

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Interest Arbitration Between:

CITY OF GARFIELD

AND

GARFIELD PBA LOCAL NO. 46

Docket No. IA-97-66

BEFORE: ERNEST WEISS, ARBITRATOR

APPEARANCES :

FOR THE PBA:

RICHARD D. LOCCKE, ESQ.
LOCCKE & CORREIA

FOR THE EMPLOYER:

BRIAN T. GIBLIN, ESQ.
GIBLIN & GIBLIN

PRELIMINARY STATEMENT

I was designated to serve as Interest Arbitrator in the above dispute in accordance with the rules of the Public Employment Relations Commission. The parties engaged in a series of collective bargaining sessions prior to my arrival and were successful in resolving some outstanding issues. Initially I attempted to mediate the remaining disputes in order to assist the parties resolve the outstanding issues voluntarily. Although some additional issues were resolved in this informal manner, major issue such as wages remained outstanding.

As a result, I convened Arbitration sessions on May 15, 1997, June 19, 1997, July 28, 1997, and September 8, 1997. During these hearings the parties were afforded the opportunity to present documents testimony and argument in support of their respective position. The formal proceedings were transcribed and the parties were afforded the opportunity to submit post hearing briefs.

Since the parties failed to agree upon an alternative form of submission, I am mandated by statute to decide the case with conventional authority and in accordance with the statutory criteria outlined below.

STATUTORY CRITERIA

The Statute requires the arbitrator to: 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 interest and welfare of the public. Among the items the arbitrator or panes of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by P.L. 1976, c. 68 (C.40A:4-45.1 et seq.)
2. comparison of the wages, salaries, salaries hours, and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing the same or similar service 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 jurisdiction, as determined in accordance with section 5 of P.L.1995, c. 425 (C.34:13A-16.2); provided, however that each party shall have the right too submit additional evidence concerning the comparability of jurisdictions for the arbitrator's consideration.
3. The overall compensation presently received by the employees, inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other benefits received.
4. Stipulations of the parties.
5. The lawful authority of the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering the 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 dispute in which the public employer is a count or a municipality, the arbitrator or panel of arbitrators shall take into account, to the extent that evidence is introduced, how the award will effect 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 employee' 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 taxpayer 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 © 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. (N.J.S.A. 34:13A-16g)

FINAL PROPOSAL OF THE PBA

The PBA proposed three economic and two non-economic issues as follows:

1. A three year agreement with 5.5% wage increase in each of the three years. This should be an across-the-board increase of each rank, step and position represented by the PBA as set forth in J1.
2. Correct the hourly rate formula to be calculated from 2080 to 1946, the actual hours worked by the members of the Unit.
3. Holiday fold-in. The holidays, which are now paid in a lump sum, should be instead folded in to the salary and paid along with regular pay and used for all calculation purposes.
4. The addition of a police services clause as per item 7A of P1

FINAL PROPOSAL OF THE CITY

1. **DURATION:** January 1, 1997 through December 31, 1999
SALARY: A. Effective January 1, 1997 a 1% salary increase across the board.
B. Effective January 1, 1998 a 2% salary increase across the board.
C. Effective January 1, 1999 a 2% salary increase across the board.

THE CITY OF GARFIELD

Counsel for the City in his post-hearing brief utilizes the following arguments with respect to the statutory criteria in order to convince the undersigned that the City has proposed the more reasonable final offer.

By way of background, counsel provides a socio-economic picture of the Town which the latter relies on in addressing the economic criteria of the Act. Counsel notes that Garfield

adjoins five Bergen County municipalities and one Passaic County municipality; its land is virtually fully developed and its residents reflect the lowest median and mean income for household in all of Bergen County. Nearly eight percent of its population is below the poverty level.

The City has a declining population and eighteen percent is over the age of sixty-five. Its \$14,963 per capita income is the second lowest in the County while its real property tax rate is in the one-third of the seventy towns in the County.

Substantiating this economically distressed climate is the fact that Garfield received \$250,000 in 1994 and 1995; \$400,000 in 1996 and \$450,000 in 1997 by way of Supplemental Municipal Property Tax Relief Act Discretionary Aid. Concurrent with those same years, Garfield saw the municipal tax rate increase significantly by 36% while its tax revenue declined and tax refunds for 1997 alone amounted to \$365,888.

