

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Interest Arbitration

between

X Re: Docket Nos.
IA-97-73 and IA-
X 97-84

BOROUGH OF NORTH PLAINFIELD

X

"Borough"

X

-and-

X

NORTH PLAINFIELD POLICEMEN'S BENEVOLENT
ASSOCIATION LOCAL NO. 85 AND SUPERIOR
OFFICERS ASSOCIATION

X

X

"Associations"

X

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APPEARANCES

For the Borough

MAURO, SAVO, CAMERINO & GRANT
Eric Martin Bernstein, Esq., of Counsel

For the Associations

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

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

BACKGROUND

The parties are signatories to Collective Bargaining Agreements which expired on December 31, 1996. Sometime prior thereto, they entered into negotiations for a successor agreement. The Borough and the Associations voluntarily elected to meet in tandem bargaining sessions. Those negotiations proved unsuccessful, whereupon the Associations separately demanded interest arbitration. The parties mutually requested that the State of New Jersey Public Employment Relations Commission ("the Commission") consolidate the two (2) separately filed Interest Arbitration Petitions. By letter dated June 9, 1997, the Commission agreed to do so. Pursuant to the rules and regulations of the Commission, I was designated as the Interest Arbitrator to hear and adjudicate these disputes. The parties agreed that at the completion of these proceedings there will be two (2) separate Agreements as there were before: one between the Borough and the PBA and the other between the Borough and the Superior Officers.

Consolidated hearings were held before me on May 29, 1997, August 4, 1997 and October 20, 1997. At those hearings, the parties were afforded full opportunity to introduce evidence and argument in support of their respective positions. They did so. Each side introduced extensive evidence relevant to the statutory criteria. This included budgetary and financial information. The parties submitted charts, graphs and data dealing with all of the statutory criteria. Upon my receipt of same, the hearings were declared closed.

Thereafter, the parties submitted their final offers as well as post-hearing briefs. Upon my receipt of same, the record was declared closed.

POSITIONS OF THE PARTIES

The Association¹ has proposed a three (3) year Agreement with a term of January 1, 1997 through December 31, 1999. It notes that the Borough has proposed an Agreement with the same term.

The Association has proposed, exclusive of increments, across the board wage increases at each rank, step and position covered by the Agreements of five percent (5%) effective on January 1, 1997, five percent (5%) effective on January 1, 1998, and five percent (5%) effective on January 1, 1999.

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

With regard to the first statutory criterion, which concerns the interests and welfare of the public, the Association maintains that the Borough's Police Department is a highly efficient and productive law enforcement agency which provides a wide variety of law enforcement and other services to the community. It contends that a recent review and analysis by the State of New Jersey, Department of Law and Public Safety, gave the Borough's Police Department high marks for its efficiency and delivery of services. (Association Exhibit No. 9) The Association claims that this report shows that the Borough's Police Department "is running at optimum efficiency." (Association Brief at pg. 9)

¹ "Association" shall refer to both the PBA and the Superior Officers.

According to the Association, in February 1997, the State of New Jersey, Department of Law and Public Safety, Division of Criminal Justice, also approved the application of the Borough's Police Department for "a \$90,000 personnel grant under the New Jersey Safe and Secure Communities Grant Program." (Association Exhibit No. 9) It argues that "[t]his is an example of not only satisfactory performance and evaluation, but further concrete evidence of the productivity and now even the development of additional funding into the town through the police department." (Association Brief at pg. 9) The Association insists that this ninety thousand dollar (\$90,000) community service grant will be used for the delivery of services which are in the interest and welfare of the public.

The Association further maintains that the Borough's Police Department is one of the busiest law enforcement agencies in the region. In support of that assertion, it relies upon an Annual Report for 1996 which was completed as of March 19, 1997. (Association Exhibit No. 4)

The Association also contends that 1988 was the last year that the Borough's Police Department was at full strength. It claims that since then the Police Department's staffing has been reduced, particularly at the supervisory level. The Association asserts that the positions of Deputy Chief and Captain are now vacant. It further asserts that the number of Lieutenants has been reduced from six (6) to four (4).

The Association asserts that this change in rank structure has

resulted in fewer employees doing work at the supervisory level. "Officers of the various ranks have less persons to rely upon for deferral of the obligation to make a decision. They must now make the decision themselves." (Association Brief at pg. 10) The Association further asserts that this change in rank structure has altered the career path of young Police Officers in the lower ranks, leaving them with less opportunity for upward mobility and improvements. "One more often now must judge success, not by advanced earnings through increased rank, but rather by earnings made through the collective bargaining process in the same rank. " (Association Brief at pg. 10) In addition, it argues that the Borough is saving a great deal of money by eliminating these supervisory positions through attrition.

The Association insists that it is remarkable that notwithstanding this attrition in the Department's supervisory ranks, the Police Department's efficiency has continued to grow. It asserts that from 1988 through 1996, the Department had i) a sixty six percent (66%) increase in calls for service from 21,085 calls for service in 1988 to 35,021 calls for service in 1996, ii) an eighty four percent (84%) increase in juvenile incidents from 273 incidents in 1988 to 504 incidents in 1996, and iii) a sixteen percent (16%) increase in criminal arrests from 967 criminal arrests in 1988 to 1,119 criminal arrests in 1996. (Association Exhibit Nos. 4 and 5) The Association stresses that these productivity gains were achieved by the Borough's Police Department with fewer Officers doing the work with less supervision.

The Association also maintains that the Borough's Police Department has one of the highest calls for service ratios per Police Officer in the entire region. It relies upon the following data in support of that assertion.

CHART NO. 1

**Calls Per Police Officer
(Based on Data Contained in
Exhibit U-6 in evidence at hearing)**

RARITAN	992
NORTH PLAINFIELD	795
FRANKLIN	750
SOMERVILLE	677
GREEN BROOK	647
MOUNTAINSIDE	590
BOUND BROOK	545
BRIDGEWATER	515
PISCATAWAY	465
HILLSBOROUGH	411
WATCHUNG	400
BERKELEY HEIGHTS	390
PLAINFIELD	382
EDISON	348
WESTFIELD	333
BERNARDSVILLE	250
AVERAGE (Excluding North Plainfield)	506 Annual Calls
NORTH PLAINFIELD	795 Annual Calls
NORTH PLAINFIELD Compared to Average	+289
	+57.1%

(Association Brief at pg. 12) On the basis of this data, the Association asserts that the Borough's Police Officers handle more calls per year than police officers in virtually any other community in the region. It further asserts that the Borough's Police Officers handle on average two hundred and eighty nine (289)

more calls per year than the average number of calls handled by police officers in other communities in the region.

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

The Association maintains that the evidence concerning the criterion regarding a comparison of the wages of other employees performing the same or similar services in public employment in comparable jurisdictions supports awarding its wage proposal. It contends that the base wage of the Borough's Police Officers is "moderate at best." (Association Brief at pg. 13) However, the Association claims that the benefits paid to the Borough's Police Officers "fall off sharply." (Association Brief at pg. 13) Thus, it argues that the total compensation of the Borough's Police Officers is "below average." (Association Brief at pg. 13)

The Association maintains that many area towns, such as Manville and Scotch Plains, pay their police officers significantly more in base wages than North Plainfield. However, it contends that the difference is even greater in terms of benefits. The Association asserts that Borough Police Officers hired after 1994 are no longer eligible for longevity benefits. It further asserts that "[t]his is a rare event seen in few other contracts in the region." (Association Brief at pg. 14) The Association also claims that its members have below average vacation benefits, terminal

leave, and a college credit program which is one of the worst in the entire area. It concedes that the clothing allowance and sick leave benefit received by its members are competitive. However, the Association points out that its retired members are worse off than retirees in many comparable communities because they are not covered by a hospital insurance plan.

The Association rejects any suggestion by the Borough that earned overtime should be compared between Officers in the Borough and officers in comparable communities. It maintains that earned overtime should not be included in any comparison because it represents compensation for extra work performed by the Borough's Police Officers. The Association argues that "[o]ne might as well include an employee's second job earnings or spouse's earnings. They are equally unrelated to the common effort of work performed for the municipality on the basic work schedule." (Association Brief at pgs. 15-16)

The Association maintains that the parties introduced data from a substantial number of police contracts in support of their positions. It contends that the following chart analyzes that data with respect to percentage changes in base wage rates.

