

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Interest Arbitration Between:

BOROUGH OF MANVILLE ,
(Employer)

AND

MANVILLE P.B.A. LOCAL NO. 236
(Union)

Docket No. IA-99-110

BEFORE: ERNEST WEISS, INTEREST ARBITRATOR

APPEARANCES:

FOR THE PBA:

RICHARD D. LOCCKE, ESQ.
LOCCKE & CORREIA

FOR THE BOROUGH:

BRIAN M. CIGE, ESQ.
LAW OFFICES OF BRIAN M. CIGE

PRELIMINARY STATEMENT

The above parties are signatories to a Collective Bargaining Agreement with a termination date of December 31, 1998. The bargaining unit consists of all sworn Police Officers employed by the Borough except for the Chief of Police.

Since the parties were unsuccessful in negotiating a successor agreement, I was designated to serve as Interest Arbitrator in accordance with the rules of the Public Employment Relations Commission. Prior to my appointment, the parties engaged in a series of collective bargaining sessions, and were successful in resolving some outstanding issues.

At an initial session with the parties on August 19, 1999, I attempted to mediate the remaining disputes in order to help them resolve the outstanding issues voluntarily. All the remaining issues, except those set forth below, were eventually resolved by the parties.

I convened a formal Arbitration session on January 5, 2000. During the formal hearing, the parties were afforded the opportunity to present documents, testimony and argument in support of their respective position. The parties were also afforded the opportunity to submit post-hearing briefs, which I thoroughly considered in making my decision herein, in conjunction with the numerous exhibits and testimony.

Since the parties failed to agree upon an alternative form of submission, I am mandated by statute to decide the outstanding issues with conventional authority and in accordance with the revised statutory criteria, which is set forth below:

STATUTORY CRITERIA

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

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

- (c) In public employment in the same or similar comparable jurisdiction, as determined in accordance with section 5 of P.L.1995, c. 425 (C.34:13A-16.2); provided, however that each party shall have the right to submit additional evidence concerning the comparability of jurisdictions for the arbitrator's consideration.
3. The overall compensation presently received by the employees, inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other benefits received.
 4. Stipulations of the parties.
 5. The lawful authority of the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering the factor are the limitations imposed upon the employer by P.L. 1976, c. 68 (C.40A:4-45. 1 et seq.)
 6. The financial impact on the governing unit, its residents and taxpayers. When considering this factor in a dispute in which the public employer is a county or a municipality, the arbitrator or panel of arbitrators shall take into account to the extent that evidence is introduced, how the award will effect the municipal or county purposes element, as the case may be, of the local property tax; a comparison of the percentage of the municipal purposes element or, in the case of a county, the county purposes element, required to fund the employees' contract in the preceding local budget year with that required under the award for the current local budget year; the impact of the award for each income sector of the property taxpayers 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 a proposed local budget.
 7. The cost of living.
 8. The continuity and stability of employment including seniority rights and such other factors not confined to the foregoing which are ordinarily or

traditionally considered in the determination of wages, hours and conditions of employment through collective negotiations and collective bargaining between the parties in the public service and in private employment. (N.J.S.A. 34:13A-16g)

At the hearing before me, the PBA presented the following four (4) economic positions for my consideration.

THE POSITION OF THE PBA

1. **Wage Increase** - The PBA proposed a 6% increase across the board at each rank, step and position covered by the contract in each of the three (3) calendar years proposed.
2. **Holidays** - The PBA proposed that the current holiday benefit be modified in its form of payment. The PBA proposes that the value be folded in and paid along with regular pay. Such revised compensation would be used for all calculation purposes.
3. **Clothing Allowance** - The PBA proposed a \$100 per contract year increase in the current clothing allowance.
4. **Detective Bureau** - The PBA proposes that Detectives receive one (1) personal day for each year worked in the Detective Bureau, up to a maximum of (5) days.

THE BOROUGH'S FINAL OFFER

1. **Wage Increase** – The Borough proposed a 2% increase for 1999, a 2.25% increase for 2000, and a 2.5% increase for 2001.
2. **Salary Adjustment for Sergeants** – The Borough proposed to eliminate the provision in Article VI, Salaries (B) which provides a 1% increase to sergeants above any across the board salary increases.
3. **Longevity** - The Borough proposed to modify Article VIII of the agreement to eliminate longevity for officers hired before January 1, 2000 or at least reduced to officers hired before January 1, 1996.
4. **Clothing allowance** – The Borough proposed to modify Article IX of the contract to eliminate the clothing allowance and permit the Borough to obtain the service of a private cleaner to maintain the officers' uniforms.
5. **Vacations** - The Borough proposed to modify Article X of the contract so that the value of vacation days accrued will be calculated at the rate they were banked.
6. **Sick Leave** - (a) The Borough proposed to modify Article XII of the contract to limit the accumulation of days to 120, with the exception of a grandfather provision that any officers who have already accumulated 120 days or more will be entitled to those days until they have used a sufficient number of sick days to go to 120 or below; (b) The Borough also proposed to further modify this Article to establish that the value of the sick days accrued will be calculated at the rate that they are banked.
7. **Bereavement Leave** - The Borough proposed to modify Article XIV of the contract to establish that such leave will be available (a) up to 5 days for the death of

