



briefs.

This proceeding has been governed by the Police and Fire Interest Arbitration Reform Act, P.L. 1995 c. 425. Consistent with the procedures set forth in that Act, the parties agreed to extend the time for issuance of the Award in this matter until September 9, 1998. As the parties have not agreed to the contrary, the terminal procedure in this case is conventional arbitration.

#### STATUTORY CRITERIA

The statute requires the arbitrator to:

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

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

(2) Comparison of the wages, salaries, hours, and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours, and conditions of employment of other employees performing the same or similar services and with other employees generally:

(a) In private employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.

(b) In public employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.

(c) In public employment in the same or similar comparable jurisdictions, as determined in accordance with section 5 of P.L.1995, c. 425 (C.34:13A-16.2); provided, however, that each party shall have the right to submit additional evidence concerning the comparability of jurisdictions for the arbitrator's consideration.

(3) The overall compensation presently received by the employees, inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other 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 on the ability of the governing body to (a) maintain existing local programs and services, (b) expand existing local programs and services for which public moneys have been designated by the governing body in a proposed local budget, or (c) initiate any new programs and services for which public moneys have been designated by the governing body in 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. (N.J.S.A. 34:13A-16g)

#### FINAL OFFER OF THE ASSOCIATION

The Association set forth its final offer by letter dated January 5, 1998. The issues listed therein are as follows:

1. Employer contribution to 457B Plan. It is proposed that the employer match up to \$1500 per year.
2. Wage Increase - a 5% annual across the board increase is proposed in each year of a 3 year contract.
3. Longevity improvement - It is proposed that the cap on the longevity program be removed thereby making the program the same as the PBA contract (PBA contract pg. 17). It is proposed that the longevity schedule be continued at additional 2% for each additional 4 years of service. It is also proposed that longevity entitlements be based and paid upon each individual employee's anniversary date.
4. Compensatory time off as previously proposed and as further clarified by the attached sheet designated "compensatory time".
6. 24 Hour Shifts
7. Funeral Leave - It is proposed that there be no chargeability against sick leave.
8. College Credit Program - The same program as is currently in effect for the Teaneck Police is proposed.
9. Leave For Union Business - It is proposed that the SOA receive the same 14 days off as are provided to the Teaneck Police SOA.
12. Cash In Holidays - It is proposed that an employee be permitted to cash in unutilized holidays at the end of each year at the employee's sole option. Such cash in would be at the employee's then current rate of compensation per day. All calculations would be based upon the 12 hour daily rate.

In addition to the economic issues above listed, the

association will also present the following 4 non-economic issues for the arbitrator's consideration.

1. Fair Share fee - as proposed.
2. Past Practice Language - as proposed.
3. Data for future bargaining - as proposed.
4. Association Office - as proposed.

Insofar as the Compensatory Time Sheet designated in Item No. 4 above is concerned, that document states as follows:

Article XI Hours and Overtime, shall be amended to establish a Compensatory Time Off (CTO) Bank as follows:

- 1) Fire Officers may elect compensatory time off (CTO) at the rate of 1 1/2 hours per hour of overtime worked in lieu of overtime pay.
- 2) The employer shall permit a fire officer to use CTO as requested provided the requested time off does not cause a shortage beneath minimum staffing levels or significantly interfere with the exercise of other managerial prerogatives.
- 3) The cap on CTO accumulation shall be set at 296 hours.
- 4) Upon separation from employment for any reason the fire officer shall be paid for 100% of all accumulated CTO at his final rate of pay. In the case of retirement, a fire officer may elect to use his accumulated CTO as terminal leave credit on a one for one basis.
- 5) In case of the death of an active fire officer, his accumulated CTO shall be paid in full to his estate.
- 6) Any fire officer may elect to convert accumulated holiday time to his CTO bank upon written notice to the employer. Within 10 days of receiving such notice the employer shall convert holiday time to the CTO bank.

FINAL OFFER OF THE TOWNSHIP

The Township set forth its final offer by letter dated January 9, 1998. The Township stated therein that it was seeking a four year Agreement with the following wage increases:

<u>Effective Date</u>	<u>Percentage</u>
7/1/97	2 3/4 %
7/1/98	3 %
7/1/99	3 %
7/1/2000	3 %

POSITION OF THE ASSOCIATION

Insofar as the first statutory criterion is concerned, the Township Fire Department is a highly professional and highly productive emergency service agency which well serves the interest and welfare of the public. In the most recent full year reported there were over 3,700 total runs. This represents an approximate tripling of the Department's activity over the past 28 years. In addition to the traditional firefighting effort, there are also substantial other services provided by the Department, including inspections, a Good Morning Wake-Up Call For Senior Citizens, and a significant amount of training. The Department also has a history of providing services to other towns in Bergen County, giving far more mutual aide than it receives.

The significant increases in workload and fire activity

within the Township have been accomplished with significantly less personnel than were available in the past. The total Fire Department staff in 1970 was 115 persons while in January, 1998 the staff was down to 96 people. Clearly these changes are at the level of execution and are not miscellaneous or ancillary administrative revisions. For example, in this bargaining unit eight Captains' positions have been reduced to four positions. Moreover, these dramatic reductions have taken place while the work schedule has remained the same. There is no change attributable to varying hours. Significantly fewer people are clearly doing significantly more work.

The citizen's perception of the Fire Department is very positive. The Department ranked No. 1 among all services referenced in a study commissioned by the Township. Perhaps one reason for the highly favorable rating of the Fire Department by the citizens is the fact that the provision of these professional services has a direct dollar savings to the Town's taxpayers and residents. At all times the Township's Fire Department has received the highest performance rating in Bergen County and the State after periodic evaluation by the insurance industry. By rating at such a high level, the Township residents get a reduced rate on their fire insurance.

It is also apparent that the Fire Officers work in a very stressful profession. Indeed, in a survey conducted by the American Heart Association, the position of firefighter was ranked as the most stressful of all.

The Fire Officers in this bargaining unit are clearly doing their job well. Through their efforts and leadership exceptional levels of performance and productivity have been obtained. These facts clearly support a proper and competitive compensation program for bargaining unit members.

