

NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of Arbitration Between:

CITY OF EAST ORANGE

"Public Employer,"

- and -

PBA LOCAL 16, SOA

"Union."

**INTEREST ARBITRATION
DECISION AND
AWARD**

Docket No. IA-1999-132

**Before
James W. Mastriani
Arbitrator**

Appearances:

For the City:

Avis Bishop-Thompson, Esq.
DeCotiis, Fitzpatrick, Gluck & Cole, LLP

For the PBA:

Simon M. Bosco, Ed.D.
S.M. Bosco & Associates

I was appointed to serve as interest arbitrator by the New Jersey Public Employment Relations Commission in accordance with P.L. 1995, c. 425, pursuant to a petition which was jointly filed by East Orange PBA Local No. 16 [the "PBA"] and East Orange Superior Officers Association [the "SOA"]. These two bargaining units were parties to collective negotiations agreements with the City of East Orange [the "City"] effective July 1, 1996 through June 30, 1999. The PBA represented all sworn police officers below the rank of Sergeant and the SOA represented all sworn police officers in the ranks of Sergeant, Lieutenant and Captain. Several pre-arbitration mediations were held with all parties present. The impasses were not resolved and formal interest arbitration hearings were scheduled. Prior to the hearings, there was a representation proceeding involving the unit of rank and file police officers which was resolved by the certification of the East Orange FOP Lodge No. 111 [the "FOP"] as the exclusive representative for those officers. Formal interest arbitration hearings proceeded with the SOA and the FOP proceeded to mediation and interest arbitration pursuant to a separately filed petition [IA-2001-51].

Formal interest arbitration hearings were held on February 26, 2001, December 18, 2001 and May 16, 2002 at which the parties examined and cross-examined witnesses and introduced documentary evidence into the record. Testimony was received from City Auditor Dieter P. Lerch and from Joseph Martin, an independent certified management consultant. The terminal

procedure was conventional arbitration because the parties did not mutually agree to an alternative terminal procedure. Under this process the arbitrator has broad authority to fashion the terms of an award based upon the evidence without being constrained to select any aspect of a final offer submitted by either party. Post hearing briefs were submitted by both parties and transmitted by the arbitrator to each party on or about October 1, 2002.

The statute requires each party to submit a last or final offer. I have set forth below the last or final offer of each party.

FINAL OFFERS OF THE PARTIES

The SOA

Non-Economic Proposals

1. **Article VII – Grievance Procedure:** Add new section as follows:

Section 2(c): A grievance shall be instituted and filed at the lowest level and/or step where a remedy is plausible and/or organizationally possible.

2. **Employee Discipline**

No employee shall be disciplined, discharged, reduced in rank or compensation without just cause.

Minor employee discipline shall be arbitrable under the grievance procedure to the extent permitted by law.

3. **Article XIX – Hours of Work, Scheduling and Overtime**

Section 5: Add the following last sentence:

It is agreed that the employee may opt at his/her sole discretion to attend such police training on either his/her scheduled day(s) off or on his/her scheduled time off.

Economic Proposals

1. **Article XIII – Insurance**

Section 6: Add new section as follows:

Employees retiring on a service retirement with at least twenty-five (25) years of creditable N.J.P.F.R.S. pension service; or, with at least fifteen (15) years of creditable N.J.P.F.R.S. pension service and reach the age of sixty-two (62); or, receive a disability retirement through the N.J.P.F.R.S., shall receive full hospitalization, health, and Major Medical benefits as provided for within the contract for himself/herself and dependents completely paid for by the City of East Orange.

Section 2: Change plan to Delta Dental Plan offered other City employees.

2. **Article XV – Salary and Longevity**

Section 1: Increase as follows:

| | | | | |
|--------|---|----------|---|------|
| 7/1/99 | - | 12/31/99 | - | 1.0% |
| 1/1/00 | - | 06/30/00 | - | 2.0% |
| 7/1/00 | - | 12/31/00 | - | 1.0% |
| 1/1/01 | - | 06/30/01 | - | 2.0% |
| 7/1/01 | - | 06/30/02 | - | 4.0% |
| 7/1/02 | - | 06/30/03 | - | 4.0% |

3. **Article XIX – Hours of Work, Scheduling and Overtime**

Section 6: Add new last sentence as follows:

Said days shall be cumulative month to month, except that all "E" days shall be used by the end of the calendar year in which they were accrued.

Section 12, Compensatory Time Bank: Increase each subsection as follows:

(a)(b)(c) from 320 hours to 480 hours

(d) All compensatory time earned by or opted for by each employee shall be accrued at the rate of one and one-half (1 ½) hours for every hour worked.

4. **Article IX – Vacation and Vacation Pay**

Section 1(c): Increase each as follows:

... vacation leave allotments for Twenty (20) years of service or more shall be increased as follows:

Sergeants – 32 days
Lieutenants – 34 days
Captains – 36 days

5. **Article X – Sick Leave Incentive Program and Retirement Benefit**

Section 2(a): Change from 25 years of service with East Orange to Twenty-five (25) years of creditable service with N.J.P.F.R.S.

6. **Article XI – Holidays:** Change as follows:

Section 1: Delete "having less than twenty-two (22) years of service."

Section 2: Change as follows:

Holiday pay shall be incorporated into each employee's base wages for purposes of pensionable earnings. The City shall indicate payment in the pay period for when the holiday occurs, however, the City shall withhold the net amount of the employee's compensation and shall distribute the net amount of all fourteen (14) holidays in accordance with Section 1 herein above.

The City of East Orange

1. **Term of Contract**

The City of East Orange seeks to enter into a five (5) year contract with the SOA for the period of July 1, 1999 through June 30, 2004.

2. **Wages/Salary**

July 1, 1999 – 0.5% increase in base salary

July 1, 2000 – 1.0% increase in base salary

July 1, 2001 – 1.5% increase in base salary

July 1, 2002 – 2.0% increase in base salary

July 1, 2003 – 2.0% increase in base salary

3. **Longevity**

A. Any individual currently receiving longevity will have the amount of longevity frozen for the balance of their career. The amount frozen would be the dollar amount, not the percentage of their salary. By way of example, if an individual is presently receiving nine (9)% longevity, and that equates to \$5,000.00, then he/she would receive only \$5,000.00 per year for the balance of his/her career, not nine (9)% of his/her salary, as that salary might increase over the next several years.

B. In addition, longevity would be eliminated for all individuals hired after the ratification of the within Contract.

4. **Health Benefits**

A. All employees presently covered under an HMO would have their co-pay increased from \$5.00 to \$10.00. All employees covered under traditional coverage would be required to contribute to the cost of said premiums as follows:

i. Single: \$50.00 per month contribution

ii. Married or not single: \$125.00 per month contribution

iii. Retirees:

1. Any retiree receiving traditional coverage as a "single" would be required to contribute

\$100.00 per month. Any retiree receiving traditional coverage other than single would be required to contribute \$250.00 per month. If a retiree can obtain coverage under an HMO, then they would not be required to pay any contribution or co-pay.

2. In order for a retiree to be eligible for any coverage, they would have to have been an employee for the City of East Orange for a minimum of 25 years. It would also be required that any retiree eligible for Medicare would utilize Medicare as their primary coverage.

- B. The City proposes a three-tier prescription plan as follows: employees would pay a \$5.00 co-pay for generic drugs; a \$12.00 co-pay for formulary drugs; and a \$25.00 co-pay for non-formulary drugs.

5. **Worker's Compensation**

The City proposes a reduction in the temporary disability payments to an amount equal to the statutory minimum or approximately 70% of the employee's wages.

6. **Time on the Books**

The City proposes that an employee's time on the books would be frozen at its dollar value immediately preceding the promotion of any affected employee.

7. **Shift Bid**

The City proposes the elimination of Section 13 pertaining to the shift bid system.

8. **Terminal Leave**

The City proposes the elimination of terminal leave payments.

The City and the Union have offered testimony and considerable documentary evidence in support of their last offers. Each submission was

expert and comprehensive in nature. The entire record of the proceeding must be considered in light of the statutory criteria. I am required to make a reasonable determination of the above issues giving due weight to those factors set forth in N.J.S.A. 34:13A-16g(1) through (8) which I find relevant to the resolution of these negotiations. I am also required to indicate which of these factors are deemed relevant along with an analysis of the evidence on each relevant factor. If one or more factors are deemed irrelevant, I must satisfactorily explain why they are not relevant. These factors, commonly called the statutory criteria, are as follows:

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

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

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

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

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

party shall have the right to submit additional evidence concerning the comparability of jurisdictions for the arbitrator's consideration.

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

(4) Stipulations of the parties.

(5) The lawful authority of the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by the P.L. 1976 c. 68 (C.40A:4-45 et seq).

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

(7) The cost of living.

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

negotiations and collective bargaining between the parties in the public service and in private employment.

BACKGROUND

The City of East Orange is an urban municipality operating in a challenging environment. The record reflects a high crime rate, high unemployment rate, decreases in ratables while property tax rates have increased. East Orange is one of 22 municipalities in Essex County. The City encompasses an area of approximately 4 square miles and has a population of approximately 72,847. According to the statistics of the U.S. Census Bureau, the median household income in the City is approximately \$26,810 per year, a sum considerably less than the median household income in Essex County (\$39,823) and statewide (\$47,903). Per capita income in the City is approximately \$12,376, which is one of the lowest in Essex County. Poverty levels in the City mirror those statewide with approximately 9% of its adult residents and 13% of its children living below the poverty level. The statewide average is 9% of adults and 14.8% of children live below the poverty level. At the same time, the City's unemployment rate was 6.4% in 2000, compared with unemployment rates of 4.7% countywide and 3.8% statewide.

The City is currently in the process of recovering from a deep fiscal crisis. The crisis was most severe in fiscal year 1999, when its \$14,279,793 deficit, combined with deficits of \$1,886,000 in fiscal year 1997 and \$6,587,650 in fiscal

year 1998, lead the State of New Jersey to take over its financial operations pursuant to the Government Supervision Act. City Auditor Dieter Lerch calculated that by the close of fiscal year 1999, the City's actual fund balance was a true deficit of \$21,868,152. The State takeover permitted the City to pay off its deficit (unfunded expenditures) over a five year period. According to Mr. Lerch, the deficit had been reduced to \$8,103,171 by June 30, 2001.

Mr. Lerch testified that the City has been successful in reducing its deficit through a combination of tax increases, aggressive tax collection campaign and state aid through the Distressed City Aid Act. Mr. Lerch also testified that about half of the City's budget is funded by its tax levy and the remaining half through state aid.

In September of 2001, the City entered into an agreement with the State Division of Local Government Services that conditioned the further receipt of State aid on a reorganization of its Police Department. That Agreement stipulates that the full staffing complement for Superior Officers is eight Captains, 21 Lieutenants and 43 Sergeants. That Agreement provided further that the City should have a full complement of 284 rank and file police officers and one Deputy Chief and one Chief of Police.

Notwithstanding this history of adverse finances, the record reflects that the City does have assets in terms of its location and mass transportation which allows for future growth and a more positive financial outlook for the future.