CHART NO. 2
Wage Increases Expressed in Percentage
of Change Based on Contracts in Evidence

	<u>1997</u>	<u>1998</u>	<u>1999</u>
Montgomery *	5		
Bernards Twsp. *	3.75	4	
Raritan	4		
Warren	4.25		
Bedminster *	4.25		
Green Brook	5		
Manville	4	4	
Hopewell	4.25		
Hillsborough	4.5	4.5	4.5
Bernardsville*	4.5		
Bernardsville SOA *	4.5		
Branchburg *	4.5	4.5	
Bridgewater *	4.1	4.2	
Far Hills	4.25		
Middlesex *	4.5		
Scotch Plains	4.25		
Averages	4.35%	4.24%	4.5%

(Association Brief at pg. 16)²

The Association argues that its wage proposal is strongly supported by this data. It acknowledges that the Association's five percent (5%) wage proposal is slightly greater than the average percentage wage increase granted to police officers in the comparable communities relied upon by both parties. However, the Association argues that a slightly higher wage increase is needed to begin to address the short fall that exists between the base wage paid to the Borough's Police Officers and their counterparts in comparable jurisdictions. It points out that the Association's

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The asterisks are for towns also cited by the Borough.

wage proposal does not attempt to close this gap all at once. Rather, the Association contends that it is attempting to close the gap by a "couple of a tenths of a percentage point per contract year." (Association Brief at pg. 17)

The Association further maintains that the Borough's evidence concerning private sector wage comparisons should be given very little weight in this proceeding. It relies upon the following analysis of Interest Arbitrator William Weinberg in support of that assertion.

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

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

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

(1) comparison within the same jurisdiction, the direct employer, in this case the Village and (2) comparison with comparable jurisdictions, primarily other municipalities with a major emphasis on other police departments.

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

(Association Brief at pgs. 18-19)

Thus, the Association insists that when all of the relevant comparisons are made, its wage proposal is clearly the more reasonable and ought to be awarded.

As to the criterion regarding overall compensation, the Association maintains, as noted above, that the Borough's Police Officers receive below average benefits in many areas such as vacations and terminal leave. Therefore, the Association argues that this criterion also supports the awarding of its wage proposal.

As to the criterion regarding stipulations between the parties, the Association notes that both parties have proposed a three (3) year Agreement. It asserts that the other stipulations entered into by the parties were procedural in nature and, as such, have little impact on the merits of this dispute or its ultimate outcome.

As to the criterion regarding the lawful authority of the Borough, the Association maintains that this requires an evaluation

of the Borough's authority to pay for the Association's proposal pursuant to the requirements of New Jersey's Cap Law. It asserts that the Borough's 1997 Cap formula permitted expenditures of \$8,899,2694. The Association further asserts that the Borough's budget for 1997 shows actual appropriations under the Cap Law of \$8,794,275. (Association Exhibit No. 10) Thus, it points out that the Borough's 1997 budget was \$105,418 under the Cap. The Association contends that the Cap Law permits this amount to be carried forward into future years. Therefore, it insists that the record demonstrates that the Borough has the budgetary flexibility to pay for the Association's wage proposal within the framework of New Jersey's Cap Law. (Association Exhibit No. 10) Accordingly, the Association argues that the Cap Law does not prohibit my awarding the Association's wage proposal.

As to the criterion regarding the financial impact on the governing unit, its residents and taxpayers, the Association maintains that the impact of its wage proposal, if awarded, would be of minimal significance. It also contends that this minimal impact "is more than offset by the significant savings already achieved through federal grants and the reduction in numbers of key personnel." (Association Brief at pg. 22) The Association further asserts that the Borough's Police Department generates substantial sums on its own, such as the more than two hundred and eighty eight thousand dollars (\$288,000) in fine money realized by the Borough's Municipal Court in 1996. It claims that essentially all of this money is the result of police activity and helps defray the costs

of operating the Borough's Police Department.

The Association maintains that the following chart lists the three (3) ranks of Police Officer at issue in this proceeding, i.e., Lieutenant, Sergeant and Patrolman, and the base wage totals for each of those ranks.

CHART NO. 3
Bargaining Units Collective Base Wages

(A)	(B) <u>Census</u>	(c) Rate per <u>J1 & J2</u>	(D) Col. (B) X <u>Column(c)</u>
Lieutenant	4	69,280	\$ 277,120
Sergeant	7	61,286	\$ 429,002
Patrolmen	32	53,292	\$1,705,344
TOTALS	43		\$2,411,466

(Association Brief at pg. 22) On the basis of this data, the Association contends that even assuming for the sake of argument that all of the Borough's Police Officers were at the maximum rate of pay - and it asserts that they are not - "a base wage point in this proceeding [would be] worth \$24,114." (Association Brief at pg. 22)

With regard to the impact of the Association's wage proposal on the Borough's financial circumstances, the Association asserts that when the value of a wage point (\$24,114) is compared with the total appropriations in the Borough's adopted budget for 1997 (\$8,673,225), then it becomes apparent that the impact of a wage point on the Borough's budget is .002%. It insists that this is a very small impact.

The Association further asserts that the evidence shows that the Borough's "fiscal picture is getting stronger." (Association Brief at pg. 26) It maintains that at the end of 1996 the Borough had reserved \$163,000 for total operations within the Cap Law and had reserved \$151,775 in other expenses. (Association Exhibit No. 10 at sheet 17)

With regard to the impact of the Association's wage proposal on the Borough's taxpayers, the Association further asserts that when the value of a wage point (\$24,114) is compared with the Borough's total tax levy for 1997 (\$27,249,895), then it becomes apparent that the impact of a wage point on the Borough's tax levy is 0008%, which again, is a small impact. The Association points out that pursuant to this analysis, the impact of a base wage point on a hypothetical taxpayer paying three thousand dollars (\$3000) per year in property taxes would be two dollars and forty cents (\$2.40) per year ($\$3000 \times .0008 = \2.40). Thus, the Association insists that even if every single dollar needed to fund a police wage increase came from an increase in taxes, the impact on the Borough's taxpayers of awarding the Association's wage proposal would be very minor.

The Association further asserts that there is little evidence in the record of taxpayer pressure and concern. It maintains that the Borough's tax collection rate has consistently been above ninety six (96%) percent, and that from 1993 to 1997 it increased from 96.07% to 97.30%. (Borough Exhibit No. 5) The Association argues that this increasingly high level of tax collection "is far

from any type of indication of a heavy tax burden." (Association Brief at pg. 27)

The Association acknowledges that the Borough's total tax rate may be on the rise. However, it asserts that the municipal portion of that total tax rate has only gone up three cents (\$.03) and four cents (\$.04), respectively, in the last two (2) years. (Borough Exhibit No. 5) The Association maintains that the school tax rate, which has gone up thirty six cents (\$.36) between 1993 and 1997, and which is sixty percent (60%) of the total tax levy, is what has had a major impact on the Borough's taxpayers. However, it points out that only eighteen percent (18%) of the Borough's residents even bother to vote on the school budget, which is the only aspect of the budget on which they are permitted to vote. (Association Exhibit No. 13) Thus, the Association argues that "[o]ne would be hard pressed to make a logical argument that there is any form of taxpayer anxiety in North Plainfield when only 18% of the people even bothered to vote on the 60% portion of the tax levy." (Association Brief at pg. 28)

The Association also maintains that the Borough has one of the largest ratable tax bases in all of Somerset County, New Jersey. It contends that the Borough's taxpayers are far from one hundred percent (100%) tax valuation.

In summary, the Association argues that "there is a strong tax base with a slowly rising tax rate that itself is more than competitive. The taxpayers do not appear upset or troubled in any way as is evidenced by their complacency in voting on the 60%

portion of the levy, the school budget. The actual impact of what occurs in these proceedings is at most de minimis." (Association Brief at pg. 29)

As to the criterion concerning the cost of living, the Association maintains that it is not a key factor in this dispute. It contends that the parties are close together in their wage proposals, both of which, the Association claims, are in line with the relevant cost of living figures presented at the hearing.

While the Association acknowledges that the cost of living is currently increasing at a relatively low rate, it maintains that the rate of increase is becoming larger. The Association also points out that in the early and mid 1980s, the rates of increase in the Consumer Price Index were in the double digit range. However, it argues that police officers never received double digit wage increases. Instead, during that period of time, employers protested and downplayed the importance of the cost of living criterion. In the Association's view, the Borough cannot now claim that the cost of living is of major importance. Moreover, the Association maintains that area wage rates are predominately reflective of area standards, and that those standards are themselves inclusive of consumer price index considerations. It relies upon the evidence discussed above, which it asserts shows that both the total compensation of the Borough's Police Officers and the Association's wage proposal are well within area norms. Thus, the Association argues that its proposal is consistent with the statutory requirement to consider the cost of living.