Consideration of the second statutory criterion, a comparison of wages and terms and conditions of employment consistent with criteria g.2 and g.3 of the Act, further supports the granting of the Association's position in this case. This is true for many reasons.

Even if the evaluation of this criterion focused on wage increases only, which would not be consistent with the Act's mandate, this comparison would still mandate adoption of the Association's position. For example, the Township has already settled with the Township's Police Superior Officers' Association for annual increases of 4% in each contract year together with certain additional benefits. The granting of percentage wage increases such as the Township has already committed to the other uniformed supervisory group would not, however, do justice to the Fire Officers nor would it result in a full analysis of criteria G.2 and G.3. This is true for two reasons. First, the police superiors are paid significantly more than the Township fire superiors. Second, the benefit package available to police superiors is significantly better than the package of benefits and general terms and conditions currently available to Fire Officers.



For these reasons, the entire package presented in this case by the Association is essentially a request for a duplication of those benefits presently available to the Township police personnel. Those benefits appear in the police contracts, both PBA and SOA, which are the result of voluntary settlement between the Township and those other uniformed unions.

In order to fully evaluate the Association position in this case the Arbitrator must consider every part of the G.2 and G.3 statutory criteria. The analysis must not end with wages but must continue to include "hours and conditions of employment of other employees performing the same or similar services..." as is required by G.2. The Arbitrator must further consider a variety of benefits beyond base wage which are currently received by Association members and other persons working for the Township. When these criteria are fully applied to the facts of this case, the Arbitrator must come to the inescapable conclusion that Association personnel not only receive less pay than their peers but in addition generally have a poor work schedule and significantly lower terms and conditions of employment.

Insofar as the Association's longevity proposal is concerned, the testimony of Lieut. O'Neill established that police superior officers have no cap on their longevity and go from 2% after four years with no limit where currently the Fire Officers have a 12% limit after 24 years. Also important, O'Neill further established that under the current system for Fire Officers an officer whose anniversary date is March 19 has

to work 9-1/2 months longer than someone who got hired on March 14 in the same position. This is clearly unfair. The unfairness in this system further impacts upon Fire Officers at the time of retirement.

Insofar as the compensatory time issue is concerned, the Association has submitted a post-hearing memorandum on the subject which was permitted on motion of the Association after the last hearing date. As set forth therein, the Association's request is more of a codification of an existing procedure than one simply of implementing a procedure where there was no compensatory time. There is clearly now a practice of providing compensatory time to Deputy Chiefs at fire headquarters.

Concerning the funeral leave proposal, such leave is now charged to a provision of the Contract which allows a fire officer to take personal days and apply them to sick leave. Under this system, funeral leave is charged directly against sick leave. The Association proposal takes away that chargeability and establishes a system consistent with that in the Township police department for both rank and file and superior officers.

Concerning the educational incentive proposal, the Association is again only seeking the same benefit currently available to Township police officers. The Fire Officers currently have no educational incentive.

Concerning the proposal for Association business leave, the Association is again seeking only the same type of benefit that is available for Township police union personnel. Testimony

established that the 14 days sought was necessary so that Association officers could reasonably attend to Association business.

Concerning the cash in holidays proposal, it is important to note that currently only one officer is allowed off at a time so if someone is on vacation a fire officer cannot get a holiday. This results in a significant amount of holidays accumulated by Fire Officers. The Association proposal would give the opportunity at the end of the year to clear these holidays at the officer's option or to carry them on. Under the current system, if an Officer dies while holding accumulated holidays, the holidays are lost. Furthermore, holidays currently are backed up for retirement purposes. While an officer is on terminal leave, he is not replaced and the remaining staff needs to work short handed.

Concerning the fair share or "agency shop" proposal, this is only a provision which is permitted under law and which provides for more convenient access to collection and payment of Association obligations. It should have no impact upon the Township.

The data for future bargaining proposal also relies upon the police contract language. The Association is trying to get information from the Township without having to pay \$0.75/page.

Insofar as the Association proposal for office space is concerned, this proposal would have no impact on the Township. The Association seeks use of a room that is presently available

off the kitchen at Station 2. It is a utility room which already has a desk, a couch and a television set, in addition to the locker for the Relief Association, which is another organization that Fire Officers are involved in. If permitted to use the room, the Association would be responsible for furnishing and maintaining that room. The Association currently does not have an office on Township property, which requires current Association officers to incur the inconvenience of using space in their own homes.

Insofar as the 24 hour shift proposal is concerned, the merit of this proposal was well presented by Lieut. Meyer. Lieut. Meyer presented a detailed analysis of the proposed shift schedule for the Fire Department. The implementation of the schedule does not require the hiring of any additional personnel. There are numerous specific examples of improvements in service and morale. There is even a trip reduction benefit which is generally accepted as a public benefit. There are financial savings and other types of cost cutting. This is clearly a "win - win" for the Township and the Fire Officers. The Association has also presented evidence illustrating the National and New Jersey Departments that have gone over to the 24/72 schedule. This is a benefit that will serve the public and the Township.

A detailed comparison of the Fire Supervisors' base pay compensation compared to the police supervisors' base pay strongly supports an award of more than the Association has even asked for in this proceeding. In every single comparison the

fire supervisor makes significantly less than his equivalent rank at the police department. To make matters worse, a trend in recent years seems to indicate a worsening of that relationship. This is a situation that demands to be rectified. It is not just the equity of the situation, it is the statutory mandate.

When one considers the significant reductions in supervisory staff personnel at the Township Fire Department that has occurred in recent years, it is apparent that not only are there less people doing more work, these people are making significantly less money and are falling farther behind their equivalent ranks in the police department. This is an inexcusable situation. Indeed, Township police patrolmen make more than Township fire supervisors. It would take a 7.9% raise in order to reach the differential that once existed between these two groups.

Comparison with area fire departments also show the Township to be in the worse position in compensation. Regardless of which universe of comparison or which frame of reference is applied, the Township fire supervisors' compensation always comes in last. They received less than Hackensack Fire Officers and Englewood Fire Officers for 1995. There is no reason for the Township's Fire Officers to be in last place, as they generally rate far above other departments with respect to productivity.

