

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Arbitration *

Between *

Borough of Carteret *

and *

PBA Local 47 *

Docket No. IA-97-28
Jeffrey B. Tener
Interest Arbitrator

Appearances

For the Borough:
Frank A. Santoro, Esq.

For the PBA:
Dr. Simon M. Bosco

OPINION AND AWARD

Background and Procedural History

PBA Local 47 filed a Petition to Initiate Compulsory Interest Arbitration with the Public Employment Relations Commission ("PERC") on October 4, 1996. As set forth in a letter dated December 3, 1996 from Timothy A. Hundley, PERC's Acting Director, Arbitration, I was informed of my appointment as the arbitrator pursuant to the mutual request of the parties.

I met informally with the parties on May 28 and June 18, 1997 to explore the possibility of a voluntary settlement. Notwithstanding the fact that the Borough had reached a voluntary agreement with its paid firefighters, no voluntary agreement could be reached.

Formal hearings were held on November 5 and December 11, 1997 at the Municipal Building in Carteret. Vincent J. Foti and Michael Materazzo testified on behalf of the PBA, Patrick DeBlasio and Joseph Sica testified on behalf of the Borough. A transcript of this proceeding was taken. Both parties filed post-hearing briefs which were received by February 20, 1998, thereby marking the close of the hearing.

This proceeding is governed by the Police and Fire Public Interest Arbitration Reform Act, P.L. 1995, c. 425 which was effective January 10, 1996. That Act, at N.J.S.A. 34:13A-16f(5), provides for the arbitrator to render the opinion and award within 120 days of selection or assignment. The parties, however, agreed to extend the time for the issuance of this decision to March 15, 1998 as set forth in a letter dated February 5, 1998 from Mr. Santoro to Mr. Hundley.

The parties did not agree upon an alternative terminal procedure. Accordingly, the terminal procedure in this case is conventional arbitration. The arbitrator is required by N.J.S.A. 34:13A-16d(2) 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." Additionally, N.J.S.A. 34:13A-16.2 calls for PERC to promulgate guidelines for determining the comparability of jurisdictions. The comparability guidelines adopted by PERC appear at N.J.A.C. 19:16-5.14.

Statutory Criteria

The statute requires the arbitrator to:

decide the dispute based on a reasonable determination of the issues, giving due weight to those factors listed below that are judged relevant for the resolution of the specific dispute. In the award, the arbitrator or panel of arbitrators shall indicate which of the factors are deemed relevant, satisfactorily explain why the others are not

relevant, and provide an analysis of the evidence on each relevant factor:

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

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

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

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

(c) In public employment in the same or similar comparable jurisdictions, as determined in accordance with section 5 of P.L.1995, c.425; provided, however, that each party shall have the right to submit additional evidence concerning the comparability of jurisdictions for the arbitrator's consideration.

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

(4) Stipulations of the parties.

(5) The lawful authority of the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by P.L.1976, c.68 (C.40A:4-45.1 et seq.).

(6) The financial impact on the governing unit, its residents and taxpayers. When considering this factor in a dispute in which the public employer is a county or a municipality, the arbitrator or panel of arbitrators shall take into account, to the extent that evidence is introduced,

how the award will affect the municipal or county purposes element, as the case may be, of the local property tax; a comparison of the percentage of the municipal purposes element or, in the case of a county, the county purposes element, required to fund the employees' contract in the preceding local budget year with that required under the award for the current local budget year; the impact of the award for each income sector of the property taxpayers of the local unit; the impact of the award on the ability of the governing body to (a) maintain existing local programs and services, (b) expand existing local programs and services for which public moneys have been designated by the governing body in a proposed local budget, or (c) initiate any new programs and services for which public moneys have been designated by the governing body in a proposed local budget.

(7) The cost of living.

(8) The continuity and stability of employment including seniority rights and such other factors not confined to the foregoing which are ordinarily or traditionally considered in the determination of wages, hours, and conditions of employment through collective negotiations and collective bargaining between the parties in the public service and in private employment. (N.J.S.A. 34:13A-16(g))

Final Offers

The parties agreed to make several changes in the prior agreement which covered the term January 1, 1993 through December 31, 1995.¹ First, they agreed to delete the word "elected" from Article I, Section D. Second, they agreed to modify Article II to permit employees to defer overtime compensation from January 1 through October 31 of each year to be paid in a lump sum no later of November 30 of the year. Third, they agreed to changes in Article V, Section A, to add the day after Thanksgiving as a holiday, to include Martin Luther King's birthday as a holiday and exclude Lincoln's

¹ These changes are reflected in a modified proposal submitted by the PBA to the Borough dated August 13, 1996. This document constituted the final offer of the PBA. Dr. Bosco confirmed at the hearing these items "were still in existence" and "would be incorporated in your award as previously agreed to items." (Tr. 11-5-97, p. 7, lines 5-17)

birthday as a holiday, and to substitute Washington's birthday with President's day as a holiday and Section E (new) to provide that a day declared as a holiday by the President of the United States, the Governor of New Jersey and the Mayor of Carteret will be a holiday with pay. Fourth, they agreed to change Article X, Section B by adding a new paragraph (3) regarding the assessment of a representation fee from newly employed individuals who do not apply for membership in the PBA.

PBA Local 47 The PBA has proposed the following, as set forth in modified proposals submitted to the Borough on August 13, 1996:

1. A three year contract covering the term January 1, 1996 through December 31, 1998.
2. Article III, Section 1: Across-the-board salary increases of 5% retroactive to January 1st of each year of the agreement.
3. Article III, Section 1: An additional \$250 be added to the base salaries of captain, lieutenant and sergeant.
4. Article III, Section 3: new pay grade for senior officers upon completion of 23 years of service with that salary to be midway between the employee's base salary (top patrol base or detective) and the salary of a sergeant.
5. Article III, Section 4: Portal to portal payment at the rate of \$.31 cents per mile plus tolls and parking for an employee's use of a personal vehicle for departmental business including training, schooling, qualifications, court and grand jury appearances.
6. Article IV, Section A: Increase the uniform maintenance from \$600 to \$650 on January 1, 1996, \$700 on January 1, 1997 and \$750 on January 1, 1998.
7. Article IV, Section B: Increase the uniform maintenance from \$400 to \$450 on January 1, 1996, \$500 on January 1, 1997 and \$550 on January 1, 1998.

8. Article V, Section F: Permit an employee to sell back up to seven holidays each year with notification to the Borough by March 15 and with payment by separate check by December 1.
9. Article VI, Section A: Increase the detective allowance from \$800 to \$1,000.
10. Article VI, Sections A and D: Increase the shift differential to \$700.
11. Article VI, Section B: Change "radar officer" to "radar operator," add new entitlements for CPR certification, breathalyzer certification and 911 desk certification.
12. Article VI, Section C: Change the court attendant compensation to one and one-half times the regular hourly rate.
13. Article VII, Section B: Increase life insurance from \$10,000 to \$25,000.
14. Article VII, Section C: Increase life insurance upon disability or retirement from \$5,000 to \$15,000.
15. Article VII, Section D 2: Increase the Borough's payment for the dental program from 85% to 100%.
16. Article VII, Section E: Add an optical insurance program for the employee, spouse and dependents with 100% of the premium being paid by the Borough. The program would provide for one full eye examination annually, one pair of glasses or contacts biannually and one pair of prescription sunglasses every other year.

Borough of Carteret The proposal of the Borough, as submitted in a March 25, 1996 response to the PBA's initial proposal,² is as follows:

1. Article II, Section F: Pay one and one-half days or the regular hourly rate for a minimum of four hours for all hours worked, whichever is greater.

² I have only listed the areas in which the Borough has proposed changes in the contract.

