

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Interest Arbitration Between

TOWN OF WEST NEW YORK

and

WEST NEW YORK PBA LOCAL 361

Docket No. IA-96-045

AWARD OF INTEREST ARBITRATOR

The undersigned Interest Arbitrator, having been designated by the New Jersey Public Employment Relations Commission in accordance with the Police and Fire Public Interest Arbitration Reform Act, N.J.S.A. 34:13A-16, and having been duly sworn, and having duly heard the proofs and allegations of the parties, AWARDS as follows:

Having duly considered all of the statutory factors and having analyzed the impact and implications of the Town and PBA positions in conjunction with each of these factors, particularly the financial impact on the governing unit and its residents and taxpayers and the interests and welfare of the public, as well as the Town's lawful authority and the continuity and stability of employment, I conclude that an appropriate wage and benefit package will include the

following changes to the current collective bargaining agreement and I AWARD as follows:

1. The term of the collective bargaining agreement shall be from July 1, 1994 through June 30, 1998.

2. The salary of bargaining unit Police Officers shall be increased as follows: for the period from July 1, 1994 through June 30, 1995, a 0% increase; for the period from July 1, 1995 through June 30, 1996, a 3.75% increase; for the period from July 1, 1996 through June 30, 1997, a 3.75% increase; for the period from July 1, 1997 to June 30, 1998, a 3.75% increase; and at 11:59 p.m. on June 30, 1998, a 3.5% increase. All wage and benefit increases effective prior to the date of this Award shall be retroactive to their first effective date, and all retroactive wages and benefits shall be computed and paid no later than December 31, 1997, after which time simple interest shall accrue on all unpaid sums at the current judgment rate.

3. When an employee is called in at a time that is not contiguous to an employee's previously scheduled tour, such call-in shall be for a minimum of four hours.

4. Effective January 1, 1998, the maximum vacation entitlement shall be reduced to twenty-nine days. Because this benefit cannot be implemented retroactively, all

Officers who will earn twenty-nine vacation days in 1998 shall also forego an additional two days of vacation in 1998 only. Police officers earning twenty working days of vacation in 1998 shall relinquish one vacation day in 1998 only.

5. Holiday pay shall roll over to an officer's salary during the officer's twenty-third year of service. This benefit should be awarded in the same manner and form that was achieved by the police superior officers.

6. The Town may convert to a biweekly payroll system for the Police bargaining unit not sooner than two weeks after the Town pays the retroactive wages due pursuant to this Award, but not later than January 15, 1998. The Town shall undertake to arrange for the direct deposit of salary paychecks for Police Officers in the same manner that they have implemented this benefit for other employees. Such implementation shall occur within thirty days of this Award.

7. Article XV shall be modified to provide that a female Police Officer's surviving spouse will receive insurance benefits the same way that a male Police Officer's surviving spouse will receive such benefits. The contract shall be clarified to provide this benefit regardless of the gender of the Police Officer.

8. Article XV, Section 9 shall be modified by the addition of the following paragraph:

If the Employer exercises its right to change insurance carriers, the succeeding health insurance plan, including major medical, dental, prescription, vision, or any other health plan shall be equivalent to or better than the plan then currently in effect.

9. The ten-day limitation for presenting the grievance is hereby increased to twenty calendar days from the date that the grievant knew, or should have known, that a cause for grievance exists.

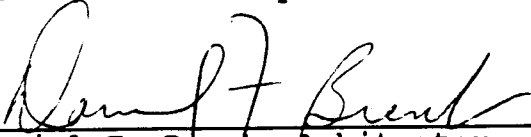
10. The education benefit reimbursement rate shall be increased by \$2.00 per credit to \$15.00 per credit in order to be funded at the same level as the fire fighters contract and the police supervisors contract.

11. The co-pay for generic drugs shall be increased from \$3.00 to \$5.00 effective January 1, 1998. The co-pay for brand name drugs shall be increased from \$5.00 to \$8.00, provided that neither of these levels exceeds the level of co-pay currently in effect for either police superiors, fire fighters, or fire superior officers.

12. The average hourly rate shall be computed effective January 1, 1998 by dividing the employee's combined base annual salary and longevity by 1966 hours.

All other proposals and demands submitted by the Town and the PBA not explicitly set forth in this Award are hereby denied. The collective bargaining agreement between the parties shall be continued in its present form except as modified by this Award or by agreement of the parties.

November 14, 1997


Daniel F. Brent, Arbitrator

State of New Jersey
County of Mercer

On this 14th day of November, 1997 before me personally came and appeared Daniel F. Brent, to me known and known to me to be the individual described in the foregoing instrument, and he acknowledged to me that he executed the same.

Philip A. Sharkey Esq.
An Attorney at Law of the
State of New Jersey

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An informal meeting at which voluntary settlement of this dispute was explored was held on February 13, 1996 and hearings were held in the above-entitled matter on September 9, September 10, December 20 and December 23, 1996 at the West New York Town Hall before Daniel F. Brent, duly designated by the New Jersey Public Employment Relations Commission as Interest Arbitrator in the instant dispute. Both parties attended these hearings, were represented by counsel, and were afforded full and equal opportunity to offer testimony under oath, to cross-examine witnesses, and to present evidence and arguments. A verbatim transcript was made of the proceedings. Post-hearing briefs were submitted by both parties, and the record was declared closed on July 5, 1997.

As permitted by the rules of the Public Employment Relations Commission at N.J.A.C. 19:16-5.7(f), the parties submitted final offers prior to the close of the hearing on December 23, 1996. The terminal procedure in this matter is conventional arbitration.

The instant proceeding is governed by the Police and Fire Public Interest Arbitration Reform Act (the Act), P.L. 1995 C. 425, which became effective January 10, 1996. The Act at N.J.S.A. 34:13A-16(f)(5) requires an Interest Arbitrator to render an opinion and award within 120 days of selection or assignment. However, the parties may agree to an extension. The Arbitrator requested and was granted an extension of time until November 14, 1997 within which to render his Award.

APPEARANCES

FOR THE TOWN

Robert E. Murray, Esq. of Murray, Murray & Corrigan, Esqs.
Richard F. Turner, Township Administrator
Joseph B. Lisa, Auditor

FOR THE PBA

Michael A. Bukosky, Esq. of Klatsky & Klatsky, Esqs.
Kevin Williams, President
Brian Fava, Vice President
Dave Hruska, Delegate
Juan Nunez, Financial Secretary

REVISED STATUTORY CRITERIA

The Police and Fire Public Interest Arbitration Reform Act, N.J.S.A. 34:13A-16(d)(2), requires an Interest Arbitrator to separately determine whether the total net annual economic changes for each year of the agreement are reasonable under the eight statutory criteria in subsection (g) of this section.

N.J.S.A. 34:13A-16(g) directs the arbitrator or panel of arbitrators 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. The arbitrator or panel of arbitrators shall indicate in the Award 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. The factors are:

(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, compensation, 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 (C.34:13A-16.2); provided, however, that each party shall have the right to submit additional evidence concerning the comparability of jurisdictions for the arbitrator's consideration.

(3) The overall compensation presently received by the employees, inclusive of direct wages, 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 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.

FINAL OFFERS OF THE PARTIES

THE TOWN'S OFFER

The Town of West New York made the following final offer to P.B.A. Local 361. Except for the following, the agreement which expired on June 30, 1994 will be continued.

The Town of West New York is proposing a five (5)-year contract, which be effective from July 1, 1994 to June 30, 1999. The offer from the Town of West New York includes modification of Article V to the contract, and adding hours to the work schedule. Under the Town's proposal, the average work week for the patrolman would be forty (40) hours per week instead of thirty-two (32.) All references to a thirty-two (32) hour work week in this article would be changed to forty (40).

The Town also proposes the amendment of Section 1, Article VI to read:

The hourly rate of each employee in the bargaining unit shall be computed by adding the employee's base annual salary plus his longevity and then by dividing the sum by 2080.

Section 4 of this Article would be amended to reflect that the standard for overtime compensation would be in accordance with the Fair Labor Standards Act. In addition, Section 5 would be amended to delete the seniority requirement for special duty assignments would be deleted, and add a provision that special duty will be assigned at the discretion of the Chief or his designee. Section 6 would be amended as follows:

All mandatory off-duty details such as but not limited to parades, funerals and special events, shall be considered as straight time subject to the Fair Labor Standards Act.

The Town also proposes alteration of the vacation schedule as follows:

During first year of service:	1 day per month with maximum of 10 days
2nd through 10th year:	15 working days
11th through 20th year:	20 working days
After 20 years:	25 working days

The Town is also proposing modification to Article IX, "Sick Leave," as well. The provision would be modified to allow the town to require a physician's certificate for a sick leave absence of less than three (3) days. The Town also seeks to reduce the twenty-one (21)-month "catastrophic leave" allotment to three (3) months.

The Town is also proposing changes to the Terminal Leave provisions in Article XIII.

