
In the matter of the Compulsory Arbitration
concerning the negotiations impasse between
The Borough of Pompton Lakes, New Jersey
and

OPINION AND AWARD
of
Frank A. Mason, Arbitrator

Pompton Lakes PBA Local No. 161

Re: New Jersey Public Employment Relations

Commission Docket No. IA-2007-055

APPEARANCES

FOR THE BOROUGH Joseph J. Ragno, Jr., Esq., Struble Ragno
 John Murrio, Mayor
 Katie Cole, Councilwoman
 William Smith, Associate

FOR THE PBA Richard D. Loccke, Esq., Loccke Correia Schlager
 Linsky & Bukosky
 Derek Clark, Stephen Recca, Robert Sutton & Ronald
 Thomas, PBA members

PROCEDURAL BACKGROUND

The Borough of Pompton Lakes and Pompton Lakes PBA Local 161 are parties to a contract which was in effect from January 1, 2002 through December 31, 2006. That Agreement covered police employees of the Employer in all ranks except Chief of Police numbering 25 plus or minus employees. Negotiations for a successor agreement reached an impasse, which condition was in dispute, when the PERC was petitioned in February, 2006, to appoint an arbitrator to assist the parties in resolving the impasse. This arbitrator was appointed at the joint request of the parties on February 27, 2006 to hear this dispute and to render a determination of the issues in accordance with the provisions of P.L. 1995.

C.425. The dispute as to whether the negotiations had reached an impasse was never responded to by the PERC and the matter was scheduled for a hearing.

The first meeting of the parties was conducted on April 19, 2007. At this meeting the parties attempted to resolve their dispute with the arbitrator functioning as a mediator. Some progress was made in the pursuit of a settlement which proved to be elusive. Therefore a second mediation session was scheduled for May 30, 2007. Again, in spite of intensive efforts a full Agreement proved to be unattainable as critical elements of a new accord could not be achieved. The decision was to move to a formal hearing and as no alternate could be agreed upon the arbitrator was understood to proceed with conventional authority.

During this time the Employer petitioned the PERC to make a determination as to the negotiability of a proposal of the PBA with regard to modification of the contract language having to do with the work schedule. PERC, in Docket SN-2007-050, on May 31, 2007, issued its determination that the issue, as presented in the demands of the PBA, was mandatorily negotiable. As such that issue will be considered in this proceeding.

POSITIONS OF THE PARTIES

There was a general understanding reached as to the term of a new Agreement being four years; from January 1, 2007 through December 31, 2010 and that condition will be accepted as part of this award.

FINAL OFFER OF THE ASSOCIATION

ECONOMIC ISSUES

1. The PBA proposes that there be a 5% across the board increase in salaries in each year of the Agreement and that the increases be applied on January 1, of each year with retroactivity for 2007.

2. The entire holiday benefit be paid as paid compensation and further be paid along with regular payroll and folded into base salary. As such, the holiday benefit would be utilized for all calculation purposes including premium pay and pension.

3. The PBA proposes that the annual personal leave day value be considered at twelve [12] hours each and not eight [8] hours each.

4. Out-of title work. When an Employee works in a higher rank, he/she shall receive the pay for that higher rank in which he/she is working and the Borough shall not defeat the intent of this clause by shifting two [2] or more Employees to cover the higher rank in question. This clause shall not apply in cases of vacancies due to vacations.

Whenever an Employee works in a higher rank, he/she shall receive the pay of such higher rank for the time during which he/she performs the work of such higher rank.

5. Hours of Work-Call Out Minimum. The PBA has asked that the current provision be enlarged in scope to add the call out for work with contractors be four hours. The PBA noted an assumption that this had been agreed to during the negotiations.

NON-ECONOMIC ISSUE

1. Article V, Hours of Work, Section 3., be modified so as to codify the 12 hour shift system by removing the provision which states, "The 12 hour schedule shall be subject to six month reviews by the parties for the length of the Agreement." "Following such reviews, if it is the opinion of the Mayor and Council that the desired goals of the change to a 12 hour shift have not been satisfactorily achieved, the Mayor and Council will unilaterally decide if the shifts should return to the prior 8 hour shift schedule or not."

All other provisions of that Section shall remain in effect.

FINAL OFFER OF THE EMPLOYER

ECONOMIC ISSUES

1. The Employer proposes that there be a 4% across the board increase in salaries in each year of the Agreement effective on January 1st. with retroactivity in 2007. .

2. Work in higher title. The Employer proposes to pay officers who work in a higher rank on a shift where there is no senior officer [sergeant or higher] and the officer is charged with the decision making responsibilities of the shift at a higher rate. The pay is to be at step one of the Sergeant scale. Further, in situations where a member is required to

work in a higher title for extended periods, except vacation leaves, the member shall be compensated at step one of the higher level rank on the eleventh day of such duty.

3. Health Care Benefits. The proposal of the Employer is to continue to provide fully paid health care benefits to every member of the Unit on an equalized basis [every member would receive the same benefit in dollar value for the category in which enrolled] by offering to pay for the full premium of the N. J. Plus plan for all levels of coverage. If a member decided to choose another plan, the member would be responsible for the additional premium. In addition, the Borough has offered an opt out provision at 50% of the NJ Plus rate for any member having another bona fide health care plan available.

STATUTORY CRITERIA

The statute under which these proceedings are held requires the arbitrator consider and give due weight to certain expressed criteria in the determination of the issues before him. In consideration of these the arbitrator must carefully determine the degree of relevance or non-relevance each criterion should be given an explain why he has reached those conclusions. They are as follows:

1. The interests and welfare of the public.
2. Comparison of the wages, salaries, hours and conditions of employment of the employees involved in the arbitration proceedings with the same or other employees performing the same or similar services and with other employers in general:
 - 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 with the same condition as in [a.] above.
 - c. In public employment in the same or similar comparable jurisdictions which shall be in consonance with the guidelines for determining the comparability of jurisdictions promulgated by the Commission.
3. The overall compensation presently received by the employees, inclusive of direct wages and all economic benefits.

4. Stipulations of the parties.
5. The lawful authority of the Employer.
6. The financial impact on the governing unit, its residents and taxpayers.
7. The cost of living.
8. The continuity and stability of employment including seniority rights and such other factors not confined to the foregoing which are ordinarily or traditionally considered in the determination of wages, hours, and other terms and conditions of employment.
9. Statutory restrictions imposed on 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 section 10 of P.L. 2007, c.62 [C 40A: 4-45.45]. Section 10 provides a 4% cap in the property tax levy from one year to the next but also sets forth exclusions which may be made.

INTRODUCTION

The Borough of Pompton Lakes lies in the center section of Passaic County in the northeast portion of the state. It is a community of approximately 10,600 residents and is a combination of almost purely residential properties with something of a mixture with some commercial properties in the south. The number of inhabitants have been very nearly constant for many years and is indicative of an aging population with many fewer children of school age. An exhibit provided by the PBA indicated there were 7074 registered voters in the Borough leaving fewer than 3500 residents under the age of eighteen. Property taxes have become more of a concern as the costs of government have risen just as is the case in almost all New Jersey communities. There is little room for any new development except where redevelopment is possible for properties which have become passe as to their utility, and there are very few of these. New construction of housing tends to be at the high end in cost and new residents, according to the PBA, expect the very best of municipal services including police.

