

**STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION**

**In the Matter of the Interest Arbitration Between:**

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**CITY OF ENGLEWOOD**

**Employer,**

**-and-**

**ENGLEWOOD PBA LOCAL NO. 216,  
and ENGLEWOOD SUPERVISORY OFFICERS'  
ASSOCIATION**

**Employee Organizations.**

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**Docket Nos. IA-2007-099  
IA-2007-100**

**Interest Arbitration  
Decision  
-and-  
Award**

**Before  
Timothy A. Hundley  
Interest Arbitrator**

**For the Employer:**

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Mark S. Ruderman, Esq.  
Of Counsel**

**Ellen M. Horn, Esq.  
On the Brief**

**For the Employee Organizations:**

**Loccke, Correia, Schlager, Limskey & Bukosky  
Richard D. Loccke, Esq.  
Of Counsel and on the Brief**

The City of Englewood ("City" or "Englewood") and PBA Local No. 216 (PBA) were parties to a negotiated agreement effective from January 1, 2004 through December 31, 2006, as were the City and the Police Supervisory Officers' Association ("SOA"). The PBA is the exclusive representative of all sworn non-supervisory police personnel, while the SOA represents all police supervisors, excluding the Chief of Police and Deputy Chief.

After engaging in negotiations for a successor agreement during November 2006 through April 2007, the PBA and the City reached an impasse and, on May 3, 2007, the PBA filed a petition with the Public Employment Relations Commission ("PERC"), requesting the initiation of compulsory interest arbitration pursuant to *N.J.S.A. 34:13A-14 et seq.* Similarly, the City and the SOA conducted several negotiations sessions between November 2006 and April 2007 and, on May 3, 2007, the SOA also filed a Petition to Initiate Compulsory Interest Arbitration. I was mutually selected by the parties in both proceedings in accordance with *N.J.A.C. 19:16-5.6*. On July 12, 2007 PERC appointed me interest arbitrator in Docket Nos. IA-2007-099 and IA-2007-100.

The parties agreed to effectively consolidate the interest arbitrations and on September 20, 2007, I conducted a joint mediation session that narrowed or resolved some issues. However, the impasse persisted. Accordingly, a formal interest arbitration hearing was held on November 7, 2007, at which time both the

unions and the City examined and cross-examined witnesses and introduced numerous exhibits into evidence. Post-hearing briefs were received by April 4, 2008 and the record was closed on that date.

The terminal procedure in this matter is conventional arbitration, since the parties did not mutually agree to an alternate procedure. *N.J.S.A.* 34:13A-16d(2). While *N.J.S.A.* 34:13A-16f(5) calls for an interest arbitrator to issue an award within 120 days of selection or assignment, the statute also permits the parties to agree to an extension. The City and the PBA and SOA have agreed to extend the time for issuing an award to December 29, 2008.

*N.J.S.A.* 34:13A-16f(1) requires that each party submit a final offer. The City and PBA/SOA final offers are as follows.

### **CITY'S FINAL OFFER**

1. Contract Term

The City proposes a three-year agreement from January 1, 2007, through December 31, 2009.

2. Salary Increases

January 1, 2007:	3.75%
January 1, 2008:	3.75%
January 1, 2009:	3.75%

3. Salary Guide

A. Freeze starting salary at 2006 level.

B. Add four salary steps to the current six-step PBA guide. The salary at each of the ten steps will be equidistant.<sup>1</sup>

4. Work Schedule

The City proposes to change the current 5/2, 5/2, 5/3 work schedule to a 4/4 work schedule with a 10.5 hour work day, effective upon the issuance of the award. For a one-year probationary period, should the City decide that the schedule does not fit the needs of the police department in its sole discretion it may revert back to the old work schedule with 30 days notice to the PBA/SOA. All time off will be changed to hours rather than days. Each employee will work approximately 100 less hours per year, which the officer shall give back to the City to be scheduled by the Chief of Police with appropriate notice to the individual member.

5. Longevity

The City proposes that all employees hired after January 1, 2008 will not be eligible for longevity.

6. Court Time

Effective January 1, 2008, Court time shall be paid at a two (2) hour minimum rather than a three (3) hour minimum.

7. Sick Leave

Effective January 1, 2008, any sick time taken shall be charged on an hour-for-hour basis.

8. Health Insurance

Effective April 1, 2008, and to the extent allowed under the State Health Benefits law, employees will pay 1% of salary for health insurance.

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<sup>1</sup> The City states that this proposal shall not affect current employees.

## **PBA/SOA FINAL OFFERS**

### **1. Contract Term**

The PBA and the SOA propose four-year agreements from January 1, 2007 through December 31, 2010.

### **2. Salaries**

The Associations propose a wage increase of five percent (5%) across-the-board at each rank, step and position, effective on each successive January 1<sup>st</sup>. As part of the wage position, the SOA also proposes the deletion of the Sergeant's pay step so that persons would go to the now designated top Sergeant Rate upon promotion.<sup>2</sup>

### **3. Article VIII, Longevity (PBA Contract page 15/SOA contract page 13)**

The Associations propose that an additional 1.5% benefit be added on top of the current three (3) top longevity plateaus.

### **4. Article XI, Travel Allowance (PBA Contract page 25/SOA Contract page 20) – The Associations propose that the current IRS rate be implemented prospectively and adjusted as the IRS may adjust the rate annually.**

## **STATUTORY FACTORS**

I am required to resolve this dispute based on a reasonable determination of the issues, giving due weight to those statutory factors set forth in *N.J.S.A. 34:13A-16g* deemed relevant. The nine statutory factors 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.).

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<sup>2</sup> Sergeants have a three-step salary guide and the SOA initially proposed that all newly promoted sergeants be placed at step two (Exhibit P-1). As set forth in the unions' brief, the SOA final position is that sergeants be placed at the current top step upon promotion.

(2) Comparisons 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 that each party shall have the right to submit additional evidence concerning the comparability of jurisdictions for the arbitrator's consideration.

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

(4) Stipulations of the parties.

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

(6) The financial impact on the governing unit, its residents and taxpayers. When considering this factor in a dispute in which the public employer is a 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.

(9) Statutory restrictions imposed on 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 Section 10 of P.L. 2007, c. 62 (C.40A:4-45.45).

### **BACKGROUND**

This proceeding involves the 82 sworn personnel in the City of Englewood's police department, one of approximately 67-69 paid police departments in Bergen County. The City itself is one of Bergen County's 70 municipalities but, together with Garfield and Hackensack, it is one of only three cities in the County (T14).

The City comprises 4.9 square miles and is situated near Routes 4 and 95. It is a busy locale, since vehicles leaving or entering New York City via the George Washington Bridge must pass through Englewood, Englewood Cliffs, or Fort Lee. In addition to a resident population of 26,000, the City draws many non-resident visitors because of its wide range of facilities and attractions including: a hospital; a thriving business district; a restaurant row; and the John Harms Performing Arts

Center. Englewood is also the site of an abortion clinic which regularly draws protestors, with the result that arrests at the facility are made on a weekly basis (T14-T15).

In the summer of 1967, Englewood was marked by racial disturbances, including protests in which a store was burned (Exhibit P-2). While the City has moved beyond that strife, it is a busy policing jurisdiction with crimes such as robbery, assault, and burglary increasing between 2004 and 2006 (Exhibits P-8; P-9).

The City has a ratable base of approximately \$4.7 billion and, according to 2000 census figures, its median household income was \$58, 379. Its effective tax rate for 2007, (including all local and County taxes) was 1.920 and its average 2006 local property tax bill was \$9,789 (Exhibit P-23; Exhibit E-2, Part 4, Section 2). During 2007, the City completed a property revaluation, the first since 1984 (Exhibit P-23).

Among the key issues in this proceeding are across-the-board increases, longevity, salary guide steps, health benefits, and the employer's proposed work schedule. The unions and the City each urge that the nine statutory criteria weigh in favor of their respective proposals on these and other items. Both sides have submitted comprehensive briefs and numerous exhibits. The record includes, among other documents, the 2007 City budget and 2006 audit report; memoranda



of agreement involving other City units; recent interest arbitration awards and PERC-compiled settlement data; contracts involving law enforcement employees in other Bergen County municipalities; and federal and state data on the cost of living, private sector wage increases; and economic trends.

The City's witnesses were Acting Police Chief Arthur O'Keefe; interim City Manager Robert Casey and Assistant City Manager Robert Gorman. Fred Pulice, the PBA President, testified on behalf of the unions. The following is a summary of the City and the PBA/SOA arguments.

### **CITY'S POSITION**

The City urges an award supporting its own offer, contending that, unlike the PBA/SOA proposals, it reasonably reflects the statutory criteria. As a backdrop to its discussion of the specific statutory factors, the City undertakes a detailed cost analysis of its own and the unions' proposals.

Preliminarily, it emphasizes that even without *any* across-the-board increases, the incremental costs associated with police officers, sergeants, and lieutenants moving through their respective salary guides will amount to \$368,769 in 2007; \$182,868 in 2008; \$219,222 in 2009 and \$46,232 in 2010 (Exhibit E-2, attached to employer's brief). When these incremental costs are analyzed together with the parties' respective proposals for across-the-board salary increases, the City concludes that the cumulative cost of the 5% increases sought by the unions

would exceed the City's 3.75% proposal by \$584,954 for 2007 through 2009, with the PBA/SOA proposal for 5% increases for 2010 of course adding to this figure. Further, the City emphasizes that the union proposals to increase longevity would add at least \$174,145 over a four-year contract term while the proposal to eliminate the first two steps on the sergeant's salary guide would cost approximately \$100,194 over the same period. (Exhibits E-3 and E-5, attached to employer's brief). The City adds that these calculations understate the true costs of the unions' longevity and salary guide proposals because they do not take into account the costs added by salary increases during the contract term.

The City contrasts its own final offer with that of the unions, underscoring that its proposal for 3.75% across-the-board salary increases is generous -- and premised on the award of the 4/4 work schedule, which it characterizes as a cost-effective measure that will increase operational flexibility. It also observes that its proposals to freeze the starting salary, modify longevity, and add salary guide steps for new hires will all reduce costs over the long term. Finally, it states that its health insurance proposal would save the City \$67,272 annually given that, in 2006, the total base salaries for these units was \$6,727,197.

### **Interest and Welfare of the Public**

The City states that this criterion requires an arbitrator to consider and balance the employer's finite budget -- and its obligation to provide a range of

governmental services -- with the needs of the employees involved in the proceeding. The City recognizes that a municipality should not sacrifice fairness to its employees in order to provide residents with an overabundance of frivolous government services. At the same time, the City cautions that essential governmental services should not be reduced to satisfy the economic demands of over-reaching public employees.

In this vein, the City notes that in *PBA Local 207 v. Bor. of Hillsdale*, 137 N.J. 71 (1994), the Supreme Court observed that taxpayers bear the ultimate burden of salary increases awarded in interest arbitration, with the Court underscoring that an award runs the risk of being found deficient if the arbitrator does not expressly consider the interest and welfare of the public. Accordingly, it emphasizes that I must consider the impact of this award on the citizens and taxpayers of Englewood.

### **Comparisons with Other Employees; Overall Compensation**

The City combines its discussion of two inter-related factors: *N.J.S.A.* 34:13A-16g(3), directing a consideration of the overall compensation of the employees involved in the proceeding, and *N.J.S.A.* 34:13A-16g(2) mandating a comparison of the wages, hours and employment conditions of unit members with employees performing similar services, and employees generally, in: (1) private employment in general; (b) public employment in general; and (c) public

employment in the same or similar comparable jurisdictions. The City maintains that these factors strongly favor the award of its salary, health benefits, and work schedule proposals.

The City observes that the *Hillsdale* Court criticized arbitrators who limited their salary comparisons to police departments in similar communities. In addition, it contends that the Legislature intended to change this emphasis by amending *N.J.S.A.* 34:13A-16g(2) to list employees in “private employment” as the first of the several comparisons that an arbitrator must undertake. The City thus begins its comparability analysis by contending that private employment data compiled by the National Labor Relations Reporter (LRR) and the New Jersey Department of Labor and Workforce Development (NJLWD) highlight the reasonableness of the City’s offer and reflect increases significantly below the PBA’s and SOA’s 5% demands.

Thus, the City notes that for private sector employees generally, the LRR reports 2.6% increases for 2005 and, for unionized employees, shows a median first year wage increase of 3.2% for settlements reached in 2005. For settlements reached through October 23, 2006, the contracts reviewed by LRR included a median first-year increase of 3%. Similarly, the City cites NJLWD reports that show that New Jersey private sector wages increased 4.6% from 2005 to 2006 and rose 4% in Bergen County during the same period. For 2004 to 2005, the pertinent

figures were 3.1% for both the State and Bergen County (Exhibit E-2, Part 3, Section 2).

Turning to comparisons with “public employees in general”, the City cites NJLWD reports for 2006 and 2007, showing the following increases, for 2005 and 2006, for local, state, and federal government employees in New Jersey.<sup>3</sup>

	<b>Local</b>	<b>State</b>	<b>Federal</b>	<b>Total Public Sector</b>
<b>2006</b>	<b>3.3%</b>	<b>2.1%</b>	<b>6.6%</b>	<b>3.4%</b>
<b>2005</b>	<b>2.8%</b>	<b>-0.7%</b>	<b>2.6%</b>	<b>1.9%</b>

The City underscores that its own 3.75% proposal substantially exceeds wage increases in all categories of New Jersey’s overall public sector.

The City argues that the reasonableness of its wage proposal is also supported by recent interest arbitration awards and by PERC data concerning voluntary settlements of interest arbitration disputes. It points to 37 voluntary reported settlements arrived at in 2007, PERC summaries of which are included in the record, and calculates that they reflect an average annual increase of 3.1%, 1.9% below the PBA/SOA proposal. Similarly, it notes that of the seven 2007 awards included in the record, all directed salary increases well below 5%, with average annual increases ranging from 3.32% to 3.875% (Exhibit E-2, Part 1, Sections 4 & 5).

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<sup>3</sup> These reports are prepared by NLWD and distributed by PERC each September. See *N.J.S.A.* 34:13A-16.6.