Section 2 would reflect the following changes:

Employees hired prior to January 1, 1972 shall receive upon retirement four (4) months' pay at retirement rate of pay.

Section 3 would read as follows:

Employees hired between January 1, 1972 and December 31, 1983 shall receive upon retirement two (2) months' pay together with all sick days, vacation days and accrued days accumulated after January 1, 1984.

Under Section 5, the terminal leave cap upon retirement would be reduced from \$15,000 to \$12,000.

The Town of West New York proposes the following with regard to wages. The Town proposes three new steps in the Patrolman's salary guide as follows:

Step 1A	\$27,973
Step 2A	\$31,725
Step 5A	\$42,500

The Town proposes a wage freeze for the period 7/1/94 to 6/30/96. For subsequent years, wage increases are proposed as follows:

Effective 7/1/96:	3.0 %
Effective 7/1/97:	3.0 %
Effective 6/30/99 (11:59 p.m.)	3.0 %

The Town further proposes that paychecks be disbursed biweekly instead of weekly.

The Town proposes the following co-pay increases to the health benefits package. Under Article XIII, the co-pay for generic drugs would be increased from \$3.00 to \$5.00. The co-pay for brand name drugs would be increased from \$5.00 to \$10.00.

Under the Town's proposal, Article XVII would be amended to provide that the Chief's decision with regard to emergency leave and compensatory time would be in the Chief's sole discretion, and not subject to grievance or arbitration.

Article XXIII, "Rules and Regulations," Section 3 would be amended as follows:

The Employer agrees to give the Union ten (10) days notice in writing, prior to any change or introductions of new rules and/or regulations of the Department.

Section 3 would also be amended to provide that the Chief of Police may, in his discretion, waive the prior notice requirement for implementation of new rules and/or regulations.

Under Article XXXV, "Union Education Fund - College Credits," the Town proposes that the payment for credits earned be ceased, except for those employees currently receiving compensation.

THE PBA OFFER

ARTICLE II: SCOPE OF AGREEMENT

The following section is to be added:

All terms and conditions of employment, past practices and customs regarding police officers not specifically set forth herein shall remain in effect and are herein incorporated by reference in their entirety.

DURATION OF AGREEMENT

The agreement between the parties shall be effective as of July 1, 1994 to June 30, 1997.

ARTICLE VI: OVERTIME

SECTION 2: There is a misprint. The word "fifteenth" should be changed to "thirty-first."

SECTION 4(a): The 38 hours is a misprint. It should be 37½ hours to conform with Article V, Section 1.

SECTION 4(b): The 38 hours is a misprint. It should be 37½ hours to conform with Article V, Section 1. However, the contract should keep detailed and safe street men at 40 hours for overtime.

SECTION 4(c): Delete "other than appearances in Municipal Court call in West New York." Change "work week" to "work day." Employees may not be retained for the purpose of attaining the minimum of four (4) hours, if the appearance requires less time. This shall include motor vehicle appearances.

SECTION 4(c)(2): To conform with Section 4(c), add "receive four (4) hour overtime minimum for the court appearance."

SECTION 4(f): Reword to make all call-in time a minimum of four (4) hours. Therefore, this section should read as follows:

Any employee recalled to duty at any time, including prior to or immediately following the tour of duty of such employee's regular tour of duty, will be guaranteed a minimum of four (4) hours at the overtime rate; and if recalled during a subsequent tour of duty will be guaranteed a minimum of four (4) hours at the overtime rate.

SECTION 8: Add a new section to read as follows:

All overtime shall be paid within 30 days of the date earned. After 30 days, the overtime shall accrue interest at the legal rate in effect pursuant to New Jersey Court Rule 4:42-11.

Note: The 1994 and 1995 interest rate is 3.5%.

SECTION 9: Add a new section to read as follows:

If an employee is called to duty outside of his usual tour of duty he will be compensated for those hours worked beyond the tour at time and one-half ($\frac{1}{2}$). An officer's regularly scheduled tour of duty shall not be changed without triggering the overtime provisions within this Article, except upon ninety (90) days notice.

SECTION 10: Add a new section in which the Township will be responsible for implementing a system in which overtime pay for "road jobs," etc., will be delineated from regular pay and the dates for which such overtime was earned will be specifically supplied.

ARTICLE VII: HOLIDAYS

SECTION 1: Now there are 14 holidays; the proposal is to increase to 15 holidays, by adding employee's birthday. All other Township employees have this benefit.

SECTION 4: Add a new section that reads as follows:

Holiday pay will roll into salary in an officer's 24th year of service. (Same as SOA contract.)

ARTICLE VII: VACATIONS AND VACATION PAY

SECTION 1: Increase vacation days from 31 to 33 days per year.

SECTION 6: Add a new section that reads, "Vacation days may be carried forward into successive years without restriction."

ARTICLE IX: SICK LEAVE

SECTION 2: Delete the following:

If an employee reports sick on two (2) separate unrelated occasions during a calendar year, then the Employer may require him to submit a doctor's certificate for any subsequent sickness during the calendar year before he returns to duty, regardless of the length of the sickness.

SECTION 3(b): Increase catastrophic sick leave from 21 calendar months to 24 calendar months.

SECTION 4: Employees will be allowed to sell back up to ten (10) sick days per year.

ARTICLE X: LINE OF DUTY INJURY

All line of duty injury medical bills shall be paid within five (5) days of receipt by the employer.

ARTICLE XI: SALARY

Police officers will receive a 6.5% salary increase per year across the board, starting July 1, 1994.

SECTION 2: Salary payments will be made on a weekly basis.

Officers will have the option to receive their salary paychecks as a direct deposit. (All other employees have this option.)

ARTICLE XII: LONGEVITY

At the present time there are two different longevity schedules. There is one longevity schedule for employees hired prior to September 14, 1978, and another longevity schedule for those hired after September 14, 1978. The PBA is proposing a longevity schedule which will be the same as the firefighters and the SOA.

<u>Pre</u> <u>September 14, 1978</u>		<u>Post</u> <u>September 14, 1978</u>		<u>Proposed</u>	
<u>Years</u>	<u>%</u>	<u>Years</u>	<u>%</u>	<u>Years</u>	<u>%</u>
3	4%				
		5	4%	5	4%
6	6%				
				8	6%
		10	6%		
11	8%				
				12	8%
		15	8%		
16	10%			16	10%
		20	10%	20	12%
				24	14%
25	12%				

The firefighters and the SOA all have the above proposed longevity schedule.

ARTICLE XIII: TERMINAL LEAVE

The PBA would like the custom and practice presently in existence to be incorporated into the contract to avoid any confusion in the future. The present custom and practice is that if \$22,000 of accumulated sick days had been earned and there was a payment of only \$15,000, then the employee was able to run out and be paid the remaining \$7,000 on terminal leave.

Increase the terminal leave cap to \$21,500 from \$15,000.

ARTICLE XIV: CLOTHING ALLOWANCE

Increase the clothing allowance and maintenance allowance \$50 per year.

ARTICLE XV: MEDICAL-SURGICAL AND MAJOR MEDICAL/DENTAL

SECTION 3: The contract is ambiguous in reference to insurance benefits after death for family members. The contract should clarify this point by clearly stating that if a retiree should die, then the employee's spouse, widow, and unmarried dependent children under the age of 23, will continue to have the same medical benefits as if the employee were still alive.

SECTION 9: Add a new section which will read as follows:

If the Employer exercises its right to change insurance carriers. the succeeding health insurance plan, including major medical, dental, prescription, vision and all other health plans, will be equal or better than the plan then currently in effect.

ARTICLE XVII: EMERGENCY LEAVE

In Section 3, the definition of immediate family should be expanded to include any relative who lived with the employee within 180 days prior to that relative dying.

ARTICLE XXV: GRIEVANCE PROCEDURE

In Section 6, the 10-day limitation of presenting a grievance should be increased to 45 days.

ARTICLE XXXII: RIGHTS OF EMPLOYEES

Each employee shall have the reasonable expectation of privacy in the locker room; therefore, there should be no video cameras, listening devices, or any other type of electronic or personal eavesdropping or surveillance equipment in the locker room.

ARTICLE XXXV: UNION EDUCATION FUND-COLLEGE CREDITS

SECTION 1: Increase the Union Education Fund from \$1,200 to \$2,000 in order to match the supervisors contract, Article XXXIII, Section 1.

SECTION 2: The PBA would like the \$2 per credit increased to \$15 per credit, to equal the supervisor's contract. Currently, the firefighters' contract has \$15 per credit.

All other contract provisions will remain in effect.

THE TOWN'S POSITION

The Town presented its case through the testimony of Joseph Lisa, a Certified Public Accountant and licensed Public School Accountant. The Town presented one hundred nineteen exhibits including recent contract settlements in West New York and elsewhere throughout the State of New Jersey and documents describing recent economic trends.

