

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Interest Arbitration

between

X Re: Docket No.
IA-98-1

CITY OF TRENTON

X

X

"City"

X

-and-

X

TRENTON POLICEMEN'S BENEVOLENT
ASSOCIATION LOCAL NO. 11

X

X

"Association"

-----X

APPEARANCES

For the City

COURTER, ROBERT, LAUFER & COHEN
Stephen E. Trimboli, Esq., of Counsel

For the Association

LOCCKE & CORREIA, P.A.
Richard D. Loccke, Esq., of Counsel

BEFORE: Martin F. Scheinman, Esq., Interest Arbitrator

BACKGROUND

The parties are signatories to a Collective Bargaining Agreement which expired on June 30, 1997. Sometime prior thereto, they entered into negotiations for a successor agreement. Those negotiations proved unsuccessful as of June 30, 1997, and on that date the Association demanded interest arbitration. Pursuant to the rules and regulations of the State of New Jersey Public Employment Relations Commission ("the Commission"), by letter dated September 4, 1997, I was designated to hear and adjudicate this dispute.

I offered November 3, 1997, November 10, 1997, November 20, 1997 and December 4, 1997, by letters to the parties, as interest arbitration hearing dates. Those dates were unacceptable to the City. Thereafter, my office continued to contact the parties by telephone in order to arrange a hearing date. Unfortunately, those attempts also were unsuccessful in scheduling a mutually agreed upon date for a hearing. On January 20, 1998, I wrote the parties suggesting March 24, 1998 as a hearing date and, subsequently, that date was accepted by both parties.

A hearing in this matter was held before me on March 24, 1998. At that hearing, the Association moved to bar the City from submitting certain issues to interest arbitration, e.g., work schedule, steady tour, accumulated sick and vacation, or any other issue beyond the scope of the issues identified in the Association's petition for interest arbitration. Thereafter, both parties submitted briefs and authorities in support of their

respective positions concerning the Association's motion.

By letter dated May 28, 1998, I granted the Association's motion with a full Opinion to follow. In an Opinion and Award dated June 4, 1998, I found that the City was "barred from raising issues in this interest arbitration which are beyond the scope of the issues identified in the Association's petition for compulsory interest arbitration." (June 4, 1998 Opinion and Award at pg. 16) In so finding, I recognized that the City was being barred from raising economic issues which were important to the City, its residents and taxpayers. For example, the City was being prevented from proposing changes in the work schedules of its Police Officers, which the City insisted were extremely favorable to the Police Officers and burdensome to the City. For this reason, I permitted the City to amend its proposed economic package concerning those issues which were properly in dispute in this proceeding.

The City availed itself of that opportunity, and on June 3, 1998, submitted a revised final offer to the Association. (City Exhibit No. 3) That same day, the City filed with the Commission a Request for Special Permission to Appeal my May 28, 1998 decision on the Association's motion. (City Exhibit No. 2) Not surprisingly, the Association opposed the City's request.

In a Decision dated June 30, 1998, Millicent A. Wasell, the Chair of the Commission, denied the City's request for special permission to appeal. City of Trenton and PBA Local No. 11, P.E.R.C. No. 98-165 at pg. 6 (June 30, 1998). In so deciding, the

Chair of the Commission found that "within the framework of the interest arbitration statute and regulations, the arbitrator carefully considered the City's arguments that the public interest warranted consideration of the [City's] work schedule proposal and did not abuse his discretion in rejecting those arguments. He also properly noted that the City could modify its final economic offer in light of his ruling." City of Trenton and PBA Local No. 11, P.E.R.C. No. 98-165 at pg. 6 (June 30, 1998).

After my decision on the Association's motion and the submission of the City's revised final offer, hearings in this matter were held before me on June 8, 1998, July 9, 1998 and July 20, 1998.¹ At those hearings, the parties were afforded full opportunity to introduce evidence and argument in support of their respective positions. They did so. Each side introduced extensive evidence relevant to the statutory criteria. This included budgetary and financial information. The parties submitted charts, graphs and data dealing with all of the statutory criteria. Upon my receipt of same, the hearings were declared closed. Thereafter, the parties submitted post-hearing briefs in support of their respective positions.

By letter dated October 28, 1998, the City submitted a reply brief which pointed out allegedly erroneous statements in the Association's post-hearing brief. By letter dated November 4,

¹
On July 20, 1998, the last day of hearing, the parties stipulated to extend the statutory time limits for issuing this Opinion and Award. (July 20, 1998 transcript at pg. 54)

1998, the Association objected to the City's reply brief as, among other things, outside of the scope of the briefing schedule agreed to by the parties. By letter dated November 17, 1998, I admitted the City's October 28, 1998, reply brief as part of the record in this matter and, in the interest of fairness, permitted the Association to promptly submit a reply letter brief pointing out any alleged errors in the City's post-hearing brief. By letter dated November 24, 1998, the Association submitted its reply brief.

By letter dated December 1, 1998, the City submitted a sur-reply brief. By letter dated December 3, 1998, the Association submitted a sur-reply brief. Upon my receipt of same, the record was declared closed.

Notwithstanding the objections to these submissions raised by the parties, all of them have been admitted as part of the record in this matter and have been given due consideration in the preparation of this Opinion and Award.

POSITIONS OF THE PARTIES

The Association has proposed a three (3) year Agreement with a term of July 1, 1997 through June 30, 2000.

The Association has proposed across the board wage increases of six percent (6%) effective on July 1, 1997, six percent (6%) effective on July 1, 1998, and six percent (6%) effective on July 1, 1999. It also has proposed a patrol differential of three percent (3%) for Officers in the patrol division with ten (10) or more years of service with the Department. The Association also has proposed a Senior Officer Differential which would provide an additional salary step upon completion of twenty (20) years of service and which would be calculated as one-half (½) the distance to the next rank's base pay rate.

The Association maintains that its salary proposals are the most reasonable. It contends that this conclusion is compelled by a consideration of all of the relevant statutory criteria specified in N.J.S.A. 34:13A-16(g).

With regard to the first statutory criterion, which concerns the interests and welfare of the public, the Association maintains that the City's Police Department is a highly productive and well motivated law enforcement agency which serves well the needs and interests of the public. It contends that as both the capital of New Jersey and an urban center, Trenton presents many challenges in the field of law enforcement. As an example, the Association asserts that the City's "night time population of 88,675 swells greatly by the influx of persons during the day to work at the

numerous commercial and governmental activities and offices within the City jurisdiction." (Association Brief at pg. 6)

The Association maintains that in recent years the number of Officers in the bargaining unit has remained fairly static. However, it claims that during that time the bargaining unit's work load has risen dramatically. As an example, the Association points out that in 1997, the City's Police Department had 123,046 police assignments, 2,374 general alarms, "and numerous other types of police activities of the more mundane nature such as teletypes, wrecker requests and emergency service requirements." (Association Brief at pgs. 6-7) (Association Exhibit No. 4) However, it contends that the activities of Trenton Police Officers are focused much more on serious crimes than the activities police officers often perform in other communities. According to the Association, "[m]any crimes not seen for years at a time in other municipalities are unfortunately seen with some frequency in Trenton. Murder, kidnaping and rapes are the types of calls frequently encountered by Trenton Police personnel." (Association Brief at pg. 7) (Association Exhibit No. 4) It asserts that in 1997, the City's Police Officers dealt with "13 homicides, 59 rapes, 591 robberies, 2,588 assaults, 1,231 burglaries, and 2,494 larcenies." (Association Brief at pg. 10) (Association Exhibit No. 3) Thus, the Association insists that "[t]he routine and mundane types of activity in Trenton do not occupy the officer's time. Serious criminal violation is the focus and responding to those needs of the citizen is the principal duty of the Trenton Police Officer."

(Association Brief at pg. 7) (Association Exhibit No. 4)

The Association further maintains that notwithstanding the need to respond to every type of criminal activity, Trenton Police Officers also are pro-active in the planning and the provision of services to the public. (Association Exhibit No. 8) It contends that the Annual Report of the Criminal Investigation Bureau "provides an almost page by page example of the successes of the Trenton Police Department in no doubt due largely to the professionalism, dedication and training of the personnel." (Association Brief at pg. 8) (Association Exhibit No. 9)

The Association also maintains that the Trenton Police Department's traffic unit provides a high level of diversified service to the public. (Association Exhibit No. 9) It asserts that the following chart illustrates some of the Department's successes in reducing traffic related problems in the City.

CHART NO. 1
Results Set Forth on
"1997 Yearly Traffic Unit Report" (U-5)

<u>Report Category</u>	<u>1997 Compared To 1996</u>
Accidents Reported	-20%
Hit & Run Accidents	-12.5%
Motor Vehicle Fatalities	-87%
Pedacycle Accidents	-5%
Police Vehicle Accidents	-24%

(Association Brief at pg. 9)

The Association further asserts that the next chart illustrates some of the increases in duties performed by the Department's traffic personnel.

CHART NO. 2

Activity Statistics Based on Trenton
Police "1997 Yearly Traffic Unit Report" (U-5)

<u>Report Category</u>	<u>1997 Compared To 1996</u>
Moving Violations	+16%
Parking School	+18.2%
Arrests Total	+13%

(Association Brief at pg. 9)

The Association contends that the testimony of Trenton Police Chief Ernest A. Williams also demonstrates that the Trenton Police Department is a hard working, no frills organization which always gets the job done. (June 8, 1998 Transcript at pgs. 15-18)

For all of these reasons, the Association insists that the public is well served by the City's Police Department. Therefore, it argues that the evidence concerning this statutory criterion demonstrates that the Association's wage proposals are reasonable and ought to be awarded.

The Association maintains that the evidence concerning the criterion regarding a comparison of the wages of other employees performing the same or similar services in public employment in comparable jurisdictions supports awarding its wage proposals. It contends that the City's Police Officers are among the poorest paid among their peers. According to the Association, the \$48,324 maximum base wage of City Police Officers is among the lowest maximum base wage paid to any police officers in the State of New Jersey. It relies upon the following chart in support of that

assertion.

CHART NO. 3
Base Wage Rates for Top Step
Patrol Officers 1997 Rates

	<u>1997 Patrol Officer Max</u>
Hackensack City	\$65,145
Clifton City	60,767
Dover	56,759
Englewood City	65,754
Woodbridge	57,450
Fort Lee	65,273
Lawrence	60,325
Ewing	62,646
Hamilton	60,770
New Brunswick City	56,796
Newark City	52,758
Average	60,404
Trenton Police officer	48,324
Trenton Police Officer Compared to Average	(\$12,080) (25%)

(Association Brief at pg. 15)

The Association argues that it would require a twenty five percent (25%) wage increase in 1997, just to bring the maximum wage rate paid to City Police Officers up to the average maximum wage rate paid to their counterparts in New Jersey.

The Association also points out that the wage rates paid to comparable police officers are not frozen. It relies upon the following data regarding wage increases granted to police officers in 1998 and 1999, in what it alleges are comparable jurisdictions.

CHART NO. 4
Base Wage Rate Increases in Percentage of
Change Based on Contracts Placed Into Evidence By PBA

	<u>1998</u>	<u>1999</u>
Camden	6 (3/3)	5 (3/2)
Englewood City	4.5	4.25
Passaic City	4	
Hackensack	4	4
Paterson City Housing	4.5	
Dover	4.45	4.7
Woodbridge	4 (2/2)	
Bordentown	4.5	4.5
Fort Lee	4	
Mercer Prosector	4.5 (2/2.5)	4.75 (2/2.75)
Mercer Sheriff	4.75 (2/2.75)	
Lawrence	4	4.5
Ewing	4	
Hamilton	4	
Somerset Sheriff	4.5	
Average	4.388%	4.556%

(Association Brief at pg. 16)

Based upon this data, the Association argues that it would require close to a nine percent (9%) wage increase in 1998 and in 1999 to maintain the relative standing of City Police Officers when compared to their counterparts in comparable jurisdictions.

The Association further maintains that the average wage increases granted in 1998 and 1999 to other law enforcement personnel in Mercer County, where Trenton is located, also supports awarding the Association's wage increase proposals. It submits the following data in support of that assertion.