The police department is composed of some 25 officers including the now acting Chief who is not included in the negotiations unit. At the time of this hearing there were two expected retirements and there were three officers on leave without pay thus leaving 19 active officers on the job. The Borough has been confronted with the possibility of having those three employees returned to active service and this has resulted in a reluctance to add new replacements. A further consideration is the practical possibility of them being returned to service with back pay, which poses a substantial financial contingency. In spite of this relative shortfall of personnel the department has maintained a very positive community image and during recent years has been able to initiate a number of programs to enhance the services to the public. It has carried on active support relationships, mutual assistance programs with neighboring communities which involves special training and information exchange as well as assistance on an incident basis.

The morale of the police force is extraordinarily high. The expansion of services has been accomplished with a work force smaller than it was five years ago and the scope of services has become more complex and varied within those last five years. The Mayor testified and indicated his satisfaction and respect for the department's reliability and its accomplishments.

Both parties presented extensive data in support of their positions concerning the economic issues at bar. The Employer believes that its proposals are realistic and that the overall compensation package will continue to be highly competitive, providing both direct financial benefits as well as a comprehensive array of fringe benefits. It has admittedly advanced a plan which will curtail the options available in health care but defends this proposal based on the need to attempt to reduce the exposure to the very inflationary trends in health care insurance, which is now very much more expensive than a few years ago and threatens to escalate for the foreseeable future, without diminishing the value of this benefit to employees. Its view is that the control of such expenses, while

maintaining a comprehensive benefit program, is necessary to balance the costs with the constructive objective of avoiding unwarranted escalation of property tax burdens.

The Employer laid out its position concerning the overall financial resolution of this impasse in detail. In support of that position, which includes arguments of fundamental fairness and equity, is the underlying foundation as to comparable jurisdictions with which comparisons should be made. There is some overlap between those chosen, by the Employer, as comparable communities with the larger group proposed by the PBA. This will be resolved below. As the focus of the parties has demonstrated the definition of comparable employment is one of the most likely of the statutory factors required to be considered in the determination of this impasse.

The PBA has asserted that the Employer has presented an inadequate response to the Union and that it has attempted to undermine the provisions of past agreements by removing some of the benefits in the health care plan. It alleges that the wage improvement offer is significantly less than employees in comparable units have achieved. It emphasizes its position by stating, "The Police Officers are paid at a below average rate well underneath the area standards." And, "Their benefits are, at best, mid-range and in several cases well below average." In further defense of that statement the PBA claims that the Employer is unable to keep personnel from moving to greener pastures, noting, "The current compensation program is not doing its job in retaining Employees." Some detail as to turnover is supplied in which several employees have been lost to higher paying positions in other police departments.

The PBA presented support for its demand that the holiday pay be rolled into base pay, claiming the advantage to the Borough would be to have all officers on the job instead of on vacation. This would be the equivalent of having more than one additional officer without having to hire a new person which would provide ease of scheduling and the utilization of experienced personnel where, alternatively, a new inexperienced person might have to be used. Additionally the extra hours worked would be the only expense

and would not include the additional costs of benefits if, alternatively, another person was hired instead. And finally the PBA summarizes the Employer's position, "The Employer responds in this case by offering an unsustainably low position which does not exist anywhere else."

The details of the dispute will be carefully evaluated in accord with the revised statutory criteria requirements. The discussion and analysis which follows is intended to more fully describe these differences and support a determination of the award.

In order that there be a known basis for the development of comparisons, which appears to be a very significant criterion in this matter, I have examined the submissions of the parties and have determined several communities which will be included. The first of them are those adjacent to Pompton Lakes. They are Butler, Bloomingdale, Wanaque and Riverdale, which is significantly less populated. In addition I have chosen West Milford to the northwest and Ringwood, which adjoins West Milford and is to the north of Pompton Lakes and Hawthorne, Haledon and Prospect Park, to the southeast. All of them are in Passaic County and very near and of similar population size. Each of these communities were included on the lists presented by one or both parties as comparable. There are several other communities in comparable geographic proximity which were not suggested by either party. I have rejected Wayne, Paterson and Passaic because of their much greater population and a number of other communities more distant as I believe those chosen are of a sufficient number to provide a reasonable basis for comparison and are within a relatively confined geographic area. In addition the PBA noted that there was little difference, between the larger group it proposed and those suggested by the Borough, as to negotiated improvements in wages for contract periods known at this time. Thus the practical advantage of using the smaller group for comparisons appears, to me, to be appropriate and fully justified.

The position of the Employer was to reject the PBA demands for changing the current language of the Agreement as it defines the twelve hour work chart. This would mean

that the provision for semiannual reviews would continue and the Employer would have the option to reverse the plan to an eight hour work chart at its discretion.

The Employer also rejected the proposal to fold the holiday pay into base pay. The PBA proposal to extend the personal leave to 36 hours was also rejected.

There was one final issue which was considered in the course of mediation. It had to do with the paid minimum call in of employees outside of their normal shift and not coincident with same. This was resolved as a minimum of two hours for ordinary duties and four hours for assignment to contractors' activities. My understanding is that this was agreed upon and is not before me in this proceeding.

SUMMARY OF THE EVIDENCE

THE POSITION OF THE BOROUGH

AS TO SPECIFIC ISSUES

During these proceedings it was very apparent that the Employer had adopted a conservative view as to the financial circumstances of the Borough. It was noted that the property tax was the principal source of funds and that there was little likelihood of significant expansion of those taxes because of the limited amount of available space for new ratables to be constructed. The PBA rejected the Employer's argument as to the taxpayers having resisted tax increases based on its observations of the lack of participation of citizens in the voting opportunity which involved the funding for education. However the Employer indicated it had reason to recognize that resistance and was therefore attempting to control spending wherever possible. The Chief Financial Officer testified and noted that there were a number of potentially increased expenditures and costs, over which the Employer had no control, which exacerbated the situation and supported the decision to approach future expenditures with caution and a will to conserve wherever possible. The offer made as to wage increases was considered, by the Employer, to be very fair, reflecting a real effort to maintain the relative position of these

employees to their counterparts in neighboring communities while attempting to stay within the State Cap Law limitations of 4%. That limit was recognized as the public policy of controlling the property tax burden of citizens. It is seen as a maximum and not a target for increasing expenditures. Therefore the financial policy of the Employer is stated to be as conservative as is practical while fully addressing the needs of the community for services and also maintaining an equitable and fair program as it relates to wages and benefits for employees.

One of the largest new expenses to be satisfied is the increase in the Borough's costs for employee pension plans. These costs are not within the authority of the Employer to control. In the case of the police personnel the cost for 2008 will be \$464,429 which represents an extraordinary increase of \$171,155 due to the end of the State's forgiveness as to contributions from municipalities. Another consideration is the increase for non-police employees which amounts to \$65,865 so the total new pension costs for 2008 are \$273,155. These figures do not reflect any basic wage and longevity increases in 2007 or 2008 which will incrementally raise the pension costs as well.