The City also asserts that internal settlements with other City employees weigh in favor of its offer and it cites *Somerset Cty. Sheriff's Office and Somerset Cty. Sheriff's FOP Lodge No. 39*, P.E.R.C.No. 2007-33, 32 *NJPER* 372 (¶156 2006), *aff'd* 34 *NJPER* 21(¶8 App. Div. 2008) in support of the proposition that an interest arbitrator should give substantial weight to such agreements. In particular, the City stresses that both firefighters and fire officers agreed to increases of 4% for 2006; 3.8% in 2007; and 3.9% in 2008, with the fire officers agreeing to a 3.5% adjustment in 2009 (Exhibit E-2, Part 2, Sections 1 & 2).

The City also urges consideration of voluntary settlements with non-public safety employees. It points to the agreement with Local 108, RWDSU, representing white collar employees, who agreed to a 3.5% increase for 2005 and 4% increases for 2006 through 2008. Similarly, it notes that the five-year contract between the City and Teamsters Local 111, representing blue collar employees, resulted in a 4% increase for 2005; 3% increases for 2006 and 2007; and a 3.25% increase effective January 1, 2008 (Exhibit E-2, Part 2, Section 3; Exhibit E-3). It argues that these figures illustrate the reasonableness of its 3.75% proposal to this unit.

Finally, the City maintains that comparisons with employees performing similar services in comparable jurisdictions show that Englewood police enjoy salaries and benefits superior to those in other Bergen County municipalities. It

argues that this circumstance demonstrates the reasonableness of its salary offer, and its proposals to increase the number of salary guide steps and modify longevity for new hires.

In terms of the universe of comparisons on which it relies, the City has submitted exhibits that list and rank the base salaries of top-step police officers, sergeants, lieutenants and captains in 35 to 58 County municipalities. At the same time, it questions the reliability of the PBA/SOA data on Bergen County police, contending that the unions hand-picked their comparables when they submitted contracts from only 27 municipalities when an additional 26 are also available. Further, the City contends that while the unions have submitted agreements involving the Bergen County Prosecutor, those documents should be given little weight because counties and municipalities have different tax bases and are not strictly comparable.

Turning to the relative standing of City police with respect to their counterparts in the County, the City notes that the 2006 top-step base salary of a City police officer -- \$96,054 -- ranks 14<sup>th</sup> out of 58 municipalities while the City's 2006 top-step sergeant salary of \$103,928 ranks eighth out of 53 jurisdictions. Similarly, Englewood's 2006 top salary for lieutenants is the seventh highest out of 50 departments while the salary of a City captain is the sixth highest out of 35 jurisdictions on which information was available (Exhibits E-7, E-9, E-10, and E-

11, attached to the employer's brief). In this context, the City argues that its 3.75% salary proposal will allow the units to maintain their generous compensation packages.

The City also maintains that, out of 56 municipalities, it is one of only eight jurisdictions that have a six-step patrol officer salary guide: all other jurisdictions have seven or more steps, with the average number among the 56 departments being 8.5 for 2007 and 2008 (Exhibit E-8, attached to employer's brief). It contends that this evidence weighs strongly in favor of its proposal to add four salary guide steps for new hires. Similarly, the City asserts that ten departments have two-tier longevity schedules and five municipalities have either eliminated longevity for new hires or never had the benefit in the first place (Exhibit E-2, Section 1, Part 3). The City concludes that this evidence, coupled with the high salaries of City police officers, warrants the award of its proposal to eliminate longevity for officers hired after January 1, 2008.<sup>4</sup> By contrast, it contends that the unions have introduced no evidence supporting the reasonableness of an award increasing longevity benefits.

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<sup>4</sup> While the City's arguments in favor of its work schedule and health benefits proposals are included within its comparability discussion, I summarize those arguments separately, after detailing how the City applies the statutory criteria to the parties' respective salary, longevity and salary guide proposals.



## **Lawful Authority of the Employer**

The City emphasizes that the PBA/SOA economic package, involving total increases of approximately 8.875% per year,<sup>5</sup> must be reviewed in the context of both the 1976 expenditure CAP law, *N.J.S.A. 40A:4-45.1, et seq.* and the 2007 legislation that imposes a 4% tax levy cap on municipalities.

Thus, the City notes that municipalities may only increase total expenditures by the lesser of 2.5% per year or the cost of living (COLA) adjustment directed by statute. It adds that this limitation is subject to certain exceptions, including a municipality's authority to pass a COLA rate ordinance allowing a 3.5% increase in overall expenditures. To the extent that this award directs increases in police compensation that exceed the applicable figure, the City contends that it will be forced to reduce expenditures in other services subject to the CAP. Finally, it notes that while the CAP law makes provision for emergency appropriations, such appropriations must be included in the succeeding year's budget, thus postponing rather than averting fiscal difficulties.

With respect to the new 4% tax levy CAP, the City notes that even without any across-the-board salary increases, the police salary budget line will increase by 3.64% in 2007 and 2.76% in 2008 due to the cost of increments and longevity "bumps" (Exhibit E-2, Part 4, Section 1, p. 10). It thus points out that any

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<sup>5</sup> The City arrives at this figure by adding to the unions' proposed 5% increases the average four-year percentage costs, as estimated by the City, of compounding, salary increments, and the unions' proposed longevity and sergeant's salary guide proposals (Eb10).

increases in police compensation above 4% will have a significant impact on the remainder of the City's current expense budget, potentially creating an undesirable and unwarranted decrease in non-police staffing or services.

### **Financial Impact on the Governing Units, Its Residents and Taxpayers**

The City argues that this factor supports the award of its offer, which requires an examination of the City's specific economic condition and budgetary resources. Thus, the City contends that it is in a more difficult economic situation than other Bergen County municipalities, citing these comparisons with the 20 jurisdictions that have an average dollar amount property tax above that in Englewood.

- Englewood had a median 2000 household income of \$58,379, while the 2000 median income in the other jurisdictions ranged from \$74,423 to \$134,289.
- Englewood's average 2006 property tax is 26.7% of the average 2000 income, while the ratio in the other 20 municipalities ranges from 8.7% to 16.4%.
- Englewood has the third highest municipal purpose tax among those 21 Bergen County municipalities with the highest average property tax.

The City also argues that an analysis of its 2007 budget shows that any award above its own offer will cause economic hardship. It states that it is already anticipating most of its surplus; there are no new sources from which it can expect to regenerate surplus; and it projects that if it appropriates the same amount from

its fund balance in 2008 as it did in 2007 it will be left virtually without working capital. It underscores that certain revenue items – State Aid; Construction Code fees; Amounts Anticipated with the Approval of the Director of Local Government Services – are not available to regenerate surplus because the amounts realized equal exactly the amounts anticipated. In the case of State Aid and Construction Code fees, the amounts realized are also appropriated. Further, amounts anticipated with approval of the Director represent “non-recurring one-shot deals” such as the 2006 transfer to the current expense fund of unexpended capital monies. The City represents that such funds were not available for 2007 and 2008.

The City continues that it hopes to regenerate some surplus by realizing tax collections and interest income in excess of the amount budgeted and by assuming that it will realize \$500,000 in unanticipated revenues – about the amount realized in 2006 (T186; Exhibit E-2, Part 4, Section 3). However, at the time of its hearing presentation, it predicted that its 2007 year-end surplus would be less than in 2006.

Finally, the City concludes its financial impact analysis by highlighting the weakness of New Jersey’s economy. It argues that the State’s bleak job outlook hampers its ability to raise taxes on financially stressed residents, referencing a January 2007 news article reporting New Jersey’s private sector job market declined .03% between 2000 and 2005 (Eb58). It also notes that, according to the

NJLWD website, New Jersey businesses laid off 15,167 workers between March 2006 and February 2007 (E-16, attached to employer's brief). These businesses include such large corporations as Revlon, the Daily Record, and Masonite, as well as Affinity Direct and Sultan Healthcare. The latter two businesses are each located in Englewood.

### **Cost of Living**

The City begins its analysis of the cost of living criterion *N.J.S.A.* 34:13A-16g(7), by observing that when a wage earner receives a salary increase that equals the CPI, he or she will theoretically be able to maintain his or her standard of living. The City argues that this factor highlights the reasonableness of the City's proposals because the present CPI is low and recent increases were at their lowest levels in many years. Indeed, it maintains that the CPI overstates the cost of living as experienced by Englewood police, because while the federal statistic includes the cost of medical care and insurance, PBA and SOA unit members do not contribute to the cost of health insurance and have low prescription co-pays.

Turning to specific figures, the City cites Bureau of Labor Statistics (BLS) information showing that the CPI for All Urban Consumers (CPI-U), increased 3.3% in 2004, 3.4% in 2005, 2.5% in 2006 and 4.1% in 2007 (Exhibit E-17, attached to employer's brief). It has also submitted a March 24, 2008 article from the Labor Relations Reporter stating that "overall consumer prices held steady in

February, as energy costs fell temporarily and increases for other goods and service moderated” (Exhibit E-18, attached to employer’s brief). Finally, it points to news releases reporting Social Security increases of 4.1% for 2006; 3.3% 2007; and 2.3% in 2008 (Exhibit E-2, Part 3, Section1). In light of the foregoing, the City maintains that an interest arbitrator should consider the “dramatic gap” between the CPI and the unions’ salary demands.

### **Continuity and Stability of Employment**

The City recognizes that *N.J.S.A.* 34:13A-16g(8) requires an interest arbitrator to consider the “continuity and stability of employment” and such other factors as are ordinarily considered in determining wages and employment conditions in collective negotiations. The City maintains that its offer will further this objective much better than would the PBA/SOA salary proposals.

### **Work Schedule**

The City argues vigorously in support of its proposal to change from the traditional 5/2, 5/2, 5/3 work schedule to a 4/4 schedule in which officers work four 10.5 hour days followed by 4 days off. It asserts that this schedule change is “wholly intertwined” with its “generous” 3.75% salary offer and that absent the proposal its salary offer would have been significantly lower.

By way of background, the City notes that the current schedule entails three shifts, 7:00 a.m. to 3:00 p.m.; 3:00 p.m. to 11:00 p.m., and 11:00 p.m. to 7:00 a.m.,

with a minimum staffing level of seven officers per shift. It underscores that O'Keefe, the Acting Chief and a 36-year veteran of the department, strongly supports the 4/4 work schedule proposal, which he maintained would afford more operational flexibility by allowing him to have "unbalanced shifts" whereby staffing levels could be higher during peak workload periods and lower during off-peak periods. As the City also notes, O'Keefe opined that a 4/4 schedule would reduce overtime costs because, without the seven-officer minimum, he would not have the same need to call in off-duty officers when their colleagues take sick or vacation days, or when there is a demand for uniform patrol, court appearances, or ceremonial events.

The City also highlights O'Keefe's testimony to the effect that overtime now accounts for 15% of the department budget, or \$1.4 million over the last two years (T77). O'Keefe predicted that a 4/4 schedule would reduce the amount of overtime expended as a result of court appearances, because there would be more officers whose regular schedules coincided with court hours.

In addition to these operational and cost benefits, the City asserts that officers would work 182 days under the 4/4 schedule as opposed to 252 days under the current schedule, thereby affording them more family time. The 4/4 schedule would also give officers every other weekend off, again allowing officers more

time for their personal lives. The City maintains that this reconfiguration of work hours would in all likelihood reduce stress, injuries, and sick calls.

In conjunction with O’Keefe’s testimony, the City argues that the experience of other New Jersey police departments weighs in favor of award of the 4/4 schedule. It has submitted interest arbitration awards involving Springfield Township (Union County) and City of Passaic (Passaic County), in which the 4/4 schedule was awarded. In Springfield, the arbitrator noted that nineteen out of 22 municipalities in the County operated under the 4/4 work chart, which he determined would result in greater scheduling flexibility, less overtime and increased opportunity for training (Exhibit E-2, Part 5, Section 1). In Passaic, the arbitrator summarized the benefits of the 4/4 schedule as including higher morale, equalized work load across all shifts, less commuting, fewer total work days, fewer injuries and less stress, and the improved ability to work a steady shift (as opposed to a rotating shift) of the officer’s choice based on seniority (Exhibit E-2, Section 5, Part 5). Finally, the City observes that in Passaic, the PBA itself had proposed the 4/4 schedule and was represented by the attorney who represents the PBA/SOA in this matter. The Passaic PBA cited these benefits of the 4/4 schedule:

- No decrease in work hours – no increase in hours off
- Increased police presence without increase in manpower levels
- No patrol unit “down time” during shift changes
- Decreased sick time
- Decreased injuries – fewer insurance claims
- Overtime for extended assignments eliminated

- Court overtime decreased
- Increased availability of training
- Higher morale
- Steady shifts – no rotation
- Less stress
- Equalized work load
- Unity of command and span of control
- Less commuting

### **Health Benefits**

The City emphasizes that it provides its police officers and their families with comprehensive medical and prescription benefits at no cost to the employee -- despite the fact that health insurance costs have increased dramatically over the past several years. Citing statistics in a May 2006 New Jersey Business, it states that health insurance costs statewide increased an average of 7% in 2005 and 2006 -- and 79% between 2000 and 2006. With respect to the SHBP in which Englewood participates, the City notes that NJ Plus premiums increased 95.67% between 2001 and 2007, while Traditional Plan premiums increased 137.8%. For 2008, employers like Englewood without a separate prescription plan will pay \$5,467.20 for single coverage and \$13,668 for family coverage under the new NJ Direct 15 Plan. NJ Direct 10 premiums are \$5,741.28 for single coverage and \$14,353.08 for family coverage (Exhibits E-13 and E-14, attached to employer's brief).

In the context of these increases, the City maintains that many private sector employers have eliminated employee health benefits altogether, while both private



and public employers have passed some of their costs on to their employees in the form premium contributions and higher deductibles. Thus, the City states that 90% of private sector employees with family coverage contribute to their premiums, and effective July 1, 2007, all New Jersey State employees began to contribute 1.5% of their annual base salary to their health insurance premiums, regardless of the plan in which they enrolled (Exhibit E-15, attached to employer's brief). Also on the State level, the City contends that the 2004-2008 agreement between the State and the State Troopers Fraternal Association eliminated Traditional plan coverage for all employees, as did the 2003-2007 agreement between the State and the New Jersey State FOP (Corrections Sergeants).

