

**PUBLIC EMPLOYMENT RELATIONS COMMISSION**

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**In the Matter of the Arbitration      \***

**Between**

**Township of Cranford**

**and**

**PBA Local 52 and SOA  
FMBA Local 37 and FSOA**

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**Docket Nos. IA-96-73 & IA-96-79  
Jeffrey B. Tener  
Interest Arbitrator**

**OPINION AND AWARD**

**Background and Procedural History**

I was appointed as the interest arbitrator in these matters by letter dated October 24, 1996 from the Public Employment Relations Commission. A hearing, which was transcribed, was held on January 9, 1997 at the municipal building in Cranford. The Township was represented by John F. Laezza, Administrator; the Associations were represented by Dr. Simon M. Bosco, Consultant. The transcript was received on January 25, 1997, thereby marking the close of the hearing.

Four bargaining units are involved in this consolidated proceeding by agreement of the parties. They are the Patrolmen and Detective Patrolmen Bargaining Unit of PBA Local No. 52, the Police Superior Officers' Bargaining Unit of PBA Local No. 52, Firemen's Mutual Benevolent Association Local No. 37, and the Cranford Fire Officers Association.

The Township and the four employee organizations were parties to separate collective bargaining agreements all of which covered the term January 1, 1993 through December 31, 1995. These agreements were signed in July 1993.

The Township and the four organizations signed two tentative agreements, one of which covers the two PBA groups and is dated July 16, 1996 and the other of which covers the two organizations of firefighters and is undated. The two agreements are similar in that they both provide for wage increases of 4% for 1996, 1997 and 1998.

The agreement which covers the police officers provides for an academy rate of \$20,000 and a probationary rate of \$25,000 which applies during the first year of employment. Those rates were \$21,200 and \$27,560 in the last year of the prior agreement. A new step will be added after the probationary level for employees hired after December 31, 1995 and that step will be 10% above the probationary level. It also provides for an increase in the point value of the merit incentive to \$26.00 in 1996, \$27.00 in 1997 and \$28.00 in 1998. This program awards additional payments to officers based on class hours of approved courses, years of service in the department, approved credit hours earned in institutions of higher learning, a qualifying average mark in annual in-service training examinations and degrees. The agreement provides for an increase in the uniform allowance from \$575.00 to \$625.00 effective in 1998. There also is an increase in the additional annual increment program for detective patrolmen and traffic investigators. The final item reads as follows: "Parties agree to arbitrate single issue of terminal leave."

The agreement which covers the firefighters provides for a starting wage of \$25,000. This rate was \$27,560 in 1995. The rates for fire inspectors were increased. Per diem emergency medical technicians will be compensated at the rate of \$50.00. The uniform allowance will be increased to \$625.00 in 1998 from the current rate of \$575.00. There were the same increases in the merit incentive program as the increases described above under the PBA agreement. Finally, the final point reads as follows: "Terminal Leave - Parties agree to arbitrate single issue."

Thus, the two tentative agreements which cover the four police and fire bargaining units are essentially similar and they both provide for arbitration of the single issue of terminal leave. It is that issue which is involved in this proceeding.

The four expired agreements all include terminal leave articles. These appear as Article 24 in the two PBA agreements, as Article 36 in the FMBA agreement, and as Article 28 in the Fire Officers Association agreement. Section 7 of these four articles is similar, except that the order of several sentences have been changed. Article 24, Section 7 of the Township-PBA agreements read as follows:

