

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
P. O. BOX 429
TRENTON, NJ 08625-0429

Docket No. IA-2002-083

TOWNSHIP OF NEPTUNE	:	
-Employer-	:	OPINION
and	:	AND
P.B.A. LOCAL 74	:	AWARD
-Association-	:	

ARBITRATOR: Robert E. Light, mutually chosen by the parties pursuant to the rules and regulations of the New Jersey Public Employment Relations Commission.

MEDIATION SESSIONS: September 5, 2002, November 25, 2002, and March 3, 2003

HEARING: June 9, 2003. Both counsel thereafter filed post-hearing briefs and supplemental material.

APPEARANCES: For the Township
James L. Plosia, Jr., Esq., APRUZZESE, McDERMOTT,
MASTRO & MURPHY

For the Association
Richard D. Loccke, Esq., LOCCKE & CORREIA

PROCEDURAL BACKGROUND

Pursuant to Chapter 85, Public Law of 1977, the act providing for compulsory interest arbitration of labor disputes in police and fire departments and, in accordance with NJAC 19:16-5.6 (b), the undersigned was duly chosen as Interest Arbitrator in the above matter. This designation was communicated to the parties and the Interest Arbitrator in the above matter. This designation was communicated to the parties and the Interest Arbitrator by letter dated June 21, 2002 from Timothy Hundley, Director of Arbitration, New Jersey Public Employment Relations Commission.

Mediation sessions were held on September 5, 2002, November 25, 2002 and March 3, 2003. Attempts at a resolution of this interest arbitration which once appeared hopeful, ultimately proved to be unsuccessful. As a result, a formal hearing was held on June 9, 2003. By virtue of the statutory revision to NJSA 34:13(a)1, et seq., by the passage of the Police and Fire Interest Arbitration Reform Act (A-3296, C. 425 L1995), as well as by agreement of the parties themselves, conventional authority is vested in the Arbitrator to decide the issues in dispute.

The revised statute cited above imposes upon the Interest Arbitrator the following:

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

1. The interest and welfare of the public. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by P.L. 1976 c.68, (C.40A:4-45.1 et seq.).
2. Comparison of wages, salaries, hours, and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours, and conditions of employment of other employees performing the same or similar services and with other employees generally:
 - a. In private employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.
 - b. In public employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.

c. In public employment in the same or similar comparable jurisdictions, as determined in accordance with Section 5 of P.L. , c. (C.) (now pending before the Legislature as this bill); provided, however, that each party shall have the right to submit additional evidence concerning the comparability of jurisdictions for the arbitrator's consideration.

[(b) in comparable private employment.

(c) in public and private employment in general.]

3. The overall compensation presently received by the employees, inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received.
4. Stipulations of the parties.
5. The lawful authority of the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by P.L. 1976, c.68 (C.40A:4-45.1 et seq.).
6. The financial impact on the governing unit, its residents and taxpayers. When considering this factor in a dispute in which the public employer is a county or a municipality, the arbitrator or panel of arbitrators shall take into account, to the extent that evidence is introduced, how the award will affect the municipal or county purposes element, as the

case may be, of the local property tax; a comparison of the percentage of the municipal purposes element or, in the case of a county, the county purposes element, required to fund the employees' contract in the preceding local budget year with that required under the award for the current local budget year; the impact of the award for each income sector of the property taxpayers of the local unit; the impact of the award for each income sector of the property taxpayers of the local unit; the impact of the award on the ability of the governing body to (a) maintain existing local programs and services; (b) expand existing local programs and services for which public monies have been designated by the governing body in a proposed local budget, or (c) initiate any new programs and services for which public monies have been designated by the governing body in a proposed local budget.

7. The cost of living.

8. The continuity and stability of employment including seniority rights and such other factors not confined to the foregoing which are ordinarily or traditionally considered in the determination of wages, hours, and conditions of employment through collective negotiations and collective bargaining between the parties in the public service and in private employment.

TOWNSHIP OF NEPTUNE

FINAL OFFER

1. Length of Contract: January 1, 2002 to December 31, 2004.
2. Article XXI – Wages: Increase base salaries by 1% in 2002, 2% in 2003, and 3% in 2004. Increases to be retroactive.
3. Article XXI – Salary Guide: The number of steps in the salary guide to be structured as follows (see below). New guide to apply only to employees hired on or after January 1, 2002. For these new hires, no longer any distinction between guides based upon health insurance enrollment. The steps on the new guide to remain frozen for the life of this contract. Employees hired prior to January 1, 2002 will be on the guides in the existing guides.

0 – 18 months:	27,000
19 – 36 months:	36,000
37 – 48 months:	42,000
49 – 60 months:	48,000
61 – 72 months:	54,000
73 – 84 months:	60,000
85 – 96 months:	66,000
97+ months:	75,000

4. Article XI (F) – Sick Leave Incentive: Eliminate in its entirety.

5. Article XIII (C) – Health Benefits: Increase prescription co-pay from \$1 for generic/\$5 brand to \$5 for generic/\$10 brand, effective July 1, 2003.
6. Article XV – Uniform Allowance: Effective 1/1/03, reduce uniform allowance from \$825.00 to \$750.00, and reduce the uniform maintenance stipend from \$725.00 to \$650.00. Alternatively, leave allowance at current amount, but eliminate the maintenance stipend (Township to provide cleaning service).
7. Article XIX (C) – Retirement: Employees hired after January 1, 2003 will no longer be eligible to be paid, upon retirement, for any accumulated sick time.
8. Article XX (B) – Court Time: Reduce the 4-hour guarantee for Superior and Federal Court appearances to 2 hours (making it consistent with all other Court appearances).