Symptomatic of this economic condition is the fact that budget surpluses have declined substantially from 1994's \$1.7 million dollars to 1997's \$217,285. The future contains the possibility of non-renewal of the discretionary aid discussed earlier, along with the known repayment of an early retirement program for the police to the tune of \$44,000 annually. The City's economic distress was highlighted in the testimony of the City Manager, who confirmed the lay-off and retirement of a total of six employees in the Public Works Department. Applying this generalized background to the specific statutory criteria, counsel for the City offers the following discussions in his brief:

INTEREST AND WELFARE OF THE PUBLIC

Counsel sites a lengthy answer made by the Mayor - a life-long local businessman - about the changing nature of the typical inhabitancy from a home owning businessman or commuter to a renting labor force. While arguing that he is not passing judgment on those citizens, he is offering his opinion that they simply don't have the finances to invest in or make long-term commitments in the community. As a result, the town is becoming part of a rental community and the market values of homes and businesses has been thus affected.

Counsel argues that the City's proposal is what it believes is an extremely fair, reasonable and sensible economic package within Garfield's ability to pay and which best serves the interests and welfare of the public. To the contrary the PBA proposal he argues ignores the economic realities of the community and the taxpayers ability to pay the taxes necessary to fund those increases.

COMPARABLE

Counsel makes no attempt to make any comparisons in the private sector for the same or similar services, noting a lack of any such position. He does rely on comparisons submitted showing wages for other Garfield employees and employees in general which have grown at a rate much closer to the City's final offer than has the PBA's. In an eight year comparison it is noted that the PBA's wage percentage increases equaled or exceeded that of the City's blue collar employees - a unit with average salaries less than half of a patrolman's. The same comparison can be made to the white collar unit in Garfield. Extending this advantage is the greater benefits the PBA members enjoy. Moving to thirteen specific interest awards it introduced into evidence, the City claims they represent outcomes far closer to the City's offer than that of the PBA. In particular, counsel argues that the award in the case involving the State

and its 6,000 Correction Officers averaged a 1.75% per year increase while Garfield's offer equates to a 1.66% per year increase which thus must be deemed reasonable given the sorry state of Garfield economic conditions.

On the subheading of Overall Compensation under Comparability, counsel reviews the contracts terms which he argues renders it among the most generous in Bergen County. Keying in on the maximum financial benefits, counsel cites the \$61,243 top salary which taken with Senior Officer differential, longevity, and clothing allowances brings an officers total compensation to \$69,000 exclusive of any overtime, court time or recall pay. Counsel submits that given that this compensation is three times the town's median household income, it is indeed a most reasonable salary for a career patrolman without any higher education.

STIPULATIONS

Counsel states no specific stipulations were entered into by the parties.

LAWFUL AUTHORITY

Counsel makes not Cap arguments. Rather he merely notes that where the PBA offered to be adopted at the end of the contract, the very same top patrolman cited above would experience a \$10,671 base salary increase to the sum of \$71,914 without any ancillary monetary benefits having been factored. In total, it represents a 17.42% increase or a 5.8 per year average. In brief, counsel argues the PBA's demands have not been justified and "the Arbitrator can only fashion an award based on the offer made by the City".

Turning to that offer, counsel notes that it would progress a top patrolman from the present \$61,243 salary to \$64,354 in 1999 - again without holiday, longevity or clothing

allowance. When compounding is calculated, it represents an actual 5.08% increase, not including step movement. Counsel argues that while the City's dire economic conditions have affected virtually every citizen and employee over the past years, the PBA has been immune to these affects and has continued to receive significant salary increases which can no longer be justified.

FINANCIAL IMPACT

Reviewing the 1995 Planners Data Book for Bergen County, counsel highlights some of Garfield's notable "firsts" and "lasts" as they reflect the City's economic status. Within the entire county, Garfield has the next to the lowest value of owner occupied housing units - among the lowest average rent, lowest household median and mean incomes and second lowest per capita income. Noted is the Tax Assessors testimony that the average value has declined as has the tax base and ratables for the past six years of over 10% during which period the average patrolman's salary has increased 26%. Under these facts and the \$365,888 in tax refunds Garfield has paid back in 1997 alone, counsel again argues the adoption of its final offer is the only reasonable choice available to the Arbitrator.