CHART NO.5
Base Rate Increases in Percentage of Change,
in Mercer County Law Enforcement Agencies

	<u>1998</u>	<u>1999</u>
Mercer Co. Prosecutor's PBA	4.5 (2/2.5)	4.75 (2/2.75)
Mercer Co. Prosecutor's SOA	4.5 (2/2.5)	4.75 (2/2.75)
Mercer County Sheriff	4.75 (2/2.75)	
Lawrence Township	4.	4.5
Ewing Township	4.	
Hamilton Township	4.	
Averages	4.291%	4.666%

(Association Brief at pg. 17)

The Association also contends that City Police Officers are not even the highest paid law enforcement personnel able to enforce the law in Trenton. (Association Exhibit Nos. 22, 35, 36 and 37)

On the basis of all of the data discussed above, the Association maintains that its wage proposals, if awarded, would not even result in City Police Officers being paid the average wage paid to their counterparts in comparable jurisdictions. Since City Police Officers are already paid less than their counterparts, the Association argues that if City Police Officers are "not provided with a higher percentage increase than the average [increase granted to other officers,] the result will certainly be a further falling back and an increased short fall from the average wage."

(Association Brief at pg. 18)

The Association further maintains that comparisons to non-

uniformed employees, particularly in the public sector, should be given very little weight in this proceeding. It contends that because of the unique job duties, stresses and demands placed upon police officers both statutorily and administratively, the best comparisons are between City Police Officers and police personnel in comparable jurisdictions.

The Association also maintains that comparisons to private sector employees should not be considered controlling in this proceeding. It asserts that there is no private sector job which is comparable to the job of being a police officer. The Association further asserts that police officers, unlike private sector employees, cannot take their skills and market them in other states. It relies upon the following list of laws and regulations to distinguish police personnel from private sector employees.

1. The Federal Fair Labor Standards Act, 29 USCA sect. 201, et seq applies different standards to private sector employees and police officers. Whereas private sector employees have the protection of the 40 hour work week and the 7 day work cycle, police officers are treated to much less protection. Police officers have only relatively recently been covered by the Act by virtue of the 7k amendment.

2. The New Jersey State Wage & Hour Law, NJSA 34:11-56a, et seq does not apply to the employment relationship between a police officer and the officer's public employer. Private sector employees are covered under New Jersey Wage and Hour Laws. Such protections as are therein available are not available to the police, Perry v. Borough of Swedesboro, 214 NJ Super. 488 (1986).

3. The very creation of a police department and its regulation is controlled by specific statutory provisions allowing for a strict chain of command and control. Included are statutory provisions for rules and regulations, specifying of powers and duties, specifics for assignments of subordinate personnel, and delegation

of authority. **NJSA 40A: 14-118.** There is no such statute covering private employment in New Jersey.

4. **NJS 40A: 14-122** provides for specifics qualifications which are statutorily mandated for police officer employment. Such requirements as US Citizenships, physical health, moral character, a record free of conviction, and numerous other requirements are set forth therein. No such requirement exists by statute for private employment in this state.

5. If an employee in a police department is absent from duty without just cause or leave of absence for a continuous period of five days said person, by statute, may be deemed to cease to be a member of such police department or force, **NJS 40A: 14-122.** No such provision exists as to private employment.

6. Statutorily controlled promotional examinations exist for certain classes of police officers in New Jersey under title 11 and other specific statutory provisions exist under **40A: 14-122.2.** There are no such private sector limitations on promotion.

7. A police officer in New Jersey must be resident of the State of New Jersey, **NJS 40A: 14-122.8.** No such restriction exists for private sector employees.

8. Hiring criteria and order of preference is set by statute **40A: 14-123. 1a.** No such provision exists for private employees in New Jersey.

9. There are age minimums and age maximums for initial hire as a police officer in New Jersey. No such maximum age requirements exist for private employment in this state. Even if an employee in a police department who has left service seeks to be rehired there are statutory restrictions on such rehire with respect to age, **40A: 14-127.1.** No such provision exists for private employees in this state.

10. As a condition for employment in a police department in the State of New Jersey there must be acceptance into the applicable Police Retirement System, **NJS 40A: 14-127.3.** No such requirement exist in private sector. The actual statutorily created minimum salary for policemen in New Jersey is set at below minimum wage **NJS 40A: 14-131.** Private employees are protected under the Fair Labor Standards Act. Days of employment and days off, with particular reference to emergency requirements are unique to police work. A police officer's work shall not

exceed 6 days in any one week, "except in cases of emergency". NJS 40A: 14-133. The Fair Labor Standard Act gives superior protection to private sector employees.

11. NJS 40A: 14-134 permits extra duty work to be paid not in excess of time and one-half. This prohibits the higher pyramided wage rates which may be negotiated in private sector. There is no such prohibition in the law applying to private sector employees.

12. The maximum age of employment of a police officer is 65 years. No such 65 year maximum applies to private sector employees.

13. Police Officer pensions are not covered by the federal ERISA Pension Protection Act. Private sector employees pensions are covered under ERISA.

14. Police officers are subject to unique statutorily created hearing procedures and complaint procedures regarding departmental charges. Appeals are only available to the court after exhaustion of these unique internal proceedings, NJS 40A: 14-147 to 40A:14-151. No such restrictions to due process protections for private employees exist. Private employees, through collective bargaining agreements, may also negotiate and enforce broad disciplinary review procedures. The scope is much different with police personnel.

(Association Brief at pgs. 23-26)

The Association also relies upon the analysis of Interest Arbitrator William Weinberg in support of its assertion that police officers cannot be compared productively to private sector employees.

Second of the comparison factors is comparable private employment. This is troublesome when applied to police. The police function is almost entirely allocated to the public sector whether to the municipality, county, state or to the national armed forces. Some private sector entities may have guards, but they rarely construct a police function. There is a vast difference between guards, private or public, and police. This difference is apparent in standards for recruiting, physical qualifications, training, and in their responsibilities. The difficulties in attempting to construct direct

comparisons with the private sector may be seen in the testimony of the Employer's expert witness who used job evaluation techniques to identify engineers and computer programmers as occupations most closely resembling the police. They may be close in some general characteristics and in "Hay Associates points", but in broad daylight they do seem quite different to most observers.

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

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

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

(Association Brief at pgs. 27-29)

The Association also rejects the City's comparisons to police officers in far away jurisdictions such as Pittsburgh,

Pennsylvania, Washington, D.C., and Boston, Massachusetts. It points out that police officers in the out-of-state jurisdictions relied upon by the City, do not have to pay New Jersey income taxes, New Jersey property taxes, New Jersey sales taxes, or New Jersey automobile insurance rates. Thus, the Association insists that these out-of-state jurisdictions have little relevance to Mercer County, New Jersey.

For all of these reasons, the Association argues that when all of the relevant comparisons are made, its wage proposals are clearly the more reasonable and ought to be awarded.

As to the criterion regarding overall compensation, the Association maintains that the City's Police Officers receive below average benefits in many areas such as longevity, education and terminal leave. Thus, it argues that there are no off-setting benefits provided to Trenton Police Officers which justify their low wage rates.

The Association also maintains that the benefits provided to Trenton Police Officers are below average when compared to the benefits provided to other Trenton uniformed personnel. It relies upon the following data in support of that assertion.

CHART NO. 7
Trenton PBA Benefits in Comparison to
Other Trenton Uniform Service Employee Contracts

Longevity	PBA	SOA	FMBA	TFSO
15 Yrs.	7.5%	7.5%	8%	8%
20 Yrs.	9%	9%	10%	10%
24 Yrs.	10.5%	11.5%	11%	12%

29 Yrs.	11%	12%
Vacation	26 days max. (All have various add. days per rank)	
Holiday Pay	13 X 8	FMBA & TFOA have add. hours 12 & 14 per day

(Association Brief at pg. 20)

Based upon this data, the Association argues that Trenton Police Officers have the worst longevity and holiday benefits when compared to other uniformed personnel within the City.

The Association rejects any suggestion by the City that Trenton Police Officers receive too many hours off. It maintains that the current work schedule for City Police Officers works well and serves the public. As an example, the Association asserts that during 1997, the number of "teaching hours" for City Police Officers increased from one hundred and eighty five (185) to three hundred and ninety nine (399). (Association Exhibit No. 5) It further asserts that "staff hours" increased by over sixty eight percent (68%). (Association Exhibit No. 5) Thus, the Association insists that the work schedule of City Police Officers "provides sufficient flexibility to meet the needs of the citizens and to meet the increasing regiment of training which is part of the Trenton Police policy." (Association Brief at pg. 10)

For all of these reasons, the Association insists that this criterion also supports the awarding of its wage proposals.

As to the criterion regarding stipulations between the parties, the Association maintains that the only stipulations entered into by the parties were procedural in nature and, as such,

have little impact on the merits of this dispute or its ultimate outcome.

As to the criterion regarding the lawful authority of the City, the Association maintains that this requires an evaluation of the City's authority to pay for the Association's proposal pursuant to the requirements of New Jersey's Cap Law. It maintains that the "index rate" for New Jersey's Cap Law in 1998 was three percent (3%) and that the City had the right to pass a "Cap Ordinance" which would have increased this budget flexibility to five percent (5%). The Association asserts that the three percent (3%) index rate provided the City with a "cap" of \$2,847,434. (Association Exhibit No. 45 at Sheet 3b) It further asserts that if the City's cap rate were increased from three percent (3%) to five percent (5%), as permitted by law, then the amount of flexibility in the City's budget under the Cap Law, would be increased by an additional \$1,898,289. It insists that this amount of budgetary flexibility is much more than the amount of money at issue in this dispute.

The Association points out that the difference between the six percent (6%) wage increase it has proposed and the three percent (3%) wage increase proposed by the Association, is three percent (3%). It maintains that the record demonstrates that a one (1) percentage point increase in wages will cost the City an additional one hundred and thirty three thousand dollars (\$133,000) per year in base wages. (July 9, 1998 Transcript at pg. 14) According to the Association, "[a] simple calculation would put the amount at

issue between the parties in this case in perspective with respect to Cap Law flexibility. If one simply divides the value of a percentage point established by employer witness Linn (\$133,000) by the amount of cap flexibility which this public employer elected not to utilize (\$1,898,289) there is a resultant value in police base wage percentage points of 14.3." (Association Brief at pg. 32) The Association argues that it only needs three (3) of these 14.3 percentage points of available cap flexibility.

Accordingly, the Association argues that the Cap Law does not prohibit my awarding the Association's wage proposals.

As to the criterion regarding the financial impact on the governing unit, its residents and taxpayers, the Association maintains that the impact of its wage proposals, if awarded, would be barely perceptible. It maintains that the three (3) percentage point difference in the parties wage proposals amounts to three hundred and ninety nine thousand dollars (\$399,000) in annual base wages (3 x \$133,000). The Association insists that the record demonstrates that this is not a problem for the City from a funding standing point.

With regard to the impact of the Association's wage proposals on the City's taxpayers, the Association asserts that when the value of a wage point (\$133,000) is compared with the City's total tax levy for 1997 (\$65,796,950), then it becomes apparent that the impact of a wage point on the City's tax levy is 006%. (Association Exhibit No. 48 at pg. 22, line 5) The Association points out that pursuant to this analysis, the impact of a base wage point on a

hypothetical taxpayer paying three thousand dollars (\$3000) per year in property taxes would be six dollars and six cents (\$6.06) per year ($\$3000 \times .006 = \6.06). Thus, the Association insists that even if every single dollar needed to fund a police wage increase came from an increase in taxes, the impact on the City's taxpayers of awarding the Association's wage proposals would be very minor.

The Association also points out that the City "has been experiencing increased percentages of current collections in recent years and that rising trend has established in excess of 90% of current collections." (Association Brief at pg. 34) (Association Exhibit No. 48 at Sheet 22, line 13) The Association argues that this increasingly high level of tax collection "is an indicator of a less than burdensome tax levy and an ability of the citizens to meet the [their] tax obligations on a current basis." (Association Brief at pg. 34)

The Association also maintains that Trenton has the lowest per capita tax levy when compared to other communities in Mercer County. It relies on the following data in support of that assertion.