A line by line analysis of benefits between Hackensack Fire Officers, Englewood Fire Officers, Township police superiors, Township patrolmen, and Township Fire Officers show that the benefits enjoyed by all of these groups are not enjoyed by the

Township Fire Officers. There is no reason for this shortfall. Persons in a supervisory capacity should not have lesser benefits than those supervised.

A comparison beyond fire service further enhances the position of the Association in this case. Comparisons with other uniformed service personnel, such as police, establish an even worse situation. The rates of increase in other municipalities by virtue of voluntary settlement and arbitration awards is greater than the Township has provided to its own police officers and provides wage increases which tend once again to support the Association's position in this case. The Village of Ridgewood Department has the work schedule sought by the Association in this case. The Association can only hope that when they approach the benefit package available in bordering Hackensack for the firefighters' Association and the fire supervisors Association.

While the public employer attempted to introduce some data showing that fire personnel were paid well on a scale of Township employees, the chart submitted by the Township was based on skewed information and incorrect comparisons. Longevity is mixed in for some persons and not others. Significantly varying duties were not explained at all. Moreover, the shortfall in compensation for the Township fire supervisors is not found in comparison of other Township titles using the same universe comparison. While Township fire supervisors rank last in comparisons with Hackensack, Englewood and Ridgewood, the Township's manager ranks No. 1 among these same town groupings,

as does the police chief and fire chief. The Township cannot adequately explain what has happened to the compensation for the fire supervisors.

Concerning the statutory criterion of stipulation of the parties, the only stipulations in this case were procedural in nature. Accordingly, this criterion will not weigh heavily in the ultimate outcome.

Insofar as the criterion of lawful authority of the Employer is concerned, an analysis of this criterion is basically an analysis of the public employer with respect to the Cap Law. Cap Law provides for a 5% spending limit in a budget year over the preceding budget year. The Cap Law is not a problem in the municipal budget of the Township and is not a bar to an Award of the Association's position in this case. The Township has voluntarily used a 2.5% index rate as opposed to the 5% permissible under law. Notwithstanding this fact, the Township budget was adopted at close to two million dollars under the permitted spending limit. This cap bank flexibility from the preceding year carries over for up to two years. There will almost certainly be no cap problem in 1998 and 1999.

Insofar as the criterion of the financial impact on the governing unit, its residents and taxpayers is concerned, the impact of the Arbitrator's Award will be extremely small and almost imperceptible to the taxpayers and residents. In order to fully evaluate this criteria, it is helpful to quantify the bargaining unit base rate costs for the supervisors covered by

this proceeding. The following chart calculates those costs based upon the actual bargaining unit census as was set forth in the transcript:

BARGAINING UNIT BASE RATE COSTS

(A)	(B)	(C)	(D)
<u>Rank</u>	<u>Census</u>	<u>Pay Rate Per (J-1)</u>	<u>Column (B) X Column (C)</u>
Deputy Chief	5	\$68,317	\$ 341,585
Captain	4	\$62,106	\$ 248,424
Lieutenant	16	\$58,091	\$ 929,456
Total	25		\$1,519,465

While the data contained in this chart is the base wage component of compensation only, the Association's selection of this component is due to the fact that it is by far the majority impact of this proceeding. Other impacts, such as longevity, are derivative of the base wage impact. A supervisor who has a percentage longevity entitlement, for example 1%, would have a 1-100th (1/100) impact above the base rate values set forth in this chart. One percent of the bargaining unit base wage rate is 1/100th of \$1,519,465 or \$15,194. If one divides 100 again to determine the impact of a longevity wage point the resulting value is \$152. Therefore, the impact of a single wage point on the longevity schedule is \$152 per bargaining unit longevity point. This is a small impact, particularly when one considers \$152 in relationship to \$1,519,465. Even if the hypothetical employee has four or six longevity points, the impact is still nominal.



For this reason, the real impact of these proceedings is on the base wage and the Association comparisons are therefore on this principal impact aspect. The impact of a base rate point change on the taxpayers is imperceptively small. The Township's fiscal statement for 1997 shows that the municipal portion of the levy represents 33.8%. Thus, two-thirds of the tax levy has no resulting impact from these proceedings. For the Arbitrator to determine the actual impact on the taxpayers, a statutorily directed inquiry, he would take the value of a bargaining base wage point (\$15,194) and divide it by the total levy (\$81,294,912). The impact of a base wage point change for this bargaining unit is .0001% the total levy. Put another way, if a hypothetical owner had a \$3,000 annual tax bill then the actual impact of a 1% increase for this bargaining unit would be \$0.56 as compared to that \$3,000 tax bill. This \$0.56 change would be only effective if there were no other offsetting savings or funding sources which would be available to the public employer. Effectively there is no impact which would be felt by the public which would result from these proceedings. It may be assumed that the public employer has funded its own offer. The real difference between the parties is the difference between the Employer's position and the Association's position which is in these \$0.56 denominations.

It also must be recognized that the Township is a fiscally healthy community. The aggregate true value of the tax base in this Township ranks No. 2 out of all 70 municipalities in the

County of Bergen. Furthermore, in 1997 the assessed value in the Township rose over the 1996 figure and the rate of current cash collections on the 1997 levy was 97.52%. Moreover, while the Township clearly does not have to borrow to pay for the Arbitrator's Award, the borrowing power of the Township is substantial. This should also indicate that the surplus of \$460,000 in 1996 increased to a 1997 surplus of \$740,000, a healthy 61% increase. Such a town can easily afford the nominal impact of an Arbitrator's Award in this case. In short, this is a first class town with first class services. The only shortfall is proper compensation for people in this bargaining unit.

In addition, the Fire Department in the Township saves citizens money in significant amounts by virtue of the high fire rating the Department has earned which results in lower insurance premiums. This more than offsets the increase in compensation to this bargaining unit sought by the Association. In effect the savings caused by the efficiency of the Fire Department actually results in a reduction in cost to the citizens on the net basis when one considers the extremely small impact of the cost increase per wage improvement.

