

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
P. O. BOX 429
TRENTON, NJ 08625-0429

Docket No. IA-97-128

In the Matter of Arbitration Between

SOUTH BRUNSWICK TOWNSHIP

-Employer-

and

**POLICE BENEVOLENT ASSOCIATION,
LOCAL 166**

-Union-

OPINION

AND

AWARD

ARBITRATOR:

Robert E. Light, mutually chosen by the parties pursuant to the rules and regulations of the New Jersey Public Employment Relations Commission.

MEDIATION SESSIONS/
FORMAL HEARINGS:

October 7, 1997, January 12, 1998, March 20, 1998, June 4, 1998; and August 21, 1998. Both counsel thereafter after filed post-hearing briefs.

APPEARANCES:

For the Employer

James McGovern, Esq., Brian O. Lipman, Esq., GENOVA BURNS & VERNIOIA, Township Labor Counsel (pre January 1, 1999)

Frederick T. Danser III, Esq., APRUZZESE, McDERMOTT, MASTRO & MURPHY, Township Labor Counsel (post January 1, 1999)

Robert J. Merryman, Esq., APRUZZESE McDERMOTT, MASTRO & MURPHY

Donato Nieman, Township Administrator

Stuart M. Migdon, Health Benefits Consultant

Ralph Palmieri, Chief Financial Officer

For the Union

James M. Mets, Esq., SCHNEIDER GOLDBERGER, et al
Richard Kunze, Negotiation Team
Martin Conte, President
Vincent J. Foti, Financial Expert
Bob Carinski, Negotiation Team
Charles W. Cart, Negotiation Team

BACKGROUND

The undersigned was mutually selected by respective counsel to serve as the Interest Arbitrator in this matter. My formal appointment through the Public Employment Relations Commission by letter from Timothy A. Hundley, Director of Arbitration was dated August 5, 1997.

The parties initially met with me on October 7, 1997 and January 12, 1998 in mediation sessions. While progress was made, it became apparent to me that no voluntary settlement would be reached and, as a result, the matter was set down to be decided in a formal interest arbitration hearing with conventional authority resting in the Arbitrator, pursuant to the statute.

Hearings were held on March 20, 1998, June 4, 1998, and August 21, 1998. At the conclusion of the hearings, a schedule was set down which called for briefs to be postmarked November 1, 1998. Replies, if any, were to be postmarked within ten days.

Subsequent to the closing of the hearings, counsel for the Township was replaced after the November 1998 elections. As a result, there was an inevitable delay while new

counsel for the Township became familiar with the record to date. A conference was held with both counsel on January 12, 1999. In the following few weeks, both counsel unsuccessfully initiated additional efforts to voluntarily resolve the contract. Although briefs were filed in early February by PBA counsel and in early March by Township counsel, settlement discussions continued over the next two months, after which it was eventually determined by counsel and the Arbitrator that the parties had reached an ultimate impasse over several issues and an award would have to issue from the Arbitrator. Note should be made that all counsel, namely, Mr. McGovern, Mr. Danser, and Mr. Merryman for the Township, and Mr. Mets for the PBA, served their clients extremely well in this complex arbitration and delivered totally professional performances which narrowed the dispute and came very close to producing a voluntary settlement. Unfortunately, however, no settlement eventuated so that the Interest Arbitrator had to decide the case.

Controlling Statute

The statutory device to resolve labor disputes between municipalities and public safety unions is set forth in N.J.S.A. 34:13a-16. The terminal procedure for this binding interest arbitration is outlined in N.J.S.A. 34:13A-16(d), which provides in part:

“...d. The following procedure shall be utilized if parties fail to agree on a terminal procedure for the settlement of an impasse dispute:

(1) In the event of a failure of the parties to agree upon an acceptable terminal procedure the parties shall separately so notify the Commission in writing, indicating all issues in dispute and the reasons for their inability to

agree on the procedure. The substance of a written notification shall not provide the basis for any delay in effectuating the provisions of this subsection.

(2) Upon receipt of such notification from either party or on the Commission's own motion, the procedure to provide finality for the resolution of issues in dispute shall be binding arbitration under which the award on the unsettled issues is determined by conventional arbitration. 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...."

In determining which final offer to accept, the Arbitrator is required by N.J.S.A. 34:13A-16(g) to consider the following factors:

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. , c. (C.)(now pending before the Legislature as this bill); provided, however, that each party shall have the right to submit additional evidence concerning the comparability of jurisdictions for the arbitrator's consideration.

[(b) in comparable private employment.

(c) in public and private employment in general.]

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

4. Stipulations of the parties.

5. The lawful authority of the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by 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 monies have been designated by the governing body in a proposed local budget, or (c) initiate any new programs and services for which public monies 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.

FINAL OFFERS

THE PBA'S FINAL OFFER (source: PBA brief, pages 6-8)

The PBA seeks the following contract modifications:

I. Duration of Agreement

Four (4) years - commencing January 1, 1997 through December 31, 2000.

II. Article III, Salary

C. Effective and retroactive to January 1, 1997, increase base salary by 5.0%.

D. Effective and retroactive to January 1, 1998, increase base salary by 5.0%.

E. Effective [and retroactive to] January 1, 1999, increase base salary by 5.0%.

F. Effective January 1, 2000, increase base salary by 5.0%.

III. Article V, Personal Days

Increase by one (1), effective and retroactive to January 1, 1997.

IV. Article XXVIII, PBA Representative/Collective Negotiations

A. Add paragraph 5 to incorporate the August 21, 1996 settlement agreement between the PBA and the Township regarding PBA leave for State Delegate and Alternate State Delegate as follows:

5. PBA DELEGATE AND ALTERNATE DELEGATE LEAVE.

a. The PBA Delegate or Alternate Delegate will be entitled to ten (10) days leave per calendar year to attend various delegate meetings.

b. The ten (10) days are not cumulative.

c. The Delegate or Alternate Delegate will give the Chief or his designee reasonable advance notice when he is taking PBA leave time for scheduling purposes.

- d. *The PBA will provide the Chief or his designee with the names of the individual officers serving as the PBA Delegate and Alternate Delegate.*

B. Add paragraph 6 regarding PBA business for the PBA President as follows:

- a. *The PBA President will be entitled to ten (10) days leave without loss of pay per calendar year to attend to PBA business.*
- b. *The ten (10) days are not cumulative.*
- c. *The PBA President will give the Chief or his designee reasonable advance notice when he is taking time off for PBA business for scheduling purposes.*
- d. *PBA Business leave may be taken in increments of one (1) hour or more.*

V. Article VI, Hours of Work and Overtime

Modify paragraph 3, B as follows:

When the Court action at which the Officer is to appear has been disposed of for the day, the Officer shall be dismissed from duty unless his shift has started.

VI. Article XVII, Medical-Health Benefits

Modify paragraph 7 as follows:

Reduce the 30 year requirement for prescription and dental to 25 years. Also, include the dependents of retirees for prescription and dental benefits.

VII. Status Quo

All other terms of the January 1, 1994 through December 31, 1996 Collective Bargaining Agreement between the parties shall remain status quo.

THE TOWNSHIP'S FINAL OFFER (source: as set forth in PBA brief, pages 9-10)

The Township has proposed the following modifications and give-backs:

1. **Term of Agreement**

January 1, 1997 to December 31, 1999.

2. **Wages**

January 1, 1997 3%

January 1, 1998 3%

January 1, 1999 3%

3. **Longevity**

Eliminate Longevity for new hires hired on or after January 1, 1998.