POSITIONS OF THE PARTIES

Position of PBA, Local 16, Superior Officers Association

Addressing its proposals in light of the statutory criteria, the SOA asserts that the interest and welfare of the public would be served better by an award of its economic package. The SOA emphasizes that the City has not indicated that the SOA's wage proposal would place an undue burden on the City under the "Cap Law". The SOA acknowledges that general restrictions included in the finance laws will impact on the retroactive portion of the award. Also acknowledging that the City has experienced some financial difficulties, the SOA reiterates the City's responsibility to fairly and reasonably compensate its police force who operate in an extremely difficult and dangerous environment. The SOA emphasizes the burden placed upon East Orange police officers in comparison to their level of compensation. The SOA points out that East Orange is the second most densely populated municipality in Essex County. Explaining that greater density is generally believed to lead to higher stress levels and the potential for more frequent conflict and increased levels of violence, the SOA urges the City to provide greater rewards for its superior officers. Comparing East Orange to the communities the SOA characterizes as the "urban six",

Paterson, Jersey City, Trenton, Newark, Camden, and Elizabeth, the SOA points out that among these six municipalities, East Orange is the second most densely populated municipality.

The SOA notes that among the six municipalities, East Orange is also the smallest in terms of size. Looking to the number of police officers per thousand, the SOA points out that East Orange has 3.81 police officers per thousand citizens, well below Newark with 5.42 police officers per thousand citizens. Looking to the County generally, the SOA notes that East Orange is the seventh most densely populated municipality but is eighth in comparative police force size, and its relative force size is to slightly greater than the County average of 3.45 officers per thousand citizens. Comparing East Orange to the urban six municipalities, the SOA points out that it is the second most densely populated municipality compared to the six, but it has fewer police per thousand citizens than four of the six municipalities. The average of 4.01 officers per 1000 citizens is above the 3.81 police officers for thousands citizens in East Orange. The SOA maintains that the urban six municipalities provide a more accurate sample Essex County communities generally because the urban six municipalities share problems similar East Orange.

The SOA asserts that East Orange police are under compensated and that the disparity is more glaring when their compensation is compared to both Essex County law enforcement officers and police officers in the urban six

municipalities. The SOA maintains even if its final offer is awarded in its totality, bargaining unit members will not catch up with their counterparts in other municipalities. The SOA seeks to retain a relatively close proximity. If the City's final offer is awarded, the SOA asserts that Superior Officers' rankings will plummet and make the disparity with other municipalities even more glaring. The SOA emphasizes that since the September 11, 2001 attacks, the general public is more cognizant of the need to recognize and compensate police officers and firefighters. For example, the SOA notes that in New York City, which is in financial distress following the attacks, police officers received a 14 percent increase in pay over two years.

Addressing the comparison of wages, salaries, hours, and conditions of employment, the SOA argues that the overall compensation of East Orange Officers compared with officers in comparable jurisdictions both within Essex County and within the urban six municipalities must be a major consideration. Noting that the City has not presented comparative data or refuted any of the comparative data submitted by the SOA, the SOA notes that wages paid to Superior Officers within each respective police department are traditionally and practically tied to wages paid to the rank-and-file police in each department. Accordingly, the SOA presents both a comparison of Superior Officer salaries as well as comparison of rank-and-file salaries. For the first year of the agreement, the SOA's comparison of its final offer of 1% on July 1, 1999 and an additional 2% on January 1, 2000 with the City's offer of .5% demonstrates that by the end

of the year police officers would experience slippage of \$2,129 compared with the County average for the year. Similarly, the SOA demonstrates that Sergeants would experience \$2,165 in slippage, Lieutenants would experience \$2,917 in slippage and Captains would experience \$1,888 in slippage when compared with the County average for 1999. The SOA calculates that in 1998, the base salary for an East Orange Patrol Officer was 3.91% under the County average of \$54,440. Similarly, the SOA calculates that in 1998, the base salary for an East Orange Sergeant was 3.52% under the County average, while Lieutenants were 4.25% under the County average and Captains were 2.5% under the County average base wage. According to the SOA, applying each party's respective final offer shows that the gap between East Orange Superior Officer salaries and the County average salary would widen under each final offer, but that the City's final offer would produce an exponential expansion.

The SOA demonstrates the increasing gap between the County average and the City's proposal in 2000-2001 graphically as follows:

**Gap Between Average Base Wage and the
East Orange Police Department 2000-2001**

| Rank | City's Proposal | SOA's Proposal |
|-----------------------|------------------------|-----------------------|
| Patrol Officer | (6.97%) | (4.64%) |
| Sergeant | (7.40%) | (5.08%) |
| Lieutenant | (8.62%) | (6.33%) |
| Captain | (7.60) | (5.24%) |

Reiterating that under the City's final offer, the departmental comparison would fall from 3.545% below the Essex County average in 1998-1999 to 7.65% below the County average for 1999-2000, the SOA asserts that if the City's final offer were awarded, the disparity would increase in the 2000-2001 fiscal year. To demonstrate the disparity between the City's offer and the County average in the 2000-2001 fiscal year, the SOA provided the following chart:

| Rank | 00/01 Base | 2000 County Average | (\$ Difference) | (%) |
|----------------|------------|---------------------|-----------------|----------|
| Patrol Officer | \$53,099 | \$58,650 | (\$5,551) | (9.46%) |
| Sergeant | \$60,199 | \$67,404 | (\$7,205) | (10.68%) |
| Lieutenant | \$66,755 | \$77,045 | (\$10,290) | (13.35%) |
| Captain | \$74,984 | \$85,983 | (\$10,999) | (12.79%) |

The SOA calculates further that over a two year period, under the City's proposal, the disparity between the Essex County average and the salaries earned by the City's Superior Officers would increase from 3.545% to 11.57%. The SOA calculates further that by the contract's end on June 30, 2003 the impact of an award of the City's final offer would have the following detrimental effect upon Superior Officers:

City's Wage Offer Application by June 30, 2003

| Rank | 02/03 Base | 2003 County Average | (\$ Difference) | (%) |
|------------|------------|---------------------|-----------------|----------|
| Sergeant | \$62,324 | \$72,205 | (\$9,881) | (13.68%) |
| Lieutenant | \$69,111 | \$82,533 | (\$13,422) | (16.26%) |
| Captain | \$77,631 | \$92,107 | (\$14,476) | (15.72%) |

In contrast, the SOA calculates the difference between the base salary for a rank and file officer of \$60,049 assuming its salary proposal, and the County average

for a rank and file police officer of \$62,847 in 2003. The SOA calculates that the difference to be \$2,778 or 4.42%. The SOA points out that its final offer would limit the gap between the County average salaries and the salaries earned by East Orange Superior Officers as follows:

SOA'S Wage Offer Application by June 30, 2003

| Rank | 02/03 Base | 2003 County Average | (\$ Difference) | (%) |
|------------|------------|---------------------|-----------------|---------|
| Sergeant | \$68,078 | \$72,205 | (\$4,127) | (5.72%) |
| Lieutenant | \$75,494 | \$82,533 | (\$7,039) | (8.53%) |
| Captain | \$84,800 | \$92,107 | (\$7,307) | (7.93%) |

Reiterating that the City has not questioned or disputed the SOA's comparative evidence, the SOA objects vigorously to the City's proposal to cap longevity payments for existing bargaining unit members and to eliminate longevity for all future hires. The SOA emphasizes that the effect would be immediate and the dollar value of the longevity benefit would decline annually by the same percentage as the increase in base wages for each year. Explaining that longevity is currently calculated as a percentage of base wages, the SOA calculates that under the City's proposal bargaining unit members would have their annual earnings stifled by either 2% or 4% in 2003, depending upon the amount of the base wage increase awarded. The SOA notes that since longevity is calculated as a percentage of base wages, by changing the benefit to a flat dollar amount, longevity growth would no longer be tied to the annual wage adjustment.

Turning to the cost of living criterion, the SOA asserts that cost of living data shows that the cost of living rose 2.00% in fiscal year 1999, 3.70% in fiscal year 2000 and 3.3% in fiscal year 2001 for a cumulative total of 9%. The SOA notes that for that same period, the City proposes a 3% increase, which is 6% below the cost of living. In contrast, the SOA emphasizes that for the same period, its cumulative proposal would increase wages by 10%, or 1% above the cost of living. Given the rigors of police work in East Orange, the SOA asserts that its proposal is more reasonable.

When overall compensation is considered, the SOA asserts that its final offer is more reasonable, particularly when the City's final offer is considered in its entirety. According to the SOA, an award of the City's proposal in its entirety would have the following effects:

- Provide wage increases below the cost of living.
- Provide wage increases well below the County average.
- Diminish real earnings by freezing longevity for current employees and eliminating it for future employees.
- Drastically increasing out-of-pocket expenses for HMO Medical deductibles.
- Charge significant monthly contributions for non-HMO Medical insurance participants and retirees.
- Charge significantly higher out-of-pocket expenses for prescription drugs.
- Reduce Workers Compensation benefits by 30%.

- Reduce an employee's hourly overtime rate by changing the base to 2080 hours per year.
- Eliminate Terminal Leave.

Addressing medical benefits, the SOA calculates that the financial impact of the City's proposed increase in medical insurance contributions and/or HMO payments total \$600 per year for family traditional coverage and a 100% increase in the HMO co-payment. The SOA contends that the City has not provided documentary evidence or testimony in support of this proposal. Additionally, the SOA asserts that there is no other police officer employed on any police force within Essex County required to make contributions to their medical insurance costs. The SOA also objects to the City's proposal to impose monthly contributions on retirees for their medical benefits. The SOA points out that the arbitration process applies only to members of the bargaining unit at the time the process begins and the Arbitrator is without jurisdiction to address retiree health benefits. The SOA contends that the City has not been successful in achieving similar "give-backs" with any other bargaining unit. In support of this contention, the SOA notes that the City has not placed any such agreements in evidence.

Turning to terminal leave, the SOA asserts that the City's proposal to eliminate terminal leave would make East Orange an anomaly since only Belleville Township, Essex Fells Borough, Maplewood Township and Essex County law enforcement units do not enjoy terminal leave benefits. The SOA notes that at present, the contract language provides only a modest terminal

leave benefit when compared to similar benefits provided to law enforcement officers throughout Essex County. Specifically, East Orange Superior Officers receive a 50% cash payout with a maximum of \$15,000 per retiree. According to the SOA, twelve other municipalities in Essex County provide terminal leave payouts of 100% and eleven of these municipalities place no cash limits on the amount of the payout. The SOA emphasizes that the City made no attempt to support its proposal to eliminate terminal leave and examination of comparable benefits within Essex County would provide little support for such a proposal. To this end, the SOA illustrates that both Newark and Irvington provide greater terminal leave benefits. According to the SOA, Newark pays 100% terminal leave to a maximum of 75 days. Based upon the per diem rate for a Newark Sergeant in 1999, exclusive of longevity, the SOA calculates that a Newark Sergeant would receive a minimum of \$22,504. Similarly, the SOA notes, in Irvington, the terminal leave benefits is 100% on a maximum of 80 days and in Orange, it is a 70% of a maximum of 126 days.

The SOA asserts that its proposal to improve vacation benefits after twenty years of service to 32 days per year for Sergeants, 34 days per year for Lieutenants and 36 days annually for Captains, would provide additional time away from the daily stresses of the job and provide recognition of the levels of responsibilities that correspond to these ranks. In support of this proposal, the SOA compares the vacation benefits over a 30 year career of an East Orange police officer, who will earn 581 days, with the County average of 633.5 days.