The Town has argued that it cannot implement wage increases without a commensurate reduction in other benefits to be forsaken by the bargaining unit because of the tenuous financial circumstances confronted by the Town. The Town argued, for example, that the Superior Officers Association generated \$68,000 per year worth of savings which the Town utilized in fashioning the package under which the SOA received 0% the first year, 4.5% the second year, 4.5% the third year, and 4.8% at 11:59 p.m. on the last day of the contract term effective July 1, 1994 through June 30, 1997.

Local 1861 of the I.A.F.F., representing the Fire Department's superior officers, also accepted a wage freeze in 1994, eliminated \$500.00 of their clothing allowance and clothing maintenance allowances, eliminated guaranteed overtime, and eliminated one hour per week of pay. In addition, Local 1861 agreed to a reduction in their hourly overtime rate. These and other cost savings to the Employer

permitted a similar settlement with the I.A.F.F. of 4.5%, 4.5% and 4.8%. The fire fighters, represented by Local 620, agreed to a wage freeze for 1994, biweekly paychecks, and a waiver of holiday pay. In addition, Local 620 accepted three additional steps on the salary scale and a freeze in the starting salary, and a cap on terminal leave payment in order to receive the same wage package as the fire superior officers.

The Town asserts that a West New York Police Officer at the maximum step in base pay, earning 10% longevity, combined with clothing and maintenance allowances of \$725.00 and \$175.00 per year, earns a total of \$49,047.00 for less work than is performed by other police departments in comparable jurisdictions. The Town also asserts that this package is higher than that earned by biomedical engineers, physical therapists, accountants, social workers with master's degrees, and deputy attorneys general according to statistics compiled by the New Jersey Department of Labor. The Town characterizes the terms and conditions of employment enjoyed by the West New York Police Officer as vastly superior to police officers employed in comparable jurisdictions when evaluated along with the fifteen days' sick leave and twenty-one month catastrophic sick leave, as well as a maximum of thirty-one working days of vacation per year.

The Town describes its financial condition as fragile but stable, although slightly improved under the current mayoral administration. The Town Auditor testified that the downgrading of the Town's bond rating from "stable" to "negative" by Standard & Poor's Creditweek Municipal on January 22, 1996 was caused by several factors, including a stagnant tax basis compounded by declining, if not "plummeting," residential values; high debt levels; and marginally adequate fiscal controls, with expenditures exceeding revenues. These factors were exacerbated by the Town's low tax collection rate, which improved from 82% to 90.63%. According to the Town, its precarious financial position makes the Town unique among the communities cited by the PBA for comparison of police salaries. The Town further asserts that its current level of debt precludes undertaking substantial additional expense for its police force.

In the 1996 budget, the Town utilized \$2.7 million of surplus, yet generated only \$486,000 of surplus. The Town contends that the total surplus available as of June 30, 1996 was \$3,392,000, of which \$703,000 was cash surplus. Consequently, approximately \$2.7 million was utilized to fund the 1997 budget. The balance of \$686,000 constitutes deferred charges from 1996, such as emergency appropriations and overexpenditures which must be repaid. Furthermore, the Town argues, much of the revenue available in the 1996

budget was from unique events, such as the sale of municipal assets, that are not recurring.

According to the Town, a surplus of \$3.75 million must be generated just to maintain spending at current levels. Because these costs represented basic operating needs in the Town and not non-recurring events, there is enormous pressure to conserve the Town's limited financial resources in order simultaneously to provide municipal services at the current level and to satisfy applicable legal constraints. The Town represented that raising taxes to close these budget gaps and to replace the \$2 million that was used in 1996 will unreasonably increase one of the highest tax rates in the State. The Town described the loss of nearly twenty percent of its ratables between 1991 and 1996, in the amount of approximately \$223 million. This decline in ratables occurred primarily in the value of commercial and industrial properties, thereby shifting additional share of the burden to residential taxpayers.

The Town also cites its high general tax rate of \$4.45 per \$100.00 of valuation, contending that it is surpassed only by Kearny, Guttenberg, and East Newark among comparable communities. Although its tax collection rate has improved, it is still only 90.63% on a valuation that is also relatively low at \$994,441,472.00. According to the

Township's Auditor, this decline in ratables is the primary cause of West New York's financial crisis.

In addition, the tax rate has achieved stability, according to the Town, for the first time in decades, notwithstanding that the tax rate remains the highest in Hudson County and the seventh highest in New Jersey.

The Town acknowledges that the Cap Law--as the Local Government Cap Law, N.J.S.A. 40A:4-45.1 et seq., is popularly known--would allow the Town to increase its spending, including allocation for the Police Department, but the Town asserts that the underlying funds are not available and further asserts that the mechanism for increasing municipal spending by raising the cap from 3% to 5% would require a substantial increase in the municipal tax burden on local citizens. The Town cited the New Jersey Supreme Court's decision in PBA Local 207 v. Borough of Hillsdale for the proposition that a municipality need not raise taxes solely to fund wage increases. Nor must a municipality spend the limit of its permissible spending under the Cap Law.

The Town has the seventh highest overall tax rate in New Jersey and the highest in Hudson County, and is faced with the prospect of raising taxes simply to close the deficit in the budget to maintain spending at its current

levels. Nor can the Town rely on autonomous bodies, such as the Municipal Utilities Authority, as a source of funds because these bodies also carry a substantial burden of debt.

The Town referred to contracts between the State of New Jersey and the CWA, IFPTE, and AFSCME which provided for no wage increases for 1995 and 1996. The Town also cited a contract between Atlantic City and IBT Local 331 which featured no wage increases in 1995 and 1996 and lump sum payments for 1997, 1998, and 1999. The Town submitted a far-flung group of public and private sector settlements, including an IBEW local in Massachusetts which accepted a three-year wage freeze, and the Kelly-Springfield and United Rubber Worker agreement which provided a three-year wage freeze and only a \$500.00 signing bonus.

The Town also cited the USAir-IAM agreement in which job security was augmented in exchange for a 12.9% wage cut. In addition, the Employer cited contracts in Alabama, the TWA flight attendants' contract, the Bath Iron Works draftsmen settlement, and the American Nurses Association agreement in support of the Town's position that the wage freeze component in the pattern of settlements effectuated with other uniform services in West New York was reasonable and should be awarded.

The Town offered evidence that the cost of living increased at the rate of 2.5% during 1995 and that the CPI has been stable at less than 3% in recent years. The Township asserted in its brief that:

All other police and fire unions in West New York have already agreed to important give-backs for the citizens, and arbitration should not insulate this one group, nor should arbitration reward a recalcitrant PBA in the face of settlement by the Police Superiors, Fire Officers Local 1861, and Fire Fighters Local 620 - all with substantial give-backs, and the one-year wage freeze, no salary increase program.

According to the Town, any significant deviation from the pattern achieved with other uniformed services will seriously undermine the ability of the parties to reach voluntary settlements in the future and disrupt the ability of the parties to negotiate meaningfully.

The Township argues that alteration by the Arbitrator of the pattern achieved through voluntary settlements with other uniformed services would have dire consequences and would derail the ability of the Town effectively to negotiate voluntary settlements in the future. According to the Town, any deviation from the magnitude of give-backs and the pattern of wage increases, particularly the zero increase in the first year, would be deleterious to the stability of all public employment in West New York.

The Town proposes increasing the average work week for a Patrol Officer from thirty-two hours to forty hours per week in order that the work load be comparable with other police departments in Hudson County, as well as to augment the police protection afforded to the citizens of West New York. Because West New York has almost the highest population density in Hudson County and is a highly urbanized area, the Town asserts that increased police protection is necessary to curtail the crime rate, which is fifty percent higher than the average rate in the State of New Jersey. In order to achieve this worthy goal without imposing an even higher burden of taxation on the citizens of West New York, the Town asserts that it is justified in radically increasing productivity.

The Town then compared the wages and benefits paid to Patrolmen in West New York to the compensation earned by counterparts in other cities. The maximum base salary of a West New York Patrol Officer is \$42,770.00, exclusive of longevity. If the Patrol Officer earns the maximum longevity, the Patrol Officer's base salary is increased to \$48,147.00, fully \$10,000.00 more than the maximum paid to a Police Officer in Philadelphia. The Town characterized this level of compensation as comparable to the Hudson County communities of North Bergen, Harrison and East Newark, where Patrol Officers work more days per year but earn less. According to the Town, patrol officers in Harrison work

thirty-five hours per week and patrol officers in Weehawken work a straight 4-3 schedule resulting in significantly more days of work per year. Guttenberg has a 4-2 tour schedule, and Hoboken Patrol Officers work a straight 4-5-3 schedule.

The Town argues that the 4-3, 4-4, 4-3 schedule enjoyed by West New York Police Officers averaging thirty-two hours per week is a substantial benefit which must be factored in when evaluating the sufficiency of the wages paid. Other communities, such as North Bergen, earn a lower base pay, have a smaller clothing allowance, and work more days. So do the Police Officers in Harrison. The Town also points to the unparalleled vacation entitlement enjoyed by West New York Police Officers at thirty-one work days off after only two years of employment in addition to the time off attributable to their tour schedule.