2. Article III, Section A: No increase in salary in 1996, 3% in 1997 and 3% in 1998.
3. Article VI, Section C: Eliminate court attendant compensation and the requirement that an off-duty police officer be hired as a court attendant.
4. Article VII, Section F: Provide a fully paid prescription plan to employees.
5. Article VIII, Section B: Change to provide severance pay of 50% of all accumulated days not to exceed \$20,000.
6. Article III, Section 4: Compensate employees who are required by the Chief to use their personal vehicles for departmental business at the rate of \$.25 cents per mile plus tolls and parking upon the presentation of receipts.
7. Article XI, Section A: Modify from four days to three days the paid leave of absence in the event of a death in an employee's immediate family.
8. Article XV: Reimburse employees for tuition and fees and pay yearly stipends of \$250 for an Associate Degree, \$500 for a Bachelors Degree, \$1,000 for a Masters Degree and \$2,000 for a Doctorate Degree.
9. Article VI, Section B: Eliminate the stipend for police photographer and identification officer.

Salary Comparisons - Carteret Police Officers and Firefighters

Both the police officers and the firefighters of Carteret are represented in collective negotiations. The police officers are represented by PBA Local 47. The firefighters are represented by FMBA Local 67.

The 1989 to 1990 agreements between the two organizations and the Borough provided for salaries for top or fourth year patrolmen and top or first grade firefighters which were identical: \$35,374 in 1989 and \$38,027 in 1990. Similarly, the salaries of

police sergeants and fire captains were identical in those years: \$38,082 in 1989 and \$40,938 in 1990.

The 1991 to 1992 agreements between the two organizations and the Borough also provided identical salaries for top patrolmen and firefighters of \$39,928 in 1991 and \$41,925 in 1992. Again, the salaries for police sergeants and fire captains were the same: \$42,985 in 1991 and \$45,134 in 1992.

The agreements covering those four years did not provide identical salaries for the patrolmen and firefighters who were not at the top step. The salaries for the police officers who were not at the top step exceeded the salaries for firefighters who were not at the top step by approximately 2% to 8% each of those years.

Under the terms of Article III, Section A of the January 1, 1993 to December 31, 1996 agreement between the Borough and the PBA, salaries were as follows:

<u>Rank</u>	<u>1/1/93</u>	<u>7/1/93</u>	<u>1/1/94</u>	<u>1/1/95</u>
Captain	\$53,107	\$54,169	\$57,127	\$60,234
Lieutenant	49,796	50,792	53,582	56,511
Sergeant	46,488	47,418	50,039	52,791
4 th Yr. Ptl.	43,183	44,046	46,248	48,561
3 rd Yr. Ptl.	40,559	41,371	43,439	45,611
2 nd Yr. Ptl.	38,686	39,460	41,433	43,504
1 st Yr. Ptl.	33,400	33,400	27,500	27,500

As set forth at Article VIII, Section 1 of the January 1, 1993 to December 31, 1995 agreement between the Borough and the FMBA, salaries were as follows:

<u>Rank</u>	<u>1/1/93</u>	<u>1/1/94</u>	<u>1/1/95</u>
Captain	\$46,488	\$48,812	\$51,253
1 st Grade FF	43,183	45,342	47,609
2 nd Grade FF	37,422	39,293	41,258
3 rd Grade FF	35,521	37,297	39,162
4 th Grade FF	33,620	35,301	37,066

These salaries are identical to those contained in Ordinance No. 95-10.

Article VIII, Section 6 of the 1993 to 1995 FMBA agreement, Wage Opening Clause, read as follows:

It is further agreed that the F.M.B.A. may reopen the contract, at its option, for the 1995 year only for the purposes of negotiating an increase in salary and other economic benefits for 1995. The Borough agrees that it will enter into such negotiations in good faith. This is predicated on an improvement of the Borough's financial condition for 1995.

Presumably pursuant to that wage reopening provision, the Borough adopted Ordinance No. 95-53 on October 5, 1995. It provided the following salaries for firefighters effective January 1, 1995:

Captain	\$53,253
4 th Yr. FF	48,560
3 rd Yr. FF	45,611
2 nd Yr. FF	43,503
1 st Yr. FF	37,066

The Borough and the FMBA have entered into a new collective bargaining agreement which covers the term January 1, 1996 through December 31, 1998. The salaries set forth in that agreement for the firefighters are as follows:

<u>Rank</u>	<u>1/1/96</u>	<u>1/1/97</u>	<u>1/1/98</u>
Captain	\$53,253	\$57,448	\$60,894
1 st Grade FF	48,560	52,474	55,622
2 nd Grade FF	45,611	49,348	52,308
3 rd Grade FF	43,503	38,174	40,729
4 th Grade FF	37,066	27,500	29,150

As can be seen, the salaries listed for all ranks of firefighters effective January 1, 1995 under Ordinance No. 95-53 and January 1, 1996 under the 1996 to 1998 collective bargaining agreement are the same. The Borough adopted Ordinance No. 97-3 on February 6, 1997 which provided for salaries effective January 1, 1997 and January 1, 1998 which are the same as those contained in the collective bargaining agreement. It also can be seen that the salaries for firefighters effective January 1,

1995 under the terms of Ordinance No. 95-53 and for police officers effective January 1, 1995 under the January 1, 1993 to December 31, 1995 collective bargaining agreement are the same.

Argument of the PBA

The PBA asserts that its final offer is reasonable in light of all of the statutory criteria and it asks that it be awarded. This offer is said to be supported not only by the statutory criteria but by the bargaining history between the parties, the Borough's treatment of other bargaining units and particularly the firefighters, the increase in the officers' workload and responsibility, and increases negotiated and awarded in neighboring communities.

The PBA disputes the claim of the Borough that there is a pattern of settlement for the other municipal bargaining units, including the firefighters. The Borough has claimed that there is a pattern of 0% increases for 1996. The statement is said to be inaccurate.

Starting with an analysis of the firefighters, the PBA asserts that it is necessary to review the relationship between the salaries of the PBA and the FMBA over the years. In both the 1989 to 1990 and the 1991 to 1992 contracts between the Borough and the PBA and between the Borough and the FMBA, the salaries of a top patrolman and a top firefighter were identical. The same was true of the salaries of fire captains and police sergeants, the ranks in the two departments which are analogous. In those years, the salaries of those police officers who were not at the top step exceeded those of firefighters at corresponding steps.

This pattern was changed in the 1993 to 1995 agreements. In the first year of those agreements, the salary for a top patrolman was \$44,046 and that of a top

firefighter was \$43,183, a difference of \$863 or 2%. The salary of a police sergeant was \$47,418 and that of a fire captain was \$46,488, a difference of \$930 or 2%.³ Similarly, in 1994, the salary of a top patrolman was \$46,248 and that of a top firefighter was \$45,342, a difference of \$906 or 2%. The salary of a police sergeant was \$50,039 and that of a fire captain was \$48,812, a difference of \$1,227 or 2.5%. Finally, in 1995, the top salary of a patrolman was \$48,561 and that of a top firefighter was \$47,609, a difference of \$952 or 2%. The salary of a police sergeant was \$52,791 and that of a fire captain was \$51,253, a difference of \$1,538 or 3%. In those years, the salaries for second and third step patrolman exceeded those of corresponding firefighters. The starting salaries of patrolmen, however, were below those of starting firefighters.

The 1993 to 1995 agreement between the Borough and the FMBA, however, contained a wage opening clause under which the FMBA could reopen negotiations for an increase in salary and other economic benefits in 1995 "predicated on an improvement of the Borough's financial condition in 1995." (Art. VIII, Section 6) Consistent with that provision, the Borough and the FMBA did reopen negotiations and, as set reflected in Ordinance No. 95-53, adopted October 5, 1995, the salaries of the firefighters were raised. The rate for a top firefighter was raised to \$48,560 and for a fire captain was raised to \$53,253. These increases were effective January 1, 1995.

Thus, the amounts earned by a top patrolman and a top firefighter in 1995 were the same as were the amounts earned by second and third step patrolmen and the corresponding firefighter. The entry rate for patrolman remained much lower than that for a firefighter by \$9,566 or 34.8%.