The final factor which cannot be overlooked with respect to the financial impact criterion is the savings achieved by the Township as a result of cost savings from significant personnel reductions within the bargaining unit. Further, in recent years the Township has been able to achieve reductions in rates for

newly promoted persons to the rank of Deputy Chief. The Deputy Chief rate for persons more recently promoted is \$6,000 less than the Deputy Chief rate for Senior Deputy Chiefs. Each one of these reduced Deputy Chiefs equates to a savings to the Township of four bargaining unit percentage points for each reduced rate Deputy Chief. All tolled, the Township is saving a significant amount and this amount alone is more than enough to offset the cost of the Association's position in this case. There is no impact on the public by virtue of an Award in this case.

As to the continuity and stability of employment, an analysis of this criterion focuses on the private sector concepts of "prevailing wage" and "area standards". As previously noted, persons in this bargaining unit are paid below area standards and are not receiving prevailing wage. The fact that many persons in the Fire Department left under an early incentive program voluntarily offered by the Township and some have been replaced by the lesser paid Deputy Chiefs is one more example of the detrimental and morale breaking compensation policies of the Township. Moreover, the result of a large number of persons leaving under the program is a significant reduction in salary costs and related costs such as longevity, vacation, pension payment, etc.. While in lieu of the substantial savings there was a required partial payment over a period of years, from which the Township selected a short span of years so as to avoid interest costs, there is certainly no rational basis for charging this obligation to this bargaining unit in these proceedings.

The essential point is that among Fire Officers less people are doing more work at a reduced cost which is certainly within the purview of consideration of statutory criterion g.8.

For these reasons, the Arbitrator should rule in favor of the last offered position of the Association.

#### POSITION OF THE TOWNSHIP

An understanding of the organizational and financial setting of the Township and its Fire Department is necessary. Just under 40% of the total municipal budget is dedicated to public safety. Fire and police salaries constitute 64% of the Township's salaries and wages. Of the 70 municipalities in Bergen County, only four maintain paid fire departments, those being this Township, Hackensack, Ridgewood and Englewood. All of the other municipalities (except for two that have only paid drivers) have fire departments with unpaid volunteers. By contrast, there are no volunteer police departments in the County.

The testimony of municipal manager Gary Saage established that the Township is a "flat" financial municipality. The Township has faced a number of financial challenges since 1993. It has suffered a reduction in State aide of approximately \$4,000,000 per year in 1997 as compared to 1993. This aide is lost forever and the Township's taxpayers must pick up the loss. In addition, for the fiscal year ending December 31, 1997, delinquent taxes were at an all time high, the number of properties which have become eligible for tax sales and liens

have increased by over 40% from fiscal 1996, assessed evaluations remain at approximately 4-1/2% below that of 1993 and the total tax rate continues to increase as the actual taxes assessed on falling average assessed values continues to rise in order to maintain services. The Township is a "flat municipality" in terms of assessed values. The Township has flat or very small increases in ratables with 1998 being lower than 1996 and lower than 1995, 1994 and 1993.

Furthermore, even if there were no increases in the economic package for the Fire Officers, the Township would still have significant new costs in maintaining its obligations to the current and retired Fire Officers over the next five years. The Township will pay \$6,230,000 to fund an early retirement program which benefited over 50 Township personnel, mostly from the Fire Department at the end of fiscal year 1994. The Township also anticipates \$789,000 in normal step increments for its firefighters during fiscal year 1999.

Given these increased costs and the burden on the Township posed by the \$4,000,000 loss of State aide, the Township's wage proposal is very reasonable. Indeed, in light of these difficulties, the Township's police officers and superior officers both agreed to postpone for six months the effective date of the wage increases in their respective contracts for the period covering January 1, 1995 through December 31, 1997. They also agreed to a 3.75% wage increase in the last year of the 1995-1997 contract, which would be the first year of the Contract

here under consideration. These two police groups have also agreed to contract extensions covering the period of January 1, 1998 through December 31, 2000, in which the only economic enhancements are wage increases of 4% each year, effective July 1.

Fire Officers should not be awarded increases equal to or greater than those agreed to by the police force. While the Township holds the Fire Officers and the job that the Fire Department performs in high regard, when viewing the overall jobs performed by these departments, the package offered to the Association herein must be viewed as fair and equitable.

More specifically, there are significant differences in the working conditions of firefighters and policemen and their respective superior officers which support this position. Fire Officers work 10 or 14 hour days in accordance with the schedule legislated by Township Council in 1970. Pursuant to this schedule, Fire Officers work two consecutive ten hour days, then they have two days off, followed by two consecutive 14 hour shifts, then three days off. Sleeping quarters include beds and televisions. In accordance with Department policy, firefighters and Fire Officers can sleep up to 10-1/2 hours of a 14 hour shift. Thus, of a 42 hour work week a Fire Officer may actually work only 27 hours. With this schedule, a fire officer works no more than 15 or 16 days out of the month. Police officers, by contrast, work either a six day on - three day off or a five day on - two day off schedule during which they will average 39-1/4

hours per week. Police officers are not given time to sleep and are actually working for all the 39-1/4 hours per week, while a fire officer can sleep for nearly half of his 42 hours each week. Firefighter training takes four to five hours per day for two days in each of ten weeks while police training involves six months of training at the Academy.

While these differences between police officers and firefighters are not meant to disparage one group or the other, they do demonstrate the sound basis for the Township's position that these groups are not comparable and what is a fair and equitable contract proposal for one need not be the same for the other. This distinction has been recognized by both the Association and Township since at least 1970 when, as the result of Ordinance 1367, parity between the departments ended. The historic perpetuation of this distinction between the fire and police personnel is itself a fact that provides support for the Township's position.

Consideration of the cost of living criterion also supports the Township's position. While the Association does not proffer cost of living information in support of its unreasonably high economic demands, the statutory criteria mandates that the Arbitrator give due weight to the fact that the Consumer Price Index for the New York - Northeastern New Jersey area for the year ending December, 1997 was up only 2%, the smallest increase for any year since 1964. Other inconsistencies concerning cost of living show similar results. For example, the Bureau of Labor

Statistics also reported that the Employment Cost Index for Total Compensation For Private Non-Farm Workers in the Northeast Region increased by only 3% in the year ending December, 1997. The Association's proposal would nearly triple that cost for the Township in each year of its Contract. The Township's proposal, by contrast, offers wage increases in excess of the inflation rate and consistent with the trend of total compensation increases in the region.

