

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

In the Matter of Interest Arbitration Between :

BOROUGH OF MANVILLE :
"the Borough or Employer" :

and :

MANVILLE PBA LOCAL 236 :
"the PBA or Union" :

**INTEREST ARBITRATION
DECISION
AND
AWARD**

Docket No: IA-2002-050
:

Before: Robert M. Glasson, Arbitrator

APPEARANCES

FOR THE EMPLOYER:

Steven S. Glickman, Esq.
Of Counsel & On The Brief
Ruderman & Glickman, P.C.

FOR THE PBA:

Richard D. Loccke, Esq.
Of Counsel & On the Brief
Loccke & Correia P.A.

Background & Procedural History

The Borough of Manville (the “Borough”) and Manville PBA Local 217 (the “PBA” or “Union”) are parties to a collective bargaining agreement (the “CBA”) which expired on December 31, 2001. Upon expiration of the CBA, the parties engaged in negotiations for a successor agreement. Negotiations reached an impasse, and the parties mutually filed a petition with the New Jersey Public Employment Relations Commission (“PERC”) on February 14, 2002 requesting the initiation of compulsory interest arbitration. The parties followed the arbitrator selection process contained in N.J.A.C. 19:16-5.6 that resulted in my mutual selection by the parties and my subsequent appointment by PERC on March 6, 2002 from its Special Panel of Interest Arbitrators.

I met with the parties in voluntary mediation sessions on May 2 and July 9, 2002. The mediation session did not resolve the issues included in the impasse. Formal interest arbitration proceedings were invoked and a hearing was conducted on November 5, 2002 when the parties presented documentary evidence and testimony in support of their positions. Both parties filed post-hearing briefs. The hearing was declared closed on January 13, 2003 upon receipt of the briefs. The parties agreed to extend the time for the issuance of the award to June 1, 2003.

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

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

Statutory Criteria

The statute requires the arbitrator to:

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

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

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

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

(3) The overall compensation presently received by the employees, inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received.

(4) Stipulations of the parties.

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

(6) The financial impact on the governing unit, its residents and taxpayers. When considering this factor in a dispute in which the public employer is a county or municipality, the arbitrator or panel of arbitrators shall take into account to the extent the evidence is introduced, how the award will affect the municipal or county purposes element, as the case may be, of the local property tax; a comparison of the percentage of the municipal purposes element, or in the case of a county, the county purposes element, required to fund the employees' contract in the preceding budget year with that required under the award for the current local budget year; the impact of the award for each income sector of the property taxpayers on the local unit; the impact of the award on the ability of the governing body to (a) maintain existing local programs and services, (b) expand existing local programs and services for which public moneys have been designated by the governing body in a proposed local budget, or (c) initiate any new programs and services for which public moneys have been designated by the governing body in its proposed local budget.

(7) The cost of living.

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

FINAL OFFERS OF THE PARTIES

MANVILLE PBA LOCAL 217

1. **Term of Contract:** January 1, 2002 to December 31, 2004.
2. **Wage Increase:** The PBA proposed a 5% across-the-board increase at each rank, step and position to be effective January 1, 2002, January 1, 2003 and January 1, 2004. The PBA proposes an updating of the dates in Article VI, B1 of the CBA.
3. **Longevity:** The PBA proposes a deletion of the grandfather provision set forth in Article VIII (D) of the CBA and the insertion of a longevity program providing for 2% of base salary for each five (5) years of completed service.
4. **Vacations:** The PBA proposes a deletion of the grandfather provision set forth in Article X (G) of the CBA.

5. **Educational Incentive:** The PBA proposes that the grandfather provision in Article XXIV, (E) be deleted from the CBA.

6. **Grievance Procedure:** The PBA proposes a new grievance procedure definition:

For purposes of this Agreement, the term "grievance" means any complaint, difference or dispute between the Employer and any Employee with respect to the interpretation, application, or violation of any of the provisions of this Agreement or any applicable rule or regulation or policies, agreements or administrative decisions affecting any employee(s) covered by this Agreement.

Minor disciplinary matters (less than six (6) days or fine or suspension or equivalent thereof) shall be included in the Grievance Procedure.

7. **No Waiver:** The PBA proposes the following new language:

Except as otherwise provided in this Agreement, the failure to enforce any provision of this Agreement shall not be deemed a waiver thereof.

This Agreement is not intended and shall not be construed as a waiver of any right or benefit to which employees are entitled by law.

BOROUGH OF MANVILLE

1. **Term of Contract:** January 1, 2002 to December 31, 2004.

2. **Wage Increase:** The Borough proposes a 2% across-the-board annual increase effective January 1, 2002; January 1, 2003 and January 1, 2004.

3. **Article VI - Salaries:**

a. The Borough proposes the deletion of Section B1 since it is no longer applicable.

b. The Borough proposes the deletion of Section C1 since it is no longer applicable.

4. **Article XI - Holidays:**

a. The Borough proposes the deletion of Section B1 since it is no longer applicable.

b. The Borough proposes the deletion of Section B3 since it is no longer applicable.

c. The Borough proposes the deletion of Section C since it is no longer applicable.

6. **Injury Leave:**

The Borough proposes the following "Injury Leave" article:

INJURY LEAVE

- A. 1. In the event that an employee becomes disabled by reason of service-connected injury or illness and is unable to perform his duties then, in addition to any sick leave benefits otherwise provided for herein, he may be entitled to full pay for a period of up to one (1) year. In the event an employee is granted said injury leave, the Borough's sole obligation shall be to pay the employee the difference between his regular pay and any compensation, disability or other payments received from other sources provided by the Borough. At the Borough's option, the employee shall either surrender and deliver his entire salary payments, or the Borough shall pay the difference.
2. If an employee returns to work from injury leave for less than one (1) year, he may return to injury leave for the same injury for an additional period of time which, when added to the initial period of injury leave, totals no more than one (1) year.
3. When an employee returns from injury leave, he shall be entitled to a new period of injury leave for a period of up to one (1) year if the employee submits a new injury claim due to an independent event causing re-injury or a new injury.
- B. When an employee requests injury leave, he or she shall be placed on a "conditional injury leave" until a determination of whether or not an injury or illness is work related and the employee is entitled to injury leave is initially made by the Borough's Workers' Compensation carrier, with the final determination, if necessary, to be made by made by the Workers' Compensation Bureau or Court. When and if it is finally determined that the injury or illness is not work related and that the employee is not entitled to job injury compensation, the employee shall be denied injury leave and shall have all time off charged against his or her sick time and, if necessary, against any other accumulated leave time. If the employee does not have enough accumulated time off, he or she shall be

advanced sick time to cover the absence. If the employee leaves the employ of the Borough prior to reimbursing the Borough for such advanced time, the employee shall be required to reimburse the Borough for such advanced time.

- C. Any employee who is injured, whether slight or severe, while working, must make an immediate report within two (2) hours thereof to the Chief of Police or his designee.
 - D. It is understood that the employee must file an injury report with the Chief of Police or his designee so that the Borough may file the appropriate Workers' Compensation claim. Failure to report said injury may result in the failure of the employee to receive compensation under this article.
 - E. The employee shall be required to present evidence by a certificate of a physician designated by the insurance carrier that he is unable to work, and the Borough may reasonably require the employee to present such certificate from time to time.
 - F. If the Borough can prove that an employee has abused his privileges under this Article, the employee will be subject to disciplinary action by the Borough.
7. **Bereavement Leave:** The Borough proposes the following revisions to Article XIV, Section A:

**ARTICLE XIV
BEREAVEMENT LEAVE**

- A. Every Officer by this Agreement shall be allowed four (4) *consecutive work* days with pay upon the death of a member of his/her immediate family *to commence between the day of death and the day of the funeral.*
8. **Dependent Coverage Contribution**

The Borough proposes the insertion of a new Section A.2 and A.3 in Article XV as follows:

“Effective January 1, 2003, all employees with dependent coverage shall contribute ten (\$10.00) dollars per month toward the premium for dependent coverage.”

“Effective January 1, 2004, all employees with dependent coverage shall contribute twenty-five (\$25.00) dollars per month toward the premium for dependent coverage.”

9. **Health Insurance:** The Borough proposes the deletion of Article XV, Section B:

B. In the event that additional health benefits become available to other municipal employees, then in that event, it is agreed between the parties of this Agreement that the Borough of Manville will provide such benefits to the employees covered by the provisions of this contract. However, the cost of such benefits shall be negotiated by the parties hereto.

10. **Educational Assistance:** The Borough proposes a revision to Article XXIV by adding the following new Section F:

F. 1. All employees hired on or after January 1, 2003 shall not be entitled to the benefit listed above in Sections A through E.

2. All employees hired on or after January 1, 2003 who earn an Associate Degree in Police Science or any other field of study approved in advance by the Chief of Police and Borough Administrator shall receive an annual payment of five hundred (\$500) dollars.

3. All employees hired on or after January 1, 2003 who earn a Bachelor Degree in Police Science or any other field of study approved in advance by the Chief of Police and Borough Administrator shall receive an annual payment of one thousand (\$1,000) dollars.

THE PBA'S POSITION AND ARGUMENT

The following are the PBA's positions and arguments in relation to the statutory criteria on the outstanding economic and noneconomic issues.

Interests and Welfare of the Public

The PBA asserts that the Manville Police Department is a full service law enforcement agency which well serves the interest and welfare of the public and is highly efficient and productive.

The PBA cites the testimony of Manville Patrol Sergeant Thomas Herbst, a 12-year veteran of the Manville Police Department. Herbst described the town with respect to size, population and most important key geographic location. Herbst described the general duties of the Manville Police Department as extremely active and growing measurably on an annual basis. Over the last ten years the calls for service have risen by 513%. P-6 illustrates Manville Police service calls from 1990 through the last complete year, 2001. During that period the annual call volume went from 2,372 up to 12,173. During the last three-year contract period adult arrests went from 277 annually to 322, an increase of 16%. Specific year-by-year statistics are illustrated in P-9. P-9 shows that the partial year 2002 already shows 224 adult arrests which is ahead of the prior year statistics. P-9 also provides data on juvenile arrests showing that juvenile arrests rose from 56 to 117 annually, an increase of 127% over three years ending in 2001. For the year 2002, as of the date of the hearing, there were already 64 juvenile arrests which will probably exceed the 2001 statistics. The PBA notes that motor vehicle enforcement also reflect increased activity. P-7 compares moving and non-moving violations for all of 2001 and partial year 2002. The projected total for 2002 will reflect a significant increase. The PBA points out that there were 252 accidents in 1998 which rose steadily to 345 for the last full completed year 2001 - an increase of 37% over

the three-year period. The PBA submits that this information shows a significant increase in work load and increases for calls across-the-board in nearly all types of police services.

The PBA cites Sergeant Herbst's testimony in this regard:

Q. What observations have you made in your years of service as to the commercial activity, the retail activity in general, activity for the Department during the daytime hours?

A. It's gone up. It's always been like that, as opposed to night time activity. Maybe the cinema would generate more personnel, but from a commercial standpoint and a business standpoint, during the day time activity there's just simply more people in town.

Q. We've identified trends in calls, certain types of services provided by the department in recent years. Is that typical of Police Department activity increases as you have observed them in your years of service?

A. Yes.

Q. Based on your experience and observation, is there more reactive as opposed to proactive patrolling at this time?

A. Well, at that particular time we have to say it would be reactive for the simple reason that the calls for services generated are much higher as opposed to nighttime, when you're supposed to be proactive.

Q. Are you spending more time responding to calls as opposed to patrolling?

A. Responding to calls. (Tr: 22-23).

The PBA further cites significant modifications and enhancements to service since July 1, 1999, the commencement date of the prior contract. Increased services which have occurred during that time frame include but are not limited to the following:

- Enhanced DARE Program
- School Violence Training, an unfortunate result of the Columbine School tragedy
- New Defibrillators in police cars and training to go with said new equipment
- Mobil Data Terminals (MDT) being placed in patrol cars to increase police efficiency and ability to respond.
- New radio system both in headquarters and in the cars
- New emergency services unit (ESU) which include 2 boats, 2 four-wheel drive vehicles, a wave runner and 2 dirt bikes.
- Senior Citizens Liaison officer - a novel approach to reaching out to senior citizens which was described by the witness at hearing.

- Car Seat program - this program is directed toward small children safety in cars
- New weapons (MB-5) for cars

The PBA points to Sergeant Herbst's testimony regarding inter-jurisdictional activity and interaction with other law enforcement agencies and the general role of the Manville Police Department in the law enforcement community. Herbst described towns such as Hillsborough and Franklin with whom they frequently interact however specifically stated that the most frequent interactions were with the State Police. Examples include interactions with nearby Millstone which does not have its own Police Department.

- Q. So the response time with respect to Millstone is faster from a neighboring town?
- A. Absolutely.
- Q. And this is one of the nearby towns - although we don't have a common border it's one of the nearby towns that might respond in an emergency?
- A. That's correct.
- Q. And then the State Police would come in and take over the case from that point?
- A. Take the investigation over, yes, and relieve us. That's correct.
- Q. During the flood did the State Police run a substation out of headquarters in this town?
- A. Yes, they were there with us. Yes.
- Q. What other interactions do you have with the State Police? I'm going to go down a list with which we've prepared. Ballistics?
- A. Yes.
- Q. Do you take your ballistics to the State Police for analysis?
- A. That's the only place we can take them. That's correct.
- Q. Forensics?

- A. I wouldn't say on a daily basis, but quite often, that's correct.
- Q. Controlled Dangerous Substances, CDS?
- A. That's just about weekly, yes.
- Q. The State Police Central Jersey Headquarters is in Somerville, is it not?
- A. That's correct.
- Q. How far from here?
- A. Five minutes, ten minutes.
- Q. At Somerville Station?
- A. That's correct.
- Q. And does the State Police regularly work in town on enforcement?
- A. Specifically on weekends for DWI there's a strong appearance from the State Police.
- Q. And there in town in this jurisdiction doing DWI enforcement?
- A. That's correct. (Tr. 31-33).

The PBA asserts that the Borough has not kept pace with police activity in the method of police staffing as the Manville Police Department has actually been reduced in size. The number of sworn police officers serving in the Manville Police Department is at a lower number today than it has been at any time in more than twenty-five years. P-6 shows that in 1975 there were twenty-three Police Officers which continued until 1999 when the force rose to twenty-five sworn officers. The twenty-five sworn officers were maintained until 2002 when it fell to twenty-two sworn officers. The PBA notes that notwithstanding the exceptional increases in activity there are three less sworn police officers serving today than there were at the commencement of the preceding contract.

