

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

In the Matter of Interest Arbitration	)	
	)	
Between	)	<b>PERC DOCKET # IA-96-040</b>
	)	
<b>BOROUGH OF SURF CITY</b>	)	
Public Employer	)	
	)	
and	)	<b>OPINION AND AWARD</b>
	)	
<b>POLICE BENEVOLENT ASSOCIATION</b>	)	
<b>LOCAL 175</b>	)	Before: <b>J.J.Pierson, Esq.</b>
Employee Representative	)	Interest Arbitrator
	)	

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Appearing for the Borough

Gerald L. Dorf, Esq.  
(Dorf and Dorf)

Appearing for the PBA

Michael A. Bukowsky, Esq.  
(Klatsky & Klatsky)

The Borough of Surf City (a public employer hereinafter referred to as the "Borough" or "Employer") and the Police Benevolent Association, Local 175 (hereinafter, the "PBA" or the "Union") are signatories to a Collective Bargaining Agreement (hereinafter, the "Agreement"). (See Joint Exhibit J-1, effective January 1, 1992 through December 31, 1994). Negotiations between the parties for a successor Agreement proved unsuccessful, an impasse resulted and the PBA petitioned the New Jersey Public Employment Relations Commission (hereinafter, "PERC") for Compulsory Interest Arbitration.

The undersigned was appointed by PERC to serve as Interest Arbitrator pursuant to N.J.A.C. 19:16-5.6 (see Appointment letter dated April 11, 1996) and to resolve the impasse between the named parties. Interest Arbitration proceedings were conducted by this Arbitrator in accordance with the statutory revision to N.J.S.A. 34:13A-1 et. seq., (The New Jersey's Police and Fire Public Interest Arbitration Reform Act, A-3296, C 425 L 1995).<sup>1</sup>

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1. Contemplating the breadth of this case and recognizing that Section 3(f)(5) of the "Act" requires the Arbitrator to render an Opinion and Award within 120 days of appointment, on August 7, 1996, this Arbitrator requested the parties to execute, in writing, an extension of time to render the Opinion and Award. That extension was granted, in writing, by both parties. Notwithstanding the extension, the arbitration proceeding was neither presented nor completed until 1997 (due to the volume of evidence presented and the extensive post-hearing briefs). There was no objection to the extended procedure.

## **BACKGROUND AND PROCEDURAL HISTORY**

Surf City is a residential shore community on Long Beach Island<sup>2</sup> with a land area of approximately seventy-two one hundredths (0.72) of a square mile and a permanent population of approximately thirteen hundred three hundred seventy three (1,373, as of 1990). Population rises dramatically in the warmer months as seasonal residents (property owners and renters), summertime guests and tourists visit the shore community primarily for vacations and recreation. The Borough is accessible by the Garden State Parkway and New Jersey Route 72.

The Borough is governed by an elected Mayor (Leonard T. Connors, Jr.) and six-member Council, further administered by a Chief Financial Officer and Borough Clerk. The Surf City Police Department ("SCPD") is currently composed of six (6) Patrolmen in the Borough Police Department is composed of five (5) Patrolmen at the top step (5th year) of the salary guide (with an annual base salary of \$38,689.) and one Patrolman at the second step (2nd full year) of the salary guide (with an annual base salary of \$31,147.). Salaries are based on upon a 2080 hour work year, and salary step increases occur on the employee's anniversary date of hire. Two (2) patrolmen at top step currently earn four (4%) percent longevity for over nine (9) years of service to the Borough, while three (3) patrolmen earn two (2%) percent longevity for over six (6) years of service.<sup>3</sup>

The Agreement between the parties expired on December 31, 1994 and, while negotiations continued, a request was submitted to PERC for the services of a Mediator. Despite the efforts of a State appointed Mediator<sup>4</sup>, subsequent attempts for a settlement reached by the parties were not successful.

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2. Long Beach Island is a barrier reef island, approximately ten miles long and containing municipalities including Long Beach Township, Ship Bottom, Beach Haven, Harvey Cedars and Surf City.

3. Note that longevity is not calculated as part of gross base pay. Article IX, Section B (page 14).

4. The parties participated in two mediation sessions, on April 15, 1996 and June 21, 1996, with PERC mediator Thomas D. Hartigan.

The PBA petitioned the PERCommission for Compulsory Interest Arbitration and the undersigned was appointed to serve as Interest Arbitrator (pursuant to N.J.A.C. 19:16-5.6) on April 11, 1996. During the first meeting with the parties (October 21, 1996), this Arbitrator exercised efforts toward mediation<sup>5</sup>, which again demonstrated that a negotiated settlement could not be reached. Accordingly, the parties were instructed to prepare their Final Offers for presentation to this Arbitrator in a formal hearing.<sup>6</sup>

With due notice to the parties, formal hearings were conducted on February 5, 1997, February 13, 1997 and June 19, 1997 at the Surf City Municipal Building.<sup>7</sup> The parties were afforded full opportunity to present witnesses and documents in support of their positions and both testimony and documents were introduced as evidence into the record. The hearing was concluded and the record declared closed upon receipt of the parties post-hearing briefs in September 1997.<sup>8</sup>

Insofar as the parties did not agree upon a terminal arbitration procedure, the interest arbitration was conducted in accordance with the compulsory statutory procedure for "conventional arbitration" set forth under N.J.S.A. 34:13a-16(d)(2).

As such, this Arbitrator is directed to decide the dispute based on a reasonable determination of the issues, giving due weight to [the following statutory criteria listed under N.J.S.A. 34:13A-16g]:

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5. The Compulsory Interest Arbitration Action and its implementing regulations permit a mediator in a public employment dispute to serve as the arbitrator in the event that mediation efforts are not successful. N.J.S.A. 34:13a-16a and f(3); N.J.A.C. 19:16-5.7(B).

6. The mediation session was conducted by this Interest Arbitrator on October 21, 1996. At the time of hearing it was understood that information disclosed during the mediation efforts would be held in confidence and not be relied upon nor referred to by this Arbitrator as "evidence" in the arbitration or the award. See Township of Aberdeen v. Patrolmen's Benevolent Association, Local 163, Superior Court of New Jersey, Appellate Division A-4553-94T2 (approved, but not published, as of this date).

7. Joint Exhibits are referenced herein as (J- ); Borough Exhibits are referenced herein as (B- ); and the PBA Exhibits are referenced herein as (A- ). The hearings were also transcribed and references to the transcripts will be designated by T(date)page:line.

8. The parties were requested to send their briefs no later than September 15, 1997.

1. The interests and welfare of the public. Among the items the arbitrator...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.).<sup>9</sup>
2. Comparison of the wages, salaries, hours and conditions of employment of the employees involved in the arbitration proceedings with the wage, hours, and conditions of employment of other employees performing the same or similar service 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-16.1); 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, salaries, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits and all other economic benefits received.
4. Stipulation of the parties.
5. The lawful authority of the employer. Among the items the arbitrator...shall assess when considering this factor are the limitations imposed upon the employer by P.L. 1976, c.68 (C.40A:4-45.1 et seq.).
6. The financial impact on the governing unit, its residents and taxpayers. When considering this factor in a dispute in which the public employer is a county or a municipality, the arbitrator...shall take into account, to the extent the 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

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9. Also referenced as the "New Jersey Cap Law", addressed in detail below.

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 opportunity and stability of employment including seniority factors not confined to the foregoing which are ordinarily or traditionally considered in the determination of wages, hours and conditions of employment through collective bargaining between the parties in the public service and in private employment."

Notably, this statutory provision further instructs that this Arbitrator:

Shall decide the dispute based on a reasonable determination of the issues, giving due weight to [the above listed factors]...and...indicate which of the factors are deemed relevant, satisfactorily explain why other are not relevant, and provide an analysis of evidence on each relevant factor. See Id.

The statutory criteria and implementing laws additionally requires the Interest Arbitrator to "separately determine whether the total net annual economic changes for each year of the agreement are reasonable under the eight statutory criteria set forth under [N.J.S.A. 34:13A-16g]." Id.

## **FINAL OFFERS OF THE PARTIES**

### **PBA FINAL OFFER**

1. Salary increase in 1995 (all steps across the board): \$2,500. *Note:* Long Beach Township received a \$2,193 salary increase in 1995.
2. Salary increase in 1996 (all steps across the board): \$2,600 *Note:* Long Beach Township received a \$2,302 salary increase in 1996.
3. Salary increase in 1997 (all steps across the board): \$2,500.
4. Update the Borough's disability insurance plan to mirror the benefits provided by the New Jersey State Disability Plan. The PBA proposes the Following clause:

The Borough agrees to provide police officers covered by this agreement with disability insurance equal to or greater than those benefits provided by the New Jersey State Disability Plan.
5. Increase uniform allowance \$100 per year for each of the years 1995, 1996 and 1997.
6. Increase vacation days by one (1) day.
7. Increase sick days by two (2) days. *Note:* Surf City currently receives ten (10) sick days, which is the lowest in the county. The county average is fifteen (15) sick days per year.
8. Increase holidays by one (1) day.
9. Presently, an officer, his spouse and his family are provided with health benefits after retirement or death, providing the officer has twenty-five (25) years of service within Surf City. Increase the coverage to extend to an officer, his spouse and family, if they retire or are disabled, regardless of their number of years of service within Surf City. Also insure that this health benefit will be portable from state to state.
10. Implement an eyeglass plan similar to the plan being provided to the Long Beach Island PBA. The PBA proposes the Following clause:

The Borough agrees to provide an optical plan which provides coverage for at least 80% of the cost of all eye examination and the cost of eyeglasses or contact lenses.
11. Allow each officer to receive one week of vacation during the summer months.
12. All other contract clauses remain the same.
13. Memorialize the existing practice of including sergeants in the recognition clause in the contract.

