

In the Matter of Interest Arbitration Between:

BOROUGH OF SPRING LAKE

"Borough,"

- and -

PBA LOCAL 50

"PBA."

Docket No. IA-99-1

**OPINION
AND
AWARD**

**Before
James W. Mastriani
Arbitrator**

Appearances:

For the Borough:

Eric Martin Bernstein, Esq.
Mauro, Savo, Camerino & Grant

For the PBA:

Richard D. Loccke, Esq.
Loccke & Correia

I was appointed arbitrator by the New Jersey Public Employment Relations Commission in accordance with P.L. 1995, c. 425, in this matter involving the Borough of Spring Lake [the "Borough "] and P.B.A. Local 50 [the "PBA"]. Pursuant to my statutory authority, pre-interest arbitration mediation sessions were held but failed to achieve resolution of the issue in dispute. Because the impasse was not resolved, a formal interest arbitration hearing was held on February 26, 1999. The mandatory terminal procedure of conventional arbitration was used to decide all issues in dispute. Under this procedure the arbitrator has the authority to fashion an award which he believes represents the most reasonable determination of the issues in dispute.

At the arbitration hearing, each party argued orally, examined and cross-examined witnesses and submitted extensive documentary evidence into the record. Each party filed post-hearing briefs, the last of which was received on June 15, 1999. Testimony was received from Patrolman Jeffrey Poland, Police Chief Robert Dawson, and Councilperson Wayne Patterson.

FINAL OFFERS OF THE PARTIES

Before beginning the formal hearing, the Borough and the PBA submitted the following final offers:

PBA LOCAL 50

Economic Issues

1. Wage Increase - the PBA proposed a three year contract commencing January 1, 1998 with a 5% across the board increase at each rank, step and position covered by the agreement.
2. Longevity - The PBA proposed a deletion of the grandfather clause set forth in paragraph #2 of Article 18 (page 31) of the preceding contract (J-1).
3. Sick Leave at Retirement - The PBA proposed a formula of 50% of all accumulated sick leave to be paid at retirement at the employee's then current daily rate. This is meant to replace the current formula set forth at Article XXVI (J-1, page 39) of the prior contract.
4. Compensatory Time Access - The PBA proposed that all compensatory time off should be available on the same basis as other time off. Therefore there would be no special standards. The PBA seeks to have the employee elect to utilize time (CTO) or paid overtime, at the employee's sole discretion with said election being made after the overtime is worked.

Non-Economic Issues

1. Fully Bargained Language Deletion - The PBA has proposed that certain specific language set forth in the prior contract at Article XXXII (J-1, pg. 56) be deleted.
2. Preservation of Rights - The PBA proposed new language which was attached to the original proposal sheet (P-1) as issue 11a with a full text of the language being set forth on sheet 5 of the original proposal. Full text of proposal as follows:

The parties agree that all benefits, rights, duties, obligations and conditions of employment relating to the status of the

Spring Lake Police Department which benefits, rights, duties, obligations, terms and conditions of employment are not specifically set forth in this Agreement, shall be maintained in not less than the highest standards in effect at the time of the commencement of collective bargaining negotiations between the parties leading to the execution of this Agreement.

Unless a contrary intent is expressed in this Agreement, all existing benefits, rights, duties, obligations and conditions of employment applicable to any officer pursuant to any rules, regulations, instruction, directive, memorandum, statute or otherwise shall not be limited, restricted, impaired, removed or abolished.

3. Requirement that Employees Stay at Home During Sick Leave - The PBA has proposed that the current contract be modified at Article XXVI (J-1, pg. 39) at paragraph "Section M" so as to delete the requirement that an employee must remain at home while on sick leave.

BOROUGH OF SPRING LAKE

1. All tentative agreements made between the parties as to either the Borough's proposals or the PBA's previous proposals.
2. Duration: January 1, 1998 - December 31, 2000.
3. Revise Article III by creating a new §A(2) (Management Rights) as follows:

"A.2. It is further understood and agreed that all rights of management are retained by the Borough, except as modified by this Agreement, and that these rights shall include, but not by way of limitation, the right to:

- a. Select and direct the employees;
- b. Hire, promote, transfer and assign;
- c. Suspend, demote, discharge or taken other disciplinary action for cause;
- d. Establish the daily, weekly and monthly work schedules;
- e. Make changes in the starting and ending time of work;
- f. Relieve employees from duty because of lack of work or for other legitimate reasons;

- g. Determine the work to be performed within the unit of employees covered by this Agreement;
 - h. Purchase the services of others by contract or other methods; and/or;
 - i. Make reasonable and binding rules and regulations together with modification of existing rules and regulations."
- 4. Revise the first sentence of Article VII, §A as follows (Probationary Employment):

"Newly hired employee shall be considered probationary employees for a period of one (1) year from appointment to the Borough Police Department or graduation from an approved police training course, whichever is greater."
- 5. Add the following language to Article IX, §A (Seniority):

"Previous employment with other police departments and/or other departments within the Borough shall not be counted as service for any purpose within this Agreement."
- 6. Add the following sentence to the end of Article X:

"The Police Chief or designee reserves the right to change/modify employee's schedule(s) as is necessary for the proper operation of the Department and the welfare of the Borough."
- 7. Article XVII - Salary
 - A. Salary proposal - 2.5% per year, effective January 1st of each year.
 - B. Patrolman's guide -- any employee hired on or after January 1, 1999 would be subject to a new salary guide with two (2) additional steps: (1) midway between probationary step and 2nd year; and (2) midway between 2nd year and 3rd year; thus the guide would like this (based on 3/1/97 as an example)

Patrolman, 1 st year of service (probationary)	\$30,476
Patrolman, 2 nd year of service	\$35,424
Patrolman, 3 rd year of service	\$40,372
Patrolman, 4 th year of service	\$43,820
Patrolman, 5 th year of service	\$47,269
Patrolman, 6 th year of service	\$50,551
Patrolman, 7 th year of service and thereafter	\$56,107

This guide would be amended by any increases awarded, as well as the existing guide, except the 1st year salary shall be frozen at \$30,476 until 1/1/00.

- C. The payment listed in §A for Juvenile Officer/Detective shall be prorated if the person(s) serving in said position(s) does not serve for a full year.
8. Eliminate §2 of Article XVIII and combine with existing §1, if and only if, all employees hired on or after January 1, 1999 shall not be entitled to any longevity benefits.
 9. The Borough wishes to incorporate the language of GO 11-1997 into Article XIX with one (1) sentence deleted. If there is a discrepancy in the language between the two, GO 11-1997 will take precedence (see attached as Exhibit A). In addition, the language of GO 12-1997 as it relates to compensatory time shall also be incorporated (see attached as Exhibit B). However, the seventy-two (72) hour notice shall be time between Monday through Friday, during business hours. Also, as to call-in, the Chief or designee reserves the right to have the employee work the full two (2) hours. The Borough agrees to this minimum whenever a member of the bargaining unit is called into work at a time not contiguous to his tour of duty.
 10. The Borough proposes that members of this bargaining unit agree to the same changes in medical insurance (Article XXI) that members of the Borough's Public Works Association agreed to in its new contract:
 - (1) employee pays \$150.00/year toward medical coverage;
 - (2) employee pays \$75.00/year toward dental coverage;
 - (3) opt-out, opt-down for dual coverage as set forth below:

Each employee may volunteer to elect, effective July 1, 2000, to reduce the medical and/or dental prescription insurance directly provided by the Borough for the employee and/or his family in order to avoid dual coverage by the Borough and the employer's spouse's employer. The employee has the option to reduce his number of members covered (i.e., from family coverage to single coverage or husband/wife coverage or no coverage, if applicable) to lower coverage status than the maximum provided. If the employee elects to reduce the coverage provided by the Borough, the employee shall receive fifteen (15%) percent of the difference between the original coverage premium and reduced coverage premium for the period of time the employee receives the reduced coverage, which shall not be less than twelve (12) consecutive months from the time of the election. The employee shall, prior to receipt of such payment, provide certification of spousal coverage

status or reduce coverage status (after the initial exercise) by providing the Borough at least ninety (90) calendar days' written notice prior to the open enrollment period to the Borough Clerk and Police Chief requesting coverage change status."