Employees who complete their twenty-fifth (25) year of creditable service time within the New Jersey Police and Fire Retirement System (P.F.R.S.), shall be entitled to receive, in lieu of all Terminal Leave provisions herein above contained, two hundred (200) days pay at the Employee's current per diem rate as Terminal Leave. However, in order to qualify for said benefit, Employee must physically retire no more than one hundred eighty (180) days beyond the completion of Employee's twenty-fifth (25) year of service within the P.F.R.S., regardless of Employee's years of service with the Township. (For calendar 1993 ONLY [emphasis in original], any Employee with at least twenty-five (25) years creditable service within New Jersey P.F.R.S., shall be entitled to receive, in lieu of all Terminal Leave provisions herein above contained, two hundred (200) days pay at the Employee's current per diem rate as Terminal Leave. Said compensation may, at the Employee's option, be totally or partially deferred into the following tax year upon due notice to the Township Administrator. However, in order for those Employees with more than twenty-five (25) years creditable pension time to avail themselves of this benefit, Employee must retire no later than six (6) months following the execution of the Agreement). Any employee who does not meet this stipulation shall, as of the one hundred eighty-first (181) day beyond their twenty-fifth (25) year, only be entitled to the Terminal Leave benefits as outlined in Sections 1 through 6, herein above.

The two firefighter agreements differ only in that the last sentence of the above-quoted section, which begins with the words, "Any employee who does not meet this stipulation...", appears as the third sentence. Thus, it appears right after the sentence

which ends with the words, "regardless of Employee's years of service with the Township."

This proceeding arises under the Revised Police and Fire Arbitration Act, P.L. 1995, c. 425. Thus, in the absence of a mutual agreement to the contrary, the arbitrator is to determine the unsettled issue by conventional arbitration as set forth at N.S.J.A. 34:13A-16(d).

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

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

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

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

(c) In public employment in the same or similar comparable jurisdictions, as determined in accordance

with section 5 of P.L.1995, c.425; provided, however, that each party shall have the right to submit additional evidence concerning the comparability of jurisdictions for the arbitrator's consideration.

(3) The overall compensation presently received by the employees, inclusive of direct wages, 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 this factor are the limitations imposed upon the employer by P.L.1976, c.68 (C.40A:4-45.1 et seq.).

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

(7) The cost of living.

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

bargaining between the parties in the public service and in private employment. (N.J.S.A. 34:13A-16(g))

### **Final Offers**

At the hearing, the parties submitted final offers. The Township's final offer is that Section 7 of the four terminal leave articles be removed from the four agreements. The final offer of the four employee organizations is that Section 7 of the terminal leave articles remain unchanged in the four successor agreements. That is the only issue before the arbitrator.

### **Differences Between the Final Offers**

Under the language which appears in Section 7 of the terminal leave article of the four expired agreements, officers who physically retire within 180 days of the completion of 25 years of creditable service in the P.F.R.S. receive a terminal leave benefit of 200 days' pay at the employee's current per diem rate. This benefit is in lieu of the benefits otherwise provided in Sections one through six of the terminal leave articles. They would continue to be eligible for this benefit under the final offer of the Associations.

The effect of the Township's proposal, which is to remove Section 7 from the four terminal leave articles, would be that employees would receive terminal leave benefits as provided in Sections one through six of the terminal leave articles. A maximum benefit of 92.5 days pay upon retirement can be earned under those sections. The contracts provide for terminal leave for employees who have accrued 25 years of creditable service of two days' pay for each year to a maximum of 30 years or 60 days. Additionally, unused sick leave is compensated at the rate of one day for every four days not to exceed 32.5 days. Thus, the total maximum number of days is

92.5. An officer who retired with 25 years of service would receive 82.5 days as a terminal leave benefit.

### **Evidence and Arguments of the Parties**

In the negotiations which led to the 1993 to 1995 agreements, the PBA's proposals for the two units did not include any proposed changes to the terminal leave articles. It was the Township which proposed what became Section 7 of the respective terminal leave articles. Initially, the Township proposed that the employee retire within 90 days of the completion of 25 years of creditable P.F.R.S. service. Ultimately, the parties agreed to 180 days. The Township also wanted to eliminate terminal leave for employees with over thirty years of service. The parties agreed to freeze terminal leave for employees with over thirty years of service. The Township also wanted an additional step and a lower starting salary. The probationary salary in 1992 had been \$31,491.20 and this was reduced to \$26,000 for 1993 and 1994 and \$27,560 in 1995. An academy rate of \$20,000 was agreed to for 1993 and 1994 and this went to \$21,200 in 1995.<sup>1</sup> As stated previously, the parties agreed that for 1996 through 1998, the academy rate will be \$20,000 and the probationary rate will be \$25,000. An additional step was added so that whereas the top salary had been for a fourth grade patrolman, under the 1993 to 1995 agreement, the top salary was earned by a fifth grade patrolman.