The cost of providing health care insurance was represented as another drain on financial resources which has increasingly become more of a problem. The actual costs for health insurance are a factor which, in 2007 was calculated to be 10 % of total revenue. This represents an increase from 2002 when it was 7.1%. The dollar costs jumped from \$667,768 to \$1,154,300 in that same period, a growth of 73%. All individual plan costs escalated during those years but the greatest rate increase was in the Traditional plan which was 138%. None of the other plans increased as much as 100%. New Jersey Plus was the next highest at 98% followed by Cigna at 92%, Amerihealth at 86%, Oxford at 76% and Aetna at 74%. I observe that all of these figures far exceed the cost of living or wage increases for the period. This became the key focus of the Employer in these negotiations and the central dispute between the parties; the PBA asserting that it, "...will never agree voluntarily to any change of any kind for any reason relating at any time to

health care benefits or premium contribution, end of story." During these negotiations no suggestion of any compromise on this issue was made and the Employer, continuing its position, insisted that the exceptional and spiraling costs of health care required a conscientious employer to explore every possible means of reducing or controlling this item of expenditures in the interests of the tax paying public.

A further cloud on the financial horizon continues to be the potential for a determination that the three officers now on leave without pay might be returned to service which could possibly require their reinstatement with back pay. The actual costs of such an event were not produced at hearing but it is clear that the value of wages and certain benefits could be in the area of several hundred thousand dollars, an amount which could pose a problem given the scarcity of budgeted funds.

AS TO FINANCIAL CONSIDERATIONS

There were a number of economic indicators which help to describe the financial health of the Borough. In the first place the tax rate has been rising each year and since 2002, when it was 4.06, it has grown to 5.32 for the 2007 year. This is a 21.6% increase and a trend which is seen as alarming. During that time the net assessed valuation of property has grown from \$592,003,873 to \$642,114,136 or just 8.5%. Most of that growth occurred between 2002 and 2004 when the total hit \$631,091,253. This represented an increase of \$39,078,942 or 6.6%. From 2004 to 2007 the increase in net asset valuation was only \$11,022,883 or just 1.9% and during the years from 2005 to 2007 the increase was only \$3,427,806, or just over a half of 1%. Between the last two years the rate of increase was even smaller with less than \$900,000 in value. This trend line is paralleled by the analysis of fund balances. In the 2002 year there was a balance remaining of \$1,580,893 and a balance of \$3,227,419. That balance figure has declined in each year since and in 2006 was \$1,588,105. Of that there was a shift of \$1,210,000 to the 2007 budget which left only \$378,105 as the balance remaining, as contrasted to the \$1,580,893 in 2002. The balance for 2007 has yet to be determined of course but the trend line would suggest it

will be narrowed further from the 2006 figures and is threatened to be even under more pressure as any or all of the uncontrollable items mentioned above require funding. Thus there is an increasing pressure to raise taxes and/or decrease expenditures to regain the quality of fiscal soundness of past years and to reduce the pattern of tax increases.

The statistics concerning limited economic expansion are worthy of note. In the year 2003 there were 88 permits issued for new building construction. In 2004 only 30 were issued and in 2005 and 2006 only a combined total of 12. These facts along with the static population figures suggest a stable but not growing tax base and conditions which affect the use of funds resulting in less flexibility in the future. The present circumstance of the declining values of real property on a national scope does not provide any comfort with regard to net assessed valuations.

AS TO ITS FINAL OFFER

The Employer defends its wage increase as being reasonable and more appropriate than that of the PBA when measured against the standards of the criteria posed in the statute. Although the PBA has asserted the salaries paid, "...are paid at a below average rate well underneath area standards," the position of the Employer contends otherwise. In the first place the current [2006] maximum salary for a patrolman is \$86512 without consideration of longevity pay. The nine municipalities listed above have provided an average maximum salary of \$81398 in 2006. This number would be elevated if the special fifteen year of service increment was added to the Butler top pay which then moves the average \$81620. The top pay listed was \$92723 for Ringwood and the least was \$77308 for Butler, which is increased to \$79243 for the senior officer, resulting in Wanaque being the lowest paid at \$77308. Of the nine Pompton Lakes ranked below only Ringwood with Hawthorne next at \$85524. Thus Pompton Lakes, in 2006, paid \$4892 more than the average of the nine communities against which it is measured.

The Employer also defended its position concerning increases at the 4% per year level indicating that this was a competitive proposal although it was below that of the group of

comparables it had suggested be used in this procedure where the increase for 2007 was 4.38%, for 2008 it was 4.42% and with only two municipalities reporting, 5.23% for 2009 and 5.1% for 2010. The two municipalities reporting the negotiated increases in 2009 and 2010 were among the lowest paying of all comparables selected. To illustrate this, in 2006, Bloomingdale's top pay was \$78095, well below that of Pompton Lakes and others. The 6.1% increase in 2007 followed by a 5% increase in 2008 and another 6% in both 2009 and 2010 would produce a final pay in 2010 of \$97968 whereas the 4% per year proposed by Pompton Lakes would produce a rate of \$101207. Thus the large differential in 2006 of \$8417 between the two would shrink to \$3239 in 2010. Clearly the intent in Bloomingdale was to become more competitive in its salary plan. Without Bloomingdale in the Employer's comparison group the average increase would have been 4.034% for 2007 and 4.13 in 2008. In the comparison group I selected Bloomingdale was included in spite of it being likely to skew the results.

The Borough's rejection of the demand to make the 12 hour day a permanent change rested on its argument that it had only agreed to the proposed schedule with the proviso that it would continue to have the option to revert back to the 8 hour day. Thus it sees the PBA's proposal as a refutation of the original condition which had been agreed upon. It had gone so far as to challenge the demand as being not negotiable in an appeal before PERC but was rebuffed in that the PERC indicated the matter was arbitrable. The Borough evidently is concerned that it might not be able to react effectively in circumstances, not defined, or as yet unforeseen. It believes that it has lived up to its proposition by not imposing a change since the adoption of the 12 hour schedule but is not satisfied that future events might make it logical to make changes even if only for limited periods of time. It seeks to retain that flexibility.

The PBA's demand to increase the personal leave time by 50% is perceived as unwarranted by the Employer which declares the Union has failed to present any substantive rationale in support of the added time off.

The PBA position as to folding in the holiday pay was also rejected. The added costs of the conversion to cash amount to an increase in annual pay of 5.38% and has the added effect of raising the value of each additional salary increase as well as pension obligations and premium pay rates. Given the financial circumstances to be faced such increases are inconsistent with the adopted policy of conservation of resources, planning for emergencies and regaining some of the fiscal stability and security it has seen shrink in recent years.

The key objective of the Borough in these negotiations is the modification of the health benefits program. As noted above, the costs of health insurance have escalated to the point where the need to effect controls where practicable has become essential. In some instances the cost of health insurance, as now structured, could be 25% or more of the wages of individuals. Thus it is a matter not to be dealt with lightly. As the Borough wishes to maintain a fully paid benefit for employees the opportunities for direct action are limited. Having examined the costs of the individual plan choices now available to employees the only solution appears to be to limit those choices without seriously denying the health benefits which are needed. In addition the Employer notes that selectable plans under the present program are so different, with premiums varying by as much as \$7188 per year as to cost, that the benefit chosen by individual employees is not equivalent to what other employees might select. The remedy proposed for this is to provide a dollar equalized program which makes the value of the plan selected for each category of coverage the same for each beneficiary. However, in order to accommodate the interests of the employees involved the plan would include the option of the individual to select any other plan providing that portion of the cost larger than the basis benefit, would become the obligation of the employee and paid by payroll deductions.