### **PBA Exhibits**

PBA-A	Exhibits referencing strong U.S. economy
PBA-B	Exhibits referencing strong N.J. economy
PBA-C	Exhibits referencing strong South Jersey economy
PBA-D	Exhibits referencing strengths of Surf City economy
PBA-E	Exhibits referencing tax rate drops in Surf City
PBA-F	Comparisons with School Funds
PBA-G	Articles highlighting police work/stress/responsibilities
PBA-H	Letter article re: police dispatching agreement
PBA-I	1994-1995 CBA Harvey Cedars Police 1994-1996 CBA Long Beach Twp. Police 1993-1995 CBA Ship Bottom Police 1995-1997 CBA Beach Haven Police
PBA-J	PBA Proposals
PBA-K	(1) K&K Chart Salary + Longevity LBI top step after 10 years (2) K&K Chart Salary = Longevity: all of Ocean
PBA-L	K&K Chart Sick days
PBA-M	K&K Chart Holidays
PBA-N	Summary Data from Dec. 1996 CPI News Release
PBA-O	K&K Chart Borough Employee Salary Increases
PBA-P	Comparison of Top[ Step Officers - Surf City and Nearby Manchester Twp (1994)
PBA-Q	K&K Chart - 1996 Tax Bill Comparison LBI Municipalities
PBA-R	K&K Charts marking comparisons between Surf City and other LBI Municipalities based on Borough proposal
PBA-S	K&K Roster and Cost Analysis using Borough Proposal
PBA-T	More Articles re: strength of economy
PBA-U	Contract with Southern Regional Education Assoc.
PBA-V	Bond Prospectus
PBA-W	Surf City Budget Comparison
PBA-X	Population and Development Trends in Ocean County
PBA-Y	Benefit Comparison
PBA-Z	(1) Chart County Top Patrolman (2) Vacation Comparison

## **BOROUGH FINAL OFFER**<sup>10</sup>

1. ARTICLE II - Successor Agreement and Management Rights.
2. ARTICLE III - Grievance Procedure - Section A(4). Time to Raise Grievance.
3. ARTICLE III - Grievance Procedure - Section E. Reprisals.
4. ARTICLE IV - Work Schedule - Section C2. Daily Work Hours - Work Shift.
5. ARTICLE V - Call Time and Overtime - Section D. Overtime Distribution.
6. ARTICLE VI - Rights of Patrolmen - Section A. Professional Advantage.
7. ARTICLE VI - Rights of Patrolmen - Section E. File Disciplinary Materials.
8. ARTICLE VI - Rights of Patrolmen - Section F. Past Practices
9. ARTICLE VI - Rights of Patrolmen - Section I. Shift Changes
10. ARTICLE VI - Rights of Patrolmen - Section J. Call In
11. ARTICLE VII - Stand-By and Rate of Pay.
12. ARTICLE VIII - PBA proposal to increase vacation days by one day.
13. ARTICLE IX - Compensation - Section A. Increases in Base Salary for 1995, 1996 & 1997.
14. ARTICLE IX - Compensation - Section C. Longevity for New Hires After January 1, 1997.
15. ARTICLE X - Leaves and Holidays - Section B1. Holidays - Illegal "Me Too" Clause
16. ARTICLE X - Leaves and Holidays - Section B2. Compensatory Time -  
Option by Employee or Employer
17. ARTICLE X - Leaves and Holidays - Section C1. Number of Sick Days
18. ARTICLE X - Leaves and Holidays - Section C2. Notification/Verification of Sick Leave
19. ARTICLE X - Leaves and Holidays - Section D1. Personal Leave -  
Entitlement for First Year of Employment and Time to Request Leave.
20. ARTICLE XI - Health Care - PBA proposal for Disability Coverage equal to State  
Coverage.
21. ARTICLE XI - Health Care - Section C. Prescription Co-Pay
22. ARTICLE XI - Health Care - Section D. Optical
23. ARTICLE XI - Health Care - Section E. Change of Insurance Plans and/or Carriers
24. ARTICLE XIII - College Reimbursement - Degree Program and Reimbursement.  
Based on Grade Achievement
25. ARTICLE XIV - Uniform and Equipment. Increase of Uniform Allowance
26. ARTICLE XV - Miscellaneous - Section E. PBA proposal to have health insurance  
coverage extended into retirement without the current 25 year service requirement.
27. ARTICLE XVI - Maintenance of Operations.
28. ARTICLE XVII - Separability and Savings (See ARTICLE VI, Section F2).
29. ARTICLE XVIII - Fully Bargained Provisions.

The Borough also asserted that, because the PBA offered no argument or evidence opposing most of the Borough's proposals during the hearing, the Borough's proposals are unopposed and should be granted.

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10. The Final Offer of the Borough was stated through written amendments to specific contract provisions and referenced herein as Borough Proposals on "List of Open Issues".



### **Borough Exhibits**

- B-1 Map of Long Beach Island
- B-2 List of LBI Municipalities with Police Departments
- B-3 Outline of Area, Population and Density LBI
- B-4 Crime Rate - for 1994 by Municipality of LBI
- B-5 Letter to Mayor Connors from Mun. Judge Paul Carr dated 3/14/96 re: Surf City Municipal Court - slow down in law enforcement
- B-6 1995-1996 N.J. Municipal Data Book Municipality Comparisons
- B-7 Borough Proposals for Surf City CBA
- B-8 CBA between Beach Haven and its police force (1995-1997)
- B-9 N.J. Employer Employee Relations Act (as amended Jan. 1996)
- B-10 CFI comparisons 1995-1997
- B-11 Graph of salary percentage increases for various municipalities in recent interest arbitration awards
- B-12 Comparison of Uniform allowances among LBI municipalities that have police departments.

#### **Also submitted by the Borough:**

- 1995 Report of Audit
- 1996 Annual Financial Statement
- 1995 Budget
- 1996 Budget
- 1997 Budget
- Report of Audit for the Year 1996.

## **POSITIONS OF THE PARTIES**

### **Article II**

#### **Successor Agreement (Management Rights Clause)**

The Borough proposed to amend this Article by deleting the successor clause and adding the following Management Rights Clause:

A. The Borough hereby retains and reserves unto itself, without limitation, all powers, rights, authority, duties and responsibilities conferred upon and vested in it prior to the signing of this Agreement by the laws and Constitution of the State of New Jersey and the United States, including, but without limiting the generality of the foregoing, the following rights:

1. The executive management and administrative control of the Borough government and its properties and facilities and the activities of its employees;
2. To hire all employees and, subject to the provisions of law, to determine their qualifications and conditions for continued employment, or assignment, and to promote and transfer employees;
3. To suspend, demote, discharge or take other disciplinary action for cause.

B. The exercise of the foregoing powers, rights, authority, duties or responsibilities of the Borough, the adoption of policies, rules, regulations and practices and the furtherance thereof, and the use of judgment and discretion in connection therewith, shall be limited only by the specific and express terms of this Agreement and then only to the extent such specific and express terms hereof are in conformance with the Constitution and Laws of the State of New Jersey and the United States, and the ordinances of the Borough of Surf City.

C. Nothing contained herein shall be construed to deny or restrict the Borough of its rights, responsibilities and authority under R.S. 40 and R.S. 11, or any other national, state, county or local laws or ordinances.

The Borough submitted that, in terms of comparability (which is one of the statutory criteria that will be discussed below), Long Beach, Ship Bottom and Beach Haven and Long Beach Island include similar management right clauses in their Collective Bargaining Agreements (CBA).<sup>11</sup>

The PBA took issue with this proposed amendment on the grounds that it was one of many attempts by the Borough to limit the rights and benefits which its members currently receive. According to the PBA, such an increase in management rights would "destroy the discretion and individual judgement of officers within Surf City." In this regard, the PBA added that, as the police department does not currently have a chief of police, the amendment would permit the Borough too much opportunity to rule the department "with an iron hand".

Article III  
Grievance Procedure  
(Limitations Period and Reprisal Language)

The Borough sought amendments to this Article to provide for "a time certain for raising grievances" (under subsection A.4.) and remove the "reprisal language" (found under subsection E)

With respect to the limitations period for filing grievances, the Borough again turned to "comparability" concerns, stressing that at least three (3) other PBA contracts on Long Beach Island contain a time restriction for raising a grievance.<sup>12</sup> The Borough cited Long Beach (with a thirty (30) day limit), Ship Bottom (with a thirty (30) day limit), and Beach Haven (with a ten (10) day limit). Notably, the current Surf City Agreement is less stringent, as it permits a grievance to be presented "within thirty (30) days after the grievant would reasonably be expected to know of its occurrence." According to the Borough, the present clause is ambiguous and leads to uncertainty.

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11. The Borough offered testimonial and documentary evidence in support of this claim. (See T (Feb 13, 1997) 105:9 - 106:6 and Exhibits B-4, B-5 & B-6.)

12. See B-7, B-8 and B-9.

With respect to Section E of this Article, which pertains to "grievance reprisals", the Borough sought complete deletion of the provision. In this regard, the Borough maintained that the present reprisal language is unnecessary since such conduct is covered in depth and prohibited, as an unfair labor practice, under the New Jersey Employee-Employer Relations Act (N.J.S.A. 34:13A5.4a).<sup>13</sup>

Responding to the Borough's request to amend the grievance procedure, the PBA took the position that the present language of the Article "is fine as it is and does not require even less opportunity for the very few employees who work within Surf City to air their grievances."

Article IV  
Work Schedule  
(Section C.2.)

The Borough has proposed to amend this provision by deleting the last line of Section C.2., which presently states that "[a]ny involuntary change [in the work shift] shall be subject to the provisions of Article III [Grievance Procedure] of this Agreement" and adding the following language to the beginning of the paragraph:

Provided that there is no significant interference with a governmental policy decision, each work shift shall consist of eight (8) hours of work, depending on the work shift election chosen pursuant to Article VI, paragraph A(1),....

According to the Borough, the present language of Article IV(C)(2), in effect, prohibits the Borough from transferring an employee from one shift to another without the employees approval and, as such, is violative of the New Jersey Supreme Court's decision in Ridgefield Park Ed. Assn. v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (1978). According to the Board, in that case, the New Jersey Supreme Court found that a contract provision requiring a public employer to arbitrate transfer decisions was unenforceable.

The PBA took the position that the proposed amendment would lead to unfair and drastic alterations in the officers' work schedules and further reduce morale within the department.

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13. See T(Feb. 13, 1997)109:5-20.

Article V  
Call Time and Overtime  
(Section D)

The Borough has sought to amend the first two paragraphs of this provision as follows:

It is the desire of the parties that overtime be distributed as equitably as possible with the first consideration being meeting the manpower needs of the Borough. The Borough therefore will first seek volunteers for overtime. However, in the event of an emergency and/or if no volunteer is available, the Borough may require an officer to work overtime. Therefore, all officers are expected and may be required to work overtime.

In the event the need for overtime occurs, due to an unanticipated absence of an employee on an immediately following shift, the Borough may first offer the overtime opportunity to those officers then working by holding over for all or a portion of an additional shift.

The Borough maintained that the amendment simply removes surplus language while making it clear that employees may be required to work overtime. According to the Borough, the proposed changes are reasonable, consistent with industrial jurisprudence, arbitration case law and practice.

The PBA challenged the Borough's position on the grounds that the Employer was essentially asking for "forced" overtime and the authority to persecute PBA members with frequent overtime assignments.

Article VI  
Rights of Patrolmen  
(Sections A, E, F, I and J)

The Borough sought several amendments to this Article.

Under Subsection A, the Borough proposed that the first sentence of the clause be deleted and replaced with the following language: "No patrolmen shall be disciplined without cause." The amendment would delete the requirement of "just cause" and eliminate the right to contest the Employer's action that "den[ys] any professional advantage" to patrolmen. According to the Borough, this particular provision adds nothing to the Agreement and is more appropriately found in a teacher agreement.