The SOA proposes to amend the holiday pay provisions so that holiday pay is included in base pay for all officers. According to the SOA, holiday pay is folded into base pay for employees once they reach their 22nd year of service. The SOA points to the New Jersey Division of Pensions ruling that in order for holiday pay to be considered creditable earnings for pension purposes, it must be incorporated into the base wages for all employees. The SOA argues that the parties' agreement has always intended for holiday pay to be included for pension purposes, and this proposal is not a new concept. Rather, according to the SOA, its proposal would simply modify the current language in order to comply with the current Division of Pensions ruling. In response to the City's argument that this would increase overtime costs, the SOA emphasizes that it does not anticipate that the holiday-roll in would be used to calculate an employee's hourly rate for overtime purposes. Accordingly, the SOA asserts that the cost would be limited to the increase in pension contributions for the first 21 years of employment. Based upon the City's calculations, the SOA points out that the estimated cost of this proposal would be \$14,143.76 less the amount currently paid by the City for those Superior Officer who have reached their 23rd year of service.

Addressing the City's remaining economic proposals to reduce Workers' Compensation benefits from 100% to 70% and to freeze the value of compensatory time accrued by an employee at the employee's hourly rate in

effect immediately preceding his or her promotion, the SOA points out that the City has not provided evidence or justification, save generalized cost savings, for these proposals. The SOA contends that these proposals are significant departures from the status quo and from benefit levels paid to other City employees, and would significantly diminish benefit levels.

The SOA also proposes to permit employees to carry "E" days from month to month, to be used by the end of the year, instead of using them in the month in which they are earned. Explaining that "E" days are schedule adjustment days used to compensate Superior Officers for additional workdays experienced as a result of training, the SOA notes that staffing constraints limit the Superior Officers' ability to use the "E" days in the month in which they are earned. The SOA maintains that the carryover of "E" days would provide greater scheduling flexibility for the department, while preserving an employee's benefit. The SOA notes that the City would retain control over its manpower and overtime expenditures.

Similarly, the SOA propose to increase the maximum accruable limit to each employee's Compensatory Time Bank from 320 hours to the statutory maximum of 480 hours. The SOA asserts that the City has not been diligent in enforcing the current limit and the proposal would provide short-term financial relief to the City by permitting it to defer overtime payments into the future.

The SOA also proposes to alter the contractual threshold for retirement benefits from 25 years of creditable service with the City to 25 years of creditable service with the New Jersey Police and Fire Retirement System. According to the SOA, this would provide the City's employees with the same benefit level as those employers who participate in the New Jersey State Health Benefits Program.

Noting that there are no stipulations between the parties, the SOA turns to the lawful authority of the parties. The SOA emphasizes that the City relied upon the fact that it was under State supervision of its financial operations, but did not assert that the SOA's proposals would fall outside of its lawful authority under the CAP law. The SOA objects to the City's efforts to get "its own financial house in order" by reliance on its proposals which adversely affect Superior Officers.

The SOA maintains that its proposal would better serve, promote and protect the public's interest and welfare because it provides a more reasonable salary structure and continued incentive to work for the City. Relying upon the City's financial evidence, the SOA points out that the City's financial woes in 1999 resulted from an ill-advised decision in 1997 to reduce the tax rate. The SOA compares the Fund Balance in 1997 through 1999, which was \$451,019 in each year, with the Fund Balance of \$2,310,914 in 2000 and \$3,441,839 in 2001. The SOA calculates that even after application of chargeable, non-budgeted and such items as deferred wages and uncollectable State Aid, the Fund Balance

deficit shrunk from \$21,868,152 in 1999 to \$8,104,171 in 2001. The SOA highlights increases in the collection of delinquent taxes, noting that in 1998 the City collected \$2,054,000 in delinquent taxes and in fiscal year 2000 the City collected \$13,492,000 or an increase of 84.77%. The SOA calculates that in FY 2000 and FY 2001, the City collected a total of \$25,017,000 in delinquent taxes, which is one component of the City's stabilized financial condition.

Turning to the City's revenues, the SOA illustrates that the City's revenues have increased dramatically. According to the SOA, in 1999 City revenues were \$112,000,000 and increased to \$131,000,000 in 2000, resulting in growth of 16.96%. The SOA notes that the growth continued in 2001 to \$132,000,000 for an additional 0.76% increase in growth.

The SOA calculates that in fiscal year 2002, the municipal budget included \$44,186,593 in total allowable appropriations and a total budget of \$76,005,457 leaving a total of \$1,181,136 available. Noting that the CAP is calculated at 4%, an additional 1% is also available, providing a total of \$1,942,140 according to the SOA. The SOA also points out that only 47% of the City's budget is funded by the tax levy, so any salary increase will not be funded totally by the taxpayers. The SOA contends that the municipal tax rate decreased by 34 points from \$18.02 in 2000 to \$17.68 in 2001. According to the SOA, the decreased municipal tax rate coupled with the taxpayers lessened burden to fund public

education due to Abbott funding, minimizes the impact of the SOA's economic proposal.

The SOA contends that generally relative stability of the cost of living minimizes its relevance, but in this instance, the SOA asserts that the City's "unrealistic" position must be compared to the cost of living. The SOA compares the increase in the cost of living of 9.0% from July 1, 1999 through June 30, 2001 with the City's final offer to increase wages by 3.0% over the same time period. According to the SOA the 6.0% disparity is unrealistic, unsupported, and not in the best interest of the City's public and taxpayers.

Addressing the continuity and stability of employment, the SOA speculates that an award of the City's final offer would have a deleterious impact on a department that is already over-worked and under-compensated when compared with the overwhelming majority of Essex County police departments. The SOA points to recent large raises issued to the Mayor, Business Administrator, Chief of Staff and other exempt employees and asserts that its Superior Officers deserve no less.

Turning to its non-economic proposals, the SOA seeks to amend the grievance procedure to add a new section that would provide that the grievance shall be filed initially at the lowest level "where a remedy is plausible and/or organizationally possible." The SOA explains that this proposal would expedite

the grievance procedure by permitting officers to skip steps of the grievance procedure when the matter can not be settled at that step. For example, the SOA explains that at present, a Sergeant must grieve a decision made by the Chief with the Sergeant's immediate supervisor, who is a Lieutenant without authority to overrule the Chief. The SOA argues that this proposal would reduce frustration and remove the potential for interdepartmental conflict by limiting the need for unnecessary ranks from having to provide comment, opinion or colloquy.

The SOA also seeks to add a new section to the agreement that would cover employee discipline. This proposal would add a provision requiring that "no employee shall be disciplined, discharged, reduced in rank or compensation without just cause" and would provide that minor discipline is arbitrable to the extent permitted by law. The SOA points out that "just cause" is a well-established standard for discipline and that minor discipline may now be legally processed through binding arbitration. According to the SOA, this proposal will neither expand nor restrict legal rights or privileges that currently exist, but will ensure that such rights are provided to SOA members given that the current agreement does not specifically address these requirements.

Finally, the SOA proposes to amend the hours of work provision of the agreement to add a provision allowing an employee to "opt at his/her sole discretion to attend such police training on either his/her scheduled day(s) off or

on his/her scheduled time off." The SOA explains that at present, employees are scheduled for training only on days off. However, according to the SOA, often training, particularly firearms qualification, lasts only a few hours, and is offered over the course of several days. Under the present contract language bargaining unit members are ordered to return for firearms qualification on their day off. Based on individual work schedules, employees could well have attended firearms qualification either or before or after their work shift. The SOA explains that it does not propose receive overtime compensation or be able to "dodge" or unreasonably prolonged necessary training. Instead, the SOA proposes that when appropriate, the employee be permitted to choose whether the training will occur on a regularly scheduled day off or during scheduled time off.

Position of the City of East Orange

According to the City, its final offer is fair and reasonable under its current operating circumstances and should be awarded. Citing statistics demonstrating that it is largely a community composed of low income minority residents, with the attendant problems including high crime rates and high levels of unemployment, as well as decreasing ratables and increasing property taxes, the City maintains that its final offer is reasonable in light of these difficult circumstances. Specifically, the City points out that in East Orange, 9% of adults and 13% of children live below the poverty level, and its median household income is \$26,810, well below the County average median household income of \$39,823 and the State median household income of \$47,903. The City also

notes that in recent years, the unemployment rate in East Orange has been considerably higher than in the remainder of Essex County and Statewide. The following table illustrates the unemployment rate for East Orange as compared to Essex County and the State of New Jersey:

| | 1997 | 1998 | 1999 | 2000 |
|--------------|------|------|------|------|
| East Orange | 8.7% | 7.5% | 7.7% | 6.4% |
| Essex County | 6.5% | 5.6% | 5.7% | 4.7% |
| New Jersey | 5.1% | 4.6% | 4.6% | 3.8% |

The City maintains that the unemployment rate is substantially greater than the unemployment rates for Essex County and the State. The City argues that the slight improvement in its fiscal conditions in 2001 does not erase the continuing economic plight in the City. To that end, the City points out that the New Jersey Office of State Planning consistently ranks East Orange in the top 100 of the Municipal Distress Index (MDI)¹, an index of socioeconomic distress. The City notes that as a distressed municipality, it has repeatedly been required to apply to the NJ Department of Community Affairs (DCA) for approval to exceed the statutory limitations to carry debt. According to the City, in 1999 it was required to operate under the supervisory powers of the State pursuant to the Government Supervision Act. Under that Act, the State imposed a hiring freeze.

¹ The MDI is an index of socioeconomic distress in which the ranking of municipalities is one of a number of factors used for determining priority in the Statewide Policies for Public Investment Priorities as well as for priority for municipal strategic revitalization planning under Statewide Policies for Urban Revitalization in the New Jersey State Development and Redevelopment Plan adopted in 1982. The MDI has also been used since 1979 as one of several factors in distributing need-based funds.

As additional support for fiscal problems facing East Orange, the City points to the testimony of its Auditor, Dieter P. Lerch. Mr. Lerch testified that the tax levy has increased 29% since 1998, compared to the CPI, which has increased by 13%.

The City maintains that the "gray financial backdrop" that it has presented supports its final offer, which though "spartan" will not negatively impact the interests of the public. To that end, the City points out that the wage increase awarded in this case will impact costs in other areas, including other bargaining units. The City maintains that it can not fund the increases proposed by the SOA to all seven bargaining units. The City asserts that the SOA has not offered either testimony or documentary evidence that its proposal can be funded through surplus funds.

Turning to the City's municipal budget, the City maintains that it is and has been in severe financial straits. The City explains that it entered a downward spiral at the end of fiscal year 1997. It incurred a deficit of \$1,887,367 by June 30, 1997. Lerch testified that the deficit increased to \$6,587,651 by June 30, 1998 and to \$14,279,793, by June 30, 1999. The City notes that it had accumulated an additional \$12 million in losses and other expenditures that had not been funded. The City calculates that in 1999 it had accumulated deferred charges of \$21,868,152, or approximately 25% of its \$105 million municipal

budget. The City explained further that under municipal accounting regulations, absent State intervention, it would have been required to fund 100% of its deficit in the following year's budget.

The City acknowledges that it has been able to begin a fiscal recovery through State aid and grants. Elements of that recovery include an agreement between the City and its employees to defer two weeks pay until retirement, thereby deferring \$1,641,523. The City notes that the deferred wages were listed as deferred charges in the budget from 1997 through 2001. The City points out that another element of its recovery required an increase in property tax rates from 32% to 42% to pay down deferred charges. The City notes that the percentage of its budget supported by tax revenues has increased from 38% in 1996 to 50% in 2001. At the same time, the City emphasizes that its tax collection rate has increased from 80% to 87%, but is still below an acceptable level of 90% or better. The City notes that in 2000 it experienced surplus revenues of \$1,859,895 and in 2001, the City had \$2,390,925 in surplus revenues.