The City continues that cutbacks in health benefits predominate at the County and municipal levels. It points to Morris County, where it contends that six law enforcement units contributed from \$670.28 to \$1,201 toward their 2006 health insurance premiums, as well as Warren County, where the FOP and PBA units contribute from \$312 to \$1,222 for family coverage. The City adds that all civilian and public safety units in Union County contribute \$120 to \$300 per year toward their premiums, while the 2003-2005 PBA Local 351 (Corrections) agreement with Camden County includes a percentage contribution toward health and prescription benefits for new hires that declines gradually (to zero) after twelve years of service.

At the municipal level, the City summarizes provisions in the Randolph Township FOP Lodge 25 and Florham Park PBA Local 78 agreements. In Randolph, employees are required to pay the difference between a base plan and a higher level plan and employees hired after 1995 contribute 20% of their premium costs. In Florham Park, the 2005-2007 agreement also includes premium contributions and states that no new employees shall be enrolled in the Traditional Plan. Finally, the City cites a December 2007 interest arbitration award in Mountainside, where the arbitrator awarded a \$40 per month premium contribution.

Based on the foregoing, the City maintains that its contribution proposal is reasonable, to the extent consistent with SHBP laws and regulations. It underscores that the projected cost of covering its 290 full-time employees in 2008 is \$3,175,000 or 5.5% of the total City budget.

### **PBA/SOA POSITION**

The PBA and SOA contend that all of the statutory criteria support an award consistent with their last offer. The following is a summary of their discussion of the nine statutory factors.

#### **Public Interest and Welfare**

The PBA and SOA underscore that the City has an excellent police department that well serves the public interest and does so despite activity levels

and policing challenges that are without parallel in Bergen County. The employee organizations stress that Englewood's uniqueness among Bergen County municipalities takes both negative and positive forms. First, the police department must deal with more serious crimes than in other Bergen County jurisdictions but, second, the City also has a range of cultural, educational, and shopping facilities that set it apart from other municipalities.

On the negative side, the PBA/SOA point to Exhibits P-8 and P-9, the Uniform Crime Reports (UCR) from 2004 and 2006. As distilled in PBA/SOA Chart No. 1, the unions state that these documents show that the City suffers major criminal activity of virtually every type, including murder (two in 2004; one in 2006) and rape (six in 2004; seven in 2006). In addition, UCR reports reflect a 6% increase in assaults between 2004 and 2006 (from 229 to 243) and a 54% increase in burglaries and an 18.1% escalation in the general "offenses known to police" category (PBA/SOA Chart No. 1). Further, routine calls increased 18% -- from 16,422 to 19,452—between 2006 and 2007 (T46). In sum, the PBA and SOA emphasize that police work in Englewood goes far beyond the simple policing and regulating of traffic found in most other municipalities.

On the positive side, the PBA and SOA stress that the extremely high activity levels handled by the department are also attributable the community's rare combination of attractions and services, including:

- Englewood Hospital – A Major Trauma Center
- Libyan Embassy
- One hotel and another one planned
- Dwight Eisenhower -- a private school
- Yeshiva School and a major Temple on Broad Avenue
- Restaurant Row
- John Harms Center – Bergen County Performing Arts Center
- Abortion Clinic which has frequent protestors and demonstrations on a regular basis

PBA President Fred Pulice elaborated on how these attractions draw residents from surrounding areas and either directly or indirectly influence the demand for police services. He explained that the Bergen County Performing Arts Center is a venue for major entertainers and is operational virtually every day of the week, while Englewood Hospital is a “very busy” place. He added that the hospital is also a major trauma center that could be called upon to treat thousands of people in the wake of a major accident in the surrounding area. Pulice also stated that the abortion clinic is the site of demonstrations almost every weekend and there have been many instances where the police have had to make arrests (T14-T15;T32-T36).

Pulice further underscored that the City has enjoyed “tremendous growth” since 1985, with the central business district growing tremendously every year. In addition, since 1996, a significant number of mixed use residential and commercial developments have been constructed in the City, including such recent projects as the “Brownstones” and the 188-unit Towne Center (T32-T39). Pulice added that

the City's mayor and planning board had stated that more projects were in the planning stages, with the City projecting that they would generate increased tax revenues (T38; T46).

In its successful effort to meet an increased demand for police services, Pulice testified that the department has instituted bicycle and motorcycle units; is planning an Emergency Service Unit; and has also assigned officers to serve as homeland security liaison and school resource officer. The PBA and SOA emphasize that the department has met its responsibilities with a complement of only 82 officers – two of whom were not working at the time of the hearing -- despite the fact that a comprehensive 1973 report by the New Jersey State Department of Law and Public Safety, Division of Criminal Justice Training, recommended a staff of 84 sworn personnel (T19; Exhibit P-7). The PBA and SOA conclude that it is a “small wonder” that the department has been “able to maintain the level of professionalism and success that it has in a changing and developing environment with many new land uses, many new people, and an expansion of many of the attractions and service described by Pulice.”

#### **Comparison of Wages and Terms and Conditions of Employment**

The PBA and SOA maintain that their own salary proposals should be awarded and they insist that the City has proposed a below average wage increase that is coupled with a schedule change that cannot work; would entail major

dislocations in officers' personal lives; and is sought by no one other than temporary management. In this latter vein, the employee organizations argue that "[t]he measure of desirability and appropriateness of a work schedule certainly should not be the opinion of temporary management" which is not familiar with the "most unique City of Englewood."

The PBA and SOA contend that their base wage is not high and is at best slightly below average. Further, the unions assert that many of their key benefits are also below average and that there are no offsetting contractual entitlements items that make up for these alleged deficiencies. They primarily ground their proposals for 5% increases on a comparison of their compensation package with the salaries and benefits of officers in 24-27 Bergen County municipalities – as well as the Bergen County Prosecutor.

In support of their proposals for across the board increases; increased longevity; and elimination of sergeant steps, the PBA and SOA rely on three charts that set forth the salary, benefits, and across-the-board increases received for the police officers in the above-noted 24-27 jurisdictions. The unions maintain that they have established that these entities serve as an appropriate universe of comparison and, in addition, they underscore that they have submitted the full contracts for the pertinent municipalities. By contrast, the PBA and SOA emphasize that the employer has presented only random numbers derived from a

lesser number of towns. The first PBA/SOA table summarizes the top-step 2007 salary for non-supervisory officers in 24 municipalities.

**Average Base Rate (Non-supervisory) In Comparable Agencies Based on PBA/SOA Exhibits**

Tenafly	\$102,801
Bergenfield	\$101,361
Closter	\$100,389
Elmwood Park	\$100,795
Paramus	\$110,002
Mahwah	\$102,521
Leonia	\$ 98,072
Bergen Cty. Prosecutor's Office	\$107,444
Ridgewood	\$ 97,298
East Rutherford	\$ 96,744
Demarest	\$ 92,942
Edgewater	\$ 92,971
Garfield	\$ 93,466
Glen Rock	\$ 97,119
Hackensack	\$ 97,128
Lyndhurst	\$ 94,999
Norwood	\$ 96,368
Oakland	\$ 95,629
Rutherford	\$ 99,639
Saddle Brook	\$ 98,283
South Hackensack	\$ 99,779
Maywood	\$ 97,680
Saddle River	\$101,519
Englewood Cliffs	\$ 99,623

The PBA and SOA observe that perhaps the most significant non-wage benefit in Bergen County law enforcement contracts is the unit's longevity program. They contend that Englewood ranks significantly below the average, a circumstance that weighs strongly in favor of their proposal to increase the top

three longevity tiers by 1.5%. They illustrate their contention with the following chart.

Englewood Cliffs	18
Tenafly	12
Rutherford	10
Ridgewood	10
Paramus	10
Fort Lee	15
Edgewater	12
East Rutherford	12
Demarest	10
Bergenfield	8
Cliffside Park	15
Closter	1/3% each year/no maximum
Elmwood Park	8
Garfield	9
Haworth	8
Leonia	12
Mahwah	\$375 per year/no maximum
Northvale	10
Norwood	8
Oakland	12
Saddle Brook	10
South Hackensack	10
Teaneck	12
Maywood	10

<b>AVERAGE</b>	<b>10.959%</b>
<b>ENGLEWOOD</b>	<b>9.5%</b>

In addition to this information on maximum longevity benefits, the PBA and SOA point out that the employer's own longevity exhibit provides further support for the unions' position because it reveals that other jurisdictions offer greater benefits at the various intermediate plateaus, not just at the top longevity step.



Thus, the PBA and SOA contend that Tenaflly, Teaneck, and Fort Lee – all towns with borders adjacent to Englewood – have greater longevity benefits than Englewood at every level.

Finally, in urging adoption of its salary and longevity proposals, the PBA and SOA emphasize that the statistics from other municipalities do not remain static. Instead, salaries and percentage longevity benefits are enhanced by the across-the-board increases achieved in collective negotiations. Thus, the PBA and SOA have submitted Chart No. 4 which, based on the contracts in the record, summarizes the increases received by police officers for 2007 through 2010 in up to 27 jurisdictions, including the Bergen County Prosecutor's Office. For 2007, the chart shows an average 4.19% increase among all 27 entities; a 4.31% increase for 2008 among 18 jurisdictions; a 4.2% increase for 2009 based on eight municipalities; and a 4.12% increase for 2010, taking into account five towns. The unions argue that these average percentages closely match their own wage position, while the employer's offer cannot be justified by any set of comparisons.

The PBA and SOA also argue vigorously in support of the proposal to delete the first and second steps on the sergeant's salary guide. They note that the initial step salary (\$96,542) is only \$480 more than the top-step patrol salary, a factor that reduces the incentive to work for a promotion given that a new sergeant would lose his seniority ranking in the PBA unit and start at the bottom of the sergeant's

seniority list. They add that no other town among either party's comparables includes a three-step salary guide for sergeants.

Finally, after analyzing police officer salaries in other Bergen County jurisdictions, the PBA and SOA discuss private sector comparisons, urging that they should not be considered controlling in this case. First and foremost, they underscore that there is no private sector position that is truly comparable to that of a police officer. They stress that an officer must be prepared to act when both on and off duty and may be armed at all times. Further, a police officer holds a unique public franchise which is not valid outside the State. Unlike machinists or engineers, they cannot relocate to another state and market their skills there.

The PBA and SOA also highlight that many laws and regulations distinguish police from private sector employees. Thus, they note that police officers do not enjoy the protection of New Jersey's wage and hour law and are not covered by the 40-hour work week set forth in the federal Fair Labor Standards Act. The PBA and SOA add that, unlike private employees, police officers are subject to a plethora of statutes that, *e.g.*, establish minimum qualifications for hire; mandate New Jersey residency; govern promotional examinations in civil service jurisdictions; set minimum and maximum ages for initial employment; and require retirement by age 65. They also point out that police officers are subject to stringent statutory training and re-training requirements. Further, the unions urge

that while national and global trends affect the private labor market -- and have a depressing effect on wages -- local comparisons are most relevant for police wages.

The PBA and SOA conclude their comparability analysis by arguing that police work is more specialized and demanding than the majority of private sector jobs. They emphasize that a police officer is a career committed twenty-five year statutorily oriented specialist who is subject to a level of scrutiny, accountability, and authority unparalleled in the private sector. In arguing that the greatest weight should be given to comparisons with other police, the PBA and SOA cite the following analysis by Arbitrator William Weinberg:

Second of the comparison factors is comparable private employment. This is troublesome when applied to police. The police function is almost entirely allocated to the public sector whether to the municipality, county, state or to the national armed forces. Some private sector entities may have guards, but they rarely construct a police function. There is a vast difference between guards, private or public, and police. This difference is apparent in standards for recruiting, physical qualifications, training, and in their responsibilities. The difficulties in attempting to construct direct comparison with the private sector may be seen in the testimony of the employer's expert witness who used job evaluation techniques to identify engineers and computer programmers as occupations most closely resembling the police. They may be close in some general characteristics and in "Hay Associates points", but in broad daylight they do seem quite different to most observers.

The weight given to the standard of comparable private employment is slight, primarily because of the lack of specific and obvious occupational categories that would enable comparison to be made without forcing the data.

Third, the greatest weight is allocated to the comparison of the employees in this dispute with other employees performing the same or similar services as with other employees generally in public employment in the same or similar comparable jurisdictions (Section g2(a) of the mandatory standards.) This is one of the more important factors to be considered. Wage determination does not take place without a major consideration of comparison. In fact, rational setting of wages cannot take place without comparison with like entities. Therefore, very great weight must be allocated to this factor. For purposes of clarity, the comparison subsections g(2)(a) of the statute may be divided into (1) comparison with the same jurisdiction, the direct employer, in this case the Village, and (2) comparison with comparable jurisdictions, primarily other municipalities with a major emphasis on other police departments.

Police are a local labor market occupation. Engineers may be recruited nationally; secretaries, in contrast, are generally recruited within a convenient commute. The nearby market looms large in police comparisons. The farther from the locality, the weaker the validity of the comparison. Police comparisons are strongest when in the local area, such as contiguous towns, a county, an obvious geographic area such as the shore or a metropolitan area. Except for border areas, specific comparisons are non-existent between states. [*Ridgewood Arbitration Award*, Docket No. IA-94-141, pages 29-41).

### **Stipulations of the Parties**

The PBA and SOA state that the only stipulations in this case revolved around procedural issues. Thus, they state that *N.J.S.A. 34:13A-16g(4)* should have no significant impact upon the resolution of this case.

### **Lawful Authority of the Employer**

The PBA and SOA maintain that neither *N.J.S.A. 34:13A-16g(5)* (lawful authority of the employer) nor *N.J.S.A. 34:13A-16g(9)* (statutory restrictions imposed on the employer), present any bar to awarding their last offer. They

explain that these criteria address the laws establishing expenditure and tax levy caps. With respect to the expenditure cap, the unions contend that the 2007 budget was more than \$1.5 million below the CAP, even without the City exercising its authority to increase the permissible increase in total annual appropriations from 2.5% to 3.5%. Placing this \$1.5 million figure in context, they add that the combined 2007 base salaries for the PBA and SOA units was \$7,351,688, with \$73,516 representing 1% of the total base salary costs. While they recognize that the \$1.5 million is expenditure authority, not cash on hand, the PBA and SOA conclude that there is absolutely no expenditure CAP problem in Englewood.

