
In the matter of Compulsory Interest Arbitration
concerning the negotiations impasse between

The Borough of Bloomingdale, New Jersey

and

Bloomingdale PBA, Local 354

DECISION AND AWARD

of

Frank A. Mason, Arbitrator

Re: PERC Docket IA-2002-037

APPEARANCES

FOR THE BOROUGH: Joseph J. Ragno, Jr., Esq. & Kenneth Petrie, Esq.,
Struble Ragno Petrie Bonanno MacMahon & Acquaviva
Steven Ward, Borough Administrator

Andrew Pascale, Borough Auditor

FOR THE ASSOCIATION: Richard D. Loccke, Esq., Loccke & Correia

Ronald Frost, PBA President

Steve Caputo, Det. Sgt., & Andrew Smith, Sgt.,
Negotiations Committee

Vincent J. Foti, PBA Financial Consultant

INTRODUCTION AND PROCEDURAL BACKGROUND

In the month of August, 2001, the parties entered negotiations for a successor Agreement to that which had been in effect from January 1, 1998 through December 31, 2001. An impasse developed and the PBA filed notice with the Public Employment Relations Commission [PERC] seeking initiation of compulsory interest arbitration. On January 16, 2002 PERC docketed the matter as IA-2002-037. The Borough responded on February 7, 2002 and identified several additional issues to be resolved. On February 15, 2002 PERC appointed this arbitrator to act under its authority and in accordance with the provisions of P.L. 1995, C. 425, to conduct such proceedings as may be required to assist the parties in the resolution of this impasse.

The arbitrator met with the parties on two occasions in an attempt to mediate but while some issues were settled there remained those set forth below. A formal arbitration

hearing was conducted on June 26, 2002 at which time the parties presented final offers and introduced argument and evidence as well as sworn testimony as to the issues. Witnesses were examined and cross examined and arrangements made for submission of post hearing briefs. Those were received and the record closed on August 12, 2002. There being no accord to the contrary the arbitrator's authority is defined as conventional.

The unit of employees represented by Local 354 was composed of patrolmen and sergeants, however, during the negotiations proceedings there was an agreement to include the rank of captain. Therefore the rank of captain shall be incorporated in this award.

POSITIONS OF THE PARTIES

The parties have extended the term of the new Agreement to four years, from January 1, 2002 through December 31, 2005, and such will be reflected in my conclusions.

FINAL OFFER OF THE BOROUGH

ECONOMIC ISSUES

1. WAGES

A. 3.9% annual across the board increase effective on January 1st with retroactivity to January 1, 2002.

B. Establishment of a new 10 step guide for employees hired after the date of ratification of the new Agreement.

C. Addition of Captain position with annual starting salary of \$75403 in 2002.

2. LONGEVITY

A new longevity schedule for new hires at 50% of current Agreement plan.

3. HEALTH BENEFITS

Implementation of new health benefits plan with provision for the reimbursement for excess costs to employees for three years at the maximum of \$600 first year, \$400 in second and \$200 in third.

NON-ECONOMIC ISSUES

1. PERSONNEL POLICIES

Provision for contractually acknowledged Personnel Policy Manual to reflect matters not incorporated in the Agreement.

FINAL OFFER OF THE PBA

ECONOMIC ISSUES

1. WAGES

A 5% across the board increase in wages in each year of the Agreement to be effective on January 1st of the year.

2. RANK DIFFERENTIAL

There be incorporated a minimum salary differential of 6% between each rank.

3. LONGEVITY

The top step longevity plateau now at 25 years service be reduced to 24 years of service.

NON-ECONOMIC ISSUE

1. The PBA proposes the incorporation of a, "Preservation of Rights" article in the new Agreement and provided the text of same.

PROFILE OF THE BOROUGH

The Borough is situated in the north-central portion of New Jersey at a point adjacent to Route 287 and its intersection with SR 23 and almost on the boundary between Morris and Passaic Counties. It is a relatively small community encompassing some 8.74 square miles, of which 42% are dedicated to State Forest and a holding of the Salvation Army, and having a population of approximately 7610 residents. 90% of the tax revenues are attributable to the residential population who reflect a bedroom community having access to transportation facilities which allow employment in and ease of commutation to the urban areas of northern New Jersey and New York. Family income is commonly attributable to a second person being employed. The commercial aspects of the Borough are very limited and in spite of a program to revitalize that sector little has been accomplished. Growth has stagnated over the past ten years even as to the population which is now somewhat less than in 1970. Should there be added residential population there would be an accompanying need for added school and police services which would place a heavy demand on the budgets for each. The Borough has in hand proposals for approval of two sections to be developed which would amount to as many as 660 new residential units being constructed.

The Borough employs a police force of 14 in the ranks of patrolman [10] and sergeant [4] and with the modification noted above will expand the force by one when the captain rank is in place. The Borough proposes that its compensation of police be measured against a group of relatively close communities of not much greater size than Bloomingdale. In its presentation the Borough uses somewhat differing groups in its chart presentations. The PBA has provided a group of what it describes as comparable employers including a greater geographical spread and public employers where the economic circumstances vary extensively due to the makeup of the ratables, size and overall wealth. There is some overlap of the comparables chosen and I will attempt to blend those proposed in some ways to develop a reasonable basis for comparisons.

Testimony entered includes information to suggest that this is a highly competent police force which has been modernized as to equipment and training. The members are of high personal quality and exhibit both strong spirit and willingness to perform in a professional manner. They have embraced the new technologies introduced and enjoy a reputation of excellence by the residents of the Borough.

