

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

In the Matter of Interest Arbitration Between :

BOROUGH OF NORTH PLAINFIELD :

"the Employer or Borough" :

and :

NORTH PLAINFIELD PBA LOCAL 85 :

AND NORTH PLAINFIELD SOA :

"the PBA", "SOA" or PBA/SOA" :

**INTEREST ARBITRATION
AWARD**

Docket Nos: IA-2000-46

IA-2000-47

Before: Robert M. Glasson, Arbitrator

APPEARANCES

FOR THE EMPLOYER:

Eric Martin Bernstein, Esq.
John Katilas, Business Administrator

FOR THE PBA:

Richard D. Loccke, Esq.
Vincent J. Foti, Consultant
Michael A. Innella, North Plainfield PBA/SOA
Brian A. Tufaro, North Plainfield PBA/SOA
Edward C. Ciempola, North Plainfield PBA/SOA
Eugene Segeda, North Plainfield PBA/SOA

Background & Procedural History

The Borough of North Plainfield (the “Employer”) and North Plainfield Policemen’s Benevolent Association, P.B.A. Local 85 (the “PBA”) are parties to a collective negotiations agreement (“CBA” or “contract”) which expired on December 31, 1999. The Borough of North Plainfield (the “Employer”) and North Plainfield Policemen’s Benevolent Association, P.B.A. Local 85, Superior Officers (the “SOA”) are parties to a collective bargaining agreement which also expired on December 31, 1999. Upon expiration of the collective bargaining agreements, the parties engaged in negotiations for a successor agreement. Throughout these negotiations the parties had, by mutual agreement, agreed to conduct a single series of negotiations covering both bargaining units. By stipulation of the parties, this dual negotiations agreement was to be continued throughout the entire negotiations process including interest arbitration. The parties mutually agreed to the conduct of a combined hearing for both bargaining units and to the issuance of a single award to cover both bargaining units. Negotiations reached an impasse, and the PBA and SOA filed petitions with the New Jersey Public Employment Relations Commission (“PERC”) on January 11, 2000 requesting the initiation of compulsory interest arbitration. The parties followed the arbitrator selection process contained in N.J.A.C. 19:16-5.6 which resulted in my mutual selection by the parties and my subsequent appointment by PERC on February 4, 2000 from its Special Panel of Interest Arbitrators.

I met with the parties in a voluntary mediation session on April 24, 2000. The mediation session did not resolve all of the issues included in the impasse. Formal interest arbitration proceedings were invoked and a hearing was conducted on June 13, 2000 at which time the parties presented documentary evidence and testimony in support of their positions. Both parties filed post-hearing briefs. The hearing was declared closed as of

November 1, 2000, upon receipt of the briefs. The parties mutually agreed to extend the time for issuance of the award to March 15, 2001.

This proceeding is governed by the Police and Fire Public Interest Arbitration Reform Act, P.L. 1995, c. 425, which was effective January 10, 1996. While that Act, at N.J.S.A. 34:13A-16f(5), calls for the arbitrator to render an opinion and award within 120 days of selection or assignment, the parties are permitted to agree to an extension.

The parties did not agree upon an alternate terminal procedure. Accordingly, the terminal procedure in this case is conventional arbitration. The arbitrator is required by N.J.S.A. 34:13A-16d(2) to “separately determine whether the net annual economic changes for each year of the agreement are reasonable under the eight statutory criteria in subsection g. of this section.”

Statutory Criteria

The statute requires the arbitrator to:

decide the dispute based on a reasonable determination of the issues, giving due weight to those factors listed below that are judged relevant for the resolution of the specific dispute. In the award, the arbitrator or panel of arbitrators shall indicate which of the factors are deemed relevant, satisfactorily explain why the others are not relevant, and provide an analysis of the evidence on each factor.

(1) The interests and welfare of the public. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by P.L. 1976, c 68 (C.40A:4-45.1 et seq.).

(2) Comparison of the wages, salaries, hours, and condition of employment of the employees involved in the arbitration proceedings with the wages, hours and condition of employment of other employees performing the same or similar services 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 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:4-45.1 et seq.).
- (6) The financial impact on the governing unit, its residents and taxpayers. When considering this factor in a dispute in which the public employer is a county or municipality, the arbitrator or panel of arbitrators shall take into account to the extent the 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 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 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.

Final Offer - Borough

The final offer of the Borough is as follows:

1. **Duration:** January 1, 2000 through December 31, 2002.

2. **Salary**

The Borough proposes the following salary increases 2000, 2001 and 2002:

January 1, 2000:	3.25% (across-the-board)
January 1, 2001:	3.5% (across-the-board)
January 1, 2002:	3.5% (across-the-board)

3. **Additional Step on Salary Guide**

For employees hired on or after January 1, 2001, the Borough proposes to add another salary step between Class D and Class E. This proposal will not affect current employees.

4. **Vacations for New Hires**

The Borough proposes that all Police Officers hired on or after January 1, 2001 shall receive the following different vacation schedules after twelve (12) and twenty-three (23) years of service.

Non 4X4 MOD

- (A) Twenty-four (24) work days after twelve (12) consecutive years of service.
- (B) Thirty (30) work days after twenty-three (23) consecutive years of service.

4X4 MOD

- (C) Two hundred sixteen (216) hours after twelve (12) consecutive years of service.
- (D) Two hundred seventy (270) hours after twenty-three (23) consecutive years of service.

5. **Article IX, §2**

Eliminate the day off for payment of the unused attendance bonus; in lieu thereof, such day will be paid in cash within sixty (60) days from the end of the year based on the daily rate in the year in which the bonus is earned.

6. **Article XIX, §2**

Add another paragraph which shall read as follows:

“Effective July 1, 2001, employees covered by this Agreement shall be permitted to opt-out (or opt-down) of the Borough provided hospital and medical insurance in return for payment equal to thirty-three (33%) percent of the premium saved by the Borough. This is a voluntary option. Said employee shall also be given the option each year to opt back into the Borough’s hospital and medical insurance plan, during the open enrollment period, except under exigent circumstances.”

7. **Article XIX, §2**

Reword the last sentence of the second paragraph as follows:

“Said employee shall also be given the option each year to opt back into the Borough’s dental insurance plan, during the open enrollment period, except under exigent circumstances.”

8. **Article VII, §2**

Add the phrase: “and subject to the approval of the Chief or designee said carryover shall be for a one (1) year period.”

9. **Article XIV, Step 1**

Reduce the maximum number of days to file a grievance from ninety (90) days to thirty (30) calendar days.

10. **Article XXII, §2**

- (A) Delete the word “full” from the second line.
- (B) Add the phrase “to the maximum amount established by the Borough” after the words “prevailing rate” and before the definition of “prevailing rate”.

11. **Article XXIV, §3**

- (A) Place paragraphs 2 and 4 in Article XXVIII.
- (B) Delete the remainder of §3.

Final Offer - PBA/SOA

The final offer of the PBA is as follows:

1. **Duration:** January 1, 2000 through December 31, 2002.

2. **Salary**

The PBA/SOA proposes a 5% across-the-board salary increase for 2000, 2001 and 2002. The PBA/SOA salary proposal is intended to preserve the current rank differential formula for Sergeants and Lieutenants, as that rank differential is defined in Article X of the SOA collective bargaining agreement. The PBA is also seeking the creation of a rank differential for the rank of Captain to be calculated at 145% of the Top Step Patrol Officer (Class A) pay rate.

3. **Out-of-Title-Work**

The PBA/SOA propose that any time an officer is assigned to act in the capacity of a supervisory position then said officer shall be paid at the higher rank's base rate of pay for all time so worked.

4. **Longevity**

The PBA/SOA propose a deletion of the lesser longevity benefit which is set forth in the Article XI, §2 of the PBA contract. The PBA/SOA propose a continuation of the longevity guide to include an eight (8%) percent step at the 20th year of service and a ten (10%) percent step upon the completion of the 24th year of service.

4. **Detective Differential**

The PBA/SOA propose that whenever a member of one of the Associations is serving in the Detective Bureau then said officer shall be paid a 3% differential. Said differential would be calculated on the base rate of said officer's rank.

5. **Minor Discipline**

The PBA/SOA propose that the respective grievance procedures be modified to include minor discipline. Such minor discipline to be defined as those circumstances where the penalty is five (5) days of suspension, or equivalent fine, or any lesser penalty.

ARGUMENTS OF THE PBA/SOA

Interest and Welfare of the public

The PBA/SOA assert that the North Plainfield Police Department well serves the interest and welfare of the public. This record of public service excellence as was established in the record exists in spite of the fact of the very busy law enforcement atmosphere with numerous challenges coupled with a low level of manpower. The PBA/SOA assert that the Borough Police Department is one of the most productive in the State of New Jersey.

The PBA/SOA assert that there is a high level and varied need for police activity within North Plainfield. Exhibit P-1 represents the most recent data available of annual activity within North Plainfield. Clearly illustrated is the wide variety of law enforcement calls including almost every type of crime, from murder to robbery, assault and numerous property crimes. The volume of activity within the department is significant. In 1998 alone there were 28,352 calls for police service (T-1, pg. 1). These calls, including the crimes mentioned above, included a great variety of citizen services. Chart 1 below lists some of those categories of police activity for the single year 1998.

CHART 1
North Plainfield Police Activity
(Based on 99 Data Sheet, P1)

Community Center calls for service	5168
Motor Vehicle Accident	833
Robbery	37
Assault	190
Burglary	139
Theft	410
Motor Vehicle Theft	64
Adult Arrests to Prosecutor's office	105
Juvenile Reports	412

Drug violations	49
Disorderly conduct	349
Commercial/Residential follow ups	2077

In addition to the calls for services and crimes above noted, there were also issued 4,815 traffic summonses in the most recent complete year.

The PBA/SOA set forth on the record the numerous new activities and improved services offered to the public through the North Plainfield Police Department. The time frame was since the last contract commenced. In these three years many new citizen services have been developed. These new services and equipment include, but are not limited to, the following:

- Expanded D.A.R.E. with two Police Officers assigned part time
- Improved and expanded community policing
- Public speaking services through the Police Department on various areas of safety and criminal issues.
- Mobile Data Terminals in the vehicles
- Bicycle Inspections for the youth
- Computerized dispatch
- Communications Technology Officer, one new officer so assigned to meet changing needs
- Expanded SWAT
- Defibrillators in the patrol cars
- "Good Morning Program" wherein certain senior citizens must call in each morning to say that they are alright or an officer will call their residence and if no answer is received a car will be sent.
- Weekly news article in the local paper

The PBA/SOA assert that increased training has been a recent priority within the department and many new courses are offered and some are taught by North Plainfield officers. Several North Plainfield Officers are Methods of Instruction (MOI) certified. This means that they are able to teach both at the County Police Academy and on an in house basis. North Plainfield Police Officers regularly teach other Police Officers and recruits at the County Police Academy.

The PBA/SOA assert that the North Plainfield Police Officer is clearly a part of the regional/ state wide law enforcement effort. In the recent past there have been officers loaned to various agencies including the County Narcotics Task Force, FBI, Homicide Task Force and the Municipal Alliance Committee (MAC). There is in addition, and consistent with the testimony of witness Edward Ciempola, a regular interaction between the North Plainfield Police Officers and others in the area. These regular interactions include detective issues, juvenile issues, drug issues and traffic considerations.

These mounting needs for police services have been the subject of grant applications by the municipality and have been noted by police administration. In the 1993 grant application made on behalf of the North Plainfield Police Department (P-7) the following statement appears, commencing at page 1.

The department staffing levels are well below its authorized strength of 45 members as recommended by the International Association of Chiefs of Police. From 1987 to 1991 the Department witnessed a 13% reduction in manpower through attrition.

These types of manpower reductions have an obvious impact on the quality of life in the Borough. The report continues:

“Unfortunately for the Police Department and the citizens of North Plainfield, there is a sense that North Plainfield is no longer the safe and secure community it once was and the police can no longer provide all of the services once performed especially in the area of crime prevention and community relations. A situation which is now exacerbated by a climbing crime rate and a sharp increase in violent crime.”

The PBA/SOA contend that the graphs which appear on pages 2 and 3 of said report put this grant application statement into focus. A 1974 report made by the IACP was referenced in the grant application (P-7).

“With 39 crimes committed per Police Officer, North Plainfield is one of the highest crime rates per Police Officer in central New Jersey. At the conclusion of its study of the Police Department in 1974, the IACP made the following observation:

"The Department is under manned, particularly in the patrol force, and cannot possibly provide the necessary level of police service to suppress crime and prevent prompt and essential police services to the borough."

As if to say the reduction in manpower and the increase in reported crimes not enough to increase the burden on the Police Department, changes in domestic violence legislation requiring Police Officers to take action in domestic violence situations has definitely added to the number of man hours spent on each individual case. This can take an individual officer away from patrol for hours. With 206 incidents in 1991, North Plainfield has one of the highest rates of domestic violence incidents in Somerset County.

The reduction in manpower coupled with the increased work load caused by rising crime rates and the loss of programs that tie the North Plainfield Police to the people of North Plainfield has caused the department to become reactive rather than pro-active and has built a wall between the borough's residents and the police." (P-7, page 4)

The PBA/SOA assert that it is this type of foresight and recognition of the problem that has caused the re-prioritization of police initiatives within North Plainfield and given rise to the successes in recent years. This is a solid police force providing excellent police services to the public. The subject of training, mentioned in the IACP referenced report as well as the testimony of the PBA witness, has been of paramount importance in recent years within North Plainfield. Exhibit P-6 illustrates the exceptional level of training which has been the focus of the North Plainfield Police Department. This is training that helps the police provide better services to the public.

All of this change, of course, has had some impact on the Department, particularly since several senior personnel have left and have been replaced by junior officers. In 1999 alone and 2000, 3 senior police personnel have left; Sgt. Ed McBride, Patrolman Ken Lacey and Patrolman Anthony Stanislao. Also Chief Davies has been on terminal leave since July 1, 1999. These four separations were replaced by three new officers who, of course, had to attend the academy upon their initial hiring. The specific dates of the changes are set forth in Exhibit P-3. The PBA/SOA contend that, in effect, less people are doing more work. The

successes of the North Plainfield Police Department are due to the dedication and professionalism of the Police Officers of the various ranks. While there is no doubt that services have improved, training level has improved, pro-active law enforcement has been improved, and many other positive steps have been taken, it is clearly the Police Officers of the various ranks that are entitled to the credit for such success. The PBA/SOA maintain that the Borough Police Department well serves the interest and welfare of the public.

