
In the matter of the Interest Arbitration
concerning the negotiations impasse
between

DECISION AND AWARD

The Borough of Rutherford, New Jersey

of

and

Frank A. Mason, Arbitrator

Rutherford PBA Local 300

PERC Docket No. IA-96-99

APPEARANCES

For the Borough: Lane J. Biviano, Esq., Labor Counsel for the Borough

Robert Gorman, Borough Administrator

Edward Cortright, Borough Treasurer

Steven Hoffman, Councilman

For the PBA: Richard D. Loccke, Esq., PBA Attorney

Brian L Hagal, President, Local 300

Nicholas Loizzi, State Delegate, PBA Local 300

Ernest Mazzaro, Robert C. Arnold & Lou Eberspeacher,
Committee Members

John F. Laezza, PBA Financial Consultant

INTRODUCTION

On January 11, 1996 Brian Hagal, President of PBA Local 300, filed a petition to initiate compulsory interest arbitration with the Public Employment Relations Commission [PERC] advising that negotiations, begun in November of 1995 with the Borough of Rutherford for a successor Agreement to that which had expired on December 31, 1995, concerning a unit of police Patrolmen, Sergeants and Lieutenants had reached impasse. The petition included a listing of economic and non-economic issues which the PBA described as unresolved mandatory subjects of negotiation.

The PERC assigned Docket No. IA-96-99 on January 22, 1996 and subsequently, on April 15, 1996 appointed this Interest Arbitrator by lot, as provided in the Police and Fire Public Interest Arbitration Reform Act of 1995, to conduct proceedings to resolve the impasse. Diligent efforts of the parties in mediated negotiations on June 27, and July 29, 1996 resulted in only a reduction of the extent of the impasse and formal hearings were undertaken on July 31 and September 25, 1996. During those hearings the parties filed final positions and were given opportunity to reconsider those positions. In addition they presented argument, evidence and testimony in support of their positions and examined and cross examined sworn witnesses. Provision was made for filing of post-hearing briefs by mid-November. However conditions arose which required extension of time until December 20th at which time the briefs were exchanged by the arbitrator and the record of hearing closed.

In January of 1995 the Attorney for the Borough had filed a petition for Issue Definition Determination with the PERC which had questioned the PBA's allegation that certain issues presented for negotiation concerning vacation selection procedures and the scope of bereavement leave were non-economic. This petition was not responded to and in September, 1996 the question was again raised by the Borough Attorney claiming that notwithstanding the amendment to the Interest Arbitration statutes it was his position that Issue Determination remained essential. There was no determination issued.

The parties did not reach an agreement as to an alternate format of the interest arbitration which resulted in conventional arbitration as the method to be employed. As there has been no determination as to the questions raised in the petition for issue determination the arbitrator shall make a decision as and if necessary to the overall determination of this impasse.

In January of 1997 the Borough submitted a request to include certain information in the record which had to do with an issue presented at the hearing which, at the time of presentation, was in an indeterminate state and which could have impact on the budgetary/fiscal circumstances of the Borough. It also asked to amend the record with presentation of additional evidence concerning an event it deemed relevant which had occurred after the final exchange of post hearing briefs and closing of the hearing record. The PBA protested both of these overtures essentially pointing out that the record was comprehensive and complete and sufficient for determination of an award and that consideration to open the hearing would lead to complications as both parties sought to distill late emerging data which might support its position leading to further extensive delays and expenses. On February 7, 1997, after consideration of the parties positions I allowed the information which clarified the issue presented at hearing to be received and denied opening the record for the reception of materials and information occurring after the record closing and began my study and preparation of the award.

POSITIONS OF THE PARTIES

FINAL OFFER OF THE BOROUGH

Economic Issues

1. The term of agreement shall be three years, January 1, 1996 through December 31, 1998
2. The salary structure for Patrolmen hired before 1/1/96 shall continue with annual adjustments of 2.5% effective on January 1st of each year producing a maximum salary of \$62920 for 1996, \$64493 for 1997 and \$66105 for 1998.

The salary structure for Sergeants shall continue with annual adjustments of 2% in each year effective on January 1st so that the salary for 1996 would become \$67935, for 1997 \$69294 and for 1998 \$70680.

The salary structure for Lieutenants shall continue with annual adjustments of 2% in each year effective on January 1st so that the salary for 1996 would become \$73709, for 1997 \$75183 and for 1998 \$76687.

The following new salary structure was presented for patrolmen hired after January 1, 1996:

	1996	1997	1998
Initial 6 months	\$18000	\$18000	\$18000
2nd six months	22000	22000	22000
Second year	26000	26000	26000
Third year	30000	30000	30000
Fourth year	35342	36226	37132
Fifth year	39000	39975	40974
Sixth year	48736	49954	51203
Seventh year	54130	55483	56870
Top pay, 8th yr.	62290	64493	66105

3. Sick Leave to be modified so that an officer who works less than four hours before leaving on a shift shall be charged with a full day of sick leave. An officer who works four or more hours on a shift shall be charged with a half day sick leave.
4. The co-pay for prescription drugs shall become \$5 for brand name and \$3 for generic prescriptions as of January 1, 1997. On January 1, 1998 the co-pay shall be raised to \$10 and \$5 per prescription.

Non-economic issues.

5. Grievance Procedure new language. Paragraph D [2] to read, "The Arbitrator shall be bound by the provisions of this Agreement and the Constitution and Laws of the State of New Jersey and be restricted to the application of the facts presented to him. The

Arbitrator shall not have the authority to add to, modify, detract from or alter in any way the provisions of this Agreement."

6. There shall be an addition of a new article to the Agreement entitled Drug Testing. This demand is in a form too lengthy to include in this summary but will be dealt with below.

FINAL OFFER OF THE PBA

Economic issues.

1. Wage Increases. PBA proposed wage increases of 7% to be effective on January 1 of each year of the Agreement for all employees.
2. A new pay provision which would allow employees with 20 years of service to be placed at a salary step mid-way between the current base salary and that of the next higher rank.
3. Proposal to provide a minimum of four hours pay for call in for unscheduled overtime or for Court appearance and for 8 hours if the Court appearance extends beyond four hours all of which are at overtime premium rates.
4. Increase in Longevity program so that employees with 24 years of service are given an additional 3% to a total of 12%.
5. Increase in Uniform Allowance by \$100 in each year of the Agreement.
6. Fold into base pay all holiday pay for all personnel.
7. Modification of Personal Leave plan to eliminate 24 hour minimum notice of use and to remove the charge to sick leave of the third day.
8. Modification of the vacation plan so that all requests for vacation schedule must be answered within 10 days; that scheduled vacation not be rescinded except in cases of full police department mobilization; that separate vacation selection lists be maintained for supervisory and non-supervisory personnel; that the minimum two day selection set in the clause be modified to 5 days and such be labeled "priority pick".

Non-economic issues

9. Modification of the Grievance Procedure to limit the response time to seven days at each step and to require changes in the Borough personnel who preside at each step of the process.
10. PBA desires to install a glass enclosed and locked Bulletin Board at cost to itself.

11. Deletion of the Fully Bargained provision of the current Agreement.

PRELIMINARY DISCUSSION

During the hearing on this matter the core issue was defined by both parties as wages and their separate, underlying defenses of the positions taken. The key considerations of those positions will be set forth in detail below. Both placed considerable emphasis on comparative data in which both wages and benefits of Rutherford police were contrasted with other public employers. Much of this information was supported by exhibits in the form of copies of original documents, generally labor agreements, which described the terms and conditions of police in numerous municipalities and other employment. There were 94 such exhibits entered into evidence. More than 50 of PBA's exhibits were oriented to comparisons between Rutherford and other municipalities and some 50 pages of such comparative data were presented in a single Borough exhibit.

Much of the information was proffered because it was supportive of the particular perspective of a party or the conclusion it sought in an arbitration determination. PBA introduced statistical data as to police wage increases and benefits comparisons involving 26 Bergen County municipalities. The Borough provided similar data in 21 municipalities. Some of the communities were immediately adjacent to Rutherford and others were at the farthest limits of the County. In an effort to synthesize a representative sample of this data which would be derived from the offerings of both parties I examined the two lists. There were 11 communities included on both lists.

I examined the salary increase data from PBA's entire list and found that in 1996, the first year of a proposed new Agreement the average percent increase was 4.78. When this list was compared to those municipalities common to the Borough's list [hereafter referred to as 11CC for eleven common comparables] I again calculated the average known wage increase for 1996 and found it to be 4.71%. This suggested that a limited list of 11CC might be a close statistical match for the broader lists provided by PBA and Rutherford. The 11CC list continued some municipalities at considerable distance from Rutherford.

