

NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of Interest Arbitration Between

BOROUGH OF PALISADES PARK

"Public Employer"

-and-

PALISADES PARK PBA LOCAL 45

"Union."

**INTEREST ARBITRATION
DECISION
AND
AWARD**

Docket No. IA-98-40

**Before
James W. Mastriani, Arbitrator**

Appearances:

For the Employer:

David F. Corrigan, Esq.
Murray, Murray & Corrigan

For the Union:

Richard Loccke, Esq.
Loccke & Correia, P.A.

I was appointed arbitrator by the New Jersey Public Employment Relations Commission on May 14, 1998 in accordance with P.L. 1995, c. 425, in this matter involving the Borough of Palisades Park ("Borough") and PBA, Local 45 (the "PBA"). Thereafter, a pre-arbitration mediation was held. Because the impasse was not resolved, a formal interest arbitration hearing was held on September 30, 1998 at which the parties examined witnesses and introduced evidence. Post-hearing briefs were submitted on February 5, 1999. The mandatory terminal procedure of conventional arbitration was used to decide all issues in dispute. Under this procedure, the arbitrator has the authority to fashion an award which he believes represents the most reasonable determination of the issues in dispute.

FINAL OFFERS OF THE PARTIES

Before beginning the formal hearing, the Borough and the PBA submitted the following final offers:

PBA LOCAL 45

Economic Issues

1. Duration--January 1, 1998 to December 31, 2000.

2. Wages-- Across the board salary increases as follows:
 - 5% effective January 1, 1998
 - 5% effective January 1, 1999
 - 5% effective January 1, 2000
3. Clothing Allowance-- Modify Article XI of the agreement by adding \$100 per year to the uniform allowance.
4. Longevity-- Delete the grandfather provision of Article XVI, which provides different longevity benefits for officers hired after January 1, 1995.
5. Vacations-- Delete the grandfather provision of Article XX which modifies the vacation entitlement for newly hired officers. The PBA seeks to have all officers covered by the subsection A of Article XX.
6. Prescription Co-Payment-- Eliminate the distinction with respect to hire date on the prescription co-payment.

BOROUGH OF PALISADES PARK

Economic Issues

1. Duration-- January 1, 1998 to December 31, 2000.
2. Wages-- Across the board salary increases as follows:
 - \$800 effective January 1, 1998

\$1100 effective January 1, 1999
\$1350 effective January 1, 2000

3. Work Week-- Add 8 hours to the current 32 ½ hour per week work schedule.
4. Meetings-- Add a new provision permitting the Chief of Police to schedule two meetings, two hours in length, per year.
5. Holidays-- Delete Section "C" of Article XII covering holidays, which provides for an additional 4 hours of compensatory time for working on any of the 7 specially designated holidays.
6. Sick Leave-- Amend Article XVIII to restrict sick time to one year in accordance with State law.
7. Probationary Period-- Increase the probationary period from 4 months to 12 months. The probationary period would begin to run after a police officer finishes the police academy.
8. Vacation-- Change the vacation schedule to provide for 30 days notice of vacation to be taken and to require that vacation be taken in blocks of at least one week.

9. Association Representatives-- Amend Article II to change "representatives" to "representative" and to delete references to "alternates". The Borough also seeks to limit time off with pay under this section to 20 hours annually.

10. Agency Shop-- Add language to Article XXXIX so that the PBA would agree to indemnify the Borough for any claims arising out of the agency shop.

Non-economic Issues

11. Outside Employment-- Add a new provision permitting the Chief of Police to be apprised of outside employment of police officers. Additionally, outside employment would be subject to notification and approval.

12. Past Practice-- The Borough proposes to eliminate all references to past practice in the contract as well as various redundant and/or unenforceable statutory references.

13. Police Vehicles-- Delete the second sentence of Article XXXIV to permit members to perform routine maintenance of police vehicles.

The Borough and the PBA have offered testimony and considerable documentary evidence in support of their final offers. Sergeant Steven Thompson testified. A total of 92 exhibits were received in evidence. I am required to make a reasonable determination of the above issues giving due weight to those factors set forth in N.J.S.A. 34:13A-16g(1) through (8) which I find relevant to the resolution of these negotiations. I am also required to indicate which of these factors are deemed relevant, satisfactorily explain why the others are not relevant, and provide an analysis of the evidence on each relevant factor. These factors, commonly called the statutory criteria, are as follows:

(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 (C.34:13A-16.2) provided, however, 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 the P.L. 1976 c. 68 (C.40A:4-45 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 on 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 its 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.

BACKGROUND

Palisades Park is a suburban, predominantly residential community in Bergen County with approximately 15,200 residents.

The Palisades Park Police Department is emerging from a difficult period characterized by retirements and other departures. Nonetheless, throughout this period, the Department has remained efficient and productive as the number of sworn officers decreased while calls for its services increased. Faced with lower staffing levels and an increasing number of calls, productivity has increased dramatically over the last three years.

Presently, the Palisades Park Police Department consists of 26 sworn officers, including the Chief of Police. There are 13 Patrol Officers, 6 Sergeants, 2 Lieutenants, 3 Captains, a Deputy Chief and a Chief of Police. During the term of the previous agreement, 7 officers left the Department, including a Deputy Chief, a Lieutenant and 5 Patrol Officers. The Borough has indicated that it intends to bring the department up to a full complement of 33 sworn officers.

THE PBA'S POSITION AND ARGUMENT

At the outset, the PBA points out that the Borough has not provided support for its proposals, which address many sections of the previous agreement.

Turning to the statutory criteria, the PBA points out that the Palisades Park Police Department is a "highly efficient and productive" law enforcement agency. The PBA asserts that it has demonstrated that workload and efficiency have improved over the term of the last agreement. While the number of sworn officers decreased from 33 in 1995 to 26 in 1997, total calls increased from 4817 in 1995 to 6864 in 1997. The PBA calculates that total calls increased 42.5% from 1995 to 1997. At the same time, criminal incidents increased from 215 in 1995 to 318 in 1997 or 47.9%. Motor vehicle violations increased from 13,389 in 1995 to 21,126 in 1997. The PBA calculates that motor vehicle violations increased 57.8%. The PBA notes that the Uniform Crime Reports for New Jersey show increases in domestic violence and larceny complaints as well.

While workload within the Borough's Police Department has been increasing, the PBA notes that the number of sworn officers has decreased from 33 as of July 1, 1995 to 26 as of September 19, 1998. Specifically, the PBA notes that there are five fewer patrol officers as well as the loss of a Deputy

Chief, a Captain and a Lieutenant. During this period, the complement of sergeants has increased by one officer from 5 to 6. Additionally, the PBA points to Sergeant Thompson's testimony that several officers, including newly hired officers were in the police academy, further reducing the complement of police officers.

The PBA also points out that there has been a significant reduction in rank structure since 1995. According to the PBA, reduction in the rank structure affects the workload and environment for supervisors and the career path for patrol officers. The PBA explains Captains and Lieutenants have seen increases in the span of their authority as well as in their workload. The PBA explains further that limits in promotional opportunities for patrol officers result in greater emphasis on wage increases as the avenue for economic gain.

The PBA acknowledges that the Borough has stipulated that it will bring the complement of police officers up to full strength. The PBA points out that the Borough has recognized the need for more sworn officers. According to the PBA, the Borough has saved money by employing fewer officers and by the separation of the higher paid sworn personnel. The PBA also points out that the Borough has attempted to "civilianize some positions which have historically been held by sworn personnel."¹ The PBA argues that these changes have

¹ This issue is currently before the Public Employment Relations Commission.

resulted in fewer respites from patrol duty. The PBA also asserts that having a non-police employee work the desk has a safety impact on civilians and officers.

The PBA points out that the Borough did not challenge the increases in productivity and asserts that evaluation of the interest and welfare of the public "should weigh heavily in favor of the current complement of sworn personnel" in the Borough's Police Department.

Turning to comparison of wages, salaries and terms and conditions of employment, the PBA asserts that the Borough's Police are not well compensated when compared to their peers in other police departments. The PBA maintains that the shortfall is most evident when benefits are compared. Specifically, the PBA maintains that Borough Police Officers receive inferior benefits covering the clothing allowance and vacation and holiday benefits.