4. **Article XVII. Medical Health Benefits**

Amend to provide:

Effective March 1, 1998, the Township will pay the premium for the employee and eligible family members for the managed care plan. If the employee elects to be covered under one of the other Township approved plans, the employee will be required to contribute the following percentage of gross annual salary or the difference in cost to the Township between the managed care program and the program the employee elects to participate in, whichever is less, on a weekly basis, based on his/her gross annual salary each year:

Employees earning \$39,999.99 or under will contribute 1% of their gross annual salary; and

Employees earning \$40,000 or more will contribute 2% of their gross annual salary.

In no event will the employee be required to contribute more than the cost difference incurred by the Township between the managed care plan and the plan selected by the employees.

The co-pay for indemnity plan medical visits will be \$2.00 per visit.

5. Article XIX, Education and Training

Amend to provide:

Effective January 1, 1997, no member will receive total increment benefits in excess of one thousand one hundred (\$1,100) dollars.

Also add: Officers hired on or after January 1, 1998 shall not be entitled to the increment provided herein.

6. Article IV, Vacation

Section 1:

The Township proposes to modify the first sentence of paragraph C as follows:

Each officer, subject to the advance approval of the Chief of Police, may be entitled to carry over up to ten (10) earned and accumulated vacation days into the next calendar year.

THE TOWNSHIP'S FINAL OFFER (source: as set forth in Township brief, pages 6-9)

1. Article III, Salaries, shall be changed to provide for the following increases:

January 1, 1997	3%
January 1, 1998	3%
January 1, 1999	3%

2. Article XIII Longevity Plan

Eliminate longevity for all new hires hired on or after January 1, 1998.

3. Article XVII, Medical Health Benefits shall be amended to provide:

Effective March 1, 1998, the Township will pay the premium for the employee and eligible family members for the managed care plan. If the employee elects to be covered under one of the other Township approved plans, the employee will be

required to contribute the following percentage of gross annual salary or the difference in cost to the Township between the managed care program and the program the employee elects to participate in, whichever is less, on a weekly basis, based on his/her annual gross salary each year:

Employees earning \$39,999.99 or under will contribute 1% of their gross annual salary; and

Employees earning \$40,000 or more will contribute 2% of their gross annual salary.

In no event will the employee be required to contribute more than the cost difference incurred by the Township between the managed care plan and the plan selected by the employee.

The Co-payment for the indemnity plan medical visits will be two (\$2.00) dollars per visit.

4. Article XIX, Education and Training, shall be amended to provide:

Effective January 1, 1997 no member shall receive total increment benefits in excess of one thousand one hundred (\$1,100.00) dollars.

Officers hired on or after January 1, 1998 shall not be entitled to the increment provided herein.

5. Article IV Vacation, Section 1, Paragraph C shall be amended as follows in the first sentence:

Each officer, subject to the advance approval of the Chief of Police, may be entitled to carry over up to ten (10) earned and accumulated vacation days into the next calendar year.

FINAL OFFER OF PBA LOCAL 127 (source: as set forth in Township brief, pages 6-9)

1. Article III, Salary, shall be changed to provide for the following increases:

January 1, 1997	5%
January 1, 1998	5%
January 1, 1999	5%
January 1, 2000	5%

2. Article V, Paragraph 1. Personal Days

Add one (1) additional personal day effective and retroactive to January 1, 1997.

3. Article XXVIII, PBA Representatives/Collective Negotiations
Paragraph 5 will be revised to include the following:

5. PBA Delegate and Alternative Delegate Leave

- a. The PBA Delegate or Alternate Delegate will be entitled to 10 days leave per calendar year to attend various delegate meetings.
- b. The 10 days are not cumulative.
- c. The Delegate or Alternate Delegate will give the Chief or his designee reasonable advance notice when he is taking PBA leave time for scheduling purposes.

Paragraph 6 will be revised to include the following:

6. PBA Business

- a. The PBA President will be entitled to 10 days leave without loss of pay per calendar year to attend to PBA business.
- b. The 10 days are not cumulative.
- c. The PBA President will give the Chief or his designee reasonable advance notice when he is taking time off for PBA business for scheduling purposes.
- d. The PBA Business leave may be taken in increments of one (1) hour or more.

4. Article VI, Hours of Work and Overtime.
Modify Paragraph 3, B to read as follows:

When the Court action at which the Officer is to appear has been disposed of for the day, the Officer shall be dismissed from duty unless his shift has started.

5. Article XVII, Medical Health Benefits.
Modify Paragraph 7 as follows:

Reduce the 30-year requirement for prescription and dental to twenty-five (25) years.
Also, include the dependents of retirees for prescription and dental benefits.

The Arguments on Behalf of PBA Local 166's Position

In his brief, counsel for the Association argues the following points in support of the contention that the Final Offer of the PBA should be awarded in its entirety:

Interest and Welfare of the Public

In fourteen pages of his brief, counsel reviews pertinent exhibits and testimony. He argues that that material highlights services supplied by the Police Department to the diverse residents of this geographically large (41 square miles) municipality which is enjoying a booming economy, an abundant surplus, affordable property taxes and controlled development. Specifically, he notes the following facts: median family income of over \$59,000, 5th highest in Middlesex County; median single-family home value of \$182,600, 4th highest in the county; "blue ribbon" schools; and a highly professional police department. In reference to the department, counsel points out the recently adopted minimum associate degree requirement; extensive departmental training; numerous public service outreach programs such as Community Policing; DARE; Senior Citizen Check-In Program; Summer Alternative; Civilian Police Academy; and "Weapons-Violence" awareness program.

Counsel recounts the arbitration testimony on the related stories of the typical "every day" police work which has grown exponentially with the Township's development. From the drastic increase in motor vehicle accidents with increased traffic on Route 1, to routine motor vehicle stops, he seeks to demonstrate the increasing demand on the patrolmen. Statistically and anecdotally through witnesses, counsel reviews increases in the number of calls responded to which witnesses the increase in juvenile crime, domestic violence and criminal mischief. In a summary of the Department's activities, counsel argues the citizens are well-served by the Department and its officers, who every day face the threat of being assaulted or killed in the line of duty.

In viewing these factors, PBA counsel argues that the compensation package requested by the PBA is fair, affordable and well deserved, whereas the Township's Final Offer seeks to strip this unit of significant benefits and reduce the overall compensation package paid to its patrolmen.

Comparability

In his discussion of comparability, PBA counsel stresses the job and working conditions that are unique to patrolmen (rigorous training, paramilitary force, competition, education, and engagement in dangerous tasks). He argues that no other non-law enforcement positions can be said to be comparable. As a result, the mass of his comparability assessments deal with twenty-four other police departments within Middlesex County. He emphasizes that there have been virtually no improvements or increases in

benefits other than wages, nor were they asked for by the PBA, in a half dozen to a dozen years. Specifically cited are the long term unchanged status of vacation benefits, personal days, sick or bereavement leave, while, at the same time in negotiations, the PBA has "given back" on increased prescription co-pay and an additional 160 work hours per year. While attempting to put a "best face" on the picture, counsel discusses a certain number of municipalities wherein the police may well enjoy extended longevity payments, sick leave or other benefits. However, he is forced to acknowledge that South Brunswick falls above the middle of the other municipalities used for comparison purposes. This midway ranking holds true in those benefits in which the PBA is now seeking increases, viz, personal days and court time.