**Comparison of the Wages, Salaries, Compensation,
Hours, and Conditions of Employment**

The PBA/SOA contends that exemplary performance, outstanding professionalism and the productivity of the North Plainfield police personnel are not matched in compensation. Total compensation is average at best and falls below average in several key areas. The PBA/SOA, in its last offer position, has tried to identify those areas of short fall and focus on bringing up the officers' total compensation program up to average. The PBA asserts that, while the top step patrol officers' pay may be marginally competitive, it is more than offset by significant short falls in benefit provision.

The PBA/SOA contend that virtually all key benefits provided to officers in the police profession are lagging in North Plainfield. The North Plainfield Police Officer works a 40-hour work week, 2080 hours per year, more than many of said officers' peers in other towns. No law enforcement officer in any contract in evidence works more than the North Plainfield Police Officer. Key benefits focused upon by the PBA/SOA in its last offer position exemplify this significant benefit short fall.

The PBA/SOA points out the detective in the Borough do not receive a detective stipend. The PBA/SOA assert that virtually all departments with a detective bureau provide such a stipend. Chart 2 below illustrates the detective allowance comparisons in those departments in evidence which have a detective bureau.

CHART 2	
DETECTIVE ALLOWANCE COMPARISON	
BEDMINSTER	\$3,000
RARITAN	\$3,243
WATCHUNG	\$ 500
MOUNTAINSIDE	\$2,519
FRANKLIN	\$ 600
BERNARDSVILLE	\$1,200
HILLSBOROUGH	\$ 695
BERNARDSVILLE SOA	\$1,200
BOUND BROOK	\$2,451
BERNARDS TOWNSHIP	\$1,500
GREEN BROOK	\$2,500
AVERAGE	\$1,764
NORTH PLAINFIELD DETECTIVE ALLOWANCE	NONE

Clearly noted is the fact that there is no Detective Stipend whatsoever in North Plainfield. The average Detective among the towns in evidence receives \$1,764 per annum as a Detective Stipend. The PBA/SOA is seeking a 3% Detective Stipend. Said Detective differential, based on the current pay rates for Police Officers in North Plainfield would be \$1,812. This is almost exactly the stipend currently in effect in comparable departments. The PBA/SOA asserts that the evidence clearly supports its position on the issue of Detective Stipend.

The longevity benefits in North Plainfield present a two fold problem for the PBA/SOA. In the first instance, the longevity program has a maximum of 6%. This is significant lower than the average longevity plan has as its maximum. Chart 3 below illustrates the short fall from average of the North Plainfield longevity maximum.

CHART 3**COMPARISON OF MAXIMUM LONGEVITY BENEFITS**

WATCHUNG	10%
MOUNTAINSIDE	10%
RARITAN	8%
FRANKLIN	8.5%
BOUND BROOK	14%
SOUTH BOUND BROOK	7%
SOMERVILLE	8%
AVERAGE MAXIMUM	9.36%
NORTH PLAINFIELD LONGEVITY MAXIMUM	6%
NORTH PLAINFIELD COMPARED TO AVERAGE	(2.36%)

In addition to the very low maximum, a second problem is presented with respect to the current longevity plan. The current longevity plan contains a grandfather provision for employees hired after July 1, 1994 (prior contract, J-1, Article X, pg. 19, section 2). This longevity grandfather provision is the second part of the longevity proposal advanced by the PBA/SOA in this case. As PBA/SOA witness Edward Ciempola testified, new officers have been hired and there is a need to hire additional officers, likely within the term of this contract. While the present cost of this proposal is essentially zero, the present negative impact of having a second tier compensation plan for certain employees is immediate. Lifting of the grandfather provision will not have an impact on a new employee for five years with respect to the cost factor. The employee however, while new, will immediately realize that said new compensation plan is a second tier plan and discriminatory. Thus, the impact may be considered immediate. The current inequitable grandfather provision may be addressed at present without financial impact.

One common benefit paid to police personnel is clothing allowance. While clothing allowance is not a direct issue in this proceeding, the PBA/SOA contends that the fact that the North Plainfield clothing allowance ranks significantly below average is relevant to a total compensation program comparison. Chart 4 below lists clothing allowance comparisons based on contracts in evidence.

CHART 4	
CLOTHING ALLOWANCE COMPARISONS	
BERNARDSVILLE	\$1300
FRANKLIN	\$ 925
HILLSBOROUGH	\$ 889
WATCHUNG	\$ 950
BEDMINSTER	\$ 650
RARITAN	\$ 600 + employer provided cleaning service
STFA	\$ 900
BERNARDSVILLE SOA	\$1300
BOUND BROOK	\$ 965
SOUTH BOUND BROOK	\$ 750
SOMERVILLE	\$1100
BERNARDS TOWNSHIP	\$1100
WARREN	\$1025
AVERAGE	\$ 958
NORTH PLAINFIELD	\$ 725
NORTH PLAINFIELD COMPARED TO AVG	(\$233) (32.1%)

The PBA/SOA asserts that the last place position of the North Plainfield Police Officer is clearly established by Chart 4. The PBA/SOA further notes that Employer Exhibit B-7 is completely supportive of its evidentiary showing in Chart 4 with respect to the below

average clothing allowance. Moreover, in the Borough's chart, "Other Leaves" North Plainfield is shown to have below average personal leaves and bereavement leaves (B-6).

The PBA/SOA asserts that overtime provisions among other departments commonly include Court Time minimums. No such minimum exists in the North Plainfield contract and the employer's own chart illustrates this fact (B-5). Sick leave is at best average in North Plainfield pursuant to employer Exhibit B-3. Holidays are once again in the mid range of comparables (B-2).

The PBA/SOA maintains that the need for out-of-title work protection (higher pay for work in the higher rank) is an important issue. The reason for this payroll protection was the subject of the testimony of Officer Ciempola at hearing. Due to changes that have occurred within the last two years, one bargaining unit member Lieutenant is acting as a captain without additional compensation. Those captain duties are being served on a full time basis. One bargaining unit member sergeant is currently acting as a lieutenant on a full time basis without receiving lieutenant's pay. A new captain's position has been created without any additional compensation. That officer is still receiving lieutenant's pay although he has been promoted to captain. These types of anomalies were the subject of detailed testimony. The PBA/SOA is seeking to have officers paid at the proper rate within the rank that they are working. The employer apparently does not contest the fact that these officers are presently working virtually on a full time basis out of title. The PBA/SOA contends that the Borough is receiving the benefit of these services as the officers working in the higher rated title are assuming the obligations and responsibilities of said higher title without additional compensation. The Borough is receiving a windfall by having the work of the higher title done without the pay of the higher title.

The PBA/SOA contends that the most important comparison of all is the fact that the towns in evidence with the higher compensation programs are all moving forward. Chart 5 below illustrates the rates of wage increases in the municipalities in evidence. This chart focuses on the base wage change only and does not add the value of benefit improvements and modifications.

CHART 5			
Base Wage Increases Expressed in Percentage of Change			
	2000	2001	2002
WATCHUNG	4		
RARITAN	4		
BEDMINSTER	4		
BERNARDSVILLE	4		
BERNARDSVILLE SOA	4		
MONTGOMERY	4		
MOUNTAINSIDE	3.9	4	4
NORTH BRUNSWICK	4.75		
STATE POLICE	5		
MONTGOMERY SOA	4		
BERNARDS TWSP	4	4	
GREEN BROOK	4		
MANVILLE	4	4	
AVERAGES	4.127%	4%	4%

The PBA/SOA contends that the towns listed on Chart 5 establish an average close to its position in this case. Borough Exhibit B-19 is the Scotch Plains contract. Neighboring Scotch Plains received a 4% increase for the year 2000 and has a longevity maximum of 10% at 23 years of service (B-19, Article XIV, pg. 23). The PBA/SOA notes that this is

almost exactly what it is seeking in this case. The PBA/SOA further notes that the base wage of the employer selected comparable Scotch Plains Police Officer is more than \$3,500 higher than the North Plainfield Police Officer. In addition, a Scotch Plains detective receives an annual stipend whereas the North Plainfield Officer receives no stipend.

The Fanwood Police Officer, another employer selected comparable, receives a higher rate of base pay and a 10% rank differential at sergeant. There is a 9% differential for lieutenants and a 9% differential for captains — neither of which exists in the North Plainfield contracts. There is also an operations division differential for persons so assigned. The PBA/SOA asserts that its wage increases are supported by the evidence on Chart 5 above.

Employer Exhibit B-21 is the Bridgewater contract, another employer selection identified comparability. The Bridgewater Police Officers received 4% in 2000 and another 4% in 2001. The clothing allowance in Bridgewater is greater than the clothing allowance in North Plainfield. The PBA/SOA maintains that the North Plainfield Police Officer is not well paid.

While the PBA/SOA does not agree that Police Officers are appropriately compared to private sector employees, mention may be made of this assertion as it was raised at hearing and is covered in the statutory criteria. Due to the unique statutory obligation and treatment of police officers under New Jersey Law, any comparison of said law as it applies to private sector employees as compared to police officers must result in a strong justification for significantly higher compensation to be paid to police officers. In a recent decision, well known Interest Arbitrator Carl Kurtzman considered this subject of private sector comparisons and wrote as follows:

“As other arbitrators have noted, it is difficult to compare the working conditions of public sector police officers with the working conditions of private sector employees performing the same or similar services because of the lack of specific private sector occupational categories with whom a meaningful comparison may be made. The standards for recruiting public sector police officers, the requisite physical qualifications for public sector police and their training and the unique responsibilities which require public sector police to be available and competent to protect the public in different emergent circumstances sets public sector police officers apart from private sector employees doing somewhat similar work. Accordingly, this comparison merits minimal weight.” (Borough of River Edge and PBA Local 201, PERC IA-97-20, p. 30)

The PBA/SOA asserts that private sector comparisons should not be considered controlling in this case. In the first instance, there is no comparable private sector job compared to that of a police officer. A police officer has obligations both on and off duty. This is most unusual in the private sector. A police officer must be prepared to act and, under law, may be armed at all times while anywhere in the State of New Jersey. Certainly this is not seen in the private sector. The police officer operates under a statutorily created public franchise of law enforcement with on and off duty law enforcement hours. Once again such public franchise and unique provision of statutory authority is not found in the private sector. There is no portability of a pension in the law enforcement community after age 35. Police officers may not take their skills and market them in other states as one may market one's own personal skills in the private sector. A machinist or an engineer may travel anywhere in the county to relocate and market their skills. This is not possible for a police officer. The certification is valid locally only. The nature of police work is inherently one of hazard and risk. This is not frequently seen in the private sector.

The PBA/SOA cited certain statutory and other precedential laws controlling the relationship of police officers to their employers which distinguish the private sector employee from a Police Officer:

1. The Federal Fair Labor Standards Act, 29 USCA sect.201, et seq. applies different standards to private sector employees and police officers. Whereas private sector employees have the protection of the 40 hour work week and the 7-day work cycle, police officers are treated to much less protection. Police officers have only relatively recently been covered by the Act by virtue of the 7k amendment.
2. The New Jersey State Wage & Hour Law, NJSA 34:11-56a, et seq. does not apply to the employment relationship between a police officer and the officer's public employer. Private sector employees are covered under New Jersey Wage and Hour Laws. Such protections as are therein available are not available to the police, Perry v. Borough of Swedesboro, 214 NJ Super. 488 (1986).
3. The very creation of a police department and its regulation is controlled by specific statutory provisions allowing for a strict chain of command and control. Included are statutory provisions for rules and regulations, specifying of powers and duties, specifics for assignments of subordinate personnel, and delegation of authority. NJSA 40A:14-118. There is no such statute covering private employment in New Jersey.
4. NJS 40A:14-122 provides for specific qualifications which are statutorily mandated for police officer employment. Such requirements as US Citizenship, physical health, moral character, a record free of conviction, and numerous other requirements are set forth therein. No such requirement exists by statute for private employment in this state.
5. If an employee in a police department is absent from duty without just cause or leave of absence for a continuous period of five days said person, by statute, may be deemed to cease to be a member of such police department or force, NJS 40A:14-122. No such provision exists as to private employment.
6. Statutorily controlled promotional examinations exist for certain classes of police officers in New Jersey under title 11 and other specific statutory provisions exist under 40A:14-122.2. There are no such private sector limitations on promotion.
7. A police officer in New Jersey must be resident of the State of New Jersey, NJS 40A:14-122.8. No such restriction exists for private sector employees.
8. Hiring criteria and order of preference is set by statute 40A:14-123.1a. No such provision exists for private employees in New Jersey.

9. There are age minimums and age maximums for initial hire as a police officer in New Jersey. No such maximum age requirements exist for private employment in this state. Even if an employee in a police department who has left service seeks to be rehired there are statutory restrictions on such rehire with respect to age, 40A:14-127.1. No such provision exists for private employees in this state.
10. As a condition for employment in a police department in the State of New Jersey there must be acceptance into the applicable Police Retirement System, NJS 40A:14-127.3. No such requirement exists in private sector. The actual statutorily created minimum salary for policemen in New Jersey is set at below minimum wage NJS 40A:14-131. Private employees are protected under the Fair Labor Standards Act. Days of employment and days off, with particular reference to emergency requirements are unique to police work. A police officer's work shall not exceed 6 days in any one week, "except in cases of emergency". NJS 40A:14-133. The Fair Labor Standards Act gives superior protection to private sector employees.
11. NJS 40A:14-134 permits extra duty work to be paid not in excess of time and one-half. This prohibits the higher pyramided wage rates which may be negotiated in private sector. There is no such prohibition in the law applying to private sector employees.
12. The maximum age of employment of a police officer is 65 years. No such 65-year maximum applies to private sector employees.
13. Police Officer pensions are not covered by the federal ERISA Pension Protection Act. Private sector employees' pensions are covered under ERISA.
14. Police officers are subject to unique statutorily created hearing procedures and complaint procedures regarding departmental charges. Appeals are only available to the court after exhaustion of these unique internal proceedings, NJS 40A:14-147 to 40A:14-151. No such restrictions to due process protections for private employees exist. Private employees, through collective bargaining agreements, may also negotiate and enforce broad disciplinary review procedures. The scope is much different with police personnel.