CHART NO. 8
Mercer County Tax Levy Per Capita

1.	West Windsor	\$2,541.58
2.	Princeton - Township	2,513.59
3.	Hopewell - Township	2,231.92
4.	Lawrence	1,894.14
5.	Pennington	1,771.42
6.	Hopewell - Borough	1,535.13
7.	Highstown	1,499.04
8.	East Windsor	1,451.37

9.	Princeton - Borough	1,449.57
10.	Washington	1,312.07
11.	Hamilton	1,222.63
12.	Ewing	1,206.90
13.	Trenton	787.56

(Association Brief at pg. 35)

The Association further asserts that Trenton's tax levy is based upon property values which are above the average in Mercer County. It relies on the following data in support of that assertion.

CHART NO. 9
Mercer County Total Property Value

1.	Hamilton	\$4,182,719
2.	Lawrence	2,373,165
3.	West Windsor	2,238,934
4.	Princeton - Township	2,059,041
5.	Trenton	1,852,425
6.	Ewing	1,763,063
7.	Hopewell - Township	1,484,160
8.	East Windsor	1,084,783
9.	Princeton - Borough	954,137
10.	Washington	571,188
11.	Pennington	225,665
12.	Highstown	215,007
13.	Hopewell - Borough	154,386

(Association Brief at pg. 36)

The Association also contends there is significant new construction taking place in Trenton. It maintains that there is more than five million dollars (\$5,000,000) in new construction going into the tax base in Trenton in this budget year, which will generate more than ninety thousand dollars (\$90,000) in new tax revenues. (Association Exhibit No. 45 at Sheet B)

According to the Association, the record also shows that the City's general fiscal condition is strong. It maintains that the

City's "excess budget revenue for the past 3 years has averaged over 2.7 million dollars annually." (Association Brief at pg. 37) (Association Exhibit No. 48) The Association asserts that the City receives substantial payments in lieu of taxes. (Report of Vincent Foti at paragraph 15) Thus, it contends that for the past two (2) years, less than one-third (1/3) of the City's budget has had to be supported by its tax levy. (Foti Report at paragraph 13) The Association further asserts that Trenton has received a AAA bond rating from Moody's Investors Service. (Foti Report at paragraph 13) For these reasons, the Association argues that "[w]hile this may not be a rich City, it is certainly not a poor one. It has a strong and growing tax base with a low per capita levy. High collection rates follow." (Association Brief at pgs. 37-38)

The Association maintains that increases in a municipality's anticipated surplus is another indicator of fiscal stability. It contends that the anticipated surplus for the current fiscal year is \$3,280,000. (Association Exhibit No. 45 at Sheet 4) The Association asserts that this is two and one-half (2-1/2) times the preceding year's anticipated surplus of \$1,194,000.

Finally, the Association points out that substantial amounts of grant money are available to the City to pay Police wages, and that the work of the Police Department generates substantial sums for the City's coffers from fines levied by the municipal court.

In summary, the Association argues that when all of the relevant data are considered, it is clear that the City can afford to pay for the Association's wage proposals without having a

negative impact on the City, its residents or its taxpayers. Thus, it insists that this criterion also supports awarding the Association's wage proposals.

As to the criterion concerning the cost of living, the Association maintains that it is not a key factor in this dispute. While the Association acknowledges that the cost of living is currently increasing at a relatively low rate, it also points out that in the early and mid 1980s, the rates of increase in the Consumer Price Index were in the double digit range. However, it argues that police officers never received double digit wage increases. Instead, during that period of time, employers protested and downplayed the importance of the cost of living criterion. In the Association's view, the City cannot now claim that the cost of living is of major importance.

In addition, the Association again maintains that the wages paid to City police Officers are low when compared to the wages paid to their counterparts in comparable jurisdictions. Since City Police Officers are already receiving below average wages, it argues that they should receive wage increases greater than the average cost of living.

For these reasons, the Association argues that its wage proposal is consistent with the statutory requirement to consider the cost of living.

As to the criterion regarding the continuity and stability of employment, the Association maintains that it is meant to focus on the private sector concepts of "area standards" and "prevailing

rate". It contends that since Trenton Police Officers have an above average work load and below average wages, both of these private sector concepts support awarding the Association's wage proposal.

The Association further contends that the City's proposals to alter the compensation plan for new employees by increasing their hours and decreasing their vacation benefits, cannot survive an analysis based on this criterion. The Association insists that creating two (2) classes of Police Officers with separate and distinct benefit programs will have an adverse impact on the "continuity and stability" of employment within the City's Police Department.

For all of these reasons, the Association argues that an analysis of all of the relevant statutory criteria establishes the reasonableness of its wage proposals and that they ought to be awarded.

The Association has proposed that its delegate be assigned to a day shift during the delegate's term of office and be provided with sufficient time to attend Association meetings without loss of regular compensation. It contends that the record shows that the Association's delegate is not provided with sufficient time to fulfill the delegate's representative role. The Association also maintains that its delegate proposal, if awarded, would not disrupt the City's operation. Thus, it argues that the Association's delegate proposal is reasonable and ought to be awarded.

With regard to accumulated sick leave at retirement, the

Association has proposed that the current limitation of eighteen thousand dollars (\$18,000) be increased to a maximum of twenty five thousand dollars (\$25,000). It contends that the Association's accumulated sick leave upon retirement proposal is supported by the record evidence concerning the statutory criteria. Therefore, the Association argues that its accumulated sick leave upon retirement proposal is reasonable ought to be awarded.

The Association has proposed that City Police Officers have the sole right to elect to receive compensatory time or paid compensation for overtime worked. Currently, Officers receive compensatory time which may be utilized upon five (5) days notice. The Association has proposed that this five (5) day notice requirement be eliminated and that once accumulated, compensatory time may be utilized at the employee's sole request, subject to the City's approval. The Association also has proposed that the current cap on overtime be eliminated.

The Association has proposed that one additional holiday be provided to City Police Officers each year and that all holidays provided be listed in the Agreement. It argues that these holiday proposals are reasonable and ought to be awarded.

The Association has proposed that three (3) additional vacation days be added to each step of the vacation guide in Article XIII of the Agreement. It maintains that the Association's vacation proposal is supported by the record evidence concerning the statutory criteria. Therefore, the Association argues that its vacation proposal is reasonable and ought to be awarded.

The Association has proposed that except in cases of unforeseeable emergency, it receive notice from the City of any proposed rule or regulation revision as well as any modification of the code or manual. It also has proposed that notice be provided not less than forty five (45) days prior to the implementation of the change and/or the employees' obligation to comply with said change. The Association asserts that its notice proposal is supported by evidence regarding comparability in the private sector. It further asserts that absent such a notice requirement, the City's statutory obligation to negotiate over any changes is meaningless and unenforceable. Thus, the Association insists that its notice proposal is reasonable and ought to be awarded.

In all, the Association submits that its final offer comports more closely than the City's with all of the relevant statutory criteria set forth in N.J.S.A. 34:13A-16 (g). It asks that its final offer be awarded.

The City, on the other hand, maintains that its final offer is the more reasonable one. It has proposed a two (2) year Agreement for the period July 1, 1997 through June 30, 1999.

The City has proposed that current employees be granted a three percent (3%) wage increase effective July 1, 1997, and a three percent (3%) wage increase effective July 1, 1998. It also has proposed that effective July 1, 1998, newly hired Police Officers be paid pursuant to the following schedule.

Salary Schedule--New Hires
(effective July 1, 1998)

Year 1.....	\$23,000
Year 2.....	\$27,000
Year 3.....	\$30,000
Year 4.....	\$33,000
Year 5.....	\$39,000
Year 6.....	\$44,000
Year 7.....	\$51,267

(City Brief at pg. 6)

The City maintains that its salary proposals are the most reasonable. It contends that this conclusion is compelled by a consideration of all of the relevant statutory criteria specified in N.J.S.A. 34:13A-16(g).

With regard to the first statutory criterion, which concerns the interests and welfare of the public, the City maintains that its wage proposals best serve the public interest because they best balance Police wage increases with the City's budget and plans. It acknowledges that the City's Police Officers perform a service for the community and deserve a salary increase. However, the City argues that "[t]he issue is to balance the appropriate level of increase against the City's fiscal needs and the level of compensation police officers currently receive." (City Brief at pg. 46)

The City maintains that "[t]he first consideration must be the City's need to control its expenditures in light of its flat

revenue, its declining tax base, the high property tax already borne by two-thirds of the City's population that pays property taxes, the operating deficit the City experienced in Fiscal Year 1997, and the anticipated operating deficit for Fiscal Year 1998." (City Brief at pg. 47) It contends that in response to its poor financial condition, the City has already implemented a hiring and promotion freeze and has cut back on necessary capital improvements. (City Exhibit No. 10 at Item 10, paragraphs 35-36)

The City further maintains that whatever wage increase is awarded will likely set the "pattern" for the remaining uniformed bargaining units. Thus, it argues that whatever wage increase is awarded will have a cost impact beyond the police bargaining unit.

The City also contends that I must consider, as described below, the favorable level of compensation Trenton Police Officers already enjoy, particularly in the areas of work hours and vacations.

The City rejects any suggestion by the Association that the new hire concessions the City is seeking will have an adverse impact on the morale of Police Officers not yet employed by the City. It points out that these new hire concessions, if awarded, will not result in a loss of benefits received or expected by currently employed Police Officers. The City further asserts that the level of benefits for new hires the City is seeking is consistent with the level of benefits provided to newly hired police officers by many New Jersey communities.

Finally, the City contends that the public interest requires

maintaining adequate police manpower at a reasonable cost. It maintains that Trenton Police Officers work fewer hours per year than most urban police officers in New Jersey. The City asserts that this requires the employment of more Officers to maintain a given level of manpower. It argues that the City's new hire concessions, if awarded, will permit the City to hire additional Officers at a more reasonable cost.

For all of these reasons, the City insists that the evidence concerning this statutory criterion demonstrates that the City's wage proposals are reasonable and ought to be awarded.

The City maintains that the evidence concerning the criterion regarding a comparison of the wages of other employees performing the same or similar services in public employment in comparable jurisdictions supports awarding its wage proposals. It contends that the most recent Commission indices for 1998 reveal the following regarding wage increase received by comparable police officers:

1998 Settlements

17 settlements total		
15 average below 4%		
0 average at 4%	1998 Ave for	
2 average above 4%	Settlements:	<u>3.31%</u>

1998 Awards

20 awards total		
8 average below 4%		
10 average at 4%	1998 Ave for	
2 average above 4%	Awards:	<u>3.83%</u>

1998 Contract Resolutions

37 total awards and settlements	
23 average below 4%	Grand Total

increases given to police officers in New Jersey in 1997 and 1998 were over four percent (4%) per year. In addition, the City claims that within the last year, seven awards and settlements combined significant givebacks with wage increases below four percent (4%) per year. (Appendix A to City Brief)

The City further maintains that its three percent (3%) wage proposal is consistent with the general trend in public sector settlements nationwide. It asserts that from March 1996 through March 1997, and from March 1997 through March 1998, public sector total wage and salary costs increased by two and eight tenths percent (2.8%). (City Exhibit No. 5 at pg. 44) The City further asserts that since December 1990, City Police Officers have enjoyed an increased in salary of over forty percent (40%), compared to a slightly over twenty percent (20%) increase in the Public Administrative Workers Employer Cost Index for that period. (City Exhibit No. 5 at pg. 13A) Thus, it argues that this factor also supports awarding the City's wage proposals.

The City also maintains that its three percent (3%) wage proposal is consistent with the private sector comparability criterion. It asserts that from 1990 to 1998, the maximum salary for City Police Officers has increased by more than forty percent (40%), compared to a twenty percent (20%) increase in the average hourly earnings for manufacturing employees in New Jersey during the same period. (City Exhibit No. 5 at pg. 14A) The City further asserts that in terms of actual earnings, the 1996 maximum salary for City Police Officers (\$47,145) exceeded the Statewide average

for private sector salaries (\$34,144) by thirty three percent (33%), and exceeded the average for every major industry except for finance and insurance. It also contends that the average private sector unionized wage increase in 1998 averaged between two and eight tenths percent (2.8%) and two and nine tenths percent (2.9%). Thus, the City argues that this factor also supports awarding the its wage proposals.