11. Take fifty (50%) percent payment of the uniform maintenance pay (\$300) and add it to the base salary in 1999; thus reducing the total payment to \$300 (Article XXII, §B).

12. Add the following language to Article XXIII for all employees hired on or after January 1, 1999:

"Said degree shall have been obtained while in the employ of the Spring Lake Police Department. Said incentive pay shall be payable only upon presentation to the Borough of proper certification with respect to same from this institution attended by said employee, including courses completed and credits involved as may be applicable."

13. Article XXV (Holidays):

- A. For calendar year 1999, requests for holiday time off should be submitted, except under exigent circumstances, at least five (5) calendar days in advance. In the event that two (2) or more officers put in for the same day as to a holiday request, the first officer making the request shall be granted the time off.

- B. Effective January 1, 2000, holidays will no longer be given in time off, but will be paid as a cash stipend in lieu of time off in the amount of \$2,000, which shall be rolled into the employee's base pay before any increase awarded is added. The employee will receive no other compensatory/time off and, if the employee works what was once designated as a holiday, he will receive no additional compensation.

14. Add the following paragraph to Article XXVI, §A (Sick Leave):

"Sick leave shall mean an absence from post or duty of an employee because of illness, accident (off-duty), exposure to contagious disease, attendance upon a member of the employee's immediate family who is seriously ill and requires the care or attendance of such employee. Immediate family shall be defined as father, mother, husband, wife, child, sister, brother or other relative living in the employee's household."

15. Add the following sentence to the beginning of Article XXIX, §B (Personal Days):

"Requests for personal day(s) will be made, in writing, to the Police Chief or designee at least forty-eight (48) hours in advance."

16. Add the following sentence to Article XXXIV (Notification of Shift Exchanges):

"The time limit set forth above shall not apply in emergency situations."

STATUTORY CRITERIA

I am required to make a reasonable determination of the above issues giving due weight to those factors set forth in N.J.S.A. 34:13A-16g(1) through (8) which I find relevant to the resolution of these negotiations. I am also required to indicate which of these factors are deemed relevant, satisfactorily explain why the others are not relevant, and provide an analysis of the evidence on each relevant factor. These factors, commonly called the statutory criteria, are as follows:

(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 (C.34:13A-16.2) provided, however, 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 economic 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 the P.L. 1976 c. 68 (C.40A:4-45 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 on 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 its 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.

BACKGROUND

The Borough of Spring Lake is a predominantly residential municipality located in southern Monmouth County. There are approximately 3,500 residents living in a 1.31 square mile land area. The Borough is an ocean front community, and because it is a resort area, it has fluctuating seasonal population figures.

As of January 1, 1998, there were twelve police officers in the bargaining unit including eight (8) patrolmen and four (4) sergeants. The Chief of Police Robert J. Dawson, Jr., in the 1998 year end Police Department Report, stated that "large numbers of visitors have expanded the traditional three month summer season to that of a nine month tourist season. This increase has placed an increased demand on our traffic enforcement, ordinance enforcement and overall incident response."

A similar observation concerning police department activity is reflected in the 1998 year end report on departmental activity submitted by Captain Marc Evangelista, Patrol Operations and Administration. He observed:

"Spring Lake continues to grow as a popular destination resort area and a desirable place to live. Inherent with the increase in popularity comes the increase in visitors and problems associated with them. It is evident that the large numbers of tourists, visitors and new residents have impacted on the operations and service requirements of the police department. As evidenced by this report, calls for service / incidents have increased substantially, traffic problems and the issuance of summonses have increased dramatically and the number of persons arrested is up considerably. These levels realistically show no signs of decreasing and only will increase as the town's desirability grows. The citizens of Spring Lake have long been afforded a high level of service by its' police department. In order to keep that tradition of prompt, efficient and professional service continuing, the addition of another police officer should be explored."

The 1998 year end report reflects an increase in police activity and productivity. There were 123 crimes committed which were required by law to be reported to the state police and FBI. This figure represented a 30% increase over 1997. There were 97 adult arrests in 1998, a 47% increase over 1997, and the highest total for the police department in the last ten years. There were 8,897 total calls for service / incidents handled in 1998, an increase of 17% over 1997. The number of summonses issued for moving violations increased by 115% in 1998 and the number of parking violations increased by 5.5% in 1998.

The last collective negotiations agreement between the Borough and the PBA expired on December 31, 1997. The last salary increase was received on March 1, 1997. The current salary schedule is as follows:

<u>Classification</u>	<u>1997 Base Salary</u>
Patrolman, 1 st year of service (Probationary)	\$30,476
Patrolman, 2 nd year of service	\$40,372
Patrolman, 3 rd year of service	\$47,269
Patrolman, 4 th year of service	\$50,551
Patrolman, 5 th year of service and thereafter	\$56,107
Sergeant	\$59,696

As of December 31, 1999, there will be six patrolmen on maximum step and two at the 4th year step. The patrolman maximum is \$56,107. The four sergeants receive \$59,696. There is a single rate of pay for sergeant. For calculation purposes I will assume all patrolmen at maximum patrolman's rate of pay. The overall salary costs represent \$448,856 for patrolmen and \$238,784 for sergeant for a total of \$687,640. A 1% increase on the salary guide is calculated at \$6,876.40. Given the parties' salary proposals of 5% per year vs. 2.5% per year, the difference between these positions is \$17,190 in 1998, \$18,480 in 1999 and \$19,845 in the contract year 2000. These figures do not include additional increment costs or roll-up costs such as increased longevity costs as a result of increases in base salaries.

POSITIONS AND ARGUMENTS OF THE PARTIES

THE BOROUGH

The Borough contends that when the relevant statutory criteria are applied, its proposals are more reasonable and more realistic and should be awarded. Most of the evidence submitted by the Borough in connection with the statutory criteria relate to the financial aspects and impacts of its proposals and the proposals of the PBA and issues which relate to the Borough's ability to administer and operate the police department.

The Borough believes that its 2.5% increase per year on the salary schedule is reasonable and should be adopted. It seeks a .82% roll-over credit for the last salary increase received by the PBA in 1997. The Borough calculates the roll-over by rolling over the two months of an annual salary increase of 4.9% not received in 1997 into the first two months of 1998 because the increase was effective on March 1, 1997. The Borough also seeks consideration of incremental or additional step increase costs for officers not at maximum step. As of December 31, 1997, there was one third year patrolman and two second year patrolmen. On December 31, 1998, there was one fourth year patrolman and two third year patrolmen. On December 31, 1999, there will be one patrolman reaching maximum step and two fourth year patrolmen. The Borough calculates these increased costs over the life of the contract as an additional

3.02% in 1998, 2.88% in 1999 and 2.74% in 2000, for a total percentage increase of approximately 8.6%.

The Borough proposes that there be two new salary steps for patrolmen hired on or after January 1, 1999. It seeks that one new step be placed midway between the probationary step and the second year step, and a second new step be placed between the second and third year steps. It also proposes that the probationary step be frozen until January 1, 2000. The Borough asserts that no existing employees would be affected by the proposal and that the two new steps would allow for a more gradual and more realistic rise in salary as a police officer moves from the bottom to the top of the salary guide.

The Borough offers several areas of support for its economic proposals. It first contends that its proposal is consistent with proposals it has made to its unionized employees in public works and its non-unionized employees. It points to a settlement it reached with the public works unit for the contract duration April 1, 1998 through December 31, 2000. The settlement provided for a 2.5% increase for each of those contract years. The Borough also points out that that settlement included the "opt-down/opt-out" insurance proposal, the medical co-payment and the roll-in of longevity pay with the elimination of new hire longevity and that those areas of the settlement are identical to the proposals it has made to the PBA.