PBA President James Switek, who participated in the 1993 negotiations as well as the current round of negotiations, testified that it had been his impression that the additional step and lower starting salary in 1993 were part of a package from the

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<sup>1</sup> There had not been an academy rate previously.

Township. He did not recall a request from the PBA membership at the time of these negotiations that the Township participate in the State's early retirement program.

There were 48 police officers in the Department in 1993 including the Chief. The figure now is 50. Eight members of the department left during the 1993 to 1995 agreement. Two more officers left in 1996 and they received a terminal leave benefit of 200 days as provided under the expired agreement. The Township replaced officers who retired as quickly as possible. There was a restructuring of the Police Department which resulted in the loss of one lieutenant and the addition of one sergeant. This was the result of a departmental reorganization.

The FMBA and the FOA did propose a change in the terminal leave provision in the 1993 negotiations. They proposed a change to Section 1 so that employees would receive two and one-half days instead of two days for each year of service upon retirement with 25 or more years of creditable service.

FOA President Leonard Dolan, who also participated in both the 1993 and current rounds of negotiations, testified that it was the Township which had proposed the addition of Section 7 to the terminal leave articles and that this was part of a package which also included a reduction in the starting salary for firefighters. He said that there had been no reference to this being a one-time offer although in the past, there had been time limits on certain items. He also cited the parenthetical portion of Section 7 which was limited to 1993 only.

Four fire officers retired between 1993 and 1995 under Section 7 as did two firefighters. One of these had over 25 years of service and had to retire before the end of 1993 to obtain the 200 days of terminal leave and he did so. The Township replaced the retiring officers as soon as possible.<sup>2</sup> In fact, the number of firefighters has been

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<sup>2</sup> There was some delay but this was due to unrelated litigation.



increased by one. In addition to the Chief, there are 10 superior officers and 17 firefighters.

Dolan testified that in the current negotiations, the Township stated that Section 7 should be removed from the contract because it was supposed to be a one-time benefit and that the Township had proposed a "standard benefit" of 120 days.

Dolan said that he recalled an interest among some of the firefighters in the State's early retirement plan but he denied that he discussed this with the Township nor was he aware that any firefighter had discussed it with the Township. He understood the Township's proposal as an incentive to senior officers to retire but he did not understand that it had been made in the context of the State's plan.

Bosco serves as the negotiator for the Associations. It was he who wrote what became Section 7 of the four agreements. The contracts have been typed by the Township.

Thomas Grady, the Township's Director of Finance, Tax Collector and Treasurer, has participated in the negotiations the last ten years for the Township. He said that prior to the commencement of the 1993 negotiations, the State had come out with a retirement incentive plan which would add five years of service to an employee's creditable time. He testified that a number of firefighters and police officers spoke to him about the plan and whether the Township was going to participate. Grady did some calculations of the costs and the Township received some cost figures from the State and decided not to participate in the State plan.

He agreed that the Township had made a terminal leave proposal, which became Section 7 of the four agreements, but he testified that it was offered as a one-time package similar to the State plan. The purpose was to stimulate retirements and open up promotional opportunities for younger officers and he said that it had done

this. He denied that the Township had linked its terminal leave proposal to savings resulting from hiring cheaper replacements, although he recognized that there is a savings for six years when an officer retires and is replaced with a new one. The Township assumed, he said, that there was a sunset provision but this was not written into the contract. He said that the budgets in 1993, 1994 and 1995 were different from what they had been in prior years. In 1993, 1994 and 1995, there was a single and separate account for terminal leave which covered the entire Township. Previously, terminal leave had been included in departmental budgets.