The PBA points out that the staffing reductions in the Manville Police Department are not just in the number of sworn officers. Promotional opportunities have been reduced and the ability to attain rank has been diminished. P-2 through P-6 illustrate the year-by-year changes in the rank structure and the number of sworn personnel. The Borough has abandoned the position of Captain thereby reducing promotional opportunities. The PBA notes the “domino effect” of a promotion to Captain creating an open Lieutenant’s position and when filled an open Sergeant’s position and then an open Patrol Officer position. The PBA submits that a smaller number of officers with fewer supervisory positions are getting the job done and are extremely productive.

The PBA asserts that the Department is productive and professional. Fewer people are doing much more work with the officers doing their best to provide for the interest and welfare of the public. The PBA cites Sergeant Herbst’s testimony regarding morale in the department.

Q. Is the job getting done by the police department?

A. The job is always getting done by the police department.

Q. What is the *esprit de corps*? What is the feeling of the sworn officers presently on staff about each other and about the job and the job they do?

A. Well I would say it’s without a doubt, positive. The department, although 22 guys is a small department, it’s kind of like a small family. That’s the best you can equate it to. You have to work with each other. It’s not - we have several towns that border us, Franklin or Bridgewater, which are 75 or 100 man departments. You can kind of get lost in those. In our department, we’re small, we’re close knit. We work together. You don’t have an option. But it’s positive and it always has been. It’s good morale. It’s a good place to be and that’s why we have officers from other departments coming here.

Q. And have you made an observation as to how the citizens react to you and the role that’s played by this department with respect to the Manville citizens, how you react?

- A. Of course I'm a biased person, but I can't see anything else but positive coming out from them. We work with them as best we can. That was something that was instilled probably long before my time and it's kind of carried on. And it's a good thing because you get back to the small town community and stuff like that and they like to see us; we like to see them. We have other things that we are out there, we walk, we ride bikes, we are on motorcycles. We do a little bit of everything and it's positive. We get nothing else back. (Tr: 33-34).

Comparison of Wages, Hours and Working Conditions

The PBA contends that the total compensation program in Manville ranks poorly among the officers' peers. Virtually everything except base compensation and clothing allowance has been grandfathered in one form or another over the years. Longevity has ceased to exist for officers since January of 1996. Vacations have been significantly reduced for employees hired on or after January 1, 1996. The Educational Incentive, used principally to encourage employees in improving their educational backgrounds for mutual benefit of both the public and the officer has been grandfathered in this town. The PBA submits that no contract in evidence has such a pattern of grandfathering.

According to the PBA, the only common benefits provided are base wages and clothing allowance. The PBA contends that the base wage program has eight steps to reach maximum, the most of any municipal contract in evidence. The PBA contends that it also ranks poorly in base wage comparisons. The PBA suggests that the Borough's exhibit with respect to 2001 is misleading as it fails to indicate that the holiday benefit in Manville has been folded into base and is disproportionately reflected as base wages. The PBA submits that to compare Manville base wages with other departments accurately one must either reduce the Manville rate by the value of the holidays or alternately add the holiday values of the other towns to their reflective base rates. The PBA contends that the criteria

under Sections g2 and g3 of the Act require a full or total compensation analysis. The PBA maintains that such proper statutory comparisons reflect the very poor relative position of the total compensation program in Manville.

The PBA contends that no other municipality has created the pattern of grandfathering as is seen in Manville. Manville has a reduced compensation program in almost every area for new employees since the end of 1995 and is continuing to seek additional grandfathered benefits in this matter.

The PBA asserts that the key element in comparison of peer contracts is the wage increase. The PBA asserts that if the Borough's position is awarded, Manville Officers would fall back from comparisons with compensation of their peers. The average rates of increase are calculable based upon the evidence introduced at hearing.

The PBA submits that it created an appropriate universe of comparison through testimony at hearing. Comparisons were made with like jurisdictions most of which work regularly with Manville officers. Specific references were made to day to day activities, back up activities, regional law enforcement activities, etc. Contracts and awards referenced by the PBA case were offered into evidence in their entirety. One can see from the entire contract the totality of benefit and benefit comparisons. The PBA asserts that this is the best evidence. The PBA points out that the Borough introduced no such evidence.

The PBA maintains that the average rate of increase favors an award of the PBA position. The following chart summarizes the base rate of increase changes for departments placed into evidence by the PBA:

**Base Rate of Increase Expressed in
Percentage Based on PBA Exhibits**

	2002	2003	2004
Hopewell	5	4.4	
Bernards Twp. PBA	4	4	3.95
Bernards Twp. SOA	4	4	3.95
North Plainfield	4	4	4
Hopewell SOA	6.5	6.5	
Somerset Corr. SOA	4.2	4	
Montgomery SOA	4	4	
Montgomery PBA	4	4	
North Plainfield SOA	4		
Raritan	3.95	3.95	
Warren	4	4	
NJ State Police	4	4	4
State Troopers NCO	4	4	4
Watchung	4		
Franklin	4	4	
Bridgewater	4	4	
Bedminster	4	4	
Hillsborough	4	4	
Averages	4.20%	4.18%	3.98%

The PBA submits that the above salary data establishes average base rate increases which are close to its position in this case. The PBA further submits that the Borough's position is not supported by evidence in the record. The PBA contends that even the employer's listing of towns, which neglects to calculate the annual rate change percentage, has to mention some of the same towns which were in the PBA's universe comparison. The PBA asserts that the Borough is unable to sustain its case using valid empirical data.

The PBA points out that the Borough has granted wage increases to nearly all of its employees that exceed the wage it proposed for the police. The Borough's other bargaining units covering blue and white collar employees were voluntarily settled with salary increases far exceeding its offer to the PBA. The PBA suggests that the sequence of the contracts is significant. The Borough had contested the wage increases which Interest Arbitrator Ernest Weiss ultimately ordered in the last contract resolution. (P-32). After the Borough received the Weiss police award it then granted the same increase to both Teamsters Local 575 and the Manville Clerical Employees Association. The PBA cites the testimony of Manville Borough Administrator Gary Garwacke on cross examination:

Q. So a position was taken before Arbitrator Weiss ruled and then the other two bargaining unit contracts were negotiated both of them in direct bargaining, both of them without Interest Arbitration, you don't have it, and both of them giving those employees the same thing Arbitrator Weiss had ordered for the police. Right?

A. Yes. (Tr: 86).

The PBA notes that the Borough has completed negotiations with the blue and white collar bargaining units for calendar years 2002. The PBA contends that the Borough has established a pattern of settlement with all other bargaining units and with non-contractual employee positions for 2002 and 2003, the first two years of this Interest Arbitration proceeding. The PBA cites Borough Administrator Garwacke's testimony in this regard:

Q. What increase did Local 175 contract receive in percentage for the year 2002?

A. 5%.

Q. And for the next year, that is calendar year 2003 what did they get?

A. 5%. (Tr: 87-88).

The PBA notes the Borough's voluntary settlement with the Clerical Workers Association which includes calendar years 2002 and 2003. The CBA is included in the tab 2 of the Borough's exhibit book. Article V, Salaries, lists titles under the word "position" with columns to the right indicating the calendar years covered by the contract. The PBA has taken that same salary graph and calculated the percentages of each change which will cover the years 2002 and 2003. The following chart provides an analysis of the Borough's voluntary settlement using the Borough's own contract salary chart referenced above converted to percentages.

**Analysis of Borough of Manville's Voluntary
Settlement with Manville Clerical Workers Association
Expressed in Percentage of Change**

Title Covered by Contract	2002	2003
Secretary Public Works	3.92	4
Administrative Assistant	4	4.1
Secretary Police Chief	4	4.2
Deputy Court Administrator	4.1	4.2
Court Administrator	4	4.1
Construction Code Secretary	4.1	4.3
Admn.Assist. Planning/Zoning	4.6	4.7
Admn. Assist. / Court	5.3	5.4
Secretary Detective Division	4.9	5
Registrar/Bd. of Health Sec.	5.5	5.5
Police Dispatch	4.3	5.4
Averages	4.43%	4.63%

The PBA notes that the Borough has set a standard of settlement which for some titles exceeds 5% and for all titles is close to 5% in 2003.

The PBA points out that Borough Administrator Garwacke received salary increases which exceeded all bargaining units. The PBA cites Garwacke's testimony regarding his actual base rate increases for 2000 and 2001:

Q. So for the last 2 years you got a 5%, then a 6.6% increase and you haven't gotten your increase for this year yet?

A. That's correct. (Tr: 92).

The PBA asserts that the pattern is clear — the Borough is granting increases and creating a pattern for virtually every other title of employment both in and out of bargaining units but for some unknown reason the police are not being treated equitably. The PBA is not asking for the same 6.6% increase that Administrator Garwacke was granted. Many clerical titles exceed the 5% that the PBA has requested. All of the Teamster employees got the same 5% increase that the PBA is asking for. The PBA contends that the Borough's own pattern of settlement supports the PBA position.

The PBA submits that the pattern includes medical issues. The PBA points out that while the Borough seeks reductions in PBA medical benefits, no such reductions were negotiated with any other bargaining unit or other Borough employees:

Q. By the way, do you co-pay medical?

A. No.

Q. Does any other staff employee pay medical or any part of medical?

A. No. No other staff member.

Q. Does any other contract negotiated, Blue collar, White collar, Teamsters, clerical, anybody pay medical?

A. No. (Tr: 92).

The PBA submits that the Borough's proposals to take more things from the PBA are unsupportable, illogical and completely unsupported by any type or form of statutory analysis.

The PBA disputes the Borough's comparisons to private sector employment arguing that such comparisons are not entitled to great weight. Due to the unique statutory obligation and treatment of police officers under New Jersey Law, any comparison of said law as it applies to private sector employees as compared to police officers must result in a strong justification for much higher compensation to be paid to police officers. The PBA cites the analysis of private sector comparisons by Interest Arbitrator Carl Kurtzman:

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

The PBA respectfully asserts that private sector comparisons should not be considered controlling in this case. In the first instance, there is no comparable private sector job compared to that of a police officer. A police officer has obligations both on and off duty. This is most unusual in the private sector. A police officer must be prepared to act and, under law, may be armed at all times while anywhere in the State of New Jersey. This is not seen in the private sector. The police officer operates under a statutorily created public franchise of law enforcement with on and off duty law enforcement hours. Again such public franchise and unique provision of statutory authority is not found in the private sector. There is no portability of a pension in the law enforcement community after age thirty-five. Police officers may not take their skills and market them in other states as one may market one's own skills in the private sector. A machinist or an engineer may travel

anywhere in the county to relocate and market their skills. This is not possible for a police officer. The certification is valid locally only. The nature of police work is inherently one of hazard and risk. This is not frequently seen in the private sector.

The PBA submits that the following represents certain statutory and other precedential laws controlling the relationship of police officers to their employers in the public sector:

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

7. A police officer in New Jersey must be a resident of the State of New Jersey, **NJS 40A:14-122.8**. No such restriction exists for private sector employees.
8. Hiring criteria and order of preference is set by statute **40A:14-123.1a**. No such provision exists for private employees in New Jersey.
9. There are age minimums and age maximums for initial hire as a police officer in New Jersey. No such maximum age requirements exist for private employment in this state. Even if an employee in a police department who has left service seeks to be rehired there are statutory restrictions on such rehire with respect to age, **40A:14-127.1**. No such provision exists for private employees in this state.
10. As a condition for employment in a police department in the State of New Jersey there must be acceptance into the applicable Police Retirement System, **NJS 40A:14-127.3**. No such requirement exists in private sector. The actual statutorily created minimum salary for policemen in New Jersey is set at below minimum wage **NJS 40A:14-131**. Private employees are protected under the Fair Labor Standards Act. Days of employment and days off, with particular reference to emergency requirements are unique to police work. A police officer's work shall not exceed six days in any one week, "except in cases of emergency". **NJS 40A:14-133**. The Fair Labor Standards Act gives superior protection to private sector employees.
11. **NJS 40A:14-134** permits extra duty work to be paid not in excess of time and one-half. This prohibits the higher pyramided wage rates which may be negotiated in private sector. There is no such prohibition in the law applying to private sector employees.
12. The maximum age of employment of a police officer is 65 years. No such 65-year maximum applies to private sector employees.
13. Police Officer pensions are not covered by the federal ERISA Pension Protection Act. Private sector employees pensions are covered under ERISA.
14. Police officers are subject to unique statutorily created hearing procedures and complaint procedures regarding departmental charges. Appeals are only available to the court after exhaustion of these unique internal proceedings, **NJS 40A:14-147** to **40A:14-151**. No such restrictions to due process protections for private employees exist. Private employees, through collective bargaining agreements, may also negotiate and enforce broad disciplinary review procedures. The scope is much different with police personnel.

Perhaps the greatest differentiation between police officers and private employees generally is the obligation to act as a law enforcement officer at all times of the day, without regard to whether one is on duty status within the state or not. Police officers are statutorily conferred with specific authority and “. . . have full power of arrest for any crime committed in said officer’s presence and committed anywhere within the territorial limits of the State of New Jersey.” **NJS 40A:14-152.1**. A police officer is specially exempted from the fire arms law of the State of New Jersey and may carry a weapon off duty. Such carrying of deadly force and around the clock obligation at all times within the State is not found in the private sector.

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

Mobility of private sector employees is certainly a factor in the setting of wages and terms and conditions generally for private sector employees. Where a company may move from one state to another, there is more of a global competition to be considered. The New Jersey private sector employee must consider the possibility that his industrial employer might move that plant to a another state or even another country. This creates a depressing factor on wages. This is not possible in the public sector. The employees must work locally and must be available to respond promptly to local emergencies. The residency restriction has been above mentioned. In a private sector labor market one might compare the price of production of an item in New Jersey with the price of production of that item in other states, even in Mexico.

The PBA asserts that local comparisons are more relevant with police wages. The PBA cites the decision of Arbitrator William Weinberg in the Village of Ridgewood case:

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

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

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

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

The PBA submits that any time there is a comparison made between a police officer and a private employee generally, a police officer's position must be given greater weight by such comparisons. The police officer lives and works within a narrowly structured

statutorily created environment in a paramilitary setting with little or no mobility. The level of scrutiny, accountability and authority are unparalleled in employment generally. The police officer carries deadly force and is licensed to use said force within a great discretionary area. A police officer is charged with access to the most personal and private information of individuals and citizens generally. His highly specialized and highly trained environment puts great stress and demand on the individual. Private employment generally is an overly generalized category that includes virtually every type of employment. To be sure in such a wide array of titles as the nearly infinite number covered in the general category of “private employment” there are highly specialized and unique situations. The majority, however, must by definition be more generalized and less demanding. Specialized skills and standards are not generally as high as in police work. A police officer is a career committed twenty-five year statutorily oriented specialist who is given by law the highest authority and most important public franchise. The police officer should be considered on a higher wage plane than private employment generally.