For these reasons, the City insists that its wage proposals are consistent with the record evidence concerning comparability. It further argues that "[w]hen the City's fiscal condition is considered along with the favorable work schedule Trenton's police officers enjoy, an award consistent with the City's final offer is clearly appropriate." (City Brief at pg. 43)

As to the criterion regarding overall compensation, the City maintains that the "4 x 4 work schedule" currently in effect is extremely favorable to Trenton Police Officers and supports awarding the City's wage proposals. It contends that as a result of the "[4 x 4] work schedule implemented during the last contract, [City] police officers have enjoyed a 15% reduction in their annual work hours, a 25% increase in their vacation time, and a 37% increase in their hourly compensation." (City Brief at pg. 35) According to the City, there are five (5) relevant urban communities in New Jersey which are comparable to Trenton, i.e., Newark, Jersey City, Paterson, Elizabeth and Camden. It insists that as a result of the current work schedule, Trenton's Police Officers work fewer hours per year than their counterparts in four

(4) of these five (5) other New Jersey urban communities. (City Exhibit No. 5 at pgs. 23 and 27)

The City maintains that prior to the implementation of the 4 x 4 work schedule, its Police Officers were scheduled to work 2,086 hours per year, received an average of 182 vacation hours per year, actually worked an average of 1,903 hours per year, and received an average total hourly compensation of \$23.54. It asserts that City Police Officers ranked last among their counterparts in New Jersey's six comparable urban communities in terms of compensation, eleven percent (11%) below the "urban six" average, and first in actual hours worked. (City Exhibit No. 5 at pg. 27) According to the City, "[a]fter the 4 x 4 schedule was adopted, things changed dramatically. Scheduled hours dropped to 1,881, lowest among the Urban Six. Vacation hours skyrocketed to 228, the second highest among the Urban Six (trailing Elizabeth only by 2). Actual hours worked plummeted from the highest among the Urban Six to the second lowest at 1,653. And the hourly wage climbed to \$32.31--third among the Urban Six and 101% of the average." (City Brief at pgs. 36-37) (City Exhibit No. 5 at pg. 27) It asserts that the hourly compensation for City Police Officers now not only exceeds the compensation of police officers in Camden, Trenton's South Jersey neighbor, but also exceeds the compensation of police officers in Paterson and Elizabeth, Northern New Jersey communities where the City alleges the cost of living is higher. The City further asserts that the hourly compensation of Trenton Police Officers also exceeds the compensation of their counterparts in Baltimore.

Boston, New York, Philadelphia, Pittsburgh and Washington, D.C.
(City Exhibit No. 5 at pg. 38)

For these reasons, the City insists that "increases in compensation exceeding the current rate of New Jersey settlements (3.59%) simply are not called for, regardless whether the additional compensation takes the form of a salary increase or a 'patrol' or senior officer differential. Indeed, an increase below the average, at the low end of New Jersey settlements, would be justified." (City Brief at pgs. 37-38) Thus, it argues that this statutory criterion also supports awarding the City's wage proposals.

As to the criterion regarding the lawful authority of the employer, the City maintains that it mandates rejection of the Association's proposal for a senior officer differential as well as the Association's proposal for compensatory time in lieu of overtime pay. It contends that since no 1997-1998 and 1998-1999 salary yet exists for Trenton's Police Sergeants, the Commission's decision in City of Patterson, PERC No. 92-110, 18 NJPER 267, 268 (1992), prevents the Association from submitting its senior officer differential proposal to interest arbitration. (City Exhibit No. 9) The City also points out that the Fair Labor Standards Act, 29 U.S.C. Section 207(o), contains strict limits on the amount of compensatory time employees may accrue. Since the Association's proposal regarding compensatory time in lieu of overtime pay does not contain any limits on compensatory time, the City insists that it is an illegal proposal. Thus, it argues that both of these

Association proposals must be rejected.

As to the criterion regarding the financial impact on the governing unit, its residents and taxpayers, the City maintains that its wage proposals are more consistent with the financial limitations facing Trenton. It insists that "Trenton faces serious short and long term fiscal challenges stemming from a combination of declining tax rates, an already heavily burdened taxpayer base, and escalating expenditures." (City Brief at pg. 22)

The City contends that Trenton is a poor urban center located in a county primarily comprised of middle class and upper-middle class suburbs. The City asserts that Trenton ranks last among Mercer County communities in per capita income, median home value, and the age of its housing stock. It submits the following data in support of those assertions:

DEMOGRAPHIC COMPARISONS
MERCER COUNTY

	<u>Per Capita Income</u>	<u>Median Home Value</u>	<u>50 Yr. Old</u>
Princeton Twp.	39,767	345,700	27%
West Windsor	30,761	282,100	9%
Pennington	29,423	249,500	51%
Hopewell Twp.	29,397	228,000	26%
Lawrence Twp.	23,605	176,000	20%
East Hanover	22,336	254,700	15%
Washington Twp.	22,190	154,200	14%
Hopewell Bor.	21,659	193,900	68%
Princeton Bor.	21,551	286,400	68%
Hightstown	19,448	145,800	43%
Ewing	18,102	135,600	27%
Hamilton	17,635	135,100	29%
<u>Trenton</u>	<u>11,018</u>	<u>71,300</u>	<u>72%</u>
AVERAGE	23,607	204,485	36%

SOURCE: New Jersey Municipal Data Book, 1998 Edition
 "50 Yr. Old" -- Percentage of homes over 50 years old in
 municipality
 Based on 1990 Census
 In descending order of per capita income

(City Exhibit No. 10 at Item 20)

The City further asserts that Trenton ranks last in Mercer County in terms of property value per capita. It submits the following data in support of that assertion:

VALUATIONS PER CAPITA
MERCER COUNTY
1997

	NVT	SEV
East Hanover	127,634	166,834
Princeton Twp.	157,903	156,359
West Windsor	132,155	141,337
Hopewell Twp.	130,618	128,530
Washington Twp.	97,447	98,802
Lawrence Twp.	88,685	92,412
Pennington	84,985	90,145
Princeton Borough	81,766	80,255
Hopewell Borough	78,770	79,759
Mercer County	49,580	59,277
Ewing	50,774	52,313
Hamilton	15,227	48,475
Hightstown	42,148	43,406
<u>Trenton</u>	21,551	21,338

Rankings in descending order of State Equalized Value
 NVT: Net Assessed Valuation (total net taxable property as computed
 by the municipality)
 SEV: State Equalized Value (net taxable property on an "equalized"
 basis)

(City Exhibit No. 10 at Item 19)

The City also contends that eighteen percent (18%) of Trenton's population falls below the Federal poverty level, that

seventeen percent (17%) of Trenton's households fall below the Federal poverty level, that Trenton contains sixty two percent (62%) of Mercer County's public assistance households, sixty five percent (65%) of the County's overcrowded homes, and ninety five percent (95%) of the County's AFDC caseload. (City Exhibit No. 10 at Item 10, paragraphs 7-11)

With regard to taxes, the City maintains that Trenton's equalized tax rate is the highest in Mercer County and that Trenton's tax collection rate is the lowest in Mercer County. It submits the following data in support of those assertions:

PROPERTY TAX DATA
MERCER COUNTY

	<u>Tax Rate</u> <u>(Equalized)</u>	<u>Tax Collection</u> <u>Rate</u>
<u>Trenton</u>	<u>3.50</u>	<u>78.5%</u>
Hightstown	3.49	92.6%
Ewing	2.75	94.7%
West Windsor	2.70	96.7%
Hamilton	2.69	95.9%
Hopewell Bor.	2.50	95.6%
Princeton Bor.	2.46	97.2%
Washington Twp.	2.44	95.0%
Hopewell Twp.	2.40	96.4%
Lawrence Twp.	2.35	94.7%
Pennington	2.35	97.4%
Princeton Twp.	1.97	97.5%
East Hanover	1.57	98.6%
AVERAGE	2.552	94.7%

SOURCE: New Jersey Municipal Data Book, 1998 Edition
Based on 1997 figures for municipal tax rate and equalization factor and 1993 figures for tax collection rate.
In descending order of tax rate.

(City Exhibit No. 10 at Item 19)

The City also contends that its ability to raise revenue

locally is limited by the following factors:

1. Because one-third of the population relies on government assistance, the remaining two-thirds must shoulder the City's entire tax burden. (City Exhibit No. 10 at Item 10, paragraph 12)
2. Forty-nine percent of the property in Trenton is tax exempt. (Id. para. 14)
3. A low tax collection rate, averaging only 84.86% since the 1992 revaluation. (Id. para. 17)
4. A thirty-year decline in population of 31%, compared to a 42% increase in Mercer County population. (Id., para, 19)
5. Most importantly, assessed ratables have consistently declined since 1992, dropping 10.3% From Fiscal Year 1992 to Fiscal Year 1998. (Id., para. 20)

(City Brief at pg. 23)

The City further maintains that while its tax base has declined, Trenton's municipal expenditures have grown. It asserts that from Fiscal Year 1995 to Fiscal Year 1998, the City's total budget appropriations increased by twenty and three tenths percent (20.3%) from \$122,378,345 to \$147,190,123. (City Exhibit No. 10 at Item 10, paragraph 24) The City further asserts that the impact of uniformed employee compensation on municipal expenditures has been particularly significant in this increase in expenditures. It contends that uniformed employees comprise forty five percent (45%) of the City's workforce, yet are responsible for sixty four percent (64%) of the City's total salary costs. (City Exhibit No. 10 at Item 10, paragraph 34)

According to the City, its declining tax base and rising costs have forced the City to raise local property taxes, thereby

increasing the burden on the two thirds (2/3) of the City's population which pays property taxes. It asserts that from Fiscal Year 1990 to Fiscal Year 1998, the City's property taxes have increased by twenty five percent (25%). (City Exhibit No. 10 at Item 10, paragraph 22) The City also asserts that from Fiscal Year 1992 to Fiscal Year 1998, the City's "municipal purpose property tax rate" has increased by sixteen percent (16%). (City Exhibit No. 10 at Item 10, paragraph 23)

In summary, the City insists that "as [a] poor urban center surrounded by comparatively wealth[y] suburban communities, Trenton faces a declining tax base, increasing expenditures, and a heavy property tax burden borne by the two-thirds of its residents not receiving some form of government assistance." (City Brief at pg. 25)

The City maintains that its other sources of revenue are limited or fixed. It acknowledges that it has a positive fund balance. However, the City contends that its fund balance is non-cash, may be used as a revenue source only with State approval, and that its use is limited to an amount equal to the amount the City will receive in cash in government grants during the first two (2) months of the budget year. (City Exhibit No. 10 at Item 10, paragraph 27) It also contends that the City's state and federal aid has remained constant and has not increased to meet the City's growing expenditures. (City Exhibit No. 10 at Item 10, paragraph 28)

The City alleges that as a result of all of these factors, the

City faced an operating deficit in Fiscal Year 1997 of 1.56 million dollars. (Association Exhibit No. 48 at Sheet 19) It maintains that absent a reduction in anticipated expenditures, "the City fears that it could end the current fiscal year with costs exceeding income." (City Brief at pg. 26) (City Exhibit No. 10 at Item 10, paragraph 35) Thus, the City points out that in order to control expenditures, it has declared a hiring freeze for Fiscal Year 1999. (City Exhibit No. 10 at Item 10, paragraph 35)

Given the City's financial circumstances, it argues that its proposal of a three percent (3%) wage increase in each year of the Agreement is more reasonable than the Association's six percent (6%) wage increase proposal. It maintains that a three percent (3%) wage increase will help moderate the growth of City expenditures during the term of the Agreement. The City acknowledges that a three percent (3%) wage increase is below the state average of 3.59% for wage increases for police officers and firefighters in New Jersey. However, it alleges that a three percent (3%) wage increase, if awarded, will add \$442,555 in retroactive costs for Fiscal Year 1998, and \$898,386 for Fiscal Year 1999. The City insists that this is a substantial amount given the operating deficit the City fears may occur at the end of fiscal Year 1998.