Clearly, the Township's proposal is consistent with many arbitration awards and voluntary settlements between other municipalities and fire and police unions. The Township has provided evidence of many such settlements. There is no evidence that any of these municipalities experienced the loss of State aide in the magnitude that this Township has, so any increase awarded in the instant case should be less than the raises reflected in these cases. Additionally, for the reasons previously discussed, the Fire Officers should not receive the same raises granted to superior police officers.

Concerning continuity and stability of employment, the evidence presented at the hearing demonstrates that the Fire Officers unit has been a particularly stable one. More than half of the unit has 25 or more years of service and 20% has in excess of 30 years service. The collective longevity of the members demonstrates that the terms and conditions of employment in the Department do not encourage or force people to leave and significant changes in working conditions are not necessary.



Insofar as the length of the Contract is concerned, a four year term is appropriate. The parties should be given a reasonable period of time to live under the new Contract before too quickly having to prepare for and engage in a new round of negotiations. If the new Contract ends in 1999, more than half of the new Contract term will have expired before it is settled and within just one year the parties will have to prepare to negotiate again. Extending the Contract to December 31, 2000 will also make it coterminous with the police contracts. The Township will then be able to address all of its emergency services contracts at the same time under similar prevailing fiscal and other conditions. The Township will also be able to avoid being whipsawed in bargaining. Surely the public interest will be best served by extending this Contract for four years.

The Arbitrator should reject all of the Association's "they have it, so we want it" proposals. The Association should not be granted any enhancements to their collective bargaining agreement simply because the rank and file police or police superiors have obtained such a benefit through collective bargaining over the years.

For example, the Association's proposal for reimbursement for college credit is completely unfounded. The only explanation that could be offered by the Association for this benefit is that no incentive exists for Fire Officers and police have it. The Association ignores, however, that this benefit was extended to the police 30 years ago in circumstances that are very different

from today. It was negotiated in the late 1960s and was meant to professionalize the police at a time when their salaries were very low. Such a proposal would not be offered to the police today.

Similarly, while the Association proposes that its members receive the same 14 days off for Association business that are provided to the Township's superior officers, a review of the police superior officer's contract does not indicate that the president or members of that group receive or are entitled to take time off to attend seminars or conduct similar business. Under the Township/PBA contract, the PBA president alone is granted twelve tours of duty a year for such purposes. This is another example of the Association attempting to pick and choose from what it considers to be the best features of any other contract and claim an entitlement to it simply because another union was able to achieve it.

Similarly, the rationale for the Association proposal that the funeral leave provisions of the Contract be changed to eliminate funeral leave chargeability against sick leave and to grant three additional days off for funeral leave is based solely on the fact that the police contracts provide for three days funeral leave. The Association has not, however, presented any evidence to demonstrate that the current method of utilizing an accumulated holiday or sick day has caused a hardship for any fire officer or that there is any compelling need to change longstanding contractual method of providing for funeral leave.

The Association's proposal that the Township provide space to use as an office similarly is based on the fact that the PBA has been provided space in the newly constructed police station completed in 1995. The Association cannot justify why the current utilization of the room desired by the Fire Officers should be changed. Significantly, the larger unit of firefighters also does not have space provided for it as an office in any of the fire houses. Space is limited in the fire houses and the Township management must maintain the ability to assign rooms for utilization.

The remaining proposals of the Association, while perhaps not based strictly upon the "they have it, so we want it" mentality, should likewise be rejected. None have merit.

The Association's proposal for 24 hour shift must be denied. In essence, the Association asserts that the Township ought to completely restructure the manner of scheduling it has chosen to provide fire protection to its citizens so that its Fire Officers, who average nearly \$70,000 a year, can go out and work a second job. As if this is not insulting enough to the Township and its citizens, the Association also proposes that during this 24 hour shift the firefighter or fire officer could sleep up to 10-1/2 hours and then be off for three days. None of the other paid fire departments in Bergen County use this system of scheduling and the Association cannot present any compelling reason to require the Township to adopt this system here. Dedication to one's job as an officer of the Fire Department must

be a primary requirement of employment by the Township.

The Association's longevity improvement proposal should also be denied. While the Association proposes that the current 12% cap on longevity pay would be removed, this would immediately increase the Township's longevity payments by 13.8%, or in excess of \$23,000 per year and will benefit less than half of the total bargaining unit. Given the overall long term tenure of this bargaining unit, it is clear that enhancing this benefit is not necessary for its continuity and stability. At a time when a financially strapped Township is looking for ways to provide wage increases to the largest number of employees, it should not be asked to provide a significant additional wage increase to a select few who are the highest compensated members of the bargaining unit.

Concerning the Association's proposal for data for future bargaining, this proposal, erroneously categorized by the Association as non-economic, is without merit. Township Manager Saage testified that copying fees are charged by the Township to all persons at rates set pursuant to State law. The Township provides public information to any union that might request it and that all of them, including police, pay for all documents that they receive. The Association did not present any evidence to demonstrate that the Township's practice deviated from the Manager's explanation.

The Arbitrator also must reject the Association proposal that the Township match employee contributions to a 457B deferred

compensation plan up to a maximum of \$1,500 per year. The Township strenuously objects to this proposal, first on the grounds that it is of questionable legality, and second, that the additional cost to the Township of such a proposal, in addition to an across the board wage increase, is absolutely unwarranted. More specifically, Section 457 of the Internal Revenue does not provide for or allow matching employer contributions. Since there is no provision in the law for matching contributions to 457B plans, any additional money paid by the Township to an employee, which the employee may then direct towards his deferred compensation plan, would constitute nothing more than an additional wage increase to the Employer. A \$1,500 per year additional pay increase represents an additional 2.4% pay increase to a fire lieutenant earning an average of \$62,000 per year. Such a proposal is also unfair to those employees who would be unable to devote any portion of their income to the deferred compensation plan. The Township's wage proposal, by contrast, seeks to have the limited funds available for wage increases spread over the broadest possible group of employees and is not targeted to any special group or classification.