Looking first to vacation benefits, the PBA concludes that Borough Police Officers receive inferior benefits when compared to the vacation benefits provided in Hackensack, Hasbrouck Heights, Rutherford, Saddlebrook, Closter, Montvale, Cresskill, Bergenfield and Ridgefield. The PBA calculates that the average vacation benefit in these communities is 27.4 days per year. In contrast, the PBA points out that the Borough's newer officers hired after January 1, 1995, receive only 20 days per year, beginning with the 21st year of service. The PBA

seeks to rollback the provision limiting the maximum vacation benefit to 20 days.² The PBA notes that even with a rollback of the new vacation benefit provisions added to the last contract, Borough police officers would still receive below average vacation benefits.

The PBA points to that the clothing allowance provided to Borough Police Officers is also below average when compared to the police departments also used as comparisons in reference to vacation leave. Specifically, clothing allowances in the communities selected by the PBA for comparison, range from \$1050 annually in Hasbrouck Heights to a low of \$600 in Ridgefield. Borough Police Officers receive a clothing allowance of \$575 annually.

The PBA asserts that the 13 paid holidays received by Borough as an annual holiday benefit is below the average of 13.5 paid holidays in the communities chosen by the PBA for comparison.

Turning to longevity benefits, the PBA asserts that the longevity benefit provided to Palisades Park Police is "barely competitive" with the longevity benefit provided to police in other communities deemed comparable by the PBA. The maximum benefit provided to Borough Police Officers is 10%, while police in Hackensack received 12% at 24 years of service and Closter and Cresskill have

² Officers hired prior to January 1, 1995 receive a maximum vacation benefit of 24 days per year beginning with the 20th year of service.

continuing benefits with no maximum. The PBA points out that longevity benefits effect the value of officers' pensions as well as their salaries during their career.

The PBA maintains that educational incentives for police officers are common, but are not available to Palisades Park Police Officers. Specifically, the PBA points to the chart it created detailing educational incentive payments which range from \$12 per credit to a maximum payment of \$1,000 in Closter, to \$1300 for an associate's degree, \$1800 for a bachelor's degree and \$1950 for a master's degree.

The PBA expresses concern that while the Borough's compensation program is "only marginally competitive," compensation in other communities is improving constantly. Focusing on the rate of increase in base wages, the PBA asserts that average increases are 4.06% in 1998, 4.08% in 1999 and 4.33% in 2000. In computing this comparison, the PBA relies upon increases in Hackensack, Rutherford, Saddle Brook, Hasbrouck Heights, Closter, Montvale, Cresskill, Teaneck, Bergenfield, Ridgefield, River Edge, Garfield, Fort Lee, Leonia and Fairview. For 1998, increases range from 3.5% in Fairview to 5% Saddle Brook. For 1999, increases range from 3.5% in Fairview to 4.5% in Montvale. For 2000, only four municipalities have settlements. These range from 4% in Closter and Teaneck to 4.8% in Ridgefield. According to the PBA, increases would be higher if other benefits were included in its analysis.

The PBA notes that historically, Palisades Park has put virtually all of its compensation into the base wage, and, even so, the base wage is "marginally competitive." Addressing the appropriate comparables, the PBA points out that recent interest arbitration awards from Leonia, Fairview, and Fort Lee are in the record. The PBA argues that these awards deserve greater weight than contracts submitted by the Borough. Specifically, the Borough submitted contracts covering the Atlantic City Fire Department and the Atlantic City Teamsters.

Turning to comparison with the private sector, the PBA suggests that such comparisons deserve little weight when law enforcement is at issue. Relying upon a recent interest arbitration award in Borough of River Edge, where Arbitrator Carl Kurtzman discussed the unique responsibilities of public sector police officers, and accorded the private sector comparison minimal weight. The PBA urges that private sector comparisons not be considered controlling in this case.

The PBA expands upon the unique nature of police work citing the need for police to be prepared to act at all times, the right to be armed and laws unique to police officers. As examples, the PBA cites the lack of portability of police pensions after age 35; their exemption from coverage by the New Jersey State Wage and Hour Law, N.J.S.A. 34:11-56a, et. seq.; the statutory creation of police departments and the chain of command and control, N.J.S.A. 40A:14-118;

specific statutory qualifications for police employment including U.S. citizenship, physical health, moral character, and no criminal record, N.J.S.A. 40A:14-122; statutory limits on unexcused absences, N.J.S.A. 40:14-122; statutorily controlled promotional exams, N.J.S.A. 40A:14-122.2; residency requirement, N.J.S.A. 40A:14-122.8; statutory hiring criteria, N.J.S.A. 40A:14-123.1a; statutory age restrictions for initial employment as a police officer, N.J.S.A. 40A:14-127.1; statutory acceptance into the Police Retirement System, N.J.S.A. 40A:14-127.3; statutorily created minimum wage for police officers below the New Jersey minimum wage, N.J.S.A. 40A:14-131; statutory governance of the length of the work week, N.J.S.A. 40A:14-133; statutory limitation on the overtime rates, N.J.S.A. 40A:14-134; maximum age of employment; exemption from ERISA; and coverage by unique statutorily created hearing and complaint procedures for departmental charges. N.J.S.A. 40A:14-147-151.

Above all, the PBA stresses the obligation entailed with the power of arrest as conferred by N.J.S.A. 40A:14-147-152.1, as well as the authority to carry a weapon at any time. The PBA also points to other qualities unique to police work such as the training received at the police academy and limitations on mobility not duplicated in the private sector.

Based upon these differences, the PBA asserts that local comparisons with other police departments are more relevant. In support of that contention, the PBA quotes Interest Arbitrator William Weinberg's award in the Village of

Ridgewood. According to the PBA, "the police officer lives and works within a narrowly structured, statutorily created environment in a paramilitary setting with little or no mobility." For these reasons, the PBA maintains that comparison of private sector work generally to a police career should result in police employees receiving compensation at a higher level than private sector employees generally.

Addressing the stipulations of the parties, the PBA notes that the only substantive stipulation is to a three-year contract term.

Turning to the lawful authority of the employer, the PBA asserts that its final offer is well within the lawful authority of the Borough as established by the Cap Law.

Turning to longevity benefits, the PBA asserts that the longevity benefit provided to Palisades Park Police Officers is "barely competitive" with the longevity benefit provided to police in other communities deemed comparable by the PBA. The maximum benefit provided to Borough Police Officers is 10%, while police in Hackensack receive 12% at 24 years of service and Closter and Cresskill have continuing benefits with no maximum. The PBA points out that longevity benefits affect the value of officers' pensions as well as their salaries during their police career.

The PBA notes that while educational incentives for police officers are common, they are not available to Palisades Park Police Officers. Specifically, the PBA points out that its final offer is well within the Borough's lawful authority. Applying the Cap law, the PBA points out that the Borough has the ability to raise the index rate from 2.5% to 5%, but its budget for 1998 used an index rate below 2.5%. Citing the Borough's 1998 budget, the PBA notes that the 2.5% calculation provided \$187,969 in cap index flexibility for 1998. Accordingly, the Borough calculated its "Total Allowable Appropriations" as \$7,967,311, but appropriated only \$7,967,311. The difference, or amount not utilized, according to the PBA's calculations is \$207,038.

Supporting its contention that the Borough does not have a Cap problem, the PBA points out that the Borough "waived" \$187,969 in budget flexibility by using the 2.5% index rate, rather than raising the index rate. Additionally, the PBA notes that the budget adopted by the Borough was over \$201,000 under the total allowable appropriation using the lower index rate of 2.5%. According to the PBA, the Borough is able to carry forward the unused flexibility and this amount may be used in 1999 or 2000. Specifically, the PBA calculates that the full cap flexibility that the Borough carries forward into 1999 and 2000 is \$389,007. The PBA reaches that sum by adding the \$201,038, that is the amount not utilized by the Total Allowable Appropriations, plus the \$187,969 which was not used because the Borough chose not to increase the index rate to 5%.

The PBA notes that the Borough has a history of maintaining a Cap bank and that the Cap bank was \$103,105 in 1996 and \$157,437 in 1997. Noting that the amount carried in the Cap bank over the past three years is increasing, the PBA maintains that the Borough does not have a Cap problem. To illustrate its point, the PBA calculates that based upon total base wages of \$1,566,668, one percentage point increase costs \$15,666 and its proposal for 1998 costs \$78,330. In comparison, the Borough's proposal of \$800 increases for 24 officers totals \$19,200. Therefore, the PBA calculates that the difference between the parties' positions is \$59,130 and the Cap bank under the 2.5% index rates has 3.4 times that difference. Further, the PBA calculates that if one uses the full index rate of 5%, the Cap bank has 6.6 times the difference in between final offers. Accordingly, the PBA maintains that the Cap Law does not present a problem for 1998. The PBA also maintains that the gap between final offers lessens for 1999 and 2000 and the cumulative impact of the Cap bank and its increasing flexibility show that there will not be a Cap Law problem in 1999 or 2000.