The Borough also sought to eliminate Subsection E of this Article, which now provides for removing disciplinary action materials from a patrolman's folder after three years. The Borough asserted that, by maintaining the file as a complete record, the trier of fact full had discretion to weigh and consider all prior discipline.

The Borough additionally proposed that Section F of this Article be replaced with the following language:

"Except as otherwise provided in this Agreement, the failure to enforce any provision of this Agreement shall not be deemed as a waiver thereof."

This proposal would limit the language solely to a no-waiver clause; eliminate the savings clause (which the Borough also proposed to move to a new "Article XVIII"; and delete the past practice clause in its entirety. The Borough claimed that the present contract language is conflicting, nonspecific, ambiguous and unnecessary.

The Borough also sought to delete the current clause under Section I of this Article and replace it with the following:

"Officers may change shifts with fellow officers so long as the change is requested and approved by the ranking officer in writing at least twenty-four (24) hours in advance, coverage is maintained, and no officer will work a double shift as a result of the change."

The proposed language of the Borough requires prior approval for shift changes as opposed to advance written notification by the police officer. According to the Borough, the requirement for Employer approval would give the Borough the ability to maintain a full compliment of police officers with special skills (such as officers certified as EMTs or with breathalyser training).

The final change to Article VI sought by the Borough was an amendment to Subsection J to read:

"Qualified breathalyser operators shall be used on a rotating basis."

The Borough submitted that the present language of Section J inappropriately infringes on the employer's ability to call in administrative officers to administer a breathalyser prior to patrol officers and sergeants being called in.

According to the Borough, its proposals to amend or delete Article VI, Sections A, E, F, I and J were reasonable and not successfully challenged by the PBA. Admittedly, the PBA did not address these proposals directly, although in its general arguments the PBA opposed the additional contract changes and admonished the Borough's attempts for increased employer rights in managing the police department.

#### Article VII Stand-By and Rate of Pay

The Borough has taken the position that the current Agreement provides an absurd level of compensation for "standby time" and seeks to change the rate for standby pay from two-thirds ( $2/3$ ) of normal salary to one third ( $1/3$ ) of the employee's normal rate of pay. In this regard, the Borough submitted that, with the use of beepers, police officers are no longer required to remain at home while on standby. The PBA, however, maintained that the reduced rate had no justification since officers were still restricted from enjoying their off duty hours and constrained from travel. Additionally, the PBA proposed that, if the Borough's position were granted, the Employer would use its authority as a means of punishment and discrimination within the department.

#### Article VIII Vacation

The Borough sought to maintain the current terms of this provision while the PBA sought to increase the vacation entitlement by one (1) day and permit officers to receive one week of vacation during the summer months.

The Borough argued that there was no justification for an across the board vacation increase and, while other municipalities have different methods for accumulating vacation time, the municipal contracts on Long Beach Island are relatively comparable to Surf City. Turning its focus to the request for summer vacations, the Borough emphasized that both Ship Bottom and Beach Haven preclude officers from taking vacations during the summer months, and that other municipalities place

severe restrictions on vacation time use during the summer months.<sup>14</sup> According to the Borough, police officers in these seashore municipalities should have no expectation of vacation use in the busy summer months.

Article IX  
Compensation  
(Section A - Salary Increases)

The Parties proposed the following annual wage increases for all officers under the Agreement:

	<u>Borough Proposal</u>	<u>PBA Proposal</u>
1995	3.5%	\$2,500.00
1996	3.5%	\$2,600.00
1997	3.5%	\$2,500.00

The Borough characterized its proposal as "reasonable" and "generous" and alternatively labeled the PBA proposal as "unrealistic and inconsistent with current PERC awards". The Borough advanced its arguments by converting the PBA proposal into percentage points and calculating salary increases for officers based upon step advancements together with the respective party proposals for annual increases.<sup>15</sup>

The Borough also drew comparisons with the current CPI, private sector wage increases and Interest Arbitration awards, arguing that, in light of these figures, its own proposal proves to be generous and in closer proximity to the statutory criteria. The Borough further submitted that, when coupled with other economic changes in its proposal, its proposed wage increases actually provides for a total economic increase in excess of four and one-half (4.5%) per cent.

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14. In this regard, the Borough referenced exhibits B-10 and B-11.

15. The cost-analysis will be addressed within the Opinion.



Upon drawing its own comparisons, the PBA demonstrated that the salaries of Surf City officers fall well below the average salary of their peers on Long Beach Island and in Ocean County. The PBA further demonstrated that this trend would continue, although with somewhat less disparity, even if its own proposal were adopted.

Article IX  
Compensation  
(New Section "C" - Reduced Longevity Benefit for New Officers)

The Borough proposed to amend the longevity provision by adding the following provision for new officers (hired after January 1, 1997):

"Employees hired on or after January 1, 1997 shall not be eligible for longevity pay."

According to the Borough, the concept of longevity increases has become unnecessary since salary guides grant annual increases to police officers.<sup>16</sup>

The PBA did not address these proposals directly. Its general arguments, however, the PBA opposed changes to the longevity clause.

Article X  
Leaves and Holidays  
(Holiday Provisions B-1 and B-2)

The Borough sought two changes under this provision. Initially, the Employer argued that Section B.1 should be amended to read:

"There will be thirteen (13) predetermined holidays for the employees covered under this Agreement."

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16. See T(Feb. 13) 123:9 - 124:12.

According to the Borough, the current language of Article X (B)(1) constitutes an illegal parity clause which is unenforceable under the Act. The present language provides, that "in the event there is an enlargement of the number of holidays for other employees of the Borough of Surf City, such enlargement of holidays will likewise benefit the employees of [the] PBA". According to the Borough, this type of parity (or "me too" clause) was held to be an illegal subject of negotiations by PERC in the matter City of Plainfield, 4 NJPER 255, ¶4130 (1978).

The Borough secondly proposed to amend Article X, Section B.2 to provide that Patrolmen working on a holiday to receive compensatory time or cash at the discretion of the Borough. The current language does not give the Borough the flexibility to compensate an employee in cash and, according to the Borough, permits the pyramiding of compensatory time.

Moreover, it was the PBA's proposal to increase the holiday entitlement by one (1) day, bringing Surf City officers up to par with their peers in the other Long Beach Island municipalities. In this connection, the PBA noted that police officers in Beach Haven, Long Beach Township and Ship Bottom are entitled to fourteen (14) holidays per year, whereas only Surf City and Harvey Cedars receive only thirteen (13) holidays per year. The PBA did not specifically address the Borough proposals regarding sections B.1 and B.2, but generally opposed the Borough in amending the vacation entitlements.

Article X  
Leaves and Holidays  
(Sick Leave - Section C)

Arguments were raised under both Section C.1 (number of sick days) and Section C.2 (leave notification provisions). Both parties agreed to increase the sick leave benefit from ten (10) to twelve (12) days per year. However, there was a distinction as to the method by which the additional sick days would accrue. The Borough sought to amend Article X, Section C.1 to increase the sick leave accrual to one (1) day per month for a maximum of twelve (12) days per year by replacing Section C.1 with the following language:

“Each employee covered by this Agreement shall be entitled to sick leave with pay. During the employees first year of employment, he will be granted one (1) day for each month of completed service. From the beginning of an employee's second year of employment, he will be granted twelve (12) days per year thereafter.”

The Borough argued its proposal was generous and maintained that the two (2) additional sick days (on an annual basis) were worth approximately three-quarters of one (0.75%) percent in calculating the cost of its proposal. The Borough further claimed, in terms of comparability, that its proposal grants PBA members with a total number of sick days similar to officers in other municipalities.

The PBA sought to increase the sick leave benefit from ten to twelve days per year, without further conditions. Upon advancing this position, the PBA noted that, with this increase, Surf City officers would be entitled to as many sick days as their peer officers in Ship Bottom, but would still have three less sick days than their peers in other Long Beach Island municipalities.

With respect to the notification provisions for sick leave, the Borough proposed to amend Article X, Section C2 as follows:

“Notification

- a. If an employee is absent for illness or accident, he shall notify his supervisor no later than one (1) hour prior to his usual reporting time.
- b. Failure to notify his supervisor may be cause for denial or abuse of sick leave for that absence and constitute cause for disciplinary action.
- c. Any time after an employee has been absent for a period longer than three (3) consecutive days or an aggregate of ten (10) days in a year, the Police Director may request a medical doctors certification regarding the employee's illness, including a statement that the employee is capable to return to work as well as the nature of the illness or injury which caused the absence from work. However, the Police Director may require a medical certification in connection with any illness when it appears reasonable under the circumstances.
- d. Abuse of sick leave will subject an employee to disciplinary action.”

The Borough also argued that its amendment would memorialize PERC decisions which confirm that a public employer has a managerial right to implement reasonable measures to verify employee illness or disability. The PBA did not address the Borough proposal directly. Its general arguments concerning the lack of evidence to support additional changes to the Agreement and its admonitions against increased Borough powers would therefore apply.

Article X  
Leaves and Holidays  
Personal Leave - Section D

The current Agreement provides that all police officers shall be entitled to four (4) personal leave days per year. The Borough seeks to delay accrual of that benefit with the following language change:

“All full-time police officers shall be entitled to four (4) personal leave days accumulative per annum as follows:

After three (3) months service:	1 day
After six (6) months service:	2 days
After nine (9) months service:	3 days
After twelve (12) month service:	4 days
Four (4) days per annum thereafter”	

According to the Borough, the proposal has no detrimental effect on any present employee and should be adopted. The PBA did not directly address the Borough proposal on this point.

Article XI  
Health Care

The parties debated a number of issues regarding Health Care provisions within the Agreement. The parties specifically addressed issues relating to disability coverage, prescription co-pay, optical coverage, and the Borough's right to change insurance plans/carriers.

With respect to Disability Coverage, the PBA requested that the disability coverage provided by the Borough be required to be "equal to or greater than the benefits provided by the State of New Jersey Disability Plan". The Borough took issue with the proposal and sought, instead, to implement (effective July 1, 1997) a policy whereby disability coverage would simply "be improved to be similar to that provided under the New Jersey State Disability Plan".

The Borough also proposed the following amendment to Article XI, Section C, as an incentive for employees to purchase generic prescriptions:

"The parties further agree that the police officers covered by this Agreement shall also be privy to and covered by a prescription plan to be obtained by the Borough which shall be a \$3.00/\$6.00 co-pay plan. This means that the employee shall pay only \$3.00 towards any generic prescription and \$6.00 towards any other prescription obtained by him or his family under this plan following the execution of this Agreement. However, nothing in said plan shall require the employee or his family to obtain generic prescriptions."