P.B.A. LOCAL 74

FINAL OFFER

1. Wage increase - The PBA proposes a 4-year contract as follows:

5.0% across-the-board effective January 1, 2002

5.0% across-the-board effective January 1, 2003

5.0% across-the-board effective January 1, 2004

5.0% across-the-board effective January 1, 2005

2. Longevity:

5 year level – additional \$ 200.00

10 year level – additional \$ 400.00

15 year level – additional \$ 600.00

20 year level – additional \$ 800.00

24 year level – additional \$1000.00

3. The PBA proposes a modification of Article VIII, Hours of Work and Overtime (contract page 17) in 2 areas. First the PBA proposes a shift bid procedure which language was specifically annexed to the proposal sheet at proposal sheet page 6. The following is a copy of that proposal sheet, page 6.

PATROL SHIFT ASSIGNMENT

The normal workweek for Police Officers shall be forty (40) hours per week.

Patrol shift assignments and days off shall be made each year in accordance with a seniority bid system. Shifts shall be eight (8) hours in duration with starting and ending times as outlined in this schedule. (See attached).

Standard slips for shift and days off selection shall be distributed to all patrol officers on or about October 1st of each year. The slips shall be returned promptly by October 15th so that assignments which will take effect January 1st of the following year, can be made by November 30th of that year.

Shift Preference: Each employee shall list his/her first, second and third preference for shift assignment and days off; and consistent with the efficient operation of the Police Department assignments and days off shall be made based upon seniority. The procedure to be used shall provide the employee with his/her highest shift preference and days off in accordance with seniority.

The second area of change is that the PBA proposes that there be advanced notice provided in the amount of 30-day notice. This will be a modification of the second line of paragraph B of this of noted article.

4. Article XXIV, Fully Bargained Provisions (Contract pg. 50) – The PBA proposes a deletion of this article.
5. Article XXVI, Miscellaneous (contract pg. 54) – The PBA proposes a modification of paragraph D so as to remove the limitation on the defense of lawsuits. Specifically proposed is that the public employer would defend all charges against an officer including the expungement of charges brought against an officer (after the officer is cleared of said charges), at competitive legal rates which would insure an adequate professional defense.
6. The PBA proposes the addition of a new article "Preservation of Rights". This proposal appeared as item 10b on the original proposal sheet and was annexed to those proposals at page 11.

PRESERVATION OF RIGHTS

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

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

The PBA wishes it noted that the parties have agreed on a few items which are intended to be included in the ultimate contract following your award. Those items were referenced on the original PBA proposal sheet as #9 (Article XXVII, Term and Renewal, pg. 55), Personnel Files (new language annexed to the proposal sheet at page 10) and Ceremonial Activities (new language annexed to the original proposal sheet at page 12).

PROCEDURAL ISSUES

1. The Township's Final Offer

The parties submitted their final offers to me on May 30, 2003. At the beginning of the arbitration hearing, counsel for the PBA moved, pursuant to N.J.A.C. 19:16-5.5(a)1, to preclude three (3) proposals submitted by Township counsel. N.J.A.C. 19:16-5.5(a)1 mandates that the respondent shall file, within seven (7) days of receipt of the formal petition, a responsive pleading listing any additional unresolved issues to be submitted to arbitration. PBA counsel also submitted a memorandum of law addressing the issue. At the hearing, I advised the parties that while the issue remained outstanding that the arbitration proceeding would take place and the parties would be given the opportunity

to later address the issue. Both counsel addressed this issue, and it is appropriate to dispose of it at the outset.

Association counsel presents the procedural history of this matter: on May 8, 2002, the Association filed an Interest Arbitration Petition; on May 15, 2002, the Director of Arbitration advised Township counsel that the Township was required to provide the interest arbitrator of any additional outstanding issues; the Township timely responded to the Director's request and listed additional issues; issues remained unresolved through mediation; on May 30, 2003, Township counsel submitted the Township's last offer.

According to the Association, the Township's final offer includes three (3) issues – uniform allowance, terminal leave benefits, and court time - that must be disregarded because they were not filed consistent with N.J.A.C. 19:16-5.5 (a) and (b):

(a) In the absence of a joint petition requesting the initiation of compulsory Interest Arbitration, the non-petitioning party shall file within seven days of receipt of a petition, a statement of response setting forth the following:

1. Any additional unresolved issues to be submitted to arbitration;
2. A statement as to whether it disputes the identification of any of the issues as economic or non-economic;
3. A statement as to whether it refuses to submit any of the issues listed on the notification or petition to arbitration or petition to arbitration on the ground that such issue is not within the required scope of negotiations; and
4. Any other relevant information with respect to the nature of the impasse.