Under the Town's proposal, the base wage for Patrolmen will increase to \$45,083.00, effective July 1, 1996; \$46,435.00, effective July 1, 1997; and \$47,828.00, effective at 11:59 p.m. on June 30, 1998. If the Patrol Officer is earning maximum longevity, the compensation then rises to \$49,591.00, \$51,078.00, and \$52,611.00, respectively, exclusive of clothing maintenance and clothing allowances, overtime, and holiday pay. When these are factored in, the total maximum compensation rises to \$53,461.00.

Comparing the compensation received by West New York Police Officers to private sector employees, the Town submitted evidence that a Patrolman at maximum longevity would earn a package that is more generous than the compensation earned by biochemists, molecular biologists, commercial airplane co-pilots, pharmacists, middle school and high school teachers, physical therapists, retail store managers, FBI agents, accountants and auditors, social workers with an MSW degree, and deputy attorneys general, all of whom work many more hours than thirty-two hours per week.

Citing testimony by the PBA President, the Town argued that there is no evidence of any West New York Patrol Officer leaving to take another police job in New Jersey or any private sector job in New Jersey, thereby further demonstrating the adequacy of the compensation and terms of employment provided by West New York to its police force. The Town also referred to the protection Police Officers have from increases in the cost of health insurance as further evidence that they enjoy a stable working situation.

According to the Town, any money legally permitted to be spent under the cap is simply not available because the Town does not have the money, regardless of what the Town could possibly have banked under the Cap Law.

THE PBA'S POSITION

The PBA asserts that its economic proposal will create no problem in complying with the restrictions imposed by the Cap Law and, therefore, the Town has the lawful authority to enact the PBA's economic proposal. The PBA noted that the Town could have implemented a 5% cap, but chose to remain at the 3% cap level. The PBA further asserts that the Town's 1997 budget could have been increased by \$420,250.00 without exceeding the 3% cap limit. The PBA noted that in 1996 the Town appropriated \$292,200.00 below the 3% cap level and was entitled to bank its unused cap by incorporating the unused portion in the following year's budget. Following this premise, the PBA asserts that the Town had the capacity to bank \$712,450.00 in potential cap spending authority during 1997.

The PBA characterized the economic vitality of the Town as much improved, referring to PBA Exhibit No. D-12 in support of the PBA's assertion that property taxes are stable for the first time in decades, the municipal tax rate is decreasing, and municipal spending is down by \$505,000.00 from the previous year. Noting that the percentage of municipal tax collection rose from 84% to 91%, the PBA argues that the Town has been artificially decreasing its

tax rate over the previous four years in order to counteract the increase in County and school taxes and thereby to stabilize the total burden on the taxpayers of West New York.

The PBA cited plans to develop the waterfront and to create a residential community on the site formerly occupied by rail yards. Newspaper articles submitted by the PBA describe the potential for eight thousand new residents.

The PBA asserted that the West New York Parking Authority and the Municipal Utilities Authority have generated extra cash that is available for municipal purposes such as increasing the compensation paid to Police Officers. The PBA cited an audit report of the Parking Authority indicating that the Authority has approximately \$317,000.00 in cash, \$1,100,000.00 in investments, and \$1,119,000.00 in other assets. The PBA argued that the Town could, at its discretion, abolish the Parking Authority and transfer these assets into the Town's accounts.

The PBA cites the Town's decision to promote a Police Officer to Lieutenant and another promotion of a Police Officer to Captain, with commensurate salary increases, as evidence of the availability of excess funds. In addition, the Town created a third Deputy Police Chief, thereby substantially increasing its police payroll.

In analyzing the financial impact of its proposed package of wage and benefit increases, the PBA asserted that the Town of West New York easily could afford the PBA's economic proposal without incurring any adverse financial impact upon the governing unit, its residents, and taxpayers. According to the PBA, the cumulative difference between the 0%, 3%, 3% proposal of the Town and the 4.75%, 4.75%, 4.75% proposal of the PBA is \$556,219.00 over three years. The 1994 increase proposed by the PBA has been computed to reflect a .45% change in the budget, the 1995 increase has been computed to reflect a .66% change in the budget, and the 1996 increase has been computed to reflect a .82% change in the budget, changes which the PBA characterizes as infinitesimal with a negligible impact on the governing unit. The PBA further argues that the theoretical 4.75% increase would have no material effect on the municipal budget if the Town had simply maintained its 1994 municipal tax rate.

The PBA cited the four year average wage increases of \$8,593.00 afforded to Sergeants, Lieutenants, and Captains in the Superior Officers bargaining unit as further justifying the level of increase sought by the PBA for Patrolmen in its bargaining unit. The PBA contended that the more advantageous seniority benefits enjoyed by the Superior Officers Association supported the PBA's position.

Increases received by the Police Superior Officers were also received by the West New York Fire Superiors represented by Local 1861 and by the rank and file fire fighters represented by Local '620, IAFF. These groups received 4.5% wage increases in 1995, followed by another 4.5% wage increase on July 1, 1996, and a 4.8% wage increase on June 30, 1997.

The PBA then summarized the terms of employment in 190 New Jersey municipalities as reflecting a valid state-wide average. According to the PBA, the Town's economic proposal provided the lowest percentage salary increase and the lowest dollar amount salary increase granted in other Hudson or Union county municipalities. The PBA decried this outcome, especially in view of the statistics reflecting that the work load in West New York has increased for the individual Patrolmen. The number of jobs undertaken by Police Officers in West New York, as reflected by the PBA's statistics, expanded from 40,406 in 1993 to more than 50,000 in 1996.

The PBA characterized the average salary increase throughout Hudson County in 1994 as 5.56%. According to the PBA, the average Hudson County salary raise in 1994 was \$2,351.00 or 4.81%. The PBA asserted that its proposed 4.75% increase was well below this level. The PBA further

asserted that the average salary increase in Hudson County for 1995 was \$2,169.00 and that the average increase in 1996 was 5.38%, which is the equivalent of \$2,562.00. The Town disputes the accuracy of these figures.

The average Union County salary increase cited by the PBA for 1995 was 5.22%; for 1996 the average Union County increase cited by the PBA was \$2,474.00 which, if awarded to the top step West New York Patrolmen, would result in a 5.3% raise.

The PBA characterized fifty recent interest arbitration awards as creating an average salary increase in 1995 of 4.56% and in 1996 of 4.57%.

The PBA compared the remuneration received by West New York teachers as earning more for working less than bargaining unit employees. According to the PBA, a West New York Patrolman with fifteen years' experience works twelve months, versus ten months for the fifteen-year teacher; is not excused for snow days; and is required to work weekends, nights, and holidays. By this comparison, the PBA asserted, a Police Officer works 218 days a year, versus 182 days a year for West New York school teachers, a difference of 34% more days. The PBA claims that the teachers enjoy the same number of sick days and more holidays and personal days than West New York Patrolmen.

The PBA cited the disparity between what a sixteen-year West New York school teacher with a Master's Degree plus thirty credits earned in 1994, \$56,994.00, which, according to the PBA, was \$9,673.00 more than a fifteen-year West New York Patrolman earned. Therefore, the PBA argued, comparability, the most important and relevant factor required by N.J.S.A. 34:13A-16(g), the Police and Fire Public Interest Arbitration Reform Act, shows that West New York Patrolmen do not compare favorably in terms of the wages, hours and working conditions earned by West New York school teachers. The PBA then compares the salaries earned by non-teaching educational employees within the Hudson County school system compared to bargaining unit Police Officers. The PBA further contends that the bargaining unit averages 37.5 hours' work per week.

The PBA cited the cost of living in the New York-Northeastern New Jersey region as rising sharply in recent years, citing a U.S. Labor Department, Bureau of Labor statistics report that in January, 1996 the New York-Northeastern New Jersey Consumer Price Index rose 3.1% compared to 1995.

The PBA asserted that the Town will experience "significant difficulty just keeping junior officers in the event that the Town's economic and no-economic proposals are

awarded. This is especially true if the Town's proposal of a salary freeze is awarded." The PBA contended that its proposed minimum four-hour call-in time will promote continuity and stability of employment because an officer would be less likely to "burn out" or become exhausted from reporting for duty on an excessive number of days in a row. The same argument was made concerning the PBA's proposal that an employee who was called to duty outside of the employee's normal tour of duty should be compensated for all hours worked beyond the tour at time-and-a-half.

The PBA proposal that "an Officer's regularly scheduled tour of duty shall not be changed without treating the overtime provisions within this article, except upon ninety-days' notice" was cited as promoting continuity and stability of employment, as was the PBA proposal to eliminate the requirement that a doctor's note be submitted if an employee is out sick more than two times a year, the PBA's proposal to increase the number of vacation days from thirty-one to thirty-three days per year, thereby rewarding veteran Police Officers with increased vacation time, and to increase the amount of payment for college credits earned from \$2.00 to \$15.00 in keeping with the reimbursement schedule enjoyed by Fire Fighters and Police Supervisors.

