

NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of Interest Arbitration Between

CITY OF LINDEN

"Public Employer,"

-and-

LINDEN PBA LOCAL 42

"Union."

**INTEREST ARBITRATION
DECISION
AND
AWARD**

Docket No. IA-99-19

**Before
James W. Mastriani, Arbitrator**

Appearances:

For the Employer:

Gerald L. Dorf, Esq.
William G. Blaney, Esq.
Dorf & Dorf, P.C.

For the Union:

Bruce D. Leder, Esq.
Schneider, Goldberger, Cohen,
Finn, Solomon, Leder & Montalbano, P.C.

I was appointed arbitrator by the New Jersey Public Employment Relations Commission on November 17, 1998 in accordance with P.L. 1995, c. 425, in this matter involving the City of Linden ("City" or "Linden") and PBA, Local 42 (the "PBA" or "Union"). Formal interest arbitration hearings were held on June 14, 28, and August 6, 1999 at which time the parties examined and cross examined witnesses and submitted documentary evidence into the record. Post-hearing briefs were submitted on October 13, 1999. The mandatory terminal procedure of conventional arbitration was used to decide all issues in dispute. Under this procedure, the arbitrator has the authority to fashion an award which he believes represents the most reasonable determination of the issues in dispute.

FINAL OFFERS OF THE PARTIES

Before beginning the formal hearing the City and the PBA submitted the following final offers:

THE PBA

Economic Issues:

1. Compensatory Time

Amend Article IV so that all Police Officers shall be permitted to accumulate 65 hours of compensatory time.

2. Sick Leave Buy-Back

Amend Article VI, sick leave buy-back, so that police officers need sixty (60) days of accumulated sick leave to participate in the buy-back.

3. Sick Pay

Amend Article VI to provide that a Police Officer shall be paid for each sick day an amount equal to the individual's workday (10¼ hours or 9 hours and 23 minutes).

4. Prescription Drug Coverage

Amend Article VII to provide that upon retirement the City shall provide a prescription drug plan to the Police Officer and dependents.

5. Retiree Insurance

Amend Article VII to revise retirees' insurance to provide that Police Officers shall be eligible if they retire on a disability pension or retire with 25 or more years of service credit in the retirement system and up to 25 years of service with the City at the time of retirement.

6. Special Equipment Allowance

Amend Article VII to provide that each Police Officer shall be entitled to up to \$150 per year as a special equipment allowance for the purchase of such items as a vest, microphones, holster, and bullets.

7. Wages

Amend Article VIII to provide for a wage increase of 4 ½ percent in each of four (4) years.

8. Senior Police Officer

Amend Article VIII to create a new title of senior police officer. Upon obtaining the following years of service, a Police Officer will be given appropriate insignia and the following increases to base salary:

10 years-	2 percent
15 years-	4 percent
20 years-	6 percent

9. Detective Differential

Amend Article VIII to provide that Detectives shall maintain a 7 ½ percent differential over and above patrol officers.

10. Seniority

Amend Article IV to provide:

- a. In the Patrol Division, seniority in the Patrol Division shall remain the same.

- b. In all other cases, seniority shall be pursuant to the time in the assignment.
- c. The use of seniority shall be for the following, but shall not be limited to, work schedule, vacation scheduling, overtime opportunities and other time off.

Non-Economic Issues:

11. Direct Deposit

Amend Article VIII to provide that the City shall provide direct deposit for all police officers.

THE CITY OF LINDEN

Economic Issues:

1. Wages

Effective January 1, 1998	3%
Effective January 1, 1999	3%
Effective January 1, 2000	3%

2. Compensation for In-Service Training While Off-Duty

The City proposes to add a new section to Article IV which provides for a twenty-eight (28) day work cycle of one hundred and seventy-one (171) hours in duration in accordance with the Fair Labor Standards Act, U.S.C.A. Sec. 207 (k). This section would also provide that hours worked in excess of the normal schedule up to one hundred seventy-one hours during such a cycle may be

utilized for in-service training and that Police Officers will be compensated for these hours in compensatory time at the rate of straight time.

3. Vacation Time

The City seeks to reduce the number of vacation days afforded all newly hired Police Officers by two days at each step.

4. Personal Days and the Police Office Day

The City seeks to eliminate the current practice of providing leave in the form of personal days and the "Police Office Day."

5. Incidents Qualifying for Sick Leave

When qualifying for sick leave, the City seeks to limit the definition of immediate family to only a Police Officer's spouse and children.

6. Extended Sick Leave

The City seeks to remove the clause from the extended sick leave provision that provided that the City will not act in an arbitrary, capricious, or unreasonable manner. The City also seeks to add language that would provide "any additional sick leave with pay granted an Officer shall be owed and returnable to the City when sick leave days are again be earned by the Officer.

7. Sick Leave Buy Back

The City seeks to amend this provision to allow Officers who meet the criteria contained in the contract to exchange ten (10) sick days in accordance with the following schedule.

<u>No. of Absences</u>	<u>No. of Days Buy Back</u>	<u>No. of Days Case Paid</u>
0	10	5
1	10	4
2	10	3
3	10	2
4	10	1

8. Sick Leave Donor System

The City seeks to eliminate the current "Sick Leave Donor System."

9. Leave Because of Death in the Immediate Family

The City proposes to add the following language to the current bereavement leave provision: "Leave with pay up to a maximum of three (3) working days will be granted to an employee in the event of a death in his/her immediate family.

10. Association Business Leave

The City seeks to reduce the number of members of the PBA Negotiating Committee which can be compensated for Association Business Leave from seven (7) members to three (3) per meeting.

11. Insurance

The City seeks to amend the language of the current provision so that all newly hired employees are responsible for fifty percent (50%) of the cost of insurance coverage for their dependents. The City also seeks to add language which would allow it to compensate employees up to two thousand dollars (\$2,000) annually if they opt out of the City's insurance plan and receive coverage through a spouse who is not a City employee. The City further seeks to have the current prescription plan's co-payment schedule changed so that employees are responsible for a five dollar (\$5.00) co-pay for generic drugs and a ten dollar (\$10.00) co-pay for name brand drugs.

The City seeks to maintain the status quo on all other provisions of the collective bargaining agreement.

The City and the PBA have offered testimony and voluminous documentary evidence in support of their final offers. Witnesses included Police Officers William Conrad, Michael Zoppi, and Alvaro Goncalves, New Jersey Budget expert Vincent Foti, and City Tax Assessor Emanuel Frangella, Jr. I am required to make a reasonable determination of the above issues giving due weight to those factors set forth in N.J.S.A. 34:13A-16g(1) through (8) which I find relevant to the resolution of these negotiations. I am also required to indicate which of these factors are deemed relevant, satisfactorily explain why the others are not relevant, and provide an analysis of the evidence on each

relevant factor. These factors, commonly called the statutory criteria, are as follows:

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

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

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

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

(c) In public employment in the same or similar comparable jurisdictions, as determined in accordance with section 5 of P.L. 1995. c. 425 (C.34:13A-16.2) provided, however, 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 et seq).

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

BACKGROUND

The City of Linden is a municipality in Union County with approximately 36,857 residents. The City includes urban and suburban areas with residential neighborhoods as well as significant industrial and commercial property. Linden

has a higher than average crime rate within the State and within Union County. As the testimony of Officers Conrad, Zoppi, and Goncalves indicated, Linden's Police are zealous in their attempts to lower the crime rate and to apprehend criminals.

The City is proud of its Police Department. In the Police Department's Annual Report, Police Chief Milano pointed to the Department as a "source of pride" and committed to the goal of continued professionalism.

The City's has 127 Police Officers. 94 Police Officers are represented by PBA, Local 42. The Superior Officers are represented in a separate bargaining unit by the Linden Police Superior Officers Association.