³ The PBA contract provided for a split increase in 1993. The figures used are the July 1, 1993 rates.

Thereafter, the Borough entered into a new agreement with the FMBA covering the years 1996 to 1998. While it is true that the rates in 1996 remained the same as they were under the terms of Ordinance 95-53, it also is true that the 1996 rates are above the rates reflected in the 1993 to 1995 agreement between the Borough and the FMBA. The PBA contends that the Borough actually increased the rates of firefighters in 1995 under the reopener provision as a way of trying to make it appear as though it had provided a 0% increase in 1996.

In 1997, the agreement provided for a top firefighter rate of \$52,474 and in 1998 it provided for a top firefighter rate of \$55,622. These represent increases of 0% in 1996 based on the ordinance and 2% based on the 1993 to 1995 collective bargaining agreement, 6% in 1997 (excluding the \$1,000 added to base for uniforms) and 6% in 1998. The total increase from 1995 under the ordinance to 1998 was \$7,062 or 14.5%, including the \$1,000 which was added to the base.

The PBA argues that while it may be true that the firefighters received no increase in 1996 over the amount they received in 1995 following the adoption of the ordinance which raised their 1995 salaries, the fact is that their salaries were increased in 1995 beyond the level provided in the collective bargaining agreement and this increase carried forward into 1996.

The PBA also contends that by increasing the steps in the firefighter salary guide, several firefighters who were on those steps received windfall increases in 1995 under the ordinance and, again, this benefit extended into 1996 and thereafter.

The PBA asserts that the final offer of the Borough, which provides for increases of 0% in 1996, 3% in 1997 and 3% in 1998, is less than half of the increase which it voluntarily agreed to give to the firefighters represented by the FMBA. This offer is totally indefensible and must be rejected by the arbitrator.

Furthermore, the FMBA enjoys several benefits not enjoyed by the PBA. For six years, firefighters with 29 and more years of service have received a longevity payment of 15% of base salary. The top longevity payment for patrolmen is 12% with 25 years of service. The schedules for the two groups are the same at all levels up through 25 years but the FMBA members receive an additional step after 29 years of service. Additionally, the members of the FMBA receive a prescription plan paid by the Borough. The PBA notes that the Police Chief and the Police Deputy Chiefs also enjoy this benefit.

Turning to the other employees of the Borough who are represented by employee organizations, the PBA notes that while they received 0% salary increases in 1996, the blue collar unit received an additional five days off and the white collar unit received an additional eight days off. Five days represents a 2% reduction (based on a work year of 245 days (260 days minus 15 holidays equals 245 days) for the blue collar employees and 3.25% for the white collar employees. Additionally, these groups, like all other Borough employees, receive a prescription plan. Thus, the PBA argues that it is disingenuous for the Borough to contend that it settled for 0% wage increases in 1996 with its other employees.

It is the position of the PBA that its proposal of 5% salary increases in each year of the new agreement is reasonable and justified not only on the basis of an analysis of internal comparisons but in relation to the other statutory criteria as well.

The PBA specifically disputes the assertion of the Borough that it cannot afford to pay the 5% across-the-board increases proposed by the PBA in 1996 and in the other two years. A claim of inability to pay by an employer is said to require very close scrutiny with the burden being on the employer to justify its claim. An employer must do much more than simply claim an inability to pay; it must support that claim with

sufficient evidence. It is the contention of the PBA that the Borough utterly failed to support its claim of an inability to pay.⁴

Turning to financial considerations - this relates to the financial impact on the governing unit, its residents and taxpayers - the PBA asserts that the testimony of its financial expert, Vincent Foti, was not refuted or contradicted.

Foti cited the Borough's results of operations between 1992 and 1996. This figure, which represents the amount of surplus generated during the year, represents funds that go into surplus. The figure has varied from a low of \$404,687 in 1996 to a high of \$1,592,417 in 1992 but has averaged close to \$1,000,000 and has never been below \$400,000. Patrick DeBlasio, the Borough's chief financial officer, tax collector and treasurer, who appeared as the Borough's financial expert, testified that the Borough anticipated that the results of operation in 1997 would be between \$400,000 and \$500,000. According to the PBA, these figures indicate not only that the Borough has budgeted accurately and lived within its means but, even more important, that its budget provides a cushion. Thus, it is claimed, the Borough does have the ability to fund the increase proposed by the PBA.

FOTI also pointed out that between 1991 and 1996, the Borough realized more revenues than it budgeted. The excess was \$204,787 in 1996 and averaged almost \$500,000 in that period. This excess goes into surplus. As with the results of operations, there is no basis to believe that this condition will not continue.

The Borough's fund balance has been as high \$2,000,000 in 1992 and dropped to \$624,907 in 1994. In both 1995 and 1996, it exceeded \$1,000,000. This healthy surplus situation has permitted the use of \$550,000 in surplus in each of the last three

⁴ The PBA cited How Arbitration Works, 5th Edition, edited by Marlin Volz & Edward Goggin, Bureau of National Affairs, 1997.

years which has served to reduce the tax rate. Furthermore, the Borough has canceled between \$200,000 and \$450,000 of appropriations in the last five years including \$234,178 in 1996. Again, this is said to demonstrate careful and responsible budgeting and the ability to fund the salary increases proposed by the PBA.

The Borough has had a tax collection rate of over 95% each of the last three years. Since the average in the State is 93%, this high rate of collection demonstrates that the taxpayers are able to pay their taxes. The collection rate in 1996 was 95.78%. The Borough also budgeted a reserve for uncollected taxes of \$1,350,000 in 1997 so the Borough has been cautious in this regard as in others.

The tax rate has increased somewhat over the years. It was \$2.37 in 1993 and \$3.22 in 1997, an increase of \$.85. Of that increase, \$.50 was due to the schools. The PBA pointed out that the tax rate in the Borough was below the average in the County.⁵

The PBA also notes that the Borough has not borrowed to the extent of its authority and that the Borough has a bond rating of Aaa with Moody's. Carteret is an urban enterprise zone which means that its sales tax rate is 3% instead of 6% which gives it a competitive advantage. A major new shopping center is in the planning stage and new construction is flooding the zone, according to the Borough's Official Statement dated November 14, 1995. This indicates that new ratables are and will be coming on the tax rolls which will boost assessed valuation.

Foti also pointed out that the Borough had a cash balance as of December 31, 1996 of \$3,515,295 and he testified that this meant that there is no cash flow problem.

Foti calculated that the cost of a 5% salary increase would be about \$.50 per person per month and he foresaw no difficulty with this. It was his conclusion that the

⁵ That is true in absolute terms but it does not reflect the equalized rates which must be used for the comparisons to be meaningful.

Borough could sustain 5% increases for the three years of the new agreement with the PBA with minimal impact on the budget and the taxpayers.

Finally, the PBA noted that DeBlasio did not dispute the claim of the PBA that the Borough could afford to pay the increases proposed by the PBA. There is simply no evidence that paying these increases would present any financial hardship.

The PBA then addressed the remaining statutory criteria. It first looked at the interests and welfare of the public. This is a factor which, as the Supreme Court made clear in P.B.A. Local 207 v. Borough of Hillsdale, 137 N.J. 71 (1994), must be considered. The Court noted that that the public is a silent party to the process because of the effect on the public of the outcome of the proceedings in terms of their receipt of services including police services as well as their taxes.

It is the position of the PBA that the public interest will best be served by an award similar to the PBA's final offer. This will serve to restore what has been the traditional relationship between the police officers and firefighters. To adopt the Borough's position would be an insult to the police officers and would have serious implications. The morale and productivity of the force would be adversely affected. The PBA cited the public policy declaration in the 1995 amendments to the interest arbitration law.