a spouse or child living in the officer's home; (b) up to 3 days for the death of a parent, grandparent, sibling or child not living in the officer's home; (c) 1 day for the death of a grandchild, sister-in-law or brother-in-law; (d) that the days will be paid at straight time if the officer is not working.

8. Educational Assistance - The Borough proposed to modify Article XXIV of the contract to provide that tuition reimbursement would be provided at the rate of 80% for A's or better, 50% for B's to an A, and 40% for C's to a B, with no recurring dollars for credit earned.

At the hearing, I ruled that additional proposals sought by the Borough were excluded from arbitration because they were not included in the pre-arbitration listing of issues presented to PERC. The Union submitted a list of issues for arbitration with its Petition filed with PERC on April 30, 1999. The Borough submitted a list of issues for arbitration in its responding letter to PERC dated May 12, 1999. At the hearing, the Borough sought arbitration of a multi-faceted sick leave proposal. I ruled that only the portion of the proposal addressing the accumulation of sick leave would be considered in arbitration because that was the issue listed by the Employer in its letter to PERC dated May 12, 1999. Additionally, I ruled that an Employer proposal regarding medical insurance was not arbitrable because it was not included in the list of issues submitted by the Employer to PERC on May 12, 1999.

The parties agreed that the term of the successor agreement shall be three years, beginning January 1, 1999, and ending December 31, 2001.

As stated above, the parties failed to agree on an alternative method of submission. Therefore, I am mandated to follow the conventional arbitration procedure wherein I may consider the position of either party on any proposed issue, or fashion an alternative position which I find to be more reasonable under the above statutory criteria.

THE POSITION OF THE PARTIES

THE INTEREST AND WELFARE OF THE PUBLIC

The PBA argued that the interest and welfare of the Manville residents and taxpayers is well served by the members of this Police Department. The PBA pointed out that the demands placed upon the Department have increased since the last contract was negotiated because of commercial developments in the Borough. Specifically, a mall has opened in town, along with a cinema and restaurants. The result, according to the PBA, is that Manville has become “a busy and growing law enforcement community.”

In support of its position, the PBA produced Detective Thomas J. Herbst who testified that the Market Place Mall was recently constructed on Main Street in the Borough. Additionally, a movie theater and two fast food restaurants have opened near the Mall. Herbst said that these commercial enterprises have brought an increase in the number of people and cars entering the Borough. The result has been an increase in the number of police calls. Additionally, the PBA presented evidence showing an increase in the number of summonses issued from 1,705 in 1998 to 2,393 in 1999, a 40% increase. During the same period, the number of motor vehicle accidents increased from 248 in 1997 to 318 in 1999. There was also a 10% increase in the number of complaints processed by the Department in 1999 as compared to

1998. Detective Herbst attributed these increases in law enforcement activity to the commercial developments taking place in the Borough.

The Department has also established new programs to support the community. For example, a bike patrol was established, along with a Secure a Child Program. There have been increased efforts to address school violence, including increased D.A.R.E., D.A.R.E. Parent programs, and other efforts. The Department also provided substantial support for the community during the major flood which struck the Borough during 1999.

The Borough acknowledges that the interests of the public are served by a competent police force. It argued, however, that the reasonableness of the offers must be determined in terms of the interest and welfare of the public and the financial impact on the governing unit, its residents and taxpayers.

In this regard, the Borough relied on its expert witness, Thomas Banker. Banker testified that the Borough is in a fragile financial condition. He attributed this condition to several factors, including its high dependency on property taxes (as with most New Jersey municipalities) combined with a relatively small assessment base. The expert pointed out that the Borough incurred damage from the 1999 Hurricane Floyd flood and continues to suffer long term environmental problems. Regarding the flood, the Borough has been forced to incur a yearly cost of \$125,000 to purchase water. The expert estimated that the flood had an initial financial impact of slightly under \$3,000,000, and an ongoing cost of \$500,000 a year. The Borough suffers from environmental contamination resulting from the Johns-Manville asbestos production of the past, along with other sources. The Borough is also highly developed, which severely restricts future development. Although the Borough has not gone to a 5% capped referendum, Banker explained that the Borough has been

following the basic rules of governmental finance that you can only spend what you can afford to raise in taxes.