Reiterating that its finances were taken over by the State after the end of the 1999 fiscal year, the City notes that it has been directed by the State to pay 20% of its 1999 deferred charges in each and every year's budget for the next five years, beginning in 2000. The City explains that in 2000 it reduced the deferred charges by \$3 million by increasing property taxes. The City notes that

it continued to pay down the deferred charges in 2001 and as of June 30, 2001, the City's accumulated deficit balance was \$8,103,171. In order to complete the payment of the deferred charges in the 2002, 2003 and 2004 budgets, the City's annual payments of the deferred charges will be approximately \$2.5 million per year.

Although the City has ended fiscal years 2000 and 2001 with an operating surplus, it maintains that it does not enjoy a true operating surplus because it is required to borrow money to meet its current revenue needs by issuing tax anticipation notes, or a working capital loan. The City points out that it has tax anticipation notes of \$7 million outstanding. Relying upon Lerch's testimony, the City points out that it has been required to sell tax anticipation notes in each fiscal year to meet current revenue needs.

The City maintains that since 1998 its revenue stream from non-tax sources has evaporated. Specifically, the City explains that it operates a water utility system that has realized a profit historically. In 1998 the water utility realized \$2,201,252 in profit and \$1 million was targeted for property tax relief. However, in fiscal year 1999, the water utility experienced a deficit of \$1,472,672 and in fiscal year 2000, the water utility experienced a deficit of \$2,518,557. Mr. Lerch testified that by June 30, 2001 the water utility's deficit totaled \$2,576,012, which the City is now required to raise on future charges through taxes. According to the City, the water utility received permission from the State Division

of Local Government Services to pay its accumulated deficits over a three year period. Accordingly, the City notes that both it and the water utility are budgeting to pay down deficits from fiscal years 2000, 2001 and 2002. The City points out that the efforts to balance the water utility's budget required employee layoffs.

As a further gauge of its financial well-being, the City compares its assessed value of real property with other municipalities in Essex County. Noting that the trend in the City is a decrease in the value of taxable real property, the City points out that between 1997 and 2001 ratables decreased by almost \$27 million to \$302,664,600. At the same time, the City's total tax levy has increased substantially over the past four years. The City points out that for the fiscal year ending 2001, City, County and school taxes increased \$18 million, with the biggest increase being attributed to the City's increase of \$14 million. The City calculates that its property tax levy increased approximately 29% from 1997 through 2001 while the CPI increased by approximately 10.7%. The City compares the increase in its tax levy to the CPI as follows:

| Year | Increase in City's Property Tax Levy | Increase in CPI |
|-------------|---|------------------------|
| 1998 | 9.9% | 1.7% |
| 1999 | 8.5% | 2% |
| 2000 | 2.5% | 3.3% |
| 2001 | 5.5% | 3.3% |

The City points out that its financial difficulties also stem from the declining value of taxable properties. The City compares its true equalized tax rate of \$6.69 with those of other Essex County municipalities. According to the City, its

equalized tax rate is in excess of three times the tax rate of some Essex County communities including Roseland, North Caldwell, Verona, Livingston and Cedar Grove. The City emphasizes that even Irvington, another distressed City in Essex County with the County's second highest tax rate of \$5.00, and Orange with a tax rate of \$4.59, both have property tax rates substantially lower than East Orange.

The City also points out that it has a severe delinquent property tax payment problem. According to the City, this problem is exacerbated by the fact that the amount of taxes owed on delinquent properties often exceeds their fair market value and properties are often abandoned or not marketable due to "environmental contamination." According to the City, by the end of 1998 it had placed tax liens of \$12,675,442, but had collected only \$371,017, or 2.9%. Pointing to Lerch's testimony, tax delinquencies increased dramatically in the fiscal year ending 2001. At that time, the City issued tax liens for \$24,408,033 and collected only \$3,168,000, or 13%. The City asserts that it has aggressively foreclosed on tax liens, but the situation remains severe.

The City maintains that it relies heavily upon grants and State aid to provide for its current revenue needs. The City explains that it receives Distressed City Aid specifically for tax relief. The City notes that it received \$7 million in such aid for fiscal year 1999 \$9 million in Distressed City Aid for fiscal year 2000 and \$6 million for fiscal year 2001 for a total of \$22 million over the last

three years. The City calculates that without this aid, the average homeowner would have paid an additional \$588 per year. According to the City, if this aid were to be removed, it would be faced with an additional 10% tax increase.

According to the City, State aid has not increased proportionately with its expenditures. When this is combined with the declining tax base, the City maintains that its new revenue sources are extremely limited. The City also points out that in the early 1990's two entries of promised State aid in the amount of \$4,150,000 were not disbursed. As a result of this financial situation, the City asserts that it must control costs wherever possible to limit the burden on its taxpayers. The City maintains that the interest and welfare of the public will be best served by adopting its final offer for fair, but affordable, increases in police salaries.

The City urges that weight be given to how recent its fiscal recovery is and to its reliance upon State Distressed City Aid program funding and a declining tax base. The City points out that the interest and welfare of the public compels adoption of its final offer because it would avoid an onerous tax increase and maintain relatively competitive salaries and benefits. The City asserts that since its employees are not resigning their positions and obtaining new employment, their current compensation should be considered competitive. The City notes that its proposal would not impose a significant cost increase on taxpayers because it has already been factored into the budget. On the other hand, the

City asserts that it does not have the funds to support the SOA's final offer of a 4% across-the-board increase.

Turning to comparison of wages, salaries and conditions of similar public employees, the City argues that comparison of salary rates for other police in Essex County is not an appropriate comparison. The City asserts that most municipalities in Essex County are not distressed, and do not have the same high tax rate and high unemployment rate, low income levels and declining ratables base. The City points out that most of the municipalities in Essex County and in the "Urban 6" are not considered distressed cities. The City notes that because it is an urban area it spends a higher proportion of its revenue on police services than do other Essex County municipalities. The City compares its spending on police services to South Orange, the municipality with the highest median income in the County, which spends less than half of the County average on police services. The City asserts that its Superior Officers receive adequate compensation given the fiscal constraints the City must address. The City asserts further that its Superior Officers' compensation is generally on par with State and local government employees and private sector employees.

The City maintains that the most comparable community for comparison of wages and benefits is Irvington, because of its geographic proximity and similar economic and fiscal pressures and similar urban environments. The City notes

that it and Irvington are both in the top 100 for the Municipal Distress Index and are ranked in the top two positions for high equalized tax rates.

The City proposes that longevity pay be frozen. Relying upon Lerch's analysis, the City points out that absent a freeze, the projected cost of longevity payments is \$567,238 compared to \$548,784, for a cost savings of \$18,454 in the fiscal year ending June 30, 2003. The City points out that the savings would be cumulative. In contrast, if longevity is not frozen, the City notes that the costs of holiday pay and overtime would continue to increase as the impact of increased longevity costs ripples through these benefits. The City maintains that the only way it can fund increased longevity costs is to increase taxes or to layoff public safety or other employees. The City asserts that given its high tax rate, its residents should not be asked to pay even higher taxes so that Superior Officers can reap benefits not justified in the current financial environment.

The City urges rejection of the SOA's proposal to roll holiday pay into base salary for all employees because it would impact on hourly rates for overtime compensation purposes resulting in higher overtime costs and the City's pension contributions would be based upon higher hourly rates as well. For example, the City calculates that the average incremental cost for a Sergeant in 2002 would be \$772 and \$801 in 2003, rising to \$924 in 2004. The City calculates further that its total cost over a two year period would be \$96,017.

The City also urges rejection of the SOA's proposal to increase vacation days to 32 for Sergeants, 34 for Lieutenants and 36 days for Captains. The City asserts that when compared to other municipalities in Essex County and to the Urban 6, the County average for vacation days is 24 and the average in the Urban 6 is 26.33 days, both significantly less than proposed by the Union. The City asserts that it can ill afford to provide precedent-setting vacation benefits.

The City proposes to increase employee prescription co-payments in response to dramatic increases in the cost of prescription coverage. The City asserts that an increase in co-payments would significantly reduce its financial obligation and provide some cost containment, while requiring only a modest increase in out-of-pocket expenses for Superior Officers. The City asserts that it would still maintain a reasonably attractive insurance system.

The City urges rejection of the SOA's proposal that its members' compensatory time bank increase from 320 hours to 480 hours. The City notes that the SOA did not present evidence concerning comparability with respect to this proposal and asserts that any contractual increase coupled with an increase in compensatory time would be "tantamount to 'double-dipping'".

Addressing the criterion of comparison with other public sector employees, the City asserts that the Department of Labor analysis from 1995 cited by the SOA showing East Orange employees as the lowest in wages for the

governmental sector in Essex County was at the City's low point in 1997 and should be discounted. The City notes that few jobs in the private sector are comparable to an urban police officer, but points out that several jobs pay less but are similarly dangerous. Those jobs include convenience store clerk, urban taxi driver, steeplejack and coal miner. However, the City points out that few private sector employees receive benefits such as a clothing allowance or high retirement benefits and full family health benefits, to name a few.

The City asserts that the generalized information submitted by the SOA relating to overall compensation does not provide a sufficient basis to raise salaries as much as proposed by the SOA. When considering the comparative compensation, the City reiterates the benefits received by Superior Officers and police generally that are superior to other public employees, including superior pension, retirement, disability leave and medical benefits. In light of the City's financial situation, the City contends that its Superior Officers do not labor under glaring shortfalls in wages or benefits when compared to similar bargaining units.

Noting that there are no stipulations between the parties, the City turns to its lawful authority under the CAP law. The City emphasizes that under the CAP law, any increases awarded will be funded out of the fiscal year 2002 and 2003 budgets. This requirement limits the City's ability to fund an award while operating under the constraints of the CAP law. The City reiterates that its finances were taken over by the State in October of 1999 and State supervision

continued until October 2001. During the course of that supervision, the City entered a series of agreements with the State Division of Local Government Services. In one of those agreements, the Division of Local Government Services agreed to support funding, if necessary for seven Captains included in the 74 police supervisors employed by the City. The City emphasizes that the State will not fund the City beyond the approved 74 positions due to the "efficiency and economic impact" the current employee complement will have on the City's future budgets. The City also notes that the State granted a waiver for the promotions of three Captains, ten Lieutenants and eighteen Sergeants with the understanding that the City would exercise fiscal restraint and not risk losing future State aid.

Looking to the financial impact on the governing unit, its residents and taxpayers, the City reiterates its "crushing and systemic financial problems" that have caused a severe impact on its fiscal operations. Under the financial distress detailed by the City, it maintains that its Superior Officers are adequately compensated and the excessive increases proposed by the SOA are not justified. The City asserts that the SOA's proposal would affect the City's ability to provide services and programs by requiring additional tax increases, which in turn would have a negative impact upon its citizens and taxpayers. The City contends that its proposal would not unduly burden the City while providing Superior Officers with generally competitive salaries.