Grady estimates that 20 employees in the Police and Fire Departments could retire in the next three years. This includes the chiefs of the two departments (who are not in the bargaining units) and the two officers who have retired already and received the 200-day terminal leave benefit. This figure includes not only those who will reach 25 years of service but also those who have exceeded 25 years of service and are not eligible for 200 days terminal leave.<sup>3</sup> He placed an estimated cost on these retirements at \$1,000,000 which is six tax points.

There are five police officers who have over 25 years of service and would not be eligible for the 200 days of terminal leave if it were continued. Based on 15 employees who would be eligible for 200 days of terminal leave, Grady estimated that the cost would be \$750,000. The cost for these same employees would be about \$375,000 if Section 7 were removed, he projected.

Grady estimated the average annual salary of the 15 employees who would be eligible for 200 terminal leave days at \$60,000. The work year is 260 days. Therefore,

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<sup>3</sup> Grady agreed that based on his overall estimate of 20 employees eligible to retire with 25 or more years of service in the two departments in the next three years, the two chiefs are not in these bargaining units and five police officers have exceeded 25 years of service and would not be eligible for 200 days' terminal leave. Thus, 13 bargaining unit employees are affected.

200 days of 260 days is 76% of a year's salary. Thus, the cost for each employee who participated would be about \$45,000 based on the estimated average salary of \$60,000.

The Township asserts that, excluding Section 7, the contractual terminal leave benefit, which provides for up to 92 ½ days, is substantially higher than that in most of Union County. In support of this contention, it submitted the collective bargaining agreements for police officer and firefighters, both rank and file and superior officers, throughout the County.<sup>4</sup> Most of the contracts provide not a terminal leave benefit but rather one related to unused sick leave.

The Township insists that a return to the terminal leave provisions which were in the agreements prior to 1993 will keep these employees at the top of the range in the County for both police officers and firefighters. The 92 ½ days is said to be fair.

It emphasizes that its intention was that the incentive for retirement, as expressed in its proposal which became Section 7 in the four agreements, be for one contract only to promote movement. It was not intended to go beyond the three years of the 1993 to 1995 agreements.

As viewed by the Associations, the question is whether the status quo should be altered. The Township made the proposal to add what became Section 7 of the terminal leave articles in 1993 because it wanted to provide an incentive for employees to retire. The Township wanted and obtained a quid pro quo in the form not only of lower starting salaries but also an additional step, thereby increasing the savings realized by the Township.

The Associations note that the parties agreed to further reduce the starting salaries in 1996 and to freeze them for three years and to add still another step to the

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<sup>4</sup> Contracts covering twenty police units and thirteen firefighter units were provided.

**PBA agreement. Thus, the Township will continue to enjoy the benefits it obtained. The Associations also should enjoy the benefit they obtained. Not only does this provide for consistency and stability but it will continue to provide an inducement for employees to retire after 25 years of service, thereby assuring continuing promotional opportunities. The rationale for the program is as valid now as it was when first proposed by the Township.**

**While recognizing that the benefit as written, which provides for a flat number of days, is unique, it denies that the Township is at the top of the County in this regard. Some municipalities pay more and some pay less.**

**The Associations note that the provisions, as written, do not contain sunset provisions. They deny that they would have agreed to a provision which expired, especially since the firefighters had been seeking an increase in the benefit. The fact that Bosco wrote the language is said to be meaningless. The Township had every opportunity to review it and to tell the Associations if the language did not accurately reflect the agreement and understanding of the parties. It is pointed out that it was the Township which prepared and typed the final contracts. Several months passed between the time the agreements were reached in March 1993 and July 1993 when the contracts were signed.**

**The Associations dispute the Township's cost figures because they fail to take into account the savings associated with hiring replacement officers at the probationary salary and the lower salaries which will continue for six years.**

**The Associations also note that the Township did not initially propose the elimination of Section 7; rather it simply proposed a reduction to 120 days. They deny that there is any reason to change the status quo and insist that the original reason for the proposal still exists: to move senior employees.**

## **Discussion**

The parties have agreed that the only issue to be decided in this proceeding is that relating to terminal leave. As set forth in their tentative agreements, they have concluded agreements which cover all other items which are to be included in the successor collective bargaining agreements which will cover 1996, 1997 and 1998. There will be wage increases of 4% in each of those three years in each of the four units which are involved in this consolidated proceeding: rank and file police officers, police superior officers, rank and file firefighters and fire superior officers. The starting salaries for the rank and file units will be reduced from the 1995 levels and a step will be added after the probationary level for newly hired police officers. Merit incentive will be increased by \$1.00 per point per year and the uniform allowance will be increased by \$50 in the third year of each agreement. Certain other "schedule" employees also will receive increases as set forth above.