(b) Proof of service on the petition of the respondent's statement shall be supplied to the Director of Arbitration. If a party has not submitted a response within the time specified, it shall be deemed to have agreed to the request for the initiation of compulsory Interest Arbitration as submitted by the filing party. The substance of this response shall both provide the basis for any delay in effectuating the provisions of this chapter. (Emphasis added).

The Association cites Middlesex Cty. Police, P.E.R.C. No. 97-63 (1996), Borough of Allendale, P.E.R.C. No. 98-27 (1997), and Aberdeen Twp. v. PBA, 286 N.J. Super. 372 (App. Div. 1996). According to the Association, the Township's final offer was inconsistent with the issues it listed in its response to the Association's Petition. The Association claims that the Township failed to list the issues above. For these reasons, the Association requests that those issues, as presented in the Township's final offer, must be disregarded.

The Township has withdrawn its proposal regarding court time. [See Twp. Br., p. 27]. The Township claims, however, that its proposals regarding uniform allowance and terminal leave are issues appropriate for interest arbitration. The Township emphasizes the fact that the Association listed both issues as "economic issues" in its Petition – "Article XV, Uniform Allowance", "Article XIX, Retirement (Terminal Leave)". The Township asserts that it had no obligation to list issues in its May 14, 2002 response that were already presented in the Association's Petition. To the contrary, the Township claims that it was only required to list additional issues to be addressed in the proceeding.

RULINGS – PRELIMINARY ISSUES

N.J.A.C. 19:16-5.5 requires that **additional unresolved** issues which the respondent wants subject to the interest arbitration process be listed in a timely fashion in a formal reply. That requirement is not burdensome, and does not provide for methods of alternate compliance such as the discussion of the topics in negotiations or mediation. On May 13, 2002, the Association filed a Petition listing the issues in dispute. The Association's economic issues included, but were not limited to - Article XV, Uniform Allowance, and Article XIX, Retirement (Terminal Leave). The Township responded to the Association's petition on May 14, 2002, and listed a number of additional issues – uniform allowance and terminal leave were not listed. While N.J.A.C. 19:16-5.5 requires the respondent to list additional unresolved issues it does not require counter positions on the issues identified in the Petition. The Township's final offer simply lists its counter positions to the Association's positions on uniform allowance and terminal leave. For these reasons, Association counsel's request to exclude the Township's counter positions with respect to uniform allowance and terminal leave is denied. As stated, the Township's proposal regarding court time has been withdrawn and will not be addressed on the merits.

2. Evidentiary Presentation

The Association raises a second procedural issue. It seeks to exclude information that the Township submitted post-hearing. Specifically, the Association objects to a June 17, 2003 news article from the *Asbury Park Press* the Township submitted to the Arbitrator and Association on June 18, 2003. The Association points out that there is nothing in the hearing record that permitted either party to supplement their evidence after the close of hearing.

The Township contends that it did not supplement the record with "new factual material", but rather, provided the Arbitrator with information that would have been given "judicial notice of" anyway.¹ The Township refers to N.J.A.C. 19:16-5.7(k) which provides, in pertinent part:

The party should not [be] permitted to introduce any new factual material in the post-hearing briefs, except upon special permission of the arbitrator.

The Township maintains that "is merely pointing out indisputable events, which are relevant to the subject matter before the Interest Arbitrator" and must be considered in rendering an Award. [Twp. Reply Br., p. 7]. The Township emphasizes the fact that the Association did not dispute the veracity of the information provided. For these reasons, the Township requests that the Association's request to exclude the information the Township submitted after the close of hearing be denied.

¹ The Township notes that it also submitted information regarding the State Health Benefits Plan post-hearing.

The Township undoubtedly submitted information after the close of the hearing. My responsibilities, however, often require me to look beyond the information the parties submit to me at hearing. Conducting research over and taking into consideration the level of health benefits and recent area settlements is valuable, available information that is utilized in rendering a well-reasoned Award. The information that the Township provided is certainly within that which judicial notice may be taken by an arbitrator. For this reason, I deny the Association's request to exclude the information.

POSITION OF THE PBA

In his post-hearing brief, counsel addresses the relevant statutory criteria:

Interest and Welfare of the Public

In addressing this criteria, counsel relies in part upon the testimony offered by Officer William Monroe who indicated that the community's needs have been met with new facilities (*i.e. two (2) sub-stations*), new services (*i.e. extensive community policing including bicycles*), and new equipment (*i.e. ATV for beach patrol*). Monroe pointed out that located within the Township include facilities such as the Ocean Grove Auditorium, the Jersey Shore Medical Center, strip malls and golf courses which attract people to the community. Monroe testified that the Department responded to approximately 30,000 calls in 2002.

For this reason, counsel describes the Department as "extremely busy" and the Township as a "fast growing municipality". Counsel points out that there has been recent development of "high end" homes averaging over \$400,000 each, and the Planning Board approved the general development plan for a 4 million square foot corporate and technology center. For these reasons, the public's interest and welfare will continue to be protected by the Department's "high standards and professional delivery of services." [Assn. Brief, p. 14].