POSITIONS OF THE PARTIES

THE PBA

Focusing on community policing and the dedication and industry of the Linden Police Officers, the PBA argues that its final offer is in the interest and welfare of the public. Noting the benefits of community-oriented policing, the PBA points out that the department had 43,789 calls for service and 2,113 arrests. The PBA also notes that its members are well trained and have received awards and citations for excellent police work (see exhibits B3). On the other hand, as evidenced by the testimony of Officers Goncalves, Conrad and Zoppi,

police officers are vulnerable to assaults causing mental trauma as well as physical harm. The PBA queries whether police officers can ever be compensated fully for their emotional distress resulting from their dangerous jobs.

The PBA notes that the Chief of Police and the Mayor both stated that Linden's Police Officers are worth every penny that they are paid and are equal to any police force in the State. In contrast, the PBA points out that there is no evidence that the City is unable to satisfy the PBA's salary proposal. Noting that the City's financial presentation was limited to tax appeals and that the City has one of the lowest tax rates in the County, the PBA asserts that the interest and welfare of the public would be best served by providing salary and benefits that would insure employee satisfaction and maintain morale.

Looking to comparison of wages, salaries, hours and conditions of employment, the PBA relies upon PERC's report of Department of Labor statistics for a period from 1996 to 1997. That report shows that average private sector wages increased by 4.8% overall and 4.5% in Union County. The PBA submits that those figures support its position. Further, the PBA submits that it is impossible to find private sector employment comparable to police employment. The PBA points out that private sector employees are not charged with the responsibility of enforcing the laws of the State of New Jersey and are not confronted with crimes in progress.

Addressing the criterion concerned with comparison to public sector employees generally, the PBA points to the agreement between the City and the CWA which provided an increase of 16.6% over the life of the agreement. In contrast, the City cited collective bargaining agreements with State workers with increases between 13.5% and 14.5% over four years. The PBA, however, rejects the comparison with public sector employees generally because no terminal procedure is available when their collective negotiations reach impasse.

Emphasizing the comparison with other police officers, the PBA asserts that the statistics compiled by PERC, showing that awards hover around 4%, support an award in its favor. Additionally, the PBA compares benefits enjoyed by Police Officers in Union County with those enjoyed by Linden's Police Officers. (Ex. C3). According to that comparison, the PBA maintains that an overwhelming majority of those departments are entitled to 15 sick days, and Elizabeth, Fanwood and Hillside enjoy a full year of sick leave. The PBA demonstrates that half of the departments in Union County provide for three personal days and Hillside, New Providence and Roselle receive more personal days, while Linden's Officers receive only two personal days per year. Turning to insurance coverage, the PBA asserts that the benefits enjoyed by Linden Police Officers are substantially similar to those provided throughout the County.

On the other hand, the PBA notes disparities in vacation and salary in comparison to officers in other Union County communities. Comparing vacation time over a 30-year career, the average number of vacation days in the County is 611 and in Linden its 470. The PBA calculates that in order to receive an average number of vacation days compared with other communities in the County, Linden's Police would need to earn an additional 140 days, or almost five days per year over a 30-year career.

Turning to salary, the PBA acknowledges that the base salary for 1997 is relatively high compared to other communities in the County. The PBA, however, claims a superficial analysis is inaccurate because Linden's base salary includes the \$1,175 clothing allowance and six paid holidays. According to the PBA, holiday pay is \$1,851 for a first grade police officer with an annual salary of \$44,966. The PBA calculates that if the clothing allowance and the six holidays are subtracted from base pay, the new base would be \$52,940. Using a base of \$52,940, the PBA maintains that the City's Police Officers do not rank within the top 50% within Union County. The PBA argues that this disparity is accentuated when longevity is added to the calculation. The PBA asserts that Linden does not have longevity pay and an "abnormally large percentage of its manpower" has worked more than 25 years as compared to police officers in other municipalities. Reviewing longevity schedules in Union County, the PBA shows that Police in 14 out of 21 communities in the County enjoy longevity payments. The PBA argues that the lack of longevity in Linden "artificially holds

down wages" compared to these other communities. Comparing base salaries over a 25-year period, the PBA calculates that Linden Police Officers are hundreds of thousands of dollars behind other municipalities due to the lack of longevity payments. While the PBA would prefer a full longevity program, it proposes a compromise called "senior officer pay" which ease the adverse effect of the absence of longevity when compared to salaries in other communities within the County.

Looking at the overall compensation of the employees, the PBA notes that Linden compares favorably with other police in other Union County communities except in the areas of wages, longevity and vacations. The PBA notes that there are no pertinent stipulations of the parties in this case.

Turning to the criteria addressing the financial impact on the City, and considerations under the limitations of the CAP law, the PBA addresses them jointly. Citing the limited testimony of the City's tax assessor, Emanuel Frangella, regarding a potential problem with respect to tax appeals, the PBA points out that there is a reserve in excess of \$13 million based upon the City's own financial documents. Alternatively, the PBA relies upon the testimony of its financial expert, Vincent Foti. Noting that Foti complemented the City on the "outstanding job" it did managing its finances, the PBA maintains that the record demonstrates that the City has the financial ability to fund the final offer of the PBA. The PBA

also cites with approval Frangella's testimony that the City has the lowest taxes in the County and in the State.

The PBA also points to the evidence of strong economic development throughout the City. Specifically, the PBA highlights the Linden Economic Development Corporation, low property taxes, development of the airport, including a \$2 million default payment from the first developer and a \$5 million payment from the present developer. The PBA also highlights the new TOSCO plant presently under construction, a power plant under construction along the Arthur Kill in Winfield and previously unusable brownfields that are newly targeted for development of an electric plant.

Beyond current construction and new projects, the PBA cites Foti's testimony that the City's results of operations show the City's ability to regenerate surplus, thereby holding down the tax rate. Noting that budget revenues have increased each year with minimal increases in the tax rate, the PBA points out that the municipal tax rate increased a nickel between 1996 and 1997 and was stable from 1997 to 1998. The PBA asserts that the City has used its surplus in succeeding calendar years to lower or stabilize the municipal tax rate and as testified by Foti, the City has a good cash flow. Pointing out that the City collected over \$1.5 million in interest, the PBA suggests that the City has sufficient funds on deposit to generate that interest. The PBA also points out that

the City has little debt, only 29% of its permissible debt limit, at a time when many municipalities are forced to bond or borrow to stabilize their fiscal affairs.

The PBA also points to the revenue raised by the Police Department. The PBA notes that the municipal courts generated over \$64,200, the City received grants for police services in excess of \$287,000, and the City will receive \$250,000 for police officers in the schools. Record Bureau fees and donated vehicles represent additional savings according to the PBA. The PBA also points out that the City received increases of \$421,000 in State aid to a total of \$2.5 million. The \$700,000 cost savings the City has achieved by switching health insurance carriers is also emphasized by the PBA.

Turning to the cost of living criterion, the PBA relies upon the Bureau of Labor Statistics Reports showing that the Employment Cost Index for the Northeast has increased by 3.3% from March of 1998 to March of 1999. When only wages and salaries are examined, the ECI increased by 3.4%. Noting that the CPI-U currently trails the ECI, the PBA points out that the ECI exceeded the CPI in 1991, and since then, the two statistics have been comparable. Additionally, the PBA points out that although the cost of living has been low, recent interest arbitration awards have averaged around four percent.

Addressing the continuity and stability of employment, the PBA notes that the City is a civil service municipality, and as such, seniority rights are controlled

by civil service laws. However, the PBA seeks to limit the disparity in salaries resulting from the lack of a longevity program by creating senior officer pay. The PBA suggests that senior officer pay will induce officers to retire after 25 years of service as they do in other municipalities, thereby creating turnover. The turnover, according to the PBA, would permit the City to replace higher paid officers with entry level Police Officers.