DISCUSSION AND ANALYSIS

As noted above the focus in the impasse which remains is almost entirely on economic elements of the Agreement. The most prominent of these is the issue of wage increases. Although this is clearly the most important issue the parties are not at great distance from one another, the offers being 3.9% by the Borough and 5% by the PBA. The Borough defends its offer by assertions that it is firmly in the middle of the comparative group of municipalities which it has chosen as to basic compensation. In the analysis below I will address this point in some detail. The PBA indicates that the Borough's wage program is one of the lowest in the area and should be improved relative to the comparable communities it has suggested. Additionally it suggests that the real value of the wage program now in place will continue to worsen in actual dollars unless the percent of increases are larger than what has been offered by those other municipalities because the base dollars of income are larger than is paid in Bloomingdale. PBA also notes that the 3.9% proposed is less than the average now contracted for in the group of comparables it suggested as a basis for analysis. In that group the average increase for 2002 was said to be 4.219%, for 2003 4.363% and for 2004 4.443%.

The PBA argued that since the average salary paid is nearly 10% lower than the average it used for comparison it would require increases of 7.6% for three years for the Borough to catch up to that average salary rate. Based on this the demand of 5% is seen as very conservative. Other things add to that conclusion. The Longevity plan, which the Borough wants to reduce by half for future employees, is amongst the lowest paid in the area and trails others by several percentage points. Of 14 selected communities reporting percent longevity rates the 7% paid by the Borough trails all of them by 3 to 5.5 points. And many of these pay the higher percent in earlier years than Bloomingdale. A further element of PBA's criticism is that the differential in pay between the rank of patrolman and

sergeant is only 4.64% while the average differential paid in 18 local communities is 9.06% and the median paid is 8.95%. The range is from 4.16% to 15% and Bloomingdale ranks 17th at the 4.64% level. This is barely more than half of the average paid, lagging by 4.4% of salary points. Thus the amount of added salary upon promotion to sergeant, \$3045 after a 3.9% increase in 2002, would be less than the average of other communities by approximately \$2900. The claim is that this isn't sufficient to encourage the desire for promotion and isn't enough to justify the added responsibility for supervision, planning and training involved. A further emphasis on the importance of this element is the fact that most patrolmen in Bloomingdale will be fortunate to ever reach the sergeant rank and that a second promotion to the only captaincy position is an unlikely second chance for upward mobility. Many patrolmen may serve an entire career in the ranks of patrolman and sergeant.

The PBA offers a further criticism of the unfair salary increase offered to the police and that is that the Borough has, for 2002, implemented a 4.2% salary improvement plan for its department heads and managerial employees by ordinance but is unwilling to propose that for this group of employees and offered no rationale as to its differentiating between them.

The second most important area of conflict between the parties revolves around the proposal of the Borough to change the health benefits plan. The situation has to do with a very difficult and expensive experience the Borough has been faced with wherein a previous plan ended in bankruptcy and caused the Borough to make very significant payments and then was met with a demand for an extremely large premium increase. In the end the Borough has undertaken to provide a self-insured plan which is proving both expensive and uncertain. It lacks the numbers of subscribers necessary to spread risk. Because of this the Borough has determined to subscribe to the State of New Jersey plan as many other communities in the area have. This will not be cheap but has the advantage of superior administration and the spread of risks for individual claims over the subscription of hundreds of thousands of public employees. Additionally it has the inherent advantage of providing a range of choices for each individual employee so that the choice can be a reflection of each employee's perceived best interests.

The PBA has resisted the change because it formerly had a fully paid plan and individuals now would be faced with some elements of expense in the form of doctor visits co-payments, deductibles and possible areas of non-coverage. The Borough has offered to provide a buffer against these costs in the form of a maximum reimbursement to each employee of \$600 in the first year, \$400 in the second and \$200 in the third. Additionally the Borough points out that the choices under the NJSHBP can provide specific advantages in terms of coverages not within the plan previously provided which would offset any long term cost to employees. Testimony presented by the Borough clearly demonstrates the need for this change. To continue to offer a self-insured health plan would place the Borough in a very risky financial position which testimony suggests it can ill afford and common sense dictates should be abandoned for a more certain cost plan.

To illustrate the underlying concerns of the Borough as to the health benefits plan it is instructive to examine the past several years experiences. In 1999 under AmeriHealth the total premium for the Borough was \$256,503. This escalated under the Bergen Municipal plan in 2000 to \$305,827, with one added employee covered, as the family coverage premium jumped from \$656 to \$782 per month. The 2001 experience was worse as the plan began to fail financially and the cost increased to \$412,712 while the family coverage moved up to \$884 per month. This was not the worst part of that experience as the Borough was required to pay a further assessment of \$161,618 which moved the total cost to over \$574,000. At the same time the Borough was informed of another exorbitant increase for the 2002 year and decided it had to get out of that plan. In an effort to match the plan it searched for new carriers but could not find one which would provide the coverages sought, and those which were close were priced at \$884 to \$1000 per month for family coverage. This led the Borough to take the step to self-insurance. During the process much was learned about the potential risks involved so the Borough continued to search for a reliable replacement. The State Health Benefits Plan offers much more stability, a broad range of options to employees including a traditional plan, a point of service plan, a choice of 5 HMO plans and the assurance of remaining in business without uncalled for swings in overall costs or surprise assessments. It is my intention to find a fair and rational way of accommodating this critical need.