The City also maintains that a three percent (3%) wage increase is more consistent with the City's long term fiscal needs than the six percent (6%) wage increases proposed by the Association. It asserts that the City's financial problems are

long term factors that will outlast any agreement awarded, herein. The City further asserts that any wage increases awarded, herein, will continue to accumulate after the contract expires and continue to exacerbate the City's structural deficit.

The City further maintains that in evaluating the financial impact of any awarded increase, I must also consider the practical reality that any increase awarded, here, will have an impact on the City's three (3) other uniformed bargaining units, i.e., the police superiors, the firefighters, and the firefighter superiors. It asserts that the contract at issue, herein, is the first in the current round of negotiations with the City's uniformed employees, and will likely set the pattern for negotiations with those three (3) other bargaining units. Thus, the City argues that "[t]he economic package awarded to the [Association] will have a ripple effect and, if not conservative in its cost impact, will further exacerbate not only the City's structural deficit, but also the disproportionate level of municipal resources currently devoted to uniform service compensation." (City Brief at pg. 29) For this reason as well, the City argues that its wage proposals are the most reasonable and ought to be awarded.

The City maintains that the "expert report" of Vincent J. Foti submitted by the Association should not be considered. It asserts that the Foti Report does not contain any of the back-up documentation the Association was directed to provide. For this reason, the City argues that the Foti Report should be stricken from the record.

The City also maintains that the Foti report is "seriously flawed, and filled with factual errors." (City Brief at pg. 30) It lists numerous alleged errors in the Foti Report. (City Brief at pgs. 30-34) Thus, the City argues that even if the Foti Report is considered, it is entitled to minimal weight. It further insists that nothing in the Foti Report "detracts from the conclusion that Trenton is a fiscally troubled municipality facing its second potential operating budget in three budget years." (City Brief at pg. 34)

For all of these reasons, the City argues that the criterion concerning the financial impact on the governing unit, its residents and taxpayers, supports awarding the City's wage proposals.

As to the criterion concerning the cost of living, the City maintains that in 1997, the rate of inflation was one and seven tenths percent (1.7%) and is now running in the Philadelphia area where Trenton is located at an annual rate of one and one tenth percent (1.1%). (City Exhibit No. 5 at pg. 41; City Brief at Appendix A13). It also contends that from December 1980 through January 1998, the maximum salary for City Police Officers increased by forty percent (40%) while the rate of inflation increased by only nineteen percent (19%). (City Exhibit No. 5 at pg. 12A) The City points out that its wage proposal, if awarded, will still result in an increase which exceeds the current rate of inflation. Thus, it insists that this criterion also supports awarding the City's wage proposals.

As to the criterion regarding the continuity and stability of employment, the City maintains that it requires me "to consider factors such as the employer's overall salary structure, the general unemployment level in the area, the level of turnover among the employees in question and the history of layoffs or other reductions in force in the subject bargaining unit." (City Brief at pg. 49)

The City asserts that turnover in the City's Police Department is minuscule and amounted to only two and seven tenths percent (2.7%) from 1995 through 1997 when resignations, retirement, deaths and disciplinary terminations are considered. (City Exhibit No. 10 at Item 10, paragraphs 38-40; Association Exhibit No. 11) It further asserts that when only voluntary resignations are considered, turnover is reduced to four tenths of one percent (0.4%). The City also contends that while there is no evidence in the record of Officers leaving the force for higher paying jobs in other jurisdictions, eight hundred (800) applicants applied for positions when the last police examination was conducted in Trenton. (City Exhibit No. 10 at Item 10, paragraph 41; City Exhibit No. 36) According to the City, there also is no history of layoffs among its Police Officers. Thus, it argues that there is a high level of continuity and employment stability among Trenton Police Officers. Therefore, the City insists that this criterion also supports awarding its wage proposals.

The City has proposed the following vacation schedule for newly hired Police Officers:

Vacation Days--New Hires
(effective July 1, 1998)

Year 1.....10 days (administrative or patrol)
Years 2-5.....12 days (administrative or patrol)
After 5.....15 days (administrative or patrol)
After 10.....17 days (administrative or patrol)
After 15.....20 days (administrative or patrol)
After 20.....25 days (administrative or patrol)
After 25.....26 days (administrative or patrol)

Officers working administrative tours receive days plus additional 125 hours off.

(City Brief at p. 6)

It maintains that the disparity in work hours discussed above is even greater for new hires. The City asserts that since Jersey City has reduced its new hire vacation schedule from two hundred and eighteen (218) hours to one hundred and forty three (143) hours, Trenton's new hires will work fewer hours than their newly hired counterparts in any of the other six (6) urban New Jersey communities which are comparable to Trenton. (City Exhibit No. 5 at pg. 23-23A) It insists that the City's new hire vacation proposal will address this disparity by reducing vacation time for new hires an average of fifty one (51) hours per year. The City further asserts that its new hire vacation proposal will provide the City with needed savings. Thus, it argues that the City's new hire vacation schedule proposal is reasonable and ought to be awarded.

The City opposes the Association's proposal for a patrol or senior officer differential. It asserts that City Police Officers already receive longevity as a reward for their service. The City further asserts that the City cannot afford this new benefit. Thus, it insists that there is no justification in the record for

an additional longevity payment disguised as a differential.

The City opposes the Association's request for additional vacation days. It asserts that vacation benefits for City Police Officers are already second highest among police officers in New Jersey's six (6) comparable urban communities, trailing only Elizabeth by two (2) hours. The City further asserts that more vacation time will only further reduce the low number of hours Trenton Police officers work per year. It also contends that the City cannot afford an improvement in this benefit area. Thus, the City argues that the Association's vacation proposal is unreasonable and should not be awarded.

The City maintains that similar considerations warrant rejecting the Association's proposal for compensatory time in lieu of overtime pay. It asserts that awarding the Association's compensatory time proposal will increase the City's overtime costs and further reduce the already low number of hours City Police Officers work. The City insists that there is no justification in the record for awarding its Police Officers more time off from work.

The City also opposes the Association's proposal for additional holiday pay. It maintains that the City's Police Officers already receive \$2,411 per year in holiday pay, which is two and one-half (6-1/2) times the urban six average of \$945 in holiday pay per year. (City Exhibit No. 5 at pg. 23A) The City also contends that it cannot afford an improvement in this benefit area. Thus, it argues that no improvement in holiday pay is

justified.

In all, the City maintains that its final offer best comports with all of the relevant statutory criteria set forth in N.J.S.A. 34:13A-16(g). It asks that its final offer be awarded.

OPINION

Several introductory comments are appropriate here. In the absence of an agreement to the contrary by the parties, the procedure to be used in this matter is conventional interest arbitration. As Interest Arbitrator, I must adhere as follows to the statutory criteria set forth in N.J.S.A. 34:13A-16(g).

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

(1) The interests and the welfare of the public. Among the items the arbitrator 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) Comparisons of the wages, salaries, hours and conditions of employment of the employees involved in the arbitration proceeding 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 sections 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, salaries, 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 shall assess when considering this factor are the limitations imposed upon the employer by P.L. 1976, c.68 (C.40A:4-45.1 et seq.).

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

(7) The cost of living.

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

Accordingly, and with these principles in mind, I now turn to the facts of this dispute.

The Association has proposed a three (3) year Agreement

covering the period July 1, 1997 through June 30, 2000. The City, on the other hand, has proposed a two (2) year Agreement which would expire in approximately six (6) months, on June 30, 1999. For the following reasons, I agree with the Association's preference for a three (3) year Agreement.

A three (3) year Agreement makes good sense. First, an Award covering a three (3) year period will enable the parties involved in this proceeding to have a sufficient period of time to resume their relationship free from the interruptions of collective bargaining.

Second, it is important to note that an Award of only a two (2) year Agreement, as the City has proposed, would virtually require negotiations between the parties to begin immediately for a successor agreement. This would be unduly burdensome on both the City and the Association.

Third, since I have awarded certain changes in the wages and benefits for newly hired Police Officers, the parties must have a sufficient period of time to evaluate those changes before entering into collective negotiations during which the parties may seek to alter some or all of the changes for new hires awarded, herein. Six (6) months, which is when a two (2) year Agreement would expire, is not a sufficient period of time in which to evaluate the changes awarded herein.

Thus, I have formulated this Award based upon a contract term of three (3) years, covering the period July 1, 1997 through June 30, 2000.

I now turn to the remaining components of the parties' proposals. The Association has proposed across the board wage increases of six percent (6%) effective on July 1, 1997, six percent (6%) effective on July 1, 1998, and six percent (6%) effective on July 1, 1999. This amounts to an eighteen percent (18%) increase over three (3) years.

The City has proposed a three percent (3%) wage increase effective July 1, 1997, and a three percent (3%) wage increase effective July 1, 1998. Based upon the record before me, it is apparent that the City believes that a three percent (3%) wage increase also is appropriate for 1999. This amounts to a nine percent (9%) increase over three (3) years, or increases equal to fifty percent (50%) of the wage increases proposed by the Association.

I find both proposals to be unacceptable. Clearly, given the financial circumstances of the City, there can be no justification for an average annual increase over three (3) years of six percent (6%). Such a large increase also is not supported by the evidence of comparability relied upon by the Association. Under no circumstances can this level of increase be justified in light of the relevant statutory criteria.

On the other hand, the City's proposal of an average annual increase of three percent (3%) also is not justified. It would result in the City's Police Officers receiving an increase less than the average increase received by police officers and firefighters in the comparable communities relied upon by the City.

In addition, as explained below, the financial circumstances of the City can be taken into account without requiring that the wage increases awarded to the City's Police Officers fall behind the increases awarded to police officers in comparable jurisdictions. Thus, the City's wage proposal cannot be justified when all of the relevant statutory criteria are taken into account.

Instead, I am persuaded that a wage increases between the Association's six percent (6%) proposal and the City's three percent (3%) proposal are appropriate here. In addition, I am equally convinced that the wage increase awarded to the City's Police Officers during the current year of the Agreement, i.e., July 1, 1998 - June 30, 1999, should be split and partially delayed. This will provide a cash savings to the City while permitting the salaries of its Police Officers to keep pace with the salaries paid to officers in comparable communities. It will also lessen the retroactive payments the City will be required to make as a result of this Award. Finally, it will, of course, also lessen the total financial cost of the awarded increases.

In order to determine with specificity the appropriate economic package, it is necessary to analyze each of the statutory criteria in relation to the positions proffered by the parties.

As to the interests and welfare of the public, I agree with the City that its citizens are not benefitted by a salary increase which the City cannot afford and which results in reductions in other needed services. Therefore, logically, the City's proposal, which is lower than the Association's, is preferred when evaluating

the economic interests and welfare of the public.

However, the public's interests and welfare are also served by a police force that is stable and whose morale is high. Thus, I am persuaded that a wage package which deviated dramatically from the type of salary increase provided to other police officers in comparable communities, does not serve the interests and welfare of the citizens of the City. After all, the interests and welfare of the public criterion is not limited solely to the public's financial interests and welfare. By necessity, it also must involve the community's interests and welfare in having its police force continue to serve its essential needs and provide essential services. This is especially so in an urban community like Trenton, where there has been a good deal of violent crime.

Under any reasonable view, the economic proposal set forth by the City will unnecessarily and invariably cause a decline in police morale. This does not serve the interests and welfare of the public. Moreover, it is not necessitated by the evidence concerning the statutory criteria submitted by the City.

By splitting wage increases, police officers can receive a higher salary at the end of a calendar year than they would be receiving if the same amount in annual wages was paid to those officers over the course of the entire year, after a larger increase at the beginning of the year.

For example, a two percent (2%) wage increase granted on January 1 and a two percent (2%) wage increase granted on July 1, results in police officers being paid a weekly salary during the

last half of the year approximately equal to the weekly salary they would have been paid had they received a four percent (4%) wage increase on January 1. However, over the course of the entire calendar year, the officers will have received total wages approximately equivalent to the amount they would have received had they been granted a three percent (3%) wage increase on January 1. Thus, splitting wage increases has two (2) benefits. At the end of the year, officers are receiving almost the same weekly salary as their counterparts in comparable communities who received their entire increase at the beginning of the year. Whatever ground was lost at the beginning of the year has been made up. However, the City has paid out less in wages for the entire year and has more money available for its other budgetary needs. Thus, the financial burden on the public of granting wage increases to the City's Police Officers can be taken into account without awarding a wage package which dramatically deviates from the type of salary increases provided to officers in comparable communities.