The PBA also seeks eleven additional contract alterations. First, the PBA seeks to increase the number of hours a Police Officer may accumulate as compensatory time. The PBA seeks to increase the number of hours a Police Officer may accumulate as compensatory time from 32¾ hours to 65 hours. Since compensatory time is accrued in lieu of payment for working overtime or for in-service training and is not voluntary, and the use of compensatory time requires the consent of the Department, the PBA asserts that no additional cost arises from permitting the accumulation of additional compensatory time. The PBA points out that there is no limitation for the superior officers unit or the firefighters or the supervisory firefighters' units. Additionally, Article IV, paragraph E, subsection 3 of the contract provides that the "officer must show a good faith effort in attempting to take the accumulated time by the end of the first three (3) months of the following year." At present, if the officer fails to do so, he risks forfeiting the accumulated time. The accumulated time may continue to be carried if the officer is not given the opportunity to take the time. The PBA seeks

to amend the agreement to permit Police Officers to carry over accumulated compensatory time.

The PBA also seeks to amend the agreement to provide that a Police Officer may sell back sick-time after accumulating 60 days instead of the current requirement of 90 days. The PBA asserts that this change would make the Police Officers' contract consistent with the three fire department contracts. Additionally, the PBA points out that currently Police Officers sell back days at eight (8) hours per day and they should be permitted to sell that time back at either 10 $\frac{3}{4}$ hours or nine hours and 23 minutes per day dependent upon their schedule. The PBA notes that firefighters selling back sick time are compensated at a rate of twelve (12) hours per day.

Next, the PBA seeks a prescription drug plan for Police Officers and their dependents upon the Officers' retirement. Characterizing this benefit as a minimal benefit for Police Officers, the PBA asserts that it will help provide Officers with financial security in their retirement. The PBA also seeks to change the language of Article VII, section B which presently provides that "upon retirement, all employees and their eligible dependents shall be entitled to all health benefits as provided through Chapter 88 Public Laws of the State of New Jersey -- 1974, as it exists and may be amended." The PBA seeks to include the present language of that statute.

The PBA also seeks a special equipment allowance of \$150 to permit Police Officers to buy vests, microphones for their walkie talkies, holsters and bullets. Noting that Officers are required to carry a gun in a holster and may need a second holster for an off-duty weapon, the PBA asserts that the clothing allowance is for the maintenance of uniforms and the special equipment allowance is for other items Police Officers need to perform their jobs.

The PBA also seeks direct deposit. The PBA maintains that the trend is towards direct deposit and that it is a cost savings over issuing paper checks. The PBA asserts that it will not result in additional costs to the City.

Turning to its proposals for wage increases and for a senior police officer position with an attendant salary increase, the PBA suggests a salary comparison of maximum base salaries that includes the clothing allowance and the six paid holidays added to base for City Police Officers as well as longevity pay for other municipalities. Using that comparison, the PBA calculates that without the clothing allowance and six paid holidays added to base, the maximum base salary for City Police Officers is \$52,940. When longevity, clothing allowance and six paid holidays are added to the maximum base salary, the PBA calculates that Linden's top step salary is less attractive compared to other Union County municipalities. To demonstrate this point, the PBA compares Linden with six communities, three of which have higher 1997 top step base salaries (Summit, Scotch Plains and Mountainside) and three which have lower

top step base salaries (Rahway, Clark and Union). In making this comparison, the PBA added longevity pay, holiday pay and clothing allowances to each salary figure. It assumed that each community would receive a 4% increase for 1999, 2000 and 2001 and that Linden would receive 4.5%. Then it compared salaries for the seventh year, which is top step in Linden, the tenth year, when the PBA's proposed 2% senior officer pay would begin and the 24th year, when the proposed 6% senior officer pay would begin for those with 24 years of service. Looking to the PBA's calculation of 7th year salaries for 1999, when longevity, holiday pay and clothing allowance is factored in, Linden's 7th year salary of \$61,116 (based upon 4.5% increases) remains above Rahway's (\$60,323) and Clark's (\$60,310), based upon 4% increases. Using the same estimated 4% increase, when longevity, holiday pay and clothing allowance is added to base salary, the 7th year salary in Union in 1999 is \$62,515. Under the PBA's example, seventh year salaries in Summit, Scotch Plains and Mountain Side are \$64,805, \$67,061 and \$65,066 respectively. Examining the tenth year comparison, for 1999 salaries which includes 2% in senior officer pay proposed by the PBA, each of the six communities have higher salaries than Linden. Specifically, under the PBA's proposal, the tenth year salary in Linden in 1999 would be \$59,654. Assuming a 4% increase in the remaining communities, when longevity, holiday pay and clothing allowance are included, the tenth year salary is \$61,506 in Rahway, \$60,830 in Clark, \$63,718 in Union, \$66,065 in Summit, \$68,364 in Scotch Plains and \$66,357 in Mountainside. Similar comparison at

the 24th year exacerbates the differences. Based upon this comparison, the PBA argues that its proposal is more fair and reasonable than the City's.

Addressing the City's proposals, the PBA opposes each of them. The PBA opposes the City's proposal for in-service training while off-duty. Noting that the purpose of this proposal is to permit certain training to be paid at straight time, the PBA asserts that the City has not provided a reason why past practice and the contract language requiring time and one half for in-service training should not be maintained. Since the City determines that training is necessary, the PBA argues, they City should compensate Police Officers at time and one-half for the inconvenience of being required to attend training sessions while off-duty.

Responding to the City's proposal to reduce vacation time, the PBA urges its rejection, asserting that Linden's Police Officers receive less than average vacation time compared with police in other communities in Union County. The PBA also urges rejection of the City's proposals to eliminate two personal days and the police officer day. The PBA asserts that other public safety contracts include these benefits. Additionally, the PBA contends that the City has not offered adequate rationale for the elimination of these benefits.

The PBA also seeks rejection of the City's proposal to limit the definition of immediate family for purposes of sick leave. The PBA asserts that the City has

not demonstrated that the present provision is abused or offered other statistics in support of its proposal. The PBA objects to the City's proposal that Police Officers be required to pay back days that are granted as extended sick leave. Again, the PBA notes the lack of statistics demonstrating abuse. The PBA rejects the City's proposals to require Police Officers to sell back sick days at a rate of two for one, and to limit the buyback to those officers who have not taken sick days. According to the PBA, such change should not be made absent a showing of abuse. Turning to the sick leave donor system, the PBA asserts that there is no proof that the program has caused problems and it should not be changed.

Addressing the City's proposal to limit bereavement leave, the PBA asserts that the City's proposal to identify time limits is unnecessary given that there has never been a dispute or a grievance over the use of bereavement leave. The PBA also argues that there is no evidence of abuse of the current provision for Association business leave and absent such evidence no change is warranted.

The PBA urges rejection of a co-pay for newly hired employees given that the recent change in carriers has resulted in a savings to the City of \$700,000 in health insurance costs. Additional relief is unsupported according to the PBA.

THE CITY OF LINDEN

Focusing on the statutory criteria, the City assert that the evidence supports its final offer and argues that the PBA has supplied little credible evidence to support its position. While acknowledging that police work can be difficult and dangerous, the City assert that the testimony regarding job-related accidents is an effort to gain sympathy and the Legislature has already acknowledged the difficulty and danger involved in police work by providing compulsory interest arbitration. Given that the hazards of police work are not included in the eight criteria provided by the Legislature, the City urges that the testimony concerning those hazards be disregarded. The City details specific inaccuracies in the PBA's exhibits and, asserting that they are "inherently unreliable" requests that they not be considered in determining a reasonable award in this case. Additionally, the City asks that Vincent Foti's financial report not be considered as it was prepared to demonstrate ability to pay a salary increase and ability to pay is not a proper factor for consideration. Hillsdale PBA Local 207 v. Borough of Hillsdale, 137 N.J. 71, 85 (1994); Township of Washington v. New Jersey State PBA, Local 206, 137 N.J. 88, 92 (1994).