The PBA/SOA contends that the greatest differentiation between police officers and private employees generally is the obligation to act as a law enforcement officer at all times of the day, without regard to whether one is on duty status within the state or not. Police officers are statutorily conferred with specific authority and "... have full power of arrest

for any crime committed in said officer's presence and committed anywhere within the territorial limits of the State of New Jersey." NJS 40A:14-152.1. A police officer is specially exempted from the fire arms law of the State of New Jersey and may carry a weapon off duty. Such carrying of deadly force and around the clock obligation at all times within the State is not found in the private sector.

Police officers are trained in the basic police academy and regularly retrain in such specialties as fire arms qualifications. This basic and follow up training schedule is a matter of New Jersey Statutory law and is controlled by the Police Training Commission, a New Jersey statutorily-created agency. Such initial and follow up training is not generally found in the private sector. Failure to maintain certain required training can lead to a loss of police officer certification and the police officer's job. This is rarely found in the private sector.

The PBA/SOA assert that local comparisons are more relevant with police wages. These types of issues were considered in the recent decision issued by the well known arbitrator William Weinberg in the Village of Ridgewood case.

"Second of the comparison factors is comparable private employment. This is troublesome when applied to police. The police function is almost entirely allocated to the public sector whether to the municipality, county, state or to the national armed forces. Some private sector entities may have guards, but they rarely construct a police function. There is a vast difference between guards, private or public, and police. This difference is apparent in standards for recruiting, physical qualifications, training, and in their responsibilities. The difficulties in attempting to construct direct comparisons with the private sector may be seen in the testimony of the Employer's expert witness who used job evaluation techniques to identify engineers and computer programmers as occupations most closely resembling the police. They may be close in some general characteristics and in "Hay Associates points", but in broad daylight they do seem quite different to most observers.

The weight given to the standard of comparable private employment is slight, primarily because of the lack of specific and obvious occupational categories that would enable comparison to be made without forcing the data.

Third, the greatest weight is allocated to the comparison of the employees in this dispute with other employees performing the same or similar services and with other employees generally in public employment in the same or similar comparable jurisdictions (Section g. 2(a) of the mandatory standards.) This is one of the more important factors to be considered. Wage determination does not take place without a major consideration of comparison. In fact, rational setting of wages cannot take place without comparison with like entitles. Therefore, very great weight must be allocated to this factor. For purposes of clarity, the comparison subsection g,(2), (a) of the statute may be divided into (1) comparison within the same jurisdiction, the direct employer, in this case the Village, and (2) comparison with comparable jurisdictions, primarily other municipalities with a major emphasis on other police departments.

Police are a local labor market occupation. Engineers may be recruited nationally; secretaries, in contrast, are generally recruited within a convenient commute. The nearby market looms large in police comparisons. The farther from the locality, the weaker the validity of the comparison. Police comparisons are strongest when in the local area, such as contiguous towns, a county, an obvious geographic area such as the shore or a metropolitan area. Except for border areas, specific comparisons are non-existent between states. (Ridgewood Arbitration Award, Docket No.: IA-94-141, pages 29 - 31)

The PBA/SOA argues, for the reasons noted above, that any time there is a comparison made between a police officer and a private employee generally, police officer's position must gain weight and be given greater support by such comparisons. The police officer lives and works within a narrowly structured statutorily created environment in a paramilitary setting with little or no mobility.

The level of scrutiny, accountability and authority are unparalleled in employment generally. The police officer carries deadly force and is licensed to use said force within a great discretionary area. A police officer is charged with access to the most personal and private information of individuals and citizens generally. His highly specialized and highly trained environment puts great stress and demand on the individual. Private employment generally is an overly generalized category that includes virtually every type of

employment. To be sure in such a wide array of titles as the nearly infinite number covered in the general category of “private employment” there are highly specialized and unique situations. The majority, however, must by definition be more generalized and less demanding. Specialized skills and standards are not generally as high as in police work. A police officer is a career committed 25-year statutorily oriented specialist who is given by law the highest authority and most important public franchise. The PBA/SOA asserts that a police officer should be considered on a higher wage plane than private employment generally.

Stipulations of the Parties

The stipulations entered into by the parties at hearing were essentially procedural in nature and therefore not likely to be determinative of the key issues in this case. Both parties have submitted three year proposals for the Arbitrator’s consideration. To that extent, one might assume that the three-year term is a mutually agreed upon point.

Lawful Authority of the Employer

The PBA/SOA contends that an analysis of this case, consistent with the c (g)(5) criterion included in the Interest Arbitration Act, provides absolutely no prohibition to the payment of the full PBA/SOA position. This criterion is essentially an analysis of the case under the “Cap Law”. The Cap Law presents a formula which restricts spending to certain percentages for certain qualifying categories of municipal expenditures. By law the cap calculation is set forth on sheet 3b of each successive municipal budget. The PBA/SOA placed in evidence as Exhibits P-27 and P-28 respectively, the 1999 and 2000 budgets. The PBA/SOA maintains that it has been clearly established in this evidence that the Cap Law presents no problem whatsoever to budgetary adoption within the Borough of North Plainfield.

The PBA/SOA contends that there is substantial flexibility within the Cap Law calculation of North Plainfield and said Cap flexibility is more than enough to meet the cost of the PBA/SOA position. The 2000 budget (P-28) has, at sheet 3b, the cap calculation. The PBA/SOA made the following assertions regarding the Cap:

1. The Borough used the lowest possible calculation rate, 2.5%, which is the “index rate” or start point for calculation. The Borough could have used up to 5% as its cap formula upon a vote of the Governing Body. Since the employer used the lowest possible index rate formula of 2.5%, it effectively waived the flexibility of the other 2.5% that was within its reach by majority vote. This 2.5% calculation is shown on the right-hand side of sheet 3b near the top. The 2.5% index rate calculation is quantified as \$237,846.00. Since that is the value of the index rate utilized, a like value, another \$237,846.00, was available for utilization but waived by the municipality. This is the first sign that there is no cap problem.
2. Notwithstanding the fact that the Borough used the lowest possible calculation figure of 2.5%, the amount available under the cap level for budgeting in the year 2000 far exceeded the amount actually utilized. On the right-hand side of sheet 3b (P-28) is the line illustrating allowable 2000 Appropriations. The amount available for appropriation under the Cap Law, using the 2.5% index rate, is \$9,751,716.00. This amount far exceeded the actual utilization for appropriation.
3. The last line on the right-hand side of sheet 3b is captioned “2000 Appropriations Within Cap”. This amount, actually utilized, in 2000 is \$9,368,636.00. The difference then between the amount available for appropriation and the amount actually appropriated is the difference between these two sums or, \$383,080. Notwithstanding the fact that the lowest possible index rate was used of 2.5%, the Borough still utilized less in appropriation than was available under the Cap Law by \$383,080. There is absolutely no cap problem in this municipality.

The PBA/SOA contends that in order to put into perspective the actual value of this flexibility one must consider the actual bargaining unit costs for base salaries. Chart 6 below calculates the cost of bargaining unit base wage rates and the resultant value of a percentage point.

CHART 6
BARGAINING UNIT BASE SALARIES

(A) RANK	(B) CENSUS	(C) CURRENT BASE RATE	(D) COLUMN (B) X COLUMN (C)
LIEUTENANT	3	\$78,566	\$ 235,698
SERGEANT	7	\$69,500	\$ 486,500
PATROLMAN	33	\$60,435	\$ 1,994,355
TOTALS	43	\$ 2,716,553	
		1% = \$27,165	

One percent of the bargaining unit base wage is \$27,165. This is a composite rate covering both the PBA/SOA bargaining units collectively. One may now compare the value of the amount waived in Cap flexibility and also the amount not utilized in cap flexibility. By utilizing the 2.5% index rate and waiving the other 2.5% available, as was discussed above, the municipality waived \$237,846 in flexibility. Considering the value of a wage point (\$27,165) this single waiver of flexibility had a value of 8.75 wage percentage points for the combined bargaining units. The PBA/SOA points out that, as described above, the unutilized amount of Cap flexibility between the amount available for appropriation and the amount actually appropriated in the year 2000 was \$383,080. If one divides this amount by \$27,165, then the amount of Cap flexibility not utilized by appropriation is valued at 14.1 percentage points. Clearly these amounts of flexibility in the Cap formula are significantly above the cost of a percentage point. The PBA/SOA assert that its position of 5% per annum could be paid for in just the Cap flexibility.

The PBA/SOA further notes that Cap flexibility, not utilized by appropriation in a given year, is carried forward for future use in the form of "Cap banking". Here, the underutilized cap flexibility from 2000 appropriations, \$383,080.00, will go forward into the

year 2001. At that point it will be added to such flexibility as exists in 2001 for increased budgetary flexibility under the cap formula. This is not new to North Plainfield. If one refers back to sheet 3b of the prior year's budget, 1999, (P-27) one notes that the 1997 cap bank was \$178,767.00. In 1998 the cap bank grew to \$216,830.00. As we have seen above, that trend in cap banking has continued however the amount has nearly doubled to \$383,080.00.

The PBA/SOA asserts that two trends are obvious. First, there is an underutilization of cap flexibility in each of the last several years. Second, there is a constant of Cap banking and significant increases in each of the last 3 years in the amount banked. The PBA/SOA maintains that the Cap formula will not have a negative impact on this case.

***The Financial Impact on The Governing Unit,
Its Residents and Taxpayers***

The PBA/SOA contends that the impact on the residents and taxpayers of an award of its position in this case would be extremely small and virtually imperceptible since the Borough is fiscally strong with a strong tax base. As will be illustrated, the impact of an award of the PBA/SOA position would be minimal.

The PBA/SOA submits that one must first consider the significant savings achieved by the Borough in the recent personnel changes in 1999 and 2000. The "breakage" in personnel changes has created significant savings. Exhibit P-3 illustrated the 3 persons who have retired since the last contract, Sgt. McBride, Patrolman Lacey, and Patrolman Stanislaw. Three new Police Officers were hired during the same term. These changes have resulted in a significant savings in actual current dollars to the public employer. A sergeants pay rate (\$69,500) when coupled with his maximum 6% longevity (\$4,170) gives a total of \$73,670. Adding to that the employer's pension contribution of 14%, there is a total cost of the

sergeant of \$83,983. The two patrolmen both receive top patrol officers' pay together with 6% longevity for a total of \$64,060 each. The total savings by the departure of the two patrolmen and the one sergeant are \$230,042. During this time frame the employer hired 3 new Police Officers with a starting rate of \$25,000. These new officers do not receive longevity. The 14% employer pension contribution brings the total cost to \$28,500 which when multiplied by the 3 new officers has a total cost of \$85,500. The difference between the cost of the departing officers saved (\$230,042) and the cost of the new officers hired (\$85,500) is \$144,542. If one divides that amount of savings due to personnel changes by the value of a base wage point (\$27,165 as was calculated on Chart no. 6, above) there is a total savings expressed in base wage points of 5.32%. The PBA/SOA contends that the "breakage" savings is sufficient to fund its entire salary package.

The PBA/SOA offered the following points in support of its position that the Borough enjoys significant flexibility and is in a strong financial position:

1. In each of the last 3 years which are supported by documents in evidence, there have been significant amounts of surplus generated each year. As a result of 1999 operations alone there was \$443,804 left as a result of operation. (AFS sheet 19, P-32).
2. Budget revenues have resulted in excess revenues in recent years. The budget revenue excess from 1999 alone was \$210,233.00. The average excess budget revenue over the last 3 years has been \$216,000 a year. (Source: AFS, sheet 17, P-32).
3. The unexpended balance of appropriation reserves has been significant in its amount in the last 3 years in evidence. In 1999 there was canceled from the prior year the amount of \$186,455. These appropriations reserves continue to demonstrate budget flexibility (source: AFS, sheet 19, P-32).
4. The schedule of fund balances, current fund, have been significant and have provided opportunity for utilization of substantial sums in succeeding years. The balance as of December 31, 1999 was \$346,696 of which \$300,000 was utilized in the succeeding year. There are currently 1.4 million dollars in receivables causing surplus to fluctuate (see sheet 3 AFS). This is, in effect, additional surplus.

5. The municipal tax rates have remained basically flat for five years. The general tax rate has decreased 17 points since 1997. (Source: 1998 Report of Audit, P-40).
6. Assessed values have increased \$8,000,000 since 1996. This means additional tax revenue to the Borough of approximately \$70,000 per year. The assessed values as of the end of 1998 were \$818,666,990.00 (Source: 1998 Report of Audit, P-40).
7. The tax collection rate is excellent. While the State average is approximately 93%, the Borough of North Plainfield has exceeded 96% in each of the last 3 years in evidence with a most recent year available, 2000, being based upon a preceding year's rate of 96.96%. (Source: 1998 Report of Audit, P-40)
8. The borrowing power of North Plainfield is far from fully utilized. The Borough is well below the statutory debt limit. (Source: 1999 Annual Debt Statement, P-29) The associations are not suggesting that the Borough borrow to pay for salaries, rather the associations assert a solid fiscal position.
9. The Borough has an excellent credit rating (see 1999 Municipal Data Book).
10. The Borough has significant cash balances as a result of operations December 31, 1999. The current fund had \$1,616,886.00 and the capital fund at \$57,635 (source: 1999 AFS, sheet 9, P-32)

The PBA/SOA contends that the cost of municipal government, particularly the Police Department, is not a heavy burden on the Borough citizens. The total levy is \$26,607,717.00, the cost of the municipal portion of the government is only 27.7% of that amount (see sheet 17 AFS, P-32). The total cost of the bargaining unit base wages (see Exhibit P-6) represents only 10% of the total levy. This means that a municipal tax payer with a \$4,000 annual tax bill pays only \$400.00 for Police Department salaries and wages.