COST OF LIVING

Counsel argues that the PBA's offer "bares little relationship to the current economic reality and cannot be sustained". He notes that the Association's demand is twice the rise in the C.P.I. in recent years. Charting the salary increase enjoyed by the Garfield PBA against the C.P.I. increases over the comparable period, shows an advantage of \$15,000 has been provided to the members. Such further increases have not been justified, it is argued and Garfields function "is not... to guarantee... a defined lifestyle".

In conclusion, counsel argued, municipalities like every other business, must determine ways to cut costs while still providing the same quality services. By the implementation of Garfield's final offer, it would achieve this purpose.

CONTINUITY AND STABILITY OF EMPLOYMENT

It is argued that no proof has been forthcoming from the PBA that either the acceptance of Garfield's offer would adversely affect the continuity and stability of employment or the acceptance of the PBA offer or increase or enhance it. It is noted that no givebacks are demanded - only that an offer be accepted which would moderate the salary increases the PBA has been receiving.

CONCLUSION

In summary, counsel argues its offer is realistic, in line with its ability to pay, its fiscal responsibilities and the present economic conditions of the City. It asks that its offer or a significant part of that offer be awarded.

P.B.A. LOCAL 46

Arguing on behalf of Local 46's final offer under the statutory criteria, PBA counsel's brief contained the following relevant points:

INTEREST AND WELFARE OF THE PUBLIC

Counsel recites what the PBA deems to be the indicia of a professional department. Increases in productivity by virtue of a higher number of calls responded to by a force diminished by attrition, development of new programs such as community policing, a bike patrol, National

Night Out as well as being required to respond to emergency and ambulance calls. Counsel quotes the Mayor himself who on cross-examination summarized the Unions argument when he stated "we've got a good working police force that is very receptive to our community". In summary counsel argues the public of Garfield is well served by its police department.

COMPARABILITY

Dealing with criteria 2 and 3 in subsection G of the act, counsel argues that for 1996 Garfield is the lowest paid of nine towns "in the immediate area". Specifically cited by counsel are Wallington, Rutherford, Hasbrook Heights, Hackensack, Saddlebrook, Lyndhurst, East Rutherford and Englewood. A 2.4% increase would be necessary retro-active to 1996 to bring Garfield up to the average salary of those towns. Accordingly, the PBA argues it should therefore be awarded the "going rate" plus the catch-up rate which is how it justifies its 5.5% increase request. Nor is this poor standing offset by other benefits, such as longevity which counsel argues, in fact, put Garfield even further behind these surrounding communities. Garfield's maximum longevity is 9% "which counsel claims is one of the worst in Bergen County". The similar argument is made for the clothing allowance. While these items are not an issue, counsel argues they are "valid barometers of police compensation".

Counsel advances to an overall comparison within Bergen County and charts 24 departments - 2 within Bergen County - arriving at average increases (both in settlements and awards as follows: 1997 - 4.508%; 1998 - 4.49% and 1999 - 4.16%. Note should be made that 1999 represents only five contracts; 1998 - 13 contracts and 1997 - 23. It is argued that the "shortfall" the PBA claims of 2.43% when combined with the total 3 year request of 16.5% comes in only slightly higher of the combined average of 15.588% reflected in this PBA prepared chart.

Counsel dismisses the City counsel's reliance on its comparability charts, noting such distant and diverse towns as Stanhope, Asbury Park and Cherry Hill are irrelevant.

He also dismisses private comparisons offered by Garfield as being inappropriate relying on the off quoted award language of the distinguished Arbitrator, William Weinberg who opined that 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 comparisons to be made without forcing the data". See Ridgewood P.E.R.C Docket No. IA94-141.

STIPULATIONS

Beyond mutual agreement to a three year contract, the parties have also proposed across the board wage increases affecting rank, step and position. No other meaningful stipulations were entered into.