The expert asserted that Manville has a weak tax base, noting that the municipal rate is about 60% higher than the average for Somerset County, its equalized rate is about 15% higher than the County average, and its equalized value per capita is slightly more than 50% of the Somerset County average. Banker testified that Manville's assessed value from the period of 1995 to 1999 increased by 5.14%, while values in the region increased by 13.14%. The CPI increase during the period was 9.94%. Banker stated that the resulting situation is not good for the municipality because its ability to pay as measured by its wealth is about half the rate of inflation, while the PBA seeks an increase at twice the rate of inflation.

The Borough argued that in light of these facts, its proposals should be found to be more reasonable and should be awarded.

COMPARISON OF WAGES, HOURS AND CONDITIONS OF EMPLOYMENT

The PBA argued that the members of this Bargaining Unit receive total compensation far behind their peers in other communities, and that the benefit package is one of the worst in the region.

Although the base pay rate is competitive, the PBA notes that it takes Manville officers 8 years to reach the top step of the scale, while officers in comparable departments reach the top in an average of 5 years. In support of this position, the PBA compiled chart No. 1 based on the contracts of 14 PBA-selected communities and the State Police that were introduced into evidence.

Chart 1 – The number of Annual Steps to reach Top Step Patrol Officer

	Steps to Maximum
Hillsborough	6
Warren	6
Watchung	3
South Bound Brook	5
Somerville	4
Bound Brook	3
Bernardsville	6
Bedminster	6
Franklin	7
Green Brook	5
Raritan	4
Bernards Township	6
Montgomery	6
North Plainfield	4
State Troopers Frat. Assoc.	9
Average	5.33
Manville PBA Steps	8
Manville PBA Compared to Average	+2.66 annual steps

The analysis shows that on average officers in the selected communities had 5.33 annual steps to reach the top, while Manville officers have 8 annual steps. Additionally, the PBA notes that only the State Police require as many steps as

Manville (actually 9 steps) and those officers earn substantially more than Manville officers. The PBA argues that the extended guide results in a financial short fall which takes years, if ever, for Manville officers to recoup.

The PBA points out that longevity benefits are common but have been grandfathered out of the Manville contract for employees hired within the past four years. It asserts that the absence of this benefit further places Manville officers at a financial disadvantage. The PBA compiled chart No. 2 containing 10 PBA-selected communities based on contracts introduced into evidence.

Chart 2 – Comparison of Longevity Benefits

	Minimum Value	Formula
Hillsborough	1,000	
Watchung	5,950	10% max. @ 25 yrs.
South Bound Brook	3,291	7% @ 20 yrs.
Somerville	4,722	8% @ 20 yrs.
Bound Brook	1,757	3% @ 25 yrs.
Bridgewater	1,500	
Bernardsville	1,000	\$500 @ 12 yrs.
Franklin	4,776	8.5% @ 25 yrs.
Green Brook	1,500	@ 15 yrs.
North Plainfield	3,626	6% @ 15 yrs.
Avg. Longevity Value	\$2,912	
Manville PBA	NONE	

The PBA states that this evidence reveals that on average officers in the selected communities received longevity benefits valued at \$2,912. The PBA argued that this evidence should be considered in the calculation of total compensation when reviewing its wage demands. The PBA states that it has sought to address the

issue through its base rate pay proposal. It notes that the \$2,912 amount is equivalent to 5% of the base pay for a top step Manville patrolman.

The PBA also introduced chart No. 3 describing clothing allowances provided to 14 PBA-selected communities based on evidence introduced into the record.

Chart 3 – Annual Clothing Allowance

Hillsborough	\$889
Warren	\$1025
Watchung	\$950
South Bound Brook	\$750
Somerville	\$600
Bound Brook	\$965
Bridgewater	\$600
Bernardsville	\$1,300
Bedminster	\$1050
Franklin	\$925
Green Brook	Unlimited supply as needed
Raritan	\$600 + cleaning
North Plainfield	\$725
STFA	\$900
Average	\$868
Manville Allowance	\$675
Manville PBA Benefit	(\$193)
Compared to Average	(29%)

This analysis demonstrated that on average officers in the selected communities received clothing allowances valued at nearly \$200 more than the Manville officers receive. Manville officers similarly lag behind their counter-parts

in the amount of vacation days received. Chart No. 4 presented by the PBA referred to 16 PBA-selected communities introduced into evidence, and showed that on average officers in the selected communities received a maximum vacation day benefit of 26.8 days, while Manville officers receive a maximum of 25 days.