As to the criterion regarding the continuity and stability of employment, the Association maintains that "[e]ffectively this criteria is providing a test or measure of the parties' positions in the area of recognizing an employment continuum where seniority rights are recognized and protected." (Association Brief at pgs. 32-33) It contends that the Borough's proposals seeking a termination of certain benefits for new employees cannot survive an analysis based on this criterion. The Association insists that creating two (2) classes of Police Officers with separate and distinct benefit programs will have an adverse impact on the "continuity and stability" of employment within the Borough's Police Department.

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

The Association points out that as a result of the grandfathering of the Police Department's longevity program, Borough Police Officers hired after 1994 are no longer eligible for longevity benefits. It has proposed that this grandfathering be eliminated and that all of the Borough's Police Officers be deemed eligible to participate in the Department's longevity program. The Association asserts that few comparable communities limit longevity benefits in this manner and that its proposal to eliminate this two (2) tier system of longevity benefits is supported by evidence concerning comparability. It further asserts that since no Borough

Police Officer is currently affected by this grandfathering, the current cost of eliminating it will be zero. Thus, the Association argues that its longevity proposal is reasonable and ought to be awarded.

The Association has proposed a new economic benefit in the form of a "Senior Officer Differential." It asserts that this new benefit, if awarded, "would provide a one-half value increase between an employee's then current rank and the next rank's base pay upon the completion of 20 years of service." (Association Brief at pg. 3) The Association argues that its Senior Officer Differential proposal is supported by an analysis of the relevant statutory criteria and ought to be awarded.

The Association has proposed that the following language be added to the Agreement regarding replacement employees:

REPLACEMENT

No full time employee covered by this Agreement shall be replaced by any non-police officer, part time or other personnel.

No post presently filled by a full time employee covered by this Agreement shall be covered by any non-police officer, part time or other personnel.

(Association Exhibit 3) The Association maintains that its replacement employee proposal protects both the job security and the job safety of the Borough's Police Officers. It contends that its replacement employee proposal, if awarded, would increase the stability and continuity of employment within the Borough's Police

Department. The Association claims that its replacement employee proposal also is supported by evidence of comparability. It further asserts that the use of non-sworn employees in police title jobs would not advance the interests or the welfare of the public. For all of these reasons, the Association argues that its replacement employee proposal is reasonable and ought to be awarded.

The Association has proposed that the following language be added to the Agreement regarding police services:

POLICE SERVICES

All requests for services of police officer while off duty that may be addressed to the public employer shall be forwarded to the Police Department for posting. The public employer agrees to require a Police Officer on all contracting jobs done within the Borough where there is a road opening involved. Any time there is a road opening or significant street repair as determined by the Chief of Police or his designee, the Employer agrees to require as a condition of the letting of the job that the contractor agreed to provide at least one (1) Police Officer to provide public safety and security at the location of the work site.

The public employer further agrees that all monies received from such contracting work shall be paid through the employer's payroll process and the law enforcement officer while so employed shall be treated in all respects as an employee of the public employer.

(Association Exhibit 3) It maintains that the Association's police services proposal, if awarded, will advance opportunities for extra duty employment by its members, while most likely saving the Borough money. Thus, the Association argues that its police services proposal is reasonable and ought to be awarded.

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

The Borough, on the other hand, maintains that its final offer is the more reasonable one. It notes that like the Association, it has proposed a three (3) year Agreement for the period January 1, 1997 through December 31, 1999.

The Borough has proposed a two percent (2%) wage increase effective January 1, 1997, a three and one-tenth percent (3.1%) wage increase effective January 1, 1998, and a three and one-tenth percent (3.1%) wage increase effective January 1, 1999. It maintains that if its wage proposal were awarded, a top-step Patrolman would make \$54,358 in 1997; \$56,043 in 1998; and \$57,780 in 1999. The Borough contends that this amounts to a \$4,488 increase over a three (3) year period. It asserts that based upon the total number of bargaining unit members, the wage increases proposed by the Borough, if awarded, would cost the Borough \$192,984 over the duration of the Agreement, or an average annual outlay of \$64,328. The Borough claims that its wage proposal allows it to be competitive with comparable communities, while

staying within its ability to pay and not unduly burdening its residents and taxpayers.

The Borough points out that "[s]ince not all of the bargaining units are at the top step of the salary guide throughout the contract term, the arbitrator must take into account and include in the calculation of any economic requests by the Borough the additional costs incurred by the Borough in the step increases derived by bargaining unit members as they move through the salary guide." (Borough Brief at pg. 7) It maintains that based upon the current composition of the bargaining unit, the total additional cost for these step increases would be \$98,220 or \$2,284 per Officer, for an additional 4.29% in 1998, and would be \$63,797 or \$1,484 per Officer, for an additional 2.78% in 1999.

As to the criterion regarding the interests and welfare of the public, the Borough maintains that its proposal best serves those objectives. It contends that the Borough's wage proposal, if awarded, would permit the Borough to maintain current taxation levels without having a major impact on other services provided by the Borough. According to the Borough, awarding a wage increase greater than the increases being proposed by the Borough, could result in either budget cuts and or tax increases. It insists that neither alternative would advance the interests or welfare of the public.

As to the criterion regarding a comparison of the wages of other employees performing the same or similar services in public employment in comparable jurisdictions, the Borough, like the

Association, points to several comparable jurisdictions in support of its position. The Borough maintains that its wage proposal over a three (3) year period is more in line with the wage increases awarded to police officers in Bernards Township, Far Hills, and Montgomery, than the fifteen percent (15%) wage increase being sought by the Association over the same period of time.

The Borough asserts that "a review of the Borough's comparable exhibits for senior patrolmen over the period in question place[s] the Borough's officers in the same or better position than a whole host of comparable municipalities both inside and outside Somerset County." (Borough Brief at pg. 13) It further asserts that if the Association's wage and longevity proposals were awarded, then the Borough's senior Police Officers would greatly improve their status relative to their counterparts in comparable jurisdictions. The Borough argues that one of the objectives of interest arbitration is to permit employees to maintain their relative standing in comparison to their counterparts in comparable jurisdictions. It argues that the Borough's wage proposal would accomplish that objective.

The Borough rejects as unrealistic the Association's reliance on comparisons with communities such as Watchung, Warren and Hopewell Township. It maintains that all of these communities have per capita incomes, median household incomes and median family incomes which far exceed those in North Plainfield. The Borough also contends that it has many more residents living below the poverty level than these alleged comparable communities relied upon

by the Association.

As to the criterion regarding comparisons to public employment in general, the Borough contends that its wage proposal is consistent with the wage proposals it has made to its other bargaining unit employees as well as to its non-unionized employees. As an example, the Borough points out that it gave its unionized clerical employees a four percent (4%) wage increase in 1996, a two percent (2%) wage increase in 1997, and a three and one-quarter percent (3-1/4%) wage increase in 1998. It further notes that the Borough's non-unionized employees will receive a two percent (2%) raise in 1997, and a two percent (2%) raise in 1998 if they continue to work a thirty five (35) hour work week. Thus, the Borough argues that its wage proposal, rather than the Association's wage proposal, is more in line with the settlements that have occurred within the Borough to date.

As to the criterion regarding comparisons to private employment in general, the Borough points out that in 1996 and 1997, the average all industries median wage increase was three percent (3%) per year for three (3) year agreements. It contends that the Borough's wage proposal of a 8.32% increase over three (3) years is more in line with this comparison than the fifteen percent (15%) wage increase being sought by the Association over the same period of time. The Borough also maintains that its wage proposal is more in line than the Association's wage proposal with the evidence in the record concerning wage increases recently agreed to by many unionized employees in New Jersey's private sector.

Thus, the Borough argues that when all of the relevant comparisons are made, its wage proposal is clearly the more reasonable and ought to be awarded.