The City also asserts that the PBA's failure to provide final offers on eight of the open issues amounts to a waiver and/or stipulation necessitating that the City's position on these issues be adopted. Specifically, the City asserts that the

PBA did not present a final offer on eight of the City's proposals.¹ As a result, the City urges adoption of these proposals as stipulations of the parties under criterion (g)(4).

Turning to the statutory criteria, the City asserts that the documentary and testimonial evidence in this case supports its proposals and urges their adoption. Specifically, the City focuses on the deterioration of its industrial tax base and the shift in taxable property valuation attributed to industrial property decreased from 52.33% of the total valuation in 1988 to 34.84% in 1996. As a result, the taxable property valuation attributed to residential property increased from 32.78% to 48.38% over the same eight-year period. The City asserts that stagnation in State funding and an increasing municipal budget have exacerbated its taxation issues. According to the City, the State's contribution to its 1997 budget was almost one million dollars less than the State's contribution in 1986. The City calculates that the State's contribution to its budget in 1997 comprised 36.05% of the budget compared with 63.35% of its budget in 1986. The City asserts that these factors have led to increases in its taxes by 39% between 1992 and 1998. Pointing out that these tax increases are well above the inflation rate of 18.5% of the CPI-W for the same period, the City notes that it has recently settled several large industrial property tax appeals and several others are pending. According

¹ The eight proposals are (1) Compensation for In-Service Training; (2) Vacation Time; (3) Personal Days and the Police Officer Day; (4) Incidents Qualifying for Sick Leave; (5) Extended Sick Leave; (6) Sick Leave Donor System; (7) Leave Because of Death in the Immediate Family; and (8) Association Business Leave.

to the City, these tax appeals could result in future tax losses of up to fifty million dollars.

The City asserts that despite the "economic turmoil" its Police have received excellent wages and benefits. According to the City, at the end of the last collective bargaining agreement, its Police Officers were the fifth highest paid in Union County although the average household income in the City is the third lowest in the County. Moreover, the City asserts that wage increases for its Police Officers have outpaced inflation consistently. Specifically, the City calculates that its Police Officers received wages increases totaling over 37% between 1991 and 1997 while the local CPI-W increased slightly over 20%. Noting that its Police Officers have job security under the State's Civil Service laws and under N.J.S.A. 40A:14-147 et. seq., the City maintains that its Police Officers receive a generous benefits package. The City seeks a fair resolution of the open issues, and points out that its final offer is consistent with other collective bargaining agreements in the City included that with its largest union, the P.E.S.U., Local 702.

Comparing its wage proposal with that of the PBA, the City notes that for the first three years, the PBA's proposal cumulatively is 4.84% higher than its proposed increase of 3% in each year for 1998, 1999, and 2000. Asserting that its proposal is more reasonable under the statutory criteria, the City notes that its Police Officers receive a desirable compensation package including generous

leave time, pension and health benefits. Specifically, the City points out that 3% increases would provide "rough equality" with the City's other bargaining units, and are comparable to other public sector increases and exceed the local inflation rate. According to the City, the CPI-W for the New York metropolitan area from December 1997 to December 1998 was 1.7%. The City also maintains that its proposal, unlike that of the PBA, would not pose an undue burden on its residential taxpayers.

Turning to its proposal regarding compensation for in-service training while on duty, the City explains that in-service training provides Police Officers with an opportunity to hone their skills and permits them to meet certain job duty requirements. Pointing out that in-service training programs provide benefits to both Police Officers and the Department resulting in better trained and more efficient Police Officers, the City acknowledges that Police Officers should be compensated for attending such training during their off-duty hours. However, the City maintains that the current provision providing compensatory time at the rate of time and one half is excessive given that the Police Officers receive the benefit of enhanced skills. The City also notes this benefit is in excess of that required by the Fair Labor Standards Act, 20 U.S.C.A. 207(k). For these reasons, the City proposes to amend the Agreement to use the 28-day/171 hour work schedule provided for under the FLSA in determining compensation for in-service training. According to the City, its proposals would provide Police Officers with compensatory time at the straight time rate for all off-duty in-service

training which does not increase the Police Officers' total hours worked in a 28 day period above 171 hours. The City would continue to compensate all other time off-duty spent in in-service training as under the current contract language.

The City seeks to reduce the current vacation benefit for newly hired employees by two days. The City does not wish to reduce vacation benefits for current employees, but seeks cost savings to off set financial increases in other areas of this agreement. The City notes that a similar provision is included in the recently negotiated agreement with its employees in the Department of Public Works.

The City also seeks cost savings from eliminating the current practice of providing paid leave time in the form of personal days and the "Police Officer Day." According to the City, these benefits are costly, provide Police Officers with excessive leave and cause scheduling difficulties.

The City proposes to eliminate the current language authorizing a Police Officer's use of paid sick leave for certain medical conditions concerning his or her parent or unmarried sibling. While acknowledging that medical emergencies do arise, the City asserts that use of its generous sick leave benefits should be limited to situations involving the Officer, and his or her spouse or child.

The City also seeks to amend provisions concerning extended sick leave. First, the City seeks to remove language prohibiting "arbitrary, capricious or unreasonable" behavior as the parties already have an obligation to abide by the terms of the contract. The City considers this provision duplicative and unnecessary and seeks its removal. Next, the City seeks the ability to off set or recoup the "exorbitant" amount of sick leave available by adding the following language: "Any additional sick leave with pay granted an Officer shall be owed and returnable to the City when sick leave days are again being earned by the Officer." According to the City, this change would benefit the City by reducing costs and would benefit employees by making the granting of such discretionary leave more attractive to the City.

The City proposes to refine the current sick leave buy back system which permits Officers who have accumulated 90 sick days with an opportunity to sell back up to five sick days in exchange for the equivalent of eight hours pay per day sold back. Specifically, the City seeks to link the number of sick days an Officer may sell back with the number of sick days the Officer has used during the year. According to the City, this proposal would preserve and enhance the initial goal of the sick leave buy back program, to encourage Officers not to abuse the sick leave provisions.

The City opposes the PBA's proposal to decrease the number of sick days accumulated to thirty to become eligible to sell back sick days. The City

considers the PBA's proposal an attempt to convert sick leave benefits into a monetary entitlement rather than a benefit to be used in times of illness or injury. The City asserts that the 90 days previously agreed to as a prerequisite for the exchange of sick days for a monetary benefit was a "sound policy decision meant to strike a compromise between providing an incentive" for use of the benefit and ensuring that Police and adequate accumulated leave in case of a major illness or injury.

The City proposes to eliminate the sick leave donor system as unnecessary because the contract already provides sick leave and extended sick leave. Additionally, the City argues that the sick leave donor system would reward employees with extended absenteeism who the City has determined are not eligible for the extended sick leave program.

The City proposes to clarify the number of bereavement leave days available when there is a death in the immediate family. The current provision provides that bereavement leave terminates the day after the deceased family member's funeral. The City seeks to provide a maximum of three days of bereavement leave.

The City also proposes to lower the number of members of the PBA Negotiating Committee who may be compensated for attending negotiating

committee meetings while scheduled for duty from seven to three. The City asserts that the seven-member requirement is excessive and unnecessary.