Because of the parties' agreement to limit this proceeding to the single issue of terminal leave, they have not presented, nor have I requested, evidence that does not relate to this issue. The parties intentionally have limited the scope of this proceeding to the terminal leave issue and I shall decide that issue on the basis of cost calculations and other considerations, including references, where relevant, to the above-quoted statutory criteria.

The statute, as amended, requires that, "The arbitrator shall separately determine whether the total net annual economic changes for each year of the agreement are reasonable under the eight statutory criteria set forth in subsection g. of this section." N.J.S.A. 34:13A-16(d)(2).

The only party to this proceeding which is proposing a change is the Township. The four employee organizations are simply proposing a continuation of the status quo.

The Township is seeking to reduce an existing benefit. Therefore, the total net annual economic changes for each year of the agreement would be zero under the proposal of the employee organizations and the total net annual economic changes would be negative, i.e. a reduction of costs, under the proposal of the Township

Although the Township asserts that its intention was that Section 7, which was added to the 1993 to 1995 agreement at the urging of the Township, would be in effect only for the term of those agreements, there is no language which would reflect or support this assertion. The parties' agree that there is no sunset provision included in Section 7.

While it may have been the intention of the Township that this benefit would cease to exist at the expiration of the contract, not only do the agreements not say that Section 7 will expire with the contracts but Section 7 does include language which expressly applies only for a limited time. All four agreements require that employees retire no more than 180 days after the completion of 25 years of service within P.F.R.S. in order to be eligible for 200 days' terminal leave but, significantly, they also provide a one-time opportunity for employees who then already had over 25 years of service to take advantage of the same opportunity. Thus, the agreements provide as follows:

**For calendar year 1993 ONLY, [emphasis in originals] any Employee with at least twenty-five (25) years creditable service within New Jersey P.F.R.S., shall be entitled to receive, in lieu of all Terminal Leave provisions herein above contained, two hundred (200) days pay at the Employee's current per diem rate as Terminal Leave.**

After providing for the compensation to be deferred to the following tax year, they  
continue:

However, in order for those Employees with more than twenty-five (25) years creditable pension time to avail themselves of this benefit, Employee must retire no later than six (6) months following execution of this Agreement.

It is evident, therefore, that the parties knew how to write language which limited the duration of a benefit and did so when writing the very section of the agreements which the Township now seeks to change. The quoted language did specifically limit this benefit for a fixed amount of time for a class of employees and the failure of the parties to include a similar provision regarding the total benefit is not consistent with the Township's position.

This benefit, of course, like all other terms of an agreement, is subject to re-negotiation at the expiration of the agreement and the Township did initially propose not that Section 7 be eliminated entirely, as it now requests, but that the number of terminal leave days be reduced from 200 to 120. The Township apparently recognized the negotiability of the provision and the possibility that it could be changed.

It is the Township which is seeking to alter the status quo. Generally, the burden is on the party seeking a change in the status quo to justify the proposed change. The Township makes a comparability argument as well as a cost argument, both of which implicate the statutory criteria.

Based on a review of the contracts which were submitted, it is evident that a benefit of 200 days is one of the best in the County. Exact comparisons are difficult because most of the plans really are payment for unused sick leave so the benefit depends upon the usage of sick leave. The Township's provision is unique in that it provides payment for a flat number of days. It also is unique in that it requires officers to retire within 180 days of completing 25 years of creditable pension service. Thus, the Township's plan clearly is designed to encourage officers to retire after 25 years. Such a retirement incentive does not appear in the other contracts submitted.