Stipulations of the Parties

The PBA notes that the only stipulations in this case were procedural in nature except for the three-year contract term.

Lawful Authority of the Employer

The PBA contends that a review of this case consistent with criteria g5 under the Act provides absolutely no prohibition to an award of the full package proposed by the PBA. Criteria g5 is essentially an analysis of the New Jersey “Cap Law” and said statute is specifically referenced within the full text of g5. The cap law is a limitation on certain categories of governmental spending. The cap is 5%. The statute provides certain methods for going beyond the 5% limitation. However, such other alternatives are not at issue here.

The PBA asserts that the adopted budget establishes that there is absolutely no cap problem in the Borough. (P-26A). The full cap computation is set forth at sheet 3c of the budget document. After operating the budget on the appropriate categories of expenditure the final calculation is listed under the line captioned "Maximum Allowable Appropriations after Modifications". The maximum amount of money which may be budgeted utilizing the New Jersey cap formula is calculated on the bottom right-hand side of sheet 3c of the budget document. The amount permitted to be used is \$6,999,758.

The PBA contends that the adopted budget uses significantly less cap flexibility than is permitted under the cap law calculation. The permitted amount to be used is \$6,999,758. The actual amount used is set forth in two specific places within the budget. There is a line captioned "Appropriation Within Caps" at the top of sheet 3 of the budget and there is also a line captioned "Total General Appropriations for Municipal Purposes within Caps" at sheet 19 of the budget. In both cases the specific amount is identical, \$6,791,115. Comparing the amount actually appropriated within cap to the amount permitted to be appropriated within cap shows a differential. The difference between the amount available for appropriation within caps (\$6,999,758) and the amount actually used as cap appropriation (\$6,791,115) is \$208,643.

The PBA contends that the Borough, in applying the cap formula, has for budget year 2002 under utilized cap flexibility by \$208,643. (P-26A). The amount under utilized in a specific budget year carries forward up to 2 budget years in the future as a "cap bank". The municipality therefore not only has no cap problem in 2002, but in addition it is carrying forward \$208,643 in cap flexibility into future budget years.

The PBA suggests that the magnitude of this cap flexibility may be considered consistent with the cost of a bargaining unit base rate point in this Interest Arbitration proceeding. The following chart represents a calculation of a bargaining unit base rate point:

Bargaining Unit Base Rate

(A) Rank	(B) Census (P-2)	(C) Rate (J-5)	(D) Col. (B) X Col (C)
Sergeant	5	\$80,975	\$ 404,875
Police Officer	13	\$69,593	\$ 904,709
Totals	18		\$1,309,584
		1% = \$13,095	

The PBA calculates the value of a base wage percentage point for this entire bargaining unit as \$13,095. To put the amount of cap flexibility banked for future years into perspective, one may divide the amount carried forward in a cap bank, \$208,643 by the value of a total bargaining unit base wage point, \$13,095, to establish for perspective purposes that the flexibility unused and carried forward from the 2002 budget into the future is worth 15.93 percentage points of bargaining unit base wage. The PBA maintains that there is no cap problem in the Borough. The amount carried forward in flexibility into future years alone is enough to pay the full PBA position with money left over.

Impact on The Taxpayers And Residents

The PBA asserts that a review of this case under criteria g6 establishes that there is no appreciable impact on the taxpayers and residents of an award of the PBA's position. There is a *de minimus* result from any comparisons made. The PBA contends that Manville is not a poor town. It has a strong fiscal picture supported by facts introduced into the case by the PBA.

Before analyzing the town's budget generally or the fiscal picture generally, the PBA notes that there is significant flexibility within the police line item for salaries and wages if said monies were not reduced by employer reallocation of appropriations. There is enough money on the prior year's line item, if carried forward, to pay for the entire PBA position.

The PBA notes there was the loss of one captain, two sergeants and a patrol officer through retirement in calendar years 2000 and 2001 as follows:

**Base Pay of Sworn Officers who left
Manville Police Department
Since Beginning of Last Contract 1/1/99 (J-5)**

Name	Rank	Date separated	Base Pay at Time of Separation
Sidorsky	Captain	6/30/02	\$94,709
Buffi	Sergeant	Jan. 2001	\$82,481
Herasymchuck	Sergeant	6/30/02	\$82,481
Bylina	Patrol Officer	March 2002	\$71,084
Total			\$330,755

According to the PBA, the above \$330,755 savings is not all the money saved by the Borough. For example, these officers retiring and listed above all receive longevity. The grandfathered longevity program is one of the issues in this proceeding. The PBA contends that there has been a windfall to the Borough by virtue of the senior officers separating since the town now is paying longevity to less people. Senior officers also receive more vacation and other benefits with compensation which is affected by base rate, holidays, overtime, etc. In essence, the above base wage savings are only the beginning of the savings to the Borough from the personnel changes.

The total savings as calculated above is \$330,755. The PBA calculates this as 25.25 percentage points with \$13,095 representing one wage point. The PBA suggests that the money saved in base pay alone from retiring officers could more than pay for the entire PBA position in this case.

The PBA notes that in addition to the above savings, the Borough also paid a one-time bonus retirement incentive payment in 2002 to the retirees identified above. The following chart notes the individual retirement bonuses paid.

**One Time Expense Retirement Bonus Payment
To Sworn Officers Who Retired During 2002**

Name	Amount of Retirement Bonus	Reference in Transcript
Capt. Sidorsky	\$42,500	P. 11, Line 20
Sgt. Herasymchuck	\$32,500	P. 12, Line 22
Ptl. Bylina	\$25,000	P. 13, Line 7
Total One time payments made in 2002		\$100,000

Each of these payments was a one-time, "one shot", payment. These expenses incurred in 2002 will not recur in the future. The PBA notes that the money spent on the one time payments in 2002 are substantial when compared with the cost of the entire PBA position. If one divides the \$100,000 spent on a one time basis in 2002 alone by \$13,095 (the cost of a bargaining unit wage point) the result is 7.6%.

The PBA asserts that the Borough has saved enough money in personnel transactions to pay the PBA position in its entirety.

The PBA cites another significant personnel change that occurred in the immediate past to the Manville Police Department. Former Chief Michael Moschak died unexpectedly while still serving as Chief of Police in February 2000. The Borough could not have anticipated the death of Chief Moschak. He was a senior officer having served his entire time with the department and his rate of pay was much more than the captain's rate of \$94,709. While Chief Moschak's pay rate was not in the record, the fact of his loss cannot be overlooked. From a purely fiscal basis a senior staff member is no longer in the employ of the department and the department will no longer have to pay that higher pay rate. In addition to this fiscal impact, the public employer elected to do away with the rank of Captain. Where there had been two captains previously one captain was promoted to the position of Chief to succeed Chief Moschak and the other, Captain Sidorsky, retired with an

incentive bonus on June 30, 2002. There are no captains now. The savings to the public employer are significant by both the loss of the senior officer, Chief Moschak, and the deletion of anyone serving in the rank of captain. One cannot also overlook the fact that the career path for junior officers has been modified with less opportunities for advancement. In addition the Borough's Police Department is running financially more efficiently in that the duties of the higher paid captains have now been reallocated to subordinate level officers. If the Chief of Police who passed away was earning \$100,000 then that would represent another 7.6 percentage points of base rate value. The only offsetting costs to that savings would be the difference between the captain's prior rate and the promotional differential paid upon said captain's promotion to Chief.

The PBA made the following observations following a review of the documents placed into evidence of the finances of the Borough:

- The results of operations for the year 2002 show a balance of \$875,394. This is an extremely important schedule in that it indicates the amount of surplus generated during the year. Conceptually it gathers or summarizes the closing entries to operations of the various holding accounts. (Source: AFS, P-27, sheet 19)
- In the year 2000 budget revenues anticipated \$10,307,701. The amount realized was \$11,646,181. The excess attributable to 2000 was \$1,338,480. For 2001 the amount anticipated was \$10,653,069. The amount realized was \$11,551,443. The excess attributable to 2001 was \$898,374. Revenues have exceeded anticipations which again indicate that they have the ability to generate additional revenue. (Source: AFS, Sheet 17)
- The unexpended balance of appropriation reserves attributable to 1999 and canceled in 2000 was \$65,112. The amount from 2000 canceled in 2001 was \$165,068. This demonstrates budget flexibility and that this municipality continues to have unspent budget appropriations. (Source: AFS sheet 19)
- The fund balance for 2001 was \$1,973,743. The amount used in the current budget was only \$750,000. Comparing with 1996, the fund balance was \$826,198. This represents an increase from 1996 to 2001 of 139% or \$1,147,545. The Borough used only a minimum to support the budget leaving a significant amount of flexibility. (Source: 2000 Report of Audit, P-22).

- The reserve for uncollected taxes has consistently exceeded collections. The collection rate for 2001 for current receipts was 96.75% (P-27, sheet 22). Rather than use this amount the Borough of Manville elected to use only an anticipated figure of 92.35% (see municipal budget, P-26A, Sheet 3, line 3). The difference between the amount that could have been utilized 96.75%, and the amount actually anticipated (92.35%) is 4.4%. This is referred sometimes as a “reserve cushion”. 4.4% when applied against the total levy of this municipality (P-27, sheet 17) results in a reserve cushion of \$706,792 in 2002.
- The borrowing power of this municipality statutorily calculated far exceeds the actual net debt. Remaining borrowing power exceeds 7.68 million dollars. This indicates a town well below the debt limit which is an example of fiscal stability (Source: 2001 Report of Audit)
- The Moody’s Credit Rating for Manville most recently stated in evidence is “AAA”. (Source: Official Statement dated 11/15/96).

The PBA points out that the Borough has saved significant money in the abatement of police pension costs. P-33 is a printout from the New Jersey Division of Pensions dated March 6, 2001. On page 7 of P-33, under the 16th District heading, the Manville Borough savings under this legislation (S-1961) are calculated. The Borough of Manville has saved by virtue of this legislation \$119,365.00. This is actual cash savings which are in the form of an abatement of police pension costs. Thus the town has a savings directly attributable to police expense. This amount of actual police cost savings if compared with the cost of a police salary point result in a value of 9.1 police base wage percentage points. Again specific funding sources are found directly within police personnel calculations.

The PBA suggests that the fiscal position of the Borough has been significantly improved by a recent sale of a municipal asset, the Water Company. By contract with the Elizabeth Town Water Company (P-35B) as authorized by Resolution No. 2000-209 of the Borough of Manville (P-35A) the municipal asset was sold for \$4,910,000.00. The PBA cites Manville Borough Manager Garwacke’s testimony in this regard:

Q. You're aware that there's a four million dollar bank account from the sale of the Water Company?

A. Yes, I am.

Q. What rate is it at? Do you know?

A. Right now?

Q. Yes.

A. It's 3% and we just entered into that account within the past month.
(Tr: 103).

The PBA notes that not many municipalities have a brand-new bank account with over \$4,900,000 receiving interest.

The Cost of Living

The PBA submits that the cost of living in the Borough is no different from the cost of living in other area towns. The same fiscal factors are at work in the region. The PBA cites the statistics generated by the New Jersey Department of Labor and promulgated by the Public Employment Relations Commission. (P-34). Page 2 of P-34 reflects the cost change in percentages as 6% statewide for all industry. Somerset County shows a percent change figure of 5.2%. This, of course, approximates the amount sought by the PBA as a base wage increase in this case. The employer did supply certain information on the subject of cost of living, but those were national figures. The PBA maintains that New Jersey is one of the most expensive places to live and northern New Jersey is more expensive than most of the state.

The Continuity and Stability of Employment

The PBA contends that a review of these criteria seems to suggest an evaluation consistent with the private sector concepts of "area standards" and "prevailing wage". In both cases the rate of change and the total compensation program analysis clearly favors the

PBA's position. The PBA maintains that, as previously discussed, private sector concepts support the PBA position.

The PBA submits that it has advanced its case on all issues consistent with the statute. This is a municipality where most benefits have been grandfathered and therefore junior officers receive significantly lesser benefits than senior personnel. The senior / junior officer balance is about to change. The loss of senior personnel and, the hopeful replacement eventually with junior personnel will further increase this rate of change. Now is the time to address the problem. For this reason, PBA submits that its proposals on longevity, vacations and educational incentive are appropriate for current consideration. The PBA contends that the cost impact of these changes is nil. The PBA contends that it is not good personnel management to have two tiers of compensation in a profession that relies heavily on comradery and *esprit de corps* often requiring close working conditions where health and safety are at issue. The PBA asserts that it is essential that employees be treated properly and not in a way that might lead to increased antagonism or competitiveness. Senior officers get longevity, have better vacation and enjoy an educational incentive which junior officers will never receive. The PBA submits that this is not in the public interest since it does not help to deliver the important public service of police protection.

The PBA asserts that its proofs have been complete and thorough and in full compliance with the statutory mandate. The PBA maintains that it did not just give a list of towns with some sort of a chart prepared — it offered testimony about why certain other jurisdictions may be considered comparable and included interaction with those other jurisdictions in the description. When contract issues regarding those other jurisdictions was presented, it was done so in full contract form. The PBA contends that the Borough's proofs with respect to fiscal issues were vague consisting principally of an opening statement which

was nothing more than a review of the status of certain accounts. Account status is of little relevance in these proceedings. For example, certain accounts are not evenly expended over the year. The status of the account for fuels, road maintenance, and police overtime varies significantly during the year. The PBA questions the relevance of the status of an account without knowledge of how that account compared in prior years at the same point in time. The PBA asserts that a strong fiscal picture was presented and the Borough's ability to pay the PBA's salary proposals without negative impact on the taxpayer has been clearly made.

The PBA asks that all of its proposals be awarded.

THE BOROUGH'S POSITION AND ARGUMENT

The following are the Borough's positions and arguments in relation to the statutory criteria on the outstanding economic and noneconomic issues.