The Borough claimed that Rutherford should not be compared to many of the far richer communities in the northern and central regions of the County. It maintained that the 12 communities in Southwest Bergen County provided a more rational basis for comparison both because of their relative proximity and because the nature of the economy of that section of the County was somewhat distinct from other areas. I found this argument to be rational after examining proffered information concerning average earnings, home valuations and other data. I next examined the 12 communities and found 6 of them to be part of the 11CC as defined above. Of the six, five had established wage increases for police in 1996. The average increase was 4.57% or 14 hundredths of a percent lower than that of the broader group of 12. When this group of 12 was considered there were

seven municipalities which had salary programs for 1997 and these indicated an average increase for police of 4.6% over 1996 levels. In comparing this figure to the broader list offered by PBA I found that group figure for 1997 to be 4.599% or virtually the same rate of increase.

I concluded from this exercise that the proper group of municipalities to be included in my base of comparison could be limited to the common comparables located in southwest Bergen County where the differences in rates of increases were statistically negligible especially when considerations of the lessened wealth of that area was factored in. It is that group of communities that I rely upon for analysis of comparative data in this determination and as the parties were in accord as to six of those communities and as data on the remainder was incomplete they will be used whenever practicable. They are North Arlington, Moonachie, Wood Ridge, Hasbrouck Heights, Carlstadt and Lyndhurst. I believe them to be fully representative of the conditions of employment of police to facilitate a proper comparison with Rutherford.

The compression of the scope of comparison greatly assists reasoned analysis, conserves time and provides a viable, understandable basis for conclusions to be drawn. In addition this base of six common comparables [hereafter 6CC] has the advantages of agreed upon examples within a local geographic area where the communities have much in common. These advantages outweigh the possible disadvantages of a very much larger sample which does not contain as high a level of agreed upon elements and where the variances encountered are significantly less relatable to the conditions of the Rutherford workplace. Where prudent I shall draw on the added information from the 11CC as defined above.

THE MANAGEMENT PORTRAIT OF THE BOROUGH OF RUTHERFORD

The most significant difference of the negotiating parties is essentially the issue of increased cost as contrasted to limited financial resources. The Borough resists the PBA level of money based demands primarily on the basis of cost impact. But it supports this resistance by defending its proposals as reasonable given an overall assessment of the value of salary and benefits provided to the police and/or offered adjustments for the three year period of a contemplated agreement and by its claim that the Rutherford salary and benefits provided are superior to those of most reasonably similar communities.

Rutherford is described as a relatively small Borough of 2.836 square miles in the southwest part of Bergen County. This is predominantly a residential community, 80% of taxable parcels are such, and there is a small portion of commercial properties with very little industrial base. It is mature in the sense of the timing of its development with very limited growth during recent years and only a small percent of vacant land suitable for new taxable uses. No new industrial or related commercial plans have been approved in over 10 years and no multi-family residential units since 1988. The average single family dwelling is valued at \$201000 and the per capita income is judged to be around \$20600.

There was a re-evaluation of assessed property in 1988 now seen as the time of the peak of real estate values. As these have declined since 1988 the dollar value of the property tax has been shrinking. Unanticipated and unavoidable tax refunds have been a very significant financial problem with tax appeals generally resulting in reductions of unit taxes ranging to 30 or 40% in the case of commercial properties and 7 to 15% for residential claims. These reductions shift the burden of property taxes required to finance the budget to the shoulders of the remaining tax payers and are basic drivers of tax rate increases.

The tax assessor testified that the Fairleigh Dickenson Campus which occupies approximately 8 acres of land is kept off the tax roles by virtue of minimum utilization by the University without the fiscal advantages which were inherent when it was a functional institution drawing faculty and students into the area and stimulating the business sector. This property has been for sale for several years and remains without a seriously interested buyer as it deteriorates.

The closing of the campus has sharply reduced the local shopping and downtown merchants and restaurants have experienced significant loss of business, a negative climate which has led to lowered commercial property values and demand for retail space. Reduced business opportunity has produced a negative impact on such properties and their tax revenues diminish with time. An example of this phenomenon is the sale of the "Twin Towers" for \$70 million in 1980 which was later, after renovation, sold again in 1995 for \$36 million with comparable reduction in tax dollars to the Borough. The level of internal tax appeals is currently over \$32 million valuation and there is an additional \$58 million at the State appeals level. Most such appeals result in some reduction of the valuation and result in tax revenue reduction.

Additionally, the economic circumstances in the immediate area portend further problems as the climate for commercial development is much better in nearby communities where there are already ambitious plans for developments which will drain commercial business from Rutherford. Some of the factors which contribute to this are higher taxes in Rutherford and less desirable transportation facilities as well as shortage of open land. These factors suggest the continued erosion of the commercial tax base as a dependable resource. In addition the higher tax rates and generally less positive economic climate in Rutherford serve to discourage the re-development of properties which are aging and occupy central locations in the business section.

The Chief Financial Officer testified as to some of the fiscal circumstances of the Borough. He noted that the property tax base has actually shrunk over the past seven years by some \$80 million to \$1,204,327,514 in 1996. Thus a tax point which produced \$128650 in 1989 is now delivering only \$120432. He further noted that the School budgets have increased some \$5 million or 42% in that same period to \$17,199,446 in 1996 while the budget for the Borough has increased 21% to \$11,473,584 during the same time. He indicated that the Borough has undertaken participation in joint and regional services to conserve money and that a number of services were contracted out for the same reason during recent years. He pointed out that tax relief from Federal and State sources was declining and threatened to decline more in the foreseeable future and that the climate as to a reversal of that trend was negative.

The Borough Auditor described a reduction of \$300000 in Federal and State support in recent years and that some services had been eliminated. Stop-gap State assistance programs which have been of help are not to be available over the long term.

A Captain of Patrol, a commanding officer of police, also testified that the squeeze on tax dollars has been felt in the Police Department causing reductions in the number of police personnel precipitating need to utilize overtime to cover operational needs as well as reduction of enforcement and assistance programs. He indicated that the overtime records were somewhat misleading however because they include hours which reflect employment with private contractors who make payment through the Borough and on which the Borough realizes some income. This amounted to about 27% of the overtime account in 1995.

The Treasurer for the Borough testified as to anticipated fiscal problems which had not been resolved including a particular matter involving a \$1.5 million payment required of the Borough for which it might have to resort to bond sales. That issue remains somewhat uncertain, however, the Borough now appears to have an arrangement to make payments over a 5 year period, approval for which had previously been rejected by the State. The new plan reduces the annual payment otherwise required but adds expanded interest costs. The payments are expected to vary with only \$147000 made in 1997 but reaching a high of nearly \$400000 in 1998. These payments will require increases in the tax rate in each of the next two years with dedication of those monies to this debt through the year 2000.

He also testified that a Federal grant for partial support of employment of a patrolman had to be declined as it has become necessary to lay off that employee along with two other policemen. PBA challenged the necessity and suggested it was more a negotiations ploy. The Borough presented an application for discretionary aid to the State Division of Local Government Services seeking \$1.5 million to assist in meeting critical 1996 budget needs including the then anticipated one third cost of the \$1.5 million claim plus interest mentioned above. Treasurer indicated that the Division grant of only \$240000 caused further downward revision of the budget. The provision for tax appeals was set at \$440000 reflecting the intent to utilize \$1 million in bonds for repayment purposes of much higher anticipated expenditures.

In an explanation of the impact of the State Cap on the budget the Treasurer noted that belt tightening measures in 1995 had resulted in savings from capped expenditure levels generated by the 1994 budget in the amount of \$468565 but that some increases in 1995 had reduced this amount to a net of \$352042. This contributed to a total available for banking of capped expenditure limits to \$1,015,658 for the 1996 budget. However, he noted that the determination to utilize such an amount which could be appropriated for future spending would require tax increases of 8.3 tax rate points or the equivalent of about \$170 on an average home tax bill.

The property tax rate for Rutherford was increased by 1.9% for 1996 which compared favorably to the 6.55% increase for the 12 municipalities in the southwest section of Bergen County and to the 6CC where the increase was 7.33%. All other sections of the County were lower, ranging from 2.24% to 6.19% and averaging 3.50% increases with the average dollar payment for homeowners for the entire County moving up 4.06% as

compared with an average increase of 3.62% in 1995 according to the Bergen Record newspaper report entered into evidence by the Borough which was adjudged accurate.