Therefore, I find that the statutory criterion concerning the interest and welfare of the public favors awarding an increase between the increases proposed by the parties.

The second criterion requires a comparison of the wages, salaries, compensation, hours and conditions of employment of Trenton's Police Officers with those of other employees performing the same or similar services in the public sector in comparable jurisdictions, in comparable private employment and in public and private employment in general.

The Association has relied upon comparisons to the wages paid to police officers in eleven (11) New Jersey communities to show that Trenton Police Officers are underpaid. (City Brief at pg. 15) The Association also relied upon comparisons with fifteen (15) public New Jersey law enforcement agencies to argue that the average annual increase given to comparable police officers was 4.388% in 1998 and 4.556% in 1998. (City Brief at pg. 15) However, only eight (8) communities were common to the different lists of jurisdictions relied upon by the Association: i.e., Englewood, Hackensack, Dover, Woodbridge, Fort Lee, Lawrence, Ewing and Hamilton. The average wage increase awarded in 1998 to police officers in those eight (8) communities average 4.12%.

The Association also presented evidence concerning the wage increases granted to Mercer County law enforcement personnel in 1998 and 1999. That evidence shows that those Mercer County Law enforcement personnel received increases which averaged 4.59% in 1998 and 4.75% in 1999. (Association Brief at pg. 17) However, it is important to note that all of the increases granted to Mercer County law enforcement personnel in 1998 and 1999, which were relied upon by the Association, were split and or delayed increases. As noted above, those splits and delays reduced the value of those increases and cushioned the impact of those increases on the County's budget. (Association Brief at pg. 17)

The City has argued that the Association's comparisons with certain jurisdictions are inappropriate because of demographic differences between those municipalities and Trenton. (City Brief

at pg. 42) Comparability, however, rather than identity of communities, is all that is required by the statute. Differences in degrees of comparability can be taken into account when evaluating evidence drawn from jurisdictions with different degrees of comparability to the City. Thus, I find that the comparisons drawn by the Association between the City's Police Officers and their counterparts in comparable communities with different demographics are relevant to this dispute.

With regard to total compensation, the City has relied upon comparisons with five (5) other urban New Jersey communities, i.e., Newark, Jersey City, Patterson, Elizabeth and Camden. These comparisons show that City Police Officers receive substantially less in base wage than the average compensation paid to police officers in these comparable communities (\$46,995 vs. \$50,053). (City Exhibit No. 5 at pg. 23) However, these comparison also establish that because of the fewer number of hours worked each year by Trenton Police Officers and the other benefits they receive which affect their take home pay, e.g., longevity and holiday pay, Trenton Police Officers earn more per hour than the average hourly earnings of officers in these comparable communities (\$32.31 vs. \$31.59). (City Exhibit No. 5 at pg. 23)

This is not to say that the City's Police Officers work too few hours. To the contrary, the evidence demonstrates that the City's Police Department is a highly efficient and effective police force. This may not be surprising. It could be argued that well rested police officers are more efficient and effective than over-

worked police officers. However, the statutory criterion requires that I consider "wages, salaries, compensation, hours, and conditions of employment." Therefore, I must consider the number of hours City Police Officers are required to work for their compensation when evaluating evidence of comparability.

With regard to average wage increases, the City relied upon comparisons with thirty seven (37) jurisdictions in New Jersey and argued that the average wage increase granted to police officers in New Jersey in 1998 was 3.59%. Like the Association, the City's comparability evidence has relied upon comparisons to jurisdictions which have different degrees of demographic similarity to Trenton. As noted above, this affects the weight to be accorded that evidence, not its relevance or admissibility.

The City also presented evidence that showed that wage increases granted to non-law enforcement employees in both the public and private sector are closer to the increases proposed by the City than the increases proposed by the Association. This evidence of comparability is somewhat less persuasive than evidence of comparability concerning police officers in comparable jurisdictions given the unique nature of police work. However, pursuant to the statutory criteria, this evidence is certainly relevant to this dispute.

The most striking thing about the evidence relied upon by the City and the Association is that it provides little persuasive support for the wage increases proposed by either party. The Association has presented no evidence of comparable police officers

being granted wage increases as high as six percent (6%) during the years at issue. The City has presented no evidence of comparable police officers being granted wage increases as low as three percent (3%) during the years at issue. Rather, the evidence relied upon by both the Association and the City shows many comparable police officers receiving wage increases of between three and one-half percent (3-1/2%) and four and one-half percent (4-1/2%).

Thus, when all of the relevant comparisons are made, I find that the record evidence concerning comparability in the public and private sectors supports awarding a wage increase in between the increase proposed by the City and the Association, but closer to the increases proposed by the City.

The next criterion deals with the overall compensation received by the City's Police Officers. Here, the evidence again demonstrates that even though City Police Officers may receive less in wages than their counterparts in comparable urban jurisdictions, their overall compensation compares favorably to the overall compensation received by police officers in other urban jurisdictions because of the below average hours worked each year by Trenton's Police Officers. (City Exhibit No. 5 at pg. 23) The Association is correct when it notes that some of the benefits received by the City's Police Officers, are below average when compared to the benefits received by officers in comparable jurisdictions. However, when wages, benefits and hours worked are considered as a package, I find that the overall compensation

received by the City's Police Officers is comparable to the total compensation received by their counterparts in comparable jurisdictions.

Notwithstanding this current comparability, the overall compensation of the City's Police Officers would not fare relatively well with the overall compensation received by other police officers in comparable jurisdictions, if I were to award the City's final wage proposal. Under those terms, the City's Police Officers would fall somewhat behind their counterparts in comparable jurisdictions. On the other hand, the economic package being sought by the Association is more generous than is necessary to maintain the relative standing of the City's Police Officers in terms of overall compensation and benefits. Thus, I find that this criterion also demonstrates the appropriateness of awarding an economic package which falls somewhere between the economic packages being sought by the City and the Association.

As to the criterion concerning the stipulations of the parties, I note that no substantive stipulations were agreed to by the parties. Thus, this statutory criterion is not particularly relevant to resolving the parties' disputes.

As to the lawful authority of the employer, I note the existence of New Jersey's Cap Law and the resulting Cap rate set each year. However, there is no persuasive evidence that the City cannot lawfully pay for the wage increases proposed by the Association should they be awarded. However, for reasons noted elsewhere in this Opinion, I am awarding an economic package which

will cost the City for less than the economic package being sought by the Association. Frankly, there is really no dispute in the record that the City has the lawful authority to pay for the types of increases awarded, herein. The Union has met its burden of establishing that the amounts awarded are within the City's lawful authority.

The statutory criterion concerning the financial impact of the parties' proposals on the governing unit, its residents and taxpayers, essentially asks for an analysis of the City's ability to pay without overburdening its taxpayers or causing a reduction in needed services.²

The City has made a compelling case that it is not flush with money. That is, any dramatic wage increase could result in either the cost of that increase being shifted to the City's residential taxpayers or a reduction in other important municipal services. Moreover, the evidence shows that the City's residential property tax rate is already quite high when compared to the residential property tax rate in other comparable communities, and that the City's residential tax payers can ill afford further property tax increases. (City Exhibit No. 10 at Item 19) In addition, the evidence establishes that the City cannot expect dramatic increases in its non-tax related revenues. (City Exhibit No. 10 at Item 10,

² The City moved to strike the expert evidence submitted by the Association because it was not accompanied by the data the Association's expert relied upon in forming his opinions. The lack of back-up data goes to the weight to be accorded the Association's expert evidence, rather than its admissibility. Therefore, the City's motion to strike is denied.

paragraphs 27-28)

Given the current economic climate in Trenton, this statutory criterion requires that I not award the increases being sought by the Association. Instead, the wage increases awarded must be more modest. Otherwise, there will be an unnecessary burden upon the governing unit and its residents and taxpayers. For this reason, I conclude that while a weighing of all of the relevant statutory criteria entitles the City's Police Officers to a more substantial wage increase, the financial circumstances of the City necessitate moderating the cost of such an increase to the City. Thus, primarily because of the financial impact upon the governing unit and its residents and taxpayers, the salary increases awarded below are less than what would be justified if the other statutory criteria were emphasized.

As a result, I have determined that the 1997 wage increase shall be comprised of a four percent (4%) increase effective July 1, 1997. This results in a cost to the City in the 1997-1998 contract year equivalent to a four percent (4%) wage increase.

The 1998 wage increase shall be comprised of a two percent (2%) increase effective July 1, 1998, and a two percent (2%) increase effective January 1, 1999. This results in a cost to the City in the 1998-1999 contract year equivalent to a three percent (3%) wage increase.

The 1999 wage increase shall be comprised of a three and six-tenths percent (3.6%) increase effective July 1, 1999. With the roll-over cost of one percent (1%) from the 1998 increase, this

results in a cost to the City in the 1999-2000 contract year equivalent to a four and six tenths percent (4.6%) wage increase.

Thus, over the life of the Agreement I am awarding the City's Police Officers an eleven and six tenths percent (11.6%) rate increase in their salaries, which averages out to an annual increase of approximately 3.866%. This is an annual rate of increase closer to the three percent (3%) average annual wage increase proposed by the City than the six percent (6%) average annual wage increase proposed by the Association. It is also close to the average wage increase of 3.59% which the City acknowledges has recently been awarded to police officers and firefighters in New Jersey. Moreover, due to the split and delay in the second year of the awarded wage increase, the retroactive cost to the City of the awarded wage package has been reduced.³

Thus, the financial circumstances of the City and its residents and taxpayers have been taken into account and the wages of the City's Police Officers have not fallen behind the wages paid to officers in comparable communities.

As to the cost of living, the evidence demonstrates that the cost of living increased by one and seven tenths percent (1.7%) in 1997. (City Exhibit No. 5 at pg. 41) While the cost of living has been exceeded in this Award, the increases awarded are not substantially above the cost of living. Moreover, they are less

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Also, the changes in salary and vacation for new hires in their first years with the City also provide a cushion to the City for the cost of these awarded increases.

than the increases being sought by the Association. In fact, they most closely relate to the City's offer. Thus, I have incorporated relevant evidence concerning the cost of living into this Award.

Moreover, I agree with the Association that police officers in the past did not receive wage increases equal to the cost of living when the increases in the cost of living were running in the double digits or close to the double digits. Under those circumstances, common sense required that salary increases be less than the cost of living.

This is not surprising. It is ordinarily the case that in periods of very high inflation, salary increases tend to lag behind the rate of inflation. Conversely, in times of low inflation, when the cost of living is quite moderate, wage adjustments somewhat exceed the cost of living. Pursuant to historic trends in the cost of living and police officer wage rates, I find the economic package awarded, herein, to be the appropriate result. The awarded increases exceed the cost of living but reflect the long term historic trends in the cost of living and are far more moderate than the increases received by police officers in prior years.

Stated otherwise, the increases awarded, herein, reflect and take into account the decline in the cost of living.

The final criterion concerns the continuity and stability in the employment of Trenton's Police Officers. The evidence establishes that the present complement of Police Officers in Trenton have a high level of continuity and stability in their employment. That is, there is no evidence to suggest that the

City's Police Officers face the imminent threat that their positions will be eliminated or that the number of Officers will be reduced. As a result, this criterion favors a more moderate increase than the one sought by the Association. The evidence also establishes that awarding too large of a wage increase could jeopardize the City's ability to maintain its present complement of sworn Police Officers. Again, this evidence demonstrates the appropriateness of an increase more moderate than the one being sought by the Association.

Accordingly, for the above reasons, I find that the statutory criteria support awarding wage increases in between the increases proposed by the City and the Association, but closer to the wage increases proposed by the City. Although I have found all of the statutory criteria to be relevant to this dispute, I find that the criteria regarding comparability and the financial circumstances of the City and its residents and taxpayers, are the criteria which are most relevant to this dispute. Therefore, they have been given the most weight. The criterion regarding the stipulations of the parties is the least relevant criterion in this dispute and has been given the least amount of weight. Thus, in light of all of the statutory criteria, as described in detail above, I award the following wage increases:

July 1, 1997	4% across-the-board
July 1, 1998	2% across-the-board
January 1, 1999	2% across-the-board
July 1, 1999	3.6% across-the-board

These increases balance the legitimate right of the City's Police Officers to be compensated appropriately without unduly burdening the residents and taxpayers of Trenton. The method of salary adjustment utilized, herein, intentionally cushions the impact of the awarded increases on the City's budgetary process by granting a delayed and split increase in the second year of the Agreement.