Legal Argument

The Borough notes that the New Jersey Employer-Employee Relations Act (the "Act"), N.J.S.A. 34:13A-1 et seq., has been amended with respect to interest arbitration. A "reemphasis" and "redirection" of the statute now provide greater awareness and significance of the interest and welfare of the public. This is demonstrated by the following additional statutory provision:

It also is the public policy of this State to ensure that the procedure so established fairly and adequately recognizes and gives all due consideration to the interests and welfare of the taxpaying public; and

Further, it is the public policy of this State to prescribe the scope of the authority delegated for the purposes of this reform act; to provide that the authority so delegated be statutorily limited, reasonable, and infused with stringent safeguards, while at the same time affording arbitrators the decision making authority necessary to protect the public good; and to mandate that in exercising the authority delegated under this reform act, arbitrators fully recognize and consider the public interest and the impact that their decisions have on the public welfare, and fairly and reasonably perform their statutory responsibilities to the end that labor peace between the public employer and its employees will be stabilized and promoted, and that the general public interest and welfare shall be preserved.

In rendering their awards, interest arbitrators are required to consider:

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.

Arbitrators must also separately determine whether the total net annual economic changes for each year of the agreement are reasonable under all the criteria set forth in the statute.

Significantly, this statute has been revised to provide for conventional arbitration, giving the interest arbitrator greater flexibility in rendering his or her award. The arbitrator is permitted to award the economic position of either party with respect to each economic item. The interest arbitrator is further permitted to reject the economic position of either or both parties on any economic item, and to fashion his or her own economic package. The same analysis holds true for non-economic items.

Burden of Proof

The New Jersey Supreme Court decided two companion cases which have had a significant impact upon the interest arbitration process. See Hillside PBA Local 207 v. Borough of Hillsdale, Docket No. A-68 (May 17, 1994); Borough of Washington v. New Jersey State Policemen's Benevolent Association, Inc., Local 206, Docket No. A-69 (May 17, 1994). In Hillsdale and Washington, the Court examined the sufficiency of the evidence which the parties must present to an Interest Arbitrator and the relevance of the various eight statutory criteria. In Hillsdale, the Court instructed that "[i]n general, the relevance of a factor depends on the disputed issues and the evidence presented." Hillsdale, Slip Op. at 11 (citing N.J.S.A. 34:13A-6(f)(5); N.J.A.C. 19:16- 5.9). The Court also directed the Arbitrator to "determine which factors are relevant, weigh them, and explain the award in writing." Id. Further, the Court cautioned that the Legislature did not intend that any one factor would be dispositive. Id. The Court further explained,

As the statute states, an arbitrator need rely not on all factors, but only on those that the arbitrator deems relevant. An arbitrator should not deem a factor irrelevant, however, without first considering the relevant evidence. An arbitrator who requires additional evidence may request the parties to supplement their presentations. . . . [T]he arbitrator need not require the production of evidence on each factor. Such a requirement might unduly prolong a process that the Legislature designed to expedite collective negotiations with police and fire departments. Id. at 14.

Moreover, even if the parties do not introduce evidence on a particular factor, the Arbitrator's decision must explain the Arbitrator's rationale for deeming that factor irrelevant. *Id.* at 15. "Without such an explanation, the opinion and award may not be a 'reasonable determination of the issues.'" *Id.* In summary, "an arbitrator's award should identify the relevant factors, analyze the evidence pertaining to those factors, and explain why other factors are irrelevant." *Id.* at 15-16.

The Borough contends that the PBA has failed to meet its burden of proof with respect to its economic demands. The Borough contends that the PBA merely "threw" collective bargaining agreements across the table in support of its economic demands. The PBA failed to present any testimony, argument or direct "evidence" to support any of the statutory criteria. Specifically, the PBA failed to present any evidence to support its wage increase demand; its demand for the deletion of the grandfather provision set forth in Section D of Article VIII, effectively granting longevity to all police officers hired after January 1, 1996; its demand for the deletion of the grandfather provision set forth in Section G of Article X, effectively granting significantly more vacation time to all police officers hired after January 1, 1996; its demand that minor disciplinary matters be arbitrable; its demand for the deletion of the grandfather provision set forth in Section E of Article XXIV, effectively granting additional educational incentive to all police officers hired after January 1, 1996 and, its demand for the insertion of a provision indicating failure to enforce any provision of this Agreement shall not be deemed a waiver thereof.

The Borough asserts that the statute and relevant case law do not find the PBA's presentation as meeting the burden of proof with respect to the statutory criteria. The purpose of the briefs presented by the parties is to summarize the arguments and evidence presented at the hearing, not to insert new evidence through argument that had not been

presented at the hearing. To rely solely on the CBAs and evidence produced by the Borough to argue the reasonableness of the PBA's demands in a post-hearing brief meets neither the spirit nor the intent of the statute or established case law. Therefore, it would violate the statute and established case law for the Interest Arbitrator to even consider the PBA's demands. The Borough asserts that the PBA has failed to meet its burden of proof.

The Borough contends that, through its exhibit book, it supported each economic position as required by the statute and established case law.

The Statutory Criteria

N.J.S.A. 34:13A-16(g) states that the Arbitrator must determine the dispute based upon "a reasonable determination of the issues." "Reasonableness" requires the Arbitrator to apply a subjective standard. The Legislature enumerated eight (8) statutory criteria to which the Arbitrator must give "due weight" in fashioning a decision. The following is the Borough's analysis of the statutory criteria:

The Interests and Welfare of the Public

The Act requires the Arbitrator to consider "the interest and welfare of the public" in reaching his or her determination. N.J.S.A. 34:13A-16g(1). This criterion focuses upon the priority to be given to the public employee's wages and other economic benefits within a municipality's finite budget and plans. Hillsdale PBA Local 207 v. Borough of Hillsdale, Docket No. A-2750-91T5, Slip Op. at 28 (App. Div. March 17, 1993), rev'd on other grounds, Hillsdale PBA Local 207 v. Borough of Hillsdale, Docket No. A-68 (May 17, 1994).

The Borough asserts that generally, a public employer best serves the public interest by striking a balance between satisfying its employees, thereby avoiding labor strife, and maintaining a stable level of government services. While a municipality may have difficulty

balancing these competing interests within the available budget, the municipality should not sacrifice fairness to its employees so that it may provide its residents with a plethora of frivolous government services. On the other hand, a municipality should not reduce essential government services to satisfy the economic demands of overreaching public employees.

The Supreme Court recognized that although compulsory interest arbitration is an adversarial process between a public employer and its employees, the public is a "silent party" to the proceeding. *Hillsdale*, Slip Op. at 12. The Court described the impact the interest arbitration process has on the public:

This case arises from a salary dispute between a municipality and its police department, but its resolution inevitably will affect the public. In an era of rising costs and budget caps, a municipality feels the initial impact of salary increases for police and fire departments. The taxpayers, however, feel the ultimate effect. *Id.* at 3.

The Court also observed,

Compulsory interest arbitration of police and fire fighters' salaries affects the public in many ways, most notably in the cost and adequacy of police and fire-protection services. Indeed, section 16g expressly requires the arbitrator to consider the effect of an award on the general public. Hence, an award runs the risk of being found deficient if it does not expressly consider "the interest and welfare of the public." *Id.* at 12-13 (citations omitted).

The Borough contends that although the Act requires interest arbitrators to consider the impact of an award upon "the interest and welfare of the public," interest arbitrators frequently do not give this factor its proper weight in deliberations. The Borough contends that the Arbitrator must consider the effect the award will have on the citizens and taxpayers of the Borough, especially considering the decrease in staffing throughout the Borough, including dispatchers and law enforcement personnel, due to budgetary constraints. The Borough argues that it would not be in the interest and welfare of the public to grant the

PBA's unreasonable demands that would either overburden the Borough's taxpayers or reduce services

The Borough contends that the public has criticized the interest arbitration process because of the high awards it produces. The Borough contends that the average award granted wage increases to police and fire personnel that dramatically exceed inflation. The Borough contends that if wage increases continue to outstrip inflation and private sector salary increases at the current pace, the relative burden on the taxpayer will continue to increase. The Borough asserts that its economic package supports the public interest because it considers the interest of its taxpayers while still giving the PBA a reasonable salary increase.

The Borough contends that when the PBA developed its economic demands, it properly considered the wants and desires of its members while placing little weight, if any at all, on the interests and welfare of the public, the Borough's ability to pay, the lawful authority of the Borough and the financial impact on the governing unit, its residents and taxpayers. The Borough contends that when it formulated its economic proposal, it considered not only the needs and desires of the bargaining unit, but also the above-mentioned criteria. The Borough contends that it is better equipped to properly gauge, weigh and consider these statutory criteria. The Borough submits that its proposal, which is reasonable and takes into account all of the statutory criteria, must be the position awarded even though the Interest Arbitrator has conventional authority.

The Borough submits that an important element in determining the interests and welfare of the public is the demographics of a municipality. The demographics of the Borough are also important as they relate to the issue of comparability. According to the Borough, its residents, "fighting" an extremely low per capita income, median family income, and median household income, are "saddled" with a high tax rate.

The Borough submits that a more accurate understanding of the interests and welfare of the public is established when reviewing the demographics of the Borough in comparison with "comparable" municipalities. To provide as complete and accurate a basis as possible for comparison, the Borough used all municipalities in Somerset County as its "universe."

In Somerset County, the Borough ranks last out of twenty-one municipalities with respect to per capita income; twentieth with respect to median family income, and twentieth with respect to median household income. With respect to the percentage of persons in poverty, the Borough ranked fifth out of nineteen municipalities. With respect to the percentage of households receiving social security and the percentage of persons receiving public aid, the Borough ranked highest out of the nineteen municipalities.

With respect to the total tax rate, the Borough ranks fifth; fourth with respect to municipal tax rate; and fifth with respect to equalized municipal tax rate out of the twenty-one municipalities. (Borough Exhibit Book, Tab 1).

To complete this picture, to raise revenue, the Borough must rely upon a tax base with the fifteenth lowest net valuation taxable and state equalized value in conjunction with the third highest percentage of residential property valuation and sixteenth lowest percentage of commercial property valuation, showing that a disproportionate share of the tax burden falls upon a residential population ranking among the lowest in Somerset County in income and ranking among the highest in poverty and public aid levels. (Borough Exhibit Book, Tab 1).

The Borough contends that considering these statistics, it is unreasonable for the PBA to demand salary increases that will maintain a salary level at or near the highest in the County; to demand longevity be reinstated when the trend in the County is to eliminate longevity; to demand additional vacation time; and, to demand greater educational incentives.

On the other hand, the Borough asserts that its reasonable salary offer and the cost containment proposed by the minimal contribution toward dependent health insurance coverage and revision of educational assistance for all new employees are reasonable, warranted, and in the interest and welfare of the public.

Comparability and Overall Compensation

The Act requires the Interest Arbitrator to consider a 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 in (a) public employment in the same or similar comparable jurisdictions (b) in comparable private employment and (c) in public and private employment in general. The Act also requires the Interest Arbitrator to consider 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. N.J.S.A. 34:13A-16(g)(2) and (3). The Borough contends that the comparable and overall compensation exhibits submitted at the interest arbitration hearing show the reasonableness of its position.

The Borough contends that the comparables and overall compensation exhibits support the Borough's offer. The Borough further contends that its package must be selected, placing the burden upon the PBA to make the strongest of showings on the comparables in light of the interests and welfare of the public, the lawful authority of the Borough and the financial impact on the governing unit, its residents and taxpayers.

Comparable Municipalities

Historically, in the 1980's, the salaries of the Borough's police officers were consistent with its demographics to comparable municipalities. From 1986 through 1989, the Borough ranked between thirteenth and sixteenth out of nineteen Somerset County municipalities with police departments. Beginning in 1991, with an Interest Arbitration award, the Borough's relative ranking began to rise until 1995, when its police officers had the highest salary in Somerset County. From 1995 through 2001, except for one year, the Borough's patrol officers ranked first or second in salary in Somerset County. (Borough Exhibit Book, Tab 2). The Borough's 2001 salary exhibit includes holiday pay in the Borough's salary figure. However, the greatest amount of holiday pay for a patrol officer is \$3,555 (Borough Exhibit Book, Tab 3, subtab 7). Factoring out this figure, the Borough's patrol officers still ranked first in Somerset County.

The Borough contends that if the PBA's proposals are awarded, the police officers would not only maintain their unwarranted highest salary ranking in Somerset County, but it would widen the salary gap. However, if the Borough's proposals are awarded, its police officer's relative salary ranking would still exceed their relative ranking in the 1980s, and far exceed its comparable per capita income, median family income, and median household income rankings.

The Borough submits that the "comparability" criterion does not mean that all municipalities must provide the same benefits or salary increases. If this were the case, salaries and benefits would never change and all municipalities would provide the same salaries and benefit packages. Encompassed within the "comparability" criterion is a consideration of trends throughout the State and the nation, and a consideration of when "enough is enough."

The Borough contends that the PBA's proposal to dramatically enrich its longevity entitlement would only serve to unreasonably increase the Borough's economic ranking in comparison to all other Somerset County municipalities. Historically, longevity was another form of compensation recognizing years on the job, since in the past there were inadequate salary guides and much lower salaries. Longevity was necessary to adequately compensate police officers who were performing their jobs for certain numbers of years. Presently, salaries have risen to where police officers are more than adequately compensated, and longevity is unnecessary. The Borough contends that this has been recognized by the statewide trend to either eliminate longevity or at least recalculate longevity on a flat-rate dollar basis to provide municipalities with cost containment.

The Borough suggests that the same is true in Somerset County. For officers employed before January 1, 1990, eleven out of the nineteen municipalities provided for longevity. For officers employed after January 1, 1999, only six of the nineteen municipalities provided for longevity. (Borough Exhibit Book, Tab 2).

With respect to vacations, some municipalities historically granted its employees excessive amounts of time off to compensate for lack of other compensation, such as salary. The Borough in the past granted its employees one of the highest vacation entitlements in Somerset County. (Borough Exhibit Book, Tab 2). The negotiation of a grandfather clause limiting the maximum vacation entitlement for newly hired employees recognized the excessive nature of this benefit. To grant the Association's demand to remove the grandfather clause would simply and unreasonably reinstate an excessive benefit.

The Borough submits that I must view the statutory criterion of comparability and overall compensation in conjunction with the above demographics and other statutory criteria. Based upon this analysis, the Borough submits that its economic offer must be accepted since the PBA has failed to meet its burden of proof and failed to establish any basis for its economic demands in light of the other statutory criteria.

Other Employee Groups Within the Municipality

The Borough asserts that the PBA salaries far exceed the salaries of other Borough employees. As the Borough's exhibit entitled "2001 Employee Salaries" demonstrates, other than police department superior officers, only the Borough Administrator's base salary exceeds the base salary of bargaining unit personnel, who also receive overtime and holiday pay, further narrowing the gap with the Borough Administrator. The Police Lieutenant's 2001 base salary exceeds the Borough Administrator's 2000 base salary by more than ten percent. When considering longevity, holiday pay and overtime, the salary of the Borough's police officers approximates if not exceeds the compensation of the Borough Administrator! (Borough Exhibit Book, Tab 2).