As to the criterion regarding overall compensation, the Borough maintains that its Police Officers are very well compensated, especially when all of their benefits are considered. The Borough contends that when compared to officers in comparable jurisdictions, its Police Officers receive superior or comparable benefits. It makes the following points in support of that assertion:

- 1) Holidays -- better or the same than all but 1 comparable municipality;
- 2) Longevity -- while lacking at the top, it is clearly the same or better than any comparable at the appropriate levels;
- 3) Vacations -- more vacation sooner than any other comparable municipality;
- 4) Health Insurance -- except for vision, no different than any other comparable;
- 5) Clothing Allowance -- better than most comparables, but for three (3) municipalities;
- 6) College credits -- better than every comparable, with no cap;
- 7) Other leave -- while slightly less on personal days, comparable on bereavement;
- 8) Overtime -- comparable to all other municipalities; and,
- 9) Sick Leave/Terminal Leave -- comparable on sick leave; better than everyone on terminal leave.

(Borough Brief at pgs. 18-19) The Borough also asserts that members of its Police Departments are among the top wage earners in the Borough, with many Officers earning more than but a handful of senior management personnel. Further, the Borough claims that its Police Officers earn far more than private sector manufacturing employees in Somerset County. Thus, the Borough argues that this criterion also supports the awarding of its wage proposal.

As to the criterion regarding the lawful authority of the Borough, the Borough does not directly dispute the Association's assertion that New Jersey's Cap Law does not prohibit my awarding the Association's wage proposal. However, it asserts that the Borough "will have no 'CAP bank' ability in 1999" and "the arbitrator should not be fooled into believing that there are 'banked' monies available -- there simply are not." (Borough Brief at pgs. 19-20) Thus, the Borough argues that the evidence concerning this criterion favors a wage proposal closer to the Borough's proposal than the Association's wage proposal.

As to the criterion regarding the financial impact on the governing unit, its residents and taxpayers, the Borough maintains that the evidence demonstrates that it "has been faced with, and continues to struggle with, the economic burdens that have ravaged urban/semi-suburban municipalities throughout the State of New Jersey." (Borough Brief at pg. 15) It asserts that the Borough "has taken extraordinary measures over the last few years and, in spite of this, the Borough has still reduced municipal employees jobs (both by attrition and layoff, coupled with minor

privatization), sacrificed programs and services and has generally been unable to stabilize its municipal tax rate." (Borough Brief at pg. 15) The Borough argues that its Police Department is the only municipal department which has remained unscathed.

With regard to taxes, the Borough maintains that since 1992, the net valuation of taxable property in the Borough has dropped from \$930,535,44 to \$800,684,623, for a decrease in net valuation of just under \$130,000,000. It contends that during this same period, Borough tax rates have risen from \$2.45 per \$100 in ratables in 1992, to \$3.40 per \$100 in ratables in 1996. The Borough submits the following data in support of these assertions:

BOROUGH OF NORTH PLAINFIELD
COUNTY OF SOMERSET, NEW JERSEY

ASSESSED VALUATION AND TAX RATES

<u>Year</u>	<u>Real Property</u>	<u>Net Taxable Value Real and *Personal Property</u>	<u>Tax Rate per \$100.00</u>	<u>Real Property Assessed Valuation Percentage of True Value</u>
1992	\$927,994,950.00	\$930,535,444.00	\$2.45	104.96%
1993	808,273,400.00	810,640,483.00	2.88	94.10
1994	805,843,900.00	808,063,424.00	3.03	99.58
1995	798,677,900.00	800,933,340.00	3.25	98.18
1996	798,609,700.00	800,664,623.00	3.40	93.44

Thus, the Borough argues that a home that was assessed at \$129,000 in 1992, which was the average assessment in the Borough at that time, was paying \$3,161 in property taxes in 1992, and is now paying \$4,386 in taxes on the same valued property. It points out that this is an increase of more than \$1,200, or a 38.75% increase in property taxes.

The Borough maintains that the trend in its municipal tax rate, which is earmarked for municipal services, has been no better. It contends that on the same average home discussed above, a Borough resident paid \$800 in taxes to cover municipal services in 1992, and paid \$1097 in municipal taxes in 1996. The Borough points out that this is an increase of \$297, or a 37.13% increase in municipal taxes. It further notes that the Certification of John Katilas, its Administrator and Chief Financial Officer, shows that the Borough's municipal tax rate has increased every year since 1992, and that there is no indication that it will fall for any length of time in the near or long term future. The Borough submits the following data in support of these assertions:

COMPARISON OF COMPONENTS OF TAX RATE

	<u>1996</u>	<u>1995</u>	<u>1994</u>	<u>1993</u>	<u>1992</u>
Tax Rate	<u>\$3.40</u>	<u>\$3.25</u>	<u>\$3.03</u>	<u>\$2.88</u>	<u>\$2.45</u>
Apportionment of Tax Rate:					
Municipal	\$.85	\$.81	\$.75	\$.73	\$.62
County	.53	.52	.46	.48	.43
Local School	<u>2.02</u>	<u>1.92</u>	<u>1.82</u>	<u>1.57</u>	<u>1.40</u>
	<u>\$3.40</u>	<u>\$3.25</u>	<u>\$3.03</u>	<u>\$2.88</u>	<u>\$2.45</u>

The Borough maintains that the Katilas certification further exemplifies the Borough's budgetary problems as follows:

- 1) In spite of numerous one-time revenue sources (including an upcoming \$400,000 one-time revenue from increased tax assessments on the Borough's largest taxpayer--Vornado), the Borough's 1997

municipal budget shows that current taxes used to support the budget have risen to 62.7% of the total revenue base--an alarming result;

2) The 1997 municipal budget shows that Police Department S&W represents 49% of the total budget within "CAP" for 1997, and the Borough will have no "CAP banking" in the foreseeable future, while as the Borough increased the number of sworn officers by 6;

3) Furthermore, the Police Department's entire budget in 1997 represents 26% of the total Borough budget and climbing. The next highest department (Fire) only represents 14% of the total Borough budget. In fact, the Police Department budget in 1997 within "CAP" went up almost \$100,000 (3.5%) while every other department's budget either went down or with very little increase -- only the Police Department survived the cuts.

4) Costs for PERS payments have averaged a 17.5% per year increase over the last four (4) years; as the salaries of the members of the Police Department have risen, said costs will also rise having a further impact on the Borough's present and future budgets. In addition, while PERS contributions are non-existent in the upcoming budget year, there is no guarantee that such will continue in the near or long-term future.

5) Costs have increased over a whole range of issues/subjects and there is no indication whatsoever that these costs will stabilize in the near future; and,

6) The Borough is being forced to use its surplus just to keep tax increases down to a "manageable" level, much less seeing any

decreases in taxes.

(Borough Brief at pg. 16)

The Borough further maintains that its tax rate and equalized tax rates are higher than those in any other municipality, both in Somerset County and among other comparable communities. It submits the following data in support of those assertions.

TAX RATES (1996)

	<u>TAX RATE</u>	<u>COUNTY EQUALIZATION RATIO</u>
NORTH PLAINFIELD	\$3.39	93.44
Bedminster	1.38	94.48
Bernards	1.65	95.37
Bernardsville	1.78	90.08
Branchburg	2.11	93.06
Bridgewater	2.78	63.64
Dunellen	6.42	44.91
Far Hills	1.72	73.75
Franklin Township	2.11	98.60
Hillsborough	2.18	100.81
Manville	2.49	102.49
Middlesex	4.21	63.16
Montgomery	2.70	77.43
Peapack and Gladstone	1.62	94.78
Plainfield	3.39	96.97
Raritan	2.29	100.65
Scotch Plains	4.87	50.06
South Plainfield	3.16	75.91

Source: 1997 ed. of New Jersey Lawyers Diary and Manual

1995 Taxes Equalized

NORTH PLAINFIELD	\$2.97
Bedminster	\$1.28
Bernards	\$1.55
Bernardsville	\$1.51
Branchburg	\$1.84
Bridgewater	\$1.72
Far Hills	\$1.23
Franklin Township	\$2.00
Hillsborough	\$2.06
Manville	\$2.47
Montgomery	\$1.91
Peapack and Gladstone	\$1.43
Raritan	\$2.27
Dunellen	\$2.80
Middlesex	\$2.49
Plainfield	\$3.38
Scotch Plains	\$2.42
South Plainfield	\$2.33

Source: 1996 New Jersey Legislative District Data Book (Rutgers University)

(Borough Exhibit No. 5)

The Borough suggests that the frustration of its residents with these high rates of taxation is reflected by the fact that "voters have defeated several bond issues for school construction/renovation, though the schools are in desperate need of repair/replacement." (Borough Brief at pg. 17) It maintains that a review of the Borough's 1997 municipal budget "shows an exceedingly tight budget with a larger dependency on municipal taxes than ever before." (Borough Brief at pg. 18) The Borough asserts that it lost almost one hundred thousand dollars (\$100,000)

in State aid in 1997. It further asserts that the Borough's construction revenues have dropped, and that its sewer utility surplus has dropped dramatically. The Borough argues that significant increases in the Borough's budget to pay for the Association's wage demands will force home owners to flee the community.

