it was \$.360. It remained flat in 1995 as well. The overall tax rate has seen only moderate increases driven by the school and county taxes. Although there was testimony that fund balances have been used as a revenue source to prevent tax increases, the fund balance remains quite healthy. Indeed, the P.B.A. presented expert testimony revealing a strong history of the regeneration of surplus balances. Additionally, there is evidence of a solid tax collection rate and a better than anticipated recovery of delinquent taxes. The evidence

presented establishes quite clearly that neither final offer is likely to be the cause an increase in the tax rate in the immediate future, that being through the life of this contract. Therefore, both final offers are reasonable under the financial impact criterion.

The cost of living criterion weighs significantly in support of the Borough's final offer. An examination of the Consumer Price Index for all urban consumers in the Philadelphia/Southern New Jersey region, as compiled by the U.S. Bureau of Labor Statistics, reveals an extended period of moderate growth in the cost of living. The evidence in this record establishes four and one half years of inflation figures between two and three percent, averaging about 2.5%. Further, the record establishes an extended period of time where unit salaries have continuously outpaced the increases in the cost of living. The more moderate (4.0%) wage increases offered by the Borough are clearly more reasonable in light of the cost of living criterion.

There is no element of either package which appears unreasonable in consideration of the concept of continuity and stability of employment. Neither package is likely to adversely impact on the stability of employment since both

packages fall within the Borough's ability to pay and both packages would provide a competitive overall compensation structure. The internal consistency among bargaining units is a traditional factor in determining terms and conditions of employment and that is one of the Borough's stronger points. The P.B.A.'s "going rate" argument is also a tradition factor but the allure of that argument is tempered by the rollover of the 1994 raise into 1995 and by the failure to adjust to a downward trend for 1996 and 1997. There are countervailing elements to this eighth criterion and it is not worthy of determinative weight for either position.

In conclusion, the final offer economic package of the Borough must be found more reason in the overall application of the statutory criteria to the evidence. Of greatest significance are: the internal comparisons with other union contracts in Avalon; comparison with other public safety contracts for 1996 and 1997; the reasonably moderate cost containment for health insurance (which was not groundbreaking within the appropriate comparison group) and the cost of living evidence. On balance, the Borough's economic package was simply more reasonable and shall be awarded herein as the resolution of all economic issues in

dispute.

The long weekend non-economic proposal presented by the P.B.A. is not opposed by the Borough. Indeed, the change is merely reflective of current practice. There was testimony of the logic of rotating with the clock and the reasonableness of this proposal, which doesn't alter the overall work obligation, is quite obvious. The proposed change shall be incorporated in the contract under the award herein.

The P.B.A. proposal seeking a specified response time of 72 hours to request for time off is also found to be most reasonable. The Borough is not opposed to the concept but suggests that the time is too short. However, the final offers were established at the hearing and the seven day period suggested by the Borough in this supplemental brief cannot be viewed as a final offer but just as an argument position. The Arbitrator agrees that the concept of a defined period for a response to time off requests is reasonable. Nothing in the record establishes 72 hours as an unreasonable or unworkable period of time. There are obvious reasons, founded in sound labor relations policy to establish parameters for a response time. Such a



requirement does not mandate an approval it merely provides employees with a known period of time within which they shall receive a response. If the 72 hours proves too short, as the Borough suggests, the parties could mutually agree to revise or modify this time frame or they could revisit the length of time in their next contract. However, the P.B.A. proposal seems most reasonable and shall be awarded herein.

The remaining non-economic changes sought by both sides: the P.B.A. proposals as to vest replacements, fully bargained deletion and replacements; and the Borough's proposals as to manpower and defective vehicles; were simply not supported by the evidence in the record. In each instance, the position opposing implementation of these non-economic proposals shall be awarded for lack of convincing evidence in support of the changes sought.

AWARD

For the foregoing reasons IT IS HEREBY ORDERED that the issues in dispute at interest arbitration shall be resolved as set forth below:

(1) The final offer economic package presented by the Borough shall resolve the economic issues. Specifically, the following shall be incorporated in the contract:

Wage Increases

Effective	1/1/95	4.0%
Effective	1/1/96	4.0%
Effective	1/1/97	4.0%

Health Insurance, Major Medical

Deductible: \$200.00 per person per calendar year.  
\$400.00 per family per calendar year.

Hospital Admission

Deductible: A separate \$100.00 per person per hospital admission.  
Maximum of \$200.00 per calendar year.

Hospital Emergency

Room: Covered only if life threatening condition or in need of immediate care.

Co-Insurance: When you or your Dependent pays 20% of those Covered Expenses until you have paid \$400.00 (\$800.00 per family) then this Plan pays 100% of Covered Expenses.

Maximum Benefits:

\$1,000,000.00 per person lifetime.

Maximum Benefit for Mental, Nervous, Drug  
Addiction, Tuberculosis & Contagious Diseases:

\$25,000.00 per person Lifetime Maximum for  
In-and Out-Patient Services

Calendar year Maximum (In-Patient) will be limited  
to 30 days.

The daily limit for out-of-hospital or Approved  
facility for a minimum of 4 hours and a maximum of  
16 hours in any 24 hour period is 60 days.

The maximum amount of expenses paid for  
psychiatric visits for outpatient and out-of-  
hospital mental care is \$1,000.00 per calendar  
year.

Longevity

Longevity does not apply to employees hired after  
January 1, 1995. (There have been no new  
employees hired after January 1, 1995 thus no  
current employee is effected).

(2) The non-economic "Long Weekend" proposal of  
the P.B.A. shall be incorporated in the contract.

(3) The non-economic "Vest Replacement" proposal  
of the P.B.A. shall not be incorporated in the  
contract.

(4) The non-economic proposal of the P.B.A. to  
delete the "Fully Bargained" provision shall not  
be incorporated in the contract.

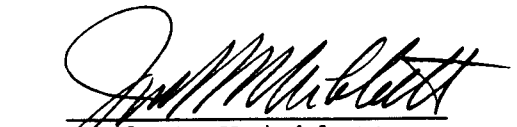
(5) The non-economic proposal of the P.B.A.  
relating to "response Time on Time Off Requests"  
shall be incorporated in the contract.

(6) The non-economic "Replacements" proposal of  
the P.B.A. shall not be incorporated in the  
contract.

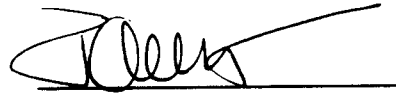
(7) The non-economic "Manning" proposal of the Borough shall not be incorporated in the contract.

(8) The non-economic "Defective Vehicle" proposal of the Borough shall not be incorporated in the contract.

Dated: February 24, 1996  
Princeton, N.J.

  
Joel M. Weisblatt  
Arbitrator

On this 24th day of February 1996, before me personally came and appeared Joel M. Weisblatt, 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:

  
BY 