The PBA/SOA suggests that one barometer of the tax burden on the citizens is the concern, or lack thereof, regarding the impact of education costs on taxes. The cost of schools is the highest single area of the tax levy with school costs accounting for 58% of the Borough tax levy. (P-32, sheet 17). The PBA/SOA suggests that if there is any distress

or citizen concern regarding the tax rate then this is where one would see a strong voter turnout. Such is not the case in North Plainfield — only 10.57% of eligible voters voted in the most recent school budget ballot indicating lack of tax pressure on the voters in North Plainfield. The PBA/SOA reasserts its initial premise that there is no significant tax burden on the taxpayers within the Borough. The PBA/ SOA contends that the impact of an award of its position will have a minimal effect that would be virtually imperceptible to the tax payer.

Cost of Living

Consistent with the PERC statute all Interest Arbitrators are supplied with a copy of the most recent Department of Labor figures from the State of New Jersey. The PBA/SOA respectfully initially requests the arbitrator to consider those figures most recently issued as being influential and illustrative of the costs in New Jersey.

The PBA/SOA acknowledge that the Public Employment Relations Commission supplies regular information to arbitrators with respect to cost of living data. It is further recognized that the cost of living data is somewhat below the position set forth as the last offer of the Associations in this case. Notwithstanding this fact however, one must also consider that it is only one of the 8 criteria and certainly is far from a key consideration.

The PBA/SOA contends that one must consider the cost of living criteria as only one of the factors, but it is not controlling. Years ago when cost of living was at or near double digit level, employees did not receive increases of like magnitude. Nor should the employees receive the identical value of cost of living at this time because of a lower value. The PBA/SOA contends that an employer's reliance on cost of living data is purely situational. The PBA/SOA acknowledged that the cost of living data does not support its position in this case.

The Continuity and Stability of Employment

The PBA/SOA suggest that this criterion brings to mind the private sector considerations of “area standards” and “prevailing rate”. Both of these private sector standards support the PBA position in this case. Of particular importance, when considering private sector comparisons, is the out-of-title work issue, a common concern in private employment. Officers should be paid commensurate with the service performed, like a machinist in the private sector who is paid at the higher rate when working out of title. The same is true of detective differential, a common form of compensation in other departments, which is paid commensurate with the extra duty performed in such position.

The PBA/SOA presented one non-economic issue — the inclusion of minor discipline in the grievance procedure. Minor discipline is defined as those circumstances where the penalty is five days of suspension, or equivalent fine, or any lesser penalty. The PBA/SOA contends that this proposal has a mutual benefit to both parties. It provides an opportunity to resolve grievances, in a cost effective and relatively short time span, issues which alternatively would go through a costly and protracted court process. Grievance arbitration provides for a speedy, confidential and professional treatment of minor discipline. It is also much less expensive and faster than the court process which can take years. Confidentiality is an asset to both parties. Court proceedings are public. Arbitrations may be scheduled at a time convenient to both parties and generally are held in the municipal facilities. Ease in scheduling and access are also factors to be considered. Certainly the quality of review and result under grievance arbitration before an experienced arbitrator is another considerable asset. Both parties will benefit by including minor discipline in the grievance procedure.

The PBA/SOA respectively requests that the Arbitrator rule in favor of its last offer on each of the issues presented.

ARGUMENTS OF THE BOROUGH

The Borough, in its brief, examined the statutory criteria in relation to its proposal on the issues in dispute. The Borough is proposing a three-year contract for the period of January 1, 2000 through December 31, 2002. The Borough proposes the following salary increases in 2000, 2001 and 2002:

January 1, 2000:	3.25% (across-the-board)
January 1, 2001:	3.5% (across-the-board)
January 1, 2002:	3.5% (across-the-board)

For employees hired on or after January 1, 2001, the Borough proposes to add another salary step between Class D and Class E. This proposal will not affect current employees. Under the Borough's proposal, a top-step patrolman will make \$62,399 in 2000; \$64,583 in 2001; and, \$66,843 in 2002. The proposed dollar increase is \$6,408 over the three-year period. Based on the total number of bargaining unit members, the Borough's salary proposal will cost \$275,544 over the duration of the contract or an average annual cost of \$91,848, which represents slightly more than one tax point per year (\$80,000 equals 1 tax point). The above costs would allow the Borough not to expend additional monies in their 2000 budget since the money budgeted meets the Borough's request for Calendar Year 2000 for members of both bargaining groups, including the \$33,202 which the Borough will have to expend for the 1999 salary rollover resulting from the 2.25% pay raise, effective July 1, 1999. Thus, the total Borough cost in 2000 would be \$125,050 or roughly 1½ tax points. Based on an average assessment of \$130,000, a taxpayer would pay an additional \$19.50 in taxes for this modest increase.

In addition, since each percentage raise is based on a percentage from the previous year, there is a compounding effect for 2001 and 2002. Thus, the Borough values the

compounded effect of its three-year salary proposal as 10.60%. The Borough submits that the additional costs incurred by the step increases of bargaining unit members moving through the salary guide should be included in the economic calculations.

For those employees hired on or before September 1, 1998, the Borough's salary proposals would compute as follows:

Step	1/1/00	1/1/01	1/1/02
A	\$62,399	\$64,583	\$66,843
B	\$57,692	\$59,711	\$61,801
C	\$52,285	\$54,115	\$56,009
D	\$45,003	\$46,578	\$48,208
Probationary	\$33,890	\$35,076	\$36,304

For those employees hired after September 1, 1998, the Borough's salary proposals would compute as follows:

Class	1/1/00	1/1/01	1/1/02
A	\$62,399	\$64,583	\$66,843
B	\$57,577	\$59,592	\$61,678
C	\$52,285	\$54,115	\$56,009
D	\$45,003	\$46,578	\$48,208
E	\$32,175	\$33,301	\$34,467
Probationary	\$30,459	\$31,525	\$32,628
Academy	\$25,813	\$26,716	\$27,651

As of January 1, 2000, there were five (5) Step B patrolmen, one (1) Step C patrolman, one (1) Step D patrolmen and two (2) Step E probationary patrolmen. On January 1, 2001, there will be two (2) additional Step A patrolmen at an increased cost of

\$8,296.00; one (1) additional Step B patrolman at an increased cost of \$7,307.00; and, two (2) additional Step D patrolmen at an increased cost of \$28,806.00. The total additional cost would be \$44,409 which equals 1.67% additional cost in 2001. In 2002, five (5) Step B goes to Step A (\$35,660.00 additional); two (2) Step D to Step C (\$18,862.00 additional); and, three (3) Step E to Step D (\$44,721.00 additional). The total additional cost would be \$99,243 which equals 3.73% in 2002. Therefore, even with the modest salary increases sought by the Borough, the Borough would still have to expend an additional 1.67% and 3.73% respectively to take into account the step increases of the members of PBA Local 85 moving through the salary guide.

The Borough is seeking a new salary step, effective January 1, 2001. For all employees hired on or after January 1, 2001, the Borough is requesting a modification in the salary guide by the creation of a new step between Class D and Class E. The present step between these classes calls for a more than \$11,000 increase, significantly larger than the increments between the other classes. The Borough asserts that this modification makes good financial sense and no existing employees would be affected. This modification allows for a more even salary guide, eliminating an existing \$11,000+ bump that occurs once an officer finishes his probationary period. This would also allow for a more gradual and realistic rise in salary from the bottom of the salary guide and place such salaries in accordance with the comparable municipalities' starting salary guides.

The Borough proposes to amend the existing dual spousal coverage plan, effective July 1, 2001 as follows:

- (a) Limitation on eligibility for a dental plan. In the previous arbitration, the arbitrator allowed for an "opt-out/opt-down" for dual coverage for dental insurance. The Borough is seeking a minor amendment to said language by requiring only opting back during the open enrollment period, except under exigent circumstances. This is consistent with the concept that the rationale

for paying such a premium rebate is that the employee remains out of the insurance plan for a year period for all parties to obtain the “savings”/“benefits.” No one would be harmed with such language, including under those circumstances where a person needs the insurance due to an insurance loss totally beyond their control.

- (b) The percentage of difference is thirty-three (33%) percent for medical/hospital insurance. As to subsection (b), this is clearly and purely a voluntary plan on behalf of the employee. If an employee took advantage of such, he would reap thirty-three (33%) percent of the premium differential (for example, an employee presently receiving \$8,000.00 premium family medical and hospital who opt out of all coverage would receive approximately \$2,667.00 during the opt-out year). No employee is required to enter into the program and the proposal allows employees to reenter/increase coverage under the Borough’s medical/hospital plan at specific time(s) in the future. The prospect of money in pocket to the employee with savings to the Borough, with full insurance coverage for the employee, is an intriguing proposal the arbitrator should give strong consideration to.

The Borough proposes minor modifications to the existing vacation schedule. These modifications apply only to employees hired on or after January 1, 2001. The reductions proposed, under either the 4x4 Modified schedule or the non 4x4 Modified schedule, would establish two new tiers of vacation eligibility that would have no impact upon any employee until at least January 1, 2014, well beyond the term of this Agreement. These proposals increase the eligibility for vacations by an additional three years. The Borough contends that these modifications produce no negative impact upon the members of the PBA/SOA and will assist the Borough in the future as to scheduling/manpower and related items.

The Borough proposes a minor modification to the unused attendance bonus. Rather than allowing the accumulation of said day, the Borough proposes paying for the day, at the daily rate of the year in which the day is earned, to be paid sixty (60) days from the end of the year. The Borough contends that the basic concept of the attendance bonus remains unchanged — a reward for members of the bargaining units who came to work all year long. The only change is to avoid making the bonus day just another accumulated day, which

impacts the overall scheduling/manpower, while the real rationale of the bonus, would be more accurately reflected in the payment of such a day.

The Borough seeks to address its concerns as to carryover vacation in its proposal to modify Article VII, §2. The Borough contends that the contract is seemingly unclear as to how long an employee can carryover unused vacation. The Borough contends that the intent of the parties is that unused vacation days be carried over for only the next succeeding year from the year in which the vacation was carried over. The proposed one-year provision would permit an employee to schedule vacation carryover in a time frame that avoids significant long-term interference with manpower scheduling by the constant carrying over of the unused vacation. This also requires the employee and the Borough to accommodate the employee's needs, but does not leave the employee with the misapprehension that they can simply schedule the vacation years later, when "it fits into their schedule." Vacation is generally carried over under one of two circumstances:

- (1) the inability of the employee to find an appropriate time to take vacation due to his/her seniority; or,
- (2) a problem within the Borough which makes the taking of the vacation at a certain time problematic. In either case, these are short-term problems; problems which should be resolvable within an additional twelve (12) month period of time, not more than that.

Thus, for all the reasons established, the Borough contends that this proposal, as well as all of the others, is justified under the provisions of the Act.

The Borough is also proposing three other language changes, which are as follows:

- (a) A revision to the time frame for filing an initial grievance at Step 1.
- (b) A revision of the legal defense article (Article XXII, §2); and,
- (c) A revision of Article XXVI, which places the language in the appropriate contract section.

The Borough contends that none of the above proposed changes will produce a negative impact upon the provisions of this Agreement and/or the employees covered by such.

The Borough asserts that its first proposal, that a grievance be filed within thirty (30) days, instead of the current ninety (90) days, is appropriate since the grievance process is supposed to be expeditious. A thirty-day period permits the parties to deal with the grievance while it is still fresh in their minds, and further allows for an expeditious resolution or arbitration of the grievance. The Borough asserts that if an employee knows or believes that a violation of the employee's contractual rights have been violated, it should not take ninety (90) days for the employee or the PBA/SOA to figure out whether or not to initiate a grievance.

The Borough contends that its second issue, a revision of the legal defense article, is necessary to curb costs. In the last interest arbitration, which set the terms of the 1997-1999 CBA's, the arbitrator put an hourly cap on the rates being charged, but he did not put a cap on the total amounts charged. The Borough sought to cap the overall costs on these legal matters only to have attorney bills submitted which are significantly beyond the Borough's projected costs. The Borough desires to cap these amounts as its obligations, as permitted under Valerius v. City of Newark, 84 N.J. 591 (1980) and Critchley and Roche v. City of Newark, 206 N.J. Super. 32 (App. Div. 1985). The Borough asserts that its proposal is reasonable and realistic under the circumstances.

The Borough's final proposal is an effort to clean up contract language regarding evaluations and personnel files. The Borough describes such language as "duplicative in nature". The Borough contends that it simply seeks to clarify what is already in existence as to its powers, duties and responsibilities. The Borough submitted evidence regarding these contractual changes from other collective bargaining agreements.

The Borough submits that the total cost of its three-year economic proposal is 17.13%:

Year	A-T-B	Compound	Increment	Annual Total
2000	3.25%		+ 1.125%	= 4.38%
2001	3.50%	+ .12%	+ 1.676%	= 5.29%
2002	3.50%	+ .23%	+ 3.73%	= 7.46%
3-Year Total				= 17.13%

The Borough maintains that its three-year economic proposal of 17.13% or an average of 5.71% per year, is clearly more aligned with the realities of the present economic climate than the economic proposal of the PBA/SOA.

The Borough contends that its overall proposal, both in terms of economics and contract language, is clearly more realistic and in line with the present economic times than the demands of the PBA/SOA. The above proposals are consistent with proposals made to its other bargaining units (firefighters, fire superiors, clerical and public works), as well as non-unionized employees. The Borough cites the settlement reached with its clerical unit for the period of January 1, 1999 - December 31, 2001. The Borough settled for 3% for 1999, 2% in 2000 and 3.5% in 2001. The Borough also settled with its public works employees for the period of January 1, 2000 through December 31, 2002 (the same as the period in question), for 2% in 2000, 3% in 2001 and 3.75% in 2002.

The Borough further notes that non-bargaining unit personnel received a 2% raise in 1999 and their future raises are to be determined based on the economic conditions faced by the Borough in future years. Thus, the Borough maintains that its economic proposal is more in line with settlements that have occurred within the Borough to date.