The current program includes the Traditional as well as the NJ Plus choices and as the Traditional plan costs have escalated well beyond that of the NJ Plus option the Employer has chosen the latter as the plan to become the standard offered without cost to employees

of the Borough. It defends this course of action on several bases, the first being the need to conserve money resources. However the NJ Plus plan has almost all of the advantages of coverage that are included in the Traditional plan but at much lower costs. In the experience of the Employer fewer than half of the employees in this unit have chosen the Traditional plan although they have enjoyed unrestricted choice. Thus it can be said that the actual preference of the majority of the employees covered, even in the face of choice for a more expensive policy, has been for other of the plans available.

The savings which would accrue to the Employer if this demand was favorably awarded are significant, estimated at over than \$63000 per year at 2007 costs and very likely more in future years as the premiums grow. Such savings would not be realized until a change in the plan might be implemented. The additional proposal to pay employees who have access to other health plans, and who can decline coverage by the Borough, at 50% of the premium ordinarily required for their class of coverage if enrolled in NJ Plus represents an advantage to both the Employer and the employee.

Finally the Employer sees its proposal as to payment for out of title work to be a fair and reasonable offer whereas the proposal of the PBA is too extensive and potentially much more expensive as well.

THE POSITION OF THE PBA

AS TO THE SPECIFIC ISSUES

The most important demand of the Union is the 5% increase in each year of the new Agreement. In the support of this demand the Employer is described as having the resources for such an increase within the framework of limits of the Cap Law. Additionally it points out that the unit functions at a very high level of community service which is acknowledged by the public and by the mayor and chief of police. This commendable performance has been accomplished in spite of the unit being under staffed by several officers. The overall performance has been greatly improved by additional services and community programs as well as adaptation of the newest technologies in

emergency medical situations, communication systems, assistance with neighboring communities and educational initiatives at the schools. The PBA attributes these things to high level of morale and dedication and to the implementation of the twelve hour shift program which it is claimed to have increased flexibility in the day to day performance of these officers. It concludes that level of performance should be deservedly well rewarded.

The assertion is made that the contrary is proposed by the Employer. In the face of these indications of superior performance the PBA asserts, "The Police Officers are paid at a below average rate well beneath the area standards." In addition the Employer's position is seen as regressive particularly as to the demand for give-backs in health insurance.

The exhibits presented by the PBA illustrate the movement of wage increases in many communities in the vicinity of Pompton Lakes. In a prepared summary the average for 2007 was 4.31%, for 2008 it was 4.41%, for 2009 it was 4.46% and for 2010 it was 4.4%. It was noted that these figures were slightly lower than were those shown by the Employer using a small group of comparables. Those numbers were, for 2007 4.38%, for 2008 it was 4.42%, for 2009 it was 5.23% and for 2010 it was 5.1%.

Although the PBA presented many agreements in evidence which include actual pay rates there was no specific computation offered to illustrate how the pay at Pompton Lakes compared to others in support of the contention that the Employer's rates were , "...well beneath the area standards." Additionally there was no clear attempt to justify the 5% plan as proposed.

The PBA did illustrate its contention as to the overall compensation by pointing out that there were several benefits, such as a detective differential commonly provided in other communities but none in Pompton Lakes and the clothing allowance which was lowest in Pompton Lakes. However neither of these issues were before me. And it is my understanding that the clothing allowance issue was negotiated to a settlement and no longer in dispute. As to the detective allowance, I have no evidence in this proceeding

that there are detectives assigned in Pompton Lakes and certainly no dispute as to their compensation was made part of the impasse.

Much of the supporting documentation provided was targeted at the relatively low cost of police protection as a minor percent of the overall budget and at the limited impact the demands of the PBA would impose on the taxpayers. Included was a comprehensive overview of the Borough's finances along with the issue of compliance with the Cap Law limitations imposed on public employers. The bottom line being that the Borough could readily afford the compensation plan proposed without any negative modification of the health insurance program which would be detrimental to these officers and an unwarranted attack on a benefit long ago negotiated.

The view of the demand for the holiday roll in to cash added to the base pay is supported by several arguments. The current plan allows officers to take holiday time off with pay. The 14 holidays are converted to 9.33 days at twelve hours. The total number of hours is 112. The conversion of those hours at straight time rates would augment the annual pay by 5.38%. However this is seen not just as an advantage to the officers but to the Borough as well. The conversion of the holidays to work days enables the Employer to assign the equivalent of about 2352 hours [PBA estimate based on 21 officers] to the job without hiring an additional officer. The 2352 hours worked would be spread among all ranks and add flexibility in assignments. The key advantage to the Employer is having the equivalent of about one and an eighth [my calculation] more persons at work without the encumbrance which would accompany hiring someone, having to pay all of the benefits which would be involved, to perform the same number of hours on the job. Additionally these hours would be performed by personnel already trained and possessing on the job experience. In some instances performance of these extra hours of work could reduce the need for overtime as well. The PBA describes this as a "win-win" situation.

The Association's demand for extension of the personal leave days to 3 twelve hour days as opposed to the current 3 eight hour equivalent time is grounded in the belief that three

days were always available under the contract when eight hours was the normal shift. Now that the shift is twelve hours there is much less utility to the time as it amounts to only 24 hours and thus only two personal days off. The demand is seen by the PBA as achieving the equivalent three days off as they would ordinarily have enjoyed.

The twelve hour shift issue is viewed by the PBA as a situation where the Employer has failed to live up to the Agreement. The PBA sees the language as having given the Employer the option to revert to 8 hour shifts had there been obvious reasons for doing so in the form of a failure to have met the understood objectives of the plan. It sees the plan as having been agreed to but with the understanding that the wording of the contract, "The 12 hour schedule shall be subject to 6 month reviews by the parties for the length of the Agreement", to mean that the time for the Employer to unilaterally discontinue the 12 hour shift was limited to the term of the Agreement. There has been no indication from the Employer to the effect that it has any complaints with the 12 hour plan and no action was taken since March of 2003, when the plan was put in place, to suggest that there had been any complaint as to the meeting of goals. Therefore the option for the Employer to unilaterally change the shift has expired.

The Employer raised the question as to arbitrability of the clause in the Agreement and PERC confirmed that it was a mandatorily negotiable subject. Thus the terms of the Agreement are enforceable. This raises the question as to whether those elements of the Agreement providing for a unilateral change remain effective after the expiration of the Agreement. However, as the matter is mandatorily negotiable and as this has been presented to the arbitrator in this proceeding I find it my province and responsibility to include this element of dispute in my award. I note that the parties did agree to the extension of the Agreement pending negotiations of a successor contract, which is the subject of this dispute.

The PBA underscored the value of the 12 hour shift plan by reciting a long list of accomplishments of the patrol officers, their general morale and the degree to which they

have been able to function successfully and the satisfaction of the Employer expressed at hearing. They emphasize the fact that the acting Chief of Police testified on this matter and responded to a question as to whether he could accept and work with a modified demand of the PBA which included a concept of removal of the six month reviews and replace that with an agreement to negotiate on any change which the Employer might wish to make. The PBA saw his response as affirmative. My understanding of his response was more complex. He specifically said that he supports the 12 hour shift but that it works only when there are sufficient personnel, that he has had to reassign a detective to patrol duties to accomplish this and that there are potential times when the 12 hour shift would hinder overall efficiency which would be better handled with 8 hour shifts. He also testified that there are times when the 12 hour shift has advantages and from his perspective he was able to work with it being continued.