Counsel strenuously argues against the additional "give backs" the Township seeks. As for new hire longevity elimination, he reviews the comparables and argues there is no "trend" to eliminate this benefit as Township counsel contends, just as there is no trend to eliminate the education incentives. He argues that overwhelming evidence supports maintaining longevity for new hires and educational incentives for all patrolmen particularly in this case since it presently only applies to thirteen (27% of the unit) who hold bachelor's degrees. In brief, counsel argues there is no justification to eliminate either tuition reimbursement or degree compensation.

Great emphasis is placed on "the most offensive give back" -- the proposal for co-pay for insurance premiums. Under the Township's plan an officer would have to "give back" approximately \$1,000 for those officers earning in excess of \$40,000 which, it is claimed,

effectively reduces the Township's 3% wage increase offer to less than a 1% net increase. Counsel notes that the PBA had its family deductible for major medical increased to \$400 in 1995; paid an increased co-pay on prescriptions of \$3 from the previous \$1 and endured the Township's self-insurance plan adoption which saved in excess of \$400,000 in 1997 alone. In light of these facts and his claim that no other Middlesex municipality has such a co-pay scheme, counsel argues no justification exists for awarding this proposal to the Township.

With respect to support from a comparability point of view for its length of contract demand and proposed wage increase, counsel argues that a three-year contract -- because of the January 1997 to December 1999 term -- would return the parties to the bargaining table this coming fall. As to the percentage increase sought, note is again made that South Brunswick's patrolmen work 129 hours more per year than the average Middlesex County patrolman. He argues that even conceding the awarding of the 5% requested raise, it will not place these patrolmen in the ranks of the best paid officers in the county. Specifically, counsel notes the 5% increase for 1997 will leave a South Brunswick officer hundreds of dollars behind his peers in East Brunswick, New Brunswick, North Brunswick, and South Plainfield, and for 1999 they will still be behind East Brunswick and some officers in Edison.

Counsel also makes note of the fact that where the Mayor and Council received increases of 47% and 40% claimed to be warranted by both the comparable salaries in neighboring communities and as well as their increased duties, the patrolmen have experienced the same increases due to the Township's growth and, accordingly, they also deserve the percentage increases they seek.

Turning to comparisons with Township employees, counsel looks to the average PWEA member and, while acknowledging a rough average annual difference of \$7,000, distinguishes the units, noting that a PWEA member is not required to hold an Associates Degree; has far less training and responsibility and is not a police officer with all the responsibility and training that entails. In summary, he argues they simply are not comparable. Most significantly, he argues that there is no real pattern settlement present between the Township's units that the Township can rely on to influence the outcome of this arbitration. Turning to the Police Superiors, he notes that the differential from top patrolman up to Sergeant, Lieutenant and Captain ranges from 19% to 49%.

Overall Compensation

Contending that although patrolmen receive a range of benefits, counsel nevertheless asserts that, as previously pointed out, several such benefits are mediocre at best and lacking by comparison with other departments. Counsel claims the PBA has not sought to increase these areas such as vacation and terminal leave, but rather sought to maintain the status quo. At length, counsel discusses and makes argument in support of its requested increase in PBA leave which it argues is but only part of what the Superiors' enjoy in their contract.

Finally, counsel argues for the inclusion of a provision identical to that enjoyed by the Superiors which releases them from duty when an officer's court appearance has been disposed of provided that his shift has not started.

STIPULATIONS OF THE PARTIES

During the course of the proceedings, the parties entered into certain stipulations, some of which are set forth in Exhibit P-3, that settled items to be included in the new collective agreement. In addition to the matters set forth in P-3, the Township agreed to eliminate its one remaining non-economic proposal contained in Exhibit T-1. Further, it was agreed that language in the collective bargaining agreement relating to the "investigative unit" would be changed to "investigative division". (Tr. 6/8/98, p. 24).

The parties also made certain stipulations concerning cost estimates associated with the Township proposal on health insurance benefits. It was stipulated that the annual cost difference for premiums between the two-dollar point of service plan and the indemnity plan is \$800 for a family and \$400 for a single individual. It was further stipulated that the annual cost difference for premiums between the five-dollar point of service plan and the \$2 point of service plan is \$400.00 for a family and \$200.00 for an individual. (see Tr. 8/20/98, p. 6)(See also PBA brief, page 51, VII [2 & 3]).

Counsel notes these stipulations were made during the middle of the first plan year of self insurance and they proved to be incorrect. The evidence now shows that the cost difference between the plans is much smaller than originally projected. The annual premiums for the three plans are set forth as follows:

	<u>Indemnity</u>	<u>\$5 Point of Service</u>	<u>\$2 Point of Service</u>
Family	\$9,428.64	\$9,079.56	\$8,905.08
Single	\$4,707.96	\$4,358.88	\$4,184.40

Therefore, the cost difference for premiums between the \$2 Point of Service plan and the indemnity plan is now \$523.56 for a family and for single coverage. The premium cost difference between the \$2 Point of Service plan and the \$5 Point of Service for both a family and an individual is \$174.48. The cost differences are actually much smaller than the parties had previously stipulated because the premiums for all of the plans, including the \$2 Point of Service have increased substantially (Exhibit T-110). Township counsel argues that these cost increases under the relatively new self insurance program implemented by the Township provide further support for the need to introduce cost containment provisions in the health insurance plan at this time. With the exception of this correction, the parties are deemed to have stipulated to those items found in Exhibit P-3. (see PBA brief, page 49-51).

Lawful Authority

Counsel notes that Ralph Palmieri, the Township's Chief Financial Officer and expert witness acknowledged that the Township is fully capable of meeting the PBA's Final Offer without any adverse impact on the CAP. In summary, counsel argues this criteria is therefore irrelevant.

Financial Impact

Counsel quotes freely from the analysis the PBA had prepared by its expert, Vincent Foti. In summary, Mr. Foti concluded that the economic health of the Township was quite rare among the hundred or so municipalities he has had the opportunity to review during his

career. Counsel reviews Foti's testimony, as well as the numerous documents the PBA introduced to single out indicia of the superb economic condition South Brunswick enjoys. Among these are a tax collection rate of 97% to 98%; the fourth highest home value in the county; the fifth highest median family income; the second lowest general tax rate; average annual surpluses of four million dollars; and a 1998 surplus of nearly double that average.

Forecasting to the future, counsel points out factors which will assume continued controlled growth and economic prosperity. The Township has 41 square miles with 18,000 acres of prime industrial zoned land. Numerous recent and projected developments and projects are cited such as the Volkswagen and Circuit City projects. Counsel briefly reviews the funds generated by permits from these projects and fines from the Municipal Court. In brief, revenues from all sources are growing annually and outpacing expenditures. Counsel asserts the PBA proposals, if awarded, certainly will not negatively impact the Township, its taxpayers and residents.

Cost of Living

Noting that both parties' Final Offers exceed the cost of living, counsel argues that the unique economic condition the Township and the state is presently enjoying which the record supports with statistics, mitigate against basing this Award on the cost of living.

Continuity and Stability of Employment

The Association's witnesses testified that in their tenure with the department, there have not been any layoffs. Conversely, counsel argues that unless the Township maintains attractive wages and benefits, officers might well be tempted to seek employment in better paying and less hazardous employment.