Finally, the PBA and SOA conclude that while the employer made some reference to the 2007 legislation establishing a revenue side CAP, it presented no proofs in this regard. It adds that this law does not take effect until budget year 2008. Accordingly, it is the unions' position that this CAP change is not pertinent to this proceeding but, even if it were, it would not alter their position that the City has the statutory authority to fund their last offer.

### **Financial Impact on the Residents and Taxpayers**

The PBA and SOA begin their financial impact analysis by asserting that Englewood is a wealthy city with substantial ratables and a mid-range tax rate whose residents enjoy exceptional services in an atmosphere of growth. The

unions therefore contend that an award of their final offer would have virtually no impact on the City's taxpayers and residents.

In support of their position, the SOA and PBA cite the City's growing, \$4.7 billion ratable base, the eighth highest in the County. They also point to the Mayor's 2007 budget message, in which he noted the City's success in generating \$1.6 million more in revenues than were anticipated in the 2006 budget, as well as Standard & Poor's recent affirmation of the City's "excellent" bond rating (Exhibit P-21, p. 3b-1). The PBA and SOA also observe that the very low (9%) turnout on the school budget vote illustrates that City residents are not experiencing any "tax pressure or tax angst." They stress that, while the City expresses concern about high taxes, the appropriate measure of a municipality's tax burden is its effective tax rate, which allows comparisons across municipalities with varying assessment formulas. Within this framework, they state that Englewood's effective tax rate is below that in the nearby municipalities of Bergenfield, Hackensack, River Edge, Tenafly and Fort Lee (Pb44; Exhibit P-23).

Moreover, in the unions' view, an analysis of the 2007 City budget further indicates fiscal strength and the ability to regenerate surplus. Thus, they note that while Exhibit P-22, the 2006 Annual Financial Statement (AFS), shows a 98.45% tax collection rate, the City anticipated only 97.86% being collected. The unions stress that when the higher tax collection rate is applied to the total tax levy of over

\$86 million (representing school and county as well as municipal taxes), the resulting excess of \$508,435 marks out an area of budgetary flexibility and represents 6.92% of the units' combined base salary (Pb49; P-20, p. 19). In a similar vein, it notes that the budget itself assumes a 7.1% increase in police department salaries, with an additional reserved amount of \$389,990 brought into the 2007 budget from the prior year. They maintain that this amount of reserved cash represents 5.3% of the units' base salary, enough to fund the unions' final offer.

In continuing their review of the 2007 budget, the PBA and SOA point out that after appropriating \$4.8 million of the 2006 fund balance for the 2007 budget, the City was left with \$917,145 – an amount which will almost certainly be carried into 2008. They add that an examination of the “miscellaneous revenues not anticipated” section of the budget shows that many of the items are in fact recurring revenue items like rental payments or payments in lieu of taxes.

In summarizing their financial impact analysis, the PBA and SOA emphasize several charts set forth in the 2006 Annual Financial Statement which, in their view, demonstrate that the City has a substantial fund balance, a tax rate that “for all practice purposes [has] remained flat”; and net debt that is well below the statutory limit.

- **Fund Balance (2006 Report of Audit)**

YEAR	BALANCE 12/31	UTILIZED	PERCENT
2006	\$5,460,168 <sup>6</sup>	\$4,800,000	87.91%
2005	\$4,847,043	\$4,473,000	92.28%
2004	\$5,333,807	\$4,800,000	89.99%
2003	\$7,326,969	\$4,800,000	65.51%
2002	\$6,904,853	\$4,600,000	66.62%

- **Tax Rates (2006 Report of Audit, p. 19)**

YEAR	MUNICIPAL	COUNTY	SCHOOL	SEWER TAX	TOTAL
2006	1.629	0.373	2.044	0.114	4.160
2005	1.612	0.362	1.970	0.076	4.020
2004	1.499	0.342	1.858	0.111	3.810
2003	1.390	0.317	1.644	0.999	3.450

- **Debt Service (2006 Report of Audit)**

EQUALIZED VALUATION BASIS	DECEMBER 31	\$4,174,106,503
EQUALIZED VALUE	3.5%	\$ 146,093,728
NET DEBT	0.94%	\$ 39,163,522
REMAINING BORROWING POWER		\$ 106,930,206

The PBA and SOA also observe that while the total tax levy increased from \$66,171,245 in 2002 to \$86,175,435, the tax rate remained relatively flat and the tax collection increased to 98.45% in 2006. They conclude that the City is in a

<sup>6</sup> This is the figure included in the 2006 Annual Financial Statement but the City's fund balance analysis (Exhibit E-2, Part 4, Section 3) states that the AFS is inaccurate and that the correct amount is \$5,717,145, as stated in the 2007 budget (Exhibit P-21, p. 39). The PBA and SOA also use this latter figure in their analysis (Pb47). Based on the revised figure approximately 84% of the 2006 surplus was used to support the 2007 budget.



very strong fiscal position, with a growing ratable base and an excellent cash position, as demonstrated by its December 31, 2006 current fund deposit of \$11,344,888 and capital fund deposit of \$18,249,746.

### **Cost of Living**

In addressing the cost of living criterion, the PBA and SOA maintain that while in recent years the cost of living advanced at a low rate, the “trend has been significantly upward in the immediate past.” They cite the 2007 NLWD report distributed by PERC to “interested persons,” pursuant to *N.J.S.A. 34:13A-16g*, noting that the document shows that, between 2005 and 2006, overall private sector wages in New Jersey increased by 4.6%. They contend that this is a significant change that should be considered under *N.J.S.A. 34:13A-16g(7)*.

### **Continuity and Stability of Employment**

The PBA and SOA maintain that the continuity and stability of employment criterion supports the award of their final offers. They argue that good order and discipline cannot be sustained in the future if the employer’s longevity and work schedule proposals are implemented.

With respect to longevity, the unions state that the grandfathering of longevity benefits would be detrimental to the delivery of public safety services and working relationships among unit members. They stress that a reduction in longevity benefits for new hires is unwarranted in view of the City’s strong fiscal

position, and would be particularly damaging since the City has already limited hiring despite the State Advisory Committee recommendations to expand staff. Because of the City's staffing policy, there are now fewer promotional opportunities than in the past and rank-and-file officers have to shoulder responsibilities that supervisors previously performed. The PBA and SOA emphasize that, in terms of compensation, longevity is one of the few ways to distinguish senior persons from junior staff. As such, the unions' position is that the benefit should be increased, not decreased, in an environment where, more than previously, an officer's career may be mostly or entirely spent as a patrol officer.

Turning to the City's work schedule proposal, the PBA and SOA view this item as "the greatest problem of all" in this proceeding, stressing that their unit members oppose the change. The unions also dispute the appropriateness of such a major revision being imposed on career employees – especially given that the City administration is now headed by an interim manager who may not understand either police work or Englewood's unique needs. The PBA and SOA add that the employer's proofs fall far short of the standard required for a major schedule shift. For example, they dispute the relevance of the Springfield and Passaic interest arbitration decisions, underscoring that changes in those jurisdictions are not pertinent to the City. In particular, they assert that Passaic has many inner city problems and has a police force double the size of Englewood's.

The PBA and SOA also maintain that the City did not describe how the proposed work chart would work during the holiday season, when there is shopper and commuter traffic, or during the summer months, when vacations are taken. Nor did it address the City's policing needs at different times of the day and week; how the schedule would affect unity of supervision; or whether there are sufficient officers to implement the schedule. For all these reasons, the unions argue that the work schedule proposal should not be awarded.

Finally, in concluding their discussion of *N.J.S.A. 34:13A-16g(8)*, the unions assert that the factor incorporates the concept of a "going rate", which in turn requires an appropriate universe of comparisons. The PBA and SOA argue that the comparisons they have advanced support their own salary, longevity, and salary guide positions. By contrast, the unions contend that the employer has not put forward appropriate comparisons and, contrary to the spirit of the interest arbitration process, has approached this proceeding with the goal of getting as much as it can for as little as it has to pay.

### **DISCUSSION AND ANALYSIS**

My consideration of the parties' proposals is governed by *N.J.S.A. 34:13A-16g* and pertinent Court and PERC decisions. I must 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.

In addition, I note that *N.J.S.A.* 34:13A-16g(8) requires consideration of those factors ordinarily or traditionally considered in the determination of wages, benefits, and employment conditions. Accordingly, I have been guided by the decision-making principles that are typically used in deciding interest arbitration disputes. One such principle is that the party proposing a change in an employment condition bears the burden of justifying it. I have applied that principle to all the proposals in this proceeding.

Similarly, while I have evaluated the merits of each individual proposal, my award reflects the precept that an arbitrator must consider the totality of changes to be made to the existing agreement, as well as the cost and impact of the overall economic package. *N.J.S.A.* 34:13A-16d(2) itself incorporates this latter concept by requiring that the arbitrator separately determine whether the total net annual economic changes for each year of the agreement are reasonable under the nine criteria in *N.J.S.A.* 34:13A-16g.

The City and the PBA/SOA have each proposed multiple changes to the predecessor contract but their presentations at the hearing and in their briefs focused primarily on salary increases, longevity, salary guide steps, health benefits, and the 4/4 work schedule. Accordingly, I devote the bulk of my analysis to those items. In arriving at an award, I conclude that all of the statutory factors are relevant, but that not all are entitled to equal weight. My weighing and balancing

of the nine factors, particularly those pertaining to the public interest, financial impact, and comparisons with other employees, leads me to award a total economic package that is more than proposed by the City but less than sought by the PBA/SOA. I believe that the award will ensure a competitive compensation package for the PBA and SOA without jeopardizing the City's generally good fiscal position. My decision-making has been informed by these factual conclusions and judgments:

- The City has not met its burden of justifying a change to a 4/4 work schedule and has not shown that the proposed work chart would save money. Accordingly, I do not believe that there is a link between the work schedule and salary issues such that the decision to deny the City's proposal weighs in favor of lower salary increases than would otherwise be appropriate.
- The City has several markers of financial strength, but the record also shows areas of vulnerability. Like most public employers in New Jersey, it is facing budgetary pressures that would militate against the increases sought by the PBA/SOA, although I also conclude that those increases are not warranted by comparability or other factors.
- The most appropriate measure for assessing the competitiveness of PBA and SOA maximum salaries is comparisons with other police officers in Bergen County municipalities. However, in arriving at across-the-board increases, it is necessary to balance the increases negotiated by other Bergen County police officers with the across-the-board increases and overall contract settlements achieved by other City negotiations units. In addition, overall wage changes in New Jersey's private and public sectors must be considered.

Within this framework, the terms of my award are as follows:

1. Term of Agreement

The term of the agreement shall be from January 1, 2007 through December 31, 2010.

2. Salary increases

4% across-the-board salary increase effective January 1, 2007.

4% across-the-board salary increase effective January 1, 2008.

4% across-the-board salary increase effective January 1, 2009.

3.8% across-the-board salary increase effective January 1, 2010.

Each salary increase is retroactive to its effective date.

**Cost of Award**

A necessary prelude to the analysis mandated by *N.J.S.A. 34:13A-16g* is a costing out of the award.

For 2006, the total base compensation for the combined PBA and SOA units was \$6,727,197. Assuming no resignations, retirements, or new hires, the cost of the annual salary increases under the employer's offer, the PBA's proposal, and the award are listed below.

	City	PBA/SOA	Award
2007	\$252,270	\$336,360	\$269,088
2008	\$261,730	\$353,178	\$279,851
2009	\$271,545	\$370,837	\$291,045
2010	\$281,728 <sup>7</sup>	\$389,379	\$287,553

<sup>7</sup> The city has proposed a contract through 2009 only. This figure represents the cost of 3.75% increases if extended to 2010.

For 2007 through 2010, the employer and PBA/SOA figures assume that the total base salary for the preceding year was enhanced by the percentage amount proposed by that party; the same method was used to calculate the cost of the award. The total cost of the awarded increases is \$1,127,536: \$60,263 more than under the employer's proposal and \$322,218 less than the annual increases proposed by the PBA/SOA. These figures do not include increments and longevity costs which are part of the existing compensation structure and which the City discussed in its cost analysis.

I conclude that these total net annual economic changes for each year of the agreement are reasonable under the criteria listed in *N.J.S.A. 34:13A-16g*. The rationale for the award is set forth in the following discussion, in which I analyze the evidence on each statutory factor and describe how it relates both to my decision to award the above-noted salary increases and my determination not to award either party's longevity or salary guide proposals. With this statutory and evidentiary analysis as a foundation, I will then address the City's work schedule, health insurance, court time, and sick leave proposals, as well as the PBA/SOA proposal concerning travel mileage.

## **SALARY INCREASES**

### **Public Interest and Welfare**

The public interest and welfare, *N.J.S.A. 34:13A-16g(1)*, is a broad criterion that encompasses considerations of fiscal responsibility and the compensation package required to attract and retain a high-productivity and high-morale law enforcement department. It also implicates residents' interest in labor relations stability, and thus mandates a consideration of any internal settlement pattern among the employer's other units. In addition, *N.J.S.A. 34:13A-16g(1)* explicitly requires consideration of the CAP Law, *N.J.S.A. 40A:4-45.1a et seq.*, and there is a strong overlap between the public interest and the financial impact and comparability factors. In sum, the "public interest and welfare" synthesizes and integrates many of the considerations enumerated in other statutory factors, and the New Jersey Supreme Court has underscored its central importance in deciding interest arbitration disputes. *Hillsdale*. Therefore, I have given this multi-faceted criterion substantial weight in determining salary increases and ruling on the parties' other proposals.

As an initial matter, the public interest is pertinent to the issue of contract term, and it favors the award of a four-year contract from January 1, 2007 through December 31, 2010. A contract ending in 2009, which the City has proposed, would result in the parties resuming negotiations shortly after this award is issued.



This runs counter to the strong public interest in labor relations stability and harmony. A four-year contract will provide a break from negotiations and an opportunity for the parties to concentrate on their shared public safety mission.

Turning to fiscal and compensation issues, City residents have a strong public interest in being served by a highly skilled and efficient police force which is fully able to handle the City's unique policing challenges. These challenges include high activity levels that are attributable to the City's many attractions and facilities; its status as a gateway to New York City; and the existence of more and more serious criminal activity than is present in the typical Bergen County suburban municipality. The unit's compensation and benefits must be sufficient to enable the City to continue to recruit and retain well-qualified personnel but, at the same time, there is a compelling public interest in having these services delivered at reasonable cost, so as to minimize tax increases and other financial pressures.