Finally, the PBA depicted its proposal to incorporate by reference all past practices and customs regarding Police Officers not specifically set forth in the collective bargaining agreement as promoting continuity and stability of employment by serving as a disincentive for the Town to alter long-standing policies that are well understood, but have not been memorialized into the collective bargaining agreement due to an oversight or administrative error on behalf of one of the parties. Likewise, the PBA proposal to increase longevity is described as promoting the continuity and stability of employment.

The PBA asserted that the economic outlook for the beginning of 1997 and thereafter is favorable by citing articles appearing in USA Today, the Star Ledger, the Asbury Park Press, and the Associated Press reporting that New Jersey had a slightly better home ownership record than the nation as a whole. The PBA cited a U.S. Bureau of Labor statistics report that the number of jobs in computer and data processing increased from 47,500 to 56,600 jobs as of June, 1995, and that the average salary for such jobs in computer programming and computer-integrated system design increased from \$48,888.00 to \$57,160.00, a wage increase in computer-related positions characterized by the PBA as 17% during the two years ending in 1995.

The PBA concluded that its economic and non-economic proposals should be awarded as the more appropriate under the statutory criteria.

COSTING OUT OF FINAL OFFERS

The bargaining unit was comprised of fifty-seven police officers as of July 1, 1994. The maximum base salary for a patrolman was then 43,770. The total payroll, exclusive of longevity, was \$2,447,470. The Town hired five police officers effective August 2, 1994, which added \$114,460. to the payroll, prorated for eleven months.

On July 1, 1995, the Town employed sixty-two bargaining unit police officers. Five more officers were hired effective July 25, 1995. The combined prorated base for these new employees was \$116,655. The total base salary burden of the bargaining unit, exclusive of longevity, for the period from July 1, 1995 to June 30, 1996 was \$2,573,585.

The base salary of these sixty seven officers as of July 1, 1996 was \$2,857,249. The longevity payments to the bargaining unit average approximately 4.15% of base.

The Union has adopted the figure of \$2,520,894.00 as the base in 1994. Three new Police Officers were hired at the rate of \$25,722.00, thereby increasing the equivalent base to \$2,598,060.00 for the subsequent year.

DISCUSSION

The Police and Fire Public Interest Arbitration Reform Act, N.J.S.A. 34:13A-16, requires the Arbitrator to:

. . . decide the dispute based on a reasonable determination of the issues, giving due weight to those factors . . . 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.

I have reviewed all of the evidence in conjunction with each of the factors and deemed all of them to be relevant, with the exception that there are no stipulations of the parties, the fourth statutory factor. The required statutory analysis follows hereafter.

The first criteria involves weighing the interests and welfare of the public in having not only a highly professional and well motivated police force to protect the citizens and their property by effectively enforcing the law, but also the attainment of such services at a reasonable cost to the taxpayer. The amended Interest Arbitration statute explicitly incorporates by reference the

limitations imposed by the Cap Law, N.J.S.A. 40A:4-45.1 et seq., wherein the Legislature expressly declared its policy that:

The spiraling cost of local government must be controlled to protect the homeowners of the State and enable them to maintain their homesteads. At the same time, the Legislature recognizes that local government cannot be constrained to the point that it is impossible to provide necessary services to its residents.

The interests and welfare of the taxpayers of West New York mandate that their already heavy tax burden not be unduly increased. Bargaining unit Police Officers are entitled to fair compensation in comparison to police officers in other jurisdictions, as will be discussed below, but it is inappropriate materially to augment their package of compensation and benefits at a time when the Town is struggling to recover from the adverse impact of a declining tax base and is burdened by one of the highest tax rates in the area.

The Town has established by persuasive documentary evidence and testimony that the Town's recovery will be jeopardized by granting the wage increases, either at the 6.5% or 4.75%, and additional benefits demanded by the PBA without also implementing offsetting economy measures which inure to the benefit of the Town. Any analysis of the welfare of the public at this juncture in the history of the Town of West New York requires that more emphasis be placed

on conserving scarce resources in order to preserve the fragile recovery of the Town, to offset the Town's declining fiscal rating by financial agencies, and to stabilize the tax burden, even if such measures require the bargaining unit to defer improving its position relative to police officers in other comparable jurisdictions. The bargaining unit is not, however, being asked to freeze its compensation package for the duration of this Agreement. At issue is the rate of increase.

The second statutory criteria requires a comparison of the wages, salaries, compensation, 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. Documentary evidence establishes that the West New York Police bargaining unit is in the middle range of police departments in Hudson and Union Counties and has historically been neither at the top nor the bottom of these groupings.

A Police Officer at maximum salary in the 6% longevity category will earn \$53,627.44 at the end of the contract term, inclusive of longevity. Regardless of which party's statistics are used, the evidence clearly establishes that West New York is in the upper half of municipalities cited in terms of base salary, etc.

When the total number of days and hours worked during the year as a result of the 4-3, 4-4, 4-3 tour schedule is factored into the cost analysis, the West New York Police bargaining unit is extraordinarily well compensated. This balance of work days and wages occurred over a period of years and should not be materially disrupted without substantial wage increases, which the Town can not afford at this time.

The wages and salaries are commensurate, within a reasonable range of deviation, to similar jurisdictions in Hudson and Union Counties as cited by both parties in their briefs and arguments. However, the hours worked constitute an unusual distinguishing circumstance which supports the Town's contention that its offer is adequate.

The Town has cited a whole group of employment categories, such as social workers with Master's degrees, FBI agents, and others, who receive compensation that is comparable to the PBA bargaining unit, but work more hours per week. These other professions do not confront the stressful nature of police work, the work environment in this densely populated urban setting, the constant exposure to potential physical danger, or the other unique attributes of police work which render comparison to civilian occupations virtually meaningless except for the comparison

of compensation received as required by this aspect of the interest arbitration statute.

The PBA established persuasively that the number of "jobs," or calls requiring police response, per year has increased significantly in the last few years, thereby further burdening the conditions of employment of the bargaining unit. However, this increased work load has been recognized by increasing wages faster than the rate of increase in the cost of living. Moreover, the increased work load is best addressed by the Town through retaining more Officers to alleviate the burden on bargaining unit employees or by buying more time from the current complement of Police Officers.

The average rate of increase in private employment in general does not approach 4.75% per year, the level of wage increase sought by the PBA. Private corporations have not been granting wage increases of this magnitude, and there is no justification for granting this order of wage increase without offsetting improvements in productivity or other concessions such as those achieved in the voluntary negotiations between the Town and the other uniformed services' bargaining units.

I am taking arbitral notice of wage data published by the Bureau of National Affairs, which reflects that median

pay increases were 3% for the 1.5 million workers covered by collective bargaining agreements reached in 1996, a figure that remains unchanged from the figure reported by BNA in 1995. Therefore, wage increases of more than 3% for this bargaining unit exceed the national figures relating to private sector employment.

Neither has there been a general augmentation of benefit and wage packages in public employment that would justify awarding the level of increase sought by the PBA. Not only has the State of New Jersey entered into collective bargaining agreements in which there were zero percent wage increases for the first two years, but there also has been a diminution in the level of settlement in police and other public sector bargaining over a period of years. The Town argued persuasively that the averages and figures proffered by the PBA are not entirely reliable because the impact of split-year increases have not been fully incorporated and further because the groups of comparable towns may be skewed.

Regardless of which jurisdictions are chosen, whether by the Town or by the PBA, the evidence is patently clear that wage increases of the magnitude sought by the PBA, augmented by increases in already generous benefit levels, such as vacation, personal days, holidays, and longevity, which materially increase the cost of the compensation

package, cannot be justified without some major offsetting factor.

The third factor is the overall compensation presently received by the bargaining unit. Their wages, vacations, holidays, catastrophic leave, pensions, and other benefits are at least as good as those in comparable jurisdictions. The 4-3, 4-4, 4-3 tour schedule, plus the generous vacation allotment available even to short-term bargaining unit employees, means that an employee receiving maximum vacation works only one hundred sixty-eight days a year. The Town must bear the burden of providing adequate police coverage simultaneously with meeting its obligations under this schedule. The thirty-one days' working vacation per year, when computed in conjunction with the fact that employees enjoy ten days off for every twelve eight-hour shifts worked, makes the configuration of the West New York tour schedule highly advantageous to the bargaining unit.

The Arbitrator thoroughly examined the possibility of restructuring the parties' relationship by imposing a vastly different tour schedule in order to effectuate the savings sought by the Town, but decided after painstaking evaluation that the consideration offered for the twenty-five percent increase in work load sought by the Town was inadequate. For the Arbitrator unilaterally to dislodge the balance of consideration that has been achieved over a period of years

would undo the bargains that the parties have previously made. Although the Arbitrator has the authority to order such a change, I have declined to do so and recommend that the parties themselves address this issue in order to achieve a mutually satisfactory adjustment in the tour schedule in return for a commensurate fair increase in overall compensation for the additional time worked.