LAWFUL AUTHORITY

Counsel reviews the workings of the Municipal Cap Law and notes that Garfield chose to use the 2.5% index rate as reflected on Sheet 3B of the City's 1997 Budget, rather than the 5% allowable under the law. Even selecting this conservative approach, Garfield still brought in its budget substantially less than the maximum allowable expenditure which made available over \$900,000 for the City's use. PBA expert witness, John Nunno, former Garfield Auditor, confirmed that \$628,548 represents the amount the City could increase its 1998 budget as a result of its Cap banking over the three prior years. The PBA's second witness, Dr. Robert Werner, confirmed the above cited calculations and conclusions and opines that no Cap problem

or pressure existed, and in fact, the sums available have reflected a trend of increase in growth over the prior years.

FINANCIAL IMPACT

Counsel establishes that the actual cost of a police wage point is \$31,890 assuming every officer is at maximum for his or her rank. Longevity represents additional \$318 beyond the cited figure that is not included by counsel due to its insignificance.

Counsel runs the budget figures to show that of the \$30+ million dollar budget, only 9.5 million or 31 cents of every tax dollar is needed for municipal operations. The police wage is approximately 10% of the entire gross levy, and thus the single percentage wage increase value is .001% or \$3.13 of a \$3,000 tax bill which counsel asserts represents a small impact on the town. In reality, it is asserted the actual impact due to attrition in the city's adoption of the State's "Early Retirement Incentive" is considerably less. Although the additional cost to Garfield is \$44,000 per year for the seven officers who opted for early retirement, and \$132,000 for three replacements hired, the actual annual savings amounts to \$394,000. This amount, it is argued, is double the amount sought by the PBA in its final offer. Counsel also dismisses numerous charges presented by the City since they often were based on the inclusion of officers who are no longer on the force. He also traces the testimony of former Municipal Auditor Nunno who confirmed the existence of grants to the Police Department totaling approximately \$200,000. Counsel then recites in detail the various sources of funding which would satisfy the cost of the PBA offer. From "as much as \$300,000" in the underestimation of tax collections, the \$500,000 of Municipal Court generated revenue to the City's own reservation of \$56,998 in the 1996 budget and \$136,216 in the 1997 budget, shows over ample sources of revenue which can easily fund the PBA's offer.

Counsel reviews in detail the specter of ever increasing tax appeals raised by the City and seeks to show the actual payout liability of the town is statistically insignificant. Moreover, he notes a third of the appeal payouts to the Municipal officials and/or their family members.

Conversely, Counsel sets out to prove that Garfield is indeed - using a standard ratable base - one of the wealthiest towns in Bergen County witnessed the County Board of Taxation's calculation of over 1 billion dollars in a ratable base, thus placing it in the upper third of the county's municipalities. Counsel also notes the city's modest debt balance of \$11,073,722 and its excellent credit rating as reflected in bond service ratings.

In conclusion on this critical criteria of Financial Impact, counsel recounts the conclusions of Dr. Werner and, particularly in light of his intimate knowledge, former Auditor, John Nunno, that the City definitely could fund the PBA offer.

COST OF LIVING

Counsel argues initially that it is self-evident that living in Bergen County is by definition more costly than almost all other areas factored into the CPI or other indicia of the cost of living. Reviewing this unit's past history of average settlements of 2% to 3% over the then CPI proves recognition of this fact and justified the increases counsel requests on the PBA's behalf. Similarly its trend of being paid increases 2 1/2% on average in addition to the percentage increases Garfield afforded to its other employees confirms another trend counsel suggests continue. On balance counsel argues its request is reasonable, is supported by past history and trends and therefore should be awarded.

CONTINUITY AND STABILITY OF EMPLOYMENT

Counsel offers the interesting incite that this criteria relates to the private sector concept of "area standards and prevailing rates". Counsel reverts this to the comparability evidence introduced and discussed and suggests that both concepts support the PBA position on its final offer.

Finally, counsel suggests that its additional economic request dealing with clarification of hours be granted since the actual number of hours worked annually by an officer is 1,946 as opposed to the erroneous 2,080 currently listed in the contract. He asserts that this request is but a housekeeping adjustment.

As to the request dealing with folding in of the holidays, it is based simply on the premise that this entitlement should be paid over the course of the year in each paycheck rather than in one lump sum. The hourly increase this would result in is negligible and would prove to be a great benefit to the employee but is no real consequence or detriment to the City.

In conclusion, counsel asks that an award issue implementing its last offer.

DISCUSSION AND OPINION

STIPULATION OF THE PARTIES

As noted by both counsel, beyond the three years length of the contract, no other substantive stipulations have been entered into by the parties.