The Borough costed out the PBA/SOA salary proposal based on forty-four (44) officers including base pay, step increases, and salary increases during the three-year contract term. The Borough estimates that the cumulative cost of the PBA/SOA economic

proposals is \$652,401. In contrast, the Borough's estimates that the cumulative cost of its economic proposal is \$431,098. Thus, the PBA/SOA salary proposal is \$221,303 more than the Borough's salary proposal. The Borough calculates this difference to be more than \$5,000 per bargaining unit member over the three-year contract term. This \$5,000 is equivalent to an additional 8.32% per bargaining unit member over the three-year contract term not taking into account the PBA/SOA out-of-title work proposal which cannot be costed out. The Borough argues that there is no justification whatsoever to conclude that the PBA/SOA salary proposals are rational or justifiable in these economic times.

The Borough contends that its economic proposal is well within the range of acceptable salary increases, not only those awarded to those employees who have settled with the Borough, but also including the interest arbitration awards/settlements that have been reported in the area. Furthermore, the Borough contends that a review of its comparable exhibits for senior patrolmen over the period in question place the Borough's senior patrolmen in the same or better position than a large number of comparable municipalities both inside and outside Somerset County.

Moreover, the Borough contends that the salary proposals of the PBA/SOA along with the detectives' differential, longevity changes and the out-of-title proposal would place senior patrolmen well above their present standing with comparable municipalities. The PBA/SOA salary proposal for 2000 would place them only behind Bernardsville (and that is only due to educational incentives rolled into the Bernardsville contract). In 2001, Borough officers would be ahead of all of the comparable municipalities, with the same occurring in 2002. The Borough contends that one of the objectives of interest arbitration is to allow police officers to remain in relative standing to that of other police officers in comparable municipalities, but not to exceed their relative standing. The Borough asserts

that its salary proposal would continue that continuity, while the PBA/SOA salary proposal would clearly place Borough police officers in a much better position not only during the term of the contract, but at the end of it as well.

The Borough is opposed to the PBA/SOA proposal for a 3% Detective Differential. The Borough calculates the cost of this proposal as \$11,707 in 2000 for the six PBA/SOA members who would be eligible for the benefit in 2000. This is equivalent to an additional .44% increase in 2000.

The Borough opposes the PBA/SOA proposal to add two steps to the longevity schedule: 8% after 20 years and 10% after 24 years of service with the Borough. The Borough asserts that if the PBA/SOA proposal is awarded, on January 1, 2000, three patrolmen and six superior officers would immediately receive longevity increases with two patrolmen and four superior officers receiving 4% increases, with the other patrolmen/officers receiving a 2% increase. Additionally, during the term of the Agreement one officer in 2001 and one officer in 2002 would receive an additional 2% increase. The Borough calculates the prorated additional cost of longevity as follows:

2000

1 officer (@ 2% increase for 10 months:	\$1,057 (\$1,269)
2 officers @ 4% increase for 7 months:	\$2,961 (\$5,076)
3 sergeants @ 4% increase for 9 months/ 5 months:	\$5,594 (\$8,757)
1 lieutenant @ 4% increase for 12 months:	\$3,299 (\$3,299)
2 lieutenants @ 2% increase for 9 months/5 months:	\$1,924 (\$3,299)

2001

1 lieutenant @ 2% increase for 9 months:	\$1,299 (\$1,732)
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2002

1 lieutenant @ 2% increase for 5 months:	\$758 (\$1,820)
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The Borough calculates the total cost of this longevity proposal as \$14,835 for 2000 which is equivalent to an additional .56% increase in 2000.

The Borough is opposed to the PBA/SOA proposal for out-of-title pay wherein any officer, acting in the capacity of a supervisory position, shall be paid at the higher rank's base rate of pay for all time so worked. The Borough argues that since there is no further explanation of the demand, it is inconceivable to calculate the exact amount that would be incurred by the Borough.

The Borough points out that the award by Arbitrator Scheinman for the previous CBA (1997-1999) called for a pay raise of two and one-quarter (2¼%) percent, effective July 1, 1999. Since this was not a full year raise, there is a pay raise carryover in calendar year 2000, which has an impact upon this arbitration. The Borough contends that I cannot ignore the cost impact of this "split raise" and its cost impact upon the Borough in the 2000 budget. The Borough calculates the "rollover" effect on the 2000 calendar year as 1.125% which is \$33,202.

The Borough calculates the total economic cost of the PBA/SOA proposal as more than 24% over three years.

The Borough is opposed to the PBA/SOA proposal to establish a rate of base pay for a Captain at 145% of the top patrol officer rate (Class 'A'). The Borough contends that this economic item was introduced by the PBA/SOA for the first time at the arbitration hearing which the Borough strenuously objected to. The Borough contends that the PBA/SOA was aware a Lieutenant was an acting Captain and another Lieutenant was serving as the acting Chief. Yet, the PBA/SOA never raised this issue during negotiations or at the time of the filing of the Petition to Initiate Interest Arbitration. The Borough argues that PERC case law provides that if an item is not listed as an issue for the interest arbitrator to consider, the

interest arbitrator may not consider such items during the arbitration process without the consent of the other party, which was not given here. The Borough further argues that even the broadest reading of the phrase “salary increase” in the interest arbitration petition would not give a party the impression that a salary guide and related matters for the specific rank of Police Captain were encompassed. The Borough asserts that there is no basis in law or factual evidence for this issue to be before me and any award containing such will be objected to by the Borough to the fullest extent of the law.

The Borough is opposed to the PBA/SOA proposal to include minor discipline in the grievance procedure. This proposal places minor discipline under the grievance procedure, including binding grievance arbitration. Minor discipline is to be defined as those circumstances where the potential penalty is five (5) days suspension, or equivalent fine or any lesser penalty. This Borough argues that this is a significant infringement on managerial rights as to imposing discipline of this type, which before was clearly a Borough prerogative. The Borough contends that the PBA/SOA offered no testimony nor any evidence to support this change and that such a change would impose a greater duty on the Borough and the Police Chief.

The Borough contends that its comparables are much more realistic than those claimed by the PBA/SOA. For example, the Borough rejects comparisons with communities such as Watchung and Warren, both of which have per capita income which far exceeds the per capita income, the median household income and median family income of North Plainfield. Furthermore, the Borough asserts that it has many more persons living below the poverty level than in any of above municipalities.

The Borough contends that private sector comparisons favor the proposals of the Borough. In 1998 and 1999, the average all-industries median wage increase was 3.2% per

year for three-year contracts. The Borough asserts that its proposal, of 10.25% over three years, is clearly more in line with the above private sector comparison than the 15% proposal of the Associations over the same period of time. The Borough contends that private sector settlements in New Jersey are well within its proposed salary increases. The Borough cites numerous settlements within the private sector which call for pay raises which average between 2.8% and 3.4% which is well within the Borough's salary proposal. Therefore, on the issue of private sector comparison, as borne out by the data, the Borough asserts that its salary proposal is the most reasonable.

The Borough asserts that, despite generally good economic conditions, it has been faced with, and continues to struggle with, economic burdens. Despite taking extraordinary measures over the last few years, the Borough has still reduced municipal employees' jobs (both by attrition and layoff, coupled with minor privatization), sacrificed programs and services and has only just recently (during the last CBA) stabilized its municipal tax rate. In spite of these burdens, the only municipal department that has remained unscathed is the police department. Since January 1, 1997, the Borough has promoted three officers to either a sergeant's rank or higher and hired eight new patrolmen. However, the net valuation taxable in the Borough has dropped from \$930,535,444 in 1992 to \$815,249,500, a 12.39% decrease. Taxes have risen from \$2.45 to \$3.28 per \$100 ratables since 1992. Thus, a home, assessed at the 1992 average assessment of \$130,000 paid \$3,185 in taxes in 1992. That same home is now paying \$4,238 in taxes, a \$1,053 actual increase in taxes or a 33.06% increase. The municipal portion of the tax rate has increased from \$807.30 in 1992 to \$1150.50 in 2000, a \$343.20 increase in taxes or a 42.51% increase.

The municipal tax rate has increased since 1992 at an average of 4.72%. In 1998, the municipal tax rate was stabilized due to a large taxpayer loss in a State tax court decision.

In 1999 and 2000, the stabilization continued after significant cuts in both salaries and other expenses within the Borough leaving only enough money to fund the Borough's current salary proposal. The Borough asserts that the following financial/budgetary data further exemplifies the budgetary problems it faces:

- (1) In spite of numerous one-time revenue sources (including the \$400,000 one-time revenue from increased tax assessments on the Borough's largest taxpayer – Vornado in 1998), the Borough's 1999 municipal budget showed that current taxes used to support the budget amounted to 61.0% of the total revenue base -- an alarming result.
- (2) The 1999 municipal budget showed that Police Department S&W account represents 33% of the total (S&W and OE) budget within "CAP" for 1999 and that the Borough will have no "CAP banking" in the foreseeable future;
- (3) Furthermore, the Police Department's entire budget in 1999 represents 28% of the total Borough budget. The next highest department (Fire) only represents 15% of the total Borough budget. In fact, the Police Department salary and wage budget in 1999 within "CAP" went up more than \$175,000 (a 6% increase from 1998 alone) while every other department's budget either went down or had very little increase -- only the Police Department continues to reap the benefits.
- (4) Costs for PFRS and related costs have averaged a 16.2% per year increase over the last five (5) years. As the salaries of the members of the Police Department have risen, said costs will also rise having a further impact on the Borough's present and future budgets. In addition, while PFRS contributions are non-existent in this budget year (2000), there is no guarantee that such will continue in the near or long-term future; and,
- (5) Costs have increased over a whole range of issues/subjects and there is no indication whatsoever that these costs will stabilize in the near future. In addition, while many of the comparable municipalities' municipal tax rates represent less than 25% of the total tax dollar, the Borough's municipal tax rate has always represented 25% or more (27% in 2000) of the total tax impact and, based on the lower average assessment of homes in North Plainfield than anywhere else in Somerset County, that burden becomes more oppressive sooner. In spite of all of this, which produces a double-edged response, the Borough's tax collection rate is one of the highest statewide, averaging approximately 97% over the past eight (8) years. If this collection rate were to fall, which is conceivably possible if economic times turn or people are unable to make payments in a timely fashion, then additional revenues would be lost. It is almost impossible to make any further headway in terms of taxes collected at this tax collection rate and the downside is clearly apparent and much more eminently possible.

The Borough asserts that its tax rate is higher than any other municipality, both in Somerset County and amongst other comparable municipalities. However, the Borough maintains that it has still done its best to keep the Police Department at a stable level. The Borough points out that the voters defeated several bond issues for school construction/renovation, even though the schools were in desperate need of repair/replacement and did not pass the necessary bond issues until this year. The Borough projects that school taxes will now go up again based on the \$17,000,000 bond referendum and the tax reductions of the last two years. These tax reductions were based on additional school monies from the State which the Borough suggests will become a thing of the past. School taxes represent almost 60% of the total tax levy. Such increases have become a significant burden on the Borough's taxpayers since North Plainfield has a large population of retirees on fixed incomes and the vast remainder of the population is best described as "working middle class". The Borough asserts that it will be forced to raise taxes and/or cut appropriations in the municipal budget (thus impacting services) in order to fund the PBA/SOA salary proposals.

The Borough submits that its proposals are clearly more reasonable when the interests and welfare of the public are considered in that they seek to maintain current taxation levels without having a major impact on the delivery of services. The Borough has budgeted its 2000 offer, however, the Borough contends that any amount in excess will lead to either further budget cuts and/or tax increases.

The Borough asserts that the 2000 municipal budget is exceedingly tight with a larger dependency on municipal taxes for revenues than ever before. The Borough continues to lose State aid, its construction revenues have dropped and the sewer utility surplus has dropped dramatically. The Borough acknowledges that while the public has an interest in

maintaining a properly staffed and educated police, it cannot come at an unlimited cost. The Police Department has grown by six men in the last five years, while every other department in the Borough has seen consolidation of positions and hiring freezes.

The Borough asserts that the Chief has had no problem in recruiting qualified applicants as evidenced by his recent success in filling vacancies in 1999 and 2000. There is never a problem finding qualified applicants for the Police Department and the Chief had no problem in filling the vacant slots that existed in 1999 and 2000. The Borough points out that the total number of police officers has increased since the commencement of the last CBA in January 1997.

The Borough submits that the average base salary of all bargaining unit members is \$60,368 with the average length of service approximately 11 years. The total average salary including longevity is \$62,783 per year. The Borough asserts that members of PBA/SOA bargaining units compare favorably with other departments as follows:

1. Holidays are better or the same than all but one of the cited comparables.
2. Longevity is lacking at the top but is the same or better than all other comparable at the appropriate levels.
3. Vacation benefits provide more vacation requiring less years of service than any other comparable municipality.
4. Health Insurance, except for vision, is comparable to other municipalities.
5. Clothing allowance is better than all other comparables.
6. College credits are better than all other comparables and is provided with no cap.
7. Overtime is comparable to all other municipalities.
8. Sick leave is comparable while terminal is better than all other comparables.

The Borough contends that the total cost of the PBA/SOA economic proposal exceeds the Borough's proposal and budget for the same period in question. The Borough contends that these costs are cumulative and without CAP banking capabilities, the Borough is unable to cover the cost of the PBA/SOA economic proposal for this period. The Borough contends that it has no lawful authority to exceed the "CAP" rate and, because of such, will have no CAP bank ability during the term of this contract. Further, there is no guarantee, based on the present economic climate, that the Borough Council will allow the budget to exceed the mandated State "CAP" in 2001, projected at 2%. The Borough asserts that it cannot spend what it does not have nor can it spend due to statutory constraints. Numerous exemptions to the "CAP" law no longer exist and a municipality, such as North Plainfield, is caught in the bind of decreasing revenues, increasing costs and the tightening "CAP" increase available in 1999 is only \$134,351 for the entire municipal budget. Thus, the Borough asserts that it has approximately \$300,000 over the next two years to pay for all salary increases to employees and increases in the costs of operating government.