Chart 4 – Maximum Vacation Day Benefit

	Annual Vacation Days
Hillsborough	21
Warren	27
Watchung	25
South Bound Brook	29
Somerville	24
Bound Brook	31
Bridgewater	30
Bernardsville	30
Bedminster	25
Franklin	30
Green Brook	25
Raritan	30
Bernards Twsp.	25
Montgomery	21
No. Plainfield	30
STFA	25
Average	26.8
Manville PBA	25
Manville PBA Compared to Average	(1.8 days)

The PBA presented evidence showing the average base wage increase for 19 area towns. It produced Chart No. 5 which measured the average increase for the years beginning January 1, 1999, January 1, 2000, and January 1, 2001.

Chart 5 – Annual Rates of Base Wage Increases

	Eff. 1/1/99	Eff. 1/1/00	Eff. 1/1/01
Hillsborough	4.5		
Warren	4	4	
Watchung		4	
South Bound Brook	4.6		
Somerville	3.5		
Bound Brook	3.85		
Bernardsville	4	4	
Bernardsville SOA	4	4	
Bedminster	4	4	
Franklin	4.25		
Green Brook	4	4	
Raritan	4	4	
Bernards Twp.	4	4	4
Bernards SOA	4	4	4
Montgomery	4	4	4
Montgomery SOA	4	4	4
North Plainfield	4.5 (2.25/2.25)		
North Brunswick	4.5	4.75	
STFA	5 (3.5/1.5)		
AVERAGES	4.15%	4.06%	4%

The PBA notes that the average increase beginning January 1, 1999 was 4.15%, for January 1, 2000 was 4.06%, and for January 1, 2001 is 4.00%. The PBA asserted that this is a total three year increase of 12.21%. According to the PBA, the longevity benefit received by officers in other towns is valued at 5% and, therefore, the total comparable rate is 17.21%. The PBA argues that over three years, the increase would be 5.74% per year, within 2/10 of its last offer.

The holiday fold in proposal is very important to the PBA and its members because it enhances the base rate for calculation purposes throughout an officer's career. Moreover, because of "benefit shifting" the change would not result in significant additional cost to the Employer. The PBA's proposal is that the existing holiday benefit be folded into the regular base wage and paid with the regular pay roll in equal installments. It claims that this will help individual officers by providing regular access to money for personal budgeting purposes. The PBA also argues that it is beneficial to the Employer since there would be a reduction of overtime when employees do not take time off for holidays. The PBA concluded that this proposal favors the public interest and carries a nominal financial cost to the Employer. The PBA also asserts that its proposal that detectives receive one personal day for each year worked in the Detective Bureau up to a maximum of five days is modest and justified by the scheduling and on call obligations incurred by these personnel.

The PBA compared the Borough's offer to the wage modifications made by the Borough to its other employees. It cited the testimony of the Borough's expert witness, Mr. Banker, who acknowledged that the average increase for DPW employees was 4.38%. The PBA produced Chart No. 6 based on the testimony of Banker. Chart No. 6 shows the Borough's settlement with Teamsters Local 575.

Chart 6 (Manville settlement with IBT Local 575)

	Range Minimum	Range Maximum
Labor Meter Reader	5.67%	4.29%
Assistant Mechanic	5.73%	5.71%
Laborer	5.75%	4.54%
Laborer/Meter Reader	5.66%	4.27%
Averages	5.70%	4.70%

This analysis revealed an average increase on the range minimum of 5.70% and on the range maximum of 4.70%. Obviously, a fixed dollar amount of increase across a range, yields a higher percentage on the lower level of the range.

The PBA also produced evidence which is reflected in Chart No. 7 concerning wage increases for three administrative personnel for the period of 1998 and 1999.

Chart 7 (Annual Wage Increases granted to Administrative Personnel)

Bruce Kosensky	5%
Philip Petrone	5%
Linda Fasanella	4%
Average	4.666%

These increases were not the result of collective bargaining and averaged 4.66%. The PBA asserts that this record shows an average non-PBA employee increase of 5.02%.

With respect to the private sector wage comparisons, the PBA insisted that given the unique statutory obligations of police officers in New Jersey, the comparison of private sector employees should not be considered controlling. The PBA presented extensive argument and examples of unique police responsibilities to demonstrate that there is no private sector job to compare with the police. A police

officer has obligations both on and off duty, which is most unusual in the private sector. The hazards and risks associated with police work rarely exist in the private sector. Therefore, the police officer must be considered on a higher wage level than an otherwise comparable private sector employee.

The PBA also noted that PERC-issued reports indicate that private sector wages in New Jersey increased at the rate of 4.5% and 4.76% during 1996 and 1997.

The Borough presented its expert witness and his report to address the issue of comparison compensation of employees.

With respect to comparisons of compensation of employees in the same or similar comparable jurisdictions, the Borough referred to Exhibit B-2 and the testimony of the expert in order to establish that members of this bargaining unit are paid more than other employees of the Borough and received a higher level of increase than other Borough employees during the prior four years.