There were no stipulations of the parties which have a bearing on the disposition of the items in dispute although there was an agreement that the Borough is the public employer and the PBA is the majority representative of the employees in this bargaining unit which includes patrolmen (29), sergeants (12), lieutenants (6) and captains (2). Not included in the unit are two deputy chiefs and the chief.

The Borough has not claimed that it lacks the lawful authority to fund the proposal of the PBA. There is no claim that any of the disputed issues is outside of the

scope of negotiations and all are agreed to be economic issues. The Borough has not claimed that it has any difficulties under the New Jersey Local Government Cap Law, N.J.S.A. 40A:4-45.1 et seq. As Foti testified, the Borough budgeted under its Cap and it also had a Cap bank. Thus, lawful authority is not a criterion which has any bearing on the outcome of this proceeding.

The next factor is the cost of living. While the PBA recognizes that this factor has an impact on collective bargaining, it asserts that it should be given little weight. It notes that both parties tend to cite this factor, depending upon the rate of inflation. When inflation is high, unions argue that they need a large salary increase to keep up with increases in the cost of living. When inflation is low, employers argue that the employees do not need a large salary increase and they argue for a low salary increase.

The PBA argues that it makes no sense to rely too heavily on increases in the cost of living because to do so would result in wages being held constant in real dollars. In other words, if wage increases simply matched increases in the cost of living, then employees would not enjoy any increase in their standard of living.

The PBA recognizes that the cost of living increased less than 3% in 1997 but it notes that Social Security announced a cost-of-living increase of 2.9% and the PBA suggests that this figure really understates increases in the cost of living. Furthermore, the PBA argues that to draw a meaningful conclusion from cost-of-living data, it would be necessary to undertake an extensive and detailed study which neither party to this proceeding undertook. It would be necessary to go back in time to trace developments and it also would be necessary to make judgments regarding the worth of the job of police officers - with the inherent dangers and demands - in relation to other jobs. In other words, the PBA believes that it would be necessary to establish a reasonable

starting point for the analysis. Since this was not done, this factor should be given little weight, it argues.

The next factor is the continuity and stability of employment. While there have been no layoffs of police officers in recent years, there has been a decrease in the number of police officers employed by the Borough. There are at least five fewer officers now than there were ten years ago. The effect of this is to increase dramatically the workload of the remaining officers. This is said to support the wage increase proposed by the PBA.

The final two criteria, which are considered together, are said to be the ones most heavily relied upon in interest arbitration: comparisons and overall compensation received. This translates into the "going rate" or "prevailing practice." By giving effect to the going rate, an arbitrator is relying on precedent or what other parties, through negotiations or other awards, have accepted as proper and reasonable wage increases. A reliance on the prevailing rate has been recognized for many years. The PBA cites a 1947 decision by Arbitrator Clark Kerr in Pacific Gas & Electric Co., 7 LA 528 (1947) in which Kerr discussed that there was no "magic formula for wage adjudication" but stated that "one of the compelling considerations must be what has happened in free and successful collective bargaining." Kerr noted that reliance on the pattern "tends to afford equality of treatment for persons in comparable situations." (Id. at 534)

The PBA argues that in this proceeding, in which the Borough has failed to establish any bona fide financial circumstances which would prevent it from paying the increase proposed by the PBA, the "going rate" should be the most compelling consideration of the arbitrator. This is said to be particularly in light of the increasing workload which has not been shown by the Borough to have been recognized in the

form of above average wage increases in that period to compensate for the increased workload. Chief Joseph Sica acknowledged that the department is short three officers at this time.

The Borough budgeted an unrealistic 0% for wage increases in 1996 simply as a self-serving means of trying to influence the negotiations and arbitration process. Reliance on the amount budgeted by the Borough would set a dangerous precedent and give unilateral control over the negotiations process to the Borough. Comparisons are said to be a much more realistic basis for deciding this case.

Both parties accepted that the other municipal police departments in Middlesex County were the appropriate ones for comparison. The PBA notes that wages in Carteret have traditionally lagged slightly behind the County average. Thus, a top patrolman earned \$44,046 in 1993 in Carteret whereas the County average was \$45,155 or \$1,109 higher. In 1994, the figures were \$46,248 in Carteret and \$47,980 in the County, a difference of \$1,732. In 1995, the figures were \$4,8561 in Carteret and \$51,093 in the County, a difference of \$2,532. Thus, not only has Carteret been behind the County average but it has fallen further behind in the last three years.

The PBA looked at Metuchen and Carteret. In 1995, top patrolmen in the two municipalities had virtually identical earnings. Officers in Metuchen received a 4% increase in 1996. Therefore, officers in Carteret must receive a 4% increase to retain their relationship with those in Metuchen.

It is the contention of the PBA that the Borough approached the bargaining table with the PBA with a hostile attitude. The fact that the parties were able to agree on such a small number of relatively minor items is said to support this as is a consideration of the final offer of the Borough to the PBA in contrast to the voluntary agreement that the Borough reached with the FMBA.

The PBA also notes that the FMBA has enjoyed an additional longevity step for employees with 29 or more years of service since 1993. The Borough has not offered this or a comparable benefit to officers nearing the end of their careers in the Police Department in recognition of their years of dedicated service. The PBA now is seeking a senior officer differential to reward those patrolmen who have completed 23 years of service and have not been promoted to the rank of sergeant. This is said to be a limited benefit because it would apply only to those who have not been promoted and would not be given to all officers in the bargaining unit. It would also increase the value of the pension of these officers at the end of their careers. The PBA asserts that either the senior officer differential or the added longevity step should be extended to the members of the PBA.

The Borough has proposed a modification in the sick leave buy-out provision, claiming that it is unfair to the Borough and its taxpayers. A major problem with the Borough's position, however, is the fact that the identical provision is contained in the agreement between the Borough and the FMBA. The Borough voluntarily agreed to continue this benefit in the 1996 to 1998 agreement which it negotiated with the FMBA. Thus, again this is viewed by the PBA as an indication of animus toward the PBA by the Borough. The PBA asserts that the status quo should be maintained and that there should be no modification to Article VIII, Severance Pay.

Accordingly, for the above reasons, the PBA urges acceptance of its final offer and a rejection of the changes proposed by the Borough. This result is supported by an application of the statutory criteria by which the arbitrator is bound.

Argument of the Borough

The Borough relied primarily upon the testimony of DeBlasio, its chief financial officer, to support its position that any salary increase should not exceed 3% in 1997 and 1998 and that there should be no salary increase in 1996. He prepared an exhibit which provided both socio-economic as well as financial data.

The Borough had a population in 1990 of 19,025 and has approximately 5,007 residential properties of which 911 or almost 20% are owned by senior citizens who qualify for senior citizen tax deductions of \$250.00. This means that they have income, excluding social security, of under \$10,000 per year. The per capita income is \$15,024 and the average mean household income is \$42,467. The median income is just over \$40,000, as shown in the data submitted by the PBA, and Carteret ranks low in the County on this measure.

The Borough notes that between 1988 and 1997, there was an overall decrease in assessed property valuations of 14%. During that time, assessed valuations decreased by over \$144 million. There was a very large reduction of 8.08% in 1996 alone.

From 1992 to 1997, the tax levy increased over 22%. It has gone up by varying amounts each of those years. At the same time, the total tax rate rose by close to 40% with an even larger 52% increase in the local purpose rate. The school rate also increased by almost 49%. These increases are significant, especially in view of the fact that almost 20% of the residential units are occupied by qualified senior citizens.

Even more significant, according to the Borough, is the fact that its overall equalized tax rate in 1997 was the third highest in Middlesex County. It had been the fourth highest in both 1995 and 1996. The 1997 rate was \$3.2648, lower only than the rates in New Brunswick (\$3.3720) and Highland Park (\$3.4591). Its local purpose rate

was the second highest in the County each of the last three years. The equalized local purpose rate in 1997 was \$1.0365 and only Perth Amboy with a rate of \$1.3780 was higher. Thus, the citizens and taxpayers of Carteret are heavily taxed.