During the period of 1993-1999, the cost of living for all urban wage earners in the New York-Northern New Jersey areas has gone up approximately 18.5% (or an average of 2.6% per year). During the same period, the PBA/SOA has received pay increases of 32% (or an average of 4.6% per year). The Borough contends that the PBA/SOA salary proposals are not justified in light of the current and/or previous CPI figures. Thus, as with all of the other factors, the Borough asserts that its economic proposal is clearly the more reasoned and reasonable one for the arbitrator to consider.

The Borough, in support of its position on the continuity and stability of employment factor, points out that the average length of service for the 43 unit members is eleven years, with eight unit members having over twenty years of service in the Department. No

Borough police officer has ever been laid off and/or reduced in rank for economic reasons. The Borough contends that it had absolutely no problem in recruiting candidates for the eight positions it filled between April 1996 and April 2000 and there is a current pool of available manpower for any future hirings. No police officer has left the Department to seek employment with any other Police Department in the State. There are seven officers who are eligible for retirement with twenty-five years of service and there is an additional officer who is eligible to retire with twenty years of service. The Borough asserts that the current private and public sector job market makes the Borough's salary proposal more than sufficient to maintain continuity and stability of employment within the North Plainfield Police Department and that no such "guarantee" exists if the PBA/SOA salary proposals are awarded.

The Borough summarized its arguments regarding the statutory factors, N.J.S.A. 34:13A-16g (1) through (8) as follows:

1. As to the interests and the welfare of the public, the Borough has shown the significant limitations placed upon it by the provisions of N.J.S.A. 40A:4-45.1 et. seq., and the sheer economics of scale that make its proposal much more reasonable and fair.
2. On the comparability issue, the Borough contends that it has shown, under the provisions of N.J.A.C. 19:16-5.14(d) that its comparables meet the criteria more favorably than the Associations'. Also, a review of these comparables clearly shows the relative strength and standing of the Borough's officers as compared to other officers who work in more affluent municipalities. The Borough asserts that its proposal is comparable to private sector employment, public sector employment and public sector employment in the same or comparable jurisdictions.
3. In terms of overall compensation, the senior patrolman (the most prevalent group in this arbitration) as of January 1, 2000 (with a 3.25% wage increase as proposed by the Borough) shall receive the following pay and benefits:

Base salary	\$62,399
Longevity (4%)	<u>2,496</u>

TOTAL	<u>\$64,895</u>
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Holidays: 14
Vacations: 24 work days
Fully paid hospital, medical and dental insurance.
Clothing Allowance: \$1,050
Overtime in excess of 8 hours/day/40 hours/week.
Call in: 2 hours of O/T plus 1 comp time hour at O/T for every 4 hours worked.
Sick Leave: 15 days/year which is cumulative.
Terminal Leave: 120 days full pay plus accrued compensatory time.

4. The Borough asserts that there are no stipulations of the parties.
5. As to the lawful authority of the parties, the Borough contends that it has met all of the requirements necessary under this factor throughout this proceeding and the PBA/SOA has not.
6. The various and sundry exhibits submitted by the Borough, including but not limited to, budget documents, financial statements and tax records clearly highlight, not only the precarious financial conditions of the Borough in the past, present and future, but also the significant impact that the awarding of the PBA/SOA demands would have on the Borough, its taxpayers and residents.
7. The Borough asserts that the cost of living factor is clearly in favor of its salary proposal. Including the Borough's 3.25% proposal for 2000, the Borough has paid police officers approximately 5½% more than the CPI over the last four years. Thus, the CPI component clearly favors the Borough's salary proposal.
8. Finally, based on all of the evidence, both intrinsic and explicit, the Borough asserts that its proposals will guarantee the continuation and stability of employment for all members of the North Plainfield Police Department during the proposed contract terms; the PBA/SOA cannot guarantee the same.

The Borough is also seeking three (3) minor language items, as well as the "opt-out"/"opt-down" provision for the insurances provided by the Borough. None of these proposals impacts and/or harms the members of each of the bargaining units. The clerical union has already accepted the language proposed as to "opt-out"/"opt-down" and indemnity

language for dues deductions. The language as to the legal defense addresses the concept of “prevailing rate” in line with existing New Jersey case law and puts an end once and for all to the question of the sliding attorney’s rate scale. Finally, the Borough asserts that its management rights clause proposal is “boilerplate” and merely establishes the Borough’s “inherent managerial prerogative.” The Borough seeks rejection of both of the PBA/SOA noneconomic proposals since: (1) they have not submitted evidence demonstrating the necessity of either or both of the changes sought; and, (2) the proposals as to both issues are non-mandatory subjects of bargaining and a clear infringement on management’s rights to schedule and assign personnel.

In conclusion, the Borough maintains it has met all of the required factors, criteria and conditions necessary to support its overall proposals, both economic and noneconomic, and respectfully requests the Interest Arbitrator to issue a conventional award supporting its proposals.

Discussion and Analysis

The arbitrator is required to decide a dispute based on a reasonable determination of the issues, giving due weight to the statutory criteria which are deemed relevant. Each criterion must be considered and those deemed relevant must be explained. The arbitrator is also required to provide an explanation as to why any criterion is deemed not to be relevant.

I have carefully considered the evidence which has been presented as well as the arguments of the parties. I have examined the evidence in light of the statutory criteria. Each criterion has been found to be relevant, although the weight given to different factors varies, as discussed below. I have discussed the weight I have given to each factor. I have also determined the total net economic annual changes for each year of the agreement in concluding that those changes are reasonable under the statutory criteria.

I shall set forth the award at this time so that, in discussing the evidence and applying the statutory criteria, the terms of the award will be the reference point. This will allow the reader to follow the analysis which led to the award. The parties related the evidence and its arguments regarding the criteria primarily to its offer and to that of the other party. I shall not do so because, in this conventional proceeding, I have the authority and responsibility to fashion a conventional arbitration award unlike the prior statute which required an arbitrator to select the final offer of one party or the other on all economic issues as a package and then to justify that selection. A governing principle that is traditionally applied in the consideration of wages, hours and conditions of employment is that a party seeking a change in an existing term or condition of employment bears the burden of demonstrating a need for such change. This principle shall also be applied to new proposals.

The parties agree that the duration of the new three-year agreement shall be January 1, 2000 to December 31, 2002. I accept this agreement as a stipulation as to the term of the new agreement and shall award a three-year agreement.

I shall award an across-the-board salary increase of 2% retroactive to January 1, 2000, an additional 2% across-the-board salary increase retroactive to July 1, 2000, an additional 4% across-the-board salary increase effective January 1, 2001, and an additional 4% across-the-board salary increase effective January 1, 2002. These percentage salary increases are across-the-board at each and every step on the salary schedule.

I shall award a modification in the PBA salary schedule by adding another step between Class 'D' and Class 'E' which shall be applicable to all police officers hired after the date of this Award.

I shall award a Detective Differential of 3% to be effective January 1, 2001.

I shall award a modification to Article XIX, §1 and §2 to provide for an "opt-out" option to be effective July 1, 2001.

I shall award a modification of the Grievance Procedure by reducing the maximum number of days to file a grievance from ninety (90) days to thirty (30) calendar days. This change shall be effective July 1, 2001. I shall also award a modification by adding "minor discipline" to the Grievance Procedure.

I shall award a modification in Article XXIV, §3 and Article XXVIII.

I shall deny the PBA/SOA "out-of-title work" proposal.

I shall deny the PBA/SOA longevity proposals.

I shall deny the PBA/SOA proposal to create a rank differential for Captain.

I shall deny the Borough's vacation proposals.

I shall deny the Borough's legal defense proposal.

I shall deny the Borough's attendance bonus proposal.

I have determined that the 1999 base salary that the 2000 salary increases will be applied to is \$2,656,192 for forty-four police officers.¹ Both the PBA/SOA and the Borough salary proposals provide that their respective percentage increases are applied to all steps of the salary schedule in each of the three years. The Borough's proposal to add another step between Class 'D' and Class 'E' which I have awarded, does not affect the annual increases for the current employees since the additional step is applicable to all police officers hired after the date of this Award. While the Borough has discussed the cost of step increases (increments) in its brief, neither party has included the incremental costs in their respective salary offers. The Borough calculated the cost of the increments to be 1.67% in 2001 and 3.73% in 2002. The record indicates that the 1999 salary increase included a 2.25% increase to be effective July 1, 1998. This provides for a 1.125% "rollover" cost in 2000. The cost of the 1.125% "rollover" is \$33,202 bringing the total base for calculation of salary increases to \$2,689,394.²

The Borough's proposed salary increase in 2000 is 3.25% across-the-board to be effective January 1, 2000. This is equivalent to \$87,405 on the salary base. The cost of the 1.125% "rollover" is \$33,202 for a total cost of \$120,607. The PBA/SOA proposed 5% across-the-board salary increase in 2000 effective January 1, 2000 costs \$134,470. The cost

¹This is the figure provided by the Borough. (See Borough brief at page 27.) The PBA/SOA, in its brief, calculates the base salary to be \$2,716,553. (See PBA/SOA brief at page 27.) The PBA/SOA base is higher because the PBA/SOA calculations assume that all patrol officers are at the top step of the salary schedule.

²The 1.125% roll-over cost is included in the 2000 base salary for purposes of calculating the cost of the salary increases for 2000, 2001 and 2002. The cost of the 1.125% "rollover" is \$33,202 bringing the total base for calculation of salary increases to \$2,689,394. I have calculated the "rollover" as "new money" in 2000. The calculations of the PBA/SOA and Borough proposals in 2000, 2001 and 2002 are calculated on this new base. The cost of the PBA/SOA salary proposal is \$134,470 in 2000, \$141,193 in 2001 and \$148,253 in 2002. The cost of the Borough salary proposal is \$87,405 in 2000, \$97,932 in 2001 and \$100,590 in 2002. The cost of my award is \$108,652 in 2000, \$111,922 in 2001 and \$116,399 in 2002. These calculations do not take into account any changes in the table of organization brought about by retirements or additional hirings.

of the 1.125% “rollover” is \$33,202 for a total cost of \$167,671. I have awarded a 2% increase to be effective January 1, 2000. This costs \$53,788 which brings the base to \$2,743,181. I have awarded a 2% increase to be effective July 1, 2000. This increases the base by \$54,864 and costs \$27,432 in 2000 (with a rollover of \$27,432 in 2001) for a total cost of \$82,296 in 2000. Factoring in the 1.125% “rollover” of \$33,202 brings the total cost in “new money” to \$115,498 in 2000. The base salary for 2000 is \$2,798,045.

The Borough’s proposed salary increase in 2001 is 3.5% across-the-board to be effective January 1, 2001. This costs \$97,932. The PBA/SOA proposed salary increase in 2001 is 5% across-the-board to be effective January 1, 2001. This costs \$141,193. I have awarded a 4% increase to be effective January 1, 2001. This costs \$111,922 bringing the base to \$2,909,967.

The Borough’s proposed salary increase in 2002 is 3.5% across-the-board to be effective January 1, 2002. This costs \$100,590. The PBA/SOA proposed salary increase in 2002 is 5% across-the-board to be effective January 1, 2001. This costs \$148,253. I have awarded a 4% increase to be effective January 1, 2002. This costs \$116,399 bringing the base to \$3,026,366.

I shall now discuss the evidence and the parties’ arguments in relation to the statutory criteria.

The interests and welfare of the public

The New Jersey Supreme Court in Hillsdale determined that the interests and welfare of the public must always be considered in the rendering of an interest arbitration award and that an award which failed to take this into account might be deficient. The amended statute specifically requires the arbitrator to consider the CAP law in connection with this factor. I have considered and fully discussed the relevance of the CAP law in the section on Lawful

Authority but at the outset it is sufficient to state that the award will not cause the Borough to exceed its authority under the CAP law. The award can be funded without the Borough exceeding its spending authority.

The interests and welfare of the public require the arbitrator to balance a number of considerations. These considerations traditionally include the Employer's desire to provide the appropriate level of governmental services and to provide those services in the most cost effective way, taking into account the impact of these costs on the tax rate. On the other hand, the interests and welfare of the public requires fairness to employees to maintain labor harmony and high morale and to provide adequate compensation levels in order to attract and retain the most qualified employees. It is axiomatic that reasonable levels of compensation and good working conditions contribute to a productive and efficient work force and to the absence of labor unrest. The work of a Police Officer is undeniably and inherently dangerous. It is stressful work and is clearly subject to definite risks. Police Officers are certainly aware of this condition of employment. This is a given which is usually balanced by the appropriate level of increases in compensation to be received by a Police Officer from one contract to the next.

I agree with the analysis provided by Arbitrator Jeffrey B. Tener in a recent interest arbitration award in Cliffside Park. Arbitrator Tener's analysis:

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

(In the Matter of the Borough of Cliffside Park and PBA Local 96, PERC Docket No. IA-98-91-14, page 45.)

I have structured the award with a "split" raise salary increase in 2000 in order to reduce the cost of the impact of the "rollover" effect of the 1999 salary increase of 2.25% which was effective July 1, 1999. The 1999 "rollover" is difficult to assess. The arbitrator awarded a 4.5% increase in 1999 to be implemented by a "split" raise of 2.25% effective January 1, 1999 and 2.25% effective July 1, 1999. This reduced the actual cost to the Borough in 1999 to 3.37%. This was a benefit to the Borough in 1999. The Borough cannot now claim the "rollover" as a salary increase in 2000. This is more properly considered as a deferral of the 1999 salary increase to be paid out in 2000. However, I have considered the "rollover" as a cost to the Borough and have structured the "split" raise in 2000 in order to reduce the cost of the awarded salary rate increase to the Borough.

I have also granted the Borough's proposal to add another salary step between Class 'D' and Class 'E'. This step will generate savings of more than \$6,000 for each new hire. I note that the Scheinman award provided additional relief to the Borough by reducing the probationary rate for 1998 from \$30,741 to \$25,000, a significant savings. The savings in 1999 is \$7,823 (\$25,000 vs. \$32,823). This was a significant savings to the Borough for all police officers hired since September 1, 1998. The additional step between Class 'D' and 'E' will generate additional savings to the Borough for all police officers hired after the effective date of this award. These savings, commonly referred to as "breakage", will reduce the Borough's overall cumulative costs for new police officer salaries. Obviously, those future savings will provide the Borough with an enhanced ability to fund the overall salary costs of all police officers. The Borough, in its brief, noted that, as of December 31, 1999, there were seven officers with twenty-five years of service and one officer with twenty years of service, all of whom are eligible to retire. The replacement of these senior officers with recruits receiving less than 50% of the retired officers' salary will provide significant future savings to the Borough.