The City is extremely fortunate to have the police department it does. The police force has been extraordinarily successful in providing excellent, responsive police services in this growing jurisdiction and it has done so despite having approximately the same complement of officers (82, with two on suspension) as it did in 1973, when the State recommended an increase in staffing to 84 sworn personnel. By contrast, police departments in Fort Lee, Teaneck, Paramus, and Hackensack grew from 9.8% to 48% during the same time period (Exhibit P-4).

The goal in this proceeding is thus to maintain department effectiveness and productivity at its current high level, and to ensure that the PBA and SOA enjoy competitive salaries and benefits, to the extent permitted by the City's fiscal circumstances.

Within this framework, both the compensation and fiscal elements of the public interest point toward across-the-board increases in the 4% range and against the increases sought by the PBA/SOA. These same considerations militate against both parties' longevity and salary guide proposals.

A threshold inquiry is the competitiveness of the PBA/SOA compensation packages under the predecessor contract. The PBA and SOA state that unit members' salaries are "at best slightly below" the average of other Bergen County police officers, thus intimating that public interest considerations warrant above-average across-the-board increases or other enhancements. However, a review of the unions' and the City's evidence shows no deficiency in the units' salary structure.

Preliminarily, I find that the salaries of other Bergen County police officers provide the best benchmark for assessing the actual dollar amount salaries of Englewood officers. There are no other law enforcement employees in the City and the record does not include information on the salaries of the City's fire officers and firefighters. And while the PBA has included the salaries of

investigators in the Bergen County Prosecutor's Office in its exhibits, there are significant differences in the statutory and day-to-day responsibilities of investigators and police officers, as well as the jurisdiction and funding sources of their employers. Therefore, in evaluating actual dollar amount salaries, comparisons between police officers and investigators are inapt.

As will be set forth in more detail in my comparability discussion, Englewood police officers are well paid compared to their Bergen County counterparts, and this award will ensure that they maintain their relative standing within the County. Thus, the 2006 base salary for patrol officers was among the ten highest in the County (out of the 27 municipalities selected by the PBA/SOA) or the 15<sup>th</sup> highest (out of the 50+ jurisdictions highlighted by the City). Increases of 4% for 2007 through 2009, and 3.8% in 2010, will maintain these rankings. By way of example, the 2006 top-step salary for an Englewood patrol officer (\$96,054) ranked eighth out of the 27 municipalities for which the PBA/SOA submitted information, and 14<sup>th</sup> out of the 58 municipalities included on a City exhibit. With a four percent increase for 2007, Englewood will rank eighth among the PBA/SOA's selected jurisdictions and 13<sup>th</sup> on the City's chart of 46 municipalities.

Similar results will pertain for other ranks. The award will maintain an Englewood sergeant's status as the seventh-highest paid among the PBA/SOA

selected municipalities, and the eighth highest out of 41 jurisdictions compiled by the City. Lieutenants will continue to rank seventh on the City's list and fifth on the PBA/SOA's. Finally, the 2006 salary of an Englewood captain was the sixth highest among the 35 municipalities surveyed by the City, and ranked fifth among the municipalities selected by the PBA/SOA. Similar salary rankings will be maintained under the award.

In sum, salaries for both units are competitive, if not always at the very highest tier of Bergen County compensation. The PBA and SOA do not suggest that this unit has experienced excessive turnover or that the City has had difficulty recruiting new officers. Therefore, there is no basis to award above-average increases that would tend to alter this unit's relative ranking in the universe of Bergen County police officers. As discussed in connection with the "continuity and stability of employment" criterion, arbitrators are generally reluctant to alter a unit's relative standing absent such evidence, given that a unit's compensation structure has been developed over many years of collective negotiations.

While the awarded increases are close to those proposed by the City, I have directed increases slightly higher than its 3.75% offer in light of the across-the-board increases received by police officers in Bergen County. Adjustments for these officers for 2007 through 2009/2010 are somewhat above 4%. Thus, the awarded increases, rather than those proposed by the employer, will better ensure

that these units maintain their current standing among Bergen County police. The awarded increases are also consistent with recent private sector wage data, and salary information concerning public safety employees statewide.

In addition, there is no strong internal settlement pattern within the City that supports 3.75% increases for 2007 through 2009. Indeed, three out of four voluntary City settlements include increases above 3.75% for 2007 and 2008, the first two years of this contract term. Moreover, there is no warrant to award increases identical to those received by the fire officers and firefighters (3.8% for 2007 and 3.9% for 2008), given that the record does not disclose that the fire and police departments have historically received the same increases. Nor does it indicate whether they have the same or similar salary guides. As such, the award does not represent the type of deviation from an internal or historical settlement pattern that could lead to labor unrest or discourage future settlements. *Compare Union Cty.*, P.E.R.C. No. 2003-33, 28 *NJPER* 459(¶33169 2002) and *Union Cty.*, P.E.R.C. No.2003-87, 29 *NJPER* 250 (¶75 2003).

The awarded increases are also consistent with the fiscal component of the public interest, which has a strong overlap with the financial impact criterion, and requires that a salary award be reasonable in light of the employer's financial and budgetary situation. The record indicates that the City is well managed and is on generally solid financial footing, with such positive financial indicators as a strong

ratable base; a high tax collection rate; an excellent bond rating; and low debt. As discussed later, there are areas of concern that might militate against the increases sought by the PBA and SOA, even if 5% raises were supported by comparability or other data. However, as I elaborate in my financial impact analysis, increases of 4% for 2007 through 2009, and 3.8% for 2010, can be accommodated within the City's budget. The award exceeds the City's offer by annual amounts ranging from \$5,825 to \$19,500 – figures that must be placed within the context of a 2007 budget of over \$52 million. In this posture, I am satisfied that the 3.8% and 4% increases will not have a negative financial impact on the County, its residents, or its taxpayers.

Similar public interest considerations pertain to the parties' various proposals concerning longevity and salary guides. The maintenance of existing benefit levels is necessary and appropriate in order to attract and retain officers in this busy City. However, in the absence of excessive turnover or low morale, the current fiscal and economic environment suggests that economic improvements should be limited to across-the-board increases that benefit all unit members.

Applying these principles to the parties' longevity proposals, the PBA and SOA argue that the existing longevity program is sub-par within Bergen County and should therefore be enhanced. As discussed in detail in the overall compensation section, the City's program falls within the mid-range in Bergen

County. However, it is not meaningful to view the program in isolation, without considering that the longevity percentages are applied to higher than average salaries, and in the context of a six-step salary guide that allows members to reach maximum salary sooner than in many other departments, thereby enhancing the total lifetime earnings of which longevity is but one part. In sum, the longevity program does not diminish the units' overall salary and benefit package.

Therefore, I conclude that the unions have not shown that the public interest favors longevity improvements that would cost an estimated \$174,000 over the contract term.

Turning to the City's proposal, it seeks to eliminate longevity for all new hires, urging that this change will reduce costs in the future. At the same time, it acknowledges that the proposal would not result in savings during the 2007-2009/10 contract term, since any new hires would not yet be eligible for longevity benefits under the predecessor contract.

According to the City's exhibit (Exhibit E-2, Part 1, Section 3), only a few of the 61 listed Bergen County police departments have eliminated longevity for new hires, and deletion of this significant benefit would likely have a long-term impact on the competitiveness of the City's compensation package. Moreover, the City's fire department units continue to have a longevity program, as does the City's white collar unit. While the fire units did agree to a longevity cap of 6% for

new hires, it appears from the MOAs that this may well have been a *quid pro quo* for the City agreeing to a new 24/72 work schedule that the unions appear to have proposed. Accordingly, I find that the public interest in maintaining a competitive salary and benefit structure militates against the award of the City's longevity proposal.

Each party's final offer also includes salary guide modifications. For new hires, the City proposes to add four steps to the patrol officer salary guide – a rather dramatic change that would create a 10-step guide. This proposal is not warranted by the City's supporting exhibit, which shows an average salary guide of 8.3 steps. Moreover, the City's current six-step guide is part of an overall compensation package that is appropriately competitive, and there is no strong justification to alter this one aspect of it.

I also decline to award the PBA/SOA proposal to delete the first two steps on the sergeant's salary guide. Virtually all Bergen County jurisdictions have one salary for sergeants, albeit Ridgewood is an exception (Exhibit P-14, Tab 39, Appendix A). However, the unions have presented no particularized evidence that the sergeant's salary guide has deterred individuals from accepting promotions. While the salary differential between a top step patrol officer and a beginning sergeant may not be large, a promotion opens up future salary and promotional opportunities for a newly elevated officer. In light of these considerations, and the



fact that the proposal would cost approximately \$100,000 over the contract term, the public interest does not favor this contract adjustment. Finally I decline to award the City's proposal to freeze starting salaries absent more information about the City's hiring plans and the availability of candidates for entry level positions.

A final element that must be considered in connection with the public interest is the expenditure CAP established by *N.J.S.A. 40A:4-45.1a et seq.* This CAP limits the amount by which a municipality may increase its total appropriations over those in the preceding year to the lesser of 2.5% or a federally-prepared cost of living adjustment (COLA). As explained in the lawful authority section of this opinion, my award for 2007 will not cause the Township to exceed the limits imposed by *N.J.S.A. 34:13A-16g(1)*. Further, there is no evidence that the award will cause the cap to be exceeded in 2008 through 2010.

### **Comparisons with Other Employees**

*N.J.S.A. 34:13A-16g(2)* is a multi-pronged factor that calls for a comparison of the wages, hours, and working conditions of the employees involved in the proceeding with employees "performing similar services" and "employees generally" in (1) private employment in general; (2) public employment in general; and (3) public employment in the same or similar comparable jurisdictions. I have given this criterion substantial weight, since a reasonable determination of a salary

dispute depends on an understanding of the salaries and working conditions that pertain in police and non-police employment.

The record includes comparability data on most of the above-noted categories of employees, some of it focusing on the percentage increases received by different employee groups and some of it detailing actual employee salaries. The City and the unions have different views about how some of this information should be analyzed, and I address some of these concerns at the outset.

For example, I agree with the PBA/SOA that there are few if any private sector employees who perform the “the same or similar services” as municipal police, and the City does not appear to dispute this point. However, as PERC has emphasized, the interest arbitration statute requires a consideration of the wages and employment conditions of “employees generally” in “private employment.” *See Borough of Bogota*, P.E.R.C. No. 98-104, 24 NJPER 130 (¶29066 1998). Accordingly, this data has been considered. I do not decide the significance, if any, of the Legislature’s 1996 re-ordering of the “private employment in general” and “public employment in general” components of *N.J.S.A.* 34:13A-16g(2). The salient point is that the statute requires an analysis of private sector data in each individual case and I have undertaken such a review.

With respect to the data on other law enforcement employees in Bergen County, I have concluded, as noted earlier, that the salaries of investigators in the

Bergen County Prosecutor's officer do not provide the best benchmark for what these units should be paid. Therefore, in assessing these units' salary rankings within the County, I have excluded investigator salaries. For the same reasons, I have given more weight to the across-the-board increase received by Bergen County police than to the adjustments negotiated by County investigators.

In terms of which Bergen County jurisdictions constitute an appropriate universe of comparison for these units, I have evaluated both the contracts submitted by the PBA/SOA, covering 27 municipalities plus the Bergen County Prosecutor,<sup>8</sup> as well as the City exhibits detailing the salaries, for each officer rank, in 35 to 58 jurisdictions. I note that there is a substantial overlap between union and employer data, and that they agree on what the salaries are in this common core of municipalities. I generally focus on this core group and note that it encompasses those at very top of the compensation scale (Paramus, Bergenfield); those in the mid-range (Ridgewood, East Rutherford) and those at the lower end (Cliffside Park, Teaneck, Haworth). Finally, in considering the salary increases received by other County police officers during 2007 through 2010, I have relied on the PBA/SOA exhibit based on 27 jurisdictions. As I explain *infra*, I reject the City's objection to it.

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<sup>8</sup> The unions also submitted a 2007 municipal salary ordinance for Englewood Cliffs.

A threshold inquiry in applying the comparability criterion to a determination of 2007-2010 increases is the adequacy – or not – of the units' existing salary structure. If the salary structure compares favorably with that of similarly situated employees, then across-the-board increases similar to those received by other employment groups will likely ensure that the unit's compensation package remains competitive. If there are deficiencies in the existing package, then higher than average increases or other adjustments might warrant consideration.

The starting point for analysis is the 2006 salaries for the PBA and SOA. As adverted to in the public interest discussion, Englewood's base salaries are higher, for all ranks, than those in most other Bergen County municipalities. Based on the contracts included in the record, Englewood's 2006 base salary for a top-step patrol officer is the eighth highest, as follows:

Paramus	\$105,771
Tenafly	\$ 98,846
Mahwah	\$ 98,578
Saddle River <sup>9</sup>	\$ 97,380
Elmwood Pk.	\$ 96,732
Bergenfield	\$ 96,714
Closter	\$ 96,528
<b>Englewood</b>	<b>\$ 96,054</b>

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<sup>9</sup> The Saddle River salaries used in this and other charts are base contractual salaries. The City's compilations add a senior officer stipend, while the PBA and SOA do not include this amount. I have adopted the latter approach. Similarly, the PBA/SOA chart lists Leonia salaries for those with a high school degree, while the City lists salaries that pertain to officers with advanced degrees. I adopt the unions' method, which results in Englewood having higher salaries than Leonia.

PBA /SOA contract exhibits also show that another 21 jurisdictions have salaries below that in Englewood, with the lowest salary in Cliffside Park (\$77,296). The City similarly lists Cliffside Park as the lowest paid municipality for 2006, but it includes additional municipalities with higher 2006 top step patrol salaries (Rochelle Park, Wyckoff, Waldwick, Ramsey, and Franklin Lakes, although the City states that the latter salary includes longevity). Further, the City lists 42 municipalities with salaries in between \$81,561 and \$95,972 (Exhibit E-7, attached to employer's brief). Overall, the pertinent point is that a review of both parties' exhibits shows that the City's patrol officers have above-average salaries.