The PBA argues that the financial impact on Palisades Park residents and taxpayers will be "essentially imperceptible." Based upon a total tax levy in the Borough of \$21,727,615, the PBA calculates the impact of its final offer as .002%. In other words, the difference between the parties' positions would increase a \$3,000 tax bill by \$6.00. The PBA notes that this is hypothetical because the available flexibility under the Cap Law could make up the difference

and taxes need not be raised. According to the PBA, there is "substantial flexibility" within the police department account and the budget which could cover the \$59,130 difference between the final offers.

The PBA also points out that the number of supervisory positions has been reduced and that the cost of each of these positions could fully pay for the PBA's final offer. Specifically, the PBA notes that reduction of a single lieutenant's position saves the Borough \$68,919 in salary. A captain's position saves the Borough \$72,217 in base salary. When these savings, as well as the savings from eliminating a deputy chief's position and five patrol officers are considered, the flexibility to fully fund its final offer is available, according to the PBA. The PBA argues that its members are paying for their own wage increase through increased productivity and the loss of promotional opportunities.

The PBA maintains that awarding its position would not result in a cost impact upon the public or taxpayers. Specifically, the PBA notes that total bargaining unit costs for base wages and fringe benefits are less now than they were under the prior contract because now there are fewer people working in the police department and there are fewer superior officers. Continuing, the PBA points out that senior officers who have left have been replaced by more junior officers. Citing the Borough's use of step movement in its calculations, the PBA suggests that if step movement is used as cost factor, turnover or reduced staffing levels must also be considered. Since the Borough as omitted these

factors, the PBA urges that the Borough's figures are misleading and should not be given any weight.

Rather, the PBA suggests consideration of the funds that the police department delivers to the Borough's coffers. Specifically, the PBA notes that the Borough's Municipal Court anticipated \$361,000 in fine money in 1997, while due to the efforts of the Police Department, fine money for 1997 was \$437,165, or 21% more than was projected. The PBA also points out that the Police Department receives \$25,000 per year for the payment of police salaries in the COPS Fast program. Looking at only the difference between the fine money projected for 1997 and the money actually received or \$76,165, the PBA asserts that it would more pay for the full value of the PBA's position.

The PBA also notes that the Borough has a strong tax base and a low tax levy. The value of real property in the Borough is \$863,271,398, or 33rd among 70 municipalities in Bergen County. The PBA shows that assessed values have grown in Palisades Park from \$837,690,873 in 1996 to \$89,773,582 in 1998. Additionally the PBA cites the **Municipal Data Book**, which indicates that the Borough's rating in Moodys is **AAA**. Turning to the Borough's 1997 audit, the PBA shows that the Borough has **\$22,867,571** in remaining borrowing power. The PBA also points to an actual **impact per capita** that is among the lowest in Bergen County. In addition to a **substantial** ratable base, the PBA points out the Borough tax rates have remained **low** and actually dropped a penny from 2.77 in

1997 to 2.76 in 1998. The PBA also notes that Palisades Park ranks 65th in tax levy per capita out of 70 municipalities in Bergen County and 48th in debt service per capita.

Focusing on the concern of residents and taxpayers with the tax burden, the PBA points out that only 410 of 6,265 eligible voters turned out to vote on the school budget, which comprises 56.6% of the local tax levy. The PBA asserts that the lack of interest in voting on the school budget demonstrates that taxpayers do not feel overburdened by taxes.

Addressing the cost of living, the PBA urges that it not be considered dispositive, noting that recent increases in the Consumer Price Index have been low. The PBA suggest that little emphasis should be placed upon national data when considering New Jersey as it is a more expensive place to live than much of the nation. The PBA points out that Federal officers receive special increases when they are stationed in New Jersey. Instead, the PBA turns to the wage report data prepared by the New Jersey Department of Labor and published by the Public Employment Relations Commission. The September 1997 data shows the average percent increase to base wages to be 4% and the average increase to base wages impacted by unemployment insurance to be 4.3%.

The continuity and stability of employment has been harmed by the reduction in patrol officers, superior officers and in rank structure according to the

PBA. The PBA maintains that these changes support the need for wage increases for remaining bargaining unit members. Examination of area standards for police salaries also provides support for its position according to the PBA.

The PBA points out that wages and conditions of employment in the areas surrounding Palisades Park do not support the Borough's position. The PBA maintains that the Borough has not demonstrated the need to "gut the PBA contract of long standing terms and conditions" of employment. Specifically, the PBA notes that the Borough did not provide testimony or evidence in Bergen County or in the "geographic context" to support its proposals. The PBA argues that there is no need to weigh the credible evidence since none was presented. Instead, the PBA asserts that the Borough presented a "laundry list of proposals" but failed to provide evidence to explain or support its goals.

THE BOROUGH'S POSITION AND ARGUMENT

The Borough begins its analysis of the statutory criteria by focusing on comparison with other employees performing the same or similar employment. According to the Borough this comparison begins with the workweek, which, for Borough Police Officers is 32 ½ hours per week. The Borough emphasizes that a 32½ hour workweek is almost a full day less than most other police officers in

Bergen County. Comparing sick leave benefits provided to Borough Police Officers with those provided to police officers in comparable communities, the Borough points out that other municipalities provide as few as 12 days per year, while the Borough provides unlimited sick leave of up to one year.

Despite its generous sick leave package, the Borough notes that it provides vacation entitlement comparable to other Bergen County municipalities. Palisades Park Police Officers hired before 1995 receive vacation benefits similar to Hackensack and only one day less than Bergenfield and Montvale.

The Borough asserts that its Police Officers enjoy a 4-2, 4-3, 4-3 work schedule while police in comparable communities work more. Specifically, Englewood, Closter, and Montvale police work 40 hours per week, with Montvale on a 4-2 schedule. Hasbrouck Heights police work a 5-3, 5-2, 5-3 schedule (with Captains working a 5-3 schedule). Rutherford police work a 5-2, 5-3 schedule and in Cresskill and South Hackensack, police work a 4-2 schedule. In Bergenfield, police work a 4-2, 5-2 schedule.

The Borough points out that in addition to the "favorable" work schedule, Palisades Park Police Officers earn salaries greater than Police in Montvale and Cresskill, despite the 4-2 work schedules in those municipalities. Additionally, the Borough notes that its Police earn only \$159 less than Ridgefield patrol officers and the highest paid officers, in Closter, earn \$67,818 for a 40 hour

workweek. Following the comparison, the Borough compares its Sergeants who earn \$65,553 to those in Cresskill who earn \$63,964 and Montvale and Ridgefield, where Sergeants earn \$65,644 and \$65,818 respectively. In contrast, the Borough notes that Sergeants in Closter and Englewood earn \$71,706 and \$71,001 respectively for a 40-hour workweek. South Hackensack Sergeants earn \$73,050.

Proceeding up the rank structure, the Borough points out that the salaries for its Lieutenants and Captains are similarly comparable. The Borough demonstrates that Palisades Park Lieutenants, who earn \$68,919, earn more than Lieutenants in Ridgefield (\$66,486) and Cresskill (\$66,088) but less than those in Montvale (\$70,542), Closter (\$75,414) and Englewood (\$76,285). The Borough also notes again that Englewood Lieutenants work a 40-hour week. Likewise, Borough Captains earn \$72,217 compared to \$71,041 in Ridgefield and \$68,235 in Cresskill.

Based upon its conclusion that Borough Police earn salaries comparable to Police in similarly situated communities, the Borough asserts that Police salaries need not be increased significantly. According to the Borough, the PBA's final offer would increase sergeants' salaries to levels "higher than or close to most other towns," including some who work more hours per week. Additionally, the Borough notes that it provides unlimited sick leave and similar

vacation allotments.³ The Borough urges consideration of all of the emoluments of employment and suggests that an award of wage increases in excess of the Borough's proposal should be balanced by increasing the workweek. Additionally, the Borough notes that the Towns of Harrison and West New York are near Palisades Park, but the difference in salaries is over \$15,000. Also, the Borough points out that its police officers are better compensated than those in Jersey City, Camden and Elizabeth.