As for optical coverage (Article XI, Section D), the Borough proposed to increase the present seventy-five dollar (\$75.00) limitation to one hundred dollars (\$100.00) which could be applied in whole or in part to either the examination or purchase of eyeglasses, effective January 1, 1997. The PBA alternatively sought the implementation of an eyeglass plan which would provide coverage for eighty (80%) percent of the cost for eye examinations and eyeglasses or contact lenses. (Exhibit 3)

Finally, the Borough proposed that a new Section "E" be added to Article XI in which the Borough would expressly retain the right to change insurance plans and/or carriers so long as substantially similar benefits are supplied. (emphasis added for distinction). The Borough requested that the following language be added as Section E:

"The Borough reserves the right to change insurance plans and/or carriers so long as in the aggregate substantially similar benefits are provided."

The PBA asserted that awarding this proposal would "sound the death knell for the health benefits provisions currently received by members within Surf City". Again, the PBA voiced its concern that the Borough would abuse its discretion and compound existing problems with departmental morale.

Article XIII  
College Reimbursement

The Borough sought to limit college reimbursement by conditioning payments on an officer's grades and matriculation in a degree program. The Borough requested amendment with the following language reflecting the intended change:

"The Borough of Surf City will pay the college tuition for police officers matriculated in a degree program in police science or criminal justice. Prior approval by the Director of Police and/or the Police Committee shall be required. Tuition will be reimbursed following successful completion of the course on the following basis:

For a grade of A-, A or A+	=	100% reimbursement
For a grade of B-, B or B+	=	95% reimbursement
For a grade of C-, C or C+	=	75% reimbursement
For a grade below C-	=	0% reimbursement"

Article XIV  
Uniforms and Equipment

The parties agreed that an increase in uniform allowance was due, but could not agree upon a dollar figure. The Borough<sup>17</sup> proposed to increase uniform allowance in 1997 by one hundred dollars (\$100.00) to a total of thirteen hundred dollars (\$1,300.00) per year (at a cost of approximately one-quarter of one (0.25%) percent. The PBA alternatively sought an increase in uniform allowance by one hundred dollars (\$100.00) per year in contract year (1995, 1996 and 1997).

The Borough characterized the PBA demand as outrageous, adding that the Borough currently provides the highest uniform allowance of all police units on Long Beach Island.

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17. During the hearing, the Borough showed that the uniform allowance increased by fifty dollars (\$50.00) in each of the last two (2) years of the current Agreement.

Article XV  
Miscellaneous  
(Section E)

This section presently provides that "after 25 years of employment with the Borough of Surf City and Retirement into the retirement plan, the Borough shall continue to pay medical benefits as per the present practice". The PBA submitted that this provision be amended to extend continued medical benefit to retirees regardless of the officer's number of years of service to Surf City.

The Borough disputed the proposal as unreasonable, costly, and inconsistent with the purpose of the benefit, which is to reward officers who provide long term service to the Borough. The PBA alternatively argued that the proposal was fair and designed to additionally insure that the health benefit would be portable from state to state.

Article XVII  
Maintenance of Operations

The Borough proposed that the following Article, entitled "Maintenance of operations" be added to the Agreement.

"A. The Association covenants and agrees that during the term of this Agreement neither the Association nor any person acting in its behalf will cause, authorize or support, nor will any of its members take part in any strike (i.e., the concerted failure to report for duty, or concerted willful absence of a police patrolman from his duties or employment), work stoppage, slowdown, walkout or other job action against the Borough. The Association agrees that such action would constitute a material breach of this Agreement.

B. In the event of a strike, slowdown, walkout or job action, it is covenanted and agreed that participation in any such activity by any Association member shall be deemed grounds for disciplinary action including the possible termination from employment of such employee or employees.

C. Nothing contained in this Agreement shall be construed to limit or restrict the Borough in its right to seek and obtain such judicial relief as it may be entitled to have in law or in equity for injunction or damages, or both, in the event of such breach by the Association or its members."

According to the Borough, the proposed language is a clear statement of existing case law and commonly found in many uniformed collective bargaining agreements. The PBA did not address the Borough proposal on point B.2 directly, relying on its general arguments concerning the lack of evidence to support additional changes to the Agreement and its admonitions against increased Borough powers.

#### Article XVIII Separability and Savings

The Agreement presently contains a savings clause in Article VI, Section F.2. The Borough has proposed that, for purposes of clarification, the clause be moved to its own section and be amended to read as follows:

“If any provision of this Agreement or any application of this Agreement to any employee or group of employees is held invalid by operation of law or by a Court or other tribunal of competent jurisdiction, such provision shall be inoperative but all other provision shall not be affected thereby and shall continue in full force and effect.”

According to the Borough, the proposed contract provision would create a more coherent and comprehensive Separability and Savings clause. The PBA did not address the Borough proposal on this point B.2.

#### Article XIX Fully Bargained Provisions

Finally, the Borough has proposed the addition of a "Fully-Bargained Provisions" clause (commonly referred to as a "Zipper clause") as follows:

“A. This Agreement represents and incorporates the complete and final understanding and settlement by the parties of all bargainable issues which were or could have been the subject of negotiations. During the terms of this Agreement, neither party will be required to negotiate with respect to any such matter whether or not covered by this Agreement, and whether or not within the knowledge or contemplation of either or both of the parties at the time they negotiated or signed this Agreement.

B. This Agreement shall not be modified in whole or in part by the parties except by an instrument in writing and executed by both parties.”



According to the Borough, a "zipper clause" is common to collective bargaining agreements and is a "no-cost" provision. The PBA did not address the Borough proposal on this issue, but submitted general arguments concerning the lack of evidence to support additional changes to the Agreement.

## **COST ANALYSIS OF THE PARTIES POSITIONS**

### **Borough's Proposals**

Based on the currently six (6) Patrolmen in the Borough --- with five (5) Patrolmen at the top step (5th year) of the salary guide and one Patrolman at the second step (2nd full year) of the salary guide<sup>18</sup> -- the Borough's proposed three and five tenths (3.5%) percent across-the-board increase over a three (3) year Agreement (1995, 1996 and 1997) would result in the following costs:

<u>NAME</u>	<u>DATE OF HIRE</u>	<u>1994 BASE SALARY</u>	<u>CURRENT LONGEVITY</u>	<u>TOTAL SALARY</u>
J. CASELLA	2/1/88	\$38,689.	1,547.	\$40,236.
C. SENIOR	6/23/88	\$38,689.	1,547.	\$40,236.
J. MADARA	2/1/89	\$38,689.	774.	\$39,463.
M. GIBERSON	5/22/91	\$38,689.	774.	\$39,463.
M. HANNOLD	5/13/92	\$38,689.	774.	\$39,463.
A. ASTARITA	5/10/95	\$31,147.		\$31,147.
<b><u>1994 TOTALS</u></b>		\$224,592	\$5,416.	\$230,008.
<b>TOTAL BASE SALARY PAID BY THE BOROUGH</b>				\$224,592.
<b>ONE PERCENTAGE POINT IS WORTH APPROXIMATELY</b>				\$2,246.

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18. Two (2) top step patrolmen currently earn four (4%) percent longevity for over nine (9) years of service to the Borough and three (3) patrolmen earn two (2%) percent longevity for over six (6) years of service. Longevity is not calculated as a portion of gross base pay. Article IX, Section B (page 14).

### **EFFECT OF BOROUGH'S PROPOSED 3.5% INCREASE OVER THREE YEARS**

TOTAL 1994 SALARY FOR ALL PATROLMEN	= \$224,592.00
TOTAL 1995 SALARY WITH 3.5% INCREASE	= \$232,453.00
TOTAL 1996 SALARY WITH 3.5% INCREASE	= \$240,588.00
TOTAL 1997 SALARY WITH 3.5% INCREASE	= \$249,009.00
TOTAL SALARY TO BE PAID BY THE BOROUGH OVER THE LIFE OF THE CONTRACT	<b><u>\$722,050.00</u></b>

### **EFFECT OF UNIFORM INCREASE**

TOTAL 1995 SALARY WITH 3.5% INCREASE + BOROUGH'S UNIFORM ALLOWANCE (\$1,200.00 TIMES 6 = \$7,200.00) = \$239,653.00

TOTAL 1996 SALARY WITH 3.5% INCREASE + BOROUGH'S UNIFORM ALLOWANCE (\$1,200.00 TIMES 6 = \$7,200.00) = \$247,788.00

TOTAL 1997 SALARY WITH 3.5% INCREASE + BOROUGH'S PROPOSED UNIFORM INCREASE (\$1,300.00 TIMES 6 = \$7,800.00) = \$256,809.005

VALUE OF THE BOROUGH'S UNIFORM INCREASE PROPOSAL = \$600.00

THE BOROUGH WILL PAY \$22,200.00 FOR UNIFORM ALLOWANCE OVER THE COURSE OF A THREE YEAR CONTRACT WITH THE 1997 UNIFORM INCREASE

TOTAL AMOUNT TO BE PAID BY THE BOROUGH OVER THE LIFE OF THE CONTRACT WITH UNIFORM ALLOWANCE INCREASE = **\$744,250.00**

### **EFFECT OF BOROUGH'S TWO ADDITIONAL SICK DAY PROPOSAL**

2 ADDITIONAL SICK DAYS FOR FIVE PATROLMEN AT THE RATE OF \$148.80 (5TH YR DAILY RATE TIMES 2) = \$1,488.00

2 ADDITIONAL SICK DAYS FOR ONE PATROLMAN AT THE RATE OF \$119.79 (2ND YR RATE TIMES 2) = \$240.00

TOTAL VALUE OF THE SICK DAY INCREASE PER YEAR = \$1,728.006

VALUE OF ADDITIONAL SICK DAYS OVER THE LIFE OF A THREE-YEAR CONTRACT = **\$5,184.00**

TOTAL AMOUNT TO BE PAID BY THE BOROUGH OVER THE LIFE  
OF THE CONTRACT WITH UNIFORM INCREASE AND ADDITIONAL  
SICK DAY PROPOSAL = **\$749,434.00**

According to the Borough, the total value of its Economic Proposal is over 4.5% when the salary, uniform allowance increase and sick day increase is included.<sup>19</sup>

**TOTAL COST OF BOROUGH'S ECONOMIC PROPOSAL**

1995 3.5% INCREASE = \$232,453.00 (\$7,861.00 OVER 1994 SALARY)

1996 3.5% INCREASE = \$240,588.00 (\$8,135.00 OVER 1995 SALARY)

1997 3.5% INCREASE = \$249,009.00 (\$8,421.00 OVER 1996 SALARY)

TOTAL SALARY TO BE PAID BY THE BOROUGH  
OVER THE LIFE OF THE CONTRACT \$722,050.00

3.5% INCREASE OVER THE LIFE OF A THREE-YEAR CONTRACT  
= \$24,417.00 (OR A TOTAL COST approximately 11%)

VALUE OF ADDITIONAL SICK DAYS  
OVER THE LIFE OF A THREE-YEAR CONTRACT= \$5,184.00

3.5% INCREASE + SICK DAY INCREASE = \$29,601.00

VALUE OF UNIFORM ALLOWANCE INCREASE = \$600.00.  
(THE BOROUGH WILL PAY \$22.200 FOR UNIFORM  
ALLOWANCE OVER THE COURSE OF A THREE-YEAR  
CONTRACT WITH THE 1997 UNIFORM INCREASE)

According to the Borough, the total amount to be paid by the Borough over the life of the  
Contract with Uniform increase and addition sick day proposal = **\$749,434.00**

Moreover, a 3.5% increase in wages plus the sick day increase plus the uniform allowance is  
approximately 13.5% over the 1994 salary.