At this time the PBA entered on record a modification in position to continue its objection to the provision allowing unilateral change by the Employer and to insert the willingness of both parties to negotiate any change which might be considered. The Employer continued its objection to the demand of the PBA. Both parties confirmed the assertion of the PBA that in the more than four years since its inception there had never been sufficient reason to consider unilateral action to make a change. Therefore they have had no real problems with the 12 hour shift concept to date. The issue remains as to whether there is need for the Employer to retain the option to make a change.

The PBA went further with this issue claiming the testimony of the acting Chief was tantamount to an acknowledgment of the proposal by the Employer and that I should accept that concept and include it in my award. Respectfully I disagree. The testimony of any witness is to be taken seriously as his or her understanding of truths or an opinion as to an issue. That having been said I intend to give his testimony the consideration it deserves. However, the Employer never conveyed to me or the PBA any understanding

that the testimony of any witness was to be seen as dispositive of an issue and I do not believe either party should make such a commitment.

With regard to the demand for special compensation for out of title work the PBA claims that the Borough has been unfairly treating employees when they are required to perform the responsibilities of higher rank of more responsible personnel, and that virtually all police agreements have included some formalized plan to compensate employees placed in the position of greater responsibility than their normal work would require. The proposal of the PBA would create an immediate application of the higher rate concept whenever there is an assignment involving such responsibilities except in the circumstance of replacement for an officer on vacation. The concept of such payments being made was in essence accepted by the employer with some greater detail as to certain exceptions and details. This issue will be dealt with in my award and will not corrupt the positions of either party.

THE APPLICATION OF STATUTORY CRITERIA

INTERESTS AND WELFARE OF THE PUBLIC

This criterion is found to be of highest relevance and importance and deserving of careful consideration. This is particularly so because the most significant elements of this dispute are of economic nature. The Borough has adopted a conservative approach to its commitments for future expenditures. This may be influenced by many factors but the most obvious is the fiscal climate in which this Agreement will be in effect. Underlying the adopted posture are several noted financial and related more general economic conditions. The Borough has seen it necessary to raise property taxes substantially in each of the last three years. In 2005 the increase was 10.6%, in 2006 it was 16.7% and in 2007 it was 7.1%. These increases represent a burden on an established and virtually unchangeable community. The population has been stagnant for many years, the assessed valuation has been virtually constant during those same three years, growing by only one half of one percent. The space available for new construction has all but vanished and in the past two

years the number of permits issued for new construction has dropped to less than 10% of the number in 2004. Not only are there few opportunities for new housing, except in situations where replacement is practical, but the growth of commercial properties is extremely limited. And there is the threat posed by declining real estate values affecting levels of tax revenue. Continued growth in expenditures will have to be met by increasing tax burdens or elimination of services which is an unpopular alternative.

Aside from those considerations the fund balance figures are not better than discouraging. The most recent information shown above pose an alarming trend to financial planners. The reduction to a balance remaining of only \$378,105 anticipated in the 2007 budget appears to be predictive of a much smaller balance than was achieved in 2006.

Complicating the picture as one looks ahead are the several uncontrollable items detailed above in the section addressing Financial Considerations and the ordinary higher costs of wages and extraordinary increases in utilities among other things.

My conclusion is that the conservative approach to spending is manifestly appropriate for the Borough. The problem faced is not how to press expenditure limits to the maximum allowed under the Cap Law but rather how to keep the cost of government to a minimal level of growth while striking a balance between the provision of all essential services and a reasonable and fair wage and benefit package for deserving employees. The latter consideration requires salary and benefits which will be seen as comparing favorably with other communities nearby and which provide the incentive for continued excellence of performance the Borough residents have come to expect. I see consideration of this criterion as of highest importance to the resolution of this impasse

COMPARISON OF SALARIES, COMPENSATION AND OTHER TERMS OF EMPLOYMENT

THE ISSUE OF WAGES AND INCREASES

The central issue in this procedure has to be seen as the economic terms of a new Agreement. As noted the question of wage increases for the four years of this contract

was the most important element as it affects both the long term interests of employees and represents the commitment of scarce revenues by the Borough. The Union's position is that there is no financial problem facing the Borough as to its demands for 5% increases in each year. There should be no problem having to do with financing their demands and the Borough is seen as being unwilling to take advantage of the provisions of the Cap Law as it pertains to maximizing the level of allowable expenditures if needed or even getting a waiver to increase flexibility.

It alleges that the police salaries are below average, that the offer of the Borough is paltry; that the benefits provided are at best below average and that these officers work the longest hours of any in other jurisdictions. The Union also criticizes the Borough for incorporating demands for give backs in the health care insurance which it claims rarely happens with other negotiations. It also asserts the turnover rate of trained personnel is high and attributable to less than competitive compensation which causes the Borough to expend resources on employment and training which could otherwise be put to improving the compensation plan so that turnover would be reduced.

On the other hand the Employer asserts that amongst the communities which are most likened to and near the Borough the proposals made are both reasonable and fair.

Using as a benchmark the rate of pay of patrol officers at the maximum place in the salary structure I note that the pay rate in Pompton Lakes is highly competitive with that received by officers in all of the comparable municipalities chosen for this purpose. Of the ten communities chosen the pay rate of Pompton Lakes ranks next to the highest and eight others are lower in 2006, the base for my comparisons. Only Ringwood at \$92723 has a more generous salary plan. I have not factored into the Ringwood compensation the fact that it provides no paid holidays which would nominally be worth 13 or 14 days pay or \$5500 to \$6000. The pay in Pompton Lakes is \$86512 so the Ringwood maximum is considerably higher but would be only about the same as Pompton Lakes if the \$6000 was subtracted. However the average of the nine comparables' salaries [including Ringwood]

is \$81398; or if the special increase at fifteen years service in Butler were to be factored in the average would move up to \$81620. Pompton Lakes salary is higher than the average by \$4892 or a differential of 6.1% and would be further enhanced, if the Ringwood base pay was reduced because of the no holiday situation, by another \$600. Thus the claim that PBA made as to the paltry pay level in Pompton Lakes seems to have been unwarranted. The next element of this dispute has to do with the increases demanded and offered. The information provided by the PBA showed increases above 4% for 2007 through 2010. The most reliable of the statistics were for the 2007 and 2008 years. Thereafter the numbers of reporting municipalities is too small to provide any clear estimate of what the larger group will be when agreements are extended to 2009 and 2010. The same can be said of the group of comparables I have chosen. Only eight of the nine have agreements for 2007 and of these the average increase was 4.25%. This computation includes Bloomingdale which had one of the lower base salaries in 2006 at \$78095 and which appears to have granted extraordinary increases to bring their rate to a more competitive position. This included split increases of 6.3% for 2007 and 5% for 2008, then 6% for 2009 and the same for 2010. These increases will improve the salary over the four years to \$97968 in 2010. But the rate in 2008 will be \$87192 while the salary in Pompton Lakes, using the proposed 4% per year, would increase to \$89972 in 2007, \$93571 in 2008, \$97314 in 2009 and \$101207 in 2010. This illustrates the narrowing of the gap between the two communities so that Bloomingdale pay would trail Pompton Lakes by only \$3239 in 2010 compared to the 2006 gap of \$8417. Certainly the justification for these high annual increases can be appreciated but they are an anomaly when contrasted to the ordinary rates of improvement. Should Bloomingdale be eliminated from the calculation of the average rate of increase for 2007 the result of seven comparables would become 3.96% and if extended to 2008 it would be 4.2%.