The Borough also contends that its proposal, rather than the PBA's, is closer to comparable increases among police officers in the Monmouth/Ocean area. For example, the Borough contends that the PBA's demands in 1998 would place them only behind Avon and Brielle and would permit the PBA to jump over several municipalities where presently they are behind. It also points out that police officers in Avon take one additional year to reach top step of the salary guide. The Borough further points out that in 1999, the PBA's proposal would place them ahead of all the comparable municipalities except Brielle, and that the same result would occur for 2000. The Borough believes that its proposal would allow the PBA to remain in relative standing to that of employees in comparable jurisdictions without exceeding or jumping over them.

The Borough also believes that its proposal is closer to the average all-industries median wage increase in the private sector which, in 1997 and 1998, approximated 3% per year. The Borough also cites several private sector settlements which more closely approximates its proposal than that of the PBA.

The Borough also contends that its proposal is more in line with the Borough's financial status. The Borough cites evidence that taxes received from its residents increased from \$3,882,163 in 1996 to \$4,119,000 in 1997 and \$4,263,000 in 1998. This represents an increase of \$380,837 over the three years, amounting to a 9.81% increase in tax revenues. The Borough has had to increase its municipal portion of the tax rate from \$492 in 1996 to \$520 in 1997 to

\$534 in 1998, an increase of 8.54%. The Borough points to evidence which reflects that "taxes have risen from \$1.23 per \$100 ratables in 1994 to \$1.45 per \$100 ratables in 1998 -- an eighteen (18%) percent increase. Thus, the home that was assessed for \$412,000 (average assessment in Borough) and paying \$5,068 in taxes in 1994 is now paying \$5,974 in taxes on the same valued property -- an increase of more than \$900 in taxes or a 17.88% increase. The municipal tax rate has been no better; on that same assessed home in 1994, a Borough resident paid approximately \$1,520 in taxes to cover municipal services; in 1998, that same resident paid \$2,091 in municipal taxes -- a \$571 increase in taxes or a 37.57% increase."

The Borough refers to the municipal tax rate which has increased by an average of 3.58% since 1994. The Borough acknowledges that the increase in 1998 was only 2.1% but that this figure was achieved only after reducing expenditures in the salary and other expense accounts. Also in support of its financial arguments the Borough cites the following factors:

- Current taxes used to support the municipal budget in 1998 have risen to 65.6% of the total revenue base.
- The 1998 municipal budget for police salaries represents 24% of the total budget within CAP for 1997 and that the Borough will have no CAP banking in the foreseeable future
- The police department's entire budget in 1998 is 17% of the total budget.
- Pension payments have increased an average of 17.5% per year over the last four years.

- The Borough had a \$125,000 emergency appropriation in 1998.
- 19% of the total budget represents payment on bond or bond anticipation note debt. A 45% increase over 1997.
- The Borough's municipal tax rate represents over 35% of the total tax impact, a comparatively high percentage.
- 23% of all taxes is spent on the police department.

The Borough also proposes an exchange in the longevity program by eliminating longevity benefits for new employees in exchange for the elimination of the two-tier longevity schedule which was produced by the last agreement. That agreement provided that new employees hired after September 16, 1996 receive flat dollar amounts rather than percentage amounts for longevity. The Borough supports its proposal by pointing to a recent agreement it negotiated with its unionized road department employees which incorporated the terms of this proposal. The Borough also proposes that the \$500 per annum payment provided for an officer assigned to juvenile officer or detective be prorated if the officer does not serve in the position for a full year. The Borough asserts that the person appointed to the assignment should not automatically receive a full year's payment unless they serve in the position for a full year.

Additional proposals of the Borough concern the incorporation of General Orders 11-1997 and 12-1997 into Article XIX of the agreement. These General Orders concern the accumulation/use of compensatory time. Currently the parties are abiding by the provisions of GO-11 pursuant to an understanding reached in grievance arbitration in March of 1999. GO-11 has been in effect for

more than a year and a half. GO-12 concerns notice for the use of compensatory time. Chief Dawson testified at hearing in support of these proposals. Chief Dawson believes that the incorporation of GO-11 and GO-12 will allow for operational improvements within the department.

The Borough has proposed that 50% of the payment for uniform maintenance pay be added to base salary in 1999. The current payment is \$600; \$300 of this payment would be incorporated into base salary, thus reducing the uniform maintenance pay to \$300. The Borough points out that its proposal will modestly increase base pay, and also increase the amount of monies paid out in longevity and overtime, both of which are computed off of base pay.

The Borough proposes a change in the manner in which holidays are now compensated as currently provided for in Article XXV. Currently employees receive 12 holidays in the form of equal time off, or compensatory time. The Borough contends that equal time off now amounts to 144 man days which, due to the smallness of the department, causes operational and scheduling difficulties. The Borough proposes that the employees receive a cash stipend of \$2,000 in lieu of time off and that this amount be rolled into the employee's base pay. The Borough points to an impact on base salary of more than 3% per year and additional impact created by increasing longevity payments which are computed on based pay. Because holidays would now be compensated in base pay, the Borough's proposal would require that an employee receive no other

compensation or time off for holidays and that an employee would receive no additional compensation if that employee worked on a day which had been designated as a holiday. The Borough also proposes that requests for holiday time off be made at least five calendar days in advance and that the first officer making the request for holiday time off be granted the time off in the event that more than one officer requests time off for a specific holiday.

The Borough proposes revisions in Article XXI, Health Insurance and Welfare. The Borough asserts that these revisions are consistent with changes in insurance coverage it provides for non-union employees and agreed to by its unionized public works employees. The Borough proposes that unit employees pay \$150 per year towards medical insurance and \$75 per year towards dental coverage. The Borough asserts that its premium costs for health insurance coverage rose by more than 20% during the past year and that its proposal for a co-pay will enable employees to assist the Borough towards its premium obligation. The other portion of the Borough's proposal would enable an employee to opt-out of Borough-provided insurance to avoid dual coverage. If an employee elected to reduce coverage, the employee would receive 15% of the difference. The Borough asserts that this position of its proposal is a "win-win" proposition which should be awarded.

The Borough also proposes three changes in existing contract language. The Borough terms these changes as "minor" and include a new management

rights clause, Article III, a definition of probationary employment, Article VIII, and a further definition of seniority, Article IX. The Borough contends that the proposed management rights clause clarifies the powers, duties and responsibilities of the public employer and is identical to the management rights clause in the Wall Township police agreement which the Borough asserts is a comparable and neighboring municipality. The Borough's proposed definition of probationary employment is asserted to be for the purpose of bringing its definition in line with the provisions of N.J.S.A. 52:17B-69. That statute establishes the probation period for a police department, as Spring Lake, not covered by Title 11A (Civil Service Act). The Borough's proposal with respect to seniority would eliminate from calculation, for credit purposes, any previous employment with other police departments and/or any other departments within the Borough. The Borough believes that crediting such prior service would be disadvantageous to existing police officers and that seniority calculation is significant because it impacts on several contractual benefits. The Borough also points out that this proposal would have no impact on any present member of the department nor anyone presently being considered for employment.

The Borough additionally proposes that new employees should not be eligible for educational incentive stipend set forth in Article XXIII unless the educational degrees set forth therein are obtained while the employee is employed by the Spring Lake Police Department. The Borough points out that it is only suggesting that future employees not be granted educational incentive

pay for degrees earned prior to joining the department and that existing employees could still take advantage of the educational incentive stipends, thus the Borough distinguishes between an employee upgrading his education while working for the Borough from the compensation it would provide for a new employee which would take into account the educational achievements of the new employee.