In a budget account status report issued on June 26, 2002 it is noted that the appropriation of \$551,946 for employee group insurance had already been diminished by expenditures of \$370,059 so that the balance for the remaining 27 weeks of the year was only \$171,909 suggesting the original appropriation will prove to be insufficient.

The prior Agreement incorporates provisions for the Borough to make changes in its health benefits plan carrier and includes the condition that it must be an equivalent or better coverage plan, provided there is no additional cost impact to the employee except that it was agreed that such a plan could include a \$100/\$200 deductible and an 80/20 program. The key difficulty in making comparisons is to accurately evaluate the specific plan provisions which would provide equivalent or better coverage. Most plans are written differently from any other. Comparisons are not easy and it is impossible to equate the advantages of one plan's provisions of certain benefits with another which has some other benefit elements particularly as one does not know what individual needs will have to be met. Suffice it to say I do not have nearly enough detailed information before me to make such an analysis and if I did it might take a long time to produce any result. However, I do not feel bound by the terms of the prior Agreement in this area of consideration any more than I would be bound to the terms of any other element of the old Agreement which might be in dispute. Thus it is my intention to address this problem and provide a resolution which will be most acceptable to each party as a part of an overall Agreement.

The financial circumstance of the Borough has been a matter of concern to its management. The attempt has been made to balance the needs of these police officers with the long term fiscal stability of the budget. The municipal budget for 2002 was

increased by \$676,239 or 10.34% over the 2001 budget. The tax rate in 2001 was \$3.66 which amounted to a property tax of \$5314 on a property valued at \$145,186. When the school budget was proposed it included a \$1,075,347 increase and was defeated by the electorate at the polls. The budget increase was then reduced a mere \$27000 and the increase equated to \$.25 in the tax rate or \$363 on the \$145000 home. The County budget was proposed at an increase of 11% and this too would have affected the 2002 municipal budget in the amount of \$.075, another \$109 for the homeowner.

On June 25, 2002 the County Tax Board certified the Borough's 2002 budget and determined a general tax rate of \$3.95, of which \$2.1775 went to the school district and \$.9689 for local municipal purposes. This represents an increase of 7.9% over the 2001 rate of \$3.66. The actual budget was never submitted in evidence which makes it difficult to ascertain what flexibility is included in the measure of anticipated surplus or even what were the actual provisions for salary increases in the police department.

In addition to the basic taxes there are approximately \$985 attributable to provision of water and sewer services so that the homeowner will be faced with an overall bill for taxes and Borough supplied utilities of about \$7000. In spite of these facts the tax rate for the municipality has remained virtually the same for the 2001-2002 period including the proposals made for resolution of this impasse. Greater than anticipated costs could exacerbate the tax structure problem, a situation this arbitrator is implored to avoid.

In defense of the particular economic proposals made by the Borough it offered data as to the comparative level of compensation provided to that in other municipalities. Some of the information presented is unfortunately misleading. As an example a comparison is drawn with Pompton Lakes where the claim is that the Borough's rates for patrolman exceed that paid there. However the comparison is made with the schedule for new hires [after 1995] and the rate of pay at a five year level. The conclusion is that the Borough is ahead paying \$63339 vs. \$54189 in 2001. Nothing is mentioned about the maximum at Pompton Lakes achieved in eight years at the rate of \$71449. Nor is there any comparison to the guide for those employed before 1995 who earn \$71449 at the five year point. Thus those hired before 1995 earned \$8110 more at Pompton Lakes in 2001. To make a more realistic comparison one might look at the Borough's proposed new guide for employees beginning in 2002 where the five year rate would have been \$47983 for 2001, some \$6206 less than Pompton Lakes would have paid recently hired officers for that service level. Perhaps the more telling element of this situation is not just the many years wherein the Pompton Lakes patrolman earns more money but that the higher level of pay, whenever achieved, makes a very substantial impact on the total income received during a career and on the pension value to be received over years of retirement.

The comparison with nearby Butler is very much closer showing the Borough pay rates at 5 years compared to Butler's at 10 years to be very close, with Butler ahead by only \$436 in 2004. Likewise the comparison of salaries with those paid in Riverdale shows the Borough to be ahead by \$3138 in 2002 for patrolman at top of guide. The Borough also suggested a comparison with Ringwood. Here as in Pompton Lakes the Borough

presented figures which need to be refined. It used its maximum pay and chose to use the 5th step pay at Ringwood. In 2002 the Ringwood number used was \$71362, however the real maximum salary there was \$76504. So the difference in salary at maximum was not \$5553 but \$10695. Ringwood also has a 5.9% rank differential and a maximum longevity pay at 13 years of 10%, in addition to which it will improve salaries at the rate of 4% each year.

West Milford was also offered as a comparable community and again the Borough chose to compare salaries at the 5 year level because it represents the maximum at Bloomingdale. Thus the pay of \$65600 for 2002 suggested by Borough is really \$70380 at fifth step for those employed before 1999 and at the 6th step for those hired after 1999 in W. Milford. The Borough's extension of the comparison to 2003 is also inaccurate as it claims the pay for 5th step to become \$68224 in West Milford whereas it actually will become \$73195 except that the later hires will not achieve that number until 6th year. Of course none of the post 1999 hires, if any, will be at maximum pay for some years yet. The claim that the Borough rate is superior is clearly incorrect as the West Milford patrolman will earn \$4571 more in 2002 and \$4820 more in 2003, presuming the 3.9% proposed is awarded. In addition the West Milford officers will enjoy a 10% increase between ranks and 10% longevity after 20 years service compared to 7% in Bloomingdale after 25 years. The \$4820 is worth approximately 7% and the added 3% for longevity pay difference brings the total package to a minus 10% at Bloomingdale. In addition West Milford provides a 2% payment for officers assigned to patrol and their longevity pay of 6% at 12 years service isn't reached at Bloomingdale until 20 years. In further review of the West Milford Agreement I note a provision for educational incentives which can add up to a maximum of \$4300 in annual pay, which is achievable with an associates degree in police science, compared to the \$1600 in Bloomingdale.