The same conclusion pertains to superior officers. Again using the contracts in the record, the top 2006 sergeant, lieutenant and captain's base salaries are as follows:

<b>Sergeant</b>		<b>Lieutenant</b>		<b>Captain</b>	
Paramus	\$116,615	Paramus	\$127,853	Paramus	\$147,996
Saddle River	\$104,825	Ridgewood	\$116,033	Bergenfield	\$125,114
Mahwah	\$104,934	Bergenfield	\$115,987	Elmwood Pk.	\$121,854
Tenafly	\$104,582	Saddle River	\$110,568	Fort Lee	\$121,002
Bergenfield	\$106,180	Elmwood Pk.	\$112,828	<b>Englewood</b>	<b>\$119,622</b>
Elmwood Pk.	\$104,471	<b>Englewood</b>	<b>\$111,598</b>		
<b>Englewood</b>	<b>\$103,928</b>				

The PBA/SOA contract exhibits indicate that another 20 or more jurisdictions have lower salary schedules, for 2006, for their superior officers. The City's listings are basically in accord. For sergeants and lieutenants, they show over 40 towns with lower salaries than in Englewood. The City's compilations

include one additional jurisdiction (Waldwick) with 2006 sergeant and lieutenant salaries higher than in Englewood. Finally, the City's ranking of 2006 captain's salaries indicates that 29 jurisdictions have a lower pay scale than Englewood, while five have higher salaries (Exhibits E-9, E-10, and E-11, attached to the employer's brief).

Based on the foregoing, it is evident that the record does not call for above-average salary adjustments in order to maintain a competitive compensation structure. At the same time, there is no dispute that Englewood, as one of only three cities in the County, is a very busy jurisdiction with policing challenges that exceed those of most other County locales. As such, when the working conditions of unit members are evaluated against those performing similar services, it is appropriate to aim to generally maintain their relative salary standing, to the extent permitted by budgetary circumstances and comparisons with non-police employees.

Against this backdrop, I have carefully reviewed and given weight to all of the comparability data. I have given the greatest weight to comparisons with other Bergen County police officers, who perform services similar to the employees in this proceeding, and to other City employees, who serve the same residents and who are similarly affected by the City's financial situation. The 4% increases awarded for 2007 through 2009, and the 3.8% increase for 2010, attempt

to balance and achieve a mid-point between the increases received by these two employee groups. In addition, the increases awarded are also consistent with data concerning wage changes in New Jersey public and private employment, and with increases received by public safety employees statewide.

I turn first to the settlements with other City units, specifically, the fire officers agreement for 2005 through 2009; the firefighters contract for 2005 through 2008; the white collar settlement for 2005 through 2008, and the blue collar MOA for 2005 through 2009. I have carefully reviewed these agreements, consistent with the well established principle that, in appropriate cases, adherence to an internal settlement pattern fosters later relations stability and encourages future settlements. *Union Cty.*, P.E.R.C. No. 2003-33, 28 *NJPER* 459(¶33169 2002) and *Union Cty.*, P.E.R.C. No.2003-87, 29 *NJPER* 250 (¶75 2003). I am also mindful of PERC's direction that an arbitrator should specify the reasons for adhering or not adhering to a pattern, and should consider the impact of deviating from any pattern on the continuity and stability of employment. *Ibid.*

The above-noted agreements do not evidence a strong internal pattern on salary increases, as would be the case if the units received identical raises for the same contract term. Nevertheless, the four settlements cluster within a relatively narrow range, particularly those pertaining to the fire units and white collar

employees. As such, I have accorded them significant but not controlling weight.

The salary adjustments are as follows:

	2005	2006	2007	2008	2009
<b>Fire Officers</b>	4%	4%	3.8%	3.9%	3.5%
<b>Firefighters</b>	4%	4%	3.8%	3.9%	N/A
<b>White Collar</b>	3.5%	4%	4%	4%	N/A
<b>Blue Collar</b>	4%	3%	3%	3.25%	3.25%

All of the internal settlements for 2007 and 2008 militate against the 5% increases proposed by the unions and warrant raises closer to the 3.75% adjustments sought by the City. The 4% increases for 2007 through 2009, and the 3.8% raise for 2010 are slightly higher than, but reasonably consistent with, these internal agreements, and my rationale for awarding them is as follows.

First, the adjustments under the award strike a balance between the average annual increases in the internal public safety agreements and those negotiated by Bergen County municipal police, which average somewhat over 4%.

Second, the record does not point ineluctably to 3.75% increases. For 2007 and 2008, three out of four City settlements exceed the City's offer and the awarded increases parallel those in the white collar unit for those years. Third, while I have given the fire department settlements significant weight, they are not controlling. The fire department settlements must be considered in light of the overall negotiations environment for those units, where the parties agreed to a



24/72 work schedule that appears to have been sought by the unions.<sup>10</sup> The fire department context is thus distinct from the situation here, where the PBA's and SOA's demands have focused primarily on salary and longevity. Moreover, there is no evidence in the record either that the City's police and fire personnel have salary parity or that they have historically received the same percentage increases. *Compare N.J.A.C. 19:16-5.14c(4)*(comparability analysis of employees in the same jurisdiction may include a comparison of the wages, salaries, hours and conditions of employees in police and fire units).

Finally, while the awarded increases are 0.75% to .80% higher than those negotiated with the Teamsters Local No. 11 blue collar unit, there is no evidence that the City's blue collar and police units have historically received the same increases and, further, the City's own offer to the PBA and SOA exceeds increases in the blue collar settlement. In addition, while the Teamsters agreement included new hire provisions such as a freeze on starting salary, it also contained economic benefits for current employees – enhanced shift differential and a decreased number of “grades” on the wage scale – that have no parallel in this award.

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<sup>10</sup> This is suggested by the fact that the longevity cap reduction for new hires – an item that is beneficial to the employer and is part of both fire department MOAs – is rescinded if the City exercises its option to revert to the predecessor schedule. See Exhibit E-2, Part 2, Sections 2 & 3.

I turn next to the across-the-board increases received by Bergen County police, as summarized in the PBA/SOA's Chart No. 4, included in its brief, which collects data from 27 of the contracts it has submitted.

Preliminarily, the City questions the validity of this chart, arguing that agreements from another 26 Bergen County jurisdictions are available. However, it has not offered an alternative compilation based on a wider database, and it does not allege that any jurisdiction omitted from the chart is especially comparable to the City. Therefore, I have considered and given weight to Chart No. 4, which does reflect a considerable range of Bergen County jurisdictions.

For 2007, it shows an average increase of 4.19% (based on 27 jurisdictions, including the Bergen County Prosecutor's Office); for 2008, an average adjustment of 4.31% (based on 18 municipalities and the Prosecutor's Office) and for 2009, 4.2% (based on 8 jurisdictions). For 2010, only five municipalities have reached an agreement, averaging 4.12%. Absent the data from the Prosecutor's Office, the 2007 figure would be slightly higher than noted, since investigators received a 3.9% increase for that year. Conversely, the average 2008 increase would be lower if the investigators' settlement were not included, since they negotiated a 5% raise for that year.

Overall, Chart No. 4 does not support the 5% increases proposed by the PBA/SOA but the average annual increases it lists would, standing alone, weigh in

favor of somewhat higher increases than I have awarded. However, as noted, I believe a reasonable determination of this salary dispute requires a balance between the raises included in internal settlements and the average annual increases received by Bergen County police. Moreover, the salary charts at the end of this discussion show that the awarded increases will not cause Englewood officers to lose ground compared with their counterparts. In this vein, it is noteworthy that in the majority of the 27 jurisdictions listed on the PBA/SOA chart, the police and their employers agreed to 4% increases. For the most part, increases above 4% were negotiated in municipalities (Oakland, Demarest, Haworth, Saddle Brook, and East Rutherford) where salaries are below those in Englewood.

As noted, in terms of comparability considerations, my award places the most importance on the City's internal settlements and on Bergen County police data. However, other data is also pertinent and is within close range of the awarded increases. For example, PERC data on interest arbitration awards issued and settlements reached during 2007 shows almost all increases for 2007 through 2010 clustering between 3.75% and 4%. *See Exhibit -2, Part 1, Sections 4 & 5.* Further, I note that the PERC Salary Analysis, distributed to the Special Panel of Interest Arbitrators in November 2008, reports that the average salary increase in the 16 awards issued during 2007 was 3.77%, while the average increase in 46

voluntary settlements reported during that time period was 3.97%. The figures for the 11 awards issued between January 2008 and November 19, 2008 was 3.84%, while the average increase in the 54 voluntary reported settlements arrived at during that period was 3.95%.

The annual NJLWD report distributed by PERC pursuant to *N.J.S.A.* 34:13A-16.6 is also relevant. This document includes information on changes in average public sector and private sector wages in New Jersey, and is compiled from a database comprised of virtually all New Jersey employers. Each party relies on the report. The City has submitted the August 2006 document, which details wage changes for 2005, and both parties cite the 2007 report, which summarizes wage changes during 2006. The 2008 report, setting forth data for 2007, was not available at the time of the hearing but I have taken arbitral notice of it. *See Borough of Bogota*, P.E.R.C. No. 99-20, 24 *NJPER* 453 (¶29210 1998) (approving arbitrator's consideration of more recent version of NLWD report).<sup>11</sup>

With respect to public workers in general, the September 2006 report showed a 1.9% increase, for 2005, in average public sector wages, a composite figure derived from a 2.6% increase for federal workers in New Jersey; a 2.8% adjustment for local government employees, and a -0.7% decrease for State workers. The 2007 report shows a 3.4% increase in average public sector wages in

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<sup>11</sup> The report is publicly available on PERC's website; the private sector components of the reports are statutorily mandated; and N.J.S.A. 34:13A-16.6 states that the report is intended for use in public sector wage negotiations.

2006, including a 2.1% increase for State employees; a 6.6% increase for federal workers; and a 3.3% change for local government employees. Finally, the 2008 report indicates that the average public sector wage in New Jersey increased 4.1% in 2007, including a 5.2% increase for federal employees; 5% increase for State workers; and a 3.5% adjustment for local government employees. Thus, the data on public sector employment points in the direction of increases in the 4% range for 2007, the first year of this agreement. While the information for 2005 and 2006 shows lower increases, I have not given it significant weight because it does not pertain to the contract term covered by this award and the increases received by State employees in particular appear to have been driven by fiscal pressures on State government that do not appear to have been present to the same degree in Englewood.

In terms of private employees, the reports show increases in average private sector wages of 3.1% for 2005, 4.6% for 2006; and 4.3% for 2007. For Bergen County, the changes in average private sector wages were 3.1% for 2005, 4.0% for 2006, and 4.9% for 2007. Again, this information is also generally consistent with increases in the 4% range. While the 2007 increase is close to the PBA/SOA proposal, the figure for one year for one county is not sufficient to establish that private sector employees are likely to experience increases at that level in 2008 through 2010. This is particularly so given that the City has submitted numerous

reports showing that many New Jersey employers, including some in Englewood itself, are laying off workers.

Based on all the foregoing, I conclude that the weight of the comparability evidence weighs in favor of the awarded increases. These increases will likely enable the City's police officers to continue to enjoy a very competitive salary throughout the contract term. The following tables show the ranking of each position for 2007 and 2008, as well as that for 2006, the last year of the predecessor contract. The charts are based on the PBA/SOA exhibits but very similar results would pertain if the City's additional towns were included, as discussed above at pages 60-61.

<b>PATROL OFFICER</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>
Paramus	\$105,771	\$110,002	N/A
Tenaflly	98,846	\$102,801	\$106,913
Mahwah	98,578	\$102,521	\$108,264
Saddle River	\$ 97,380	\$101,519	\$105,580
Elmwood Park	\$ 96,732	\$100,795	N/A
Bergenfield	\$ 96,714	\$101,361	\$104,149
Closter	\$ 96,528	\$100,389	N/A
<b>Englewood</b>	<b>\$ 96,054</b>	<b>\$ 99,896</b>	<b>\$103,892</b>

<b>SERGEANT</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>
Paramus	\$116,615	\$121,279	N/A
Saddle River	\$104,825	\$109,280	\$113,651
Mahwah	\$104,934	\$109,131	\$115,244
Tenaflly	\$104,582	\$108,766	\$113,116
Bergenfield	\$106,180	\$111,282	\$114,342
Elmwood Park	\$104,471	\$108,859	N/A
<b>Englewood</b>	<b>\$103,928</b>	<b>\$108,085</b>	<b>\$112,408</b>

<b>LIEUTENANT</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>
Paramus	\$127,853	\$132,967	N/A
Ridgewood	\$116,033	\$121,194	\$126,584
Bergenfield	\$115,987	\$121,560	\$124,903
Saddle River	\$110,568	\$115,267	\$119,878
Elmwood Park	\$112,828	\$117,567	N/A
<b>Englewood</b>	<b>\$111,598</b>	<b>\$116,062</b>	<b>\$120,704</b>

<b>CAPTAIN</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>
Paramus	\$147,996	\$153,916	N/A
Bergenfield	\$125,114	\$131,125	\$134,731
Elmwood Park	\$121,854	\$126,973	N/A
Fort Lee	\$121,002	N/A	N/A
<b>Englewood</b>	<b>\$119,622</b>	<b>\$124,407</b>	<b>\$129,383</b>

These charts do not detail the salaries for 2009 and 2010 because evidence for those years is more limited. However, the PBA/SOA Chart No. 4 shows increases close to 4% for 2009 and 2010 (4.2% and 4.12%), so that is unlikely that the award will cause Englewood officers to lose significant ground for those years.

### **Overall Compensation**

The overall compensation criterion, *N.J.S.A.34:13A-16g(3)*, requires the arbitrator to consider all the economic benefits received by the employees involved in the proceeding, including direct wages, vacations, holidays, excused leaves, insurance, pensions and medical benefits. It thus directs a focus on all employee benefits, not just the items that are at issue in the proceeding.

Viewed from this perspective, unit members enjoy a comprehensive compensation and benefit package that includes vacation, sick leave, personal days, membership in the PFRS retirement system, and comprehensive health,

prescription, and dental coverage. As stated earlier, all ranks also enjoy competitive salaries. However, the PBA and SOA state that many of their key benefits are below average and, to illustrate this point, they highlight the longevity program and the three-step sergeant's guide.