It is also worthy of note that the Public Employment Relations Commission publishes reports concerning the rates of increases in salaries having to do with negotiations

impasses under its jurisdiction which proceed to interest arbitration. The figures for the first nine months of 2007 show 44 cases and an average increase in annual pay of 3.94%

Thus it can be seen that the offer of Pompton Lakes is in the ball park at 4% per year.

Which begs the question as to what wage improvement rates the comparables will settle on for the 2008 through 2010 years. What evidence I have to go on at this juncture would suggest the probability of something in the area of 4.25%. My conclusion is that general area merits serious consideration. Other factors as yet not fully set forth will be added to the information accumulation to enable me to reach the best determination of this issue.

As there is increasing evidence that the cost of living is rising at an increasing rate it is logical to presume salary increases will follow suit. Certainly the elements of family costs are rising with energy products and foods leading the way and those triggering higher costs of products which depend on energy as a component of production costs. Even the dampening effect of Chinese goods at very low prices appears likely to be reduced as the demand is for products having safer ingredients and as the labor force in China and other emerging economies demand better conditions and wages. The decline of the U. S. dollar in comparison with other currencies also suggests relatively higher prices to come in products affected by international trade on which we, as a nation of consumers, have become increasingly dependent. Translation; higher costs for the average consumer.

There is always an element of guess work in the business of forecasting future economic conditions and certainly this is a factor in interest arbitration. However, it is the responsibility of the arbitrator to make decisions using experience and the best data available as guidelines. In this case I am persuaded that the cost of labor will rise over the next few years and there are already indications of that phenomenon in the few reported settlements among the comparables.

THE ISSUE OF OTHER COMPONENTS OF THE COMPENSATION PACKAGE

HEALTH BENEFITS

Although there are differences between the benefits program of Pompton Lakes and other of the comparable communities these have not surfaced as areas of sufficient conflict to have remained unresolved in these negotiations procedures. For example, the clothing allowance is mentioned as being inferior by the PBA but it was negotiated to settlement. The exception to this has been the impasse concerning the demand of the Employer to find some ways to curtail the costs of health insurance without severely impacting on the protections afforded within the plan. The PBA has been critical of the Employer's benefits as being average or less but as to one such issue, the agreement on clothing allowance, it has made an agreement and on others eliminated consideration in these proceedings. Their focus has been on the several issues in this dispute. This may be the typical posture of the parties in the comparable group as well. There was no evidence introduced which would suggest many benefits changes in those other agreements. No added holidays or other vacation improvements have been cited as a trend and none of those issues were on the table here.

The dispute as to health insurance has been illustrated above. The PBA has categorically refused to consider any erosion of the plan or modification of options now available to its members and simply addressed it as if it were cast in stone. The interests of the Employer to rein in the alarming rate of increase in premiums has been its highest priority in the negotiations and I see this as an important part of this criterion. While it is not difficult to understand the attitude of the PBA the issue remains within the mandatorily negotiable issues and must be addressed in these proceedings.

When the focus of this criterion is switched to the broader economy to include the private sector the first conclusion drawn is that there are no really comparable jobs with which to make comparisons. This theme has been recounted in interest arbitration awards many times over. However, what is happening in the private sector certainly is of personal significance to the tax payers in the community. There have been many headlines in the news illustrating the problems which face even the largest corporations. High on their list

of targets has been control of costly benefits, principally health care and pensions. One can hardly refuse to recognize these as representing threats to the profitability and even to the continued existence of such organizations. The public at every level, including the National and State government as well as that of Pompton Lakes, has focused on the problem in recognition of the fact that the associated costs are out of control. Here the Borough has addressed the problem because ten percent of its budget is expended on health care; a situation which demands the attention of fiscally responsible representatives of the public who are in office. In Pompton Lakes the Traditional plan, now available to any employee by election, is priced at \$20375 for family coverage for 2007 which undoubtedly will rise for 2008. This represents nearly 25% of the salary of a patrolman at maximum pay and considerably more for persons at lower steps; close to 50% for a second year person. It is an issue of singular importance to a responsible management. The obvious circumstance is that the NJ Plus plan, which has been offered for years, costs 35% less and provides basically the same coverages. It differs from the Traditional plan in some ways. In particular the Traditional plan has no out of Network concept. The NJ Plus plan has that condition. However, wide areas of coverage are provided. The Traditional plan has numerous circumstances where there is a deductible associated with the benefit or a limit on coverage imposed after a certain number of visits or treatments. These are generally more fully covered in the NJ Plus plan especially if within network and fully covered in out of network locations but with deductibles and/or percent limitations for out of network situations. I would conclude that the NJ Plus plan is as good or better than the Traditional plan if the user remains within the geographic network which includes all of N.J. & Florida as well as parts of Delaware, Pennsylvania and New York. It is also obvious to the Management that the majority of the police choose NJ Plus or another plan in spite of the opportunity to choose the much more expensive Traditional plan. The conclusion drawn is that other plans offer choices which are more attractive to those employees than does the Traditional plan.

The proposal of the Employer is to pay in full the costs of the NJ Plus plan at every level of coverage and to continue to offer all other choices with the additional expense being paid by the employee; what it referred to as an equalized benefit. However there is no way to equalize the dollar value of such benefits because the premiums are priced differently to reflect the circumstance of the insured as single or married, etc. The Employer's proposal addresses equalization of benefit value predicated on all employees electing the same level of coverage receiving a benefit of equal value. To accomplish this the offer is to stabilize the Employer's contribution at the cost of the NJ Plus plan and to have employees who chose another coverage, if more costly, pay the differential via payroll deductions. The key objective is to reduce the Borough's exposure to higher priced plans than that of the NJ Plus cost.

A substantial number of specific services are more expensive under the Traditional plan than the NJ Plus or other insurer's plans either because of limits on the element of care or because of deductibles and co-payments. Most of the other plans have more restriction as to the in-network than does the Traditional which has none. This is true of the NJ Plus plan which imposes added costs for services beyond those in-network but the out of network is essentially a geographic consideration which would not affect the use of medical insurance in New Jersey and vicinity.

Some of the examples of more liberal coverage in the NJ Plus plan as compared to the Traditional plan are; hospital inpatient no cost under the Plus plan while the Traditional requires co-payment after 365 days at 80% after deductible; Skilled nursing for 120 days in the Plus plan and 30 in the Traditional; Physical therapy at 100% with \$10 per visit in Plus plan vs. 80% after deductible; Maternity care at \$10 first visit and then 100% at Plus vs. Basic benefits at 100% and balance at 80% after deductible in Traditional; Emergency hospital 100% after \$25 co-payment in Plus vs. 100 % for accidental and 80% after deductible for all other situations including physician fees, all after deductible. The deductible in the Traditional plan is annually \$200 to \$400 vs. the Plus plan zero in-

network and \$250 for out of network. Immunizations and annual physical exams incur \$10 per visit in Plus plan but are not paid in the Traditional plan. The whole detail of the comparative benefits are difficult to evaluate until the individual has medical requirements which generally are not easily forecasted making a choice of the most suitable plan difficult. One further difference is that the lifetime maximum benefit in the Plus plan is not limited while in the Traditional plan it is \$1,000,000.