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19. According to the Borough, the proposed uniform allowance increase is worth approximately 0.25%, while the value of the sick leave proposal is approximately 0.75%.

### **PBA's Proposal**

#### **EFFECT OF PBA DEMAND OVER THREE YEARS**

TOTAL 1994 SALARY FOR ALL PATROLMEN =	\$224,592.
TOTAL 1995 SALARY WITH PBA DEMAND =	\$239,592.
TOTAL 1996 SALARY WITH PBA DEMAND =	\$255,192.
TOTAL 1997 SALARY WITH PBA DEMAND =	\$270,192.

TOTAL SALARY TO BE PAID BY THE BOROUGH  
OVER THE LIFE OF THE CONTRACT UNDER THE PBA  
WAGE INCREASE

**\$764,976.00**

According to the PBA, the difference between the Borough proposal and the PBA demand on salary increase over the term of the Agreement would be \$42,926.00.

#### **EFFECT OF PBA PROPOSED UNIFORM INCREASE**

TOTAL 1995 SALARY WITH PBA DEMAND. plus PBA PROPOSED UNIFORM ALLOWANCE (\$1,300.00 TIMES 6 = \$7,800.00) =	<b>\$247,392.00</b>
TOTAL 1996 SALARY WITH PBA DEMAND plus PBA PROPOSED UNIFORM ALLOWANCE (\$1,400.00 TIMES 6 = \$8,400.00) =	<b>\$263,592.00</b>
TOTAL 1997 SALARY WITH PBA DEMAND plus PBA PROPOSED UNIFORM ALLOWANCE (\$1,500.00 TIMES 6 = \$9,000.00) =	<b>\$279,192.00</b>

According to the PBA, the difference between the Borough proposal and PBA demand on Uniform allowance over the term of the Agreement would be \$3,000.00. The Borough will pay \$22,200.00 for uniform allowance over the course of a three-year contract with the 1997 uniform increase. Under the PBA uniform increase the Borough would pay \$25,200.00, a difference of \$3,000.00.

TOTAL AMOUNT TO BE PAID BY THE BOROUGH OVER THE LIFE  
OF THE CONTRACT UNDER THE PBA UNIFORM INCREASE PLAN= **\$790,176.00**

**TOTAL COST OF THE PBA ECONOMIC PROPOSAL**

1995 PBA WAGE INCREASE = \$239,592.00 (\$15,000.00 OVER 1994 SALARY).

1996 PBA WAGE INCREASE = \$255,192.00 (\$15,600.00 OVER 1995 SALARY).

1997 PBA WAGE INCREASE = \$270,192.00 (\$15,000.00 OVER 1996 SALARY).

PBA SALARY DEMAND OVER THE LIFE OF A THREE-YEAR CONTRACT = **\$45,600.00**

TOTAL SALARY TO BE PAID BY THE BOROUGH OVER  
THE LIFE OF THE CONTRACT UNDER THE PBA WAGE INCREASE **\$764,976.00**

VALUE OF ADDITIONAL SICK DAYS OVER  
THE LIFE OF A THREE-YEAR CONTRACT= **\$5,184.00.**

PBA UNIFORM ALLOWANCE DEMANDS  
OVER THE LIFE OF THE CONTRACT = **\$25,200.00**

According to the PBA, the total amount demanded by the PBA over the life of the Agreement with  
uniform increase and sick day proposal = **\$795,360.00.**<sup>20</sup>

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20. There was also an analysis of the shift differential being rolled into base salary:

**HOURLY SALARY:**

CURRENT HOURLY SALARY FOR TOP STEP OFFICER WITHOUT SHIFT DIFFERENTIAL IN BASE SALARY=	\$18.60
HOURLY SALARY WITH SHIFT DIFFERENTIAL IN BASE =	\$19.75
1997 HOURLY SALARY WITH 3.5% INCREASE AND SHIFT DIFFERENTIAL =	\$21.77

**OVERTIME SALARY**

CURRENT OVERTIME SALARY FOR TOP STEP OFFICER WITHOUT SHIFT DIFFERENTIAL IN BASE SALARY =	\$27.90
OVERTIME SALARY WITH SHIFT DIFFERENTIAL IN BASE =	\$29.63
1997 OVERTIME SALARY WITH 3.5% INCREASE AND SHIFT DIFFERENTIAL =	\$32.65

The foregoing shows that the Borough's proposal to roll the shift differential into the base salary will provide a significant increase in compensation for most Borough Patrolmen. It is important to note that all six patrolmen received the shift differential in 1996.

## OPINION

With the positions of the parties analyzed above, this Arbitrator must turn to address those positions pursuant to the requirements of the "Statutory Criteria". As mandated by the inherent responsibilities of the controlling Act, this Arbitrator is mandated to reach decision based on a reasonable determination of the issues, giving due weight to the statutory criteria which are judged relevant. As such, each criterion must be considered and those deemed relevant must be discussed. Similarly, those criterion deemed not to be relevant to the decision herein must also be addressed.

In this regard, the parties provided a record of pertinent evidence and, in this Arbitrator's opinion, met their obligations imposed in Fox v. Morris County Policemen's Association, PBA 151, 266 N.J. Super. 501, 517 (App.Div.1993), cert. denied, 137 N.J. 311 (1994).

It is important to note that, while the parties stipulated to a three-year contract, this Arbitrator could have confidently ventured beyond that limitation for the obvious reason --- the instant Interest Arbitration Award covers an effective period which concludes within one month of issuance. An extended Agreement would have had the potential of permitting the parties to "adjust" to the terms and conditions of the imposed award prior to turning to renegotiate its provisions. Time would also have allowed both parties with the opportunity to reset their post-arbitration relationship. As it is, the parties may be resuming a posture of negotiation before testing the intended benefits of the 1995-1997 Agreement. That belief was not absent from this Arbitrator's considerations.

Having considered the exhibits offered in the context of the relevant statutory criteria, this Arbitrator has determined that, effective January 1, 1995, the base salary of each bargaining unit member should be increased by four and one-half (4.5%) percent and, effective January 1, 1996, the base salary of each bargaining unit member should be modified by an additional increase of four and one-half (4.5%) percent and, effective January 1, 1997, the base salary of each bargaining unit member should be modified an additional increase of four and one-half (4.5%) percent.

Likewise, the Borough's request to add a Management Rights clause to Article II should be granted since it is reasonable in terms of comparability with other Agreements on Long Beach Island contain similar clauses. However, the request for deletion of a Successor Clause is denied.

Moreover, the Borough's proposal to set time limits for raising a grievance in Article III, Sections A.4. and to amend the procedures under Section C find no compelling reasoning and should be denied. Likewise, the Borough's proposal to remove the "Reprisal" language in Article III, Section E should not be adopted, since no compelling reasoning is pronounced.

The Borough's proposal to amend Article IV, Section C.2 should be denied since there is no indication that the present language impermissibly infringes on the Borough's right to determine how its employees should be assigned. The proposal to remove language which allows the employee to grieve changes pertaining to shift assignments should also be denied.

The Borough's proposal to clarify the language in Article V, Section D to require employees to work overtime appears consistent with certain arbitration decisions. While the present language appears to fulfill the overtime needs, the proposed language appears to establish greater constraints on the bargaining unit. Considering the modest size of the police force, the present contract language appears to provide the reasonable balance for the Borough to require officers to work overtime. Therefore, the Borough's proposal to amend Article V, Section D should be denied.

The language proposal in Article VI, Section A, regarding the deletion of reference to "professional advantage" is not necessary. Moreover, citing "cause" rather than "just cause" does not appear compelling. The Borough's proposal for a transformation of contract language in Article VI, Section A should be denied.

The Borough's proposal to remove Article VI, Section E is a matter which is better suited to determination of the parties. Disciplinary materials within a personnel folder have both positive and negative implications for both the Department and the individual officer. Thus, while the proposal appears reasonable on its face (mandating that all personnel material, favorable and unfavorable, remain a part of the employee's file), the incentive for an officer to clear a reprimand or disciplinary action from their file mandates the Borough's proposal to be redirected to the negotiation forum. Removal of Article VI, Section E should not be adopted.

However, the Borough is correct in seeking to rearticulate portions of Article VI, Section F and, when considering the number of clauses which are in conflict, the Borough's proposal to delete or modify the clauses should be adopted. In that same respect, the Borough's proposal to move the Savings Clause to Article XVII, with amendments, should be adopted.

The Borough's proposal to amend Article VI, Section I referring to the requirement for approval of a superior officer prior to shift changes is reasonable in light of the limited police force and the necessity of close supervision in determining manning and coverage needs. Thus the amended language should be adopted.

The Borough's proposal to modify Article VI, Section J and eliminate the current limitation on the Borough's ability to call-in qualified breathalyser operators, as needed, is reasonable. As such, the Borough's request to amend the language in Section J should be granted.

The Borough's proposal to reduce compensation for stand-by time as outlined in Article VII should be denied. Again, this is a matter for negotiation since, under the present circumstances, the Borough is merely seeking to reduce the compensation rate for officers on standby.

The Borough's proposal to amend Article IX, Section C and to eliminate longevity for new hires should be denied. Likewise, the Borough's proposal to remove the language in Article X, Section B.1 and B.2 should be denied. While seeking to eliminate previously negotiated benefits for future hires and gain greater control over the scheduling of holidays and the means of limiting compensation for officers working the holiday, these are economic issues having a cost-benefit factor.

One reasonable means of attaining cost containment is by "staging" the entitlement in steps. In this respect, the Borough's proposal to change Article X, Section D.1, which permits new employees to earn and accumulate the "Personal Leave" benefits that current employees enjoy, is reasonable and should be adopted.