The bargaining unit is insulated from the spiraling cost of medical and hospitalization benefits. The only impact regarding medical benefits on the bargaining unit as a result of this Award is an increase in the co-payments for prescriptions. Given the dramatic increase in the cost of prescription medications, this modest increase will not unduly burden the bargaining unit and will serve them better in the long run by enabling the Town to continue to provide prescription plans that make available not only generic, but also name brand medications. It is neither uncommon nor inappropriate for the bargaining unit to participate in some small measure in absorbing tangentially the increasing cost of providing medical benefits. This additional burden on the bargaining unit is fairly offset by granting the language sought by the PBA better defining the Employer's obligations if the Employer switches plans or health insurance carriers.

There are no stipulations of the parties, so the Arbitrator need not dwell further on the fourth statutory criterion.

The fifth statutory criterion is the lawful authority of the employer. The statute now explicitly mandates that the Arbitrator assess the limitation imposed upon the employer by Public Law 1976, the Cap Law, N.J.S.A. 40A:4-45.1 et seq. The PBA argues that the Town has \$712,450.00 available under the 3% cap limit in 1996 and 1997 and further asserts that the Town has an additional \$622,149.00 available in 1997 if the taxpayers would vote to increase the cap to 5%. However, the PBA ignores the fact that any legally permissible spending remaining available under the cap does not necessarily correspond to money on hand in the Town's coffers.

The Town countered the assertions of Mr. Doody, the PBA witness, that there was ample room under the 3% cap to fund the magnitude of increases sought by the PBA. In 1995, the maximum allowable cap appropriation was \$27,252,500, of which the Town appropriated \$27,252,300. In 1996, the maximum allowable appropriate was \$30,850,600, and the actual municipal appropriation was \$30,609,400, leaving \$241,200 under the legal limit available for expenditure if the municipality could raise the revenue represented by this available spending authority.

In 1997, the maximum allowable cap was \$31,527,700, of which the Town budgeted \$31,107,470. Mr. Doody testified that the Town appropriated \$6,349,000 for police salaries in 1996, and expended only \$6,112,100, thereby creating a \$236,900 pool of funds available to carry forward and apply to subsequent wage increases. Mr. Doody speculated that there would be \$353,000 of unexpended funds that had been budgeted to police salaries in 1997. By adding these numbers together, Mr. Doody opined that there was a total \$773,250 available to fund the benefits sought by the PBA. The PBA correctly and persuasively asserts that there is no impediment to the lawful authority of the Employer to grant the wage increases and other benefits sought by the Town without violating the ceiling imposed by the Cap Law. However, the lawful authority to spend does not presuppose that the Town has the resources to spend to its maximum cap or that such resources, if available, should be expended on police salaries.

Furthermore, there are several one-time budget items, including a \$2 million sale of assets, that cannot be replicated in subsequent years and must be replaced. This need to replace one-time sources of revenue in order to meet the obligations of the prior year weighs heavily in determining the ability of the Town to pay the increased benefits sought by the PBA. Although the Town could spend

more without violating the provisions of the Cap Law, even at the 3% level, any such additional spending would require increasing taxes on an already unduly burdened public.

The sixth criterion is the financial impact on the governing unit, its residents and taxpayers. The Arbitrator has studied the impact of the parties' positions and the impact of this Award on the municipal purposes element of the tax burden on West New York tax payers and determined that any increased burden is fair and equitable. This conclusion is based primarily on the fact that the impact of this Award is designed to be no more onerous than the settlements achieved voluntarily by the Town with its other uniformed services bargaining units. The form of the package may differ in terms of the nature of the concessions offsetting the cost increase, but the Arbitrator's intention and, I believe, result is to create an alternative package that imposes no greater burden on the taxpayers than they were willing to accept through their agents and elected officials who ratified the other voluntary settlements.

The PBA seeks to revise the collective bargaining agreement, including augmenting existing benefits, at a time when the municipality is ill-equipped to absorb the cost of additional benefits for its employees, including its Police Officers, as the Town recently laid off approximately one hundred full-time and part-time employees. In addition, tax

collections are low in comparison to other communities and the Town has had to resort to one-time funding mechanisms that cannot be replicated during the term of this contract. Such augmented benefits as increased vacation, longevity, and terminal leave cannot be justified.

Standard and Poor's Creditweek Municipal described the financial status of West New York after downgrading the Town's bond rating from "stable" to "negative" on January 22, 1996 as follows:

West New York, on Hudson County, N.J.'s "gold coast," experienced rapid growth in the late 1980's with residential development spurred by expansion in the financial services industry in New York City. This growth dissipated recently, the town's financial position has weakened considerably, and debt management matters are not being attended to in an orderly manner. Short term debt represents about 70% of total town debt.

As of June 30, 1994, the general fund balance of \$1.99 million represents about 5.4% of operating expenses. However, there were over \$8 million of tax anticipation notes (TANs) outstanding, taxes receivable increased dramatically to \$9 million, and \$11.4 million of fiscal year adjustment bonds issued in 1991 mature in 2006. The fiscal year adjustment bonds represent transition year debt obligations issued at the time of the town's conversion of fiscal years.

Over six months after the close of the fiscal year, June 30, 1995 financial results are not available. The June 30, 1994 results were not available until May 1995, 10 months after the close of the year. The town has undergone several financial manager changes and a reorganization, adding to a lack of fiscal controls. Short term debt levels are escalating. Investment policy and cash management practices do not add to the town's financial problems, adhering to state required practices.

The \$1.1 billion tax base has remained stagnant, following a 1991 property revaluation. Overall market

values declined about 10% between 1991 - 1994. Residential property values, particularly West New York's "high-rise" apartments, townhouses and condominiums, have plummeted, adding to the town's fiscal pressures. Furthermore, the leading five taxpayers'--all real estate or development companies or owners--property values dropped 40% in the aggregate, to \$136 million in 1993, from \$226 million. Property tax collection rates fell to 84% in 1992. However, town officials indicate that tax-lien sales have elevated collection rates back to a traditional 92% level.

The town's total debt of nearly \$50 million, including \$8.5 million of TANs, is heavily dependent on short-term obligations. Over \$26 million in bond anticipation notes (BANs) need to be converted to long-term bond obligations within the near term of 12 to 24 months. Overall net debt per capita of \$1,474 and 4.7% of property values is relatively high. Also, the West New York Municipal Authority's

\$85 million sewer debt obligations, with a town G.O. backing, have not called on the town's general fund support. However, it took an 85% sewer rate hike in 1993/1994 for the enterprise system to meet expenses and debt service requirements. Town officials are attempting to develop strategies to restructure the debt service payments, given fiscal pressures. Minimal capital improvements are being made, given the limited amount of actual general city infrastructure capital financing that has been done in recent years. (Town Exhibit E-1)

Furthermore, the Town has crafted a series of settlements with its other uniformed services, including the IAFF representing the fire fighters and the West New York Superior Officers Association representing the police superior officers. This pattern of contract settlements has been achieved by requiring the affected bargaining units to accept substantial give-backs in order to fund the magnitude of raises provided in their new collective agreements.

The Town has argued vigorously and persuasively that the Interest Arbitrator should not disturb this pattern of settlements because the willingness of the other bargaining units to settle is delicately balanced on the uniformity of pattern among the settlements that they achieved. This pattern of settlement among employees who also have access to interest arbitration under the Police and Fire Public Interest Arbitration Reform Act weighs heavily in determining whether funds exist substantially to improve the position of West New York Police Officers relative to other similarly situated Police Officers by granting the variety of benefits sought in the instant case and whether to spend existing or available funds on augmenting the size of a raise in wages and benefits for police.

There is no evidence in the record that the Award as constituted will jeopardize the Town's ability to maintain existing local programs and services or to expand existing programs and services for which public monies have been designated by the governing Board in a proposed local budget. Consequently, there is no discernable adverse impact emanating from this Award as constituted. Such adverse impact would emanate if taxes were raised to the extent necessary to fund the increased benefits and wages sought by the PBA, thereby mandating denial of that package except as certain aspects have been incorporated in this Award.

The seventh statutory criterion is the cost of living. Both parties acknowledge that the cost of living has remained stable in the past few years. The Town asserts as evidence submitted (Exhibit E-C-12) that the cost of living increased only 2.5% in 1995 and has remained below 3% for several years. PBA Exhibit No. B-9 cites a cost of living between September, 1995 and September, 1996 at 3%, compared to the CPI increase for the New York-Northeastern New Jersey Region of 3.1% in the same period.

The PBA has argued that this factor should be disregarded because some arbitrators have awarded wage increases far in excess of this level after considering the recent history of the CPI. There is, however, no basis in the record to augment further the wage increases established by this Award as there has been no onerous increase in the cost of living that imposes undue hardship on the bargaining unit. Averting such hardship is the purpose for which this statutory criterion was enacted.