All of this suggests the Plus plan to be a better choice if medical expenses are limited to in-network incidents. Both the Aetna and Signa HMO plans are quite similar to the Plus plan and have wider in-network coverage. The Oxford HMO, Amerihealth HMO and Health Net HMO plans all have only local area coverage but benefits much like those of Aetna HMO and Cigna HMO. They have no out of network coverage. The principal distinguishment between Aetna and Cigna is the more extensive geographical coverage of Cigna. Their benefits are very closely matched.

The rate of increases in premiums over the last five years varies with each provider. The Plus plan increased by 96% while the Aetna was up only 74% and the Cigna plan increased by 91%. The Traditional plan was up 138% and the Amerihealth plan 86% and the Oxford plan 76%. The Healthnet plan had not been offered until recently so no measure of increases was available. Considering the rate of increase as potentially reflecting the ability of the carrier to contain costs may be risky but there is no indication in the evidence to suggest the quality of these plans varies. However costs do vary greatly. One other thing which presents itself is that a substantial portion of the employees prefer an HMO type of carrier with 6 of the 13 who did not choose the Traditional plan selected an HMO. Seven chose the NJ Plus plan.

The next element of this analysis is aimed at comparison of costs. When the Traditional plan is compared with the others the variation becomes clear and is here expressed as a percentage of the Traditional premiums. The average coverage for all categories vs. Traditional premiums are; NJ Plus 64.3%; Aetna 67.4%; Cigna 79.3%; Oxford 67.1% and

Amerihealth 77%. A further factor entered into evidence was the rate at which these carriers have increased their costs as noted above. The conclusions drawn are that almost any of those carriers have rates which are 20 to 35 % below that charged for the Traditional plan. The rate of premium growth suggests, if continued, what the extended consequence as to costs or savings might become. The compounded annual growth rate for the Traditional plan over the last five years was 18.5%; for the NJ Plus it was 14.3%; for the Cigna plan it was 14%; for the Amerihealth plan it was 13.5%; for the Oxford plan it was 12%; and for the Aetna plan it was 11.75%. Thus it can be shown that the Aetna plan rates are consistently the lowest for comparable coverage and as its compound annual increases are also the lowest it will, if the past is an indicator of the future, remain the lowest cost plan with a gradually increasing margin of lower dollar costs than the others. There is only one person who has chosen the Aetna plan. There are four who have chosen Cigna which has a consistently higher annual rate of increase and consequently higher rates for each category of coverage than Aetna. The annual difference between the two measured in dollars of cost are; for family \$2408; for parent and child \$1907; for two adults \$1806 and for single coverage \$880.

At the time of the submission of evidence in this matter there was a division as to employee preferences with seven choosing the NJ Plus plan, nine choosing the Traditional plan and six choosing one of the HMO plans. Even the lowest cost HMO, Aetna, has a higher cost than the NJ Plus plan for each category of coverage. However the Aetna costs are closer to the NJ Plus than any other, costing out at \$338 or 2.5% more for family coverage; \$98 or 1.3% more for parent and child; \$687 or 6% more for two adults and \$465 or 9.1% more for single coverage. The Cigna costs are \$1598 or 23.7% more than the NJ Plus, \$846 or 21.8% more for parent and child, \$1436 or 24.8% more for two adults and \$756 or 29% more for single coverage. It seems that the coverage for Cigna, which is quite comparable to Aetna except for significantly greater geographic coverage,

is much more costly and as its rate of increase for the past five years was 91% versus the Aetna record of 74% it would seem likely that the cost gap will widen going forward.

HOLIDAY PAY AND PERSONAL DAYS

The PBA wants the equivalent of the value of fourteen holiday days off be converted to ordinary base pay. This is the equivalent of adding 5.38% to the payroll costs. The PBA sees this as a reasonable demand in that there is the foregoing of fourteen days off at the same dollar equivalent and adding much needed work hours to an understaffed situation without incurring premium pay for those extra hours as would be the case if assigned as overtime. It also is a measureable boon to the Employer as having the equivalent of more than one new employee on the job without the added costs of benefits or training.

The Employer rejected this demand essentially because the work of the department is being effectively handled without an additional person or the extra paid days which the PBA proposal would add. It also argues that the added 5.38% increase in pay is unwarranted and disputes the PBA position as to the value of the extra hours. Those extra hours would be paid mostly at the top rate for officers and the higher ranking personnel and would far exceed the hiring rate for a new person if ever needed. Furthermore there is the immediate and lasting impact of paying for extra hours which are not required at this point in time. Beyond that is the cost of the higher rate impacting on overtime costs and pension liabilities as well as its compounding effect on future increases in base salary.

Holidays were provided to offset the vigors of a normal schedule. With the coming of the twelve hour day there is not the same need for holidays as there is already a substantial amount of time off built into that schedule which is complimented by the extra compensatory time provided in the Agreement. So the PBA seeks to extend the compensation instead of having time off. The Employer has not agreed that the twelve hour day should be set in stone and seeks certain conditions be imposed should this award confirm it to be "permanent". These matters are under consideration.

Having found the need for holidays to be of less importance than their value in extra pay the next demand from the PBA was to increase the personal leave time by 50%. This seems inimical to the selling back of holiday time due in part to the added time off because of the twelve hour work chart. It also would add .5% in value to the costs of this contractual benefit and place the Employer in a position to have to defend its not extending the same consideration to all other of its employees. In short there is no underlying reason to extend this benefit for employees who have found themselves with more days off than they have absolute need for. It seems it would set the stage for a demand in the next round of negotiations that the personal days be converted to extra pay as is requested for the holiday allowance in this proceeding. There was no evidence introduced to suggest this to be a common practice either.

THE TWELVE HOUR WORK CHART

The PBA and the Employer negotiated a twelve hour work chart during the last round of contract negotiations. The express conditions of that accord were noted above. The Employer asserts that without an accord as to those conditions it would never have agreed to the new schedule. It certainly made it clear that it wanted to be in a position to switch back to the eight hour schedule should the change not work to its satisfaction. There were imposed the option to reverse on the basis of six month reviews. Four and a half years have passed and the Employer has not resorted to making any change and the record indicates that it has been very satisfied with the performance of the employees who have not only achieved a superior record but did so in spite of added workload, technical complexities and new initiatives.

The PBA called the acting Chief to testify and he admitted that he could live with the twelve hour program but also spoke of reservations concerning specific conditions, assignments or unexpected circumstances which could make the eight hour schedule more appropriate and efficient. The Employer describes the position of the PBA as having backed away from their agreement to allow the continuing level of success of the twelve

hour chart be the measure used to determine its continuation. This may be true. But this is a negotiation about terms of the next Agreement which are negotiable. There has been no evidence introduced which would suggest the twelve hour chart has not met the Employer's standards of acceptability to date. But it is possible that the effort of the patrolmen has been elevated to a higher level of performance because of the possibility that the Employer might, if it felt levels of achievement were not met, utilize its reserved right to revert to an eight hour schedule. For these reasons I will mandate the continuation of the twelve hour chart but add conditions which will safeguard the Employer's concerns.