Addressing its insurance proposals, the City seeks changes designed to permit its employees to maintain their current high benefit levels. Specifically, the City proposes an increase in the prescription co-pay; a cash incentive for Police Officers who voluntarily opt out of the City's health insurance program if the Officer is covered by another plan; and a provision which would make new employees responsible for 50% of the cost of health care coverage for their dependents. Noting that a similar provision for contribution for health care coverage for the dependents of newly hired employees is included in the agreement covering the Department of Public Works employees, the City asserts that such a provision will allow it to control the increasing cost of health insurance coverage with little impact upon current employees. The City asserts that its proposal for a health insurance opt out would provide a benefit to effected employees. Citing the Kiplinger Washington Letter from February 12, 1999, the City argues that health insurance trends in both the public and private sectors demonstrate that employers generally no longer can be responsible for providing the full cost of health care for employees and their dependents. The report from the Kiplinger Washington Letter indicates that workers are being required to pay a larger share of prescription drug costs. The City also cites the insurance provisions included in contracts between the State of New Jersey and six of its

bargaining units. These agreements provide for an employee co-payment for medical insurance.

Additionally, the City opposes the PBA's proposal for the provision of a prescription plan for employees after they have retired. Pointing out that the City already provides a pension program permitting retirement at a relatively early age, the City asserts that such a prescription plan would create an extensive future liability at a time when the costs of drugs and medical services are escalating. Accordingly, the City argues that the imposition of such a provision would be fiscally unsound and inappropriate.

The City also opposes the PBA's proposal to create a special equipment allowance. Since the parties agreed in the last contract to include the clothing allowance and the clothing maintenance allowance in base salaries so that those allowances would increase by the same percentages as base salary; the City argues that a new equipment allowance would be duplicative of the existing allowances.

Opposing the PBA's proposal to provide Police Officers with the option of having their pay checks deposited directly into their personal bank accounts, the City asserts that such a provision would be costly and an administrative burden.

The City objects to the PBA's proposal for the creation of a new title called a "Senior Police Officer" as well as to the resulting pay increase based upon the Police Officer's years of service. The City characterizes this proposal as an attempt to re-institute longevity pay that was bargained out of the collective bargaining agreement in 1975. Noting that longevity benefits were exchanged for retiree health benefits, the City point out that under the PBA's proposal, 59 Police Officers would qualify for a salary increase form 2% to 6% over and above their yearly wage increases. Such an additional increase for 59 Officers would have an adverse financial impact on the City and is unwarranted given current salary and benefit levels, according to the City. The City is also mindful that the PBA received a benefit in exchange for longevity and it would be inequitable to re-institute the system after over 24 years.

The City also opposes the PBA's proposal to increase compensation for Detective assignments based upon a percentage of the Patrol Officers' salary guide. The City agrees that special compensation is due to those Officers performing Detective assignments. However the City argues that the specific dollar amount remains appropriate monetary compensation for this assignment and should remain for the life of the agreement.

DISCUSSION

As stated above, I am required to issue an award based upon a reasonable determination of all issues in dispute after giving due weight to the

statutory criteria which I judge relevant. The City and the PBA have expertly and fully articulated their positions on the issues and have submitted testimony, evidence and argument on each statutory criterion to support their respective positions. The testimony, evidence and arguments have been carefully reviewed, considered and weighed.²

Initially, the City argues that the PBA did not present a formal final offer on eight of its proposals and therefore, those proposals should be accepted as stipulations of the parties. However, the PBA did present evidence in rebuttal to these proposals and addressed each of them in its post-hearing brief. A stipulation requires mutual agreement. The record reflects that no such agreement exists on these issues and they are addressed on their merits below.

Turning to the merits, many economic and non-economic issues remain in dispute. One principle which is ordinarily and traditionally considered in the determination of wages, hours and conditions of employment through the bargaining process is that a party seeking such change bears the burden of showing the need for such modification. I will apply that principal to the analysis of each issue and the final offers of the City and the PBA. As set forth below, this burden has been met by the parties only with respect to the issues of salary, senior officer pay, direct deposit, prescription co-pay, paid leave time for new

² After discovering inaccuracies in some of the PBA's documentary exhibits, the City urges wholesale disregard of the PBA's evidence. The inaccuracies, some of which were noted and corrected at hearing, impact the weight, rather than the relevance, to be given to those documents.

hires, and qualification for sick leave buy back. Although the City and the PBA have presented thoughtful submissions on behalf of the many other issues in dispute, I respectfully deny the remaining proposals for the reasons set forth below.

The City has made several proposals designed to reduce costs by limiting leave available to Police Officers. Specifically, the City has proposed to eliminate personal days, and the Police Officer Day. The City has also proposed to reduce Association business leave, limit bereavement leave to three days, limit compensation for in-service training while off-duty, and reduce by two the number of vacation days for newly hired police officers. Although cost reduction is a laudable goal, it has not been demonstrated that existing leave time provisions are excessive or that they have been abused. Additionally, the City has suggested that these proposals would ease scheduling problems. However, the record does not reflect the existence of operational problems which would be solved by the proposals. However, reduced costs resulting from limiting leave time provide some offset to costs of this Award and long term future savings are in the public interest. For these reasons the City's proposal to limit some leave time for newly hired employees has merit. Review of the current vacation schedule shows that current vacation allotments for Officers in the Patrol Division are consistent or slightly below those provided to Police in the County. As a result, lowering that allotment by two days at each level for newly hired employees would provide new Officers with below average vacation benefits.

The City also seeks to eliminate Personal Days and the Police Officer Day for all Officers. The proposal to diminish current leave allotments by three days annually is too broad a reduction. However, a modest leave adjustment for newly hired employees would achieve the goal of future cost containment without rendering employment with the City less desirable. Accordingly, one personal day and the Police Officer Day are eliminated for all employees hired after the date of this Award. The remainder of the proposals for modified paid leave time are denied.

The PBA seeks to increase the amount of compensatory time that Police Officers are permitted to accumulate from 32 $\frac{3}{4}$ hours to 65 hours. The PBA has not shown that Officers are losing compensatory time because they can not use it within the allotted time frame. Nor has the PBA demonstrated any other valid reason why the current 32 $\frac{3}{4}$ hours need to be increased. Therefore, I do not award this proposal.

Both the City and the PBA seek to amend the sick leave buy back provisions. The agreement currently provides that Officers with 90 days of accumulated sick leave may exchange up to five days of sick leave for cash each calendar year at the rate of eight hours at their hourly rate. The buy back is permitted regardless of the number of sick days used. The City would amend the buy back provision to require that two sick days be exchanged for one day of pay and would tie the number of days bought back to the number of sick days used in

each year. The PBA would reduce the number of days accumulated for eligibility in the buy back program to 60 and would increase the number of hours for which Police are compensated. There is no evidence that the buy back program has been abused, or that the existing number of days required to allow Officers to participate in the program has made such participation difficult. There is merit to the City's contention that an Officer can qualify for buy back regardless of the number of sick days used in a given year. Participation should represent a reward for less use of sick leave during an annual period. Article VI(A)(3) allots fifteen (15) paid sick days annually. To require that an employee take no more than five sick days in a given year to qualify for the buy back program is reasonably related to the overall goal of attendance reward. This minimum requirement for qualification, as long as an employee has 90 days of accumulated sick leave is awarded and the remaining proposals covering the sick leave buyback and the sick leave donor programs are denied.

Both the City and the PBA seek to modify provisions concerning extended sick leave. The City would add language that would provide "any additional sick leave with pay granted an Officer shall be owed and returnable to the City when sick leave days are again be earned by the Officer." The City also seeks to remove the clause from the extended sick leave provision that provided that the City will not act in an "arbitrary, capricious, or unreasonable" manner. Additionally, for the purposes of qualifying for sick leave, City proposes to limit the definition of immediate family to only a Police Officer's spouse and children.

The PBA proposes to provide that a Police Officer shall be paid for each sick day an amount equal to the individual's workday (10¾ hours or 9 hours and 23 minutes).

There is no evidence that the extended sick leave provisions or the current definition of immediate family have resulted in disputes or in abuse. That City Firefighters are compensated differently for sick days and other leave time is not sufficient justification for importing that concept into the Police agreement. Neither party has provided persuasive rationale for these changes and they are not awarded.