For all of these reasons, the Borough argues that pursuant to this criterion, its wage proposal is clearly the more reasonable and ought to be awarded.

As to the criterion concerning the cost of living, the Borough maintains that the record demonstrates that during the period of 1993 through 1997, the cost of living for all urban earners in the New York-Northern New Jersey areas increased by thirteen and one-half percent (13-1/2%), or an average of two and seven tenths percent (2.7%) per year. It contends that during that period the Borough's Police Officers have either received or demanded pay increases of twenty one percent (21%), for an average increase of four and two tenths percent (4.2%) per year. The Borough asserts that if its wage proposal is awarded, then the percentage increase in Police wages for this period will be reduced to eighteen percent (18%), or three and six tenths percent (3.6%) per year. Thus, the Borough insists that its wage proposal is supported by the statutory requirement to consider the cost of living and ought to be awarded.

As to the criterion regarding the continuity and stability of employment, the Borough maintains that there is complete stability

of employment within its Police Department. It asserts that there have been no layoffs or reductions in rank for economic reasons within its Police Department. The Borough further asserts that it had absolutely no problem filling eight (8) positions between April 1996 and July 1997, and that there is a current pool of manpower for any future hiring. It also claims that no Police Officer has ever left the Borough's police force to seek employment with any other police department. Thus, the Borough argues that its wage proposal also is supported by the this statutory criterion and ought to be awarded.

For all of these reasons, the Borough insists that its wage proposal is the most reasonable and ought to be awarded.

The Borough has proposed the following three (3) new salary steps, effective January 1, 1998: i) An academy step which would govern a Police Officer's salary while in the Academy and which would be frozen at \$24,500 for the term of the Agreement. ii) A new probationary step which would apply for twelve (12) months after Academy graduation or after joining the Borough's Police Department if already Academy trained, and which would be frozen at \$27,000 for the term of the Agreement. iii) A new Step E which would limit the significant jump in wage rates on the current salary scale from the Probationary Step to Step D. The Borough has proposed that Step E be set at fifty percent (50%) between the Probationary step and Step D, and that it only apply to Officers hired on or after January 1, 1998.

The Borough maintains that no existing employees would be

effected by its salary step proposals if they were awarded. It asserts that its salary step proposals, if awarded, would result in a more gradual and realistic salary rise and eliminate an exiting \$11,000+ salary increase that occurs once an Officer completes his or her probationary period. The Borough further asserts that its salary step proposals are supported by evidence concerning comparability. Therefore, it insists that the Borough's salary step proposals are reasonable and ought to be awarded.

The Borough has proposed that effective January 1, 1999, Police Officers be permitted to opt out of the Borough provided health or dental plan in return for a payment equal to twenty five percent (25%) of the premiums saved by the Borough. It points out that this is a purely voluntary plan which would produce savings for the Borough while increasing the earnings of its Police Officers. The Borough further notes that it has proposed that Officers be permitted to regain their medical and or dental coverage at specific times in the future. Thus, it argues that its health and dental insurance proposal is reasonable and ought to be awarded.

The Borough also has proposed three (3) changes in the Agreement's language which it explains as follows: i) "An indemnity clause for the Borough's collection of representation fees". ii) "A revision of the legal defense article ... to reflect state statute and case law". iii) "A new management rights clause." (Borough Brief at pg. 10) It maintains that "[n]one of these items should produce a negative impact upon the provisions of [the]

Agreement and/or the employees covered by such." (Borough Brief at pg. 10) The Borough asserts that its three (3) language proposals are supported by evidence of comparability. It further asserts that there is no reason why the Borough should not be awarded these language changes. Therefore, the Borough argues that its three (3) language proposals are reasonable and ought to be awarded.

The Borough opposes the Association's proposal to eliminate the two (2) tier longevity schedule that was negotiated by the parties in their current Agreement. It maintains that as of January 1, 1997, ten (10) Patrolman would be effected by this proposal and would receive longevity benefits in the very foreseeable future. The Borough contends that awarding the Association's longevity proposal would impose additional costs on the Borough and reverse the only give back received by the Borough during the previous contract term. It insists that this would be completely unjustified. Thus, given the Borough's financial circumstances, it argues that the Association's longevity proposal is unreasonable and should not be awarded.

The Borough opposes the Association's proposal for a Senior Officer Differential which would result in career Patrolmen with more than twenty (20) years of service receiving fifty percent (50%) of the difference between the wage for top-step Patrolman and the wage for Sergeants. It maintains that this proposal would result in an additional wage increase of 1.09% in 1997. Given the Borough's financial circumstances, it argues that the Association's Senior Officer Differential proposal is unreasonable and should not

be awarded.

The Borough also opposes the Association's two (2) non-economic proposals. It maintains that the Association's police services proposal requires the use of police services for road openings or significant road repairs. The Borough contends that the Association's replacement employee proposal demands that no law enforcement duties be performed by non-police officers. It asserts that both of these proposals, if awarded, would be significant infringements on managerial rights to handle manpower assignments. The Borough further asserts that there is no evidence in the record that either of these proposals deserve meritorious consideration. Thus, it insists that the Association's non-economic proposals are unreasonable and should not be awarded.

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

OPINION

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

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

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

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

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

- (3) The overall compensation presently received by the employees, inclusive of direct wages, salaries, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received.
- (4) Stipulation of the parties.
- (5) The lawful authority of the employer. Among the items the arbitrator shall assess when considering this factor are the limitations imposed upon the employer by P.L. 1976, c.68 (C.40A:4-45.1 et seq.).
- (6) The financial impact on the governing unit, its residents and taxpayers. When considering this factor in a dispute in which the public employer is a county or a municipality, the arbitrator shall take into account, to the extent the evidence is introduced, how the award will affect the municipal or county purposes element, as the case may be, of the local property tax; a comparison of the percentage of the municipal purposes element or, in the case of a county, the county purposes element, required to fund the employees' contract in the preceding local budget year with that required under the award for the current local budget year; the impact of the award for each income sector of the property taxpayers of the local unit; the impact of the award on the ability of the governing body to (a) maintain existing local programs and services, (b) expand existing local programs and services for which public moneys have been designated by the governing body in a proposed local budget, or (c) initiate any new programs and services for which public moneys have been designated by the governing body in a proposed local budget.
- (7) The cost of living.
- (8) The continuity and stability of employment including seniority rights and such other factors not confined to the foregoing which are ordinarily or traditionally considered in the determination of wages, hours and conditions of employment through collective negotiations and collective bargaining between the parties in the public service and in private employment.

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

The Borough and the Association both have proposed a three (3)

year Agreement. This would result in an Agreement for the period January 1, 1997 through December 31, 1999. Since both the Association and the Borough have agreed to a three (3) year Agreement, I have formulated this Award based upon a contract term of three (3) years.

In addition, a three (3) year Agreement makes good sense. First, an Award covering a three (3) year period will enable the parties involved in this proceeding to have a sufficient period of time to resume their relationship free from the interruptions of collective bargaining. Second, it is important to note that an Award of only a two (2) year Agreement would virtually require negotiations between the parties to begin immediately for a successor agreement. This would be unduly burdensome on both the Borough and the Association. Thus, I concur with the parties' preference for a three (3) year Agreement.

I now turn to the remaining components of the parties' proposals. The Association has proposed, exclusive of increments, across the board wage increases at each rank, step and position covered by the Agreements of five percent (5%) effective on January 1, 1997, five percent (5%) effective on January 1, 1998, and five percent (5%) effective on January 1, 1999. This amounts to a fifteen percent (15%) increase over three (3) years or an average annual increase of five percent (5%).

The Borough has proposed a two percent (2%) wage increase effective January 1, 1997, a three and one-tenth percent (3.1%) wage increase effective January 1, 1998, and a three and one-tenth

percent (3.1%) wage increase effective January 1, 1999. This amounts to an eight and two tenths percent (8.2%) increase over three (3) years or an average annual increase of 2.73%. Thus, the increase proposed by the Borough is a little more than half (½) of the increase proposed by the Association.

I find both proposals to be unacceptable. Clearly, given the financial circumstances of the Borough, there can be no justification for an average annual increase over three (3) years of five percent (5%). Under no circumstances can this level of increase be justified in light of the relevant statutory criteria.