Both parties proposed an increase in sick days within Article X, Section C.1 and, accordingly, the number of permissible sick days should be increased by two (2) days. In comparison with the number of sick day entitlement within the County, the PBA will be more in line with the average of fifteen (15) sick



days per year. However, the Borough's proposal to condition the entitlement for new hires in earning additional sick days should be adopted. The Borough's proposals in Section C.2 for notification and sick leave verification clauses are reasonable and granting the employers' right to a verification for use of sick leave time should be adopted. However, in Section C.2.c, the proposal should be further modified to reflect "an aggregate of twelve (12) days in a year"<sup>21</sup>, which reflects the permissible number of sick days under the amended Section C.1.

Few contemporary interest arbitration awards are void of reference to health care benefits. This Award is no different, as evidenced by the Borough's proposal to amend Article XI, Section A and provide a modification to the present benefits. In the first change, a disability benefit plan "similar" to those provided in the state disability plan should be permitted. The Borough's request to modify Article XI, Section C, by increasing the co-pay for name brand drugs as an incentive for employees to purchase generic drugs is reasonable and should be adopted. The proposal is a no-cost item to most recipients of the benefit and will reduce costs for the employer. Moreover, the three dollar (\$3.00), six dollar (\$6.00) co-pay proviso is the same co-pay provided in the State Health Benefits Program. Under Section D, the Borough's proposal to increase the optical coverage and remove the restrictions of the current plan is reasonable and should be adopted.

Finally, the Borough should be allowed to change medical insurance carriers under the proposal of Article XI, Section E, on the condition that the Borough and new carrier provide "substantially equivalent" benefits (as opposed to the Borough's proposed "substantially similar" benefits) to the bargaining unit. The Borough's proposal should be adopted in the form of modification directed by this Award.

The Borough's proposal to amend Article XIII is philosophically sound in that the college reimbursement should be based on efforts greater than attendance and passing a course.<sup>22</sup> However, to the

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21. As opposed to the 10 stated in the Employer's proposal.

22. The objective to reimburse employees based on performance in relevant course work benefits both the officers and the Borough.

extent that a full-time police officer on Long Beach Island does not necessarily have access to a matriculated science/criminal justice degree program, the additional commitment may be impossible to achieve. While this proposal has a basis for future implementation, an objective determination of the opportunities must be balanced with the potential of achievement prior to adopting this proposal.

While both parties proposed an increase in the uniform allowance under Article XIV, the Borough's proposal is more reasonable and should be adopted, since an increase in the uniform allowance by one hundred dollars (\$100.00) in 1997 would place the officer's allowance at the high end of comparison with other police bargaining units on Long Beach Island.

With respect to the Borough's goal of clarifying (or streamlining) the Agreement, the addition of clauses providing for Maintenance of Operations, Separability and Savings, and Fully-Bargained Provisions should be adopted and/or consolidated within one Article. These clauses, as stated by the Borough, are reasonable and consider a clear statement of existing case law regarding unlawful job actions, provide a reflection of the parties' recognition of the present process of resolving impasse and reflect language uniform in nature to other public sector agreements. Finally, these provisions appear to mirror a number of contracts of comparable municipalities on Long Beach Island and throughout the State of New Jersey.

The remaining PBA proposals --- including the requests to: increase vacation days by one (1) day, increase holidays by one (1) day, increase the health benefit coverage to extend to an officer, his spouse and family<sup>23</sup> regardless of the number of years of service (within Surf City), insure that health benefits are portable from state to state, and allow each officer to receive one week of vacation during the summer months --- should not be granted at this time or under the present economic circumstances. Each issue possesses a cost factor which exceeds the proposed award.

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23. Presently, an officer, his spouse and his family are provided with health benefits after retirement or death, providing the officer has twenty-five (25) years of service within Surf City.

Lastly, the PBA proposal for the Sergeants to be included in the Local 175 PBA bargaining unit with patrolmen should be denied on the basis that neither the language of the Agreement nor the PERC procedures (rules and decisions) grant this Arbitrator the authority to effect the PBA's request. Moreover, the record fails to demonstrate that the PBA filed a timely petition with PERC to clarify the bargaining unit in accordance with PERC rules.

The parties were requested to emphasize their calculations of the cost of their economic proposals. Both parties utilized the 1994 base salaries of the bargaining unit members --- six (6) patrolmen. Their 1994 salaries, excluding longevity, amounted to \$224,592.<sup>24</sup> which is the baseline figure for which this Arbitrator made certain calculations.

The salary increases of 4.5% effective January 1, 1995 will cost \$10,106.64 and the base will be \$234,699.; with the salary increase of 4.5% effective January 1, 1996 the cost will be an additional \$10,561.44; and with the salary increase of 4.5% effective January 1, 1997 the cost will be an additional \$11,036.70. These figures exclude the added costs of longevity, pension and other items which are directly connected to salary costs. The figures assume neither hires nor retirees.

The change in sick leave benefit, with the addition of two days of sick leave per year, was calculated at \$1,728., based on an 1994 average rate of \$148.80 per day for five officers and \$120. per day for one officer. This actual cost will increase by 4.5% in each of three years --- \$1,855 in 1995; \$1,939. in 1996; and \$2,026. in 1997.

The increase in the uniform allowance under Article XIV, effective January 1, 1997, will cost the Borough and additional \$600. (\$100. increase in the uniform allowance for each of six (6) officers).

Thus, the total annual net economic change for the calendar year 1995 will be \$11,961.44; the total annual net economic change for the calendar year 1996 will be \$12,500.64; the total annual net economic change for the calendar year 1997 will be \$13,662.70. The three year net economic change will total \$38,124.78. Turning to a review of relevant statutory criteria supports this Award.

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24. Five patrolmen earn \$38,689. and one patrolman earns \$31,147.

## CONSIDERATION OF STATUTORY CRITERIA

**N.J.S.A. 34:13-16(g)(1) requires consideration of the "interests and welfare of the public."**<sup>25</sup>

The Borough did not offer any specific argument under this criteria, although its case reflected concern for the public. The PBA alternatively addressed this criteria by asserting that its economic proposal (and wage increases) would best serve the public by "modestly increasing salaries which will have the effect of raising morale and also enable the Surf City police department to attract and retain experienced officers".

One issue is certain -- in the absence of Cap Constraints, the interest and welfare of the public require a police force of trained professionals, committed to the protection of persons and property of the community they serve. In this respect, it must be expected that the level of compensation for those officers are to a standard which relates to (both) the real and perceived contributions which the officers make to the community. While some arbitrators relate to the morale and respect of the department, it is this Arbitrator's belief that the interests of the public are best met when, within the policies of the governing body, compensation for uniform employees in the police department reasonably recognizes the functions, effectiveness and responsibilities of its officers.

By the Borough's record of high quality public protection and a police force composition of relatively few officers, it may be reasonably concluded the SCPD functions at a high level of effectiveness and individual responsibility within the general confines a small force. Officers however serve with the lowest wage guide on Long Beach Island. And, while the Borough is comforted with its belief in fiscal constraint, the police officers of the SCPD sincerely conclude that their members do not receive the compensation it deserves and often serves as a training ground for officers to qualify before transferring to other municipal police forces. While this may not be conclusive in fact, it is an indication that officers perform their duties with the belief that their compensation package does not meet their performance level.

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25. While the New Jersey Cap Law is referenced under this criteria, it is also addressed under subsection g(5), and will be discussed specifically under that section.

Being a relevant concern to the interest of the community, this Arbitrator has attempted to show the recognition relating to the functions of the department and endeavored to increase the officers' base wages within the constraints expressed by the Borough.

**N.J.S.A. 34:13A-16(g)(2) requires "comparison of the wages, salaries, hours, and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours, and conditions of employment of other employees performing the same or similar services and with other employees generally:**

- (a) In private employment in general.**
- (b) In public employment in general.**
- (c) In public employment in the same or similar comparable jurisdictions.**

The Borough did not address this criteria in detail, but submitted that its proposed increases were "generous" when compared to the CPI, private sector wage increases, and recent Interest Arbitration awards. The Borough acknowledged that the wage guide was lower than comparable PBA units, but asserted that its overall compensation package included all benefits available to other uniformed officers and was generally comparable to other LBI bargaining units.

Additionally, the comparability concerns were discussed by the Borough with respect to certain proposed amendments to the Agreement. (Specific references were made earlier in the discussion of party positions concerning amendments to enumerated Articles of the Agreement).

The PBA alternatively directed its attention to this criteria, detailing several comparisons with peer officers in Long Beach Island and Ocean County, Surf City teachers, other Surf City municipal employees, and private employment in general.

A salary<sup>26</sup> comparison with peer officers in other Long Beach Island municipalities clearly revealed that, under either the PBA or Borough proposal, Surf City officers ranked last (with the lowest salary) in each contract year. Comparisons of employee sick day and holiday entitlements revealed similar results

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26. (including longevity)

(Differences were detailed above under the PBA arguments relating to the proposed amendments under the Agreement). Drawing further comparisons among neighboring police officers, the PBA charted salaries and salary increases (in terms of both percentages and dollars) paid to top level Ocean County police officers in 1995, 1996 and 1997. The charts demonstrate that the increases proposed by the Borough fall well below the statistical averages and comparisons of the unit affiliates. In fact, comparisons rank the PBA unit last among their peers in terms of percentage and actual dollar increases.

Upon drawing further comparisons with other municipal employees within Surf City, the PBA first analyzed the Surf City teachers working condition and maintained that teachers was one of the "best comparisons" because: (1) the same taxpayers were paying the teacher and police salaries; (2) these taxpayers were subject to the same economic conditions; and (3) the voter's in the municipality actually vote on the teacher salaries. Here the PBA highlighted evidence to support its submission that "teachers work less days and less hours than police officers in Surf City, but have better fringe benefits and earn more money per day" than police officers. The PBA also submitted that, "over the past six years, the majority of Surf City (municipal) employees have been outstripping the pace by which Surf City patrolmen have been receiving salary increases". The PBA targeted the salaries of the Borough Administrator, the Borough Superintendent, the Municipal Clerk, the Assistant Driver and the Borough Mechanic to demonstrate this point.

More generally, the PBA submitted that the New Jersey economy is "growing by leaps and bounds" and has positively affected the wages, salary, and conditions of private employment. The PBA also submitted extensive newspaper articles and economic data in private employment.

There is an obvious conclusion that there few occupation in the private section which compare with that of a uniformed police officer. Nevertheless, the attempt to make comparisons with private sector employment are meaningful to the extent that private sector increases are based on profit and loss, the ability to compete economically and the result of performance.

In the public sector, while profit may not be the primary motive, the correlative incentive is constraining the means for expenditures and, more specifically, preventing tax increases. Moreover, the report of private sector increases reveals a benchmark for public sector compensation improvements.