The PBA's rendition of comparable salaries is based on a substantially larger group of communities but most are within a ten mile radius of the Borough. A substantial portion of them are larger municipalities in population and with greater commercial tax bases. After a careful review of that group and with some modification due to recalculation made by myself it appears that the average increase for 2002 was 4.1%, for 2003 4.12% and for 2004, with a much shortened list having reported, the average was 4.25%. When I further reduced the population of municipalities which might logically be considered inappropriate as comparables from the PBA list the results as to average rate of improvement were not affected in any meaningful degree; in one such set the average increase actually increased. I therefore have concluded that the figures above fairly represent the pace of improvement in surrounding municipalities when the sample is expanded beyond the limited group chosen by the Borough but without extending the geographic area beyond an average of less than 6 miles distant from Bloomingdale.

A less costly element of the PBA demands is the reduction of the number of years required for eligibility for the maximum, 7%, level of longevity. This clearly reflects the interest in fully qualifying for the higher pay rate for the year before a normal retirement with 25 years service. The Borough rejected this proposal in spite of the fact that the 7% trails

just about every other municipality in the region by at least 3 to 5%. PBA notes that it is not asking for an improvement in the rate of the longevity payment although it avows that could readily be defended. Noting the relatively less than average overall compensation paid to its officers, as compared with an appropriate group of local municipalities, it appears this would represent a way to provide something of a future catch up of pensionable income while payment of that incremental 1%, which represents the improvement at 25 years now incorporated in the Agreement, would not be overly burdensome. In fact the only officers who would actually benefit from this change won't become eligible until after the term of this Agreement. There are three officers who would qualify but they already have more than enough service to have included the 7% in current pay. Certainly it will add to the costs of the pension but presuming that these officers are entitled to be compensated reasonably while working and in retirement it seems to be a cost which could be borne without great budgetary stress, particularly not in the immediate future. In addition it probably would provide incentive to an officer to take advantage of the 25 year retirement and then be replaced by someone earning considerably less at the bottom of the salary guide.

The Borough also proposes that new hires be placed on a guide having 10 steps before reaching maximum salary and that they become entitled to a longevity program at half the rate of the current relatively anemic plan. In support of the ten step proposal the Borough introduced evidence suggesting that many municipalities have adopted a more extensive guide to help conserve salary costs while still providing sufficient incentive to attract fully qualified candidates for employment. In short the market place has evolved such that police jobs have become very attractive and there are many qualified applicants for available openings. As is true in most economic formulae when the need is less than the available applicant source there is a reduced pressure to provide added monetary incentives. The annual salary movement within the salary guide as it now exists is very substantial and a reduction of the annual incremental movement will probably not dissuade applicants nor reduce the quality of performance. The Borough failed to demonstrate that a ten step plan was something which has been adopted in any other location and without such demonstration it is difficult to justify such a departure from what has been the norm over the years. By that I mean that police officers are generally considered fully qualified for the top rate for the job in less than ten years. They have generally been treated almost as if the first several years were an apprenticeship and the top pay is the equivalent of a journeyman. This demand does reflect a means of maintaining the attractiveness of the job while imposing some control as to the costs to be borne by the taxpayers. Some middle ground would appear to be both consistent with what is happening elsewhere and in keeping with the Borough's need for conservation of resources where such does not impede the delivery of services.

I shall address the non-economic issues in the presentation of my conclusions below.

CONSIDERATION OF THE STATUTORY CRITERIA

THE INTERESTS AND WELFARE OF THE PUBLIC

One of the key elements of this criterion has to do with the impact of an award on the CAP Law limitations imposed on the flexibility of the municipality in its budget process. The Borough suggested that any award of the demands of the PBA which required additional funds beyond what has been budgeted for 2002 would impact on those limitations as the Borough used all of its CAP reserves in creating the 2002 budget leaving a balance of only \$67. In point of fact the Borough has been very successful in maintaining the municipal portion of the overall levy for the last two years. The budget cast for 2002 demonstrates its success in that endeavor. Of course the policy of the Borough has been to contain expenses wherever possible in order to control the burden of homeowner taxation. One of the keystones of that plan has been to create surplus within the index rate of the CAP limits. This has been accomplished in past years despite the spending of substantial monies on capital expenditure items, that might otherwise have been paid over long periods of time, in order to avoid financing costs. As noted above, all details of the 2002 budget were not placed in evidence. It is therefore difficult to determine the precise effect of marginal modifications on the integrity of the budget. It is even more problematic as to future years.

The efforts to control expenditures have not extended to the school district where that budget has become a major cause of the escalation of the tax rate and the County portion has likewise had a substantial impact. In the 2002 budget the Borough has incorporated substantial commitments for improved salaries at the top echelons of its employment and there has been provision for additional expenditures as well. What my award will do to the already budgeted plan for 2002 will not produce a meaningful problem.