The property tax on the average homeowner in Rutherford was set at \$4875 for 1996, the highest in the southwest section of the County comparing to an average of \$3567 or 37% greater. The portion of the property tax devoted to the municipal [as opposed to schools or County] budget in Rutherford was \$1761 in 1996, up 2.5% from \$1719 in 1995. The average of the 12 communities was \$1317 in 1996, an increase of 12.59% from 1995. The 6CC average was \$1363 representing a 20% increase over 1995. The portion of property tax attributable to the Rutherford municipal budget in 1995 had increased 2.0% over 1994 which also compared favorably with the 5.25% average increase of the 12 communities and 8.6% for the 6CC.

These figures show Rutherford's municipal tax dollars on an averaged home value to be substantially higher than the taxes on homes in the 6CC although this may reflect differences in value as well. Rutherford was \$397 higher in 1996, \$566 higher in 1995 and \$596 higher in 1994. This decline is reflective of the substantially reduced rate of increase in Rutherford as compared to the others which is the product of a deliberate fiscal policy aimed at bringing the Rutherford tax burden into line with neighboring communities. I note that the actual differences in police compensation, discussed in more detail herein, cannot be construed to account for the wide disparity of Rutherford's municipal tax burden as compared to the 6CC or the 12 southwest Bergen communities and that other factors must be contributing.

Additional testimony and evidence demonstrated that the police portion of the budget was 17.96% in 1996 compared with 17.27% in 1993 and that it was 39.33% of the municipal payroll in 1996 as compared with 34.08% in 1993. This minor percent increase of police payrolls has come about during a period of downsizing of the Police Department and reflects both higher rates of salary increases and expanding costs of pension and other benefits of police personnel. The average annual rate of police salary increases exceeded that of Department of Public Works employees by .75% and white collar employees by 1.57% over the last 10 years. No comparison was provided for the employees of the Board of Education during this period although it is noted that the Board's rate of budget increase is twice that of the municipality.

In the last 10 to 12 years the Borough had reduced its complement of employees on a broad front. The police staff declined from 48 to 38. The Borough Administrator testified that the 1996 budget required personnel reductions from 1995 levels which resulted in layoff of three police plus the police dispatcher and, although a substantial number of other employees were earmarked for layoff, this number was reduced by retirements and some productivity concessions in negotiations with other units of employees and a net reduction of three outside of the Police Department.

A further reduction of police personnel should reflect at least two employees retiring soon although the compensation due on retirement will carry over beyond active employment delaying savings related to replacement at lower salary for some time. It is uncertain as to whether these employees will be replaced at this time. If immediate replacement is necessary the Borough will experience the cost of both retirees and the replacements during the transition period.

The Borough's response to PBA allegations of understating anticipated tax revenue by reducing the percent of expected tax payments is that it is irresponsible to assume the rate of payments at the highest level in 5 years. Likewise the anticipation of a high level of successful tax appeals is predicated on a concept of conservative financial planning based on recent experience and current trends. PBA is critical as to the Borough's argument that outside aid will not be dependable or actually be lessened during the period of the proposed Agreement noting that the anticipation of such revenues for 1996 was set at \$155000 higher than was received in 1995. The Borough points out that the funding sources for that budget are being eliminated or diminished and that casting a financial plan without recognition of this fact would be unrealistic and unreliable. In addition the Borough responds to the PBA's allegation that the Borough has over a million dollars of within-cap flexibility in setting its budgets stating that it refuses to use that flexibility because the property taxes are already unfairly high in Rutherford and that higher rates would be unacceptable to the taxpayers and would also accelerate the relative decline of the micro-economy of Rutherford as compared to surrounding municipalities. It theorizes that further lowering of actual real estate values and a disincentive for commercial growth or re-development, problems exemplified by the failure to sell the Fairleigh Dickenson University property and the decline of sale prices of other properties, mandates adoption of a fiscal plan which will make Rutherford more attractive for investment than it has become in recent years. The Borough sees itself in a competitive situation where failure to

attract a reasonable share of new investment will become the precursor to accelerated decline.

The Borough administration has elected to follow a path of fiscal restraint, as evidenced by the limited tax increases in the past two years, in an effort to stabilize the Borough's economy and the value of both residential and commercial properties. This is seen as achievable only by adopting long term restrictions on budget expansion in an effort to drive the tax burden to levels more comparable with neighboring communities. This problem is exacerbated by the lack of a substantial alternative such as available open land for development.

THE POSITION OF THE PBA

The key focus of PBA's argument in support of its demands is that Rutherford should keep pace with the rate of wage and benefits increases of other employers in the County. It is highly critical of the 2.5% and 2% annual adjustments offered by Rutherford in sharp contrast to the rate of improvement provided elsewhere in the County which, for 1996, averaged almost 100% higher whether the product of voluntary settlements or arbitration awards. In addition the value of the overall package of benefits now present in Rutherford is described as considerably less than in other communities. This allegation extends particularly to elements of dollar value such as clothing allowance and minimum pay guarantees for call in from off duty for overtime and court appearances, for which PBA has presented demands for improvement. These will be examined below.

In defense of the conclusions offered by the Borough the PBA points out that law enforcement is among the first responsibilities of a community and that the Police Department, now at about 25% less manpower than in former years, is expected to perform and does perform all of the work required to secure the safety and protection of the citizenry and its property. This is accomplished in an increasingly complex system of laws and needs for special skills on the job. PBA is critical of Borough's refusal to more fully utilize the budget flexibility available under the Cap regulations to provide what it views as the average or normal increases in wages and the ordinary value of benefits made available to police in virtually all other jurisdictions. This view is supported by noting that the police work very hard and have helped the community by performing the work of 48 employees with just 38 while maintaining an excellent record. PBA asserts that the Borough has been mistaken in its willingness to eliminate certain services such as a

juvenile bureau and special radar squad in the cause of reducing police personnel and the budget. Those and other activities such as a walking post are the things which impact on the community in ways which go beyond the cost of police workers and which contribute to taxpayer safety and satisfaction.

In addition PBA argues that the actual expenditures which would be required to provide such competitive salary increases and benefits improvements would not require higher taxation as they could be funded by more realistic assumptions as to revenues and less dire presumptions as to tax refunds. Further, the reduction of police by layoff and anticipated retirements will contribute to closing the gap between the offers of the Borough and that of the PBA for a new Agreement. PBA also claims that the recent settlement of agreements involving Rutherford Board of Education employees are more costly than the provision of an average of other police settlements with the PBA would be and it asks the question, why should the police be rewarded less well than those employees?

In detailing its position the PBA notes the Bergen County communities in its survey, which had settled new agreements for 1996 provided an average increase of 4.781% followed by 4.500% for 1997. It defends its proposal of 7% as being closer to the average than the Borough's offer of a combination of 2.5% for Patrolmen and 2% for Sergeants and Lieutenants and adds that the benefit portion of the compensation package is of lower value in Rutherford. For example the Rutherford maximum of 9% in longevity payment pales beside that of 10.72% afforded by a broad group of Bergen County employers. Likewise it notes that the \$450 clothing allowance of Rutherford is woefully behind the average of \$714 being paid by that same group of communities.

It is critical of the provision of only one hour minimum guarantee for a call in from off duty to attend to a Court appearance while the average of the group of 25 other Bergen County communities is 2.68 hours and only one of them is one hour. PBA sees this as a small issue in the overall circumstance of employment but emphasizes that the officer who is called upon to come to work on a day off has no control of the work assignment and if it should result in only a few minutes of work, because of some legal process or postponement, the impact on the day off is much more consequential than the pay received. Plans for the day cannot be made because of the uncertainty of the work requirement.

PBA also complains that one of the three personal days off with pay is now, under the current Agreement, chargeable to sick leave if utilized. No other police department makes such a charge. The personal day should be just that, not inappropriately charged to another leave credit.

In summary PBA has focused its economic demands on those elements of compensation which are less generously provided for in Rutherford than in the group of Bergen County communities for which detailed comparisons were provided. The rate of change of salaries remains the key item in a new Agreement and PBA suggests the appropriate means of determination of a fair salary program is to consider the "prevailing rate" of increases provided for police in other communities i. e. the 4.781% for 1996, 4.599% for 1997 and 4.55% in 1998 averages of the 25 municipalities in Bergen County presented in this record. This line of argument did not include any allusion to the comparison of actual salaries being paid.