It is true that the tax collection rate has remained high at over 95% - admittedly a very good rate, according to DeBlasio - but there has been an increase in the percentage of the tax levy which has been apportioned to delinquent taxes. The figure for 1995 was 2.78% and it was 4.14% in 1996 when the amount of delinquent taxes stood at over \$1.2 million. If delinquent taxes continue to increase, the Borough argues, there will have to be an increase in future tax rates. Furthermore, the Borough, like most municipalities, experienced a drop in State aid although the amount received in the last couple of years has been steady. The decrease occurred several years ago and has not been made up.

While the Borough does have an Aaa bond rating, this is due to the fact that it purchases insurance. The high rating is only possible because of the insurance which, of course, the Borough must pay for.

The Borough points out that a significant portion of the municipal budget goes to salaries in the Fire and Police Departments. These costs represent almost 25% of the local purpose budget.

The Borough has over \$20 million in outstanding debt and, while this is not its legal limit, it is nevertheless a large figure on which the Borough must pay interest and repay principal.

While not denying that the Borough has reached a settlement with the FMBA for 1996 to 1998, the Borough emphasizes the cost impact of that settlement and the increases proposed by the PBA for those years. As calculated by the Borough, the cost of the settlement with the FMBA was \$0 in 1996, \$60,000 in 1997 and \$65,000 in

1998. The Borough described this settlement as 6% in 1997 and 6% in 1998. These figures included salary and longevity. Furthermore, it noted, the uniform allowance was increased by \$60 to a total of \$1,000 at a cost of \$1,080 for all firefighters and this \$1,000 was included in base pay in 1997 and 1998.

If the salaries of the members of the PBA were to be increased by 5% each year of the agreement, then, again according to the Borough's calculation, the salary and longevity cost would be \$170,000 in 1996, \$180,000 in 1997 and \$190,000 in 1998. The total impact of these increases would be \$540,000 and this works out to about 6 tax points (with each tax point being worth \$93,000).

Beyond the salary and longevity costs, the PBA has proposed additional increases. It would cost an additional \$5,000 to increase the base pay of sergeants, lieutenants and captains by \$250. The senior officer differential would cost an additional \$27,996. It would cost an additional \$5,200 each year of the agreement to increase the uniform allowance each year as proposed by the PBA. It would cost an extra \$9,589 to add a holiday. There would be a similar cost if a new holiday were declared by the President. It would cost \$67,123 if employees could sell back seven holidays each year. It would cost \$2,400 to increase the detective allowance as proposed by the PBA. Thus, when all of these things are considered, the total PBA package is indeed costly and cannot be justified on any basis.

The cost to an average taxpayer in 1996, whose home is valued at \$117,000, would be an additional \$23.00 to fund the 1996 increase proposed by the PBA. The cost of the salary increase of \$170,000 represents almost two tax points since each point is worth \$93,000. There would have to be basically similar increases each year in order to fund the increases sought by the PBA.

DeBlasio said that while there is some industry coming into the municipality, the value of older existing buildings is decreasing. Therefore, the net effect on overall valuation is pretty much to stay even. The figure in 1997 was stable compared to 1996 but it is still far below the figure in 1988.

The Borough also pointed out that it plans some capital expenditures. A new library and senior citizens center will be constructed and bonds will be floated for that purpose.

A review of the contracts covering the PBA and the FMBA is said to reveal that the two contain very similar benefits. Thus, argues the Borough, there is no justification for improving the benefits as proposed by the PBA.

The Borough acknowledges that there exists no current problem in terms of the Cap Law but nevertheless asserts that a six point increase in the tax rate would have a dire impact on many of the Borough's residents and particularly the approximately 20% who are qualified senior citizens.

The Borough also denies that the PBA justified the increases it is seeking in comparison to increases in the cost of living. With the consumer price index increasing at a rate of less than 3% per annum over the last several years, any salary increase in excess of that amount is said to be excessive and would unfairly impose on the Borough's taxpayers, thereby increasing the cost of living of those taxpayers and especially on the large number of senior citizens who are living on fixed incomes.

As Chief Sica testified, employment in the Police Department has been stable for many years. There has been little change in manpower. Furthermore, the Borough appointed four additional sergeants in December 1996.

The Chief also provided evidence that the crime rate and especially violent crime in the Borough has been decreasing. This is said to suggest that there is less work.

The Borough points out that it is the obligation of an interest arbitrator to follow the statutory criteria as mandated by statute. Awards must be supported by substantial credible evidence presented in the record. The arbitrator must cite the criteria and the supporting evidence in writing an award. All of the statutory factors are presumed to be relevant and all must be considered.

One of the factors is the comparability of wages and benefits. The Borough recognizes that these must be competitive so as to avoid any deterioration of public safety. The Borough argues that the dropping crime rate, as reflected in the data provided by Chief Sica, demonstrates that there has been no deterioration of public safety. In fact, public safety has increased. Therefore, there is said to be no need for concern about the wage and benefit level in terms of its relationship to public safety. If there had been an increase in the crime index or in the rate of violent crime, then it would be necessary to examine this factor. Under the current circumstances, this is said not to be required. Furthermore, the size of the Police Department has been quite constant. The crime statistics referred to by the Chief show that the number of police officers was 49 in 1984, has been as high as 53, and now stands at 51.

The Borough asserts that parity between employees of the Police and Fire Departments is not one of the goals of the legislation. Thus, the considerable amount of time spent by the PBA on the relationship between the employees of the two departments is said to have been unnecessary.

The Supreme Court made it clear in Hillsdale, Ibid., that the public interest and welfare must be considered. The Court also stated the ability of an employer to pay is

not the controlling factor. The mere fact that an employer could pay or a simple comparison with employees represented by the FMBA who have similar duties would not be sufficient to support an award without a very full explanation as to the weight and relevance of those factors and a consideration of all of the statutory factors. A comprehensive analysis is required.

Thus, in summary, the Borough asserts that any award in excess of 3% each year in 1997 and 1998 would conflict with the statutory criteria and place an undue burden on the taxpayers of the Borough who already have the third highest overall tax rate in the County and the second highest local purpose rate of the 25 municipalities in Middlesex County.

Discussion

The statute requires the arbitrator to decide the dispute by making a reasonable determination of the issues, giving due weight to the eight statutory criteria listed above which are judged relevant. Each criterion must be considered. Those deemed relevant must be explained and also there must be an explanation as to why any factor is deemed not to be relevant. In making the decision, the arbitrator must separately determine whether the total net annual economic changes for each year of the agreement are reasonable under the statutory criteria.

I have carefully considered the documentary and testimonial evidence introduced by the parties as well as their arguments. I have considered the evidence in relation to the statutory criteria, as discussed below. I have discussed the weight which I have accorded to each factor, all of which I have found to be relevant. I have determined the total net annual economic changes for each year of the agreement in order to conclude that these changes are reasonable under the criteria.

As the parties stipulated, their final offers included only economic issues. Both are seeking a three-year agreement which will cover the term January 1, 1996 through December 31, 1998. Accordingly, I shall provide for a three-year contract in this award.

In order to make the subsequent discussion of the statutory criteria meaningful, I shall describe the award at this time. This will permit me to use the award as the reference point in referring to and applying the statutory criteria. The alternative would be to use the parties' final offers as the reference point but, since I shall not adopt the position of either party as the award, it makes sense to relate the criteria to what will be awarded rather than to things that will not be awarded. The parties in their presentations necessarily focused on their position and that of the other party because that is what they were defending or attacking. I need only deal with the terms of the award which I shall render.