As adverted to in the public interest discussion, longevity must be evaluated within the context of the entire compensation packages received by the PBA and SOA, which include very good salaries. Moreover, the City's longevity program is not deficient, even if analyzed in isolation. Out of the 63 municipalities on which the parties have submitted data, 21 jurisdictions have a longevity program with a maximum percentage benefit that is the same as, or lower than, the City's.<sup>12</sup> Another 14 have a maximum percentage benefit of 10% -- only ½ percentage point above the City's. The benefits in some of the remaining jurisdictions are not readily compared with the City's because they have no fixed maximum but rather a formula – *e.g.*, .33% for each year of service – that would yield a high maximum after a very long career. And while there are several jurisdictions with longevity maximums of 12% or higher, that maximum must be correlated with the relevant base salaries. For example, while neighboring Teaneck has higher longevity, it also has lower salaries, with the result that Englewood's total maximum salary – top-step base salary plus maximum longevity – is still higher than in Teaneck. The

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<sup>12</sup> The 63 municipalities include the 61 summarized in the Exhibit E-2, Section 1(3), plus two additional municipalities included on the PBA/SOA Chart No. 3 that are not part of the City's document.



opposite is true in Tenaflly, where the higher longevity is applied to a salary that, for patrol officers, is higher than in Englewood.

On balance, the PBA/SOA has not shown that the existing longevity program measurably depresses the overall compensation of this unit such that an increase in the top three longevity tiers is warranted. Indeed, Exhibit E-12, attached to the City's brief lists "maximum 2007 base salaries plus longevity" for patrol officers in 45 municipalities. Under the award, the total compensation for an Englewood patrol officer would rank 11<sup>th</sup> out of 45 jurisdictions, very close to its ranking (14/58) for base salary alone.

At the same time, the record also conclusively establishes that longevity is a significant benefit for virtually all police officers in the County, and award of the City's proposal to eliminate longevity for new hires would significantly reduce the competitiveness of its compensation package. Therefore, award of this proposal is not warranted under the overall compensation criterion.

A similar analysis pertains to the parties' salary guide proposals. Analyzing the union proposal to shorten the sergeant's guide, a review of the record shows that most, but not all, municipalities have a single pay rate for sergeants. However, this feature is a minor component of an overall compensation package that includes competitive base salaries and a six-step salary guide that allows a patrol officer to reach maximum salary sooner than in most jurisdictions, thereby

increasing the lifetime earnings of all officers including those promoted to sergeant. The sergeant's salary guide is an acceptable trade-off for some of the other benefits that, over the years, the parties have negotiated for City officers.

On the other hand, establishing a 10-step guide for new hires, as the City proposes would be a significant change that would decrease lifetime earnings for new employees. While the record shows that City officers have good salaries and benefits, they are not excessive vis-à-vis their counterparts in the County as a whole. As such, the City's salary guide proposal is not warranted under the overall compensation criterion. Finally, as indicated in the public interest discussion, I decline to award the City's proposal to freeze starting salaries absent more information about the City's hiring plans and the availability of candidates for entry level positions. Based on the foregoing, I find that the units' existing overall salary and benefit packages are very good and favor salary increases in the average range, so that the units maintain their relative standing. The officers' overall compensation does not require modifications to longevity benefits or salary guides.

### **Stipulations**

*N.J.S.A.* 34:13A-16g(4) requires the arbitrators to consider the stipulations of the parties. There are no stipulations in this case.

## **Lawful Authority of the Employer; Statutory Restrictions on the Employer**

*N.J.S.A.* 34:13A-16g(1) and (5) mandate consideration of the lawful authority of the employer, including the limitations on appropriations imposed by *N.J.S.A.* 40A:4-45.1a *et seq.*, commonly known as the CAP law. *N.J.S.A.* 34:13A-16(g)(9), similarly directs an analysis of the statutory restrictions imposed on the employer, including the tax levy cap enacted in 2007. *See L. 2007 c. 62.* Both of these CAPS were designed to help control the costs of local government and limit increases in the local property tax. I discuss each CAP in turn and conclude that the award will not cause the City to breach the restrictions they impose. I turn to the most recently enacted statute first.

*N.J.S.A.* 40A:4-45.44 through 45.47 limits the annual increase in a local entity's tax levy to 4%, with certain expenditures excluded from the cap. Among these are debt service; increases to replace lost State aid; and health insurance cost increases over 4% but below the State Health Benefits Program index. In 2007 and 2008, increases in both PFRS and PERS employer pension contributions are also excluded. *See Local Finance Notice No. 2008-3.* PFRS contributions go inside the CAP in 2009 and PERS contributions do so in 2010. *Ibid.*

For local units with calendar year budgeting, *N.J.S.A.* 40A:4-45.44 first went into effect in 2008. Because the hearing in this matter was held prior to 2008, the budget documents in the record do not include calculations for this tax levy cap.

However, 4% increases are not in and of themselves inconsistent with the new 4% tax levy CAP. I recognize, as the City notes, that the built-in cost of increments and longevity will entail some annual increase in the total base salaries for this unit, even without any new across-the-board increases. When coupled with the awarded across-the-board salary adjustments, the total compensation for these units will increase by more than 4%, just as they would under the City's 3.75% offer. However, I note both that the tax levy CAP applies to the overall budget, not any single line item, and that it allows more than a strict 4% increase in the prior year's tax levy once exceptions are taken into account. In this posture, and in view of the City's own offer, I find that the award will not violate the new tax levy CAP.

*N.J.S.A. 40A:4-45.1a* limits the amount by which a municipality can increase its total final appropriations from the previous year to the lesser of 2.5% or a federally-prepared cost of living adjustment (COLA). In addition, a municipality may by ordinance choose to increase the COLA percentage up to 3.5% and may also "bank" the difference between 3.5% and its final appropriations subject to the cap. Any "cap bank balance" provides additional expenditure authority that may be used in the ensuing two years.

Certain items are excluded from the CAP limits including, among other items: revenue generated by applying the preceding year's tax rate to the apportionment valuation of new construction or improvements; capital

expenditures; debt service; and expenditures mandated by statute or court order.

The CAP does not limit any particular line item, only total appropriations.

The COLA percentage for 2007 and 2008 was 2.5% and that is the percentage for 2009 as well. *See Local Finance Notice No. 2008-11 (June 26, 2008)*. Budget documents in the record show that the City has been able to operate within the 2.5% CAP, and has not exercised its option to increase its COLA percentage to 3.5%.

For 2007, my award will result in an additional expenditure of \$16,818 beyond that in the City's offer. Even if these monies are not available in, for example, reserves for salary increases, this additional expenditure will not cause the City to exceed its lawful authority under *N.J.S.A. 40A:4-45.4*, since the City's 2007 budget was \$1,565,340 under the 2.5% CAP (Exhibit P-21, p. 3b-2).

The CAP calculations for 2008 through 2010 are not in the record. However, it is extremely unlikely that salary increases that will cost the City between \$5825 and \$19,500 more per year than it expected to spend under its own offer will cause it to exceed its lawful authority.

### **Financial Impact of the Award**

*N.J.S.A. 34:13A-16g(6)* requires an arbitrator to consider the financial impact of an award on the governing unit, its residents and taxpayers. As such, the factor has a strong overlap with the fiscal component of the public interest and

with *N.J.S.A. 34:13A-16g(5)* and *N.J.S.A. 34:13A-16g(9)*, which mandate a consideration of the legal limits of a municipality's expenditure and taxation authority. However, the financial impact criterion directs a broader inquiry than 16g(5) and (9) and requires an analysis of whether an award is reasonable in view of a municipality's ratable base, existing tax levels, and the income of its residents.

I have given *N.J.S.A. 34:13A-16g(6)* substantial weight both in denying the PBA's and SOA's longevity and salary guide proposals and in arriving at salary increases that are closer to the City's proposal than they are to the PBA and SOA's final offer. I conclude that my award will not have an adverse financial impact on the Township or its residents and taxpayers.

The budgetary and financial documents in the record indicate that the City has several fiscal strengths, including a strong ratable base of \$4.7 billion, the eighth highest in the County, and the demonstrated ability to regenerate surplus while operating within the 2.5% CAP limit. The Mayor has highlighted the renewal of the City's excellent bond rating and the City's total debt is low and does not approach the statutory limit of 3.5% of the City's equalized valuation. *See N.J.S.A. 40A:2-6; Exhibit P-20, p. 26; Exhibit P-21, sheet 3b-1.* As of the time of the hearing, several mixed-use residential and commercial complexes had been recently completed and others were in the planning stages.

Some financial indicators are not quite as positive. For example, the City has the 15<sup>th</sup> highest effective tax rate among 70 Bergen County municipalities and its property tax is the 21<sup>th</sup> highest in the County (Exhibit P-23; Exhibit E-2, Part 4, Section 2). Further, according to 2000 census figures, the City's household income was significantly lower than the other Bergen County towns with high average property taxes (Exhibit E-2, Part 4, Section 2). Finally, the City is facing fiscal constraints common to all New Jersey public employers, including the reinstituted pension obligations that will go inside the CAP in 2009 and 2010 and a possible weakening in the State's economy, as evidenced by the many layoff notices issued by New Jersey employers during 2007 (Exhibit E-16, attached to the City's brief).

Overall, this financial picture militates against an award that includes 5% increases, plus longevity and salary guide enhancements. These economic improvements would cost approximately \$656,820 more than the package the City has proposed.<sup>13</sup> On the other hand, I believe that 4% increases for 2007 through 2009, and a 3.8% increase for 2010, represent a reasonable determination of the parties' salary dispute and will not negatively impact the City or its taxpayers.

The cost of annual increases under my award will be \$60,263 more than 3.75% adjustments over the same time period, or between \$5,825 and \$19,500 more per year than the City's offer if it were extended into 2010. These figures

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<sup>13</sup> This figure represents the cost of the PBA/SOA longevity and salary guide proposals, as estimated by the City, along with the difference between the costs of four annual 5% increases vs. four 3.75% adjustments.

must be evaluated in the context of a 2007 City budget of over \$52 million. While it is not my role to direct how the City should fund the award, *see County of Essex*, P.E.R.C. No. 2005-52, 31 *NJPER* 86 (¶41 2005), citing *New Jersey State PBA, Local 29 v. Irvington*, 80 *N.J.* 271, 293 (1970), I am satisfied that this differential can be accommodated within the City's overall budgetary framework.

Preliminarily, the City's 2007 budget assumed a \$519,795 increase in police department salaries over the prior year, with an additional reserved amount of \$389, 799 that was brought into the 2007 budget from the prior year (Exhibit P-21, p. 15a). While this line appears to include some civilian salaries and may take into account increment costs (T202-203), there is certainly the possibility that the difference between these units' 2007 salaries under the award vs. the City's offer could be absorbed by the appropriated amount. *Compare Essex* (because settlements and awards do not always coincide with adopted budgets, the planning process for salary increases includes budgeting for reserves and contingencies within the current operating fund).

Other aspects of the record also suggest sufficient budgetary flexibility to accommodate the difference between the award and the City's offer. Preliminarily, I recognize that Englewood has historically underestimated certain revenues (*e.g.*, investment income, taxes collected), so that excess receipts can flow into surplus, thereby providing the City with working capital and funds that can be used to help



support the next year's budget and keep tax increases in check (T123;T183-T190). Accordingly, the City may have depended on some of the items highlighted by the PBA and SOA (*e.g.*, an additional \$700,000 in investment income not anticipated in the 2007 budget) in order to replenish a surplus that was projected to decline in 2007 from 2006 (Exhibit E-2, Part 4, Section 3, line 23).

Even within the context of this budgeting practice, however, the record suggests the possibility of more revenue flows into surplus, and thus more budgetary flexibility, than the City predicted. For example, in projecting miscellaneous anticipated revenues for 2007, the City's fund balance analysis assumes excess tax revenues of \$296,888, but this figure is substantially below excess taxes collected in 2005 (\$570,117) and in 2006 (\$631,428). *See* Exhibit E-2, Part 4, Section 3, line 7. Similarly, the City projected \$500,000 in miscellaneous unanticipated revenues for 2007 -- \$3,000 more than in 2006. However, the fund balance analysis shows that in several years unanticipated revenues have substantially exceeded those in the preceding year (Exhibit E-2, Part 4, Section 3, line 10).

In any case, turning from revenues to expenditures, the City has cited no planned or existing programs or services that would be jeopardized by an award that exceeds its own offer by the amounts at issue here. Indeed, a review of budget appropriations at the hearing showed that, in addition to providing essential

services, the City has had the ability to fund quality of life projects involving City parks, ponds, and recreational facilities (T50-T54). This circumstance again points to the existence of sufficient budgetary flexibility to accommodate the difference between the award and the City's offer.

For the foregoing reasons, I conclude that the award will not have an adverse impact on the County as a governmental entity. Nor is there evidence that it will adversely affect residents or taxpayers.

### **Cost of Living**

*N.J.S.A.* 34:13A-16g(7) mandates consideration of the cost of living, which is typically measured by the Consumer Price Index (CPI) published by the federal Bureau of Labor Statistics. Both the City and the PBA/SOA observe that, in the recent past, the cost of living has been low. The City has submitted the table for the CPI for All Urban Consumers, which indicates that the CPI increased only 2.5% in 2006, down from 3.4% in 2005. Similarly, it points to the 3.3% Social Security increase for 2007, a decrease from the 4.1% increase in 2006. The City also observes that these figures include the cost of health care and thus do not reflect the cost of living as experienced by PBA and SOA unit members, who have fully paid medical benefits. For their part, the PBA and SOA maintain that inflation is on the rise, citing the 2007 4.1% increase in private sector wages reported by the NLWD.

I have carefully considered CPI data in the record and, for 2007, the 4% increases that I have awarded should enable the maximum salary to increase at about the rate of inflation: one of the City's CPI exhibits shows that the index increased by 4.1% between December 2006 and December 2007 (Exhibit E-17, attached to employer's brief). However, the inflationary picture for the remainder of the contract term is uncertain and this circumstance precludes me from giving this factor determinative weight. The most recent Labor Relations Reporter economic new releases included in the record (Exhibit E-2, Part 5, Section 6, and Exhibit 18, attached to the City's brief) show energy and food prices charting an up-and-down course throughout 2007 and early 2008. Thus, CPI increases for 2009 and 2010 are particularly difficult to predict. However, the potential for CPI increases either higher or lower than those in recent years does not warrant different salary adjustments. The awarded increases are appropriate in light of the several other factors I have discussed and it does not appear that the parties have historically tied salary increases to the CPI. Finally, to the extent that CPI increases may exceed the adjustments I have awarded, the City accurately observes that, by virtue of their fully paid health benefits, unit members are partially shielded from the impact of inflation.