Concluding his brief and his analysis of the statutory criteria, PBA counsel asserts that the evidence clearly shows the improvements it seeks are certainly justified; will not have a negative impact on the Township or residents' economic status; and should be awarded.

The Arguments on Behalf of the Township's Position

Cost Analysis

Before beginning a review of the statutory criteria which must be examined, counsel calculates the actual dollar and percentage difference between the parties' Final Offers. Premised on a three-year contract term, counsel asserts that its Final Offer will actual cost the taxpayers 17% over three years, whereas the PBA Offer would cost 23.2% or, when compounded, 18% versus 25%. Broken down this would represent a \$162,408 higher tariff to fund the PBA Offer or a total of \$8,688 or \$2,899 per year higher cost per officer over that period of time. When compounded, counsel asserts the total additional cost to represent a \$310,000 additional tax burden on the taxpayers of South Brunswick.

Interest and Welfare of the Public

Counsel sets up hypothetical questions and then concludes in answer to the questions that it is not in the interest of the public to award patrolmen a better settlement than is being paid to other Township employees; to award them more than has been allocated in the budget for their wage increases and to ignore the rising costs growing out the Township's rapid growth and expansion. Counsel claims that, contrary to the PBA's claims, the tax burden has increased and the demands sought, if implemented, would create budget shortfalls and necessitate cuts to programs and staff.

By way of argument that the adoption of the PBA's Final Offer would not be in the best interests of the public, counsel notes the following: The Township's growth has largely been residential which proves more demanding on the Township's assets; commercial ratables share has declined 2%, whereas residential share has increased just less than 3% in two years; the voters' rejection of the school budget witnesses their frustration over property tax increases; necessary reduction in municipal spending and services documents negative financial trends in the Township; the PBA's demand for 5% increases and retention of the status quo in medical coverage is clearly not in the public's interest, and awarding it would result in disparate treatment toward other bargaining unit employees who have accepted 3% increases and have accepted the elimination of longevity and education increments and contributions toward health plans.

In summary, counsel argues that the Township's proposal is more rational and reasonable in its equality and fair dealing, and it is by far in the best interests of the public to treat employee groups the same.

Comparability

Counsel initially argues that internal comparability should have greater weight placed on it than comparability with other police departments. Quoting the Appellate Division, counsel argues that sufficient reason or compelling reasons to the contrary are needed in order to pay higher percentage increases to the police than to other municipal workers.

Counsel notes that the present difference between a patrolman and a municipal worker is \$11,541, which will grow wider even if the Town's Final Offer is awarded. Statistically 34 of the Township's 50 highest paid employees are police officers (11 of 20 are Superiors). Recited further are other benefits enjoyed by South Brunswick's law enforcement personnel: better pensions; higher clothing allowance; built-in overtime and outside employment. Finally noted is the fact that when patrolmen receive increases, the gap between salary and the average employee increases. With compounding, the actual dollar difference increases even further. Were the requested 5% awarded, it would result in 6% more of a salary increase over the contract term than the 3% received by the AFSCME and PWEA unit.

In conclusion, counsel states there is absolutely no justification for granting the PBA increases which are in excess of those accepted by the other bargaining units.

Pattern

Continuing on this theme, counsel again asserts that good labor relations does not allow a double standard of treatment of bargaining units merely because one unit has access to interest arbitration whereas the others do not.

Counsel asserts that a pattern has been established encompassing a 3% wage increase and acceptance of measures to control costs of health insurance, longevity and education increments. Both CWA and AFSCME accepted 3% annual increases for four-year contract terms as well as an agreement to pay for the cost of any difference in premiums if they choose either the indemnity or \$5 point of service (P.O.S.) plan rather than the \$2 P.O.S. managed care plan. Similarly, the CWA, AFSCME and PWEA units have agreed to eliminate longevity increases for new hires.

Counsel argues that legislative mandate, judicial decisions and arbitration principals dictate that substantial weight be given to any pattern of settlement established in a municipality. Breaking the pattern has a negative financial impact on the governmental body because it impacts on future negotiations. The PBA must offer compelling reasons why there should be a deviation from the pattern. It has failed to do so.

In conclusion, counsel argues that awards that disregard the pattern of settlement encourage discord, envy, militancy and violates legislative intent. The pattern of settlement, it is asserted, is a determinative factor, and counsel argues that the Arbitrator should adhere to the pattern and award the Township's offer.

Private Employment

Counsel uses both the Township's exhibits as well as those of the PBA itself to demonstrate that the salaries of the South Brunswick police officers compare extremely well with those in private employment. Leading to this conclusion are the following facts: Their hourly rate is \$10 in excess of a private sector employee; their annual salary is 27% higher than a private sector employee; percentage wage increases from 1989 through 1996 amount to 14% higher than the average private sector employee; the average percentage wage increase between 1993 and 1996 averaged nearly 2% higher than private sector employees.

The present 3% per year wage increase offered by the Township is consistent with the Bureau of Labor Statistics reported private sector settlements, whereas the PBA seeks to nearly double this increase.

The Commission in Boro of Bogota, 24 NJ PERC/30 emphasized that it is essential that arbitrators consider private sector wage levels and increases despite the disparity of job functions between public sector policework and private employment. All of the evidence cited demonstrates that the Township's Final Offer is much more reasonable than the PBA's offer.

Public Employment in General

Counsel chronicles the recent trend in significant public sector contracts which have followed the lower wage increases afforded in the private sector. Of major note, of course, are the AFSCME and CWA settlements with the State in which both picked up cost

differentials for traditional health plans. Cited also are similar provisions in other state contracts, along with zero increases over parts of multi-year contracts. Specifically, counsel cites the recent Mastriani Award in the State Police contract in which the five-year average increase came to 3.1%. Against this backdrop counsel asserts South Brunswick's Final Offer is extremely fair.

Comparability with Police Officers

Counsel traces the trend away from over-reliance in awards on other police settlements and awards and the whipsawing that naturally resulted from this practice. Looking at the Township's offer, it is claimed that when compared with other Middlesex County officers, the proposed final award is very reasonable. The salaries will continue to be amongst the highest, behind only those departments with higher crime rates such as Edison, East Brunswick, New Brunswick and South Plainfield. Counsel reviews specific salary and benefit levels and concludes its Final Offer will allow these officers to continue to enjoy excellent salaries, benefits, and conditions of employment.

Overall Compensation

Township counsel notes, among other facts, that 27 bargaining unit employees earn in excess of \$60,000 per year; 31 of the 80 highest paid Township employees come from these ranks; and the health insurance benefits are "virtually unsurpassed" since they have no cost containment provision. The patrolmen enjoy the unique coverage provisions of 100%

hospitalization; reimbursement at the 90th rather than the standard 80th percentile; and no deductible or coverage limitation. No other Middlesex County municipality offers such coverage, and the Township's expert opined that he knew of no other similar plan. As a result of this coverage before South Brunswick opted to self insure, Aetna/U.S. Healthcare increased its rate the contractually-allowed 9% and offered renewal at an additional 15% increase.

Counsel disputes the \$400,000 savings figure attributed to South Brunswick's self insurance plan and claims the actual cost decrease was only \$112,000 or 8% in year one followed by a 45% (\$632,528) increase in the following year. As to the provisions contained in the Township's Final Offer, police contracts in four Middlesex County towns require differential cost payments and a modest premium contribution program modeled after the State contracts discussed above. Counsel relies on the Zausner Award in Plainfield for the proposition that cost differentials between plans be paid where a town is seeking to control health costs.