The term of the new agreement shall be January 1, 1996 through December 31, 1998. Wages shall be not increased on January 1, 1996 except that the pay for sergeants shall be increased by \$462.00 to match the salary paid to a fire captain. To maintain the current wage relationship between the ranks, the wages of lieutenants shall be increased by \$494.00 and the wages of captains shall be increased by \$527.00.⁶ Wages generally shall be increased by 6% retroactive to January 1, 1997 and then the uniform allowance of \$1,000 shall be added to the base pay in lieu of a

⁶ Fire captains received \$53,253 in 1996. Police sergeants should receive the same amount because the parties have agreed that those ranks in the two departments correspond. There is a differential of 6.6% between police sergeants and police lieutenants and there is a differential of 7% between police lieutenants and police captains. The increases provided to these ranks maintain those percentage differentials.

separate payment.⁷ Wages shall be increased by an additional 6% retroactive to January 1, 1998. The exact amounts are set forth in the award.

Additionally, a new longevity step shall be added to Article III, Section B, effective January 1, 1997, to provide longevity compensation of 15% of base salary for employees with 29 years of service and over.

A prescription plan, paid by the Borough, shall be added to Article VII. This shall be effective immediately.

A new section shall be added to Article III to provide for automobile reimbursement at the rate of \$.31 cents per mile, portal to portal, plus tolls and parking, as fully set forth in the award. This shall be effective January 1, 1998.

Article XV, College Credit, shall be changed for employees hired on or after January 1, 1998. For such employees, the Borough shall reimburse tuition after the officer successfully completes a police related course with books being paid for by the Borough and kept in the police station for reference and use by all police personnel. Also, these employees shall receive, in addition to their annual salary, three hundred dollars (\$300) for an Associate's Degree, five hundred dollars (\$500) for a Bachelor's Degree, one thousand dollars (\$1,000) for a Master's Degree and two thousand dollars (\$2,000) for a Doctorate Degree. These payments shall not be cumulative and shall be paid in a lump sum during July. This shall not apply to any employee hired before January 1, 1998.

The new agreement also shall include the items upon which the parties previously agreed. Neither party provided sufficient justification to support any of the other changes proposed.

⁷ Article IV shall be amended to reflect that the uniform allowance has been incorporated into base pay as it has been in Article XI, Section 1 of the 1996 to 1998 agreement between the Borough and the FMBA.

The total net annual economic cost of these changes in each year of the agreement shall be computed. The cost in 1996 is minimal. The only changes effective in 1996 are the adjustments to the salaries of the superior officers which, as stated, is necessary to maintain the prior relationship among ranks and between the police and fire departments. The cost of these adjustments is \$9,562 for twelve sergeants, six lieutenants and two captains.

The total net annual economic changes in 1997 consist of the salary increase of 6%, the additional pension and other costs of incorporating the \$1,000 uniform allowance into base pay and the cost of adding a new longevity step for officers with 29 and more years of service. The parties did not provide a breakdown of the bargaining unit but the Borough calculated that a 5% increase would cost \$170,000 so a 6% increase would cost 20% more than that or approximately \$204,000. The cost to the Borough of the additional costs of incorporating the uniform allowance into base pay could not be provided by DeBlasio but he placed the pension cost at 2%. The other costs would not be significant. The parties also did not provide a breakdown of years of service of the members of the bargaining unit. An additional 3% longevity payment would cost \$1,574 in 1997 for a top patrolman. It is unlikely that many members of the unit would qualify for this payment.

The total net annual economic changes in 1998 consist of the salary increase of 6%, the prescription plan, and the mileage reimbursement. Again based on the Borough's calculations, the cost of the salary increase would be approximately \$216,000. The Borough already pays the premium for the prescription plan so making that benefit available to the members of the PBA will not add any costs to the Borough. The cost of mileage reimbursement will be minimal.⁸

⁸ The Borough provided no estimate of this cost.

Having set forth the terms of the award and the total net annual economic changes in each year of the award, I shall discuss the award, the evidence and the parties' arguments in relation to the statutory criteria.

Before doing that, however, it is useful to discuss the historical relationship between the police officers and firefighters in Carteret. A separate section was included above which discussed that relationship. The key position in both departments is that of a top patrolman and top firefighter, known, respectively, as 1st grade firefighter and 4th year patrolman. In both departments, the top rate is reached in the fourth year of employment. The top rates in the two departments were identical in both the 1989 to 1990 and the 1991 to 1992 agreements. There was a deviation in the 1993 to 1995 agreements. However, pursuant to a wage reopener provision in the agreement between the Borough and the FMBA, the Borough agreed to increase the 1995 rates for the firefighters so that they matched the 1995 rates of the police officers, thereby reestablishing, on a voluntary basis, the relationship between the two departments.

It is this relationship which I believe is of overriding importance in deciding this case. I believe that a number of the statutory criteria will be served by preserving that relationship in the 1996 to 1998 agreement and, on the other hand, that it would be contrary to a number of those criteria to fail to respect that historical relationship. I shall discuss the reasons for this conclusion below.

Interests and Welfare of the Public The Supreme Court in Hillsdale, ibid., made it clear that the interests and welfare of the public must always be considered and that an award which failed to consider the interests and welfare of the public was in danger of being deficient. The amended statute also requires the arbitrator to consider the limits imposed by the Cap Law in connection with this factor.

The Borough acknowledged that it budgeted beneath its Cap limit and that there exist no current problems with the Cap Law. Furthermore, the Borough has a Cap bank of several hundreds of thousands of dollars. The Cap Law poses no impediments to the implementation of this award.

Aside from the Cap Law, this factor is one which tends to point in different directions. The public wants and needs a sufficient number of police officers and other employees to meet their legitimate service needs. The public also generally likes to receive public services at the lowest possible cost. The public interest, however, also is served by having a reasonably well compensated police force. This will serve to attract and maintain sufficient numbers of qualified and dedicated professional police officers. Considerations of morale also are important. If the police officers do not perceive that they are being treated fairly and reasonably, then their morale will suffer. Officers who perceive that they are being fairly treated will constitute a productive, effective and efficient police force.

I believe that to fail to provide increases to the police officers which are commensurate with those voluntarily given to the firefighters would seriously undermine the morale of the police officers and their job performance. This would be contrary to the public interest. Indeed, it is hard to understand the Borough's position in this proceeding because the Borough apparently believed that the relationship between the two groups was important enough that it voluntarily agreed with the FMBA in the last year of their prior agreement to raise the salaries of firefighters to the same level as was being received by the police officers. The police officers certainly deserve the same consideration at this time.

Thus, I believe that considerations of the interests and welfare of the public point compellingly toward the implementation of an award which equalizes the wages in

the police and fire departments, as they were at least from 1989 to 1992 and again, as a result of the Borough's actions, in 1995. Put another way, it would be inconsistent with the public interest to treat the police officers less favorably than the firefighters have been treated. This conclusion is further buttressed by the fact that the Borough reached a voluntary agreement with the FMBA. That result was not imposed by an interest arbitrator, although the logic of a retention of the historical relationship would be very strong in that circumstance as well.

Comparisons Comparisons are to be made with other public employees performing similar services as well as with other employees generally in the following groups: 1) in private employment in general, 2) in public employment in general and 3) in public employment in the same or similar comparable jurisdictions. I shall discuss these in order.

First, private sector comparisons are to be made with employees performing similar services as well as with private employees generally. Police officers perform a uniquely governmental function in society and do not really have private sector counterparts. Comparisons simply do not exist. Thus, this part of the comparison is not relevant.

The other part of this comparison calls for a comparison of police officers with other employees generally in private employment. The parties provided very little evidence or data on this. Nevertheless, this is a factor which must be taken into account. Data published by the Bureau of National Affairs regarding negotiated settlements reached in 1996 showed that the median annual wage increase was 3%, the same as the figure for 1995. The amended statute requires PERC to provide a private sector wage increase survey each year.⁹ The report issued in August 1996

⁹ N.J.S.A. 34:13A-16.6.

covered 1995 and showed an increase in New Jersey of 3.4% that year. The figure in Middlesex County was 3.5%. The report covering 1996 showed an increase in the State of 4.3% and in Middlesex County of 4.9%. The U.S. Department of Labor's Bureau of Labor Statistics publishes an Employment Cost Index ("ECI") which reflects increases in total compensation for nonfarm workers. The increase reported as of December 1997 over the prior twelve months was 3% in the northeast and the national figure was 3.4%.