The Borough seeks to add a sentence to the Hours provision set forth in Article X. This proposal would give the police chief or designee the right to change or modify an employees work schedule "as is necessary for the proper operation of the department and the welfare of the Borough." The Borough asserts that the Department is small and that flexibility is required especially during the summer tourist season when the demands are at their greatest.

The Borough further proposes language modifications to Sick Leave, Article XXVI, Personal Days, Article XXIX and Notification of Shift Changes, Article XXXIV. The modification to Sick Leave is asserted to memorialize the existing practice as to what types of absences qualify for sick leave and to provide a more precise definition of an existing benefit. The Borough also asserts that the proposed modifications to personal days and shift changes also memorialize existing practice. Chief Dawson testified in support of both proposals. With respect to personal days, the Chief would receive a request at least 48 hours in advance. With respect to shift changes, the current

requirement that time and a half be paid if change is made within 48 hours would be waived in emergency situations.

THE PBA

The PBA contends that its positions on the outstanding items in dispute must be found to be more reasonable than the Borough after applying the statutory criteria. The PBA believes that the interests and welfare of the public are well served by an efficient and productive police department which provides a high level of services to the taxpayers. The PBA points to the year end report and statistics comparing 1998 with 1997 in support of its view. The PBA also cites the results of a survey conducted in connection with the Community Policing Program which reflects that the community is satisfied with the services provided by the police department. The PBA contends that the interests and welfare of the public are well served by a properly compensated and competitively paid police officer. The PBA takes issue with various portions of the Borough's offer which seek modification of existing employee benefits. The PBA contends that granting the proposals would have a negative effect on department morale.

The PBA asserts that its salary proposal of 5% a year is "closely in line with average settlements and awards." The PBA submits charts and collective negotiations agreements to support its position with respect to comparability with

other police departments. The comparisons submitted by the PBA reflect average increases of 4.29% in 1998, 4.22% in 1999 and 4.17% in 2000. The PBA also points to comparisons submitted by the Borough which reflect averages of 4.27%, 4.16% and 4.11% with the same contract years.

The PBA acknowledges that private sector comparisons are relevant but should not control nor be given substantial weight. The PBA asserts that police officers have unique statutory obligations by virtue of their law enforcement obligations. The PBA asserts that police officers have less protection than other employees under the federal and New Jersey Wage and Hour Laws, are subject to statutorily mandated qualifications, a mandatory retirement age and regulated requirements for hiring, promotions, extra duty work and disciplinary procedures. The PBA asserts that the "nature of police work is inherently one of hazard and risk ... not frequently seen in the private sector."

The PBA also contends that the cost of living data submitted by the Borough cannot be given controlling or substantial weight. The PBA contends that its members are paid below average salaries and that to award the cost of living figures would result in a deterioration of their wages due to the comparable settlements and awards which it submitted into the record. The PBA asserts that cost of living is only one criterion in that this factor has never been controlling on wage increases. It cites wage increases being well below cost of living when the cost of living data reflected at or near double digit levels.

The PBA asserts that an award of its wage proposal will not have an adverse impact on the Borough's residents and taxpayers nor interfere with the Borough's lawful authority or obligations. The PBA points to the financial and budgetary documents which it asserts reflects a financially healthy municipality with a substantial ability to pay. Among the evidence cited are a CAP bank of \$125,014, a budget surplus in 1998 of \$789,000, a substantial reserve for uncollected taxes, a high tax collection rate and interest earned on investments of \$112,806. The PBA also points to steady increases in assessed valuation and a reduction in total tax levy per capita from 1997 to 1998.

The PBA believes that the continuity and stability of employment for Borough police officers will be adversely affected by the Borough's proposals. The PBA asserts that the Borough's proposals would cause a gross reduction in relative standing. The PBA contends that a maintenance of relative standing will promote the continuity and stability of employment and that the adoption of its proposals would only cause its members to remain in mid-range of the comparable communities.

In addition to salary, the PBA proposes a deletion of the modification to longevity made in the last agreement. This provision grandfathered current employees and modified the longevity benefit from percentages to dollars for new employees. The PBA contends that this modification would have no current

impact and that when there is an impact in the future, such impact would be so small as to be incalculable.

DISCUSSION

As stated above, I am required to issue an award based upon a reasonable determination of all issues in dispute after giving due weight to the statutory criteria which I judge relevant. The Borough and the PBA have articulated fully their positions on the issues and have submitted testimony, evidence and argument on each statutory criterion to support their respective positions. The testimony, evidence and arguments have been carefully reviewed, considered, and weighed. All of the criteria are relevant although not accorded identical weight.

Initially, I note that there are an extraordinary number of issues which remain in dispute. Pre-arbitration mediation was successful in narrowing some but not most of the outstanding issues. One principle which is ordinarily and traditionally considered in the determination of wages, hours and conditions of employment through the bargaining process is that a party seeking such change bears the burden of showing the need for such modification. I apply that principle to the parties' proposals.

The Borough seeks to achieve many significant changes to the contract in this proceeding. Some of these changes are warranted while others have not been justified. Initially, I conclude that the Borough has not supplied adequate justification for its proposed changes to Article III - Management Rights, Article X - Hours, Article XXXIV - Notification of Shift Change, Article XVIII - Longevity and Article XXIX, §B - Personal Days and Article XXI, Health Insurance Co-payments and Article XVII, §A-1 - the pro-rating of Juvenile Officer/Detective Pay and Article XXII, §B - the revision of the clothing maintenance allowance. For the reasons stated below, these proposals are denied.

The Borough seeks to replace the existing Management Rights clause set forth in Article III with a completely new proposal (see pg 4). The Borough believes that its proposed clause clarifies its powers and would not negatively impact upon the provisions of the Agreement or unit employees. The existing clause contains five separate sections delineating management rights. Because there is an absence of evidence that the existing clause is deficient in any respect or that the existing clause has interfered with the Borough's exercise of its powers, duties and responsibilities, this proposal is denied and the existing provision shall be carried forward.

The Borough seeks to add language to Article X, Hours, to explicitly recognize the Chief's right to change or modify work schedules. The existing Article provides that the standard weekly work schedule be continual throughout

the seven day week and that the standard work week consist of 40 hours of work. The Borough acknowledges that the circumstances in which a change would be effectuated are "few and far between" and that the proposal would allow for changes in a "limited purpose situation." The proposal, however, is broadly constructed and would allow for changes well beyond limited purpose situations. Further, the record does not reflect that Article X, as written, has interfered in any way with the proper operation of the department and the welfare of the Borough. An additional relevant consideration is that existing case law recognizes broad managerial prerogatives when work schedules need to be modified when dictated predominantly by government policy considerations. For these reasons, the Borough's proposal is denied and the existing provision shall be carried forward.

The Borough has proposed that language be added to Article XXXIV, Notification of Shift Changes. Currently employees receive premium pay premium rate of pay for changes in shift assignments which occur within 48 hours prior to the scheduled assignment. The Borough proposes that the time limits not apply in emergency situations. The existing language is strictly economic in nature and does not interfere with the Chief's right to change an employee's regular shift assignment. The language of the existing provision reflects an intent to compensate an employee for the inconvenience associated with a change to a regularly scheduled shift within the short time period of 48 hours. In the absence of evidence that compliance with the existing provision

has interfered with the proper operation of the department or has been financially burdensome to the Borough, I conclude that the Borough's proposal should be denied and the existing provision shall be carried forward.

The Borough proposes that longevity (see Article XVIII) be eliminated for new hires and also that longevity be converted from dollars to percentages for those employees hired during the term of the last Agreement. The last Agreement converted longevity from percentages to dollars for new employees. I note that the PBA has proposed that the concession changing longevity from percentages to dollars for new employees be eliminated and that all longevity be computed on a percentage basis. The Borough's main contention is that it successfully negotiated this proposal into its public works agreement. Although this contention must be given some weight, I conclude that the merits of this proposal are outweighed by maintaining the concession negotiated in the last agreement into the new agreement. The modifications which the parties have made to their last Agreement should carry forward and not be disturbed by the proposals of either the Borough or PBA which seek to undo their most recently negotiated agreement on this issue.