Counsel reviews numerous other benefits which compensate South Brunswick's patrolmen. Four assignments (Canine, Investigative, Traffic and Juvenile) carry a 5% pay increase; longevity based on date of hire runs from \$1,250 to \$5,000 between five and fifteen years of service; and a tuition reimbursement and degree incentive program is in place. Justification no longer exists for either longevity or degree compensation. An Associate's Degree is now a job requirement, and it would be illogical to require payment for that degree. Furthermore, to control costs which, in total, amounted to \$18,500 last year, the Township is

seeking to terminate these benefits. These proposals only offer prospective savings and will have no impact on the current bargaining unit.

Further listed are the benefits of sick leave, unused sick leave buy back, uniform allowance, \$30-an-hour outside employment, and a generous pension plan. Counsel then sets up a hypothetical 10-year officer with a bachelor's degree working in the investigative unit and shows that the cost of compensation under such a scenario -- including health insurance costs -- totals just under \$69,000. The Arbitrator notes that the same officer without any degree, not working in a premium assignment and minus the health insurance would gross \$55,791.

Lawful Authority

Counsel notes that, even if there is not a cap problem, the Arbitrator must consider the impact the Award will have on "non-police line items" in the budget. Counsel notes that the fact that the PBA offer is 5% does not mean it will cost the Township a mere 5%. To the contrary -- if awarded -- it would actually cost 6% and will negatively impact "on the ability to fulfill other programs -- as set forth in its budget." Counsel also asserts that to fund "significant salary increases" beyond what was budgeted for 1997 and 1998, the Township "may" have to seek additional revenues via higher taxes or reduce personnel programs. In view of such an alternative, counsel urges that the Arbitrator reject the PBA final wage demand as "overreaching, unreasonable and having the real potential to impact negatively on non-police line items in the budget."

Financial Impact

Counsel notes that in Hillsdale the Appellate Division rejected the notion that financial impact equated with a municipality's "ability to pay." In this instance, the PBA's Final Offer would impact negatively on the Township since other South Brunswick employees in negotiations "may receive less simply to pay for the additional increases -- the police receive." Secondly, counsel claims the Township "may be required to draw upon its surplus -- to accommodate the salary and the benefit demands of the PBA." Third, without any specific citation to any actual figures projected, counsel claims the more it increases its budget (apparently due to the funding requirement of the police department), the larger the -- "average tax bill will be."

In summary, counsel asserts that any award requiring South Brunswick to take funds from surplus or other line items will "obviously have a negative financial impact on the Township and its resident taxpayers." Accordingly, the Township's Final Offer is more financially responsible and should be awarded.

Cost of Living

Counsel, after citing the recognized role of the cost of living in interest arbitration, notes that over the last eight-year period (1989-1996), the total percentage salary increase amounted to 44.5% vis a vis the CPI-U increase of 27.9%, leaving a net increase of 16.6% (\$7,825 in real dollars) or an average of 2.1% a year in excess of the cost of living. Counsel asserts the present final offers on the table from the PBA exacerbates this inequity as against

the recent 1.7% (1997), 1.6% (1998) and 2% (projected 1999) rates, whereas South Brunswick's Final Offer provides an adequate but more reasonable offer.

Continuity and Stability of Employment

Although unemployment is recognized as having decreased significantly, counsel nevertheless agrees that it exists and could impact on South Brunswick's citizens who pay patrolmen's salaries through their taxes. Counsel finally argues that the patrolmen are a "protected class" in any discussion of unemployment. In summary, counsel argues that whatever arguments are made under this criteria, the final Township offer requires its adoption.

PBA's Unwarranted Proposals

With respect to the PBA's remaining demands, counsel argues that the PBA has to -- as required -- provide evidence showing that the present benefit level is inadequate. Specifically, the increase in Union business time-off would deny the Chief the discretion to deny leave. Moreover, it would impact on required overtime and represent additional hidden costs.

Similarly, the proposal to cut to 25 years of service from the present 30, the limit entitling retirees to health benefits until their Medicare benefits take effect, would increase costs dramatically by lengthening the number of years of eligibility of the officer as well as his dependents. The cost of such a change in this provision would project out over many years

to come. No evidence has been presented regarding the need for such a proposal, nor has the PBA proven how the increased costs can be funded.

Finally, counsel notes the Township has shied away from offering a fourth year solely due to the unpredictable increases in health benefit costs. For that reason alone it argues that its three-year term is more reasonable.

Conclusion

Based on the analysis of the statutory criteria as applied to the present facts discussed above, counsel argues that South Brunswick has presented the more reasonable and responsible offer. Accordingly, counsel submits that its Final Offer be awarded.

DISCUSSION

A review of the statutory criteria and the proofs adduced thereunder by each party leads to the following analysis:

Stipulations of the Parties

As noted, the parties were very cooperative and entered into a detailed stipulation recited separately above. Beyond those points, there are no further relevant stipulations.

Cost of Living

Accepted is the fact that the CPI for 1997 and 1998 was 1.7% and 1.6% respectively. Nothing in 1999 to date indicates any significant increase which would cause the figure for this year to surpass the 3% offered by the Township. The year 2000 is, of course, unpredictable, but recent Fed discussions seem to indicate that the CPI will be above the exceptionally low figures for 1997 and 1998.

The PBA barely contests the Township under this criteria. While reference is made to historic lows (in unemployment rates) for those years, these prove unconvincing when examining the criteria.

The Township's case relies on a comparison of CPI-U increases vis a vis salary increases the PBA has enjoyed from 1989 through 1996. This, of course, omits those early 1980 years which perhaps might have presented a more balanced picture depending on the wage increases paid over those years.

On balance, however, the Township's 3% offers over the three or four years of the proposed contract must be said to be the more reasonable. Accordingly, the edge must be said to be awarded to the Township under this criteria when viewed strictly on the numbers of the final offers themselves. It must be borne in mind, however, that we are not simply choosing between best final offers as may have been done under the prior act. The true impact of the parties final 3% versus 5% wage increase will be discussed in greater detail later in this Award. The task at hand is to fashion the most reasonable award.

Continuity and Stability of Employment

This criteria bears very little relevance, if any at all, to the ultimate award rendered. As has often been noted, with the exception of certain county and park police forces, the elimination of municipal forces or significant reduction in forces is virtually unheard of in the state.

Even considering the other factors intended to be viewed by interest arbitrators, very little relevance is noted. The record discloses no unemployment among other Township employees related or unrelated to the police budget. If anything, the Township is expanding its employment as a result of its growth. There is no high unemployment in the state. And without reflecting on any specific figures, the exceptionally high tax collection rate on homes which average between \$165,600 and \$182,600 in sales price argues against any concern over unemployment of the Township's citizens.

Overall Compensation Received by Patrolmen

There is little doubt but that the subject patrolmen receive a moderately full menu of benefits which, when viewed with the wage scale, provides excellent overall compensation. This is the battleground for this arbitration. Patrolmen enjoy 14 holidays, 3 personal days (providing partial entitlement to year three for those hired after 1/1/94); 4 days bereavement leave; \$1,050 uniform allowance; a \$1,250 to \$5,000 longevity range, partial tuition reimbursement and stipends for Associates, Bachelors and Masters degrees; 15 to 26 vacation days; and a health plan presently in dispute. Before discussing salaries and

comparability, it should be noted that the majority of these benefits are, with rare exception, enjoyed by other Township employees and generally by other public sector employees county and state wide. For the Township to cite the "most generous" PFRS pension plan and these patrolmen's eligibility for outside employment at \$30 an hour serves no purpose other than to document, that as police officers, they are the beneficiaries of a legislatively-structured pension plan over which neither party here has much influence. Similarly, presumably due to the growth and construction within the Township, these officers can work "quasi-duty", thus relieving the Township of any burden to supply coverage at road construction sites. Further, patrolmen can utilize their "public" training in the private sector, thus financially benefiting themselves and the Township.