The amount to be awarded here is 12% over three years and it is back-loaded so the cost to the Borough is less than it would be if it were spread evenly over the three years. This is an average of 4% per year which is somewhat below the increases reported in New Jersey and somewhat above those reported nationally. Thus, the award is basically consistent with this aspect of the criterion.

Second, comparisons are to be made with other public employees generally. Again, the parties provided very little data on this component of comparisons. Relying on data published by the Bureau of Labor Statistics, wage settlements entered into by state and local governments in 1995 averaged 3.2%. The ECI for state and local government workers increased by 2.8% in 1996 and the same amount in the first quarter of 1997. The figures provided by PERC showed an increase of 3% for government employees in New Jersey in 1996. Thus, increases of 4% exceed these figures by approximately 1% but they are justified by more important factors as discussed herein.

Third, comparisons, are to be made with public employees in the same jurisdiction as well as with those in similar comparable jurisdictions. Looking at comparisons within the same jurisdiction, the settlement reached by the Borough with the FMBA is of very large significance. As noted above, there has been a history of

identity of wage rates for a top patrolman and a top firefighter and the Borough reopened the 1992 to 1995 agreement with the FMBA in 1995 to reestablish that relationship in 1995. It then settled voluntarily with the FMBA for 1996, 1997 and 1998. The settlement provided a 0% increase in 1996, a 6% increase in 1997 (plus the inclusion of the \$1,000 uniform allowance in base pay) and a 6% increase in 1998. By awarding the same increases to the PBA in this proceeding, I am preserving what has been the historic relationship, a relationship that the Borough itself restored in 1995 when it reopened negotiations with the FMBA. Thus, internal comparisons with the firefighters point compellingly toward an award which preserves that relationship. This is even more true when, as here, the size of that increase - 12% over three years - is otherwise a reasonable increase.¹⁰

Comparisons also are to be made with similar employees in comparable jurisdictions. The PBA submitted data from Middlesex County and that is reasonable and consistent with the guidelines adopted by PERC at N.J.A.C. 19:16-5.14. First, Carteret is below the average in terms of its top patrolman rate. Thus, the Borough is not leading in this area which might permit it to argue that a below average increase was justified when considering this factor. Second, the average increase in the County reported for 1996 is 3.98%. That is virtually identical to the average annual increases I shall award. The PBA cited the decision of Arbitrator Carl Kurtzman issued June 9, 1997 in a case which involved Middlesex County and the County police represented by PBA Local 156. The arbitrator awarded across-the-board increases of 2% January 1, 1996, 2% July 1, 1996, 2.25% January 1, 1997, 1.5% July 1, 1997, 2.5% January 1, 1998 and 1.5% July 1, 1998. These increases, when compounded (112.34%), are

¹⁰ Other Borough employees have not settled with the Borough. Even if they had, however, I would have found the comparisons with the firefighters to be the most important ones.

virtually identical to the award which I shall issue (112.36%). Thus, this factor provides support for the increases which I shall award.

Looking at this factor overall, the 12% increase over three years which I shall award is slight above private sector and general public sector increases but it is identical to the settlement with Carteret's firefighters and very similar to increases received by other municipal police officers in the Middlesex County.

Overall Compensation No data were submitted which suggest that the overall compensation of the police officers of Carteret is unusual or out of line with the norm. The evidence which was provided indicated, and the Borough asserted, that the police officers and firefighters have very similar benefits. As a result of this award, that will continue to be true and, indeed, it will be even more true because I shall award to the PBA benefits already enjoyed by the FMBA.

I shall award a prescription plan, paid by the Borough, to the PBA. This item was included in the Borough's offer to the PBA. It is my understanding that the Borough has been paying a premium which covers all Borough employees so there is no additional cost associated with this benefit. I shall incorporate the uniform allowance into base pay, as the Borough agreed to do with the FMBA. This will occur effective January 1, 1997 which is when the Borough made that change with the FMBA. Both allowances were \$1,000 so the effect on the two groups and the cost to the Borough is proportionally the same. I also shall provide a new longevity step, effective January 1, 1997, for police officers who have provided 29 or more years of service at a rate of 15% or 3% higher than the current maximum. This is a benefit which the members of the FMBA have enjoyed since 1993. Again, this will equalize benefits and overall compensation between these two historically related groups. I shall not change the severance pay provision as urged by the Borough, in major part because the Borough

did not change an identical provision which appears in the agreement between the Borough and the FMBA. I have also provided for mileage reimbursement. This benefit does not appear in the FMBA contract and this may not be an issue with those employees. In any event, both the Borough and the PBA included this item in their proposals with the only difference being the rate of compensation. The Borough proposed \$.25 per mile and the PBA proposed \$.31 per mile. The current rate approved by the IRS is \$.32½ so I believe that the \$.31 proposed by the PBA is a reasonable figure. Finally, I shall change the college credit provision in the PBA contract for new hires so that it closely parallels the benefit found in the FMBA contract. This will further the consistency between the groups without taking away a benefit now received or anticipated by current employees.

I have rejected the other proposals of both parties. They were not justified on the basis of comparisons with the FMBA contract and a compelling case was not made for any other changes.

Stipulations There were no stipulations as they relate to the substantive terms of the new agreement except that the term of that agreement should be three years.

Lawful Authority The statute requires the arbitrator to consider the limitations imposed by the Cap Law when considering this the lawful authority of the employer. The Cap Law limits the amount by which a municipality can increase its final appropriations from one year to the next and it was intended to control the cost of local government to protect homeowners. The limitation, however, applies only to total appropriations and not to individual line items or appropriations.

The Borough acknowledged that there exists no current Cap Law problem. The evidence established that the Borough did not budget to the extent of its authority under the Cap Law and that it has not done so in the last several years. This has

resulted in the development of a Cap bank which could be used, if necessary, to fund an interest arbitration award or other expenses. This is not to say that this should be done nor that it will be necessary. It simply addresses the issue of the lawful authority of the employer. In fact, this award can be funded without resort to the Borough's Cap bank authority. Accordingly, the lawful authority, or limits on that authority, are not significant in deciding this case.

Financial Impact It is true, as the Borough argued, that its assessed property values decreased 14% between 1988 and 1997, that its tax rate rose by 35% between 1992 and 1997 while its tax levy rose by 22% during that period, that its 1997 overall tax rate was the third highest in Middlesex County and that its local purpose rate was the second highest in the County.

By awarding no wage increase in 1996, I am following the pattern which the Borough claims to have created with its other organized employees. Actually, of course, the Borough is able to say that it gave a 0% increase to the FMBA only because it reopened the 1993 to 1995 agreement with the FMBA and agreed to give a second increase to that union in 1995. It raised the wages of the firefighters in late 1995 retroactive to January 1, 1995 and then did not raise those wages again in 1996, thus enabling it to state that there was no increase in 1996. The Borough's 0% wage settlements with the blue and white collar employees were coupled with additional days off for those employees. Thus, the blue collar employees received five more days off and the white collar employees received eight additional days off. These translate to over 2% and 3%, respectively. Nevertheless, I have accepted the Borough's position

for 1996 and awarded a 0% salary increase to the PBA that year. Obviously, the financial impact that year is minimal.¹¹

The Borough included in its budget the money necessary to pay the 6% increase which it paid the firefighters in 1997. Beyond that, it budgeted \$130,000 for wage increases. The amount to be utilized for police officers in 1997 is approximately \$204,000 for wage and longevity increases. This exceeds the amount budgeted by the Borough for all Borough employees except the firefighters by \$75,000. The Borough's fund balance and its recent history of results of operations and cancellation of reserves as well as the excess of realized revenue over budgeted revenue all indicate that the Borough will be able to fund this increase. DeBlasio projected in December 1997, when the budget year was almost over, that the results of operations in 1997 would be between \$400,000 and \$500,000.