With respect to other Borough personnel, the Borough's proposal allows PBA bargaining unit members to increase their comparatively higher salaries even higher relative to other Borough employees. The dollar increase generated by the Borough's percentage offer to PBA bargaining unit members translates to a dollar increase greater than the dollar increase received by other Borough employees. The PBA's salary demands not only exceed the Borough's salary increase given to other Borough employees on a dollar basis, but in many cases on a percentage basis as well.

The longevity entitlement of this bargaining unit exceeds the longevity entitlement of all other Borough employees, with administrative staff and department heads receiving no longevity. While longevity was eliminated for this bargaining unit as of January 1, 1996, the longevity entitlement for the clerical employees was eliminated as of January 1, 1994 and as of January 1, 1992 for Street, Sewer and Water Departments employees.

National Wage Trends

The Borough asserts that national wage trends also highlight the reasonableness of its economic offer. The Borough's exhibit entitled "Wage Stagnation", as printed in the New York Times in May 2002, based upon the Economic Policy Institute analysis of data

from the Commerce Department, indicated wage freezes or deductions being the norm since 2001. (Borough Exhibit Book, Tab 5).

Private Sector Employment

The Borough notes that the PBA presented an exhibit reporting the private sector wage changes compiled by the New Jersey Department of Labor for 1999 and 2000. While the increase in "Total Private Sector" wages in 2000 averaged 6.9%, and the "Total" increase in wages was 6.4%, the increase in "Total Government" wages was 3.0% with an increase of 2.7% for "Local Government". The Borough notes that the average 2000 private sector salary for the industries surveyed was \$22,400 less than the base salary earned by the Borough's police officers.

The Lawful Authority of the Employer

N.J.S.A. 34:13A-16g(5) requires the Interest Arbitrator to consider the "lawful authority of the employer" in determining whether the municipality or the union has proposed the more reasonable economic package. The New Jersey Local Government Cap Law (the "Cap Law"), N.J.S.A. 40A:4-45.1 et seq., restrains the lawful authority of the employer by limiting overall budget increases. It thereby restricts a municipality's ability to grant wage increases to its employees.

In enacting the Cap law, the Legislature declared it to be "the policy of the [State] that the spiraling cost of local government must be controlled to protect the homeowners of the State and enable them to maintain their homesteads." N.J.S.A. 40A:4-45.1. The Legislature also recognized, however, that "local government cannot be constrained to the point that it would be impossible to provide necessary services to its residents." Id.

The Cap Law controls the cost of local government by prohibiting a municipality from increasing its tax levy by more than 5% over the previous year's tax levy. N.J.S.A. 40A:4-45.2 states, "[b]eginning with the tax year 1991 municipalities, other than those

having a municipal purpose tax rate of \$0.10 or less per \$100.00 . . . shall be prohibited from increasing their final appropriations by more than 5% . . . over the previous year . . ."

N.J.S.A. 40A:4-45.2. The New Jersey Supreme Court explained:

As the wording of the statute makes clear, it is the final line of appropriations in a municipal budget (less expenditures excepted from Cap consideration) which cannot exceed by more than 5% the previous year's overall appropriations diminished by that year's Cap exclusions. The law does not preclude a municipality from increasing in excess of 5% any particular line item or items which are reflected in the Borough's total appropriations. It is the budget as a whole, rather than each component thereof, which is subject to the 5% ceiling.

N.J. State P.B.A., Local 29 v. Borough of Irvington, 80 N.J. 271, 281-82 (1979).

Therefore, the Cap Law does not impose a line item by line item limitation. Instead, it places a limit on the overall budget to the extent it is subject to the Cap Law. Because salary expenditures fall within the Cap, the Legislature has already predetermined the maximum amount the Borough may increase taxes to cover police salary expenditures. N.J.S.A. 40A:4-45.3.

Moreover, costs incurred to fund an adverse interest arbitration award must be taken into account by the municipality in determining whether overall employer budgetary appropriations exceeded the ceiling imposed by the Cap Law. Irvington, 80 N.J. 284-92; City of Atlantic City v. Laezza, 80 N.J. 255, 266 (1979). In fact, if an interest arbitrator fails to consider the impact of the Cap Law on a municipality before rendering an award, the award "would be subject to vacation on grounds of procurement by 'undue means.'" Laezza, 80 N.J. at 269.

A municipality may, under extremely narrow circumstances, resort to an emergency appropriation to fund an arbitration award which exceeds the budget. The Local Budget Law explains when a municipality may make emergency appropriations. N.J.S.A. 40A:4-46 provides:

A local unit may make emergency appropriations, after the adoption of a budget, for a purpose which is not foreseen at the time of the adoption thereof, or for which adequate provision was not made therein. Such an appropriation shall be made to meet a pressing need for public expenditure to protect or promote the public health, safety, morals or welfare or to provide temporary housing or public assistance prior to the next succeeding fiscal. N.J.S.A. 40A:4-46; See N.J.S.A. 40A:4-20 (temporary emergency appropriations).

Emergency relief, however, will not be available unless the municipality cannot foresee the need for funds at budget making time or "the need arises despite a bona fide effort to structure a reasonable budget." Passaic v. Local Finance Board of the Department of Community Affairs, 88 N.J. 293, 303 (1982). Nevertheless, even if the municipality qualifies for an emergency appropriation to fund an interest arbitration award, an emergency appropriation will only delay major financial disaster. Irvington, 80 N.J. 271; City of Atlantic City v. Laezza, 80 N.J. 255 (1979).

N.J.S.A. 40A:4-45.3, which sets forth exceptions to the Cap, partially exempts emergency temporary appropriations passed pursuant to N.J.S.A. 40A:4-20 "to meet an urgent situation or event which immediately endangers the health, safety or property of the residents of the municipality" and emergency appropriations passed pursuant to N.J.S.A. 40A:4-46 from the 5% Cap. Significantly, however, to the extent the aggregate yearly emergency appropriations exceed "3% of the previous year's final current operating appropriations," they must be included in the following year's budget and must be included within the following year's permissible Cap limit. N.J.S.A. 40A:4-45.3(c); 40A:4-46; 40A:4-47.

Under the Local Budget Law, N.J.S.A. 40A:4-1 et seq., a local governing body possesses "the primary responsibility for allocating available resources among the various services which it chooses to provide to its inhabitants." Laezza, 80 N.J. at 263. A

municipality may not adopt a budget unless the Director of the Division of Local Finance certifies his or her approval, even when the statute permits a "self-audit." N.J.S.A. 40A:4-10. Additionally, the Director must approve all emergency appropriations which exceed 3% of the municipality's operating appropriations. N.J.S.A. 40A:4-49. To approve the emergency appropriation, the Director must determine that an "emergency" exists and that the proposed appropriation is "necessary." N.J.S.A. 40A:4-49(d), (e). If the Director approves the emergency appropriation, the municipality may use funds from the next year's Cap allowed increase during the current year. Therefore, emergency appropriations "in excess of 3% of the Borough's budget . . . will merely operate to postpone, rather than avert, major fiscal crises." Irvington, 80 N.J. at 298.

Because funding adverse compulsory interest arbitration awards which exceed the Cap through emergency appropriations merely delays fiscal disaster, municipalities will have to exercise their inherent management prerogative to determine "whether, and to what extent, police personnel or other municipal employees should be laid off, or whether budgetary appropriations for non-payroll costs should be reduced" to keep the municipal budget within the mandatory 5% Cap. Irvington, 80 N.J. at 298 (citations omitted).

Amendments to the Cap Law have narrowed the exceptions from the Cap limitation, making it increasingly more difficult for municipalities to keep budgets within the Cap. The Legislature eliminated the following exceptions from the Cap Law:

1. Cost of special or cap referendum elections;
2. Amounts offsetting losses in federal revenue sharing;
3. Purchase of police vehicles and related equipment;
4. "Additional" spending for testing of water supplies or other expenditures necessary to comply with DEP orders or permits for public water supply systems;

5. Insurance costs over that of 1985;
6. 9-1-1 system termination equipment purchased, leased or maintained;
7. Project costs in a transportation development district project agreement;
8. All budgeted solid waste related expenses;
9. State and federal mandates prior to January 1, 1991.
(N.J.S.A. 40A:4-45.3.)

The Borough contends that the elimination of the “insurance costs over that of 1985” has had a profound impact. Despite the spiraling cost of health care, the Borough has continued to date to provide employee health benefits at no cost to the employee. (Borough Exhibit Book, Tab 4, subtab 2)

The Borough asserts that it is unnecessary to repeat, but only highlight, its “ability to pay” argument previously submitted in the Borough’s Exhibit Book, Tab 3. On the revenue side, the Borough is faced with a declining surplus, (which was inflated recently by a “one-shot deal” receipt of Storm Damage Aid from the State), dramatically decreasing State Aid, and no more “one-shot deals.” The only revenue source available to absorb any budgetary increases or reductions from other revenue sources is municipal taxes, where the Borough has an unconscionably comparatively high total tax rate, municipal tax rate, and equalized municipal tax rate.

On the expenditure side, the Borough prepared a budget recognizing the fiscal pressures on its residents, evidenced by the extremely low per capita, median family, and median household income; unconscionably high percentage of persons in poverty, households receiving public aid, and households receiving social security; and unreasonably high total tax rate, municipal tax rate, and equalized municipal tax rate. The projected 2001 surplus of only \$4,070 supports the Borough’s contention of a “tight” budget.

The Borough contends that any economic increase granted to the PBA which exceeds its offer will have a detrimental impact on the Borough's "ability to pay" with respect to municipal services and required projects without further impacting on a projected rising tax rate. The Borough contends that since its offer is reasonable with respect to the other statutory criteria, there is no need to award any economic benefit exceeding the Borough's offer.

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

N.J.S.A. 34:13A-16g(6) requires the Interest Arbitrator to consider the economic offer's financial impact on the governing unit, its residents and taxpayers in determining whether the municipality or the employee representative presents the more reasonable final offer. The considerations under this factor "do not equate with a municipality's ability to pay." Hillsdale, Slip Op. at 17. The New Jersey Supreme Court emphasized that "[i]t is not enough to simply assert that the public entity involved should merely raise taxes to cover the costs of a public interest arbitration award." Id. (quoting 263 N.J. Super. at 188 n.16). Moreover, the municipality does not carry the burden of proving its financial inability to meet the union's final offer. Id.

The Borough contends that its economic package considers the financial impact its award will have on the governing unit, its residents and taxpayers because it takes into account the State's bleak economic condition. The Borough cites the many articles outlining the economic slowdown in the State and the nation. (Borough Exhibit Book, Tab 5).

The Borough submits that the economy impacts upon its ability to raise taxes to pay the PBA's economic demands. The Borough has presented numerous exhibits and has presented its argument regarding the impact of the declining surplus, decreasing State Aid,

absence of “one-shot” deals, statutorily required expenditures, etc. on the Borough’s tax rate. (Borough Exhibit Book, Tab 3). The Borough argues that the effect of granting an economic benefit in excess of that proposed by the Borough will have a detrimental impact on its attempt to minimize a projected increasing tax rate, contrary to the statutory criteria requiring the Interest Arbitrator to consider the financial impact on the governing unit, its residents and taxpayers.

The Borough notes that, in its amendments to the Interest Arbitration statute, the Legislature specifically requires the Interest Arbitrator to consider how the award will impact on the tax rate and the ability of the municipality 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."

Based on the arguments set forth above, taking into consideration the recent reductions in personnel, reduced appropriations for and expenditures from “Other Expenses” line items; and, transfer of services to be performed by the County (i.e., Administration of Public Assistance); it is the position of the Borough that awarding any economic package beyond that offered by the Borough would have a detrimental financial impact on the governing unit, its residents and taxpayers.

The Consumer Price Index/Cost of Living

N.J.S.A. 34:13A-16g(7) requires the Interest Arbitrator to consider the consumer price index ("CPI") in determining whether the municipality or the employee representative has proposed the more reasonable economic package. The CPI measures a wage earner's purchasing power. When a wage earner receives a salary increase equaling the CPI increase,

the wage earner theoretically will be able to continue to maintain his or her standard of living. During the first eight (8) months of 2002, consumer prices rose at an annual rate of only 2.5%, a substantial decrease from the low 3.4% increase in 2000. Factored into these increases is the increase in health insurance costs, a factor not relevant for the Borough's employees. (Borough Exhibit Book, Tab 4, subtab 1). The Borough's police officers have consistently received wage increases which dramatically exceeded increases in the CPI. This is an important element in applying the statutory criteria.

Based on the above, the Borough contends that in light of the present and projected cost of living figures, the Borough's proposal is more realistic and reasonable than the PBA's economic demands or any package between, and should be awarded.

Continuity and Stability of Employment

N.J.S.A. 34:13A-16g(8) requires an Interest Arbitrator to consider the "continuity and stability of employment" in determining whether the municipality or the employee representative presents the more reasonable economic package. The continuity and stability of employment is an important statutory criterion. The Borough contends that its economic proposal would best allow the Borough's work force to maintain and continue at present levels. The Borough contends that an award in excess of its proposals will hamper the Borough's ability to maintain the continuity and stability of present levels of employment. The Borough submits that its position is supported by the fact that staffing levels in the Borough have decreased in recent years, most recently with a decrease in dispatchers and law enforcement personnel.

The Borough asserts that in both the public and private sectors, the economy is slowing. When composing its economic position, the Borough took the continuity and stability of employment into consideration, since its goal is to maintain as much as possible

a stable level of governmental services. To the contrary, the goal of the PBA is to obtain the greatest economic advantages for its members.

The Borough contends that the PBA resented no information concerning the continuity and stability of employment. The Borough provided a series of articles concerning the economic slowdown throughout the State and the Nation. (Borough Exhibit Book, Tab 5). The Borough asserts that an award in excess of the Borough's offer could lead to that situation in the Borough.

Based on the above, the Borough contends that when I consider the stability and continuity of employment criterion, I must award the Borough's economic proposal.

Conclusion

The Borough submits that these are unusual times that call for what some might consider unusual fiscal measures. The nationwide recession was magnified by the events of September 11. The new administration in New Jersey is faced with an unprecedented budget shortfall. The full fiscal impact of these circumstances on municipalities and their residents will not be known for some time. This is not the atmosphere to grant salary increases blindly based upon the "going rate." This is not the time to increase benefits such as longevity and vacation entitlement. It is the time to grant reasonable increases such as proposed by the Borough and implement cost containment measures such as the Borough's proposed minimal contribution to dependent health insurance coverage, and educational assistance modification, which has no economic impact on present bargaining unit members.