The above analysis is intended to demonstrate my belief that the first three criteria of the statute are of great relevance in this proceeding. The same can be said for the 6th, "The financial impact on the governing unit, its residents and taxpayers".

There were no stipulations of the parties except the accord as to the duration of the Agreement.

The cost of living was given a modest degree of importance as neither party made arguments based on this criterion. In addition the past Agreements of the parties have provided improvements in excess of the cost of living. The award will not be more excessive as to cost of living than have been recent Agreements. My attention to this criterion was primarily focused on questions as to the future circumstances of the economy and thus are speculative at best and certainly cannot be seen as a derivation of the cost of living as reported.

I do not see the continuity and stability of employment to be a significant factor in this proceeding and nothing in my award is expected to have a material impact. Of course there has been cognizance of the ordinary considerations made in the development of a fair award and the balancing of employees' requests and needs with the collateral responsibilities of the management in public service to be equitable and to diligently

protect the interests of the taxpaying public. Thus this becomes an important criterion and I have given it the attention appropriate to its importance.

The last criterion, having to do with the application of the Cap Law, has not become an issue. My award will not be economically excessive as contrasted to the position taken by the Employer who made no assertions as to its limitations. I do not, as a result of careful analysis of the matters before me, anticipate the award will trigger any need for this Employer to resort to making other changes in its budgetary plans and priorities to remain within the Cap limitations.

SUMMATION

I will include a substantive change in the provision of health care insurance. This is an issue which has taken a position of high priority in both public and private sector employment and has been the focus of governmental attention at all levels, both State and National as the costs have steadily moved ahead at a much greater pace of increase than the overall costs of goods and services. The threat is that this will continue as demand for medical care increases, treatments become ever more exotic and thus more expensive, the population lives longer and the need for providers to increase costs to offset the experience of non-paying patients, particularly in hospitals, grows. And these are not the only causes for the soaring costs of medical care.

The position of the Employer is to attempt to reduce its costs without severely reducing the quality of protection of employees and their families and without the imposition of mandatory cost sharing. This would be accomplished by reducing the options currently available which would be fully paid by the Borough and allowing employees who wish to enroll in more expensive plans to do so if they pay the additional costs. While no cost sharing plan will be welcomed by those employees the imposition will reduce the pressure to increase the budget of the Borough and to save taxpayers money. The plans to be provided at no cost are good, comprehensive and have been selected by numerous employees even in the face of having a right to select more expensive plans without cost.

The current program includes selection options in two types of plans. One I will describe as conventional which includes the Traditional and NJ Plus plans and the other are the HMO plans. For all of the reasons discussed the Traditional plan will not be available on a no cost basis. The conventional NJ Plus plan will continue to be without cost. The interests of the both employees and the Employer suggest that there be special consideration for HMO plans. In particular I note the Aetna plan is only modestly more expensive than the NJ Plus plan but appears likely to become less costly in time if its annual increases continue to be less than NJ Plus, as has been the case over the last five years. Additionally there are a number of reasons which underlie the individual choice of an HMO. I believe it is reasonable to allow the choice of a conventional or an HMO without cost. This will provide encouragement to those who wish to use HMO facilities. The only problem has been that most of those using HMO's have chosen Cigna which is considerably more expensive than Aetna. But if the choice is to continue to use Cigna the differential in cost will have to be borne by the employee just as it would in the Employer's suggested plan. Or if the desire is to reduce costs the Aetna plan can be chosen to replace the Cigna plan.

The award will include generous wage increases and no diminution of benefits already enjoyed apart from selection choices in health insurance. The level of wage increases will reflect the reasoning above and some cost offsets achieved by the modification of the health insurance program. As those offset savings will not be available until sometime in 2008 the wage increase in 2007 will be slightly more modest but in accord with the experience of the comparable group. The relative position of Pompton Lakes, at the top of the group, in level of wages will not be disturbed.

There has been little mention of the consideration of the Cap Law provisions. This does not indicate that I view this criterion as not relevant, rather it is the lack of these decisions having any major impact on those limits. Neither party raised questions as to Cap Law impact except when the PBA, in defense of its demand for 5% increases, noted that even

that level of cost would not seriously be affected by Cap limitations as the Employer's budget was cast. Given the financial circumstances of the Borough the awards rendered herein will be generous enough to maintain the relative comparability of wages and benefits within a reasonable level of costs.

AWARD

WAGES

There shall be an increase in wage rates of 4% for the period January 1, 2007 through December 31, 2007. Retroactive payments shall be made promptly and in no case later than thirty days from the date of this award. Wage rates will be increased by 4.25% in each of the remaining years of the Agreement effective on January 1, 2008 and on January 1st of 2009 and 2010.

HOLIDAY PAY AND PERSONAL LEAVE

For the reasons discussed above the PBA demand for converting the holiday credits provided in the current Agreement into equivalent cash and added to base pay is rejected.

The demand for extension of personal leave time by 50% is also rejected for reasons set forth in the discussion above.

WORK IN HIGHER TITLE

When an officer works in a position of higher rank, responsible for the decision making activity of a higher ranking officer, for at least a whole shift he/she shall be paid at the lowest rate of the next higher rank providing this does not apply to circumstances where the assignment is due to replacement for a vacation leave.

HEALTH BENEFITS

There shall be a modification in the health insurance plan which will provide that the individual may choose any plan as before but in the choice of conventional plans only the NJ Plus will be provided without cost. In the choice of HMO plans the Aetna plan will be without cost. All choices of plans having higher premiums will incur the payment of the difference by payroll deduction. No extra credit will be given if the Aetna cost should fall

below that of the NJ Plus plan. The option to make a change in selection of a plan will not be changed.

The new plan shall be put into effect at the earliest time available for enrollment. No change or contribution will be required until that time. The Employer shall make every effort to convey these changes to all personnel at the earliest time and include the anticipated time for enrollment changes so that those affected may have time to consider their options and the consequences of such changes.

THE TWELVE HOUR CHART

The language of the current Agreement shall be changed. The first paragraph of Section 3 of Article V shall be modified by the elimination of, "The twelve hour schedule shall be subject to 6 month reviews by the parties for the length of the Agreement." And, "Following such reviews, if it is the opinion of the Mayor and Council that the desired goals of the change to a 12 hour shift have not been satisfactorily achieved, the Mayor and council will unilaterally decide if the shifts should return to the prior 8 hour shift schedule or not."

New language shall be added to that section as follows: The employer may impose a change to the 8 hour shift, without negotiations, for temporary periods when there are emergencies, for training which would be better achieved on 8 hour shifts, or if there are circumstances as to service to the community which may be optimized by a shift change.

CALL IN

This item was agreed to during the hearings and noted above. That agreement is part of this award.

TERM OF AGREEMENT

This Agreement shall be for the four year period beginning January 1, 2007 and expiring on December 31, 2010

All changes required by application of the terms of this Award shall be implemented at the earliest possible time after its receipt except where there is specific provision for retroactive application. All provisions of the prior Agreement shall be continued unless specifically modified by this award and then as provided above.


Frank A. Mason

Pennington, Mercer County,

New Jersey December 24, 2007

On this date before me personally came and appeared Frank A. Mason, to me known and known to be the individual described in and who, in my presence, executed the foregoing opinion and award and he acknowledged to me that he executed the same.



PAUL M. SABOL
Notary Public - New Jersey
My Commission Expires January 31, 2012