Turning to comparison in the public sector generally, the Borough asserts that most public employees, other than Police Officers in Bergen County have received restrained wage increases, reflecting the "flat" cost of living and escalating health care costs. Initially, the Borough cites the agreements between AFSCME, IFPTE, and CWA and the State of New Jersey. The agreement between the State and its employees represented by the Communications Workers of America, which provided \$2625 in wage increases over four years (including a two year wage freeze) and modifications to health benefits.

Regarding employees entitled to the interest arbitration provisions of the New Jersey Employer Employee Relations Act, the Borough cites the agreement between the FMBA, Local 22 and Harrison. That agreement included a terminal leave cap, reduced longevity for new hires and wages increase of 4% on January 1, 1996, 3% on January 1, 1997, 1% on July 1, 1997, 3% on January 1, 1998

³ The Borough notes that it does not seek to reduce the sick leave entitlement, but only to reflect the limitation imposed by State law.

and 1% on July 1, 1998. The Borough emphasizes that these increases were all payable in the following year. The Borough also cites the Atlantic City Firefighters agreement which provided a two year wage freeze followed by 4% and 5% in the next two years, as well as a reduced vacation schedule for new hires. The Borough also points to the agreement between Atlantic City and the International Brotherhood of Teamsters providing wage freezes in 1995 and 1996 followed by increases of \$1600, \$1100 and \$1400 respectively.

The Borough also cites wage increases among Police in West New York and AFSCME members in Bergen County. In West New York, Superior Officers agreed to a reduced vacation schedule and to reduce "Catastrophic Sick Leave" from an 18 month lifetime entitlement to 12 months. The wage increases included in that agreement were no increases in 1997, 3% on July 1, 1998, 1.5% on January 1, 1999, 2% on January 1, 2000 and 2% at 11:59 p.m. on June 30, 2000. In an interest arbitration award cited by the Borough, the rank and file police in West New York received 3.75% on July 1, 1995, July 1, 1996, July 1, 1997 and 3.5% at 11:59 p.m. on June 30, 1998. That award also reduced the vacation entitlement and increased the prescription co-pay. According to the Borough, Bergen County employees represented by AFSCME received under 3% in 1997 and 1998.

The Borough notes that Federal Government employees received a 2.8% increase nationally which was adjusted regionally. The Borough cites a

September 1997 report by the Bureau of National Affairs that in the Northern New Jersey, the net salary increase to government employees was 2.87%.

The Borough asserts that comparison with private sector compensation strongly favors its position. According to the Borough, the weighted increases in private sector labor contracts for the first three months of 1998 was 2.8%, compared to 3.7% in 1997. Further analysis and research by the Borough demonstrates that 3% increases were the norm throughout 1998 in the private sector as well as in state and local agreements. The first example the Borough points to is an IBEW agreement in Minneapolis, Minnesota which provides 6% over three years. The Borough then points out that the UAW and John Deere entered into an agreement which lowered the base wage and provided 3% lump sum payments in each year of the agreement, and that Lockheed Martin Aerospace workers agreed to 3% increases in both years of a two year agreement.

Looking closer to New Jersey, the Borough cites a settlement covering the turnpike workers in Pennsylvania that provides 9.5% over three years, as well as increased prescription co-payments and an increased deductible. The Borough also cites contracts between CWA and the IBEW and AT&T that provide increases between 2.88% and 3.85% over a four year contract.

The Borough also points out that private sector workers are faced with the risk of layoff. In light of the 5.3% unemployment rate in Palisades Park, which is higher than the County average of 4.4% and the State average of 4.8%, the Borough suggests that the PBA's compensation package is "enhanced by the . . . unparalleled job security."

Looking at average hourly occupational wages in New Jersey, the Borough concludes that the PBA members' hourly rates for overtime of \$28.84 are higher than many employees in the category of "Managerial and Administrative Occupations." For example, the Borough cites the hourly rate for Education Administrators at \$30.89, as only \$2.05 per hour more than the overtime rate for patrol officers. Further, the Borough points out that the hourly overtime rate for patrol officers is more than the hourly rate earned by many post-secondary teachers. Looking at the superior ranks, the Borough notes that architects earn \$31.67 per hour on average compared to Palisades Park Sergeants who earn \$30.01 per hour. The Borough points out that the hourly Captains' salary of \$33.07 is higher than the salaries of Education Administrators, Computer Science Instructors and Architects.

Addressing the overall compensation received by its Police, the Borough seeks special consideration of the favorable work schedule in addition to competitive wages, and vacation and sick leave benefits. Because Palisades

Park Police work a 32½ hour week, the Borough contends that simple wage charts are misleading.

The Borough maintains that any wage increases beyond the Borough's position must be balanced by work schedule adjustments. The Borough seeks a work schedule more comparable to other jurisdictions. The Borough cites the award of Interest Arbitrator Daniel Brent in Township of West New York. There, according to the Borough, the Arbitrator pointed to the work schedule and favorable vacation benefits in awarding modest wage increases, a wage freeze and givebacks.

According to the Borough, the PBA's claims of increased crime and increased workload are exaggerated, and to the extent that they merit consideration, they support the Borough's proposals to hire civilian dispatchers, increase the work schedule, and hire more officers. Citing the testimony of PBA witness Sergeant Steven Thompson, the Borough agrees that passive patrol is suffering from the currently reduced staffing levels. However, the Borough suggests that the best response to this problem is to provide that dispatching duties be performed by civilians. The Borough asserts that shifting dispatching duties to civilians would free Police to patrol and run radar. In contrast, the Borough contends that the PBA's proposal to increase wages is unlikely to effect the crime rate or to decrease workload. Instead, increasing the workload and

reducing time off will also provide additional coverage for passive patrol, according to the Borough.

The Borough points out that the 4-2, 4-3, 4-3 work schedule, which has been used since 1982, is more generous than the work schedules included in the contracts supplied as comparable by the PBA. Based upon its review of Sgt. Thompson's testimony and the Violent Crime Report, the Borough points out that there were 2 rapes and 9 robberies in 1995 and more recent violent crime could not be recalled. Instead, the Borough notes that most of the increase in incidents over the past three years stems from the increase in parking summons from 13,389 in 1995 to 21,126 in 1997. However, the Borough had 13 Special Officers in 1997 who primarily monitored overtime parking. In contrast, the Borough points to Sgt. Thompson's testimony that the number of parking summons he has issued has remained constant over the years.

The Borough asserts that the PBA's theory of using attrition to fund wage increases should be rejected. The Borough cites the PBA's agreement that none of the officers who left the Police Department since 1995 left to work for other police departments. Rather, the Borough acknowledges that several of the officers no longer employed by the Borough were terminated for cause after a federal corruption probe.⁴ The Borough prefers to return the Police Department to its 1995 staffing levels.

⁴ The Borough has thoroughly screened its current officers and is corruption free.

Focusing on the interests and welfare of the public, the Borough asserts that its proposal to increase the probationary period is reasonable and consistent with analogous State regulations. Since Palisades Park is not a civil service jurisdiction, its Police Department is not subject to those State regulations covering the hiring and retention of employees. Therefore, the Borough points out that it is responsible for "ensuring the establishment of a competent police department." The Borough seeks to extend the current provision for four months of "training and observation" to a 12 month probationary period commencing after completion of training at the police academy. In support, the Borough points to its recent loss of officers after a federal corruption probe. The Borough is confident that the current police force is "law abiding and competent." However, the Borough seeks to enact safeguards, including lengthening the probationary period to prevent future problems. Department of Personnel regulations cited by the Borough provide a "12-month test period" after completion of the police academy for law enforcement officers. N.J.A.C. 4A:5.2(d). The Borough maintains that this proposal, which will not effect the current members of the Department, will assure that it maintains a qualified and law-abiding department and will assure the public that it is taking steps to prevent corruption in the future. The Borough asserts that this proposal will begin to address the public mistrust and disillusionment. Additionally, the Borough points out that many comparable municipalities which are Department of Personnel jurisdictions have probationary periods exceeding four months.

Addressing the staffing issue, the Borough seeks to delete the contract provision covering replacements. That provision provides that positions currently filled by full-time police employees may not be covered by "any non-police officer, part-time or other personnel." In order to put more officers on patrol, the Borough seeks to use civilian dispatchers in place of police officers. Presently each tour of duty is covered by three or four police officers. One officer currently performs dispatching duties and does not patrol. The Borough would like to place all officers on patrol and use civilian dispatchers instead. The Borough asserts that this plan is an effort to alleviate the staffing shortage caused by the loss of officers in the federal corruption probe and through retirement.