The PBA, during cross examination of Borough's witnesses and in its post hearing brief brought emphasis on the fact that the Borough has great flexibility, within the State budget Cap regulations, to establish a conservative budget and still pay for such economic demands as are advocated and described as reasonable and fair for police employees without significant cost impact. It points to the 1996 budget being set at well over a million dollars below the amount which would be approved by the State and that the 1997 budget will also fail to utilize a comparable and probably larger available limit and that less pessimistic assumptions as to income and tax refunds would, taken alone, provide more than enough flexibility to afford a fair PBA contract. PBA describes an arbitration award of the full amount of its demands as being of relatively small consequence, suggesting that an increase of \$10.50 on the tax of an average homeowner would be sufficient to pay for those demands in the 1996 year. Such an amount was compared to the cost of a night at the movies or other minor pleasures, hardly something which would corrupt the finances of Borough residents. It goes further to note that the amount required to bridge the gap between the Borough's offer and the average increase would be less than \$4 in a year for that homeowner, an amount which should not be an obstacle in this matter.

PBA decried the proposal to establish a very substantially different salary program for new hires of patrolmen with an entry rate of \$18000, in sharp contrast to the current minimum rate of \$35342 previously established as of January 1, 1995, with eight additional steps to top pay which would be paid to employees hired after the effective date of this new

Agreement. The current salary plan for police involves an entry level and three additional, annual, steps to top pay.

Under terms of the 1995 Agreement a patrolman with one year of service would be earning \$48736. Under the Borough proposal for future hires [set forth in detail above] the rate of pay would be \$18000 for a half year then \$22000 for the second half year and \$26000 for the second year of employment, just over one half of the pay established in the old contract and even less when compared to the rates of pay which will evolve from this arbitration. This scenario is described as effectively dismantling the compensation program for officers, present and future.

These quite different views represent the conundrum to be resolved by the Arbitrator. In pursuit of that objective the statutory mandate is to determine whether the total net annual economic changes for each year of the Agreement are reasonable as measured against the eight criteria set forth therein. The Legislature, in the Police and Fire Public Interest Arbitration Reform Act, incorporated elements of public policy which provide a framework as to the nature and conduct of the arbitration and underlying considerations which need to be kept in focus by the Arbitrator. In particular attention is drawn to the unique and essential duties performed by police, the life threatening dangers confronted by them and the requirement to promote their high morale. Further, the proclamation is to assure that arbitrators fully recognize and consider the public interest and the impact of a determination on the public welfare. The authority of the arbitrator is carefully limited and infused with stringent safeguards so that the exercise of that authority shall be within considerations of the public interest and welfare and performed in such manner as to encourage and stabilize labor peace between the public employer and its employees.

Beyond this general circumstance the arbitrator is mandated to consider eight specific factors and to determine which are deemed to be relevant or not to the issues presented and to predicate the determination of those issues on considerations of the relevant factors. My conclusions and award set forth below represent a careful consideration of the balance of the parties interests required by the implementation of the legislated policy.

CONSIDERATION OF STATUTORY CRITERIA

I. The interests and welfare of the public. The arbitrator is instructed to specifically evaluate the limitations imposed by the Local Government Cap Law. The Borough has

been shaping its fiscal policy around considerations of shrinking valuation of real property including residential and commercial parcels and the relatively high rate of taxes imposed as compared with other municipalities in the southwest section of Bergen County. This has demanded an emphasis on controlled limitations on spending, efficient use of funds and some reduction of public services. One result is that the budget for 1996, the first year of a proposed new Agreement, was cast well below available limits which could be considered within the Cap Law limitations. There is no reason for discussion of Cap limitations in this proceeding. However, the Borough has placed considerable emphasis on the concern for the interests and welfare of the public which it perceives to best be satisfied by conservative fiscal policy. The Borough describes its situation as one reflecting little or no real growth over the recent past and little likelihood of a positive change. Property values have plummeted and the burden on taxpayers is higher than in other neighboring communities. This circumstance produces a situation where Rutherford is less attractive to property owners or prospective home buyers or commercial interests and this tends to further depress ratable values, the result of which is pressure to reduce taxes through appeals. It is a self inflicting cycle which, if not corrected, leads to community decay or at least economic depression. As pointed out above, the tax appeals in recent years have been increasing in number and value and generally have led to reductions of the tax value of the ratables involved. The Borough wants to continue a trend begun in 1994 to contain tax increases so that the decline of property values is reduced and ultimately reversed.

The financial aspect of this criterion is not the only facet worthy of consideration. The public has need for an effective police force and, to some extent, this depends on their numbers and motivation to perform their work. Issues such as wages and benefits are intimately tied to the level of morale and productivity of any employee group. For this reason consideration of the public interest and welfare must reflect both fiscal constraint and the balance of a fair and equitable wage and benefits package for the employees affected. To some extent this is definable by statistical measures and yet it is also a matter of perspective of those involved.

I consider this to be an important criterion but not as to a threat of Cap Law violation. Instead the concern is focused on the more subjective aspects of nurturing the environment of the community and at the same time that of the work place.

2 & 3. The comparison of wages and total compensation. The most significant aspect of this dispute is, of course, the disparate views of the parties as to proper wages and benefits. This is an economic impasse and the costs and rewards of a new multi-year contract are at the heart of the matter.

The Borough defends the appropriateness of its position by both the terms of its final offer which are described as fair and the fiscal circumstances which dictate a prudent, restrained course of fiscal policy. The key limiting factor is the drive to contain costs; to meet stringent budget objectives by improving efficiencies, elimination of unjustifiable expenditures including staff and avoidance of excess or unnecessary cost escalation. Rutherford is seen as having to make itself over, from a fiscal perspective, in order to prevent accelerated decline of the community economy and hopefully produce a turnaround in that current trend.

The Borough made a strong case as to which communities should be considered in making comparisons of wages and benefits. As set forth above I am attempting to use the "common comparables", offered by both parties, 6 in the southwest section of Bergen County and/or the 11 included on both parties lists as the most appropriate basis for such comparisons. As wages are the dominant cost element I will examine that issue first.

The comparison of Rutherford's police must be essentially with other public employers of police. No private sector employers perform comparable work responsibilities and the services of police can readily be compared with other public employers where the scope of work performed is public safety and protection and the enforcement of law. The first point of comparison is the 1995 top pay for Patrolman, the most common rank, which, at Rutherford, was \$61385. The 6CC employers were paying an average of \$58585 or some \$2799 or 4.8% less than Rutherford. When the comparison group is expanded to the 11CC, for 10 of which 1995 salary data was placed in evidence, Demarest, Hillsdale, Ridgefield, Saddlebrook and Waldwick are added to the 6CC in the more closely grouped southwest section, the average top patrolman salary is \$58689. Thus it can be seen that the expanded comparison has relatively limited differential effect. Rutherford remains \$2696 or 4.6% higher than the average with only two employers paying more. Hasbrouck Heights had the highest rate at \$61995 or \$610 more than Rutherford and the lowest salary paid was \$57064 or \$4321 less than Rutherford.

Of the 11CC group there is reliable data for 10 as to the rate of increase granted for 1996. The average salary went to \$61455 or 4.71% higher.

The salary for a Sergeant in Rutherford for 1995 was \$66603. Five of the 6CC paid an average of \$62165 or 7.1% less than Rutherford which had the highest rate. When expanded to the 11CC the 8 reported had an average of \$62427, still 6.69% lower than Rutherford. The 1996 figures for Sergeant moved up to \$64812 for the 6CC group, a figure still below the 1995 rate for Rutherford although up 4.25%. When the 11CC data is considered the average moved up to \$65255 for 1996 or 4.53% higher.

The salary rate for Lieutenant was \$72264 in Rutherford for 1995. Four of the 6CC communities reported salaries which averaged \$66904, some \$5359 or 8.0% less than Rutherford. The 1996 average for the same group was \$70380 or 5.2% higher than 1995. There were two additional communities of the 11CC reporting Lieutenants salaries for 1995 and when added to the 6CC figures moved the average to \$66726. For 1996 the average was adjusted to \$69529. Only three of the 6CC group reported salaries for 1997 for Lieutenants and the average was \$73050 and when 2 others from the 11CC group were added the average moved to \$73860, just 2.2% higher than the 1995 salary paid in Rutherford and up 10.4% from their group rate in 1995.