LAWFUL AUTHORITY OF THE EMPLOYER

There is no doubt that the City of Garfield could, within its cap limitation, expend additional sums needed to fund the PBA's final offer. I view this issue as representing an instance where both parties have co-equal burden of proof. The PBA through its expert witnesses clearly demonstrated that its offer could be funded within the applicable cap limitation.

Conversely, the City failed to establish even that such a funding requirement would produce “cap pressure” borrowing that term from PBA counsel. Accordingly, it can only be concluded that the PBA prevailed under this statutory criteria. Comment need be made however, that prevailing under this criteria should not be viewed as a complete victory for the PBA. Prevailing under this criteria is the equivalent, in the vernacular of this time of year, as qualifying for the NCAA championships. In interest arbitration the party prevails under the remaining criteria just as a college team advances that wins subsequent games. Here the real test will come under the criteria of financial impact, comparability, cost of living, interest and welfare of the public and to a lesser degree the continuity and ability of employment.

CONTINUITY AND STABILITY OF EMPLOYMENT

Initially it should be noted that PBA counsel’s attempt to identify this criteria with the area standard’s and prevailing rate of the private sector, proves unconvincing for the association’s case. With respect to the traditional interpretation given to this criteria over time, i.e., the likelihood of future job stability vs. the threat of layoffs, the PBA failed to enter any evidence or argument questioning an officer’s continuing employment. In light of the recent attrition comprised of seven voluntary retirements with three replacements, it would appear from mere observation of these facts that an even less likelihood of any layoffs could occur. In summary the PBA failed to establish that the present facts support its final offer under this statutory criteria.

COST OF LIVING

It is self evident that the City in its final offer prevails under this criteria. Although it is fair to conclude as PBA counsel argues that the true cost of living in Bergen County is probably higher than the traditional broad based CPI figures relied on, it has not been shown that this

opinion, arising from common observation, has been substantiated at all by evidence let alone sufficient evidence to conclude that the true cost of living is so substantially higher as to invalidate the promulgated CPI figures. A review of the percentage increases this unit has enjoyed since 1988 shows a 65% cumulative increase standing opposite a 32.9% CPI increase for those same years. Hence, we see the PBA enjoy a vast advantage going into 1997. With the CPI presently in the high 2% or 3% range, clearly the City's offer prevails under this extremely relevant criteria. This is not to say that these numbers alone warrant the adoption of the City's offer as presented and unaltered. It does mean proper deference must be shown to that offer when contrasted with the PBA's.

One final comment, PBA counsel argues that the additional percentage points the PBA succeeded in achieving over recent years over both Garfield blue and white collar bargaining units as well as over the CPI should be recognized as trends in the City's collective bargaining history which supports the PBA's present final offer. This contention is rejected outright. To begin with nothing but the actual figures exist in the record. If counsel arguments were even to be considered, evidence of negotiation history would have to be introduced to even entertain such a theory.

COMPARABILITY

PBA counsel's contention that the private sector comparisons suggested by the employer are not appropriate comparisons, while containing some truth, does not suggest that all private sector comparisons are entirely worthless. The statute requires that the private sector be compared. As much as one can distinguish public sector police work from private sector, what does remain at the least is a comparison of percentage wage increases paid in the private sector.

City counsel's argument that private sector increases are closer to the City's final offer than they are to the PBA's final demand is accurate.

Moving to the next statutory areas of public employment, i.e., public employment in general and public employment in the same or similar jurisdictions, the same result attains. Specifically the evidence produced substantiates the City's claim that its final offer is closer to the wage increase being paid. Discussion was included by both counsel as to the blue collar and white collar bargaining units within the township, represented by labor organizations and in contract with the City. As an example, even discounting the salaries paid within the units, the fact exists that over the past eight years the blue collar units have averaged 1.125% per year less of an increase than the police department. While it will always be true that these public and private sector employees will never equate directly with police officers for all of the obvious reasons of job safety, professional responsibility, exercise of discretion and shift work, the question must be asked whether this annual additional increase must continue in perpetuity as Union Counsel suggests when he argues that it can be considered to constitute a pattern or practice which should continue. The fallacy of that argument appears to be obvious. Projecting that theory out on a hypothetical \$30,000 starting salary results in the officer earning nearly \$6,500 per year more than the blue collar employee after only 10 years. Over a lifetime career of 20 years, the difference would grow to \$18,910 per year. Accordingly, this arbitrator does not accept the PBA's suggestion that such a difference in the ratios belong to the police forever. The conclusion one reaches after reviewing this statutory criteria is that the offer of the City is the more reasonable since it is closer to the average increase in the private sector and in the public sector in general.