South Brunswick seeks to modify or eliminate certain of these benefits which patrolmen now enjoy. Conversely, the PBA seeks to modify and expand them. These will be dealt with on an item-by-item basis below.

Township counsel cites the fact that 31 of the present bargaining unit are among the 80 highest Township employees and 27 of them earn in excess of \$60,000 in 1996. It is clear that when combined with the benefit package discussed above, the wage salaries force one to the conclusion that the overall compensation paid to these patrolmen is, indeed, excellent. However, numerous factors exist which temper this conclusion. Underlying this is the very nature of these patrolmen's vocation. In these days when so much more is being demanded of the police and they are under intense scrutiny, these are the individuals we hire as law enforcement officers, make them officers of the courts and entrusting them with the right to

carry and use lethal weapons. It goes without saying that it is extremely difficult to make any qualitative comparison between how we compensate them versus a secretary or a construction official or a teacher. The legislature has recognized the unique status of policemen and firemen in the very act which grants authority to an impartial arbitrator to resolve disputes and to award wage increases. Accordingly, the mere statistics quoted above offered to us by the Township must be understood in the context, not only of their duty, their longevity and the nature of their work, but also the tasks we assign to them.

In conclusion, as stated earlier, these employees can be said to receive excellent overall compensation which resulted, in significant measure, from earlier negotiated agreements.

The Lawful Authority of the Employer

There is no Cap problem in South Brunswick. Township counsel, hesitant to concede this point, relies on arguments more appropriately found under the Financial Impact criteria. Counsel argues that "...even if there is not a Cap problem per se, the Arbitrator must consider the impact the Award would have on the non-police line items of the budget, which would have to be cut to pay for the Award." Without offering any specifics, it is argued that it would be "extremely difficult" to pay any additional cost "beyond what was budgeted for in 1997 and 1998", and further claiming the Township "may" have to either seek additional revenues in the next year (higher taxes) or reduce personnel or programs."

No substantiation was offered for such claims. As noted later, South Brunswick runs a seven million dollar surplus annually and acknowledges saving about \$225,000 to \$300,000 (T. 79) in the first year of its self-insurance plan. Much discussion was had in the record with the opposing financial experts. The undisputed conclusion is that there is no Cap problem, and the funding of any award in excess of that budgeted for by the Township itself can be accomplished without a municipal tax rate increase. (T. 78, Ralph Palmieri with reference to a 4% increase for 1997 and 1998).

Comparability

Private Sector. A comparison between a patrolman in South Brunswick and the universe of private employment could well comprise a doctoral thesis. As a result, it is necessary to limit such a comparison to average wages and average wage increases. Attention has been paid to the PBA's argument that we are dealing on one hand with police officers and all that entails. As Township counsel notes, the statute mandates a comparison with employees in private employment in general as to salary, benefits and conditions of employment. Counsel then directs us to Exhibit T-102 which lists the average weekly salary of "manufacturing employees" in January 1997. Counsel notes the average South Brunswick patrolman makes \$10 an hour more than the average \$13.17 hourly average of the manufacturing employee. How these respective parties reached the level they did as of January 1997 would fill another doctoral thesis, but the obvious questions occur as to educational background, competition for the job opening, shift work, public official, and so on.

Even without answers to all these questions, the basic difference between a police officer and a "manufacturing employee" are sufficient to this trier of fact on the surface to pay less attention to that statistic of comparability.

In connection with the passage of the amended Interest Arbitration statute, the Department of Labor prepares for PERC a report captioned "Average Wages in Employment Covered by Unemployment Insurance, Major Industry Division: New Jersey." The most recent and most pertinent comparison reveals that between 1996 and 1997 government increases ran from 2.1% at the state level through 3% at the local level to 5% at the Federal level. In the private sector for the same period of time, increases ran from 3% in retail trade to 6.2% in manufacturing the overall average of 4.5%. This figure will be relied on later in explaining this Award. However, with respect to the issue of comparability with the private sector, it is fair to conclude that without getting more specific, a South Brunswick patrolman compares favorably; that is, has neither an inexplicable monetary advantage or disadvantage with a private sector employee in New Jersey over the years subject to the present contract.

Public Employment In General and Within South Brunswick

Township counsel noted the exceptional statewide contracts covering thousands of employees which provided for little or no salary increases for certain years. With the exception of the State Police who have most recently received an interest arbitration award with an average increase of 3.1%, the other units were not police or fire units and not a beneficiary of interest arbitration. What must also be borne in mind is the fact that on a

statewide basis, New Jersey had elected a governor who had pledged a 15% tax cut and who utilized reorganizations, privizations and reductions in force to accomplish that tax cut. In conclusion, it is clear that one must agree with Township counsel's statement that its Final Offer is "very fair" when compared to public sector negotiations in New Jersey. The issue, however, is what would be the most reasonable and the fairest award in the community of South Brunswick involving its police rank and file unit.

In earlier discussion, an extensive analysis was laid out on comparability between the patrolmen and the employees in the Township. While conceding that the patrolmen compare very favorably with those employees, a further discussion is pertinent because of the pattern argument counsel raises. In brief, counsel argues that the burden rests on the PBA, which it has not accomplished according to counsel, to place substantial credible evidence on the record to warrant breaking the pattern of settlement. When the respective demands are dealt with, this issue will be discussed where pertinent.

Comparability With Other Police Officers

A review of other departments in Middlesex County shows that South Brunswick's police officers compare favorably depending on the particular benefit compared. Generally they place in the mid to upper range. For example, they enjoy 14 holidays, which is the average for 26 departments; Personal Days - They enjoy 3, which is also approximately the average; Bereavement Leave - They enjoy 4 days, slightly more than the average; Uniform Allowance - They are among 9 departments receiving a \$1,000 or more per year, while 15

receive less; Longevity is received by 25 departments with a wide variety of payout plans based on percentages or flat sums. South Brunswick receives \$2,500 and \$5,000 (pre '83 hire) after 20 and 25 years respectively; Education Incentives - again, the variety prohibits an exact placement of South Brunswick: Twenty-five departments receive incentives in one form or another; Vacation - again, the variety based on entitlement and number of qualifying years precludes an exact placement. South Brunswick appears to be in the mid range.

Two issues are most significant when speaking of comparability in this arbitration, viz salary and health benefits. As to salary, exact comparison is difficult at best due to the fact that some existing contracts may have expired, while others may be up to date. Ignoring the number of steps and concentrating on the year 1996, it appears that seven municipalities surpass top patrolman's salary, while thirteen fall below of those available for comparison.

With respect to Health and Welfare Benefits, the plans also vary greatly. Key in this arbitration is the issue of whether an employee shall pay the difference between the cost of HMO coverage and that of an indemnity plan. In the separate discussion below, this issue will be discussed in detail.

As to fellow employees of the Township, what is noteworthy is that the Township offered and its Union -- without the benefit of interest arbitration -- accepted 3% wage increases while providing some significant give backs which establishes a pattern argument the Township now seeks to use against the PBA.