The Borough proposes adding a sentence to Article XXIX, §B, Personal Days, requiring that requests for personal days be made in writing at least 48 hours in advance. Although this proposal is not unreasonable on its face, no evidence has been presented that the existing procedures have interfered with

the operation of the department. Chief Dawson also testified on cross-examination that the contract language allows for the denial of a personal day request when there are "emergent problems within the department." Accordingly, I find no basis to disturb the existing language in the Agreement and the Borough's proposal is denied.

The Borough has proposed that employees contribute to their medical/dental insurance. The Borough would require a flat \$225 annual contribution per employee for medical/dental insurance. This contribution is split between \$150 for medical and \$75 for dental. The Borough supports this proposal with a recently negotiated agreement with its public works employees and asserts that the PBA should fall in line with this agreement. The Borough also cites a recent (July 1, 1998) 20% increase in premiums to \$8,655.06 per employee. The Borough characterizes its proposal as a "very, very modest co-pay" which is consistent with general employee benefit trends in both public and private sectors.

The PBA opposes the proposal for the flat annual co-pay contributions. The PBA points to Borough Exhibit #52 reflecting that the recently negotiated Public Works agreement did not provide for a co-pay unless "all Borough employees pay for coverage." As such, the PBA points out that no weight can be given to the Public Works agreement because there is no agreement unless it agrees to the proposal or it is awarded herein.

Although the Borough's proposal is modest in terms of the amount demanded, its reliance on the Public Works agreement must be given less weight than what might normally be accorded to such a concessionary demand already in place in other bargaining units. Instead of the PBA falling into line with a Borough-wide insurance program, the Borough seeks to implement its co-pay proposal with the PBA as a necessary condition for implementing this proposal with other Borough employees.

Consideration must also be given to how this proposal compares with the level of this benefit with similarly situated employees in comparable communities. Contracts for the municipalities of Avon, Belmar, Bradley Beach, Brielle, Manasquan, Sea Girt, South Belmar and Spring Lake Heights have been submitted into evidence and have been reviewed. These communities surround the Borough and are appropriate for comparison purposes. The municipalities of Avon, Belmar, Bradley Beach, Brielle, Manasquan and South Belmar have health insurance benefits which are fully paid and involve no expense on the part of the police officers. Spring Lake Heights requires a contribution (amount unstated) for dependent coverage for employees hired after 1990; however, these contributions cease after two years when the municipality then assumes full payment. Of the eight, only Sea Girt provides a co-payment for dependent coverage for employees hired after 1994. I give substantial weight to the lack of co-payment in seven of these eight surrounding communities, to the lack of an

agreement within Spring lake to implement this proposal unless implemented herein and, therefore, this demand of the Borough is denied.

The Borough proposes to pro-rate Juvenile Officer/Detective Pay if a person does not serve in the position for a full year. Article XVII, §A-1 states that officers given the title or assigned the duties of Juvenile Officer and Detective shall each receive five hundred (\$500.00) dollars per annum in addition to the base salary. The Borough asserts that a person who does not serve in the position for a full year should not be automatically entitled to a full years pay. Although this proposal would be appealing if there were only short term assignments to this position, the record does not support a change in the current language of the Agreement. The officer assigned to work this position is assigned by the Chief and there is no testimony or other evidence that the current provision has interfered with the Chief's ability to make assignments to this position, to remove an officer from this position or that short term assignments are necessary to staff this position properly. Even assuming that the Chief might desire to reassign this position during the course of a calendar year, any costs associated with the removed officer's receipt of the \$500 stipend would be minimal and must be counterbalanced with the modest incentive provided to the person working in the assignment. I conclude that the Borough's proposal should be denied and the existing provision shall be carried forward.

The Borough proposes to revise Article XXII, §B by taking 50% payment of the uniform maintenance pay (\$300) and adding it to the base salary in 1999, thus reducing the total payment to \$300. Although there may be benefits to all parties by rolling a portion of the clothing and/or uniform maintenance allowance into base pay, I do not award this proposal for the following reasons. I do not believe that a roll-in which deals only with a portion of the amounts provided for in Article XXII is administratively desirable. Further, the amount proposed would have an insignificant impact upon base salary. I also conclude that a roll-in of the entire amounts would not be advisable during this contract term in light of the roll-in of the holiday pay provided herein which will augment the base pay of all police officers. I conclude that the Borough's proposal should be denied and the existing provision shall be carried forward.

The record reflects that there is merit in whole or in part, to the Borough's proposals with respect to Article VII, §A, Probationary Employment, Article IX, §A, Seniority, Article XXIII, Educational Incentive Pay, Article XXV, §A and B - Holidays, Article XXVI, §A - Sick Leave, to the incorporation of General Orders 11 and 12-1997 into the Agreement, and Article XXI, Health Insurance - the dual spousal coverage plan.

The Borough proposes that definition of a probationary employee coincide with the provisions of N.J.S.A. 52:17 B-69. This would provide that a newly hired employee be considered a probationary employee for a period of one year from

appointment to the Borough police department or graduation from an approved police training course, whichever is greater. This proposal only affects newly hired employees. The duties of a police officer are substantial and directly related to the public's health safety and welfare. A one year period in which to evaluate an officer's ability to fulfill this function will enhance the Borough's evaluation responsibilities. The proposal to have a Borough police officer's probationary period be defined in accordance with the proposed language is reasonable and is awarded.

The Borough's proposal with respect to the calculation of seniority, Article IX, §A, also applies only to new employees. The Borough's proposal would not allow seniority credit for the purposes of the Agreement for previous employment with other police departments and/or other departments within the Borough. It is not unreasonable to require that seniority credit for the purposes of the Agreement be limited to the time which a police officer has served as an employee of the Borough as a police officer. The terms of the Agreement are sufficiently attractive that it is unnecessary to award outside seniority as an inducement to hire new officers. The Borough's proposal is awarded.

The Borough has proposed that Article XXV §A, Holidays, be modified to require that requests for holiday time off be submitted at least five calendar days in advance and that the first officer making the request be granted the time off if more than one request is made. The Borough has represented, and there is no

evidence to the contrary, that this proposal is in line with the present practice for scheduling or taking holiday time off. With the following modification, I conclude that this proposal is reasonable and is adopted. The proposed language does not contemplate a situation when more than one request is made simultaneously. When such a situation exists, I conclude that the Chief shall be obligated to take a police officer's seniority within the police department into consideration before granting the time off.

I also conclude that there is merit, subject to the modifications set forth below, to the Borough's proposal to provide payment for contractual holidays rather than providing for equal time off (see Article XXV, §B). The significant fact here is that the department only has twelve full time employees and the existing provision creates 144 man days off of work. This proposal will improve the Borough's ability to staff the department without incurring premium payments and also enhance base salaries and compensation for other purposes. There is no support, however, for the Borough's proposal to limit the amount of compensation to be rolled into the employee's base pay to less than the full value of a day of work or a paid day off. Accordingly, the Borough's proposal is awarded but shall be modified to reflect a roll-in of holiday pay to base pay be based upon the full value of a day of work or a paid day off. Once rolled into base pay, the roll-in shall be applied for "all purposes."

The Borough proposes to add a paragraph to Article XXVI, §A, Sick Leave, defining the purpose of sick leave. The current provision simply states that sick leave may be taken "for reasons that entitle an officer to sick leave." A review of the Borough's proposal (see pg. 7) reflects that its proposed definition is sufficiently broad to be commensurate with reasons which normally and traditionally entitle employees to utilize sick leave. For this reason, the Borough's proposal has merit and is awarded.