Manville Borough – Comparison of Police to Other Manville Employees

Year	Patrol Officer Max Salary	DPW Avg. Max Salary	Clerical Avg. Max Salary
1998	\$58,706.65	\$19.05	\$31,911.67
1997	\$56,448.70	\$18.25	\$30,637.67
1996	\$54,277.60	\$17.45	\$29,363.67
1995	\$52,190.00	\$16.65	\$28,453.00
1994	\$47,342.00	\$15.15	
Cumulative Change 1998 v. 1994			
	0.2401	0.1981	0.1436

With respect to the comparison to employees from comparable jurisdictions, the Borough's expert witness relied on a summary comparison of several municipalities in the region and the cash compensation provided to patrol officers. This data, included in Borough Exhibit 2, was for the period of 1996 to 1998 and contained information regarding the compensation paid by seven municipalities in Somerset County.

Manville Borough – Comparison of Maximum Base Salaries Patrol Officer

	1998	1997	1996
Manville	\$58,707.00	\$56,449.00	\$54,278.00
Bedminster		\$54,186.00	
Branchburg	\$57,368.00		
Raritan		\$52,061.00	
Somerville		\$52,000.00	
Warren		\$52,978.00	
Watchung			\$50,867.00

Manville Borough – Comparison of Cash Compensation Patrol Officer

	1998	1997	1996
Manville			
-Salary (top step)	\$58,707.00	\$56,449.00	\$54,278.00
-Longevity (10 yrs.)	\$1,050.00	\$1,050.00	\$1,050.00
-Uniform/Maint.	\$650.00	\$600.00	\$500.00
-Total	\$60,407.00	\$58,099.00	\$55,878.00

	1998	1997	1996
Bedminster			
-Salary (top step)		\$54,186.00	
-Longevity (10 yrs.)		0.00	
-Uniform/Maint.		875.00	
-Total		\$55,061.00	
Branchburg			
-Salary (top step)		\$57,368.00	
-Longevity (10 yrs.)		\$2,294.72	
-Uniform/Maint.		\$1,350.00	
-Total		\$61,012.72	
Montgomery			
-Salary (top step)	\$56,362.00		
-Longevity (10 yrs.)	\$00.00		
-Uniform/Maint.	\$00.00		
-Total	\$56,362.00		
Raritan			
-Salary (top step)		\$52,061.00	
-Longevity (10 yrs.)		\$0.00	
-Uniform/Maint.		\$825.00	
-Total		\$52,886.00	
Somerville			
-Salary (top step)		\$52,000.00	
-Longevity (10 yrs.)		\$0.00	
-Uniform/Maint.		\$500.00	
-Total		\$52,500.00	

Warren

-Salary (top step)	\$52,978.00
-Longevity (10 yrs.)	\$0.00
-Uniform/Maint.	\$1,025.00
-Total	\$54,003.00

Watchung

-Salary (top step)	\$50,867.00
-Longevity (10 yrs.)	\$0.00
-Uniform/Maint.	\$800.00
-Total	\$51,667.00

The analysis showed that Manville police officers ranked at or near the top in compensation among the above communities. The Borough argued that given the officers' competitive compensation and the Borough's difficult financial condition, as set forth above, that the Borough's 2%, 2 ¼%, and 2 ½% wage offer for the next three years should be found to be far more reasonable than the 6% per year proposed by the PBA.

STIPULATIONS OF THE PARTIES

The parties agreed that the duration of the contract should be a three year term. There were no other stipulations.

LAWFUL AUTHORITY OF THE EMPLOYER.

Under this statutory criteria, the PBA discussed the "Cap Law" in which municipalities are not permitted to increase their qualifying expenditures by more

than 5% for a category in a given year. The PBA pointed out that Manville adopted the 1.5% index rate, the lowest formula calculation. The PBA argued that the Employer elected to forego the additional flexibility in spending that a 5% cap would have provided. The PBA pointed out that the flexibility not used, as is the case herein, can be carried forward for up to two years to be used in future budgets for additional flexibility. The PBA also noted that the total bargaining unit base pay is \$1,271,171; \$12,711 represents 1% of base pay for the bargaining unit. The PBA concludes that Criteria g.5 does not in any way preclude the payment of the PBA position.

The Borough argued, as outlined above, that it is in a difficult financial condition due to its tax base and other problems. The expert witness, Banker, explained that although the Borough has not gone to a 5% capped referendum or used the 1.5 index rate, it has been following the basic rules of governmental finance that you can only spend what you can afford to raise in taxes.

THE IMPACT ON THE TAXPAYERS AND RESIDENTS

The PBA argued that the Borough can afford the entire final proposal of the PBA. It asserted that the base pay of the bargaining unit is only 9.2% of the tax levy. Stated another way, the PBA suggests that it would cost the hypothetical taxpayer \$30.69 per month to fund the entire base wage cost of the bargaining unit. This, argued the PBA, is less than the cost of taxpayer's cable bill.