This is true for the 1998 increase for the same reasons. Also, there is development in the Borough which will increase assessed value. Thus, for example, the White Rose Company, which enjoys a tax abatement, will be paying 20% more in taxes in 1998 than it paid in 1997 and that figure will increase by 20% in 1999 to 80% of the regular rate and to 100% of the regular rate in 2000. Other development, including a mall, is coming as well.

Furthermore, it is hard to believe that the Borough did not anticipate that the wages of its police officers would be increased the same as were those of its firefighters. In other words, when the Borough settled voluntarily with the FMBA

¹¹ These is an increase in the Borough's costs in 1996 because of the increases awarded to police superior officers. The cost of these is under \$10,000. DeBlasio testified that the Borough had approximately \$200,000 which was unencumbered from the 1996 budget. Thus, the Borough has the funds for these increases.

sometime late in 1995 or early in 1996, the Borough undoubtedly expected that it would provide the same increase to the police officers.

It also is worth noting that the language of the reopener in the 1992 to 1995 FMBA contract made the reopening contingent upon an improvement in the Borough's financial condition for 1995. Therefore, the Borough implicitly acknowledged when it agreed to increase the wage of the firefighters late in 1995 that its financial conditions had improved. This, too, supports the conclusion that the financial impact of this award, which cannot come as a surprise to the Borough, is manageable and acceptable to the Borough.

Thus, it is my conclusion that the financial impact of this award will come as no surprise to the Borough and that it is one which can be managed without upsetting other budgetary plans or items. It will ultimately result in an increase in the tax levy, as do all increases in expenditures. That impact on an average residential taxpayer, as estimated by DeBlasio, will be approximately \$27.50 in 1997 and in 1998 after being zero in 1996.¹²

Cost of Living The Consumer Price Index for New York-Northeastern New Jersey published by the Bureau of Labor Statistics increased 2% from December 1996 to December 1997. The increases the past few years have been very close to 3%. Therefore, average wage increases of 4% are in line with increase in the CPI in that they will provide for a modest increase in real wages. This is consistent with the long-term trend whereby employees have seen improvements in their living standards as improvements in technology and productivity have permitted such increases. I do not

¹² DeBlasio estimated that the impact of the PBA's proposal - which was 5% for each of three years - would be \$23.00 per year. Thus, a 6% increase in 1997 and 1998 will be approximately \$27.50 each of those years.

deem this factor to be as important as the public interest and the internal comparisons discussed above but the award is nonetheless consistent with this criterion.

Continuity and Stability of Employment This, too, is not a significant factor in deciding this case. An increase of 12% over three years, identical to that given to the firefighters, will not jeopardize continuity and stability of employment. Over the long term, I am concerned that if the police officers were to be treated less favorably than the firefighters, the Borough would experience difficulties in attracting and retaining the quality of officer that it wants and that there would be morale, performance, efficiency and productivity difficulties as well. There has been a decrease in the number of officers over the last ten years so the remaining officers have a greater workload. Thus, while there have not been any layoffs in this Department since the 1950s, employment levels have dropped. I do not believe, however, that this justifies a wage increase in excess of that given to the firefighters.

Summary

I have carefully considered the evidence and the arguments of the parties. I have considered each of the eight statutory criteria. The two most important factors in this decision are the public interest and internal comparisons with the Borough's firefighters. The Borough voluntarily settled with its firefighters for 0% in 1996, 6% in 1997 and 6% in 1998. The uniform allowance was included in base wages in 1997. This voluntary settlement reached by the Borough with its paid firefighters is compelling for the police officers. There is a history of the top officers in the two departments receiving the same salary. The Borough cannot be surprised and indeed must or certainly should expect at an award which matches what it agreed to do voluntarily with its other employees who are eligible for interest arbitration.

This award, which averages 4% each of three years, is slightly above average private sector increases nationally but below those in New Jersey, slightly above public sector increases in general and slightly above increases in the cost of living. It is very close to increases received by other police officers in Middlesex County. These factors, whether coincidentally or not, point to an award very similar if not identical to the amount awarded primarily on the basis of internal comparisons and the public interest. There is no problem of lawful authority. The financial impact of this award should be minimal on the Borough. There is almost no impact in 1996 when the Borough budgeted no money for salary increases, although it carried over approximately \$200,000 from that budget which is unencumbered and therefore available for funding wage increases. The surplus plus the pattern of regenerating surplus indicates that the Borough will be able to fund this award. Furthermore, the Borough agreed to reopen negotiations with the FMBA late in 1995. In the words of the contract between the Borough and the FMBA, "This [reopening] is predicated on an improvement of the Borough's financial condition for 1995." Obviously, the Borough believed that such an improvement had taken place because it did agree to provide an increase to the firefighters.

Accordingly, I hereby issue the following:

AWARD

The term of the new agreement shall be three years from January 1, 1996 through December 31, 1998.

In 1996, the salaries of sergeants shall be increased by \$462, the salaries of lieutenants shall be increased by \$494 and the salaries of captains shall be increased by \$527. The salaries for 1996, 1997 and 1998 shall be as shown below. These

generally reflect an increase of 6% in 1997 and 1998 with \$1,000 being added to the base in 1997.

<u>Rank</u>	<u>1996</u>	<u>1997</u>	<u>1998</u>
Captain	\$60,761	\$65,407	\$69,331
Lieutenant	57,005	61,425	65,111
Sergeant	53,253	57,448	60,894
4 th Yr. Ptl.	48,561	52,474	55,622
3 rd Yr. Pt.	45,611	49,348	52,308
2 nd Yr. Ptl.	43,504	38,174	40,729
1 st Yr. Ptl.	27,500	27,500	29,150

Article IV, Uniform Allowance, shall be amended to reflect that the uniform allowance and uniform maintenance of \$1,000 have been included in base salary as of January 1, 1997 in lieu of a separate payment.

A new longevity step shall be added to Article III, Section B, effective January 1, 1997, to provide longevity compensation of 15% of base salary for employees with 29 years of service and over.

A prescription plan, paid by the Borough, shall be added to Article VII. This shall be effective immediately.

A new section shall be added to Article III to provide for automobile reimbursement as follows:

Whenever an employee is required by the Chief of Police to utilize his/her personal vehicle for departmental business, the employee shall be reimbursed for all tolls and parking costs upon presentation of receipts as well as a mileage rate of \$.31 per mile portal to portal to and from the destination.

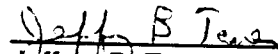
Article XV, College Credit, shall be changed for employees hired on or after January 1, 1998. For such employees, the Borough shall reimburse the tuition after employees have successfully completed a police related course with books being paid for by the Borough and kept in the police station for reference and use by all police

personnel. Also, these employees shall receive, in addition to their annual salary, three hundred dollars (\$300) for an Associate's Degree, five hundred dollars (\$500) for a Bachelor's Degree, one thousand dollars (\$1,000) for a Master's Degree and two thousand dollars (\$2,000) for a Doctorate Degree. These payments shall not be cumulative and shall be paid in a lump sum during July. This shall not apply to any employee hired before January 1, 1998.

The new agreement also shall include the items upon which the parties previously agreed as set forth above.

Except as otherwise mutually agreed by the parties, the terms of the prior agreement shall be continued unchanged in the new agreement.

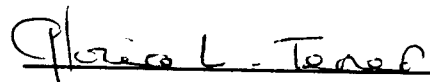
Dated: March 6, 1998
Princeton, NJ



Jeffrey B. Tener
Arbitrator

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

On this 6th day of March, 1998, before me personally came and appeared JEFFREY B. TENER to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.



Gloria L. Tener

GLORIA L. TENER
NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES SEPT. 8, 1999