The Borough has differentiated its offer so that Patrolmen would receive a half percent higher rate of increase in each year. This is because the Sergeants and Lieutenants are seen as being much better paid in contrast to common comparables and the dollar value of those differences, which is described as excessive, will grow even wider if the officers are granted the identical percent increases as are Patrolmen. This distinction becomes even more indefensible when it is recognized that Sergeants enjoy 2 extra days of vacation allowance, thus working .82% less time than Patrolmen and Lieutenants are given 4 more vacation days than Patrolmen which amounts to 1.64% less work time. These differences significantly enhance the total compensation gap between Patrolmen and higher ranking officers.

These elements of salary analysis above indicate that Rutherford police employees rank very high in comparison with other communities both in the southwest section and in the County as a whole. In order to gain a more comprehensive perspective it is necessary and useful to include comparisons of the value of paid leave and other benefits in order to draw reliable conclusions. Rutherford police have 15 holidays. The 6CC group provide

an average of 13.67 and the 11CC average 13.55 holidays. As Rutherford Patrolmen earned about \$252 per day based on 1995 pay rates, the extra [1.33 to 1.45] holidays have a minimum value of \$335.

Rutherford provides three personal leave days. However, one of them is charged to sick leave if taken thus reducing the real value to two. The 6CC provide an average of 3 and the 11CC average only 2.64 as two of them provide no personal days. The Rutherford plan of really 2 days is less valuable and using the 6CC group the difference would be \$252 in 1995 salary terms.

Uniform and clothing allowances vary widely but in 1995 Rutherford paid \$450 per year. The 6CC paid between \$525 and \$1225 in 1996 and averaged \$900 or 100% more than Rutherford. The 11CC group paid an average of \$802 in 1996. Some of these communities indicate increased payments to be made in 1997 as well.

Rutherford pays unit members an annual stipend of \$1000 for attainment of an associates degree and \$1500 for a bachelors degree. This plan is somewhat more generous than most of the comparable communities who's educational incentives vary from assistance with tuition while in school to bonuses for achievement and annual stipends. Because there is no detail as to the numbers of participants in such programs and as there is no issue related to this benefit before me I have decided not to make it part of my cost of total compensation calculations.

There is a demand concerning minimum guarantee of hours to be paid when an employee is called in for overtime or Court attendance. The plan for Rutherford which sets one hour for Court and 2 hours for other overtime can be compared to the other communities. The 6CC provide an average of 2 hours minimum for call-in for overtime and 2.62 hours for Court time. Placing a value on this distinction is guess work as there are no substantive details available as to the frequency of such assignments or the incidence when minimum payment is a factor. As the average for overtime call-in is the same as Rutherford there is no reason to label Rutherford's plan as inadequate. The same can not be said of the Court time minimum in that all of the other communities provide at least 2 hours and three of the 6 provide 3 or more.

Rutherford has presented a medical and health benefits issue in the form of a demand to raise the prescription drug co-pay from the current level to \$3 for generic and \$5 for brand

drugs in 1997 and a further move to \$5 and \$10 in 1998. None of the common comparables has a \$5/\$10 co-pay plan and two of the 6CC require no co-pay. Three have a \$3/\$5 plan and one a \$3 plan. This is another area where it is very difficult to quantify the value of the employee's contribution and I have not been presented with sufficient detail to do so. For employees who have medical costs which require their full payment of the deductible the costs of co-pay of prescription drugs are offset by the 80% major medical coverage. Notwithstanding the determination not to fully assess the value of employee participation it should be said that it is increasingly common for co-pay to be increased simply because of the higher cost of each prescription.

The longevity issue raised by PBA is also complex because of the variations in formulae used in different jurisdictions which make absolute dollar value comparisons difficult. The PBA relies on the position that the Rutherford maximum rate of 9% at 24 years of service does not compare favorably to other programs. However, if the comparison base is limited to the 6CC I find the average maximum to be 8.25% and if the base for comparison is extended to the 11CC the average is 9.36%. There is one circumstance of as much as 15% and one as low as 6% in the 11CC group and a range of 6% to 10% in the 6CC group.

Rutherford provides a maximum of 24 vacation days for Patrolmen, 26 for Sergeants and 28 for Lieutenants. The 6CC provide an average of 27.3 and the 11CC an average of 26.45 days. The Patrolmen allowance in Rutherford, the largest segment of the unit, have between 2.45 and 3.3 fewer days depending on the choice of comparison groups. The 3.3 day difference amounts to 26.4 hours and in 1995 pay rates is equivalent to \$831.

In summary the benefits which can be reasonably appraised in equivalent salary dollars indicate Rutherford top pay Patrolmen to be \$1198 behind the average for the 6CC group. This figure is computed as follows; vacation -\$831, clothing allowance -\$450, personal days -\$252 and holidays +\$335 = -\$1198. The combined salary and benefits comparison reduces the 1995 wages only difference of +\$2799 by the benefits only of -\$1198 to a net differential of +\$1601. This certainly places Rutherford in a positive comparison position but the net is +2.73% which is not remarkable in statistical terms and a variance from the average which is quite normal.

If the average salary for the 6CC is advanced by the average increase of 4.57% for 1996 the new average becomes \$61262 and using the 4.31% increase for 1997 it moves up to

\$63902. The Borough proposal of 2.5% per year would move the Rutherford rate to \$62919 in '96, \$64493 in '97 and \$66105 in 1998. Thus the salary only differential of \$2799 in 1995 would have shrunk to \$591 in 1997. In fact, when allowing for the less valuable benefits in the Rutherford compensation package the net difference of \$1601 in 1995 would have declined to a -\$607 in 1997, and assuming a 4% increase for the 6CC group in 1998, the now negative difference in compensation would grow by approximately \$960 to - \$1567 for Rutherford Patrolmen in 1998.

Obviously an annual increase of 7% as proposed by the PBA would expand the net difference of \$1601 in 1995 in each year to produce a positive difference of \$4363 in 1996, \$7387 in 1997 and \$10694 in 1998. The distinction between Borough's proposal produces a Patrolman salary in 1998 of \$66105 as opposed to PBA's plan which would yield \$75199. The 6CC rate of \$66458 enhanced by the \$1598 benefits advantage to \$68056 would thus be \$7143 lower than the Rutherford compensation package in 1998. The actual value of certain benefits would have advanced somewhat as they are driven by underlying pay rates which would have changed. I have not undertaken a precise measure because I do not believe there is reason to give serious consideration to the 7% annual increase plan. Suffice it to say that it has not been demonstrated to be in keeping with the circumstances confronting Rutherford and is unmatched by comparables.

Both parties are agreed that the compensation of police is unique and not really comparable to private sector employment of non-police work. The Borough did demonstrate that the police wages had increased at a substantially and uncomfortably higher rate compared to other of its employees for many years as was noted above. There was no substantial documentation of private sector wage increases during the proposed contract period though it was acknowledged that those rates had increased at a pace near or lower than the rate of change in the cost of living for the past several years. Borough did also show that the relative costs of police compensation had become increasingly burdensome and disproportionate to the spectrum of services required of the public. PBA stressed that Board of Education employees in Rutherford had a new contract which incorporated higher levels of increases than are proposed here. The actual differences are not readily determined from the evidence introduced in this record however, as Education budgets are heavily weighted for payroll costs it may be assumed that the Board's budget changes in recent years at twice the rate of the Municipality's lends credibility to PBA's allegation.

4 & 5. There were no stipulations of the parties of any significance to the resolution of this dispute and the Borough did not claim the demands of the PBA would, if awarded, impose a threat to the lawful authority of the employer. Its arguments as to the need for lean budgets and emphasis on fiscal restraint were not related to lawful authority as to spending limits under the Cap Law. Instead it noted that the interests of the taxpaying public as to restraining the rate of property tax increases certainly had been communicated to elected officials of the Borough who were attempting to do just that. In addition, expenses which are excluded from the budget Cap limitations which include debt service have increased dramatically and are also paid by the property taxes of residents. I conclude that the lawful authority of the Employer and stipulations of the parties, while not irrelevant, are certainly not pivotal considerations in the resolution of this impasse.

6. To demonstrate the fiscal impact of the terms of the new contract awarded it is necessary to establish the value of incremental changes in the tax rate. In 1996 the tax rate was set at 2.64 or \$2.64 per \$100 of property valuation. Based on figures offered by competent witnesses for the Borough one point in the tax rate was determined to be roughly equivalent to \$120000 in tax revenue. Therefore if the Borough needed to raise expenditures for any purpose by \$120000 it would have to increase the tax rate by one point from 2.64 to 2.65. This adjustment would be equal to a .379% increase in the taxes paid on any taxable property.