The PBA also observed that the fiscal picture of the Borough is of a growing municipality with an improving tax base. It notes that the most recent official statement, a 1996 statement based upon a bond issue, showed that commercial taxpayers were the largest 10 taxpayers in the Borough. The PBA argues that this has only continued with the establishment of the Market Place Mall. The statement also indicated that the total school population was within capacity. It noted that the Borough's expert, Banker, acknowledged that the tax rate for 1999 decreased. It also noted that the 1997 municipal portion of the tax rate was unchanged from 1996. There has also been a high rate of tax collection, with the record showing that between 1995 and 1997, the rate of collection was between 95.89% and 96.69%. The PBA further argued that the low rate of participation in the April 1999 school budget vote of 15.3% of potential voters demonstrates that there is not significant pressure on taxpayers in the Borough.

The PBA noted that the Borough is within Somerset County, the second wealthiest county in the state, based on various criteria, and one of the wealthiest in the United States. It also argued that the Borough is far from the bottom with respect to ratables in comparison to other municipalities within the County. The PBA introduced the "Somerset County Board of Taxation - 1998 Abstract of Ratables." This document indicated that the Borough rated 13th out of 21 municipalities in the total value of taxable land and improvements, 7th out of 21 in the value of land, 13th out of 21 regarding the taxable value of improvements, and 12th out of 21 in the net taxable value of land.

The PBA disputed the Borough's claim that flood damage is of significant relevance in this case. It acknowledged the losses suffered by families, but argued that the ratables are still in the Borough, most of the properties are covered by insurance and will be rebuilt, and some rebuilt properties will have even greater value as a ratable. In sum, the PBA argued that an award in its favor would have a de minimus impact on the taxpayers.

The Borough argued that any increase above the 2%, 2 ¼% and 2 ½% proposed by the Borough for the next three years would have a serious adverse financial impact. It referred to the evidence set forth above concerning the very limited tax base available to the Borough, the nearly full development of the Borough, and the existing limits on development arising from contamination and other environmental problems affecting a significant portion of property.

The Borough concluded that its proposal must be viewed as the more reasonable and should be awarded.

THE COST OF LIVING

With respect to this criteria, the PBA acknowledged that the cost of living factor does not support its position. It urges, however, that it is only one of the eight criteria and should not be a key consideration. The PBA argues that the cost of living data is regional and notes that the evidence it has submitted regarding the

wage increases provided to officers in neighboring municipalities involved the application of the same cost of living information along with the other criteria.

The Borough argued in part that the Cost of Living criteria favors its economic position. It urged that the CPI rose only 10 ½% during the five years from 1994 through 1998, while police compensation increased 24%.

CONTINUITY AND STABILITY OF EMPLOYMENT

Under this criteria the PBA discusses the concept of “area standards” and “prevailing rate”. Both of these private sector wage concepts, according to the PBA, support an award of the PBA position. It pointed out that it introduced into evidence the actual contracts and awards of neighboring towns that the police work with on a regular basis. The Borough, in contrast, provided inconsistent information based on telephone calls and not actual contracts regarding communities. Additionally, some of the communities referred to are some distance from Manville and similar only in population. The PBA asserts that this form of evidence is not in accordance with the statutory requirements. Additionally, it notes that the Borough’s only witness testified that he did not consider the “going rate” in his analysis.

The Borough did not put forth specific evidence regarding this issue. However, it argued in general that the financial condition of the municipality amply demonstrates that it cannot afford the PBA’s proposals and that the more modest wage increases proposed by the Borough should be adopted by the arbitrator.

DISCUSSION AND OPINION

As stated above, since the parties failed to agree on an alternate method of resolution, I am mandated by the amended Interest Arbitration statute to decide the issues presented under the conventional method of arbitration, giving appropriate weight, where relevant, to the eight statutory criteria.

The interest and welfare of the public is the first factor in the amended statute. As I have previously stated regarding this element, it is axiomatic and somewhat contradictory that a well paid police force and a low tax rate are both in the interest and welfare of the public. Therefore, it is desirable to maintain a balance between these seemingly contradictory interests of the public.

It is obvious that the residence and taxpayers of Manville benefit substantially by having a competent and efficient Police Department. This of course requires among other things, the maintenance of a competitive wage rate in order to reduce turnover and preserve a reasonable continuity of experienced and well-trained officers.

It is generally the sentiment of both parties that the interest and welfare of the public is best served by providing fair wages and conditions of employment to the officers who serve and protect the citizens of the community. However, differences usually exist in the definition of what and how much is fair. That, obviously, is the essence of this or any other Interest Arbitration.