On the other hand, the Borough's proposal of an average annual increase over three (3) years of 2.73% also is not justified. It would result in the Borough's Police Officers unnecessarily falling behind their counterparts in neighboring comparable communities. As explained below, the financial circumstances of the Borough can be taken into account without requiring that the wages of the Borough's Police Officers fall significantly behind the wages paid to police officers in surrounding jurisdictions. Thus, the Borough's wage proposal cannot be justified when all of the relevant statutory criteria are taken into account.

Instead, I am persuaded that a wage increase between the Association's five percent (5%) proposal and the Borough's 2.73% proposal is appropriate here. In addition, I am equally convinced that the wage increases should be split and or delayed in each year of the Agreement. This will provide a cash savings to the Borough while permitting the salaries of its Police Officers to keep pace

with the salaries paid to officers in comparable communities. It will, of course, also lessen the total financial cost of the awarded increase.

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

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

However, the public's interests and welfare are also served by a police force that is stable and whose morale is high. Thus, I am persuaded that a wage package which deviated dramatically from the type of salary increase provided to other police officers in comparable communities, does not serve the interests and welfare of the citizens of the Borough. After all, the interests and welfare of the public criterion is not limited solely to the public's financial interests and welfare. By necessity, it also must involve the community's interests and welfare in having its police force continue to serve its essential needs and provide essential services.

The morale problems which would be caused by a wage package which deviated dramatically from the type of increases provided to

officers in comparable communities would be even greater in the Borough's Police Department. The evidence demonstrates that in recent years the Borough has chosen to reduce the staffing within its Police Department, particularly at the supervisory level. The positions of Deputy Chief and Captain are vacant. The number of Lieutenants also has been reduced by thirty three percent (33%) from six (6) to four (4). Consequently, the Borough's Police Officers have less of an opportunity for advancement than their counterparts in comparable communities. If on top of this truncated career ladder, the Borough's Police Officers are awarded a wage increase which unnecessarily causes them to fall further behind their counterparts in comparable communities, their morale will certainly suffer.

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

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

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

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

Therefore, I find that the statutory criterion concerning the interest and welfare of the public favors awarding an increase between the increases proposed by the parties, but closer to the wage increases proposed by the Association than the wage increases proposed by the Borough.

The second criterion requires a comparison of the wages, salaries, compensation, hours and conditions of employment of North Plainfield Police Officers with those of other employees performing the same or similar services in the public sector in comparable

jurisdictions, in comparable private employment and in public and private employment in general.

The evidence demonstrates that both parties have presented a series of public sector jurisdictions which they assert should be compared to North Plainfield. There is a certain degree of overlap between the comparable communities relied upon by the Association and the Borough in their exhibits and charts, e.g., Montgomery, Bernards Township, Bedminster, Bernardsville, Branchburg and Bridgewater. (Chart No. 2 to Association Brief at pg. 16) (Borough Exhibit No. 5) Moreover, in their briefs both the Borough and the Association relied upon many of the comparable communities cited by the other party in their exhibits and charts. (Borough Brief at pg. 13) (Association Brief at pg. 16) Thus, I find that the communities relied upon by both the Borough and the Association are appropriate comparable communities for purposes of drawing the comparisons required by the statute.

The Borough has argued that the Association's comparisons with certain communities, such as Watchung, Warren and Hopewell Township, are inappropriate because of demographic differences between those municipalities and North Plainfield. Comparability, however, rather than identity of communities, is all that is required by the statute. Differences in degrees of comparability can be taken into account when evaluating evidence drawn from jurisdictions with different degrees of comparability to the Borough. Thus, I find that comparisons drawn by the Association between the Borough's Police Officers and their counterparts in

comparable communities with different demographics are relevant to this dispute.

The Borough introduced evidence which demonstrated that if the Association's wage proposal were awarded, then the Borough's Police Officers would improve their ranking when compared to their counterparts in comparable jurisdictions. This evidence is relevant. However, it is not determinative.

Evidence concerning the wage increases granted by comparable communities to their police officers in 1997, 1998 and 1999, also is relevant to this dispute. The Association introduced evidence which demonstrated that the percentage wage increases it was proposing were only slightly higher than the average percentage wage increase granted to police officers by sixteen (16) comparable communities. (Chart No. 2 to Association Brief at pg. 16) Thus, the evidence concerning comparability presented by the Association provides support for a wage increase closer to the increases proposed by the Association than the increases proposed by the Borough.

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

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

The next criterion deals with the overall compensation received by the Borough's Police Officers. I agree with the Borough that the overall compensation received by its Police Officers tends to be similar to the overall compensation received by police officers in comparable jurisdictions. The Association, however, is correct when it notes that some of the benefits received by the Borough's Police Officers, such as personal days, are below average when compared to the benefits received by officers in comparable jurisdictions. However, when considered as an overall package, I find that the overall compensation received by the Borough's Police Officers is comparable to the total compensation received by their counterparts in comparable jurisdictions.

Notwithstanding this current comparability, the overall compensation of the Borough's Police Officers would not fare relatively well with the overall compensation received by other police officers in comparable jurisdictions, if I were to award the Borough's final wage proposal. Under those terms, the Borough's Police Officers would fall somewhat behind their counterparts in comparable jurisdictions. On the other hand, the economic package being sought by the Association is more generous than is necessary

to maintain the relative standing of the Borough's Police Officers in terms of overall compensation and benefits. Thus, I find that this criterion also demonstrates the appropriateness of awarding an economic package which falls somewhere between the economic packages being sought by the Borough and the Association.

As to the criterion concerning the stipulations of the parties, the Borough and the Association have agreed that the term of the Agreement shall be for three (3) years, commencing on January 1, 1997 and concluding on December 31, 1999. No other substantive stipulations were agreed to by the parties. Thus, this statutory criterion is not particularly relevant to resolving the parties' dispute.

As to the lawful authority of the employer, I note the existence of New Jersey's Cap Law and the resulting Cap rate set each year. I accept the Borough's position that New Jersey's Cap Law places constraints on the Borough's budget as well as on its lawful authority to pay for the wage increases proposed by the Association. However, there is no persuasive evidence that the Borough cannot lawfully pay for the wage increases proposed by the Association should they be awarded. The Association has met its burden of establishing this fact. However, for reasons noted elsewhere in this Opinion, I am awarding an economic package which will cost the Borough less than the economic package being sought by the Association. Thus, there can be no dispute that the Borough has the lawful authority to pay for the types of increases awarded herein.

The statutory criteria concerning the financial impact of the parties' proposals on the governing unit, its residents and taxpayers, essentially asks for an analysis of the Borough's ability to pay.

The Borough has made a compelling case that it is not flush with money. That is, any substantial increase will necessarily result in either the cost of that increase being shifted to the Borough's residential taxpayers or a reduction in other important municipal services. Moreover, the evidence shows that the Borough's residential property tax rate is already quite high when compared to the residential property tax rate in other comparable communities, and that the Borough's residential tax payers can ill afford further property tax increases. The Borough also persuasively argued that it has suffered a reduction in its tax base. In addition, the evidence establishes that there has been a decrease in the Borough's non-tax related revenues.

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

governing unit and its residents and taxpayers, the salary increases awarded below are less than what would be justified if the other statutory criteria were emphasized.

As a result, I have determined that the 1997 wage increase shall be comprised of a four percent (4%) increase effective July 1, 1997. This results in a cash cost to the Borough in 1997 equivalent to a two percent (2%) wage increase.

The 1998 wage increase shall be comprised of a two and one-eighth percent (2-1/8%) increase effective January 1, 1998 and a two and one-eighth percent (2-1/8%) increase effective July 1, 1998. With the roll-over cost of two percent (2%) from the 1997 increase, this results in a cash cost to the Borough in 1998 equivalent to a 5.1875% wage increase.

The 1999 wage increase shall be comprised of a two and one-quarter percent (2-1/4%) increase effective January 1, 1999 and a two and one-quarter percent (2-1/4%) increase effective July 1, 1999. With the roll-over cost of one and one-sixteenth percent (1-1/16%) from the 1998 increase, this results in a cost to the Borough in 1999 equivalent to a 4.4375% wage increase.