The City notes that the SOA fails to consider the impact that similar settlements or interest arbitration awards with other municipal unions will have in terms of increased costs to the City, including longevity, vacation, retiree health benefits, and dental benefits proposed by the SOA, as well as any benefits effected by salary adjustments. The City calculates that under the SOA's proposal, base salaries for Superior Officers would be over \$4,500,000 per year. Since no money was placed in the 1999, 2000 or 2001 budgets for municipal salary increases, an award of the SOA's proposal would result in a severe financial hit for the City in the 2000 budget. The City also emphasizes that this award will provide a benchmark for the remaining public safety bargaining units.

Addressing the cost of living, the City points out that the CPI-U for the New York-Northeastern area increased by 3.1% in 2001, 3.7% in 2000 and 2.0% in 1999. (C-2 at p. 15). The City contrasts the increase in the area CPI of 10.7% over the past five years with the SOA's proposal which would increase wages by 14% in four years. Accordingly, the City asserts that its proposal is supported by the cost of living criterion.

The City asserts that its final offer is supported by the continuity and stability criterion. According to the City, the overall compensation provided to superior officers has induced them to remain in employed by the City, and their salaries and benefits are comparable to those provided by other police departments in communities with similar blighted economic conditions. The City

argues that the SOA has not shown that the current level of compensation is insufficient to attract and retain qualified superior officers or that there is shortage of available applicants for police officer positions.

The City asserts that a five year contract from July 1, 1999 through June 30, 2004 is appropriate under the circumstances to provide the parties with time to absorb the terms of this contract before commencing negotiations on the next one. Additionally, the City maintains that an additional year would allow for greater analysis of its financial progression.

The City urges elimination of the shift bid system. The City argues that it has a managerial prerogative to change shift assignments to improve efficiency or to meet operational needs, as well as to determine minimum staffing levels. In this instance, the City asserts that it has the prerogative to assign its officers so as to assign qualified employees to specific jobs. The City asserts that the shift bid system directly related to the City's managerial prerogative to determine the duties and responsibilities undertaken by its superior officers.

Finally, the City urges rejection of the SOA's proposal to modify the grievance procedure to protect major and minor discipline. The City asserts that this proposal was not supported by evidence and that there was no evidence that bargaining units are not adequately protected under existing procedures.

DISCUSSION

I am required to issue an award based upon a reasonable determination of all issues in dispute after giving due weight to the statutory criteria which I judge relevant. The City and the SOA have expertly articulated their positions on the issues and have submitted comprehensive evidence and argument on each statutory criterion to support their respective positions. All of the evidence and arguments have been carefully reviewed, considered and weighed.

The City's final offer includes several economic proposals including a wage proposal and other proposals that are concessionary in nature involving compensation related issues and health insurance. The SOA proposed a wage increase, holiday fold-in, improvements in vacation benefits, and several non-economic proposals. In reviewing these proposals, I apply a principle which is ordinarily and traditionally considered in the determination of wages, hours and conditions of employment through the bargaining process, namely that a party seeking such change bears the burden of establishing the need for such modification.

The SOA proposes to amend the grievance procedure to permit the filing of a grievance at the lowest step where a remedy is "plausible and/or organizationally possible." The SOA asserts that the requirement to file a grievance at a level lower than that at which the action being grieved occurred

simply delays the process and causes frustration. The SOA asserts that its proposal would remove the potential for interdepartmental conflict by limiting the need for unnecessary ranks from having to provide comment, opinion or colloquy. The City has not objected to this proposal. There is rationale and logic for this proposal and it is awarded.

The SOA also seeks to modify the grievance procedure to provide that discipline or discharge shall be for just cause and to permit binding arbitration of minor discipline. The SOA asserts that this proposal will neither expand nor restrict legal rights or privileges that currently exist, but will ensure that such rights are provided to SOA members given that the current agreement does not specifically address these requirements. The City urges rejection this proposal asserting that this proposal was not supported by evidence and that there was no evidence that bargaining units are not adequately protected.

The Grievance Procedure is silent on the issue of discipline. However, the management rights provision included in Article XVIII, Section 1 includes the City's right to "suspend, discharge, or otherwise discipline officers for just cause." Given the City's undisputed right to suspend, discipline or discharge police officers, there is merit to providing a procedure for review of a City decision to issue minor discipline for just cause. The SOA's proposal would allow review of minor disciplinary disputes in the arbitration process rather than in Superior Court for grievances involving the imposition of discipline up to five days in length. The

Legislature made this subject matter mandatorily negotiable by recent legislation which states that:

Public employees shall negotiate written policies setting forth grievance and disciplinary review procedures ... such procedures may provide for binding arbitration of disputes involving the minor discipline of any public employees ... other than public employees subject to discipline pursuant to R.S. 53:1-10 (State Troopers)

The New Jersey Employer-Employee Relations Act reflects a preference that disputes over terms and conditions of employment should be resolved, if possible, through grievance procedures. The informal nature of arbitration would most likely be more efficient and less expensive than pursuit of formal proceedings by Actions in Lieu of Prerogative Writs in New Jersey Superior Court and would thereby serve the interests and welfare of the public. Arbitral review would be limited to reprimands through five days of suspensions and any award under this proposal would require compliance with a public interest standard as required by arbitration case law. For these reasons I conclude that there is merit to the SOA's proposal and it is awarded.

The City proposes to eliminate terminal leave as a cost saving measure. At present, Superior Officers receive 50% pay for unused sick leave up to a maximum of \$15,000. The City has not provided any estimate of how many Superior Officers it expects to retire over the next few years or an estimate of the resulting cost savings. At present, the terminal leave benefit provided to Superior Officers is a limited one and is more conservative than the terminal leave benefit

provided to law enforcement officers in the neighboring communities of Newark, Irvington and Orange. For these reasons, the City has not met its burden on this issue and this proposal is denied.

The City also proposes to reduce temporary disability payments to an amount equal to the statutory minimum or approximately 70% of the employee's wages, from its present 100% level. The City has not articulated a justification for this proposal beyond its generalized discussion of its financial hardship. The record does not reflect the number of Superior Officers it anticipates would be eligible for temporary disability payments or the resultant estimated cost savings related to this proposal. Accordingly I decline to modify the existing temporary disability provision.

The SOA proposes to increase the number of vacation days for those Superior Officers with twenty or more years of service to 32 days for Sergeants, 34 days for Lieutenants and 36 days for Captains. At present upon completion of 20 years of service, Sergeants are eligible for 27 vacation days, Lieutenants for 28 vacation day and Captains, for 29 vacation days. Although there is evidence that some Superior Officers in Essex County receive vacation benefits in excess of those received by the City's Superior Officers, an increase in vacation benefits is an economic issue cannot be justified. For this reason, the SOA's proposal to increase the vacation allotment is denied.

Both parties seek to amend Article XIX of the Agreement covering hours of work, scheduling, and overtime. The SOA seeks to amend Section 6 to provide that the "E" days provide to those Officers who work a "5-2" schedule shall accumulate from month to month provided that they are used by the end of the calendar year in which they are accrued. The SOA asserts that permitting "E" days to be carried from month to month would provide the department with greater scheduling flexibility while allowing the City to retain control over its manpower and overtime expenditures. However, there is no evidence that there is difficulty using the "E" days at present. Absent justification as to the potential impact of such change, an amendment of Article XIX is unwarranted at this time and the SOA's proposal is denied.

Similarly, the SOA seeks to add a Subsection (d) to Section 12 that would provide that all compensatory time would be accrued at the rate of time and one half hours for every hour worked. At the same time, the City proposes to freeze the value of compensatory time already accrued by an employee at the rate in effect immediately preceding a promotion. Neither party has provided justification for such modifications to the compensatory time provisions and both are denied. The SOA also seeks to increase the number of hours that may be accrued in an Officer's compensatory time bank in Section 12 from 320 hours to the statutory limit of 480 hours. Section 12 of the parties' Agreement appears to already provide for the 480 hour statutory limit and I award no change to that provision.

The SOA also seeks to modify Section 5 to provide that an employee may, at his or her sole discretion, opt "to attend such police training on either his/her scheduled day(s) off or on his/her scheduled time off." At present, Section 5 provides:

Each employee assigned to units which shall work the "4-2 schedule" as provided in Section 1 above may, at the discretion of the Chief of Police, be required to report for police training sessions, not exceeding eight (8) hours duration each, on three (3) scheduled days off (except holidays, vacation leave or other leave with pay) during the calendar year in the case of Sergeants and Lieutenants and two (2) such days in the case of Captains. Transportation will be provided as heretofore for any employee assigned to a training session at a location outside Essex County. Such employees may leave the training range as soon as they have completed their firearms training.

The SOA explains that it is not seeking additional pay for attending training or to "dodge or unreasonably prolong" training, but rather to allow employees to choose, where appropriate, whether to attend training before or after a shift rather than on a day off. According to the SOA, employees are scheduled for training only on days off. However, the SOA points out that often training, particularly firearms qualification, lasts only a few hours, and is offered over the course of several days. The SOA's proposal to amend the training provision to allow Superior Officers to attend certain training either before or after their shift rather than on a day off would have no financial consequence to the City and would permit employees to enjoy their entire day off. The SOA's proposal however, unnecessarily limits the Chief's discretion to assign training and does

not state clearly that the proposal would not have a financial impact. Accordingly, the SOA's proposal is granted. The proposal shall be added to the existing Article XIX, Section 5 with the following modifications:

It is agreed that the employee may opt, with approval from the Chief of Police, to attend such police training on either his/her scheduled day(s) off or on his/her scheduled time off. Such approval shall not be unreasonably denied, so long as the employee's option shall not increase the costs of attending the training.

The City seeks to amend Article XIX to eliminate Section 13, which covers Shift Bid and Schedule Change. The City asserts that it has a managerial prerogative to change shift assignments to improve efficiency or to meet operational needs. The City's arguments concerning the shift bid provisions of the parties' Agreement address the negotiability of the provision. In addition to insufficient evidence of interference with the City's operations, I note that the City's managerial prerogative concerns may properly be addressed in a Scope of Negotiations proceedings before PERC whenever a grievance is filed on this issue. Accordingly, the City's proposal to eliminate the shift bid provisions of the agreement is denied.

The City proposes extensive changes to the current health benefit provisions. For those employees presently covered under an HMO, the City proposes to increase the co-payment for doctor's visits from \$5 to \$10. For those employees presently receiving traditional coverage, the City proposes that

employees would be required to contribute \$50 per month towards the cost of the premium for single coverage and \$125 per month for family coverage. The SOA calculates that the cost to employees for this proposal would be \$600 per year for single coverage and \$1500 per year for family traditional coverage.

Although these changes would lead to cost savings on health benefits, there is no evidence that any City employee currently contributes towards the cost of their health insurance premiums. Nor is there any evidence that law enforcement officers in either Essex County or in the "Urban 6" communities contribute towards the cost of their health insurance premiums. Accordingly, to the extent that the City proposes to require contributions towards health insurance premiums, this portion of its proposal is denied. However, the City's proposal that the co-payment for doctor's visits increase from \$5 to \$10 for those employees presently covered by an HMO is a reasonable cost-saving measure assisting in offsetting health insurance costs. It will provide some cost containment of health care costs for officers who access medical services with relatively modest increases in out-of-pocket expenses for them. Accordingly, this proposal is awarded, effective upon thirty (30) days notice.

The City also proposes to amend its current prescription drug plan to create a three tier plan where employees would pay \$5.00 co-payment for generic drugs, \$12.00 co-payment for formulary drugs and \$25.00 co-payment for non-formulary drugs. The City asserts that increasing prescription co-

payments would allow it to contain the increasing cost of prescription drug coverage and with only a modest increase in the cost of prescription drugs for Superior Officers. The City has provided justification for a modification to prescription coverage but not to the extent proposed. Effective upon thirty (30) days notice, the co-payment for prescription drugs shall be \$5.00 for generic drugs and \$10.00 for brand name drugs.