I further recognize that increased productivity in a police department is not necessarily a reason, by itself, to increase wages. In this instance, however, I have taken note of the increased demands placed upon the police as a result of economic development which has recently taken place in the Borough, along with the special projects cited by the PBA which have been implemented by the Department. There

is no question that even a minor increase in productivity is beneficial to the Borough and results in some meaningful savings to help fund the economic package awarded herein.

It is also generally accepted in interest arbitration that the criteria of Interest and Welfare of the Public can relate to a number of elements in the collective bargaining process in the public sector. While the PBA argues the effectiveness, productivity and professionalism of the force and the necessity to fund salary increases to guarantee the sustainability of those qualities, the Borough reasonably argues that the interests and welfare of the citizens of Manville are best served by providing fair wages while insuring the economic viability of the community.

Clearly, police officers operate in a critical people contact, public safety position. Obviously, they must be given recognition for their assumption of a career with such inherent risks. It is also obvious, however, that any governmental entity must be prudent not to price itself out of its economic stability by granting inordinate raises, as argued by the Borough. This balance must be considered when awarding compensation and benefits funded by the taxpayers of the Borough. The Borough presented substantial evidence demonstrating that it is not a community as affluent as many of its neighbors in Somerset County. It continues to face challenges in pursuing economic development as a result of environmental contamination resulting from its industrial past, along with the recent effects of flooding. The record also disclosed that the Borough has a relatively weak tax base.

Therefore, it is my considered opinion, after reviewing the extensive record produced by both parties, that it is in the best interest and welfare of the public that an award issue at the rates set forth below, which are less than the PBA seeks but are more than the Borough's proposal.

The Borough convincingly argued that the 6% per-year wage proposal of the PBA would be excessive, but the 2%, 2 ¼% and 2 ½% proposal of the Borough is, in my opinion, likewise somewhat inadequate. Therefore, neither side totally prevails under this criteria.

For all the statutory reasons stated herein and after reviewing the evidence in the record, I found that 4% in each year of the three year contract is the appropriate increase. This is essentially 1 ½ to 2% greater than the Borough's wage proposal and 2% lower than the PBA's wage proposal.

COMPARABILITY

The PBA's argument that the private sector comparisons are not appropriate, while containing some truth, does not suggest that all private sector comparisons are entirely worthless. The statute requires that the private sector be compared. As much as one can distinguish public sector police work from private sector, what does remain at the least is a comparison of percentage wage increases paid in the private sector. The evidence contained in the record on the issue were the PERC reports indicating that private sector wages increased at the rate of 4.5% and 4.76% during 1996 and 1997. This is slightly greater than the wage award I will issue in this matter, as well as being above the Borough's offer and below the PBA's offer.

The next statutory area is public employment, i.e., public employment in general and public employment in the same or similar jurisdictions. Consideration was given to the compensation and settlements of other union and non-union represented public employees employed by the Borough. The record reflects that police officers receive the highest pay of the Borough's employees. It also appears however, that the blue and white collar employees have received wage increases recently that are slightly more than my award. While it will always be true that

public and private sector employees will never equate directly with police officers for all of the obvious reasons of job safety, professional responsibility, exercise of discretion and shift work, it does not follow that officers must always be awarded annual additional increases in excess of those employees.

The conclusion I have reached after reviewing this statutory criteria is that an award roughly in the middle of the final offers made by the Borough and the Union is not out of line with the increases in the private sector and in the public sector in general.

We now turn to the discussion of the comparability of compensation police officers receive in similar jurisdictions. The evidence produced shows that police officers in the Somerset County area received average increases for the three years of 1999-2001 of between 4.00% and 4.15%. These samples are extremely close to my award in this case and in the middle of the final offers made by the PBA and the Borough. The PBA argues further, however, that the elimination of longevity benefits for employees hired in the last four years is a significant reduction in compensation for officers and reduces their relative position with neighboring municipalities. Although the PBA concedes that Manville officers receive a competitive base rate, it argues in Chart No.2 that officers in ten neighboring communities receive longevity benefits which have an average value of \$2,912. The PBA asserts that this equals 5% of a top step patrolmen's pay in Manville, and when added to the average increases of 4.00% to 4.15% for neighboring communities results in an average over three years of 5.74%.

While the PBA arguments are convincing that a 2-2 ½% wage offer is not reasonable, I do not agree that it justifies three 6% increases – which is above even their selection of comparable communities as depicted in Chart No. 5. Regarding the PBA's longevity argument, only officers hired within the past four years do not

receive longevity pay. Additionally, the evidence provided by the PBA in calculating the value of longevity pay in other communities is based on a sample of significantly fewer towns than the data provided in Chart 5 surveying wage increases in 19 bargaining units outside of Manville. A careful examination of this subpart of the criteria including Borough Exhibit B-2, leads to the conclusion that the most reasonable award, as stated above, must be deemed to be somewhere between the two final offers of the parties or 4% per year, which is awarded herein.