The interests and welfare of the public focus on the need for competency in providing a safe and secure environment. This is best achieved by the establishment of a reasonable compensation package for the superior quality of police performance that is expected of the department. That quality is being delivered by a force having a somewhat less than average level of compensation in salary and limited opportunity for promotions. Even if there were more chances to move up in rank the pay differential is not a great incentive. It is my belief that some more generous compensation plan for the four years of this contract period is justified and will, if provided, be in the best interests of the public.

I view this criterion as of significance but not critically so. The economic circumstances will be examined more completely below. I therefore attribute only moderate relevance to it in drawing my conclusions.

COMPARISON OF WAGES AND CONDITIONS OF EMPLOYMENT

Clearly the emphasis of this entire arbitration proceeding has been focused on this criterion. The overall conditions of work for the police have not been criticized and the Borough has generally provided a full array of benefits which are in most ways comparable to the standards of this type of employment. The high level of morale is testament to this and the only negative testimony from the employees had to do with the level of cash

compensation. As noted above the Borough has indicated its focus to have been on being competitive in the compensation package provided. However the defense of that objective led to straining the actual data in order to show an average pay package which appears to have been the goal of the Borough. The real problem is that the overall pay for 20 or 25 years or more of service is dependent on the highest level of compensation received for most of the term of that employment. The comparison of salary at the 5th step, as noted above, versus consideration of the maximum pay achievable is very misleading and unfair. In reality the police officer employed by the Borough will be paid somewhat less than other comparable employers are affording for most of their careers. Most of this is due to the base salary and part to longevity and rank differential. The PBA placed emphasis on these three elements in its presentation and provided evidence to demonstrate how far behind average the Borough's compensation plan actually was. This is not to say that there is an empirical principle which suggests that every public employer compensate its police at the average level. However, absent economic circumstances which dictate to the contrary the statutory standards direct the attention of the arbitrator to what is done in comparable employment. The reason for this is that the compensation market place is a combination of those circumstances found by examination of comparable situations.

The economy of Bloomingdale has not flourished in recent years. The Borough has reason to be conservative in its approach to maintaining a tolerable level of property taxes. Both the County and the school district do not appear to share the Borough's determination.

During the three year period from 2000 through 2002 the municipal portion of the budget has changed very little from \$4,076,157 to \$4,166,005 or 2.2%. During that same period the school budget has advanced from \$7,724,281 to \$9,127,313 or 18.16 % while the student population has not grown perceptibly and while the teacher salary increases have outstripped those afforded to the police as the effect of negotiations without interest arbitration as a factor and in the face of substantial voter opposition. The County portion of the budget increased 8.77% for that period.

The question emerges; to what degree should the police officer be expected to be satisfied with less than average compensation for police officers both at this time and for the future? Should the Agreement for the four years provide a status quo, a further decline in comparability or a program that provides some degree of catch up toward average? When the pay rate is below average and percentage increases are less than comparable or even if they are equal the result is a compensation level that falls further behind in dollar terms. The fiscal circumstances of the Borough do not appear to be such as to justify or require that condition. On the other hand there is a definite need to support a conservative financial management program.

As neither party has placed reliance on the events in private sector employment as a basis for its position in this matter I do not intend to place much emphasis on this element. The private sector has no specific jobs which are worthy of comparison to that of a police officer. This has been the general conclusion of many arbitrators involved in this process. As a result they have not placed great emphasis on this factor. The exception to this

would be the consideration of the relative degree of change in private sector wage structures as contrasted to those proposed here. In that respect the private sector has been experiencing more substantial increases in the general pattern of adjustments than has been the situation in governmental employment. However the data supporting this observation is dated and with the current circumstance of the economy being rather different than was the case in 1999-2000, the last period which State measurements covered, I do not believe that data to be of great assistance in attempting to discern what the appropriate changes should be for the next several years. In this proceeding there have been reliable data collected which is reflective of absolutely comparable employment circumstances from the work performed to the geographic area involved and complete with detailed data on the added elements of a total compensation package. Therefore my attention is centered on the employment of police officers in communities rather like the Borough and located near it.

I see the comparability criterion as of great significance in this proceeding and place substantial relevance on it in the determination of the merits of this dispute. This conclusion is supported by the fact that the parties devoted almost all of their attention to the economic aspects of the impasse.

STIPULATIONS OF THE PARTIES

There were numerous elements of accord reached during these proceedings. They are intended to be incorporated in the new contract. Other than those there were no stipulations of consequence. I therefore find this criterion to be of limited relevance and not of consequence to the evaluation of those issues which remained in dispute.

LAWFUL AUTHORITY OF THE EMPLOYER

The authority of the Employer is not at risk as to any of the issues discussed above. However the PBA demand for inclusion of an article entitled, "Preservation of Rights" raised serious questions as to the ordinary functioning of management. It is drawn in a manner to appear to encompass almost anything that could be seen as beneficial to an employee even if only expressed in the least formal manner and by anyone in the supervisory or management function. It is so vague and expansive in its form as to defy definition of its potential impact. This was not an issue pressed or defended effectively by the PBA and addressed only superficially by the Borough during these proceedings. It is not an issue that I will endeavor to dissect or modify in the course of development of an award. Thus it will not be awarded and thus not impact on the lawful authority of the Employer.