The Borough's proposal with respect to Educational Incentive Pay (see Article XXIII) would also only affect new employees. The Borough proposes that future employees not receive educational incentive pay for degrees taken prior to joining the Borough's police department. This proposal has merit because it is consistent with the existing language of this provision which reflects the intent to provide stipend for those police officers, including present police officers, to work toward upgrading their education while employed by the Borough. The stipend is an incentive towards reaching those goals. The Borough's proposal would be limited to those police officers it hires who already have a BA/BS degree or an MA degree prior to being hired by the Borough. This proposal is reasonable and is awarded.

The Borough also proposes that the language of General Order 11 and 12 of 1997 be incorporated into Article XIX. The Borough points out that the provisions of GO-11 have been in effect for over 18 months and that GO-11 has

not reduced overtime benefits or the accumulation or use of compensatory time. Chief Dawson testified as to the successful implementation of GO-11. In the absence of evidence that the provisions of GO-11 have adversely affected bargaining unit members, I find merit in the Borough's proposal to implement this General Order. The Borough also points out that the provisions of GO-12 have been implemented since the summer of 1997 with certain modifications which it has implemented and included in its proposal. Chief Dawson also testified as to the successful implementation of GO-12. In the absence of evidence that the provisions of GO-12 have adversely affected bargaining unit members, I find merit in the Borough's proposal to implement this General Order. Each General Order shall be incorporated into Article XIX by reference.

The Borough has proposed a dual spouse coverage plan, effective January 1, 2000. The Borough asserts that this is a "win-win" proposal. It would provide a payment of 15% premium differential for an employee who "opts out" of the Borough's insurance coverage where a dual spousal coverage plan exists. Participation is voluntary. This proposal is in the interest of both the Borough and the employee, is logical and reasonable, and is awarded. Language incorporating this proposal shall be added to Article XXI and the Borough shall to take the necessary legal steps to implement this provision.

The PBA also seeks significant changes to the existing Agreement. I will next examine and decide the merits of these proposals.

The PBA proposes to delete Article XXXII, entitled "Fully Bargained Agreement". The precise impact of the proposed deletions cannot be ascertained in the abstract. The parties' negotiations obligations during the course of the Agreement in the event of a unilateral change can only be determined under a specific fact contest. Similarly, the Preservation of Rights proposal may or may not impact upon a dispute over the modification of a benefit not expressly set forth in the Agreement. The impact of this proposal, as with the proposed deletion of Article XXXII, cannot be ascertained in the abstract. The record does not reflect an instance where the presence or absence, of a Fully Bargained Agreement or a Preservation of Rights provision has controlled or governed an instance where the parties' legal or contractual rights were substantially affected in any manner. Accordingly, I do not award either proposal and each is hereby denied.

The PBA has also proposed that the requirement that an employee remain at home while on sick leave (see Article XXVI, Section M) be deleted. The PBA asserts that this provision is without justification as it offers no legitimate reason why an employee should have to remain at home under circumstances such as during a recovery from a broken arm. The PBA contends that Section M is primitive and coercive. I note that Section M does allow an employee to leave a residence upon notification, but the language provides exceptions only for a visit to a doctor or a drug store. There is merit to the PBA's view that Section M, as

written, is overly restrictive and reaches beyond the intent of the provision which is to minimize the opportunities for sick leave abuse. Further, inasmuch as I have awarded the Borough's proposal to add a definition of sick leave, that definition implies a strong probability that an employee may legitimately take sick leave and require that the employee leave home for purposes extending beyond that stated in Section M. Accordingly, I award a modification to the second sentence of Section M to read, "When an employee seeks to leave his local residence, he shall notify the Department Head or his designated representative in advance to inform as to the destination, purpose and anticipated duration of the visit."

The PBA proposes a modification to the Longevity Provision set forth in Article XVII. Specifically, the PBA seeks to delete the grandfather clause set forth in paragraph 2. I have already (see pg. 28) denied the Borough's proposal to modify the Longevity Provision, and for the reasons stated therein, I also deny the PBA's proposal.

The PBA proposes to modify the benefit of Sick Leave at Retirement set forth in Article XXVI, §O. This provision provides for fifty (50%) percent of accumulated unused sick days up to \$100.00 per day with a cap of seventy-five (75) days. The PBA's proposal eliminates the cap of seventy-five (75) days and provides that the payment be calculated at the employee's then current daily rate rather than \$100.00 per day. Although the record does not reflect the projected

costs of this proposal, it appears that the proposal would result in well over a doubling of the cost of the existing provision. Because the costs are undefined, and appear to be overly substantial, I conclude that the proposal has not been justified and should be denied. I do conclude, however, that the daily rate set forth in Section O should be modified to reflect the percentages awarded herein. It is reasonable during this contract term to adjust this rate in proportion to the rate of increase of the value of a day's work. The modification shall be effective as of the date of this Award.

The PBA also seeks to modify that portion of Article XIX, Overtime which provides that employees receive compensatory time (time off to be mutually agreed to by the Chief and employee) or money at the overtime rate. The PBA proposes that the employees have the right to elect whether he or she receives compensatory time or overtime compensation after the overtime is worked. The PBA acknowledges that all time off requests must be approved in advance by the Chief, and that nothing in its proposal seeks to challenge that authority. The purpose of the PBA's proposal, as set forth in its argument, "is clearly to avoid the potentially coercive effect of an officer who wants cash being denied the overtime or as the officer who will take time being permitted to work the overtime. If it is the officer's turn to work overtime then such overtime access should not be denied because the officer is seeking cash or compensatory time. This should not be an ingredient in the granting or not granting of an overtime opportunity." I have closely examined the language set forth in Article XIX, Section C. Although

this language requires that compensatory time off be mutually agreed to by the Chief and the employee, there is no language in this provision which would grant the Borough the right to deny an officer's turn to work overtime merely because that officer has opted for either cash or compensatory time. Because the Chief does not have the contractual right to bypass an employee's contractual right to an overtime assignment because of the manner in which that employee has sought compensation, I conclude that there is no basis to alter the language set forth in Article XIX. Any disputes with respect to the merits of the PBA's contentions that there have been improper denials and selections may be pursued in the negotiated grievance procedure.

I now turn to salary, the final issue in dispute. The Borough and the PBA agree upon the duration of the agreement, but have significant differences as to the appropriate salaries to be provided in each year. Each emphasize the evidence each has submitted and the arguments advanced on the issue of salary. The PBA proposes 5% increases in 1998, 1999 and 2000. On the other hand, effective January 1, 1998, January 1, 1999 and January 1, 2000 the Borough proposes increases of 2.5% in each of the aforementioned years.

Using the list of current members of the bargaining unit, I have calculated the total annualized base salary figure, assuming all patrolmen are at the top step. The Sergeants are at a single rate of pay. Based upon this calculation, the total annualized base salary is \$687,640.00 with 1% or \$6,876.40. Applying the

Borough's proposed increases of 2.5% per year, the Borough's proposal cost \$17,191 in 1998, \$17,620 in 1999, and \$18,061 in 2000. The cost of the PBA's proposal is \$34,382 in 1998, \$36,101 in 1999, and \$37,906 in 2000. The difference in the proposals in terms of new money cost is \$17,190 in 1998, \$18,480 in 1999, and \$19,845 in 2000. A total difference of \$55,516 is derived from adding the difference in the costs of the respective proposals for each year of the proposed contract. Cumulative costs resulting from the effect on overtime, increments, longevity and other benefits would add to the difference. The Borough points out that there are salary costs in addition to the across the board percentages by virtue of step increase costs for Patrolmen Plosonka, Gilroy and Moran. These costs are built into the existing salary schedule structure which has been carried forward into the new Agreement. These costs have been considered when evaluating the cost impacts of the respective proposals but I do not conclude that the costs are chargeable as new money costs to the new Agreement.