I turn now to the other economic and non-economic proposals made by the parties.

The Association has proposed a patrol differential of three percent (3%) for Officers in the patrol division with ten (10) or more years of service with the Department. It also has proposed a Senior Officer Differential which would provide an additional salary step upon completion of twenty (20) years of service and which would be calculated as one-half ($\frac{1}{2}$) the distance to the next rank's base pay rate.

Currently, Trenton Police Officers with five (5) or more years of continuous service are entitled to longevity pay calculated as a percentage of their base pay. (Joint Exhibit No. 1 at Article XIV, Section 14.01) For example, Officers with "20 years but less than 24 years" of continuous service, receive nine percent (9%) of their base salary as longevity pay. (Joint Exhibit No. 1 at Article XIV, Section 14.01) The ten (10) and twenty (20) year differentials proposed by the Association are, in effect, proposed increases in longevity pay.

The record does establish that Police Officers in Trenton with

twenty five (25) years of continuous service receive less in longevity benefits than most of their counterparts in comparable urban New Jersey communities. (City Exhibit No. 5 at pg. 23) However, the evidence also demonstrates that as a result of the wage increases awarded, herein, as well as the favorable work schedule of Trenton's Police Officers, the total compensation of Trenton's Police Officers will compare favorably to the average total compensation received by their counterparts in comparable urban New Jersey communities. (City Exhibit No. 5 at pg. 23) Thus, the record evidence concerning comparability does not support awarding the Association's ten (10) and twenty (20) year differential proposals. In addition, the evidence concerning the City's financial circumstances persuades me that the City cannot afford to be a leader in this benefit area. For these reasons, I find that the Association's ten (10) and twenty (20) year differential proposals are not supported by evidence concerning the statutory criteria and should not be awarded.

Currently, "Officers of the Association ... have a total (pool) of thirty (30) days off with pay (straight time) for the conduct of legitimate union business in each calendar year, not including the time off with pay granted to the Delegate to the State P.B.A., or other P.B.A. representatives as provided for under existing law." (Joint Exhibit No. 1 at Article III, Section 3.01)

The Association has proposed that its Delegate be assigned to a day shift during the Delegate's term of office and be provided with sufficient time to attend Association meetings without loss of

regular compensation.

Since the City's population swells during the day, more of its Police Officers work on the day shift than on the night shift. Thus, in order for the Association to adequately service its membership, it makes sense for the Association's Delegate to be assigned to the day shift when a majority of the City's Officers are at work. Therefore, that aspect of the Association's Delegate proposal shall be awarded.

There is no persuasive evidence in the record that providing the Association's Delegate with sufficient time to attend Association meetings without loss of regular compensation would burden the City. However, in order to insure that this aspect of the Association's Delegate proposal does not become burdensome to the City, the Association's Delegate shall receive, upon request and with the consent of the Department, sufficient time to attend Association meetings without loss of regular compensation.

Currently, retiring City Police Officers receive "supplemental compensation ... at the rate of one-half of the eligible employee's daily rate of pay for each day of earned and unused accumulated sick leave ... provided, however, that no such supplemental compensation payment shall exceed ... \$18,000" (Joint Exhibit No. 1 at Article V, Section 5.05) The Association has proposed that the maximum payment for accumulated sick leave upon retirement be increased to twenty five thousand dollars (\$25,000).

In their most recent Agreement, the parties recognized that this important retirement benefit needed to be increased. Thus,

they increased the maximum payment for accumulated sick leave upon retirement from twelve thousand dollars (\$12,000) at the beginning of the Agreement to eighteen thousand dollars (\$18,000) at the conclusion of the Agreement. The evidence concerning the statutory criteria supports awarding an additional increase in this retirement benefit. However, due to the financial circumstances of the City, this benefit shall not be increased to the extent requested by the Association. Accordingly, as of the date of this Opinion and Award, the maximum payment for accumulated sick leave upon retirement shall be increased to twenty thousand dollars (\$20,000).

Currently, any City Police Officer "required, directed or authorized to work for any hours in excess of the normal hours of employment as defined [in the Agreement is] paid at the rate of time and one-half of his regular pay rate (including benefits) for all such overtime." (Joint Exhibit No. 1 at Article VIII, Section 8.01) However, the Agreement also contains a ten thousand dollar (\$10,000) annual cap on the amount of overtime compensation the City is required to pay so that Officers may use their accumulated compensatory time. (Joint Exhibit No. 1 at Article VIII, Section 8.06)

The Association has proposed that City Police Officers have the sole right to elect to receive compensatory time or paid compensation for overtime worked. It also has proposed the elimination of the ten thousand dollar (\$10,000) annual cap on the amount of overtime compensation the City is required to pay so that

Officers may more easily use their accumulated compensatory time.

It is important to note that currently, all City Police Officers are paid for their overtime work and that there is no cap on the payment of compensation for overtime worked. The cap limits the amount of compensatory time Officers may take each year, but it does not result in Officer being denied overtime compensation for the overtime hours they work. Thus, there is no need to grant Officers the option of electing compensatory time in lieu of overtime pay for overtime hours worked.

I recognize that the cap on the amount of overtime compensation the City is required to pay so that Officers may use their accumulated compensatory time, may result in Officers being prevented from using their compensatory time when Officers would most like to take time off. However, this is an important cost saving measure for the City. In addition, there is no persuasive evidence in the record that the annual cap on the amount of overtime compensation the City is required to pay so that Officers may use their accumulated compensatory time, has prevented Officers from using their compensatory time on days which are less in demand as days off.

For these reasons, I find that the Association's compensatory/overtime proposals are not supported by the evidence concerning the statutory criteria and shall not be awarded.

Currently, Article X, Section 10.01 of the Agreement provides that "[t]he Association agrees to recognize as paid holidays such holidays as shall be designated for all employees of the City of

Trenton as set forth in the appropriate ordinance or resolution adopted by the City for such purpose." (Joint Exhibit No. 1 at Article X, Section 10.01) Section 10.02 of that Article deals with the fact that "employees of the Division of Police are not able to be excused from working on the thirteen (13) holidays which are enjoyed by other City employees." (Joint Exhibit No. 1 at Article X, Section 10.02) The Association has proposed that one (1) additional holiday be provided to City Police Officers each year and that all holidays provided be listed in the Agreement.

The record establishes that City Police Officers already receive above average holiday pay each year when compared to their counterparts in comparable urban New Jersey communities. (City Exhibit No. 5 at pg. 23) It further demonstrates that the City cannot afford to be a leader in this benefit area. Thus, the Association's proposal for an additional holiday shall not be awarded. It also is not necessary that the exact holidays, as opposed to the number of holidays, be specified in the Agreement. However, so that there is no confusion regarding the number of holidays to which Officers are entitled, Article X, Section 10.01 of the Agreement shall be amended to provide that in no event shall employees of the Division of Police receive fewer than thirteen (13) paid holidays per year.

Currently, City Police Officers are granted paid vacation pursuant to the following schedule:

- a. During the first calendar year, or part thereof, of such employee's employment: one (1) day for each month of partial month employment.**

b. After one year of service but less than 5 years of service: 17 days.

c. After five years of service but less than 15 years of service: 24 days.

d. After 15 years of service but less than 25 years of service: 25 days.

e. After 25 years of service: 26 days.

(Joint Exhibit No. 1 at Article XIII, Section 13.01) The Association has proposed that three (3) additional vacation days be added to each step of this vacation schedule.

The record demonstrates that City Police Officers already receive above average vacation benefits when compared to their counterparts in comparable urban New Jersey communities. (City Exhibit No. 5 at pg. 23) It further establishes that the City cannot afford to be a leader in this benefit area. Thus, the Association's proposal for additional paid vacation days shall not be awarded.

The Association has proposed that except in cases of unforeseeable emergency, it receive notice from the City of any proposed rule or regulation revision as well as any modification of the code or manual. It also has proposed that notice be provided not less than forty five (45) days prior to the implementation of the change and/or the employees' obligation to comply with said change.

New Jersey labor law already provides that the Association must be provided with notice and an opportunity to bargain before the City changes a term and condition of employment. The amount of

notice required in a variety of situations has been determined by the Commission in its extensive case law. Nothing in the record demonstrates that the City has ignored its obligations to provide the Association with notice before altering a term and condition of employment. Moreover, as the City points out, a strict forty five (45) day notice requirement could deprive the City "of necessary flexibility to adopt rules dealing with changing circumstances [as] specific needs arise." (City Brief at pg. 62) In addition, police work, as the Association points out, is very different from private sector employment. Thus, the fact that notice provisions analogous to the provision proposed by the Association may exist in the private sector, provides little reason to impose such a requirement on the City's Police Department. For these reasons, I find that the Association's notice requirement proposal is unreasonable and that it should not be awarded.

The Agreement's renewal language currently reads as follows:

This agreement shall be deemed a continuing agreement, automatically renewing itself from year to year thereafter except that either party shall have the right of renegotiation by written notice to the other outlining the specific areas and items of renegotiation at least sixty (60) days prior to the end of the initial term hereof or any renewal term. The parties agree that they will enter into negotiations on such requested modifications within fifteen (15) days after the receipt by either party of such proposals by the other party and will continue such negotiations in good faith until a renewal of the within agreement, together with all agreed upon modifications, has been arrived at by agreement.

(Joint Exhibit No. 1 at Article XXII, Section 22.01) The Association has proposed that this language be amended to read as follows:

If the parties have not executed a successor agreement by [the expiration date of the Agreement], then this Agreement shall continue in full force and effect until a successor agreement is executed.

As the City notes, the intent of this Association proposal "appears to be ... to incorporate [the Commission's] rules pertaining to successor agreement negotiations into the contract." (City Brief at pg. 62) Since the City is obligated to follow the Commission's rules regarding successor agreements, this Association proposal shall be awarded.

The Association has proposed that the following new language concerning Insurance be added to the Agreement:

INSURANCE

The employer will indemnify all employees covered by this Agreement from civil suits arising out of the performance of their duties including but not limited to the following: False arrest, malicious prosecution, libel, slander, defamation of character, privileged occupancy and the invasion of civil rights.

Employees covered by this Agreement shall be fully indemnified and defended by the employer for all circumstances in which the employee renders first aid, whether on duty or off duty.

As the City points out, the indemnity language proposed by the Association, "goes beyond the statutory requirement [regarding the indemnification of police officers], and would require the City to indemnify and provide defense for police officers in cases not arising from the lawful performance of police duties and, indeed, in cases of intentional wrongdoing ..." (City Brief at pg. 63) The evidence in the record concerning the statutory criteria does not support extending the City's obligation to indemnify its Police

Officers to the extent proposed by the Association. Therefore, the Association's insurance proposal shall not be awarded. However, the parties should continue to address this important issue in their subsequent negotiations.

The Association has proposed that the following new No Waiver language be added to the Agreement:

NO WAIVER

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

This agreement is not intended and shall not be construed as a waiver of any right or benefit to which the Employees herein are entitled by law.

The City opposes this proposal because its purpose has not been explained by the Association. However, its meaning is clear and its purpose self-explanatory. The Association's no waiver language proposal is reasonable and, therefore, shall be awarded.

The Association has proposed that the following new language concerning Personnel Files be added to the Agreement:

PERSONNEL FILES

A personnel file shall be established and maintained for each employee covered by this Agreement. Such files are confidential records and shall be maintained in the office of the Chief of Police, and may be used for evaluation purposes.

Upon advance notice and at reasonable times, any member of the Department may at any time review his personnel file. However, this appointment for review must be made through the Chief of Police or his designated representative.