Wage data published by the Bureau of National Affairs reveal that the percentage wage increases granted within this Award are above the national median pay increases in 1995 and 1996. Notwithstanding, while these percentages relate to the private sector, the figures appear below those of comparison with the municipal employees within the County in 1995 (4.96% and \$2,287. in actual dollars) and in 1996 (5% and \$2,400. in actual dollars).

It is concluded that the wage increases herein are within the range of private and public wage increases, in general, and do not exceed (perhaps, they are even below) comparative wage increases in the public sector uniformed units on Long Beach Island. When compared with municipal employees cited by the PBA, wage increases awarded herein may be below the wage increases afforded certain municipal employees within the Borough.

**N.J.S.A. 34:13A-16(g)(3) requires consideration of 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 receive 1."**

Neither of the parties offered direct argument under this criteria, although both parties alluded to their characterizations of the Agreement. As was evident, aside from the substantive issues, the Borough was compelled, through Counsel, to revise the provisions of the Agreement through deletions, amendments and additions. To that end, this Arbitrator has attempted to address these proposed revisions in the context of both clarifications and management's clear intention to seize greater control over the bargaining unit.

This Arbitrator has repeated held that, without a compelling basis for modification of contract language, amendment should not be granted. In the present circumstances, with the analysis of each proposal, both substance and intent of the amendments were considered.

For purposes of addressing this criteria, this Arbitrator has taken notice that the Agreement is a fully developed composite of terms and conditions developed through negotiation and the controlling New Jersey public sector law. For purposes of description, the Agreement covers recognition, succession, a grievance (and arbitration) procedure, work schedule, call time and overtime, rights of patrolmen, standby compensation, vacations, compensation (salary and longevity), leaves and holidays (sick days, holidays and personal leave), health care insurance, compensation for use of personal vehicles, college reimbursement, uniforms and equipment, duration of the agreement and miscellaneous terms.

In this Arbitrator's opinion, the record supported the inclusion of a management rights clause for purposes of clarification, revision of the "no waiver" clause for purposes of verification, moving the savings clause for purpose of administration, amendment to shift change provisions for the purpose of insured shift coverage, amendment to the breathalyser assignment for purposes of improved management, improvement of the sick leave provision for the purpose of improving the quality and administration of the benefit, amendment of notice requirement for purposes of administration, amendment of the personal leave benefit, changes to the health care provisions for purposes of improving the benefit and constraining the diminution



of the benefit through changing carriers', improvement of the uniform allowance, insertion of a fully bargaining for provision for the purpose of improving administration, and moving the separability and savings clause for purpose of administration. These changes are granted to improve both the quality and context of the Agreement.

**N.J.S.A. 34:13A-16(g)(4) requires consideration of "stipulations of the parties."**

The parties have stipulated on a three year Agreement governing calendar years 1995 through 1997.

**N.J.S.A. 34:13A-16(g)(5) requires consideration of the "lawful authority of the employer."**

This criteria requires the Arbitrator to consider fiscal constraints imposed upon municipalities by the State legislature under N.J.S.A. 40A:4-45.1 et. seq. (hereinafter, the Cap Law").<sup>27</sup> This law outlines specific guidelines "which require local governments to follow sound business principles in their budgetary practices." Morris County v. Skokowski, 86 N.J. 419, 423 (1981). The basic concept is that local government must hold yearly budget increases and expenditures within a limited range imposed by statute and, to this end, a municipality is encouraged to structure its budget by limiting increased expenditures to a specific "cap index" number. The governing body may, by majority vote and without referendum, increase the cap figure for any given year to a limit of 5% (the Cap).

Additionally, if the municipality increases its Cap to the limit of 5%, but in fact utilizes a lesser percentage within its budget considerations, it can "bank" the "percentage" difference. Through this "cap banking", a local government has the lawful authority and flexibility of carrying forward unused CAP allocations into future budgets and permit additional budget increases.

Upon referring to these lawful guidelines, the PBA has argued and demonstrated that there is significant flexibility in the Borough budget to lawfully escalate Borough resources and fund the PBA

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27. Notably, N.J.S.A. 34:13a-16g(5) does not necessarily limit this Arbitrator's analysis to Cap Law

proposal. The Borough did not contest its "lawful authority" to budget additional monies toward the PBA proposal, although the Borough asserted that exercised a prudent approach in fiscal constraint and was not obligated to extend its budget simply because it had the authority to do so.

As viewed in these circumstances (and other instances), while the government entity has the ability and the Borough acknowledged the lawful flexibility of utilizing the Cap limits, it maintained that it would not be fiscally responsible to exceed the cap "index" figure for any given year. In this connection, the Borough explained that the Cap index represents prudent budgetary constraints (as recognized by the Legislature), whereas utilization of the 5% Cap would be more akin to buying on credit. Moreover, economic concerns has driven the Borough to retain any budgetary surplus in preparation for the increasing possibility fiscal prudence.

In assessing the lawful authority of the Employer, this Arbitrator will not presume that the Borough should be required to make full use of Cap limits and flexibility. Nonetheless, in light of the evidence presented, it appear that the Borough will be able to contain its expenditures comfortably within a budget built on fiscal prudence and budgetary planning. When considering the previous budgetary documents of the Borough, the increases awarded will fit within the budget constraints.

**N.J.S.A. 34:13-16(g)(6) requires consideration of the "the financial impact on the governing unit, its residents and taxpayers".**

The Borough did not address this criteria in detail, but highlighted the testimony of its financial expert and Borough Auditor, David J. Pawlishak. Mr. Pawlishak noted that the Borough's ratables had decreased for several years since properties were unable to be sold for their assessed value. (Tr - June 19, 1997, 21:10-21). The witness also explained that any excessive PBA wage increase award would have to be funded through an emergency appropriation in the 1998 budget and that this would clearly have an impact on the Borough's taxpayers. (Tr. - June 19, 1997, 23:4-24). Mr. Pawlishak characterized the PBA recommendation for salary increases to be funded through Borough surplus as a fiscally imprudent decision (*emphasis added by this Arbitrator*) (Tr. - June 19, 1997, 13:17-24).

The PBA contended that the "Borough of Surf City enjoys an extremely stable and healthy economic outlook". In support of this contention, the PBA focused on numerous and various news articles and quotations from town officials which painted a positive economic picture for the Borough. (See PBA- D5; PBA- D6). The PBA also highlighted the Borough's high property values (PBA C-13), low unemployment rate (see PBA-D10),<sup>28</sup> low tax rates (see PBA-C13A)<sup>29</sup>, falling expenditures and rising revenues. (see PBA-A1).

Beyond these positive economic indicators, the PBA also directed attention to other instances where the Borough may expect to realize significant savings and additional revenues. The PBA noted news reports of anticipated savings resulting from a change in employee health plans (see PBA-T) and grant money due from the county under the Clean Communities Program (see PBA-N3).

As for the Borough's ability to fund the proposed wage increases, the PBA noted that the Borough had already budgeted increases for police salaries which were reflected in budget increases for the department in the amounts of 3.5% (between 1994 and 1995), 5.3% (between 1995 and 1996) and 3.5% (between 1996 and 1997). To the extent that the Borough's proposal surpassed the budget figures, the PBA characterized the difference between the party's proposals as "infinitesimal" when calculated in light of the municipal budget. The PBA maintained that the actual difference between the two proposals reflected less than a 1% change.

In brief, the PBA maintained that the Borough could "easily afford the additional costs of the PBA salary proposal without causing any adverse financial impact on the Surf City governing unit, its residents and taxpayers".

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28. Which ranks Surf City with the lowest unemployment rate in the county.

29. Which indicates that Surf City's tax rate has fallen in past years and is one of the lowest tax rates in Ocean County.

In this Arbitrator's opinion, the financial impact on the governing unit, its residents and taxpayers is not beyond the fiscal forecasts or confines which the Borough blueprinted in its prior budgets. Moreover, considering the actual dollar wages increases of 4.5% in each year of the Agreement, the salary increases of 4.5% effective January 1, 1995 will cost \$10,106.64 and the base (or total 1995 police salary costs) will be increased to \$234,699.; with the salary increase of 4.5% effective January 1, 1996 the cost will be an additional \$10,561.44 with the salary base increased \$245,260.; and with the salary increase of 4.5% effective January 1, 1997 the cost will be an additional \$11,036.70 with the salary base increased to \$256,297.<sup>30</sup> Considering that the change in sick leave benefit, and the addition of two days of sick leave per year (calculated at \$1,728. and based on an 1994 average rate of \$148.80 per day for five officers and \$120. per day for one officer), the actual cost of this benefit will increase by 4.5% in each of three years --- \$1,855 in 1995; \$1,939. in 1996; and \$2,026. in 1997). Considering the increase in the uniform allowance under Article XIV, effective January 1, 1997, the additional cost to the Borough will be \$600. (\$100. increase in the uniform allowance for each of six (6) officers).

Further considering that the total annual net economic change for the calendar year 1995 will be \$11,961.44; the total annual net economic change for the calendar year 1996 will be \$12,500.64, the total annual net economic change for the calendar year 1997 will be \$13,662.70, the three year net economic change will total \$38,124.78.

Given the relative small size of the bargaining unit, the financial aspects of this Award will not have an adverse financial impact on the governing body or the residents or taxpayers of Surf City.

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30. Again, these figures exclude the added costs of longevity, pension and other items which are directly connected to salary costs and assume neither hires nor retirees.

**N.J.S.A. 34:13A-16(g)(7) requires consideration of the "cost of living".**

The Borough argued that its proposal was generous when compared to recent figures outlining the current cost of living. In this connection it highlighted that the July, 1997 CPI-U index is at 2.1% for the Philadelphia area and only 2.3% for the New York area. The PBA alternatively submitted that the CPI for the New York-Northeastern New Jersey region has continued to sharply rise in recent years.

In this Arbitrator's opinion, the cost of living data does not prohibit the increases within this Award.

**N.J.S.A. 34:13A-16(g)(8) requires consideration of 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.**

This criterion, like the public interest, tends to raise diametric responses --- subjective in nature by most observations. Actually, the Borough did not raise any specific arguments under this criteria --- although, through the course of the proceedings, Counsel argued generally held that the Borough's position met the goals of the governing body and the conservative intentions of its leadership. Alternatively, the PBA maintained that continuity and stability of employment was a critical aspect of this case since the Borough "has a history of treating its police officers poorly in terms of compensation and benefits" and has thereby "established a reputation of being a stepping stone before leaving for other higher paying departments". The PBA repeatedly argued that the Borough's attempts to amend contract provisions evidenced an effort to manipulate and diminish employee entitlements. According to the PBA, the Borough's treatment of its officers has produced a decline in the department's morale and stability, and has resulted in many officers leaving the force within the last ten years. In light of these factors, the PBA submitted that its proposals be granted in their entirety, "so that Surf City can again retain some of the former semblance of respectability and legitimacy which it now does not have." According to the PBA, adoption of the Borough proposals would "further lessen and destroy the already low morale within Surf City". Whew!