Several communities have benefits which are close to those provided by the Township. Plainfield's police officers and firefighters receive a six-month leave of

absence at retirement plus one additional day for each three unused sick days which exceed those that would be used in six months. Rahway's police officers receive one day for each unused sick day for the first 120 days and firefighters one day for each unused sick day for the first 90 days. These employees also receive additional unused sick days on a one for three basis. Police officers in Kenilworth receive two days per year after 25 years as terminal leave and all unused sick days in a lump sum payment or time off. Police officers in Union receive 40% of the monetary value of unused sick leave upon retirement and they accumulate 16 sick days per year in their 6<sup>th</sup> to 10<sup>th</sup> years of employment, 17 days per year in their 11<sup>th</sup> to 15<sup>th</sup> years of employment, 18 days in their 16<sup>th</sup> to 20<sup>th</sup> years of employment, 19 days per year in their 21<sup>st</sup> to 25<sup>th</sup> years of employment and 20 days per year from the 26<sup>th</sup> year forward. Thus, again depending on sick leave utilization, this benefit can exceed that available in Cranford.

The benefits in the other municipalities are less than those cited above. Some are better than the entitlement provided in the first six sections of the terminal leave articles in the Township and many are less favorable. It is my conclusion that, although the terminal leave benefit in Cranford provided under the first six sections of the terminal leave articles as well as that provided under Section 7 of those articles is among the most generous in the County, it is not so exorbitant as to justify a change in the status quo by an arbitrator.

This conclusion is reinforced when it is remembered that the parties agreed to reduce the starting salaries and to add steps to the salary schedule in 1993. The new 1996 to 1998 agreements not only continue the lower rates and longer schedules which were accepted when Section 7 was added to the agreements but the starting rates were again lowered in 1996 and will remain frozen for the three years of the new agreements. Additionally, in 1996, the PBA agreed to the addition of another step in



the schedule. The effect of these changes, of course, is to reduce the costs to the Township of employing newly hired police officers and firefighters.

The other basic consideration relates to costs. It is not possible to place an exact figure on the effect of this proposed change because it is not known if the existence of the benefit induces officers to retire after 25 years of creditable service rather than working longer at full salary and enhancing their pension. That, however, was the goal of the Township when it made the proposal in 1993 and, according to Grady, the effect was to stimulate retirements.<sup>5</sup>

To place this matter in some perspective, the number of employees in the Police and Fire Departments who are or will be eligible to retire in the next three years with 25 years of service was placed by Grady at 20. That figure includes the two chiefs, who are not in the bargaining units and should not be included in these cost calculations, and five police officers who have exceeded 25 years of service and will not be eligible for 200 days' terminal leave and are not affected by this decision in any way.<sup>6</sup>

That means that there are 13 bargaining unit members who would be eligible for this benefit during the term of this contract. Actually, two of them already retired during 1996 and they received the benefit of 200 days' terminal leave, presumably on the theory that the status quo had to be maintained until a successor agreement was signed.

Grady estimated that the average salary of a retiring officer would be \$60,000. Based on a work year of 260 days, he approximated the cost of the terminal leave

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<sup>5</sup> See Tr. 103, line 21 to 104, line 17 which includes the following statement by Grady in response to the question of what benefit the Township hoped to derive by proposing the retirement incentive: "One of the major reasons that it was done was because it was thought that it would, number one, stimulate retirements, which it did, which would mean that older people probably were hanging on who would now have the incentive to leave."

<sup>6</sup> They will, of course, receive the terminal leave benefits provided in sections one to six of the terminal leave article.

benefit for each retiring officer who received 200 days' terminal leave at \$45,000. The cost of the terminal leave benefit for 13 officers, assuming that they all left within 180 days of completing 25 years of creditable service, would be approximately \$585,000. Under the Township's proposal, even if the officers still retired after 25 years of creditable service, they would receive 82 ½ days and the cost per officer would be \$19,038<sup>7</sup> or \$247,500 for 13 officers. The difference between the cost of 200 days and 82 ½ days is \$25,962 per officer or \$337,500 for 13 officers. These figures, however, disregard the savings realized by the Township which occur when a senior officer retires and is replaced by a new officer.