Both the City and the PBA also propose changes to health care coverage. The City would require that newly hired Police Officers contribute 50% towards the cost of dependent health insurance coverage. The City would also add a new co-payment for prescription drugs and would provide a \$2000 annual payment to Officers who opt out of its health care coverage and receive alternate coverage through a spouse. The PBA would add a new prescription drug coverage benefit for retirees and their dependents. The PBA would also revise retirees' insurance coverage to include Officers who retire on a disability pension or retire with 25 or more years of service credit in the retirement system and up to 25 years of service with the City. The record reflects that the City recently saved several million dollars by switching health insurance carriers. In light of recent health care savings and the absence of any similar such provision in

comparable departments in Union County, I conclude that the City's proposals for health insurance co-pay modifications for future employees are not justified at this particular time. The City's proposal to increase the prescription co-pay has merit but not to the extent proposed. Prescription costs have risen substantially and a modest co-pay increase to \$5 for generic drugs and \$10 for name brand drugs from \$2 and \$5 respectively will provide cost off-sets while giving weight to the relationship between the co-pay and the cost of a prescription. At the same time, rising health care costs could make the cost of the PBA's proposal to provide prescription benefits for retirees and dependents prohibitive. No cost estimates have been provided for this benefit or for the inclusion of employees with less than 25 years of service to the City into retiree health care coverage. For these reasons, no modifications to the agreement's health care provisions on these issues are awarded. There is merit to the City's opt out proposal for employees with dual coverage. It is a "win-win" proposal, beneficial to both sides and is hereby awarded.

The PBA also seeks to amend the seniority provisions of the agreement to provide that except in the Patrol Division, "seniority shall be pursuant to the time in the assignment." The effect of such a proposal on the department's operations are not sufficiently reflected in the record to justify granting this proposal. Thus, this proposal is denied.

The PBA seeks a new special equipment allowance of \$150 annually to cover the costs of vests, microphones for their walkie talkies, holsters and bullets. The City opposes such an allowance noting that Police Officers already receive a uniform allowance and a uniform maintenance allowance. Although reimbursement for legitimate expenses for special equipment which are operationally necessary and required in the performance of duties is a reasonable concept, I do not award a special equipment allowance for the following reasons. Any such system should contain procedures which specify what equipment is required, what is operationally necessary, what are reasonable time periods for the equipment rotation, and accountability in terms of costs and prior approvals. These, and other relevant issues relating to the purchase of special equipment deserve further direct attention by the parties. I deny this proposal and encourage discussion between the parties on this issues to be used for future negotiations.

The PBA also seeks to modify the current Detective differential of \$3,950 to provide that the differential will be 7% of the Officer's salary. Changing the differential from a stable figure to a percentage would permit the differential to increase with salaries. The current Detective differential is the second highest in Union County and adjustment to the existing differential is warranted at this time.

The PBA seeks a direct deposit option for its members. Direct deposit of paychecks requires minimal start up costs and is otherwise cost neutral. It is a

safe and secure method of payment. Accordingly, a direct deposit option is awarded.

The remaining economic issues represent the most substantial areas of dispute. The views of the City and the PBA vary sharply, particularly over the issue of senior officer compensation. The parties' views also diverge over the amounts of annual increases to be provided to Police Officers and over the compensation and benefits package for newly employed police officers.

Turning first to internal comparisons, the City would place greater weight on the increases provided to its public works employees. The City urges adoption of an award similar to the P.E.S.U. agreement, which includes 3% increases in 1998 and 1999 and a wage re-opener for 2000. The record does not reflect, however, that the Police and the P.E.S.U. have a history of a strict internal pattern concerning salary increases. The increases provided to the public works bargaining unit are not controlling especially where the record does not reflect a history of receipt of identical increases. While not controlling, internal comparison is nevertheless relevant. I have already given weight to that aspect of the public works settlement which reduced paid leave time for new employees and applied a similar concession to this bargaining unit. With respect to the totality of the new terms, I am compelled to apply other considerations and points of comparison as well as remaining statutory criteria. These factors include comparability within and without law enforcement, the financial status of

the City, the financial impact of increases in compensation, the interests and welfare of the public and the lawful authority of the employer.

Both the City and the PBA look to other police departments in Union County for reference or comparison. The City focuses on the relative ranking of its Police Officers within the County, especially at maximum step. The PBA asserts that its top step salary of \$56,966 in 1997 is inflated by the inclusion of the \$1,175 clothing allowance and six paid holidays in base pay. The PBA calculates that when the clothing allowance and six paid holidays are subtracted, maximum base pay decreases to \$52,940 and that this figure is the most appropriate for comparison purposes.

Review of maximum base salaries for 1997 shows that the average maximum base salary in Union County was \$53,798 and that Linden's top step salary was lower than Summit, Scotch Plains, and Mountain Side, but higher than the salaries for all other communities in the County. Among the eleven municipalities with settlements for 1998, police salaries increased by an average of 3.9% over those in 1997. Fewer settlements are available for comparison in 1999 but those average 3.58%. In 2000, only Summit has an agreement and that agreement increases its police salaries by 3.8%. These settlements as set forth in PBA Ex. #7 are detailed below:

Union County Municipalities with Agreements 1998-2000
Top Patrolman's Salary

Town	1997	1998	1998	1999	1999	2000	2000
Summit	\$57,805	3.7%	\$59,955	3.75%	\$62,205	3.8%	\$64,580
Scotch Plains	\$56,922						
Mountainside	\$56,743	4.25%	\$59,155				
Linden	\$55,966						
Rahway	\$55,614	4.5%	\$58,117				
Clark	\$54,187	4.25%	\$56,490				
Fanwood	\$53,893	4.5%	\$56,319				
Union	\$53,360	2.9%	\$54,907	2.9%	\$56,500		
Westfield	\$52,553	3.7%	\$54,500				
Roselle Park	\$51,349	3.9%	\$53,351	4.0%	\$55,539		
Plainfield	\$51,162	4.0%	\$53,208				
New Providence	\$50,352	4.0%	\$52,366	4.0%	\$54,461		
Roselle	\$49,478	3.25%	\$51,086	3.25%	\$52,874		
Average	\$53,798	3.90%	\$54,404	3.58%	\$56,315	3.8%	\$64,580

The PBA also cites comparisons with police settlements and awards throughout the State since January 1, 1998. That data shows that settlements and awards with Police units are generally between 3.5% and 4%, although there are instances of results below 3.5% and above 4%.

The PBA has raised concerns that the economic package is diminished by a simple comparison of salary alone because the majority of its members do not receive longevity pay unlike the vast majority of police officers in Union County. The PBA proposes a new position of Senior Police Officer with attendant percentage increases for Senior Police Officers with ten, fifteen, and twenty years of service. The City views this proposal as an attempt to re-institute longevity pay. This benefit was phased out over 25 years ago as part of a tradeoff between longevity pay and retiree health benefits. Employees were

grandfathered at that time and only six employees now receive that benefit. The City points out that 59 Police Officers would be eligible for Senior Officer Pay under the PBA's proposal.

The record does reflect that all municipal police departments within Union County, except Winfield Township, do provide some form of longevity benefits to Police. Most Departments provide longevity benefits as a percentage of annual salary commencing generally around the sixth year of service and ranging from 6% to 12% by the 21st year of service. In Plainfield, longevity is provided as a fixed sum. In 1995, by the 21st year of service, that amount was \$1300. Where longevity benefits are provided as a percentage, in 1995, police officers who were in their 21st year of service received benefits ranging from \$2975 in Fanwood to \$6626 in Springfield Township. Officers who continued to be eligible for the benefit in Linden in 1995 who were in their 21st year of service received 8% of their salary or \$4135. The average longevity benefit received by Police Officers in their 21st year is 7.25% in Union County.