Comparability

Counsel asserts that the comparability factors found in the second and third statutory criteria favor the PBA's final offer with respect to wage increases and longevity in light of the numerous law enforcement contracts, settlements and awards placed in the record by the PBA. The PBA maintains that the following consists of the comparable group: Bradley Beach, Freehold Township, Holmdel, Keyport, Lakewood, Manasquan, Monmouth County Corrections, Monmouth County Prosecutors, Neptune City, Ocean Township, Point Pleasant, Seaside Park, Spring Lake Heights, the SFTA, State Police NCO, and Wall Township. Counsel indicates that the average increases of its public sector comparisons are 4.365% in 2002, 4.392% in 2003, and 4.466% in 2004. Counsel claims the average increases "closely approximate" the PBA's wage proposals and do not include the fringe benefit improvements which would increase the averages above. Counsel presents a smaller group for comparison of longevity

at the top step. Based upon the comparisons presented, the PBA's benefit of \$3,000 is well below the comparable's average of \$5,475 in 2002. Counsel argues it would require an 82.5% increase just to reach the average. Counsel points out that most longevity benefits, unlike the PBA's, are based upon a percentage of salary. For this reason, the benefit falls behind others that automatically increase with upward salary adjustments. Even so, the PBA requests a flat dollar increase that, if awarded, would keep the benefit well below the average. Counsel notes that the longevity benefit for the Township's employees represented by AFSCME is \$1,100 greater than the PBA's.

Counsel indicates that the voluntary settlement between the Township and its blue-collar employees represented by AFSCME supports its wage proposal. Counsel points out that the blue-collar employees received a 5% increase in 2002, and at least 4% for each of 2003 and 2004 – increases which are greater than the Township offer to the PBA. Counsel asserts the average base increases of 3.9% reflected in the Township's agreement with the superior officers cannot be relied upon as it contains an illegal parity clause with respect to base pay. Counsel asserts the superior officers will seek to maintain the 8.5% rank differential once the PBA's agreement is reached.

Counsel asserts that the private sector trends and general cost of living statistics should be given little weight. Counsel points to the "unique statutory obligation and treatment of police officers under New Jersey Law", as well as their distinguishable terms and conditions of employment, which render private

sector comparisons difficult. Counsel urges local comparisons in the public sector.

Counsel claims the Township's proposals to eliminate the sick leave benefit and to reduce the uniform allowance are unsupported by the record. Counsel points out that those benefits were neither reduced nor eliminated in the Township's agreement with the superior officers.

Stipulations

Counsel notes that the only stipulations were procedural in nature.

Lawful Authority

Counsel claims the award the PBA requests is within the Township's lawful authority to pay. He notes the Township used the lowest possible percentage (1%) in adopting a cap formula for its 2003 municipal budget. Counsel points out the Township waived \$742,020 in Cap flexibility, and its Actual Operating Appropriation (\$20,099,951) is \$837,582 less than that available under the Allowable Operating Appropriation (\$20,937,533). Counsel indicates that a percentage point of maximum base pay (\$68,629) is equal to \$36,373. The unused cap flexibility therefore represents twenty-three (23) maximum base pay percentage points. Consequently, this criterion cannot affect the final Award.

Financial Impact on the Residents and Taxpayers

The claim is made that the impact of these proceedings upon the residents and taxpayers is almost imperceptible. Counsel asserts that the bargaining unit's base rate is only 7.7% of the entire tax levy (\$3.64 million/\$47.22 million), and based upon a \$5,000 tax bill, the impact of the base rate is only \$1.03 per day.

Counsel made a number of observations regarding the Township's financial exhibits including, but not limited to, the following: the Township's tax rate comparison includes only a selected number of municipalities and does not include equalized rates; an equalized value comparison of the tax ratable base would place the Township tenth (10th) out of the 53 Monmouth County municipalities; the Township's surplus has increased 42% over the past five (5) years and has been used toward the tax levy; the municipal tax rate over the last four (4) years has been "extremely small" and the unspent budget appropriations were approximately \$441,000 in 2000, \$582,000 in 2001, and \$531,000 in 2002; budget revenues realized exceeded the anticipated amounts 2000 through 2002 (\$1.37 million, \$1.51 million, \$1.77 million respectively); and property values increased \$33 million from 1999 to 2002 (\$1.295 billion to \$1.329 billion).

Counsel points out that the Township has recently enjoyed and will continue to incur in budget year 2003 savings as a result of the Police Pension Employer Contribution. He indicates there is no tax pressure from Township

residents, and the Township "appears to be rapidly expanding and increasing". For all of the reasons above, counsel contends this criterion does not act as a prohibition to awarding the PBA's proposal.

Continuity and Stability of Employment

Counsel claims the "area standards" and "prevailing rate" support an award of the PBA's entire proposal. Counsel emphasizes the need for, and the reasonableness of, the PBA's proposal shift bid procedure. He indicates that the procedure would provide officers with some stability in their personal lives with no impact upon the Township's ability to operate. Counsel asserts that Article XXIV, "Fully Bargained Provisions", must be removed from the parties' Agreement because it conflicts with N.J.S.A. 34:13A-5.3. Counsel claims Article XXVI.D must be removed because it conflicts with N.J.S.A. 40A:14-155. He indicates that adding the proposed "Preservation of Rights" clause would act as "a fundamental interpretive tool for contract review."

In conclusion, counsel argues that all of the PBA's proposals are reasonable and should be incorporated into the final Award.

POSITION OF THE TOWNSHIP

In support of the adoption of the Township's final offer, counsel cites the following points under the statutory criteria and other relevant arguments.