Concerning the Association's proposal that its members be permitted to cash in unutilized holidays at the end of each year at the employee's sole option, the Arbitrator must reject this proposal. Under this proposal, all holidays would be paid out based on a twelve hour daily rate. As evidence established that Fire Officers had 614 holidays accumulated in their banks at the

end of 1997, the cost of paying out these holidays would be in excess of \$234,000. In view of the Township's difficult financial circumstances, there is no reason to impose this additional financial burden on the Township. The Association clearly did not demonstrate any compelling justification for changing the Department's longstanding methods of holiday accumulation and payouts.

As to the Association's compensatory time proposal, wherein it seeks to change the longstanding negotiated requirement of paying all bargaining unit employees for overtime work, except for certain Deputy Chiefs who were in office as of July 11, 1997, or as established by clear past practice, the Arbitrator must also reject this demand. As extensively set forth in the Township's submission to the Arbitrator, a clear past practice existed with respect to permitting the "floater" Deputy Chief to accumulate comp time in lieu of overtime pay in consideration of the irregular and unpredictable working hours he has to endure by virtue of his role as a floater. The Contract requirement pertaining to overtime, except for the two Deputy Chiefs holding office prior to 1991 and the past practice with respect to the floating Deputy Chief has been one recognized by the Association and Township. The Association did not present any compelling reasons to change these contractual requirements or the past practice.

Indeed, one is left to wonder at the unexplained internal conflict in the Association's position with respect to

accumulating time or being paid out for time. In the case of holidays that they are permitted to accumulate, the Association wants to be paid out. In the case of working overtime, the Association wants to be able to accumulate compensatory time off. The only common thread between these proposals is that the Association wants complete control over whether its members receive pay or accumulated time without any regard for the Township's managerial right to reasonably control its work force or its ability to reasonably budget for its labor costs. For all these reasons, the Association's proposal with respect to compensatory time off must be rejected by the Arbitrator.

Finally, the Township does not oppose the Association's proposal for the fair share fee but continues to object to the Association's proposal concerning past practice language.

For all these reasons, the Township's final offer should be adopted in full.

#### ANALYSIS

I have decided this dispute based upon a reasonable determination of the unresolved issues. I have given due weight to each of the statutory criterion. I have also determined the total net annual economic changes for each year of the Agreement.

As a result of this analysis, I make the following determination: The length of the Collective Bargaining Agreement will be for three (3) years. Salaries will be increased "across the board" 3.75% effective July 1, 1997, an additional 4%

effective July 1, 1998 and an additional 4% effective July 1, 1999. The Association's funeral leave and fair share fee proposals will be granted. All other proposals will be denied.

I now turn to an analysis of this Award pursuant to each of the individual statutory criterion.

#### Interests and Welfare of the Public

The interests and welfare of the public are well served by providing a fair and reasonable increase in compensation for Association members while giving due weight to the legitimate economic concerns of the Township.

The Award I have fashioned is fair and reasonable for the Fire Officers. The raises I have granted are in excess of the cost of living. They are in excess of raises in the private sector. They are consistent with raises received by other Township uniformed employees. They fall within the range of raises received through recent Awards and settlement by uniform employees in other jurisdictions. The Award also includes one monetary and one non-monetary Contract enhancement.

The Award I have fashioned also gives due weight to the legitimate economic concerns of the Township. The Township can fund this Award well within its CAP. The Township is not in poor economic condition, notwithstanding its loss of State aide and a "flat tax" situation. While the Award does exceed the cost of living and private sector wage increases, this is justified in consideration of deficiencies which exist in the wages and



benefits of the Fire Officers when contrasted with certain other uniformed groups of employees. It is also justified in light of the excellent service the Association members provide to the citizens of the Township.

### Comparisons

Comparisons concerning private employment in general are either neutral or favor the position of the Township. While there is no evidence concerning any private sector jobs which may be comparable to that of Fire Officer, the Township did present evidence that the United States Department of Labor's Bureau of Labor Statistics has reported that the Employment Cost Index (ECI) for total compensation for private non-farm workers in the Northeast Region increased 3.0% over the year ended December, 1997. This is the most recent private sector data available to me. The Award I have fashioned does, of course, exceed this figure in each of its three years.

Comparisons with public employment in general reveals information favorable to the positions of both sides in this matter. The Township and Association have submitted evidence of settlements and Awards which indicate results both lower and higher than the Award I have fashioned. For example, the Association notes that the City of Englewood settled with its police and police superiors for increases over the Contract term that range from 4.25% to 4.9% and that an interest arbitrator awarded annual increases of 4.5% in bordering Bogota. The

Township, by contrast, points to various lower settlements and Awards, including Springfield Township and the FMBA (annual increases of 3%, 3.25%, 3.25% and 3.5%), North Bergen Township and IAFF (3.5% annual increases), Morris Township and FMBA (3.7%, 3.6% and 3.5% annual increases). Neither side, however, has established a pattern of settlement or Award as low as the final offer of the Township or as high as the final offer of the Association. In general, it is apparent that the Award I have fashioned falls well within the range of settlements and Awards relevant for my consideration concerning public employment in general.

Comparisons with similar comparable jurisdictions favor the position of the Association in this matter. Comparisons with the Fire Officers in Hackensack, Ridgewood and Englewood, the other towns in Bergen County with paid fire departments, establishes the relative disadvantage of Association members. The Association members receive the lowest salary in this comparison grouping.

Internal comparisons within the Township provide a mixed picture. While Fire Officers are in general among the best paid and compensated of the Township's employees, when contrasted with the wages received by equivalent supervisory titles in the Police Department, they are at a significant relative disadvantage. Indeed, in recent years the salary of a police patrolman has overtaken and exceeded that of a Fire Lieutenant.

It is important to note, however, that the Award I have

fashioned provides the Association with percentage wage increases that will be fully equivalent to those received by both the PBA and SOA for equivalent years. Examination of recent SOA and PBA settlements with the Township support this fact. In 1997, the PBA and SOA both received across the board salary increases of 3.75%, effective July 1, 1997 as called for in the final year of three year contracts. Near the end of 1997, the PBA and SOA then entered into new three year collective bargaining agreements with the Township, running from January 1, 1998 to December 31, 2000. Pursuant to the terms of those new contracts, the PBA and SOA achieved for their members annual across the board salary increases of 4%, effective July 1 of each year.