If the existence of the benefit induces an officer to retire after 25 years rather than after 28 years, the Township would realize a net savings. To illustrate, an officer who retired at the beginning of 1996 would receive a terminal leave benefit of approximately \$45,000 in 1996 for 200 days. Without Section 7, that officer would receive 82 ½ days or \$19,038. Thus, the marginal cost of Section 7 is \$25,962. If that officer were replaced on January 1, 1996 - the Township has endeavored to replace retiring officers as soon as possible, although it could save additional money if it did not do so immediately - it would pay the new officer the academy rate of \$20,000 for the first six months of 1996 and the probation rate of \$25,000 for the second six months of 1996 or an annual salary of \$22,500.<sup>8</sup> The net savings to the Township would be \$11,538 in 1996: \$19,038 in extra terminal leave benefits to the retiring officer plus

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<sup>7</sup> \$60,000 divided by 260 days times 82 ½ days equals \$19,038.

<sup>8</sup> A number of benefits received by senior officers exceed those received by new officers. Thus, the senior officer receives additional vacation time and has greater longevity, merit, social security and pension costs. I have not included these in this rough calculation but do note that the effect is to further increase the reduction in costs associated with the new hire as opposed to the officer with 25 years of service.

**\$22,500 to the new officer minus the \$60,000 that the retiring officer would have earned had he not retired.**

**In 1997, the new officer would receive the 1995 rate for a 1<sup>st</sup> grade patrolman plus two 4% increases or \$36,130. The salary of the officer who retired would also have gone up by 4% in 1997. Using the 1996 average salary of \$60,000, the salary would be \$62,400 in 1997. This means that the Township's costs are less that year by \$26,270. At that point, the Township's two-year expenditures would be \$37,808 less than they would have been had the officer not retired.**

**In the third year of the agreement, 1998, the Township would have paid an additional 4% to the officer who retired or \$64,896. The officer hired at the beginning of 1996 would then be a 2<sup>nd</sup> grade patrolman earning, with the 4% annual raises, \$44,338. The Township would have lower costs by \$20,558 in 1998 as a result of the retirement of the officer after 25 years as opposed to 28 years and his immediate replacement by a new hire.**

**The overall reduction in costs to the Township would be \$58,366. This reduction, of course, would be repeated for each officer who retired after 25 years in order to get the 200 day's terminal leave benefit rather than remaining through 28 years.**

**The purpose of setting forth these calculations is to indicate that, to the extent that Section 7 has the effect intended by the Township, i.e. to induce employees to retire after 25 years, the result is a reduction in costs to the Township. Grady testified that the Township believed that Section 7 did have this effect. If that is correct, it does in fact result in a decrease in Township costs.**

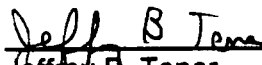
**On this basis, it cannot be said that the Township has provided a justification for the change in the status quo. The system which it proposed in 1993 apparently is**

having the desired effect of causing officers to retire after 25 years, thereby not only providing younger police and fire services and more promotional opportunities but financial savings to the Township as well. I shall not modify the status quo.

AWARD

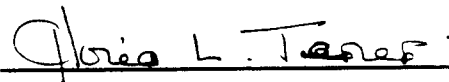
Based upon a careful consideration of the evidence and the arguments of the parties, I hereby issue the following award: Section 7 in the terminal leave articles in the four collective bargaining agreements which are affected by this proceeding shall continue as they were in the 1993 to 1995 agreements.

Dated: February 7, 1997  
Princeton, NJ

  
\_\_\_\_\_  
Jeffrey B. Tener  
Arbitrator

State of New Jersey)  
County of Mercer) ss.:

On this 7<sup>th</sup> day of February, 1997, before me personally came and appeared JEFFREY B. TENER 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 the same.

  
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GLORIA L. TENER  
NOTARY PUBLIC OF NEW JERSEY  
MY COMMISSION EXPIRES SEP 12, 1999