As this Arbitrator has noted, the Borough arduously seeks to administer the municipality in a stable and circumspect manner and there is little question that the fiscal prudence of the governing body results in conservative and discerning budget formation. One of the positions expressed was that the governing body has sought to treat employees equally, but within the constraints of the Borough's fiscal philosophy of restraint and limitation. In fact, aside from its economic proposals, the Borough demonstrated its ideology of tightening the relationship with the PBA by scouring and "cleansing" the Agreement.

While portions of the Agreement admittedly require modification, the attempts of Counsel to rewrite the great majority of the contract conveyed the impression to the PBA that the Borough was attempting to take control the collective bargaining relationship with the PBA. It was a reasonable conclusion to reach --- Counsel did not relent.

However, a more positive and hopeful conclusion is that the Borough merely attempted to tighten the gaps in contract language. Any judgment relating to the Borough's intention will bear out in the upcoming negotiations --- and will have a marked effect on the future continuity and stability of employment.

In the interim, this Arbitrator has attempted to reward the unit for their performance and duties through a reasonable and proper increase for the bargaining unit officers which is within the fiscal constraints sought by the Borough. This Award should meet those goals within the address of the statutory criteria.

Having considered the evidence in the context of the relevant statutory criteria, this Arbitrator issues the following:

**AWARD**<sup>31</sup>

1. **Article XVI** of the Collective Bargaining Agreement ("Agreement") shall be modified to read:

**Duration And Effect**

"A. The duration of this Agreement shall be for three years commencing January 1, 1995 and expiring on December 1997.

B. The adjustments of the Interest Arbitration Award to Base Salary Guide and clothing allowance shall be retroactive to January 1, 1995.

..."

2. **Article IX, Compensation**, of the Agreement shall be amended to reflect:

A four and one-half (4.5%) percent across the board increase on base salaries effective January 1, 1995; a four and one-half (4.5%) percent across the board increase on base salaries effective January 1, 1996; and a four and one-half (4.5%) percent across the board increase on base salaries effective January 1, 1997. The salary increases shall be effective as of the date of this Award and effective retroactively to January 1, 1995. Retroactive payments shall be determined and paid to employees within a reasonable period of time.

3. The Borough's proposal to delete **Article II, Successor Agreement** shall be denied.

4. The Borough's proposal to amend **Article II, Management Rights** shall be granted as follows

"A. The Borough hereby retains and reserves unto itself, without limitation, all powers, rights, authority, duties and responsibilities conferred upon and vested in it prior to the signing of this Agreement by the laws and Constitution of the State of New Jersey and the United States, including, but without limiting the generality of the foregoing, the following rights:

1. The executive management and administrative control of the Borough government and its properties and facilities and the activities of its employees;

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31. Reference to Article's in the Award refer to those corresponding in the 1992-1994 Agreement

2. To hire all employees and, subject to the provisions of law, to determine their qualifications and conditions for continued employment, or assignment, and to promote and transfer employees;

3. To suspend, demote, discharge or take other disciplinary action for cause.

B. The exercise of the foregoing powers, rights, authority, duties or responsibilities of the Borough, the adoption of policies, rules, regulations and practices and the furtherance thereof, and the use of judgment and discretion in connection therewith, shall be limited only by the specific and express terms of this Agreement and then only to the extent such specific and express terms hereof are in conformance with the Constitution and Laws of the State of New Jersey and the United States, and the ordinances of the Borough of Surf City.

C. Nothing contained herein shall be construed to deny or restrict the Borough of its rights, responsibilities and authority under R.S. 40 and R.S. 11, or any other national, state, county or local laws or ordinances.”

5. The Borough's proposal to amend **Article III, Grievance Procedure, Sections A.4. and C and E**, shall be denied.

6. The Borough's proposal to amend **Article IV, Work Schedule, Section C.2.**, shall be denied.

7. The Borough's proposal to amend **Article V, Call Time and Overtime, Section D** shall be denied.

8. A. The Borough's request to delete the reference to "professional advantage" in **Article VI, Rights of Patrolmen, Section A.**, shall be denied.

B. The Borough's request to change the "just cause" standard to "cause" shall be denied

C. The Borough's request to delete **Section E** shall also be denied.

D. The Borough's request to delete the present **Section F.1.** and replace the provision with a revised **Section F.1.** shall be granted with the following:

“1. **No Waiver**:

Except as otherwise provided in this Agreement, the failure to enforce any provision of this Agreement shall not be deemed as a waiver their of.”

E. The Borough's request to move **Section F.2. (Savings Clause)** to another section of the Agreement, shall be granted (and addressed more specifically below).



F. The Borough's proposal to amend **Section I** shall be granted with the following:

"Officers may change shifts with fellow officers so long as the change is requested and approved by the ranking officer in writing at least twenty-four (24) hours in advance, coverage is maintained, and no officer will work a double shift as a result of the change."

G. The Borough's proposal to amend **Section J** shall be granted with the following:

"Qualified breathalyzer operators shall be used on a rotating basis."

9. The Borough's proposal to reduce the compensation rate for standby time as outlined in **Article VII, Standby**, is unreasonable and shall be denied.
10. The PBA's proposal to modify **Article VIII, Vacation**, by increasing the number of vacation days and exercising the right to use vacation time during the summer months, shall be denied.
11. The Borough's proposal to create a new **Article IX, Longevity, Section C** for eliminating longevity for new hires shall be denied.
12. A. The proposals to amend **Article X, Leaves and Holidays, Sections B.1. and B.2. Holidays**, shall be denied, specifically:

1. The PBA's request to increase holidays by one (1) day shall be denied.

2. The Borough's requests to establish "predetermined" holidays and, when an officer works a holiday, to provide payment in compensatory time or cash at the discretion of the Borough shall be denied.

B. The proposal to increase sick day entitlements by two (2) pursuant to **Article X, Section C.1., Sick Leave**, shall be granted and amended as follows:

"1. Each employee covered by this Agreement shall be entitled to sick leave with pay. During the employees first year of employment, he will be granted one (1) day for each month of completed service. From the beginning of an employee's second year of employment, he will be granted twelve (12) days per year thereafter."

C. The Borough's proposal for amendment to **Article X, Section C2, "Notification"**, shall be granted as follows:

"a. If an employee is absent for illness or accident, he shall notify his supervisor no later than one (1) hour prior to his usual reporting time.

b. Failure to notify his supervisor may be cause for denial or abuse of sick leave for that absence and constitute cause for disciplinary action.

c. Any time after an employee has been absent for a period longer than three (3) consecutive days or an aggregate of ten (10) days in a year, the Police Director may request a medical doctors certification regarding the employee's illness, including a statement that the employee is capable to return to work as well as the nature of the illness or injury which caused the absence from work. However, the Police Director may require a medical certification in connection with any illness when it appears reasonable under the circumstances.

d. Abuse of sick leave will subject an employee to disciplinary action.”

D. The Borough’s proposal to amend **Article X, Section D.I., Personal Leave** shall be granted and state the following:

“1. All full-time police officers shall be entitled to four (4) personal leave days accumulative per annum as follows:

After three (3) months service:	1 day
After six (6) months service:	2 days
After nine (9) months service:	3 days
After twelve (12) month service:	4 days
Four (4) days per annum thereafter.”	

13. A. The Borough’s proposal to delete the present language of **Article XI, Health Care Insurance, Section A**, shall be denied.

B. The PBA’s proposal to amend **Article XI, Section A** by requiring the Borough to provide disability coverage equal to or greater than the State of New Jersey Disability Plan shall be denied.

C. The Borough's proposal to provide a disability benefit plan similar to the benefits provided in the state disability plan shall be granted.

D. The Borough's proposal to increase the co-pay for name brand drugs as an incentive for employees to purchase generic drugs in **Article XI, Section C** shall be granted.<sup>32</sup> [The three dollar (\$3.00), six dollar (\$6.00) co-pay proviso is the same co-pay provided in the State Health Benefits Program].

E. The Borough's proposal to increase the optical coverage in **Article XI, Section D** and remove the restrictions of the current plan shall be granted.

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32. The proposal is represented as a no-cost item to most recipients of the benefit and will reduce costs for the employer.


F. The Borough's proposal to amend **Article XI, Section E** by allowing the Borough to change insurance plans and/or carriers shall be granted, in part, and denied, in part. The proposal shall be granted on the condition that the Borough and new carrier provide "substantially equivalent" benefits (as opposed to the Borough's proposed "substantially similar" benefits) to the bargaining unit. Section E. shall read:

"The Borough reserves the right to change insurance plans and/or carriers so long as in the aggregate substantially equivalent benefits are provided."

14. The Borough's proposal to amend **Article XIII, College Reimbursement**, shall be denied.
15. The proposal for an increase in the uniform allowance under **Article XIV, Uniforms and Equipment**, shall be granted and the uniform allowance shall be increased by one hundred dollars (\$100.00) to each bargaining unit member in 1997.
16. The PBA's proposal to amend **Article XV, Section E**, by extending medical benefits to retirees shall be denied.
17. The Borough's proposal to delete **Article XV, Miscellaneous, Sections A and B.1.**, shall be denied.
18. The Borough's proposal to insert a **Maintenance of Operations** clause as **Article XVI** shall be granted.
19. The Borough's proposal to move and insert a **Separability and Savings** (previously, Article VI, Section F.2.) as **Article XVII** shall be granted.
20. The Borough's proposal to insert a **Fully Bargained Provisions** as **Article XVIII** shall be granted.
21. The PBA proposal for the Sergeants to be included in the Local 175 PBA bargaining unit with patrolmen shall be denied. based on the plain language of the Agreement, PERC rules and PERC decisions. The PBA failed to file a petition to clarify the bargaining unit in accordance with PERC rules. Moreover, the PBA's cost out analysis ("PBA Exhibit SI") and any other document using Sergeants as part of the PBA proposals should be disregarded by the Arbitrator.
22. The economic amendments within this Interest Arbitration Award shall apply only to those employees on the present payroll of the Borough on the date of this Award.

23. All other terms and conditions of the Collective Bargaining Agreement which expired on December 31, 1994 shall remain in full force and effect, without modification or amendment.

Dated: December 4, 1997

  
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J. J. Pierson, Esq.  
Arbitrator

State of New Jersey    )  
                                      ) ss  
County of Morris        )

On the 4th day of December, 1997, before me personally came and appeared J.J. Pierson, Esq., to me known and known to me to be the person described herein who executed the foregoing instrument, and he acknowledged to me that he executed the same.

  
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**NANNETTE PIERSON**  
**NOTARY PUBLIC OF NEW JERSEY**  
**My Commission Expires Mar 5, 2001**