The Borough passed an ordinance creating the position of emergency dispatcher. According to the Borough, that ordinance has been in litigation since its passage.⁵ The Borough argues that its authority to create civilian dispatcher positions is a managerial prerogative and seeks deletion of the provision only in the event that PERC finds the issue mandatorily negotiable. According to the Borough, the PBA opposes civilian dispatchers because, as a result, Police Officers might lose overtime opportunities. The Borough maintains that no evidence as to the effect on overtime was introduced at the hearing and the PBA

⁵ On March 4, 1998, the PBA filed an unfair practice charge with the Public Employment Relations Commission. In response to the PBA's Order to Show Cause for Interim Relief Commission Designee Stuart Reichman conducted a hearing on March 27, 1998, and on April 7, 1998, Commission Designee Reichman ordered the Borough to refrain from employing civilian dispatchers. On April 20, 1998, the Borough sought a stay of Mr. Reichman's Order from the Commission and filed Notice of Motion for Leave to Appeal to the Superior Court, Appellate Division. The PBA subsequently withdrew its demand for temporary restraints. On March 27, 1998, the same date as the interim relief hearing, the Borough filed a Petition for Scope of Negotiations Determination. That Petition is pending before PERC.

has not demonstrated that retention of overtime opportunities is supported by any of the statutory criteria. Citing Borough of Teterboro, 18 NJPER ¶2311 (April 29, 1992); Borough of Little Ferry, 16 NJPER ¶21195 (July 20, 1990); and Passaic Board of Education, 15 NJPER ¶20199 (August 1, 1989), the Borough asserts that lost overtime opportunities resulting from a managerial decision are not mandatorily negotiable.

Supporting its argument that its proposal to delete the "Replacements" clause from the agreement is in the interest and welfare the public, the Borough argues that deleting the clause would put more trained and experience officers on patrol. Additionally, the Borough asserts that civilian dispatchers would be a more efficient use of resources, even if overtime is not reduced. If overtime is decreased as a result of the use of civilian dispatchers, the Borough suggests that it could attempt to pass the savings on to taxpayers. Specifically, a lower paid civilian dispatcher would provide additional funds to hire the new patrol officers needed by the Borough. The Borough suggest that the taxpayers would be getting better use of police if they were out patrolling rather than handling dispatching duties which may be handled by civilian employees. Additionally, the Borough points to Sgt. Thompson's testimony that there is currently insufficient manpower to operate passive patrol.

The Borough asserts that its proposal is compelled by the statutory criterion covering the financial impact on the Borough, its residents and

taxpayers. Citing the benefits currently enjoyed by its Police, the Borough points out that the PBA's arguments are that the Borough can afford 5% increases and that some police officers in Bergen County earn more than Police in Palisades Park. In contrast, the Borough seeks to keep its tax rate down. The Borough argues that Police salaries in Bergen County are among the highest in the nation, and New Jersey residents pay more to fund police than any state save New York. Citing articles in the Bergen Record, the Borough suggest that "home rule" which has resulted in 72 small police departments in Bergen County is responsible for high taxes and soaring police salaries. As an example the Borough points to Paramus, where 20% of its department earned over \$100,000 in salary and stipends in 1997. According to the Borough's research, the Paramus Police Chief earned more than police chiefs in Philadelphia, St. Louis, Baltimore and Houston. Additionally, the Borough cites other communities in Bergen County where police salaries have increased over the past decade—a phenomenon resulting from the comparability criteria under the 1977 Interest Arbitration Act according to the Borough. Now, the Borough seeks application of the financial impact criterion to permit the Borough to "contain and perhaps lessen tax burdens, and to preserve and create local programs. For this reason the Borough urges careful consideration of its evidence on salaries and settlements outside of Bergen County. The Borough expresses concern that "narrow" comparison plus view of its ability to pay could perpetuate what the Bergen Record called the "domino effect." The Borough cites the New Jersey Supreme Court's ruling in Hillsdale PBA Local 207 v. Borough of Hillsdale, 137

N.J. 71, 86 (1994), that the financial impact criteria "does not require the municipality to prove its financial inability to meet the other party's final offer."

Asserting that its Police Officers are "at or near the top echelons of wage earners," the Borough urges consideration of property tax levels in Bergen County and in the State as well as in Palisades Park.

Turning to the proposals to eliminate redundant, confusing, or unnecessary language from the agreement, the Borough asserts that such changes are sensible, and would enhance the effectiveness and quality of the agreement. First, the Borough seeks to clarify the Management Rights clause to delete the clause "subject only to the specific limitations of this Agreement and applicable State Law." The Borough argues that this language does not belong in a management rights clause and is confusing. Because the remainder of the agreement speaks for itself, the Borough argues that it is not an effective restriction on management rights. According to the Borough, whether any section of the Agreement limits its management rights depends upon the language of the provision at issue. Additionally, the Borough argues that State law applies as enacted by the legislature and interpreted by the courts rather than by operation of a management rights clause. Therefore, the Borough asserts that the parties cannot negotiate over whether or not they will be limited by State law.

Next, the Borough seeks to eliminate the following language from the "Future Bargaining" section of the agreement:

In the event such occur, the parties agree to negotiate the impact of same and if they can't reach an agreement, they may utilize interest arbitration as set forth in N.J.S.A. 34:13A-5.3 et seq., to resolve the impact of such permissive management decisions or actions, all consistent with law. Proposed new rules or modifications or existing rules governing working conditions shall be negotiated with the Association before they are established.

The Borough asserts that interest arbitration is a terminal procedure used to resolve impasses in police and fire negotiations and the parties cannot use this statutory procedure for other purposes. The Borough notes that parties can petition PERC for interest arbitration under certain conditions pursuant to N.J.S.A. 34:13A-16. Further, the Borough argues that to the extent that the Future Bargaining clause refers to interest arbitration it is redundant, and to the extent it provides for the use of interest arbitration beyond the intent of the Legislature, it is nonsensical and unenforceable. Additionally, the Borough asserts that whether it is required to bargain over work rules is not itself a subject for bargaining. Therefore it seeks to delete the Future Bargaining provision, as well as the third paragraph of Article XXV (Rights of Parties). That provision provides as follows:

In accordance with N.J.S.A. 34:13A-5.3 et seq., proposed new rules or modifications of existing rules governing working conditions shall be negotiated with the Association before they are established.

The Borough also proposes to eliminate "past practice" as a term of the agreement. The Borough bases this proposal on its desire for efficiency and labor peace. According to the Borough, "where past practice is a relevant consideration", it is so regardless of the language of the existing agreement. Therefore, the Borough asserts that the language is redundant and confusing.

Next, the Borough asserts that the agreement's "Sick Time" clause should be modified to delete the first two sections and to replace them with the provision that "employees injured on the job shall receive a maximum of one year with pay." Citing N.J.S.A. 40A:14-137, the Borough argues that a municipality may grant leaves of absence to police department members for up to one year and therefore the parties may not agree to a sick leave entitlement of more than one year. Additionally, the Borough notes that the first paragraph of the current provision refers to past practice, and as such, should be deleted.

Addressing the cost of living criterion the Borough asserts that in the year ending July of 1998 the CPI rose 1.7% and cost of living increased 1.7% in 1997 as well. The Borough contrasts the "extraordinarily low" increase in the cost of living with the 5% increase its Police received in 1997 and the 5% they seek for 1998. Citing the research and predictions of Economist Bob Brown that the CPI would rise 2.5% in 1998, as well as the lack of evidence that the rate of inflation will rise during the next contract term, the Borough urges that the cost of living be viewed as a serious factor in this award. The Borough compares the limited rise

in the CPI with "skyrocketing property taxes." Additionally, the Borough suggests that its Police are insulated from increases in health care costs, one of the major components of the cost of living analysis which continues to rise. Unlike other Police Departments, the Borough points out that its Police have not had to sacrifice health care benefits for wage increases. The Borough cites data showing that the cost of medical care increased by 3.4% under the CPI and the CPI-U. Looking only to August of 1998, the Borough demonstrates that the CPI increased .2% while medical care costs rose 4%. The Borough considers health care to be an important component of the police benefits package. The Borough also points to efforts to change the method of calculating CPI to adjust for overstated inflation as additional justification for its proposal, since future increases in CPI are likely to be even less than initially anticipated.

Looking to the continuity and stability of employment, the Borough asserts that the lack of layoffs or turnover to go to other police departments supports its proposal. Given the job security enjoyed by Palisades Park Police, as well as the lack of evidence that hiring is difficult, the Borough contends that its proposal furthers this criterion.