The Borough contends that the PBA's presentation fails to meet its burden of proof. The PBA failed to produce any evidence regarding any of its demands to meet the statutory criteria. The Borough contends that the PBA's failure to present evidence in support of the statutory criteria and established case law precludes the Interest Arbitrator from considering, any of the PBA's demands.

The Borough asserts that its economic package more reasonably reflects the statutory criteria than the PBA's economic package. It considers the interest and welfare of the public, the officers' overall compensation package, salaries and benefits of other employees including police employees in nearby communities, public sector employees in New Jersey and nationwide, and private sector employees in New Jersey and nationwide.

The Borough asserts that its package also considers the impact of the "Cap" law on its ability to grant wage increases, and the financial impact on the governing unit, its residents and taxpayers in light of modest increases in the cost of living, and the tax rate problem faced by the Borough.

Finally, the Borough asserts that its package takes into account its impact on the officers' continuity and stability of employment. The Borough requests that I award its economic and non-economic package.

Discussion and Analysis

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

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

The parties related the evidence and arguments regarding the criteria primarily to its offer and to that of the other party. I shall not do so because, in this conventional proceeding, I have the authority and responsibility to fashion a conventional arbitration award unlike the prior statute which required an arbitrator to select the final offer of one party or the other on all economic issues as a package and then to justify that selection.

A governing principle that is traditionally applied in the consideration of wages, hours and conditions of employment is that a party seeking a change in an existing term or condition of employment bears the burden of demonstrating a need for such change. This principle shall also be applied to new proposals.

The parties agree that the duration of the new three-year agreement shall be January 1, 2002 to December 31, 2004. I accept this agreement as a stipulation to the term of the new agreement and award a three-year agreement. The agreement shall be effective January 1, 2002 to December 31, 2004.

Cost of Proposals

I have determined that the base salary that the 2002 salary increases will be applied to is \$1,295,693 for the nineteen sworn Police Officers in the bargaining unit.¹ The bargaining unit includes five Sergeants and fourteen Patrol Officers. The Sergeants salary in 2001 was \$80, 975 including the holiday roll-in. Ten of the fourteen Patrol Officers are at the maximum step. The maximum Patrol Officer step in 2001 is \$69,593 including the holiday roll-in. Four of the officers are progressing through the steps of the salary guide. Three officers are at Step 4 (\$51,286 with holiday roll-in) and one officer is at Step 3 (\$41,030 with holiday roll-in). The complement and rank placement of the bargaining unit members has changed since the expiration of the 1999-2001 CBA. The four officers on the salary guide will receive increments as they proceed through the steps.

I have not calculated the cost of the increments since both the Borough and the PBA have presented their respective salary proposals as flat percentage increases to be applied as across-the-board increases. Neither party included the cost of step movement in their final offers. It is recognized that actual costs in 2002, 2003 and 2004 will be slightly higher if the cost of incremental movement is included.

These calculations do not include step increases and roll up costs nor do they assume any resignations, retirements, promotions or additional new hires. Changes since the close of the hearing are not relevant since the parties' salary proposals are based on the same complement of officers.

The PBA proposed a 5% across-the-board salary increase in 2002, 2003 and 2004. The cost of the PBA's 5% salary proposal in 2002 is \$64,785. The new base in 2002 is \$1,360,478.

¹The nineteen sworn officers include five Sergeants and fourteen Patrol Officers. The Department includes three Lieutenants and a Chief of Police who are not in the bargaining unit. This is the complement of sworn officers as of the date of the hearing.

The cost of the PBA's 5% salary proposal in 2003 is \$68,024. The new base in 2003 is \$1,428,502.

The cost of the PBA's 5% salary proposal in 2004 is \$71,425. The new base in 2004 is \$1,499,927.

The cost of the PBA's proposal to convert the current longevity "flat dollar" program to a program providing for 2% of base salary for each five years of completed service is significant. The value of the current longevity is \$858 in the fifth year of service, \$1,092 in the tenth year of service and \$1,326 in the fifteenth year of service. Under the PBA's proposal, the value of the 10-year, 4% step is \$2,784; the value of the 15-year, 6% step is \$4,176; the value of the 20-year, 8% step is \$5,567; and the value of the 25-year, 10% step is \$6,959. It is noted that these percentage longevity payments would increase by 5% annually under the PBA's salary proposal.

The cost of the PBA's proposal to remove the "grandfather" provisions from the CBA on longevity, vacations and educational assistance affects the four junior officers at Steps 3 and 4. The actual cost during the term of the new CBA will not be high. However, the projected costs are significant. Longevity for "grandfathered" officers ranges from \$858 (after 5 years) to \$1,326 (after 15 years). Vacation is capped at twenty days for officers hired after January 1, 1996. Removing the "grandfather" provision would make officers eligible for twenty vacation days in their 11th year instead of their 13th year. Such officers would also be eligible for up to twenty-five or thirty days in later years depending on the length of their shift. The college assistance cost is not measurable without data on the educational backgrounds of the affected officers.

The Borough proposed a 2% across-the-board salary increase in 2002, 2003 and 2004. The cost of the Borough's 2% salary proposal in 2002 is \$25,914. The new base in 2002 is \$1,321,607.

The cost of the Borough's 2% salary proposal in 2003 is \$26,432. The new base in 2003 is \$1,348,039.

The cost of the Borough's 2% salary proposal in 2004 is \$26,961. The new base in 2004 is \$1,375,000.

The cost of the Borough's proposal for an employee contribution for dependent coverage in 2003 is \$2,280 (\$120 x 19 unit members). The cost of the Borough's proposal for an employee contribution for dependent coverage in 2004 is \$5,700 (\$300 x 19 unit members).

Interests and Welfare of the Public

The New Jersey Supreme Court in Hillsdale determined that the interests and welfare of the public must always be considered in the rendering of an interest arbitration award and that an award which failed to consider this might be deficient. The amended statute specifically requires the arbitrator to consider the CAP law in connection with this factor. I have considered and fully discussed the relevance of the CAP law in the section on Lawful Authority but at the outset it is sufficient to state that the award will not cause the Borough to exceed its authority under the CAP law. The award can be funded without the Borough exceeding its spending authority.

The interests and welfare of the public factor require the arbitrator to balance a number of considerations. These considerations traditionally include the Employer's desire to provide the appropriate level of governmental services and to provide those services in the most cost effective way, taking into account the impact of these costs on the tax rate. On the other hand, the interests and welfare of the public requires fairness to employees to maintain labor harmony and high morale and to provide adequate compensation levels to attract and retain the most qualified employees. It is axiomatic that reasonable levels of

compensation and good working conditions contribute to a productive and efficient work force and to the absence of labor unrest. The work of a Police Officer is undeniably and inherently dangerous. It is stressful work and is clearly subject to definite risks. Police Officers are certainly aware of this condition of employment. This is a given which is usually balanced by the appropriate level of increases in compensation to be received by a Police Officer from one contract to the next.

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

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

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

The New Jersey Supreme Court in Hillsdale determined that the interests and welfare of the public must always be considered in the rendering of an interest arbitration award and that an award which failed to consider this might be deficient.

I shall now discuss the open issues with respect to the interests and welfare of the public factor.

Term of Contract

The PBA and the Borough have both submitted salary proposals for 2002, 2003 and 2004. There is no dispute as to the length of the new CBA. The new contract shall be effective January 1, 2002 and continue through December 31, 2004.

PBA's Grandfather Proposals

The PBA proposes to include all officers hired after January 1, 1996 in the longevity, vacation and educational assistance provisions of the CBA that are applicable to officers hired before January 1, 1996 who have been "grandfathered".

The PBA's proposal to remove the "grandfather" provisions from the CBA on longevity, vacations and educational assistance affects the four junior officers at Steps 3 and 4 and all future hires. The actual cost during the term of the new CBA will not be high. However, the projected costs are significant. Longevity for "grandfathered" officers ranges from \$858 (after 5 years) to \$1,326 (after 15 years). Vacation is capped at twenty days for officers hired after January 1, 1996. Removing the "grandfather" provision would make officers eligible for twenty vacation days in their 11th year instead of their 13th year. Such officers would also be eligible for up to twenty-five or thirty days in later years depending on the length of their shift. The college assistance cost is not measurable without data on the educational backgrounds of the affected officers.

The Borough is opposed to the PBA's proposals and seeks to maintain the limitation of these benefits to officers hired before January 1, 1996. The Borough submitted County data showing that eleven out of the nineteen municipalities provided for longevity to officers employed before January 1, 1990. For officers employed after January 1, 1999, only six of the nineteen municipalities provided for longevity. (Borough Exhibit Book, Tab 2).

The Borough asserts that in the past it granted its employees one of the highest vacation entitlements in Somerset County. The Borough asserts that the negotiation of a grandfather clause in 1996 limiting the maximum vacation entitlement for newly hired employees recognized that the vacation entitlement was excessive. The Borough submits that awarding the Association's proposal to remove the grandfather clause would simply and unreasonably reinstate an excessive benefit.

The PBA seeks a significant change in an existing terms or conditions of employment. The PBA bears the burden of demonstrating a need for such change. I find that the PBA has not met its burden. This is for several reasons.

First, while the immediate cost of the PBA's proposal is not significant, the projected cost of these proposals is significant. The future cost of longevity and additional vacation benefits is not confined to the four officers currently affected. These future costs will increase as the current officers retire and new officers are hired.

Second, the cost of the PBA's proposal to convert the current longevity "flat dollar" program to a program providing for 2% of base salary for each five years of completed service is significant. If the PBA's proposal is granted in either this matter or some future interest arbitration matter, the future cost to the Borough will be considerable.

Third, the PBA's proposal to remove the "grandfather" provision comes only two contracts after it was negotiated (or awarded). The record does not include evidence or testimony as to what the "trade-off" was for the inclusion of this language. The "trade-off" may have included a higher salary increase or some other consideration. The PBA agreed to the "grandfather" provision as part of the "give and take" of bargaining to be effective in a contract that expired on January 1, 1999. The Borough's arguments concerning the recognition of high levels of vacation benefits and a continuing trend to grandfather longevity benefits in Somerset County are persuasive.

The PBA's proposals to remove the "grandfather" provisions for employees hired after January 1, 1996 are denied.

Grievance Procedure

The PBA proposes a new grievance definition and the addition of minor discipline to the grievance procedure:

For purposes of this Agreement, the term "grievance" means any complaint, difference or dispute between the Employer and any Employee with respect to the interpretation, application, or violation of any of the provisions of this Agreement or any applicable rule or regulation or policies, agreements or administrative decisions affecting any employee(s) covered by this Agreement.

Minor disciplinary matters (less than six (6) days or fine or suspension or equivalent thereof) shall be included in the Grievance Procedure.

The language in the 1999-2001 CBA provides the following definition of a grievance:

DEFINITION

The term "grievance" as used herein means any controversy arising over the interpretation or adherence to the terms and conditions of this Agreement and may be raised by any individual, the PBA or the Borough.

The PBA seeks a change in an existing term or condition of employment. The PBA bears the burden of demonstrating a need for such change. I find that the PBA has not met its burden. The PBA's proposed definition is much broader than the current definition. There is no history of grievances being denied because of the current definition. There is simply no evidence in the record to support the PBA's proposal to change the current definition and it is denied.

The second part of the PBA's proposal is to include minor discipline in the grievance procedure. I shall award the inclusion of minor discipline in the grievance procedure. This change is consistent with the major purpose of a grievance procedure which is to provide for an expeditious and cost-effective resolution of grievances. I have been directly involved in more than 125 interest arbitration matters since 1997. The inclusion of minor disciplinary matters in the grievance procedure is common to the resolution of many of these cases. This change shall be effective July 1, 2003.

No Waiver

The PBA proposes the following new language:

Except as otherwise provided in this Agreement, the failure to enforce any provision of this Agreement shall not be deemed a waiver thereof.

This Agreement is not intended and shall not be construed as a waiver of any right or benefit to which employees are entitled by law.

The PBA seeks to add a new term and condition of employment. The PBA bears the burden of demonstrating a need for such change. The PBA has not submitted evidence or testimony to justify the inclusion of the "No Waiver" language in the new CBA. The Borough and the PBA may have a mutual interest in adding this language (or some variation) in the new CBA. However, the record includes no history, reasons or basis for its inclusion. I find that the PBA has not met its burden. There is simply no evidence in the record to support the PBA's proposal and it is denied.

Holidays

The Borough proposes the deletion of Sections B.1, B.3 and C of Article XI, Holidays. The Borough submits that this language is no longer applicable since the holiday pay was rolled into base effective January 1, 2001. I agree with the Borough that any language in Article XI rendered inapplicable as a result of the roll-in of holiday pay should be removed from the contract. Let me be perfectly clear. If the language is no longer applicable, it should be removed from the CBA. Unfortunately, the record does not show that the language is applicable or inapplicable.

I remand to the parties, the question of the continued applicability of Sections B.1, B.3 and C of Article XI, with a directive to remove any language rendered inapplicable as a result of the roll-in of holiday pay. I shall retain jurisdiction for sixty (60) days following the receipt of the award by the parties.

Injury Leave

The Borough proposes the following "Injury Leave" article to be included in the new

CBA:

INJURY LEAVE

- B.
1. In the event that an employee becomes disabled by reason of service-connected injury or illness and is unable to perform his duties then, in addition to any sick leave benefits otherwise provided for herein, he may be entitled to full pay for a period of up to one (1) year. In the event an employee is granted said injury leave, the Borough's sole obligation shall be to pay the employee the difference between his regular pay and any compensation, disability or other payments received from other sources provided by the Borough. At the Borough's option, the employee shall either surrender and deliver his entire salary payments, or the Borough shall pay the difference.
 2. If an employee returns to work from injury leave for less than one (1) year, he may return to injury leave for the same injury for an additional period of time which, when added to the initial period of injury leave, totals no more than one (1) year.
 3. When an employee returns from injury leave, he shall be entitled to a new period of injury leave for a period of up to one (1) year if the employee submits a new injury claim due to an independent event causing re-injury or a new injury.
- C. When an employee requests injury leave, he or she shall be placed on a "conditional injury leave" until a determination of whether or not an injury or illness is work related and the employee is entitled to injury leave is initially made by the Borough's Workers' Compensation carrier, with the final determination, if necessary, to be made by the Workers' Compensation Bureau or Court. When and if it is finally determined that the injury or illness is not work related and that the employee is not entitled to job injury compensation, the employee shall be denied injury leave and shall have all time off charged against his or her sick time and, if necessary, against any other accumulated leave time. If the employee does not have enough accumulated time off, he or she shall be advanced sick time to cover the absence. If the employee leaves the employ of the Borough prior to reimbursing the Borough for such advanced time, the employee shall be required to reimburse the Borough for such advanced time.