The CAP Law limitations for future years may become more of a problem. The costs of this contract will escalate in the future although posing no immediate threat to the functioning of the Borough within CAP limitations. The budget cast for 2002 was done within the 2.5% limit and did not require the Borough to consider the exercise of its authority to move up to 5% as is allowed. The Borough indicated in its post-hearing

summary that just about all of the CAP carry over from prior years had to be utilized in forming the budget. It did not offer any insight as to what surplus is anticipated for carry over into 2003. I must presume that a conservative minded administration has not cast a budget which would reduce its fiscal stability to the extent that its credit worthiness would be impaired. The likely prospect is that the Borough may have to modify its practice of making all capital expenditures from current income to some extent but this award will not produce an extraordinary level of unanticipated expenditures for the near term and should not of its own weight place an unmanageable burden on the Borough.

It is anticipated that somewhat larger than planned salary costs will not become a factor until 2003 and will be offset by reductions in the health benefits area. The Borough initially predicted savings related to moving to the State plan to be \$53000. However, that estimate was made before it became clear that the current year expenditures were underestimated by a substantial amount. The move to the State plan will therefore have a more beneficial effect than had been built into that calculation.

The bottom line however is that the Borough's lawful authority as it concerns budget making will not be so constricted by this award as to endanger its ordinary exercise for this year and for the future years as well.

I am concerned as to the potential of a new Agreement to threaten the lawful authority of the Borough and consider this criterion to be of significant relevance. The fashioning of my award including the rejection of the proposed "Rights" clause will be a reflection of that concern.

FINANCIAL IMPACT ON THE BOROUGH

This criterion is always relevant and deserving of significant consideration. The Borough has made a substantial part of its presentation focused on the perceived need to control the increasing level of property taxes. The recent financial plans have incorporated the concepts of fair compensation with conservative management. It is my responsibility to resolve the negotiations impasse and at the heart of that conflict is the issue of fairness as observed from two perspectives. I intend this award to represent a reasonable compromise which both parties can live with harmoniously.

The Borough has not indicated anything in its presentation which would suggest that plans for vital improvements are being threatened or that municipal projects or priorities would be endangered by modest changes in the cost of settlement of this matter. It has said that all expenditures should be justified and considered against the backdrop of conservative financial policy. The key element here is the magnitude of the impact of an award. For these reasons I will give this criterion the substantial consideration it merits.

THE COST OF LIVING

Neither party relied heavily on the cost of living as a defense for its position. The Borough did incorporate details showing that its proposals were more generous than the CPI increases which have been contained between 1.24% and 3.36% for the past five years. It also noted that the 1st quarter of 2002 indicated an annual increase rate of only 1.24% forecasted. The Borough concluded that its provision of salary improvements at an average of 2.66% greater than the CPI for the past 4 years was generous. On balance the CPI has been relegated to a secondary level of consideration in recent years as a factor in establishment of wages. The data from the State concerning private sector wage improvements indicated a 6.4% gain between 1999 and 2000 while the CPI remained below 3.4%. The gains in the private sector were substantially greater than in government employment. But such data is historical and only serves to demonstrate that CPI has not been the singular basis for setting of pay rates in recent years. For that year the private sector change in Morris County was reported to be 20.4% while that of Passaic only 1.9%. Given the location of the Borough on the border of those two Counties it is difficult to establish what the effects were in the Borough. Although it appears that most residents of Bloomingdale are not employed within the Borough

I consider this criterion to be of little consequence and afford it slight relevance as it appears not to be the significant basis for determination of adjustments to rates of pay that it once was.

CONTINUITY AND STABILITY OF EMPLOYMENT

The circumstances of employment in Bloomingdale have led to a substantially positive relationship between employees and the Borough. For the most part the officers are satisfied with the conditions of their work and perform exceedingly well. The Borough is proud of them and places substantial confidence on their ability to maintain order and safety. There have not been any episodes of unhappy employees leaving the Borough in recent memory. The PBA reports no great problems in its dealings with the Borough and in testimony the Local President was generous in his assessment of the working relationship where the improvements in equipment and training have assisted the men in performing with pride at a high level of professionalism and with increased efficiency.

This criterion becomes a matter of serious consideration primarily when there is evidence of meaningful problems not present here. For that reason I do not consider it highly relevant except to the extent that the relative fairness of the new Agreement could potentially affect the very positive relationships noted above.

CONCLUSIONS

I believe the information presented to me supports the grant of a salary plan which is somewhat more generous than the last offer of the Borough. I also believe that the Borough is not in the financial position to grant very substantially greater improvements than it offered. The compromise will be to deliver a program which does not impose heavily on the budget plan for this year, now two thirds behind us, but which will advance

the base pay rates at a pace which avoids the further falling behind as measured against the averages discussed above. I see this as consistent with the stated objective of the Borough but more accurately focused on the real maximum salaries received among the comparable communities deemed appropriate for comparison. Therefore for the 2002 year I will award a split increase which will reduce its added value in current year dollars so as not to upset this years fiscal plan but will establish an improved base so as to achieve a more competitive structure for the following years. The same treatment will be utilized for 2003 and for the same reasons. The increase in 2002 will be 3% on January 1st and 2% on July 1st. The effective cost for the year will be 4%, only .1% more than offered by the Borough. However it will mean a base increase of 5% going into 2003. The 2003 increases will be the same. The increase for 2004 will be 4.2% effective on January 1st and the 2005 increase will be the same. The effect of these increases will be to produce an overall dollar value such that the Borough's compensation plan more nearly keeps pace with those paying higher salaries with an average of about 4.1% increases which when compounded on higher base pay produces greater dollars of improvement.