Whenever a written complaint concerning an officer of his actions is to be placed in his personnel file, a copy shall be made available to him and he shall be given the

opportunity to rebut it if he so desires, and he shall be permitted to place said rebuttal in his file. When the employee is given a copy of the complaint, the identification of the complainant shall be excised. However, if any disciplinary action is taken based on any complaint, then the Employee shall be furnished with all details of the complaint, then the Employee shall be furnished with all details of the complaint, including the identity of the complainant.

All personnel files will be carefully maintained and safeguarded permanently, and nothing placed in any file shall be removed therefrom. Removal of any material from a personnel file by any member of the force shall subject that member to appropriate disciplinary action.

The City opposes this proposal for a number of reasons: "First, the clause improperly limits the purpose to which personnel files may be used. ... Second, [it] seeks to dictate where personnel files will be physically stored. ... [Third, it] attempts to impose procedures pertaining to discipline. ... Finally, the clause infringes upon management's non-negotiable prerogative to determine the contents of personnel files." (City Brief at pgs. 64-65) In addition, and more importantly, I find that the evidence concerning the statutory criteria does not support awarding the Association's personnel file proposal. Therefore, it shall not be awarded.

The Association has proposed that the following new Preservation of Rights language be added to the Agreement:

PRESERVATION OF RIGHTS

The parties agree that all benefits, rights, duties, obligations and conditions of employment relating to the status of the Trenton Police Department which benefits, rights, duties, obligations, terms and conditions of employment are not specifically set forth in this

Agreement, shall be maintained in not less than the highest standards in effect at the time of the commencement of collective bargaining negotiations between the parties leading to the execution of this Agreement.

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

As the City points out, the evidence is inconclusive concerning which "benefits, rights [and] terms and conditions of employment" the awarding of this proposal would incorporate into the parties Agreement. (City Brief at pg. 65) I find that there is an inadequate basis for awarding this provision. For this reason, it shall not be awarded.

Currently, Trenton Police Officers hired after January 1, 1993, are paid pursuant to the following schedule.

PBA CONTRACT SALARY PROJECTIONS (HIRED 1993 OR AFTER)

	EFF: 1/1/94	EFF: 1/1/95	EFF: 7/1/95
STEP			
Academy Rate	22,000	22,000	22,000
Probat. Rate	25,000	25,625	26,266
2	30,711	31,479	32,266
3	33,711	34,554	35,418
4	36,711	37,629	38,570
5	39,711	40,704	41,722
6	42,711	43,779	44,873
	EFF: 1/1/96	EFF: 7/1/96	EFF: 3/1/97
STEP			
Academy Rate	22,000	22,000	22,000
Probat. Rate	26,923	27,596	28,285
2	33,073	33,900	34,748
3	36,303	37,211	38,141
4	39,534	40,522	41,535

5	42,765	43,834	44,930
6	45,995	47,145	48,324

... Newly-hired officers after January 1, 1993, shall be paid at the "Academy Rate" until graduation from the police training academy. They shall then be paid at the "Probationary Rate" for their twelve-month probationary period. Upon successful completion of their probationary period, they shall be paid at "Step 2" for the remainder of their second year. Subsequent increments shall be given on the anniversary of their original appointment date.

(Joint Exhibit No. 1 at Article IX, Section 9.01)

At the sixth step of this salary schedule, newly hired Police Officers are paid the same base salary as Officers hired before January 1, 1993. (Joint Exhibit No. 1 at Article IX, Section 9.01) Thus, after five (5) years of employment, newly hired Police Officers are treated the same in terms of base salary as their more senior co-workers.

Neither party has proposed that this group of City Police Officers be treated any differently than more senior Police Officers in terms of wage and benefit improvements. Therefore, this group of recently hired City Police Officers shall receive the same percentage wage increases as their more senior counterparts. That is:

July 1, 1997	4% across-the-board
July 1, 1998	2% across-the-board
January 1, 1999	2% across-the-board
July 1, 1999	3.6% across-the-board

The City, however, has proposed that effective July 1, 1998, newly hired Police Officers be paid pursuant to the following

schedule.

**Salary Schedule--New Hires
(effective July 1, 1998)**

Year 1.....	\$23,000
Year 2.....	\$27,000
Year 3.....	\$30,000
Year 4.....	\$33,000
Year 5.....	\$39,000
Year 6.....	\$44,000
Year 7.....	\$51,267

(City Brief at pg. 6)

In effect, the City is proposing that Police Officers hired after July 1, 1998, be paid pursuant to a less generous salary schedule for their first six (6) years of employment.

The City's new hire salary schedule proposal, if awarded, would clearly result in cost savings to the City. In addition, the City's salary schedule proposal, if awarded for Police Officers hired on or after January 1, 1999, would not affect any current Patrolmen or Patrolwoman. It also would not create a permanent two (2) tier wage system.

Given the City's financial circumstances, as well as the extent of the wage increases awarded, herein, I am persuaded that the City is in need of certain cost saving measures, and that this an appropriate mechanism for achieving cost savings. After all, the parties have previously agreed to a lower pay scale for new hires. However, I am not persuaded that the City requires the

extent of cost savings being sought with its salary schedule proposal. I have provided a step program with savings to the City, in step, but which will bring new hires to the same top step as other officers. Thus, I find that Police Officers hired on or after July 1, 1999, shall be paid pursuant to the following schedule:

STEP	
Academy Rate	23,000
Probat. Rate	27,500
2	32,500
3	37,500
4	43,500
5	49,500
6	54,169

... The current rules for step movement shall continue to apply police training academy. They shall then be paid at the "Probationary Rate" for their twelve-month probationary period. Upon successful completion of their probationary period, they shall be paid at "Step 2" for the remainder of their second year. Subsequent increments shall be given on the anniversary of their original appointment date.

As noted above, City Police Officers currently are granted paid vacation pursuant to the following schedule:

- a. During the first calendar year, or part thereof, of such employee's employment: one (1) day for each month of partial month employment.
- b. After one year of service but less than 5 years of service: 17 days.
- c. After five years of service but less than 15 years of service: 24 days.
- d. After 15 years of service but less than 25 years of service: 25 days.
- e. After 25 years of service: 26 days.

(Joint Exhibit No. 1 at Article XIII, Section 13.01)

The City has proposed the following vacation schedule for Police Officers hired on or after July 1, 1998:

**Vacation Days--New Hires
(effective July 1, 1998)**

Year 1.....10 days (administrative or patrol)
Years 2-5.....12 days (administrative or patrol)
After 5.....15 days (administrative or patrol)
After 10.....17 days (administrative or patrol)
After 15.....20 days (administrative or patrol)
After 20.....25 days (administrative or patrol)
After 25.....26 days (administrative or patrol)

Officers working administrative tours receive days plus additional 125 hours off.

(City Brief at p. 6)

The City's new hire vacation schedule proposal, if awarded, would clearly result in cost savings to the City. In addition, the City's vacation schedule proposal, if awarded for Police Officers hired on or after January 1, 1999, would not affect any current Patrolmen. However, the City's new hire vacation proposal, if awarded, would create a two (2) tier vacation system for twenty five (25) years. That is, newly hired Police Officers would not receive the same vacation benefits as their more senior co-workers until after twenty five (25) years of service. That is the equivalent of a permanent two (2) tier vacation benefit system and would have a negative impact on the morale and the cohesion of the Trenton Police Department.

Given the City's financial circumstances, as well as the extent of the wage increases awarded, herein, I am persuaded that the City is in need of certain cost saving measures, and that this

an appropriate mechanism for achieving cost savings.⁴

However, I am not persuaded that the City requires the extent of cost savings being sought with its salary schedule proposal. For all of these reasons, I find that City Police Officers hired after the date of this Opinion and Award shall receive vacation benefits pursuant to the following schedule:

a. During the first calendar year, or part thereof, of such employee's employment: one (1) day for each month of partial month employment.

b. After one year of service but less than 5 years of service: 15 days.

c. After five years of service but less than 15 years of service: 20 days.

d. After 15 years of service but less than 25 years of service: 25 days.

e. After 25 years of service: 26 days.

This program provides real savings to the City in most of the first fourteen (14) years of a new officer's employment but guarantees vacation parity with other officers upon reaching fifteen (15) years of service.

In summary, I have carefully considered all of the relevant statutory criteria, as well as the type of standards normally evaluated in interest arbitrations of this kind, in reaching my findings above. In my view, they balance the rights of the members of the bargaining unit to fair improvements in their terms and conditions of employment with the legitimate needs of the City to

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This particularly so given the fact that vacation entitlements for incumbents were not proportionally reduced when the 4 X 4 schedule was agreed to by the parties.

budget its economic resources.

Accordingly, the changes herein are awarded to the extent indicated in this Opinion.

AWARD

1. TERM

The Agreement shall have a term of July 1, 1997 to June 30, 2000.

2. WAGES

July 1, 1997	4% across-the-board
July 1, 1998	2% across-the-board
January 1, 1999	2% across-the-board
July 1, 1999	3.6% across-the-board

3. ASSOCIATION DELEGATE

The Association's Delegate shall be assigned to a day shift during the Delegate's term of office and upon request of the Association and consent of the Department, shall be provided with sufficient time to attend Association meetings without loss of regular compensation.

4. ACCUMULATE SICK LEAVE UPON RETIREMENT

Article V, Section 5.05, of the Agreement shall be amended to provide that as of the date of this Opinion and Award, the maximum payment for accumulated sick leave upon retirement shall be twenty thousand dollars (\$20,000).

5. HOLIDAYS

Article X, Section 10.01 of the Agreement is amended to provide that in no event shall employees of the Division of Police receive fewer than thirteen (13) paid holidays per year.

6. NO WAIVER

The following No Waiver language shall be added to the

Agreement:

NO WAIVER

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

This agreement is not intended and shall not be construed as a waiver of any right or benefit to which the Employees herein are entitled by law.

7. NEW HIRE SALARY SCHEDULE

Police Officers hired on or after July 1, 1999, shall be paid pursuant to the following schedule:

STEP	
Academy Rate	23,000
Probat. Rate	27,500
2	32,500
3	37,500
4	43,500
5	49,500
6	54,169

... Newly-hired officers after January 1, 1993, shall be paid at the "Academy Rate" until graduation from the police training academy. They shall then be paid at the "Probationary Rate" for their twelve-month probationary period. Upon successful completion of their probationary period, they shall be paid at "Step 2" for the remainder of their second year. Subsequent increments shall be given on the anniversary of their original appointment date.

8. NEW HIRE VACATION SCHEDULE

Police Officers hired on or after the date of this Opinion and Award, shall be entitled to vacation benefits pursuant to the following vacation schedule:

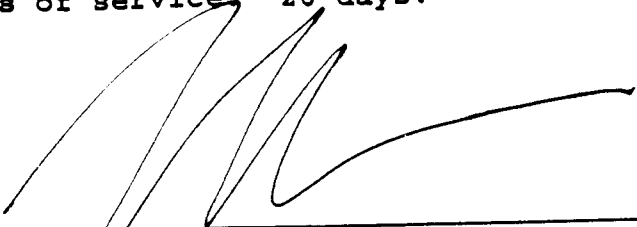
- a. During the first calendar year, or part thereof, of such employee's employment: one (1) day for each month of partial month employment.
- b. After one year of service but less than 5 years of service: 15 days.

c. After five years of service but less than 15 years of service: 20 days.

d. After 15 years of service but less than 25 years of service: 25 days.

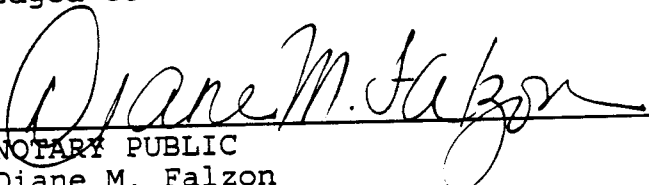
e. After 25 years of service: 26 days.

December 23, 1998.



Martin F. Scheinman, Esq.,
Interest Arbitrator

On this 23rd day of December 1998, before me personally came and appeared MARTIN F. SCHEINMAN, ESQ., to me known and known to me to be the individual described herein and who executed the foregoing instrument and he acknowledged to me that he executed the same.



NOTARY PUBLIC
Diane M. Falzon
Registration No. 01FA5073646
County of Nassau
Expires March 3, 1999