The Borough did not provide a statistical breakdown as to the variations of income in groups of residents and neither party was able to produce such information so the discussion of the impact of tax changes was focused on the effect on an average residential tax payer. There was some discrepancy as to testimony in this area with the average home being described as worth about \$200000 but the range of that value was relatively narrow from about \$190000 to something over \$200000. These variances seemed to reflect the dynamics of the current real estate market and the estimates of how the actual results of tax appeals now pending would ultimately be reflected in home valuations. The \$200000 figure itself reflected a substantial reduction from market over the last 5-7 years and the down side of the market evaluations were said to be heaviest in commercial and multi-dwelling properties as noted earlier. The \$200000 figure worked out reasonably well when other budget items were reviewed and so it is accepted.

To relate my award, or the proposals of the parties, to impact on the tax payers I shall use the \$120000 as equal to one tax point and that, in turn, equal to .379% of the tax now

paid by the average homeowner. For 1996 the Borough increased property taxes by 1.9%. This was the result of the policy of fiscal restraint and resulted in Rutherford's rate of tax increase being among the lowest in the County as well as in the southwest section where the average increase was 6.55%. The Municipal portion of the tax was increased by 2.5% for 1996 which, though disproportionately higher than the overall increase of 1.9% was still very low in comparison with the 12.59% average of the southwest Bergen group and less than half of the 5.19% increase of all Bergen County communities as reported in Borough's post hearing brief, [p. 28 A-F]. The Municipal portion of Rutherford's property taxes for 1995 were increased by 2.0% over 1994 in sharp contrast to the 5.25% average rate of increase in southwest Bergen County and 3.41% for all of the municipalities in the County.

These figures indicate a relatively modest rate of increase of the tax burden on Rutherford taxpayers for those two years. The fact that the 1996 budget was cast without use of \$1.16 million purportedly available under the Cap limitations is further evidence of adherence to the fiscal policy intended to preserve property values and improve the micro-economic environment of Rutherford in comparison to neighboring communities. Clearly the conservative management of fiscal matters has been effective as it is reflected in the control of tax rate increases.

Insofar as the implementation of the policy has resulted in reductions of personnel by attrition and layoffs there appears to have been only marginal impact on services or programs. PBA offered testimony suggesting the reduction of police personnel over the last 10 years has resulted in curtailment of certain programs and the need to increasingly rely on overtime to fill in when there were insufficient personnel to perform needed work. However, the Borough indicated the level of crime had been reduced and that the incidence of overtime was probably attributable to planned retirements for which employees use of leave time balances left assignments to be covered by overtime. Further it indicated the public safety was not jeopardized by the modification of police services and programs some of which are covered in less formal ways by modification of the scope of work and attention to improved methods.

The Borough has not indicated that it has programs or services which it needs or intends to expand which would require added funding and did not produce evidence which would suggest such plans, operationally or in budget format. Rather the Borough is described as finding effective ways to continue necessary public services with fewer tax dollars. The

exception to this was a demonstrated need for capital equipment but that need appears to be managed over a period of several years with intention to provide incremental budgetary support for those items during the period in which they are expected to be needed and are provided for in a long term plan. The Borough did not forecast its budget for 1997 or beyond. There is a presumption that the current containment policy is to be continued for the foreseeable future with the hope that its positive affects will be increasingly realized.

It is my opinion that this criterion has very significant relevance in this matter and my conclusions and award will demonstrate this.

7. The cost of living. Neither party has stressed the issue of cost of living as a factor of prime concern. The Borough alleges its proposal is reasonably in keeping with recent consumer price index [CPI] changes and the generally accepted forecast for limited modification over the near term. PBA decries the reliance on CPI indicating that when changes were very high wage changes did not often match them and there is no reason why the present lower levels of CPI change should be seen as a governing maximum on salary adjustments.

The rate of change of the CPI does have a strong influence on rates of changes of wages, however, it is one of many such influencing factors and does not appear to have been the most significant in the determination of police pay. This is illustrated by noting that the annualized change rate for the CPI has hovered around 3% for several years while police wages have been growing at a 50% greater rate including the situation where most of those adjustments are accomplished by voluntary settlement. I therefore view the cost of living as a significant influencing but not determinative criterion because greater reliance on such an index in any particular situation could produce a result otherwise very much out of step with what is happening in the spectrum of police contractual negotiations. Had the Legislature intended it to be viewed in a more absolute way it probably would have been spelled out in something like the Cap Law on budgets. In this situation I see it as being applied as a modulating but not defining consideration.

8. The continuity and stability of employment is a criterion which does not appear to be of substantial concern in these negotiations. The issues at bar do not go to the core of traditional aspects of employment such as seniority and are unlikely to affect continuation of jobs. The focus here is almost exclusively on financial aspects of employment. I see this criterion relevant only should my award have such ramifications as a layoff or cut back

on staff size and I do not foresee such an impact. The exception to this generality is apparent in my concern as to the circumstances of future hires. I believe the dramatic changes demanded by the Borough could significantly affect the stability of such employment. My conclusions and award as to this issue are somewhat influenced by such considerations and are set forth below.

CONCLUSIONS AND REASONING

WAGES

The PBA proposal of 7% annual increases is entirely indefensible and is dismissed. No other agreements incorporate such high levels of change and there is nothing about the particular circumstances in Rutherford which would suggest the need or justification for such levels of increases or the resources to deliver them. On the other hand I believe the Borough's position suffers from being well below all comparisons of rates of changes in the nearby communities or throughout the County. So while average settlements of around 4.5% over three years may seem excessive given the fact that Rutherford's salary levels were marginally above the averages, the Arbitrator is not instructed nor empowered to impose an average salary criterion in determining an award. Instead the Arbitrator must consider all the above noted criteria in the search for an appropriate decision.

The Borough made a strong case concerning reasons for a distinction in the rates of increase to be granted to Patrolmen as contrasted to Sergeants and Lieutenants. As noted above the relation between Rutherford pay rates and other common comparables differ substantially at the higher ranks where Rutherford pay rates more distinctly exceed other communities and where the separation of the pay between Patrolmen and those higher ranks is generally wider in Rutherford than in other communities. Further, as illustrated above, the value of paid vacation at higher allowances for those in higher ranks equates to an even wider disparity. While the PBA approach is to stabilize the current status and apply comparable rates of increase I am persuaded that such would continue and expand a situation, which by comparison to other jurisdictions, can only be considered inequitable. In the situation, as is the case here, where the total value of an award must be limited because of the particular circumstance of the Employer it is especially important, from my point of view, that the increased salary dollars be distributed where there is greatest justification. Assuming that there are underlying reasons which would substantiate the relative salary rates of Rutherford in contrast to other communities why would not the

same factor of relativity apply equally at each rank? I believe it should. In this situation I see no reason not to differentiate as to the rates of increases and substantial arguments in favor of that approach. For these reasons I have incorporated such a differential in this award. My conclusions as to appropriate wage adjustments, after thoughtful consideration and evaluation of the impact of same on the taxpayers and of all the facts presented to me, are as follows:

For contract years 1996 and 1997 there shall be a 3.75% increase for Patrolmen and a 3.25% increase for Sergeants and Lieutenants effective on January 1st of those years.

For 1998 and effective on January 1st there shall be a 2% increase for all employees in the unit. Effective on July 1st there shall be a 2% increase for Patrolmen and a 1.5% increase for Sergeants and Lieutenants. These split increases shall not be compounded as illustrated in Award below.

These increases are determined as a reflection of my heavily weighted relevance of the need to balance the interests and welfare of the public and the impact of the costs of same on the Borough and its citizens with considerations of the equally significant concern as to comparative wages and adjustments in other police jurisdictions and the provision of reasonable and fair reward aimed at maintaining the loyalty and morale of the employees affected. To a considerable extent this award is the product of examining its ultimate impact on the police and the Borough. It reasonably and fairly compensates the employees while accommodating the need for the Borough to contain costs which is accomplished by putting in place salary adjustments which are something less than the surrounding communities but not so much less as to make the employment circumstance in Rutherford suffer unduly by comparison to them. It will probably provide a marginal improvement in standard of living as a result of real wage increases contrasted to the erosion factor of annual cost of living changes.