The eighth factor of the Interest Arbitration Act, N.J.S.A. 34:13A-16(g), is 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. The PBA argues without evidentiary justification that the Town will experience "significant difficulties keeping junior Officers in the event that the Town's economic and non-economic proposals are awarded." The evidence clearly suggests, however, that no West New York Police Officer has abandoned service as a Police Officer in West new York in order to accept employment in the private sector or to join another police department in the State of New Jersey. Neither does the record reflect any shortage of qualified applicants seeking to join the Police Department. Consequently, the stability and continuity of employment will not be adversely affected by the combination of benefits and wage increases imposed by this Award.

The Arbitrator recognizes the desirability of continuing education for Police Officers in order to achieve greater professional competence. Therefore, I have adjusted the reimbursement rate for such educational endeavors to correspond with the reimbursement rate voluntarily granted by the Town in its negotiations with other uniformed services.

There is no justification for the PBA's arguments that there will be a diminution in the continuity and stability of employment if the minimum call-in time for overtime is not raised to four hours or, if an Officer called in outside of the Officer's tour is not guaranteed payment of four hours at time-and-a-half. Nor is there basis to order that no change in the tour of duty can be made on a straight-time basis except on ninety days' prior notice or that the failure to eliminate the existing requirements to submit doctor's certificates under certain circumstances threatens the continuity and stability of employment.

The past practice clause proposed by the PBA is unduly vague and cannot be awarded. Clearly there is merit to the PBA's argument that the more the bargaining unit is paid, the happier they will be, but the purpose of the continuity and stability of employment criterion is to assess at what point compensation becomes so inadequate that adverse consequences arise. Given the trade-off of hours worked for compensation received that this bargaining unit has made in the past, there is no basis to conclude that the wage increases awarded herein will erode the ability of the Town to attract and retain qualified professional Police Officers.

Furthermore, the public interest requires that the bargaining unit be maintained at least at its present size. The revised package of benefits and wages resulting from this Award will encourage the stability of employment by permitting the Town to maintain its current police force and increase the bargaining unit, thereby improving the work environment for bargaining unit employees by spreading the increasing work load.

After extensive analysis of the huge record of documentary evidence and testimony submitted by the parties, and after considering the effect on the taxpayers; the comparison of wages, salaries and benefits; the interests and welfare of the public; and the over-all compensation presently received by the bargaining unit, I conclude that the demands of the PBA exceed the municipality's ability to pay. The reasons for this conclusion are discussed below. Moreover, the impact on the governing unit, its residents and taxpayers, cannot be justified in view of the relatively stable cost of living since the expiration of the last contract and the fact that the stability and continuity of employment have not been adversely affected at the wage rates currently received by the bargaining unit.

The evidence strongly supports the Town's assertion that it does not have the ready cash available to carry forward and use to fund the increased benefits sought by the PBA on an on-going basis. An appropriation is not the same as a resource available to fund the appropriation. However, even if adequate funds were available, the other factors involving comparability to other police jurisdictions and to private sector employment preclude granting the full range of benefits sought by the PBA.

The Town introduced evidence that market values in the Town declined approximately 10% between 1991 and 1994. More particularly, residential property values in general, and high rise apartments, townhouses and condominiums in particular, have experienced a sharp decline in value. This is reflected in the job and property tax collection rates of 84% in 1992. Although the rate has increased to 90.63% since then, there is still peril in relying on expanding real estate values as a source of increased future revenue. Furthermore, even at 90.63%, West New York tax collection rate is one of the lowest in Hudson County.

The Arbitrator has afforded great weight to the pattern of settlement, the financial condition of the municipality, and the impact on the taxpayers of funding the level of increase in benefits sought by the PBA. In view of the municipality's financial condition, and in view of the fact

that the PBA is relatively near the mid-range of similarly situated Hudson County communities, there is no basis to increase the number of holidays by one, to give a 6.5% or even a 4.75% per year salary increase, or to augment the longevity benefits sought by the bargaining unit. Neither is there any basis for increasing the terminal leave cap by almost fifty percent.

The other unions representing uniformed services in West New York, the IAFF Local 620, the West New York Police Superiors Association, and IAFF Local 1861 representing fire superiors, acquiesced to substantial reductions in current benefits in order to achieve the wage increases granted by the Town. These include a one-year wage freeze for 1994-1995, removal of holiday pay from the calculation of overtime, a reduction in the clothing maintenance allowance and clothing allowance, the elimination of guaranteed overtime, and payment for acting capacity for all temporary time off. In addition, IAFF Local 1861 agreed to the elimination of "one hour per week" pay. Local 1861 also agreed to accept 50% payment for permanent sick time off, such as catastrophic leave.

The Police Superior Officers Association recognized the demotion of eight Sergeants to Patrol Officers as a source of savings to the Town, which was reflected in the over-all settlement with the Superiors. The PBA has not offered any

such relief to the Town in order to fund the level of benefits the PBA requests in its final offer. This factor weighs against granting the final offer in substantially the form demanded by the PBA.

Similarly, the Town's final offer includes factors which cannot be justified by the need to create funds for payment of the increased benefits inherent in the Town's offer. A twenty-five percent increase in the work load without commensurate additional compensation cannot be justified.

There is, however, ample justification for adjusting several contract terms to comply with the pattern of benefits received by other uniformed services in West New York. Consequently, the reimbursement per credit shall be increased by \$2.00 per credit to \$15.00 per credit in order to be funded at the same level as the fire fighters contract and the police supervisors contract.

The expansion in the definition of immediately family for purposes of emergency leaves to include "any relative who lived with the employee within 180 days prior to that relative dying" is unduly vague. If the parties wish to include cousins, in-laws, or others who are not within the traditional definition of "immediately family" for purposes of this leave, the definition proposed by the PBA is not

sufficiently clear to permit adoption of this language. Furthermore, an expansion of the leave benefits to include partners of those in untraditional relationships requires better definition before establishing an expanded entitlement. The request of a Police Officer for a discretionary leave when a domestic partner of long duration is seriously ill or dies should be dealt with favorably and sensitively by the Police administration, perhaps invoking criteria best established in a side letter agreement.

The PBA has not demonstrated a compelling reason for preserving as immutable by management not only all terms and conditions of employment and past practices, but also all undefined customs regarding Police Officers and incorporating these practices and customs by reference into the collective bargaining agreement. Without better documentation of the customs and practices in existence, it would be inequitable to bind the municipality and its management to perpetual continuation of these vaguely described "customs."

The PBA seeks to revise the language of Section 4(f) to provide that there will be a minimum call-in of four hours, including "prior to or immediately following the tour of duty of such employee's regular tour of duty." There is no persuasive basis in the record to justify obligating the municipality to pay a minimum of four hours when an employee

is held over at the end of the employee's regular shift or when an employee is called in early to his regular shift, as no additional travel time is involved. When an employee is called in at a time that is not contiguous to an employee's previously scheduled tour, such call-in shall be for a minimum of four hours.

There is not sufficient proof in the record to mandate the payment of interest on overtime that has not been paid within thirty days of the date earned. Nor is there any basis to increase the number of vacation days per year.

The bargaining unit now enjoys the best vacation of any police department in Hudson County with thirty-one vacation days per year. When added to the work schedule of four days on, three days off, four days on, four days off, and four days on, three days off, the bargaining unit has more than ample opportunity for relaxation away from work. Moreover, this level of benefit is earned after only two years of employment as a Police Officer. Consequently, the vacation entitlement is more than adequate and can be construed as an appropriate source of cost savings to fund the raises sought by the PBA. Therefore, effective January 1, 1998, the maximum vacation entitlement shall be reduced to twenty-nine days. Because this benefit cannot be implemented retroactively, all Officers who will earn twenty-nine vacation days in 1998 shall also forego an additional two

days of vacation in 1998 only. Employees who have earned twenty vacation days in 1998 will relinquish one vacation day in 1998 only.

If the Town expects to reap the benefits of the pattern bargaining it achieved with other uniformed service unions, the Town must also provide some of the same consideration that other bargaining units achieved for accepting the pattern settlement. Among these is that holiday pay roll over to an officer's salary during the officer's twenty-third year of service. This benefit should be awarded in the same manner and form that was achieved by the police superior officers.

The PBA has not demonstrated that there has been abuse of the language in Article IX, Section 2 which provides that:

If an employee reports sick on two (2) separate unrelated occasions during a calendar year, then the Employer may require him to submit a doctor's certificate for any subsequent illness during the calendar year before he returns to duty, regardless of the length of the illness.

Without such evidence of abuse, there is no basis for deleting language that has previously been negotiated by the parties.

Article IX, Section 3(b) currently provides catastrophic sick leave for twenty-four calendar months. The PBA has not demonstrated that this benefit has been inadequate to provide sick leave to officers who suffer an injury covered by this benefit. Therefore, there is no basis to expose the Town to additional economic costs by increasing the catastrophic sick leave benefit.

The generous availability of sick leave, which is better than all of the jurisdictions in Hudson County except Jersey City, Hoboken and Union City, should not be converted into a further source of cash benefit to the bargaining unit at a time when municipal funds are scarce. To permit employees to sell back up to ten sick days per year would circumvent the integrity of the pattern of settlement and would unnecessarily add an additional financial burden to the taxpayers of West New York.