Counsel presents the Township's demographic and economic data. He compares the Township to municipalities county-wide as well as its comparable group consisting of the following Monmouth County municipalities: Asbury Park, Eatontown, Freehold Township, Holmdel, Long Branch, Manalapan, Marlboro, Neptune City, Ocean, Red Bank, Tinton Falls, and Wall Township. Counsel refers to testimony of Michael Bascom, the Township's Chief Financial Officer and financial expert, for the factors considered in choosing the comparable group (*i.e. income, poverty level, property value, geographic proximity, total population*). Counsel indicates the Township, whether compared countywide or to the comparable group, has one of the highest percentages of minority population, one of the highest levels of poverty and unemployment, one of the lowest median household incomes and per capita incomes, and one of the lowest average equalized residential property values. He points out that the Township has one of the highest local property tax rates among the comparables. Counsel claims the Township has little room for development (2.2% of total valuation available) and does not envision receiving additional revenue by increasing its tax levy collection (nearly 96% collection rate).

Counsel claims despite the fact that the Township is relatively poor compared to other county municipalities that the Township provides "excellent

working conditions and more than competitive salaries and benefits...." Counsel acknowledges a low starting salary (\$31,482 in 2001) but emphasizes that officers reach the maximum salary (\$68,683 in 2001) in 5.5 years. He also points out that the Township ratio of residents to police officers is relatively low, and the average Township officer earns \$10,499 in off-duty employment. Counsel indicates the Township's police budget in 2003 was 31% of its overall budget compared to the statewide average of 25%. He emphasizes that the annual budget does not account for the substantial amount of accumulated employee leave.

Counsel asserts that the Township will incur significant fixed costs (*i.e.* *salary guide movement, longevity increases, insurance*) even assuming there are no salary increases. He points out that only one (1) officer in the unit has more than twenty (20) years of service. For this reason, salary guide movement will result in substantial increases to salary and longevity with little or no savings relief from retiring officers. Counsel claims that the total cost for salary and longevity will increase from \$3,076,405 in 2001 to \$3,561,962 in 2004 – a total non-compounded increase of 16% (\$485,556), and a compounded increase of 36% (\$1,114,590). Counsel indicates that health insurance costs are expected to increase from \$278,941 in 2001 to \$550,569 in 2004 – a compounded increase of \$492,271. He points out that dental and prescription coverage costs will also increase. According to counsel, when all of the fixed increases are factored, without consideration for increases in holiday pay, overtime, reimbursement for

sick days, etc., PBA "members will, as a unit, obtain a non-compounded equivalent of a 31% increase in base salary above the Township's 2001 salary costs" – which is approximately \$930,000 over the three (3) year period. When compounded, the figure increases to \$1,710,000.

Ability to Pay

Counsel claims the PBA's wage proposals are unreasonable given the State's fiscal crisis. Counsel indicates that Bascom predicts revenues to decrease by \$1 million in 2004 and a loss of non-recurring revenues of approximately \$500,000. Bascom estimates an appropriation increase of approximately \$1.9 million due to increased costs (*i.e. health insurance, salaries, etc.*) For these reasons, Bascom expects the Township's budget to increase 12% from 2003 to 2004. Counsel asserts the PBA did not "alter" Bascom's conclusions at hearing. Bascom notes that the Township does not anticipate a significant increase in ratables in 2004. Counsel indicates the Township will not receive any revenue from the Garden State High Tech Park until 2007. Bascom estimates the Township loses \$12,000 annually on every residential home built due to the cost of providing municipal services and education. Counsel claims there will be a significant tax increase regardless of any salary increases.

Counsel asserts that the municipal tax rate has increased 76% from 1990 (\$0.55) to 2003 (\$0.97). Counsel indicates that increased municipal spending has resulted in a loss of surplus. As a result, the Township has exceeded its Cap

spending rate over the last four (4) years. Bascom is concerned that the Township could lose its A-bond rating from Moody's.

Counsel points out there are two (2) other bargaining units in the Township – the superior officers and the AFSCME unit consisting of blue-collar employees. He indicates these units settled their agreements in 2002 prior to the Township's fiscal crisis in 2003. Even so, those agreements included givebacks such as an increase in prescription drug co-pay, and a reduction in accumulated sick leave pay upon retirement. Further, the AFSCME unit agreed to eliminate the step guide increment. Under the circumstances, counsel argues the PBA's proposals are unreasonable.

Economic Issues

Counsel points out that the Township has absorbed the increased costs in health benefits and asserts that the Township's proposal to increase prescription co-pay is justified. Counsel indicates the PBA's benefits are better than its comparables even assuming the Township's proposal is awarded.

Counsel asserts that reaching the top step after 5.5 years of service is "much too short of time for a newly hired officer to be making what will be in excess of \$70,000 during the term of this Agreement." Counsel claims the Township's proposals to lengthen the time to eight (8) years of service for officers hired after January 1, 2002, and to freeze the guide through December 2004, are not only necessary cost savings measures but enable the Township to

continue to attract qualified candidates with a salary guide that remains to be competitive with the comparables.