While the Township argues that an Award of percentage increases to the Association of less than that received by the PBA and SOA is justified, primarily because of different working conditions within the fire and police departments, I disagree. While it is true that for many years now there has not been a history of parity in this town between the police and fire units, there is insufficient justification for the further disparity that would result from my awarding percentage salary increases lower than those achieved by the PBA and SOA.

While the Association argues that an Award to the Association of percentage increases greater than that received by the PBA and SOA is justified, primarily because of the relative disparity in wages and benefits between it and the police units, I again disagree. The Association's rationale might prove

persuasive were percentage increases of 3.75%, 4% and 4% otherwise inadequate. As detailed elsewhere in this Analysis, however, these percentage increases, even absent consideration of the PBA and SOA settlements, are consistent with application of the totality of statutory criteria to the facts of this case.

The fact that the Township and Police units have settlements calling for increases of 3.75% in 1997, 4% in 1998 and 4% in 1999 further solidifies the fact that these same percentage increases should now be awarded to Association members in 1997, 1998 and 1999. It is well settled that a pattern of settlement among uniform service units within a town is a legitimate statutory consideration. If an award is made at lower than the pattern, the morale of the involved employees likely suffers. If an award is made at higher than the pattern, the morale of the employees who established the pattern likely suffers. Neither result is conducive to the criteria concerning the interest and welfare of the public or the continuity and stability of employment.

#### Overall Compensation

An examination of the most recent Association/Township Collective Bargaining Agreement reveals that Association members enjoy many benefits. These include longevity, clothing allowance, hospitalization and dental, life insurance, holidays, vacation, and several forms of leave. A further analysis, however, reveals that when contrasted with the benefits received by police personnel within the Township and personnel in other

paid fire departments in Bergen County, there are some relative deficiencies.

Indeed, the Association asserts that its package of proposals is intended to achieve for it benefits held by these other groups which its members do not enjoy. I have considered each of these proposals, as well as the Association's non-economic proposals, and decide them as follows.

I deny the Association's demand for a Township contribution to a 457B Plan. The granting of this demand, in addition to the wage increases and other benefit enhancements I have recommended, would not best effectuate the statutory mandate. Aside from questions raised by the Township about the legal implications of this Plan, the cost of this item, as much as \$1500 per year per employee, is considerable. There is insufficient justification for granting this costly new benefit.

I deny the Association's demand for longevity improvement. The current longevity plan allows all eligible employees to receive a longevity payment of 2% for each four years of service to a maximum of 12% for twenty-four (24) years of service. The cost of removing the cap, as demanded by the Association, would be excessive when viewed within the context of the overall Award I have made. In addition, while Township Police Superiors have no maximum, it is notable that Englewood Fire Superiors do not have unlimited longevity. Insofar as the effective date of longevity is concerned, the current past practice for Fire Officers is the same as in the Police Department and there is

insufficient justification for granting a change to Fire Officers.

I deny the Association's compensatory time off proposal. This conclusion holds true, notwithstanding my consideration of certain post-hearing material submitted by the Association, as well as the evidence developed at the hearing. Article XI C of the most recent Collective Bargaining Agreement between these parties provides that "all employees shall be paid for all overtime work at time and one-half the hourly rate which he/she receives for this regularly assigned duty...". There is insufficient justification for altering this provision. While certain Deputy Chiefs have received overtime compensation, this practice apparently developed in recognition of the circumstances unique to them. These circumstances do not have broad applicability to the bargaining unit as a whole and cannot be used as justification for imposing a compensatory system for all Fire Officers.

I reject the Association's demand for 24 hour shifts. Since 1970, the Fire Department has operated under the current schedule, which involves a four-shift 42 hour work week. While the Association perceives many advantages to a 24/72 shift, the Township is strenuously opposed to this system, and it is apparent to me that the Fire Department has operated well under the current system. It is also apparent that 24/72 shifts are not common among the professional fire departments in Bergen County. I therefore find insufficient justification for imposing

the schedule change sought by the Association and will not do so.

I grant the Association's funeral leave demand. Association members currently do not enjoy any funeral leave benefit. Article XVIII of both the SOA and PBA contracts do, however, provide a funeral leave benefit of up to three calendar days for certain covered deaths. In addition, the Fire Officers in Englewood, Hackensack and Ridgewood all enjoy a funeral leave benefit. Association members are therefore the only professional Fire Officers in Bergen County who do not enjoy a funeral leave benefit. I find no justification for this disparity. My conclusion is based not only upon the fact that the other noted groups have a funeral leave benefit while Fire Officers do not, but also from my belief that a Fire Officer in this Township who suffers the loss of an individual covered by the funeral leave provision should not be required to use sick leave in response to the death. A funeral leave provision such as that set forth in SOA and PBA Contracts shall therefore be included in the Association/Township Contract.

I reject the Association's college credit program demand. While this is also a benefit available to PBA and SOA members, as well as Fire Officers in Hackensack and Englewood, it is not a benefit available to Ridgewood Fire Officers. In addition, there is no evidence that Association members have in practice been disadvantaged economically or professionally by the absence of such a program.

I reject the Association's demand of leave for Association

business. There is insufficient justification for requiring the Township to provide to the Association the days off it seeks.

I reject the Association's demand to cash in holidays. This proposal could have costly implications to the Township. It calculates that at the end of 1997 the bargaining unit had 614 holidays valued at \$234,412.63. There is insufficient justification to grant this potentially costly new benefit.

I grant the Association's fair share fee proposal. The Township has not opposed this benefit. There is no justification for withholding this benefit from this bargaining unit.

I reject the Association's past practice language. There is insufficient justification for granting this proposal.

I reject the Association's data for future bargaining proposal. There is insufficient justification for altering the current arrangements by which the Association receives such data.

I reject the Association's office proposal. While its desire for guaranteed space from the Township to conduct its activities is understandable, there is insufficient reason to impose such an obligation upon the Township. While the police rank and file unit has a space reserved for its use, the Police superiors and firefighters do not.