We now turn to the discussion of the comparability of compensation police officers receive in similar jurisdictions. The City introduced approximately 12 awards and settlements. PBA counsel's objections to certain of these such as Stanhope, Asbury Park, Cherry Hill and the New Brunswick Fire Department, have legitimate elements (distance, nature of the work, socio-economics of the area) to limit their value as comparisons. Others so listed such as the State and the State Law Enforcement Council (correction officers) are valid as to comparability. Similarly, PBA counsels list of comparable are not totally representative. For example, as justification for the PBA's three 5.5% per year demand, counsel lists 24 departments - all but 2 of which are in Bergen County - and proceeds to calculate the average increases they received throughout 1999. However, only five of those 24 have settled for 1999 and only thirteen have settled for 1998. Even in 1997 while he lists 22 Bergen County Communities, this represents less than 1/3 of the county's 70 municipalities. Even taking these municipalities selected by PBA counsel for comparison, the average increase is 4.508% for 1997. While it would be impossible to complete a town by town assessment of 70+ communities in Bergen or even the 22 cited by counsel, a review of data submitted in the Planners Data Book and other material, it is obvious that these towns do not share the unenviable position Garfield does as to the second lowest per capita income and lowest median and mean income households in the County. Although the ability to pay and financial impact will be dealt with separately, it is not inappropriate to site it when dealing with comparability. If one attempts to assess winner/loser under this criteria it has to be concluded that there are none.

While Union Counsels arguments are convincing that a 1%, 2%, 2% package is not reasonable, so also did he fail to justify three 5.5% increases - far above even his somewhat cherry-picked selection of comparables. A careful examination of this subpart of the criteria

leads to the inescapable conclusion that the most reasonable award must be deemed to be somewhere between the two final offers of the parties.

OVERALL COMPENSATION

A review was made of the overall compensation the Garfield Officers received including PBA counsel's contention as to their inadequacy. Counsel has not proposed any increases in these additional sources of compensation. He does argue, however that they serve to prove that nothing offsets or compensates for the inadequate salaries, he argues, they receive. On balance, this arbitrator finds that the members of this department appear to be adequately compensated when their overall compensation is reviewed. For that reason, although a review of the overall compensation received by an employee is essential to our statutory charge - in this case neither side can be said to prevail.

INTERESTS AND WELFARE OF THE PUBLIC

This statutory criteria is a moveable feast. It can relate to a panoply of topics. While the PBA argues the effectiveness, productivity and professionalism of the force and the necessity to fund salary increases to guarantee the sustainability of those qualities, City counsel argues the interests and welfare of the citizens of Garfield are best served by providing fair wages while insuring the economic viability of the City. Clearly police officers in a critical people contact, public safety position, must be given recognition for their assumption of a job with such inherent risks. It is also obvious that no governmental entity can price itself out of the economic stability by inordinate raises. Ironically, as has been argued in other cases, many affluent towns can afford to pay a patrolmen very high wages, where as urban areas where the job demands are greater cannot prudently afford such largess. Accordingly, many patrolmen in Garfield and other urban areas take exception to the unfairness of their compensation compared with their peers. In

light of the economic realities involved in a financially burdened town such as Garfield, it is in the best interest and welfare of the public that an award issue at the rate set forth below which while they exceed the average of the recent CPI's are less than the average settlements the PBA counsel attributes to his list of comparable communities.