Both parties present proposals to amend retiree health care benefits. The City seeks to require contributions of \$100 per month to health insurance premiums for retirees receiving single coverage and \$250 per month for retirees receiving traditional coverage other than single coverage. The SOA asserts that the City has not provided justification for this proposal and that the arbitrator does not have jurisdiction to rule on benefits for those employees who have already retired. At the same time, the SOA seeks to add a new section to Article XIII of the Agreement which would provide that employees retiree health benefits to employees with at least 25 years of creditable N.J.P.F.R.S. pension service; or, at age 62, with at least 15 years of creditable N.J.P.F.R.S. pension service, or receive a disability retirement through the N.J.P.F.R.S., would receive full family health coverage. I conclude that neither party has presented sufficient justification for changes in retiree health care coverage during the term of this Agreement. Accordingly, both proposals are denied.

The SOA seeks to change the current dental plan to the Delta Dental plan currently offered to other City employees. Although the SOA provides a benefit comparison between the Unity Health Plan currently provided to Superior Officers and the Delta Dental Plan provided to some City employees, there is no evidence of the difference in the costs of the two plans. There is insufficient evidence of the cost of the plans and the cost difference that would result from changing plans. Accordingly, the proposal to switch to the Delta Dental Plan during the term of this Agreement is denied.

The City has proposed to freeze longevity for each Superior Officer for the balance of his or her career at the current dollar amount that officer receives. The City also proposes to eliminate longevity for all individuals hired after the ratification of this Agreement. Under the previous agreement the longevity provisions state as follows:

2. Employees who have completed the following years of service shall receive, in addition to base salary, the following longevity payments:

| | |
|---|--------------------|
| Completion of five (5) years of service | 2% of base salary |
| Completion of ten (10) years of service | 4% of base salary |
| Completion of fifteen (15) years of service | 6% of base salary |
| Completion of twenty (20) years of service | 8% of base salary |
| Completion of twenty-two (22) years of service | 14% of base salary |
| Completion of twenty-four (24) years of service | 16% of base salary |

Employees who shall have completed the required years of service in the contract year shall receive the applicable longevity

percentage in addition to base salary, commencing with the anniversary of the employee's date of hire.

The longevity payments herein are to be considered part of remuneration for purposes of pension contributions, vacation pay, and sick leave pay, but not for other purposes, e.g. overtime or holiday pay.

The City calculates that the by freezing longevity payments it would save \$18,454 in fiscal year 2003, with costs increasing incrementally in future years.

I deny the City's proposal to freeze longevity payments for existing employees and to eliminate them for new hires. For similar reasons, I also deny the City's proposal to freeze an employee's "time on the book" at its dollar value immediately preceding the promotion of any affected employee. Existing employees have an expectation for earnings based upon accrual of time over their career. The City's proposals could negatively impact on their continuity and stability of employment and affect employee morale which I do not believe is in the interest of the public. Since this is a unit of superior officers, the elimination of longevity for new hires is not warranted in the absence of evidence of any similar agreements among East Orange public safety officers and especially non-superior law enforcement officers.

I next turn to the major economic issue in dispute which centers on salaries. The SOA has also proposed to fold holiday pay into base salaries. As such, this is a salary related issue. In reviewing the salary issue, I conclude that

all of the statutory criteria are relevant, although some are entitled to more substantial weight than others.

The City urges that major emphasis be given to the financial impact of an award on the governing unit, its residents and taxpayers. Inextricably tied to this contention are the interests and welfare of the public whose interests would be undermined by having to fund an award which the City cannot afford. The SOA places great emphasis on comparability evidence concerning law enforcement officers employed in comparable jurisdictions as well as the dangerous work environment on which police services are provided. In this regard, the SOA believes that the interests and welfare of the public will not be served by a result which causes less favorable terms and conditions of employment for the City's superior officers in relation to other superior officers employed in comparable jurisdictions.

Substantial weight must be given to the financial impact of this award on the City, its residents and taxpayers. The SOA has implicitly recognized this point by constructing an economic package in each of the first two years which provide for 3% rate increases with split raises producing 2% payouts. This proposal is intended to ease the impact of retroactive salary payments to unit members. The SOA's salary proposal amounts to a 14% increase in rate over four years. The City has responded with an offer of 7% in salary rate over a five year period.

There is no dispute that the City experienced a fiscal crisis which caused a State takeover of the City's finances at the end of the 1999 fiscal year. Since FY 1999, the City has made progress in restoring order to its finances and is in the beginning stages of recovery. In doing so, the City has relied upon a combination of property tax increases, a more aggressive tax collection program targeting delinquent taxpayers and State aid to pay down its debt and fund its current operations. The City's location and transportation services serves redevelopment and future residential and commercial development and are strong assets in future recovery and revitalization efforts.

The City increased property taxes in 2000 to reduce deferred charges by \$3 million. The City continued to pay down the deferred charges in 2001 and as of June 30, 2001, its accumulated deficit balance was reduced to \$8,103,171. The City is making annual payments of approximately \$2.5 million in 2002, 2003 and 2004 to complete the payment of the deferred charges.

Additionally, the City's taxpayers bear a heavy burden because some of its non-tax revenue sources have been diminished. Specifically, the City's water utility system which historically, had realized profits, experienced a deficit of \$1,472,672 in FY 1999 and a deficit of \$2,518,557 in FY 2000. Mr. Lerch testified that by June 30, 2001 the water utility's deficit totaled \$2,576,012, which the City must now pay down over a three-year period. However, the City's

budget for FY 2002 reflects an operating surplus of \$500,000 in FY 2001 and an anticipated operating surplus of \$500,000 in FY 2002.

At the same time, the assessed value of real property in the City decreased by almost \$27 million from 1997 through 2001 to a figure of \$302,664,600. As a result, the City's total tax levy has increased substantially over the past four years. For the fiscal year ending 2001, City, County and school taxes increased \$18 million, with the largest increase being attributed to the City's increase of \$14 million. The City calculates that its property tax levy increased approximately 29% from 1997 through 2001. The decline in the assessed value of real property has also resulted in an increase in the equalized tax rate to \$6.69, which is the highest in Essex County. For example, Irvington, another distressed City in Essex County has the County's second highest tax rate of \$5.00, and Orange has a tax rate of \$4.59.

Despite its aggressive actions in foreclosing on tax liens, the City had a delinquent property tax payment problem depriving it of revenues although it has embarked on an aggressive campaign to address this problem in the future. According to Mr. Lerch, tax delinquencies increased dramatically in the fiscal year ending 2001 when the City issued tax liens for \$24,408,033 and collected only \$3,168,000, or 13%. In response to this, the SOA contends that the City's financial condition will improve dramatically as it succeeds in easing delinquency rates. The SOA points out that even a modest increase in the percentage of

collection would yield substantial revenues. The receipt of revenue from delinquent taxpayers will ease the burden on those who fulfill their taxpaying responsibilities.

The City's efforts to restore its solvency present a complicated financial picture. The City, which ended fiscal year 2001 with an operating surplus of \$1,260,000, anticipated an operating surplus of \$1,500,000 in its FY 2002 budget. However, the City asserts it must borrow money to meet its current revenue needs by issuing tax anticipation notes, or working capital loans. Mr. Lerch testified that the City has been required to sell tax anticipation notes each year to meet current revenue needs and has tax anticipation notes of \$7 million outstanding.

In addition to property taxes, the City has relied heavily upon grants and State aid to meet its current revenue needs. The City receives Distressed City Aid specifically for tax relief. The City received \$7 million in Distressed City Aid for fiscal year 1999, \$9 million in Distressed City Aid for fiscal year 2000, and \$6 million for fiscal year 2001 for a total of \$22 million over the last three years. In addition to the Distressed City Aid it receives, the City receives a variety other State aid from a variety of funds. According to the FY 2002 municipal budget, the City anticipated receiving a total of \$32,293,660 in State aid without offsetting appropriations. This sum is an increase over the \$30,933,803 received in FY 2001. However, the City notes that State aid has not increased in proportion with its expenditures.

Through a combination of increased property taxes and State aid, the City has made progress toward regaining its financial footing. In sum, this award must give weight to the extreme financial difficulty encountered by the City since the fiscal crisis in 1999 and also be responsive to the City's need to continue its financial recovery without adverse impact on the City, its residents and taxpayers. This factor does not stand alone and weight must also be given to other factors. The award must also consider the City's obligation to compensate its superior officers in a manner in which maintains the continuity and stability of employment among those officers. Comparability within law enforcement in the county and internal comparability with the City's firefighters are relevant considerations. The creation of a large disparity in salaries of the City's superior officers compared to superior officers in similar comparable jurisdictions could reasonably lead to early retirements and resignations. The interests and welfare of the public are not served by a result which fosters poor morale in a workforce which is required to preserve order and stability in a jurisdiction which experiences a high rate of crime and violent crimes. The City's financial recovery is largely dependent upon an environment in which education and residential and commercial redevelopment can flourish. Without a strong law enforcement component, recovery and revitalization could be severely jeopardized.

The SOA seeks substantial weight to be placed upon comparability evidence in law enforcement. The SOA has produced comparability evidence

which it believes reflects that its superior officers compare unfavorably with those employed throughout the County.

| Essex County | 1998 | | | | 1999 | | | |
|----------------------|--------|--------|--------|--------|--------|--------|--------|--------|
| | Ptl | Sgt | Lt | Capt | Ptl | Sgt | Lt | Capt |
| Max Base Salary | | | | | | | | |
| East Orange | 52,311 | 59,306 | 65,765 | 73,873 | | | | |
| Belleville | 52,643 | 60,539 | 69,620 | 80,063 | 54,748 | 62,961 | 72,405 | 83,266 |
| Caldwell Township | 53,448 | 59,861 | 67,046 | | | 62,480 | 69,979 | |
| Cedar Grove | 55,329 | 61,969 | 71,884 | | 57,680 | 64,602 | 74,939 | |
| Prosecutor's Office | 58,536 | | | | | | | |
| County Sheriff's | 51,171 | | 67,323 | 77,422 | | | | |
| Essex Fells | 55,521 | 61,185 | 69,239 | | 57,742 | | | |
| Fairfield Borough | 55,903 | 63,556 | 72,759 | 81,947 | 58,000 | 65,940 | 75,488 | 85,020 |
| Glen Ridge Borough | 53,565 | 60,480 | | | 55,841 | 63,050 | | |
| Irvington | 57,157 | | | | | | | |
| Livingston Township | 55,125 | 62,689 | | | 57,192 | 65,040 | 73,170 | 79,755 |
| Maplewood | 53,161 | 59,008 | 64,856 | 70,704 | | | | |
| Millburn Township | 54,640 | 61,539 | 67,414 | 73,290 | 56,826 | 64,001 | 70,111 | 76,221 |
| Montclair Township | 53,602 | | | | | | | |
| Newark City | | 71,066 | 78,565 | 87,216 | | 74,264 | 82,101 | 91,141 |
| North Caldwell Boro | 53,886 | 60,596 | 64,873 | | 56,041 | 63,019 | 67,468 | |
| Nutley Township | 52,159 | 58,679 | | | 54,266 | 61,050 | | |
| Orange City | 50,278 | 55,062 | 59,024 | 64,336 | 51,787 | 56,438 | 60,684 | 65,945 |
| Roseland | 56,216 | 61,265 | 67,354 | 71,108 | | | | |
| South Orange Village | 54,870 | | | | 56,516 | | | |
| Verona Township | | | | | 56,814 | 66,803 | 73,483 | 80,832 |
| West Caldwell Twp | 57,009 | 64,576 | 72,905 | | 59,289 | 67,159 | 75,821 | |
| West Orange Twp | 56,710 | | | | 58,411 | | | |