Counsel claims the Township's proposal to eliminate the perfect attendance stipend for all employees will have no adverse effect upon the bargaining unit's attendance record. Counsel views the benefit as unnecessary because officers are receiving the stipend even when they do not have perfect attendance. For instance, officers who use accumulated compensatory time remain eligible for the stipend. As for the Township's proposal to eliminate terminal leave for officers hired on or after January 1, 2003, counsel indicates the current benefit is by far the best among the comparables. Counsel cites the need to diminish the Township's contingent liability in support of its proposal and contends there will be no adverse effect upon the Township's ability to recruit new officers.

The Township seeks to reduce the total uniform and maintenance allowance from \$1,550 to \$1,400. Counsel indicates the PBA has the highest benefit among the comparables and exceeds the second highest unit by \$250 (Manalapan - \$1300). Counsel contends the benefit "is extraordinary, if not exorbitant", and even with the proposed reduction that the PBA would retain the highest benefit in the comparable group.

Cost of Living

Counsel indicates that, from 1991 through 2001, PBA salary increases exceeded cost of living increases by at least 100% in seven (7) of those years. He asserts that the disparity between the PBA's increases and the cost of living does not take into account the significant, generous benefits the Township's officers receive (*i.e. longevity, holiday pay, health benefits, pension, etc.*), and the PBA failed to present evidence in support of salary increases which double or triple the cost of living.

Continuity and Stability of Employment

Counsel claims Township officers have never been laid off and in the past fifteen (15) years no officer has left the Department for another law enforcement agency. He indicated the Township receives hundreds of applications for each vacant position.

Interest and Welfare of Public

Counsel asserts that the increases received by the PBA over the past eight (8) years have exceeded those received by State employees. He claims the PBA's wage proposal would be disastrous given the Township's demographic make up of working class individuals, a high unemployment rate and the percentage of residents with families below poverty level. Counsel refers to the

testimony of Michael Bascom, the Township's Chief Financial Officer and financial expert, who indicated he expected the Township's budget to increase 12% from 2003 to 2004. Counsel argues the Township's wage proposal is reasonable under the circumstances and its cost-saving proposals are necessary.

Comparability

Counsel claims that the Township's officers have fared better than private sector employees from 1991 through 2002. He indicates that the salary increases the Township's officers received "have consistently outstripped" the nationwide private sector median wage increases. Counsel asserts that private sector employees are required to contribute to the cost of health insurance which is inferior to the coverage provided to Township officers. He points to tremendous job security, a "superior" pension system, and an array of other benefits that the private sector does not enjoy.

Counsel asserts that the Township's officers have received higher wage increases than State and local government employees from 1993 through 2002. Counsel refers to the wage freeze State employees incurred in the first year of their most recent contract settlement. He claims the PBA's analysis of Monmouth County settlements does not take into consideration the trend of lower increases received statewide.

Counsel argues that while the PBA's percentage increases since 1991 have been similar to those received by the Township's bargaining unit consisting of blue-collar employees that the PBA's increases translate into greater dollar amounts because the percentage increases are based upon higher salaries. He notes that the most recent AFSCME settlement included givebacks such as the abolishment of the existing salary guide, an increase in prescription co-pay and limits on benefits for new hires. Counsel claims the AFSCME unit and the superior officers settled their contracts before the Township experienced its fiscal crisis and thus the PBA cannot expect the same increases.

Counsel places little reliance on comparisons between the PBA and other County law enforcement agencies. He notes, however, that the unit's top salary in 2001 ranks higher than 7 of the 12 comparable municipalities (the highest paid municipalities in the County) in 2002, and even a 2% increase in 2002 would rank the PBA fourth highest overall. Counsel points out that the comparable municipalities which rank higher either do not have the same generous level of benefits that the PBA enjoys or have more steps before reaching the maximum salary. Counsel claims the PBA's wage proposal would raise the maximum salary to nearly \$80,000 in 2004. In sum, Counsel views the PBA's proposal as an attempt to move ahead in the comparison group without regard to the fixed costs the Township will incur during the life of the new agreement.

Non-Economic Issues

Counsel asserts that the PBA failed to present any evidence in support of its non-economic proposals. Counsel argues that these issues would be best addressed through scope of negotiations determinations. Counsel requests that they be rejected in their entirety.

For all of the reasons above, counsel asserts the Township's proposals are reasonable and urges their acceptance.

DISCUSSION

Prior to reaching this decision, the Interest Arbitrator carefully weighed all of the evidence in the case including the testimony of the witnesses at the hearing, the arguments of respective counsel as set forth both at the hearing and in their submissions, the contract itself and the numerous exhibits introduced. Note should be made that the parties were given the opportunity to file reply briefs and rebuttals.

Stipulations of the Parties

The parties made no substantive stipulations as that term appears under the statutory criteria.

Interests and Welfare of the Public

The interest and welfare of the public is far from being solely determined by paying its officers the least. The morale of the Township's officers will inevitably impact the quality of services rendered. Public safety work is demanding but, most importantly, it requires employees to place themselves in harm's way in order to protect the safety of residents. On the one hand, the Township offers salary increases that are substantially less than those it provided to its superior officers and substantially less on a percentage basis than those provided to members of the blue and white-collar unit. The Township also proposes some reduced benefits levels that its superior officers did not incur. On the other hand, the PBA seeks increases in excess of those the Township provided and seeks increases in longevity that the superior officers did not receive. In sum, my analysis leads to the conclusion that the interests and welfare of the public will be best served by accepting neither party's proposals in their entirety, but rather, determining a reasonable but competitive compromise based upon the factors that will be more fully discussed below.