The City's Police Officers are among the few officers who do not receive a longevity benefit. The absence of this benefit, except for the few who were grandfathered in the mid 1970s, does impact on their total compensation package, particularly in comparison to others throughout the County. The City's Police Officers earn compensation that is the fourth highest in the County, and otherwise receive benefits comparable to other Police Departments in Union

County. However, the lack of a longevity benefit, a benefit that may be valued at 7.25% in the 21st year alone County-wide, considerably lowers the total value of the compensation and benefits package for Linden's police officers relative to others in the County.

Adoption of a Senior Police Officer position as proposed by the PBA would be a costly undertaking. As proposed by the PBA, over half of the bargaining unit would currently be eligible for Senior Police Officer pay with ten officers being eligible for 2% annual payments after ten years, 17 officers eligible for 4% annual payments after fifteen years and 24 officers eligible for 6% annual payments after twenty years. The estimated total cost of such a proposal for 2000 would be between \$140,000 and \$145,000 assuming adoption of the City's wage proposal. The cost of the PBA's proposal approaches 3%.

As proposed, the PBA's proposal must be denied. Its cost is overly substantial. In addition to its cost, its structure closely resembles a longevity schedule. It is expressed as a percentage of base salary at various levels of years of service commencing at ten years. Although there is nothing to foreclose consideration of such a proposal in the future, its merits cannot be sustained here due to the proposed structure and cost. The PBA, however, has established a basis for some additional compensation for police officers who have lengthy service with the department.

The present lack of a longevity benefit for the vast majority of Police Officers in the City does impact on their total compensation package and their relative maximum salary when compared throughout the County. The absence of this benefit for a police officer after twenty years of service diminishes their relative standing within the County when a total compensation package is calculated and compared. Some weight must also be given to the difficult nature of policing in Linden compared to many of the other Union County municipalities. For these reasons, there is merit to providing a senior officer differential for police officers who have established lengthy service in the department. Any such benefit should be expressed as a differential rather than as a position and in dollar rather than percentage terms. Qualification for such benefit shall commence after twenty years of service as of the first day of each year. This benefit shall be \$1,500 annually and commence on January 1, 2000 and be payable on each January 1 thereafter. A benefit at this level is in the interest and welfare of the public by enhancing the continuity and stability of employment of Linden's police officers and rewarding their length of service and contributions they can make by working with younger officers. The cost of a senior officer differential in 2000 will be \$36,000 or 0.62% based upon an estimated total salary cost of \$5,801,865. Future costs will fluctuate based upon the number of employees eligible for the senior officer differential. This amount shall be payable in a manner which is pensionable.

The award of this senior officer differential and its cost cannot be viewed in a vacuum. The compensation package awarded herein must be considered in its totality, including the across-the-board increases. I also conclude that the senior officer differential would not be justified without also awarding additional cost savings or future cost offsets in the compensation and benefits package provided to newly hired police officers. The City sought a variety of benefit modifications for new hires. Some of those modifications, including the elimination of one personal day and the Police Officer Day for prospective employees, have been awarded. Others, such as modifications to vacation time and health insurance benefits have not. However, in addition to the deletion of two paid days off for new hires, a modification to the salary guides for prospective employees will serve as a substantial offset to the costs of the senior officer differential. Analysis of the present salary guide points to a significant increase in salary amounts between the 5th grade and 4th grade police officer steps. Based upon the 1997 salary guide, when an Officer progresses from the 5th grade earning \$39,000 to the 4th grade, his salary increases to \$50,972. Increases between other steps on the salary guide are \$5,000 or less. Accordingly, adding an additional step between the current 5th grade and the current 4th grade will even the rate of increase for newly hired Officers and will save the City well over \$15,000 each time a new Police Officer progresses through the salary guide. Accordingly, a salary guide for new Police Officers employed after the date of this Award which includes an additional step between the current 5th grade and 4th grade steps, is awarded.

I now turn to the across-the-board wage increases. Based upon this analysis, all of the evidence and arguments submitted, the totality of all elements contained in this Award and after applying the statutory criteria, I have determined that wage increases shall be 3.62% effective January 1, 1998, 3.75% effective January 1, 1999; and 3.50% effective January 1, 2000. I have determined that a three year duration is appropriate and more consistent with the duration of contract terms throughout Union County. I have calculated costs based upon all police officers at top step in 1997. Based only upon across-the-board salary increases, this award results in an annual net economic change of \$190,442, \$204,421 and \$196,198, an annual average of 3.62% and a total of 10.87%. The 0.62% cost of the senior officer differential will cause the total average to be 11.49%. This average rate of increase is also generally consistent with law enforcement comparability within Union County and throughout the State of New Jersey. These comparisons have been discussed above. They are due substantial weight and there is nothing in the record which would suggest that the salary increase deviate substantially from that set forth herein. In 1998 the salary increase will cost \$190,442, in 1999 the net economic change of the increase is \$204,421 and in 2000, the net economic change is \$196,198. The difference between the Award and the City's proposal is \$32,618 in 1998, \$41,862 in 1999 and \$28,762 in 2000. The difference between the PBA's proposal and the Award is \$46,294 in 1998, \$42,968 in 1999 and \$62,354 in 2000. These figures are exclusive of, pre-existing step increases and roll up

costs, and assume no resignations, retirements, hiring or promotions. These are cost offsets to the Award, most of which are not deductible from the Award because the vast majority of cost savings are prospective.

The salary guides for current employees including the increases awarded herein follows.

RANK	Annual Salary 1998	Annual Salary 1999	Annual Salary 2000
Police Officer, 1 st Grade	\$57,991	\$60,116	\$62,220
Police Officer, 2 nd Grade	\$56,285	\$58,396	\$60,439
Police Officer, 3 rd Grade	\$54,542	\$56,587	\$58,568
Police Officer, 4 th Grade	\$52,817	\$54,787	\$56,704
Police Officer, 5 th Grade	\$40,929	\$42,464	\$43,951
Police Officer, 6 th Grade	\$36,267	\$37,627	\$38,943
Academy Graduation	\$31,086	\$32,251	\$33,380
Police Officer Probationary	\$29,880	\$31,001	\$32,086

The salary guide for employees hired after the date of this award follows.

RANK	Annual Salary
Police Officer, 1 st Grade	\$62,220
Police Officer, 2 nd Grade	\$60,439
Police Officer, 3 rd Grade	\$58,568
Police Officer, 4 th Grade	\$56,704
Police Officer, 5 th Grade	\$50,327
Police Officer, 6 th Grade	\$43,951
Police Officer, 7 th Grade	\$38,943
Academy Graduation	\$33,380
Police Officer Probationary	\$32,086

Application of several factors included in N.J.S.A. 34:13A-16g requires an inquiry into the financial status of the City and the financial impact of the terms of

this Award. These include the interests and welfare of the public [g(1)], the lawful authority of the employer [g(5)] and the financial impact on the governing unit, its residents and taxpayers [g(6)].

The City of Linden is a well-governed municipality and is successfully implementing an economic redevelopment program. Recent years has seen commercial development surrounding the airport, a new TOSCO plant, and a new power plant presently under construction. The City has regenerated its \$3,000,000 surplus from year to year and used that surplus to hold down its tax rate.³ The tax rate, among the lowest in Union County, was unchanged from 1997 to 1998. In addition to maintaining and regenerating a healthy surplus, the City is well within its lawful authority under the Cap law. Using a Cap index rate of 1.5%, the City has declined to appropriate an additional 3.5% which would be allowable under P.L. 176 c. 68 (C.40A:4-45 et seq.). The total general appropriations for 1998 were \$55,179,083 in its 1999 budget. In that budget the City had \$670,524.00 in its Cap bank. The financial data reflects that this award can be funded without impact on the City's authority pursuant to the Cap law and therefore does not compel the City to exceed its lawful authority.