| Essex County | 2000 | | | | 2001 | | | |
|----------------------|--------|--------|--------|--------|--------|--------|--------|--------|
| | Ptl | Sgt | Lt | Capt | Ptl | Sgt | Lt | Capt |
| Max Base Salary | | | | | | | | |
| East Orange | | | | | | | | |
| Belleville | 56,801 | 65,321 | 75,119 | 86,387 | 58,931 | 67,771 | 77,936 | 89,627 |
| Caldwell Twp | | | | | | | | |
| Cedar Grove | | | | | | | | |
| Essex Fells | 60,052 | | | | 62,454 | | | |
| Fairfield Borough | 60,320 | 68,578 | 78,508 | 88,421 | 62,733 | 71,321 | 81,648 | 91,958 |
| Glen Ridge Borough | | | | | | | | |
| Livingston Township | 59,337 | 67,479 | 76,589 | 84,248 | | | | |
| Millburn Township | | | | | | | | |
| Newark City | | | | | | | | |
| North Caldwell Boro | | | | | | | | |
| Nutley Township | 56,166 | 63,196 | | | | | | |
| Orange City | 53,703 | | | | | | | |
| South Orange Village | 58,494 | 67,268 | 76,042 | | 60,541 | 69,622 | 79,095 | |
| Verona Township | 59,655 | 70,143 | 77,157 | 84,874 | 63,288 | 74,415 | 81,856 | 90,043 |
| West Caldwell Twp | 61,661 | 69,845 | 78,854 | | | | | |
| West Orange Twp | 60,309 | | | | 62,429 | | | |

| Essex County | 2002 | | | | 2003 | | | |
|----------------------|--------|--------|--------|--------|--------|--------|--------|------|
| | Ptl | Sgt | Lt | Capt | Ptl | Sgt | Lt | Capt |
| Max Base Salary | | | | | | | | |
| East Orange | | | | | | | | |
| Belleville | 61,141 | 70,312 | 80,859 | 92,988 | | | | |
| Caldwell Twp | | | | | | | | |
| Cedar Grove | | | | | | | | |
| Essex Fells | | | | | | | | |
| Fairfield Borough | 65,242 | 74,174 | 84,914 | 95,636 | | | | |
| Glen Ridge Borough | | | | | | | | |
| Livingston Township | | | | | | | | |
| Millburn Township | | | | | | | | |
| Newark City | | | | | | | | |
| North Caldwell Boro | | | | | | | | |
| Nutley Township | | | | | | | | |
| Orange City | | | | | | | | |
| South Orange Village | 62,963 | 72,407 | 82,259 | | 65,482 | 75,503 | 85,549 | |
| Verona Township | | | | | | | | |
| West Caldwell Twp | | | | | | | | |
| West Orange Twp | | | | | | | | |

The SOA points to increases within the county which approximate 4%. Although the SOA emphasizes "similar comparable jurisdictions," that criterion, N.J.S.A. 34:13A-16(g)2(c), also speaks to consideration of comparability in the same jurisdiction. This criterion requires an examination of the evidence relating to comparisons among the City's labor organizations representing firefighters and fire officers. The City and FMBA Local 23 were recipients of an interest arbitration award issued on June 12, 2002 and supplemented by an additional opinion and award on remand issued on February 19, 2003 [hereinafter referred to as "Zausner 1" and "Zausner 2"]². Although these awards are not contained in the official record of this proceeding due to their timing, I take administrative and arbitral notice of them.

² The initial award was issued shortly after the completion of formal hearings in this matter and the supplemental award issued after the receipt of post-hearing briefs.

The Zausner 1 award provided wage increases for a five year period as set forth below. [See Zausner 1 at page 26.] The dollar salary amount effective July 1, 2001 refers to the fold-in of Holiday Pay into base pay.

| | |
|------------------------|-----------------------------|
| Effective July 1, 1999 | 1% |
| Effective July 1, 2000 | 1% |
| Effective July 1, 2001 | + \$4,033 (Holidays; 8%) |
| Effective July 1, 2002 | 3.5% |
| Effective July 1, 2003 | 3.5% |

On February 19, 2003, a supplemental Opinion and Award was issued clarifying the dollar amount of the fold-in into base pay. In Zausner 2, the salary portion of the award was clarified to read:

| | | | |
|--------------|----------|-------------------------|----------|
| July 1, 1999 | \$52,439 | 1% | \$52,963 |
| July 1, 2000 | | 1% | \$53,493 |
| July 1, 2001 | | +\$4,114 Holidays 8% | \$57,607 |
| July 1, 2002 | | 3.5% | \$59,623 |
| July 1, 2003 | | 3.5% | \$61,710 |

A comparison of the parties' respective salary offers reflects the following. The City has proposed salary increases for an agreement that would extend from July 1, 1999 through for five years, through June 30, 2004. The SOA has proposed salary increases for an agreement that would cover a four year period from July 1, 1999 through June 30, 2003. The City's proposal would increase salaries for superior officers by a total of 7.0% over a five-year period, while the

SOA's proposal would increase salaries by a total of 14% over a four-year period.

The salary guides for Superior Officers under the parties' respective proposals are as follows. These charts do not reflect the SOA's proposal to fold holiday pay into base pay. The SOA's proposal seeks an across-the-board salary increase in each year of the agreement in addition to the holiday fold in.

| | City's Proposal | Sergeant | SOA Proposal | Sergeant | Dollar Difference |
|--------|-----------------|-------------------|--------------|-------------------|-------------------|
| 7/1/99 | 0.5% | \$59,603 | 1.0% | \$59,899 | \$296 |
| 1/1/00 | 0.0% | \$59,603 | 2.0% | \$61,097 | \$1,494 |
| 7/1/00 | 1.0% | \$60,199 | 1.0% | \$61,708 | \$1,509 |
| 1/1/01 | 0.0% | \$60,199 | 2.0% | \$62,942 | \$2,743 |
| 7/1/01 | 1.5% | \$61,102 | 4.0% | \$65,460 | \$4,358 |
| 7/1/02 | 2.0% | \$62,324 | 4.0% | \$68,078 | \$5,754 |
| 7/1/03 | 2.0% | \$63,570 | | | |
| | | Lieutenant | | Lieutenant | |
| 7/1/99 | 0.5% | \$66,094 | 1.0% | \$66,423 | \$329 |
| 1/1/00 | 0.0% | \$66,094 | 2.0% | \$67,751 | \$1,657 |
| 7/1/00 | 1.0% | \$66,755 | 1.0% | \$68,429 | \$1,674 |
| 1/1/01 | 0.0% | \$66,755 | 2.0% | \$69,797 | \$3,042 |
| 7/1/01 | 1.5% | \$67,756 | 4.0% | \$72,589 | \$4,833 |
| 7/1/02 | 2.0% | \$69,111 | 4.0% | \$75,493 | \$6,382 |
| 7/1/03 | 2.0% | \$70,493 | | | |
| | | Captain | | Captain | |
| 7/1/99 | 0.5% | \$74,242 | 1.0% | \$74,612 | \$370 |
| 1/1/00 | 0.0% | \$74,242 | 2.0% | \$76,104 | \$1,862 |
| 7/1/00 | 1.0% | \$74,984 | 1.0% | \$76,865 | \$1,881 |
| 1/1/01 | 0.0% | \$74,984 | 2.0% | \$78,402 | \$3,418 |
| 7/1/01 | 1.5% | \$76,109 | 4.0% | \$81,538 | \$5,429 |
| 7/1/02 | 2.0% | \$77,631 | 4.0% | \$84,800 | \$7,169 |
| 7/1/03 | 2.0% | \$79,184 | | | |

I am persuaded that internal comparability considerations between police and firefighters are entitled to substantial weight in this proceeding. Indeed, there is a lengthy history, including arbitration awards for firefighters which reflects that comparable treatment is relevant. For example, an arbitration award provided firefighters with a comparable longevity schedule enjoyed by the law enforcement units. This is not to the exclusion of other statutory criteria including financial impact because financial impact was thoroughly reviewed and considered in the Zausner awards as well as by the record evidence as previously discussed in this Award. This leads me to conclude that consideration must be given to comparable treatment in the fashioning of terms for police superiors.

I award a 2% retroactive payment, not to be reflected in base salary, for contract year commencing July 1, 1999. This amount shall be calculated based upon each superior officer's rate of pay on July 1, 1999. The net economic cost of this payment for the entire bargaining unit is \$71,456. The total payroll cost of \$3,572,837 is unaffected by this payment and is required by the financial standing of the City at that time. In the absence of a base wage increase for the first contract year, a 2% increase in base salary for each rank effective July 1, 2000 will provide a comparable adjustment to that contained in the Zausner awards. The net economic cost of this adjustment is also a total of \$71,456 although this sum is added to base pay and reflected in new total payroll cost

which will increase to \$3,644,293. The cost for the rank of Sergeant is \$42,696, the cost for the rank of Lieutenant is \$18,410, and the cost for the rank of Captain is \$10,339.

The contract year commencing July 1, 2001 is the contract year in which Zausner awarded the fold-in of Holiday Pay into base pay. This was the only adjustment in base pay awarded for that year. No separate salary increase was awarded. An amount of \$4,114, or 8% of base pay, was calculated as the amount to be folded in. Although the Zausner award is silent on the method of calculation, it is apparent that her methodology was based upon a multiplication of the number of holidays (14) received times the number of hours in a paid holiday (12 hours) which equals 168 hours of pay. When the annual number of hours scheduled to be worked (2,080) are divided by 168 hours, the result is 8%.

The SOA has also proposed that holiday pay be folded into base pay. This proposal is as follows:

Section 1: Delete "having less than twenty-two (22) years of service."

Section 2: Change as follows:

Holiday pay shall be incorporated into each employee's base wages for purposes of pensionable earnings. The City shall indicate payment in the pay period for when the holiday occurs, however, the City shall withhold the net amount of the employee's compensation and shall distribute the net amount of all fourteen (14) holidays in accordance with Section 1 herein above.

This proposal has merit and is awarded, also effective July 1, 2001, for the following reasons. The existence of the holiday fold in by virtue of the Zausner award should extend to police superiors as well. There is administrative convenience associated with a payroll system which is common. Also, the law enforcement comparability data reflects that wage increases within Essex County, including urban municipalities during contract years 1999 – 2000 substantially outpaced the wage increases awarded herein for those years because of the City's financial condition. The holiday fold in will increase base pay for the police superiors, assist in more favorable comparability and enhance their pensionable income which I believe will promote the continuity and stability of employment for police superiors.