The Borough asserts that its proposal to enhance the Chief's ability to monitor the Department's efficiency and quality are appropriate and reasonable and should be awarded. Specifically, the Borough seeks a new provision that would permit the Chief to schedule two Department meetings per year, not to

exceed two hours in length, with no additional compensation. The Borough contends that adding up to four hours per year onto the police force's work schedule is reasonable. The Borough also seeks to add a new provision (Article XXXVI) to require notification and approval of outside work in order to ensure that Police do not perform work inconsistent with the Borough's policies or which constitute a conflict of interest. Lastly, the Borough seeks to remove the language from Article XXXIV which, according to the Borough, "appears to restrict unit members from performing basic maintenance on police vehicles." The Borough asserts that it is impractical to impose that restriction.

DISCUSSION

As stated above, I am required to issue an award based upon a reasonable determination of all issues in dispute after giving due weight to the statutory criteria which I judge relevant. The Borough and the PBA have articulated fully their positions on the issues and have submitted testimony, evidence and argument on each statutory criterion to support their respective positions. The testimony, evidence and arguments have been carefully reviewed, considered, and weighed.

Initially, I note that there are an extraordinary number of issues which remain in dispute. Pre-arbitration mediation was not successful in narrowing the outstanding issues. One principle which is ordinarily and traditionally considered in the determination of wages, hours and conditions of employment through the

bargaining process is that a party seeking such change bears the burden of showing the need for such modification. I believe that burden is especially heavy when such a substantial number of existing contract terms are sought to be modified. I apply that principle to the analysis of each issue. I conclude that this burden has not been met with respect to most of the parties' non-salary proposals and those which seek revision to existing contract provision.

The Borough seeks to achieve many significant changes to the contract in this proceeding. A limited number of these changes are warranted. Others have not been justified. Initially, the Borough has not supplied adequate justification for its proposed changes to the holiday, vacation, and police vehicle provisions or to include two meetings annually without additional compensation. Nor has it articulated rationale for its proposal that the PBA indemnify it for claims arising out of the agency shop provision of the contract or its proposal to limit the use and compensation of PBA representatives. Lacking support for these proposals, they are denied.

The PBA too seeks unsupported benefit changes. The PBA seeks to eliminate the new benefit levels for longevity, vacation, and prescription co-payments for employees hired after January 1, 1995. The changed benefit levels were implemented in the last agreement and the PBA now seeks to return those benefits for employees hired after January 1, 1995 to the levels enjoyed by officers hired prior to that date. The PBA has pointed to other Bergen County

municipalities where police officers enjoy more generous longevity benefits. However, those municipalities generally have a single longevity schedule for all officers. Given the recent nature of the change in benefits and the fact that most of the impact of the benefit changes remains prospective, the PBA has not justified its proposals to roll back prior benefit changes in longevity or vacation and prescription co-payments. These benefit levels shall remain unchanged.

On the other hand, the Borough proposes to limit its currently unlimited sick leave provision to one year. According to the Borough, N.J.S.A. 40A:14-137 restricts municipalities from granting leaves of absence for more than one year. The Borough proposes to replace the first two sections of the current provision with "employees injured on the job shall receive a maximum of one year with pay." The first section of Article XVIII, the current sick leave provision, provides that "all full time members of the within bargaining unit shall be granted unlimited sick leave as per the prior practice." The second section of Article XVIII defines sick leave and provides limits for leave time used for family illness. The Borough's proposal to limit sick leave to one year is consistent with law and is therefore justified. However, because its proposal could limit sick leave to on the job injuries only, this proposal is unduly restrictive and is therefore denied. Additionally, I conclude that deletion of the entire second provision is unnecessary. The parties have constructed a definition of sick leave and no justification for deleting that definition has been raised. While the second sentence of the second provision could potentially be abused, there is no

evidence of such abuse which would warrant the adoption of the Borough's proposal to delete this sentence. The borough maintains a prerogative and contractual right to verify the bona fide of an illness as reflected in Section 3. For all of these reasons, Section 1 of Article XVIII shall be modified as follows:

1. All full time members of the bargaining unit shall be granted sick leave consistent with prior practice. Sick leave for employees injured on the job shall not exceed one year with pay.

Several of the modifications sought by the Borough are designed to enhance public confidence in the department in the wake of the recent investigation. Specifically, the Borough seeks to increase the probationary period from 4 to 12 months, commencing after completion of training at the Police Academy and to require notice and approval of all outside employment.

The Borough points out that its proposal to lengthen the probationary period will not effect its current officers, and will bolster its efforts to address public mistrust and disillusionment resulting from the investigation of its Police Department. Increasing the probationary period to 12 months is reasonable and justified, particularly in light of the Borough's current concerns. A 12-month probationary period will enhance weakened public trust in the Department and will aid in the Department's efforts to ensure that it maintains a qualified and law-abiding department. State regulations and many other police departments currently require a 12-month probationary period. Additionally, this proposal would not effect any Officers currently employed by the Borough. Lengthening

the probationary period for new hires to 12 months is in the interest and welfare of the public and is awarded.

In an effort to avoid conflicts of interest and to assure that Police "do not perform work inconsistent with the Borough's policies," the Borough proposes that the Chief of Police be apprised of outside employment undertaken by Police and outside employment would be subject to notification and approval. The Borough is understandably interested in changes designed to improve the public's perception of its Police Department. However, the Borough's proposal would give the Police Chief unilateral authority to prohibit outside employment and given the fact that the Borough has not demonstrated a problem with the current policy, which could have a significant economic impact on Police Officers this portion of the Borough's proposal is denied. I do, however, find merit to the Borough's proposal to direct police officers to notice the Chief as to outside employment. Such notification is in the interests and welfare of the public because it allows the Chief to insure that outside employment is consistent with all legal requirements.

The Borough also seeks to delete the contract provision that provides that positions currently filled by full-time police employees may not be covered by "any non-police officer, part-time or other personnel." This issue has been the subject of litigation before PERC. The issue of its negotiability is presently pending before PERC and I have not been advised that any final administrative

decision has been issued as of this date. In light of the fact that this issue is pending, I decline to render a determination on this issue. To do otherwise would go beyond my authority as stated in N.J.A.C. 19:16-5.7(h) which, in pertinent part, states that the arbitrator may:

Take evidence, but shall not render a decision on any issue which is the subject of a scope of negotiations determination.

The Borough also seeks substantial revisions to several portions of the contract either because they are redundant, confusing, or unnecessary, or because they incorporate past practice into the agreement. Although the Borough has carefully articulated its arguments in support of these proposals to revise the language of the Agreement for the stated purposes, I conclude that such changes are either unwarranted or should be negotiated rather than imposed on the parties. The proposal to delete past practice references in the agreement cannot be considered in a meritorious vein without documentation as to what past practices currently exist. I also am not persuaded that the management rights clause should delete the modifying language that such rights should be subject to the limitations of the agreement and applicable state law. This clause retains the Borough's right to exercise lawful managerial prerogatives and act pursuant to relevant statutes. The proposed deletion would rescind the PBA's right to lawfully enforce negotiable issues in the agreement. The proposal is an unwarranted intrusion into the PBA's contractual right and is denied. Clarifications of language could be considered during the drafting process for the

new Agreement. Therefore the Borough's proposals to change or eliminate the various areas of the Agreement are denied.

The Borough proposes to increase the workweek from 32 ½ hours to 40 hours per week. Since 1982, Police Officers have worked a 4-2, 4-3, 4-3 schedule.

Article X of the contract provides that "the existing schedule for Employees covered by this Agreement shall be maintained pursuant to prior practice." Increasing the hours worked by Police Officers would increase productivity, provide cost efficiencies, and increase the number of officers on patrol at any one time. The Borough and the PBA agree that there is a staffing shortage, and Sgt. Thompson testified that staffing shortages have limited the police department's ability to continue passive patrols. His testimony is that staff reductions since 1995 have forced a reduction in the number of personnel committed to passive patrols such as the monitoring of radar. The Borough agrees with his assessment but disagrees on how it should be achieved. The Borough desires to return the Department to 33 sworn officers and predicates this goal of increased police availability through cost and productivity measures making hiring more attractive.

Police work schedules for municipalities within Bergen County and other nearby municipalities included in the record include 40 hour weeks worked by

police in Englewood, Closter and Montvale and 5-3, 5-2, 5-3 in Hasbrouck Heights, 5-2, 5-3 in Rutherford, 4-2, 5-2 in Bergenfield, 4-2 in Cresskill and South Hackensack. Police in Fort Lee work eight-hour days with a 5-2, 5-2, 5-3 schedule. Palisades Park have worked a 4-2, 4-3, 4-3 schedule since 1982. The 32 ½ hour work weeks is at the lowest end of hours worked by police officers within the County.