³ The City argues that Foti's Financial Analysis of its financial situation should not be considered because its stated purpose was to "determine if the City of Linden has the ability to pay" for the increases sought by the PBA. The stated purpose of Foti's report is to "determine if the City of Linden has the ability to pay for the compensation increase based on the criteria set forth under State of New Jersey Statute 34:13A-16." Although the City correctly argues that the availability of money does not compel that it be awarded, the material included in Foti's report is relevant to consideration of the eight statutory criteria and the material is used for that purpose.

At greater issue is the financial impact of this award on the City, its residents and taxpayers. I have considered the evidence that there has been a long-term shift from a predominantly industrial tax base to an increasingly residential tax base. Also, there are several large outstanding industrial tax appeals which are important factors when considering the financial impact of this award. The City estimates that its tax base has shifted from 52.33% industrial property in 1986 to 34.84% in 1996. This led to an increase in the residential property tax base. While taxes did increase from 1993 to 1996, the tax rate has stabilized and there was no tax increase from 1996 to 1997 and the municipal portion of the budget did not rise from 1997 to 1998. The City has been able to avoid tax increases by using its surplus to supplement its funds. Nonetheless, the City's tax rate is one of the lowest in Union County and in particular is 2.680 per \$100 compared to Hillside, which has a tax rate of 3.810 per \$100. The City enjoys an "AA" rating from Moody's. The record also reflects that the tax collection rate has increased from 96.16% in 1995 to 97.24% in 1997.

Although the City's economic picture has brightened considerably since the early 1990's, the City has raised concerns about several outstanding tax appeals. For example, the City has a longstanding tax dispute with General Motors with a possible exposure between \$10 million and \$14 million. As Tax Assessor Frangella testified, that dispute has been ongoing for 17 years and continues to work its way through the courts. Other outstanding commercial tax appeals with a maximum total exposure of over \$5 million dollars remain

unsettled. The importance of these tax appeals cannot be minimized. Should the City ultimately lose those appeals, the maximum exposure is significant. In recognition of this exposure, the City has set aside \$9,635,891.38 in the event that tax reductions are granted (City Ex. 26, P. A-21, N.11). The tax appeals, while relevant, are uncertain and the City has prudently taken steps to provide for the funding of successful appeals. Given the uncertainty of any additional liability, these tax appeals support the City's opposition to the increases sought by the PBA but do not justify increases below that set forth in this Award.

The terms of the Award are generally consistent with the private sector wage data submitted into the record. According to the New Jersey Department of Labor report showing changes in the average wages of private sector jobs covered under the state's unemployment insurance system, comparing wages between 1996 and 1997, the following data is reflected. The overall percentage statewide change was 4.8% and 4.5%. In Union County, the data reflects an increase in total private sector wages of 4.76% while total government increases were averaged at 3.0%.

Turning to the cost of living, both parties acknowledge that their proposals exceed increases in the CPI. The CPI-U increased 1.6% in 1998 and 1.9% for the first four months of 1999. For the year that ended in March 1999, the Employment Cost Index increased by 3.3%. This data is relevant and the CPI and ECI data tend to support the City's position. In this instance, the cost of

living data weighs against awarding increases at the level proposed by the PBA but, given all of the factors, does not require an Award at the level proposed by the City.

Finally, the terms of this Award are consistent with promoting the interests and welfare of the public. The public is well served by the police department which is highly productive and active in crime detection and apprehension of criminals. The terms of the Award will maintain the compensation level of the police officers without adverse impact on the governing body or the taxpayers. Although the Award will increase compensation costs, it has also provided for cost offsets and reductions for the future. The Award will also provide for the continuity and stability of employment by providing an additional incentive for employees to remain with the department as a career.

Accordingly, based upon all of the above, I respectfully enter the following Award.

AWARD

There shall be a three-year agreement effective January 1, 1998 through December 31, 2000. All proposals by the City and the PBA not awarded herein are denied and dismissed. All provisions of the existing agreement shall be carried forward except for those modified by the terms of this Award.

Wages

Wages for all current employees shall be increased as follows and are retroactive to their effective dates.

Effective January 1, 1998	3.62% across the board increase
Effective January 1, 1999	3.75% across the board increase
Effective January 1, 2000	3.50% across the board increase

The new salary guide shall read as follows:

RANK	Annual Salary 1998	Annual Salary 1999	Annual Salary 2000
Police Officer, 1 st Grade	\$57,991	\$60,116	\$62,220
Police Officer, 2 nd Grade	\$56,285	\$58,396	\$60,439
Police Officer, 3 rd Grade	\$54,542	\$56,587	\$58,568
Police Officer, 4 th Grade	\$52,817	\$54,787	\$56,704
Police Officer, 5 th Grade	\$40,929	\$42,464	\$43,951
Police Officer, 6 th Grade	\$36,267	\$37,627	\$38,943
Academy Graduation	\$31,086	\$32,251	\$33,380
Police Officer Probationary	\$29,880	\$31,001	\$32,086

The following salary guide shall apply to employees hired after the date of the issuance of this Award due to the addition of one step between the old 5th Grade and 4th Grade steps.

RANK	Annual Salary
Police Officer, 1 st Grade	\$62,220
Police Officer, 2 nd Grade	\$60,439
Police Officer, 3 rd Grade	\$58,568
Police Officer, 4 th Grade	\$56,704
Police Officer, 5 th Grade	\$50,327
Police Officer, 6 th Grade	\$43,951
Police Officer, 7 th Grade	\$38,943
Academy Graduation	\$33,380
Police Officer Probationary	\$32,086

Personal Days

Article V(c) is amended to provided that all Police Officers hired on or after the date of this Award, assigned to the Patrol Division only, will receive one (1) personal day off annually with pay.

Police Officer Day

Article V(d) is amended to eliminate the Police Officer Day for all Officers hired on or after the date of the Award.

Sick Leave Buy Back

Article VI(A)(8)(a) is amended to provide that an employee take no more than five (5) sick days in a given year to qualify for the buy back program.

Insurance Benefits

Article VII(B)(2) is amended to provide that the prescription co-payment shall be increased to \$5.00 for generic drugs and \$10.00 for name brand drugs at a date within the discretion of the City. The City's proposal to allow "opt out" at a rate of \$2,000 is awarded.

Senior Officer Differential

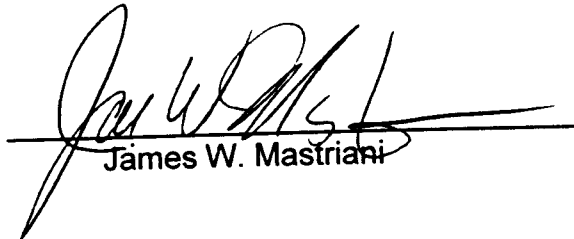
A new section will be added to Article VIII to provide that, effective January 1, 2000, officers who have completed at least their 20th year of service on or after January 1 of that year or any succeeding year shall receive a senior officer differential of \$1500.00 per year in a manner which is pensionable.

Direct Deposit

The following new provision shall be added to the agreement.

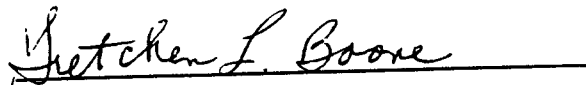
Officers may elect to receive their paycheck via direct deposit.

Dated: April 3, 2000
Sea Girt, New Jersey


James W. Mastriani

State of New Jersey }
County of Monmouth }ss:

On this 3rd day of April, 2000, before me personally came and appeared James W. Mastriani 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.



GRETCHEN L. BOONE
NOTARY PUBLIC OF NEW JERSEY
Commission Expires 8/13/2003