In 1996 the basic salary-only cost difference between my award and the proposal of the Borough is \$27998. This is equivalent to 23 hundredths of a tax point and less than 9 hundredths of one percent of the average residential tax. For 1997 that amount grows to \$29646 and the difference in cost in 1998 which reflects a split raise produces a further difference of \$12779. The entire three year total of the new annual cash flow differences amounts to \$70423. Each of these salary increases expand the payroll base and are compounded in following years but an approximately equivalent amount of new taxes

need be levied annually as the tax rate increase for 1996 would also be in the base of the tax rate and be replicated in revenues in 1997. This latter bit of reasoning is, of course, hypothetical as adjustments of taxes for past periods can't be made, but there is need to explain the decision as if it had been timely made for application to the 1996 contract year. The cumulative increase of tax rate to be attributable to differences in salary-only increases over a three year period would remain well under one point. The split increase in 1998 is intended to relieve the Borough as to anticipated cash flow problems in that year while granting a reasonably competitive rate of salary adjustment.

The introduction of a new salary guide for future hires should offer substantial relief as to the effect on employment costs by 1998 as it is understood that several current employees are likely to retire by then. So, as to cash flow for payroll purposes, the minimum annual saving on salary for one new hire to replace a Patrolman would be over \$40000 under the plan set forth below which illustrates a \$22000 salary replacing one of 66 or \$68000. This amount would be multiplied by the number of retirees and expanded if those retiring were from higher ranks unless offset by promotions.

PBA has offered consistent and rigorous resistance to the incorporation of a new salary schedule for new hires but this has become a very common approach to the management of police costs. The current [1995] minimum salary is \$35342 and will rise to \$36667 in 1996, to \$38042 in 1997 and to \$39563 in 1998. There are abundant applicants for police employment and there are among them many who are well qualified for appointment. The employment market makes police entry jobs very attractive at salaries dramatically less than \$38000. For the Borough to pay such a starting wage would border on irresponsibility as to the public interest. However, having said that, I maintain a belief that the base wage presented should be sufficiently high as to provide an ample pool of candidates with extraordinary qualifications from which to choose. Additionally, it does the Employer no lasting good to have the lowest entry salary of any community and thus invest in the academy and other first year training costs only to find that such an employee, now qualified by training, will seek other employment at substantially more attractive pay and find Employers who welcome that applicant because of the training already completed.

As part of PBA concern is also to assure that new employees are highly qualified and motivated to perform as competent co-workers with good morale, enthusiasm and potential for superior police performance I have determined a salary plan designed to

allow the Employer to realize justifiable savings while providing pay rates designed to attract and retain superior candidates. The savings are realistic as to the beginning value of such employees and there is a reasonable and balanced progression toward the top pay which both parties subscribe to as a part of any salary structure.

The salary plan for employees hired after the date of this award shall be as set forth below.

	1997	1998	
		1/1-6/3	7/1-12/31
Hire Rate [Academy] 0-6 months	\$22000	\$22000	\$22000
Remainder of first year	26404	26404	26404
Begin year #2	30101	30703	31305
Begin year #3	34315	35001	35688
Begin year #4	39119	39901	40684
Begin year #5	44596	45487	46380
Begin year #6	50838	51854	52872
Begin year #7	57957	59116	60275
Begin year #8 [top pay]	66074	67395	68717

ADDITIONAL PBA PROPOSALS

That a new step be provided for employees above the salary plan maximum as set forth in the 1995 and subsequent Agreement referred to as a "Senior Officer Differential" and applicable to employees who have 20 years service. It would be a step at half of the difference between the salary occupied and that of the next higher rank. There is no substantial justification in this record for such a step in salary. It is somewhat comparable to an extension of the longevity plan. This would be a novel provision not found in contracts for other jurisdictions. My persuasion to provide somewhat higher salary increases than was proposed by the Borough was predicated on an overall evaluation of the wages and benefits already in effect. My choice was to place improvements in the system in such a way as to be beneficial and appropriate. In doing so I will have caused the expenditure of as many new salary dollars as were justified by the conditions presented to me, distributed in the most equitable manner. The accommodation of this request would provide many employees with another substantial increase and it would likely be applied to the higher ranked employees whom I have already determined to be more adequately paid than the Patrolmen. Adding an additional half promotion increment

would provide many employees with another substantial increase and it would likely be applied to the higher ranked employees whom I have already determined to be more adequately paid than the Patrolmen. Adding an additional half promotion increment would result in these highest paid employees being elevated further and require more new salary expenditures than can be justified. The proposal is rejected

The PBA has made proposals for the increase in minimum call-in time for overtime assignments and Court appearances. This was discussed above in some detail. I conclude the Court time minimum should be extended to two hours for the reasons set forth. Therefore Article XV, paragraph 5 shall be modified to specify the change effective as of ten days after the date of this award. The call-in for overtime is deemed to be fair, as the current guarantee is fully representative of the norm provided by common comparables, and the extension of the minimum is denied.

I also reject the PBA proposal to increase the longevity payment plan. The current plan is very competitive and the Borough's fiscal circumstance should be given very careful consideration when contemplating added costs for any employee group. There is no compelling evidence that this request warrants the associated costs to be borne by the taxpayers. The same considerations as are presented here and above lead to the conclusion to reject this proposal and the demand to fold holiday pay into base salary. In addition it should be remembered that the holiday plan is generous in its current form and further enrichment is unwarranted, especially during a period of fiscal constraints.

PBA proposal to improve the uniform maintenance allowance could be ignored because of the financial problems of the Borough mentioned many times in this analysis and because I have factored into the determination of wage increases the relative value of fringe benefits, however, I find the current rate of \$450 has become very much lower than what is provided by the common comparables as illustrated above. The direct costs of uniform maintenance are unavoidable and the allowance should reflect some offset to the cumulative additional costs since the current rate was set in 1991. I therefore award an increase of \$100 to \$550 to be effective in the 1997 contract year.

PBA seeks to modify the personal leave provisions to eliminate a 24 hour notice of intent to use and the charge of one such day to sick leave. While the argument that a personal leave day really isn't such if charged to sick leave has merit, it is apparent that the negotiations of that clause created a balance in its provisions. For one thing this leave is

cumulative and is available without providing reasons for use. On the other hand the Borough retained a 24 hour notice and the charge to sick leave first of 2 days and then of just one. The balance in the clause would be eliminated by deletion of the limits agreed to. Such changes should be considered in negotiations where the full spectrum of the elements of the clause are given consideration. Very little supporting evidence as to reason for the changes sought was presented as part of this record. I choose not to undertake restructuring this clause without good reason and a complete understanding of the interrelated elements which underlie its present form. Such was not presented by either party.

PBA has requested modification of the procedural aspects of Article XXV, Vacation. This deals with a primary benefit which, unlike others such as sick leave, is best utilized by careful planning coupled with considerations of personal circumstances and a myriad of factors such as travel and accommodations reservations. The enjoyment of vacation greatly influences the morale of the employee and because this is often a very expensive benefit, use of which should be cost effective to both Employer and Employee, there should be a cooperative effort to assure its greatest satisfaction without undue interference with the obligation to provide police services.

PBA wants the Employer to respond promptly to all vacation use requests and suggests 10 days as an appropriate limit. As this would be beneficial to an employee planning use of vacation and as it does not remove the option to grant or refuse the request I believe it to be constructive and beneficial to the greatest satisfaction in the use of vacation time. Although I do not have a precise understanding of the Employer's reticence in granting this request I presume the limited time of 10 days must be at the core. However every request must be answered at some point and if it must be controlled by contractual provision I am prepared to do so. I therefore, and with consideration for the Employer's resistance, award that such requests must be answered within two weeks of the time the request is presented.

PBA wants to eliminate rescinding of any vacation approved except in the case of, "full police department mobilization". This is a condition established by the parties to be used in the circumstance of recalling an employee from vacation. I suspect it has never been relied upon. Changes in approved vacation schedules should not be imposed with cavalier disregard for the employee's interests. I believe those interests would be sufficiently protected by the following, "Approved vacation requests shall not be rescinded except in

emergent circumstances and with due consideration as to the impact of the change on the employee", and I so award.