In the situation above should Pompton Lakes continue the 3.9% level of increases it has provided for the past three years the result would be a 2005 salary at maximum for those hired before 1995 of \$83264. The proposed increases I have noted above for this unit would yield an approximate salary of \$75820 in 2005. This would result in the negative differential between Bloomingdale and Pompton Lakes shrinking from \$8110 to \$7444 at an average of \$166 per year. This is a step in the right direction even though the Borough's pay scale will still trail quite substantially. A similar example can be made for other communities such as West Milford now paying more than Bloomingdale and also considered by the Borough as worthy of consideration as an appropriate comparable. It is obvious that the PBA proposed 5% per year would not be an outrageous level of increase as it would have propelled the Bloomingdale rate at maximum to \$76989 in 2005 and still left the Borough trailing Pompton Lakes by \$6275. However I am convinced the Borough needs as much breathing room as possible as it struggles with the fiscal issues it now faces. This compromise should not prove very damaging to that effort and should help to assure the reasonable satisfaction of the officers as well. The 2002 added cost of one tenth of a percent is only of nominal dollar consequence. Given the 2002 police salary budget at just over \$1,000,000 it would amount to only \$1000. In the second year and thereafter the compounded salary increases awarded will be somewhat higher than the offer of the Borough would have produced. However, the savings attributable to the changes here ordered in the health benefits plan, which will be enhanced by extension of the State plan to all Borough employees now enrolled in the self-insured program, plus added savings for any new hires will more than offset the incremental added costs related to the slightly higher salary increases.

The request to adjust the longevity program to allow the 7% plateau to be reached in 24 years is to be granted based on its very limited financial impact, in fact none for the next several years, and the generally much less generous than average plan now in effect. If, as it seems likely, the officers employed by Bloomingdale will have to be content with that level of compensation I think this small long term cost to assist in the improvement of

their income is a reasonable price to pay for the Borough. Beyond this, the modest change does not have the effect of making the plan nearly as generous as others where the fruits of the longevity plan are greater in terms of percent of salary compensated; are paid for much longer periods and also impact pension computations at higher rates than the 7% maximum of Borough's plan. Although I do not consider this movement to be the only way to make the longevity plan more comparable it is what was requested by PBA and is the least expensive improvement that could have been designed.

The Borough has demanded that a second salary guide be put in place for new hires. Its suggested outline was to be a ten step pay plan which brought the officers involved up to the maximum pay rate afforded other employees when the ten years of service was attained. It was noted that many other such modified salary guides have been incorporated into contracts within the group of comparable municipalities. Very little statistical analysis was provided as to the years of service necessary for attainment of maximum salary ordinarily found in those guides. My review of the Agreements in evidence suggests that the average of such plans is well under ten steps. Pompton Lakes guide has eight steps, West Milford has six and others vary around those numbers.

It is obvious that the annual rate of salary increase in a five step plan is quite substantial. As an example to illustrate this point note that a Bloomingdale officer at the first year step at the rate of \$34669 at the end of 1998 would have received across the board increases of 3.9% for each of the next three years. However the step increases add substantially to that figure and when he arrived at step four on January 1, 2001 his salary would have jumped to \$57226. This means that he would have received total increases of 20.2% in 1999; 18% in 2000 and 16.3% for 2001. I conclude that some moderation of this rapid movement is quite justifiable in the circumstances of Bloomingdale. I will make an award which represents a compromise between the objectives of the parties and incorporate a new guide in my award. However as to the demand of the Borough that such new employees be granted a longevity plan only half as rich as that now in effect I do not find reasonable justification. There is no longevity plan cited in the record of this matter which comes anywhere near the paucity of that proposed. The present plan is one of the least generous. To inflict such a plan as proposed would only exacerbate the long term issue of a generally less than average compensation plan as is now the case. There is no cost to the Borough which would be attributable to longevity payments for new hires during the term of the Agreement. This means there are no short term costs to be considered. There are long term effects of course but as pointed out above the longevity plan is a part of overall compensation and to diminish this in the face of the circumstances here was not justified by the data presented to me.

The key issue presented by the Borough has to do with the need for a change in the health benefits plan. As outlined at the beginning of this opinion I am convinced that the need of the Borough must be accommodated in some way to help avoid the financial fallout of being self insured. I do not believe that I have the evidence or insight to render an exact opinion as to the comparison of the several coverage choices available under the State health benefits plan with the coverage of the plan now in effect. However the State plan is

a comprehensive collection of choices which may be subscribed to by individual as best suits their particular needs. My conclusion is that problem must be put behind the parties at this juncture. In addition I conclude that the State plan is a very substantially acceptable plan and that determination is fortified by the subscription of many local municipalities to same as well as the State and its Police. The Borough has advanced a method of cushioning the possible cost impact on employees as a matter of sharing the savings to be achieved by adoption of that alternative. That proposal was made whilst the considerations were limited to a three year contract. In this award I intend to modify the change to include the fourth contract year and also to adjust the formula for the reimbursement payments. It is understood that this new plan may have the effect of requiring the officers covered to make some contribution in support of the coverage afforded including the \$100/\$200 and 80/20 concepts. It is also my intention to continue the provision that any further change of carrier by the Employer's choice must incorporate, "to equivalent or better coverage and at no greater cost to employees" language than participation in the State plan required. It is also intended that this award not change the entitlement of retirees to the new plan and that the dental plan not be changed by the award.