Cost of Living

The United States Department of Labor Bureau of Labor Statistics indicates that the annual CPI-U for the Northeast was 2.8% for 2001, 2.1% for 2002, and 2.8% for 2003. Wage increases for this unit have exceeded the CPI-U since no earlier than 1991. The Township's salary proposal, if awarded, would result in a

loss of purchasing power. On the other hand, the PBA's proposal would result in percentage increases well beyond the CPI-U. Under the circumstances, neither proposal prevails under this criterion.

Continuity and Stability of Employment

It is undisputed that no officer in the past fifteen (15) years has left the Department for another law enforcement position. It is therefore fair to conclude that the current and past compensation and benefit packages these officers have received have been sufficient to insure continuity and stability of employment from the Township's and the individual patrolman's perspectives. Between the offers, the Township's is the only one that could reverse the trend noted as the Township seeks a number of changes to the parties' Agreement that, if awarded in their entirety, would result in a dramatic reduction in benefits – particularly with respect to sick leave incentive and terminal leave benefits for new hires. However, since the ultimate resolution of this interest arbitration will employ a modification of these offers, neither party can be said to have prevailed under this criterion.

Lawful Authority of the Employer

Based on the extensive financial data supplied and the relevant expert testimony, there is no CAP issue or lawful authority problem. PBA counsel's cross-examination of the Township's financial expert revealed that a cap bank of

\$837,582 would be forwarded into the 2004 municipal budget process and that the Township's debt limit of 0.8% is significantly below the statutory debt limit of 3.5%. Even so, this criterion has never served as the sole determinant in a case, but rather, serves basically as a threshold issue.

Overall Compensation

The parties' agreement has been reviewed. The PBA enjoys the typically broad spectrum of benefits found in law enforcement agencies: medical coverage, pension, vacations, bereavement and sick leave, longevity, paid holiday, personal days, etc. When reviewed in their entirety, these benefits are not only adequate; they are competitive no matter which comparison group is used. For this reason, drastic wholesale changes to the current compensation and benefits package proposed by either party are unnecessary and will not be awarded. Neither party prevails under this criterion.

Comparability

Each party presented a "hand-picked" comparison group within Monmouth County – the PBA included the State Police, the County prosecutors' unit and corrections officers. The Township's analysis of its comparison group indicates the following: wage increases range from 3.3% (Asbury Park) to 4.8% (Holmdel) for 2002, and 3.5% (Tinton Falls) to 4.8% (Holmdel) for 2003 and 2004; minimum salaries for 2002 ranged from \$26,200 (Holmdel) to \$43,524 (Tinton

Falls); maximum base salaries for 2002 ranged from \$63,375 (Asbury Park) to \$74,720 (Freehold Township); maximum base salaries plus longevity ranged from \$66,217 (Long Branch) to \$81,269 (Eatontown); and, the number of steps to reach the top step ranged from 3 (Red Bank) to 10 (Tinton Falls). As for the PBA's analysis of its group, wage increases range from 3.9% (County Prosecutors) to 4.8% (Holmdel) for 2002, and 3.8% (Lakewood) to 7.5% (County Prosecutors) for 2003, and 4.0% (5 agencies) to 6.9% (County Prosecutors) for 2004, and top longevity pay for 2002 ranged from \$3,000 (Holmdel and Neptune Township) to \$7,637 (Bradley Beach). The PBA did not provide comparisons of minimum salaries, maximum base salaries (with or without longevity), and the number of steps to reach the top but did provide the supporting agreements.

Neither comparison group supports awarding the lower than average salary increases presented by the Township or the higher than average increases proposed by the PBA. I find that the increases the County's corrections officers received in 2002 and those received by the County prosecutors' unit in 2003 and 2004 are anomalies that will be given less weight than the other settlements. As indicated above, I have reviewed the fringe benefits offered within the comparable groups. In sum, the Township's officers receive competitive wage and benefits and their entire package falls within the acceptable range.

Turning to comparability within the Township itself, the settlements reached by the Township's other bargaining units favor neither side's proposal in

its entirety. The superior officers received increases of 3.8% in 2002, 3.9% in 2003, and 4.0% in 2004. The blue-collar employees, in general, received 4.0% across the board for 2002 through 2004. The Township places great emphasis on the fact that the percentage increases the civilian unit received equates to less actual dollar amounts than the same percentage increases to the PBA. Although true, the Township's argument is rendered meaningless by the fact that the superior officers' actual dollar amounts would exceed the PBA's. The Township's internal comparison also places great emphasis on its settlement with the blue and white-collar unit with very little emphasis on its settlement with the superior officers. The PBA rarely discusses the superior officers' unit and places greater emphasis on its Countywide comparison.