The evidence in the record indicates that the Borough Police Department is an active force with a high level of activity including almost every type of crime, from murder to robbery, assault and numerous property crimes as was demonstrated by PBA Chart 1. In 1998, there were 28,352 calls for police service. In addition, there were 4,815 traffic summonses issued in the most recent complete year.

The record also includes numerous new activities and improved services offered to the public through the North Plainfield Police Department in the last three years. These new services and equipment include, but are not limited to, the following:

- Expanded D.A.R.E. with two Police Officers assigned part time
- Improved and expanded community policing
- Public speaking services through the Police Department on various areas of safety and criminal issues.
- Mobile Data Terminals in the vehicles
- Bicycle Inspections for the youth
- Computerized dispatch
- Communications Technology Officer, one new officer so assigned to meet changing needs
- Expanded SWAT
- Defibrillators in the patrol cars
- “Good Morning Program” wherein certain senior citizens must call in each morning to say that they are alright or an officer will call their residence and if no answer is received a car will be sent.
- Weekly news article in the local paper

The record indicates that increased training has been a recent priority within the department and many new courses are offered and some are taught by North Plainfield officers. Several North Plainfield Officers are Methods of Instruction (MOI) certified.

By all accounts, the North Plainfield police department has a well-trained, productive and professional department police force.

I have determined that salary increases of 4% (2/2 "split") in 2000, and 4% in 2001 and 2002 are more consistent with the interests and welfare of the public than either the Borough or PBA/SOA proposals. These increases, as discussed in other areas of this award, are consistent with other salary increases received within Somerset County and throughout the State. The split raise application of the salary increase in 2000 gives the Borough a smaller payout and balances the need of the Borough to maintain a stable level of governmental services and at the same time, it provides the PBA/SOA with an increase in base salary that is fair and reasonable.

I have also granted the Borough's proposal to add another salary step between Class 'D' and Class 'E'. This step generates savings of more than \$6,000 for each new hire. When this additional step is combined with the relief provided in the Scheinman award, the Borough will achieve significant savings through "breakage" thereby reducing its overall cumulative costs for new police officers. As previously stated, these savings generated by the replacement of up to eight senior officers will provide the Borough with an enhanced ability to fund the overall salary costs of all police officers.

I find that neither the Borough salary proposal nor the PBA/SOA salary proposal satisfies the requirements of the interests and welfare of the public. The PBA/SOA salary proposal is excessive when compared with other settlements and awards within Somerset County and throughout the State. The PBA/SOA proposed salary increases have the potential to force the Borough to reduce services and staffing levels. Conversely, the Borough's proposal is less than the average salary increases within Somerset County and throughout the State. The Borough's proposed salary increases have the potential to undermine morale, labor harmony and the adequate compensation levels needed to attract and retain the most qualified police officers.

As previously stated, a reasonable level of compensation is a necessary ingredient in maintaining a productive work force with requisite high morale. I am required to balance the competing and diverse needs of the Borough and the PBA/SOA in order to satisfy the interests and welfare of the public. I believe that the awarded salary increases achieve that balance and are consistent with the public interest.

I shall now discuss certain other open issues with respect to the interests and welfare of the public. I have granted the Borough's proposed modification to Article XIX, §1 and §2 to provide for an "opt-out" option to be effective July 1, 2001. This is a voluntary option which, if exercised, can be best described as a "win/win" for the Borough and any officer who decides to opt out with both the Borough and the individual officer receiving a financial benefit. This is consistent with the requirements of this criterion.

I shall award a modification of the Grievance Procedure by reducing the maximum number of days to file a grievance to thirty (30) calendar days. I shall also award a second modification by adding "minor discipline" to the Grievance Procedure. These changes shall be effective July 1, 2001. These changes are consistent with the major purpose of a grievance procedure which is to provide for an expeditious and cost effective resolution of grievances and to process such grievances within a reasonable period of time following their occurrence. This is consistent with the requirements of this criterion.

I shall award a modification in Article XXIV, §3 and Article XXVIII. This essentially moves contractual language relating to personnel files from the article titled "Evaluation Procedures" to the article titled "Personnel Files". This is consistent with the requirements of this criterion.

I shall deny the PBA/SOA proposal to create a rank differential for Captain. The current CBA provides a rank differential for Sergeant and Lieutenant but there is no such reference for the rank of Captain. For reasons discussed under other criteria, I have rejected

the PBA/SOA request for pay for out-of-title work. The record indicates that a Lieutenant was serving as an Acting Captain and that no bargaining unit members are currently serving permanently in the rank of Captain. If an individual was serving permanently as a Captain, then the issue would be properly before me since the recognition clause of the CBA clearly provides that the SOA is “the exclusive representative and bargaining agent for all superior officers in the ranks of Sergeant and above excluding the Chief of Police.” Therefore, if the rank of Captain has been permanently established since the close of the hearing, the parties are obligated to negotiate a rate of pay for such rank. I shall retain jurisdiction in the event the parties do not mutually agree on a rate of pay for the rank of Captain.

I shall deny the Borough’s vacation proposals. There is no basis on the record to create a permanent two-tier level of vacation benefits for police officers. This has the potential to undermine the morale of the police force by providing different permanent vacation benefits for police officers who are called upon to perform the same work. This would be inconsistent with the requirements of this criterion.

I shall deny the Borough’s legal defense proposal. There is simply insufficient evidence in the record to warrant a change in the current language. The Borough stated, in its brief, that it desired to cap these amounts as its obligations, as permitted under Valerius v. City of Newark, 84 N.J. 591 (1980) and Critchley and Roche v. City of Newark, 206 N.J. Super. 32 (App. Div. 1985). While I have denied the Borough’s requested change, I strongly recommend that the parties review the current contract language to insure its compliance with current statutory requirements.

I shall deny the Borough’s attendance bonus proposal. There is insufficient evidence in the record to justify any modification at this time.

This completes my discussion and analysis of the *interests and welfare of the public* factor. I shall now proceed to a discussion and analysis of the other factors.

Comparison of The Wages, Salaries, Hours and Conditions of Employment

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

The first part, private sector comparisons, calls for comparisons with private sector employees performing similar services as well as private employees generally. As both parties acknowledged, there are no easily identified private sector police officers who perform services similar to those performed by Borough police officers. I find this aspect of the comparison to be of no relevance.

The second part of this factor requires a comparison with other employees generally in private employment. National wage increases in the private sector fall significantly below the 5.00% three-year average increase demanded by the PBA. The Borough cited statistics showing all-industries average median wage increases as 3.2% in both 1998 and 1999. This wage data supports the Borough's assertion that these increases fall 2.0% per year below the PBA's annual increases and are consistent with the Borough's 3.25% wage offer for 2000. This sub-factor favors the Borough's first-year wage proposal. My salary award in 2000 is somewhat higher than the private sector wage data submitted by the Borough however the cost of my award in 2000 is less than the cost of the Borough's in providing for a 3% pay out in calendar-year 2000.

Neither party submitted data on private sector wage settlements in 2000 and 2001. There is a trend toward higher salary increases in 2000 and 2001 in the private sector which are consistent with the awarded salary increases in 2000 and 2001. The three-year salary

increases awarded may be slightly higher than the average private sector salary increases over the same three-year period.

The only other evidence on private sector employees in general is a report of private sector wage changes compiled by the New Jersey Department of Labor ("NJ DOL") for the Public Employment Relations Commission in accordance with N.J.S.A. 34:13A-16-6. This survey is provided to members of the Special Panel of Interest Arbitrators by the Commission. The last survey issued by PERC in July 2000 shows that the percentage change from 1997 to 1998 in private sector wages in New Jersey was 5.7%. The figure for Somerset County was 9.7%. The corresponding figures for State and Local government annual wage increases are 3.4% and 3.5% respectively. This factor appears to support the PBA's salary proposal but this is only one of the factors to be considered under comparisons and no one factor is controlling or dispositive. All of the sub-factors must be considered as a whole in making a final determination.

The next comparison is with public employees in general. This has two parts: comparisons with public employees in the same jurisdiction and comparisons with public employees in comparable jurisdictions.

The first comparison is with employees in North Plainfield. Evidence in the record indicates that the Borough negotiated wage increases of 3% for 1999, 2% in 2000 and 3.5% in 2001 with its clerical unit for the period of January 1, 1999 - December 31, 2001. There is no salary data available for other Borough employees in 2002. This subfactor favors the Borough's salary proposal.

The next part of this comparison involves comparison with employees in comparable jurisdictions. The Borough submitted exhibits at the hearing comparing its salaries, longevity and clothing maintenance allowance with fifteen other Somerset County communities as follows:

Minimum Salaries - 2000

This salary data clearly demonstrates that North Plainfield has the lowest starting salary in the County. The minimum salaries for 2000 range from \$28,076 in Scotch Plains to \$46,324 in Bedminster. Applying the Borough's proposed 3.25% increase to the current \$25,000 minimum starting salary would bring the starting salary to \$25,813 in 2000.

Top Step Patrol Officer

This salary data shows top step patrol officer rates ranging from \$58,562 in Raritan to \$63,926 in Scotch Plains. This data shows five communities with a higher top step patrol officer rate and five communities with a lower top step patrol officer rate placing the North Plainfield officer in the middle of the group. The data for 2001 only includes five communities. There is no data for 2002.

Sergeants

The Borough data shows that the 1999 salary of \$69,500 is higher than twelve communities with only Bernardsville at \$70,462 and Bridgewater at \$70,770 having higher salaries for sergeants.

Lieutenants

The Borough data shows that the 1999 salary of \$78,566 is higher than all of the other eleven communities in the comparison.

Longevity

The longevity data shows seven communities with longevity benefits that are better than those provided by the Borough. The maximum longevity benefit in North Plainfield is 6% after 15 years. Only two other communities had longevity benefits equal to or less than the Borough's longevity schedule.

Clothing Maintenance Allowance

This data shows that the Borough's current \$725 clothing maintenance allowance is higher than five communities and lower than five communities.

The PBA/SOA submitted contracts at the hearing and exhibits in its brief comparing its salaries, longevity, detective allowance, out-of-title pay and clothing maintenance allowance with other Somerset County communities as follows:

PBA/SOA Chart 2 shows that eleven departments in Somerset County provide a Detective Allowance ranging from \$695 in Hillsborough to \$3,243 in Raritan. The average Detective Allowance in these eleven communities is \$1,764. The PBA/SOA is seeking a 3% Detective Allowance which is equal to \$1,812 on the current top step patrol rate.

PBA/SOA Chart 3 shows that the average maximum longevity benefit of the eight County departments receiving higher longevity benefits is 9.36% as compared to the current North Plainfield maximum of 6%. The PBA/SOA points out that its proposal to delete the current two-tier longevity provision from the CBA is essentially zero since it would not be effective for at least five years for any new hires.

The PBA/SOA is not seeking an increase in the current clothing maintenance allowance of \$725. However, it contends that the fact that the North Plainfield clothing allowance ranks significantly below average is relevant to a total compensation program comparison. PBA/SOA Chart 4 shows that the average clothing allowance is \$958.

The PBA/SOA maintains that the need for out-of-title work protection (higher pay for work in the higher rank) is an important issue. The record indicates that one bargaining unit member Lieutenant is acting as a captain without additional compensation. Those captain duties are being served on a full time basis. One bargaining unit member sergeant is currently acting as a lieutenant on a full time basis without receiving lieutenant's pay. The

PBA/SOA is seeking to have officers paid at the rate within the rank that they are working. The PBA/SOA argues that the Borough is receiving the benefit of these services as the officers working in the higher rated title are assuming the obligations and responsibilities of said higher title without additional compensation.

The PBA/SOA contends that the towns in evidence with the higher compensation programs are all moving forward as illustrated by Chart 5 below:

CHART 5			
Base Wage Increases Expressed in Percentage of Change			
	2000	2001	2002
WATCHUNG	4		
RARITAN	4		
BEDMINSTER	4		
BERNARDSVILLE	4		
BERNARDSVILLE SOA	4		
MONTGOMERY	4		
MOUNTAINSIDE	3.9	4	4
NORTH BRUNSWICK	4.75		
STATE POLICE	5		
MONTGOMERY SOA	4		
BERNARDS TWSP	4	4	
GREEN BROOK	4		
MANVILLE	4	4	
AVERAGES	4.127%	4%	4%

The PBA/SOA asserts that its wage increases are supported by the evidence on Chart 5 above. The PBA notes, in its brief, that neighboring Scotch Plains received a 4% increase for the year 2000 and has a longevity maximum of 10% at 23 years of service. The

PBA/SOA further notes that the base wage of the employer selected comparable Scotch Plains Police Officer is more than \$3,500 higher than the North Plainfield Police Officer. In addition, a Scotch Plains detective receives an annual stipend whereas the North Plainfield Officer receives no stipend.

The salary increases I have awarded will maintain the position of police officers at maximum with their counterparts in the communities cited by the Borough as well as those communities cited by the PBA. The salary data submitted by the PBA/SOA does not support its proposal seeking 5% increases in each of three years. This salary data is more consistent with my salary award for each of the three years of the new CBA. The data further indicate that the Borough's proposed salary increases are below those negotiated in a large majority of other County departments. Another factor favoring the awarding of 4% salary increases is my denial of any further increases in longevity benefits beyond the 6% maximum even though the data submitted by the PBA/SOA appears to support its position for a higher maximum after 20 and 25 years of service.

I have awarded a 3% Detective Allowance to be effective on January 1, 2001, the second year of the new CBA. This is clearly justified under the data submitted by the PBA/SOA and is consistent with allowances/stipends received in police departments throughout the State. I have increased the minimum salaries by the 4% annual wage increases. This will provide the Borough with the lowest starting salary in the County saving additional dollars for new hires in their first year of employment. All in all, my award will basically maintain the position of North Plainfield police officers with their colleagues in other departments within the County.