When viewed in their totality, my determinations concerning overall compensation best effectuates the statutory criteria. The Association has achieved benefit enhancement for its members in one economic and one non-economic area, thereby addressing in some measure negative comparisons with other uniform personnel



within the Township and other paid Fire Officers. The Township has avoided the need to fund any excessively costly new benefits.

#### Stipulation of the Parties

There were no substantive stipulations of significance between the parties other than those which may have been noted elsewhere in this Award. Accordingly, I have not afforded weight to this criterion.

#### Lawful Authority of the Township

The Award I have granted will not require the Township to exceed its lawful authority. As well detailed by the Association, the Township has considerable room under its Cap to fund this Award. The Township does not argue otherwise. While the Township has raised questions of its legal authority concerning the contribution to the 457B Plan and data for future bargaining, I have rejected those proposals on other grounds. Thus, I have not granted this criterion weight.

#### Financial Impact on the Governing Unit

The Award I have fashioned will not have undue financial impact on the governing unit, its residents and its taxpayers. As noted by the Association, only about one third of the budget is apportioned to municipal purposes. The amount my Award will increase the tax burden upon the taxpayers, particularly when contrasted with the position of the Township, is minimal. The

Township will have no difficulty maintaining existing local programs and services or expanding existing local programs and services for which public monies have been designated by the governing body in a proposed local budget, or initiating any new programs and services for which public monies have been designated by the governing body in a proposed local budget.

It is also here important to note that the total net annual economic changes for each year of the Agreement under the Award I have fashioned are reasonable under the eight statutory criteria in Subsection g. Under the most recent Collective Bargaining Agreement, Fire Lieutenants had a base salary of \$58,091, Fire Captains a base salary of \$62,106 and Deputy Chiefs attaining rank as of January 1, 1993 a base salary of \$68,317. The Bargaining unit census of record establishes the existence of five Deputy Chiefs, four Captains and 16 Lieutenants. Based upon these figures, the base salary for the bargaining unit is \$1,519,465. In 1997, there will be an increase of 3.75% effective July 1. This will bring the base salary to \$1,576,445. If the rate increase were in effect for the full twelve months of 1997, the cost would be \$56,980. As it will be in effect for only six months, however, the actual cost in 1997 will be \$28,490. In 1998, there will be an additional increase of 4% effective July 1. This will bring the base salary to \$1,639,502. If this rate increase were in effect for the full 12 months of 1998, the additional cost would be \$63,057. As it will only be in effect for six months of 1998, however, the actual

cost in 1998 will be \$31,528. With the rollover of \$28,490 from 1997, the full cost in 1998 will be \$60,018. In 1999, there will be an additional increase of 4% effective July 1. This will bring the base to \$1,705,082. If this rate increase were in effect for the full 12 months of 1999, the additional cost would be \$65,580. As it will only be in effect for six months of 1999, however, the actual cost in 1999 will be \$32,790. With the rollover of \$31,528 from 1998, the full cost in 1999 will be \$64,318. There will, of course, be a rollover cost of \$32,790 for the first year of the successor Collective Bargaining Agreement to begin in the year 2000.

While these figures are exclusive of increment and longevity, and base salary increases obviously result in some additional cost for items calculated upon base pay, such as longevity increases, the Association correctly calculates that increases in such costs will not be great. Longevity will remain 2% for each four years of service to a maximum of 12% for twenty-four (24) years of service. In addition, while it is impossible to calculate the net annual economic changes resulting from my granting the Association's funeral leave demand, it is fair to say that the annualized costs, if any, resulting from this benefit will also be small. The overall net annual economic changes are therefore eminently reasonable.

### Cost of Living

The Award I have fashioned will exceed the cost of living. Evidence submitted by the Township established for the year ending December, 1997, consumer prices were up 2%, the smallest increases for any year since 1964. This is obviously significantly lower than the package of salary increase and benefits I have awarded. Nonetheless, consideration of the totality of statutory criteria supports my granting an Award in excess of the cost of living.

### Stability of Employment

The Award I have fashioned is compatible with this criterion. The record does not reveal the need for large increases in wages or benefits in order to maintain continuity of employment. The members of this bargaining unit have extensive seniority and the staff is stable. While a number of Fire Officers did retire several years ago, this resulted from an early incentive departure program which the Township elected to offer. While an unfair or unreasonable Award might have a detrimental impact upon stability of employment, the Award I have fashioned is eminently fair and reasonable as defined by the statutory criteria.

Finally, an Award of three years length, which I have here fashioned, will put in place a Collective Bargaining Agreement through the remainder of this year and all of 1999, thereby providing for a measure of stability. While it is true that the

granting of an Award covering four years, as sought by the Township, would give an even longer period of labor peace and stability, and make this Contract expire at the same time as those involving the PBA and SOA, on balance I do not believe that the statutory criteria is best served by imposing an unwanted, extra Contract year upon the Association.

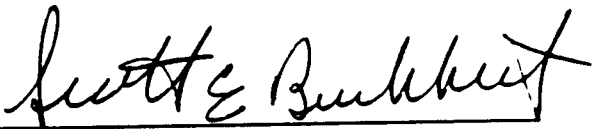
### Conclusion

Neither the final offer of the Association nor Township best effectuates the totality of statutory criteria. That result only occurs by finding middle ground between the positions of the two parties. The Award I have fashioned takes into account all statutory considerations, assigns weight to the statutory criteria as appropriate, and reaches a fair and equitable result to all concerned. It is therefore the Award I grant.

AWARD

1. The term of the Agreement shall be January 1, 1997 through December 31, 1999.
2. Salaries shall be increased 3.75% across-the-board effective July 1, 1997, 4% July 1, 1998 and 4% July 1, 1999.
3. The Association's funeral leave proposal is granted effective immediately.
4. The Association's fair share fee proposal is granted effective immediately.
5. All other proposals are rejected in their entirety.

Signed this *4th* day of September, 1998.

  
SCOTT E. BUCHHEIT, ARBITRATOR

*State of New Jersey  
County of Camden  
Matter of [illegible]*

FILED  
NOV 10 1998  
CLERK

1999