The Township presented a comparison of its contract settlements with its collective negotiations units since 1991 – the PBA did not refute the comparison. Noteworthy is the fact that the PBA and the superior officers received the same exact percentage increases from 1991 through 2001. During that same time period, their percentage increases equaled those of the civilian blue-collar unit from 1991 through 1995, and exceeded the blue-collar unit's from 1996 through 2001. It was only until 2002 that the blue-collar unit's percentage increases slightly edged the superior officers'. Both parties "danced around" the fact that there is a well-established pattern of settlement within the Township. To do so would deflate the arguments presented by either side. Under the circumstances, having given careful consideration to the PBA's overall wage

and benefits package, there is ample justification for awarding wage increases and benefit levels that are in line with those received by the superior officers. The Award will not only provide unit members with increases that compare within the Township it will also provide them with increases that lie within the acceptable range of the comparable groups each party presented. The Award will also provide the officers with increases that compare favorably to those received in the private sector as will be more fully discussed below. Similar to the increase the superior officers received, a modest increase to longevity is also warranted.

Comparability in the general public or the private sector offer less substantial grounds for comparison. It is best to compare law enforcement officers to their counterparts and within their municipality. However, wage increases paid across the board by private employers can provide guidance in determining the appropriate level of wage increases. The Township presented private sector median wage increases of 3.5% in 2001 and 3.5% in 2002. These increases amply support the reasonableness of the Award.

Financial Impact

The economic health and welfare of the Township must be taken into consideration. Extensive review has been undertaken of the testimony and exhibits relating to the economic well being of the Township. Although the Township never argued that it could not afford the PBA's entire economic

package, it emphasizes that its police budget will increase under either party's proposal given such factors as the built in increase from step movement and the increasing cost of health insurance. The Township's financial expert pointed out that the Township has been utilizing its surplus to offset taxes in the municipal budget. PBA counsel, on the other hand, pointed to the fact that the Township has been able to regenerate surplus of \$3.106 million into 2001, \$2.779 million into 2002, and \$3.385 million into 2003. Even so, the Township does not expect the surplus to remain at the 2003 level. The parties' viewpoints on the issue are obviously divergent. This is not unusual considering that the parties sit on opposite sides of the bargaining table. My independent analysis of such factors as the probable tax rate consequences, and the degree to which the effect, if any, will affect the Township, its residents and taxpayers leads me to the conclusion that the Award rendered below will not produce prohibitive financial effects on the Township. Further, to the extent that the Township may be experiencing some economic decline that could justify benefit reductions that vary significantly from the reductions other bargaining units within the Township experienced from 2002 through 2004 the situation will be best addressed through the next round of negotiations.

For the reasons expressed herein, I hereby issue the following:

AWARD

A. Economic Package

1. Duration – January 1, 2002 to December 31, 2005.
2. Salaries – No change to the number of steps in the guide.

3.8% effective January 1, 2002
3.9% effective January 1, 2003
4.0% effective January 1, 2004
4.0% effective January 1, 2005

3. Longevity

Five (5) years of service	\$1,600
Ten (10) years of service	\$1,900
Fifteen (15) years of service	\$3,000
Twenty (20) years of service	\$3,500
Twenty-four (24) or more years of service	\$4,000

4. Health Benefits – The Township presented sufficient evidence as to the rising costs of health benefits and has shown a need for some cost containment.

Increase prescription co-pay to \$5 for generic/\$10 brand, effective January 1, 2004.

5. Retirement – The Township presented sufficient evidence as to its rising cost burden associated with retirement but not to the extent that the benefit needs to be eliminated completely for new hires. Modify Article XIX(C) – Retirement to include new section XIX(C)3 to read as follows:

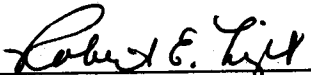
Employees hired on or after January 1, 2004 and all future employees who shall have accumulated sick leave upon retirement shall be entitled to one half (1/2) day's pay at the rate of pay in effect at the time of retirement for each full day of unused accumulated sick leave up to a maximum of two hundred (200) days which is the equivalent of a maximum of one hundred (100) day's pay.

6. Sick Leave Incentive – No change. The Township did not present sufficient evidence to support its proposal.
7. Uniform Allowance – No change. The Township did not present sufficient evidence to support a benefit reduction. The PBA's final offer did not include a proposed change in Article XV – Uniform Allowance.
8. Court Time – The Township's proposal was withdrawn.

To the extent to which either party's economic proposals are inconsistent with the changes awarded above they are DENIED.

B. Non-Economic Proposals

Little, if any, justification has been offered to convince me that the PBA's non-economic proposals are necessary or require an awarding of same. The PBA's proposed modifications to Article VIII – Hours and Overtime is DENIED. The PBA's proposed modification to Article XXIV – Fully Bargained Provisions is DENIED. The PBA's proposed modification to Article XXVI – Miscellaneous is DENIED. The PBA's proposal for the addition of a new article – "Preservation of Rights" is DENIED. To the extent the PBA supports its proposed modifications with assertions that the article(s) conflicts with existing law those assertions are best addressed through other forums available to the parties.



ROBERT E. LIGHT, Arbitrator
Dated: March 15, 2004

STATE OF NEW JERSEY:

:SS

COUNTY OF MONMOUTH:

On this 15th day of March, 2004 before me personally came and appeared ROBERT E. LIGHT to be known to me to be the individual described

here and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

Ellen Orlandini

**ELLEN ORLANDINI
NOTARY PUBLIC OF NJ
MY COMMISSION EXPIRES 5/17/05**