- D. Any employee who is injured, whether slight or severe, while working, must make an immediate report within two (2) hours thereof to the Chief of Police or his designee.
- E. It is understood that the employee must file an injury report with the Chief of Police or his designee so that the Borough may file the appropriate Workers' Compensation claim. Failure to report said injury may result in the failure of the employee to receive compensation under this article.
- F. The employee shall be required to present evidence by a certificate of a physician designated by the insurance carrier that he is unable to work, and the Borough may reasonably required the employee to present such certificate from time to time.
- G. If the Borough can prove that an employee has abused his privileges under this Article, the employee will be subject to disciplinary action by the Borough.

The Borough seeks to add a new procedure which is comprehensive in nature. The Borough bears the burden of demonstrating a need for such change. The Borough has not submitted evidence or testimony to justify the inclusion of the "Injury Leave" language in the new CBA. The Borough and the PBA may have a mutual interest in adding this language (or some variation) in the new CBA. However, the record includes no history, reasons or basis for its inclusion. I find that the Borough has not met its burden. There is simply no evidence in the record to support the Borough's proposal and it is denied.

Bereavement Leave

The Borough proposes the following revisions to Article XIV, Section A:

- A. Every Officer by this Agreement shall be allowed four (4) ***consecutive work*** days with pay upon the death of a member of his/her immediate family ***to commence between the day of death and the day of the funeral.***

The Borough seeks a significant change in an existing benefit. The Borough bears the burden of demonstrating a need for such change. The Borough has not submitted evidence or testimony to justify the proposed change. The Borough has not submitted any

evidence to suggest that this benefit has been abused. The Borough and the PBA may have a mutual interest in modifying this language in the new CBA. However, the record includes no history, reasons or basis for its inclusion. I find that the Borough has not met its burden. There is simply no evidence in the record to support the Borough's proposal and it is denied.

Health Insurance

The Borough proposes the deletion of Article XV, Section B:

- B. In the event that additional health benefits become available to other municipal employees, then in that event, it is agreed between the parties of this Agreement that the Borough of Manville will provide such benefits to the employees covered by the provisions of this contract. However, the cost of such benefits shall be negotiated by the parties hereto.

The Borough proposes the deletion of the above language contending that it is an illegal "me too" clause and is therefore not within the scope of negotiations (or arbitration). The language may be an illegal "me too" clause although the last sentence places an obligation on the Borough and the PBA to negotiate the cost of any additional health benefits. This is unlike a typical "me too" clause which passes benefits on to a third party without any negotiations. The Borough may be correct that the above language is illegal. However, there is no basis in the record to remove this language from the CBA. The Borough is aware that there are established PERC procedures to determine whether a matter is within the scope of negotiations. The PERC proceeding will determine whether the disputed matter is a required, permissive or illegal subject for collective negotiations.

I find that the Borough has not met its burden and its proposal is denied.

Educational Assistance:

The Borough proposes a revision to Article XXIV by adding the following new

Section F:

- F.
1. All employees hired on or after January 1, 2003 shall not be entitled to the benefit listed above in Sections A through E.
 2. All employees hired on or after January 1, 2003 who earn an Associate Degree in Police Science or any other field of study approved in advance by the Chief of Police and Borough Administrator shall receive an annual payment of five hundred (\$500) dollars.
 3. All employees hired on or after January 1, 2003 who earn a Bachelor Degree in Police Science or any other field of study approved in advance by the Chief of Police and Borough Administrator shall receive an annual payment of one thousand (\$1,000) dollars.

The Borough seeks to “grandfather” the current provisions of Article XXIV. I note that Section E of Article XXIV includes a “grandfather” provision for police officers hired after January 1, 1996. The Borough’s proposal will provide a third tier of benefits for educational assistance.

The Borough’s proposal is flawed. The Borough’s proposal, if awarded, would provide greater benefits to new hires than more senior officers. Payment is now capped at \$900 annually. Credits are worth \$15 each. The maximum payment is reached upon the completion of sixty credits. Senior Borough officers with a Bachelor Degree are capped at \$900. Under the Borough’s proposal, officers hired on or after January 1, 2003 would receive an annual payment of \$1,000 for a Bachelor Degree.

The creation of a third tier with three different levels of benefits is not called for at this time. There is no basis to provide greater benefits to junior officers than those received by senior officers. The Borough’s proposal is denied.

The remaining issues — salary, longevity and dependent coverage contributions — are all major economic issues. I shall discuss each of these issues separately.

Dependent Coverage Contribution

The Borough proposes the insertion of a new Section A.2 and A.3 in Article XV as follows:

“Effective January 1, 2003, all employees with dependent coverage shall contribute ten (\$10.00) dollars per month toward the premium for dependent coverage.”

“Effective January 1, 2004, all employees with dependent coverage shall contribute twenty-five (\$25.00) dollars per month toward the premium for dependent coverage.”

The cost of the Borough’s proposal for an employee contribution for dependent coverage in 2003 is \$2,280² (\$120 x 19 unit members). The cost of the Borough’s 2% salary proposal in 2003 is \$26,432. The value of the Borough’s salary proposal is reduced to 1.83% in 2003 when the additional cost to the employee of dependent coverage contributions are factored in.

The cost of the Borough’s proposal for an employee contribution for dependent coverage in 2004 is \$5,700 (\$300 x 19 unit members). The cost of the Borough’s 2% salary proposal in 2004 is \$26,961. The value of the Borough’s salary proposal is reduced to 1.58% in 2003 when the additional cost to the employee of dependent coverage contributions are factored in.

I find that the Borough has not met its burden and its proposal for an employee contribution for dependent coverage is denied. This is for several reasons.

²This assumes that all officers have dependent coverage. The record does not include data on the number of officers with dependent coverage.

First, it is undisputed that effective salary increases of 1.83% and 1.58% are uncommon. There is no evidence in the record showing any such effective salary increases in Somerset County. The Borough did not submit any comparable data from any jurisdictions within the State that show effective salary increases of 1.83% and 1.58%.

Second, it is undisputed that no other Borough employees are currently making any contribution for dependent coverage. This includes members of the Borough's "white collar" and "blue collar" bargaining units. The Borough did not negotiate employee contribution for dependent coverage with either bargaining unit. Testimony of Borough Administrator Gary Garwacke confirmed that all other unorganized employees up to and including the Borough Administrator have their dependent coverage fully paid by the Borough. The Borough has not imposed any costs for dependent coverage in the same time period that it is asking police officers to absorb these costs. It is noted that the Borough did not seek these contributions while negotiating or providing salary increases to organized and unorganized employees that are more than double the salary proposed for police officers. Internal comparability does not support an award in favor of the Borough's proposal.

Third, there is no evidence in the record to show that other public employers in Somerset County are contributing to the cost of dependent coverage. The Borough submitted extensive comparability evidence regarding vacations, holidays, personal days, longevity and maximum patrol officer salaries. But it did not submit any such comparability data regarding dependent coverage contributions. External comparability does not support an award in favor of the Borough's proposal.

Fourth, the Borough put forth evidence of employees contributing to the cost of dependent coverage in the private sector. I have examined this evidence and find that is deserving of consideration but it cannot be given as much weight as the above internal and external comparisons.

For all of the above reasons, the Borough's proposal for an employee contribution for dependent coverage is denied.

Longevity

The PBA proposes to convert the current longevity "flat dollar" program to a program providing for 2% of base salary for each five years of completed service. The cost of the PBA's proposal is significant. The value of the current longevity is \$858 in the fifth year of service, \$1,092 in the tenth year of service and \$1,326 in the fifteenth year of service.

Under the PBA's proposal, the value of the 10-year, 4% step is \$2,784; the value of the 15-year, 6% step is \$4,176; the value of the 20-year, 8% step is \$5,567; and the value of the 25-year, 10% step is \$6,959. I note that these percentage longevity payments would increase by 5% annually under the PBA's salary proposal.

I find that the PBA has not met its burden and its proposal to convert the current longevity "flat dollar" program to a program providing for 2% of base salary for each five years of completed service is denied. This is for several reasons.

First, the cost of implementing the PBA's proposal is significant. The current value of the ten-year step is \$1,092. Converting this payment to a 4% payment is \$2,784 at the 2001 maximum patrol salary. This will increase in 2002, 2003 and 2004. The cost will range from a minimum of \$2,784 to more than \$3,000. This is approximately \$1,700 more than the current payment in 2002 and is equivalent to approximately 2.5%. This increases the PBA's proposed salary increase in 2002 to 7.5% for employees with ten years experience. This is also an additional cost to the Borough in 2003 and 2004.

The current value of the fifteen-year step is \$1,326. Converting this payment to a 6% payment is \$4,176 at the 2001 maximum patrol salary. This will increase in 2002, 2003 and 2004. The cost will range from a minimum of \$4,176 up to \$4,697. This is approximately

\$2,850 more than the current payment and is equivalent to approximately 4%. This increases the PBA's proposed salary increase in 2002 to 9% for patrol officers with fifteen years experience. This is also an additional cost to the Borough in 2003 and 2004.

The conversion would result in even higher dollar increases for sergeants. The current value of the ten-year step is \$1,092. Converting this payment to a 4% payment is \$3,239 at the 2001 sergeant salary. This will increase in 2002, 2003 and 2004. The cost will range from a minimum of \$3,239 to \$3,644. This is approximately \$2,150 more than the current payment and is equivalent to approximately 2.7%. This increases the PBA's proposed salary increase in 2002 to 7.7% for sergeants with fifteen years experience. This is also an additional cost to the Borough in 2003 and 2004.

The current value of the fifteen-year step is \$1,326. Converting this payment to a 6% payment is \$4,848 at the 2001 sergeant salary. This will increase in 2002, 2003 and 2004. The cost will range from a minimum of \$4,848 up to \$5,465. This is approximately \$3,525 more than the current payment and is equivalent to approximately 4.35%. This increases the PBA's proposed salary increase in 2002 to 9.35% for sergeants with fifteen years experience. This is also an additional cost to the Borough in 2003 and 2004.

The increased costs at the 20-year, 8% rate and the twenty-five-year, 10% rate would push the 2002 salary increases well into "double digits" producing salary increases approximating 11% and 13%. The PBA's longevity proposal would generate salary increases that are prohibitive. These increases are not justified under any of the statutory criteria.

Second, the Borough submitted Somerset County data showing that eleven out of the nineteen municipalities provided for longevity to officers employed before January 1, 1990. For officers employed after January 1, 1999, only six of the nineteen municipalities provided for longevity. This data evidences a contraction of longevity not a major expansion as proposed by the PBA.

Third, even if the cost of the PBA's proposed conversion was economically sound — which it is not — the contracts in evidence do not support the PBA's proposal. There are a number of contracts in evidence that provide longevity in "flat dollar" amounts. There are a number of contracts that do not provide any longevity. There are a number of contracts that provide percentage longevity but in many of these contracts, the longevity benefits are only provided to officers that were previously "grandfathered". This evidence is not supportive of the PBA's proposal.

For all of the above reasons, the PBA's proposal to convert the current longevity "flat dollar" program to a program providing for 2% of base salary for each five years of completed service is denied.

Salary

The PBA proposed a 5% across-the-board salary increase in 2002, 2003 and 2004. The cost of the PBA's 5% salary proposal in 2002 is \$64,785. The new base in 2002 is \$1,360,478. The cost of the PBA's 5% salary proposal in 2003 is \$68,024. The new base in 2003 is \$1,428,502. The cost of the PBA's 5% salary proposal in 2004 is \$71,425. The new base in 2004 is \$1,499,927.

The Borough proposed a 2% across-the-board salary increase in 2002, 2003 and 2004. The cost of the Borough's 2% salary proposal in 2002 is \$25,914. The new base in 2002 is \$1,321,607. The cost of the Borough's 2% salary proposal in 2003 is \$26,432. The new base in 2003 is \$1,348,039. The cost of the Borough's 2% salary proposal in 2004 is \$26,961. The new base in 2004 is \$1,375,000.

The Borough proposes the deletion of Sections B.1 and C.1 in Article VI (Salary). The Borough submits that these sections are no longer applicable. I agree that these sections are no longer applicable. These sections shall be deleted from the CBA effective January 1, 2003.

I shall first address the internal and external comparability data in the record. This requires a comparison of the data submitted by the parties comparing the wages, salaries, hours, and condition of employment of the officers in the Borough with the wages, hours and condition of employment of other employees performing the same or similar services; with other employees in private employment in general; in public employment in general; and in public employment in the same or similar jurisdictions.

Internal comparability includes the Borough's organized employees and employees not in bargaining units. The Borough's contract with its "blue collar" unit represented by Teamsters Local 575 provides for salary increases of 5% in 2002 and 5% in 2003. The bargaining unit includes twelve different job titles with annual salaries ranging from more than \$45,000 to nearly \$60,000 for Work Leader/Foreman in 2003. There are two rates of pay for Laborer with new hires paid \$14.91 per hour in 2003 and all other Laborers paid \$21.97 per hour in 2003. Other titles include mechanic, heavy equipment operator, senior road maintenance, etc.

The Borough's contract with its "white collar" unit represented by the Clerical Workers Association provides for salary increases of \$1,375 in 2002 and \$1,475 in 2003. The bargaining unit includes fourteen different job titles with annual salaries ranging from \$26,125 to \$37,910. The PBA submitted a chart showing the value of the \$1,375 salary increase in 2002 and the \$1,475 salary increase in 2003. The chart shows that the salary increases ranged from 3.92% to 5.5% in 2002 with an average increase of 4.43%. The chart further shows that the salary increases ranged from 4% to 5.5% in 2003 with an average increase of 4.63%. The record does not include salary increases for unorganized employees with the exception of the salary increase received by Administrator Garwacke who received a 6.66% increase in 2000 and a 5% increase in 2001.

The above internal comparability data favors an award on salary that is considerably higher than the Borough's salary proposal but less than the PBA's salary proposal.

I shall now examine external comparability. The external comparability data in the record is essentially data submitted by the Borough and the PBA which was derived from CBAs in most if not all municipalities in Somerset County. All of these CBAs are in evidence. The PBA's comparability submission includes settlement rates in selected municipalities in the County. The Borough's comparability submission includes charts showing the relative position of Manville maximum step patrol officers in relation to other municipal police departments in Somerset County.