## **Continuity and Stability of Employment**

*N.J.S.A.* 34:13A-16g(8) directs a consideration of the continuity and stability of employment, including seniority rights and other factors ordinarily and traditionally considered in determining wages and employment conditions in public and private sector negotiations. It incorporates two concepts that have been discussed throughout this award. The first is the desirability of providing for a competitive compensation package that will prevent excessive turnover, thus maintaining “continuity and stability in employment.” The second is the concept of the “relative standing” of a negotiations unit with respect to similarly situated units. Absent strong justification arbitrators are generally reluctant to significantly change a unit’s relative standing, reasoning that interest arbitration is an extension of the negotiations process and is not ordinarily intended to revamp a compensation structure established over many years of negotiations.

Both of these components of *N.J.S.A.* 34:13A-16g(8) weigh in favor of the awarded increases but against the parties’ longevity and salary guide proposals. As discussed in the public interest and comparability sections of this analysis, increases of 4% for 2007 through 2009, and 3.8% for 2010, should ensure that the PBA and SOA units continue to enjoy competitive salaries. The longevity and salary guide adjustments sought by the unions are not necessary either to maintain the units’ standing in the County or to ensure continuity and stability of

employment. There is no suggestion in the record that the City has had difficulty in recruiting or retaining officers.

On the other hand, the City's proposal to eliminate longevity for new hires would be a significant downward adjustment in the overall compensation for both units, and would measurably downgrade officers' relative standing compared to other officers in the County. Award of the proposal could affect future continuity and stability of employment as well, creating the potential that new officers would seek employment in other jurisdictions, where they would be eligible for a maximum longevity benefit that significantly enhances base salary. To a lesser extent, the proposal to lengthen the salary guide could have a similar effect.

In view of the foregoing, the continuity and stability of employment is best furthered by awarding an economic package that is limited to across-the-board increases of 4% for 2007 through 2009 and 3.8% in 2010.

### **OTHER ECONOMIC & NON-ECONOMIC PROPOSALS**

The foregoing discussion of the statutory factors informs my consideration of the other unresolved issues. I begin with an analysis of the City's economic and non-economic proposals, starting with its proposed work schedule change.

## WORK SCHEDULE

The City's proposal to replace the current 5/2 work chart with a 4/4 schedule would significantly affect department operations and employee schedules. PERC has emphasized that the party proposing such a "major" work schedule change has the burden of justifying it. *Teaneck Tp. and Teaneck FMBA Local No. 42*, P.E.R.C. No. 2000-33, 25 *NJPER* 450 (¶30199 1999), *aff'd* in part, *rev'd* and *remanded* in part on other grounds, 353 *N.J. Super.* 289 (App. Div. 2002), *aff'd o.b.*, 177 N.J. 560 (2003). Within this framework, I conclude that the City did not establish by a preponderance of the evidence that award of the 4/4 schedule is warranted.

Preliminarily, the City's proposal lacks specificity and does not outline what the shifts would be under the new schedule, or how many officers would be deployed on each shift. This circumstance makes it difficult to fully evaluate the impact of the schedule change on police operations and officers' personal lives. Nevertheless, the City did present the overall concept of a schedule in which officer would work four 10.5 hour days, followed by four days off. It also offered testimony to the effect that this schedule would reduce sick leave, overtime, and employee injuries, while also allowing the Chief to adjust staffing levels in accordance with workload. However, the City did not meet its burden of showing

that these alleged benefits would likely flow from the new schedule, and the PBA and SOA raised significant doubts on these points.

For example, the City argues that the 4/4 schedule would improve police operations because it would allow the department to assign more officers during the hours when activity levels are high – and deploy fewer officers during low activity periods. The Acting Chief explained that the 5/2 work chart and the seven-officer minimum staffing requirement now preclude him from instituting such staffing practices. However, this circumstance does not establish that this staffing issue should necessarily be addressed through a schedule change that would significantly change officers' work hours.

For example, it would appear that the desired staffing patterns could also be achieved by changing the minimum staffing requirement for certain time periods or, as the unions suggested at the hearing, exploring with the PBA/SOA the possibility of having staggered starting times on each shift, so that officers would be “stacked” during peak hours. The Acting Chief acknowledged that the latter practice could address the issue that he was seeking to resolve via the 4/4 schedule (T107-T109).

With respect to the impact of a 4/4 schedule on officers' personal lives, the City underscores that the proposed work chart would allow officers to have more weekends off, thereby allowing them to spend more time with their families.

However, the crucial factor is that the PBA and SOA, as representatives of the employees who would allegedly benefit from a more family-friendly schedule, do not support the change and instead point to the impact of a 10.5 hour work day on child care arrangements, educational pursuits, and supplemental employment. It is also noteworthy that the City's proposal specifies that officers will work the 100 annual work hours that would otherwise be eliminated in the transition from a 5/2 to a 4/4 schedule. These hours will not be integrated into the officers' regular, predictable schedule but will be required to be worked upon "appropriate" notice by the Chief. In sum, the City's proposal does not present a clear-cut benefit to officers in terms of the number of annual hours worked or the configuration of work hours within a work week.

Nor did the City establish by a preponderance of the evidence that operational benefits would result from officers working a 4/4 schedule with more weekends off. In this regard, the Acting Chief suggested that officers would sustain fewer injuries and take fewer sick days because of this facet of the 4/4 schedule. However, the PBA and SOA countered that on busy days an officer could be more fatigued under the proposed work chart because he or she would have to work a longer day. Indeed, the Acting Chief observed that whether an officer would be more refreshed throughout a 4/4 as opposed to a 5/2 work week



would “depend on the individual” (T112). In this posture, I cannot conclude that individuals would be less susceptible to injuries and illness under a 4/4 schedule.

The City also asserts that implementation of the 4/4 schedule would lead to substantial savings in overtime costs, both because it would cut down on sick time and because more officers would have schedules that coincided with court hours, thereby reducing the need to bring in off-duty officers for court appearances. Again, the City did not firmly establish these points; the City’s witness was unable to estimate the overtime savings that would result from adoption of the proposed schedule (T101). In addition, PBA and SOA questioning suggested some weaknesses in this rationale for the schedule.

With respect to court time, the PBA and SOA do not appear to dispute that the 4/4 schedule would result in more officers being on duty during court hours. However, they point out that while day shift officers are now on duty five days a week, they would work only four days a week under the proposed schedule. Thus, they suggest that the reduction in court-related overtime might not be as substantial as the City posits.

The unions make the same point with respect to the contention that the 4/4 work chart will reduce the need for the City to call in off-duty officers to cover for sick colleagues. Underlying the assumption that the 4/4 schedule will reduce this type of overtime is management’s recognition that officers sometimes call in sick

in order to obtain a day off that they could not otherwise secure under a 5/2 schedule, perhaps because of minimum staffing requirements (T109). While a 4/4 schedule might reduce this tendency, the PBA and SOA suggest it could also be curbed by disciplining an officer for a false sick call (T110). Further, as discussed above, the City has not proven that the 4/4 schedule would reduce genuine illness. In this posture, possible reductions in sick leave and court related overtime do not provide a firm basis for awarding a 4/4 schedule.

Finally, I do not find it dispositive that interest arbitrators have awarded the 4/4 schedule in other jurisdictions. The Springfield and Passaic awards are well reasoned but I cannot adopt wholesale the testimony and evidence offered in those proceedings. A work schedule proposal must be evaluated in the context of each individual police department, and a schedule that works well for one municipality may not be appropriate for another. Moreover, neither Springfield nor Passaic is in Bergen County and it appears that there are significant differences between them and Englewood. The Springfield arbitrator described the municipality as primarily residential, and the Passaic opinion indicates that the city has a police force almost twice the size of Englewood's (Exhibit E-2, Part 5, Sections 1 and 5). In addition, I note that in both Passaic and Springfield the unions, who proposed the schedule, submitted more detailed proposals than the City introduced here (Exhibit E-2, Part 5, Sections 2 and 3).

For all these reasons, the City has not met its burden of proving that the 4/4 schedule should be awarded.

### **Health Benefits**

The City proposes that, to the extent allowed under the SHBP law, PBA and SOA unit members shall contribute 1% of their salary toward their health insurance premiums. The City argues that because health insurance costs have increased dramatically over the last several years, it is no longer appropriate to provide unit members and their families with fully paid medical and prescription benefits. It asserts that 90% of private sector employees pay part of the premium costs for family coverage, and it also cites the fact that, effective July 1, 2007, State employees must contribute 1.5% of their salaries toward health insurance. *See N.J.S.A. 52:14-17.28b*. It also relies on data from four counties and several non-Bergen County municipalities in urging that premium contributions are becoming increasingly common.

As a threshold point, there appears to be no barrier to my considering the City's proposal. Recent amendments to the SHBP statute provide that "[n]otwithstanding the provisions of any other law to the contrary, the obligations of a participating employer other than the State to pay the premium or periodic charges for health benefits coverage provided under *P.L.1961, c.49 (C.52:14-17.25 et seq.)* may be determined by means of a binding collective negotiations

agreement.” L. 2007, c. 62, s. 42. While this statutory change to the SHBP is not the same as the amendment which *mandates* a percentage contribution for State employees, the quoted language appears to allow parties to agree to a premium contribution based on a percentage of employee salaries. The PBA and SOA do not suggest otherwise.

Health benefits are clearly a major and costly benefit and, in awarding salary increases, I have considered the fact that these units have comprehensive, fully paid medical benefits. I also recognize that in some cases, public interest, financial impact, and comparability factors may weigh in favor of awarding premium contributions for health benefits. On this record, however, the City has not met its burden of justifying the award of the particular proposal it has advanced.

First, the City’s proposal is a significant one, in that it would move these two units from a health benefits system where the employer pays all premium costs, to one where employees would pay a contribution that is unrelated the level or type of coverage they selected (single or family; HMO or NJ Direct), but that is instead based on their annual salaries. If the formula were instituted in 2009, it would result in substantial annual payments annually for superior officers and top-step patrol officers in particular. Negotiations, and interest arbitration, generally proceed with more incremental changes.

Also weighing against the award of the proposal are comparability considerations. The City's MOAs with its white collar, blue collar, and fire officers and firefighters do not provide for premium contributions, and the City does not suggest that the predecessor contracts for those employees included such contributions. Further, the City does not point to any Bergen County municipalities where either police or other employees have agreed to premium contributions. Finally, out of all the contracts submitted by the PBA and SOA, virtually all guarantee fully paid health, prescription and dental coverage for employees and their dependents. There are some exceptions. Edgewater, Glen Rock, and Northvale have a premium contribution requirement for dental coverage and the Leonia 2004-2007 contract has a clause stating that it may require employees to pay 10% of the premium for their selected health coverage, provided the then-applicable SHBP uniformity requirements are met.

I recognize that implementation of the employer's health benefits proposal would result in cost savings to the City but, for the reasons stated above, it has not met its burden of justifying the change it has proposed.

### **Sick Leave and Court Time – City Proposals**

The City proposes to modify provisions in the predecessor contracts to state that when an officer's off-duty time is interrupted for a court appearance, he or she shall be entitled to a minimum of two hours of overtime instead of three. The City

acknowledges that the savings that would flow from this change are “speculative” (Eb13) because it cannot ascertain how many times unit members will be called in on overtime for court appearances. In this posture, and absent information about how much the minimum court time provision has cost the City in the past, the City has not met its burden of justifying this change.

The same analysis pertains to the City’s proposed change to the current sick leave article, which addresses the situation of an officer who leaves early because of illness. Under the predecessor contract, if an officer has worked four continuous hours, he or she is credited with the entire day, up to a maximum of three occurrences annually. If he or she has worked less than four hours, then the entire day is charged. The City seeks to change these provisions and require that sick leave be charged on an hour for hour basis.

The proposed system would appear to be a more precise basis of accounting for sick leave, but the City has not set forth any background about the City’s experience under the current provision. For example, it is not clear how often it is invoked either to provide full payment for a four-hour day or to charge an officer with an entire sick day when he or she has in fact worked for a few hours. On balance, I conclude that the City has not met its burden of justifying this change.

### **Travel Allowance -- PBA/SOA Proposal**

The PBA and SOA seek to change the travel allowance provisions in the predecessor contracts, which state that officers shall be compensated at the rate of 15 cents per mile when the Chief authorizes the use of a personal vehicle in connection with an officer's performance of his or her job duties. The current contracts also state that "if mileage is not a reflective remuneration, in view of the use of the vehicle" then other reimbursements will be used on a case by case basis. The unions propose that the articles be changed to state that, on a prospective basis, officers shall be reimbursed at the current IRS mileage rate, which shall be adjusted annually in accordance with any IRS changes.

As is the case with some of the City's proposals, the record does not include any information on the parties' experience under this provision. There is no indication of how often officers use their personal vehicles for work-related assignments or how often alternative reimbursement formulas are used. In this context, it is not possible to calculate the cost impact of the proposal or to assess the reasonableness of making the proposed change. As such, I find that the unions have not met their burden of proving that this travel allowance change should be awarded.

## AWARD

### 1. Term of Agreement

The term of both the PBA and SOA agreements shall be from January 1, 2007 through December 31, 2010.

### 2. Salary increases

The following increases shall apply to each rank, step, and position in the PBA and SOA units.

4% across-the-board salary increase effective January 1, 2007.

4% across-the-board salary increase effective January 1, 2008.

4% across-the-board salary increase effective January 1, 2009.

3.8% across-the-board salary increase effective January 1, 2010.

Each salary increase is retroactive to its effective date.

3. All proposals of the City and the PBA and SOA not awarded herein are denied and dismissed. All provisions of the existing collective negotiations agreements shall be carried forward except for those provisions modified by the terms of this Award.

Dated: December 22, 2008  
Princeton, N.J.

Timothy A. Hundley  
Timothy A. Hundley  
Arbitrator



State of New Jersey       }  
County of Mercer       } ss:

On this 22<sup>nd</sup> day of December 2008, before me personally came and appeared Timothy A. Hundley 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.

Virginia G. Hundley  
Virginia G. Hundley  
Notary Public of New Jersey  
My Commission Expires 6/22/2010