This is an appropriate section to discuss the Borough's proposal to add another step to the current salary schedule which permits an officer to reach maximum in the fifth year

of service. This is a common trend in negotiations throughout the State and is justified in this matter. I have added a step and equalized all of the steps leading to the maximum step. A comparison of contracts in evidence shows that Bridgewater has a ten-year maximum step for patrol officers; Fanwood has an eight-year maximum; Hillsborough has a six-year maximum; Franklin has an eight-year maximum; Bedminster has a six-year maximum; Bernardsville has a seven-year maximum; Montgomery has a six-year maximum; and Bernards has a six-year maximum. This modification does not affect any current officers.

The PBA/SOA submits that many of the contracts in evidence provide for out-of-title work provisions and that it is only seeking proper pay for the actual work performed. The PBA/SOA contends that the employer is enjoying a benefit of having lower rank officers work in higher rank positions without additional compensation. The PBA/SOA contends that this is a windfall which should not be permitted. The PBA/SOA points out that a review of most of the contracts in evidence indicates that this is the prevailing model found in most of those contracts.

The Borough is opposed to the PBA/SOA proposal to implement an out-of-title work provision. This criterion does not favor the awarding of out-of-title pay. The record shows that only five of the contracts in evidence provide for out-of-title pay or payment for work in a higher rank. These contract provisions also require that such payment is provided after a minimum number of days of consecutive service, i.e., the Green Brook contract which provides that "police officers who work in the capacity of Acting Sergeant or Watch Commander for fifteen (15) consecutive work days shall be paid at the Sergeant's rate of pay." Since less than a majority of the surveyed municipalities provide for some form of out-of-title payment and with no data to evaluate its impact, I must reject the PBA/SOA proposal on a comparative basis.

Overall compensation

I have previously discussed certain aspects of the overall compensation received by the officers in North Plainfield. Overall compensation levels in North Plainfield, in terms of benefits are reasonably similar to other comparable communities. All employees are covered by or receive social security, workers' compensation, disability and health care benefits. They are covered by State pension plans. The Police and Fire Retirement System, to which all North Plainfield police officers belong, is much richer than that available to employees in the Public Employees Retirement System, although employee contributions to PFSR are appreciably higher than those to PERS.

The overall compensation factor favors the granting of the Detective Allowance since it provides a benefit now enjoyed by a large majority of police departments within the County and throughout the State. This will create more uniformity and consistency in overall compensation for Detectives in the North Plainfield department.

The overall compensation factor favors the rejection of the Borough's proposed vacation schedule change since such change will create less uniformity and consistency in overall benefits in the North Plainfield department. This change, if granted, could lead to an undermining of employee morale.

As discussed above, the officers in North Plainfield enjoy a competitive salary with commensurate longevity benefits and fringe benefits.

Stipulations

The only substantive point of agreement between the parties in this proceeding is the term of agreement. Both parties have submitted 3 year packages for the Arbitrator's consideration.

Lawful Authority of the Employer

This factor, among other things, requires the arbitrator to consider the limitations imposed on the Employer by the CAP Law which, generally, limits the amount by which appropriations of counties and municipalities can be increased from one year to the next. This was intended to control the cost of government and to protect homeowners. The limitation applies to total appropriations and not to any single appropriation or line item.

This factor can be a significant factor in interest arbitration matters when the parties fair and final offers on salary are extreme or when a party is asserting that the CAP Law affects their ability to fund salary increases.

The Borough contends that the total cost of the PBA/SOA economic proposal exceeds the Borough's proposal and budget for the same period in question. The Borough contends that these costs are cumulative and without CAP banking capabilities, the Borough is unable to cover the cost of the PBA/SOA economic proposal for this period. The Borough's position would require extensive evaluation vis-a-vis the Cap if I had awarded the PBA/SOA salary proposal which is considerably higher than the salary package I have awarded.

As previously discussed, the cost of my award is 1.75% more than the Borough's proposed across-the-board salary increases of 3.25% in 2000 and 3.5% in 2001 and 2002. This is reduced by the split raise in 2000 which costs the Borough 3% in actual dollars in 2000 versus its own proposal which costs 3.25%. The second year (2001) is 1½% (5% vs. 3.5%) higher in actual costs (4% plus the 1% flow-through from the second 2% increase in 2000) and the third year (2002) is ½ of 1% higher in actual costs (4% vs. 3.5%). The actual difference in rate is ¾ of 1% in 2000 and ½ of 1% in 2001 and 2002. The rate increase difference in 2000 is \$21,247, \$13,990 in 2001 and \$15,809 in 2001. The actual difference

in "payout" is that the Borough's proposal costs $\frac{1}{4}$ of 1% more than the 2/2 "split" in 2000. The awarded salary increase in 2000 costs the Borough \$6,185 less than its own proposed 3.25% increase (\$87,404 vs. \$81,220). The difference in cost in 2001 is 1½% which is \$41,970. 1% of this difference is attributable to the flow through from the 2% raise effective July 1, 2000. This is more properly considered as a deferral of the 2000 salary increase to be paid out in 2001. The Borough enjoyed the benefit of not paying out the full value of the 4% rate increase in 2000. However, I have factored this into the Borough's costs in 2001 as part of my analysis of the Borough's CAP arguments.

The second year difference will be offset by the additional step and the flattening of the salary schedule which will provide considerable savings to the Borough through the savings or "breakage" it will realize thereby reducing the Borough's overall cumulative costs for new police officers. These future savings will provide the Borough with an enhanced ability to fund the overall salary costs of all police officers. The Borough noted that, as of December 31, 1999, there were seven officers with twenty-five years of service and one officer with twenty years of service, all of whom are eligible to retire. The replacement of these senior officers with recruits receiving less than 50% of the retired officers' salary (and longevity) will provide significant future savings to the Borough which will offset, if not exceed, the difference in payout between the Borough's proposal and the awarded salary schedule. This savings will continue into 2002 where the difference is $\frac{1}{2}$ of 1% which amounts to \$14,544. Thus, the salary rate difference between the awarded salary increases and the Borough's proposed salary increase is \$48,699 over three years. The total dollar difference is \$50,329 over three years which is an average of \$16,776 per year. These figures do not include the 3% Detective Differential or the savings to the Borough as a result of the insurance "opt-out" proposal. I find that the difference in the cost of awarded salary

increases and the Borough's proposed salary increases will be offset by the addition of a step to the salary schedule and the flattening of the steps to maximum for new hires resulting in significant cumulative savings to the Borough in 2001, 2002 and future years beyond the term of the new CBA.

The PBA is correct that the evidence shows that the Cap is not a problem in 2000. Under New Jersey Law said sum carries forward for future use for over the next two years in a "Cap Bank". In 1998 the cap bank grew to \$216,830.00 and has continued as the amount has nearly doubled to \$383,080.00 in 2000.

It is undisputed that the Borough has not experienced Cap problems with its budget. There is absolutely no evidence in the record to demonstrate that any aspect of this award will cause the Borough to approach the limits of its financial authority or to breach the constraints imposed by the CAP Law in funding the salary increases I have awarded.

**Financial Impact on the Governing Unit,
its Residents and Taxpayers**

The financial impact of my award will be minimal. Based on the evidence submitted, I cannot conclude that the award's financial impact will have an adverse effect on the governing unit, its residents and its taxpayers. I have reduced the impact of the salary increases by providing for a "split" raise in 2000 thereby reducing the cost impact. This was particularly important in 2000 when the Borough absorbed the cost of the July 1, 1999 salary increase of 2.25% resulting in an additional 1.125% payout in 2000. As I previously stated, this was a benefit to the Borough in 1998 and the Borough cannot now claim the "rollover" as a salary increase in 2000. This is more properly considered as a deferral of the 1999 salary increase to be paid out in 2000. I have considered the "rollover" as a cost to the Borough and have structured the "split" raises in 2000 in order to reduce the cost of the salary increases to the Borough. The impact of the salary increases on the Borough is further

reduced by awarding the Borough's proposal to add an additional step to the salary schedule. My previous discussion on the "breakage" and savings to the Borough by adding a step and the Borough's own recognition of a large number of potential retirees is applicable to this criterion since it will further reduce the impact of the awarded salary increases on the governing unit, its residents and taxpayers.

The total difference between the Borough's proposed salary increases and the awarded salary increase is \$50,329 over three years for an average of \$16,776 per year. This overall figure will be offset by the savings from the additional step on the salary schedule as well as the breakage from retirements.

Based on the evidence in the record, I conclude that the award's financial impact will not have an adverse effect on the governing unit, its residents and its taxpayers.

Cost of Living

The cost of living data shows that the Consumer Price Index ("CPI"), as published by the U.S. Department of Labor, Bureau of Labor Statistics ("BLS"), increased by 1.7% in 1999 and for the year ending in April of 2000 was increasing at an annual rate of 3%. The above figures are for the New York-Northeastern New Jersey area.

These figures demonstrate that the awarded salary increases will result in an increase in real earnings in 2000 however the most recent CPI figures for January of 2001 of 6/10 of 1%, if duplicated in later months, could erode any increases in real earnings.

Thus, I conclude that the awarded salary increases, while higher than the increase in the cost of living in 2000, provide for an acceptable increase in real earning that must be measured against the productivity gains and reduced labor costs achieved by the Borough through attrition.

Continuity and Stability of Employment

The salary award in this matter will not jeopardize either employment levels or other governmental services. The salary award will maintain a competitive salary and permit the Borough to retain and attract qualified police officers. The granting of the Borough's proposals regarding longevity, salary and health insurance would have jeopardized the ability of the Borough to both retain and attract qualified police officers. This would have eroded the fringe benefit and salary package making employment in North Plainfield less attractive than other communities which provide higher salaries, longevity benefits and full medical insurance.

The terms of this award will preserve the continuity and stability of employment and satisfy the requirements of this criterion.

I have carefully considered the evidentiary record in this matter including the testimony of the parties' witnesses and the numerous exhibits. I have calculated the cost of the award each year. I have also carefully considered the arguments advanced by the parties in support of their respective positions. I have considered the evidence and arguments in relation to the statutory criteria which I am bound to consider and apply. Each of the statutory criteria has been considered. I have found each factor to be relevant although I have accorded more weight to some factors than others.

Accordingly, I hereby issue the following award:

AWARD

1. The term of the new agreement shall be January 1, 2000 through December 31, 2002.
2. Salaries shall be increased across-the-board by 2% retroactive to January 1, 2000, by an additional 2% retroactive to July 1, 2000, by an additional 4% retroactive to January 1, 2001, and by an additional 4% effective January 1, 2002. The above increases shall be applied to the salary schedules identified as Appendix A and Appendix A-1 in the PBA collective bargaining agreement. The base salary for Sergeants and Lieutenants shall continue to be calculated in accordance with Article X of the SOA collective bargaining agreement. The following salary schedule shall be applicable to all police officers hired after the effective date of this award:

Appendix A-2

SALARIES

	<u>EFF.</u> <u>1/1/01</u>	<u>EFF.</u> <u>1/1/02</u>
<u>CLASS A</u>		
Over 72 mos. (maximum)	\$65,392	\$68,007
<u>CLASS B</u>		
60 to 72 months	\$59,405	\$61,781
<u>CLASS C</u>		
48 to 60 months	\$53,464	\$55,603
<u>CLASS D</u>		
36 to 48 months	\$47,524	\$49,425
<u>CLASS E</u>		
24 to 36 months	\$41,583	\$43,246
<u>CLASS F</u>		
12 to 24 months	\$35,643	\$37,069
Second six months	\$29,550	\$30,632
<u>ACADEMY</u>		
(1 st 6 mos. of employment)	\$27,050	\$28,132

3. A Detective Differential of 3% shall be implemented to be effective January 1, 2001.
4. Article XIX, §1 and §2 shall be modified to provide for an "opt-out" option to be effective July 1, 2001 as follows:

Article XIX, §2

Add another paragraph which shall read as follows:

"Effective July 1, 2001, employees covered by this Agreement shall be permitted to opt-out (or opt-down) of the Borough provided hospital and medical insurance in return for payment equal to thirty-three (33%) percent of the premium saved by the Borough. This is a voluntary option. Said employee shall also be given the option each year to opt back into the Borough's hospital and medical insurance plan, during the open enrollment period, except under exigent circumstances when there is a loss of coverage."

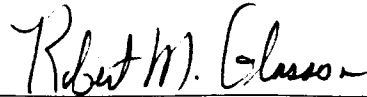
Article XIX, §2

Reword the last sentence of the second paragraph as follows:

"Said employee shall also be given the option each year to opt back into the Borough's dental insurance plan, during the open enrollment period, except under exigent circumstances when there is a loss of coverage."

5. The Grievance Procedure shall be modified by reducing the maximum number of days to file a grievance to thirty (30) calendar days and by the addition of minor discipline. Minor discipline shall be defined as those circumstances where the penalty is five (5) days of suspension, or equivalent fine, or any lesser penalty. These changes shall be effective July 1, 2001.
6. I shall award a modification in Article XXIV, §3 and Article XXVIII. This modification places paragraphs 2 and 4 of Article XXIV, §3 in Article XXVIII. The remainder of §3 is deleted.
7. All other proposals of the PBA/SOA and the Borough are rejected. Except as the parties shall otherwise mutually agree, all terms and conditions of employment of the 1997-99 predecessor agreements shall be continued in the 2000-2002 successor agreement.

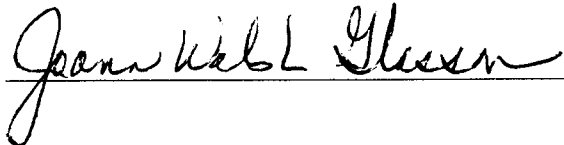
Dated: March 8, 2001
Pennington, NJ



Robert M. Glasson
Arbitrator

STATE OF NEW JERSEY) ss.:
COUNTY OF MERCER)

On this 8th day of March 2001, before me personally came and appeared ROBERT M. GLASSON, to me known and known by me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.



Joann Walsh Glasson
Notary Public
State of New Jersey
Commission Expires 12-11-01