Further, the 32 ½ hour work week must be evaluated in the context of salary where, given the comparability evidence, the police officers in Palisades Park are not at the lowest end of the salary schedules. For example, the patrol maximum in the Borough of \$62,990.00 for 1997 exceeded that of Montvale and Cresskill by more than \$2,000.00 although the police officers in those municipalities work a forty hour week.

I also conclude, however, that justification has been presented warranting an increase in the number of hours worked per week. I base this conclusion on evidence beyond the fact that the police officers now enjoy a work week at the lowest end within the country. The interests and welfare of the public will be served by having more police officers deployed. A somewhat expanded work week should motivate the Borough to fulfill its expressed desire to hire more police officers. The PBA has acknowledged in its testimony that the reduction of the force from 33 in 1995 to 26 in 1998 has impacted on the ability of the force to

continue the service levels of the past. PBA testimony is that the safety of the force has been adversely affected by the reduction in staffing levels. Although the increase in productivity levels of the police officers has been noted, the need to expand the force is mutually recognized and productivity and service will increase by hiring more police officers and having a somewhat expanded work week.

I conclude that the Borough's proposal on work week should be sustained in part and denied in part. An increase to forty hours amounts to almost a twenty-five percent increase in work hours. Because of the traditionally accepted principle of a relationship between salary and time worked, the costs of such an increase in time work would be substantial and could adversely affect the financial posture of the governing body and its taxpayers. I must also consider the evidence that some police departments in Bergen County work more than 32 ½ hours but less than 40. For these reasons, I deny the proposal to increase the work week to the extent that it seeks to increase the work week to 40 hours

Based upon the record, I conclude that the Borough should have the ability and authority to increase the work week to no more than 36 hours per week on average during a work cycle. If the Borough exercises this authority, it should do so within the existing work schedule. Experience with a modification in work hours would form a reasonable basis to consider the negotiations of revisions in a future contract.

The Borough must also recognize that this adjustment to the work week warrants an adjustment to base pay because of the well accepted relationship between time and compensation. Such adjustment should be equitable to the police officers, the governing body and the taxpayers. I have considered the existing wage rates and, number of hours now worked and conclude that a reasonable balance must be struck between fairly compensating police officers for extra time but at a rate which provides an incentive to the Borough to move toward its productivity objective. The rate shall be set at 1% of base pay per additional hour per week worked as set by the Borough up to the maximum of 36 hours which, at maximum, would yield an additional 3.5% in base pay. Any such wage adjustment shall be implemented contemporaneously with any upward adjustment to hours worked. Once the base pay has been increased pursuant to this formula, it shall not be reduced by virtue of any unilateral reduction in hours.

The Borough and the PBA agree upon the duration of the agreement, but have significant differences as to the appropriate salaries to be provided in each year. Each place great importance on the evidence each has submitted and the arguments advanced on the issue of salary. The PBA proposes 5% increases in 1998, 1999 and 2000. On the other hand, the Borough proposes across the board salary increases of \$800 (1.2%) effective January 1, 1998, \$1100 (1.7%) effective January 1, 1999, and \$1350 (2%) effective January 1, 2000.

Using the list of current members of the Police Department, I have calculated the total annualized base salary figure, assuming all patrolmen are at the top step.⁶ Based upon that calculation, my estimate of the total annualized base salary is \$1,556,667 with one percent worth \$15,566. Applying the Borough's proposed increases of \$800, \$1,100 and \$1,350 to that figure, the proposal cost is \$19,200 for 1998, \$26,400 in 1999, and \$32,400 in 2000. The cost of the PBA's proposal is \$77,833 for 1998, \$81,725 in 1999, and \$85,111 in 2000. The difference in the proposals in terms of new money cost is \$58,663 in the first year, \$55,325 in the second year and \$53,411 in the third year. The difference is a total of \$167,369. Cumulative costs resulting from the effect on overtime, increments, longevity and other benefits would add to the difference.

Based upon the arguments and evidence submitted, and after applying the statutory criteria, I have determined that wage increases shall be set at 3.75% on January 1, 1998, 3.87% on January 1, 1999, and 4% on January 1, 2000, for a total net economic change of \$186,802. The difference between the PBA's proposal and the award is \$19,458 in 1998, \$20,354 in 1999, and \$18,055 in 2000. These figures are exclusive of roll up costs and assume no retirements, hiring or promotions. In addition, the cost of the increase not chargeable towards the cost of wages as compensation for the potential change in the work hours could impact upon the base wage depending upon the increase in the hours of work. The analysis that leads me to this award is as follows.

⁶ This calculation is a slight overestimate given that the three officers hired since January 1, 1995 earn considerably less than top step. However, it is a more equitable basis for comparison with

Both parties hone in on the comparability factors as key to any salary award. The Borough asserts that its Police enjoy salaries comparable to their counterparts in other Bergen County municipalities and enjoy salaries well in excess of those paid to most public and private sector workers. In particular, the Borough notes that Palisades Park's 32½ hour work week also increases the hourly rate compared to police in Bergen County municipalities who work 40 hours per week. In contrast, the PBA points to the rates of increase among police in other Bergen County municipalities and suggests rejection of the Borough's emphasis on comparison with large cities in New Jersey and with non-police public sector employees.

The Borough would use local communities within a 15-mile radius of Palisades Park for purposes of comparison with other local police departments. The PBA would limit local comparison to communities within Bergen County. The Borough would examine actual salaries and the PBA would compare the rates of increase. Given the different economic environments in the Essex County and Hudson County communities of West Caldwell, Weehawken, West New York and Harrison when compared to Bergen County communities, I find comparison of Palisades Park to other Bergen County communities of greater relevance. I give weight to the fact that these police officers work in integrated fashion with police officers within Bergen County communities and within the County of Bergen's law enforcement system. The following chart compares 1997

other police departments.

top step salaries and rates of increase in Bergen County communities suggested as comparison by either the Borough or the PBA:

Community	Top Step Patrol Salary	1998	1999	2000
Tenafly	\$69,118	4	4	
Leonia	\$68,222	4	4.25	
Closter	\$67,818	4	4	4
Hasbrouck Heights	\$66,732	3.75		
Rutherford	\$66,074	4(2/2)		
Fort Lee	\$65,273	4		
Hackensack	\$65,145	4	4	
Saddlebrook	\$64,390	5		
Little Ferry	\$63,656			
Ridgefield	\$63,149			
Palisades Park	\$62,990			
Moonachie	\$61,721			
Cresskill	\$60,781	4.3	4.3	
Montvale	\$60,675	4.5	4.5	4.5
Bergenfield	N/A	4 (2/2)	4	
Fairview	N/A	3.5	3.5	
Garfield	N/A	3.75	4	
Teaneck	N/A	4	4	4
Average	\$64,696	4.06	4.06	4.16

This illustration of comparable Bergen County communities shows that when salary alone is considered, Palisades Park Police earn salaries that are solidly within the range of top step police salaries within the County, but are less than average. When longevity, vacation, sick leave, and other benefits are included, Borough Police earn wages and benefits that are just short of average for the County. The chart depicts wage increases within a range of 3.5% to 4.5%. By providing salary increases within the average range of the comparable

communities listed above, this award maintains the Borough's relative ranking within the County. Additional compensation awarded in exchange for the modification to work hours maintains the Borough's relative ranking by paying police for additional hours of work while decreasing the Borough's hourly wage rate for the increased hours.

The Borough relies heavily upon other public sector, as well as private sector comparisons. Specifically, in the public sector, the Borough emphasizes comparison with Jersey City, Camden, Elizabeth, Atlantic City and Newark. The significant disparity between police salaries in the Borough and in those communities results in part from the urban nature of those communities. Palisades Park, as a suburban Bergen County community, is more appropriately compared with other suburban Bergen County communities, such as those included in the table above.

The Borough seeks to compare Police salaries to the private sector by analyzing the effect its proposal would have on its police officers as well as on private sector employees. The PBA points out the differences between law enforcement and private sector employees. Private sector comparison, though relevant, is not a controlling consideration. Police work also includes education and training at the police academy, a comprehensive scheme of regulations covering police only, and the danger inherent in police work. Further, private sector comparisons are difficult to make, because there is a disparity in salary

increases received in the private sector depending upon whether the work which is performed is on a railroad, as in one settlement included by the Borough, or in the financial sector, the telecommunications industry, computers or real estate.