The PBA submitted the following chart:

	2002	2003	2004
Hopewell	5	4.4	
Bernards Twp. PBA	4	4	3.95
Bernards Twp. SOA	4	4	3.95
North Plainfield	4	4	4
Hopewell SOA	6.5	6.5	
Somerset Corr. SOA	4.2	4	
Montgomery SOA	4	4	
Montgomery PBA	4	4	
North Plainfield SOA	4		
Raritan	3.95	3.95	
Warren	4	4	
NJ State Police	4	4	4
State Troopers NCO	4	4	4
Watchung	4		
Franklin	4	4	
Bridgewater	4	4	

Bedminster	4	4	
Hillsborough	4	4	
Averages	4.20%	4.18%	3.98%

I have factored out the salary data from Hopewell Township and the State Police settlements (not in County) and added Somerville at 4% in 2002; Branchburg at 4% in 2002, 2003 and 2004; and Far Hills at 4.5% in 2003 and 2004. The average increase in 2002 is now 4.03%; the average increase in 2003 is now 4.09%; and the average increase in 2004 is now 4.08%.³

The above external comparability data favors an award on salary that is considerably higher than the Borough's salary proposal but less than the PBA's salary proposal.

The Borough's external comparability data primarily includes charts showing the relative position of Manville maximum step patrol officers in relation to other municipal police departments in Somerset County from 1986 to 2001. This data also includes maximum salaries from fifteen municipalities in 2002 and thirteen municipalities in 2003.

The Borough notes that in the 1980s the salaries of its police officers were consistent with the Borough's demographics to comparable municipalities. From 1986 through 1989, police salaries ranked between thirteenth and sixteenth out of nineteen Somerset County municipalities. Beginning in 1991, with an Interest Arbitration award, the Borough's relative ranking began to rise until 1995, when its police officers had the highest salary in Somerset County. From 1995 through 2001, except for one year, the Borough's patrol officers ranked first or second in salary in Somerset County.

³I note that these averages are similar to external comparability data in the Somerset County/FOP Lodge 39 interest arbitration award issued on March 15, 2003. The FOP submitted salary data from certain municipalities in Somerset County showing an average salary increase of 3.96% in 2002 (15 municipalities), 4.06% in 2003 (15 municipalities) and 3.99% in 2004 (8 municipalities).

The Borough contends that if the PBA's proposals are awarded, the police officers would not only maintain their "unwarranted" highest salary ranking in Somerset County, but it would widen the salary gap. However, the Borough submits that its salary proposals are awarded, its police officer's relative salary ranking would still exceed their relative ranking in the 1980s. The Borough argues that the high ranking of maximum police salaries far exceeds the Borough's comparable demographics regarding per capita income, median family income, and median household income rankings.

The Borough's argument is a novel one. The Borough's argument is one that might justify some moderation in salary increases assuming all other factors are equal. But all factors are not equal. There are other factors to consider in measuring the value of a salary guide. The Manville salary guide has eight steps to maximum salary. This means that police officers must serve seven years before moving to the maximum step. This is high in relation to other Somerset County municipalities.

Somerville, Green Brook, and South Bound Brook police officers move to maximum after four years; Montgomery, Bedminster, Far Hills, Hillsborough, Warren, Raritan and Watchung police officers move to maximum after five years; and Franklin Township police officers move to maximum after six years. This means that Manville's police salary costs are much less during the first eight years than those of many other municipalities in the County.

Public employers commonly seek to add steps to salary guides to slow the progression to maximum. This has been a frequent component of settlements (and awards) in recent years. As an example, Arbitrator James Mastriani, in a recent award in Raritan Borough added two steps to the salary guide for employees hired after July 15, 2002. Raritan Borough Officers hired before July 15, 2002 reach maximum salary commencing their

fourth year of employment. Raritan Borough Officers hired after July 15, 2002 reach maximum salary commencing their sixth year of employment. The cumulative earnings of a Raritan Borough police officer hired prior to July 15, 2002 are \$231,232 for his first four years of employment. This “grandfathered” officer reached the maximum salary of \$65,780 after three years. The cumulative earnings of a Raritan Borough police officer hired after July 15, 2002 is \$188,258 for his first four years of employment. The officer hired after July 15, 2002 reached the fourth step salary of \$55,085 after three years.⁴ This is a savings of \$42,974. This is considerable and increases to more than \$50,000 after six years.

The above example illustrates the value of the eight-step salary guide in Manville. The Borough is correct that its police officers are currently number two in the County but the actual cost to the Borough over the first eight years is considerably less than costs to the Borough of Raritan over the same eight years.⁵ Yet, Raritan is 15th (after including Manville) on the Borough’s 2002 maximum salary chart. The actual salary costs for the “hypothetical” police officer in Raritan are \$436,235 during his first eight years. The actual salary costs for the “hypothetical” police officer in Manville are \$408,728 during his first eight years - \$27,507 less than the “hypothetical” police officer in Raritan. Prior to the change in July of 2002, the difference on the 4-step guide to maximum would have increased the actual salary costs for the “hypothetical” police officer in Raritan to \$494,232 during his first eight years - a difference of \$85,504. This is a significant difference in cumulative earnings.

⁴I have not included probationary salary in either example. I recognize that the actual salaries will change in 2004, 2005 and 2006 for the employee hired after July 15, 2002. Nonetheless, the examples are valid comparisons to illustrate the considerable savings achieved by adding steps to the salary guide.

⁵I increased the Manville salary guide by the same 3.95% increase awarded in Raritan in 2002 to calculate the cumulative cost of a “hypothetical” police officer hired in 2002. I recognize that the actual salaries will change in subsequent years for the employee hired after July 15, 2002. Nonetheless, the examples are valid comparisons to illustrate the considerable savings achieved by adding steps to the salary guide.

The eight-step salary guide in Manville provides significantly less cumulative earnings for Manville police officers than other County salary guides with fewer steps to maximum. This means that the Borough of Manville's costs are less than those of many other municipalities in the County notwithstanding the higher maximum salary.

Another factor is longevity. Manville's fixed "flat dollar" longevity program yields a maximum of \$1,326 (less than 2%). A number of towns have percentage longevity with 2% added for each five years of service ranging up to 10%. Many are "grandfathered" as in Manville. However, adding 4% -10% to maximum salaries will move these towns up and narrow the gap. An accurate comparison of maximum salaries should include longevity.

The Borough's arguments concerning comparable demographics are worthy of some consideration. However, these arguments do not justify a 2% annual increase to permit a reduction in their relative placement in the County with respect to maximum salaries. I have encountered this argument in reverse — where police bargaining units at the low end of a ranking seek to move up. I recently rejected that argument in an interest arbitration award issued on February 1, 2003 in which the PBA sought to move up from its 7th out of nine position in the agreed-upon demographic grouping:

"The salary data submitted by both the PBA and the Borough, when averaged, is just above or just below 4% annually. The award of 4% annual increases will maintain Allendale's relative position in the above grouping. There is simply no basis to award the PBA's 5% annual increase to narrow the gap with the highest paid communities nor is there any basis to award the Borough's 3.75% annual increase which will widen the gap." (Allendale/PBA 217 IA-2002-032, at 51).

I find that the Borough's arguments do not justify a 2% annual increase to permit a reduction in the Borough's relative placement in the County with respect to maximum salaries. I have given this argument no weight.

I find that the external comparability data detailing salary increases in other municipalities in Somerset County is the most relevant factor in this proceeding. After all, this is salary data for all other police officers in Somerset County. This data shows that the

average settlement in Somerset County is slightly above 4% in 2002, 2003 and 2004. I note that the external Somerset County comparability data is in line with my experience throughout the State. This data is also consistent with the summary data provided by PERC on the average salary increases achieved by the parties voluntarily and by award.

I find that the internal comparability data, which is higher than the external Somerset County salary data, is not entitled to as much weight as the external Somerset County comparability data. This is primarily because the Borough's settlement with its white collar and blue collar employees is not subject to the same rigorous examination as a salary dispute in an interest arbitration matter. The record does not indicate why the Borough negotiated above average salary increases with its blue and white collar employees. However, I have given some weight to this since it shows that the Borough was able to fund 5% salary increases on salaries that average somewhere between \$45,000 and \$50,000 in 2002 and 2003 — two of the three years included in this matter.

Therefore, having considered all of the evidence and arguments presented by the County and the PBA; and considering all of the statutory criteria; and determining that the statutory criteria which are the most relevant and entitled to the most weight are *N.J.S.A. 34:13A-16(g) (1)* (the interests and welfare of the public) and *N.J.S.A. 34:13A-16(g) (2) (c)* (comparisons of wages in the same or similar jurisdictions), I award salary increases of 4% effective January 1, 2002; 4% effective January 1, 2003 and 4% effective January 1, 2004. All salary increases are across-the-board and shall be applied to all steps on the 2001 salary schedule. All salary increases are fully retroactive.

The annual net economic change of my award is \$1,347,207 effective January 1, 2002; \$1,401,422 effective January 1, 2003; and \$1,457,478 effective January 1, 2004. My award in 2002 costs \$25,914 more than the Borough's salary proposal in 2002 and \$12,957 less than the PBA's salary proposal in 2002. The differences are slightly higher in 2003 and 2004 because of compounding.

Overall Compensation

I have considered the overall compensation received by the Borough police officers and find that the terms of my Award will maintain the existing levels of economic benefits. The current overall compensation is competitive and will not be diminished. The terms of my award are consistent with other internal and external settlements thus maintaining a consistent level of benefits.

Cost of Living

The cost of living data shows that increases in the Consumer Price Index ("CPI"), as published by the U.S. Department of Labor, Bureau of Labor Statistics ("BLS"), are below the terms of my Award in 2002 and 2003. If the current trend continues, the awarded salary increases will exceed the CPI resulting in an increase in real earnings of bargaining unit members for the 2002-2004 duration of the new CBA. I have not placed great weight on this factor.

I conclude that the awarded salary increases, while higher than the increases in the cost of living in 2002 (and probably higher in 2003 and 2004), provide for an acceptable increase in real earnings that must be measured against the continued delivery of quality services.

Private Sector Comparisons

Neither party emphasized private sector comparisons. The Borough noted that the PBA presented an exhibit reporting the private sector wage changes compiled by the New Jersey Department of Labor for 1999 and 2000. The Borough pointed out that while the increase in "Total Private Sector" wages in 2000 averaged 6.9%, and the "Total" increase in wages was 6.4%; the increase in "Total Government" wages was 3.0% with an increase

of 2.7% for “Local Government”. The Borough further noted that the average 2000 private sector salary for the industries surveyed was \$22,400 less than the base salary earned by the Borough’s police officers. I agree with the analysis of Arbitrator William Weinberg that comparisons to the private sector are difficult because of the unique nature of law enforcement. (See excerpt on page 24 of this Award). I have given this factor very little weight.

Continuity and Stability of Employment

The terms of my Award will maintain the continuity and stability of employment for Borough police officers. The salary award in this matter will not jeopardize either employment levels or other governmental services. The salary award will maintain a competitive salary and permit the Borough to continue to recruit and retain qualified police officers. This factor persuaded me that the Borough’s proposal for monthly contributions for dependent health insurance for all employees and a third tier of educational incentives for prospective employees would negatively affect the continuity and stability of employment of the bargaining unit.

I am convinced that the terms of this award will maintain the continuity and stability of employment and satisfy the requirements of this factor.

Lawful Authority of the Employer

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

This can be a significant factor in interest arbitration matters when the parties fair and final offers on salary are extreme or when a party is asserting that the CAP Law affects their ability to fund salary increases. My award costs \$25,914 more than the Borough's salary proposal in 2002. It is slightly higher in 2003 and 2004.

The Borough is obviously well managed. This was confirmed by the testimony of Borough Administrator Gary Garwacke and the observations made by the PBA on pages 30-32 of this Award. I need not detail all of these factors given the minimal difference between the Borough's salary proposal and my awarded salary increases.

Garwacke's testimony confirmed that the Borough's fiscal position had been improved by the recent sale of the Municipal Water Company to Elizabeth Town Water Company for nearly \$5,000,000. Garwacke testified that the Borough was expecting to draw down approximately \$500,000 annually. Garwacke further testified that the \$5,000,000 was drawing 3% annual interest or nearly \$150,000 a year.

The Borough's police costs have been reduced by the Borough's "buying out" of several senior police officers. This has resulted in a reduction in the number of police officers and a commensurate reduction in the Borough's salary costs for police services. I note that the Borough paid out nearly \$100,000 to effect this "buyout" in 2002. This "buyout" will save the Borough additional money by not filling certain positions or by replacing the senior officers with junior officers at less than 50% of the former senior officer salaries. The PBA calculated the cost of the reduction in police salaries to be more than \$300,000. This "breakage" could approximate \$150,000 a year even if the positions are subsequently filled.

There is absolutely no evidence in the record to demonstrate that an additional \$25,914 in annual expenditures in 2002 (slightly higher in 2003 and 2004) will cause the

Borough to approach the limits of its financial authority or to breach the constraints imposed by the CAP Law in funding the salary increases I have awarded.

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

The financial impact of my award will be minimal. The annual costs are approximately \$25,000 more per year than the Borough's proposed salary increases. Based on the evidence submitted, I conclude that the award's financial impact will not adversely affect the governing unit, its residents and its taxpayers.

Conclusion

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

Accordingly, I hereby respectfully enter the following award:

AWARD

1. **Term of Contract:** January 1, 2002 to December 31, 2004.

2. **Salary:**

Salaries shall be increased by 4% effective January 1, 2002; 4% effective January 1, 2003; and 4% effective January 1, 2004. All salary increases are across-the-board on all steps of the salary guide. All salary increases shall be fully retroactive.

Article VI, Sections B.1 and C.1 shall be deleted from the CBA effective January 1, 2003.

3. **Grievance Procedure:**

The PBA's proposal on minor discipline is awarded and shall be effective July 1, 2003.

4. **Holidays:**

I remand to the parties, the question of the continued applicability of Sections B.1, B.3 and C of Article XI, with a directive to remove any language rendered inapplicable as a result of the roll-in of holiday pay. I shall retain jurisdiction for sixty (60) days following the receipt of the award by the parties.

Dated: May 31, 2003
Pennington, NJ



ROBERT M. GLASSON
ARBITRATOR

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

On this 31st day of May 2003, before me personally came and appeared ROBERT M. GLASSON, to me known and known by me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

A handwritten signature in cursive script that reads "Joann Walsh Glasson". The signature is written in black ink and is positioned above a horizontal line.

Joann Walsh Glasson
Notary Public
State of New Jersey
Commission Expires 12-11-06