Based upon the arguments and evidence submitted, and after applying the statutory criteria, I have determined that the wages should be less than the PBA has proposed but more than the Borough has proposed. The wage increases awarded shall be set at 3.95% on January 1, 1998, 3.85% on January 1, 1999 and 3.95% on January 1, 2000, for a total net economic change of \$84,150. The difference between the PBA's proposal and the award is \$7,150 in 1998, \$8,500 in 1999, and \$8,500 in 2000. The difference between the

Borough's proposal and the award is \$9,995 in 1998, \$9,960 in 1999, and \$11,000 in 2000. Over the three year contract period, the award is \$30,955 more than the Borough's proposal and \$24,150 less than the PBA's proposal. These figures are exclusive of roll up costs and assume no retirements, hiring or promotions.

Among the factors to be considered are the lawful authority of the Borough and the financial impact of the award on the residents, taxpayers and governing body. The record reflects that the Borough enjoys excellent financial health. The average median value of a one family house is estimated at \$412,000.00 and has been increasing. According to Annual Financial Statements, the Borough's budget revenues have exceeded that which was anticipated by \$268,076.00 in 1996, \$340,596.00 in 1997 and \$409,015.00 in 1998. The Borough has also generated surpluses during the same year in the amounts of \$744,096.00, \$903,459.00 and \$901,353.00. The municipal portion of the tax rate, at 37.0%, is somewhat higher than average, but has remained steady during 1996, 1997 and 1998. The Borough's assessed value has steadily increased from 1995 in the amount of \$774,802,252.00 to \$798,709,115.00 in 1998, an increase of 24 million. The value of one tax point is \$79,870.00. Based upon these figures, the cost of the Award averages 1/8th of a tax point per year assuming that the Borough does not choose to offset any of these costs from its reserves or surplus. The financial profile of the Borough reflects its ability to absorb the costs of the Award beyond its proposal without compromising its financial health.

The Borough also enjoys a high actual tax collection rate of 98.43% in 1998. The rate of collection utilized in the budget has been set at 96.13%, generating more revenue realized than anticipated.

The Borough's adequate ability to pay does not warrant an award of the PBA's demand of annual 5% increase, but is reflective that its lawful authority will not be exceeded, that the interest and welfare of the public will not be compromised in order to fund the Award and that the costs of the Award will not have adverse financial impact upon the governing body, the residents and taxpayers.

I have also considered the Award's affect on the interests and welfare of the public. The police department is a well run, efficient and productive department as reflected in the testimony of Police Officer Poland, Chief Dawson and the 1998 Year End Report. The interests and welfare of the public also require that the department be run in a financially sound and affordable manner. The costs of the Award must also be balanced against the operational and managerial flexibilities awarded herein. As shown, the additional costs of the Award beyond the Borough's proposal can be funded in a manner consistent with maintaining the public's interest in supporting an efficient and productive police force without adverse financial impact on the residents and taxpayers.

Both parties have submitted substantial evidence on the comparability criteria. I have reviewed the numerous contracts submitted into evidence as well as the data concerning voluntary settlements and interest arbitration awards issued throughout the State of New Jersey. When all of this data is evaluated in relationship to the relevant circumstances in the Borough of Spring Lake, no basis can be found to support the position of either the PBA or the Borough. There is simply nothing in the record which would compel a wage award to be substantially more or less than what has occurred within the Southern Monmouth County area and, in particular, communities which surround the Borough of Spring Lake. The law enforcement comparables are not controlling but must be given substantial weight. The comparison of base wage increases as summarized by the PBA is an accurate reflection of the wage data submitted by both the PBA and the Borough. The following chart reflects these comparisons.

**Comparison of Base Wage Increases Expressed In
Percentage of Change (Based on Evidence Submitted by the PBA)**

	<u>1998</u>	<u>1999</u>	<u>2000</u>
Spring Lake Heights	5	5	
Brielle	4.65		
Sea Girt	4	4	
Lakewood	4	4	4
Belmar	4	3.5	
Seaside Heights	4.5	4.5	4.5
Bradley Beach	3.95	3.95	4
South Belmar	4		
Avon	3.9	4	
Dover	4.5	4.75	
Manasquan	4.25	4.25	

Wage Increases Based on Employer Submitted Contracts

	<u>1998</u>	<u>1999</u>	<u>2000</u>
Brielle	4.75	4	3.75
Bradley Beach	3.95	3.95	3.95
Belmar	4	3.5	
Avon	3.9	4	
Atlantic Highlands	4.5	4.25	
Spring Lake Heights	5	5	
South Belmar	4		
Seaside Heights	4.5	4.5	4.5
Sea Girt	4	4	
Rumson	4.25	4.25	
Neptune City	4 (3/1)		
Monmouth Beach	4.5		
Manasquan	4.25	4.25	
Little Silver	4.5		
Fair Haven	4	4	
Deal			4.25

The percentages of change vary between 3.5% and 5%. This Award, which averages 3.92%, is well within the ranges of salary increases and extremely close to the mean average of change based upon the above data and also with respect to the statewide data submitted by the PBA and the Borough as also reflected by the documents of settlements and awards issued by the New Jersey State Public Employment Relations Commission.

The Borough and the PBA each argue from the data which each has submitted that this Award should be either more or less than what has been awarded. I have carefully reviewed these claims and conclude that each position must be rejected. For example, I find no merit in the ability of the PBA or the Borough to point out awards or settlements which may be either higher or lower

than that awarded herein and assert that such higher or lower awards or settlements should, therefore, control in this proceeding. A comparison of the existing wage structure in Spring Lake as well as a comparison of relative terms and conditions of employment and benefits reflects the moderate standing of midrange from which an upward or lower deviation from the norm is not warranted. I have also considered the terms of the prior settlement which advanced the department's relative standing in the County and the Award's compensation enhancements resulting from a roll-in of holiday pay to base wages for all purposes.

I have also considered the evidence submitted with respect to wage increases in the private sector. The record reflects a wide variation in adjustments to private sector wages. These include a 2% increase over three years between Jersey Central Power & Light Company and IBEW, a 4% increase over three years at Merck & Company Inc., an average 1.75% increase at Bristol Meyers and a 2% average increase at Entenmanns, Inc. Also in the record are average wage increases in total private sector, by industry sector and by county in New Jersey. This data is reported by the New Jersey Public Employment Relations Commission from data compiled by the New Jersey Department of Labor. It reflects statewide average increases among private sector employees of 3.4% (3.1% in Monmouth County) between 1994 and 1995, a 4% increase (3.1% in Monmouth County) between 1995 and 1996, and a 4.5% increase (5.91% in Monmouth County) between 1996 and 1997. A wide variety of wage

increases is apparent depending upon the industry involved. For example, the percentage change in public utilities between 1996 and 1997 was 3.8%, 3.0% in retail trade, 6.3% in finance/insurance/real estate and 4.3% in services. This data also reflects increases in total government (federal, state and local) 2.8% between 1994 and 1995, 2.8% between 1995 and 1996 and 3.0% between 1996 and 1997. Within these overall figures federal government wages increased at the highest level of 11.6% over the three years to a low of 6.3% over three years in state government. The wage increases awarded in this proceeding averaging 3.92% are clearly within the range of the aforementioned public and private sector wage increase and supported by the overall statutory criteria given all of the relevant circumstances present in the Borough of Spring Lake.

I have also examined the evidence submitted with respect to the labor agreement executed between the Borough and its public works employees. This data reflects a settlement of 7.5% over three years although the longevity provision was increased in exchange for elimination of longevity for new employees. The wage levels for laborers in that agreement unadjusted by the negotiated wage increases reflect the range of \$14.49 per hour through \$25.54 per hour. This data is persuasive to the extent that it diminishes the viability of the 5% increase sought by the PBA. However, I do not conclude that this settlement is controlling on law enforcement. On this record, I place substantially more weight on the comparability of wages among law enforcement units in southern Monmouth County and in contiguous communities than that which I

accord to the settlement among the public works employees. There is no evidence of a strict pattern of settlement between the two units which would cause more substantial weight to be placed on the public works settlement.