A final economic issue has to do with the demand for extending the rank differential from the current 4.64% to 6%. Based on the discussion above I am convinced this is a fair modification. As noted almost no other of the comparables has such a low differential. But in addition in the ordinary work of job evaluation there is general agreement that one can not differentiate two jobs by less than a 5% distinction. In the State Civil Service ordinarily no differential involving a supervisory/subordinate relationship is reflected with less than a 10% distinction. There are only four employees who would benefit from such a change but I believe the very nature of the supervisory control, especially as there is no rank of lieutenant, fully justifies a greater differentiation than is now provided. The 6% requested is a moderate change under all of the circumstances. Borough's only element of rejection of this demand was the incremental cost involved. Nothing was introduced as to the lack of equity of such demand. Therefore it will become part of my award.

There were two non-economic issues presented. The first by the PBA was discussed above and for the reasons set forth there is denied. The second is the demand by the Borough that the Agreement contain specific acknowledgment of the Personnel Policy Manual. The Borough also stated that it's adoption of policy is a reserved managerial prerogative. As such it would not be negotiable except as it might deal with mandatorily negotiable matters. My conclusion is that the Borough does have the right to publish such a policy manual providing only that its content not conflict with a negotiated element of the Agreement. Why then must it become a part of that Agreement? The Borough clearly has the right to establish such policies under the Management Rights article and it can freely distribute copies to these employees if it so chooses. I conclude there is no persuasive reason for me to rule in favor of its incorporation in the Agreement. In part this conclusion reflects my observation that the Policy Manual, not being written in the way of a contract, leaves substantial question as to whether it might be interpreted in ways

which do conflict with the terms of the Agreement or possibly impact on the obligation to negotiate changes in mandatorily negotiable terms. This demand is also denied.

Therefore after careful evaluation of each of the issues at impasse and giving scrupulous consideration to the statutory criteria to be weighed as noted above I have produced the following award.

AWARD

1. WAGES

A. For the year 2002 there shall be a 3% increase of December 31, 2001 rates effective on January 1, 2002 and a 2% of December 31, 2001 salary rates added increase on July 1, 2002. These to be paid retroactively within 60 days of this award.

Thus on January 1, 2002 the Academy rate will become \$31159, the starting rate \$33755, step 1 \$40053, step 2 \$46349, step 3 \$52646, step 4 \$58943, step 5 \$65239 and sergeant \$68267. On July 1, 2002 these rates will increase by the 2% to Academy rate \$31763, starting rate \$34411, step 1 \$40830, step 2 \$47249, step 3 \$53669, step 4 \$60087, step 5 \$66506 and sergeant \$69593.

B. For the year 2003 there shall be a 3% increase on January 1, 2003 and a 2% of 2002 final rate increase added on July 1, 2003.

In the sergeant rank the differential shall be increased to 6% on January 1st before the application of the 2003 increases to base pay so that the pay before the addition of percentage changes as noted above will have increased to \$70496

C. For the 2004 and 2005 years there shall be an across the board increase of 4.2% effective on January 1st in each year.

D. For employees hired after the date of this award there shall be a new salary guide with seven steps. The figures herein reflect what would have been the increases had the guide been effect for the 2002 year. Thereafter this guide will be susceptible to the increases outlined in B. and C. above. The new guide will be as follows: Academy rate \$31763, starting rate \$34411, step one \$37806, step 2 \$41537, step 3 \$45636, step 4 \$50141, step 5 \$55090, step 6 \$60529 and step 7 \$66506.

New employees promoted to sergeant shall be placed on the single guide step for that rank.

E. The rank of captain shall be established with a pay rate of \$75403 for the 2002 year. Thereafter the increases above shall be applied beginning on January 1, 2003.

2. LONGEVITY

The current longevity plan shall be continued in all respects except that the requirement for adjustment to 7% of salary shall be reduced to 24 years of service.

3. HEALTH BENEFITS

The Borough shall be entitled to enroll all employees in the State Health Benefits Plan, which shall include a prescription drug benefit, at a time when this change can be implemented. Co-payments, deductibles and office visit charges to be paid by the insured shall be as provided in the plan selected by the individual employee. The Agreement shall include the provision that should the Borough wish to make a further change of insurance carriers for health benefits it is restricted by the following; "...can be changed only to an equivalent or better coverage plan and at no additional costs to the employee". This is not intended to limit the parties from jointly agreeing to make changes.

It is further noted that the eligibility of employees or retirees to health or dental benefits as provided in the Agreement is not intended to be modified by this award.

The Borough offered, as a share of savings, \$600 in year one, \$400 in year two and \$200 in year three as a maximum reimbursement to any individual who experienced excess costs as the result of the change to the State Plan. My award is that these monies be available on a total pool basis. This means that the \$600 be multiplied by the number of officers in the unit and the cost experiences of all members in the first year be paid out of that pool at the end of the year. Should there be an oversubscription to the pool limit the pay to each employee shall be on a pro-rata basis. The same formula would be in effect for the second year at the rate of contribution to the pool of \$400 per officer and for the third year at the rate of \$200. It appears this will include all or most of 2003, 2004 and 2005. Monies not subscribed to in either the first or second year shall be carried over to the following year's pool but will expire if not used at the end of the third year.

4. All other elements of agreement of the parties which were part of this process are to be construed as incorporated in this award. All other issues presented including the non-economic issues are denied.


Frank A. Mason

Pennington, Mercer County, New Jersey

On this 30th day of August, 2002 before me personally came and appeared Frank A. Mason, to me known and known to be the individual described in and who executed the foregoing opinion and award and he acknowledged to me that he executed the same.