I am also persuaded that the deletion of "having less than twenty-two (22) years of service" in Article XI, Section 1 prior to the fold in of holiday pay has merit. The effect of this deletion eliminates the existing differentiation between the number of holidays police superiors receive based upon years of service. Currently employees having completed less than twenty-two (22) years of service receive pay for fourteen (14) holidays per year while employees who have completed twenty-two (22) years or more of service receive pay for one holiday per year. A fair and reasonable reading of Article XI in conjunction with Article XV – Salary and Longevity, reflects that employees who have completed twenty-two (22) years of service have a 6% longevity increase at that step as consideration for the reduction in their number of paid holidays. The Union's

proposal eliminates this distinction in holiday pay without altering the longevity schedule. The implementation of the terms of the Zausner award serves as justification for the granting of the Union's proposal. The Zausner Award, as stated above, awarded a fold in based upon the full number of holidays without any distinctions or offset due to length of service. There is no evidence of offset due to a longevity increase after completion of the 22nd year of service or reductions in holiday pay received due to length of service. To do otherwise here would severely diminish the relative salary schedule and base pay differences between these units and thereby erode the significance attached to increased pay for those who serve in the supervisory ranks. There is an economic cost to the awarding of the fold in. Prior to calculating the net annual economic value of the fold in, I note that the dollar per rank fold in of holiday pay for police superiors has less value and costs less than the net annual economic value of the fold in for firefighters due to the fact that each day of holiday pay for firefighters is calculated on a 12 hour day rather than an 8 hour day. This causes the number of hours of holiday pay be 14 times 8 or 112 hours rather than 168 hours folded in by the Zausner award.

Prior to the effective date of the holiday fold in, the total payroll cost for police superiors on June 30, 2001 is \$3,644,293. The total payroll cost of \$3,572,837 at the conclusion of the prior contract was not altered during the first year because there was no change in base salaries for that year due to the non-base payment of 2%. This figure was adjusted by \$71,456 on July 1, 2000

because of the 2% increase in base salaries increasing the total payroll cost to \$3,644,293. The actual cost of holidays as of July 1, 2001 under the existing holiday pay provision was \$78,675. With the deletion of Article XI, Section 1 prior to the fold in of holiday pay, the actual cost of the fold in would be \$195,818. Because the \$78,675 is an existing financial obligation, the \$117,143 difference must be considered and charged as a new cost. When this figure is calculated based upon total payroll costs as of July 1, 2001, the economic value of the fold in represents a new cost of 3.21%. Broken down by rank, the base salary for the rank of Sergeant will be adjusted by \$3,248, the base salary for the rank of Lieutenant will be adjusted by \$3,612 and the base salary for the rank of Captain will be adjusted by \$4,046. As stated above, the total value of the fold in is \$195,818 based upon seven (7) Captains at a cost of \$28,322, fourteen (14) Lieutenants at a cost of \$50,568 and thirty-six (36) Sergeants at a cost of \$116,928. Also, as stated above, \$78,645 of the \$195,818 is an existing obligation with the remaining \$117,143 constituting new money cost. I also conclude that the new money cost is justified not only in light of the previously stated considerations but also, in the absence of a base wage increase effective July 1, 2001, the overall changes to base salary including the cost of the holiday fold in during the first three years of the new contract remain well below the average changes in all of the Essex County municipalities and are independently justified based upon comparability considerations within the County's law enforcement community. The new total payroll cost is calculated at \$3,840,111. I do not award a separate base pay salary adjustment for contract year

commencing July 1, 2001. Also, because of the effective date of this provision, holiday pay which has been received subsequent to July 1, 2001 shall be deducted from each unit member's retroactive pay.

Consistent with the terms of the Zausner award, I award an increase of 3.5% effective July 1, 2002. The net economic cost of this adjustment is a total of \$134,403. The cost for the rank of Sergeant is \$80,280, the cost for the rank of Lieutenant is \$34,636, and the cost for the rank of Captain is \$19,446. The new total payroll cost is calculated at \$3,974,514.

Consistent with the terms of the Zausner award, I award an increase of 3.5% effective July 1, 2003. The net economic cost of this adjustment is a total of \$139,107. The cost for the rank of Sergeant is \$83,124, the cost for the rank of Lieutenant is \$35,854, and the cost for the rank of Captain is \$20,136.

The terms of the Award will not compel the City to exceed its statutory spending limitations. While financial impact considerations as well as internal comparability evidence compel an award at levels less than average increases in the county's law enforcement municipalities, the financial obligations of implementing the Award are within the City's financial capability without exceeding its Cap. The budgetary data reflects fund balances and funds available for banking. The City also assumes an obligation in each budget year to anticipate additional costs associated with funding its labor agreements

including retroactive costs, especially when the negotiation process is protracted over a period of years.

In fashioning this award I have also considered data relative to the cost of living. The Award totals 16.5% in base wage increases over seven years at an average of 2.35% or 19.6% over seven years including the new cost of the holiday fold in at an average of 2.8%. The cost of living criterion is one of many considerations and is not independently controlling. The terms of the Award exceed the cost of living data but not significantly. When coupled with the criterion which concerns financial impact, these factors serve to outweigh the SOA's contention that comparability data in law enforcement be controlling in the setting of base wage adjustments.

Given the extended nature of these proceedings, I believe that the interests and welfare of the public will be served by an award which extends an additional two years. This observation is also supported by evidence that the City has engaged in negotiations with other public safety bargaining units which includes contract years commencing July 1, 2004 and July 1, 2005. An award less in duration would place these parties immediately back to negotiations and the record is sufficiently developed to render an award providing an additional two years. The labor agreement for these years should remain unchanged with the exception of base salary modifications.

Given the City's financial difficulties requiring base salary adjustments of 9% over the first five years and total net annual economic changes of 12.2% (including the holiday fold in) over the first five years, salary adjustments which are more in line with salary adjustments occurring within Essex County, including the county's urban municipalities, are appropriate and justified. Such increases are also justified in light of the improvement in the City's fiscal posture which is reflected in the substantial increase in the City's property tax collection rates, its ability to regenerate substantial surplus and its continuing effort to pay off long term debts which accrued during its years of fiscal difficulty.

Accordingly, I award an increase of 4.0% effective July 1, 2004. The total payroll cost would be increased by \$164,544 to a new payroll cost of \$4,278,165. The additional cost for the rank of Sergeant is \$98,352, the additional cost for the rank of Lieutenant is \$42,406, and the additional cost for the rank of Captain is \$23,821. Effective July 1, 2005, I award an increase of 3.5%. The total payroll cost would be increased by \$149,735 to a new payroll cost of \$4,427,900. The additional cost for the rank of Sergeant is \$89,460, the additional cost for the rank of Lieutenant is \$38,584, and the additional cost for the rank of Captain is \$21,665.

When the terms of the award are applied to the existing salary schedules, they will cause the salary schedules to be modified as follows:

Sergeant

(June 30, 1999 - \$59,306)

| | | |
|--------------|--------|----------------------------------|
| July 1, 1999 | 59,306 | 0% to base salary 2% lump sum |
| July 1, 2000 | 60,492 | 2% |
| July 1, 2001 | 63,740 | \$3,248 Holiday Fold In |
| July 1, 2002 | 65,971 | 3.5% |
| July 1, 2003 | 68,280 | 3.5% |
| July 1, 2004 | 71,011 | 4.0% |
| July 1, 2005 | 73,496 | 3.5% |

Lieutenant

(June 30, 1999 - \$65,765)

| | | |
|--------------|--------|----------------------------------|
| July 1, 1999 | 65,765 | 0% to base salary 2% lump sum |
| July 1, 2000 | 67,080 | 2% |
| July 1, 2001 | 70,692 | \$3,612 Holiday Fold In |
| July 1, 2002 | 73,166 | 3.5% |
| July 1, 2003 | 75,727 | 3.5% |
| July 1, 2004 | 78,756 | 4.0% |
| July 1, 2005 | 81,512 | 3.5% |

Captain

(June 30, 1999 - \$73,873)

| | | |
|--------------|--------|----------------------------------|
| July 1, 1999 | 73,873 | 0% to base salary 2% lump sum |
| July 1, 2000 | 75,350 | 2% |
| July 1, 2001 | 79,396 | \$4,046 Holiday Fold In |
| July 1, 2002 | 82,175 | 3.5% |
| July 1, 2003 | 85,051 | 3.5% |
| July 1, 2004 | 88,453 | 4.0% |
| July 1, 2005 | 91,549 | 3.5% |

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

AWARD

1. All proposals by the City and the SOA not awarded herein are denied and dismissed. All provisions of the existing agreement shall be carried forward except for those modified by the terms of this Award.

2. The increases in salary shall be retroactive to their effective date and received by all eligible unit employees, including those who have left employment in good standing between the effective date of the salary adjustments and their last date of employment.

3. **Duration** – There shall be a seven-year agreement effective July 1, 1999 through June 30, 2006.

4. **Article XIII – Health Insurance**

Effective upon thirty (30) days notice:

- A. All employees presently covered under an HMO would have their co-pay increased from \$5.00 to \$10.00.
- B. The prescription plan shall be modified to require employees to pay a \$5.00 co-pay for generic drugs and a \$10.00 co-pay for brand name drugs.

5. **Article VII – Grievance Procedure:**

Effective September 19, 2003:

The following language shall be added to Article VII, Section 2:

A grievance shall be instituted and filed at the lowest level and/or step where a remedy is plausible and/or organizationally possible.

6. Employee Discipline

Effective September 19, 2003:

No employee shall be disciplined, discharged, reduced in rank or compensation without just cause.

Minor employee discipline shall be arbitrable under the grievance procedure to the extent permitted by law.

7. Article XIX – Hours of Work, Scheduling and Overtime

Effective July 1, 2004:

Each employee assigned to units which shall work the "4-2 schedule" as provided in Section 1 above may, at the discretion of the Chief of Police, be required to report for police training sessions, not exceeding eight (8) hours duration each, on three (3) scheduled days off (except holidays, vacation leave or other leave with pay) during the calendar year in the case of Sergeants and Lieutenants and two (2) such days in the case of Captains. Transportation will be provided as heretofore for any employee assigned to a training session at a location outside Essex County. Such employees may leave the training range as soon as they have completed their firearms training.

It is agreed that the employee may opt, with approval from the Chief of Police, to attend such police training on either his/her scheduled day(s) off or on his/her scheduled time off. Such approval shall not be unreasonably denied, so long as the employee's option shall not increase the costs of attending the training.

8. **Article XI – Holidays:**

Effective July 1, 2001 there shall be a fold in of holiday pay into base salary in accordance with the proposal of the SOA as follows:

Section 1: Delete “having less than twenty-two (22) years of service.”

Section 2: Holiday pay shall be incorporated into each employee’s base wages for purposes of pensionable earnings. The City shall indicate payment in the pay period for when the holiday occurs, however, the City shall withhold the net amount of the employee’s compensation and shall distribute the net amount of all fourteen (14) holidays in accordance with Section 1 herein above.

9. **Salaries:** The existing salary schedule shall be modified, retroactive to the effective dates, as follows:

Sergeant
(June 30, 1999 - \$59,306)

| | | |
|--------------|--------|----------------------------------|
| July 1, 1999 | 59,306 | 0% to base salary 2% lump sum |
| July 1, 2000 | 60,492 | 2% |
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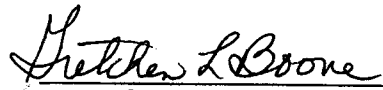
Dated: September 19, 2003
Sea Girt, New Jersey



James W. Mastriani
}
}ss: 

State of New Jersey
County of Monmouth

On this 19th day of September, 2003, before me personally came and appeared James W. Mastriani to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed same.



GRETCHEN L. BOONE
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires 8/13/2008