Thus, over the life of the Agreement I am awarding the Borough's Police Officers a twelve and three-quarters percent (12-3/4%) rate increase in their salaries. This is a rate increase closer to the total rate increase proposed by the Association than the total rate increase proposed by Borough. However, due to the splits and delays in portions of the awarded wage increase, the cost to the Borough over the life of the Agreement is equivalent to

11.625%, which averages out to an annual increase of approximately 3.875%, which is approximately mid-way between the average annual cost of the increases proposed by the Borough and the average annual cost of increases proposed by the Association.³

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

As to the cost of living, the evidence demonstrates that between 1993 and 1997, the cost of living increased by an average of two and seven-tenths percent (2.7%) per year. While the cost of living has been exceeded in this Award, the increases awarded are not substantially above the cost of living. Moreover, they are less than the increases being sought by the Association. Thus, I have incorporated relevant evidence concerning the cost of living into this Award.

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

This is not surprising. It is ordinarily the case that in

³ Of course, there is a roll-over cost of one and one-eighth percent (1-1/8%) into 2000 as a result of delaying the effective date of the last increase to July 1, 1999.

periods of very high inflation, salary increases tend to lag behind the rate of inflation. Conversely, in times of low inflation, when the cost of living is quite moderate, wage adjustments somewhat exceed the cost of living. Pursuant to historic trends in the cost of living and police officer wage rates, I find the economic package awarded herein to be the appropriate result. The awarded increases exceed the cost of living but reflect the long term historic trends in the cost of living and are far more moderate than the increases received by police officers in prior years.

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

The final criterion concerns the continuity and stability in the employment of North Plainfield's Police Officers. The evidence establishes that the present complement of Officers in North Plainfield have a high level of continuity and stability in their employment. That is, there is no evidence to suggest that the Borough's Police Officers face the imminent threat that their positions will be eliminated or that the number of Officers will be reduced. As a result, this criterion favors a more moderate increase than the one sought by the Association. The evidence also establishes that awarding too large of a wage increase could jeopardize the Borough's ability to maintain its present complement of sworn Police Officers. Again, this evidence demonstrates the appropriateness of an increase more moderate than the one being sought by the Association.

Accordingly, for the above reasons, I find that the following

statutory criteria support the Association's wage proposal over the Borough's wage proposal: the interests and welfare of the public, the wages paid to comparable employees, and overall compensation. However, I also find that the following statutory criteria support the Borough's wage proposal over the Association's wage proposal: the financial impact on the Borough and its residents and taxpayers, the cost of living and the continuity and stability of employment.

In summary, in light of all of the statutory criteria, as described in detail above, I award the following wage increases:

July 1, 1997	4% across-the-board
January 1, 1998	2-1/8% across-the-board
July 1, 1998	2-1/8% across-the-board
January 1, 1999	2-1/4% across-the-board
July 1, 1999	2.1/4% across-the-board

These increases balance the legitimate right of the Borough's Police Officers to be compensated appropriately without unduly burdening the residents and taxpayers of North Plainfield. The method of salary adjustment utilized herein intentionally cushions the impact of the awarded increases on the Borough's budgetary process by granting delayed or split increases in each year of the Agreement. The impact of the awarded increases on the Borough's budgetary process also has been cushioned by the fact that the smallest annual increase in terms of cost to the Borough, has been granted in 1997, the year which has already passed.

I turn now to the one other economic and non-economic

proposals made by the parties.

Currently, Borough Police Officers hired before July 1, 1994 are eligible for longevity benefits after five (5) years, ten (10) years and fifteen (15) years of service. Borough Police Officers hired after July 1, 1994, are not eligible for longevity benefits after five (5) years and ten (10) years of service. (Joint Exhibit No. 1 at pg. 20; Joint Exhibit No. 2 at pg. 19)

The Association has proposed that this different system for longevity benefits be eliminated and that all of the Borough's Police Officers be deemed eligible to participate in the Department's longevity program after five (5) years and ten (10) years of service.

The Association is incorrect in arguing that its longevity proposal, if awarded, would have no cost to the Borough. Officers who would not otherwise be eligible for longevity benefits, would be eligible for five (5) year longevity benefits during the term of the Agreement if the Association's longevity proposal were awarded. Moreover, the cost to the Borough of the Association's longevity proposal would only increase in the future. In addition, the record demonstrates that the elimination of longevity benefits after five (5) years and ten (10) years of service for Officers hired after July 1, 1994, was one of the few cost saving measures obtained by the Borough during negotiations for the current Agreement. There is no persuasive evidence in the record that the Borough can now afford to give back that cost saving measure. Thus, given the Borough's current economic circumstances, as well

as the cost of the wage increases awarded herein, I find that the Association's longevity proposal is unreasonable and should not be awarded.

The Association has proposed a new economic benefit in the form of a "Senior Officer Differential." The Association's Senior Officer Differential proposal is not supported by persuasive evidence of comparability. Moreover, given the financial circumstances of the Borough, it can ill afford to implement a new costly benefit such as the Association's Senior Officer Differential proposal. Therefore, the Association's Senior Officer Differential proposal shall not be awarded.

The Association has proposed that the following language be added to the Agreement regarding replacement employees:

REPLACEMENT

No full time employee covered by this Agreement shall be replaced by any non-police officer, part time or other personnel.

No post presently filled by a full time employee covered by this Agreement shall be covered by any non-police officer, part time or other personnel.

(Association Exhibit 3)

The Association is correct in arguing that its replacement employee proposal, if awarded, would increase the stability and continuity of employment within the Borough's Police Department. However, as noted above, the stability and continuity of employment within the Borough's Police Department is already quite high and

there is no persuasive evidence in the record that it needs to be further improved. In addition, the Association's replacement employee proposal, if awarded, would impose additional costs on the Borough. Given the Borough's financial circumstances and the extent of the wage increases awarded herein, the Association's replacement employee proposal cannot be justified. Therefore, it shall not be awarded.

The Association has proposed that the following language be added to the Agreement regarding police services:

POLICE SERVICES

All requests for services of police officer while off duty that may be addressed to the public employer shall be forwarded to the Police Department for posting. The public employer agrees to require a Police Officer on all contracting jobs done within the Borough where there is a road opening involved. Any time there is a road opening or significant street repair as determined by the Chief of Police or his designee, the Employer agrees to require as a condition of the letting of the job that the contractor agreed to provide at least one (1) Police Officer to provide public safety and security at the location of the work site.

The public employer further agrees that all monies received from such contracting work shall be paid through the employer's payroll process and the law enforcement officer while so employed shall be treated in all respects as an employee of the public employer.

(Association Exhibit 3)

The Association is unpersuasive in arguing that its police services proposal, if awarded, would most likely save the Borough money. To the contrary, I am persuaded that it would cost the Borough money, since it would impose a cost on the Borough's contractors and they undoubtedly would pass that cost onto the Borough. In addition, since the Association's police services proposal states that Officers employed under that provision "shall be treated in all respects as an employee of the public employer", the Borough could be liable for harm suffered by Police Officers providing services to contractors rather than to the Borough. Given these costs and potential liabilities, as well as the Borough's financial circumstances and the extent of the wage increases awarded herein, the Association's police services proposal cannot be justified. Therefore, it shall not be awarded.

Currently, the Borough's Patrolmen work pursuant to a five step salary schedule: Probationary Step, Step D, Step C, Step B, and Step A. (Joint Exhibit No. 1 at pg. 56) Each step lasts for twelve (12) months. (Joint Exhibit No. 1 at pg. 56) Thus, it takes four (4) years after graduation from the Academy for a Borough Police Officer to reach Step A, the top-step on the parties' salary schedule.

The Borough has proposed the following three (3) new salary steps, effective January 1, 1998. i) An academy step which would govern a Patrolman's salary while in the Academy and which would be frozen at \$24,500 for the term of the Agreement. ii) A new

probationary step which would apply for twelve (12) months after Academy graduation or after joining the Borough's Police Department if already Academy trained, and which would be frozen at \$27,000 for the term of the Agreement. iii) A new Step E which would limit the significant jump in wage rates on the current salary scale from the Probationary Step to Step D.

The Borough's salary schedule proposal, if awarded, would clearly result in cost savings to the Borough. In addition, the Borough's salary schedule proposal, if awarded, would not affect any current Patrolmen and would not create a permanent two (2) tier wage system. Given the Borough's financial circumstances, as well as the extent of the wage increases awarded herein, I am persuaded that the Borough is in need of certain cost saving measures, and that this an appropriate mechanism for achieving cost savings. However, I am not persuaded that the Borough requires the extent of cost savings being sought with its salary schedule proposal. Therefore, I shall award the Borough's salary schedule proposal to the extent indicated below.