FINANCIAL IMPACT

Many of Union counsel's arguments relating to financial impacts are on point. His explanation of the percentage share taken up by the school budget and the county budget and the small amount of the overall budget that police appropriation actually represents are accurate and telling. However, those budget segments and expenditures are alone susceptible to political pressure. In dealing with interest arbitration for police salaries, the legislature has created the interest arbitration system. In effect, a third party has been placed in the equation. The interest arbitrator must exercise his statutory authority with a view toward the impact of any increases he awards. In this case, the testimony of former Auditor, John Nunno and the Association's second financial expert, Dr. Robert Werner, established that the City's revenues could fund the percentage increase sought by the PBA. As counsel argues, this budget contains flexibility of \$175,395 to afford to pay its final offer. Standing as a sum alone that is true. However, much in additional costs - both real and psychological, flow from these increases beyond the \$175,395. While this figure represents the cost of 1% point increase at the 5.5% rate of increase sought by the Association, this represents but a base cost. From this year forward, it contains a built in factor that will always add cost to the City in funding the departments budget. Flowing from these real costs are the psychological heightening of the barrier the City will face in subsequent negotiations with this and other units. In brief, while the financial cost on the City itself can be

said to be affordable, the impact in this arbitrator's judgment of that high a percentage is not bearable.

Moreover, when we move to the Citizens and taxpayers, the impact offers even more reasons to conclude that the 5.5% annual increase is excessive. The City has established that the median and mean income of a Garfield household is the lowest in the County. Nearly one in five residents is a Senior Citizen presumably living on a fixed income. The PBA has failed to totally justify the entire amount of salary increase it seeks beyond the cost of living. Even amongst the 24 communities counsel picked for a basis of comparison in 1997, none of them are at 5.5%. Conversely the City has failed to prove the necessity or reasonableness of a 1% increase for that same year. In light of all of the statutory factors evaluated, but particularly those of financial impact, the cost of living, comparability, and the interest and welfare of the public, it is concluded that the most reasonable wage award would be as follows:

1997 - 3.75%

1998 - 3.75%

1999 - 4%

The PBA also requested within economic items an hourly rate clarification so that the contract reads 1,946 rather than the 2,080 hours to reflect the hours actually worked. Counsel asserts this is not a change, "but sort of a housekeeping adjustment".

Also, within the list of economic items is the request that holidays be paid out over the year rather than in a lump sum payment. Counsel acknowledges this is a cost item since the hourly rate will be enhanced very slightly. Although the enhancement is not specified, the arbitrator has calculated its perceived impact and has affirmed for himself counsels conclusion and representation of the slight additional cost. City counsel argues that no evidence or

testimony was submitted in support of either the hourly rate formula or the addition of the sole non-economic police services clause to the contract. To the extent that his comment applies to the police services clause, I agree and decline to award it.

The impact of the change in the hourly rate formula raises concerns which the PBA's presentation failed to address. I regard the burden existing on the party seeking to add language to a contract and I conclude that the PBA has failed to meet the burden by showing that as it exists it creates a problem that has an effect which equitably should be changed. In brief, beyond the recognition of the "mistake" counsel has failed to establish that the correction need to be made. Since it was listed under an economic item, I also have concerns about arguments that might result in the future over the proposed change. Although this concern might not be justified, PBA counsel failed to offer a sufficient reason for the change or make an affirmative statement that no possible economical detriment could result to the City as a result of the awarding such a "housekeeping adjustment".

Accordingly I decline to award the request for hourly rate formula change and the police services clause. As cited above, I have awarded the economic request that holiday pay be folded into the annual salary.

Numerous arguments were raised by both side which were relevant to the statutory criteria but which may not have been cited in the position of the parties or if they were, were not specifically addressed in my discussion section. All such arguments were considered and evaluated and the mere written omission of them herein should not be interpreted to the contrary.

Accordingly I award the following:

AWARD

1. Duration 1/1/97 through 12/31/99 Wage increases apply across the board on each rank, step and position in the PBA contract as follows:
 - a. Effective 1/1/97 an increase of 3.75%
 - b. Effective 1/1/98 an increase of 3.75%
 - c. Effective 1/1/99 an increase of 4%

2. I direct that the Holiday Fold In proposal of the PBA be awarded beginning in 1998 and going forward. The fold in for the balance of 1998 can be effectuated with the reasonable discretion of the City based on the ability of its payroll department to make such necessary adjustments.



ERNEST WEISS,
ARBITRATOR

STATE OF : NEW JERSEY)
COUNTY OF: MONMOUTH)

On this 25th day of March 1998, before me personally came and appeared ERNEST WEISS, to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed same



JILL E. FARKAS
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires May 5, 2000