PBA also proposes to change paragraph 6 to mandate a minimum 5 day selection of vacation instead of 2 days. I do not have sufficient understanding of the genesis of this request to make a determination as to its merit and therefore reject the proposal. Conversely the request to require two selection lists, one for supervisors and one for subordinates is seen to be reasonable. A single list would appear to have a possibly uncalled for special advantage for the higher ranking officers. The relative advantage to either group of employees represented by the PBA in this Agreement is of greater significance to the Association than to the Employer which can continue to apply whatever standards it believes necessary to the approval of vacation requests including requirements as to minimum staffing as well as the mix of supervisory and subordinate employees needed on the job. I therefore award that separate vacation pick lists be established, one for Patrolmen and one for the combined supervisory group of Sergeants and Lieutenants.

The PBA request to install a new bulletin board at its cost is awarded including the requested caveat that a key to the lock be given to the Employer.

PBA requested substantial changes of the Grievance Procedure, principally directed at the level and nature of management participation involved and reduction of time limits for response at the various steps. As to the former such demand is an undue intrusion into the prerogative of management to determine who is to carry out its responsibilities for contract administration and as to the latter, there was no evidence introduced to support such a demand and both are rejected.

The PBA proposal to eliminate Article XLVII the Fully Bargained clause was also unsupported either in principal or as to any functional impact it may have had and is therefore denied.

PROPOSALS OF THE BOROUGH

The first difference of opinion of the parties had to do with the term of this Agreement. It remained an issue at the close of the hearing but both parties made most proposals as if the Agreement was to be in effect from January 1, 1996 through December 31, 1998. I conclude that is the Agreement term.

Borough proposed modification of sick leave so that employees reporting for work but who work less than four hours should be charged with a full day of sick leave seems patently unfair to most employees who may very, very occasionally experience an instance where they come to work and are taken ill and have to leave. This issue apparently is based on a past practice as contrasted to any contractual provision and the desire to change the practice is a reflection of its abuse in limited situations. The Borough's posture in this matter is to eliminate the abuse but the proposal is onerous as to the broad application to all employees. Under its terms an employee could be on the job for several hours, become legitimately ill and have to leave and in doing so be charged with a full day of sick leave. Apparently the practice is to pay an employee, who comes to work and then leaves for illness, for 4 hours work and charge him with only a half day of sick leave. The practice was undoubtedly intended to encourage employees to come to work even on days when there might be uncertainty as to possible illness. Thus coming in was rewarded with 4 hours minimum pay and a charge of only half day to sick leave in the event the employee had to leave because of claimed illness.

PBA does not condone the abuse of this practice but has no control over abusing members and sees the Borough's position as not equitable based on the logic which led to the practice in the first place. After due consideration I make the following award, "An employee who reports to work and begins his assignment but is subsequently forced to leave because of illness will be given credit for four hours worked and charged with four hours of sick leave unless he shall have worked more than four hours before being incapacitated by illness in which case he will be given a full day of work credit without charge for sick leave. However, this provision shall be applicable to only one incident in a calendar year and shall be subject to verification of the need for sick leave. For any such subsequent incident beyond the first in a calendar year the employee shall be entitled to work credit only for hours actually worked and charged for sick leave for all remaining hours of the assigned regular shift. This provision shall not reduce the option of the Borough to require substantiation of illness or to resort to disciplinary action in the circumstance of just cause. This provision shall be an exception to paragraph [5] of the Article, Sick Leave, and to any other provision of the Agreement to the contrary."

Borough has requested modification of the Prescription Drug plan so that the co-pay is increased first to \$3 for generic and \$5 for brand drugs in 1997 and then to \$5/\$10 in 1998. As discussed above, there has been nearly universal movement to increase co-

payments in this area as costs have moved upward dramatically. However, there is a concentration of the incidence of co-payment at the \$3/\$5 level and rarely beyond. I deem the request to move to a \$3/\$5 co-pay plan as prudent and not overly burdensome to employees and award it from the time when it can be implemented and for the remainder of the term of the Agreement.

The Borough also included in its demands a desire to supplement the provisions of Article XLVI, Grievance Procedure, paragraph D. Arbitration [2]. This section has to do with the framework within which the arbitrator of a dispute, moved to arbitration for resolution, is bound. While on its face it appears to be only directed to the objective of clarifying and adding detail to the role of the arbitrator and thus commendable from an arbitrator's viewpoint, upon closer examination of conditions set in the entire procedure there emerge questions as to the application, effect or impact of the suggested change. Because of these unanswered questions as to potentially substantive effects on the application of the Article which have not been fully defined I have determined to reject this demand. If it is intended only for purposes of clarification it is probably not harmful but neither is it known to me to be essential because no evidence was presented to support such a contention. If the intent is to accomplish the somewhat undefined substantive changes I believe could be attributed to such change there would have to be a level of justification which has not been presented to me.

Borough has also presented a demand to incorporate in this Agreement a new Article on Drug Testing Procedures. The intended article is seven pages long in 16 sections ranging from purpose to methods of implementation which incorporate involvement of representatives of each of several negotiations units of Rutherford employees and much detail about sampling processes, preservation of specimens confidentiality etc. Here again very little discussion as to the inclusion of this material in the Agreement took place in this proceeding. There was no evidence introduced to demonstrate its relative efficacy or need. I cannot confidently rule on such a complex contractual addition without much more comprehensive knowledge and the derived conviction that it is justified. I therefore reject this as being insufficiently supported at hearing.

There were several additional issues presented as demands by the Employer but they were not included in the statement of the final offer presented to me in the post hearing brief. I presume them to have been withdrawn.

AWARD

After careful examination of the arguments and evidence presented at hearings and with due consideration of the statutorily mandated criteria for such determinations including reasoning described in the Analysis and Conclusions above I make the following award:

1. The Agreement shall be effective from January 1, 1996 through December 31, 1998
2. Except for future hires wage adjustments shall be 3.75% for Patrolmen and 3.25% for Sergeants and Lieutenants effective on both January 1st of 1996 and January 1st of 1997. There shall be a 2% wage increase for all ranks on January 1st of 1998. Patrolmen shall receive an additional increase on July 1st of 1998 of 2% computed on the base salary which was in effect on December 31, 1997. Sergeants and Lieutenants shall receive a 1.5% increase on July 1st of 1998 also computed on the base salary in effect on December 31, 1997.

Employees hired after the date of this award shall be placed on the salary schedule set forth above in the section CONCLUSIONS AND REASONING subsection WAGES. That salary schedule is intended to become a permanent provision in the Agreement subject only to changes resulting from future negotiations of a subsequent contract.

3. There shall be an increase in clothing allowance of \$100 to a total of \$550 effective and paid in the 1997 year.
4. The contractual minimum guarantee of one hour for Court appearance on days off shall be extended to two hours effective as of ten days after the date of this award.
5. Article XXV, Vacations, shall be modified to reflect the following changes and additions:
"The Employer shall respond promptly to requests for vacation use within two weeks of such request": "Approved vacation requests shall not be rescinded except in emergent circumstances and with due consideration as to the impact of change on the employee":
"There shall be separate vacation rosters, one for Patrolmen and one for Sergeants and Lieutenants".

6. The PBA shall be permitted to install a new locked bulletin board and will provide a courtesy key to the Chief.

7. Article XXVII, Sick Leave, shall be modified by the addition of the following, "An employee who reports to work and begins his assignment but is subsequently forced to leave because of illness will be given credit for four hours of work and charged four hours of sick leave unless he shall have worked more than four hours before being incapacitated by illness in which case he will be given a full day of work credit without charge for sick leave. However, this provision shall be applicable to only one incident in a calendar year and shall be subject to verification of the need for sick leave. For any such subsequent incident beyond the first in a calendar year the employee shall be entitled to work credit only for hours actually worked and charged for sick leave for all remaining hours of the assigned regular shift. This provision shall not reduce the option of the Borough to require substantiation of illness or to resort to disciplinary action in the circumstance of just cause. This provision shall be an exception to paragraph [5] of the Article, Sick Leave, and to any other provision of the Agreement to the contrary."

8. The employee co-pay for prescription drugs shall be changed to \$3 for generic and \$5 for brand name prescriptions effective whenever the Employer can institute the change.

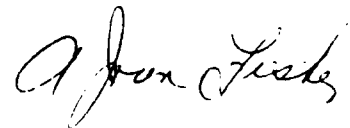
9. All elements of the prior Agreement are to be continued except as this award may impose changes, limitations or additions thereto.


Frank A. Mason, Arbitrator

Pennington, Mercer County, New Jersey

March 5, 1997

On this 5th day of March, 1997 before me personally came and appeared Frank A. Mason. to me known and known to be the individual described in and who executed the foregoing opinion and award and he acknowledged to me that he executed the same.



A. JOAN FISHER
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires June 3, 1999