Effective on the issuance of this Opinion and Award, a new Academy Step shall be added to the bottom of the parties' salary schedule. During the first year of the Agreement, the Academy Step shall be \$25,000 for the first six (6) months while in the Academy and \$27,500 for the first six (6) months after graduation from the Academy (Probationary Step). During the second year of the Agreement, the Academy Step shall be \$25,000 for the six (6) months while in the Academy and \$28,500 for the first six (6) months after

graduation from the Academy (Probationary Step). During the third year of the Agreement, the Academy Step shall be \$25,000 for the six (6) months while in the academy and \$29,500 for the first six (6) months after graduation from the Academy (Probationary Step).

In addition, effective on the issuance of this Opinion and Award, a new Step E shall be added to the parties' salary schedule. It shall be placed between Step D and the Probationary Step and shall pay a wage midway between the wages paid pursuant to Step D and the Probationary Step. This change shall ameliorate the problem of the "bubble" in the current salary guide.

The Borough has proposed that effective January 1, 1999, Police Officers be permitted to opt out of the Borough provided health or dental plan in return for a payment equal to twenty five percent (25%) of the premiums saved by the Borough.

This is a purely voluntary plan which could produce savings for the Borough while increasing the take home pay of its Police Officers. However, it could result in Police Officers having inadequate health insurance coverage. Therefore, it shall only be implemented for dental insurance. In addition, Police Officers shall be given the option each year to opt back into the Borough provided Dental Plan.

Pursuant to Article XX of the Agreements, the parties have implemented a representation fee check-off plan. (Joint Exhibit No. 1 at pgs. 37-39; Joint Exhibit No. 2 at pgs. 36-38) The Borough has proposed that the following language be added to Article XX of the Agreements: "The Association shall indemnify, defend and save

the Borough from any action, legal or otherwise, brought against the Borough regarding any issues related to this Article and its intentions."

An indemnity provision such as the Borough has proposed is common in virtually all collective bargaining agreements which have a check-off provision. Thus, the Borough's indemnity proposal is entirely reasonable and shall be awarded.

Pursuant to Article XXII of the Agreements, the Borough provides a "defense for [Police Officers] in actions or legal proceedings arising out of or incidental to the performance of duties pursuant to N.J.S.A. 40A:14-155." (Joint Exhibit No. 1 at pgs. 37-39; Joint Exhibit No. 2 at pg. 40) The Borough has proposed that the following language be added to Article XXII of the Agreements: "The affected [Police Officer] shall select his own counsel to assume sole control of his defense and the Borough agrees to assume the full cost of the [Police Officer's] legal fees, so long as it qualifies under N.J.S.A. 40A:14-155, at the 'prevailing rate.' 'Prevailing rate' shall be defined as the hourly rate charged by the Borough Attorney to the Borough. However, should an insurance carrier enter a defense on behalf of the affected [Police Officer] and furnish counsel as part of that defense, the Borough's obligations under this provision shall be deemed to have been satisfied, and, under such circumstances, the affected [Police Officer] shall have the right to select his own counsel at the Borough's expense."

A legal defense provision such as the Borough has proposed is

common in most police collective bargaining agreements. Thus, the Borough's legal defense proposal is entirely reasonable and shall be awarded.

Currently, the parties' Agreements do not contain a Management Rights clause. The Borough has proposed that the following Management Rights clause be added to the Agreements:

A. The Borough hereby retains and reserves unto itself without limitation, all powers, rights, authority, duties and responsibilities conferred upon and vested in it prior to the signing of this Agreement by the Laws and Constitution of the State of New Jersey and the United States, including, but without limiting and generality of the forgoing, the following rights:

1. To the executive management and administrative control of the Borough and its properties and facilities and the activities of its employees:

2. To hire all employees and subject to the provision of the law, to determine their qualifications and conditions for continued employment or assignment and to promote and transfer employees.

3. To suspend, demote, discharge or take other disciplinary action for good cause according to law.

B. The exercise of the foregoing powers, rights, authority, duties and responsibilities of the Borough, the adoption of policies, rules regulations and practices in furtherance thereof, and the use of judgement and discretion in connection therewith shall be limited only to the specific and express terms hereof are in conformance with the Constitution and laws of New Jersey and of the United States and ordinances of the Borough of North Plainfield.

C. Nothing contained herein shall be construed to deny or restrict the Borough of its powers, rights, authorities, duties and responsibilities under Tittle 40 and 40A, N.J.S.A., or any other national, state, county or local laws or ordinances.

Although not uncommon, Management Rights clauses, unlike the Borough's other language proposals, are not found in virtually all collective bargaining agreements. In addition, they are often the

most contentious issue between employers and unions during negotiations. For these reasons, I find that the record before me does not support the awarding of the Management Rights clause proposed by the Borough. Therefore, it shall not be awarded.

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

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

AWARD

1. TERM

The Agreement shall have a term of January 1, 1997 to December 31, 1999.

2. WAGES

July 1, 1997	4% across-the-board
January 1, 1998	2-1/8% across-the-board
July 1, 1998	2-1/8% across-the-board
January 1, 1999	2-1/4% across-the-board
July 1, 1999	2-1/4% across-the-board

3. PBA SALARY SCHEDULE

Effective on the issuance of this Opinion and Award, a new Academy Step shall be added to the bottom of the parties' salary schedule. During the first year of the Agreement, the Academy Step shall be \$25,000 for the six (6) months while in the Academy and \$27,500 for the first six (6) months after graduation from the Academy. During the second year of the Agreement, the Academy Step shall be \$25,000 for the six (6) months while in the Academy and \$28,500 for the first six (6) months after graduation from the Academy. During the third year of the Agreement, the Academy Step shall be \$25,000 for the six (6) months while in the Academy and \$29,500 for the first six (6) months after graduation from the Academy.

Effective on the issuance of this Opinion and Award, a new

Step E shall be added to the parties' salary schedule. It shall be placed between Step D and the Probationary Step and shall pay a wage midway between the wages paid pursuant to Step D and the Probationary Step.

4. DENTAL PLAN

Effective January 1, 1999, Police Officers shall be permitted to opt out of the Borough provided Dental Plan in return for a payment equal to twenty five percent (25%) of the premiums saved by the Borough. This is a purely voluntary option. Police Officers also shall be given the option each year to opt back into the Borough's Dental Plan.

5. ARTICLE XX

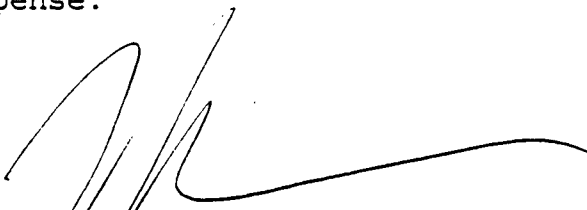
The following provision shall be added to Article XX of the Agreements: "The Association shall indemnify, defend and save the Borough from any action, legal or otherwise, brought against the Borough regarding any issues related to this Article and its intentions."

6. ARTICLE XXII

The following provision shall be added to Article XXII of the Agreements: "The affected [Police Officer] shall select his own counsel to assume sole control of his defense and the Borough agrees to assume the full cost of the [Police Officer's] legal fees, so long as it qualifies under N.J.S.A. 40A:14-155, at the 'prevailing rate.' 'Prevailing rate' shall be defined as the hourly rate charged by the Borough Attorney to the Borough. However, should an insurance carrier enter a defense on behalf of

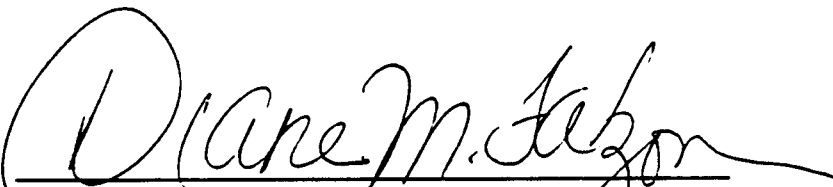
the affected [Police Officer] and furnish counsel as part of that defense, the Borough's obligations under this provision shall be deemed to have been satisfied, and, under such circumstances, the affected [Police Officer] shall have the right to select his own counsel at the Borough's expense."

August 19, 1998.



Martin F. Scheinman, Esq.,
Interest Arbitrator

On this 19th day of August 1998, before me personally came and appeared MARTIN F. SCHEINMAN, ESQ., to me known and known to me to be the individual described herein and who executed the foregoing instrument and he acknowledged to me that he executed the same.



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