Private employment salary increases in any individual sector are not significant. A more realistic figure emerges when all private employees are considered together on average. An official private sector compilation prepared by the New Jersey Department of Labor reflected an increase in New Jersey of 3.4% to from 1994 to 1995 and 3.6% in Bergen County for the year stated. The respective increase from 1995 to 1996 was 4.3% statewide and 3.6% in Bergen County. The 1997 data shows the average percent increase in statewide wages to be 4.76% and 5% in Bergen County from 1996 to 1997. The increases set forth herein, are generally consistent with the above private sector increases which averaged 4.1% statewide and 4.0% in Bergen County. Also, while the increases set forth in the award are somewhat higher than the average increases for non-law enforcement public employees in general, the terms of this Award (averaging 3.87%) are consistent with the PERC reported average salary increases of voluntary settlements and interest arbitration awards for police officers for 1998, which averaged 3.77% and 3.87% respectively.

As the PBA points out and as the Borough has tacitly acknowledged, neither party's proposal will cause the Borough to exceed its Cap. Using an index rate of less than 2.5%, the Borough maintained a Cap bank of \$103,105 in

1996 and \$157,437 in 1997. The budget adopted by the Borough provides over \$201,000 in unspent funds. Both proposals and this award are within its Cap restraints and do not interfere with the Borough's lawful authority. The Borough has also enjoyed savings as a result of less staff and fewer promotions during recent years.

The cost of living criterion does favor the Borough's position. The CPI increased 1.75% for the year ending in July 1998. The Borough accurately points out that the salary increases received by Borough police have exceeded the cost of living increases in recent past contracts. The Borough urges that the cost of living be considered a "serious factor" in this award. I have considered and weighed these contentions. They serve to diminish the weight given to the PBA's contentions that this data be given little or no weight and that the Borough's ability to pay and strict application of police comparability data require a finding in favor of its wage proposal.

The CPI is one of the several factors to apply and, as with each of the remaining factors, is an influencing but is not a controlling consideration. The record also reflects that the Borough's wage proposal is less than the CPI, that all settlements and awards in Bergen County exceed the CPI, that a smaller number of police officers have engaged in an increasing workload, and that private sector wage surveys reflect wage increases above the CPI. These

considerations diminish the application of this factor as dispositive of the wage result awarded herein.

Addressing the criterion of the financial impact on the taxpayer, the Borough seeks to "contain and perhaps lessen" the tax burden on its residents. To that end, the Borough emphasizes settlements outside of Bergen County and seeks to avoid the "domino effect" of reliance on other settlements within the County. In contrast, the PBA points to the Borough's fiscal health, the Borough's recent success at lowering the tax rate, the limited impact this award would have on taxpayers, and the taxpayers' comfort with their current tax burden.

The record does not reflect that the wage increases awarded will cause an increase in the Borough's tax rate or in any way will adversely impact upon the governing body or the taxpayers. The financial impact of this award upon the residents and taxpayers of Palisades Park need be placed in the proper context. The economy is strong, and Palisades Park has benefited from its strength. Tax rates decreased from 2.77 in 1997 to 2.76 in 1998 and the tax levy per capita in Palisades Park at 65 of 70 Bergen County towns is one of the lowest in Bergen County. The Borough's assessed values have also increased from 837,690,873 in 1996 to 863,271,398 in 1997. Further, the Borough will have the ability to produce additional man hours of police work at less unit cost per hour than presently required. The budget adopted by the Borough was well under the

allowable lower index CAP rate and the Borough also has generated a CAP bank which, if it deems appropriate, could be utilized towards the funding of the award.

The Borough asserts that turnover has not been a problem and that officers leaving the police force have either retired or resigned for reasons unrelated to salaries and benefits. While there has been turnover, it does not appear that wages and working conditions have been factors leading to current staffing shortages. In crafting this award, I balance the Borough's ability to insure the continuity and stability of the current force, while assuring that the salaries and benefits are sufficient to attract new police officers to the force. There is an expectation that new police officer will be hired. This award balances those goals by retaining new benefit levels for employees hired after January 1, 1995, providing salary increases sufficient to retain the existing members of the Police Force and to attract new Police Officers.

PARA CUT AND SAVED

The PBA seeks to increase the current \$575 annual uniform allowance by \$100 in each year of the agreement. Comparing the clothing allowance provided by the Borough with the allowances provided by other municipalities within a 15 mile radius shows that such allowances range from \$525 annually in Harrison and Moonachie to \$975 in Little Ferry. Averaging the allowances for the eleven communities used in the comparison results in an average allowance of \$646. **Given that Palisades Park is generally in the

middle range of these communities with respect to salaries and other benefits compared, some adjustment of the clothing allowance is appropriate. The PBA's proposal, which would increase the uniform allowance by \$300 in 2000, would bring Palisades Park to the top of the range and is unwarranted. Instead, raising the allowance by \$50 in 1999 and 2000 achieves the goal of maintaining an average uniform allowance in a period of low inflation. Those increases, which based upon a 26 member force would cost the Borough an additional \$1300 in 1999 and \$2600 in 2000.

The final issue is clothing allowance. The PBA seeks to increase the current \$575 annual uniform allowance by \$100 in each year of the agreement. Comparing the clothing allowance provided by the Borough with the allowances provided by other municipalities within a 15 mile radius shows that such allowances range from \$525 annually in Harrison and Moonachie to \$975 in Little Ferry. Averaging the allowances for the eleven communities used in the comparison results in an average allowance of \$646. Given that Palisades Park is generally in the middle range of these communities with respect to salaries and other benefits compared, some adjustment of the clothing allowance is appropriate. The PBA's proposal, which would increase the uniform allowance by \$300 in 2000, would bring Palisades Park to the top of the range and is unwarranted. Instead, raising the allowance by \$50 in 1999 and 2000 achieves the goal of maintaining an average uniform allowance in a period of low inflation.

Those increases, which based upon a 26 member force would cost the Borough an additional \$1300 in 1999 and \$2600 in 2000.

Accordingly, and based upon all of the above, I respectfully enter the following Award as a reasonable determination of the issues.

AWARD

There shall be a three-year agreement effective January 1, 1998 through December 31, 2000. All proposals by the Borough and the PBA not awarded herein are denied and dismissed.

Salary

3.75	%	effective January 1, 1998
3.87	%	effective January 1, 1999
4.00	%	effective January 1, 2000

Probationary Period

Amend Article IX(B) to provide:

An employee shall be considered permanent and off of Probationary status when said Employee has completed twelve (12) months of service following successful completion of the Basic Police Training Academy.

Work Hours

The Borough shall have the discretion to increase the work week by three and one-half hours to no more than thirty-six (36) hours per week based upon annual average, based upon the existing work schedule. There shall be an

adjustment to base wage of one (1%) percent per additional hour per week up to the maximum 36 hours. The wage adjustment shall be complemented contemporaneously with any adjustment to hours worked and once implemented shall not be reduced by virtue of a unilateral reduction in hours.

Clothing Allowance

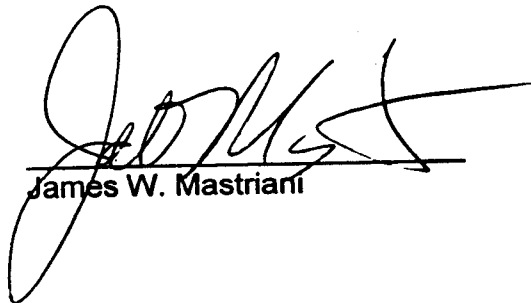
Amend Article XI to increase the clothing allowance to \$625 effective January 1, 1999 and to \$675 effective January 1, 2000.

Sick Leave

Sections 1 and 2 of Article XVIII are modified as follows:

1. All full time members of the bargaining unit shall be granted sick leave consistent with prior practice. Sick leave for employees injured on the job shall not exceed one year.

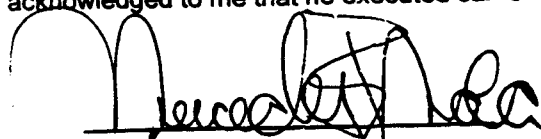
DATED: May 17, 1999
Sea Girt, New Jersey



James W. Mastriani

State of New Jersey }
County of Monmouth }ss:

On this 17th day of May, 1999, before me personally came and appeared James W. Mastriani to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed same.



MERCEDES B. NOLA
NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES APRIL 23, 2001