STIPULATION OF THE PARTIES

As already stated above, the parties have agreed to a three year contractual term and no other stipulation.

LAWFUL AUTHORITY OF THE EMPLOYER

The record demonstrates that the Borough of Manville could, within its cap limitation, expend additional sums needed to fund the PBA's final offer. I view this criteria as representing an instance where both parties have co-equal burden of proof. The PBA demonstrated that its offer could be funded within the applicable cap limitation. Conversely, the Borough failed to establish that such a funding requirement would produce a cap hardship. The Borough adopted a 1999 budget using the lowest available formula of the 1.5% index rate and actually used \$293,898.00 less than was allowed even under the lowest index. Accordingly, I conclude that the PBA prevailed under this statutory criteria. I must add, however, that prevailing under this criteria should not be viewed as a complete victory for the PBA. Having the legal right to fund the proposal, or even that the funds are available, does not necessarily mean that the PBA is entitled to such an amount. Here, the real test will come under the criteria of financial impact, comparability, cost

of living, interest and welfare of the public and to a lesser degree the continuity and stability of employment.

THE COST OF LIVING

The PBA acknowledges that this factor does not support its position. The CPI increases have not been significant in recent years and inflation has been mostly under control.

CONTINUITY AND STABILITY OF EMPLOYMENT

There was no hard evidence in the record that the Continuity and Stability of Employment would be negatively affected by the Borough's proposal or enhanced by the PBA proposal. However, I recognize that such evidence is difficult to gather and most often it is merely speculation. The best evidence of course, in this regard, is the turnover of employees, where officers give up their seniority in order to seek a position elsewhere for greater compensation. In this instance, I have nothing in the record to indicate that such a condition exists in Manville on a significant level.

Nevertheless, it is obvious that maintaining a competitive and fair compensation program in the police department is desirable and is in the best interest of the citizens and taxpayers. With this in mind and considering all the above revised statutory criteria, I have concluded, for the reasons stated above, that the PBA wage proposal was too high and the Borough proposal was too low.

While I do not agree that the holiday fold-in proposal of the PBA is completely a "win win" situation as suggested, I do conclude that it is somewhat mutually beneficial. There may in fact be a potential reduction of overtime expenditures for the Borough if holiday absences are not replaced on overtime basis. Although the

members of the PBA will no doubt benefit in future increases on a larger base rate, the Borough also benefits by paying the value of the existing benefit on a regular predictable basis and by a potential reduction of overtime for holiday replacements. In order not to inflate the wage compounding effect during this contract, I awarded the holiday fold-in commencing January 1, 2001, the final year of the three year agreement.

A number of arguments and additional proposals were raised by both side which were relevant to the statutory criteria but which may not have been cited in the position of the parties or if they were, were not specifically addressed in my discussion and opinion section herein. However, all such arguments were considered and thoroughly evaluated and the mere written omission of them herein should not be interpreted to the contrary.

All the other remaining proposals of both parties were thoroughly considered but not granted herein. The rejected proposals include the PBA's proposal for an increased clothing allowance and the Borough's proposal to eliminate this provision and provide that a private cleaner will perform the maintenance of uniforms, a PBA proposal to provide detectives with additional personal days based on the number of years worked in the Detective Bureau, a Borough proposal to eliminate a differential which sergeants now receive of 1%, a Borough proposal to modify the vacation provision to provide that the value of days will be calculated according to when they accrue, a cap on sick leave and a valuation of accrued sick days based on when they accrued, and Borough proposals to modify the provisions dealing with bereavement leave and educational assistance.

I note for clarity that the elimination of longevity for officers hired subsequent to January 1, 1996, a grandfather provision previously established by the parties shall continue and apply to new hires. Other than the question of wage increases and the

holiday fold-in, there was insufficient credible evidence or justification for me to seriously consider awarding any other proposals of both parties.

Therefore, after thoroughly considering all the evidence in light of the revised statutory criteria as required, and after reviewing the respective positions, the post hearing written arguments of the parties, I make the following:

AWARD

- 1. 4% base wage increase across the board, effective January 1st of each of the three years of the agreement.**
- 2. The value of the existing holiday benefits shall be folded in to the base wage effective January 1, 2001 as proposed by the PBA.**
- 3. All other proposals of both parties are hereby not granted**



ERNEST WEISS, ARBITRATOR

STATE OF : NEW JERSEY)
COUNTY OF: MONMOUTH)

On this 27th day of May, 2000, before me personally came and appeared ERNEST WEISS, to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed same.



JILL E. PARKAS
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires May 3, 2001