Within the county and among their peers in law enforcement the patrolmen compare somewhat favorably. In light of the prosperity of the Township and its superb financial condition, they do appear to be somewhat below what might be expected.

Interest and Welfare of the Public

This criteria equates somewhat as a quality of life index. The issue before me is to determine which Final Offer or amalgam of the offers best serves the interest and welfare of the citizens of South Brunswick. Although financial concerns indeed come under this criteria, they are more completely addressed under the financial impact criteria. The role they play in this criteria really asks will the cost of a settlement, while in the public's interest and welfare, prove prohibitive. The answer here, as in most cases, is that it will not be.

South Brunswick is already or will soon be one of the premier communities in Middlesex County. In addition to massive warehousing complexes, extensive residential real estate development and accompanying population growth, the Township is experiencing an influx of middle class citizens who demand and appear to be willing to pay for superior schools and a professional police force. The Township has responded to this demand by requiring Associates Degrees of all new officers. It is clear from viewing the Crossroads tape that the Township, through its Economic Development Commission's presentation, pictures itself as a progressive planned community, ideal for light industry, distribution, marketing and corporate headquarters while also providing a high quality of life for its residents. Highlighted in the tape presentation was the school system and governmental services including its

police department. These factors are significant because the Police Department is held out along with fire and rescue units in a progressive light. It is indeed in the best interests and welfare of the community to provide excellent compensation for an essential service such as the Police Department which interacts with the public on a daily basis. It can only be concluded, given South Brunswick's ability to fund those demands found to be reasonable, that a vote under this criteria clearly sides with the P.B.A.

Financial Impact on the Governing Unit, Its Residents and Taxpayers

This criteria is best addressed as part of the rationale offered on an item-by-item basis. Note need only be made at this point that South Brunswick is enjoying the best of all possible worlds in that it is presently enjoying increased ratables from a balance of new commercial and residential development before being fully hit with demands, particularly as to education, that completed residential developments will eventually extract from the municipality.

The demands from both sides have been fairly evaluated and examined in reaching the final wage and benefit package. Although the provisions relating to wages and health insurance will be discussed as to projected costs, the remaining items are of little consequence presently as will be noted. It is important to realize that inclusion or exclusion is decided to a great degree on the reasonableness and necessity of each demand.

Length of Contract

Over the recent few years the CPI has remained relatively constant at a very comfortable rate. For various reasons this Award is being issued midway in the third year of the proposed contract. It seems most reasonable to set the length of the contract at four years for these and other reasons. The wage figure provided for the fourth year is consistent with those set for the prior years and should not present any budgetary problems for the Township. Accordingly, the term of the contract is set from January 1, 1997 to December 31, 2000.

Article III. Salary

The Township has offered a 3% increase per year over three years as has been accepted by the other Township bargaining units not covered and recognized by the legislature under the Interest Arbitration Statute. Conversely, the P.B.A. is seeking four increases of 5% per year. Both offers, for the purpose of reaching the most reasonable resolution, are found to be off the mark. After reviewing all of the economic data presented, the testimony offered, the chronologically appropriate CPI figures, recent settlements and awards among Middlesex County municipalities, the increases within the Township's other bargaining and non-bargaining units, the general public and private sector increases within the state, and the economic condition of the Township among a myriad of other data contained in approximately 180 exhibits, a determination has been made that the most reasonable wage increase is as follows:

Effective and retroactive to January 1, 1997, an increase to base salary of 3.75%

Effective and retroactive to January 1, 1998, an increase to base salary of 3.75%

Effective and retroactive to January 1, 1999, an increase to base salary of 3.75%

Effective January 1, 2000, an increase to base salary of 3.75%

Article V. Personal Days

The P.B.A. sought an additional Personal Day to the three presently provided. At best, the rationale offered is to be at the same level as East Brunswick, Edison and Monroe, while coming a step closer to Dunellen, New Brunswick, North Brunswick, Sayreville, South River and Spotswood. No proofs were offered to show that the present number is inadequate or burdensome to the average police officer. "Me too" is never a sufficient argument unless a persuasive and meaningful rationale is offered behind such an argument. For these reasons, the request for an additional day is denied.

Article XXVIII. P.B.A. Representative/Collective Negotiations

The P.B.A. asks that the August 21, 1996 Settlement Agreement between the parties be added to the contract. I am unimpressed by the Township's argument against this provision which essentially relies on a speculative cost argument and a dubious management's rights argument. Accordingly -- and having been convinced by the P.B.A.'s

arguments and proofs on this issue, I direct as part of my Award that this provision be incorporated into the contract.

The P.B.A. next seeks to have added a provision affording the P.B.A. President with ten days leave without loss of pay per calendar year to attend to P.B.A. business. While I was convinced to a degree of the necessity of some provision, some of the rationale offered such as visiting the state headquarters in Woodbridge seemed excessive. Accordingly, while I grant this request I reduce the total number to four days leave which seems to be fair, adequate and reasonable.

Article III. Hours of Work and Overtime

The P.B.A. seeks to modify the provision to dismiss an officer from duty unless his shift has started if the court action has been disposed of. I have not been convinced of the need or reasonableness of this provision and, accordingly, it is denied.

Article XVII. Medical-Health Benefits

The two provisions the P.B.A. seeks to add (reducing eligibility years of service and expanding coverage for dependents) certainly would result -- although clearly speculative -- in a significant and ongoing cost increase. In light of the other provision discussed and ruled upon; that is, the Township's request for co-pay on the indemnity program, this provision is rejected for the general cost analysis discussed therein, as well as for the fact that the P.B.A. argument for the inclusion of this provision proved unconvincing.

Township's Proposals Not Previously Ruled Upon

The Township seeks to eliminate longevity for new hires after January 1, 1998. The Township's argument that longevity historically was a form of compensation at a time when increases were small or nonexistent proves interesting. Certainly a tracing of the history of this Township's contracts and salary ordinances might bear this argument out. Certainly longevity is or was also intended as compensation for faithful service and an incentive to remain in one's employment. With the increases police officers have experienced over the past ten to twenty years vis a vis their prior salary history, it may well be time to look at eliminating longevity. It appears a convincing argument that might well be made at sometime in the future. It certainly has not been made in this case. Nor has a convincing argument been made as to an intolerable cost burden over the next ten or so years which is when this provision, if adopted, would begin to significantly benefit the Township. Moreover, such an argument would carry more weight in economically troubled urban areas. It has not been made in this case, and the Township's request is therefore denied.

Article XVII. Medical Health Benefits

To begin with, the Township is seeking to take away an existing benefit or provision which heightens the burden of their proof in my view. Conversely, they do have a pattern argument with respect to the other Township bargaining units. However, as noted, those units do not have the benefit of an interest arbitration provision, and the AFSCME Agreement is presently under challenge before the Commission over one aspect of this very issue.