The cost of living criterion tends to favor the Borough's position over that of the PBA. The CPI data reflects increases of approximately 2% per year. The Borough accurately points out that salary increases received by Borough police have exceeded the cost of living increases in recent past contracts. The Borough contends that the PBA's demands are not justified in light of the current and/or previous CPI figures. The PBA acknowledges that its demands are above the CPI data but points out that the CPI is normally not a controlling factor. In support of this argument, the PBA cites contract years where salary increases were well below the CPI when the CPI reflected a high rate of inflation.

I have considered and weighed these contentions. They serve to diminish the weight given to the PBA's contentions that a 5% increase should be awarded and that this data be given little or no value. However, there is merit to the PBA's assertion that the CPI is one of the several factors to apply and, as with each of the remaining factors, is an influencing but is not a controlling consideration. I have also considered that portion of the record which reflects that all settlements and awards in Monmouth County exceed the CPI, that the Spring Lake police officers have engaged in increased productivity with an expanding workload and that the private sector wage surveys reflect wage increases above the CPI.

These considerations diminish the application of this factor as dispositive of the wage increases which should be awarded herein.

I have also considered the relationship between terms and conditions of employment and the continuity and stability of the bargaining unit work force. The police department is small but efficient. There is no evidence of turnover or resignations for reasons which relate to the existing level of salaries and benefits. It does not appear that an award of the Borough's proposal or the PBA's proposal would have any short-term impact upon the continuity and stability of employment in Spring Lake. The terms of this Award will be sufficient to attract new police officers to the force in the event that new police officers are hired.

I have also considered and weighed the Borough's salary proposals with respect to probationary employees and its desire to add two new steps on the salary guide. These proposals are consistent with the trends reflected in recent settlements and awards to provide cost offsets within new labor agreements. The evidence in support of the Borough's proposals are sustained to the extent that the probationary step should remain unadjusted for 1998 and 1999 and then be adjusted by the increase provided for in the year 2000. I also award a new step on the salary guide for any employee hired on or after January 1, 2000. Any such employee would be subject to a new salary guide with one (1) additional step midway between the current 2nd year and 3rd year of service. These adjustments of freezing the probationary step for two years and the adding an

additional step to the salary guide for new officers will not negatively impact upon the Borough's ability to hire new employees while providing cost offsets in the future.

Accordingly, and based upon all of the above, I respectfully enter the following Award.

AWARD

1. Duration:

There shall be a three-year agreement effective January 1, 1998 through December 31, 2000.

2. Incorporation of Tentative Agreements:

All tentative agreements entered into by the Borough and the PBA prior to the conduct of this arbitration proceeding are incorporated into the terms of this Award.

3. Denial of Proposals not Awarded:

All proposals by the Borough and the PBA not awarded herein are denied and dismissed.

4. Sick Leave at Retirement:

The value of each eligible accumulated, unused sick day shall be increased for each year of this Agreement by the percentage salary increase awarded herein.

5. Requirement to Remain at Home While on Sick Leave:

Article XXVI, Section M shall be modified to state, "When an employee seeks to leave his local residence, he shall notify the Department Head or his

designated representative in advance to inform as to the destination, purpose and anticipated duration of the visit."

6. Request for Holiday Time Off:

Article XXV, Section A - Holidays, shall be modified effective January 1, 2000, to require that requests for holiday time off be submitted, except under exigent circumstances, at least five (5) calendar days in advance and that the first officer making the request be granted the time off if more than one request is made. When more than one request is made simultaneously, the Chief shall be obligated to take a police officer's seniority within the police department into consideration before granting the time off before scheduling or granting the time off.

7. Payment for Contractual Holidays:

Effective January 1, 2000, holidays will no longer be given in time off, but will be paid in cash in lieu of time off in the amount of one day's pay for each holiday. The pay shall be rolled into the employee's base pay before the January 1, 2000 increase is calculated. The roll-in shall be applied for "all purposes." The employee will receive no other compensatory/time off and, if the employee works on a day which was once designated as a holiday, he will receive no additional compensation.

8. **Educational Incentive Pay:**

Article XXIII shall be modified to add the following language for all employees hired on or after the date of this Award:

"Said degree shall have been obtained while in the employ of the Spring Lake Police Department. Said incentive pay shall be payable only upon presentation to the Borough of proper certification with respect to same from this institution attended by said employee, including courses completed and credits involved as may be applicable."

9. **Sick Leave:**

Article XXVI, Section A, shall include the following language:

"Sick leave shall mean an absence from post or duty of an employee because of illness, accident (off-duty), exposure to contagious disease, attendance upon a member of the employee's immediate family who is seriously ill and requires the care or attendance of such employee. Immediate family shall be defined as father, mother, husband, wife, child, sister, brother or other relative living in the employee's household."

10. **Probationary Employment:**

Article VII, Section A, shall include the following language:

"Effective as of the date of this Award, newly hired employee shall be considered probationary employees for a period of one (1) year from appointment to the Borough Police Department or graduation from an approved police training course, whichever is greater."

11. **Seniority:**

Article IX, Section A, shall include the following language:

"Effective as of the date of this Award, previous employment with other police departments and/or other departments

within the Borough shall not be counted as service for any purpose within this Agreement."

12. General Orders 11 and 12 of 1997:

The terms of these two general orders shall be incorporated by reference into the Collective Negotiations Agreement.

13. Dual Spousal Coverage:

Article XXI shall be amended to incorporate the following proposal for dual spousal coverage:

"Each employee may volunteer to elect, effective July 1, 2000, to reduce the medical and/or dental prescription insurance directly provided by the Borough for the employee and/or his family in order to avoid dual coverage by the Borough and the employer's spouse's employer. The employee has the option to reduce his number of members covered (i.e., from family coverage to single coverage or husband/wife coverage or no coverage, if applicable) to lower coverage status than the maximum provided. If the employee elects to reduce the coverage provided by the Borough, the employee shall receive fifteen (15%) percent of the difference between the original coverage premium and reduced coverage premium for the period of time the employee receives the reduced coverage, which shall not be less than twelve (12) consecutive months from the time of the election. The employee shall, prior to receipt of such payment, provide certification of spousal coverage status or reduce coverage status (after the initial exercise) by providing the Borough at least ninety (90) calendar days' written notice prior to the open enrollment period to the Borough Clerk and Police Chief requesting coverage change status."

14. Salary:

3.95%	effective and retroactive to January 1, 1998
3.85%	effective and retroactive to January 1, 1999

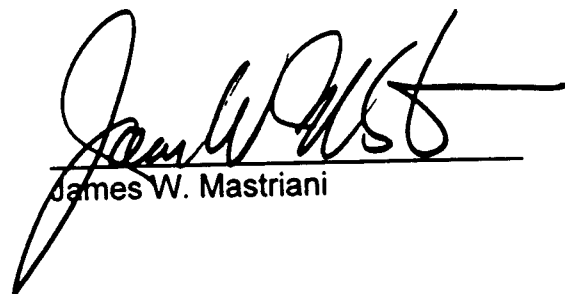
3.95% effective January 1, 2000

The above increases shall be made to each step of the salary schedule and are retroactive to the effective dates set forth above. The probationary step shall only be adjusted by the percentage increase provided on January 1, 2000.

17. **Salary Guide:**

Any employee hired on or after January 1, 2000 would be subject to a new salary guide with one (1) additional step midway between the current 2nd year and 3rd year.

Dated: November 1, 1999
Sea Girt, New Jersey


James W. Mastriani

State of New Jersey }
County of Monmouth }ss:

On this 1st day of November, 1999, before me personally came and appeared James W. Mastriani 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 same.



GRETCHEN L. BOONE
NOTARY PUBLIC OF NEW JERSEY
Commission Expires 8/13/2003