Similarly, the alteration in Article X sought by the PBA which would require that all line-of-duty injury medical bills be paid within five days of receipt by the Town has not been justified by evidence demonstrating that there has been a pervasive delay in paying such bills to the medical providers involved. This request is, therefore, denied.

The Police Officers bargaining unit is currently the only bargaining unit in the municipality that is paid on a weekly basis. The Town desires to convert the bargaining unit to a biweekly payroll. The PBA seeks to have the option to have their salary checks directly deposited into their bank accounts. This seems a reasonable trade-off. The Town may convert to a biweekly payroll system for the Police bargaining unit not sooner than two weeks after the Town pays the retroactive wages due pursuant to this Award, but not later than January 15, 1998. The Town shall undertake to arrange for the direct deposit of salary paychecks for Police Officers in the same manner that they have implemented this benefit for other employees. Such implementation shall occur within thirty days of this Award.

The PBA seeks to modify Article XV to provide that a female Police Officer's surviving spouse will receive insurance benefits the same way that a male Police Officer's surviving spouse will receive such benefits. The contract shall be clarified to provide this benefit regardless of the gender of the Police Officer.

Article XV, Section 9 shall modified by the addition of the following paragraph:

If the Employer exercises its right to change insurance carriers, the succeeding health insurance plan, including major medical, dental, prescription, vision, or any other health plan shall be equivalent to or better than the plan then currently in effect.

The PBA has not demonstrated a compelling basis for increasing the current limitation for presenting a grievance to forty-five days. However, given the availability of substantial amounts of vacation, plus regular four-day intervals in which a bargaining unit employee is not at work, it is reasonably foreseeable that an aggrieved employee cannot make adequate contact with the PBA delegate or other PBA official charged with advising an aggrieved employee and presenting the grievance to management within ten days of a grievable event. Therefore, the ten-day limitation for presenting the grievance is hereby increased to twenty calendar days from the date that the grievant knew, or should have known, that a cause for grievance exists.

The salary of bargaining unit Police Officers shall be increased as follows: for the period from July 1, 1994 through June 30, 1995, a 0% increase; for the period from July 1, 1995 through June 30, 1996, a 3.75% increase; for the period from July 1, 1996 through June 30, 1997, a 3.75% increase; for the period from July 1, 1997 to June 30, 1998, a 3.75% increase; and at 11:59 p.m. on June 30, 1998, a 3.5% increase. All wage and benefit increases effective prior to the date of this Award shall be retroactive to their first effective date, and all retroactive wages and benefits shall be computed and paid no later than December 31, 1997.

The co-pay for generic drugs shall be increased from \$3.00 to \$5.00 effective January 1, 1998. The co-pay for brand name drugs shall be increased from \$5.00 to \$8.00, provided that neither of these levels exceeds the level of co-pay currently in effect for either police superiors, fire fighters, or fire superior officers.

The Town's proposal to amend Article XVII to remove from grievance or arbitration the Chief's decision with regard to emergency leave and compensatory time is denied.

Article XIII, Section 3 shall not be amended to provide the Chief of Police with the discretion to waive prior notice for implementing new rules or regulations except in the event of an unforeseen emergency.

Because Police Officers employed by West New York work substantially fewer hours than their counterparts in Hudson County or, indeed, elsewhere, the Town has requested that the tour of duty schedule be amended to provide forty hours of work per week for each Police Officer. Reconfiguring a tour schedule requires substantial information and has a highly significant impact on the essence of the parties' bargain. The Town's desire to increase the average work week is readily understandable and eminently desirable, but the absence of sufficient evidence to justify the Town's

request to increase the average work week for Patrolmen from thirty-two to forty hours, especially in view of the level of compensation sought by the Town, precludes granting the Town's demand.

The bargaining unit now works 199 eight-hour days a year, less vacation. Some Police Officers receive as many as 197 paid days off. This ratio may reasonably be viewed as unduly generous. There is no basis to increase the vacation benefits enjoyed by the bargaining unit, as these benefits are among the best compared to other jurisdictions cited by the parties. Consequently, the vacation entitlement for new employees hired after the date this Award is issued shall be limited to ten days during the first year of employment (pro-rated), twenty working days in the second through eighth year of employment, and twenty-five working days thereafter.

This Award requires employees in their second year of service to give back one working day's vacation, and employees in their third year of service and each year thereafter to give back two working days' vacation by amendment of the contract. In addition, all employees having completed two or more years of service on or before December 31, 1997 shall relinquish an additional two working

days' vacation on a one-time basis only during calendar year 1998 in order to compensate for the fact that this benefit cannot be instituted retroactively.

Therefore, on an on-going basis, the Town will enjoy the benefit of paying 131 days' fewer vacation in 1998 and 134 days' fewer vacation annual leave thereafter. The average cost of a day during the life of this contract is \$200.66, creating an average annual benefit of vacation savings of \$26,200.00.

The Town's request that Article V, Section 6 be amended to pay for all mandatory off-duty details at straight time subject to the Fair Labor Standards Act has not adequately been justified, and is hereby denied. Although there is merit to the Town's desire to compute the average hourly rate by dividing the employee's combined base annual salary and longevity by 2,080 hours, the negotiated divisor of 1950 hours reflects the bargain the parties have made in the past. There is insufficient basis to increase the number of hours worked for purposes of determining the divisor for overtime hourly rate calculation beyond the additional sixteen hours attributable to the reduced vacation allotment. Effective January 1, 1998, the divisor shall become 1966 hours.

The difference between the 4.5%, 4.5%, 4.8% pattern of settlements granted by the Town voluntarily to its other uniformed services and the pattern of wage increases ordered by this Award will create a savings of \$18,907.00 the first year of wage increase, \$39,373.00 in the second year, and \$76,539.00 in the third year. This averages to \$44,940.00 per year of savings attributable to the award of a smaller rate of increase, thereby replicating in effect the pattern voluntarily agreed upon by the other West New York uniformed services when added to the savings generated by the modification of vacation benefits.

The PBA has asked for increased longevity to equal that of the fire fighters and the SOA. This increase can not be justified in isolation, as both of these units achieved substantial increases in their compensation only by providing significant give backs to the Town.

The Town demoted eight Sergeants to Police Officers as a source of significant savings, and the resulting savings were used to fund the over-all settlement. If the PBA expects parity in the level of wage increase and fringe benefits received by other uniformed services, then the PBA must provide the Town with similar cost-saving mechanisms. No such cost savings have been proposed by the PBA, and the Arbitrator is left to choose between awarding a level of benefits equivalent to the pattern received by other units

in West New York, but adjusted for the absence of give backs, or to create a pool of money by increased productivity.

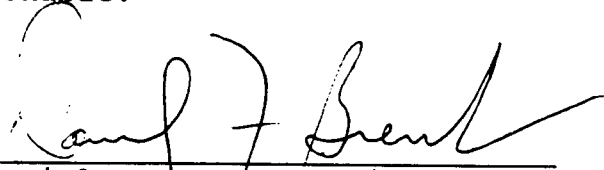
The most obvious way of increasing productivity would be to increase the number of hours per year worked by each Police Officer. The record does not contain sufficient testimony about the implications of tinkering with the current 4-3, 4-4, 4-3 schedule to justify this alternative. Therefore, I have adjusted the level of wage increase to reflect the fewer givebacks required of the police bargaining unit.

The Arbitrator is required by the statute to set forth the additional costs on an annual basis of the new contract. Year one of the agreement will incur no additional cost because there is a zero percent wage increase. Year two, beginning July 1, 1995, imposes a 3.75% wage increase on a base of \$2,678,585.00, resulting in \$100,447.00 in new salary costs, plus a new longevity cost of approximately \$4,169.00 (based on the 4.15% average cost derived from the listing of bargaining unit employees prepared by the Town and placed in evidence by the PBA). The total cost of salary plus these two increased elements is \$2,890,193.00 as of July 1, 1996, the beginning of year three of the contract.

Commencing July 1, 1996, the 3.75% increase will result in \$108,382.00 in new salary costs, and approximately \$4,498.00 in new longevity costs, resulting in a new base of \$3,118,518.00 as of July 1, 1997. When the additional 3.75% wage increase is applied to this base, the result is \$116,994.00 in new salary costs, plus approximately \$4,855.00 in new longevity costs, resulting in a new base of \$3,364,880.00, which will be paid from July 1, 1997 through June 30, 1998, when the Town will incur an additional \$117,771.00 in salary costs as of 11:59 p.m. on June 30, 1998 that are payable throughout the following year.

The costs of these increases will be offset by the reduction in vacation benefits and the method of calculating the hourly rate for overtime in the annual amount of approximately \$27,000. Additional offset is inherent the percentage of wage increases granted. All of these net increased annual costs are reasonable.

November 14, 1997


Daniel F. Brent, Arbitrator