Health benefits are certainly the most expensive, confusing and unpredictable issue in employee benefits, and perhaps in all of employee and labor relations these days. Depending on whose figures you rely upon, the Township saved between \$200,000 and \$400,000 when it self-insured. The divergency in these numbers both, coming from Township witnesses, serves either as proof of the difficulty in judging this issue or else as a graphic example of two people seeing a glass half empty or half filled. Be it the mercury-like quality of the problem or the inarticulateness of the expert or experts, the fact remains that the savings from the adoption of this provision or conversely the high end cost of the failure to adopt the provision has not been graphically portrayed for this Arbitrator. Even given the stipulated cost figures the parties agreed upon. The fact remains that, as the Township was paying some additional \$200,000 to \$400,000 for approximately 275 employees, this provision was not in place. Nor was it to the best of my calculations when the Township was saving that amount. Although the cost out of pocket on the high end can be calculated along with the concept that the Township would be liable for the overage, and the employee would actually only pick up the total cost difference between the managed care plan cost and the cost of the plan he chooses, the Township has not convinced me to take away a present benefit. Further, that benefit, contracted for in the past, takes money out of an employee's pocket at a substantial rate based on the sole comfort that he will only actually pay some future cost difference. When the Township cannot agree on its past savings gained through self-insurance, I remain skeptical of such a scheme particularly having been provided with a paucity of hard evidence found in the record.

Little good is served by the Town claiming in its brief that the "plan is so rich that it defied computer programs set up to administer claims for millions of individuals...." The simple fact is that, although Aetna/U.S. Healthcare willingly negotiated a contract with South Brunswick containing this provision, it failed to program its computers to handle the parameters of such a plan. Little cogent information was offered by the Township's own benefits' expert in his testimony. His lack of knowledge of comparable widely-used plans gives one pause to rely on any representations he would make. In brief, his testimony and the proofs offered provided less than an adequate foundation on which to base the removal of this benefit plan.

For these reasons, together with comments previously made, this provision has been found not to be the most reasonable, and therefore it is rejected.

Article XIX. Education and Training

I agree that new hires should not be compensated for an Associates Degree when it is now a condition of employment and, accordingly, that part of the Township's provisions shall be awarded.

There has been no proof offered to me that the present cost of the remaining education incentives is or will become, over the course of the contract, prohibitive. If anything, in today's society the enlightenment that can result from such degrees can only add to the professionalism of the department. Work on such degrees and recognition for

obtaining them is a most reasonable and desirous goal. Accordingly, the balance of the Township's proposal is denied.

CONCLUSION

The Arbitrator has listened to days of testimony, reviewed hundreds of exhibits and absorbed hours of counsels' arguments in oral argument and written briefs. South Brunswick presents a unique setting for this decision. Its controlled growth continues apace in perhaps the best economic climate of the past twenty or thirty years. It is well run and managed. It is presently experiencing all the criteria that signals an extremely robust economic climate -- exceptionally high tax collection rates; regenerating more than ample surpluses; balanced growth and development to name but a few. At the same time this award seeks to stabilize wage increases over a four-year period at modest, average increases. Although it exceeds the rates offered to and accepted by other bargaining units, that fact seems appropriate in these circumstances involving this unit, at this time for the background, tasks, hours and responsibilities of this bargaining unit. Very few of the PBA's demands beyond the wage increase viewed to be the most reasonable was awarded. Conversely, the significant give-backs the Township sought, viz. healthcare co-pay as proposed and the elimination of longevity prospectively were not awarded simply because the Township failed to prove to me the necessity and reasonableness of these proposals. The fact that they may have been accepted by other units, although supportive of the proposals, was not persuasive. The

record should reflect that such a pattern argument by its very nature should be more convincing in the next round of negotiations at which time the Township may well be able to offer more persuasive arguments based on its experience and economic proofs.

Having well considered all of the proposals under each of the statutory criteria, I award the following:

AWARD

I. Duration of Agreement

Four (4) years - commencing January 1, 1997 through December 31, 2000.

II. Article III, Salary

- C. Effective and retroactive to January 1, 1997, increase base salary by 3.75%
- D. Effective and retroactive to January 1, 1998, increase base salary by 3.75%
- E. Effective [and retroactive to] January 1, 1999, increase base salary by 3.75%
- F. Effective January 1, 2000, increase base salary by 3.75%

III. Article V, Personal Days

Increase by one (1), effective and retroactive to January 1, 1997. **DENIED**

IV. Article XXVIII, PBA Representative/Collective Negotiations

A. Add Paragraph 5 to incorporate the August 21, 1996 settlement agreement between the PBA and the Township regarding PBA leave for State Delegate and Alternate State Delegate as follows:

5. PBA DELEGATE AND ALTERNATE LEAVE.

- a. The PBA Delegate or Alternate will be entitled to ten (10) days leave per calendar year to attend various delegate meetings.
- b. The ten (10) days are not cumulative.
- c. The Delegate or Alternate Delegate will give the Chief or his designee reasonable advance notice when he is taking PBA leave time for scheduling purposes.
- d. The PBA will provide the Chief or his designee with the names of the individual officers serving as the PBA Delegate and Alternate Delegate.

B. Add Paragraph 6 regarding PBA business for the PBA President as follows:

a. The PBA President will be entitled to four (4) days leave without loss of pay per calendar year to attend to PBA business.

b. The four (4) days are not cumulative.

c. The PBA President will give the Chief or his designee reasonable advance notice when he is taking time off for PBA business for scheduling purposes.

d. PBA Business leave may be taken in increments of one (1) hour or more.

V. **Article VI, Hours of Work and Overtime**

Modify Paragraph 3, B as follows:

When the Court action at which the Officer is to appear has been disposed of for the day, the Officer shall be dismissed from duty unless his shift has started. **DENIED**

VI. **Article XVII, Medical-Health Benefits**

Modify Paragraph 7 as follows:

Reduce the 30-year requirement for prescription and dental to 25 years. Also, include the dependents of retirees for prescription and dental benefits. **DENIED**

VII. **Status Quo**

All other terms of the January 1, 1994 through December 31, 1996 Collective Bargaining Agreement between the parties shall remain status quo.

VIII. **Longevity**

Eliminate Longevity for new hires hired on or after January 1, 1998. **DENIED**

IX. **Article XVII, Medical Health Benefits**

Amend to provide:

Effective March 1, 1998, the Township will pay the premium for the employee and eligible family members for the managed care plan. If the employee elects to be

covered under one of the other Township approved plans, the employee will be required to contribute the following percentage of gross annual salary or the difference in cost to the Township between the managed care program and the program the employee elects to participate in, whichever is less, on a weekly basis, based on his/her gross annual salary each year:

Employees earning \$39,999.99 or under will contribute 1% of their gross annual salary; and

Employees earning \$40,000 or more will contribute 2% of their gross annual salary.

In no event will the employee be required to contribute more than the cost difference incurred by the Township between the managed care plan and the plan selected by the employees.

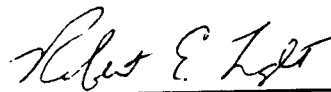
The co-pay for indemnity plan medical visits will be \$2.00 per visit. **DENIED**

X. **Article IV, Vacation**

Section 1:

The Township proposes to modify the first sentence of Paragraph C as follows:

Each officer, subject to the advance approval of the Chief of Police, may be entitled to carry over up to ten (10) earned and accumulated vacation days into the next calendar year.



ROBERT E. LIGHT, Interest Arbitrator
Dated: June 30, 1999

STATE OF NEW JERSEY:
:SS
COUNTY OF MIDDLESEX:

On this 30th day of June, 1999 before me personally came and appeared ROBERT E. LIGHT to be known to me to be the individual described here and who executed the foregoing instrument, and he duly acknowledged to me that he executed the same.

A handwritten signature in cursive script, reading "Ellen Orlandini", written over a horizontal line.

ELLEN ORLANDINI
Notary Public of NJ